

AGENDA ITEM NO. 2

AGENDA STAFF REPORT

City of West Covina | Office of the City Manager

DATE: August 16, 2022

TO: Mayor and City Council

FROM: David Carmany
City Manager

SUBJECT: CONSIDERATION OF EXCLUSIVE NEGOTIATION AGREEMENT FOR THE CITY YARD PROJECT SITE IN THE CITY OF WEST COVINA

RECOMMENDATION:

It is recommended the City Council authorize the City Manager to negotiate and execute all necessary documents to effectuate an Exclusive Negotiation Agreement (ENA) with Envision Hotel Partners, LLC (Envision) for the sale of the City Yard property (811 South Sunset Avenue).

BACKGROUND:

The City of West Covina owns the 8.27 acre property located at 811 South Sunset Avenue in West Covina (the "Development Site") (Attachment No. 1). The Development Site includes the City yard building and facilities, the "shop" with automotive bays, Fire Station 1, two (2) compressed natural gas (CNG) facilities, and a vacant former chamber of commerce building. Currently, there are two operational facilities on the Development Site; the Fire Station 1 building was closed down, however, and the fire station has been relocated to a trailer onsite, and the City yard is also operational.

Over the years, City staff has received multiple inquiries for the Development Site, from prospective housing developers to potential tenants inquiring about the chamber building. In March 2021, the City decided to list the property as surplus, which would allow the City to consider disposition of the site. Pursuant to California Government Code Section 54221(b), the City of West Covina declared the Development Site as surplus property on March 23, 2021. While the City listed the property as surplus, it does not obligate the City to dispose of the property.

On May 10, 2021, in compliance with the Surplus Land Act (Government Code Sections 54220-54233) the City put out to open, competitive bid a Request for Qualifications/Proposal (RFQ/P) and provided all entities identified in subdivision (a) of Section 54222 an invitation to participate in the competitive RFQ/P process, for the purpose of proposing a highest and best use, high quality development project.

The City received development proposals for the Development Site from three development teams; The Olson Company, City Ventures, and Meritage Homes, and ultimately did not come to agreement on price and terms with those entities.

The City also received an unsolicited proposal from Envision for the Development Site (Attachment No. 2). On June 21, 2022, the City rejected the three proposals submitted through the Surplus Land Act and selected the Envision proposal. Envision is owned by Simon Sarriedine and Frank Zarabi, who currently own and operate four (4) dealerships in West Covina as well as a hotel in the Bay Area. Mr. Zarabi owns a billion-dollar apparel company and twenty (20)+ hotels.

DISCUSSION:

Envision desires to negotiate a Purchase and Sale Agreement (“PSA”) and a Development Agreement (“DA”) (referred to collectively as the “Project Agreements”) with the City, to develop the Development Site as a mixed-use project including market-rate residential, affordable residential, commercial, parking, hotel, and community uses (the “Project” hereinafter). The Project includes the following:

- 300 Residential Units (Townhomes/Condos)
- 15% Affordable Units (45 units)
- 150+Room Contemporary full-service Hotel
- First Floor Retail (Food Hall, Brewery, etc.)
- Walking path along flood control channel (landscaping, lighting, and security)

The proposed ENA (Attachment No. 3) for the sale of the Development Site will include the following terms:

- Purchase by Envision Hotel Partners of 8.27-acres of City-owned property
- Disposition Price:
 - Purchase Price: \$21,000,0000
 - Fire Station Contribution; \$7,000,000
 - City Yard Grant: \$1,500,000
 - **TOTAL CONSIDERATION: \$29,500,000**
- Term of ENA: 270-days
- Deposit: \$295,000
- Disposition Costs (including staff time, attorney fees and any consultants if needed)
- Developer Submissions (comprehensive development plans)
- Exclusive Right to Negotiate. City shall not negotiate with any other party; City and developer shall negotiate in good faith.

The disposition of the City property will comply with the Surplus Land Act. In addition, any future development of the Development Site is contingent on the relocation of Fire Station 1 and the City yard facilities.

Envision will pay for expenses that are necessary to prepare reports, plans, financial projections, California Environmental Quality Act (CEQA), and other documents that will be utilized to negotiate the final terms of the Project Agreements.

Staff recommends authorizing the City Manager to negotiate with Envision towards execution of any and all documents necessary to effectuate the ENA. If the ENA is approved, the City can

further pursue negotiations of the Project Agreements.

LEGAL REVIEW:

The City Attorney's Office is assisting staff with the ENA and will review and approve the finalized ENA prior to execution.

OPTIONS:

The City Council has the option to

1. Adopt staff's recommendation; or
2. Provide alternative direction.

ENVIRONMENTAL REVIEW:

The ENA is categorically exempt from the California Environmental Quality Act (CEQA) and CEQA Guidelines. CEQA review will be required when an application for a "project" is submitted.

