

EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT  
17-ACRE PARCEL AT BUCHANAN FIELD AIRPORT

This Exclusive Negotiating Rights Agreement (“Agreement”) is dated May \_\_, 2019, (the “Effective Date”) and is between CONTRA COSTA COUNTY, a political subdivision of the State of California (the “County”) and MONTECITO DEVELOPMENT COMPANY, LLC, a California limited liability company (“Developer”).

RECITALS

- A. The County is the owner of approximately 17 acres of real property located on the west side of Buchanan Field Airport, in Concord, California, generally between Marsh Drive and Sally Ride Drive, as shown in Exhibit A (the “Property”).
- B. The County has planned for the development of the Property, as reflected in the County’s adopted Buchanan Field Airport Master Plan (2008), and has actively solicited interest in the development of the Property. In 2018, Developer notified the County in writing of its interest in developing the Property. The County gave public notice of the availability of the Property and no further expressions of interest were received in the time period prescribed for responses. The County Board of Supervisors then designated, through a board order December 4, 2018, Developer as the preferred party to enter into negotiations with the County for development of the Property.
- C. The County and Developer desire to enter into a long-term lease of the Property following a due diligence period, the negotiation of a mutually acceptable lease, and subject to the Federal Aviation Administration (the “FAA”) agreeing to release the Property from aeronautical use.

The parties therefore agree as follows:

AGREEMENT

- 1. Exclusive Right to Negotiate. The County hereby grants Developer the exclusive right to negotiate with the County for a long-term ground lease to develop the Property. During the term of this Agreement, the County will not negotiate with any entity other than Developer regarding the development of the Property or solicit or entertain bids or proposals to develop the Property.
- 2. Term. Unless terminated in accordance with this Agreement, the term of this Agreement is comprised of (i) an initial period of 24 months, beginning on the Effective Date, and (ii) if agreed to by the parties in writing, four six-month renewal periods. The County’s Director of Airports (the “Director”) will make the determination for the County with respect to whether the term will be extended through any renewal period. The Director’s decision will be based on his reasonable judgment as to whether sufficient progress has been made toward a

mutually acceptable lease to merit further negotiations. Nothing in this Agreement obligates either party to agree to an extension.

3. Deposit. Developer shall pay the County a nonrefundable deposit in the amount of \$25,000 no later than June 15, 2019, as consideration for this Agreement.
4. Due Diligence; Timing; Default. During the term of this Agreement, Developer shall actively take steps to pursue the development of the Property, including the preparation of technical studies; environmental review; development application and entitlement processing, including site plan, landscape plan and elevations for the proposed use; and the finalization of a mutually-acceptable lease. The timetable set forth in Exhibit B reflects the parties' best estimate of when certain activities will be undertaken or completed. Developer will keep the County informed of the progress being made and of any delays. If the County's Director of Airports determines, in his sole and reasonable judgment, that the activities described in Exhibit B are not being vigorously pursued, or that insufficient progress is being made, the Director of Airports will notify Developer, in writing, of this determination. If the issue identified in the notification provided by the Director of Airports is not resolved to the satisfaction of the Director of Airports within 30 days after the issuance of the notification, Developer will be in default of this Agreement. In the event of Developer's default, the County may terminate this Agreement.
5. Lease Terms. Among the issues to be negotiated in the lease are the permitted use of the Property, the permitted improvements to be constructed on the Property, the lease term, the amount of the security deposit, the construction period rent, the operating term rent, the percentage rent, periodic rent increases; maintenance of improvements, and end of term obligations.
6. Costs and Fees.
  - a. Developer shall pay all applicable development application fees.
  - b. At the sole and reasonable discretion of the County's Director of Airports, Developer shall reimburse the County for staff time devoted to Developer's development of the Property, at the hourly rate established by the County for such staff person's time.
7. Consultants; Environmental Review; Technical Reports.
  - a. If during the term of this Agreement, the County requires the assistance of outside consultants in connection with Developer's development of the Property, Developer shall reimburse the County for the cost of such consultants. Prior to engaging a consultant, the County will provide Developer with an estimate of the cost of the consultant and obtain Developer's approval of the estimated cost.
  - b. The County, at Developer's expense, 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 proposed development,

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. Developer shall provide any information about the proposed 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.

- c. Developer, at its sole expense, may engage its own consultants to prepare any technical reports or studies required for the development of the Property. The County reserves the right to approve or disapprove in advance, any professional consultant, the consultant's scope of work and the draft technical reports prepared by Developer or Developer's consultant. County approvals will not be unreasonably withheld.

8. Limitation on Effect of Agreement. This Agreement does not obligate either the County or Developer to enter into a lease. Execution of this Agreement by the County is merely an agreement to allow a period of exclusive negotiations in accordance with the terms hereof, reserving for subsequent action by the County Board of Supervisors (the "Board"), the final discretion and approval regarding the execution of a lease and all proceedings and decisions in connection therewith. Any lease resulting from negotiations pursuant to this Agreement will be effective only if it is considered and approved by the Board 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 lease is approved by the 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 lease or be used as evidence of any oral or implied agreement by either party to enter into any other legally binding document.

9. 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 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 of 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 term of this Agreement.

10. No Encumbrances. It is expressly understood and agreed by the parties that no liens or other encumbrance may be filed against the Property by reason of this Agreement or any dispute or act arising from this Agreement.

11. Confidentiality.

- a. Both parties agree to treat all confidential information disclosed by the other party, either directly or indirectly, in writing, orally, electronically or by inspection of tangible objects (including without limitation documents, business plans, financial projections, intellectual property), as confidential, and take all steps necessary to preserve such confidentiality, subject to any legal requirements of disclosure. Confidential information does not include (i) information that was publicly available at the time of the disclosure, other than as a result of disclosure in breach of this Agreement, (ii) information that becomes publicly available through no fault of the recipient after the time of the delivery, and (iii) information that was rightfully in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction against disclosing such information to the recipient.
- b. If a recipient is required by applicable law or by a court or regulatory agency to disclose confidential information, the recipient will, to the extent possible, give the disclosing party prompt notice of such request so that the disclosing party may seek an appropriate protective order.
- c. Developer acknowledges that the County may share information provided by Developer of a financial and potential proprietary nature with third party consultants who have been contractually engaged to advise the County concerning matters related to this Agreement and to members of the County's Board of Supervisor as part of the negotiation and decision making process.

12. 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:            Director of Airports  
                         Contra Costa County

550 Sally Ride Drive  
Concord, CA 94520

Developer: Montecito Development Company, LLC  
3494 Camino Tassajara #229  
Danville, CA 94506  
Attn: Karl Higgins, 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.

13. 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. Subject to Section 4 above, if the default remains uncured fifteen 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 10 (no encumbrances), and Section 9(d) (indemnity), 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.
14. Governing Law. The laws of the State of California govern all matters arising out of this Agreement.
15. 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.
16. Assignment. The Developer may not transfer or assign any or all of its rights or obligations under this Agreement.

[Remainder of Page Intentionally Left Blank]

17. 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

Montecito Development Company, LLC

By: \_\_\_\_\_  
Keith Freitas, Director of Airports

By: \_\_\_\_\_  
Karl Higgins, President

APPROVED AS TO FORM

SHARON L. ANDERSON, COUNTY COUNSEL

By: \_\_\_\_\_  
Kathleen M. Andrus  
Deputy County Counsel