AGENDA BILL

Beaverton City Council
Beaverton, Oregon

SUBJECT: Contract Award – Master Developer Agreement

FOR AGENDA OF: 01-18-11 **BILL NO:** 11020

Mayor's Approval: Denny Doyle

DEPARTMENT OF ORIGIN: CDD

DATE SUBMITTED: 01-10-11

CLEARANCES: City Attorney
Asst. to Mayor
Purchasing
Finance
Planning

PROCEEDING: CONSENT AGENDA (CONTRACT REVIEW BOARD)

EXHIBITS: Exhibit A: Master Agreement for Master Developer Svcs.

BUDGET IMPACT

EXPENDITURE REQUIRED $0	AMOUNT BUDGETED $0	APPROPRIATION REQUIRED $0

RECOMMENDED ACTION:
City Council, acting as the Contract Review Board, award a contract in a form approved by the City Attorney to Gerding Edlen Development Co., LLC, (GED) of Portland, Oregon, to provide the City with Master Developer Services.

HISTORICAL PERSPECTIVE:
The City of Beaverton solicited individuals and firms to submit proposals in response to the City's Request for Proposal (RFP) for Master Developer Services (Solicitation No. 2413-10B) to provide comprehensive, integrated development services to the City in support of future real estate development opportunities. Qualified proposers were asked to demonstrate substantial experience in aspects of complex real estate development, redevelopment, and building rehabilitation projects, including planning, design, negotiation of public/private partnerships, structuring of private and public financing sources, providing or attracting investment equity, financial analysis, pro-forma financial statements, capital structure analysis, land assembly, construction and project management, sales and leasing, and ongoing management.

The City advertised the RFP in the Daily Journal of Commerce on May 27 and June 1, 2010. A voluntary pre-proposal conference was held on June 9, 2010 at City Hall with the option for a conference call. The RFP closed on June 25, 2010. The City received proposals from five firms and their partnerships.

INFORMATION FOR CONSIDERATION:
An evaluation panel scored the proposals. The two top-scoring firms were formally interviewed by the panel. Gerding Edlen Development scored the highest in both phases of the evaluation process. Final evaluation was based upon 16 substantive criteria as described in the RFP.

Project Contract. A maximum, not-to-exceed amount of compensation payable to Developer under the Project Contract, which includes any allowable expenses or reimbursement, shall be established and made a part of any Project Contract entered into. Rates for selected services are set out in Exhibit 3.

6. ASSIGNMENT AND SUBCONTRACTORS. Developer shall not assign, sell, subcontract, dispose of or transfer rights or delegate duties hereunder, either in whole or in part, without the City's prior written consent; provided, however, that money due to Developer may be assigned, if the City is given written notice thereof, but any assignment of money shall be subject to all proper setoffs and withholdings in favor of the City. The City may rescind this Contract if an assignment is made without the prior written consent of the City. The rights hereunder may not be transferred or assigned by operation of law, change of control or merger without the prior written consent of the City. The City may rescind this Contract if transferred or assigned by operation of law, change of control or merger without the prior written consent of the City. In no instance shall City's consent to an assignment of rights or delegation of duties relieve Developer of any obligations hereunder. Any assignee, transferee or subcontractor shall be considered the agent of the Developer and be bound to abide by all provisions of this Contract. Developer, and its surety, if any, shall remain liable to City for complete performance of this Contract as if no such assignment, sale, subcontracting, disposal, transfer or delegation had occurred, unless City otherwise agrees in writing. The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns, if any.

7. TERMINATION. The parties may effect termination of this Contract in the manners indicated:

a. **Parties' Right to Terminate for Convenience.** This Contract may be terminated at any time by mutual written consent of the parties.

b. **City's Right to Terminate for Convenience.** City may, at its sole discretion, terminate this Contract, in whole or in part, upon 30 days notice to Developer.

c. **City's Right to Terminate for Cause.** City may terminate this Contract, in whole or in part, immediately upon notice to Developer, or at such later date as City may establish in such notice, upon the occurrence of any of the following events:

(i) City fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for Developer's Work;

(ii) Federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Contract is prohibited or City is prohibited from paying for such work from the planned funding source;

(iii) Developer no longer holds any license or certificate that is required to perform the work; or

(iv) Developer commits any material breach or default of any covenant, warranty, obligation or agreement under this Contract, fails to perform the work under this Contract within the time specified herein or any extension thereof, or so fails to

pursue the work as to endanger Developer's performance under this Contract in accordance with its terms, and such breach, default or failure is not cured within 10 business days after delivery of City's notice, or such longer period as City may specify in such notice.

d. **Developer's Right to Terminate for Cause.** Developer may terminate this Contract upon 30 days' notice to City if City fails to pay Developer pursuant to the terms of this Contract and City fails to cure within 30 business days after receipt of Developer's notice, or such longer period of cure as Developer may specify in such notice.

e. **Remedies.** (i) In the event of termination pursuant to subsections a, b, c(i), c(ii) or d, of this Section, Developer's sole remedy shall be a claim for the sum designated for accomplishing the work multiplied by the percentage of work completed and accepted by City, less previous amounts paid and any claim(s) which City has against Developer. If previous amounts paid to Developer exceed the amount due to Developer under this subsection, Developer shall pay any excess to City upon demand. (ii) In the event of termination pursuant to subsection c(iii) or c(iv) of this Section, City shall have any remedy available to it in law or equity. If it is determined for any reason that Developer was not in default under subsection c(iii) or c(iv) of this Section, the rights and obligations of the parties shall be the same as if the Contract was terminated pursuant to subsection b of this Section.

