



This is an updated version of the February 15, 2024 staff report. Changes are presented in **Red** text.

## Staff Report

**Date:** March 19, 2024

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

**From:** Valerie J. Barone, City Manager

**Prepared by:** Guy Bjerke, Director of Economic Development and Base Reuse  
[Guy.bjerke@cityofconcord.org](mailto:Guy.bjerke@cityofconcord.org)  
(925) 671-3076

**Subject:** **Considering the Local Reuse Authority's Acceptance of BCUS Acquisitions LLC's (Brookfield) Term Sheet for the development of approximately 2,300 acres ("the EDC property") at the former Concord Naval Weapons Station; directing staff to Proceed to the Disposition and Development Agreement (DDA) stage of the Negotiation Period, as defined in the Exclusive Agreement to Negotiate (ENA); and approving the First Amendment of the ENA between the Local Reuse Authority and Brookfield to extend the DDA stage up to 48 months.**

**CEQA:** Not a project/exempt pursuant to Public Resources Code Section 21065, CEQA Guidelines Sections 15060(c), 15061(b)(3), and/or 15378.

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### Report in Brief

A Term Sheet is the outline of the potential future contract between the City of Concord, acting in its capacity as the Local Reuse Authority (LRA),<sup>1</sup> and BCUS Acquisitions LLC (Brookfield), the Master Developer. The Term Sheet provides a framework to be further negotiated in the proposed Disposition and Development Agreement (DDA) and statutory Development Agreement (DA) and reflected in the land use entitlement documents required to implement the project to redevelop the former Concord Naval Weapons Station (CNWS), including a Specific Plan and Environmental Impact Report.

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<sup>1</sup> For convenience this staff report references the LRA and City interchangeably.

LRA staff and consultants have negotiated a Term Sheet with Brookfield in good faith and with the best interests of the City and Concord community as a top priority. The Term Sheet includes standard contract provisions and terms, for example on project labor agreements, local developer and contractor participation, business and job opportunities, affordable housing, entitlement processing, fiscal neutrality, reimbursement of City costs, community benefits, parks, Mt. Diablo Creek restoration, remediation of contamination, and onsite/offsite habitat mitigations, as well as details of the conceptual development plan, and expected timing of all horizontal development improvements. See Attachment 1 - draft Term Sheet (Brookfield Term Sheet).

The Brookfield Term Sheet covers the entire project area of approximately 2,300 acres. The Term Sheet's conceptual land use plan closely aligns with the adopted Concord Reuse Project (CRP) Area Plan (2012) but differs somewhat from the CRP Area Plan in that it does not include the North Concord/Martinez BART (BART) site, and the Campus District is shifted closer to BART along the southern side of State Route 4.<sup>2</sup>

Brookfield proposes direct project contributions of several hundred million dollars in identified community benefits in the Term Sheet, over the life of the project. Brookfield's Term Sheet incorporates an 18% cumulative annual internal rate of return (IRR) (which reflects the average annual return on total capital invested) that will trigger profit participation with the City/LRA.

The Brookfield Term Sheet is the product of the Preliminary Stage negotiations between the LRA and Brookfield, as outlined in the Exclusive Agreement to Negotiate (ENA). Upon acceptance of the Brookfield Term Sheet by the LRA, the parties will enter into the DDA Stage of the negotiation process.

During the DDA Stage of the negotiation process, the LRA and Brookfield will conduct robust community engagement; prepare a Specific Plan for the project; analyze and address impacts of the proposed development in a subsequent Environmental Impact Report (EIR); prepare a fiscal impact report; prepare required amendments to the CRP Area Plan, General Plan and Development Code; formalize the terms of the comprehensive DDA and DA; and negotiate the terms (price/payment) of the Economic Development Conveyance (EDC) Agreement for transfer of the EDC property from the United States Navy to the City of Concord and subsequently to Brookfield. These DDA Stage documents will all be subject to future public review, input, and approval by the LRA as provided for in the ENA. The LRA and Brookfield project teams will also continue progress on Resource Agency permitting and monitor the Navy's remediation progress.

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<sup>2</sup> The City is still in discussions with BART to determine whether it will be included within the City's Specific Plan process. If not a part of the process, the 18-acre BART property would be developed separately, pursuant to Assembly Bill 2329, but coordinated between BART, the City, and BART's to-be-selected Master Developer.

