

**EXCLUSIVE NEGOTIATION AGREEMENT
BY AND AMONG
THE CITY OF ALAMEDA,
AND
BROOKFIELD BAY AREA HOLDINGS LLC
AND
CATELLUS DEVELOPMENT CORP**

This EXCLUSIVE NEGOTIATION AGREEMENT ("**Agreement**") is entered into by and among the City of Alameda, a municipal corporation ("**City**"), and Brookfield Bay Area Holdings LLC, a Delaware limited liability company ("**Brookfield**") and Catellus Development Corp, a Delaware corporation ("**Catellus**") (individually and/or collectively, "**Developer**"), as of the Effective Date (defined in Section 1). City and Developer sometimes are referred to collectively as the "**Parties**" and either individually as a "**Party**."

RECITALS

A. City is the owner of certain real property located within the City of Alameda, State of California commonly referred to as the former Alameda Naval Air Station, now known as Alameda Point. The property that is the subject of this Agreement is the West Midway development area, an approximately 22.8-acre property located in the Main Street Neighborhood sub-district, which is depicted for convenience in Exhibit A ("**Property**").

B. In February 2014, the Alameda City Council approved a Master Infrastructure Plan, General Plan Amendment, Zoning Ordinance Amendment and certified an Environmental Impact Report for Alameda Point, including the Property. On March 21, 2017, City Council approved the Main Street Neighborhood Specific Plan. These documents (collectively, "**Planning Documents**") all relate to potential development of the Property. Developer understands that any proposed Project (as described below) must be consistent with the Planning Documents.

C. Developer has demonstrated to City its experience with successfully developing properties similar to the Property, as shown by its statement of qualifications submitted to City on March 30, 2020. Developer seeks to develop the Property with a mixed-use, mixed-income residential neighborhood with two-hundred and ninety-one (291) residential units and up to five hundred thousand square feet (500,000 square feet) of commercial space ("**Project**").

D. Concurrently with development of the Project, a non-profit developer that includes Mid-Pen, Alameda Point Collaborative, Building Futures for Women and Children and Operation Dignity (collectively, "**Collaborating Partners**"), will develop a 9.7 acre site and construct 267 low and very-low income units ("**RESHAP Site**").

E. City and Developer seek to negotiate a transfer of the Property from City to Developer for development of the Project. The Parties intend to negotiate mutually acceptable terms and conditions for the transfer and development of the Project by first negotiating a "Term Sheet" and thereafter negotiating a Disposition and Development Agreement ("DDA").

NOW, THEREFORE, in consideration of the foregoing, which are incorporated herein by reference, and the promises, covenants, and provisions set forth below, the receipt and adequacy of which consideration is acknowledged, Developer and City agree as follows.

AGREEMENT

1. Term. The term of this Agreement shall commence on the date City Council approves this Agreement (the "Effective Date") and shall extend for eighteen (18) months thereafter unless sooner terminated or extended as herein provided ("Initial Term").
2. Extended Term. The Initial Term plus any and all extensions of the Initial Term under this Section 2 are referred to collectively as the "Term." The Initial Term may be extended two (2) times for up to three (3) months each time, which may be granted in the City Manager's or designee's reasonable discretion, so long as Developer is continuing to negotiate in good faith.
3. Intentionally Omitted.
4. Negotiation of Term Sheet. During the initial six (6) months of the Term, the Parties shall negotiate a proposed Term Sheet for submittal to City Council for its consideration. The Term Sheet will establish all material and essential business terms, timing and framework for the transfer and development of the Property, and will define the financial, legal, operational and administrative mechanisms to implement such transfer and development. A summary of non-binding key terms to be included in the Term Sheet (and subsequently incorporated into the DDA) is attached as Exhibit B. The Term Sheet shall also include (a) requirements and conditions for a proposed Development Plan, as more fully described in Alameda Municipal Code Section 30-4.13(j) ("Development Plan") for the Project, (b) a "Phasing Plan" for the Project, and (c) a "Milestone Schedule" for each phase of the Project. Developer understands and agrees that the City Manager shall have the right to determine in his/her good faith, reasonable discretion if the proposed Term Sheet is complete and sufficiently consistent with the intent described in this Section 4 to be placed on a City Council agenda. At the end of the initial six (6) months of the Term (unless extended in the reasonable discretion of the City Manager or designee and so long as Developer is continuing to negotiate in good faith), if (a) a proposed Term Sheet is not placed on a City Council agenda by the City Manager in accordance with this Section 4; (b) City Council does not approve a proposed Term Sheet; or (c) City Council does not conditionally approve a proposed Term Sheet with direction being

given to staff as to required modifications where such modifications are made and a Term Sheet executed by Developer thereafter within a reasonable period of time, then the City shall have the right to terminate this Agreement by written notice to Developer, in which case the Parties shall have no further rights and obligations one to another pursuant to this Agreement.

