

DRAFT TERM SHEET
Between
The City of Portland
And The Olympia Companies

DEFINITIONS

“Building” means a building constructed by a Building Developer on the premises subleased to it pursuant to a Building Site Sublease.

“Building Developer” means an affiliate of the Olympia Companies which will be the Tenant under a Building Site Sublease and construct a Building or Buildings on the subleased premises.

“Closing”: The Closing is the date upon which the financial closing of the transaction contemplated by the MDA occurs. There shall be a single Closing unless the Developer requests separate financing transactions with respect to any component of the Project, subject to City approval of such request. The City will require that adequate security (as agreed upon by the parties) for any subsequent elements of the project be posted as a condition, inter alia, of approval of such request.

“Critical Path Tasks” Certain development milestones to be defined in the MDA that materially impact project schedule. Such milestones may be extended by the City for good cause shown upon payment of an extension fee as provided in the MDA. Extended failure to complete certain Critical Path Tasks may lead to early termination of the MDA.

“Developer” means an affiliate of the Olympia Companies which will be the Borrower under the Infrastructure Financing, use the proceeds thereof to construct the Infrastructure Improvements, be the Tenant under the Lease and the landlord under the Building Site Subleases.

“Development Permits” means all municipal, county, state and federal permits, approvals, and consents that are required or necessary for the development of the Project and to allow financial closing(s) to occur.

“Infrastructure Improvements” means the construction of Casco Bay Park and repair of the seawall adjacent thereto and the reconstruction, renovation, and repair of the Maine State Pier all as more particularly described on Exhibit B.

“Infrastructure Financing” means the loan or loans used to finance the costs of the Infrastructure Improvements and transaction costs related to such financing. It is anticipated that the Infrastructure Financing will consist primarily of tax exempt bonds issued by or with the approval of the Finance Authority of Maine to be supplemented by conventional financing of costs that do not qualify for such tax exempt financing. The Developer shall be responsible for repayment of the Infrastructure Financing and there shall be no recourse against the City with respect thereto.

“Initial Financing Plan” means a detailed initial project financing plan including the terms and conditions proposed for the revenue bond for infrastructure improvements and the specific proposed sources and commitments (if any) from financing sources.

After the Development Permits have been issued and prior to the closing under the MDA, the Initial Financing Plan will be updated with a final financing plan.

“**Lease**” means the lease of the Premises between the City and the Developer

“**MDA**” shall mean the Master Development Agreement.

“**MDA Date**” shall mean the date the MDA is executed and the initial deposit is made.

“**Municipal Development Permits**” means the subset of Development Permits granted by the City of Portland and shall include, but not be limited to, conditional re-zoning agreements, site plan and subdivision approvals, and building permits.

“**Pre-Closing Expenditures**” means all third party expenditures by the Developer and its affiliates related to the Project prior to the Closing including, but not limited to professional fees and expenses, but not including Developer general overhead expense.

“**Project**” means collectively the Infrastructure Improvements and the Buildings. A preliminary plan of the Project is attached hereto as Exhibit A.

GENERAL PROVISIONS

Risks of Development. All risks and cost of development, construction and permitting shall be the responsibility of the Developer, and the responsibilities and obligations of the City shall be limited to those expressly set forth in the MDA, the Lease or any related documents executed by the City.

Environmental Liability. The parties acknowledge that the premises consist of a site with prior industrial use and that the City therefore may currently have responsibility under certain circumstances for pre-existing environmental conditions on the site to the extent required by applicable law. During the Investigation and Due Diligence Period the Developer shall conduct such tests and studies as it, in its discretion shall deem necessary to assure itself of the subsurface conditions on and below the Premises, including any submerged lands, in the time frame set forth in the MDA. If such tests determine that remediation actions are needed, the parties shall negotiate a plan for taking such actions, provided that the City will not be responsible for the disturbance of existing materials of environmental concern in situ caused by such tests. If such tests determine that no remediation actions are currently needed, subsequent to the expiration of the Investigation and Due Diligence Period, the existence of environmental conditions shall not be a basis for early termination of the MDA or subsequent project agreements nor shall the City bear any cost responsibility including no reduction of lease fees.

Existing Conditions. Prior to the start of the Investigation and Due Diligence Period the City shall provide the Developer with all plans and other documents that it may have identifying the locations of any underground pipes, conduits or other existing conditions that may exist on the Premises.

