

MEMORANDUM OF UNDERSTANDING
Between the City of Eureka and
Rural Communities Housing Development Corporation
for the Sunset Heights Project

THIS MEMORANDUM OF UNDERSTANDING (MOU) is made and entered into this ____ day of ____, 2023, by and between the City of Eureka, a political subdivision of the State of California (City), and Rural Communities Housing Development Corporation, a California nonprofit public benefit corporation (RCHDC) (collectively City and RCHDC may be referred to herein as the Parties).

WHEREAS, RCHDC’s mission is “to provide decent and affordable housing to low and moderate-income persons” and RCHDC is “committed to being an industry leader of the North Coast of California in providing low and moderate-income housing”; and

WHEREAS, the City is eager to work with RCHDC to facilitate the building of affordable housing that the City’s residents greatly need; and

WHEREAS, the City owns four parcels in the City limits, collectively referred to as Sunset Heights, and more particularly described as Sunset Heights #1 – 1200 West Harris Street (APN 008-052-027), Sunset Heights #2 – Between Harris and Henderson (APN 008-052-024); Sunset Heights #3 – Between Harris and Henderson (APN 008-052-025); and Sunset Heights #4 – South of Henderson (APN 008-052-026); and

WHEREAS, the City’s Certified Housing Element, adopted December 3, 2019 and amended October 18, 2022, lists the Sunset Heights properties as available for affordable housing with the following *minimum* requirements for very low income (VLI) and low income (LI) units:

- Sunset Heights #1: 15 VLI and 5 LI
- Sunset Heights #2: 15 VLI and 5 LI
- Sunset Heights #3: 15 VLI and 5 LI
- Sunset Heights #4: 15 VLI and 5 LI; and

WHEREAS, RCHDC and City wish to work together to develop the required number of VLI and LI units on the four parcels (the Sunset Heights Project or Project); and

NOW, THEREFORE, the Parties agree as follows:

1. TERM.

This MOU will remain in place until the goals of the MOU are met, or until replaced by a subsequent agreement, unless sooner terminated in accordance with Section 6. Upon termination, any and all of City's documents or materials provided to RCHDC and any and all of the documents or materials prepared for City or relating to or derived from the performance of the responsibilities set forth in Section 4 (Responsibilities), must be delivered to City as soon as possible.

2. INTENT

This MOU is intended to outline the roles, responsibilities, and goals of the Parties and to memorialize the Parties' dedication to coordinating their respective resources and efforts towards building affordable housing in the City. It is the intent of the Parties that this MOU be replaced with a Dedicated Development Agreement and/or other necessary agreement(s) to accomplish the next phase of the Project.

3. RESPONSIBILITIES OF CITY

City agrees to work collaboratively with RCHDC on all elements of the Project, to the greatest extent possible. City will ensure that it has complied with all applicable laws related to the Project, including the Surplus Land Act, the California Environmental Quality Act, all local, state, and federal laws regulating the development of housing, and ensure that the Sunset Heights parcels are otherwise available for the type of housing proposed by this MOU.

4. RESPONSIBILITIES OF RCHDC

A. Design and Planning

RCHDC will develop a project consistent with the City's priorities outlined in Housing Element Implementation Program IMP H-34 (Affordable Housing on City-owned Properties), including a mix of unit types (number of bedrooms), incorporation of mixed-use components like child care facilities, maximization of development potential, incorporation of programs/amenities to encourage use of active/collective modes of transport, and high quality design consistent with the objective design standards contained in Section 155.312 of the Eureka Zoning Code.

B. Public Meetings

RCHDC will facilitate a *minimum* of three public meetings to encourage public input on the Project prior to applying for any building permits. The public meetings may, but do not have to, take place at a City-owned facility. The public meetings must be advertised in a manner that ensures meaningful public participation in the process. At least one of the three required meetings must take place prior to presentation of the conceptual plans to City Council.

C. Conceptual Plans

As soon as practicable and prior to applying for building entitlements, RCHDC will present conceptual site plans, floor plans and elevations to City Council (or City staff, as applicable) for review and feedback. The site plans should show building footprints, community spaces, site access and circulation, utility connections, landscaped areas, and any offsite infrastructure improvements (e.g., crosswalk improvements). The floor plans should show the number of floors, total floor area, general mix of unit sizes, and any communal spaces. The plans should be consistent with the objective design and development standards of the

City's Municipal Code, with any requests for deviations from Zoning Code standards (e.g., Density Bonus allowances) clearing identified.

