

Attachment A
Exclusive Right to Negotiate Agreement

EXCLUSIVE NEGOTIATIONS AGREEMENT

This Exclusive Negotiations Agreement (“Agreement”) is made and entered into this 5th day of November, 2019 (“Effective Date”), by and between THE COUNTY OF SANTA BARBARA, a political subdivision of the State of California (“County”), and The Housing Authority of the County of Santa Barbara, a public body, corporate and politic (“HACSB”). County and HACSB are sometimes referred to herein individually as a “Party” or collectively as the “Parties.”

RECITALS

- A. County, as a political subdivision of the State of California, owns or controls real property located adjacent to 4570 Hollister Avenue, Goleta, which is more particularly described on Exhibit A, attached hereto and incorporated herein by this reference (“Property”).
- B. HACSB is a public body, corporate and politic established under the agency and a political subdivision of the State of California.
- C. HACSB intends to develop an affordable housing project on the Property known as the Hollister Lofts Project (“Project”).
- D. HACSB plans to apply for competitive State of California Department of Housing and Community Development No Place Like Home (NPLH) funds to assist with financing for the development of the Project.
- E. County is entering into this Agreement to assist HACSB in pursuing NPLH funding, which requires, among other things, that HACSB demonstrate “site control” as defined at 25 CCR §8303.
- F. It is expressly intended by the County and HACSB agrees, that this Agreement is intended to provide a general framework for the subsequent good faith negotiations of an acquisition agreement that will facilitate development of the Project and is not intended commit any Party to a particular course of action. The County wishes this document to function as an exclusive agreement to negotiate pursuant to 25 CCR §8303(a)(5) but it is not intended to create an enforceable obligation for the County to sell the Property.
- G. The Project would meet the social needs of the population of the County and the Property will not be needed for County purposes, and therefore, the County may make the Property available to HACSB pursuant to California Government Code §26227 and County Code §12A-10.3.

H. Pursuant to 25 CCR §8303(a)(5) the County now desires to offer HACSB the opportunity to exclusively negotiate with the County for purchase of the Property and development of the Project.

NOW, THEREFORE, in consideration of the mutual covenants and promises hereinafter set forth, the Parties hereby agree as follows:

1. Purpose and Scope

The purpose of this Agreement is to memorialize the preliminary, major terms that have been agreed to by the Parties and to provide HACSB with an exclusive right to negotiate, in mutual good faith, with the County for purchase of the Property. The County will not be obligated to sell or grant the Property unless and until the Parties have negotiated, executed and delivered mutually acceptable agreements based upon information produced from the California Environmental Quality Act (CEQA) environmental review process and on other public review and hearing processes and subject to all applicable governmental approvals. Any agreements resulting from negotiations will become effective only if and after such agreement has been considered and approved by HACSB and the County following conduct of all legally required procedures.

2. Parties Agree to the Major Preliminary Terms

A transaction of the type contemplated in this Agreement involves many essential terms and conditions that have not yet been agreed upon. However, pursuant to 25 CCR §8303(a)(5), County and HACSB have agreed upon major preliminary terms discussed herein that will serve as a general framework for subsequent good faith negotiations. The parties agree that any acquisition of the Property by HACSB is subject to the following conditions precedent:

- a.) HACSB securing all necessary funding to finance the Project, including NPLH competitive funds;
- b.) HACSB obtaining all land use and zoning approvals for the Project;
- c.) CEQA environmental clearance for the Project;
- d.) HACSB's preparation and implementation of a community engagement plan which shall be acceptable to County in its sole discretion, as described below;
- e.) County, at its option, may require a restrictive covenant to be recorded against the Property upon transfer, to the extent permitted by the State requirements; and
- f.) The sales price must be mutually agreed upon. The Board of Supervisors reserves the right to approve a price at or below fair market value.

