

## EXCLUSIVE NEGOTIATION AGREEMENT

**THIS EXCLUSIVE NEGOTIATION AGREEMENT** (the “Agreement”) is made and entered into as of \_\_\_\_\_, 2019 (the “Date of Agreement”), by and between the **CITY OF GARDEN GROVE**, a municipal corporation (“City”) and **SOCAL HOTEL, LLC**, a California limited liability company (the “Developer”) (the Developer and the City are collectively referred to herein as the “Parties”).

### *RECITALS*

The following recitals are a substantive part of this Agreement.

- A. City is a municipal corporation.
- B. Developer is an experienced developer, owner, manager and operator of hotels and commercial facilities.
- C. The Garden Grove Sanitary District, a California special district and subsidiary district to the City (“GGSD”) owns certain landfill property as shown on the Site Map attached hereto as Exhibit A and incorporated herein by reference (the “GGSD Property”), a portion of which currently provides parking for the Hyatt Regency which is also shown on the Site Map. The parties acknowledge that the GGSD Property, as a former landfill site, will require surcharging. The scope of surcharging and access to the GGSD Property are open issues to be resolved during the Term.
- D. Developer has proposed the development, opening, and operation of an approximately 200-225 room AAA Three Diamond Hotel (the “Conforming Hotel”) on an approximately three (3) acre portion of the GGSD Property shown as the “SoCal Hotel Site” on the Site Map.
- E. The parties further acknowledge that the City is also negotiating an agreement with GGSD with respect to the use of the GGSD Property for purposes of the construction and operation of the Conforming Hotel for purposes described herein.
- F. The parties further acknowledge that no determination has been made as to the viability of the Conforming Hotel and/or the utility of the GGSD Property for purposes described herein.
- G. This Agreement is in the vital and best interests of the City and the health, safety and welfare of its residents, and in accordance with public purposes of applicable state and local laws and requirements.
- H. The Parties intend that during and for the period of negotiations set forth herein (the “Negotiation Period”) each will perform certain actions and responsibilities under this Agreement.
- I. The foregoing Recitals constitute a substantive part of this Agreement.

**NOW, THEREFORE,** the Parties mutually agree as follows:

**1. Exclusive Agreement to Negotiate.**

a. Developer Feasibility Determination. Within one hundred eighty (180) days from the Date of Agreement, Developer will make a written determination, in its sole and absolute discretion, whether or not (i) the Conforming Hotel is feasible and (ii) there are conditions under which the GGSD Property, including the SoCal Hotel Site, can feasibly provide a site on which parking for the Conforming Hotel may be situated (the “Affirmative Feasibility Determination” or “Negative Feasibility Determination,” as applicable).

b. Negative Feasibility Determination. In the event of a Negative Feasibility Determination, this Agreement will be automatically terminated and neither party shall have any rights or obligations with respect to the other.

c. Affirmative Feasibility Determination. In the event of an Affirmative Feasibility Determination, the Developer shall submit:

- (1) a site plan and elevation(s) for the Conforming Hotel;
- (2) a construction and operating pro forma which identifies all sources and uses of funds, with respect to the Conforming Hotel and supporting infrastructure;
- (3) a statement describing the proposed method of financing, including construction and permanent financing;
- (4) a list of entities committed to be involved in the development and the operation of the Conforming Hotel, their respective roles, and financial references for such entities;
- (5) An updated evidence of interest by Hilton or Marriott in the Conforming Hotel; and
- (6) evidence that Developer has adequate access to the SoCal Hotel Site.

d. Response by City. Within sixty (60) days of submittal of the items described in Section 1.c.(1), above, the City shall provide Developer with a written response regarding the submittals, including further direction in connection therewith, leading toward the City DDA.

**2. Negotiating the City/GGSD Agreement and City DDA.** Following submittal by Developer, as described in Section 1.c. above, and the Parties joint determination that the proposed development is feasible based on such submittals, the City will then:

- (1) enter into negotiations with GGSD pursuant to which GGSD will grant City a sufficient interest in the GGSD Property to enable the City to enter into the City DDA (the “City/GGSD Agreement”), and
- (2) enter into negotiations with the Developer with respect to the conveyance of an interest in the SoCal Hotel Site to Developer and the construction and operation by Developer of the Conforming Hotel (the “City DDA”).

3. **Term.** The term of the negotiation period shall commence as of the Date of Agreement and shall continue until the earlier to occur of (i) a Negative Feasibility Determination as evidenced by written notice to Developer by City to that effect, (ii) the execution by the Parties of the City DDA, or (iii) or December 31, 2019 (the "Term of the Negotiation Period") at which time this Agreement shall automatically terminate unless sooner terminated pursuant to Sections 1.5., 14, and 15 or extended by the Parties, each acting at its sole and absolute discretion. Notwithstanding the foregoing, the City Manager may, in his sole and absolute discretion, extend the Term of the Negotiation Period for an additional six (6) months.

