



Roll Call Number

19-1013

Agenda Item Number

38

Date June 24, 2019

APPROVING ESCROW AGREEMENT FOR PRIVATE CONTRIBUTION TO COSTS OF STREET LIGHTING ON HIGH STREET ADJOINING 1525 HIGH STREET

WHEREAS, the City Planning Administrator has approved a Site Plan “Selix Brewery”, submitted by OLUA, LLC, represented by Scott Selix, to allow construction and operation of the Selix Brewery on property located at 1525 High Street (“Property”), subject to conditions set forth in the staff recommendation; and

WHEREAS, the approved Site Plan for the Property contains the following requirement:

General Note 25: Installation of one black utility/street light pole, with “Autobahn LED” light fixture as currently required by the Sherman Hill Self-Supported Municipal Improvement District (SSMID) and Downtown Overlay District shall be deferred indefinitely, subject to the following terms:

- a) Approval of an agreement between the City Council and the developer which specifies that the developer shall deposit funds with the City of Des Moines that are equivalent to the City approved estimated cost to install a black utility/street light pole, with “Autobahn LED” light fixture adjacent to the subject property, but not to exceed a total cost of \$7,705.73.
- b) The City will hold and then combine funds contributed by the developer with Sherman Hill SSMID funds to install yet to be determined, unified and district specific street light fixture or to install the black utility/street light pole with “Autobahn LED” light fixture adjacent to the subject property on a later date; and

WHEREAS, City staff have negotiated an Escrow Agreement with OLUA, LLC as developer, and with 1525 High Street, LLC as the owner of the Property, whereby OLUA, LLC has agreed to deposit the sum of \$7,705.73 with the City in payment of the required cost share for the street lighting and related improvements as set forth in the approved Site Plan, and 1525 High Street, LLC, has consented and agreed to the escrow and to installation of the improvements on the Property.

NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of Des Moines, Iowa, as follows:

- 1. The proposed Escrow Agreement with OLUA, LLC as developer, and with 1525 High Street, LLC as the owner of the Property is hereby approved, and the Mayor and City Clerk are hereby authorized and directed to execute the Escrow Agreement on behalf of the City.

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ESCROW AGREEMENT

This Escrow Agreement (this "Agreement") is made on or as of the 24th day of June, 2019, by and between the **City of Des Moines, Iowa**, a municipal corporation (the "City"); **OLUA, LLC**, an Iowa limited liability company (the "developer"); and **1525 High Street, LLC**, an Iowa limited liability company (the "Owner").

WHEREAS, the Owner owns the real estate at 1525 High Street, Des Moines, Iowa (the "Property"); and

WHEREAS, the developer is undertaking a development upon the Property; and

WHEREAS, on application by the Owner, the City's Planning Administrator approved a Site Plan "Selix Brewery" to allow construction and operation of the Selix Brewery on the Property; and

WHEREAS, the approved Site Plan for the Property contains the following requirement:

General Note 25: Installation of one black utility/street light pole, with "Autobahn LED" light fixtures as currently required by the Sherman Hill Self-Supported Municipal Improvement District (SSMID) and Downtown Overlay District shall be deferred indefinitely, subject to the following terms:

a) Approval of an agreement between the City Council and the developer which specifies that the developer shall deposit funds with the City of Des Moines that are equivalent to the City approved estimated cost to install one black utility/street light pole with "Autobahn LED" light fixture adjacent to the subject property, but not to exceed a total cost of \$7,705.73 dollars.

b) The City will hold and then combine funds contributed by the developer with Sherman Hill SSMID funds to install yet to be determined, unified and district specific street light fixture or to install the black utility/street light pole with "Autobahn LED" light fixtures adjacent to the subject property on a later date; and

WHEREAS, the purpose of this Agreement is to memorialize the agreement between City, developer and Owner for the installation of street lighting as described above and required by the approved Site Plan.

NOW THEREFORE, the City, developer and Owner hereby agree as follows:

1. Deposit of Escrowed Funds. No later than August 1, 2019, and prior to the issuance by City of a permanent Certificate of Occupancy for the occupancy of the building on the Property, developer shall deposit the sum of Seven-Thousand Seven-Hundred Five and 73/100 U.S. Dollars (\$7,705.73) (the "Escrowed Funds") with City, to be held by City in trust for the benefit of developer, Owner and City under the terms of this Agreement.

2. Construction of Public Street Lighting. City shall proceed with all necessary steps to design and install the City-approved, unified and district specific street light fixtures or to install one black utility/street light pole with "Autobahn LED" light fixture, as determined appropriate by the City Engineer, and related work and improvements (all collectively "improvements"), within City right-of-way adjacent to the Property as a public improvement.

3. Application of Escrowed Funds. City may draw on the Escrowed Funds for payment of the construction of improvements as identified above at the time of such construction, either as an advance payment or as a reimbursement for City payment of construction costs. If the City's cost for construction of the improvements described above is less than the amount deposited by developer pursuant to this Agreement (\$7,705.73), then the remaining balance of the Escrowed Funds shall be promptly refunded to developer.

4. Deadline for Release of Funds. If the City has not completed the construction of improvements as described above within 10 years of the date of this Agreement, then the Escrowed Funds shall be returned to developer.

5. Investment of Escrowed Funds. City, at its sole discretion, may comingle the Escrowed Funds for the purpose of placing the Escrowed Funds on deposit with a financial institution, including but not limited to comingling of the Escrowed Funds with Sherman Hill Self-Supported Municipal Improvement District (SSMID) funds. Any interest earned by the Escrowed Funds shall be retained by City.

6. Owner Consent. The Owner acknowledges and consents and agrees to the construction of the improvements on the Property and escrow arrangement as described herein.

7. Force Majeure. In the event the City is delayed in the timely performance of its obligation to complete the design, bidding and construction of the improvements as described above due to unforeseeable causes beyond its control and without its fault or negligence, the time allowed for performance of the obligation shall be extended for the period of such delay.

IN WITNESS WHEREOF, the City and Owner have caused this Agreement to be duly executed on or as of the day first above written.

"DEVELOPER"

OLUA, LLC

An Iowa limited liability company

By: Scott Selix 6/14/19
Its: Member, Co-Founder

"OWNER"

1525 HIGH STREET, LLC

An Iowa limited liability company

By: Ed. Massman
Its: MANAGER

"CITY"

CITY OF DES MOINES, IOWA

a municipal corporation

By: Bill Gray
T.M. Franklin Cownie, Mayor *Pro Tem*
Bill Gray

ATTEST:

Diane Rauh
By: Diane Rauh, City Clerk

Authorized by Roll Call No. 19- 1013,
passed JUNE 24, 2019.

APPROVED AS TO FORM:

Glenn F. Fink
Assistant City Attorney

CITY OF DES MOINES
OFFICE OF CITY CLERK

TO: Mike Ludwig

DATE: June 28, 2019

FROM: City Clerk's Office

**RE: City Council Agenda of
June 24, 2019**

We are transmitting herewith the following from the City Council Agenda of:

ROLL CALL

SUBJECT

19-1013 Escrow Agreement - Street lighting on High Street (original).

Thank you.



Diane Rauh
City Clerk

DR:rb
Attachments

cc: Roll Call
File