Prepared by: Paulina Morales, Assistant City Manager

Attachments

Attachment No. 1 - Development Site

Attachment No. 2 - Envision Hotel Partners, LLC Proposal

Attachment No. 3 - Draft ENA

CITY Enhance City Image and Effectiveness
COUNCIL A Well-Planned Community
GOALS & Expand Economic Development Opportunities
OBJECTIVES:

City-Owned Property - City Yard



Address: 811 S. Sunset Ave.

APN: 8468016904

Parcel Acreage: 8.27 Acres

City Yard Facilities

- Office
- Streets Warehouse
- Workshop
- Paint Shed
- Parks Equipment Warehouse
- CNG Fueling Station
- CNG & Propane Fueling Station

Other Buildings

- The "Shop" Automotive Bays 9,090 SF
- Vacant Former Chamber Building 5,169 SF
- Active Fire Station #1 6,657 SF

Building square footage is approximated.

City Yard Development Proposal

JUNE 16, 2022

Envision Hotel Partners, LLC
Simon Sarriedine



CITY YARD DEVELOPMENT PROPOSAL BY ENVISION HOTEL PARTNERS

Our intent with the subject proposal is to express interest in purchasing and developing the property located at 811 South Sunset Avenue in West Covina, CA. Our vision is to create a block in West Covina unlike any other: The Block on Sunset. The location will have ground floor local retailers and restaurants, a contemporary hotel with banquet and meeting facilities, a rooftop restaurant, pool, and lounge and several hundred condos and townhomes.

Our offer to purchase the land is \$21,000,000 (\$58.29 per square foot). In addition to our commitment to develop the land at 811 S. Sunset, if our bid is accepted, we will also commit to an investment of up to \$7,000,000 for us to build a new fire station at a city owned location. We will also offer an additional \$1,500,000 grant to fund the relocation of the current City Yard. In total, \$29,500,000.

This proposal is offered by Envision Hotel Partners and owners Simon Sarriedine and Frank Zarabi. Mr. Sarriedine and Mr. Zarabi currently own and operate 4 new car dealerships in the City of West Covina and 6 new car dealerships outside of West Covina and one hotel jointly. Mr. Zarabi also owns a billion-dollar apparel company and 20+ hotels. Our team is experienced in building beautiful, state-of-the-art dealerships and hotels and have the capacity to complete this project very quickly.

We enjoy being part of the community surrounding our current properties in West Covina and are confident that this development will be mutually beneficial to the City of West Covina and its residents. I look forward discussing with you soon.

A handwritten signature in black ink, appearing to read 'Simon Sarriedine', is written over the typed name.

Sincerely,
Simon Sarriedine
818-277-5026
simon@envisionmotors.com

PROJECT SUMMARY - CONCEPTUAL DESIGN

- Contemporary full-service hotel with 150+ rooms
 - 1.35 acres of the property dedicated to the hotel
 - Rooftop pool, lounge, and restaurant
 - One hotel floor dedicated to meeting, banquet, and conference space
- First floor retail
 - Open concept
 - Similar to a 'Eatery' style food hall
 - Space to include a local coffee shop, wine bar, brick-oven style pizza kitchen, brewery, and specialty dessert bar
 - Roll up doors will accommodate outdoor seating along S. Sunset Ave
- 300 residential units
 - 6.92 acres of the property dedicated to residential
 - Mixed condos and townhomes
 - 15% of all units will be affordable housing units (45 units)
 - Parking for residential units will be non-visible with both subterranean parking and parking garages in the center of the buildings
 - First floor of the condo complex on S. Sunset Ave. will house a boutique grocery store such as Trader Joe's or Amazon Fresh
 - Pools, gardens and parks will be incorporated into the residential areas
- The space adjacent to the flood control channel will be developed into a walking path to support safe, pedestrian friendly passage for residents and hotel guests to access nearby shopping and restaurants
 - Street lighting
 - Security cameras
 - Landscaping

COMMUNITY BENEFIT

- We will invest up to \$7M to build a new state of the art Fire Station on city property
 - Envision Hotel Partners will finance and facilitate the entire construction process with our preferred contractors, architects, and builders

