

AMENDED AND RESTATED
EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT
(Revitalization of Former West County Health Center)

This Amended and Restated Exclusive Negotiating Rights Agreement ("Agreement") is dated as of June 19, 2022 (the "Effective Date"), and is by and between the COUNTY OF CONTRA COSTA, a political subdivision of the State of California (the "County") on the one hand, and EDEN HOUSING, INC., a California nonprofit public benefit corporation ("Eden"), and COMMUNITY HOUSING DEVELOPMENT CORPORATION-NORTH RICHMOND, a California nonprofit public benefit corporation ("CHDC"), on the other. Together, Eden and CHDC are the "Developer."

RECITALS

- A. The County is the owner of approximately two acres of real property located at 100 38th Street in Richmond, California, which is more particularly described in Exhibit A (the "Property"). The Property is adjacent to the Richmond courthouse. The Property is improved with a multi-story, 83,884-square-foot building that was formerly used by the County as a health center (the "Building"). The Building is currently vacant.
- B. The County desires that the Property and the Building be redeveloped to create affordable housing and community services. The Developer has submitted a proposal to the County under which the Developer would (i) rehabilitate the Building to create fifty-nine units of supportive housing, (ii) construct a new building with seventy-six units of family housing and approximately 8,500 square feet of commercial space including a YMCA child care facility, and (iii) if feasible, a 1,500 square foot microenterprise retail development project, such as a café, on the Property, all as more fully described in the Developer's proposal to the County, attached hereto as Exhibit B (such proposal, the "Project").
- C. The County and the Developer are parties to an Exclusive Negotiating Right Agreement dated December 19, 2019 (the "Original Agreement"), under which the parties are negotiating the terms under which the County would transfer the Property to the Developer to carry out the Project.
- D. The parties desire to amend and restate the Original Agreement in order to extend its term and to require payments to be made to the County by the Developer as consideration for this Agreement.

The parties therefore agree as follows:

AGREEMENT

Exclusive Negotiations

1. Good Faith Negotiations; Original Agreement Superseded.

- a. The County and the Developer shall negotiate diligently and in good faith during the Negotiating Period (defined below) the terms of a purchase and sale agreement (“PSA”) under which the County will transfer the Property to an entity formed by the Developer for the purpose of developing the Project. Among the issues to be addressed in the negotiations are the price to be paid by the Developer for the Property and land title conditions of the Property.
 - b. During the Negotiating Period, defined below, 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.
 - c. This Agreement supersedes and replaces the Original Agreement. Effective on the Effective Date, the Original Agreement is of no force or effect, except the provisions of the Original Agreement that continue to apply to obligations under the Original Agreement.
2. Negotiating Period. The "Negotiating Period" under this Agreement is two years, beginning on the Effective Date and ending June 19, 2024.
- a. Subject to Section 2.b. below, if a PSA 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 17 (no encumbrances), Section 20 (no commissions), and Section 27 (indemnification), all of which survive the termination of this Agreement). Upon the execution of a PSA by the County and the Developer, this Agreement will terminate, and all rights and obligations of the parties will be governed by the PSA.
 - b. Notwithstanding anything to the contrary in this Agreement, if at the end of the Negotiating Period, a form of PSA has been mutually agreed upon by the Developer and the Director, but the PSA 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 PSA.
3. Commitment Fee. During the Negotiating Period, the Developer shall make quarterly commitment fee payments to the County as follows:

<u>Due Date</u>	<u>Amount Due</u>
Upon Full Execution	\$15,000.00
October 1, 2022	\$15,000.00
January 1, 2023	\$15,000.00
April 1, 2023	\$15,000.00
July 1, 2023	\$30,000.00
October 1, 2023	\$30,000.00
January 1, 2024	\$30,000.00
April 1, 2024	\$30,000.00

Payments are due without demand and are to be mailed to:

Contra Costa County
Public Works Department
Attention: Chief of Fiscal Services
255 Glacier Drive
Martinez, CA 94553

4. Developer's Representatives. The following people are authorized to negotiate the PSA on behalf of the Developer: Eden Housing – Kevin Leichner, Vice-President of Development, Housing Finance, and Acquisitions, KLeichner@edenhousing.org, (510) 247-8160; and CHDC – Donald Gilmore, Executive Director, dgilmore@communityhdc.org, (510) 412-9290 x12.

Negotiation Tasks

5. Overview. To facilitate negotiation of the PSA, the parties shall use reasonable good faith efforts to accomplish the negotiation tasks and due diligence set forth below in an effort to determine the feasibility of the Project and complete the negotiation and execution of a mutually acceptable PSA prior to the expiration of the Negotiating Period.
6. 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 is subject to approval by the County's Board of Supervisors.
7. Condition of Title. Within thirty days after the Effective Date, the Developer shall cause a reputable title company to issue a preliminary report for the Property to the Developer and the County. If the Developer objects to any of the exceptions to title, the Developer shall notify the County of its objection within thirty days of receipt of the preliminary report. Within fifteen days after the receipt of the Developer's objection, the County shall notify the Developer in writing if the County is willing to cause the exception to be removed. If the County is not willing to cause the exception to be removed and the Developer is unwilling to take title subject to the exception, this Agreement will terminate in accordance with Section 2.a. above.

