

Resolution No. 19-58

A RESOLUTION OF SOUTH OGDEN CITY AUTHORIZING AN AGREEMENT FOR THE REPLACEMENT OF CERTAIN WATER LINES AND THAT THIS RESOLUTION SHALL BECOME EFFECTIVE IMMEDIATELY UPON POSTING AND FINAL PASSAGE

Section 1 – Recitals

WHEREAS, the City of South Ogden City (“City”) is a municipal corporation duly organized and existing under the laws of Utah; and

WHEREAS, in conformance with Utah Code (“UC”) § 10-3-717, the City’s governing body may exercise all administrative powers by resolution, including, but not limited to, regulating the use and operation of municipal property; and

WHEREAS, City staff have reviewed and studied this matter and recommended that the City Council authorize the execution of an agreement with Urban Land Group, LLC, for the replacement of two of the City’s water lines; and

WHEREAS, Urban Land Group, LLC, has demonstrated an ability to provide the services contemplated in the agreement; and

WHEREAS, the Council finds that public convenience and necessity require the actions contemplated by this resolution.

NOW, THEREFORE, BE IT RESOLVED by the GOVERNING BODY OF THE CITY OF SOUTH OGDEN:

Section 2 – Agreement Authorized

The agreement with Urban Land Group, LLC, in substantially the form attached hereto as **Attachment A** and by this reference incorporated herein (the “Agreement”), is approved and adopted and shall be executed by the appropriate person on behalf of the City. Further, the City Manager, with assistance of legal counsel, is authorized to make such modifications to the Agreement as may be necessary prior to execution so as to protect the interests of the City and to accomplish the purposes of this resolution.

Section 3 – Prior Ordinances and Resolutions

The body and substance of all prior resolutions and ordinances of the City, where not otherwise in conflict with this Resolution, are hereby reaffirmed and readopted.

Section 4 – Repealer of Conflicting Enactments

All orders, ordinances, and resolutions regarding the subject matter of this Resolution, which have been adopted, in whole or in part, by the City that conflict with this Resolution are, for such conflict, repealed, except that this repeal shall not be construed to revive any act, order, or resolution, or part, previously repealed.

Section 5 – Savings Clause

If any provision of this Resolution shall be held or deemed invalid, inoperative, or unenforceable, such reason shall not render any other provisions or provisions invalid, inoperative, or unenforceable to any extent whatever, this Resolution being deemed the separate, independent, and severable act of the City Council of South Ogden City.

Section 6 – Date of Effect

This Resolution takes effect immediately upon publication or posting as required by law.

**PASSED AND ADOPTED BY THE CITY COUNCIL OF SOUTH OGDEN CITY
THIS _____ day of _____, 2019.**

By: _____
Russell L. Porter, Mayor

Attest:

Leesa Kapetanov, CMC
City Recorder

ATTACHMENT A

to Resolution 19-58

A RESOLUTION OF SOUTH OGDEN CITY AUTHORIZING AN AGREEMENT WITH URBAN LAND GROUP LLC AND PROVIDING THAT THIS RESOLUTION SHALL BECOME EFFECTIVE IMMEDIATELY UPON POSTING AND FINAL PASSAGE

WATERLINE REPLACEMENT AGREEMENT

THIS WATERLINE REPLACEMENT AGREEMENT (“**Agreement**”) is entered into as of this ____ day of _____, 2019, by and between URBAN LAND GROUP LLC, a Utah limited liability company (“**Developer**”), and SOUTH OGDEN CITY, a Utah municipal corporation (the “**City**”); Developer and the City are sometimes referred to individually as a “**Party**” or collectively as the “**Parties.**”

RECITALS

WHEREAS, the City and Developer entered into a Development Agreement for 1 East Harrison in May 2017 for the Developer to develop property (“**Property**”) located within the City; and,

WHEREAS, the City has old water lines that convey water from Weber Basin Water Conservancy District’s system to the City’s water tanks east of the Property; and,

WHEREAS, the City desires to protect the integrity of the City’s water system during and after the development of the Property; and,

WHEREAS, the City has determined that the waterlines should be replaced; and,

WHEREAS, Developer is currently developing the Property; and,

WHEREAS, given Developer’s current development of the Property, the City has determined that Developer is in the most efficient position to manage the replacement of the City’s waterlines on the Property; and,

WHEREAS, the Parties desire to enter into this Agreement authorizing Developer to manage the replacement of the water lines, and authorizing the City to reimburse the Developer for its services.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

AGREEMENT

1. The Parties’ Duties and Covenants.

a. The Developer shall replace, or cause to be replaced, the water line (the “**Project**”, as defined below.

