



Staff Report

Date: March 28, 2016

To: City Council/City Council Sitting as the Local Reuse Authority

From: Valerie J. Barone, City Manager

Prepared by: Guy S. Bjerke, Director of Community Reuse Planning
Guy.bjerke@cityofconcord.org
925 671-3076

Subject: **Request by Catellus Development Corporation for Changes in its Agreement to Negotiate and Term Sheet, or the Refunding of the Initial Good Faith Deposit of \$250,000**

REPORT IN BRIEF

The Local Reuse Authority (LRA) staff and consultants met with Catellus Development Corporation (Catellus) on March 14, 2016 in preparation for the scheduled April 5, 2016 Council meeting for selection of a Master Developer for Phase 1 of the Concord Naval Weapons Station (CNWS) project. In the meeting and through subsequent letters on March 17 and March 22, 2016, Catellus requested changes to its Agreement to Negotiate and Disposition and Development Agreement (DDA) Term Sheet (Term Sheet) related to the Master Developer Selection process. The changes sought, should Catellus be selected by the Council, would shift the financial risks associated with the DDA and Navy negotiation from Catellus to the City. Staff indicated at the March 14, 2016 meeting, and in a March 18, 2016 reply letter, that the requested changes are not in the best interest of the City; consequently, staff would not recommend to the Council that the changes be approved. This is the same approach staff took last September when Lennar Urban requested to modify its Term Sheet after submittal of the final version.

Catellus' letters state the company wishes to remain in the Master Developer Selection process. But, this request for changes in the Agreement to Negotiate and Term Sheet, coupled with their offer to withdraw if the City refunds its Initial Good Faith Deposit of

Request by Catellus Development Corporation for Changes in its Agreement to Negotiate and Term Sheet, or the Refunding of the Initial Good Faith Deposit of \$250,00

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\$250,000, suggests to staff that Catellus lacks confidence and trust in the process and that Catellus' preference is to exit the selection process.

RECOMMENDED ACTION

Staff recommends that the Council, sitting as the LRA: (1) reject Catellus' request for changes to its Agreement to Negotiate and Term Sheet; (2) authorize the refunding of Catellus' Initial Good Faith Deposit of \$250,000 in exchange for Catellus' voluntary withdrawal from the Master Developer selection process and waiver and release of any and all claims it may have against the City, subject to a mutually agreeable settlement agreement; and (3) authorize the City Manager to execute a settlement agreement on behalf of the LRA and City in substantially the form attached hereto.

BACKGROUND

Following designation by the City Council as Master Developer selection finalists, Catellus and Lennar Urban entered into an Agreement to Negotiate with the LRA/City on May 26, 2015. The Agreements to Negotiate set forth the terms under which each company would negotiate a detailed Term Sheet for the proposed disposition and development of the Phase 1 of the CNWS Area Plan.

Section 6.1 of the Agreements to Negotiate obligate each finalist to provide a cash deposit to the City in the amount of \$250,000, as an initial good faith deposit for the LRA/City to draw against to pay internal and third party expenses incurred by the City in connection with the negotiation and drafting of the Term Sheets.

On September 24, 2015, a law firm representing Catellus sent letters to the City alleging that Lennar Urban had violated its Agreement to Negotiate with the City. As a result of the letters, the City put the Master Developer selection process on hold and hired the law firm of Jenkins & Hugin, LLP, as independent special counsel to investigate the allegations. Upon completion of the investigation Council released the report to the public and held a public meeting on February 23, 2016 to address the findings within the report. The goal of these actions was to transparently reset the relationship between the City and each Master Developer finalist, create a level playing field, and restart the Master Developer Selection Process. Subsequently, the City scheduled April 5, 2016 as the date Council would consider the two term sheets, take public testimony and select a Master Developer for the Phase 1 Development of the Area Plan.

On March 14, 2016, staff met with Catellus to review its Term Sheet, discuss the accuracy of staff's characterization of its Term Sheet in the previously published September 29, 2015 staff report and review City expectations of the process post selection. At the meeting, Catellus requested several changes to the Agreement to Negotiate and Term Sheet as a condition of continuing in the Master Developer selection process. Staff told Catellus they did not think the proposed changes were in

Request by Catellus Development Corporation for Changes in its Agreement to Negotiate and Term Sheet, or the Refunding of the Initial Good Faith Deposit of \$250,000

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the best interest of the City and would not be recommended to the City Council. At that point Catellus stated that it would be willing to exit the Master Developer selection process, and would do so waiving any claims against the City if the City agreed to refund its Initial Good Faith Deposit of \$250,000.

Catellus and the City exchanged letters on March 17, 18 and 22, 2016 (see attachments) in an attempt to clarify each party's respective position and determine a path forward. Staff has concluded based on the letters and further discussions with Catellus, that the best way to resolve this matter is to bring it before the City Council for resolution prior to the scheduled April 5, 2016 meeting to consider the relative merits of each firm's Term Sheets.

ANALYSIS

Catellus' Requests

Catellus has requested two changes to its Agreement to Negotiate and Term Sheet:

1. In addition to the initial deposit of \$250,000, the existing agreement requires the ultimately selected Master Developer to provide an additional non-refundable \$350,000 deposit to cover further city expenses associated with negotiation of the DDA. Should Catellus be selected as the Master Developer, Catellus wants the \$350,000 deposit required by the Agreement, as well as any further funds required under the Agreement pursuant to Section 5 (i.e., to pay for City costs related to preparation of a Specific Plan and environmental documentation and subsequent permitting), to be entirely reimbursable to Catellus in the event the City and Catellus fail to reach agreement on a final DDA or fail to reach a valuation agreement with the Navy. Under the terms of the Agreement to Negotiate signed by both Catellus and Lennar Urban, these costs/expenses are the responsibility of the Master Developer regardless of the outcome of either negotiation.
2. Catellus also requested that the developer fees provided for in its Term Sheet (specifically including the Administrative Fee to pay for Catellus' overhead costs) begin accruing 60 days after its selection as the Master Developer and for those fees to also be payable by the City if the City Council does not approve a final DDA with Catellus or complete negotiations on value with the Navy. The existing Term Sheet requires the approval of the DDA before any fees can be charged by Catellus and specifically labels them as Project Costs "...all of which are reimbursed or paid to Developer through Projected Revenue sources (not by the City.)"¹

¹ Catellus Term Sheet, page 24.

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Staff estimates that the two proposed changes would shift between \$350,000 and \$700,000 in financial risk from Catellus to the City in the event Catellus is selected, but the parties are unable to agree to a DDA.

Staff can only conclude from these requests that the necessary working relationship in this potential partnership is not aligned for success.

Refunding Catellus' Initial Good Faith Deposit

Despite the considerable effort the City has undertaken to address Catellus' concerns about the Master Developer selection process, it is clear there are now insurmountable trust and confidence issues between the parties. The City is not obligated to refund the expended portion of Catellus' Initial Good Faith Deposit should Catellus decide to exit the Master Developer selection process. Staff, however, feels it would be beneficial to the City and the CNWS Area Plan implementation process to resolve differences with Catellus amicably through a negotiated settlement and refund Catellus' Initial Good Faith Deposit of \$250,000 in exchange for Catellus' agreement to voluntarily withdraw from the Master Developer selection process and provide the City with a full waiver and release of any and all claims Catellus may have against the City. The LRA currently holds a balance of \$71,000 in Catellus' deposit account. The remainder of the refund (\$179,000) would be deducted from the loan to the LRA from the General Fund approved as part of the FY 2015-2016 budget and repaid through future land sales or lease revenue to the City from development of the former Concord Naval Weapons Station pursuant to the Area Plan.

FINANCIAL IMPACT

There are two potential fiscal impacts to the City depending on Council's action.

1. If the Council grants Catellus' requested changes to the Agreement to Negotiate and Term Sheet AND Catellus is selected as the Master Developer, the City would be required to reimburse Catellus its \$350,000 Good Faith Deposit associated with the DDA and Navy negotiations plus developer fees (including the Administrative Fee) should the parties fail to agree to and execute a DDA and a valuation agreement with the Navy. Staff estimates that shift in financial risk from Catellus to the City is between \$350,000 to \$700,000.
2. If the Council refunds Catellus' Initial Good Faith Deposit in exchange for a full waiver and release of any and all claims Catellus may have against the City it would require the LRA to pay \$179,000 from the project budget and refund the remaining Initial Good Faith Deposit balance of \$71,000, or a total \$250,000.

Request by Catellus Development Corporation for Changes in its Agreement to Negotiate and Term Sheet, or the Refunding of the Initial Good Faith Deposit of \$250,00

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PUBLIC CONTACT

The agenda has been posted in accordance with legal requirements and the City has issued a press release advising the public of this special meeting.

ATTACHMENTS

- 1: Letter from Catellus to City of Concord dated March 17, 2016
- 2: Letter from City of Concord to Catellus dated March 18, 2016
- 3: Letter from Catellus to City of Concord dated March 22, 2016
- 4: Catellus Term Sheet
- 5: Catellus Agreement to Negotiate
- 6: Draft Settlement Agreement and Mutual Release



CATELLUS

March 17, 2016

Valerie Barone
City Manager
City of Concord
1950 Parkside Dr.
Concord, CA 94519

VIA EMAIL

Re: Catellus Position Concerning Next Steps for Master Developer

Dear Ms. Barone:

Based on our March 14, 2016, meeting and subsequent conversations, City Staff requested we provide a letter to present our position concerning the City's desired next steps for the master developer subsequent to the selection.

Per the Agreement to Negotiate signed between Catellus and the City dated May 26, 2015, as subsequently amended ("Agreement"), the City was to select a master developer and proceed to finalizing a Disposition and Development Agreement ("DDA") as provided in Section 2. Our understanding, based on our recent discussions, is that the City believes that any transfer of land from the Navy will not occur until 2017 at the earliest and that the City would like to finalize the DDA once an agreement is reached with the Navy. At that point the City would return to City Council to get a final DDA approved and executed.

Catellus has asked that the City Staff clarify (with City Council approval if necessary) that the \$350,000 deposit required by the Agreement, as well as any further funds required under the Agreement pursuant to Section 5, would be reimbursable to Catellus in the event the City did not reach an agreement with the Navy or ultimately did not approve a final DDA with Catellus. Additionally, given the City's desire to have us actively engaged with the Navy prior to execution of the DDA, we would request that the Catellus fees provided for in our term sheet (specifically including the Administrative Fee) begin accruing 60 days after selection. The Catellus fees would be payable if the City ultimately did not execute and approve a final DDA with Catellus. Our request is a result of the delay in timeline, the process of executing a DDA after a deal is struck with the Navy, as well as concerns raised by recent comments from one voting Council member that were adverse to Catellus.

Unfortunately, City Staff indicated they would not likely recommend our request to City Council. During our recent call, it was proposed that the City of Concord would entertain reimbursing Catellus' \$250,000 Good Faith Deposit if it agreed to voluntarily withdraw from the RFP process and sign a release of claims against the City of Concord. Although we would have preferred to continue as the Master Developer for the project, given all that has transpired, we are willing to agree to these terms. Accordingly, once the City of Concord has returned the Good Faith Deposit of \$250,000 to Catellus (per wiring instructions that will follow), Catellus will deliver a release and written withdrawal from the RFP process for the Concord

Naval Weapons Station project. If this is acceptable to you, please forward to me a proposed release and withdrawal agreement for us to consider in advance of wiring the refund.

Sincerely,



Ted Antenucci

Cc: Guy Bjerke, Director of Community Reuse Planning
Michael Wright

CITY OF CONCORD
1950 Parkside Drive
Concord, California 94519-2578
FAX: (925) 798-0636

OFFICE OF THE CITY MANAGER
Telephone: (925) 671-3150



CITY COUNCIL
Laura M. Hoffmeister, Mayor
Ronald E. Leone, Vice Mayor
Edi E. Birsan
Timothy S. Grayson
Daniel C. Helix

Tim McGallian, City Treasurer
Valerie J. Barone, City Manager

March 18, 2016

Mr. Ted Antenucci
Catellus Development Corporation
29029 Upper Bear Creek Road, Suite 203
Evergreen, CO 80439

Dear Ted:

I am responding to your letter of March 17, 2016, concerning the meeting between Catellus and City staff on Monday, March 14, and offer the following points of clarification. Our understanding from that meeting and your March 17 letter is that Catellus wishes to withdraw from the Master Developer Selection process. If we are incorrect in this conclusion, please notify us no later than March 22, 2016, as your decision will impact the logistics for the City Council meeting on April 5, 2016, at which Council is expected to select a Master Developer.

While I did not participate in the meeting last Monday I am informed by City staff and participating consultants that the following are the key points of the discussion prompting your letter:

1. Catellus requested several changes to terms in the Agreement to Negotiate and Catellus' DDA Term Sheet as a condition of continuing in the Master Developer selection process.
2. Contrary to the reasons listed in Catellus' letter, staff never indicated that the Navy's conveyance timeline would prolong or impact our timely negotiation of the DDA or business terms related to the EDC application. In fact, to address Catellus' expressed concern about upfront or "potentially at-risk" costs, staff confirmed that, should Catellus be selected, the work of preparing a Specific Plan and the associated expenses could be deferred until after approval of a DDA.

3. The request by Catellus to designate various fees and earnest deposits as reimbursable by City would shift significant financial risk to the City and require an amendment to the Catellus Agreement to Negotiate. City staff told Catellus they did not think Catellus' proposed changes would be in the best interest of the City and therefore staff would not recommend approval of those changes to the Council. Just as staff did not agree to allow Lennar to amend its term sheet following submittal, so staff will not recommend changes to the agreed-upon process with Catellus.
4. Catellus asked City staff if, despite the terms of the Agreement to Negotiate, the City would refund Catellus' Good Faith Deposit of \$250,000 if Catellus withdrew from the Master Developer selection process and waived and released any and all claims it may have against the City or the LRA. Staff responded that they would recommend to the Council that it support such a refund and settlement if requested by Catellus.

City staff will have a closed session with the Council to discuss your threat of litigation and Catellus' proposed offer to settle all claims against the City or the LRA. However, the City Council will not be able to complete its deliberation on this matter before April 5. Therefore, it is essential that you let us know as soon as possible, and no later than March 22, 2016, whether we have misread your intent.

Sincerely,



Valerie Barone
City Manager

cc: Guy Bjerke, Director of Community Reuse Planning



CATELLUS

March 22, 2016

Valerie Barone
City Manager
City of Concord
1950 Parkside Dr.
Concord, CA 94519

VIA EMAIL

Re: Catellus Position Concerning Next Steps for Master Developer

Dear Ms. Barone:

I received your letter dated March 18, 2016 and have discussed my comments with Guy Bjerke. Although we don't agree with several of the points made in the letter, we don't think it makes sense to continue to go back and forth on our different interpretations of the items you referenced. However, one thing I want to specifically respond to is that we have not threatened litigation.

To be clear, at this point we have not withdrawn from the process, but have asked for reasonable clarifications to the Agreement to Negotiate and the Catellus DDA Term Sheet.

We believe the economics and structure of our proposal are significantly better for the City than those of Lennar's (as was determined by your staff). Catellus would prefer to continue moving forward in this process, yet every week, there seem to be new mistruths, fabricated by certain individuals, which make it difficult for us to have confidence that the City wants a successful, long-term partnership with Catellus. As such, we view these clarifications as reasonable given everything that has happened over the last year. In addition, it would seem that the City would be motivated to work with us, given the many documented benefits of our proposal.

However, given the City's preference not to consider our request, it makes sense for both parties to explore alternatives that would be acceptable to both the City and Catellus. With that in mind, if the City offers to refund to Catellus the \$250,000 Good Faith Deposit, we would

be willing to withdraw from the process and waive and release the City from any Claims we may have against the City or the LRA (a mutual release). If this is the course of action you prefer, please prepare the release for our review.

Sincerely,

A handwritten signature in black ink, appearing to read "Ted Antenucci", with a long horizontal flourish extending to the right.

Ted Antenucci

Cc: Guy Bjerke, Director of Community Reuse Planning
Michael Wright

**CONCORD NAVAL WEAPONS STATION
TERM SHEET FOR
DISPOSITION AND DEVELOPMENT AGREEMENT
BETWEEN CITY OF CONCORD, IN ITS CAPACITY AS THE LOCAL REUSE
AUTHORITY (“CITY” OR “LRA”) AND
CATELLUS DEVELOPMENT CORPORATION (“DEVELOPER”)**

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CONCORD NAVAL WEAPONS STATION

TERM SHEET FOR DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN CITY OF CONCORD, IN ITS CAPACITY AS THE LOCAL REUSE AUTHORITY (“CITY” OR “LRA”) AND CATELLUS DEVELOPMENT CORPORATION (“DEVELOPER”)

1. Purpose of the Term Sheet and DDA

The purpose of this term sheet is to set forth the key business terms to be included in a Disposition and Development Agreement (“DDA”) between City of Concord (“City”) and Catellus (“Developer”) if City selects Developer as the preferred master developer and the parties enter the DDA Stage (as defined in the Agreement to Negotiate dated May 26, 2015 by and between City and Developer, as amended). The purpose of the DDA is to (a) provide for the disposition of the Development Phase One Property, as defined below, to Developer through multiple phased closings and (b) effectuate the timely development of the Development Phase One Property with a range of land uses substantially consistent with the desires set forth by the community in the CRP Area Plan, as defined below, including parks and open space, public amenities and facilities as well as residential and commercial uses.

The following are defined terms for discrete geographic areas that are referred to throughout the Term Sheet document:

- a. Concord Reuse Project Area (“CRP Area”). Approximately 5,028 acres known as the Inland Area of the Concord Naval Weapons Station.
- b. Concord Reuse Project Area Plan (“CRP Area Plan”). The vision, policies, and standards set forth by the community and approved by City Council on January 24, 2012 for the transformation of the Concord Naval Weapons Station into the City’s newest neighborhoods and open spaces.
- c. Regional Park. Approximately 2,700 acres of the CRP Area that will be set aside for habitat conservation/restoration, open space and passive recreation pursuant to a public benefit conveyance from the United States government to a regional parks agency.
- d. Public Benefit Conveyance (“PBC”) Areas. Approximately 80 acres of the CRP Area that will be set aside for various public benefit uses including, potentially, a first responder training facility.
- e. Development Footprint or EDC Property. Approximately 2,248 acres of the CRP Area that will be transferred in phases by Navy to City under the economic development conveyance provisions of the Base Closure and Realignment Commission (“BRAC”).

- f. First Transfer Parcel. Approximately 1,400 acres of the Development Footprint that will be transferred in the first phase by Navy to City.
- g. Development Phase One Property. Approximately 423 acres as depicted in **Exhibit A – Development Phase One Property**. The Development Phase One Property is a portion of the First Transfer Parcel.

2. Project Summary

Developer's vision for the Development Phase One Property is to establish a world-class, sustainable, transit oriented village early on in the evolution of the EDC Property. The focus of the Development Phase One Property is the adjacency to the North Concord BART Station which the Developer believes is the single most important factor in achieving this vision.

Developer's proposal for the Development Phase One Property contemplates development in a manner consistent with the community's vision as outlined in the CRP Area Plan by focusing on key project assets like the North Concord BART Station and adding new amenities such as a 10 acre, 200 foot wide "Central Park" in the heart of the Development Phase One Property. In order to meet the goals of the CRP Area Plan with respect to transit, sustainability, walkability, and bike accessibility, Developer's proposed development of the Development Phase One Property is focused on developing commercial and residential uses within a 5 – 15 minute walk of the North Concord BART Station. New development is organized around a walkable grid that undulates with the topography, heightens diversity, and builds connections to amenities and resources that will add to the quality of life of existing and future Concord residents. The contemplated development of the Development Phase One Property will include a "Village Center" with employment and tax generating uses that will become an economic engine for the City and region. See **Exhibit A** for location of the Village Center.

As described in Section 3 below, Developer anticipates that it will develop the Development Phase One Property with approximately 4,401 residential units (25% of which will be affordable units), up to 150,000 square feet of TOD Core (as defined in the CRP Area Plan) and neighborhood-serving retail, a 333,000 square foot regional retail center, and approximately 118 acres of public parks and greenways (collectively, the "Project"). The Project will be designed to include approximately 18 acres of land owned by BART (subject to negotiation with BART). The BART property could accommodate a substantial amount of employment generating office, commercial, and retail uses adjacent to the North Concord BART Station. In the event the BART property does not become part of the Development Phase One Property, Developer will reprogram the Village Center to ensure employment generating office and commercial uses are included in the Development Phase One Property, adjacent to the BART station.

3. Project Description and Phasing of Project Components

The CRP Area Plan requires that the development of the Project be governed by a Specific Plan that sets forth detailed development standards, policies, guidelines, and infrastructure requirements (the “Specific Plan”). The Specific Plan will be developed with significant community input through a series of design community workshops and planning meetings to insure public feedback is understood and incorporated.

While the details of the proposed Project, including permitted uses, building heights, design guidelines, requirements for phasing and financing of infrastructure, will be set forth in and subject to the Specific Plan and related Project entitlements (the “Project Entitlements”) and subject to other regulatory approvals for development of the Project (together with the Project Entitlements, the “Project Approvals”), the parties agree that the Project proposed to be developed by Developer will include the key components and amenities in all material respects as set forth in this Section 3, which will be developed according to the schedule and phasing requirements subject to the provisions of Section 4 below.

Developer intends to phase the development of the Project with the goal of establishing:

- A robust level of improved parks and open space benefitting all of Concord;
- The development of community facilities, including schools, consistent with the rate of residential and commercial development;
- The development of affordable housing at a pace commensurate with development of market rate housing; and
- The development of the Transit Oriented Development (“TOD”) Core (as defined in the CRP Area Plan) and neighborhood serving retail consistent with the goals of the CRP Area Plan.

Developer will commit to complete certain key elements of the Project, such as recreational amenities, affordable housing, community facilities, neighborhood serving retail, and development in the TOD Core, as detailed in this Section 3. Additional Project improvements and amenities will be added to the Project in accordance with the EDC Property Improvement Fund discussed at the end of Section 3 and in Section 11 below.

