

**COLONY PARK SUSTAINABLE COMMUNITY
SUMMARY OF ESSENTIAL TERMS**

TERM	DESCRIPTION	NOTES
A. Parties; Colony Park Sustainable Community Development Agreement	1) City of Austin (“City”) 2) CDC Colony Park Holdings, L.P. or assigns (“Developer”) 3) Pursuant to the Exclusive Negotiating Agreement dated May 12, 2020 between City and Developer (as amended, “ENA”), City and Developer shall work in good faith to negotiate and execute a Colony Park Sustainable Community Development Agreement (“CPDA”) by January 31, 2024. City Council approval of the PUD Rezoning (as defined below) and the CPDA Financing Plan (as defined below) are both conditions to execution of the CPDA. The PUD Rezoning is estimated to be presented to City Council for approval in November or December 2023 and the TIRZ Project and Financing Plan and the CPDA Financing Plan is estimated to be presented to City Council for approval in January 2024.	
B. Property/Site	1) Approximately 208-acre site being the City-owned parcel in Northeast Austin, north of Loyola Lane, east of the existing Colony Park neighborhood, south of the Parker Station neighborhood, and west of the existing Lakeside neighborhood on two parcels with the following tax appraisal descriptions: a) Parcel 1 – 199.60 acres - ABS 4 SUR 19 BURLESON J ACR 199.60 b) Parcel 2 – 8.56 acres - COLONY PARK SUSTAINABLE COMMUNITY INITIATIVE PUD PHS 1 ROW	
C. Colony Park Sustainable Community (“CPSC”) Vision	1) CPSC Master Plan 2) Community Identified Eight Pillars of Need 3) Phase 1 Report prepared pursuant to the ENA 4) Council Resolution No. 20230608-054 5) Council Resolution No. 20221103-004 6) Council Resolution No. 20220324-056 7) Council Resolution No. 20141211-120	

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D. Colony Park Existing Conditions and Site Analysis	The Developer is in receipt of the following materials: 1) The Phase 1 Environmental Site Assessment (ESA), dated May 16, 2014, by HVJ Associates to Austin Housing Finance Corporation 2) CPSC Tax Increment Reinvestment Zone (TIRZ) Preliminary Project and Financing Plan, dated November 3, 2022 3) The Traffic Impact Analysis (TIA) dated September 8, 2014 by Kimley-Horn, as updated by HDR in November 2023 4) Survey Plat, Including Metes and Bounds, dated 2017 by Holt Carson 5) Colony Park Planned Unit Development Zoning Ordinance and Exhibits, dated 2014 by Dunaway Associates and adopted by City of Austin 6) Existing Conditions Report, dated 2014 by Farr Associates 7) Master Plan and Design Guidelines, dated 2014 by Farr Associates	
E. Related Projects	1) The City and Developer will use good faith efforts to collaborate on the following projects related to CPSC led by the City, which may or may not be located on the Property: a) Colony Park District Park, including requests to use portions of the park for drainage, water quality, wetland mitigation, and other enhancements b) Austin Energy Easement request for trail access to the Colony Park District Park c) Central Health Infrastructure d) Space for performance art or other creative media, or an incubator space, at discounted rent, as funding allows e) Civic Uses	
F. Affordable Housing	1) Affordable Housing Program: a) Developer must provide an Affordable Housing Plan, subject to the City's approval, that describes how the affordable housing goals listed below will be achieved.	

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	b) Overall affordable housing goal of 20% of the residential units in CPSC at the Median Family Income (“MFI”) limits as set forth below. c) The affordable units will be dispersed throughout the neighborhoods and across product types and visually indistinguishable from the exterior compared to the market rate units. d) The CPDA shall provide a range for the balance of ownership and rental units (e.g., no more than 25% of all leased units shall be affordable and no less than 15% of all owned units shall be affordable, or vice versa). e) Developer and City will require developers of for-lease affordable housing comply with tenant protections, as required by their funding sources, and within the limits of State and Federal Law which may be further defined in the CPDA. 2) Affordability Restrictions: a) Rental: i. Available to households with an income at or below 60% MFI for initial leases of at least one year; lease renewals for households with income at or below 140% of the initial income limit. ii. The rents shall be no greater than thirty percent (30%) of gross income for households at sixty percent (60%) MFI as defined by HUD, published by the City, and as adjusted from time to time, for the relevant housing market area. iii. Rental tenant incomes shall not be subject to discrimination based on sources of income. b) Ownership: i. Available to households with an income at or below 80% MFI. ii. The sales price for the Affordable Homes shall be set to require a household to incur total annual housing costs of no greater than thirty percent (30%) of gross income for households at eighty percent (80%) MFI as defined by HUD, published by the City, and as adjusted from	

