

EXCLUSIVE NEGOTIATING AGREEMENT

This Exclusive Negotiating Agreement (this "Agreement"), is made and entered into by and between THE CITY OF AUSTIN, a Texas home rule city and municipal corporation (the "City") and CDC COLONY PARK HOLDINGS, L.P., a Delaware limited partnership (the "Developer"). The City and the Developer are sometimes collectively referred to as the "Parties" and individually as a "Party."

WHEREAS, the City owns an approximate 208-acre tract of real property located at the terminus of Colony Loop Drive, north of Loyola Lane, between Johnny Morris Road and Decker Lane (the "Site"), which is more particularly described in the map attached hereto as **Exhibit A**.

WHEREAS, the Parties desire to negotiate a Master Development Agreement (the "MDA") pursuant to which the Parties intend to create a new, vibrant, sustainable, and mixed-use neighborhood on the Site to be known as the "Colony Park Sustainable Community" (the "Project").

WHEREAS, in the Request for Qualifications issued October 23, 2017, the City reserved the right to allocate up to 5 acres out of the Site in the proposed Loyola Town Center on the Site for a Central Health clinic and offices independent of the MDA process (the "Central Health Transaction").

WHEREAS, pursuant to this Agreement and through the negotiation of a Master Development Agreement, the Parties will endeavor to implement the Colony Park Master Plan, which was guided by several years of participatory planning led by the City, community members, business leaders and community organizations, and adopted by the Austin City Council on December 11, 2014 (the "Master Plan").

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, the City and the Developer agree as follows:

1. TERM, EXCLUSIVITY, AND NEGOTIATIONS.

1.1. **Term.** Unless otherwise terminated in accordance with the provisions of this Agreement, the term of this Agreement will commence on the Effective Date and continue for a period of twenty-four (24) months (the "Term"). If, at the expiration of the Term, the Parties have not executed an MDA, the Parties may extend the Term by mutual agreement. Additionally, the Developer will be entitled to separate thirty (30) day extensions to the schedule established for Phase II as well as for the negotiation of the MDA to provide additional necessary time to complete such phase or final negotiations.

1.2. **Exclusivity.** Except for the contemplated in the Master Plan with respect to the Central Health Transaction and the City's contemplated Colony Park Loop Right of Way Project, the City shall not, without the written consent of the Developer, sell, lease, encumber, or otherwise

dispose of all or a portion of the Site in any manner which would materially or adversely affect the Developer's right to acquire and develop the Site under the MDA.

1.3. **Basis of Negotiations.** The negotiations to be conducted under this Agreement will be based on the development concepts described in the Master Plan and, to the extent applicable, the Developer's Response ("RFP Response") to the City's Request for Proposals ("RFP"). The Developer acknowledges that, while it may help to guide certain aspects of the negotiations, the RFP Response has not been approved by the City.

1.4. **Outside Negotiations.** During the Term, it is contemplated that the Developer will negotiate with third parties to establish the feasibility of the development of the Site, provided that (a) the Developer shall advise such third parties that the current Master Plan and the Colony Park Sustainable Community PUD (the "PUD") form the basis for ongoing negotiations between the Developer and the City, (b) the Developer may not enter into any binding agreements regarding the disposition of any portion of the Site prior to the Parties' agreement to the MDA or an interim agreement to be approved by the Developer and the Austin City Council, and (c) the Developer shall keep the City generally informed as to negotiations with such third parties.

1.5. **Entity Status.** The Developer is the successor entity to Catellus Development Corporation ("Catellus"), the entity that submitted its RFP Response to the City's RFP proposals for the selection of a developer for the Project. The Developer is an affiliated entity with Catellus through common ownership.

1.6. **Independent Consideration.** The City agrees that it has received independent and legally sufficient consideration for the execution of this Agreement and the establishment of the Developer's exclusive right to negotiate with the City for the development of the Site for the 24 month Term of this Agreement including the preliminary planning and professional services and work product to be provided to the City with respect to the integration of the Central Health site plan with the Master Plan and PUD independent of the negotiation of this Agreement and in satisfaction of the requirements of the Colony Park Master Developer Opportunity Request for Proposals issued on February 27, 2018. In addition, the Parties recognize the adequacy of the mutual promises and performances recited in this Agreement as bargained for consideration sufficient to support the execution of this Agreement and the right to continue to negotiate during the Term.

2. PLANNING.

2.1. **Consistency with the Master Plan.** The Parties agree that, while the Master Plan and/or the PUD may be amended, the implementation of the Master Plan and the development of the Site is intended to improve:

- a. Access to food resources,
- b. Access to healthcare services,
- c. Mobility, connectivity and safety,
- d. Access to open spaces and parks,
- e. Economic vitality of new and existing communities,
- f. Access to quality education,
- g. Equal access to affordable workforce housing, and
- h. Quality of life through accessing available public resources.