5. **Negotiation of the DDA.** During the Term, the Parties shall negotiate the proposed terms of the DDA for submittal to City Council for its consideration. The DDA will document the material and essential business terms and framework for the transfer, timing and development of the Property, and will define the financial, legal, operational and administrative mechanisms to implement such transfer and development. The DDA shall include the final (a) Phasing Plan for the Project, (b) Milestone Schedule for each phase of the Project, and (d) Financing Plan for the Project. Developer understands and agrees that the City Manager shall have the right to determine in his/her reasonable discretion if the proposed DDA is complete and sufficiently consistent with the intent described in this Section 5 to be placed on a City Council agenda. At the end of the Term, if (a) if the City Manager does not place a proposed DDA, including a Phasing Plan, Milestone Schedule and Financing Plan, on a City Council agenda in accordance with this Agreement; or (b) City Council does not approve a proposed DDA, including a Phasing Plan, Milestone Schedule, and Financing Plan, then this Agreement shall expire and the Parties shall have no further rights and obligations one to another pursuant to this Agreement.
6. **Processing of Development Plan, Subdivision Map and Development Agreement.**
 - 6.1 During the Term, Developer shall apply for and City shall process a Development Plan for the Project for consideration by the Planning Board. If during the Term the Planning Board (or the City Council on appeal) does not approve a Development Plan, then this Agreement shall expire, and the Parties shall have no further rights and obligations to the other pursuant to this Agreement.
 - 6.2 During the Term, Developer may apply for and, if so, City shall process a Development Agreement and/or subdivision map for the Project for consideration by the Planning Board and, in the case of a Development Agreement, the City Council. If during the Term Developer applies for but the City does not approve a Development Agreement and/or subdivision map for the Project, then Developer shall have the right to terminate this Agreement, in which case the Parties shall have no further rights and obligations to the other pursuant to this Agreement.
7. **City Responsibilities.** During the Term, City shall do the following to further the negotiation process:
 - 7.1 **Exclusive Negotiations.** City shall negotiate exclusively with Developer regarding the Project, the Property, and the terms of the Term Sheet and DDA and shall not solicit, market to or negotiate with any other person or entity regarding the Project or the Property or solicit or entertain bids or proposals to do so.

- 7.2 Retention of Discretionary Authority. City shall negotiate in good faith with Developer during the Term with respect to the Term Sheet, DDA, Development Plan, Development Agreement (if applicable), subdivision map (if applicable) and any other Project entitlements Developer may reasonably elect to apply for during the Term. Developer understands and agrees that by entering into this Agreement, City is making no commitment that it will approve a Term Sheet or a DDA, including a, Financing Plan, Phasing Plan and/or Milestone Schedule for the Project, or a Development Plan, Development Agreement or subdivision map for the Project. City specifically retains the right to approve or deny a proposed Term Sheet and/or DDA, including a Phasing Plan and/or Milestone Schedule and/or Financing Plan, approve or deny a Development Plan, Development Agreement and/or subdivision map, and/or to approve an alternative(s) and/or to impose any conditions or mitigation measures upon the Project in accordance with the discretion accorded to City pursuant to applicable law.
8. Developer Responsibilities. During the Term, Developer shall do the following, at its sole expense, to further the negotiation process:
- 8.1 Non-Refundable Deposits to Offset City Expenses.
- 8.1.1 City acknowledges that Developer paid to City a non-refundable deposit of Twenty-Five Thousand Dollars (\$25,000) upon City's selection of Developer to negotiate this Agreement ("**First Deposit**").
- 8.1.2 Within thirty (30) days after execution of this Agreement by all parties, Developer shall wire transfer to City a non-refundable deposit of Twenty-Five Thousand Dollars (\$25,000) ("**Second Deposit**").
- 8.1.3 Within five (5) business days after approval and execution of the Term Sheet by all parties in accordance with Section 4 herein, Developer shall wire transfer to City a non-refundable deposit of Seventy-Five Thousand Dollars (\$75,000) ("**Third Deposit**", and collectively with the First Deposit and the Second Deposit, the "**Deposits**").
- 8.1.4 If payment is not received by City within the time periods specified in Sections 8.1.2 and 8.1.3 above, this Agreement shall immediately terminate. The Deposits will assist City in offsetting City staff and outside legal and consultant expenses associated with this Agreement and negotiation of the Term Sheet and DDA; however, Developer understands and agrees that the Deposits are non-refundable.