Brookfield is requesting a First Amendment to the ENA to extend the DDA Stage from 24 to up to 48 months to accomplish these complex and interacting tasks. (See Attachment 2<sup>3</sup>). City staff supports this change.

### **Recommended Action**

Accept the Brookfield Term Sheet for the development of approximately 2,300 acres (the “EDC property”) at the former CNWS; approve the First Amendment to the ENA extending the DDA Stage to up to 48 months, direct staff to proceed to the DDA Stage of the Negotiation Period (as defined in the ENA), and make the CEQA determinations as provided in this staff report.

### **Background**

On August 26, 2023, after undertaking a competitive process to identify interested developers, the City Council, sitting as the LRA selected the Brookfield team as the potential Master Developer of the former CNWS property, subject to successful negotiation and LRA approval of an ENA.

The City Council approved the ENA after public review at its meeting held on September 19, 2023. The ENA outlined the negotiation steps and performance timelines for considering a Term Sheet and subsequent actions necessary to implement the project.

A public study session was held by the City Council/LRA on November 14, 2023, to discuss Brookfield’s conceptual land use plan, project phasing, and community outreach efforts. On January 4, 2024, the City Manager extended the Preliminary Stage negotiation period by 45 days to a total of 165 days, based on the parties’ successful progress, in order to accommodate continued negotiations. **To allow additional time for community consideration of the Term Sheet, Brookfield requested the Council meeting be changed from February 20, 2024 to March 19, 2024. The City Manager extended the Preliminary Stage negotiation period by another 28 days to a total of 193 days, to accommodate Brookfield’s request.**

### **Term Sheet Negotiation Process**

During the Preliminary Stage negotiation period, LRA staff and a team of City consultants met regularly with Brookfield to review and comment on the details of Brookfield’s proposed conceptual land use plan, evaluate its financial proforma for the

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<sup>3</sup> Under ENA Section 3.3, the City Manager also has the authority to extend the DDA Stage one or more times for a period not to exceed an additional ninety (90) calendar days if she determines an extension is necessary to address delays related to CEQA compliance, litigation, or negotiations with the Navy. To date, the City Manager has extended the Preliminary Stage from 120 days to **193** days (March **30**, 2024); should the City Council desire to continue tonight’s meeting to a date in the future, the City Manager will further extend the ENA to accommodate that process.

project, and negotiate the Term Sheet. LRA staff used the following objectives as the basis for negotiating the Term Sheet:

- Outline the key terms and conditions that the Master Developer would agree to include in a DDA and DA, including a variety of community benefits.
- Incorporate best land use planning, environmental, and financing practices for large-scale development projects to be implemented over an extended timeline.
- Ensure the proposed terms and conditions are aligned with existing City policy documents and historical guidance provided by the LRA, including the CRP Area Plan, while recognizing that key terms will be further clarified and set forth in a comprehensive DDA and DA, consistent with a Specific Plan and EIR, all to be considered for approval in the future by the LRA.
- Ensure internal consistency between Brookfield's land use plan, real estate market conditions, an appropriately detailed financial model, and the requirements of the Term Sheet.
- Evaluate preliminary projections of City tax and other revenues and service costs to avoid any negative impact to the City's General Fund.
- Identify how the proposed terms and conditions would support land transfer by the U.S. Navy to the LRA/City through an Economic Development Conveyance (EDC) methodology.

#### Term Sheet

A Term Sheet is an outline of key terms to be included in a comprehensive contract anticipated to be negotiated and drafted by the relevant parties. It is often used to summarize and clarify complex terms that will be further fleshed out and included in the future agreement. While it does not commit the City to proceed with disposition or development of the CNWS property and is not legally binding in the same way as a comprehensive agreement, such as a DDA or DA, it does – when coupled with an ENA – impose obligations on the parties to conduct further negotiations and work together collaboratively and in good faith to further negotiate and draft comprehensive agreements in a manner consistent with the Term Sheet.

#### Disposition and Development Agreement

A DDA is used in cases where the City sells or conveys land to the developer and the developer agrees to develop the property in accordance with certain requirements and schedule milestones. The DDA will be prepared and negotiated with Brookfield consistent with the key business terms set forth in the Term Sheet as accepted by the LRA.

