



## MEMORANDUM

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TO: Mayor and City Council

FROM: Matthew J. Dixon, City Manager

RE: **December 6, 2022 City Council Meeting**

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### WORK SESSION

- **Legislative Issues** – The city is fortunate to be able to host our three state legislators for a legislative work session. Senator Ann Millner and Representatives Rosemary Lesser and Katy Hall have all agreed to join us. We plan on sharing information about what's happening in South Ogden (i.e., housing, development, parks, etc.) to help the legislators better understand what's happening in the city. We will then share concerns we have with some of the legislation being considered. We will also give each legislator the chance to share their thoughts/ideas about legislation they are working on. This is a great opportunity to strengthen these important relationships and we are fortunate to have such great individuals representing us at the state.

### PRESENTATION

We will be recognizing two Jets Football teams for their winning seasons. The Mighty Mites and the Pee Wee Division teams both had great seasons and competed for the championship in their divisions.

### DISCUSSION/ACTION ITEMS

- **Ordinance 22-20** – According to state law, the city council is required to approve their meeting schedule for 2023. This ordinance has been prepared anticipating the council's desire to continue the practice of holding regular council meetings on the first and third Tuesdays of each month.
- **Resolution 22-46** – Leesa has finalized the updates to the policy based changes to state law and the council's discussion at the November 15, 2022 council meeting.
- **Resolution 22-47** – It has come time for the city to renew its contract with Landmark Design for Planning Services. The city has used Landmark Design for many years as our contract planner and we've been very happy with the services they provide. This contract is for three years with the option to be extended for 3 additional 3-year terms.

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- ***Discussion on canceling the Dec. 20, 2022, Council Meeting.*** Due to a lack of agenda items, it is proposed that the Dec. 20 meeting be cancelled. Merry Christmas!!!

## DISCUSSION/ACTION ITEMS

- ***Discussion on proposed amendments to Form Based Code Exception Approval Process.***  
Leesa has provided a very well-written Staff Report outlining this discussion item. She also prepared a Pros and Cons list for the council to consider when discussing what's best. Although I agree there are some good arguments in favor of requiring "additional exceptions" to be considered by the Planning Commission, I believe the Cons outweigh the Pros.

### The Current Process

When a developer submits a request for additional exceptions, I review the request and I ask for input from Leesa, Mark Vlastic, and department directors, as needed (Staff Review Committee). I have found this to be a very efficient, productive process. At times, these exception request decisions are not easy. There are certainly differing options and thoughts related to whether the exception, if granted, falls within the "intent" of the General Plan (the goals and vision for the city). I have a few concerns about requiring the Planning Commission to make these decisions.

### Concerns with Recommended Changes

First, it could be argued this is a solution looking for a problem. I am unaware of any problems or concerns related to the current process. If we were experiencing problems or disagreements with the current processes, I would understand the desire to change the process. The current process has worked very well and does not need to be changed.

Second, this change will slow development reviews and approvals and frustrate developers. I don't believe in changing a policy that is working when doing so will slow development reviews and approvals, increase costs for development and is not likely to result in better decisions/outcomes for the city.

Finally, these should be administrative decisions devoid of politics. Last week, Leesa, Mark Vlastic and I were on a call for an hour reviewing and discussing an Exception Request. We debated, analyzed, and evaluated the requested exceptions against the General Plan's intent for the property being developed and against other City Codes, etc. Staff do not think, nor do we act politically when evaluating these types of requests. We look at codes, rules, regulations, etc. It will be challenging for seven community volunteers (Planning Commissioners) to remain objective and politically neutral when evaluating Exception Requests.

In my opinion, it will be difficult for members of the commission to avoid such thoughts as, "How will my neighbors feel about this decision?" or "How can I tell my neighbor 'No' by denying his/her request?" Please don't misinterpret my thoughts on this. I have stated many times, and I still believe that we have one of the best Planning Commissions I've ever had the

opportunity to work with. I do not question or doubt their integrity and abilities. My comments are based on ‘best practice’ structures/systems and not the individuals occupying those positions.

## Conclusion

South Ogden has a very positive reputation with the development community. Developers over the years have commented many times on how much they like developing in South Ogden. Our review and approval processes within the Form-Based Code create a very good separation between legislative and administrative decisions. Typically, requests for exceptions can be received, reviewed, and decided on within a matter of only a few days. Requiring a developer to wait for the next Planning Commission meeting that could be as far out as 4 weeks does not promote South Ogden as a development-friendly city.

Seldom do I have a strong recommendation when it comes to code amendments, etc. Based on my report above, you may have realized that I do feel strongly that changing how Exceptions Requests should be handled is unnecessary and is not likely to result in positive outcomes for developers or the South Ogden City.

## CDRA BOARD MEETING

- ***Resolution 22-05 – Approving a Participation Agreement with Season on Riverdale Rd.*** My notes on this project date back to February 2019 (yes, almost 4 years ago). This has been a very challenging project due to the number of properties that needed to be acquired, the unique triangular shape of the property, the city’s desire to help Costco by incorporating additional parking, the vacation of Lincoln Ave., etc.

In August 2020, to help the developer with his request for financing through HUD, the CDRA Board approved a Commitment Letter (see packet) expressing the Agency’s support of the project and the expectation that the Agency would contribute no less than \$650,000 in Tax Increment Financing (TIF) Support.

As you are aware, the project did get funded through HUD and construction is underway for the 181 apartments and parking lot for Costco’s leasing. The project also has one small commercial pad on Riverdale Road.

This Resolution will solidify the Agency’s participation with TIF for this project and set forth the legal terms, conditions, etc. that both parties agree to related to how the TIF will be calculated and distributed, based on the developer’s performance in constructing the project, as designed, and paying the requisite taxes on the property after construction. Naturally, the developer would like as much TIF as the Agency is willing to share to help the project. He has presented several valid arguments in support of increasing the amount from the Commitment Letter amount (\$650,000). These arguments include:

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- His willingness to buy additional properties and build additional parking to help the city help Costco with parking
- Delays to the project based on working with Costco and the landowner over the property where the parking lot will be constructed
- Increased construction costs due to the delayed timeline
- The expense associated with the construction of the additional parking for Costco with the ROI being longer than any reasonable investor would accept (developer has provided a cost estimate from his contractor for how much the additional parking will cost him (see Highmark Construction breakdown dated 11/18/2022 in packet)

In summary, the land cost for the additional parking was \$530,445.83. The landowner required a percentage of the leasing income the developer will get from Costco amounting to \$152,000 and the construction costs for the parking lot, landscaping, etc. is \$372,214.14. This totals \$1,054,660.

There are, however, some valid arguments against increasing the Agency's participation above \$650,000. These arguments include, but are not limited to:

- The value of the property vacated by the city the developer has been able to use to meet the parking requirements for 181 units
- The fact that the developer will be earning income from Costco for the leasing of the parking stalls for Costco employees (~\$50,000/yr.)
- The fact that the project has been determined to be viable and was financed based on the Agency's commitment of \$650,000

I have a great relationship with Sean Alibrando (developer) and we have both been very transparent and honest about the arguments in favor and against the Agency increasing the amount. You'll notice in the Participation Agreement the amount listed is \$750,000 over 12 years. These two variables are open for debate and discussion by the Board and are just place holders. I would not get too wrapped up around the number of years in the agreement, since the biggest question is how much the Agency wants to give in support of the project. When an amount is determined, it will be a "not to exceed" amount making the number of years less important.

Please contact me if you have any questions about this agreement or the project, etc.



**NOTICE AND AGENDA  
SOUTH OGDEN CITY COUNCIL  
WORK SESSION**

**TUESDAY, DECEMBER 6, 2022, 5PM**

Notice is hereby given that the South Ogden City Council will hold their regularly scheduled work session at 5 pm Tuesday, December 6, 2022. The meeting will be located at City Hall, 3950 Adams Ave., South Ogden, Utah, 84403, in the EOC. The meeting is open to the public; anyone interested is welcome to attend. No action will be taken on any items discussed during the pre-council work session. Discussion of agenda items is for clarification only. Some members of the council may be attending the meeting electronically.

## **WORK SESSION AGENDA**

- I. CALL TO ORDER** – Mayor Russell Porter
- II. REVIEW OF AGENDA**
- III. DISCUSSION WITH STATE LEGISLATORS**
  - A. Report on Great Things Happening in South Ogden
  - B. Reports From Legislators
- IV. ADJOURN**

The undersigned, duly appointed City Recorder, does hereby certify that a copy of the above notice and agenda was posted to the State of Utah Public Notice Website, on the City's website (southogdencity.gov) and emailed to the Standard Examiner on December 5, 2022. Copies were delivered to each member of the governing body.

  
Leesa Kapetanov, City Recorder

In compliance with the Americans with Disabilities Act, individuals needing special accommodations (including auxiliary communicative aids and services) during the meeting should notify the City Recorder at 801-622-2709 at least 24 hours in advance.



## NOTICE AND AGENDA SOUTH OGDEN CITY COUNCIL MEETING

TUESDAY, DECEMBER 6, 2022, 6 PM

Notice is hereby given that the South Ogden City Council will hold their regularly scheduled council meeting at 6 pm Tuesday, December 6, 2022. The meeting will be located at City Hall, 3950 Adams Ave., South Ogden, Utah, 84403, in the city council chambers. The meeting is open to the public; anyone interested is welcome to attend. Some members of the council may be attending the meeting electronically. The meeting will also be streamed live over [www.facebook.com/southogdencity](https://www.facebook.com/southogdencity).

### CITY COUNCIL MEETING AGENDA

#### I. OPENING CEREMONY

- A. **Call to Order** – Mayor Russell Porter
- B. **Prayer/Moment of Silence** -
- C. **Pledge of Allegiance** – Council Member Orr

#### II. PRESENTATION

Recognition of Jets Football Mighty Mites and Pee Wees Divisions Winning Season

- III. **PUBLIC COMMENTS** – This is an opportunity to address the mayor and council with any concerns, suggestions, or praise. No action can or will be taken at this meeting on comments made.  
Please limit your comments to three minutes.

#### IV. RESPONSE TO PUBLIC COMMENT

#### V. CONSENT AGENDA

- A. Approval of November 15, 2022 City Council Minutes

**VI. DISCUSSION / ACTION ITEMS**

- A. Consideration of **Ordinance 22-20** – Setting the 2023 City Council Meeting Schedule
- B. Consideration of **Resolution 22-46** – Amending and Re-Adopting the Electronic Meeting Policy for City Meetings
- C. Consideration of **Resolution 22-47** – Approving an Agreement With Landmark Design for Planning Services
- D. Discussion on Canceling December 20, 2022 City Council Meeting

**VII. DISCUSSION ITEMS**

- A. Discussion on Proposed Amendments to Form Based Code Exception Approval Process

**VIII. RECESS INTO COMMUNITY DEVELOPMENT AND RENEWAL AGENCY BOARD MEETING**

See separate agenda

**IX. RECONVENE CITY COUNCIL MEETING**

**X. REPORTS/DIRECTION TO CITY MANAGER**

- A. City Council Members
- B. City Manager
- C. Mayor

**XI. ADJOURN**

The undersigned, duly appointed City Recorder, does hereby certify that a copy of the above notice and agenda was posted to the State of Utah Public Notice Website, on the City's website (southogdencity.gov) and emailed to the Standard Examiner on December 5, 2022. Copies were delivered to each member of the governing body.

  
Leesa Kapetanov, City Recorder

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## MINUTES OF THE SOUTH OGDEN CITY COUNCIL WORK SESSION AND CITY COUNCIL MEETING

TUESDAY, NOVEMBER 15, 2022

WORK SESSION – 5 PM IN EOC

COUNCIL MEETING – 6 PM IN COUNCIL ROOM

### WORK SESSION MINUTES

#### COUNCIL MEMBERS PRESENT

Mayor Russell Porter, Council Members Sallee Orr, Brent Strate, Susan Stewart, Mike Howard, and Jeanette Smyth

#### PLANNING COMMISSIONERS PRESENT

Jeremy Howe, Robert Bruderer, Angela Snowden, and Steve Pruess

#### STAFF MEMBERS PRESENT

City Manager Matt Dixon, Assistant City Manager Doug Gailey, Parks and Public Works Director Jon Andersen, Events and Communications Specialist Jamie Healy, Planner Mark Vlastic, and Recorder Leesa Kapetanov

#### OTHERS PRESENT

Makala Jordan from the Wasatch Front Regional Council and Fred Philpot, Consultant with Lewis, Young, Robertson, and Burningham

**Note: The time stamps indicated in blue correspond to the audio recording of this meeting, which can be found by clicking the link:**

[https://files4.1.revize.com/southogden/document\\_center/Sound%20Files/2022/CC221115\\_1703.mp3](https://files4.1.revize.com/southogden/document_center/Sound%20Files/2022/CC221115_1703.mp3)

**or by requesting a copy from the office of the South Ogden City Recorder.**

### I. CALL TO ORDER

- Mayor Porter called the work session to order at 4:05 pm and called for a motion to begin the meeting 00:00:00

Council Member Smyth so moved, followed by a second from Council Member Stewart. Council Members Orr, Strate, Stewart, and Smyth all voted aye.

Note: Council Members Howard and Stewart were not present for the vote. Commissioners Snowden and Pruess also joined the meeting after the vote.



- The mayor asked everyone to introduce themselves

00:00:15

## II. PRESENTATION

Demonstration of Wasatch Front Regional Council's Housing Location Explorer by Mikala Jordan, CED Transportation Planner

- Ms. Jordan demonstrated how to use the Weber County Housing Location Explorer found at <https://wfrc.org/weber-housing-map/>

00:00:49

## III. MODERATE INCOME HOUSING PLAN

- City Manager Dixon reviewed the Weber County Moderate Housing Affordability and Access Study

00:25:33

### A. Review of State Suggested Moderate Income Housing Plan Strategies

- Fred Philpot, Consultant from Lewis, Young, Robertson, and Burningham, explained each of the strategies. Those participating then scored each strategy in four different categories.

