CITY OF ALHAMBRA
AGENDA REPORT

CITY MANAGER APPROVAL: 

DATE: October 28, 2019

TO: Honorable Mayor and Members of the City Council

SUBMITTED BY: Marc Castagnola, AICP, Director of Community Development

SUBJECT: Consideration of an Exclusive Negotiation Agreement (ENA) with American Family Housing (AFH) and National Community Renaissance (CORE) for a proposed 40 unit affordable Housing Project in Downtown Alhambra.

RECOMMENDATION

Staff recommends the City Council approve an Exclusive Negotiation Agreement (ENA) for a total period of 180 days, with a possible additional 180 day extension, with American Family Housing (AFH) and National Community Renaissance (CORE) for a potential affordable housing project located in downtown Alhambra between 1st and 2nd street, south of Main Street immediately adjacent to the AT&T property.

BACKGROUND

Over the past couple of years, staff has investigated options to utilize available housing funds remaining after the dissolution of Redevelopment was finalized. Staff researched underutilized and vacant land with the appropriate multi-family land use and zoning classifications that may lend themselves for affordable housing development. The City of Alhambra is largely built out and the largest single, vacant, City-owned parcel remaining available for such a project is less than half an acre, about 0.42 acres (18,399 square feet), with limited street frontage and currently used as a surface parking lot in the downtown district. The subject parcel is located between 1st and 2nd Streets, south of Main Street under the Assessor Parcel Number (APN) 5344-026-915.

On July 8, 2019, the City Council directed staff to issue a Request For Proposals (RFP) to allow non-profit entities to submit proposals for affordable housing development on the available parcel in Downtown Alhambra. The type of affordability was not specified in the RFP and was left open to a wide range of income eligibility, from supportive housing to moderate income in order for the developers to propose what they thought would be most financially feasible on the site based on subsidies available in relationship to the type of product proposed. The RFP required developers submit information such as the total number of proposed units and the unit mix with respect to specific affordable income categories. The RFP also requested the developer identify the amount of set-aside subsidy non-profit entities will seek from the City.
The RFP was posted on the City’s website and sent to 14 individual regional affordable housing developers. In addition, the Southern California Association of Non-Profit Housing (SCANPH) was contacted for secondary distribution amongst its membership. The RFP was made available from July 12 through August 22, 2019 for a total of forty-two (42) days.

By the submission deadline, the City received a total of three proposals as follows:

1) American Family Housing & National CORE;
2) Little Tokyo Service Center; and,
3) Affirmed Housing Group, Inc.

On September 9, 2019, staff presented the results of the RFP to the City Council. Following public input and discussion, The City Council voted unanimously to pursue an Exclusive Negotiation Agreement (ENA) with American Family Housing & National CORE.

The team of American Family Housing (AFH) & National CORE proposed a mix of 1- and 2-bedroom units for a total of 40 units in a 5-story building with on-site support services. The project will provide 20 residential parking spaces and 20 replacement public parking spaces.

The total construction costs are estimated at $19,941,303 or $498,533 per unit. AFH & CORE will finance the project with a combination of conventional loans, LA County funding and a 4% Tax Credit in the amount of $17,950,634. The City of Alhambra will provide the balance of funding in an amount of $1,990,669 in the form of a long-term residual loan at 3% interest. The land will also be subject to a long-term ground lease.

EXCLUSIVE NEGOTIATION AGREEMENT (ENA)

An ENA is a device that allows both the developer and staff the ability to explore and focus on the feasibility of a potential project between the two parties, during a defined period of time. With the assurance of an exclusive negotiation period, the developer will devote financial resources to further developing a project proposal. The ENA will allow staff to evaluate the project feasibility, the appropriateness of the City's level of contribution and make recommendations.

The Developer anticipates the City’s contribution of the land and set-aside subsidies will make the project feasible. In addition, the Developer will seek tax credits, State and County Affordable Housing grants and conventional loans. Based on preliminary estimates, the total project cost is approximately $20M.

At the conclusion of the ENA, if the City decides to proceed with the project, the Developer and the City will have the option to negotiate and enter into a Disposition and Development Agreement (DDA).

The proposed ENA contains a time-line of deliverables as follows:

1. **Term:** 180 days with possible additional 180 day extension with the City Manager’s approval based upon demonstrated progress.

