

September 29, 2022

Housing Authority Board of Commissioners
Clackamas County

Approval of an Exclusive Negotiation Agreement (ENA) with
Related Northwest for the Redevelopment of Hillside Park.
No County General Funds are involved.

Purpose/Outcome	Approval of an Exclusive Negotiation Agreement (“ENA”) with Related Northwest for the Redevelopment of Hillside Park. This ENA obligates both parties to negotiate in good faith the terms of a Disposition and Development Agreement (“DDA”). It requires HACC to refrain from marketing the Property and negotiating with other parties during the Exclusive Negotiation Period and allows Related Northwest to complete preliminary due diligence activities on the Property during Exclusive Negotiation Period. It is not a binding commitment by any party to execute further agreements.
Dollar Amount and Fiscal Impact	Should HACC and Related Northwest be unable to agree upon and execute the DDA(s) prior to the end of the Exclusive Negotiating Period, HACC will reimburse Related Northwest for eligible consultant costs expended during the Exclusive Negotiating Period up to an amount of \$100,000.
Funding Source	Metro Affordable Housing Bonds funds
Duration	The Exclusive Negotiation Period starts once the ENA is executed by both parties and expires December 31, 2022, with up to four 6-month options to extend to be exercised by Related Northwest upon mutual written consent of both parties. Future extensions, if any, of the Exclusive Negotiation Period will be negotiated prior to expiration of the ENA.
Previous Board Action/Review	08/01/22 – Development Update: Notifying Board of HACC’s selection of Related Northwest, one of six teams to respond to the RFEI, to enter into exclusive negotiations for the redevelopment of Hillside Park. 01/10/22 – Memo to Board: Intent to release Requests for Expressions of Interest (RFEI) - Hillside Park Redevelopment Developer Solicitation 08/15/21 – Approval of Resolution 1956 Authorizing the Housing Authority’s Submittal of a Section 18 Demolition and Disposition Application for Hillside Park Public Housing Complex 11/30/20 – Provided Letter of Support Section 18 Demolition & Disposition Application 10/03/19 – Approval of Hillside Park Master Plan Design Concept 10/01/19 – Study Session Update on Redevelopment Plans 08/06/19 – Study Session Project Update & Proposed Design Concept

Strategic Plan Alignment	This funding aligns with the County’s strategic priority to ensure safe, healthy, and secure communities by increasing the inventory of affordable housing units in Clackamas County.
Counsel Review	Reviewed by County Counsel 9/8/22 by Andrew Naylor
Procurement Review	1. Was the item processed through Procurement? yes <input checked="" type="checkbox"/> no <input type="checkbox"/> 2. If no, provide brief explanation.
Contact Person	Devin Ellin, Director of Housing Development, HACC 971-227-0472
Contract No.	H3S #10843, Board Order #1972

BACKGROUND:

In coordination with County Counsel and HACC’s outside counsel, HACC released a Request for Expressions of Interest (RFEI) seeking conceptual proposals for the redevelopment of Hillside Park. HACC received six competitive submissions from qualified development teams. After a rigorous review process, HACC’s selection committee choose to enter into exclusive negotiations with Related Northwest. Since May, Related Northwest, HACC, and County Counsel have been drafting and negotiating the terms the Exclusive Negotiation Agreement (“ENA”) and working through Phase 1 due diligence and concept planning.

Approval of the ENA with Related Northwest obligates both parties to negotiate in good faith the terms of a binding agreement that will govern the final disposition of the property and set forth the terms of the transaction. It requires HACC to refrain from marketing the Property and negotiating with other parties during the Exclusive Negotiation Period and allows Related Northwest to complete preliminary due diligence activities on the Property during Exclusive Negotiation Period. It is not a binding commitment by any party to execute further agreements.

The ENA will serve as the basis for the negotiation and execution of a subsequent binding agreement called a Disposition and Development Agreement (“DDA”). The DDA will govern the final disposition of the property setting forth the terms of the transaction.

The ENA includes provisions reserving to the Authority the right to terminate negotiations with Related Northwest, if HACC in its sole discretion, determines that negotiations during the pre-development phase are not progressing in a satisfactorily timely manner.

All binding agreements are contingent upon Board review and approval. HACC staff will keep the Board apprised of the process as concepts progress and feasible propositions develop.

The redevelopment of Hillside Park aligns with the County’s Performance Clackamas goal of ensuring safe, healthy and secure communities by providing up to 400 units of new mixed-income (including affordable, workforce & market-rate) housing and replacing 100 units of near-obsolete public housing with newly constructed affordable housing.

