

PRE-DEVELOPMENT AGREEMENT

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INLAND DEVELOPMENT PARTNERS,LLC

THIS PRE-DEVELOPMENT AGREEMENT, effective as of the ____ day of _____, 2022 be and between the DULUTH ECONOMIC DEVELOPMENT AUTHORITY, an economic development authority under Minnesota Statutes (1989) Chapter 469, hereinafter referred to as "DEDA", and INLAND DEVELOPMENT PARTNERS, LLC, a Minnesota limited liability company, hereinafter referred to as "Inland".

WHEREAS, DEDA and Inland have engaged in cooperative dialogue regarding the possible development of the hereinafter-described Property with the intent of establishing a public-private partnership to address complex technical challenges related to the Property's redevelopment; and

WHEREAS, Inland proposes to develop the hereinafter-described Project on the Property intended to include approximately 350-450 units in multiple apartment buildings, approximately 40 townhomes, commercial buildings including a hotel and light industrial buildings; and

WHEREAS, based on initial reviews and the cooperative dialogue as to the development of the Property, it appears that the Project is potentially feasible following additional future review and analysis of technical details; and

WHEREAS, the parties wish to collaborate in further analyzing the potential and feasibility of the Project and are willing to proceed with such analysis as described in this Agreement; and

WHEREAS, the parties acknowledge that Inland will expend substantial time and effort, and incur substantial expense in pursuing the Project; and

WHEREAS, Inland is willing to undertake the activities described in this Agreement only with the reasonable assurance from DEDA that it will support and cooperate with Inland in its efforts; and

WHEREAS, DEDA and Inland have executed this Agreement to document their understanding with respect to the proposed Project.

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

1. Definitions

The following terms and phrases shall have the meanings hereinafter ascribed to them:

- A. Concept Plans: shall mean a set of plans for the development of the entire Project on the entire Property carried to the level sufficient to support securing grants to defray costs of elements of the Project which can be legally funded by various public sources and to support securing financial commitments for all other portions of the Project by non-public sources.
- B. Development Agreement: shall mean an agreement between DEDA and Inland for the conveyance of the Property to Inland and the development of the Project thereon in substantial conformance with the Concept Plans and the financing thereof; said agreement may provide for the development of the Project by phases and may, by agreement of the parties, include binding commitments to less than the entire Project.
- C. City: shall mean the City of Duluth.
- D. Director: shall mean the Executive Director of DEDA or such person or persons designed by the Executive Director in writing.
- F. EAW: shall mean an environmental assessment worksheet conforming the requirements of MCAR Chapter 4410.
- G. Engineer: shall mean an engineering firm reasonably approved by the Director qualified to perform a thorough environmental and geotechnical investigation of the condition of the Property and to design and lead implementation of a RAP.
- H. Finance Plan: shall mean a financial plan for the Project showing in reasonable detail the proposed sources and uses of funds sufficient to fund the development of the Project and cash flow projections showing the timing of the various uses of funds.

- I. Phase I Project: shall mean those elements of the Project which the parties can reasonably expect to be included as commitments in the Development Agreement
 - J. Project: shall mean the development on the Property of a development as approved by DEDA pursuant to the Development Agreement, currently anticipated to include various levels of residential development including townhomes and multi-family structures, public recreational space, commercial development, light manufacturing, one or more hotels and parking areas to serve the Project.
 - K. Property: shall mean that property legally described on Exhibit A attached hereto and made a part hereof.
 - L. Subsequent Phases: shall mean all portions of the Project not included in the Phase I Project.
 - M. RAP: shall mean a current plan describing the response action as described in 40 CFR Part 300 necessary to remediate any environmental condition on the Property under state and federal environmental law.
 - N. Seawall Engineer: shall mean an engineering firm reasonably approved by the Director qualified to analyze the condition of the seawalls separating the Property from the waters of the St. Louis River Estuary and to design and oversee the implementation of any needed repair or reconstruction of said seawalls.
 - O. TIF District: shall mean a tax increment financing district created under Minnesota Statutes 469 174 through 469.1794.
 - P. Traffic Engineer: shall mean an engineering firm reasonably approved by the Director with expertise in analyzing existing traffic patterns and traffic loads and in predicting the impacts of the Project on traffic patterns and load in the vicinity of the Property and to make recommendations of modifications that should be made to streets and highways in the vicinity of Property to better accommodate existing traffic and increased traffic anticipated to result from the development of the Project.
2. Purpose of Agreement

A. Generally

The purpose of this Agreement is to set forth the intended trajectory for the development by the Parties of the Project on the Property. It is understood between the Parties that the successful development of the Project at present involves many unknown factors and that the ability to accomplish the development in a manner satisfactory to the Parties will likely require favorable actions and decisions by third parties beyond the control of the Parties. This Agreement represents the commitments of the Parties to undertake the actions committed to in this Agreement and to use their commercially reasonable efforts to implement those actions. It does not bind either of the Parties to produce the intended results but only to use their commercially reasonable efforts to accomplish them.

