

REQUEST FOR COUNCIL ACTION

SUBJECT: Construction Reimbursement Agreement – Jordan Valley TOD (Whitaker Construction).

SUMMARY: Approval of the Ordinance will approve payment to Whitaker Construction for asphalt repair work approved by the City and previously performed in 2015.

FISCAL AND/OR

ASSET IMPACT: The maximum fiscal impact associated with the passage of the proposed Construction Reimbursement Agreement is \$28,994.55.

STAFF RECOMMENDATION:

Staff recommends approval of this agreement and reimbursement to Whitaker Construction.

MOTION RECOMMENDED:

“I move to approve Resolution 16-166, authorizing the Mayor to execute the Construction Reimbursement Agreement which authorizes the City to reimburse Whitaker Construction for asphalt repair work it completed in 2015.”

[Roll Call vote required]

Prepared by:


Craig R Kleinman
Deputy City Attorney

Reviewed by:


David R Brickey
City Attorney

Recommended by:


Mark R Palesh
City Manager

BACKGROUND DISCUSSION:

During Construction work at the Jordan Valley TOD during 2015, the City discovered unanticipated asphalt damage to existing roadway section and curb and gutter. The City needed immediate repair work performed. Whitaker Construction was already on the construction site as a subcontractor to Jordan Valley Station I, LLC (Boulder Ventures Development, Inc.). The principal agreement with Jordan Valley Station I, LLC did not call for this repair work to be performed because it was unforeseen at the time of the drafting of the agreement with Jordan Valley Station I, LLC. Consequently, the City asked Whitaker Construction to perform this repair work because it were available, on site and could fix the problems quickly. The City already agreed to reimburse Whitaker Construction for this work.

City staff recommends authorizing this resolution so Whitaker Construction can be paid for the work it performed.

CONSTRUCTION REIMBURSEMENT AGREEMENT
Jordan Valley TOD (Whitaker Construction Co. Inc.)

This Construction Reimbursement Agreement (the "Agreement") is entered into this _____ day of October, 2016, by and between Whitaker Construction Co, Inc., a Utah corporation ("Whitaker"), and the City of West Jordan, a municipality and political subdivision of the State of Utah (the "City").

RECITALS

WHEREAS, the City entered into a Reimbursement Agreement with Jordan Valley Station I, LLC (the "Developer") to install certain public improvements to a property located within the corporate boundaries of the City of West Jordan, Salt Lake County, Utah, as reflected in Exhibit "A" which is attached hereto and by this reference made a part hereof (the "Property"); and

WHEREAS, Whitaker worked as a subcontractor for the Developer on the Property; and

WHEREAS, Whitaker completed all work required by Developer on the Property but while performing its work came across some unanticipated problems that required immediate attention (the "Repairs"); and

WHEREAS, The City asked Whitaker to make the Repairs and agreed to pay Whitaker for the Repairs; and

WHEREAS, The Parties would like to resolve all claims and potential claims that could have been asserted or might, in the future, be asserted.

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 hereby agree as follows:

1. Incorporation of Recitals. The foregoing Recitals are hereby incorporated into this Agreement and are made a part hereof.
2. Construction Reimbursement Payment. The City agrees to pay Whitaker for the Repairs in the amount of Twenty Eight Thousand, Nine Hundred Ninety Four Dollars and Fifty-Five Cents (\$28,994.55).
3. Waiver and Covenant Not to Sue. Whitaker specifically agrees to accept the reimbursement specified herein as full and final payment of all claims against the City for the Repairs identified herein. Developer hereby waives, releases, and forever discharges the City of West Jordan, and its agents, attorneys, employees, independent contractors, insurers, successors, assigns, officials and officers from all claims and causes of action of whatever kind or nature which now exist, whether actual or potential, known or unknown, communicated or not communicated for any rights or claims against the City for any additional reimbursement of any kind or source other than as set forth herein.

4. Entire Agreement. This Agreement contains the entire agreement and understanding of the parties with respect to reimbursement to Whitaker for the Repairs and supersedes all prior written or oral agreements, representations, promises, inducements, or understandings between the parties with regard to any reimbursements to Whitaker from the City for Repairs.
5. Binding Effect. This Reimbursement Agreement shall be binding upon the parties hereto and their respective officers, employees, representatives, agents, members, successors, and assigns.
6. Validity and Severability. In the event a court, governmental agency, or regulatory agency with proper jurisdiction determines that any provision of this Reimbursement Agreement is unlawful, that provision shall terminate. If a provision is terminated, but the parties can legally, commercially, and practicably continue to perform this Reimbursement Agreement without the terminated provision, the remainder of this Reimbursement Agreement shall continue in effect.
7. Amendment. This Reimbursement Agreement may be amended only in a writing signed by the parties hereto.
8. Controlling Law, Jurisdiction and Venue. This Agreement shall be governed by the laws of the State of Utah. Venue shall be in Salt Lake County, Utah.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first hereinabove written.

CITY:

By: _____

Name: Kim V. Rolfe, Mayor

Date: _____

ATTEST:

City Recorder

[Signatures continued on the following page]

DEVELOPER:

Whitaker Construction Co., Inc.
a Utah Corporation

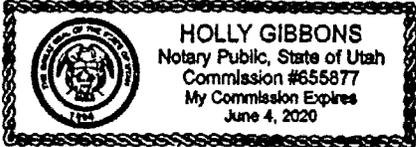
By: [Signature]
Its: Vice President of Operations

STATE OF Utah)
COUNTY OF Box Elder) ss.

On this day personally appeared before me Brett Nielsen to me known to be the Managing Member of Whitaker Construction Co., Inc., and acknowledged to me that he executed this instrument in his authorized capacity, and that by his signature on the instrument the entities upon behalf of which he acted executed the instrument.

Dated: 10-11, 2016.

[Signature]



Notary Public in and for the State of Utah
My appointment expires 6-4-2020

EXHIBIT A
PROPERTY DESCRIPTION

All of Lots 3 and 4, FIRST AMENDMENT JORDAN VALLEY T.O.D. SUBDIVISION PLAT "A", according to the official plat thereof, filed in the office of the Salt Lake County Recorder in Plat Book 2014P at page 43.