



AGENCY ITEM NO.
AGENCY MEETING: 9/25/07

APPROVED BY

REPORT TO THE REDEVELOPMENT AGENCY


(Executive Director)

DATE: September 25, 2007

FROM: MARLENE MURPHEY, Executive Director

SUBJECT: Consider the First Amendment to Exclusive Negotiation Agreement with Fresno Historic Chinatown, LLC, a California limited liability company, for the Historic Chinatown Project Area located within the Chinatown Expanded and Redevelopment project area.

RECOMMENDATIONS

It is recommended that the Agency Board consider taking the following actions:

Approve the First Amendment to Exclusive Negotiation Agreement with Fresno Historic Chinatown, LLC for the Historic Chinatown Project Area located within the Chinatown Expanded and Redevelopment project area, subject to minor modifications approved by Executive Director, and approved as to form by the City Attorney's office.

EXECUTIVE SUMMARY

On October 27, 2004, the Redevelopment Agency of the City of Fresno ("Agency") and Fresno Historic Chinatown, LLC ("Developer") executed an Exclusive Negotiation Agreement ("ENA") for a period of twenty four (24) months for master planning of the Historic Chinatown Project area generally bounded by Fresno Street to the north, Union Pacific Railways to the east, Freeway 99 to the west and Monterrey (Freeway 41) to the south. The Developer is requesting a one year extension.

BACKGROUND

Both the Developer and Agency Staff have made substantial progress in accordance with the Performance Schedule. The Developer's earlier concept was a mixed use development consisting of office use, commercial use, housing units and public parking development; however after further market research, the Developer anticipates the initial focus of the development to include public use buildings and general office with associated retail uses. Considering the need for public use buildings, the Developer needs to make changes to their previous design concepts and related financial pro formas. The Developer has also proposed reducing the study area from 165 acres to approximately 125 acres by amending the Southern boundary generally to Freeway 41. Such considerations require an extended time frame and the Developer has requested a 1st Amendment Extension.

In the twenty four months following the signed ENA with predevelopment cost already incurred, Fresno Historic Chinatown completed substantial progress in their necessary due diligence

including feasibility studies and a conceptual plan for the Historic Chinatown Study Area. In addition, during this time, the Agency was able to complete its necessary due diligence including a General Plan Amendment to allow for mixed-use development in the Chinatown Area, selection of 35 potential owner participation candidates and completion of the Chinatown Expanded Redevelopment Plan Amendment. Given the size and scope of the proposed project, the Agency originally anticipated the need for extending the negotiation period through an amendment.

CONCLUSION / RECOMMENDATION

Staff has worked with the Office of the City Attorney and Fresno Historic Chinatown LLC in drafting the attached First Amendment to Exclusive Negotiation Agreement (See Attachment "A" – First Amendment to Exclusive Negotiation Agreement). During the added time period under the amended ENA, the Agency will (1) analyze the data prepared by Fresno Historic Chinatown LLC; (2) negotiate with the Developer and prepare recommended "deal points" to the Agency and Council; (3) process owner participation agreements in accordance to the Community Redevelopment Law; and (4) solicit proposals and retain a CEQA consultant to initiate a draft Environmental Impact Report. An updated project Performance Schedule covering the additional 12-months is attached to the proposed First Amendment to Exclusive Negotiation Agreement. All other terms within the original ENA are reaffirmed and will continue in full force and effect.

ATTACHMENTS:

"A": First Amendment to Exclusive Negotiation Agreement

**FIRST AMENDMENT TO
EXCLUSIVE NEGOTIATION AGREEMENT**

THIS FIRST AMENDMENT TO EXCLUSIVE NEGOTIATION AGREEMENT ("First Amendment") is entered into this _____ day of _____, 2007, by and between the REDEVELOPMENT AGENCY OF THE CITY OF FRESNO, a public body corporate and politic ("Agency") and FRESNO HISTORIC CHINATOWN, LLC, a California limited liability company ("Developer") on the terms and conditions set forth below.

RECITALS

A. The Agency and the Developer have entered into that certain Exclusive Negotiation Agreement (the "2005 ENA") as of the Effective Date defined therein, describing the terms and conditions under which the parties would negotiate in good faith to conclude a disposition and development agreement ("DDA") for the redevelopment a portion of the Chinatown Expanded Redevelopment Project Area Redevelopment Project Area ("Project Area") pursuant to the redevelopment plans for such Project Area. Capitalized terms not defined herein shall have the meaning given those terms in the 2005 ENA.

B. During the Negotiation Period, the Agency and the Developer have diligently pursued feasibility and other studies in connection with negotiating the DDA and have achieved substantial progress in understanding the issues to be addressed in the DDA.

C. The parties have concluded that it may be desirable to consider one or more DDAs that will provide for the development of less than all of the Site.

D. The Agency and the Developer desire to extend the Negotiation Period in order to continue negotiation of one or more DDAs during the extended Negotiation Period.

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 Agency and the Developer hereby agree as follows:

Section 1. Extension of Negotiation Period

The Negotiation Period, as defined in paragraph 4 of the 2005 ENA, is hereby extended to and including the date which is one (1) year from the date of the execution of this First Amendment, unless sooner terminated in accordance with this First Amendment.

