

M E M O R A N D U M

TO: South Weber City Mayor and Council

FROM: Brandon K. Jones, P.E.
South Weber City Engineer 

CC: David Larson – South Weber City Manager
Mark Larsen – South Weber City Public Works Director

RE: **COOPERATIVE AGREEMENT**
Cottonwood Dr. Waterline Replacement – Cost Share with Riverside RV Park Development

Date: October 9, 2019

Background

The 2016 Culinary Water Capital Facilities Plan (CFP) identifies the existing waterline in Cottonwood Drive as needing to be replaced, due to the fact that it is a 6" line, and needs to be replaced with an 8" line, as that is the minimum size for a line servicing fire hydrants. In the 2018 Capital Improvements Plan (CIP) the replacement of this line is shown to take place in the year 2026 (not a high priority project). However, recent fire flow tests have revealed that this line also struggles to provide sufficient fire flow. The City budgeted \$300,000 this year to go towards waterline replacement projects addressing fire flow deficiencies.

Project Priority Adjustment

We are recommending an adjustment to the CIP; to complete the Cottonwood Drive waterline replacement in the current fiscal year. While the project location is different than some of the other locations anticipated, the purpose of the project remains the same; to address fire flow deficiencies. We feel the timing is right to make this adjustment for two reasons: 1) Cottonwood Drive is in desperate need of resurfacing, but cannot be done until the waterline is replaced, and 2) the developer of the Riverside RV Park needs to have adequate fire flow.

Cooperative Agreement

The Riverside RV Park developer is ready to begin construction. However, they are concerned about the fire flow deficiency and need to get that corrected. We have run several scenarios in the computer water model to determine what size line is needed. It was determined that replacing the waterline with an 8" line would provide sufficient fire flow for the residents on Cottonwood Drive, but not for the development. In order to provide sufficient fire flow for both the existing residents and the development a new 10" line would be required. Since both the city and the developer have need for this line to be replaced, we felt that it would be more economical and efficient if we participated in a cost sharing agreement (see Draft Cooperative

COOPERATIVE AGREEMENT

Cottonwood Dr. Waterline Replacement – Cost Share with Riverside RV Park Development Page 2 of 2
October 9, 2019

Agreement attached). While the Agreement itself spells out more of the details, essentially the agreement states that the City will pay for and provide the design of the waterline replacement in Cottonwood Drive, but the construction would be completed by the Developer's contractor. The Developer would pay the contractor and the City would reimburse for the City's portion of the project. The City would pay for the same scope that they would have done otherwise if no development were occurring (i.e. new 8" waterline, fire hydrants, reconnection of existing services, and an asphalt patch), but there may be a chance that the costs will come in cheaper than if the project was done by the City alone. The developer is paying for the "upsizing" of the waterline from 8" to 10". According to the cost estimate included in the Cooperative Agreement, the entire \$300,000 budgeted would be needed to complete the project.

Cottonwood Drive Resurfacing

Completing the replacement of this waterline now will allow for the resurfacing of Cottonwood Drive to take place as soon as the City makes that decision. If the resurfacing were to be budgeted for in the next fiscal year, the City could potentially save the cost of the asphalt patch that is part of the waterline replacement project. If not, the trench would be patched; but with the waterline being replaced, the road would be ready to be resurfaced whenever the City was ready to fund that project.

Recommendation

We recommend approval of the Cooperative Agreement to get the Cottonwood Drive waterline replaced and upsized to a 10" line.

**COOPERATIVE AGREEMENT BY AND BETWEEN
SOUTH WEBER CITY AND F.M. WINKEL FAMILY, LLC
FOR WATERLINE REPLACEMENT
IN CORRESPONDENCE WITH RIVERSIDE R.V. PARK DEVELOPMENT**

This Cooperative Agreement is made by and between South Weber City, a body politic and political subdivision of the State of Utah, having its principal business address as 1600 East South Weber Drive, South Weber, Utah (hereinafter “City”) and the F.M. Winkel Family, a Limited Liability Corporation having its principal business address as 3651 North 100 East #125, Provo, Utah (hereinafter “Developer”), individually referred to as “Party” or collectively referred to as “Parties.”

