

EXCLUSIVE NEGOTIATING AGREEMENT

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 Klamath Falls, a municipal corporation ("Owner"), and Cody Development Corp., dba project^, an Oregon corporation ("project^").

RECITALS

- A. The City of Klamath Falls owns real property and all rights appurtenant thereto (hereinafter "Property"), located at the intersection of Main Street and Esplanade Avenue and further described as Klamath County Assessor map tax lots R-3809-028CC-10700, 10800, 10900, 11000, 11100, 11200, 11300, and 11400 in the City of Klamath Falls, County of Klamath, State of Oregon, commonly known as the Balsiger redevelopment site.
- B. The City of Klamath Falls has identified project^ for further negotiations concerning redevelopment of the Property subject to the approval of the City of Klamath Falls City Council.
- C. This Agreement confirms the basis upon which Owner and project^ (the "Parties") are prepared to negotiate the terms of a Disposition and Development Agreement and related documents providing for the redevelopment of the Property (the "Development"), which then must be approved by the City of Klamath Falls City Council.

TERMS

- 1. Good Faith Exclusive Negotiations. Owner and project^ agree and covenant to negotiate the terms of a Disposition and Development Agreement (DDA) and any intervening Memoranda of Understanding (MOU) (both defined below) in good faith. Owner and project^ acknowledge and agree project^ will expend time and expense in preparing its initial proposal, conducting due diligence, providing preliminary conceptual design aspects and refining its development proposal. During the term hereof, Owner agrees project^ shall have the exclusive right to conduct due diligence and negotiate with Owner for the rights to develop the Property and Owner will not accept, solicit, pursue or entertain other offer(s) or indications of interest with respect to the Property for any development, sale or other transaction.
- 2. Duration. The Agreement's term is 180 days from the Effective Date which may be extended for two (2) additional 120-day renewal terms upon the written approval of the City of Klamath Falls City Manager. This Agreement automatically terminates upon execution and delivery of a DDA (assuming one is ultimately negotiated) which thereafter controls the rights of Owner and project^ with respect to the Property. The Parties may terminate this Agreement by mutual agreement if latent conditions are discovered on the Property or events occur that would (either presently or with the passage of time) prevent the entry and execution of a DDA.

Notwithstanding the above, either Owner or project[^] may at their option terminate this Agreement by notice in writing if the other makes a material misrepresentation in the course of the negotiations hereof; otherwise fails to act in good faith; if project[^] becomes insolvent or (in the terminating party's reasonable estimation) otherwise is unable to perform as set forth below in the Base Development Criteria.

3. Base Development Criteria. The Base Development Criteria expresses Owner's expectations with regard to the transaction serving as guidance at the inception and during negotiations between project[^] and Owner but are not nor shall be construed as mandatory criteria. Base Development Criteria are attached as Exhibit A.
4. Basic Business Terms. The Owner intends to prepare the lot in question for development regardless of the outcome of this agreement. Further the Owner, will place conditions on the development that constrain any developer into providing a high-quality mixed-use development within certain time frames. As an inducement for bringing a high-quality mixed-use development to the Property as required, it is mutually understood that Owner intends to convey Property to project[^] at a cost of \$1 free and clear of any above ground structures and the reasonable remove of subservice structures necessary for redevelopment of the site, a copy of the no further action determination on environmental conditions or hazardous materials, leveled with structural fill, and in addition Owner will pay any and all City fees associated with the development of the Property.
5. Memorandum of Understanding. Tentative agreements on the terms of a Disposition and Development Agreement (DDA) shall be memorialized in a written Memorandum of Understanding ("MOU") or series thereof during the Term of this Agreement. Any such MOUs will provide the framework for final negotiation and preparation of the DDA.
6. Cooperation.
 - 5.1 Owner and project[^] shall each provide each other all information reasonably related to the Property and Development which may be obtained without material expense upon written request. Owner and project[^] shall cooperate in connection with any zoning and development code amendments, applications, permits, approvals or entitlements sought by project[^] from any governmental authority with respect to the Development, including easements, provided Owner is not required to incur any material cost or liability connection with such applications, permits or approvals.
 - 5.2 Project[^] understands that to the extent that Owner is a governmental authority that must approve any permit or land use application, that the permit or application will be processed through its normal procedures. Administrative, Planning Commission, and City Council approvals for such permits applications are not guaranteed.
7. Due Diligence. Project[^] may conduct due diligence and inspections of the Property, including physical, legal and engineering inspections, tests and investigations as it deems

necessary or desirable including soils and environmental studies. 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 project[^]. In event project[^] elects not to proceed with the DDA or construction of the Development, project[^] shall nonetheless provide Owner copies of all studies, including environmental and soils studies, surveys, title reports and similar information developed by or provided to project[^] during Due Diligence.

