

EXCLUSIVE NEGOTIATING AGREEMENT BETWEEN THE CITY OF LOS ANGELES  
AND THE RATKOVICH COMPANY AND JERICO DEVELOPMENT, INC.  
REGARDING THE DEVELOPMENT OF THE PORTS O' CALL SITE  
AT THE PORT OF LOS ANGELES

THIS EXCLUSIVE NEGOTIATING AGREEMENT ("Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by and between the CITY OF LOS ANGELES, a municipal corporation, acting by and through its Board of Harbor Commissioners ("Board") of the Harbor Department also known as the Port of Los Angeles (hereinafter referred to as "City" or "Harbor Department"), and the RATKOVICH COMPANY and JERICO DEVELOPMENT, INC., (collectively referred to as "Developer").

RECITALS

WHEREAS, the City has the possession, management and control of the Ports O' Call Redevelopment Site as defined below; and

WHEREAS, City released a Request for Qualifications for a Unique Retail and Commercial Redevelopment Opportunity ("RFQ") in July 2012 and Developer's proposal submitted in response to the RFQ ("Proposal") was selected based upon the criteria set forth in the RFQ; and

WHEREAS, City and Developer entered into an initial Exclusive Negotiating Agreement ("First ENA"), and as amended on March 6, 2014 and May 8, 2014, which set forth responsibilities for both parties and framework and guidelines for negotiations resulting in an eventual term sheet and ground lease; and

WHEREAS, the First ENA expired on November 4, 2014; and

WHEREAS, City and Developer desire to continue its exclusive negotiations for the redevelopment of the Ports O' Call Redevelopment Site; and

NOW, THEREFORE, IT IS MUTALLY AGREED AS FOLLOWS:

**Section 1. Term.**

1.1 The term of this Agreement shall commence on December 4, 2014 with the effective date of November 5, 2014 and terminate on January 8, 2015, with two (2) thirty (30) day options to be exercised in writing at the sole discretion of the Executive Director or his/designee (collectively referred to as "Executive Director"); subject, however, to earlier termination as provided herein.

## **Section 2. Developer Rights and Obligations.**

2.1 Developer. City hereby grants to Developer for the time period set forth in Section 1 herein the right to exclusive negotiations of all related terms and conditions for a term sheet, option agreement and/or ground lease for redevelopment of the Ports O' Call Redevelopment Site which is defined in Section 4, subsection 4.1 below.

2.2 The Ratkovich Company and Jerico Development, Inc. The Developer comprised of the Ratkovich Company and Jerico Development, Inc., shall be jointly and severally liable for all obligations of Developer under this Agreement. Wayne Ratkovich shall remain reasonably and significantly involved with the management and operation of the Ratkovich Company and the negotiations between Developer and the City during the term of this Agreement.

2.3 Developer Responsible for Own Costs. Developer acknowledges and agrees that all expenses and costs of Developer arising from this Agreement or the performance of Developer's obligations hereunder shall be the sole responsibility of Developer, with no reimbursement from City of any kind.

## **Section 3. City's Obligations.**

3.1 City Cooperation. City shall negotiate with the Developer the terms and conditions for the redevelopment of the Ports O' Call Redevelopment Site.

3.2 No Further Commitment. Developer acknowledges this Agreement shall not be construed as a direct or indirect commitment by City or any other entity to take or to not take any action under the California Environmental Quality Action ("CEQA"), the National Environmental Policy Act ("NEPA"), the California Coastal Act, or otherwise under the applicable law, and shall not guarantee final approval of the Ports O' Call Redevelopment Site or any other proposed project related to the site.

## **Section 4. Ports O' Call Village Redevelopment Site.**

4.1 Redevelopment Site. The Ports O' Call Village Redevelopment Site is depicted in Exhibit A ("Ports O' Call Redevelopment Site") which is attached hereto and incorporated by reference to this Agreement.

## **Section 5. Environmental Considerations.**

5.1 2009 Environmental Impact Report/Environmental Impact Statement ("EIR/EIS"). Developer and City acknowledge the Board certified 2009 environmental impact report for the project commonly known as the "San Pedro Waterfront Project" which project may occur, in part, in the area in which the Ports O' Call Redevelopment Site resides.

5.2 Future Environmental Review. Developer and City further acknowledge Developer's Proposal, potential conceptual plans, construction plans, and any and all other related plans may require additional environmental review and analysis pursuant to the applicable law beyond that undertaken in the EIR/EIS discussed in Section 5, subsection 5.1.

