

EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT
(RODEO SENIOR)

This Exclusive Negotiating Rights Agreement (“Agreement”) is dated December 20, 2016 (the “Effective Date”), and is between the COUNTY OF CONTRA COSTA, a political subdivision of the State of California (the “County”), and EAH INC., a nonprofit corporation (the “Developer”).

RECITALS

- A. The County, in its capacity as housing successor to the Contra Costa County Redevelopment Agency, is the owner of approximately .98 acres of real property located near Willow Avenue and San Pablo Avenue in Rodeo, California, having Assessor’s Parcel Number 357-120-074, as more particularly described in Exhibit A (the “Property”).
- B. The County desires the Property to be developed in a manner that will result in (i) affordable housing for seniors at a density of approximately 50 units per acre, and (ii) a senior center, consisting of approximately 1,250 square feet of space, to be used for programs for senior citizens (together, such housing and the senior center are the “Development”).
- C. Developer has developed projects similar to the proposed Development, including a 50-unit senior housing development that is adjacent to the Property.
- D. The purpose of this Agreement is twofold. First, it is intended to enable the parties to assess the feasibility of the Development. Second, if the Development is determined to be feasible, it is intended to enable the parties to negotiate a disposition and development agreement (a “DDA”). Under the DDA, the Property would be conveyed to the Developer for construction of the Development.
- E. Because the property is a housing asset of the former Redevelopment Agency, its disposition is governed by the County, in its capacity as housing successor, and is subject to the requirements of Health and Safety Code Section 34176.

The parties therefore agree as follows:

AGREEMENT

Exclusive Negotiations

- 1. Good Faith Negotiations. The County and the Developer shall negotiate diligently and in good faith during the Negotiating Period (defined below), the terms of a DDA for the development of the Development on the Property.

Among the issues to be addressed in the negotiations are: (i) the price to be paid by the Developer for the Property, (ii) the physical and land title conditions of the Property, (iii) the type of entitlements necessary for the Development, (iv) the design, density, and mix of uses within the Development, (v) the development schedule for the Development, (vi) financing of the Development; (vii) the marketing of, sales process associated with, and management of the Development, (viii) housing affordability and the nature of affordability controls, (ix) the provision of public improvements related to the Development, (x) and the green building components of the Development.

2. Negotiating Period. The "Negotiating Period" under this Agreement is comprised of (i) an initial period of twelve months, beginning on the Effective Date, and, (ii) if agreed to by the parties in writing, three six-month renewal periods. The County's Director of Conservation and Development (the "Director") will make the determination for the County with respect to whether the Negotiating Period will be extended through the renewal periods. The Director's decision will be based on his reasonable judgment as to whether sufficient progress has been made toward a mutually acceptable DDA to merit further negotiations.
 - a. Subject to Section 2.b. below, if a DDA is not executed by the parties prior to the expiration of the Negotiating Period, this Agreement will terminate and neither party will have any further rights or obligations under this Agreement (with the exception of Section 22 (waiver of lis pendens), Section 23(d) (indemnity) and Section 25 (no commissions), all of which survive the termination of this Agreement). Upon the execution of a DDA by the County and the Developer, this Agreement will terminate and all rights and obligations of the parties with respect to the Development will be governed by the DDA.
 - b. Notwithstanding anything to the contrary in this Agreement, if at the end of the Negotiating Period, a form of DDA has been mutually agreed upon by the Developer and the Director but the DDA has not been approved by the parties' governing bodies, the Director may extend the Negotiating Period to the date on which the County holds a public hearing to consider approving the DDA.
3. Exclusive Negotiations. During the Negotiating Period, the County may only negotiate with the Developer regarding development of the Property and may not solicit or entertain bids or proposals for such development from any other entity.
4. Party Representatives. The Developer's representative to negotiate the DDA is Al Bonnett, its Senior Vice President, Real Estate or Errol Dominguez, its Assistant Secretary or Welton Jordan, its Authorized Representative. The County's representative to negotiate the DDA is Maureen Toms, its Deputy Director of Conservation and Development.