3. Exclusive Right to Good Faith Negotiations

Subject to all terms and conditions of this Agreement, the County and HACSB agree for the time period set forth below to negotiate diligently and in good faith towards the preparation of one or more purchase and sale agreements or other agreement(s) that will involve the acquisition of the Property by HACSB from the County for the Project (hereinafter, a "Disposition/Acquisition Agreement"). It is expressly understood and agreed by the Parties that this is a contract regarding negotiations only and does not convey any interest in the Property. This Agreement also does not constitute any approval whatsoever of any proposed project. By its execution of this Agreement, the County is not committing to (a) any disposition of land to HACSB; (b) the ability to obtain any approvals required from the County to use the Property for the Project; or (c) any other acts requiring the subsequent independent exercise of discretion by the County, or its departments. It is further agreed and understood that this Agreement does not imply any obligation on the part of the County or HACSB to enter into any agreement that may result from the negotiations contemplated herein.

County agrees, for the Initial Term and any Extended Term (defined below), not to negotiate with, solicit offers or proposals regarding, or respond to inquiries from (other than to notify the inquiring party, person or entity that County is subject to an exclusive negotiation agreement) any other person or entity regarding development, sale, or lease of the Property or any portion thereof.

4. Term of Agreement

- A. The term of this Agreement shall be for a period of three (3) years from the date of final execution by the Parties ("Initial Term") unless earlier terminated or extended as provided in this Section 4.
- B. The Board of Supervisors, shall have the right to extend the Initial Term of this Agreement for up to an additional one (1) year ("Extended Term"). The decision to extend the Initial Term shall be at the sole and absolute discretion of the Board of Supervisors. If the Board of Supervisors elects to extend the Initial Term, the County shall notify HACSB in writing not less than thirty (30) days prior to expiration of the Initial Term ("Notice of Extension").
- C. Any request by HACSB to extend any term of this Agreement shall be made in writing and shall provide a description of the circumstances necessitating an extension.

5. Right of Entry

During the Initial Term or any extension thereof, HACSB, its representatives, consultants, contractors, agents and employees shall have the right to enter the Property at all reasonable times for the purpose of conducting any tests, studies, analysis or other work necessary, pursuant to the Temporary Entry Permit, attached hereto and incorporated herein by this reference as Exhibit B, which replaces and supersedes the Temporary Entry Permit executed between the County and HACSB on August 21, 2019.

HACSB shall have access to all data and information on the Property available to the County, but without warranty or representation by the County as to the completeness, correctness or validity of such data and information. Copies of any tests, studies or analysis obtained or made by HACSB on the Property shall be provided to the County. Any preliminary work by HACSB shall be undertaken only after securing any necessary approval from the appropriate governmental agency.

6. Disposition of Property

Within the time period set forth in Section 4 – Term of Agreement, HACSB and the County shall negotiate the terms and conditions of a proposed Disposition/Acquisition Agreement in good faith pursuant to Section 3. It is expressly acknowledged and agreed by the Parties that, until and unless a Disposition/Acquisition Agreement is signed by HACSB and approved by the Board of Supervisors in its sole and absolute discretion, any drafts or other communications resulting from performance of this Agreement shall not be used to impose any legally binding obligation on the County or HACSB or as evidence of any oral or implied agreement by the County or HACSB to enter into a legally binding document.

7. Disclosure of Confidential Information

HACSB acknowledges that the County is subject to the California Public Records Act (“Act”). The Act generally provides that written documents retained by the County are subject to disclosure upon the request of any third party except for specific limited exceptions provided for in the Act. HACSB shall designate as “Confidential” any information which HACSB provides to the County which HACSB desires to keep confidential. If a request for disclosure of any information designated as “Confidential” by HACSB is made under the Act, the County shall notify HACSB in writing and HACSB shall have the opportunity to object to the release of such information.

8. Conflict of Interest

- A. HACSB shall at all times avoid conflict of interest or appearance of conflict of interest under any applicable state, federal or local laws, rules and regulations in performance of this Agreement. HACSB shall disclose any conflict of interest, or potential conflict of interest, which exists or arises at any time during the Term of this Agreement. For purposes of this Section, any conflict of interest of a principal, officer, partner, joint-venturer or employee of HACSB shall be conclusively deemed to be a conflict of interest of HACSB.
- B. County shall have the right to treat any violation of this Section as a material breach of this Agreement, and shall have the right to terminate the Agreement and pursue any and all legal or equitable remedies for said breach of this Agreement.

