

**ASTORIA: HERITAGE SQUARE
EXCLUSIVE NEGOTIATING AGREEMENT
DRAFT IV**

March 1, 2022

THIS EXCLUSIVE NEGOTIATING AGREEMENT (the "Agreement") is made and entered into as of the last date of signature indicated below (the "Effective Date"), by and between the City of Astoria, an Oregon municipal corporation ("Owner"), and Edlen & Co. Development, LLC ("Developer"), an Oregon limited liability company registered with the State of Oregon and licensed with the City of Astoria.

RECITALS

A. Owner owns real property and rights appurtenant thereto, (hereinafter referred to as the "Property"), located on portions of the block bounded by Duane, Exchange, 11th and 12th Streets in Downtown Astoria, commonly known as "Lots 4-11, 13 & 14, Block 64, of the Town (now City) of Astoria, as laid out and recorded by John McClure and as extended by Cyrus Olney, in the City of Astoria, County of Clatsop, State of Oregon, EXCEPTING THEREFROM the North 5 feet of lots 4-7 inclusive, the South 5 feet of Lots 8-14, inclusive, the East 5 feet of Lots 7 and 8, and the West 5 feet of Lot 14, all in Block 64, of the Town (now City) of Astoria, as laid out and recorded by John McClure and extended by Cyrus Olney, in the City of Astoria, County of Clatsop, State of Oregon."

B. Owner has prioritized the provision of new workforce housing serving area businesses, and accordingly seeks to form a *Public Private Partnership* to redevelop the Heritage Square site, as set forth in a Request for Expressions of Interest (RFEI) soliciting developer teams for the Property, which the Astoria Development Commission ("Commission") issued in November of 2021. The Commission received two responses to the RFEI.

C. On January 18, 2022, the Astoria Development Commission held a public hearing to consider the recommendations of a "Heritage Square Review Panel", which the Mayor of Astoria had appointed for the purpose of evaluating responses to the RFEI. Following public testimony, the Commission recommended that the Owner enter into an Exclusive Negotiating Agreement (the "Agreement") with the Developer, for the purpose of negotiating the terms of a Disposition and Development Agreement (DDA) under which the Developer will acquire and redevelop the Property with uses, site plans, building designs, and other elements to be negotiated between the Owner and the Developer (the "Parties"). The Commission's recommendation was based on the Developer's response to the RFEI; and the evaluation, developer interviews and recommendation of the Mayor-appointed Review Panel.

D. On February 7, 2022, the Astoria City Council convened a public hearing and received further testimony from members of the public.

E. On February 22, 2022, the Astoria City Council met and voted to authorize the City Manager to enter into this Agreement.

F. This Agreement provides Developer with the exclusive rights to negotiate with Owner for conveyance and development of the Property; provides Developer with exclusive “site control”; and confirms the basis upon which the Parties are prepared to initiate negotiation of the terms of a DDA and related documents providing for the desired program of development for the Property. The DDA must be approved by the Owner.

G. The terms of this Agreement are as follows:

TERMS

1. Good Faith Exclusive Negotiations. Owner and Developer agree and covenant to negotiate the terms of the Disposition and Development Agreement and any intervening Memoranda of Understanding (as defined below) in good faith. Owner acknowledges that Developer has expended substantial time and expense and will continue to expend time and expense in preparing its initial proposal, conducting due diligence, conferring with City staff with regard to project programming, design and deal terms and refining its development proposal. During the term hereof, Owner agrees Developer shall have the exclusive right to conduct due diligence and to negotiate with Owner for the rights to develop the Property and that Owner will not accept, solicit, pursue or entertain any other offers or other indications of interest with respect to the Property for any development, sale or other transaction.
2. Duration. The Term of this Agreement shall be 180 days from the Effective Date. Owner may, in its sole discretion, extend this Agreement for up to two additional 90-day renewal terms upon the determination of the Owner’s Executive Director that Developer has made significant progress in defining a feasible development for the Site. In making this determination, the Executive Director will consider such factors as the Developer’s progress on the following elements of the deal:
 - the progress made in securing construction and permanent financing
 - the progress made in securing tenants for commercial space, if any
 - the progress made in cooperating with the City in examining options to expand the range of household incomes that the project can serve
 - the progress made in obtaining Owner support for any proposed Commission participation, such as the types of participation described in Section 8.3 of this Agreement
3. Termination. This Agreement shall automatically terminate upon execution and delivery of the Disposition and Development Agreement (“DDA”) which shall thereafter control the rights of the Parties with respect to the Property. Until that time, either party may in their sole discretion, terminate this Agreement by notice in writing to the other of their decision not to pursue development of the Project.
4. Performance Timeline. The Performance Timeline attached as Exhibit A establishes the