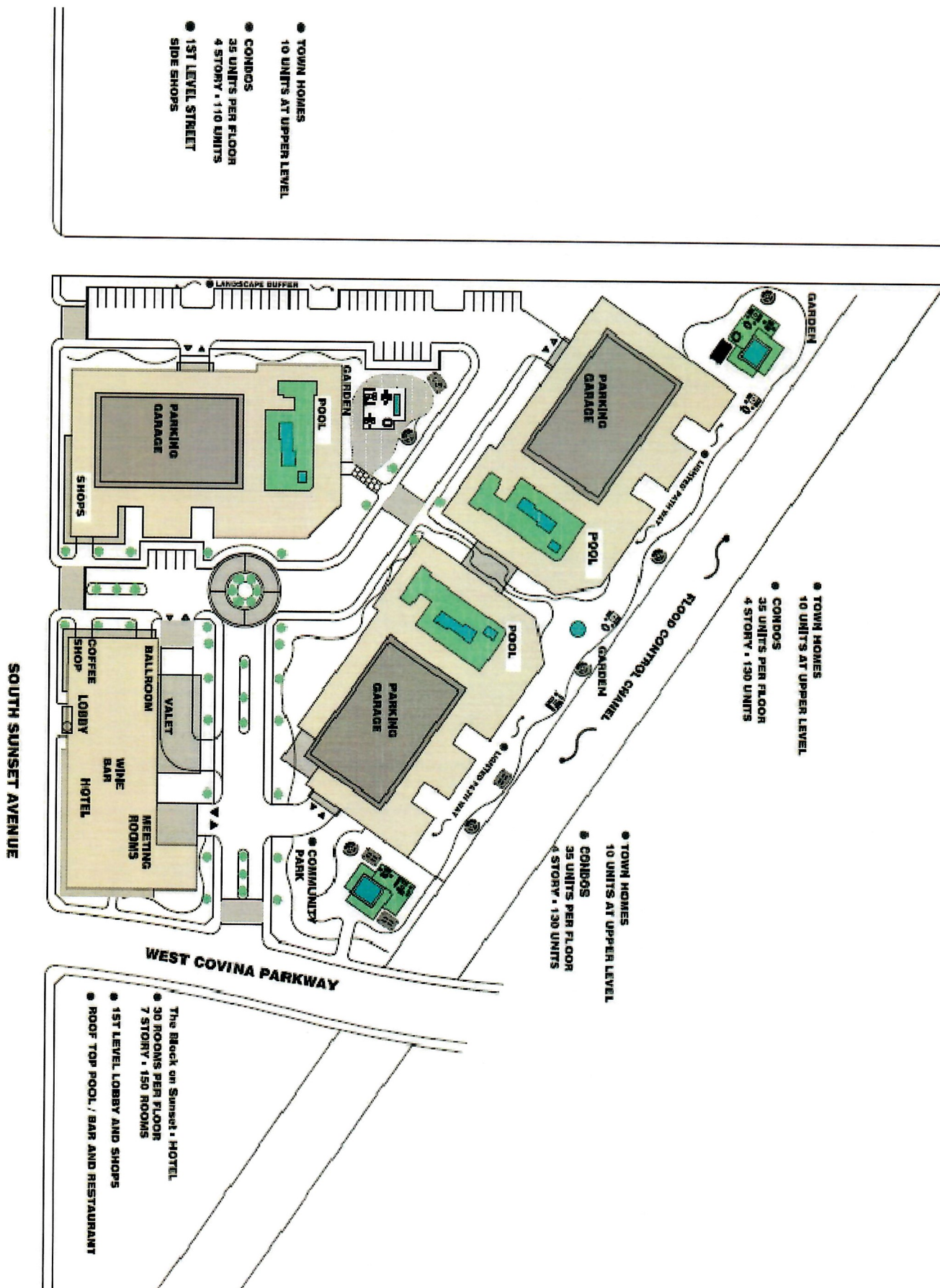


- Additionally, we are willing to provide a grant of \$1.5M for the relocation of the city yard
 - The 300 residential condos and townhouses have the potential to house many West Covina residents, of which 45 units will be affordable, income qualified units
 - We plan to build several Electric Vehicle charging stations in the subterranean parking structure that will be accessible to the public to help make Electric Vehicles more attractive to West Covina residents
 - Research has found that the national average to charge an EV is \$0.15 per kWh, which can translate into savings of as much as \$14,500 over 15 years on fuel costs
 - Significant tax revenue for the city of West Covina

PURCHASE

- Envision Hotel Partners is prepared to offer \$58.29/square foot (\$21,000,000) to purchase the lot at 811 South Sunset Avenue in addition to investing up to \$7M to build the fire station and \$1.5M as a grant for the city yard relocation
- We will begin construction on the lot as soon as permitting allows
- All pre-development expenses, legal and permitting fees, demolition and building costs will be handled by Envision Hotel Partners, making this a turn-key sale