f. **Developer's Tender upon Termination.** Upon receiving a notice of termination of this Contract, Developer shall immediately cease all activities under this Contract, unless City expressly directs otherwise in such notice of termination. Upon termination of this Contract, Developer shall deliver to City all documents, information, works-in-progress and other property that are or would be deliverables had the Contract been completed. Upon City's request, Developer shall promptly surrender to anyone City designates, all documents, research or objects or other tangible things needed to complete the work.

8. Force Majeure. Neither party shall be held responsible for delay or default caused by war, insurrection, acts of terrorism, strikes, lockouts, labor disputes, riots, terrorist acts or other acts of political sabotage, volcanoes, floods earthquakes, fires, acts of God, acts of the public enemy, epidemic, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priorities, severe weather, or any other uncontrollable or unforeseeable act or circumstance beyond a party's reasonable control and without the fault or negligence of the party. The affected party, however, shall make all reasonable efforts to remove or eliminate such cause of delay or default and shall, upon cessation of the cause, diligently pursue performance of its obligations under this Contract. In the event of such delay, the party delayed shall give written notice of the delay and the reason therefor to the other party within 30 days after the delayed party learns of the delaying event. An extension of time for any such cause shall be for the period of duration of the cause. Delays under this paragraph shall not be the basis for additional compensation payable to the Developer.

9. Modification. Any modification of the provisions of this Contract shall not be enforceable unless first reduced to writing and signed by both parties. A modification is a written document, contemporaneously executed by City and Developer, which increases or decreases the cost to City

over the agreed sum or changes or modifies the Statement of Services or Delivery Schedule. Any such modification shall be effective only in the specific instance and for the specific purpose identified in the modification. The services of the Developer with regard to any specific Work requested by the City shall be specified in a Project Contract supplementing this Contract. The services of the Developer with regard to any specific Work requested by the City shall be specified in a Project Contract supplementing this Contract.

In the event that Developer receives any communication of whatsoever nature from City that Developer contends gives rise to any modification of this Contract, Developer shall, within 15 calendar days after receipt, make a written request for modification to City. Developer's failure to submit such written request for modification in a timely manner is a basis for refusal by the City to treat said communication as a modification. In connection with any modification to the Contract affecting any change in price, Developer shall submit a complete breakdown of labor, material, equipment and other costs. If Developer incurs additional costs or devotes additional time on project tasks which were reasonably expected as part of the original Contract or any mutually approved modifications, then City shall be responsible for payment of only those costs for which it has agreed to pay.

10. Access to Records. Developer shall maintain all books, documents, papers and records relating to this Contract in accordance with generally accepted accounting principles. In addition, Developer shall maintain any other records pertinent to this Contract in such a manner as to clearly document Developer's performance. City, state and federal government, and their duly authorized representatives, shall have access to Developer's books, documents, papers, plans, writings and records that are directly pertinent to this Contract for the purpose of performing examinations and audits and making excerpts and transcripts. Developer shall retain and keep accessible all such fiscal records, books, documents, papers, plans, and writings for a minimum of three years from the date of Contract expiration, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later. Developer is responsible for any audit discrepancies involving deviation from the terms of this Contract and for any commitments or expenditures in excess of amounts authorized by City. The state and federal governments and their duly authorized representatives are intended beneficiaries of the terms of this provision.

11. Compliance with Applicable Laws. Developer shall comply with all federal, state and local laws, ordinances, rules, regulations and executive orders applicable to the Work to be performed under this Contract. Failure or neglect on the part of Developer to comply with any or all such laws, ordinances, rules or regulations shall not relieve Developer of these obligations or the requirements of this Contract. Without limiting the foregoing, Developer shall comply with all federal, state and local civil rights and rehabilitation laws prohibiting discrimination because of race, sex, age, color, religion, ethnicity, disability, marital status, national origin, veteran status or sexual orientation and shall comply with all applicable provisions of ORS Chapters 279A, 279B and 279C relating to public contracts. The provisions of ORS 279B.220, ORS 279B.225, ORS 279B.230 and ORS 279B.235 are hereby incorporated herein by this reference and made binding upon City and Developer. Before commencing Work under this Contact, Developer shall obtain a Beaverton business license. Developer shall maintain the license during the full term of this Contract. Developer shall provide the business license number in the space provided on the signature page of this Contract. If Developer fails to obtain or maintain a valid business license during the full term of this Contract, the

City shall have the right to deduct from payments due Developer an amount sufficient to satisfy in full or in part the business license fee owed under provisions of Beaverton Code section 7.01. Developer shall safeguard consumer personal information pursuant to ORS 646A.600 to 646A.628 (the Oregon Consumer Identity Theft Protection Act). The parties shall comply with any state or federal law or regulation specific to the funding source that supports this Contract.