- 8.2 **Minimum Due Diligence Expenditure.** During the first five (5) months of the Initial Term, Developer agrees to invest no less than Twenty-Five Thousand Dollars (\$25,000.00) per month ("**Minimum Due Diligence Expenditure**") in due diligence investigations of the Project and the Property, which may include without limitation physical due diligence, financial due diligence, and entitlements due diligence and processing. By no later than the tenth (10th) day of each month during the Initial Term, Developer shall provide to City an accounting of the Minimum Due Diligence Expenditure. If a monthly accounting is not timely received by City during each month of the Initial Term, then the City shall have the right to terminate this Agreement by written notice to Developer. If this Agreement terminates for any reason, Developer understands and agrees that the Minimum Due Diligence Expenditure is non-refundable.
- 8.3 **Further Entitlements.** Developer shall seek further entitlements, as needed, for development of the Project, including but not limited to, preparation of a proposed Development Plan. Developer understands and agrees that, subject to any Development Agreement approved by City for the Project, the Project will be required to conform to City's approval processes and ordinances and be consistent with City's Zoning Ordinance, General Plan, Alameda Point Master Infrastructure Plan, Main Street Specific Plan and other specific plans applicable to the Property as now approved, or as may be in effect at the time Developer submits a preliminary application (or completed application, if Developer does not submit a preliminary application) for the Project.
- 8.4 **Due Diligence.** Developer shall conduct any and all investigations it deems necessary to negotiate the terms of the Term Sheet and DDA regarding the physical condition of the Property and the condition of title to the Property at the time of transfer. If Developer's due diligence requires entry on the Property, Developer will be required to sign a Right of Entry with City in a form provided by City, which shall include City's standard indemnification and insurance requirements. In connection with such due diligence, Developer shall have the right to terminate this Agreement upon five (5) business days' prior written notice to City if Developer, in its sole discretion, determines that the Project is not feasible. Upon such termination by Developer, (i) Developer shall have no obligation to pay any Deposit or make any Minimum Due Diligence Expenditure that is not yet due pursuant to Sections 8.1 and 8.2 above, and (ii) Developer shall deliver to City copies of diligence materials regarding the Property prepared by or for Developer during the Term (provided that Developer shall be entitled to withhold any attorney-client privileged, attorney work product, confidential, and/or proprietary materials) and shall assign to City in writing Developer's rights to such materials; provided that Developer shall not be obligated to deliver such materials to the City in the event of a City breach of its obligations pursuant to Section 7.1 herein.

- 8.5 Transportation Demand Management Compliance Strategy. Developer shall prepare a Transportation Demand Management ("TDM") Compliance Strategy in compliance with the Alameda Point TDM Plan.
- 8.6 RESHAP Site. The Phasing Plan will be prepared in cooperation with the Collaborating Partners and will be designed to maximize their ability to finance the RESHAP Site. Phase 1 of the Project, at a minimum, will include construction of all backbone and in tract infrastructure improvements identified in the Term Sheet as necessary to support the RESHAP Site.
- 8.7 Financing and Project Pro Forma. Developer shall provide evidence, satisfactory to City, of the development team's financial ability to undertake and successfully complete the proposed Project, including the following:
- Financing Plan - including a pro forma for review and approval by City that includes sources (including evidence of commitments or availability) and uses for financing the Project and the rate of return requirement anticipated to be imposed on the Project.
 - Financing Statement – submit audited (or if audited financial statements are not available, unaudited certified by Developer's chief financial officer) financial statements for the past two (2) years for each development entity that is part of the development team. If not available, provide documented evidence of prior development transactions in which substantially all of the funding was obtained by Developer. Subject to any written confidentiality restrictions imposed on and in effect as to Developer, this information should identify the Project lenders and the size and material terms of the loans, as well as the equity investors, the equity investment amounts and the material terms applicable to the equity contribution.
- 8.8 Project Team. Developer shall identify key individuals on its Project team who will be dedicated to working with City during negotiation of the Term Sheet and negotiation and implementation of the DDA. Additionally, Developer shall provide City with a list of its intended consultants, including but not limited to, architectural, engineering, legal, financial and construction.
- 8.9 Reports. At any time requested by City, but not more frequently than monthly, Developer shall make oral and summary form written progress reports advising City on all progress being made on the responsibilities listed in this Section 8.
9. Meetings. Developer and City staff, as needed, shall meet or hold a conference call approximately every two (2) weeks during the Term to negotiate the Term Sheet and the DDA and discuss the status of activities and tasks related to the negotiations and

