



## MEMORANDUM

---

TO: Mayor and City Council

FROM: Matthew J. Dixon, City Manager

RE: **January 03, 2023 City Council Meeting**

---

### WORK SESSION

**Department Reports:** In preparation for the 2023 Strategic Planning Retreat, we will be hearing reports from each of the department directors during the next two council work sessions. This work session we will hear reports from Doug Gailey (Courts, HR, IT & Special Events) and Jon Andersen (Parks, Recreation, Building Inspection & Building Maintenance). These reports are meant to help you as members of the city council an opportunity to learn more about each department's accomplishments, the things they are currently focused on, and what needs, challenges, etc. they face in the coming 12-36 months.

### EMPLOYEE RECOGNITION

**Parks Department – Jon Andersen.** Jon will recognize Anthony Bell's recent promotion to Parks Crew Leader II. Jon has been working to help develop and prepare Anthony for this opportunity. Anthony is a natural leader, and this promotion is a nice recognition of his skills and abilities and the value he brings to the Parks Department.

### DISCUSSION/ACTION ITEMS

- **Ordinance 23-01 – Amending city code related to Exception Requests.** My recommendation is that the code be amended to require that all exception requests and the decisions made by staff related to the exception requests be forwarded to the Planning Commission. I believe this meets the intent of the Planning Commission's (PC) recommendations (that the PC knows the types of exceptions being requested and the decisions being made by staff) and does not unnecessarily slow down the development review process.

This agenda item was on the council's previous agenda (Dec. 6, 2022) for discussion. Based on the council's discussion on Dec. 6, staff has added code language that will now require reporting of all exception requests and decisions to the PC. This will ensure that the PC is aware of the types of exception requests being made and the types of exceptions being granted. That will enable the PC the ability to monitor the requests to know if additional code

---

E [mdixon@southogdencity.com](mailto:mdixon@southogdencity.com)

O 801-622-2702

F 801-622-2713

3950 Adams Ave. Suite 1

South Ogden City, UT 84403

[SouthOgdenCity.com](http://SouthOgdenCity.com)

Follow Us:



amendments should be reviewed/discussed (i.e., if the same types of exceptions are consistently being requested, maybe the city should consider making amendments to the code).

Based on the council discussion on Dec. 6, staff also prepared process flow charts (see packet) showing how the process currently works and how it would change if the PC recommendations are approved. You'll notice that there is not a lot of change by way of the process, however, the flow chart does not illustrate the time involved with each process. **In my opinion, this is the strongest argument in favor of keeping the process we currently have.** It is my recommendation that the code be amended to require the reporting to the PC but not authorize the PC as the land use authority to review and decide exception requests. Below is the same information provided in the Dec. 6 packet.

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 Vlasic, 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 Vlasic 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.

- ***Resolution 22-47 – Approving an agreement with Landmark Design for planning services.*** This agenda item was tabled on Dec. 6, 2022. Staff has reviewed the agreement and the questions that came up during the council discussion. The agreement has been updated is ready for council action.
- ***Resolution 23-01 – Approving an agreement with Utah Department of Public Safety for use of grant funds.*** The state recently approved legislation (UCA 53-21-102, 103) that requires all public safety entities in the state, provide mental health services and established that providers provide periodic screenings, assessments, and that the provider can dispatch services within 12 hours of a critical incident. In 2022 the legislature funded \$5M in one-time money to help public safety agencies the ability to implement a qualifying program. Our police department applied for and was awarded a grant in the amount of \$26,690. The grant was approved based on the city working with First Responders First (FRF). FRF has been vetted by the state and determined qualified to provide the required services. This grant will fund the program for the first year and will be available for 62 employees and 49 spouses (111 total) as well as retired first responders and their spouses. Future program funding will either need to come from other state/federal grants or the city’s general fund.



This grant is very much in line with several of the council's strategic initiatives and goals. Chief Parke has prepared a good Staff Report (see packet) on this agenda item and will be available to answer any questions you may have regarding this grant and the program.

- **Resolution 23-03 – Approving a Franchise Agreement with VAIX, Inc. for fiber network.** Vaix, Inc. (DBA Senawave Communications) is a Utah-based internet service provider. They are working to extend their fiber network to service some of the apartment complexes in South Ogden. They could potentially expand (depending on demand) to other residential and business areas in the City.

## ARTS COUNCIL MEETING

- **Heritage Trail Monuments.** The Historical Content Sub-Committee met in November and developed a list of potential monuments (see list in packet) for this project. Below is a list of the funding/committed to this project so far. The city council has indicated that you would like to request additional funds from RAMP in the 2023 cycle to add to the monuments. Given the available funds, and with the 2023 RAMP cycle in mind, the council will be asked to decide what monuments you'd like to see installed first. One idea may be to request funding to help the city install as additional 2 or 3 monuments. By way of reference, each monument purchased and installed is estimated to cost between \$25k and \$30k.

### Heritage Trail Donations/Contributions

▪ 2022 RAMP	\$48,216
▪ Emma Eccles Jones Foundation	\$20,000
▪ South Ogden City	\$20,000
▪ Sons of Utah Pioneers	\$10,000
▪ Bank of Utah	\$ 7,500
▪ Goldenwest Credit Union	<u>\$ 5,000</u>

Total: \$110,716

- **South Ogden Days RAMP Grant** - For the city to apply for RAMP grant funding for South Ogden Days, the city's Arts Council must first review the request and provide direction to staff that the city should apply for grant funding. The recommendation, as in previous years, is that the city apply for funding to help pay for the entertainer(s) for South Ogden Days. The staff recommendation is that the city apply for \$25,000 to support South Ogden Days entertainment for 2023.

## DISCUSSION/ACTION ITEMS

---

**E** [mdixon@southogdencity.com](mailto:mdixon@southogdencity.com)

**O** 801-622-2702

**F** 801-622-2713

3950 Adams Ave. Suite 1

South Ogden City, UT 84403

[SouthOgdenCity.com](http://SouthOgdenCity.com)

Follow Us:



- **Weber County RAMP Grant applications.** During this discussion item we will review the following city projects for which we will be seeking RAMP funding. During the last discussion on 2023 RAMP application the direction from the council was that the 40<sup>th</sup> Street Skatepark would be the No. 1 priority with the Meadows Park Playground No. 2 and Heritage Trail No. 3 and South Ogden Days No. 4.
  - **40<sup>th</sup> Street Skatepark.** Due to some delays in getting soils test results, the design for the skatepark has been delayed. Having said that, the design team has put together a very preliminary, very rough design concept and estimated costs sheet for a 15,000 sq. ft. skatepark (see packet). For the sake of having something for the 2023 RAMP grant cycle, this discussion will center around general design concepts and, more importantly, funding for the project.
  - **Meadows Park Playground.** The design team has prepared the updated Master Plan for the park. As per the council's direction, the playground and the basketball court have been swapped (see plan in packet). Staff also provided an estimate of probable costs for the entire park. During this discussion staff will be looking for direction on what the council would like to apply for through RAMP. Do you want to put in both playgrounds or one of the playgrounds?

## CLOSED EXECUTIVE SESSION

**Character and Competence:** The council will convene in a short Executive Session in accordance with state law (UCA 52-4-205(1)(a)).

---

**E** [mdixon@southogdencity.com](mailto:mdixon@southogdencity.com)

**O** 801-622-2702

**F** 801-622-2713

3950 Adams Ave. Suite 1

South Ogden City, UT 84403

[SouthOgdenCity.com](http://SouthOgdenCity.com)

Follow Us:





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

**TUESDAY, JANUARY 3, 2023, 5PM**

Notice is hereby given that the South Ogden City Council will hold their regularly scheduled work session at 5 pm Tuesday, January 3, 2023. 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**

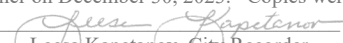
**II. REVIEW OF AGENDA**

**III. DEPARTMENT REPORTS**

- A.** Assistant City Manager Doug Gailey- Courts, HR, IT, and Special Events
- B.** Public Works Director Jon Andersen- Parks, Recreation, Building Inspections, and Building Maintenance

**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 30, 2023. 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 24 hours in advance.



## NOTICE AND AGENDA SOUTH OGDEN CITY COUNCIL MEETING

TUESDAY, JANUARY 3, 2023, 6 PM

Notice is hereby given that the South Ogden City Council will hold their regularly scheduled council meeting at 6 pm Tuesday, January 3, 2023. 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 Strate

#### II. EMPLOYEE RECOGNITION

Recognition of Promotion of Anthony Bell to Parks Crew Leader II

- 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 December 6, 2022 Council Minutes
- B. Set Date for Public Hearing (January 17, 2022 at 6 pm or as soon as the agenda permits)  
To Receive and Consider Comments on Proposed Amendments to the FY2023 Budget

**VI. DISCUSSION / ACTION ITEMS**

- A. Consideration of **Ordinance 23-01** - Amending Code for Exception Requests
- B. Consideration of Previously Tabled **Resolution 22-47** – Approving and Agreement With Landmark Design for Planning Services
- C. Consideration of **Resolution 23-01** – Approving an Agreement With Utah Department of Public Safety for Use of Grant Funds
- D. Consideration of **Resolution 23-02** – Approving a Franchise Agreement With VAIX Inc. for Fiber Network

**VII. RECESS INTO SOUTH OGDEN ARTS COUNCIL MEETING**

See separate agenda

**VIII. RECONVENE AS SOUTH OGDEN CITY COUNCIL**

**IX. DISCUSSION ITEMS**

- A. Discussion/Direction on RAMP Grant Applications

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

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

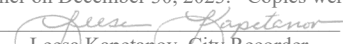
**XI. RECESS INTO CLOSED EXECUTIVE SESSION**

In Accordance With 52-4-205(1)(a) to discuss the character, professional competence, or physical or mental health of an individual;

**XII. RECONVENE CITY COUNCIL MEETING**

**XIII. 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 30, 2023. 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 24 hours in advance.



