

EXCLUSIVE NEGOTIATION AGREEMENT

THIS EXCLUSIVE NEGOTIATION AGREEMENT ("ENA" or "Agreement") is entered into this 20th day of January, 2010, by and between the City of Las Vegas Redevelopment Agency, a public body in the State of Nevada (hereinafter "Agency") and Solterra Nevada Holdings, LLC, a Nevada limited liability company or (hereinafter "Developer"), on the terms and provisions set forth below.

RECITALS

WHEREAS, the AGENCY owns real property located at 408 East Clark Avenue, know as APN: 139-34-303-002 and referred to as the "Site" or "Property" for the purposes of this Agreement; and

WHEREAS, the AGENCY wishes to dispose of the Site for the purpose of redevelopment; and

WHEREAS, the Developer wishes to acquire the Site for the purpose of the real estate development for the construction of a new private development; and

WHEREAS, the AGENCY and Developer desire to enter into negotiations concerning the Developer's plans for the development of the Site with the intent that at the conclusion of the Negotiation Period, as defined below, an affiliate of developer enter into a "Disposition and Development Agreement ("DDA") for the Site.

NOW, THEREFORE, for and in consideration of the mutual agreements, which are hereinafter contained, the parties do hereby agree as follows:

1. Scope of Development

A. Mixed-Use Development

The Developer will agree to study and conduct due diligence (and present, or make available to the Agency for its review and inspection, results of its studies that are not deemed confidential by the Developer) regarding design, cost, operational structure of and constructability of a mixed-use development on the Site.

B. Deal Terms

The Agency and the Developer commit to negotiate terms of the land purchase price for the Site, which land purchase price shall comply with applicable Nevada law. The Agency and the Developer must agree to a mutually acceptable schedule of performance for development of the Site, which shall be incorporated into the DDA for the Site.

2. Negotiations

A. Good Faith Negotiations

The Agency and Developer agree for the Negotiation Period set forth below to negotiate diligently and in good faith to prepare a Disposition and Development Agreement for the Site. All terms and conditions of the DDA will be defined and negotiated in good faith by the Agency and the Developer during the entire Negotiation Period. The Agency further agrees, for the Negotiation Period set forth below, not to negotiate with any other person or entity regarding the sale, disposition and/or development of the Site. The Agency further agrees, for the Negotiation Period set forth below, not to negotiate with any other person or entity regarding the ownership, development, operation and management of the Site. The terms and provisions of the DDA shall be acceptable to the Agency and the Developer in its respective sole subjective discretion.

B. Negotiation Period

The duration of this ENA shall be for a term of One Hundred Eighty (180) days, commencing on the full execution of this ENA (hereinafter "Negotiation Period"). The Negotiation Period may be extended for an additional Ninety (90) days ("Extension") in the event that progress towards the finalization of the DDA for the Site is being made. This Extension would require written mutual agreement by the Executive Director of the Agency and the authorized representative of the Developer, which shall be executed no later than thirty (30) days prior to the expiration of the initial 180 day term. If upon expiration of the Negotiation Period (as same may have been extended), Developer and the Agency have not reached mutual agreement as to the scope, conceptual plan, and business terms for acquisition of the Site, then this Agreement shall automatically terminate. If the Parties have not reached agreement on the above points, and both parties mutually agree to extend this Negotiation Period, this ENA will need to be amended which will be subject to the Las Vegas City Council and/or Agency Board approval, the term of any extension will be negotiated at that point in time.

C. Tasks to be Performed by Developer during the Negotiation Period

i. Master Plan for Site.

The Developer, at Developer's expense, shall complete and provide to the Agency, or make available for review and inspection by the Agency, a master plan consisting of site plans (showing proposed programming) and renderings for development of the Site within four (4) months of the date of this ENA.

ii. Within six (6) months of the date of this ENA, the Developer shall provide to the Agency, or make available for review by the Agency, the following:

a) A schedule of performance for the Site;

- b) A schedule and scope for design, permitting, construction, and completion of improvements on the Site; and
- c) A plan for equity and/or debt financing for the development of the Site.

iii. Developer shall complete all necessary due diligence on the Site prior to the execution of the DDA. This due diligence will be at the Developer's sole expense.

iv. The Developer shall explore the potential of assembling additional acreage near the Site to expand the development.

