

AGREEMENT TO NEGOTIATE EXCLUSIVELY

THIS AGREEMENT TO NEGOTIATE EXCLUSIVELY (“Agreement”) is entered into by and between the Urban Renewal Agency of the City of Coeur d’Alene, aka ignite cda, a public body, corporate and politic (“Agency”), organized pursuant to the Idaho Urban Renewal Law, title 50, chapter 20, Idaho Code, as amended (the “Law”), and undertaking projects under the authority of the Local Economic Development Act of 1988, title 50, chapter 29, Idaho Code, as amended (the “Act”), and _____, or its assigns as provided for herein (“Developer”), collectively referred to as the “Parties” and each individually as “Party,” on the terms and provisions set forth below.

RECITALS

Agency, an independent public body, corporate and politic, is an urban renewal agency created by and existing under the authority of the Law and the Act;

Following notice duly published and a public hearing, the City Council adopted its Ordinance No. 2842 on December 16, 1997, approving the Coeur d’Alene Urban Renewal Plan for Midtown, Northwest Boulevard, and Downtown Urban Renewal Project, and making certain findings;

Following notice duly published and a public hearing, the City Council adopted its Ordinance No. 3154 on November 18, 2003, approving the Lake District Amended and Restated Urban Renewal Plan, and making certain findings;

Following notice duly published and a public hearing, the City Council adopted its Ordinance No. 3337 on August 19, 2008, approving the Lake District Second Amended and Restated Urban Renewal Plan, and making certain findings;

Following notice duly published and a public hearing, the City Council adopted its Ordinance No. 3542 on July 13, 2016, approving the First Amendment to the Lake District Second Amended and Restated Urban Renewal Plan, and making certain findings;

Following notice duly published and a public hearing, the City Council adopted its Ordinance No. _____ on December 4, 2018, approving the Second Amendment to the Second Amended And Restated Midtown-Northwest Boulevard Downtown Urban Renewal Plan Now Referred to as the Lake District Urban Renewal Project Plan (the “Plan”), and making certain findings;

In order to achieve the objectives of the Plan, Agency is authorized to acquire real property for the revitalization of areas within Agency's boundaries;

Agency owns certain real property (the "Site"), as described on Exhibit A;

Agency seeks to initiate a redevelopment project to revitalize the Project Area in compliance with the Plan through the redevelopment of the Site, which could also serve as a catalyst for redevelopment of other properties in the vicinity;

Following the issuance of a Request for Proposals, attached hereto as Exhibit B, Agency received _____ proposals for development of the Site;

At a public meeting on _____, 201__, the Agency Board selected Developer's proposal attached hereto as Exhibit C as the highest ranked proposal;

Agency and Developer intend to pursue the negotiations of a Disposition and Development Agreement ("DDA") and, thus, comply with the required notice provisions concerning the disposition of property by Agency as set forth in the Law;

Agency seeks to enter into an agreement with Developer for the purpose of analyzing and assessing a development opportunity for the Site as defined in this Agreement.

NOW, THEREFORE, Agency and Developer hereby agree as follows:

AGREEMENTS

Section 000 DEFINITIONS

"Agency" shall be the Coeur d'Alene Urban Renewal Agency, aka ignite cda, and includes both Agency Staff and the Agency Board.

"Agency Staff" shall be the staff of Agency, as opposed to the members of the Agency Board.

"Agency Board" shall be the members of the Agency's Board of Commissioners, as duly and legally appointed.

"Developer" shall be _____, or its assigns.

“Disposition and Development Agreement” or **“DDA”** shall mean the agreement the Parties hope to negotiate that will set forth the definitive terms of Agency’s disposition of the Site to Developer.

“Effective Date” shall be the date this Agreement is signed by both Parties (last date signed).

“Negotiation Period” shall begin on the Effective Date and end _____ (___) days after the Effective Date, unless extended by Agency.

“Schedule of Performance” shall mean the attached Exhibit D.

“Site” shall mean the real property owned by Agency and more particularly described in Exhibit A, attached hereto and incorporated herein by reference.

Section 100 NEGOTIATIONS

Section 101 Good-Faith Exclusive Negotiations

The Parties agree the foregoing recitals are not mere recitations but are covenants of the Parties, binding upon them as may be appropriate and a portion of the consideration for the agreements contained herein.