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

TUESDAY, DECEMBER 6, 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

#### 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, Police Chief Darin Parke, and Finance Director Steve Liebersbach

#### OTHERS PRESENT

Senator Ann Millner, Representative Katy Hall, Representative Rosemary Lesser

**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/CC221206\\_1802.mp3](https://files4.1.revize.com/southogden/document_center/Sound%20Files/2022/CC221206_1802.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 5:02 pm and called for a motion to begin the meeting 00:00:00

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

#### II. REVIEW OF AGENDA

- Council Member Orr had several questions about the CDRA item 00:00:29

37  
38 **III. DISCUSSION WITH STATE LEGISLATORS**

- 39 • All those present introduced themselves

40 00:01:48

41 A. Report on Great Things Happening in South Ogden

- 42 • City Manager Dixon gave a visual presentation of great things happening in South Ogden  
43 (see Attachment A) 00:02:58

44  
45 B. Reports From Legislators

- 46 • Senator Ann Millner 00:26:18  
47 • Questions/Comments 00:28:41  
48 • Representative Rosemary Lesser  
49 00:32:27  
50 • Questions/Comments 00:33:11  
51 • Representative Katy Hall  
52 00:38:11  
53 • Discussion with Legislators  
54 00:39:35

55  
56  
57 **IV. ADJOURN**

- 58 • At 6:00 pm, Mayor Porter called for a motion to adjourn the work session

59  
60  
61 **Council Member Stewart so moved, followed by a second from Council Member Strate. All**  
62 **present voted aye.** 00:58:17

## 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

### MEMBERS OF THE PUBLIC PRESENT

Sean Alibrando, coaches, parents, and members of the Jets' Mighty Mites, and Pee Wee Little League Football Teams

**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/CC221206\\_1908.mp3](https://files4.1.revize.com/southogden/document_center/Sound%20Files/2022/CC221206_1908.mp3)

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

## I. OPENING CEREMONY

### A. Call To Order

- At 6:08 pm, Mayor Porter called the meeting to order and entertained a motion to begin  
00:00:00

**Council Member Smyth so moved. The motion was seconded by Council Member Strate. 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 Orr led everyone in the Pledge of Allegiance.

## II. PRESENTATION

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

- Mayor Porter announced this item would be postponed until the rest of the Jets' teams arrived 00:00:56

### III. PUBLIC COMMENTS

- Mayor Porter invited anyone who wished to comment to come forward. No one commented. He gave those online until 6:19 to submit comments.

### IV. RESPONSE TO PUBLIC COMMENT

- Not applicable at this time

### V. CONSENT AGENDA

#### A. Approval of November 15, 2022 Council Minutes

- Mayor Porter asked if there were any changes or corrections to the minutes. Council Member Stewart noted some corrections. The mayor then entertained a motion to approve the consent agenda with the corrections.

00:01:31

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

### VI. DISCUSSION / ACTION ITEMS

#### A. Consideration of Ordinance 22-21 – Setting the 2023 City Council Meeting Schedule

- Staff overview 00:02:50
- There was no discussion on this ordinance
- Mayor Porter called for a motion to approve Ordinance 22-21

00:06:40

**Council Member Strate so moved. The motion was seconded by Council Member Howard. 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

**Ordinance 22-21 was adopted.**

- Note: The agenda incorrectly called this ordinance out as Ordinance 20-20; however, the ordinance itself was correctly numbered as Ordinance 20-21. The minutes show the correct number although the recording refers to Ordinance 20-20.

**B. Consideration of Resolution 22-46 – Amending and Re-Adopting the Electronic Meeting Policy for City Meetings**

- Staff overview 00:03:43
- Council discussion 00:04:34
- During discussion, Council Member Stewart pointed out an incorrect date in the resolution.
- Mayor Porter called for a motion to adopt Resolution 22-46 with the corrections that were discussed 00:07:09

**Council Member Strate so moved, followed by a second from Council Member Howard. The mayor asked if there was further discussion.** Council Member Strate asked what the context of the incorrect date was. He was told that was the date when the electronic meeting ordinance was first adopted. **The mayor made a roll call vote:**

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

**Resolution 22-46 was adopted.**

**C. Consideration of Resolution 22-47 – Approving an Agreement With Landmark Design for Planning Services**

- Staff overview 00:09:46
- Discussion 00:11:10
- Mayor Porter called for a motion to table Resolution 22-47 00:18:30

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

- The mayor stated that no public comments had been made online 00:18:40

- Mayor Porter announced they would return to Item II on the agenda, Recognition of the Jets' Teams

## II. PRESENTATION

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

- The mayor and staff congratulated the two teams, and then invited each team member to come forward as their names were called

00:18:44

## VI. DISCUSSION / ACTION ITEMS (continued)

### D. Discussion on Canceling December 20, 2022 City Council Meeting

- Discussion 00:26:00
- The mayor called for a motion to cancel the December 20, 2022 council meeting 00:26:33

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

## VII. DISCUSSION ITEMS

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

- Staff overview 00:26:49
- Discussion 00:32:35
- The council determined that the code should not be amended as shown in the packet, but that it should be amended so that any exceptions are reported to the Planning Commission and City Council. Staff should place the amendments on the next agenda for approval.

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

- Mayor Porter called for a motion to enter a CDRA meeting 01:09:27

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

See separate minutes

235 **IX. RECONVENE CITY COUNCIL MEETING**

236 Motion from Community Development and Renewal Agenda Board Meeting:  
237 02:13:32  
238

239 **Board Member Smyth moved to adjourn the CDRA Board meeting and reconvene as the South**  
240 **Ogden City Council. The motion was seconded by Board Member Strate. The vote was**  
241 **unanimous in favor of the motion.**  
242  
243  
244

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

246 **A. City Council Members**

- 247 • Council Member Howard- 02:13:41
- 248 • Council Member Orr- 02:14:18
- 249 • Council Member Smyth - 02:15:13
- 250 • Council Member Stewart- 02:15:39
- 251 • Council Member Strate- 02:17:38
- 252

253 **B. City Manager** 02:19:44  
254

255 Additional Comments by Council Member Orr  
256 02:26:57  
257


258 **C. Mayor** 02:28:48  
259  
260  
261  
262

263 **VI. ADJOURN**

- 264 • At 8:38 pm, Mayor Porter called for a motion to adjourn the meeting  
265 02:30:30  
266

267 **Council Member Howard so moved, followed by a second from Council Member Strate. The**  
268 **voice vote was unanimous in favor of the motion.**  
269  
270  
271

272 I hereby certify that the foregoing is a true, accurate and complete record of the South Ogden City Pre-Council  
273 Work Session and Council Meeting held Tuesday, December 6, 2022.  
274

275   
276 Leesa Kapetanov, City Recorder

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

277  
278  
279  
280  
281  
282  
283  
284  
285  
286  
287  
288  
289  
290  
291  
292  
293  
294  
295  
296  
297  
298  
299  
300  
301  
302  
303  
304  
305  
306  
307  
308  
309  
310  
311  
312  
313  
314  
315  
316  
317  
318  
319

## ATTACHMENT A

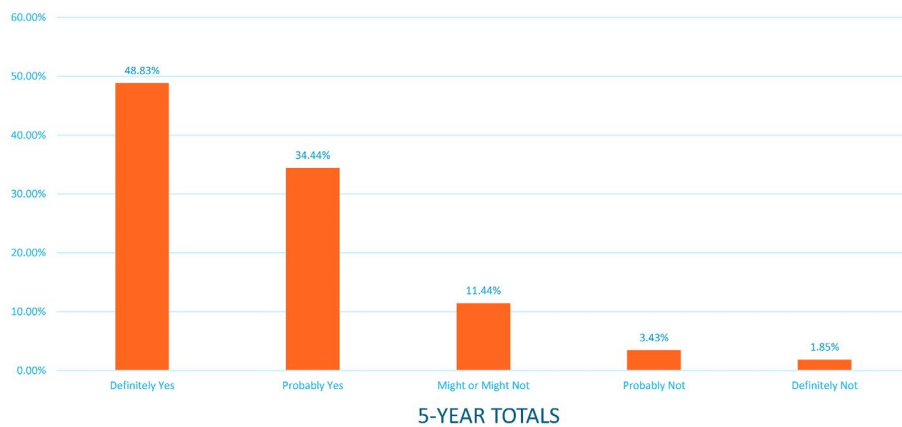
Presentation by City Manager Dixon



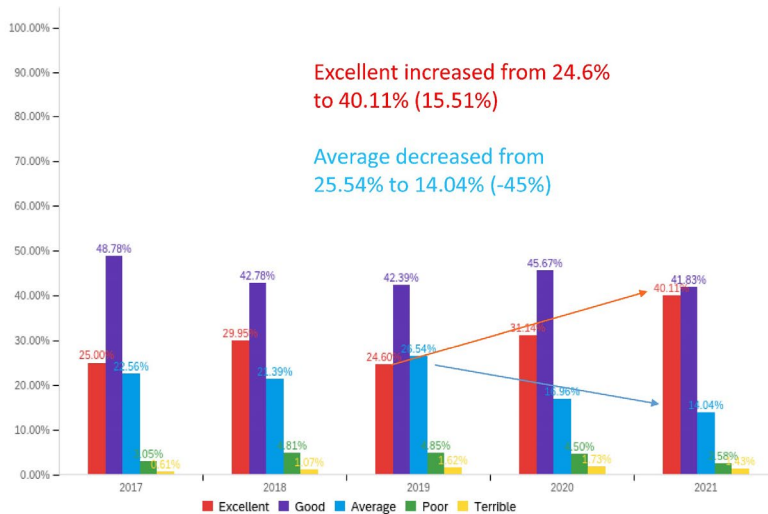
# South Ogden City

December 2022

## RECOMMEND SOUTH OGDEN?

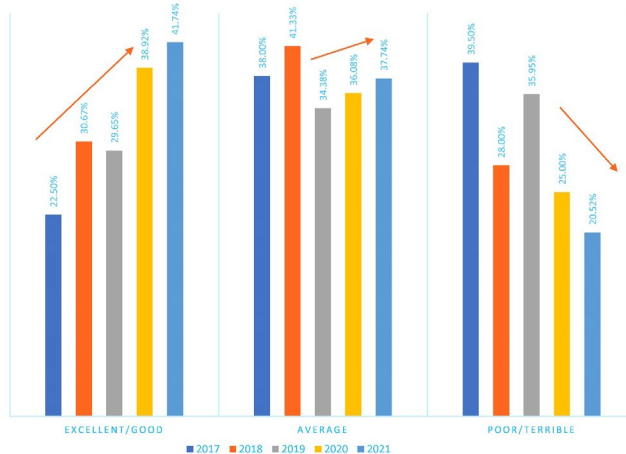


## EXPERIENCE - CITY PARKS?



- Burch Creek \$6.3M
- Club Heights \$1.1M
- 40<sup>th</sup> Street \$227K
- Friendship \$500K
- Skatepark Design
- Meadows Plan
- Nature Park Trail
- Club Heights \$193K

## QUALITY OF CITY STREETS?

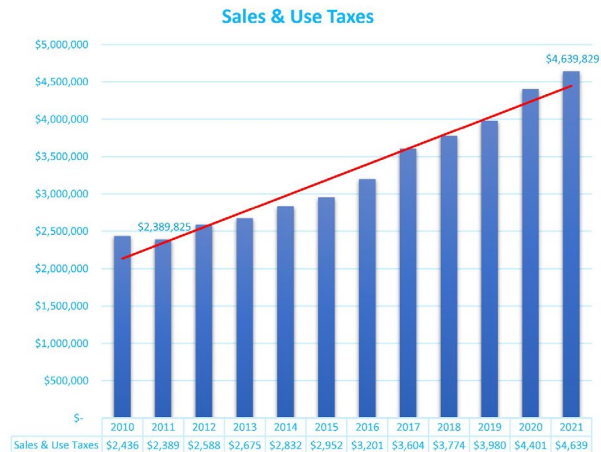


- \$3.8M over last three years
  - 15 miles slurry/chip
  - 5.5 miles new asphalt
  - 2023 3 miles overlays
- 40<sup>th</sup> Street Widening
- 40<sup>th</sup> & Chimes Rebuild