00:43:42

### B. Prioritization of Strategies

- Assistant City Manager Doug Gailey used an online voting tool to have each participant submit their five top strategies

01:50:08

## IV. ADJOURN

- At 6:05 pm, Mayor Porter called for a motion to adjourn the work session

Council Member Strate so moved, followed by a second from Council Member Stewart. All present voted aye.

02:00:07

## COUNCIL MEETING MINUTES

### COUNCIL MEMBERS PRESENT

Mayor Russell Porter, Council Members Sallee Orr, Brent Strate, Susan Stewart, Mike Howard, and Jeanette Smyth

### STAFF MEMBERS PRESENT

City Manager Matt Dixon, Parks and Public Works Director Jon Andersen, Events and Communications Specialist Jamie Healy, and Recorder Leesa Kapetanov

### MEMBERS OF THE PUBLIC PRESENT

Joyce & Bruce Hartman, friends and family of Firefighter Ryan Johnson

**Note: The time stamps indicated in blue correspond to the audio recording of this meeting, which can be found by clicking this link:**

[https://files4.1.revize.com/southogden/document\\_center/Sound%20Files/2022/CC221115\\_1908.mp3](https://files4.1.revize.com/southogden/document_center/Sound%20Files/2022/CC221115_1908.mp3)

**or by requesting a copy from the office of the South Ogden City Recorder.**

## I. OPENING CEREMONY

### A. Call To Order

- At 6:10 pm, Mayor Porter called the meeting to order and entertained a motion to begin  
00:00:00

**Council Member Strate so moved. The motion was seconded by Council Member Smyth. In a voice vote Council Members Orr, Strate, Stewart, Howard, and Smyth all voted aye.**

### B. Prayer/Moment of Silence

The mayor led those present in a moment of silence

### C. Pledge Of Allegiance

Council Member Smyth led everyone in the Pledge of Allegiance.

## I. EMPLOYEE RECOGNITION

Recognize Promotion of Ryan Johnson to Fire Engineer

- Mayor Porter enumerated Engineer Johnsons’ many qualifications and invited him forward to receive his promotion pin 00:01:25

## II. PUBLIC COMMENTS

- Mayor Porter invited anyone who wished to comment to come forward. No one came forward. He gave those online until 6:20 to submit comments.

## III. RESPONSE TO PUBLIC COMMENT

- Not applicable at this time

## IV. CONSENT AGENDA

### A. Approval of November 1, 2022 Council Minutes

- Mayor Porter asked if there were any changes or corrections to the minutes. Seeing none, he called for a motion to approve the consent agenda.

00:04:53

**Council Member Smyth so moved. The motion was seconded by Council Member Howard. The voice vote was unanimous in favor of the motion.**

## V. DISCUSSION /ACTION ITEMS

### A. Consideration of Ordinance 22-20 – Approving a Franchise Agreement With Century Link

- Staff overview 00:05:09
- Council discussion 00:06:15
- Mayor Porter called for a motion to approve Ordinance 22-20

00:06:40

**Council Member Howard so moved. The motion was seconded by Council Member Smyth. After determining there was no discussion on the motion, the mayor called the vote:**

Council Member Orr-	Yes
Council Member Strate-	Yes
Council Member Stewart-	Yes
Council Member Howard-	Yes
Council Member Smyth-	Yes

153  
154 **Ordinance 22-20 was adopted.**  
155  
156

157 **B. Discussion on City Property on Evelyn and 40th Street**

- 158
  - Mayor Porter led this discussion  
159 00:07:00
  - Council discussion 00:09:08
  - The consensus of the Council was that the property should be used for an affordable  
162 housing project. They directed staff to look into all the options.
- 163
- 164
- 165
  - The mayor asked Communications and Events Specialist Jamie Healy to come forward and read  
166 the online comments. There were two, both from the same person.
- 167
  - Pam Peterson Prince 00:16:40 Please remove graffiti on Evelyn and 40<sup>th</sup>
  - Pam Peterson Prince 00:16:46 Community garden and sign at Evelyn and 40<sup>th</sup>
- 168  
169  
170  
171

172 **VII. DISCUSSION ITEMS**

173 **A. Discussion On Ordinance To Allow And Regulate Short-Term Rentals In South Ogden**

- 174
  - Staff overview 00:17:26
  - Discussion 00:22:33
  - Motion 00:34:22
- 175  
176  
177

178 **Council Member Strate moved to table this item for five months and then bring it back to**  
179 **the council for deliberation. Council Member Howard seconded the motion. There was**  
180 **discussion on the motion. Council Member Smyth offered a friendly amendment that the**  
181 **item only be tabled for three months. Council Member Strate accepted the friendly**  
182 **amendment and Council Member Howard seconded it. The voice vote was unanimous in**  
183 **favor of the amended motion.**  
184  
185

186 **B. Discussion/Direction on Meadows Park Master Plan**

- 187
  - Staff overview 00:37:51
  - Discussion 00:39:47
  - The majority of the council chose example 1B as shown in the packet but switching the  
190 playground and basketball court
- 191  
192

193 **C. Discussion/Direction on Electronic Meeting Policy**

- 194
  - Staff overview 00:57:46
  - Discussion 01:00:24
- 195

- Staff was instructed to redline the current electronic meeting policy with the discussed changes and bring it back to the council for their consideration

### VIII. REPORTS/DIRECTION TO CITY MANAGER

#### A. City Council Members

- Council Member Strate- nothing to report
- Council Member Howard- nothing to report
- Council Member Stewart - nothing to report
- Council Member Smyth- 01:10:49
- Council Member Orr- 01:11:54

#### B. City Manager 01:12:57

#### C. Mayor 01:17:03

### VI. ADJOURN

- At 7:28 pm, Mayor Porter called for a motion to adjourn the meeting  
01:18:42

**Council Member Strate so moved, followed by a second from Council Member Smyth. The voice vote was unanimous in favor of the motion.**

I hereby certify that the foregoing is a true, accurate and complete record of the South Ogden City Pre-Council Work Session and Council Meeting held Tuesday, November 15, 2022.

  
Leesa Kapetanov, City Recorder

\_\_\_\_\_  
Date Approved by the City Council

## ORDINANCE NO. 22-21

### AN ORDINANCE OF THE CITY OF SOUTH OGDEN CITY, UTAH SETTING THE MEETING SCHEDULE FOR THE CITY COUNCIL FOR CY2023 AND PROVIDING FOR AN EFFECTIVE DATE.

#### SECTION I - RECITALS:

**WHEREAS**, the City Council finds that the City of South Ogden City ("City") is a municipal corporation and a city duly organized and existing under the laws of Utah; and,

**WHEREAS**, the City Council finds that in conformance with Utah Code ("UC") §10-3-717, the governing body of the city may exercise all administrative powers by resolution; and,

**WHEREAS**, the City Council finds that in conformance with UC §10-3-702, the governing body of the city may pass any ordinance to regulate, require, prohibit, govern, control, or supervise any activity, business, conduct or condition authorized by State law or any other provision of law; and,

**WHEREAS**, the City Council finds that in conformance with UC §10-3-502, the governing body shall by ordinance prescribe the time and place for holding its regular meeting which shall be held at least once each month; and,

**WHEREAS**, the City Council finds that the public convenience and necessity, public safety, health and welfare is at issue and requires action by the City as noted above;

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF SOUTH OGDEN CITY, UTAH** that the following meeting schedule is established for South Ogden City:

<u>Body</u>	<u>When</u>	<u>Time</u>
City Council	1 <sup>st</sup> & 3 <sup>rd</sup> Tuesday of each month	6:00 p.m.

The foregoing recitals are fully incorporated.

#### SECTION II - REPEALER OF CONFLICTING ENACTMENTS:

All orders, ordinances and resolutions regarding the changes enacted and adopted which

have been adopted by the City, or parts, which conflict with this Ordinance, are, for such conflict, repealed, except this repeal shall not be construed to revive any act, order or resolution, or part, repealed.

### **SECTION III - PRIOR ORDINANCES AND RESOLUTIONS:**

The body and substance of all prior Ordinances and Resolutions, with their provisions, where not otherwise in conflict with this Ordinance, are reaffirmed and readopted.

### **SECTION IV - SAVINGS CLAUSE:**

If any provision of this Ordinance shall be held or deemed or shall be invalid, inoperative or unenforceable such reason shall render no other provision or provisions invalid, inoperative or unenforceable to any extent whatever, this Ordinance being deemed the separate independent and severable act of the City Council of South Ogden City.

### **SECTION V - DATE OF EFFECT**

This Ordinance shall be effective on the 6<sup>th</sup> day of December, 2022, and after publication or posting as required by law.

**PASSED, ADOPTED AND ORDERED POSTED** by the City Council of South Ogden City, Utah this 6<sup>th</sup> day of December, 2022.

**SOUTH OGDEN CITY**, a municipal corporation

by: \_\_\_\_\_  
Mayor Russell Porter

Attested and recorded

\_\_\_\_\_  
Leesa Kapetanov, CMC  
City Recorder

**Resolution No. 22-46**

**RESOLUTION OF SOUTH OGDEN CITY AMENDING AND RE-ADOPTING  
AN ELECTRONIC MEETING POLICY FOR CITY MEETINGS, AND  
PROVIDING THAT THIS RESOLUTION SHALL BECOME EFFECTIVE  
IMMEDIATELY UPON POSTING AND FINAL PASSAGE.**

**WHEREAS,** the City Council finds that the City of South Ogden ("City") is a municipal corporation duly organized and existing under the laws of Utah; and,

**WHEREAS,** the City Council finds that in conformance with Utah Code ("UC")§ 10-3-717 the governing body of the city may exercise all administrative powers by resolution including, but not limited to regulating the use and operation of municipal property and programs; and,

**WHEREAS,** the City Council finds it is necessary or desirable occasionally to convene a public meeting of the South Ogden City Council, Boards and Commissions ("Body") to permit one or more members to participate with a telephonic or telecommunications link or conference; and,

**WHEREAS,** the City Council finds that UC §52-4-207 requires the South Ogden City Council to establish written procedures governing electronic meetings and the City Council desires to do so; and,

**WHEREAS,** the City Council finds that flexibility is needed in situations involving emergencies, loss of facilities, or other unforeseen circumstances that prevent Body members from attending to hold an electronic meeting to conduct the business of the City; and,

**WHEREAS,** the City Council finds that City now desires to further those ends by adopting and establishing procedures governing electronic meetings of South Ogden City and,

**WHEREAS,** the City Council finds that the public convenience and necessity requires the actions contemplated,

**NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF SOUTH OGDEN AS FOLLOWS:**

**SECTION 2 - ELECTRONIC MEETING ATTENDANCE**

**Section 1.** The terms defined or described in the recitals will have the same meanings when used in the body of this Resolution. The above recitals are fully incorporated.



**Section 2.** All prior actions heretofore taken (not inconsistent with this Resolution), by South Ogden City, its elected and appointed officers of the City, including but not limited to the South Ogden City Council, Boards and Commissions ("Body") members directed toward the calling and holding of electronic meetings are ratified, approved and confirmed, provided such actions conformed to the provisions herein.

**Section 3.** Any meeting of the Body may be called and held electronically provided such meeting is otherwise called in conformance with the Utah Open and Public Meetings Act found in Utah Code Title 52, Chapter 4, and consistent with the procedures set forth herein.

**Section 4.** The City main office at 3950 South Adams Avenue, South Ogden, Utah is where Body meetings would normally convene and will be the anchor location for all electronic Body meetings. The City finds that such chambers ~~prove~~ provide space and facilities so any interested persons ~~and from~~ the public may attend and monitor the open portions of meetings of the Body, whether such meeting is a public hearing or otherwise. The City shall provide space for the public at all public meetings, unless the chair of the Body determines that opening the meeting to the public presents a substantial risk to the health or safety of those present at the anchor location; or the location where the public body would normally meet has been ordered closed to the public for health or safety reasons.

**Section 5.** A meeting may be held by using computer and/or telephone conferencing to allow a member of the Body, subject to the open meeting requirements of Utah, to be present at a meeting. ~~and to provide a quorum. A quorum consisting of a simple majority, must be present at the anchor location.~~ There will be a limit of only two electronic connections ~~by telephone or other conferencing methodology~~ at any meeting. Any member of the Body participating via electronic means may make, second and vote on all motions and participate in the discussion as though present. Except for a unanimous vote, a public body that is conducting an electronic meeting shall take all votes by roll call.

**Section 6.** To provide for electronic meeting attendance, public notice of such meeting must be given at least 24 hours before the meeting by (i) posting written notice at the anchor location; and (ii) providing written or electronic notice to (a) at least one newspaper of general circulation within the State and in the City; ~~and or~~ (b) to a local media correspondent; and (c) the state's public notice website; and (iii) providing notice of the electronic meeting to the members of the council or board at least 24 hours before the meeting so they may participate in and be counted as present for all purposes, ~~including the determination that a quorum is present;~~ and (iv) providing each member of the public body a description of how to electronically connect to the meeting ~~a description to the members of the Body of how the members will be connected to the electronic meeting.~~

**Section 7.** A request for electronic meeting attendance made by a member of the council or board may be made up to three days, but not less than twenty-four hours, prior to the scheduled meeting to allow for ~~arrangements to be made for the electronic meeting connection(s) and for the~~ public notice provisions. ~~The request must be due to an emergency or other condition that prohibits physical attendance at the meeting. Notwithstanding the foregoing, no member may attend more than two meetings per year electronically.~~ Requests to attend meetings electronically must be made to and approved by the mayor or chairperson of the affected board or commission.

### **SECTION 3 - PRIOR ORDINANCES AND RESOLUTIONS**

The body and substance of all prior Resolutions, with their provisions, where not otherwise in conflict with this Resolution, are reaffirmed and readopted.

### **SECTION 4 - REPEALER OF CONFLICTING ENACTMENTS**

All orders, and Resolutions regarding the changes enacted and adopted which have been adopted by the City, or parts, which conflict with this Resolution, are, for such conflict, repealed, except this repeal shall not be construed to revive any act, order or resolution, or part repealed.