12. INDEPENDENT CONTRACTOR; RESPONSIBILITY FOR TAXES & WITHHOLDING. The Work to be rendered under this Contract is that of an Independent Contractor. Developer is not an officer, employee or agent of the City as those terms are used in ORS 30.265 of the Oregon Tort Claims Act, and Developer shall not to be considered an officer, employee or agent of City for any purpose. Developer shall be solely and entirely responsible for its acts and for the acts of its agents or employees during the performance of this Contract. As used herein, "Independent Contractor" means that:

a. Developer is free from direction and control over the means and manner of providing labor or services, subject only to City's right to specify the desired results.

b. Developer is responsible for obtaining all required business registrations or professional occupational licenses.

c. Developer furnishes the tools or equipment necessary to perform the contracted labor or services.

d. Developer has the authority to hire and fire Developer's employees.

e. Developer is registered under ORS chapter 701 to provide labor or services for which such registration is required.

f. For labor and services performed as an Independent Contractor in the previous year, Developer has either filed federal and state income tax returns in the name of Developer's business or, in the alternative; Developer has filed a Schedule C tax form as part of Developer's personal income tax return.

g. Developer represents to the public that the labor or services described herein are to be provided by an independently established business.

h. Payment to the Developer is made upon completion or periodic completion of the performance required herein, or is made based on a periodic retainer.

Neither Developer nor any of Developer's agents or employees is entitled to any of the benefits (including, but not limited to, social security, workers' compensation and unemployment insurance benefits) that City provides its employees. Developer shall be responsible for all federal or state taxes applicable to compensation or payments paid to Developer under this Contract. Unless Developer is subject to backup withholding, City will not withhold from such compensation or payments any amount to cover Developer's federal or state tax obligations.

13. REPRESENTATIONS AND WARRANTIES; STANDARD OF CARE. Developer represents and warrants to City that:

a. Developer has the power and authority to enter into and perform this Contract;

b. When executed and delivered, this Contract shall be a valid and binding obligation of Developer enforceable in accordance with its terms;

c. If Developer provides personal services under this contract, the Work under this Contract shall be performed in a good and workmanlike manner;

d. If Developer provides professional services under this contract, the Work under this Contract shall be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care, skill and diligence ordinarily exercised by members of the profession currently practicing under similar conditions; and

e. Developer shall, at all times during the term of this Contract, be duly licensed to perform the Work, and if there is no licensing requirement for the profession or Work, be duly qualified and competent.

The warranties set forth in this Section are in addition to, and not in lieu of, any other warranties provided.

City does not warrant or guarantee that any work will be requested or authorized under this Contract. No Work will be undertaken pursuant to this Contract unless a written Project Contract supplementing this Contract with terms and conditions regarding the specific Work requested by the City is executed.

14. Ownership of Work Product. Developer is an Independent Contractor for purposes of determining whether Developer's work product is "work made for hire" under provisions of the U.S. Copyright Act, 17 U.S.C. §§ 101 - 810. If Developer's work meets the definition of a work made for hire by an Independent Contractor, then the work shall be considered a work made for hire and the City shall be deemed the work's author. If Developer's work does not meet the definition of work made for hire by an Independent Contractor, then Developer hereby irrevocably assigns and transfers to the City all right, title and interest in such work product, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrines. Developer waives and releases all rights relating to the use of the work described in or encompassed by the Statement of Work of this Contract, including any rights arising under 17 U.S.C. § 106A. Reuse of work product by City or others for purposes outside the scope of the Statement of Work of this Contract shall be without liability to Developer. If professional architectural services are provided under the terms of a Project Contract, any plans, drawings and other work product produced within the scope of work for such services are the property of the architect providing the services and the architect hereby grants the City an exclusive and irrevocable license to use that work product.

15. Indemnity. With regard to the Developer's performance in connection with or incidental to the Work, but excluding its performance of professional services and the indemnification and hold harmless aspects thereto as set forth below in this Section, the Developer shall defend, indemnify, protect and hold the City, its officials, employees, agents and volunteers harmless from and against

any and all claims, suits, actions, losses, costs or judgments of any nature for damages or injuries to any person or property, including injury to the Developer and/or its agents, employees or subcontractors which arise from or are connected with or are caused or claimed to be caused by the negligent, reckless or willful acts or omissions of the Developer and/or its agents, employees or subcontractors, in performing Work herein, and all expenses of investigating and defending against same, including reasonable attorney fees and costs at trial and on appeal; provided, however, that the Developer's duty to indemnify and hold harmless shall not include any claims or liability arising from the established sole negligence or willful misconduct of the City, its officials, employees, agents and volunteers.

With regard to the Developer's performance of professional services, Developer shall defend, indemnify and hold harmless the City, its officials, employees, agents and volunteers from and against any and all claims, costs, suits, actions, losses, expenses and damages, including reasonable attorney's fees and costs at trial and on appeal, arising from the willful misconduct or negligent acts, errors or omissions of the Consultant and/or its agents, employees or subconsultants associated with the Work.

16. INSURANCE COVERAGE. The City's Sample Project Contract (attached hereto and marked as Exhibit 1) has several options for types and amounts of required insurance coverage. These options allow the City to tailor insurance coverage to specific project circumstances. The type and amount of insurance coverage actually required for a specific project shall be determined in conjunction with the letting of a Project Contract. The following are the minimum kinds and amounts of insurance Developer must have to be eligible for award of a Project Contract. (Insurance must have coverage terms and conditions equivalent to those insurance terms and conditions described in the Sample Project Contract.)