Agency and Developer agree for the Negotiation Period to negotiate diligently and in good faith to prepare a DDA to be considered for execution between Agency and Developer, in the manner set forth herein, with respect to the development of the Site. During the Negotiation Period (defined below) Agency shall not directly or indirectly negotiate with any person or entity other than Developer with respect to the disposition or development of the Site.

Section 102 Negotiation Period

The duration of this Agreement (the “Negotiation Period”) shall commence on the Effective Date and shall terminate _____ (___) days thereafter (the “Termination Date”). Provided, Agency may, in its discretion, extend the Negotiation Period for an additional thirty (30) days beyond the Termination Date: if such extension is at the sole instigation of Agency, no extension fee shall be due. In the event that Developer requests such an extension and Agency grants such request, Agency may, in its sole discretion, require Developer to pay an extension fee of \$_____. In the event an extension fee has been paid and a DDA has been executed by both Parties, such extension fee shall be credited towards the purchase price for the Site.

If, upon expiration of the Negotiation Period, Developer has not executed an Agency Staff approved, as to form, DDA, then this Agreement shall terminate, unless extended in writing by Agency. Once a DDA is signed by both Developer and Agency, then the terms of the DDA shall prevail and this Agreement shall automatically terminate.

If the negotiations do not result in an executed DDA, Developer shall submit to Agency a summary of its findings and determinations regarding the proposed development, excluding any confidential or privileged information. If this Agreement is terminated per this Section 102, Developer shall not seek reimbursement for costs and expenses from Agency and Agency shall not seek reimbursement for costs and expenses from Developer, except that Agency shall retain any extension fee paid by Developer, and Agency shall be entitled to retain the Deposit (defined below) subject to Section 103.

Section 103 Deposit

Developer's Submission of Deposit:

Developer shall submit to Agency a deposit ("Deposit") in an amount of _____ Dollars (\$_____) in the form of cash or cashier's check to ensure that Developer will proceed diligently and in good faith to negotiate and perform all of Developer's obligations under this Agreement. This Deposit shall be applied to the purchase price for the site. Provided, if the Parties terminate this Agreement before Agency incurs any costs in preparing the Reuse Appraisal, defined below, the Deposit shall be refunded in its entirety to Developer. After Agency incurs any third-party costs in preparing the Reuse Appraisal, such costs shall be deducted from the amount of the Deposit refunded to Developer if such a refund occurs as otherwise provided herein.

Submission of the Deposit must occur within fifteen (15) days of the Effective Date. If Developer fails to submit said Deposit within the fifteen (15) day period, Agency may terminate this Agreement, with neither Party having any further rights against nor liability to the other under this Agreement, unless as agreed to in writing by Agency.

Agency shall be under no obligation to pay or earn interest on Developer's Deposit, but if interest shall accrue or be payable thereon, such interest (when received by Agency) shall become part of the Deposit.

Section 200 DEVELOPMENT CONCEPT

Section 201 Scope of Development

Agency and Developer acknowledge Developer's proposal, as submitted to Agency (the "Proposal"), is attached as Exhibit C.

Section 202.01 Design Development Plan

Developer shall refine and supplement their Proposal to produce a second submittal to Agency Staff under this Agreement (the "Design Development Plan"). Prior to the submittal of the Design Development Plan to Agency Staff, Developer, a principal representative or representatives from Developer's architectural design firm ("Principal Designer"), and Agency Staff shall engage in a design refinement process to address design-related issues identified by Agency. Following this design refinement and within _____ (___) days of the Effective Date, Developer shall submit the Design Development Plan to Agency Staff which shall include:

A clear chart showing changes from the Proposal including:

- square footage by type of uses,
- number of parking spaces
- perspective renderings
- floor plans
- site plan
- elevations/sections listing exterior finishes.

The Design Development Plan shall also include a brief project summary and a critical path analysis identifying key milestones in the planning and construction stages for the Project and an updated estimated project schedule. Developer shall submit the Design Development Plan to Agency Staff and Agency Staff shall review and consider the Design Development Plan as set forth in Section 202.02 of this Agreement and the Schedule of Performance.