### **SECTION 5 - SAVINGS CLAUSE**

If any provision of this Resolution shall be held or deemed or shall be invalid, inoperative or unenforceable such shall not have the effect of rendering any other provision or provisions invalid, inoperative or unenforceable to any extent whatever, this Resolution being deemed the separate independent and severable act of the City Council of South Ogden City.

### **SECTION 6 - DATE OF EFFECT**

This Resolution shall be effective on the 10<sup>th</sup> day of July, 2017, and after publication or posting as required by law.

**PASSED AND ADOPTED BY THE CITY COUNCIL OF SOUTH OGDEN CITY,  
STATE OF UTAH,** on this 6<sup>th</sup> day of December, 2022.

**SOUTH OGDEN CITY**

---

Russell Porter  
Mayor

**ATTEST:**

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Leesa Kapetanov, CMC  
City Recorder

## **Resolution No. 22-47**

### **RESOLUTION OF SOUTH OGDEN CITY APPROVING AND AUTHORIZING AN AGREEMENT WITH LANDMARK DESIGN, INC., FOR THE PROVISION OF ONGOING PLANNING AND OTHER DEVELOPMENTAL SERVICES ON BEHALF OF THE CITY; AUTHORIZING THE CITY MANAGER TO SIGN THE NECESSARY DOCUMENTS ON BEHALF OF THE CITY TO GIVE EFFECT TO THE INTENT HEREOF; AND, PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City Council finds that the City of South Ogden (herein "City") is a municipal corporation duly organized and existing under the laws of the State of Utah; and,

**WHEREAS**, the City Council finds that in conformance with the provisions of UCA §10-3-717 the governing body of the city may exercise all administrative powers by resolution including, but not limited to regulating the use and operation of municipal property; and,

**WHEREAS**, the City Council finds that there is an ongoing need for the provision of planning and other developmental services for South Ogden city; and,

**WHEREAS**, the City Council finds that the City now desires to further those ends by entering into an agreement with Landmark Design to provide such services; and,

**WHEREAS**, the City Council finds that the public convenience and necessity requires the actions herein contemplated,

**NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF  
SOUTH OGDEN AS FOLLOWS:**

#### **SECTION 2 - CONTRACT AUTHORIZED**

That the Agreement for the Provision of Municipal Planning and Consulting Services, attached hereto as **Attachment "A"** and by this reference fully incorporated herein, is hereby approved and adopted; and that the City Manager is authorized more fully negotiate the desired "scope of services" on behalf of the city and then to sign, and the City Recorder authorized to attest, any and all documents necessary to effect this authorization and approval.

#### **SECTION 3 - PRIOR ORDINANCES AND RESOLUTIONS**

The body and substance of any and all prior Resolutions, together with their specific provisions, where not otherwise in conflict with this Resolution, are hereby reaffirmed and readopted.

#### **SECTION 4 - REPEALER OF CONFLICTING ENACTMENTS**

All orders, and Resolutions with respect to the changes herein enacted and adopted which have heretofore been adopted by the City, or parts thereof, which are in conflict with any of the provisions of this Resolution, are, to the extent of such conflict, hereby repealed, except that this repeal shall not be construed to revive any act, order or resolution, or part thereof, heretofore repealed.

#### **SECTION 5 - SAVINGS CLAUSE**

If any provision of this Resolution shall be held or deemed to be or shall, in fact, be invalid, inoperative or unenforceable for any reason, such reason shall not have the effect of rendering any other provision or provisions hereof invalid, inoperative or unenforceable to any extent whatever, this Resolution and the provisions of this Resolution being deemed to be the separate independent and severable act of the City Council of South Ogden City.

#### **SECTION 6 - DATE OF EFFECT**

This Resolution shall be effective on the 19<sup>th</sup> day of June, 2012, and after publication or posting as required by law.

**PASSED AND ADOPTED BY THE CITY COUNCIL OF SOUTH OGDEN CITY,  
STATE OF UTAH, on this 6<sup>th</sup> day of December, 2022.**

**SOUTH OGDEN CITY**

---

Russell Porter  
Mayor

**ATTEST:**

---

Leesa Kapetanov, CMC  
City Recorder

## **Attachment "A"**

### **Resolution No. 22-47**

Resolution Of South Ogden City Approving And Authorizing An Agreement With Landmark Design, Inc., For The Provision Of Ongoing Planning And Other Developmental Services On Behalf Of The City; Authorizing The City Manager To Sign The Necessary Documents On Behalf Of The City To Give Effect To The Intent Hereof; And, Providing For An Effective Date.

06 Dec 22

## **AGREEMENT**

THIS AGREEMENT, made and entered into the \_\_\_\_ day of \_\_\_\_\_, 2022, by and between LANDMARK DESIGN, INC., a Utah Corporation, hereinafter referred to as "Consultant" and South Ogden City, hereinafter referred to as "Client."

## **WITNESSETH**

WHEREAS, the Client desires to engage Consultant to provide professional and technical services for on-going planning services, and

WHEREAS, the Consultant has the resources, expertise and the desire to perform such services for and on behalf of the Client.

NOW, THEREFORE, in consideration of the mutual covenants herein set forth and for other good and valuable consideration, the parties agree as follows:

1. Agreement: The Client agrees to engage the Consultant as an independent contractor, and the consultant agrees to provide its professional and technical services as hereinafter provided.

2. Scope of Services: The Client and the Consultant agree that the Scope of Work attached hereto and incorporated herein. All work must be performed and completed to the satisfaction of the Consultant and the Client.

3. Commencement of Work: Work shall begin on August 1<sup>st</sup>, 2022 and will be a duration of three (3) consecutive years through July 31<sup>st</sup>, 2025. With this agreement, renewal can be extended up to three (3) times in three-year intervals, unless extended by mutual agreement of the Client and the Consultant.

4. Compensation: As total compensation and expenses, the Consultant shall be paid for services hourly as per the Hourly Billing Rates shown in the Scope of Work, to be paid monthly for work completed to date. Client agrees to make payment within 30 days of receipt of invoice. Modifications to hourly rates may be requested at the end of each three-year contracting period for consideration and approval by South Ogden City.

5. Amendments: This Agreement can only be modified or amended in writing. Any change in this Agreement, including any increase or decrease in the amount of Consultant's compensation, shall be mutually agreed upon by the Client and the Consultant and shall be set forth only in written amendments to this Agreement.

6. Independent Contractor Relationship: The legal relationship of the Client to the Consultant with respect to the services required under this Agreement shall be that of an independent contractor and not that of an agent or employee.

7. Representations and Notices: The following are designated as representatives of parties to this Agreement:

(a) The Consultant designates Mark Vlastic, President of Landmark Design, Inc., or Samuel Taylor, Principal of Landmark Design, Inc. as authorized representatives in all matters under this agreement and all notices given to Consultant shall be by regular U.S. mail to:

Landmark Design Inc.  
850 South 400  
Salt Lake City, Utah 84101  
Attention: Mark Vlastic or Samuel Taylor

(b) The Client designates as its representative in all matters under this Agreement and all notices given to Consultant shall be by regular U.S. mail to the above designated representative at:

South Ogden City  
3950 South Adams Avenue  
South Ogden, Utah 84403  
Attention: Matt Dixon

8. Indemnification: The Consultant agrees and covenants to hold harmless and indemnify the Client from claims, losses, injury, expenses and attorneys' fees proximately caused by any negligent conduct or omissions that constitute a form of tortious behavior on the part of the Consultant, its officers, employees, or agents in the execution of the work performed in accordance with this Agreement, or which constitutes a breach of this Agreement.

9. Successors: The Consultant agrees that the provisions of this Agreement shall be binding on heirs, permitted assigns and successors, subcontractors and agents.

10. Termination: Either party to this Contract has the right to terminate the agreement on 15 days' notice. In the event such termination occurs, regardless of who initiates the termination, Consultant shall be paid for the work completed to date of termination. In such event, all unfinished work shall, at the option of the Consultant, become its property.

11. Entire Agreement: This Agreement including the Scope of Work attached hereto contains the complete agreement and understanding of the parties hereto and supersedes any previous understandings, commitments, proposals, or agreements whether oral or written, and may only be modified or amended in writing or executed by authorized individuals of Consultant and Client.

12. Jurisdiction: This agreement shall be governed by the laws of the State of Utah.



IN WITNESS THEREFORE, the Consultant and the Client have hereunto executed this Agreement the day and year first above written.

LANDMARK DESIGN, INC.

By \_\_\_\_\_  
Mark Vlastic, Vice President

SOUTH OGDEN CITY

By \_\_\_\_\_

Attest: \_\_\_\_\_

## **ATTACHMENT A:**

Proposed Scope of Work, Qualifications and Staffing Provisions  
South Ogden City Municipal Planning and Consultation Contract

# ATTACHMENT A:

Proposed Scope of Work, Qualifications and Staffing Provisions  
South Ogden City Municipal Planning and Consultation Contract

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## SCOPE OF WORK

**Landmark Design** proposes to provide day-to-day planning services to assist South Ogden City meet its city planning and development needs and requirements. The services we will provide are likely to include, but not necessarily limited to, the following tasks:

- Designing, promoting and administering South Ogden City plans and policies affecting land use, zoning, public utilities, community facilities, housing, recreation and transportation;
- Holding public meetings and conferring with city staff, citizens and members of the Planning Commission and City Council;
- Processing development proposals and recommending approval, denial or conditional approval of such proposals;
- Processing applications for zoning and general plan modifications, and recommending denial or conditional approval of such proposals;
- Determining the effects of regulatory limitations on projects; and
- Assessing the feasibility of all proposals and identifying appropriate changes and/or responses.

As part of carrying out these duties, **Landmark Design** will work closely and coordinate with City to the greatest degree possible to ensure that planning routines are conducted in a timely manner and that City resources are utilized in an efficient and cost-effective manner. It is assumed that the tasks required will generally require up to 20 hours, and that the inputs of Landmark Design staff will be applied to meet the workloads and tasks that emerge over time.

## QUALIFICATIONS/COMPARABLE EXPERIENCE

**Landmark Design** was founded in 1987 and has been providing superlative community planning and design services to our clients ever since. We are located in Salt Lake City, Utah and have a staff of six professional planners and design professionals, including two certified planners (AICP) and five professional landscape architects (PLA) licensed to work in Utah and nine other western states. All of the personnel involved in our projects are professionals, and hold appropriate degrees, certifications, or licenses.

We offer expertise in the preparation of community master plans; updating general plans; redevelopment planning and design; day-to-day planning input and facilitation; site planning, analysis and design; parks, recreation, open space and trail planning; urban design; and public involvement. Our experience illustrates a commitment to regionally appropriate and sustainable planning and design solutions, and solutions that embrace each community's "sense of place".

Our firm has completed a varied and extensive list of comparable community, land use and redevelopment plans and urban design projects, many of which are described in this proposal. We have provided similar services as described in South Ogden since 2012, and propose to continue similar services as

## ATTACHMENT A:

Proposed Scope of Work, Qualifications and Staffing Provisions  
South Ogden City Municipal Planning and Consultation Contract

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### FIRM DESCRIPTION AND RESUMES OF KEY INDIVIDUALS

#### Staffing Approach

We are excited to provide day-to-day planning services for South Ogden City. We understand that this requires a close working relationship with the City Manager, Assistant City manager and City Recorder, in addition to careful coordination with the Planning Commission and City. Our approach is to be as flexible and efficient, available as necessary, and maintain clear communication channels. It is our goal to provide the variety of services needed, all under a single roof. To achieve this, we will utilize the skills and input of the lowest-fee staff member qualified to complete the various tasks that may be required.

We are prepared to provide the range of services required, from policy and ordinance considerations, to detailed planning, redevelopment and land planning inputs. We are experienced urban designers, have prepared site design guidelines, are experienced in plan adoption processes, and are experienced facilitators and communicators with the public. Several of our staff members have actively worked on South Ogden projects completed by Landmark Design during the past decade and earlier, and understand the issues faced by the city and the technical requirements that are necessary to move the situation forward.

**Mark Vlasic, Principal and President of Landmark Design, will lead the day-to-day work.** He will be your primary contact and will manage and direct the inputs of our staff as needed to ensure the work required is completed in a professional and cost-efficient manner. Mark will work closely with the South Ogden City Manager as specific projects and day-to-day planning needs arise. He will maintain close communication so that you always know the status of open projects, and he is prepared to meet with the public, Planning Commission and City Council as part of providing advice and facilitating planning routines.

#### Resumès of Key Staff

Mark Vlasic, AICP, ASLA, PLA

##### **Principal and President**

**Mark** will serve as **Principal-in-Charge, Project Manager and Principal Planner** for the project. He has performed a range of planning and review services as part as the current term contract with South Ogden City, and is presently mentoring junior staff to assume those duties as part of serving the long-term needs of the city. Mark will be responsible for day-to-day management of planning processes and routines.

Mark has more than 40 years experience both internationally and domestically, performing community planning, master planning, landscape architecture and urban design services for a broad range of public and private projects. Mark joined Landmark Design 25 years ago and has completed hundreds of successful planning and design projects during his tenure in Utah and the Intermountain west region since. Mark is a member of the American Planning Association (APA) and the American Institute of Certified Planners (AICP) and a Professionally Licensed Landscape Architect (PLA) in Utah.

## ATTACHMENT A:

Proposed Scope of Work, Qualifications and Staffing Provisions  
South Ogden City Municipal Planning and Consultation Contract

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### Sam Taylor, PLA, ASLA

#### **Principal Planner /Landscape Architect**

Sam brings more than seven years of valuable experience in planning and design. Since joining Landmark Design in 2018 he has provided leadership and a diverse technical skillset to the firm's work in an approach that has proven to be innovative, thoughtful, and down to earth. He recently completed design efforts for Burch Creek and Club Heights Parks in South Ogden, the Heber Parks and Recreation Master Plan, Spike 150 Legacy Plazas in Brigham City and streetscape designs for Orem Center Street and Eagle Mountain Boulevard. Sam is currently leading projects for the Washington Terrace Parks Master Plan and general plan efforts for Pleasant Grove and Fruit Heights, and was a key contributor to the Springville Parks, Trails and Recreation Master Plan and the 600/700 North Corridor Study in Salt Lake City. Sam is a Professionally Licensed Landscape Architect (PLA) in Utah and Idaho.