Recitals

WHEREAS, City is a municipal corporation duly organized under Title 10 of the Utah Code Annotated, as amended;

WHEREAS, Developer is a Limited Liability Company duly organized under the laws of the State of Utah;

WHEREAS, the Developer has received approval from the City and plans to construct the Riverside R.V. Park located at 855 E. Cottonwood Drive (hereinafter “Development”); and

WHEREAS, City has an existing six-inch (6”) culinary waterline connected to the Weber Basin Water Conservancy District (WBWCD) transmission line through a meter vault by Adams Avenue and the Weber River Trail, and extending to the western boundary of the Development (See Exhibit A); and

WHEREAS, due to the age and condition of the existing waterline, the City desires to replace and upsize the line to a ten-inch (10”) waterline (hereinafter “Replacement”); and

WHEREAS, the City has performed a computer model analysis and determined that the waterline needs to be upsize to a ten-inch (10”) waterline in order to provide adequate fire flow protection for the existing residents on Cottonwood Drive and the Development; and

WHEREAS, Parties desire to work cooperatively in order to increase time and cost efficiency by incorporating the Replacement as part of the construction of the Development (hereinafter “Project”), rather than the City and the Developer running separate projects;

NOW, THEREFORE, for the reasons cited above, and in consideration of the mutual covenants and agreements contained herein, City and Developer do mutually agree and undertake as follows:

**Section One
Scope of Agreement**

Intent. For the purpose of construction, the Parties intend by this Agreement to incorporate the replacement and upsize of City infrastructure as additional construction to that of the Development.

Specifically, this Agreement addresses the obligations of City and Developer in relation to designing and managing the Project.

Section Two

City's Agreement and Responsibilities

City agrees to:

1. Engineer plans for the design, layout, and construction of the Replacement portion of the Project in accordance with City's adopted Development, Design, & Construction Standards technical specifications.
2. Coordinate the construction of the Project with the Developer.
3. Approve the selection of the Contractor by the Developer to complete the construction of the Project. The City, when determined to be in the best interest of the City, reserves the right to reject a proposed Contractor or Sub-Contractor.
4. Conduct a pre-construction meeting with all Parties, the Contractor, and any Sub-Contractor(s) performing the work.
5. Provide a representative to attend all Project related meetings.
6. Provide inspections of all Project work completed.
7. Within three (3) business days of request from Developer:
 - a. Provide written approval or comments for pay requests.
 - b. Provide written approval or denial of change order requests.
8. Allow the City's computer model analysis and the Developer's participation in upsizing the waterline from an eight-inch (8") to a ten-inch (10") waterline to be considered sufficient for the required fire flow protection. If, after the project is completed, the actual fire flow is less than the required amount, and the Developer has maximized the meter size serving the Development, the City will be responsible for making adjustments to the WBWCD meter vault in order to provide the required fire flow.

Section Three

Developer's Agreement and Responsibilities

Developer agrees to:

1. Coordinate with City and provide necessary information for the design and construction of the Project.
2. Select the Contractor to complete the construction of the Project.

3. Provide a representative to attend all Project related meetings.
4. Issue Project Change Order(s) to Contractor, when necessary.
5. Notify City of all Contractor payment requests related to the Project and obtain concurrence from City of pay request prior to approving pay request and issuing payment.
6. Notify City of all Contractor change order requests related to the Project and obtain concurrence from City of change prior to approving.
7. Maintain and oversee Project records and provide electronic versions to City.
8. Complete construction of the Project no later than June 30, 2020.
9. Maximize the size of the meter serving the Development if, after the project is completed, the actual fire flow is less than the required amount.

Section Four Payment

City and Developer will establish and maintain their own budgets for expenses related to this Agreement. For the Project, Developer shall make payment in full to Contractor and request reimbursement from City.

1. City will pay one hundred percent (100%) of design and engineering fees associated with the Project.
2. City will pay one hundred percent (100%) of actual Project construction costs associated with the eight-inch (8") waterline, reconnection of existing services, fire hydrants, and asphalt patching as estimated in Exhibit B.
3. City will pay one hundred percent (100%) of Project inspections, testing, and City-related Project construction oversight.
4. Developer will pay one hundred percent (100%) of design and engineering fees associated with their development.
5. Developer will pay one hundred percent (100%) of construction costs, Project inspections, and testing associated with their development.
6. Developer will pay daily Liquidated Damages of five hundred dollars (\$500) to the City for each calendar day that the Project construction goes beyond the agreed upon completion date.
7. Any projected remaining balance above \$350,000 will be negotiated between the City and Developer and agreed upon prior to the work being completed. Any projected costs in excess of a 5% contingency must be approved by the City Council.