B. DEDA Commissioner Approval

It is understood and agreed by Inland that DEDA staff will work diligently to perform DEDA's obligations under this Agreement but Inland understands and agrees that no commitment or obligation beyond those specifically set forth in this Agreement may be binding on DEDA unless set forth in writing and approved by the Board of Commissioners of DEDA by resolution and, if legally required, by the City Council.

3. Exclusive Negotiation Rights

A. Generally

For the Term of this Agreement, DEDA hereby agrees that Inland shall have the sole and exclusive right to negotiate a Development Agreement, including the right to acquire the Property and the right to develop the Project on the Property from the date set forth above and through December 31, 2024, subject to the termination of such rights as hereinafter set forth. Subject to final negotiation of a Development Agreement, it is the parties' intent that DEDA would sell the Property to Inland for One Dollar (\$1.00).

B. Extension

Upon the expiration of the Term of this Agreement, the parties may agree to an extended Term of this Agreement for such additional term as the parties may agree to under the terms and conditions herein set forth or under such modified terms and conditions as the parties may then agree to, provided that such extension shall be approved with the same formality as this Agreement.

C. Termination

Notwithstanding the provisions of Subparagraphs A and B above, Inland may terminate this agreement upon Thirty (30) days prior written notice to DEDA upon Inland's good faith determination that that negotiations to reach agreement on a Development Agreement have reached an impasse or that DEDA is not diligently pursuing the Project or its obligations hereunder or that the Project is not feasible, which determination could include, without limitation a determination that the City will not (i) provide the approvals needed for the Project, (ii) will not form the tax increment districts needed for the Project or (iii) will not support and pursue the grants and legislation described in this Agreement.

Notwithstanding the provisions of Subparagraphs A and B above, DEDA may terminate this agreement upon Thirty (30) days prior written notice to Inland if Inland fails to submit required reports or information in a timely manner and such failure is not cured in such thirty (30) day period.

D. Rights Upon Termination

In the event of the expiration of the Term or of any Extension of the Term of this Agreement or of termination for any reason, both parties shall be deemed to have waived any claim or cause of action they may have against the other party arising out of the Agreement or the failure of the parties to reach a Development Agreement.

4. Property Access

A. Access Granted

Upon the effective date of this Agreement, DEDA grants to Inland the right to access to the Property for the purposes of investigation of the Property and its parameters and physical condition as such conditions could impact upon the ultimate development of the Project. Such investigation may include survey work, environmental testing, geotechnical testing, under-water inspection and testing and limited excavation. Provided that prior to any investigation work which involves significant soils disturbing activities or the installation of monitoring structures, Inland shall secure the written consent of the Director, which consent shall not be unreasonably withheld.

B. Repair or Replacement

Upon the termination of this Agreement, Inland agrees to remove all structures and installations made on the Property and to restore the Property to the condition it was in prior to the effective date of this Agreement unless the Director shall authorize, in writing, that any such structures or installations may remain on the Property or that any elements of the Property need not be so restored or both.

5. Concept Plan & Financial Plan

A. Concept Plan Generation

No later than April 15, 2023, Inland shall have prepared and provided to the Director for their approval a Concept Plan for the Project which sets forth in reasonable detail all elements of Project that Inland intends to construct on the Property including physical size, scale, height, type, character and proposed use of each such element along with a detailed description of all site improvements contemplated to be necessary to Project and a detailed estimate of the cost of each such element and improvement. Said Plan shall include professionally drawn concept plans for the Project and financial information based on professional reviews of plans and costs. If Inland proposes to construct the Project in phases, the above information shall be broken down by phases, saying what elements and improvements need to be constructed in each phase and the projected dates for completion of each such phase.

