

RESOLUTION NO. 2249

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN EXCLUSIVE NEGOTIATING AGREEMENT WITH EASTWINDS LLC

THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:

1. For over a year, Eastwinds LLC has explored potential deal points for transferring the City's former wastewater treatment plant (the "Property") to Eastwinds LLC for inclusion within a larger development plan, in the Urban Renewal Area.
2. Discussions between the parties indicate that there is sufficient potential for Eastwinds to realize the development potential of the Property, that the City should demonstrate its willingness to come to terms for a purchase and sale of the Property.
3. Eastwinds LLC has requested an exclusive right to negotiate with the City to facilitate its development and financing.
4. Under the proposed exclusive negotiating agreement ("ENA"), the City will temporarily forsake negotiating with any party other than Eastwinds. During this time, Eastwinds and the City will attempt to identify the activities that each step must take to result in transfer and development of the Property.

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

Section 1. The Council authorizes the City Manager to enter into an exclusive negotiating agreement in substantially the form of the ENA attached as Exhibit A to this Resolution.

Section 2. This Resolution takes effect upon passage by the City Council.

YEAS: 7
NAYS: 0
ABSTAINED: 0



Doug Daoust, Mayor

Date

5/28/14

Debbie Stickney

Debbie Stickney
City Recorder

Adopted: May 27, 2014

EXCLUSIVE NEGOTIATION AGREEMENT

TROUTDALE RIVERFRONT URBAN RENEWAL PROJECT

Between

City of Troutdale

And

Eastwinds Development LLC

1. This Exclusive Negotiation Agreement (“Agreement” or “ENA”) is entered into this __ day of May, 2014 (“Effective Date”) between the City of Troutdale, Oregon (“City”), a political subdivision and municipal corporation of the State of Oregon, and Eastwinds Development LLC, an Oregon limited liability company (“Eastwinds”) (individually a “Party” and together, the “Parties.”)
2. The ENA establishes a period of time during which the Parties will complete ongoing pre-construction development activities and conclude negotiations regarding the potential transfer and redevelopment of certain real property between the Parties (the “Troutdale Riverfront Urban Renewal Project” or “Project”), which period commences on the Effective Date and ends on the 180th day after the Effective Date (“Initial ENA Period”). The real property that is included in the Project and illustrated in Exhibit 1 includes a parcel owned by the City (“City Property”) and a parcel owned by Eastwinds (“Eastwinds Property”). Together, the City Property and the Eastwinds Property are a part of the Troutdale Riverfront Urban Renewal Site as identified in the Troutdale Riverfront Renewal Plan. The City, in its sole discretion, may transfer the City Property to the Troutdale Urban Renewal Agency (the “Agency”) before completion of any or all activities contemplated by this ENA or any subsequent definitive agreements are executed by the Parties. The ENA is a continuation of the process to pursue development of the Project, which may include without limitation, completion of environmental site assessments pursuant to the City’s United States Environmental Protection Agency (“EPA”) Brownfield Assessment Grant and ongoing remedial action activities with the Oregon Department of Environmental Quality (“DEQ”), potential transfer of property between the Parties and evaluating redevelopment options and corresponding costs and limitations due to environmental, natural resource or economic conditions. In consideration of Eastwinds’ efforts under this Agreement including without limitation, Eastwinds’ tasks set forth in Exhibit 2, the City agrees not to negotiate, solicit or enter into any agreement with any third party for the potential transfer and/or development of the City Property or transfer all or any portion of the City Property (other than to Agency consistent with this ENA) during the Initial ENA Period and any extension of this ENA.
3. Except for the good faith duties of the Parties, the exclusive negotiations and transfer covenants in Section 2 above, the termination and extension rights in Sections 4 and 5 below, the provisions

of Section 8 and this Section 3, as described herein, this ENA is not a binding legal agreement and does not commit either Party to any specific agreement or to proceed to sale or purchase and/or development of the City Property or otherwise. Rather it is a statement of the activities that each Party intends to undertake, in good faith, to lead to sufficient detail about the potential transfer and development of the City Property to continue negotiations towards binding agreements. The Parties understand and agree that no Party will be bound until a final, definitive purchase and sale agreement for the purchase and sale of the City Property has been negotiated, approved, executed and delivered by City and Eastwinds (and, if applicable, Agency) (“PSA”). Except as expressly stated in the first sentence of this Section 3, neither this ENA nor any negotiations or actions pursuant hereto are to be relied upon by the Parties as a contract (express, by estoppel or otherwise), until a definitive, written PSA is agreed upon and mutually executed and delivered by the Parties. Upon execution of a definitive PSA, the terms of such agreement shall supersede this ENA and any prior negotiations, and shall govern the transaction. Each Party is proceeding at its own expense and, except as hereafter may be specifically agreed in writing, neither Party will be required to reimburse the other Party for costs related to this proposed transaction. Time is of the essence of the enforceable paragraphs of this ENA.

