

SECOND AMENDMENT TO
EXCLUSIVE NEGOTIATING AGREEMENT NO. 13-3238
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 SECOND AMENDMENT ("Second Amendment"), is made and entered into this _____ day of _____, 2014, by and between the CITY OF LOS ANGELES, a municipal corporation, acting by order of and through its Board of Harbor Commissioners ("Board") of the Harbor Department ("City") and THE RATKOVICH COMPANY and JERICO DEVELOPMENT, INC. (collectively referred to as "Developer").

RECITALS:

WHEREAS, City and Developer entered into an Exclusive Negotiating Agreement ("Agreement") dated March 14, 2013 for the redevelopment of the Site (as described in the Agreement and the Request for Qualifications); and

WHEREAS, City exercised its one hundred twenty (120) day option on October 23, 2013 extending the Exclusivity Period (as defined in the Agreement) to March 9, 2014; and

WHEREAS, on March 6, 2014, City and Developer entered into a first amendment of the Agreement ("First Amendment") extending the Exclusivity Period to May 8, 2014; and

WHEREAS, City and Developer desire to further extend the Exclusivity Period to continue to negotiate the terms of development of the site; and

NOW, THEREFORE, BE IT RESOLVED, that the Agreement be amended as follows:

Section 1. Section 5, EXCLUSIVE RIGHT TO NEGOTIATE, subsection A of the Agreement is hereby deleted in its entirety and replaced with the following:

"5. EXCLUSIVE RIGHT TO NEGOTIATE

- A. The term of this Agreement shall commence on March 14, 2013 and terminate on May 8, 2014 with six (6) thirty (30) day options (each, an "Option") to be exercised in writing at the sole discretion of the Executive Director ("Exclusivity Period"), but in no event shall the Exclusivity Period extend beyond November 4, 2014; subject, however, to earlier termination as set forth in

Sections 9 and 10 of this Agreement. Developer acknowledges that any further extension of the Exclusivity Period may require Board and Los Angeles City Council approval.”

Section 2. Section 5, EXCLUSIVE RIGHT TO NEGOTIATE, of the Agreement, Subsection C is deleted in its entirety and replaced with the following:

“C. The specific duties and responsibilities of City and Developer during the Exclusivity Period are as follows:

1. Developer’s Responsibilities. Developer, at its sole cost and expense, shall be responsible for the following:

- a. Prepare a financial model for the proposed development sufficient to enable a substantive discussion with City on the financial terms and the length of the proposed ground lease.
- b. Plan and conduct public outreach efforts.
- c. Prepare development concept.
- d. Conduct physical due diligence in connection with the Site, including infrastructure capacity analysis, for the Proposed Site Development.
- e. Complete entitlement and permitting due diligence.
- f. Initiate a market analysis for the selected development concept.
- g. Develop an initial business plan, which shall include a preliminary capital plan, construction costs, and revenue and expense analysis, to the extent practical.
- h. Finalize development plan, including site plan, on-site improvements and identification of necessary off-site improvements.
- i. Complete anticipated schedule for development, lease-up and operations.
- j. Submit Department’s Application for Discretionary Permit (“ADP”) with scope of the Proposed Site Development defined enough to enable Department to perform an initial project evaluation to begin CEQA analysis to the extent required, if at all.

2. City’s Responsibilities. City shall be responsible for the following:

- a. Perform financial due diligence, including review of Developer’s financial references.
- b. Develop and begin to populate a financial feasibility model.

- c. Prepare and complete a financial feasibility analysis. City and Developer will mutually agree to the scope of work used in the financial feasibility analysis. Developer acknowledges selection of a third-party consultant shall be designated solely by the City. Developer further acknowledges any final documents produced upon the conclusion of the financial feasibility analysis shall be the property of the Harbor Department. Any work product received by City shall also be provided to Developer during the course of preparation of the financial feasibility analysis. Upon completion of the work, City shall provide Developer with copies of the financial feasibility analysis and any specific requested work product of the third party consultant relating thereto; which Developer shall have the right to use in any manner in connection with the project, including, without limitation, to provide to its consultants, prospective tenants or prospective financing sources.
 - d. Cooperate with Developer's entitlement and permitting due diligence.
 - e. Coordinate the planning of the public outreach effort with Developer.
 - f. Complete anticipated schedule for development, lease-up, and operations.
 - g. Complete Phase I characterization of the Ports O' Call site.
 - h. Review Developer's business and capital plan.
 - i. Commence preparation of term sheet, option agreement, ground lease, and other required documents.
 - j. Begin to process Developer's ADP and perform initial project evaluation related to CEQA analysis.
 - k. Commence process for determining any required remediation necessary to obtain environmental site approvals for a commercial land use standard.
3. Developer's Responsibilities During Financial Feasibility Analysis. Developer shall cooperate with City in the development of the financial feasibility analysis and shall facilitate the obtaining of all information, data, figures, and details reasonably requested by City from third parties in connection therewith, including, but not limited to: conceptual plan(s) and development program(s), theme, physical layout, site access and circulation, (collectively, "Information"), solely to the extent that such Information is not deemed by

Developer or the third party to be confidential. Developer shall further provide, in a timely manner, any other information in its possession and reasonably requested by the Executive Director, solely to the extent that such information is not deemed by Developer to be confidential.”

Section 3. Section 9, TERMINATION BY CITY, of the Agreement, Subsection B is deleted in its entirety and replaced with the following:

“B. Developer fails to perform any of its obligations under this Agreement during the Exclusivity Period as may be extended in accordance with Section 5.A, 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”

Section 4. This Second Amendment may be executed in one or more counterparts, each of which shall be deemed to constitute an original but all of which, when taken together shall constitute one and the same instrument, with the same effect as if all of the notices to this Second Amendment had executed the same counterpart. Electronic copies of signatures shall operate as originals for all purposes under this Second Amendment and the Agreement.

Section 5. Except as specifically provided herein, this Second Amendment shall not in any manner alter, change, modify, or affect any of the rights, privileges, duties, or obligations of either of the parties hereto under or by any reason of said Agreement, and except as expressly exercised herein, all of the terms, covenants, and conditions of said Agreement, as exercised, shall remain in full force and effect.

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

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

Dated: _____, 2014

By _____
Interim Executive Director

Attest: _____
Board Secretary

THE RATKOVICH COMPANY

Dated: April 25, 2014

By Wayne Ratkovich
WAYNE RATKOVICH, Pres./CEO
(Print/type Name and Title)

Attest: Alan C. Johnson
Alan C. Johnson, CEO Jerico Dev
(Print/type Name and Title)

JERICO DEVELOPMENT, INC.

Dated: APRIL 25, 2014

By Eric C. Johnson
Eric C. Johnson, President
(Print/type Name and Title)

Attest: John S. Peterson
John S. Peterson, General Counsel
(Print/type Name and Title)

APPROVED AS TO FORM AND LEGALITY

_____, 2014
MICHAEL N. FEUER, City Attorney
JANNA B. SIDLEY, General Counsel

By _____
HELEN J. SOK, Deputy City Attorney

HJS/jpr
04/23/14