#### Development Agreement

A DA is a contract between the City and a developer providing vested rights to develop a project over an extended time period in accordance with existing land use approvals

and often requires the developer to provide specified community benefits in exchange for vesting their development rights for a period of time. DAs are authorized by statute (Government Code Sections 65484, et seq.) and the Concord Municipal Code (Chapter 18.460, Development Agreements) and are adopted by ordinance. The DA will be prepared and negotiated with Brookfield simultaneously with the DDA and consistent with the business terms set forth in the Term Sheet and the requirements and mitigation measures incorporated in a Specific Plan and/or subsequent EIR and associated Mitigation Monitoring and Reporting Program.

#### Specific Plan/Environmental Impact Report (EIR)

A Specific Plan containing detailed development standards and implementation measures for future projects within the EDC property will be prepared by Brookfield, through a process that includes LRA staff input/collaboration and, extensive community participation. This Specific Plan ultimately will be considered for adoption by the LRA at a future public meeting. The process will include environmental review consistent with the California Environmental Quality Act (CEQA). City staff and their consultants (not Brookfield) will lead the preparation of the EIR (or other appropriate CEQA document) to ensure a comprehensive review of the potential impacts that could result from implementation of the Specific Plan and any associated conforming amendments to the CRP Area Plan and Development Code. Brookfield will fund preparation of both the Specific Plan and the EIR. The environmental review is expected to build on the extensive environmental analysis previously certified in the Reuse Plan EIR (2010) and the CRP Area Plan addendum to the CRP EIR (2012) as well as the U.S. Navy's Environmental Impact Statement on property transfer (2017).

#### CRP Area Plan Amendments

Any amendments to the City's General Plan, which includes the CRP Area Plan adopted for the former CNWS property in 2012, will be required to ensure the General Plan and Specific Plan are consistent in setting development policies for the project. The number and significance of these amendments are not yet known but will be determined through the Specific Plan/EIR process. City staff will lead the preparation of the General Plan/CRP Area Plan amendments and any associated CEQA analysis. All costs will be paid for by Brookfield. Staff will also lead the effort to make corresponding amendments to the City's Development Code, as applicable, with costs borne by Brookfield.

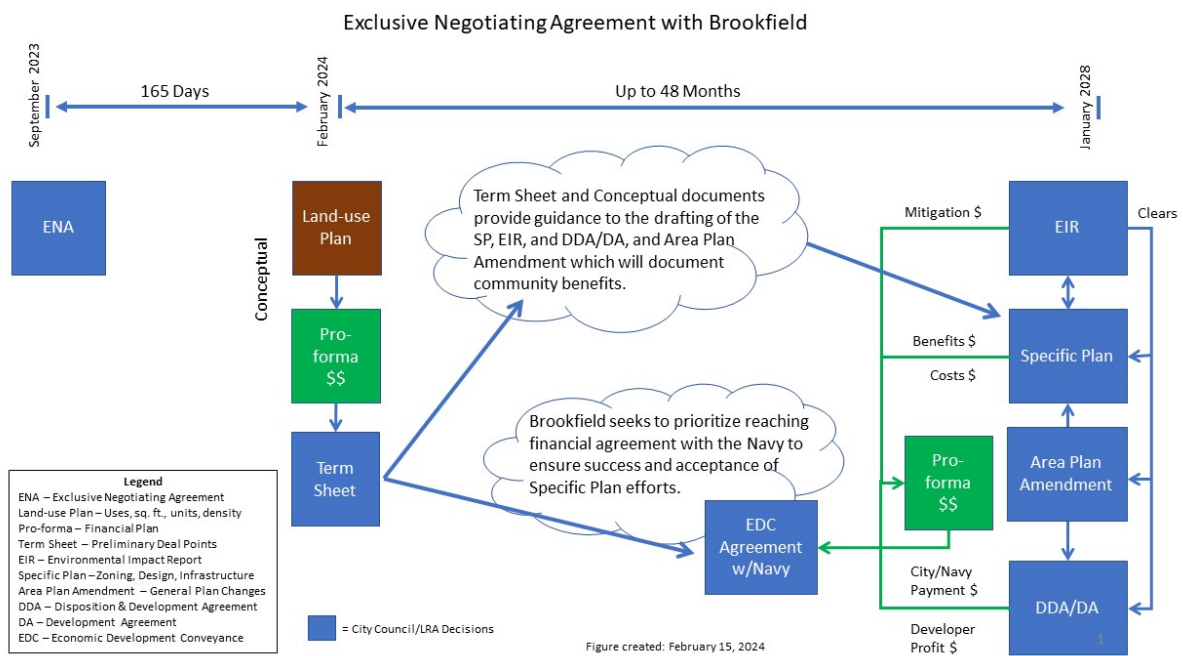
#### Economic Development Conveyance Agreement

