

RESOLUTION NO. 21-109

Resolution Of The City Council Of The City Of Emeryville Authorizing The City Manager To Execute A Second Amendment To The Exclusive Right To Negotiate Agreement With EAH, Inc. ("ERN") For The Purpose Of Negotiating A Lease Disposition And Development Agreement For The Redevelopment And Operation Of 4300 San Pablo Avenue As Intergenerational Housing To: (1) Extend The ERN Term To January 22, 2022, (2) Authorize An Additional 180 Day Extension If Needed, And (3) Authorize the Execution of Additional Minor Amendments As Necessary To Effectuate The Purpose Of The ERN

WHEREAS, the 2015-2023 Housing Element of the Emeryville General Plan (the "Housing Element") identifies the property at 4300 San Pablo Avenue (the "Site") as a possible site for affordable housing; and

WHEREAS, staff issued a request for qualifications/proposals on September 24, 2019 for the development of the Site as a 100% affordable senior or intergenerational housing project; and

WHEREAS, on July 21, 2020, the City Council adopted Resolution No. 20-85 selecting EAH, Inc. ("EAH") as the developer to develop the Site as an intergenerational housing project and authorizing the City Manager to execute an exclusive right to negotiate agreement ("ERN"); and

WHEREAS, the City and EAH entered into an ERN on October 29, 2020, which was originally set to expire on April 27, 2021, and

WHEREAS, during the original term of the ERN certain legal limitations relating to intergenerational housing were found to pose obstacles to development of the Site as envisioned, and Senate Bill 591 ("SB 591") was introduced in the California State Legislature and would resolve these obstacles; and

WHEREAS, the City and EAH entered into a First Amendment to the ERN to extend the term of the ERN from April 27, 2021, to October 22, 2022, to allow time for SB 591 to become law; and

WHEREAS, the parties anticipate that the Governor will sign SB 591, and the City and EAH desire to extend the term of the ERN to allow for negotiations to continue in light of the new law; now, therefore, be it

RESOLVED, that the City Council of the City of Emeryville hereby authorizes the City Manager to execute a second amendment to the ERN, extending the term of the ERN to January 20, 2022, in a form attached hereto as Exhibit A; and, be it, further

RESOLVED, that the City Council of the City of Emeryville hereby authorizes the City Manager to execute an additional amendment to extend the term of the ERN as provided for in Section 2.2, provided the cumulative amendments do not exceed 180 days; and be it, further

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RESOLVED, that the City Council of the City of Emeryville hereby authorizes the City Manager to execute minor amendments to the ERN as may be necessary to effectuate its purpose.

ADOPTED by the City Council of the City of Emeryville at a regular meeting held Tuesday, October 19, 2021, by the following vote:

AYES:	4	Mayor Martinez, Vice Mayor Donahue, and Council Members Bauters and Medina
NOES:	0	
ABSTAIN:	0	
ABSENT:	0	

DocuSigned by:

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MAYOR

ATTEST:

DocuSigned by:

FB7B5D8EAB6A4BE...
CITY CLERK

APPROVED AS TO FORM:

DocuSigned by:

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INTERIM CITY ATTORNEY



City of Emeryville

CALIFORNIA

EXCLUSIVE RIGHT TO NEGOTIATE AGREEMENT 4300 SAN PABLO AVENUE, EMERYVILLE, CA SECOND AMENDMENT

THIS SECOND AMENDMENT TO THE EXCLUSIVE RIGHT TO NEGOTIATE AGREEMENT 4300 SAN PABLO AVENUE, EMERYVILLE, CA ("Amendment") is effective as of this _____ day of _____, 2021, by and between **THE CITY OF EMERYVILLE**, a municipal corporation, ("City") and **EAH INC.** ("Developer"), individually referred to as a "Party" and collectively as the "Parties."

WITNESSETH THAT

WHEREAS, the City and Developer entered into an Exclusive Right to Negotiate Agreement dated October 29, 2020, ("Agreement") for the purpose to set forth the terms and conditions under which the City and Developer exclusively negotiate the terms and conditions of a proposed Lease Disposition and Development Agreement ("**LDDA**") for the construction, establishment and operation an affordable senior/inter-generational housing development containing no less than 68 rental residential units affordable to tenants whose incomes are no greater than 80% AMI, located at 4300 San Pablo Avenue, Emeryville, CA; and

WHEREAS, pursuant to Section 1.1 of the Agreement, within ninety (90) calendar days of the Effective Date, the Parties agree to prepare an initial, non - binding Term Sheet to use as a general basis for negotiating key terms and provisions of the LDDA (the "Term Sheet")

WHEREAS, pursuant to Section 2.1 of the Agreement, the term of the Agreement was originally set to expire on Tuesday, April 27, 2021; and

WHEREAS, pursuant to Section 2.2, the Parties entered into the First Amendment to the Agreement in which the City Manager extended the term of the Agreement for an additional 180 days so that the Agreement expires on Friday, October 22, 2021; and

WHEREAS, the City Council finds that the Parties have engaged in good faith negotiations, have made substantial progress towards the development of the LDDA, and desires to extend the term of the Agreement to allow for continuation of the negotiations; and

WHEREAS, the public interest will be served by this Amendment.

NOW, THEREFORE, the Parties hereto do mutually agree as follows:

FOR CITY USE ONLY			
Contract No.		CIP No.	
Resolution No.		Project No.	

City of Emeryville Exclusive Right to Negotiate 4300 San Pablo Avenue, Emeryville, CA Second Amendment

1. RECITALS

The foregoing recitals are true and correct and incorporated by reference.

2. AMENDMENT

2.1 The Parties agree to amend Section 2.1 of the Agreement to extend the term of the Agreement to **January 20, 2022**.

2.2 The Parties agree that the City Manager may further extend the term of the Agreement again pursuant to Section 2.1 of the Agreement.

3. CONTINUING EFFECT OF AGREEMENT

Except as amended by this Amendment, all other provisions of the Agreement remain in full force and effect and shall govern the actions of the Parties under this Amendment. From and after the date of this Amendment, whenever the term "Agreement" appears in the Agreement, it shall mean the Agreement as amended by this Amendment.

4. ADEQUATE CONSIDERATION

The Parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Amendment

5. SEVERABILITY

If any portion of this Amendment is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect

6. WAIVER

The City's failure to enforce any provision of this Amendment or the waiver in a particular instance shall not be construed as a general waiver of any future breach or default.

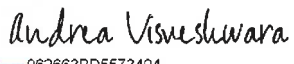
SIGNATURES ON FOLLOWING PAGE

City of Emeryville Exclusive Right to Negotiate 4300 San Pablo Avenue, Emeryville, CA Second Amendment

7. SIGNATURE PAGE TO EXCLUSIVE RIGHT TO NEGOTIATE 4300 SAN PABLO AVENUE, EMERYVILLE, CA, SECOND AMENDMENT

IN WITNESS WHEREOF the City and the Developer have executed this Agreement, which shall become effective as of the date first written above.

Approved As To Form:

DocuSigned by:

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Interim City Attorney

Dated:

_____, 2021


CITY OF EMERYVILLE

Christine S. Daniel, City Manager

Dated:

September 28, 2021

EAH INC., A CALIFORNIA NONPROFIT CORPORATION



(Signature)
Welton Jordan, Chief Real Estate Development Officer