good faith expectations of the Parties during the term of the Agreement. The times for performance in the Timeline establish ranges and/or estimates and not strict deadlines.

5. Initial Concept Development Proposal. The Developer's *initial* proposal is for a project consisting of the elements identified below. However, the parties anticipate that this program is likely to evolve during the term of this Agreement. This Initial Concept Development Proposal serves as an early expression of the expectations of the Owner with regard to the transaction contemplated herein. As the concept development program evolves, this description shall serve as guidance at the inception and during the negotiations among the Parties. The Initial Concept Development Proposal consists of the following elements:

- A new workforce housing project on the primary (easterly) portion of the site, consisting of 44-75 rental units (depending on floor plan and number of stories) in a three or four level building, primarily serving households at 60-80% of MFI
 - Owner intends to encourage a broader income range, possibly to include a limited number of unrestricted units, recognizing that this component will require careful analysis to ascertain its impact on project feasibility
- Parking for approximately 55 cars, to be a mix of surface and "tuck under" spaces
- Building design that respects the rich architectural heritage of the surrounding Historic District
- Mix of ground floor uses to be negotiated, possibly to include loft residential units, childcare facilities, community space (including a community room facing the Garden of Surging Waves), and retail use.
 - The parties acknowledge that some of the proposed ground floor uses could trigger commercial prevailing wage requirements, affecting project costs and the potential funding gap.
- A new 4 story building on the smaller (southeasterly) portion of the site, consisting of 33 studio units serving very low income clients (at or below 30% of MFI) of Clatsop Behavioral Health (CBH); also to include ground floor offices and wrap around services provided by CBH.

6. Memorandum of Understanding. Tentative agreements on the terms of the DDA may be memorialized in a written Memorandum of Understanding ("MOU"), or series of such memoranda, during the Term of this Agreement. Any such MOUs will provide the continuing framework for final negotiations and preparation of the Disposition and Development Agreement.

7. DDA and Preconditions to Closing.

7.1 Owner's conveyance of the Property to Developer, and its willingness to provide various forms of financial assistance to the Developer, will be formalized within the DDA. The DDA will also incorporate terms and conditions necessary in the Owner's sole discretion to warrant the financial assistance. Key areas to be addressed in the DDA

will include but not be limited to: the final design drawings and development program; the final Land Value Write down and any other financial participation that the Owner decides to contribute to the project; a detailed timeline for performance; sources and uses of funds; remedies and reconveyance provisions for failure to progress or perform (giving due consideration to typical requirements of investors and lenders); and monthly construction monitoring reports and copies of all draw requests as applicable.

7.2 The conditions precedent to entry into the DDA include but are not limited to:

- Owner satisfaction, in its sole discretion, that there have been no material changes to Developer's qualifications and financial capacity since approval of the ENA (this shall include the Developer's partners identified in Developer's response to the RFEI)
- Owner approval of the conceptual design and other due diligence established by Owner
- Establishing a Performance Timeline that is satisfactory to Owner
- Owner approval of the design drawings, of any land value write-down and any other public participation
- Owner authorization to enter into the DDA

7.3 The DDA conditions precedent to closing will include but not be limited to:

- Execution of financing agreements consistent with sources and uses in the DDA
- Execution of construction contract consistent with sources and uses in the DDA
- Owner approval of final project plans and issuance of building permits consistent with the final project plans in the DDA
- Securing a predetermination letter from the Oregon Bureau of Labor and Industry establishing that prevailing wage laws do not apply to the Project or, in the event that such wage laws do apply, that adequate sources exist to pay any additional construction costs likely to be incurred as a result