2.2. **Planning.** The Parties acknowledge that, as contemplated in the Master Plan, certain planning issues must be addressed in the development of the Developer's services, the Phase 1 and 2 Reports (described below), and the negotiation of the MDA, in order to determine:

a. **Planned Unit Development.** The timing, responsible parties, and method for securing PUD zoning district amendments and other project and related approvals for the Site. (In doing so, the Parties will establish the manner for assuring the Developer's compliance with the Colony Park Sustainable Community PUD and the approved PUD amendments.)

b. **Colony Park Sustainable Community.** The timing of completion of all studies, planning, and entitlement work necessary to implement the Colony Park Sustainable Community (as defined herein). (In doing so, the Parties will establish sustainability goals for the Project. The minimum sustainability requirements are defined in the PUD, which requires that the development of the Project shall comply with the Austin Energy Green Building Program multifamily, single-family, or commercial rating system for a minimum two-star rating. The Parties acknowledge that the Master Plan contemplates a dense, mixed-use community with mixed-income characteristics, which promote walkability and alternative transportation modes, energy and water conservation, green infrastructure, community employment and community food production.)

c. **Community Outreach and Public Involvement.** The implementation of the contemplated Community Outreach and Public Involvement Programs. (The Parties will develop a community engagement plan that includes clear timelines, deliverables, and examples of how the Developer will engage and maximize participation with existing communities in relation to the Project. The Parties will establish the method and responsibility for informing adjacent neighborhoods of construction activities throughout the development of the Site and minimizing the impact of these activities on those neighborhoods.) (The community engagement plan will include a plan to maximize participation between the Project and the existing community with respect to housing, healthcare, education, job training, open space, sustainable design, and other community benefits.

d. **Community Benefits.** Strategies to deliver community benefits, such as workforce housing, income-restricted affordable housing, healthcare services, education and job training services, open space and similar programs and facilities within the Site.

e. **Sustainable Community.** The options to deliver the robust community benefits and sustainable design goals set forth in the Master Plan as a core concept for the Project (the “Colony Park Sustainable Community.”).

f. **Local Business Opportunities.** The plan to recruit local businesses to the Project, including retailers, grocers, and restaurants. (The recruitment plan shall include recruitment strategies for (i) a wide range of commercial and job-producing businesses; (ii) businesses of all types and sizes and (iii) small and local businesses that will fill voids in the surrounding market and benefit residents and surrounding communities.)

g. **Financing Issues.** (i) The role and method of the City, the Developer and any third parties in financing the development of the Site; (ii) The manner and method in which public, private and public/private financing arrangements and other appropriate financing mechanisms will be structured; and (iii) clarification of the role of each entity with respect to any proposed special finance districts throughout the build-out of the Project. (As part of its services, the Developer will identify the preliminary and long-term amount and structure of public financing required for the Project and will identify any potential public finance partners, such as the City, Travis County, Capital Metro, the State of Texas, and appropriate federal housing and infrastructure agencies for financing the public infrastructure development of the Site.)

h. **Land Disposition and Payments to the City.** The manner or manners in which the City’s fee simple interests and other interests in real property in the Site will be transferred to the Developer; the amount and timing of payments by the Developer to the City to secure development rights and acquire the City’s interests in the Site; and the phasing strategy and schedule for the real estate transfers necessary for the development of the Site.

i. **Environmental Remediation.** The processes for ensuring compliance with all applicable environmental laws prior to the transfer of the Site to the Developer; and the process and responsible parties for environmental issues both before and following the phased disposition of the City’s real property interests in the Site to the Developer.

j. **Capital Improvement Program Plan.** The Capital Improvement Program (“CIP”) infrastructure projects to be constructed on and off the Site as reasonably required for the development of the Site. The City will include the identified projects in the City’s CIP planning process.

k. **Small and Minority Business Resources.** WBE/MBE subcontracting goals in relation to the Project in accordance with City Code Chapter 2-9B and all other applicable codes, resolutions, rules, or ordinances.

l. **Third Party Resolutions.** Compliance with the so-called City Council “Third Party Resolutions,” regarding the applicability of certain OSHA requirements, Prevailing

Wage Rates, environmental design requirements, rest breaks, and M/WBE participation in projects involving the private development of City-owned land.

3. PHASE 1. During Phase 1 of the Term, the Parties will be responsible for the following preliminary due diligence tasks (the “Phase 1 Tasks”).

3.1. City Documentation. To the extent not previously produced during the RFP process, the City will provide the Developer with access to all available documents in its possession related to the Site, including, but not limited to surveys, maps, reports, studies, and analyses and cooperate with the Developer to provide information in the City’s possession or control so that the Developer can perform its Phase 1 Tasks.

3.2. Preliminary Pro Forma and Economic Feasibility Analysis. During Phase 1, the Developer will provide the necessary professional services to analyze the economic feasibility of developing the Site. The analysis will include projected cash flows, demonstrating the potential for a financially feasible project based on proposed public and private funding sources with a range of cost estimates and a timeline for drawing on funds. The Developer will consider a broad range of possible sources of funding, including, but not necessarily limited to (1) developer equity, (2) land disposition proceeds, (3) Public Improvement District funding or similar land-based financing mechanisms, (4) Tax Increment Reinvestment Zone revenues generated by development of the Site and/or surrounding areas, (5) Capital Improvement Project funding, and (6) any other sources, as applicable. In addition, the Developer will include a comparison of relatively weighted planning factors, such as Capital Improvement Projects, park projects, affordable housing, work force housing, etc., in order to illustrate the relationship between the goals of the Master Plan and their impact on the economic feasibility of implementing the overall development of the Site. The Parties acknowledge that the City’s so-called “Third-Party Resolutions,” requiring third party compliance with OSHA, Prevailing Wage Rates, environmental design, rest breaks, and MBE/WBE Ordinance requirements will impact Project costs, budgets, and planning. Upon mutual agreement of the Parties, a market study may be a Phase I Task.