Section 202.02 Approval of the Design Development Plan

Within fifteen (15) days of Agency Staff's receipt of the Design Development Plan, Agency shall either approve or disapprove the Design Development Plan in writing to Developer. In the event the Design Development Plan is initially disapproved by Agency Staff, within fifteen (15) days of Agency's receipt of the Design Development Plan Agency Staff shall set forth the reasons for disapproval and options that address Agency's reasons for disapproval. Developer shall then have fifteen (15) days to resubmit information to address the reasons for disapproval. Within five (5) days of Agency Staff's receipt of the resubmittal, Agency Staff shall meet with Developer to discuss the resubmittal (the "Resubmittal Meeting") and

shall identify issues that have not been resolved to Agency Staff's satisfaction, if any, and shall provide an additional period of fifteen (15) days for Developer to resubmit information to address Agency Staff's issues. Agency and Developer agree that the purpose of this process is to reach a mutually satisfactory resolution of differences on project design with the understanding that Agency retains the right to approve the Design Development Plan. In the event the Design Development Plan, as applicable, is again disapproved based on issues identified by Agency Staff in its discussions with Developer, Agency may terminate this Agreement and the Deposit, less any costs incurred per Section 103, shall be refunded to Developer.

Section 203 Progress Reports

Developer agrees to make oral and written progress reports advising Agency on all matters and all studies being made by Developer on a monthly basis or at the request of Agency.

Section 204 Assessment of Project Feasibility; Notification

In the event at any time during the Negotiation Period Developer determines that it is not feasible to proceed with the Project, this Agreement shall be terminated upon ten (10) days' written notice to Agency. In the event of such termination, Agency shall refund the Deposit subject to Section 103 of this Agreement.

In the event of such termination neither Party shall have any further rights against or liability to the other under this Agreement. Developer acknowledges and consents that in the event this Agreement is terminated, Agency has the right and authority to enter into an exclusive right to negotiation agreement concerning the Site with any other interested developer.

Section 300 PURCHASE PRICE AND/OR OTHER CONSIDERATIONS

During the Negotiation Period, Agency and Developer shall negotiate the purchase price to be paid by Developer for the Site and the schedule and conditions for transfer of the Site to Developer with respect to financing and a schedule for the development and disposition of the Site, which schedule and conditions will be included in the DDA. Provided, it will be a condition of the transfer of the Site that Developer pay the entire Purchase Price (less the Deposit) to Agency before the title is transferred to Developer.

Under the Law, Agency may transfer real property for no less than the fair reuse value. Agency will prepare and provide Developer with a copy of the reuse appraisal ("Reuse Appraisal") based upon the information developed through the Design Development Plan as described in this Agreement. The Reuse Appraisal shall

establish the fair reuse value of the Site as required under the Law (the “Residual Land Value”).

Within _____ (____) days of the Effective Date, Developer shall submit to Agency Staff the data required by the appraiser (“Reuse Appraiser”) who has been selected by Agency, which data (“Reuse Appraisal Data”) is needed by the Reuse Appraiser to prepare the Reuse Appraisal for the Site. Developer shall submit the Reuse Appraisal Data at the time the Design Development Plan is submitted to Agency Staff. Developer may be required to supplement the Reuse Appraisal Data during the course of the Reuse Appraisal and shall submit this supplementary data in a timely manner as required by the Reuse Appraiser and Agency. The Reuse Appraisal Data includes but may not be limited to:

- density of development,
- costs expected to be incurred and revenues expected to be realized in the course of developing and disposing of the Project,
- residential and/or commercial unit types,
- sizes and expected sales prices or rents,
- square footages of retail and office space,
- estimated number of parking spaces,
- leasing or sales prices for other uses and assets such as office space, retail space and parking spaces,
- assumptions regarding soft costs such as marketing and insurance, risks of Agency, risks of Developer,
- Developer participation in the funding of public facilities and amenities, and
- estimated or actual Developer return including assumptions regarding entrepreneurial incentive, overhead and administration as these factors apply to the Project.

