



**REGULAR AGENDA
SPRINGVILLE REDEVELOPMENT AGENCY
SEPTEMBER 17, 2019 AT 6:50 P.M.
City Council Chambers
110 South Main Street
Springville, Utah 84663**

CALL TO ORDER

REGULAR AGENDA

1. Consideration of a Resolution to approve the Frontage Road Neighborhood Development Project Area Sewer Agreement by and between the Redevelopment Agency of Springville City, The Olds Family 2002 Trust, and Springville City - John Penrod, Assistant City Administrator/Finance Director

MOTION FOR REVIEW AND FINALIZATION OF THE SEPTEMBER 17, 2019 MINUTES

ADJOURNMENT

CERTIFICATE OF POSTING - THIS AGENDA IS SUBJECT TO CHANGE WITH A MINIMUM OF 24-HOURS NOTICE - POSTED 09/13/2019

In compliance with the Americans with Disabilities Act, the City will make reasonable accommodations to ensure accessibility to this meeting. If you need special assistance to participate in this meeting, please contact the City Recorder at (801) 489-2700 at least three business days prior to the meeting.

Meetings of the Springville City Council may be conducted by electronic means pursuant to Utah Code Annotated Section 52-4-207. In such circumstances, contact will be established and maintained by telephone or other electronic means and the meeting will be conducted pursuant to Springville City Municipal Code 2-4-102(4) regarding electronic meetings. s/s - Kim Crane, CMC, City Recorder





STAFF REPORT

DATE: September 11, 2018

TO: Honorable Mayor and City Council

FROM: John Penrod, City Attorney

SUBJECT: CONSIDERATION OF A RESOLUTION TO APPROVE THE FRONTAGE ROAD NEIGHBORHOOD DEVELOPMENT PROJECT AREA SEWER AGREEMENT BY AND BETWEEN THE REDEVELOPMENT AGENCY OF SPRINGVILLE CITY, THE OLDS FAMILY 2002 TRUST, AND SPRINGVILLE CITY.

RECOMMENDED MOTION

Motion to Approve Resolution #____ that approves the Frontage Road Neighborhood Development Project Area Sewer Agreement by and between the Redevelopment Agency of Springville City, The Olds Family 2002 Trust, and Springville City.

SUMMARY OF ISSUES/FOCUS OF ACTION

On December 18, 2017, the Springville City Redevelopment Agency approved entering into a Participation Agreement with The Olds Family 2002 Trust ("Participant"), which agreement allocated 70% of the Agency's tax increment from Participant's property to Participant. Under the Participation Agreement, before any tax increment was to be paid to Participant, a sewer lift station needed for Participant's property was to be paid with the tax increment that has been and will be collect from Participant's property.

In the event that Participant decides that Participant wants the lift station sooner than tax increment is collect to pay for the lift station, the Participation Agreement allows Participant to move forward with constructing the lift station at Participant's cost. Agency would then reimburse Participant for the costs of the lift station. The proposed agreement sets the terms for Participant to construct the lift station at this time.

When the Participant Agreement was entered into, the parties were considering the City would upsize the lift station beyond what was needed for the Spring Pointe development in order to serve property outside the development. After evaluating costs and the upsizing possibilities, the City decided not to participate.

The following provisions, among others, are in the proposed agreement:

- **Lift Station Cost.** Total Cost to Build Sewer Lift Station is \$642,830.00. Agency will not make any payments until the lift station has been completed. Even though the City is not upsizing the lift station, the City has agreed to pay for a few items that will better help the City to maintain and operate the lift station. Those items include a concrete access drive, fencing, flow meters, and inspection port stations, which amount totals \$32,540.
- **Lift Station Property.** The property required for the lift station is approximately 3,600 square feet and is located along the frontage of the subdivision. Based on the square footage price property

for property already sold in the development, the property is worth \$14,400. After the lift station has been constructed, the property will be deeded to the City. Agency will pay for the property once the property is deeded to the City.

- Change orders. The participant shall pay all cost increases required in change orders, except that the city has agreed to pay up to a 10% increase in those items the City has agreed to pay. Total possible increase to the City may be \$3,254.00. If those items that the City is paying for decrease in costs, the City will pay the decreased amounts.

FISCAL IMPACT

Agency will pay \$624,690 as tax increment is collected. In the event that the Agency does not collect that amount, the Agency does not need to pay the full amount. The City will pay \$32,540 for a concrete access drive, fencing, flow meters and inspection port stations.

