

**FIRST AMENDMENT TO
EXCLUSIVE NEGOTIATION AGREEMENT**

THIS FIRST AMENDMENT TO EXCLUSIVE NEGOTIATION AGREEMENT (First Amendment) is entered into this ___ day of April, 2020, by and between the CITY OF FRESNO, a municipal corporation (City) and in its capacity as HOUSING SUCCESSOR TO THE REDEVELOPMENT AGENCY OF THE CITY OF FRESNO (FHS) and NOYAN FRAZIER CAPITAL, L.P., a California limited partnership (Developer) on the terms and conditions set forth below.

RECITALS

A. The City and the Developer have entered into that certain Disposition and Development Agreement dated March 15, 2016, (DDA). Section 4.12 of the DDA provides for exclusive good faith negotiations for potential future phases of the planned project. This First Amendment to Exclusive Negotiation Agreement shall apply only to the exclusive negotiation rights granted for Phase 4 as described in the DDA (ENA).

B. Phase 4 is defined as .24 acres located on the southwest corner of Fulton and Kern Streets, 887 Fulton Mall (Property), and is proposed to entail adaptive reuse of the existing Berkeley building's 33,750 square feet for retail use.

C. The ENA was originally granted through December 31, 2017, administratively extended by letter from the City Manager dated December 13, 2017, through June 29, 2018, and extended further by the First Amendment to DDA dated June 28, 2018, through April 11, 2020 (Negotiation Period).

D. The Developer has requested to extend the Negotiation Period to April 11, 2021, in order to continue negotiations.

AGREEMENT

NOW, THEREFORE, for and in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and the Developer hereby agree as follows:

Section 1. Extension of Negotiation Period

The Negotiation Period, is hereby extended to April 11, 2021, unless sooner terminated in accordance with this First Amendment, with no further extensions permitted unless approved by the City Council.

Section 2. Exclusive Negotiating Fee. As consideration for the exclusive negotiation rights granted, Developer shall pay an Exclusive Negotiating Fee of \$5,000 (Fee), which shall be due and payable to FHS within ten days of execution of this First Amendment to ENA. The Fee is intended to offset the costs of maintaining the Property and costs of obtaining an updated appraisal.

Section 3. Conditions Precedent. Developer must comply with the following conditions precedent for Council to approve a Disposition and Development Agreement:

1. A disposition and development agreement (DDA) must be negotiated, drafted and presented to Council for approval prior to expiration of the Negotiation Period.
2. As a condition to considering a DDA for approval, City must first receive a pro forma, sources and uses budget and proof of necessary financing.
3. Conditions precedent to the close of escrow will include receipt of evidence of development entitlements, combined monies from funding sources not less than the total development amount or amount which City/FHS determines is necessary to complete the project and such funds are deposited into escrow and is in a position to close no later than December 31, 2021.
4. Normally, but not more frequently than monthly, but at any time requested by the City Council, the Developer shall make oral and summary form written progress reports advising the City, FHS and/or its staff on all progress being made on tasks, financing, and other activities undertaken by the Developer pursuant to this ENA. Developer shall present a report to Council within six months of Council approval of this First Amendment, no later than October 9, 2020.

Section 4. Termination. Any material default under the DDA as amended, including, without limitation, failure to close escrow by November 20, 2020, will result in the immediate termination of this ENA with no further obligation by the City.

Section 5. Effect of This First Amendment.

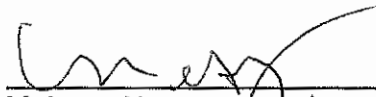
The DDA and the ENA, as amended by any prior amendments, shall remain in full force and effect except as amended hereby or inconsistent herewith.

IN WITNESS WHEREOF, the parties have caused this First Amendment to be executed by their respective representatives thereunto duly authorized as of the date first written above.

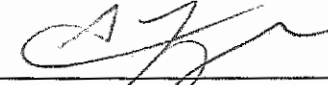
CITY OF FRESNO,
A California municipal corporation

NOYAN FRAZIER CAPITAL, L.P., a
California limited partnership

By: _____
Wilma Quan
City Manager

By: 
Mehmet Noyan, 4-2-2020

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By: 
Terrance Frazier, _____

By: _____ Date
Laurie Avedisian-Favini
Assistant City Attorney

By: 
Jeff Isenstadt, _____

ATTEST:
YVONNE SPENCE, MMC
City Clerk

Housing Successor Agency to the
Redevelopment Agency
of the City of Fresno

By: _____
Deputy

By: _____
Marlene Murphey,
Executive Director