



May 9, 2005

Redevelopment Agency of the City of Sacramento  
Sacramento, California

Honorable Members in Session:

**SUBJECT: AUTHORIZATION TO EXTEND THE EXCLUSIVE RIGHT TO NEGOTIATE THE DEVELOPMENT OF THE ORLEANS HOTEL SITE IN OLD SACRAMENTO WITH HARVEGO REAL ESTATE, LLC**

**LOCATION/COUNCIL DISTRICT:** 1022 2<sup>nd</sup> Street, Council District 1

**RECOMMENDATION:**

Staff recommends that the Redevelopment Agency of the City of Sacramento (Agency) approve the attached resolution which extends the Exclusive Right to Negotiate Agreement with Harvego Real Estate, LLC for the development of the Orleans Hotel site in Old Sacramento.

**CONTACT PERSON:** Laura Sainz, Senior Project Manager, 808-2677  
Wendy Saunders, Economic Development Director, 808-8196

**FOR THE COUNCIL MEETING OF:** May 24, 2005

**SUMMARY:**

This report recommends extending the Exclusive Right to Negotiate (ERN) between the Redevelopment Agency of the City of Sacramento and Harvego Real Estate, LLC until September 30, 2005 to develop the Agency-owned site located at 1022 2<sup>nd</sup> Street, otherwise known as the Orleans Hotel site. The process will continue to follow the *Guidelines for Individual Project Review (Guidelines)* adopted by the Agency in 2004.

**BACKGROUND:**

On February 1, 2005, the Redevelopment Agency of the City of Sacramento approved a 90-day Exclusive Right to Negotiate with Harvego Real Estate LLC, ("developer") for the development of the Agency-owned Orleans Hotel site in Old Sacramento. The developer has completed a number of predevelopment steps including:

1. Met with the Old Sacramento Design Committee Chair to review the façade requirements and potential development standards;
2. Retained Monaghan & Associates Architects AIA, Inc. as the project architect;



3. Met with Jim Henley (City's Archives and Museum Collection Center Manager) and Bruce Monighan (project architect) to discuss design requirements and verify façade and other history;
4. Retained J. R. Roberts Corp. as construction contractor;
5. Retained CB Richard Ellis, Inc. (CBRE) for leasing and pricing assistance;
6. Completed a first draft conceptual design of the entire site; and
7. Started structural engineering, soils and foundation evaluations.

**Future Schedule**

The original exclusive negotiation period expired May 3, 2005. Staff recommends that the ERN be reinstated and extended to September 30, 2005. During the extension period, the developer has agreed to the following new benchmarks:

1. Develop a preliminary project pro forma to test the feasibility of the existing Schematic Design;
2. Review the pro forma with Agency staff to discuss potential funding gap;
3. If necessary, adjust project so that it is financially feasible or continue to develop concept if project appears to be financially feasible;
4. Further develop the design and construction drawings to prepare for geotechnical analysis of the site;
5. Continue to solicit feedback from the Old Sacramento Design Committee and other Old Sacramento stakeholders in the project; and
6. Initiate discussions with potential ground-floor tenants and generate Letters of Interest.

**FINANCIAL CONSIDERATIONS:** None

**ENVIRONMENTAL CONSIDERATIONS:**

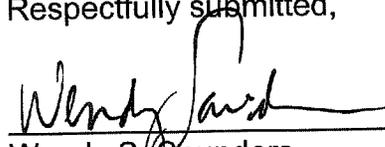
No environmental review is necessary at this time. The potential project is subject to environmental review before any actions are taken.

**POLICY CONSIDERATIONS:**

The ERN is consistent with the Merged Downtown Redevelopment Plan.

