

## EXCLUSIVE NEGOTIATING AGREEMENT

**THIS EXCLUSIVE NEGOTIATING AGREEMENT** (the “*Agreement*”) is entered into as of July 9, 2024 (the “*Effective Date*”), by and among the **CITY OF IRVINE**, a chartered city and municipal corporation (“*City*”); **BROOKFIELD SOUTHERN CALIFORNIA LAND LLC**, a Delaware limited liability company (“*Brookfield Land*”) and **BROOKFIELD HOMES SOUTHERN CALIFORNIA LLC**, a Delaware limited liability company (“*Brookfield Homes*”). Brookfield Land and Brookfield Homes may be individually referred to herein as a “*Party*” and collectively referred to herein as the “*Parties*.”

### RECITALS

The following recitals are a substantive part of this Agreement.

**A.** City is the owner of fee title to that certain real property located in the City of Irvine, County of Orange, State of California, generally depicted on **Exhibit “A”** attached hereto (the “*Property*”).

**B.** Brookfield is highly experienced and sophisticated in entitlement, land development, construction and selling residential homes and has the financial capacity to perform all of the terms of (i) this Agreement and; (ii) the Development Management Agreement (as defined in Section 6) and (as defined in Section 7) Option Agreement (collectively, the “*Project Agreements*”).

**C.** Brookfield Land wishes to negotiate with the City to assist the City in entitling, developing and marketing a market rate and affordable residential community commonly known as the “*Gateway Project*” in the Property. Brookfield Homes wishes to negotiate with the City to acquire and develop portions of the Gateway Project with market rate housing for sale to the home buying public. The Gateway Project will conform generally to the plans, number of residential units, and mix of residential units submitted by Brookfield Land to the City in response to City RFP No. 24-3381 unless otherwise agreed by the Parties.

**D.** The purpose of this Agreement is to establish a period during which Brookfield Land may perform studies and investigations and perform due diligence activities on the Property to determine the feasibility of the Gateway Project development, and City and Brookfield Land and Brookfield Homes shall exclusively negotiate with each other to attempt to agree on terms of the Project Agreements.

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

#### Defined Terms:

The term “*Brookfield Homes Deposit*” shall have the meaning as set forth in Section 7(c).

The term “*Brookfield Land Entities*” shall have the meaning as set forth in Section 3.

The term “**Brookfield Land Expenses**” shall have the meaning as set forth in Section 5(d).

The term “**City Council**” shall have the meaning as set forth in Section 1.

The term “**City and City Personnel**” shall have the meaning as set forth in Section 3(c).

The term “**Development Budget**” shall have the meaning as set forth in Section 6(b).

The term “**Development Management Agreement**” shall have the meaning as set forth in Section 6.

The term “**Entitlements**” shall have the meaning as set forth in Section 5(a).

The term “**Final Land Value**” shall mean the final Land Development Revenues less the final Land Development Costs from the Land Development Cash Flow.

The term “**Finished Lots**” shall have the meaning as set forth in Section 7(a).

The term “**Finished Lot Closing**” shall have the meaning as set forth in Section 7(d).

The term “**Home Builder Net Margin**” for purposes of determining Builder Profit Participation Payment shall mean the net profit to Brookfield Homes and Merchant Builders (each a “**Home Builder**”). Net profit is equal to the total of all Home Builder revenues less the total of all Home Builder costs.

The term “**Inspections**” shall have the meaning as set forth in Section 3.

The term “**Land Development Cash Flow**” shall mean a month-by-month summary of actual and projected costs and revenues. The Land Development Cash Flow begins upon receipt of entitlements and collection of homebuilder deposits and completes at the end of the Gateway Project.

The term “**Land Development Cash Flow Costs**” shall mean all costs related to the Project Budget.

The term “**Land Development Cash Flow Revenues**” shall mean the aggregate of homebuilder deposits, lot sale revenue, affordable parcel sales revenues, and Builder Profit Participation Payments.

The term “**Land Profit Participation Payment**” shall have the meaning as set forth in Section 6(d).

The term “**Merchant Builder**” shall have the meaning as set forth in Section 8.

The term “**Negotiation Period**” shall have the meaning as set forth in Section 2.

The term “**Option Agreement**” shall have the meaning as set forth in Section 7.

The term “**Project Budget**” shall have the meaning as set forth in Section 5(d).

The term “**Project Responsibility Chart**” shall have the meaning as set forth in Section 5(b).

The term “**Target Land Value**” shall mean Five Hundred Forty-One Million Dollars (\$541,000,000).

**1. Agreement to Negotiate in Good Faith.** City and Brookfield agree that for the term of the Negotiation Period each party shall diligently and in good faith attempt to negotiate the terms of the Project Agreements for consideration by the Irvine City Council (the “**City Council**”). City agrees to negotiate exclusively with Brookfield, and not to negotiate with any other person or entity, with regard to the Project Agreements during the Negotiation Period.

