

**EXCLUSIVE NEGOTIATIONS AGREEMENT**

This Exclusive Negotiations Agreement ("Agreement") is made and entered into this 19 day of FEBRUARY 2020 ("Effective Date"); by and between the REDEVELOPMENT AGENCY OF MURRAY CITY, a Utah community development and renewal agency or redevelopment agency, ("RDA,") and EDLEN & COMPANY, LLC., an Oregon limited liability company ("Developer").

**RECITALS**

The RDA is a community development and renewal agency, or redevelopment agency created either under the Limited Purpose Local Government Entities – Community Development and Renewal Agencies Act, Utah Code Ann. §§ 17C-1-101 et seq., (the "Act") or under previous law.

A. RDA is the owner of property located beginning at the southwest corner of the intersection of 4800 West and State Street in Murray and more particularly described on **Exhibit A**, attached hereto and incorporated herein by this reference ("Property").

B. Developer is a company that represents that it is focused on the development of urban, infill, transit-oriented, and highly sustainable office, apartment, and mixed-use real estate in the states of Oregon, Washington, and Idaho.

C. Developer was selected by a committee through a Request for Proposals process to oversee the development of the Property ("Project").

D. RDA now desires to offer Developer the opportunity to exclusively negotiate with RDA for the development of the Property.

NOW, THEREFORE, in consideration of the mutual covenants and promises hereinafter set forth, the parties hereby agree as follows:

1. **Good Faith Negotiations.** Subject to all terms and conditions of this Agreement, RDA and Developer agree for the time period set forth below to negotiate diligently and in good faith towards the preparation of a purchase and sale agreement, development agreement and any other project agreement (collectively, "Project Agreement") which will involve the development of the Property. It is expressly understood and agreed by the parties that this is a contract regarding negotiations only and does not convey any interest in the Property or a potential agreement or constitute any approval whatsoever of any proposed project. By its execution of this Agreement, the RDA is not committing to (a) any disposition of land to Developer; (b) the ability to obtain any approvals required from RDA or Murray City Corporation (the "City") to use the Property for the proposed Project or (c) any other acts requiring the subsequent independent exercise of discretion by the RDA, City, or its departments. It is further agreed and understood that this Agreement does not imply any obligation on the part

of the RDA to enter into any agreement that may result from the negotiations contemplated herein.

2. **Negotiations Exclusive.** During the term of this Agreement, the RDA shall not, except as otherwise mutually agreed, negotiate or discuss any proposal by any person other than the Developer with respect to:

- (a) the purchase, sale or development of the Property,
- (b) the new utilities, roads, curbs and sidewalks, storm water pipes and detention basins, and all other infrastructure for the Project,
- (c) the feasibility of a parking arrangements between the Parties,
- (d) the feasibility and desirability of integrating Parcel Number 2207105007, 4836-4844 South State Street, owned by DAR Enterprises, LLC ("DAR Property") into the Project, and
- (e) the request for public assistance with respect to the Project.

In addressing these components, the Parties will likely execute multiple, separate agreements between the Developer and the RDA as to all or as to certain of these components, as the Parties mutually decide what will be optimum for achievement of the stated development goals (collectively, the "Individual Agreements"). The Parties acknowledge and agree that the Individual Agreements shall have such terms and conditions as each Party shall determine to be acceptable in such Party's sole discretion and that no Party shall be obligated to enter into an Individual Agreement if the Parties cannot mutually agree on all material terms and conditions. In the event that the Parties do not enter into Individual Agreements that cover all of the components of the Project as described in Section 2(a) through (e) above during the Term of this Agreement, no Party shall have any further obligations or any liability hereunder.

3. **Term of Agreement.**

A. The term of this Agreement shall initially expire June 30, 2021 ("Initial Term") unless earlier terminated or extended as provided in this Section 2(B) and Section 14.

B. The Executive Director of RDA, acting on behalf of the RDA, shall have the right to extend the Initial Term of this Agreement, in increments of three (3) month time periods, up to an additional six months ("Extended Term"). The decision to extend the Initial Term shall be based on mutual written or email agreement of both Parties. If the Parties elect to extend the Initial Term, the Parties shall mutually determine extension not less than thirty (30) days prior to expiration of the Initial Term ("Notice of Extension").

