



STAFF REPORT

DATE: February 25, 2021
TO: Honorable Mayor and City Council
FROM: John Penrod, City Attorney
SUBJECT: CONSIDERATION OF RESOLUTION APPROVING AN AGREEMENT WITH THE DEVELOPER OF EVANS LEGACY PARK REGARDING WATER TENDERING.

RECOMMENDED MOTIONS

Motion to approve Resolution No. ____ that resolves a claim made by a developer regarding required water to be tendered for Evans Legacy Park.

BACKGROUND

Jamie Evans (“Evans”) is developing property known as the Evans Legacy Park, which is located north of Stouffers. Evans has submitted building permits to build two large office/warehouses on the property. One of the remaining items for the building permits to be issued is for Evans to tender water. Evans has contested tendering any water because Evans’ group contends that a prior development was approved and water tendered. Neither Evans nor the City can find a record showing that any water was tendered. The proposed agreement is to resolve Evans’ claim by allowing Evans to pay money in lieu of tendering water and give Evans extra time to find information showing that the water was previously tendered. If Evans is able to show that the water was previously tendered, the City will return the money to Evans.

Here’s a summary of provisions in the proposed agreement:

- Water Usage. Based on the two buildings (approximately 200,000 square feet) being divided into 10,000 sq. ft. units with bathrooms as the only water fixtures (information provided by Evans) and an assumption of 35 or less employees per unit, our engineers have determined that the water usage will amount to 8.54 shares of water, or 34.16 acre-feet of water. Additionally, staff has talked about providing a credit for a 1200 square foot building on the property in the amount of 2.25 acre feet. Accordingly, the amount of water that needs to be tendered is 7.98 shares or 31.91 acre feet.
- Money in Lieu of. The agreement requires Evans to pay \$45,000 in lieu of tendering water, which amounts to approximately \$5,700 per water share and is a reasonable amount for a Springville Irrigation Company water share.
- Money Held by City. The City will hold the \$45,000 for the shorter of six months after a certificate of occupancy is given on the buildings or one and a half years. During that time, if Evans submits documentation that clearly shows water was tendered, the money will be returned to Evans. If no documentation is produced, the money will become the City’s property to purchase water.
- Claims. This will resolve any claims that Evans has against the City for the water tendering.

FISCAL IMPACT

None.

Attachments: Proposed Resolution and Agreement

RESOLUTION #2021-XX

A RESOLUTION APPROVING AN AGREEMENT REGARDING WATER TENDERING FOR THE EVANS LEGACY PARK.

WHEREAS, the Developer of the Evans Legacy Park claims that water has been tendered for the project as part of a prior development, for which records have not yet been found; and

WHEREAS, the proposed agreement is to resolve the Developer's claim by allowing developer to provide money in lieu of water to the City and give the Developer time to research and produce documentation that clearly shows water has been tendered; and

WHEREAS, on March 2, 2021, the Springville City Council met in a regular meeting to consider the attached agreement and finds that the attached agreement is in the best interest of the City.

NOW, THEREFORE, BE IT RESOLVED BY THE SPRINGVILLE CITY COUNCIL:

SECTION 1. Approval. The Agreement, substantially in the form attached as Exhibit A, is approved and shall be executed by Springville City.

SECTION 2. Effective Date. This resolution shall become effective immediately upon passage.

PASSED AND APPROVED this ____ day of March 2021.

Richard J. Child, Mayor

Attest:

Kim Crane, City Recorder

EXHIBIT A

Evans Legacy Park and Jamie Evans Water Tendering Agreement

AGREEMENT (Water Tendering)

This AGREEMENT is entered into this _____ day of March, 2021, by and between, Springville City, a Utah municipal corporation ("City"), and JAMIE EVANS, EVANS LEGACY PARK a Utah corporation ("Developer").