- WORKERS' COMPENSATION & EMPLOYER LIABILITY INSURANCE
  As required under Oregon law, unless statutorily exempt.

- COMMERCIAL GENERAL LIABILITY INSURANCE
  Not less than $500,000 combined single limit.

- AUTOMOBILE LIABILITY INSURANCE
  Not less than $500,000 each accident.

- PROFESSIONAL LIABILITY INSURANCE
  Not less than $2,000,000 combined single limit per claim with a $2,000,000 annual aggregate.

Meeting the minimum insurance coverage requirements set out above does not assure that for a specific project the City cannot require different coverage or greater amount of coverage consistent with the insurance provisions set forth in the Sample Project Contract.

17. INSURANCE CERTIFICATION; OTHER INSURANCE REQUIREMENTS. Before Developer com mences Work under this Contract, Developer shall furnish City, through its Risk Manager, with acceptable certificates evidencing the types, amounts and issuers of insurance coverage meeting the minimum requirements of this Contract. The certificate shall specify all of the parties who are Additional

Insureds. If a certificate of insurance coverage is unavailable from a particular insurer, alternative proof of insurance coverage acceptable to City shall be arranged. Renewal certificates of insurance shall be furnished no later than 15 days before the expiration of the policy. Any deductibles or self-insured retentions must be stated on the certificate of insurance, which shall be sent to and approved by City's Risk Manager in advance to commencement of Work under this contract.

In all instances concerning all forms of insurance required by this Contract:

a. The insurance shall be issued by a company authorized to do insurance business in the State of Oregon or by a non-admitted insurer subject to ORS 735.400 to 735.495 (the Oregon Surplus Lines Law);

b. Upon request, complete copies of insurance policies, trust agreements etc. shall be provided to City;

c. Developer shall be financially responsible for all pertinent deductibles, self-insured retentions and/or self-insurance amounts;

d. Umbrella or Excess Liability Insurance may be used to achieve the above minimum liability limits, so long as policy is endorsed to state it is "As Broad as Primary Policy." If Umbrella or Excess policy is evidenced to comply with minimum limits, a copy of the Underlying Schedule from the Umbrella or Excess Liability Insurance policy may be required;

e. Developer shall provide City not less than 30 days written notice of Developer's intent to cancel, terminate or make any material change affecting required insurance coverage;

f. Until such time as the insurance is no longer required by the City, Developer shall provide the City with renewal or replacement evidence of insurance no less than 30 days before the expiration or replacement of the required insurance. If at any time during the period when insurance is required by the Contract, an insurer shall fail to comply with the requirements of this Contract, as soon as Developer has knowledge of any such failure, Developer shall immediately notify the City and immediately replace such insurance with an insurer meeting the requirements;

g. Except for Professional Liability Insurance, the insurance shall be provided by a carrier with A.M. Best's Rating of A- or better and Financial Performance Rating of 7 or better. Developer's Professional Liability Insurance policy shall be written by an insurer satisfactory to City and may be written on a claims made basis, provided Developer, at Developer's own expense, maintains the Professional Liability Insurance in full force for not less 24 months following completion of this Contract; and

h. The commercial general liability insurance and automobile liability insurance provided by Developer and its subcontractors shall apply on a primary basis and be required to respond and pay prior to any other available coverage. Any commercial general liability insurance maintained by the City shall be excess of and shall not contribute with the commercial general liability insurance provided by Developer and its subcontractors.

City reserves the right to review the types of coverages and limits of insurance required herein from time to time. In the event that City changes its insurance requirements after this Contract has been signed, City will provide notice to Developer of the new requirements. Developer shall promptly modify its coverage to comply with the new requirements and provide City with updated evidence of coverage. Developer will be entitled to an adjustment in the Contract price for any increase in premium resulting from such changes, provided Developer can establish with reasonable certainty that the increased premium was due to changes required by City. Premium savings from any changes shall be refunded to City.

18. LIMITATION OF LIABILITIES. Neither party shall be liable in contract, tort, strict liability, warranty or otherwise for (i) any special, indirect, incidental, consequential or non-economic damages resulting from or in any way related to this Contract, such as, but not limited to, delay, disruption, loss of product, cost of capital, loss of anticipated profits or revenue, or loss of use of equipment or system, or (ii) any damages of any sort whatsoever arising solely from the termination of this Contract in accordance with its terms; provided, however, the provision of this paragraph do not apply to liability arising under or relating to Section 6(e)(ii) (Termination) or Section 12 (Representations and Warranties; Standard of Care).

19. NOTICE. Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid, to Developer or City at the address or number as identified herein above, or to such other addresses or numbers as either party from time to time may designate in writing. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. To be effective against City, such facsimile transmission must be confirmed by telephone notice to the Contract Administrator. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

20. NO THIRD PARTY BENEFICIARIES. City and Developer are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

21. CONFLICT OF INTEREST. Developer hereby represents that no employee of the City, or any partnership or corporation in which a City employee has an interest, will or has received any remuneration of any description from Developer, either directly or indirectly, in connection with the letting or performance of this Contract, except as specifically declared in writing.