**2. Negotiation Period.** The initial term of the Negotiation Period shall be for the period from the Effective Date until the date that is one hundred fifty (150) days thereafter (“**Negotiation Period**”). The Negotiation Period may be extended by the parties for periods of ninety (90) days each upon written approval of the City Manager. Both parties may terminate this Agreement by written notice to the other Parties at any time upon determining that the Gateway Project is economically or otherwise infeasible. The Agreement shall be automatically terminated if the City Council disapproves the Project Agreements.

**3. Due Diligence.** Brookfield Land and its employees, contractors, agents, representatives, architects, engineers and consultants (collectively, the “**Brookfield Land Entities**”), as a component of the Brookfield Land Expenses (defined below), shall have the right during the Negotiation Period to inspect the Property, make surveys and conduct such soils, engineering, hazardous or toxic material, pollution, seismic or other tests, studies and investigation as Brookfield Land may require (collectively, the “**Inspections**”) Brookfield Land is prohibited from performing any invasive testing or boring on the Property without the prior written consent of the City Manager.

(a) Brookfield Land shall cause the Inspections to be conducted at times reasonably acceptable to City, upon not less than seventy-two (72) hours prior written notice to City in each instance, and in a manner that does not materially adversely affect the Property. City may have a representative present at any Inspections of the Property. In conducting its Inspections at the Property, Brookfield Land and the Brookfield Land Entities shall: (i) not damage any part of the Property or any personal property owned or held by any third party; (ii) promptly repair any damage to the Property resulting directly or indirectly from the entry by Brookfield Land or the Brookfield Land Entities or from any such Inspections; (iii) not injure or otherwise cause bodily harm to City, or its tenants, agents, guests, invitees, contractors and employees; (iv) comply with all applicable laws; (v) promptly pay when due the costs of all Inspections; and (vi) not permit any liens to attach to the Property by reason of the exercise of Brookfield Land’s rights hereunder.

(b) Promptly upon completion of each Inspection, Brookfield Land shall cause the portion of the Property subject to such Inspection to be restored to substantially the condition existing immediately prior to such Inspection. Brookfield Land shall provide City, as a component

of the Brookfield Land Expenses, with copies of the final results of each Inspection made by or for Brookfield Land concurrently with Brookfield Land's receipt of such final results.

(c) Brookfield Land hereby agrees to indemnify, defend, and hold harmless the City and its respective officers, officials, members, employees, directors, agents, representatives, contractors, and volunteers (collectively, the "***City and City Personnel***"), and the Property, free and harmless from and against any and all claims, damages, liabilities, demands, actions, liens, stop notices, losses, costs and expenses (including without limitation reasonable attorneys' fees and court costs) arising from or as a result of the conducting of Inspections, except to the extent caused by an indemnified party's negligence, recklessness or intentional misconduct.

(d) Brookfield Land's obligations under this Section shall survive the expiration or termination of this Agreement.

**4. Insurance.** Without limiting Brookfield Land's indemnification obligations under this Agreement, Brookfield Land shall procure and maintain, at its sole cost and for the duration of this Agreement, insurance coverage as provided below, against all claims for injuries against persons or damages to property which may arise from or in connection with the performance of the work hereunder by Brookfield Land and/or the Brookfield Land Entities, including without limitation Brookfield Land's conducting of the Inspections. In the event that Brookfield Land subcontracts any portion of the work, the contract between Brookfield Land and such subcontractor shall require the subcontractor to maintain the same policies of insurance that Brookfield Land is required to maintain pursuant to this Section.

(a) **Comprehensive General Liability Insurance** which affords coverage at least as broad as Insurance Services Office "occurrence" form CG 00 01 including completed operations and contractual liability, with limits of liability of not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) annual aggregate for liability arising out of Brookfield Land's performance of this Agreement, including without limitation Brookfield Land's conducting of the Inspections. Such insurance shall be endorsed to:

- (1) Name the City and City Personnel as additional insured for claims arising out of Brookfield Land's performance of this Agreement, including without limitation Brookfield Land's conducting of the Inspections.
- (2) Provide that the insurance is primary and non-contributing with any other valid and collectible insurance or self-insurance available to City.

(b) **Automobile Liability Insurance** with a limit of liability of not less than One Million Dollars (\$1,000,000) each occurrence and One Million Dollars (\$1,000,000) annual aggregate. Such insurance shall include coverage for all "owned," "hired" and "non-owned" vehicles, or coverage for "any auto." Such insurance shall be endorsed to:

- (1) Name the City and City Personnel as additional insureds for claims arising out of Brookfield Land's performance of this Agreement,

including without limitation Brookfield Land's conducting of the Inspections.

- (2) Provide that the insurance is primary and non-contributing with any other valid and collectible insurance or self-insurance available to City.

