

**REPORT TO MAYOR AND COUNCIL
SITTING AS THE LOCAL REUSE AUTHORITY**

**TO THE HONORABLE MAYOR AND COUNCIL
SITTING AS THE LOCAL REUSE AUTHORITY:**

DATE: May 26, 2015

**SUBJECT: CONSIDERATION AND APPROVAL OF THE AGREEMENTS TO
NEGOTIATE BETWEEN (1) THE CITY OF CONCORD LOCAL REUSE
AUTHORITY AND CATELLUS DEVELOPMENT CORPORATION, AND
(2) THE CITY OF CONCORD LOCAL REUSE AUTHORITY AND LENNAR
CONCORD LLC**

Report in Brief

The report recommends that the Concord City Council, sitting as the Local Reuse Authority, consider and approve the attached Agreements to Negotiate between the LRA and Catellus Development Corporation, and between the LRA and Lennar Concord, LLC, as a first step in commencement of the LRA's negotiations related to selecting a Master Developer for Phase One of development for the Concord Naval Weapons Station.

Further this report describes the process for selecting a Master Developer, negotiating with the U.S. Navy and for completing negotiations of a Disposition and Development Agreement with the selected Master Developer.

Background

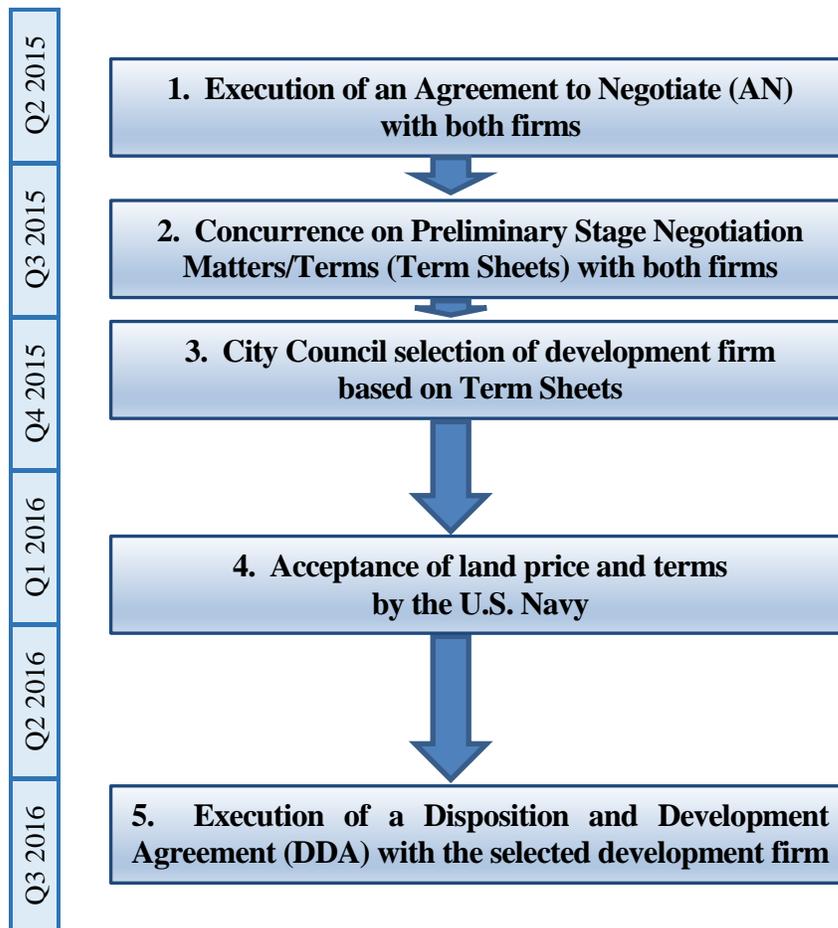
Prior to selection of a Master Developer there are two basic steps of negotiation. The first step is to gain concurrence between the LRA and each candidate firm on the Agreement to Negotiate. The Agreement to Negotiate guides negotiations on price and terms through the second step which is development of a Term Sheet. The completed Term Sheet will be an important input into Council's deliberations in selecting one of the two firms to be the Master Developer. After selection of the Master Developer, the information in the Term Sheet will also be used in negotiations with the Navy on value sharing. The Term Sheet will also guide the development of the Disposition and Development Agreement (DDA) between the LRA and the Master Developer. The DDA spells out the contractual terms of the partnership between, and the responsibilities of, the LRA and the Master Developer. Further it establishes milestones and public benefits of the Phase One development of the Base. Staff is targeting the selection of the Phase One Master Developer by the Council in early September, 2015.

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The graphics below summarize the five steps and provides an estimated timeline for each milestone.



The Council will approve the documents at each of the five key steps and would use the information from Steps 1 and 2, along with project site visits and its independent judgment to select a single master developer with which to complete Steps 4 and 5. The following paragraphs provide additional detail on the five key steps.

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1. Agreement to Negotiate

This Agreement must be executed by the candidate firm before any substantive discussion can take place on key negotiation matters. Attachments 1 and 2 are the final Agreement to Negotiate with each of the two candidate firms (Catellus and Lennar). The Agreement sets the process for our initial discussions, lays out remedies for default and sets the structure for reimbursement of City initial costs. The Agreement will cover the non-exclusive period and costs of development of a Term Sheet but will also become an exclusive agreement to cover the finalization of a DDA and the costs associated with that effort.

2. Concurrence on Preliminary Stage Negotiation Matters/Terms (Term Sheet)

Once an Agreement to Negotiate is executed, the LRA negotiating team will move to the development of initial terms and price in the form of a Term Sheet. Finalization of an initial Term Sheet will require concurrence between the LRA and the candidate developer on approximately 25 primary issues listed as Exhibit C to the Agreements to Negotiate. Several of the key issues may require guidance from the Council to the LRA negotiating team. The resultant initial Term Sheet will assist the City Council, sitting as the LRA, in its final selection process but it will likely require modification once the discussions with the Navy on land value (Step 4) are completed. Staff is estimating that this stage of negotiations could take up to 120 days, although we are hoping to conclude this step sooner to get the Term Sheets to the Council for a decision on a single master developer in mid-September.

3. City Council Selection of Master Developer

Based on the two Term Sheets, and other independent review, the City Council, sitting as the LRA, will select a single master developer with whom to continue negotiating.

4. Acceptance of Price and Terms by the U.S. Navy

Once the LRA has selected a master developer, and approved the associated price and terms (initial Term Sheet) resultant from negotiations with that firm, the next step is to seek an agreement on value with the Navy.

The price and terms established with the selected master developer will be the starting point of discussions with the Navy. Issues to be negotiated with the Navy include residual value for the raw land, upfront payments, payment terms over time, risk/value sharing of improved land residuals, and long term remedial liabilities. It is estimated that getting an agreement between all parties on these issues will take another 120 days, roughly until the first quarter of 2016. The agreement with the Navy will require Council approval before negotiations move to the final step of executing a DDA.

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5. Completion/Execution of a Disposition and Development Agreement

The DDA negotiations will be built on the foundation of the Term Sheet from Step 2 and the valuation agreement with the Navy. It is anticipated that finalization of this step will take six to eight months once a value is established with the Navy.

A draft of the DDA was included as an attachment to the RFP and staff received preliminary comments from the developer candidates on the document. The DDA should be viewed by Council as the actual contract between the City and the master developer and staff will start to bring sections of it for Council review starting in late 2015. However, we will not be able to finalize it until the Navy negotiations are completed. This document is intended to be amended to reflect the development details that will come from preparation of a specific plan for the first phase of development.

Discussion

Attached to this staff report are two documents. Attachments 1 and 2 are the final Agreement to Negotiate for Catellus Development Corporation and Lennar Concord LLC. They have been signed by the respective firms and staff is seeking LRA approval of the documents and authorization for the City Manager to execute them on behalf of the LRA. Execution of the documents will complete step one in the negotiation of price and terms. A draft of the Agreement to Negotiate was included as an appendix to the Master Developer RFP.

The major revisions to the draft in the RFP are as follows:

- In Section 3.2.1, new language was added to clarify that the City Manager can execute amendments to the Agreement to Negotiate that are consistent with a Term Sheet approved by the City Council.
- In Section 4, language was incorporated to confirm that the negotiations between each developer candidate are confidential and will not be shared with the second candidate.
- Section 5 now states that the developer's costs regarding CEQA compliance will be funded by the developer separate and apart from the Good Faith Deposits that will be used to fund City costs to negotiate and draft a proposed Term Sheet and DDA.
- Section 7 provides that the LRA will keep the developer candidates informed of any changes in status of the Public Benefit requests for land and any other

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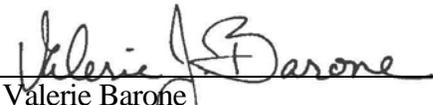
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third party inquiries or LRA responses regarding the site, as well as the status of negotiations with the U.S. Navy and other public entities.

- Section 10 was revised to clarify the developer's obligations to refrain from making disparaging statements and to set forth a meet and confer and mediation process to resolve any disputes as to whether the developer made such a statement before the LRA can impose liquidated damages.
- In Section 11, language was added to clarify exceptions to the lobbying prohibition, such as the developer's participation in workshops, public events and community forums.
- Terms were added to Exhibit C, regarding Preliminary Stage Negotiations Matters, to reflect the detailed provisions that will be discussed regarding the transfer of the site and other terms in the draft DDA.

Recommendation for Action

Staff requests LRA approval of the final Agreement to Negotiate between Catellus Development Corporation and the LRA and Lennar Concord LLC and the LRA and authorization for the City Manager to execute the documents.



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Attachment 1 – Catellus Agreement to Negotiate
Attachment 2 – Lennar Agreement to Negotiate

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AGREEMENT TO NEGOTIATE

THIS AGREEMENT TO NEGOTIATE (“**Agreement**”) is entered into this 26th day of May, 2015 (“**Effective Date**”), by and between the CITY OF CONCORD, a California municipal corporation in its capacity as local reuse authority for the Concord Naval Weapons Station (“**City**”), and CATELLUS DEVELOPMENT CORPORATION, a Delaware corporation (“**Developer**”). City and Developer are sometimes referred to individually herein as a “**Party**” and collectively as the “**Parties.**”

R E C I T A L S

A. City has solicited and evaluated development proposals from development entities for the first phase of development of the approximately 5,028-acre property known as the Inland Area of the Concord Naval Weapons Station (“**CRP Area**”).

B. The Concord Naval Weapons Station was once the United States Navy’s primary ammunition depot on the Pacific Coast. The Navy vacated the CRP Area in 1997, and in 2005 officially placed it on the base closure list. At that point, the City, acting through its City Council, was designated as the Local Reuse Authority by the Department of Defense pursuant to the provisions of the federal Base Realignment and Closure Act (P.L. 101-510), as amended (“**BRAC**”). The City engaged in a seven-year planning process, which, among other things, culminated in the adoption of the Concord Reuse Project (“**CRP**”) Area Plan.

C. Approximately 2,700 acres of the CRP Area (“**Regional Park**”) will be set aside for habitat conservation/restoration, open space and passive recreation pursuant to a public benefit conveyance from the United States government to a regional parks agency. An additional approximately 80 acres may be set aside for various public benefit uses, including, potentially, a first responder training facility, the City-owned portion of the golf course and various Caltrans, BART and City rights-of-way property. The balance of the CRP Area comprising approximately 2,248 acres (“**Development Footprint**”) will be transferred by Navy to City under the economic development conveyance provisions of BRAC. The Navy will transfer the Development Footprint to City in phases, with the first transfer to consist of approximately 1,400 acres (the “**First Transfer Parcel**”). The CRP Area, the Regional Park, the Development Footprint and the First Transfer Parcel are each depicted on the Site Map attached hereto as Exhibit A. The property that is the subject of this Agreement is an approximately 350 to 500 acre portion of the First Transfer Parcel (the “**Development Phase One Property**”), as depicted on the Map of Development Phase One Property attached hereto as Exhibit B, the specific location and acreage of which will be the subject of the Preliminary Stage negotiations, as defined below.