9. HACSB Responsibilities

- A. HACSB Obtains Funding
HACSB shall secure all necessary funding to finance the Project, including without limitation competitive State of California Department of Housing and Community Development NPLH funds as a precondition to entering into any Disposition/Acquisition Agreement.
- B. Development Costs
HACSB expressly acknowledges that all expenses and costs it may incur during the Initial Term of or as a result of this Agreement are its sole obligation and responsibility and done at its sole risk, including, but not limited to, any costs associated with any proposed project and any costs incurred to prepare the necessary studies and analysis required for any proposed project. All County fees for processing a development application or any CEQA review shall be paid by HACSB when they are due.
- C. Detailed Project Development Plan
HACSB shall provide County with a detailed project development plan including descriptions that set forth with specificity each phase of the Project and its implementation.
- D. Entitlement Applications
HACSB shall obtain all required land use and zoning approvals as a precondition to entering into any Disposition/Acquisition Agreement. HACSB understands and agrees that this Agreement does not and shall not be construed to indicate or imply that County, acting as a regulatory or permitting authority, has hereby waived, granted or is obligated to grant any approval or permit required by law for the development of the Project on the Property as contemplated by the Agreement.

E. California Environmental Quality Act

The County retains the absolute sole discretion to (i) modify the transaction, create and enter into transactional documents, and modify the project as may be necessary to comply with CEQA, (ii) select other feasible alternatives to avoid significant environmental impacts identified during the CEQA process, (iii) balance the benefits of entering into an agreement against any significant environmental impacts of the Project prior to taking final action, and (iv) determine not to proceed with an agreement to avoid significant environmental impacts identified during the CEQA process. No legal obligations will exist unless and until the parties have negotiated, executed and delivered a mutually acceptable Disposition/Acquisition Agreement based upon information produced from the CEQA environmental review process and on other public review and hearing processes, subject to all applicable governmental approvals.

F. Progress Reports

HACSB shall keep the County apprised as to the status of all work to be undertaken by or on behalf of HACSB as described in the Conditions for Continued Negotiation. During the Initial Term or any Extended Term, HACSB shall submit to County within ten (10) days following County's request, via email or other reasonable method, a progress update advising County of the status of all work being undertaken by or on behalf of HACSB.

G. Community Outreach

As a precondition to entering into any Disposition/Acquisition Agreement HACSB shall prepare and implement a community engagement plan. The community engagement plan shall be acceptable to the County in its sole discretion and shall consist of a series of community meetings with stakeholders including, but not limited to, the Ben Page Youth Center Operators and Users and the surrounding neighborhood.

10. Distinction from Regulatory Authority of the County

HACSB understands and agrees that this Agreement does not and shall not be construed to indicate or imply that the County, acting as a regulatory or permitting authority, has hereby granted or is obligated to grant any approval or permit required by law for the development of the Project on the Property as contemplated by the Agreement.

11. Public Hearing

If the negotiations contemplated herein culminate in the execution of a Disposition/Acquisition Agreement, the Disposition/Acquisition Agreement will be brought forward for consideration by the Board of Supervisors, provided, however, such Disposition/Acquisition Agreement shall become effective only after having been

considered and approved by the Board of Supervisors in its sole and absolute discretion following any public hearing or other actions required by law.

12. Non-Discrimination

HACSB shall not discriminate, in any way, against any person on the basis of age, sex, race, color, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity or national origin in connection with or related to the performance of this Agreement.

13. Termination

If HACSB does not comply in a timely and diligent manner with any material obligation of HACSB under this Agreement, County, at its option, may terminate this Agreement at any time by written notice to HACSB and failure of HACSB to cure the breach within thirty (30) days following receipt of such notice. The Board of Supervisors may at its absolute and sole discretion extend the period of time to cure the breach in the event an extension is deemed reasonably necessary. The County may terminate this Agreement. The termination shall be effective upon HACSB's receipt of County's written notice.

14. Indemnification

Subject to the limitations as set forth in Section 21 below, HACSB shall indemnify, defend and hold harmless the County of Santa Barbara, and its officers, employees and agents against any claim, loss or liability arising out of this Agreement or resulting in any way from work performed under this Agreement, including any work performed on the Property pursuant to the provisions of Section 6 above, by HACSB, its representatives, consultants, contractors, agents or employees. This indemnification shall survive the expiration or other termination of this Agreement.

