

## **RESOLUTION NO. 2265**

### **A RESOLUTION APPROVING THE VALUATION FORMULA AND DEAL TERMS FOR THE SALE OF PROPERTY FORMERLY USED FOR THE CITY'S WASTEWATER TREATMENT SITE, AND AUTHORIZING THE CITY MANAGER TO NEGOTIATE A DEFINITIVE PURCHASE AND SALE AGREEMENT WITH EASTWINDS DEVELOPMENT LLC**

#### **THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:**

1. On May 27, 2014, the Troutdale City Council adopted Resolution No. 2249 authorizing the City Manager to enter into an Exclusive Negotiating Agreement (ENA) to negotiate the terms and conditions for the purchase, sale and transfer of the City's former sewer plant property ("City Property") to Eastwinds LLC in order to facilitate the redevelopment of the City Property and the Troutdale Urban Renewal Area.
2. Following the adoption of Resolution No. 2249, Eastwinds proposed a draft Term Sheet to the City concerning several key terms and milestones for the sale of the City Property, including a formula for determining the Fair Reuse Value of the City Property, a process for appraising the City Property, terms for Eastwinds' removal of animal waste material from the adjacent Eastwinds property, and various closing conditions.
3. Eastwinds requested that at least one elected official from Troutdale participate in negotiations to reach agreement on the Term Sheet. The City, including Mayor Daoust, and Eastwinds engaged in a series of negotiations to refine the Term Sheet. On July 24 and August 12, 2014, City Council held Executive Sessions to receive reports on the status of negotiations, to actively engage in the refinement of the Term Sheet and to give the City Manager and legal counsel direction in responding to proposals from Eastwinds.
4. Upon adoption of the Term Sheet by City Council, the City and Eastwinds shall proceed to obtain appraisals for the City Property, and Eastwinds shall receive bids and finalize arrangements for excavation of the animal waste material from the Eastwinds property. The City and Eastwinds also shall proceed to negotiate a Purchase and Sale Agreement incorporating the Term Sheet and the appraised value of the City Property.

**NOW THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TROUTDALE:**

- Section 1. The City Council approves the valuation formula and deal terms in substantially the form reflected in the attached Term Sheet (Attachment A).
- Section 2. The City Council authorizes the City Manager to negotiate a definitive purchase and sale agreement with Eastwinds Development LLC. for subsequent consideration by the City Council and/or Urban Renewal Agency.
- Section 3. This Resolution takes effect upon passage by the City Council.

**YEAS: 7  
NAYS: 0  
ABSTAINED: 0**



**Doug Daoust  
Mayor**

Date 8/27/14



**Debbie Stickney  
City Recorder**

**Adopted: August 26, 2014**

**TERM SHEET**

Revised Select Terms for Purchase and Sale Agreement  
August 26, 2014

RECITALS:

WHEREAS, The City of Troutdale (the "City") and Eastwinds LLC ("Eastwinds") (individually a "Party" and collectively, the "Parties") are working to remediate and redevelop the former Troutdale Sewer Treatment Plant property ("City Property") and the Eastwinds LLC property ("Eastwinds Property") located within the Troutdale Riverfront Renewal Plan area (the "Project"), and administered by the Urban Renewal Agency of the City of Troutdale ("Agency");

WHEREAS, Eastwinds desires to purchase the City Property, and together with the Eastwinds Property, redevelop the Project site of approximately 20 acres;

WHEREAS, Eastwinds is participating in the Oregon Department of Environmental Quality ("DEQ") Voluntary Cleanup Program to investigate and clean up the Eastwinds Property, including providing the public benefit of voluntarily removing non-toxic animal waste from former meat packing operations not required to be removed;

WHEREAS, Eastwinds has contributed to the Sandy River Access Plan and other local and regional planning efforts. Eastwinds intends that the property along the Sandy River will remain open to and accessible by the public, and if possible, placed in public ownership for future generations;

WHEREAS, Eastwinds and the City are working together to identify public infrastructure to support the future redevelopment of the site and the surrounding community consistent with, and in conformance with, the adopted Troutdale Riverfront Renewal Plan;

WHEREAS, the Parties have negotiated a formula as set forth in this Term Sheet for determining a major component of the Fair Reuse Value of the City Property as defined by Oregon law for property within the Urban Renewal Area;

WHEREAS, upon approval of this Term Sheet by the Troutdale City Council, the Parties will appraise the City Property and incorporate that information into a subsequent Purchase and Sale Agreement ("PSA") subject to the requirements of ORS 457.230. The PSA will be presented to the Agency for approval at a later date.

