



City Council Memorandum

To: Mayor Fasbender and City Council
From: John Hinzman, Community Development Director
Date: April 4, 2022
Item: Authorize Signature: 2nd Amendment to Master Development Agreement - Wallin

Council Action Requested:

Authorize signature of the attached 2nd Amendment to the Master Development Agreement (MDA) between the City and Wallin. A simple majority is necessary for action.

Background Information:

The original MDA was executed in 2002 and established the development parameters for subsequent development of Wallin property which has encompassed Wallin 10th through 19th Additions. The original MDA was amended in 2012 to extend the applicability of the agreement until July 31, 2022. The proposed 2nd amendment to the MDA would extend the applicability for an additional year (July 31, 2023). Although all land within agreement has been platted, the City seeks to extend the agreement to ensure all warranty work for municipal improvements is covered.

Financial Impact:

N/A

Advisory Commission Discussion:

N/A

Council Committee Discussion:

N/A

Attachments:

- 2nd Amendment to Master Development Agreement

**SECOND AMENDMENT TO
MASTER DEVELOPMENT AGREEMENT**

THIS SECOND AMENDMENT TO MASTER DEVELOPMENT AGREEMENT (“Second Amendment”) is made and effective this ____ day of _____, 2022, by and between the City of Hastings, a municipal corporation under the laws of the State of Minnesota ("City"), and the Duane R. Wallin and Winston R. Wallin Limited Liability Limited Partnership (“Developer”) (City and Developer sometimes referred to as the “Parties”).

RECITALS:

WHEREAS, the Parties, on July 10, and July 15, 2002, respectively, executed and entered into that certain Master Development Agreement (“Agreement”), filed for record with the office of the Dakota County Recorder on _____, 2002, providing for, among other things, City approval of a comprehensive preliminary plat of all of the previously un-platted land owned by Developer which un-platted land was legally described in Exhibit A of the Agreement and which further provided that preliminary plat approvals granted in 2002 would be valid and effective for a period of ten (10) notwithstanding the provisions of Minn. Stat. §462.358, Subd.3(c) and any contrary City ordinance, subject to the terms and qualifications set forth in section 2 of the Agreement; and

WHEREAS, effective March 15, 2012, the Parties executed and entered into that certain First Amendment to Master Development Agreement (“Amendment”), filed for record with the office of the Dakota County Recorder on _____, 2012, which Amendment formally extended the applicability of the Agreement, and the validity of the preliminary Approvals to July 31, 2017, unless the project was not completed with a final plat, in which case, it was automatically extended without action of either party for an additional 5-year period; and

WHEREAS, the project was not completed with a final plat by July 31, 2017 and there was an automatic extension of the Agreement, which now expires on July 31, 2022; and

WHEREAS, the Developer is now, and at all times since the Agreement was made effective has been, in compliance with the terms and provisions of the Agreement, and has fulfilled all obligations and responsibilities thereunder without default; and

WHEREAS, Developer has since final platted the entirety of the real property which was made subject to the Agreement, but remains obligated to extent sanitary sewer and water from General Sieben Drive to the westerly edge of the said property within an easement situated between Lot 2, Block 1 and Lots 3 and 4, Block 1, Wallin 14th Addition in conformity with the provisions of the Agreement; and

WHEREAS, by reason of the fact an obligation of warranty owed by Developer regarding the installation of such sewer and water utilities would extend beyond the current expiration date of the Agreement, as amended, the Parties are desirous of effecting by this Second Amendment a further, one-year extension of the Agreement and other corresponding amendments.

NOW, THEREFORE, in consideration of the foregoing, and for good and valuable consideration, it is hereby agreed, by and between the parties, undersigned, as follows:

1. Effect of Project Approval and Extension of the Agreement. The provisions of the Agreement, as previously amended, shall be, and hereby are, initially extended until July 31, 2023.

2. Deletion of Exhibit A and Amendment of Section 14.7 of the Agreement. Exhibit A to the Agreement is herewith deleted as superfluous, and the provisions of Section 14.7 of the Agreement shall be amended by deleting the original and previously amended language thereof in its entirety. From and after the date of this Amendment, all references to Section 14.7 of the Agreement shall mean and refer to the following Section 14.7 language.

14.7 Binding Effect. The provisions of this Agreement are made binding upon, and shall inure to the benefit of, the heirs, executors, administrators, successors, and assigns of the Parties, and this Agreement shall run with the land legally described as Lots 2, 3, and 4, Block 1, Wallin 14th Addition, Dakota County, Minnesota.

3. Warranty for Utility Installations. The Parties acknowledge and agree that the Developer's warranty for the installation of the sanitary sewer and water main within the easement between Lot 2, Block 1 and Lots 3 and 4, Block 1, Wallin 14th Addition shall remain in effect until July 31, 2023.

4. Reimbursement for Oversizing and Over Depth Expenses. In conformity with the Agreement, the City shall reimburse Developer for all charges incurred in the construction of the aforementioned sanitary sewer and water utility lines which exceed the costs which otherwise would be incurred by Developer but for (i) the election by the City to require oversized pipes (i.e., 27" sanitary sewer and 16" water), and (ii) the election to require installations at depths for reasons unrelated to the engineering needs of those of Developer's lots hereinabove referenced, including all additional costs for removal of limestone rock.

5. Applicability and Binding Effect. Except to the extent modified herein, all other terms and conditions of the Agreement, as amended, shall remain in full force and effect, enforceable according to their terms. In the event of a conflict between the terms of this Amendment and the terms of the Agreement, the terms of this Amendment shall govern and control. All terms used herein shall have the meanings ascribed to them in the Agreement.