2. **Bimonthly Status Report:** Bimonthly progress reports required on the 10th of each month starting with the first full month after the effective date of the ENA.

3. **Community Outreach:** Within the first 45 days, the Developer shall conduct outreach with community leaders, including the Chamber of Commerce and the Alhambra Unified School District.

4. **Financial Pro-Forma:** Within the first 45 days, the Developer shall provide a complete financial pro-forma to be evaluated by a third party.
5. **Preliminary Development Concept Package**: To be delivered within 75 days after the effective date of the ENA. The preliminary package shall include:
   a. A development proposal describing all activities to be undertaken.
   b. Identification of role and responsibilities of the entities developing the project.
   c. Identification of architect and entity responsible for on-site management.
   d. A financial statement identifying all funding sources.
   e. A construction and operation financial pro-forma.
   f. A proposed project time line.

6. **Final Development Concept Package**: To be delivered within 150 days after the effective date of the ENA. The final package shall include:
   a. An update of all information submitted in the preliminary package.
   b. A preliminary financing plan including preliminary designation of amounts.
   c. Complete project plans.

**FINANCIAL ANALYSIS**

There will be no fiscal impact related to the approval of the ENA.

**Attachments:**

1. Exclusive Negotiation Agreement
EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT

THIS EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT (this “Agreement”) is entered into effective as of __________, 2019 (“Effective Date”) by and between the City of Alhambra, a municipal corporation (“City”) and American Family Housing, a California nonprofit public benefit corporation (“AFH”) and National Community Renaissance of California, a California nonprofit public benefit corporation (“NCRC” and together, with AFH, “Developer”). City and Developer are hereinafter referred to collectively as the “Parties.”

RECITALS

A. The City is the owner of certain real property constituting approximately .42 acres, located within the City limits located on Second Street, South of Main Street and immediately north of an AT&T building, currently utilized as a public parking lot, as more particularly described in Exhibit A attached hereto (the “Property”).

B. To implement the City’s General Plan, City staff has undertaken outreach to potential developers for an affordable housing development for the Property, and based upon such outreach, has selected Developer as the entity with which to enter into exclusive negotiations for development of the Property.

C. Developer has proposed developing the Property with a residential project that would include 50% permanent and supportive housing and 50% affordable housing in 40 rental units, and complementary uses including supportive uses, private open space, and additional amenities (the “Project”).

D. The purpose of this Agreement is to establish the procedures and standards for the negotiation of a potential disposition and development agreement (“DDA”) that would address: (i) the disposition of the Property from the City to Developer, and (ii) Developer’s development of the Project on the Property. As more fully set forth below, this Agreement in itself does not obligate the City to execute a DDA or convey the Property, or any portion thereof, to Developer, nor does it grant Developer the right to develop the Project on the Property.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Incorporation of Recitals. The Recitals set forth above, and all defined terms set forth in such Recitals and in the introductory paragraph preceding the Recitals, are hereby incorporated into this Agreement as though set forth in full.
2. **Good Faith Efforts to Negotiate.** The Parties shall use their best efforts to negotiate a DDA that will describe the terms and conditions governing the conveyance of the Property and the development of the Project on the Property. The Parties shall diligently and in good faith pursue such negotiations. This Agreement does not impose a binding obligation on City to convey any portion of, or interest in, the Property to Developer, nor does it obligate City to grant any approvals or authorizations required for the Project (including the DDA). Without limiting the generality of the foregoing, Developer expressly acknowledges that any agreement resulting from the negotiations contemplated hereby shall become effective only if the agreement is approved by the City Council following compliance with all applicable notice and hearing requirements and compliance with all other requirements of law, including without limitation the California Environmental Quality Act ("CEQA").

3. **Developer’s Exclusive Right to Negotiate With City.** City agrees that it will not, during the term of this Agreement ("Term"), directly or indirectly, through any officer, employee, agent, or otherwise, solicit, initiate or encourage the submission of bids, offers or proposals by any person or entity with respect to the acquisition of any interest in the Property or the development of the Property, and City shall not engage any broker, financial adviser or consultant to initiate or encourage proposals or offers from other parties with respect to the disposition or development of the Property or any portion thereof. Furthermore, City shall not, directly or indirectly, through any officer, employee, agent or otherwise, engage in negotiations concerning any such transaction with, or provide information to, any person other than Developer and its representatives with a view to engaging, or preparing to engage, that person with respect to the disposition or development of the Property or any portion thereof. The parties further agree and acknowledge that the City shall not dispose of or transfer the Property to any other third party during the Term.