3.3. Suggested PUD Amendments. During Phase 1, the Developer will review the Development Plan included in the Master Plan and all related planning, infrastructure, and zoning entitlements and develop an illustrative plan, and a corresponding report recommending any proposed amendments to (i) improve the efficiency of the Development Plan, (ii) increase the yield of developable land at the Site and (iii) decrease the cost of public infrastructure. The suggested amendments may include proposed revisions to existing plans, programs, environmental requirements, and entitlements, including the adopted PUD ordinance.

3.4. Project Phasing. The development of the Site may consist of multiple sub-projects. The Developer will consider and include phasing options for the proposed development of the Site in order to increase economic feasibility, facilitate CIP planning, and equitably deliver community benefits and sustainable design.

3.5. Negotiated Contract Compliance Goals. The Parties will establish MBE/WBE subcontracting goals, sustainable design parameters, and public art requirements for implementation in the MDA.

3.6. Central Health Site Plan. The Parties acknowledge that Central Health may acquire development rights to a portion of the Site for office and clinic purposes. In the planning of the overall Site development, the Developer will coordinate the integration of the potential Central Health site plan with the overall Master Plan and PUD.

3.7. Phase 1 Report. Based upon the information developed in its Phase 1 services (including the City's cooperation and collaboration with the Developer), the Developer will deliver to the City its Phase 1 Report, setting forth its findings, internal logic, and preliminary recommendations for the implementation of the Master Plan, including a discussion of the weighted planning factors driving development decisions derived from the Developer's Preliminary Pro Forma and Economic Feasibility Analysis when taking into consideration Project Phasing, suggested PUD Amendments, public financing, Capital Improvement Projects, Community Benefits (including mixed income and workforce Housing), and sustainable Design.

3.8. Recommendations for Phase 2: Based upon the information developed in its Phase 1 services, the Developer will deliver to the City its Phase 2 Recommendations, setting forth its findings, internal logic, and preliminary recommendations for the Phase 2 scope of work and corresponding fees subject to reimbursement in Phase 2.

3.9. Phase 1 Schedule. It is anticipated that the Developer will complete its Phase 1 services and deliver its Phase 1 Report to the City by October 4, 2020. The City will promptly review the Phase 1 Report and provide a copy of its comments to the Developer within ten (10) business days of its receipt. The Parties will meet to discuss the Phase 1 Report within five (5) business days of the delivery of the City's comments. During the performance of its Phase 1 Services, the Developer will attend monthly progress meetings with the City to present its findings to date, to discuss possible options, and to provide an overall opinion of progress and feasibility and, on request by the City, provide written status reports containing such information and in such format as the Parties mutually agree. Upon the clearance of comments and approval of the Phase 1 Report by the City's Project Manager, the City Manager or designee will present the Phase 1 Report and recommendations for Phase 2 to City Council on or before October 29, 2020. It is agreed and understood that the contemplated Phase 1 Schedule dates and turn-around times represent a "best efforts" planning process and set of goals and that the failure to achieve the schedule goals will not be considered an event of default under this Agreement.

4. PHASE 2. Upon the completion of the Phase 1 services and the securing of additional Phase 2 reimbursement authority that is satisfactory to Developer, the City will issue a notice to proceed for Phase 2 and the Parties will be responsible for the following tasks:

4.1. Continuation of Phase 1 Due Diligence Tasks. During the provision of the Phase 2 services and the negotiation of the MDA, the Developer will continue to build upon the findings and recommendations contained in the Phase 1 Report, the goals articulated in the Master Plan, and the directions received from the City at the close of Phase 1 and will further investigate, report, recommend, and refine its findings.

4.2. Phase 2 Reimbursement. If agreed to by the Parties at the close of Phase 1, the City will return to City Council to present the Phase 1 Report and for authority to reimburse the Developer for further pre-development services in Phase 2.

4.3. PUD Revisions. As an integral part of its Phase 2 Services, the Developer will continue to prepare suggested revisions and amendments to the PUD in conjunction with the timing of the proposed execution of the MDA.

4.4. MDA Illustrative Plan. As a part of its Phase 2 services, the Developer will produce and deliver to the City a detailed and comprehensive conceptual MDA “Illustrative Plan” for the Site identifying the physical parameters of the phased development of the Site, including proposed land uses, any property restrictions, and development guidelines, as mutually agreed to by the Parties. The MDA Illustrative Plan will demonstrate the size, location, density and configuration of the interim and post-development land uses for the Site, including open space, single family residential, multi-family residential, affordable housing sites, healthcare, office, retail, civic, and other transportation and infrastructure components.

4.5. Phase 2 Pro Forma Report. The Developer will develop and deliver to the City a Phase 2 Pro Forma Report based on the information developed in Phases 1 and 2 evaluating the economic feasibility of the Colony Park Master Plan, as refined by the information contained in the Phase 1 and Phase 2 Reports and the MDA Illustrative Plan. The Parties will work together during the remaining Term to confirm or refine the Phase 2 Report’s findings, recommendations, and conclusions regarding the Project’s financial feasibility, while ensuring the Master Plan’s overall objectives are met. The Phase 2 Report will include, without limitation, the following information; estimated predevelopment expenses, infrastructure expenses, community benefit expenses, Land Disposition income, (other) sources of funding, cash flow, Project overhead, and investment returns to the Developer and the City, as applicable.