The Parties anticipate completion of the Reuse Appraisal within _____ (____) days of the Effective Date. Developer acknowledges that Agency will be unable to commence the Reuse Appraisal process without Developer’s submittal of the Reuse Appraisal Data, and Developer acknowledges that Agency will be unable to complete negotiation of the terms of the DDA without the results of the Reuse Appraisal.

Section 400 DEVELOPER AND DEVELOPER'S OBLIGATIONS

Section 401 Nature of Developer

Developer is _____, or its assigns. Wherever the term "Developer" is used herein, such term shall include any permitted nominee or assignee as herein provided.

Section 402 Full Disclosure

Developer is required to make full disclosure to Agency of its officers, key managerial employees, and design professionals (collectively the "Development Team") involved in this Project. Any significant change during the period of this Agreement of the Development Team or in the controlling interest of Developer of the Project covered by this Agreement is subject to the approval of Agency, such approval not to be unreasonably withheld or delayed.

This Agreement shall only be assigned or otherwise transferred as provided herein.

Section 403 Compliance with Applicable Laws

Developer recognizes it will be required to comply with all applicable laws, including all applicable federal and state labor standards, antidiscrimination standards, affirmative action standards, and nondiscrimination and nonsegregation standards, laws, and regulations in development, rental, sale, or lease of the Site.

Section 500 AGENCY'S RESPONSIBILITIES

Section 501 Urban Renewal Plan

This Agreement and any DDA agreed to by the Parties are subject to the provisions of the Plan.

Section 600 REAL ESTATE COMMISSIONS

Agency shall not be liable for any real estate commission or brokerage fees which may arise here from. Agency represents that it has engaged no broker, agency, or finder in connection with this transaction, and Developer agrees to hold Agency harmless from any claim by any broker, agent, or finder retained by Developer.

Section 700 EXECUTION OF THIS AGREEMENT NOT A DISPOSITION OF PROPERTY

By its execution of this Agreement, Agency is not committing itself to or agreeing to undertake: (a) disposition of land to Developer; or (b) any other acts or activities requiring the subsequent independent exercise of discretion by Agency; or (c) any other acts or activities requiring the subsequent independent exercise of discretion by any federal or state agency including, but not limited to, environmental clearance and historic preservation approval. Execution of this Agreement by Agency and Developer does not constitute a disposition of property by Agency.

Section 800 ISSUES OF NEGOTIATION

Developer recognizes that the following items are matters Agency desires be addressed during the Negotiation Period, but both Parties understand that there is no present agreement as to the manner or degree to which they or any particular one can or will be included in the DDA or Development Plan.

Section 801 Design Refinement

Prior to submission of the Design Development Plan, Agency, Developer, and the Principal Designer shall engage in design discussions to address design issues related to the Design Development Plan identified by Agency, which Agency desires to resolve prior to submittal of the Design Development Plan to Agency by Developer. Agency shall prepare a list of the issues to be addressed in the Design Development Plan, and the process shall be conducted as provided in the Schedule of Performance.

Section 802 Demolition and Clearance

Cost estimates for demolition and clearance, and any environmental remediation, shall be included in the Reuse Appraisal as a development cost to be paid by Developer. The Parties agree to address as part of the negotiation of the DDA: 1) the timing and any phasing involving the demolition and clearance costs; 2) rights of the Parties to the structural components and materials comprising the buildings and any equipment or appurtenances on the Site; and 3) requirements, if any, for recycling of structural components and building materials as part of demolition and clearance.

Section 803 Agency Participation

Developer specifically acknowledges, recognizes, and consents that Agency participation in the Project may be limited to the inclusion of the Site for the Project at a yet to be determined value based on the Reuse Appraisal and Agency determinations.

Section 900 GENERAL PROVISIONS

Section 901 Notices

Formal notices, demands, and communications between Agency and Developer shall be sufficiently given if sent by registered or certified mail, postage prepaid and return receipt requested, to the principal offices of Agency and Developer as set forth below. Routine communication may be by first class mail, e-mail or telephone.