22. HAZARD COMMUNICATION. Developer shall notify City before using products containing hazardous chemicals to which City employees or patrons may be exposed. In accordance with the OR-OSHA Hazard Communication Rules in OAR chapter 437, division 155, Developer shall provide City with a Material Safety Data Sheet for any goods provided under this Contract that may release, or otherwise result in exposure to a hazardous chemical under normal conditions of use (OAR 437-155-005(2), 437-155-025). In addition, Developer must label, tag, or mark such goods.

23. Disclosure of Social Security Number. Developer must provide Developer's Social Security Number (SSN) unless Developer provides an Employer Identification Number (EIN) or other valid form of Taxpayer Identification Number (TIN). SSN is requested pursuant to BPC 47-0636 of the Beaverton Purchasing Code (Resolution 3917, as amended). SSN provided pursuant to this authority will be used for the administration of state, federal and local tax laws. Developer's TIN will be reported to the Internal Revenue Service (IRS) under the name and TIN submitted. (See IRS 1099 for more information.) Information not matching IRS records may subject Developer to backup withholding.

24. Survival. Expiration shall not extinguish or prejudice City's right to enforce this Contract with respect to any breach of a Developer warranty or any default or defect in Developer performance that has not been cured. All representations, indemnifications, warranties and guarantees made in, required by or given by the Developer in accordance with this Contract, as well as all continuing obligations indicated in the Contract, will survive final payment to the Developer, completion of the Work and termination or completion of the Contract.

25. Time is of the Essence. Time is of the essence for the completion of the Work described in any Project Contract entered into under this Contract.

26. Governing Law. This Contract is entered into and is to be performed in Oregon and shall be governed and construed in accordance with the laws of the State of Oregon, without resort to any jurisdiction's conflict of laws, rules or doctrines. Any claim, action, suit, or proceeding between City and Developer arising from or relating to this Contract shall be brought and conducted solely and exclusively within the Circuit Court of Washington County, Oregon, or, if the claim must be brought in a federal forum, the United States District Court for the District of Oregon. Developer her eby consents to *in personam* jurisdiction of said courts.

27. Captions. The captions or headings in this Contract are for reference purposes only and shall not affect in any way the meaning or interpretation of this Contract.

28. Counterparts. This Contract may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of the Contract so executed shall constitute an original.

29. Merger. This Contract (including, to the extent provided herein, any attached exhibits or any Project Contract supplementing this instrument) constitutes the entire and integrated agreement between the parties and supersedes all prior contracts, negotiations, representations or agreements, either written or oral. There are no understandings, agreements, representations, oral or written, not specified herein regarding this agreement.

30. Waiver. City's failure to enforce a provision of this Contract shall not constitute a continuing waiver, shall not constitute a relinquishment of City's right to performance in the future and shall not operate as a waiver of City's right to enforce any other provision of this Contract.

31. Severability. If any term or provision, or portions thereof, of this Contract is declared by an arbiter or a court of competent jurisdiction to be illegal, invalid, void, or otherwise unenforceable, each such term or provision shall be enforced only to the extent it is not in violation of law or is not otherwise unenforceable; all other provisions and requirements of this Contract shall remain in full

force and effect insofar as possible to preserve the lawful anticipated benefits of this Contract to the parties.

Certification

The individual signing on behalf of Developer hereby certifies and swears under penalty of perjury: (a) the number shown on this form is Developer's correct taxpayer identification; (b) Developer is not subject to backup withholding because (i) Developer is exempt from backup withholding, (ii) Developer has not been notified by the IRS that Developer is subject to backup withholding as a result of a failure to report all interest or dividends, or (iii) the IRS has notified Developer that Developer is no longer subject to backup withholding; (c) s/he is authorized to act on behalf of Developer, s/he has authority and knowledge regarding Developer's payment of taxes, and to the best of her/his knowledge, Developer is not in violation of any Oregon tax laws; (d) Developer is an Independent Contractor as defined in ORS 670.600; and (e) the Developer data set forth herein is true and accurate.

The parties, by their signature below, acknowledge having read and understood the Contract and agree to be bound by its terms and conditions.

AGREED TO BY THE PARTIES HERETO:

CITY OF BEAVERTON, OREGON

BY: _____

NAME & TITLE: _____

DATE: _____

Approved as to legal sufficiency:

_____

GERDING EDLEN DEVELOPMENT COMPANY, LLC

BY: _____

NAME & TITLE: _____

DATE: _____

Beaverton Business License Number: _____

Federal Tax ID#: ____-_____

Business License Number and TIN must be provided for Contract approval. TIN will be reported to the Internal Revenue Service (IRS) under the name and taxpayer identification submitted. (See IRS 1099 for more information.) Information not matching IRS records could subject Developer to backup withholding.

EXHIBIT 1:
AUTHORIZED MASTER DEVELOPER SERVICES

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1. Master Planning Services
Work closely with the City and its team of consultants to develop and implement development master plans that align with City goals and objectives as identified through the Community Development Department. Master planning services may include establishment of comprehensive urban development through sustainable practices, including determination of infrastructure and services necessary to support development of one or more sites.

Examples of master planning tasks include, but are not limited to:

- Identification and analysis of project site locations consistent with City goals and objectives.
- Development and implementation of Master Plan designs.
- Integration of development and redevelopment proposals in other City plans into the Master Plan.
- Completion of plans for development of specific projects in accordance with strategies established in the Master Plan.