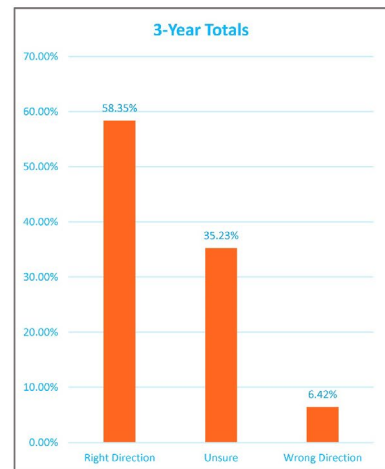
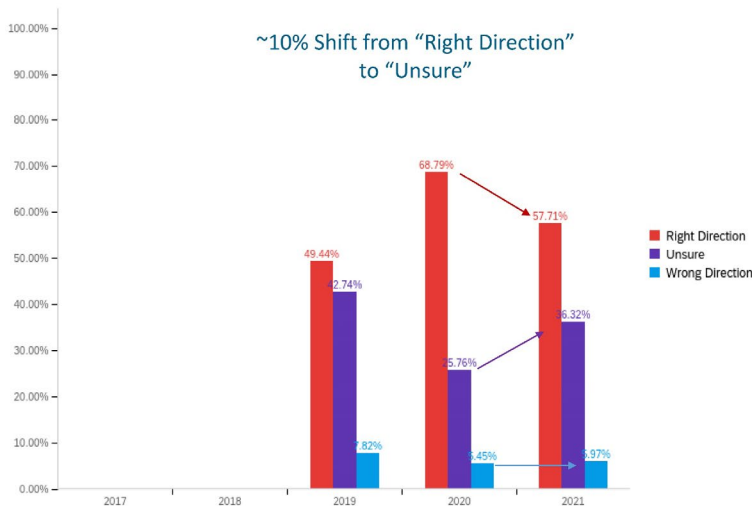
# ECONOMIC DEVELOPMENT

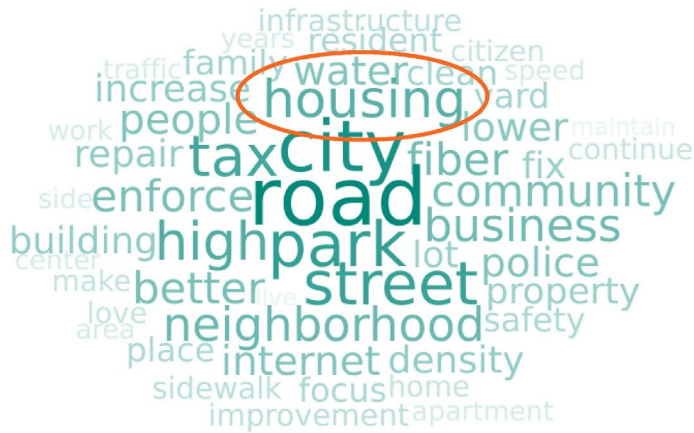


- DEVELOPMENT-FRIENDLY
- FORM-BASED CODE
- ECONOMIC DEV. STRATEGY
- YOUNG AUTOMOTIVE (JOBS & SALES TAX)
  - SUBARU
  - SUB. EXPANSION
  - MAZDA
  - \$30M SUBARU NEW INVESTMENT
- COSTCO
  - SITE/PARKING
- HINCKLEY COMMONS
- OGDEN CLINIC HEADQUARTERS
  - VACATE ROW/TRAIL CONNECTION
- NORTHERN UT REHAB
- NEW HOUSING PROJECTS



# RIGHT OR WRONG DIRECTION?





**SOUTH  
OGDEN**



# HOUSING...



- **ULCT Principles for Housing Policy**
  - Does the proposed policy respect the role of local government?
  - Does the proposed policy result in good planning outcomes?
  - Does the proposed policy result in reduced housing prices to the home buyer/renter?
- **Cities plan for housing we don't build housing and therefore cannot be punished for market forces out of our control**
- Housing policies should be made based on reliable data not anecdotes
- **ULCT Survey Data:**
  - 2019-2021 – cities permitted more than 100,000 housing units (majority were multi-family) with an additional 93,000+ entitled awaiting permits
  - Housing gap has shrunk from 56,000 to 31,000 in 4 years (slowing market)
- **S. Ogden issued 644 permits from 2011-2021 (556 multi-family & 86 single-family)**  
– WCHAA 2022 STUDY
- S. Ogden is doing its part (6.4% supply & 6.7% of pop.). 3<sup>rd</sup> most multi-family units in Weber County from '10 to '21 – WCHAA 2022 STUDY
- **S. Ogden recognized as “exception” by allowing multi-family throughout form-based code** – WCHAA 2022 STUDY

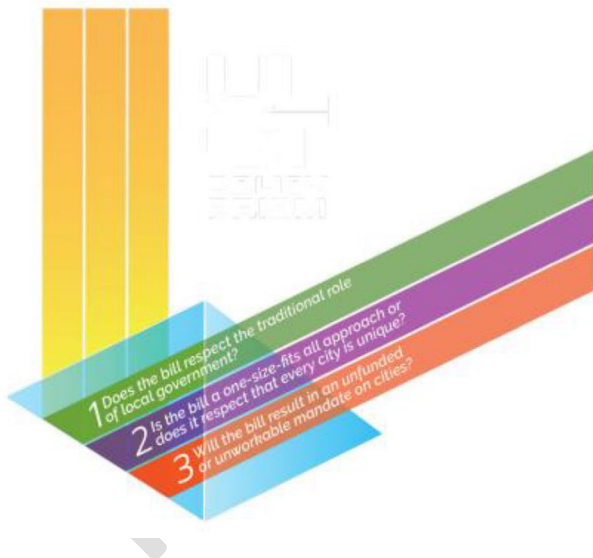
Perceived problem: planning, zoning, public clamor, 462	PRC proposal	ULCT concerns	ULCT counter proposal, Board endorsed frame	LPC survey results to date (Sep 12)
I) “public clamor” part 1: GP & zoning (legislative actions)	A) Make general plans binding & zoning administrative; B) by right MIH development when GP calls for MIH	A1) Moves zoning map to GP; A2) courts would say zoning is legislative; A3) neuter residents; B) by right development lacks infrastructure	1) Raise referendum signature (HB 462) thresholds for MIH 2) 2/3 majority makes significant MIH rezone non-refer 3) “Guiding Growth”	All PRC proposals are <b>very concerning</b> ; referendum changes are <b>very comfortable</b>
II) “public clamor” part 2: subdivisions (admin actions)	See A and B above; PRC referred to ULCT proposal as “big deal”	1) State law allows public input on admin land use acts but lacks clarity on process	1) 2 step subdivision process in state law <b>SYSTEMIC CHANGE</b> 2) Clarify public input 3) Leg body does not make sub decision	<b>In-person LPC:</b> <b>Somewhat comfortable</b>
III) HB 462 MIHP non-compliance	A) Withhold B&C funds, B) allow plaintiff to sue city, get attorneys fees	A) Precedent of limits on B&C (which is insufficient now); B) Precedent; what would standing & remedy be?	1) Make city receipt of “5 <sup>th</sup> 5 <sup>th</sup> ” portion tied to HB 462 compliance 2) Tight “rip cord” for non-compliant cities 3) State Infra Bank	All PRC proposals are <b>very concerning</b> ; more incentives are <b>somewhat comfortable</b>

Perceived problem: local land use processes, fees	PRC proposal	ULCT concerns	ULCT counter proposal, Board endorsed frame	LPC survey results to date (as of Sep 12)
IV) “local land use process takes too long”	A) Redlines deemed approved after 3 reviews if applicant “materially complies”; B) shot clocks with fee refunds after clock	A) Deemed approved means applicant won’t fix redlines B) delay often due to applicant (see ULCT Oct 22 data)	1) Subdivision proposal would streamline admin land use process <b>SYSTEMIC CHANGE</b> 2) <b>Data shows city review timing</b> ; projects are different scale, size 3) OPRO review panel	PRC proposals are <b>very concerning</b> ; expedited process was <b>somewhat concerning</b>
V) “local gov’t won’t make a decision” (i.e. dev. agreements)	Deemed approved after X time	A) Applicant will have no reason to work with city B) bad projects move	1) Deemed <b>denied</b> after time frame to trigger appeal to move process (PRC dislikes “denied”)	Deemed approved is <b>Somewhat concerning</b>
VI) Role & accounting of development fees	A) Put dev. fees in restricted accounts; B) only use for development services	A) Won’t account for year-to-year diffs B) already do studies C) how to account for admin costs?	1) None; how would this produce MIH? 2) Transparency on real estate transaction price (realtor, materials, etc.)	<b>Somewhat concerning</b> ( <b>ULCT letter to State Auditor in spring 2022</b> ); <b>very comfortable</b> w/real estate price disclose

Perceived problem: infrastructure, dev. standards, STRs	PRC or other proposal	ULCT concerns	ULCT counter proposal, Board endorsed frame	LPC survey results to date (as of Sep 12)
VII) Infrastructure: funding	Other UEOC: Expand PIDs as “Developer Infra District” (DIDs)	A) Must have local gov’t approval for new mill levy for PID B) Reviewing DID now	1) State Infra. Bank 2) DID TBD 3) 5 <sup>th</sup> 5 <sup>th</sup>	<b>Very comfortable</b> on SIB, <b>somewhat comfortable</b> on new \$; <b>very concerning</b> on PIDs
VIII) Infrastructure: development standards  Note: <b>water flow</b> standard at UEOC	Consistent infra standards for ALL public improvements	A) One size misfits all (soil, geology, connect to other roads, etc.)	1) Consistent standards for residential roads (base, width, etc.) w/some local flexibility ( <i>negotiations ongoing</i> )	<b>Very concerning</b> on uniform standards; <b>somewhat comfortable</b> on consistent w/flex
IX) Short-term rentals	They see no impact on housing; concerned about more regs on prop. rights	A) 19,000+ STRs (Gardner) impacts housing availability B) neighborhood QOL C) equity w/hotels D) health, safe, welfare	1) Clarify local regulatory authority & revenue; 2) sales tax req’ts 3) ensure compliance w/state & local law	<b>Very comfortable</b> on more reg. authority; <b>very concerning</b> with state mandated STRs in residential zones w/o local approval
X) Economic development incentives	1) Tie housing plans & econ. dev. 2) RDA “sweep”	A) Need to consider redevelopment B) small economic dev C) rural, low-income	1) HB 151, SAP model 2) TIF bill (audit) 3) Let RDA database work (start 6/22)	Surveyed <b>HB 151</b> concepts in 2021

