

**EXCLUSIVE NEGOTIATION AGREEMENT
FOR
CIVIC CENTER AND DOWNTOWN WEST END GATEWAY PROJECT**

BETWEEN

**THE CITY OF NAPA AND
PLENARY PROPERTIES NAPA LLC**

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BETWEEN

**THE CITY OF NAPA AND
PLENARY PROPERTIES NAPA LLC**

THIS EXCLUSIVE NEGOTIATION AGREEMENT (this "ENA") is entered into this _____, 2017 ("Effective Date"), by and between the CITY OF NAPA, a California charter city (the "City"), and PLENARY PROPERTIES NAPA LLC, a Delaware limited liability company (the "Developer"). The City and Developer are sometimes referred to herein individually as "Party" and collectively as "Parties."

RECITALS

A. The City is the owner, or will undertake to acquire, certain real property located in the City of Napa that includes those properties graphically depicted in Exhibit A-1 hereto (the "Civic Center Site") and Exhibit A-2 hereto (the "Private Development Site"). The Civic Center Site and the Private Development Site are sometimes hereinafter referred to collectively as the "Project Site."

B. On October 30, 2015, the City issued a Request for Qualifications ("RFQ") to interested parties to tender submissions and substantiate their qualifications to work with the City to design, build, finance, operate and maintain a new combined City Administrative and Public Safety Building, and to purchase excess property at fair market value for private development.

C. On May 10, 2016, following review of responses to the RFQ, the City selected three (3) qualified proposers ("Shortlisted Proposers") to respond to the issuance of a future request for proposals for the Project.

D. On November 7, 2016, the City issued to the Shortlisted Proposers a Request for Proposals, as subsequently supplemented by the City in Addenda 1-7, as well as the City's responses to the Developer's Alternative Technical Concepts Nos. 1-3 (collectively, the "RFP") to the Shortlisted Proposers, including the Developer, to submit proposals for to design, build, finance, operate and maintain a new combined City Administrative and Public Safety Building, and to purchase excess property at fair market value for private development.

E. On February 17, 2017, the Developer submitted a formal response to RFP (the "RFP Response"), and thereafter the Developer provided written supplements thereto, including: (i) the Developer's response (dated March 21, 2017) to the City's "Request for Information and Developer Clarification" dated March 13, 2017, (ii) the

Developer's response (dated May 2, 2017) to the City's Best and Final Submittal request dated April 21, 2017, (iii) the Developer's Updated Financial Matrix and attachments transmitted by email dated May 27, 2017, and (iv) the Developer's PowerPoint Presentation to City Council on May 30, 2017 (collectively, the "Supplemental Communications"). The RFP Response and the Supplemental Communications are hereinafter collectively referred to as the "Proposal".

F. On May 30, 2017, the City selected the Developer as the Preferred Proposer that submitted the best value proposal in the best interest of the City to design, build, finance, operate and maintain a new combined City Administrative and Public Safety Building (collectively the "Civic Center Project") on the Civic Center Site, and to purchase excess property at fair market value for private development (the "Private Development Project") on the Private Development Site. The Civic Center Project and the Private Development Project are sometimes hereinafter referred to collectively as the "Project.")

G. The City and the Developer desire to enter into this ENA to establish the period during which the Parties shall negotiate the terms and conditions of the agreements to consummate the transactions contemplated in the RFP, as described in this ENA.

IT IS HEREBY MUTUALLY AGREED BY THE PARTIES AS FOLLOWS:

1. INCORPORATION BY REFERENCE OF RFP AND PROPOSAL

Developer has been selected to enter into this ENA in accordance with the RFP and the Proposal, the provisions of which are expressly incorporated herein by reference and made a part of this ENA. Capitalized terms not otherwise defined in this ENA shall have the meaning given to them in the RFP. The Project Agreements (defined below) for the Civic Center Project and Private Development Project to be negotiated pursuant to this ENA shall be based upon and in substantial accord with all requirements of the RFP, the Proposal, and this ENA. The City and the Developer have made a good faith effort to document, in the "Summary of Terms of Transaction" attached hereto as Exhibit B, (incorporated herein by reference) the key conceptual terms that supplement, clarify, or differ from the RFP and/or Proposal (collectively, the "Key Supplemental Terms"), and which will require particular attention as a part of negotiating the terms of the Project Agreements. Any conflict between or among the RFP, this ENA, and the Proposal, shall be resolved first in favor of this ENA, then the RFP, and only then in favor of the Proposal.

2. NEGOTIATIONS

2.1 Good Faith Negotiations

2.1.1 The City and the Developer agree during the Negotiating Period (defined below) to negotiate diligently and in good faith to prepare (i) a supplemental terms sheet (the "Terms Sheet") which will supplement and more fully define the terms of this ENA, the RFP, and the Proposal, to the extent such terms/scope are not already fully defined and/or developed in this ENA, the RFP, and the Proposal, and (ii) one or more

agreements setting forth the rights and obligations of the parties with respect to: the conveyance of a leasehold and/or fee interest for the Civic Center Site and Private Development Site, the development of the Civic Center Project and Private Development Project, the timing and conditions to closing of the various transactions which are contemplated and/or required to implement the Civic Center Project and Private Development Project, the terms of all documents necessary to close such transactions, and such other agreements deemed necessary by the Parties to implement the Civic Center Project and Private Development Project, respectively, as contemplated by this ENA, the RFP, and the Proposal (respectively, the "Civic Center Project Agreements" and "Private Development Project Agreements", and collectively the "Project Agreements"). For the sake of clarification, the Parties hereby acknowledge and agree that the Terms Sheet is intended to supplement the key terms already set forth in the body of this ENA and/or the exhibits hereto (including the Key Supplemental Terms), and/or in the RFP and Proposal, as may be necessary and/or desired by the Parties in order to (a) more clearly define such existing key terms, and/or (b) set forth additional key terms that address matters which are not already included in the body of this ENA (or the exhibits hereto), and/or in the RFP or Proposal, but which are material to establishing the Parties' respective rights, duties and obligations with respect to the Civic Center Project and Private Development Project, prior to the initial drafting of the forms of Project Agreements.

2.1.2 The obligation to negotiate in good faith requires the Parties to communicate with each other with respect to those issues for which agreement has not been reached, and in such communication to follow reasonable negotiation procedures, including meetings, telephone conversations, and correspondence.

2.1.3 The City anticipates that following execution of this ENA, and through the Negotiating Period (defined below) and preparation of the Project Agreements, the City, as well as certain consultants and attorneys for the City, will devote substantial time and effort in reviewing documents, proposals, plans, and meeting with the Developer, each other, and other necessary third parties. The City acknowledges that the Developer will also expend substantial time and financial resources hereunder, and the Parties are willing to engage in all of these activities subject to the terms and conditions set forth in this ENA. Except as otherwise provided in this ENA, each Party shall be responsible for and bear their respective costs and expenses incurred during and as a result of performing their activities, obligations and negotiations pursuant to this ENA

2.2 Exclusive Negotiations

During the Negotiating Period, the City and the Developer shall work and negotiate exclusively with each other regarding the Project Agreements consistent with this ENA, and the City shall not entertain proposals from or negotiate with any other person concerning the Project. If negotiations with the Developer under this ENA are unsuccessful and do not lead to approval and execution of the Project Agreements within the Negotiating Period and, pursuant to the terms and conditions of this ENA, the City elects to terminate this ENA, the City reserves the right to subsequently negotiate with any other developer.

2.3 Negotiation of the Project Agreements and Other Agreements

2.3.1 The Parties further acknowledge and agree that during the Negotiating Period, the Parties shall use their respective good faith efforts to develop and enter into final Project Agreements for both the Civic Center Project and Private Development Project which prescribe all rights, duties, and obligations of the Parties for the Civic Center Project and Private Development Project, respectively, as described in this ENA.

2.3.2 The Parties further acknowledge and agree that during the Negotiating Period, the Parties shall use their respective good faith efforts to develop and, as applicable, enter into such other agreements with third parties as may be deemed necessary by the Parties to implement the Civic Center Project and Private Development Project.

2.4 Period of Negotiations

2.4.1 The “Negotiating Period” shall commence upon the Effective Date and shall end two years after the Effective Date, unless it is extended in accordance with this ENA. The Parties agree to negotiate in good faith and conduct due diligence activities during the Negotiating Period and any extension thereof. If all of the Project Agreements have not been executed prior to the expiration of the Negotiating Period, the Negotiating Period may be extended by the mutual written consent of the Developer and the City to enable the City to: (i) determine whether it desires to enter into the Project Agreements, and, (ii) take any actions that might be necessary to authorize the City to continue negotiation of the Project Agreements. Upon written request from the Developer, the Negotiating Period will be extended by the City Manager for an additional term not to exceed one-hundred eighty (180) calendar days if the City Manager makes a written determination that: (a) the Developer is exercising good faith and diligent efforts toward completion of the Project Agreements, or (b) there is a force majeure event or delay (as defined in Section 2.4.4). Any other/further extension of the Negotiating Period shall require approval by the City Council and the Developer, pursuant to Section 18.19.

2.4.2 If the City has not signed the Project Agreements by the expiration of the Negotiating Period and the Negotiating Period has not been extended in accordance with this ENA, then this ENA shall automatically terminate and be of no further force or effect, except as otherwise provided in this ENA.

2.4.3 The Negotiating Period shall include a multi-phase process in accordance with Sections 5.1 and 5.2 hereof and the timing outlined in Exhibit C-1 (the “Civic Center Project Milestones”) and in Exhibit C-2 (the “Private Development Project Milestones”). The Civic Center Project Milestones and the Private Development Project Milestones are hereinafter sometimes collectively referred to as the “Performance Milestones.”

2.4.4 If unforeseen events arise which delay or prevent satisfaction of any of the Performance Milestones, where neither Party has any control over such unforeseen

circumstances (e.g. third party litigation, strikes or other labor disputes, civil commotion, riots, etc.), excepting project financing (collectively, hereinafter “force majeure events”), or to the extent a delay is caused by the other Party, then, upon written notice to the other Party, the Completion Date (as defined in Exhibits C-1 and C-2) for the impacted Performance Milestones shall be extended for a reasonable time to allow the Parties to fully perform, but only to the extent caused by the delay and where performance was actually prevented.

3. CONFIDENTIALITY

The Developer acknowledges that the City will need sufficient, detailed information about the economic feasibility of the Civic Center Project and Private Development Project to negotiate and make informed decisions about the content and approval of the Project Agreements. As a general rule, all records (documents and materials) submitted by the Developer and received by the City (“Submitted Materials”) are considered public records, and are subject to disclosure to the public under the requirements of the Public Records Act, California Government Code section 6250 et seq. (“CPRA”). However, there are two categories of records that the City anticipates may justify the City to refuse to disclose Submitted Materials to the public for: (a) the “deliberative process” until the time that the City Manager makes a recommendation to the City Council for approval of any action contemplated by this ENA, particularly approval of the Project Agreements (see *Michaelis v. Superior Court* (2006) 38 Cal.4th 1065); or (b) Confidential “Official Information” (see California Government Code Section 6254(k) and Evidence Code Section 1040).

The Developer acknowledges and agrees that the City may share Official Information provided by the Developer (e.g., of a financial and potential proprietary nature) with third-party consultants and attorneys who have been engaged to advise the City concerning matters related to this ENA as part of the negotiation and decision-making process.

If the Developer asserts that any portion of Submitted Materials are subject to a legal exception to public disclosure under the CPRA, the Developer must: (1) clearly label the relevant Submitted Materials as “Confidential – Official Information,” (2) upon request from the City, provide additional information regarding the legal basis for exception from disclosure under the CPRA, and (3) defend, indemnify, and hold harmless the City regarding any claim by any third party for public disclosure of the confidential portion of the Submitted Materials.

To the extent that the City receives a request to disclose any Submitted Materials that are clearly marked as “Confidential – Official Information,” and the City determines that there is a legal basis for withholding such Official Information from public disclosure, the City shall not disclose such Official Information unless compelled by court order; provided that Developer shall defend, indemnify, and hold harmless the City regarding any claim or litigation by any third party for such public disclosure, and such obligation shall survive the termination of this ENA and any expiration of the Negotiating Period.

To the extent that the City receives a request to disclose any Submitted Materials, and the City does not identify a legal basis to withhold the Submitted Materials, the City shall provide written notice to the Developer, and the Developer shall be given a reasonable opportunity to seek a court order to preclude the City from disclosing such Submitted Materials, or applicable portion thereof, provided that in such event Developer shall defend, indemnify, and hold the City harmless regarding any claim or litigation by any third party, and such obligation shall survive any termination of this ENA and any expiration of the Negotiating Period.

Except as expressly set forth above in this Section 3, City shall be entitled to publicly disclose all Submitted Materials.

4. PERFORMANCE MILESTONES

4.1 Satisfaction of Performance Milestones

During the Negotiating Period, the Developer shall diligently pursue to completion the respective Performance Milestones for the Civic Center Project and Private Development Project in accordance with the schedules set forth in Exhibits C-1 and C-2 in the manner and in the times set forth therein, and any additional Performance Milestones mutually agreed upon by the Parties. The Developer shall consider in good faith during the Negotiating Period, any feasible additional Performance Milestones proposed by City for either the Civic Center Project and Private Development Project that do not materially increase the Developer's obligations, burdens, or risks during the Negotiating Period. As Performance Milestones are accomplished, the City shall consult with the Developer to update and provide more detailed definition to the remaining Performance Milestones. The Developer's compliance with the Performance Milestones for the Civic Center Project and Private Development Project shall not alter or reduce its obligations to comply with any other provision of this ENA.

4.2 Waiver or Extension of Performance Milestones

The City reserves the right, in its sole discretion, to waive or extend the times for performance of any of the Performance Milestones, including, without limitation, the right to condition such waiver or extension on additional Performance Milestones or other conditions required by the City in its sole discretion, provided that all such actions shall be effective only if in writing and provided, further, that compliance with the Performance Milestones as so revised shall not alter or reduce Developer's obligations to comply with any other provision of this ENA including execution of all Project Agreements for both the Civic Center Project and Private Development Project within the Negotiating Period.

4.3 Monthly Progress Reporting

The Developer shall submit to the City written reports no later than the first day of each month during the Negotiating Period, setting forth a description of the status of the Developer's compliance with the Performance Milestones for the Civic Center Project and Private Development Project, respectively.

5. OBLIGATIONS

5.1 Obligations of the Developer

5.1.1 During the Negotiating Period, the Developer shall use diligent good faith efforts to:

(a) Commence and complete its due diligence review and investigation of the Civic Center Site and Private Development Site;

(b) To prepare and submit complete applications for all regulatory entitlements for both the Civic Center Project and Private Development Project;

(c) Intentionally omitted;

(d) Prepare and complete for each of the Private Development Project and the Civic Center Project all applicable documentation and processes required for the City's review and processing of entitlement approvals, including environmental review, and for public outreach;

(e) Negotiate with the City the principal terms of the Civic Center Project Agreements and Private Development Project Agreements;

(f) Work cooperatively with the City to establish the financing structure of the Civic Center Project;

(g) Prepare and provide Schematic Design (as defined by American Institute of Architects ["AIA"]) package and other design documents for the Civic Center Project referred to in Exhibit C-1 for review and approval by the City;

(h) Prepare and provide 50% complete Design Development Plans and Specifications for the Civic Center Project, as defined in Exhibit E to this ENA and referred to in Exhibit C-1, for review and approval by the City;

(i) Prepare and provide a Fixed Price Proposal, as defined in Exhibit C-1, for review and approval by the City;

(j) Prepare and provide a complete financial model for the Civic Center Project, that shall include data book and user guide, assumptions, sources and uses for construction and operations periods, detailed cash flow model showing construction and operating period, complete financial statements, and summary outputs required by the RFP, including payments by the City based on (i) the complete applications for regulatory approvals of the Civic Center Project, (ii) the Terms Sheet, (iii) the Fixed Price Proposal for Civic Center Project, and (iv) the pro forma tax revenues estimated by the financial model for the Private Development Project;

(k) Prepare and provide pro forma financial information for the Private Development Project in accordance with the requirements of Exhibit H (the "Pro Forma Financial Projections");

(l) Prepare and provide presentation materials to the City no later than two (2) business days in advance of any meetings to discuss the Project Application and related design issues for the Civic Center Project and/or the Private Development Project, unless otherwise mutually agreed;

(m) Negotiate the Project Agreements with the City for development of each of the Civic Center Project and Private Development Project, respectively, incorporating specific terms, including the City's and the Developer's respective rights, duties, obligations, and responsibilities, the economic parameters, financing, development standards and requirements, and a performance schedule for each of the Civic Center Project and Private Development Project, all consistent with (a) this ENA and (b) the Terms Sheet;

(n) Identify, secure and provide to City adequate interim use space for City operations during the period needed for the construction of the Civic Center Project (the "Swing Space"), consistent with the terms of (a) this ENA and (b) the Terms Sheet;

(o) Identify and secure (when required as agreed upon by the Parties), staging area(s) sufficient to support the development and construction of the Civic Center Project and Private Development Project;

(p) Provide all requested studies, analysis, reports, and documentation required for the City's review and processing of entitlement approvals for each of the Civic Center Project and Private Development Project, including environmental review and other Project approvals; and

(q) Arrange for the financing of the construction of the Civic Center Project through a "63-20" tax exempt bond offering.

5.1.2 During the Negotiating Period, the Developer shall meet the respective Performance Milestones and schedules as prescribed in Section 4 of this ENA, and subject to extension as provided for in this ENA.

5.2 Obligations of the City

During the Negotiating Period, the City shall use diligent good faith efforts to:

5.2.1 Exclusively negotiate the respective Project Agreements with the Developer for the Civic Center Project and Private Development Project, consistent with the terms of (a) this ENA and (b) the Terms Sheet;

5.2.2 Review the Developer's submittals for each of the Civic Center Project and Private Development Project and determine consistency with the requirements of this ENA and the Terms Sheet;

5.2.3 Provide the Developer with documents in the City's possession that would assist the Developer with the due diligence activities described in this ENA;

5.2.4 Respond on a timely basis, in accordance with the Performance Milestones, to all submittals by the Developer made pursuant to this ENA;

5.2.5 Provide feedback to the Developer within two (2) business days of any meetings to discuss the Project Application and related design issues for the Civic Center Project and/or the Private Development Project, unless otherwise mutually agreed;

5.2.6 Cooperate and work with Developer to establish a reasonable process and time schedule, within the Negotiating Period, for negotiation of the respective Project Agreements for each of the Civic Center Project and Private Development Project;

5.2.7 Process the submissions and approvals for each of the Private Development Project and the Civic Center Project as required for the City's review and processing of entitlement approvals, including environmental review; and

5.2.8 Subject to the provisions of this ENA, including those contained in Sections 6 and 7 hereof, meet the Respective Performance Milestones and schedules as prescribed in Section 4 of this ENA, and subject to extension as provided for in this ENA.