3. Development Concept

A. Completion of Development Program

The negotiations hereunder shall be based on a development program encompassing the entire Site. The development will consist of an acceptable mixed-use development.

B. Developer's Findings, Determinations, Studies and Reports

The Developer shall keep the Agency reasonably informed of its progress in developing the scope of development. Upon reasonable notice, as requested by the Agency, Developer agrees to make oral progress reports advising the Agency on the status of the development plan, all matters and all studies being made by Developer. The work product produced by Developer constitutes the property and assets of Developer.

4. Developer

A. Nature of Developer

Developer is Solterra Nevada Holdings, LLC, a Nevada limited liability corporation. If Developer chooses to form a partnership or limited liability company in the future and they wish to assign the rights of this ENA to this new entity or partnership, such assignment shall require the prior written approval of the Agency. The Agency recognizes that the DDA shall be entered into by an affiliate of Developer.

B. Office of Developer

The principal office of Developer is:

460 Fraser View Place
Delta, BC V3M 6H4
Phone: (604)528-6010
Attention: Mike Bosa

C. Full Disclosure of Principals

Developer is required to make full disclosure to Agency of its principals, officers, major stockholders, major partners, joint venture partners, key managerial employees and other associates, and all other material information concerning Developer and its associates. Any significant change in the principals, associates, partners, joint venture, negotiators, development manager, consultants, professionals and directly-involved managerial employees of Developer is subject to the approval of Agency; such approval shall not be unreasonably withheld.

Pursuant to Resolution RA-4-99 adopted by the City of Las Vegas Redevelopment Agency Board effective October 1, 1999, Developer warrants that it has disclosed, on the form attached hereto as Exhibit "C", all principals, including, partners or members of Solterra Nevada Holdings, LLC, as well as all persons and entities holding more than 1% interest in said company or any principal, partner or member of the same, including any assignee of this ENA and all key employees. Throughout the term hereof, Developer shall provide written notification of any material change in the above disclosure within 30 days of any such change, pursuant to Section 12 (Notices).

5. Developer's Financial Capacity

A. Financial Ability

Prior to execution of the DDA, Developer shall submit to Agency satisfactory evidence of its ability to finance and complete the development, if not already provided pursuant to Section 2.C. above.

B. Construction Financing

Developer's proposed method of obtaining construction financing for the development of the development shall be submitted concurrently with Developer's proposed DDA for the Site to Agency for approval, if not already provided pursuant to Section 2.C. above.

C. Long-Term Development Financing

Developer's proposed method of obtaining long-term development financing shall be submitted concurrently with Developer's proposed DDA for the Site to Agency for approval, if not already provided pursuant to Section 2.C. above.

D. Full Disclosure of Financing

Developer will be required to make and maintain full disclosure to Agency of its methods of financing to be used in the development of the Site.

6. Developer's Responsibilities

A. Return of Site to Original Condition

Developer hereby agrees to return the Site to its original condition upon completion of any investigations requiring access to the Site, as applicable. This includes replacement of any dust palliative which may be disturbed by vehicles and personnel permitted to access the Site. If the Developer fails to return the site to its original condition any costs incurred by the Agency to return to the Site to its original condition shall be covered from the Developer's Deposit.

B. Indemnification and Hold Harmless

Developer will indemnify and hold harmless the Agency, its officers, employees and agents from and against any claims, demands or causes of action caused by Developer or persons acting on behalf of Developer in carrying out their responsibilities in accessing the Site. This indemnity and hold harmless obligation shall not apply to claims, demands or causes of action caused by the negligence or wrongful acts of the Agency, its officers, employees and/or agents.

7. Agency's Responsibilities

A. Agency Assistance and Cooperation

Agency shall cooperate fully in providing Developer with appropriate information and assistance.

B. RIGHT TO ENTER

AS SET FORTH IN EXHIBIT "D," AGENCY GIVES DEVELOPER THE RIGHT TO ENTER SITE, SUBJECT TO CURRENT TENANT APPROVALS, TO CARRY OUT ITS DUE DILIGENCE INSPECTION OF THE SITE AND THE DEVELOPER ACKNOWLEDGES AND UNDERSTANDS THE CONDITIONS AND EXCEPTIONS UNDER WHICH SAID RIGHT IS GRANTED.

