



## URA RESOLUTION 2008-022

### **A RESOLUTION OF THE URBAN RENEWAL AGENCY OF THE CITY OF SHERWOOD, DIRECTING THE AGENCY MANAGER TO SIGN THE DEVELOPMENT SERVICES AGREEMENT FOR THE PUBLIC INFRASTRUCTURE IN THE CANNERY REDEVELOPMENT**

**WHEREAS**, the Urban Renewal Agency of the City of Sherwood ("Agency"), as the duly designated Urban Renewal Agency for the City of Sherwood, Oregon ("City"), is undertaking to carry out The Sherwood Urban Renewal Plan ("Plan") which Plan was approved by the City Council of the City ("Council") on August 29, 2000 by Ordinance No. 2000-1098; and

**WHEREAS**, the real property known as the Old Cannery site, consisting of 6.06 acres of real property intersected by Pine Street with frontage along Willamette Street and bordered on the north by the Union Pacific railroad right of way. Said property consists of parcels R0555599 - 5.46 acres; R0556017 - 0.09 acres and R0555615 - 0.51 acres located at what was previously 220 SE Willamette Street, Sherwood is planned for private redevelopment as set forth in Sections 501 and 600 of the Plan; and

**WHEREAS**, the Agency approved a Memorandum of Understanding (MOU) on April 15, 2008 with Capstone Partners, LLC to purchase and develop the property; and

**WHEREAS**, the attached Development Services Agreement (Exhibit C) defines the terms and conditions negotiated with Capstone Partners, LLC to manage the development of the public infrastructure as identified in the MOU.

### **NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE SHERWOOD URBAN RENEWAL AGENCY:**

Section 1. The Agency directs the Agency Manager to sign the Development and Disposition Agreement with Capstone Partners, LLC.

Section 2. This Resolution shall be effective from and after its adoption by the Agency Board.

**Duly passed by the Urban Renewal Agency District Board this 19<sup>th</sup> day of August 2008.**

Keith S. Mays, Board Chairman

*Dave Grant, Board Vice Chair*

ATTEST:

Sylvia Murphy, District Recorder

**DEVELOPMENT SERVICES AGREEMENT  
OLD CANNERY SITE, SHERWOOD, OREGON**

This Agreement ("Agreement") is effective as of this \_\_\_\_\_ day of \_\_\_\_\_, 2008, between Sherwood URD Urban Renewal District ("Sherwood URD"), and Capstone Partners LLC ("Development Manager").

RECITALS

A. Sherwood URD desires to construct: (i) a public plaza containing not less than 10,000 square feet and not more than 20,000 square feet at the northeast corner of the intersection of SE Pine Street and the Southern Pacific Railroad tracks (the "Plaza"), and (ii) public rights of way (including, without limitation, streets, sidewalks and utilities) for SE Columbia Street and SE Highland Drive and the improvement to the western half of SE Willamette Street (the "Street Improvements"). The Plaza and the Street Improvements are collectively referred to as the Project.

B. Development Manager is a professional in the area of development of public improvements.

C. Sherwood URD has requested and Development Manager has agreed to provide Sherwood URD with comprehensive services for managing, planning, developing and construction of the Project.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, it is mutually agreed as follows:

1. Development Management Technical Services. Development Manager agrees to provide comprehensive development services for the Plaza and Street Improvements such that the Project will be completed on time (subject to Force Majeure events), substantially in accordance with specifications, in compliance with all applicable permits and governmental regulations, and within the Project budget (as may be amended by Sherwood URD). Such services include the following:
  - 1.1 Supervising the Project's architect and/or engineer in the preparation of plans and specifications and related documents for the Project (the "Contract Documents" or "CD") that shall provide for the development and construction of the Project consistent with City of Sherwood standards and within the limits of Project budget. The CD shall include:
    - (a) Plans, specifications and related documents that fully describe the Project.
    - (b) An itemized cost breakdown for the Project, including both "hard costs" (construction) and "soft costs" (engineering fees, construction permits, etc).
    - (c) A proposed development schedule.