Buildings to Be Fully Taxable. The MDA will provide that the tenant is responsible for taxes assessed against the Buildings and the land under the Buildings to the extent such land is not considered to be submerged lands under applicable law. The tenant

shall not be responsible for any real estate taxes on submerged lands, Casco Bay Park or the Pier Infrastructure Improvements. The property taxable value shall be fully taxable pursuant to the normal assessment process and tenant shall have all available rights to challenge assessed valuations or seek abatements as provided by law. No TIF or other form of property tax relief is contemplated hereunder.

TERM SHEET PROCESS

Term Sheet Approval Process. The proposed Term Sheet with attachments, schedules, and plans, shall be posted on the City of Portland Web site and otherwise made publicly available and shall be the subject of a public hearing before the Community Development Committee of the City Council and a subsequent public hearing before the full City Council. After such public process, the Council shall promptly determine whether to approve, to amend, or to reject same. The Developer will have the opportunity to address any amendments proposed prior to a vote and thereafter within ten (10) days to accept or to decline the Term Sheet as ultimately adopted by the Council. Should the Developer decline to accept the Term Sheet then their proposal shall be rejected and the parties shall have no right and no claims against each other and the City, in its sole discretion, shall determine what, if any, process to follow thereafter with respect to the Project.

Term Sheet as Basis for Project Design Schedule and MDA. The Term Sheet as voted on by the Council and accepted by the Developer shall be the basis for the Project and for negotiation of all subsequent project documents between the City and the Developer. Any matter proposed to be included in the MDA that is deemed by the negotiation team to be inconsistent with the Term Sheet shall be brought to the CDC for review and to the City Council for decision.

Term Sheet Not a Permit to Build. The parties acknowledge that acceptance of this Term Sheet shall not permit, in and of itself, the construction of this Project, or any part thereof, and that further permits at the municipal, state and federal level shall be required. It shall be the responsibility of the Developer to identify, to apply for and to obtain, at its sole cost and expense, all necessary municipal, county, state and federal permits for the Project. The City in its capacity as owner of the leased premises will cooperate with Developer's efforts to obtain such state and federal permits.

Comprehensive Project Schedule. Exhibit C hereof is a Project Schedule which sets forth the sequence of the development process, identifies all permits required to commence construction, provides an anticipated schedule for the submission of all such permits and approvals, anticipated completion of each of the primary components of the Project, as well as the schedule for the commencement of construction. This schedule will include Critical Path Tasks and trigger dates which may be extended upon payment of an extension fee for good cause shown, which cause may include delay by public agencies in issuing permits and approvals, notwithstanding the timely submission of complete applications for same by the Developer. If such dates, as the same may be extended are not met will vest the City will the option to terminate the MDA. Submission of completed applications for certain Critical Path Permits under this schedule are designated as Critical Path Tasks. These include but are not limited to the

submission of a request for Conditional Zoning to the City, and other permits as provided on the Permit Schedule. The Schedule attached to this term sheet may be updated with a revised schedule to be attached to the MDA.

MASTER DEVELOPMENT AGREEMENT (MDA)

Legal Effect, Deadline for Execution, and Early Termination. The MDA is the legally binding document between the City and the Developer setting forth in final and enforceable form the rights and obligations of the parties with respect to the Project. The parties will endeavor in good faith to complete and execute the MDA within sixty 60 days of the date of approval of this Term Sheet. In the event the MDA is not fully executed by a date which is 90 days from the City Council approval of the Term Sheet, the City may terminate any right of the Developer to negotiate hereunder and to reject the Developer's proposal. Failure to complete certain Critical Path Tasks as set forth on Exhibit C, including, but not limited to failure to make timely application for all permits as required, failure to maintain adequate third party expenditures to sustain the effort required to timely deliver the project, and other serious defaults contained therein, after the expiration of extensions granted (if any) and of applicable cure periods will vest the option in the City to elect the early termination of the MDA. Any such early termination after the expiration of the Investigation and Due Diligence Period shall result in the forfeiture to the City of all deposits, except that all Deposits will be returned in the event of a termination of the MDA based on the failure of Developer to obtain the Municipal Development Permits.