Perceived problem (13-17 non-CHA):	PRC or other proposal	ULCT concerns	ULCT counter proposal, Board endorsed frame	LPC survey results to date (as of Sep 12)
XI) Maximize owner-occupied density	NA	A) Apts don't create home ownership B) Zone for density but market builds wood; parking cost	1) Incentivize condos 2) Incentivize building from wood to steel 3) Incentivize parking for high density	Very comfortable with revolve loan for parking for aff h/density
XII) IADUs; HB 82 ('21)	Clarify standards	A) Confirm ordinances	1) TBD	None
XIII) Annexation	Working with ULCT	A) Clarity on process	1) Working with PRC	None
XIV) Property tax	NA; others proposed limiting local prop. tax or state value capture	A) Ensure property tax revenues for services & infra for housing	1) Review 55% for multi-fam housing 2) Preserve tools	Very concerned; state value capture in transport. corridors
XV) Public assets	NA	A) Need data first before policy	1) Gather data of public property	Somewhat comfortable w/mandate
XVI) Homelessness	NA	A) HB 440; respond to lessons learned B) All cities contribute to mitigation fund	1) Facilitate permanent support housing 2) Mitigation fund	Very comfortable incentivizing PSH; somewhat comfortable require large counties have homeless services
XVII) Moratorium use	Address cities who "stack" moratoriums	A) City pauses growth for valid reasons (i.e. water shortage)	TBD: Clarify timing; role of moratoriums & pending ordinances	None

## ULCT POLICY PRISM



1. Does the bill respect the traditional role of local government?
2. Is the bill a one-size-fits all approach or does it respect that every city is unique?
3. Will the bill result in an unfunded or unworkable mandate on cities?

## CONTACT INFORMATION



- Mayor Russ Porter: 801.725.3090, [rporter@southogdencity.gov](mailto:rporter@southogdencity.gov)
- Councilmember Sallee Orr: 801.645.7558, [sorr@southogdencity.gov](mailto:sorr@southogdencity.gov)
- Councilmember Brent Strate: 801.660.9432, [bstrate@southogdencity.gov](mailto:bstrate@southogdencity.gov)
- Councilmember Jeanette Smyth: 801.726.0801, [jsmyth@southogdencity.gov](mailto:jsmyth@southogdencity.gov)
- Councilmember Susan Stewart: 385.279.6299, [sstewart@southogdencity.gov](mailto:sstewart@southogdencity.gov)
- Councilmember Mike Howard: 801.502.2664, [mhoward@southogdencity.gov](mailto:mhoward@southogdencity.gov)
- City Manager, Matt Dixon: 801.388.4667, [mdixon@southogdencity.gov](mailto:mdixon@southogdencity.gov)

Not Applicable

**Staff Review Committee**  
*Decides "Additional Exceptions"*  
Process Flow Chart

Applicant submits for  
Site Plan approval

Staff Review Committee (SRC)  
evaluates application against  
city codes/standards

SRC determines  
codes/standards are met

SRC determines plan does not  
comply with codes/standards

Site Plan Approved

Site Plan  
Denied

Applicant requests  
Exceptions under  
10-5.1A-10-3

Applicant submits  
request for  
"Additional  
Exceptions"

Request(s) not  
within  
parameters in  
code

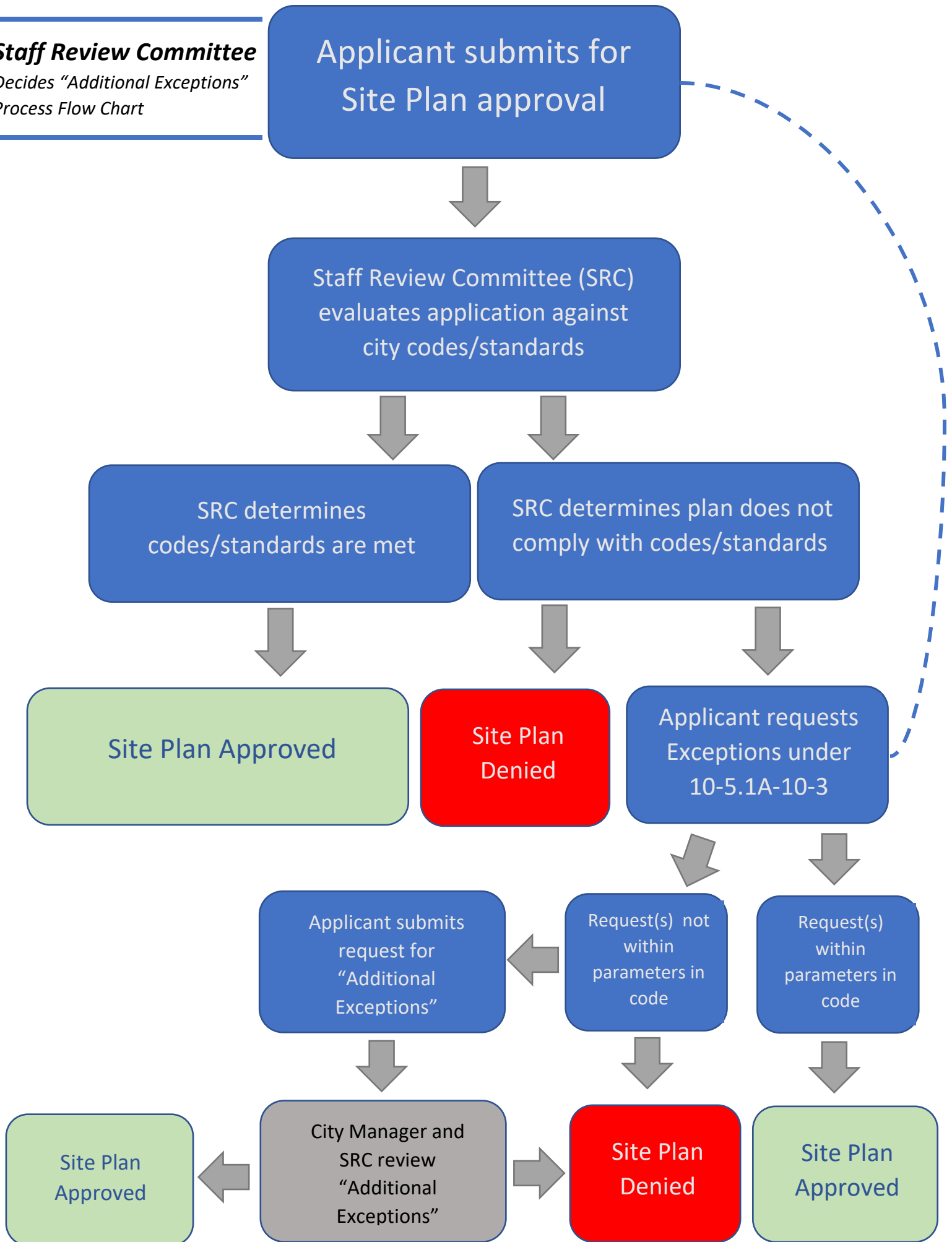
Request(s)  
within  
parameters in  
code

Site Plan  
Approved

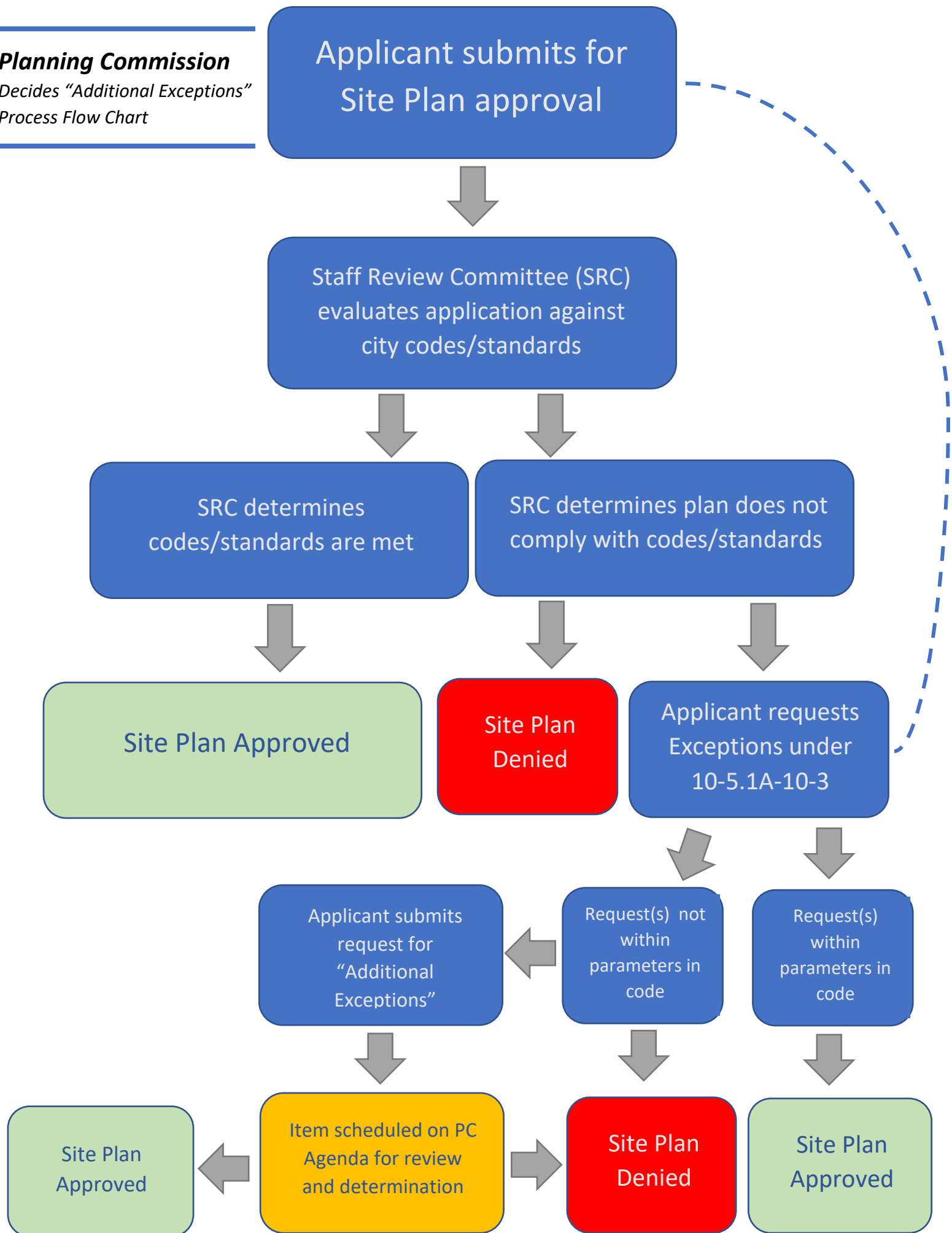
City Manager and  
SRC review  
"Additional  
Exceptions"

