

**EXCLUSIVE NEGOTIATION AGREEMENT**

**THIS EXCLUSIVE NEGOTIATION AGREEMENT** (the “Agreement” or “ENA”) is made as of this \_\_\_ day of \_\_\_\_\_, 2019, by and between the CITY OF FULLERTON, a municipal corporation (“City”), and RENEWABLE FARMS, a 501c3 non-profit Corporation (“R-Farms”). The City and R-Farms are sometimes referred to individually herein as a "Party" and, collectively, as the "Parties."

**RECITALS**

A. City owns the certain real property identified as Union Pacific Park (“Park”), which is a 1.7 acre park located near the downtown area just south of the SOCO District. The park was established in 2003 after the land was purchased from Union Pacific Railroad in 1998. In 2004, the park was partially closed due to soil contamination from prior rail road industry operations. In 2009, the remaining areas of the park were closed due to repeated illicit uses. In 2012, soil remediation was conducted and completed by the Department of Toxic Substance Control (DTSC), leaving the park ready for unrestricted uses.

B. City received a development proposal from R-Farms for a development in of the Park. The Park is currently closed and underutilized.

C. The proposal received from R-Farms for Union Pacific Park is similar to the program in the City of Anaheim, where there are several components for the community’s enrichment and enjoyment. Such components would include recreational, educational internship opportunities, retail, public and private events, public art opportunities, beer and wine festivals, and open public space for passive uses.

D. Negotiation and potential lease or license Agreement (“LLA”) of a portion of the Park property to R-Farms is consistent with the City’s objective to redevelop and revitalize the Park property.

E. R-Farms desires to negotiate a LLA with City, to revitalize the Park property as an open space recreational and educational park venue (the “Project”).

**NOW, THEREFORE, CITY AND R-FARMS HEREBY AGREE AS FOLLOWS:**

**(§ 100)Negotiation**

**(§101) Good Faith Negotiations**

City and R-Farms agree, for the period set forth below, to negotiate in good faith to prepare a LLA to be entered into between the Parties for the revitalization of the Park by establishing the Project thereon. The City Attorney will draft the LLA based on terms agreed upon by the City and R-Farms at the conclusion of negotiations.

During the term of this Agreement, or any extension thereof, City agrees that it shall not negotiate with any other person or entity for the development of the Park. The term “negotiate” as used herein shall be deemed to preclude the City from accepting development proposals from persons

or entities other than R-Farms, or discussing with persons or entities other than R-Farms, development plans for the Park which might be acceptable to City.

**(§ 102) Negotiation Period**

City and R-Farms hereby establish a negotiating period commencing on the date of this Agreement and continuing for an initial period of Six (6) Months (the "Initial Negotiation Period").

If, at the expiration of the Initial Negotiation Period, R-Farms is not willing to negotiate the terms of a LLA ("LLA"), then this Agreement will terminate.

If at the expiration of the Initial Negotiation Period, R-Farms and City are willing to negotiate the terms of the LLA and R-Farms provides to the City documents evidencing, to the City Manager's sole satisfaction, R-Farms' good faith prosecution of reasonable due diligence during the Initial Negotiation Period, the Initial Negotiation Period will automatically be extended for an additional period of Six (6) Months (the "Extended Negotiation Period" and, collectively with the Initial Negotiation Period, the "Negotiation Period"), subject to the City Manager's satisfaction that R-Farms has demonstrated good faith prosecution of the Project.

If at the expiration of the Extended Negotiation Period, R-Farms and City have failed to agree on the terms of the LLA, this Agreement shall terminate unless extended pursuant to Section 700 hereof.

Upon the occurrence of a default by R-Farms not cured within the time provided in Section 500 below, City shall have the right, after providing R-Farms with ten (10) days' written notice, to terminate this Agreement.

**(§200) Consideration**

In acknowledgement of valuable consideration, the receipt and sufficiency of which is hereby acknowledged by both Parties.

**(§300) R-Farms' Responsibilities**

**(§ 301) Disclosure and Approval**

Within the Initial Negotiation Period, R-Farms will provide information to the City regarding the identities of its principals and officers.

**(§ 302) Method of Financing**

Within the Negotiation Period or any extension thereof, R-Farms shall provide City with proof of sufficient funds available to complete the Project.

Within the Negotiation Period or any extension thereof, R-Farms shall provide adequate assurance that funds sufficient to complete the project are available for use within the United States and that said funds are irrevocably committed to complete the project. Alternatively, R-Farms shall provide a letter of credit, completion bond or similar assurance that is acceptable to City.

City agrees to consider all financial information submitted as confidential and further agrees to refrain from releasing information provided by R-Farms pursuant to this Agreement unless: (1)

City Attorney determines, after reasonable consultation with R-Farms' counsel, that the release of the information is required by the California Public Records Act or other applicable statutes, (2) a court orders the release of the information or (3) as otherwise required by law.

(§ 400) **Proposed Development**

(§ 401) **Comprehensive Development Plans**

R-Farms shall provide comprehensive development plans for implementation of development of the Project. Such development plans must comply with all applicable laws, rules and regulations of City and all other government entities having jurisdiction over the Park property.

(§ 402) **Cooperation and Additional Information**

R-Farms Cooperation

R-Farms shall generally cooperate with the City and shall supply such other documents and information as may be reasonably requested in writing by the City.

City Cooperation

City shall cooperate with R-Farms in connection with obtaining access to the Park.