Due Diligence

8. Physical Condition of Property. During the Negotiating Period, the Developer shall conduct any and all investigations it deems necessary to enable it to evaluate the physical condition of the Property prior to acquiring it in its as-is condition.
9. Financial Feasibility of Project. Within sixty days after the Effective Date, the Developer shall prepare and submit to the County a detailed financial analysis of the Project that contains, among other things, a budget for the Project and an operating pro forma for the housing component of the Project. The Developer shall use the budget and the pro forma

to evaluate the financial feasibility of the Project and to identify financing sources for the Project.

10. Planning Approvals; Compliance with Environmental Laws. The Developer acknowledges that the Project requires approvals and entitlements from the City of Richmond (the "City") (collectively, the "Planning Approvals"). During the Negotiating Period, the Developer shall submit conceptual site plans and preliminary designs for the Project to the City for informal review by City staff. The Developer shall pay any fees charged by the City for such review.
 - a. It will be a pre-disposition condition (among other conditions) for conveyance of the Property under the PSA that the Developer apply for and obtain any necessary Planning Approvals required for the Project.
 - b. Following submission of the necessary applications to the City for the required Planning Approvals, the Developer shall work with the City to prepare any environmental documentation required by the California Environmental Quality Act ("CEQA"), and, to the extent applicable, the National Environmental Policy Act ("NEPA").
11. 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 Project that is to include, but is not limited to, the dates for submitting and obtaining Planning Approvals and financing commitments for the Project, the date construction plans will be submitted to the City, the date all preconditions to conveyance of the Property will be satisfied, the date escrow will close to convey the Property pursuant to the PSA, and the dates construction of the Project will commence and be completed.
12. Organizational Documents. Prior to the end of the Negotiating Period, the Developer shall provide the County with copies of the organizational documents for the entity that will take title from the County on behalf of the Developer. The organizational documents must show that the entity exists and is in good standing.
13. Outreach. The Developer shall prepare and submit to the County a plan for community outreach in connection with the Project. 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 Terms

14. Reports. Unless otherwise waived by the County, the Developer shall provide the County with copies of all reports, studies, analyses, official correspondence and similar documents, but excluding confidential or proprietary information, prepared or commissioned by the Developer with respect to this Agreement and the Project, promptly upon their completion. The Developer makes no representation or warranty as to the accuracy or completeness of any such materials.

15. Limitation on Effect of Agreement. This Agreement does not obligate the County or the Developer to enter into a PSA or to enter into any particular PSA. By executing this Agreement, the County is not committing to dispose of the Property (or any portion of it). This Agreement is merely an agreement to conduct a period of exclusive negotiations. Any PSA that results from negotiations under this Agreement will be effective only if, and after, it has been considered and approved by the County Board of Supervisors in compliance with all legally required procedures, including, the requirements of CEQA and NEPA, and after it has been executed by duly authorized representatives of the County and the entity formed by the Developer to acquire the Property. Until and unless a PSA is approved by the County Board of Supervisors and executed by the County and the entity formed by the Developer to acquire the Property, 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 PSA or be used as evidence of any oral or implied agreement by either party to enter into any other legally binding document.
16. Right of Entry. If the Developer or its consultants enter upon the Property, the Developer shall:
- a. Give the County seventy-two 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, promptly upon request, 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, broad form 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 years after the expiration of the term of this Agreement.
17. No Encumbrances. It is expressly understood and agreed by the parties that no liens, lis pendens, or other encumbrance may be filed against the Property by reason of this Agreement or any dispute or act arising from this Agreement.

18. 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
Public Works Department
255 Glacier Drive
Martinez, California 94553
Attention: Real Property Manager

Developer: Eden Housing, Inc.
22645 Grand Avenue
Hayward, California 94541
Attention: SVP – Real Estate

Community Housing Development Corporation, Inc.
1535-A Fred Jackson Way
Richmond, CA 94801
Attention: Real Estate Development Director

19. Costs and Expenses. Each party is responsible for its own costs and expenses in connection with any activities and negotiations undertaken in connection with this Agreement and the performance of each of its obligations under this Agreement.

20. No Commissions. The County is not liable for any real estate commissions or brokerage fees that may arise from this Agreement or any PSA resulting from this Agreement. Each party represents that it has not engaged a broker, agent or finder in connection with this transaction.

21. Defaults 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 (i) a payment default remains uncured five days after receipt of the notice by the defaulting party, or (ii) any other 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 17 (no encumbrances), Section 20 (no commissions) and Section 27 (indemnification) will 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 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.

22. Governing Law. The laws of the State of California govern all matters arising out of this Agreement.
23. Assignment. The Developer may not transfer or assign any of its rights or obligations under this Agreement.
24. 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.
25. 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.
26. Time of the Essence. Time is of the essence in this Agreement and every provision contained in it.

[Remainder of Page Intentionally Left Blank]

27. Indemnification. Developer shall indemnify, hold harmless, and defend the County, its Board of Supervisors, agents, and employees (collectively, the "Indemnitees"), from and against all claims arising out of or in connection with this Agreement or the activities contemplated hereby; provided, however, Developer has no indemnification obligation with respect to the negligence or misconduct of any Indemnitee. Developer's indemnification obligations shall survive the termination or expiration of this Agreement and is effective regardless of any insurance Developer may have, or that may otherwise be available to the Developer.

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

COUNTY

COUNTY OF CONTRA COSTA, a
political subdivision of the State of California

By: _____
Brian M. Balbas
Director of Public Works

DEVELOPER:

EDEN HOUSING, INC., a California
nonprofit public benefit corporation

By: _____
Name
Title

COMMUNITY HOUSING
DEVELOPMENT CORPORATION –
NORTH RICHMOND, a California
nonprofit public benefit corporation

By: _____
Name
Title