DESIGN INSPIRATION: POTENTIAL SITE PLAN







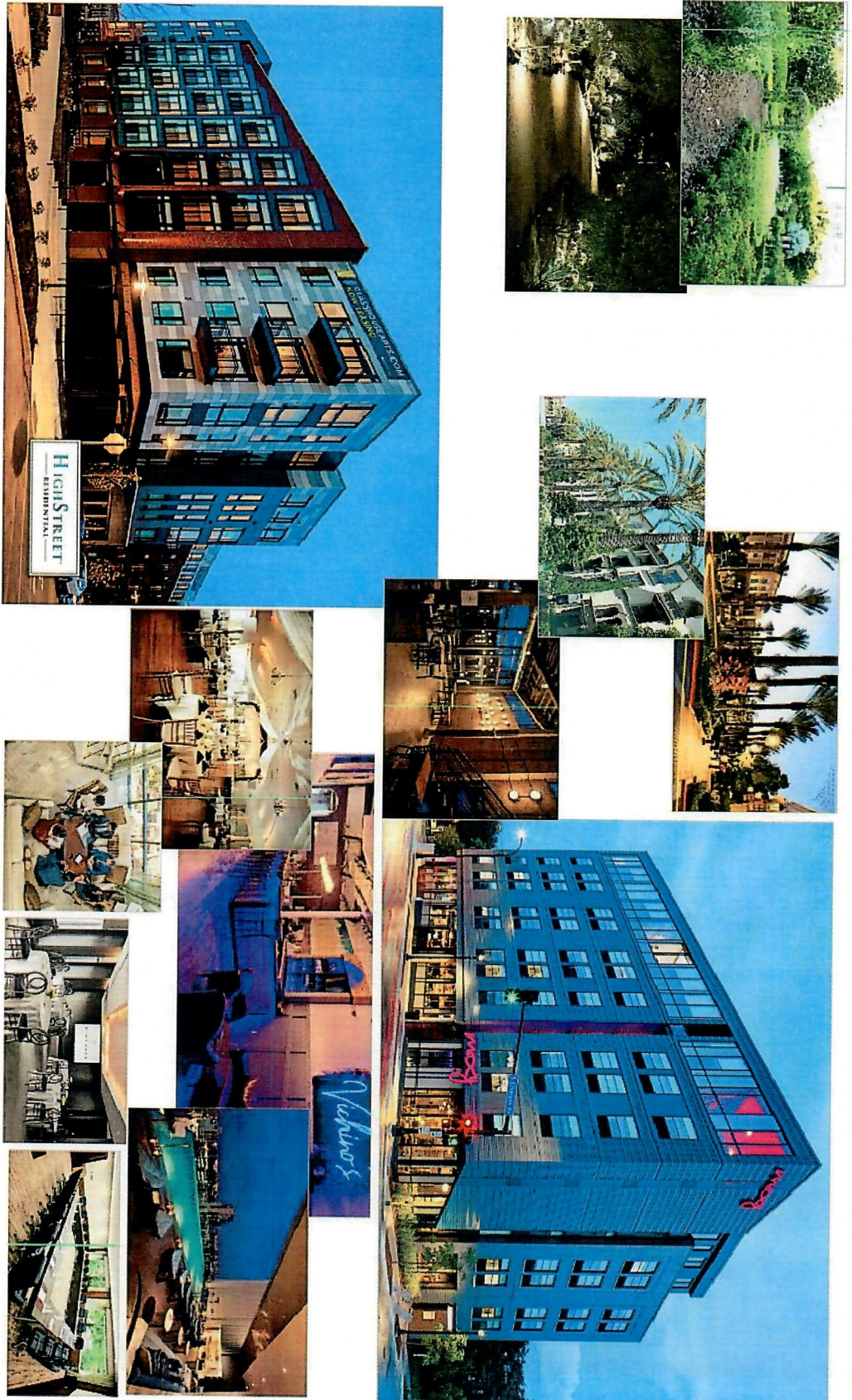






DESIGN INSPIRATION

**WEST COVINA - THE BLOCK AT SUNSET
CONCEPT STUDY - INSPIRATION IMAGES**



SHEET - A1.00
DATE: 5/18/22



DESIGN INSPIRATION: POTENTIAL FIRE STATION



**EXCLUSIVE NEGOTIATION AGREEMENT FOR THE
CITY YARD PROJECT SITE IN THE CITY OF WEST COVINA**

THIS EXCLUSIVE NEGOTIATION AGREEMENT (the “Agreement”) is made as of this 16 day of August, 2022, by and between the **CITY OF WEST COVINA (the “City”)**, a **municipal corporation**, having their office at 1444 West Garvey Ave. South, West Covina, CA 91790, and **Envision Hotel Partners, LLC a** (hereinafter referred to as “Developer”), with its principal office located at

RECITALS

1. City owns an 8.27 Acre parcel located at 811 South Sunset Avenue in West Covina shown on Exhibit “A” (the “Development Site”).
2. By Resolution No. 2021-93 approved on September 21, 2021, the City declared the Development Site as surplus property under Government Code Section 54221(b).
3. On May 10, 2021, in compliance with the Surplus Land Act (Government Code Sections 54220-54233) the City put out to open, competitive bid a Request for Qualifications/Proposal (RFQ/P) and provided all entities identified in subdivision (a) of Section 54222 an invitation to participate in the competitive RFQ/P process, for the following purpose of proposing a highest and best use, high quality development project.
4. The City received development proposals for the Development Site from three development teams, and ultimately did not come to agreement on price and terms with those entities.
5. On June 21, 2022, the City selected Developer to develop the Development Site. Developer’s proposal is attached hereto as Exhibit “B.”
6. Developer desires to negotiate a purchase and sale agreement (“PSA”) and a development agreement (“DA”) (referred to collectively as the “Project Agreements”) with City, to develop the Site as a mixed-use project including market-rate residential, affordable residential, commercial, parking, hotel, and community uses (the “Project” hereinafter).
7. Developer will pay for expenses, generally described by this Agreement, that are necessary to prepare reports, plans, financial projections, California Environmental Quality Act (CEQA), and other documents that will be utilized to negotiate the final terms of the Project Agreements.