The Specific Plan will include an anticipated phasing plan for development of the Project including specific proposed sub-phases. Each sub-phase will identify the anticipated acreage for market rate housing and commercial development, the anticipated public utility systems and street network (the “Backbone Infrastructure”) required to serve the sub-phase, and the anticipated parks and community facilities within the sub-phase. Backbone Infrastructure will be designed to accommodate the ultimate build out of the EDC Property. For illustrative purposes, a Conceptual Phasing Strategy has been attached as **Exhibit B – Conceptual Phasing Strategy**. A summary of the Conceptual Phasing Strategy is provided in the table below; however, the phasing plan for the Project will be further refined during the Specific Plan process.

Summary of Conceptual Phasing Strategy – Years 1-10

Conceptual Phasing Program
 Catellus - Development Phase One Property
 Concord Naval Weapons Station

Year	Parks/Open Space (Acres)	Single Family Detached (Units)	Multi-Family & Single-Family Attached (Units)	Total Residential (Units)	Regional Retail Center (Sq. Ft.)	Village Center Mixed-Use Commercial & Neighborhood Retail (Sq. Ft.)
One	9	126	103	229	-	-
Two	5	126	191	317	333,000	-
Three	10	126	240	366	-	20,000
Four	11	168	247	415	-	-
Five	12	210	254	464	-	-
Six	21	210	586	796	-	-
Seven	20	177	574	751	-	-
Eight	17	126	514	640	-	-
Nine	13	84	304	388	-	130,000
Ten	-	30	5	35	-	-
Total	118	1,383	3,018	4,401	333,000	150,000

*Figures are based on market studies for residential and commercial development and are estimates only.

** Actual phasing will depend on market demand. Figures include affordable housing.

***Village Center will be designed to include 18 acres of BART land (subject to negotiations) & +/- 1.7mm sq. ft. of commercial development

- a. **Residential Development.** Consistent with the CRP Area Plan, Developer will provide a range of residential product types at varying densities and prices, including 25% affordable housing as discussed below. The Project would include approximately 4,401 residential units (unit count assumes the First Transfer Parcel includes the CRP Area Plan land adjacent to the Coast Guard Housing site) as generally shown in the Land Use Program table attached as **Exhibit C – Land Use Program**. Unit count, density, and product types will be further refined during the Specific Plan process.

- b. **Neighborhood Serving Retail Development.** In order to provide new residents and employees with retail shopping, retail services, and restaurant options within close proximity of their homes or offices, a minimum of 30,000 square feet of neighborhood serving retail will be located in the TOD Core and/or TOD Neighborhood areas (as defined in the CRP Area Plan). Developer will commence construction of the Backbone Infrastructure to serve neighborhood-serving retail parcels as depicted in **Exhibit B – Conceptual Phasing Strategy**, concurrently with the Certificate of Occupancy of the 200th market rate residential unit, and diligently pursue vertical development of same in accordance with the time frames set forth in the Schedule of Performance (more particularly described in Section 4). Neighborhood serving retail may include grocery, restaurants, and daily needs retail such as banking and pharmacy.

- c. TOD Core Development. Consistent with the CRP Area Plan, the TOD Core will be planned as a region-serving mixed-use employment center within a short walking distance of BART, with Class A offices, retail shopping, services, restaurants, plazas and open spaces. Developer is proposing multi-family residential, office, commercial, and retail in a “Village Center” format. Consistent with the CRP Area Plan, the TOD Core will include multi-family residential product types with ground floor retail and services. Residential development will include market rate for sale units, market rate rental units, and affordable units.

The Village Center will be designed to incorporate both the TOD Core and approximately 18 acres of land currently owned by BART, which will be targeted to employment generating commercial/office/retail uses (subject to successful negotiations with BART). Retail development in the Village Center will be in the range of 30,000 to 150,000 square feet depending on community feedback. Other potential uses include hotel services and entertainment.

In order to provide new residents and employees with immediate access to BART, Developer will complete pedestrian, bicycle, and vehicular connections to the TOD Core and the North Concord BART Station as depicted in **Exhibit B – Conceptual Phasing Strategy**, concurrently with development of the first development sub-phase. Developer will commence construction of the Backbone Infrastructure necessary to serve the Village Center concurrently with the Certificate of Occupancy of the 750th market rate residential unit, and diligently pursue vertical development of same in accordance with the time frames set forth in the Schedule of Performance.

- d. Recreational/Civic Amenities Development. In order to provide a wide variety of parks and recreational facilities as well as maximize open space, Developer will develop and construct the key recreational and civic amenities and public spaces detailed below and depicted on the attached **Exhibit D – Proposed Recreational/Civic Amenities**, subject to further refinement during the Specific Plan process. Additional recreational and civic amenities may be added to the Project in accordance with the EDC Property Improvement Fund discussed at the end of Section 3 and in Section 11 below.

Parks and boundary linear parks will have limited roadways designed to be minimally intrusive and will include Class 1 bike lanes, be designed with traffic calming features and for vehicular exclusion for special events, high pedestrian/bike uses, etc. Roads crossing parks will be limited to the extent feasible and designed in a manner that protects pedestrian connectivity and recreational use.

Parks will be completed at a pace commensurate with the completion of market rate residential units, on a per acre basis. Developer will commence construction of the parks in each sub-phase no later than the issuance of Certificates of Occupancy for fifty percent (50%) of the residential units in that sub-phase, and will diligently continue construction to completion.

- i. BART Gateway Public Plaza. A two acre public plaza adjacent to the North Concord BART Station connecting the residential areas of the Project to BART via pedestrian pathways, bicycle pathways, and vehicular connections. In order to provide immediate access to BART for the first new residents, the plaza will be completed concurrently with development of the first sub-phase.
- ii. Central Park. A ten acre, 200 foot wide central green, adjoined on either side by the central roadway connecting the Village Center and BART to Willow Pass Road. The Central Park will be completed in no more than four (4) phases concurrently with the adjacent residential development sub-phases, with construction of each phase of the Central Park being commenced no later than the certificate of occupancy for the residential unit representing fifty percent (50%) of the residential units in the applicable sub-phase.
- iii. Hilltop Park. An eleven acre promontory park located on the central ridgeline.
- iv. South Park. A nine acre community park.
- v. Perimeter Greenways/Buffers. Pedestrian paths and Class 1 biking paths totaling approximately sixteen acres.
- vi. School Park. Approximately nine acres will be set aside within the Development Phase One Property for a potential joint use neighborhood school and park. See Section 3.f below. The portion of the school site used for the school park will be counted toward satisfaction of Developer's park dedication obligations pursuant to the Quimby Act and the City's Municipal Code, in accordance with applicable law.
- vii. Canal and/or Mt. Diablo Creek Greenways. Buffers connecting the Development Phase One Property to the Regional Park, Willow Pass Park, and the local and regional trail system (including initial connectivity to the Delta DeAnza Regional Trail) totaling approximately twenty one acres. Recreational trail connectivity will be provided in consultation with the East Bay Regional Park District ("EBRPD") and consistent with the requirements of resource agencies. Consistent with the CRP Area Plan and subject to

agreement with the resource agencies, Developer will include a minimum 300 foot wide corridor along Mt. Diablo Creek (150 ft. on either side of center) for conservation/restoration. Developer will work with the City, EBRPD, and the resource agencies to enhance and restore Mt. Diablo Creek.

- viii. Tournament Sports Facility. The CRP Area Plan identifies the 75 acre Tournament Sports Facility as an important community facility to be included within the Development Footprint. Developer's Project proforma has set aside funds for completion of approximately 40 acres of the Tournament Sports Facility, including active sport facility improvements of approximately 18 acres with the balance of the 40 acres improved as parks and open space.
- ix. Neighborhood Parks. In addition to the 118 acres of master planned parks discussed above, each individual residential neighborhood will feature at least a two acre neighborhood pocket park as a central neighborhood feature.
- x. Entry Gateways / Monuments. Entry gateways and monuments will be completed at major ingress and egress points throughout the Project with careful consideration not to create "two Concords". Specifications will be determined with community input in the Specific Plan process.
- e. Affordable Housing Development. Developer will deliver affordable housing in an amount equal to twenty five percent (25%) of the total amount of residential units in the Project. Developer will work with the City to accommodate Homeless Housing requirements as required under BRAC. See Section 15 below.
- f. School Development. Developer will set aside approximately 10 acres within the Project, generally consistent with the size and requirements for an elementary school, so long as the Mt. Diablo Unified School District (the "School District") deems a school site to be necessary. Developer will diligently work with the School District on construction timing and phasing. In the event the School District decides the Project will not generate sufficient demand for a new school or if an alternative (such as re-opening a closed school) is preferred, Developer and City will collaborate as to the final land use for the designated school site. Actual size and location of the planned school site will be determined during the Specific Plan process.
- g. Regional Retail Center Development. Developer intends to construct a 333,000-square-foot regional retail center at the corner of Willow Pass Road and Highway 4 to serve Project residents and which will provide an additional shopping center amenity for Concord residents and will increase

the City's sales tax collection. The regional retail center will be located within the CRP Area Plan's commercial flex district that encourages a range of commercial uses including retail, business, industrial park, or hotel. Developer will diligently pursue vertical development of same in accordance with the time frames set forth in the Schedule of Performance. The commercial flex district and the regional retail center will be connected to the North Concord BART Station, TOD Core, and new housing areas via a proposed frontage road that will include pedestrian, bicycle, and vehicular pathways.

- h. Golf Course/Evora Road. Consistent with the CRP Area Plan, in order to create an east-west connection north of Highway 4 and provide additional pedestrian and bicycle connections from the CRP Area to existing neighborhoods within the City, Developer will construct an extension of Evora Road from Port Chicago Highway to the existing cul-de-sac adjacent to Willow Pass Court, and reconfigure and reconstruct portions of the municipal golf course adjacent to the First Transfer Parcel, as needed to support the Project. City will maintain ownership of the municipal golf course, including that portion currently owned by the Navy.
- i. Sustainability, Transit, and Neighborhood Benefits.
 - i. The Specific Plan will be consistent with the community's vision set forth in the CRP Area Plan and Climate Action Plan and shall implement or exceed the goals and objectives of the CRP Area Plan and Climate Action Plan, including those regarding sustainability, transit, community character, and economic vitality.
 - ii. Developer will establish a transportation demand management program ("TDM") to ensure compliance with the CRP Area Plan's goal for a convenient, multi-model transportation system including encouraging walking, bicycling, and transit use.
 - 1. The TDM program will provide for a subsidized shuttle service, funded by TDM assessments. Developer will use best efforts to come to an agreement with County Connection to become the shuttle provider.
 - iii. Developer will prepare and implement a bicycle and pedestrian connectivity plan to provide for safe connections from surrounding neighborhoods into the Project.
 - iv. Developer will endeavor to accommodate seniors with a variety of needs and resources, including residents of the Concord area who may be looking for options that allow them to stay in the community. In addition to the affordable housing component, the Project will include a range of housing types from compact single-

family homes to apartments in higher density buildings that are specifically designed with the needs of seniors in mind.

- v. Developer is committed to sustainable design throughout the Project consistent with the CRP Area Plan. Developer intends to meet or exceed the CRP Area Plan's Sitewide Green Building Standard CA-3 to achieve net positive energy production within the Development Phase One Property.
 - vi. Developer will coordinate with CCTA, and other relevant agencies and stakeholders, to ensure that county and regional transportation infrastructure investments are aligned to reduce vehicle miles traveled ("VMTs") and ensure transit ridership and reduction of congestion.
 - vii. Developer will comply with the CRP Area Plan requirements for smart growth and compact development standards.
 - viii. Developer will pursue water neutrality consistent with the CRP Area Plan, including the design of grey water systems into the Project where feasible and permitted by State health agencies.
- j. EDC Property Improvement Fund. EDC Property Improvement Fund: The Project will provide a comprehensive package of public amenities, including the affordable housing, neighborhood-serving retail, TOD Core, recreational/civic amenities, parks and plazas, and school site described in this Section 3, as well as substantial public improvements to City's infrastructure, including transportation and utility systems. Developer anticipates that the inclusion of these amenities and public improvements will greatly enhance the success of the Project, both as a community and financially. Developer also recognizes that, given the long-term nature of the Project, City may desire to enhance or accelerate the construction of certain anticipated amenities or to add other currently unanticipated amenities in the future. In order to create an opportunity for City to share in, and further enhance, the success of the Project thought provision of such amenities, Developer proposes to create an "EDC Property Improvement Fund" (as defined in Section 11). In the event that the Project is performing such that the parties anticipate that proceeds from the Lookback Waterfall (as defined in Section 11) will be available, the DDA will require the City to use the EDC Property Improvement Fund to invest in additional amenities or public infrastructure for the benefit of the Development Phase One Property. For example, when funds become available in the EDC Property Improvement Fund, City could decide to enhance or accelerate the construction of the Tournament Park. The details of the EDC Property Improvement Fund are further described in Section 11.

4. Schedule of Performance

- a. Commitment to Schedule of Performance. Developer will commit to a detailed schedule of performance (the “Schedule of Performance”) to be included in the DDA, which will provide the City with the right to terminate the DDA and/or exercise certain repurchase rights if Developer does not meet outside dates for achieving various milestone targets. Although Developer will not be obligated to proceed if certain conditions precedent to Developer’s obligation to commence Backbone Infrastructure, as described in Section 9, or conditions precedent to Developer’s obligation to acquire land, as described in Section 10, are not satisfied or waived, City will retain its termination rights if Developer fails to meet the outside dates in the Schedule of Performance. This approach gives the City long-term control over the land in the event of non-performance by Developer.
- b. In-Tract Infrastructure. Developer will complete Backbone Infrastructure pursuant to the “Lease Addendum” (defined below) prior to conveyance of land in accordance with Section 5 below. Developer will also have the right, but not the obligation, to concurrently construct any in-tract streets, utilities and other infrastructure required for vertical development of a sub-phase (“In-Tract Infrastructure”) pursuant to the Lease Addendum. Installation of Backbone Infrastructure in each applicable phase will allow the release of specific parcels of land for conveyance to Developer or other vertical builders.
- c. Construction and Conveyance Milestones. The Schedule of Performance in the DDA will establish outside dates for the commencement of construction of the Backbone Infrastructure and the conveyance of land in connection with the commencement of vertical construction, as set forth below (the “Construction and Conveyance Milestones”). If Developer (or the vertical builder) fails to meet these dates, the City will have remedies, including termination. The following are the Construction and Conveyance Milestones and outside dates for vertical construction:
 - i. Construction of Backbone Infrastructure. Commencement of construction of Backbone Infrastructure on the initial portion of the Development Phase One Property will occur not later than the date (the “Outside Construction Commencement Date”) which is thirty (30) months following the date upon which (A) the Federal Government will have conveyed the real property that is the subject of the “Initial Takedown” (defined below) to the City by deed including the covenant provided for in CERCLA section 120(h)(3)(A)(ii) (except to the extent such property is conveyed under a FOSET rather than a FOST), (B) the City will have approved the Specific Plan and the Development Agreement and approved a CEQA document in connection therewith, and (C) the City will have approved a large lot tentative map, and

corresponding improvement agreements and payment and performance bonds, and approved any development permit required for construction of the Backbone Infrastructure for the Initial Takedown. Developer shall submit a large lot tentative map application to the City within twelve (12) months following execution of the Development Agreement and approval of the Specific Plan. The date upon which all of the foregoing events have occurred may be referred to as the "Trigger Date".

- ii. Initial Transfer of Property. Transfer of the initial portion of the Development Phase One Property consisting of not less than twenty five (25) acres ("Initial Takedown") to Developer or a vertical builder for commencement of vertical construction will occur no later than thirty (30) months following the Outside Construction Commencement Date (the "Outside Initial Takedown Date").
- iii. Subsequent Transfers. Following the date upon which the Initial Takedown actually occurs (the "Actual Initial Takedown Date"), Developer will acquire a minimum of forty (40) acres (each a "Takedown") per year (each, including the Actual Initial Takedown Date, a "Takedown Date") calculated on a three (3) year rolling cumulative average as of each anniversary of the Actual Initial Takedown Date, subject to satisfaction of the Conditions Precedent to Conveyance of Parcels (defined in Section 10).

In calculating the acreage for purposes of each Takedown, acreage for net developable land, Backbone Infrastructure, In-Tract Infrastructure, and Parks will be included.

- iv. Annual Updates. Developer will provide the City with annual updates describing the portions of the Development Phase One Property acquired as of such update and the portions of the Development Phase One Property anticipated to be acquired by Developer in the two (2) years following the date of such update.
- v. Retail Construction. The vertical builder (including potentially Developer, Developer Affiliate and/or third-party vertical developer), will commence vertical construction on any parcel of retail land acquired by such vertical builder no later than twelve (12) months following the applicable Takedown Date for such parcel and will complete construction no later than sixty (60) months following the applicable commencement date.
- vi. Office Construction. The vertical builder (including potentially Developer, Developer Affiliate and/or third-party vertical developer), will commence vertical construction on any parcel of office land acquired by such vertical builder no later than twenty four (24)

months following the applicable Takedown Date for such parcel and will complete construction no later than sixty (60) months following the applicable commencement date.

- vii. Residential Construction. The vertical builder, will commence vertical construction on any parcel of residential land acquired by such vertical builder no later than twenty four (24) months following the applicable Takedown Date for such parcel and will complete construction no later than sixty (60) months following the applicable commencement date.
- viii. Conditions and Milestones. Developer's obligation to commence construction of the Backbone Infrastructure is subject to satisfaction of the "Backbone Infrastructure Commencement Conditions" (defined below). Developer's obligation to acquire, and City's obligation to convey, the Initial Takedown and any subsequent Takedown is subject to satisfaction of the Conditions Precedent to Conveyance of Parcels. Notwithstanding the foregoing though, any failure to achieve the vertical construction milestones described in the Construction and Conveyance Milestones will trigger certain land repurchase rights in favor of the City, as set forth in Section 22 (Default and Remedies).

5. Interim Lease

- a. Property Management. Developer will enter into an "Interim Lease" with City upon conveyance of the First Transfer Parcel from the Navy to the City, which will provide for Developer to manage and maintain the First Transfer Parcel, including the following terms:
 - i. Developer as a Project Cost, will operate, manage and maintain the entirety of the First Transfer Parcel, including providing security, maintenance and management of grazing or other leases.
 - ii. As additional EDC Property is conveyed by the Navy to the City, such property will be automatically added to the premises covered by the Interim Lease.
 - iii. Developer will cooperate with the Navy and EBRPD to explore joint security and property management arrangements under which the entirety of the Concord Naval Weapons Station property, including the First Transfer Parcel, the PBC Property and that portion of the EDC Property not yet transferred by the Navy, could be managed by one party with the costs shared among Developer, EBRPD and the Navy.
 - iv. The Interim Lease will be terminated in part if, and to the extent that, fee title to portions of the Development Phase One Property

are transferred to Developer or vertical builder pursuant to the terms of the DDA.

- v. City will acknowledge in the Interim Lease, through appropriate recitals and indemnification and other provisions, that Developer is not accepting financial responsibility for hazardous materials on the leased property except to the extent that Developer's management of the leased land causes a new release of hazardous materials or worsens a release existing as of the commencement of the Interim Lease. The Interim Lease will confirm the parties' commitment to cooperate so as to maximize the benefit of the Navy's obligations to remediate, or fund the remediation of, hazardous materials present as of the Navy's conveyance(s) to the City, whether the physical remediation occurs in one or more discrete projects or in conjunction with Developer's activities (e.g., construction of Backbone Infrastructure).
- b. Backbone Infrastructure Lease Addendum. Developer proposes to construct Backbone Infrastructure within the Phase One Development Property via a Backbone Infrastructure "Lease Addendum" to the Interim Lease, rather than taking fee title to the land. Below is a summary of the benefits to the City as well as an overview of the proposed process.

Benefits of a Backbone Infrastructure Lease Addendum:

- i. The City will continue to own the land as Developer funds and installs Backbone Infrastructure, ensuring that the City controls the land until Backbone Infrastructure is complete and the land is ready for vertical development. This approach ensures that, in the event of a Developer default, City will not need to pursue legal remedies such as a foreclosure or other reconveyance proceedings in order to regain ownership and control of the land.
- ii. The Project does not immediately incur carrying costs of taking title to the land (property taxes, transfer tax, closing costs, etc.). Deferring Project carrying costs will allow the money saved to flow back into the Project and be invested in other EDC Property improvements and amenities and/or provide the City and Navy with more profit sharing in the Lookback Waterfall.

Backbone Infrastructure Construction Process under a Lease Addendum:

- i. Developer and City enter into an Interim Lease for the First Transfer Parcel upon conveyance of the First Transfer Parcel from Navy to City.

- ii. The City and Developer identify a sub-phase of development and prioritize public improvements and amenities and confirm financial viability.
- iii. When Conditions Precedent to Commencement of Backbone Infrastructure have been met (Section 9), Developer and City enter into a Lease Addendum pursuant to which Developer constructs Backbone Infrastructure to serve the parcel or sub-phase. As provided in Section 13.c below, Developer will coordinate all remediation on the Development Phase One Property and will interface with Navy to address and remediate hazardous materials that may be discovered on the Development Phase One Property during installation of Backbone Infrastructure. Further, Developer acknowledges and agrees that upon the effective date of the Lease Addendum, as between Catellus and City only, Developer will be deemed an “operator” for purposes of liability under CERCLA (42 USC section 9601 *et seq.*) with respect to the parcel or sub-phase that is the subject of the Lease Addendum.
- iv. After Developer completes Backbone Infrastructure and satisfies all other Conditions Precedent to Conveyance of Parcels, City conveys the land to Developer or the vertical builder for vertical construction.
- v. If conveyance of land does not occur by the applicable Takedown Date, City has remedies, including termination of the DDA.
- vi. After conveyance of land, vertical builder has deadlines to commence and complete vertical construction (Section 4). If vertical builder does not meet deadlines, the City has remedies, including land repurchase rights.

6. Backbone Infrastructure

- a. Backbone Infrastructure Completion Schedule. Backbone Infrastructure will be designed and constructed in accordance with an infrastructure completion schedule to be mutually agreed upon by Developer and City and included in the DDA Schedule of Performance. A list of the general Backbone Infrastructure that is included in Developer’s proforma is attached as **Exhibit E – Backbone Infrastructure**. A preliminary Backbone Infrastructure master phasing plan will be attached to the DDA as an exhibit. The master phasing plan will be used in the same manner as the Project Proforma (i.e., for planning purposes, not as a performance standard for Developer).
- b. Developer Obligation. Developer will be responsible for all Backbone Infrastructure regardless of the nature of disposition of each site and

regardless of whether vertical development is subsequently performed by Developer, Developer Affiliate or third-party vertical developers or end users.