5.3 Shared Cost. City shall undertake CEQA and NEPA compliance, if any, required beyond the EIR/EIS. Upon receipt and processing of Developer's Application for Permit ("APP") by the Harbor Department, or earlier if mutually agreed by parties. If in the Harbor Department's reasonable discretion and with Developer's prior approval of the scope of work and estimated costs, the Harbor Department shall engage the services of consultants ("Outside Consultants") to enable the Harbor Department to comply with CEQA (including, without limitation, causing any environmental impact report, negative declaration or mitigated negative declaration to be prepared and issued) in connection with the Ports O' Call Redevelopment Site and Developer's proposed plans. Developer shall reimburse the Harbor Department within thirty (30) days after receipt of any written request (accompanied by invoice or other satisfactory back-up documentation) from the Harbor Department for seventy-five percent (75%) of the cost of the approved services provided by the Outside Consultants through the date of the request. City and Developer shall in good faith negotiate and execute a separate agreement regarding reimbursement for CEQA expenses ("CEQA Cost Sharing Agreement") prior to City incurring additional CEQA-related expenses after such reasonable requests for information from the Outside Consultants. The CEQA Cost Sharing Agreement shall only apply to Outside Consultants engaged by the City to assist City in its compliance with CEQA for the Ports O' Call Redevelopment Project. Developer shall be solely responsible for costs and expenses of any CEQA consultants it engages to assist Developer in its development process.

5.4 Pre-Existing Environmental Conditions. Environmental site characterization of the Ports O' Call Redevelopment Site performed prior to the effective date of the ground lease document, if any, shall be undertaken by City and at its sole cost. Pre-existing environmental conditions at the Ports O' Call Redevelopment Site that pre-date the effective date of the ground lease document, if any, shall be, as between City and Developer, the sole cost, expense, and responsibility of City.

## **Section 6. Additional Terms.**

6.1 Rights to Additional Information. City and Developer may, during the term of this Agreement, request additional information and data from one another. City and Developer shall provide such additional information or data, if reasonably available, in a timely manner.

6.2 No Commitment. Developer acknowledges that any undertaking of the Ports O' Call Redevelopment Site is uncertain and that the activities contemplated by this Agreement do not suggest that such project may ever commence. Pursuit of the Ports O' Call Redevelopment Site, including issuance of an option agreement and/or

ground lease for the site to Developer, is expressly conditioned upon agreement on a term sheet for a ground lease document for the Ports O' Call Redevelopment Site and any other required documents, as well as prior procurement of all entitlements required by, and in compliance with, the applicable law. Except for City's obligations expressly set forth in this Agreement, City shall not be obligated or deemed obligated to take or refrain from any action, including without limitation, further environmental assessment under CEQA and NEPA, specific project approval, the approval or certification of any environmental review of the Ports O' Call Redevelopment Site and/or issuance to Developer of an option agreement and/or ground lease or other required documents.

6.3 Developer Right of Entry. During the term of this Agreement, Developer may, subject to the issuance of a temporary permit or other document issued by City and the provision of insurance certificates in forms satisfactory to the Harbor Department's Risk Manager, enter onto the Ports O' Call Redevelopment Site to conduct tests and studies, at Developer's sole cost and expense, to determine the suitability of the site for the proposed development.

6.4 Assignments.

6.4.1 No Assignments. Developer acknowledges that City's consent to issue this Agreement is based on the prior experience and qualifications of Developer. Therefore, Developer shall not assign, sell, or otherwise transfer any rights under this Agreement without the prior written approval of the Board in its sole and absolute discretion; provided, however, that Developer may assign its rights under this Agreement to an entity that Controls or is Controlled by or is under common Control with the Ratkovich Company's parent, RM Properties, LLC (a limited liability company of which Wayne Ratkovich is the majority owner), without the prior written approval of the Board so long as written notice of such assignment, along with sufficient documentation to the satisfaction of the City showing that the assignee qualifies under the Control requirement above, is delivered to the Harbor Department at least ten (10) business days prior to effective date of assignment.

6.4.2 Definition of Control. "Control", "Controlled by" or words of similar import mean the possession, directly or indirectly, of the power to direct or cause the direction of management and policies of a designated entity, whether through the direct or indirect ownership of voting securities, general or limited partnership interests, interests in a limited liability company, or by contract or other manner of control.

6.5 Conflicts of Interest. The parties to this Agreement have read and are aware of the provisions of Section 1090 et seq and Section 87100 et seq. of the California Government Code relating to conflict of interest of public officers and employees, as well as the Conflict of Interest Code of the Harbor Department. All parties hereto agree that they are unaware of any financial or economic interest of any public officer or employee of City relating to this Agreement. Notwithstanding any other

provision of this Agreement, it is further understood and agreed that if such a financial interest does exist at the inception of this Agreement, City may immediately terminate this Agreement by giving written notice thereof.