**ESBD CONSIDERATIONS:** None

Respectfully submitted,

  
\_\_\_\_\_  
Wendy S. Saunders  
Economic Development Director

RECOMMENDATION APPROVED:

  
\_\_\_\_\_  
ROBERT P. THOMAS  
City Manager

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**EXTENSION OF THE AGREEMENT FOR  
EXCLUSIVE RIGHT TO NEGOTIATE  
ORLEANS HOTEL SITE**

1. The Redevelopment Agency Of The City Of Sacramento ("Agency") and Harvego Real Estate, LLC ("Developer"), have entered into this Extension of the Agreement for Exclusive Right to Negotiate ("Agreement") as of May 24, 2005, ("Effective Date") upon the follow terms:
2. DEPOSIT FEE. On September 30, 2005, Developer shall deliver to Agency with its Proposal for Agency governing body approval, a deposit of Twenty-five Thousand Dollars (\$25,000) ("Deposit"). The Deposit is the property of the Agency, subject to the following:
  - a. Prior to execution of a Disposition and Development Agreement ("DDA") for the project or termination of negotiations between Agency and Developer, Agency may expend the Deposit solely for payment of all third-party fees, costs and expenses (the "Third Party Costs") for predevelopment activities for the project incurred by Agency, including, without limitation, costs related to preparation of the environmental documentation for the Project and supporting studies other than fees for Agency outside legal counsel for the negotiation or preparation of documents for the transactions contemplated by this Agreement. Prior to any such expenditure, Agency shall provide the Developer with a schedule of anticipated expenditures on the Third Party Costs. Developer must approve expenditures in advance. The parties anticipate that Third Party Costs will not exceed \$25,000. If the actual expenditures exceed \$25,000 the parties shall meet and confer with respect to the budget for such costs. It is agreed and understood that the required \$25,000 deposit is a Deposit only, and that to the extent that the costs of the Project exceeds \$25,000, Developer is responsible for the payment of any and all such additional costs.
  - b. If the Developer enters into a DDA with the Agency the Deposit remaining after the Third Party Costs may, at Developer's election, be applied to the good faith deposit required under the DDA.
  - c. If the Agency fails to approve a proposed DDA, developed in accordance with the provisions of this Agreement, which is duly before it for consideration and which has been executed by the Developer, Agency will refund to Developer the Deposit remaining after payment of such Third Party Costs incurred to the date of the hearing regarding approval of the DDA. All property paid for with Third Party Costs will remain the property of the Agency.
  - d. If Developer and Agency agree in writing to terminate the negotiations, the Deposit remaining after such Third Party Costs will be refunded to the Developer.
3. RECITALS. This Agreement is based upon the following recitals, facts and understandings of the Parties:
  - a. Developer desires to negotiate with Agency to develop certain real property ("Property") located in the City of Sacramento, County of Sacramento, State of California, at 1022 2<sup>nd</sup> Street in the Old Sacramento Historic District. The Property is within the Merged Downtown Sacramento Redevelopment Project Area ("Project Area") and is owned by the Agency. The development of the Property ("Project") is consistent with the Merged Downtown Sacramento Redevelopment Plan ("Redevelopment Plan") and its implementing documents, and has been identified by the Agency as important to the furtherance of the Project Area and the elimination of blighting conditions in the Project Area.
  - b. The purpose of this Agreement is to state the obligations of the parties to investigate the feasibility of the project and to develop a project proposal. Once such feasibility is demonstrated, the parties intend to negotiate a Disposition and Development Agreement exclusively and in good faith.
  - c. Agency represents, and Developer agrees, that the development of the Site, the completion of the Project and the fulfillment generally of this Agreement are for the purpose of community improvement and welfare, for the benefit of the Project Area and in accord with the public purposes and provisions of any applicable federal, state and local laws and requirements under which the project is to be undertaken.