### Lisa Benson, ASLA, PLA

#### **Senior Planner/ Landscape Architect**

Lisa has been part of the landmark Design team for the past 22 years, during which time she has provided leadership on a variety of community planning and urban design projects, merging evocative design with technical GIS mapping and documentation skills to create places and plans for cities, towns, regions and parks throughout the west. Examples of her work include the Jordan River Parkway Master Plan, general plans for Morgan City and Morgan County, and a variety of park, recreation, trail and open space plans for nearly 20 communities. She has extensive experience working on a variety of National Park Service projects around the country, including two projects through the Sustainable Sites Initiative (SITES)™ pilot process – the Mesa Verde Visitor and Information Center and the Bat Cave Draw and Visitor Center Restoration at Carlsbad Caverns National Park. Lisa is a Professionally Licensed Landscape Architect in Utah and Colorado, an AICP Certified Planner, a SITES Certified professional, and a LEED Green Associate.

### Madison Merrill, ASLA, PLA

#### **Associate Planner/ Landscape Architect**

Madison joined Landmark Design in September of 2018, during which time she has played an integral role in the development of several parks, recreation, and trails master plans, including those for Salem, Mapleton, Saratoga Springs, Herriman, and West Jordan. She has also completed streetscape designs for Taylorsville and Moab, Utah, and most recently has led urban design and streetscape design for a large new community located just south of Moab. She recently participated in the *On the River's Edge* design companioning - her team receiving an honorable mention for their ecological vision for the Jordan River. Madison is currently leading the South Ogden General Plan and a wayfinding master plan for San Juan County, Utah.

Madison is proficient in AutoCAD, LandF/X, Sketchup, ArcGIS and the Adobe Creative Suite. She recently completed a Master Degree in City and Metropolitan Planning at the University of Utah, and successfully completed her Utah licensing exam as a Professional Landscape Architect (PLA) in Utah. She is also a member of the Utah Chapter of the American Planning Association, and is completing efforts toward becoming a Certified Planner (AICP).

## ATTACHMENT A:

### Proposed Scope of Work, Qualifications and Staffing Provisions South Ogden City Municipal Planning and Consultation Contract

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#### Aubrey Larsen

##### **Planner/Landscape Architect**

Aubrey joined Landmark Design, Inc. in April 2022, and has become a valued contributor to projects including the *South Ogden General Plan Update (2022)*. She is currently applying her cartography and design skills toward the creation of ten bi-lingual orientation maps for a Salt Lake City Parks Wayfinding Signage Project, and is being trained to assume day-to-day planning efforts for South Ogden and Heber City in the near future.

Prior to joining Landmark Design Aubrey spent nearly seven years with the State of Utah's Community Development Office where she created award-winning tools, guides, resources, and programs in support of local planning efforts. In 2020 she published the *GIS Applications in Municipal Management Guidebook*, which provides information and strategies for community leaders, planners, and managers to help overcome barriers to utilizing geographic information systems. The Guidebook was awarded Best Use of GIS by the Utah Division of Technology Services in 2021 and received a Project Merit Award from the Utah Chapter of the American Planning Association in 2022. She also provided high-level support for the Regional Planning Program, topic-driven research on relevant planning challenges and opportunities facing Utah's communities, review of Small Planning Grant applications, digital design work, and mapping assistance to municipalities during her years working for the State of Utah. She is recognized for her role as Coordinator of the Colorado Plateau Dark Sky Cooperative. For four years she worked to build knowledge and capacity of Cooperative partners and stakeholders, increasing public understanding of the benefits and implications of dark-sky conservation, and establish a collaborative advocate's network. Aubrey is a member of the Utah Chapter of the American Planning Association (APA) and a member of the Environmental Dispute Resolution Program Collaborative Leadership Network. She received a Bachelor of Landscape Architecture and Environmental Planning in 2014 and a Master of Bioregional Planning degree from Utah State University in 2017.

#### Hugh Holt

##### **Senior Landscape Architect**

Hugh has been with Landmark Design since its inception in 1987, during which time he has provide landscape architectural and related services for a wide range of clients. He is experienced in the design and implementation of a range of projects, including parks, streetscapes, education and playfields, coordinating the detailed design and preparation of construction documents for nearly all landscape architectural projects in the office.

Hugh is recognized for his construction management abilities and his expertise applying LEED and other High-Performance Building Standards (HPBS). A sampling of his recent work include Burch Creek Park and Club Heights Park in South Ogden; the Utah School for the Deaf and Blind in Salt Lake City; the Salt Lake Community College Westpointe Career and Technical Education Building; the USU Fine Arts Complex Renovation and Addition; and the Utah School for the Deaf and Blind in Springville. Other recent projects include the Jordan Valley Water Conservancy District Demonstration Garden – LocalScape and "Flip Your Strip" Exhibits in West Jordan City; City Creek Park in Salt Lake City; Liberty Park Site Improvements in Salt Lake City; landscape design for the UTA North Temple TRAX line between the Salt Lake City International Airport and landscape design for a large new subdistrict of Saratoga Springs. Hugh is a Professionally Licensed Landscape Architect (PLA) in Utah and Wyoming, a Certified Arborist, since 1998, and a Certified Playground Safety Inspector since 2001.

## ATTACHMENT A:

Proposed Scope of Work, Qualifications and Staffing Provisions  
South Ogden City Municipal Planning and Consultation Contract

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### CLIENT REFERENCES

Bryn MacDonald  
Community Development Director  
3200 West 300 North  
West Point City, Utah 84015  
801.776.0970

Tim Stephens  
Community Development Director  
Woods Cross  
Tel: 801.292.4421

Elise Erler  
Deputy Assistant Director  
State of Utah School and Institutional Trust Lands Administration (SITLA)  
Tel: 801.538.5179

### HOURLY BILLING RATES

The following are Landmark Design billing rates. We will strive to match all tasks with the appropriate level of expertise required, and will utilize the skills and input of the lowest-fee staff member qualified to complete the various tasks that may be required.

Principal Planner/Landscape Architect/Manager	\$165	(Mark Vlastic)
Principal Planner/Landscape Architect	\$150	(Sam Taylor)
Senior Planner/Landscape Architect	\$135	(Lisa Benson/Hugh Holt)
Associate Planner/Landscape Architect	\$125	(Madison Merrill)
Planner/Intern Landscape Designer	\$100	(Aubrey Larsen/Survier Castillo)
Junior Professional Staff/ Intern	\$ 80	(Corinne Bahr)
Clerical	\$ 75	(Debra Young)

Reimbursable Expenditures to be billed at cost as needed (printing, plotting, etc.)

Mileage: Federal Rate (currently 62.5 cents per mile)

## ATTACHMENT A:

Proposed Scope of Work, Qualifications and Staffing Provisions  
South Ogden City Municipal Planning and Consultation Contract

### PROOF OF REQUIRED INSURANCE COVERAGE

As illustrated in the insurance certificate below, Landmark Design carries professional liability Insurance insurable to a minimum of \$2,000,000 annual aggregate, general liability insurance of \$4,000,000 aggregate, and Workmen's Compensation Insurance of \$100,000. Certificates of insurance can be provided at no additional cost to the City.

ACORD		CERTIFICATE OF LIABILITY INSURANCE		DATE (MM/DD/YYYY) 06/27/2022	
<b>THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.</b>					
<b>IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).</b>					
<b>PRODUCER</b> UFFE TRAELEN, AGENT 1121 E 3900 S BUILDING C SUITE 119 State Farm SALT LAKE CITY, UT 84124-1261		<b>CONTACT</b> NAME: MICHELLE AUGASON PHONE (A/C, No, Ext): 801-262-9997 FAX (A/C, No): 801-263-3269 E-MAIL ADDRESS: michelle.augason.ruu0@statefarm.com			
<b>INSURED</b> LANDMARK DESIGN INC 850 W 400 W SUITE 104 SALT LAKE CTY UT 84101-4819		<b>INSURER(S) AFFORDING COVERAGE</b> INSURER A: State Farm Fire and Casualty Company INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:		<b>NAIC #</b> 25143	
<b>COVERAGES</b>		<b>CERTIFICATE NUMBER:</b>		<b>REVISION NUMBER:</b>	
<b>THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.</b>					
<b>INSR LTR</b>	<b>TYPE OF INSURANCE</b>	<b>ADDL SUBR INSR WVD</b>	<b>POLICY NUMBER</b>	<b>POLICY EFF (MM/DD/YYYY)</b>	<b>POLICY EXP (MM/DD/YYYY)</b>
A	<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: POLICY <input type="checkbox"/> PRO. <input type="checkbox"/> LOC	Y Y	94-06-3345-7 F	02/01/2022	02/01/2023
					<b>LIMITS</b> EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 179,700 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMPIOP AGG \$ 4,000,000 \$
A	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	Y Y	94-06-3345-7 F	02/01/2022	02/01/2023
					COMBINED SINGLE LIMIT (Ea accident) \$ 4,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> <b>UMBRELLA LIAB</b> <input type="checkbox"/> EXCESS LIAB DED <input type="checkbox"/> RETENTION \$	Y Y	94-CA-0531-F	08/25/2021	08/25/2022
					EACH OCCURRENCE \$ 3,000,000 AGGREGATE \$ 3,000,000 \$ WC STATU- TORY LIMITS <input type="checkbox"/> OTH ER <input type="checkbox"/>
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICE/ MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N/A			E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	<b>BUSINESS PROPERTY</b> VALUABLE PAPER & RECORDS ON PREMISE VALUABLE PAPER & RECORD OFF PREMISE	Y Y	94-06-3345-7 F	02/01/2022	02/01/2023
					\$185,400 \$50,000 \$15,000
<b>DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)</b>					
<b>CERTIFICATE HOLDER</b> South Ogden City 3950 S. Adams Avenue South Ogden, Utah 84403			<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE <i>Michelle Augason</i>		

ACORD 25 (2010/05)

The ACORD name and logo are registered marks of ACORD

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# STAFF REPORT



**SUBJECT:** Exception Requests Approval Process  
**AUTHOR:** Leesa Kapetanov  
**DEPARTMENT:** Administration  
**DATE:** December 6, 2022

## RECOMMENDATION

The Planning Commission recommends the amendments to the exception request process be approved.

## BACKGROUND

Staff has noticed that if and when a developer wants to request an exception, it is often before they make a formal submittal for a site plan review; however, the code states that an exception request 'shall' be made at the time of formal submittal. If they need to pay someone to draw the submittal documents, they want them to be as correct as possible. For example, if a developer wants an exception to the setback requirements, he wants to know if the City will grant the exception so the architect or engineer won't have to go back and change the drawings. Staff recommended that the language be changed to 'may', so the developer could submit the request before or at the time of formal submittal.

As staff was reviewing the proposed change with the Planning Commission, Commissioner Pruess asked a few questions about exceptions that had been granted e.g. how many, what kinds of exceptions, and so forth. He then suggested that if an exception was not specifically listed in 10-5.1A-10(A)(2), that it come before the Planning Commission for approval. This would cover everything referred to as "additional exceptions" in 10-5.1A-10(A)(2)(b)(5) which says: "Additional exceptions may be granted based on a formal request in writing by the applicant, stating specific reasons why the request does not impact the overall intent of this section, and is essential for success of the development."

## ANALYSIS

There are pros and cons to both methods of reviewing/allowing exceptions. I have listed a few below, and give Matt permission to add any others he may think are important to note:

Pros:

Takes pressure off the City Manager to make the decision

Creates a separation of power as the City Manager is also the person who must ultimately approve the site plan

Allows the Planning Commission to be aware of how the code is or is not working

Allows the insight of more than just one person in allowing exceptions

Cons:

May slow down the approval process for the developer

## **SIGNIFICANT IMPACTS**

None

## **ATTACHMENTS**

Proposed Code Changes

### **10-5.1A-10-3: Exceptions and Variances**

#### **1. Exceptions:**

1. Intent: To establish relief and flexibility in standards that may be administratively reviewed and approved, if certain criteria are met.
2. Eligible Applicant: Applicant is eligible to apply for an exception to this article upon submittal of an application for site plan approval, in cases that involve such standards as the following:

##### **1. Regulating plan requirements:**

1. Distribution of permitted subdistricts within one hundred feet (100') of required amount. (Substitution of subdistricts is not permitted.)
2. Block size within one hundred feet (100') of required dimensions and with the provision of a midblock pedestrianway. (Refer to section 10-5.1A-1 of this article.)
3. Street type requirements within one foot (1') of required dimensions. (Refer to section 10-5.1A-2 of this article.)
4. Open space requirement within one hundred feet (100') of required distance for no more than ten (10) units and with the availability of two (2) open spaces within that dimension. (Refer to sections 10-5.1A-1 and 10-5.1A-6 of this article.)
5. Building type requirements within one foot (1') of required dimensions. (Refer to section 10-5.1A-5 of this article.)

##### **2. Site plan requirements:**

1. Landscape requirements within one foot (1') of required dimensions. (Refer to section 10-5.1A-7 of this article.)
2. Parking and loading facilities within one foot (1') of required dimensions. (Refer to section 10-5.1A-8 of this article.)
3. Sign type requirements within one foot (1') of required dimensions. (Refer to section 10-5.1A-9 of this article.)
4. Building type requirements within one foot (1') of required dimensions. (Refer to section 10-5.1A-5 of this article.)

5. Additional exceptions may be granted based on a formal request in writing by the applicant, stating specific reasons why the request does not impact the overall intent of this section, and is essential for success of the development. Any exception request that exceeds the parameters listed above or is not included in the exceptions above must be heard and approved by the planning commission.

