



CITY COUNCIL ACTION REPORT

August 19, 2008

TO: Phillip L. Nelson, City Manager

FROM: Brian P. Murphy, Asst. City Manager/Economic Development Services
Steven J. Vandette, City Engineer

SUBJECT: Private Agreement for Granite City Food and Brewery
Project No. 08.911.3

Background:

- The Planning Commission granted preliminary site plan approval for the above referenced project on June 10, 2008. The Engineering Department has reviewed the plans for this project and recommends approval. The plans include water main and sanitary manhole.

Financial Considerations:

- The owner has provided the necessary escrow deposit and paid the cash fees in accordance with the attached Private Agreement.

Legal Considerations:

- There are no legal considerations associated with this item.

Policy Considerations:

- Troy is rebuilding for a healthy economy reflecting the values of a unique community in a changing and interconnected world.

Options:

- Council can approve or deny the recommendation.

cc: Tonni Bartholomew, City Clerk (Original Agreement)
James Nash, Financial Services Director

00.711.3

City Of Troy

Contract for Installation of Municipal Improvements
(Private Agreement)

Project No.: 08.911.3

Project Location: NW 1/4 Section 28

Resolution No: _____

Date of Council Approval: _____

This Contract, made and entered into this 11th day of August, 2008 by and between the City of Troy, a Michigan Municipal Corporation of the County of Oakland, Michigan, hereinafter referred to as "City" and Dunham Capital Management LLC whose address is 230 South Phillips Avenue, Suite 202, Sioux Falls, South Dakota 57104 and whose telephone number is (605) 339-2423 hereinafter referred to as "Owners", provides as follows:

FIRST: That the City agrees to permit the installation of Water Main and Sanitary Manhole in accordance with plans prepared by Professional Engineering Associates whose address is 2430 Rochester Court, Suite 100, Troy, MI 48083-1872 and whose telephone number is (248) 689-9090 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 \$45,630.00. This amount will be deposited with the City in the form of (check one):

- Cash
- Certificate of Deposit
- Irrevocable Bank Letter of Credit
- Check
- Performance Bond & 10% of Cash

Refundable cash deposit in the amount of \$2,500.00. This amount will be deposited with the City in the form of (check one):

- Cash
- Check

Non-refundable cash fees in the amount of \$10,431.00. This amount will be paid to the City in the form of (check one):

- Cash
- Check

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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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.

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IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed in duplicate on this 11th day of August, 2008.

OWNERS

CITY OF TROY

By: Dunham Capital Management, LLC

By:



Donald A. Dunham, Jr.
Please Print or Type His Sole - Managing Member

Louise E. Schilling, Mayor

Please Print or Type

Tonni Bartholomew, City Clerk

STATE OF MICHIGAN, COUNTY OF OAKLAND

On this _____ day of _____, A.D.20____, before me personally appeared _____ 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: _____

STATE OF SOUTH DAKOTA, COUNTY OF MINNEHAHA

On this the 11th day of August, AD, 2008, before me, Nancy J. Hughes, personally appeared Donald A. Dunham, Jr., sole and managing member of Dunham Capital Management, LLC, a South Dakota limited liability company, known by me to be the same person who executed this instrument and who acknowledged this to be his free act and deed.



Notary Public, Minnehaha County, SD
My Commission Expires September 30, 2009