8. Real Estate Commission

The Agency shall not be liable for any real estate commission or brokerage fees, which may arise here from, unless due to the actions of the Agency. Developer represents that it has engaged no broker, agent or finder in connection with this transaction, and Developer agrees to hold Agency harmless from any claim by any broker or finder retained by Developer. The Agency represents that it has engaged no broker, agent or finder in connection with this transaction, and the Agency agrees to hold the Developer harmless from any claim by any broker or finder retained by the Agency.

9. Limitations of this ENA

By its execution of this ENA, the Agency is not committing itself to or agreeing to undertake:

A. The disposition of the Site to Developer; or,

B. Any other acts or activities requiring the subsequent independent exercise of discretion by the Agency or any Agency department or board thereof.

This ENA does not constitute a disposition of property or exercise of control over property by Agency. Execution of this ENA by Agency is merely an ENA to enter into a period of exclusive negotiations according to the terms hereof, reserving final discretion and approval by Agency, City of Las Vegas Redevelopment Agency Board and the Las Vegas City Council as to any and all proceedings and decisions in connection therewith.

By its execution of this ENA, Developer is not committing itself to or agreeing to undertake the acquisition of the Site from the Agency or to develop anything on the Site.

10. Deposit

Within ten (10) days after the execution of this ENA, Developer shall provide the Agency with a One Hundred Thousand Dollar (\$100,000) deposit ("Deposit"). The Deposit shall be placed in an interest bearing account, insured by the Federal Deposit Insurance Corporation, for the benefit of the Developer. For any reason or no reason, should the Agency and Developer fail to enter into a DDA for the Site during the Negotiation Period or if the Negotiation Period expires, including any extensions thereto, One Hundred percent (100%) of the Deposit shall be refunded to Developer with any interest earned within 30 days after the termination or expiration of this ENA. In addition, if a DDA is entered into for the Site, One Hundred percent (100%) of the Deposit shall be applied to the purchase price for the Property. If the ENA is extended through the mutual extension, the Deposit shall remain refundable. However, if the mutual extension is approved, the Developer shall provide the Agency with an additional One Hundred Thousand Dollar (\$100,000) deposit ("Extension Deposit"), within ten (10) of approval of the extension. If after the Extension period the Developer is unable to move forward, the entire deposit of \$200,000 with any interest will be returned to the Developer.

11. Conflict of Interest

A. An official of the Agency, who is authorized in such capacity and on behalf of the Agency to negotiate, make, accept or approve, or take part in negotiating, making, accepting, or approving this ENA, payments under this ENA, or work under this ENA, shall not be directly or indirectly interested personally in this ENA or in any part hereof. No officer, employee, architect, attorney, engineer or inspector of, or for the Agency, who is authorized in such capacity and on behalf of the Agency to exercise any legislative, executive, supervisory or other similar functions in connection with this ENA, shall become directly or indirectly interested personally in this ENA or in any part hereof, any material supply contract, subcontract, insurance contract, or any other contract pertaining to this ENA.

B. Each party represents that it is unaware of any financial or economic interest of any public officer or employee of the Agency relating to this ENA.

C. Developer represents and warrants that it has, in accordance with the current policy of Agency, disclosed the ownership and principals of Developer on Exhibit "C", "Disclosure of Principals", and that it has a continuing obligation to update this disclosure whenever there is a material change in the information.

12. Notices

All legal notices required pursuant to the terms and conditions of this ENA shall be in writing. Any notice required to be given under the terms of this ENA shall be deemed to have been given when (i) received by the party to whom it is directed by hand delivery or personal service, (ii) on the next business day when sent by a nationally recognized over-night delivery service, or (iii) on the fifth day after being sent by U.S. mail via certified mail-return receipt requested at the following addresses:

If to Developer:

Solterra Nevada Holdings, LLC
460 Fraser View Place
Delta, BC V3M 6H4
Phone: (604)528-6010
Attention: Mike Bosa

If to Agency:

William Arent
Director
Office of Business Development
City of Las Vegas
400 Stewart Avenue, Second Floor
Las Vegas, 89101

And

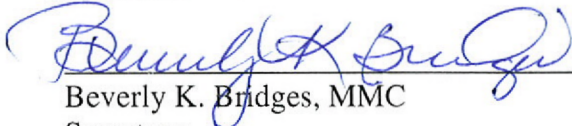
Brad Jerbic
City Attorney
City of Las Vegas
400 Stewart Avenue
Las Vegas, NV 89101

IN WITNESS WHEREOF, the parties hereto have caused this Exclusive Negotiation Agreement to be executed on the date set forth above.

