

Coos Bay Urban Renewal Agency
Agenda Staff Report

MEETING DATE	AGENDA ITEM NUMBER
December 3, 2013	

TO: Chairman and Board Members

FROM: Rodger Craddock, City Manager

ISSUE: Approval of the Exclusive Negotiation Agreement with the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians

BACKGROUND:

The City of Coos Bay Urban Renewal Agency (Agency) at their October 15, 2013 meeting authorized the City Manager to enter into negotiations with the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians (CTCLUSI) for the development of the Hollering Place. Negotiations are well underway and have progressed to the next milestone which is the development of an Exclusive Negotiation Agreement. The agreement was drafted in accordance with the wishes of the Agency as stated at the October 15th meeting, and it has been reviewed by the CTCLUSI attorney, City Attorney, and Jeanette Launer, the attorney hired which specializes in this type of negotiation and the intricacies regarding the Oregon Revised Statutes and urban renewal districts.

ADVANTAGES:

The agreement is a positive step in the negotiation process and enables negotiations to continue.

DISADVANTAGES:

None.

BUDGET:

The agreement requires the CTCLUSI to deposit \$10,000 with the Agency to fund any payment that the CTCLUSI would be obligated to make under a Disposition and Development Agreement (DDA). This deposit is refundable if the negotiations fail to enter into a DDA

RECOMMENDATION:

Staff proposes the Agency authorized the City Manager to sign the Exclusive Negotiation Agreement to continue negotiations with CTCLUSI.

Attachment:
Exclusive Negotiation Agreement

EXCLUSIVE NEGOTIATION AGREEMENT

This Exclusive Negotiation Agreement ("Agreement") is entered into this _____ day of December 2013 between the Urban Renewal Agency of the City of Coos Bay ("URA") and the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians ("Developer").

A. The URA is the owner of certain real property situated at the junction of Newmark Avenue and Empire Boulevard (Cape Arago Highway), consisting of approximately 3.27 acres in the City's Empire District (tax lots #6000, #301, and #300), commonly referred to as the Historic Hollering Place site (collectively, the "Property").

B. On August 6, 2013, the URA sent a request for proposals to the public entitled "Development Solicitation/ Request for Qualifications/ The Historic Hollering Place Development" ("RFP"), which solicited qualifications and a concept for the development of the Property. On September 13, 2013, Developer submitted a response to the RFP, proposing a preliminary concept for the development of the Property ("Project"). On October 18, 2013, the URA reviewed the responses to the RFP and voted to move forward with Developer to negotiate terms for the Project.

C. The purpose of this Agreement is to establish procedures and standards for the negotiation by the URA and Developer of a Disposition and Development Agreement ("DDA") for the acquisition by Developer of the Property and the development of the Project.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the receipt of sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Exclusive Negotiation Period. The Developer and the URA agree to negotiate in good faith and exclusively for a period ending no later than 5:00 p.m. Pacific Time on March 7, 2014, unless extended by mutual agreement. "Negotiate" does not require securing the formal approval of the parties' governing bodies, but rather the parties anticipate that a DDA may be submitted for such approvals after expiration of the negotiation period. For the purposes of this Agreement, it is not considered good faith to conduct parallel negotiations with third parties with respect to the transaction contemplated by this Agreement, to fail to disclose information relating to the transaction, or to refuse to negotiate.

2. Refundable Deposit. The Developer has deposited the sum of \$10,000 with the URA. The URA shall refund the deposit to the Developer in the event that the parties do not enter into a DDA. It is the intent of the parties to apply the deposit to any payment that the Developer would be obligated to make under any DDA.

3. Limitation of Effect of Agreement. This Agreement shall not obligate either the URA or the Developer to enter into a DDA or any other agreement. By execution of this Agreement, this Agreement in itself does not obligate the URA to sell the Property or any portion thereof to the Developer, does not grant the Developer the right to purchase or develop the Property, and does not obligate the Developer to purchase or develop the Property or undertake the Project. If the parties fail to enter into the DDA within the time period set forth above, as such time may be extended by mutual agreement, then the parties have no further obligation to

one another and neither is entitled to any compensation from the other party for any reason connected with the negotiations (except for the return of the deposit described in Section 2, above). The parties acknowledge that the DDA will include terms that will be conditioned on final City land use approval, among other conditions.

4. Modification and Interpretation. This Agreement may be modified only in writing signed by the URA and Developer. The headings contained in this Agreement are for convenience of reference only and do not limit the provisions of this Agreement. This Agreement is made and entered into solely for the benefit of the URA and the Developer and no other person shall have a right of action under or by reason of this Agreement.

5. Severability. If any provision of this Agreement is illegal, invalid or unenforceable under present or future laws, then, and in that event, it is the intention of the parties that the remainder of this Agreement is not affected. It is also the intention of the parties that in lieu of each provision of this Agreement that is illegal, invalid or unenforceable, there be added as a part of this Agreement a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible, and be legal, valid and enforceable.

6. Waiver. Any failure by a party to insist or any election by a party not to insist upon strict performance by the other party of any of the terms, provisions or conditions of this Agreement is not a waiver thereof or of any other term, provision or condition, and such party has the right at any time or times to insist upon strict performance of any and all of the terms, provisions and conditions.

7. Governing Law and Sovereign Immunity. This Agreement is governed by and construed in accordance with the laws of State of Oregon. Venue for any suit or action under this Agreement shall exclusively be in Coos County, Oregon. Developer hereby expressly waive sovereign immunity from any suit, action, or proceeding and from any legal process thereof in the forum and jurisdiction set forth above, only to the extent necessary for URA to enforce the terms of this Agreement in the form of injunctive relief.

8. Counterparts. This Agreement may be executed and delivered in several counterparts, each of which shall be deemed an original but all of which when taken together shall constitute one and the same Agreement. This Agreement may be delivered via electronic means, including without limitation electronic mail, or via facsimile, with a confirmation of receipt.

The undersigned duly authorized representatives hereby agree on behalf of their respective parties to the terms and conditions of this Agreement.

City of Coos Bay Urban Renewal Agency

Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians

By: _____
Rodger Craddock, City Manager

By: _____
Robert "Bob" Garcia, its Chairman

Date: _____

Date: _____