



Report to City Council

TO: Mayor and City Council Acting in its Capacity as Chairman and Commissioners of the Moreno Valley Housing Authority (HA)

FROM: Marshall Eyerman, Chief Financial Officer

AGENDA DATE: February 5, 2019

TITLE: EXCLUSIVE NEGOTIATION AGREEMENT BY AND BETWEEN THE MORENO VALLEY HOUSING AUTHORITY AND RANCHO BELAGO DEVELOPERS, INC.

RECOMMENDED ACTION

Recommendations:

1. Approve the Exclusive Negotiation Agreement by and between the Moreno Valley Housing Authority and Rancho Belago Developers, Inc.
2. Authorize the Executive Director to execute the Exclusive Negotiation Agreement, subject to the approval of the City Attorney.

SUMMARY

This report recommends approval of the Exclusive Negotiation Agreement (ENA) by and between the Moreno Valley Housing Authority and Rancho Belago Developers, Inc. (Developer).

The Developer has informed the Housing Authority that it is interested in developing an affordable rental housing project, to include: approximately eighty (80) rental dwelling units. The proposed development concept would be constructed on a portion of Housing Authority property located at the northeast corner of Cottonwood Avenue and Indian Street consisting of approximately 8.6 acres.

DISCUSSION

The Housing Authority currently owns approx. 8.6 acres located at the northeast corner of Cottonwood Avenue and Indian Street which is zoned R5 and restricted for the future

development of an affordable housing project.

The proposed development concept would be constructed on a portion of Housing Authority property located at the northeast corner of Cottonwood Avenue and Indian Street consisting of approximately 8.6 acres. The remaining northern portion of the property, which consists of approximately 1.65 acres, is believed to be surplus to the needs of the Developer in pursuing the affordable rental housing project and may be disposed of.

The Developer is currently seeking an ENA to allow for the option to propose a development on the Housing Authority land prior to substantial investments being incurred for development and financial plans necessary for the Housing Authority to consider before entering into a future Development and Disposition Agreement. The ENA does not commit the Housing Authority to the development of the site but provides an opportunity to negotiate with the Developer for the potential affordable housing project.

The ENA provides the Developer an opportunity to prepare a Preliminary Development Concept Package consisting of a development proposal generally describing the facilities, including all development activities proposed to be undertaken; a statement describing the proposed method of financing, including construction and permanent financing and, if applicable, proposed credit enhancement; a detailed construction and operating pro forma which identifies all sources and uses of funds including without limitation design of the facilities and supporting infrastructure; and a proposed timeline which includes the submittal for any required allocation for tax credits and/or bonds.

Upon receipt of the Preliminary Development Concept Package, the Housing Authority may further negotiate a Development and Disposition Agreement (“DDA”) with the Developer. The DDA shall then be brought back to the Housing Authority and the City Council for review and formal approval before proceeding with the development of the project.

ALTERNATIVES

1. Approve the Exclusive Negotiation Agreement; authorize the City Manager and Executive Director of the Housing Authority to execute project-related documents. **Staff recommends this alternative as it will allow the Housing Authority to negotiate the potential development of the site.**
2. Do not Approve the Exclusive Negotiation Agreement; do not authorize the City Manager and Executive Director of the Housing Authority to execute project-related documents. **Staff recommends does not recommend this alternative as it will not allow the Housing Authority to negotiate the potential development of the site.**

FISCAL IMPACT

NA

NOTIFICATION

The public has been notified through the publication of the agenda.