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	time to time, for the relevant housing market. Additional income-restricted ownership units targeted for households at 80 to 120% MFI may be provided if allowed by applicable funding sources. 3) Community Land Trust a) Developer and City will use good faith efforts to explore opportunities to establish a Community Land Trust (“CLT”), which may be managed by the Austin Housing Finance Corporation (“AHFC”), or a third-party or agency as jointly identified by Developer and City and approved by the City. As part of exploring a CLT, the parties acknowledge that CLTs are subject to certain statutory requirements. 4) Affordability Period: a) Rental: A minimum of 40 years beginning on the date the applicable certificate of occupancy is issued by the City of Austin. b) Ownership: A minimum of 30 years upon the initial sale of each individual home; for which the affordability period will be reset with any resale to an income-qualified buyer. Owners of individual affordable homes may exercise an option to extend the affordability period for 10-year periods at the end of the 30-year period.	
G. Affirmative Marketing, Preference Policy, Partnerships & Displacement Prevention	1) Affirmative Marketing: Developer will work with City in good faith and in compliance with applicable laws to connect with local community organizations to ensure that community groups, especially those with ties to the Colony Park area, to participate in the affirmative marketing. The affirmative marketing will focus on communities that may not know about affordable housing opportunities. For example, families who have been displaced from Austin and families who speak a language other than English as their first language. 2) Preference Policy: Developer and the City will work together to create a preference policy that meets all government standards and limitations. The final requirements will appear in the Affordable Housing Plan. The above requirements must be in compliance with Fair Housing regulations, and shall	

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	not be applicable to the extent the requirements are not consistent with applicable laws. 3) Partnerships: Developer will use good faith efforts to involve third-party organizations, including participants of the Small Developer Training Program or the Housing Department of the City, that address the City of Austin Preference Policy. 4) Displacement Prevention: Developer will use good faith efforts to participate in City-led area-wide initiatives to address displacement prevention in the existing Colony Park, Lakeside and nearby neighborhoods.	
H. Tenanting/Local Business	1) The Developer will use good faith efforts to initially achieve leases such that 30% of the total number of businesses are local businesses for commercial space in the Loyola Town Center and Equitable Transit Oriented Development zones, cumulatively.	
I. Community Shopping Center Development	1) As reflected in the current CPDA Illustrative Property Plan (which remains subject to change pursuant to the CPDA), a portion of the parcel(s) on the northeast corner of Loyola Lane and Wilmington Drive is identified as potentially being developed for community scale retail and services. Developer shall make good faith efforts to develop such portion of the parcel(s) for those intended uses, including proactively marketing applicable and appropriate sites to supermarket operators to serve as an anchor. Developer shall keep the City reasonably informed regarding such good faith efforts.	
J. Infrastructure Projects	1) Infrastructure Projects: The CPDA will include an exhibit identifying the initial Infrastructure Projects, which may be updated upon agreement by the City and Developer. The Developer will provide a preliminary Phasing Plan which will delineate the approximate scope and location of the Infrastructure Projects within and outside of the Property that will be delivered as contemplated by the CPDA. 2) Construction: City or Developer to construct Infrastructure Projects, with all eligible associated hard, soft and development costs to be funded or	