- c. Utilities. The parties will cooperate to solve utility issues and work with current and new utility providers.
- d. Utility Oversizing. The parties acknowledge that the Backbone Infrastructure will include utilities sized to accommodate the development of the entire Development Footprint, including the balance of the First Transfer Parcel and potential future uses for the North Concord BART Station based on coordination with BART.

7. Project Entitlements

- a. Specific Plan. As noted in Section 3 above, the details of the Project to be developed will be set forth in a Specific Plan to be prepared by Developer. The Specific Plan will be prepared in accordance with California law, will be consistent with the CRP Area Plan and Climate Action Plan, and will:
 - i. Be based on substantial community input, review by the City's Boards and Commissions (including Planning Commission, Design Review Board, and the Parks, Recreation and Open Space Commission) and final approval by the City Council;
 - ii. Reflect consultation with key stakeholders, the general Concord community, residents in the immediate vicinity, BART and EBRPD;
 - iii. Include appropriate management planning documents to minimize construction impacts on existing residents and protect public health and safety;
 - iv. Include a minimum 300 foot wide corridor along Mt. Diablo Creek (150 ft. on either side of center) for conservation/restoration and flood control;
 - v. Identify Backbone Infrastructure needed to support the development of the Project, as well as the entire Development Footprint, which may include requirements outside the Project boundaries, such as the North Concord BART station property; and
 - vi. Include design standards and guidelines, as set forth below, as well as a process for implementation:
 - 1. Design Guidelines. The Specific Plan will establish design guidelines for all vertical development within the Project. The design guidelines will be consistent with the community's vision set forth in the CRP Area Plan and

Climate Action Plan and shall implement or exceed the goals and objectives of the CRP Area Plan and Climate Action Plan contained therein (including those regarding sustainability, transit, community character, and economic vitality).

2. Site Plan Approval and Design Review. Site plan approval and design review applications will be reviewed for consistency with the Specific Plan and design guidelines and will follow a process which will be set forth in the Specific Plan. Unless otherwise agreed to by the parties, the Specific Plan will require approval of all applications for site plan approval and design review by the Planning Commission, subject to appeal to the City Council. The Specific Plan will provide a process for approval of amendments to site plan approvals and design review approvals by the Planning Manager. Site plan approval and design review applications may be processed consecutively or concurrently, at Developer's election.
- b. Development Agreement. Concurrently with approval of a Specific Plan, Developer will enter into a Development Agreement with City that provides the following:
- i. An initial term of fifteen (15) years with, upon written request to City from Developer, an option to extend for an additional seven (7) years if Developer has not committed an uncured event of default within such 15 year period and is on target to satisfy those Construction and Conveyance Milestones, if any, required to be achieved after year 15.
 - ii. Vested rights to develop in accordance with the Project Approvals and applicable City laws and regulations in effect as of the effective date of the Development Agreement ("Applicable City Laws"). New City laws that conflict with the Project Entitlements or Applicable City Laws will not apply; provided, however, the Project will remain subject to applicable building codes, new City laws that do not conflict with the Project Approvals and Applicable City Laws, and new City laws necessary to protect public health and safety.
 - iii. Project improvements and amenities consistent with Section 3.
 - iv. Developer to pay all processing fees, at rates then in effect.
 - v. Public infrastructure and other public facilities (including land therefor) dedicated by Developer will be counted toward satisfaction of Developer's City impact fee obligations with respect

to impact fees that otherwise would be collected to fund such infrastructure and facilities. These fees will include, without limitation, City impact fees for storm water, traffic, parks, affordable housing, and other applicable City impact fees.

- vi. The Development Phase One Property will be subject to all City impact fees in effect as of the effective date, including any fee escalation provisions in effect as of the effective date, or if no such fee escalation provision exists, a fee escalation based on an index agreed upon by the parties. Except as otherwise provided above, new or increased City impact fees will not apply to the Development Phase One Property for a period of ten (10) years after the Effective Date. This initial period will be extended for the term of the Development Agreement if Developer has not committed an uncured event of default within such 10 year period and is on target to satisfy those Construction and Conveyance Milestones, if any, required to be achieved after year 10.
 - vii. Assignment rights and remedies consistent with the DDA.
- c. California Environmental Quality Act (“CEQA”). City will analyze the Specific Plan and related Project Entitlements under CEQA at Developer’s expense. Developer will comply with all applicable mitigation measures and monitoring and reporting requirements in accordance with and as required by the Final EIR for the CRP Area Plan, the Addendum for the CRP Area Plan, additional environmental review required to approve the DDA, if any, and the additional environmental review required in connection with the Specific Plan and related Project Entitlements. This CEQA review is expected to include, and build upon, the mitigation measures incorporated into the mitigation monitoring and reporting program for the CRP Area Plan Final EIR. City shall retain 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.

8. Reimbursement of City Costs

Developer will enter into a reimbursement agreement with City to provide for the payment of City’s and the Local Reuse Authority’s (“LRA”) internal, third party and consultant costs in connection with the review and processing of Developer’s Specific Plan, Development Agreement, CEQA compliance, land use entitlement and permit applications and interim lease agreements, and applications for federal, state and other regulatory agencies to complete the transfer process from the Navy and associated

activities. Developer would acknowledge that City may retain third-party professionals to assist City staff in negotiating, drafting, processing and implementing the DDA, Development Agreement, Specific Plan and all subsequent project agreements, plans, permits, and/or other entitlements, including related environmental review. Developer shall have the right to retain a third-party consultant or consultants of its choosing for the purpose of preparing its Specific Plan, subject to the approval of the City. Costs would be payable within thirty (30) days of City's written demand which shall be accompanied by copies of invoices or other reasonable evidence of such costs. The reimbursement agreement would provide for an "evergreen deposit", in the amount of \$550,000, to secure Developer's obligations to pay such costs. If the City draws on the deposit to pay any such costs, Developer would be obligated to deposit with City additional funds to fully replenish the Deposit within forty five (45) days of City's demand therefor. The following City and LRA internal, third party and consultant costs would be paid pursuant to the reimbursement agreement:

- a. City Staffing. City's fully loaded costs to maintain a suitable level of staffing for the Project, which the parties currently estimate will be 2.5 full-time equivalent staffing within the Community and Economic Development Department, made up of a dedicated principal planner supported by up to an additional 1.5 full-time equivalent staffing at a variety of levels, to (i) participate in the preparation and review of the Specific Plan, such as review scope of work and approach to outreach process, meet regularly with Developer and consultants, review interim and final deliverables, and prepare staff reports for Council and Board/Commission review; (ii) lead and expedite review of Project development applications; and (iii) interface with other City departments on the Developer's behalf.
- b. LRA Staffing. City's fully loaded costs to maintain 2.0 full-time staffing equivalents for LRA project management.
- c. CEQA Review. Actual costs associated with City-led CEQA review, including (i) outside consultant costs to prepare environmental documents and studies; and (ii) costs of consultants and outside legal counsel to manage, review and oversee the CEQA process.
- d. Outside Consultants. Actual costs of outside consultants and legal counsel to provide support to the City and LRA in implementation of the DDA, including but not limited to negotiation, drafting, processing and implementing the Development Agreement, Specific Plan and all subsequent project agreements and entitlements, and the LRA's project management costs to complete the negotiations and transfer process with the Navy.
- e. Administration Fee. An administration mark-up fee of 6.5% on the costs described in subsections a. and b. above to cover time spent by other City departments, including the City Manager, City Clerk, City Attorney, Engineering Division and Police Department (i.e. departments other than

Community and Economic Development Department and the LRA which are addressed above).

9. Conditions Precedent to Commencement of Backbone Infrastructure

Developer's obligation to commence construction of Backbone Infrastructure within any phase or sub-phase of development of the Development Phase One Property (each a "Parcel") will be subject to satisfaction (or waiver by the benefitted party) of the following conditions precedent (the "Backbone Infrastructure Commencement Conditions"):

- a. Fee Title. The Federal Government will have conveyed the Parcel to the City by deed including the covenant provided for in CERCLA section 120(h)(3)(A)(ii) (except to the extent such Parcel is conveyed under a FOSET rather than a FOST – this caveat can be removed if all of the Project is FOST).
- b. Project Approvals. The City will have approved the Specific Plan and the Development Agreement as to the Project.
- c. Approvals for Backbone Infrastructure. The City will have approved a large lot tentative map, and corresponding improvement agreements and payment and performance bonds, and approved any development permit required for the construction of the Backbone Infrastructure for the particular Parcel and other applicable agencies will have approved other Project Approvals necessary to construct the Backbone Infrastructure in the applicable phase.
- d. Insurance Policies. Developer will have submitted to the City evidence of the insurance required to be submitted to City, and any environmental insurance obtained by City before City's conveyance of the Parcel will be on terms subject to Developer's reasonable review and approval unless Developer elects to obtain its own environmental insurance.
- e. Commitment to Commence Improvements. Developer will demonstrate to the reasonable satisfaction of the LRA Executive Director that Developer will commence the required Backbone Infrastructure and is committed to continuously and diligently prosecute such Backbone Infrastructure to completion within the time provided in the Schedule of Performance.
- f. Targeted Hurdle. Developer will have determined in good faith through Project pro forma(s) that Developer will achieve the Developer Profit with respect to the applicable phase.
- g. Lease Addendum. The City and Developer will have approved the Lease Addendum for the applicable phase.

By way of clarification, Developer's failure to satisfy any of the Backbone Infrastructure Commencement Conditions described in subsections d

through g will have no impact on the time frames set forth in the Schedule of Performance, all of which shall remain unchanged, or City's remedies for Developer's failure to meet such time frames.

10. Conditions Precedent to Conveyance of Parcels

City will convey each Parcel comprising the Development Phase One Property to Developer (or to one or more vertical builders) by grant deed in multiple phases corresponding with Developer's phased build-out of the Backbone Infrastructure upon the satisfaction (or waiver by the benefitted party) of the following conditions precedent (the "Conditions Precedent to Conveyance of Parcels"):

- a. Satisfaction/Waiver of Backbone Infrastructure Commencement Conditions. The Backbone Infrastructure Commencement Conditions will have been satisfied (or waived) by the applicable party for the applicable phase.
- b. Approval of Assignee. If applicable, the City will have approved the proposed assignee if required under Section 21 including, without limitation, the ability of the assignee to fulfill its obligations.
- c. Assignee Formation Documents. If applicable, the assignee will 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 DDA as to such Parcel.
- d. Related Backbone Infrastructure. All Backbone Infrastructure required to serve the applicable Parcel will have been completed or bonded for or insured around.
- e. Approvals and Permits. Developer or the assignee will have obtained all discretionary Project Approvals required for the construction of the vertical improvements on such Parcel.
- f. Insurance Policies. If applicable, the assignee will have submitted to the City evidence of required insurance policies pursuant to the DDA.
- g. Commitment to Commence Vertical Improvements. Developer or the assignee will demonstrate to the reasonable satisfaction of the LRA Executive Director that the Developer or assignee will commence the vertical improvements and is committed to continuously and diligently prosecute such vertical improvements to completion within the time provided therefor in the Schedule of Performance.
- h. Map Act Compliance. The conveyance of the applicable Parcel will not constitute a violation of the California Subdivision Map Act.

- i. Miscellaneous Standard Closing Conditions. The parties will have submitted executed closing documents into escrow, title insurance policies will be ready to be issued and other standard conditions precedent to the transfer of real property must be satisfied (or waived).

If, despite the diligent good faith efforts of Developer and the City, any of the Conditions Precedent to Conveyance of Parcels have not been satisfied (or waived) prior to the applicable Takedown Date (described in Section 4) then either Developer or the City will have the right to terminate the DDA with respect to the Parcels not yet conveyed, and, in such event, Developer will be entitled to reimbursement from the City for all Project Costs incurred by Developer that are reasonably allocable to any Parcels not then acquired by Developer, which reimbursement obligation will be payable only from revenue received by the City from Project Revenue Sources for which such Project Costs would otherwise be eligible for reimbursement (including revenue generated from subsequent sales of such Parcels), which reimbursement obligation will be secured in a manner to be determined in the DDA.

11. Financial Deal Structure

- a. Proposed Financial Deal Structure. Developer proposes a financial deal structure that aligns public and private interests through an open sharing of information and profits. Under the proposed structure, each sub-phase of development will proceed only when Developer and the City have agreed on the private and public improvements and amenities to be constructed for a specific Parcel or in a sub-phase, and have jointly determined that Project Revenue Sources (defined below) are sufficient to fund both Project Costs (as defined below) and Developer Profit (as defined below) associated with such development. This structure allows the City to play a direct role in prioritizing the provision of public improvements and amenities, as well as allowing the City and the Navy to share in the profits of Project success. Some highlights of the deal structure are as follows, with additional detail further below:
 - i. Completely open book partnership allowing Developer and the City to prioritize EDC Property public improvements and amenities based on available Project Revenue Sources.
 - ii. Developer advances the money needed for land development with internal equity, which eliminates any dependency on third party financial partners. Developer is projecting to invest approximately \$700 million of its own money in the Project.
 - iii. Developer undertakes one hundred percent (100%) of the risk in obtaining an acceptable return; City provides no guarantee.
 - iv. Developer will rely solely on Project Revenue Sources, the City will NOT be responsible for any Project Costs.

- v. The Project benefits from the maximum amount of public amenities, quality local jobs, affordability, sustainability, and public improvements resulting from the EDC Project Improvements Fund (defined below) and the Lookback Waterfall (defined below).
 - vi. The proposed structure allows the City and Developer to determine the Project's priorities and how to make the Project balance financially.
- b. Development Process. Developer will manage the implementation of the Project:
- i. Developer will enter into contracts with, and will manage, the consultants and contractors required to entitle, process, and construct the Backbone Infrastructure, as detailed in Section 6, In-Tract Infrastructure and other horizontal development costs associated with the Project, including remediating hazardous materials, as needed, to complete the Backbone Infrastructure and In-Tract Infrastructure constructed by Developer.
 - ii. Developer will manage the process of selling land to vertical builders using a competitive bidding "Request For Proposal" process ("RFP Process") to select the builders for each phase of development. This process will allow Developer to select multiple, best-in-class builders, provide diverse architecture, and generate the highest land sale proceeds. Maximizing the land sale proceeds will maximize the benefits to the EDC Property, such as additional services, parks and open space, sustainability, and affordable housing. As part of the land sale process, Developer will manage ongoing compliance with the Project Approvals.
 - iii. City and Developer will cooperate to optimize the use of public financing wherever possible during the course of development of the Project.
 - iv. Developer will fund the cost of all eligible Project Costs and will be reimbursed for Project Costs incurred from Project Revenue Sources (defined below) and will earn a Developer Profit (defined below). City will not be responsible for any Project Costs.
 - v. Upon completion of the Project, after Developer has been reimbursed for Project Costs incurred and paid the Developer Profit, surplus proceeds will be shared with the City for the benefit of the EDC Property according to the Lookback Waterfall (defined below).
- c. Revenue Sources. The following sources of revenues ("Revenue Sources") will be accrued in a Project revenue fund available to reimburse

Developer for Project Costs and pay the Developer Profit, with all subsequent funds being shared between the City and Developer, all as detailed in this Section 11.

- i. Land Sales to Third Parties. Developer will notify the City that Developer is “going to market” with a site (i.e., is ready to commence an RFP Process to identify potential vertical builders for a particular Parcel). Once a preferred third party vertical builder has been selected by the Developer, the City will convey the applicable Parcel either to the Developer who will then convey to the third party vertical builder or directly to the third party builder (if acceptable to the City). Developer will use commercially reasonable efforts to sell land to non-affiliated third parties at purchase prices generally at or higher than similar prices then paid in the open market.
- ii. Land Sales to Developer Affiliate as Vertical Builder. In some cases (such as commercial development), a Developer Affiliate will act as the vertical builder. In this event, the following process will be followed to determine fair market value for the Parcel:

Step 1. Developer will notify City that a Developer affiliate intends to purchase a Parcel for vertical development.

Step 2. Developer will obtain an independent appraisal based on the proposed use to determine the fair market value of the Parcel, subject to City’s reasonable review and approval.

Step 3. Developer and City will agree on the Parcel purchase price as determined by the independent appraisal.
- iii. Profit Participation. Any and all profit participation payments paid to Developer by end users or vertical builders (the “Profit Participation Payments”) will be considered Revenue Sources.
- iv. Public Financing. Public financing, including proceeds from any Community Facility Districts, Enhanced Infrastructure Finance Districts, or other such infrastructure funding mechanisms, will be considered Revenue Sources.
- v. Other Sources. Other Revenue Sources can include grants, insurance proceeds, condemnation proceeds, interim revenue (e.g. rents), and other cash payments made to Developer in connection with its development of the Project. Other Sources would also include reimbursements from the Department of Defense pursuant to its statutory obligation(s) to indemnify City and/or Developer for costs associated with the investigation and remediation of hazardous materials.

- d. Project Costs. A detailed summary of Project Costs will be included in the DDA, but will generally include any and all actual and reasonable fees, costs and expenses incurred by Developer (or by City and reimbursed by Developer) that are necessary and reasonably related to the development, maintenance, and ownership of the Development Phase One Property or First Transfer Parcel in accordance with City's and Developer's obligations under the DDA, Development Agreement, Specific Plan and ancillary agreements. Project Costs will also include the following types of costs, all of which are reimbursed or paid to Developer through Project Revenue sources (not by the City).
- i. Developer Fees and Expenses. Developer is entitled to a project administration fee of \$750,000 per year, a construction management fee of four percent on hard and soft costs including infrastructure and site preparation costs, and commissions of three percent on single family residential land sales, four percent on land sales from other product types (commissions would be paid at closing of any land sales and split if land sales involve a co-broker), seven and one-half percent (7.5%) of any other sources (e.g., grants and awards obtained by Developer).
 - ii. City Costs. City costs to be reimbursed by Developer are further described in Section 8.
- e. EDC Property Improvement Fund. If the Project is performing such that City and Developer mutually agree that there is a high likelihood of future Lookback Waterfall Proceeds (as defined below), a portion of such expected proceeds will be required to be re-invested for the benefit of the Development Phase One Property through an EDC Property Improvement Fund. The "EDC Property Improvement Fund" will be established to allow the City and Developer to direct the investment of Project proceeds into additional amenities and improvements, above and beyond those amenities listed above and which have yet to be determined at this early state of planning. Expenditures can include additional community centers, community pools, additional parks, additional affordable housing and/or updating, improving or accelerating existing amenities within the Project. Expenditures of EDC Property Improvement Funds on Project amenities shall be considered a Project Cost as defined herein.
- f. Developer Profit. Developer is entitled to the greater of fifteen percent (15%) of total gross land sales revenue ("Land Sales Fee") or a fifteen percent (15%) Internal Rate of Return (compounded monthly on a cumulative basis using the amount and duration of Developer's contribution of equity to the payment of Project Costs) (the "IRR"). Developer advances Project Costs using its own money. For any land sale revenue, Developer will receive its Land Sales Fee and the remaining revenue goes into a "Project Revenue Escrow Account." The Project

Revenue Escrow Account is then used to reimburse Developer for any money advanced to pay for prior Project Costs and also set aside for future Project Costs. Separately, an accounting will be made of all money advanced by Developer and reimbursed out of the Project Revenue Escrow Account including the Land Sales Fee paid to Developer. To the extent that the money reimbursed to Developer from the Project Revenue Escrow Account, including the Land Sales Fee, is not enough to provide Developer with a fifteen percent (15%) IRR as described above, Developer would be entitled to additional monies from the Project Revenue Escrow Account to get Developer to a fifteen percent (15%) IRR (an “IRR Shortfall Payment”). All remaining monies after any required IRR Shortfall Payment will be distributed to the City and Developer according to the Lookback Waterfall described below.

- g. Lookback Waterfall. The net remaining cash flow after all Project Costs have been reimbursed to Developer, Developer's Land Sales Fee has been paid, and any required IRR Shortfall Payments have been paid, will be split as follows:
- i. For the first seventy million dollars (\$70,000,000) of Lookback Waterfall Proceeds, seventy percent (70%) to the EDC Property Improvement Fund and thirty percent (30%) to Developer.
 - ii. Next, thirty percent (30%) to City, seventy percent (70%) to Developer until Developer achieves a twenty percent (20%) IRR.
 - iii. Thereafter, seventy percent (70%) to City and thirty percent (30%) to Developer.
 - iv. As part of the negotiations with the Navy, Developer and City will work with the Navy to determine appropriate Navy participation in the portion of the Lookback Waterfall not allocable to Catellus.
- h. Project Accounting. Separate escrows will be established for the various Revenue Sources (e.g. land sales revenue proceeds and public finance funds). Project Costs will be paid from each escrow account in the agreed upon order (i.e. funds from public financing will be used to pay certain types of eligible Project Costs, then the land sales revenues are used until depleted, then Developer's equity contributions, if needed, are used). The types of accounts are set forth as follows:
- i. Project Revenue Escrow Account. The Project Revenue Escrow Account will include land sales proceeds, Profit Participation Payments from vertical builders, ground lease payments, fees, costs and other amounts paid by buyers / vertical builders.
 - ii. Public Finance Escrow Account. The Public Finance Escrow Account will include proceeds from any Community Facilities

District tax / bonds, Enhanced Infrastructure Finance District, or other available public finance methods.

- iii. Other. Additional accounts may be set up for other Revenue Sources, such as grants, insurance proceeds, or condemnation proceeds.