PREPARATION OF STAFF REPORT

Prepared By:
Marshall Eyerman
Chief Financial Officer

Department Head Approval:
Marshall Eyerman
Chief Financial Officer

CITY COUNCIL GOALS

None

CITY COUNCIL STRATEGIC PRIORITIES

1. Economic Development
2. Public Safety
3. Library
4. Infrastructure
5. Beautification, Community Engagement, and Quality of Life
6. Youth Programs

ATTACHMENTS

1. Preliminary Site Plan
2. Cottonwood - Indian Site Location
3. Negotiation Agreement RB Cottonwood and Indian
4. Cottonwood - Indian Surplus

APPROVALS

Revisions	

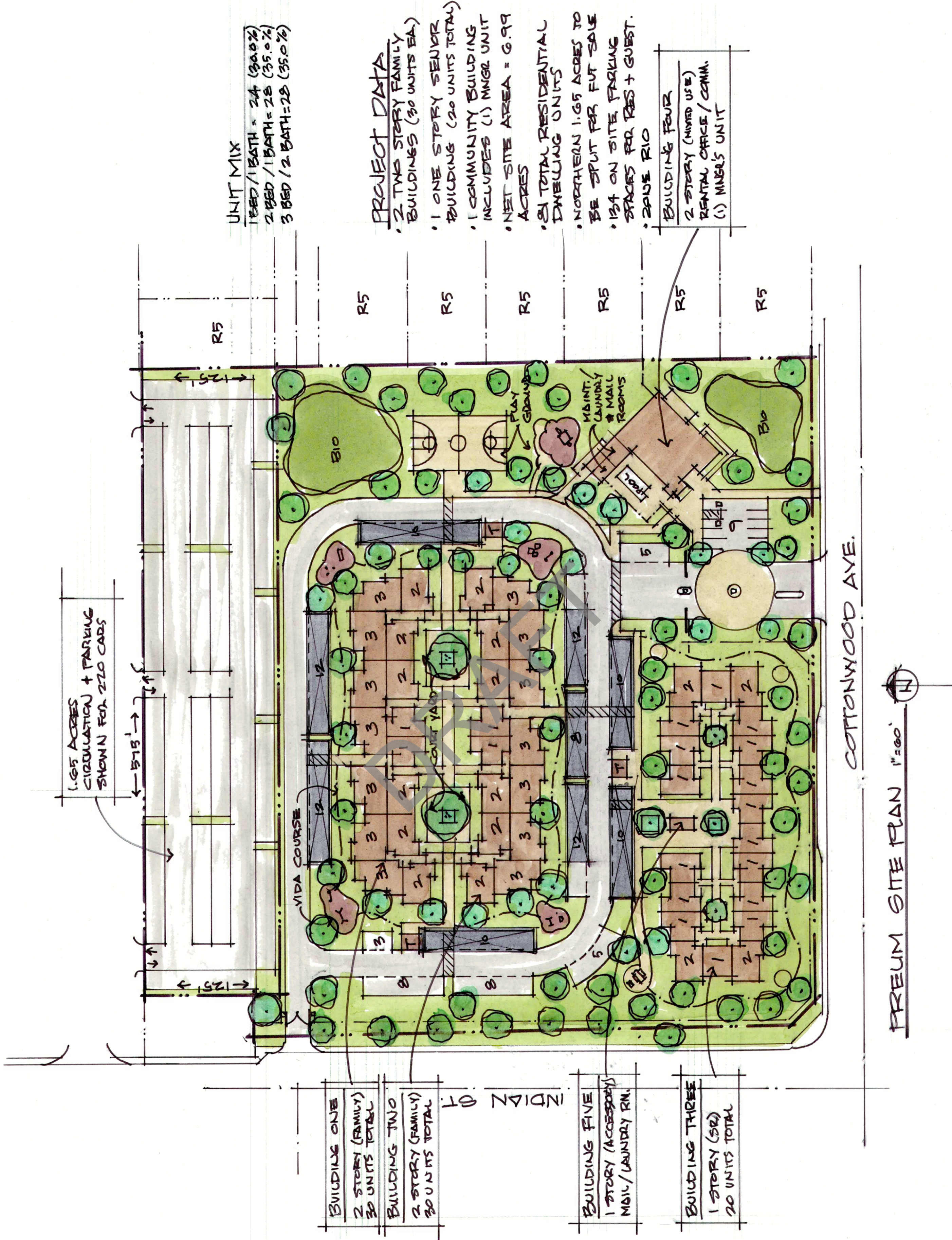
Rancho Belago @ Cottonwood

Family Apartments

North East Corner of
 Cottonwood Ave. & Indian St.