8. Within thirty (30) days of Project completion, Developer shall issue an invoice, along with Contractor pay request, to City for work completed within the Project.
9. Within thirty (30) days of receipt of an invoice from Developer, City shall submit the reimbursement payment.

Section Five General Provisions

1. **Limitations.** Except as outlined by this Agreement or by agreement separate from this, Developer shall assume full responsibility for the design, engineering, and construction of the Development. Furthermore, the Developer shall be fully responsible for fees, inspections, and any other types of activity outside the scope of this Agreement.
2. **Official Representative.** Parties respectively designate the following persons to act as their authorized representative in matters and decisions pertaining to the timely performance of this Agreement.

City

David Larson
City Manager
801-479-3177
dlarson@southwebercity.com

Developer

F.M. Winkel Family, LLC
McKay Winkel
801-377-8035
mckaywinkel@gmail.com

The authorized representative(s) shall have full power to bind City and Developer, respectively, in decisions related to Project that do not require approval from either City's elected representatives or Developer's Corporation, unless otherwise required by their individual Purchasing Policy. Each may designate an authorized representative upon written notice to the other party.

3. **Term and Renewal.** This Agreement shall be for a period of twenty four (24) months beginning upon the effective date or until such time as the construction of Project as described herein is complete, including the one-year warranty period, whichever comes first.
4. **Termination.** This Agreement may be terminated by either party upon ninety (90) days written notice from the City or Developer provided to the City Recorder. Upon termination of the Agreement, City shall have thirty (30) days to pay any outstanding balance owed to Developer.
5. **Effective Date.** This Agreement shall become effective upon the date signed by both Parties.
6. **Amendment.** This Agreement may be changed, modified, or amended by written agreement of the participants, upon adoption of appropriate resolutions from the each Party, along with being

approved as to form by the City Attorney and Developer Attorney, and upon meeting all other applicable requirements.

7. **Entire Agreement.** This Agreement, together with any written amendments, shall constitute the entire agreement between the parties and any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding upon either party except for the resolutions of each party herein attached and incorporated by reference.
8. **Indemnification.** Each party agrees to indemnify, defend, and save and hold the other party and its respective officers, trustees, agents, employees, and permitted assigns harmless against and in respect of the following:
 - a. all claims, losses, liabilities, damages, costs, deficiencies, and expenses affecting any persons or property as a result of the indemnifying party's actions;
 - b. any misrepresentation, material omission, breach of warranty, or non-fulfillment of any covenant or agreement by the indemnifying party, relating to this Agreement; and
 - c. any and all actions, suits, proceedings, demands, assessments, judgments, costs, legal and accounting fees, and other expenses incident to any of the foregoing.
9. **Employee Status.** It is understood and agreed by the parties that any and all personnel furnished by the parties shall remain employees of the respective parties and shall abide by the personnel policies of the respective parties.
10. **Hired Consultant Status.** It is understood and agreed by the parties that any consultant, including but not limited to the person, firm, or entity serving as City Engineer, Project Engineer, or Contractor, shall not represent themselves as employees of the respective parties.
11. **Warranties.** Each party represents and warrants that it is authorized to execute and deliver this Agreement and there is no litigation, legal action or investigation between the parties that would adversely affect this Agreement.
12. **Documents on File.** Executed copies of this Agreement shall be placed on file in the office of the City Recorder and Developer and shall remain on file for public inspection for the duration of this Agreement.
13. **Governing Law.** It is understood and agreed by the parties that this Agreement shall be governed by the laws of the State of Utah as to interpretation and performance.
14. **Non-transferable.** This rights, duties, powers and obligations of this Agreement may not be transferred, assigned or delegated without the consent of the parties.
15. **Rules of Construction and Severability.** Standard rules of construction, as well as the context of this Agreement, shall be used to determine the meaning of the provisions herein, except as follows: If any of the provisions herein are different from what is normally allowed or required

by law, every effort shall be made to construe the clauses to be legally binding and to infer voluntary arrangements which are in addition to what is normally allowed or required by law. If any provision, article, sentence, clause, phrase, or portion of this agreement, including but not limited to any written amendments, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this agreement, unless the invalidation of the provision materially alters the agreement by interfering with the purpose of the agreement or by resulting in non-compliance with applicable law. If the invalidation of the provision materially alters the agreement, then the parties shall negotiate in good faith to modify the agreement to match, as closely as possible, the original intent of the parties. It is thus the intention of the parties that each provision of this agreement shall be deemed independent of all other provisions herein, as long as the overall purpose of the agreement is preserved.

