

EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT  
(APN 093-170-056)

This Exclusive Negotiating Rights Agreement (this “**Agreement**”) is entered into as of September \_\_\_\_, 2024 (the “**Effective Date**”), by and between the County of Contra Costa, a California municipal corporation (the “**County**”), and EmpowHER Builders, LLC, a California limited liability company (the “**Developer**”), with reference to the following facts:

Recitals

A. The County is the owner of that certain real property located at 190 Bel Air Lane, Bay Point, California, more particularly known as APN 093-170-056 (the “**County Property**”) as more particularly described in Exhibit A attached to this Agreement and incorporated herein by this reference.

B. The County Property is “surplus property” that the County seeks to dispose of pursuant to the laws of the State of California.

C. The Developer timely submitted its Letter of Intent to acquire the County Property in order to construct a wholly-affordable transit oriented development, as set forth in the attached Exhibit B (the “**Proposed Project**”).

D. There were no other timely letters of intent submitted and, pursuant to California law, the Developer has been awarded the right to negotiate an agreement to acquire the County Property.

E. The purpose of this Agreement is to establish procedures and standards for negotiation by the County with the Developer of a purchase and sale agreement (“**PSA**”) for disposition of the County Property.

AGREEMENT

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

ARTICLE 1  
EXCLUSIVE NEGOTIATING RIGHT

Section 1.1 Good Faith Negotiations. The County and the Developer shall negotiate diligently and in good faith, during the Negotiating Period (defined in Section 1.2 below), the terms of a PSA for disposition of the County Property. During the Negotiating Period, the parties shall use good faith efforts to accomplish the respective

tasks outlined herein. This Agreement does not impose a binding obligation on County to convey any interest in the County Property to Developer, nor does it obligate County to grant any approvals or authorizations required for the Proposed Project or improvements constructed on the Property.

The issues to be addressed include, but are not limited to, conditions by which the County will sell Property to Developer, a development schedule for the Proposed Project, financing of the Proposed Project development, marketing and management of the Proposed Project, design and aesthetic considerations of the Proposed Project, and the provision of improvements related to the Proposed Project.

Section 1.2 Negotiating Period. The negotiating period (the "**Negotiating Period**") under this Agreement shall commence on the date of this Agreement and terminate one hundred twenty (120) calendar days from the date of this Agreement. If, during the initial Negotiating Period, negotiations with the Developer have progressed sufficiently to the point where there is a draft PSA that, in the judgment of the County Administrator, warrants initiation of the environmental review process required by the California Environmental Quality Act ("**CEQA**"), then the County Administrator may extend the Negotiating Period by written notice to the Developer for the period of the environmental review process required by CEQA if anticipated to extend beyond the Negotiating Period established under this Agreement (but in no event shall such extension exceed a six (6) month period). If, as a result of the environmental review process required by CEQA, there is an administrative or legal challenge, all of the timeframes set forth in this Agreement shall be stayed for the duration of any such challenge, through any appeal periods. The Developer understands that such an extension in no way obligates the County to approve a PSA, or other any other agreement at the end of the environmental review process.

In addition, the County may extend the Negotiating Period for up to sixty (60) days by written notice to the Developer from the County Administrator if, in the County Administrator's judgment, sufficient progress toward a mutually acceptable PSA has been made during the initial Negotiating Period to merit such extension.

If a PSA has not been presented to the County Board of Supervisors with staff's supporting recommendation and approved by the Developer by the expiration of the Negotiating Period (as may be extended under this Section), then this Agreement shall terminate and neither party shall have any further rights or obligations under this Agreement except as set forth in Sections 3.2(d), 4.2 and 4.6. If the County and the Developer (or a related entity approved by the County) execute a PSA, then, upon such execution, this Agreement shall terminate, and all rights and obligations of the parties shall be as set forth in the executed PSA.

Section 1.3 Exclusive Negotiations. During the Negotiating Period (as such Negotiating Period may be extended by operation of Section 1.2), the County shall not negotiate with any entity, other than the Developer, regarding development of the Property or any portion thereof, or solicit or entertain bids or proposals to do so. This provision shall not preclude the County from providing copies of documents or

information related to the Property in response to a request under the California Public Records Act or other applicable statutory provisions.