Attachments: Resolution and Sewer Agreement



**FRONTAGE ROAD NEIGHBORHOOD DEVELOPMENT PROJECT AREA
SEWER AGREEMENT
BY AND BETWEEN THE
REDEVELOPMENT AGENCY OF SPRINGVILLE CITY,
THE OLDS FAMILY 2002 TRUST, AND
SPRINGVILLE CITY**

This Agreement is entered this 17th day of September, 2019, by and between the **Redevelopment Agency of Springville City**, a political subdivision of the State of Utah ("Agency"); **Thomas L. Olds, Jr. and Kelly Olds, Trustees of The Olds Family 2002 Trust under Declaration of Trust dated June 3, 2002** ("Participant"); and **Springville City**, a Utah municipal corporation ("City"). Agency, Participant, and City may also be individually referred to as "**Party**" and collectively as "**Parties**".

BACKGROUND

- A. Agency and Participant entered into the Frontage Road Neighborhood Development Project Area Participation Agreement by and between The Redevelopment Agency of Springville City and The Olds Family 2002 Trust, dated _____ (the "Participation Agreement"). The Participation Agreement contains a number of provisions concerning how tax increment will be paid from Agency to Participant.
- B. One of the issues addressed in the Participation Agreement is the sewer Lift Station (the "Lift Station") needed for the Site. The Site in this Agreement shall mean the Site as defined in the Participation Agreement.
- C. Section 2.1 of the Participation Agreement states that the Lift Station is to be "paid from two sources: a) the Agency will utilize tax increment it has and will receive from the Site, other than the 20% of tax increment that is required to be used on housing, to pay for that portion of the Lift Station Costs attributable to the size and capacity of the Lift Station appropriate for the Site; and b) the

Agency and/or the City will pay from sources, other than the Participant and tax increment that is to be paid to Participant under this agreement for that portion of the Lift Station Costs attributable to the additional size and capacity of the Lift Station necessary to service surrounding non-Site property.”

- D. Furthermore, Section 2.1 of the Participation Agreement states, “In the event that the timing of the Site’s development requires the Lift Station to be installed prior to the Agency collecting that portion of the Lift Station Costs attributable to the Site, the Parties will work together to determine how the Lift Station will be installed and how the Lift Station Costs will be paid. However, in no event shall the Agency be required to pay for the Lift Station Costs attributable to the Site out of funds besides the tax increment it receives from the Site.”
- E. Based on the anticipated schedule for developing the Site, Participant is desirous at this time to move forward with the construction of the Lift Station and is willing to pay for the entire costs of the Lift Station upfront with the understanding that Participant will receive reimbursement from Agency and City in accordance with the terms of this Agreement.
- F. Since entering into the Participation Agreement, the Parties have designed and determined the Lift Station costs attributable to the Lift Station’s size and capacity needed for the Site. Based on the costs associated with the Lift Station, City has decided not to upsize the Lift Station to meet the additional size and capacity needed for surrounding non-Site property.
- G. The Lift Station costs necessary for the Site are \$ 642,830.00, as shown on the estimated itemized costs attached as Exhibit A. Of the total cost of the Lift Station, City has agreed to pay for the concrete access drive, fencing, flow meters, and inspection port stations, which amount totals \$32,540.00. Accordingly, the total amount to be paid from Agency tax increment from the Site is \$610,290.

- H. In addition to the costs to construct the Lift Station, Agency desires to purchase the property and Participant desires to sell the property on which the Lift Station will be constructed. The property on which the Lift Station is to be constructed is approximately 3,600 square feet (the "Lift Station Property"), as shown on the attached map attached as Exhibit B, and has a fair market value of \$14,400. The purchase price for the Lift Station Property shall be paid at the time the property is deeded to City.
- I. The Parties desire to enter into this Agreement to formalize the process for the construction of the Lift Station, purchase of the Lift Station Property and reimbursement payment to Participant for the Lift Station.

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

1. **Recitals 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. **Purpose.** This Agreement is entered into for the construction of the Lift Station on the Site as described herein. Other than the Lift Station, nothing in this Agreement addresses or governs any development of the Site.
3. **Construction of the Lift Station.** Participant shall construct the Lift Station a) in a good and workmanlike manner, (b) in conformance with the construction plans attached as Exhibit C, and (c) in compliance with all applicable laws, statutes, ordinances, resolutions, the Springville Municipal Code (the "City Code"), rules, regulations, and official policies of the City applicable to the construction and installation of the Lift Station. Participant shall furnish all materials, supplies, tools, equipment, labor and any and all other services necessary for the construction, installation and completion of the Lift Station at Participant's sole cost with the understanding that Participant will be reimbursed pursuant to Section 4 of this Agreement.
4. **Lift Station Costs.** The Lift Station Costs are the costs to construct and install the Lift Station, which amount is \$657,230 and includes the costs for the Lift Station Property.