Agency

Tony Berns
Executive Director
105 North 1st Street, Suite 100
Coeur d'Alene, Idaho 83814
(208) 292-1630
tonyb@ignitecda.org

Developer

Name
Company
Address
City, State, Zip
Telephone
Email

Section 902 Remedies and Damages

Notwithstanding anything to the contrary contained in this Agreement, Developer's obligations hereunder are nonrecourse. Agency's only recourse and security for Developer's obligations shall be retention of the Deposit and any extension fee. In the event of any legal proceeding described in this Section 902 between the Parties to this Agreement to enforce any provision of this Agreement or to protect or establish any right or remedy of either Party hereunder, the prevailing Party shall recover its reasonable attorney fees, at trial and upon appeal, as determined by the Court.

Section 903 No Recordation

In no event shall any Party record this Agreement or any memorandum hereof or otherwise encumber the Site by reason of this Agreement or the negotiations contemplated hereby.

Section 904 Successors and Assigns

No Party may assign or delegate its obligations under this Agreement without the consent of each other Party hereto, which consent may not be unreasonably withheld or delayed. Agency may condition its consent to any assignment which would require the assignee to comply with City and Agency design standards and guidelines. Agency shall not withhold consent to any assignment of this Agreement by Developer to an entity managed by Developer or its assigns, directly or indirectly. Except as otherwise set forth in this Agreement, the terms, covenants, conditions, and agreements contained herein specifically, but not including, Agency's right to approve or disapprove the Design Development Plan as set forth in section 202.02, shall be binding upon and inure to the benefit of the heirs, personal representatives, successors, and assigns of the Parties hereto.

Section 905 Counterparts

This Agreement may be executed in counterparts, and each counterpart shall then be deemed for all purposes to be an original, executed agreement with respect to the Parties whose signatures appear thereon.

Section 906 Local Project Management

_____, an employee of Developer, shall serve as Local Project Manager ("Project Manager") who will be available to Agency.

Section 1000 TERMINATION

Section 1001 Termination by Mutual Agreement:

This Agreement may be terminated at any time by the written consent of either Party. In the event of such termination, Deposit shall be refundable as set forth in Section 103 and neither Party shall have any further rights against or liability to the other under this Agreement.

Section 1002 Termination Due to Inability to Agree on the DDA Terms:

Upon termination of this Agreement at the expiration of the Negotiation Period, or such extension thereof, neither Party shall have any further rights against nor liability to the other under this Agreement. If this Agreement is terminated for the Parties' failure to negotiate a DDA acceptable to both Parties, Developer shall not seek reimbursement for costs and expenses from Agency, and Agency shall not seek reimbursement for costs and expenses from Developer, except to retain from

Developer's Deposit and extension fee, if any, any third-party costs actually incurred by Agency in preparing the Reuse Appraisal, as provided in Section 103.

Exhibits

- Exhibit A Legal Description of the Site**
- Exhibit B Request for Proposals**
- Exhibit C Developer's Proposal**
- Exhibit D Schedule of Performance**

End of Agreement

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the dates set forth below.

_____, 2019

AGENCY
ignite cda

_____, _____

_____, 2019

DEVELOPER

By _____
Its _____

Exhibit A
Legal Description of the Site

Exhibit B
Request for Proposals

Exhibit C
Developer's Proposal

Exhibit D
Schedule of Performance

Task	Completion Date	Section Reference
Developer Submits Design Development Plan to Agency Staff	_____ (____) days after the Effective Date	202.01
Developer Provides Reuse Appraisal Data to Reuse Appraiser	_____ (____) days after the Effective Date	300
Agency Staff approves or disapproves of the Design Development Plan	Within fifteen (15) days of Agency's receipt of the Design Development Plan	202.02
Developer's response to Agency's disapproval of the Design Development Plan ("Developer's Resubmittal")	Within fifteen (15) days of Developer's receipt of Agency's disapproval of the Design Development Plan	202.02
Agency's Meeting with Developer to discuss Developer's Resubmittal (the "Resubmittal Meeting")	Within five (5) days of Agency's receipt of Developer's Resubmittal	202.02
Developer's submission in response to Agency's issues with Developer's Resubmittal	Within fifteen (15) days of the Resubmittal Meeting	202.02
Completion of Reuse Appraisal	_____ (____) days after the Effective Date	300
Finalize Disposition and Development Agreement agreeable to Agency Staff and Developer	_____ (____) days after the Effective Date	102

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