D. City issued a Request for Qualifications for development of the Development Phase One Property on January 15, 2014. In June 2014, the City announced the names of four prequalified respondents who would be invited to submit proposals in response to a City Requests for Proposals (“**RFP**”). Based on the proposals submitted in response to the RFP, City has selected two master developer candidates to pursue concurrent negotiations with City:

Developer and Lennar Concord, LLC (“**Second Developer Candidate**”). Developer has proposed developing the Development Phase One Property with a mix of residential, commercial and public uses substantially consistent with the approved CRP Area Plan (“**Development**”).

E. City and Developer desire to enter into this Agreement in order to set forth the terms under which the Parties will negotiate a detailed term sheet for the Development (“**Term Sheet**”). City intends to concurrently negotiate a separate term sheet with the Second Developer Candidate and to present that term sheet along with Developer’s Term Sheet to the City Council for consideration and, potentially, selection of one of the two master developer candidates for further negotiations with City. If the City Council selects Developer as the preferred master developer, this Agreement establishes procedures and standards for the negotiation and drafting of a proposed disposition and development agreement (“**DDA**”) pursuant to which, among other matters, City would convey to Developer the Development Phase One Property via multiple phased closings, and Developer, either itself or in cooperation with one or more vertical developers, would develop the Development on the Development Phase One Property. The City included with its RFP a form of DDA setting forth some of the terms applicable to the phased conveyance and development of the Development Phase One Property.

F. As more fully set forth below, City is pursuing concurrent negotiations with the Second Developer Candidate, and this Agreement does not obligate City to convey the Development Phase One Property or any portion thereof to Developer, or grant Developer the right to develop the Development.

NOW, THEREFORE, City and Developer hereby mutually agree as follows:

A G R E E M E N T

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 Negotiations.**

City and Developer agree for the Negotiating Period described in Section 3 below, to work together cooperatively and in good faith to negotiate and present for City Council consideration a Term Sheet, and, if the City Council selects Developer as the preferred master developer, to negotiate diligently and in good faith the terms of a mutually satisfactory DDA, including a form of statutory development agreement as an exhibit thereto, for the conveyance of the Development Phase One Property via multiple phased closings and the development of the Development thereon, on terms consistent with the approved Term Sheet.

3. **Negotiating Period.**

The negotiating period (“**Negotiating Period**”) shall be conducted in two stages as follows:

3.1 Preliminary Stage. Unless extended as provided in Section 3.3 below, the first stage of the Negotiating Period (“**Preliminary Stage**”) shall commence on the Effective Date and expire four (4) months thereafter. On or before expiration of the Preliminary Stage, the Parties shall work together in good faith to negotiate and present to the City Council for consideration a Term Sheet addressing the matters described in Exhibit C, attached hereto. As provided in Section 4 below, the City will be concurrently negotiating with the Second Developer Candidate a separate term sheet that City intends to present to the City Council for concurrent consideration. Further, during the Preliminary Stage, City will be negotiating with the Navy regarding the transfer of the First Transfer Parcel. If the Parties fail to reach agreement on a mutually acceptable Term Sheet prior to expiration of the Preliminary Stage, either Party may terminate this Agreement by written notice to the other Party. Upon such termination, the Initial Good Faith Deposit (as defined in Section 6.1 below), and any interest earned thereon, shall be refunded to Developer less any expenses charged or chargeable against the Initial Good Faith Deposit in accordance with this Agreement; and neither Party shall have any further rights or obligations under this Agreement, except as expressly set forth herein.

3.2 DDA Stage.

3.2.1 If the Parties reach agreement on a mutually acceptable Term Sheet and the City Council selects Developer as the preferred master developer, the Parties shall proceed to the second stage of the Negotiating Period (“**DDA Stage**”), which shall commence on the date the City Council makes its selection, and unless extended as provided below, shall expire on the date which is nine (9) months thereafter, or such later date as may be mutually determined through the Term Sheet negotiations. If the Parties agree upon a later date for expiration of the DDA Stage and if the City Council selects Developer as the preferred master developer, the Parties shall execute an amendment to this Agreement memorializing the revised DDA Stage expiration date. Such amendment may also include any additions to this Agreement the Parties agree are appropriate in light of the revised DDA Stage expiration date. The City Manager is authorized to approve amendments to this Agreement consistent with the approved Term Sheet. During the DDA Stage, it is expected that City will be continuing to negotiate with the Navy regarding the transfer of the First Transfer Parcel and that Developer will also participate in such negotiations. If a DDA has not been executed by City and Developer by the expiration of the DDA Stage of the Negotiating Period, then this Agreement shall terminate and neither Party shall have any further rights or obligations under this Agreement, except as set forth herein. If a DDA is executed by City and Developer then, upon execution of such agreement, this Agreement shall terminate, and all rights and obligations of the Parties shall be as set forth in the executed DDA.

3.2.2 If the City Council selects the Second Developer Candidate as the preferred master developer, Developer agrees to hold its Term Sheet open for a period of 12 months in the event negotiations with the Second Developer Candidate do not proceed to successful conclusion and City desires to resume further negotiations with Developer. In such event, City shall provide notice to Developer and Developer shall resume negotiations with City toward reaching agreement on a DDA consistent with the previously submitted Term Sheet. Upon notice by City of its intent to resume negotiations with Developer under this Section 3.2(b), the DDA Stage shall be extended until the date which is 270 days after the date of City’s

notice to Developer, negotiations shall proceed as set forth in Section 3.2.1 above, and Developer shall provide a Second Good Faith Deposit as described in Section 6.2 below.

3.2.3 If Developer is selected as the preferred master developer, Developer, at its option, may nevertheless terminate this Agreement by written notice to City delivered prior to deposit of the Second Good Faith Deposit, defined in Section 6.2 below, in which case Developer shall be entitled to the return of any unexpended portion of the Initial Good Faith Deposit in accordance with this Agreement; and neither Party shall have any further rights or obligations under this Agreement, except as expressly set forth herein.

3.3 Extensions. The Preliminary Stage of the Negotiation Period may be extended once for a period not to exceed 60 days on City's behalf by the City Manager if the City Manager determines in his or her sole discretion that the Parties have made substantial progress in their negotiations to merit such extension. The Negotiating Period may also be extended by mutual written agreement of the Parties. Possible administrative extensions of the DDA Stage of the Negotiation Period may be set forth in the Term Sheet and, if the City Council selects Developer as the preferred master developer, the Parties shall execute an amendment to this Agreement providing for such mutually agreed upon administrative extensions, which amendment the City Manager shall have authority to execute.

4. Exclusivity of Negotiations.

The Parties agree and acknowledge that, during the Preliminary Stage, City shall be conducting concurrent negotiations with the Second Developer Candidate regarding development of the Development Phase One Property, that such concurrent negotiations are expressly contemplated and permitted by this Agreement, and that City shall not negotiate regarding development of the Development Phase One Property during the Preliminary Stage with any private party other than Developer and the Second Developer Candidate. Negotiations during the DDA Stage, if applicable, shall be exclusive. Therefore, if the City Council selects Developer as the preferred master developer and enters into the DDA Stage with Developer, City shall be negotiating exclusively with Developer regarding development of the Development Phase One Property. During the entirety of the Negotiating Period, City shall not share information regarding the negotiations between City and Developer with the Second Developer candidate, and likewise will not share information regarding the negotiations between City and the Second Developer Candidate with Developer. Notwithstanding the above, during the entirety of the Negotiating Period, this Agreement shall not prevent City from providing information regarding the Development Phase One Property and development thereof to persons or entities other than Developer or the Second Developer Candidate or engaging in negotiations with other public entities, including the Navy, San Francisco Bay Area Rapid Transit District and East Bay Regional Park District, with respect to coordination of development, transfer and use of the CRP Area.

5. Planning and CEQA Review.

Pursuant to the California Environmental Quality Act ("CEQA"), City certified a Final Programmatic Environmental Impact Report ("EIR"), adopted Overriding Findings of Significance and adopted a Mitigation Monitoring and Reporting Program ("MMRP") in

conjunction with adoption of the Reuse Plan and adopted an Addendum to the EIR in connection with the CRP Area Plan. Developer acknowledges that, in conjunction with City consideration of a DDA and any permits or approvals for the Development, it will be necessary to comply with CEQA, although the EIR may be relied upon to the extent permitted under CEQA. Compliance with CEQA may require preparation of additional CEQA documents for the Development. Notwithstanding any other provision of this Agreement to the contrary, Developer, at its sole expense, shall pay all costs incurred by City in connection with compliance with CEQA and City review and consideration of permits or approvals for the Development or any other applications for City and federal, state and other regulatory agency permits and approvals, including all costs associated with environmental review and, if necessary, preparation of additional CEQA documents, including supplemental or subsequent environmental impact report(s), if any, with respect to the Development (collectively, “**CEQA and Permitting Costs**”). CEQA and Permitting Costs are in addition to the City Costs described in Section 6 below, and are not subject to the reimbursement limits on City Costs set forth in Section 6. Provisions for staffing and budgeting, setting of hourly rates, and Developer’s reimbursement for CEQA and Permitting Costs incurred by the City shall be negotiated and addressed in the Term Sheet.

6. Reimbursement of City Costs; Good Faith Deposit. Developer shall be required to reimburse the City for certain costs incurred during the Preliminary Stage of the Negotiating Period and, if selected as the preferred master developer, the DDA Stage of the Negotiating Period, as set forth in detail below.

6.1 Preliminary Stage Negotiations. In consideration for this Agreement, Developer has, prior to execution of this Agreement by City, provided to City a cash deposit of Two Hundred Fifty Thousand Dollars (\$250,000) (“**Initial Good Faith Deposit**”). City shall be entitled to draw against the Initial Good Faith Deposit and apply such draws to pay all internal and third party expenses incurred by City in connection with the negotiation and drafting of the Term Sheet and, if Developer is selected as the preferred master developer, the DDA, including but not limited to expenses of financial consultants, attorneys, planners and engineers, to negotiate draft term sheets and agreements and review infrastructure plans, development plans and the timing and financial ability to complete the Development, all related solely to the Development (collectively, “**City Costs**”) during the Preliminary Stage of the Negotiating Period. City Costs do not include CEQA and Permitting Costs, which are addressed in Section 5 above. City shall provide Developer with monthly invoices for City Costs. Such invoices must provide sufficient detail from which Developer may confirm who performed the services, the nature of the work performed, the hours worked, the rate charged to the City, and that the services were performed for City Costs. Reimbursement of City Costs during the Preliminary Stage shall be capped at a maximum of the Initial Good Faith Deposit and City shall not be entitled to any reimbursement over the amount of the Initial Good Faith Deposit. If Developer is selected as the preferred master developer, the remaining balance of the Initial Good Faith Deposit, if any, shall be retained by City and supplemented with the Second Good Faith Deposit, as set forth in Section 6.2 below. If Developer is not selected as the preferred master developer, then the remaining balance of the Initial Good Faith Deposit and any interest earned thereon, less any amounts needed to pay City Costs incurred prior to the date on which the Second Developer Candidate is selected as the preferred master developer (or the City determines not to proceed with either Developer or Second Master Developer Candidate), shall be held by City for six (6) months as security for performance of Developer’s obligations under Section 10 below.

Following expiration of the six month period and provided Developer has not breached its obligations under Section 10, the remaining balance of the Initial Good Faith Deposit and any interest earned thereon, if any, shall be refunded promptly to Developer.