(c) **Workers' Compensation Insurance** in accordance with the Labor Code of California and covering all employees of the Brookfield Land providing any service in the performance of this Agreement. Such insurance shall be endorsed to:

- (1) Waive the insurer's right of subrogation against City and City Personnel.

(d) **Professional Liability Insurance** with minimum limits of One Million Dollars (\$1,000,000) each claim. Covered professional services shall include all work performed under this Agreement and delete any exclusion that may potentially affect the work to be performed. Brookfield Land does not carry Professional Liability Insurance, but would require all consultants to do so.

(e) **Evidence of Insurance:** Brookfield Land shall provide to City a Certificate(s) of Insurance evidencing such coverage, together with copies of the required policy endorsements, no later than five (5) business days prior to commencement of service and at least fifteen (15) business days prior to the expiration of any policy. ***Statements on an insurance certificate will not be accepted in lieu of the actual endorsements required.*** Coverage shall not be suspended, voided, cancelled, reduced in coverage or in limits, non-renewed, or materially changed for any reason, without thirty (30) days prior written notice thereof given by the insurer to City by U.S. mail, or by personal delivery, except for nonpayment of premiums, in which case ten (10) days prior notice shall be provided.

(f) **Acceptability of Insurers.** Each policy shall be from a company with current A.M. Best's rating of A- VII or higher and authorized to do business in the State of California, or otherwise allowed to place insurance through surplus lines brokers under applicable provisions of the California Insurance Code or any federal law. Any other rating must be approved in writing by City.

(g) **Insurance of Subcontractors.** Brookfield Land shall be responsible for causing subcontractors to maintain the same types and limits of coverage in compliance with this Agreement, including naming the City and City Personnel as additional insureds to the Subcontractor's policies.

## **5. Gateway Project Processing.**

(a) The parties have agreed on a conceptual Site Plan for the Gateway Project as set forth on **Exhibit "B"** attached hereto and general scope of the desired entitlements for the Gateway Project consisting of a financially feasible market rate residential development ("***Entitlements***"). During the Negotiation Period, City and Brookfield Land shall use good faith efforts to agree upon a refined Site Plan and scope of Entitlements to be submitted and processed

for the Gateway Project. The Site Plan shall be subject to modification by the Parties as necessary to conform to the Entitlements, regulatory requirements and final approvals.

(b) The Parties shall have the respective lead role responsibilities and financial responsibilities set forth on **Exhibit “C”** attached hereto (“***Project Responsibility Chart***”) in connection with the design, planning, entitlement, implementation and construction of the Gateway Project. All contracts entered into by Brookfield Land for the Gateway Project shall be freely assignable to the City without the payment of any fee.

(c) The Gateway Project will comply with Government Code Section 54221(f)(1)(H), including but not limited to the requirement that “at least 25 percent of the residential units shall be restricted to lower income households, as defined in Section 50079.5 of the Health and Safety Code, with an affordable sales price or an affordable rent pursuant to Sections 50052.5 and 50053 of the Health and Safety Code, for a minimum of 55 years for rental housing, land use for ownership housing. Consistent with the Irvine Zoning Code, to the fullest extent permitted by law, the City shall have the right of first refusal over the placement of qualified tenants for the affordable units in the Gateway Project in a manner which complies with City laws and policies related to the provision of affordable housing and fair housing requirements.

(d) The Parties have agreed on the estimated budget for the processing and implementation the Gateway Project that is set forth on **Exhibit “D”** attached hereto (“***Project Budget***”). During the Negotiation Period the Parties shall use good faith effort to agree upon a more detailed Project Budget. The Project Budget shall be updated by the Parties not less than quarterly. The items with an asterisk next to Brookfield Land in the Financial Responsibility Column of the Project Responsibility Chart (“***Brookfield Land Expenses***”) and as identified in the Project Budget and as more particularly set forth on **Exhibit “E”** shall initially be paid for by Brookfield Land but shall be reimbursed to Brookfield Land by City as a draw against the Project Budget following approval of the Entitlements. During the Negotiation Period, the Parties shall also use good faith efforts to agree upon the timing for reimbursement by the City for all other contracts that Brookfield Land enters into to perform its lead role responsibilities pursuant to the Project Responsibility Chart but that City is responsible for payment. Each Party shall be responsible for its own fees and costs for any responsibilities incurred in connection with the Gateway Project not listed in the Project Responsibility Chart. Notwithstanding the foregoing, in the event Entitlements are not ultimately approved by the City, Brookfield Land shall be entitled to be reimbursed by the City for its actual third party out of pocket fees, costs and expenses set forth in the Project Responsibility Chart that have not been previously reimbursed by the City. Nothing herein shall constitute a representation by the City as to what conditions of approval may be imposed on the Entitlements.

(e) During the Negotiation Period the parties shall also use good faith efforts to agree upon a master schedule for processing the Entitlements including major milestone dates.

(f) Brookfield Land acknowledges that the City may elect to form a CFD and/or a maintenance district for the Gateway Project and agrees to consult with Brookfield Land on the size of any CFD.

