

Attachment B

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**EXCLUSIVE NEGOTIATING AGREEMENT
COUNTY OF MONTEREY AND EDEN HOUSING, INC.**

This Exclusive Negotiating Agreement (“Agreement”) is made and entered into as of this ___ day of _____, 2023 by and between the County of Monterey, a political subdivision of the state of California (“County”), and Eden Housing, Inc., a California non-profit public benefit corporation (“Developer”), The County and the Developer may be referred to herein as “Party or collectively as the “Parties.”

RECITALS

- A. The County is the owner of certain real property located at 855 East Laurel Drive in the City of Salinas (APN 003-851-043-000) as shown on the map attached hereto as **Exhibit A** and incorporated herein by this reference (“Property”).
- B. On October 4, 2022, the County Board of Supervisors adopted a Resolution No. 22-383 Select Eden Housing, Inc., jointly with the City of Salinas, as the developer for 855 East Laurel Drive in Salinas Request for Qualifications for the Design and Development of a 100% Affordable Multifamily Rental Housing Project on the Property (“Project”). The Resolution authorized the Housing and Community Development Department Director, or designee, jointly with the City of Salinas, to negotiate an Exclusive Negotiating Agreement and a subsequent Ground Lease with Eden Housing, Inc. for the affordable housing development.
- C. The County and Developer are interested in exploring feasibility of the Project.
- D. The purpose of this Agreement is to establish procedures and standards for the negotiation by the County and the Developer related to agreements (“Development Agreement” and “Conveyance Agreement”) pursuant to which the Developer will conduct specified development activities related to the Property, and a Long Term Ground Lease Agreement (“LTGA”), the substantially final form of which shall be attached as an exhibit to the Conveyance Agreement, which will provide the terms and conditions for the leasehold interest in the Property to the Developer for ultimate development. The Conveyance Agreement may be in the form of an Option to Ground Lease, or a similar form that the Parties mutually agree to. As more fully set forth in herein, the Developer acknowledges and agrees that this Agreement does not grant the Developer the right to develop the Project, nor does it obligate the Developer to any activities or cost to develop the Project, except for the preliminary analysis and negotiations contemplated by the Agreement. The Development Agreement, pursuant to state law and Chapter 18.62 of the Monterey County Code, will provide the terms and conditions related to and providing such development rights.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and for other valuable consideration, the receipt and sufficiency is hereby acknowledged, the Parties mutually agree as follows:

EXCLUSIVE NEGOTIATIONS RIGHT

1. Good Faith Negotiations. During the Negotiating Period described in Section 2, the County and the Developer shall negotiate diligently and in good faith the terms of the Development Agreement and Conveyance Agreement for the development of the Project on the Property and the terms of the LTGA for the leasehold interest of the Property. During the Negotiating Period, the Parties shall use good faith efforts to accomplish the respective tasks outlined herein to facilitate the negotiation of mutually satisfactory agreements for the development and disposition of the Property.

Among the issues to be addressed in the negotiations are the final leasehold consideration for each parcel comprising the Property, physical and land title conditions of the Property and remediation of any adverse conditions, the development schedule for the Project, financing of the Project, marketing and management of the Project, design and aesthetic considerations of the Project and as required, the provision of public improvements related to the Project such as site access, utility connections and energy storage, and the terms and conditions for such development.

2. Negotiating Period. The negotiating period (“Negotiating Period”) under this Agreement shall be eighteen (18) months, commencing on the date of this Agreement. The Negotiating Period may be extended for a period of an additional two periods of six (6) months each upon presentation of a written request from the Developer together with a schedule of tasks to be accomplished during the additional period. Approval of the extended Negotiating Period shall be at the discretion of the County of Monterey Housing and Community Development Director.

The Negotiating Period may only be extended or modified by formal amendment of this Agreement executed by the County and the Developer.

Except as otherwise set forth in this Agreement, if the Development Agreement and Conveyance Agreement has not been executed by the County and the Developer by the expiration of the Negotiating Period, then this Agreement shall terminate and neither Party shall have any further right or obligation under this Agreement. If the Development Agreement and Conveyance Agreement is executed by the County and the Developer then, upon such execution, this Agreement shall terminate, and all rights and obligations of the Parties shall be as set forth in the executed agreement(s).