12. Fiscal Neutrality - Financing of Public Improvements and Publically Accessible Private Improvements

- a. Fiscal Neutrality. Developer recognizes that the City's general fund may not be adversely affected by the development of the Project. Simply stated, the revenues generated by the development from property taxes, sales taxes, and other sources must exceed the costs of providing City services to the Project such as fire, police, and maintenance of the Project's public roads, parks, and facilities.
- b. Community Facilities District. To finance the cost of construction of Backbone Infrastructure, Developer may propose establishing one or more community facilities district(s) ("CFD"). The City will cooperate with Developer in establishing one or more CFDs and issuing bonds secured by a lien on some or all of the Property as is designated by Developer. The City's general fund will not be adversely impacted because the bonds are repaid directly by property tax assessments on each applicable Project land parcel.
- c. Municipal Services District. To finance the cost of the long term maintenance of public improvements and public services, Developer will establish a CFD and/or Municipal Services District ("MSD"). Similar to a CFD, MSD assessments are secured by a lien on the Property, and not the City's general fund.
- d. Tax Increment. If tax increment financing is utilized to fund the cost of public infrastructure, the City and Developer will work cooperatively to balance the use of future tax increment generated by the Project with CFD and MSD revenue funds in order to ensure there is no adverse impact on the City's general fund.
- e. Publicly Accessible Private Improvements. Private infrastructure and open space will be publicly accessible and will be maintained by assessments on private associations, without requiring any expenditure from the City's general fund.
- f. Project Improvements Program Fund. City and Developer will cooperate to generate sufficient revenue proceeds for development of the Project as well as to fund ongoing maintenance costs for the public infrastructure and other Project improvements. Additional revenue sources could include

TDM revenues, HOA assessments, grant funding, reimbursements from third parties or other available sources of funds.

13. Hazardous Materials and Remediation

a. Finding of Suitability for Transfer.

i. City, in consultation with Developer, will obtain from the Navy a Finding of Suitability to Transfer (“FOST”) applicable to certain initial portions of the First Transfer Parcel (the “Initial Transfer Parcels”), as substantially depicted in **Exhibit F – CRP Area Plan**. The Initial Transfer Parcels will include carve outs of areas that will not be included in the Initial Transfer Parcels pending further investigation. City currently anticipates obtaining the FOST in early 2016.

ii. The FOST will contain standard land use controls regarding asbestos containing materials and lead. Areas that are not subject to specific land use controls stated in the FOST documentation will be eligible for unrestricted use, subject to the land use controls contained in the Navy deed, land use restrictions required by resource agencies or as may otherwise be imposed by governmental authorities under applicable State or Federal Law or the Project Entitlements established under Section 7.

b. Finding of Suitability for Early Transfer (“FOSET”). In the event an end user or other use opportunity exists to develop a parcel of land within the Development Footprint, but outside the First Transfer Parcel, and a FOSET is required, the City and Developer will work together to cause the Navy to convey the land via a FOSET with an Environmental Services Cooperative Agreement (“ESCA”) for private remediation. Areas that are not subject to specific land use controls required by regulatory agencies will be eligible for unrestricted use, subject to the Project Entitlements.

c. Remediation. Developer will coordinate all remediation on the Development Phase One Property and will interface with Navy to address and remediate hazardous materials that may be discovered on the Development Phase One Property during installation of Backbone Infrastructure or In-Tract Infrastructure or other development activities and following completion of Navy’s initial remediation program. City will transfer the Development Phase One Property to Developer with any CERCLA covenants received by Navy. Land anticipated for residential use is expected to be cleaned to appropriate residential standards, subject to CERCLA covenants and/or other applicable land use controls.

d. Environmental Insurance. The parties will obtain, at no cost to the City, a pollution legal liability policy (“PLL Policy”) for the First Transfer Parcel

with an initial term of 5-10 years with extension provisions, approximately \$25 million in policy limits, and coverage for both first party (e.g., discovery of unexpected contamination) and third party claims. The parties will use best efforts to obtain a PLL Policy which provides coverage to both the City and Developer (as a pre-approved additional named insured or otherwise) with Developer's coverage becoming effective upon Developer assuming maintenance responsibility for the First Transfer Parcel, and for the duration of the term of the PLL Policy, including any extension(s) beyond the original term including a replacement policy or policies. City and Developer will comply with all terms of the PLL Policy, including but not limited to disclosures, reporting, and notifications of claim events.

- e. Indemnification. City and Developer are both indemnified parties pursuant to Section 330 of the National Defense Authorization Act of 1993, PL 102-484, 106, October 23, 1992, Stat 2315, as amended by the National Defense Authorization Act For Fiscal Year 1994, PL 103-160, November 30, 1993, 107 Stat 1547 (the "DOD Indemnity"). City and Developer will cooperate and coordinate in pursuing any applicable coverage available pursuant to the DOD Indemnity, with Developer taking lead responsibility consistent with its role as generally stated throughout this Term Sheet. Developer will indemnify City for hazardous materials only to the extent that costs associated with such hazardous materials are not covered by either the DOD Indemnity or the PLL Policy.

14. Habitat & Species Mitigation and Resource Agency Permitting

a. Resource Agency Permits.

- i. 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 ("ACOE"), the California Department of Fish and Wildlife ("CDFW"), and the San Francisco Bay Regional Water Quality Control Board ("RWQCB"), all permits and approvals, and associated environmental reviews, which are necessary to implement reuse of the Project in accordance with the CRP Area Plan and the Specific Plan (other than, as specified further below, activities that may be conducted by EBRPD).
- ii. Developer understands that City has initiated the permit process for the entirety of the CRP Area Plan and the Specific Plan, and that City desires to secure a single ACOE individual permit, including a single Section 401 certification from the RWQCB and Section 7 biological opinion and incidental take statement from the USFWS, for the entire plan area (including the Project). City further desires to secure from CDFW a Master Lake and Streambed Alteration Agreement, and incidental take permit (or Section 2080.1

concurrence) for the entirety of the Area Plan. Coverage under the National Environmental Policy Act would be provided through the EIS under preparation by the Department of the Navy, although this EIS may be supplemented by the ACOE for purposes of considering issuance of the individual permit.

- iii. City and Developer will endeavor to ensure that the permits described in subsection (ii) above, although plan-wide in nature, (x) provide sufficiently-specific authorizations to allow Developer to develop the Project without the need for additional Project-level permits; (y) provide for severability of liability so that, except as otherwise specified herein, Developer will not be responsible for the actions or inactions of other parties (e.g., EBRPD, Phase Two developers, City) who may rely upon the plan-wide permits; and (z) are otherwise in form and substance adequate for Developer to pursue development of the Development Phase One Property in accordance with a mutually-agreeable schedule ("Permit Schedule") to be set forth in the DDA. If City does not receive site-wide permits from the ACOE, RWQCB, and/or CDFW, Developer will be required to identify and secure any necessary project-specific permits from those agencies. The DDA will contain terms allowing Developer to shift to a Project-specific permit strategy if it becomes reasonably likely that the programmatic permits described in subsection (ii) above cannot be secured in accordance with the Permit Schedule.
- iv. City and Developer will work together in pursuing all permits, developing work product, and meeting with and responding to consultants and agencies. Concurrently with the DDA, City and Developer will enter into a reimbursement agreement to establish an account for payment of consultants and City's overhead costs, and to provide for reimbursement to Developer of a fair share of costs (including, without limitation, mitigation costs) attributable to the permitting of areas within the CRP Area Plan but outside the Development Phase One Property that would otherwise be considered Project Costs.

b. Mitigation.

- i. The parties mutually desire that to the maximum feasible extent all state and federal endangered species mitigation for the EDC Property (including both the USFWS and CDFW enhancement and preservation requirements) occur on the Regional Park property, that the Mt. Diablo Creek restoration and mitigation occur within the Mt. Diablo Creek conservation areas, and that all of the wetland and aquatic resource mitigation needed as part of the ACOE permit and RWQCB certification occur outside of the Development Phase

One Property and the balance of the First Transfer Parcel, with the exception provided in the last sentence of this paragraph. Further, City's goal is to obtain approval of a solution that would allow sufficient mitigation to occur on the Regional Park property to serve the mitigation needs of both the Development Phase One Property and the balance of the First Transfer Parcel. If offsite mitigation is required, best efforts will be made to mitigate within the Mt. Diablo or Kirker Creek watersheds. Developer will work with the lead land manager for the Regional Park and the City as to Mt. Diablo Creek conservation areas, in an effort to meet aquatic resource/wetlands and endangered species mitigation for the EDC property development on the Regional Park property, on the Mt. Diablo Creek conservation areas, or outside of the Development Phase One Property to the maximum feasible extent. Final determinations regarding the amount of mitigation credit will be reflected in permits or other authorizations issued by the resource agencies, and Developer will bear all costs of such mitigation requirements whether on or off of the Regional Park property. City and Developer will use best efforts to avoid use of the Development Phase One Property for mitigation purposes; provided, however, that Developer acknowledges that certain wetland mitigation may occur within the Development Phase One Property and that setbacks may be needed to accommodate the Mt. Diablo Creek conservation areas.

- ii. City and Developer will endeavor to structure any site-wide permit in a manner that allows for phased mitigation so that the mitigation is roughly proportional to the impact of new development; provided, however, that they recognize that the resource agencies may require some, or a substantial amount, of mitigation in advance of development impacts in order to accommodate all of the mitigation on the Regional Park property and to minimize temporal loss. Moreover, although the programmatic permits will not authorize any fill of jurisdictional waters on the Regional Park property in connection with EBRPD related uses, the state and federal endangered species authorizations may include mitigation for EBRPD activities, and City and Developer will endeavor to have those approval documents specify the mitigation measures that are applicable to EBRPD. City and Developer will work with the resource agencies to identify in the permitting documents and approvals the mitigation necessary to offset impacts from the Project, the balance of the First Transfer Parcel development and subsequent development to the extent feasible. To the extent that permits do not clearly distinguish the impacts and offsetting mitigation as between the Development Phase One Property and the balance of the First Transfer Parcel, then such determination will be made by mutual agreement of City and Developer.

- c. MOU. City, in cooperation with Developer, will enter into an MOU with EBRPD to provide for mitigation, open space monitoring and management, conservation easements/deed restrictions, balancing of park and mitigation uses, financial security, and other provisions necessary to accommodate such mitigation on the Regional Park property. As the understandings with EBRPD develop further as the permit process proceeds, the parties will consider whether and the extent to which Developer should be in a direct contractual relationship with EBRPD in light of Developer's responsibilities under the permits.
- d. Endowment Fund. Prior to issuance of the first grading permit, Developer and City will cooperate in the establishment of an endowment fund or other financial mechanism acceptable to the resource agencies to pay certain ongoing costs of mitigating impacts to species, aquatic resources, and other resources subject to the resource agency permits and authorizations. The endowment fund or other acceptable financial mechanism will be in an amount deemed sufficient by the resource agencies to fund long-term management and monitoring of the conservation areas. While a non-wasting endowment will be required to fund certain creation, restoration, enhancement, start-up, and interim management and monitoring obligations associated with the mitigation program, the parties acknowledge that it may be appropriate for 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.

15. Affordable Housing

- a. Affordable Housing Program.
 - i. Developer will deliver development-ready pads, as further discussed below ("Affordable Housing Pads"), at no cost to affordable housing builders, for construction of affordable housing in an amount equal to twenty five percent (25%) of the total amount of residential units in the Project. This twenty five (25%) will include rental housing affordable to households with incomes at sixty percent (60%) or less of the Area Median Income (AMI) for Contra Costa County. Developer's proforma has assumed fifty eight percent (58%) of the affordable housing will be for low and very-low incomes, as defined in the City's Housing Element.
 - ii. Developer will prioritize partnerships with local, non-profit, mission oriented, San Francisco Bay Area-focused developers for development of the affordable housing.

- iii. Developer has assumed \$56 million dollars of gap subsidy for affordable housing in the Project, including very low, low and moderate income units, Habitat for Humanity and homeless housing. This money, or a portion thereof, could be allocated to other Project improvements and amenities, such as parks, if replacement outside financing becomes available to the affordable housing builders.
- iv. Developer will provide Affordable Housing Pads to accommodate the affordable housing, including clean developable pads, at no cost, with utilities to the curb line, no requirements for major grading, environmental standards for residential development, and lien-free with clear title.
- v. In addition to income-qualified individuals and families, the affordable housing will also address the needs of lower-income seniors, veterans, teachers, families, workers, and people who are homeless and with special needs.
- vi. Affordable Housing Pads will be distributed throughout the Project with generally the same advantages and desirability as market rate sites, including access to transit and site amenities. Developer will locate Affordable Housing Pads for low and very-low incomes to support medium to high density development throughout the Project and to ensure maximum points in the nine percent (9%) and/or four percent (4%) low-income housing tax credit scoring process.
- vii. Developer will provide Affordable Housing Pads that are appropriate for medium to high density projects.
- viii. The affordable housing will include both affordable homes for rent as well as affordable homes for sale by non-profit firms such as Habitat for Humanity that utilize the “sweat equity” model. Some for sale affordable homes, other than “sweat equity” could be included in the program.
- ix. The first building permits for affordable housing development will be required after the 200th market rate unit is constructed and utilities can be made available to the affordable housing site(s).
- x. The affordable units will be delivered at generally the same pace as the market rate residential units, measured on an aggregate basis. Because the Development Phase One Property will be developed in phases over time, the actual percentage of affordable housing in each sub-phase may be more or less than twenty five percent (25%) of the aggregate residential units in that sub-phase; provided

that, at no time will the aggregate amount of affordable housing completed or for which Backbone Infrastructure served land has been made available be less than twenty percent (20%) of the aggregate amount of residential units for all sub-phases completed or under development.

xi. Homeless Housing will be located adjacent to one or more other affordable housing developments in order to facilitate provision of supportive services and programs to the residents of such transitional housing.

b. Administration of the Affordable Housing Program. In an effort to establish and maintain long term affordability of housing at the Project and to minimize the cost burden of long term administration by the City, Developer and City will determine an approach to an appropriate affordable housing administration program.

16. Labor Policies

Developer will address local hire and labor concerns by committing to the following:

- a. Project Labor Agreement. Developer will work to enter into one or more Project Labor Agreement(s) ("PLA") covering construction related to the build-out of the Project.
- b. Third-Party Contracts. Developer will pursue opportunities to include local hire provisions in third party contracts such as the good faith goal of meeting the forty percent (40%) local hire target as set forth in the Hire Concord First provisions.
- c. Veteran Job Placement. Developer will pursue training and employment opportunities for returning military veterans. Developer will work with veteran job placement groups, such as Swords to Plowshares, Helmets to Hard Hats, the Employment Development Department, Veterans Employment Committee of Contra Costa County, and Eastbay Works to establish a job placement program at the Project. Developer will pursue opportunities for contractors to enroll and post job openings in the programs available for veteran job placement.
- d. Training Program. Consistent with the CRP Area Plan, Developer will pursue opportunities to provide certified apprenticeships, internships and other employment development programs in accordance with the State certified Joint Labor Management Apprenticeship Training Program.
- e. Local Resident Job Placement. Developer will pursue opportunities to work with established organizations such as the Greater Concord Chamber of Commerce, the Mt. Diablo Unified School District, East Bay Works, the Contra Costa Workforce Development Board, Cal State East

Bay, and the California Employment Development Department to provide adult education and vocational training at the Project, in an effort to link new jobs created at the Project to local residents.

- f. Local Businesses. Developer will pursue opportunities to purchase materials and supplies from local businesses for the development of the Project.
- g. Local Vertical Builders. Developer will pursue opportunities to work with local vertical builders for the development of the Project.
- h. Labor Peace. Developer acknowledges that additional dialogue regarding labor peace is appropriate during the DDA negotiation process, including the impact of any labor peace agreements on third parties. The Parties acknowledge that potential “labor peace agreements” should be confined to those certain Development Phase One Property commercial parcels to be developed for uses employing a predominance of service sector workers. In no event shall Developer be obligated to enter into any labor peace agreement which would put operators of the applicable commercial businesses at a competitive disadvantage in the marketplace or have a material adverse effect on the sale price that vertical developers are willing to pay for, or the rental income to be derived from, such parcels.

17. Prevailing Wages

Developer agrees that any worker (defined by State prevailing wage law to be entitled to receipt of prevailing wages on any portion of the work performed by the worker) on publicly-funded construction, alteration, demolition, installation or repair work 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, and shall be subject to the same hours and working conditions, and shall receive the same benefits as in each case are provided for under the State prevailing wage law for similar work performed in Concord, California. Developer shall include in any contract for a 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 to the extent required by the California prevailing wage law.

18. Insurance

Developer will maintain the following policies of insurance, naming Developer as insured and, except for workers’ compensation insurance, naming the City as additional insured, on forms acceptable to City:

- a. General Liability Insurance. Commercial General Liability policy with a commercially reasonable minimum limit of per occurrence for bodily injury and/or property damage, products and completed operations with a commercially reasonable minimum aggregate amount – such amounts to

be set forth in the DDA -and blanket contractual coverage, independent contractors' coverage and explosion, collapse and underground (X, C & U) coverage.

- b. Automobile Liability Insurance. Automobile Liability Insurance for all owned, non-owned, and hired motor vehicles, which Developer, or its agents or contractors on Developer's behalf, will utilize with respect to the Development Phase One Property in a commercially reasonable minimum amount to be set forth in the DDA.
- c. Workers' Compensation Insurance. Workers' compensation insurance as required by law;
- d. Builder's Risk Insurance. Builder's risk in the amount of the full insurable value of the improvements; and
- e. Environmental Insurance. Environmental insurance as set forth in Section 13.

19. Indemnity

Developer will indemnify, defend and hold the City harmless from and against any and all claims resulting or arising from the following, to the extent caused by acts or omissions of Developer or Developer's contractors, subcontractors, employees, agents, or representatives, provided Developer will have no obligation to indemnify (but will be obligated to defend, subject to reimbursement below) the City from claims to the extent resulting from the negligence or willful misconduct of City parties:

- a. Sale or Use. The development, marketing, sale or use of the Project; and
- b. Breach or Default. Any loss or damage to City resulting from any breach or default by Developer under the DDA; and
- c. Plans and Designs. Any plans or designs for private improvements prepared by or on behalf of Developer, regardless of whether such plans or designs have been approved by the City. Liability with respect to public improvements will be addressed in the public improvement agreement(s) for the Project.

Notwithstanding the foregoing, Developer will not be required to indemnify City for consequential, special, punitive or exemplary damages arising out of claims covered by the foregoing indemnity. Indemnities regarding Hazardous Materials are set forth in Section 13.

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.

Developer will use commercially reasonable efforts to require in each purchase contract it enters into with a Vertical Builder that such Vertical Builder agrees to undertake comparable indemnity and defense obligations for the benefit of City with respect to the portion of the Development Phase One Property acquired by such Vertical Developer.

20. Third Party Legal Challenges

City and Developer will cooperate in the defense of any third party challenge of the DDA, Specific Plan, any Project entitlements or any related CEQA documents. City and Developer will each have the right, in their sole discretion, to elect whether or not to defend such challenge. If both parties elect to defend, the parties will cooperate to enter into a joint defense agreement; Developer will take the lead role, reimburse City for any of its reasonable costs related to the challenge and indemnify, defend and hold the City harmless from any damages and/or attorneys' fees awarded. Any proposed settlement that would obligate either party to perform will be subject to such party's approval, in its reasonable discretion. In addition, City will have the right, but not the obligation, to contest or defend any challenge, at its sole expense, in the event that Developer elects not to do so.

21. Assignment

- a. Transfer of Interests. Developer intends to create a special purpose entity that will enter into the DDA. Developer (or, if formed, such special purpose entity) will not be permitted to assign or transfer its interests in the DDA, except as explicitly provided below. Further, except as explicitly provided below, there would be no change in "control" of the Developer, with the term "control" meaning the power to direct the management and a presumption that control with respect to a corporation or limited liability company is the right to exercise, directly or indirectly, more than fifty percent (50%) of the voting rights attributable to the controlled corporation or limited liability company, and, with respect to any individual, partnership, trust, other entity or association, control is the possession, indirectly or directly, of the power to direct or cause the direction of the management or policies of the controlled entity.

- b. Restrictions. The restrictions described above in clause a. will not apply to assignments meeting the following criteria and will be permitted under the DDA:
- i. The transfer of partnership interests, shares of stock or limited liability shares or the addition or substitution of partners, shareholders or members holding interests in Developer, provided the day-to-day management and operations of the resulting entity remain in the control of the same persons controlling the day to day management and operations of Developer;
 - ii. The assignment of the DDA to a separate entity other than in connection with the conveyance of a specific Parcel so long as the day to day management and operations of such assignee is held directly or indirectly by the same persons controlling the day to day management and operations of assignor;
 - iii. Upon or at any time after the satisfaction of Conditions Precedent to Conveyance of Parcels to Developer, the creation by Developer of a separate legal entity the day to day management and operations of which remains under the direct or indirect control of Developer, and the assignment to such entity of Developer's rights and obligations under the DDA as to that Parcel;
 - iv. Upon or at any time after the satisfaction of Conditions Precedent to Conveyance of Parcels to Developer, an assignment of the rights and obligations of Developer pursuant to the DDA in whole or in part to an "Affiliate" (defined as any person or entity directly or indirectly controlling, controlled by or under common control with another person or entity) of Developer as to that Parcel, provided the day-to-day management and operations of such entity remain directly or indirectly in the control of the same persons controlling the day to day management and operations of Developer; Upon or at any time after the satisfaction of Conditions Precedent to Conveyance of Parcels to Developer or vertical builder of a Parcel, any permitted mortgage may be recorded against fee title (or leasehold title) or ownership interests in such Developer or vertical builder as to such Parcel;
 - v. Upon or at any time after the satisfaction of Conditions Precedent to Conveyance of Parcels to a vertical builder of a Parcel meeting the control or affiliate requirements of clauses i. through iv, any conveyance by Developer to an assignee of fee or leasehold title as to any Parcel, and a corresponding assignment of any rights or obligations of Developer pursuant to the DDA to such assignee as to such Parcel; or

- vi. Upon or at any time after the satisfaction of Conditions Precedent to Conveyance of Parcels to a vertical builder that does meet the control or affiliate requirements of clauses i. through iv. (a "Third Party Vertical Developer"), with the consent of the City not to be unreasonably withheld, conditioned or delayed, any conveyance by Developer to an assignee of fee or leasehold title as to any Parcel, and a corresponding assignment of any rights or obligations of Developer pursuant to the DDA to such assignee as to such Parcel. Once approved, such Third Party Vertical Developer will have the right to make further transfers of such Parcel and partial assignments of the DDA without requiring the consent of the City if such transfer and assignment is to an entity meeting the same control or affiliate requirements described above with respect to Developer transfers and assignments.
- vii. Following completion of the vertical improvements, a vertical builder may transfer, lease or mortgage all or any portion of its Parcel.
- c. Assignment or Transfer. Any assignment or transfer not otherwise permitted may be approved by City in its sole and absolute discretion.