RECOMMENDATION:

Staff recommends the Board approve HACC entering into an Exclusive Negotiation Agreement with Related Northwest for the Redevelopment of Hillside Park.

The Exclusive Negotiation Agreement contains four optional 6-month renewals to extend the time in which to negotiate a final agreement. Staff further requests this Board execute an order delegating authority to sign such optional renewals to the HACC's executive director. This request is for purposes of administrative efficiency in the execution of the non-substantive extensions of time to negotiate. HACC will provide this Board with updates of the progress of the negotiations as they progress.

ATTACHMENTS:

Exclusive Negotiation Agreement for Hillside Park Redevelopment Site

Respectfully submitted,



Rodney A. Cook, Director
Health, Housing and Human Services

**BEFORE THE BOARD OF COMMISSIONERS
FOR THE HOUSING AUTHORITY OF CLACKAMAS COUNTY**

In the Matter of Approving Limited
Delegation of Authority to Sign
Extensions of Time to Exclusive
Negotiation Agreement for Hillside
Park Redevelopment Site



Board Order No. 1972
Page 1 of 1

Whereas, the Board of Commissioners for the Housing Authority of Clackamas County (the “Board”) has authority to sign all real property contracts;

Whereas, the Board approved an exclusive negotiation agreement (the “Agreement”) with the Related Companies of California LLC, dba Related Northwest (“Developer”) that obligates the parties to negotiate, in good faith, towards a possible disposition and development agreement;

Whereas, the Agreements provides that its term may be extended for an additional four 6-month periods to allow the parties additional time to continue negotiations;

Whereas, staff has requested, and the Board has agreed, that in the interest of administrative efficiency, the Executive Director of the Housing Authority of Clackamas County should be delegated limited signing authority to approve such extensions of time.

NOW THEREFORE, the Board of Commissioners for the Housing Authority of Clackamas County orders as follows:

1. The Executive Director of the Housing Authority of Clackamas County is hereby delegated limited authority to approve and sign any of the optional 6-month extensions of time permitted under the Agreement.

DATED this ____ day of _____, 2022

**BOARD OF COMMISSIONERS FOR THE HOUSING
AUTHORITY OF CLACKAMAS COUNTY**

Chair

Recording Secretary



September 12, 2022

Stef Kondor

Senior Vice President, Development
The Related Companies of California LLC, dba Related Northwest
208 SW First Avenue, Suite 240
Portland, Oregon 97204
Via Email: skondor@related.com

Devin Ellin

Director of Housing Development
Housing Authority of Clackamas County
13930 Gain Street
Oregon City, Oregon 97045
Via Email: DEllin@clackamas.us

Re: Exclusive Negotiation Agreement for Hillside Park Redevelopment Site

Dear Ms. Kondor,

Thank you for your outstanding response to the Hillside Park ~13.7-Acre Site ("Site") Request for Expressions of Interest. The Housing Authority of Clackamas County ("HACC") believes the elements of your proposal, including affordable housing development with curated services, are best suited for the site which today consists of Tax Lot 11E25CD00102 currently owned by HACC called the "**Property.**"

HACC believes the development concepts provided in your response will support the Clackamas County Local Implementation Strategy objectives and be consistent with the approved Hillside Master Plan.

This Exclusive Negotiation Agreement obligates both parties to negotiate in good faith the terms of a Disposition and Development Agreement ("DDA"), including the provisions listed below; requires HACC to refrain from marketing the Property and negotiating with other parties during the Exclusive Negotiation Period (as defined below); and allows Related Northwest to complete preliminary due diligence activities on the Property during Exclusive Negotiation Period. It is not a binding commitment by any party to execute further agreements. By signing this letter, HACC and you agree to the following terms and conditions:

- 1) The "Exclusive Negotiation" Period starts as of the latest signed date below and expires March 31, 2023 with up to four 6-month options to extend to be exercised upon mutual written consent of both parties. Future extensions, if any, of the Exclusive Negotiation Period will be negotiated prior to expiration of this Agreement.
- 2) During the Exclusive Negotiation Period, Related Northwest will have an exclusive right to negotiate the terms of the DDA with HACC, perform initial due diligence, and determine the property's value and development feasibility. HACC agrees that during the Exclusive Negotiation Period it will not list or advertise the Property, or enter into negotiations for the sale or development of the Property with any other persons or legal entities.
- 3) During the Exclusive Negotiation Period:
 - Related Northwest will begin Property acquisition and redevelopment due diligence;
 - Related Northwest and their design team will hold a joint kickoff charrette meeting with City of Milwaukie staff.
 - Related Northwest will refine cost estimates for any requested public subsidy including infrastructure for right of way improvements, affordable housing, and any parking;
 - Both parties will negotiate and potentially agree upon a disposition and/or land lease terms for the Property; and
 - Both parties will negotiate and potentially agree upon the mix of affordable and market-rate units to be constructed on the Property
 - Both parties will negotiate and potentially agree upon the terms for any "turn-keyed" units for HACC
 - Both parties will negotiate potential other terms of the DDA, including whether or not the Property will be developed in multiple phases (each a "Phase") and the terms applicable to each Phase.
- 4) The parties expect key terms of the DDA may include the following terms:
 - Related Northwest to use good faith efforts to provide all elements of the response to the RFEI with uses that include:
 - i. Affordable Housing
 - ii. Open space
 - iii. Program space within the affordable housing community
 - Understanding of who will demolish existing structures and pursue additional property acquisitions, if any.
 - Conditions precedent to closing which may, subject to further negotiation, include the following:
 - i. HACC to deliver Property free of residents, tenancies or occupants.
 - ii. HACC to approve:

1. Property ownership structure for each Phase
 2. Land write down and/or other public investment
 - iii. Related Northwest to finalize acquisition funding and have evidence of financing commitments
 - iv. Building, site development and land use permits are approved
 - v. Any additional conditions precedent stated in the DDA
- 5) HACC and Related Northwest will meet regularly to discuss project status, including design, programming, budget, etc. Regular meetings identified and mutually agreed upon following kickoff meeting.
- 6) HACC will allow Related Northwest and its consultants reasonable access to the Property upon request, to conduct due diligence, which access will be provided under a separate Permit of Entry. Related Northwest understand that the buildings on site are currently occupied by residents. Related Northwest will provide a minimum of forty eight (48) hours' notice during weekdays before conducting activities onsite that require site or building access.
- 7) Related Northwest will pay for consultant expenses during the Exclusive Negotiating Period in order to complete the physical and financial due diligence that will be necessary to fully underwrite the project and enter into DDA(s). Consultant services may include, but are not limited to, surveys, geotechnical studies, environmental reports, design studies, and legal guidance. Should HACC and Related Northwest be unable to agree upon and execute the DDA(s) prior to the end of the Exclusive Negotiating Period, HACC will reimburse Related Northwest for eligible consultant costs expended during the Exclusive Negotiating Period up to an amount of \$100,000. As used herein, "eligible consultant costs" means costs associated with predevelopment activities including but not limited to architectural design, land surveys, soils reports, environmental reports, appraisals, market studies, and other recoverable development costs.
- 8) HACC expects to commit up to \$57,200,000 of its Metro Housing Bond allocation and 100 project based vouchers to support the development of affordable housing to be spread across the projects and Phases as mutually agreed upon. The allocation of Metro Housing Bond funds will be documented in the DDA(s) and officially committed with receipt of the Metro Concept Endorsement. In addition, HACC anticipates that it will serve as the private activity bond issuer for each 4% LIHTC affordable project on the Property that meets OHCS requirements for HACC issuance.
- 9) The \$57,200,000 Metro Regional Housing Bond funds represents up to 400 units ("Housing Bond Fund Units") of HACC's unit production goals. The Housing Bond Funded Units must proportionately contribute to HACC's unit production goals for 30% Area Median Income ("AMI") units and family sized units. Approximately 40% of

the Housing Bond Funded Units must house households earning 30% of AMI or less and half of the Housing Bond Funded Units must be two-bedroom units or larger. All Housing Bond Funded Units must be restricted at 80% of AMI or less and no more than 10% may be between 61% and 80% of AMI.

- 10) If a final agreement is reached, HACC expects to oversee and submit the HUD Section 18 application on behalf of the project.
- 11) If a final agreement is reached, HACC expects to be responsible for the tenant relocations on the Property. Related Northwest and its team will support these efforts with ample communication and coordination.
- 12) Subject to any applicable laws, statutes, rules, or regulations that may restrict disclosure of such information, HACC agrees to provide Related Northwest any reports and information in its possession or control regarding the condition and tenancy of the Property. These may include:
 - Due diligence materials related to Hillside Park or Hillside Manor property;
 - Plans, specifications, permits, applications, drawings, surveys and studies pertaining to the property, if in HACC's possession;
 - Any other contracts, agreements, etc. that may pertain to the Property.

