



## M E M O R A N D U M

**DATE:** September 15, 2010

**TO:** Board of Directors  
The Long Beach Housing Development Company

**FROM:** *Ellie Tolentino*  
Ellie Tolentino, Vice President

**PREPARED BY:** Norma C. Lopez, Development Project Manager

**SUBJECT:** **Agreement to Negotiate Exclusively Between The Long Beach Housing Development Company, the Redevelopment Agency of the City of Long Beach, and United Cerebral Palsy/Spastic Childrens Foundation of Los Angeles and Ventura Counties (CD8)**

### RECOMMENDATIONS

- 1) Authorize the President or designee to enter into an Agreement to Negotiate Exclusively with the Redevelopment Agency of the City of Long Beach (RDA) and United Cerebral Palsy /Spastic Childrens Foundation of Los Angeles and Ventura Counties (UCP) for a period of 180 days for the development of a site at the southeast corner of Long Beach Boulevard and 49<sup>th</sup> Street; and
- 2) Authorize the President or designee to execute any and all documents necessary to implement the Agreement to Negotiate Exclusively.

### BACKGROUND

UCP has submitted a proposal to build 24 units of independent housing for the disabled at 4800-4870 Long Beach Blvd. The site is a vacant 1.1-acre parcel owned by the RDA at the southeast corner of Long Beach Blvd. and 49<sup>th</sup> Street in the North Long Beach Redevelopment Project Area. A site map is attached as Exhibit A. The proposed development will assist in meeting one of the North Long Beach Strategic Guide for Development's goals to develop housing along Long Beach Boulevard.

**MAKING  
AFFORDABLE  
HOUSING  
HAPPEN**

AGENDA ITEM NO. 4

UCP is requesting that the Long Beach Housing Development Company (LBHDC) be a party to the Agreement to Negotiate Exclusively with it and the RDA. RDA staff reviewed UCP's proposal and presented it to its Board at the meeting of August 30, 2010. The RDA Board approved staff's recommendation to enter into a three-party Agreement to Negotiate Exclusively.

Approval of an Agreement to Negotiate Exclusively will provide the developer with time to do a more complete proposal and financial pro forma and will give staff time to fully analyze the proposal and prepare a recommendation. It does not commit the Board to any future financial obligation on the project. A draft Agreement to Negotiate Exclusively between the RDA, the LBHDC, and UCP is attached.

UCP was founded in 1945 by a group of parents who wanted to create community-based services for their children with disabilities when no such services existed. Today UCP operates over 40 program sites throughout five counties in Southern California and offers a range of services to improve the lives of people with disabilities.

DJT:ET:NCL

Exhibits:

A – Site Map

B – Agreement to Negotiate Exclusively



## 4800-4870 Long Beach Boulevard



### Disclaimer

DISCLAIMER OF DATA ACCURACY: The services provided on this web site are intended for informational purposes only and the GIS data used is compiled from various sources and is subject to constant change. While reasonable effort has been made to ensure the accuracy of the data, the information provided herein may be inaccurate or out of date.

**AGREEMENT TO NEGOTIATE EXCLUSIVELY**

Property address: 4800 – 4870 Long Beach Boulevard  
(Assessor Parcel Nos. 7125-036-900)

THIS AGREEMENT is entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by and among the REDEVELOPMENT AGENCY OF THE CITY OF LONG BEACH, CALIFORNIA, a public body corporate and politic ("Agency"), LONG BEACH HOUSING DEVELOPMENT COMPANY, a California nonprofit public benefit corporation ("LBHDC"), and UNITED CEREBRAL PALSY/SPASTIC CHILDREN'S FOUNDATION OF LOS ANGELES AND VENTURA COUNTIES, a California nonprofit public benefit corporation ("Developer").