6. ENTITLEMENTS, PERMITS AND APPROVALS

6.1 Developer Responsibility

Except only for the express obligations of the City under Section 5.2, the Developer shall have sole responsibility for obtaining all entitlements, permits, and approvals necessary for the development of the Civic Center Project and Private Development Project.

6.2 Regulatory Approval Strategy

The Parties acknowledge that regulatory approvals and permits are required for development of each of the Civic Center Project and Private Development Project (respectively, the "Civic Center Project Regulatory Approvals" and "Private Development Project Regulatory Approvals", and collectively, the "Regulatory Approvals"). Prior to taking any action to obtain any Regulatory Approvals, the Developer first shall present to the City for its approval, the basis upon which the Developer proposes to obtain the required Regulatory Approvals for each of the Civic Center Project and Private Development Project (respectively, the "Civic Center Project Regulatory Approvals Strategy" and "Private Development Project Regulatory Approvals Strategy", and collectively, the "Regulatory Approvals Strategy"). The City may suggest reasonable revisions or changes to the proposed Regulatory Approvals Strategy for the Civic Center Project and/or Private Development Project, which the Developer shall consider in good faith. The Developer agrees and acknowledges that maintaining professional working relations with each regulatory agency is critical to implementing the Civic Center Project

and Private Development Project. Accordingly, the Developer shall use commercially reasonable efforts throughout the Negotiating Period and thereafter not to take any actions relating to the Civic Center Project and/or Private Development Project that would adversely affect the City's relationship with any regulatory agency.

6.3 Project Materials

The term "Project Materials" applies to all reports, studies, plans, drawings, analysis, financial plans, correspondence, other documents related to the physical condition of the Civic Center Site and Private Development Site, financing structures, and any similar documents prepared for or commissioned for the Civic Center Project by the Developer's architects, engineers, tax and legal advisors, and consultants ("Project Consultants") and any due diligence documents prepared for or commissioned for the Private Development Project, including without limitation all market studies for the hotel, residential, and retail portions of the Private Development Project, and all available appraisals. Notwithstanding the foregoing, the Project Materials shall exclude any legally privileged materials and communications; provided Developer agrees that any reports and studies relating to the physical condition of the Civic Center Site and/or Private Development Site which are otherwise subject to a claim of privilege because such factual or expert reports or studies were commissioned by legal counsel shall not be deemed privileged for the purposes of this paragraph; any disclosure of such information deemed not privileged shall be narrowly construed as described herein and shall not be considered a waiver of the attorney-client privilege. As used in this ENA, the term "Intellectual Property" means any and all legally protected ideas, processes, trademarks, service marks, inventions, technology, computer programs, original works of authorship, designs, formulas, discoveries, patents, copyrights and all legally protected improvements, rights and claims related to the foregoing, in each case as the same relate to any Project Materials. In the event of: (i) the Developer's termination of this ENA in accordance with Section 16.2; or (ii) any early termination of this ENA by the City as a result of a Developer Event of Default, then the Developer shall, within thirty (30) days of written notice from the City, and without cost to the City: (a) satisfy all outstanding fees relating to the Project Materials and Intellectual Property that are then due and payable, or will become due and payable to Project Consultants or others for services relating to each of the Civic Center Project and Private Development Project rendered by any of the Project Consultants up to the date of withdrawal, abandonment, termination, or expiration, as prescribed above, and provide written evidence of such satisfaction to the City; (b) assign to the City, by way of legally binding instruments, all of the Developer's existing rights and interest in the Project Materials and related Intellectual Property (the "Assigned Materials and Rights"); and (c) deliver or have delivered from the all Project Consultants and any other appropriate parties all to the City, all Assigned Materials and Rights in their native file format, as well as customary evidence of approval of such assignment where necessary or reasonably required.

The Developer shall be permitted to disclaim any representations or warranties with respect to all Assigned Materials and Rights (other than the payment by the Developer of the fees for such Assigned Materials and Rights); and at the request of the Developer, the City shall provide the Developer with a release from liability for future use

of the Assigned Materials and Rights, in a form reasonably acceptable to the Developer and the City. Provided that the City meets the foregoing obligation, the Developer shall be deemed to waive and release the City from any claims of proprietary rights or interest by the Developer in or to all Assigned Materials and Rights, and the Developer agrees that the City may utilize any or all of the Assigned Materials and Rights for any purpose whatsoever, including pursuit of the same or a similar project with another party, including but not limited to, another developer.

7. RETENTION OF DISCRETION BY THE CITY

7.1 Retention of Discretion to Approve the Project

The Parties acknowledge and agree that the City is reserving the right to exercise discretion as to all matters which, by law, the City is entitled or required to exercise in its sole discretion, including, but not limited to, the approval of the Project Agreements for each of the Civic Center Project and Private Development Project, the approval of a comprehensive final development proposal for the Civic Center Project and/or Private Development Project, and approval of any and all plans, permits, financial plans and strategies, or any other acts or activities requiring the subsequent independent exercise of discretion by the City or any agencies or departments thereof. Accordingly, the City's entry into this ENA does not constitute approval of a "project" under the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Sections 15004 and 15352. The Parties understand that the City has complete and unfettered discretion to reject and refuse final approval of the Project Agreements for each of the Civic Center Project and Private Development Project, in which instance all costs and expenses incurred by the Developer shall be absorbed entirely by the Developer, except that the Developer shall still be entitled to payment to the extent, if any, set forth in Section 16.3.1.

7.2 Review and Approval of all Discretionary Actions

The negotiation of the Project Agreements for each of the Civic Center Project and Private Development Project is subject to approval of the City Council at a duly noticed public meeting. The decisions of the City regarding the Project Agreements for each of the Civic Center Project and Private Development Project shall be conditioned upon the successful review and approval of all necessary findings and conclusions which the City is required to make by law, including all necessary findings and determinations required under CEQA, and state and local land use provisions. As to those matters, neither anything herein, or to be contained in the Project Agreements for each of the Civic Center Project and Private Development Project shall obligate the City to exercise its discretion in any particular manner, and any exercise of discretion required by law, other than abuse of discretion, shall not be deemed to constitute a breach of the City's duties under this ENA.

7.3 No Representation or Warranty

The Developer agrees and acknowledges that the City has made no representation or warranty that the necessary Regulatory Approvals to allow for the

development of the Civic Center Project and/or the Private Development Project can be obtained. The Developer further agrees and acknowledges that although the Civic Center Project is being developed for the City, the City officials, departments, boards, commissions or agencies (individually defined as "Regulatory Agency" and collectively as "Regulatory Agencies") responsible for the issuance of such required Regulatory Approvals, shall at all times, remain independent in its regulatory role, and that the City is entering into this ENA in its capacity as a landowner with a proprietary interest in the Civic Center Site, and not as a regulatory agency with certain powers. Accordingly, there is no guarantee or presumption that any of the Regulatory Approvals required for the development of either the Civic Center Project or Private Development Project will be issued by the appropriate Regulatory Agency and the City's status as a Regulatory Agency shall in no way limit the obligation of the Developer to obtain approvals from any Regulatory Agencies which have jurisdiction over each of the Civic Center Project and Private Development Project. Subject to Section 16.3.1, if applicable, the Developer hereby releases and discharges the City from any liability relating to the failure of any Regulatory Agency to issue any required Regulatory Approval.

8. CHANGES TO THE PROJECT

8.1 Changes by the City - Civic Center Project

The City may require modifications or changes ("Changes") to the Civic Center Project from what is described in this ENA (including the RFP and Proposal), if such Changes are in response to the request, guidance or requirements of any Regulatory Agencies (including the City), as a result of civic engagement, or if the City believes such Changes to be in the best interests of the City and/or the Civic Center Project. The City shall present any Changes to the Developer to incorporate into the Civic Center Project. The City shall present to the Developer a detailed description of each of the Changes. Proposed Changes resulting from civic engagement, shall be tracked and compiled by Developer, however the City will retain responsibility for reviewing such proposed Changes and determining which ones to ask the Developer to incorporate into the Civic Center Project. The City shall have the absolute and unfettered discretion to incorporate Changes into Civic Center Project for any reason. The terms and conditions of this ENA (including Performance Milestone completion dates) and any resulting agreement(s) relating to the Civic Center Project cost and schedule, as applicable, shall be equitably adjusted as may be required and as agreed to by the Parties, each acting reasonably, in connection with any Changes the City requires or elects to incorporate into the Civic Center Project.

8.2 Changes by the Developer - Civic Center Project

The Developer may propose modifications or changes ("Developer Proposed Changes") to the Civic Center Project from what is described in this ENA (including the RFP and Proposal) if such Developer Proposed Changes are in response to the request, guidance or requirements of any Regulatory Agencies (including the City), as a result of civic engagement, or if the Developer believes such Developer Proposed Changes to be in the best interests of the City and/or the Civic Center Project. The Developer shall

present the Developer Proposed Changes to the City for review and written approval. As part of any request for approval, the Developer shall present a detailed description of each of the Developer Proposed Changes and explain the reasons supporting such proposed change(s). The City shall have the absolute and unfettered discretion to approve or disapprove any Developer Proposed Changes to the Civic Center Project for any reason, unless any such Developer Proposed Change is required by a Regulatory Agency having jurisdiction over the Civic Center Project, in which cases the Parties will negotiate in good faith as to how to incorporate such Developer Proposed Change into the Civic Center Project. The terms and conditions of this ENA (including Performance Milestone completion dates) and any resulting agreement(s) relating to the Civic Center Project cost and schedule, as applicable, shall be equitably adjusted as may be required and as agreed to by the Parties, each acting reasonably, in connection with any Developer Proposed Changes that the City requires or elects, in its sole discretion, to incorporate into the Civic Center Project.

8.3 Changes by the City - Private Development Project

The City may propose Changes to the Private Development Project from what is described in this ENA (including the RFP and Proposal), if such Changes are (i) in response to the requirements of any Regulatory Agencies (including the City), (ii) as a result of civic engagement, or (iii) if the City believes such Changes to be in the best interests of the City and/or the Private Development Project. The City shall present any such proposed Changes to the Developer along with a detailed description of each of the proposed Changes and a reasonable description of the reasons for such proposed Changes. Without limiting anything else in this ENA, any Changes described in subclause (i) above shall not require Developer consent or approval, and shall be made by the Developer and incorporated into the Private Development Project. All other proposed Changes to the Private Development Project shall be reviewed and considered by the Developer in good faith, but their inclusion in the Private Development Project shall be subject to Developer's written approval, not to be unreasonably withheld, conditioned, or delayed. The terms and conditions of this ENA (including Performance Milestone completion dates) and any resulting agreement(s) relating to the Private Development Project cost and schedule, as applicable, shall be equitably adjusted as may be required and as agreed to by the Parties, each acting reasonably, in connection with any Changes incorporated into the Private Development Project pursuant to this Section 8.3.

8.4 Changes by the Developer - Private Development Project

The Developer may propose Developer Proposed Changes to the Private Development Project from what is described in this ENA (including the RFP and Proposal) if such Developer Proposed Changes are (i) in response to the requirements of any Regulatory Agencies (including the City), (ii) as a result of civic engagement, or (iii) if the Developer believes such Developer Proposed Changes to be in the best interests of the Private Development Project. The Developer shall present all Developer Proposed Changes to the Private Development Project in writing to the City, including a detailed description of each of the Developer Proposed Changes and a reasonable description of the reasons for such Developer Proposed Changes. Without limiting anything else in this

ENA, any Developer Proposed Changes described in subclause (i) above shall be required and shall be made by the Developer and incorporated into the Private Development Project. All other Developer Proposed Changes to the Private Development Project shall be reviewed and considered by the City in good faith, but their inclusion in the Private Development Project shall be subject to City's written approval, not to be unreasonably withheld, conditioned, or delayed; provided the Parties hereby acknowledge and agree that it shall be reasonable for City to object to any Developer Proposed Changes to the Private Development Project which would be reasonably expected to in any way materially impact the Pro Forma Financial Projections for the Private Development Project or delay the expected completion of construction and/or commencement of operations of any material portion of the Private Development Project. The terms and conditions of this ENA (including Performance Milestone completion dates) and any resulting agreement(s) relating to the Civic Center Project cost and schedule, as applicable, shall be equitably adjusted as may be required and as agreed to by the Parties, each acting reasonably, in connection with any Developer Proposed Changes that the City requires or elects, in its sole discretion, to incorporate into the Civic Center Project.

9. TEMPORARY PROJECT SITE ENTRY

The Developer expressly agrees and acknowledges that irrespective of the execution of this ENA by the City, neither the Developer nor any of its employees, officers, directors, agents, contractors, consultants, architects and engineers (collectively, "Agents") shall have the right to enter or access the Project Site until a separate agreement in the form of Exhibit D hereto (the "Access Agreement") between the City and the Developer is executed by the Parties.

10. [Intentionally Omitted]

11. COMMUNITY OUTREACH PROGRAM

The Developer shall present to the City for its approval, the Developer's proposed plan for conducting outreach to various community groups and stakeholders for educating and soliciting input from the public with respect to the Civic Center Project and Private Development Project, and for informing the City Council and other Regulatory Agencies about the Civic Center Project and Private Development Project during the Negotiating Period ("Community Outreach Program"). The Community Outreach Program shall include a plan for use of outreach tools (e.g., mailers, brochures, and forums educating the public, and a budget for publicizing the Civic Center Project), along with the Developer's strategy for publicizing the Civic Center Project and Private Development Project and for keeping the appropriate Regulatory Agencies apprised of the development status of both the Civic Center Project and Private Development Project. The City may suggest reasonable revisions or changes to the proposed Community Outreach Program, if any, which Developer shall consider in good faith. During the Negotiating Period, the Parties shall mutually agree upon the proposed Community Outreach Program, and no Party shall unreasonably withhold, condition or delay its consent to revisions or changes.

The Developer agrees and acknowledges that maintaining professional working relations with the City's constituents, the public and Regulatory Agencies, is critical to the City.

12. PROJECT PUBLICITY

12.1 Press Releases

Except as such Press Releases (defined below) are part of the Community Outreach Program formulated, approved and executed pursuant to Section 11 hereof, during the Negotiating Period, the Developer shall not issue, or authorize any other party to issue, any written press release, advertisement or other formal communication (individually and collectively, "Press Release") to any media outlet (including, but not limited to, newspapers, radio and television stations and web sites) relating to the Civic Center Project or Private Development Project (collectively, "Press Matters"), without the prior written consent of the City. The Developer shall provide the City with a draft copy of any Press Release no less than five (5) business days prior to the proposed release of the Press Release. The City shall promptly review the Press Release and advise the Developer of any comments by the end of the business day prior to the proposed release of the Press Release. If after review of the Press Release, the City reasonably believes that revisions or changes to the Press Release are advisable, the Developer shall work with the City in good faith to incorporate appropriate revisions or changes into the Press Release. In the event the City reasonably believes that due to the nature of the Press Release, the Press Release cannot be revised or changed, irrespective of whether the Press Release may further the Developer's interests, or if the City reasonably believes that such Press Release would adversely affect the City's interests, then the City shall have the absolute right to withhold its consent to release of all or any portion of the proposed Press Release.

12.2 Press Conferences

Except as such press conferences are part of the Community Outreach Program formulated, approved and executed pursuant to Section 11, during the Negotiating Period, the Developer shall not hold any press conference relating to Press Matters without first extending an invitation to the City to have a City representative present at such press conference. The Developer shall provide the City with no less than five (5) business days prior written notice of the date and time of any proposed press conference. Such notice shall also state in detail the purpose of the press conference and the topics to be discussed at such press conference ("Conference Summary"). The City agrees promptly to review the Conference Summary and advise the Developer of any comments by the end of the business day two (2) days prior to the press conference. If after review of the Conference Summary, the City reasonably believes that revisions or changes to the Conference Summary are advisable, the Developer shall work in good faith with the City to incorporate such revisions or changes to the Conference Summary. In the event the City reasonably believes that irrespective of whether the press conference may further the Developer's interests, such press conference would adversely affect the interests of the City, then the City shall have the absolute right to withhold its consent to the Developer holding the press conference. The Developer shall make reasonable efforts to schedule

the press conference to accommodate the schedules of staff designated by the City to attend the press conference.

13. TRANSACTION COSTS

13.1 Definition of Transaction Costs

The term "City Transaction Costs" shall be calculated separately for the Civic Center Project and Private Development Project, and such term shall collectively mean all costs reasonably incurred by the City during the Negotiating Period directly and solely related to either the Civic Center Project and/or Private Development Project, and shall include, but not be limited to, time spent on the Civic Center Project and/or Private Development Project by the City staff, the services of real estate and economic consultants (including, without limitation, experts within the City that are paid by the City), construction management services, and legal services (including, without limitation, costs for the City Attorney's office and outside counsel), and Swing Space costs. The City Transaction Costs shall also include, without limitation, costs reasonably incurred by the City for negotiating the Project Agreements for each of the Civic Center Project and Private Development Project, and any other transaction documents; costs related to environmental review under CEQA; costs related to pursuit of entitlements for which the City is required to be a co-permittee or co-applicant including, if necessary, any legislative process pursued to obtain legislative authorization for the Civic Center Project and/or Private Development Project; costs of preparing materials to be submitted to the City for a determination of the fiscal feasibility of the Civic Center Project and/or Private Development Project; costs of preparing legislative reports, findings and resolutions related to approval of the Civic Center Project and/or Private Development Project by the City; and costs related to the review of any architectural design or drawings, plans and specifications.

13.2 Payment of Transaction Costs

With respect to the City Transaction Costs for the Private Development Project, the Developer shall pay, or cause such City Transaction Costs to be paid, within thirty (30) days after the City delivers to the Developer a written invoice for the payment of the City Transaction Costs for the Private Development Project, including reasonable supporting documentation. Such invoice will be presented no earlier than the earlier of: (i) Financial Close, or (ii) termination of this ENA by the City under Section 16.2(a). With respect to the City Transaction Costs for the Civic Center Project, the Developer shall, at City's election, arrange to have such City Transaction Costs paid out of financing proceeds for the Civic Center Project; provided that, without limiting City's other rights and remedies under this ENA and applicable law, the Developer shall immediately pay such City Transaction Costs to the City upon receipt of a written demand (including reasonable supporting documentation) if this ENA is terminated by the City due to a Developer Event of Default under Section 16.2(a).