Proposed wording



3. Application Process Time Line: An application for exception ~~shall~~may be submitted before or concurrently with ~~the process seeking exception from~~ either the regulating plan approval or site plan approval.
  1. The staff review committee shall review and make recommendations to the city manager on the application for exception within ten business days ~~the same time line as the applicable process, regulating plan or site plan approval~~from receiving it.

2. The city manager or designee shall render a decision to approve or disapprove the application for exception within five business days from receiving recommendations from the staff review committee. ~~the same time line as the applicable process, regulating plan or site plan approval.~~
4. Variances: Refer to subsection 10-4-6C of this title for information on the variance process. (Ord. 16-07, 6-21-2016, eff. 6-21-2016)



## NOTICE AND AGENDA

### SOUTH OGDEN CITY COMMUNITY DEVELOPMENT AND RENEWAL AGENCY BOARD MEETING

TUESDAY, DECEMBER 6, 2022 – 6:00 P.M.

Notice is hereby given that the South Ogden City Community Development and Renewal Agency Board will hold a meeting on, Tuesday, December 6, 2022 beginning at 6:00 p.m. in the Council Chambers located at 3950 So. Adams Avenue, South Ogden, Utah. Any member of the board may be joining the meeting electronically.

- I. **CALL TO ORDER** – Chairman Russell Porter
- II. **CONSENT AGENDA**
  - A. Approval of June 21, 2022 CDRA Minutes
- III. **DISCUSSION/ACTION ITEMS**
  - A. Consideration of **CDRA Resolution 22-05** – Approving a Participation Agreement With Seasons on Riverdale LLC
- IV. **ADJOURN**

The undersigned, duly appointed City Recorder, does hereby certify that a copy of the above notice and agenda was posted to the State of Utah Public Notice Website, on the City's website (southogdencity.gov) and emailed to the Standard Examiner on December 5, 2022. Copies were also delivered to each member of the governing body.

  
Leesa Kapetanov, City Recorder

In compliance with the Americans with Disabilities Act, individuals needing special accommodations (including auxiliary communicative aids and services) during the meeting should notify the City Recorder at 801-622-2709 at least 48 hours in advance.



**MINUTES OF THE  
SOUTH OGDEN CITY COMMUNITY DEVELOPMENT  
AND RENEWAL AGENCY BOARD MEETING**

**TUESDAY, JUNE 21, 2022 – 6:00 P.M.**

**COUNCIL CHAMBERS, CITY HALL**

**BOARD MEMBERS PRESENT**

Chair Russell Porter, Board Members Sallee Orr, Brent Strate, Susan Stewart, Mike Howard, and Jeanette Smyth

**STAFF MEMBERS PRESENT**

City Manager Matthew Dixon, Assistant City Manager Doug Gailey, Parks and Public Works Director Jon Andersen, Police Chief Darin Parke, Parks and Public Works Director Jon Andersen, and Recorder Leesa Kapetanov

**OTHERS PRESENT**

Nate K., Curtis Groft, Justin Evrankaya, Lenette Girres, Elise Fortin, Bruce & Joyce Hartman

**Note: The time stamps indicated in blue correspond to the audio recording of this meeting, which can be found by clicking this link:**

[https://files4.1.revize.com/southogden/document\\_center/Sound%20Files/2022/CC220621\\_1805.mp3](https://files4.1.revize.com/southogden/document_center/Sound%20Files/2022/CC220621_1805.mp3)

**or by requesting a copy from the office of the South Ogden City Recorder.**

Motion from council meeting to enter CDRA Board Meeting:

01:24:29

**Council Member Strate moved to recess City Council meeting and convene as the Community Development and Renewal Agency Board. Council Member Howard seconded the motion. The voice vote was unanimous in favor of the motion.**

**I. CALL TO ORDER**

- Chair Porter called the meeting to order at 7:29 pm and moved to the consent agenda

**II. CONSENT AGENDA**

- A. Approval of May 17, 2021 CDRA Minutes**

- The chair called for a motion to approve the May 17, 2022 CDRA Minutes  
01:24:51

**Board Member Smyth so moved, followed by a second from Board Member Strate. Board Members Orr, Strate, Stewart, Howard, and Smyth all voted in favor of the motion.**

### **III. PUBLIC HEARING**

#### To Receive and Consider Comments on the Proposed FY2023 CDRA Budget

- Chair Porter called for a motion enter a public hearing to receive comments about the FY2023 CDRA budget  
01:25:10

**Board Member Howard so moved. Board Member Strate seconded the motion. All present voted in favor of the motion.**

- Chair Porter invited anyone who wished to come forward and comment. No one came forward. He then called for a motion to close the public hearing but allow online comments until 7:37.  
01:25:48

**Board Member Strate so moved, followed by a second from Board Member Howard. The voice vote was unanimous in favor of closing the public hearing.**

### **IV. DISCUSSION ITEM**

#### Terms of Participation Agreement With Young Automotive

- Staff overview  
01:26:04
- Comments by Curtis Catcott, representative for Young Automotive  
01:29:44

### **V. DISCUSSION/ACTION ITEMS**

#### A. Consideration of CDRA Resolution 22-02 – Dissolving the 36<sup>th</sup> Street Community Redevelopment Project Area

- Staff overview  
01:30:27
- Discussion/Questions by Board  
01:30:50
- Chair Porter called for a motion to approve CDRA Resolution 22-02  
01:33:28

**Board Member Smyth so moved. The motion was seconded by Board Member Strate. The chair made a roll call vote:**

Board Member Stewart -	Yes
Board Member Orr -	Yes

Board Member Strate - Yes  
Board Member Howard - Yes  
Board Member Smyth - Yes

**CDRA Resolution 22-02 was approved.**

**B. Consideration of CDRA Resolution 22-03 – Adopting the FY2023 CDRA Budget**

- Staff overview [01:33:51](#)
- There were no questions or comments by the Board
- Chair Porter called for a motion to adopt CDRA Resolution 22-03, adopting the FY2023 CDRA Budget [01:35:32](#)

**Board Member Strate so moved. The motion was seconded by Board Member Howard.  
The chair made a roll call vote:**

Board Member Smyth - Yes  
Board Member Howard - Yes  
Board Member Strate - Yes  
Board Member Orr - Yes  
Board Member Stewart - Yes

**The FY2023 CDRA budget was adopted.**

**C. Consideration of CDRA Resolution 22-04 – Approving a Letter of Intent With Young Automotive** [01:35:53](#)

- Since this item was reviewed and discussed earlier in the meeting, there was no more discussion at this time
- The chair called for a motion to approve CDRA Resolution 22-04 [01:36:15](#)

**Board Member Howard so moved. The motion was seconded by Board Member Strate.  
The chair made a roll call vote:**

Board Member Howard - Yes  
Board Member Strate - Yes  
Board Member Stewart - Yes  
Board Member Smyth - Yes  
Board Member Orr - Yes

**The motion stood.**





**CDRA Resolution No. 22-05**

**A RESOLUTION OF THE SOUTH OGDEN CITY COMMUNITY DEVELOPMENT  
AND RENEWAL AGENCY AUTHORIZING A PARTICIPATION AGREEMENT FOR  
THE CITY CENTER CRA**

**WHEREAS**, the South Ogden City Community Development and Renewal Agency (the “**Agency**”) is authorized to provide for project area development pursuant to Utah Code Ann. § 17C-1-101 et seq., the Limited Purpose Local Government Entities - Community Reinvestment Agency Act (the “**Act**”); and

**WHEREAS**, the Agency is authorized to enter into agreements with property owners, governmental entities, private entities and others; and

**WHEREAS**, the Agency finds the participation agreement between the Agency and the developer (the “**Participation Agreement**”) to be in harmony with and consistent with the Plan for the Project Area and in the best interests of the Agency and South Ogden City.

**THEREFORE, BE IT RESOLVED BY THE GOVERNING BOARD OF THE SOUTH OGDEN CITY COMMUNITY DEVELOPMENT AND RENEWAL AGENCY:**

1. The Agency, having reviewed the matter, hereby approves the Participation Agreement attached hereto as **Exhibit A** and authorizes the Chair and Secretary to execute the Participation Agreement on behalf of the Agency upon execution of the Participation Agreement by the counterparty to the agreement.
2. The Participation Agreement is approved with such additions, modifications, deletions or other changes as may be deemed necessary or appropriate and approved by the Chair of the Agency in cooperation with Agency legal counsel, whose execution thereof on behalf of the Agency shall conclusively establish such necessity, appropriateness and approval with respect to all such additions, modifications, deletions and/or other changes incorporated therein, so long as such changes are keeping with the intent and purpose of the Participation Agreement.
3. This Resolution shall take effect upon adoption.

**APPROVED AND ADOPTED** on the \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Russell L. Porter, Chair  
*South Ogden City Community Development  
and Renewal Agency*

***Attest:***

\_\_\_\_\_  
Leesa Kapetanov, Secretary

## **EXHIBIT A**

### Participation Agreement

**PARTICIPATION AGREEMENT by and between the SOUTH OGDEN  
CITY COMMUNITY DEVELOPMENT AND RENEWAL AGENCY and  
SEASONS ON RIVERDALE, LLC for the SOUTH OGDEN CITY CENTER  
COMMUNITY REINVESTMENT PROJECT AREA**

This Participation Agreement (the “**Agreement**”) is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_ 2022 (the “**Effective Date**”), by and among the SOUTH OGDEN CITY COMMUNITY DEVELOPMENT AND RENEWAL AGENCY (the “**Agency**”), a political subdivision of the State of Utah operating under the Utah Community Reinvestment Agency Act (the “**Act**”; § 17C-1-101 *et seq.*, or its predecessor statutes), and SEASONS ON RIVERDALE, LLC, a Utah limited liability company (“**Participant**”). Participant and the Agency may from time to time hereinafter be referred to individually as a “**Party**” and collectively as the “**Parties**.”

**1. SUBJECT OF AGREEMENT**

**1.1. Purpose of the Agreement**

The purpose of this Participation Agreement (the “**Agreement**”) is to carry out in part the Project Area Plan (the “**Plan**”) for the South Ogden City Center Community Reinvestment Project Area (the “**Project Area**”) by providing for incentives to entice Participant to develop a multi-family housing development in the Project Area (the “**Project**”), and to specify the terms and conditions pursuant to which the Agency and Participant will cooperate in bringing about such development, including funds the Agency will provide to assist in Participant’s development of the Project, which will benefit the Project Area and the City as a whole. A conceptual development plan for the Project is attached as **Exhibit A**.

**1.2. Agreement in the Best Interests of the City and Residents**

This Agreement is in the vital and best interests of South Ogden City, Utah (the “**City**”), and the health, safety and welfare of its residents, and in accord with public purposes. This Agreement is carried out pursuant to the Act.

**1.3. The Project Area**

The Project Area is located within the boundaries of the City. The exact boundaries of the Project Area are specifically and legally described in the Plan.

**1.4. Description of the Site**

The site of the Project is located within the Project Area on parcels consisting of approximately 4.7 total acres (the “**Site**”) that are owned by Participant. The Site is shown in detail on the site map, attached hereto as **Exhibit B**. The Site is only a portion of the Project Area. The Site is currently identified as Weber County Parcel Nos. 05-122-0030 and 05-139-0126.

## **1.5. Interlocal Agreements**

Subject to the terms of the interlocal agreements with South Ogden City, Weber County, and the Central Weber Sewer Improvement District (attached hereto as **Exhibits C, D, and E**, respectively) (together, the “**Interlocal Agreements**”), the Agency is entitled to receive, for a period of up to 20 years (the “**Tax Increment Term**”), a portion of the tax increment generated by the development within the Site (the “**Agency Share**”). Participant shall have no claim to interest earned by the Agency on any portion of the Agency Share. For clarity, the Agency Share consists of only those funds that are generated by taxes paid on development within the Site that are received by the Agency pursuant to the Interlocal Agreements; the Agency Share does not include any funds received by the Agency pursuant to the Interlocal Agreements due to development outside of the Site, funds currently held by the Agency, or funds received by the Agency from any other sources. The amount of Agency Share generated by the Site shall be calculated as shown on **Exhibit F**.

### **1.5.1. Commencement of Tax Increment Term**

The Interlocal Agreements allow the Agency to begin (or “trigger”) collecting the Agency Share beginning on January 1 of 2022 or 2023 in order to receive tax increment for the full Tax Increment Term. The Agency shall take such actions as may be necessary to trigger collection of the Agency Share beginning no later than January 1, 2023.

## **1.6. Description of the Project**

Participant shall develop the Project within the Site. Participant agrees that its total construction and improvements in the Site shall be no less than \$35,000,000 (the “**Investment**”). A portion of the Investment will be used to construct those infrastructure improvements listed on **Exhibit G** (the “**Infrastructure Improvements**”). Nothing in this Agreement shall be construed to require the Participant to proceed with the construction of or any other implementation of the Project or any portion thereof. The Agency hereby acknowledges that Participant may develop the Project in such order and at such rate and times as Participant deems appropriate within the exercise of its sole and absolute discretion. The Agency acknowledges that this right is consistent with the intent, purpose, and understanding of the Parties. Participant acknowledges that failure to develop the Project prior to the various performance deadlines described in this Agreement will cause Participant to be ineligible to receive the Incentive.

## **1.7. The Incentive**

### **1.7.1. Definitions**

- a. “**Commencement Date**” means December 31 of the year in which Participant achieves substantial completion of construction of the Project and receives a certificate of occupancy from South Ogden City for at least 180 residential units within the Site.
- b. “**Incentive**” means an annual payment from the Agency in an amount equal to eighty percent (80%) of the amount of the Agency Share, for a period of up to twelve (12) consecutive tax years, or until the total incentive payout reaches \$750,000 - whichever

occurs first; beginning with the first full tax year after the Commencement Date and ending no later than December 31, 2035.

c. “**Taxes**” means the real and personal property taxes paid by Participant on the Site.

#### **1.7.2. Agreement to Pay Incentive**

The Agency agrees to pay Participant the Incentive for each of the twelve (12) years following the Commencement Date but in no case for any period beyond December 31, 2035, subject to compliance with the terms and conditions of this Agreement.