- 1.2 Subject to Sherwood URD's procurement process, recommend to the Sherwood URD such third party contractors and/or professionals for retention by Sherwood URD in connection with and required for the implementation of the Project, and negotiate on behalf of Sherwood URD the terms of the agreements with such third party contractors and/or professionals.
- 1.3 Supervise the performance of the services provided by third party contractors and professionals.
- 1.4 Recommend for approval all payments to contractors, professionals and/or vendors, and prepare draw requests for authorizing payments by Sherwood URD of such amounts.
- 1.5 Represent Sherwood URD at Project meetings.
- 1.6 Coordinate the application for, and securing, all necessary permits, approvals for zoning, surveying, environmental and other governmental matter(s), permit(s) and/or compliance(s) required to proceed with the Project.
- 1.7 Provide the following construction management services:
  - (a) Notice To Proceed: Development Manager will issue various limited Notices To Proceed or unlimited Notices To Proceed as necessitated by the contract negotiation, execution and required time of commencement in order to meet the Project schedule.
  - (b) Project Control Procedures: Prior to Project commencement, Development Manager will establish standard procedures concerning correspondence distribution, change order format, Project schedule updating, pay request flow, progress meeting protocol and punch list inspections to implement a smooth flow of the administration of the Project.
  - (c) Representatives: Throughout the Project duration, Development Manager will act as Sherwood URD's representative in regard to daily interactions with the design and construction teams and coordinate the work of all testing laboratories and other consultants in accordance with the Contract Documents. Sherwood URD retains control over final approval for all Contract Documents.
  - (d) Project Meetings: Development Manager will conduct regular project coordination meetings throughout design and construction phases of the Project. Sherwood URD will be provided with notice and minutes of Project meetings.
  - (e) Contract Administration: Development Manager will administer all aspects of the construction contracts including scheduling of all work in accordance with the Project schedule, review of claims for additional

services and change orders. All Contract Documents are subject to the approval of Sherwood URD. Any proposed contract changes to the work, time for performance or contract sums that would extend the scheduled completion date or exceed the Project budget must be approved in advance in writing by Sherwood URD. Development Manager shall have the authority to reject work not conforming to the CDs. Development Manager shall advise Sherwood URD if it appears that total construction costs will exceed the accepted bids, and make recommendations for corrective action.

- (f) Punch-List Items: Development Manager shall determine when the Project or a designated portion thereof is substantially complete, shall cause to be prepared a list of incomplete or unsatisfactory items ("punch list items"), and shall then coordinate the correction and completion of the punch list items by the responsible contractors.

2. Sherwood URD Role and Responsibilities. Sherwood URD agrees to oversee the Development Manager regarding the managing, planning, developing and construction of the Project. Specifically, Sherwood URD will coordinate with the Development Manager to:
  - 2.1 Provide architect and engineering services to prepare plans and specifications and related documents for the Project consistent with City of Sherwood standards.
  - 2.2 Prepare a Project budget which will include an itemized cost breakdown for the Project, including both "hard costs" (construction) and "soft costs" (engineering fees, construction permits, etc).
  - 2.3 Create a development schedule.
  - 2.4 Retain third party contractors and/or professionals to implement the Project.
  - 2.5 Approve final agreements with third party contractors and/or professionals.
  - 2.6 Provide payments to contractors, professionals and/or vendors for costs related to the Project upon receiving draw requests and detailed invoices from the Development Manager.
  - 2.7 Attend Project meetings when necessary.
  - 2.8 Approve all Contract Documents before implementation.
3. Development Services Fee. For the services provided by Development Manager under this Agreement, Development Manager shall be paid by Sherwood URD a development services fee based on the actual bids utilized for the construction of the Project, which fee shall be determined by Development Manager (but is subject to the approval of Sherwood URD, not to be unreasonably withheld, conditioned or delayed and in no event

is to be less than five percent (5%) or more than eight (8%) of the total Project costs for the Project).