4. If either Party reasonably determines that the potential transfer of the City Property to Eastwinds or development of the Project by Eastwinds is not in its best interest, either Party may terminate the ENA by giving written notice to the other Party of the date of termination. If the ENA is so terminated, neither Party has any financial or other obligations whatsoever to the other Party, and City may thereafter undertake negotiations for the transfer and development of the City Property with any third party it chooses.
5. The ENA will terminate on the earlier of: (1) one hundred and eighty (180) days after the Effective Date, (2) the date a subsequent definitive PSA is executed by the Parties, or (3) the date that the ENA is terminated before the conclusion of the Initial ENA Period (“Termination Date”). If the ENA is not terminated beforehand under Section 4 by the Parties or a subsequent definitive PSA is not executed by the Parties within ten (10) days of the Termination Date, the Parties will meet before the Termination Date to assess progress toward each of the Tasks set forth in Exhibit 2 to this ENA. Thereafter, unless a Party gives written notice to the other of its intent to terminate the ENA, the Parties will continue in good faith toward completion of the Tasks in Exhibit 2 through an extension period sufficient to negotiate and prepare the subsequent definitive agreement(s) that the Parties determine necessary to proceed with the Project. If the Parties do not enter into a subsequent definitive PSA within one hundred and eighty (180) days after the Termination Date, the ENA will automatically terminate, unless both Parties agree in writing to continue the ENA beyond that date.
6. Regular and direct communication between the Parties is a necessary part of all the activities contemplated by this ENA. Therefore, Eastwinds has identified Ron Garzini and the City has identified Craig Ward as the respective Parties’ Lead Project Representatives. Each Lead Project Representative shall coordinate staff, legal advisors and other consultants as each deems necessary to diligently complete the Tasks set forth in Exhibit 2. The Lead Project

Representatives will schedule regular monthly meetings of project team members to address matters of mutual interest and to keep each other informed on progress and challenges.

7. The Parties will make good faith efforts to complete their respective Tasks set forth in Exhibit 2 to this Agreement prior to the Termination Date unless the Parties agree in a subsequent definitive agreement to undertake or complete any Tasks after the Termination Date.
8. The undersigned representatives are authorized to sign this ENA on behalf of their respective Parties, and agree to receive any notices sent by the other Party at the address set out below. This ENA may be signed in counterparts which, together, constitute the same agreement. Signatures by fax or pdf are binding as originals.

City of Troutdale

By: 

Craig Ward, City Manager
219 E. Historic Columbia River Hwy.
Troutdale, OR 97060

With a copy of notices to:

Douglas C. MacCourt
Ater Wynne LLP
1331 NW Lovejoy St., Suite 900
Portland, OR 97209

Eastwinds Development LLC

By: 

Glenn Leier
Eastwinds Development LLC.
8440 N.E. Alderwood Rd., Suite A
Portland, OR 97220

With a copy of notices to:

Christopher R. Hermann
Stoel Rives LLP
900 SW Fifth Avenue Suite 2600
Portland, OR 97204-1268

EXHIBIT 1: PROPERTY MAP AND ILLUSTRATION



EXHIBIT 2: PRECONSTRUCTION DEVELOPMENT TASKS

Eastwinds will, at Eastwinds' sole cost and expense:

- E-1 During the first 120 days of the Initial ENA Period, fund and manage a Detailed Market Feasibility Study for its proposed development of the Project, and provide a summary of the study findings to the City.
- E-2 Within 30 days after receipt of the City information described in Paragraphs C-1 and C-2 below:
 - a. If appropriate, revise the conceptual Site Development Plan and massing study of the site showing development and infrastructure components, including, but not limited to, the possible location and amount of public use components, parking, trails and sustainable/green and historic preservation project elements that may be incorporated into a development and illustrative sketches describing the proposed character of the overall project and public spaces.
 - b. Identify desirable public infrastructure on and around the site, including a conceptual street layout and pedestrian connections. The public infrastructure should address the planned roles of North Frontage Road and S. 257th Street as probable gateways to the project, and the proposed location and a conceptual design and construction cost estimates for pedestrian connections and trails.
 - c. Identify a potential development schedule and a phasing plan, taking into consideration, among other things, the time limits imposed by the ongoing environmental studies.
 - d. Identify revisions to the Troutdale Riverfront Renewal Plan, and the City's land use and zoning codes necessary to implement Eastwinds' conceptual Site Development Plan.
 - e. Eastwinds has applied for the certain loan funding from Business Oregon, and will work with the City, legal and other staff, environmental consultants, and DEQ to assess and, in Eastwinds' sole discretion, undertake (i) removal of the animal carcasses from the Eastwinds' Property as early as October 2014 and (ii) such actions as may be required by DEQ necessary for Eastwinds to obtain a Prospective Purchaser Agreement ("PPA") with respect to the City Property or other approval for the Eastwinds' Property, as determined by Eastwinds in its sole discretion.
- E-3 Identify preliminary realistic funding/financing sources for completion of pre-construction activities and a successful development, including sources, processes and timing for acquiring such resources and estimates for City financial participation.
- E-4 Once detailed feasibility studies are complete seek partners for development of the site.
- E-5 During the first 60 days of the Initial Period, draft instructions for an appraisal of the City Property that includes a value based upon its "as is" condition, although the appraisal is understood to be conducted within six (6) months of its anticipated sale or title transfer at fair market value.
- E-6 Support the Jurisdictional Transfer Agreement for the Old Kendall Frontage road (North Access) from the Oregon Department of Transportation (ODOT) to the City. Work with Simon Outlet Group (with support of City) to assure site coordination as development planning is continued.

- E-7 Draft a Purchase and Sale Agreement (“PSA”) consistent with this ENA for negotiation with the City and identify development parameters and City public infrastructure investments necessary to implement the current or a revised Troutdale Riverfront Renewal Plan through Eastwinds’ conceptual Site Development Plan.
- E-8 Define expectations for the City’s continuing participation in a PSA.
- E-9 Coordination with other owners:
- Simon – initiated by Eastwinds, and supported by the City for North Access. Eastwinds will also endeavor to coordinate its Master Plan with Simon Outlet Group.
 - Railroad – joint contact, rail underpass, Kibling extension, and leasehold owned by Union Pacific within the Master Plan area
 - ODOT – joint contact highway and trail interface
 - DLCD and Corps of Engineers regarding river access, primary contact City of Troutdale

City will, at City's sole cost and expense:

- C-1 After receipt of Eastwinds' Conceptual Site Development Plan, identify infrastructure needs to implement the Troutdale Riverfront Renewal Plan and
- C-2 After receipt of Eastwinds' Conceptual Site Development Plan, provide to Eastwinds a conceptual plan for public infrastructure that may influence Eastwinds' conceptual Site Development Plan.
- C-3 After receipt of the materials under E-2 above:
 - a. Consider and respond to Eastwinds' proposed public investments in implementing Eastwinds' revised conceptual Site Development Plan.
 - b. Assist Eastwinds to identify potential permits of non-City public agencies for Eastwinds' revised conceptual Site Development Plan.
 - c. Assist Eastwinds to identify consistency of Eastwinds' conceptual Site Development Plan with vegetation corridor, riparian zone, or similar standards and provide a rough outline of District Plan requirements or variance proposals as needed to implement Eastwinds' conceptual Site Development Plan.
 - d. Approve or disapprove the conceptual Site Development Plan.
- C-4 Consider and respond to Eastwinds' proposed instructions for an appraisal of the City's former wastewater treatment plant with the goal of mutual agreement.
- C-5 Continue to implement the EPA Brownfield Assessment Grant program with Eastwinds cooperation in the City's grant funded activities and in the DEQ Voluntary Cleanup Program, including Eastwinds' removal of the animal waste area and other remedial action activities on the City Property as needed.
- C-6 Identify the process needed to transfer the City's former wastewater treatment plant property from the City to the Urban Renewal Agency and support Eastwinds efforts to coordinate with Simon.
- C-7 Complete the Jurisdictional Transfer Agreement for the Old Kendall Frontage road from ODOT to the City.
- C-8 Define expectations for Eastwinds continuing participation in a PSA and negotiate the PSA with Eastwinds consistent with this ENA.
- C-9 Coordination with other owners:
 - Simon – initiated by Eastwinds, and supported by the City for North Access. Eastwinds will also endeavor to coordinate its Master Plan with Simon Outlet Group.
 - Railroad – joint contact, rail underpass, Kibling extension, and leasehold owned by Union Pacific within the Master Plan area
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