4. **Term.** The Term shall commence on the Effective Date, and shall terminate one hundred eighty (180) days thereafter, unless extended or earlier terminated as provided herein. The Term may be extended for up to a maximum of one hundred eighty (180) additional days upon the mutual written agreement of Developer and City’s City Manager if the City Manager determines in her sole discretion that the Parties have made substantial progress in their negotiations to merit such extension. The Parties may, with City Council approval, agree to additional extensions. If a DDA has not been executed by the City and Developer (or an entity related to Developer and reasonably approved by the City) by the expiration of the Term (as the Term may have been extended pursuant to this Section), then this Agreement shall terminate, and neither Party shall have any further rights or obligations under this Agreement except such rights and obligations that expressly survive termination.

5. **Good Faith Deposit.** In consideration for this Agreement, Developer has, prior to City’s execution of this Agreement, provided to City a cash deposit in the amount of Twenty Thousand and No/100 Dollars ($20,000.00) (the “Good Faith Deposit”). During the Term, City shall invest the Good Faith Deposit for purposes of earning interest thereon. If the Parties enter into a DDA, the Good Faith Deposit shall be disposed of as specified in the DDA. If this Agreement is terminated without execution of a DDA for any reason, then the Good Faith Deposit and any interest earned thereon, less any amounts expended to reimburse City for City Costs as provided in Section 6 below, shall be refunded promptly to Developer. If this Agreement is terminated as
a result of an Event of Default, then the Good Faith Deposit and any interest earned thereon shall be disposed of as more fully provided in Section 12.4. If at any time prior to the Parties entering into a DDA, City Costs (as defined in Section 6) are incurred in an aggregate amount that equals or exceeds the amount of the original Good Faith Deposit, the Developer shall replenish the Good Faith Deposit as soon as Good Faith Deposit falls below Seven Thousand and No/100 Dollars ($7,000.00) promptly upon written request by the City.

6. **Costs and Expenses.** City shall be entitled to draw upon the Good Faith Deposit and apply such draws to reasonable expenses incurred by the City during the Term. The Good Faith Deposit may be used to cover costs that City incurs in connection with the proposed Project and negotiation with Developer regarding agreements for development of the Property. Expenses shall be limited to third party vendors including without limitation, expenses incurred for financial feasibility studies, design analyses, appraisals, environmental analyses, title examination, reasonable legal fees, and consulting fees (collectively, "City Costs"). City shall notify Developer monthly in writing of the amount drawn by City to pay City Costs. The notice shall include copies of all invoices paid from the Good Faith Deposit.

7. **Termination.**

7.1 **Termination by Mutual Agreement.** This Agreement may be terminated at any time by the mutual written consent of the Parties. In the event of such termination, subject to Section 7.4, neither Party shall have any further rights against or liability to the other under this Agreement.

7.2 **Termination by City for Cause.** City shall have the right to terminate this Agreement upon City’s good faith reasonable determination that Developer is not negotiating diligently and in good faith. City shall exercise such right by delivering not less than ten (10) business days’ advance written notice to Developer in the event of a monetary default and twenty (20) business days’ advance written notice to Developer in the event of a nonmonetary default describing the nature of Developer’s default and the termination date. If Developer does not commence to cure the default and resume negotiations in good faith within such ten (10) or twenty (20) business day period, as applicable, City may terminate this Agreement effective as of the termination date stated in the notice. In the event of termination by the City pursuant to this Section 7.2, subject to Section 7.4, neither Party shall have any further rights against or liability to the other under this Agreement.

7.3 **Termination by Developer.** Developer shall have the right to terminate this Agreement upon Developer’s good faith reasonable determination that City is not negotiating diligently and in good faith. Developer shall exercise such right by delivering not less than ten (10) business days’ advance written notice to City describing the nature of City’s default and the termination date. If City does not commence to cure the default and resume negotiations in good faith within such ten (10) business day period, Developer may terminate this Agreement effective as of the termination date stated in the notice. In addition, Developer shall have the right to terminate this Agreement, effective upon ten (10) days’ written notice to City, if Developer determines, in the exercise of Developer’s sole discretion, that the results of Developer’s investigation of the Property are unsatisfactory with respect to Developer’s desired
development activities or if Developer is unable to obtain other necessary approvals, rights or interests. In the event of termination by the Developer pursuant to this Section 7.3, subject to Section 7.4, neither Party shall have any further rights against or liability to the other under this Agreement.