**Section 7. Limitation on Remedies for Breach or Default and Release of Claims.**

7.1 Right and Remedy. City would not have agreed to any part of this Agreement if it were to be potentially or actually liable to Developer for any amount of monetary damages or other remedies not expressly contemplated in this Section 8(A). Accordingly, Developer acknowledges and agrees that its exclusive right and remedy upon any breach or default of City of this Agreement is to either (i) terminate this Agreement, or (ii) enforce this Agreement by specific performance or injunctive relief.

7.2 Assumption of Risk. Developer acknowledges that there is a risk that, subsequent to the execution of this Agreement, it will discover, incur or suffer loss, damages or injuries in connection with this Agreement which are unknown or unanticipated at the time that this Agreement is executed. Developer hereby assumes this risk and understands that the limitations on remedies set forth in this Agreement shall apply to all unknown or unanticipated losses, damages or injuries related to the matters released herein, as well as those known and anticipated.

7.2.1 Developer is familiar with Section 1542 of the California Civil Code which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

7.2.2 Developer understands and acknowledges the significance and consequence of this specific waiver of Section 1542. Having the opportunity to consult with legal counsel, Developer expressly waives and relinquishes any and all rights and benefits which it may have under Section 1542 of the Civil Code to the full extent that such rights and benefits may be lawfully waived pertaining to the subject matter of this Agreement.

7.3 Limitation on Remedies. Subject to the last sentence of this Section, Civil Code Section 1542 notwithstanding, it is the parties' intent to be bound by the limitation of remedies set forth in this Section, and as to any remedies not explicitly preserved in Section 8.A, Developer hereby releases City and City's former, present and future boards, elected and appointed officials, employees, officers, directors, representatives, agents, departments, assigns, insurers, attorneys, predecessors, successors, divisions, subdivisions and parents, and all persons or entities acting by, through, under or in concert with any of the foregoing (the "City Parties") from and against any and all rights, claims, demands, damages, debts, liabilities, accounts, liens, attorneys' fees, costs,

expenses, actions and causes of action arising from or related to this Agreement ("Released Claims"), whether or not such Released Claims were known or unknown to Developer as of its entry into this Agreement. Notwithstanding the foregoing, the parties understand, acknowledge and agree that such releases do not apply to any claims which may arise independently from this Agreement from a fully approved agreement executed by the City or a City party.

**Section 8. Termination.**

**8.1 Termination by City.**

8.1.1 City shall have the right to terminate this Agreement in the event that:

- (i) The Proposed Site Development is determined by City to be infeasible;
- (ii) Developer fails to perform any of its obligations under this Agreement, and if such failure continues for a period of thirty (30) calendar days following Developer's receipt of City's written notice identifying such failure with specificity; or
- (iii) Developer assigns, sells or otherwise transfers any rights under this Agreement in contravention of Section 6, subsection 6.4.

**8.2 Termination by Developer.**

8.2.1 Developer shall have the right to terminate this Agreement in the event that:

- (i) City fails to perform any of its obligations under this Agreement;
- (ii) Developer determines that the Site is infeasible; or
- (iii) City fails to execute this Agreement within sixty (60) days of Developer's execution of this Agreement.

**Section 9. Notices.**

9.1 Communication. Any notice, request, approval or other communication to be provided by either party shall be in writing and dispatched by first class mail, registered or certified mail, postage prepaid, return-receipt requested, or by electronic facsimile transmission followed by delivery of a "hard" copy, or by personal delivery (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), to the addresses of Department and Developer set forth below. Such written notices, requests, approvals or other communication may be sent in the same manner to such other addresses as either party may from time to time designate.

9.2 Delivery. Any notice that is transmitted by electronic facsimile transmission, followed by delivery of a "hard" copy, shall be deemed delivered upon its transmission; any notice personally delivered, (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), shall be deemed received on the documented date of receipt; and any notice that is sent by registered or certified mail, postage prepaid, return-receipt requested shall be deemed received on the date of receipt thereof.

9.3 Addresses.

If to Department:

Port of Los Angeles  
425 South Palos Verdes Street  
San Pedro, CA 90731  
Attn: Michael Galvin

With a copy to:

Los Angeles City Attorney's Office  
425 South Palos Verdes Street  
San Pedro, CA 90731

If to Developer:

The Ratkovich Company  
700 South Flower Street, Suite 2600  
Los Angeles, CA 90017  
Attn: Brian Saenger

and

Jerico Development, Inc.  
461 W. Sixth Street, Suite 300  
San Pedro, California 90731  
Attn.: Eric Johnson

**Section 10. No Warranty as to Site/Improvement Conditions.**

10.1 No Warranty or Representation. Except as may be expressly set forth in a separate, definitive document executed by City in connection with the Site, if any, no warranty or representation of any kind is made by City with respect to the condition of the Ports O' Call Redevelopment Site or any improvements thereon.