the Project, the accomplishment of such activities and tasks and other such matters as City or Developer reasonably requests.

10. Representations and Warranties.

10.1 Duly Formed and Validly Existing. Brookfield represents and warrants that Brookfield Bay Area Holdings LLC, a Delaware limited liability company, is duly formed and validly existing under the laws of the State of Delaware and qualified to do business in California. Catellus represents and warrants that Catellus Development Corp, a Delaware corporation, is duly formed and validly existing under the laws of the State of Delaware and qualified to do business in California. Brookfield and Catellus each shall deliver to City satisfactory evidence to support their respective above representations.

10.2 Developer Authority. Developer represents and warrants that the person executing this Agreement, the Term Sheet and the DDA on behalf of Developer has or will have the full right, power and authority to execute this Agreement and to bind Developer hereunder. Developer agrees to provide City with evidence of this authority prior to execution of this Agreement, the Term Sheet and the DDA.

10.3 City Authority. City represents and warrants that the person executing this Agreement on behalf of City has the full right, power and authority to execute this Agreement and bind City hereunder and that all necessary Planning Board, City Council, and other City approvals have been obtained.

11. No Assignment. City is entering into this Agreement with Developer based on Developer's development experience and track record with similar developments. City acknowledges and agrees that this Agreement is entered into with each of Brookfield and Catellus, and if either Brookfield or Catellus terminates this Agreement but the other party does not, this Agreement shall remain in full force and effect with the non-terminating Developer.

11.1 This agreement may be assigned to a joint venture comprised solely of Brookfield and Catellus (or their respective affiliates) without City approval, which joint venture will act as Developer for purposes of developing the Project.

11.2 In addition, in the event that either Brookfield or Catellus terminates this Agreement but the other Developer does not, then upon receipt of the written approval of City (including delivery to City of relevant information reasonably requested by it), which approval shall not be unreasonably withheld, conditioned, or delayed, this Agreement may be assigned to a joint venture comprised of Brookfield or Catellus and an

affiliate of the non-terminating Developer where such Developer party has day-to-day management control and responsibility of such affiliate), which joint venture will act as Developer for purposes of developing the Project.

11.3 Except as otherwise provided herein, Developer may not sell, assign or transfer any of its rights or obligations under this Agreement.

12. Notices. All notices required or permitted under this Agreement shall be delivered in person; by facsimile, email or overnight courier with written confirmation of receipt, or by registered or certified mail, postage prepaid, return receipt requested, to such Party at its address shown below, or to such other address designated in writing by such Party:

Notices to the City:

City of Alameda
2263 Santa Clara Avenue
Alameda, CA 94501
Attn: Eric J. Levitt, City Manager and
Michelle Giles, Base Reuse Manager, Base Reuse
Telephone: 510.747.7449
Email: mgiles@alamedaca.gov

With copies to:

City of Alameda
2263 Santa Clara Avenue
Alameda, CA 94501
Attn: Yibin Shen, City Attorney and
Lisa Nelson Maxwell, Assistant City Attorney
Telephone: 510.747.4750
Email: lm Maxwell@alamedacityattorney.org

Notices to Developer:

Brookfield Bay Area Holdings LLC
Josh Roden
500 La Gonda Way, Suite 100
Danville, CA 94526
Phone: (925) 743-8000

Fax: (925) 743-8050
Josh.rodan@brookfieldpropertiesdevelopment.com

Catellus Development Corp
William Hosler
66 Franklin Street Suite 200
Oakland, CA 94607
Phone: (510) 267-3401
Fax: (510) 869-3401
bhosler@catellus.com

Cox, Castle & Nicholson LLP
Margo Bradish
50 California Street, 32nd Floor
San Francisco, CA 94111
Telephone: (415) 262-5101
Facsimile: (415) 262-5199
mbradish@coxcastle.com

Notice shall be deemed received and effective on delivery, if delivered personally or upon receipt of confirmation if by facsimile, email or overnight courier; or three (3) days after deposit into the United States mail if delivered by registered or certified mail.

