

EXCLUSIVE NEGOTIATING AGREEMENT

This EXCLUSIVE NEGOTIATING AGREEMENT (this “ENA”) is dated as of February 26, 2019, and is entered into by and between the CITY OF TEMECULA, a municipal corporation (the “City”) and THE STEPHEN A. BIERI COMPANY, INC., a California corporation (the “Purchaser”).

R E C I T A L S

- A. The City owns the land in the City of Temecula, State of California that is described in Attachment No. 1 (the “Site”).
- B. The City desires to sell the Site and desires that a mixed-use development be constructed thereon, including a water park.
- C. The City has instructed the City’s staff to proceed with this ENA between City and Purchaser to negotiate on an exclusive basis to establish the terms and conditions of an agreement (“Agreement”) that would result in the sale of the Site by City to Purchaser and the development of the Site with the understanding that neither party shall be under any obligation to reach agreement on the terms thereof.
- D. The Purchaser and the City are willing to enter into this ENA setting forth, among other things, the terms pursuant to which the City will negotiate with the Purchaser on an exclusive basis for a limited period regarding the proposed Agreement.

NOW, THEREFORE, the Parties hereto agree as follows:

1. The term of this ENA shall commence on the date hereof and shall end nine (9) calendar months thereafter (“Initial Negotiation Period”).

If an Agreement has not been signed and approved within the Initial Negotiation Period, and the Purchaser is using good faith efforts to negotiate diligently as determined by the City Manager, then the Initial Negotiation Period may be extended in writing by the City Manager for up to three periods of thirty (30) days each to enable the Purchaser and the City to: (1) determine whether each desires to enter into an Agreement; (2) hold any public hearings required by laws and take the action necessary to authorize the City to approve the Agreement; and (3) sign and deliver the Agreement.

The Initial Negotiation Period, as so extended, is hereinafter referred to as the “ENA Period.”

2. During the ENA Period, the City shall not negotiate with any person or entity other than the Purchaser for the sale, lease, or development of the Site, except that the City may lease the Site to one or more vehicle dealers for overflow vehicle parking during the ENA Period.

3. Throughout the ENA Period, City staff shall use good faith efforts to be reasonably available to meet with the Purchaser to discuss the proposed Agreement and shall prepare and review drafts of the Agreement.

4. The Purchaser shall bear all costs and expenses of any and all title, environmental, physical, engineering, financial, and feasibility investigations, reports and analyses and other analyses or activities performed by or for the Purchaser.

5. The Purchaser and the City understand and agree that neither Party is under any obligation whatsoever to enter into an Agreement. In the event of the expiration or earlier termination of this ENA, the City shall be free at the City's option to negotiate with any persons or entities with respect to the sale, lease and/or development of the Site.

6. This ENA may not be assigned by the Purchaser without the prior express written consent of the City in its sole and absolute discretion.

7. Any notice, request, approval or other communication to be provided by one Party to the other shall be in writing and provided by personal service or a reputable overnight delivery service (such as Federal Express) and addressed as follows:

If to the City:

City of Temecula
41000 Main Street
Temecula, California 92590
Attn: City Manager

with a copy to:

Richards, Watson & Gershon
355 South Grand Avenue, 40th Floor
Los Angeles, California 90071-3101
Attn: Peter Thorson

If to the Purchaser:

The Stephen A. Bieri Company, Inc.
17150 Via del Campo, Suite 101
San Diego, CA 92127-2137
Attn: Stephen A. Bieri, President

8. This ENA constitutes the entire agreement of the Parties hereto with respect to the specific subject matter hereof. There are no other agreements or understandings between the Parties with respect to the subject matter hereof or any related subject and no representations by either Party to the other have been made as an inducement to enter into this ENA. All prior negotiations between the Parties are superseded by this ENA.

9. This ENA may not be altered, amended or modified except by a writing executed by all Parties.

10. If any Party should bring any legal action or proceeding relating to this ENA or to enforce any provision hereof, or if the Parties agree to arbitration or mediation relating to this ENA, the Party in whose favor a judgment or decision is rendered shall be entitled to recover reasonable attorneys' fees and expenses from the other. The Parties agree that any legal action or proceeding or agreed-upon arbitration or mediation shall be filed in and shall occur in the County of Riverside.

11. The interpretation and enforcement of this ENA shall be governed by the laws of the State of California.

12. Time is of the essence of each and every provision hereof.

13. This ENA may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same ENA, and such executed counterparts may be delivered by email/PDF.

IN WITNESS WHEREOF, the parties hereto have executed this ENA as of the day and year first written above.

PURCHASER:

THE STEPHEN A. BIERI COMPANY, INC.,
a California corporation

By: _____
Stephen A. Bieri, President

CITY:

CITY OF TEMECULA,
a municipal corporation

By: _____
Michael S. Naggar, Mayor

ATTEST:

Randi Johl, City Clerk

APPROVED AS TO FORM:

Peter M. Thorson, City Attorney

ATTACHMENT NO. 1

DESCRIPTION OF SITE

Real property in the City of Temecula, County of Riverside, State of California, described as follows:

THAT PORTION OF PARCEL 1 OF PARCEL MAP NO. 4646, IN THE CITY OF TEMECULA, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 6 PAGE 75 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHERLY CORNER OF SAID PARCEL 1; THENCE ALONG THE NORTHEASTERLY LINE OF SAID PARCEL 1 (SAID NORTHEASTERLY LINE ALSO BEING THE CENTERLINE OF A RIVER CHANNEL EASEMENT TO THE COUNTY OF RIVERSIDE), SOUTH $41^{\circ}42'22''$ EAST 19.08 FEET TO THE BEGINNING OF A TANGENT 4000.00 FOOT RADIUS CURVE CONCAVE NORTHEASTERLY; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF $6^{\circ}36'30''$, A DISTANCE OF 461.35 FEET; THENCE TANGENT TO SAID CURVE SOUTH $48^{\circ}18'52''$ EAST 482.01 FEET; THENCE LEAVING SAID NORTHEASTERLY BOUNDARY SOUTH $43^{\circ}58'46''$ WEST 1,387.89 FEET TO THE BEGINNING OF A TANGENT 850.00 FOOT RADIUS CURVE CONCAVE NORTHWESTERLY; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF $25^{\circ}52'42''$ A DISTANCE OF 383.91 FEET; THENCE NORTH $41^{\circ}50'22''$ WEST 1,001.63 FEET; THENCE NORTH $48^{\circ}09'30''$ EAST 1,680.60 FEET TO THE POINT OF BEGINNING.