A Proposed Affordable Housing Community

Job No.	Date
1891A	12/29/18
Drawn By	Checked By
WGA	WGA



UNIT MIX
 1 BED / 1 BATH = 24 (36.0%)
 2 BED / 1 BATH = 28 (37.3%)
 3 BED / 2 BATH = 28 (36.7%)

PROJECT DATA
 2 TWO STORY FAMILY BUILDINGS (90 UNITS EA)
 1 ONE STORY SENIOR BUILDING (20 UNITS TOTAL)
 1 COMMUNITY BUILDING INCLUDES (1) NURSERY UNIT
 NET SITE AREA = 6.99 ACRES
 21 TOTAL RESIDENTIAL DWELLING UNITS
 1.65 ACRES TO NORTHWEST
 55' SPIT FOR FUTURE USE
 194 ON SITE PARKING SPACES FOR RES + GUEST.
 20' USE R/O
 BUILDING FOUR
 2 STORY (NURS USE) SENIOR OFFICE / COMM.
 (1) NURSERY UNIT

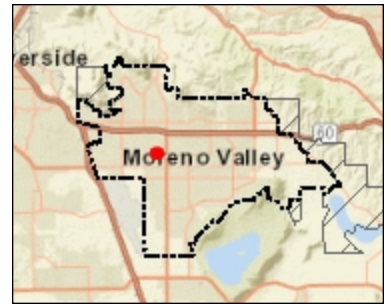
BUILDING ONE
 2 STORY (FAMILY)
 30 UNITS TOTAL

BUILDING TWO
 2 STORY (FAMILY)
 30 UNITS TOTAL

VIDA COURSE

BUILDING FIVE
 1 STORY (ACCESSORY)
 MAIL/LAUNDRY RM.

BUILDING THREE
 1 STORY (S/N)
 20 UNITS TOTAL



Legend

- Public Facilities
 - Public Facilities
 - ★ Fire Stations
- Parcels
- ⊞ City Boundary
- ⊞ Sphere of Influence

Notes

315.5 0 157.74 315.5 Feet

DISCLAIMER: The information shown on this map was compiled from the City of Moreno Valley GIS and Riverside County GIS. The land base and facility information on this map is for display purposes only and should not be relied upon without independent verification as to its accuracy. Riverside County and City of Moreno Valley will not be held responsible for any claims, losses or damages resulting from the use of this map.

EXCLUSIVE NEGOTIATION AGREEMENT

THIS EXCLUSIVE NEGOTIATION AGREEMENT (the “Agreement”) is made and entered into as of _____, 2019 (the “Date of Agreement”), by and between the **MORENO VALLEY HOUSING AUTHORITY**, a public agency corporate and politic (“Authority”) and **RANCHO BELAGO DEVELOPERS, INC.**, a California corporation (the “Developer”). The Developer and the Authority are collectively referred to herein as the “Parties.”

RECITALS

The following recitals are a substantive part of this Agreement.

A. The Developer has informed the Authority that the Developer is interested in developing an affordable rental housing project, to include: approximately eighty (80) rental dwelling units approximately thirty percent (30%) of which will be rented to extremely low income households (up to 30% of median income), with an on-site manager’s unit and the remainder of the units to be rented to very low income households (up to 50% of median income) and lower income households (up to 60% of median income), all income-restricted units to be rented at rents which do not exceed affordable rents as defined under sections 50052.5 and 50053 of the California Health and Safety Code, with recorded affordability covenants to be senior to liens securing financing (the “Basic Development Concept”); the Basic Development Concept would be implemented on all or a portion of certain property at the northeast corner of Cottonwood Avenue and Indian Street consisting of approximately 8.6 acres (the “Property”), within the corporate limits of the City of Moreno Valley. A portion of the units developed may be restricted to senior citizen households.