4.6. Phase 2 Schedule. It is anticipated that the Developer will complete its Phase 2 services and deliver its Phase 2 Report to the City within six (6) months of the notice to proceed with Phase 2 services. The City will promptly review the Phase 2 Report and provide a copy of its comments to the Developer within thirty (30) days of its receipt. The Parties will meet to discuss the Phase 2 Report within ten (10) business days of the delivery of the City’s comments. During the performance of its Phase 2 Services, the Developer will attend monthly progress meetings with the City to present its findings to date, to discuss possible options, and to provide an overall opinion of progress and feasibility and, on request by the City, provide written status reports containing such information and in such format as the Parties mutually agree. Upon the clearance of comments and approval of the Phase 2 Report by the City’s Project Manager, the City

Manager or designee will present the Phase 2 Report to City Council or in the alternative the Parties, if the Parties mutually agree, may proceed with final phase negotiations of the MDA, which will be presented to City Council in lieu of the Phase 2 Report.

5. MASTER DEVELOPMENT AGREEMENT NEGOTIATIONS.

5.1. Scope. During the Term, as the Phase 1 and 2 Reports are developed, the Parties agree to use good faith efforts to negotiate an MDA that definitively evidences the agreement of the Parties regarding the terms and conditions for the overall development of the Site, the implementation of the Project, and the disposition of the City's interests in the Site, including forms of transfer and related documents in accordance with the Master Plan.

5.2. MDA Drafting. The Parties legal representatives will, if the Parties mutually agree, prepare a preliminary draft of the proposed MDA as the Developer completes the Phase 1 Report. The Parties legal representatives will, if the Parties mutually agree, refine the initial MDA draft as Phase 2 proceeds with the goal of finalizing the draft as Phase 2 Report comment and response negotiations are completed. Notwithstanding the foregoing, the Developer has no obligation to incur legal costs with respect to preparation or negotiation of an MDA prior to the approval of the Phase 2 Report by City Council.

5.3. Project Management. The Parties will each designate a duly qualified and experienced project manager to facilitate communications between the Parties, schedule and attend meetings, and provide day-to-day technical management of the Project. The Parties will also designate a senior level decision maker in their respective organizations for the purpose of resolving issues and rendering management decisions above the Project level.

6. INTERIM DEVELOPMENT AGREEMENTS. The Parties acknowledge that it may be mutually beneficial and advantageous to undertake certain due diligence activities concurrently with the negotiation of the MDA (but without any obligation to do so), including without limitation:

a. **Entitlements Process.** If, at any time during the Term, the Parties agree to a desired rezoning and/or subdivision of a portion of the Site, the City, as the landowner and the applicant, but with participation and input from Developer, may commence the process for the requisite rezoning and/or subdividing of a portion of the Site. In the alternative and by mutual agreement, the Developer may serve as the applicant and the City's agent in the entitlements process.

b. **Financing.** If, at any time during the Term, the Parties agree as to a desired strategy for public and/or private financing of the Project, the Parties may commence preliminary evaluations for establishment and implementation of those financing options provided that, prior to commencing the establishment and implementation process, the City Council must approve any proposed public financing options. Subject to the approval of the City Attorney, any private

financing options must provide sufficient protection to the City and be structured to accommodate the further development of the Project.

7. DOCUMENT PRODUCTION, DELIVERY, AND OWNERSHIP.

7.1. Developer Copies. The Developer shall provide the City with copies of all non-confidential, non-proprietary, and non-privileged reports, studies, analyses, and similar documents, prepared or commissioned by the Developer with respect to this Agreement and the Site, promptly upon their completion and internal review by the Developer.

7.2. Ownership. The City will own all information produced by the Developer for which the costs are actually reimbursed by the Phase 1 Reimbursement or the Phase 2 Reimbursement, including without limitation work product documents, CAD drawings, editable graphic files, plans, surveys, maps, studies, reports, analyses, and similar documents regarding the planning, engineering, infrastructure and preparation of any improvements for the Site, but excluding any attorney-client privileged information and attorney work product.

7.3. City Copies. The City shall provide the Developer with copies of all non-confidential, non-proprietary, and non-privileged reports, studies, and analyses prepared or commissioned by the City related to Phase 1 or Phase 2 or otherwise related to the development and operation of the Site.

8. FINANCIAL OBLIGATIONS.

8.1. Phase 1 Expenses. The Developer and the City shall each pay their own costs and expenses incurred in connection with this Agreement, provided that, if the City or the Developer elects to terminate the Agreement at the end of Phase 1, the City will reimburse the Developer an amount not to exceed \$300,000 for expenses incurred by the Developer directly related to its Phase 1 activities.

8.2. Phase 2 Expenses. Upon the completion and approval of Phase 1, the City Manager or designee will request authority from the City Council to further reimburse the Developer an amount in addition to the Phase 1 authorization for expenses related to due diligence and other Phase 2 services. The Developer has no obligation to proceed to Phase 2 if the amount approved by the City Council is not acceptable to it.