8. Co-application/Cooperation.

- 8.1 Owner and Developer shall be co-applicants on any land use permit application sought in connection with this Agreement or subsequent Memoranda issued during the term thereof. Developer shall bear responsibility for all land use application and permit fees, unless otherwise agreed to by Owner.
- 8.2 Owner and Developer shall each promptly provide to the other all information reasonably related to the Property and the Project which may be obtained without material expense, upon written request. Owner and Developer acknowledge that certain amendments to the City of Astoria's Comprehensive Plan and its zoning code are needed to best facilitate the Project. The Astoria City Council will be considering these code amendments on February 7, 2022. The amendments pertain to language in the Comprehensive Plan regarding suitable uses for the Heritage Square site; allowance of multi-family housing in the C-4 zone as a

matter of right; and the elimination of any minimum off-street parking requirements for housing uses in the C-4 zone. These amendments need to be legislatively approved prior to proceeding with development under the new code. Owner and Developer shall cooperate in connection with any zoning and development code amendments, applications, permits, approvals or entitlements sought by Developer from any governmental authorities with respect to the Project, including easements, provided that Owner shall not be required to incur any material cost or liability related to such applications, permits or approvals.

- 8.3 The Parties will confer on a regular basis throughout the term of this Agreement, particularly with respect to the project design, development program and deal structure. Regarding deal structure, the Developer will confer with Owner particularly relative to proposed Owner participation. Developer has identified a complete land write-down as a possible type of Owner participation in the deal. Developer has also indicated that they will seek urban renewal funds to address extraordinary costs associated with development of the site, including geotechnical considerations and remediation of environmental contamination. The parties understand that any public (particularly Owner) participation in the project will be subject to the Owner's reasonable determination that the public participation is necessary to assure the financial viability of the project, and that suitable measures are incorporated in the ultimate deal structure to assure the protection of public benefits for a reasonable period of time.
 - 8.4 The Parties intend to cooperate in all aspects of the project development provided that both parties reach agreement on those aspects.
 - 8.5 The Parties intend to cooperate in identifying and securing other potential funding sources, understanding that these other sources need to be evaluated in terms of the requirements that they would impose on the project. Potential sources include State funding (specifically Low Income Housing Tax Credits and "LIFT" program funds), Project Based Vouchers, and Property Tax Abatement.
9. Due Diligence. Developer may conduct due diligence and inspections of the Property, including such physical, legal, and engineering inspections, tests and investigations as it may deem necessary or desirable, including soils and environmental studies. Developer shall inform Owner prior to any such studies being undertaken. Such studies and investigations may include, without limitation, zoning, land use, environmental, title, design review, covenants, conditions and restrictions, financing, leasing markets, project feasibility and related matters. The scope and cost of the due diligence and inspections shall be the sole discretion and responsibility of Developer, other than any due diligence activities which Owner in its sole discretion opts to fund. In the event that Developer elects not to proceed with the DDA or development of the Project, Developer shall provide to Owner copies of all studies, including environmental and soils studies, surveys, title reports and similar information developed during the Due Diligence by Developer, for the City's use in any subsequent negotiations with other developer teams.