B. Concept Plan Approval

Upon receipt of the Concept Plan, the Director shall review said Plan for conformance to the requirements of this Agreement. If the Director determines in the exercise of their reasoned discretion that said Plan fails to meet the requirements of this Agreement, the Director shall return said Plan to Inland with a written request for modifications to bring said Plan into conformance with the requirements of this Agreement. Inland shall modify said Concept Plan to address the issues and return it to the Director for their review and approval within fifteen (15) days of receiving the Director's request for modification. Said process shall continue until the Director's approval is given.

C. Finance Plan

No later than June 15, 2023, Inland shall have prepared and provided to the Director for their approval the Finance Plan for the Project. Said Plan shall be subject the approval of the Director in the same manner as the Concept Plan as provided for in Subparagraph B above.

D. Concept Plan & Finance Plan as Basis

Upon approval by the Director of the Concept Plan and the Finance Plan, the parties shall be entitled to use said Plans as the basis for performing their various obligations under this Agreement.

E. Market Study

Based on the Concept Plan, by no later than September 30, 2023, Inland shall have prepared and provided to the Director for their approval a market study demonstrating that there is a market in the Duluth-Superior market area for all of the elements of the Project. Said study shall be subject to the approval of the Director in the same manner as the Concept Plan as provided for in Subparagraph B above.

6. Inland Commitments

Inland shall have enter into agreements for the following services, which agreements shall commit inland to be responsible for and to pay the contracting parties for the following services:

A. Site Environmental and Geotechnical Services

Within thirty (30) days of approval of the Concept Plan, Inland shall have contracted with the Engineer to investigate the environmental and geotechnical condition of the Property and to determine whether there exists on the Property any environmental or geotechnical condition which would require remediation or correction in order to implement the Concept Plan and, if any such condition exists, the nature and character thereof, the extent thereof, the estimated cost of remediation or correction thereof and to prepare and update the RAP which had been previously prepared for DEDA regarding the Property.

B. EAW

Within thirty (30) days of approval of the Concept Plan, Inland shall have contracted with the Engineer to prepare an EAW for the Project on the Property.

C. Traffic Plan

No later than November 30, 2023, Inland shall have contracted with the Traffic Engineer to perform a traffic study of the traffic in the area of the Property, to predict the impact of the Project on said traffic and traffic patterns and to make recommendations as to what if any modifications to existing streets and highways should be made to accommodate the impact of the Project of such streets and highways and to estimate the costs of such modifications.

D. Seawall Engineer

No later than November 30, 2023, Inland shall have contract with the Seawall Engineer to analyze the condition of the seawalls on the northeast and southeast sides of the Property, to determine what repairs or reconstructs of said seawalls are required in order for the Project to go forward and to estimate the cost thereof.

E. Inland Funding

Inland agrees to pay the entire cost of the work described in in Subparagraphs A through D above, subject to any reimbursement made available pursuant to Subparagraph B of Paragraph 7 below, and to be

permanently responsible for the paying of any local or matching share of any grants received for the benefit of the Project by DEDA; provided that any such costs shall be considered to be Project costs subject to the availability of Project funds to reimburse them.

7. DEDA Commitments

In addition to DEDA's obligations pursuant to Paragraphs 3 and 4 above, upon approval of the Concept Plan as provided for above, DEDA agrees to the following, subject the limitations set forth below:

A. Grants

DEDA agrees to use its commercially reasonable effort and to cooperate fully with the City to identify, apply for and to secure grants from various available state and federal authorities to defray all or a portion of the costs of the work described in Subparagraphs A through D of Paragraph 6 above.

B. Inland Reimbursement - Grant Funds

To the extent that DEDA receives grants referred to in Subparagraph A above and is unconditionally eligible to reimburse Inland for costs incurred by inland to perform any of the work described in Subparagraphs A through D in Paragraph 6 above, DEDA will reimburse Inland for such costs upon the application of Inland to the Director for such reimbursement, which application shall be accompanied by such documentation of such costs as the Director shall reasonably request. Similarly, and to the extent that the City shall have received such grants, DEDA will use its commercially reasonable efforts to induce the City to similarly reimburse Inland.

C. TIF Districts Creation

DEDA hereby agrees to use its commercially reasonable efforts to create or to cause the City to create TIF Districts covering the Property to support the development of the Project. The exact nature of the TIF Districts so created and the terms and conditions of

TIF Plan covering said TIF Districts shall be determined based on the nature and character of the Project.

D. Special TIF Legislation

DEDA agrees to use its commercially reasonable efforts to seek City support and proceed to pursue special legislation from the Minnesota State Legislature authorizing DEDA to create a "Redevelopment District" TIF District for the Project having a duration of thirty-five (35) years from the date of first receipt of tax increment proceeds.