4. Independent Agent. Sherwood URD and Development Manager agree that Development Manager is an independent agent and Development Manager's employees and agents are not employees of Sherwood URD. Development Manager is retained by Sherwood URD only for the express purposes and to the extent set forth in this Agreement. This Agreement does not create a partnership, joint venture or any other legal business relationship between the parties except contractual in the nature of a consulting relationship.
5. Actions By Development Manager On Behalf of Sherwood URD. Until written notice to the contrary, all reasonable actions taken by Development Manager, in accordance with the terms of this Agreement and with final Project budget, shall be deemed to be made with Sherwood URD's consent.
6. Completion and Cost. Development Manager shall not be deemed, pursuant to this Agreement, to be guaranteeing the availability of financing, the feasibility or success of the Project, nor the ultimate cost of the Project. However, the foregoing shall not discharge Development Manager from performing its obligations hereunder.
7. Relationship To Third Parties. Nothing contained herein shall be deemed to create any contractual relationship between Development Manager and any of the contractors, subcontractors, material suppliers or consultants on the Project; nor shall anything contained herein be deemed to give any third party any claim or right of action directly against Development Manager which does not otherwise exist without regard to this Agreement.
8. Lead Representative. Sherwood URD shall appoint a lead representative who is authorized to act on behalf of and make decisions that bind Sherwood URD in connection with any matter pertaining to the Project. Development Manager shall be allowed to rely on all decisions or information received from the lead representative. Such person shall be named early in the design process and shall remain in such position for the duration of the Project.
9. Response. Both Parties,, subject to the provisions of this paragraph, shall respond promptly to any written request submitted by either Party, and make all necessary decisions called for in such requests as soon as possible following receipt of such request taking into account the subject matter of such request.
10. Defaults. It shall be an event of default hereunder if:
  - 10.1 Either party fails to perform any of its material obligations under this Agreement (except for Sherwood URD's payment of money as provided below), and such failure to perform under this Agreement continues for a period of thirty (30) days after written notice of such failure to the defaulting party from the other party hereto; provided that such thirty (30) day period shall be extended for such time as is necessary to effectively cure such default, if the defaulting party has

commenced the curing of such default within such thirty (30) day period and is diligently pursuing the completion of such cure.

- 10.2 Sherwood URD fails to make any payment required herein and such failure continues for a period of ten (10) days after written notice of such failure from Development Manager to Sherwood URD.
  - 10.3 Development Manager shall: (i) fail to exercise the level of development skill, knowledge, judgment and practices which are commonly expected with respect to the development of similar projects, it being understood that should the Development Manager not perform to this standard, Sherwood URD shall provide Development Manager with a written notice related to such failure of performance and Development Manager shall have thirty (30) days to cure such failure, or (ii) commit an act or omission of gross negligence or willful misconduct while carrying out its obligations and duties hereunder.
11. Termination. This Agreement shall terminate upon the occurrence of any of the following events:
- 11.1 The date ten (10) days after notice of termination from the non-defaulting party to the defaulting party under the provisions of Section 9 above.
  - 11.2 In the event a termination occurs, Development Manager shall be paid fees and expenses due it under the terms hereof earned or accrued through the date of termination which shall include any retention being held.
12. Notices. Any notice required or permitted by this Agreement to be given shall be in writing and shall be addressed to:

SHERWOOD URD: Sherwood URD Urban Renewal District  
22560 SW Pine Street  
Sherwood, OR 97140  
ATTN: Jim Patterson  
Fax: (503) 625-5524

With a copy to: Pamela J. Beery  
Beery, Elsner & Hammond  
1750 SW Harbor Way, Suite 380  
Portland, OR 97201

