

Town of Windsor

Memorandum

July 11, 2023

Late Item

TO: The Honorable Mayor and Town Council
FROM: William G. Saunders, IV, Town Manager
SUBJECT: Use Agreement – KCH Contracting, LLC

Background

The contractor for the Duke Street / Virginia Avenue Water Main Project needs a lay down yard for materials related to the project. Per the contract documents, it is up to the contractor to obtain an area for a laydown yard.

Specifics

The Town owns the vacant lot at the north end of Duke Street, which includes a small, detached garage structure. This property would serve well as a lay down yard for this project.

The property also contains an abandoned well head, which the Town would like to have removed down to approximately five feet (5 ft.) beneath grade.

KCH Contracting is interested in using the property as a lay down yard, and in return would remove the well head and regrade the area in return.

Please find attached a use agreement between the Town and KCH Contracting, LLC to establish expectations of this arrangement.

Recommended action

For Council's consideration

Enclosures

Use Agreement – KCH Contracting, LLC

AGREEMENT
between
KCH CONTRACTING, LLC,
and
THE TOWN OF WINDSOR, VIRGINIA

I. Parties. The parties to this Agreement are the Town of Windsor, Virginia, a Virginia municipal corporation (Town), and KCH Contracting, LLC, organized in the Commonwealth of Virginia (KCH).

II. Purpose. The purpose of this Agreement is to establish expectations concerning the use of a vacant lot owned by the Town at the end of Duke Street, near its intersection with Virginia Avenue (Tax MAP 54B-01-053A) (“Lot”), and its use by KCH during the Virginia Avenue/Duke Street Watermain Replacement Project (“Project”).

III. Responsibilities

A. Town of Windsor

Town will:

1. Permit the use of the vacant lot owned by the Town at the end of Duke Street, near its intersection with Virginia Avenue (Tax MAP 54B-01-053A) by KCH for a lay down yard, and the use of the detached garage thereon for storage, during its completion of the Virginia Avenue/Duke Street Watermain Replacement Project.

B. KCH Contracting, LLC

In consideration thereof, KCH will:

1. Utilize the Lot in a manner consistent with a lay down yard during the Project.
2. Upon completion of the Project, restore the Lot to its pre-use condition, which shall include but not be limited to, cutting off the existing well head located on the lot to approximately five (5) feet below grade, back-fill the excavation, and grade and seed the lot.

IV. Insurance

KCH shall add the Town as an additionally insured party for its use of the

Lot, with a minimum of \$1M coverage per event and \$5M total coverage.

V. Counterparts

This Agreement may be executed in counterparts, and any number of counterparts signed in the aggregate by the Parties will constitute a single, original instrument.

VI. Waiver

The failure of either to insist upon strict performance of any obligation in this Agreement shall not constitute a waiver of said Party's right to demand strict compliance therewith in the future.

VII. Governing Law and Severability

This Agreement shall be deemed to be a Virginia contract and shall be governed as to all matters whether of validity, interpretations, obligations, performance or otherwise exclusively by the laws of the Commonwealth of Virginia, and all questions arising with respect thereto shall be determined in accordance with such laws. Regardless of where actually delivered and accepted, this Agreement shall be determined to have been delivered and accepted by the Parties in the Commonwealth of Virginia. The Parties further agree that any legal action or proceeding arising out of this Agreement shall be commenced and tried in the Circuit Court of Isle of Wight County, Virginia to the express exclusion of any otherwise permissible forum.

If any portion of this Agreement shall be adjudged invalid, illegal or unenforceable, no other provision shall be affected in any way.

VIII. Termination

The terms of this Agreement will remain in effect until terminated by either party. Termination may only occur after providing thirty (30) days written notice.

IX. Adoption

The foregoing Agreement was duly adopted, accepted, and approved by the Town Council at a regular meeting held on the ____ day of _____, 2023.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed intending to be bound thereby. This Agreement becomes effective on the date of the last signature.

Town of Windsor, VA

BY: _____

NAME: _____

TITLE: _____

DATE: _____

KCH Contracting, LLC

BY: _____

NAME: _____

TITLE: _____

DATE: _____

Approved as to Form and Correctness

Fred D. Taylor, Town Attorney