7.4 **Effect of Termination.** Upon the expiration of the Term as such may be extended, or upon the earlier termination of this Agreement, without the Parties having successfully negotiated and executed a DDA, this Agreement shall forthwith be void, and there shall be no further liability or obligation on the part of either of the Parties or their respective officers, employees, agents or other representatives; provided however, the provisions of Section 9.1 (Studies), Section 9.2 (Access; Indemnity), Section 10 (Confidentiality), Section 12.4 (Liquidated Damages), and Section 14.7 (Indemnification) shall survive such termination. In no event shall either Party have the right to seek an award of damages as a result of the termination of this Agreement.

8. **Compliance with CEQA.** The Parties acknowledge that the Project description set forth in this Agreement is preliminary in nature and shall be described in further detail in the DDA to be negotiated during the Term. The Parties acknowledge that development of the Property for the Project will require the grant of discretionary land use entitlements subject to the City’s normal review and approval process, that the Project must comply with CEQA, and that nothing in this Agreement is intended to or shall be interpreted as the grant of any approvals for development of the Project or the Property, or the modification or waiver of any City procedures or requirements. Without limiting the foregoing, the Parties acknowledge that the City retains discretion to (i) modify the Project as City may, in its discretion, determine to be reasonably necessary to comply with CEQA, (ii) select other feasible alternative and/or impose mitigation measures to avoid or minimize significant environmental impacts; (iii) balance the benefits of the Project against any significant environmental impacts prior to taking final action, if such impacts cannot otherwise be avoided; and/or (iv) determine not to proceed with the Project.

The Parties acknowledge that nothing in this Agreement shall be deemed a commitment by the City to enter into an agreement for conveyance of any interest in the Property or for the development of the Project. In addition, the Parties acknowledge that the final form of any agreement governing the development of the Property may contain matters not covered in this Agreement, and the provisions herein are not intended to exclude or preclude any other issues that may arise during negotiations.

Developer acknowledges that the Project must be evaluated under CEQA prior to City’s approval of the DDA. If City determines that CEQA compliance requires preparation of an Environmental Impact Report ("EIR") for the Project, then i) Developer will select the consultant for preparation of the EIR, subject to the City’s reasonable approval; and ii) Developer will pay City’s costs for environmental review, including the cost of City’s EIR consultant. Developer’s obligation to pay such costs shall be in addition to Developer’s obligation to pay City expenses pursuant to Section 6.

9. **Developer’s Studies; Right of Access; Deliverables.**
9.1 Developer's Studies. During the Term of this Agreement, Developer may prepare, at Developer’s sole expense, any studies, surveys, plans, specifications and reports ("Developer's Studies") Developer deems necessary or desirable in Developer’s sole discretion, to determine the suitability of the Property for the Project. Such studies may include, without limitation, title investigation, relocation analyses, marketing, feasibility, soils, seismic and environmental studies, financial feasibility analyses, and design studies. Developer shall provide to City without representation or warranty, copies of all reports, test results, studies, analyses, cost estimates, and documents prepared by third-party consultants for or commissioned by Developer with respect to the Project or the Property within ten (10) business days following their completion; provided however, Developer shall not be obligated to provide proprietary or financial information. Developer’s obligation to provide reports and studies pursuant to this Section 9.1 shall survive the expiration or earlier termination of this Agreement. The City will make available to Developer, upon Developer’s request, existing information and plans regarding the Property.

9.2 Right of Access. Developer, including its employees, agents, assigns and contractors, shall have the right of reasonable access to the Property for the purposes of inspection, environmental assessments, soils testing, and similar work. Developer shall be responsible for obtaining any additional rights of access to the Property from third parties that may be necessary to prepare Developer’s Studies. The City may impose reasonable limitations on access to the Property, and may require Developer to provide City with proof of insurance in compliance with City’s requirements prior to performance of studies on the Property. City’s advance written approval, which shall not be unreasonably withheld, conditioned or delayed, shall be required for any invasive testing. Developer agrees that unless City agrees otherwise in writing, Developer shall repair, restore, and return the Property and all improvements located thereon to their condition immediately prior to any such testing at Developer’s sole cost and expense, excluding ordinary wear and tear or damage or destruction by acts of God. Developer shall at all times keep the Property free and clear of all liens and encumbrances related to Developer’s inspection activities on the Property or otherwise within Developer’s control.