8.3. Developer's Risk. The Developer will proceed at limited risk and expense, which will be determined by establishing the reimbursement authority for Phase 1 and Phase 2. The Phase 1 reimbursement authority has been established at \$300,000.00. The Phase 2 reimbursement authority will be subject to the further agreement of the Parties and City Council action following the completion of Phase 1. Assuming that the Parties actually execute an MDA, the Developer will not require reimbursement from the City for the Phase I Expenses and the Phase 2 Expenses and such expenses shall be addressed in the MDA as costs of the Project and will be used under the

MDA in calculating the Developer's return on investment. Likewise, the Developer may accrue an annual administrative fee of \$500,000.00 (increased at the rate of 3% year over year after the first 12 months of the Term) and construction management fees of 4% on all hard and soft costs incurred by the Developer from the execution of this Agreement until the execution of the MDA. Assuming that the Parties actually execute an MDA the accrued administrative fees and the accrued construction management fees shall be deemed costs of the Project in the MDA and will be used under the MDA in calculating the Developer's return on investment. If the City and the Developer fail to execute an MDA by the end of the Phase 1 or the Term (as it may be extended in accordance with this Agreement), then the City will reimburse the Developer the amounts authorized for the Phase 1 Services and, as applicable, the Phase 2 Services. If the City and the Developer fail to execute an MDA by the end of Phase 1 and do not proceed to Phase 2, any accrued administrative fees and construction management fees shall be waived by the Developer. At the time that the Phase 1 Report and Phase 2 Recommendations are presented to City Council, the Developer may request that it receive all or part of its then accrued and future administrative and construction management fees to cover its internal costs in the event that the Parties subsequently fail to execute an MDA by the end of the Term (as it may be extended) as a condition to moving on to Phase 2.

9. PROFESSIONAL SERVICES PROCUREMENT. As the Developer contracts for the performance of professional services, it shall conform with the requirements of Chapter 2254 of the Texas Government Code. The Developer has selected its existing consultants on the basis of demonstrated competence and qualifications to perform the contemplated services in substantial conformance with the requirements of Chapter 2254 and, in the selection of any additional professional consultants, the Developer will in accordance with the requirements of Chapter 2254 and applicable City procurement policies and processes and with the assistance of appropriate City departments select the providers of the contemplated services on the basis of demonstrated competence and qualifications, including, without limitation, relevant experience on similar types of projects as well as related fees, costs and expenses in the second phase of the procurement process to provide the best overall value to the Project taking into account all relevant considerations.

10. EXCLUSIONS. The Developer acknowledges the City has conducted, and may continue to conduct, meetings with Central Health related to disposition and development of approximately five acres within Site. The City will keep the Developer apprised as to the status of such meetings and Developer acknowledges that, prior to the execution of the MDA, the City may enter into an agreement with Central Health. The Developer will be included in all such meetings and be allowed to participate in same and the negotiation of any such agreement so that it can properly assess the impact thereof on the development of the Site and the Developer's rights and responsibilities hereunder and in connection with any MDA.

11. GOVERNMENTAL APPROVALS. To the extent permitted by Texas law, and subject to any and all limitations on the City's rights and powers to do so, the City will cooperate reasonably in connection with the Developer's efforts to pursue necessary governmental approvals, including City Council approval required for financing or development of the Project. Nothing contained in this Agreement is intended to serve as, nor shall it be interpreted to serve as

a waiver of any rights or obligations of the City in respect of its zoning, land use, permitting, inspection, infrastructure acceptance, or other governmental processes.

12. CONFIDENTIALITY. Disclosure of the terms of this Agreement and information developed pursuant to this Agreement will be governed by the Public Information Act, Chapter 552, Texas Government Code and other applicable Texas law. Unless required to be disclosed under such applicable laws, the City agrees that it will keep confidential and not disclose any information submitted by the Developer in the course of the negotiations that is clearly, marked "Privileged" or "Confidential" ("Confidential Information") except for disclosures (1) in the process of discussions, meetings or conferences with its officers, agents, employees and representatives who reasonably need to know this information for purposes of evaluating, approving or effecting the transactions contemplated hereby; (2) in response to a legal process; or (3) in any manner to which the Developer consents in writing. The City and the Developer agree that neither shall have the right to require the other to disclose attorney-client privileged communications.

13. EVENT OF DEFAULT.

13.1. Event of Default. A breach of this Agreement by either Party and the continuation of such breach for a period of thirty days following written notice of such breach to the breaching Party shall be considered an Event of Default.

13.2. Failure to Reach Agreement. Notwithstanding anything to the contrary in this Agreement, provided that each Party has complied with the provisions of this Agreement, the failure to reach agreement upon the Phase 1 Tasks or Phase 2 Tasks will not be deemed an Event of Default by either Party. In the event the Term expires (as may be extended pursuant to the terms hereof) and the Parties have failed to reach agreement upon the Phase 1 Tasks and the Phase 2 Tasks, this Agreement will terminate and neither Party will have any further rights or obligations under this Agreement, except those rights or obligations which expressly survive termination pursuant to the terms hereof. The City's obligation to reimburse the Developer for the pre-development services in accordance herewith expressly survives the expiration or earlier termination of this Agreement.

13.3. Remedies. Upon an Event of Default, the non-breaching Party may, as its sole and exclusive remedy, terminate this Agreement upon written notice to the breaching Party provided that, if the City is the breaching party, the Developer may bring an action against the City for any unpaid Reimbursement Obligations, as provided in Sections 271.151 – 271.160 of the Texas Local Government Code. Neither Party may pursue against the other Party any claim for special, indirect, exemplary, punitive or consequential damages.

13.4. Mediation. If the Parties reach an impasse in negotiations of any sort, including extensions of time and reimbursement, the Parties may initiate the mediation process. The Developer and the City agree to select a mediator trained in mediation skills, to assist with resolution of the dispute within thirty (30) calendar days. Should the Parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the Parties agree to ask the Travis County Dispute Resolution Center to select a qualified individual, which selection

shall be binding on the parties. Mediation is a forum in which an impartial person, the mediator, facilitates communication between parties to promote reconciliation, settlement, or understanding among them. The Parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session, unless mutually agreed otherwise. Should the Parties fail to reach a resolution of the dispute through mediation, then each party is released to pursue other remedies available to them.