Currently, the EDC property is still owned by the U.S. Navy. The Economic Development Conveyance (EDC) Agreement will set the terms (including price/payment) for transfer of the EDC property by the U.S. Navy to the LRA. Upon acceptance of the Brookfield Term Sheet, the LRA staff and Brookfield will hold discussions with the U.S. Navy regarding the EDC Agreement, taking direction from the City Council. As shown in Figure 1, all of the contemplated post-Term Sheet documents (DDA, DA, Specific Plan, EIR, CRP Area Plan/General Plan Amendments, and EDC

Agreement) are inter-related. The EDC Agreement will be prioritized, as reaching agreement with the Navy is key to a successful project because it will define land costs for the project. The remaining plans, agreements, and amendments will be worked on in parallel over the term of the DDA Stage of the negotiation process. All work on these documents and other aspects of the project will be funded by Brookfield and managed by LRA staff.

Figure 1 provides a diagram of the processes required to finalize all of these approvals and agreements.

**Figure 1: Inter-related Process to Finalize All Approvals and Agreements to Implement the CNWS Project**



## Analysis

The Brookfield Term Sheet covers the entire EDC property (approximately 2,300 acres). The Brookfield Term Sheet addresses issues impacting future phases, including provision of community benefits, and adheres closely to the CRP Area Plan. It proposes no increases to the overall unit count and all required affordable units will be provided through traditional units, not through the use of Accessory Dwelling Units.

