

RESOLUTION NO. 2017-58

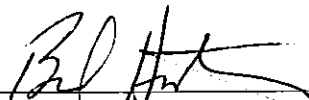
A RESOLUTION AMENDING RESOLUTION NO. 2017-57, ADOPTED JULY 25, 2017 AUTHORIZING AN AMENDMENT TO THE MASTER SERVICES AGREEMENT WITH LIBERTY DEVELOPMENT COMPANY FORMING A DEVELOPMENT RELATIONSHIP RELATIVE TO THE CONAGRA PROPERTY.

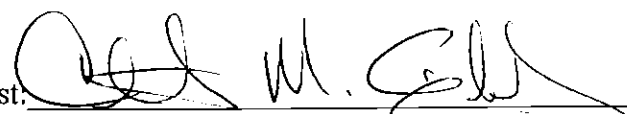
NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF HURON, OHIO:

SECTION 1. That the City Manager be, and he hereby is, authorized and directed to enter into an amended Master Services Agreement with Liberty Development Company for the purpose of establishing a development relationship relative to the ConAgra property, which agreement shall be in substantially the form of Exhibit "A" attached hereto and made a part hereof.

SECTION 2. That this Council hereby finds and determines that all formal actions relative to the adoption of this Resolution were taken in an open meeting of this Council and that all deliberations of this Council and of its Committees, if any, which resulted in formal action, were taken in meetings open to the public in full compliance with applicable legal requirements, including O.R.C. §121.22

SECTION 3. That this resolution shall go into effect and be in full force and effect from and after the earliest date allowed by law.


Brad Hartung, Mayor

Attest: 
Clerk of Council

Adopted: AUG 08 2017

MASTER SERVICES AGREEMENT

This Master Services Agreement (the "Agreement"), entered into by and between the **CITY OF HURON** (hereinafter "City"), a municipal corporation of Erie County, Ohio and **LIBERTY DEVELOPMENT COMPANY** (hereinafter "Developer"), an Ohio corporation, effective as of the last date set forth below their respective signatures hereto (the "Effective Date"), witnesseth:

WHEREAS, the City is the owner of real property located adjacent to the Huron Municipal Boat Ramp near the intersection of Cleveland Road East and River Road known as the ConAgra site (PPN #42-61270.001) (the "ConAgra Site") which is further described herein; and,

WHEREAS, the City and Developer have expressed their intent to form a development relationship with respect to the ConAgra Site (collectively the "Project Site") as evidenced by the Memorandum of Understanding (hereinafter "MOU") effective June 26, 2017 (attached hereto and incorporated herein by reference as Exhibit A); and,

WHEREAS, this Agreement shall establish the terms and conditions necessary to promote the orderly economic development of the Project Site (the "Project").

Now, therefore, the parties intending to be legally bound, agree to the following terms and conditions, to wit:

SECTION 1. PROJECT SCOPE. The parties agree that the terms and conditions of this Agreement shall incorporate the terms set forth in the MOU attached as Exhibit A.

1.1. Project Phase I shall include, but not be limited to, a development plan for the ConAgra Site anticipated to produce in its approximately 3-acres, 20 luxury, for-sale townhomes with an approximate post construction value of \$6 million. Furthermore, the City and the Developer will collaborate to develop a sustainable financial method such as Tax Increment Financing ("TIF") in order for the City to construct an approximately 1 acre public waterfront park and approximately 750 feet of new public street as part of Project Phase I. Additional due diligence is necessary to determine the specifics of the development and whether these uses are economically feasible for both the City and the Developer and appropriate for the market.

The Developer or its designee shall have a period of time commencing on the Effective Date of this Agreement and continuing for 180 days to conduct inspections of the Project Site. The Developer and its agents, representatives and contractors shall be granted full access to the land comprising the Project Site for purposes of conducting such physical and environmental inspections, tests and surveys, including without limitation a Phase I environmental survey, soil borings, geotechnical testing, surveys and title searches (collectively, the "Inspections") of the Project Site as the Developer deems necessary, in the Developer's sole discretion, to determine the feasibility, costs and physical and other impediments to development of the Project Site.