DEVELOPER MANAGER: Capstone Partners LLC  
1015 NW 11<sup>th</sup> Avenue, Suite 243  
Portland, Oregon 97209  
ATTN: Chris Nelson  
Fax No.: (503) 226-1973

With a copy to:           Ball Janik LLP  
                                  Attn: Bradley S. Miller  
                                  101 SW Main St., Suite 1100  
                                  Portland, OR 97204  
                                  Fax No.: (503) 295-1058

or such other address and to such other parties and/or attorneys as either party may designate in writing. Any such notice shall be sent by registered or certified US Mail, postage prepaid, return receipt requested and shall be deemed to have been given on the date of delivery at the address to which such notice is so directed as reflected by such return receipt. The parties agree to use their best efforts to accompany any written notice with actual notice by telephone whenever possible.

13. Force Majeure. For all purposes of this Agreement, the term “Force Majeure” shall mean any failure, prevention, delay or stoppage due to strikes, lockouts, acts of God, inability to obtain labor or material or reasonable substitutes therefor, enemy or hostile government action, civil commotion, failure of a governmental entity to issue governmental permits within a reasonable time period, fire or other casualty and other causes (other than financial) beyond the reasonable control of the party obligated to perform. Neither party shall be responsible for failure, prevention, delay or stoppage in performing any obligations hereunder (other than the payment of money) to the extent such failure or delay results solely from a Force Majeure.
14. Enforceability. The enforceability and validity of this Agreement, in whole or in part, shall not be affected by the unenforceability or invalidity of any particular provision of this Agreement.
15. Entire Agreement. This Agreement, together with other writings signed by the parties expressly stated to be supplementary hereto and together with any instruments to be executed and delivered pursuant to this Agreement, constitutes the entire agreement between the parties and supersedes all prior understandings and writing, and may be changed only by a writing signed by the parties hereto.
16. Applicable Laws. This Agreement shall be construed under the laws of the State of Oregon.
17. Successors and Assigns. All of the provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective permitted successors and assigns.
18. Waiver. Failure of either party at any time to require performance of any provision of this Agreement shall not limit such party's right to enforce such provision, nor shall any waiver of any breach of any provision of this Agreement constitute a waiver of any succeeding breach of such provision or a waiver of such provision itself.
19. Amendment. This Agreement may not be modified or amended except by the written agreement of the parties.

20. Time of Essence. Time is of the essence with respect to the performance of every provision of this Agreement in which time of performance is a factor.
21. Attorney's Fees. In the event a suit, action, arbitration, or other proceeding of any nature whatsoever, including, without limitation, any proceeding under the US Bankruptcy Code, is instituted, or the services of an attorney are retained, to interpret or enforce any provision of this Agreement or with respect to any dispute relating to this Agreement, the prevailing party shall be entitled to recover from the losing party its reasonable attorneys', in-house counsel, paralegals', accountants', and other experts' fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith. In the event of suit, action, arbitration, or other proceeding, the amount thereof shall be determined by the judge or arbitrator, shall include fees and expenses incurred on any appeal or review, and shall be in addition to all other amounts provided by law.
22. Authority of Parties. Sherwood URD represents and warrants that it has full right and authority to enter into this Agreement and to perform all of Sherwood URD's obligations hereunder. Development Manager represents and warrants that it has full right and authority to enter into this Agreement and to perform all of Development Manager's obligations hereunder.



IN WITNESS WHEREOF, Sherwood URD and Development Manager have caused this Agreement to be duly executed and sealed pursuant to proper authority as of the day and year first above written.

**Sherwood URD Urban Renewal District**

By: \_\_\_\_\_  
Jim Patterson, District Manager

**Capstone Partners LLC, an Oregon limited liability company**

By: \_\_\_\_\_  
Chris Nelson, Member

By: Triangle Development Company, an Oregon corporation, Member

\_\_\_\_\_  
Jeffrey M. Sackett, President