

EXCLUSIVE NEGOTIATING AGREEMENT

This Exclusive Negotiating Agreement (“Agreement”) is entered into this ___ day of _____, 2021 (the “Effective Date”), by and between the City of San Luis Obispo, a California charter municipal corporation (“the City”) and Ecologistics, a California non-profit corporation, through the Peace Project, an unincorporated association which operates under fiscal sponsorship by Ecologistics, and Smart Share Housing Solutions, Inc., a California non-profit organization. These entities shall be jointly referred to as the “Parties”. Ecologistics, operating through the Peace Project, and Smart Share Housing Solutions shall be jointly referred to as the “Project Partners”.

RECITALS

WHEREAS, the City is the legal owner of the property located at 466 Dana Street in San Luis Obispo, California (the “Property”) commonly known as the Rosa Butron de Canet Adobe; and

WHEREAS, the City received the Property as a life estate gift from Mary Gail Black in 1989 and desires to preserve and maintain the historic adobe structure, trees, and grounds that comprise the Property, as well as public recreational uses, all in keeping with the donative intent of the gift; and

WHEREAS, in March 2020, pursuant to City Council direction, the City issued a Request for Information (“RFI”) soliciting community partners that may be interested in working with the City towards restoration, adaptive reuse, and long-term stewardship of the City’s Rosa Butron de Canet Adobe. Further, it was anticipated at this time that the chosen community partner(s) would enter into a negotiation period with the City, and if all parties choose to move forward following the negotiation period, the Parties would enter into a long-term lease agreement for use of the site; and

WHEREAS, the City received meritorious responses to the RFI from both the Peace Project and Smart Share Housing Solutions. Through subsequent conversations, both groups entered into a Memorandum of Understanding (“MOU”) dated August 13, 2020, and incorporated herein by reference, in order to set forth a vision for a shared project to be known as the Waterman Peace Village (“Peace Village”), as well as identification of tasks and responsibilities agreed upon by both groups; and

WHEREAS, the Peace Village project, as currently described, entails rehabilitation and adaptive re-use of the adobe structure, construction of a new multi-use straw bale studio facility, and installation of tiny housing units, together with related on-site and off-site (if any) improvements on or appurtenant to the Property; and

WHEREAS, the Parties recognize that the exact site plan, improvements, and location of improvements that can be accommodated by the Property cannot be determined at this time, and understand that the Property has certain zoning requirements, regulations, and development restrictions including permissible uses, maintenance of trees, street setbacks, creek protection, and other provisions that affect the net buildable and usable land; and

WHEREAS, the City’s Financial Management Manual allows exclusive negotiations for long term lease of City property when there is a clear link between the proposal and accomplishment of significant City goals, plans or policies; and

WHEREAS, the City considers the restoration, adaptive reuse, and long-term stewardship of the Property to be in the public interest and in accordance with the City’s goals and policies.

NOW, THEREFORE, in consideration of the mutual covenants, conditions, promises and agreements herein set forth, the parties agree as follows:

AGREEMENT

1. **RECITALS.** The above Recitals are true and are incorporated herein by reference.
2. **TERM.** This Agreement shall commence upon the Effective Date and shall continue in effect for a period of two (2) years (the “Term”), unless sooner terminated as provided herein. The Parties may extend the Term of this Agreement in writing upon mutual consent.
3. **PURPOSE.** The purpose of this Agreement is to enable the Parties to explore the feasibility of designing, permitting, constructing, and financing the Peace Village on the Property.
4. **CITY’S OBLIGATIONS.** The City shall, during the Term of this Agreement:
 - a. **Exclusivity.** Negotiate exclusively with the Project Partners as the future tenant of the Property.
 - b. **Project Entitlements and Permitting Requirements.** The City will work with the Project Partners to review zoning and General Plan requirements and any other applicable local, state, or federal regulations. The intent of this portion of the Agreement is for the Parties to reach an understanding of the legally permissible uses and restrictions on the Property; however, the City legally cannot, and therefore does not, contractually agree as to how it will exercise its legislative authority to administer the General Plan and its zoning and land use authority.
 - c. **Environmental Review.** The City will act as Lead Agency pursuant to the requirements of the California Environmental Quality Act. If any project-specific environmental documentation is necessary in order for the City to conduct its environmental review, such documentation shall be at the Project Partners sole cost and expense.
5. **PROJECT PARTNERS’ OBLIGATIONS.** Project Partners shall, during the term of this Agreement:
 - a. **Non-Profit Status.** Be a California non-profit corporation in good standing and be exempt from state and federal income taxes under section 501 (c) (3) of the Internal Revenue Code.
 - b. **Proof of Financial Ability.** Provide to the City's reasonable satisfaction that it has the financial ability to design, construct and operate the Peace Village on the Property. At a minimum the Project Partners shall:
 - i. **Preliminary Cost Estimates.** Provide the City with preliminary capital development cost estimates (including but not limited to planning, design, engineering and construction) and two (2) year operating cost estimates, within these established timeframes:
 - Primary Component Plan: Smart Share Housing Solutions and Peace Project, jointly, for the adobe rehab, initial site infrastructure and public

neighborhood park installation; by one year from effective date of this agreement;

-Secondary Component Plan S1: Smart Share, solely, for the tiny housing unit component; by one year of effective date of this agreement; and

-Secondary Component Plan S2: Peace Project, solely, for the New Studio component; by two years from the effective date of this agreement.