The Developer shall provide copies to the City of any and all test results and reports relating to Inspections performed at the Project Site. The Developer shall be responsible for any damage to the Project Site caused by the Developer or the Developer's inspectors or contractors during such Inspections, shall repair and restore, to the extent reasonably possible, the Project Site to its condition immediately prior to said Inspections, and shall indemnify and hold the City harmless from and against any and all costs, claims and liabilities arising therefrom except arising out of pre-existing conditions. All studies and reports as a result of work performed under this

Agreement, upon payment in full of all sums due to Developer, will become property of the City but will be made available for use by the Developer.

Additionally, the City shall furnish or make available to the Developer upon the Effective Date, all available information with respect to the history and physical and environmental condition of the Project Site which is in the City's possession or control, including without limitation any environmental or geotechnical studies or tests, surveys, plats and title reports.

In the event that the Developer is dissatisfied with the results of the Inspections for any reason whatsoever, the Developer may give written notice to the City to such effect and thereafter shall have no obligation or liability with respect to the Project. Alternatively, the Developer may propose changes to the nature and scope of the proposed Project. If such changes are rejected by the City, the Developer may likewise give written notice to the City and thereafter shall have no obligation or liability with respect to the Project.

1.2. Developer shall provide as Project administrator the following planning and development services:

- a. Coordinate all necessary feasibility studies and evaluations for site redevelopment
- b. Provide detailed housing market analysis for development sites
- c. Develop financial analysis of likely public/private investment and incentives
- d. Directly network with potential development partners and tenants
- e. Investigate external funding opportunities
- f. Coordinate the public input and design review process for the Project Site master plan
- g. Assist City in marketing and PR program for Huron as well as Project Site

1.3. The Developer acknowledges that the City considers community engagement to be a critical component of the development process for the Project, and the Developer agrees to cooperate with the City to gather input concerning the Project from residents and businesses in the community.

The Developer agrees that as part of its Project review process it will make itself reasonably available to meet at convenient times and places with interested/inquiring task forces and community groups and to participate upon reasonable advance request in City Council meetings, public briefings and information sessions that are open to all interested parties.

2. PROJECT SITE. The Project Site shall incorporate those lands owned by the City known as the ConAgra Site.

2.1. The ConAgra Site exists as real property located adjacent to the Huron Municipal Boat Ramp near the intersection of Cleveland Road East and River Road, more particularly described as PPN #42-61270.001 and depicted in Exhibit B to this Agreement.

SECTION 3. TERM. The Term of this Agreement (the "Term") shall be for one hundred and eighty days (180 days) and shall commence upon the Effective Date.

SECTION 4. COST. As compensation for the work performed under this Agreement, the City will pay the Developer \$60,000 to be billed in equal 30 day increments over the course of the Term. The Developer will only remit monthly invoices after providing the City with written or in

person updates as to the reasonable progress made to date on the work items listed in this Agreement.

Prior to the conclusion of the Term, the Developer will engage with and manage a third party Architectural/Engineering/Planning (AEP) firm or similar to design a Project master development plan. The City and the Developer will equally share the cost of this work and it is expected the total amount will not exceed \$75,000.

Additionally, during the Term of project administration the Developer will coordinate and pay for the studies and reports necessary to document and evaluate the physical conditions of the entire parcel identified as the Project Site and not solely the three acres identified as potential Phase I development. These may include but not be limited to the following:

- a. Site survey (site boundaries, topo, utilities)
- b. Appraisal of the "as is" condition of the site (baseline reference document)
- c. Environmental Site Assessment (ESA) Phase I and II
- d. Geotechnical survey

The City will reimburse the Developer for the costs of such studies in an amount not to exceed \$50,000. If additional studies and reports are mutually deemed necessary by the parties and are beyond the identified not to exceed amount, that additional cost will be paid by the Developer.

SECTION 5. DEVELOPMENT AGREEMENT. The City and the Developer will negotiate diligently and in good faith with the goal of entering into a Development Agreement (the "Development Agreement") within 60 days of completing the work outlined in this Agreement, setting forth the essential terms upon which the development will proceed on the Project. The Development Agreement will include such terms as the City and the Developer deem necessary to implement the development as currently envisioned, including, at a minimum to the extent reasonably able to be determined upon execution of the Development Agreement, the following:

- a. Detailed descriptions of the improvements to be constructed for Project Phase I;
- b. A detailed plan of finance with respect to the Project Phase I, including the amount of Developer contribution and other sources and uses of funds necessary to complete the Project;
- c. Detailed timelines/schedules/deadlines for the development acceptable to the City, including timelines and deadlines relating to community engagement, planning, diligence, financial underwriting, architectural design and review, City approvals, construction bidding and construction, and an agreement by the Developer to proceed in accordance with the agreed-upon schedule;
- d. Details relating to the City's process of zoning and planning approval and City assistance with financing of the Project using tax-increment financing pursuant to Section 5709.40 of the Ohio Revised Code (TIF);
- e. A detailed process and expected timeline relating to City review and approval of preliminary and final plans and specifications and any material modifications to such plans and specifications outside the original scope of the Project as required by the City's zoning and plan approval process and City review and approval of preliminary and final architectural plans and drawings and any material modification of such plans and drawings outside the original scope of the Project as required by the City's zoning and plan approval process;
- f. Terms and conditions upon which the City will agree to sell the Project Phase I to the Developer, including detailed process for the City to contribute the initial two acres of the necessary three acres total of the Project Site for the Project Phase I

- that includes the City's ability to recapture the initial project administration fee of \$60,000 (i.e. the City's sale of the third acre to the Developer for that amount or fee paid to the City per every unit sold until that amount is reached);
- g. Terms and conditions upon which the City will agree to sell the balance of the Project Site, including terms for a preferred sale rate to the Developer and proceeds splits between the City and the Developer if Project Site land is sold to a third party;
 - h. A detailed plan relating to security and avoidance of nuisances on the Project Site during construction.;
 - i. Provisions allowing the City to receive periodic reports from any construction inspector retained by any lender or financing source in connection with any financing of the Project, if requested by the City;
 - j. Detailed provisions requiring the Developer to maintain insurance in form and amount reasonably required by the City and to provide the City customary indemnity with respect to the Project;
 - k. Detailed provisions requiring the Developer (but not transferees upon substantial completion of the Project) to provide the City with periodic reporting and reasonable access to books and records pertaining to the Project.

Notwithstanding anything herein to the contrary (i) the parties acknowledge that all deliverables or other matters described above may not be available or completed upon execution of the Development Agreement and the parties shall work together diligently and in good faith after the execution of the Development Agreement with respect thereto, and (ii) in the event that certain of the information requested to be provided by the Developer hereunder or in the Development Agreement, if executed, are deemed confidential by the Developer, the Developer and the City shall work together to keep the information confidential and not subject to disclosure to third parties.

SECTION 6. INDEMNIFICATION. The Developer shall indemnify and hold harmless the City, and all of its elected officials, officers, employees and agents ("Indemnities") from all claims, suits, actions and expenses (including reasonable attorney's fees) which arise due to the wrongful or negligent performance or non-performance of the Developer under this Agreement, including any and all proceedings which may originate from or on account of any death, injuries or damages to persons or property received or sustained as a consequence of any actions or omissions of any contractor, subcontractor or agent, from any material, including explosives, or any method used in said work or by or on account of any accident caused by negligence or any other act or omission of any contractor, subcontractor, or his agents or employees. The Developer shall not be required to indemnify or hold harmless the Indemnitees for any wrongful or neglect acts or omissions of the Indemnities.

SECTION 7. BREACH AND REMEDIES. Except as otherwise provided in this Agreement, in the event of breach of this Agreement, or any of its terms or conditions, by either party hereto, or any successor to such party, such party (or successor) shall, upon written notice from the other, proceed promptly to cure or remedy such breach, and, in any event, within 30 days after receipt of such notice, which period may be extended if the breaching party is making reasonable progress to cure or remedy the breach; provided, however, that such thirty day grace period shall not be applicable to the times by which payment shall be made under this Agreement. In case such action is not taken within such time or not diligently pursued, or the default or breach shall not be cured or remedied within such time, the party asserting breach may institute such proceedings at law or in equity as may be necessary or desirable in its opinion to remedy such breach, including,

but not limited to, proceedings to compel specific performance by the party in default or breach of its obligations, or proceedings to recover damages suffered as the result of such default.

Pursuit of any of the remedies in this Section shall not preclude pursuit of any of the other remedies herein provided, or any other remedies provided by law or equity, nor shall pursuit of any remedy herein provided constitute a forfeiture or waiver of any damages accruing to a party by reason of the violation of any of the other party's obligations hereunder. Forbearance by a party to enforce one or more of the remedies herein provided upon the occurrence of an event of default shall not be construed to constitute a waiver of such default.