1. **NEGOTIATIONS**

During the term of this Agreement, the Agency and Developer (or an entity owned or controlled by the Developer) agree to negotiate in good faith regarding the terms and conditions of a Disposition and Development Agreement ("DDA") between Agency and Developer concerning the purchase and development of property located at 4800 – 4870 Long Beach Boulevard ("Property"), identified as assessor parcel nos. 7125-036-900, more particularly shown on the Site Map (Exhibit A). The Property is located within the North Long Beach Redevelopment Project Area in the City of Long Beach. During the term of this Agreement, the Agency agrees not to negotiate with or solicit any other person or entity regarding the acquisition and development of the Property without the written consent of the Developer. Nothing in this Agreement shall be deemed a covenant, promise or commitment by the Agency, LBHDC, the City of Long Beach, or any agency of the City, with respect to the acquisition of the property or the approval of any development on the Property proposed by Developer or the sale of the Property to Developer. This Agreement is merely an agreement to enter into a period of exclusive negotiations according to the terms hereof; the Agency, LBHDC and

Developer reserve their final discretion and approval with respect to future agreements and approvals relating in any way to the Property. The Developer shall not assign this Agreement without the prior written approval by the Agency and LBHDC, which approval may be withheld at the sole and complete discretion of the Agency or LBHDC.

2. NEGOTIATION PERIOD

Agency, LBHDC and the Developer agree to negotiate exclusively for six (6) months after the execution date of this Agreement (the "Exclusive Negotiation Period") for the purpose of determining whether to enter into a DDA for the purchase and development of the Property and, if so, the terms and conditions of such DDA. At the request of Developer, the Executive Director of Agency ("Executive Director") with the concurrence of the President of LBHDC ("President") may, in his or her absolute discretion, extend the Exclusive Negotiation Period not more than one time for up to six (6) months. If, upon expiration of the Exclusive Negotiation Period (including extensions, if any), a DDA has not been approved and executed by all of the Agency, LBHDC and the Developer (or an entity owned or controlled by the Developer), then this Agreement shall automatically terminate, the Developer shall have no further rights regarding the subject matter of this Agreement or the Property, and the Agency shall be free to negotiate with any other person or entity with regard to the Property.

Provided, however, that if Developer has executed a DDA and Agency and LBHDC staff has agreed to place, or has placed, such DDA on the agenda for consideration by the Agency's Board and on the LBHDC's agenda for consideration by its Board, the Executive Director and the President may, in his or her sole option, if

required agree in writing to further extend the Exclusive Negotiation Period for an additional thirty (30) days.

3. PROPOSED DEVELOPMENT

A. Development Plan.

The proposed development to be negotiated hereunder shall be a residential independent housing facility for the disabled that complements the neighborhood and furthers the Agency's goals. Developer shall be solely responsible for the construction costs of the proposed project, unless expressly agreed otherwise by Agency and/or LBHDC. Neither City nor LBHDC or Agency, nor any of their officers, employees or agents has provided any direct or indirect information which in any way would indicate that the proposed project is or is not subject to the State of California's prevailing wage requirements.

B. Essential Terms and Conditions.

The terms and conditions of any disposition and development agreement to be entered into by the parties shall include the following:

- i. Developer shall acquire the Property from the Agency.
- ii. Developer shall pay a purchase price in an amount and upon such payment terms as established pursuant to this Agreement.
- iii. The Property will be conveyed to Developer in an "as-is" condition with no warranty, express or implied by the Agency as to the condition of the improvements, soil or water, its geology or the presence of known or unknown faults; it is the Developer's responsibility and cost to connect the utilities to the improvements on the Property.

vi. The Developer shall design and construct the project in accordance with the then applicable land use requirements, and be responsible to obtain all applicable land use, planning and zoning approvals, permits and entitlements for the Property.

C. Schedule of Performance.

Attached hereto as Exhibit B is a Schedule of Performance indicating the dates by which the parties are to have accomplished their tasks.

4. OBLIGATIONS OF THE DEVELOPER

A. Evidence of Financing

Developer shall develop a program of financing and provide Agency and LBHDC with reasonably satisfactory evidence that financing will be available for the acquisition and development of the Property.

B. Condition of the Property

Developer may conduct such tests, surveys, and other analyses of the Property as Developer deems necessary to determine the feasibility of the Project, and shall complete such tests, surveys and other analyses as promptly as possible within the Exclusive Negotiation Period.

C. Development Plan

Developer shall formulate a development plan for the Property, and shall submit same to Agency and LBHDC for their approval.

D. Plans and Drawings

Developer shall have plans and drawings prepared by a licensed architect or building/design professional that are sufficient in detail and scale to show

the planned construction and to obtain building permits. Design approval by the LBHDC may be required in addition to the City's design review and entitlement process.

