



CITY COUNCIL AGENDA ITEM

Date: August 22nd, 2016

To: Brian Kischnick, City Manager

From: Mark F. Miller, Director of Economic and Community Development
Steven J. Vandette, City Engineer
R. Brent Savidant, Planning Director

Subject: Private Agreement – Contract for Installation of Municipal Improvements
Amber Studios and Lofts - Project No. 15.912.3

History

Amber Properties Company proposes to develop the 35 unit Amber Studios and Lofts building located on the east side of Livernois Avenue between Vermont and Birchwood Drives.

Troy City Council granted preliminary site plan and conditional rezoning approval on August 24th, 2015.

Site grading and utility plans for this development were reviewed and recently approved by the Engineering Department. The plans include municipal improvements, which will be constructed by Amber Properties Company on behalf of the City of Troy including: Water Main, Storm Sewer, Paving, Sidewalks, Landscaping, and Soil Erosion. The required fees and refundable escrow deposits in the form of an Irrevocable Bank Letter of Credit and 10% Cash, that will assure completion of the municipal improvements, have been provided by Amber Properties Company (see attached Private Agreement).

Financial

See attached summary of required deposits and fees for this Private Agreement.

Recommendation

Approval of the Contract for Installation of Municipal Improvements (Private Agreement) is recommended.

City Of Troy

Contract for Installation of Municipal Improvements (Private Agreement)

Project No.: **15.912.3**

Project Location: **SW 1/4 Section 27**

Resolution No: _____

Date of Council Approval: _____

This Contract, made and entered into this **22nd** day of **July, 2016** by and between the City of Troy, a Michigan Municipal Corporation of the County of Oakland, Michigan, hereinafter referred to as "City" and **Amber Properties Company** whose address is **380 N. Crooks Road, Clawson, MI 48017** and whose telephone number is **248-280-1700** hereinafter referred to as "Owners", provides as follows:

FIRST: That the City agrees to permit the installation of **Water main, storm sewer, paving, sidewalks landscaping and soil erosion** in accordance with plans prepared by **Stonefield Engineering & Design** whose address is **28454 Woodward Avenue, Royal Oak, MI 48067** and whose telephone number is **248-247-1115** and approved prior to construction by the City in accordance with City of Troy specifications.

SECOND: That the Owners agree to provide the following securities to the City prior to the start of construction, in accordance with the Detailed Summary of Required Deposits & Fees (attached hereto and incorporated herein):

Refundable escrow deposit equal to the estimated construction cost of \$ **51,144.00**. This amount will be deposited with the City in the form of (check one):

Cash/Check	<input type="checkbox"/>	} 10% Cash \$5,114.40
Certificate of Deposit & 10% Cash	<input type="checkbox"/>	
Irrevocable Bank Letter of Credit & 10% Cash	<input checked="" type="checkbox"/>	
Performance Bond & 10% Cash	<input type="checkbox"/>	

Refundable cash deposit in the amount of \$ **10,614.00**. This amount will be deposited with the City in the form of (check one):

Cash	<input type="checkbox"/>	Check	<input checked="" type="checkbox"/>
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Non-refundable cash fees in the amount of \$ **5,735.00**. This amount will be paid to the City in the form of (check one):

Cash	<input type="checkbox"/>	Check	<input checked="" type="checkbox"/>
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Said refundable escrow deposits shall be disbursed to the Owners after approval by the City. The City reserves the right to retain a minimum of ten (10) percent for each escrowed item until the entire site/development has received final inspection and final approval by all City departments. Refundable cash deposits shall be held until final approval has been issued. Disbursements shall be made by the City within a reasonable time, after request for refund of deposits is made by the Owners.

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Contract for Installation of Municipal Improvements (Private Agreement)

THIRD: The owners shall contract for construction of said improvement with a qualified contractor. Owners, or their agents, and contractor(s) agree to arrange for a pre-construction meeting with the City Engineer prior to start of work. All municipal improvements must be completely staked in the field under the direct supervision of a registered civil engineer or registered land surveyor, in accordance with the approved plans. Revisions to approved plans required by unexpected or unknown conflicts in the field shall be made as directed by the City.

FOURTH: Owners agree that if, for any reason, the total cost of completion of such improvements shall exceed the sums detailed in Paragraph SECOND hereof, that Owners will immediately, upon notification by the City, remit such additional amounts in accordance with Paragraph SECOND hereof. In the event the total cost of completion shall be less than the sums as detailed in Paragraph SECOND hereof, City will refund to the Owners the excess funds remaining after disbursement of funds.

FIFTH: Owners agree to indemnify and save harmless City, their agents and employees, from and against all loss or expense (including costs and attorneys' fees) by reason of liability imposed by law upon the City, its agents and employees for damages because of bodily injury, including death, at any time resulting therefrom sustained by any person or persons or on account of damage to property, including work, provided such injury to persons or damage to property is due or claimed to be due to negligence of the Owner, his contractor, or subcontractors, employees or agents, Owner further agrees to obtain and convey to the City all necessary easements and/or right-of-way for such public utilities as required by the City Engineer.