3. Exclusive Negotiations. During the Negotiation Period, the County shall not negotiate with any entity, other than the Developer, regarding development of the Property, or solicit or entertain bids or proposal to do so.
4. Consultant Costs. The County shall be responsible for all third-party consultant costs incurred directly by the County in connection with the negotiation of this Agreement, the Development Agreement, the Conveyance Agreement, and the LGTA. The Developer shall be responsible for all third-party consultant costs incurred directly by Developer in connection with the negotiation of this Agreement, the Development Agreement, the Conveyance Agreement, and the LGTA. In addition, Developer shall be solely responsible for all third-party consultant and other costs incurred by Developer to complete Developer's due diligence, prepare and process land use entitlements, and implement the financing and construction of the Project. Such costs shall include, but are not limited to, preparation of site and architectural plans, CEQA clearance documents and technical studies, civil engineering studies and plans, and other plans, specifications, reports or studies necessary to complete the Project.

NEGOTIATION TASKS

5. Overview. To facilitate negotiation of the Development Agreement and Conveyance Agreement, the Parties shall use reasonable, good faith efforts to accomplish the tasks set forth herein in a timeframe that will support negotiation and finalization of a mutually acceptable Development Agreement, Conveyance Agreement and LTGA prior to the expiration of the Negotiating Period.
6. Preliminary Scope, Site Plan and Architectural Plans. As detailed in **Exhibit B**, the Developer will submit planning and design progress documents throughout the design process. Within forty-five (45) days following the date of this Agreement, the Developer shall prepare and submit to the County a scope of development describing location and land uses of the proposed Project, a preliminary site plan identifying the size and shape of the parcel(s) to be developed and the approximate location of all proposed improvements to be constructed as part of the Project. Preliminary architectural plans including floor plans, elevations and landscape plan, and civil site plan, will be submitted by the Developer to the County within sixty (60) days of the conclusion of the public outreach process.
7. Financing and Costs of Development. The Developer shall provide the County with a detailed financial pro forma for the Project containing, among other matters, a detailed development budget setting forth the cost of the tasks to be undertaken by the Developer. The financial pro forma will be used to evidence the financial feasibility of the Project and to assist in the negotiation of development terms and conditions.
8. Schedule of Performance. During the Negotiating Period, the Developer will complete initial work and studies as described in **Exhibit B**. Developer shall provide the County with a detailed schedule of performance (the "Schedule of Performance") for the Project

to incorporate into the Conveyance Agreement which shall include, but not be limited to: a due diligence period, a plan setting forth the proposed timeline for the preparation of development concepts, community outreach and planning and environmental review and approval, milestones for development of the Property, specifically addressing the mix of development uses, phases of development (if applicable), the date for the submittal of construction plans to the County, the estimated date for close of escrow on the conveyance of the Property, and the dates for the commencement and completion of construction of Project. The Developer will also submit an application for a Development Agreement pursuant to Monterey County Code Chapter 18.62 and the requirements of the Housing and Community Development Department.

9. Organizational Documents. The Developer shall provide the County with its organizational documents as well as an organization chart outlining key personnel's roles and responsibilities. Developer shall also submit to the County for approval, copies of all operation agreements, joint venture agreements or other agreements between the members of the development entity, and such financial statements or tax returns reasonably required by the County to determine the Developer financial capability.
10. Environmental Review. The County will prepare the environmental documentation required by the California Environmental Quality Act ("CEQA") for consideration of approval of the Development Agreement and Conveyance Agreement and any related land use entitlements for the Project, provided, that nothing in this Agreement shall be construed to compel the County to approve or make any particular findings with respect to such environmental documentation. The Developer shall provide technical studies, or such information as may be required to enable the County to prepare or cause the preparation and consideration of any CEQA required document and shall otherwise generally cooperate with County to complete this task. The Developer shall be responsible for all costs associated with the preparation of the required CEQA documentation.
11. Due Diligence. During the Negotiating Period, the Developer shall conduct the following due diligence activities:
 - a. Property Adequacy Determination. The Developer shall determine whether the Property is suitable for development of the Project, taking into account the geotechnical and soils conditions, the presence or absence of toxic or other hazardous materials, the zoning of the Property, the massing of the proposed Project improvements and the parking requirements imposed on Projects of this type and the other environmental and regulatory factors that the Developer deems relevant. If, in the Developer's judgement based on such investigations and analyses, the Property is not suitable for development, the Developer may notify the County in writing prior to the expiration of the Negotiating Period of its determination. Upon such timely notification by the Developer, this Agreement shall be terminated

without further action of either party, and thereafter neither party shall have any further duties, obligations, rights, or liabilities under this Agreement.