NOW, THEREFORE, CITY AND DEVELOPER HEREBY AGREE AS FOLLOWS:

I. Negotiation

A. Good Faith Negotiations

1. City and Developer agree, for the period set forth below, to negotiate in good faith to prepare a PSA to be entered into between City and Developer concerning the development of the Development Site to establish the Project thereon and, in doing so, shall comply with the Schedule of Performance attached hereto as Exhibit "C."

2. During the term of this Agreement ("Agreement" or "ENA"), or any extension thereof, other than in acting to comply with applicable law, City agrees that it shall not negotiate with any other person or entity for development of the Development Site. The term "negotiate" as used herein shall be deemed to preclude City from accepting development proposals from persons or entities other than Developer, or discussing with persons or entities other than Developer, development plans for the Development Site which might be acceptable to City. However, City shall not be precluded from furnishing to other persons or entities unrelated to Developer information in the possession of City related to development under the General Plan, West Covina Downtown Specific Plan the implementation of which is within City's purview to administer. City also may furnish any other information in the possession of City which City would normally furnish to persons requesting information from City concerning its activities, goals, and matters of a similar nature.

B. Negotiation Period

1. City and Developer hereby establish a negotiating period ("Negotiation Period") commencing on execution of this Agreement by both parties and continuing for nine (9) months plus two potential three-month extensions which may be agreed to by City's City Manager based upon Developer's good faith compliance with the Schedule of Performance attached hereto as Exhibit "C."

2. If, at the expiration of the Negotiation Period, Developer and City have not agreed on the final terms and language of the PSA, then this Agreement will terminate unless the agreement is extended as provided in this Agreement.

3. If, based on the final negotiations with City and an evaluation of proposed terms and conditions Developer deems the PSA acceptable, Developer will sign and submit the PSA to City. If, on the submittal, less than sixty (60) days remain in the then agreed on Negotiation Period, this Agreement will automatically be extended to a date which is sixty (60) days immediately subsequent to the submittal to enable City (1) to take actions necessary to review and consider the PSA, and (2) if approved, to sign the PSA. If City and Developer are not willing to sign the PSA, this Agreement will automatically terminate upon the conclusion of the Negotiation Period.

4. A Schedule of Performance which sets forth the timing of parties' obligations under this Agreement is attached hereto as Exhibit "C" and incorporated herein.

5. Upon the occurrence of a Default by the Developer not cured within the time provided in Section IV.4 below, City shall have the right, after providing Developer with ten (10) days' written notice, to terminate this Agreement.

C. Deposit

1. Concurrent with the execution of this Agreement by City, Developer shall submit to City a good faith deposit ("Deposit") in the amount of Two Hundred Ninety Five Thousand Dollars (\$295,000) to cover the City's actual legal and other expenses to negotiate and prepare the DA and PSA ("Expenses"). The Deposit shall be in the form of cash or in a manner reasonably acceptable to the City. City shall deposit the Deposit in an interest-bearing account and such interest, when received by City, shall become part of the Deposit. The City may thereafter apply such Deposit against Expenses as they are incurred. Notwithstanding, no later than five business days prior to the end of each month, the City shall provide Developer with an estimate of Expenses anticipated to be incurred the following month. Developer may, upon receipt of such estimate, choose to terminate this Agreement, and all unused funds submitted to the City in the form of a Deposit or Supplemental Deposit shall be returned to Developer along with an accounting of the amounts of funds used by the City. The Deposit amount is separate from and will not be used for the payment of City fees for processing of entitlements or the preparation of any required studies and analysis required for compliance with CEQA.

2. If City and Developer subsequently determine that the Deposit is insufficient, which determination shall be based on the reasonable Expenses incurred by City hereunder, then within twenty (20) days following Developer's receipt of written notice from City, Developer shall deposit with the City a lump sum deposit in the amount reasonably estimated by City and Developer to be sufficient to cover the excess (each a "Supplemental Deposit").

3. If Developer defaults in the payment of any Supplemental Deposit to City the Project may be suspended in the discretion of the City until the applicable Supplemental Deposit is made. In no event shall Developer's obligation to reimburse City for Expenses incurred under this paragraph exceed a maximum of Two Hundred Thousand Dollars (\$200,000), unless the parties mutually agree otherwise in writing.

4. In the event the parties do not reach terms of a DA and PSA, all unused funds submitted to the City in the form of a Deposit or Supplemental Deposit shall be returned the Developer along with an accounting of the amounts of funds used by the City. Developer acknowledges that any and all expenditures made by it are not recoverable by Developer in the event that a PSA, DA, land use entitlement application, or permit application is not approved.