(§ 500) **Event of Default**

The failure of R-Farms or City to reasonably and timely comply with its obligations under this Agreement, if not due to circumstances beyond the reasonable control of R-Farms or City, as the case may be, shall be considered a default hereunder. Prior to exercising any remedies hereunder for the default of this Agreement, the Party asserting a default shall provide written notice to the other Party describing the alleged default, and such Party shall have thirty (30) days to cure such default.

(§ 600) **The City's Responsibilities**

(§ 601) **City's Assistance and Cooperation**

City shall cooperate in good faith in providing R-Farms with appropriate information and the assistance R-Farms may reasonably require toward the preparation of necessary plans and drawings for the proposed Project, and toward the securing of any permits that may be required from the City. Nothing herein stated shall constitute the granting of any land use or other approval required for the proposed development on the Park, and shall not constitute a guarantee of the outcome of any application filed by R-Farms with the City.

(§ 602) **Agencies Compliance with State and Local Law**

If negotiations culminate in a LLA mutually agreeable to the Parties, such agreement shall not become effective until all state and local requirements for the LLA have been complied with and approved by the City Council and any other applicable legislative hearings required by law.

(§ 603) **Fees, Costs & Expenses**

The R-Farms is responsible for all costs and expenses of providing documents and studies necessary to complete the LLA, and any fees or charges incurred securing permits and any other necessary approvals. This term is subject to further negotiations and some or all fees may be waived by City.

(§ 604) **No Predetermination of Agencies Discretion**

The Parties agree and acknowledge that, while this Agreement provides that the Parties shall negotiate in good faith, this Agreement does not obligate either City or R-Farms to enter into a LLA or other instrument for development of the Project, and approval of a LLA or other instrument for development of the Project shall require the approval of both Parties, with the City Council giving their approval, if at all, only after consideration of the LLA or other instrument for development of the Project at a regular meeting of the City Council following all other proceedings required by law.

(§700) **Extension**

The Negotiation Period may be extended by the mutual written consent of the Parties for up to one (1) additional period of Six (6) Months. The City Manager, or designee, may grant such extension upon receipt of an extension request and a report from R-Farms indicating in specific terms the efforts of R-Farms to date and the anticipated steps to be undertaken in the extension period for completion of the negotiation of the LLA. To the extent that such efforts are reasonably determined by the City to be consistent with the requirements of this Agreement, the City shall grant such extension request. Granting of an extension is expressly conditioned upon R-Farms providing to the City manager written documentation of all R-Farms' due diligence to date.

(§ 800) **Miscellaneous**

(§ 801) **Complete Agreement**

This Agreement reflects the complete and total understanding between the Parties hereto and all agreements or understandings between the Parties hereto are contained within them. Any changes, modifications, amendments or addenda to this Agreement must be in writing and signed by all Parties to be effective.

(§ 802) **Assignment**

This Agreement or any interest therein may not be assigned or transferred voluntarily or by operation of law to any other party without written approval of the Parties, except as expressly set forth herein. An attempt to transfer this Agreement by R-Farms to another party, without first obtaining the written permission of City, shall constitute grounds for the immediate termination of this Agreement by City.

(§ 803) **Notices**

Any notice, tender, demand, delivery, or other communication pursuant to this Agreement shall be in writing and shall be deemed to be properly given if delivered in person or mailed by first class

or certified or registered mail, postage prepaid to the following persons:

To City:  
Kenneth A. Domer, City Manager  
City of Fullerton  
303 W. Commonwealth Ave.  
Fullerton, CA 92832

To R-Farms:  
Aaron Flora, CEO  
1426 E Vermont Ave  
Anaheim, CA 92805

If sent by mail, any notice, delivery, or other communication shall be effective or deemed to have been given three (3) days after it has been deposited in the United States mail, duly registered or certified, with postage prepaid, and addressed as set forth above. For purposes of calculating these time frames, weekends, Federal, State, County or City holidays shall be excluded.

(§ 804)      **Jurisdiction and Venue**

This Agreement and all questions relating to its validity, interpretation, and enforcement shall be governed and construed in accordance with the laws of the State of California. This Agreement has been executed and delivered in the State of California and the validity, interpretation, and enforcement of any of the clauses of this Agreement shall be determined and governed by the laws of the State of California. Both Parties further agree that Orange County, California, shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Agreement.

(§ 805)      **Attorney Fees**

In the event any judgment is ordered in any action upon this Agreement, the Party hereto against whom such judgment is ordered agrees to pay to the other Party hereto, and that there may be added to such judgment an amount equal to the reasonable value of all legal services (including attorney fees and costs) rendered in said action on behalf of the Party in whose favor any such judgment is ordered and that such sum may be fixed by the Court in such action.

(§ 806)      **Severability**

The provisions of this Agreement are severable, and if any part of it is found to be unenforceable, the other paragraphs shall remain in full force and effect.

(§ 807)      **Hold Harmless**

R-Farms agrees to defend, indemnify and hold the Agencies, their officials, employees, and agents harmless from all costs, expenses, liabilities and claims (including reasonable attorney fees) in connection with R-Farms' activities upon the Project Properties and R-Farms' performance of its

obligations under this Agreement. Notwithstanding the foregoing, R-Farms shall not be responsible to indemnify City to the extent of City's gross negligence or willful misconduct.

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement to Negotiate Exclusively as of the day and year first above written.

**“CITY”**

CITY OF FULLERTON

By: \_\_\_\_\_  
Kenneth A. Domer, City Manager

ATTEST:

By: \_\_\_\_\_  
Lucinda Williams, City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Richard D. Jones, City Attorney

**“R-FARMS”**

RENEWABLE FARMS

By: \_\_\_\_\_  
Aaron Flora, Chief Executive Officer