2. Design Services
Solicit and review design proposals. Present such proposals to the City for analysis, comment and approval. Manage schematic design development and construction documents for each individual facility or project. Provide opportunity for City review and approval of design documents to ensure facility or project design meets the architectural and functional objectives of the City's codes. Provide all applicable engineering and other technical studies as may be necessary for design development and review. Develop and implement environmental and energy efficiency design standards related to projects.

Examples of design tasks include, but are not limited to:

- Creating design solutions for specific development and redevelopment projects.
- Following through with applicable permitting and construction documentation.
- Integrating community standards for sustainable and energy efficient construction practices into managed projects.
- Following best practices for sustainable environmental design and development of real estate, such as those established through LEED certification.

3. Entitlement / Development Approval Services
Procure all necessary land use entitlements, permits, and regulatory approvals for development of the identified projects. This may include any required environmental permits, reports and approvals, building permits, and other required documentation. (The City will assist with, but cannot guarantee, procurement of such permits or other approvals.)

Examples of entitlement / development approval tasks include, but are not limited to:

- Assistance with site assembly or procurement.
- Analysis and review of project proposals.
- Application for required permits, entitlements or other approvals.

4. Development Financing Services
Identify appropriate public/private financing resources and optimizing the use of federal, state and local funding for identified projects. This includes utilization of both tax-exempt and taxable financing for facilities that may be occupied by the City, as well as facilities developed for lease by private-sector users. Assist the City in maximizing the value of its property holdings by assisting the City in measuring property value through a combination of annual returns and total project cost reduction to the City resulting from public/private financing and ownership structures proposed by the Master Developer. Provide capital for all or a portion of the cost of a proposed development project or credit enhancing public financing of a project. This may include all predevelopment costs such as: infrastructure, public communications, entitlements, environmental, traffic, soil and other studies, design and construction costs, and off- and on-site work including all utilities.

Examples of financing infrastructure and development cost tasks include, but are not limited to:

- Produce project *pro formas* and financial statements (e.g., cash flow and net revenue analyses) and finance plans, including integration of traditional and non-traditional financing options (e.g., tax credit financing and tax credit bond financing).
- Create development budgets.
- Provide equity funding for development projects as a co-funder or sole-funder where feasible.
- Utilize non-traditional financing resources, such as New Market Tax Credits, State and Federal Energy Tax Credits, and Historic Tax Credits, for real estate project development.

5. Construction Services
(Important Note: To the extent construction-related work entails the construction of a public improvement, the award of a project contract for such construction work will likely entail additional public contracting procedures and requirements, the nature of which will be determined on a project-by-project basis.)

The Master Developer may be responsible for the construction of all necessary on and off-site improvements, including, but not limited to, all infrastructure (utilities, roads, etc.); the buildings' cores and shells; tenant improvements; fixed furniture, fixtures, and equipment; and landscaping. The Master Developer will be required to comply with all applicable state and federal regulations concerning prevailing wage and other labor-related issues. The Master Developer will also be responsible for packaging selected land parcels for development by third-party developers. In addition, the Master Developer will be responsible for negotiating all development agreements with third-party developers.

Examples of construction tasks include, but are not limited to:

- Manage construction.

- Prepare contract specifications for contractors, sub-contractors, leasing agents, brokers, and other third-party service providers.
- Review, analyze and report on project pro-forma financial statements, site development plans, construction budgets and other relevant construction and development materials.
- Consult with respect to the City's internal policies and procedures for project review and approval.
- Assist City to establish significant collaborative relationships with contractors and other professional service providers.

6. Facility Maintenance and Operation Services
Provide ongoing maintenance and operation of city-owned or operated facilities.

Examples of facility maintenance and operation tasks include, but are not limited to:

- Hire and oversee on-site property management staff, leasing agents, service contractors, and other relevant service providers (e.g., janitorial, security, landscaping, trash disposal).
- Maintain roofs and building shells, interior carpet, walls and paint, HVAC systems, elevators, plumbing, electrical and other building systems.

EXHIBIT 2:
SAMPLE PROJECT CONTRACT

CITY OF BEAVERTON
PROJECT CONTRACT
PROJECT: _____

THIS PROJECT CONTRACT supplements the Master Agreement for Master Developer Services entered into between the CITY OF BEAVERTON, OREGON, an Oregon Municipal Corporation, located at 4755 SW Griffith Drive, P.O. Box 4755, Beaverton, Oregon 97076-4755 (the "City") and GERDING EDLEN DEVELOPMENT COMPANY, LLC, an Oregon limited liability company, located at 1140 SW 11th Avenue, Suite 400, Portland, Oregon 97205-2490 (the "Developer"). The City's primary supervisor for this Project Contract (the "Project Contract Administrator") is _____.

THE PARTIES AGREE THAT their Master Agreement for Master Developer Services (the "Contract") is hereby supplemented as follows:

1. STATEMENT OF WORK. Developer shall perform the services set forth in Developer's project proposal dated _____, 20___, attached hereto as Exhibit A and incorporated herein by this reference.