### **1.8. Parties to the Agreement**

#### **1.8.1. The Agency**

The address of the Agency for purposes of this Agreement is:

South Ogden City Community Development and Renewal Agency  
3950 S. Adams Ave.  
South Ogden, Utah 84403  
Attention: South Ogden City Manager  
Email: mdixon@southogdencity.com

With a copy to:

Smith Hartvigsen, PLLC  
Attn: Adam S. Long  
257 East 200 South, Suite 500  
Salt Lake City, UT 84111  
Email: along@SHUtah.law

#### **1.8.2. The Participant**

Participant’s address for purposes of this Agreement is:

Seasons on Riverdale, LLC  
3697 South Riverdale Rd  
South Ogden, UT 84405  
Email: sean@asvalo.com

## **1.9. Prohibition against Certain Changes**

### **1.9.1. Representation by Agency**

Agency represents that the qualifications and identity of Participant are of particular concern, and that in reliance on Participant's qualifications and identity the Agency is entering into this Agreement. Accordingly, the transfer restrictions of this Section 1.10 represent a material inducement for Agency to enter into this Agreement.

### **1.9.2. Representation as to Development Intent**

Participant represents and agrees that its Investment in and use of the Project, and Participant's other undertakings reflected in this Agreement are and shall only be for the purpose of Participant's development of the Project and not for speculation in land holding or otherwise.

### **1.9.3. Assignment or Transfer of Agreement**

Participant represents and agrees for itself and its successors and assigns that Participant will not assign or transfer or attempt to assign or transfer all or any part of this Agreement, or any rights herein or obligations hereunder, during the term of this Agreement except as explicitly allowed herein or as agreed to in a writing signed by the Parties.

The foregoing notwithstanding, Participant may transfer its rights and obligations under this Agreement in connection with (a) the sale, exchange, issuance or redemption of a controlling interest in the Participant; (b) transfers of interests in either the Project, the Participant or this Agreement to persons or entities that, after the transfer, are under common control with or controlled by the Participant; (c) changes in the organizational form of the Participant; (d) a sale and leaseback or similar financing transaction of the Project; or (e) the granting of encumbrances, easements, covenants, conditions, restrictions or other similar rights or obligations in the Project; in each case without the Agency's prior written approval during the term of this Agreement; provided, however, that Participant must provide notice of the intended transfer to the Agency at least 60 days in advance of the actual transfer.

The attempted or actual assignment or delegation of this Agreement in violation of the above provisions is a material Default that shall be subject to the provisions of Article 5 of this Agreement.

Notwithstanding anything to the contrary contained in this Agreement, Participant's granting, pledging or otherwise transferring an interest in this Agreement, the payment of the Incentive as contemplated by this Agreement, the Project, or the Site or any portion thereof as collateral or security in connection with a financing transaction shall not constitute an assignment or transfer and shall not otherwise require the consent of the Agency.

### **1.9.4. Conveyance of Site Prior to Completion of Construction**

Prior to substantial completion of construction of the Project, Participant shall not sell, transfer, directly or indirectly, any Interest in the Site, except as set forth in Section 1.9.3. If, prior to



substantial completion of construction of the Project, any Interest in the Site is sold or transferred, Participant shall be deemed to have breached this Agreement, and the Agency City shall be relieved of any and all remaining obligations under this Agreement from the date of sale or transfer. For this purpose, "Interest in the Site" means any legal or beneficial interest in the Site, including but not limited to, those beneficial interests transferred in a deed, contract for deed, installment sales contract, or escrow agreement, the intent of which is the transfer of title by Participant at a future date to a purchaser.

#### **1.9.5. Conveyance of Site After Completion of Construction**

With any sale or transfer of the Site, Participant shall, with the consent of Agency, assign this Agreement to the purchaser of the Site or any undivided interest therein, on condition that: (a) such assignment shall only be permitted in connection with the sale of the Site, (b) Participant shall not be in default hereunder beyond any applicable notice or cure period, and (c) the form of the assignment shall both assign the rights and require the transferee to assume the responsibilities under this Agreement.

#### **1.9.6. Transfer to Tax-Exempt Organization**

Notwithstanding anything in this Agreement to the contrary, any attempt by Participant or its Agency-approved transferee or assignee to transfer any of the real or personal property within the Site to a tax-exempt organization or otherwise to exempt any of the taxable property within the Site from *ad valorem* property taxation without the prior written consent of the Agency will entitle the Agency, at its sole discretion, to immediately and without prior notice terminate this Agreement, cease further payments under this Agreement to Participant or its successors or assigns, and seek remedies, pursuant to Subsection 5.3.1., including repayment of all amounts paid to Participant under this Agreement. If an Interest in the Site is sold or transferred to a third-party unaffiliated with Participant, the subsequent sale or transfer of that Interest in the Site to a tax-exempt entity is not subject to the restrictions set forth in this Subsection 1.10.6.

#### **1.9.7. Continuing Obligations**

A permitted assignment of this Agreement that is associated with the conveyance of a partial Interest in the Site shall not relieve Participant from any and all obligations under this Agreement unless specifically agreed to in writing by the Agency. Except as otherwise provided herein, all of the terms, covenants, and conditions of this Agreement are and will remain binding upon Participant and its Agency-approved transferee or assignee until the expiration or termination of this Agreement.

#### **1.9.8. Foreclosure**

The transfer of the Site or any portion thereof pursuant to a foreclosure, judicial sale, or similar action, or under threat of such action, shall constitute a Default under this Agreement.

## **2. OBLIGATIONS OF THE PARTIES**

### **2.1. Payment of Incentive**

#### **2.1.1. Payment Obligation**

So long as Participant fulfills all of its obligations under this Agreement, the Agency will pay to Participant the Incentive. The Incentive for any given year shall not exceed eighty percent (80%) of the total amount of the Agency Share generated for that year and the cumulative amount of the Incentive paid to Participant shall not exceed \$750,000.00 (the “**Incentive Cap**”), although the total Incentive may be less than the Incentive Cap. The Agency shall make the payment to Participant representing the Incentive for the preceding year within sixty (60) days after the date on which all of the conditions precedent as described in Section 2.3 are met. Notwithstanding the foregoing, the Agency, in its sole discretion, may delay the final payment of the Incentive until all deadlines to contest or appeal the assessed value of taxable property within the Site have passed; in the event of such a decision by the Agency, the final Incentive payment shall be made no later than sixty (60) days after such deadlines have passed.

### **2.2. Sole Source of Funding for the Incentive**

The entirety of Participant’s Incentive contemplated in this Agreement will be funded solely by the Agency Share received by the Agency pursuant to the Interlocal Agreements generated solely by the Site. Participant is not, and shall not be, entitled to any other funds collected by the Agency for the Project Area or any other funds held by the Agency.

### **2.3. Conditions Precedent to the Payment of the Incentive to Participant**

In addition to other provisions in this Agreement, the Agency has no obligation to remit to Participant the Incentive unless and until all the following conditions precedent (each a “**Condition Precedent**” and together “**Conditions Precedent**”), as detailed in the following subsections, are satisfied:

#### **2.3.1. Agency is Entitled to Receive the Agency Share**

The Agency is not obligated to pay to Participant the Incentive unless the Agency is legally entitled to receive the Agency Share pursuant to the Interlocal Agreements. The Agency agrees not to amend the Interlocal Agreements in a way that would reduce, or would potentially reduce, the Agency Share available to pay the Incentive without the prior written consent of Participant.

#### **2.3.2. Agency has Actually Received the Agency Share Payment**

The Agency is obligated to pay to Participant the Incentive only to the extent the Agency has actually received the Agency Share payment(s) from the entity charged with collecting property taxes for the particular calendar year.

### **2.3.3. Operation of Project**

The Agency is not obligated to pay to Participant the Incentive unless Participant has commenced operation of the Project as described in Section 2.12 and has continuously operated the Project as described in Section 2.13.

### **2.3.4. Payment of Taxes**

Participant shall not receive any payments (including payments representing the Incentive) from the Agency for any period until the Agency has received documentation from Participant that all Taxes applicable to the Site have been paid by Participant. Notwithstanding the foregoing, Participant may at its cost petition the Weber County Board of Equalization to have the assessed valuation of the Site reduced; if Participant does initiate any such proceedings, it shall promptly notify the Agency in writing. Participant acknowledges that any reduction in assessed value of the Site will result in a corresponding reduction in the amount of the Incentive. If Participant's petition to contest the assessed valuation of the Site has not been resolved by the payment deadline for the Taxes, Participant shall pay the full assessment by that deadline. Upon the final determination of any proceeding or contest: (a) if the determination results in Participant owing additional Taxes, Participant shall immediately pay the Taxes due, together with all costs, charges, interest, and penalties incidental to the proceedings; and (b) if the determination results in Participant owing a lesser amount of Taxes than already paid, then Participant shall promptly notify the Agency, which shall adjust the amount of the Incentive for that year.

### **2.3.5. Request for Incentive**

The Agency is not obligated to pay the Incentive to Participant unless Participant has made a timely Request for Payment in writing pursuant to Section 2.5 for the year for which payment of the Incentive is sought.

## **2.4. Effect of Failure to Meet Conditions Precedent to Payment of Incentive**

In the event that the conditions precedent as described in Section 2.3 are not fully met by March 31 of the year following the year for which the Incentive is sought, and the Participant is thus not entitled to receive the Incentive attributable to that tax year, but is otherwise not in default under this Agreement, such failure shall not be a breach of this Agreement. Such failure shall result in the forfeiture by Participant of the Incentive for that particular year. Except as explicitly allowed herein, in no event will the Participant be subject to a clawback or repayment of any portion of the Incentive that has already been paid to the Participant, unless such repayment is necessary to correct for an administrative or clerical error that resulted in an overpayment to the Participant.

## **2.5. Request for Payment**

Participant shall submit in writing a request for payment to the Agency by March 31 of the year following the year for which the Incentive is being sought (the "**Request for Payment**"). Each Request for Payment shall be in substantially the form attached hereto as **Exhibit H** and shall include, at a minimum, the information listed in **Exhibit H**. In the event that the Agency determines that a Request for Payment is incomplete or otherwise deficient, the Agency shall

notify Participant within thirty (30) days of the Agency's receipt of the Request for Payment. A deficient Request for Payment that is submitted by the date established in this section shall be treated as timely so long as Participant provides an updated Request for Payment within fifteen (15) days of receiving notice of the deficiency from the Agency.

## **2.6. Payment of Taxes**

During the term of this Agreement, to the extent applicable, Participant and any of its successors-in-title to any portion of the Site agree to timely pay, prior to delinquency, all Taxes assessed against the Site to the extent owned by Participant or any successors-in-title; provided, however, that Participant expressly retains any and all rights to: (a) challenge, object to, or appeal any real property or personal property and other *ad valorem* taxes and assessments; and (b) petition for the reduction thereof.

## **2.7. Reduction or Elimination of Incentive**

The Parties agree that Participant assumes and accepts the risk of possible alteration of federal or state statute, regulation, or adjudication rendering unlawful or impractical the collection, receipt, disbursement, or application of the Incentive as contemplated in and by this Agreement. If the provisions of Utah law which govern the payment of the Incentive are changed or amended so as to reduce or eliminate the amount paid to the Agency under the Interlocal Agreements, the Agency's obligation to pay Participant the Incentive, as applicable, will be proportionately reduced or eliminated, but only to the extent necessary to comply with the changes in such law. Participant agrees and acknowledges that it has made such investigations as necessary and assumes all risk as to whether the Project Area, the Plan, the Budget, and the Interlocal Agreements were properly approved, adopted, and made effective. Notwithstanding any change in law, Participant specifically reserves and does not waive any right it may have to challenge, at Participant's sole cost and expense, the constitutionality of any law change(s) that would reduce or eliminate the payment of the Incentive to Participant and nothing herein shall be construed as an estoppel, waiver or consent to reduce or eliminate payment of the Incentive to Participant. Participant acknowledges, understands, and agrees that the Agency is under no obligation to challenge the validity, enforceability, or constitutionality of a change in law that reduces or eliminates the payment of Incentive to Participant, or to otherwise indemnify or reimburse Participant for its actions to independently do so; provided, the Agency will not oppose the Participant, if Participant challenges a change in the law that reduces or eliminates the payment of the Agency Share to the Agency.

## **2.8. Declaration of Invalidity**

In the event any legal action is filed in a court of competent jurisdiction that seeks to invalidate the Project Area, the Plan, or this Agreement or that otherwise seeks to or would have the possible result of reducing or eliminating the payment of the Incentive to Participant, the Agency shall provide written notice of such legal action to Participant. In the event such an action is filed, the Agency shall have no obligation to challenge that action or defend itself against such action but agrees not to enter into any settlement, consent, decree, or other resolution without first providing Participant a reasonable opportunity to intervene and defend its rights and privileges provided under this Agreement. If requested by Participant, the Agency may, at its sole discretion, take

such actions as may be reasonably required to defend such legal action and to address the grounds for any causes of action that could result in the reduction or elimination of the Incentive. Participant specifically reserves and does not waive any right it may have to intervene, at Participant's cost and expense, in any such legal action and challenge the basis for any causes of action or any remedy sought that would reduce or eliminate the payment of the Incentive to Participant, and nothing herein shall be construed as an estoppel, waiver or consent to reduce or eliminate payment of the Incentive to Participant. In the event that the court declares that the Agency cannot pay the Incentive, invalidates the Project Area or the Plan, the Interlocal Agreements, or this Agreement, or takes any other action which eliminates or reduces the amount of Incentive, and the grounds for the legal determination cannot reasonably be addressed by the Agency, the Agency's obligation to pay to Participant the Incentive in accordance with this Agreement will be reduced or eliminated to the extent required by law. The Participant at its sole and exclusive discretion may, without penalty, terminate its obligations under this Agreement if any court invalidates the Participant's right to receive the Incentive pursuant to this Agreement.