**6. Brookfield Land - Development Management.** During the Negotiation Period, Brookfield Land and the City shall use good faith efforts to agree upon the form of a development management agreement (“***Development Management Agreement***”) for the Gateway Project based upon the general terms as set forth in this Section 6.

(a) Pursuant to the Development Management Agreement, Brookfield Land, as agent for the City, shall perform the planning, subdivision, development, construction and marketing tasks for the Gateway Project as generally identified in the Project Responsibility Chart, which includes without limitation, preparing the market rate residential lots in the Gateway Project in a “finished lot” condition. Brookfield Land shall prepare the initial draft of the Development Management Agreement.

(b) In connection with the Development Management Agreement, the Parties will adopt a development budget which will be updated and reviewed by the Parties on a quarterly basis (“***Development Budget***”). Brookfield Land shall be required to post all security including bonds required to complete the improvements set forth in the Development Management Agreement.

(c) Under the Development Management Agreement Brookfield Land will charge a Development Management Fee of three percent (3%) of all hard and soft costs (excluding land bond premiums, interest payments or carry costs) and a General Contractor Fee of five percent (5%) of all hard costs. The estimated Development Management Fee and General Contractor Fee shall be set forth in the Development Budget.

(d) In the event that the Final Land Value exceeds the Target Land Value, Brookfield Land will be entitled to fifteen percent (15%) of the difference between the Final Land Value and the Target Land Value (“***Land Profit Participation Payment***”). An example of the Land Profit Participation Payment is set forth on **Schedule “1”** attached hereto.

**7. Brookfield Homes – First Right to Purchase Finished Lots.** During the Negotiation Period, the Parties shall use good faith efforts to agree upon the form of an option agreement (“***Option Agreement***”) upon the general terms as set forth in this Section 7.

(a) Brookfield Homes shall have the exclusive first right to select segments Brookfield Homes shall build which in the aggregate shall include approximately sixty five percent (65%) of the for-sale market rate finished lots (created by Brookfield Land) in the Gateway Project (“***Finished Lots***”). Each of the Finished Lots shall be conveyed to Brookfield Homes on a rolling basis when each completed residence is ready to close as set forth in Section 7(d) below.

(b) Upon each closing, Brookfield Homes will pay fair market value for the Finished Lots (“***Base Land Purchase Price***”) to be sold to Brookfield Homes. During the Negotiation Period the Parties shall use good faith efforts to determine the timing and procedure for determining fair market value of the Finished Lots which shall be based upon a land residual calculation assuming a Home Builder Net Margin not to exceed eight percent (8%).

(c) Within three (3) business days following final Entitlements being issued for the Gateway Project, Brookfield Homes shall make an earnest money deposit in the amount of twelve and one-half percent (12.5%) of the total Base Land Purchase Prices of the Finished Lots to

be purchased by Brookfield Homes (“**Brookfield Homes Deposit**”). The Brookfield Homes Deposit shall be immediately released to the City upon recordation of a memorandum of agreement. Brookfield Homes acknowledges that the City intends to use the Brookfield Homes Deposit together with the deposits to be made by Merchant Builders to fund payments to Brookfield Land under the Development Management Agreement. The Brookfield Homes Deposit shall be non-refundable except for a default by City. The Brookfield Homes Deposit shall be partially applicable to the Base Land Purchase Price at each closing on a Finished Lot on a prorata basis calculated based on the total number of Finished Lots that Brookfield Homes acquires under the Option Agreement.

(d) Brookfield Homes will pay the Base Land Purchase Price to the City no later than sixty (60) days prior to the closing date for applicable completed residences (“**Finished Lot Closing**”). The City will convey fee title to Finished Lots to Brookfield Homes at the time of each Finished Lot Closing based upon a closing schedule to be agreed upon by the City and Brookfield Homes.

(e) Until the City transfers fee title to the Finished Lots to Brookfield Homes, the Parties agree that Brookfield Homes will build and complete homes on the Finished Lots under a license agreement from the City in a form agreed to by the Parties during the Negotiation Period. Brookfield Homes will transfer fee title to completed residences to homebuyers pursuant to their standard purchase agreement. Brookfield Homes shall provide City with copies of all Brookfield Homes seller closing statements.

(f) The Option Agreement shall provide for the following when the City transfers Finished Lots to Brookfield Homes: (i) a full release of liability from Brookfield Homes in favor of the City; (ii) an indemnity from Brookfield Homes for any future construction defect claims made against the City; (iii) insurance from Brookfield Homes to cover the indemnity with coverage acceptable to the City; and (iv) any other legal protections the City deems reasonably necessary to protect the City from construction defect claims.