City Of Troy

Contract for Installation of Municipal Improvements
(Private Agreement)

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed in duplicate on this 19 day of August, 2016.

OWNERS

CITY OF TROY

By: Amber Lofts, LLC
Jerome S. Amber
Jerome S. Amber, Member

By: _____

Please Print or Type

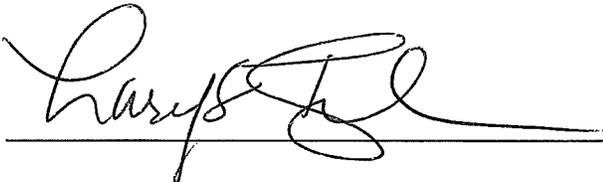
Dane M. Slater, Mayor

Please Print or Type

M. Aileen Dickson, City Clerk

STATE OF MICHIGAN, COUNTY OF OAKLAND

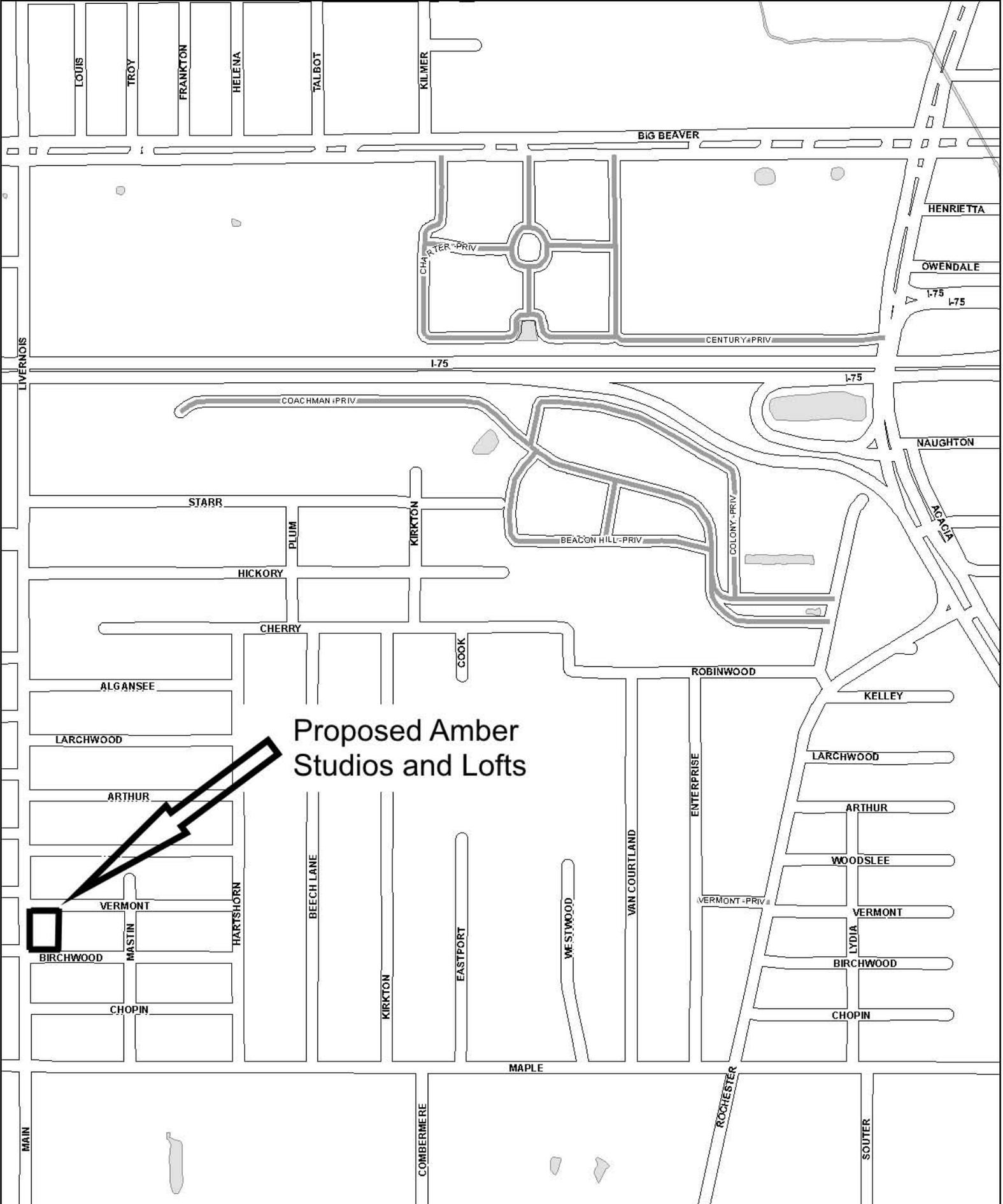
On this 19th day of August, A.D. 2016, before me personally appeared Jerome S. Amber, Member of Amber Lofts, LLC known by me to be the same person(s) who executed this instrument and who acknowledged this to be his/her/their free act and deed.