Developer shall indemnify, defend, and hold the City and its elected and appointed officers, officials, employees, consultants, agents and representatives (collectively, the “Indemnitees”) harmless from and against all liability, loss, cost, claim, demand, action, suit, legal or administrative proceeding, penalty, deficiency, fine, damage and expense (including without limitation reasonably attorney’s fees and of litigation) (all of the foregoing, collectively “Claims”) arising out of Developer’s and Developer’s agents, employees, consultants, representatives and contractor’s entry on the Property or otherwise arising out of the exercise of this right of access, provided that Developer shall have no obligation related to Claims resulting from the Indemnitees’ gross negligence or willful misconduct, or Developer’s mere discovery of information regarding the Property. Developer’s defense and indemnity obligations pursuant to this Section 9.2 shall survive the expiration or earlier termination of this Agreement.

9.3 Deliverables. Developer shall provide to City the deliverables identified in Exhibit B, attached hereto and incorporated herein by reference, consistent with the schedule set forth in Exhibit B, unless such other dates are agreed to in writing by Developer and City Manager, and subject to force majeure delays.
10. **Confidentiality of Information.** While desiring to preserve its rights with respect to treatment of certain information on a confidential or proprietary basis, Developer acknowledges that City will need sufficient, detailed information about the proposed Project to make informed decisions about the content and approval of the DDA. City will work with Developer to maintain the confidentiality of proprietary information subject to the requirements imposed on City by the Public Records Act (Government Code Section 6250 et seq.). Developer acknowledges that City may share information provided by Developer of a financial and potential proprietary nature with third party consultants who have been contractually engaged to advise City concerning matters related to this Agreement and/or the DDA and to City Council members as part of the negotiation and decision making process. If this Agreement is terminated without the execution of a DDA, City shall return to Developer any confidential information submitted by Developer under this Agreement. If any litigation is filed seeking to make public any information Developer submitted to City in confidence, City and Developer shall cooperate in defending the litigation if Developer elects not to make public the information in question. Developer shall pay City's reasonable costs of defending such litigation if Developer elects not to make public the information in question and shall indemnify City against all costs and reasonable attorneys' fees awarded to the plaintiff in any such litigation.

11. **Execution of Definitive Agreement.** The City shall have no legal obligation to grant any approvals or authorizations for the Project prior to City Council approval of the Project and related agreements following compliance with CEQA and all other applicable requirements of law.

12. **Defaults and Remedies.**

12.1 **Default.** In the event either Party breaches its obligations 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 ten (10) days for monetary defaults and twenty (20) days for nonmonetary defaults (subject to such longer period as may be reasonably necessary so long as the defaulting party has commenced a cure within such 20 day period and is diligently prosecuting such cure to completion) after receipt by the defaulting Party of such notice, the non-defaulting Party may exercise the remedies set forth in Subsections 12.2, 12.3, and 12.4 below, as applicable.

12.2 **Remedies for City Default.** In the event of an uncured default by City hereunder, Developer's may terminate this Agreement upon which termination, Developer shall be entitled to repayment of the remaining Good Faith Deposit and any interest earned thereon, as further provided in Section 5 and reimbursement of third party expenses paid for with Good Faith Deposit. Following such termination, neither Party shall have any right, remedy or obligation under this Agreement; provided however, any obligation under a specific provision of this Agreement for a Party to pay or reimburse the other Party for a cost or to provide indemnity and defense shall survive such termination.

12.3 **Remedies for Developer Default.** In the event of an uncured default by Developer, City's sole remedy shall be to terminate this Agreement and to retain the Good Faith Deposit and any interest earned thereon as further set forth in Subsection 12.4 below. Following
such termination, neither Party shall have any right, remedy or obligation under this Agreement; provided however, any obligation under a specific provision of this Agreement for a Party to pay or reimburse the other Party for a cost or to provide indemnity and defense shall survive such termination.