22. Default and Remedies

- a. Developer Default. Subject to applicable notice and cure periods to be set forth in the DDA, the following constitute "defaults" by Developer: failure to pay amounts required to be paid by Developer under the DDA; unpermitted transfers; unpermitted encumbrances or liens; failure to develop any Parcel that has been conveyed to Developer in accordance with the Schedule of Performance set forth in the DDA; and failure to perform Developer's other obligations pursuant to the DDA.
- b. City Default. Subject to notice and applicable cure periods to be set forth in the DDA, the following constitute "defaults" by City: failure to pay amounts required to be paid by City under the DDA; failure to convey any Parcel to Developer at the time set forth in the DDA; and failure to perform City's other obligations pursuant to the DDA.
- c. Developer's Remedies for City Default.
 - i. Default Prior to Initial Takedown. Developer may terminate the DDA, institute an action for specific performance, and/or seek other remedies at law or in equity subject to Section 22.c.iv below.
 - ii. Default Following Initial Takedown. Developer may terminate the DDA as to property not yet acquired, institute an action for specific performance, and/or seek other remedies at law or in equity subject to Section 22.c.iv below.

- iii. Default as to Prior Conveyed Land. Developer may institute an action for specific performance and/or seek other remedies at law or in equity subject to Section 22.c.iv below.
 - iv. Damages. City will not be liable in damages to Developer for a City Default, except for actions to enforce payment of monies under the terms of the DDA.
- d. City's Remedies for Developer Default.
- i. Default Prior to Initial Takedown. City may terminate the DDA and/or seek other remedies at law or in equity subject to Section 22.d.iv below.
 - ii. Default Following Initial Takedown. City may terminate the DDA as to property not yet acquired, and/or seek other remedies at law or in equity subject to Section 22.d.iv below.
 - iii. Default as to Prior Conveyed Land. City may institute an action for specific performance; exercise a right of repurchase; exercise a right of reverter as described in this subsection; and/or seek other remedies at law or in equity subject to Section 22.d.iv below.
 - 1. In the event of a Developer Default for a failure to develop any portion of the Property that has been conveyed to Developer (the "Undeveloped Property") in accordance with the Schedule of Performance set forth in the DDA, City will have an option to repurchase the Undeveloped Property for an amount equal to the lesser of ninety percent (90%) of (a) the sum of all Project Costs incurred by Developer with respect to the Undeveloped Property and not previously reimbursed to Developer or (b) the fair market value of the Undeveloped Property (which fair market value will be determined by an independent appraiser holding certain minimum qualifications to be more particularly described in the DDA).
 - 2. In the event of a Developer Default for an unpermitted transfer or unpermitted encumbrance or lien by Developer with respect to any portion of the Property that has been conveyed to Developer (the "Default Property"), the City will have a right of reverter with respect to such Default Property, subject to a 120 day notice and cure period. The DDA will terminate with respect to any Default Property with respect to which the City exercises its right of reverter. Upon reversion of title to the Default Property in the City, the City will use its best efforts to resell the Default Property for

development in accordance with the Specific Plan. Resale proceeds will be distributed as follows: first, to the City for the costs of sale, second, to any mortgagee as necessary to cause a reconveyance of the mortgage, third, to reimburse the City for carry costs for the Default Property; fourth to reimburse Developer for Project Costs incurred by Developer with respect to the Default Property and not previously reimbursed to Developer; and fifth, any balance to the City.

- iv. Damages. Upon the occurrence of a Developer Default, Developer's liability for damages will be limited to actual damages.
- e. Attorneys' Fee and Costs. In the event of an action to enforce the DDA, the prevailing party will be entitled to payment of its reasonable attorneys' fee and costs.

23. Force Majeure

Performance will not be deemed a default, and the time within which Developer is required to perform any act under the DDA will be extended by a period of time equal to the number of days during which such performance is delayed, for reasons beyond the control of Developer, including, without limitation war, strikes, natural disasters, litigation, reasonably unforeseen site conditions, Acts of God, civil unrest, casualties, unusually severe weather, inability to secure necessary labor or materials, failure of governmental entities to act, changes in applicable law, development moratoria, and significant adverse change in economic conditions preventing Developer or a vertical builder from proceeding with development in a manner that is economically feasible such as a significant drop in home prices or rents. The party claiming a force majeure delay must provide notice within sixty (60) days of actual acknowledge of the event causing delay in order for the period of the force majeure delay to commence to run from the date of such delay. Failure of Developer to provide timely notice will cause the period of delay to run from the date of such notice. Residential Economic Infeasibility Delay and Commercial Economic Infeasibility Delay are defined as follows:

- a. Residential Economic Infeasibility Delay. "Residential Economic Infeasibility Delay" shall commence upon Developer's notification to the City (together with appropriate documentation) that there has been a sustained decline in the residential real estate market, defined as a three percent (3%) or more decline in the Federal Housing Finance Agency all-transactions Home Price Index (the "Index") for the Oakland-Hayward-Berkeley MSAD during the preceding 12 month period. Residential Economic Infeasibility Delay shall continue prospectively on a quarterly basis and remain in effect until the calendar quarter in which the Index has increased for four (4) successive quarters; provided that the cumulative total of Residential Economic Delay shall not exceed 48 months.

- b. Commercial Economic Infeasibility Delay. “Commercial Economic Infeasibility Delay” shall commence upon Developer’s notification to the City (together with appropriate documentation) that there has been a sustained decline in one or more land use-specific vacancy rate (i.e., exceeds a long-term average) in the applicable commercial real estate submarket that includes Concord, as reported by the applicable CBRE local real estate market report (the “CBRE Vacancy Rate”), including: (a) office vacancy rate of twelve and one-half percent (12.5%) or more, (b) a retail vacancy rate of six percent (6%) or more; and/or (c) an industrial vacancy rate of seven percent (7%) or more, each during the preceding 12 months. Commercial Economic Infeasibility Delay shall continue prospectively on a quarterly basis and remain in effect until the calendar quarter in which the applicable vacancy rate has declined for four successive quarters; provided that the cumulative total of Commercial Economic Infeasibility Delay shall not exceed 48 months. If the Index or CBRE Vacancy Rate is discontinued, Developer and the City shall approve a substitute index that tracks the residential market with as close a geography to the Oakland-Hayward-Berkeley, CA Metropolitan Statistical Area Division as possible, and/or a vacancy rate data source that tracks the Concord commercial real estate submarket.

24. Transfer of Remainder of First Transfer Parcel

Developer submitted its proposal for the Development Phase One Property to the City with the understanding that there would be no guaranteed development rights to future phases. Developer acknowledges that City may, but will not be required to negotiate with Developer regarding the transfer of all or any portion of the balance of the EDC Property, including the balance of the First Transfer Parcel, other than the Development Phase One Property (the “Future Development Property”). Notwithstanding the foregoing, should City in its discretion choose to negotiate with Developer regarding the transfer of all or any portion of the Future Development Property, whether prior to or after completion of development of the Project, then City may do so without initiating a new competitive process (such as a request for qualifications, request for proposals, or other process) with respect to such Future Development Property, provided that Developer is not in material default under the DDA with respect to the Project.

In the event that City elects to convey all or any portion of the Future Development Property (the “Transferred Portion”) to any party other than Developer, then City will require the developer of such Transferred Portion to reimburse Developer, out of project revenues from such Transferred Portion, for such Transferred Portion’s pro rata share of reasonable Project Costs incurred by Developer for oversized utilities, school facilities, habitat or species mitigation work, hazardous materials remediation or containment work or facilities, environmental insurance premiums, or other similar work or improvements serving and benefitting the Project and such Transferred Portion and that the new developer would have had to complete but for Developer’s completion thereof. The DDAs for both the Development Phase One Property and such Transferred Portion will contain a mechanism for granting priority and security for such

reimbursement. Developer acknowledges that the City will not be obligated to fund such reimbursement from its general fund or other City revenues (other than fees or revenues from the development of such Transferred Portion).

List of Exhibits

Exhibit A – Development Phase One Property

Exhibit B1 – Conceptual Phasing Strategy

Exhibit B2 – Conceptual Phasing Strategy

Exhibit C – Land Use Program

Exhibit D – Recreational / Civic Amenities

Exhibit E – Backbone Infrastructure

Exhibit E1 – Backbone Infrastructure Description and Offsite Infrastructure

Exhibit F – CRP Area Plan Diagram

Exhibit G – Proforma Summary

Exhibit H – Summary of Community Benefits

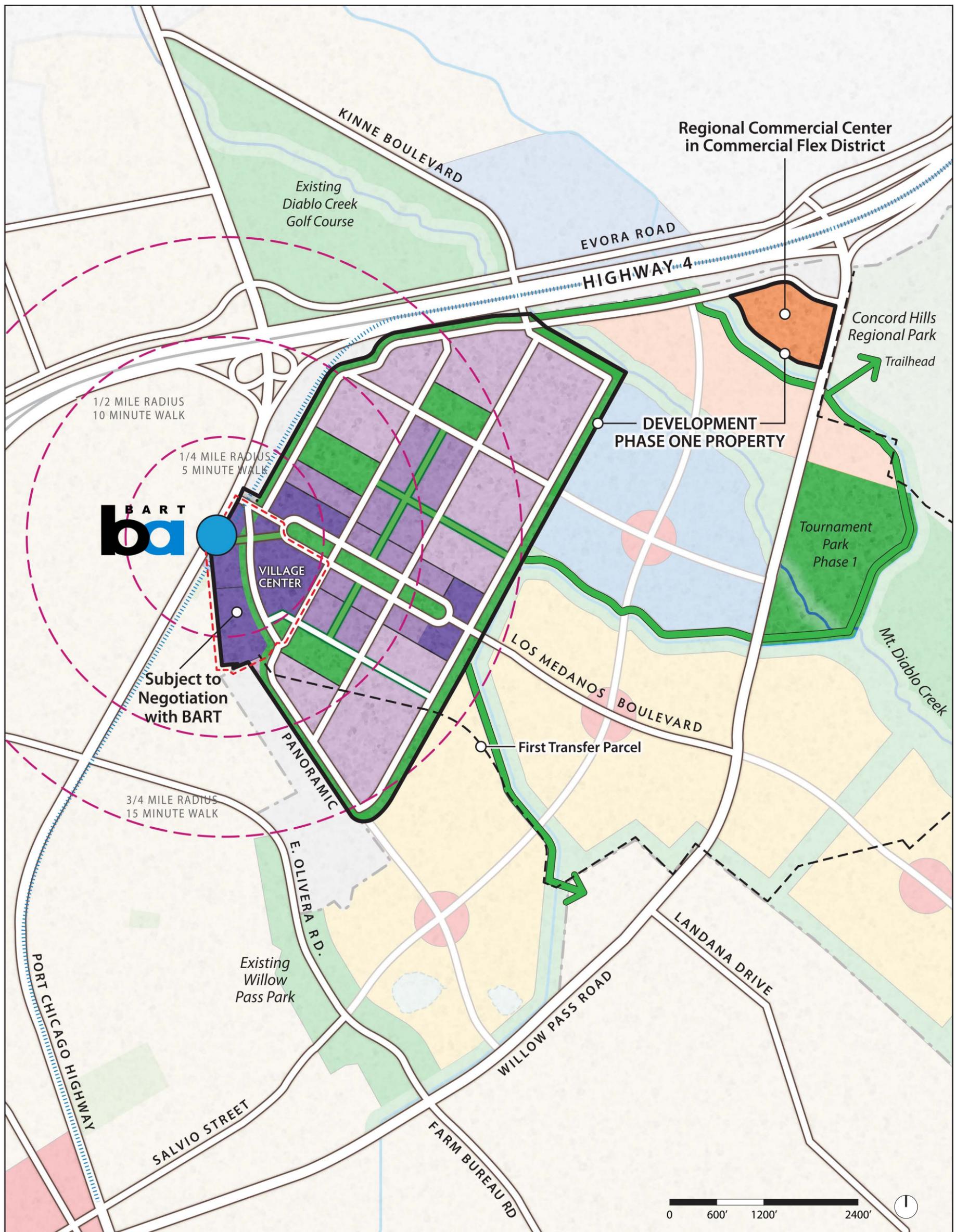


EXHIBIT A: DEVELOPMENT PHASE ONE PROPERTY

NORTH CONCORD TRANSIT VILLAGE

CNWS DEVELOPMENT PHASE ONE PROPERTY PROPOSAL • CATELLUS DEVELOPMENT • ROMA DESIGN GROUP • AUGUST 24, 2015

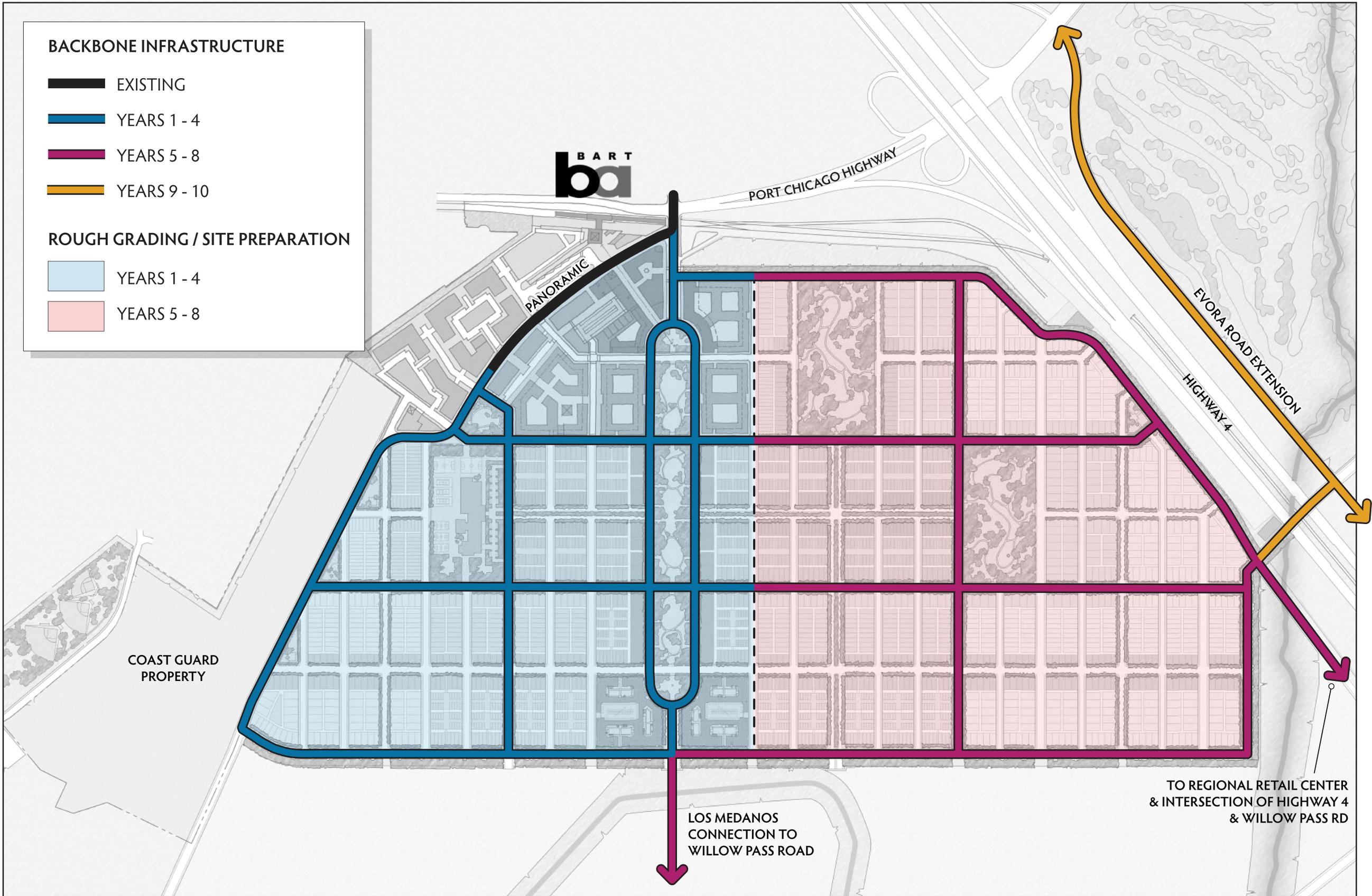


EXHIBIT B1: CONCEPTUAL PHASING STRATEGY: INFRASTRUCTURE



NORTH CONCORD TRANSIT VILLAGE

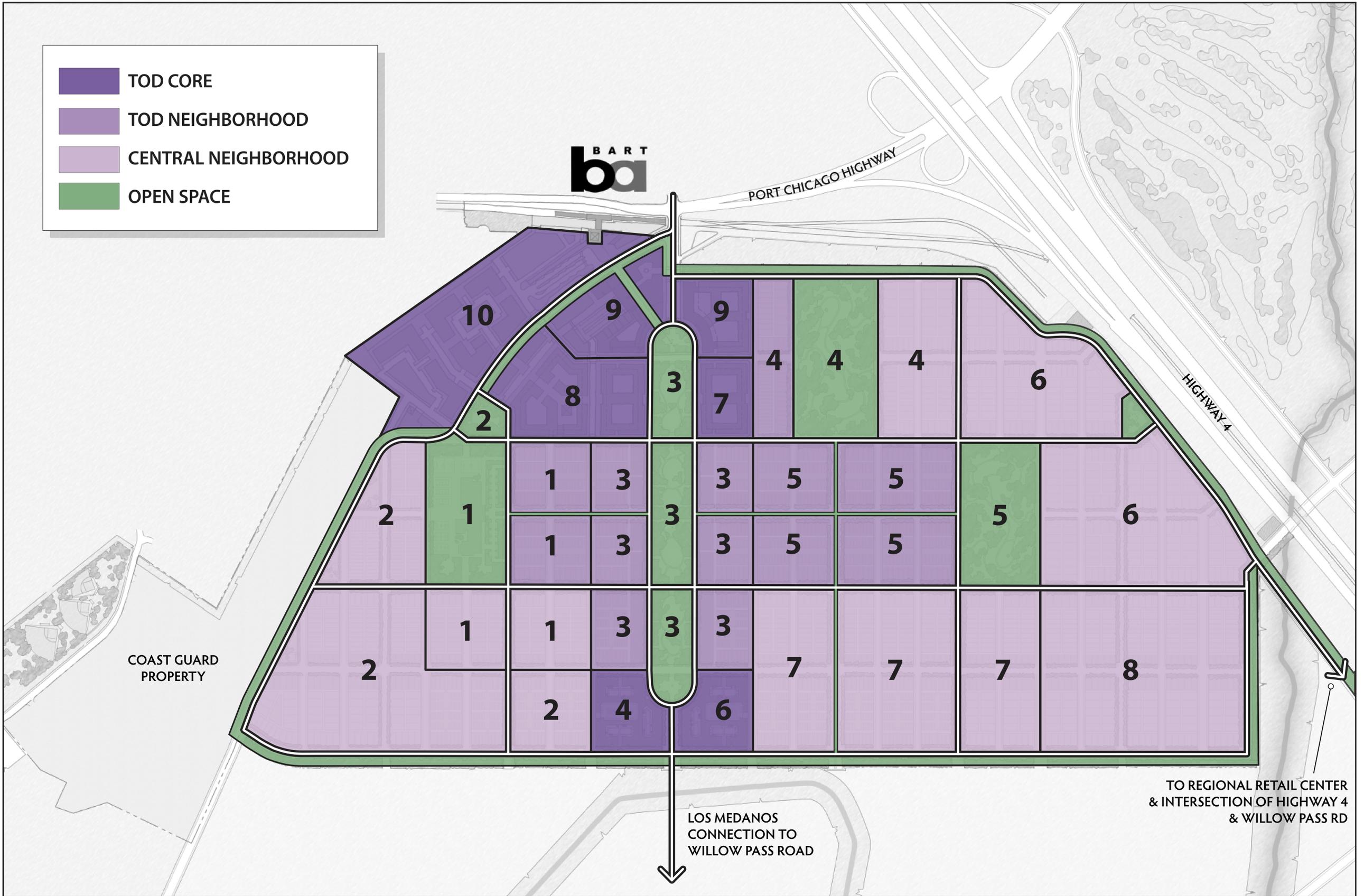
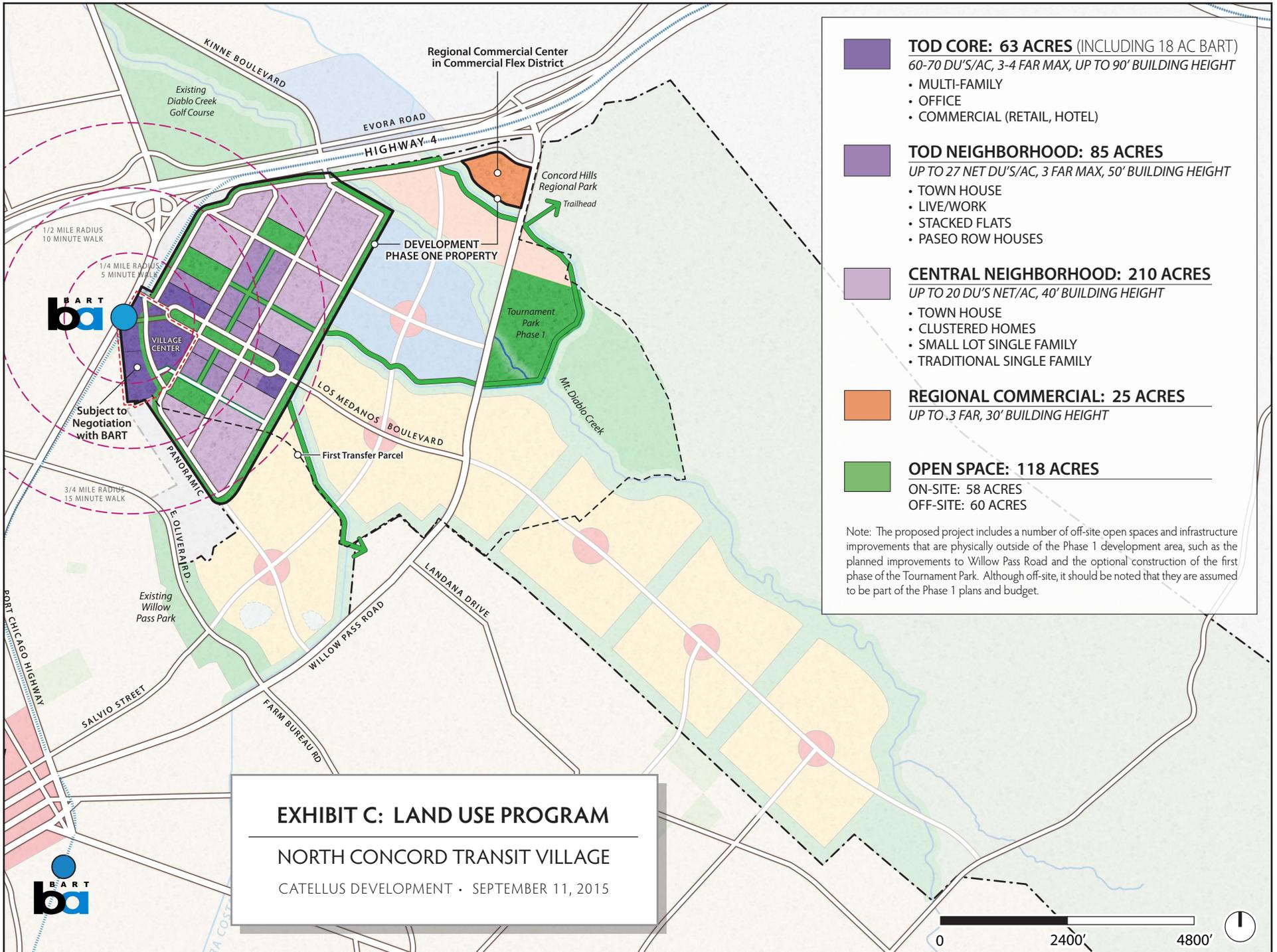


