

Resolution No. **2020-12-15-1403**

STOCKTON CITY COUNCIL

RESOLUTION APPROVING AN EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT WITH RBH GROUP, LLC, FOR A PROPOSED MIXED-USE DEVELOPMENT PROJECT AT SOUTH POINTE LOCATED ALONG WEST WEBER AVENUE

The City of Stockton (the "City") owns property on the South Shore area of Stockton along West Weber Avenue, inclusive of County Assessor Parcel Numbers 145-190-03, 145-270-06, 145-270-09, and 145-270-10; and

RBH Group, LLC, a New Jersey limited liability company, (the "Developer") has submitted a proposal which includes the development of a mixed-use, infill development project; and

The Developer's proposal includes properties owned by the City of Stockton; and

The City supports the proposed project and wishes to execute an Exclusive Negotiating Rights Agreement in order to negotiate with the Developer; and

The City desires to enter into a 180-day Exclusive Negotiating Rights Agreement with Developer during the term of which City and Developer will negotiate the business terms of a Purchase Option and/or Sales Agreement for the project and any other assistance as necessary to undertake the proposed project; now, therefore,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF STOCKTON, AS FOLLOWS:


1. The City finds and declares that RBH Group, LLC, has the expertise necessary to develop the proposed Project outlined in its proposal, attached as Exhibit B to the Exclusive Negotiating Rights Agreement, which is attached hereto as Exhibit 1 and incorporated herein by this reference.

2. RBH Group, LLC, is granted a period of 180 days from the date of execution, with an option to extend an additional 180 days if mutually agreed to, as an exclusive negotiating period in which to negotiate the terms and conditions of a Purchase Option and/or Sales Agreement between Developer and City in connection with the proposed Project.

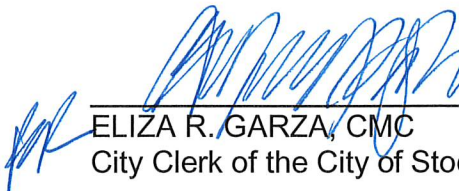
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3. The City Manager is hereby authorized to take whatever actions are necessary and appropriate to carry out the purpose and intent of this Resolution.

PASSED, APPROVED, and ADOPTED December 15, 2020.


MICHAEL D. TUBBS
Mayor of the City of Stockton

ATTEST:


ELIZA R. GARZA, CMC
City Clerk of the City of Stockton



**EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT
FOR DEVELOPMENT OF SOUTH POINTE WITH RBH GROUP, LLC**

This Exclusive Negotiating Rights Agreement (hereinafter referred to as “Agreement”) is made on _____ by and between the **CITY OF STOCKTON**, a municipal corporation, (hereinafter referred to as the “City”), and **RBH GROUP, LLC**, a New Jersey limited liability corporation (hereinafter the “Developer”), on the terms set forth below:

1.1 GOOD FAITH NEGOTIATIONS. During the term of this Agreement, City and Developer (together referred to as “Parties”) agree to negotiate, diligently and in good faith, the terms and conditions of a Purchase Option Agreement and/or Sales Agreement (“Purchase Agreement”) by and between City and Developer for the development of certain real property (the “Site”) known as South Pointe, located within the Downtown Waterfront South Shore area. The Site is described as San Joaquin County Assessor Parcel Numbers 145-190-03, 145-270-06, 145-270-09, and 145-270-10 as shown on the map attached hereto as Exhibit “A” and incorporated herein by this reference.

1.2 The obligation to negotiate in good faith requires the respective Parties to communicate with each other with respect to those issues for which agreement has not been reached, and in such communication to follow reasonable negotiation procedures, including meetings, telephone conversations, and correspondence. The Parties understand that final accord on all issues may not be reached.

1.3 Developer has submitted a project proposal (“Proposal”), a copy of which is attached hereto as Exhibit “B” and incorporated herein by reference. The development is more specifically described in the Proposal but is generally described as a residential mixed-use development. The terms of the Purchase Agreement, including without limitation, the timing, assistance, responsibilities, financing, and schedule for planning and construction of the proposed project shall be the subject of the negotiations.