- b. **Objections to Title.** Promptly following the execution of this Agreement, the Developer shall cause a title company selected by the Developer to issue a Preliminary Title Report (“PTR”) on the Property to the Developer and the County. If the Developer objects to any exception appearing on the PTR or should any title exception arise after the date of the PTR, the Developer may object to such exception, provided such objection is made to the County in writing on or before 5 o’clock P. M. on the thirtieth (30th) day following the date of the Developer receives the PTR (or in the case of any new exceptions arising after the date of the PTR, by no later than the 30th day following the date the Developer receives notification of that new exception). If the Developer objects to any exception to title, the County, within fifteen (15) days of receipt of Developer’s objections shall notify Developer in writing whether County elects to (i) cause the exception to be removed of record, (ii) obtain a commitment from Title Company for an appropriate endorsement to the policy of title insurance to be issued to the Developer, insuring against the objectionable exception, or (iii) terminate this Agreement unless the Developer elects to accept title subject to such exception.
 - c. **Termination.** If either Party elects to terminate this Agreement pursuant to this subsection (c.), neither party shall thereafter have any obligations to or rights against the other hereunder. If the Developer fails to provide any notification to the City regarding this matter prior to expiration of the time period set forth herein, the condition set forth in this subsection (c.) shall be deemed satisfied and the Agreement shall continue in effect.
12. **Site Access.** The Developer and its representatives shall have full rights to enter upon the Property to conduct inspections and investigations in accordance with this Agreement. In connection with such entry and investigation, the Parties and their representatives shall:
- a. Provide 24-hour notice to the other Party prior to entry;
 - b. Repair and restore any damage it may cause;
 - c. Indemnify, defend and hold the County, its decision making body (Board of Supervisors) and its officers, employees and agents harmless from any and all claims, liabilities, damages, losses, expenses, costs and fees (including attorneys’ fees and costs), with the exception of any injury or death to County staff or their consultants which may proximately arise out of the Developers’ or its consultants’ entry upon the Property or the investigation(s) and test(s) which the Developer may conduct, arising out of the negligent or intentional acts of the Developer or dangerous conditions on the Property for which the County should know or have known to exist, provided, however, that this indemnity shall not apply to matters arising from the results of the Developer conducting investigations, tests and inspections (e.g., this indemnity shall not apply to any diminution in value or

remediation costs incurred by the County if the other Party's investigations were to discover an environmental condition that required remediation); and

- d. Maintain insurance or a self-insured program with the following limits: \$1 million general liability, and workers compensation insurance as statutorily required.
13. Reports. The Developer shall provide the County with copies of all reports, studies, analyses, 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 County shall provide the Developer with copies of all reports, studies, analyses, correspondence, and similar documents (collectively, "documents") prepared or commissioned by the County with respect to this Agreement and the Project, promptly following execution of this Agreement with respect to documents then in its possession or under its reasonable control, and promptly upon their completion with respect to any subsequently prepared documents.

While desiring to preserve its rights with respect to treatment of certain information on a confidential or proprietary basis, the Developer acknowledges that the County will need sufficient, detailed information about the proposed Project (including, without limitation, the financial information described in Section 9) to make informed decision about the content and approval of the Development Agreement, the Conveyance Agreement and/or the LTGA. The County will work with the Developer to maintain the confidentiality of proprietary information subject to the requirements imposed on the County by the Public Records Act (Government Code Section 6253, est. seq.) The Developer acknowledges that the County may share information provided by the Developer of a financial and potential proprietary nature with third party consultants and members of the County Board of Supervisors as part of the negotiation and decision-making process. If this Agreement is terminated without the execution of a Development Agreement or Conveyance Agreement, the County shall return to the Developer any information submitted by the Developer under this Agreement.

14. Progress Reports. From time to time as reasonably agreed upon by the parties, each Party shall make oral or written progress reports advising the other party on studies being made and matters being evaluated by the reporting party with respect to this Agreement and the Project.

GENERAL PROVISIONS

15. Limitation on Effect of Agreement. This Agreement shall not obligate either the County or the Developer to enter into a Development Agreement, Conveyance Agreement or LTGA. By execution of this Agreement, the County is not committing to or agreeing to undertake acquisition, disposition, or exercise of control over any property. Execution of this Agreement by the County is merely an agreement to conduct a period of exclusive

negotiations in accordance with the terms hereof, reserving for subsequent County Board of Supervisors action the final discretion and approval regarding the execution of a Development Agreement, Conveyance Agreement and LTGA, and all proceedings and decisions in connection therewith. Any Development Agreement, Conveyance Agreement or LTGA resulting from negotiations pursuant to this Agreement shall become effective only if and after such agreement has been considered and approved by the County.

