

AMENDMENT NO. 1 TO EXCLUSIVE NEGOTIATING AGREEMENT

This Amendment No. 1 to the Exclusive Negotiating Agreement (the "**Amendment**"), 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**"), sometimes collectively referred to as the "**Parties**," and individually as a "**Party**".

WHEREAS, the Parties entered into that certain Exclusive Negotiating Agreement, dated May 12, 2020 (the "**Agreement**"); and

WHEREAS, the Developer has diligently performed Phase 1 services through Phase 1 of the Term of the Agreement, timely delivered the Phase 1 Report to the City and has identified additional information that must be developed in order to complete Phase 1 before any decision to move onto the Phase 2 services contemplated in the Agreement; and

WHEREAS, the Parties acknowledge that additional Phase 1 Developer services, Developer compensation, and City planning decisions will be necessary to resolve issues in order to be able to move onto the Phase 2 Services contemplated in the Agreement; and

WHEREAS, premises considered, the Parties desire to amend the Agreement to provide for an extension to the timing of the Developer's Phase 1 services and the Term, additional Developer compensation for those services, and a framework for the necessary City planning decisions;

NOW, THEREFORE, in consideration of the mutual promises and performances set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. The Developer will perform additional Phase 1 services reasonably necessary to determine the feasibility of proceeding to Phase 2. In doing so, the Developer will continue the

performance of appropriate Phase 1 services set forth in the Agreement and will also schedule and conduct additional events and meetings to:

a. continue its outreach efforts and meetings with City departments to identify potential improvements that could be made to the Master Plan to deliver community benefits not only for the 208 acre Site, but also the surrounding neighborhoods;

b. continue community engagement to better define and refine the draft MDA Illustrative Plan that is in process; and

c. receive community and City input on future MDA items.

2. The contemplated subjects of such additional events and meetings will include further discussions of the essential elements established in the Master Plan and to be refined in the draft MDA Illustrative Plan and the further development of specific issues that require the Parties' attention, including workforce housing, parks programming, streets/trails/bike lanes, zoning, the Loyola Town Center, retail and services, healthcare, and community partnerships. (Note: In order to maintain safe "social distancing," the events and meetings will be planned and conducted virtually until it is safe again to host in person events and meetings.)

3. The City acknowledges that the Developer's services and Project planning and feasibility are dependent on the City's ability to secure the public financing and CIP commitments to fund the City's contemplated cost participation in the Project. The Developer will reasonably cooperate with the City's efforts to secure such financing and CIP planning approval during the Phase 1 extension provided herein (currently anticipated to be no later than April 30, 2021) to bridge the currently identified Project funding gap of \$103,248,688, based on the draft MDA Illustrative Plan provided in the Developer's Phase 1 Report. The Parties acknowledge that the funding gap may deviate from the above estimated funding gap based on the final development program for the Project.

4. Upon the conclusion of Phase 1, any decision to move to Phase 2 will be subject to the mutual agreement of the Parties rather than the unilateral issuance of a notice to proceed.

5. In addition to the \$300,000 reimbursement authority initially established in the Agreement, if the City or the Developer elects to terminate the Agreement, as amended, or at the end of the Phase 1 extension, if either Party elects not to move to Phase 2, the City agrees to reimburse the Developer an additional amount not to exceed \$400,000 for eligible expenses incurred by the Developer directly related to its extended Phase 1 activities including \$500,000 per year for administrative fees and a construction management fee of 4% on all hard and soft cost incurred by the Developer, provided that the administrative fee will be based upon the portion of the year(s) that the Developer provides services prior to any decision not to proceed to Phase 2 or terminate. The total Phase 1 reimbursement authority under the Agreement, as amended, including reimbursement for administrative fees and construction management fees, is established at the not to be exceeded sum of \$700,000.

6. The Term of the Agreement is extended by a period of six (6) months from the date of execution of this Amendment by both Parties such that the Term will expire on November 11, 2022.

7. The confidentiality obligations contained in Section 12 of the Agreement shall be mutual and apply to any party who receives Confidential Information from another Party. Confidential Information shall expressly include any information related to the development of a Central Health facility on the Site that is marked as "Privileged" or "Confidential".

8. Miscellaneous.

a. The Agreement is hereby referenced and made a part hereof as if set forth verbatim. The Agreement is amended only as set forth herein, otherwise, the Agreement is hereby ratified, approved, and confirmed. Capitalized terms in this Amendment have the same meaning assigned in the Agreement.

b. The Agreement, as amended, shall inure to the benefit of and be binding upon each of the Parties and each of their respective successors and assigns.

c. The electronic delivery of an executed counterpart of this Amendment will be considered to be the delivery of an executed original.

(signature page follows)

IN WITNESS WHEREOF, the Parties have executed this Amendment to be effective as of the date of the last signature set forth below.

CITY OF AUSTIN

DocuSigned by:
By: Rodney Gonzales
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Date: 01/04/2021

Name: Rodney Gonzales

Title: Assistant City Manager

Approved as to form:

DocuSigned by:
By: Sean Creegan
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Name: Sean Creegan

Title: Assistant City Attorney

CDC COLONY PARK HOLDINGS, L.P.

DocuSigned by:
By: Greg Weaver
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Date: 12/22/2020

Name: Greg Weaver

Title: Vice President