

**AMENDMENT NO. 5
TO THE EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT BETWEEN
THE CITY OF SANTA CLARA, CALIFORNIA
AND HABITAT FOR HUMANITY EAST BAY/SILICON VALLEY, INC.**

PREAMBLE

This agreement (“Amendment No. 5”) is entered into on this _____ day of _____, 2022, (“Effective Date”) by and between the City of Santa Clara, a chartered California municipal corporation (“City”), and Habitat for Humanity East Bay/Silicon Valley, Inc., a California Non-Profit Corporation (“Developer”). City and Developer may be referred to individually as a “Party” or collectively as the “Parties” or the “Parties to this Agreement.”

RECITALS

- A. The Parties previously entered into an agreement entitled “Exclusive Negotiating Rights Agreement” dated April 9, 2019 and fully executed on June 17, 2019 (the “Original Agreement”).
- B. The Parties previously entered into an agreement entitled “Amendment No. 1 to the Exclusive Negotiating Rights Agreement” dated December 17, 2020 (First Amendment).
- C. The Parties previously entered into an agreement entitled “Amendment No. 2 to the Exclusive Negotiating Rights Agreement” dated July 12, 2021 (Second Amendment).
- D. The Parties previously entered into an agreement entitled “Amendment No. 3 to the Exclusive Negotiating Rights Agreement” dated December 20, 2021 (Third Amendment).
- E. The Parties previously entered into an agreement entitled “Amendment No. 4 to the Exclusive Negotiating Rights Agreement” dated October 11, 2022 (Fourth Amendment).
- F. The City is the owner of a .69-acre parcel of real property in the City of Santa Clara located at 3575 De La Cruz Boulevard (APN 101-15-049) (the “Property”). The Developer has proposed to develop the Property with 15 units of affordable ownership housing, including mixed-income townhomes and flats (the “Project”). The entire project is proposed to be affordable to households with income between 50% and 120% of Area Median Income (AMI).
- G. The Original Agreement established procedures and standards for the negotiation by the City and the Developer of a Disposition and Development Agreement (the “DDA”) pursuant to which the Developer will conduct specified development activities related to the Property.
- H. The Original Agreement provided a Negotiating Period of 18 months, which expired on December 17, 2020.

- I. The First Amendment to Agreement provided a six (6) month extension which expired on June 17, 2021.
- J. The Second Amendment to Agreement provided a six (6) month extension which expired on December 30, 2021.
- K. The Third Amendment to Agreement provided a six (6) month extension which expired on June 30, 2022.
- L. The Fourth Amendment to Agreement provided a six (6) month extension which will expire on December 30, 2022.
- M. This Fifth Amendment to Agreement provides a six (6) month extension which is set to expire on June 30, 2023.

NOW, THEREFORE, the Parties agree as follows:

AMENDMENT TERMS AND CONDITIONS

1. Section 2 of the Fourth Amendment Agreement, entitled "Negotiating Period," is hereby deleted and replaced in its entirety to read as follows:

"2. Negotiating Period. The negotiating period (the "Negotiating Period") under this Agreement shall be six (6) months, commencing on the date this Agreement is fully executed, for a Negotiating Period of December 30, 2022 through June 30, 2023. The parties mutually agreed to extend the negotiating period for six (6) months, commencing on December 17, 2020 and terminating at 11:59 p.m. on June 17, 2021. The parties mutually agreed to a second extension of the negotiating period for six (6) months, terminating at 11:59 p.m. on December 30, 2021. The parties mutually agreed to a third extension of the negotiating period for six (6) months, terminating at 11:59 p.m. on June 30, 2022. The parties mutually agreed to a fourth extension of the negotiating period for six (6) months, terminating at 11:59 p.m. on December 30, 2022. The parties mutually agree to this fifth extension of the negotiating period for six (6) months, commencing on December 30, 2022 and terminating at 11:59 p.m. on June 30, 2023. This date may be extended for a period of an additional six (6) months upon presentation of a written request from the Developer together with a schedule of tasks to be accomplished during the additional period. Granting of such extension shall be at the discretion of the City Manager and shall only be effective upon the execution of an amendment to this agreement.

If a DDA has not been executed by the City and the Developer (or its affiliate) by June 30, 2023, and no additional extension has been approved through an additional amendment to this Agreement, then this Agreement shall terminate and no party shall have any further

rights or obligations under this Agreement, except as set forth in Section 4 and Section 11. If a DDA is executed by the City and the Developer (or its affiliate), then, upon such execution, this Agreement shall terminate, and all rights and obligations of the Parties shall be as set forth in the executed DDA.”

2. Except as set forth herein, all other terms and conditions of the Original Agreement shall remain in full force and effect. In case of a conflict in the terms of the Original Agreement, Amendment No. 1, Amendment No. 2, Amendment No. 3, Amendment No. 4, or this Amendment No. 5, the provisions of this Amendment No. 5 shall control.
3. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

The Parties acknowledge and accept the terms and conditions of this Amendment No. 5 as evidenced by the following signatures of their duly authorized representatives.

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

Approved as to Form:

Dated: _____

Office of the City Attorney
City of Santa Clara

Rajeev Batra
City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

“CITY”

HABITAT FOR HUMANITY EAST BAY/SILICON VALLEY, INC.
a California non-profit corporation

Dated: _____

By: _____

JANICE JENSEN
President & CEO

2619 Broadway
Oakland, CA 94612

jjensen@HabitatEBSV.org
Telephone: (510) 251-6304
Fax: (510) 251-6309

“DEVELOPER”