

CONCORD NAVAL WEAPONS STATION
TERM SHEET FOR
DISPOSITION AND DEVELOPMENT AGREEMENT AND STATUTORY
DEVELOPMENT AGREEMENT
BETWEEN CITY OF CONCORD, IN ITS CAPACITY AS THE LOCAL REUSE
AUTHORITY (“CITY” OR “LRA”) AND
BCUS ACQUISITIONS LLC (“DEVELOPER”)
DATED _____, 2024

This March 12, 2024, revision does not change any of the substance of the version released on February 15, 2024. The Table of Contents has been corrected to accurately reflect what content is found on which page. Additionally, a Glossary of Certain Defined Terms has been added at page 58.

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**CONCORD NAVAL WEAPONS STATION
TERM SHEET FOR DISPOSITION AND DEVELOPMENT
AGREEMENT AND STATUTORY DEVELOPMENT AGREEMENT
BETWEEN CITY OF CONCORD, IN ITS CAPACITY AS THE LOCAL
REUSE AUTHORITY (“CITY” OR “LRA”) AND
BCUS ACQUISITIONS LLC, A DELAWARE LIMITED LIABILITY
COMPANY (“DEVELOPER”)**

1. Purpose of Term Sheet and DDA and DA.

The purpose of this term sheet (“**Term Sheet**”) is to set forth the key business terms to be included in a Disposition and Development Agreement (“**DDA**”) and statutory Development Agreement (“**DA**”) between City and Developer as part of the environmental review and entitlement approval process. The purpose of the DDA is to (a) set forth terms and conditions upon which Developer, subject to meeting specified milestones and conditions, would have the right to acquire rights in or title to and construct and install Backbone Infrastructure (defined in Section 7.a below) and deliver community benefit contributions for the first phase of the Project (“**Phase One**”) and future phases (each, a “**Future Phase**” and collectively the “**Future Phases**”) of the Development Footprint (defined in Section 2); (b) upon commencement of a Phase, ensure the timely construction and installation of Backbone Infrastructure and delivery of community benefit contributions for each Phase, including all sub-phases thereof, to accommodate a range of land uses substantially consistent with the Concord Reuse Project Area Plan (the “**CRP Area Plan**”), including parks and other public amenities and facilities, commercial and residential uses, including affordable housing; and (c) set forth procedures for City (or Developer, if Developer acquires fee title) to convey developable portions of the Phase One Property and Future Phases to Vertical Developers with the proceeds of sale allocated exclusively to Developer until such time as Developer achieves an 18% unlevered investment rate of return and proportionately to the parties after Developer achieves an 18% unlevered investment rate of return as provided in Section 14.a below. Phase One and the Future Phases are sometimes referred to herein individually as a “**Phase**” and collectively as the “**Phases**”. The purpose of the DA is to ensure (i) appropriate vested rights with respect to Project approvals and entitlements, including a Specific Plan; (ii) delivery of substantial community benefits from the Project’s contributions to parks and recreation, transportation, and community improvements and contributions; (iii) increased affordable housing options for lower income residents; and (iv) payment of fees for the purpose of developing recreational amenities, bicycle, pedestrian and road circulation improvements, and other project contributions as provided for in this Term Sheet and the Specific Plan. As more fully set forth in Section 8(e) below, City retains full discretion in accordance with applicable law before any action on the proposed Project, including full discretion under CEQA.

2. Phase One; Future Phases.

The “**Phase One Property**” consists of approximately 348 acres, as depicted on Exhibit A. The Phase One Property includes a portion of an initial transfer parcel,

expected to be 1,100 to 1,400 acres in size (the “**First Transfer Parcel**”) as generally depicted in Exhibit D that is anticipated to be transferred by the United States Navy (“**Navy**”) to City as the first phase of an economic development conveyance (“**EDC**”) of the inland portion of the former Concord Naval Weapons Station property. The developable property that will ultimately be transferred by Navy to City through the EDC is expected to total approximately 2,305.6 acres (the “**Development Footprint**”). Subject to Developer achieving the Phase One-related milestones and meeting the conditions set forth in Section 10 below, Developer shall have the right to receive conveyance of an additional 601 acres of the Development Footprint (the “**Phase Two Property**”). Subject to Developer achieving the Future Phase-related milestones and meeting the conditions set forth in Section 10 below, Developer shall have the right to receive further conveyances of an additional 310 acres of the Development Footprint (the “**Phase Three Property**”); an additional 418 acres of the Development Footprint (the “**Phase Four Property**”) and an additional 454 acres of the Development Footprint (the “**Phase Five Property**”). The acreages for Phases One through Five above do not include the 175 acres for the Tournament Sports Park/Citywide Park, which Developer will not be taking title to. The 175 acres for the Tournament Sports Park/Citywide Park when combined with the acreages for Phases One through Five above equals 2,305.6 acres. Transfers of the property comprising each Phase for the purposes of Developer’s construction of the Backbone Infrastructure for such Phase will be effectuated via multiple phased fee title closings and/or right of entry issuances by infrastructure sub-phase (each an “**Infrastructure Subphase**” or “**Infrastructure Sub-Phase**”), as will be set forth in DDA and Specific Plan. The DDA will include flexibility for future Infrastructure Sub-Phase conveyances to occur prior to completion of all prior Infrastructure Sub-Phase conveyances upon satisfaction of certain conditions to be specified in the DDA, including among other conditions, the City making findings that the proposed out-of-sequence conveyance and development will not materially adversely affect functionality of the Project. The Parties acknowledge that the foregoing Project phasing is preliminary and that phasing and sub-phasing may need to be adjusted to accommodate Navy FOST phases, Specific Plan refinements, California Environmental Quality Act, Public Resources Code Sections 21000, et seq., (“**CEQA**”) review, regulatory permitting agency requirements, financing, and/or remediation completion along with market conditions, and that the estimated size of each Phase and each Infrastructure Sub-Phase as well as each transfer parcel of the Development Footprint conveyed by the Navy shall be subject to adjustment and shall be reflected in the EDC Memorandum of Agreement or Purchase and Sale Agreement (“**MOA/Purchase Agreement**”) between City and Navy and the DDA. In addition to requiring Developer to satisfy milestones for the conveyance of or issuance of a Right of Entry for a Phase (or Infrastructure Sub-phase thereof), there shall be certain conditions precedent for the benefit of Developer (e.g. Navy’s conveyance of the applicable EDC Transfer Parcel(s) following approval of a FOST (defined in Section 5.b. below) by the applicable regulatory agency), which if not satisfied shall be considered an Excusable Delay event under the DDA and will extend such milestones per the terms of the DDA.

3. Labor Policies & Local Opportunity.

- a. The DDA will cross reference the contractual obligations of Developer and its transferees, including Vertical Developers, to local trades under Developer's existing project labor agreement(s) for Project construction.
- b. The DDA will address Developer's obligations with respect to local hire policies and goals for Project-related construction jobs consistent with a program to be reviewed and approved by Developer and the City, which may include:
 - i. The City's good-faith "Hire Concord First" goal that 40% of the construction workforce should be prioritized first for local employees who reside in Concord, then, employees who reside in Contra Costa County.
 - ii. Job training, apprenticeship programs, and vocational training opportunities, which would extend to both construction and permanent operational jobs.
 - iii. Coordination with the Greater Concord Chamber of Commerce, the Mt. Diablo Unified School District, East Bay Works, the Contra Costa Workforce Development Board, California State University East Bay, Diablo Valley College, U.C. Berkeley, the California Employment Development Department and others, as appropriate, to enhance opportunities for local employment and training.
 - iv. Military veteran-focused career training and workforce reintegration programs.
 - v. Priority use of public sector employees (i.e. County Connection drivers) to staff the proposed "Concord Connector" providing access to and from the Bay Area Rapid Transit ("**BART**") station. The Concord Connector program, including Developer's and its successors' participation in the funding of such program, will be addressed in the Specific Plan.
- c. Developer will use good faith efforts to engage community-based organizations ("**CBOs**") involved in local labor issues to promote awareness of the Project and opportunities for local labor workforce development and business participation.
- d. Developer is also committed to implementing "Hire Concord First" policies by offering opportunities to unaffiliated third-party Vertical Developers to acquire land within the Project and by offering development opportunities, at competitive prices, for local development firms. Opportunities would be for residential, commercial, and recreational facilities and would focus first on firms located in the City of Concord, second on firms located in Contra Costa County, and third on firms located in the other eight Bay Area counties.

4. Project.

Developer and the City (together, the “**Parties**”) propose that the project to be developed within the Development Footprint include the key components and amenities, general densities, and land use patterns described in this Section 4 (the “**Project**”). The Project is based on Developer’s current anticipated financial feasibility pro-forma dated February 13, 2024, a summary of which is attached hereto as Exhibit B (the “**Pro-forma**”). Specific densities, land use patterns, phasing and uses remain subject to refinement through the planning and negotiation of the MOA/Purchase Agreement, Specific Plan and DA and associated public and CEQA processes, all as set forth in Section 8. While Developer’s key obligation under the DDA is to deliver Backbone Infrastructure (as described in Section 7.a) to serve the Project’s land use program, Developer also agrees to make commercially reasonable efforts to market resulting development parcels throughout the Project to Vertical Developers (defined below) (including Affiliates of Developer as defined in Section 21.a and third-party developers) so that vertical development -- and its associated benefits to the community -- may proceed in an orderly and timely manner and to ensure that commercial and retail uses are developed in a balanced manner with residential uses, as further described in the DA.

- a. Development Phases & Project Summary. The Project is proposed to be developed in five Phases as depicted in Exhibit A; each Phase will have multiple Infrastructure Sub-Phases. The primary Project elements to be included in each Phase are described below and also listed in Exhibit A; provided, however, construction or funding of the primary Project elements are subject to the more specific timing requirements set forth in Section 4.b through Section 4.i below. In addition, the following is preliminary and will need to be revised to address Developer’s finalization of its Development Plan, the MOA/Purchase Agreement, the Project’s entitlements, CEQA review, resource agency requirements, financing, and/or remediation completion along with market conditions. For the avoidance of doubt, (i) Developer shall not be committed to providing the required Backbone Infrastructure in a Phase unless it has elected to commence such Phase and otherwise on and subject to the terms and conditions of the DDA and DA, (ii) except where noted below, Developer is constructing and installing the Backbone Infrastructure for each Phase and intends to convey or cause the City to convey completed development pads and/or lots within Infrastructure Sub-Phases to vertical developers (“**Vertical Developers**”) for development of the vertical improvements contemplated for such Infrastructure Sub-Phases, and (iii) Developer may form affiliated developer entities to act as Vertical Developers for the vertical development of such development pads and/or lots.

To accelerate delivery of affordable units, ensure proximity of affordable units to transit routes, and/or improve third-party funding opportunities, Developer shall have the right to reallocate affordable units between Phases (e.g., to satisfy Phase Five affordable obligations by adding more affordable to Phase One or Phase Two or Phase Three) subject to certain limitations as will be further addressed in the DDA and DA.

i. Phase One

- A. Development of pads and finished lots for development of 2,149 total dwelling units comprised of:
 - 1) 1,612 market-rate units, and
 - 2) 537 affordable units, including:
 - Transitional housing, 4 acres (65 affordable units)
- B. Veterans Land Set-Aside – 4 acres
- C. Parks/Greenways/Open Space – 33.6 acres of the approximately 886 total park, recreational, and open space acres, including Mt. Diablo Creek corridor
- D. Mt. Diablo Creek Restoration/Conservation Open Space – 42.6 acres (subject to regulatory permitting agency approval) of the approximately 886¹ total park, recreational, and open space acres, including Mt. Diablo Creek Corridor
- E. Phase #1 component of Tournament Sports Park/Citywide Park to be more fully described in the Specific Plan with Developer committing \$5 Million² to such work or, alternatively in lieu of such financial commitment, Developer committing to the performance of a specified scope of work to be set forth in the Specific Plan and DA.
- F. Development of pads for development of the Village Center and Neighborhood Commercial – 16 acres
- G. Backbone Infrastructure to support all of the uses in A. through F. above

ii. Phase Two

- A. Development of pads and finished lots for development of 1,855 total dwelling units comprised of:
 - 1) 1,388 market-rate units, and

¹ The 886 acres includes the Tournament Sports Park/Citywide Park, conservation space, greenways, trails, parks to be dedicated to the City, joint-use outdoor recreation areas and associated parking.

² All monetary community benefit contributions set forth in this Term Sheet are listed in 2023 dollars. The amount of the community benefit contributions in this Term Sheet including the Library/Community Center contributions (Section 4.c.ii.), the Tournament Sports Park (Section 4.c.iii.), Citywide Park (Section 4.c.iv.), and the Affordable Housing Subsidy (Section 4.d.ii.) will be subject to adjustment as appropriate, to account for any increase or decrease in the cost of the work for which such community benefit contributions are intended. The timing and methodology for determining such adjustments shall be provided for in the DA.

- 2) 467 affordable units, including:
- Transitional housing, 4 acres (65 affordable units); and
 - Habitat for Humanity, 2 acres (20 affordable units)
- B. Development pad for development of the PG&E substation – approximately 5 acres
- C. Development of pads for development of the Innovation District, a mixed-use district as further described in the Specific Plan – 63.6 net acres
- D. Land dedication, mass grade and stub utilities to the Campus District of 120 acres (inclusive of school and associated parks, detention basins, open space and greenways, and Library/Community Center, all as further described in the Specific Plan)
- E. Development of pad within the Campus District for development of the Library/Community Center - 3 acres
- F. Development of pad for development of the Food Bank – 10 acres
- G. Phase #1 component of Library/Community Center to be more fully described in the Specific Plan, with Developer committing \$30 Million¹ to such work or, alternatively in lieu of such financial commitment, Developer committing to the performance of a specified scope of work to be set forth in the Specific Plan and DA
- H. Phase #2 component of Tournament Sports Park/Citywide Park to be more fully described in the Specific Plan with Developer committing \$15 Million² to such work or, alternatively in lieu of such financial commitment, Developer committing to the performance of a specified scope of work to be set forth in the Specific Plan and DA
- I. Fire Station – Developer commitment of \$10 Million² for the construction of a northerly offsite fire station or, alternatively in lieu of such financial commitment, Developer committing to the performance of a specified scope of work to be set forth in the Specific Plan and DA
- J. Parks/Greenways/Open Space – 144.5 acres of the approximately 886¹ total park, recreational, and open space acres, including Mt. Diablo Creek corridor
- K. Mt. Diablo Creek Restoration/Conservation Open Space – 38.3 acres (subject to regulatory permitting agency approval) of the approximately 886¹ total park, recreational, and open space acres, including Mt. Diablo Creek Corridor

- L. Development of pad(s) for development of School sites (subject to confirmation of need based on enrollment data) – 10 acres
- M. Backbone Infrastructure to support all of the uses in A. through L. above
- iii. Phase Three
 - A. Development of pads and finished lots for development of 3,046 total dwelling units comprised of:
 - 1) 2,284 market-rate units, and
 - 2) 762 affordable units, including:
 - Transitional housing, 4 acres (65 affordable units)
 - B. Development pads for development of the TOD Core District - a mixed use district that will include, among other uses, a portion of the market rate and affordable dwelling units noted in A. above, as further described in the Specific Plan
 - C. Development of pad for development of a Mid-rise hotel within the high density mixed use residential area – 2 acres
 - D. Development of pad(s) for development of School sites (subject to confirmation of need based on enrollment data) – 25 acres
 - E. Phase #2 component of Library/Community Center to be more fully described in the Specific Plan, with Developer committing \$35 Million¹ to such work or, alternatively in lieu of such financial commitment, Developer committing to the performance of a specified scope of work to be set forth in the Specific Plan and DA
 - F. Phase #3 component of Tournament Sports Park/Citywide Park to be more fully described in the Specific Plan, with Developer committing \$40 Million² to such work or, alternatively in lieu of such financial commitment, Developer committing to the performance of a specified scope of work to be set forth in the Specific Plan and DA
 - G. Parks/Greenways/Open Space – 102.4 acres of the approximately 886¹ total park, recreational, and open space acres, including Mt. Diablo Creek corridor
 - H. Backbone Infrastructure to support all of the uses in A. through G. above
- iv. Phase Four

- A. Development of pads and finished lots for development of 2,316 total dwelling units comprised of:
 - 1) 1,735 market-rate residential units, and
 - 2) 581 affordable units, including:
 - Transitional housing, 4 acres (65 affordable units)
 - B. Phase #4 component of Tournament Sports Park/Citywide Park to be more fully described in the Specific Plan, with Developer committing \$40 Million² to such work or, alternatively in lieu of such financial commitment, Developer committing to the performance of a specified scope of work to be set forth in the Specific Plan and DA
 - C. Development of superpads for development of the Village Center – 14 acres
 - D. Development of pad(s) for development of School sites (subject to confirmation of need based on enrollment data) – 10 acres
 - E. Parks/Greenways/Open Space – 75.9 acres of the approximately 886¹ total park, recreational, and open space acres, including Mt. Diablo Creek corridor
 - F. Mt. Diablo Creek Restoration/Conservation Open Space – 52.2 acres (subject to regulatory permitting agency approval) of the approximately 886¹ total park, recreational, and open space acres, including Mt. Diablo Creek Corridor
 - G. Development of pad for development of a Fire Station – 1 acre, with Developer committing \$10 Million² for the construction of a fire station on the pad or, alternatively in lieu of such financial commitment, Developer committing to the performance of a specified scope of work to be set forth in the Specific Plan and DA.
 - H. Backbone Infrastructure to support all of the uses in A. through G. above
- v. Phase Five
- A. Development of pads and finished lots for development of 2,906 total dwelling units comprised of:
 - 1) 2,185 market-rate units, and
 - 2) 721 affordable units

- B. Development of pad(s) for development of School sites (subject to confirmation of need based on enrollment data) – 10 acres
 - C. Parks/Greenways/Open Space – 110.1 acres of the approximately 886¹ total open space acres, including Mt. Diablo Creek corridor
 - D. Mt. Diablo Creek Restoration/Conservation Open Space – 56.1 acres (subject to regulatory permitting agency approval) of the approximately 886¹ total park, recreational, and open space acres, including Mt. Diablo Creek Corridor
 - E. Backbone Infrastructure to support all of the uses in A. through D. above
- b. Commercial Pads; Neighborhood Serving Retail. Developer shall develop pads in development ready condition (i.e. graded, compacted, and with utilities stubbed to locations approved by City) (“**Development Ready Condition**”) for all standalone commercial uses in each Phase prior to issuance of the first market rate dwelling unit building permit after building permits for 75% of the market rate dwelling units in such Phase have been issued (the parties agreeing that commercial uses in the ground floor of mixed-use buildings do not count toward this requirement). Following development of the commercial pads, Developer shall market such pads, including retail property, to Vertical Developers so that commercial and retail uses may be constructed and opened as soon as is reasonably practicable in each Phase of the Project. Of the approximately 620,000 square feet of commercial development proposed to be located within Phase One, Developer shall ensure that approximately 50,000 square feet will be reserved for retail uses carrying food items, sundries, and providing other daily necessities to provide a retail resource for residents of the Project (“**Neighborhood Serving Retail**”), which may include a small grocery store. Developer shall build or cause to be built a minimum of 15,000 square feet of Phase One Neighborhood Serving Retail prior to issuance of the first market rate dwelling unit building permit after building permits for 50% of the market rate dwelling units in Phase One have been issued. Developer’s obligations to facilitate development of Neighborhood Serving Retail uses in Phases 2 through 5 will be addressed in the Specific Plan.
- c. Recreational/Civic Amenities. Developer shall develop and construct key recreational and civic amenities and public spaces listed below in this subparagraph c. in a sequence that will complement the overall pace and character of corresponding vertical development as more particularly described in this subparagraph c. Parks and greenways will provide for access and trail connectivity for local and regional trails/bikeways and will provide connectivity to the Delta DeAnza Regional Trail. The Specific Plan will include mechanism(s) ensuring the long term maintenance and repair of recreational and civic amenities and public spaces in perpetuity. To the extent any of the foregoing improvements are not located on land within the applicable Phase under development by Developer or cannot otherwise be constructed without access to or rights over land outside such applicable Phase, then Developer’s obligations described below in this subparagraph c. shall be subject to Developer obtaining such access or rights and

City shall cooperate with Developer to acquire such access and/or rights (at no cost to the City). In the event such access and/or rights cannot be obtained for off-site improvements that are necessary to the Project, City shall reasonably cooperate with Developer regarding redesign and alternatives.

i. Parks, Greenways, and Open Space.