## **Section 11. Miscellaneous Provisions.**

11.1 No Third Party Beneficiaries. This Agreement shall not benefit any persons or entities not signatory to this Agreement including, without limitation, any brokers, agents or finders. Neither City nor Developer shall be liable for any real estate commissions or brokerage fees which may arise herefrom. City and Developer represent and warrant that neither has engaged a broker, agent or finder in connection with the Ports O' Call Redevelopment Site and project.

11.2 Indemnity. Developer undertakes and agrees to defend, indemnify and hold harmless the City and any of its Boards, Officers, Agents, Employees, Assigns, and Successors in Interest from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, reasonable attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the City, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever, for death or injury to any person, including Developer's employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of the negligent acts, errors, omissions (where there is a duty to act) or willful misconduct incident to the performance of this Agreement by Developer, its principals, employees, or agents. Rights and remedies available to the City under this provision are cumulative of those provided for elsewhere in this Agreement and those allowed under the laws of the United States, the State of California, and the City. Developer's obligation to indemnify shall apply even if City is alleged to have contributed to the otherwise indemnified claim. If City's negligence, error, omission or willful misconduct is finally determined by a court of competent jurisdiction to have contributed to an indemnified claim, Developer's indemnification obligation shall be reduced by the percentage of City responsibility.

11.3 Governing Law. This Agreement is made and entered into in the State of California and shall in all respects be construed, interpreted, enforced and governed under and by the laws of the State of California, without reference to choice of law rules. Any action or proceeding arising out of or related to this Agreement shall be filed and litigated in the state or federal courts located in the County of Los Angeles, State of California, in the judicial district mandated by applicable court rules.

11.4 Modification in Writing. This Agreement may be modified only by written agreement of all parties. Any such modifications are subject to all applicable approval processes required by, without limitation, City's Charter and City's Administrative Code.

11.5 Construction of Agreement. This Agreement shall not be construed against the party preparing the same, shall be construed without regard to the identity of the person who drafted such and shall be construed as if all parties had jointly prepared this Agreement and it shall be deemed their joint work product; each and every provision of this Agreement shall be construed as though all of the parties hereto participated equally in the drafting hereof; and any uncertainty or ambiguity shall not be interpreted against any one party. As a result of the foregoing, any rule of construction that a document is to be construed against the drafting party shall not be applicable.

11.6 Integrated Agreement. This Agreement contains the entire understanding and agreement between the parties hereto with respect to the matters referred to herein. No other representations, covenants, undertakings, or prior or contemporaneous agreements, oral or written, regarding such matters which are not specifically contained, referenced, and/or incorporated into this Agreement by reference shall be deemed in any way to exist or bind any of the parties. Each party acknowledges that it has not been induced to enter into the Agreement and has not executed the Agreement in reliance upon any promises, representations, warranties or statements not contained, referenced, and/or incorporated into the Agreement. THE PARTIES ACKNOWLEDGE THAT THIS AGREEMENT IS INTENDED TO BE, AND IS, AN INTEGRATED AGREEMENT.

11.7 State Tidelands Grant. This Agreement is entered into in furtherance of and as a benefit to the State Tidelands Grant and the trust created thereby. Therefore, this Agreement is at all times subject to the limitations, conditions, restrictions and reservations contained in and prescribed by the Act of the Legislature of the State of California entitled "An Act Granting to the City of Los Angeles the Tidelands and Submerged Lands of the State Within the Boundaries of Said City", approved June 3, 1929 (Stats. 1929, Ch. 651), as amended, and provisions of Article VI of the Charter of the City of Los Angeles relating to such lands. Developer and City agree that any interpretation of this Agreement and the terms contained herein must be consistent with such limitations, conditions, restrictions and reservations.

11.8 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which shall constitute one agreement to be effective on the date first above written.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date to the left of their signatures.

THE CITY OF LOS ANGELES, by  
its Board of Harbor Commissioners

Dated: \_\_\_\_\_

By \_\_\_\_\_  
Executive Director

Attest: \_\_\_\_\_  
Board Secretary

THE RATKOVICH COMPANY

Dated: \_\_\_\_\_

By \_\_\_\_\_

\_\_\_\_\_  
(Print/type Name and Title)

Attest: \_\_\_\_\_

\_\_\_\_\_  
(Print/type Name and Title)

JERICO DEVELOPMENT, INC.

Dated: \_\_\_\_\_

By \_\_\_\_\_

\_\_\_\_\_  
(Print/type Name and Title)

Attest: \_\_\_\_\_

\_\_\_\_\_  
(Print/type Name and Title)

APPROVED AS TO FORM

\_\_\_\_\_, 20\_\_\_\_\_  
MICHAEL N. FEUER, City Attorney

By \_\_\_\_\_  
HELEN J. SOK, Deputy City Attorney

# Ports O' Call

