

**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 of a portion of the now closed Skywest Golf Course. 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. 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 leases 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 (47acs x 43,560 sq ft =2,047,320 sq ft x .12 cents/sq ft x 10% for an ENA fee of approximately \$245,678 per year to be more fully determined by a land survey and lease plat creation). 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.

### The Transaction

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

- Premises: The western portion of the former Skywest Golf Course consisting of approximately 47 acres as approximately depicted on Exhibit A for the construction of an office/R&D/advanced manufacturing park for, without limitation, the uses described below. There is flexibility in the final size and location.
- FAA Property Release: This site was approved by the FAA for non-aeronautical development through an Instrument of Release dated May 5, 1966.
- Description: Developer will cause to be designed and constructed appropriate office facilities in support of, advanced manufacturing and research and development buildings for intended use by life sciences or tech companies and/or advanced manufacturing (as defined in the California Public Resources Code) and related amenities, including suitable vehicle parking, decorative landscaping that conforms with City and Federal Aviation Administration (FAA) standards, and walking trails for the public along the perimeter of the site. The practicality of constructing public trails throughout the business campus must be evaluated. Dedicated residential housing may not be constructed on the site.
- Lease Term: Fifty (50) years
- Lease Consideration: To be negotiated a 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 the City Council and by the FAA that meets height and other applicable federal standards.
- Other Requirements: Environmental approvals (CEQA, NEPA) and rezoning from AT-R, Air Terminal Recreation, 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: At the present time, there are no known environmental issues on the former golf course site, but Montecito must thoroughly investigate to be assured there are no remaining issues at developer expense.

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 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