Section 2. Site Redefined.

The Site is hereby redefined to mean that certain real property consisting of approximately one hundred (125) acres, generally bounded by Fresno Street, the Union Pacific Railroad right-of-way, Freeway 99, and Freeway 41, as depicted on Exhibit "A" attached hereto and incorporated herein by this reference.

Section 3. Multiple DDAs.

During the Negotiation Period, the Agency and the Developer may negotiate the terms of one or more DDAs governing the redevelopment of all or a portion of the Site. The parties acknowledge that, in particular, there is interest in the development of a City of Fresno Public Safety Headquarters Building within the Site which could be the subject of a separate DDA. If such a DDA is entered into it shall require the Developer to perform significant additional redevelopment in the Project Area consisting of approximately one hundred thousand (100,000) square feet of office or mixed-use building space and may also include coordination of development by others pursuant to owner participation agreements.

Section 4. Revised Performance Schedule.

The Performance Schedule attached to the 2005 ENA as Exhibit "B" is hereby deleted and the revised Performance Schedule attached hereto as Exhibit "B", and incorporated herein by this reference, is substituted in its place.

Attachments:

Exhibit "A" – Chinatown Amended Study Area Map
Exhibit "B" – Performance Schedule

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Section 5. Effect of This First Amendment.

The 2005 ENA 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.

APPROVED AS TO FORM:
City Attorney's Office
Ex Officio Attorney to the Agency

By: _____
City Attorney/Assistant/
Deputy

ATTEST: Rebecca E. Klisch
Ex Officio Clerk of the Agency

By: _____

AGENCY:

REDEVELOPMENT AGENCY OF THE
CITY OF FRESNO, a public body,
corporate and politic

By: _____
Title: _____

DEVELOPER:

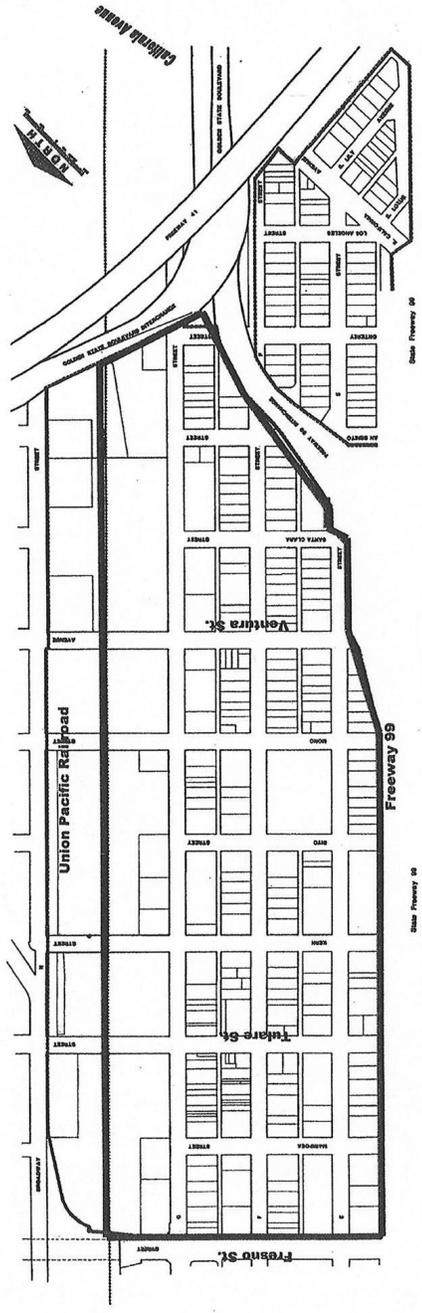
FRESNO HISTORIC CHINATOWN,
LLC,
a California limited liability company

By: _____
Title: _____

By: _____
Title: _____

EXHIBIT "A"

CHINATOWN AMENDED STUDY AREA MAP



Historic Chinatown LLC ENA AMENDED Study Area Boundary



EXHIBIT B

PERFORMANCE SCHEDULE

Developer Responsibilities. During the Negotiation Period, and without limiting any other provision of this Amendment, the Developer shall complete the following tasks, in furtherance of the negotiation process, by the times stated. The times stated shall run from the Effective Date of this Amendment (i.e., the date that the Agency signs this Amendment), unless expressly provided otherwise. Should the Agency and the Developer enter an agreement extending the Negotiation Period and updating this Performance Schedule, the amendment and updated Performance Schedule will supercede this Performance Schedule.