4. **Project Milestones.** Within the intended time periods set forth in the Schedule of Performance attached hereto as Exhibit B ("Schedule of Performance"), Developer shall have

completed the following milestones. Parties agree that dates are subject to change and that both Parties will diligently pursue the achievement of the milestone as indicated in Exhibit B:

A. **Feasibility Analysis.** Developer shall have commenced and completed a feasibility analysis for the proposed Project.

B. **Environmental Due Diligence.** Developer shall have commenced and completed any required environmental due diligence required for the proposed Project.

D. **Purchase and Sale Agreement.** Developer shall agree during the time period set forth above to negotiate diligently and in good faith towards the preparation of a purchase and sale agreement for the Property.

E. **Individual Agreements.** Commence and diligently pursue efforts to provide analysis, information, drawings, estimates and other information to the RDA necessary to allow entry into the detailed, separate Individual Agreements contemplated in Paragraph 2. The Parties shall address the following issues, among others, during the negotiation of the Individual Agreements for the Project:

- (1) The purchase of the Property for the purpose of constructing the Project.
- (2) The location, size, design and cost of the development of the infrastructure.
- (3) The feasibility and desirability of integrating the DAR Property into the Project.
- (4) The feasibility of utility relocations, including costs for relocations.
- (5) Acknowledging that all land use applications for development of the Project shall require approval by the City pursuant to applicable provisions of the City Code.
- (6) Commercial space uses or tenancy.
- (7) The term of each of the Individual Agreements.
- (8) Such other terms and conditions as the Parties shall mutually agree.

5. **Right of Entry.** During the Initial Term or any extension thereof, Developer, its representatives, consultants, contractors, agents and employees shall have the right to enter the Property at all reasonable times for the purpose of conducting any tests, studies, analysis or other work necessary to perform the milestones set forth above. The Developer shall provide the RDA with written notice prior to entry on the Property. The Developer shall have access to all data and information on the Property available to the RDA, but without warranty or representation by the RDA as to the completeness, correctness or validity of such data and information. Copies of any tests, studies or analysis obtained or made by the Developer on the Property shall be provided to the RDA. Any preliminary work by the Developer shall be undertaken only after securing any necessary permits from the appropriate governmental agencies.

6. **Disposition of Property.** Within the time period set forth in the Schedule of Performance, Developer and RDA shall negotiate the terms and conditions of a proposed Project

Agreement. It is expressly acknowledged and agreed by the parties that, until and unless a Project Agreement is signed by Developer and approved by the RDA Board, in absolute sole discretion, any drafts or other communications resulting from performance of this Agreement shall not be used to impose any legally binding obligation on either the RDA or the Developer or as evidence of any oral or implied agreement by the RDA or the Developer to enter into a legally binding document.

7. **Disclosure of Confidential Information.** Developer acknowledges that the RDA is subject to the Utah Government Records Access and Management Act ("Act"). The Act generally provides that written documents retained by the RDA are subject to disclosure upon the request of any third party except for specific limited exceptions provided for in the Act. Developer shall designate as "Confidential" any information which Developer provides to the RDA which Developer desires to keep confidential. If a request for disclosure of any information designated as "Confidential" by Developer is made under the Act, the RDA shall notify Developer in writing and Developer shall have the opportunity to object to the release of such information. Developer hereby designates all of its financial information as Confidential and will submit a written determination of such confidentiality in accordance with 63G-2-309(1)(a).

8. **Conflict of Interest.**

A. Developer shall at all times avoid conflict of interest or appearance of conflict of interest under any applicable state, federal or local laws, rules and regulations in the performance of this Agreement. Developer shall disclose any conflict of interest, or potential conflict of interest, which exists or arises at any time during the term of this Agreement. For purposes of this Section, any conflict of interest of a principal, officer, stockholder, partner, joint-venturer, employee or other associate of Developer shall be conclusively deemed to be a conflict of interest of Developer.

B. RDA shall have the right to treat any violation of this Section as a material breach of this Agreement, and shall have the right to terminate the Agreement and pursue any and all legal or equitable remedies for said breach of this Agreement.

9. **Development Costs.** Developer expressly acknowledges that all expenses and costs it may incur during the term of or as a result of this Agreement are its sole obligation and responsibility and done at its sole risk, including, but not limited to, any costs associated with any proposed Project and any costs incurred to prepare the necessary plans, studies and analysis required for any proposed Project.

10. **Distinction from Regulatory Authority of the City.** Developer acknowledges that the RDA is legally a separate entity from the city even though city council members sit on its board. Further, Developer understands and agrees that this Agreement does not and shall not be construed to indicate or imply that the City, acting as a regulatory or permitting authority, has hereby granted or is obligated to grant any approval or permit required by law for the development of the Project on the Site as contemplated by this Agreement.