(g) In addition to the Base Land Purchase Price, Brookfield Homes will pay a profit participation to the Land Development Cash Flow equal to Fifty Percent (50%) of the net profits in excess of an eight percent (8%) Home Builder Net Margin to Brookfield Homes (“**Builder Profit Participation Payment**”). An example of the Builder Profit Participation Payment is set forth on **Schedule “2”** attached hereto. Brookfield Homes shall provide quarterly reports to the City that calculate the estimated Builder Profit Participation Payment. A final true up of all profit participation will be completed after close-out of each housing product segment.

(h) Brookfield Homes and City mutually agree to discuss and conclude additional Option Agreement terms during the Negotiation Period. The additional items to be discussed include, but are not limited to, adding one adjustment mechanism to the Base Land Purchase Price at a to be determined point in time between the Brookfield Homes Deposit and the grand opening of each housing product segment.

**8. Merchant Builder Sales.** The remaining approximately Thirty-Five Percent (35%) of the for-sale market rate Finished Lots would be sold to third party home builders (“**Merchant Builders**”) through a marketing and sales process run by Brookfield Land and



approved by the City. The terms and conditions of the Merchant Builder purchase agreements shall mirror the Brookfield Homes purchase terms as described in Sections 7 (c) through (g) and shall be subject to the review and approval of the City in its sole and absolute discretion.

**9. No Predetermination of City Discretion.** The Parties acknowledge and agree that nothing in this Agreement in any respect does or shall be construed to affect or prejudice the exercise of City's discretion concerning the designation of the Property and/or consideration of Gateway Project, or any submittal by Brookfield Land with respect to either of the foregoing. The Parties do not intend this Agreement to be binding Project Agreements, development agreement, purchase agreement or other agreement for the conveyance of land or the construction or development of improvements thereon. The Parties acknowledge and agree that they have not agreed upon the essential terms of the subject matter of a transaction, and that such essential terms will be the subject matter of further negotiations. Notwithstanding any submittals to be made by Brookfield Land hereunder, and/or any authorization by the City Manager to extend the term of this Agreement, the Parties acknowledge and agree that any final agreement, if an agreement is reached, would be in the form of final Project Agreements, and any such Project Agreements would not be effective until it has been considered and formally approved by the City Council and thereafter has been executed by authorized representatives of each of the Parties. Notwithstanding anything in this Agreement to the contrary, City does not intend by this Agreement to commit to a definite course of action with respect to the Property or Gateway Project. City retains full discretion with respect to the Property, Gateway Project and the Project Agreements, any CEQA determination with respect to Gateway Project, and any mitigation measures, conditions of approval or alternatives to the Gateway Project pursuant to CEQA, including a decision not to proceed with the Property, Gateway Project, or the Project Agreements.

**10. Lead Negotiators.** The City Manager, or his or her designee, shall be the lead negotiator for the City with respect to the subject matter of this Agreement. Nicole Burdette shall be the lead negotiator for Brookfield Land and Brookfield Homes with respect to the subject matter of this Agreement.

**11. Change in Brookfield Land or Brookfield Homes.** The qualifications of Brookfield Land and Brookfield Homes are of particular interest to City. Consequently, no person or entity, whether a voluntary or involuntary successor of Brookfield Land or Brookfield Homes, shall acquire any rights or powers under this Agreement, nor shall Brookfield Land or Brookfield Homes assign all or any part of this Agreement, without the prior written approval of City, which approval City may grant, withhold 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.

**12. 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 Irvine  
1 Civic Center Plaza  
Irvine, CA 92606  
Attn.: City Manager

And to: Rutan & Tucker, LLP  
18575 Jamboree Road, 9<sup>th</sup> Floor  
Irvine, CA 92612  
Attn.: Jeffrey Melching  
jmelching@rutan.com

To Brookfield Land: Brookfield Southern California Land LLC  
3200 Park Center Drive, Suite 1000  
Costa Mesa, CA 92626  
Attn.: Nicole Burdette

With a copy to: Randall Coffee & Humphrey LLP  
3200 Park Center Drive, Suite 950  
Costa Mesa, CA 92626  
Attn.: Timothy L. Randall, Esq.

To Brookfield Homes: Brookfield Homes California LLC  
3200 Park Center Drive, Suite 1000  
Costa Mesa, CA 92626  
Attn.: Nicole Burdette

With a copy to: Randall Coffee & Humphrey LLP  
3200 Park Center Drive, Suite 950  
Costa Mesa, CA 92626  
Attn.: Timothy L. Randall, Esq.

Any Party may designate a different address for itself by notice similarly given. Any notice, demand or document so given, delivered or made by United States mail, shall be deemed to have been given seventy-two (72) hours after the same is deposited in the United States mail as registered or certified mail, addressed as above provided, with postage thereon fully prepaid. Any notice, demand or document delivered by overnight delivery service shall be deemed complete upon actual delivery or attempted delivery, provided such attempted delivery is made on a business day. Any such notice, demand or document not given by registered or certified mail or by overnight delivery service as aforesaid shall be deemed to be given, delivered or made upon receipt of the same by the Party to whom the same is to be given or delivered.