Site Plan  
Denied

Site Plan  
Approved



**Planning Commission**  
*Decides "Additional Exceptions"*  
Process Flow Chart



## **ORDINANCE NO. 23-01**

### **AN ORDINANCE OF SOUTH OGDEN CITY, UTAH, REVISING AND AMENDING SOUTH OGDEN CITY CODE 10-5.1A-10 and 10-5.1B-10, REQUIRING STAFF TO REPORT ANY REQUESTS FOR EXCEPTIONS TO THE PLANNING COMMISSION; MAKING NECESSARY LANGUAGE CHANGES TO THE CITY CODE TO EFFECT THOSE CHANGES; AND ESTABLISHING AN EFFECTIVE DATE FOR THOSE CHANGES.**

#### **SECTION I - RECITALS:**

**WHEREAS**, South Ogden City (“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, and UC §10-3-701, the governing body of the city may exercise all administrative and legislative powers by resolution or ordinance; and,

**WHEREAS**, in conformance with the provisions of UCA §10-9a-501 the governing body of the city may enact a zoning ordinance establishing regulations for land use and development within the city; and,

**WHEREAS**, South Ogden City has previously adopted and promulgated a city zoning ordinance; and,

**WHEREAS**, the City Council finds that the Planning Commission has recommended that all requests for exceptions exceeding the parameters of 10-5.1A-10-3 and 10-5.1B-10-3 be heard and considered by the Planning Commission rather than the City Manager; and,

**WHEREAS**, the City Council finds that rather than following the recommendation of the Planning Commission they instead will require that staff report all requests for exceptions and decisions on the requests to the Planning Commission; and,

**WHEREAS**, the City Council finds that South Ogden City Code, Title 10, Chapter 5.1 and various of its subsections should be amended by adding new language governing these changes for exception requests; and,

**WHEREAS**, the City Council finds that the requirements should be effective upon passage of this Ordinance; and,

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF SOUTH OGDEN CITY, UTAH** that the City Code be changed and amended:

**AMENDED SECTION:**

Upon the adoption of this Ordinance, Title 10, Chapter 5.1 of the South Ogden City Code is readopted with the changes set out in **Attachment "A"**, which is incorporated herein, to read as indicated.

The foregoing recitals are incorporated herein.

**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 any prior Ordinances and Resolutions, with their specific 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 not render any 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 3<sup>rd</sup> day of January, 2023, and after publication or posting as required by law.

DATED this 3<sup>rd</sup> day of January, 2023.

SOUTH OGDEN CITY

---

Russell L. Porter, Mayor

ATTEST:

---

Leesa Kapetanov, CMC  
City Recorder

## **ATTACHMENT "A"**

### **ORDINANCE NO. 23-01**

An Ordinance Of South Ogden City, Utah, Revising And  
Amending South Ogden City Code 10-5.1a-10 And 10-5.1b-10, Requiring Staff To Report  
Any Requests For Exceptions To The Planning Commission; Making Necessary Language  
Changes To The City Code To Effect Those Changes; And Establishing An Effective  
Date For Those Changes.

03 Jan 23

### **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. Staff shall report any exception request and its decision to the planning commission at their next meeting.

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)

### **10-5.1B-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 mid-block pedestrianway (refer to section 10-5.1B-1 of this article).
    3. Street type requirements within one foot (1') of required dimensions (refer to section 10-5.1B-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 10-5.1B-1 and 10-5.1B-6 of this article).
    5. Building type requirements within one foot (1') of required dimensions (refer to section 10-5.1B-5 of this article).
  2. Site plan requirements:
    1. Landscape requirements within one foot (1') of required dimensions (refer to section 10-5.1B-7 of this article).
    2. Parking and loading facilities within one foot (1') of required dimensions (refer to section 10-5.1B-8 of this article).
    3. Sign type requirements within one foot (1') of required dimensions (refer to section 10-5.1B-9 of this article).
    4. Building type requirements within one foot (1') of required dimensions (refer to section 10-5.1B-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. Staff shall report any exception

request and its decision to the planning commission at their next meeting

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 of receiving it.~~the same time line as the applicable process, regulating plan or site plan approval.~~
  2. The City Manager or designee shall render a decision to approve or disapprove the application for exception within five business days from receiving recommendationse from the staff review committee.~~the same time line as the applicable process, regulating plan or site plan approval.~~
2. Variances: Refer to subsection 10-4-6C of this title for information on the variance process. (Ord. 18-04, 5-15-2018, eff. 5-15-2018)

## **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 3<sup>rd</sup> day of January, 2023, 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 3<sup>rd</sup> day of January, 2023.

**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.

03 Jan 23

## AGREEMENT

THIS AGREEMENT, made and entered into the \_\_ day of \_\_\_\_\_, 2023, 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 Samuel Taylor, President of Landmark Design, Inc. or Mark Vlasic, 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: Samuel Taylor or Mark Vlasic

(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. Ownership and Archive of Work Products: Consultant releases all claims to ownership of any completed products or deliverables produced as part of this Agreement. Such products and deliverables shall be the property of South Ogden City and can be utilized at the discretion of South Ogden City.

12. 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. This agreement may only be modified or amended in writing and executed by authorized individuals of Consultant and Client.

13. 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 \_\_\_\_\_  
Samuel Taylor, 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

---

## 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

---

### 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 Planner and Landscape Architect**

Mark will serve as Principal Planner and Project Manager 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

---

### Sam Taylor, PLA, ASLA

#### **Principal and President**

Sam brings more than seven years of experience in planning, design and project management to the project. 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

---

#### 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

---

### 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		
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.						
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).						
PRODUCER UFFE TRAELEN, AGENT 1121 E 3900 S BUILDING C SUITE 119 State Farm SALT LAKE CITY, UT 84124-1261			CONTACT NAME: MICHELLE AUGASON PHONE (A/C, No, Ext): 801-262-9997 FAX (A/C, No): 801-263-3269 E-MAIL ADDRESS: michelle.c.augason.ru0@statefarm.com			
INSURED LANDMARK DESIGN INC 850 W 400 W SUITE 104 SALT LAKE CTY UT 84101-4819			INSURER(S) AFFORDING COVERAGE INSURER A: State Farm Fire and Casualty Company NAIC # 25143 INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:			
COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:						
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.						
INSTR LTR	TYPE OF INSURANCE	ADOL SUBR INSR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <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-JECT <input type="checkbox"/> LOC	Y Y	94-06-3345-7 F	02/01/2022	02/01/2023	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 - COMP/OP AGG \$ 4,000,000
A	AUTOMOBILE LIABILITY <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	UMBRELLA LIAB EXCESS LIAB DED RETENTION \$ CLAIMS-MADE	Y Y	94-CA-0531-F	08/25/2021	08/25/2022	EACH OCCURRENCE \$ 3,000,000 AGGREGATE \$ 3,000,000
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICEMEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N				WC STATUTORY LIMITS \$ E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	BUSINESS PROPERTY 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
DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)						
CERTIFICATE HOLDER South Ogden City 3950 S. Adams Avenue South Ogden, Utah 84403			CANCELLATION 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> © 1988-2010 ACORD CORPORATION. All rights reserved.			

ACORD 25 (2010/05)

The ACORD name and logo are registered marks of ACORD

1001486 132849.8 01-23-2013

# STAFF REPORT



**SUBJECT:** Resolution 23-01 - First Responder Mental Health  
**AUTHOR:** Darin Parke  
**DEPARTMENT:** Police and Fire  
**DATE:** January 3, 2023

---

## RECOMMENDATION

This is brought forward to inform elected officials of State Laws requiring agencies have a First Responder Mental Health Program (FRMH), a State Grant awarded to begin a FRMH, information about first responder mental health, and the continuation of the program.

## BACKGROUND

Assisting with employee mental health and preparing for succession is part of the City's Strategic Plan, which reads:

- 2.1 Improve access and quality of Mental Health Resources for employees.
- 2.2 Identify area for improvement with the City's Wellness program.
- 2.3 Prepare Succession Plans for departments

In 2021, the state legislature recognized the need for additional resources to address FRMH, and made state funds available for such programs. South Ogden applied, but did not receive an award.

In the 2022 State legislative session laws regarding FRMH were passed. One law, 53-21-102, reads in part:

“Effective 5/4/2022

53-21-102. Mental health services -- Requirement to provide --- Confidentiality.

- (1) Every first responder agency within the state shall provide or make available mental health resources to:
  - (a) all first responders;...”

A second law, 53-21-103, identifies the minimum services a FRMH must provide to include, periodic screenings, assessments, and availability for direct FRMH services within 12 hours of a critical incident. It also requires access for spouses and retired first responders, and made additional grant funding available for the implementation, or expansion of FRMH program.

Lastly, the law directs adoption of Administrative Rules to set parameters for services and administration of the chapter. As a result, Utah Administrative Rule R714-570 was made.

\$5,000,000.00 in one-time state grant funding was made available during the 2022 legislative general session to start or expand a FRMH program.

South Ogden applied for, and was awarded, \$26,690.00 in one-time funding to begin a FRMH program.

## ANALYSIS

Critical incidents experienced by first responders can be life threatening, traumatic and highly stressful. Experiencing critical incidents can result in depression, Post Traumatic Stress Disorder, or other mental health conditions. Left untreated such mental health issues can have negative outcomes such as poor work performance, leaving the profession, family life disruption, and suicide.

The divorce rate nationally remains at approximately 50%, while the divorce rate among first responders is 60-70%.

In just the past few years mental health, particularly suicide, among first responders and veterans began receiving focused scrutiny. On March 6, 2019, U.S. President Donald J. Trump signed an executive order titled “National Initiative to Empower Veterans and End Veterans Suicide” to establish a national task force to prevent veteran suicide. The executive order, also called the PREVENTS Initiative, will pull together the heads of departments across the government as well as in the community. It wasn’t until 2020 the U.S. House and Senate approved funding for the Helping Emergency Responders Overcome (HERO) Act. This legislation directs the Centers for Disease Control and Prevention (CDC) to create a Public Safety Officer Suicide Reporting System to increase our knowledge of these events.

Data shows the suicide rate among police officers can be as high as 19 per 100,000 officers, and 18 out of every 100,000 Firefighters. The public kill themselves at a rate of 13 per 100,000. The annual number of police suicides is over three times higher than the number of officers fatally shot each year.<sup>ii</sup>

Just 3-5 percent of the nation’s 18,000 law enforcement agencies have suicide prevention training programs in place, according to the National Police Suicide Foundation.