## ARTICLE 2 THE DEVELOPER

Section 2.1 Identification of Developer Representatives. The Developer, its address, and its authorized representatives to negotiate the PSA with the County are as follows:

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Section 2.2 Development Entity. The Developer shall make full disclosure to the County of all information pertinent to the ownership, control, and financial capacity of the development entity that is proposed to serve as developer under the PSA, including, but not limited to, the members of the Developer's development team, and (should the Development include for rent units) the proposed property management company for the Development. Notwithstanding the foregoing, nothing in this Section 2.2 shall require Developer to give County access to its financial books and records.

## ARTICLE 3 NEGOTIATION/PRE-CONSTRUCTION TASKS

Section 3.1 Overview. During the Negotiating Period, the parties shall use reasonable good faith efforts to accomplish the tasks set forth in this Article 3 and to accomplish the negotiation of a mutually acceptable PSA. To facilitate negotiation of the PSA, the parties shall use reasonable good faith efforts to accomplish the tasks set forth in this Article 3 in a timeframe that will support achievement of these goals.

### Section 3.2 Developer's Studies; Right of Entry.

(a) During the Term of this Agreement, Developer will use its best efforts to prepare, at Developer's expense, any studies, surveys, plans, specifications and reports ("**Developer's Studies**") Developer deems necessary or desirable in Developer's sole discretion, to complete its due diligence for the Property. Developer's Studies may include, without limitation, title investigation, relocation analyses, marketing, feasibility, soils, seismic and environmental studies, financial feasibility analyses and design studies. The Developer will have rights of access to the Property to prepare the Developer's Studies.

(b) Developer hereby agrees to notify the County twenty-four (24) hours or at least one business day, whichever is greater, in advance of its intention to enter the Property.

(c) Developer will provide the County with work plans, drawings, and descriptions of any intrusive sampling it intends to perform. Developer must keep the

Property in a safe condition during its entry. Developer shall repair, restore and return the Property to its condition immediately preceding Developer's entry and sampling thereon at Developer's sole expense.

(d) Without limiting any other indemnity provisions set forth in this Agreement, Developer shall indemnify, defend and hold the County, its officials, officers, employees, and volunteers harmless from and against all claims resulting from or arising in connection with entry and sampling upon the Property by Developer or Developer's agents, employees, consultants, contractors or subcontractors pursuant to this Section. Developer's indemnification obligations set forth in this Section 3.2 shall survive the termination of this Agreement.

(e) If upon expiration of this Agreement the Parties have not successfully negotiated a PSA, or in the event of a County default, Developer will provide County, within fifteen (15) days following said date of expiration, copies of the Developer's Studies completed by such date (provided County has paid for all of Developer's Studies to the extent required by Section 4.7 herein). Developer will also provide County with copies of any Developer's Studies completed after the expiration of the Negotiation Period within fifteen (15) days following completion of such studies, or if Developer intends not to complete any Developer Studies, Developer will provide County with copies of such uncompleted studies. "Successful negotiation" for the purposes of this Agreement shall mean Developer approval and staff supporting recommendation to the County Board of Supervisors of the affected agreements.

Section 3.3 County Reports. The County shall provide the Developer with copies of all reports, studies, analyses, and similar documents prepared or commissioned by the County with respect to this Agreement, the Property and the Proposed Project, promptly upon their completion. The Developer acknowledges that the County will need sufficient, detailed information about the Proposed Project (including, without limitation the financial information described in Sections 3.6 and 3.7) to make informed decisions about the content and approval of the PSA. Nothing in this Section 3.3 obligates the County to undertake any studies or analyses.

Section 3.4 Planning Approvals. The Developer acknowledges that the Proposed Project requires approvals and entitlements from the County (the "**Planning Approvals**"). During the Negotiating Period, the Developer shall submit preliminary Property plans and designs for the Proposed Project and architectural designs for all buildings within the Proposed Project to the County and the appropriate County departments for their informal review. The Developer understands that a formal application for the Planning Approvals and issuance of the Planning Approvals (in accordance with all applicable requirements of CEQA) will be a pre-disposition condition under the PSA, in addition to other pre-disposition conditions.

Section 3.5 Utilities. The Developer shall consult with the utility companies serving the area of the Property to determine if utility capacity exists to serve the Proposed Project and if existing utility facilities require expansion, relocation, or

underground installation in connection with development of the Proposed Project. The County shall assist and cooperate with the Developer in such consultations.

Section 3.6 Financial Proforma Analysis. Within forty-five (45) calendar days after the Effective Date, the Developer shall provide the County with a detailed financial proforma for the Proposed Project containing, among other matters typically contained in such proformas, a detailed development cost, budget, and a detailed operating income and expense estimate (excluding confidential or proprietary information). The financial proforma will be used to evidence the financial feasibility of the Proposed Project.