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	reimbursed from the project revenues or from public financing resources, as outlined in the Financing Plan and as contemplated by the CPDA.	
K. Council adopted Third-Party Requirements	The CPDA will include obligations consistent with rules and laws, including City ordinances and resolutions, applicable to the development of City owned property, including, as applicable: 1) Prevailing Wage Requirements (Resolution 20080605-047) 2) Worker Safety Program Requirements (Resolution 20110728-106) 3) MBE/WBE Requirements (Resolution 20071108-127; Resolution 20120112-058) 4) Construction Training Requirements (Resolution 20180628-061) 5) Better Builder Requirements (Resolution 20190619-091)	
L. Financing Plan	1) The CPSC Preliminary Project and Financing Plan was unanimously adopted by City Council on November 3, 2022 (see ORDINANCE NO. 20221103-004) (the “Preliminary Financing Plan”). 2) The Preliminary Financing Plan will be updated and a TIRZ Project and Financing Plan acceptable to the City and the Developer will be presented to City Council for approval and subsequently attached to the CPDA. 3) The “CPDA Financing Plan,” referred to as the “Financing Plan,” may ultimately include sources from Land Sale Revenue, TIRZ Project and Financing Plan, Capital Improvement Project Funds, Housing Bonds, Community Development Block Grant (CDBG) funds, and possibly other sources, such as PID, cash financing, and fee waivers (for example, SMART Housing fee waivers) as agreed upon by the City and Developer. The City and Developer will work together in good faith to find funding sources for any gap identified in the Financing Plan to the extent not funded by other sources. The CPDA Financing Plan may be updated from time to time.	
M. CPDA Pro Forma	1) A pro forma will be prepared by the Developer in coordination with the Financial Services Department and the Economic Development Department at the City and agreed upon by the parties to be attached to the CPDA. The pro	

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	forma attached to the CPDA will be a preliminary proforma and is subject to change during the term of the CPDA.	
N. Project Revenues & Project Costs	1) Project revenues will include all revenue or other consideration generated by the Property from the sale, lease, or other transfer or from the redevelopment of all or a portion of the Property. 2) Public financing funding per the Financing Plan will include, but not be limited to, a pay-as-you-go mechanism from the City and may include other funds (such as grants, federal funds, etc.). 3) Project revenues and public funding will be deposited into one or more escrow accounts and used to pay or reimburse Developer Project Costs, Developer fees, returns, and commissions, subject to City review and approval and reflecting the limitations on uses of public financing funds in the Financing Plan. 4) Project Costs include all eligible fees, costs and expenses incurred by the City or Developer which are necessary and reasonably related to the development and marketing of the Property in accordance with the City's and Developer's obligations under the CPDA, the zoning, the community covenants and the design guidelines for CPSC including, eligible expenses incurred pursuant to the ENA, selling and closing costs, general costs (including legal fees and expenses of Developer and City, except those legal fees and expenses which are the result of a dispute between the City and Developer), deconstruction/environmental costs and construction costs. 5) Parties can mutually agree upon additional projects at a later date that have a community benefit or direct benefit to CPSC, the costs of which will be Project Costs. Additional projects agreed upon by the City and Developer may be considered as tiered Project Costs as identified in the Financing Plan. 6) The Developer's obligation to fund Project Costs will be subject to a peak equity investment cap by the Developer. 7) Eligible expenses incurred pursuant to the ENA in the amount of \$500,000 shall be reimbursed to the Developer within 30 days following execution of the	

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	CPDA. This reimbursement is out of the \$3.3 reimbursement fund established under the ENA. The City may reallocate the remaining \$2.8 million to a Colony Park project and the eligible costs of that project will be reimbursed as a Project Cost.	
O. Developer Fees & Returns	1) Construction Management Fee: 4% of Project Costs 2) Administration Fee a) Developer - \$800,000 per year in year one of the CPDA with Consumer Price Index (CPI) annual escalations subject to a floor of 3% per year and a ceiling of 5% per year. The ceiling cap will re-set every 5 years subject to performance of CPSC finances with City approval. The Developer's Administration Fee shall not be payable through any public financing funds identified as such in the Financing Plan. b) City of Austin - \$250,000 per year with Consumer Price Index (CPI) annual escalations subject to a floor of 3% per year and a ceiling of 5% per year with a re-set on the ceiling cap every 5 years, subject to performance of CPSC finances. The City's Administration Fee shall not be payable through any public financing funds identified as such in the Financing Plan. 3) Other Proceeds: 7.5% of all other proceeds. 4) Commissions: 3% on single-family lot closings, 4% for commercial parcels when no outside broker is involved, or 3% if an outside broker is involved. Division of commissions with outside brokers must not result in the Developer receiving more than half of the Commission amount. 5) Developer Return: The greater of the "Land Sales Method" or the return as specified by the "Waterfall Method" as specified below: a) The Land Sales Method: i. 15% of land sales proceeds, paid upon closing of each takedown. b) The Waterfall Method:	