14. RIGHT OF ENTRY. The Developer may enter the Site for any purpose related to the Project, including conducting inspections, tests, examinations, surveys, studies, soil stockpiling, appraisals, and marketing tours, subject to the following terms, conditions and covenants:

a. **Costs.** Except with respect to expenses reimbursed for Phase 1 and/or Phase 2 services in accordance with this Agreement, all entries by the Developer on the Site shall be at the Developer's sole expense and in accordance with applicable laws.

b. **Delivery of Insurance Certificates.** Neither Developer, nor a Developer's agent, contractor, or assignee may enter the Site until Developer has provided the City with certificates of insurance evidencing the insurance coverages required by attached **Exhibit B**, which is incorporated and made part of this Agreement.

c. **Repair of Damage.** If, for any reason, the Parties do not agree to the proposed MDA, the Developer shall repair any material damage to the Site caused by it or its agent, contractor, or assignee during entry on the Site and restore the Site to substantially the same condition it was in prior to the occurrence of such damage; provided that any soil stockpiling approved by the City's Project Manager does not need to be removed or restored by the Developer. The Developer will not have any responsibility for actions or omissions with respect to any damage caused by or related repair or restoration activities by the City or Central Health or their respective agents, contractors, or assignees.

d. **City Performance.** If the Developer fails to commence to repair such damage within a reasonable time after written notice from the City and diligently pursue the restoration of the Site to completion, the City may perform such repair and restoration work, and the Developer agrees to compensate the City for the actual cost thereof plus a 10% charge for overhead expenses related thereto upon receipt of an invoice therefor with reasonable supporting documentation. Developer shall cause its agents and contractors to execute and deliver to the City such waivers of liability as the City may reasonably request as a condition to entry upon the Site. The provisions of this subsection will survive the expiration or earlier termination of this Agreement.

15. LIMITATIONS.

15.1. Submission Not an Offer. The submission of a copy of this Agreement by the City to the Developer will not be construed as an offer. Until executed by appropriate representatives of both Parties, the final terms and provisions hereof are subject to revision.

15.2. No Disposition or Exchange. By executing this Agreement, the City is not committing itself to, or agreeing to undertake the: (a) exchange or transfer of real property; (b) disposition of real property to the Developer; or (c) any other acts or activities requiring the subsequent independent exercise of discretion by the City or any agency or department thereof. By executing this Agreement, the Developer is not committing itself to, or agreeing to undertake the: (a) purchase or acquisition of real property; (b) acquisition of real property from the City; or (c) any other acts or activities requiring the subsequent independent exercise of discretion by the Developer.

15.3. Council Authority. Execution of this Agreement by the City is merely an agreement to enter into a period of exclusive negotiations according to the terms hereof, subject to final approval by the City Council as to the terms of the MDA.

15.4. Developer Authority. Execution of this Agreement by the Developer is merely an agreement to enter into a period of exclusive negotiations according to the terms hereof, subject to final approval by the appropriate internal governing body of the Developer as to the terms of the MDA.

15.5. Limitation on Liability. No member, official or employee of the City shall be personally liable to the Developer in the event of any default or breach by the City, or for any amount which may become due to the Developer, or on any obligations under the terms of this Agreement. No officer, director, partner, member, official or employee of the Developer or Catellus or any of their respective affiliates shall be personally liable to the City in the event of any default or breach by the Developer, or for any amount which may become due to the City, or on any obligations under the terms of this Agreement.

15.6. The City's Right to Obtain Information and to Consult with Others. The City reserves the right, at its sole cost and expense, to obtain information concerning the transactions described by this Agreement from any person, entity or group, but in all respects subject to the confidentiality provisions hereof.

16. INDEMNITY AND INSURANCE.

16.1. THE DEVELOPER SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, ITS OFFICERS, APPOINTED OR ELECTED OFFICIALS, EMPLOYEES, AGENTS, REPRESENTATIVES, CONSULTANTS, CONTRACTORS, AND SUCCESSORS AND ASSIGNS (THE "INDEMNIFIED PARTIES"), AGAINST ALL COSTS, LIABILITIES, DAMAGES, CLAIMS, SUITS, AND CAUSES OF ACTIONS (THE "CLAIMS"), TO THE EXTENT ARISING OUT OF (A) A VIOLATION OF LAW BY THE DEVELOPER, ITS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, SUCCESSORS OR ASSIGNS, (THE "DEVELOPER PARTIES"), (B) A FALSE REPRESENTATION OR WARRANTY MADE BY THE DEVELOPER PARTIES, OR (C) THE NEGLIGENCE, WILLFUL MISCONDUCT, OR BREACH OF A STANDARD OF STRICT LIABILITY BY THE DEVELOPER PARTIES IN CONNECTION WITH THIS AGREEMENT, BUT ONLY TO THE EXTENT CAUSED BY THE NEGLIGENT ACTS

OR OMISSIONS OF A DEVELOPER PARTY; PROVIDED, HOWEVER, THE DEVELOPER DOES NOT HEREBY INDEMNIFY THE INDEMNIFIED PARTIES FROM THE NEGLIGENT OR WRONGFUL ACTS OR OMISSIONS OF THE INDEMNIFIED PARTIES.