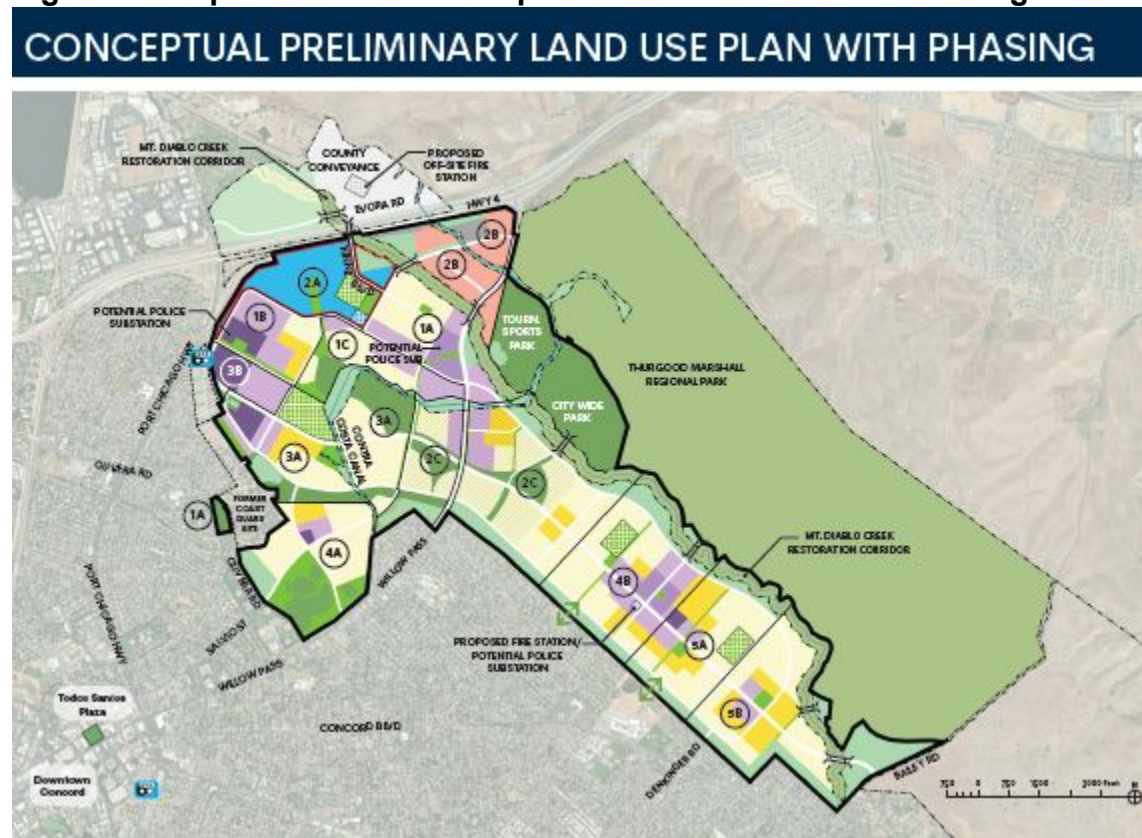
## Development Program

The Brookfield development program is proposed to occur in five (5) major phases over a 40-year timeline.



As illustrated in Figure 2, the proposed conceptual land uses are largely consistent with the adopted CRP Area Plan with higher density developments in the Transit Oriented Development (TOD) Core and TOD Neighborhood zones, medium densities around the Willow Pass Road corridor, and lower densities (as compared to the project overall) in the “Bunker City” phases between Willow Pass Road and Bailey Road. Most of the proposed commercial uses are located near the North Concord BART station, in the Innovation District or within the Campus District; all of these districts are at the northern end of the project closer to State Route 4. Several neighborhood commercial areas are spread throughout the project to ensure future residents have convenient access to nearby shopping and services.

**Figure 2: Proposed CNWS Conceptual Land Use Plan with Phasing**



*For a larger view of Figure 2 and related tables, please see Exhibit A to the Term Sheet in Attachment 1 or Attachment 3 to this staff report.*

The proposed development phases provide a balanced mix of land uses, parks and open space including the phased restoration of Mt. Diablo Creek. The conceptual land use plan includes a green frame buffer between existing neighborhoods and the new development. In addition, the project will have the benefit of the adjacent 2,687 acre

conservation area/regional park<sup>4</sup> being developed and managed by the East Bay Regional Park District (EBRPD). Phase 1 of Brookfield's proposed land use plan is focused on areas proximate to BART, residential areas along Mount Diablo Creek, and property along Willow Pass Road. This phase is within the "first transfer" property to be conveyed to the LRA by the U.S. Navy, upon execution of the EDC Agreement (see Exhibit D to the Term Sheet), and proximate to necessary utilities that will be extended from north of State Route 4, via Evora Road. The plan commits to delivering a new, widened Willow Pass Road in Phases 1, 2 and 4 and the planned extension of Evora Road to Port Chicago Highway (with Golf Course repairs) in Phase 1.

The EDC property is largely undeveloped so the on- and off-site backbone infrastructure (roads, water, sewer, utilities, etc.) needed to support the entire project is substantial and estimated to cost \$1.2 billion in current dollars. A significant portion of the initial backbone infrastructure will need to be installed either before or concurrently with the development of Phase 1, requiring it to be over-sized to accommodate the subsequent phases. Because of these "front-loaded" costs the financial return to Brookfield from Phase 1 is lower than from subsequent phases. (See Attachment 1 Term Sheet Exhibit B – Summary Proforma for the cumulative financial return by Phase and Term Sheet Exhibit C for a listing of on- and off-site backbone infrastructure).

The Brookfield conceptual land use plan puts the Campus District and a portion of the TOD development in project Phases 2 and 3, respectively, primarily due to uncertain market demand; nevertheless, Brookfield is committed to development of a Specific Plan that will generate sufficient demand and delivering those products and uses at the earliest opportunity. The plan does not include residential units or commercial square footage to be planned by BART at the North Concord BART station but does anticipate coordinating with BART on infrastructure and utility needs. The plan does not address any uses on the former Coast Guard Property that is now in private ownership.