D. California Environmental Quality Act

RCHDC will work collaboratively with the City to complete the requisite environmental review for the Project. RCHDC will fund any necessary studies for the Project's CEQA determination, including any analysis necessary to demonstrate less than significant effects on traffic, noise, air quality, water quality, cultural resources, and/or sensitive species.

E. Recorded Covenant.

RCHDC understands that, regardless of whether the City leases or sells the property underlying the Project to RCHDC, RCHDC shall be required to record a regulatory agreement to run with the land in a form provided by the City that sets forth the above income and occupancy restrictions and such other matters as deemed necessary by the City to achieve the City's goals of ensuring the Project's housing units remain affordable to, and occupied by, lower income households for a period of at least 55 years.

5. COMPENSATION

There will be no compensation among the Parties hereto for Responsibilities provided under this MOU; provided, however, nothing in this MOU waives, limits, or impairs RCHDC's ability to obtain compensation as the developer of the Project.

6. TERMINATION

Either City or RCHDC may terminate this MOU upon breach of this MOU by the other Party. A written notice of such breach must be given, and if the noticed Party fails to cure such breach to the reasonable satisfaction of the notifying Party within thirty (30) days of delivery of the notice of breach, or such extended period as is agreed necessary to cure the breach, such termination by the noticing Party shall be effective at the end of the cure period if no cure has been affected. In addition, the following occurrences will give City the right to terminate this MOU:

- A. A petition is filed for voluntary or involuntary bankruptcy by or on behalf of RCHDC, which petition not dismissed within sixty (60) days.
- B. RCHDC makes a general assignment, or RCHDC's interests hereunder are assigned involuntarily or by operation of law, for the benefit of creditors.
- C. Abandonment of the Development by RCHDC. Abandonment, for the purposes of this MOU, includes but is not limited to failure to begin implementation of the Responsibilities of RCHDC within 90 days and/or make substantial progress towards completion of all Responsibilities within one year.

The sole remedy of either Party, following default by the other Party, shall be termination of this MOU, as set forth above. The Parties waive any and all other rights or remedies.

7. AMENDMENTS

This MOU may be amended by written mutual consent of the Parties hereto. Said amendments shall become effective only when in writing and fully executed by duly authorized officers of the Parties hereto and any required third-party consents have been obtained.

8. NOTICES

All notices to be given by the Parties hereto shall be in writing, served by depositing same in the United States Post Office, postage prepaid, return receipt requested or by overnight delivery service such as Federal Express.

Notices to City must be addressed to:

City of Eureka
Office of the City Manager
531 K Street
Eureka, CA 95501

Notices to RCHDC must be addressed to:

Rural Communities Housing Development Corporation
Chief Executive Officer
499 Leslie Street
Ukiah, CA 95482

9. SEVERABILITY

If any term or portion of this MOU is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this MOU continue in full force and effect.

10. ASSIGNMENT

RCHDC will make no assignment or transfer in whole or in part of this MOU without the prior written consent of City.

11. COMPLIANCE WITH ALL LAWS.

RCHDC and any third-party affiliates must comply fully with all applicable local, state and federal rules, laws, regulations and ordinances pertaining to performance of the Responsibilities, including the Americans with Disabilities Act and any copyright, patent or trademark law. To the extent that

any other government agency or entity provides compensation for any Responsibilities, RCHDC must comply with all rules and regulations applicable to that fiscal assistance. RCHDC's failure to comply with any law(s) or regulations(s) applicable to the performance of the Responsibilities hereunder may be declared, at the discretion of the City, a breach of contract.

12. CONFLICT OF INTEREST

RCHDC represents that it presently has no interest, and covenants that it will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of its Responsibilities. RCHDC further agrees that, in the performance of this MOU, it will not employ any subcontractor or person having a conflict of interest. RCHDC represents that no one who has or will have any financial interest under the MOU is an officer or employee of City. If a conflict of interest arises during this MOU, RCHDC will immediately advise City and City may, at its sole discretion, immediately terminate this MOU.