Contents of MDA. The MDA shall include, among other provisions: a Final Comprehensive Project Schedule; Schedule of Critical Path Tasks; the legal description of the premises to be leased, a form of option to lease and a form of ground lease, title insurance commitment; rent schedule, performance specification for all public improvements; and a final Project Security for Performance Schedule. The MDA shall provide for an Investigation and Due Diligence Period. During the Investigation and Due Diligence Period the Developer shall seek approval of the contract zone and the parties shall seek letters of interpretation from the Maine DEP, and DOC regarding the acceptability of the proposed uses of the Project and the Developer shall conduct such environmental and other studies and evaluations as it deems appropriate. If the Developer determines at the expiration of the Investigation and Due Diligence Period that in its sole judgment that Project is not feasible, then the Developer may within ten (10) days of the expiration of the Investigation Period elect to terminate the MDA and receive a refund of its deposit paid to date.

Security for Performance

Upon execution of the Master Development Agreement Developer shall make an initial Deposit of \$150,000 and in the case of default and termination of the MDA, Developer shall assign and transfer free and clear of all encumbrances to the City for its use without further cost and expense, all written and electronic products, reports, studies, and design documents, previously commissioned by the Developer, to the extent Developer has the

right to make such assignment pursuant to the terms of the applicable contracts with parties that produced such work product. The Developer's own internal documents and financial analyses shall not be included in any such assignment.

During the Investigation and Due Diligence Period the Developer will verify the Pre-Closing Expenditures of \$500,000 pursuant to the attached Schedule and shall assign and transfer free and clear of all encumbrances to the City for its use without further cost or expense all written and electronic products, reports, studies, and design documents, resulting there from, in the case of default and termination of the MDA. The Developer's own internal documents and financial analyses shall not be included in any such assignment.

Upon Completion of the Investigation and Due Diligence Period a further Deposit of \$200,000.

Upon receipt of all Development Permits a further Deposit of \$300,000.

From the expiration of the Investigation and Due Diligence Period to the Closing the Developer will verify Pre-Closing Expenditures of \$1.5 million pursuant to the attached Schedule and shall assign and transfer free and clear of all encumbrances to the City for its use all written and electronic products, reports, studies, and design documents, resulting there from, in the case of default and termination of the MDA. The Developer's own internal documents and financial analyses shall not be included in any such assignment.

At Closing, Developer shall post a Letter of Credit in the amount required to provide credit enhancement for the Infrastructure Financing. The documents relating to the Infrastructure Financing shall assure that the proceeds thereof shall be used to fund the costs of the Infrastructure Improvements and transaction costs related to such financing.

All Deposits under the MDA may be either in the form of cash held by the City in an escrow account or a letter of credit naming the City as beneficiary. If the Developer is able to be more cost effective and efficient than currently estimated so that Pre-Closing Expenditures are lower than the amounts set forth above, the same shall not constitute a default under the MDA.

LEASE

Parties to Lease: The City of Portland and the Developer.

Premises: The Maine State Pier and such upland portions of land that are agreed to by the parties, subject to approved modifications of the Ocean Gate Terminal existing approvals.

Building Site Subleases: In order to allow separate financing of the Buildings, the Developer may enter into subleases of specific portions of the Premises with affiliated

Building Developers and the City will enter into Nondisturbance and Attornment Agreements with the Building Developers and their leasehold mortgagees.

Title to Premises: City will convey insurable leasehold title subject to rights of the public under the Colonial Ordinance (fishing, fowling, and navigation) and the Public Trust Doctrine for the term of the ground lease or leases. Title shall be deemed to be insurable only if it provides affirmative insurance that the Premises may be used for the purposes proposed by Developer.

Term of Lease: 75 years. The City may offer to extend the lease on terms to be determined at the time. All Buildings and other leasehold improvements will be acquired by City at the then fair market value at expiration of the initial lease term.

Lease Fees: As provided on Exhibit D.

Parking and Transportation Plan. The Developer shall submit as part of the application process for the Municipal Development Permits a comprehensive parking and transportation plan serving the entire project which plan shall describe in detail the sites to be utilized for such functions, evidence of site control or agreements with owners for use of the facilities and a budget showing compliance with the Developer's commitment to invest \$13 million for this component of the project. The project cost will include the reconfiguration of the Ocean Gateway terminal queuing and parking as a result of changes in the existing configuration that will be required by use of a portion of that site by the developer as shown on the Project Plan.

List of Exhibits:

Exhibit A	Project Plan Sketch
Exhibit B	Performance Specifications of Infrastructure Improvements
Exhibit C	Project Schedule (Best Case and Contracted)
Exhibit D	Lease Fee Schedule