4. **Agreement to Negotiate.** The City and Developer agree that for the term of the Negotiation Period (whether said period expires or is earlier terminated by the provisions herein) each party shall negotiate diligently and in good faith to carry out its obligations under this Agreement with the goal (but not the obligation) of coming to agreement on a City DDA. The Developer expressly agrees and acknowledges that its rights pursuant to this Agreement are subject to and based upon compliance by the Developer with this Agreement (including without limitation the making of all submittals required pursuant to this Agreement, in conformity with this Agreement).

5. **Supplemental Progress Reports.** In addition to the information required in Section 1 above, for so long as this Agreement remains in effect Developer agrees to make weekly oral progress reports and monthly written reports to the City Manager or his designee advising the City on all matters and all studies being made.

6. **Deposit by Developer.** The Parties recognize that the City will incur significant expenses in evaluating the Developer's proposal hereunder. Accordingly, as consideration for this Agreement, to be used by the City for any purpose it determines, acting in its sole and absolute discretion. The Developer will deposit with the City the cash sum of Fifty Thousand Dollars (\$50,000) (the "Deposit") concurrently with delivery of an Affirmative Feasibility Determination. The Deposit will be retained by the City if a City DDA is executed by the parties or returned to the Developer upon termination of this Agreement without a City DDA.

7. **No Predetermination of City Discretion; No Assurances as to Actions of Other Entities.** The Parties agree and acknowledge that nothing in this Agreement in any respect does or shall be construed to affect or prejudice the exercise of the City's discretion. The Developer acknowledges in this regard that the feasibility of the Developer's proposal has not been determined nor has the City completed necessary environmental review or governmental processes necessary for processing of plans for development or use of the GGSD Property, including the SoCal Hotel Site. Further, nothing in this Agreement in any respect does or shall be construed to affect or prejudice the City's discretion to consider, negotiate, and/or undertake the acquisition and/or development of any portion of the GGSD Property, including the SoCal Hotel Site, or shall affect the City's compliance with the laws, rules, and regulations governing land uses, environmental review, or disposition of the GGSD Property, including the SoCal Hotel Site. In addition, no assurances are made by City hereunder that parking or any other use is feasible on the GGSD Property, including the SoCal Hotel Site. However, pursuant to this Agreement the Parties agree to negotiate in good faith and to take all actions necessary and customary in determining the feasibility of Developer's proposal as set forth in this Agreement.

8. **Environmental and Other Requirements.** Certain federal, state, and local environmental requirements (including, but without limitation, the California Environmental Quality Act of 1970, Public Resources Code Section 21000, et seq.) may be applicable to proposed

development. Pursuant to such requirements, certain environmental documents may be required to be prepared and certified for any proposed development. The City, by this Agreement, undertakes no obligation to pay any costs associated with such environmental documents. However, the Parties anticipate that certain environmental documents will apply to the overall GGSD Property, and if the City makes an Affirmative Parking Feasibility Determination, then during the Negotiation Period, the Parties will discuss and agree on the allocation of costs for such environmental documents among developers of the GGSD Property.

9. **Costs and Expenses.** Except as otherwise provided in this Agreement, each party shall be responsible for its own costs and expenses in connection with any activities and negotiations undertaken in connection with the performance of its obligations under this Agreement.

10. **No Change in Developer or its Constituent Members.** The qualifications of the Developer are of particular interest to the City. Consequently, no person or entity, whether a voluntary or involuntary successor of Developer, shall acquire any rights or powers under this Agreement nor shall the Developer assign all or any part of this Agreement without the prior written approval of the City, which approval the City may grant, withhold, condition, or deny at its sole and absolute discretion. Any other purported transfer, voluntarily or by operation of law, shall be absolutely null and void and shall confer no rights whatsoever upon any purported assignee or transferee.

11. **Address for Notices.** Any notices pursuant to this Agreement shall be in writing and sent (i) by Federal Express (or other established express delivery service which maintains delivery records), (ii) by hand delivery, or (iii) by certified or registered mail, postage prepaid, return receipt requested, to the following addresses:

To City: City of Garden Grove  
Attention: Scott C. Stiles, City Manager  
11222 Acacia Parkway  
Garden Grove, California 92842

With a copy to: Stradling Yocca Carlson & Rauth  
660 Newport Center Drive, Suite 1600  
Newport Beach, California 92660  
Attention: Thomas P. Clark, Jr.  
tclark@sycr.com

Woodruff Spradlin & Smart  
555 Anton Boulevard, Suite 1200  
Costa Mesa, CA, 92626  
Attention: Omar Sandoval  
omars@ci.garden-grove.ca.us

To Developer: SoCal Hotel, LLC  
19700 Fairchild Rd., Suite 130  
Irvine, CA 92612  
Attn: Mark David  
mdavid@landmarkco.com

With a copy to: Hecht Solberg Robinson Goldberg & Bagley LLP  
600 West Broadway, Suite 800  
San Diego, California 92101  
Attn: Jonathon Giebeler, Esq., CCIM  
jgiebeler@hechtsolberg.com

12. **Breach.** Failure by either party to perform one or more of its duties as provided in this Agreement shall constitute a “Breach” under this Agreement. The non-breaching party shall give written notice of a Breach to the breaching party, specifying the nature of the Breach and the action required to cure the Breach. If the breaching party fails to cure such Breach within thirty (30) days of written notice, such Breach shall become a “Default.”