E. State and Federal Funding

DEDA agrees to use its commercially reasonable efforts to seek City support to proceed in pursuit of special legislation from the Minnesota State Legislature providing financial support in the form of grants or low-or-no-interest loans to support the Project, and to pursue other State or Federal programs available to support the Project and its surrounding infrastructure.

F. Transportation and utility infrastructure

DEDA agrees to collaborate with Inland and the City to evaluate the sufficiency of the transportation and utility infrastructure around the Site. DEDA agrees to further collaborate with Inland and the city of Duluth develop plans for transportation and utility infrastructure design, to establish viable funding options using local and outside resources to fund those improvements, and when funding is secured, to order such improvements constructed.

G. Land use entitlements

DEDA agrees to use its commercially reasonable efforts to support Inland in evaluation and potential changes to site density limitations, permissible uses allowed on the site, setback and height regulations, and other applicable zoning controls, and to seek City approval of all necessary zoning entitlements to allow the Project to proceed.

8. Indemnification

Inland shall, to the fullest extent permitted by law, protect, indemnify and save DEDA and the City and their officers, agents, servants, employees and any person who controls DEDA within the meaning of Securities Act of 1933, harmless from and against all liabilities, losses, damages, costs, expenses, including attorneys' fees and expenses, causes of action, suits, claims, demands and judgments of any nature arising from any injury to or death of any person or damage to property in or upon the Project or the Property arising out of the negligence or willful misconduct of Inland. The foregoing indemnification shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefits payable by or for Inland, customers, suppliers or affiliated organizations under any Workers' Compensation Act, Disability Benefit Acts or any other Employee Benefit Acts.

9. Insurance

Inland agrees that it will require any contractor performing work on its behalf on the Property under this Agreement to purchase and maintenance of the insurance coverages set forth below:

A. Liability Insurance. All such contractors shall procure and maintain continuously in force Public Liability Insurance written on an "occurrence" basis under a Commercial General Liability Insurance and Automobile Liability Insurance Form in limits of not less than \$2,000,000 per occurrence for personal bodily injury and death, and limits of \$2,000,000 for property damage liability. If person limits are specified, they shall be for not less than \$2,000,000 per person and be for the same coverages. DEDA and the City shall be named as additional insureds therein. Insurance shall cover:

1. Public liability, including premises and operations coverage;
2. Independent contractors--protective contingent liability;
3. Personal injury;
4. Owned, non-owned and hired vehicles;

5. Contractual liability covering the indemnity obligations set forth herein;

6. Products--completed operations.

- B. Workers' Compensation. Workers' Compensation Coverage in statutory amounts with "all states" endorsement unless qualified as a self-insurer under Minnesota Law, and evidence of such qualification is furnished to DEDA. Employees' liability insurance shall be carried in limits of \$100,000 per employee.
- C. Requirements for All Insurance. All insurance required in this Article shall be taken out and maintained in responsible insurance companies organized under the laws of the states of the United States and licensed to do business in Minnesota.
- D. Certifications. All such contractors shall be required to supply to DEDA written certifications of insurance requiring the insurer to give DEDA thirty (30) days' written notice prior to cancellation or modification of said insurance for any reason other than non-payment of premium and ten (10) days' written notice prior to cancellation for non-payment of premium of said insurance. If such notice is not available for the insurers, the contractors shall be permitted to provide such notice to DEDA.

10. Amendment; Assignment

Any alterations, variations, modifications or waivers of terms of this Agreement or any assignment thereof shall be binding upon the DEDA and Inland only upon being reduced to writing and signed by a duly authorized representative of each party.

11. Data and Confidentiality, Records and Inspection

- A. DEDA agrees that it will make available all pertinent information, data and records under its control for Inland's to use in the performance of this Agreement, or assist Inland wherever possible to obtain such records, data and information.

- B. Inland agrees that all work created by Inland pursuant to this Agreement shall be addressed to and can be relied upon by both Inland and DEDA.
- C. Records shall be maintained by Inland in accordance with requirements prescribed by the DEDA and with respect to all matters covered by this Agreement. Such records shall be maintained for a period of six (6) years after receipt of final payment under this Agreement.
- D. Inland will ensure that all costs shall be supported by properly executed payrolls, time records, invoices, contracts, vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible.
- E. Inland shall be responsible for furnishing to DEDA records, data and information as DEDA may reasonably require pertaining to matters covered by this Agreement.
- F. Inland shall ensure that at any time during normal business hours and as often as the DEDA may deem necessary, there shall be made available to the DEDA for examination at the primary offices of Inland, all of its records with respect to all matters covered by this Agreement. Inland will also permit the DEDA to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, and other data relating to all matters covered by this Agreement.