EXHIBIT B2: CONCEPTUAL PHASING STRATEGY YEARS 1-10



NORTH CONCORD TRANSIT VILLAGE

CNWS DEVELOPMENT PHASE ONE PROPERTY PROPOSAL • CATELLUS DEVELOPMENT • ROMA DESIGN GROUP • AUGUST 25, 2015



TOD CORE: 63 ACRES (INCLUDING 18 AC BART)
 60-70 DU'S/AC, 3-4 FAR MAX, UP TO 90' BUILDING HEIGHT

- MULTI-FAMILY
- OFFICE
- COMMERCIAL (RETAIL, HOTEL)

TOD NEIGHBORHOOD: 85 ACRES
 UP TO 27 NET DU'S/AC, 3 FAR MAX, 50' BUILDING HEIGHT

- TOWN HOUSE
- LIVE/WORK
- STACKED FLATS
- PASEO ROW HOUSES

CENTRAL NEIGHBORHOOD: 210 ACRES
 UP TO 20 DU'S NET/AC, 40' BUILDING HEIGHT

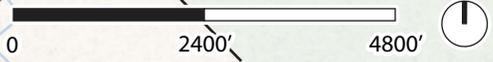
- TOWN HOUSE
- CLUSTERED HOMES
- SMALL LOT SINGLE FAMILY
- TRADITIONAL SINGLE FAMILY

REGIONAL COMMERCIAL: 25 ACRES
 UP TO .3 FAR, 30' BUILDING HEIGHT

OPEN SPACE: 118 ACRES
 ON-SITE: 58 ACRES
 OFF-SITE: 60 ACRES

Note: The proposed project includes a number of off-site open spaces and infrastructure improvements that are physically outside of the Phase 1 development area, such as the planned improvements to Willow Pass Road and the optional construction of the first phase of the Tournament Park. Although off-site, it should be noted that they are assumed to be part of the Phase 1 plans and budget.

EXHIBIT C: LAND USE PROGRAM
 NORTH CONCORD TRANSIT VILLAGE
 CATELLUS DEVELOPMENT • SEPTEMBER 11, 2015



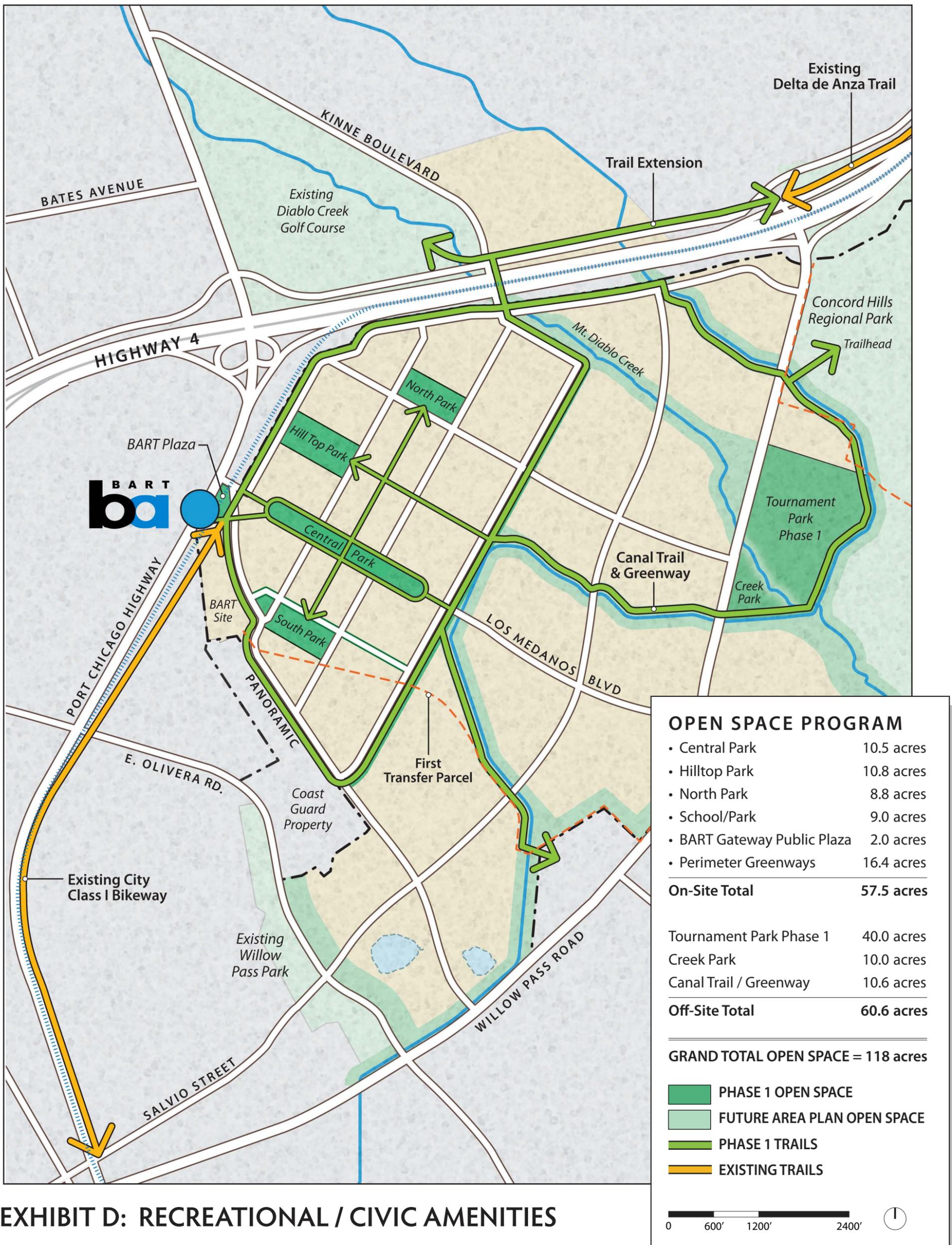


EXHIBIT D: RECREATIONAL / CIVIC AMENITIES

NORTH CONCORD TRANSIT VILLAGE

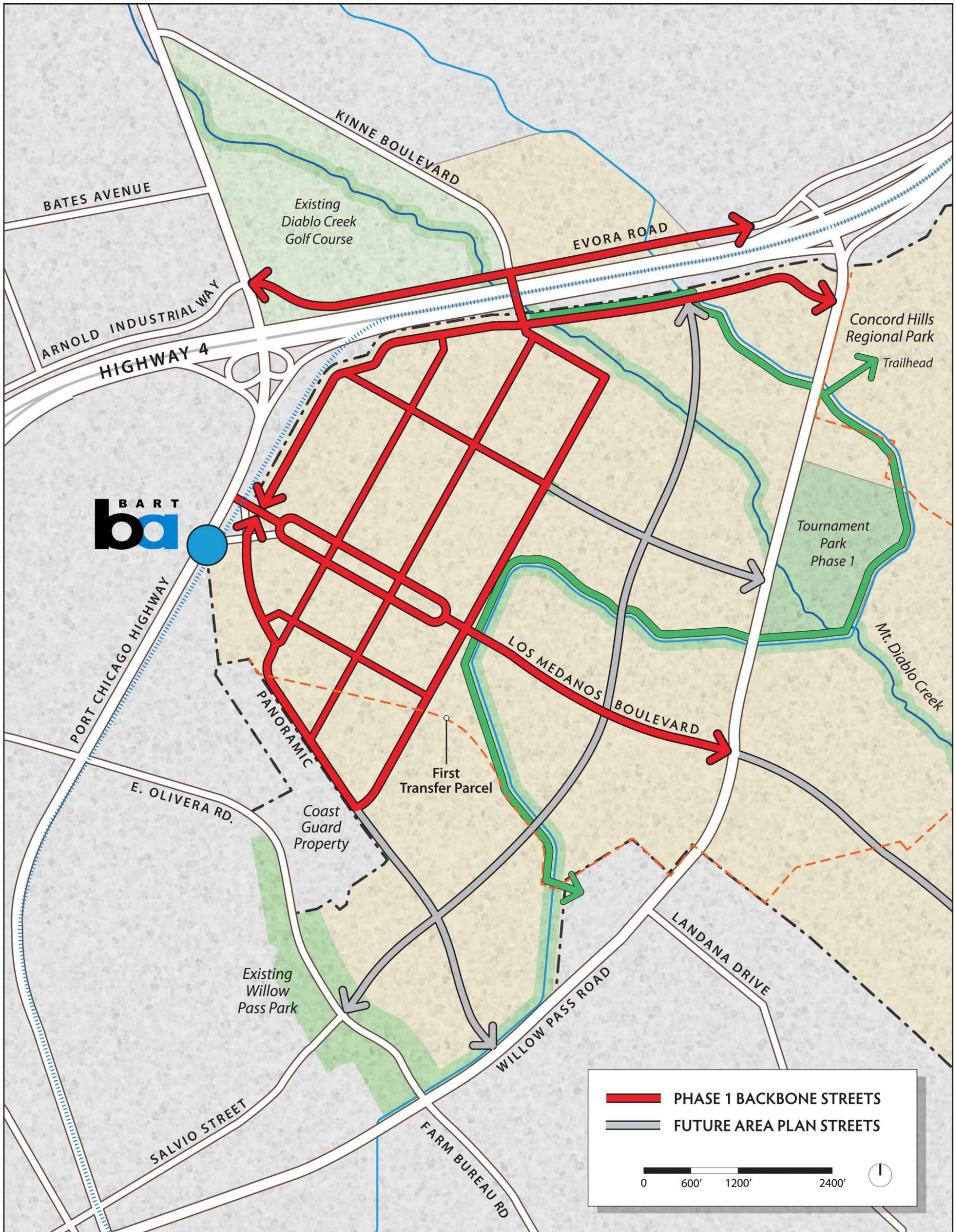


EXHIBIT E: BACKBONE INFRASTRUCTURE

NORTH CONCORD TRANSIT VILLAGE

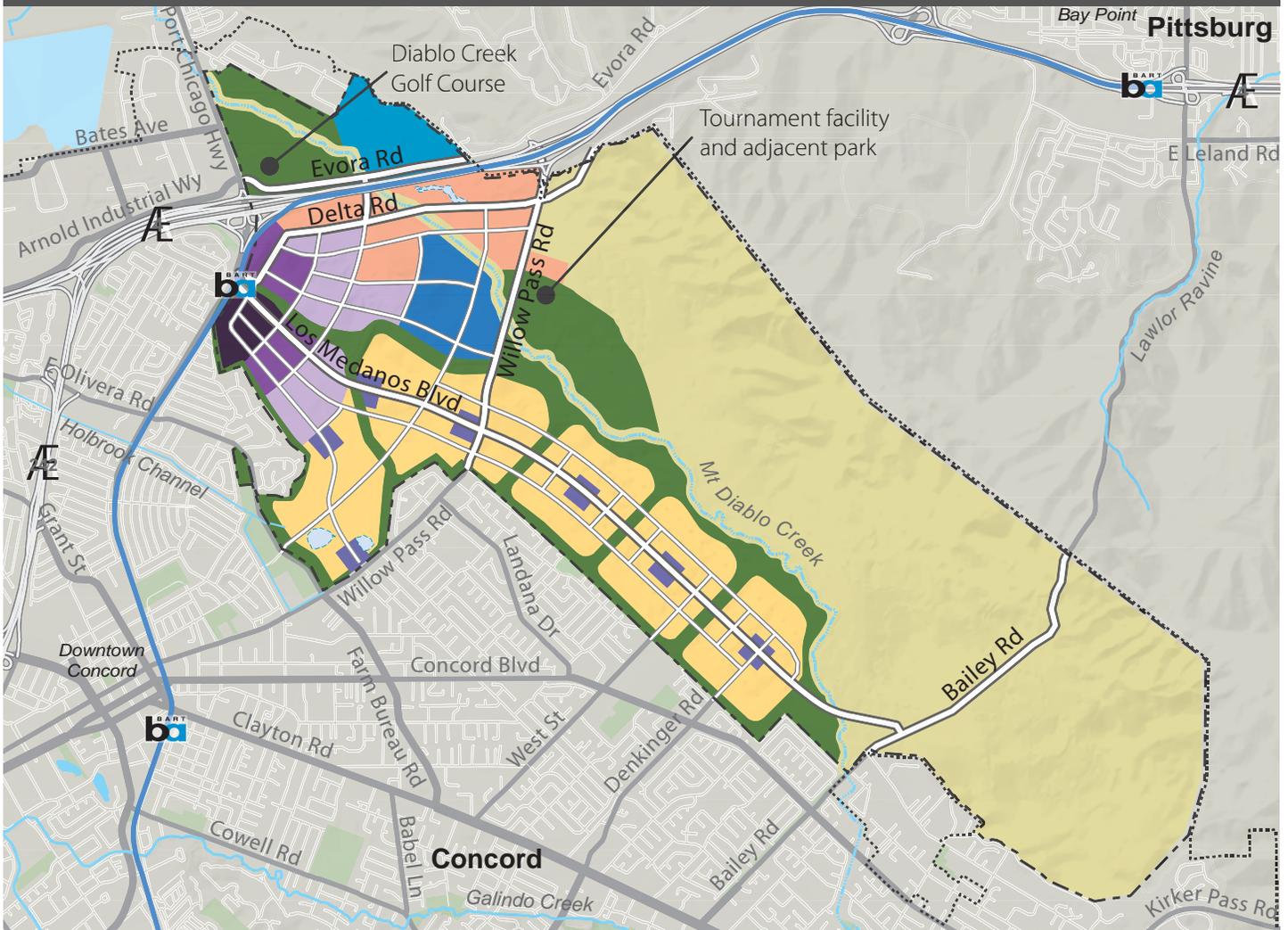
CNWS DEVELOPMENT PHASE ONE PROPERTY PROPOSAL • CATELLUS DEVELOPMENT • ROMA DESIGN GROUP • AUGUST 24, 2015

Exhibit E1 – Backbone Infrastructure Description and Offsite Infrastructure

1. Off haul / disposal for an estimated amount of contaminated soils within the Development Phase One Property and under rail lines
2. Demolition/Site Clearing of the Development Phase One Property
3. Mass Grading of the Development Phase One Property
4. Offsite Infrastructure
 - a. Wastewater connection to existing City system
 - b. Domestic Water connection to existing City system, including new zone 1 storage tank near Evora Road
 - c. Recycled Water connection to Central Contra Costa Sanitary District, including converting domestic storage tank to recycled water
 - d. Traffic / Roadway Improvements
 - i. Widening of intersection at Port Chicago and Panoramic
 - ii. Panoramic Pedestrian Bridge over BART tracks
 - iii. Connection from Development Phase One Property to Willow Pass Road near Clayton Way, including bridge over the adjacent Contra Costa Canal
 - iv. Improvements to Willow Pass Road & Highway 4 ramps
 - v. Improvements to intersection at Willow Pass Road and Avila
 - vi. Port Chicago Highway widening (25% share)
 - vii. Willow Pass Road widening (100% share)
 - viii. Upgrade Improvements to Willow Pass Bridge
 - ix. East Olivera widening (50% share)
 - x. Farm Bureau Road widening (50% share)
 - xi. Evora Road extension to Port Chicago Highway with golf course realignment modifications
 - e. Electrical Distribution connection to PG&E
 - f. Storm Drain / Flood Control connections to existing system, outfall, detention, and treatment areas
5. Parks and Greenways
 - a. Central Park
 - b. BART Plaza
 - c. Hilltop Park
 - d. South Park
 - e. School Park
 - f. Buffers, Greenways, trail connections
 - g. Willow Pass Park Extension and sport park upgrade
6. Public Benefit / Mitigations
 - a. Mt. Diablo Creek Restoration west of Willow Pass Road
 - b. Habitat & Wetlands Mitigation
 - c. Public Art
 - d. TDM Program
 - e. Gateway Features
7. Backbone Infrastructure, In-Tract Infrastructure, and related utilities as depicted on the Development Phase One Property site plan
8. SWPPP, General Conditions, Site Security and Contractor Fees

EXHIBIT F

▼ Figure 3-3: Area Plan Diagram



Legend

Transit Oriented Districts



- North Concord TOD Core
- North Concord TOD Neighborhood

Neighborhoods



- Central Neighborhood
- Village Center
- Village Neighborhood

Civic and Institutional



- Campus
- First Responder Training Center

Commercial



- Commercial Flex

Conservation, Open Space and Recreation Lands



- Conservation Open Space
- Greenways, Citywide Parks, and Tournament Facilities

Not shown: Potential bike and pedestrian facilities in the Regional Park.

Primary Circulation Network



- Through Streets
- Collector Streets



0 1,250 2,500 5,000 Feet

- Planning Area Boundary
- City of Concord Boundary

- Seasonal Wetlands (delineated as of 2010)
- ◆ 2010 Concord parks

Activities Included	
Housing	Regional Auto Access
Offices	Transit, Bicycling + Walking Priority
Shopping	Parks and Recreation
Schools + Public Facilities	Conservation and Species Protection
Research + Development	

Exhibit G - Proforma Summary - Annual Cash Flow

CATELLUS - CNWS - DEVELOPMENT PHASE ONE PROPERTY

	Total	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028
SOURCES															
Land Sales Revenue															
Multifamily Apartments	55,412,032	-	-	-	-	-	-	-	-	14,089,854	15,269,380	16,499,428	9,553,369	-	-
P1 Condos / Stacked Flats	63,382,201	-	-	-	-	6,654,408	7,067,996	7,498,270	7,945,817	8,411,242	8,302,160	8,771,700	8,730,608	-	-
P2 10-Pac Autocourt Town	72,459,535	-	-	-	7,655,900	8,110,221	8,582,666	9,073,866	9,584,476	10,115,173	10,666,654	8,670,579	-	-	-
P3A Townhomes	54,929,602	-	-	-	-	-	6,624,172	6,977,692	7,344,914	7,726,311	8,122,370	8,533,596	9,600,547	-	-
P3B Live/Work Towns	11,538,326	-	-	-	-	-	-	-	-	5,716,011	5,822,315	-	-	-	-
P4 Clustered Detached	80,777,162	-	-	-	8,189,482	8,600,325	9,026,798	9,469,433	9,928,785	10,405,422	10,899,934	11,412,928	2,844,055	-	-
P5 2-Pack/Cluster/40x70 Lot	82,600,156	-	-	-	-	-	-	10,722,113	11,240,168	11,777,693	12,335,350	12,913,823	13,513,819	10,097,190	-
P6 45x75 Lot/50x70 Lot	80,686,254	-	-	-	10,957,907	11,490,147	12,042,425	12,615,422	13,209,843	13,826,416	6,544,094	-	-	-	-
P7 50x85 Lot/52x80 Lot	79,991,230	-	-	-	-	-	-	-	15,405,289	16,113,205	16,847,273	17,608,376	14,017,087	-	-
P8 55x92 Lot/55x105 Lot	117,537,256	-	-	-	15,183,091	15,898,657	16,640,890	17,410,697	18,209,009	19,036,790	15,158,122	-	-	-	-
P9 60x95Lot/55x105 Lot	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Commercial Flex - Regional Retail	26,711,299	-	-	-	26,711,299	-	-	-	-	-	-	-	-	-	-
TBD	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Land Sales Revenue	726,025,054	-	-	-	68,697,679	50,753,759	59,984,946	73,767,492	92,868,301	117,218,117	109,967,652	84,410,432	58,259,485	10,097,190	-
CFD Public Financing	117,104,913	-	-	-	-	21,221,785	-	-	34,701,083	-	-	-	61,182,045	-	-
EIFD Public Financing	89,409,340	-	-	-	-	14,614,153	-	-	25,700,066	-	-	-	49,095,121	-	-
Total Sources	932,539,307	-	-	-	68,697,679	86,589,697	59,984,946	73,767,492	153,269,450	117,218,117	109,967,652	84,410,432	168,536,651	10,097,190	-
USES															
Development Costs	Total														
Hard Costs	448,154,586	-	-	32,742,132	39,236,309	32,321,505	47,796,620	48,549,814	56,016,056	74,824,038	55,072,229	41,882,117	19,713,764	-	-
Soft Costs	107,620,391	600,000	12,097,640	11,770,893	9,696,452	14,338,986	14,564,944	10,082,890	13,468,327	9,913,001	7,538,781	3,548,478	-	-	-
Misc Costs (Maintenance, CM Fee)	30,934,317	274,000	2,072,296	2,379,542	2,599,987	2,472,348	3,225,095	3,064,038	3,571,377	4,317,726	3,265,173	2,456,475	1,236,261	-	-
Indirect Costs	9,150,000	-	1,650,000	750,000	750,000	750,000	750,000	750,000	750,000	750,000	750,000	750,000	750,000	-	-
EDC Property Improvement Fund	49,000,000	-	-	-	-	-	-	-	-	12,000,000	12,000,000	12,000,000	13,000,000	-	-
Contingency	100,891,956	25,000	1,453,764	7,754,516	8,845,907	7,927,200	11,044,818	10,747,252	12,579,044	15,985,108	11,797,324	8,760,271	3,971,753	-	-
Sub-Total Development Costs	745,751,251	899,000	17,273,700	55,397,082	61,128,655	57,810,039	77,381,478	73,193,994	86,384,804	117,789,873	90,423,508	69,397,341	38,671,778	-	-
Other Costs															
Title Ins; Transfer Tax @ .25% (seller)	1,815,063	-	-	-	171,744	126,884	149,962	184,419	232,171	293,045	274,919	211,026	145,649	25,243	-
Closing Costs @ 1.00%	7,260,251	-	-	-	686,977	507,538	599,849	737,675	928,683	1,172,181	1,099,677	844,104	582,595	100,972	-
SF Resi Commission @ 3.00%	19,317,052	-	-	-	1,259,591	1,522,613	1,799,548	2,213,025	2,786,049	3,093,848	2,840,948	2,037,330	1,461,184	302,916	-
MF/Comm Resi Commission @ 4.00%	3,284,933	-	-	-	1,068,452	-	-	-	-	563,594	610,775	659,977	382,135	-	-
Developer Profit @ 15%	108,903,758	-	-	-	10,304,652	7,613,064	8,997,742	11,065,124	13,930,245	17,582,718	16,495,148	12,661,565	8,738,923	1,514,579	-
Subtotal Other Costs	140,581,056	-	-	-	13,491,416	9,770,099	11,547,102	14,200,242	17,877,148	22,705,386	21,321,467	16,414,002	11,310,485	1,943,709	-
Total Uses	886,332,307	899,000	17,273,700	55,397,082	74,620,071	67,580,138	88,928,580	87,394,236	104,261,952	140,495,259	111,744,974	85,811,343	49,982,262	1,943,709	-
NET CASH FLOW	46,206,999	(899,000)	(17,273,700)	(55,397,082)	(5,922,392)	19,009,560	(28,943,635)	(13,626,744)	49,007,498	(23,277,142)	(1,777,322)	(1,400,911)	118,554,389	8,153,481	-
Cumulative Cash Flow		(899,000)	(18,172,700)	(73,569,782)	(79,492,174)	(60,482,615)	(89,426,249)	(103,052,993)	(54,045,495)	(77,322,637)	(79,099,959)	(80,500,870)	38,053,518	46,207,000	46,207,000