#### Financial Model

As part of these Term Sheet negotiations, Brookfield provided the LRA's financial consulting team<sup>5</sup> with a conceptual financial feasibility model, also known as a proforma. The financial feasibility model was revised several times over the course of the Term Sheet negotiations to reflect changes in Brookfield's proposals. The LRA financial consulting team reviewed Brookfield's model, including all revisions, in detail and concluded that it is based on reasonable assumptions for this stage of the planning process. While the Brookfield model contains proprietary information not subject to public disclosure, a summary has been included in the Term Sheet as Exhibit B. Actual

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<sup>4</sup> On July 13, 2019, 2,360 acres of the regional park land were transferred to the East Bay Regional Park District for the "Thurgood Marshall Regional Park – home of the Port Chicago 50" which will include future park amenities including a visitor center, staging areas, public access points, and miles of recreational trails for hiking, biking, and nature viewing. An additional 327 acres are set to transfer to the Park District at a later date.

<sup>5</sup> Paul Silvern, HR&A Advisors; Mary Smitheram-Sheldon, Thomas Jirovsky, and Amy Herman of ALH Economics.



financial results may differ from these projections for any number of reasons. These reasons could include changes required as a result of the pending Specific Plan and environmental review process, outcomes from negotiations with the U.S. Navy regarding the EDC Agreement,<sup>6</sup> results of further negotiations with federal and state permitting agencies, and changes in economic and real estate market conditions between now and when construction is ready to commence.

The LRA's financial consulting team also reviewed Brookfield's preliminary fiscal impact analysis projecting the project's impact on future City revenues and service costs, and the impact from potential use of public financing (such as an Enhanced Infrastructure Financing District) and determined that at this stage of project specificity the project appears to meet the LRA's goal of "fiscal neutrality" – i.e. no negative financial impact on the General Fund.

The Brookfield Term Sheet identifies specific project contributions to various high priority community benefits throughout the life of the project.

#### Community Benefits

The following is a summary of priority community benefits included in the Term Sheet:

1. Brookfield has entered into a Project Labor Agreement (PLA) with the Contra Costa Building and Construction Trades and the Nor Cal Carpenters Union for all project construction. The Term Sheet also has provisions for local hiring priorities, training programs and opportunities for local businesses.
2. Implementation of the Legally Binding Agreements regarding the provision of housing for the homeless (4 acres in Phases 1,2,3, and 4) and land (10 acres in Phase 2) for future Food Bank expansion.
3. Contribution of land (4 acres in Phase 1) for a future Veterans Hall.
4. Achievement of an Affordable Housing Goal of 25% through:
  - a. Balanced delivery of affordable housing building pads and infrastructure at an estimated value of \$146 million through all 5 phases to provide the opportunity for 3,068 affordable units for low income households (80% of Area Median Income or below).
  - b. Contribution of \$50 million towards Affordable Housing projects – (\$5 million each in Phase 1 and 2, \$10 million in Phase 3, and \$15 million each in Phase 4 and 5, respectively).

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<sup>6</sup> The Brookfield financial model includes assumptions recommended by LRA staff for reasonable and significant land payments to the U.S. Navy, based on previous LRA-Navy EDC Agreement negotiations, but the final terms of such payments, and their impact on the pro forma, are subject to further LRA/Brookfield negotiations with the Navy.

- c. Brookfield acting as the Project's affordable housing administrator in an effort to successfully implement the Project's affordable component with at least 50% of the stand-alone affordable projects to be available for development by third party affordable developers.
5. Provision of 886 acres of developed Parks, Recreations and Trails delivered by phase.
6. Contribution of \$100 million towards the Tournament Sports Park/City-Wide Park - \$5 million in Phase 1 and \$95 million over Phases 2, 3, & 4.
7. Contribution of \$65 million towards a Campus District Community Center/Library over Phases 2 & 3.
8. Contribution of 55 acres for school sites in Phases 2 through 5 subject to confirmation of need based on enrollment data).
9. Provisions for expedited repayment of approximately \$15 million of City Loans to the LRA over Phases 1 & 2.
10. Contribution of up to \$10 million for the construction of Fire Stations in both Phase 2 on County PBC property and Phase 4 on a 1-acre site.
11. Provision of an interim Delta-DeAnza trail connection in Phase 1 or Phase 2.
12. Restoration of the Mount Diablo Creek Corridor and trail creation over 5 phases, consistent with adjacent phased development, subject to refinement through the regulatory permitting process.