2. CONSIDERATION. City shall pay Developer at an hourly rate based in accordance with the existing Retainer Agreement with the City of Beaverton and the attached _____ current Cost Schedule as shown in Exhibit B for satisfactory accomplishment of the Work required by this Contract. The **MAXIMUM, NOT-TO-EXCEED AMOUNT** of compensation payable to Developer under this Contract, which includes any allowable expenses or reimbursement, is $ _____ .

3. BILLING AND PAYMENT SCHEDULE. At least thirty (30) days prior to due date of payment, Developer shall prepare and submit to **THE CITY OF BEAVERTON, ATTENTION:** _____ an invoice of services rendered. Payment shall be made upon City's approval and acceptance of Developer's completed Work described herein, whereupon a payment request shall be submitted to City's Finance Department. If this Contract specifies an end product, an amount up to 10 percent of the total sum of money to be paid for the satisfactory accomplishment of the Work may be withheld until all required Work is completed and accepted. If charges are made for services performed and those charges are to be paid from grant funds, the services shall relate directly to the grant from which the funds are expended. Interim payments to Developer for partial completion of tasks or services may be made only upon prior written authorization of City. When made, interim payment shall release City from any further obligation for payment to Developer for Work performed or expenses incurred as of the date of the invoice of services rendered.

4. INSURANCE. Developer, at Developer's own expense, shall procure and maintain in full force and effect for the duration of Developer's Work under this Contract the types and coverage amounts of insurance conforming to these minimum requirements:

WORKERS' COMPENSATION INSURANCE
AND EMPLOYER LIABILITY INSURANCE
☐ Required; ☐ Not Required.

Workers' Compensation Insurance in compliance with ORS 656.017, which requires subject employers to provide Oregon workers' compensation coverage for all their subject workers. Out-of-state employers must provide Oregon workers' compensation coverage for their workers who work in Oregon, unless existence of extraterritorial coverage is established pursuant to ORS 656.126(3). All Contractors and subcontractors required to procure and maintain Workers' Compensation Insurance shall also procure and maintain in full force and effect for the duration of Developer's or subcontractor's Work under this Contract Employer Liability Insurance with a combined single limit, or the equivalent, of not less than $500,000 each employee per accident for bodily injury by accident or disease.

Developer shall require and ensure that each of its subcontractors who provide labor or services in connection with this Contract operates in compliance with ORS 656.017 by providing Oregon workers' compensation coverage for all their subject workers. Developer shall require proof of such Workers' Compensation Insurance and Employer Liability Insurance by receiving and keeping on file a certificate of insurance from each subcontractor and anyone else directly employed by either the Developer or subcontractor.

Workers' Compensation Insurance and Employer's Liability Insurance coverage is required under this Contract of all employers. If Developer is legally exempt from any requirement to provide Workers' Compensation Insurance coverage for the Work to be performed under this Contract, Developer hereby represents that Developer understands and agrees that under ORS 656.006(13), an "employer" is any person who contracts to pay remuneration for and secures the right to direct and control the services of any person. Developer understands and agrees that if Developer is exempt from coverage under ORS 656.027 and engages individuals in performance of this Contract who are not exempt from coverage under ORS 656.027, then Developer shall provide Workers' Compensation Insurance coverage for all such individuals. If the Developer does not provide that insurance, Developer may be deemed a non-complying employer for purposes of Oregon law and agrees to hold City harmless from and indemnify City against any and all

claims for compensation benefits made against the Developer as a non-complying employer. If Developer is declaring Developer exempt from any requirement to provide workers' compensation coverage, Developer must initial here: _____; otherwise Developer shall procure and maintain the required insurance.

COMMERCIAL GENERAL LIABILITY INSURANCE

☐ **Required;** ☐ **Not Required.**

General Liability Insurance with a combined single limit, or the equivalent, of not less than ☐ $500,000; ☐ $1,000,000; ☐ $2,000,000; or ☐ $5,000,000 covering, but not limited to, liability for personal injury and property damage. The policy shall be written on an occurrence basis on ISO Form CG 00 01, or its equivalent, and shall include blanket contractual liability coverage for the assumed liability under this Contract and broad form property damage coverage including completed operations. The City of Beaverton, and its officials, employees and agents shall be named as additional insureds under ISO Form CG 20 10 (Additional Insureds – Owners, Lessees or Consultants), or its equivalent, with respect to the Work to be provided under this Contract. The Commercial General Liability Insurance coverage required by this Contract is with respect only to the Work described in this Contract, and has no relationship to, or bearing upon, other projects of the insured. The insurance coverage is primary to any self-insurance program.

AUTOMOBILE LIABILITY INSURANCE

☐ **Required;** ☐ **Not Required.**

Automobile Liability Insurance with an each accident limit, or the equivalent, of not less than ☐ $500,000, or ☐ $1,000,000 covering, but not limited to, liability for bodily injury and property damage, together with coverage for "any auto," including owned, non-owned and hired autos used in connection with the performance of the Work. The policy shall be written on an occurrence basis on ISO Form CA 00 01, or its equivalent, including an omnibus insurance clause. The City of Beaverton, and its officials, employees and agents shall be named additional insureds under the policy if Developer's Work entails transporting people for the City. The policy cannot be excess to a self-insurance program; any deductible cannot exceed $5000. If Developer is declaring Developer excused from any requirement to provide Automobile Liability Insurance coverage because Developer does not use an automobile in connection with Work under this Contract, Developer may initial here: _____; otherwise Developer shall procure and maintain the required insurance.