b. The City shall design the plans to replace the two waterlines: a ten (10) inch ductile iron water line and a fourteen (14) inch transite water line that each run through the Property (the replacement of the two waterlines is referred to herein as “**Project**”). A plat map showing the location of the water lines is attached as **Exhibit A**.

c. The City’s plans shall include the Project’s construction drawings and notice of invitation for bids. The City shall provide its plans to Developer. Developer shall not be obligated to perform any of its duties in relation to the Project until it receives the City’s plans.

d. The Developer shall obtain at least three (3) written bids from reputable contractors for completion of the Project and shall provide all bids obtained to the City. From the bids received, Developer shall select at least three (3) bids that satisfy the requirements set forth in the Bid Notice and submit those bids to the City for its confirmation. Prior to awarding the Project to a contractor, Developer must receive written approval from the City confirming that a specific bid is acceptable to the City. If the Developer accepts a bid without the City’s prior, written approval, the City shall not be responsible for any of the costs and expenses incurred by the unapproved contractor.

e. Developer shall oversee, manage, and assure that the Project is completed in a timely manner. Developer shall ensure that the Project is completed no later than _____.

f. Developer will charge the City for its reasonable and actual expenses incurred in overseeing and managing the Project, and the City shall pay those expenses pursuant to this Agreement.

g. Developer shall submit an invoice to the City for Developer’s reasonable and actual expenses incurred in completing the Project. Developer shall also submit invoices from the contractor working on the Project to the City. Developer shall submit all invoices to the City within thirty (30) days of Developer’s receipt of the invoice. Late invoices will not be accepted by the City, and the City shall not be obligated to reimburse any expenses represented on any invoice submitted after the thirty (30) day time limit.

h. The City shall pay each invoice within thirty (30) days of its receipt of the invoice unless the City disputes the invoice pursuant to Section 2 herein.

i. All construction and improvements done with the Project shall be in accordance with the City’s adopted standards and specifications, as amended from time to time.

2. Invoice/Cost Disputes. In the event the City disputes any amount on any invoice, it shall provide written notification of such dispute to Developer. The City’s notice shall include specific details regarding its dispute. If Developer does not agree with the City’s position, both parties agree to and shall engage in good faith negotiations to determine the actual cost represented on the invoice.

3. State and Federal Law. The parties agree, intend, and understand that the obligations imposed by this Agreement are only such as follow state and federal law. The parties further agree that if any provisions of this Agreement becomes, in its performance, inconsistent with state or federal law or is declared invalid, this Agreement shall be deemed amended to the extent necessary to make it consistent with state or federal law and the balance of the Agreement shall remain in full force and effect.

4. No Waiver. Failure of a party hereto to exercise any right hereunder shall not be deemed a waiver of any such right and shall not affect the right of such party to exercise at some future time said right or any other right it may have. No officer, official, or agent of the City has the power to amend, modify or alter this Agreement or waive any of its conditions as to bind the City by making any promise or representation not contained herein.

5. Entire Agreement. Except as specifically stated, this Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, whether oral or written, covering the same subject. This Agreement may not be modified or amended except in writing mutually agreed to and accepted by both parties to this Agreement.

6. Attorney's Fees. If any legal action is filed regarding the interpretation or enforcement of this Agreement, including insolvency, bankruptcy, arbitration, declaratory relief or other litigation, including appeals or rehearings, the prevailing party shall be entitled to receive from the other party thereto reimbursement for all attorneys' fees and all costs and expenses incurred in connection with the aforementioned legal proceedings. Should any judgment or final order be issued in those proceedings, the reimbursement amount shall be specified therein. Legal expenses incurred during mediation shall not be reimbursable under this paragraph.

7. Applicable Law. This Agreement is entered into under, and is to be construed and enforceable under, the laws of the State of Utah.

8. Execution of Agreement. This Agreement may be executed in multiple parts as originals or by facsimile copies of executed originals; provided, however, if executed and evidence of execution is made by facsimile copy, then an original shall be provided to the other party within seven (7) days of receipt of the facsimile copy.

(Signatures Follow)

IN WITNESS WHEREOF, this Agreement has been executed by South Ogden City, acting through the City Council of South Ogden City, Weber County, State of Utah, under _____, authorizing such execution, as of the above-stated date.

ATTEST:

SOUTH OGDEN CITY,
a Utah municipal corporation

By: _____
City Recorder

By: _____
Title: _____

IN WITNESS WHEREOF, this Agreement has been executed by a duly authorized representative of Developer as of the above-stated date.

URBAN LAND GROUP LLC,
a Utah limited liability company

By: _____
Title: _____

ATTACHMENT A
to
WATERLINE REPLACEMENT AGREEMENT
(WATERLINE PLAT MAP)