6.2 DDA Stage Negotiations. If Developer is selected as the preferred master developer, Developer shall supplement the Initial Good Faith Deposit by providing to City a second cash deposit of Three Hundred Fifty Thousand Dollars (\$350,000) (“**Second Good Faith Deposit**”). The remaining balance of the Initial Good Faith Deposit, if any, as supplemented by the Second Good Faith Deposit, shall be referred to as the “**Good Faith Deposit.**” City shall be entitled to draw against the Good Faith Deposit and apply such draws to pay all City Costs incurred during the DDA Stage of the Negotiating Period. City shall provide Developer with monthly invoices for City Costs. Such invoices must provide sufficient detail from which Developer may confirm who performed the services, the nature of the work performed, the hours worked, the rate charged to the City, and that the services were performed for City Costs. Reimbursement of City Costs at the DDA Stage shall be capped at a maximum of the Good Faith Deposit and City, except as may otherwise be agreed upon by the Parties, shall not be entitled to any reimbursement over the amount of the Good Faith Deposit. If the Parties enter into a DDA, the remaining amount of the Good Faith Deposit shall be disposed of as specified in such agreement, and the Good Faith Deposit shall be considered an eligible project cost for purposes of calculation of Developer returns in any profit participation arrangement agreed to in the DDA. If this Agreement is terminated without execution of a DDA for any reason (except for default by Developer under Section 10), then the Good Faith Deposit and any interest earned thereon, less any amounts needed to pay City Costs incurred prior to the date of termination, shall be refunded promptly to Developer.

6.3 Deposit Accounts. City shall be under no obligation to pay or earn interest on the Initial Good Faith Deposit or the Second Good Faith Deposit, but, if interest shall accrue or be payable thereon, such interest (when received by City) shall be accumulated by City and added and held as part of the Initial Good Faith Deposit or the Second Good Faith Deposit, as applicable.

7. Progress Reports and Information.

Within ten (10) days following either Party’s request, which may be made from time to time during the Negotiating Period, the other Party shall submit to the requesting Party a written progress report advising the requesting Party on the status of all work being undertaken by or on its behalf. Further, City shall provide Developer with information regarding the Development Phase One Property reasonably available to City and shall make good faith efforts to notify Developer of: i) any third party offers or requests for negotiation (other than requests or offers from the Second Developer Candidate) received by City concerning the disposition of all or a portion of the Development Footprint; ii) any proposed City response to such offers or requests from a private party (other than the Second Developer Candidate) prior to City’s issuance of such response; and iii) the status of any negotiations between the City and any public entity concerning the disposition of all or a portion of the Development Footprint that occurs pursuant to the City’s reserved negotiation rights in Section 4.

8. Limitations on Effect of Agreement.

This Agreement (and any extension of the Negotiating Period) shall not obligate either City or Developer to enter into a DDA on or containing any particular terms. By execution of this Agreement (and any extension of the Negotiating Period), City is not committing itself to, or agreeing to, undertake disposition of the Development Phase One Property or any portion thereof and Developer is not committing itself to acquire the Development Phase One Property or any portion thereof. Execution of this Agreement by City and Developer is merely an agreement to conduct a period of negotiations in accordance with the terms hereof, reserving for subsequent City action the final discretion and approval regarding the execution of a DDA and all proceedings and decisions in connection therewith. Any DDA resulting from negotiations pursuant to this Agreement shall become effective only if and after such DDA has been considered and approved by the City Council, following conduct of all legally required procedures, and executed by duly authorized representatives of City and Developer. Until and unless a DDA is signed by Developer, approved by the City Council, and executed by City, no agreement drafts, actions, deliverables or communications arising from the performance of this Agreement shall impose any legally binding obligation on either Party to enter into or support entering into a DDA or be used as evidence of any oral or implied agreement by either Party to enter into any other legally binding agreement. This Agreement, which pertains only to negotiating procedures and standards between City and Developer, does not limit in any way the discretion of City in acting on any applications for permits or approvals for the Development. Consistent with Section 5 of this Agreement, the Parties acknowledge that CEQA compliance in connection with consideration of the Development will be required, and that City shall retain the discretion in accordance with applicable law before action on the Development by the City Council to (i) identify and impose mitigation measures to mitigate significant environmental impacts, (ii) select other feasible alternatives to avoid significant environmental impacts, (iii) balance the benefits of the Development against any significant environmental impacts prior to taking final action if such significant impacts cannot otherwise be avoided; or (iv) determine not to proceed with the Development.

9. Defaults and Remedies.

9.1 Default. Failure by either Party to negotiate in good faith as provided in this Agreement shall constitute an event of default hereunder. Except as otherwise set forth herein with respect to City's immediate right to terminate the Agreement under Section 10 or Section 11, 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 such default remains uncured ten days after receipt by the defaulting Party of such notice, the non-defaulting Party may exercise the remedies set forth in Section 9.2 or 9.3 below.

9.2 Exclusive Remedies for City Default. In the event of an uncured default by City, Developer's sole and exclusive remedy shall be to terminate this Agreement, upon which termination Developer shall be entitled to return of the remaining unexpended and uncommitted balance of the Initial Good Faith Deposit or Good Faith Deposit, as applicable, and any interest earned thereon, and neither Party shall have any further right, remedy or obligation under this Agreement; provided, however, any obligation under a specific provision of this Agreement for Developer to indemnify or defend the City shall survive such termination.

9.3 Exclusive Remedies for Developer Default. Except as otherwise provided in Section 10 below, in the event of an uncured default by Developer, City's sole and exclusive remedy shall be to terminate this Agreement and retain that portion of the Initial Good Faith Deposit or Good Faith Deposit, as applicable, and any interest earned thereon, needed to pay City Costs incurred prior to the date of such termination. 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 Developer to indemnify or defend City shall survive such termination.

9.4 No Damages. Except as otherwise provided in Section 10 below, neither Party shall have any liability to the other for damages or otherwise for any default, nor shall either Party have any other claims with respect to performance or non-performance by the other Party under this Agreement. Subject to Section 10 below, each Party specifically waives and releases any such rights or claims they may otherwise have at law or in equity in the event of a default by the other Party, including the right to recover actual, consequential, special or punitive damages from the defaulting Party.

10. Non-Disparagement.

10.1 Disparaging Statement. Developer agrees to refrain from making any public statements (*e.g.*, statements made in press releases, public hearings, community meetings, or similar public forums), or authorizing any statements to be reported as being attributed to the Developer, that are critical or derogatory of the City Council or City staff, and which are intended to and which would reasonably be expected to injure the reputation or business of the City (hereafter a "**Disparaging Statement**").

10.2 Notice and Demand to Meet and Confer. In the event where City claims that Developer has made or authorized a Disparaging Statement in violation of this Section 10, City shall provide notice of such claimed violation in accordance with Section 14, along with a demand to Developer to meet and confer in good faith within five (5) business days of Developer's receipt of said notice.

10.3 Mediation. If the Parties are unable to resolve the dispute at the meeting (or such longer time as each Party may agree in its sole discretion), the Parties agree to try and settle the dispute in good faith by mediation. Mediation shall be conducted by JAMS, Inc. ("**JAMS**"), in accordance with JAMS mediation rules and procedures (including those relating to confidentiality), and shall occur at JAMS' facility in Walnut Creek, California. Mediation shall not extend beyond one half-day absent mutual agreement of the Parties. Developer agrees to pay all costs charged by JAMS as a result of any mediation occurring pursuant to this Subsection 10.3

10.4 Liquidated Damages. Developer acknowledges and agrees that commission or authorization of a Disparaging Statement by Developer may result in irreparable harm to the City and that there is no adequate remedy at law for a violation of this Section 10. Developer further acknowledges and agrees that in the event of such violation, City will suffer damages, including lost opportunities to pursue other development and delayed receipt of property tax revenues from the Development Phase One Property, and that it would be impracticable and infeasible to fix the

actual amount of such damages. Therefore, if Developer is in breach of its obligations under this Section 10, and assuming City has exhausted the procedures described in Subsections 10.2 and 10.3, City may (i) if this Agreement has not already expired or been terminated, immediately terminate this Agreement by written notice to Developer, and (ii) retain the unexpended portion of the Initial Good Faith Deposit or Good Faith Deposit, as applicable, plus any interest thereon, as fixed and liquidated damages and not as a penalty. Developer's obligations under this Section 10 shall survive termination or expiration of this Agreement.

11. Lobbying Prohibition.

Developer agrees and acknowledges that the Preliminary Stage and DDA Stage negotiations shall take place with the LRA Executive Director, the City's legal, financial and planning advisers and such other City parties as may be designated by the LRA Executive Director from time to time (collectively, the "**City-Designated Team**"). Developer shall not engage in discussions, negotiations or lobbying of any City Council or Planning Commission members, or other City employees or officials as may be designated by the LRA Executive Director from time to time (collectively, "**Excluded City Parties**"), unless requested to do so by the City-Designated Team for specific purposes related to the negotiations. Nothing in this Section 11 shall prevent: (i) responses to requests for information from one or more Excluded City Parties, provided such responses are directed to the City-Designated Team; (ii) Developer's participation in any question-and-answer sessions, workshops, or tours approved in writing by the City-Designated Team; or (iii) Developer's participation in public events or community fora at which one or more Excluded City Parties are present, provided Developer does not engage in communications with such Excluded City Parties at such events that are intended to influence the Preliminary Stage or DDA Stage negotiations. In the event of Developer's violation of its obligations under this Section 11, City may immediately terminate this Agreement by written notice to Developer without affording Developer any opportunity to cure such violation.

12. Rights Following Expiration or Termination.

Following expiration or termination of this Agreement, neither party shall have any further rights against or liability to the other under this Agreement except as otherwise provided herein. Following expiration or termination of this Agreement, unless a DDA is signed by Developer, approved by the City Council, and executed by City, City shall have the absolute right to pursue disposition and development of the Development Phase One Property in any manner and with any party or parties it deems appropriate.

13. Right to Enter the First Transfer Parcel.

City shall work in good faith with the Navy to provide Developer, its employees, agents and contractors with a right of entry or other similar access to the First Transfer Parcel for the purpose of conducting inspections, tests, examinations, surveys, studies, appraisals and marketing tours. Any Right of Entry shall be in a form acceptable to City, Navy and Developer.

14. Notices.

Any approval, disapproval, demand or other notice which any Party may desire to give to the other Party under this Agreement must be in writing and may be given by any commercially acceptable means, including first class mail, personal delivery, or overnight courier, to the Party to whom the notice is directed at the address of the Party as set forth below, or at any other address as that Party may later designate by notice:

To Developer: Catellus Development Corporation
66 Franklin Street, Suite 200
Oakland, CA 94607
Attention: Bill Hosler
Telephone: (510) 267-3400

with a copy to: Catellus Development Corporation
66 Franklin Street, Suite 200
Oakland, CA 94607
Attention: Corporate Secretary
Telephone: (510) 267-3400

To City: City of Concord
Local Reuse Authority
1950 Parkside Drive
Concord, California
Attention: LRA Executive Director
Telephone: (925) 671-3001

with copies to: City of Concord
1950 Parkside Drive
Concord, California
Attention: City Attorney
Telephone: (925) 671-3160

and

Burke, Williams & Sorensen, LLP
1901 Harrison Street, 9th Floor
Oakland, CA 94612-3501
Attention: Gerald J. Ramiza
Telephone: (510) 273-8780

Any notice shall be deemed received on the date of delivery if delivered by personal service, three (3) business days after mailing if sent by first class mail, and on the date of delivery or refused delivery as shown by the records of the overnight courier if sent via overnight courier.

15. Confidentiality of Information.

Any information provided by Developer to City, including *pro formas* and other financial projections (whether in written, graphic, electronic or any other form) that is clearly marked as “CONFIDENTIAL/PROPRIETARY INFORMATION” (“**Confidential Information**”) shall be subject to the provisions of this Section 15. Subject to the terms of this Section, City shall use good faith diligent efforts to prevent disclosure of the Confidential Information to any third parties, except as may be required by the California Public Records Act (Government Code Section 6253 *et seq.*) or other applicable local, state or federal law (collectively, “**Public Disclosure Laws**”). Notwithstanding the preceding sentence, City may disclose Confidential Information to its officials, employees, agents, attorneys and advisors, but only to the extent necessary to carry out the purpose for which the Confidential Information was disclosed. Developer acknowledges that City has not made any representations or warranties that any Confidential Information City receives from Developer will be exempt from disclosure under any Public Disclosure Laws. In the event the City’s legal counsel determines that the release of the Confidential Information is required by Public Disclosure Laws, or order of a court of competent jurisdiction, City shall notify Developer of City’s intention to release the Confidential Information. If the City Attorney, in his or her discretion, determines that only a portion of the requested Confidential Information is exempt from disclosure under the Public Disclosure Laws, City may redact, delete or otherwise segregate the Confidential Information that will not be released from the non-exempt portion to be released.

Developer acknowledges that in connection with City Council’s consideration of any DDA as contemplated by this Agreement, City will need to present a summary of Developer’s financial projections, including anticipated costs of development, anticipated project revenues, and returns on cost and investment. If this Agreement is terminated without the execution of a DDA, City shall return to Developer any Confidential Information.

If any litigation is filed seeking to make public any Confidential Information, City and Developer shall cooperate in defending the litigation, and Developer shall pay City’s reasonable costs of defending such litigation and shall indemnify City against all costs and attorneys’ fees awarded to the plaintiff in any such litigation. Alternatively, Developer may elect to disclose the Confidential Information rather than defend the litigation.

The restrictions set forth herein shall not apply to Confidential Information to the extent such Confidential Information: (a) is now, or hereafter becomes, through no act or failure to act on the part of City, generally known or available; (b) is known by the City at the time of receiving such information as evidenced by City’s public records; (c) is hereafter furnished to City by a third party, as a matter of right and without restriction on disclosure; (d) is independently developed by City without any breach of this Agreement and without any use of or access to Developer’s Confidential Information as evidenced by City’s records; (e) is not clearly marked “CONFIDENTIAL/PROPRIETARY INFORMATION” as provided above (except where Developer notifies City in writing, prior to any disclosure of the Confidential Information, that omission of the “CONFIDENTIAL/PROPRIETARY INFORMATION” mark was inadvertent), or (f) is the subject of a written permission to disclose provided by Developer to City.

16. 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 potential 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 Section 16 shall survive termination of this Agreement.

17. 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 right to negotiate with City to any other person or entity, without the prior written approval of the City Council. Any purported voluntary or involuntary assignment of Developer's negotiation rights without such City written approval shall be null and void. Notwithstanding the foregoing, Developer may assign its rights under this Agreement without consent by the City to another business entity of which Developer or an affiliate of Developer (a) retains responsibility for the day to day entitlement and development activities; and (b) has a voting and profits interest in such entity. Developer shall provide not less than ten (10) days' prior written notice to City of any such permitted assignment.

18. Applicable Law; Venue.

This Agreement shall be construed in accordance with the law of the State of California without reference to choice of laws principles, and venue for any action under this Agreement shall be in Contra Costa County, California.

19. Severability.

If any provision of this Agreement or the application of any such provision shall be held by a court of competent jurisdiction to be invalid, void or unenforceable to any extent, the remaining provisions of this Agreement and the application thereof shall remain in full force and effect and shall not be affected, impaired or invalidated.

20. Integration.

This Agreement contains the entire understanding between the Parties relating to the matters set forth herein. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged in this Agreement and shall be of no further force or effect.

21. Modifications.

Any alteration, change or modification of or to this Agreement, in order to become effective, shall be made in writing and in each instance signed on behalf of each Party.

22. 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 Development Phase One Property or any other portion of the CRP Area with respect to this Agreement or any dispute or act arising from this Agreement.

23. Rights to Design Concepts and Development Plans.

Once submitted, all development project design concepts and plans that Developer owns or has the right to transfer shall become the property of the City. The City, without compensation to Developer or any third party, may use such development project design concepts and plans, together with any and all ideas and materials submitted in connection with the negotiations hereunder, whether or not Developer is selected as the preferred master developer and whether or not City and Developer enter into a DDA; provided, however, to the extent such concepts and plans are used without Developer's permission or agreement, Developer disclaims any representations or warranties regarding such concepts and plans, including whether or not they are sufficient for any particular purpose.

24. Interpretation.

As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The word "including" shall be construed as if followed by the words "without limitation." 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.

25. Authority.

Each person executing this Agreement on behalf of Developer does hereby covenant and warrant that (a) Developer is created and validly existing under the laws of Delaware, (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.

26. Joint and Several.

If Developer consists of more than one entity or person, the obligations of Developer hereunder shall be joint and several.

27. Counterparts.

This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement.

28. List of Exhibits.

The following Exhibits are attached hereto and incorporated herein by reference:

- (a) Exhibit A – Site Map
- (b) Exhibit B – Map of Development Phase One Property
- (c) Exhibit C – Preliminary Stage Negotiation Details

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

CITY:

CITY OF CONCORD, a California
municipal corporation

By: _____
Valerie Barone, City Manager

DEVELOPER:

CATELLUS DEVELOPMENT
CORPORATION, a Delaware corporation

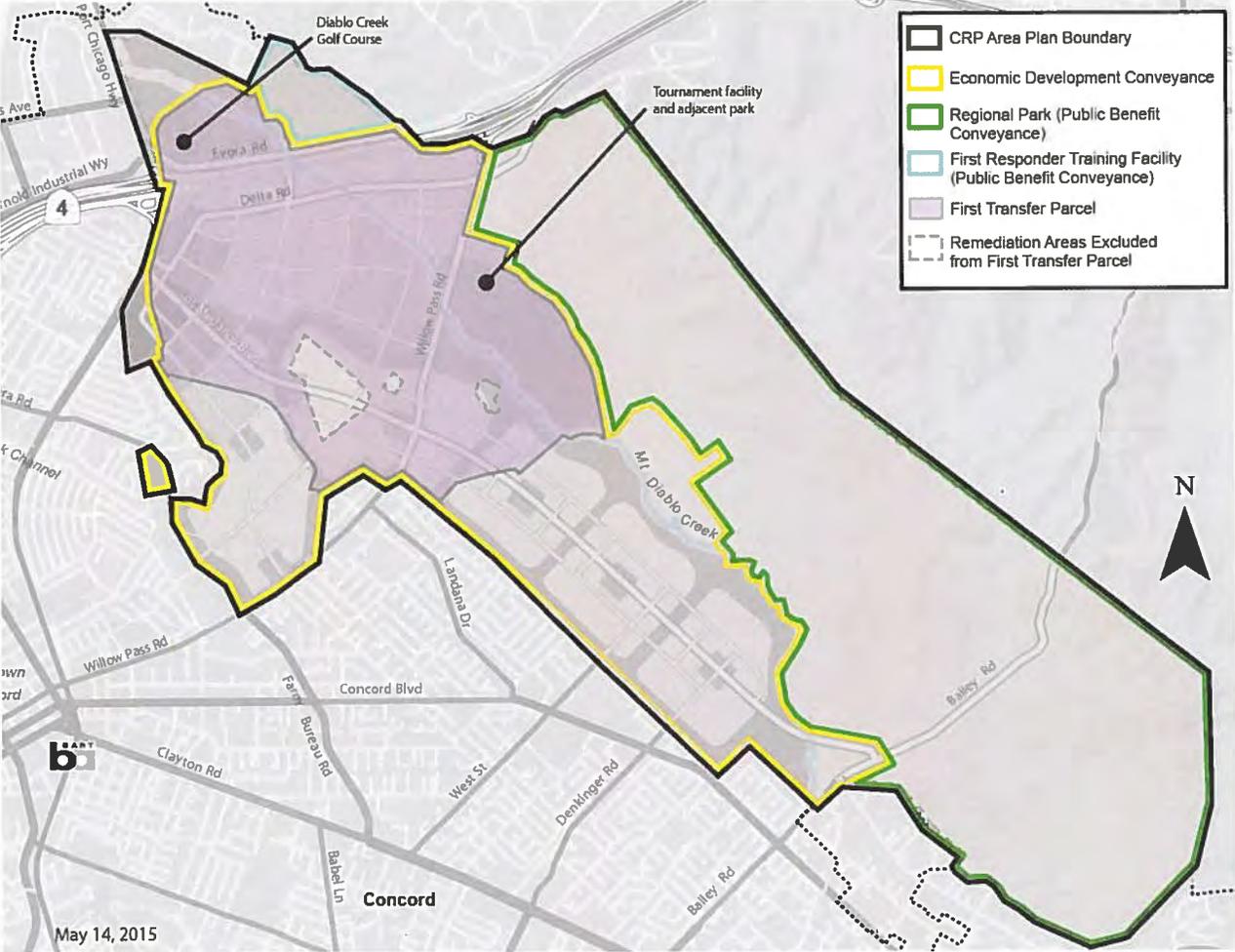
By:  _____
Name: C. William Hosler
Title: Executive Vice President

APPROVED AS TO FORM:

By: _____
Mark Coon, City Attorney

EXHIBIT A

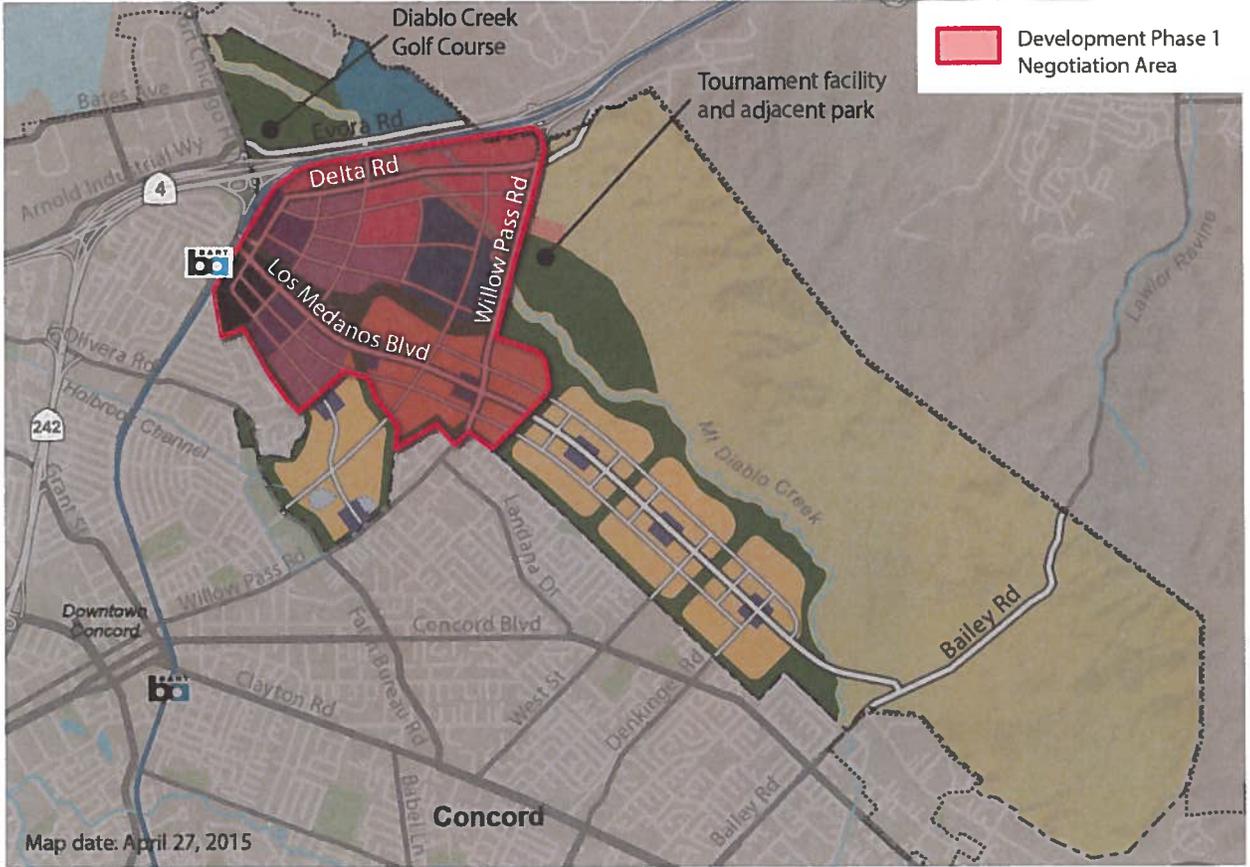
SITE MAP



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EXHIBIT B

MAP OF DEVELOPMENT PHASE ONE PROPERTY



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EXHIBIT C

PRELIMINARY STAGE NEGOTIATIONS MATTERS

- The terms under which Developer, following Navy's conveyance of the First Transfer Parcel to City, would operate, manage and maintain the First Transfer Parcel, including the Development Phase One Property, on an interim basis until such time as the final component of the Development Phase One Property is ready to be conveyed to Developer pursuant to the DDA, or the DDA has been terminated.
- Requirements for Developer to pay all internal, third party and consultant costs incurred by City in connection with the review and processing of Developer's Specific Plan, Development Agreement, land use entitlement and permit applications, including applications for federal, state and other regulatory agency permits, and provisions for staffing and budgeting, setting of hourly rates, and Developer's reimbursement for CEQA and Permitting Costs incurred by the City.
- The terms, including conditions precedent to closing, under which City would convey the Development Phase One Property to Developer by deed (or lease with respect to the Commercial Flex portions) in multiple phases corresponding with Developer's phased build out of the Development Phase One Property backbone infrastructure.
- The terms under which Developer would be permitted to assign or transfer its interests in the DDA to affiliates.
- The terms, including conditions precedent to closing, under which Developer would be permitted to convey subdivided, developable portions of the Development Phase One Property to one or more vertical developers, which may or may not be affiliates of Developer, following Developer's completion of applicable portions of the Development Phase One Property backbone infrastructure.
- The terms under which City and/or Navy may potentially receive a portion of the proceeds generated from Developer's conveyance of subdivided, developable portions of the Development Phase One Property to the vertical developer(s).
- The terms under which Developer will interface with Navy to address and remediate additional hazardous materials that may be discovered on the Development Phase One Property during development and following completion of Navy's initial remediation program.
- Requirements regarding compliance with the City's policies on prevailing wages, local hire and apprenticeship programs and potential Project Labor Agreements.
- Requirements for implementing site-wide mitigation and monitoring in accordance with the certified Final EIR for the Reuse Plan, Addendum for the CRP Area Plan and other environmental documents.

- Requirements for establishing an endowment fund to pay ongoing costs of implementing and complying with endangered species, habitat mitigation, archaeological and other mitigation obligations.
- Requirements related to compliance with affordable housing obligations and the phasing of affordable residential units.
- Requirements related to existing legally binding agreements regarding the provision of homeless housing and the transfer of property for a food bank.
- Requirements related to the phasing of development in the TOD core, as described in the CRP Area Plan, and neighborhood serving retail development.
- Requirements related to phasing of public improvements, including parks and other community facilities and amenities, and any necessary modifications to phasing over time.
- Requirements related to the transfer of a portion of the golf course and the provision of access through the golf course and corresponding improvements.
- Criteria and guidelines for development of the Development Phase One Property, including requirements related to design standards and City design review, to be set forth in a Specific Plan.
- Methods of financing the construction, installation and/or long term maintenance of public improvements, including, potentially, via Mello-Roos Community Facilities District, Infrastructure Finance District, Landscape and Lighting District or other tax exempt financing vehicles.
- The formula for calculating the purchase price, including any differences in pricing that are dependent on whether or not Developer is the vertical Developer, and adjustments to purchase price depending on remediation, backbone infrastructure, and other project development costs.
- Provisions regarding the term of the DDA and outside dates for conveyance of land and construction of specified improvements in phases.
- The terms, including conditions precedent, under which Developer would be obligated to commence each backbone infrastructure phase.
- Terms regarding leasing of existing facilities within the First Transfer Parcel including terms under which City would lease existing buildings to Developer for Project related uses and terms for termination of existing leases and approval of new leases.
- The Development Phase One Property development milestones and other conditions precedent that the Developer would be required to satisfy, before City would enter into subsequent exclusive negotiating agreements and/or disposition and development

agreements with Developer for all or a portion of the balance of the Development Footprint.

- Terms regarding remedies in the event of failure of conditions precedent and/or default at various stages (prior to land conveyance, prior to development, after partial conveyance/development, etc.).
- The terms under which City would enter into a Development Agreement with Developer with regard to the Development Phase One Property, including such terms as the duration of the Development Agreement, the scope of vested rights conferred, and the applicability of new or increased impact fees.
- Any other issues that the Parties mutually agree to negotiate.

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AGREEMENT TO NEGOTIATE

THIS AGREEMENT TO NEGOTIATE (“**Agreement**”) is entered into this 26th day of May, 2015 (“**Effective Date**”), by and between the CITY OF CONCORD, a California municipal corporation in its capacity as local reuse authority for the Concord Naval Weapons Station (“**City**”), and LENNAR CONCORD, LLC, a Delaware limited liability company (“**Developer**”). City and Developer are sometimes referred to individually herein as a “**Party**” and collectively as the “**Parties.**”

R E C I T A L S

A. City has solicited and evaluated development proposals from development entities for the first phase of development of the approximately 5,028-acre property known as the Inland Area of the Concord Naval Weapons Station (“**CRP Area**”).

B. The Concord Naval Weapons Station was once the United States Navy’s primary ammunition depot on the Pacific Coast. The Navy vacated the CRP Area in 1997, and in 2005 officially placed it on the base closure list. At that point, the City, acting through its City Council, was designated as the Local Reuse Authority by the Department of Defense pursuant to the provisions of the federal Base Realignment and Closure Act (P.L. 101-510), as amended (“**BRAC**”). The City engaged in a seven-year planning process, which, among other things, culminated in the adoption of the Concord Reuse Project (“**CRP**”) Area Plan.

C. Approximately 2,700 acres of the CRP Area (“**Regional Park**”) will be set aside for habitat conservation/restoration, open space and passive recreation pursuant to a public benefit conveyance from the United States government to a regional parks agency. An additional approximately 80 acres may be set aside for various public benefit uses, including, potentially, a first responder training facility, the City-owned portion of the golf course and various Caltrans, BART and City rights-of-way property. The balance of the CRP Area comprising approximately 2,248 acres (“**Development Footprint**”) will be transferred by Navy to City under the economic development conveyance provisions of BRAC. The Navy will transfer the Development Footprint to City in phases, with the first transfer to consist of approximately 1,400 acres (the “**First Transfer Parcel**”). The CRP Area, the Regional Park, the Development Footprint and the First Transfer Parcel are each depicted on the Site Map attached hereto as Exhibit A. The property that is the subject of this Agreement is an approximately 350 to 500 acre portion of the First Transfer Parcel (the “**Development Phase One Property**”), as depicted on the Map of Development Phase One Property attached hereto as Exhibit B, the specific location and acreage of which will be the subject of the Preliminary Stage negotiations, as defined below.

D. City issued a Request for Qualifications for development of the Development Phase One Property on January 15, 2014. In June 2014, the City announced the names of four prequalified respondents who would be invited to submit proposals in response to a City Requests for Proposals (“**RFP**”). Based on the proposals submitted in response to the RFP, City has selected two master developer candidates to pursue concurrent negotiations with City:

Developer and Catellus Development Corporation (“**Second Developer Candidate**”). Developer has proposed developing the Development Phase One Property with a mix of residential, commercial and public uses substantially consistent with the approved CRP Area Plan (“**Development**”).

E. City and Developer desire to enter into this Agreement in order to set forth the terms under which the Parties will negotiate a detailed term sheet for the Development (“**Term Sheet**”). City intends to concurrently negotiate a separate term sheet with the Second Developer Candidate and to present that term sheet along with Developer’s Term Sheet to the City Council for consideration and, potentially, selection of one of the two master developer candidates for further negotiations with City. If the City Council selects Developer as the preferred master developer, this Agreement establishes procedures and standards for the negotiation and drafting of a proposed disposition and development agreement (“**DDA**”) pursuant to which, among other matters, City would convey to Developer the Development Phase One Property via multiple phased closings, and Developer, either itself or in cooperation with one or more vertical developers, would develop the Development on the Development Phase One Property. The City included with its RFP a form of DDA setting forth some of the terms applicable to the phased conveyance and development of the Development Phase One Property.

F. As more fully set forth below, City is pursuing concurrent negotiations with the Second Developer Candidate, and this Agreement does not obligate City to convey the Development Phase One Property or any portion thereof to Developer, or grant Developer the right to develop the Development.

NOW, THEREFORE, City and Developer hereby mutually agree as follows:

A G R E E M E N T

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 Negotiations.

City and Developer agree for the Negotiating Period described in Section 3 below, to work together cooperatively and in good faith to negotiate and present for City Council consideration a Term Sheet, and, if the City Council selects Developer as the preferred master developer, to negotiate diligently and in good faith the terms of a mutually satisfactory DDA, including a form of statutory development agreement as an exhibit thereto, for the conveyance of the Development Phase One Property via multiple phased closings and the development of the Development thereon, on terms consistent with the approved Term Sheet.

3. Negotiating Period.

The negotiating period (“**Negotiating Period**”) shall be conducted in two stages as follows:

3.1 Preliminary Stage. Unless extended as provided in Section 3.3 below, the first stage of the Negotiating Period (“**Preliminary Stage**”) shall commence on the Effective Date and expire four (4) months thereafter. On or before expiration of the Preliminary Stage, the Parties shall work together in good faith to negotiate and present to the City Council for consideration a Term Sheet addressing the matters described in Exhibit C, attached hereto. As provided in Section 4 below, the City will be concurrently negotiating with the Second Developer Candidate a separate term sheet that City intends to present to the City Council for concurrent consideration. Further, during the Preliminary Stage, City will be negotiating with the Navy regarding the transfer of the First Transfer Parcel. If the Parties fail to reach agreement on a mutually acceptable Term Sheet prior to expiration of the Preliminary Stage, either Party may terminate this Agreement by written notice to the other Party. Upon such termination, the Initial Good Faith Deposit (as defined in Section 6.1 below), and any interest earned thereon, shall be refunded to Developer less any expenses charged or chargeable against the Initial Good Faith Deposit in accordance with this Agreement; and neither Party shall have any further rights or obligations under this Agreement, except as expressly set forth herein.

3.2 DDA Stage.

3.2.1 If the Parties reach agreement on a mutually acceptable Term Sheet and the City Council selects Developer as the preferred master developer, the Parties shall proceed to the second stage of the Negotiating Period (“**DDA Stage**”), which shall commence on the date the City Council makes its selection, and unless extended as provided below, shall expire on the date which is nine (9) months thereafter, or such later date as may be mutually determined through the Term Sheet negotiations. If the Parties agree upon a later date for expiration of the DDA Stage and if the City Council selects Developer as the preferred master developer, the Parties shall execute an amendment to this Agreement memorializing the revised DDA Stage expiration date. Such amendment may also include any additions to this Agreement the Parties agree are appropriate in light of the revised DDA Stage expiration date. The City Manager is authorized to approve amendments to this Agreement consistent with the approved Term Sheet. During the DDA Stage, it is expected that City will be continuing to negotiate with the Navy regarding the transfer of the First Transfer Parcel and that Developer will also participate in such negotiations. If a DDA has not been executed by City and Developer by the expiration of the DDA Stage of the Negotiating Period, then this Agreement shall terminate and neither Party shall have any further rights or obligations under this Agreement, except as set forth herein. If a DDA is executed by City and Developer then, upon execution of such agreement, this Agreement shall terminate, and all rights and obligations of the Parties shall be as set forth in the executed DDA.

3.2.2 If the City Council selects the Second Developer Candidate as the preferred master developer, Developer agrees to hold its Term Sheet open for a period of 12 months in the event negotiations with the Second Developer Candidate do not proceed to successful conclusion and City desires to resume further negotiations with Developer. In such event, City shall provide notice to Developer and Developer shall resume negotiations with City toward reaching agreement on a DDA consistent with the previously submitted Term Sheet. Upon notice by City of its intent to resume negotiations with Developer under this Section 3.2(b), the DDA Stage shall be extended until the date which is 270 days after the date of City’s

notice to Developer, negotiations shall proceed as set forth in Section 3.2.1 above, and Developer shall provide a Second Good Faith Deposit as described in Section 6.2 below.

3.2.3 If Developer is selected as the preferred master developer, Developer, at its option, may nevertheless terminate this Agreement by written notice to City delivered prior to deposit of the Second Good Faith Deposit, defined in Section 6.2 below, in which case Developer shall be entitled to the return of any unexpended portion of the Initial Good Faith Deposit in accordance with this Agreement; and neither Party shall have any further rights or obligations under this Agreement, except as expressly set forth herein.

3.3 Extensions. The Preliminary Stage of the Negotiation Period may be extended once for a period not to exceed 60 days on City's behalf by the City Manager if the City Manager determines in his or her sole discretion that the Parties have made substantial progress in their negotiations to merit such extension. The Negotiating Period may also be extended by mutual written agreement of the Parties. Possible administrative extensions of the DDA Stage of the Negotiation Period may be set forth in the Term Sheet and, if the City Council selects Developer as the preferred master developer, the Parties shall execute an amendment to this Agreement providing for such mutually agreed upon administrative extensions, which amendment the City Manager shall have authority to execute.

4. Exclusivity of Negotiations.

The Parties agree and acknowledge that, during the Preliminary Stage, City shall be conducting concurrent negotiations with the Second Developer Candidate regarding development of the Development Phase One Property, that such concurrent negotiations are expressly contemplated and permitted by this Agreement, and that City shall not negotiate regarding development of the Development Phase One Property during the Preliminary Stage with any private party other than Developer and the Second Developer Candidate. Negotiations during the DDA Stage, if applicable, shall be exclusive. Therefore, if the City Council selects Developer as the preferred master developer and enters into the DDA Stage with Developer, City shall be negotiating exclusively with Developer regarding development of the Development Phase One Property. During the entirety of the Negotiating Period, City shall not share information regarding the negotiations between City and Developer with the Second Developer candidate, and likewise will not share information regarding the negotiations between City and the Second Developer Candidate with Developer. Notwithstanding the above, during the entirety of the Negotiating Period, this Agreement shall not prevent City from providing information regarding the Development Phase One Property and development thereof to persons or entities other than Developer or the Second Developer Candidate or engaging in negotiations with other public entities, including the Navy, San Francisco Bay Area Rapid Transit District and East Bay Regional Park District, with respect to coordination of development, transfer and use of the CRP Area.

5. Planning and CEQA Review.

Pursuant to the California Environmental Quality Act ("CEQA"), City certified a Final Programmatic Environmental Impact Report ("EIR"), adopted Overriding Findings of Significance and adopted a Mitigation Monitoring and Reporting Program ("MMRP") in

conjunction with adoption of the Reuse Plan and adopted an Addendum to the EIR in connection with the CRP Area Plan. Developer acknowledges that, in conjunction with City consideration of a DDA and any permits or approvals for the Development, it will be necessary to comply with CEQA, although the EIR may be relied upon to the extent permitted under CEQA. Compliance with CEQA may require preparation of additional CEQA documents for the Development. Notwithstanding any other provision of this Agreement to the contrary, Developer, at its sole expense, shall pay all costs incurred by City in connection with compliance with CEQA and City review and consideration of permits or approvals for the Development or any other applications for City and federal, state and other regulatory agency permits and approvals, including all costs associated with environmental review and, if necessary, preparation of additional CEQA documents, including supplemental or subsequent environmental impact report(s), if any, with respect to the Development (collectively, “**CEQA and Permitting Costs**”). CEQA and Permitting Costs are in addition to the City Costs described in Section 6 below, and are not subject to the reimbursement limits on City Costs set forth in Section 6. Provisions for staffing and budgeting, setting of hourly rates, and Developer’s reimbursement for CEQA and Permitting Costs incurred by the City shall be negotiated and addressed in the Term Sheet.

6. Reimbursement of City Costs; Good Faith Deposit. Developer shall be required to reimburse the City for certain costs incurred during the Preliminary Stage of the Negotiating Period and, if selected as the preferred master developer, the DDA Stage of the Negotiating Period, as set forth in detail below.

6.1 Preliminary Stage Negotiations. In consideration for this Agreement, Developer has, prior to execution of this Agreement by City, provided to City a cash deposit of Two Hundred Fifty Thousand Dollars (\$250,000) (“**Initial Good Faith Deposit**”). City shall be entitled to draw against the Initial Good Faith Deposit and apply such draws to pay all internal and third party expenses incurred by City in connection with the negotiation and drafting of the Term Sheet and, if Developer is selected as the preferred master developer, the DDA, including but not limited to expenses of financial consultants, attorneys, planners and engineers, to negotiate draft term sheets and agreements and review infrastructure plans, development plans and the timing and financial ability to complete the Development, all related solely to the Development (collectively, “**City Costs**”) during the Preliminary Stage of the Negotiating Period. City Costs do not include CEQA and Permitting Costs, which are addressed in Section 5 above. City shall provide Developer with monthly invoices for City Costs. Such invoices must provide sufficient detail from which Developer may confirm who performed the services, the nature of the work performed, the hours worked, the rate charged to the City, and that the services were performed for City Costs. Reimbursement of City Costs during the Preliminary Stage shall be capped at a maximum of the Initial Good Faith Deposit and City shall not be entitled to any reimbursement over the amount of the Initial Good Faith Deposit. If Developer is selected as the preferred master developer, the remaining balance of the Initial Good Faith Deposit, if any, shall be retained by City and supplemented with the Second Good Faith Deposit, as set forth in Section 6.2 below. If Developer is not selected as the preferred master developer, then the remaining balance of the Initial Good Faith Deposit and any interest earned thereon, less any amounts needed to pay City Costs incurred prior to the date on which the Second Developer Candidate is selected as the preferred master developer (or the City determines not to proceed with either Developer or Second Master Developer Candidate), shall be held by City for six (6) months as security for performance of Developer’s obligations under Section 10 below.

Following expiration of the six month period and provided Developer has not breached its obligations under Section 10, the remaining balance of the Initial Good Faith Deposit and any interest earned thereon, if any, shall be refunded promptly to Developer.

6.2 DDA Stage Negotiations. If Developer is selected as the preferred master developer, Developer shall supplement the Initial Good Faith Deposit by providing to City a second cash deposit of Three Hundred Fifty Thousand Dollars (\$350,000) (“**Second Good Faith Deposit**”). The remaining balance of the Initial Good Faith Deposit, if any, as supplemented by the Second Good Faith Deposit, shall be referred to as the “**Good Faith Deposit.**” City shall be entitled to draw against the Good Faith Deposit and apply such draws to pay all City Costs incurred during the DDA Stage of the Negotiating Period. City shall provide Developer with monthly invoices for City Costs. Such invoices must provide sufficient detail from which Developer may confirm who performed the services, the nature of the work performed, the hours worked, the rate charged to the City, and that the services were performed for City Costs. Reimbursement of City Costs at the DDA Stage shall be capped at a maximum of the Good Faith Deposit and City, except as may otherwise be agreed upon by the Parties, shall not be entitled to any reimbursement over the amount of the Good Faith Deposit. If the Parties enter into a DDA, the remaining amount of the Good Faith Deposit shall be disposed of as specified in such agreement, and the Good Faith Deposit shall be considered an eligible project cost for purposes of calculation of Developer returns in any profit participation arrangement agreed to in the DDA. If this Agreement is terminated without execution of a DDA for any reason (except for default by Developer under Section 10), then the Good Faith Deposit and any interest earned thereon, less any amounts needed to pay City Costs incurred prior to the date of termination, shall be refunded promptly to Developer.

6.3 Deposit Accounts. City shall be under no obligation to pay or earn interest on the Initial Good Faith Deposit or the Second Good Faith Deposit, but, if interest shall accrue or be payable thereon, such interest (when received by City) shall be accumulated by City and added and held as part of the Initial Good Faith Deposit or the Second Good Faith Deposit, as applicable.

7. Progress Reports and Information.

Within ten (10) days following either Party’s request, which may be made from time to time during the Negotiating Period, the other Party shall submit to the requesting Party a written progress report advising the requesting Party on the status of all work being undertaken by or on its behalf. Further, City shall provide Developer with information regarding the Development Phase One Property reasonably available to City and shall make good faith efforts to notify Developer of: i) any third party offers or requests for negotiation (other than requests or offers from the Second Developer Candidate) received by City concerning the disposition of all or a portion of the Development Footprint; ii) any proposed City response to such offers or requests from a private party (other than the Second Developer Candidate) prior to City’s issuance of such response; and iii) the status of any negotiations between the City and any public entity concerning the disposition of all or a portion of the Development Footprint that occurs pursuant to the City’s reserved negotiation rights in Section 4.

8. Limitations on Effect of Agreement.

This Agreement (and any extension of the Negotiating Period) shall not obligate either City or Developer to enter into a DDA on or containing any particular terms. By execution of this Agreement (and any extension of the Negotiating Period), City is not committing itself to, or agreeing to, undertake disposition of the Development Phase One Property or any portion thereof and Developer is not committing itself to acquire the Development Phase One Property or any portion thereof. Execution of this Agreement by City and Developer is merely an agreement to conduct a period of negotiations in accordance with the terms hereof, reserving for subsequent City action the final discretion and approval regarding the execution of a DDA and all proceedings and decisions in connection therewith. Any DDA resulting from negotiations pursuant to this Agreement shall become effective only if and after such DDA has been considered and approved by the City Council, following conduct of all legally required procedures, and executed by duly authorized representatives of City and Developer. Until and unless a DDA is signed by Developer, approved by the City Council, and executed by City, no agreement drafts, actions, deliverables or communications arising from the performance of this Agreement shall impose any legally binding obligation on either Party to enter into or support entering into a DDA or be used as evidence of any oral or implied agreement by either Party to enter into any other legally binding agreement. This Agreement, which pertains only to negotiating procedures and standards between City and Developer, does not limit in any way the discretion of City in acting on any applications for permits or approvals for the Development. Consistent with Section 5 of this Agreement, the Parties acknowledge that CEQA compliance in connection with consideration of the Development will be required, and that City shall retain the discretion in accordance with applicable law before action on the Development by the City Council to (i) identify and impose mitigation measures to mitigate significant environmental impacts, (ii) select other feasible alternatives to avoid significant environmental impacts, (iii) balance the benefits of the Development against any significant environmental impacts prior to taking final action if such significant impacts cannot otherwise be avoided; or (iv) determine not to proceed with the Development.

9. Defaults and Remedies.

9.1 Default. Failure by either Party to negotiate in good faith as provided in this Agreement shall constitute an event of default hereunder. Except as otherwise set forth herein with respect to City's immediate right to terminate the Agreement under Section 10 or Section 11, 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 such default remains uncured ten days after receipt by the defaulting Party of such notice, the non-defaulting Party may exercise the remedies set forth in Section 9.2 or 9.3 below.

9.2 Exclusive Remedies for City Default. In the event of an uncured default by City, Developer's sole and exclusive remedy shall be to terminate this Agreement, upon which termination Developer shall be entitled to return of the remaining unexpended and uncommitted balance of the Initial Good Faith Deposit or Good Faith Deposit, as applicable, and any interest earned thereon, and neither Party shall have any further right, remedy or obligation under this Agreement; provided, however, any obligation under a specific provision of this Agreement for Developer to indemnify or defend the City shall survive such termination.

9.3 Exclusive Remedies for Developer Default. Except as otherwise provided in Section 10 below, in the event of an uncured default by Developer, City's sole and exclusive remedy shall be to terminate this Agreement and retain that portion of the Initial Good Faith Deposit or Good Faith Deposit, as applicable, and any interest earned thereon, needed to pay City Costs incurred prior to the date of such termination. 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 Developer to indemnify or defend City shall survive such termination.

9.4 No Damages. Except as otherwise provided in Section 10 below, neither Party shall have any liability to the other for damages or otherwise for any default, nor shall either Party have any other claims with respect to performance or non-performance by the other Party under this Agreement. Subject to Section 10 below, each Party specifically waives and releases any such rights or claims they may otherwise have at law or in equity in the event of a default by the other Party, including the right to recover actual, consequential, special or punitive damages from the defaulting Party.

10. Non-Disparagement.

10.1 Disparaging Statement. Developer agrees to refrain from making any public statements (*e.g.*, statements made in press releases, public hearings, community meetings, or similar public forums), or authorizing any statements to be reported as being attributed to the Developer, that are critical or derogatory of the City Council or City staff, and which are intended to and which would reasonably be expected to injure the reputation or business of the City (hereafter a "**Disparaging Statement**").

10.2 Notice and Demand to Meet and Confer. In the event where City claims that Developer has made or authorized a Disparaging Statement in violation of this Section 10, City shall provide notice of such claimed violation in accordance with Section 14, along with a demand to Developer to meet and confer in good faith within five (5) business days of Developer's receipt of said notice.

10.3 Mediation. If the Parties are unable to resolve the dispute at the meeting (or such longer time as each Party may agree in its sole discretion), the Parties agree to try and settle the dispute in good faith by mediation. Mediation shall be conducted by JAMS, Inc. ("**JAMS**"), in accordance with JAMS mediation rules and procedures (including those relating to confidentiality), and shall occur at JAMS' facility in Walnut Creek, California. Mediation shall not extend beyond one half-day absent mutual agreement of the Parties. Developer agrees to pay all costs charged by JAMS as a result of any mediation occurring pursuant to this Subsection 10.3

10.4 Liquidated Damages. Developer acknowledges and agrees that commission or authorization of a Disparaging Statement by Developer may result in irreparable harm to the City and that there is no adequate remedy at law for a violation of this Section 10. Developer further acknowledges and agrees that in the event of such violation, City will suffer damages, including lost opportunities to pursue other development and delayed receipt of property tax revenues from the Development Phase One Property, and that it would be impracticable and infeasible to fix the

actual amount of such damages. Therefore, if Developer is in breach of its obligations under this Section 10, and assuming City has exhausted the procedures described in Subsections 10.2 and 10.3, City may (i) if this Agreement has not already expired or been terminated, immediately terminate this Agreement by written notice to Developer, and (ii) retain the unexpended portion of the Initial Good Faith Deposit or Good Faith Deposit, as applicable, plus any interest thereon, as fixed and liquidated damages and not as a penalty. Developer's obligations under this Section 10 shall survive termination or expiration of this Agreement.

11. Lobbying Prohibition.

Developer agrees and acknowledges that the Preliminary Stage and DDA Stage negotiations shall take place with the LRA Executive Director, the City's legal, financial and planning advisers and such other City parties as may be designated by the LRA Executive Director from time to time (collectively, the "**City-Designated Team**"). Developer shall not engage in discussions, negotiations or lobbying of any City Council or Planning Commission members, or other City employees or officials as may be designated by the LRA Executive Director from time to time (collectively, "**Excluded City Parties**"), unless requested to do so by the City-Designated Team for specific purposes related to the negotiations. Nothing in this Section 11 shall prevent: (i) responses to requests for information from one or more Excluded City Parties, provided such responses are directed to the City-Designated Team; (ii) Developer's participation in any question-and-answer sessions, workshops, or tours approved in writing by the City-Designated Team; or (iii) Developer's participation in public events or community fora at which one or more Excluded City Parties are present, provided Developer does not engage in communications with such Excluded City Parties at such events that are intended to influence the Preliminary Stage or DDA Stage negotiations. In the event of Developer's violation of its obligations under this Section 11, City may immediately terminate this Agreement by written notice to Developer without affording Developer any opportunity to cure such violation.

12. Rights Following Expiration or Termination.

Following expiration or termination of this Agreement, neither party shall have any further rights against or liability to the other under this Agreement except as otherwise provided herein. Following expiration or termination of this Agreement, unless a DDA is signed by Developer, approved by the City Council, and executed by City, City shall have the absolute right to pursue disposition and development of the Development Phase One Property in any manner and with any party or parties it deems appropriate.

13. Right to Enter the First Transfer Parcel.

City shall work in good faith with the Navy to provide Developer, its employees, agents and contractors with a right of entry or other similar access to the First Transfer Parcel for the purpose of conducting inspections, tests, examinations, surveys, studies, appraisals and marketing tours. Any Right of Entry shall be in a form acceptable to City, Navy and Developer.

14. Notices.

Any approval, disapproval, demand or other notice which any Party may desire to give to the other Party under this Agreement must be in writing and may be given by any commercially acceptable means, including first class mail, personal delivery, or overnight courier, to the Party to whom the notice is directed at the address of the Party as set forth below, or at any other address as that Party may later designate by notice:

To Developer: Lennar Concord, LLC
c/o Lennar Urban
One Sansome Street, Suite 3200
San Francisco, CA 94104
Attention: Kofi Bonner, President
Telephone: (415) 995-1770

with a copy to: Perkins Coie LLP
4 Embarcadero Center, Suite 2400
San Francisco, CA 94111
Attention: Matthew S. Gray, Esq.
Telephone: (415) 344-7082

To City: City of Concord
Local Reuse Authority
1950 Parkside Drive
Concord, California
Attention: LRA Executive Director
Telephone: (925) 671-3001

with copies to: City of Concord
1950 Parkside Drive
Concord, California
Attention: City Attorney
Telephone: (925) 671-3160

and

Burke, Williams & Sorensen, LLP
1901 Harrison Street, 9th Floor
Oakland, CA 94612-3501
Attention: Gerald J. Ramiza
Telephone: (510) 273-8780

Any notice shall be deemed received on the date of delivery if delivered by personal service, three (3) business days after mailing if sent by first class mail, and on the date of delivery or refused delivery as shown by the records of the overnight courier if sent via overnight courier.

15. Confidentiality of Information.

Any information provided by Developer to City, including *pro formas* and other financial projections (whether in written, graphic, electronic or any other form) that is clearly marked as “CONFIDENTIAL/PROPRIETARY INFORMATION” (“**Confidential Information**”) shall be subject to the provisions of this Section 15. Subject to the terms of this Section, City shall use good faith diligent efforts to prevent disclosure of the Confidential Information to any third parties, except as may be required by the California Public Records Act (Government Code Section 6253 *et seq.*) or other applicable local, state or federal law (collectively, “**Public Disclosure Laws**”). Notwithstanding the preceding sentence, City may disclose Confidential Information to its officials, employees, agents, attorneys and advisors, but only to the extent necessary to carry out the purpose for which the Confidential Information was disclosed. Developer acknowledges that City has not made any representations or warranties that any Confidential Information City receives from Developer will be exempt from disclosure under any Public Disclosure Laws. In the event the City’s legal counsel determines that the release of the Confidential Information is required by Public Disclosure Laws, or order of a court of competent jurisdiction, City shall notify Developer of City’s intention to release the Confidential Information. If the City Attorney, in his or her discretion, determines that only a portion of the requested Confidential Information is exempt from disclosure under the Public Disclosure Laws, City may redact, delete or otherwise segregate the Confidential Information that will not be released from the non-exempt portion to be released.

Developer acknowledges that in connection with City Council’s consideration of any DDA as contemplated by this Agreement, City will need to present a summary of Developer’s financial projections, including anticipated costs of development, anticipated project revenues, and returns on cost and investment. If this Agreement is terminated without the execution of a DDA, City shall return to Developer any Confidential Information.

If any litigation is filed seeking to make public any Confidential Information, City and Developer shall cooperate in defending the litigation, and Developer shall pay City’s reasonable costs of defending such litigation and shall indemnify City against all costs and attorneys’ fees awarded to the plaintiff in any such litigation. Alternatively, Developer may elect to disclose the Confidential Information rather than defend the litigation.

The restrictions set forth herein shall not apply to Confidential Information to the extent such Confidential Information: (a) is now, or hereafter becomes, through no act or failure to act on the part of City, generally known or available; (b) is known by the City at the time of receiving such information as evidenced by City’s public records; (c) is hereafter furnished to City by a third party, as a matter of right and without restriction on disclosure; (d) is independently developed by City without any breach of this Agreement and without any use of or access to Developer’s Confidential Information as evidenced by City’s records; (e) is not clearly marked “CONFIDENTIAL/PROPRIETARY INFORMATION” as provided above (except where Developer notifies City in writing, prior to any disclosure of the Confidential Information, that omission of the “CONFIDENTIAL/PROPRIETARY INFORMATION” mark was inadvertent), or (f) is the subject of a written permission to disclose provided by Developer to City.

16. 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 potential 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 Section 16 shall survive termination of this Agreement.

17. 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 right to negotiate with City to any other person or entity, without the prior written approval of the City Council. Any purported voluntary or involuntary assignment of Developer's negotiation rights without such City written approval shall be null and void. Notwithstanding the foregoing, Developer may assign its rights under this Agreement without consent by the City to another business entity of which Developer or an affiliate of Developer (a) retains responsibility for the day to day entitlement and development activities; and (b) has a voting and profits interest in such entity. Developer shall provide not less than ten (10) days' prior written notice to City of any such permitted assignment.

18. Applicable Law; Venue.

This Agreement shall be construed in accordance with the law of the State of California without reference to choice of laws principles, and venue for any action under this Agreement shall be in Contra Costa County, California.

19. Severability.

If any provision of this Agreement or the application of any such provision shall be held by a court of competent jurisdiction to be invalid, void or unenforceable to any extent, the remaining provisions of this Agreement and the application thereof shall remain in full force and effect and shall not be affected, impaired or invalidated.

20. Integration.

This Agreement contains the entire understanding between the Parties relating to the matters set forth herein. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged in this Agreement and shall be of no further force or effect.

21. Modifications.

Any alteration, change or modification of or to this Agreement, in order to become effective, shall be made in writing and in each instance signed on behalf of each Party.

22. 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 Development Phase One Property or any other portion of the CRP Area with respect to this Agreement or any dispute or act arising from this Agreement.

23. Rights to Design Concepts and Development Plans.

Once submitted, all development project design concepts and plans that Developer owns or has the right to transfer shall become the property of the City. The City, without compensation to Developer or any third party, may use such development project design concepts and plans, together with any and all ideas and materials submitted in connection with the negotiations hereunder, whether or not Developer is selected as the preferred master developer and whether or not City and Developer enter into a DDA; provided, however, to the extent such concepts and plans are used without Developer's permission or agreement, Developer disclaims any representations or warranties regarding such concepts and plans, including whether or not they are sufficient for any particular purpose.

24. Interpretation.

As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The word "including" shall be construed as if followed by the words "without limitation." 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.

25. Authority.

Each person executing this Agreement on behalf of Developer does hereby covenant and warrant that (a) Developer is created and validly existing under the laws of Delaware, (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.

26. Joint and Several.

If Developer consists of more than one entity or person, the obligations of Developer hereunder shall be joint and several.

27. Counterparts.

This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement.