**13. Default.** Failure by either Party to negotiate in good faith or to perform any other of its duties as provided in this Agreement shall constitute an event of default under this Agreement. The non-defaulting Party shall give written notice of a default to the defaulting Party, specifying the nature of the default and the action required to cure the default. If the default remains uncured fifteen (15) days after the date of such notice, the non-defaulting Party may exercise the remedies set forth in Section 14 of this Agreement.

**14. Remedies for Breach of Agreement.** In the event of an uncured default under this Agreement, the sole remedies of the non-defaulting Party shall be (a) to terminate this Agreement, and (b) to receive a reimbursement for its actual out-of-pocket transaction costs. Following the termination of this Agreement, neither Party shall have any further rights, remedies or obligations under this Agreement, except as specifically set forth herein. Neither Party shall have any liability to the other for monetary damages for the breach of this Agreement, or failure to reach agreement on the Project Agreements, and each Party hereby waives and releases any such rights or claims it may otherwise have at law or at equity. Furthermore, Brookfield Land or Brookfield Homes knowingly agree that it shall have no right to specific performance for conveyance of any right, title or interest in the Property or any portion thereof, and shall not file a lis pendens with respect to the Property or any portion thereof. No representative of either Party shall be held personally liable for any breach of this Agreement. In addition, the Parties jointly waive any special, consequential or punitive damages and lien rights on the Property. The Parties' rights and obligations under this Section shall survive the expiration or termination of this Agreement.

**15. Attorney's Fees.** In the event any action is taken by either Party to this Agreement to enforce this Agreement, the prevailing Party shall be entitled to recover from the other Party its actual attorneys' fees and costs. The Parties' rights and obligations under this Section shall survive the expiration or termination of this Agreement.

**16. 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.

**17. Time of Essence.** Time is of the essence of every portion of this Agreement in which time is a material part.

**18. Agreement Does Not Constitute Development Approval.** City reserves final discretion and approval as to any entitlements and conditions of approval for Gateway Project and final terms of the Project Agreements 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 Gateway Project or any other project on the Property. All design, architectural, and building plans for Gateway Project shall be subject to the review and approval of City. By its execution of this Agreement, City is not committing itself to or agreeing to undertake the disposition of the Property to Brookfield Homes, or any other acts or activities requiring the subsequent independent exercise of discretion by City or any agency or department thereof.

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

**20. Amendments.** This Agreement may not be altered, amended, changed, waived, terminated or modified in any respect or particular unless the same shall be in writing and signed by the Parties.

**21. Implementation of Agreement.** City shall maintain authority to implement this Agreement through the City Manager (or his or her duly authorized representative). City Manager

shall have the authority to make approvals, waive provisions and/or enter into certain amendments of this Agreement on behalf of City so long as such actions do not materially or substantially change the substantive business terms of this Agreement, or add to the costs incurred or to be incurred by City as specified herein. Such amendments may include extensions of time to perform. All other material and/or substantive approvals, waivers, or amendments shall require the consideration, action and written consent of the City Council.

**22. No Brokers.** Each Party shall indemnify, defend, protect and hold harmless the other Party from and against any and all obligations or liabilities to pay any real estate broker's commission, finder's fee, or other compensation to any person or entity arising from or in connection with this Agreement which results from any act or agreement of such Party.

**23. Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but which when taken together shall constitute one and the same instrument.


**NOW THEREFORE,** City, Brookfield Land and Brookfield Homes have executed this Exclusive Negotiating Agreement as of the date first set forth above.

**CITY:**

**CITY OF IRVINE,**  
a chartered city and municipal corporation

By: Oliver Chi  
Name: Oliver C. Chi  
Title: City Manager

ATTEST:

  
Carl Petersen, City Clerk

APPROVED AS TO FORM:  
RUTAN & TUCKER, LLP

Jeffrey Melching  
Jeffrey T. Melching, City Attorney

**BROOKFIELD LAND:**

**BROOKFIELD SOUTHERN CALIFORNIA  
LAND LLC**, a Delaware limited liability company

By: *Nicole Burdette*  
Nicole Burdette (Jul 16, 2024 09:46 PDT)  
Name: Nicole Burdette  
Its: President

By: *DB*  
Dave Bartlett (Jul 16, 2024 09:58 PDT)  
Name: Dave Bartlett  
Its: Vice President

**BROOKFIELD HOMES:**

**BROOKFIELD HOMES SOUTHERN  
CALIFORNIA LLC**, a Delaware limited liability  
company

By: *Nicole Burdette*  
Nicole Burdette (Jul 16, 2024 09:46 PDT)  
Name: Nicole Burdette  
Its: President

By: *Tony Pauker*  
Tony Pauker (Jul 16, 2024 09:53 PDT)  
Name: Tony Pauker  
Its: Vice President

## EXHIBIT “A”

### GENERAL DEPICTION OF REAL PROPERTY

[See Attached]