2. EXCLUSIVE NEGOTIATIONS. City agrees, during the term of this Agreement, to refrain from consideration of proposals from other developers for the Site. City further agrees to not solicit or entertain proposals from others regarding acquisition and/or development of the Site during the term of this Agreement. City may provide information that is publicly available regarding the Site to any person or entity requesting information, but shall not provide any information or details concerning the Developer’s evolving concept for the Site beyond what is contained in Exhibit “B” in the Developer’s Proposal.

3. GOOD FAITH DEPOSIT. In consideration for this Agreement, the Developer will deposit with the City no later than ten (10) days after the City Council approval of the execution of this Agreement, a cash deposit of a Ten Thousand Dollars (\$10,000) fee (“Good Faith Deposit”). The Good Faith Deposit is provided in consideration for this Agreement and is non-refundable.

The City may periodically deduct funds from the Good Faith Deposit to pay the costs and consulting fees incurred and documented by the City in connection with implementing this Agreement. The fees for the following services are anticipated to be paid through deductions from the Good Faith Deposit: appraisal of the Property by a certified appraiser or the preparation of a reuse appraisal of the Property by a real estate economist, public notices, and pro forma review. There shall be no deductions from the Good Faith Deposit for City staff time or overhead expenses. In the event that the Good Faith Deposit is insufficient to pay all of the costs incurred by the City in connection with preparing and implementing this Agreement, the City shall be responsible for such costs from its own resources.

In the event the Developer and City enter into a Purchase Agreement and the Developer acquires the Property, or any portion thereof, from the City, the remaining balance of the Good Faith Deposit payment shall be credited against any cash purchase price paid by Developer to the City.

4. CITY COOPERATION. During the Term of this Agreement, the City shall make good faith efforts to:

- a. Work with Developer to establish a reasonable time schedule, within the Term of this Agreement, for negotiations and drafting of a Purchase Agreement.
- b. Review Developer's renderings and/or plans and determine consistency with the General Plan, zoning, and other relevant land use regulations on the Proposed Site.
- c. Provide Developer with documents in City's possession that would assist Developer with the development of the Site and Developer's responsibilities described in this Agreement.

5. CITY AND DEVELOPER COOPERATION. Both Parties shall mutually make good faith efforts to respond on a timely basis to all submittals and inquiries made by either Party.

6. NEGOTIATION PERIOD. The Term ("Term") of this Agreement shall be for a period of one hundred eighty (180) days from the date of execution. Developer may extend the term of this Agreement for an additional one hundred eighty (180) days if the Parties mutually agree that substantial progress has been made in negotiation of the terms of the Purchase Agreement.

7. NO COMMISSIONS. The Parties acknowledge that no real estate brokers and/or real estate agents have been or will be employed by either City or Developer in connection with this Agreement or the Purchase Agreement. If Developer has retained or in any other way become responsible to any broker, Developer shall be solely responsible for payment of any commission due and agrees to indemnify, defend and hold City

harmless from any claims, including all defense costs and attorney's fees, by any broker, agent, or finder retained by the Developer, or other similar person or entity claiming to have dealt with Developer.

8. LIMITATION ON EFFECT OF AGREEMENT. This Agreement shall not obligate either the City or Developer to enter into any other agreement or an agreement containing any particular terms, to acquire any property, or to convey any property to Developer. Failure of the Parties to reach an agreement on the terms and conditions of a Purchase Agreement shall not, by itself, constitute a failure on the part of either party to negotiate in good faith. Developer understands and agrees that the concurrence of City staff to the terms and conditions of an agreement does not constitute the agreement of the City, and that the City cannot agree to enter into any agreement until a public hearing is held as required by law, a resolution approving the agreement has been adopted, and the City has fully executed the document. Parties understand that the City reserves the right to exercise its discretion as to all matters which it is, by law, entitled or required to exercise its discretion, including, but not limited to, the approval of a final development and the approval of any and all plans, permits or any other acts or activities requiring the subsequent independent exercise of discretion by the City or any department thereof.