14. INDEMNITY

To the maximum extent allowed by law, each of the Developer and the City (as applicable, the "Indemnifying Party") shall indemnify, protect, defend and hold harmless the other Party, its council, boards, commissions, elected officials, officers, employees, representatives, members, consultants, and agents (collectively, "Indemnified Parties") from and against any and all losses, liabilities, damages, claims, demands, obligations, causes of action, proceedings, awards, fines, judgments, penalties, or costs and expenses (including attorneys' fees and costs, court costs, experts' and witness' fees, and other costs and fees of litigation) arising out of, related to or resulting from, in whole or in part, out of or in connection with: (i) the Indemnifying Party's breach or failure to comply with any of its obligations contained in this ENA, including any obligations arising from compliance with or failure to comply with applicable laws, including all applicable federal and state labor requirements including, without limitation, the requirements of California Labor Code section 1770 et seq., and/or (ii) the Indemnifying Party's acts, errors, omissions, and/or willful misconduct with respect to the obligations of the Indemnifying Party, its officers, employees, representatives, members, consultants and agents under this ENA, the Project Agreements, or relating to the Civic Center Project and Private Development Project (collectively "Claims" or individually "Claim").

If a court of competent jurisdiction determines that a Claim was caused by the sole negligence or willful misconduct of any Indemnified Parties, the Indemnifying Party's costs of defense and indemnity shall be: (i) reimbursed in full if the court determines sole negligence by the Indemnified Parties, or (ii) reduced by the percentage of willful misconduct attributed by the court to the Indemnified Parties.

The Indemnifying Party's duty to defend the Indemnified Parties from and against all Claims is separate and wholly independent of its other duties set forth above. Such duty to defend shall be at the Indemnifying Party's expense by legal counsel approved by the Indemnified Parties, and shall continue until the Claims are resolved, whether by settlement, judgment or otherwise. No finding or judgment of negligence, fault, breach, or the like on the part of the Indemnifying Party shall be required for the duty to defend to arise.

An Indemnified Party shall notify the Indemnifying Party of the existence of any Claim that it reasonably becomes aware of or to which the Indemnifying Party's indemnification obligations would apply and shall give the Indemnifying Party a reasonable opportunity to defend the same at its sole cost and expense with counsel of its own selection, subject to the Indemnified Parties' reasonable approval. If the Indemnifying Party, within a reasonable time after written notice, fails to defend the Indemnified Parties, the Indemnified Parties shall have the right, but not the obligation, to undertake the defense of, and compromise and settlement of (exercising reasonable business judgment) the Claim on behalf, for the account, and at the risk and expense of the Indemnifying Party.

The provisions of this Section 14 shall survive any termination of this ENA and the expiration of the Negotiating Period.

15. REAL ESTATE COMMISSIONS

The City has not engaged a broker, agent, or finder in connection with this transaction. As such, the City will not be responsible for any Claims by a broker, agent or finder, and the Developer agrees to defend, indemnify, protect and hold the City harmless from any and all Claims, including all defense costs and attorneys' fees, by any broker, agent, or finder retained by the Developer. The Parties acknowledge that a broker may be engaged to assist with securing Swing Space in which case the reasonable costs of such brokerage arrangement will be excluded from the provisions of the preceding sentence. The foregoing obligations shall survive the termination of this ENA and any expiration of the Negotiating Period.

16. DEFAULT AND REMEDIES

16.1 Default

16.1.1 Developer's Events of Default. The occurrence of any of the following (each, a "Developer Event of Default") shall constitute a default by the Developer after the expiration of the applicable cure period, if any:

(a) Failure to pay any sums due hereunder or under the Access Agreement when due, where such failure is not cured within thirty (30) days after written notice by the City has been given to the Developer;

(b) Failure to perform or abide by any provision of this ENA or the Access Agreement, if such failure is not cured within thirty (30) days after notice has been given to the Developer by the City. If such default cannot reasonably be cured within thirty (30) days, then a Developer Event of Default shall not occur so long as the Developer commences to cure the default within the thirty (30) day period and diligently and in good faith continues to seek to cure of such default; provided, however, that in no event shall such cure period exceed ninety (90) days;

(c) Either: (i) the filing by the Developer of a petition to have the Developer adjudicated insolvent and unable to pay its debts as they mature or a petition for reorganization or arrangement under any bankruptcy or insolvency law, or a general assignment by the Developer for the benefit of creditors; or, (ii) the filing by or against the Developer of any action seeking reorganization, arrangement, liquidation, or other relief under any law relating to bankruptcy, insolvency, or reorganization or seeking appointment of a trustee, receiver, or liquidator of the Developer or any substantial part of Developer's assets; and

(d) A default by Developer under Section 18.13, where such default is not cured within the times periods, if any, set forth in Section 18.13.

16.1.2 The City's Events of Default. The occurrence of any of the following (each, a "City Event of Default") shall constitute a default by the City after the expiration of the applicable cure period:

(a) Abandonment of the Project by the City during such time that the Developer is not then in default of its obligations under this ENA; or

(b) Failure to perform or abide by any provision of this ENA, including failure to perform any payment obligation of City under this ENA, if such failure is not cured within thirty (30) days after notice has been given to the City by the Developer, shall each constitute a "City Event of Default"; provided, however

(c) With respect to both subclauses (a) and (b) above, if the default cannot reasonably be cured within thirty (30) days, the City shall not be in default of this ENA if the City commences to cure the default within the thirty (30) day period and diligently and in good faith continues to seek to cure the default; provided, however, that in no event shall such cure period exceed ninety (90) days.

16.2 Termination

(a) Notwithstanding the Negotiating Period hereinabove set forth, either Party may terminate this ENA if the other Party has materially defaulted in its obligations set forth herein, and the terminating Party has provided the defaulting Party with written notification of such determination, and the defaulting Party has failed or refused to cure the same within the cure periods set forth in this Section 16. The written notification shall set forth the nature of the actions required to cure such default if curable. The defaulting Party shall have thirty (30) days, or such other period as is otherwise prescribed in this Section 16, from the date of the written notification to cure such default. If such default is not cured within the prescribed period, the termination shall be deemed effective. Any termination of this ENA shall also be deemed an automatic termination of the Access Agreement, subject to and in accordance with the terms thereof.

(b) Upon thirty (30) days written notice to the other Party, the City and the Developer shall also have the right to terminate this ENA in the event that either Party, in its sole discretion, determines that (i) an impasse has been reached in the negotiation of the Project Agreements for either the Civic Center Project or Private Development Project, or (ii) either the Civic Center Project or Private Development Project is not feasible. Upon the termination of this ENA, the obligations set forth in Section 16.3 shall apply and the City may exercise any or all of the options set forth in Section 16.3.2 and may immediately move forward with the negotiation and execution of an exclusive negotiation agreement with another party, in which event the Developer shall be entitled to a Termination Payment (as defined in Section 16.3.1(c)) if the City exercises its right to terminate this ENA and the Developer is not then in default of its obligations set forth in Section 5.1 or elsewhere in this ENA.

16.3 Remedies

16.3.1 Exclusive Remedies of Developer. The Developer's exclusive remedies for a City Event of Default under this ENA or for termination by the City under Section 16.2(b) shall be:

(a) To terminate this ENA in accordance with the terms of Section 16.2;

(b) To seek to enforce the City's indemnity obligations under this ENA;

and

(c) To receive a termination payment ("Termination Payment") from the City as provided in this Section 16.3.1(c). The amount of the Termination Payment shall be equal to the actual out-of-pocket cost incurred by the Developer and Key Partners as of the effective date of termination, excluding Swing Space costs, but in all events shall not exceed the amount set forth in the chart below for the specific row which reflects the furthest Performance Milestone that has been achieved/completed by the Developer by such date. By way of example and for the sake of clarification: (1) if by the effective date of termination the Developer has achieved/completed each of the "Draft Term Sheet for Civic Center Project", "Complete Project Application for Civic Center Project," and "Approval of Final Basis of Design", then the maximum Termination Payment is \$650,000, and (2) if by the effective date of termination all of the Performance Milestones identified in the chart below have been achieved/completed by the Developer, then the maximum Termination Payment shall be \$2,600,000.

<u>Performance Milestone</u>	<u>Termination Payment</u>
Draft Term Sheet for Civic Center Project	\$300,000
Complete Project Application for Civic Center Project	\$500,000
Approval of Final Basis of Design	\$650,000
Schematic Design Approval for Civic Center Project	\$1,000,000
Fixed Price Proposal and Detailed Design Submittal for Civic Center Project	\$2,000,000
All Project Agreements for both the Civic Center Project and the Private Development Project are in final form approved in writing by the City Manager, and executed by the Developer	\$2,600,000

The City shall pay the Termination Payment to the Developer within thirty (30) days after the Developer satisfies its obligations under Section 6.3 and any outstanding obligations under the Access Agreement. In no event shall Developer be entitled to a Termination Payment if Developer is in default of its obligations under this ENA or the Access Agreement. In no event shall the Termination Payment exceed Developer's and Key Partners' actual costs incurred in connection with the Civic Center Project and/or Private Development Project as of the date of the termination of this ENA; and

(d) To receive a swing space payment ("Swing Space Payment") from the City as provided in this Section 16.3.1(d). The amount of the Swing Space Payment shall be equal to the actual out-of-pocket swing space cost incurred by the Developer and Key Partners as of the effective date of termination but shall not exceed \$4,637,306 unless otherwise agreed in writing from the City. The City shall pay the Swing Space Payment to the Developer within thirty (30) days after the Developer satisfies its obligations under Section 6.3 and any outstanding obligations under the Access Agreement. In no event shall Developer be entitled to a Swing Space Payment if Developer is in default of its obligations under this ENA or the Access Agreement. In no event shall the Swing Space Payment exceed Developer's and Key Partners' actual costs incurred in connection with the swing space for the Civic Center Project as of the date of the termination of this ENA.

Except for the Termination Payment, in no event shall the Developer have the right, and the Developer expressly waives the right, to seek monetary damages of any kind (including but not limited to actual damages, economic damages, consequential damages, lost profits, or any other damages) from the City for a City Event of Default under this ENA or any action related to this ENA, nor shall the Developer have any other right or remedy against the City, including any action for specific performance, the filing of a lis pendens, or otherwise. Developer hereby acknowledges that the waivers and limitations set forth above are a part of the material consideration to City under this ENA, and but for such agreements by Developer the City would not enter into this ENA.

16.3.2 The City's Remedies. If a Developer Event of Default remains uncured or is deemed to be an incurable default, the City, at its option, may: (i) terminate this ENA upon written notice to the Developer as provided above; (ii) seek to recover from the Developer any funds due and owing to the City; (iii) seek to enforce the Developer's indemnity obligations; and/or, (iv) enforce the obligations set forth in Section 6.3; provided in all events the City shall be entitled to reimbursement of all City Transaction Costs. The foregoing remedies are not exclusive, but shall be cumulative with any remedies now or later allowed by law.

17. REQUIRED PROVISIONS

17.1 Conflict of Interest

17.1.1 The Developer shall not make any payment (including any payment, or agreement to pay, any fee or commission, or any other thing of value) to any City employee or official, or to any consultant hired by the City for purposes of either the Civic Center Project or Private Development Project; with the exception that, (i) the Developer may make a payment to a City employee or official without violating this Section 17.1.1 only if the City employee or official has provided a written disclosure of the payment to the City Clerk, and the City employee or official duly recuses from participation in his or her official City capacity as it relates to the Civic Center Project and the Private Development Project, and (ii) the Developer may make a payment to a consultant hired by the City for the Civic Center Project and/or Private Development Project without violating this Section 17.1.1 only if the Developer provides a written disclosure to the City Clerk: (a) identifying the consultant that was paid, and summarizing the services provided by the consultant, and (b) certifying that the payment was made for services provided by the consultant to the Developer, and the services are not related to the consultant's work on the Civic Center Project and/or Private Development Project. By entering into this ENA, the Developer certifies to the City that it has not made any payment in violation of this Section 17.1.1.

17.1.2 The Parties acknowledge that the City reserves the full and sole discretion and authority to determine which consultants, contractors, or employees shall be hired to advise the City on the Civic Center Project and/or Private Development Project, and to direct and evaluate such work and to establish the amount of compensation paid.

17.2 Prevailing Wages

Without limiting the Developer's obligations with respect to Section 1.11 of the RFP, the Developer agrees that all public work (as defined in California Labor Code section 1720) performed pursuant to this ENA or the Access Agreement (the "Public Work"), if any, shall comply with the requirements of California Labor Code sections 1770 et seq. The City makes no representation or statement that the Project, or any portion thereof, is or is not a "public work" as defined in California Labor Code section 1720.

17.3 Nondiscrimination

17.3.1 In connection with performance of this ENA and subject to applicable rules and regulations, the Developer shall not discriminate against any employee or applicant for employment because of race, religion, national origin, color, age, sex, sexual orientation, gender identity, AIDS, HIV status, handicap or disability. The Developer shall ensure that applicants are employed, and that employees are treated during their employment, without regard to these bases. These actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

17.3.2 It is the policy of the City to encourage the participation of disadvantaged, minority and women-owned business enterprises in the City's procurement process, and the Developer agrees to use commercially reasonable efforts to carry out this policy in its use of consultants, advisors and contractors to the fullest extent consistent with the efficient performance of this ENA. The Developer may rely on written representations by consultants, advisors and contractors regarding their status. The Developer shall report to the City the names of all consultants, advisors and contractors hired by the Developer for each of the Civic Center Project and Private Development Project, and information on whether or not they are a disadvantaged, minority or women-owned business enterprise, as defined in Section 8 of the Small Business Act (15 U.S.C. Sec. 637).

17.4 Advertising

The Developer shall not use the name of the City, its officials or employees in any advertising or solicitation for business or as a reference, without the prior written approval of the City Manager or his/her designee.

17.5 Audit

The City shall have the right at all reasonable times during the Negotiating Period and for a period of five (5) years after termination or expiration of this ENA, to examine, audit, inspect, review, extract information from and copy all books, records, accounts and other documents of the Developer relating to this ENA, including without limitation all such items which relate to the Assigned Materials and Rights.

18. GENERAL PROVISIONS

18.1 Limitation on Effect of ENA

This ENA shall not obligate either the City or the Developer to enter into any of the Project Agreements for either the Civic Center Project or Private Development Project. By execution of this ENA, the City is not committing itself to or agreeing to approve any Project Agreements, undertake disposition or lease of any property related to either the Civic Center Project or Private Development Project, or undertake any other acts or activities relating to the subsequent independent exercise of discretion by the City. This ENA is merely an agreement to conduct a period of exclusive negotiations diligently and in good faith in accordance with, and subject to, the terms of this ENA, reserving for subsequent City Council action the final discretion and approval regarding the Project Agreements for the Civic Center Project and Private Development Project, all associated approvals, and all proceedings and decisions in connection therewith. Until and unless the Project Agreements for the Civic Center Project and Private Development Project are signed by the Developer and approved and executed by the City, no agreement, drafts, actions, deliverables or communications arising from performance of this ENA shall impose any legally binding obligation on any Party to enter into or support entering into any Project Agreements, or be used as evidence of any oral or implied agreement by either Party to enter into any other legally binding document.

18.2 Applicable Law; Venue

The laws of the State of California shall govern the interpretation and enforcement of this ENA. The Superior Court of Napa County shall be the site and have jurisdiction for the resolution of all such actions.

18.3 Acceptance of Service of Process

In the event that any legal action is commenced by the Developer against the City, service of process on the City shall be made by personal service upon the City or in such other manner as provided by law. In the event that any legal action is commenced by the City against the Developer, service of process on the Developer shall be made by personal service upon the Developer or in such other manner as may be provided by law, and shall be valid whether made within or without the State of California.

18.4 Rights and Remedies are Cumulative

Except as otherwise expressly stated in this ENA, the rights and remedies of the Parties are cumulative, and the exercise by either Party of one or more of its rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.

18.5 Notices, Demands and Communications Between the Parties

Written notices, demands, and communications between the City and the Developer shall be given either by: (i) personal service; (ii) delivery by reputable document delivery service such as Federal Express that provides a receipt showing date

and time of delivery; or, (iii) by mailing in the United States mail, certified mail, postage prepaid, return receipt requested, addressed to:

To City: City Manager
Office of the City Manager
955 School Street
PO Box 660
Napa, CA 94559-0660

With copy to: City Attorney
Office of the City Attorney
955 School Street
PO Box 660
Napa, CA 94559-0660

To Developer: Plenary Properties Napa LLC
10100 Santa Monica Blvd, Suite 410
Los Angeles, CA 90067
Attn: Stuart Marks

Notices personally delivered, sent by United States mail, or delivered by document delivery service shall be deemed effective upon receipt. Notices sent solely by mail in the manner provided above shall be deemed effective on the second business day following deposit in the United States mail. Such written notices, demands, and communications shall be sent in the same manner to such other addresses as either Party may from time to time designate by mail.

18.6 Non-liability of Agency Officials and Employees

18.6.1 No member, official, employee, consultant, agent or contractor of the City shall be personally liable to the Developer in the event of any default or breach by City or for any amount which may become due to the Developer, or upon any obligations prescribed by the terms of this ENA.

18.6.2 No member, official, employee, consultant, agent or contractor of the Developer shall be personally liable to the City in the event of any default or breach by Developer or for any amount which may become due to the City, or upon any obligations prescribed by the terms of this ENA.

18.7 Interpretation

The terms of this ENA shall be construed in accordance with the meaning of the language used and in accord with Section 18.14. The part and paragraph headings used in this ENA are for purposes of convenience only, and shall not be construed to limit or extend the meaning of this ENA.

18.8 Waivers and Amendments

All waivers of any of the provisions of this ENA must be in writing and signed by the appropriate officials/authorities of the Party to be charged, and all amendments and modifications hereto must be in writing and signed by the appropriate officials/authorities of the City and the Developer. Unless a requirement for City Council action is explicitly referenced in this ENA, whenever this ENA calls for or permits the approval, consent, authorization or waiver by the City, such approval, consent, authorization or waiver by the City may be given by the City Manager without further action of the City Council.

18.9 Counterparts

This ENA may be executed in counterparts, each of which, after all the Parties hereto have signed this ENA, shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

18.10 Successors

This ENA shall be binding upon and shall inure to the benefit of the successors and permitted assigns of each of the Parties hereto.

18.11 Severability

In the event any section or portion of this ENA shall be held, found, or determined to be unenforceable or invalid for any reason whatsoever, the remaining provisions shall remain in effect, and the Parties hereto shall take further actions as may be reasonably necessary and available to them to effectuate the intent of the Parties as to all provisions set forth in this ENA.