City of Las Vegas Redevelopment Agency

By 
Oscar B. Goodman, Chairman Date

ATTEST:


Beverly K. Bridges, MMC
Secretary

APPROVED AS TO FORM:

 1/8/10
Deputy City Attorney Date

Solterra Nevada Holdings, LLC,
A Nevada limited liability company

By:

By 
"Developer" Date

EXHIBIT "A"

Legal Description

Part of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼) of Section 34 T. 20 S., R. 61 E., Clark County, Nevada. A complete legal has been detailed in the attached deed.

Parcel Number 139-34-303-002

Site Address: 501 South 4th Street, Las Vegas, NV 89101

Exhibit "B" Site Map



Legend



4th & Clark

0 110 220 440 Feet

N



EXHIBIT "C"

DISCLOSURE OF PRINCIPALS

CERTIFICATE DISCLOSURE OF OWNERSHIP / PRINCIPALS

1. Definitions

"City" means the City of Las Vegas.

"City Council" means the governing body of the City of Las Vegas.

"Contracting Entity" means the individual, partnership, or corporation seeking to enter into a contract or agreement with the City of Las Vegas.

"Principal" means, for each type of business organization, the following: (a) sole proprietorship – the owner of the business; (b) corporation – the directors and officers of the corporation; but not any branch managers of offices which are a part of the corporation; (c) partnership – the general partner and limited partners; (d) limited liability company – the managing member as well as all the other members.

2. Policy

In accordance with Resolution 79-99 and 105-99 adopted by the City Council, Contracting Entities seeking to enter into certain contracts or agreements with the City of Las Vegas must disclose information regarding ownership interests and principals. Such disclosure generally is required in conjunction with a Request for Proposals (RFP). In other cases, such disclosure must be made prior to the execution of a contract or agreement.

3. Instructions

The disclosure required by the Resolutions referenced above shall be made through the completion and execution of this Certificate. The Contracting Entity shall complete Block 1, Block 2, and Block 3. The Contracting Entity shall complete either Block 4 or its alternate in Block 5. Specific information, which must be provided, is highlighted. An Officer or other official authorized to contractually bind the Contracting Entity shall sign and date the Certificate, and such signing shall be notarized.

4. Incorporation

This Certificate shall be incorporated into the resulting contract or agreement, if any, between the City and the Contracting Entity. Upon execution of such contract or agreement, the Contracting Entity is under a continuing obligation to notify the City in writing of any material changes to the information in this Certificate. This notification shall be made within fifteen (15) days of the change. Failure to notify the City of any material change may result, at the option of the City, in a default termination (in whole or in part) of the contract or agreement, and/or a withholding of payments due the Contracting Entity.

Block 1	Contracting Entity
Name	Solterra Holdings Nevada, LLC
Address	460 Fraser View Place, Delta, BC V3M 6H4
Telephone	(604) 528-6010
EIN or DUNS	

Block 2	Description
Subject Matter of Contract/Agreement:	
RFP #	

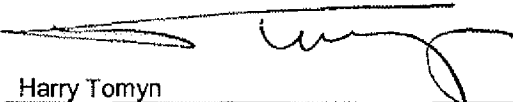
Block 3	Type of Business		
☐ Individual	☐ Partnership	☒ Limited Liability Company	☐ Corporation

Block 4		Disclosure of Ownership and Principals	
In the space below, the Contracting Entity must disclose all principals (including partners) of the Contracting Entity, as well as persons or entities holding more than one-percent (1%) ownership interest in the Contracting Entity.			
	FULL NAME/TITLE	BUSINESS ADDRESS	BUSINESS PHONE
1.	Gerry Nichele	460 Fraser View Place, Delta, BC V3M 6H4	604-528-6010
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			