16. Notices. Formal notices, demands and communications between the County and the Developer shall be sufficiently given if, and shall not be deemed given unless, dispatched by certified mail, postage prepaid, return receipt requested, or sent by express delivery or overnight courier service, to the office of the parties shown as follows, or such other address as the Parties may designate in writing from time to time:

County: County of Monterey
Housing and Community Development Department
1441 Schilling Place, 2nd Floor
Salinas, CA 93901
Attention: Erik V. Lundquist, Director

Developer: Eden Housing, Inc.
22645 Grand Street
Hayward, CA 94541
Attention: Andrea Osgood

Such written notices, demands and communications shall be effective on the date shown on the delivery receipt as the date delivered or the date on which delivery was refused.

17. Costs and Expenses. Each Party shall be 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 party's obligations under this Agreement.
18. No Commissions. The County shall not be liable for any real estate commissions or brokerage fee that may arise from this Agreement or any Development Agreement, Conveyance Agreement or LTGA that may result from this Agreement. The County represents that it has engaged a no broker, agent or finder in connection with this transaction, and the Developer shall defend and hold the County harmless from any claims by any broker, agent or finder retained by the Developer.
19. Defaults and Remedies.
- a. Default. Failure by either Party to negotiate in good faith as provided in the Agreement shall constitute an event of default hereunder. The non-defaulting Party shall give written notice of a default to the defaulting Party, specifying the nature

of the default and the required action to cure the default. If a default remains uncured thirty (30) days after receipt by the defaulting Party of such notice, the non-defaulting Party may exercise the remedies set forth in subsection (b).

- b. Remedies. In the event of an uncured default by the County, the Developer's sole remedies shall be either: 1) specific performance; or 2) to terminate this Agreement. Following a termination, neither Party shall have any further right, remedy or obligation under this Agreement.

In the event of an uncured default by the Developer, the County's sole remedy shall be to terminate this Agreement. Following such termination, neither Party shall have any right, remedy or obligation under this Agreement.

Except as expressly provided above, neither Party shall have any liability to the other for damages or otherwise for any default, nor shall either Party have any other claims with respect to performance under this Agreement. Each Party specifically waives and releases any such rights or claims they may otherwise have at law or in equity.

20. Attorneys' Fees. The prevailing Party in any action to enforce this Agreement shall be entitled to recover attorneys' fees and costs from the other Party.
21. Governing Law. This Agreement shall be governed by and constructed in accordance with the laws of the State of California.
22. Entire Agreement. This Agreement constitutes the entire agreement of the Parties regarding the subject matter of this Agreement.
23. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement.

IN WITNESS WHEREOF, this Agreement has been executed by the Parties on the date first above written.

DEVELOPER:

EDEN HOUSING, INC., a California non-profit
public benefit corporation

By: _____

Its: _____

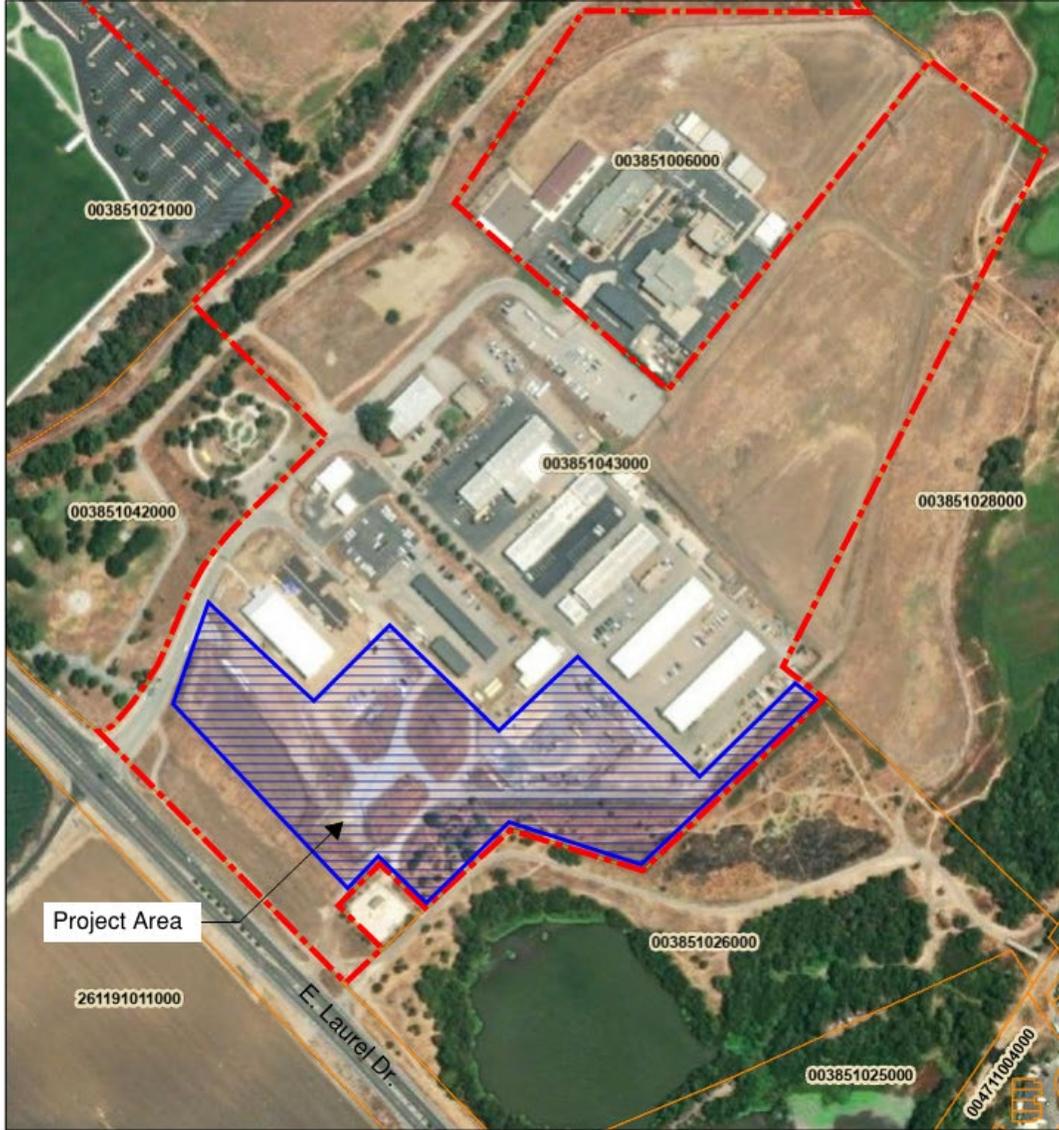
COUNTY:

COUNTY OF MONTEREY, a political subdivision
of the State of California

By: _____ By: _____

EXHIBIT A
PROPERTY MAP

855 East Laurel Drive, Salinas



1/28/2023, 8:41:15 AM

1:4,514

-  Parcels
-  Subject Parcel
-  Project Area

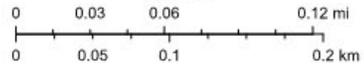


EXHIBIT B
SCHEDULE OF PERFORMANCE

Task	Target Date
<p>1. Due Diligence</p> <p style="padding-left: 20px;">a. Property Adequacy Determination: Developer to order initial reports necessary for Property Adequacy Determination such as a Phase I environmental assessment and geotechnical report</p> <p style="padding-left: 20px;">b. Title Objections: Developer to order a preliminary title report</p>	<p>a. Within 15 days of ENA execution</p> <p>b. Within 5 days of ENA execution</p>
<p>2. Outreach Plan</p> <p style="padding-left: 20px;">a. Submission of Outreach Plan: Developer to submit to County a proposed public outreach plan for the project</p> <p style="padding-left: 20px;">b. Initiation of Outreach Plan: Developer to begin outreach process</p>	<p>a. Within 60 days of ENA execution</p> <p>b. Within 60 days of County approval of proposed outreach plan</p>
<p>3. Project Site Plan and Design:</p> <p style="padding-left: 20px;">a. Developer to submit Preliminary Scope and Site Plan to County with Development Agreement Application</p> <p style="padding-left: 20px;">b. Developer to submit Schematic Architectural Design, Landscape Design and Civil Site Plan documents to County</p> <p style="padding-left: 20px;">c. Developer to commence necessary technical and environmental impact studies, including feasibility analysis for battery storage</p>	<p>a. Within 45 days of ENA execution</p> <p>b. Within 60 days of conclusion of public outreach process</p> <p>c. Within 4 months of ENA execution</p>
<p>4. Financing and Phasing Plan</p> <p style="padding-left: 20px;">a. Pro Forma: Developer to provide to County preliminary pro forma including proposed project sources and uses.</p> <p style="padding-left: 20px;">b. Schedule: Developer to provide to County preliminary project construction schedule and, as applicable, phasing plan.</p>	<p>a. Within 30 days of Schematic Design Document submittal to County</p> <p>b. Within 30 days of Schematic Design Document submittal to County</p>
<p>5. Conveyance Agreement and LTGA Term Sheet(s): Developer and County to begin negotiation of Conveyance Agreement and LTGA Term Sheets</p>	<p>Within 180 days of ENA Execution</p>
<p>6. CEQA and Land Use Approvals: Developer to obtain any applicable CEQA clearance</p>	<p>Prior to expiration of ENA and concurrent with execution of Conveyance Agreement and LTGA</p>

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