18.12 Time is of the Essence

Time is of the essence for each of the Parties' obligations under this ENA.

18.13 Assignment/Transfer; Change in Key Partners

18.13.1 Excluding as expressly set forth otherwise below, the Developer shall not be permitted to assign or otherwise transfer its interest in this ENA (a "Transfer"), whether voluntarily or by operation of law, without the prior written consent of the City, in its sole and absolute discretion. Any Transfer without City's consent in accordance with the requirements of this Section 18.13 shall be voidable by City and shall constitute an immediate and incurable Developer Event of Default under this ENA. The term "Transfer" shall include, without limitation, any sale, assignment, transfer, withdrawal, transaction, series of transactions, event, or other circumstance whatsoever which results in any entity other than Plenary Group (Canada) Ltd. ("Developer's Parent") having the direct or indirect controlling ownership and/or voting interest in/of Developer.

18.13.2 Notwithstanding the foregoing, the Developer shall be permitted to Transfer its interest in this ENA to an owner or affiliate of Developer, including any

fund or investment company having a common manager with such owner or its affiliates ("Successor"), without the need for City consent; provided all of the following conditions are satisfied: (i) Developer's Parent at all times retains the direct or indirect controlling ownership and/or voting interest in Successor; (ii) such Transfer is done via formal written agreement, reasonably acceptable to City, whereby the Successor agrees in writing to be bound by and assume each and every obligation and liability of Developer under this ENA; (iii) there shall be no outstanding default by Developer under this ENA at the time of Transfer; (iv) if the Successor is not a U.S. entity, then such Successor must be qualified to do business in the State of California and hold all other appropriate, Federal, State, and local licenses, permits, and approvals which may be required in connection with its duties and obligations under this ENA, and shall have agreed in writing with the City to submit to the jurisdiction of the courts of the United States of America, and in particular the applicability of the controlling laws and venue specified in this ENA; and (v) City is given at least thirty (30) days prior written notice of the proposed Transfer, with such notice to contain, at a minimum, the identity of the proposed successor, a reasonably detailed explanation of the proposed Transfer transaction and reasons therefor, and reasonably detailed evidence that such proposed Transfer satisfies all conditions set forth in this Section 18.13.2. A Transfer satisfying all of the conditions set forth above in this Section 18.13.2 shall be referred to herein as a "Permitted Transfer".

18.13.3 Notwithstanding any Permitted Transfer or City's consent to any other Transfer, no Transfer shall release or alter the initial Developer's primary liability to perform all of its obligations hereunder, nor otherwise affect or reduce any obligations of Developer or any rights of City hereunder, and all obligations of the initial Developer hereunder shall continue in full effect, as the obligations of a principal and not of a guarantor or surety, to the same extent as though no Transfer has been made, unless agreed to otherwise in writing by City. The consent by City to any one Transfer shall not be deemed to be consent to any subsequent Transfer.

18.13.4 City's prior written consent, not to be unreasonably withheld, conditioned, or delayed, shall also be required for any proposed change to any Key Partner, as identified in Exhibit F, and/or any of the key management personnel of Developer and/or any Key Partner identified in Exhibit G as a Key Individual. Any change to a Key Partners or Key Individuals made without City's prior written consent shall be a Developer Event of Default if not cured within ten (10) business days after written notice from City. With respect to any proposed change in Key Partners or Key Individuals and a request for City's consent thereto, Developer shall provide City with all information reasonably requested by City. Notwithstanding the foregoing: (i) a mere name/brand change of a Key Partner shall not be considered a change requiring City consent, and it shall not be a Developer Event of Default under this Section 18.13.4 if there occurs a change in a Key Partner due to any corporate merger or acquisition relating to such Key Partner, and (ii) it shall not be a Developer Event of Default under this Section 18.13.4 if there occurs a change in any Key Personnel due to such Key Personnel no longer being employed/engaged by the Developer or applicable Key Partner; provided in all such events the Developer agrees to give City prompt written notice of the occurrence of any of the foregoing and such information as City may reasonably request in connection therewith.

18.14 Construction

The provisions of this ENA should be liberally construed to effectuate its purposes. The language of all parts of this ENA shall be construed simply according to its plain meaning and shall not be construed for or against either Party, as each Party has participated in the drafting of this document and had the opportunity to have their counsel review it. Whenever the context and construction so requires, all words used in the singular shall be deemed to be used in the plural, all masculine shall include the feminine and neuter, and vice versa.

18.15 Several Obligations

Except where specifically stated in this ENA to be otherwise, the duties, obligations, and liabilities of the Parties are intended to be several and not joint or collective. Nothing contained in this ENA shall be construed to create an association, trust, partnership, or joint venture or impose a trust or partnership duty, obligation, or liability on or with regard to either Party. Each Party shall be individually and severally liable for its own obligations under this ENA.

18.16 Attorneys' Fees

If any legal proceeding (lawsuit, arbitration, etc.), including an action for declaratory relief, is brought to enforce or interpret the provisions of this ENA, the prevailing Party shall be entitled to recover actual attorneys' fees and costs, which may be determined by the court in the same action or in a separate action brought for that purpose. The attorneys' fees award shall be made as to fully reimburse for all attorneys' fees, paralegal fees, costs and expenses actually incurred in good faith, regardless of the size of the judgment, it being the intention of the Parties to fully compensate for all attorney fees, paralegal fees, costs and expenses paid or incurred in good faith by the prevailing Party.

18.17 Authority

Each Party represents and warrants that (i) the individuals executing this ENA on behalf of such Party have the authority to execute and deliver this ENA on behalf of such Party, (ii) it has the authority to perform all acts and obligations set forth in this ENA, and (iii) the consent, approval, or execution of or by any third-party is not required to legally bind such Party to the terms and conditions of this ENA.

18.18 Survival

Any provision of this ENA which by its nature is intended to survive this ENA shall so survive the termination of this Agreement, including without limitation any indemnity and defense obligations.

18.19 Entire Agreement

This ENA (including its exhibits, all of which are incorporated herein by this reference) contains the entire understanding and agreement of the Parties with respect

to the Civic Center Project and Private Development Project, and supersedes all prior agreements and understandings, oral and written, between the Parties. There have been no binding promises, representations, agreements, warranties or undertakings by any of the Parties with respect to the Civic Center Project and/or Private Development Project, either oral or written, of any character or nature, except as stated in this ENA. This ENA may be altered, amended or modified only by an instrument in writing, executed by the Parties to this ENA and by no other means. Each Party waives its future right to claim, contest or assert that this ENA was modified, canceled, superseded or changed by any oral agreement, course of conduct, waiver or estoppel.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the City and the Developer have signed this ENA on the date first written above.

CITY:
CITY OF NAPA, a California charter city

DEVELOPER:
PLENARY PROPERTIES NAPA LLC
a Delaware limited liability company

By: _____
Mike Parness, City Manager

By: _____

Name: _____

Its: _____

ATTEST:

Dorothy Roberts, City Clerk

By: _____

Name: _____

Its: _____

COUNTERSIGNED:

Desiree Brun, City Auditor

APPROVED AS TO FORM:

Michael W. Barrett, City Attorney

Exhibit A-1
(cover page)

DESCRIPTION OF CIVIC CENTER SITE

See attached.

EXHIBIT A-1: CIVIC CENTER SITE

ATTACHMENT 2

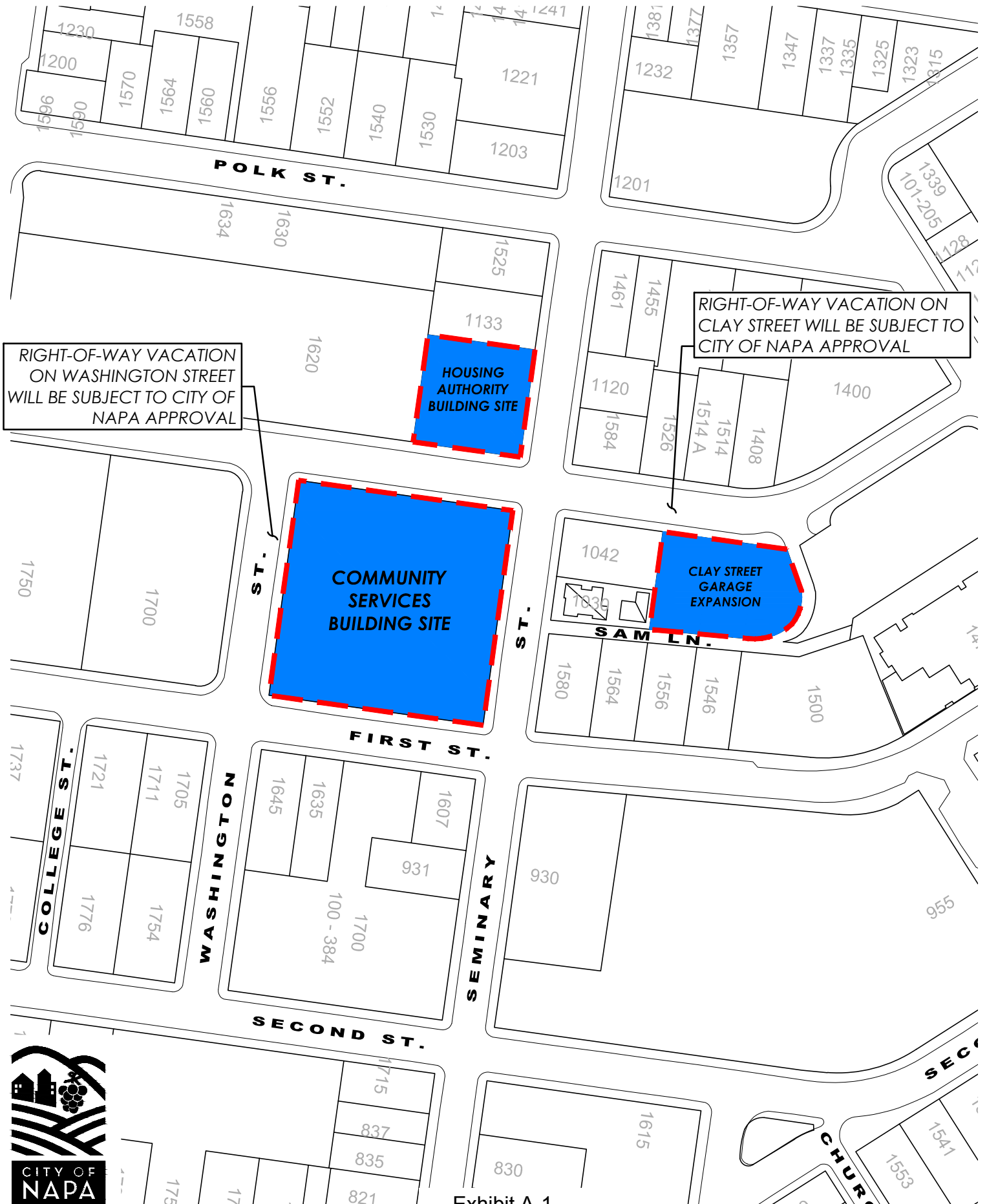


Exhibit A-2
(cover page)

DESCRIPTION OF PRIVATE DEVELOPMENT SITE

See attached.

ATTACHMENT 2



Exhibit B

SUMMARY OF TERMS OF TRANSACTION

Civic Center Project Summary	
City Hall	<p>As part of the Civic Center Project, Developer will construct a new City Administration and Public Safety Building ("City Hall") to be located on the present CSB Site at 1600 First Street, City-owned property bounded by First, Washington, Clay and Seminary Streets. This building will consist of 4 floors, of which 112,193 SF will be provided on three fully finished floors, and 18,000 gross SF will be provided on one unfinished fourth floor, which will be delivered as a "cold shell." For purposes of the fourth floor, cold shell is defined as having the following elements:</p> <ul style="list-style-type: none"> - Providing the code required minimum lighting levels and up-turned sprinklers as required to protect the structure and surrounding occupancies and achieve occupancy of the entire building. - The building infrastructure will be sized to accommodate the occupancy for HVAC, plumbing, and electrical distribution. - The HVAC, plumbing, etc. risers will be to the floor and capped; - There is no duct work or plumbing lines inside the 4th floor space; - There are no finishes, ceilings, nor drywall on the interior side of the shell space, etc.; - There is drywall on the corridor side of the studs by not on the inside of the shell space; and <p>Developer commits to provide 29 stalls of associated secured parking on site. Developer proposes to provide 24 surface parking stalls at the location of present-day Washington Street, which is based on Developer's proposal to permanently abandon Washington Street as a city street (from First Street to Clay Street). The proposed abandonment of Washington Street is subject to Developer's obligation to mitigate all impacts of the abandonment (including potential improvements to the western half of Washington Street), and is subject to City Council review and approval. The remainder of the required parking for City Hall, including any reduction of the proposed 24 surface parking stalls, will be constructed at the Clay Street Garage site.</p> <p>Developer's proposed construction cost is \$60,262,363 associated directly to the finished space and proposes a construction cost of \$3,240,000 associated directly to the core and shell located on the fourth floor. The City will retain control of all finished and unfinished space.</p> <p>Developer's proposal includes minimal operation and maintenance services for the 4th floor space, such services being limited to applicable code requirements (fire alarm and HVAC) and window cleaning.</p>
Clay Street Garage Expansion	<p>Developer will construct a parking solution that covers all the base requirements of the RFP, as well as the parking needed to serve the 4th floor addition to City Hall, including:</p> <ul style="list-style-type: none"> - 29 Police essential service parking stalls; - 241 other city fleet, staff, elected official and visitor parking stalls; and

- 9 fire station stalls.
- For the 4th floor addition to City Hall, Developer has currently identified an additional 38 parking stalls; however, Developer acknowledges that the City's parking standard for office space in the City of Napa Downtown Specific Plan requires 2.4 stalls / 1000sf, which would result in 44 stalls required for the 4th floor addition to City Hall.

Additionally, Developer will ensure that a stall is provided for each original stall that is lost through the implementation of Developer's design. A breakdown of Developer's proposed parking solution has been provided below:

	Existing Spaces on-site	New Program Requirements	Developer's Proposal	Excess (Shortage)
City Hall				
Streets around City Hall	13		24	11
SWOT (secure)		2	2	0
Police (secure)		25	25	0
Motorcycles (secure)		2	2	0
Total City Hall Parking	13	29	53	11
Fire Station				
Streets around Fire Station	7		4	-3
Vehicles in Apparatus Bay		4	4	0
Fire Station Vehicles		5	1	-4
Total Fire Station Parking	7	9	9	-7
Other Parking				
Clay St. Garage Extension		241	271	30
Stalls on Clay Street	3		0	-3
Existing parking on Clay Garage Extension Site	35		0	-35
Total Other Parking	38	241	271	-8
Total Excess (Shortage)				-4
Other Parking to be Provided by Developer			4	
4th Floor Parking to be Provided by Developer			38	
Total spaces located on-site at conclusion of Project			375	

As the Civic Center Project design is refined, Developer will add the stalls required to meet the City's parking requirements for the Civic Center Project, which includes the 4 stall deficit identified in the chart above, as well as the 6 stall deficit for the 4th floor addition to City Hall (44 required, less 38 identified).

The Clay Street Parking Garage Extension to be constructed by Developer consists of an above-grade parking garage located in the empty parking lot on Clay Street.

Developer's proposed construction cost is \$11,517,731 associated directly with these parking improvements.

Fire Station #1	<i>Developer will construct a stand-alone fire station facility that will be located at 1115 Seminary Street. This building will consist of 13,167 SF of finished space including 5 stalls of associated parking. To be included are 4 vehicles in apparatus bay, and 1 additional fire station. Developer's proposed construction cost is \$8,593,681 associated directly to the finished facility, site improvements, and parking.</i>																																														
Swing Space	<p><i>Developer estimates that the cost associated with 50,000 SF of Swing Space for City use during construction will be \$4,637,306, based on the following assumptions:</i></p> <table> <tr> <td colspan="2"><u>Assumptions</u></td></tr> <tr> <td>Tenant Improvements (\$/SF)</td><td>\$25</td></tr> <tr> <td>Gross Rental Price per Month</td><td>2.25</td></tr> <tr> <td>Max Swing Space Required</td><td>50,000</td></tr> <tr> <td>Full Time Months (months 2-23)</td><td>22</td></tr> <tr> <td>Partial Swing Space Required</td><td>27,000</td></tr> <tr> <td>Partial Months (month 1)</td><td>1</td></tr> <tr> <td colspan="2"><u>Swing Space Rental</u></td></tr> <tr> <td>Full Time (months 2-23)</td><td>\$ 2,475,000</td></tr> <tr> <td>Part Time (month 1)</td><td>\$ 60,750</td></tr> <tr> <td>Total Swing Space</td><td>\$ 2,535,750</td></tr> <tr> <td colspan="2"><u>Move Allowance</u></td></tr> <tr> <td>CSB</td><td>\$ 46,695</td></tr> <tr> <td>Superblock</td><td>\$ 52,470</td></tr> <tr> <td>Housing</td><td>\$ 19,891</td></tr> <tr> <td>Police and Fire Evidence</td><td>\$ 32,500</td></tr> <tr> <td>Total Move Allowance</td><td>\$ 151,556</td></tr> <tr> <td colspan="2"><u>Other Costs</u></td></tr> <tr> <td>Design Fees</td><td>\$ 300,000</td></tr> <tr> <td>TI Allowance</td><td>\$ 1,250,000</td></tr> <tr> <td>Dispatch (Move, TI, Swing Space Cost)</td><td>\$ 400,000</td></tr> <tr> <td>Total Other Costs</td><td>\$ 1,950,000</td></tr> <tr> <td>Total Swing Space / Moving Costs</td><td>\$ 4,637,306</td></tr> </table> <p><i>Additional Assumptions:</i></p> <ul style="list-style-type: none"> - <i>Housing Move: Move and install entire contents to include all furniture, work-stations, shelving, records computers and misc. to a Swing Space. Then at a later date move contents and computers (no furniture or work-stations) to the permanent space.</i> - <i>CSB Move: Move and install entire contents to include all furniture, work-stations, shelving, records computers and misc. to a swing space. Then at a later date move contents and computers (no furniture or work-stations) to the permanent space.</i> - <i>Superblock Move: Move all contents including furniture to a Swing Space. Move contents, computers and misc. items from the Swing Space to the new location. This also includes moving the contents of the evidence room in the Police Department and large equipment in the Fire Department</i> 	<u>Assumptions</u>		Tenant Improvements (\$/SF)	\$25	Gross Rental Price per Month	2.25	Max Swing Space Required	50,000	Full Time Months (months 2-23)	22	Partial Swing Space Required	27,000	Partial Months (month 1)	1	<u>Swing Space Rental</u>		Full Time (months 2-23)	\$ 2,475,000	Part Time (month 1)	\$ 60,750	Total Swing Space	\$ 2,535,750	<u>Move Allowance</u>		CSB	\$ 46,695	Superblock	\$ 52,470	Housing	\$ 19,891	Police and Fire Evidence	\$ 32,500	Total Move Allowance	\$ 151,556	<u>Other Costs</u>		Design Fees	\$ 300,000	TI Allowance	\$ 1,250,000	Dispatch (Move, TI, Swing Space Cost)	\$ 400,000	Total Other Costs	\$ 1,950,000	Total Swing Space / Moving Costs	\$ 4,637,306
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	<p>- <i>TI Allowance: assumes no major renovation of the mechanical, plumbing, fire sprinkler, or electrical systems. Assumes majority of space can be used without demolition or re-build.</i></p> <p><i>Developer and the City will work together to determine final Swing Space location(s) and cost. This amount will include the costs attributable to acquiring and outfitting Swing Space prior to financial close, and such costs will be reimbursed from proceeds at financial close.</i></p>
Art Allowance	<p><i>Developer commits \$400,000 to be allocated to costs of art for the Project. The art will be sited at a location (or locations) on the Project to be determined by the City in its sole discretion, which may be on the Civic Center Site, and/or in public open spaces on the Private Development Site. The City will coordinate with Developer regarding the nature, and design of the art, in conjunction with the City's design review of the Project. This commitment of \$400,000 for art is in addition to the public art obligations under NMC Chapter 15.108, which is a full 1% of total project cost. (Developer will not seek a reduction to this requirement.)</i></p>
Senior Debt Financing	<p><i>Developer will reimburse the City as set forth in the body of the ENA for all costs borne by the City directly related to issuance of Senior Debt Financing leading up to and during closing proceedings. Such costs include but are not limited to costs such as hiring of bond counsel and its opinion(s), time and costs associated with the set-up and the operations of the 63-20 non-profit corporation, and other costs of issuance borne by the City. These costs anticipated at \$300,000 and will be reimbursable from the bond issuance. If actual costs are more or less than \$300,000 a corresponding adjustment will be made to the City lease payment.</i></p>
Entitlement Costs	<p><i>Entitlement costs will be clearly bifurcated between the Civic Center Project and the Private Development Project and Developer or its affiliates will pay all entitlement fees and related costs (EIR, CEQA, legal, etc.) that are required for development of the Private Development Project.</i></p> <p><i>Developer will not be required to pay any entitlement or impact fees to the City for the Civic Center Project. Developer will also be reimbursed from the proceeds at financial close all entitlement costs for which it has funded related to the Civic Center Project. Such reimbursable costs include all legal (Holman Teague), environmental (FirstCarbon Solutions), traffic (Kimley-Horne & Associates) and any other related consultant costs (as agreed with the City) that Developer may incur in relation to achieving entitlements on the Civic Center Project during the Negotiating Period. Developer and the City will each keep the other Party informed on a monthly basis the total amount undertaken by each respective Party directly tied to entitlement of the Civic Center Project and the Private Development Project.</i></p>
Commitments Related to the Private Development	<p><i>Developer's proposed purchase price for the Private Development Site is subject to the below:</i></p>

