



Request for Council Action

TO: Mayor and City Council
THROUGH: Tim Murray, City Administrator
FROM: Mark DuChene, City Engineer
MEETING DATE: May 26, 2020
SUBJECT: Approve Amendment to Purchase and Development Agreement by and between City of Faribault and Faribault Division, LLC

Background:

As part of the Purchase and Development Agreement by and between City of Faribault and Faribault Division, LLC (Hillside Apartments) the City of Faribault was to replace the existing sidewalk along the Hillside Apartment project on both Division Street and Central Avenue as part of a planned City street reconstruction project. The street project was to follow the standard City street reconstruction assessment process, however the assessments for the Hillside Apartments parcel were to be paid by the City, again as stipulated in the purchase and development agreement.

Due to the COVID-19 pandemic, the City street reconstruction project will not be completed as soon as originally planned and the Hillside Apartment developer (Faribault Division, LLC) would like to secure an occupancy permit for the new apartment building in early June. One requirement for occupancy would be an accessible pedestrian route to the main entrance on the south side of the building fronting Division Street. This access route includes the public sidewalk.

To remedy this situation and keep the Developer on schedule, the City and Developer have negotiated an amendment to the purchase and development agreement to allow the Developer to construct the City sidewalk along Division Street and Central Avenue as necessary to get an occupancy permit and then submit an invoice for said sidewalk work to the City for reimbursement as outlined in the attached First Amendment to Purchase and Development Agreement by and between City of Faribault and Faribault Division, LLC.

Funding for the sidewalk will come out of the Street Improvement (401) fund, just as it would have had it been part of the City street reconstruction project.

Recommendation:

Approve the First Amendment to Purchase and Development Agreement by and between City of Faribault and Faribault Division, LLC

Attachments:

- First Amendment to Purchase and Development Agreement by and between City of Faribault and Faribault Division, LLC



4057 28th Street NW, Suite 200
Rochester, MN 55901
(507) 281-1002 ♦ www.hamiltonmnre.com

May 11, 2020

Mr. Mark Duchene
Director of Engineering
City of Faribault
1200 Belview Trail
Faribault, MN 55021

Mark:

Enclosed please find the executed and notarized Amendment to Purchase and Development Agreement. Please circulate it for signature on behalf of the City and return a fully executed copy for our records.

Cordially,

A handwritten signature in blue ink that reads 'Mac Hamilton'.

J.M. Hamilton, CCIM, SIOR, CPM
CEO

Enclosure

JMH/jeanne

**FIRST AMENDMENT TO PURCHASE AND
DEVELOPMENT AGREEMENT
BY AND BETWEEN CITY OF FARIBAULT AND
FARIBAULT DIVISION, LLC**

THIS FIRST AMENDMENT TO PURCHASE AND DEVELOPMENT AGREEMENT is made and entered into this ___ day of May, 2020, by and between the CITY OF FARIBAULT, a Minnesota municipal corporation (the "City"), and Faribault Division, LLC, a limited liability company formed under the laws of Minnesota (the "Developer").

WHEREAS, Seller and Buyer have entered into a Purchase and Development Agreement, dated July 31, 2019 (the "Agreement");

WHEREAS, Article 2.02 of the Agreement under Public Improvements stated "The Developer shall not be responsible for any public improvements associated with the Redevelopment Plan and Minimum Improvements, both as hereinafter defined, regarding the Property. The City intends and shall endeavor to furnish and install necessary public improvements (the "Public Improvements") associated with the Property pursuant to a City project presently scheduled to occur in 2020.";

WHEREAS, the Developer has indicated that they will be seeking an occupancy permit for the project on or about June 1, 2020;

WHEREAS, Due to the COVID 19 pandemic of 2020, the scheduled Public Improvements have been delayed past June 1, 2020;

WHEREAS, In order to receive an occupancy permit the Developer's project must have adequate ingress and egress, including meeting all federal, state and local building and accessibility codes from their exterior entryways which fronts the public sidewalk within the Division Street and Central Avenue rights-of-way;

WHEREAS, part of the planned Public Improvements was the replacement of the public sidewalk adjacent to the Developers Property.

NOW, THEREFORE, in consideration of the mutual covenants and other good and valuable consideration hereinafter set forth, the parties hereby amend the Purchase and Development Agreement as hereinafter provided:

1. The Developer shall solicit quotes, hire, retain and contract with a licensed and reputable Contractor subject to the approval of the City, to complete the construction and installation of the public sidewalks within the Division Street and Central Avenue rights-of-way as is necessary for the Developer to obtain a certificate of occupancy for their project. All landscaping, grading and if necessary retaining walls required to be constructed outside of the public rights-of-way so that the public sidewalk meets the City's ADA Transition Plan requirements shall be 100% the responsibility of the Developer.

2. Said Contractor shall complete the sidewalk construction to the standards and specifications as shown on the approved project plans and as determined by the City Engineer.

3. Once said sidewalk construction is complete, Developer shall submit an invoice to the City for said sidewalk work with a proper lien release from the Contractor indicating the Contractor has been paid for said work, and upon verification by the City that said work has been completed according to the standards and specifications as indicated by the City, the City shall reimburse the Developer for the costs according to standard City accounts payable procedures.

4. This First Amendment and any amendments thereto shall be recorded with the Rice County recorder along with the Purchase and Development Agreement.

5. Except as provided in this First Amendment to Purchase and Development Agreement, the Purchase and Development Agreement remains unchanged and in full force and effect.

The remainder of this page is left intentionally blank.

IN WITNESS OF THE ABOVE, the parties have caused this Agreement to be executed on the date and year written above.

City of Faribault

By: _____
Kevin F. Voracek, Mayor

By: _____
Timothy C. Murray, City Administrator

STATE OF MINNESOTA)
) SS.
COUNTY OF RICE)

The foregoing instrument was acknowledged before me this _____ day of May, 2020, by Kevin F. Voracek and Timothy C. Murray, the Mayor and City Administrator, respectively, of the City of Faribault, a Minnesota municipal corporation, on behalf of the corporation.

Notary Public

FARIBAULT DIVISION, LLC

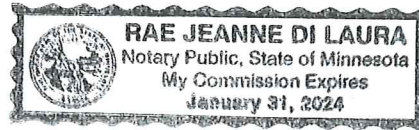
By: Jim Hamilton

Its: CHIEF MANAGER

STATE OF MINNESOTA)
) SS.
COUNTY OF OLMSTED)

The foregoing instrument was acknowledged before me this 8 day of May, 2020, by JM HAMILTON, the CHIEF MANAGER of Faribault Division, LLC, a Minnesota limited liability company, on behalf of the company.

Rae Jeanne Di Laura
Notary Public



DRAFTED BY:
City of Faribault
208 NW 1st Avenue
Faribault, MN 55021