B. As of the Date of Agreement, title to the Property is held by the Authority.

C. A portion of the Property, which portion consists of approximately 1.65 acres, is believed to be surplus to the needs of the Developer in pursuing the affordable rental housing project as referenced above; such portion (“Surplus Area”) may be disposed of by Authority on a temporary or permanent basis notwithstanding the remaining portions of this Agreement. The Surplus Area is delineated on Exhibit “A” hereto.

D. Based upon its review to date, and although design, price, rent and financial structure have not been determined, the Developer believes that development of the Basic Development Concept is probably feasible and that any financing proposed to be obtained by the Developer is obtainable. Developer contemplates that development under the Basic Development Concept would be accomplished in one phase. The Authority is entering into this Agreement and is thereby affording the Developer the valuable opportunity to negotiate for development of the Property for a limited period of time as set forth herein. The willingness of the Authority to enter into this Agreement is based upon: (i) the Basic Development Concept, (ii) the agreement and acknowledgment that the Developer shall be subject to the normal entitlement process of the City of Moreno Valley, a municipal corporation (the “City”) in connection with the development of the Property; and (iii) the recognition by Developer of the reservation to Authority of the right to address the Surplus Area, which may include disposition to a party unrelated to Developer on terms and conditions to be established by the Authority. Developer agrees that in the event any moneys are generated from the disposition of the Surplus Area, to the extent such moneys would be available for the proposed

affordable housing project or to Developer, such moneys shall be devoted exclusively to the construction of affordable rental housing units on the Property.

E. Based partly upon (i) the interest of the Developer, (ii) assurances by the Developer that the Developer and/or its joint venturers are experienced in the development and operation of high quality affordable residential projects, (iii) the desirability of accomplishing the development, if feasible, of affordable rental housing and other new facilities (together, the “Facilities”), and (iv) the contention of the Developer that the proposed development is feasible, the Parties mutually desire to enter into discussions concerning possible development of the Property generally consistent with the Basic Development Concept.

F. The Parties intend that during and for the period of negotiations set forth herein (the “Negotiation Period”) each will perform certain actions and responsibilities under this Agreement.

NOW, THEREFORE, the Parties mutually agree as follows:

1. Exclusive Agreement to Negotiate.

(a) Required Actions.

(1) Within sixty (60) days from the Date of Agreement, Developer shall submit to the Authority a “Preliminary Development Concept Package,” consisting of the following in addition to a revised project pro forma:

(a) a development proposal generally describing the Facilities, including all development activities proposed to be undertaken (the “Proposed Development”);

(b) identification of specific development entities. Developer has disclosed to the Authority and the Authority acknowledges that Developer may form a single-asset entity for purposes of the development of the improvements;

(c) identification of the architect proposed to be used by the Developer for the Facilities and the entity which will be responsible for on-site management (if other than the Developer);

(d) a preliminary iteration of each of a site plan, elevations and a layout as to the entire Property other than the Surplus Area;

(e) a statement describing the proposed method of financing, including construction and permanent financing and, if applicable, proposed credit enhancement. The person(s) or companies providing debt financing or equity, and, if available, the provider of credit enhancement (if applicable), are to be identified by the Developer. It is contemplated that there will be private financing of the Facilities to be developed on the Property (but excluding the Surplus Area). The Developer is also considering seeking financial participation by the City based upon certain specific purposes, non-general fund revenues currently held by the City;

(f) a detailed construction and operating pro forma which identifies all sources and uses of funds including without limitation design of the Facilities and supporting infrastructure;

(g) a proposed timeline which includes the submittal for any required allocation for tax credits and/or bonds;

(h) identification of one or more candidates for the proposed the Property manager and a list of references for that entity; and

(i) negotiate a Development and Disposition Agreement (“DDA”) with the Authority and the City.