Exhibit G - Proforma Summary - Waterfall Analysis
CATELLUS - CNWS - DEVELOPMENT PHASE ONE PROPERTY

Proposed Cash Flow Structure															
(\$000's)	Total	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028
Sources															
Land Sales	726,025	-	-	-	68,698	50,754	59,985	73,767	92,868	117,218	109,968	84,410	58,259	10,097	-
less: 15% Land Sales Fee	(108,904)	-	-	-	(10,305)	(7,613)	(8,998)	(11,065)	(13,930)	(17,583)	(16,495)	(12,662)	(8,739)	(1,515)	-
Public Finance Proceeds	206,514	-	-	-	-	35,836	-	-	60,401	-	-	-	110,277	-	-
Total Sources	823,636	-	-	-	58,393	78,977	50,987	62,702	139,339	99,635	93,473	71,749	159,798	8,583	-
Uses															
Development Costs	(745,751)	(899)	(17,274)	(55,397)	(61,129)	(57,810)	(77,381)	(73,194)	(86,385)	(117,790)	(90,424)	(69,397)	(38,672)	-	-
Commissions/Closing Costs	(31,677)	-	-	-	(3,187)	(2,157)	(2,549)	(3,135)	(3,947)	(5,123)	(4,826)	(3,752)	(2,572)	(429)	-
Total Uses	(777,429)	(899)	(17,274)	(55,397)	(64,315)	(59,967)	(79,931)	(76,329)	(90,332)	(122,913)	(95,250)	(73,150)	(41,243)	(429)	-
Total Project Cash Flow	46,207	(899)	(17,274)	(55,397)	(5,922)	19,010	(28,944)	(13,627)	49,007	(23,277)	(1,777)	(1,401)	118,554	8,153	-
CALCULATION #1															
Catellus Cash Flow (15% Land Sales Fee Based)															
Infrastructure Account															
Beginning Balance			(899)	(18,173)	(73,570)	(79,492)	(60,483)	(89,426)	(103,053)	(54,045)	(77,323)	(79,100)	(80,501)	-	-
Cash Out	(148,518)	(899)	(17,274)	(55,397)	(5,922)	-	(28,944)	(13,627)	-	(23,277)	(1,777)	(1,401)	-	-	-
Cash In	148,518	-	-	-	-	19,010	-	-	49,007	-	-	-	80,501	-	-
Ending Balance		(899)	(18,173)	(73,570)	(79,492)	(60,483)	(89,426)	(103,053)	(54,045)	(77,323)	(79,100)	(80,501)	-	-	-
Infra Account Cash Flow	-	(899)	(17,274)	(55,397)	(5,922)	19,010	(28,944)	(13,627)	49,007	(23,277)	(1,777)	(1,401)	80,501	-	-
Catellus 15% Land Sales Fee	108,904	-	-	-	10,305	7,613	8,998	11,065	13,930	17,583	16,495	12,662	8,739	1,515	-
Total Cash Flow	108,904	(899)	(17,274)	(55,397)	4,382	26,623	(19,946)	(2,562)	62,938	(5,694)	14,718	11,261	89,240	1,515	-
		IRR		14.20%											
CALCULATION #2															
Catellus Cash Flow (15% IRR Based)															
Beginning Balance			(899)	(18,308)	(76,451)	(83,536)	(69,444)	(99,806)	(117,339)	(72,002)	(88,497)	(87,054)	(88,851)	-	-
Accrued IRR @ 15.00%	(120,328)	-	(135)	(2,746)	(11,468)	(12,530)	(10,417)	(14,971)	(17,601)	(10,800)	(13,275)	(13,058)	(13,328)	-	-
15% Land Sales Fee	108,904	-	-	-	10,305	7,613	8,998	11,065	13,930	17,583	16,495	12,662	8,739	1,515	-
Infra Cash Out	(148,518)	(899)	(17,274)	(55,397)	(5,922)	-	(28,944)	(13,627)	-	(23,277)	(1,777)	(1,401)	-	-	-
Infra/IRR Cash In	159,942	-	-	-	-	19,010	-	-	49,007	-	-	-	93,440	(1,515)	-
Ending Balance		(899)	(18,308)	(76,451)	(83,536)	(69,444)	(99,806)	(117,339)	(72,002)	(88,497)	(87,054)	(88,851)	-	-	-
Total Cash Flow	120,328	(899)	(17,274)	(55,397)	4,382	26,623	(19,946)	(2,562)	62,938	(5,694)	14,718	11,261	102,179	-	-
		IRR		15.00%											
"Greater of" Calculations															
Catellus Profit Required	120,328														
Land Sales Fee Pd	(108,904)														
IRR Shortfall Payment	11,424														
Project Cash Flow	46,207														
IRR Shortfall Payment	(11,424)														
Remaining CF For Waterfall	34,783	-	-	-	-	-	-	-	-	-	-	-	25,115	9,668	-

		2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028
Distribution of \$70mm tranche	Total														
Remaining CF after \$49mm distributed to EDC PIF	21,000	-	-	-	-	-	-	-	-	-	-	-	21,000	-	-
30% of \$70MM tranche to Catellus	(21,000)	-	-	-	-	-	-	-	-	-	-	-	(21,000)	-	-
	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Remaining CF After \$70MM tranche	13,783	-	-	-	-	-	-	-	-	-	-	-	4,115	9,668	-

	Total	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028
CALCULATION #3															
Catellus Cash Flow (20% IRR Based)															
Beginning Balance			(899)	(18,352)	(77,420)	(88,522)	(79,604)	(115,470)	(141,126)	(106,413)	(133,390)	(145,351)	(163,160)	(69,733)	(76,912)
Accrued IRR @ 20.00%	(243,271)	-	(180)	(3,670)	(15,484)	(17,704)	(15,921)	(23,094)	(28,225)	(21,283)	(26,678)	(29,070)	(32,632)	(13,947)	(15,382)
15% IRR cash flow	120,328	(899)	(17,274)	(55,397)	4,382	26,623	(19,946)	(2,562)	62,938	(5,694)	14,718	11,261	102,179	-	-
30% of \$70MM tranche	21,000	-	-	-	-	-	-	-	-	-	-	-	21,000	-	-
70% of Remaining Cash Flow	9,648	-	-	-	-	-	-	-	-	-	-	-	2,880	6,768	-
Ending Balance		(899)	(18,352)	(77,420)	(88,522)	(79,604)	(115,470)	(141,126)	(106,413)	(133,390)	(145,351)	(163,160)	(69,733)	(76,912)	(92,295)
Total Catellus Cash Flow	150,976	(899)	(17,274)	(55,397)	4,382	26,623	(19,946)	(2,562)	62,938	(5,694)	14,718	11,261	126,059	6,768	-
		IRR		16.82%											
City Waterfall Cash Flow & EDC PIF	53,135	-	-	-	-	-	-	-	-	12,000	12,000	12,000	14,234	2,900	-

Total Cash Flow Check	
Total Cash Flow (excluding EDC PIF)	204,111
Catellus Payments	(150,976)
EDC Property Improvement Fund	(49,000)
City Payments (via waterfall)	(4,135)
Remaining Available Cash Flow	0

Exhibit H – Summary of Community Benefits

1. Catellus Will Deliver a Total of 118 Acres of Parks, Open Space, & Public Plazas

(See Project Description and Phasing of Project Components – Section 3)

- a. **BART Gateway Public Plaza.** A two acre public plaza adjacent to the North Concord BART Station connecting the residential areas of the Project to BART via pedestrian pathways, bicycle pathways, and vehicular connections. In order to provide immediate access to BART for the first new residents, the plaza will be completed concurrently with development of the first sub-phase.
- b. **Central Park.** A ten acre, 200 foot wide central green, adjoined on either side by the central roadway connecting the Village Center and BART to Willow Pass Road.
- c. **Hilltop Park.** A ten acre promontory park located on the central ridgeline.
- d. **Community Park.** A nine acre community park
- e. **Perimeter Greenways and Buffers.** Extensive pedestrian paths and Class 1 biking paths totaling approximately 16 acres.
- f. **School Park.** 10 acres to serve future potential school and open space requirements.
- g. **Canal and Mt. Diablo Creek Greenways.** Buffers connecting the Project to the East Bay Regional Park, Willow Pass Park, and the local and regional trail system (including initial connectivity to the Delta DeAnza Regional Trail) totaling approximately 43 acres. Recreational trail connectivity will be provided in consultation with the East Bay Regional Park District (“EBRPD”) and consistent with the requirements of natural resource agencies. Consistent with the CRP Area Plan, Developer will maintain a buffer along Mt. Diablo Creek. Developer will work with the City, the resource agencies, and the EBRPD to enhance and restore Mt. Diablo Creek.
- h. **Willow Pass Park Extension and/or Tournament Sports Facility.** The CRP Area Plan identifies the 17.6 acre Willow Pass Park extension and the 75 acre Tournament Sports Facility as important community facilities to be included within the Development Footprint. Developer’s Project proforma has set aside funds for phased improvements to either or both of these important facilities, depending on input received from the community during the Specific Plan process. In addition, at the City’s direction, excess funds from the Project’s Community Benefit Fund can be directed to accelerate the phasing of these facilities to completion. For purposes of calculating the 118 acres of master planned parks within the Project, the 17.6 acre Willow Pass Park extension was used.
- i. **Pocket Parks.** In addition to the 118 acres of master planned parks discussed above, each individual residential neighborhood will feature at least a two acre neighborhood pocket park as a central neighborhood feature.
- j. Parks may be used as the location for public facilities such as museums, ball fields, community gardens, dog parks, active sports fields, and similar uses.

- k. Parks and boundary linear parks shall have limited roadways designed to be minimally intrusive and shall include Class 1 bike lanes, be designed with traffic calming features and for vehicular exclusion for special events, high pedestrian/bike uses, etc. Roads crossing the parks shall be limited to the extent feasible and designed in a manner that protects pedestrian connectivity and recreational use.

2. Deal Structure - City Controls the Land

(See Financial Deal Structure – Section 4, Schedule of Performance – Section 5, and Interim Lease – Section 6)

- a. Completely open book and fully transparent allowing Catellus and the City to find the right balance of project sources and uses to maximize community benefits.
- b. Catellus will buy land in smaller parcels, not in large takedowns, ensuring the City controls the land long-term, not the developer.
- c. Developer proposes to construct Backbone Infrastructure using a Lease vs. Developer immediately taking title to the Land. This approach has several benefits for the City:
 - i. The City will continue to own the land as Developer funds and installs Backbone Infrastructure, ensuring that the City controls the land until Backbone Infrastructure is complete and the land is ready for vertical development. The City will not face the risks associated with trying to get land back from a non-performing developer.
 - ii. The Project does not immediately incur carrying costs of taking title to the land (property taxes, transfer tax, closing costs, etc.). Deferring Project carrying costs will allow the money saved to flow back into the Project and be spent on other community benefits and/or provide the City with more additional profit sharing in the Lookback Waterfall.
- d. Catellus advances the money needed for land development with internal equity which eliminates any dependency on third party financial partners. Catellus is projecting to invest approximately \$700 million of its own money in Phase One.
- e. Catellus takes on 100% of the risk and requires no guarantees from the City.
- f. The City has a right to terminate the DDA if Catellus does not perform.
- g. Once a vertical builder purchases the land, if they fail to construct within reasonable time frames, the City has repurchase rights to get the land back.
- h. Catellus submitted its Phase One proposal to the City of Concord with the understanding that there would be no development rights to future phases. The City has no obligation to keep Catellus as the master developer for future phases.

3. New Jobs, Retail Services & Sales Tax

(See Project Description and Phasing of Project Components – Section 3)

- a. Catellus is proposing multi-family residential, office, commercial, and retail in a “Village Center” format in the TOD Core area adjacent to the North Concord BART station.

- b. The Village Center will be designed to incorporate both the TOD Core and approximately 18 acres of land currently owned by BART. Preliminary estimates suggest the TOD Core could accommodate up to 1.7 million square feet of employment generating commercial/office/retail uses, including utilization of a portion of the BART owned land (subject to successful negotiations with BART). Retail development in the Village Center will be in the range of 30,000 to 150,000 square feet depending on market demand and community feedback. Other potential uses include hotel services and entertainment.
- c. Catellus intends to construct a 333,000-square-foot regional retail center at the corner of Willow Pass Road and Highway 4 which will provide an additional shopping center amenity for the Concord community and will increase the City's sales tax collection.

4. Affordable Housing

(See Affordable Housing – Section 16)

- a. Developer will deliver development-ready sites at no cost for affordable housing in an amount equal to 25% of the total amount of residential units in the Project. This 25% will include affordable rental housing targeted at 60% AMI and below. Developer's proforma has assumed 58% of the affordable housing will be for low and very low incomes.
- b. Developer will prioritize partnerships with local, non-profit mission oriented developers for development of the Affordable Housing.
- c. Developer has assumed \$56 million dollars of gap subsidy for affordable housing in Phase One, including approximately \$84,000 per unit in gap subsidy for low- and very-low-income housing. This money, or a portion thereof, could be allocated to other community benefits, such as parks, if more outside financing becomes available to the affordable housing builders.
- d. Developer will provide sufficient free land and clean developable pads to accommodate the affordable housing. The free land and clean developable pads will include utilities to the curb line, will not require major grading, will meet environmental standards for residential development, and will be lien-free with clear title.
- e. Affordable Housing will address the needs of lower-income seniors, veterans, teachers, families, workers, and people who are homeless and with special needs.
- f. Affordable Housing sites will be distributed throughout the Project with generally the same advantages and desirability as market rate sites, including access to transit and site amenities. Developer will use best efforts to locate affordable housing sites for low and very low incomes to support medium to high density development throughout the Project and to ensure maximum points in the 9% tax credit scoring process.
- g. Developer will use best efforts to provide affordable housing sites that are appropriate for medium to high density projects.
- h. The Affordable Housing will include both affordable homes for rent as well as affordable homes for sale by non-profit firms such as Habitat for Humanity that utilize the "sweat equity" model. Additional for sale affordable homes could be included in the program.

- i. The affordable units will be delivered at generally the same pace as the market rate residential units, measured on an aggregate basis.

5. **Sustainability, Transit, and Neighborhood Benefits**

(See Project Description – Section 3)

- a. The Specific Plan will be substantially consistent with the community’s vision set forth in the CRP Area Plan and Climate Action Plan and shall implement or exceed the goals and objectives of the CRP Area Plan and Climate Action Plan, including those regarding sustainability, transit, community character, and economic vitality.
- b. Developer will establish a transportation demand management program (“TDM”) to ensure compliance with the CRP Area Plan’s goal for a convenient, multi-model transportation system including encouraging walking, bicycling, and transit use.
- c. Developer will provide a subsidized shuttle service and will use best efforts to come to an agreement with County Connection as the shuttle provider.
- d. Developer will prepare and implement a Bicycle and Pedestrian Connectivity Plan to provide for safe connections from surrounding neighborhoods into the Project.
- e. Developer will use best efforts to accommodate seniors with a variety of needs and resources, including residents of the Concord area who may be looking for options that allow them to stay in the community. In addition to the affordable housing component, the Project will include a range of housing types from compact single-family homes to apartments in higher density buildings that are specifically designed with the needs of seniors in mind.
- f. Developer will use best efforts to coordinate with CCTA, and other relevant agencies and stakeholders, to ensure that county and regional transportation infrastructure investments are aligned to reduce VMTs and ensure transit ridership and reduction of congestion.
- g. Developer will use best efforts to pursue water neutrality consistent with the CRP Area Plan including the design of grey water systems into the Project where feasible.

6. **Labor Policies**

(See Labor Policies – Section 17)

- a. Developer will work to enter into one or more Project Labor Agreement(s) (“PLA”) covering construction related to the build-out of the Project.
- b. Developer will pursue opportunities to include local hire provisions in third party contracts such as the good faith goal of meeting the 40% local hire target as set forth in the Hire Concord First provisions.
- c. Developer will pursue training and employment opportunities for returning military veterans. Developer will work with veteran job placement groups, such as Swords to Plowshares, Helmets to Hard Hats, the Employment Development Department, Veterans Employment Committee of Contra Costa County, and Eastbay Works to

establish a job placement program at the Project. Developer will pursue opportunities for contractors to enroll and post job openings in the programs available for veteran job placement.

- d. Consistent with the CRP Area Plan, Developer will pursue opportunities to provide certified apprenticeships, internships and other employment development programs in accordance with the State certified Joint Labor Management Apprenticeship Training Program.
- e. Developer will pursue opportunities to work with established organizations such as the Greater Concord Chamber of Commerce, the Mt. Diablo Unified School District, East Bay Works, the Contra Costa Workforce Development Board, Cal State East Bay, and the California Employment Development Department to provide adult education and vocational training at the Project, in an effort to link new jobs created at the Project to local residents.
- f. Developer will pursue opportunities to purchase materials and supplies from local businesses for the development of the Project.
- g. Developer will pursue opportunities to work with local developers for the development of the Project.

AGREEMENT TO NEGOTIATE

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

RECITALS

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

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

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

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

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

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

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

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

A G R E E M E N T

1. **Incorporation of Recitals.**

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

2. **Good Faith Negotiations.**

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

3. **Negotiating Period.**

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

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

3.2 DDA Stage.

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

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

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

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

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

4. Exclusivity of Negotiations.

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

5. Planning and CEQA Review.

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

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

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

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

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

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

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

7. Progress Reports and Information.

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

8. Limitations on Effect of Agreement.

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

9. Defaults and Remedies.

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

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

9.3 Exclusive Remedies for Developer Default. Except as otherwise provided in Section 10 below, in the event of an uncured default by Developer, City's sole and exclusive remedy shall be to terminate this Agreement and retain that portion of the Initial Good Faith Deposit or Good Faith Deposit, as applicable, and any interest earned thereon, needed to pay City Costs incurred prior to the date of such termination. Following such termination, neither Party shall have any right, remedy or obligation under this Agreement; provided, however, any obligation under a specific provision of this Agreement for Developer to indemnify or defend City shall survive such termination.

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

10. Non-Disparagement.

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

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

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

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

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

11. Lobbying Prohibition.

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

12. Rights Following Expiration or Termination.

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

13. Right to Enter the First Transfer Parcel.

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

14. Notices.

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

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

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

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

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

and

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

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

15. Confidentiality of Information.

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

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

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

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

16. No Commissions.

Each Party represents and warrants that it has not entered into any agreement, and has no obligation, to pay any real estate commission in connection with the transaction contemplated by this Agreement. If a real estate commission is claimed through either Party in connection with the potential transaction contemplated by this Agreement or any resulting DDA, then the Party through whom the commission is claimed shall indemnify, defend and hold the other Party harmless from any liability related to such commission. The provisions of this Section 16 shall survive termination of this Agreement.

17. Assignment.

The qualifications and identity of Developer are of particular concern to City. It is because of those unique qualifications and identity that City has entered into this Agreement with Developer. Accordingly, except as provided below, Developer may not assign its right to negotiate with City to any other person or entity, without the prior written approval of the City Council. Any purported voluntary or involuntary assignment of Developer's negotiation rights without such City written approval shall be null and void. Notwithstanding the foregoing, Developer may assign its rights under this Agreement without consent by the City to another business entity of which Developer or an affiliate of Developer (a) retains responsibility for the day to day entitlement and development activities; and (b) has a voting and profits interest in such entity. Developer shall provide not less than ten (10) days' prior written notice to City of any such permitted assignment.

18. Applicable Law; Venue.

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

19. Severability.

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

20. Integration.

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

21. Modifications.

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

22. Waiver of Lis Pendens.

It is expressly understood and agreed by the Parties that no *lis pendens* shall be filed against any portion of the Development Phase One Property or any other portion of the CRP Area with respect to this Agreement or any dispute or act arising from this Agreement.