8. Access. Owner shall provide project[^] full access to the Property for purposes of Due Diligence. Project[^] shall repair or restore any damage caused by project[^] or its agent's entry on or under the Property.
9. Indemnity and Insurance. Project[^] 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 third persons or damage to property caused by or resulting from the acts of project[^] or its representatives or consultants on or about the Property. During the term of this Agreement, project[^] 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. The indemnity required under this Section 8 survives termination of this Agreement.
10. No Assignment. Neither party shall assign or transfer its interest in this Agreement or the Property until termination of this Agreement or execution and delivery of the DDA.
11. Brokers. Owner and project[^] each represent and warrant to the other that no broker, finder or other representative acting on its behalf in connection with this Agreement. Owner and project[^] 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. This Section 10 survives termination of this Agreement.
12. Confidentiality. Owner and project[^] agree all information submitted by project[^] during the term hereof is submitted on the condition that Owner keep said information confidential. Owner agrees not to disclose said confidential information provided by project[^], including but not limited to financial statements regarding project[^] or the Development and pro forma information. This nondisclosure agreement survives termination of this Agreement but does 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 Klamath County District Attorney under Oregon public records laws. Owner further agrees that Owner shall not disclose the terms of this Agreement, MOUs or DDA prior to the termination or expiration of this Agreement or

execution of the DDA (whichever occurs first) unless disclosure is required by the Klamath County District Attorney under Oregon public records laws.

- 13. Governing Law. This Agreement shall be governed by the laws of the state of Oregon.
- 14. Time of the Essence. Time is of the essence of this Agreement.
- 15. Amendments. This Agreement may be amended only by the written agreement of the Parties hereto.
- 16. Notices. All notices given under this Agreement must be in writing and either (i) personally delivered, (ii) delivered by express mail, Federal Express or comparable courier service, or (iii) delivered by certified mail, postage prepaid, return receipt requested, as follows:

To Owner: City of Klamath Falls
Nathan Cherpeski
City Manager
500 Klamath Avenue
Klamath Falls, OR 97601

To project[^]: Cody Development Corp., dba project[^]
1116 NW 17th Avenue
Portland, OR 97209

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 a definitive DDA upon terms and conditions consistent with this Agreement and any MOUs. No sale agreement or other right, obligation or estate in land shall be created except by delivery and appropriate execution of the definitive DDA and all other related and necessary instruments duly authorized by the Klamath Falls City Council and necessary project[^] authorized representatives. If the DDA is not executed and delivered prior to expiration of the Term (and any extension(s) thereto) or if project[^] elects in its sole discretion (by notice in writing to Owner) not to pursue construction of the Development, this Agreement shall terminate and be of no further force or effect, except Sections 8, 10 and 11 hereof which all survive termination. If during the course of negotiations, it becomes clear no agreement can be reached project[^] shall not unreasonably withhold consent to early termination of this Agreement.

project [^] :	OWNER:
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<p>Tom Cody Managing Partner</p> <p>Dated</p> <p>_____</p>	<p>Nathan Cherpeski City Manager</p> <p>Dated</p> <p>_____</p>
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EXHIBIT A

Base Development Criteria for Negotiations

Development of a multi-floor mixed-use development consisting of market rate apartments and commercial space.

Development is to incorporate a mix of residential floor plans, styles, and price points to help meet the diverse needs of those seeking an urban living experience in downtown Klamath Falls. Floor plans are to include a combination of townhouses and flats and to vary in size from studio units up to two and three-bedroom units with two baths.

Development is to complement and enhance the Historic Main Street environment through appropriate scope and scale of architecture and finishes.

New building facades are to have a strong pedestrian orientation along Main Street and Esplanade Avenue and create a vibrant street presence suitable for this important gateway to the Central Business District.

Parking for residences shall be at a ratio of at least 1:1. Inclusion within the parking district is desired for further flexibility.

Development is to incorporate low-impact development features and site improvements that enhance the building exterior and improve ecological performance. Sustainable building elements and development approaches to be incorporated as feasible including but not limited to construction waste recycling, energy and water efficiency, materials selection and ecologically sound site design features.

Site design is to establish a pattern to improve public pedestrian connectivity through the site, particularly between Main Street and Esplanade Avenue.