16.2. **Notice and Defense.** The City shall give the Developer written notice of a Claim asserted against an Indemnified Party and the Developer shall assume and conduct with due diligence and in good faith the defense of all Claims against the Indemnified Parties. The Indemnified Parties shall have the right (but not the obligation) to participate in the defense of any claim or litigation with attorneys of their own selection without relieving Developer of any obligations in this Agreement.

16.3. **Insurance.** The Developer will provide the insurance coverage set forth in attached Exhibit B.

16.4. **Limitation and Subcontract Obligations.** In no event may Developer admit liability on the part of an Indemnified Party without the written consent of City Attorney. Maintenance of the insurance required under this Agreement shall not limit the Developer's legal obligations hereunder. The Developer will cause all of its contractors and subcontractors to provide insurance as required in attached **Exhibit B** with respect to such Party's scope of work and activities on the Site and to indemnify the City in a substantially similar manner as provided in this Article taking into account such Party's scope of work and activities on the Site.

16.5. **Survival.** The provisions of this Section will survive the expiration or earlier termination of this Agreement.

17. MISCELLANEOUS

17.1. Notices.

a. Formal notices, demands and communications between the Parties will be sufficiently given if, and will not be deemed given unless, delivered personally, dispatched by certified mail, postage prepaid, return receipt requested, or sent by a nationally recognized express delivery or overnight courier service, to the office of the Parties shown as follows, or such other address as the Parties may designate in writing from time to time:

City:	City of Austin Economic Development Department
	Attn: Martin Barrera
	301 W. 2nd St., Ste. 2030
	Austin, TX 78702
	Email: martin.barrera@austintexas.gov
	Phone: 512-974-3394

With a copy to: City of Austin Law Department
Attn: Sean Creegan
301W. 2nd Street, 4th Floor
Austin, TX 78701
Email: sean.creegan@austintexas.gov
512-974-6461

Developer: CDC Colony Park Holdings, L.P
c/o Catellus Development Corporation
4550 Mueller Blvd.
Austin, Texas 78723
Attention: Greg Weaver; Sergio Negrete
Email: gweaver@catellus.com; snegrete@catellus.com

with a copy to: CDC Colony Park Holdings, L.P.
c/o Catellus Development Corporation
66 Franklin Street, Suite 200
Oakland, California 94607
Attention: Bill Hosler
Email: bhosler@catellus.com

and: DuBois, Bryant & Campbell, LLP
303 Colorado Street, Suite 2300
Austin, Texas 78701
Attention: Rick Reed
Email: rreed@dbcllp.com

b. Such written notices, demands, and communications will be effective on the date shown on the delivery record as the date delivered (or the date on which delivery was refused) or in the case of registered mail two Business Days following deposit of such instrument in the United States Mail.

17.2. Governing Law; Venue. This Agreement will be governed by and construed in accordance with the laws of the State of Texas. The obligations of the Parties are performable in Travis County, Texas, and venue for any dispute arising hereunder will lie exclusively in the state courts located in Travis County, Texas.

17.3. Entire Agreement. This Agreement contains the entire agreement of the Parties regarding the subject matter hereof and supersedes any other prior agreements. This Agreement may be modified only by written agreement signed by the duly authorized representative of the Parties.

17.4. **Captions.** Captions at the beginning of the paragraphs or sections of this Agreement are for reference only and will in no way define or interpret any provision hereof.

17.5. **Construction.** The provisions of this Agreement have been jointly drafted by the Parties and will be constructed as to the fair meaning and not for or against any Party.

17.6. **Counterparts.** This Agreement may be executed in counterparts, each of which will be deemed an original.

17.7. **Electronic Transmission of Signatures.** The use of electronically transmitted signatures, in place of original signatures on this Agreement is expressly allowed. The Parties intend to be bound by the signatures on such electronically transmitted document; are aware that the other Party will rely on the electronically transmitted signatures; and hereby waive any defenses to the enforcement of the terms of this Agreement based on the form of signature.

17.8. **Successor and Assigns.** This Agreement will be binding upon and inure to the benefit of the Parties named herein and their respective successors and permitted assigns. Any assignment by the Developer must be approved by the City Manager, which approval will not be unduly delayed or unreasonably conditioned; provided, however that the Developer may assign its interests in this Agreement to an affiliate of the Developer provided that such affiliate is owned and controlled by the people or entities that own and control Developer as of the Effective Date without the prior consent of the City but with written notice to the City of any such assignment. The City may only assign its interest in this Agreement to a special entity or entities formed by the City to facilitate the development of the Site without the prior consent of the Developer but with written notice to the Developer of any such assignment. The City shall not otherwise assign its interest in this Agreement without the prior written consent of Developer, which Developer may withhold in its sole and absolute discretion. If either Party assigns its interest hereunder, that Party's assignee shall execute an assumption agreement unconditionally assuming that Party's obligations hereunder, a copy of which shall be provided to the other Party

17.9. **Severability.** If any provision of this Agreement or the application thereof to any person or circumstances becomes invalid or unenforceable to any extent, the application of such provisions to other persons or circumstances and the remainder of this Agreement will not be affected thereby and will be enforced to the greatest extent permitted by law.

17.10. **Relationship of Parties; No Third-Party Beneficiaries.** This Agreement creates an independent contractor relationship of the Developer to the City. The City and the Developer are not partners or joint venturers, nor is either the principal or agent of the other, and nothing herein will be construed to create any such relationship between the Parties, or to render either Party liable for any obligations of the other. The only beneficiaries of this Agreement are the City and the Developer. There are no third-party beneficiaries.