13. INDEPENDENT PROJECT SPONSOR/DEVELOPER

It is understood and agreed by Parties that RCHDC is an independent entity and that no relationship of employer-employee exists between the Parties hereto outside of what is explicitly declared and outlined in this MOU. RCHDC shall not be entitled to any benefits payable to employees of City, including Workers' Compensation Benefits. City is not required to make any deductions from the compensation payable to RCHDC under the provisions of the MOU, if any; and as an independent entity, RCHDC hereby holds City harmless from any and all claims that may be made against City based upon any contention by any third party that an employer-employees relationship exists by reason of this MOU.

14. LICENSES/PERMITS

RCHDC must, at RCHDC's sole cost and expense, keep in effect and require its third-party affiliates, if any, to keep in effect at all times during the term of this MOU, any licenses, permits or other approvals that are legally required for performing the Responsibilities under this MOU.

15. NO THIRD-PARTY BENEFICIARIES.

The Parties do not intend to create, and nothing in this MOU creates, any benefit or right in any third party.

16. OWNERSHIP OF WORK

All work product prepared and delivered by RCHDC to the City in connection with the Project will be the sole property of the City, and RCHDC will have no proprietary interest in the programs or data they develop for the City or those programs or data developed during periods of time that the Responsibilities are performed in connection with the Project. To the extent applicable, RCHDC understands that work performed in the described manner is accomplished for the benefit of the City and becomes the sole property of the City. RCHDC agrees that the products of this work, its "Intellectual Property" solely related to the Project are by right the sole possession of the

City. Notwithstanding the foregoing, RCHDC shall retain sole ownership of any Project drawings prepared by a licensed architect, or any other work product prepared by a third party for the benefit of RCHDC, and paid for, or otherwise funded, by RCHDC.

17. INDEMNIFICATION

RCHDC shall defend, indemnify, and hold City, its officers, agents and employees, free and harmless from any claim and/or liability whatsoever, including wrongful death, based or asserted upon any acts or omission of RCHDC, its agents, representatives, employees, and subcontractors, relating to or in any way connected with or arising from the performance of the work under this MOU by RCHDC, its agents, representatives, employees, and subcontractors; provided, however, RCHDC shall have no obligation to indemnify the City for any claim related to the City's sole negligence or willful misconduct.

18. INSURANCE

Without limiting RCHDC's indemnification of the City, RCHDC shall procure and maintain for the duration of this MOU, insurance against claims for injuries to persons or damages to property that may arise from, or be in connection with the performance of the work hereunder by RCHDC, RCHDC's agents, representatives, employees, and subcontractors. At the very least, RCHDC will maintain the insurance coverage, limits of coverage and other insurance requirements as described in Standard Insurance Requirements for City Contracts (Attachment 1), which by reference is incorporated hereto. Certificates evidencing the maintenance of RCHDC's insurance coverage must be submitted to the City. Certificates must be on file prior to services performed under this MOU.

19. CHOICE OF LAW; VENUE

This MOU will be enforced and interpreted under the laws of the State of California. Any action arising from or brought in connection with this MOU will be venued in a court of competent jurisdiction in the County of Humboldt, State of California.

20. MEDIATION

The Parties agree to make a good faith attempt to resolve any dispute arising out of this MOU through mediation prior to commencing litigation. The Parties must mutually agree upon the mediator and divide the costs of mediation equally.

21. SURVIVAL

All obligations arising prior to the termination of this MOU and all provisions of this MOU allocating liability between City and RCHDC will survive the termination or completion of this MOU.

22. HEADINGS

The headings used in this MOU are for convenience only and are not intended to affect the interpretation or construction of any of its provisions.

23. ENTIRE AGREEMENT

This MOU, including any exhibits or incorporations by reference, constitutes the entire agreement between the Parties with respect to the Responsibilities, and supersedes all prior agreements or understandings, oral or written, between the Parties in this regard.

IN WITNESS WHEREOF the parties have executed this MOU and made it effective on the date of the last signature.

CITY OF EUREKA:

APPROVED AS TO ADMINISTRATION:

Miles Slattery, City Manager

Date

APPROVED AS TO FORM:

Autumn E. Luna, City Attorney

ATTEST:

Pamela J. Powell, City Clerk

RURAL COMMUNITIES HOUSING DEVELOPMENT CORPORATION:

Ryan LaRue, Chief Executive Officer

_____ Date