E. Operating Plan

The parties acknowledge that the Agency and LBHDC are interested in the long term management and operation of the Project. By the time required in the Schedule of Performance, the Developer shall submit for the approval of the President a detailed "Operating Plan" which sets forth in detail the identity and the duties of the property manager, the tenant selection process, a security system and crime prevention program, the procedures for determining "Affordable Rent" and for the collection of rent, occupancy limits and the procedures for monitoring of occupancy levels, the procedures for eviction of tenants, the rules and regulations of the Project and manner of enforcement, a standard lease form, and other matters relevant to the operation and management of the Project. In addition, Developer shall submit to the President for its reasonable approval a budget for the operation of the Project.

F. Environmental Information

Developer shall coordinate with the City's Development Services Department to determine and conduct the environmental review required by the California Environmental Quality Act ("CEQA"). Developer shall be responsible to pay all costs incurred to comply with CEQA. The parties agree that they will cooperate with each other with respect to CEQA compliance as required in order to permit the Agency Board and the LBHDC Board to consider approval of a DDA and certification of a negative declaration, mitigated negative declaration or, if required, and environmental impact report.



G. Periodic Reports or Meetings

From time to time, at the request of either the Executive Director or the President, Developer shall either provide written reports regarding the status of its compliance with this Agreement or meet with Agency staff to review Developer's progress hereunder.

H. Good Faith Deposit

The Developer shall not be required to post a good faith deposit.

I. Developer to Pay all Costs and Expenses

All fees and expenses for engineers, architects, financial consultants, legal, planning and other consultants and contractors, retained by the Developer to perform Developer's obligations set forth in this Section 4, shall be the sole responsibility of the Developer. The Agency shall not be obligated to pay or reimburse any costs or fees incurred by the Developer in performance of any of the obligations of the Developer under this Agreement, whether or not this Agreement is terminated or extended or results in the execution of a DDA.

J. Indemnity

Developer agrees to defend, indemnify and hold harmless Agency, LBHDC, City and each of their officers, agents and employees from damages, claims or liability arising from Developer's acts or omissions; provided, the obligation to hold harmless and indemnify for damages, claims and liability shall only be to the extent any are caused by Developer's acts or omissions.

5. OBLIGATIONS OF THE AGENCY

A. Agency and LBHDC Cooperation

The Agency and LBHDC shall cooperate fully in providing Developer with all appropriate information known by Agency and/or LBHDC staff regarding the Property.

B. Right to Inspect the Property

The Agency shall provide to Developer, its agents, and its representatives the right to enter onto those portions of the Property owned by Agency, and to conduct such tests, surveys, and other procedures (the "Tests") after Developer enters into a right of entry agreement with the Agency in form prepared by the City Attorney. The right of entry agreement shall provide, among other matters, that Developer shall indemnify and hold harmless the Agency, LBHDC and City from any loss, cost, or damage (including, without limitation, reasonable attorney's fees) arising out of any such entry on the Property by Developer, its agents, or its representatives, and shall present the Agency with evidence of a general liability insurance policy in form and in an amount as prescribed by the City's Risk Manager.

C. Appraisal of the Property and the Project

Agency shall prepare an appraisal of the Property indicating the estimated fair market value of the Property as improved by the Project. The Agency shall use reasonable efforts to obtain such appraisal within ninety (90) days after the execution date of this Agreement; upon completion of the appraisal, Agency shall provide a copy to Developer;

D. CEQA Compliance

Agency and LBHDC shall undertake such review as required to comply with CEQA in order to permit the Agency and LBHDC Boards to consider approval of a DDA and certification of a negative declaration, mitigated negative declaration or, if required, and environmental impact report.

E. Agency and City Public Hearings

If the negotiations culminate in a DDA, signed by the Developer (or an entity owned or controlled by the Developer), such DDA shall become effective only if and after the DDA has been considered and approved by the Agency and LBHDC Boards, and, if required, the City Council of the City of Long Beach after separate public hearings.