Inability of Smart Share to provide cost estimates for its housing project or the Peace Project to provide cost for its New Studio project will not prevent the Primary Component Plan, adobe rehab, or other secondary project component.

Cost estimates will be updated as design progresses, at least every 6 months.

The Project Partners will include the payment of prevailing wages in estimates for construction.

- ii. **Fundraising Plans.** Provide the City with fundraising and / or financing plans with milestones that are acceptable to, and approved by, the City Manager, whose approval shall not be unreasonably withheld, delayed or conditioned, within these established timeframes:

-Primary Component Plan: Smart Share Housing Solutions and Peace Project, jointly, for the adobe rehabilitation, initial site infrastructure and public neighborhood park installation; by one year of effective date of this agreement;

-Secondary Component Plan S1: Smart Share, solely, for the tiny housing unit component; by one year of effective date of this agreement; and

-Secondary Component Plan S2: Peace Project, solely, for the New Studio component; by two years from the effective date of this agreement.

Inability of Smart Share to provide cost estimates for its housing project or the Peace Project to provide cost for its New Studio project will not prevent the Primary Component Plan, adobe rehabilitation, or other secondary component.

Milestones shall, at a minimum, prior to commencement of lease negotiations demonstrate to the City Finance Director's reasonable satisfaction that the Project Partners have available at least 50% of all the funds necessary to design and construct the Primary component, at a minimum, and/or either or both of the Secondary Components in addition to the Primary Component. "Funds necessary" may include cash on hand, donor pledges or evidence of financing.

Inability for one or other of the parties (i.e. the Peace Project to fund and construct its Secondary New Studio project or Smart Share to fund and construct its Secondary housing project) will not prevent the Primary Component adobe rehabilitation and other project components.

- iii. **Annual Financials.** Annually, commencing on or before December 31st of 2022, provide the City with a current financial statement, copy of most recent filed state and federal tax returns, and copies of current bank statements, to demonstrate fundraising results for the Peace Village.
- iv. **Formal Development Application.** Finalize and submit a formal development application for the Peace Village to the City.

- v. **Compensation for City Review Costs.** Discuss and finalize how City processing and review costs will be funded. Notwithstanding, parties will agree to seek cost estimates prior to entering into lease.
 - c. **Environmental Review Information.** Provide the City promptly with all information necessary to conduct any subsequent environmental review of the Peace Village that may be necessary. This information includes, but is not limited to, square footage of structures; square footage of various uses such as public or common areas, storage, studio, and other accessory structures, and any other information deemed necessary by City to conduct its evaluation and inform its environmental determination.
6. **TERMINATION.** Either the City or Project Partners may terminate this Agreement with or without cause and without liability to the other party at any time by providing forty-five (45) days' written notice to the other party.
7. **CONDITIONS PRECEDENT TO LEASE NEGOTIATION AND EXECUTION.** All of the following conditions must be met as conditions precedent prior to lease execution for the Property:
- a. **Lease negotiation:**
 - i. **Project Due Diligence.** The Parties have reviewed zoning and General Plan requirements and any other applicable local, state, or federal regulations and agree with the likely conditions and requirements that will be necessary to carry out the project.
 - ii. **Availability of Funds for Design, Construction, and Operation.** Prior to execution of the lease, Project Partners demonstrate to the City Manager's reasonable satisfaction that they have met all applicable financial milestones in the fundraising and financing plan approved by the City Manager, at a minimum, for Primary Component, adobe rehab and public park.
 - iii. **Obligations Met.** Both City and Project Partners have met all of their respective obligations under the Agreement, for Primary Component, at a minimum, and agree that the Peace Village appears economically feasible, physically possible, and legally permissible.
 - b. **Non-Profit Status.** Project Partners have established and maintain non-profit and tax-exempt status under applicable state and federal law.
 - c. **Design and Construction Schedule.** Prior to lease execution, Project Partners shall provide, to the City's Community Development Director's reasonable satisfaction, a design and construction schedule, demonstrating, at a minimum, the Peace Village will be constructed and completed within 7 years of the execution of the long-term lease, allowing for Primary and Secondary component phasing, and the potential for either Secondary component to be removed from the project description, without sacrificing the project as a whole, as described in section 5.
8. **GENERAL LEASE TERMS.** As the Parties enter into the exclusive negotiations, the Parties desire that the lease include the following general provisions; provided, the actual language of each provision is subject to further negotiation, and most material terms and provisions of the

lease have not yet been discussed. The City shall not lease the land for minimal rent unless the lease is completely acceptable to the City and approved by the City Attorney. The following provisions serve as guidelines of the Parties' general intent but nothing in this paragraph shall be interpreted as an agreement or offer to lease upon the terms, provisions or language set forth below.

