

**AMENDMENT NO. 2
TO THE EXCLUSIVE NEGOTIATION AGREEMENT BETWEEN
CITY OF SANTA CLARA,
SANTA CLARA VALLEY TRANSPORTATION AUTHORITY
AND
REPUBLIC METROPOLITAN, LLC**

PREAMBLE

This Amendment No. 2 (“Second Amendment”) to the Exclusive Negotiation Agreement is made and entered into on this ____ day of _____, 2019, (“Effective Date”) by and between the City of Santa Clara, a municipal corporation (“**City**”), the Santa Clara Valley Transportation Authority (“**VTA**”) and Republic Metropolitan LLC, a Delaware limited liability company (“**Developer**”) herein 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 Negotiation Agreement” dated February 6, 2018 (“**Agreement**”);
- B. The Agreement provided for a negotiating period of twelve (12) months with a possible extension of an additional six (6) months, subject to the execution of an amendment. The Parties entered into “Amendment No. 1” to the Agreement, dated February 8, 2019 to extend the negotiating period through August 5, 2019;
- C. In February 2019, Developer submitted a development application to the City of Santa Clara (“**Development Application**”);
- D. The Parties have determined to pursue a Leasehold Disposition & and Development Agreement and Ground Lease (“**DDA**”), or a Lease Option Agreement and Ground Lease (“**LOA**”) whereby Developer enters into an agreement with VTA and City for a ground lease on the Property under which Developer would construct a project consisting of an affordable housing component and a workforce/student apartment component.
- E. The Parties desire to amend the Agreement to retroactively extend the negotiating period by twelve additional months, through August 5, 2020.

AGREEMENT PROVISIONS

The Parties agree as follows:

1. EXTENSION OF NEGOTIATING PERIOD.

Section 2 of the Agreement, entitled “Negotiation Period” is hereby deleted and replaced in its entirety with the following:

“2. Negotiating Period. The negotiating period (the "**Negotiating Period**") under this Agreement shall commence on February 6, 2018 and terminate at 11:59 p.m. on August 5, 2020.

Any further extensions or modification of the Negotiating Period will require formal amendment of this Agreement approved by the City Council, the VTA Board of Directors in their complete discretion and executed by the City, VTA, and the Developer.

If a DDA or LOA has not been executed by the City, VTA, and the Developer (or its affiliate) by the expiration of the Negotiating Period, then this Agreement shall terminate and no party will have any further rights or obligations under this Agreement, except those that explicitly survive termination herein. If a DDA or LOA is executed by the City, VTA, 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 or LOA.

2. NEGOTIATION DEPOSIT

The third paragraph of Section 4 of the Agreement, entitled “Negotiation Deposits” is hereby deleted and replaced in its entirety to read as follows:

“The City and VTA acknowledge the prior receipt of First and Second Negotiation Deposits remitted by Developer totaling \$50,000.00. Notwithstanding the foregoing, upon presentation, at any time, of accounting of Negotiation Deposits expended by City or VTA for third party costs associated with the Project showing that there is less than \$10,000 remaining from the Developer’s most recent deposit and upon receipt of a schedule of proposed consultant costs and an outline budget showing proposed uses provided to the Developer by the City/VTA, and upon reasonable approval of such budget within seven (7) days following receipt by Developer, Developer must tender to the City an additional Twenty-Five Thousand Dollars (\$25,000), in the form of a cashier’s check made payable to the City. Developer’s failure to approve or disapprove such budget within seven (7) days shall be considered approval thereof.”

3. RESUBMITTAL OF DEVELOPMENT APPLICATION.

The Agreement is hereby amended to add a new Section 10.A, which section will read as follows:

10.A Prior to a formal resubmittal to the City, Developer will work cooperatively with VTA and City staff on revisions to the Development Plan, including at least one community outreach meeting prior to a formal resubmittal to the City.

4. REVISED TERM SHEET

The Agreement is hereby amended to add a new Section 20.A, which section will read as follows:

20.A Revised Term Sheet. Developer must submit a revised term sheet to VTA and City within 90 days after the execution of the Second Amendment which term sheet will: (i) present all economic terms of any proposed LOA or DDA between the parties; and (ii) respond to all written requests for information presented to Developer by VTA and/or the City. Developer must use good faith efforts to propose business terms that provide fair market ground lease payments to VTA and City as well as a pre-operations period lease payment that will be paid to VTA and City after the execution of the Ground Lease but prior to the Rent Commencement Date. If Developer has not submitted an initial draft of this revised term sheet to VTA and City prior to that date which is 90 days after the execution of this Second Amendment, either VTA or City will have the option to terminate this agreement by sending written notice to the other two Parties.

5. DEVELOPMENT OF LOA OR DDA

The Agreement is hereby amended to add a new Section 20.B, which section will read as follows:

20.B DDA or LOA. The Parties will work in good faith and use best efforts to develop mutually acceptable terms and conditions of a DDA or LOA (the "Final Term Sheet") within one hundred-twenty (120) days following the submittal of the Revised Term Sheet. The Final Term Sheet will provide all economic terms and conditions (including any development milestones) pursuant to which Developer will have the right to lease the Property and construct the Project. If applicable, the LOA or DDA will also take into consideration the time required for satisfactory completion of the CEQA documentation and receipt of all other pertinent project entitlements and approvals. Nothing in this Agreement, however, will require additional extension of this ENA if CEQA documentation cannot be finished prior to August 5, 2020.

6. DEFAULT AND REMEDIES

Section 25(a) of the Agreement is hereby deleted and replaced in its entirety with the following:

In the event that any party hereto fails to negotiate diligently and in good faith during the Exclusive Negotiating Period ("**Defaulting Party**"), any other party hereto ("**Noticing Party**") may give written notice thereof to the Defaulting Party, specifying the one or more material reason(s) that the Noticing Party reasonably believes Defaulting Party has failed to negotiate diligently and in good faith and specifying a particular course of action being requested to cure such default. Thereafter, the

Defaulting Party will have fifteen (15) working days (“**Cure Period**”) to commence negotiating in good faith during the Exclusive Negotiating Period. Following the receipt of such notice and the failure of the Defaulting Party to thereafter commence negotiating in good faith within the Cure Period, either of the other parties may, at their option, exercise the remedies set forth in Section 25(b).. For purposes of this Agreement, a lack of diligent, good faith negotiations will include, but not be limited to, the Developer’s failure to meet the revised term sheet submittal date as set forth in Section 20.A.

7. TERMS

All other terms of the Agreement (as modified by the First Amendment) and which are not in conflict with the provisions of this Second Amendment shall remain unchanged in full force and effect. In case of a conflict in the terms of the Agreement (as amended) and this Second Amendment, the provisions of this Second Amendment shall control. Capitalized terms used herein will have the same meaning as set forth in the Agreement and First Amendment, unless otherwise indicated herein.

8. COUNTERPARTS

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.

The Parties acknowledge and accept the terms and conditions of this Second Amendment 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:

Approved as to Form:

Dated: _____

BRIAN DOYLE
City Attorney

DEANNA J. SANTANA
City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

“CITY”

SANTA CLARA VALLEY TRANSPORTATION AUTHORITY
a special district

By: _____

NURIA FERNANDEZ

General Manager

APPROVED AS TO FORM:

By: _____

VICTOR PAPPALARDO

Senior Assistant Counsel

“VTA”

REPUBLIC METROPOLITAN LLC
a Delaware limited liability company

By: _____
Robert Mendelsohn
Authorized Agency

“DEVELOPER”