## **2.9. Dispute over Receipt of Payment of the Incentive**

In the event a dispute arises as to the person or entity entitled to receive the Incentive under this Agreement due to a claimed assignment of this Agreement by Participant or claimed successor-in-interest to this Agreement and successor-in-title to the Project, the Agency may withhold payment of the Incentive and may refrain from taking any other action required of it by this Agreement until the dispute is resolved either by agreement or by a court of competent jurisdiction and sufficient evidence of such resolution is provided to the Agency. The Agency shall be entitled to deduct from its payment of the Incentive any costs or expenses, including reasonable attorney fees, reasonably incurred by the Agency due to the dispute.

## **2.10. Nature of Participant's Obligations and Limitation**

The Agency shall have no right to compel Participant to install any necessary improvements or otherwise develop or construct the Project.

## **2.11. Development and Operation of the Project**

From and after substantial completion of construction of the Project, Participant shall continuously Operate the Project on the Site as a residential apartment facility for the full Term of this Agreement. For purposes of this Agreement, "**Operated**", "**Operate**", "**Operational**", or "**Operations**" of the Project shall mean when the following conditions are satisfied: (1) Participant has constructed at least one hundred (180) residential units within the Site; (2) Participant has constructed a building or buildings with total interior space of at least 120,650 net rentable square feet; (3) Participant has expended the entire Investment in construction of the Project, and (4) Participant continuously uses commercially reasonable efforts to develop the Project and to attract tenants to the Project. For purposes of this Section, Participant shall be deemed to have continuously Operated the Project if the foregoing standards are met or exceeded, notwithstanding temporary cessation of Operations for inspection, maintenance, repair, replacement, and/or events of *force majeure* or destruction.

#### **2.12. Commencement of Operations**

Operations of the Project as described in Section 2.11 shall begin no later than January 1, 2024. If Participant fails to commence Operations of the Project as required by this Section for any reason other than events of *force majeure*, the Agency shall have the right to terminate this Agreement upon written notice to Participant, subject, however, to any notice and cure periods set forth in Article 5.

#### **2.13. Continuing Operations**

After Operations of the Project have commenced, Operations of the Project shall continue throughout the term of this Agreement as set forth in Article 4. For purposes of this Section, the Project shall be considered to be in Operation if the Project is Operating as described in Section 2.11 of this Agreement.

#### **2.14. Cessation of Operations**

If after January 1, 2024 Participant ceases to Operate the Project for any reason other than events of *force majeure* or destruction (“**Cessation**”), such Cessation shall be a default subject to the provisions of Article 5.

#### **2.15. Funding Responsibility**

The Parties understand and agree that funding for the Investment comes entirely from Participant’s internal capital or from financing obtained by Participant. The Agency shall not be liable or responsible for providing, obtaining, or guaranteeing such financing.

### **3. ADDITIONAL TERMS**

#### **3.1. Investment**

Participant will at all times be responsible for its Investment in the Project Area. Recognizing the level of Investment by Participant, the Agency has determined that it is in the best interests of the residents of the City to provide the Incentive to Participant as an incentive to develop the Project and undertake the continued Operation requirements as contemplated in this Agreement.

#### **3.2. Responsibility for Development Plans and Permits**

The Agency shall not have any responsibility to obtain permits, licenses, or other approvals for any development within or relating to the Project Area, provided, however, Agency will reasonably cooperate in providing any consents or acknowledgments as may be required to obtain the same.

#### **3.3. Other Terms**

##### **3.3.1. City Land Use Authority**

Participant acknowledges that nothing in this Agreement shall be deemed to supersede, waive, or replace the City’s authority over land use, zoning, and permitting within the City.



### **3.3.2. Restriction Against Parcel Splitting**

During the Term, Participant shall not, without the prior written approval of the Agency subdivide the Site or consolidate the Site with other real property in such a way that any portion thereof would extend outside of the boundaries of the Project Area. Participant understands and acknowledges that these requirements are intended to avoid the creation by the Weber County Assessor of tax identification parcels that extend beyond the boundaries of the Project Area.

### **3.3.3. Deannexation**

Participant agrees that it will not vote or petition to remove, deannex, disconnect, or disincorporate the Project Area or any portion thereof from the City during the Term of this Agreement. In the event that the Site or a portion thereof is disconnected, deannexed, disincorporated, or otherwise removed from the municipal boundaries of the City, the Agency's obligations to pay the Incentive shall immediately cease. Further, Participant shall not seek to nor support any legislation that would (i) restrict or eliminate the City's land use authority over any portion of the Project Area or (ii) allow for any portion of the funds that comprise Agency Share to be paid to any other person or entity.

### **3.3.4. Limits on Liability**

In no event shall one Party be liable to the other(s) for consequential, special, incidental, indirect, exemplary, or punitive damages of any kind (including, but not limited to, loss of profits, loss of reputation, or loss of current or prospective business advantage, even where such losses are characterized as direct damages) arising out of or in any way related to the relationship or dealings between Participant and the Agency, regardless of whether the claim under which damages are sought is based upon contract, tort, negligence (of any kind), willful misconduct, strict liability or otherwise, and regardless of whether the parties have been advised of the possibility of such damages at the time of contracting or otherwise.

### **3.3.5. Local, State, and Federal Laws**

Each Party shall act in conformity with all applicable laws; provided, however, that unless otherwise addressed elsewhere in this Agreement, nothing herein shall limit the right of Participant to properly challenge any such law or the applicability of such law.

### **3.3.6. Rights of Access**

Representatives of the Agency shall have the right of reasonable access to the Site for purposes of inspecting Participant's compliance with this Agreement, with reasonable and prior written notice (but in no event less than 24 hours prior), and without charges or fees, during normal business hours or as otherwise agreed to in writing by Participant, subject, however, to the rules, regulations, security protocols and other access limitations for safety and security purposes as required by Participant.

### **3.3.7. Responsibility of the Agency**

The Agency shall not have any obligation under this Agreement other than those specifically provided for herein. Except as expressly provided for in this Agreement, nothing herein shall be construed as requiring the Agency to pre-approve or prejudge any matter, or as otherwise binding the Agency's discretion or judgment on any issue prior to an appropriate hearing (if required), review, or compliance with any other requirement.

### **3.3.8. Non-waiver of Governmental Immunity**

Nothing in this Agreement shall be construed as a waiver of any immunity, protection, or rights granted to the Agency under the Governmental Immunity Act of Utah, Utah Code § 63G-7-101, *et seq.*

## **4. EFFECT AND DURATION OF COVENANTS; TERM OF AGREEMENT**

The covenants, including but not limited to conformance with federal, local, and state laws, established in this Agreement shall, without regard to technical classification and designation, be binding on the Parties and any successors-in-interest during the term of this Agreement, which shall terminate on the date that is 180 days after the final payment is made to Participant pursuant to this Agreement, unless earlier terminated by written agreement of the Parties or pursuant to the terms of Article 5 (the “**Term**”); provided, the Parties shall continue to have the right to seek to enforce, or commence proceeding to enforce, the obligations of the other Party that arose prior to the termination of this Agreement. All of the rights and benefits associated with this Agreement shall only inure to the benefit of the Participant and any Agency-approved transferee or assignee.

## **5. DEFAULTS, REMEDIES, AND TERMINATION**

### **5.1. Default**

If either the Agency or Participant fails to perform or delays performance of any material obligation of this Agreement and fails to cure as provided for in this Article 5, such conduct constitutes a default of this Agreement (“**Default**”). The Party in default must immediately commence to cure, correct, or remedy such failure or delay and shall complete such cure, correction, or remedy within the periods provided in Section 5.3 hereof.

### **5.2. Notice**

If a Default under this Agreement occurs, the non-defaulting Party shall give written notice (a “**Default Notice**”) of the Default to the defaulting Party, specifying the nature of the Default. Failure or delay in giving such notice shall not constitute a waiver of any Default, nor shall it change the time of Default, nor shall it operate as a waiver of any rights or remedies of the non-defaulting Party; but the non-defaulting Party shall have no right to exercise any remedy hereunder without delivering the Default Notice as provided herein. Delays by either Party in asserting any of its rights and remedies shall not deprive the other Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.



### **5.3. Cure Period**

The non-defaulting Party shall have no right to exercise a right or remedy hereunder unless the subject Default continues uncured for a period of thirty (30) days after delivery of the Default Notice with respect thereto, or, where the default is of a nature which cannot be cured within such thirty (30) day period, the defaulting Party fails to commence such cure within thirty (30) days and to diligently proceed to complete the same. A Default which can be cured by the payment of money is understood and agreed to be among the types of defaults which can be cured within thirty (30) days. If the Default is not cured, or commenced to be cured if such default is of a nature which cannot be cured within thirty (30) days, by such Party within thirty (30) days of delivery of the Default Notice, such failure to cure shall be an Event of Default (“**Event of Default**”), and the non-defaulting Party may pursue such other rights and remedies as it may have, except, however, if Participant fails to commence or continue Operations as required by Sections 2.12 and 2.13, above, then in such case Agency shall be entitled to, as its sole remedy, immediately terminate this Agreement (for clarity, Agency may not commence an action against Participant for specific performance to commence or continue Operations). Further, in Event of Default by Participant, Agency’s sole remedy shall be to terminate this Agreement upon payment of any amounts that may be due from Participant to the Agency under this Agreement.

#### **5.3.1. Rights and Remedies**

Upon the occurrence of an Event of Default, the non-defaulting Party shall have all remedies provided for in this Agreement and shall have the right to obtain specific performance, unless otherwise limited by the express remedies set forth in this Agreement. Such remedies are cumulative, and the exercise of one or more of such rights or remedies shall not preclude the exercise, at the same or different times, of any other rights or remedies for the same Default or any other Default by the defaulting Party.

Notwithstanding to foregoing, the Agency shall not have to right to compel, through a remedy of specific performance or otherwise, the Participant to make any investment within the Project Area or to Operate the Project as contemplated by this Agreement.

#### **5.3.2. Legal Actions**

##### **5.3.2.1. Venue**

All legal actions between the Parties, arising under this Agreement, shall be conducted exclusively in the Second District Court for the State of Utah located in Weber County, Utah, unless they involve a case with federal jurisdiction, in which case they shall be conducted exclusively in the Federal District Court for the District of Utah.

##### **5.3.2.2. Service of Process**

Service of process on the Agency shall be made by personal service upon the Chairman or Executive Director of the Agency or in such other manner as may be provided by law. Service of

process on Participant shall be by personal service upon its Registered Agent, or in such other manner as may be provided by law, whether made within or without the State of Utah.

#### **5.3.2.3. Applicable Law**

The laws of the State of Utah shall govern the interpretation and enforcement of this Agreement.

### **6. GENERAL PROVISIONS**

#### **6.1. Authority**

Each Party hereby represents and warrants to the other that the following statements are true, complete, and not misleading as regards to the representing and warranting party: (a) such Party has full authority to enter into this Agreement and to perform all of its obligations hereunder; (b) those executing this Agreement on behalf of each Party do so with the full authority of the Party each represents; (c) this Agreement constitutes a legal, valid, and binding obligation of each Party, enforceable in accordance with its terms, subject to: (i) the effect of applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the rights of creditors generally; and (ii) the effect of the exercise of judicial discretion in accordance with general principles of equity.

#### **6.2. Notices, Demands, and Communications between the Parties**

Formal notices, demands, and communications between the Agency and Participant shall be sufficiently given if emailed and: (1) personally delivered; or (2) if dispatched by registered or certified mail, postage prepaid, return-receipt requested, to the principal offices of the Agency and Participant, as designated in Sections 1.9.1 and 1.9.2 hereof. Such written notices, demands, and communications may be sent in the same manner to such other addresses as either Party may from time to time designate by formal notice hereunder. Delivery of notice shall be complete upon making physical delivery or five days after mailing of the writing containing the notice.

#### **6.3. Severability**

In the event that any condition, covenant or other provision herein contained is held to be invalid or void by a court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect any other covenant or condition herein contained unless such severance shall have a material effect on the terms of this Agreement. If such condition, covenant, or other provision shall be deemed invalid due to its scope, all other provisions shall be deemed valid to the extent of the scope or breadth permitted by law.

#### **6.4. Nonliability of Officials and Employees**

No director, officer, agent, employee, representative, contractor, attorney, or consultant of the Parties hereto shall be personally liable to any other Party hereto, or any successor-in-interest thereof, in the event of any Default or breach by a Party hereto or for any amount which may become due to a Party hereto or to its successor, or on any obligations under the terms of this Agreement.

#### **6.5. Enforced Delay; Extension of Time and Performance**

In addition to the specific provisions of this Agreement, performance by either Party hereunder shall not be deemed to be in default where a “force majeure” event has occurred, which shall mean and include delays or defaults due to war, insurrection, strikes, lock-outs, riots, floods, earthquakes, fires, casualties, acts of God, acts of a public enemy, terrorist activity, pandemics, quarantine restrictions, freight embargoes, lack of transportation, unusually severe weather, or any other causes beyond the reasonable control or without the fault of the Party claiming an extension of time to perform. An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the Party claiming such extension is sent, whether on the part of the Agency’s Executive Director or its governing board or on the part of Participant, to the other Party within thirty (30) days of actual knowledge of the commencement of the cause. Time of performance under this Agreement may also be extended in writing by the Agency and Participant by mutual agreement.

#### **6.6. Approvals**

Whenever the consent or approval is required of any Party hereunder, except as otherwise herein specifically provided, such consent or approval shall not be unreasonably withheld or delayed.

#### **6.7. Time of the Essence**

Time shall be of the essence in the performance of this Agreement.

#### **6.8. Attorney Fees**

In the event of any litigation arising from or related to this Agreement, the prevailing Party shall be entitled to recover from the non-prevailing party all reasonable costs and attorney fees related to such litigation.

#### **6.9. Interpretation**

The Parties hereto agree that they intend by this Agreement to create only the contractual relationship established herein, and that no provision hereof, or act of either Party hereunder, shall be construed as creating the relationship of principal and agent, or a partnership, or a joint venture, or an enterprise between the Parties hereto.