Section 3.7 Progress Reports. Upon reasonable notice, as from time to time requested by the County, the Developer shall make oral or written progress reports advising the County on studies being made and matters being evaluated by the Developer with respect to this Agreement and the Proposed Project, including the status of the environmental site assessments, geotechnical investigations, biological assessments, traffic impacts, cultural and archaeological studies, parking and circulation studies, pedestrian connectivity, and general site planning and architectural design work.

#### ARTICLE 4 GENERAL PROVISIONS

Section 4.1 Limitation on Effect of Agreement. This Agreement (and any extension of the Negotiating Period) shall not obligate either the County or the Developer to enter into a PSA or to enter into any other agreement. This Agreement (and any extension of the Negotiating Period) shall not obligate the County to lease, or otherwise transfer, the County Property, or any portion thereof, to the Developer or any other entity, nor does it grant the Developer the right to develop the Proposed Project. This Agreement (and any extension of the Negotiating Period) shall not obligate the County to dispose of the County Property or any portion of the County Property. This Agreement (and any extension of the Negotiating Period) shall not obligate the County to provide any financial assistance to the Developer. 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 and County Board of Supervisors action the final discretion and approval regarding the execution of a PSA, any transfer of the Property, and all proceedings and decisions in connection therewith. Any PSA resulting from negotiations pursuant to this Agreement shall become effective only if and after such PSA has been considered and approved by the County Board of Supervisors, following conduct of all legally required procedures, and following completion of all applicable requirements of CEQA.

Section 4.2 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, with signature required, 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: \*\*\*

Developer: \*\*\*

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.

Section 4.3 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.

Section 4.4 No Commissions. The County shall not be liable for any real estate commissions or brokerage fees that may arise from this Agreement or any PSA that may result from this Agreement. The County represents that it has engaged 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. The terms of this Section will survive the expiration or earlier termination of this Agreement.

Section 4.5 Default and Remedies.

(a) Default. Failure by either party to negotiate in good faith as provided in this 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 remedy shall be to terminate this Agreement and to recover from County all costs for the Developer's Studies. Following such termination, neither party shall have any further right, remedy, or obligation under this Agreement; provided, however, that the Developer's indemnification obligations pursuant to Sections 3.2(d), 4.2 and 4.5 shall survive such termination.

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; provided, however, that the Developer's indemnification obligation pursuant to Sections 3.2(d), 4.2 and 4.5 shall survive such termination. In the event of an uncured default by the Developer, County may request, and the Developer may not unreasonably withhold, Developer's Studies resulting from this Agreement and the PSA.

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.

Section 4.6 Assignment. The Developer may not transfer or assign any or all of its rights or obligations hereunder except with the prior written consent of the County, which consent shall be granted or withheld in the County's sole discretion, and any such attempted transfer or assignment without the prior written consent of County shall be void.

Section 4.7 No Third Party Beneficiaries. This Agreement is made and entered into solely for the benefit of the County and the Developer and no other person shall have any right of action under or by reason of this Agreement.

Section 4.8 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.

Section 4.9 Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Venue shall be in Contra Costa County, California.

Section 4.10 Entire Agreement. This Agreement constitutes the entire agreement of the parties regarding the subject matters of this Agreement. This Agreement has been mutually prepared by the parties and the parties agree that any rule of construction to the affect that ambiguities are to be resolved against the drafting party shall not apply to this Agreement (including, but not limited to, California Civil Code Section 1654), as may be amended from time-to-time.

Section 4.11 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.

Section 4.14 Authority to Execute. The undersigned represent and warrant they are each duly authorized to execute this Agreement on behalf of the respective party and to take the actions necessary to perform hereunder without the need to seek further authorization from the entity each represents.

Section 4.15 No Agency, Joint Venture or Partnership. County and Developer hereby renounce the existence of any form of agency relationship, joint venture or partnership between County and Developer and agree that nothing contained herein or in any document executed in connection herewith shall be construed as creating any such relationship between County and Developer.

**Remainder of Page Left Intentionally Blank**

WHEREFORE, the parties have executed this Agreement on or as of the date first above written.