NOW THEREFORE, for good and valuable consideration as stated herein, the Parties agree as follows:

1. Purchase price to be determined as follows:

- a. APPRAISALS/VALUATION: Appraisals shall be conducted pursuant to the terms and conditions of Exhibit A, attached and incorporated by reference to this Term Sheet.
- b. DEDUCTION: Full cost for demolition of City Property
  - i. Expense for demolition in compliance with all laws applicable to public works projects;
  - ii. Eastwinds and City may secure estimates from licensed contractors, scope to include demolition and removal of all buildings, ponds and liquid storage, plus removal of all waste materials at offsite location; and
  - iii. LOWEST estimate shall be deduction amount.
- c. DEDUCTION: The City and Eastwinds have both incurred significant fees and expenses to cleanup and redevelop the Troutdale Urban Renewal Area. In consideration of Eastwinds' expenditures of planning/professional fees incurred for the Sandy River Access Plan and related planning efforts to provide community benefits through public access and open space,
  - i. The City will allow a one-time deduction not to exceed \$50,000.00 from the purchase price for fees and expenses described above; and
  - ii. Eastwinds will provide invoices for fees and expenses not to exceed \$50,000.00 incurred to-date for preparation of the Sandy River Access Plan and site concept planning.

2. Closing to occur upon issuance by DEQ of a No Further Action ("NFA") Determination.

City to submit NFA request and supporting documentation to DEQ no later than September, 2014.

3. Animal Waste Removal

a. Eastwinds to obtain all necessary approvals and funding to conduct removal of waste from area identified by DEQ on accelerated schedule in September, 2014, including all handling, excavation, transportation and disposal, and confirmation sampling and analysis to confirm compliance with applicable laws and regulations.

b. City to contribute to public outreach consistent with EPA Work Plan and grant requirements with the understanding that Eastwinds may develop additional public outreach at Eastwinds expense and any additional public outreach materials that Eastwinds requests the City to use will be without additional cost or expense to the City.

**UNDERSTOOD AND AGREED:**

CITY OF TROUTDALE

By: Doug Daoust

Name: Doug Daoust

Title: Mayor

Date: 8/27/14

EASTWINDS LLC

By: Matthew Ward

Name: Matthew Ward

Title: General Counsel

Date: 9/5/14

## EXHIBIT A

### APPRAISAL PROCEDURE, TERMS AND CONDITIONS

On or after the approval of the Term Sheet, the City and Eastwinds, at each Party's own cost and by giving notice to the other Party, will appoint an individual or firm (with one or more owners) that is a Member of the Appraisal Institute ("MAI") with at least five years' full-time commercial real estate appraisal experience in the area of the City Property to appraise and set the Appraised Value.

Valuation under all appraisals assumes a No Further Action ("NFA") Determination will be provided by the Oregon Department of Environmental Quality ("DEQ") for the City Property prior to Closing. Valuation will assume the site as clean with no structures remaining. Valuation shall be based on current accessibility and zoning. The Parties acknowledge that the City Property may only be sold for the Fair Reuse Value as required by Oregon Revised Statutes for property within an Urban Renewal Area.

The appraisers selected by City and Eastwinds will independently report in writing on their opinion as to the appropriate Appraised Value to each other no later than 30 days after such appraisers have been selected by the Parties. Each Party will promptly, on receipt of the appraisal report from its appraiser, deliver the report to the other Party and make every effort to deliver the appraisal report to the other Party at substantially the same time to avoid delay in evaluation of the reports.

If the higher appraisal is equal to or less than 110 percent of the lower appraisal, the two appraisals will be added together and their total divided by two; the resulting quotient will be the Appraised Value. If the higher appraisal is greater than 110 percent of the lower appraisal, then the two appraisers will meet to confer and determine if any assumptions, facts or circumstances can be reevaluated so that the higher appraisal is equal to or less than 110 percent of the lower appraisal.

If, after conferring, the appraisers are not able to reconcile the values of each appraisal as stated in the preceding paragraph, then within ten (10) days after the City's and Eastwinds' receipt of the appraisal reports, the two originally selected appraisers will choose a third appraiser, meeting the above qualifications, who will, not later than ten (10) days after selection, determine a third Appraised Value. If the two appraisers are unable to agree on the third appraiser within such ten (10) day period, then either City or Eastwinds may request the MAI President of the Oregon Chapter of the Appraisal Institute to select a third appraiser meeting the above qualifications. The third appraiser, however selected, must be a person who has not acted in any capacity for or against either Party.

The Parties may use the third appraisal in any way mutually agreed between the Parties, including without limitation, averaging the Appraised Value from the third appraisal with the prior two appraisals. Each Party will pay the fees and expenses of its own appraiser and will equally share the fees and expenses of any third appraiser.

Each appraiser will hear, receive, and consider such information as the City and Eastwinds each care to present regarding the Appraised Value, and each appraiser will have access to the information used by each other's appraiser. On setting the Appraised Value, the appraisers will immediately notify the City and Eastwinds in writing of such decision by certified mail with return receipt requested.