13. **Remedies for Default.** In the event of a Default under this Agreement, the sole remedy of the nondefaulting party shall be to terminate this Agreement. Following such termination, neither party shall have any further rights, remedies or obligations under this Agreement. Neither party shall have any liability to the other for monetary damages or specific performance for Default of this Agreement or failure to reach agreement on a City DDA, and each party hereby waives and releases any such rights or claims it may otherwise have at law or at equity. Furthermore, the Developer knowingly agrees that it shall have no right to specific performance for conveyance of, nor to claim any right of title or interest in the GGSD, including the SoCal Hotel Site, or any portion thereof.

14. **Termination.** This Agreement shall: (i) automatically terminate upon the expiration of the Term of the Negotiation Period, or (ii) terminate prior to the time(s) set forth in Section 3 above in the event the Developer shall be in Default hereunder. In addition, the Parties agree that, if the development of the Conforming Hotel does not appear to either party to be economically sound and feasible, either party may, upon ten (10) days’ written notice to the other party, terminate this Agreement. Upon termination of this Agreement, whether upon expiration of the Negotiation Period or otherwise, both Parties knowingly agree that neither party shall have any further rights or remedies to the other and the Developer shall have no rights in or with respect to the GGSD Property, including the SoCal Hotel Site.

15. **Time of Essence.** Time is of the essence of every portion of this Agreement in which time is a material part. During the Negotiation Period the time periods set forth in this Agreement for the performance obligations hereunder shall apply and commence upon a complete submittal of the applicable information or occurrence of an applicable event. In no event shall an incomplete submittal by the Developer trigger any of the City’s obligations of review, approval and/or performance hereunder; provided, however that the City shall notify the Developer of an incomplete submittal as soon as is practicable and in no event later than the applicable time set forth for the City’s action on the particular item in question. Further, the time periods set forth herein are outside dates of performance. In the event a party completes a performance item earlier than the time required hereunder, the time for the next performance obligation of a party shall commence. Thus, the Parties agree that the requirements hereunder may occur and be completed in a shorter time frame than set forth herein.

16. **Real Estate Commissions.** The City shall not be liable for any real estate commission, finder’s fee, or brokerage fees which may arise with respect to this Agreement, or the GGSD Property, including the SoCal Hotel Site.

17. **Developer Not an Agent.** The Developer is not an agent of the City.

18. **Press Releases.** The Developer agrees to discuss any press releases with the City Manager or his designee prior to disclosure or publication in order to assure timeliness, propriety, accuracy, and consistency of the information.

19. **Entire Agreement.** This Agreement constitutes the entire understanding and agreement of the Parties, integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the Parties or their predecessors in interest with respect to all or any part of the subject matter hereof.

20. **Agreement Does Not Constitute Development Approval.** The City reserves final discretion and approval as to the sale and/or sublease or development and all proceedings and decisions in connection therewith. This Agreement shall not be construed as a grant of development rights or land use entitlements to construct the Conforming Hotel or any other project. All design, architectural, and building plans for the Conforming Hotel shall be subject to the review and approval of the City and such governmental entities properly exercising authority with respect thereto. By its execution of this Agreement, the City is not committing itself to or agreeing to undertake the disposition of the GGSD Property, including the SoCal Hotel Site to the Developer, or any other acts or activities requiring the subsequent independent exercise of discretion by the City or any agency or department thereof.

21. **Governing Law.** This Agreement shall be construed in accordance with the laws of the State of California.

22. **Implementation of Agreement.** The City shall maintain authority to implement this Agreement through the City Manager (or his or her duly authorized representative). The City Manager shall have the authority to issue interpretations, waive provisions, and/or enter into certain amendments of this Agreement on behalf of the City so long as such actions do not materially or substantially change the uses or concept of the proposed development, or add to the costs or risks incurred or to be incurred by the City as specified herein, and such interpretations, waivers and/or amendments may include extensions of time to perform. All other materials and/or substantive interpretations, waivers, or amendments shall require the collective consideration, action and written consent of the City Council.

23. **No Third Party Beneficiaries.** There are no third party beneficiaries of this Agreement.

24. **Waiver of Damages.** Each party hereby waives any claim for monetary damages for breach or default hereunder.

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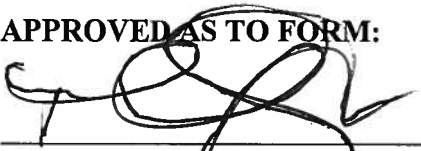
**NOW THEREFORE**, the Parties have executed this Negotiation Agreement as of the date and year first set forth above.

**CITY:**

**CITY OF GARDEN GROVE,**  
a municipal corporation

By: \_\_\_\_\_  
City Manager

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Stradling Yocca Carlson & Rauth PC  
Special Counsel to City

**DEVELOPER:**

**SOCAL HOTEL, LLC,**  
a California limited liability company

By:   
Its: managing member



**EXHIBIT A**  
**MAP OF THE SITE**



So Cal Hotel Site/Mark David Site



Garden Grove Sanitary District Property