13. Limitations of this Agreement.

- 13.1 Limitations of City's Commitment. City is not, by entering this Agreement, committing itself to or agreeing to undertake any other acts or activities requiring the subsequent independent exercise of discretion by City or any agency or department thereof. This Agreement is merely an agreement to enter exclusive negotiations with respect to the Property according to the terms hereof, with all final discretion and approval in accordance with applicable law remaining with City Council as to any Term Sheet or DDA, including Phasing Plan and Milestone Schedule, and Financing Plan and all proceedings and decisions in connection therewith and Planning Board as to the Development Plan. If negotiations under this Agreement result in a proposed Term Sheet and/or DDA, City Council approval thereof may occur only after compliance, as may be required, with all applicable laws and ordinances including, without limitation, CEQA.
- 13.2 Effect of Expiration or Termination. If this Agreement expires under Section 1 (as extended under Section 2) or is terminated under Section 4, 6, or 8, then neither Party shall have any further rights, obligations, or liability to the other Party under this Agreement.

14. Miscellaneous Provisions.

- 14.1 Entire Agreement. This Agreement is the entire agreement as understood by the Parties with respect to the matters set forth herein.
- 14.2 Amendments. This Agreement may be amended only in a writing signed by all Parties and approved by City Council; provided that extensions of the Term on accordance with Section 2 or of the time period for agreement on the Term Sheet in accordance with Section 4 shall not require City Council approval; and further provided that the City Manager shall have the authority to approve amendments that the City Manager determines to be immaterial.
- 14.3 Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of California. Any action to enforce or interpret this Agreement shall be brought in a court of competent jurisdiction in Alameda County or, in the case of any federal claims, in federal court for the Northern District of California.
- 14.4 Limitation on Remedies. In any action or other legal or administrative proceeding to enforce this Agreement, or that otherwise may arise out of this Agreement, neither City nor Developer shall be entitled to any damages or monetary relief. It is understood and agreed by the Parties that this Agreement is only to enable the Parties to negotiate the terms of a proposed Term Sheet and a proposed DDA, including Phasing Plan, Milestone Schedule and Financing Plan, and Development Plan, Development Agreement, subdivision map and other Project entitlements, on an exclusive basis during the Term. There is no commitment that any Term Sheet and/or DDA, including Phasing Plan and Milestone Schedule or Development Plan, subdivision map, Development Agreement or other entitlements will be approved and no damages, monetary relief or specific performance shall be available to Developer or City if a Term Sheet and/or DDA, Phasing Plan and Milestone Schedule, or Development Plan, subdivision map, Development Agreement or any other entitlements are not approved during the Term.
- 14.5 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 Property with respect to this Agreement or any dispute or act arising from it.
- 14.6 Commissions. Neither Party shall be liable for any real estate commissions or brokerage fees that may arise from this Agreement or any Term Sheet or DDA resulting from this Agreement. The Parties represent and warrant that they have not engaged any brokers, agents or finders in connection with this transaction. Developer shall defend (with counsel acceptable to City) and hold City harmless from any claims by any broker, agent or finder retained by Developer. City shall defend and hold Developer harmless from any claims by any broker, agent or finder retained by City.

