

REQUEST FOR COUNCIL ACTION

SUBJECT: Enter a Right of Occupancy Agreement with Kick Creek, L.L.C.

SUMMARY: City administration and staff are proposing to widen a narrow section of 7800 South Street as part of the City's 5600 West Road Improvement Project. The property owner is agreeable as long as the City promises to purchase the property in the future. The attached Occupancy Agreement states the conditions of the future property purchase.

FISCAL IMPACT: \$250,000.00, plus up to \$500 for closing costs, which City staff hopes to receive from the Wasatch Front Regional Council (WFRC) through the corridor preservation funding process. The Occupancy Agreement allows the City to request the funds through the WFRC up to three times, if necessary. If the WFRC does not award the funds to the City to purchase this property, then the City must pay for the property by December 31, 2015, regardless of the funding source.

STAFF RECOMMENDATION:

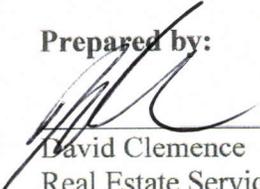
Staff recommends approval.

MOTION RECOMMENDED:

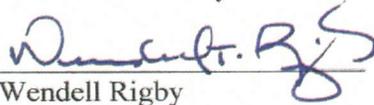
"I move to adopt Resolution No. 14-160, authorizing and directing the Mayor to sign the attached Right of Occupancy Agreement between Kick Creek, L.L.C. and the City of West Jordan.

Roll Call vote required

Prepared by:


David Clemence
Real Estate Services Manager

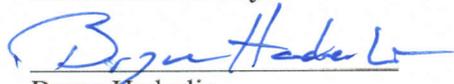
Recommended by:


Wendell Rigby
Public Works Director

Reviewed as to legal sufficiency:


Jeffrey Robinson
City Attorney

Recommended by:


Bryce Haderlie
Interim City Manager

BACKGROUND DISCUSSION:

Upon completion of the City's 5600 West Road Improvement Project between 7000 South and 7800 South there will only be three narrow sections of 7800 South Street remaining between 4800 West and 5600 West. One narrow section is on the north side of the road at about 5200 West and the other two narrow sections are on the south side of the road at about 4977 West and between 5280 and 5490 West.

While constructing the intersection of 7800 South and 5600 West it became apparent that it would be more cost effective and efficient for the City to widen 7800 South Street through those three narrow sections while the City's contractors are still available and while the construction prices are still good, rather than waiting to widen the road at a future date.

The City already owns the property required to widen 7800 South through the narrow section on the north side of the road, so City staff contacted the property owners on the south side of the road to see if they would be favorable to the City widening the road in those two locations as well. The property owners are agreeable as long as they are paid for their property.

City staff proposed the idea of the Right of Occupancy Agreement to the property owners as a way of allowing the City to immediately begin the additional road widening project and also to allow City staff the time necessary to request the funds to pay for the property through the corridor preservation funding process. The property owner is agreeable to signing the Occupancy Agreement as long as the City promises to pay for the property no later than December 31, 2015, regardless of the funding source.

If the City is agreeable to widening the road at all three narrow locations at this time, then 7800 South Street between 4800 West and 5600 West will be fully completed, with the exception of two sidewalk locations on the south side of the road, which will be constructed as part of future private development projects.

Attachments:

Resolution
Right of Occupancy Agreement
Exhibit

THE CITY OF WEST JORDAN, UTAH

A Municipal Corporation

RESOLUTION NO. 14-160

**A RESOLUTION TO SIGN A RIGHT OF OCCUPANCY AGREEMENT
WITH KICK CREEK, L.L.C.**

Whereas, the City of West Jordan (the "City") has an imminent project to widen a section of 7800 South Street (the "Project"); and

Whereas, the property within the Project boundary is currently owned by Kick Creek, L.L.C. ("Kick Creek"); and

Whereas, Kick Creek has agreed to allow the City to construct the Project and permanently occupy the property subject to the City agreeing to purchase the property in the near future; and

Whereas, the terms and conditions of the City's occupancy and future purchase of the property is described in the attached Right of Occupancy Agreement; and

Whereas, the City is allowed to enter into contracts and agreements pursuant to the Utah Code.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WEST JORDAN, UTAH, THAT:

Section 1. The Mayor is hereby authorized and directed to sign the attached Right of Occupancy Agreement between the City of West Jordan and Kick Creek, L.L.C.

Section 2. This resolution shall take effect immediately.

Adopted by the City Council of West Jordan, Utah, this 27th day of August, 2014.