II. Consideration

The right to negotiate exclusively with the City, and the City forgoing their right to negotiate with any other party than Developer during the term of this Agreement is consideration exchanged by Developer and City under this Agreement.

III. Developer's Responsibilities

A. Disclosure and Approval

1. Developer is required to make full disclosure to the City of its principals, officers, stockholders, partners, joint venturers, employees and other associates, and all other pertinent information concerning Developer and its associates.

2. Developer agrees to hold City harmless from all costs, expenses, liability or claims of liability (including reasonable attorney fees) in connection with the Developer's activities upon the Site and other performance under this Agreement.

3. Developer shall discharge its obligations hereunder, as further described in Exhibit "C," at its sole cost and expense.

B. Method of Financing

1. Developer shall make available and maintain full disclosure to City of its methods of construction financing proposed to be used on the Project. All requests for financing information shall be submitted to City upon written request. Such financial information shall include the following:

(a) Financial Statement prepared for the Developer and any entities proposed to make an equity contribution to the Project.

(b) Proof of sufficient equity funds available to complete construction.

(c) identification of the sources of construction and permanent financing for the project.

2. City agrees to consider all financial information submitted as confidential and further agrees to retain from releasing information provided by Developer pursuant to this Agreement unless: (i) City's legal counsel determines, after reasonable consultation with the Developer's counsel, that the release of the information is required by the California Public Records Act or other applicable statutes, or (ii) a court orders the release of the information.

IV. Proposed Development

A. Comprehensive Development Plans

Developer shall provide comprehensive development plans for implementation of development of the Development Site as specified in Developer's proposal (Exhibit "B"). Such development shall represent Developer's best efforts to comply with all applicable laws, rules and regulations of City and all other government entities having jurisdiction over the Development Site. Furthermore, such comprehensive development plans shall include, but not be limited to, the items listed in the Schedule of Performance attached hereto as Exhibit "C".

B. Developer's Studies and Reports

As requested by City, from time to time, Developer agrees to make oral progress reports and written reports advising City on all matters and all studies being made. If the negotiations do not result in a PSA, City may request from Developer copies of all non-privileged studies and reports made by Developer specifically for this proposed Development, subject to Developer's covenants of confidentiality which may be contained in such studies and reports.

C. Cooperation and Additional Information

Developer shall generally cooperate with City and shall supply such other documents and information as may be reasonably requested in writing by City.

D. Event of Default

The failure of Developer to reasonably and timely comply with the provisions of this Agreement, if not due to circumstances beyond the reasonable control of Developer, shall be considered a default hereunder. The failure of City to reasonably comply with its obligations hereunder, if not due to circumstances beyond the reasonable control of City, shall be considered a default hereunder. Prior to exercising any remedies hereunder for the default of this Agreement, the party asserting a default shall provide written notice to the other party describing the alleged default, and such party shall have thirty (30) days to cure such default.

V. City Responsibilities

A. Development Project Regulations

This Agreement and the Project Agreements to be negotiated are subject to the provisions of the Surplus Land Act and all applicable City plans, codes and regulations.

B. City Assistance and Cooperation

City shall cooperate fully in providing Developer with appropriate information and assistance.

C. City Approval

If negotiations culminate in a PSA signed by Developer, such an agreement becomes effective only after and if the agreement has been considered and approved by the City Council.

D. Fees

City shall not be liable for any real estate commission or brokerage fees which may arise from this transaction. The City warrant they are not represented by any broker.

E. **Hold Harmless**

1. City agrees to hold Developer harmless from all costs, expenses, liability or claims of liability (including reasonable attorneys' fees) in connection with City's activities upon the Site and City's performance of its obligations under this Agreement.

2. Developer agrees to hold City harmless from all costs, expenses, liability or claims of liability (including reasonable attorneys' fees) in connection with Developer's activities upon the Site and Developer's performance of its obligations under this Agreement, or any challenge to this ENA, or the approval thereof by the City.

VI. **Conceptual Terms of Project Agreements**

A. **Purpose**

City and Developer agree to pursue negotiations of a PSA which result in the establishment of the Project.

B. **Proposed Disposition Price**

Envision Hotel Partners is prepared to offer \$58.29/square foot (\$21,000,000) to purchase the lot at 811 South Sunset Avenue in addition to investing up to \$7M to build the fire station and \$1.5M as a grant for the city yard relocation. All pre-development expenses, legal and permitting fees, demolition and building costs will be handled by Envision Hotel Partners, making this a turn-key sale.

C. **CEQA**

The City and Developer acknowledges that all applicable requirements of CEQA must be met in order for the City to approve Project entitlements and for the City and Authority to enter into a PSA, and that this may require reports and/or analyses for CEQA purposes (collectively, the "CEQA Documents"). The Developer will, at its cost, fully cooperate with the City in the City's preparation of any CEQA Documents.