COUNTY:

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By: \_\_\_\_\_  
\*\*\*

ATTEST:

By: \_\_\_\_\_  
\*\*\*  
County Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
\*\*\*,  
County Attorney

DEVELOPER:

\*\*\*

By: \_\_\_\_\_  
\*\*\*



EXHIBIT A  
Property



February 12, 2024

VIA E- MAIL ([Lashun.Cross@dcd.cccounty.us](mailto:Lashun.Cross@dcd.cccounty.us))

Contra Costa County Housing Successor Agency  
c/o Lashun Cross  
Department of Conservation and Development  
Successor Housing  
30 Muir Road  
Martinez, CA 94553

**RE: EmpowHER Builders – Surplus Land Acquisition of 190 Bel Air Lane, Bay Point**

To Whom It May Concern:

We are a group of female leaders in the Bay Area building industry looking to make a positive difference in the lives of women. Together we have formed EmpowHER Builders, Inc., a new nonprofit that has as its express purpose three goals:

- Locate surplus property within Contra Costa County suitable for building charitable housing units, over time, in locations such as 190 Bel Air Lane in Bay Point, California;
- Using an exclusively female workforce, design and construct these units; and
- Sell these units to women in need at wholly affordable prices.

Our mission is not new and, in fact, has been modeled after the wildly successful program entitled The House That She Built, modified to address California's unique land acquisition and entitlement challenges but embracing the auspicious goals of female workforce development, training for women in construction with an emphasis on STEAM (science, technology, engineering, art and math), and diversity, equity and inclusion in the building trades. You can learn more at <https://thehousethatshebuilt.com/>.

As an added benefit, and in the midst of a housing crisis in California, this charitable housing will allow us to develop a model to serve low-income families in Contra Costa County that strive for homeownership, while emphasizing youth prevention and trade training for young women in the County. The Building Industry Association of the Bay Area's existing partnerships with the Girl Scouts of America and the Boys & Girls Club provides for access to the youngest, and often most vulnerable, members of our community, with the goal of creating mentorship programs, as well.

With that in mind, **we are hereby submitting an offer to purchase Assessors Parcel Number 093-170-056, commonly known as 190 Bel Air Lane, Bay Point, for the purpose of developing charitable housing.** The following paragraphs in this letter are intended to outline the main deal points for a forthcoming Purchase and Sale Agreement and will be used to guide preparation of that Agreement.



EmpowHER Builders (“HER”) would like to enter into a Purchase and Sale Agreement (“Agreement”) with Contra Costa County Housing Successor Agency (“Seller”). The following are the main deal points for Agreement preparation if accepted:

**A. Purchase Price:**

HER is offering to work directly with the County during the 60-day exclusive negotiation period to identify the affordability level for each of the homes to be constructed on the Property, as well as the exact number of homes to be constructed on the Property given the existing site constraints (including but not limited to the restricted access with a single ingress-egress, overhead power lines and any associated easement that restricts buildability, existing habitat and/or wetlands, and the like). In any event, HER is making this proposal with the expectation that **100% of the units will be provided at affordable levels and will be deed restricted.**

Given the information available to HER at this time, we are assuming that the site will accommodate 16 total units of either 1 or 2 bedrooms each (suitable for 2-to-4 people). On that basis, we make the following offer:

- HER will pay to the Seller the sum of 10% of the total net sales price of each unit constructed, payable at the Closing to the low-income purchaser. **By way of example only**, if the pre-set sales price for a 2-bedroom low-income unit in Contra Costa County is \$300,000, at the time of sale to the ultimate purchaser, Seller would receive \$30,000 for that unit.
- All construction trades will be similarly compensated at the Closing of each unit to a low-income purchaser, on a percentage basis.
- HER and the County to partner on a program to cover any interim expenses related to design, planning, engineering, inspections, etc., with the expectation that these funds will be paid to the various departments that provide fee-based services.
- All payments will be made within a 20-year period, pursuant to Government Code section 54225 (with payment secured by a Deed of Trust).
- All constructed units may be deed restricted in perpetuity.
- HER will operate as a non-profit, with the purpose of constructing charitable housing and without compensation for its Board members. HER will retain sufficient funds from each sale to continue operating for the duration of the project and for administration of the project but will not retain program “profits.”
- HER will construct all units within an agreed-upon schedule, with no more than 3 units anticipated per year, to create a living “project” that will allow an ongoing partnership with the County to maximize:
  - Youth engagement and prevention;
  - Skills training;
  - Continuous homeownership opportunities; and,



- Continuous housing activity on site.