4. IDENTITY OF PARTIES. The legal identities of the parties to this Agreement and their addresses are as follows:
  - a. Developer is Harvego Real Estate LLC, organized and doing business in the State of California. The principal office of Developer is located 2356 Gold Meadow Way, Suite 201, Gold River, CA 95670.
  - b. Agency is the Redevelopment Agency of the City of Sacramento, a public body, corporate and politic, organized under California law and functioning within the jurisdiction of the City of Sacramento. The principal office of Agency for purposes of this agreement is located at 1030 15<sup>th</sup> Street, Suite 250, Sacramento, CA 95814. Agency includes any successor to operations of Agency.
  - c. Notices to any party shall be personally delivered or sent by first class mail to its principal office address. Notices to Agency shall be clearly marked "Attention: Downtown Development Group (Orleans Hotel Site - Old Sacramento)." A copy of all notices to Agency shall be mailed or delivered to 630 I Street, Sacramento, CA 95814 and marked "Attention: Legal Department (Orleans Hotel Site – Old Sacramento)."
5. EXTENSION OF THE EXCLUSIVE RIGHT TO NEGOTIATE. Agency grants to the Developer an extension of the exclusive right to negotiate as long as the following new conditions are met accordingly:
  - a. Developer must develop a pro forma based on the uses identified in the April 14, 2005 Schematic Development by June 30, 2005;
  - b. Developer should review the pro forma and potential funding gap with Agency staff by July 15, 2005;
  - c. If the project is considered feasible following pro forma review with Agency staff, Developer should continue to develop design/construction documents for the proposed project or adjust as necessary in order to develop a financially feasible project. The next level of design documents should be complete and shared with Agency staff by August 15, 2005;
  - d. Developer should produce letters of interest by ground floor level retail tenants by September 15, 2005.
  - e. Developer should have contracted for the geotechnical analysis of the site, per 35% construction drawings by September 25, 2005.
6. TERM. This Agreement shall be effective as of Effective Date and shall terminate on September 30, 2005.
7. PROJECT APPROVAL. If the final proposed project is disapproved by final action of the governing bodies of the Agency, as a result of CEQA review or otherwise as may be required in this Agreement or by law, this Agreement shall terminate as of the date of such disapproval. If the Agreement terminates without the execution of a DDA, each party shall bear its own costs related to this Agreement.
8. REFINEMENT OF PROPOSAL. As a condition to the Agency negotiating for and entering into a DDA, Developer must prepare and submit to Agency a proposal that meets the objectives of the parties and that is approved by the Agency as provided in this Agreement and more clearly specified in the *Guidelines*. It is agreed and understood that approval of a proposal is a prerequisite and preliminary step to further processing a proposal, and that the approval of the full proposal under this Agreement for further processing and consideration is not intended to, and does not, in fact, compel or require the Agency to approve the Project, enter into a DDA or agree to contribute Agency property to Developer following completion of CEQA and/or other review processes.
9. SCHEDULE OF PERFORMANCES. The parties shall perform the stated obligations by September 30, 2005.
10. EXTENSION PERIOD. Upon written request of Developer, Agency shall reasonably consider an extension of this Extension, if Developer has acted diligently and in good faith in performing its obligations under this Agreement.
11. DEFAULTS. Either the Agency or the Developer shall be in default of this Agreement if it (a) fails to fulfill its obligations when due, which failure is not caused by the other party (b) does not reasonably cooperate with the other in fulfilling the other's obligations under this Agreement, or (c) unilaterally terminates this Agreement.

12. PREDEVELOPMENT COSTS. Developer shall bear all predevelopment costs relating to actions of Developer under this Agreement, including but not limited to costs for planning, environmental, architectural, engineering and legal services and other costs associated with preparation of Developer's proposal and/or the DDA.

13. ASSIGNMENT. This Agreement is not assignable by either party in whole or in part without the prior written consent of the other parties.

14. APPLICABLE LAW; VENUE. This Agreement shall be construed in accordance with the law of the State of California, and venue for any action under this Agreement shall be in Sacramento County, California.