## EXHIBIT “B”

### PRELIMINARY SITE PLAN

[See Attached]



Exhibit “B”

**EXHIBIT “C”**  
**ENTITLEMENT AND PROJECT RESPONSIBILITIES**

Responsibility	Allocation of Responsibilities Lead / Responsible Party	Financial Responsibility
1. General Plan Amendment	City	City
2. Zone Change	City	City
3. Master Plan	Brookfield Land	City
4. Subdivision Maps	Brookfield Land	City
5. CEQA / Environmental Review	City	City
6. Fiscal Impact Report	City	City
7. ENA	Both	Brookfield Land * and City.
8. Project Agreements	Both	Brookfield Land * and City.
9. Fire Safe Planning	City to obtain easements; Brookfield Land to study and implement	City
10. Concept Site Plans for Master Plan and satisfaction of design guidelines	Brookfield Land	Brookfield Land * and City
11. Land Development Construction Drawings and Improvement Plans	Brookfield Land	Brookfield Land * and City
12. Subdivision Master Improvements (Horizontal Work)	Brookfield Land	City
13. DPGF (Project Financing)	City	City
14. Implementation of Conditions of Approval	Brookfield Land and City	City
15. Project Construction and Delivery	Brookfield Land	City
16. Sales and Marketing of finished Lots	Brookfield Land	City
17. Construction of in-tract infrastructure	Brookfield Land	City
18. Completion of pedestrian bridge, JOST, and South Park	City	City
19. Homeowner Regulations (CCRs)	Brookfield Land	Master by City, Sub-associations by Builder
20. Consultant and Legal Fees in discharging its responsibilities per the above and in reviewing and commenting upon the work prepared by the other party or its consultants	Brookfield Land and City	Brookfield Land * and City



## EXHIBIT “D”

### PROJECT BUDGET

Gateway Project Cost	Budget*
Brookfield Land Expense	2,602,735
Land Development - Hard Costs - Backbone	30,310,273
Land Development - Hard Costs - Offsite	3,900,000
Land Development - Hard Costs - Intracts	27,001,018
Land Indirects	2,579,008
Land A&E	4,994,620
Land Fees	4,584,903
Land Bond Premiums	1,146,226
Contingency (20%)	11,462,258
Insurance	885,810
CFD	(35,399,866)
Master Marketing (paid by builders)	(10,025,284)
PAPA	-
Master Marketing (paid at land closing)	6,000,000
Development Fee - Hard & Soft Costs - 3%	2,657,431
GC Fee - Hard Costs - 5%	3,633,677
<b>TOTAL PROJECT BUDGET</b>	<b>56,332,809</b>

*\*Budget represents current estimate as of ENA exucution date*

# EXHIBIT “E”

## BROOKFIELD LAND EXPENSES

BROOKFIELD LAND EXPENSES (Entitlement Period)																					
																Start Grading Engineering Design (Draft EIR Comments Back)				1st Bldr Deposit	
	Total	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6	Month 7	Month 8	Month 9	Month 10	Month 11	Month 12	Month 13	Month 14	Month 15	Month 16	Month 17	Month 18	Month 19	Month 20
Brookfield Managed Responsibilities - Per ENA Term Sheet - Included in Scenario E Budget																					
Phase 1 & 2 peer review	\$15,000	\$7,500	\$7,500																		
Geotech review and testing	\$35,000	\$10,000	\$10,000	\$15,000																	
CFD Analysis	\$8,000		\$8,000																		
Fee Validation	\$7,000		\$7,000																		
Engineering Validation	\$50,000	\$15,000	\$20,000	\$15,000																	
Mocte validation	\$10,000			\$10,000																	
Legal (includes ENA/Transaction Doc/Builder Agreement	\$300,000	\$20,000	\$30,000	\$40,000	\$13,125	\$13,125	\$13,125	\$13,125	\$13,125	\$13,125	\$13,125	\$13,125	\$13,125	\$13,125	\$13,125	\$13,125	\$13,125	\$13,125	\$13,125	\$13,125	
RFP Process (completed)	\$120,000	\$120,000																			
Brookfield consultants for EIR	\$150,000				\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	
Engineering Design Work*	\$687,735														\$114,623	\$114,623	\$114,623	\$114,623	\$114,623	\$114,623	
Spec mapping (Builder TTM B maps)	\$200,000				\$20,000	\$20,000	\$20,000	\$20,000	\$20,000	\$20,000	\$20,000	\$20,000	\$20,000	\$20,000	\$20,000						
<u>subtotal</u>	<u>\$1,582,735</u>	<u>\$172,500</u>	<u>\$82,500</u>	<u>\$80,000</u>	<u>\$43,125</u>	<u>\$43,125</u>	<u>\$43,125</u>	<u>\$43,125</u>	<u>\$43,125</u>	<u>\$43,125</u>	<u>\$43,125</u>	<u>\$43,125</u>	<u>\$43,125</u>	<u>\$43,125</u>	<u>\$137,748</u>	<u>\$137,748</u>	<u>\$137,748</u>	<u>\$137,748</u>	<u>\$137,748</u>	<u>\$127,748</u>	
Brookfield Managed Responsibilities - Per ENA Term Sheet - Not in Scenario E Budget																					
Master Plan (to inform B maps)	\$350,000							\$38,889	\$38,889	\$38,889	\$38,889	\$38,889	\$38,889	\$38,889	\$38,889	\$38,889					
B Map Preparation and Site Plans	\$300,000											\$33,333	\$33,333	\$33,333	\$33,333	\$33,333	\$33,333	\$33,333	\$33,333	\$33,333	
Development Agreement	\$100,000					\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000						
A Map	\$100,000													\$14,286	\$14,286						
Contingency @ 20%	\$170,000	\$0	\$0	\$0	\$0	\$2,000	\$2,000	\$9,778	\$9,778	\$9,778	\$9,778	\$16,444	\$16,444	\$19,302	\$19,302	\$17,302	\$9,524	\$9,524	\$9,524	\$9,524	
<u>subtotal</u>	<u>\$1,020,000</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$12,000</u>	<u>\$12,000</u>	<u>\$58,667</u>	<u>\$58,667</u>	<u>\$58,667</u>	<u>\$58,667</u>	<u>\$98,667</u>	<u>\$98,667</u>	<u>\$115,810</u>	<u>\$115,810</u>	<u>\$103,810</u>	<u>\$57,143</u>	<u>\$57,143</u>	<u>\$57,143</u>	<u>\$57,143</u>	
GRAND TOTAL	\$2,602,735	\$172,500	\$82,500	\$80,000	\$45,125	\$55,125	\$55,125	\$101,792	\$101,792	\$101,792	\$101,792	\$141,792	\$141,792	\$158,935	\$253,557	\$241,557	\$194,890	\$194,890	\$194,890	\$184,890	