#### Brookfield's Compensation

Brookfield will be compensated for serving as Master Developer and overseeing the entitlement and implementation of this approximately \$6 billion project (See Term Sheet Exhibit B) in the following ways:

1. Brookfield will earn an entitlement fee equal to three times the costs they incur in successfully gaining final approval from the City/LRA and Navy of the key entitlements and approvals needed to develop the project. The Entitlement Fee will be paid from the project (not the LRA/City) after successful horizontal development of Phase 1 allows revenue to be generated from land sales to vertical developers. The entitlement fee serves two purposes: (a) it compensates Brookfield for the significant investment risks represented by the entitlement phase of the project, and (b) it aligns Brookfield's, the LRA's and the Community's interests on completing the initial infrastructure investment (approx. \$200 million) of Phase 1, as it is a necessary to make parcels available for sale, which must occur for Brookfield to receive the entitlement fee.
2. Brookfield will earn fees typical of development projects – development, construction, and asset management fees which will be further negotiated in the DDA.

3. Brookfield has also proposed a developer's cumulative internal rate of return threshold of 18% (unleveraged internal rate of return (UIRR)) for the combined phases of the project. The UIRR is the value that investors receive back from their investment in the project. This is at the low-end of the range of real estate industry expectations for a project of this scope and complexity. This Brookfield cumulative UIRR threshold will provide the basis for annual calculation of potential future City participation in profit sharing. (See City Participation description below). Brookfield is also proposing Open Book Accounting to make the project's financial performance transparent. Any City profit participation amounts would be reinvested in the project under the terms of the future EDC Agreement with the Navy and could be used for enhancement or completion of community benefit projects.

Brookfield will also receive revenue and potential profit from any vertical development they choose to undertake as part of the project.

#### Approach to Land Transfer

Brookfield proposes that the LRA transfer sub-phases of the EDC property to them through either fee title transfer (purchase) or via grants of rights-of-entry (LRA retains property ownership) for grading and installation of backbone infrastructure (roads, utilities, etc.) and completion of certain community benefit improvements, including parks and greenways, and environmental mitigation measures after certain conditions have been met. Brookfield would then undertake the grading work and construct and install the backbone infrastructure, community benefit improvements and environmental mitigations. Once that "horizontal development" is completed, Brookfield or City would transfer/sell completed portions of the sub-phase site to one or more vertical developers (possibly including Brookfield or a Brookfield entity) for construction and development. Brookfield would provide completion, labor and material bonds to the City as security to ensure performance of the backbone infrastructure and community benefit improvements work.

#### Schedule of Performance

Brookfield has agreed to a schedule of performance milestones to ensure the phased delivery of backbone infrastructure (including parks, affordable housing pads, Neighborhood Serving Retail and other community benefits) within certain time limits. The key milestones for each Phase and sub-phase include: i) applications for Large Lot Tentative Subdivision Maps, ii) conveyance of parcels or right-of-entry issuance corresponding to sub-phases from LRA to Brookfield, iii) commencement of Backbone Infrastructure, and iv) completion of Backbone Infrastructure. These provisions will be refined and further clarified in the Specific Plan, DDA and or DA and associated subsequent EIR. (See the Schedule of Performance Table in Section 5c of the Term Sheet, Attachment 1).

The schedule is subject to extension for what are called *force majeure* delays due to unanticipated conditions, such as acts of God, litigation, or severe economic downturns, as defined in the Term Sheet. As to the latter, if specified measurable adverse economic conditions occur that could reasonably prevent Brookfield from proceeding with a market-responsive development, the time frames for development would be extended. However, the cumulative total of economic delay in any phase may not exceed forty-eight (48) months.

#### Approach to Vertical Development

Brookfield intends to serve as the Master Developer responsible for the installation of backbone infrastructure and community benefits, including public amenities (also known as horizontal construction). They intend to sell improved or “paper” lots to their affiliated builders (Brookfield related entities or subsidiaries) and to third-party, unaffiliated residential and commercial builders for vertical development. Transfers to affiliated builders would be at a value that has been reviewed and agreed to by the LRA through the LRA’s real estate advisors. The sale price of improved or paper lots transferred to unaffiliated builders will be set by the market. All vertical developers will be required to assume certain obligations (including PLA compliance) under the DDA and DA with respect to the portion of the site being transferred, and the obligations to meet milestones related to construction of in-tract public improvements will be the same regardless of the identity of the vertical builder.