If Related Northwest does not enter into a DDA with HACC, they will return to HACC all documents and information received from HACC.

- 13) HACC does not intend to use a broker. Should Related Northwest decide to be represented by a broker, they will be responsible for their own brokers' fees.

The anticipated disposition schedule is as follows (subject to additional acquisition timing):

September 2022	HACC approves ENA
September 2022	Sign ENA and commence ENA due diligence and DDA negotiation
March 31, 2023	HACC approves DDA
December 30, 2023 timeframe	Phase 1 Construction start – 18 month construction

***Construction start dates are subject to affordable housing being completely funded.

Please direct any questions to Devin Ellin, Director of Housing Development, at 971-227-0472 or by email at dellin@clackamas.us. This Exclusive Negotiation Agreement is subject to the terms and conditions attached hereto as Exhibit A, and incorporated by this reference herein. If these terms are agreeable, please sign and date this letter below, and return the executed letter.

Sincerely,

Tootie Smith
Chair of the Board of Commissioners for the
Housing Authority of Clackamas County

Approved: _____ Date: _____

Approved as to form: _____
Authorized Signer

This letter agreement is effective as of the date persons with authority to sign on behalf of Related Companies of California LLC, dba Related Northwest, has signed below.

Agreed to by:  _____ Date: **09/13/2022**
Ann Silverberg, CEO Related Companies of California LLC, dba Related
Northwest

Exhibit A

As used herein, "HACC" means the Housing Authority of Clackamas County and "Developer" means the real property developer described in that certain exclusive negotiation agreement ("Agreement") to which this Exhibit A is attached and incorporated.

1. **ACCESS TO RECORDS.** Developer shall maintain books, records, documents, and other evidence, in accordance with generally accepted accounting procedures and practices, sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of the Agreement. HACC and their duly authorized representatives shall have access to the books, documents, papers, and records of Developer, which are directly pertinent to the Agreement for the purpose of making audit, examination, excerpts, and transcripts. Developer shall maintain such books and records for a minimum of six (6) years, or such longer period as may be required by applicable law, following final payment and termination of the Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to the Agreement, whichever date is later.
2. **AVAILABILITY OF FUTURE FUNDS.** Any continuation or extension of the obligation to provide reimbursement pursuant to Section 7 of the Agreement after the end of the fiscal period in which it is written is contingent on a new appropriation for each succeeding fiscal period sufficient to continue to make payments under the Agreement, as determined by the HACC in its sole administrative discretion
3. **COMPLIANCE WITH APPLICABLE LAW.** Developer shall comply with all applicable federal, state and local laws, regulations, executive orders, and ordinances, as such may be amended from time to time. All provisions of law required to be a part of the Agreement, whether listed or otherwise, are hereby integrated and adopted herein. Failure to comply with such obligations is a material breach of the Agreement. Developer shall further comply with all other obligations as may be required by the applicable local, State or Federal agencies providing funding for performance under the Agreement, whether or not specifically referenced herein. Developer agrees to take all necessary steps, and execute and deliver any and all necessary written instruments, to perform under the Agreement including, but not limited to, executing all additional documentation necessary to comply with applicable State or Federal funding requirements.
4. **COUNTERPARTS.** The Agreement may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.
5. **GOVERNING LAW.** The Agreement, and all rights, obligations, and disputes arising out of it, shall be governed and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County without regard to principles of conflicts of law. Any claim, action, or suit between HACC and Developer that arises out of or relates to the performance of the Agreement shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of Oregon. Provided, however, that if any such claim, action, or suit may be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be

construed as a waiver by the HACC of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. Developer, by execution of the Agreement, hereby consents to the personal jurisdiction of the courts referenced in this section.