6. CONDITIONS PRECEDENT TO RECOMMENDATION OF APPROVAL

Notwithstanding paragraph 8.B below and subject to compliance with CEQA, the Executive Director shall recommend to the Agency and, if required, the City Council, and the President shall recommend to the LBHDC, approval of a DDA with Developer for conveyance of the Property and development of the Project upon satisfaction of the following conditions precedent:

A. Developer has approved Agency's fair market value appraisal of the Property as improved by the Project;

B. Developer has approved the physical condition of all improvements on the Property, and the soils, geology and any groundwater of the Site and agrees to accept conveyance of the Property "as is;"

C. The Executive Director and President have approved Developer's pro forma budget for development of the Project;

D. The Executive Director and Developer have agreed upon the purchase price for the Property; and

E. The Executive Director and LBHDC have approved Developer's preliminary evidence of financing.

7. NO BROKERS

Neither Agency nor LBHDC shall be liable for any real estate commission or brokerage fees which may arise in connection with this Agreement or Developer's purchase of the Property. Agency and LBHDC represent that they have engaged no broker, agent or finder in connection with this transaction, and Developer agrees to hold the Agency and LBHDC harmless from any claim by any broker, agent or finder retained by Developer.

8. ACKNOWLEDGEMENTS AND RESERVATIONS

A. No Further Obligations

The Agency, LBHDC and the Developer agree that neither the Agency, LBHDC nor the Developer shall be under any further obligation to each other regarding the assembly and disposition of the Property or the development of the proposed Project on the Property if this Agreement expires, is terminated for any reason, or a DDA is not executed by each of the Agency, LBHDC and the Developer (or an entity owned or controlled by the Developer).

B. No Agreement

The Developer acknowledges and agrees that no provision of this Agreement shall be deemed to be an offer by the Agency, nor an acceptance by the Agency of any offer or proposal from the Developer, for the Agency to convey any interest in all or a portion of the Property to the Developer (or an entity owned or controlled by the Developer) or for either the Agency or LBHDC to provide any financial or other assistance to the Developer for redevelopment of the Property.

C. No Acquisition

Developer acknowledges and agrees that it has not acquired, nor will acquire, by virtue of the terms of this Agreement, any legal or equitable interest in real or personal property from Agency.

D. Limitations of this Agreement

Nothing contained in this Agreement shall constitute a waiver, amendment, promise or agreement by the Agency, LBHDC or the City of Long Beach (or any of its departments or boards) as to the granting of any approval, permit, consent or other entitlement in the exercise of the Agency's, LBHDC's or the City's regulatory capacity or function. The Developer acknowledges that any proposed DDA or further amendment that may result from these negotiations will have to be submitted to the Agency Board, the LBHDC Board and, to the extent required by law, to the City Council of the City of Long Beach, for review and approval. The Developer further acknowledges and agrees that no Agency or LBHDC staff, consultant, agent, or member of the Agency or LBHDC Boards has the authority to bind the Agency or LBHDC. Although the Agency and LBHDC will not be bound to any agreement nor to

any course of action except after approval and execution of the proposed DDA, or, as the case may be, the further agreement to negotiate, it is intended by all parties that these negotiations be conducted to carry out the terms set forth in this Agreement without material change. The final form of any proposed DDA to be negotiated may contain matters not contemplated by this Agreement, including, but not limited to, matters necessary to accommodate compliance with law, including without limitation the California Environmental Quality Act.

9. LIMITATIONS ON REMEDIES FOR BREACH

A. Exclusive Right and Remedy

The Agency, LBHDC and the Developer each acknowledge and agree that neither the Agency, nor LBHDC nor the Developer would have entered into this Agreement if it were to be liable to the other for monetary damages or other remedies. Accordingly, the Agency, LBHDC and the Developer each acknowledge and agree that their respective sole and exclusive right and remedy upon the breach of this Agreement by the other is to terminate this Agreement, without cost, expense or liability to either party or their respective officers, officials, employees, consultants or agents.

B. Section 1542

Each party acknowledges that it is aware of the meaning and legal effect of California Civil Code Section 1542, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her would have materially affected his or her settlement with the debtor.