(2) Within one hundred twenty (120) days from the Date of Agreement, Developer shall submit to the Authority a “Proposed Final Development Concept Package,” consisting of the following:

(a) updated information, current as of the date of submittal of the Proposed Final Development Concept Package, as to each and every item set forth under the heading “Preliminary Development Concept Package” and addressing such other and additional matters as may arise during negotiations;

(b) proposed sources of financing, with a description of the terms and conditions of such financing (such identification may or may not be final);

(c) an updated timeline which includes the proposed submittal for any required allocation for tax credits and/or bonds; and

(d) a proposed construction schedule.

(3) The Developer shall bear the cost for its performance under this Agreement.

(4) The Authority and the Developer will continue to negotiate toward the execution within such period of a DDA with respect to the development and use of the Property; provided that the disposition of the Surplus Area shall be as determined by Authority. Disposition of financeable interests as to portions of the Property are to take place based upon the imminent recording of a construction loan and commencement of construction of the improvements. During the term of this Agreement, the Authority will negotiate exclusively with Developer concerning that portion of the Property other than the Surplus Area. If a DDA is signed, it shall supersede this Agreement.

(b) Term. The term of the Negotiation Period shall be two hundred seventy (270) days. As of the two hundred seventieth (270th) day after the Date of Agreement, this Agreement shall automatically terminate unless this Agreement has been mutually extended by the Authority and the Developer. Notwithstanding the foregoing, if a DDA is entered into between the Authority and the Developer prior to the two hundred seventieth (270th) day after the Date of Agreement, this Agreement shall be deemed terminated upon the approval of the DDA by the Authority. In addition, if Developer determines that it is unlikely that the Parties will reach agreement on a DDA, Developer will promptly inform the Authority in writing, in which event this Agreement shall be deemed terminated upon confirmation by the Authority to Developer that it has received such a writing and that this Agreement is deemed terminated forthwith.

(c) Agreement to Negotiate. The Authority (by and through its staff and consultants) and Developer agree that for the term of the Negotiation Period (whether said period expires or is earlier terminated by the provisions herein) each party shall negotiate diligently and in good faith to carry out its obligations under this Agreement. The Developer acknowledges that the Authority holds title to the Property. The Developer expressly agrees and acknowledges that its rights pursuant to this Agreement are subject to and based upon compliance by the Developer with this Agreement (including without limitation the making of all submittals required pursuant to this Agreement, in short conformity with this Agreement).

(d) Supplemental Progress Reports. In addition to the information required in Section 1 above, for so long as this Agreement remains in effect Developer agrees to make bi-weekly oral progress reports and monthly written reports to the Executive Director or his designated representatives of the Authority advising the Authority on all matters and all studies being made.

2. **No Predetermination of Authority or City Discretion.** The Parties agree and acknowledge that nothing in this Agreement in any respect does or shall be construed to affect or prejudice the exercise of the Authority's or the City's discretion. The Developer acknowledges in this regard that the feasibility of the Developer's proposal has not been finally determined, and further that, at the discretion of the City, an environmental review will be prepared and circulated for comment by the City, if the ground lease of a portion of the Property occurs. Further, nothing in this Agreement in any respect does or shall be construed to affect or prejudice the Authority's or the City's discretion to consider, negotiate, or undertake the acquisition and/or development of any portion of the Property (including without limitation the Surplus Area), or shall affect the Authority's or the City's compliance with the laws, rules, and regulations governing land uses, environmental review, or disposition of interests in the Property or portions thereof.

3. **Environmental and Other Requirements.** Certain federal, state and local environmental requirements (including, but without limitation, the National Environmental Policy Act ["NEPA"], the California Environmental Quality Act of 1970, Public Resources Code Section 21000, et seq. ["CEQA"], and regulations promulgated pursuant thereto) may be applicable to the Proposed Development. Pursuant to such requirements, certain environmental documents may be required to be prepared and certified for the Proposed Development. The Authority, by this Agreement, undertakes no obligation to pay any costs associated with such environmental documents and to supply data and information both to determine the impact of the development on the environment and to assist in the preparation of any necessary environmental documents.