(continued on next page)

**COOPERATIVE AGREEMENT BY AND BETWEEN
SOUTH WEBER CITY AND F.M. WINKEL FAMILY, LLC
FOR WATERLINE REPLACEMENT**

IN CORRESPONDENCE WITH RIVERSIDE R.V. PARK DEVELOPMENT

DATED this ____ day of _____, 2019

SOUTH WEBER CITY:

City Manager, South Weber City

ATTEST:

City Recorder

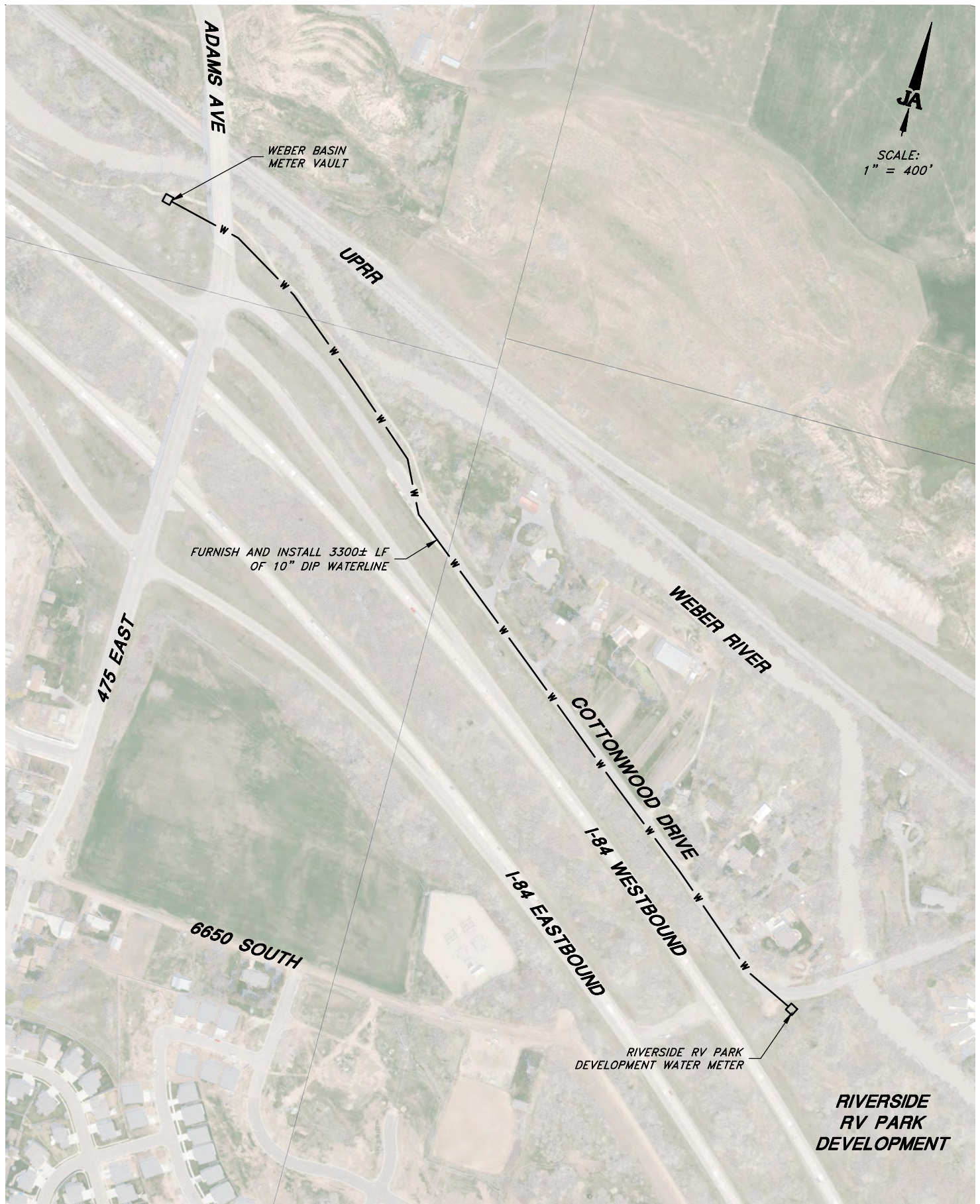
DATED this ____ day of _____, 2019

F.M. WINKEL FAMILY, LLC:

Title:

ATTEST:

Title:



CONSULTING ENGINEERS

6080 Fashion Point Drive South Ogden, Utah 84403

(801) 476-9767 www.jonescivil.com

SOUTH WEBER CITY CORPORATION

COOPERATIVE AGREEMENT WATERLINE REPLACEMENT

EXHIBIT A

SHEET:

1

OF 1 SHEETS

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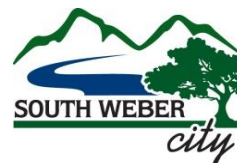
Cottonwood Dr. Waterline Replacement Project

Improvement costs associated with replacement and upsizing of existing waterline, fire hydrants, reconnection of services, and asphalt patch.