NOTARY PUBLIC, Oakland County, Michigan

My commission expires: _____

LARYSA FIGOL
Notary Public, Oakland County, Michigan
Acting in Oakland County, Michigan
My Commission Expires 03/02/2018



Proposed Amber Studios and Lofts



**Detailed Summary of Required Deposits & Fees
Amber Studios and Lofts
15.912.3**

ESCROW DEPOSITS (PUBLIC):

Sanitary Sewers	\$6,500
Water Mains	\$12,870
Paving	\$2,764
Sidewalks	\$5,100
Underground Detention System/Restricted Outlet/Sewer Tap/Oil & Gas Trap	\$23,910

TOTAL ESCROW DEPOSITS (Refundable): **\$51,144**

CASH FEES (Non-Refundable):

Engineering Review Fee (Private Improvements)(PA1)	\$1,657
Water Main Testing and Chlorination (PA 2)	\$650
Plan Review and Construction Inspection Fee (Public Improvements) (PA1)	\$4,143
Soil Erosion/Sedimentation Control Commercial Permit Fee (SUB 10)	\$400
Soil Erosion/Sedimentation Control Commercial Inspection Fee (SUB 10)	\$500
Less Initial Engineering Review Fee (Public & Private)(1.1%)	-\$1,615

TOTAL CASH FEES (Non-Refundable): **\$5,735**

CASH DEPOSITS (Refundable):

Street Cleaning/Road Maintenance	\$5,000
Soil Erosion/Sedimentation Control Repair, Replace, or Maintenance	\$500
Punchlist & Restoration	\$5,114

TOTAL CASH DEPOSITS (Refundable): **\$10,614**

Total Escrow & Cash Deposits (Refundable): **\$61,758**

Total Cash Fees (Non-Refundable): **\$5,735**

Total Amount: **\$67,493**

PAID
AUG 19 2016
CITY OF TROY
TREASURER'S OFFICE

New Buffalo Savings Bank
45 North Whittaker Street
New Buffalo, Michigan 49117
(269)469-2222

L/C Number: 2016-05

RE: IRREVOCABLE STANDBY COMMERCIAL LETTER OF CREDIT

CITY OF TROY
500 W BIG BEAVER
Troy, MI 48084

Attention: ANTONIO CICCHETTI

Sir, Madam:

Upon the request of JEROME S AMBER, we, New Buffalo Savings Bank (the Issuing institution) have established this Irrevocable Standby Commercial Letter of Credit in your (Beneficiary) favor, up to an aggregate amount of Fifty-one Thousand One Hundred Forty-four and 00/100 Dollars (\$51,144.00).

Payment to you will be made upon presentation of a sight draft drawn on us.

This Letter of Credit must be presented with your drawing and the Conditions for Draw(s) set forth below must be satisfied. A draft must bear upon its face the statement "Drawn under Letter of Credit No. 2016-05."

CONDITIONS FOR DRAWS. THE FUNDS FOR PAYMENT OF ANY DRAWS WILL BE MADE THROUGH A LINE OF CREDIT #0140004092 DATED JUNE 24, 2016.

This Credit is not transferable. Any successor or assignee of the Beneficiary will not constitute a transferee of Credit.

We will honor a draft drawn and presented under and in compliance with the terms of this Letter of Credit if presented to us at our address set forth above at or before August 16, 2017.

The Uniform Customs and Practice for Documentary Credits (hereinafter called the "UCP") as most recently published by the International Chamber of Commerce (ICC) shall in all respects be deemed a part hereof as fully as if incorporated herein and shall apply to the Credit. This Agreement shall be governed by and construed in accordance with the laws of the state of Michigan, United States of America, except to the extent such laws are inconsistent with the UCP.

ADDITIONAL PROVISIONS. It is a condition of this Letter of Credit that it shall be automatically extended without amendment for additional 12 month periods from the present or each future expiration date, unless at least 60 days prior to the current expiry date we send notice in writing to you via swift, or hand delivery at the above address. In that we elect not to automatically extend this letter of credit for any additional period. Upon such notice to you, you may draw on us at sight for an amount not to exceed the balance remaining in this Letter of Credit within the then-applicable expiry date, by your swift or presentation of your draft and dated statement purportedly signed by one of your officials reading as follows:

"The amount of this drawing USD xxxxx under New Buffalo Savings Bank letter of credit number 2016-05 represents funds due us as we have received notice from New Buffalo Savings Bank of their decision not to automatically extend letter of credit number 2016-05 and the underlying obligation remains outstanding."

PROJECT NAME: AMBER STUDIOS AND LOFTS LOCATED AT SW 1/4 SECTION 27

New Buffalo Savings Bank

 (Seal)
By: WILLIAM F. O'CONNELL Date: 8/17/2016
Its: MANAGER PRESIDENT