12.4 Liquidated Damages. IN THE EVENT OF TERMINATION DUE TO DEVELOPER'S DEFAULT AS DESCRIBED IN THIS SECTION 12 ABOVE, SUBJECT TO ALL APPLICABLE NOTICE AND CURE PERIODS, THE GOOD FAITH DEPOSIT (OR, AS APPLICABLE, SUCH PORTION THEREOF WHICH HAS NOT BE DRAWN AGAINST BY THE CITY FOR CITY COSTS) MAY BE RETAINED BY CITY AS LIQUIDATED DAMAGES AND AS ITS PROPERTY WITHOUT ANY DEDUCTION, OFFSET OR RECOUPMENT WHATSOEVER, SUBJECT TO REIMBURSEMENT OF THIRD PARTY EXPENSES AS PROVIDED IN SECTION 12.2 ABOVE. THE PARTIES AGREE THAT THE DAMAGES SUFFERED BY CITY BY REASON OF A DEVELOPER DEFAULT WOULD BE UNCERTAIN AND THAT SUCH DAMAGES WOULD INVOLVE SUCH VARIABLE FACTORS AS THE CONSIDERATION THAT ANOTHER DEVELOPER WOULD PAY FOR THE PROPERTY; THE EXPENSES OF CONTINUING THE OWNERSHIP AND CONTROL OF THE PROPERTY AND OF IDENTIFYING OTHER INTERESTED PARTIES AND NEGOTIATING WITH SUCH PARTIES; POSTPONEMENT OF TAX REVENUES TO THE COMMUNITY; AND THE FAILURE OF CITY TO EFFECT ITS PURPOSES AND OBJECTIVES WITHIN A REASONABLE TIME, RESULTING IN ADDITIONAL IMMEASURABLE DAMAGE AND LOSS TO CITY. IT IS IMPrACTICABLE AND EXTREMELY DIFFICULT TO FIX THE AMOUNT OF SUCH DAMAGES TO CITY, BUT THE PARTIES ARE OF THE OPINION, UPON THE BASIS OF ALL INFORMATION AVAILABLE TO THEM, THAT SUCH DAMAGES WOULD APPROXIMATELY EQUAL THE AMOUNT OF THE GOOD FAITH DEPOSIT HELD BY CITY AT THE TIME OF THE DEFAULT OF DEVELOPER, AND THE AMOUNT OF SUCH GOOD FAITH DEPOSIT SHALL BE PAID TO CITY UPON ANY SUCH OCCURRENCE AS THE TOTAL OF ALL LIQUIDATED DAMAGES FOR ANY AND ALL SUCH DEFAULTS AND NOT AS A PENALTY. IN THE EVENT THAT THIS PARAGRAPH SHOULD BE HELD TO BE VOID FOR ANY REASON, CITY SHALL BE ENTITLED TO THE FULL EXTENT OF DAMAGES OTHERWISE PROVIDED BY LAW. DEVELOPER AND CITY SPECIFICALLY ACKNOWLEDGE THIS LIQUIDATED DAMAGES PROVISION BY THEIR SIGNATURES HERE:

Developer: __________________

13. City Rights Following Expiration or Termination. Following expiration or termination of this Agreement, unless a DDA is executed by the Parties, City shall have the absolute right to pursue disposition and development of the Property in any manner and with any party or parties it deems appropriate; provided, however, nothing herein shall be deemed to preclude or disqualify Developer from responding to future requests for qualifications and/or proposals, if any, that City may publicly issue to qualified firms with respect to development of the Property.

14.1 Assignment. The qualifications and identity of Developer are of particular concern to City. It is because of those unique qualifications and identity that City has entered into this Agreement with Developer. Accordingly, except as provided below, Developer may not assign its rights under this Agreement to any other person or entity, without the prior written approval of City. Any purported voluntary or involuntary assignment of Developer’s exclusive negotiation rights without such City written approval shall be null and void. Notwithstanding the foregoing, Developer may assign its rights under this Agreement to a limited liability company or partnership in which Developer or an affiliated entity: (a) is a managing member or general partner; (b) is responsible for managing the day-to-day entitlement and development activities of such entity; and (c) has a controlling interest in such entity, or to a tax credit partnership formed for the project.

14.2 Notices. Except as otherwise specified in this Agreement, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other parties in accordance with this Section. All such notices shall be sent by: (i) personal delivery, in which case notice is effective upon delivery; (ii) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered on receipt if delivery is confirmed by a return receipt; or (iii) nationally recognized overnight courier, with charges prepaid or charged to the sender’s account, in which case notice is effective on delivery if delivery is confirmed by the delivery service.