The President of the Ruderman Family Foundation is quoted as stating:

“First responders are heroes who run towards danger every day in order to save the lives of others. They are also human beings, and their work exerts a toll on their mental health. It is our obligation to support them in every way possible – to make sure that they feel welcome and able

to access life-saving mental health care. This white paper should serve as a critical call to action to all who care about our heroes in red and blue.”<sup>ii</sup>

The state legislature recognizes the need for first responders to have their particular mental health needs addressed, and requires agencies to enact a program specific to their needs. To assist agencies the Legislature enacted laws identifying requirements FRMH programs must meet, and provided one-time money to assist in starting, or expanding, such a program.

The grant solicitation required agencies to, among other things, identify an entity they would use and the one year cost for their programs. First Responders First provided that and other necessary information for the grant application.

South Ogden applied for start-up funding. The grant awards committee determined the program describing SOC working with First Responders First met all criteria, and awarded \$26,690.00 to begin a First Responder Mental Health Program. The grant funding is not on going.

The FRMH program will assist in reaching the goals of the Strategic Plan by improving access and quality Mental Health Services, increase likelihood of employees’ participating in the Wellness program, and will help retain employees for department Succession.

The First Responder Mental Health Program is beyond and separate from an Employee Assistance Program (EPA). The FRMH focuses specifically on the trauma experienced by First Responders. In South Ogden program is accessible to 62 current employees and their 49 spouses (111 total), and all retired first responders and their spouses. FRMH also addresses areas of the Strategic Plan under Strategies 2.1, 2.2, and 2.3.

## **SIGNIFICANT IMPACTS**

State funding of \$26,690.00 will cover the costs of the FRMH program for one year, after which city funding will be required, if another funding source is not identified.

## **ATTACHMENTS**

Utah Administrative Rule: R714-570

First Responders First- flyer, pricing and services offered documents

<sup>1</sup> [President Trump Signs Executive Order for Veteran Suicide Prevention \(themighty.com\)](https://themighty.com)

<sup>1</sup> [First Responder PTSD and Suicides, and the Silence That Surrounds Them | \(witnessla.com\)](https://witnessla.com)

Public Safety

Highway Patrol

Rule 570: Mental Health Resources for First Responders Grant Funding

**Effective Date:** 09/07/2022

**Admin. Code Reference:** R714-570

**Rule Type:** Current Rule

**R714. Public Safety, Highway Patrol.**

**R714-570. Mental Health Resources for First Responders Grant Funding.**

**R714-570-1. Purpose.**

The purpose of this rule is to create a program to assist first responder agencies through monetary grants to provide mental health resources for first responders in accordance with Section 53-21-103.

**R714-570-2. Authority.**

This rule is authorized by Section 53-21-103.

**R714-570-3. Definitions.**

(1) Terms used in this rule are found in Section 53-21-103.

(2) In addition:

(a) "assessment" means an in-depth clinical interview and ongoing process of information gathering conducted by a licensed mental health therapist to determine if an individual is in need of mental health or substance use disorder treatment and to develop a treatment plan;

(b) "committee" means the Mental Health Resources for First Responders Grant Funding Committee established under this rule;

(c) "retired" means the status of an individual who has:

(i) become eligible, applies for, and may receive an allowance under Title 49, Utah State Retirement and Insurance Benefit Act; or

(ii) separated employment as a result of a critical incident; and

(d) "screening" means a preliminary evaluation to determine whether key features of a substance use disorder or mental health disorder are present in an individual.

**R714-570-4. Mental Health Resources for First Responders Grant Funding Committee.**

This rule establishes the Mental Health Resources for First Responders Grant Funding Committee, which shall be responsible for assisting the department in awarding funds to first responder agencies to provide mental health resources for first responders in accordance with Section 53-21-103.

**R714-570-5. Committee Membership.**

(1) The committee shall consist of seven members made up of one representative from each of the following groups or organizations:

- (a) Utah Department of Public Safety Commissioner or designee;
- (b) Utah Highway Patrol Colonel or designee;
- (c) Utah Sheriffs Association;
- (d) Utah Chiefs of Police Association;
- (e) Utah State Fire Chiefs Association;
- (f) Utah Association of Counties; and
- (g) League of Cities and Towns.

(2) Members of the committee shall:

- (a) be approved by the Commissioner of the Utah Department of Public Safety;
- (b) be appointed for four-year terms; and
- (c) cease to be members of the committee immediately upon the termination of their membership in the group or organization they represent.

(3) If a vacancy occurs during the four-year term of a committee member, a new member shall be appointed from the same group or organization to finish the term of that member.

(4) The committee chair shall be the Utah Department of Public Safety Commissioner or designee.

(5) Four members shall constitute a quorum for committee action.

(6) The department's special counsel shall assist the committee as needed.

#### **R714-570-6. Committee Meetings.**

The committee shall meet at least quarterly to review and approve applications from first responder agencies.

#### **R714-570-7. Applications.**

(1) Applications for grant funding shall:

- (a) be made on department forms;
- (b) include criteria required under Section 53-21-103;
- (c) ensure that peer confidentiality is addressed;
- (d) be sent to the committee in care of the department; and
- (e) be submitted before March 31, 2023.

(2) A group of first responder agencies may jointly apply for grant funding to provide mental health resources for first responders.

(a) The group of agencies shall designate one first responder agency as the lead agency.

(b) The lead agency shall:

(i) take responsibility for applying for grant funding in behalf of the group of first responder agencies in accordance with Subsection R714-570-7(1);

(ii) provide oversight of the mental health resources program for the group of agencies;

(iii) maintain accounting records; and

(iv) ensure that mental health resources are available to first responders employed by the group of first responder agencies, their family members, and first responders that have retired from the group of first responder agencies, as required under Section 53-21-102.

**R714-570-8. Criteria and Awards.**

(1) The committee shall:

(a) review timely applications submitted by first responder agencies;

(b) prioritize grant funding as required under Subsection 53-21-103(6); and

(c) approve funding awards for first responder agencies that have submitted completed applications that meet the requirements under Section 53-21-103.

(2) The committee shall notify each first responder agency that applied for grant funding of:

(a) the approval or denial of the application for funding; and

(b) the amount of funding that will be made available to first responder agency.

(3) An agency awarded grant funding shall ensure that mental health resources are made available to first responders, family members of first responders and retired first responders within 60 days of receipt of grant funding.

**R714-570-9. Parameters for Services for Retirees.**

A first responder agency shall provide mental health resources for at least three years to a first responder who has retired from the first responder agency.

**R714-570-10. Agency Accountability.**

(1) First responder agencies that receive funding shall:

(a) use the awarded resources only in the manner set forth in Section 53-21-103;

(b) maintain records for five years sufficient to show how the funding is used;

(c) cooperate with the committee if and when the committee determines it is necessary to audit agency records, and evaluate use of the funding; and

(d) provide a quarterly report to the committee that includes:

(i) the amount of grant funding awarded to the agency;

(ii) the amount of grant funding spent by the agency, and the purposes for which the grant funding was spent;

(iii) the amount of grant funding not yet spent by the agency;

(iv) the number of first responders, family members, and retired first responders served; and

(v) the types of services provided.

(2) If the committee determines that an agency has used grant funding for purposes not specified in Section 53-21-103, the agency shall return the grant funding to the committee.

**KEY: mental health resources, first responder, first responder agency**

**Date of Enactment: September 7, 2022**

**Authorizing, and Implemented or Interpreted Law: 53-21-103**



## WHO WE ARE

**First Responders First** is a Utah-based mental health and wellness company that specializes in working with law enforcement, firefighters, EMS personnel, dispatchers, correction officers, victim advocates, crime scene investigators, search and rescue personnel, and other public safety civilian staff members, including volunteers and retirees. We also work with their spouses and family members. Per Utah law § 53-20-102, your organization is required to provide mental health and peer support resources, and we have the expertise to do so.

We aim to help you and your agency navigate stress, risk, and trauma through regular periodic screenings and wellness check-ups, counseling and therapy, custom-tailored training, consultation, post critical incident intervention, and peer support development and oversight. We specialize in treatment modalities recognized by International Association of Fire Fighters (IAFF) and the National Fraternal Order of Police (FOP). We can be available in the evenings, holidays, and weekends because first responders work those times too.

**WE PROVIDE TRAINING, CONSULTATION,  
AND MENTAL HEALTH COUNSELING  
HELPING YOU ACHIEVE INDIVIDUAL WELLNESS  
AND ORGANIZATIONAL STABILITY.**

UTAH'S PREMIERE RESOURCE  
FOR POLICE AND PUBLIC SAFETY  
MENTAL HEALTH & WELLNESS



## WHAT WE OFFER

Therapy, counseling, and screenings for employees and spouses/family members, including retirees

Critical incident and crisis response, assessment, and counseling

Regular periodic screenings, and annual or semi-annual wellness check-ups

Mental health and wellness training

- Mental health crisis intervention and de-escalation (§ 53-6-202)
- Stress and trauma management
- Suicide prevention
- Mindset and officer safety
- Critical incident response
- Custom-tailored training

Crisis and non-crisis consultation

Post critical incident intervention

Peer support team development and oversight

- Legally-approved peer support certification (§ 78B-5-901)
- 24/7 clinician access
- Policy review and development
- Ongoing training and consultation

## **Overview**

*First Responders First* is a Utah-based mental health and wellness company that specializes in working with public safety professionals, their families, and retirees. Per Utah law, providing mental health care for members, their families, and retirees is now mandatory for public safety agencies. We aim to help individuals and agencies navigate stress, risk, and trauma through regular periodic screenings and wellness check-ups, counseling and therapy, custom-tailored training, consultation, post critical incident intervention, and peer support development and oversight.

*Note:* Meetings and/or trainings listed below will be conducted in-person when practical, or via teleconferencing when warranted.

## **Peer Support Team Development and Oversight**

- Peer support team administrative assistance
  - Policy review and recommendation
  - Organizational structure/management advisory
  - Personnel and staffing recommendations
  - Committee/subcommittee assignments
  - Clinical mental health guidance and consultation
  - Regular contact including crisis consultation
  - New team member selection consultation
  - Assistance with vetting additional therapists
  - Peer support team consultant/coordinator assistance
    - Monthly check-in to discuss challenges and solutions
    - Coordinator and supervisor-specific skills development
- Peer support team crisis and noncrisis on-call consultation
  - Day, night, or weekend consultation
  - Administrative leadership advisory
- Peer support team clinical processing group consultation, if desired
  - Six annual 1-hour psychoeducation and group processing for entire team
- Semi-annual 1-hour one-on-one counseling session
  - Meeting with peer support team members
  - Prospective team member interview
- Peer Support Individual 2-Day Training Certification

## **Post Critical Incident Intervention**

Post critical incident intervention may include emergency physical response, one-on-one or small group crisis intervention, critical incident stress debriefings, and so forth. Future follow-up and check-ins may be necessary.