**B. Contract Preparation:**

Within ten calendar days (10) days of acceptance of this LOI, HER shall provide Purchase and Sale Agreement to Seller.

**C. Feasibility Period:**

HER shall have forty-five days (45) days (“Feasibility Period”) following the execution of the Agreement to review in its sole discretion, the condition and suitability of the Property for its intended use. Seller agrees to promptly provide all documents in Seller’s possession relating to the Property within three (3) business days from mutual execution the Purchase and Sale Agreement. HER shall, immediately upon acceptance of this Letter of Intent, instruct Chicago Title Insurance Company (the “Title Company”) to prepare a preliminary report on the Property, including copies of all plotted easements and copies of underlying exceptions attached. Immediately following mutual execution of the Purchase and Sale Agreement, HER and its agents shall have the right to enter the Property for the purpose of completing any desired inspections of the Property. On or before the last day of the Feasibility Period, HER shall notify Seller in writing that the feasibility conditions either have been approved or disapproved. Failure to provide such notice shall be deemed disapproval by HER of this feasibility of the Property. If HER disapproves the feasibility conditions, the contract shall terminate immediately, and the Agreement will be considered null and void.

**D. Escrow Closing:**

The Close of Escrow shall occur within forty-five days (45) days following HER clearing the allotted Feasibility Period.

**E. Closing Costs:**

HER requests that the County’s Affordable Housing Fund either contribute and/or loan the Closing Costs to HER for close of escrow. HER shall be responsible for the cost of all inspection fees. Title and Escrow fees shall be split 50/50. Seller to pay country transfer tax.

**F. Property Condition:**

Seller shall deliver the Property to HER in a condition that is clean and suitable for residential use, with clean/lien-free title.

**G. Representations and Warranties:**

Seller shall provide customary disclosures, representations, and warranties to HER in the forthcoming Purchase and Sale Agreement.

**H. Confidentiality**

HER and Seller each agree that to the extent possible, they shall treat as confidential any information received from the other party relating to this Offer to Purchase or the purchase of the Property. The parties further agree that they shall use all such information solely for the purpose of evaluating the merits of the proposed transaction and shall not disclose or permit the disclosure of, such information to any unrelated third parties without the other party’s express written consent. Each party will immediately upon the written request of the other party, return to that party



all such information (including all copies thereof), or if so directed, destroy such information and furnish a letter stating that such information has been destroyed.

**I. Other Terms**

Seller shall assign all documentation related to the Property to HER, to the extent any exists. This includes all inspections, plans sets, permits, entitlements, pre-paid fees, and other related materials to HER upon the close of escrow, to the extent they exist.

This Letter of Intent merely contains the general terms and conditions of our agreement and is not intended to be representative of all the terms and conditions that will be included in the final purchase and sale agreement. This Letter of Intent does not create any legally binding rights or obligations on Seller or HER, except as provided in this paragraph below.

We would welcome the opportunity to meet with you to discuss in greater detail our business plan for this project, as well as how a partnership between EmpowHER Builders and the County can be used to help women in the Bay Area by supporting workforce development and training.

In the event that the requested Property at 190 Bel Air Lane in Bay Point is not available because another affordable housing development has been proposed for the site, EmpowHER Builders would be willing to enter into an agreement to purchase Property at another surplus land site within Contra Costa County, including those sites identified as The North Broadway Assemblage, Canal Road, or the North Richmond site.

We know that the development model proposed is different than a typical planned development. However, one of our members sits on the Yellow Roof Foundation Board of Directors and can attest to the success of the private charitable housing framework. For more information about Yellow Roof Foundation and the success of its Contra Costa County communities, please see [www.yellowrooffoundation.org](http://www.yellowrooffoundation.org) for details.

We will reach out to your office in the next couple of weeks to set an appointment with the hope that you will be able to assist us with acquiring property within Contra Costa County. Thank you for your consideration.

Sincerely yours,

*Emily Boyd*

Emily Boyd  
Brookfield Residential

*Linnea Chapman*

Linnea Chapman  
Trumark Co.

*Juliann Cretsinger*

Juliann Cretsinger  
Signature Homes

*Pam Nieting*

Pam Nieting  
Nieting Development

*Monique Small*

Monique Small  
DR Horton

*Kelley Stough*

Kelley Stough  
Lennar

*Dana Tsubota*

Dana Tsubota  
DeNova Homes

*Deana Vidal*

Deana Vidal  
John Burns  
Research & Consulting