- A. Developer shall construct and upon completion thereof offer to dedicate to the City approximately 33.6 acres of parks and greenways within Phase One. As part of Phase One, Developer shall, at its election (but subject to City making required legal findings in the DDA or DA if Developer desires to pursue option (ii) below), either (i) fund or, at no expense to City, cause the funding of a portion of the costs of the Phase One component of the Tournament Sports Park/Citywide Park, consistent with City's conceptual plan to be finalized in the Specific Plan and subject to the following (the **"Progress Payments Process"**): (a) Developer's review and reasonable approval of the City's allocation of such funding between soft costs and hard costs and (b) progress payments to the City as the City incurs and invoices costs for the design and construction of the facilities together with reasonable supporting documentation verifying such costs, or (ii) cause the construction of such facilities within the time(s) set forth in the DA (subject to extensions as provided therein); provided Developer's out-of-pocket costs of meeting such funding or construction obligation shall not exceed \$5 Million²; provided, further, that the requirement to fully fund or complete construction of such facilities shall not arise until issuance of the first market rate dwelling unit building permit after building permits for 75% of the market rate dwelling units in the Phase have been issued, provided that if the City is constructing the facilities, then Developer's funding obligation would be triggered on the later to occur of (1) issuance of the first market rate dwelling unit building permit after building permits for 75% of the market rate dwelling units in the Phase have been issued, and (2) the time the City is ready to commence design of the facilities (the foregoing collectively, the **"75% BPs/Design Ready Condition"**). Developer shall commence and complete construction of the Phase One parks and greenways (other than the Tournament Sports Park/Citywide Park) within the times required by the subdivision improvement agreement between City and Developer; provided, however, in all events not less than 15 acres of the Phase One parks and greenways shall be completed and offered for dedication to City prior to issuance of the first market rate dwelling unit building permit after building permits for 50% of the market rate dwelling units in Phase One have been issued. The remaining parks and greenways in Phase One shall be completed prior to issuance of the first market rate dwelling unit building permit after building permits for 90% of the market rate dwelling units in Phase One have been issued. In addition, as a part of Phase One or

Phase Two, Developer shall in coordination with the East Bay Regional Park District (“**EBRPD**”) do the following provided that Developer has obtained the appropriate access and rights to carry out the applicable work: 1) construct interim trail improvements which shall be a decomposed granite surface treatment and more fully detailed in the Specific Plan to connect the Delta-DeAnza Trail to the Contra Costa Canal Trail; and 2) develop and construct vehicular access improvements off of Willow Pass Road to EBRPD property which improvements will be more particularly described in the Specific Plan. If such access and rights are not available, the City will cooperate with Developer, at Developer’s cost and expense as a Project Cost, regarding alternative mechanisms to acquire such access or rights or to relocate or redesign such improvements so that appropriate access or rights may be obtained.

- B. As part of Phase Two, Developer shall, at its election (but subject to City making required legal findings in the DDA or DA if Developer desires to pursue option (ii) below), either (i) fund or, at no expense to City, cause the funding of a portion of the costs of the Phase Two component of the Tournament Sports Park/Citywide Park, consistent with City’s conceptual plan to be finalized in the Specific Plan, pursuant to the Progress Payments Process, or (ii) cause the construction of such facilities, within the time(s) set forth in the DA (subject to extensions as provided therein); provided Developer’s out-of-pocket costs of meeting such funding or construction obligation shall not exceed \$15 Million²; provided, further, that the requirement to fully fund or complete construction of such facilities shall not arise until the 75% BPs/Design Ready Condition for such Phase and facilities has been satisfied. Developer shall also construct and upon completion thereof offer to dedicate to the City the approximately 144.5 acres of parks and greenways within Phase Two (the “**Phase Two Parks and Greenways**”). Developer shall commence and complete construction of the Phase Two Parks and Greenways (other than the Tournament Sports Park/Citywide Park) within the times required by the subdivision improvement agreement between City and Developer; provided, however, in all events not less than 25 acres of Phase Two Parks and Greenways shall be completed and offered for dedication to the City prior to issuance of the first market rate dwelling unit building permit after building permits for 50% percent of the market rate dwelling units in Phase Two have been issued. The remaining Phase Two Parks and Greenways shall be completed and offered for dedication to the City prior to issuance of the first market rate dwelling unit building permit after building permits for 90% of the market rate dwelling units in Phase Two have been issued.

- C. As part of Phase Three, Developer shall, at its election (but subject to City making required legal findings in the DDA or DA if Developer desires to pursue option (ii) below), either (i) fund or, at no expense to City, cause the funding of a portion of the costs of the Phase Three component of the Tournament Sports Park/Citywide Park, consistent with City's conceptual plan to be finalized in the Specific Plan, pursuant to the Progress Payments Process, or (ii) cause the construction of such facilities, within the time(s) set forth in the DA (subject to extensions as provided therein); provided Developer's out-of-pocket costs of meeting such funding or construction obligation shall not exceed \$40 Million²; provided, further, that the requirement to fully fund or complete construction of such facilities shall not arise until the 75% BPs/Design Ready Condition for such Phase and facilities has been satisfied. Developer shall also construct and upon completion thereof offer to dedicate to the City the approximately 102.4 acres of parks and greenways within Phase Three (the "**Phase Three Parks and Greenways**"). Developer shall commence and complete construction of the Phase Three Parks and Greenways (other than the Tournament Sports Park/Citywide Park) within the times required by the subdivision improvement agreement between City and Developer; provided, however, in all events not less than 20 acres of Phase Three Parks and Greenways shall be completed and offered for dedication to the City prior to issuance of the first market rate dwelling unit building permit after building permits for 50% percent of the market rate dwelling units in Phase Three have been issued. The remaining Phase Three Parks and Greenways shall be completed and offered for dedication to the City prior to issuance of the first market rate dwelling unit building permit after building permits for 90% of the market rate dwelling units in Phase Three have been issued.
- D. As part of Phase Four, Developer shall, at its election (but subject to City making required legal findings in the DDA or DA if Developer desires to pursue option (ii) below), either (i) fund or, at no expense to City, cause the funding of a portion of the costs of the Phase Four component of the Tournament Sports Park/Citywide Park, consistent with City's conceptual plan to be finalized in the Specific Plan, pursuant to the Progress Payments Process, or (ii) cause the construction of such facilities, within the time(s) set forth in the DA (subject to extensions as provided therein); provided Developer's out-of-pocket costs of meeting such funding or construction obligation shall not exceed \$40 Million²; provided, further, that the requirement to fully fund or complete construction of such facilities shall not arise until the 75% BPs/Design Ready Condition for such Phase and facilities has been satisfied. Developer shall also construct and upon completion thereof offer to dedicate to the City

approximately 75.9 acres of parks and greenways within Phase Four (collectively the “**Phase Four Parks and Greenways**”). Developer shall commence and complete construction of the Phase Four Parks and Greenways (other than the Tournament Sports Park/Citywide Park) within the times required by the subdivision improvement agreement between City and Developer; provided, however, in all events not less than 20 acres of the parks and greenways within Phase Four shall be completed and offered for dedication to the City prior to issuance of the first market rate dwelling unit building permit after building permits for 50% of the market rate dwelling units in Phase Four have been issued, and the remaining acres of parks and greenways within Phase Four shall be completed and offered for dedication to the City prior to issuance of the first market rate dwelling unit building permit after building permits for 90% of the market rate dwelling units in Phase Four have been issued.

E. As part of Phase Five, Developer shall construct and upon completion thereof offer to dedicate to the City approximately 110.1 acres of parks and greenways within Phase Five (collectively the “**Phase Five Parks and Greenways**”). Developer shall commence and complete construction of the Phase Five Parks and Greenways within the times required by the subdivision improvement agreement between City and Developer; provided, however, in all events not less than 30 acres of the parks and greenways within Phase Five shall be completed and offered for dedication to the City prior to issuance of the first market rate dwelling unit building permit after building permits for 50% of the market rate dwelling units in Phase Five have been issued, not less than 60 acres of the parks and greenways within Phase Five (inclusive of the previously referenced 30 acres) shall be completed and offered for dedication to the City prior to issuance of the first market rate dwelling unit building permit after building permits for 75% of the market rate dwelling units in Phase Five have been issued, and the remaining acres of parks and greenways within Phase Five shall be completed and offered for dedication to the City prior to issuance of the first market rate dwelling unit building permit after building permits for 90% of the market rate dwelling units in Phase Five have been issued.

- ii. Community Center/Library. The Community Center/Library will be located in the Campus District and will be developed in two phases. Developer will, at its election (but subject to City making required legal findings in the DDA or DA if Developer desires to pursue option (ii) below), either (i) pay City a total of \$65 Million² towards design and construction of the Community Center/Library as follows: A) Developer shall become obligated to fund an initial contribution of \$30 Million² in Phase Two pursuant to the Progress Payments Process upon the satisfaction of the 75% BPs/Design Ready Condition for such Phase and facilities; and B) Developer shall become obligated to fund the remaining contribution of \$35 Million² in Phase Three

pursuant to the Progress Payments Process upon the satisfaction of the 75% BPs/Design Ready Condition for such Phase and facilities, or (ii) begin construction of a portion of such Phase Two Community Center/Library on or before issuance of the first market rate dwelling unit building permit after building permits for 75% of the market rate dwelling units in Phase Two have been issued (and complete or cause the completion of construction thereof in accordance with the Schedule of Performance) and begin construction of a portion of such Phase Three Community Center/Library facilities on or before issuance of the first market rate dwelling unit building permit after building permits for 75% of the market rate dwelling units in Phase Three have been issued (and complete or cause the completion of construction thereof in accordance with the Schedule of Performance); the anticipated project delivery methodology (e.g. design/build, design/bid/build, Developer build etc.) will be addressed in the Specific Plan and/or the DA (and the outside dates for completion of construction shall be subject to extensions as provided therein). The improvements and programming of the Community Center/Library, including the specific components to be funded or constructed by Developer in each of Phases Two and Three, shall be defined in the Specific Plan and/or DA. To the extent Developer funds rather than constructs designated components of the Community Center/Library, Developer, at its expense, shall also prepare Development Ready Condition building pad(s) on land retained by the City for the Community Center/Library in Phases Two and/or Three as set forth in the Specific Plan.

- iii. Tournament Sports Park/City Wide Park. To the extent Developer funds rather than constructs designated components of the Tournament Sports Park/Citywide Park, Developer, at its expense, shall also provide utilities stubbed to locations approved by the City to land retained by the City [(approximately 175 acres total)] for the Tournament Sports Park/Citywide Park in Phases One, Two, Three, Four, and Five all within the times set forth in the Specific Plan. The improvements and programming, including specifics of each phased component of the Tournament Sports Park/Citywide Park, shall be set forth in the Specific Plan.
- d. Affordable Housing. The State Surplus Land Act, Government Code sections 54220-54234 (“**SLA**”), as amended by AB 1486, directly conflicts with various requirements of the Base Closure Law and is therefore preempted. Even if the SLA is not preempted by the Base Closure Law, the City Council made certain findings in Resolution No. 23-50 adopted by the Council on September 19, 2023, that the Development Footprint is “exempt surplus land” as defined in Government Code Section 54221(f)(1)(F)(ii). Developer will be expected to deed restrict and contribute Development Ready Condition building pads to support development of 25 percent of the residential units (i.e., at least 3,068 affordable dwelling units if the full 12,272 units are constructed) affordable to lower income households, as defined in Section 50079.5 of the Health and Safety Code, with an affordable sales price or an affordable rent, as defined in Sections 50052.5 or 50053 of the Health and Safety Code, for a minimum of 55 years for rental housing and 45 years for

ownership housing in order to remain consistent with the requirements of SLA section 54221(f)(1)(F) governing exempt surplus land.

- i. Delivery of Development-Ready Affordable Housing Pads. Developer will improve and deliver to City (or its affordable housing developer designee) Development Ready Condition building pads (“**Affordable Housing Pads**”) throughout each Phase of the Project at no cost to City (or its affordable housing developer designee). The value of the Affordable Housing Pads is currently estimated to exceed \$146,117,500. Such value shall be subject to adjustment and updates as the Project proceeds. As planned, land for 537 affordable units will be included in Phase One. 50% of the Affordable Housing Pads within each Phase will be improved and offered to the City (or its affordable housing developer designee) no later than issuance of building permits for 25% of the market rate residential units in such Phase, 75% of the Affordable Housing Pads within each Phase will be improved and offered to the City (or its affordable housing developer designee) no later than issuance of building permits for 50% of the market rate residential units in such Phase, and 100% of the Affordable Housing Pads within each Phase will be improved and offered to the City (or its affordable housing developer designee) no later than issuance of building permits for 75% of the market rate residential units in such Phase; provided that a Developer Affiliate shall have the first right to acquire up to 50% of the Affordable Housing Pads either itself or in partnership with a non-profit affordable housing developer partner and construct and operate the units planned for such pads, as set forth below. Site locations shall be geographically disbursed throughout the phases and sub-phases, as determined in the Specific Plan, with consideration given toward selecting sites that are proximate to transit and services such that they will be competitive for State, federal and regional affordable housing funding.
- ii. Additional Developer Funding and Commitments to Ensure Delivery of Affordable Housing Units. In addition to its delivery of development-ready pads, Developer shall pay to City an affordable housing subsidy (“**Affordable Housing Subsidy**”) totaling \$50 Million² payable as follows: Phases One and Two - \$5 Million² in each Phase; Phase Three \$10 Million²; and Phases Four and Five - \$15 Million² in each Phase. The Affordable Housing Subsidy for each Phase, together with a CPI or other cost adjustment mechanism to be negotiated in the DDA, shall be paid to City, or its affordable housing developer designee, on the later of (i) the date on which the City (or its affordable housing developer designee) requires such funds to design and/or construct affordable housing or (ii) the issuance of building permits for 50% of the market rate dwelling units in the applicable Phase (“**50% BPs Subsidy Funding Condition**”); provided the Affordable Housing Subsidy shall be funded by Developer to City (or its affordable housing developer designee(s)) pursuant to the Progress Payments Process. If the Affordable Housing Phase Subsidy for a Phase is not payable by Developer on the satisfaction of the 50% BPs Subsidy Funding Condition, then upon the request of the City, Developer shall provide

appropriate financial or other assurances to be negotiated in the DDA securing Developer's obligation to pay such Affordable Housing Subsidiary when due. By delivering all of the Affordable Housing Pads and paying the Affordable Housing Subsidy in full and complying with subsections 4.d.iii. and 4.d.iv. below, Developer shall satisfy all applicable affordable housing requirements for the Project.

- iii. Legally Binding Agreements for Permanent Multifamily Supportive Housing and Food Bank Project. Developer will make available 16 acres for the development of 260 permanent multifamily supportive housing units and 10 acres for the development of the Food Bank Project consistent with the HUD Legally Binding Agreements.
- iv. Self-Help Housing (Habitat for Humanity). Developer will donate approximately 2 acres of development-ready property to one or more self-help housing developers for development of low or very low-income for-sale homes at approximately 10 units per acre, resulting in 20 affordable for-sale homes. Sites for self-help (Habitat for Humanity) housing will be located in reasonable proximity to transit and services such that those sites will be competitive for State and federal affordable housing funding.
- v. Other Federal, State, and Regional Funding Sources. Additional funding will be required for affordable housing developers to deliver the remainder of the City's goal of 3,068 affordable units (assuming the full 12,272 units are constructed) representing 25% of the total market rate dwelling units within the five Phases. Sites for affordable housing will be located in reasonable proximity to transit and services such that those sites will be competitive for State and federal affordable housing funding. Developer will assist the City and affordable housing partners, in applying for federal, state and regional funding to leverage the maximum possible amount of available government funding from existing programs and any new state or federal programs established in the future. Moreover, Developer will assist the City in pursuing government funding specific for veterans housing, including through HUD's Veterans Affairs Supportive Housing Program, and the California Department of Housing and Community Development's Veterans Housing and Homelessness Prevention Program.
- vi. Affordable Housing Administrator. Developer intends to act as the Project's affordable housing administrator in an effort to successfully implement the Project's affordable housing components (excluding Self-Help i.e. Habitat for Humanity Housing, and Permanent Multifamily Supportive Housing governed by the HUD Legally Binding Agreement). Developer would, among other things:
 - A. Recommend the siting of affordable housing locations within Project that are best suited to achieve community and financing objectives, promote provision of supportive services and transit opportunities while optimizing ability to compete for public funding, including tax credits; and

- B. Developer will work directly with the City to implement and administer the City's affordable housing program for stand-alone affordable projects described in Section 4(d)(i) only, including managing the competitive bidding and developer selection process in coordination with and subject to oversight by the City, all at no cost to City.

In consideration for providing the services described in sub-sections A and B above, Developer would have the right/option to build/develop 50% of the stand-alone affordable projects on Affordable Housing Pads either, at Developer's election, itself or in partnership with a non-profit affordable housing developer partner. 50% of the stand-alone affordable housing projects would be available for development by third-party affordable housing developers.

- e. Golf Course/Evora Road. If identified as necessary mitigation by the applicable CEQA document to mitigate a potentially-significant project-specific or cumulative traffic impact, Developer, will fund and construct at its expense (subject to potential pro rata reimbursement by parties other than City in the event of a cumulative impact): (i) access improvements, including an extension of Evora Road from its current location to an area identified in a relevant traffic impact study as necessary to mitigate or reduce the identified traffic impact; and (ii) golf course reconfiguration improvements to address affected portions of Diablo Creek Golf Course. Such improvements shall be phased as the Project progresses as such mitigation measures are required. The foregoing shall be subject to Developer having obtained the appropriate access and rights to carry out the applicable work. If such access and rights are not available, the City will cooperate with Developer, at Developer's cost and expense as a Project Cost, regarding alternative mechanisms to acquire such access or rights or to relocate or redesign such improvements so that such access or rights may be obtained.
- f. Commitment to Successful Transit Oriented Development. Developer's land use program includes substantial high-density, mixed-use development pads adjacent to BART which will be developed as soon as economically and logistically feasible.
 - i. Developer is committed to implementing the City's vision for a vibrant, pedestrian-oriented, mixed-use, and transit-oriented core around the North Concord/Martinez BART station.
 - ii. Successful high-density TOD Core development can occur only after:
 - A. BART completes its own planning process, negotiates a DDA, and provides for the reconfiguration of its existing parking, access, and related facilities.
 - B. New development and place making create demand for high-density housing sufficient to elevate rents and land values to levels that will support development of the infrastructure and community benefits associated with such high-density development.

- g. Fire Station. As part of Phase Two, Developer will, at its election (but subject to City or Fire District making required legal findings in the DDA or DA if Developer desires to pursue option (ii) below), (i) fund or, at no expense to City, cause the funding of a portion of the costs of the offsite northerly fire station pursuant to the Progress Payments Process, or (ii) cause the construction of such facilities; provided Developer's out-of-pocket costs of meeting such funding or construction obligation shall not exceed \$10 Million²; provided, further, that the requirement to fully fund or complete construction of such facilities shall not arise until the 75% BPs/Design Ready Condition for such Phase and facilities has been satisfied. As part of Phase Four, and in addition to developing a 1 acre pad for a fire station in Phase Four, Developer will, at its election (but subject to City or Fire District making required legal findings in the DDA or DA if Developer desires to pursue option (ii) below), (i) fund or, at no expense to City, cause the funding of a portion of the costs of the fire station to be constructed on such 1 acre pad pursuant to the Progress Payments Process, or (ii) cause the construction of such facilities; provided Developer's out-of-pocket costs of meeting such funding or construction obligation shall not exceed \$10 Million²; provided, further, that the requirement to fund or complete construction of such facilities shall not arise until the 75% BPs/Design Ready Condition for such Phase and facilities has been satisfied.
- h. Mount Diablo Creek Restoration Area. Developer shall, at no expense to City, undertake the restoration of approximately 146.3 acres of Mount Diablo Creek (the "**Mount Diablo Creek Restoration Area**") which shall occur in each of the five Phases of the Project tentatively as follows: 42.6 acres in Phase One, 24.6 acres in Phase Two, 0 acres in Phase Three, 23 acres in Phase Four, and 56.1 acres in Phase Five. Restoration of the Mount Diablo Creek Restoration Area, including the conditions under which Developer shall be required to commence a phase of restoration, the phasing of such restoration, the acreage within each such phase and a financing plan for the completion of restoration, are all subject to refinement through the regulatory permitting agency approval process and shall be more fully described in the Specific Plan and/or the applicable CEQA document.
- i. Campus District Marketing Plan. Developer shall develop a marketing plan with the City for the Campus District, and Developer shall commit to \$150,000¹ towards that effort with \$75,000² in Phase One and \$75,000² in Phase Two.
- 5. Summary of Project Milestones and Phasing Requirements.
 - a. Size and Configuration of Land Transfers or Rights of Entry from City to Developer. Transfers from the City to Developer within a Phase shall occur in multiple subphases (which may include entire Infrastructure Sub-Phases or portions thereof), the size and sequencing of which will be more specifically set forth in the DDA, Specific Plan, and other entitlement approvals and CEQA documents. In lieu of fee transfer of such a subphase by the City to Developer, Developer may elect to enter into a Right of Entry (each a "**ROE**" or "**Right of Entry**") for the purpose of carrying out various authorized uses and required construction activities to be prescribed in the applicable ROE and subject to applicable entitlement and environmental review approval procedures. Accordingly, wherever the transfer of an Infrastructure Sub-Phase or portion thereof is contemplated hereunder for purposes of Developer's constructing Backbone

Infrastructure, such transfer may, at the election of Developer, be accomplished through a ROE. Upon the substantial completion of the Backbone Infrastructure work performed pursuant to an ROE with respect to a “Parcel” (i.e., which as defined below represents a portion of an Infrastructure Sub-Phase on which vertical development will occur) other than “In-Tract Improvements” and “Assigned Backbone Infrastructure” (as such quoted terms are defined below), Developer shall have the right to require the City to convey directly to one or more Vertical Developers such Parcel for vertical development. Each such ROE will be terminated as fee title to those portions of the Development Footprint that are subject to such ROE are transferred to Developer or a Vertical Developer pursuant to the terms of the DDA.