12. Independent Contractor

- A. It is agreed that nothing herein contained is intended or should be construed in any manner as creating or establishing the relationship of copartners between the parties hereto or as constituting Inland as an agent, representative or employee of the DEDA for any purpose or in any manner whatsoever. The parties do not intend to create any third party beneficiary of this Agreement. Inland and its employees shall not be considered employees of the DEDA, and any and all claims that may or

might arise under the Worker's Compensation Act of the State of Minnesota on behalf of Inland's employees while so engaged, and any and all claims whatsoever on behalf of Inland's employees arising out of employment shall in no way be the responsibility of DEDA. Inland's employees shall not be entitled to any compensation or rights or benefits of any kind whatsoever from DEDA, including without limitation, tenure rights, medical and hospital care, sick and vacation leave, Worker's Compensation, Unemployment Insurance, disability or severance pay and P.E.R.A. Further, DEDA shall in no way be responsible to defend, indemnify or save harmless Inland from liability or judgments arising out of the acts or omissions of Inland or its employees while performing the work specified by this Agreement.

B. The parties do not intend by this Agreement to create a joint venture or joint enterprise, and expressly waive any right to claim such status in any dispute arising out of this Agreement.

C. Inland expressly waives any right to claim any immunity provided for in Minnesota Statutes Chapter 466 or pursuant to the official immunity doctrine.

13. Civil Rights Assurances

Inland, as part of the consideration under this Agreement, does hereby covenant and agree that:

A. No person on the grounds of race, color, creed, religion, national origin, ancestry, age, sex, marital status, status with respect to public assistance, sexual orientation, and/or disability shall be excluded from any participation in, denied any benefits of, or otherwise subjected to discrimination with regard to the work to be done pursuant to this Agreement.

B. That all activities to be conducted pursuant to this Agreement shall be conducted in accordance with the Minnesota Human Rights Act of 1974, as amended (Chapter 363), Title 7 of the U.S. Code, and any regulations and executive orders which may be affected with regard thereto.

14. Laws, Rules and Regulations

Inland agrees to observe and comply with all laws, ordinances, rules and regulations of the United States of America, the State of Minnesota and the City with respect to their respective agencies which are applicable to its activities under this Agreement.

15. Notices

Notice or demand or other communication between or among the Parties shall be sufficiently given if sent by U.S. mail, postage prepaid, or delivered personally:

DEDA
Room 418 City Hall
411 West 1st Street
Duluth, MN 55802
Attn: Executive Director

Inland Development Partners, LLC
100 Lake Street West, Suite 200
Wayzata, MN 55391
Attn: Steve Schwanke

Copy to:

Fredrikson & Byron, P.A.
200 South Sixth Street
Suite 4000
Minneapolis, MN 55402-1425
Attn: Mary Ranum

16. Applicable Law

This Agreement, together with all of its paragraphs, terms and provisions is made in the State of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota.

17. Severability

In the event any provision herein shall be deemed invalid or unenforceable, the remaining provision shall continue in full force and effect and shall be binding upon the parties to this Agreement.

18. Entire Agreement

It is understood and agreed that the entire agreement of the parties including all exhibits is contained herein and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof. Any amendment to this Agreement shall be in writing and shall be executed by the same parties who executed the original agreement or their successors in office.

19 Counterparts

This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, but all of which together shall constitute but one and the same instrument. Signatures to this Agreement transmitted by facsimile, by electronic mail in "portable document format" (".pdf"), or by any other electronic means which preserves the original graphic and pictorial appearance of the Agreement, shall have the same effect as physical delivery of the paper document bearing the original signature.

(The remainder of this page intentionally blank.)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above shown.

DULUTH ECONOMIC DEVELOPMENT
AUTHORITY, an economic development
Authority under Minn. Stat. Chapter 469

By: _____
Matt Cartier, its President

By: _____
Ellie Just, its Secretary

Approved:

Its Attorney

Countersigned:

Its Auditor

INLAND DEVELOPMENT PARTNERS , LLC, a
Minnesota limited liability company

By: _____
Its: _____