Cost Estimate

Location:

From the WBWCD Meter Vault (approx. Adams Ave by River Trail) to the Riverside R.V. Park Development boundary



Date: October 9, 2019

Item	Description	Qty	Unit	Unit Price	Total
New 8" Waterline (approx. pipe length = 3,300 l.f.)					
1	Mobilization	1	L.S.	\$5,000.00	\$5,000.00
2	Traffic Control	1	L.S.	\$7,000.00	\$7,000.00
3	Sawcut asphalt	4,200	l.f.	\$1.50	\$6,300.00
4	Remove asphalt (3"-5" thick)	12,600	s.f.	\$1.75	\$22,050.00
5	Remove existing fire hydrant	3	ea.	\$700.00	\$2,100.00
6	Cut, plug and abandon existing waterline	2	ea.	\$500.00	\$1,000.00
7	New 8" cl-51 DIP waterline	3,300	l.f.	\$48.00	\$158,400.00
8	New 8" gate valve	3	ea.	\$2,000.00	\$6,000.00
9	New fire hydrant	3	ea.	\$5,500.00	\$16,500.00
10	Connect new 8" to existing waterline	2	ea.	\$2,500.00	\$5,000.00
11	Connect existing service to new waterline	6	ea.	\$1,700.00	\$10,200.00
12	New granular imported trench backfill	50	ton	\$18.00	\$900.00
13	New UTBC (12" thick)	920	ton	\$25.00	\$23,000.00
14	New HMA (4" thick)	330	ton	\$75.00	\$24,750.00
15	Raise valve box to grade with concrete collar	2	ea.	\$400.00	\$800.00
SUBTOTAL 8" WATERLINE =					\$289,000.00
5%± Contingency* =					\$14,450.00
TOTAL 8" WATERLINE =					\$303,450.00

Item	Description	Qty	Unit	Unit Price	Total
New 10" Waterline (approx. pipe length = 3,300 l.f.)					
1	Mobilization	1	L.S.	\$5,000.00	\$5,000.00
2	Traffic Control	1	L.S.	\$7,000.00	\$7,000.00
3	Sawcut asphalt	4,200	l.f.	\$1.50	\$6,300.00
4	Remove asphalt (3"-5" thick)	12,600	s.f.	\$1.75	\$22,050.00
5	Remove existing fire hydrant	3	ea.	\$700.00	\$2,100.00
6	Cut, plug and abandon existing waterline	2	ea.	\$500.00	\$1,000.00
7	New 10" cl-51 DIP waterline	3,300	l.f.	\$60.00	\$198,000.00
8	New 10" gate valve	3	ea.	\$3,200.00	\$9,600.00
9	New fire hydrant	3	ea.	\$5,500.00	\$16,500.00
10	Connect new 10" to existing waterline	2	ea.	\$3,000.00	\$6,000.00

Item	Description	Qty	Unit	Unit Price	Total
11	Connect existing service to new waterline	6	ea.	\$1,700.00	\$10,200.00
12	New granular imported trench backfill	50	ton	\$18.00	\$900.00
13	New UTBC (12" thick)	920	ton	\$25.00	\$23,000.00
14	New HMA (4" thick)	330	ton	\$75.00	\$24,750.00
15	Raise valve box to grade with concrete collar	2	ea.	\$400.00	\$800.00

SUBTOTAL 10" WATERLINE = \$333,200.00

5%± Contingency* = \$16,660.00

TOTAL 10" WATERLINE = \$349,860.00

** Contingency is intended to account for a small portion of costs not accounted for with the line items listed and costs due to unknown conditions*

COOPERATIVE AGREEMENT COSTS

DEVELOPER: Difference in cost for pipe upsizing (8" vs. 10").

CITY: Furnish and install 10" waterline complete, including connections of services, replacement of fire hydrants, and asphalt patching.