SECTION 8. FORCE MAJEURE. Except as otherwise provided herein, neither the City nor Developer shall be considered in default in their obligations to be performed hereunder, if delay in the performance of such obligations is due to unforeseeable causes beyond its control and without its fault, including but not limited to, acts of God or other the public enemy, acts of terrorism, acts of the Federal or state governments, acts or delays of the other party, fires, floods, unusually severe weather, epidemics, freight embargoes, unavailability of materials, strikes or delays of contractors, subcontractors or materialmen due to any of such causes, but not including lack of financing or financial capacity by Developer or the City, it being the purpose and intent of this Section that in the event of the occurrence of any such enforced delay, the time or times for performance of such obligations shall be extended for the period of the enforced delay; provided, however, that the party seeking the benefit of the provisions of this Section shall within 14 days after the beginning of such enforced delay, notify the other party in writing thereof and of the cause thereof and of the duration thereof, or, if a continuing delay and cause, the estimated duration thereof, and if the delay is continuing on the date of notification, within 30 days after the end of the delay, notify the other party in writing of the duration of the delay. If additional costs are incurred as a result of a delay caused by the acts or omissions of the City, or arising from decisions of the City that impact the time of performance of the development services, the Developer shall be entitled to an equitable adjustment in its compensation or cost sharing provided in Section 4 of this Agreement. Subject to Section 4 of this Agreement, the City shall not be liable for additional expenses incurred by Developer which are the result of unauthorized acts of the Developer. In the event delays are encountered for any reason, the parties agree to undertake reasonable steps to mitigate the effect of such delays.

SECTION 9. SEVERABILITY. In case any section or provision of this Agreement, or any covenant, agreement, obligation or action, or part thereof, made or assumed, entered into or taken, or any application thereof, is held to be illegal or invalid for any reason,

- a. that illegality or invalidity shall not affect the remainder hereof or thereof; any other section or provision hereof, or any other covenant, agreement, obligation or action, or part thereof, made assumed, entered into or taken, all of which shall be construed and enforced as if the illegal or invalid portion were not contained herein or therein,
- b. the illegality or invalidity of any application hereof or thereof shall not affect any legal and valid application hereof or thereof; and
- c. each section, provision, covenant, agreement, obligation or action, or part thereof, shall be deemed to be effective, operative, made, assumed, entered into or taken in the manner and to the full extent permitted by law.

SECTION 10. AMENDMENT. This Agreement may only be amended by written instrument executed by all parties.

SECTION 11. LIMITED MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES. City and Developer agree to waive all claims against each other for any consequential damages that may arise out of or relate to this Agreement, except for those specific items of damages excluded from this waiver as mutually agreed upon by the parties. City agrees to waive damages including but not limited to City's loss of use of the Project Site, loss of income, profit, or financing related to the Project, as well as the loss of business, loss of financing, expenses, loss of profits not related to the Project or loss of reputation. Developer agrees to waive damages including but not limited to loss of business, loss of financing, loss of profits not related to the Project, loss of bonding capacity or loss of reputation.

SECTION 12. GENERAL TERMS AND CONDITIONS.

12.1. This Agreement constitutes the entire Agreement between the parties and supersedes all prior or written agreements or understandings except for any binding provisions in the MOU.

12.2. The captions and headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections in this Agreement.

12.3. This Agreement may not be assigned by any party hereto without the written consent of the other party. All representations and warranties of the Developer and the City herein shall survive the execution and delivery of this Agreement.

12.4. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio. All claims, counterclaims, disputes and other matters in question between the City, its agents and employees, and the Developer, its employees, contractors, subcontractors and agents arising out of or relating to this Agreement or its breach will be decided in a court of competent jurisdiction within Erie County, Ohio.

12.5. The City and the Developer shall proceed with their respective performance of this Agreement during any dispute resolution process, unless otherwise agreed by them in writing.

12.6. In consideration of the expenses that the Developer will incur in connection with this Agreement, the City agrees that until such time as this Agreement is terminated or replaced by the Development Agreement, the City will not solicit or accept bids from any other party and will not furnish information with respect to the Project to any other party.

FOR THE CITY:

FOR THE DEVELOPER:

City of Huron

Liberty Development Company

By Andrew J. White

By _____

Date: 08/09/17

Date: _____

Approved as to form only:

Laura E. Alkire

Laura E. Alkire
Law Director
City of Huron