Site – Swing Space and Site Delivery	<ul style="list-style-type: none"> - <i>The City will vacate the entire Private Development Site and Fire Station #1 to a mutually-agreed upon Swing Space site at the before the construction start for the Civic Center Project.</i> - <i>The City will work with Developer to avoid/minimize transaction costs associated with conveyance of the Private Development Site to Developer.</i> - <i>Prior to financial close, the Private Development Site’s zoning and general plan designation will allow all proposed uses.</i> - <i>All of the assumptions and limiting conditions set out in the CBRE appraisal reports for the Private Development Site (as provided with the RFP) apply.</i> - <i>The Private Development Site will be delivered vacant and otherwise “as-is” with no representation or warranty of any kind.</i> - <i>Financial close on the Private Development Project shall not be unreasonably withheld beyond thirty (30) days after approval of Developer’s proposed hotel development and residential development by the City and expiration of all appeal periods from discretionary approvals, and in accordance with the RFP and public sale procedures.</i> - <i>Upon financial close, the City will deliver fee title of the Private Development Site to Developer (or its nominee), with all real property insurable in the amount of a purchase by standard coverage ALTA Title Insurance, free and clear of all encumbrances and liens and other title exceptions, except those specifically agreed to in writing by Developer prior to financial close.</i>
Public Outreach	<p><i>Developer will prepare a Public Outreach Plan, and submit it to the City for approval, to address the following elements:</i></p> <ul style="list-style-type: none"> - <i>Stakeholder Engagement: Developer will work to ensure all user group stakeholders will be given the opportunity to review the program and comment.</i> - <i>Neighborhood Outreach: Developer will plan ahead and get stakeholders’ buy-in to minimize disruptions and pushback. This includes communicating changes and disruptive activities a minimum of three weeks in advance via face to face interaction with impacted stakeholders, as well as creating a communication network that includes social media, site signage, notifications in adjacent building and flyers, all with the approval from the City.</i> - <i>Citywide Public Outreach. Developer will conduct independent citywide outreach (as required under Section 5.4 of the RFP). Developer’s commitment will include development and engagement of local businesses, as well as MBE/WBE firms, as partners. Through active outreach and strong identification efforts, Developer will establish an up-to-date database of local firms available and their capabilities, utilizing this information to package the bid solicitations, and develop joint venture, subcontractor and supplier relationships.</i> <p><i>The City and Developer will discuss and mutually agree how outreach is coordinated between the Civic Center Project and the Private Development Project.</i></p>
Design Control	<p><i>In accordance with the to-be agreed upon schedule, Developer to manage and drive a successful design process, integrating current best practices for similar facilities,</i></p>

	<i>and seeking input from the City regarding the design nature and general vocabulary of the Civic Center Project. The City maintains final design approval.</i>
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Civic Center Project – Financial Terms	
Summary of Financing Structure	<p><i>Developer’s proposal anticipates the following financial structure, however, the final financing structure will be determined at the corresponding Project Milestone outlined in Exhibit C-1.</i></p> <ul style="list-style-type: none"> - <i>63-20 Non-Profit Structure (80% City controlling stake, 20% Developer)</i> - <i>City leases public land to 63-20; 63-20 leases back land and new public facilities (City Hall, Fire Station #1, and Clay Street Garage) to City</i> - <i>Public offering of tax-exempt bonds plus privately placed subordinated tax-exempt bonds (to developer or affiliate)</i>
Construction	<p>Total Hard Cost: \$86,669,774</p> <p><i>At each of Final Basis of Design, Schematic Design and Fixed Price Proposal, Developer will provide an updated construction cost estimate which, among other changes, may reflect cost changes resulting from agreed changes in design relative to the design contained in the Proposal.</i></p> <p><i>While the construction period security package has not yet been finalized, the Design-Builder will provide a security package consistent with precedent transactions. It is anticipated to include a combination of the following (to be determined in consultation with Design-Builder):</i></p> <ul style="list-style-type: none"> a. <i>Liquidated Damages payable for delay in achieving scheduled substantial completion (sized to cover finance and other unavoidable costs of Developer and the 63-20 non-profit financing entity)</i> b. <i>12 month look-forward test – Developer may retain payments (for amounts expected to be due as Liquidated Damages) if Design-Builder not anticipated to achieve substantial completion on the scheduled date (tested 12 months prior to scheduled substantial completion and monthly thereafter), until Design-Builder is back on track</i> c. <i>Payment & Performance Bond (100%) – will likely be in dual-obligee form (City and Project Co)</i> d. <i>Liquid security in the form of a letter of credit and/or cash retention – equal to 5%-10% of the DBA Contract Sum</i> e. <i>Parent Company Guarantee – to be determined if this will be required</i> f. <i>Limitation on Liability – likely 50% to 100% of the DBA Contract Sum</i> <p><i>Construction period insurance will include a builders risk policy with limit set at a level commensurate with the scope of the Civic Center Project.</i></p>
Risk Sharing	<p><i>Developer, or an affiliate of Developer, will purchase at closing and contribute to the Civic Center Project in cash an amount of Subordinated Debt equal to \$9.8 million. The parties note that this amount could change depending on the</i></p>

	<p><i>Civic Center Project's final cost and that Developer has sized the Subordinated Debt to equal 10% of the total long-term debt requirement. 100% of the payments allocated to repayment of the Subordinated Debt will be subject to deduction for failure to meet performance standards which will be negotiated and contained in the Project Agreement.</i></p>
City Lease Payments (Total) Includes O&M and Capital Reserve	<ul style="list-style-type: none"> - Escalating Payments: Fixed component plus a variable component tied to CPI - Subject to change based on the Civic Center Project's final cost and movements in Senior Debt interest rates from Developer's Best and Final Submittal ("BAFO") to financial close - \$6.08 million -> \$11.07 million (2% annual escalation) - \$8,255,787 (average anticipated payment) for 32 years - Total Anticipated Payments: \$255,929,392 - Anticipated NPV of Cost of Financing: \$60,224,540 <p><i>The City lease and lease payments will run for an operating term of 30 years from substantial completion to handback.</i></p>
O&M Payment	<ul style="list-style-type: none"> - \$727,129 per year (\$2017, inflated at CPI annually) - NPV of O&M Payments: \$17,417,726
Capital Reserve	<ul style="list-style-type: none"> - \$207,834 average annual payment (30 years) (\$2017, inflated at CPI annually) - JCI fluctuating lifecycle payment
Financing	<p><i>Senior Debt:</i></p> <ul style="list-style-type: none"> - Targeted AA/AA- rating - DSRF anticipated to be sized at ½ MADS, with the potential to eliminate the need for a DSRF, to be discussed with the City, its advisors, and the rating agency - 32-year term - Capitalized interest during construction <p><i>Subordinate Debt:</i></p> <ul style="list-style-type: none"> - 10% rate of return utilizing a stepped coupon structure - 32-year term
Price of Private Development Site to fund Civic Center Project	<p><i>\$105/SF or \$14,350,000 for Private Development Site net of transaction costs.</i></p>
Private Development Site Proceeds	<p><i>\$11,834,410, which is equal to Developer's commitment to purchase the Private Development Site for \$15,575,000, less \$1,429,610 of transaction costs and \$2,515,590 of Developer's carried interest in the hotel component of the Private Development Project. Developer may re-allocate transaction costs between the \$1,429,610 of Private Development Project transaction costs to its "Bid/ENA Cost</i></p>

	<i>Recovery,” which would increase the net proceeds from the Private Development Site by a commensurate amount (i.e., this would have no impact on the City’s annual lease payment).</i>
Tax-Exempt Debt	<i>\$88,481,427 (publicly sold in municipal market), which may change depending on the Civic Center Project’s final cost (Developer has sized its Senior Debt amount based on 90% of the total long-term debt requirement).</i>
Subordinated Debt	<i>\$9,480,278 (sold to Developer or an affiliate of Developer), which may change depending on the Civic Center Project’s final cost (Developer has sized its Subordinated Debt amount based on 10% of the total long-term debt requirement).</i>

Civic Center Project - Summary of Sources and Uses																			
Sources During Construction	<p><i>Developer commits to working closely with the City on a funding and financing approach that best meets the needs of the Civic Center Project and the City. Current proposed sources of funds are as follows:</i></p> <p><i>Senior Debt \$88,481,427</i></p> <p><i>Subordinated Debt \$9,840,278 (10% of project debt)</i></p> <p><i>Private Development Site Proceeds* \$11,834,410</i></p> <p><i>Total Sources \$110,156,115</i></p> <p><i>*Net of Developer’s 25% carried interest in hotel portion of Private Development Project (\$2,515,590).</i></p>																		
Uses During Construction	<p><i>Developer commits to working closely with the City on a funding and financing approach that best meets the needs of the Civic Center Project and the City. The following table presents the proposed uses of funds for the construction period. Additionally, the table identifies whether each use of funds is either (1) subject to change (and if so, the factor(s) leading to change); or (2) carried “at risk” by Developer and therefore not subject to change (though Developer may re-allocate its costs between various costing categories, so long as the City’s annual lease payment does not change).</i></p> <table> <tr> <th>Item</th><th>Amount</th><th>Subject to Change?</th><th>Factor(s) Leading to Change</th></tr> <tr> <td>Construction Cost</td><td>\$86,669,774</td><td>Yes</td><td>Final agreed scope and terms of Civic Center Project</td></tr> <tr> <td>Operating Transition Cost</td><td>\$1,007,644</td><td>Yes</td><td>Final agreed scope and terms of Civic Center Project</td></tr> <tr> <td>Interest During Construction</td><td>\$5,729,147</td><td>Yes</td><td>Movements in Senior Debt Interest Rates from Developer’s Best and Final Submittal to financial close, final</td></tr> </table>			Item	Amount	Subject to Change?	Factor(s) Leading to Change	Construction Cost	\$86,669,774	Yes	Final agreed scope and terms of Civic Center Project	Operating Transition Cost	\$1,007,644	Yes	Final agreed scope and terms of Civic Center Project	Interest During Construction	\$5,729,147	Yes	Movements in Senior Debt Interest Rates from Developer’s Best and Final Submittal to financial close, final
Item	Amount	Subject to Change?	Factor(s) Leading to Change																
Construction Cost	\$86,669,774	Yes	Final agreed scope and terms of Civic Center Project																
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Interest During Construction	\$5,729,147	Yes	Movements in Senior Debt Interest Rates from Developer’s Best and Final Submittal to financial close, final																

				lease revenue bond par amount and coupons, and final construction period schedule
	Up-Front Development Fee	\$804,800	No	N/A
	Developer Financial Advisor Fee	\$427,158	No	N/A
	Lease Revenue Bonds Underwriting Cost	\$319,386	Yes	Final lease revenue bond par amount
	Bid/ENA Cost Recovery	\$3,961,881	No	N/A
	Swing Space Cost	\$4,637,306	Yes	Final agreed Swing Space scope
	City Cost of Issuance	\$300,000	Yes	Final City costs of issuance
	Rating Agency Monitoring Cost	\$10,200	Yes	Final rating agency monitoring cost payable during construction
	Art Allowance	\$1,203,204	Yes	To be determined based on 1% of total construction cost, in accordance with NMC Chapter 15.108 plus \$400,000. Note that Developer's commitment of \$400,000 for art in addition to the public art obligations under NMC Chapter 15.108 will not be subject to change.
	SPV Costs During Construction	\$1,526,221	Limited	Periodic amounts fixed, only changes to the extent the length of the construction period changes.
	DSRA Funding	\$3,559,393	Yes	Rating agency requirements, final lease revenue bond par amount and coupons
	Total Uses During Construction	\$110,156,115	-	-

Cost Reductions	<p><i>As part of its BAFO response, Developer reduced its proposed fees and costs by \$4.452 million, limiting its development fee to \$804,800 and administration fees of \$4.00 million. For illustration, the following table is provided by Developer:</i></p> <table><tr><th>Cost Line Item</th><th>Original Proposal Amount</th><th>Reduction in BAFO</th><th>Final Proposed Amount</th></tr><tr><td>A – Operating Transition Cost</td><td>\$1,082,644</td><td>(\$75,000)</td><td>\$1,007,644</td></tr><tr><td>B – Construction Cost¹</td><td>\$83,376,440</td><td>(\$1,181,666)</td><td>\$82,194,774</td></tr><tr><td>C – Development Fee²</td><td>\$3,500,000</td><td>(\$2,695,200)</td><td>\$804,800</td></tr><tr><td>D – Administration Fees³</td><td>\$4,500,000</td><td>(\$500,000)</td><td>\$4,000,000</td></tr><tr><td>TOTAL</td><td>\$92,459,084</td><td>(\$4,451,866)</td><td>\$88,007,218</td></tr></table> <p><i>1. For the purposes of comparison, this final proposed amount excludes the additional cost of a 4th floor and additional parking, which cost \$3,240,000 and \$1,235,000, respectively. Developer’s final proposed construction price inclusive of this additional scope is \$86,669,774, as seen in Developer’s Pro Forma and Financial Model.</i></p> <p><i>2. This reduction represents Developer’s carried interest in 25% of the hotel component of the Private Development Project (\$2,515,590), as well as an additional \$179,610 reduction.</i></p> <p><i>3. Amounts shown on a total, real basis over the 30 year operating period. Developer’s BAFO proposed a reduction in annual administrative fees of \$25,000 per annum after year 10 of operations.</i></p>	Cost Line Item	Original Proposal Amount	Reduction in BAFO	Final Proposed Amount	A – Operating Transition Cost	\$1,082,644	(\$75,000)	\$1,007,644	B – Construction Cost ¹	\$83,376,440	(\$1,181,666)	\$82,194,774	C – Development Fee ²	\$3,500,000	(\$2,695,200)	\$804,800	D – Administration Fees ³	\$4,500,000	(\$500,000)	\$4,000,000	TOTAL	\$92,459,084	(\$4,451,866)	\$88,007,218
Cost Line Item	Original Proposal Amount	Reduction in BAFO	Final Proposed Amount																						
A – Operating Transition Cost	\$1,082,644	(\$75,000)	\$1,007,644																						
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D – Administration Fees ³	\$4,500,000	(\$500,000)	\$4,000,000																						
TOTAL	\$92,459,084	(\$4,451,866)	\$88,007,218																						
Design Build and Services Agreements	<p><i>The Project Agreement(s) will set forth a number of conditions in which the City will be able to terminate the Project Agreement(s), including material breach of contract and ongoing failure to operate the facilities to a specified level of performance (noncompliance). Further, in the event that Developer defaults under the Project Agreement(s), the City will maintain the right to “step in” to the role of Developer within the Design Build Agreement to manage the Design-Build contractor and the Services Agreement to manage the Services contractor, accordingly.</i></p>																								

Civic Center Project – Key Assumptions	
Permit Fees	<p><i>Building permit Fees have been included in the proposed construction cost as an allowance of \$200,000. This cost is based on estimates provided by the Community Development Department Building Division of the City of Napa on 2/1/2017.</i></p>
Utility Connection Charges	<p><i>Compensation to utility companies in order to connect service and for any construction work performed by utility companies on or offsite is not included in the proposed construction cost.</i></p>