DEVELOPER COST = \$46,000.00

CITY COST = \$304,000.00

TOTAL PROJECT COST = \$350,000.00

From: [Brandon Jones](#)
To: [Kim Guill](#); [Angie Petty](#); [Blair Halverson](#); [Kent Hyer](#); [Jo Sjoblom](#); [Merv Taylor](#); [Wayne Winsor](#)
Cc: [Doug Ahlstrom](#); [David J. Larson](#); [Mark McRae](#); [Michelle Clark](#); [Shaelee King](#); [McKay Winkel](#); [Lisa Smith](#)
Subject: RE: City Council 2019-10-15 Packet
Date: Tuesday, October 15, 2019 11:58:42 AM
Attachments: [image001.png](#)
[2019-10-09 Draft Cooperative Agreement City and Developer - mw comments.docx](#)
[2019-10-09 Draft Cooperative Agreement City and Developer - mw comments.pdf](#)

All,

With David being out, I've been asked to send this to you.

The developer (McKay Winkel) has supplied some suggested revisions to the Cooperative Agreement that was included in your original packet, sent last Thursday. Attached are the Word and PDF versions (whichever format you prefer).

Here is my summary of the revisions:

- Owner name revised
- Clarification to include a statement about the City accepting the improvements
- Clarification that the Developer will pay their contractor, and THEN request reimbursement from the City. Payment from the City to be made within 15 days after being approved. I have asked Mark McRae, and he indicated that this was not a problem.
- The contractor will use the City's Construction Contract. This will ensure that liquidated damages can be charged if necessary. This contract also contains other coverage and protection to the City.
- Clarification that any projected costs in excess of the \$350,000 will be negotiated and approved before the work is done. Anything above a 5% contingency will come to the City Council for approval.
- Indemnification obligations would expire for both parties 12 months after the acceptance of the improvements.

These revisions have been reviewed by the City Attorney, Doug Ahlstrom, and he indicated that he did not see any problems with the proposed revisions by McKay.

I will be at tonight's meeting to answer any questions that you may have.

Thank you,

Brandon K. Jones | Principal
Jones & Associates Consulting Engineers
6080 Fashion Point Dr, South Ogden, UT 84403
P: (801) 476-9767 | C: (801) 391-9621

From: Kim Guill <kguill@southwebercity.com>
Sent: Thursday, October 10, 2019 11:58 AM
To: Angie Petty <apetty@southwebercity.com>; Blair Halverson <bhalverson@southwebercity.com>; Kent Hyer <KHyer@southwebercity.com>; Jo Sjoblom <JSjoblom@southwebercity.com>; Merv Taylor <MTaylor@southwebercity.com>; Wayne Winsor

<wwinsor@southwebercity.com>

Cc: 'Doug Ahlstrom' <djahlstrom83@gmail.com>; Brandon Jones <brandonj@jonescivil.com>; David J. Larson <dlarson@southwebercity.com>; Mark McRae <mmcrae@southwebercity.com>; 'Michelle Clark' <mclark.1166@gmail.com>; Shaelee King <sking@southwebercity.com>; McKay Winkel <mckaywinkel@gmail.com>; Lisa Smith <lsmith@southwebercity.com>

Subject: City Council 2019-10-15 Packet

Here is the packet for the CC Meeting on October 15, 2019

Please let me know if you have any questions.

Kimberli Guill

Development Coordinator

Crossing Guard Supervisor

Business Licensing

South Weber City

801-479-3177 ext. 2205

Mon-Thurs 8:30am-5:30pm

1600 East South Weber Dr.

South Weber City, UT 84405



**COOPERATIVE AGREEMENT BY AND BETWEEN
SOUTH WEBER CITY AND F.M. WINKEL FAMILY, LLC
FOR WATERLINE REPLACEMENT
IN CORRESPONDENCE WITH RIVERSIDE R.V. PARK DEVELOPMENT**

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WHEREAS, Developer is a Limited Liability Company duly organized under the laws of the State of Utah;

WHEREAS, the Developer has received approval from the City and plans to construct the Riverside R.V. Park located at 855 E. Cottonwood Drive (hereinafter “Development”); and

WHEREAS, City has an existing six-inch (6”) culinary waterline connected to the Weber Basin Water Conservancy District (WBWCD) transmission line through a meter vault by Adams Avenue and the Weber River Trail, and extending to the western boundary of the Development (See Exhibit A); and

WHEREAS, due to the age and condition of the existing waterline, the City desires to replace and upsize the line to a ten-inch (10”) waterline (hereinafter “Replacement”); and