17.11. **Signature Authority.** In accordance with City Council approval and delegation, the Austin City Manager or the City Manager's duly authorized designee has the authority to

execute this Agreement on behalf of the City. A duly authorized representative of the Developer will execute this Agreement in compliance with all necessary corporate formalities.

18. Force Majeure.

18.1. If either Party is delayed, hindered, or prevented from performance of any of its respective obligations under this Agreement by reason of Force Majeure, and if the Party claiming delay is not in default hereunder which is continuing, the time for performance of such obligation is automatically extended for the period of such delay, provided that the following requirements are complied with by the affected Party:

a. The affected Party shall give prompt written notice of such occurrence to the other Party, but in any event within ten (10) days after such occurrence; and

b. The affected Party shall promptly and diligently attempt to remove, resolve, or otherwise eliminate such event, keep the other Party frequently advised with respect thereto, and commence performance of its affected obligations hereunder immediately upon such removal, resolution, or elimination.

18.2. "Force Majeure" means acts of God, strikes, lockouts or other industrial disturbances, acts of public enemies, orders of any kind of the government of the United States, the State of Texas, Travis County, Texas, the City (e.g., building moratoriums, homeland security powers, etc.), or any other civil or military authority, insurrections, riots, acts of terrorism, epidemics, pandemics, landslides, earthquakes, lightning, fires, hurricanes, storms, floods, washouts, other natural disasters, a Party not receiving a governmental permit, license, approval or inspection in time to meet a contractual time period imposed hereunder provided that Party exercised commercially reasonable diligence in the application or request for and prosecution of the process to obtain that permit, license, approval or inspection, restraint of government and people, civil disturbances, explosions, acts or omissions of either Party to this Agreement or other causes not reasonably within the control of the Party claiming such inability (except financial inability to perform unless such event, act or cause results primarily from the occurrence of a Force Majeure event described above). A Party may not claim that its own acts or omissions is a Force Majeure event excusing or delaying its own performance.

18.3. The Parties hereby acknowledge and agree that the current COVID-19 pandemic may cause a delay in the performance of certain of the Developer's obligations hereunder, but that in connection with any such delay the Developer will comply with clauses 18 a. and b. above.

[signatures on following page]

EXECUTED TO BE EFFECTIVE AS OF THE LATER DATE SET FORTH BELOW
(the Effective Date”).

CITY OF AUSTIN:

DocuSigned by:
By: Rodney Gonzales
Date: 05/12/2020
Name: rodney gonzales
Title: Assistant City Manager

**CDC COLONY PARK HOLDINGS,
L.P.:**

DocuSigned by:
By: Greg Weaver
Date: 05/12/2020
Name: Greg weaver
Title: VP

Approved to form:

DocuSigned by:
By: Sean Cregan
Name: sean cregan
Title: Assistant City Attorney

Exhibit A
Map of Site

SEE ATTACHED

Exhibit B

Insurance Requirements

1. Developer, and its contractors, as applicable, shall carry and maintain, or cause to be carried and maintained, throughout the Term the following insurance policies:
 - a. Workers' Compensation and Employers' Liability Insurance coverage with limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Art. 401) and minimum policy limits for employers' liability of \$1,000,000 bodily injury for each accident, \$1,000,000 bodily injury by disease policy limit and \$1,000,000 bodily injury by disease each employee. The City will accept workers' compensation coverage written by the Texas Workers' Compensation Insurance Fund.
 - b. 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 to carry out the Authorized Purposes in a minimum amount of \$1,000,000, combined single limit.
 - c. Commercial General Liability policy with a minimum limit of \$1,000,000 per occurrence for bodily injury and/or property damage. The policy shall provide provisions for blanket contractual coverage and independent contractors coverage.
 - d. Professional Liability Insurance at a minimum limit of \$500,000 per claim, to pay on behalf of the assured all sums which the assured shall become legally obligated to pay as damages by reason of any negligent act, error, or omission arising out of the performance of professional services under this Agreement. If coverage is written on a claims-made basis, the retroactive date shall be prior to or coincident with the date of the Contract and coverage shall be continuous for 24 months following the completion of the contract. This requirement is only applicable if Developer (or its agent) or contractor is providing professional services under this Agreement.
2. Developer shall not cause any insurance to be canceled nor permit any insurance to lapse during the Term. Insurance coverage is to be written by companies duly authorized to do business in the State of Texas at the time the policies are issued and will be written by companies with an A. M. Best rating of B+VII or better or otherwise acceptable to the City. The policies will contain a provision in favor of the City waiving subrogation or other rights of recovery against the City. The City will be an additional insured as its interests may appear on the Commercial General and Automobile Liability policies.
3. All endorsements naming the City such as additional insured, waivers, and notices of cancellation endorsements as well as the certificate of insurance shall indicate: City of Austin, Economic Development Department, Attn: Director, P.O. Box 1088, Austin, Texas 78767.

4. Developer or its contractor, as applicable, shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the certificate of insurance attached. The insurance coverages required under this Agreement are required minimums and are not intended to limit the responsibility or liability of Developer.

5. For contractors who are providing professional services hereunder that are required to maintain Professional Liability Coverage, but who are not providing professional services as defined by Section 2254 of the Texas Government Code, including engineering, real estate appraising, accounting, architectural, or professional surveying services, Developer may determine, based on its professional business judgment and in the exercise of commercially sound risk management practices, that the scope of a particular contractor's work involves a lower level of risk and, accordingly, require that contractor to maintain a lower amount of Professional Liability Coverage.