- 14.7 **Attorneys' Fees.** In any action or other legal or administrative proceeding to enforce this Agreement, or that otherwise may arise out of this Agreement, each Party shall pay its own attorneys' fees and costs.
- 14.8 **Headings.** The section headings in this Agreement are for convenience only; they do not explain, modify, or add to the meaning of this Agreement.
- 14.9 **Interpretation.** This Agreement is the result of the combined efforts of the Parties. If any provision is found ambiguous, the ambiguity will not be resolved by construing this Agreement in favor of or against either Party, but by construing the terms according to their generally accepted meaning.
- 14.10 **Time Periods.** Any time period to be computed under this Agreement shall be computed by excluding the first day and including the last day. If the last day falls on a Saturday, Sunday or legal holiday, the last day will be extended until the next day City is open for business. All references to days in this Agreement shall mean calendar days unless otherwise expressly specified. City offices are closed on Fridays and therefore any reference to business days shall mean Monday through Thursday, unless one of those days is a holiday observed by City.
- 14.11 **Severability.** The provisions of this Agreement are severable. The invalidity or unenforceability of any provision in this Agreement will not affect the other provisions.
- 14.12 **Successors and Assigns.** This Agreement is binding on and will inure to the benefit of the Parties and their respective successors. This Agreement cannot be transferred or assigned except as permitted by the terms of this Agreement.
- 14.13 **Independent Capacity.** Nothing in this Agreement is intended to or does establish the Parties as partners, co-venturers or principal and agent with each another.
- 14.14 **Conflict of Interest.** No officer or employee of City shall hold any financial interest in this Agreement (California Government Code § 1090).
- 14.15 **Counterparts.** This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same agreement.
- 14.16 **Electronic Signatures.** This Agreement may be executed by electronic signature, which shall be considered as an original signature for all purposes and shall have the same force and effect as an original signature. Without limitation, "electronic signature" shall include faxed versions of an original signature or electronically scanned and transmitted versions (e.g., via pdf) of an original signature.

14.17 Exhibits. The following exhibits are attached to this Agreement and incorporated herein as though set forth in full for all purposes:

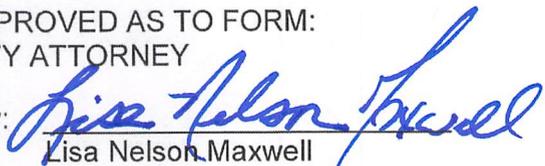
[Signatures on following page]

CITY:

CITY OF ALAMEDA,
a California municipal corporation

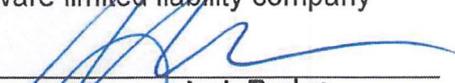
By: _____
Eric J. Levitt
City Manager

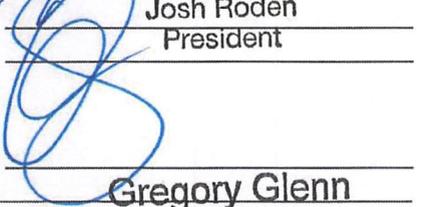
**APPROVED AS TO FORM:
CITY ATTORNEY**

By: 
Lisa Nelson Maxwell
Assistant City Attorney

DEVELOPER:

BROOKFIELD BAY AREA HOLDINGS LLC
a Delaware limited liability company

By: 
Name: _____ Josh Roden
Title: _____ President

By: 
Name: _____ Gregory Glenn
Title: _____ VP/CFO

DEVELOPER:

CATELLUS DEVELOPMENT CORP
a Delaware corporation

By: Counter signed
Name: _____
Title: _____

By: Counter signed
Name: _____
Title: _____

CITY:

CITY OF ALAMEDA,
a California municipal corporation

By: _____
Eric J. Levitt
City Manager

APPROVED AS TO FORM:
CITY ATTORNEY

By: _____
Lisa Nelson Maxwell
Assistant City Attorney

DEVELOPER:

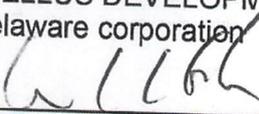
BROOKFIELD BAY AREA HOLDINGS LLC
a Delaware limited liability company

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

DEVELOPER:

CATELLUS DEVELOPMENT CORP
a Delaware corporation

By:  _____
Name: CW MASLER
Title: EVP

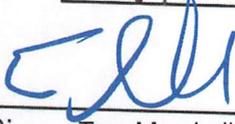
By:  _____
Name: Tom Marshall
Title: Executive Vice President

Exhibit B

Summary of Non-Binding Key Terms for the DDA

1. Project Description
2. Developer Responsibilities
3. City Responsibilities
4. Property Description and Condition
5. Term of DDA
6. Phasing/Milestone Schedule
7. Infrastructure and Amenity Package
8. Land Transfer/Escrow
9. Financing
10. City Cost Reimbursement
11. Implementation Schedule
12. Insurance
13. Indemnity
14. Assignment and Transfer
15. Hazardous Materials
16. Backbone and in tract infrastructure improvements necessary to support the RESHAP Site