NEGOTIATION TASKS

5. Overview. To facilitate negotiation of the DDA, the parties shall use reasonable good faith efforts to accomplish the negotiation tasks set forth below in an effort to (i) determine the feasibility of the Development, and (ii) complete the negotiation and execution of a mutually acceptable DDA prior to the expiration of the Negotiating Period.
6. Financing and Costs of Development. Within ninety days of the Effective Date, the Developer shall prepare and submit to the County a detailed financial proforma for the Development containing matters typically contained in such proformas, including (without limitation) a detailed development cost budget and tax credit funding analysis. The development cost budget will be used to evaluate the financial feasibility of the Development and to identify financing sources for the Development. The Developer shall cause the financial proformas to include (i) an analysis of the affordable units to be constructed as part of the Development, and (ii) Developer's obligation to pay prevailing wages in connection with the construction of the Development.
7. Purchase Price for the Property. During the Negotiation Period, the County and the Developer shall seek to agree upon a purchase price for the Property. The proposed purchase price for the Property will be subject to approval by the County's Board of Supervisor following a noticed hearing conducted in accordance with Health and Safety Code Section 33433.
8. Site and Architectural Plans. During the Negotiation Period, the Developer shall prepare and submit to the County a proposed site plan, including massing diagram and a rendering that identifies the location, general configuration and proposed design characteristics of the buildings, parking spaces, landscaping, and other aspects of the Development. During the Negotiating Period the Developer shall prepare appropriate refinements and modifications to the site plan, diagram and renderings for the County's review and approval. During the Negotiating Period, the Developer shall affirmatively outreach to the local community to obtain and consider community input regarding the design of the Development.
9. Planning Approvals. The Developer acknowledges that the Development requires approvals and entitlements from the County, including a General Plan amendment (together, such approvals and entitlements are the "Planning Approvals"). During the Negotiating Period, the Developer shall submit conceptual site plans and preliminary designs for the Development to the appropriate County departments for their informal review. During the Negotiation Period, the Developer shall submit applications for those components, if any, of the Planning Approvals that are required to be submitted in accordance with the schedule of performance described in Section 10 below.
10. Schedule of Performance. Within ninety (90) days after the Effective Date, the Developer shall provide the County with a proposed detailed schedule of performance for the Development which is to include, but is not limited to: The dates for obtaining Planning Approvals and financing commitments for the Development, the date for the

submittal of construction plans to the City, the date for satisfaction of all preconditions to conveyance of the Property, the dates for close of escrow and conveyance of the Property, and the dates for the commencement and completion of construction of the Development.

11. Due Diligence. During the Negotiating Period, the Developer shall conduct any and all investigations it deems necessary to enable it to negotiate those aspects of the DDA that relate to the physical condition of the Property at the time of conveyance.
12. Utilities. The Developer shall consult with the utility companies serving the Property to determine if construction of the Development will require existing utility facilities to be expanded, relocated or placed underground. The County shall assist and cooperate with the Developer in such consultations.
13. Reports. The County shall provide the Developer with copies of all reports, studies, analyses, correspondence and similar documents (collectively, "documents"), exclusive of detailed property appraisals, prepared or commissioned by the County or in the County's possession with respect to the Property, this Agreement and the Development, promptly following execution of this Agreement with respect to documents then in its possession or under its reasonable control, and promptly upon their completion with respect to any subsequently prepared documents.

The Developer acknowledges that the County needs sufficient detailed information about the proposed Development (including, without limitation, the financial information described in Section 6) to make informed decisions regarding the DDA.

14. Organizational Documents; Financial Statements. The Developer shall provide the County with copies of its organizational documents evidencing that the Developer has been duly organized, is in good standing and is able to perform its obligations under this Agreement and the DDA. The Developer shall provide the County will copies of its audited financial statements for the three years preceding the Effective Date, along with evidence of its 501(c)(3) status.
15. Environmental Review. The County shall prepare or cause to be prepared the appropriate environmental documentation required by the California Environmental Quality Act ("CEQA") for consideration of approval of the DDA, provided that nothing in this Agreement may be construed to compel the County to approve or make any particular findings with respect to such CEQA documentation. The Developer shall provide any information about the Development that the County requires to enable it to prepare, or cause to be prepared, CEQA-required documents, and shall generally cooperate with the County to complete CEQA-related tasks.
16. Section 33433 Report. The County shall prepare the documentation that is required to be submitted to the County Board and the County Board of Supervisors in conjunction with the County's and the County's consideration of any DDA, in accordance with Section 33433(a)(2)(B) of the California Health and Safety Code. The Section 33433 report will

contain the estimated value of the Property determined (i) at its highest and best use, and (ii) at the use and with the conditions, covenants and development costs required pursuant to the DDA.

17. Progress Reports. From time to time as reasonably agreed upon by the parties, each party shall make oral or written progress reports advising the other party on studies being made and matters being evaluated by the reporting party with respect to this Agreement and the Development.
18. Outreach. The Developer shall prepare and submit to the County a plan for community outreach associated with the development of the Development. During the Negotiating Period, the Developer shall prepare appropriate refinements and modifications to the community outreach plan that are reasonably requested by the County.

GENERAL PROVISIONS

20. Limitation on Effect of Agreement. This Agreement does not obligate either the County or the Developer to enter into a DDA. By execution of this Agreement, the County is not committing itself to or agreeing to undertake acquisition, disposition or exercise of control over any parcels in the Property. Execution of this Agreement by the County is merely an agreement to conduct a period of exclusive negotiations in accordance with the terms hereof, reserving for subsequent County Board of Supervisors action, the final discretion and approval regarding the execution of a DDA and all proceedings and decisions in connection therewith. Any DDA resulting from negotiations pursuant to this Agreement will be effective only if it is considered and approved by the County Board of Supervisors in accordance with all legally required procedures, and if it is executed by duly authorized representatives of the County and the Developer. Until and unless a DDA is approved by the County Board and executed by the County and the Developer, no agreement drafts, actions, deliverables or communications arising from the performance of this Agreement will impose any legally binding obligation on either party to enter into or support entering into a DDA or be used as evidence of any oral or implied agreement by either party to enter into any other legally binding document.
21. Notices. Any notices required or permitted under this Agreement (other than day to day routine communications) must be in writing and sent by overnight or personal delivery with delivery receipt. Such notices are to be sent to the address listed below:

