

**PROPOSED TERM AND CONDITIONS
EXCLUSIVE NEGOTIATION AGREEMENT
BETWEEN THE CITY OF HAYWARD AND MONTECITO DEVELOPMENT COMPANY LLC**

Exclusive Negotiation Agreement:

- Purpose: The purpose of the proposed Exclusive Negotiation Agreement (“ENA”) is to (a) permit Montecito Development Company LLC (together with its successors and assigns, “Developer”) to conduct a due diligence investigation and determine the suitability of the premises for the intended use, and (b) grant Developer the exclusive right to negotiate with the City (as defined below) for a long term ground lease for the 8.8-acre west portion of the former California Air National Guard (aka CANG) site. Following execution of the ground lease(s) (which shall include an entitlement period and be subject to Developer obtaining entitlements), Developer subsequently intends to entitle the Premises with necessary discretionary and ministerial permits under the structure of a long-term ground lease, and construct improvements as outlined below. During the term of this ENA, Developer shall be granted access to the Premises to conduct such due diligence investigations as Developer deems appropriate.
- Duration: The duration of the proposed ENA shall be for an initial term of one (1) year from the date of full execution of this document by both parties. The City Manager shall approve up to four separate 6-month extensions of time provided the developer has made a good faith effort towards entitlement in the previous 1-year term, and previously approved extensions, in the sole discretion of the City Manager. During the term of the ENA, (a) the City shall not negotiate with any other entity to lease, sell or otherwise encumber the Premises, and (b) the City and Developer shall negotiate the ground lease in good faith.
- Fee: The ENA fee payable by the developer shall be equal to ten percent (10%) of the current non-aeronautical lease rate currently in effect, or approximately \$0.12 per square foot, per year [8.8acs x 43,560 sq ft = 383,328 sq ft x .12cents/sq ft x 10% = \$45,999] for the CANG site, subject to a land survey to establish lease lines and a parcel). The ENA fee is payable annually on the anniversary date of the ENA approval by the City Council, but shall be subject to offset as provided below. As an additional consideration, to offset a portion of the ENA fee, the Developer agrees to provide the City with the results of all soils investigations, biological field examinations, engineering analysis and the like, at the sole expense of the Developer. Developer shall be entitled to offset the cost of its investigations and analyses of the Premises and such offset shall be on a dollar-for-dollar basis, which offset shall be applied against the ENA fee otherwise payable. Developer shall provide City with copies of all invoices related to the request for offsets against the ENA annual fee.

- Confidentiality: Both parties agree to treat all confidential information disclosed by the other party as privileged and will take all steps necessary to preserve confidentiality. Both parties acknowledge that confidential information may be subject to disclosure as required by State and/or Federal law, and additionally, Developer shall be permitted to disclose any information pertaining to the Premises to investors, lenders, attorneys, accountants, insurers, appraisers and consultants.
- Limitations: Although this term sheet does not obligate the City or Developer to enter into a ground lease(s) with respect to the Premises, the execution of this ENA is, however, an agreement to grant Developer a period of exclusive negotiations with the City in accordance with the terms hereof.
- Assignment: The City agrees the Developer will create a special purpose entity for each project and will be permitted to assign this ENA to any special purpose entity so long as such special purpose entity is either affiliated with Developer or engages Developer as the developer for the contemplated project. Developer will provide evidence of good standing from state authorities prior to any assignment. Said assignment may be executed subject to review and approval by the City Manager which shall not be unreasonably withheld.

The Transaction

A commercial ground lease between the City and Developer for real property on Hayward Executive Airport.

- Premises: The former California Air National Guard (CANG) site is approximately 16.8 acres in size as approximately depicted on Exhibit A (Eight acres has been tentatively identified as the site for a new headquarters building and other facilities for the Public Safety Center (PSC) for the City of Hayward. City is currently engaged in initial land planning of the site.) The remaining 8.8-acres on the west side of the property would be dedicated to Developer's proposed uses as noted in the Description section below.
- FAA Property Release: This site must be released for non-aeronautical use by the Federal Aviation Administration (FAA) prior to construction, a process that is estimated to take 6 months. Airport management agrees to process the FAA release paperwork.
- Description: The developer has expressed interest to the City in the design and construction of the 8-acre PSC facility once a source of financing is identified. As an option, the developer may propose a design-build deal for leaseback to the City. Should the Developer be selected for the PSC project, they have expressed interest in developing the remaining 8.8-acres on the west side of the property for a technology park or advanced manufacturing use that may include life science or advanced manufacturing/tech companies. Warehouse use in support of the proposed uses will be allowed by City. Dedicated residential housing may not be constructed on the site.

- Access: The site will be accessed from West Winton Avenue.
- Lease Term: PSC to be determined; office park fifty (50) years.
- Consideration: To be negotiated fee per square foot, per year of the current non-aeronautical lease rate. Both parties acknowledge this rate could change in the future pursuant to a mutually agreed formula.
- Mandatory Approval: A commercial ground lease approved by the Hayward City Council, and a final site plan approved by City Council and the FAA that complies with height and other applicable federal standards.
- Other Requirements: Environmental approvals (CEQA, NEPA) and rezoning from AT-AC, Air Terminal Airport Commercial to AT-C Air Terminal Commercial. These costs are the responsibility of Developer. It must also be determined if an amendment to the City's General Plan is required.
- Environmental Due Diligence: CANG was a former brown field site, and remediation was conducted by the federal government and concluded with a no further action required letter. However, Developer must thoroughly investigate to be assured there are no remaining issues. The City and Developer both agree that any environmental issues discovered during the due diligence investigation that are related to the former use of the property are not the responsibility of either party for clean-up and/or mitigation. Further investigation is required to determine ultimate responsibility in the event that additional underground contamination is discovered. The cost of such clean-up shall be born by the appropriate federal agency with responsibility for clean-up, if any. Developer shall not be liable for any ground rent payments until such time as a no further action letter is issued to the airport by the appropriate regulatory agencies overseeing the remediation efforts.

ENDORSEMENTS

IN WITNESS WHEREOF, the parties hereto have executed this ENA as of November
____, 2023.

CITY OF HAYWARD, A MUNICIPAL CORPORATION:

By: _____
Doug McNeeley, Airport Manager Date

By: _____
Alex Ameri, Director of Public Works Date

By: _____
Kelly McAdoo, City Manager Date

Approved as to form:

By: _____
Michael S. Lawson, City Attorney Date

Attest: _____
Miriam Lens, City Clerk Date

[Signatures to this ENA continued on next page]

[Signatures to this ENA continued from previous page]

MONTECITO DEVELOPMENT COMPANY, LLC

By: _____
Karl Higgins, Chief Executive Officer Date

FOUR STONES REAL ESTATE COMPANY, INC.

By: _____
Blake Goodman, Chief Executive Officer Date

EXHIBIT A