**Assessment and Wellness Check-ins**

A wellness check-in includes a self-reported, documented disclosure as well as an interview. Check-ins could be arranged to take place at the agency for convenience. Options may include quarterly, semi-annual, or annual interviews and assessments, in-person, telehealth, and/or phone check-ins, or a combination of a check-in with an assessment at another time during the year. Agency members, retirees, and/or family members may opt in. Agencies may want more frequent access to these services for those in higher risk positions.

**Individual and/or Couple Counseling or Educational Services**

Individual, couple, and family counseling, as well as group counseling are options. This may also include one-on-one training or group psychoeducation from various course topics listed below.

**Training**

Weekly group education/discussion—*Emotional Wellness & Resilience*

12 weeks—or twelve 1- to 2-hour classes

(Topics include, but are not limited to, trauma reactions, positive psychology, crisis and adversity, routines and habits, relationships, the science of sleep and exercise, etc.)

Quarterly training from 1- to 2-hours in length for any agency personnel, their family members, and retirees. Selected training topics are found below.

Examples of course topics:

**SELF CARE**

- Employee communication strategies
- Stress and anxiety reduction
- Perfectionism and self-compassion
- Positive psychology
- Sleep hygiene
- Addictive behavior regulation
- Curbing depression
- Anger management
- Suicidal ideation and wellness
- Healthy skills building
- Burnout prevention
- Building resilience
- Therapeutic treatment and evidence-based modalities
- Spirituality and public safety
- Crisis response planning

**UNDERSTANDING TRAUMA & STRESS**

- Moral injuries and trauma
- Individual crisis management skills
- Stress, trauma, and resilience
- Understanding posttraumatic stress and first responder exhaustion syndrome
- Crisis intervention and response planning

**FAMILY RELATIONS**

- Healthy family relationships
- Vicarious trauma and compassion fatigue
- Couples' communication
- Intimacy and sexual relations
- Sexual issues and disorders
- Betrayal trauma
- Posttraumatic stress management
- Marriage to a first responder
- Wellness for partners and spouses
- Enhancing marriage and relationships

**PEER & ORGANIZATIONAL SUPPORT**

- Officer-Involved Critical Incident (OICI) wellness and peer support protocol
- Post critical incident intervention and mental health support
- Developing and implementing a suicide prevention program
- When and how to make a mental health referral
- Enhancing peer support programs
- Consultation for peer support team
- Stopping suicide: Suicide intervention and awareness

**MENTAL WELLNESS WHILE SERVING THE PUBLIC**

- Mental health basics
- Implicit bias and cultural competency
- Compassion fatigue and vicarious trauma
- Crisis/hostage negotiation and human dangerousness
- Surviving hostage situations
- Tactical mindset and officer safety
- Tactical mental health and critical incident response
- Autism spectrum disorder
- Post critical incident intervention
- Tactical de-escalation

*Custom-tailored training, including 1- or 2-day trainings, is available upon request.*

This proposal is for fiscal year 2022 in accordance with Utah Code [53-21-102](#). This pricing fee is an à la carte-type service that goes in conjunction with the **First Responders First Services Offered** document. Additionally, it can be pay-as-you-go. For example, if only a few people use individual counseling services, there is no extra charge. We simply want to give the best service to you, your agency, and your personnel. Additional options can be created, discussed and/or modified as agreed upon by both parties.

It is proposed that each member will have at least two assessments annually which will consist of a self-reported, documented disclosure and interview estimated at approximately 20-30 minutes per interview. The department will assist in scheduling and provide a central location to conduct the check-ins. If necessary, these check-ins can be done remotely via telehealth.

The recipients understand therapeutic counseling is under the supervision of a licensed mental health professional. Per Utah law, family members and retirees must have access to mental health resources and may do so through **First Responders First**. Outside referrals may need to occur to secure the best treatment (e.g., in-patient treatment facilities).

**First Responders First** provides 24/7 support. Both parties understand that there may be times when an immediate response from—or access to—**First Responders First** personnel cannot occur due to unforeseen or unplanned circumstances (e.g., in a therapy session, out of range).

As the leading experts in post critical incident intervention, we hope your agency will contact us at such times, even if utilizing other resources (e.g., the Utah CISM Team).

**First Responders First** conducts return-to-work counseling mandated by agency policy following an Officer-Involved Critical Incident, if applicable. We do not recommend traditional fit for duty assessments following OICIs, and we will *not* do fit for duty assessments for disciplinary measures. Thus, helping us remain an unbiased, trusted resource for all personnel.

As subject matter experts in public safety peer support and mental wellness training, we recommend utilizing us for department-wide training and peer support oversight per Utah law.

The hourly rate for counseling from **First Responders First's** mental health professionals is \$150. Assessments and check-ins are usually scheduled at no more than 30 minutes. Couples counseling is \$175 per hour. Coaching with a certified staff member is \$45 for 30 minutes.

Group training and group counseling is \$250 per hour unless otherwise noted or agreed upon. This includes monthly group training for the peer support team; however, day-long or multi-day trainings may have a different rate.

Debriefings and emergency call-outs that require a response is \$300 per hour. Monthly 24/7 on-call support fee for administration and peer support is only \$300. There are no extra hourly fees with using this option unless a response is required.

*Note: Where applicable, travel time, mileage, per diem, hotel expenses may apply.*

**Resolution No. 23-01**

**RESOLUTION OF SOUTH OGDEN CITY APPROVING AND  
AUTHORIZING AN MEMORANDUM OF UNDERSTANDING WITH  
THE UTAH DEPARTMENT OF PUBLIC SAFETY FOR USE OF  
GRANT FUNDS FOR FIRST RESPONDER MENTAL HEALTH;  
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 Utah Legislature passed House Bill 23 in the 2022 General Legislative Session, stating that there is a need for Mental Health Services for First Responders and requiring that all first responder agencies in the state provide or make available mental health resources; and,

**WHEREAS**, the Utah Legislature recognized that funding should be available so all First Responder Agencies could provide Mental Health Services for First Responders and therefore set up a grant program; and,

**WHEREAS**, the City Council finds that City Staff applied for and were awarded a grant of \$26,690 to begin a First Responder Mental Health Program; and,

**WHEREAS**, the City Council finds that in order to receive the grant funds they must agree to certain rules as to how the grant funds may be used; and,

**WHEREAS**, the City Council finds that compliance with state law requires the actions herein contemplated; and,

**WHEREAS**, the City Council finds that the City now desires to enter into an agreement for the use of grant funds for a First Responder Mental Health Program;

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

**SECTION 2 - MOU AUTHORIZED**

That the Memorandum of Understanding for the use of grant funds to establish a First Responder Mental Health Program, attached hereto as **Attachment "A"** and by this reference fully incorporated herein, is hereby approved and adopted; and

that the City Manager is authorized 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 3<sup>rd</sup> day of January, 2023, 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 3<sup>rd</sup> day of January, 2023.**

**SOUTH OGDEN CITY**

---

Russell Porter  
Mayor

**ATTEST:**

---

Leesa Kapetanov, CMC  
City Recorder

## **Attachment "A"**

### **Resolution No. 23-01**

Resolution Of South Ogden City Approving And Authorizing An Memorandum Of Understanding With The Utah Department Of Public Safety For Use Of Grant Funds For First Responder Mental Health; 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.

03 Jan 23



State of Utah

SPENCER J. COX  
*Governor*

DEIDRE M. HENDERSON  
*Lieutenant Governor*

Department of Public Safety

JESS L. ANDERSON  
*Commissioner*

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (MOU) is entered by and between South Ogden Police Department (Recipient Entity) and the State of Utah, Department of Public Safety (DPS), stating the obligations that govern the award of state funds granted to the Recipient Entity from state funding received pursuant to House Bill 23 "First Responder Mental Health Service Amendments" passed in the 2022 General Legislative Session.

### PURPOSE

This MOU is to implement the provisions of Utah Code Ann. §§ 53-21-103, which allows DPS to award grants to first responder agencies to assist with the costs of providing mental health resources to first responders.

### AGREEMENT

Therefore the Parties agree to this MOU as follows:

- a. DPS shall issue a check to Recipient Entity in the amount of \$26,690.
- b. The Recipient Entity agrees to:
  - 1) use the awarded resources only in the manner set forth in Section 53-21-103;
  - 2) maintain records for five years sufficient to show how the funding is used;
  - 3) cooperate with the committee (awarding committee) created under Administrative Rule R714-570-10 if and when the committee determines it is necessary to audit agency records, and evaluate use of the funding; and
  - 4) provide a quarterly report to the committee that includes:
    - (a) the amount of grant funding awarded to the agency;
    - (b) the amount of grant funding expended by the agency, and the purposes for which the grant funding was expended;
    - (c) the amount of grant funding not yet expended by the agency;
    - (d) the number of first responders, family members, and retired first responders served; and the types of services provided
  - 5) return the grant funding to DPS if DPS determines that an agency has used grant funding for purposes not specified in Section 53-21-103.

This MOU shall be construed in accordance with the laws of the State of Utah. Each signatory below represents that he/she has the authority to agree to all the terms of this Agreement and bind their respective entity.

This MOU is in effect as of the last date when both signatories have signed this document. This MOU remains in effect until all funds have been spent by Recipient Entity, and a final report is received by DPS.

