

MEMORANDUM OF UNDERSTANDING

This **MEMORANDUM OF UNDERSTANDING** is hereby made and entered into as of January 3, 2017 by and between Testa Enterprises, Inc., an Ohio corporation (“**Testa**”) and the city of Hudson, an Ohio municipality (“**Hudson**”).

Whereas, the parties have entered into discussions relevant to the construction and development of a multi-use project called “First and Main Phase II” which will take place on underutilized publicly owned property in downtown Hudson consistent with Hudson’s 2015 Comprehensive Plan described on Exhibit A (the “**Project**”);

Whereas, the parties desire to work toward a definitive development agreement related to the Project, and in the meantime, the parties desire to enter into this Memorandum of Understanding (“**MOU**”) setting forth the general terms, conditions and services to be provided by such collaboration on the Project.

Whereas, the City’s approval of the final development agreement and payment for items described herein are subject to the approval of City Council;

Whereas, the parties have worked together to draft this MOU and have sought input from relevant individuals on both sides;

Therefore, in consideration of the foregoing, the parties agree to the following:

THE PROJECT

Details of the Project

- The Project will consist of a blend of residential units, commercial office space and limited commercial retail space. Each of these aspects of the Project will represent a different “phase” and may be broken down into further sub-phases.

Hudson’s Responsibilities

Hudson will work to pursue the following responsibilities:

- Provide the land for the Project by transferring it to Testa. The means of such transfer (whether by lease or sale and whether by a single transfer or numerous transfers over time, as phases/sub-phases of the Project are ready to commence construction) and the consideration for said transfer(s) (as well as the method to determine said consideration) are not yet determined.
- Remediate environmental issues on the land for the Project. Specifically, Hudson will complete Phase I and Phase II environmental assessments and coordinate all appropriate remediation activities for the applicable parcels as recommended by

the pertinent assessments. Such assessments shall be subject to the reasonable review and approval of Testa's environmental consultants.

- Complete demolition of existing structures as needed.
- Rough grade the land for the Project and will make reasonable efforts to accommodate specific grading requirements of Testa to the extent that the same do not materially increase Hudson's cost of grading such land.
- Provide technical assistance including a project manager to work with Testa on city-related planning and zoning approvals and other similar matters.
- Provide assistance to Testa with client leads for commercial tenants.
- Manage a roundtable advisory group to assist Testa with community feedback and support.
- Assist Testa with public utilities and related infrastructure relocation and construction.
- Pursue financing options to assist Testa, including Port Authority programs, TIF expansion, tax abatements and delayed/discounted land payments to Hudson.

Testa's Responsibilities

Testa will work to pursue the following responsibilities:

- Acquire (by a purchase or long-term ground lease) lands within the development area that are owned by Hudson. Testa may also acquire by lease or purchase such lands which are adjacent to the development area as Testa believes to be in the best interest of the Project.
- Facilitate, and partner with Hudson on, a mechanism for obtaining community input throughout the Project to engage and inform the community on the preliminary site and building design. Testa will also involve its architect, Mota Design Group ("Mota") and its public engagement consultant, MKSK, in this public engagement process. This process will also include an ongoing feasibility study for each phase/sub-phase of the Project.
- Develop a pro forma budget for each phase/sub-phase of the Project.
- Prepare designs and schematics for each phase/sub-phase of the Project, including all buildings and infrastructure improvements.
- Develop a schedule of benchmarks for the Project.

- Submit the Project through Hudson’s development review process including review and approval by the Planning Commission and Architectural and Historic Board of Review (“AHBR”).

ANTICIPATED TIMING

- Testa anticipates reaching the following concept plan milestones on the dates listed below:

Step	Week	Notes
Community Engagement Process	0 - 12	
Application for Preliminary Plan	12	
Planning Commission	15	Planning Commission public hearing, review, and action on the Preliminary Plan
City Council	17	City Council Public Hearing on preliminary plan
City Council	19	City Council action on Preliminary Planned Development
Application for Final PD	33	Application for Final Planned Development to include detailed site plan review
AHBR	24	AHBR preliminary review on the architectural design
Planning Commission	28	Planning Commission public hearing, review, and action on the Final Plan
AHBR	28	AHBR review and action on the final architectural design

- Testa anticipates reaching the following Project milestones on the dates listed below:
 - The public engagement process, which will include the feasibility study, will commence in or about January, 2017.
 - Hudson’s Development Review process will commence in or about March 2017.
 - Construction on each phase/sub-phase of the Project will commence once either (i) 60% of the tenants for the building in that phase/sub-phase (as

applicable) have committed with pre-leases; or (ii) purchase agreements have been executed with purchasers for 60% of the space the building in that phase/sub-phase (as applicable). It is anticipated the first such construction project will begin in mid-2017.

- The above-referenced milestones are aspirational only, and the parties agree that these dates may be extended or revised due to changes in business climate and market conditions. The parties will engage in good faith negotiations to agree on commercially reasonable alterations as needed. Moreover, the parties recognize that the nature of the Project is such its various phases/sub-phases will be completed over time, and it is not yet known what order those phases/sub-phases will be done. The parties will work together to ensure that work is done on those phases/sub-phases that are most appropriate given market conditions, and the parties further recognize that Testa's acquisition of particular pieces of property from Hudson will be tied to such phases/sub-phases.

MANAGEMENT

- Because the Project consists of mixed use development, and each different use, phase or sub-phase may have different ownership structures (e.g., owner-occupied residential vs. landlord-owned, tenant-occupied commercial retail space), the management of the Project will be variable. Notwithstanding, Testa shall prepare and present to Hudson a plan for the management of the Project by one of more Master and sub-Owners' Associations.

FINANCIAL MATTERS

- Each party will bear the costs of its own advisors, consultants, and attorneys related to this MOU and the parties' efforts to work towards a definitive development agreement.
- The parties acknowledge that, in the event the pro forma budgets developed by Testa indicate a gap between costs and funding sources, Hudson may agree to consider additional financial support for the project, subject to demonstration of need by Testa and City Council authorization.
- Throughout the Project, Testa will consistently show to Hudson what steps are being taken and will demonstrate the cost associated with those steps. Testa and Hudson will work together to determine an appropriate allocation of these costs between them. Testa's feasibility study will also address this issue.

- Testa will obtain the necessary outside funding for the Project, which is anticipated to be a combination of debt and equity.

TERMINATION

- The parties agree that the development agreement to be executed must have a termination procedure addressing what happens if Testa does not meet the benchmarks referenced above. Similarly, the development agreement must have a termination procedure which addresses what happens if some or all of the Project is deemed not to be financially or otherwise feasible. In the event the public engagement/feasibility study reveals that some or all of the Project is not feasible before the development agreement is finalized, the parties will, in good faith, negotiate a commercially reasonable termination of this MOU.

IN WITNESS WHEREOF, the parties to this MOU through their duly authorized representatives have executed this MOU on the days and dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this MOU as set forth herein.

The effective date of this MOU is the date of the signature last affixed to this page.

TESTA ENTERPRISES, INC.


By: 

1-3-2017 _____
Date

Print Name: Joel A. Testa _____

Its: Vice President _____

CITY OF HUDSON

By: 
Its: City Manager

1/3/2017

Exhibit A