11. **Public Meeting.** If the negotiations contemplated herein culminate in the execution of a Project Agreement, the Project Agreement will be brought forward for consideration by the RDA Board, provided, however, such Project Agreement shall become effective only after having been considered and approved by the RDA Board in their sole and absolute discretion following any public meeting or other actions required by law. Notwithstanding any other provision of this Agreement, Developer expressly agrees and acknowledges that the timing of any presentation of the Project Agreement for RDA Board consideration shall be in the Executive Director's sole discretion.

12. **Non-discrimination.** Developer shall not discriminate, in any way, against any person on the basis of age, sex, race, color, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity or national origin in connection with or related to the performance of this Agreement.

13. **Termination by RDA.** If Developer does not comply in a timely and diligent manner with any material obligation of Developer under this Agreement, RDA, at its option, may terminate this Agreement at any time by written notice to Developer after having provided Developer with a thirty (30) written notice detailing the non-compliance and providing Developer with the opportunity to cure said non-compliance within the same thirty (30) day time period. The Executive Director of the RDA may terminate this Agreement on behalf of the RDA. The termination shall be effective upon Developer's receipt of RDA's written notice.

14. **Indemnification.** Developer shall defend, indemnify and hold harmless the RDA, and its officers, employees and agents against any claim, loss or liability arising out of this Agreement or resulting in any way from work performed under this Agreement, including any work performed on the Property pursuant to the provisions of Section 4 above, by Developer, its representatives, consultants, contractors, agents or employees. This indemnification shall survive the expiration or other termination of this Agreement.

15. **Notices.** All notices and other communications required or permitted to be given under this Agreement shall be in writing and may be delivered by-hand, by facsimile transmission with verification of receipt, by email, or by United States mail, postage prepaid and return receipt requested, addressed to the respective parties as follows:

To RDA:       Redevelopment Agency of Murray City  
                  Attention: Deputy Executive Director  
                  4646 South 500 West  
                  Murray City, UT 84123

To Developer: Edlen & Company, LLC  
                  Attention: Jill Sherman

or to such other address as any party may designate by notice in accordance with this Section.

16. **Waiver of Lis Pendens.** It is expressly understood and agreed by the parties that no lis pendens shall be filed with respect to this Agreement or any dispute or act arising from it.

17. **Time of Essence.** It is understood and agreed by the parties that time is of the essence in the performance of the obligations of this Agreement. Unless otherwise expressly provided in this Agreement; any failure on the part of Developer to perform according to the Schedule of Performance shall constitute, at RDA's sole and absolute discretion, grounds for termination of this Agreement by RDA subject to notice as provided in Paragraph 13 above.

18. **Assignment.** Developer may not transfer or assign any or all of its rights or obligations hereunder except with the prior written consent of RDA which may be granted or withheld in RDA's sole and absolute discretion, and any such attempted assignment without the prior written consent of RDA shall be wholly void and of no effect and cause for immediate termination of this agreement. The RDA acknowledges and consents that Developer intends to form a joint venture arrangement with deChase Miksis to perform the obligations under this Agreement and the contemplated Project.

19. **No Third-Party Beneficiaries.** This Agreement is made and entered into solely for the benefit of the RDA and Developer and no other person shall have any right of action under this Agreement.

20. **Limitation of Liability.** Notwithstanding anything to the contrary - at law or equity, in the event of any breach of this Agreement by the RDA, the sole and exclusive remedy of Developer hereunder shall be the recovery of Developer's actual out of pocket costs incurred by Developer to third parties to satisfy its obligations under this Agreement. In no event shall Developer be entitled to "expectation damages" i.e., any amounts that Developer would expect to gain were an agreement ever executed, including, without limitation, any amount for potential lost profits. Nor shall Developer be allowed to recover any damages for lost business opportunity, or for any indirect or consequential damages.

21. **Waiver.** The Parties agree that waiver by either Party of any breach or violation of any term or condition of this Agreement shall not be deemed to be a waiver of any other term or condition contained herein or a waiver of any subsequent breach or violation of the same or any other term or condition. The acceptance by either Party of the performance of any work or services by the other Party shall not be deemed to be a waiver of any term or condition of this Agreement.

22. **Governing Law.** The law governing this Agreement shall be that of the State of Utah.