D. **Project Agreements Subject to Further Approval**

1. The parties understand and agree that no party is under any obligation whatsoever to approve or enter into the Project Agreements, and that notwithstanding its approval of this ENA, each party shall have the right to disapprove one or more, or all, of the proposed PSA or DA to which it is to be a party in its sole and absolute discretion, and in that regard, the Developer hereby expressly agrees that the City shall not be bound by any implied covenant of good faith and fair dealing in connection with such approval or disapproval of any of the proposed PSA or DA.

2. In the event of the expiration or earlier termination of this ENA, the City shall be free to negotiate with any persons or entities with respect to the sale or lease of the Development Site.

3. No consents, approvals, comments or discussions by staff shall diminish, affect or waive: (i) rights of the City to later impose conditions and requirements under CEQA; (ii) the right of City not to approve the PSA or DA; or (iii) the City's other governmental rights, powers and obligations. The Developer understands and acknowledges that the City is not obligated to enter into a PSA or DA or sell the Development Site if, in good faith, the City Council determines that such development plan or sale is not in the public interest, not permitted by law, not consistent with the City of West Covina General Plan, or for any other valid reason.

VII. Right of Entry; Insurance

A. Upon providing to City reasonable evidence of the insurance required below (including the naming of City as additional insureds, and waiver of subrogation), such as a Certificate of Insurance, the Developer and its consultants that shall have been designated in writing to City ("Developer Designees") shall have the right to enter the Development Site (subject to additional conditions imposed by City staff) until the date that is 180 days after the execution of this ENA to inspect the same and any improvements thereon, and to conduct soils tests, Phase I environmental assessments, and if recommended by the applicable Phase I report(s), Phase II tests. Developer shall promptly provide City with copies of all reports and test results.

B. Developer shall obtain, maintain, and keep in full force and effect all of the following minimum scope of insurance coverages with an insurance company admitted to do business in California, rated "A," Class X, or better in the most recent Best's Key Insurance Rating Guide, and approved by the City Manager:

1. Broad-form commercial general liability, in a form at least as broad as ISO from #CG 00 01 11 88, including premises-operations, products/completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury or bodily injury with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or shall be twice the required occurrence limit.
2. Business automobile liability for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence for bodily injury and property damage.
3. Workers' compensation insurance as required by the State of California and Employers Liability Insurance with a minimum limit of \$1,000,000 per accident. Developer agrees to waive, and to obtain endorsements from its workers' compensation insurer waiving subrogation rights under its workers' compensation insurance policy against the City and their officers, agents, employees, and

volunteers for losses arising from work performed by Developer and to require each of its subcontractors, if any, to do likewise under their workers' compensation insurance policies.

C. Before execution of this Agreement by the City, the Developer shall file with the Director of Human Resources and Risk Management of City the following signed certification:

"I am aware of, and will comply with, Section 3700 of the Labor Code, requiring every employer to be insured against liability of Workers' Compensation or to undertake self-insurance before commencing any of the work."

D. The Developer shall also comply with Section 3800 of the Labor Code by securing, paying for and maintaining in full force and effect for the duration of this Agreement, complete Workers' Compensation Insurance, and shall furnish a Certificate of Insurance to the City Clerk before execution of this Agreement by the City. City, Authority, and their officers and employees shall not be responsible for any claims in law or equity occasioned by failure of the Developer to comply with this section.

E. Neither City nor Authority nor any of their elected or appointed officials, officers, agents, employees, or volunteers makes any representation that the types of insurance and the limits specified to be carried by Developer under this Agreement are adequate to protect Developer. If Developer believes that any such insurance coverage is insufficient, Developer shall provide, at its own expense, such additional insurance as Developer deems adequate.

F. The commercial general liability insurance policy and business automobile liability policy shall contain or be endorsed to contain the following provisions:

1. Additional insureds: "The City and the Authority and their elected and appointed boards, officers, officials, agents, employees, and volunteers are additional insureds with respect to: liability arising out of activities performed by or on behalf of the Developer pursuant to its contract with the City and Authority; premises owned, occupied or used by the Developer; automobiles owned, leased, hired, or borrowed by the Developer."
2. Notice: "Developer shall provide immediate written notice if (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; (3) or the deductible or self-insured retention is increased. In the event of any cancellation or reduction in coverage or limits of any insurance, Developer shall forthwith obtain and submit proof of substitute insurance. Should Developer fail to immediately procure other insurance, as specified, to substitute for any canceled policy, City or Authority may procure such insurance at Developer's sole cost and expense."
3. Other insurance: "The Developer's insurance coverage shall be primary insurance as respects the City, the Authority and their officers, officials, agents, employees,

and volunteers. Any other insurance maintained by the City or Authority shall be excess and not contributing with the insurance provided by this policy."

4. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to City, Authority, or their officers, officials, agents, employees, and volunteers.
5. The Developer's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

G. If any of such policies provide for a deductible or self-insured retention to provide such coverage, the amount of such deductible or self-insured retention shall be approved in advance by the City Manager. No policy of insurance issued as to which City or Authority is an additional insured shall contain a provision which requires that no insured except the named insured can satisfy any such deductible or self-insured retention.

H. Nothing in this Section shall be construed as limiting in any way, the indemnification provision contained in this Agreement, or the extent to which Developer may be held responsible for payments of damages to persons or property.

VIII. Miscellaneous

A. Assignment

Neither this Agreement nor any interest herein may be assigned or transferred voluntarily or by operation of law to any other party without written approval of the City Manager. An attempt to transfer this Agreement by the Developer to another party, without first obtaining such written permission of City Manager, shall constitute grounds for the immediate termination of this Agreement by the City Manager. City and acknowledge that Developer may desire to create a limited partnership or limited liability company to be the Developer party to the Project Agreements, and the City shall not unreasonably disapprove the new entity.

B. Notices

Any notice pursuant to this Agreement shall be in writing and shall be deemed to be properly given if delivered in person or mailed by certified mail, postage prepaid to the following persons:

To City: City Manager

City of West Covina

1444 West Garvey Ave. South, Room 305

West Covina, CA 91790

To Developer:

If sent by mail, any notice, delivery, or other communication shall be effective or deemed to have been given three (3) days after it has been deposited in the United States mail, certified, with postage prepaid, and addressed as set forth above. For purposes of calculating these time frames, weekends, and Federal, State, County and City holidays shall be excluded.

C. Jurisdiction and Venue

This Agreement and all questions relating to its validity, interpretation, and enforcement shall be governed and construed in accordance with the laws of the State of California. Both parties agree that courts in Los Angeles County, California, shall have jurisdiction and shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Agreement.

D. Attorneys' Fees

In the event any judgment is ordered in any action upon this Agreement, the party hereto against whom such judgment is ordered agrees to pay to the other party ("prevailing party") hereto, and that there may be added to such judgment, an amount equal to, the attorneys' fees and costs incurred by such prevailing party.

E. Severability

The provisions of this Agreement are severable, and if any part of it is found to be unenforceable, the other paragraphs shall remain in full force and effect.

F. Time of Essence

Time is of the essence of every provision herein in which time is a factor.

G. Entire Agreement

This Agreement reflects the complete and total understanding between the parties hereto and all agreements or understandings between the parties hereto are contained within them. Any changes, modifications, amendments or addenda to this Agreement must be in writing and signed by all parties to be effective. If a DA and/or PSA have been executed by the City and the Developer, the DA and PSA shall supersede this Agreement and thereafter govern the rights and obligations of the parties with respect to the sale of the Development Site and the development of the Project.

- Signature Page to Follow –

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to Negotiate Exclusively as of the day and year first above written.

“CITY”

By:

David Carmany, City Manager

ATTEST:

By: _____
Lisa Sherrick, City Clerk

“DEVELOPER”

_____, LLC

By:

Name:

Title:

APPROVED AS TO FORM:

By: _____
Thomas P. Duarte, City Attorney

EXHIBIT "A"
DEVELOPMENT SITE MAP

EXHIBIT "B"

PROPOSAL

(Original Plans and Pro Formas Submitted Under the Request for Proposals)

EXHIBIT “C”

SCHEDULE OF PERFORMANCE

<u>ACTION</u>	<u>TIMEFRAME</u>	<u>RESPONSIBLE ENTITY FOR OVERSIGHT AND COORDINATION</u>	<u>RESPONSIBLE ENTITY FOR COST</u>
1. Deposit of \$295,000 with City	Within 30 days of City approval of ENA	Developer	Developer
2. Disclosure of developer principals	Within 30 days of City approval of ENA, with updates thereafter if changes occur	Developer	Developer
3. Disclosure of developer method of financing	For equity portions of financing disclosure shall occur within 6 months of City approval of ENA For debt/construction portions of financing disclosure shall occur prior to the public hearing on the execution of PSA	Developer for all Project components with input from City on public components	Developer
4. Developer submittal of Comprehensive Development Plans to City.	Within 105 days of City of approval of the ENA	Developer	Developer
5. Submittal of all necessary information and estimated costs needed to complete CEQA process for the Project and cooperate with selected CEQA consultant in preparing necessary documents.	Prior to approval of PSA	Developer	Developer

<u>ACTION</u>	<u>TIMEFRAME</u>	<u>RESPONSIBLE ENTITY FOR OVERSIGHT AND COORDINATION</u>	<u>RESPONSIBLE ENTITY FOR COST</u>
6. Processing of CEQA compliance, including review and final approval.	Prior to approval of PSA	City	Processing fees to be paid by Developer
7. Developer provision of progress reports to City	Within 5 days of receipt of request thereof by City staff, and the request for such progress reports shall not exceed two (2) per month	Developer and City	Developer
6. Completion of a Draft Development Agreement	Within 9 months of City approval of PSA	City and Developer	City