23. Rights to Design Concepts and Development Plans.

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

24. Interpretation.

As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The word "including" shall be construed as if followed by the words "without limitation." This Agreement shall be interpreted as though prepared jointly by the Parties. Titles and captions are for convenience of reference only and do not define, describe or limit the scope or the intent of this Agreement or any of its terms.

25. Authority.

Each person executing this Agreement on behalf of Developer does hereby covenant and warrant that (a) Developer is created and validly existing under the laws of Delaware, (b) Developer has and is duly qualified to do business in California, (c) Developer has full corporate power and authority to enter into this Agreement and to perform all of Developer's obligations hereunder, and (d) each person (and all of the persons if more than one signs) signing this Agreement on behalf of Developer is duly and validly authorized to do so.

26. Joint and Several.

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

27. Counterparts.

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

28. List of Exhibits.

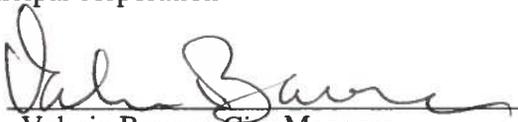
The following Exhibits are attached hereto and incorporated herein by reference:

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

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

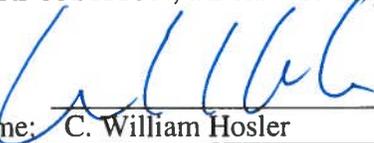
CITY:

CITY OF CONCORD, a California
municipal corporation

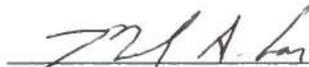
By: 
Valerie Barone, City Manager

DEVELOPER:

CATELLUS DEVELOPMENT
CORPORATION, a Delaware corporation

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

APPROVED AS TO FORM:

By: 
Mark Coon, City Attorney

ATTEST:


City Clerk

EXHIBIT A

SITE MAP

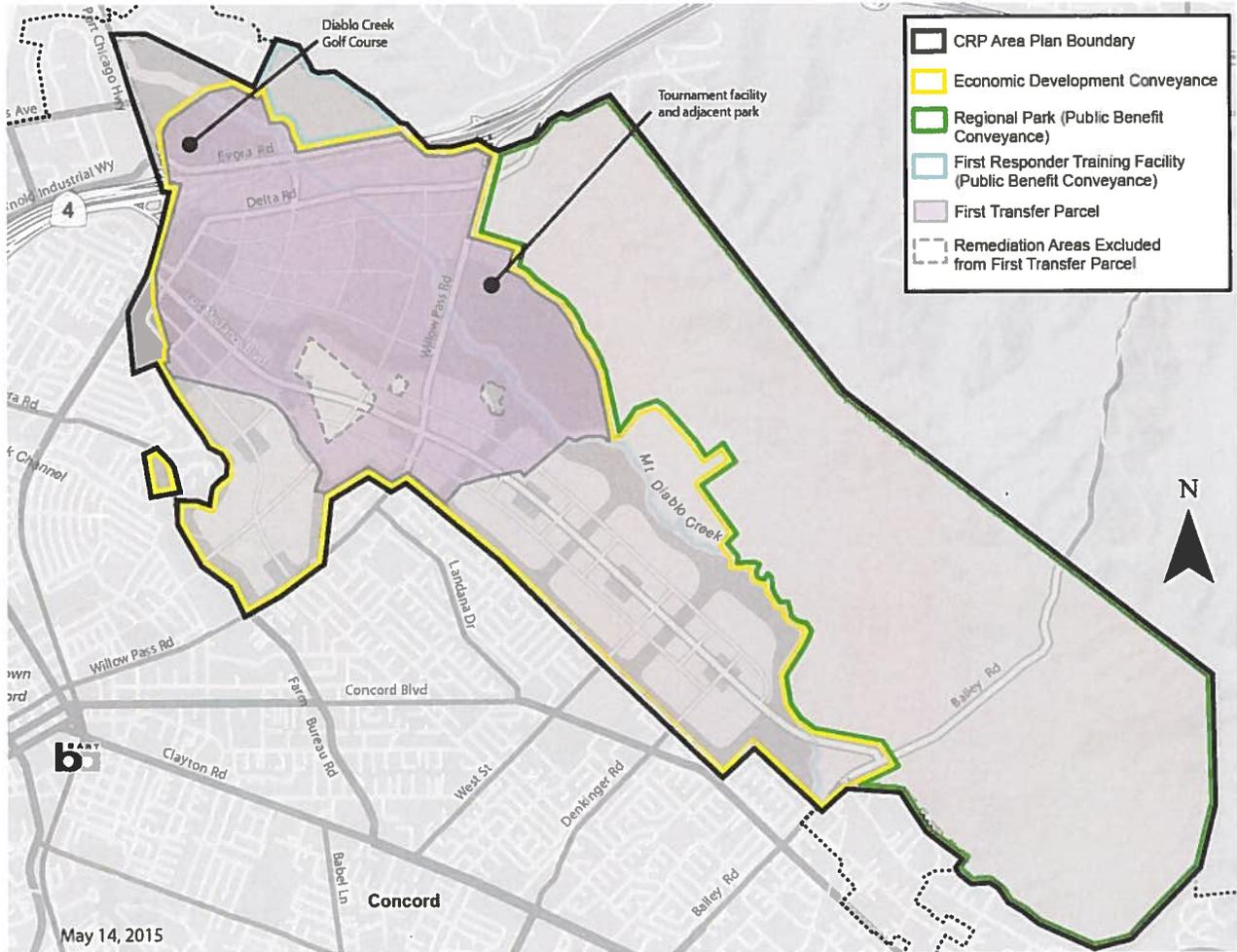


EXHIBIT B

MAP OF DEVELOPMENT PHASE ONE PROPERTY

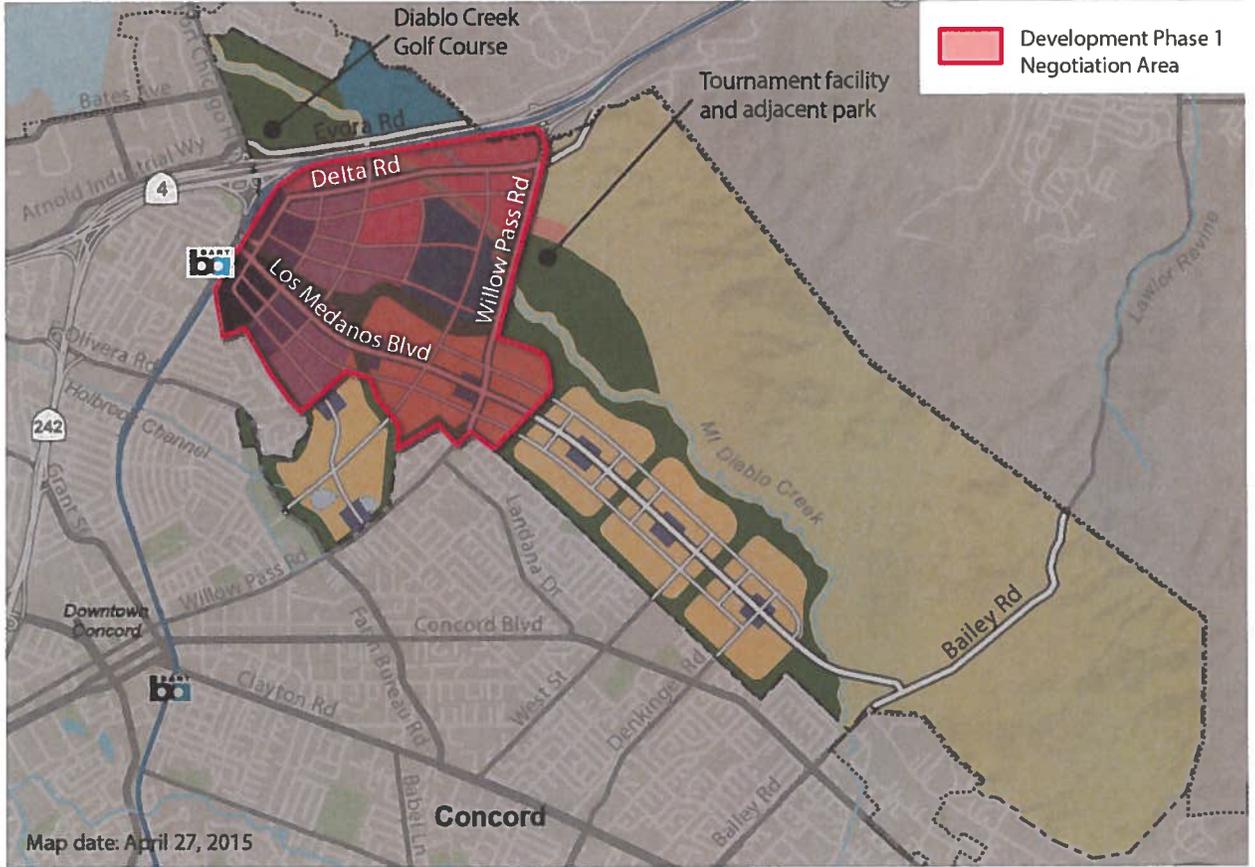


EXHIBIT C

PRELIMINARY STAGE NEGOTIATIONS MATTERS

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

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

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

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

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This SETTLEMENT AGREEMENT AND MUTUAL RELEASE (the “**Agreement**”) is entered into as of _____, 2016 (the “**Effective Date**”), by and between the CITY OF CONCORD, a municipal corporation in its capacity as local reuse authority for the Concord Naval Weapons Station (“**City**”) and CATELLUS DEVELOPMENT CORPORATION, a Delaware corporation (“**Catellus**”). City and Catellus may each be referred to as a “Party” and collectively as the “Parties.”

RECITALS

A. On January 15, 2014, City issued a Request for Qualifications for the first phase of development of the property known as the Inland Area of the Concord Naval Weapons Station (the “**Property**”). In June 2014, the City announced the names of four prequalified respondents, including Catellus, who would be invited to submit proposals in response to a City Requests for Proposals (“**RFP**”). Based on the proposals submitted in response to the RFP, City selected two master developer candidates to pursue concurrent negotiations with City: Catellus and Lennar Concord, LLC (“**Lennar**”).

B. City and Catellus entered into an Agreement to Negotiate dated May 26, 2015, in order to set forth the terms under which City would negotiate with Catellus a detailed term sheet for the proposed disposition and development of the Property, while concurrently negotiating a separate term sheet with Lennar. The Agreement to Negotiate was amended twice, on June 26, 2015 and on November 25, 2015. In addition, the term of the Agreement to Negotiate was extended twice by letters from City dated November 10, 2015, and February 29, 2016. The Agreement to Negotiate as amended and extended is hereinafter referred to as the “**Negotiating Agreement**.” Lennar entered into a nearly identical Agreement to Negotiate with City, which was also subsequently amended and extended in the same manner as the Negotiating Agreement between Catellus and City.

C. Section 6.1 of the Negotiating Agreement obligated Catellus to provide a cash deposit to City in the amount of \$250,000, as an initial good faith deposit for City to draw against to pay all internal and third party expenses incurred by City in connection with the negotiation and drafting of the term sheet (the “**Initial Good Faith Deposit**”). Catellus submitted the Initial Good Faith Deposit as required.

D. City and Catellus engaged in negotiations pursuant to the terms of the Negotiating Agreement and City was prepared to bring an item forward to the City Council on the selection of the final master candidate on September 29, 2015.

E. On September 24, 2015, the law firm of Hanson Bridgett sent a letter to the City Manager on behalf of Catellus alleging that Lennar had violated its Agreement to Negotiate with the City. Hanson Bridgett sent the City a second letter on September 25, 2015, threatening potential litigation. As a result of the letters, the City put the master developer process on hold and the City’s Interim City Attorney hired the law firm of Jenkins & Hogin, LLP, as independent special counsel to investigate and report back to the City Council findings and conclusions with

respect to these allegations.

F. Michael Jenkins, of Jenkins & Hogin, issued a report to the City's City Council, dated February 11, 2016, concluding that certain campaign donations made by various consulting firms associated with Lennar constituted lobbying in violation of Lennar's Agreement to Negotiate and that the City Council conducted an illegal serial meeting. The report noted that a determination of the consequences of the lobbying violation was within the discretion of the City Council. Lennar has disputed the findings in the Jenkins & Hogin report.

G. On February 23, 2015, the City Council determined, in its discretion, to move forward with the master developer selection process as originally contemplated, with both Catellus and Lennar as the two finalists. Following Council's determination, Catellus alleged, among other things, that adverse comments by one or more Councilmembers indicated Council bias against Catellus, and the Parties discussed, among other possible paths forward, that Catellus deliver a release and written withdrawal from the RFP process in exchange for the City's return to Catellus of the Initial Good Faith Deposit.

H. In light of the allegations made by Hanson Bridgett on behalf of Catellus in the letters dated September 24, 2015, and September 25, 2015, the results of the Jenkins & Hogin independent investigation, Catellus' subsequent claims and allegations, and any other allegations and claims that Catellus may have, known or unknown, regarding the City's master developer selection process (collectively, the "**Dispute**"), City desires to return the Initial Good Faith Deposit in exchange for Catellus' compromise, release and waiver, all as set forth herein.

NOW, THEREFORE, in consideration of the mutual promises referenced herein, the Parties hereby agree as follows:

AGREEMENT

1. Recitals. The Parties hereby incorporate by reference the foregoing recitals as part of this Agreement.

2. Mutual Releases.

2.1 Release by Catellus. Catellus, on behalf of itself and its subsidiaries, affiliates, assigns, predecessors and successors-in-interest, and its and their employees, officers, directors, members, partners, representatives, shareholders, agents, attorneys and heirs, hereby releases and forever discharges City, in its capacity as the local reuse authority and as a municipal corporation, and its past and present officers, employees, representatives, elected and appointed officials, agents, contractors and attorneys, and all persons acting by, through, or in concert with any of them, from any and all claims, charges, complaints, debts, liabilities, demands, obligations, costs, expenses (including, but not limited to, attorneys' and consultants' fees and costs), damages, suits, actions, rights to appeal, pending appeals, and causes of action related to or arising out of the Dispute, the RFP and the Negotiating Agreement, or any of them.

2.2 Release by City. City, on behalf of itself, as the local reuse authority and as a municipal corporation, and its employees, volunteers, officers, elected and appointed officials, attorneys, and representatives, hereby releases and forever discharges Catellus and its

subsidiaries, affiliates, predecessors and successors-in-interest, and its and their directors, officers, employees, partners, representatives, shareholders, agents, contractors and attorneys, and all persons acting by, through, or in concert with any of them, from any and all claims, charges, complaints, debts, liabilities, demands, obligations, costs, expenses (including, but not limited to, attorneys' and consultants' fees and costs), damages, suits, actions, rights to appeal, pending appeals, and causes of action related to or arising out of the Dispute, the RFP and the Negotiating Agreement, or any of them.

2.3 Waiver of Unknown Future Claims. The Parties hereto understand and agree that this Agreement extends to all claims of every nature and kind, known or unknown, suspected or unsuspected, arising out of or accruing in connection with any act or omission occurring prior to the execution of this Agreement that pertains to the Dispute, the RFP and the Negotiating Agreement, or any of them, and that any and all rights granted under Section 1542 of the Civil Code of California, and any analogous state or federal law or regulation are hereby expressly waived. Section 1542 of the Civil Code of California reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

City Initials

Catellus Initials

3. Settlement Terms. As consideration for the settlement of the Dispute:

3.1 No later than five business days after the Effective Date, City shall reimburse Catellus by wire transfer an amount equal to the full amount of the Initial Good Faith Deposit, or Two Hundred Fifty Thousand Dollars (\$250,000). The wire instructions for such payment are: _____ [to be inserted].

3.2 The Negotiating Agreement is hereby terminated and neither Party shall have any further rights or obligations under the Negotiating Agreement, except for the City's obligations to Catellus under Section 15 of the Negotiating Agreement.

4. Representations. Each Party represents and warrants to the other that: (a) it has not heretofore assigned, transferred or purported to assign or transfer to any person any portion or all of its claims related to or arising out of the Dispute; (b) it has the power and authority to enter into this Agreement; (c) the execution, delivery and performance of this Agreement will not constitute a breach or violation of any agreement to which it is a party or violate any other covenant, agreement or judgment by which it is bound or to which its assets are subject; and (d) each of the individuals signing this Agreement is authorized to do so on behalf of the entity for whom he or she is signing, is authorized to bind the respective Party to the terms of this Agreement, and has taken all steps necessary to obtain the requisite corporate authority or approval by any political or governmental body or entity to bind their respective Party without any additional or further signatures, resolutions, consents or actions.

5. Compromise. The Parties agree that this Agreement is a compromise and settlement of disputed claims, or potential disputed claims, and that the furnishing of the consideration for this Agreement shall not be deemed or construed as an admission of liability or responsibility at any time for any purpose. It is further agreed that this Agreement is being entered into solely for the purposes of (i) avoiding further expenses and inconvenience associated with prosecuting and/or defending against any and all claims, rights, demands, actions, obligations, liabilities, and causes of action related directly or indirectly to, or arising out of, the matters released herein and (ii) terminating the Negotiating Agreement. This Agreement is the result of a compromise, and is not and shall not be considered as an admission of the truth of the allegations, claims, or contentions of either Party to this Agreement against the other Party or any other person or entity. Each Party denies all such allegations, liabilities, and responsibilities.
6. Attorneys' Fees and Costs. Each Party shall bear its own attorneys' fees and costs incurred in connection with the drafting of this Agreement.
7. Mutual Drafting. This Agreement shall be deemed to have been drafted by or on behalf of each of the Parties. The Parties agree that each has had an opportunity, with counsel, to participate in the drafting of this Agreement, and that this Agreement will not be construed against any Party on the basis of that Party having primary responsibility for the drafting of this Agreement.
8. Legal Representation. In entering into this Agreement, each Party represents that they have relied upon the legal advice of their respective attorneys, who are the attorneys of their choice, that the terms of this Agreement have been completely read and explained to them by their respective attorneys, and that these terms are fully understood and voluntarily accepted by each of the Parties.
9. Enforceability. This Agreement will not become valid and enforceable unless and until signed on behalf of each of the Parties. However, the Agreement will be binding and enforceable on the date that it is signed by all Parties, which date shall be inserted above as the Effective Date.
10. Time is of the Essence. Time is of the essence for this Agreement.
11. No Inducement to Settlement. Each Party represents and warrants that no promise, representation, or warranty whatsoever, whether express, implied or statutory, which is not contained in this Agreement concerning the rights, duties and defenses for the matters released herein or otherwise to induce the execution of this Agreement has been made by the other Party or its principals, agents, attorneys, or representatives. The Parties are not bound by any representations or inducements which are not set forth in writing in this Agreement. Each Party represents and warrants that it has not executed, approved or entered into this Agreement in reliance upon any promise, representation or warranty which is not contained within this written Agreement, but instead has executed, approved and entered into this Agreement solely upon its own independent investigation of any and all facts as it may deem appropriate.
12. Future Attorneys' Fees. Should either Party reasonably retain counsel for the purpose of enforcing or preventing the breach of any provision of this Agreement, including but not limited

to instituting any action or proceeding to enforce any provision of this Agreement, for damages by reason of any alleged breach of any provision, or for a declaration of such Party's rights or obligations, or for any other remedy related to or in connection with this Agreement, then the prevailing Party in such proceeding shall be entitled to recover all costs and expenses actually incurred, including, but not limited to, reasonable attorneys' fees and costs.

13. Controlling Document. This Agreement contains the entire agreement between the Parties with respect to settlement of the matters released herein, and supersedes any prior discussions or agreements between the Parties, whether oral, written or both, concerning settlement of the matters released herein, except as may otherwise be expressly stated herein. The Parties intend this written instrument to serve as the sole and exclusive embodiment and final expression of their agreement for settlement of the matters released herein which may not be contradicted or supplemented by evidence of any prior or contemporaneous agreements. The Parties further intend that this Agreement constitute the complete and exclusive statement of its terms and that no extrinsic evidence may be introduced in any judicial or arbitration proceeding, if any, involving this Agreement, in order to vary, modify or contradict its terms. It is expressly understood and agreed that there have been no promises, agreements or inducements not expressed in this Agreement.

14. Written Modification Only; No Waiver. This Agreement and each of its terms and provisions may not be amended, altered, modified, terminated or waived orally, and no amendment, alteration, modification, termination or waiver shall be valid unless it is in writing and signed by each of the Parties. No provision of this Agreement may be waived unless in writing and signed by the Party benefited by the waiver. Waiver of any one provision shall not be deemed to be a waiver of any other provision of this Agreement.

15. Agreement Read. Each Party represents and warrants that it has carefully read each and every term of this Agreement and has familiarized itself thoroughly and completely with the contents of this Agreement.

16. Applicable Law. This Agreement shall, in all respects, be governed by the laws of the State of California without reference to its choice of laws principles.

17. Execution of Further Documents. From time to time, at the request of either Party and without further consideration of its expense and within a reasonable period of time after a request is made, the other Party agrees to execute and deliver any and all further documents and instruments, and to do all acts, as the requesting Party may reasonably request, which may be necessary or appropriate to fully implement the provisions of this Agreement, but not contradict its terms.

18. Successors and Assigns. All of the terms and provisions contained herein shall inure to the benefit of and shall be binding upon the Parties hereto and their respective heirs, administrators, representatives, executors, successors, transferees, assigns, parent and other affiliated companies, predecessors, and any business entities owned in whole or in part by such Party.

19. Counterparts. This Agreement may be executed in one or more counterparts. All counterparts so executed shall constitute one contract, binding on the Parties, even though the Parties are not signatory to the same counterpart.

20. Faxed/PDF Signatures. Delivery of a facsimile or PDF copy of a signed counterpart of this Agreement shall constitute delivery of a valid signature, equivalent for all purposes to delivery of the original signed counterpart.

[SIGNATURES ON NEXT PAGE]

DRAFT

CITY:

CITY OF CONCORD, a California
municipal corporation

DEVELOPER:

CATELLUS DEVELOPMENT
CORPORATION, a Delaware
corporation

By: _____
Valerie Barone, City Manager

By: _____
Name: _____
Title: _____

Dated: _____

Dated: _____

APPROVED AS TO FORM:

By: _____
Brian Libow, Interim City Attorney

ATTEST:

By: _____
Joelle Fockler, City Clerk