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	i. 100% of the distribution to Developer until Developer achieves a 15% IRR on its cumulative equity investment (“Tier 1 Return”); and ii. then, a separate calculation shall determine the return that would constitute a 20% IRR on Developer’s cumulative equity investment, and Developer shall be entitled to 60% of the difference between that figure and the Tier 1 Return amount representing a 15% IRR on its cumulative equity investment, with the City receiving the other 40% of that difference (“Tier 2 Return”); and iii. then, for any additional dollars remaining for distribution, 30% of the distribution to Developer and 70% of the distribution to the City (“Tier 3 Return”).	
P. Takedown/Closing	1) The Property will be taken down in portions on a rolling basis, the timing and milestones of which will be coordinated with the Financing Plan and subject to tolling based on market conditions, financing conditions and certain unilateral tolling rights of Developer, which will be set forth in CPDA. The Takedown Schedule will be updated year by year. 2) Developer will takedown the applicable portion of the Property at Developer’s election, either (a) in connection with a substantially contemporaneous land sale to a third party not affiliated with the Developer or (b) for a fair market value land sale to an entity that is affiliated with Developer. 3) In connection with any takedown, the land sales proceeds will be treated as project revenues and the net proceeds will be deposited into the project revenue escrow account. 4) The consideration to the City for all takedowns will be deferred to the final lookback of the project. 5) The timing of construction for perimeter parks (i.e., the “green fingers” of preserved open space), neighborhood parks, and other parks will be delivered pursuant to the Phasing Plan and the Financing Plan.	

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Q. Planning	1) The CPDA Illustrative Plan and Land Use Plan will be implementable as entitled by (i) the PUD Amendment zoning case application #2023-072997 Z currently underway, (ii) subsequent development applications including a preliminary plan for the Property, and (iii) numerous administrative waivers contemplated in the CPDA that were not specifically adopted as code modifications in the PUD Ordinance; and within the funding limitations of the future final TIRZ project and financing plan, and reviewed and approved by the City and included as an exhibit to the executed CPDA. 2) The CPDA will include a right of the Developer to access and use all of the Property for the purpose of fulfilling the Developer’s obligations under the CPDA.	
R. Subdivision	1) One or more subdivision plats acceptable to the City (in its regulatory capacity) will be approved and recorded in accordance with the CPDA and in coordination with the PUD in connection with each takedown, subject to certain exceptions to be set forth in the CPDA.	
S. PUD Rezoning	1) Current PUD zoning – Ordinance 20141211-150 (to be amended as outlined below) 2) A PUD zoning amendment application, 2023-072997 ZC was submitted on June 9, 2023 (the “PUD Rezoning”) and is scheduled to be considered for City Council approval on November 30, 2023 to secure the required zoning entitlements. 3) CPDA shall include sections to address conditions of approval from departments or divisions with regulatory review jurisdiction over the PUD, and also addresses issues identified in the PUD amendment ordinance, including: a. Design Guidelines that implement certain development standards and practices (e.g., signage, plant list, technical criteria, commercial and residential design standards). b. Transportation and Public Works i. A Fiscal Surety Credit Bank will be established and be used to provide the project fiscal surety as required by the Land Development Code (“LDC”) for the development of transportation infrastructure.	

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	ii. Approved TIA update and TDM plan shall be valid for duration of the CPDA. c. Austin Energy i. The CPDA will attach a memorandum of understanding between AE, EDD, and PARD that allows interdepartmental review and approval process between AE, EDD, and PARD to facilitate trail connections within or crossing the tract of land that encumbers the transmission easement. d. Parks and Recreation Department i. The minimum amount of parkland in the CPDA, and the minimum investment in park improvements for the entire PUD, shall be at least the amount set forth in the CPDA. The method of dedication and obligations related to dedication and maintenance shall also be set forth in the CPDA. Dedication and maintenance contribution from the City to be further finalized in the CPDA. e. Watershed Protection / Development Services - Drainage/Water Quality i. The CPDA will require signage and maintenance of water quality ponds to be designed and constructed to meet public water quality pond standards and will require ponds to be maintained by the land developer, site developer or the POA, subject to pond maintenance contribution from the City to be further finalized in the CPDA. f. Development Services - Arborist i. A Fiscal Surety Credit Bank will be established and be used to provide the CPSC fiscal surety as required by the LDC for removing and replanting trees. ii. The CPSC Design Guidelines will provide guidance on selecting tree planting species. g. Office of Sustainability	