23. **Exclusive Venue.** In the event that an action is filed by either Party arising out of, based on, or in any way relating to this Agreement, the Parties agree that such action shall be filed and the case tried exclusively in state District Court for the Third Judicial District, Salt lake County, State of Utah.

24. **Prior Agreements and Amendments.** This Agreement, including all Exhibits listed below and attached hereto, represents the entire understanding of the parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may only be modified by a written amendment duly executed by the parties to this Agreement.

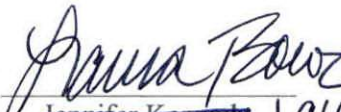
**[SIGNATURES ON FOLLOWING PAGE]**

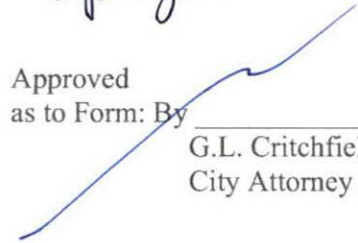
IN WITNESS WHEREOF, the parties have executed this Exclusive Negotiations Agreement as of the day and year first above written.


**RDA: REDEVELOPMENT AGENCY OF MURRAY CITY**

By   
D. Blair Camp  
Executive Director

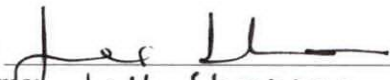


Attest: By   
~~Jennifer Kennedy~~ Laura Bown  
Deputy City Recorder

Approved  
as to Form: By   
G.L. Critchfield  
City Attorney

Finance  
Approved: By   
Brenda Moore  
Finance & Administration Director

**DEVELOPER: EDLEN & COMPANY, LLC**

By   
Name: Jill Sherman  
Its: Principal

**APPROVED AS TO CONTENT**





**EXHIBIT A**  
**DESCRIPTION OF PROPERTY**  
**LEGAL DESCRIPTION**

**EXHIBIT B**  
**SCHEDULE OF PERFORMANCE**

<b>Task</b>	<b>Tentative Completion Dates</b>
1. Feasibility analysis, updated proforma and financing	February 28, 2021
2. Environmental due diligence (Phase 1, Phase 2, etc.)	Phase 1 complete; Phase 2 complete
3. Property appraisal	April 15, 2021
4. Geotechnical study	March 15, 2021
5. Property Purchase and sales agreement	April 30, 2021
6. Concept plan submitted by Developer to RDA staff	March 1, 2021
7. RDA staff comments to Developer on concept plan	March 15, 2021 (within 10 business days after receipt of concept plan)
8. Updated concept plan from Developer (if necessary)	April 12, 2021 (within 20 business days after receipt of RDA comments)
9. Site plan, renderings elevations submitted by Developer to RDA staff	April 30, 2021
10. RDA staff comments back to Developer on site plan, renderings elevations	May 14, 2021 (within 10 business days after receipt of concept plan)
11. Updated site plan, renderings, elevations from Developer (if necessary)	June 14, 2021 (within 20 business days after receipt of RDA comments)
12. Traffic study	April 30, 2021
13. Design Review approval application submission to Planning Division	August 30, 2021
14. MCCD DRC Design Approval recommendation to Murray City Planning Commission	October 31, 2021 The MCCD DRC will be the first step in the approval process and will take about 30 days. They meet monthly on the last Thursday of the month. Once there is a recommendation from the DRC, the application is moved on to the Planning Commission.
15. Design Approval through Murray City Planning Commission	January 1, 2022 This process will also take about 30 days.
16. Proposed schedule of development and construction from Developer	September 15, 2021

17. RDA staff comments to Developer on schedule of development	September 28, 2021 (within 10 days of receipt of schedule from Developer)
18. RDA staff provides to Developer proposed Individual Agreements	June 1, 2021
19. Developer provides comments to RDA staff	June 15, 2021 (within 10 business days after receipt of RDA comments)
20. RDA Board reviews concept plan, schedule of development and agreement terms	June 15, 2021
21. If RDA Board approves plan, schedule and terms, Board approval of individual agreements	July 20, 2021
22. Utility relocations	Fall 2021
23. Demolition of existing buildings	April 2022
24. Construction drawings/plan submittal and review	January 2022
25. Building permit issuance	May 2022 The review would take about 20-30 days at best. You know how this goes with back and forth with comments and revisions.
26. Construction begins	May 2022
27. Occupancy	April 2024 Edlen wanted to open in Spring to avoid a final construction and opening in the holiday or winter season, all their dates have been backed in based on this date