City:

City of Alhambra
Attn: Marc Castagnola, Community Development Director
111 South First Street
Alhambra, California 918011
Telephone: (626) 570-5041
Facsimile: (626) 458-4201

With copy to:

City of Alhambra
Attn: Joseph Montes, City Attorney
111 South First Street
Alhambra, California 918011
Telephone: (626) 570-5040
Facsimile: (626) 281-2248

Developer:

Milo Peinemann, Chief Executive Officer
American Family Housing
15161 Jackson Street
Midway City, CA 92655
Phone: (714) 897-3221
Fax: (714) 893-6858

With copy to:
14.3 No Commissions. Each Party represents and warrants that it has not entered into any agreement, and has no obligation, to pay any real estate commission in connection with the transaction contemplated by this Agreement. If a real estate commission is claimed through either Party in connection with the transaction contemplated by this Agreement or any resulting DDA, then the Party through whom the commission is claimed shall indemnify, defend and hold the other Party harmless from any liability related to such commission. The provisions of this Paragraph shall survive termination of this Agreement.

14.4 Relationship of the Parties. The Parties agree that nothing in this Agreement shall be deemed or interpreted to create between them the relationship of lessor and lessee, of buyer and seller, or of partners or joint venturers.

14.5 Authority; Disclosure. Developer warrants that none of its principals, officers, partners, joint venturers, employees, associates, or affiliates who have any economic interest in this Agreement or the contemplated development of the Property or the Project, have a familial, financial, or other material relationship with any elected or appointed official or employee of the City. Each person executing this Agreement on behalf of Developer does hereby covenant and warrant that (a) Each of AFH and NCRC is created and validly existing under the laws of California, (b) Developer has and is duly qualified to do business in California, (c) Developer has full corporate power and authority to enter into this Agreement and to perform all of Developer’s obligations hereunder, and (d) each person (and all of the persons if more than one signs) signing this Agreement on behalf of Developer is duly and validly authorized to do so. Each person executing this Agreement on behalf of City does hereby covenant and warrant that
(a) City has full power and authority to enter into this Agreement and to perform all of City’s obligations hereunder, and (b) each person (and all of the persons if more than one signs) signing this Agreement on behalf of City is duly and validly authorized to do so.

14.6 Waiver of Lis Pendens. It is expressly understood and agreed by the Parties that no lis pendens shall be filed against any portion of the Property with respect to this Agreement or any dispute or act arising from this Agreement. This Section shall survive the expiration of termination of this Agreement.

14.7 Indemnification. Developer hereby covenants, on behalf of itself and its permitted successors and assigns, to indemnify, hold harmless and defend the Indemnitees (defined in Section 9) from and against all Claims (defined in Section 9) arising out of or in connection with the negligent actions of Developer or Developer’s agents, employees, officers, representatives, contractors or consultants pursuant to this Agreement; provided however, Developer shall have no indemnification obligation with respect to the gross negligence or willful misconduct of any Indemnitee. This Section shall survive the expiration or earlier termination of this Agreement.

14.8 Severability. If any term or provision of this Agreement or the application thereof shall, to any extent, be held by a court of competent jurisdiction to be invalid or unenforceable, such term or provision shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining terms and provisions of this Agreement or the application of such terms and provisions to circumstances other than those as to which it is held invalid or unenforceable unless an essential purpose of this Agreement would be defeated by loss of the invalid or unenforceable provision.

14.9 Entire Agreement. This Agreement contains the entire understanding of the Parties with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements and understandings, oral or written, between the Parties with respect to such subject matter.

14.10 Amendments. This Agreement may be amended only by a written instrument executed by the Parties or their permitted successors in interest.

14.11 Successors and Assigns; No Third-Party Beneficiaries. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective permitted successors and assigns; provided however, that except as expressly permitted by this Agreement, neither Party shall transfer or assign any of such Party’s rights hereunder by operation of law or otherwise without the prior written consent of the other Party, and any such transfer or assignment without such consent shall be void. Subject to the immediately preceding sentence, this Agreement is not intended to benefit, and shall not run to the benefit of or be enforceable by, any other person or entity other than the Parties and their permitted successors and assigns.

14.12 Captions; Interpretation. This Agreement shall be interpreted as though prepared jointly by the Parties. Titles and captions are for convenience of reference only and do not define, describe or limit the scope or the intent of this Agreement or any of its terms.
14.13 **Governing Law; Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of California without reference to conflicts of laws principles. Venue for any action under this Agreement shall be in Los Angeles County, California.