WHEREAS, the City has performed a computer model analysis and determined that the waterline needs to be upsized to a ten-inch (10”) waterline in order to provide adequate fire flow protection for the existing residents on Cottonwood Drive and the Development; and

WHEREAS, Parties desire to work cooperatively in order to increase time and cost efficiency by incorporating the Replacement as part of the construction of the Development (hereinafter “Project”), rather than the City and the Developer running separate projects;

NOW, THEREFORE, for the reasons cited above, and in consideration of the mutual covenants and agreements contained herein, City and Developer do mutually agree and undertake as follows:

**Section One
Scope of Agreement**

Intent. For the purpose of construction, the Parties intend by this Agreement to incorporate the replacement and upsize of City infrastructure as additional construction to that of the Development.

Specifically, this Agreement addresses the obligations of City and Developer in relation to designing and managing the Project, and accepting the completed improvements by City.

Section Two

City's Agreement and Responsibilities

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2. Coordinate the construction of the Project with the Developer.
3. Approve the selection of the Contractor by the Developer to complete the construction of the Project. The City, when determined to be in the best interest of the City, reserves the right to reject a proposed Contractor or Sub-Contractor.
4. Conduct a pre-construction meeting with all Parties, the Contractor, and any Sub-Contractor(s) performing the work.
5. Provide a representative to attend all Project related meetings.
6. Provide inspections of all Project work completed.
7. Within three (3) business days of request from Developer:
 - a. Provide written approval or comments for pay requests.
 - a.b. Provide approval of reimbursement requests from Developer, provided Developer has provided proof of payment in accordance with City approved pay requests, and pay all approved requests within fifteen (15) days of approval
 - b.c. Provide written approval or denial of change order requests.
8. Allow the City's computer model analysis and the Developer's participation in upsizing the waterline from an eight-inch (8") to a ten-inch (10") waterline to be considered sufficient for the required fire flow protection. If, after the project is completed, the actual fire flow is less than the required amount, and the Developer has maximized the meter size serving the Development, the City will be responsible for making adjustments to its system, including the WBWCD meter vault in order to provide the required fire flow.

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Section Three

Developer's Agreement and Responsibilities

Developer agrees to:

1. Coordinate with City and provide necessary information for the design and construction of the Project.
2. Select the Contractor to complete the construction of the Project.
3. Provide a representative to attend all Project related meetings.
4. Issue Project Change Order(s) to Contractor, when necessary.
5. Notify City of all Contractor payment requests related to the Project and obtain concurrence from City of pay request prior to approving pay request and issuing payment.
6. Notify City of all Contractor change order requests related to the Project and obtain concurrence from City of change prior to approving.
7. Maintain and oversee Project records and provide electronic versions to City.
8. Subject to City complying with its obligation in section 2, Complete construction of the Project no later than June 30, 2020.
9. Maximize the size of the meter serving the Development if, after the project is completed, the actual fire flow is less than the required amount.

Section Four Payment

City and Developer will establish and maintain their own budgets for expenses related to this Agreement. For the Project, Developer shall make payment in full to Contractor and request reimbursement from City.

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4. Developer will pay one hundred percent (100%) of design and engineering fees associated with their development.
5. Developer will pay one hundred percent (100%) of construction costs, Project inspections, and testing associated with their development.

6. Developer will cause and obligate Contractor to pay daily Liquidated Damages of five hundred dollars (\$500) to the City for each calendar day that the Project construction goes beyond the agreed upon completion date.
7. ~~and a~~Any projected costs remaining balance above ~~the City's exceeded amount stated above.~~ \$350,000 will be negotiated between the City and Developer and agreed upon prior to the work being completed. Any projected costs in excess of a 5% contingency must be approved by the City Council.
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Section Five General Provisions

1. **Limitations.** Except as outlined by this Agreement or by agreement separate from this, Developer shall assume full responsibility for the design, engineering, and construction of the Development. Furthermore, the Developer shall be fully responsible for fees, inspections, and any other types of activity outside the scope of this Agreement. Except as outlined by this Agreement or by agreement separate from this, City shall assume full responsibility for the design of the Replacement and agrees to accept the water improvements constituting the Replacement upon completion inspection confirming completion in accordance with the design and applicable codes.
2. **Official Representative.** Parties respectively designate the following persons to act as their authorized representative in matters and decisions pertaining to the timely performance of this Agreement.