#### **6.10. No Third-Party Beneficiaries**

It is understood and agreed that this Agreement shall not create for either Party any independent duties, liabilities, agreements, or rights to or with any third party, nor does this Agreement contemplate or intend that any benefits hereunder accrue to any third party.

#### **6.11. Headings**

Article and Section titles, headings or captions are inserted only as a matter of convenience and for reference and in no way define, limit, extend, or describe the scope of this Agreement or the intent of any provision hereof.

#### **6.12. Contra Proferentum**

This is an arm's-length Agreement: The Parties have read this Agreement and have executed it voluntarily after having been apprised of all relevant information and the risks involved and having had the opportunity to obtain legal counsel of their choice. Consequently, no provision of this Agreement shall be strictly construed against either Party.

#### **6.13. Further Assurances**

The Parties shall cooperate, take such additional actions, sign such additional documentation, and provide such additional information as reasonably necessary to accomplish the objectives set forth in this Agreement.

#### **6.14. Incorporation of Recitals and Exhibits**

All recitals and exhibits attached hereto are incorporated into this Agreement as if fully set forth herein.

### **7. DUPLICATION, INTEGRATION, WAIVERS, AND AMENDMENTS**

#### **7.1. Duplicate Originals**

This Agreement may be executed in duplicate originals, each of which shall be deemed an original. Email transmission of pdf-format signatures shall be considered original signatures and pdf-format scans of original documents shall be treated as original documents.

#### **7.2. Integration**

This Agreement (including its exhibits) constitutes the entire understanding and agreement of the Parties regarding the subject matter thereof. When executed by the Parties, this Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the Parties with respect to the subject matter thereof.

#### **7.3. Waivers and Amendments**

All waivers of the provisions of this Agreement must be in writing. This Agreement and any provisions hereof may be amended only by mutual written agreement between Participant and the Agency.

*[Remainder of page intentionally left blank; signature pages to follow]*

**“Agency”**

**SOUTH OGDEN CITY COMMUNITY  
DEVELOPMENT AND RENEWAL  
AGENCY**

By: \_\_\_\_\_  
Russell L. Porter, Chair

Attest:

By: \_\_\_\_\_  
Leesa Kapetanov, Secretary

**“Participant”**

**SEASONS ON RIVERDALE, LLC**

By: \_\_\_\_\_  
\_\_\_\_\_, its Manager

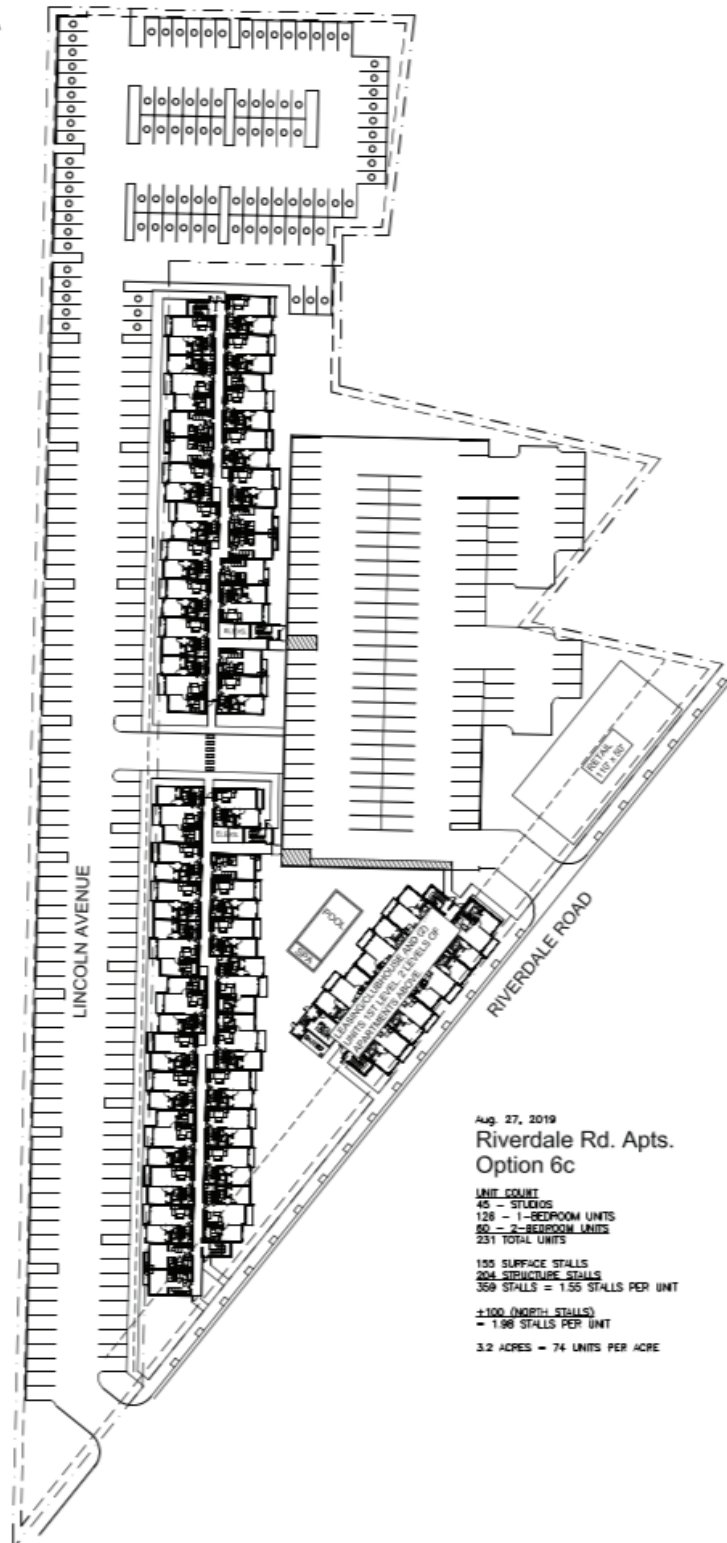
**Exhibit A**  
to Participation Agreement

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*Conceptual Development Plan*

**Exhibit A**  
to Participation Agreement

*Conceptual Development Plan*



**Exhibit B**  
to Participation Agreement

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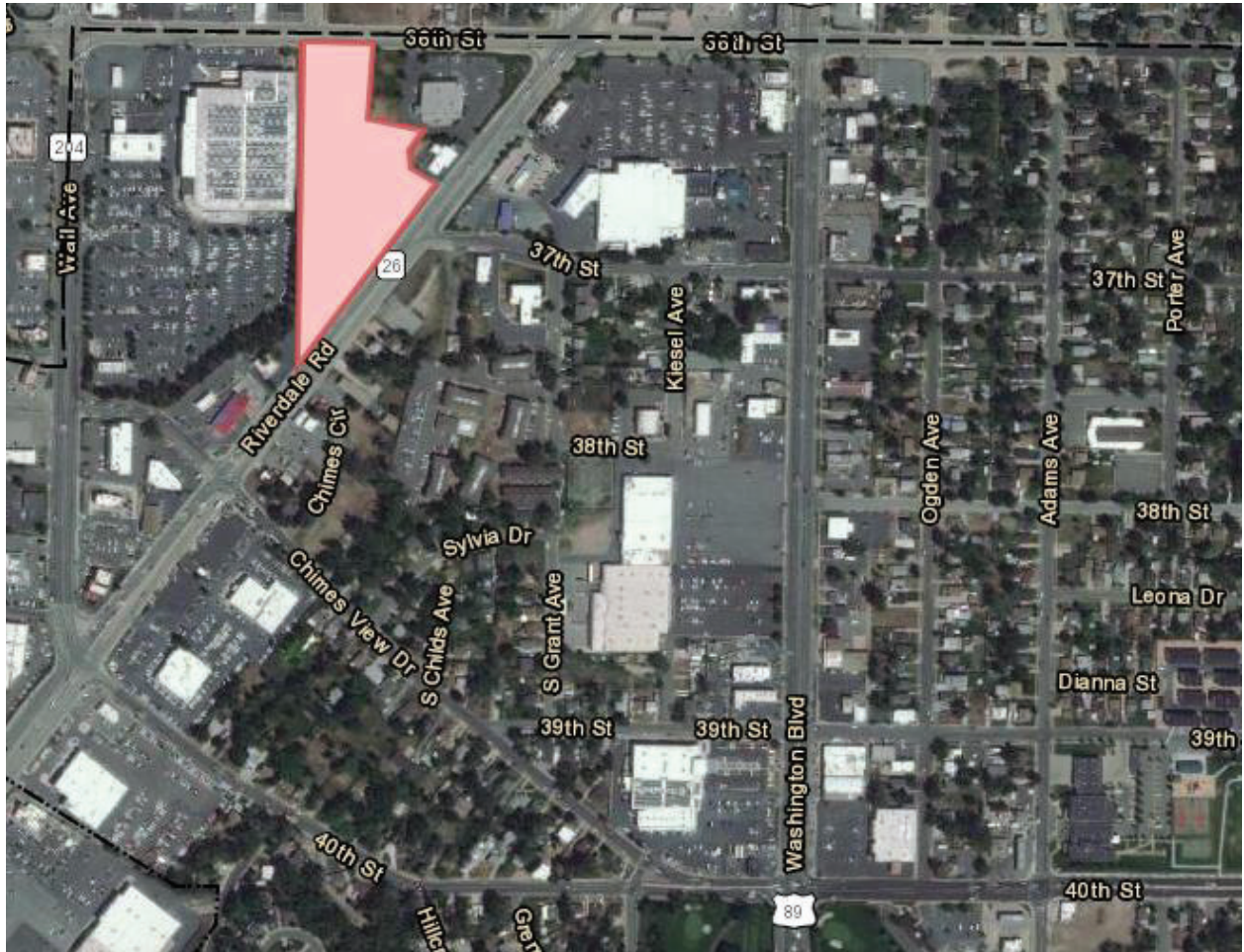
*“Site” Map*



**Exhibit B**  
to Participation Agreement

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*“Site” Map*



**Exhibit C**  
to Participation Agreement

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*South Ogden City Interlocal Agreement*

**Exhibit D**  
to Participation Agreement

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*Weber County Interlocal Agreement*

**Exhibit E**  
to Participation Agreement

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*CWSID Interlocal Agreement*

**Exhibit F**  
**to Participation Agreement**

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*Calculation of Agency Share*

The Agency Share for purposes of this Agreement shall be calculated as follows:

*((current taxable value of the Site) – (base year value of the Site)) = incremental value of the Site*

*(incremental value of the Site) \* (current tax rate) = tax increment*

*(tax increment) \* (participation percentage) = agency increment*

The calculation above shall be performed for each of the three Interlocal Agreements. The sum of the “agency increment” from those three calculations shall be the “Agency Share” for that particular year. For all calculations, the “base year value of the Site” shall be \$2,883,312.

The “participation percentage” for each Interlocal Agreement” is as follows:

City:	80%
County:	75%
CWSID:	80%

**Exhibit G**  
**to Participation Agreement**

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*Infrastructure Improvements* means the following located within or outside the Project Area:

1. improvements of every type that are to be dedicated to the City and are needed to facilitate the development of the Project Area;
2. improvements required as a condition of the approval of a development application for property within the Project Area (for purposes of this Exhibit A, “development application” means a complete application to South Ogden City for development of a portion of the Project Area including a Final Plat, Subdivision application, or any other permit (including, but not limited to, building permits), certificate, or other authorization from the City required for development within the Project Area);
3. improvements in the following categories that are installed or constructed within the Project Area, or which are installed outside of the Project Area and are necessary to enable the installation of the same type of improvements within the Site:
  - a. culinary water infrastructure
  - b. sanitary sewer improvements
  - c. storm water improvements;
  - d. utility infrastructure of every type including, without limitation, electric, gas, fiber, and other communications utilities;
  - e. road infrastructure, including without limitation, bridges and underpasses;
  - f. rail infrastructure;
  - g. street lighting and landscaping within public rights-of-way;

**Exhibit H**  
to Participation Agreement

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*Form of Request for Payment*

## REQUEST FOR PAYMENT

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To: South Ogden City Community Development and Renewal Agency  
3950 S. Adams Ave.  
South Ogden, Utah 84403  
Attention: South Ogden City Manager  
Email: mdixon@southogdencity.com

From: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Re: PARTICIPATION AGREEMENT by and between the SOUTH OGDEN CITY  
COMMUNITY DEVELOPMENT AND RENEWAL AGENCY and SEASONS ON  
RIVERDALE, LLC for the SOUTH OGDEN CITY CENTER COMMUNITY  
REINVESTMENT PROJECT AREA

Date of Request: \_\_\_\_\_

Calendar year for which request is being made: \_\_\_\_\_

As of December 31 of the year for which the request is being made:

- Total completed interior square footage of building(s) within the Site: \_\_\_\_\_
- Total number of residential units leased or available for lease: \_\_\_\_\_
- Total cost of installed Infrastructure Improvements: \_\_\_\_\_
- Total amount of property taxes paid by Participant: \_\_\_\_\_

Describe development within the Site during the year: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Describe Infrastructure Improvements completed during the year: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Include supporting documentation showing actual costs of Infrastructure Improvements completed during the year.**





# HIGHMARK CONSTRUCTION

1034 W RSI Drive, Suite 130  
Logan, UT 84321  
(435) 752-4775

11/18/2022

To Whom It May Concern,

Please see below for the summary of costs associated with the North Parking Lot area of the Seasons on Riverdale Project in South Ogden, UT.

Mobilization	\$7,500.00
Asphalt	\$70,552.29
Landscaping	\$25,000.00
Concrete Site Work	\$37,073.70
Electrical/Light Poles	\$12,289.00
Excavation/Subgrade	\$37,120.00
Storm Drain	\$21,468.86
Demo	\$51,012.36
Vinyl fencing	\$7,361.00
Rock Retaining Wall	\$62,056.56
Chain Link Fence	\$2,677.50
General Conditions	\$16,329.80
Overhead	\$7,257.69
Profit	\$14,515.38
Total	\$372,214.14

Thank you,

*Jules Spencer*

Assistant Project Manager  
Highmark Construction