The Contracting Entity shall continue the above list on a sheet of paper entitled "Disclosure of Principals - Continuation" until full and complete disclosure is made. If continuation sheets are attached, please indicate the number of sheets: _____

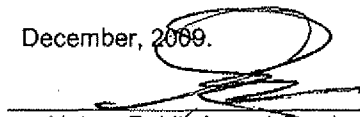
Block 5		Disclosure of Ownership and Principals - Alternate	
If the Contracting Entity, or its principals or partners, are required to provide disclosure (of persons or entities holding an ownership interest) under federal law (such as disclosure required by the Securities and Exchange Commission or the Employee Retirement Income Act), a copy of such disclosure may be attached to this Certificate in lieu of providing the information set forth in Block 4 above. A description of such disclosure documents must be included below.			
Name of Attached Document: _____		Number of Pages: _____	
Date of Attached Document: _____			

I certify, under penalty of perjury, that all the information provided in this Certificate is current, complete, and accurate. I further certify that I am an individual authorized to contractually bind the above named Contracting Entity.


Harry Tomyn

December 29, 2009

Subscribed and sworn to before me this 29th day of
December, 2009.


Notary Public In and For the Province of British
Columbia, Canada

GREG T. PALM
LAWYER
HUNGERFORD TOMYN LAWRENSEN AND NICHOLS
1100 - 925 WEST GEORGIA STREET
VANCOUVER, B.C. CANADA V6C 3L2

EXHIBIT "D"
RIGHT-OF-ENTRY FORM
FOR
Solterra Nevada Holdings, LLC

The City of Las Vegas Redevelopment Agency (Agency) hereby authorizes Right-of-Entry onto the parcel known as APN: 139-34-303-002 of the EXCLUSIVE NEGOTIATION AGREEMENT ("ENA") dated _____, 2010, which is located at 408 East Clark Avenue to Solterra Nevada Holdings, LLC, for the purpose of performing surveys, environmental and/or geotechnical services on said Agency owned parcel.

Agency contact person is: Bill Arent, 702-229-6100

The Solterra Nevada Holdings, LLC, contact person is: _____

City of Las Vegas Redevelopment Agency

By: _____
Elizabeth N. Fretwell, Executive Director Date

INDEMNIFICATION

Solterra Nevada Holdings, LLC,, hereby agrees to protect, indemnify, and hold the Agency and City of Las Vegas, its officers, employees and agents, harmless from and against any and all claims, damages, losses, expenses, suits, actions, decrees, judgments, awards, attorneys' fees and court costs, which the Agency and/or City of Las Vegas, its officers, employees or agents, may suffer or which may be sought against or are recovered or obtainable from the Agency and/or the City of Las Vegas, its officers, employees or agents, that are caused by the wrongful acts or omission of, negligence of Solterra Nevada Holdings, LLC or its officers employees, contractors, subcontractors and agents. This indemnity and hold harmless obligation shall not apply to claims, demands or causes of action caused by the gross negligence or wrongful acts of the Agency and/or the City of Las Vegas, its officers, employees and/or agents.

In this connection, the Solterra Nevada Holdings, LLC, expressly agrees, at its sole cost and expense, to defend the Agency and/or the City of Las Vegas, its officers, employees and agents, in any suit or action that may be brought against it or them, or any of them by reason of any act or omission, negligent or otherwise, against which The Solterra Nevada Holdings, LLC, has agreed to indemnify the Agency and/or the City of Las Vegas, its officers, employees and agents in the above paragraph. If The Solterra Nevada Holdings, LLC fails to do so, after notice to The Solterra Nevada Holdings, LLC the Agency and/or the City of Las Vegas shall have the right, but not the obligation to defend same and to charge all of the direct and incidental costs of such defense, including reasonable attorneys' fees and court costs, to the Solterra Nevada Holdings, LLC.

The Solterra Nevada Holdings, LLC, agrees to restore the site to its original condition as much as possible, and agrees to conduct its testing in a manner which will cause the least amount of disruption to the present users. This agreement does not constitute or imply any binding contracts or other commitments by the Agency and/or the City of Las Vegas to Solterra Nevada Holdings, LLC, agrees that it proceeds at its own risk and agrees that the results of said testing shall be shared with Agency.

Solterra Nevada Holdings, LLC
By: _____

Date: _____