City

David Larson
City Manager
801-479-3177
dlarson@southwebercity.com

Developer

F.M. Winkel Family, L.L.C.
McKay Winkel
801-377-8035
mckaywinkel@gmail.com

The authorized representative(s) shall have full power to bind City and Developer, respectively, in decisions related to Project that do not require approval from either City's elected representatives or Developer's Corporation, unless otherwise required by their individual Purchasing Policy. Each may designate an authorized representative upon written notice to the other party.

3. **Term and Renewal.** This Agreement shall be for a period of twenty four (24) months beginning upon the effective date or until such time as the construction of Project as described herein is complete, including the one-year warranty period, whichever comes first.
4. **Termination.** This Agreement may be terminated by either party upon ninety (90) days written notice from the City or Developer provided to the City Recorder. Upon termination of the Agreement, City shall have thirty (30) days to pay any outstanding balance owed to Developer.
5. **Effective Date.** This Agreement shall become effective upon the date signed by both Parties.
6. **Amendment.** This Agreement may be changed, modified, or amended by written agreement of the participants, upon adoption of appropriate resolutions from the each Party, along with being approved as to form by the City Attorney and Developer Attorney, and upon meeting all other applicable requirements.
7. **Entire Agreement.** This Agreement, together with any written amendments, shall constitute the entire agreement between the parties and any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding upon either party except for the resolutions of each party herein attached and incorporated by reference.
8. **Indemnification.** Each party agrees to indemnify, defend, and save and hold the other party and its respective officers, trustees, agents, employees, and permitted assigns harmless against and in respect of the following:
 - a. all claims, losses, liabilities, damages, costs, deficiencies, and expenses affecting any persons or property as a result of the indemnifying party's actions;
 - b. any misrepresentation, material omission, breach of warranty, or non-fulfillment of any covenant or agreement by the indemnifying party, relating to this Agreement; and
 - c. any and all actions, suits, proceedings, demands, assessments, judgments, costs, legal and accounting fees, and other expenses incident to any of the foregoing.

The foregoing indemnification obligations shall terminate as to each party twelve (12) months after acceptance of the improvements comprising the Replacement by City.

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9. **Employee Status.** It is understood and agreed by the parties that any and all personnel furnished by the parties shall remain employees of the respective parties and shall abide by the personnel policies of the respective parties.
10. **Hired Consultant Status.** It is understood and agreed by the parties that any consultant, including but not limited to the person, firm, or entity serving as City Engineer, Project Engineer, or Contractor, shall not represent themselves as employees of the respective parties.

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11. **Warranties.** Each party represents and warrants that it is authorized to execute and deliver this Agreement and there is no litigation, legal action or investigation between the parties that would adversely affect this Agreement.
12. **Documents on File.** Executed copies of this Agreement shall be placed on file in the office of the City Recorder and Developer and shall remain on file for public inspection for the duration of this Agreement.
13. **Governing Law.** It is understood and agreed by the parties that this Agreement shall be governed by the laws of the State of Utah as to interpretation and performance.
14. **Non-transferable.** This rights, duties, powers and obligations of this Agreement may not be transferred, assigned or delegated without the consent of the parties.
15. **Rules of Construction and Severability.** Standard rules of construction, as well as the context of this Agreement, shall be used to determine the meaning of the provisions herein, except as follows: If any of the provisions herein are different from what is normally allowed or required by law, every effort shall be made to construe the clauses to be legally binding and to infer voluntary arrangements which are in addition to what is normally allowed or required by law. If any provision, article, sentence, clause, phrase, or portion of this agreement, including but not limited to any written amendments, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this agreement, unless the invalidation of the provision materially alters the agreement by interfering with the purpose of the agreement or by resulting in non-compliance with applicable law. If the invalidation of the provision materially alters the agreement, then the parties shall negotiate in good faith to modify the agreement to match, as closely as possible, the original intent of the parties. It is thus the intention of the parties that each provision of this agreement shall be deemed independent of all other provisions herein, as long as the overall purpose of the agreement is preserved.

(continued on next page)

**COOPERATIVE AGREEMENT BY AND BETWEEN
SOUTH WEBER CITY AND F.M. WINKEL FAMILY, LLC
FOR WATERLINE REPLACEMENT
IN CORRESPONDENCE WITH RIVERSIDE R.V. PARK DEVELOPMENT**

DATED this ____ day of _____, 2019

SOUTH WEBER CITY:

City Manager, South Weber City

ATTEST:

City Recorder

DATED this ____ day of _____, 2019

F.M. WINKEL FAMILY, L.L.C.:

Title:

ATTEST:

Title:

DRAFT