CITY OF WEST JORDAN

By: _____
KIM V. ROLFE
Mayor

ATTEST:

By: _____
MELANIE S. BRIGGS, MMC
City Clerk

Voting by the City Council

"AYE"

"NAY"

- Council Member Jeff Haaga
- Council Member Judy Hansen
- Council Member Chris McConnehey
- Council Member Chad Nichols
- Council Member Ben Southworth
- Council Member Justin D. Stoker
- Mayor Kim V. Rolfe

RIGHT OF OCCUPANCY AGREEMENT

KICK CREEK, L.L.C., a Utah limited liability company (Property Owner), hereby grants to the City of West Jordan and its contractors (West Jordan), permission to enter upon, take possession of, and commence construction of its public works facility (the Project) on the property described in the attached Exhibit A (the Property), incorporated herein by this reference, subject to the terms and conditions contained herein. This Right of Occupancy is granted in anticipation of a future purchase by West Jordan and is intended to provide for occupancy of the Property pending West Jordan's receipt of funding as provided for in this agreement. Property Owner understands that, by executing this agreement, Property Owner has waived and abandoned all defenses to the eventual acquisition of the Property.

It is understood and agreed that the sum of Two Hundred Fifty Thousand and no/100 dollars (**\$250,000.00**) (the Payment) will be paid to the Property Owner in exchange for the Property Owner providing West Jordan fee simple title to the Property, subject to the terms and conditions outlined below. The Payment is based on an appraisal with an Effective Date of Valuation of June 20, 2014, completed by Michele Jakob of Van Drimmelen and Associates Real Estate Appraisers (the Appraisal).

It is understood that West Jordan will seek a grant from the Council of Governments (the COG) through the corridor preservation funding program to pay the Property Owner the Payment. The Property Owner agrees to allow West Jordan to request the Payment from the COG in September 2014, and if the COG does not award West Jordan the Payment at that time, then the Property Owner agrees to allow West Jordan to request the Payment from the COG up to two additional occasions, which are in the spring and fall of 2015. West Jordan shall be obligated to make the Payment available no later than December 31, 2015 regardless of where the funds originate.

The Property Owner and West Jordan agree to close the transaction at First American Title Company within thirty (30) calendar days after the Payment becomes available, or as soon thereafter as reasonably practical. The Payment to the Property Owner shall be based on a City-approved final settlement statement to be produced by First American Title Company at the time of closing. This Right of Occupancy is not a conveyance; therefore, the property taxes are the responsibility of the Property Owner until the Property is conveyed to West Jordan.

The parties to this agreement understand that a title report may indicate that other third parties may have a claim to part of the Payment. It is understood that the Property Owner is obligated to provide good and marketable title to the Property when any conveyance is made to West Jordan. It is not the intent of this agreement to properly assess potential third-party claims. It shall be the sole obligation of the Property Owner to satisfy such claims and deliver good and marketable title to West Jordan. It shall also be the sole obligation of the Property Owner to hold West Jordan harmless as to such encumbrances. The Property Owner shall not encumber the Property, financially or otherwise, after signing this agreement.

EXHIBIT "A"

That portion of the Northwest quarter of Section 36, Township 2 South, Range 2 West of the Salt Lake Base and Meridian, more particularly described as follows, to wit:

Beginning at the Northeast corner of Parcel B, Stone Creek West One Final Plat, according to the official plat thereof, on file and of record in the office of the Salt Lake County Recorder, filed on May 11, 2009, under Entry Number 10699056, in Book 2009P, at Page 65, said point of beginning being 927.28 feet South 89°40'55" East along the section line from the Northwest corner of said Section 36; thence South 89°40'55" East 1096.95 feet along said section line to the Northwest corner of the Stonecreek Condominiums Phase 2 subdivision, according to the official plat thereof, on file and of record in the office of the Salt Lake County Recorder, filed on May 28, 2004, under Entry Number 9075832, in Book 2004P, at Page 134; thence South 00°19'05" West 63.00 feet along the Westerly line of said subdivision; thence North 89°40'55" West, parallel to and 63.00 feet distant Southerly from the Northerly line of said section 36, a distance of 1084.70 feet to the Easterly line of said Parcel B; thence Northwesterly 13.57 feet along the arc of a 17.50 foot radius curve to the left (chord bearing North 67°28'31" West 13.23 feet), with a central angle of 44°40'51", along said Easterly line; thence North 00°19'05" East 58.00 feet along said Easterly line to the point of beginning.

The foregoing description contains 69,066 square feet, or 1.59 acres, more or less.

The foregoing description affects a portion of Salt Lake County Parcels Nos.:

20-36-100-042

20-36-100-043

20-36-126-030



5490 WEST

33' DONATION AREA

7800 SOUTH

20-36-100-042

30' PURCHASE AREA

SWIFT WATER

20-36-126-030

20-36-100-043

PARCELS

20-36-126-030, 20-36-100-042, 20-36-100-43