10. Access. Owner shall provide Developer full access to the Property for the purpose of conducting Due Diligence. Developer shall repair or restore any damage caused by the entry of Developer or its agents upon or under the Property.
11. Indemnity and Insurance. Developer hereby agrees to indemnify, defend and hold Owner, including its appointed and elected officials, officers, employees and agents, harmless from and against any and all claims for injury to persons or damage to property caused by or resulting from the acts or neglect of Developer or its representatives or consultants on or about the Property. During the term of this Agreement, Developer shall maintain insurance with respect to its activities on or about the Property, naming Owner as an additional insured, in amounts as follows: (i) commercial general liability insurance with a combined single limit of not less than \$1,000,000 per occurrence and with at least \$2,000,000 general aggregate; (ii) auto liability insurance with combined single limit of \$1,000,000 per occurrence; (iii) employers liability insurance with a limit of not less than \$1,000,000; (iv) profession liability insurance with a limit of at least \$2,000,000 per claim and (v) in addition to the primary limits specified in (i) and (ii) above, excess liability insurance with a limit of not less than \$4,000,000 for each occurrence and in the aggregate. The indemnity required under this Section 11 shall survive termination of this Agreement.
12. No Assignment. Neither party shall assign or transfer its interest in this Agreement.
13. Brokers. Owner and Developer each represent and warrant to the other that no broker, finder or other representative has acted on its behalf in connection with this Agreement. Owner and Developer agree to indemnify, defend and hold the other harmless from any claim or liability for any fee, commission or other compensation with respect to this Agreement, the DDA or other transactions contemplated hereby, asserted by any other broker, finder or other representative claiming through the indemnifying party. Section 13 shall survive termination of this Agreement.
14. Confidentiality. While striving to maintain transparency to the greatest extent practicable, Owner and Developer agree that some information submitted by Developer during the term hereof may need to be submitted on the condition that Owner keep said information confidential to the full extent permitted by law. This includes but is not limited to financial statements and *pro forma* information. Prior to submitting such information, Developer shall indicate a desire to maintain confidentiality, including the rationale for confidentiality. In this event, Owner will either agree not to disclose said confidential information, or inform the Developer that Owner does not agree, in which case Developer may provide further clarification as to why Developer believes it is necessary to maintain confidentiality. This nondisclosure agreement shall survive termination of this Agreement but shall not apply to the extent any such information is publicly available, has been disclosed by other parties or is required to be disclosed by the Clatsop County District Attorney under Oregon public records laws.
15. Governing Law. This Agreement shall be governed by the laws of the state of Oregon.

- 16. Time of the Essence. Time is of the essence of this Agreement.
- 17. Amendments. This Agreement may be amended only by the written agreement of the Parties hereto.
- 18. Notices. All notices given under this Agreement must be in writing and either personally delivered; delivered by express mail, Federal Express or comparable courier service; or delivered by certified mail, postage prepaid, return receipt requested, as follows:

To Owner: City of Astoria
 Brett Estes, City Manager
 1095 Duane Street
 Astoria, Oregon 97103


To Developer: Edlen & Co. Development, LLC
 Jill Sherman
 151 SW 1st Avenue, Suite 300
 Portland, Oregon 97204

All notices shall be deemed effective upon receipt. Any party may from time to time change its address for purposes of this Section by notice in writing to the other party.

- 19. Binding Effect. During the Term hereof and any extensions thereto, the Parties shall negotiate in good faith to complete and execute the definitive DDA upon terms and conditions consistent with this Agreement and the MOUs. No sale agreement or other right, obligation or estate in land shall be created except by delivery of the definitive DDA and all other related and necessary instruments, duly authorized by the Commission and all necessary Developer corporate action and executed by authorized representatives of the Parties. If the DDA is not executed and delivered prior to expiration of the Term and any extensions thereto, or if Developer elects, in its sole discretion, by notice in writing to Owner not to pursue development of the Project, this Agreement shall terminate and be of no further force or effect, except Sections 11, 13, 16 and 17 hereof, which shall survive termination. If during the course of negotiations, it becomes clear that the Parties will not reach an agreement, Developer shall not unreasonably withhold consent to early termination of this Agreement.

DEVELOPER:

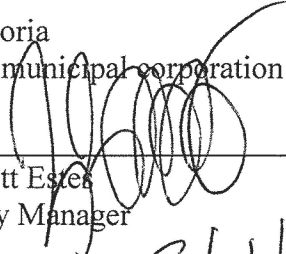
Edlen & Company, LLC
 An Oregon limited liability company

By: 
 Jill Sherman
 Principal in Charge

Date: March 4, 2022

OWNER:

City of Astoria
 an Oregon municipal corporation

By: 
 Brett Estes
 City Manager

Date: 3/4/22

EXHIBIT A

Performance Timeline

(Note – all dates are tentative and are subject to change)

City Council Authorization of ENA: February 22, 2022
Programming & Design Development: February – June, 2022
Application for State Funding: early April, 2022
State Funding Award: August, 2022
DDA: Fall, 2022
Historic Design Review: Fall, 2022
Financing Commitments: Winter 2023
Building Permits: Spring, 2023
Construction Start: August, 2023
Project Completion: Fall, 2024
Community Engagement: Ongoing