BACKGROUND

- A. Developer is developing Evans Legacy Park, which is located at 816 West Raymond Klauck Way in Springville's industrial park (the "Property").
- B. Developer is ready to start construction on two large office/warehouse buildings (the "Buildings") on the Property, and in accordance with Section 11-6-124 of the Springville City Code, Developer is required to tender water in an amount equal to the amount of water use the Buildings will use based on similar uses or fixture counts.
- C. The City Engineer has determined that based on the fixtures within the Buildings and an assumption that only 35 or less people will work in each 10,000 square foot unit, Developer is required to tender water in an amount equivalent to 8.54 first class water shares in the Springville Irrigation Company, which amount of water totals 34.16 acre-feet of water.
- D. Developer contends that Developer should not have to tender any water based on prior development of the Property. The parties have both researched and cannot find any development records for buildings on the Property other than for one 1200 square foot warehouse.
- E. The City has agreed to credit Developer 2.25 acre-feet of water for the 1200 square foot warehouse. Accordingly, Developer's required amount of water to be tendered based on fixture counts for the Buildings is the equivalent of 7.98 first class water shares in the Springville Irrigation Company, which amount totals 31.91 acre-feet of water.
- F. The parties desire to enter into this agreement to resolve Developer's claim regarding water tendered for the Evans Legacy Park property by doing the following:
 - a. Developer will tender money in lieu of water to City to hold in custody for the shorter period of up to six months after certificate of occupancy on Developer's two large office/warehouse buildings or one and a half years; and
 - b. Developer will have the time period in subsection a to provide authentic documents to City that clearly shows that water has been tendered as part of a prior development on the Property.

NOW, THEREFORE, in consideration of the mutual covenants, conditions and terms as more fully set forth below, Developer and City agree to the following:

1. **Background Affirmed.** The parties each certify the correctness and accuracy of the facts recited above and adopt the same as a statement of their principal reasons for entering this Agreement.

2. **Water Tendered.** The parties agree and acknowledge that Developer is required to tender to City as part of the building permit application Developer submitted to City in May 2020, with the City's building permit tracking no. Plan20-313 (the "Building Permit"), the equivalent of 7.98 first class water shares in the Springville Irrigation Company, which amount totals 31.91 acre-feet of water (the "Water Shares").
3. **Funds Deposited.** In lieu of tendering the Water Shares, Defendant shall tender to City the amount of \$45,000.00 ("Deposited Funds") that City will hold in custody. The following will govern the Deposited Funds:
 - a) **Building Permit.** Developer's tendering of the Deposited Funds to City will meet Developer's water tendering requirements for the Building Permit.
 - b) **Future Water Usage.** Should uses within the Buildings (including individual units) change in the future that require an increased amount of water usage within the Buildings, or an individual unit, Developer understands and agrees that Section 11-6-124 of the Springville City Code may require more water to be tendered at the time a building permit is submitted.
 - c) **Time Period.** The City will hold the Deposited Funds for up to six months after the certificate of occupancy is issued on the Buildings or one and a half years from the effective date of this agreement, whichever occurs first (the "Time Period"). The Deposited Funds will be held during the Time Period as follows:
 - i. Developer will have until the end of the Time Period to find and submit to City authenticated documentation that clearly shows that water in an amount equal to the Water Shares was tendered for prior development on the Property. In the event that Developer does provide authenticated documentation within the Time Period to City that clearly shows the appropriate amount of water has previously been tendered for water use on the Property, City will release the Deposited Funds back to Developer.
 - ii. In the event Developer is unable to clearly show within the Time Period that water equal to the amount of Water Shares was previously tendered to City for development of the Property, Developer shall forfeit all right to the Deposited Funds, and the Deposited Funds shall become the property of City.
4. **Water Shares.** This agreement only address Developer's requirement to tender water to the City. This agreement does not modify any requirement Developer has to develop the Property or construct the Buildings pursuant to City Code and/or regulations. Developer shall follow all applicable laws, statutes, ordinances, resolutions, the Springville Municipal Code (the "City Code"), rules, regulations, and official policies of the City governing the use, density and intensity of the uses of land within the City, and the design, improvement, and public works construction standards and specifications applicable to the development of land within the City.
5. **Claim.** The parties acknowledge and agree that this agreement resolves any and all issues and claims associated with Developer's requirement to tender water for issuance of the Building Permits.
6. **Termination.** This agreement shall terminate at the end of the Time Period.

7. **Default.** Should any party to this agreement default in performance of any terms contained herein, the non-defaulting party shall be entitled to reasonable attorney's fees and costs of Court incurred by the non-defaulting party in enforcing any of the terms of this agreement.
8. **Binding.** This Agreement shall bind and inure to the benefit of the parties, their heirs, administrators, executors, successors, and assigns.
9. **Authorization.** The signatories to this agreement expressly represent and warrant that they have authority to act for and on behalf of Developer and City respectively.

EXECUTED the day and year first above written.

SPRINGVILLE CITY

Mayor Richard J Child

Jamie Evans
Title: _____

Attest:

Kim Crane, City Recorder