#### City Participation

The City will participate in project profits after Brookfield has achieved an 18% cumulative unlevered internal rate of return (UIRR). If the UIRR exceeds 18% up to 20% Brookfield and the City will participate 60%(Brookfield)/40%(City) in the portion between 18% and 20%. If the UIRR exceeds 20% Brookfield and the City will participate 50%/50% for the portion above 20%. An initial estimate of UIRR by Phase is included in the financial summary found in Exhibit B.

#### City Loan Repayment

The City has loaned the LRA approximately \$15 million to carry out site-wide activities (i.e. securing resource agency permits and monitoring Navy clean-up efforts) and conduct multiple Master Developer selection processes. The loans were made with the understanding that they would be repaid with interest (at the Local Agency Investment Fund rate) from the revenue generated by land sales or leases over the life of the project. Brookfield is proposing to expedite the repayment of these loans, plus interest, to completely repay the loans in Phases 1 and 2.

#### Brookfield Corporate Structure & Capitalization of Developer

BCUS Acquisitions LLC is a Delaware Limited Liability Corporation. BCUS Acquisitions is a wholly owned subsidiary of Brookfield Communities US Holdings LLC. BCUS Acquisitions’ single member is Brookfield Communities US Holdings LLC (the “Member”). At the time of signing the DDA, BCUS Acquisitions or the affiliated entity

that signs the DDA as the “Developer” will demonstrate sufficient capitalization to pursue completion of the project.

The LRA financial consultants reviewed the financial qualifications of Brookfield during the Request for Qualifications process and concluded that Brookfield has sufficient financial resources to undertake a project of this size and complexity.

### **Alternatives**

After considering the Brookfield proposed Term Sheet, responses to Council questions, and public comment, the City Council/LRA may take any of the following actions:

- Approve the Term Sheet as drafted (LRA staff’s recommendation); or
- Provide additional direction to LRA staff and Brookfield regarding additional or changed provisions for consideration in the Term Sheet and continue this meeting to a date certain; and direct the City Manager to extend the Preliminary Stage negotiation period accordingly; or
- Direct LRA staff to let the ENA with Brookfield expire on March 30, 2024.

### **Financial Impact**

Funding for the negotiation of this Term Sheet is coming from the existing budget for the Reuse Project consisting of reserves from previous City loans to the Local Reuse Authority and from the deposit made by Brookfield in accordance with the Exclusive Agreement to Negotiate.

### **Environmental Determination**

Pursuant to Public Resources Code Section 21065, CEQA Guidelines Sections 15060(c), 15061(b)(3), and/or 15378, City Council action on this item is not subject to environmental review under the California Environmental Quality Act (CEQA) of 1970, as amended, as it does not constitute a “project,” does not commit the City to a definite course of action, does not constitute discretionary approval of a specific project, and will not result in a direct or reasonably foreseeable indirect physical change in the environment, and in the alternative is exempt from CEQA as it falls within the “common sense” exemption set forth in CEQA Guidelines Section 15061(b)(3), excluding projects where “it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.” This determination reflects the City’s independent judgment and analysis. Individual projects will undergo CEQA analysis as necessary. Taking action on the attached Brookfield Term Sheet is a preliminary step that does not bind the City to approve the conceptual land use plan it is based upon. The DDA, Specific Plan, and associated land use approvals will be developed over the coming months and will be the subject of a subsequent EIR, all of which are subject to review by City and the City retains its discretion to act on those entitlements. Also, the City and Brookfield have expressly acknowledged in the Brookfield Term Sheet that the CEQA process could necessitate adoption of an

alternative development plan and/or mitigation measures that could alter the ultimate project.

### **Public Contact**

The City Council/LRA Agenda was posted. This staff report and Term Sheet were made available to the City Council/LRA and the public on February 15, 2024. The documents were sent out via email to the Reuse Project's interested parties list on February 15, 2024. Updated documents were posted and sent out via email to the Reuse Project's interested parties list on March 12, 2024. The updates made to the documents were non-substantive and related to correcting dates and actions required when the matter was shifted from the February 20, 2024 meeting to the March 19, 2024 meeting.

### **Attachments**

1. BCUS Acquisitions LLC Term Sheet (Brookfield Term Sheet)
2. First Amendment to the Exclusive Agreement to Negotiate (Redline)
3. Larger version of Term Sheet Exhibit A – Conceptual Land Use Plan and Table