- a. Project Partners shall commence construction of the Peace Village no later than one (1) year after the execution of the lease agreement and shall complete construction of the Peace Village within seven (7) years after execution of lease. Project Partners shall not commence construction of the Peace Village unless and until they have demonstrated, to the City's Finance Manager's reasonable satisfaction prior to expiration of the year within which Project Partners are to commence construction, that they have all of the funds necessary to design and construct, at a minimum, the Primary Component (adobe rehabilitation, site infrastructure and public park construction), as well as operate for at least two (2) years after completion of construction, plus a 15% contingency, available in cash or approved financing (the "Required Funds").

Secondary component tiny house construction will commence within 3 years, and;

Secondary component New Studio construction will commence within 5 years of lease agreement.

If Project Partners do not timely demonstrate that they have the Required Funds, or if Project Partners fail to timely begin or timely complete construction of the Primary Component, Project Partners shall be in substantial default, and the lease shall automatically terminate unless City agrees otherwise in writing. Failure of Smart Share or Peace Project to complete either one or both of the Secondary Components will not place Project Partners in default.

The Peace Village shall be deemed complete only upon issuance of a Certificate(s) of Occupancy.

- b. Minimum 55-year term with the right of first refusal for additional lease years provided that the Project Partners are in good standing at the time of the renewal.
- c. Rent of \$1.00 per year provided Project Partners:
 - i. Are a California non-profit corporation in good standing; and
 - ii. Are a federal and state income tax exempt 501 (c)(3) entity; and use the Property solely as described herein, consistent with the RFI and other related City approved community uses.
 - iii. Project Partner's failure to maintain their non-profit corporate status in good standing or its tax-exempt status under applicable state and federal law or to use the Property for any purpose other than as approved and related City approved community uses during the term or any extended term of the lease, shall be a material breach of the lease. In the event any such breach occurs, City may, at its option, either terminate the lease or raise the rent to fair market rates for neighboring commercial uses.
- d. Project Partners shall design, construct, operate and maintain the Peace Village and all street frontage and landscaping, utility extensions and connections, and other improvements, based on agreed upon and approved plans and specifications, at its sole

cost and expense without any assistance from the City, unless otherwise agreed to by the City.

- e. Project Partners agree and understand that the City's Cultural Heritage Committee shall have the opportunity to review the Peace Village project in order to ensure consistency with the City's Historic Preservation Guidelines and any other applicable guidance or regulations, including the Secretary of the Interior's Standards for Historic Preservation.
- f. Project Partners shall be responsible for meeting or mitigating all conditions, impacts, mitigations and requirements identified in the environmental review and entitlement processes for issues associated with the Project Partners' operation of the Peace Village on the Property, at Project Partners' sole cost and expense. Some cost sharing between the City and Project Partners may be possible, i.e. tree maintenance, hardscape improvements, historic structure repair and infrastructure costs, where they support public access and purpose.
- g. Project Partners shall take all reasonable efforts to preserve, protect, and maintain the heritage trees and grounds of the Property in accordance with a Tree Preservation and Protection Plan agreed to by the Parties.
- h. If the Project Partners are not in material compliance with the Lease or ceases to be financially solvent and to maintain the Property in a commercially reasonable manner, the lease shall contain provisions for the City to declare a default of the Lease, for Project Partners to effect a reasonable cure of the default(s), and for the City to terminate the Lease if the default(s) are not cured pursuant to the terms and conditions of the Lease, and for the Remainder Property to revert to the City.
- i. Prevailing wages shall be paid by Project Partners for construction of the Peace Village and related improvements where applicable.
- j. Payment of possessory interest and other taxes by Project Partners.
- k. Other long-term landlord protection ground lease provisions, such as City standard insurance requirements, indemnity provisions, attorneys' fees, prohibitions against nuisance, waste, requiring maintenance at the Project Partners' expense.
- l. The City will not subordinate its interest in the Property to any financing.

10. AMENDMENT. This Agreement may be extended, amended, or modified with the mutual consent of the parties. Any such extension, amendment or modification from the terms of this Agreement shall be in writing and shall be effective only upon approval by the City Council.

11. COMPLETE AGREEMENT. This written Agreement, including all writings specifically incorporated herein by reference, shall constitute the complete agreement between the parties. No oral agreement, understanding or representation not reduced to writing and specifically incorporated herein shall be of any force or effect, nor shall any such oral agreement, understanding or representation be binding upon the parties.

12. NOTICE. All notices to the parties shall be in writing and shall be sent by United States mail, postage prepaid by registered or certified mail addressed as follows:

13. AUTHORITY TO EXECUTE AGREEMENT. Both City and Project Partners warrant and represent that each individual executing the Agreement on behalf of each party is a person duly authorized and empowered to execute agreements for such party.

IN WITNESS WHEREOF, the parties execute this Agreement on the day and year first above written.

CITY OF SAN LUIS OBISPO

Mayor

ATTEST:

City Clerk

Approved:

City Manager

Approved to as form:

City Attorney

ECOLOGISTICS, a California non-profit corporation, as fiscal sponsor for The Peace Project

President

SMART SHARE HOUSING SOLUTIONS, a California non-profit corporation

President