Utility Fees	<i>All local power, data, cable, etc., connection fees are excluded from the proposed construction cost.</i>
Hazardous Material	<i>Cost has been included to provide Phase 1 Hazardous Material Testing and Report on existing buildings including the Napa Planning Department & Napa Housing Authority. If remediation or abatement is required, this will be an added cost to the proposed construction cost.</i>
Offsite work	<i>All offsite work has been excluded from the proposed construction cost as it is impossible to define at this time. Construction/Demolition on the three proposed sites are up to the concrete curbs at the perimeter of each site. Existing curb and gutter are to remain as is. Any costs to replace, re-locate, or remove existing utilities and/or street lights outside of Civic Center Project boundary have been excluded until further discussion. This would include any utility line realignments due to conflicts.</i>
Ceiling Space	<i>Additional ceiling space to allow for future utilities, etc. at 25% of ducting, piping, plumbing and electrical required is not being provided in the proposed construction cost. Provision for specific future needs will be provided for like occupancies of the building as being initially constructed, risers will be sized accordingly on all systems.</i>
Dispatch	<i>All design, supply, and installation of the dispatch equipment including tower is excluded from the proposed construction cost. Support for tower is included. Should Developer need to purchase the tower it will be added as part of the Fixed Price Proposal.</i>
Equipment	<i>Telephone equipment, systems, IT network switches are not included in the proposed construction cost. The telephone system would be the City's IT work.</i>
Elevator Controller	<i>The elevator machine controller proposed is one by any of the number of standard elevator vendors. A non-proprietary controller is not included. However, the elevator systems will be openly accessible to any maintenance contractor by providing head-end equipment within the elevator machine room.</i>
Corrosive Soil	<i>Provisions for corrosive soil have not been included in the proposed construction cost but will be part of the analysis on final selection of underground materials and added into the Fixed Price Proposal.</i>
Exhaust Air	<i>At rooms noted not to have recirculate air will have fully ducted exhaust air systems. Otherwise, will be a plenum design. All exhaust and supply air ductwork to be standard galvanized. The lab exhaust is not noted to be corrosive.</i>
Spare Conduit	<i>25% of spare conduit is not included in the proposed construction cost for unknown future expansion and cabling replacement. Conduit to address analyzed future needs will be provided with additional conduits placed underground into the building MPOE and providing additional sleeves from floor to floor for future pathways.</i>

AV Systems	<i>There are proprietary manufacturers and fixed model #'s for the A/V equipment within Addendum #7. We are proposing a Target Value Design for the AV System that has a budget of \$550,000 by including potential alternate manufacturers and equivalent features at the time of purchase.</i>
Outside Plant Connection	<i>Vaults, boxes, conduit, cable, and fiber to Network Distribution Center or corporation yard is not included in the proposed construction cost as part of the offsite work as it can't be defined at this time. Work also excluded from the proposed construction cost: (1) Connection to existing City street light control infrastructure and (2) Vaults and conduit to any City wide data infrastructure, both of which will be investigated and added into the Fixed Price Proposal.</i>

Private Development Project - Summary	
Purchase Price	<i>Firm commitment to purchase the Private Development Site for \$105.00/ft, or \$14.35M net of transaction costs.</i>
Right of Reverter / Power of Termination	<p><i>The Developer acknowledges the City's interest in ensuring timely development of the Private Development Project on the Private Development Site. The Project Agreements related to the purchase and disposition of the Private Development Site will include particular timing requirements for the Developer to expeditiously begin construction and to continue such construction to completion. The relevant Project Agreements will include defined financial remedies available to the City, requiring the Developer to pay to offset the City's damages for delay, if the Developer does not comply with the identified timing requirements. The relevant Project Agreements will also include an escalation of more severe remedies, which are based on the escalation of damages anticipated to be incurred by the City, if the Developer fails to comply with a final deadline date, which may include the City's right to exercise a power of termination (as defined by California Civil Code Sections 885.010, et seq.). The relevant Project Agreements will also include:</i></p> <ul style="list-style-type: none"> <i>(a) objective bases on which the Developer will be authorized to obtain one or more extensions for the time to begin or complete construction, based on causes outside the control of the Developer, including force majeure and a material adverse change in the hospitality market and/or multi-unit residential market as relevant to development in the City of Napa; and</i> <i>(b) objective bases on which the City will reimburse the Developer, as a condition of exercising a power of termination, based on the price paid by the Developer for the Private Development Site less the quantified estimated damages for delay incurred by the City.</i>
Hotel JV	<i>One hotel, four-star or better, with 250 keys, plus or minus 25 keys, to be delivered on the Private Development Site. Hotel ownership to be 25% Developer and 75% Stanford Hotels Corporation and/or its affiliate ("Stanford"). Developer will authorize Stanford to be the applicant for all project requirements of the hotel development including the artistic, architectural, conceptual, and design elements, subject to compliance with all requirements of the Project Agreements and the City's regulatory authority under State law and local code.</i>

Retail	<p><i>The Private Development Project will include design for approximately 25,000sf of general retail and approximately 15,000sf of hotel related retail. Retail uses to include but not limited to a small grocery market, eating and drinking establishment uses and general retail, in a way that provides amenity to the surrounding residents, workers, and visitors.</i></p> <p><i>Stanford/Cresleigh (defined below) will conduct a retail study and will share the results of the study with the City promptly upon completion of such study (expected within two months of the Effective Date).</i></p>
Residential Development – Private Development Site	<ul style="list-style-type: none"> - <i>Cresleigh Homes Corporation or its affiliate (“Cresleigh”) will construct 100 residential dwelling units, plus or minus 15 units, on the Private Development Site.</i> - <i>Developer will authorize Cresleigh to be the applicant for all project requirements of the residential development including the artistic, architectural, conceptual, and design elements, subject to compliance with all requirements of the Project Agreements and the City’s regulatory authority under State law and local code.</i>
Affordable Housing	<p><i>As a part of Developer’s application for Private Development Project entitlements, Developer shall submit to the City proposed Alternative Equivalent options to the affordable housing impact fees otherwise required for the Private Development Project, subject to approval by the City Council in accordance with Napa Municipal Code Chapter 15.94 (particularly Section 15.94.070). The options shall address each component of use on the Private Development Project (Residential Uses, Hotel Use, and Retail Uses) as described below.</i></p> <p><i><u>1. Residential Uses:</u> The Developer shall construct Affordable Housing units at an off-site location acceptable to the City (which may include the SoCo Site). The number of affordable units shall be approximately equal to but no less than 10% of the number of residential units proposed for development on the Private Development Site.</i></p> <p><i><u>2. Hotel Use:</u> The Developer shall pay the applicable affordable housing fee for the Hotel Use portion of the Private Development Project, unless the Developer proposes an alternative equivalent approved by the City.</i></p> <p><i><u>3. Retail Uses:</u> The Developer shall pay the applicable affordable housing fee for the Retail Use portion of the Private Development Project, unless the Developer proposes an alternative equivalent approved by the City.</i></p> <p><i>Developer may partner with an affordable housing developer for the construction of Affordable Housing units, or any other alternative equivalent proposal (such as a dedication of real property).</i></p>
Parking	<p><i>Parking for the Private Development Project will be a stand-alone solution (separate from the Clay Street Parking Garage solution proposed for the Civic</i></p>

	<i>Center Project). The solution will be developed in consultation with parking studies.</i>
Impact Fees	<i>All normal Impact Fees associated with the development of the Private Development Project will be paid to the City by Developer or its affiliates.</i>

Exhibit C-1

CIVIC CENTER PROJECT PERFORMANCE MILESTONES

PM#	Performance Milestone	Proposed Completion Dates
1.	Access and Due Diligence Agreement: The Developer shall sign the Access Agreement to gain temporary access to the Civic Center Site. The Access Agreement should include a schedule showing when the Developer intends to access and work on the Civic Center Site during the Negotiating Period.	2 weeks from Effective Date
2.	Draft Community Outreach Program: The Developer shall provide the City with a draft Community Outreach Program for review and comment by the City.	2 weeks from Effective Date
3.	Pre-Application Meeting: The Developer shall meet with the City staff to review the Civic Center Project plan in order to streamline internal project review process and identify all forms and materials required for the Civic Center Project application submission.	2 weeks from Effective Date
4.	Regulatory Approval Strategy: The Developer shall submit to the City a written plan for the Developer's obtaining regulatory approvals (including affordable housing).	4 weeks from Effective Date
5.	Swing Space Strategy: The Developer shall submit to the City a written plan for Developer's obtaining Swing Space for the City.	4 weeks from Effective Date
6.	Regulatory Approval Strategy Response The City shall submit to the Developer responses to the Developer's obtaining regulatory approvals (including affordable housing).	6 weeks from Effective Date
7.	Draft Terms Sheet: The Developer shall work in coordination with the City to prepare a draft of the Terms Sheet and submit it to the City for review. The Terms Sheet would expand on the Summary of Terms to also include: a description of all necessary documents which would make up the Project Agreements for the Civic Center Project, a description of the primary risk allocation terms as between the Parties, and other key business terms not previously addressed by the ENA that are important for drafting the Project Agreements for the Civic Center Project.	7 weeks from Effective Date
8.	Community Outreach Program: The Developer and the City shall agree upon a Community Outreach Program for implementation during the Negotiating Period.	8 weeks from Effective Date

PM#	Performance Milestone	Proposed Completion Dates
9.	Developer Due Diligence: The Developer shall complete its due diligence of the Civic Center Site, including review and approval of: (i) a preliminary title report and underlying documents; (ii) soils condition, both environmental and geotechnical; and (iii) other additional Inspections deemed necessary to satisfy the Developer as to the condition of the Civic Center Site, environmental review, and all regulatory matters.	10 weeks from Effective Date
10.	Project Application Submittal: Upon completion of Inspections (as defined in the Access Agreement), the Developer shall submit to City a development application for the Civic Center Project that is complete with all necessary analyses, forms and related materials necessary for a complete review by City staff.	12 weeks from Effective Date
11.	Draft Basis of Design Submittal: The City shall develop a draft "Basis of Design" document in close consultation with the Developer that shall include: <ul style="list-style-type: none"> - The ENA, including Exhibits as applicable - The RFP, including Appendix A Public Facilities Technical Specifications" (A1 "Public Facilities Program", A2 "Public Facilities Design and Construction Performance Specifications", A3 "Public Facilities O&M Service Requirements") - The Proposal - Applicable Developer commitments in Summary of Terms - City technical requirement modifications - Developer design modifications - Modifications of Swing Space strategy (as needed) 	12 weeks from Effective Date
12.	Final Terms Sheet: The Parties shall review and ultimately approve the final Terms Sheet.	13 weeks from Effective Date
13.	Completion of Project Application Review: The Developer shall meet with City to coordinate with the internal City staff to review requests for additional information in order to obtain complete project applications for the Civic Center Project to the City's satisfaction. The City retains its discretion as a regulatory body to determine whether the application is complete.	16 weeks from Effective Date
14.	Approval of Final Basis of Design: The Parties shall review and amend, and the City shall ultimately approve a Final Basis of Design document. The Final Basis of Design should include the final Swing Space plan.	16 weeks from Effective Date

PM#	Performance Milestone	Proposed Completion Dates
15.	Deadline for City Comments: Deadline for City to provide comments on all design submission received so that changes can be incorporated into Schematic Design Submittal.	16 weeks from Effective Date
16.	Response to Design/Use Comments on Project Application: Developer to submit response to comments on project application review.	18 weeks from Effective Date
17.	Initial Draft of Project Agreements: The Developer shall prepare draft documents and submit them to the City for review.	20 weeks from Effective Date
18.	Formation of “63-20” Financing Entity: The City shall undertake the formation of the “63-20” non-profit tax exempt entity.	20 weeks from the Effective Date
19.	Notice of Completion: City shall publish EIR draft.	20 weeks from Effective Date
20.	Schematic Design Submittal: The Developer shall submit a complete Schematic Design package compliant with the Approved Basis of Design for review by the City, including a staging and logistics plan for construction.	22 weeks from Effective Date
21.	Schematic Design Approval: The City shall review and comment on the submittal to guide Detailed Design by the Developer.	24 weeks from Effective Date
22.	Final Draft of Project Agreements: The Developer shall prepare final draft Project Agreements based on negotiation and Consultation with the City, subject only to minor changes resulting from final pricing and CEQA/entitlements process.	32 weeks from Effective Date
23.	Initial Draft of Financing Documents: The Developer shall prepare draft documents for the financing structure and submit them to the City for review.	34 weeks from Effective Date
24.	Completion of Final EIR: City to publish Final EIR.	40 weeks from Effective Date
25.	Planning Commission Action: The City and the Developer shall coordinate public hearing(s) by Planning Commission to consider taking action(s) to recommend that the City Council (i) certify CEQA compliance, (ii) approve the Civic Center Project entitlements, and (iii) action on abandonment of public rights of way (as needed).	4 weeks from Completion of Final EIR

PM#	Performance Milestone	Proposed Completion Dates
26.	Complete Project Agreements: The Developer and City shall develop and negotiate Project Agreements so as to have available execution ready Project Agreements.	46 weeks from Effective Date
27.	Fixed Price Proposal and Detailed Design Submittal: The Developer shall submit to the City a fixed price proposal and the Detailed Design for the Civic Center Project, which shall include: <ul style="list-style-type: none"> - Updated full financial model - MasterFormat or UniFormat Level 3 Cost Estimate for all construction costs - Annual Routine Operations and Maintenance Cost spreadsheet in accordance with services and performance standards identified in RFP "Appendix A3 Operations and Maintenance Service Requirements" Spreadsheet to detail all costs by category beginning in base year and shall include escalation assumptions for subsequent years - Spreadsheet identifying annual capital renewal reserves by year for entire operating term (including explanation of timing and amount of planned expenditures) - Confirmation of security package and insurance levels - Detailed construction schedule - Facilities management plan - Final Swing Space costs. 	20 weeks from Schematic Design Approval
28.	Agreement as to Fixed Price: Parties shall negotiate as to a final Fixed Price.	4 weeks from Fixed Price Proposal Submittal
29.	Final Financing Documents Submitted: The Parties shall submit to the City the final version of bond documents and Preliminary Official Statement (POS) for City and 63-20 Board review.	48 weeks from Effective Date
30.	63-20 Board Approval: 63-20 Board to approve Project Agreements (including all financing documents).	50 weeks from Effective Date
31.	Developer Execution of the Project Agreements: The Developer shall execute the Project Agreements (as applicable).	Prior to City Council hearing date
32.	City Council Hearing: The City to coordinate public hearing(s) before the City Council to act on Civic Center Project approvals and to approve execution of the Project Agreements (as applicable).	12 weeks from Completion of Final EIR

PM#	Performance Milestone	Proposed Completion Dates
33.	City Council Approval: Second reading by City Council.	2 weeks from City Council Hearing
34.	Bond Pricing	4 weeks from City Council Approval
35.	City Execution of the Project Agreements: The City to execute the Project Agreements, as applicable.	6 weeks from City Council Approval
36.	Bond Closing/Execution of Bond Documents/Financial Close	TBD

Exhibit C-2

PRIVATE DEVELOPMENT PROJECT PERFORMANCE MILESTONES

PM#	Performance Milestone	Proposed Completion Dates
1.	Access and Due Diligence Agreement: The Developer shall sign the Access Agreement to gain temporary access to the Private Development Site. The Access Agreement should include a schedule showing when the Developer intends to access and work on the Private Development Site during the Negotiating Period.	2 weeks from Effective Date
2.	Draft Community Outreach Program: The Developer shall provide the City with a draft Community Outreach Program for review and comment by the City.	2 weeks from Effective Date
3.	Pre-Application Meeting: The Developer shall meet with the City staff to review the Private Development Project plan in order to streamline internal project review process and identify all forms and materials required for the Private Development Project application submission.	3 weeks from Effective Date
4.	Regulatory Approval Strategy: The Developer shall submit to the City a written plan for the Developer's obtaining regulatory approvals (including affordable housing).	4 weeks from Effective Date
5.	Regulatory Approval Strategy Response The City shall submit to the Developer responses to the Developer's obtaining regulatory approvals (including affordable housing).	6 weeks from Effective Date
6.	Community Outreach Program: The Developer and the City shall agree upon a Community Outreach Program for implementation during the Negotiating Period.	8 weeks from Effective Date
7.	Developer Due Diligence: The Developer shall complete its due diligence of the Private Development Site, including review and approval of: (i) a preliminary title report and underlying documents; (ii) soils condition, both environmental and geotechnical; and (iii) other additional Inspections deemed necessary to satisfy the Developer as to the condition of the Private Development Site, environmental review, and all regulatory matters.	10 weeks from Effective Date

PM#	Performance Milestone	Proposed Completion Dates
8.	Draft Terms Sheet: The Developer shall work in coordination with the City to prepare a draft of the Terms Sheet and submit it to the City for review. The Terms Sheet would expand on the Summary of Terms to also include: a description of all necessary documents which would make up the Project Agreements for the Private Development Project, a description of the primary risk allocation terms as between the Parties, and other key business terms not previously addressed by the ENA that are important for drafting the Project Agreements for the Private Development Project.	11 weeks from Effective Date
9.	Project Application Submittal: Upon completion of Inspections (as defined in the Access Agreement), the Developer shall submit to City a development application for the Private Development Project that is complete with all necessary analyses, forms and related materials necessary for a complete review by City staff.	16 weeks from Effective Date
10.	Final Terms Sheet: The Parties shall review and ultimately approve the final Terms Sheet.	17 Weeks from Effective Date
11.	Initial Draft of Project Agreements: The Developer shall prepare draft documents and submit them to the City for review.	20 weeks from Effective Date
12.	Completion of Project Application Review: The Developer shall meet with City to coordinate with the internal City staff to review requests for additional information in order to obtain complete project applications for the Private Development Project to the City's satisfaction. The City retains its discretion as a regulatory body to determine whether the application is complete.	20 weeks from Effective Date
13.	Notice of Completion: City shall publish EIR draft.	20 weeks from Effective Date
14.	Response to Design/Use Comments on Project Application: Developer to submit response to comments on project application review.	TBD based on City comments
15.	Submittal of Private Development Pro Forma: The Developer to submit Pro Forma Financial Projections for the Private Development Project as required pursuant to Section 5.1.1(k)	24 weeks from Effective Date

PM#	Performance Milestone	Proposed Completion Dates
16.	Final Draft of Project Agreements: The Developer shall prepare final draft Project Agreements based on negotiation and Consultation with the City, subject only to minor changes resulting from final pricing and CEQA/entitlements process.	32 weeks from Effective Date
17.	Completion of Final EIR: City to publish Final EIR.	40 weeks from Effective Date
18.	Planning Commission Action: The City and the Developer shall coordinate public hearing(s) by Planning Commission to consider taking action(s) to recommend that the City Council (i) certify CEQA compliance, (ii) approve the Civic Center Project entitlements, and (iii) action on abandonment of public rights of way (as needed).	4 weeks from Completion of Final EIR
19.	Complete Project Agreements: The Developer and City shall develop and negotiate Project Agreements so as to have available execution ready Project Agreements.	46 weeks from Effective Date
20.	Developer Execution of the Project Agreements: The Developer shall execute the Project Agreements (as applicable).	Prior to City Council hearing date
21.	City Council Hearing: The City to coordinate public hearing(s) before the City Council to act on Civic Center Project approvals and to approve execution of the Project Agreements (as applicable).	12 weeks from Completion of Final EIR
22.	City Council Approval: Second reading by City Council.	2 weeks from City Council Hearing
23.	City Execution of the Project Agreements: The City to execute the Project Agreements, as applicable.	6 weeks from City Council Approval
24.	Financial Close	TBD

EXHIBIT D

**FORM OF
ACCESS AND DUE DILIGENCE AGREEMENT**

This Access and Due Diligence Agreement ("Agreement") is entered into as of the _____ day of _____, 2017 (the "Effective Date"), by and between the CITY OF NAPA ("City") and PLENARY PROPERTIES NAPA LLC, a Delaware limited liability company ("Developer"), with respect to the following facts and intentions:

A. The City and the Developer have executed that certain Exclusive Negotiating Agreement dated as of _____, 2017 ("ENA") pursuant to which the City and the Developer shall negotiate the terms and conditions of the future development of certain real property respectively defined in the ENA as the "Civic Center Site" and the "Private Development Site" and collectively referred to as the "Project Site."