- 6. RESPONSIBILITY FOR DAMAGES; INDEMNITY.** Developer shall be responsible for all damage to property, injury to persons, and loss, expense which may be caused by, or result from, Developer's performance under the Agreement, or from any act, omission, or neglect of Developer, its subcontractors, agents, or employees. The Developer agrees to indemnify, hold harmless and defend the HACC, Clackamas County, and their officers, elected officials, agents and employees (collectively, the "Indemnified Parties") from and against all claims and actions, and all expenses incidental to the investigation and defense thereof (including reasonable attorney fees), arising out of or based upon Developer's performance under the Agreement, including damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the Developer or the Developer's employees, subcontractors, or agents provided, however, that no Indemnified Party shall be entitled to indemnification under this Section 6 for matters caused by such Indemnified Party's gross negligence or willful misconduct or for any matter arising from the discovery of any pre-existing condition upon the Site. However, neither Developer nor any attorney engaged by Developer shall defend the claim in the name of HACC or Clackamas County, nor purport to act as legal representative of HACC or Clackamas County, without first receiving from the Clackamas County Counsel's Office authority to act as legal counsel for HACC or Clackamas County, nor shall Developer settle any claim on behalf of HACC or Clackamas County without the approval of the Clackamas County Counsel's Office. HACC may, at its election and expense, assume its own defense and settlement.
- 7. OWNERSHIP OF WORK PRODUCT.** In the event the Agreement is terminated without the execution of a binding disposition and/or land lease terms for the Property, Developer shall promptly assign to HACC all of its right, title, and interest in and to any and all of the all third party work product prepared for or commissioned by Developer that results from the Agreement ("Work Product") , on an as-is basis, without representation or warranty provided HACC reimburses Developer for its actual and verifiable costs in developing the Work Product. Developer shall execute such further documents and instruments as HACC may reasonably request in order to fully vest such rights in HACC. Effective upon the assignment of the Work Product to HACC, Developer agrees to waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications. Notwithstanding the above, HACC shall have no rights in any pre-existing Developer intellectual property provided to HACC by Developer in the performance of the Agreement except to copy, use and re-use any such Developer intellectual property for HACC use only. Developer's obligations pursuant to this Section 7 shall survive termination of the Agreement.

Provided, however, that Work Product created using funds jointly acquired by HACC and Developer, or acquired solely by HACC, for pre-development activities including without

limitation, funding provided by the City of Milwaukie for the potential redevelopment of the Property, shall, subject to the terms and conditions of the documentation governing the use of such funding, be the property of HACC.

8. **INDEPENDENT CONTRACTOR STATUS.** The service(s) to be rendered under the Agreement are those of an independent contractor.
9. **LIMITATION OF LIABILITIES.** The Agreement is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.
10. **DEFAULT.** Failure by either Party to negotiate in good faith as provided in this Agreement or otherwise comply with the terms of 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 required action to cure the default. If a default remains uncured fifteen (15) days after receipt by the defaulting Party of such notice, the non-defaulting Party may exercise the remedies set forth in Section 11.
11. **REMEDIES.** If terminated by HACC due to a breach by the Developer, then HACC shall have any remedy available to it in law or equity including, but not limited to, the right to require Developer to repay any funds spent in violation of the Agreement.
12. **NO ATTORNEY FEES.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of the Agreement, each party shall be responsible for its own attorneys' fees and expenses.
13. **MERGER.** THE AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER REFERENCED THEREIN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THE AGREEMENT. NO AMENDMENT, CONSENT, OR WAIVER OF TERMS OF THE AGREEMENT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY ALL PARTIES. ANY SUCH AMENDMENT, CONSENT, OR WAIVER SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. DEVELOPER, BY SIGNING THE AGREEMENT, IS AN INDEPENDENT CONTRACTOR, ACKNOWLEDGES HAVING READ AND UNDERSTOOD THE AGREEMENT, AND DEVELOPER AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.







AS SIG - Hillside Park ENA 09.13.2022

Final Audit Report

2022-09-13

Created:	2022-09-13
By:	Bayley Boggess (BBoggess@clackamas.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAAFNje6NI_oUTvJ9W7kXOKYsvSCwTdwbJ0

"AS SIG - Hillside Park ENA 09.13.2022" History

-  Document created by Bayley Boggess (BBoggess@clackamas.us)
2022-09-13 - 4:57:14 PM GMT- IP address: 76.115.38.40
-  Document emailed to asilverberg@related.com for signature
2022-09-13 - 4:57:55 PM GMT
-  Email viewed by asilverberg@related.com
2022-09-13 - 5:46:19 PM GMT- IP address: 71.202.255.243
-  Signer asilverberg@related.com entered name at signing as Ann Silverberg
2022-09-13 - 5:50:22 PM GMT- IP address: 71.202.255.243
-  Document e-signed by Ann Silverberg (asilverberg@related.com)
Signature Date: 2022-09-13 - 5:50:24 PM GMT - Time Source: server- IP address: 71.202.255.243
-  Agreement completed.
2022-09-13 - 5:50:24 PM GMT

COVER SHEET

- New Agreement/Contract
- Amendment/Change/Extension to _____
- Other _____

Originating County Department: _____

Other party to contract/agreement: _____

Description:

After recording please return to: _____

- County Admin
- Procurement

If applicable, complete the following: _____

Board Agenda Date/Item Number: _____