9. NOTICES. Any notices to be given shall be in writing and shall be effective either (a) when delivered in person to the recipient to whom addressed, or (b) three (3) business days after deposit in the United States mail, postage prepaid, by certified mail, return receipt requested, addressed to the recipient at the address below, whichever is earlier:

To City: City of Stockton
 400 East Main Street, 4th Floor
 Stockton, California 95202
 Attn: Economic Development Director

To Developer: RBH Group, LLC
 89 Market Street
 Newark, New Jersey 07102
 Attn: Ron Beit, CEO

Such addresses may be changed from time to time by written notice given in accordance with this section. No person shall refuse or evade delivery of any notice.

10. RIGHT OF ENTRY. The Developer, and including but not limited to Developer's contractors, subcontractors, architects, and engineers, shall have the right of entry to the Site for testing and inspection purposes.

11. ASSIGNMENT. The Developer, without prior written approval of the City, shall not assign this Agreement. The City agrees that, notwithstanding the foregoing, the Developer may assign without the City's prior written approval, but with thirty (30) days prior written notice to the City, its rights under this Agreement to a limited liability

company, corporation, trust, or partnership of which the Developer and/or Developer's principals, own the majority beneficial interest and has operational control.

12. NONLIABILITY AGENCY OFFICIALS AND EMPLOYEES. No member, official, employee, or contractor of the City shall be personally liable to the Developer in the event of any default or breach by City or for any amount, which may become due to Developer or on any obligations under the terms of the Agreement. Further, no director, officer, or employee of the Developer shall be personally liable to the City in the event of any default or breach by Developer or for any amount, which may become due to City or on any obligations under the terms of the Agreement.

13. INTERPRETATION. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either Party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

14. ENTIRE AGREEMENT, WAIVERS, AND AMENDMENTS. This Agreement integrates all the terms and conditions mentioned herein, or incidental hereto, and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the Party to be charged, and all amendments and modifications hereto must be in writing and signed by the appropriate authorities of the City and the Developer.

15. COUNTERPARTS. This Agreement may be executed in counterparts, each of which, after all the Parties hereto have signed this Agreement, shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

16. SEVERABILITY. In the event any section or portion of this Agreement shall be held, found, or determined to be unenforceable or invalid for any reason whatsoever, the remaining provisions shall remain in effect, and the Parties hereto shall take further actions as may be reasonably necessary and available to them to effectuate the intent of the Parties as to all provisions set forth in this Agreement.

17. CONFIDENTIALITY. Developer acknowledges and agrees that the City is a public entity with a responsibility and, in many cases, legal obligation to conduct its business in a manner open and available to the public. Accordingly, any information provided by the Developer to the City with respect to the Site, the Development or Developer may be disclosed to the public either purposely, inadvertently, or as a result of a public demand or order. With respect to any information provided that the Developer reasonably deems and identifies in writing as proprietary and confidential in nature, the City agrees to exercise its best efforts to keep such information confidential as allowed by law.

18. GOVERNING LAW. The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

19. AUTHORITY TO EXECUTE. The undersigned represent and warrant that they are each authorized to execute this Agreement by the party on whose behalf they have signed.

THIS AGREEMENT executed the date and year first above written.

RBH GROUP, LLC,
a New Jersey limited liability corporation

CITY OF STOCKTON,
a municipal corporation

RON BEIT
FOUNDING PARTNER & CEO

HARRY BLACK
CITY MANAGER

ATTEST:

ELIZA R. GARZA, CMC
CITY CLERK

APPROVED AS TO FORM AND
CONTENT:

JOHN M. LUEBBERKE
CITY ATTORNEY

EXHIBIT A

PROJECT SITE MAP – SOUTH POINTE

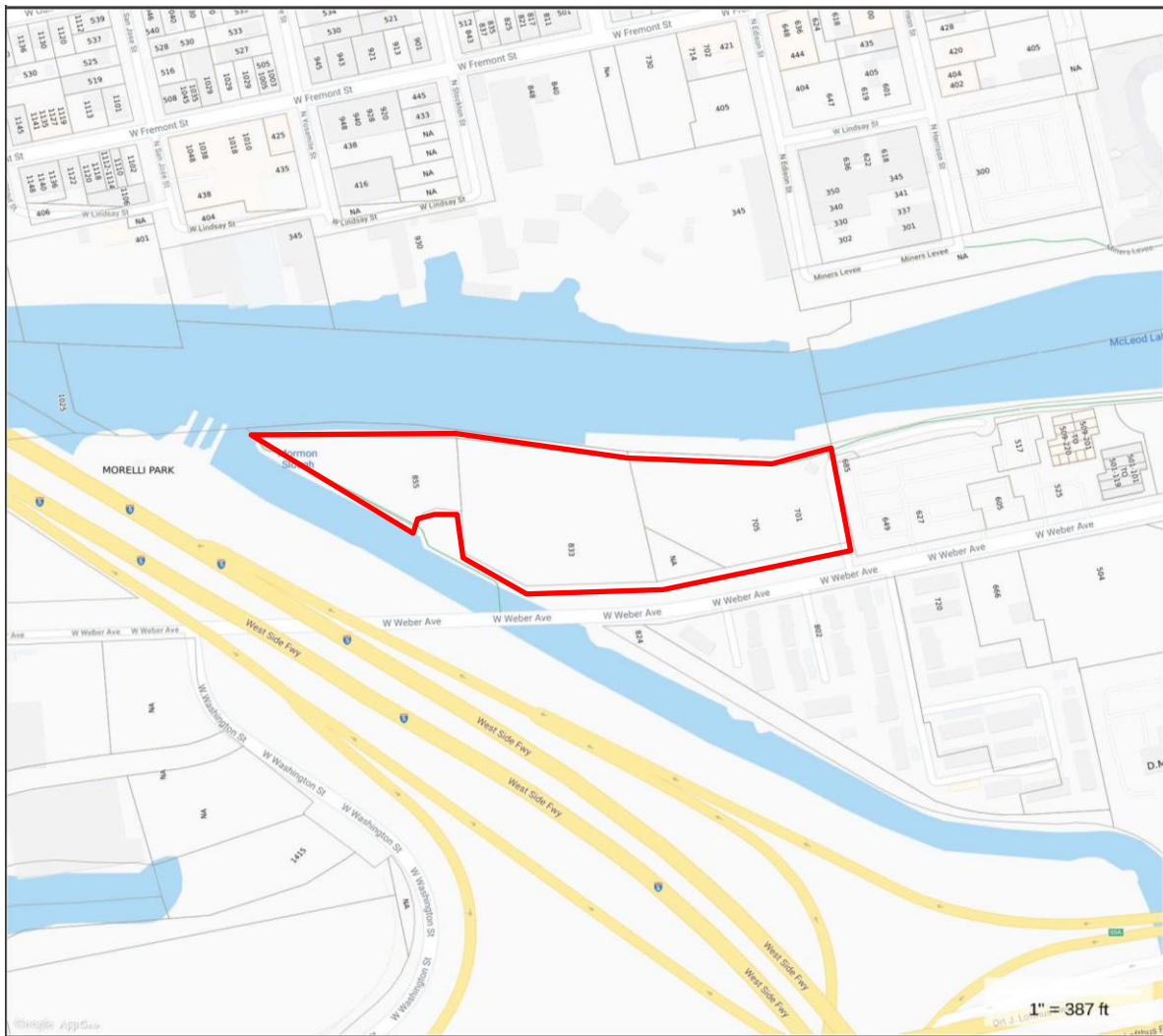


EXHIBIT B**PROJECT PROPOSAL**

The proposed infill development includes a mixed-use development with mixed-income residential units, commercial retail, makers space, civic space, green space, and parking. Phase I of the proposed mixed-use development will include approximately 230,000 square feet of mixed-income residential housing marketed to educators, seniors and life-long learners offering a diverse mix of residents and creating a multi-generational neighborhood centered around Stockton's downtown waterfront. The proposed Phase I development also includes 24,000 square feet of retail space located along the waterfront promenade and 223,000 square feet dedicated to parking.

Phase II of the proposed development includes additional residential units, retail space, community/civic space, and parking. The total proposed development supports the Envision Stockton 2040 General Plan for a live/work/play environment in the downtown waterfront and includes more than 500 residential units, 80,000 square feet of commercial retail space, more than 60,000 square feet of civic/recreation space and 350,000 square feet of parking spaces.