5. **Reimbursement.** Participant will be paid reimbursement payments for the amount of \$657,230.00 ("Reimbursement Payments"), as follows:

- a. Upon (1) completion of construction of the Lift Station; (2) City's approval and acceptance of the Lift Station; and (3) Participant's delivery of a fully-executed deed to the Lift Station Property to City (or an easement to City pursuant to Section 6):
 - i. Agency shall pay to Participant the full amount of tax increment the Site has received to that date (minus 20% of the tax increment that is required to be used on housing), which amount currently is approximately \$161,574.11, and
 - ii. City shall pay to Participant the amount of \$32,540.
- b. As Agency receives tax increment generated from the Site, (minus 20% of all tax increment received that is required to be used for housing), Agency shall pay to Participant any remaining and unpaid balance of the \$657,230.00 (as adjusted pursuant to Section 5(c) below) until the amount is paid in full. As stated under the Participation Agreement, Agency is only required to pay Participant for the costs of the Lift Station to the extent that tax increment is actually generated from the Site and actually paid to Agency. Collected tax increment from the Site, minus the 20% of tax increment for housing, is Agency's only available funding source and the only funds Agency is obligated to pay Participant for the Lift Station. Participant acknowledges and agrees that Agency has no funds or revenue to make reimbursement payments under this Agreement other than the tax increment Agency receives from the taxing entities that levy taxes on the Site. Other than the amounts referred to under 5.a., Participant acknowledges that Participant may not receive any other reimbursement payments because Agency may not receive tax increment.
- c. The parties acknowledge and agree that the amount of \$642,830.00 may not be the actual costs to construct and install the Lift Station. In the event the actual costs to construct and install the Lift Station exceed \$642,830.00, the Participant shall pay for all additional amounts. In the event

that the above-estimated construction costs of the Lift Station are less than the Reimbursement Payments, the Reimbursement Payments shall be reduced to the actual costs, and the Agency and City shall each be credited their respective pro-rata portion of the decrease in Reimbursement Payments. The Parties shall, in good faith, review and approve or reject all change orders arising during the construction process. Each Party shall have ten days after receipt of a proposed change order to approve or reject the change order. If a Party does not approve or reject a proposed change order within ten days after receipt of the change order, the Party shall be deemed to have approved the change order. If a Party rejects a proposed change order, the Party shall provide a detailed written explanation of the rejection. Notwithstanding the above provisions, City will pay up to 10% of \$32,540 for any additional increased costs associated with the concrete access drive, fencing, flow meters, and inspection port stations. In no event shall City pay more than \$3,254.00 in additional costs above \$32,540.

6. **Lift Station Property.** Prior to any payments being made to Participant under Section 5 of this Agreement, Participant shall deed the Lift Station Property to City with a warranty deed or, if the Lift Station Property has not been legally subdivided, Participant shall convey an easement in a form that is acceptable to City for the Lift Station Property, which easement shall be in effect until the Lift Station Property is subdivided. Participant agrees to include the Lift Station Property in a future subdivision of Participant's property, and once the Lift Station Property is legally subdivided, Participant shall deed the Lift Station Property to City with a warranty deed. Participant shall deed the Lift Station Property to City free of any and all liens, encumbrances, deed restrictions, easements, encroachments, conditions, and liabilities of any kind. In addition to the deed, Participant shall assign and deliver to City all Lift Station construction warranties. Upon City's acceptance of the deed (or easement) by City, Participant shall have no further obligation or liability to City with regard to the operation and maintenance of the Lift Station. However, Participant shall warranty the lift station and be responsible for any defective construction of the lift station for a period of one year following the completion of the lift station.

7. **Participation Agreement.** The Parties acknowledge that Agency has no obligation to pay Participant any of the Participant's Tax Increment Share under the Participation Agreement until the Lift Station Costs are paid.

8. **Indemnity.** Participant agrees to indemnify, release and defend City and Agency with Counsel of City and Agency's choice, and hold City and Agency, and those two entities' employees, officers, and agents harmless from and against any and all claims, demands, actions, or liability whatsoever, including, but not limited to, any bodily injury, property damage, cost, or expense (including, but not limited to, reasonable attorneys' fees) of any kind or character to any person or property, to the extent resulting from (i) any negligent act or omission of Participant or Participant's contractors, sub-contractors, employees and/or agents, (ii) any claim or action related to the installation of the Lift Station or breach of this Agreement, (iii) any negligent or defective construction of any part of the Lift Station, during construction thereof, and from completion of such construction until that date which is one (1) year after the acceptance of the Lift Station by City; and (iv) liens or claims on the Lift Station by any persons providing materials and/or services related to the Lift Station on behalf of or at the request of Participant or Participant's contractors, subcontractors, employees or agents.