1. Prepare and submit to the Agency, for Agency staff review and comment, a conceptual development plan indicating general land use designations and intensities, sufficient to determine the entitlement track necessary. Make initial deposit of \$25,000 for Developer's share of Consultant/Services Agreements. (Upon execution of ENA)
2. Identify in writing to the Agency the names of its decision makers, lead negotiators, the authority of the foregoing, and the decisions that must be made by the Developer's manager(s) or membership; design consultants; market consultants; architect; engineer; financial consultant (if any); legal counsel; building contractor; building management company; and any other development team members not identified in Section 8 of the 2005 ENA. (Within 30 days after Effective Date)
3. Prepare a Phase 1 (or more) schematic plan to include number and type of residential units, square footage of office, retail, commercial and entertainment, number of hotel rooms, and number and type of parking spaces required, and necessary Phase 1 public improvements, including without limitation local and/or regional transportation facilities. (Within 60 days after the Agency selection of Owner Participant(s))
4. Prepare a pro forma economic model for Phase 1 of the Project and a more general economic analysis for the balance of the Project to include preliminary development costs, revenues, and operating statements. The economic model will be presented in sufficient detail to enable the Agency to estimate property tax and other public revenues to be generated by the Project and evaluate the economic feasibility of the proposed Project. Submit a preliminary financial plan for Phase 1 of the Project, including a statement of overall construction costs, source and availability of equity capital, construction and permanent financing, gap analysis identifying the source and amount of any financing gap, and the scope and type of

Agency/City investment necessary. (Within 75 days after the Agency's selection of Owner Participant(s))

5. Prepare and submit to Agency staff an inventory of Site conditions, including without limitation extent of hazardous materials, location, condition and capacity of public infrastructure and utilities, and similar conditions. (Within 60 days after completion of Developer Responsibility No. 4)
6. Prepare and submit to the Agency evidence of market support for the initial project components. Such evidence may include a market study, letters of tenant interest or other market data to allow the Agency to reach conclusions as to the market interest for the Project. (Within 60 days after completion of Developer Responsibility No. 4)
7. Submit to the Agency proposed DDA deal points (including deal points for a Development Agreement with City for vesting of development rights, etc.), a master development plan, the economic parameters of the initial phases of development, and a project scope description sufficient for issuing a notice of preparation for an Environmental Impact Report (EIR). The proposed DDA deal points shall include a Project phasing development and implementation schedule. (Within 60 days after completion of Developer Responsibility No. 4)
8. Complete negotiation of DDA and (if applicable) development agreement. (Within Negotiation Period)

Agency Responsibilities. During the Negotiation Period, and without limiting any other provision of this Agreement, the Agency shall complete and/or work with City staff to complete the following tasks, all in furtherance of the negotiation process, by the times stated. The times stated shall run from the Effective Date (i.e., the date that the Agency signs this Amendment), unless expressly provided otherwise. Should the Agency and the Developer enter an agreement extending the Negotiation Period and updating the Performance Schedule, the updated Performance Schedule shall supercede this Performance Schedule.

1. Agency Board and Council direction to proceed with Plan Amendment(s), and direction to proceed with formation of Project Area Committee. (Upon approval of ENA)
2. Provide or assist Developer in obtaining available and existing public records, such as, plans, studies, reports and documents relating to the Site. Such information may include, without limitation, EIRs, the General Plan, utility plans, architectural historic surveys, Specific Plans, soils reports, and zoning, redevelopment plan or plans, Owner Participation Rules, any Agency adopted policies, or other information reasonably requested by Developer that may assist the Developer in evaluating the Site and the Project. (Commence upon execution of ENA by Agency and continue through Negotiation Period)

3. Tentatively approve Conceptual Development Plan and notify owners and tenants of opportunity to submit proposal(s). Conduct a review of the Redevelopment Plans to determine possible amendments, e.g., land use and land assembly, timing to adopt any amendments, and financial impacts relative to the proposed Project. (Within 60 days after the Effective Date)
4. Review owner participation request(s) with Developer, and tentatively select owner participant(s) pursuant to any required owner participation procedures so as to determine the specific properties available to the Developer for development. (Within 180 days of after Effective Date)
5. Prepare, process and tentatively approve any owner participation agreement(s). (Within 60 days after selection of Owner Participant(s) pursuant to Agency Responsibility No. 4)
6. Prepare a preliminary property acquisition cost estimate through an appraiser's and relocation consultant's windshield estimate. Prepare a preliminary estimate of goodwill. (Within 180 - 300 days after Effective Date)
7. Prepare an initial study, retain CEQA consultant, and publish notice of preparation under CEQA. (Within 30 days after receipt of DDA deal points, etc., in Developer Responsibility No. 7)
8. Cooperate with and assist the Developer in determining a description and timeline for the entitlement track likely to be necessary to enable the Project to proceed in the timeliest manner. (Commence upon selection of owner participant(s) in Agency Responsibility No. 5 above and continue through Negotiation Period)
9. Complete preparation of draft environmental impact report, publish notice of completion and transmit draft to State Clearinghouse. (Within 180-240 days after publication of notice of preparation, Agency Responsibility No. 7)
10. Complete preparation for Agency and City Council actions necessary to approve any required amendments to Redevelopment Plans, general plan, zoning code and obtain other City land use entitlements. (During the Negotiation Period)
11. Complete preparation of final environmental impact report. (During the Negotiation Period)
12. Complete negotiation of DDA and development agreement. (During the Negotiation Period)

13. Submit for approval (via Agency Board action) owner participation agreements, DDA, and environmental impact report. (Within 30 days after completion of Agency Responsibility 11 and 12)