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	i. CPSC Green Building Standards established in accordance with the CPDA will be included in the CPSC Design Guidelines. h. Watershed Protection Environmental Officer i. Additional off-site mitigation for wetland removal and CEF buffer modifications may be provided in the CPDA, including as it relates to performing such mitigation on the Colony Park District Park land. ii. The 2023 ERI report will remain valid for the duration of the CPDA. iii. The CPDA will require the development of a Natural Area Management Plan, including an Integrated Pest Management Plan, for the restoration of the wetland Critical Environmental Feature, and the existing creek that establishes baseline maintenance practices to support a healthy riparian habitat. i. CPSC Green Building Standards will be developed in accordance with the CPDA and will be included in the CPSC Design Guidelines, and will encourage that, to the extent feasible, third-party builders comply with the Austin Energy Green Building ST7 Light Pollution Reduction, and the City’s proposed “Functional Green” standards as a part of achieving a 2-star Austin Energy Green Building Rating, which may include but not be limited to green walls and roofs, native plantings, rain gardens or porous pavement and beneficial reuse of water for irrigation. j. Art in Public Places Division i. A public art plan to deliver a minimum of \$500,000 in public art must be included as a requirement in the CPDA, all costs of which shall be Project Costs.	
T. Events of default & remedies	1) Events of default: failure to pay or perform; failure to carry insurance; unauthorized assignment; receiver and bankruptcy, and others to be defined in the CPDA. 2) Remedies: Specific performance, actual damages, tolling of other obligations, and others to further be defined in the CPDA. However, the CPDA would	

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	provide that neither the City nor the Developer will be entitled to claim consequential damages against each other. Further, damages against the City are limited by the Texas Constitution and other applicable statutes. 3) Tolling: The CPDA will include provisions for tolling of project obligations under certain circumstances.	
U. Public Comment and Outreach	1) Community engagement will continue during negotiation and after execution of the CPDA. 2) The Parties will develop a community engagement plan that will be updated on an as-needed basis. This plan will include an obligation to use good faith efforts to engage with community stakeholders on topics of affordable workforce housing, healthcare, education, food access, mobility, safety, economic vitality, open space, government resources, and other community benefits. 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.	
V. CCRs/POAs	1) Developer and the City to work together in good faith to establish the structure of community covenants and restrictions (“CC&Rs”) and property owners’ associations (“POAs”).	
W. Environmental Remediation & Soil Mitigation	1) The 2014 Phase 1 ESA revealed no evidence of a recognized environmental condition on or near the Subject Project Area (as referenced in such ESA) and recommended no further environmental investigation of the Subject Project Area. 2) The City acknowledges that due to the age of the 2014 Phase 1 ESA report an updated Phase 1 ESA report must be obtained. Costs to study and remediate environmental conditions recommended in an updated Phase 1 ESA and subsequent environmental studies and reports shall be deemed Project Costs. 3) The City acknowledges that the Property has highly expansive clay soils. Costs to study the soil conditions and to mitigate soils pre- or post-construction documented and recommended in engineering studies and reports shall be	

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	deemed Project Costs. Any ongoing post-construction soil issues following the expiration of the CPDA will be further defined in the CPDA.	
X. Sales and Admin Office	1) The Developer will use commercially reasonable efforts to open an on-site Sales Office within the Property/Site for the Colony Park Sustainable Community when commercial lease space becomes available. Until that time, the Developer will open a Sales Office off-site. The City shall reasonably approve the location and costs of on-site and off-site Sales Offices. Developer may open an Admin Office for the Colony Park Sustainable Community in a location selected by Developer. All cost to construct, operate and maintain the Sales Offices and a pro-rata cost to operate and maintain the Admin Office for the Colony Park Sustainable Community shall be Project Cost.	
Y. Term	1) The term of the CPDA will be determined based on the pro forma attached to the CPDA, subject to extensions as contemplated by the CPDA.	