- b. Defined Terms. “**Master Entitlement Date**” means the date by which the Navy has transferred the Phase One Property (or a substantial portion thereof in the event of carve outs to the initial Finding of Suitability to Transfer [“**FOST**”]) to the City and final approval of the General Plan/Area Plan Amendment, Specific Plan, DDA and DA, including EIR certification, has occurred. “**Large Lot Tentative Map**” means a tentative subdivision map that subdivides an Infrastructure Subphase or a portion thereof into large parcels, with each large parcel proposed to be further subdivided through further mapping.
- c. Schedule of Performance. The Schedule of Performance to be included in the DDA shall address the phased public benefit delivery requirements (including for the Tournament Sports Park/Citywide Park, other parks, affordable housing pads, Neighborhood Serving Retail pads and buildings and the Community Center) addressed in Section 4 above and the following four key milestones for each Phase and Infrastructure Sub-Phase: i) applications for Large Lot Tentative Subdivision Maps, ii) conveyance of Infrastructure Sub-Phases or portions thereof or grants of Rights of Entry corresponding to particular Infrastructure Sub-Phases or portions thereof from City to Developer, iii) Commencement of Backbone Infrastructure within or serving a Infrastructure Sub-Phase; and iv) Completion of Backbone Infrastructure within or serving an Infrastructure Sub-Phase. Milestones for each of the Infrastructure Sub-Phases within Phases One through Five are described in the table below (“**Schedule of Performance Table**”) and shall be subject to extension for Excusable Delay subject to limitations and requirements to be set forth in the DDA. Schedule of Performance milestones (including Excusable Delay-related permitted delays) remain subject to refinement through the planning and negotiation of the Specific Plan and DA and associated CEQA process, and state and federal permit process, all as set forth in Section 8 below.

| Milestone | Development Phase One | Development Phase Two | Development Phase Three | Development Phase Four | Development Phase Five |
|-------------------------------------|---|---|--|---|---|
| Large Lot Tentative Map Application | Map application for first Phase One Infrastructure Sub-Phase to be submitted within 12 months of Master Entitlement Date. | Map application for first Phase Two Infrastructure Sub-Phase to be submitted on or before date which is 6 years after Close of Escrow or Right of Entry | Map application for first Phase Three Infrastructure Sub-Phase to be submitted On or before date which is 6 years after Close of Escrow or | Map application for first Phase Four Infrastructure Sub-Phase to be submitted on or before date which is 6 years after Close of Escrow or | Map application for first Phase Five Infrastructure Sub-Phase to be submitted on or before date which is 6 years after Close of Escrow or |

| Milestone | Development Phase One | Development Phase Two | Development Phase Three | Development Phase Four | Development Phase Five |
|---|--|---|--|---|--|
| | Map applications for subsequent Phase One Infrastructure Sub-Phases to be submitted no later than date on which building permits for 50% of residential units or commercial sq ft, as applicable, have been issued for prior Infrastructure Sub-Phase | for first Phase One Infrastructure Sub-Phase. Map applications for subsequent Phase Two Infrastructure Sub-Phases to be submitted no later than date on which building permits for 50% of residential units or commercial sq ft, as applicable, have been issued for prior Infrastructure Sub-Phase | Right of Entry for first Phase Two Infrastructure Sub-Phase. Map applications for subsequent Phase Three Infrastructure Sub-Phases to be submitted no later than date on which building permits for 50% of residential units or commercial sq ft, as applicable, have been issued for prior Infrastructure Sub-Phase | Right of Entry for first Phase Three Infrastructure Sub-Phase. Map applications for subsequent Phase Four Infrastructure Sub-Phases to be submitted no later than date on which building permits for 50% of residential units or commercial sq ft, as applicable, have been issued for prior Infrastructure Sub-Phase | Right of Entry for first Phase Four Infrastructure Sub-Phase. Map applications for subsequent Phase Five Infrastructure Sub-Phases to be submitted no later than date on which building permits for 50% of residential units or commercial sq ft, as applicable, have been issued for prior Infrastructure Sub-Phase |
| First Phased Large Lot Final Map Application | Submittal within 9 months following date on which the applicable Large Lot Tentative Map has been approved (with all appeal and legal challenges periods having expired without the filing of an appeal or challenge). | Submittal within 9 months following date on which the applicable Large Lot Tentative Map has been approved (with all appeal and legal challenges periods having expired without the filing of an appeal or challenge). | Submittal within 9 months following date on which the applicable Large Lot Tentative Map has been approved (with all appeal and legal challenges periods having expired without the filing of an appeal or challenge). | Submittal within 9 months following date on which the applicable Large Lot Tentative Map has been approved (with all appeal and legal challenges periods having expired without the filing of an appeal or challenge). | Submittal within 9 months following date on which the applicable Large Lot Tentative Map has been approved (with all appeal and legal challenges periods having expired without the filing of an appeal or challenge). |
| Final Map and Site Development Permit Approval for applicable Infrastructure Sub-Phase | Prior to close of escrow for conveyance of or Right of Entry for each Infrastructure Sub-Phase | Prior to close of escrow for conveyance of or Right of Entry for each Infrastructure Sub-Phase | Prior to close of escrow for conveyance of or Right of Entry for each Infrastructure Sub-Phase | Prior to close of escrow for conveyance of or Right of Entry for each Infrastructure Sub-Phase | Prior to close of escrow for conveyance of or Right of Entry for each Infrastructure Sub-Phase |
| Outside Date for Close of Escrow/Right of Entry for Infrastructure Sub-Phases in each Phase | First Phase One Infrastructure Sub-Phase to transfer or made subject to a Right of Entry on or before 3rd anniversary of Master Entitlement Date. Subsequent Phase One Infrastructure Sub-Phases to be transferred or made subject to a Right of Entry prior to transfer of any later Phase Infrastructure Sub-Phases unless otherwise set forth in the Term | First Phase Two Infrastructure Sub-Phase to transfer or made subject to a Right of Entry on or before date which is 8 years after Close of Escrow for first Phase One Infrastructure Sub-Phase. Subsequent Phase Two Infrastructure Sub-Phases to be transferred or made subject to a Right of Entry prior to transfer of any later Phase Infrastructure Sub-Phase unless otherwise set forth in the Term | First Phase Three Infrastructure Sub-Phase to transfer or made subject to a Right of Entry on or before date which is 8 years after Close of Escrow for first Phase Two Infrastructure Sub-Phase. Subsequent Phase Three Infrastructure Sub-Phases to be transferred or made subject to a Right of Entry prior to transfer of any later Phase Infrastructure Sub-Phase unless otherwise set forth in | First Phase Four Sub-Infrastructure Sub-Phase to transfer or made subject to a Right of Entry on or before date which is 8 years after Close of Escrow for first Phase Three Infrastructure Sub-Phase. Subsequent Phase Four Infrastructure Sub-Phases to be transferred or made subject to a Right of Entry prior to transfer of any Phase Five Infrastructure Sub-Phase unless otherwise set forth in | First Phase Five Sub-Infrastructure Sub-Phase to transfer or made subject to a Right of Entry on or before date which is 8 years after Close of Escrow for first Phase Four Infrastructure Sub-Phase. Remaining Phase Five Infrastructure Sub-Phases to be transferred or made subject to a Right of Entry no later than date which is 6 years after Close of Escrow for first Phase Five Infrastructure Sub-Phase |

| Milestone | Development Phase One | Development Phase Two | Development Phase Three | Development Phase Four | Development Phase Five |
|--|---|---|---|---|---|
| | Sheet/DDA or approved by City | Sheet/DDA or approved by City | the Term Sheet/DDA or approved by City | the Term Sheet/DDA or approved by City | |
| Commencement of grading and Backbone Infrastructure work necessary for development of each Infrastructure Sub-Phase per Site Development Permit | Within 9 months after Close of Escrow/Right of Entry for the applicable Infrastructure Sub-Phase | Within 9 months after Close of Escrow/Right of Entry for the applicable Infrastructure Sub-Phase | Within 9 months after Close of Escrow/Right of Entry for the applicable Infrastructure Sub-Phase | Within 9 months after Close of Escrow/Right of Entry for the applicable Infrastructure Sub-Phase | Within 9 months after Close of Escrow/Right of Entry for the applicable Infrastructure Sub-Phase |
| Completion of grading and Backbone Infrastructure work (other than In-Tract Improvements) necessary for development of each Infrastructure Sub-Phase | <i>Tbd</i> depending on size of Infrastructure Sub-Phase but in any event by no later than 36 months following commencement of such work | <i>Tbd</i> depending on size of Infrastructure Sub-Phase but in any event by no later than 36 months following commencement of such work | <i>Tbd</i> depending on size of Infrastructure Sub-Phase but in any event by no later than 36 months following commencement of such work | <i>Tbd</i> depending on size of Infrastructure Sub-Phase but in any event by no later than 36 months following commencement of such work | <i>Tbd</i> depending on size of Infrastructure Sub-Phase but in any event by no later than 36 months following commencement of such work |
| Large Lot Transfers to Vertical Developers | As soon as practicable following substantial completion of Backbone Infrastructure work associated with the applicable Large Lot Phased Final map (a separate SIA will be executed that ensures development of applicable In-Tract Improvement work to be performed by the Vertical Developer and provided Developer shall remain ultimately responsible for any Assigned Backbone Infrastructure absent consent from the City) | As soon as practicable following substantial completion of Backbone Infrastructure work associated with the applicable Large Lot Phased Final map (a separate SIA will be executed that ensures development of applicable In-Tract Improvement work to be performed by the Vertical Developer and provided Developer shall remain ultimately responsible for any Assigned Backbone Infrastructure absent consent from the City) | As soon as practicable following substantial completion of Backbone Infrastructure work associated with the applicable Large Lot Phased Final map (a separate SIA will be executed that ensures development of applicable In-Tract Improvement work to be performed by the Vertical Developer and provided Developer shall remain ultimately responsible for any Assigned Backbone Infrastructure absent consent from the City) | As soon as practicable following substantial completion of Backbone Infrastructure work associated with the applicable Large Lot Phased Final map (a separate SIA will be executed that ensures development of applicable In-Tract Improvement work to be performed by the Vertical Developer and provided Developer shall remain ultimately responsible for any Assigned Backbone Infrastructure absent consent from the City) | As soon as practicable following substantial completion of Backbone Infrastructure work associated with the applicable Large Lot Phased Final map (a separate SIA will be executed that ensures development of applicable In-Tract Improvement work to be performed by the Vertical Developer and provided Developer shall remain ultimately responsible for any Assigned Backbone Infrastructure absent consent from the City) |

6. Interim Lease. Provided that the conditions specified in Section 6(e) below have been satisfied or otherwise waived by Developer, a single purpose entity affiliated with Developer (“**Developer Lessee**”) agrees to enter into an interim lease (the “**Interim Lease**”) with City with respect to those portions of the Development Footprint transferred by Navy to City commencing upon the later to occur of approval of the DDA and conveyance of the First Transfer Parcel. The form of Interim Lease will be attached as an exhibit to the DDA, and will be subject to the following, subject to further refinement based upon the Term Sheet and MOA/Purchase Agreement to be negotiated with the Navy:

- a. Developer Lessee, as an expense of the Project, will operate, manage, and maintain the entirety of the First Transfer Parcel, including providing security, maintenance, and management of grazing or other leases. It is the intent of the parties that the Interim Lease is only an instrument for transferring property management responsibilities to Developer Lessee, and Developer Lessee shall not have or acquire any of the incidents or liabilities of ownership or being a lessee under a lease by virtue of entering into the Interim Lease.
- b. Developer Lessee is entitled to all net revenues (gross revenues less all Developer costs incurred under the Interim Lease, including security, management, insurance, maintenance, etc.), if any, generated from grazing, leases, or other operations on property covered by the Interim Lease.
- c. As additional Phases of the Development Footprint are conveyed by the Navy to the City (each such transfer parcel and the First Transfer Parcel, an “**EDC Transfer Parcel**” or “**Transfer Parcel**”), such Transfer Parcel shall be automatically added to the premises covered by the Interim Lease subject to satisfaction or waiver by Developer Lessee of the conditions specified in Section 6(e).
- d. At City’s request, Developer will cooperate with Navy and the EBRPD or other recipients of Public Benefit Conveyance (“**PBC**”) property to explore (but Developer shall have no obligation to enter) joint security/property management arrangements under which the entirety of the Concord Naval Weapons Station, including the First Transfer Parcel, the PBC property and that portion of the EDC property not yet transferred by Navy could be managed by one party with the costs shared among Developer, the PBC property recipient, and Navy.
- e. Notwithstanding anything herein to the contrary, neither Developer nor Developer Lessee shall have any obligation to enter into an Interim Lease for an EDC Transfer Parcel unless and until certain conditions precedent thereto shall have been satisfied or otherwise waived by Developer, including, without limitation, the following with respect to such Transfer Parcel; (i) completion of Developer’s due diligence, including, without limitation, its determination that the Navy has completed all required remediation, including ongoing monitoring of the applicable EDC Transfer Parcel required as of the date of such transfer, and all regulatory agencies with jurisdiction over the applicable EDC Transfer Parcel have approved the remediation required as of the date of such transfer, and all other conditions to

transfer included in the MOA/Purchase Agreement have been satisfied; (ii) Developer's review and approval of all EDC conveyance covenants, conditions and restrictions with respect to such EDC Transfer Parcel; (iii) the issuance of leasehold title insurance or leasehold title insurance commitments acceptable to Developer, and (iv) obtaining PLL (defined below) insurance policies for such EDC Transfer Parcel.

- f. Except to the extent Developer or Developer Lessee causes or exacerbates a release of existing hazardous substances, Developer and Developer Lessee shall have no liability related to hazardous substances on or within any areas subject to the Interim Lease where the presence of such hazardous substances predates Developer's or Developer Lessee's execution of the Interim Lease. City and Developer will endeavor to negotiate appropriate limitations on the scope of City's and its successors liability with respect to exacerbation of existing hazardous substances, such as limiting liability to instances involving active negligence or willful misconduct, and to the extent those limitations are included in the MOA/Purchase Agreement, Navy deed(s) or other applicable Navy document, those liability limitations will be carried over and included in the Interim Lease, Rights of Entry and/or deeds conveying fee title, as applicable, for the benefit of Developer and Vertical Developers.
 - g. Developer will coordinate with the City to procure one or more pollution legal liability ("**PLL**") insurance policies the cost of which shall be paid by Developer during the term of the Interim Lease as a Project Cost.
 - h. The Interim Lease will not give Developer the right to construct any Backbone Infrastructure, and Developer shall have no right to commence construction of any Backbone Infrastructure until either City has issued a Right of Entry to Developer for the construction of the applicable Backbone Infrastructure or City has conveyed fee title to the applicable sub-phase to Developer for the construction of Backbone Infrastructure.
 - i. The Interim Lease and DDA shall include cross default provisions specifying that an uncured material breach by Developer Lessee following notice and expiration of applicable cure periods shall be deemed a default by Developer under the DDA; provided that the remedies under DDA for such a default shall be limited to termination of DDA only with respect to the portions of the Development Footprint subject to the Interim Lease that have not been previously conveyed to Developer and/or for which the City has not previously issued Rights of Entry to Developer.
 - j. The Interim Lease shall include an indemnification of the City by Developer Lessee for death, personal injury, loss, or property damage to the extent caused by Developer Lessee or its employees, agents, representatives, contractors or subcontractors.
7. Infrastructure.
- a. Backbone Infrastructure. Backbone Infrastructure shall be commenced and completed and delivered on an Infrastructure Sub-Phase by Infrastructure Sub-

Phase basis. “**Backbone Infrastructure**” for an Infrastructure Sub-phase shall mean those components of infrastructure, including utilities for potable water, sewerage and recycled water, dry utilities, roadways, pedestrian and bike ways, parks, storm water detention facilities or other flood control measures, pump/lift stations, electricity substations and similar public and quasi-public improvements, including off-site public improvements that are within, or are necessary to serve planned development within the Infrastructure Sub-Phase. The Backbone Infrastructure components by Infrastructure Sub-Phase are generally described in Exhibit C attached hereto and will be more fully detailed in the Specific Plan, the CEQA document and state and federal permits. Some off-site improvement components may be constructed by other agencies (e.g. PG&E or CCWD) and/or require additional time due to ROW acquisitions and extensive improvements that may be completed during the development of the entire Phase and not specifically for the first Infrastructure Sub-Phase. The foregoing shall be subject to Developer having obtained the appropriate access and rights to carry out the applicable work. If such access and rights are not available, the City will cooperate with Developer, at Developer’s cost and expense as a Project Cost, regarding alternative mechanisms to acquire such access or rights or to relocate or redesign such improvements so that such access or rights may be obtained.

- b. Developer Obligation; Timing. Developer, at its expense (subject to City’s obligations to participate in implementation of financing mechanisms identified in Section 13), shall construct the Backbone Infrastructure to support the development of each Phase in accordance with the Schedule of Performance described in Section 5c.
- c. Limited Right to Assign In-Tract Backbone Infrastructure Obligations. Except as otherwise expressly provided below and in Section 11(g), each Developer Affiliate developing a Phase shall perform all Backbone Infrastructure work itself and shall not be permitted to assign its Backbone Infrastructure obligations to Vertical Developers or other third parties. Developer may assign to a Vertical Developer the obligation to construct (i) in-tract subdivision public improvements (e.g. local streets, utility lateral lines, curb/gutter/sidewalk, street trees and landscaped medians and the like) (“**In-Tract Improvements**”) serving only the property to be purchased by the Vertical Developer and/or (ii) certain Backbone Infrastructure in order to achieve efficiencies in the coordinated development of the Project as will be further refined in the DA and Specific Plan (“**Assigned Backbone Infrastructure**”); provided that without the consent of the City not to be unreasonably withheld, Developer shall not be released from the obligation to complete such Assigned Backbone Infrastructure.
- d. Upsizing of Infrastructure. Obligations to construct Backbone Infrastructure shall include construction of oversized public facilities to accommodate development of the entirety of the Development Footprint as planned and depicted in the Specific Plan. Developer will coordinate with BART regarding potential future uses for the North Concord BART Station and infrastructure sizing with the expectation that BART will be required to pay its fair share of all out-of-pocket hard and soft costs associated with the entitlements, design, and construction of such BART serving infrastructure. Similar to BART, any other upsizing to serve other uses within or

outside the EDC that are not a part of Developer's Project will utilize a benefit district or other method to reimburse Developer for the proportional costs of the upsizing.

- e. Reimbursement. If Developer for any reason is not the master developer of one or more Future Phases to be served by upsized Backbone Infrastructure, City shall require future development to reimburse Developer for the pro rata share of Backbone Infrastructure capacity created by Developer in excess of the capacity required for land transferred by City to Developer.
- f. Willow Pass Road and Bridge. Upon approval by Caltrans and the City, Developer agrees to improve Willow Pass Road to four lanes between Landana and State Route 4 (including the bridge), which improvements will be phased consistent with phasing to be set forth in the Specific Plan and/or DA. Developer has included funding for this work in the Pro-forma. The foregoing shall be subject to Developer having obtained the appropriate access and rights to carry out the applicable work. If such access and rights are not available, the City will cooperate with Developer, at Developer's cost and expense as a Project Cost, regarding alternative mechanisms to acquire such access or rights or to relocate or redesign such improvements so that such access or rights may be obtained.
- g. Recycled Water Infrastructure. Subject to the acquisition of necessary off-site real property rights, the Parties anticipate that complete recycled water infrastructure shall be fully provided to all facilities and improvements within a Phase, and all uses of recycled water as allowed under State and local regulations at the beginning of each Phase shall be incorporated into the Project. The offsite connection of the recycled water infrastructure to Central Sanitation will be made in Phase Four, provided that Developer will in good faith consider accelerating the timing of such offsite connection subject to it obtaining sufficient funding from outside sources and its determination that such acceleration and/or funding will not adversely impact the financial performance of the Project.
- 8. Project Entitlements.

The key Project entitlements and approvals, including the EIR, General Plan/CRP Area Plan amendments, the Specific Plan, the DDA, the DA, and potentially, at Developer's election, one or more Large Lot Tentative Maps and the first small lot tentative map in Phase One, would be considered by the City Council for approval (or in the case of actions requiring approval by ordinance, first reading) at the same meeting and the various ordinances and resolutions memorializing such approvals (other than the EIR) would include provisions conditioning the effectiveness of each such approval on the effectiveness of all other concurrent approvals (for example, the effectiveness of City's approval of a proposed Specific Plan would be conditioned on City's concurrent approval of the proposed DDA and DA and vice versa such that approval of the Specific Plan could not become effective unless and until the DDA and DA approvals also became effective).

- a. General Plan/CRP Area Plan Amendments. Prior to approving a Specific Plan for the Project, City will have to amend the General Plan/CRP Area Plan to conform to the proposed Specific Plan. The General Plan/CRP Area Plan amendments will be prepared by a third party engineering and planning consultant retained by the

- City in consultation with Developer, at Developer's expense as a Project Cost, in accordance with the Reimbursement Agreement.
- b. City/Navy EDC Term Sheet and MOA/Purchase Agreement. Developer shall have the right to participate in the negotiation and preparation, and approve the final terms of, the City/Navy EDC term sheet and MOA/Purchase Agreement and any subsequent agreements between the LRA and Navy that would materially impact development of the Project.
 - c. Specific Plan. As noted in Section 4 above, Project details will be set forth in a Specific Plan to be prepared by Developer, at its cost and expense as a Project Cost. The Specific Plan will be prepared in accordance with California law, will be considered for approval concurrently with the General Plan/CRP Area Plan Amendments, and will comply with the following:
 - i. Must be substantially consistent with the goals and objectives of the CRP Area Plan; include development of the full range of uses, housing types, and densities contemplated by the CRP Area Plan as proposed to be amended, with the understanding that the specific number of residential units authorized by the Specific Plan may exceed the number of residential units referenced in the CRP Area Plan. City has determined that the programming outlined in this term sheet is consistent with the CRP Area Plan, as proposed to be amended.
 - ii. Must provide for creation of a sense of place at the point of interface with the BART station, including an initial entry plaza, retail core, or other comparable signature public space.
 - iii. Must be based on substantial community input and will be reviewed by the City's Design Review Board, Parks Recreation and Open Space Commission, and Planning Commission and subject to final approval by the City Council.
 - iv. Must reflect consultation with key stakeholders.
 - v. Must include a land use program, development standards, and design guidelines for the entire Development Footprint.
 - vi. Must identify all Backbone Infrastructure needed to support development of the Development Footprint, including any required off-site infrastructure, consistent with a land use program to be established in the Specific Plan.
 - vii. Must include a framework for evaluating and maintaining financial feasibility of the entire development (including implementation of extraordinary unanticipated conditions of approval or extraordinary unanticipated CEQA mitigation measures imposed upon the Project) consistent with parameters set forth in the Pro-forma.
 - viii. Must include development standards and design guidelines to implement or exceed the goals and objectives of the CRP Area Plan and the Citywide

Climate Action Plan -- including those regarding sustainability, transit, community character, and economic vitality -- as well as a process for implementation.

- ix. Must include appropriate management planning documents to minimize construction impacts on existing residents and protect public health and safety.
- x. Must include a minimum 300 foot wide corridor along Mt. Diablo Creek (150 ft. on either side of center) for conservation/restoration.
- d. DDA. Concurrently with approval of a Specific Plan Developer will enter into a DDA with City.
- e. Development Agreement. Concurrently with City Council's consideration of a Specific Plan for approval, City Council will consider approval of a DA between Developer and City that addresses among other items, the key terms set forth in Section 28 below.
- f. CEQA. Developer will work with the City to prepare a comprehensive and legally defensible CEQA document for the proposed Project, which will incorporate, as appropriate SB 375, SB 743 and/or other priority planning and transit-based statutory or regulatory provisions. City and Developer anticipate that project-level CEQA review would tier from the Concord Reuse Project Final EIR (the "**Reuse Plan EIR**") and the CRP Area Plan Addendum. This new CEQA document is expected to include, and build upon, the mitigation measures incorporated into the mitigation monitoring and reporting program for the Reuse Plan EIR. City will determine, with input from Developer, whether a second addendum to the Reuse Plan EIR, a negative declaration tiered from the Reuse Plan EIR, a supplemental EIR tiered from the Reuse Plan EIR, or some other CEQA document should be prepared, to the extent required by law. Developer will bear the costs of CEQA compliance for the Project, including the costs of the CEQA consultant who shall be retained by the City, in accordance with the Reimbursement Agreement, which costs shall be Project Costs. Developer will be provided a draft CEQA scope for review and comment. The Parties acknowledge that the Term Sheet 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 approvals. 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.

The Parties acknowledge that the project-specific CEQA document will include, to the extent required by law, a full transportation impact analysis in accordance with

SB 743 to determine the nature and timing of any applicable local or regional transportation improvement and mitigation measures described in the Community Reuse Plan EIR as well as other mitigation measures that may be deemed feasible and may reduce or avoid potentially significant transportation impacts.

This Term Sheet does not obligate either Party to enter into a DDA or DA on or containing any particular terms. By execution of this Term Sheet, 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 or develop the Development Footprint or any portion thereof. Execution of this Term Sheet 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, in accordance with applicable law, regarding the execution of a DDA and DA and all proceedings and decisions in connection therewith.

The Parties further acknowledge that any DDA or DA resulting from negotiations pursuant to this Term Sheet and the Exclusive Agreement to Negotiate (“**Agreement to Negotiate**”) dated September 19, 2023 shall become effective only if and after such DDA or DA 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 and DA 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 Term Sheet and Agreement to Negotiate shall impose any legally binding obligation on either Party to enter into or support entering into a DDA or DA or be used as evidence of any oral or implied agreement by either Party to enter into any other legally binding agreement.

9. Reimbursement of City Costs.

The Developer shall fully reimburse the City for costs incurred by the City and the Local Reuse Authority (“**LRA**”) pursuant to an administratively approved reimbursement agreement that as set forth in Section 3.2 (a) of the Agreement to Negotiate has been executed by the Developer prior to the City Council’s consideration of the Term Sheet. The costs that Developer reimburses the City for pursuant to the reimbursement agreement shall be Project Costs.

10. Conditions Precedent to Transfer to Developer of Infrastructure Subphases within a Phase.

City would convey Infrastructure Sub-Phases, or portions thereof, to Developer by quitclaim deed or authorize Developer to undertake development by entering a Right of Entry corresponding with Developer’s phased build-out of the Backbone Infrastructure for each Infrastructure Sub-Phase within a Phase upon the satisfaction of the following conditions precedent (which conditions shall operate for the benefit of both Developer and the City except where otherwise noted below or set forth in the DDA):

- a. Fee Title. The federal government shall have conveyed the Infrastructure Subphase to the City without any use or activity restrictions that would impede the development of the Infrastructure Subphase in accordance with the existing CRP Area Plan as previously approved by Navy (or any amendment thereto as may be approved by Navy, City and Developer), pursuant to a Finding of Suitability to Transfer issued by the Navy and concurred-in by the U.S. Environmental Protection Agency, the Department of Toxic Substances Control, the regional water board and any and all other regulatory agencies. Developer shall have the right to approve or disapprove any proposed use restrictions that conflict with the land uses allowed by the Navy-approved CRP Area Plan (or any amendment thereto approved by Navy, City and Developer) and determine whether any such restrictions would materially limit or otherwise materially adversely impact the conveyances, phasing, timing, cost, financing, marketability, and/or development of the Project as envisioned in the CRP Area Plan. For fee title conveyances, title to the applicable Infrastructure Subphase shall at the election of Developer be evidenced by the issuance of appropriate title insurance subject only to those permitted exceptions contemplated by the DDA (and, if title insurance is commercially available for Rights of Entry, Developer's interest in the applicable Infrastructure Subphase pursuant to a Right of Entry shall, at Developer's election, also be evidenced by the issuance of appropriate title insurance subject only to those permitted exceptions contemplated by the DDA).
- b. Project Entitlements; Resource Agency Permits. The City shall have "finally approved" (to be defined in the DDA) the CRP Area Plan amendment, General Plan amendment, Specific Plan, the DA, and associated Large Lot Tentative Map and large lot Final Map and shall have certified or approved the CEQA document associated therewith, and the resource agency permits required for the development of the Infrastructure Sub-Phase shall have been issued by the applicable agencies and shall not be subject to any appeal or challenge.
- c. Completion of Prior Sub-phase Backbone Infrastructure. For each conveyance following conveyance of the first Infrastructure Sub-Phase, as a condition for the benefit of the City, Developer shall have substantially completed construction of the Backbone Infrastructure (and shall have provided appropriate assurances that any such infrastructure which is incomplete will be completed such as a subdivision improvement agreement and associated improvement security), including parks (but not including In-Tract Improvements or Assigned Backbone Infrastructure) in the prior Infrastructure Subphase, provided that the DDA will provide flexibility with respect to Developer's obligation to commence and complete Infrastructure Sub-Phases of Backbone Infrastructure in order to address the timing of Navy conveyances, Excusable Delay and other conditions to be addressed in the DDA. The DDA will provide a definition of the "substantial completion" that will need to be achieved in order for Developer to proceed to the next Infrastructure Subphase.

The City acknowledges that in order for Developer to commence and/or complete the Backbone Infrastructure or community benefits for one Infrastructure Subphase, it may be necessary or desirable for Developer to enter and perform work upon other Infrastructure Subphases that Developer has not yet commenced, and that Developer's entry and performance of work upon such other Infrastructure

- Subphases shall not be deemed Developer's commencement of construction of the other Infrastructure Subphases.
- d. Approvals for Backbone Infrastructure; Improvement Security. The City shall: (i) have approved and recorded a Large Lot Final Map that includes the Infrastructure Subphase; (ii) have approved and executed an Improvement Agreement providing for Developer's installation of Backbone Infrastructure for the Infrastructure Subphase (other than In-Tract Improvements which may be deferred until further subdivision of the Infrastructure Subphase) and the posting of security consistent with the requirements of the Subdivision Map Act and the Subdivision Code ensuring performance of such Backbone Infrastructure and payment of labor and materials in connection therewith; and (iii) have issued or be ready to issue the development permit(s) required for grading and construction of the Backbone Infrastructure for the particular Infrastructure Subphase. Developer shall have delivered surety bonds to City from issuer(s) reasonably acceptable to City in amounts required to guarantee the completion of all Backbone Infrastructure, parks and public facilities, and the payment of labor and material costs associated with such work to comply with applicable Infrastructure Subphase and subdivision map approvals consistent with the DA and Specific Plan.
 - e. Insurance Policies. Developer shall have submitted to the City evidence of the insurance required to be maintained by Developer pursuant to Section 18 herein.
 - f. Evidence of Financing. As a condition for the benefit of the City, if Developer intends to use a construction loan, Developer shall have delivered to City (i) certified copies of binding loan commitment letter(s) from the construction loan lender(s), committing said lender(s) to make construction loan(s) to Developer, subject only to such lender conditions as are customary in connection with binding loan commitments, and setting forth the terms of said loan(s), and (ii) evidence reasonably satisfactory to City of Developer's equity commitments for the applicable Infrastructure Sub-Phase. The total of the loan and equity commitments (collectively, the "**Loan/Equity Commitments**") shall be in substantially the same amount as the Backbone Infrastructure costs for the applicable Infrastructure Sub-phase as identified in Developer's updated pro-forma.
 - g. Commitment to Commence and Complete Improvements. Developer shall demonstrate to the reasonable satisfaction of the Director of Economic Development & Base Reuse (the "**LRA Director**") or their designee that Developer will commence and complete the Backbone Infrastructure for the Infrastructure Subphase within the applicable time pursuant to the Schedule of Performance. If Developer is hiring a general contractor for such work (as opposed to Developer acting as the general contractor) such evidence may include a construction contract with one or more contractors for the applicable Backbone Infrastructure work. The Parties shall agree upon and attach to the DDA a form of letter to the LRA Director that, when executed by Developer and accompanied by materials identified in the letter, would satisfy the requirements of this Section 10(i).
 - h. Environmental Remediation. Both (i) Navy shall have completed all required environmental remediation of the Infrastructure Subphase, including any ongoing monitoring activity for such Infrastructure Phase, all regulatory agencies with jurisdiction over the applicable Infrastructure Subphase shall have approved such

remediation and determined no further action is required (provided that waiver or satisfaction of this conditions shall not waive Developer's rights with the respect to the Navy's compliance with its ongoing and future covenants and obligations with respect to the Development Footprint under CERCLA and applicable Navy conveyance documents), and all other conditions to transfer included in the MOA/Purchase Agreement shall have been satisfied; and (ii) there shall be no change relating to environmental matters from those previously approved by Developer that materially adversely impacts the Project, including, without limitation, the conveyances, phasing, timing, cost, financing, marketability and/or development of the Project.

- i. Miscellaneous Standard Closing Conditions. The Parties shall have submitted executed closing documents into escrow, title insurance policies shall be ready to be issued and other standard conditions to closing (which shall be described in more detail in the DDA) shall be met.
- j. Waiver of Conditions / Repurchase Right. Developer may request, and City shall reasonably consider, transfers of Infrastructure Subphases within a given Phase prior to satisfaction of one or more of the conditions in this Section 10 provided: (i) City retains a repurchase right as to such property for which one more conditions has not been satisfied until satisfaction of such condition(s) (which repurchase right would be subject to term and conditions to be set forth in the DDA), and (ii) Developer shall be required to satisfy all Developer obligations as to such Infrastructure Subphase under the DDA, including Schedule of Performance obligations relating to the commencement and completion of Backbone Infrastructure as to such property. For the avoidance of doubt, the repurchase right shall not apply to Vertical Developers.

Developer shall not be required to accept fee conveyance of portions of the Development Footprint to be dedicated in fee to the City, Utility Districts, School Districts, the Flood Control District, or other governmental or quasi-governmental agencies so long as such entities agree to directly take fee title to those portions of the Development Footprint, and to the extent Developer needs to install any Backbone Infrastructure on such portions, City shall issue, or cause such other agency(ies) to issue, a Right of Entry to Developer for such work.

11. Conditions Precedent to Transfer to Vertical Developer.

Developer would be permitted to convey or require the City to convey subdivided large lot portions of a previously transferred Infrastructure Subphase (each such portion a "Parcel") to one or more Vertical Developers for vertical development upon the satisfaction of the following conditions precedent:

- a. Satisfaction of Conditions Precedent to Transfer from City to Developer. All applicable conditions precedent set forth in Section 10 shall have been satisfied or waived by the Party benefitted by such condition.
- b. Evidence of Experience. The Vertical Developer has demonstrable and has successful experience acting as the developer of a project of similar size commensurate with the property in which an interest is being transferred as reasonably determined by City; provided that any Vertical Developer that is an Affiliate of Developer shall be deemed to have satisfied this requirement and the

- DDA shall include a list of certain pre-approved third-party Vertical Developers or specified qualifications which if met would not require City approval.
- c. No Debarment or Suspension. The Vertical Developer has not been suspended, debarred, or prohibited from contracting with the City.
 - d. Assignment and Assumption Agreements. The Vertical Developer shall have executed assignment and assumption agreements with the City in substantially the forms attached to the DDA and DA. Each assignment and assumption agreement shall only require that such Vertical Developer be responsible for the Parcel being conveyed and any default of Developer shall not be considered a default of such Vertical Developer and vice versa (and any default by one Vertical Developer shall not be considered a default by any other Vertical Developer and vice versa).
 - e. Land Valuation for Assignment to Affiliated Vertical Developer. Where Developer proposes to transfer a Parcel to a Vertical Developer that is an Affiliate of Developer (as defined in Section 21), then the value of the Parcel being conveyed shall be determined in accordance with the residual land value formulas set forth in the DDA. The parties acknowledge such formulas may be subject to the Navy's approval.
 - f. Assignee Formation Documents. The Vertical Developer shall have delivered to the City entity formation and other relevant documentation relating to the corporate, partnership, limited liability, or other similar status, as the case may be, of the entity to which Developer intends to assign its rights under the assignment and assumption agreement as to such Parcel.
 - g. Associated Backbone Infrastructure. All Backbone Infrastructure (other than In-Tract Improvements) needed to serve the vertical improvements on the Parcel proposed to be transferred shall have been substantially completed, provided that Developer shall have the right to defer and assign to Vertical Developers the obligation to construct and complete the Assigned Backbone Infrastructure in order to achieve efficiencies in the coordinated development of the Project, as will be further refined in the DA and Specific Plan.
 - h. Receipt of Improvement Security. The Vertical Developer shall have delivered subdivision improvement bonds to City from issuer(s) reasonably acceptable to City in amounts required to guarantee the completion of all In-Tract Improvements, and the payment of labor and material costs associated with such work, all in accordance with a subdivision improvement agreement to be entered into between Vertical Developer and City in accordance with the Subdivision Map Act.
 - i. Insurance Policies. The Vertical Developer assignee shall have submitted to the City evidence of required insurance policies pursuant to the DDA and DA as required in the assignment and assumption agreement.
 - j. Completion of Commercial and Affordable Housing Pads. As a condition for the benefit of the City, 50% of commercial pads in prior Infrastructure Subphases (measured by acreage) must be available for sale and fee title to 50% of the Affordable Housing Pads in prior Infrastructure Subphases (measured by maximum number of affordable units permitted by the Specific Plan) which are required to be developed pursuant to Section 4(d) above shall be ready to be transferred to City, its designee, or a Developer affiliate for development of affordable housing (or Developer shall have otherwise provided appropriate

assurances that such commercial pads and affordable housing pads will be completed such as a subdivision improvement agreement and surety bonds).

- k. Miscellaneous Standard Closing Conditions. The Parties shall have submitted executed closing documents into escrow, title insurance policies shall be ready to be issued and other standard conditions must be met.
- 12. City Participation; Entitlement Fee.

The parties agree, to the extent funds are available after Developer achieves an 18% unlevered investment rate of return (“**UIRR**”), to implement a profit participation model formula described below (the “**PPF Formula**”). All City participation proceeds shall be deposited into a designated escrow account (“**Community Benefit Fund Account**”) and reinvested back into the Project in accordance with Section 12.c. below.

- a. Participation Model. The Parties acknowledge that Developer will incur substantial costs and associated risks to install the infrastructure necessary to serve the Project, provide the community and public benefits (including by way of example only, affordable housing, parks, and local hiring) and that the City will directly benefit from the Project as a result of job creation, direct and indirect sales taxes, transient occupancy taxes, and other tax revenues created by the Project. The participation model shall include all Project Costs, whether incurred before or after the date of this Agreement. All Project revenues shall be applied:
 - i. First, Developer shall receive an 18% UIRR (Tranche 1);
 - ii. Second, after funding any LRA loan repayments to the extent required under subsection 12.f. below, Developer and City shall participate 60(Developer)/40(City) in proceeds received above 18% UIRR to a 20% UIRR (Tranche 2); and
 - iii. Third, Developer and City shall participate 50/50 on proceeds received above a 20% UIRR (Tranche 3).
- b. Calculation/Distribution. Within one-hundred twenty (120) days of the beginning of each calendar year, Developer shall provide City with an annual Profit Participation Model detailing all revenues and costs for the preceding year along with a projection for the current year and calculation of UIRR return(s) and profit participation under each of Tranches 1 through 3, as applicable. The details regarding the distribution of the City’s profit participation interest will be further defined in the DDA.
- c. Community Benefit Fund. Funds deposited into the Community Benefit Fund Account shall be placed in a specific and designated escrow account, and shall be reinvested into the Project for City costs and community benefits within the Project. The preferred prioritization of the reinvested funds shall be as required by the Navy/City Conveyance Agreement (defined in Section 25 below) and as directed by the City Council. A committee, which includes a representative of Developer, will be formed by the City to make recommendations to the City Council on the reinvestment of funds into the Project.

- d. Project Costs. “Project Costs” include all costs in connection with the Project, including without limitation those incurred to acquire, own, entitle, develop, construct, operate and maintain, manage, market, finance, and dispose of the Project, and will also include market rate construction management, development administration, and other fees payable to Developer as set forth in the DDA, including the entitlement fee referenced in subsection e. below. The definition of Project Costs will be further defined in the DDA. For the avoidance of doubt, any costs or expenses identified in this Term Sheet as “at Developer’s cost” and/or “at no cost to City” (or variations of these phrases) shall be Project Costs.
- e. Entitlement Fee. Developer shall be entitled to an entitlement fee (“**Entitlement Fee**”) equal to three times the sum of: (i) the out-of-pocket costs that Developer incurs to obtain the Project entitlements and approvals referenced in Section 8 above, plus (ii) the out-of-pocket costs incurred by Developer in connection with the Resource Agency Permits prior to the date City Council considers the entitlements and approvals referenced in Section 8 for approval plus (iii) any out of pocket costs that Developer incurs with respect to any appeal, request for rehearing or reconsideration, legal challenge, and/or referendum, as applicable, to the validity of any of the foregoing (which Entitlement Fee shall be deemed earned and accrued upon the approval of such Project entitlements and approvals with all such entitlements and approvals no longer subject to any appeal or legal challenge and the periods for such appeal or challenges having been expired). Developer acknowledges and agrees that the only source for payment of the Entitlement Fee will be the first Project revenues generated from land sales to Vertical Developers in Phase One (and Phase Two if not fully paid from Phase One revenues) and that City will not be obligated to fund any portion of the Entitlement Fee from its general fund or any other City revenues.
- f. Repayment of LRA Loan. As a Project Cost Developer, effective upon the commencement of Phase One, shall reimburse the City for the applicable portion of the approximately \$15 Million advance that the City made to the LRA for costs the LRA incurred for site-wide activities, plus interest at the Local Agency Investment Fund (“**LAIF**”) rate, on and subject to the following conditions and reimbursement schedule:
 - i. \$5 Million upon issuance of the first market rate dwelling unit building permit after building permits for 90% of the market rate dwelling units in Phase One have been issued, and, in the event that the 18% UIRR hurdle is achieved for Phase One, Project Revenues from Phase One in excess of the 18% UIRR to Developer, up to \$3 Million (so that up to \$8 Million may potentially be reimbursed to City in Phase One).
 - ii. The remaining balance of the \$15 Million advance (i.e., the portion not paid to City pursuant to Section 12.f.i. above) plus interest at the LAIF rate shall be paid to the City upon issuance of the first market rate dwelling unit building permit after building permits for 90% of the market rate dwelling units in Phase Two have been issued.

13. Federal, State, and Regional Funding Sources; Financing of Public Improvements and Publicly Accessible Private Improvements; Sales Tax Allocation.
- a. City and Developer will cooperate in good faith at Developer's expense to secure State, Federal and Regional grants and/or low interest loans or other similar vehicles and other financing mechanisms to fund the costs of preparing Project planning documents such as the Specific Plan and CEQA documentation as well as hard and soft costs of constructing affordable housing, Backbone Infrastructure, public facilities, and open space, parks, and trail amenities.
 - b. The parties contemplate that the construction, installation, and long-term maintenance of Backbone Infrastructure, other public improvements, and potentially certain additional community benefits will be financed through the use of private capital; federal, state, and local governmental (other than City) grants; community facilities district(s) ("**CFD(s)**"), enhanced infrastructure financing district(s) ("**IFD(s)**") or other similar vehicles, and other financing mechanisms. The DA shall include procedures addressing the filing of petitions by Developer and the City Council's consideration of adoption of resolution(s) of intention to establish the applicable financing district(s). Upon adoption of such resolution(s) of intention, City, at Developer's expense, shall use good faith, diligent efforts to establish and implement the financing district(s) pursuant to terms to be set forth in the DA, including scheduling of necessary public hearings and adoption of a resolution(s) of formation. Developer shall cooperate with City in the formation of such financing district(s), including by timely submitting all petitions, waivers and consents and promptly paying all costs of establishing such financing district(s).
 - c. Developer also proposes to finance ongoing maintenance and replacement of publicly accessible private improvements, including private streets, private storm drains, common areas, and landscaping etc. through the use of various revenue sources, including homeowners associations ("**HOAs**"), landscaping and lighting districts ("**LLDs**"), geologic hazard abatement districts ("**GHADs**"), and other financing mechanisms.
 - d. Prior to implementing an IFD or other mechanism that would direct to Developer tax increment otherwise available to the City, or implementation of revenue sources for annual maintenance and repair costs, Developer shall demonstrate that the combination of its proposed financing strategies would preserve fiscal neutrality to the City's General Fund.
 - e. City and Developer agree to cooperate with each other and the title company or companies providing title insurance for the Project to ensure that exceptions to title do not materially adversely affect the finance ability of the Project. The Parties also agree to mutually cooperate at Developer's expense, in accordance with the Reimbursement Agreement and as a Project Cost, in supporting legislation in furtherance of the economic feasibility and success of the Project such as has been adopted for other significant projects such as environmental leadership projects.

- f. Developer shall use good faith diligent efforts, to the extent allowed by law, to require all persons and entities providing bulk lumber, concrete, structural steel and pre-fabricated building components, including roof trusses, to be used in connection with the construction and development of, or incorporated into, the Project, to (a) obtain a use tax direct payment permit; (b) elect to obtain a sub-permit for the job site of a contract valued at Five Million Dollars (\$5,000,000) or more; or (c) otherwise designate the Property as the place of use of material used in the construction of the Project in order to have the local portion of the sales and use tax distributed directly to City instead of through the county-wide pool. A developer shall instruct its general contractor(s) for the Project and cause such general contractor(s) to instruct each of its/theirs subcontractors to cooperate (or, if a developer is acting as its own general contractor, the developer shall cooperate and shall instruct each of its subcontractors to cooperate) with City to ensure the local sales/use tax derived from construction of the Project is allocated to City to the fullest extent possible and/or as permitted by law. To assist City in its efforts to ensure that such local sales/use tax is so allocated to City, a developer shall provide City with an annual spreadsheet, which includes a list of all subcontractors working on the Project with contracts in excess of the amount set forth above, including a description of all applicable work and the dollar value of such subcontracts. City may use said spreadsheet to contact each subcontractor who may qualify for local allocation of use taxes to City. In no event shall this provision be interpreted as requiring a developer or its contractors or subcontractors to pay sales and use tax to multiple jurisdictions on the same Project expenditures.
- 14. Open Book Accounting.
 - a. Proposed Financial Deal Structure. Developer proposes a deal structure that aligns public and private interests through an open sharing of information and profits. Developer will provide a completely open book partnership allowing City to confirm Developer's budgets and security (including subdivision bonds) to fully secure Backbone Infrastructure on a Infrastructure Subphase by Infrastructure Subphase basis before any land is conveyed to Developer.
 - b. Potential Federal/State/Regional Funding. To the extent the Project or any component thereof receives grant awards or other similar funding from Federal, State or regional funding sources, the net revenue from such awards that is paid to Developer or otherwise used to pay Project Costs shall be included in the calculation of Project Revenue for the purposes of determining Developer's UIRR. Developer's commitments to deliver Project community benefits, including the Library/Community Center, Tournament Sports Park, Citywide Park and affordable housing as set forth in this Term Sheet shall not be subject to reduction based on receipt of monies from Federal, State or regional funding sources except to the extent there are cost savings, in which event such cost savings shall be split between Developer and City pursuant to percentages to be agreed upon in the DDA.
 - c. Open Book Accounting. Developer shall maintain a completely open book accounting, with specific processes for record keeping, accounting, and auditing as further described below.

- i. Book and Recordkeeping Obligation. Developer shall maintain books and records of all Project costs and expenses for a period of three years following the end of each calendar year, or such longer period as may be necessary to comply with Base Realignment and Closure (“**BRAC**”) requirements. Books and record shall be maintained with generally-acceptable accounting principles consistently applied or in another auditable form approved by the City.
 - ii. Annual Reports. Developer shall provide annual reports to the City commencing as of the date that Developer receives the first Infrastructure Subphase from the City. Annual reports, which shall be submitted to the City no later than four months after the end of each fiscal year, shall include at minimum: updated estimates of project costs and gross revenues; variances from the prior year’s annual report (if applicable); new development that is expected to occur or that is occurring; and a summary of all public benefits delivered to the City; and a statement of cumulative IRR achieved to date. Annual reports shall use generally accepted accounting procedures as consistently applied by Developer and its Affiliates.
 - iii. Inspection Rights. Upon ten business days’ prior written notice, City shall have the right to review or audit Developer’s books and records at Developer’s local office.
- 15. Remediation.
 - a. City will transfer each Infrastructure Subphase to Developer, and/or transfer each Parcel directly to a Vertical Developer, as applicable, subject to applicable provisions of the quitclaim deed from the Navy to the City, including the Comprehensive Environmental Response, Compensation, and Liability Act (“**CERCLA**”) section 120 covenants received from the Navy. Land anticipated for residential use is expected to be cleaned to appropriate residential standards, and to remain subject to CERCLA covenants. If hazardous substances requiring investigation or remediation are discovered on the Infrastructure Subphase and/or Parcel after completion of Navy’s remediation program, and following transfer of any Infrastructure Subphase and/or Parcel to the City, and/or subsequent transfer of such Infrastructure Subphase and/or Parcel from City to Developer or a Vertical Developer, the City shall not be responsible for performing or paying for such investigation or remediation, unless the City through its active negligence or willful misconduct shall have caused or exacerbated the release of such hazardous substances (in which case the City shall be responsible to the extent of its active negligence or willful misconduct). In the instance where the City is not so responsible and the applicable Parcel is subject to the Interim Lease, Right of Entry or has otherwise been transferred to Developer, Developer will, in its sole discretion: (i) request that the Navy perform or pay for the investigation or remediation under CERCLA section 120 covenants, which shall run with the land, or the indemnity provisions of BRAC section 330 of the National Defense Authorization Act of 1993, PL 102-484, October 23, 1992, 106 Stat. 2315, as amended (“**DOD Indemnity**”); (ii) tender a claim to the insurer under the PLL policy to pay for the investigation or remediation; (iii) in situations where the costs of

performing the investigation or remediation would be less than the costs of pursuing a claim against the Navy or paying the deductible or self-insured retention under the PLL policy, perform or cause to be performed the investigation or remediation as a Project Cost; and/or (iv) perform or cause to be performed the investigation or remediation itself so as to limit delay to the Project and thereafter pursue a claim against the Navy and/or under the PLL policy as a Project Cost. Notwithstanding the foregoing, neither the City nor Developer will take any action that adversely affects the rights of either Party under CERCLA section 120 covenants granted by the Navy or under the DOD Indemnity or under the PLL policy. The Parties share the following objectives relating to remediation and transfers from the Navy:

- b. It is in the Parties' mutual interest for the First Transfer Parcel to transfer from the Navy to the City as expeditiously as possible without any use or activity restrictions, including with respect to munitions and explosives of concern ("**MEC**") and per- and polyfluoroalkyl substances ("**PFAS**"), that would materially impede development of the First Transfer Parcel and for subsequent Transfer Parcels to transfer without any use or activity restrictions that would materially impede development of such property as expeditiously as possible thereafter.
- c. Developer shall have the right to conduct environmental due diligence prior to the transfer of the First Transfer Parcel and later Transfer Parcels (and any LIFO-Ced parcels), to peer review the scope and anticipated timing of Navy's remediation and clean-up work, and to confirm that both (i) Navy has completed its environmental remediation of the applicable Transfer Parcel, including any ongoing monitoring activity for such Transfer Parcel, all regulatory agencies with jurisdiction over the applicable Transfer Parcel have approved such remediation required as of such date (provided that waiver or satisfaction of this condition shall not waive Developer's rights with the respect to the Navy's compliance with its ongoing and future covenants and obligations with respect to the Development Footprint under CERCLA and applicable Navy conveyance documents), and all other conditions to transfer included in the MOA/Purchase Agreement shall have been satisfied; and (ii) there has been no change relating to environmental matters from those previously approved by Developer that materially adversely impacts the Project, including, without limitation, the conveyances, phasing, timing, cost, financing, marketability and/or development of the Project.
- d. The Parties will cooperate and actively participate in negotiations with the Navy, US EPA, DTSC, and regional water board over remediation of hazardous substances, including with respect to MEC and PFAS, and the transfer of lands and habitat/wetlands mitigation from the Navy to the City on a schedule that will permit timely development consistent with the Specific Plan and state and federal natural resources permits and will satisfy the conditions to the Interim Lease set forth in Section 6(e) with respect to the applicable Transfer Parcel.
- e. For lands within the Phase One Property (or reasonably necessary for the efficient development of the Phase One Property) that are not included in the First Transfer

Parcel or transferred within a reasonable time thereafter via a FOST under section 120(h)(3)(A) and (B) of CERCLA, it is in the Parties mutual interest to gain access to such lands under a license or lease in furtherance of conveyance (“**LIFOC**”) or have such lands transferred pursuant to a Finding of Suitability for Early Transfer (“**FOSET**”) under section 120(h)(3)(C) of CERCLA, and subject to approval by the Navy. Accordingly, City and Developer, at Developer’s expense and as a Project Cost, agree to timely coordinate and actively and in good faith negotiate such licenses, LIFOCs, FOSETs and related Environmental Services Cooperative Agreements (“**ESCA**s”) that minimize risks to the Parties by, among other things, providing sufficient funds from the Navy to complete the necessary remediation and procure appropriate environmental insurance. Developer’s obligations under this subsection e. shall be subject to satisfaction of the same conditions which are applicable to the Interim Lease.

- f. For properties not included in the Phase One Property that may be eligible for a FOSET, as may be determined by the Navy, Developer similarly agrees to coordinate with the City to actively and in good faith negotiate FOSETs and related ESCAs that minimize risks to the Parties by, among other things, providing sufficient funds from the Navy to complete the necessary remediation and procure appropriate environmental insurance. As appropriate, the Parties shall consider advocating for the use of a phased transfer of FOST-eligible properties to the extent such phasing would allow accelerated transfer of less complicated sites critical to development phasing (e.g. Site 13) ahead of the transfer or early transfer under a FOSET of other potentially more complicated sites (e.g. Bunker City). Developer’s obligations under this subsection f. shall be subject to the satisfaction of the same conditions which are applicable to the Interim Lease.

16. Habitat & Species Mitigation and Resource Agency Permitting.

- a. The Parties will cooperate, at Developer's expense, to obtain from the various resource agencies, including the U.S. Fish and Wildlife Service (“**USFWS**”), the U.S. Army Corps of Engineers (“**USACE**”), the California Department of Fish and Wildlife (“**CDFW**”) and the San Francisco Bay Regional Water Quality Control Board (“**RWQCB**”) (collectively, “**resource agencies**”), all permits and approvals which are necessary to implement the development of the Project and reuse of the Development Footprint in accordance with the General Plan/CRP Area Plan, as proposed to be amended by Developer, and the Specific Plan (“**Resource Agency Permits**”).
- b. The Parties agree to cooperate in pursuing all Resource Agency Permits necessary to implement the Project and establishing mutually agreeable, reasonable, and appropriate feasible mitigation obligations in accordance with the Permitting Protocol further defined below. The Parties share the following objectives regarding resource agency permitting and the associated mitigation:
 - i. Impacts to species, aquatic resources, and other resources subject to the resource agency permits and authorizations (collectively, “**Ecological Resources**”) from development of the Project shall be mitigated, in part and

as authorized by the resource agencies, on site and on the EBRPD PBC property. Additional mitigation required by the resource agencies shall be provided either through offsite mitigation within the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan (ECCCHCP/NCCP) and the remainder of the Mt. Diablo Creek watershed, or through payment to the ECCCHCP/NCCP Conservancy, or purchase of mitigation credits at a resource-agency approved conservation bank, or a combination of these approaches, or as otherwise required or authorized by the Resource Agency Permits. The City will confer with Developer to determine the approach to satisfying resource agency requests for additional mitigation and will in good faith endeavor to pursue the most commercially reasonable and cost-effective approach for the Project.

- ii. Final determinations regarding the amount of any mitigation credit or other form of mitigation will be reflected in the Resource Agency Permits and Developer will bear all costs of such mitigation requirements whether on or off of the EBRPD PBC property.
 - iii. Obligations to fund and implement mitigation should be roughly proportionate -- in amount, nature, and timing -- to either the phasing of development generally or, where appropriate, to the timing of actual impacts caused by development. However, the Parties acknowledge that the Resource Agency Permits may require some, or a substantial amount, of mitigation in advance of development, and agree to make a good faith effort to provide the advance mitigation onsite and on the EBRPD PBC property provided that City reasonably and in good faith affords Developer the opportunity to propose adjustments to such obligations that apply to Developer's Project. City and Developer will work with the resource agencies to identify in the permitting documents, the CEQA document, and approvals the habitat and species mitigations necessary to offset impacts from the Project. To the extent the permitting documents do not clearly identify each impact and its offsetting mitigation, this determination will be made by City as lead agency for CEQA purposes following consultation with Developer.
- c. Prior to issuance of the first Project grading permit, Developer shall deposit into a temporarily restricted interim account (or an initial and capital cost account) the funds needed to pay the start-up and certain ongoing interim costs associated with Ecological Resources mitigation, including habitat creation/restoration/enhancement costs, which shall be Project Costs. Developer shall also establish a non-wasting endowment fund in an amount deemed sufficient by the resource agencies to fund long-term management and monitoring of the restoration and conservation areas; the funds deposited in the endowment fund shall be Project Costs. While a non-wasting endowment will be required to fund certain long-term habitat management and monitoring costs and obligations associated with the mitigation program, the Parties acknowledge that subject to resource permitting agency approval it may be appropriate for certain other

mitigation obligations to be secured through other financial tools (for example, letters of credit, bonding, etc.). The Parties agree to pursue the most cost-effective combination of funding mechanisms available through the resource agency permitting process.

- d. The Parties recognize that the success of the resource agency permitting process depends on a collaborative process between the Parties so that the Parties engage in discussions and information exchange as may be appropriate prior to, and/or in response to, City discussions with the resource agencies regarding the Resource Agency Permits, and the Parties agree and acknowledge that the development footprint of Developer's Project differs from the General Plan/CRP Area Plan area covered by the USFWS Permit and modifications to Resource Agency Permits may be required as a result. By way of example, such modifications reflected in Developer's Project may include construction of storm drain outfalls within the Mt. Diablo Creek restoration area, off-site Backbone Infrastructure or other utility and/or roadway improvements greater than 10 acres that results in greater effects to listed species habitat than that authorized by the USFWS biological opinion and incidental take statement. In furtherance of the foregoing shared intent and understanding, the Parties intend to engage in a collaborative process concerning such matters as permit conditions, mitigation obligations, modifications to the Development Footprint and avoidance and minimization measures, among other similar Project features in order to assure that the Resource Agency Permits authorize Developer's proposed Project with minimal modification and to ensure minimal changes to existing Resource Agency Permits and permit applications.
- e. The Parties will implement the following communications/collaboration protocol ("**Permitting Protocol**") to advance the City's resource agency permitting efforts, and efforts to implement the Resource Agency Permits.
 - A. Regular monthly meetings to discuss the status of the resource agency permitting efforts, the frequency of which will reflect the status of the City's discussions with the resource agencies and permitting efforts, and additional meetings as necessary to discuss information requests from the City to the Developer team.
 - B. Developer will provide technical Project information to City regarding such matters as grading and Backbone Infrastructure, including utilities to facilitate the resource agency permitting, and implementation of the Resource Agency Permits.
 - C. City will regularly apprise Developer of the status of the permitting processes, including any substantive discussions and communications with the resource agencies regarding the terms and conditions of the Resource Agency Permits, and provide Developer with an opportunity to provide input on communications with the resource agencies prior to and concurrent with City discussions with the resource agencies.

- D. City in its reasonable, good faith discretion, may invite Developer to participate in meetings, discussions, and communications with the resource agencies with the understanding that unless otherwise agreed upon in advance, the City will take the lead in all meetings, discussion, and communications.
- E. The Parties understand that the USFWS has issued a Resource Agency Permit, a biological opinion and incidental take statement, for the Project that includes mandatory mitigation and minimization measures that will be implemented as part of the Project, and that the City has applied for other Resource Agency Permits, including an application for an incidental take permit from CDFW, and an application for a permit to fill waters of the United States from the USACE, and further understand City will submit other applications for Resource Agency Permits, including an application for a Lake and Streambed Alteration Agreement with CDFW and a request for water quality certification/waste discharge requirements from RWQCB.
- F. City will continue to pursue Resource Agency Permits consistent with the existing permit applications.
- G. City will provide Developer with an opportunity to provide input on the Lake and Streambed Alteration Agreement application and request for water quality certification/waste discharge requirements prior to submitting those applications to CDFW and RWQCB, and City will make a reasonable, good faith effort, to include proposed mitigation and minimization measures in those applications that are consistent with the USFWS' biological opinion and incidental take statement, USACE application, and the mitigation plans that have already been prepared pursuant to the biological opinion and USACE application.
- H. City will provide Developer with an opportunity to provide input and comments on any Resource Agency Permits that are provided to the City in draft form by the resource agencies, and City will make a reasonable, good faith effort, to communicate Developer's input and comments to the resource agencies prior to issuance of any final Resource Agency Permit.
- I. If one or more of the resource agencies issues a final Resource Agency Permit the Parties believe will materially affect the Project's financial viability or constructability, the Parties will meet and confer regarding alternative permit terms or conditions that would reduce the burden to the Project, and the City will in good faith consider pursuing a mutually agreeable amendment to the Resource Agency Permit(s).
- J. If the boundary of the EDC/PBC changes, or other Project changes, necessitate reinstituted consultation with the USFWS, City shall promptly take steps to facilitate the reinstitution process and keep Developer apprised of the status. Project changes may include, by way of example and not

limitation, construction of storm drain outfalls within the Mount Diablo Creek Restoration Area, off-site Backbone Infrastructure or other utility and/or roadway improvements greater than 10 acres that results in greater effects to listed species habitat.

- K. City and Developer will work with the lead land manager for the EBRPD PBC areas to implement the Resource Agency Permit authorized mitigation on EBRPD PBC property.
- L. City and Developer may from time to time mutually agree to modify the Permitting Protocol to advance the resource agency permitting and implementation of the Resource Agency Permits and depending on the status of the resource agency permitting efforts, the Parties may revisit the structure of the resource agency permitting efforts.

17. Prevailing Wages.

Developer agrees that any worker (as defined by State prevailing wage law) performing construction, alteration, demolition, installation or repair work paid for in whole or in part out of public funds, or street, sewer or other improvement work done under the direction and supervision or by the authority of any officer or public body ("**Public Work**") shall be paid not less than the general prevailing rate of wages, as provided by State prevailing wage law, as applicable, and shall be subject to the same hours and working conditions, and shall receive the same benefits as in each case are provided for similar Public Work performed in and for Concord, California. Developer shall include in any contract for Public Work a requirement that all workers performing labor under such contract shall be paid not less than the general prevailing rate of wages for the labor so performed as provided by California prevailing wage law.

18. Insurance.

Developer shall maintain, at its cost and expense as a Project Cost, the following policies of insurance: (a) commercial general liability; (b) automobile; (c) workers' compensation; (d) builder's risk and (e) one or more Pollution Legal Liability policies to the extent required under Section 6, naming Developer as insured and, except for workers' compensation insurance, naming the City as additional insured, on forms acceptable to City, and in amounts commensurate with similar military base redevelopment projects as will be determined in the DDA.

19. Indemnity.

- a. Developer shall indemnify, defend (with counsel reasonably acceptable to City) and hold the City harmless from and against any and all claims resulting or arising from or in any way connected with the following, provided Developer shall have no obligation to indemnify the City (but will be obligated to defend (with counsel reasonably acceptable to City), subject to reimbursement below) to the extent any such claims directly result from the sole or active negligence or willful misconduct of the City:

- i. The existence, release, presence or disposal of any hazardous substances to the extent that the City's liability results from any of the following: (i) Developer's breach of any obligation under the DDA with respect to hazardous substances; (ii) Developer's breach of any environmental law on or relative to the Development Footprint; (iii) Developer's breach of any covenants or land use controls contained in the applicable Navy deed to the City or other actions by Developer in breach of the applicable Navy deed that compromise or invalidate City's rights under the CERCLA covenants granted by Navy or the DOD Indemnity; (iv) any release or threatened release of hazardous substances to the extent the release or threatened release first commenced during Developer's ownership of the subject real property or control of such property pursuant to a Right of Entry, or in the case of hazardous Substances contamination located on, under or about the subject real property prior to the date Developer takes ownership or control of such property pursuant to a quitclaim deed or Right of Entry, was either deposited by Developer or exacerbated as a result of Developer's active negligence or willful misconduct, provided this clause (iv) shall not apply to the extent such release or threatened release was caused, contributed to, or exacerbated by the sole or active negligence or willful misconduct of City or its agents, servants, employees or contractors;
 - ii. The non-compliance of improvements constructed by Developer with any federal, State, or local laws or regulations, including those relating to access, or any latent defects, in all cases regardless of whether the City has reviewed and/or approved plans for such infrastructure; and
 - iii. During the period of time that Developer holds title to all or any portion of the Development Footprint or controls all or any portion of the Development Footprint pursuant to a Right of Entry, the death of any person or any accident, injury, loss, or damage whatsoever caused to any person or to the property of any person that shall occur on or about such portion of the Development Footprint, provided this clause iii. shall not apply to the extent caused by the active negligence or willful misconduct of City or its agents, servants, employees or contractors.
- b. In addition to the foregoing, Developer shall indemnify, defend (with counsel reasonably acceptable to City), and hold the City harmless from and against all losses and costs arising out of or connected with contracts or agreements (i) to which the City is not a party and (ii) entered into by Developer in connection with its performance under the DDA, including any actual or alleged breach by Developer of a future assignment & assumption agreement (see Section 21, *infra*), provided Developer shall have no obligation to indemnify the City (but will be obligated to defend, with counsel reasonably acceptable to City, subject to reimbursement as provided below) to the extent that any such losses and costs result directly from the sole or active negligence or willful misconduct of the City or its agents, servants, employees or contractors.

- c. Notwithstanding the foregoing, where claims are asserted against the City in connection with any of the claims above, Developer agrees to defend the City, subject to reimbursement by City to Developer of the City's pro rata share of costs (including attorneys' fees associated with Developer's defense) corresponding to City liability following final resolution of such claims.
 - d. Each Vertical Developer will be required to undertake comparable indemnity and defense obligations for benefit of City with respect to the portion of the Development Footprint acquired by such Vertical Developer, including by way of example in an assignment and assumption agreement (see Section 21, *infra*).
 - e. All defense and indemnification costs incurred by Developer hereunder shall be considered a Project Cost unless arising from the gross negligence or willful misconduct of Developer.
 - f. For any matter the City is entitled to indemnification by Developer, City agrees to first look to available insurance provided by Developer prior to tendering a claim to Developer under an indemnification provision. For avoidance of doubt, City shall have no obligation to look to its own insurance, self-insurance or joint self-insurance before tendering a claim to Developer under an indemnification provision.
20. Third Party Legal Challenges.

At Developer's cost and expense but as a Project Cost, City and Developer shall cooperate in the defense of any third party, or state or federal governmental entity appeal, request for rehearing or reconsideration, legal challenge, and/or referendum, as applicable, to the validity of any provision in this Term Sheet, the DDA, the General Plan/CRP Area Plan amendments, the Specific Plan, the DA, any Project entitlements and/or any related CEQA determinations or documents (for purposes of this section, a "**Project Challenge**"). If Developer elects, in its sole discretion, to contest or defend a Project Challenge, the Developer shall take the lead role defending such Project Challenge and shall reimburse City for any of City's reasonable costs, including any attorneys' fees, related to the Project Challenge. City may, in its sole discretion, elect to be separately represented by the legal counsel of its choice in any such action or proceeding with the reasonable costs of such representation to be paid by Developer. Any proposed settlement of a Project Challenge will be subject to City's and Developer's approval, not to be unreasonably withheld, conditioned, or delayed. If the terms of the proposed settlement would constitute an amendment or modification of this Term Sheet, the DDA, the General Plan/CRP Area Plan amendments, the Specific Plan, the DA, any Project entitlements and/or any related CEQA determinations or documents, the settlement shall not become effective unless such amendment or modification is approved by City, and City reserves its full discretion, in accordance with applicable law, with respect thereto. If Developer opts not to contest or defend any such Project Challenge, City shall have no obligation to do so, provided that if City elects to contest or defend such Project Challenge following Developer's election not to contest or defend, then (a) the contest or defense shall be at City's sole cost

and expense, and (b) Developer shall have no obligation to indemnify defend or hold harmless City or City Parties in connection with such Project Challenge.

Developer shall indemnify, defend (with counsel reasonably acceptable to City), and hold harmless City Parties from and against any and all Claims raised in connection with the Project Challenge, including attorneys' fees awarded under Code of Civil Procedure Section 1021.5, assessed or awarded against City by way of judgment, settlement, or stipulation.

For purposes of Sections 18, 19 and 20, "**City Parties**" means and includes City and its elected and appointed officials, officers, employees, agents, volunteers, attorneys, contractors and representatives, and "**Claims**" means any and all liabilities, obligations, judgments, orders, claims, damages, fines, penalties and expenses, actions, causes of action, claims, cross-claims, disputes, demands, losses, taxes, costs, loss of service, expenses, liabilities, debts whatsoever, in law or in equity, whether known or unknown, of any kind or character, including attorneys' fees and costs.

This Section 20 shall survive expiration or other termination of this Term Sheet to the extent a claim accrues prior to or costs are incurred prior to such termination or expiration. This Term Sheet shall terminate upon execution and approval of the DDA and DA or expiration or termination of the Agreement to Negotiate, whichever first occurs.

All costs and expenses incurred by Developer with respect to Project Challenges shall be a Project Cost.

21. Transfers.

This Term Sheet and the DDA and DA shall be executed and entered into by BCUS ACQUISITIONS LLC, a Delaware limited liability company, or another entity constituting a Developer Affiliate. After execution of the DDA and DA, transfers by Developer of certain rights and obligations under the DDA and DA may be appropriate or necessary to achieve organizational and tax efficiencies, to attract development partners for diverse Project elements, to attract capital and investment in the Project, to transfer vertical development obligations to Vertical Developers, and for or other commercially recognized reasons. Developer shall be permitted to transfer its interests in the DDA and DA only as set forth in this Section 21. For purposes of this Section 21, "**control**" means power, indirectly or directly, to direct or cause the direction of the day to day management or policies of the subject person or entity by contract or otherwise, subject only to major decisions requiring the consent and approval (or which is otherwise subject to the direction) of other owners of such entity and other customary enforcement rights and remedies in favor of such other owners.

- a. Transfer to Affiliate of Developer. Developer shall be permitted to transfer all or any portion of its rights and corresponding obligations under the Agreement to Negotiate, the DDA and DA from time to time to one or more transferees who, directly or indirectly, controls, is controlled by, or is under common control with

Brookfield Parent (defined below) and, in the case of transfers of Infrastructure Subphases only (and not in the case of transfers of Parcels to Vertical Developers), which meets certain minimum liquidity and net worth requirements to be set forth in the DDA (any such person or entity, an “**Affiliate**”) without, in any such case, the approval of the City provided that at the time of such transfer: (i) there has been no material uncured event of default by the assigning Developer under the DDA or DA; and (ii) no event has occurred that, with notice and opportunity to cure or both, would constitute a material event of default by the assigning Developer under the DDA or DA. The rights and obligations of Developer and any transferee of any vertical development rights and obligations under the DDA or DA shall not be cross-defaulted or cross-collateralized in any way, nor shall the rights or obligations of Developer and any transferee of any Backbone Infrastructure development rights and obligations under the DDA or DA be cross-defaulted or cross-collateralized in any way, nor shall the rights and obligations of any transferee under the DDA or DA and any other transferee of Developer’s rights and obligations under the DDA and DA be cross-defaulted or cross-collateralized in any way. “**Brookfield Parent**” means any of Brookfield Corporation (formerly known as Brookfield Asset Management Inc.), Brookfield Asset Management Ltd., or any successor to either such Person who succeeds, whether by merger, acquisition, or other legal means of succession, to all or substantially all of the business or assets of any of the foregoing.

- b. Transfer to Vertical Developer. Developer shall be permitted to transfer, or direct City to transfer, to Vertical Developers portions of the Development Footprint as to which applicable components of Backbone Infrastructure have been substantially completed as contemplated above (other than In-Tract Improvements and Assigned Backbone Infrastructure). The DDA shall provide for certain parameters to establish pre-approval of qualified Vertical Developers.
- c. Change in Control; Stock/Share Transactions. Developer shall not, without the City’s consent, allow a transfer of the direct or indirect interests in the Developer to any new or unrelated person, entity, or party. Nothing in this Section 21 shall restrict transfer or issuance of shares on a public market or any other transfers of direct or indirect interests of Developer provided that the Brookfield Parent continues to directly or indirectly retain control of Developer.
- d. Mortgages & Transfers to Vertical Developers. Subject to any conditions set forth in other Sections of this Term Sheet, the following mortgages and transfers shall be allowed without review or approval by the City:
 - i. Upon or at any time after the satisfaction of the conditions precedent to transfer of an Infrastructure Subphase to Developer set forth in Section 10, any mortgage against fee title (or leasehold title) as to such Infrastructure Subphase (which mortgage shall include partial reconveyance requirements with respect to affordable housing development pads and all real property, including easement interests, to be offered for dedication to the City or other governmental agencies for public purposes, including park land and greenways, public streets and rights-of-way, the Community Center/Library pad(s), and land for the Tournament Sports Park/ City Wide

Park) for the purpose of securing debt financing for development of all or a portion of the Development Footprint.

- ii. Upon or at any time after the satisfaction of conditions precedent to transfer of a Parcel to a Vertical Developer set forth in Section 11, any conveyance by Developer to a transferee of fee or leasehold title as to such Parcel, and a corresponding permitted assignment to such Vertical Developer assignee of rights and obligations, including In-Tract Improvement obligations or Assigned Backbone Infrastructure, of Developer under the DDA and DA as to such Parcel.
- iii. Upon or at any time after the satisfaction of conditions precedent to transfer of a Parcel to a Vertical Developer and completion of the vertical development, the sale or leasing for occupancy of the completed vertical development.
- iv. Other permitted transfers will be set forth in the DDA and DA.
- e. Form of Assignment & Assumption Agreement. The Parties agree to negotiate and include as exhibits to the DDA and DA approved forms of one or more assignment and assumption agreements. The form of assignment and assumption agreement for Vertical Developers shall include a release of Developer from the applicable DDA and DA obligations being transferred to and assumed by the Vertical Developers. The form of assignment and assumption agreement for transfer of Backbone Infrastructure development obligations shall include a release of the transferor from the applicable DDA and DA obligations being transferred, except for obligations to be expressly identified herein (i.e., Assigned Backbone Infrastructure to a Vertical Developer) or the DDA and DA as being not subject to release upon assignment, absent consent by the City.
- f. Other Transfers. Any transfer not otherwise permitted by this Section 21 may be approved by City in its sole, absolute discretion.
- 22. Remedies.
 - a. Limitations on Award of Damages. Appropriate and customary remedies in the case of default by a Party (and in no event to include actual, consequential, special, or punitive damages) will be addressed by the Parties in the DDA and DA. The principal remedy of both Parties in the event of default under the DDA or DA shall be specific performance. Without limiting the foregoing, in the event that any condition or threshold to the issuance of a building permit (e.g., completion and dedication of a specified portion of a park or greenway) is not satisfied at the time Developer or any Vertical Developer applies for a building permit and Developer or any Vertical Developer believes the City caused the non-satisfaction of the applicable condition or threshold (e.g., through City's failure to timely review and approve improvement plans), then the matter shall be submitted for expedited arbitration pursuant to a procedure to be set forth in the DDA and/or DA, and if the arbitrator determines that the City was the cause of the non-satisfaction of the condition or threshold, then the particular condition or threshold in question will be waived until such time as the City takes actions needed to ensure City is no longer the cause of non-satisfaction of the condition or threshold, and the City shall issue

the building permit that has been applied for provided that the other applicable requirements for issuance of the building permit are satisfied.

- b. No Attorneys' Fees. Each party will bear its own attorney fees in any action by a Party to enforce its rights under the DDA and/or DA.
 - c. City Remedies against Vertical Developers and Affiliate Developers. The forms of assignment and assumption agreement to be negotiated between City and Developer and attached to the DDA and DA shall address City's remedies against Vertical Developers for defaults by such Vertical Developers or against Affiliate Developers for defaults by such Affiliate Developers and shall expressly exclude cross-defaults between Developer and Affiliate Developers, between Developer or any Affiliate Developer and any Vertical Developer and between Vertical Developers.
23. Excusable Delays.

The time for Developer to perform any act under the DDA or DA, including Developer's obligations in Section 5 (Schedule of Performance), shall be automatically extended for the period of any of the delays described below (each, an "**Excusable Delay**").

- a. Administrative Delay. Meaning failure by governmental or quasi-governmental entities to act within reasonable times under applicable laws, or actions by governmental or quasi-governmental entities that are successfully challenged by the Developer or an assignee / transferee / Vertical Developer.
- b. Resource Permitting Agency Delays. Meaning delays in issuance of resource agency permits required to implement the Project, including: (1) authorization to dredge or fill waters of the United States under Clean Water Act section 404 from the U.S. Army Corps of Engineers; (2) certification of the San Francisco Bay Regional Water Quality Control Board ("RWQCB") under section 401 of the Clean Water Act and/or approval by the RWQCB of waste discharge requirement permit(s) and stormwater management plans; (3) a Streambed Alteration Agreement with the California Department of Fish and Wildlife; (4) authorization under sections 7 and/or 10 of the federal Endangered Species Act from the Fish and Wildlife Service; and/or (5) a Consistency Determination or Incidental Take Permit from the California Department of Fish and Wildlife under the California Fish and Game Code. Application of this automatic extension is subject to Developer's reasonably diligent pursuit of such resource agency permits. Provided Developer can reasonably proceed with development consistent with the Schedule of Performance in the absence of one or more of the above-referenced permits, the extension in this Section 23.b. would apply only to those geographic areas of the Development Footprint where development consistent with the Specific Plan cannot occur absent such permit.
- c. CEQA Delay. Meaning the time reasonably required to complete any additional environmental review or documentation for future Project applications or approvals (not including the initial approvals of the General Plan/CRP Area Plan amendments, the Specific Plan, the DDA, and the DA), subject to a requirement that Developer shall have made all commercially reasonable efforts to cause the applicable agency to timely complete such environmental review, and the time during which legal proceedings regarding sufficiency of environmental review are

- pending (regardless of whether development is subject to a stay during such proceedings). City and Developer shall reasonably cooperate on the scope of the environmental review for the initial Project approvals to minimize the need for subsequent environmental review for subsequent approvals, including state and regional agency permits, to the extent feasible and consistent with CEQA.
- d. Economic Delay. Meaning two or more of the following have occurred in any 24 month period: i) the FHFA House Price Index has declined by four percent (4%) or more over the preceding 12-month period; ii) the Housing Starts rate has declined fifteen percent (15%) or more over the preceding 12-month period for two consecutive quarters; and iii) the National Bureau of Economic Research has declared that a recession is in effect during a calendar quarter. Economic Delay shall commence upon Developer's notification to the City of the Economic Delay (together with appropriate backup evidence) (the "**Economic Delay Start Date**") that two or more of the foregoing metrics have been triggered. An event of Economic Delay once triggered shall continue prospectively on a quarterly basis and such event remain in effect until two or more of the following have occurred with respect to such event, as applicable: (1) the FHFA House Price Index has increased by more than four percent (4%) over the preceding 12-month period; (2) Housing Starts has increased for two (2) successive quarters; and (3) the National Bureau of Economic Research has declared that the recession has ended; provided that the cumulative total of Economic Delay in any given Phase shall not exceed forty-eight (48) months. "**FHFA Housing Price Index**" means the Rolling 12-Month Change (Purchase Only) published by the Federal Housing Finance Agency representing home price trends for the Oakland-Berkeley-Livermore Metropolitan Statistical Area (comprising Alameda and Contra Costa counties). "**Housing Starts**" means the New Private Housing Units Authorized by Building Permits for California published by the U. S. Census Bureau. If the FHFA Housing Price Index and/or the Housing Starts are discontinued, Developer and City agree to use a substitute index that tracks the residential market with as close a geography to the Oakland-Berkeley-Livermore Metropolitan Statistical Area as possible. If the National Bureau of Economic Research no longer makes declarations of recession Developer and City agree to use a declaration from another similar public or private, non-profit, non-partisan organization.
 - e. Navy Remediation and/or Conveyance Delays. Meaning delays by the Navy in completing sufficient remediation of the Project site for Developer to complete the Project, or applicable portions thereof, as contemplated by the Project approvals (including individual phases of remediation), or in timely completing land conveyance(s) to the City.
 - f. Force Majeure. Meaning the range of natural and man-made acts outside of the reasonable control of the Party claiming delay, including wars, strikes, natural disasters, pandemics, administrative appeals or litigation (regardless of whether development is subject to a stay during such proceedings), and reasonably unforeseen site conditions, which adversely affect the claiming Party's (which may, notwithstanding anything above, be Developer or City) ability to timely perform its obligations under the DDA or DA, provided that Excusable Delay shall not include

the inability to obtain financing. “Force Majeure” shall be further defined in the DDA and DA.

- g. Other. Those other delays identified in the DDA or DA.
 - h. Notice. To claim Excusable Delay, Developer shall provide notice within sixty (60) days of actual knowledge of the event causing the delay the failure of which shall toll the time period of Excusable Delay as described below. The period of Excusable Delay shall commence, and shall run from, the date of the occurrence thereof, provided that it shall be reduced day for day for any period beyond the foregoing 60 day notice period that Developer fails to notify the City thereof.
24. Transfer of Remainder of Development Footprint.
- a. Subject to Section 24.b below, if, following Developer’s default under the DDA (for reasons other than merely failing (notwithstanding its good faith and diligent efforts) to timely meet milestones or other conditions required to earn the right to acquire and develop one or more Future Phases), the City (1) exercises a remedy to terminate the Developer’s right to acquire and develop one or more Future Phases pursuant to the DDA, or (2) reacquires a Phase or terminates a Right of Entry for a Phase that, in either case, is the subject of such default (in each case, a “**Termination/Reacquisition Remedy**”), and City conveys all or any portion of any such Future Phase or Phases or reacquired Phase (the “**Transferred Portion**”) to any party other than Developer or its Affiliate(s), then City will require the developer of such Transferred Portion to reimburse Developer, out of project revenues from such Transferred Portion, for the following costs incurred by Developer (“**Reimbursable Costs**”): (i) reasonable Project Costs for (a) components of Backbone Infrastructure in the Transferred Portion that have been constructed by Developer in accordance with City-approved plans and drawings, (b) community benefit improvements in the Transferred Portion that have been constructed by Developer as well as community benefit payments, including any Affordable Housing Subsidy payments, that Developer has advanced to City at the time of such repurchase or termination to pay for community benefit improvements allocable to the Transferred Portion, and (c) the preparation of design and engineering plans for Backbone Infrastructure or community benefit improvements that have not yet been installed or constructed within the Transferred Portion but which, at City’s request, have been assigned by Developer to the City or City’s subsequent developer designee, (ii) payments made by Developer to the Navy in connection with the conveyance of the Transferred Portion to the City, and (iii) the Transferred Portion’s pro rata share of (X) any Developer reimbursement payments to the City with respect to the approximately \$15 Million City/LRA loan in excess of the Developer’s pro rata share and (Y) reasonable Project Costs for oversized utilities, habitat or species mitigation work and to acquire mitigation land or credits, and/or environmental remediation, oversight, or containment work serving and benefitting either the Transferred Portion exclusively or the Project as a whole, including such Transferred Portion, and that the new developer would have had to complete or perform but for Developer’s completion or performance thereof; plus (iv) accrued interest calculated at a variable per annum rate equal to the LAIF rate on each of the foregoing costs in clauses (i) and (iii) above, beginning on the date of termination of the DDA and continuing until the Reimbursable Costs

have been paid by the subsequent developer of such Transferred Portion; provided, however, the Reimbursable Costs owed to Developer shall be reduced by the amount of the City's actual damages resulting from Developer's default and by depreciation/degradation, if any, in the value of partially constructed Backbone Infrastructure over time; provided further, the foregoing reimbursement obligations shall end, and Developer shall have no right to any reimbursement payments beyond the period after the date of the DDA termination which period shall be equal to 40 years (plus the periods of any Excusable Delay occurring prior to the date of termination) less the period prior to such termination that the DDA was in effect (i.e., the then expired term of the DDA). The DDAs between City and the developer(s) of such Transferred Portion will contain a mechanism for granting priority and security for such reimbursement. Developer acknowledges and agrees that the only source for repayment of Reimbursable Costs will be the project revenues generated from development of such Transferred Portion and that City will not be obligated to fund any portion of such reimbursement from its general fund or any other City revenues.

- b. Notwithstanding Section 24.a above, in the event the City exercises a Termination/Reacquisition Remedy merely because Developer fails, notwithstanding its good faith and diligent efforts) to timely meet milestones as to a Phase or other conditions required to earn the right to acquire and develop one or more Future Phases, then the "Reimbursable Costs" payable to Developer with respect to the Transferred Portion shall also include (without duplication) the reasonable Project Costs paid by Developer for the following items but only to the extent such items benefit the Transferred Portion and the development project that the new developer intends or is otherwise obligated to undertake and, but for Developer's completion or performance of such items, the new developer would have otherwise needed to complete or perform: (i) affordable housing pads, commercial pads, and/or residential lots and pads located on the Transferred Portion, (ii) premiums for environmental insurance that is transferable to and will provide coverage for new developer, (iii) land use approvals, permits, and entitlements, including, without limitation, phase specific tentative maps, applicable to the Transferred Portion and any Project Challenges with respect thereto (provided that with respect to the Project Costs to obtain the initial Project entitlements and approvals referenced in Section 8 such amount shall be reduced dollar for dollar by the amount of the Entitlement Fee actually paid to Developer), and (iv) accrued interest calculated at a variable per annum rate of interest on each of the foregoing costs in clauses (i) through (iii) above at the LAIF rate beginning on the date of termination of the DDA and continuing until the Reimbursable Costs have been paid by the subsequent developer of such Transferred Portion. The provisions of Section 24.a above regarding timing, priority and security and limitations on the source of repayment monies shall apply to the Reimbursable Costs owed to Developer pursuant to this Section 24.b.

25. Navy/City Conveyance Agreement.

Developer and City acknowledge the need to negotiate the terms for conveyance of property from the Navy. Any land acquisition payment required to be made to

the Navy (which could include an up-front payment, a participation framework, or some other structure), and approved by City and Developer, would be considered a Project Cost for purposes of the Pro-forma. The parties intend for any land acquisition payment to be based on the market rate / revenue-producing acreage of the Property. Developer shall actively participate in negotiations with the Navy for the City's acquisition of the Development Footprint from the Navy. Developer shall attend meetings, provide Project data, and provide Project financial analysis to the City to support the City's acquisition negotiations and final agreement between the City and Navy which is consistent with this Term Sheet (the "**Navy/City Conveyance Agreement**"). City shall use its good faith efforts to complete such negotiations for: a term sheet with the Navy within 12 month following City Council's approval of this Term Sheet or as soon thereafter as reasonably practicable; and b) execute the Navy/City Conveyance Agreement within 24 months following City Council's approval of this Term Sheet, or as soon thereafter as reasonably practicable.

26. Corporate Structure & Capitalization of Developer.

As of the Effective Date of this Term Sheet, Developer, BCUS Acquisitions LLC, is a Delaware limited liability company ("**BCUS Acquisitions**"). BCUS Acquisitions is a wholly owned subsidiary of Brookfield Communities US Holdings LLC. BCUS Acquisitions' single member is Brookfield Communities US Holdings LLC (the "**Member**"). At the time of signing the DDA, BCUS Acquisitions or the affiliated entity that signs the DDA as the "Developer" will demonstrate sufficient capitalization.

27. Development Agreement.

- a. Term. The overall term of the DA will be commensurate with the timeline for development of the entire Project. The term of DA will be coterminous with the term of the DDA. The DA will also include provisions authorizing extension of the term and deadlines for performance milestones upon occurrence of specified events of Excusable Delay referenced in Section 23.
- b. Vested Rights.

- i. Developer shall have the vested right to develop the portion of the Property in which Developer has a legal or equitable interest in accordance with and subject to the DA, the Specific Plan (and any related contemporaneous approvals) and any subsequently-required project approvals, which shall control the overall design, development, and construction of the Project and all improvements and appurtenances in connection therewith, including without limitation: (1) permitted uses; (2) density and intensity of uses; (3) maximum height and size of buildings; (4) building location; (5) the number of allowable parking spaces, (6) provision for construction of public improvements, (7) all mitigation measures that may be required, (8) reservation or dedication of land for public purposes, (9) requirements for subsequent discretionary actions, and (10) financing of public facilities.

- ii. To the extent Developer is required to obtain any subsequent Project approvals from the City, the City shall not use its discretionary authority in

considering any such application to change the policy decisions reflected in the DA and the Specific Plan, or otherwise to prevent or to delay development of the Project.

- c. Public Improvements and Amenities. The DA would specify the public improvements, community benefits and amenities and required timing of delivery of same.
- d. Fees. Except for impact fees (including habitat mitigation fees) imposed upon Project-specific permits by federal and state resource agencies or to address Project-specific mitigation measures imposed through the CEQA process, the Project shall be subject only to development impact fees that are imposed uniformly on a City-wide basis. The specifics of impact fees and infrastructure financing will be set forth in the Specific Plan and DA. However, the Project shall not be subject to any of the following fees or exactions, due to the substantial infrastructure, mitigation measures and improvements to be provided by the Project:
 - i. Any affordable housing fee, off-set or similar affordable housing requirement.
 - ii. Any traffic or transportation impact fee other than a fee program pursuant to the Specific Plan or pursuant to the mitigation monitoring and reporting program adopted in connection with a CEQA document for the Specific Plan and the DA. Any City development impact fee that addresses development impacts previously addressed and/or mitigated by Developer relative to the Project through mitigation measures imposed through the CEQA process described in Section 8.c.; Project elements included in the development program; or Project features, programs, or benefits required pursuant to the DDA, the DA, or the Specific Plan.
 - iii. Where Developer would be required to pay a development impact fee notwithstanding the provisions above, Developer shall receive credit against the fee in the amount of actual reasonable hard and soft costs, not including financing costs, associated with facilities built or provided as part of the Project.
- e. Assignment. Assignment provisions and remedies consistent with those in the DDA.
- f. Addition of Future EDC Transfer Parcels. The DA would address addition of future EDC transfer parcels as and when Navy transfers such parcels to the City.
- g. Termination. Termination of the DDA will result in automatic termination of the DA as to the portions of the Development Footprint that have not previously been conveyed to Developer or for which a Right of Entry has not been previously issued to Developer (but not the portions that have been previously conveyed to Developer or for which a Right of Entry has been previously issued to Developer).

28. ENA Extension. Concurrently herewith the Parties are entering into a First Amendment to the Agreement to Negotiate to, among other things, extend the DDA Stage of the Negotiating Period.

29. Exhibits.

| | |
|-------------------|---|
| <u>Exhibit A:</u> | Land Use Plan with Phasing |
| <u>Exhibit B:</u> | Pro-forma (Summary Sheet & Cashflow Analysis) |
| <u>Exhibit C:</u> | Backbone Infrastructure by Development Phase |
| <u>Exhibit D:</u> | First Transfer Parcel Diagram |

30. Glossary of Certain Defined Terms.

“75% BPs/Design Ready Condition” is defined in Section 4.c.i.A on Page 10.

“Affiliate” is defined in Section 21.a on Page 48.

“Affordable Housing Pads” is defined in Section 4.d.i on Page 15.

“Affordable Housing Subsidy” is defined in Section 4.d.ii on Page 15.

“Agreement to Negotiate” is defined in Section 8.f on Page 29.

“Assigned Backbone Infrastructure” is defined in Section 7.c on Page 25.

“Backbone Infrastructure” is defined in Section 7.a on Page 24.

“BART” is defined in Section 3.b.v on Page 3.

“BRAC” is defined in Section 14.c.i on Page 38.

“CDFW” is defined in Section 16.a on Page 41.

“CEQA” is defined in Section 2 on Page 2.

“CERCLA” is defined in Section 15.a on Page 39.

“Community Benefit Fund Account” is defined in Section 12 on Page 34.

“CRP Area Plan” is defined in Section 1 on Page 1.

“DA” is defined in Section 1 on Page 1.

“DDA” is defined in Section 1 on Page 1.

“Developer Lessee” is defined in Section 6 on Page 22.

“Development Footprint” is defined in Section 2 on Page 2.

“Development Ready Condition” is defined in Section 4.b on Page 9.

“DOD Indemnity” is defined in Section 15.a on Page 39.

“EBRPD” is defined in Section 4.c.i.A on Page 11.

“EDC” is defined in Section 2 on Page 2.

“EDC Transfer Parcel” or **“Transfer Parcel”** is defined in Section 6.c on Page 23.

“Entitlement Fee” is defined in Section 12.e on Page 35.

“Excusable Delay” is defined in Section 23 on Page 51.

“First Transfer Parcel” is defined in Section 2 on Page 2.

“FOST” is defined in Section 5.b on Page 19.

“Future Phase” and collectively the **“Future Phases”** are defined in Section 1 on Page 1.

“Infrastructure Subphase” or **“Infrastructure Sub-Phase”** is defined in Section 2 on Page 2.

“Interim Lease” is defined in Section 6 on Page 22.

“In-Tract Improvements” is defined in Section 7.c on Page 25.

“LAIF” is defined in Section 12.f on Page 35.

“Large Lot Tentative Map” is defined in Section 5.b on Page 19.

“LRA” is defined in Section 9 on Page 29.

“Master Entitlement Date” is defined in Section 5.b on Page 19.

“MOA/Purchase Agreement” is defined in Section 2 on Page 2.

“Mount Diablo Creek Restoration Area” is defined in Section 4.h on Page 18.

“Navy/City Conveyance Agreement” is defined in Section 25 on Page 55.

“Neighborhood Serving Retail” is defined in Section 4.b on Page 9.

“Parties” is defined in Section 4 on Page 4.

“PBC” is defined in Section 6.d on Page 23.

“Permitting Protocol” is defined in Section 16.e on Page 43.

“Phase” and collectively as the **“Phases”** are defined in Section 1 on Page 1.

“Phase One” is defined in Section 1 on Page 1.

“Phase One Property” is defined in Section 2 on Page 2.

“PLL” is defined in Section 6.g on Page 24.

“Pro-forma” is defined in Section 4 on Page 4.

“Progress Payments Process” is defined in Section 4.c.i.A on Page 10.

“Project” is defined in Section 4 on Page 4.

“Project Challenge” is defined in Section 20 on Page 47.

“Resource Agency Permits” is defined in Section 16.a on Page 41.

“ROE” or **“Right of Entry”** is defined in Section 5.a on Page 19.

“RWQCB” is defined in Section 16.a on Page 41.

“Term Sheet” is defined in Section 1 on Page 1.

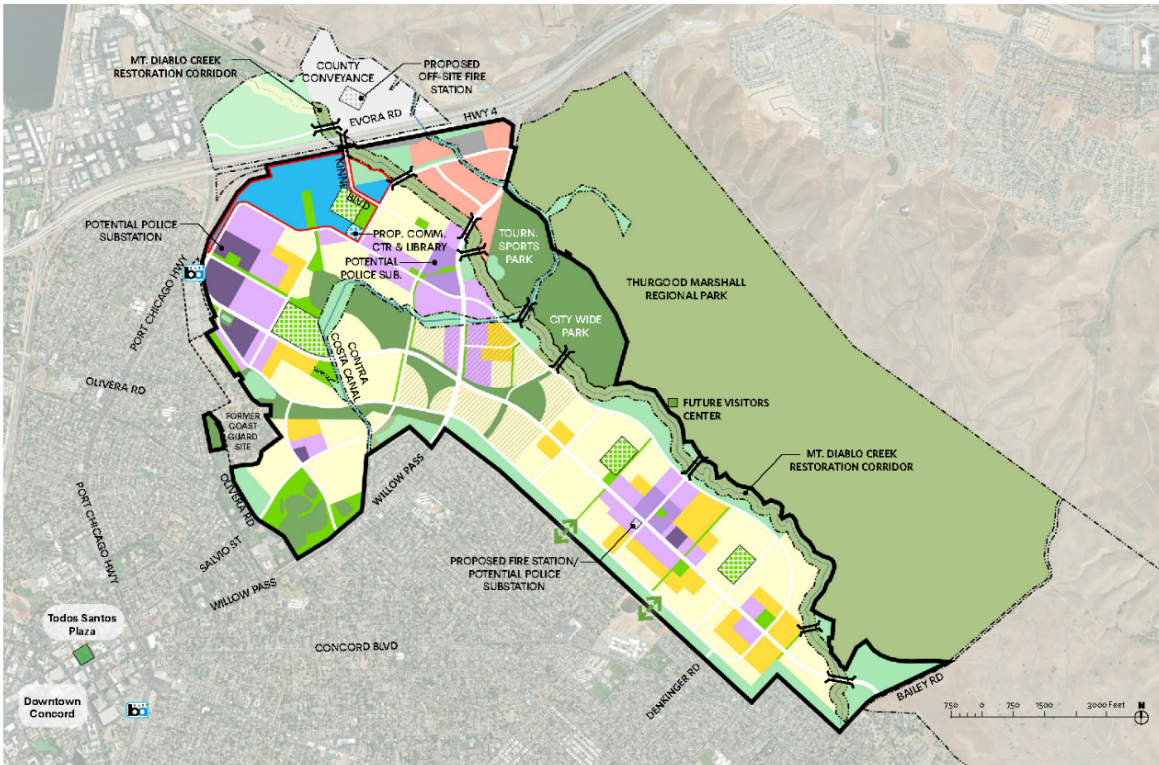
“UIRR” is defined in Section 12 on Page 34.

“USFWS” is defined in Section 16.a on Page 41.

“Vertical Developers” is defined in Section 4.a on Page 4.

EXHIBIT A
Land Use Plan with Phasing

CONCEPTUAL PRELIMINARY LAND USE PLAN



LAND USE DESIGNATIONS

- LOW DENSITY RES. (RL)
- MEDIUM DENSITY RES. (RM)
- NEIGHBORHOOD COMMERCIAL (NC)
- MIXED-USE MEDIUM (MUM)
- MIXED-USE HIGH (MUH)
- COMMERCIAL FLEX (CF)
- CAMPUS DISTRICT

OPEN SPACES TYPES

- GREENWAYS
- OTHER PARKS & OS
- CONSERVATION OS
- CITYWIDE PARKS

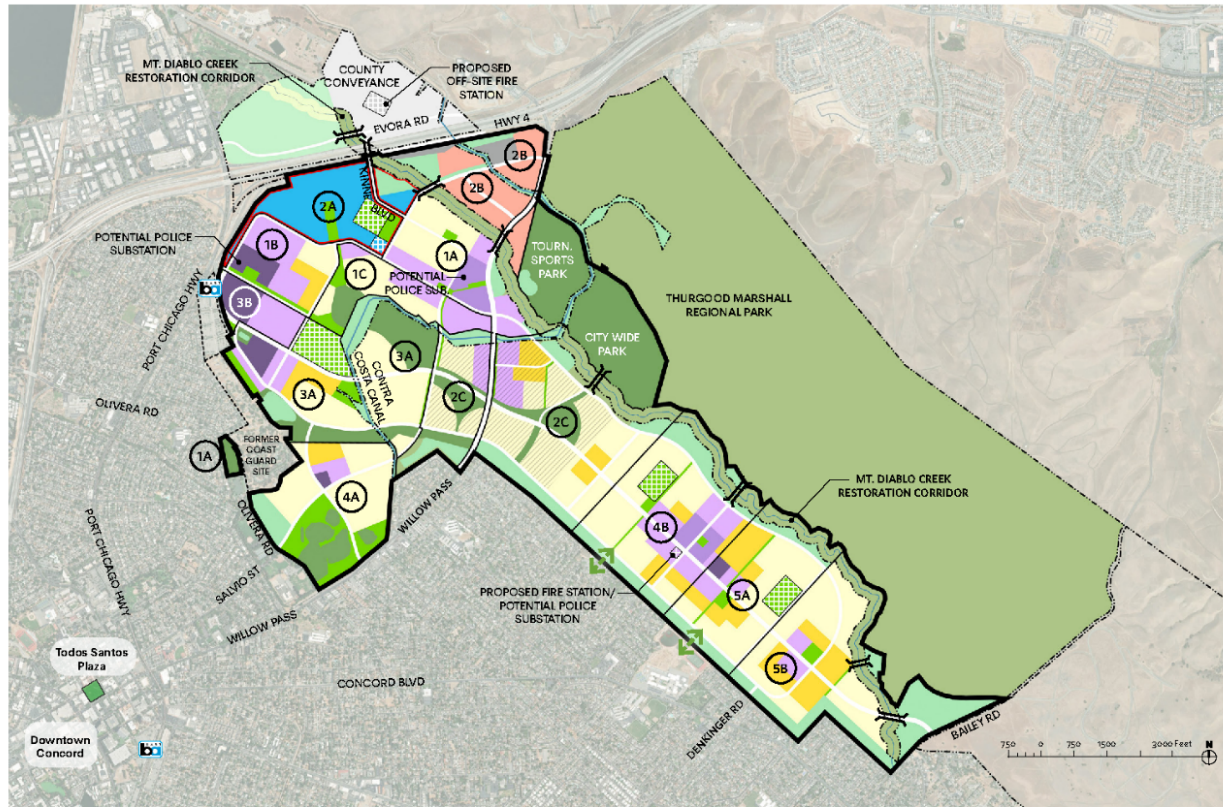
MISCELLANEOUS

- SUBSTATION & HIGHWAY SETBACK
- STEEP SLOPE AREAS
- COMMUNITY FACILITIES OVERLAY
- SPECIFIC PLAN BOUNDARY
- PROPERTY BOUNDARIES
- FORMER COAST GUARD SITE & BART PROPERTY BOUNDARIES
- PROPOSED BIKE & PEDESTRIAN CONNECTION
- POTENTIAL CREEK CROSSINGS
- CAMPUS DISTRICT BOUNDARY

Proposed school locations are subject to school district approval, and may be shifted and relocated accordingly

02/20/2024

CONCEPTUAL PRELIMINARY LAND USE PLAN WITH PHASING



KEY

PHASE 1

| | |
|---|-------------|
| Infrastructure | 53.4 ac |
| Housing | 1,612 Units |
| Commercial (Jobs: 1,378) | 620,000 gsf |
| Inclusionary Housing | 537 Units |
| Community Facilities & Set Asides (Jobs: 0) | 4 ac |
| Conservation, Open Space & Rec. Lands | 76.2 ac |

PHASE 2

| | |
|---|---------------|
| Infrastructure | 44.7 ac |
| Housing | 1,388 Units |
| Commercial (Jobs: 0) | 0 gsf |
| Innovation District (Jobs: 3,778) | 1,700,000 gsf |
| Campus District (Jobs: 8,250) | 3,000,000 gsf |
| Inclusionary Housing | 467 Units |
| Community Facilities & Set Asides (Jobs: 196) | 23 ac |
| Conservation, Open Space & Rec. Lands | 182.8 ac |

PHASE 3

| | |
|---|-------------|
| Infrastructure | 29.3 ac |
| Housing | 2,284 Units |
| Commercial (Jobs: 1,778) | 680,000 gsf |
| Inclusionary Housing | 762 Units |
| Community Facilities & Set Asides (Jobs: 372) | 25 ac |
| Conservation, Open Space & Rec. Lands | 102.4 ac |

PHASE 4

| | |
|---|-------------|
| Infrastructure | 34.3 ac |
| Housing | 1,735 Units |
| Commercial (Jobs: 222) | 100,000 gsf |
| Inclusionary Housing | 581 Units |
| Community Facilities & Set Asides (Jobs: 196) | 11 ac |
| Conservation, Open Space & Rec. Lands | 128.1 ac |

PHASE 5

| | |
|---|-------------|
| Infrastructure | 35.1 ac |
| Housing | 2,185 Units |
| Commercial (Jobs: 0) | 0 gsf |
| Inclusionary Housing | 721 Units |
| Community Facilities & Set Asides (Jobs: 186) | 10 ac |
| Conservation, Open Space & Rec. Lands | 166.2 ac |

TOURNAMENT SPORTS PARK & CITYWIDE PARK

| | |
|---------------------------------------|--------|
| Conservation, Open Space & Rec. Lands | 175 ac |
|---------------------------------------|--------|

Tournament Sports Park and City Wide Park to be phased and programmed in the Specific Plan.

Proposed school locations are subject to school district approval, and may be shifted and relocated accordingly.

LAND USE DESIGNATIONS

- LOW DENSITY RES. (RL)
- MEDIUM DENSITY RES. (RM)
- NEIGHBORHOOD COMMERCIAL (NC)
- MIXED-USE MEDIUM (MUM)
- MIXED-USE HIGH (MUH)
- COMMERCIAL FLEX (CF)
- CAMPUS DISTRICT

OPEN SPACES TYPES

- GREENWAYS
- OTHER PARKS & OS
- CONSERVATION OS
- CITYWIDE PARKS

MISCELLANEOUS

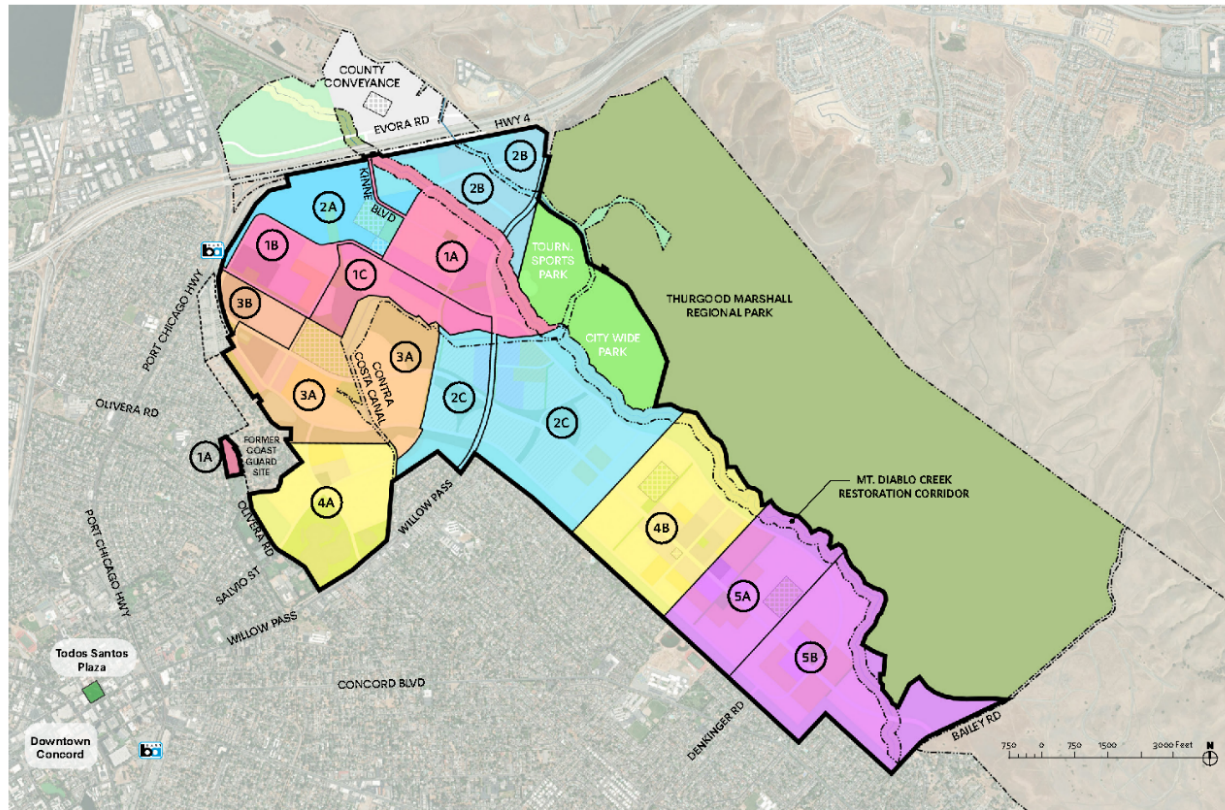
- SUBSTATION & HIGHWAY SETBACK
- STEEP SLOPE AREAS
- COMMUNITY FACILITIES OVERLAY
- SPECIFIC PLAN BOUNDARY
- PHASE BOUNDARY
- PROPERTY BOUNDARIES
- FORMER COAST GUARD SITE & BART PROPERTY BOUNDARIES
- PROPOSED BIKE & PEDESTRIAN CONNECTION
- POTENTIAL CREEK CROSSINGS
- CAMPUS DISTRICT BOUNDARY

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CONCEPTUAL PRELIMINARY PHASING PLAN



KEY

PHASE 1

| | |
|---|-------------|
| Infrastructure | 53.4 ac |
| Housing | 1,612 Units |
| Commercial (Jobs: 1,378) | 620,000 gsf |
| Inclusionary Housing | 537 Units |
| Community Facilities & Set Asides (Jobs: 0) | 4 ac |
| Conservation, Open Space & Rec. Lands | 76.2 ac |

PHASE 2

| | |
|---|---------------|
| Infrastructure | 44.7 ac |
| Housing | 1,388 Units |
| Commercial (Jobs: 0) | 0 gsf |
| Innovation District (Jobs: 3,778) | 1,700,000 gsf |
| Campus District (Jobs: 8,250) | 3,000,000 gsf |
| Inclusionary Housing | 467 Units |
| Community Facilities & Set Asides (Jobs: 196) | 23 ac |
| Conservation, Open Space & Rec. Lands | 182.8 ac |

PHASE 3

| | |
|---|-------------|
| Infrastructure | 29.3 ac |
| Housing | 2,284 Units |
| Commercial (Jobs: 1,778) | 680,000 gsf |
| Inclusionary Housing | 762 Units |
| Community Facilities & Set Asides (Jobs: 372) | 25 ac |
| Conservation, Open Space & Rec. Lands | 102.4 ac |

PHASE 4

| | |
|---|-------------|
| Infrastructure | 34.3 ac |
| Housing | 1,735 Units |
| Commercial (Jobs: 222) | 100,000 gsf |
| Inclusionary Housing | 581 Units |
| Community Facilities & Set Asides (Jobs: 196) | 11 ac |
| Conservation, Open Space & Rec. Lands | 128.1 ac |

PHASE 5

| | |
|---|-------------|
| Infrastructure | 35.1 ac |
| Housing | 2,185 Units |
| Commercial (Jobs: 0) | 0 gsf |
| Inclusionary Housing | 721 Units |
| Community Facilities & Set Asides (Jobs: 186) | 10 ac |
| Conservation, Open Space & Rec. Lands | 166.2 ac |

TOURNAMENT SPORTS PARK & CITYWIDE PARK

| | |
|---------------------------------------|--------|
| Conservation, Open Space & Rec. Lands | 175 ac |
|---------------------------------------|--------|

Tournament Sports Park and City Wide Park to be phased and programmed in the Specific Plan.

Proposed school locations are subject to school district approval, and may be shifted and relocated accordingly.

LAND USE DESIGNATIONS

- LOW DENSITY RES. (RL)
- MEDIUM DENSITY RES. (RM)
- NEIGHBORHOOD COMMERCIAL (NC)
- MIXED-USE MEDIUM (MUM)
- MIXED-USE HIGH (MUH)
- COMMERCIAL FLEX (CF)
- CAMPUS DISTRICT

OPEN SPACES TYPES

- GREENWAYS
- OTHER PARKS & OS
- CONSERVATION OS
- CITYWIDE PARKS

MISCELLANEOUS

- SUBSTATION & HIGHWAY SETBACK
- STEEP SLOPE AREAS
- COMMUNITY FACILITIES OVERLAY
- SPECIFIC PLAN BOUNDARY
- PHASE BOUNDARY
- PROPERTY BOUNDARIES
- FORMER COAST GUARD SITE & BART PROPERTY BOUNDARIES

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COUNTY OF ALBANY

CONCEPTUAL PRELIMINARY LAND USE PLAN SUMMARY

| CONCEPTUAL PRELIMINARY LAND USE PLAN LAND USE CATEGORY | Commercial | | Residential | | | Approx. Gross Acres | Estimated Jobs to Housing Ratio |
|---|------------------|-----------------|---------------------------------|--|-----------------------------------|------------------------|--|
| | Approx. GSF | Approx. Jobs | Approx. Market Rate Units | Approx. Affordable Units (inc. transitional housing) | Approx. Number of Residents | | |
| Infrastructure | | | | | | | |
| Backbone Streets | | | | | | 196.8 | |
| PG&E Substation | | | | | | 5.0 | |
| Housing & Commercial | | | | | | | |
| Low Density Residential | | | 4,218 | | 11,600 | 663.1 | |
| Medium Density Residential | | | 2,273 | | 6,251 | 137.7 | |
| Medium Density Mixed-Use | | | 1,759 | | 4,837 | 115.6 | |
| High Density Mixed-Use | 1,180,000 | 2,889 | 954 | | 2,624 | 28.1 | |
| Neighborhood Commercial/Village Center | 220,000 | 489 | | | | 30.0 | |
| Special Districts | | | | | | | |
| Innovation District -- Commercial Flex (net acres) | 1,700,000 | 3,778 | | | | 63.6 | |
| Campus District (net acres) | 3,000,000 | 8,250 | | | | 85.3 | |
| Inclusionary Housing | | | | | | | |
| Affordable Housing | | | | 2,788 | 7,667 | 58.7 | |
| Transitional Multifamily Housing (LBA) | | | | 260 | 715 | 16.0 | |
| Habitat for Humanity | | | | 20 | 55 | 2.0 | |
| Community Facilities & Set-Asides | | | | | | | |
| Library/Community Center #1 | | 10 | | | | 3.0 | |
| Fire Station** | | 10 | | | | 1.0 | |
| 4 School Sites | | 930 | | | | 55.0 | |
| Food Bank (LBA) | | | | | | 10.0 | |
| Veterans Land Set-Aside | | | | | | 4.0 | |
| Conservation, Open Space, & Rec. Lands | | | | | | | |
| <i>Conservation Open Space</i> | | | | | | | |
| Mt. Diablo Creek Restoration | | | | | | 146.3 | |
| Existing Open Space (to remain) | | | | | | 9.4 | |
| Existing Wetlands (to remain) | | | | | | 9.2 | |
| Proposed Wetlands | | | | | | 11.0 | |
| Highway 4 Easements | | | | | | 13.3 | |
| <i>Greenways</i> | | | | | | | |
| Greenway - East of Creek | | | | | | 84.6 | |
| Green Frame | | | | | | 82.1 | |
| Proposed Multi-Purpose Basins | | | | | | 71.8 | |
| Contra Costa Canal ROW | | | | | | 33.1 | |
| <i>Citywide Parks</i> | | | | | | | |
| Ridgetop Park | | | | | | 86.2 | |
| Willow Pass Park Extension | | | | | | 28.7 | |
| Tournament Sports Park & Citywide Park | | | | | | 175.0 | |
| <i>Other Parks & Open Space</i> | | | | | | | |
| Parks, Plazas, and Open Space | | | | | | 80.0 | |
| Total | 6,100,000 | 16,356 | 9,204 | 3,068 | 33,748 * | 2,305.6 | 1.33 |

Notes:

*Approximate number of residents based on 2019 Housing Element Average Household Size (Appendix B, Table 10). Area Plan, page 4, assumed approx. 2.34 pp/unit. Approximate number of residents can be further considered in Specific Plan.

** Project includes two fire stations, one in Phase 1 that is north of Hwy 4 (off-site) and one in Phase 4 (on-site).

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Exhibit A-4

CONCEPTUAL PRELIMINARY LAND USE PLAN PHASING SUMMARY

| CONCEPTUAL PRELIMINARY LAND USE PLAN LAND USE CATEGORY | Commercial | | Residential | | | Approx. Gross Acres | Estimated Jobs to Housing Ratio |
|---|--------------------|-----------------|---------------------------------|--|------------------------------------|------------------------|--|
| | Approx. GSF | Approx. Jobs | Approx. Market Rate Units | Approx. Affordable Units (inc. transitional housing) | Approx. Number of Residences | | |
| PHASE 1 | | | | | | | |
| Infrastructure | | | | | | 53.4 | |
| Badstone Streets | | | | | | | |
| Housing & Commercial | | | | | | | |
| Low Density Residential | | | 684 | | 1,087 | | 216.3 |
| Medium Density Residential | | | 215 | | 591 | | 18.8 |
| Medium Density Mixed-Use | | | 535 | | 1,471 | | 58.2 |
| High Density Mixed-Use | 518,880 | 1,111 | 176 | | 464 | | 8.9 |
| Neighborhood Commercial/Village Center | 128,880 | 267 | | | | | 16.0 |
| Inclusionary Housing | | | | | | | |
| Affordable Housing | | | | 472 | 1,398 | | 8.1 |
| Transitional Multi-Family Housing (LBA) | | | | 65 | 179 | | 4.8 |
| Community Facilities & Services | | | | | | | |
| Veterans Land Use As-Is | | | | | | | 4.8 |
| Conservation Open Space & Rec. Lands | | | | | | | |
| Conservation Open Sp. (Primarily Mt. Diablo OH) | | | | | | | 42.6 |
| Greenways | | | | | | | 6.3 |
| Oxide Parks | | | | | | | 18.4 |
| Other Parks & Open Space | | | | | | | 17.9 |
| Phase 1 Total | 620,000 | 1,378 | 1,432 | 537 | 5,050 | 548.1 | |
| PHASE 2 A – Campus District | | | | | | | |
| Special Districts | | | | | | | |
| Campus District (net acres) | 3,818,880 | 8,258 | | | | | 65.3 |
| Community Facilities & Services | | | | | | | |
| School Site | | | 286 | | | | 18.8 |
| Library/Community Center | | | 18 | | | | 3.8 |
| Conservation Open Space & Rec. Lands | | | | | | | |
| Conservation Open Space | | | | | | | 3.5 |
| Greenways | | | | | | | 9.8 |
| Other Parks & Open Space | | | | | | | 9.4 |
| Phase 2A – Campus District Total | 3,800,000 | 8,446 | 0 | 0 | 0 | 120.2 | |
| PHASE 2 B & C | | | | | | | |
| Infrastructure | | | | | | 44.7 | |
| Badstone Streets | | | | | | | 5.8 |
| Housing & Commercial | | | | | | | |
| Low Density Residential | | | 1,884 | | 2,761 | | 151.4 |
| Medium Density Residential | | | 211 | | 588 | | 24.6 |
| Medium Density Mixed-Use | | | 273 | | 476 | | 13.5 |
| Special Districts | | | | | | | |
| Innovation District – Commercial Flex (net acres) | 1,708,880 | 3,778 | | | | | 63.6 |
| Inclusionary Housing | | | | | | | |
| Affordable Housing | | | | 382 | 1,851 | | 11.2 |
| Transitional Multi-Family Housing (LBA) | | | | 61 | 179 | | 4.8 |
| Habitat for Humanity | | | | 18 | 15 | | 2.8 |
| Community Facilities & Services | | | | | | | |
| Food Bank (LBA) | | | | | | | 18.8 |
| Conservation Open Space & Rec. Lands | | | | | | | |
| Conservation Open Sp. (Primarily Mt. Diablo OH) | | | | | | | 34.0 |
| Greenways | | | | | | | 75.9 |
| Oxide Parks | | | | | | | 42.4 |
| Other Parks & Open Space | | | | | | | 7.0 |
| Phase 2B & 2C Total | 1,700,000 | 3,778 | 1,388 | 467 | 5,100 | 480.9 | |
| PHASE 3 | | | | | | | |
| Infrastructure | | | | | | 28.3 | |
| Badstone Streets | | | | | | | |
| Housing & Commercial | | | | | | | |
| Low Density Residential | | | 584 | | 1,398 | | 79.5 |
| Medium Density Residential | | | 459 | | 1,369 | | 18.8 |
| Medium Density Mixed-Use | | | 942 | | 1,491 | | 21.5 |
| High Density Mixed-Use | 518,880 | 1,109 | 778 | | 2,348 | | 17.2 |
| Hotel | 128,880 | 267 | | | | | 2.8 |
| Inclusionary Housing | | | | | | | |
| Affordable Housing | | | | 697 | 1,957 | | 18.8 |
| Transitional Multi-Family Housing (LBA) | | | | 65 | 179 | | 4.8 |
| Community Facilities & Services | | | | | | | |
| School Site | | | 372 | | | | 25.8 |
| Conservation Open Space & Rec. Lands | | | | | | | |
| Conservation Open Space | | | | | | | 8.8 |
| Greenways | | | | | | | 28.3 |
| Oxide Parks | | | | | | | 62.2 |
| Other Parks & Open Space | | | | | | | 12.8 |
| Phase 3 Total | 680,000 | 2,151 | 2,284 | 762 | 8,377 | 309.9 | |
| PHASE 4 | | | | | | | |
| Infrastructure | | | | | | 34.3 | |
| Badstone Streets | | | | | | | |
| Housing & Commercial | | | | | | | |
| Low Density Residential | | | 588 | | 2,773 | | 163.2 |
| Medium Density Residential | | | 449 | | 1,235 | | 18.3 |
| Medium Density Mixed-Use | | | 286 | | 814 | | 21.9 |
| Neighborhood Commercial/Village Center | 188,880 | 222 | | | | | 24.8 |
| Inclusionary Housing | | | | | | | |
| Affordable Housing | | | | 516 | 1,419 | | 11.2 |
| Transitional Multi-Family Housing (LBA) | | | | 65 | 179 | | 4.8 |
| Community Facilities & Services | | | | | | | |
| Fire Station | | | 18 | | | | 1.8 |
| School Site | | | 286 | | | | 18.8 |
| Conservation Open Space & Rec. Lands | | | | | | | |
| Conservation Open Sp. (Primarily Mt. Diablo OH) | | | | | | | 52.2 |
| Greenways | | | | | | | 53.2 |
| Oxide Parks | | | | | | | 8.8 |
| Other Parks & Open Space | | | | | | | 22.7 |
| Phase 4 Total | 100,000 | 418 | 1,715 | 581 | 6,369 | 418.0 | |
| PHASE 5 | | | | | | | |
| Infrastructure | | | | | | 35.1 | |
| Badstone Streets | | | | | | | |
| Housing & Commercial | | | | | | | |
| Low Density Residential | | | 1,832 | | 2,830 | | 162.7 |
| Medium Density Residential | | | 948 | | 2,585 | | 63.8 |
| Medium Density Mixed-Use | | | 213 | | 586 | | 8.5 |
| Inclusionary Housing | | | | | | | |
| Affordable Housing | | | | 721 | 1,983 | | 17.2 |
| Community Facilities & Services | | | | | | | |
| School Site | | | 286 | | | | 18.8 |
| Conservation Open Space & Rec. Lands | | | | | | | |
| Conservation Open Sp. (Primarily Mt. Diablo OH) | | | | | | | 56.1 |
| Greenways | | | | | | | 99.9 |
| Oxide Parks | | | | | | | 8.8 |
| Other Parks & Open Space | | | | | | | 11.2 |
| Phase 5 Total | 0 | 186 | 2,185 | 721 | 7,392 | 458.5 | |
| Other | | | | | | | |
| Conservation Open Space & Rec. Lands | | | | | | | |
| Tournament Sports Park & Oxide Park | | | | | | | 175.1 |
| Other Total | 0 | 0 | 0 | 0 | 0 | 0 | 175.0 |
| Grand Total | 6,300,000.0 | 16,556.6 | 9,204.0 | 3,068.0 | 33,748.0 | 2,305.6 | 1.38 |

Notes:

*Approximate number of residents based on 2019 Housing Element Average Household Size (Appendix B, Table 18). Area Plan, page 4, assumed approx. 2.34 pps/unit. Approximate number of residents can be further considered in Specific Plan.

** Project includes two fire stations, one in Phase 1 that is north of Hwy 6 (off-site) and one in Phase 4 (on-site).

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Exhibit A-5

EXHIBIT B**Proforma (Summary Sheet & Cashflow Analysis)
(dollar values in millions, including annual inflation)**

| Sources and Uses | |
|--|-------------------|
| <u>Sources</u> | |
| Net Land Revenues | \$ 5,296.6 |
| Marketing Program Revenues | \$ 109.0 |
| CFD(s) | \$ 824.0 |
| Subtotal - Sources: | \$ 6,229.7 |
| <u>Uses</u> | |
| Entitlements | \$ 22.6 |
| Pre-Development | \$ 511.1 |
| Remediation/Oversight | \$ 8.5 |
| Environmental Remediation | \$ 131.1 |
| City Prior Debt Contribution | \$ 15.8 |
| Habitat Mitigation | \$ 59.3 |
| Backbone Infrastructure | \$ 919.2 |
| Intracts for Superpads and Finished Lots | \$ 612.0 |
| Parks/Greenways/Mt. Diablo Creek Restoration | \$ 277.2 |
| Transportation/Transit Contr./Campus Marketing | \$ 193.8 |
| Community Center/Library | \$ 84.4 |
| Affordable Housing Contributions | \$ 67.8 |
| Tournament Sports Park | \$ 137.9 |
| Fire Stations | \$ 27.2 |
| Schools | \$ 177.9 |
| Project Management/Overhead | \$ 385.1 |
| Property Maintenance/Insurance | \$ 50.4 |
| Marketing/Sales/Closing Costs | \$ 145.2 |
| Contingency | \$ 494.3 |
| Subtotal - Uses: | \$ 4,320.7 |
| Net Cash Flow: | \$ 1,909.0 |
| Developer UIRR (Un-Levered IRR): | 20.5% |

| Community Benefits | |
|----------------------------------|-----------------|
| Community Center / Library | \$ 84.4 |
| Affordable Housing Contributions | \$ 67.8 |
| Tournament Sports Park | \$ 137.9 |
| Total Community Benefits: | \$ 290.1 |

| Projected Project Cumulative UIRR by Phase | |
|---|-------|
| Phase I | 18.0% |
| Phase II | 19.9% |
| Phase III | 19.9% |
| Phase IV | 19.8% |
| Phase V | 20.5% |

| Profit Participation Structure | City |
|---------------------------------------|-------------|
| Tranche 1 (18% - 20% UIRR) | 40.0% |
| Tranche 2 (20% +) | 50.0% |

EXHIBIT C

Backbone Infrastructure by Development Phase

PHASE 1

- Off-Site Infrastructure
 - Utility Maintenance Access Road along Evora Road corridor
 - Phase 1 Evora Road connection from Port Chicago to Mt. Diablo Creek and Diablo Creek Golf Course repair
 - Evora Road bridge at Mt Diablo Creek
 - Kinne Culvert at Mt. Diablo Creek
 - Phase 1 Mount Diablo Creek Regional Stormwater Detention Basin
 - Phase 1 Potable Water Storage Reservoir, approx. 1 – 3.3 MGD+/-, with required supply pipelines and access road
 - CCCSD sewer pipeline extension from Project to CIPS (pump station) and Phase 1 pump station upgrade (2022 CCCSD Study – Alternative #3 North Concord)
 - Install potable water main from Project to Bates Ave / Port Chicago Hwy
- On-Site Backbone Infrastructure
 - Site preparation, demolition, and grading
 - Phase 1 Mount Diablo creek restoration
 - Backbone roadways and adjacent perimeter intersections
 - Widening and Realignment of Willow Pass Road to 4 lanes within Phase 1 and as needed to construct new bridge at Mt Diablo Creek
 - New Willow Pass Road bridge at Mt Diablo Creek
 - Backbone utilities (sewer, storm drain, potable water, recycled water, and dry utilities)
 - Stormwater Multi-Purpose Basins and Outfalls

PHASE 2

- Off-Site Infrastructure
 - Phase 2 Potable Water Storage Reservoir, approx. 1 – 3.3 MGD+/-
 - CCCSD Phase 2 upsizing of downstream existing pipelines and Phase 2 pump station upgrades (2022 CCCSD Study – Alternative #3 North Concord)
- On-Site Backbone Infrastructure
 - Site preparation, demolition, and grading
 - Phase 2 Mount Diablo and Willow Pass Creek restorations
 - Backbone roadways
 - Backbone utilities (sewer, storm drain, potable water, recycled water, and dry utilities)
 - Delta Road Mount Diablo Creek Bridge
 - Citywide Park Pedestrian Bridge
 - Widening of Willow Pass Road to 4 lanes within Phase 2
 - Stormwater Multi-Purpose Basins and Outfalls
 - Phase 2 Mount Diablo Creek Regional Stormwater Detention Basin

PHASE 3

- Off-Site Infrastructure
 - Panoramic Drive reconfiguration at BART and intersection
 - Phase 2 Evora Road east of Mt. Diablo Creek to existing Evora Rd east of Mt. Diablo Creek
- On-Site Backbone Infrastructure

- Site preparation, demolition, and grading
- Backbone roadways construction
- Backbone utilities (sewer, storm drain, potable water, recycled water, and dry utilities)
- Stormwater Multi-Purpose Basins and Outfalls
- Sanitary Sewer Pump Station

PHASE 4

- Off-Site Infrastructure
 - Recycled Water Transmission Main to CCCSD Recycled Water Treatment Plant (Route B per 2011 CCCSD Study)
 - 2 – 2.9 MGD+/- Recycled Water Storage Reservoirs, supply pipelines and booster pump station Phase 4 Mount Diablo Creek Regional Stormwater Detention Basin
- On-Site Backbone Infrastructure
 - Site preparation, demolition (runway), and grading
 - Phase 4 Mount Diablo Creek restoration
 - Backbone roadways and adjacent perimeter intersections
 - Backbone utilities (sewer, storm drain, potable water, recycled water, and dry utilities)
 - Stormwater Multi-Purpose Basins and Outfalls
 - Mount Diablo Creek Bridge to EBRPD Visitor Center
 - East Olivera Widening adjacent to Phase 4
 - Widening of Willow Pass Road to 4 lanes within Phase 4

PHASE 5

- Off-Site Infrastructure
 - Phase 5 Mount Diablo Creek Regional Stormwater Detention Basin
- On-Site Backbone Infrastructure
 - Site preparation, demolition, and grading
 - Phase 5 Mount Diablo Creek restoration
 - Backbone roadways and adjacent perimeter intersections
 - Pedestrian Bridge to EBRPD Regional Park
 - Backbone utilities (sewer, storm drain, potable water, recycled water, and dry utilities)
 - Stormwater Multi-Purpose Basins and Outfalls
 - Backbone roadway bridge at Mount Diablo Creek
 - Backbone roadway extension to Bailey Road and intersection improvements

First Transfer Parcel Diagram