9. **Authority and Authorization.** Each Party hereby represents and warrants to the other Parties that the execution and delivery of this Agreement by the Party and the performance of the terms hereof by the Party, have been duly authorized through proper action and, upon full execution hereof, this Agreement will be binding on and enforceable against each Party.

10. **Other Laws.** Participant may be responsible to fulfill other federal, state and local laws, including, but not limited to Workers Compensation and Occupational Safety and Health Administration regulations. Participant agrees to comply with all laws during construction of the Lift Station.

11. **Assignment.** Neither this Agreement nor any of the provisions, terms or conditions hereof can be assigned to any other party, individual or entity without assigning the rights as well as the responsibilities under this Agreement and without the prior written consent of all of the Parties.

12. **Attorney Fees.** In the event this Agreement or any of the exhibits hereto are breached, the party at fault agrees to pay the attorney fees and all costs of enforcement of the non-breaching party.

13. **Governing Law and Jurisdiction:** This Agreement shall be governed by the laws of the State of Utah. Any suit, action or proceeding with respect to this Agreement shall be brought in the Fourth District Court of Utah. All parties submit to the jurisdiction of Utah courts with respect to any proceeding and agree that service of process as provided by Utah law may be made on all parties in such proceeding. No party may claim that Utah is an inconvenient forum.

14. **Severability.** Should any portion or paragraph of this Agreement be declared invalid or unenforceable, the remaining portions or paragraphs of the Agreement shall remain valid and enforceable.

15. **Modification.** Modification of this Agreement shall only be effective if agreed upon, in writing, and approved by each of the Parties.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers.

**REDEVELOPMENT AGENCY OF
SPRINGVILLE CITY**

By:

Richard J. Child
Chair

Attest:

By:

Kim Crane
Secretary

Thomas L. Olds, Jr. and Kelly Olds,
Trustees of The Olds Family 2002
Trust under Declaration of Trust
dated June 3, 2002

By:

Thomas L. Olds, Jr.
Trustee

By:

Kelly Olds
Trustee

SPRINGVILLE CITY

By:

Richard J. Child
Mayor

Attest:

By:

Kim Crane
City Recorder

RESOLUTION #2019-xxR

A RESOLUTION APPROVING THE FRONTAGE ROAD NEIGHBORHOOD DEVELOPMENT PROJECT AREA SEWER AGREEMENT BY AND BETWEEN THE REDEVELOPMENT AGENCY OF SPRINGVILLE CITY, THE OLDS FAMILY 2002 TRUST, AND SPRINGVILLE CITY.

WHEREAS, On December 18, 2017, the Springville City Redevelopment Agency (the “Agency”) and The Olds Family 2002 Trust (the “Participant”) entered into the Frontage Road Neighborhood Development Project Area Participation Agreement by and between The Redevelopment Agency of Springville City and The Olds Family 2002 Trust (the “Participation Agreement”). One of the issues addressed in the Participation Agreement is the sewer lift station (the “Lift Station”) needed for the development of property the Participant owns in the project area (the “Site”); and

WHEREAS, the Participation Agreement states that the parties to the Participation Agreement may enter into an agreement wherein the Participant would move forward with the construction of the Lift Station at the Participant’s cost with the understanding that the Agency would reimburse the Participant for costs associated with the Site, and Springville City (the “City”) would reimburse the Participant for Lift Station costs necessary to service property outside of the project area. Since entering into the Participation Agreement, the City has decided not to participate in upsizing the Lift Station but will pay for some minor enhancements to help with the maintenance and operation of the Lift Station. The attached agreement is the agreement contemplated in the Participation Agreement; and

WHEREAS, the attached agreement estimates that the total cost of the Lift Station is \$642,830. Except for what the City will pay towards the Lift Station costs for a concrete access drive, fencing, flow meters and inspection port stations, totaling \$32,540, the Agency will reimburse to the Participant with received tax increment. In the event that the Agency does not receive any tax increment, the Agency shall have no reimbursement obligations; and

WHEREAS, the agreement also values the property on which the Lift Station will be located as being worth \$14,400 for approximately 3,600 square feet. Under the agreement, the Agency will pay for the property.

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

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

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

PASSED AND ADOPTED BY THE CITY COUNCIL OF SPRINGVILLE CITY, ON THIS
17TH DAY OF SEPTEMBER, 2019.

Richard J. Child, Chair
Springville City Redevelopment
Agency

Attest:

Kim Crane, Agency Secretary

EXHIBIT A

FRONTAGE ROAD NEIGHBORHOOD DEVELOPMENT PROJECT AREA
SEWER AGREEMENT
BY AND BETWEEN THE
REDEVELOPMENT AGENCY OF SPRINGVILLE CITY,
THE OLDS FAMILY 2002 TRUST, AND
SPRINGVILLE CITY