4. **Costs and Expenses.** Except as otherwise provided in this Agreement, each party shall be responsible for its own costs and expenses in connection with any activities and negotiations undertaken in connection with the performance of its obligations under this Agreement.

5. **No Change in Developer or its Constituent Members.** The Developer shall within sixty (60) days of this Agreement make full disclosure to the Authority of all pertinent information concerning the Developer, including any joint venture partners. The qualifications of the Developer are of particular interest to the Authority. Consequently, no person or entity, whether a voluntary or involuntary successor of Developer, shall acquire any rights or powers under this Agreement nor shall the Developer assign all or any part of this Agreement without the prior written approval of the Authority, which approval the Authority may grant, withhold, condition, or deny at its sole and absolute discretion. Any other purported transfer, voluntarily or by operation of law, shall be

absolutely null and void and shall confer no rights whatsoever upon any purported assignee or transferee.

6. **Lead Negotiators.** The Executive Director of the Authority (the “Executive Director”), or his designee, shall be the lead negotiator for the Authority with respect to the subject matter of this Agreement; provided, however, that the Authority, reserves its rights to consider and approve or disapprove the proposed DDA. James M. Jernigan and his approved designee shall be the lead negotiator(s) for the Developer with respect to the subject matter of this Agreement.

7. **Non-Discrimination.** Developer shall not discriminate against nor segregate, any person, or group of persons on account of sex, race, color, marital status, religion, creed, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall the Developer establish or permit any such practice or practices of discrimination or segregation in the selection, location, number, use, or occupancy of tenants, lessees, subtenants, sublessees or vendees of the land.

8. **Address for Notices.** Any notices pursuant to this Agreement shall be in writing and sent (i) by Federal Express (or other established express delivery service which maintains delivery records), (ii) by hand delivery, or (iii) by certified or registered mail, postage prepaid, return receipt requested, to the following addresses:

To Authority: MORENO VALLEY HOUSING AUTHORITY
14177 Frederick Street
Moreno Valley, California 92552-0805
Attention: Executive Director

To Developer: RANCHO BELAGO DEVELOPERS, INC.
Attention: James M. Jernigan
27700 Kalmia Avenue
Rancho Belago, California 92128

9. **Default.** Failure by either party to perform one or more of its duties as provided in this Agreement shall constitute an event of default under this Agreement. The non-defaulting party shall give written notice of a default to the defaulting party, specifying the nature of the default and the action required to cure the default.

10. **Remedies for Breach of Agreement.** In the event of an uncured default under this Agreement, the sole remedy of the nondefaulting party shall be to terminate this Agreement. Following such termination, neither party shall have any further rights, remedies or obligations under this Agreement. Neither party shall have any liability to the other for monetary damages or specific performance for the breach of this Agreement, or failure to reach agreement on a DDA, and each party hereby waives and releases any such rights or claims it may otherwise have at law or at equity. Furthermore, the Developer knowingly agrees that it shall have no right to specific performance for conveyance of, nor to claim any right of title or interest in the Property or any portion thereof. The City has no duties under this Agreement.

11. **Termination.** This Agreement shall: (i) automatically terminate at the time(s) set forth in Section 1(b) above, and (ii) terminate prior to the time(s) set forth in Section 1(b) above in

the event the Developer shall fail to perform its obligations hereunder to the reasonable satisfaction of the Executive Director; provided that prior to termination under part (ii) of this paragraph d., the Authority shall provide the Developer with notice of the failures and 10 days in which to cure. In addition, the parties agree that if either party shall determine that it is infeasible to proceed with the Basic Development Concept or if the development of the Property, consistent with such Basic Development Concept, does not appear to either party to be economically sound and feasible, either party may, upon ten (10) days' written notice to the other party, terminate this Agreement. Upon termination of this Agreement, whether upon expiration of the Negotiation Period or otherwise, both Parties knowingly agree that neither Party shall have any further rights or remedies to the other and the Developer shall have no rights in respect to the Property.