15. ATTORNEYS' FEES. In the event of any dispute between the parties, whether or not such dispute results in litigation, the prevailing party shall be reimbursed by the other party for all reasonable costs and expenses, including, without limitation, reasonable attorneys' fees, witness and expert fees and investigation costs. A party receiving an award after arbitration or an order or judgment after hearing or trial shall not be considered a prevailing party if such award, order or judgment is not substantially greater than the other party's offer of settlement made in advance of the arbitration, hearing or trial.

16. UNAVOIDABLE DELAY. For the purposes of any of the provisions of this Agreement, neither Agency nor Developer shall be considered in breach of, or default in, its obligations with regard to their respective obligations, if the delay in the performance of such obligations is due to unforeseeable causes beyond the delayed party's control and without its fault or negligence. Unforeseeable causes shall include acts of God, acts of the public enemy, acts of the federal government, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather (as for example, floods, tornadoes, or hurricanes). In the event of the occurrence of any such delay, the time or times for performance of such obligations of Agency and Developers shall be extended for the period of the delay provided that the party seeking the benefit of the provisions of this Section shall, within ten days after it has or should have knowledge of any such delay, first notified the other party, in writing, of the delay and its cause, and requested an extension for the period of the delay.

EXECUTED as of the date first written above, in Sacramento, California.

AGENCY: REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO

Approved as to form:

By: \_\_\_\_\_  
Robert P. Thomas, City Manager

By: \_\_\_\_\_  
Dana W. Phillips, General Counsel

DEVELOPER: HARVEGO REAL ESTATE, LLC

Approved as to form:  
Counsel for Developer

By: \_\_\_\_\_  
Lloyd Harvego, Manager

By: \_\_\_\_\_

**RESOLUTION NO. \_\_\_\_**

**ADOPTED BY THE REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO**

ON DATE OF \_\_\_\_\_

**MERGED DOWNTOWN SACRAMENTO REDEVELOPMENT PROJECT AREA:  
AUTHORIZATION TO EXTEND THE EXCLUSIVE RIGHT TO NEGOTIATE  
WITH HARVEGO REAL ESTATE, LLC FOR THE DEVELOPMENT OF  
THE ORLEANS HOTEL SITE IN OLD SACRAMENTO**

**WHEREAS**, the Amended Redevelopment Plan for the Merged Downtown Sacramento Redevelopment Project Area was prepared by the Redevelopment Agency of the City of Sacramento ("Agency") and approved and adopted on June 17, 1986, by Ordinance No. 86-063, -064, 065, 0-66, and -067 of the City Council of the City of Sacramento and subsequently amended:

**WHEREAS**, two of the goals of the Redevelopment Plan for the Project Area are:

1. To retain and improve existing businesses, as appropriate, within commercial areas of the Merged Project Area; and
2. To improve the visual and aesthetic appearance of the Merged Project Area.

**WHEREAS**, the Agency adopted the Merged Downtown Five Year Strategic Plan and Implementation Plan for the Project Area on February 29, 2000;

**WHEREAS**, the Downtown Five Year Strategy and Implementation Plan identified the development of opportunity sites in Old Sacramento;

**WHEREAS**, the Orleans Hotel Site is properly zoned and situated for commercial use;

**WHEREAS**, the Agency approved an Exclusive Right to Negotiate with Harvego Real Estate LLC for the Orleans Hotel in Old Sacramento on February 1, 2005.

**BE IT RESOLVED BY THE REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO;**

Section 1: The above statements are true and correct.

Section 2: The City Manager is authorized to reinstate and extend the Exclusive Right to Negotiate (ERN), on behalf of the Agency, with Harvego Real Estate, LLC for the development of the Orleans Hotel site until September 30, 2005, provided Harvego Real Estate, LLC meets the new benchmarks identified in the ERN extension agreement.

Approved:

\_\_\_\_\_  
CHAIR

ATTEST:

\_\_\_\_\_  
SECRETARY

\_\_\_\_\_  
FOR CITY CLERK USE ONLY

RESOLUTION NO.: \_\_\_\_\_

DATE ADOPTED: \_\_\_\_\_

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