



Legislation Text

File #: 07-0332, **Version:** 1

Resolution to Approve a Project Milestone Extension to the Option Agreement for the Purchase of Land at 350 S. Fifth Avenue

Attached for your review and action is a resolution to approve a Project Milestone Extension to the Option Agreement with XY, LLC for the purchase of the City owned property at 350 S. Fifth Avenue (old YMCA property).

On September 24, 2007, City Council approved the Option Agreement with XY, LLC for the purchase of the subject property, R-456-9-07. The Option Agreement was signed on October 12, 2007. It gives XY, LLC a continuing option to purchase the City property if and so long as XY, LLC complies with all the terms and conditions within the Option Agreement, including timely meeting of a series of clear Project Milestones and Project Goals. The deadlines for the various Project Milestones and Project Goals are set forth in the Option Agreement.

Below is the status of certain Project Milestones whose deadlines have occurred to date, and that XY, LLC is fully responsible for meeting:

- A. [Section 8.A.a] XY, LLC filed a Revised Site Plan for the Revised Project and certain exhibits and accompanying documents and materials required or appropriate under applicable City ordinances, at approximately 12:00 noon EDT on August 27, 2007. Delivered on schedule.
- B. [Section 8.A.b] XY, LLC simultaneous with filing its Revised Site Plan, delivered and submitted to the City a written and executed acknowledgment from AATA staff, acknowledging that it has reviewed, is satisfied with, and consents to the filing of the Revised Site Plan. Delivered on schedule.
- C. [Section 8.A.c] XY, LLC delivered to the City a Pre-Approval Letter and Certificate duly executed by the Michigan Economic Growth Authority ("MEGA"), evidencing pre-approval of the issuance of Brownfield tax credits for the Revised Project on October 11, 2007. Delivered on schedule.
- D. [Section 8.A.e] XY, LLC provided the City with a joint venture agreement by October 15, 2007, which is being modified by XY, LLC to meet the requirements of a fully executed joint venture agreement between XY and the operator of the proposed hotel to be located within and comprise a portion of the Revised Project.
- E. [Section 8.A.g] XY, LLC provided the City with a true copy of AATA's application to the Federal Aviation Authority ("FAA") for approval of the location and height of any and all proposed communications tower to be located on the Revised Project on October 11, 2007. A true copy of application was due on September 30, 2007.

Below is a status of certain Project Goals whose tentative deadlines have occurred to date, and which represent events and dates that are critical, but may be impacted or delayed due to third parties or events outside the control of XY, LLC:

- A. [Section 8.B.i] XY, LLC and the City are negotiating and finalizing the Supplemental Agreement in good faith.
- B. [Section 8.B.ii] XY, LLC delivered preliminary drafts of certain, but not all, of the condominium documents to the City Attorney for review and comment by September 15, 2007. The documents delivered included draft Master Deed and Condominium Bylaws (Exhibit A to the Master Deed), but

did not include the Condominium Subdivision Plan (Exhibit B to the Master Deed), which is critical to a meaningful review of the other condominium documents.

Significantly, and central to this Memorandum, XY, LLC failed to meet the Project Milestone set forth in Section 8.A.i: to “submit a full, complete and adequate demolition and staging plan, and application for demolition permits on the City Property and the AATA Property, to City by October 15, 2007.” XY, LLC provided the City with a site utilization plan on Friday, October 12, 2007. On Monday, October 15, 2007, XY, LLC was notified by the City that the submitted site utilization plan did not meet the required Project Milestone, “to submit a full, complete and adequate demolition and staging plan, and application for demolition permits on the City Property and the AATA Property, to City by October 15, 2007”, and that it had until 11:59 pm to provide the necessary information to meet the Project Milestone. On October 18, 2007, the City sent via email and overnight courier, formal notice to XY, LLC of their default under the Option Agreement (attached). On October 19, 2007, the City received a Milestone Extension Request from XY, LLC (attached).

Section 8.A. of the Option Agreement stipulates that if XY, LLC determines that it will be unable to meet one or more Project Milestones, it shall notify the City in writing, specifying the reason why the Milestone will not be met and request a reasonable and specified extension for the applicable Project Milestone. The Option Agreement further stipulates that no extension of any Project Milestone shall be binding unless in writing and signed by the City Administrator after City Council approval.

Notwithstanding the above provisions, in the event a Milestone filing is timely made, but the City determines that a Milestone has not been met, it shall notify XY, LLC in writing specifying why the Milestone has not been met and XY, LLC will have five (5) business days from the date of the notice to correct the basis for the City’s objection.

Per Section 16.A. of the Option Agreement, the City may terminate the Option Agreement and all of XY, LLC’s rights for failure to fully perform or achieve any of the Project Milestones and Project Goals set forth in Section 8 of the Agreement.

While XY, LLC did not request an extension for this Project Milestone prior to the Milestone deadline, City staff notified the developer that in order for an extension to be considered by City Council the developer must request an extension. XY, LLC was also notified that the City reserves the right to exercise all remedies available including in particular but without limitation the right to terminate the Option Agreement pursuant to Section 16.A.

Approval of this specific requested extension, to November 10, 2007, to the Option Agreement with XY, LLC is recommended.

Jayne Miller, Community Services Area Administrator

Roger W. Fraser, City Administrator

Whereas, The City is the owner of property located on William Street between Fourth and Fifth Avenues formerly housing the Ann Arbor YMCA;

Whereas, On September 24, 2007, City Council approved an Option Agreement with XY, LLC for the purchase of the City owned property at 350 S. Fifth Avenue, R-456-9-07;

Whereas, The Option Agreement permits XY, LLC to continue with the purchase of the City property if and so long as XY, LLC enters into and complies with the terms and conditions within the Option Agreement;

Whereas, The Option Agreement has established clear project milestones and goals, including timetables for each project milestone and goal, which must be successfully taken or accomplished by XY, LLC for the revised project to reach completion;

Whereas, XY, LLC failed to submit a full, complete and adequate demolition and staging plan, and application for demolition permits on the City Property and the AATA Property, to City by October 15, 2007, an established Project Milestone under Section 8.A.i of the Option Agreement; and

Whereas, On October 19, 2007, the City received a Milestone Extension Request from the XY, LLC;

RESOLVED, That the Mayor and Council, approve the requested extension to November 10, 2007 for Milestone 8.A.i, submission of a full, complete and adequate demolition and staging plan, and application for demolition permits on the City Property and the AATA Property, to City; and

RESOLVED, That the City Administrator be authorized to take all necessary actions to implement this Resolution.