B. The "Property" which is the subject of this Agreement shall be the "Project Site" as defined in the ENA.

C. The City has agreed to permit the Developer to enter the Property to examine, inspect and perform investigations on the Property to evaluate the physical and environmental condition of the Property and to perform other investigations and inspections, but only on the terms and conditions set forth below.

NOW, THEREFORE, The City and the Developer agree as follows:

1. Investigation Period. For purposes of this Agreement, the term "Investigation Period" means the period from the Effective Date until the earlier of (i) receipt by the City of written notice from the Developer to the City terminating this Agreement, which decision shall be made in the Developer's sole discretion, (ii) the Developer's completion of the Investigations (as defined below), as determined by the Developer in its sole discretion, (iii) the termination of the ENA, (iv) the date of written notice from the City to the Developer terminating this Agreement, which notice may be given in the City's sole discretion, or (v) the closing of the transactions contemplated pursuant to the ENA.

2. Limited Access. The City grants a limited right of entry to the Developer, its Key Partners (as defined in the body of the ENA), and their respective agents, contractors, engineers, surveyors, attorneys, and employees (collectively, "Consultants") during the Investigation Period to enter onto the Property and make such customary studies, tests, examinations and inspections, or investigations (collectively, the "Inspections") as the Developer deems necessary or advisable, subject to the limitations and restrictions set forth in this Agreement. The Developer shall conduct all such Inspections strictly in accordance with the following purposes and procedures, and other applicable terms of this Agreement:

2.1 The Developer may conduct and make any and all Inspections of or concerning the Property (including without limitation, engineering, environmental, and feasibility studies and surveys, including topographical surveys); provided, however, that the Developer shall not contact or test groundwater, or perform any invasive testing whatsoever, without the specific prior written consent of the City.

2.2 The Developer shall confirm any and all matters which the Developer may reasonably desire to confirm with respect to the Property.

2.3 The Developer shall ascertain and confirm the suitability of the Property for the Developer's intended use.

2.4 The Developer shall review all due diligence materials, if any, with respect to the Property as delivered or made available by the City to the Developer. The Developer agrees to immediately deliver the foregoing due diligence materials and other Confidential Information (as defined below) to the City upon the termination of this Agreement.

2.5 The Investigations shall be conducted during normal business hours, unless the City otherwise approves in writing, which approval may be given or withheld in the City's sole discretion. The Developer shall provide to the City a notice (which may be sent via email) of the Developer's intent to enter the Property at least three (3) business days prior to the intended date of entry, which notice shall include a general description of the activities to be conducted.

2.6 A representative of the City shall have the right, but not the obligation, to be present during the Investigations.

2.7 Neither the Developer nor its Consultants shall take any action which interferes with the use, occupancy, and/or enjoyment rights of any tenants or occupants of the Property or of such tenant's or occupant's employees, contractors, customers or guests. Neither the Developer nor its Consultants shall injure or otherwise cause bodily harm to City, or the guests, agents, invitees, contractors and employees of the City, or to any other occupant of the Property or their respective employees, guests or invitees.

3. Indemnity by The Developer. The Developer shall indemnify, hold harmless and, if requested by the City (in the City's sole discretion), defend (with counsel approved by the City) the City, together with the City's affiliates, parent and subsidiary entities, successors, assigns, partners, managers, employees, officers, elected officials, counsel, representatives, and agents (collectively, including the City, "the City's Indemnified Parties"), from and against any and all damages, liabilities, losses, demands, actions, causes of action, claims, costs and expenses (including, without limitation, reasonable attorneys' fees, including the cost of in-house counsel and appeals) (collectively, "Losses") arising from or related to the Developer's or any of its Consultants' entry onto the Property, and any Inspections or other matters performed by or for the Developer with respect to the Property.

4. Confidentiality. All information made available by the City to the Developer or its Consultants in accordance with this Agreement, all information obtained by the Developer or its Consultants in the course of its Inspections and the results of all tests, surveys, studies, investigations and assessments conducted or obtained by the Developer (collectively, "Confidential Information") shall be treated as confidential information by the Developer, and the Developer shall not divulge or disclose, and shall cause its Consultants to not divulge or disclose, such information to any third parties, except (a) as required by law, or (b) to the Developer's lenders, attorneys and accountants who need to know such information for the sole purpose of evaluating the Developer's intended use of the Property and who are advised not to divulge such information. If required by law to disclose any Confidential Information, the Developer shall promptly deliver written notice to the City (at the address listed below) of such fact. Within two (2) business days following the City's written request, the Developer shall provide the City with the names of the persons to whom any Confidential Information has been communicated in accordance with this paragraph. The Developer shall be liable for any breach of this paragraph by it or any of its Consultants. All Confidential Information shall be held by the Developer in strict confidence solely for the purpose of assisting the Developer in assessing the suitability of the Property for the Developer's intended use. In providing any such Confidential Information to the Developer, the Developer acknowledges and agrees that the City makes no representation or warranty, express, written, oral, statutory, or implied, and all such representations and warranties are hereby expressly disclaimed and excluded. The Developer shall not in any way be entitled to rely upon the accuracy of such information. Notwithstanding anything in this Agreement to the contrary, the Developer agrees that the covenants, restrictions and agreements of the Developer contained in any confidentiality agreement executed by the Developer prior hereto shall survive the execution of this Agreement and shall not be superseded hereby.

5. Property Documents. The City has previously made, or will make, available to the Developer and its Consultants for their review, certain items and information pertaining to the Property (collectively referred to as the "Property Documents"). The Property Documents have been and shall be made available (to the extent made available) to Developer without representation or warranty by, or recourse against, the City, it being agreed that the Developer shall not rely on such documents and shall independently verify the truth, accuracy and completeness of said information and/or items contained therein. The Property Documents shall not include any internal memoranda or correspondence of the City relating to the Developer's intended use of the Property (i.e., strategy or negotiation oriented memoranda or correspondence), documents which constitute attorney work product or which are subject to the attorney-client privilege.

6. Investigation Documents. On or prior to the expiration of the Investigation Period pursuant to Section 1, the Developer agrees to deliver to the City, without any representation or warranty whatsoever, copies of any and all reports, studies, environmental audits, environmental assessments, or other documents or information prepared by or for the Developer or obtained by or for the Developer with respect to the Property, at no cost or expense to the City. Any such reports, studies, environmental audits, environmental assessments, or other documents or information prepared by the

Developer or its Consultants shall contain language, to be pre-approved by the City in advance, enabling the City to rely on the contents of same. Notwithstanding the foregoing, and unless set forth otherwise in the ENA, the Developer shall not be required to deliver to City any information, reports or analyses that are developed by the Developer based on information it obtains from its due diligence of the Property and which contain financial, marketing, land planning or trade secret information or other information that is proprietary or confidential to the Developer.

7. Restrictions. Notwithstanding anything in this Agreement to the contrary, the City shall have the right in its sole and absolute discretion, without limitation, to disapprove any and all entries, surveys, tests (including, without limitation, a Phase II environmental study of the Property), investigations and other matters that in the City's sole judgment could result in any injury to the Property or breach of any contract, or expose the City to any Losses or violation of applicable law, or otherwise adversely affect the Property or the City's interest therein, and the Developer shall obtain the City's prior written consent to any such entries, surveys, tests, investigations or other matters that are invasive on the Property. The Developer shall use best efforts to minimize disruption to operations at the Property in connection with the Developer's or its Consultants' activities pursuant to this Agreement. No consent by the City to any such activity shall be deemed to constitute a waiver by the City or assumption of liability or risk by the City. The Developer hereby agrees to promptly restore, at the Developer's sole cost and expense, the Property to the same condition existing immediately prior to the Developer's exercise of its rights pursuant to this Agreement.

8. Insurance. The City shall have no liability, responsibility or duty of care to the Developer or to any of its Consultants on the Property. The Developer acknowledges that the Developer and its Consultants enter and occupy the Property at their own risk. Prior to accessing the Property pursuant to this Agreement, the Developer shall maintain and cause its Consultants to maintain the following insurance coverages:

8.1 Workers Compensation Insurance. Insurance to protect the Contractor and its subcontractors from all claims under California Workers Compensation and Employers Liability Acts. Such coverage shall be maintained, in the type and amount, in strict compliance with all applicable State and Federal statutes and regulations.

8.2 Commercial General Liability Insurance. Commercial general liability insurance for bodily injury (including death), personal injury, property damage, owned and non-owned equipment, blanket contractual liability, completed operations, explosion, collapse, covering Contractor's performance, which coverage shall be at least as broad as Insurance Services Office (ISO) Occurrence form CG 0001, and with a limit in an amount of not less than Two Million Dollars (\$2,000,000). If insurance with a general aggregate limit or products-completed operations aggregate limit is used, either the general aggregate limit shall apply separately with the ISO CG 2503, or ISO CG 2504, or insurer's equivalent endorsement or the general aggregate limit and products-completed operations aggregate limit shall be twice the required occurrence limit.

8.3 Automobile Liability Insurance. Insurance to protect against claims arising from death, bodily or personal injury, or damage to properties resulting from actions, failures to act, operations of equipment of the insured, or by its employees, agents, and consultants or by anyone directly or indirectly employed by the insured. The amount of insurance shall not be less than two Million Dollars (\$2,000,000) combined single limit per acts of coverage applied to bodily and personal injury and property damage. Coverage shall include all owned, non-owned and hired vehicles.

8.4 General Provisions. The above insurance coverages shall be subject to the City's reasonable approval. The City shall be provided with copies of the certificate of insurance evidencing the above insurance coverages. The City shall be named as the additional insured on the commercial general liability and automobile liability insurance policies. Each policy of insurance shall require thirty (30) days advance written notice to the City of any change or cancellation of insured. The above insurance coverage shall be primary as respects the interest of the additional insured, include a cross liability and severability of interest endorsement, a waiver of any and all transfer rights of recovery (subrogation) against the additional insured. In addition, the above insurance requirements shall not limit the indemnification obligations of the Developer.

9. Comply with Law. The Developer shall take all necessary actions and implement all protections necessary to ensure that all actions taken in connection with the Inspections or other matters performed by the Developer with respect to the Property, and all equipment, materials and substances generated, used or brought onto the Property pose no material threat to the safety of persons or the environment and cause no damage to the Property or other property of the City or other persons. The Developer shall conduct itself on the Property according to, and all of the Developer's tests, inspections, examinations and studies performed pursuant to this Agreement shall be performed in compliance with, all applicable laws and regulations. Without limiting the previous sentence, the Developer shall inspect, investigate, and otherwise handle any hazardous materials and substances at the Property in such a manner that fully complies with all applicable environmental laws and regulations.

10. Intentionally deleted.

11. No Additional Rights Granted. The Developer acknowledges and agrees that the City's execution of this Agreement shall in no way constitute a binding contract related to the Property or an obligation to enter into or to negotiate any Project Agreements (as defined in the ENA), and no such agreement shall exist unless and until a separate contract has been executed by the City and the Developer. The Developer acknowledges and agrees that nothing in this Agreement shall be in any way construed as granting the Developer any interest in the Property whatsoever on account of this Agreement.

12. General Provisions.

12.1 Applicable law; Venue. The laws of the State of California shall govern the interpretation and enforcement of this Agreement. The Superior Court of Napa County shall be the site and have jurisdiction for the resolution of all such actions.

12.2 Notices, Demands and Communications Between the Parties. Written notices, demands, and communications between the City and the Developer shall be given either by: (i) personal service; (ii) delivery by reputable document delivery service such as Federal Express that provides a receipt showing date and time of delivery; or, (iii) by mailing in the United States mail, certified mail, postage prepaid, return receipt requested, addressed to:

To City:	City Manager Office of the City Manager 955 School Street PO Box 660 Napa, CA 94559-0660
With copy to:	City Attorney Office of the City Attorney 955 School Street PO Box 660 Napa, CA 94559-0660
To the Developer:	Plenary Properties Napa LLC 10100 Santa Monica Blvd, Suite 410 Los Angeles, CA 90067 Attn: Stuart Marks

Notices personally delivered, sent by United States mail or delivered by document delivery service shall be deemed effective upon receipt. Notices sent solely by mail in the manner provided above shall be deemed effective on the second business day following deposit in the United States mail. Such written notices, demands, and communications shall be sent in the same manner to such other addresses as either Party may from time to time designate by mail.

12.3 Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and in accord with Section 12.9 below. The part and paragraph headings used in this Agreement are for purposes of convenience only, and shall not be construed to limit or extend the meaning of this Agreement.

12.4 Counterparts. This Agreement may be executed in counterparts, each of which, after all the Parties hereto have signed this Agreement, shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

12.5 Successors. This Agreement shall be binding upon and shall inure to the benefit of the successors and permitted assigns of each of the Parties hereto.

12.6 Severability. In the event any section or portion of this Agreement shall be held, found, or determined to be unenforceable or invalid for any reason whatsoever, the remaining provisions shall remain in effect, and the Parties hereto shall take further actions as may be reasonably necessary and available to them to effectuate the intent of the Parties as to all provisions set forth in this Agreement.

12.7 Time is of the Essence. Time is of the essence for each of the Parties' obligations under this Agreement.

12.8 Assignment. This Agreement shall not be assignable by Developer without the prior written consent of the City, who shall have the sole discretion to consent or not to consent to any proposed assignment, and which may only be done in accordance with an approved or permitted assignment of the ENA. Any attempted assignment by Developer without the approval of the City shall be void, and shall be deemed a material and incurable breach of this Agreement by Developer.

12.9 Construction. The provisions of this Agreement should be liberally construed to effectuate its purposes. The language of all parts of this Agreement shall be construed simply according to its plain meaning and shall not be construed for or against either Party, as each Party has participated in the drafting of this document and had the opportunity to have their counsel review it. Whenever the context and construction so requires, all words used in the singular shall be deemed to be used in the plural, all masculine shall include the feminine and neuter, and vice versa.

12.10 Several Obligations. Except where specifically stated in this Agreement to be otherwise, the duties, obligations, and liabilities of the Parties are intended to be several and not joint or collective. Nothing contained in this Agreement shall be construed to create an association, trust, partnership, or joint venture or impose a trust or partnership duty, obligation, or liability on or with regard to either Party. Each Party shall be individually and severally liable for its own obligations under this Agreement.

12.11 Attorneys' Fees. If any legal proceeding (lawsuit, arbitration, etc.), including an action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, the prevailing Party shall be entitled to recover actual attorneys' fees and costs, which may be determined by the court in the same action or in a separate action brought for that purpose. The attorneys' fees award shall be made as to fully reimburse for all attorneys' fees, paralegal fees, costs and expenses actually incurred in good faith, regardless of the size of the judgment, it being the intention of Parties to fully compensate for all attorney fees, paralegal fees, costs and expenses paid or incurred in good faith by the prevailing Party.

12.12 Authority. Each Party represents and warrants to the other that the individuals executing this Agreement on behalf of such Party have the authority to enter

into this Agreement and to perform all acts required by this Agreement, and that the consent, approval or execution of or by any third-party is not required to legally bind such Party to the terms and conditions of this Agreement.

12.13 Survival. The provisions of this Section 12 and of Sections 3, 4, 6 and 8 shall survive the termination of this Agreement.

12.14 Entire Agreement. Other than the applicable provisions contained in the body of the ENA, this Agreement contains the entire understanding and agreement of the Parties with respect to the Inspections, and supersedes all prior agreements and understandings, oral and written, between the Parties. It is intended by the parties that the terms in this Agreement are complimentary and/or supplementary to the terms contained in the body of the ENA, and to the maximum extent possible, such terms shall be construed in such manner. There have been no binding promises, representations, agreements, warranties or undertakings by any of the Parties, either oral or written, of any character or nature, except as stated in this Agreement. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the Parties to this Agreement and by no other means. Each Party waives its future right to claim, contest or assert that this Agreement was modified, canceled, superseded or changed by any oral agreement, course of conduct, waiver or estoppel.

Remainder of page intentionally left blank.

IN WITNESS WHEREOF, the City and the Developer have entered into this Agreement as of the date first written above.

CITY:
CITY OF NAPA, a California charter city

DEVELOPER:
PLENARY PROPERTIES NAPA LLC
a Delaware limited liability company

By: _____
Mike Parness, City Manager

By: _____

Name: _____

Its: _____

ATTEST:

By: _____

Name: _____

Dorothy Roberts, City Clerk

Its: _____

COUNTERSIGNED:

Desiree Brun, City Auditor

APPROVED AS TO FORM:

Michael W. Barrett, City Attorney

EXHIBIT E**DESIGN DEVELOPMENT PLANS AND SPECIFICATIONS - DEFINITIONS
AND DELIVERABLES****Code Analysis**

Developer shall prepare and submit to City an outline of applicable provisions of building codes which apply to the Civic Center Project. The outline shall include a written report and diagrammatic drawings which delineate the design criteria (e.g., exit paths, travel distances, required exits, rated walls, rated corridors, building occupancy, construction type, and fire zones). This graphic documentation of the design criteria shall be updated with each subsequent submittal.

Code analysis shall include all applicable codes and standards, including NFPA 1221 and other requirements related to essential facilities and dispatch/EOC.