15. Notices

All notices and other communications required or permitted to be given under this Agreement shall be in writing and may be delivered by hand, by facsimile transmission with verification of receipt, or by United States mail, postage prepaid and return receipt requested, addressed to the respective Parties as follows:

To County: County of Santa Barbara
Attention: Office of the Director of General Services
105 E. Anapamu Street
Santa Barbara, CA 93101

With a copy to: General Services, Real Property Division
Attention: Carlo Achdjian, Real Property Manager
1105 Santa Barbara Street
Courthouse East Wing, 2nd Floor
Santa Barbara, CA 93101

To HACSB: Housing Authority of the County of Santa Barbara
Attention: John Polanskey, Director of Housing Development
815 W. Ocean Avenue
Lompoc, CA 93436

With a copy to: Housing Authority of the County of Santa Barbara
Attention: Robert Havlicek, Executive Director
815 W. Ocean Avenue
Lompoc, CA 93436

Or to such other addresses as any Party may designate by notice in accordance with this Section.

16. Waiver of Lis Pendens

It is expressly understood and agreed by the Parties that no lis pendens shall be filed with respect to this Agreement or any dispute or act arising from it.

17. Time of Essence

It is understood and agreed by the Parties that time is of the essence in the performance of the obligations of this Agreement.

18. Assignment

HACSB may not transfer or assign any or all of its rights or obligations hereunder except with the prior written consent of the County which may be granted or withheld in the County's sole and absolute discretion, and any such attempted assignment without the prior written consent of the County shall be wholly void and of no effect.

19. No Third Party Beneficiaries

This Agreement is made and entered into solely for the benefit of County and HACSB and no other person shall have any right of action under this Agreement.

20. Limitation of Liability

Notwithstanding anything to the contrary at law or equity, in the event of any breach of this Agreement by the County, the sole and exclusive remedy of HACSB hereunder shall be the recovery of HACSB's actual out of pocket costs incurred by HACSB to third parties to satisfy its obligations under this Agreement. In no event shall HACSB be entitled to "expectation damages" i.e., any amounts that HACSB would expect to gain were an agreement ever executed, including, without limitation, any amount for potential lost profits. Neither Party shall be allowed to recover any damages for lost business opportunity, or for any indirect or consequential damages from the other Party.

21. Waiver

HACSB agrees that waiver by the County of any breach or violation of any term or condition of this Agreement shall not be deemed to be a waiver of any other term or condition contained herein or a waiver of any subsequent breach or violation of the same or any other term or condition. The acceptance by the County of the performance of any work or services by HACSB shall not be deemed to be a waiver of any term or condition of this Agreement.

22. Governing Law

The law governing this Agreement shall be that of the State of California.

23. Venue

In the event that suit shall be brought by either party hereunder, the Parties agree that trial of such action shall be exclusively vested in a state court in the County of Santa Barbara, or where appropriate in the United States District Court for the Central District of California.

24. Prior Agreements and Amendments

This Agreement, including all Exhibits listed below and attached hereto, represent the entire understanding of the Parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may only be modified by a written amendment duly executed by the Parties.

25. HACSB shall not subject the Property to any additional liens, encumbrances, covenants, conditions, easements, rights of way or similar matters during the term of this Agreement or any extension thereof.

Exhibit A	Description of the Property
Exhibit B	Temporary Entry Permit

WITNESS THE EXECUTION HEREOF on the day and year first hereinabove written.

ATTEST:
MONA MIYASATO
CLERK OF THE BOARD


COUNTY OF SANTA BARBARA

By: _____
Deputy

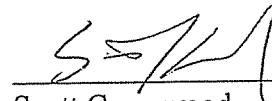
By: _____
Steve Lavagnino, Chair
Board of Supervisors

APPROVED AS TO FORM

APPROVED AS TO FORM
Michael Ghizzoni, County Counsel




Ray Aromatorio, Risk Manager



Scott Greenwood,
Deputy County Counsel

SIGNATURE PAGE FOR THE HOUSING AUTHORITY
COUNTY OF SANTA BARBARA

HOUSING AUTHORITY OF THE COUNTY OF SANTA BARBARA



Robert P. Havlicek Jr., Executive Director

EXHIBIT "A"
APN 061-040-030