12. **Time of Essence.** Time is of the essence of every portion of this Agreement in which time is a material part. During the Negotiation Period the time periods set forth in this Agreement for the performance obligations hereunder shall apply and commence upon a complete submittal of the applicable information or occurrence of an applicable event. In no event shall an incomplete submittal by the Developer trigger any of the Authority's obligations of review, approval and/or performance hereunder; provided, however that the Authority shall notify the Developer of an incomplete submittal as soon as is practicable and in no event later than the applicable time set forth for the Authority's action on the particular item in question. Further, the time periods set forth herein are outside dates of performance. In the event a party completes a performance item earlier than the time required hereunder, the time for the next performance obligation of a party shall commence. Thus, the Parties agree that the requirements hereunder may occur and be completed in a shorter time frame than set forth herein.

13. **Real Estate Commissions.** Neither the City nor the Authority shall be liable for any real estate commission or brokerage fees which may arise with respect to this Agreement or the Property.

14. **Developer Not an Agent.** The Developer is not an agent of the Authority or the City.

15. **Press Releases.** The Developer agrees to discuss any press releases with the Executive Director prior to disclosure in order to assess whether it is appropriate at that time to publish a press release, as well as to assure accuracy and consistency of the information.

16. **Entire Agreement.** This Agreement constitutes the entire understanding and agreement of the parties, integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties or their predecessors in interest with respect to all or any part of the subject matter hereof.

17. **Agreement Does Not Constitute Development Approval.** The Authority reserves final discretion and approval as to any DDA and all proceedings and decisions in connection therewith. This Agreement shall not be construed as a grant of development rights or land use entitlements to construct the Proposed Development or any other project. All design, architectural, and building plans for the Proposed Development shall be subject to the review and approval of the Authority and the City. By its execution of this Agreement, the Authority is not committing itself to or agreeing to undertake the disposition of a financeable interest in the Property or other real property to the Developer, or any other acts or activities requiring the subsequent independent exercise of discretion by the Authority, the City, or any agency or department thereof.

18. **No Third Party Beneficiaries Except City.** The City shall be a third party beneficiary of this Agreement. Except for the City, there shall be no third party beneficiaries of this Agreement.

19. **Governing Law.** This Agreement shall be construed in accordance with the laws of the State of California.

20. **Implementation of Agreement.** The Authority shall maintain authority to implement this Agreement through the Executive Director or his or her duly authorized representative. The Executive Director shall have the authority to issue interpretations, waive provisions, and/or enter into certain amendments of this Agreement on behalf of the Authority so long as such actions do not materially or substantially change the uses or concept of the Proposed Development, or add to the costs or risks incurred or to be incurred by the Authority as specified herein, and such interpretations, waivers and/or amendments may include extensions of time to perform. All other materials and/or substantive interpretations, waivers, or amendments shall require the collective consideration, action and written consent of the governing board of the Authority.

(signatures on following page)

DRAFT

NOW THEREFORE, the Parties have executed this Agreement as of the date and year first set forth above.

AUTHORITY:

**MORENO VALLEY HOUSING
AUTHORITY**, a public body corporate and
politic

By: _____
Thomas M. DeSantis
Its: Executive Director

DEVELOPER:

**RANCHO BELAGO DEVELOPERS,
INC.**, a California corporation

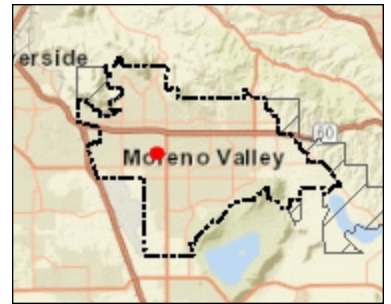
By: _____
James M. Jernigan
Its: President

DRAFT

EXHIBIT "A"

MAP OF THE SURPLUS AREA

DRAFT



Legend

- Public Facilities
 - Public Facilities
 - ★ Fire Stations
- Parcels
- ⊞ City Boundary
- ⊞ Sphere of Influence

Notes

315.5 0 157.74 315.5 Feet

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