County: Contra Costa County, Housing Successor
 30 Muir Road
 Martinez, CA 94553
 Attn: Maureen Toms, Deputy Director

Developer: EAH Inc.
 2169 E. Francisco Blvd., Ste. B
 San Rafael, CA 94901
 Attn: Mary Murtagh, President

At any time, either party may designate in writing a substitute address for an address set forth above and thereafter notices are to be directed to such substituted address. Notices will be deemed received as follows: on the date shown on the delivery receipt as the date of delivery, the date delivery was refused, or the date the item was returned as undeliverable. If the date on the delivery receipt is not a business day, notice will be deemed received on the following business day.

22. Waiver of Lis Pendens. It is expressly understood and agreed by the parties that no lis pendens may be filed against any portion of the Property by reason of this Agreement or any dispute or act arising from this Agreement.
23. Right of Entry. If the Developer or its consultants enter upon the Property, the Developer shall:
 - (a) Give the County seventy-two (72) hours' notice of intent to enter the Property and the purpose of the entry.
 - (b) Repair and restore any damage it may cause.
 - (c) Deliver to the County, within ten (10) days of receipt thereof, a complete copy of any investigation, test, report or study that the Developer conducts, or causes to be conducted, with respect to the Property.
 - (d) Indemnify, defend and hold the County and its directors, officers, employees and agents harmless from any and all claims, liabilities, damages, losses, expenses, costs and fees (including reasonable, attorneys' fees and costs) that may proximately arise out of the Developer's entry upon the Property or the investigation(s) and test(s) the Developer may conduct.
 - (e) Prior to entry, cause the County to be named as an additional insured on a Commercial General Liability insurance policy with limits not less than Two Million Dollars (\$2,000,000) each occurrence combined single limit for Bodily Injury and Property Damage, including coverage from Contractual Liability, Personal Injury, Broadform Property Damage, Products and Completed Operations. The required insurance is to be provided under an occurrence form by an insurer authorized and licensed to provide such insurance in the State of California, and the Developer shall maintain such coverage for not less than two (2) years after the expiration of the Negotiating Period.
24. Costs and Expenses. Except as otherwise set forth in this Agreement, each party is responsible for the costs and expenses it incurs as a result of activities and negotiations undertaken in connection with, and the performance of its obligations under, this Agreement.

25. No Commissions. The County is not liable for any real estate commissions or brokerage fees that may arise as a result of this Agreement or a DDA. The County represents that it has not engaged a broker, agent or finder in connection with this transaction and the Developer agrees to defend and hold the County harmless from the claims of any broker, agent or finder retained by the Developer.
26. Default and Remedies. Failure by either party to negotiate in good faith or to fulfill its obligations under this Agreement is an event of default hereunder. At the non-defaulting party's election, the non-defaulting party may 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 thirty (30) days after receipt of the notice by the defaulting party, the non-defaulting party may terminate this Agreement.
- a. Following a default and termination, neither party will have any further right, remedy or obligation under this Agreement, except that the obligations under Section 22 (waiver of lis pendens), Section 23(d) (indemnity) and Section 25 (no commissions), all survive the termination of this Agreement.
 - b. Except as expressly provided above, if there is a default under this Agreement, (i) neither party will be liable to the other party for damages or otherwise, and (ii) neither party will have any other claims with respect to performance under this Agreement. Each party specifically waives and releases any such rights or claims it may otherwise have at law or in equity.
27. Governing Law. The laws of the State of California govern all matters arising out of this Agreement.
28. Entire Agreement; Counterparts. This Agreement constitutes the entire agreement between the parties regarding the subject matter of this Agreement. This Agreement may be executed in counterparts.
29. Assignment. The Developer may not transfer or assign any or all of its rights or obligations under this Agreement; provided, however, the Developer may assign this Agreement to a limited partnership created by the Developer if (i) such limited partnership is created for the purpose of constructing the Development, (ii) the Developer provides documentation reasonably acceptable to the County that such limited partnership is directly under the control of the Developer, and (iii) such limited partnership executes an assignment and assumption agreement that is reasonably acceptable to the Director (such assignment, a "Permitted Assignment"). Upon the occurrence of a Permitted Assignment, the Developer will be released, without the need for further documentation, of all of the Developer's obligations under this Agreement that are assumed by the assignee under the assignment and assumption agreement.

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30. No Third Party Beneficiaries. This Agreement is made and entered into solely for the benefit of the County and the Developer and no other person has any right of action under or by reason of this Agreement.

The parties are signing this Agreement as of the date set forth in the introductory paragraph.

COUNTY

DEVELOPER

Contra Costa County, a political subdivision
of the State of California

EAH Housing, a Nonprofit Housing
Corporation

By: _____
Maureen Toms, Deputy Director

By: _____
Mary Murtagh, President

EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY