

FIRST AMENDMENT TO EXCLUSIVE AGREEMENT TO NEGOTIATE

THIS FIRST AMENDMENT TO EXCLUSIVE AGREEMENT TO NEGOTIATE (this “**First Amendment**”) dated for reference purposes as of ~~February 20~~March 19, 2024 (the “**First Amendment Effective Date**”) is entered into by and between the CITY OF CONCORD, a California municipal corporation in its capacity as local reuse authority for the Concord Naval Weapons Station (“**City**”), and BCUS ACQUISITIONS LLC, a Delaware limited liability company (“**Developer**”).

RECITALS

A. City and Developer are parties to an Exclusive Agreement to Negotiate dated September 19, 2023, as affected by ~~that~~those certain ~~letter~~letters dated January 2, 2024, and February 16, 2024, from the City Manager of the City to Developer administratively extending the Preliminary Stage negotiating period by ~~45~~73 days (collectively, the “**Agreement**”). Any term not otherwise defined herein shall have the definition set forth in the Agreement.

B. City and Developer negotiated in good faith and the Parties produced a final proposed Term Sheet that was presented to the City Council for consideration on ~~February 20~~March 19, 2024, and which was approved by the City Council at that meeting. In addition, the Parties reached agreement on a mutually acceptable Reimbursement Agreement that was signed by Developer prior to the City Council meeting on ~~February 20~~March 19, 2024. In light of these actions, the DDA Stage of the Agreement commenced on ~~February 20~~March 19, 2024.

C. Section 3.3 of the Agreement provides that administrative extensions of the DDA Stage may be set forth in the Term Sheet and, if the Term Sheet is approved by the City Council, the Parties will execute an amendment to the Agreement to memorialize the administrative extensions agreed upon in the Term Sheet, which amendment the City Manager has the authority to execute.

D. The Term Sheet approved by the City Council sets forth an administrative extension of the DDA Stage, and the Parties are entering into this First Amendment to memorialize such extension as required by Section 3.3.

AGREEMENTS

CITY AND DEVELOPER HEREBY AGREE AS FOLLOWS:

1. Incorporation of Recitals. The recitals set forth above, and all defined terms set forth in such recitals and in the introductory paragraph preceding the recitals, are thereby incorporated into this Agreement as though set forth in full.

2. DDA Stage. Section 3.2(a) of the Agreement is hereby deleted in its entirety and restated as follows:

“(a) If, and only if, prior to expiration of the Preliminary Stage, as may be extended pursuant to Section 3.3 below, the Parties reach agreement on a mutually acceptable Term Sheet and Reimbursement Agreement (as defined in Section 6.2 below), such Reimbursement Agreement has been executed by the Developer prior to the City Council’s consideration of the Term Sheet, and the City Council approves the Term Sheet, the Parties shall proceed to the second stage of the Negotiating Period (“**DDA Stage**”), which shall commence on the date the City Council approves the Term Sheet, and unless extended as provided in Section 3.3 below, shall expire on the later of (a) the date that is two years after both the economic development conveyance application for the Development Footprint has been finalized and the Navy-City term sheet for the transfer of the Development Footprint to the City has been approved by the Navy and City’s respective negotiating teams (collectively hereinafter referred to as the “**Initial EDC Related Milestones**”), and (b) the date that is three years after the date the City Council approved the Term Sheet (i.e., February 20, 2027); provided that the DDA Stage shall not extend beyond the date that is four years after the date the City Council approved the Term Sheet (i.e., February 20, 2028), unless the City Manager further extends the DDA Stage pursuant to Section 3.3 below. If a DDA has not been executed by City and Developer by the expiration of the DDA Stage, then this Agreement shall terminate and neither Party shall have any further rights or obligations under this Agreement, except as set forth herein.”

3. Extensions. Section 3.3 of the Agreement is hereby deleted in its entirety and restated as follows:

“3.3 Extensions. The DDA Stage may be extended one or more times for a period not to exceed an additional ninety (90) calendar days by the City Manager or designee if such official determines in their sole discretion that such an extension is necessary to address delays related to CEQA compliance, litigation, or negotiations with the Navy. Subject to approval by the City Council, the DDA Stage of the Negotiating Period may also be extended by mutual written agreement of the Parties.”

4. Estoppels. Each party further acknowledges and certifies that, as of the date hereof, the other party has fully and faithfully performed all of its obligations under the Agreement, the other party is not in default under the Agreement and each party knows of no event that has occurred or is continuing which, with the passage of time or the giving of notice, or both, would constitute a default by the other party under the Agreement.

City is relying upon ~~Developers~~Developer’s acknowledgments and certifications in this Section in advancing to the DDA Stage, and in consideration of such material reliance, Developer shall now and forever be estopped from denying the validity of the certifications and acknowledgments in this Section. City shall now and forever be estopped from denying the validity of the certifications and acknowledgements in the preceding paragraph.

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

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

7. Ratification. Except as expressly provided herein, the Agreement, as amended by this First Amendment, remains unmodified and in full force and effect.

[Remainder of page intentionally left blank]

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

CITY:

CITY OF CONCORD, a California
municipal corporation

DEVELOPER:

BCUS ACQUISITIONS LLC,
a Delaware limited liability company,

By: _____
Valerie Barone, City Manager

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM:

By: _____
Susanne Brown, City Attorney

ATTEST:

By: _____
Joelle Fockler, City Clerk