Area Tabulation

Developer shall develop a space-by-space comparison of the Initial Concept's assignable square feet (ASF) with the Civic Center Project program's ASF. Developer shall provide overall gross square feet (OGSF). These tabulations shall be made by floor and program component and shall include totals for the buildings as a whole.

Energy Analysis

Developer shall submit a complete performance-approach computer simulation demonstrating Title 24 energy compliance for City review and certification. Process loads shall be clearly identified and evaluated as allowed by California Code of Regulation Title 24, Part 6. The simulation shall demonstrate compliance with the City's requirement to outperform Title 24 and reduce process loads as described in subparagraph 1.13.2. The Developer shall correct any non-complying aspect of the design, including the energy compliance approach.

Sustainability

Developer shall submit preliminary sustainability plan and LEED checklist.

Site Planning and Landscape Design**1) Calculations**

- a) Site storm drainage combined with building storm drainage and sanitary sewer calculations
- b) Storm water detention calculations, if required

2) Narrative

- a) Site circulation concept, explaining:

- i) Site circulation design and number of site entrances
 - ii) Proposed scheme for waste removal
 - iii) Proposed scheme for fire apparatus access and fire lanes
 - b) Site utilities distribution concept
 - i) Brief description of fire protection water supplies
 - ii) Brief description of fire hydrant locations
 - iii) Drainage design concept
 - c) Landscape design concept, explaining:
 - i) Reasoning for landscape design, paving, site furnishings, and any water features
 - ii) Reasoning for choice of plant materials
 - iii) Proposed landscape maintenance plan and water conservation plan
 - iv) Brief operating description of irrigation system
 - d) Site construction description
 - i) Brief description of materials proposed for pavements and utilities
 - e) Passive Security features
 - i) Description of approach to crash protection and ballistic protection.
- 3) Drawings
- a) Demolition drawings
 - b) Site layout plan, showing:
 - i) All buildings, roads, walks, parking, and other paved areas (including type of pavement)
 - ii) Accessible route from parking areas and from public street to main facility entrance
 - iii) Fire apparatus and fire lanes
 - c) Grading and drainage plan, showing:
 - i) Site grading and storm drainage inlets, including storm water detention features
 - d) Site utilities plan, showing:
 - i) Sizes and locations of domestic and fire protection water supply lines, sanitary sewer lines
 - e) Landscape design plan, showing:
 - i) General areas of planting, paving, site furniture, water features, etc.
 - ii) Irrigation plan, if applicable

Architectural

- 1) Calculations
- a) Acoustical calculations for compliance to the acoustical performance requirements:
 - i) Interior walls, floors (including raised floors), and ceilings

- b) ASHRAE 160 analysis
- c) Toilet fixture count
- d) Illumination, daylighting, and glare
- e) Elevator analysis
- f) Loading dock analysis
- g) Energy analysis
- 2) Narrative
 - a) Building concept, explaining:
 - i) Energy conservation design elements
 - ii) Water conservation considerations
 - iii) Analysis of refuse removal, recycled materials storage and removal, and maintenance requirements
 - iv) Approach to materials and design to provide Physical and Functional/Economic Life requirements.
 - b) Building construction description, explaining:
 - i) Structural bay size
 - ii) Exterior materials, waterproofing, air barriers/vapor retarders, and insulation elements
 - iii) Roofing system(s)
 - iv) Exterior glazing system
 - v) Interior finishes, with detailed explanation for public spaces
 - c) Provide shading analysis and solar exposure study.
 - d) Potential locations for artwork
 - e) Use of recycled materials
 - f) Sustainable design concepts and LEED strategy
 - g) Building maintenance, explaining:
 - i) How unique and tall architectural spaces such as atriums or grand staircases will be cleaned, have their light fixtures maintained, have interior and exterior glass surfaces cleaned and typical maintenance performed)
 - ii) Proposed scheme for window washing equipment
 - iii) Consideration of integrated pest management and bird nesting on exterior surfaces
 - iv) How major mechanical and electrical equipment can be serviced and/or replaced in future years giving the necessary dimension clearances
 - h) Curtain Wall Report
 - i) Describe size and locations of major movement joints to accommodate structural drift due to seismic and/or wind loading) Describe proposed curtain wall attachment methods to accommodate these lateral movements.
 - ii) Describe water migration
 - iii) Describe exterior fire safety systems

- iv) Describe typical interfaces between exterior wall system and interior finishes
 - v) Describe interfaces between major enclosure assemblies such as glass curtain wall to precast or stone panels
 - i) Door schedule indicating each door type, size, material, hardware group and pertinent comments.
 - j) Window schedule indicating each window type, size, material, and pertinent comments.
 - k) Building keying: Report must fully define the keying hierarchy for the entire building incorporating various levels of access, security, and fire egress.
 - l) Signage Report: Signage system and room numbering system must be integrated with keying system.
 - m) Provide two finish boards for both public and tenant interior areas and two finish boards of exterior finishes composed of actual material samples and color coded plans, sections, and elevations of major space showing their use)
- 3) Drawings
- a) Demolition drawings
 - b) Building floor plans, showing:
 - i) Spaces individually delineated and labeled
 - ii) Door swings
 - iii) Locations and fire ratings of all fire separations, exit enclosures, fire doors, and similar elements, as required by applicable codes.
 - iv) Accessible toilets and drinking fountains.
 - v) Plumbing fixtures such as lavatories, floor drains, water closets, urinals, service sinks, drinking fountains, eyewash fountains, deluge showers, and fire-hose cabinets.
 - vi) Built-in features such as kitchen equipment, display cases, counters, shelves, lockers, laboratory benches, casework, sterilizers, fume hoods, and similar items.
 - vii) Movable furniture, including “interior landscape” partitions and equipment. Differentiate between movable furniture and equipment and built-in furniture and equipment.
 - viii) Enlarged layouts of special spaces
 - ix) Dimensions
 - x) Planning module
 - c) Building reflected ceiling plans, showing:
 - i) Enlarged layouts of special spaces
 - ii) Spaces individually delineated
 - iii) Materials labeled
 - iv) Ceiling heights labeled
 - v) Lighting fixture types indicated and scheduled

- d) Building roof plan, showing:
 - i) Drainage design, including minimum roof slope
 - ii) Dimensions
 - iii) Membrane and insulation configuration of the roofing system
 - iv) Mechanical equipment rooms and their relationship to elevators
- e) Elevations, showing:
 - i) Entrances, window arrangements, doors
 - ii) Exterior materials with major vertical and horizontal joints
 - iii) Roof levels
 - iv) Raised flooring and suspended ceiling space
 - v) Dimensions
- f) Interior elevations, showing:
 - i) Lobby, atrium
 - ii) Public corridors
 - iii) Restrooms
 - iv) Typical public elevator lobby
 - v) Typical tenant corridors
 - vi) Typical conference rooms
- g) One longitudinal and one transverse section, showing:
 - i) Floor-to-floor dimensions
 - ii) Stairs and elevators
 - iii) Typical ceiling heights
 - iv) General roof construction
- h) Exterior wall sections, showing:
 - i) Materials of exterior wall construction, including flashing, connections, method of anchoring, insulation, vapor retarders, and glazing treatments
 - ii) Vertical arrangement of interior space, including accommodation of mechanical and electrical services in the floor and ceiling zones
 - iii) Windowsill and head heights
- i) Proposed room finish schedule, showing:
 - i) Floors, bases, walls, and ceilings
 - ii) Finish schedule may be bound into narrative
 - iii) Perspective sketches, renderings and/or presentation model, if included in the project scope
- j) Proposed site furniture, showing:
 - i) Site furniture cut sheets or photos
 - ii) Proposed locations
- k) Diagrams illustrating the ability to access, service, and replace mechanical/electrical equipment showing the pathway with necessary clearance
- l) Location of accessible pathways and services for the physically disabled

- m) Placement of Art elements
- n) Design of typical building signage, including wayfinding and room identification, building directory, exterior building signage, and major interior building identification
- 4) Specifications
 - a) Provide outline specification section to be used on the project
- 5) Renderings
 - a) Two sets of renderings for:
 - i) model image
 - ii) elevation views for all exposures

Structural

- 1) Calculations – will be provided at the CD Level
- 2) Narrative
 - a) Description of recommended structural concept, including:
 - i) Choice of framing system, including lateral load-resisting elements, and proposed foundation design
 - ii) Verification of adequacy of all assumed dead and live loads
 - iii) Proposed progressive collapse strategy. To demonstrate a good faith effort to accommodate the intent of inherent resistance in the building system without demonstrating capacity
 - b) Geotechnical engineering report, including boring logs
 - c) Geologic hazard report.
 - d) Seismic, and wind analysis if applicable
- 3) Drawings
 - a) Framing plans and key details
- 4) Specifications
 - a) Provide outline specification section to be used on the project

Mechanical

- 1) Calculations
 - a) Building heating and cooling load calculations
 - b) Psychrometric calculations for HVAC systems at full and partial loads (partial loads at 50% and 25%, and unoccupied periods)
 - c) Energy consumption calculations and analysis
 - d) Water consumption calculations and analysis including make-up water for HVAC systems, domestic water consumption, and water consumption for irrigation
 - e) Fuel consumption estimates

2) Narrative:

- a) HVAC: A written narrative describing the final mechanical system and equipment selection including:
 - i) Indoor and outdoor design conditions for all spaces under occupied, 24-hour, and unoccupied conditions
 - ii) Dew point analysis
 - iii) Ventilation rates, dehumidification, and pressurization criteria for all spaces under occupied, 24-hour, and unoccupied conditions
 - iv) Equipment capacities, weights, sizes, and power requirements
 - v) A complete description of the air side and water side systems and the associated components including operating characteristics, ranges, and capacities, spaces served, and special features
 - vi) Descriptions of control strategy and sequence of operations for all spaces under occupied, 24-hour, and unoccupied conditions
- b) Plumbing
 - i) Description of plumbing system, including domestic cold and hot water, sanitary and storm drainage, and irrigation systems

3) Drawings:

- a) HVAC
 - i) Floor plan(s):
 - (1) Single line piping and ductwork schematic layout
 - (2) Show terminal air units
 - (3) Perimeter terminal units
 - ii) Quarter-inch scale drawings of mechanical equipment room(s) showing all mechanical equipment, ductwork, and piping, including equipment access and service requirements in plan, elevations, and cross-sections
 - iii) Roof plan showing all roof-mounted equipment and access to roof
 - iv) Show adequate access from mechanical equipment room(s) to elevators
 - v) Single line schematic flow and riser diagram(s):
 - (1) Airflow quantities and balancing devices for all heating/cooling equipment
 - (2) Water flow quantities and balancing devices for all heating/cooling equipment
 - (3) Flow/energy measuring devices for water and air systems for all cooling, heating, and terminal equipment
 - vi) Automatic control diagram(s) – Will be provided at the CD Level
 - vii) Schedules:
 - (1) Provide schedules of major equipment that includes chillers, boilers, pumps, air handling units, and terminal units, cooling towers, and all equipment required for 24-hour operations
 - viii) Air terminal devices

- ix) Air balance relationships between spaces
- b) Plumbing
 - i) Floor plan(s):
 - (1) Proposed building zoning and major piping runs
 - (2) Locations of proposed plumbing fixtures and equipment
 - ii) Systems schematics and flow diagrams
- 4) Specifications
 - a) Provide outline specification section to be used on the project

Fire Protection

- 1) Calculation
 - a) Occupant load and egress calculations
 - b) Fire protection water supply calculations
 - i) Includes water supply flow testing data
 - c) Fire pump calculations where applicable
 - d) Smoke control calculations where applicable (e.g., atrium)
 - e) Stairway pressurization calculations where applicable
 - f) Calculations contained in The SFPE Handbook of Fire Protection Engineering for calculating sound attenuation through doors and walls for placement and location of fire alarm system audible notification appliances
- 2) Narrative
 - a) Building egress description
 - i) Includes egress calculations and stairway exit capacities, remoteness, exit discharge, etc.)
 - b) All building fire alarm and suppression systems
 - c) Smoke control system(s), where applicable
 - d) Special fire protection systems, where applicable
 - e) Fire resistance rating of building structural elements
 - i) Coordinate with structural engineer
 - f) Fire alarm system
 - i) Interface of fire alarm system with BAS and security systems
 - ii) Review of building for compliance with life safety requirements and building security requirements
 - g) Interior finish requirements as they pertain to the life safety requirements
 - h) Mass notification system
- 3) Drawings
 - a) Floor plans showing:
 - i) Equipment spaces for fire protection systems, Fire protection water supply lines, fire hydrant locations, fire apparatus access roads, and fire lanes
 - ii) Standpipes and sprinkler risers

- iii) Remoteness of exit stairways
- iv) Location of firewalls and smoke partitions
- v) Identification of occupancy type of every space and room in building
- vi) Calculated occupant loads for every space and room in the building
- vii) Location of special fire protection requirements (e)g, kitchens, computer rooms, storage)
- b) Riser diagrams for sprinkler system
- c) Riser diagram for fire alarm system
- 4) Specifications
 - a) Provide outline specification section to be used on the project

Electrical/IT

- 1) Calculations
 - a) Lighting calculations
 - b) Power calculations from building entry to branch circuit panel
 - c) Load calculations
 - d) Power density analysis for lighting of each area
- 2) Narrative
 - a) Proposed power distribution scheme
 - i) Provide a detailed description and justification for the selected scheme. Address special power and reliability requirements, including emergency power and UPS systems.
 - b) Proposed lighting systems
 - i) Discuss typical lighting system features, including fixture type, layout, and type of controls
 - ii) Discuss special spaces such as lobbies, auditoria, dining rooms, and conference rooms
 - iii) Discuss exterior lighting scheme
 - iv) Discuss lighting control systems and daylighting
 - v) Describe the energy usage of the lighting system
 - vi) Interface with BAS
 - vii) Methods proposed for energy conservation and integration with BAS
 - viii) Engineering analysis for demand limit controls
 - c) Description of each proposed signal system
 - i) Description of proposed security systems' features and intended mode of operation
 - ii) Proposed zone schedule
 - iii) Proposed card access controls, CCTV assessment and intrusion protection system, if applicable
 - iv) Preliminary ERRC/BDA/DAS analysis and design approach

- d) Proposed telecommunications Infrastructure
 - i) Systems proposed for infrastructure and cabling to accommodate the communications systems. These must be designed and provided in compliance with EIA/TIA building telecommunications wiring standards.
 - ii) Radio and microwave mast schematics, including locations of equipment, radio signal and line of sight analysis, waveguide routing, etc.
 - iii) Initial WiFi predictive survey
- 3) Drawings
 - a) Site plan
 - i) Proposed site distribution for power and communications, proposed service entrance and location of transformers, generators, and vaults, etc.)
 - b) Floor plans
 - i) Proposed major electrical distribution scheme and locations of electrical rooms and closets and communication closets
 - ii) Proposed major routing of major electrical feeder runs, bus duct, communication backbone systems, and security systems
 - iii) Plan layouts of electrical rooms, showing locations of major equipment, including size variations by different manufacturers
 - c) Single line diagram of the building power distribution system
 - d) Plan of typical office lighting layout
 - e) Single line diagram of other signal system including: telephones, security, public address, and others
 - f) Security system site plan
 - i) Proposed locations for CCTV, duress alarm sensors, and access controls for parking lots. If the system is not extensive, these locations may be shown on the electrical site plan.
 - ii) Security system floor plans
 - iii) Proposed locations for access controls, intrusion detection devices, CCTV, and local panels
 - g) Lightning protection and building grounding
- 4) Specifications
 - a) Provide outline specification section to be used on the project

EXHIBIT F
KEY PARTNERS

Role	Key Partner
Developer	Plenary Properties Napa LLC
Contractor - Civic Center Project	Sundt Construction, Inc. ("Sundt")
Architect of Record – Civic Center Project	Calpo Hom & Dong Architects ("CH&D")
Master Planner, Lead Architect & Designer – Civic Center Project	Woods Bagot Architects, P.C. ("WB")
Operations and Maintenance Provider – Civic Center Project	Johnson Controls, Inc. ("JCI")
Lead Hotel Developer – Private Development Project	Stanford Hotels Corporation ("Stanford")
Residential Developer – Private Development Project	Cresleigh Homes Corporation ("Cresleigh")

EXHIBIT G

KEY INDIVIDUALS

Role	Key Individual	Firm
Project Executive	Stuart Marks	Plenary
Project Manager	Josh Coulter	Plenary
Public Building Architect	Dennis Dong	CH&D
Lead Project Designer	Patrick Daly	WB
Principal-in-Charge	Terry Meurk	WB
Construction Executive	Cody Pearson	Sundt
Project O&M Executive	Claudio Andreetta	Johnson Controls

EXHIBIT H**REQUIREMENTS FOR PRO FORMA FINANCIAL INFORMATION
PRIVATE DEVELOPMENT PROJECT**

Developer shall provide two (2) separate proformas for the Private Development Project, one for the hotel and one for the multifamily residential units. Each proforma shall be provided in an unlocked Excel format and demonstrate the basic details and mix of uses, sources and uses, development costs, and cash flows including, but not limited to:

- 1) An all-in development budget including all direct, indirect, and financing costs, which clearly specifies key assumptions and how calculations are made, including from predevelopment up to and including stabilized operations;
- 2) A stabilized year operating statement detailing assumptions for all sources of income, a vacancy factor, operating expense budget, Net Operating Income ("NOI"), capital reserves, debt service, and equity returns;
- 3) A sources and uses table during predevelopment, construction, and permanent phases of the development, which clearly indicates debt to equity ratio assumptions about all financing;
- 4) A clear statement regarding the Developer's profit/return requirement and how it is calculated; and
- 5) A ten (10) year projection of operating income and cash flows, including:
 - a. For the hotel: income shall be segmented by room revenue, food and beverage, retail, conference revenue, parking and any other income assumptions. Expenses shall be segmented by departmental expenses, undistributed operating expenses and fixed charges. Inflation assumptions, debt service, management fees and replacement reserves shall be separately identified. The projections shall include NOI and residual cash flow after debt service calculations for each year.
 - b. For the residential component: income shall include rental revenue or unit sales, and assumptions and calculations for concessions, bad debt and vacancy losses. Income shall also include, retail revenue, parking and other income. Inflation assumptions, taxes and insurance, management fees and replacement reserves shall be separately identified. The projections shall include NOI and residual cash flow after debt service calculations for each year.
- 6) For the hotel, provide annual assumptions over the ten (10) year projected operating period for Average Daily Rates (ADR's), Vacancy and Revenue Per available Room (RevPar) and Operating expenses (OPEX).
- 7) For the multifamily apartments, provide annual assumptions over the ten (10) year projected operating period for rental rates by unit type, vacancy and OPEX.