28. List of Exhibits.

The following Exhibits are attached hereto and incorporated herein by reference:

- (a) Exhibit A – Site Map
- (b) Exhibit B – Map of Development Phase One Property
- (c) Exhibit C – Preliminary Stage Negotiation Details

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

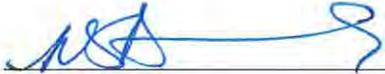
CITY:

CITY OF CONCORD, a California
municipal corporation

By: _____
Valerie Barone, City Manager

DEVELOPER:

LENNAR CONCORD, LLC, a Delaware
limited liability company

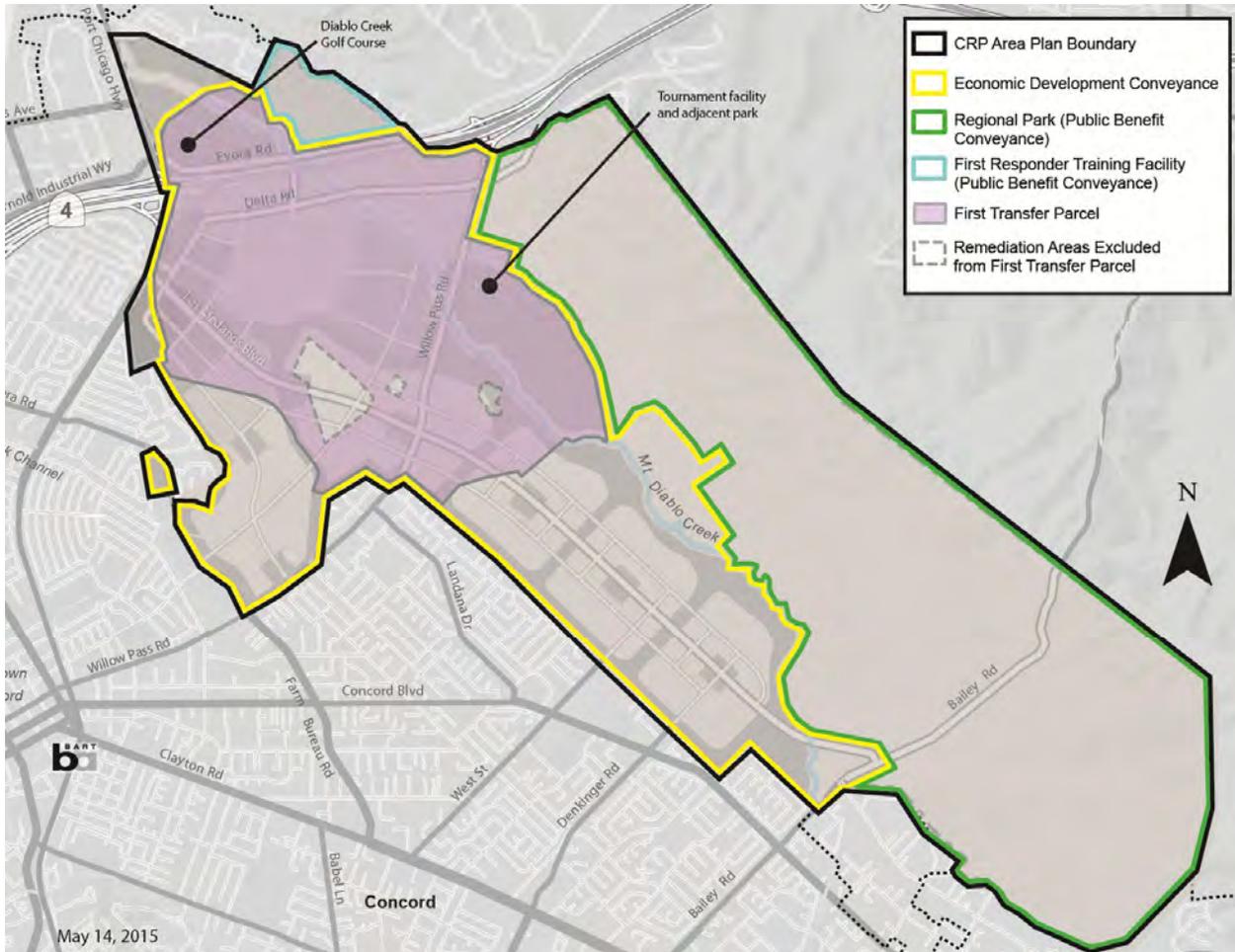
By: 
Name: Kofi Bonner
Title: President

APPROVED AS TO FORM:

By: _____
Mark Coon, City Attorney

EXHIBIT A

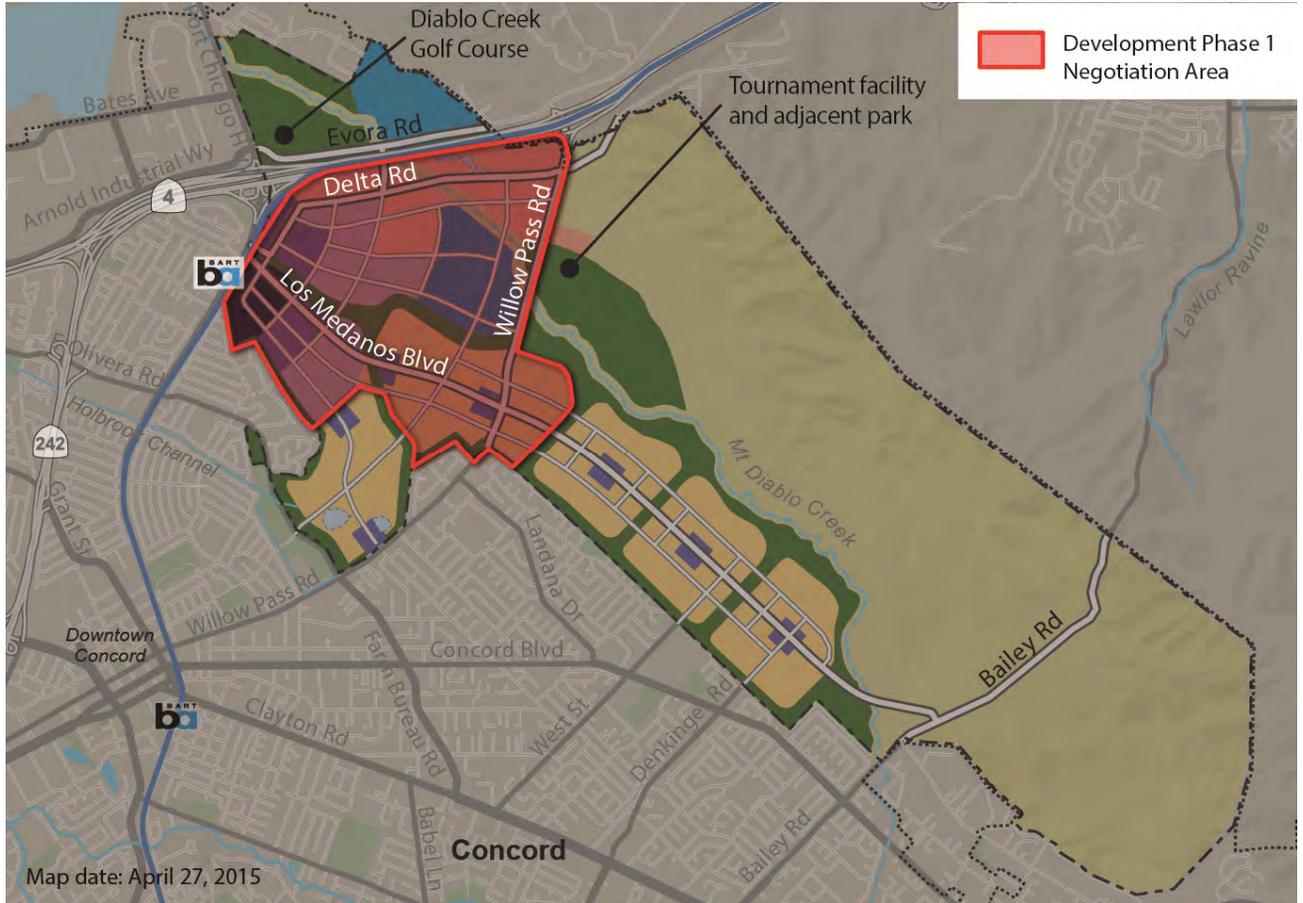
SITE MAP



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EXHIBIT B

MAP OF DEVELOPMENT PHASE ONE PROPERTY



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EXHIBIT C

PRELIMINARY STAGE NEGOTIATIONS MATTERS

- The terms under which Developer, following Navy's conveyance of the First Transfer Parcel to City, would operate, manage and maintain the First Transfer Parcel, including the Development Phase One Property, on an interim basis until such time as the final component of the Development Phase One Property is ready to be conveyed to Developer pursuant to the DDA, or the DDA has been terminated.
- Requirements for Developer to pay all internal, third party and consultant costs incurred by City in connection with the review and processing of Developer's Specific Plan, Development Agreement, land use entitlement and permit applications, including applications for federal, state and other regulatory agency permits, and provisions for staffing and budgeting, setting of hourly rates, and Developer's reimbursement for CEQA and Permitting Costs incurred by the City.
- The terms, including conditions precedent to closing, under which City would convey the Development Phase One Property to Developer by deed (or lease with respect to the Commercial Flex portions) in multiple phases corresponding with Developer's phased build out of the Development Phase One Property backbone infrastructure.
- The terms under which Developer would be permitted to assign or transfer its interests in the DDA to affiliates.
- The terms, including conditions precedent to closing, under which Developer would be permitted to convey subdivided, developable portions of the Development Phase One Property to one or more vertical developers, which may or may not be affiliates of Developer, following Developer's completion of applicable portions of the Development Phase One Property backbone infrastructure.
- The terms under which City and/or Navy may potentially receive a portion of the proceeds generated from Developer's conveyance of subdivided, developable portions of the Development Phase One Property to the vertical developer(s).
- The terms under which Developer will interface with Navy to address and remediate additional hazardous materials that may be discovered on the Development Phase One Property during development and following completion of Navy's initial remediation program.
- Requirements regarding compliance with the City's policies on prevailing wages, local hire and apprenticeship programs and potential Project Labor Agreements.
- Requirements for implementing site-wide mitigation and monitoring in accordance with the certified Final EIR for the Reuse Plan, Addendum for the CRP Area Plan and other environmental documents.

- Requirements for establishing an endowment fund to pay ongoing costs of implementing and complying with endangered species, habitat mitigation, archaeological and other mitigation obligations.
- Requirements related to compliance with affordable housing obligations and the phasing of affordable residential units.
- Requirements related to existing legally binding agreements regarding the provision of homeless housing and the transfer of property for a food bank.
- Requirements related to the phasing of development in the TOD core, as described in the CRP Area Plan, and neighborhood serving retail development.
- Requirements related to phasing of public improvements, including parks and other community facilities and amenities, and any necessary modifications to phasing over time.
- Requirements related to the transfer of a portion of the golf course and the provision of access through the golf course and corresponding improvements.
- Criteria and guidelines for development of the Development Phase One Property, including requirements related to design standards and City design review, to be set forth in a Specific Plan.
- Methods of financing the construction, installation and/or long term maintenance of public improvements, including, potentially, via Mello-Roos Community Facilities District, Infrastructure Finance District, Landscape and Lighting District or other tax exempt financing vehicles.
- The formula for calculating the purchase price, including any adjustments to purchase price depending on remediation, backbone infrastructure, and other project development costs.
- Provisions regarding the term of the DDA and outside dates for conveyance of land and construction of specified improvements in phases.
- The terms, including conditions precedent, under which Developer would be obligated to commence each backbone infrastructure phase.
- Terms regarding leasing of existing facilities within the First Transfer Parcel including terms under which City would lease existing buildings to Developer for Project related uses and terms for termination of existing leases and approval of new leases.
- The Development Phase One Property development milestones and other conditions precedent that the Developer would be required to satisfy, before City would enter into subsequent exclusive negotiating agreements and/or disposition and development

agreements with Developer for all or a portion of the balance of the Development Footprint.

- Terms regarding remedies in the event of failure of conditions precedent and/or default at various stages (prior to land conveyance, prior to development, after partial conveyance/development, etc.).
- The terms under which City would enter into a Development Agreement with Developer with regard to the Development Phase One Property, including such terms as the duration of the Development Agreement, the scope of vested rights conferred, and the applicability of new or increased impact fees.
- Any other issues that the Parties mutually agree to negotiate.