\*Timing adjusted from original submittal

## SCHEDULE “1”

### LAND PROFIT PARTICIPATION PAYMENT EXAMPLE

<b>CURRENT PROJECTED LAND DEVELOPMENT CASH FLOW</b>		
Land Development Cash Flow Revenue (projected)	\$	710,703,752
Land Development Cash Flow Costs (projected)	\$	(56,332,809)
Land Development Cash Flow - Final Land Value (projected)	\$	654,370,942
Target Land Value (Phase 1 up to \$541M)	\$	541,000,000
Final Land Value less Target Land Value (Phase 2 above \$541M)	\$	113,370,942
Land Profit Participation Payment - Brookfield (15%)	\$	17,005,641
City Share of Final Land Value less Target Land Value (85%)	\$	96,365,301
<b>City Net Profit (projected)</b>	<b>\$</b>	<b>637,365,301</b>

<b>EXAMPLE FINAL LAND VALUE CALCULATION</b>		
Land Development Cash Flow Revenue (final)	\$	741,510,423
Land Development Cash Flow Costs (final)	\$	(57,654,973)
Land Development Cash Flow - Final Land Value (final)	\$	683,855,450
Target Land Value (Phase 1 up to \$541M)	\$	541,000,000
Final Land Value less Target Land Value (Phase 2 above \$541M)	\$	142,855,450
Land Profit Participation Payment - Brookfield (15%)	\$	21,428,317
City Share of Final Land Value less Target Land Value (85%)	\$	121,427,132
<b>City Net Profit (final)</b>	<b>\$</b>	<b>662,427,132</b>

## SCHEDULE “2”

### **BUILDER PROFIT PARTICIPATION PAYMENT EXAMPLE**

<b>BUILDER PROFIT PARTICIPATION PAYMENT EXAMPLE</b>					
Home Builder profits from home sales greater than an 8% net margin split 50/50 between Builder and Land Development Cash Flow					
<b>Current Proforma</b>	<u>Average Per Unit</u>				
Average Total Home Price	1,441,969	represents home value			
Base Land Purchase Price	(765,592)	based on 8% net profit			
Builder Cost	(565,288)	<i>includes financing and subject to City audit</i>			
Total Net Profit	111,089	8%	Builder Net Margin		
<b>Market Appreciation*</b>	<u>Average Per Unit</u>				
Average Total Home Price	1,511,644	represents home value			
Base Land Purchase Price	(765,592)	based on 8% net profit			
Builder Cost	(568,498)	<i>includes financing and subject to City audit**</i>			
Total Net Profit	177,554	12%	Builder Net Margin		
PAPA over 8%	66,465				
Development Cash Flow	33,233	50%			
Builder	33,233	50%			
*represent 5% home price increase					
**Builder cost with market appreciation higher than 'current proforma' due to some costs based on percent of revenue. (i.e. sales and marketing, warranty, and insurance costs)					