PROFESSIONAL LIABILITY INSURANCE

☐ **REQUIRED;** ☐ **NOT REQUIRED.**

Professional Liability Insurance with a combined single limit, or the equivalent, of not less than ☐ $500,000; ☐ $1,000,000; ☐ $2,000,000; or ☐ $5,000,000 per claim with a ☐ $2,000,000 or ☐ $5,000,000 annual aggregate limit, covering, but not limited to, liability for bodily injury, property damage and economic loss. Developer shall be responsible for any deductible amounts. If Developer proposes using subcontractors, in addition to any other requirements of this Contract, City may require subcontractors to provide professional liability insurance of similar type and coverage amount. Developer, at Developer's own expense, shall maintain the Professional Liability Insurance in full force for not less 24 months following completion of this Contract. The Professional Liability coverage required by this Contract is with respect only to the Work described in this Contract, and has no relationship to, or bearing upon, other projects of the insured. Coverage must be in effect prior to the commencement of the performance of this Contract. Developer shall furnish proof of continuous "tail" coverage for 24 months after Contract completion.

CONSULTANT POLLUTION LIABILITY

☐ **REQUIRED;** ☐ **NOT REQUIRED.**

Developer's Professional Liability Insurances shall be endorsed to provide liability coverage in an amount not less than ☐ $1,000,000; ☐ $2,000,000; or ☐ $5,000,000 per claim limit, with a ☐ $2,000,000 or ☐ $5,000,000 annual aggregate limit, covering, but not limited to, liability for bodily injury, property damage and cleanup costs. In lieu of endorsement, the City may accept equivalent coverage under a separate insurance policy.

COMMERCIAL CRIME INSURANCE

☐ **REQUIRED;** ☐ **NOT REQUIRED.**

Commercial Crime Insurance not less than $50,000 including, but not limited to, coverage for theft or loss of client property.

CONTRACTOR POLLUTION LIABILITY INSURANCE

☐ **REQUIRED;** ☐ **NOT REQUIRED.**

Contractor Pollution Liability Insurance in an amount not less than ☐ $1,000,000; ☐ $2,000,000; or ☐ $5,000,000 per claim limit, with a ☐ $2,000,000 or ☐ $5,000,000 annual aggregate limit, covering, but not limited to, liability for bodily injury, property damage and cleanup costs.

WAIVER OF SUBROGATION

☐ **REQUIRED;** ☐ **NOT REQUIRED.**

If Waiver of Subrogation is required, Developer hereby waives Developer's right to recover from the City, and its officers, agents, employees and volunteers for any damages arising out of Work performed under this Contract and covered by insurance. Any Commercial General Liability Insurance policy and/or Automobile Liability Insurance policy required under this Contract shall be endorsed to provide for a waiver of underwriter's rights to subrogation as to additional insureds.

5. Availability of Funds. City has sufficient funds currently available and authorized for expenditure to finance costs of this Contract within City's current fiscal period; provided, however, that continuation or extension of the Contract after the end of the fiscal period in which this Contract is written is contingent upon a new appropriation for each succeeding fiscal period. If sufficient funds are not provided in future City Council-approved budgets of City (or from applicable federal, state, or other sources) to permit City in the exercise of its reasonable administrative discretion to continue this Contract, or if City abolishes the program for which benefit this Contract was executed, City may terminate this Contract without further liability by giving Developer not less than 30 days' notice. In determining the availability of funds, City may use the annual budget adopted for it by its City Council.

6. Reuse of Work Product. Reuse of Work Product by City or others for purposes outside the scope of the statement of work of this Project Contract shall be without liability to Developer.

7. Compliance with Public Contract Laws. Developer shall comply with all applicable provisions of ORS 279A, 279B and 279C relating to public contracts. The provisions of ORS 279B.220, ORS 279B.225, ORS 279B.230, ORS 279B.235, are hereby incorporated herein by this reference and the applicable terms therein shall be binding upon City and Developer.

All other provisions of the Master Agreement for Master Developer Services or any amendments thereto remain in full force and effect.

IN WITNESS HEREOF, the parties have duly executed this Project Contract as of the day and year first above written.

CITY OF BEAVERTON, OREGON

BY: _____

NAME & TITLE: _____

DATE: _____

Approved as to legal sufficiency:

_____

GERDING EDLEN DEVELOPMENT COMPANY, LLC

BY: _____

NAME & TITLE: _____

DATE: _____

Beaverton Business License Number: _____

Federal Tax ID#: ____-_____

Business License Number and TIN must be provided for Contract approval. TIN will be reported to the Internal Revenue Service (IRS) under the name and taxpayer identification submitted. (See IRS 1099 for more information.) Information not matching IRS records could subject Developer to backup withholding.

EXHIBIT 3:
RATES FOR SELECTED SERVICES

GERDING EDLEN	RATE
Mark Edlen	$325
Kelly Saito	$325
Roger Krage	$325
Jill Sherman	$150
Patrick Wilde	$190

ECONORTHWEST	RATE
Abe Farkas	$210
Lorelei Juntunen	$120
Nick Popenuk	$85