C. General Release

California Civil Code Section 1542 notwithstanding, it is the intention of each of the Agency, LBHDC and the Developer to be bound by the limitation on damages and remedies set forth in this Section 9, and the Agency, LBHDC and the Developer hereby release any and all claims against each other and their respective officers, officials, employees, consultants or agents for monetary damages or other legal or equitable relief related to any breach of this Agreement, whether or not any such released claims were known or unknown to any of the Agency, LBHDC or the Developer as of the date of this Agreement. The Agency, LBHDC and the Developer each waive the benefits of California Civil Code Section 1542 and all other statutes and judicial decisions (whether state or federal) of similar effect with regard to the limitations on damages and remedies and waivers of any such damages and remedies contained in this Section 9.

10. ENTIRE AGREEMENT

This Agreement represents the entire agreement of the parties and supersedes all negotiations or previous agreements between the parties with respect to development of the Property. This agreement may not be amended except by a writing executed by both parties.

THE PARTIES have executed this Agreement as of the date first written  
above.

REDEVELOPMENT AGENCY OF THE CITY OF  
LONG BEACH, CALIFORNIA, a public body  
corporate and politic

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

LONG BEACH HOUSING DEVELOPMENT  
COMPANY, a California nonprofit public benefit  
corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

Approved as to form this \_\_\_\_\_ day of  
\_\_\_\_\_, 2010.

ROBERT E. SHANNON, City Attorney of  
the City of Long Beach, California and  
general counsel of the Redevelopment  
Agency of the City of Long Beach and the Long  
Beach Housing Development Company

By: \_\_\_\_\_  
Assistant



DEVELOPER

UNITED CEREBRAL PALSY/SPASTIC CHILDREN'S  
FOUNDATION OF LOS ANGELES AND VENTURA  
COUNTIES, a California nonprofit public benefit  
corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

EXHIBIT A

SITE MAP

## EXHIBIT B

### SCHEDULE OF PERFORMANCE

1. Payment – Good Faith Deposit. Developer shall pay the Good Faith Deposit to Agency. Not required.
2. Developer Access to the Property. Agency shall provide Developer with access to the Property. Upon execution of this Agreement.
3. Inspect Environmental Condition of the Property. Developer shall perform such tests and inspections as Developer determines to be prudent. Within 30 days after execution of this Agreement by Agency.
4. Completion of Appraisal. Agency shall have completed its appraisal of the Property. Within 90 days after execution of this Agreement by Agency.
5. Submission – Pro Forma Budget. Developer shall submit to Agency and LBHDC its pro forma budget for the Project. Within 90 days after execution of this Agreement by Agency and LBHDC.
6. Preliminary Evidence of Financing. Developer shall have submitted to Agency and LBHDC its preliminary evidence of financing. Provided that the Exclusive Negotiation Period is extended, within 120 days after execution of this Agreement by Agency and LBHDC.
7. 50% Entitlement Drawings. Developer shall submit to Agency and LBHDC its 50% entitlement drawings. Provided that the Exclusive Negotiation Period is extended, within 120 days after execution of this Agreement by Agency and LBHDC.
8. CEQA. Agency shall circulate to the public a draft EIR for the Project, or a notice of determination for a mitigated negative declaration or a negative declaration. Provided that the Exclusive Negotiation Period is extended, within 120 days after execution of this Agreement by Agency

9. Purchase Price. The parties shall have agreed upon a purchase price and payment terms for the Property.

Provided that the Exclusive Negotiation Period is extended, within 180 days after execution of this Agreement by Agency.

10. Approval - Condition of the Property. Developer shall have approved the condition of the Property.

Provided that the Exclusive Negotiation Period is extended, within 180 days after execution of this Agreement by Agency.

11. Approval – Pro Forma Budget. The Executive Director and President shall have approved Developer's pro forma budget for the Project.

Provided that the Exclusive Negotiation Period is extended, within 180 days after execution of this Agreement by Agency and LBHDC.

12. Approval – Preliminary Evidence of Financing. The Executive Director and President shall have approved Developer's preliminary evidence of financing.

Provided that the Exclusive Negotiation Period is extended, within 180 days after execution of this Agreement by Agency and LBHDC.

13. Execution of DDA. Developer shall have executed and submitted to Agency for its approval a DDA.

Provided that the Exclusive Negotiation Period is extended, within 180 days after execution of this Agreement by Agency.