COPY

BEFORE THE CITY COUNCIL SITTING AS THE CONCORD LOCAL REUSE AUTHORITY OF THE COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA

RESOLUTION NO. 21-29

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN EXCLUSIVE AGREEMENT (ENA) TO NEGOTIATE BETWEEN THE LOCAL REUSE AUTHORITY AND CONCORD FIRST PARTNERS, LLC REGARDING DISPOSITION AND DEVELOPMENT OF APPROXIMATELY 2,350 ACRES OF THE INLAND AREA OF THE FORMER CONCORD NAVAL WEAPONS STATION; AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE ENA IN A FORM ACCEPTABLE TO THE CITY ATTORNEY

WHEREAS, the United States Navy ("Navy") vacated the approximately 5,000-acre property known as the Inland Area of the Concord Naval Weapons Station ("CRP Area") in 1997, and in 2005 officially placed it on the base closure list; and

WHEREAS, the City acting in its capacity as the Local Reuse Authority ("LRA") engaged in a seven-year planning process, which, among other things, culminated in the adoption of the Concord Reuse Project Area Plan ("CRP Area Plan"); and

WHEREAS, the CRP Area Plan provides that (i) approximately 2,600 acres of the CRP Area will be set aside as a regional park for habitat conservation/restoration, open space, and passive recreation ("Regional Park") pursuant to a public benefit conveyance from the United States government to a regional parks agency; (ii) approximately 78 acres may be set aside in accordance with the CRP Area Plan for various public benefit uses, including, potentially, a first responder training facility ("First Responder Site"); and (iii) the balance of the CRP Area comprising approximately 2,350 acres ("Development Footprint") will be transferred by Navy to City under the economic development conveyance provisions of the federal Base Realignment and Closure Act (P.L. 101-510), as amended ("BRAC"); and

WHEREAS, the Development Footprint is proposed to be transferred to the City, as LRA, pursuant to BRAC's economic development conveyance transfer mechanism because of the extensive job generation on the former installation; and

WHEREAS, BRAC requires LRAs to prepare a Reuse Plan and Homeless Assistance Submission to explain the proposed reuses of the military installation and how the Reuse Plan would

achieve a balance in responding to the community's economic development needs, and the needs of the homeless; and

WHEREAS, federal regulations specifically require the Navy to consider a list of specified factors in determining whether to approve an economic development conveyance, including the "[e]xtent of short- and long-term job generation," the "[f]inancial feasibility of the development and proposed consideration, including financial and market analysis and the need and extent of proposed infrastructure and other investments" and "[c]urrent local and regional real estate market conditions, including market demand for the property"; and

WHEREAS, as required by BRAC, the City, as LRA, prepared a Reuse Plan, a regional homeless needs assessment and conducted extensive outreach to solicit interest from homeless housing and service providers to satisfy the homeless needs which identified a need for multifamily transitional housing and job training; and

WHEREAS, consistent with federal regulations, the City advertised the availability of surplus buildings and properties to state and local eligible parties, including homeless assistance providers, conducted a public workshop, and directed outreach to homeless assistance providers to define how those needs could be met; and

WHEREAS, compliance with BRAC was brought to closure through City's development of legally binding agreements approved by the US Department of Housing and Development (HUD) with affordable housing providers in a collaborative (Contra Costa County Continuum of Care) and the Contra Costa/Solano Food Bank for dedication of certain land within the CRP Area for multifamily homeless housing and a food bank/warehouse training facility; and

WHEREAS, in 2019 the State of California enacted AB 1486 amending the State Surplus Land Act (Government Code section 54220 et seq.) ("SLA") to require, in part, that, except where property is considered "exempt surplus land," a local agency, including a city, disposing of real property not needed for certain narrowly defined agency uses, must first offer the property for sale to housing sponsors, school districts and parks districts for affordable housing, educational purposes or parks purposes, as applicable; and

//

WHEREAS, SLA Section 54221(f)(1)(F)(ii) states that "exempt surplus land" includes "[s]urplus land that is put out to open, competitive bid by a local agency, provided all entities identified in subdivision (a) of Section 54222 will be invited to participate in the competitive bid process, for. . . [a] mixed-use development that is more than one acre in area, that includes not less than 300 housing units, and that restricts at least 25 percent of the residential units to lower income households . . .with an affordable sales price or an affordable rent . . .for a minimum of 55 years for rental housing and 45 years for ownership housing"; and

WHEREAS, the City's commitment to the affordable housing goals embodied by AB 1486 is evidenced by the fact that City, since it first approved the CRP Area Plan in 2012, has been committed to a goal that 25% of all residential dwelling units developed on the Development Footprint be made available to lower-income households as defined in Section 50079.5 of the Health and Safety Code at an affordable rent or affordable housing cost as defined in Sections 50052.5 and 50053 of the Health and Safety Code; and

WHEREAS, on April 16, 2021, City issued a Request for Qualifications ("RFQ") for development of the Development Footprint which notified prospective developers that City was seeking a master developer who could commit to support delivery of at least 25% of the total number of residential units as affordable units available to lower income households; and

WHEREAS, City voluntarily provided notices of availability and issuance of the RFQ to the State Department of Housing and Community Development and all entities identified in Section 54222(a) of the SLA; and

WHEREAS, the RFQ incorporated findings that: (1) with respect to economic development conveyances, the SLA is preempted by the comprehensive and detailed scheme for transfer, disposition and development of former military base property set forth in BRAC, and (2) even if the SLA were deemed not to be preempted and therefore applicable to the City's disposition of the Development Footprint, the City's affordable housing requirements for the Development Footprint as described in the RFQ, meet the requirements for the Development Footprint to be considered "exempt surplus land" under SLA section 54221(f)(1)(F)(ii); and

//

WHEREAS, during the 63-day period the RFQ was available to prospective master developers, including affordable housing sponsors identified in Section 54222(a) of the SLA, the City received no notices of interest from housing sponsors or other preferred purchasers under the SLA, but did receive statements of qualifications from three prospective master developer candidates: a team now known as Concord First Partners, LLC, Brookfield Development and City Ventures; and

WHEREAS, on August 21, 2021, the Local Reuse Authority, based on the statements of qualifications submitted in response to the RFQ, selected a team now known as Concord First Partners, LLC, a joint venture whose members include Discovery Homes, Seecon Financial & Construction Co., Seeno Homes, Sierra Pacific Properties, Inc., Lewis Concord Member, LLC (one of the Lewis family group of companies), and California Capital & Investment Group, to negotiate with City and to potentially become the master developer of a proposed development project to include a mix of residential, commercial, and public uses substantially consistent with the approved CRP Area Plan ("Project") on the Development Footprint; and

WHEREAS, City and Developer desire to enter into an Exclusive Agreement to Negotiate ("ENA"; attached hereto as Exhibit A) setting forth the terms under which the parties will negotiate a detailed term sheet with respect to the proposed Project ("Term Sheet") which, if negotiations are successful, will be presented to the Local Reuse Authority for approval; and

WHEREAS, if the Local Reuse Authority approves the Term Sheet, the ENA establishes procedures and standards for the negotiation and drafting of a comprehensive proposed Disposition and Development Agreement ("DDA") consistent with the Term Sheet providing, among other things, for City's conveyance to Developer, subject to Developer meeting performance milestones to be set forth in the DDA, of all of the Development Footprint via multiple phased closings, and Developer's implementation, either itself or in cooperation with one or more vertical developers, of the Project; and

WHEREAS, the staff report accompanying this Resolution provides additional information about the potential Project and a copy of the proposed ENA; and

//

//

WHEREAS, the Local Reuse Authority intends and understands that in entering into the ENA the City is not committing to grant any land use approvals for the Project or to approve any further agreement with the Developer; and

WHEREAS, the Local Reuse Authority, after giving all public notices required by State Law and the Concord Municipal Code, held a duly noticed public meeting on October 26, 2021 and at such public meeting, they considered all pertinent oral and written information, exhibits, testimony, and comments received during the public review process, including, without limitation, information received at the public hearing, the oral report from City staff, the written report from City staff dated October 26, 2021, this Resolution, and all other information on which the Local Reuse Authority has based its decision (collectively, "Council Information").

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CONCORD SITTING AS THE LOCAL REUSE AUTHORITY DOES RESOLVE AS FOLLOWS:

Section 1. Approval of the Exclusive Agreement to Negotiate does not commit the City to a definite course of action with respect to the subject property, and this activity does not constitute a "project" within the meaning of Public Resources Code Section 21065 and/or the California Environmental Quality Act (CEQA) Guidelines Section 15060(c)(2) and CEQA Guidelines Section 15378. Even if this activity is a project for CEQA analysis, it falls within the "Common Sense" CEQA exemption set forth in CEQA Guidelines Section 15061(b)(3) where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. No unusual circumstances exist and none of the exceptions under CEQA Guidelines Section 15300.2 apply. This determination reflects the City's independent judgment and analysis. Appropriate CEQA analysis will occur in connection with formal negotiations for the Disposition and Development Agreement for the Reuse Project property.

Section 2. The Local Reuse Authority hereby finds and determines that the foregoing recitals are true and correct; the recitals are hereby incorporated by reference into each of the findings as though fully set forth therein. The recitals constitute findings in this matter, and together with the Council Information, serve as an adequate and appropriate evidentiary basis for the findings and actions set forth herein. Any exhibits attached to this Resolution are incorporated herein by reference.

Section 3. The Local Reuse Authority hereby finds that the 2019 amendments to the SLA implemented by AB 1486 directly contravene BRAC requirements by, among other things, (a) excluding from the definition of "agency's use" any development for "commercial or industrial uses or activities, including nongovernmental retail, entertainment, or office development" or dispositions for "the sole purpose of investment or generation of revenue"; and (b) requiring disgorgement of a percent of the gross sale price if the disposing agency fails to comply with the SLA which is in direct conflict with BRAC provisions requiring all proceeds obtained from the sale or use of former base property to either be paid to the federal government as consideration for the economic development conveyance or used for specified listed purposes to support economic redevelopment of the former base for at least seven years under threat of recoupment from the federal government and, therefore, the SLA, as amended by AB 1486, is preempted by BRAC.

Section 4. The Local Reuse Authority hereby further finds that even if the SLA were not preempted by BRAC and, therefore, deemed applicable to City's proposed disposition of the Development Footprint, the Development Footprint property subject to the ENA is "exempt surplus land" as defined in Section 54221(f)(1)(F)(ii) because (a) the development opportunity was put out to open, competitive bid by the City via issuance of the RFQ, (b) all entities identified in SLA Section 54222(a) were invited by City to participate in the competitive bid process, and (c) the development opportunity described in the RFQ is for a mixed-use development that is more than one acre in area, includes more than 300 housing units, and will restrict at least 25 percent of the residential units to lower income households with an affordable sales price or an affordable rent for a minimum of 55 years for rental housing and 45 years for ownership housing.

Section 5. The Local Reuse Authority hereby approves the ENA and authorizes the City Manager to execute the ENA on behalf of the City in substantially the form submitted to the Local Reuse Authority in connection with the consideration of this Resolution, subject to such minor changes as the City Manager and City Attorney may approve, in a form acceptable to the City Attorney provided, however, that nothing in this Resolution, the preparation of the ENA or the conduct of the negotiations pursuant to the ENA shall be deemed to commit the City to approve any land use approvals for the Project or to approve any further agreement with the Developer.

Section 6. The Local Reuse Authority authorizes and directs the City Manager and her designees to take such steps as are reasonable and necessary to performance of the City's obligations under the ENA and to carry out the terms and conditions of the ENA.

Section 7. This resolution shall become effective immediately upon its passage and adoption.

PASSED AND ADOPTED by the City of Concord Local Reuse Authority on October 26, 2021, by the following vote:

AYES: Authoritymembers - D. Aliano, E. Birsan, L. Hoffmeister, C. Obringer, T. McGallian

NOES: Authoritymembers - None

ABSTAIN: Authoritymembers - None

ABSENT: Authoritymembers - None

I HEREBY CERTIFY that the foregoing Resolution No. 21-29 was duly and regularly adopted at a regular meeting of the City of Concord Local Reuse Authority on October 26, 2021.

Joelle Fockler, MMC
Local Reuse Authority Secretary

APPROVED AS TO FORM:

Susanne Meyer Brown
Authority Counsel

Attachment: Exhibit A – Exclusive Agreement to Negotiate

EXCLUSIVE AGREEMENT TO NEGOTIATE

by and between

CITY OF CONCORD
("City")

and

CONCORD FIRST PARTNERS, LLC,
("Developer")

Dated October 26, 2021

CCA-5918

TABLE OF CONTENTS

TABLE OF CONTENTS
(continued)

EXCLUSIVE AGREEMENT TO NEGOTIATE

THIS EXCLUSIVE AGREEMENT TO NEGOTIATE (**"Agreement"**), dated for reference purposes as of October 27, 2021 (the **"Effective Date"**), is entered into 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 CONCORD FIRST PARTNERS, LLC, a Delaware limited liability company (**"Developer"**). City and Developer are sometimes referred to individually herein as a **"Party"** and collectively as the **"Parties."**

RECITALS

A. The Concord Naval Weapons Station was once the United States Navy's primary ammunition depot on the Pacific Coast. The United States Navy (**"Navy"**) vacated the approximately 5,000-acre property known as the Inland Area of the Concord Naval Weapons Station (**"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 ("**LRA**") 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 Area Plan (**"CRP Area Plan"**).

B. The CRP Area Plan provides that approximately 2,600 acres of the CRP Area will be set aside as a regional park for habitat conservation/restoration, open space, and passive recreation (**"Regional Park"**) pursuant to a public benefit conveyance from the United States government to a regional parks agency. An additional approximately 78 acres may be set aside in accordance with the CRP Area Plan for various public benefit uses, including, potentially, a first responder training facility (**"First Responder Site"**). The balance of the CRP Area comprising approximately 2,350 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, following concurrence by state and federal regulatory agencies on a Finding of Suitability for Transfer ("**FOST**") with respect to the Development Footprint or portion thereof to be transferred. The Navy has completed a FOST for an initial transfer of 1,304 acres of the Development Footprint. The CRP Area, the Regional Park, and the Development Footprint are each depicted on the Site Map attached hereto as Exhibit A.

C. City issued a Request for Qualifications (**"RFQ"**) for development of the Development Footprint on April 16, 2021. On August 21, 2021 (**"Selection Date"**), the City Council, based on the statements of qualifications submitted in response to the RFQ, selected Developer to negotiate with City and to potentially become the master developer of a potential development project to include a mix of residential, commercial, and public uses substantially consistent with the approved CRP Area Plan (**"Project"**) on all of the Development Footprint.

D. 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 with respect to the Project (**"Term Sheet"**) which, if negotiations are successful, will be presented to the City Council for approval. If the City Council approves the Term Sheet, this Agreement also establishes procedures and standards for the negotiation and drafting of a comprehensive proposed

Disposition and Development Agreement (**"DDA"**) consistent with the Term Sheet providing, among other things, for City's conveyance to Developer, subject to Developer meeting performance milestones to be set forth in the DDA, of all of the Development Footprint via multiple phased closings, and Developer's implementation, either itself or in cooperation with one or more vertical developers, of the Project.

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

AGREEMENTS

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. Exclusive Negotiations.

City and Developer agree for the Negotiating Period described in Section 3 below, to work together cooperatively to diligently negotiate and present for City Council consideration a Term Sheet, and, if the City Council approves the Term Sheet, to diligently negotiate the terms of a mutually satisfactory DDA, including a form of statutory Development Agreement as an exhibit thereto, for the conveyance to Developer, subject to Developer meeting performance milestones to be set forth in the DDA, of the Development Footprint via multiple phased closings and implementation of the Project thereon, all on terms consistent with the approved Term Sheet.

3. Negotiating Period.

The Negotiating Period will be conducted in two stages as follows:

3.1 Preliminary Stage. The first stage of the Negotiating Period (**"Preliminary Stage"**) will commence on the Effective Date and expire, unless extended as provided in Section 3.3 below, one hundred eighty (180) calendar days thereafter. During the Preliminary Stage, the Parties shall diligently work together to negotiate and present to the City Council, prior to expiration of the Preliminary Stage, for Council's consideration and potential approval a Term Sheet addressing the matters described in Exhibit B, attached hereto and such other matters agreed upon by the Parties. 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, neither Party will have any further rights or obligations under this Agreement, except as expressly set forth herein.

3.2 DDA Stage.

(a) If, and only if, the Parties reach agreement on a mutually acceptable Term Sheet and the City Council approves it prior to expiration of the Preliminary Stage, as may be extended pursuant to Section 3.3 below, the Parties shall proceed to the second stage of the Negotiating Period (the **"DDA Stage"**), which will commence on the date the City Council approves the Term Sheet, and unless extended as provided in Section 3.3 below, will expire on

the date which is twenty-four (24) months thereafter, or such later date as may be mutually determined through the Term Sheet negotiations. The City Manager or designee is authorized to approve amendments to this Agreement to the extent consistent with the approved Term Sheet. During the DDA Stage, it is expected that City will continue to negotiate with the Navy regarding the transfer of the Development Footprint to the City and that Developer may be asked to participate in such negotiations as requested by City. If a DDA has not been executed by City and Developer by the expiration of the DDA Stage, then this Agreement shall terminate and neither Party shall have any further rights or obligations under this Agreement, except as set forth herein.

(b) If the Parties reach agreement on a mutually acceptable Term Sheet and such Term Sheet is approved by the City Council, Developer, at its option, may nevertheless terminate this Agreement by written notice to City delivered prior to delivery of the Second Deposit, defined in Section 6.2 below, in which case neither Party will have any further rights or obligations under this Agreement, except as expressly set forth herein.

3.3 Extensions. The Preliminary Stage may be extended one or more times for a period not to exceed one hundred eighty (180) calendar days in total on City's behalf by the City Manager or designee if such official determines in their sole discretion that the Parties have made substantial progress in their negotiations to merit such extension. Possible administrative extensions of the DDA Stage of the Negotiating Period may be set forth in the Term Sheet and, if the City Council approves it, the Parties will execute an amendment to this Agreement providing for such mutually agreed upon administrative extensions, which amendment the City Manager shall have authority to execute. Subject to approval by the City Council, either stage of the Negotiating Period may also be extended by mutual written agreement of the Parties.

4. Exclusivity of Negotiations.

During the Negotiating Period, the City shall negotiate exclusively with Developer regarding implementation of the Project. Notwithstanding the above, during the entirety of the Negotiating Period, this Agreement does not prevent City from providing information regarding the Project or implementation thereof (other than Developer's Confidential Information as defined in Section 16 below) to persons or entities other than Developer or engaging in negotiations with other public entities, including the Navy, San Francisco Bay Area Rapid Transit District (**"BART"**) and East Bay Regional Park District (**"EBRPD"**), with respect to development, transfer and use of relevant portions of the CRP Area.

5. Project Implementation; Payment of City CNWS Project Costs.

Pursuant to the California Environmental Quality Act (**"CEQA"**), City certified a Final Programmatic Environmental Impact Report (**"Program 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 Program EIR in connection with the CRP Area Plan. Developer acknowledges that, in conjunction with City consideration of a proposed DDA and any Specific Plan or other land use plans, entitlements, permits, or approvals for the Project (collectively the **"Project Approvals"**), it will be necessary to comply with CEQA at the Project level, although the Program EIR may be relied upon to the

extent permitted under CEQA. The Parties agree that all costs incurred by City in connection with the planning, administration, and implementation of the proposed Project, including the work of preparing, processing, and reviewing a proposed Specific Plan and accompanying CEQA document and all other Project Approvals, negotiating and drafting an Economic Development Conveyance Memorandum of Agreement with the Navy, procuring and negotiating environmental insurance policies, processing of site-wide natural resource agency permits, and negotiating with EBRPD, BART and the County on one or more agreements to coordinate development and operation of the Development Footprint, Regional Park, adjacent North Concord BART property, and First Responder Site (collectively, the **"City CNWS Project Costs"**), shall be paid by Developer as provided in a separate reimbursement agreement between City and Developer. The reimbursement agreement will be signed by the City Manager and Developer, in a form reasonably acceptable to the City and Developer, and will be entered into by the Parties no later than commencement of the DDA Stage. City CNWS Project Costs are in addition to the City DDA Costs described in Section 6 below, and are not subject to the reimbursement limits on City DDA Costs set forth in Section 6. Provisions for staffing and budgeting, setting of hourly rates, Developer right to review and approve budget augmentations, and Developer's reimbursement for City CNWS Project Costs incurred by the City will be negotiated and addressed in the Term Sheet.

6. Reimbursement of City DDA Costs; Developer Deposit.

Developer shall reimburse the City for certain City DDA Costs (defined below) incurred between the Selection Date and the Effective Date and during the Preliminary Stage and the DDA Stage of the Negotiating Period, as set forth in detail below. As used in this Agreement, **"City DDA Costs"** means and includes all internal and third party expenses incurred by City between the Selection Date and the Effective Date in connection with the negotiation and drafting of this Agreement and during the Negotiating Period in connection with the negotiation and drafting of the Term Sheet and DDA, including but not limited to expenses of City/LRA staff, financial consultants, attorneys, planners, and engineers retained to negotiate and draft this Agreement, the Term Sheet, the DDA and any ancillary agreements, including without limitation any statutory Development Agreement, and prepare analyses regarding the timing and Developer's financial ability to complete the Project, all related solely to the Project. The City's initial estimate of the City DDA Costs anticipated to be incurred following the Selection Date and during both stages of the Negotiating Period is Six Hundred Thousand Dollars ($600,000) as generally itemized in the initial budget for the Negotiating Period attached hereto as **Schedule 1** (**"Anticipated City DDA Costs Budget"**), which Developer hereby approves. City DDA Costs do not include CEQA/Entitlement Costs, which are addressed in Section 5 above. Developer has the right to review and reasonably approve any material changes to, or increases in, the Anticipated City DDA Costs Budget before those additional City DDA Costs are incurred by the City in accordance with Section 6.3 (provided, however, City may make changes to, and/or reallocated funds between individual line items, provided the overall Anticipated City DDA Costs Budget is not increased).

6.1 Preliminary Stage Negotiations. Developer has, prior to or concurrent with the execution of this Agreement by City, provided to City a cash deposit of Two Hundred Fifty Thousand Dollars ($250,000) (**"Initial Deposit"**). City is entitled to draw against the Initial Deposit and apply such draws to pay all City DDA Costs incurred between the Selection Date

and the Effective Date and during the Preliminary Stage of the Negotiating Period. City shall provide Developer with monthly invoices for City DDA 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 DDA Costs. If the City Council approves the Term Sheet, the remaining balance of the Initial Deposit, if any, will be retained by City and credited towards Developer's Second Deposit, as set forth in Section 6.2 below.

6.2 DDA Stage Negotiations. If the City Council approves the Term Sheet, Developer shall provide to City a second cash deposit of Three Hundred Fifty Thousand Dollars ($350,000) (**"Second Deposit"**). The remaining balance of the Initial Deposit, if any, will be credited towards the Second Deposit. The Initial Deposit and the Second Deposit, as supplemented by any further augmentations of same, are referred to herein individually and collectively as the **"Deposit"**. City is entitled to draw against the Deposit and apply such draws to pay all City DDA Costs incurred during the DDA Stage of the Negotiating Period. City shall promptly provide written notice to Developer if the Deposit balance falls below $75,000 in which case Developer (subject to Developer's rights in Sections 6 and 6.3 to approve increases in the Anticipated City DDA Costs Budget) shall replenish the Deposit to $150,000 within five (5) business days of receipt of such notice. If Developer fails to replenish the Deposit within such time, City will have no obligation to continue incurring any further City DDA Costs or negotiating the proposed Term Sheet or DDA until such time as the requested additional funds required to supplement the Deposit have been received.

6.3 Anticipated City DDA Costs Budget and Deposit Increases.

(a) The Parties acknowledge and agree that the Anticipated City DDA Costs Budget represents City's preliminary estimate of the total City DDA Costs to be incurred between the Selection Date and the Effective Date and over the Preliminary Stage and DDA Stage of the Negotiating Period, and that the Anticipated City DDA Costs Budget may be increased from time to time with the written consent of Developer, which may not be unreasonably withheld, conditioned, or delayed, provided that before the Anticipated City DDA Costs Budget is increased: (1) the City will have conferred with Developer and furnished such written justification for the increase as Developer may request; (2) City will have provided monthly Invoices to Developer as provided in Section 6.4; and (3) City will have endeavored to use staff resources and outside consultants and coordinate with Developer and its consultants in a reasonable, cost-effective, and business-like manner with the goal of ensuring cost efficient and productive use of time and funds. Within ten (10) calendar days of Developer's approval of an increase in the Anticipated City DDA Costs Budget, Developer shall increase the Deposit to an amount sufficient to fully fund the increase in the Anticipated City DDA Costs Budget. If Developer disapproves or otherwise fails to approve a requested augmentation of the Anticipated City DDA Costs Budget within thirty (30) calendar days following City's request, or if Developer fails to increase the Deposit within ten (10) calendar days after approving such augmentation, City will have no obligation to continue incurring any further City DDA Costs or negotiating the proposed Term Sheet or DDA until such time as the requested budget augmentation has been approved and the additional funds required to increase the Deposit have been received.

(b) Any proposed increase in the Anticipated City DDA Costs Budget will be deemed an amendment of this Agreement, and Developer is not liable for any City DDA Costs in excess of the Anticipated City DDA Costs Budget (as increased by approval of Developer pursuant to Section 6.3(a)) without Developer's express written consent. Developer's obligation to pay for all such City DDA Costs survives the expiration or termination of this Agreement with respect to any and all City DDA Costs incurred on or before the date of expiration or termination as set forth herein, provided, however, except as may otherwise be agreed upon by the Parties, in no event will Developer's liability for City DDA Costs exceed the amount of the Anticipated City DDA Costs Budget, including any increases approved by Developer pursuant to Section 6.3(a).

6.4 City Draws and Invoices. City is entitled to draw against the Deposit and apply such draws to pay all City DDA Costs, not to exceed the amount of the Anticipated City DDA Costs Budget, plus any approved augmentation(s) of same, as such City DDA Costs are incurred. City shall provide Developer with monthly invoices for City DDA Costs (hereafter **"Invoices"**). Such Invoices must provide sufficient detail from which Developer may confirm who performed the services, the general nature of the work performed, the hours worked, the rate charged to the City, and that the services were performed for City DDA Costs. Invoices which, together with all prior Invoices, do not exceed the amount of the Anticipated City DDA Costs Budget (as increased from time to time subject to Developer's approval as provided in Sections 6 and 6.3) will be binding on Developer in the absence of error demonstrated by the Developer within thirty (30) calendar days of delivery of a given Invoice.

6.5 Disposition of Deposit upon Termination of Agreement. If the City Council does not approve the Term Sheet or if this Agreement is terminated without execution of a DDA for any reason (except due to a breach by Developer of its obligations under Section 11), then the remaining balance of the Deposit and any interest earned thereon, less any amounts needed to pay City DDA Costs incurred prior to the date of expiration or termination, shall be held by City for six (6) months as security for performance of Developer's obligations under Section 11 below. Following expiration of the six-month period and provided Developer has not breached its obligations under Section 11, the remaining balance of the Deposit and any interest earned thereon, if any, shall be refunded to Developer within thirty (30) days after expiration of such period. If the Parties enter into a DDA, the remaining amount of the Deposit will be disposed of as specified in the DDA, and the Deposit will be considered an eligible project cost for purposes of calculation of Developer returns in any profit participation arrangement agreed to in the DDA.

6.6 Deposit Accounts. City is under no obligation to pay or earn interest on the Deposit, but, if interest does accrue or be payable thereon, such interest (when received by City or deposited into the relevant account) will be accumulated by City and added and held as part of the Deposit.

7. Progress Reports and Information.

Within ten (10) calendar 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 and, in the case of the City, the costs incurred in connection with such work.

Further, City will provide, or make available to Developer for its review as reasonably requested by Developer, all information regarding the Development Footprint reasonably available to City, including all non-privileged information concerning the CRP Area, CRP Area Plan, and the physical condition and development of the Development Footprint obtained or developed by City Consultants or provided to the City by the Navy or any other third parties, including prior prospective developers. The City shall not, however, be obligated to produce any documents created for the specific purpose of assisting the City in its negotiations with Developer, or information produced by any prior prospective developer that City, in its reasonable discretion, determines to be confidential or proprietary developer information.

8. Limitations on Effect of Agreement.

This Agreement (and any extension of the Negotiating Period) does 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 Footprint or any portion thereof and Developer is not committing itself to acquire the Development Footprint or any portion thereof. Execution of this Agreement by City and Developer is merely an agreement to conduct a period of diligent, good faith 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 will become effective only if and after such DDA is 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 will 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 any Project Approvals; provided, however, City agrees to coordinate with Developer the scheduling of meetings for Planning Commission and City Council consideration of such applications for approval. Consistent with Section 5 of this Agreement, the Parties acknowledge that CEQA compliance in connection with consideration of the Project is required, and that City retains the discretion, in accordance with applicable law, before action on the Project 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 Project 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 Project.

9. Defaults and Remedies.

9.1 Default. Failure by either Party to negotiate in good faith, and without unreasonable delay, as provided in this Agreement constitutes an event of default hereunder. Except as otherwise set forth herein with respect to City's immediate right to terminate the Agreement under Section 11 or Section 12, 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 (10) calendar days after receipt by the defaulting Party of such notice in the case of a default on an obligation to pay or reimburse money, or thirty (30) calendar days after receipt of such notice in the case of all other defaults, the non-defaulting Party may exercise the remedies set forth in Section 9.2 or Section 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 is to terminate this Agreement. From and after such termination neither Party will have any further right, remedy, or obligation under this Agreement, except for those surviving rights and obligations of the Parties as set forth in Sections 6.3, 6.5, 10, 11, 16 and 17 hereof.

9.3 Exclusive Remedies for Developer Default. Except as otherwise provided in Section 11 below, in the event of an uncured default by Developer, City's sole and exclusive remedy will be to terminate this Agreement and retain that portion of the Deposit, and any interest earned thereon, needed to pay City DDA Costs incurred prior to the date of termination. Following such termination, neither Party will have any right, remedy, or obligation under this Agreement, except for those surviving rights and obligations of the Parties as set forth in Sections 6.3, 6.5, 10, 11, 16 and 17 hereof.

9.4 No Damages. Except as otherwise provided in Section 11 below, neither Party will 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 11 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. Rights to and Delivery of Third-Party Materials.

Once submitted to the City, all documents, reports, and other work product generated by third parties for Developer with respect to the Project that Developer owns or has the right to transfer, including without limitation: (i) all environmental reports, geotechnical reports, surveys, marketing reports, lot studies and improvement plans; (ii) design concepts and draft land use and infrastructure plans, including any draft specific plan, and any other permits and approvals for any other land use entitlements; and (iii) any other relevant information or documentation relative to entitlement, approval or development of the Project (excluding only attorney client privileged communications) (collectively, **"Third Party Materials"**) will become the property of the City. Developer shall include contractual language in all contracts with the engineers, designers, architects, and other consultants producing such Third Party Materials (the "**Third Party Contracts**") by which those firms and consultants consent to future use of such Third Party Materials by City and its designees without payment by City or its designees, provided such contractual language will not require those third-party consultants to continue working with the City. Such contractual language must be in a form reasonably acceptable to the City Attorney.

Notwithstanding any other provision of this Agreement, if this Agreement is terminated by either Party prior to expiration of the Negotiating Period, or by City pursuant to Section 9.3, or if this Agreement expires without the Parties having entered into a DDA, then Developer shall promptly, at no cost and without warranty as to correctness, deliver to City copies of all Third Party Materials in such formats as reasonably requested by City. Except for Third Party Materials subject to Section 16 below, and subject to reasonable restrictions on the use of such Third Party Materials in the Third Party Contracts, the terms of which shall have been approved by the City Attorney, City, and its current and future consultants, contractors, and developers, may use all Third Party Materials, at no cost and without warranty as to correctness, for any lawful purpose in connection with any future development or proposed development of the Development Footprint or other portion of the CRP Area. Developer's obligations under this Section 10 shall survive the expiration or earlier termination of this Agreement.

11. Non-Disparagement.

11.1 Disparaging Statement. Developer agrees that the Developer Restricted Individuals, as defined in Section 11.6, shall refrain from making, or soliciting another to make, any public statements *(e.g.,* statements made in press releases, traditional and social media, public hearings, community meetings, or similar public forums), or authorizing any statements to be reported as being attributed to the Developer, that are disparaging or derogatory of any City Council member or City staffer, and which are intended to and which would reasonably be expected to injure the reputation or business of such individuals (hereafter a **"Disparaging Statement"**). By way of example only (and without limitation), a Disparaging Statement will not include statements by any Developer Restricted Individual that disagrees with, objects to or challenges statements made by a member of City Council or City staff about the Project.

11.2 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 11, City shall provide notice of such claimed violation in accordance with Section 15, along with a

demand to Developer to meet and confer within five (5) business days of Developer's receipt of said notice.

11.3 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 by mediation. Mediation shall be conducted by JAMS, Inc. (**"JAMS"**), in accordance with JAMS mediation rules and procedures (including those relating to confidentiality), and will 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 Section 11.3.

11.4 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 11. 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 PROJECT, 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 11, AND ASSUMING CITY HAS EXHAUSTED THE PROCEDURES DESCRIBED IN SECTION 11.2 AND SECTION 11.3, 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 DEPOSIT, PLUS ANY INTEREST THEREON, BUT NOT TO EXCEED $100,000, AS FIXED AND LIQUIDATED DAMAGES AND NOT AS A PENALTY. DEVELOPER'S OBLIGATIONS UNDER THIS SECTION 11 SHALL SURVIVE TERMINATION OR EXPIRATION OF THIS AGREEMENT. BY PLACING THE INITIALS OF THE AGENT EXECUTING THIS AGREEMENT ON ITS BEHALF BELOW, EACH PARTY SPECIFICALLY CONFIRMS THE ACCURACY OF THE STATEMENTS MADE ABOVE AND THE FACT THAT EACH PARTY WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THIS LIQUIDATED DAMAGES PROVISION.

INITIALS: DEVELOPER DS ASI _____ CITY DS VB _____

DEVELOPER DS JG _____

DEVELOPER DS PT _____

11.5. Developer's objections to any development conditions made in a public hearing, its exercise of its administrative or judicial rights of appeal of any action by the City, or its response to a Disparaging Statement made about Developer, in connection with the proposed Project or Project Entitlements shall not, by themselves, be deemed a Disparaging Statement or a violation of this Section.

11.6. The following individuals (the "Developer Restricted Individuals") are subject to this Section 11 and Section 12 below: Albert D. Seeno III, Chief Executive Officer, Discovery Builders, Inc.; Jacqueline Seeno, Owner, Discovery Builders, Inc.; Richard Lewis, President, Lewis Concord Member, LLC (Lewis Group of Companies); Robert Lewis, President-Nevada Operations, Lewis Concord Member, LLC (Lewis Group of Companies); Roger Lewis, Senior Executive Vice President, Lewis Concord Member, LLC (Lewis Group of Companies); Randall Lewis, Senior Executive Vice President, Lewis Concord Member, LLC (Lewis Group of Companies); John Goodman, Chief Executive Officer / Senior Executive Vice President, Lewis Concord Member, LLC (Lewis Group of Companies); Bryan Goodman, Executive Vice President - Development, Lewis Concord Member, LLC (Lewis Group of Companies); Doug Mull, Senior Vice President-Norcal Planned Communities, Lewis Concord Member, LLC (Lewis Group of Companies); Jeb Elmore, Vice President-Acquisitions, Lewis Concord Member, LLC (Lewis Group of Companies); Phil Tagami, President and Chief Executive Officer, California Capital & Investment Group; Ross Hellesheim, Partner, California Capital & Investment Group; Brad Francke, Vice President - Associate General Counsel, Lewis Concord Member, LLC (Lewis Group of Companies); Skyler Sanders, General Counsel, California Capital & Investment Group; David Young, General Counsel, Discovery Builders, Inc.

12. Campaign Contributions.

12.1 Campaign Contribution Restrictions. During the term of this Agreement, Developer shall ensure that the Developer Restricted Individuals do not make, or solicit another to make,, any political contribution(s) to the campaign, or any political action committee supporting or opposing the election or re-election, of (i) any appointed or elected sitting City of Concord official running for any elected office, or (ii) any candidate running for elected City office. Developer further agrees that the Developer Restricted Individuals shall not solicit its or their or Developer's employees, contractors, or subcontractors working on the Project to make any political contribution(s) to the campaign, or any political action committee supporting or opposing the election or re-election, of (i) any appointed or elected sitting City of Concord official running for any elected office, or (ii) any candidate running for elected City office, and will notice Developer, Developer Restricted Individuals, and their respective employees, contractors, and subcontractors working on the Project on an annual basis not to make such contributions. Within ten (10) business days of the execution of this Agreement (or, in the case of newly appointed or newly elected officials, within ten (10) business days of such appointment or election), the City Manager will advise all appointed or elected sitting City of Concord officials in writing of the restrictions on campaign contributions set forth in this Section 12.1.

12.2 City Remedies. In the event City has reason to believe Developer has violated its obligations under this Section 12, City may notify Developer in writing which notice shall include a brief recitation of the facts City believes constitute evidence of such violation. Developer shall have fifteen (15) days following receipt of such notice to provide any exculpatory evidence demonstrating that no such violation has occurred. Following expiration of such 15-day period City may immediately terminate this Agreement by written notice to Developer, and without affording Developer any opportunity to cure such violation, if City determines that Developer has violated its obligations under this Section.

13. Rights Following Expiration or Termination.

If a DDA is signed by Developer, approved by the City Council, and executed by City, the ongoing rights and obligations of the Parties will be as specified in the DDA and any ancillary agreements. If, at the time this Agreement expires or is terminated in accordance with its terms, the Parties have not entered into a DDA, then City has the absolute right to pursue disposition and development of all or portion of the Development Footprint in any manner and with any party or parties it deems appropriate.

14. Right to Enter the Development Footprint/City Property Documents.

City shall work with the Navy to provide Developer, its employees, agents, and contractors with a right of entry or other similar access during the Negotiation Period to pertinent portions of the Development Footprint for the purpose of conducting inspections, tests, examinations, surveys, studies, appraisals, and marketing tours. Any right of entry will be in a form acceptable to City, Navy, and Developer and consistent with any existing right of entry in favor of the City or any prior right of entry provided by the City to former prospective developers or purchasers of the Development Footprint.

15. 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 that offers confirmation of receipt, including by certified or registered U.S. Mail, postage prepaid and return receipt requested, personal delivery, overnight courier, or email, 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:

Attention: Albert Seeno III
Discovery Builders, Inc.
4021 Port Chicago Highway
Concord, CA 94520
Telephone: (925) 682-6419
Email: Albert@discoverybuilders.com

Attention: John M. Goodman
Lewis Management Corp.
1156 North Mountain Avenue
Upland, CA 91786
P. O. Box 670
Upland, CA 91785-0670
Telephone: (909) 946-7503
Email: John.Goodman@lewismc.com

Attention: Jeb Elmore
Lewis Management Corp.
9216 Kiefer Blvd.
Sacramento, CA 95826
Email: Jeb.Elmore@lewismc.com
(916) 403-1713

Attention: Phil Tagami
California Capital Investment Group
300 Frank H. Ogawa Plaza
Suite 340
Oakland, CA 94612
Telephone: 510-268-8500
Email: Tagami@Californiagroup.com

With a copies to:

Attention: David E. Young, Esq.
Discovery Builders, Inc.
4021 Port Chicago Hwy.
Concord, CA 94520
Telephone: 925-324-6419
Email: dyoung@discoverybuilders.com

And:

Attention: Brad Francke
Lewis Management Corp.
1156 North Mountain Avenue
Upland, CA 91786
P. O. Box 670
Upland, CA 91785-0670
Telephone: (909) 946-7538
Email: brad.francke@lewismc.com

And:

Attention: Skyler Sanders
California Capital Investment Group
300 Frank H. Ogawa Plaza
Suite 340
Oakland, CA 94612
Telephone: 510-268-8500
Email: ssanders@Californiagroup.com

To City: City of Concord
Local Reuse Authority
1950 Parkside Drive
Concord, California
Attention: LRA Executive Director
Telephone: (925) 671-3001
Email: guy.bjerke@cityofconcord.org
and: reuse.project@cityofconcord.org

With copies to: City of Concord
1950 Parkside Drive
Concord, California
Attention: City Attorney
Telephone: (925) 671-3160
Email: susanne.brown@cityofconcord.org
and: city.attorney@cityofconcord.org

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

Any notice will be deemed given on the date of delivery if delivered by certified or registered mail, personal delivery to the recipient, or overnight courier if on a business day (and if not on a business day, then on the next business day) or when delivery is refused. Any notice shall be deemed given when received if sent by email if received before 5:00 local time (of the recipient) on a business day, and otherwise on the next business day.

16. 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"**) is subject to the provisions of this Section 16. Subject to the terms of this Section, City shall endeavor 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 ("**City Representatives**"), 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, prior to disclosure of such Confidential Information, of City's intention to release the Confidential Information. Developer shall have five (5) calendar days after the date of City's notice ("**Objection Period**") to deliver to City a written objection notice which includes (1) justification for non-disclosure of all or any portion of the requested Confidential Information, and (2) legally binding confirmation of Developer's indemnity and release obligations as set forth in this section ("**Objection Notice**"). City may release the Confidential Information if (i) City does not timely receive an Objection Notice, (ii) a final and non-appealable order by a court of competent jurisdiction requires City to release Confidential Information, or (iii) the City's City Attorney, in his or her reasonable discretion, upon review of the Objection Notice, notifies Developer in writing that they have determined that it does not satisfy the requirements set forth in this Section or that the requested Confidential Information is not exempt from disclosure under the Public Disclosure Laws and Developer then fails to file and obtain a temporary restraining order or other similar injunctive relief preventing such disclosure within ten (10) days after receipt of the City Attorney's determination. If the City Attorney, in his or her reasonable 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, and may key by footnote or other reference to the appropriate justification for not disclosing the unreleased Confidential Information.

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 equity, cost, and/or investment. If this Agreement is terminated without the execution of a DDA, City shall return to Developer any Confidential Information within thirty (30) days.

To the extent Developer believes the Confidential Information is not subject to Public Disclosure laws, Developer may, at no cost to the City, file any necessary legal actions to enjoin or prevent the disclosure of the Confidential Information.

Developer shall defend, indemnify and hold harmless City and its officers, officials, employees, volunteers, agents, attorneys, and representatives (collectively, "**Indemnitees**") from and against any and all Claims arising out of or in any way connected with disclosure or non-disclosure of any Confidential Information. "**Claim**" or "**Claims**" means any and all present and future liabilities, claims, demands, obligations, grievances, judgments, orders, injunctions, causes of action, assessments, losses, costs, damages, fines, penalties, expenses, suits or actions of every name, kind, description and nature (including attorneys' fees and costs), known or unknown, and whether now existing or hereafter arising, including all costs, attorney's fees, expenses and liabilities incurred in the defense of any legal challenge brought by a third-party seeking or objecting to the disclosure of that Confidential Information. Developer's obligations under this Section 16 shall survive the expiration or termination of this Agreement.

Developer hereby waives, releases and discharges forever the Indemnitees from any and all present and future Claims arising out of or in any way connected with any Confidential

Information. Developer aware of and familiar with the provisions of Section 1542 of the California Civil Code which provides as follows:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

As such relates to this Section, Developer hereby waives and relinquishes all rights and benefits which it may have under Section 1542 of the California Civil Code.

DS ASI
Developer Initials

DS JG
Developer Initials

DS PT
Developer Initials

The restrictions set forth herein shall not apply to Confidential Information to the extent such Confidential Information: (i) is now, or hereafter becomes, through no act or failure to act on the part of City, generally known or available; (ii) is known by the City at the time of receiving such information as evidenced by City's public records; (iii) is hereafter furnished to City by a third party, as a matter of right and without restriction on disclosure; (iv) 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; (v) 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 (vi) is the subject of a written permission to disclose provided by Developer to City.

Nothing herein shall prohibit Developer from seeking injunctive relief to prevent disclosure of information which Developer believes qualifies as Confidential Information.

17. 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 17 shall survive termination of this Agreement.

18. Assignment.

The qualifications and identity of Developer and its constituent members Discovery Homes, Seecon Financial & Construction Co., Seeno Homes, Sierra Pacific Properties, Inc.; and Lewis Concord Member, LLC (or other affiliate of the Lewis family group of companies); and

California Capital & Investment Group were material considerations by City in selecting Developer. Accordingly, except as provided below, Developer may not assign all or any portion of this Agreement to any other person or entity (other than an Affiliate owned and controlled by all of the constituent members of Developer), without the prior written approval of the City Council. Any purported voluntary or involuntary assignment by Developer of this Agreement without such City written approval will be null and void, except as provided below. Notwithstanding the foregoing, Developer may assign this Agreement in its entirety without approval by the City to another business entity provided that (a) Albert D. Seeno III, Jeb Elmore, Doug Mull and Phil Tagami have responsibility for the day to day entitlement and development activities of such entity; and (b) Discovery Homes (or Seecon Financial & Construction Co. and/or Sierra Pacific Properties Inc. in lieu of Discovery Homes), Lewis Land Developers, LLC (or other affiliate of the Lewis family group of companies), and California Capital & Investment Group each have a voting and profits interest in such entity. Developer shall provide not less than ten (10) business days' prior written notice to City of any such permitted assignment. As used herein, the term **"Affiliate"** means an entity which controls, in controlled by or under common control with Developer.

19. Applicable Law; Venue.

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

20. 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.

21. 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.

22. 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.

23. 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 Footprint or any other portion of the CRP Area with respect to this Agreement or any dispute or act arising from this Agreement.

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." Unless otherwise expressly stated, "days" means calendar days. 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. Next Business Day.

In the event the date on which City or Developer is required to take any action under the terms of this Agreement is not a business day, the action shall be taken on the next succeeding business day.

27. Joint and Several.

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

28. 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.

29. List of Exhibits.

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

(a) Exhibit A -- Site Map

(b) Exhibit B -- Preliminary Stage Negotiation Matters

[Remainder of page intentionally left blank]
[Signatures on next page]

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: DocuSigned by: Valerie Barone 11/2/2021
Name: Valerie Barone
Title: City Manager

APPROVED AS TO FORM:

DocuSigned by: Susanne Brown 11/2/2021
Susanne Brown,
City Attorney

ATTEST:

DocuSigned by: Joelle Fockler 11/2/2021
Joelle Fockler, MMC, City Clerk

DEVELOPER:

CONCORD FIRST PARTNERS, LLC,
a Delaware limited liability company

By: DocuSigned by: Albert Seeno III 11/2/2021
Name: Albert Seeno III
Title: Chief Executive Officer
Discovery Builders, Inc.
albert@discoverybuilders.com

By: DocuSigned by: John Goodman 11/2/2021
Name: John Goodman
Title: Chief Executive Officer/
Senior Executive Vice President
Lewis Concord Member, LLC
John.goodman@lewismc.com

By: DocuSigned by: Phil Tagami 11/2/2021
Name: Phil Tagami
Title: President and
Chief Executive Officer
California Capital & Investment Group
tagami@californiagroup.com

EXHIBIT A

SITE MAP

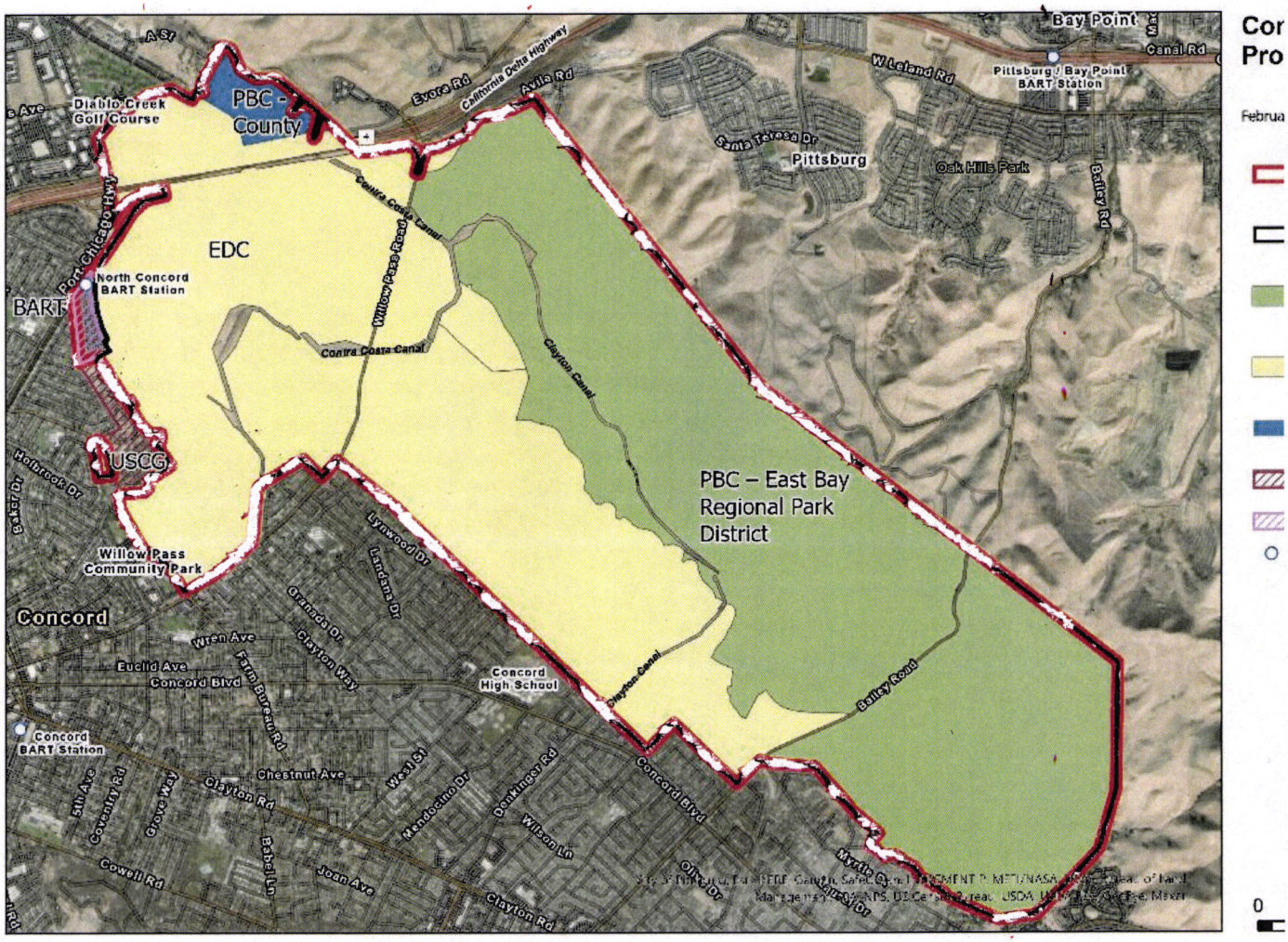

Exhibit A

EXHIBIT B

PRELIMINARY STAGE NEGOTIATIONS MATTERS

- Determination of the Project and applicable portion of the Development Footprint to be addressed in the DDA.

- The terms under which Developer, following Navy's conveyance of each portion of the Development Footprint to the City, would operate, manage, and maintain it on an interim basis until such time as the Development Footprint, or applicable portion thereof, 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 City CNWS Project Costs incurred by the City.

- The terms, including conditions precedent to closing, under which City would convey the Development Footprint, or applicable portion thereof, 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 Project, including 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 Footprint, or applicable portion thereof, to one or more vertical developers, which may or may not be affiliates of Developer, following Developer's completion of applicable portions of the 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 Footprint, or applicable portion thereof, to the vertical developer(s).

- The terms under which Developer will interface with Navy to address the Navy's remediation of additional hazardous materials that may be discovered on the Development Footprint, or applicable portion thereof, 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 funding the 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 implementation of the Project, 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, Enhanced Infrastructure Finance District, Landscape and Lighting District or other tax-exempt financing vehicles.

- 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 land and structures within the Development Footprint, or applicable portion thereof, including terms under which City would lease land and structures to Developer for Project related uses and terms for termination of existing leases and approval of new leases.

- The Project implementation 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 those portions of the Development Footprint that are not addressed by the DDA.

- 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 Project, 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, including terms under which Developer would potentially be compensated for amounts expended on a specific plan and EIR if City Council were to approve those two items but then reject the proposed DDA as negotiated by City and Developer's negotiating teams.

SCHEDULE 1

ANTICIPATED CITY DDA COSTS BUDGET

PRELIMINARY STAGE

Work or Review Expected	Likely Assignments	Cost
Drafting ENA and Term Sheet	Burke Williams; City Staff	$70,000
Real estate deal terms	City Staff; HR&A; ALH; Burke Williams	$20,000
Pro forma review	HR&A; ALH; Arup	$30,000
Land use concept	City Staff; Arup	$50,000
Approach to entitlement	City Staff; Jarvis Fay	$10,000
Community benefits	City Staff; Arup	$20,000
Infrastructure	City Staff; Arup	$10,000
Economic Development Conveyance - related terms	City Staff; Knisely; HR&A; Arup	$20,000
Remediation-related terms	City Staff; Knisely; ERS; Arup	$10,000
Permitting-related terms	Lubin Olson; HT Harvey; Johnson Marigot; Arup	$10,000
Total		**$250,000**

DDA STAGE

Work or Review Expected	Likely Assignments	Cost
Drafting Disposition & Development Agreement	Burke Williams; City Staff	$200,000
Real estate deal terms	City Staff; HR&A; ALH; Burke Williams	$50,000
Pro forma review	HR&A; ALH; Arup	$75,000
Economic Development Conveyance - related terms	City Staff; Knisely; HR&A; Arup	$25,000
Total		**$350,000**

Grand Total		**$600,000**

This initial budget is for the costs associated with City review and work related to Section 6 of the Exclusive Agreement to Negotiate – Preliminary and DDA Stages. It does not include the CEQA/Entitlement or other City CNWS Project Costs outlined in Section 5 – which will be addressed administratively in a separate reimbursement agreement.