14.14 **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

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IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

CITY OF ALHAMBRA, a municipal corporation

By: _____________________________
    Jessica Binnquist, City Manager

ATTEST:

By: _____________________________
    Lauren Myles, City Clerk

APPROVED AS TO FORM:

By: _____________________________
    Joseph Montes, City Attorney

DEVELOPER:

AMERICAN FAMILY HOUSING, a California nonprofit public benefit corporation

By: _____________________________
    Myles A. Peinemann II, Chief Executive Officer

And

National Community Renaissance of California, a California nonprofit public benefit corporation

By: _____________________________
    Michael Ruane, Executive Vice President
Exhibit A

PROPERTY

Assessor parcel No. 5344-026-915
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<th>Every two months, on the 10&lt;sup&gt;th&lt;/sup&gt; day of the month, commencing on the first: full month after the Effective Date</th>
<th>Written Status Reports: Every two months, on the 10&lt;sup&gt;th&lt;/sup&gt; day of the month, commencing on the first full month after the Effective Date</th>
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<tbody>
<tr>
<td>Within forty-five (45) days after the Effective Date</td>
<td>Developer to meet with key community leaders including the Chamber of Commerce and the School District in order to get their feedback on the proposed project.</td>
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<td>Preliminary Development Concept Package, consisting of the following in addition to an initial project pro forma:</td>
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<td>(A) A development proposal generally describing the improvements, including all development activities proposed to be undertaken in connection with the Project.</td>
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<tr>
<td>(B) Identification of the respective roles of the Developer and its partners and the identification of the entity which Developer herein proposes to act as developer (the New Developer) and operator of the affordable housing project proposed to be developed on the Project Site.</td>
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<tr>
<td>(C) Identification of the architect proposed to be used by the Developer for the Project and the entity which will be responsible for on-site management (if other than the New Developer).</td>
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<td>(D) A statement describing the proposed method of financing, including construction and permanent financing, the person(s) or companies the Developer expects to provide debt financing or equity, subject to change, 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 Project Site. It is further contemplated that Developer will apply for either 4% or 9% tax credits and other financing sources such as NPLH, AHP, MHP, and other financing sources to enhance the economic viability of the development of the Project Site consistent with the Preliminary Development Concept. The City will provide information to Developer regarding the amount of funds that may be available for the Project.</td>
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<td>(E) The proposal by Developer assumes that a leasehold interest in the Project Site would be made available as required by the financing. The ground lease would be a triple net lease, with Developer responsible for the payment of property taxes and assessments, insurance, and operating expenses.</td>
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<tr>
<td>(F) A comprehensive construction and operating pro forma which identifies all sources and uses of funds including without limitation design of the Facilities and supporting infrastructure and which includes with reasonable particularity proposed funding sources.</td>
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<td>(G) A proposed timeline which includes the submittal for any required allocation for tax credits and/or bonds.</td>
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<tr>
<td>Within forty-five (45) days of submittal of the Preliminary Development Concept Package</td>
<td>City’s Financial Consultant to complete review of the initial project pro forma and City to provide comments to Developer.</td>
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</table>
**Final Development Concept Package:**

(A) Updated information, current as of the date of submittal of the 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) A preliminary financing plan, which delineates with as much particularity as is reasonably available the proposed method of financing, including the preliminary designation of amounts (such identification may or may not be final).

(C) Site Plan, Floor Plan and Architectural and Conceptual Landscape Plans, which shall include site amenities including but not limited to: (i) indoor and outdoor amenities; (ii) functional open space; (iii) indoor kitchen; and educational/employment training services/programming space.

In addition, the submittal shall include: (A) an updated pro forma addressing detailed development and operational costs; (B) a draft social services and educational/employment training services plan, which shall include a description of all such services, the entity or entities which will deliver the proposed services, the cost to deliver such services, and the method by which Developer will pay for such services; and (C) a timeline with the proposed commencement and completion of construction and the availability of rental units; (D) an updated timeline which includes the proposed submittal dates for any required allocation for tax credits and/or bonds as well as a reasonably detailed update concerning efforts that shall have been undertaken by the Developer with regard to the obtaining of financing, such as those public sources referenced above; and (F) a proposed construction schedule.