**IN WITNESS WHEREOF.**

**DEPARTMENT OF PUBLIC SAFETY**

**RECIPIENT ENTITY**

\_\_\_\_\_  
Jess Anderson  
Commissioner, Public Safety

\_\_\_\_\_  
Date

\_\_\_\_\_  
Recipient Entity

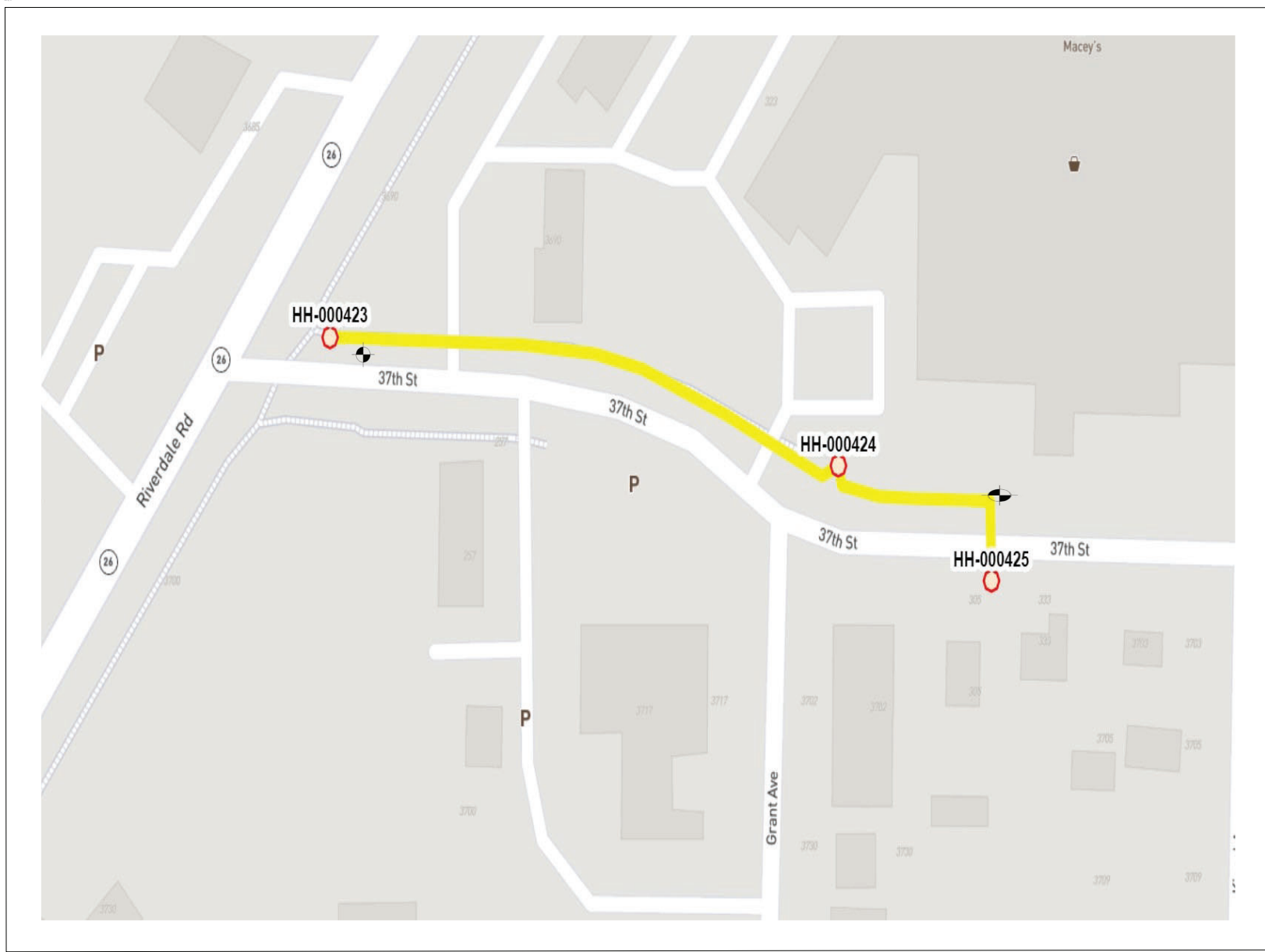
\_\_\_\_\_  
Date

Vaix Inc dba Senawave Communications (Senawave) is a local Utah Internet Service Provider founded in 2011 by experienced telecom engineers and network operators.

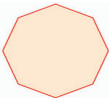
Senawave currently provides high speed Internet and phone service to business customers, residential users, and apartment complexes along the Wasatch Front. Senawave provides service using several technologies. Senawave provides Internet over Fiber optic cables as well as some fixed wireless deployments.

Currently Senawave is building out fiber optic networks to residential homes in Traverse Mountain, Eagle Mountain UT (Cedar pass ranch), Riverton Utah, North Ogden and Brighton Utah.

Senawave would like to build fiber to connect a couple apartment complexes in South Ogden. If there is a strong demand, Senawave would like to be able to bring high speed Fiber cables to residential and Business users in South Ogden.



Site Plan Legend



Medium vault

1-1.25" conduit

GENERAL NOTES

BORING LEGEND

- W.P. WORK POINT LOCATIONS
- MB-# DENOTES SHALLOW BORING FOR SOIL PROFILE
- B-# DENOTES BUILDING BORING LOCATIONS
- BP-# DENOTES BORING FOR SOIL PROFILE AND PERCOLATION DATA

CEO  
David Bradshaw  
2076 S Pioneer Rd  
South Ogden, UT 84403  
801-279-0000 ext 111

Project Manager  
Moley Yalls  
Senawave  
801-279-0000 ext 111

Design  
David Bradshaw  
2076 S Pioneer Rd  
South Ogden, UT 84403  
801-279-0000 ext 111

OSP Manager  
Quinn MacLean  
2076 S Pioneer Rd  
South Ogden, UT 84403  
801-279-0000 ext 111

Project  
South Ogden-HilltopToSeasons  
North Run

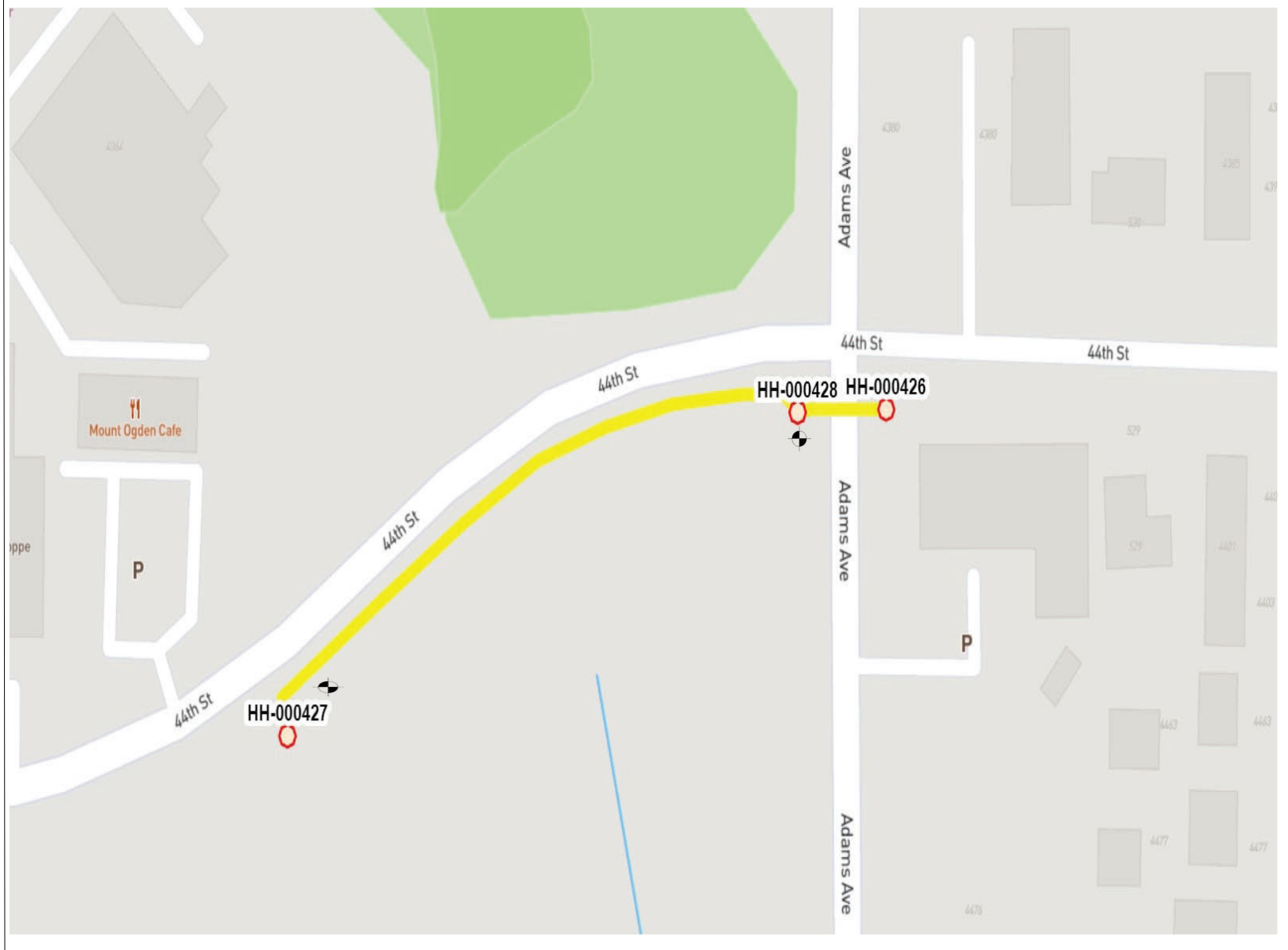
Company

Rev	Date	Note

**SITE BORING LOCATION PLAN**

07/07/2022

South Ogden

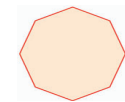


1  
SB-101

**SITE PLAN - BORING LOCATION PLAN**

Scale: 1" = 40'-0"

**Site Plan Legend**



Medium vault


1-1.25" conduit

**GENERAL NOTES**

**BORING LEGEND**

- WORK POINT LOCATIONS
- MB-B DENOTES SHALLOW BORING FOR SOIL PROFILE
- B-B DENOTES BUILDING BORING LOCATIONS
- BP-B DENOTES BORING FOR SOIL PROFILE AND PERCOLATION DATA

**SITE BORING PLAN**

<div>Company</div> <div></div>			Project	Project Manager Miley Yalls 2076 S Pioneer Rd Salt Lake City UT 84104 801-587-2844 ext 111	CEO David Bradshaw 2076 S Pioneer Rd Salt Lake City UT 84104 801-277-9200 ext 111
			South Ogden-HilltopToSeasons	GSP Manager Quinn McLean 2076 S Pioneer Rd Salt Lake City UT 84104 801-277-9200 ext 121	Designer Quinn McLean 2076 S Pioneer Rd Salt Lake City UT 84104 801-277-9200 ext 121
			South Run		
Rev	Date	Notes			

**Resolution No. 23-02**

**RESOLUTION OF SOUTH OGDEN CITY AUTHORIZING AND  
APPROVING A FRANCHISE AGREEMENT WITH VAIX INC. FOR  
WORK IN THE CITY'S RIGHTS-OF-WAY, 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 necessary to address additional communications services needs within the city; and,

**WHEREAS**, the City Council finds that the city staff has reviewed and studied this matter and recommends that to best address these additional communications service needs within the city, the city council authorize and approve a Franchise Agreement with VAIX Inc. for work in the City's rights-of-way, including not limited to installation of service lines, and additional communications services; and,

**WHEREAS**, the City Council finds that VAIX Inc. has demonstrated the professional ability to provide for these services to meet the additional communications services needs of the city and its residents while preserving the infrastructure of the city; and,

**WHEREAS**, the City Council finds that City now desires to achieve these ends by authorizing and approving a franchise agreement with VAIX Inc. for work in the City's rights-of-way; 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 - CONTRACT AUTHORIZED**

The **“Franchise Agreement”** Between South Ogden City And VAIX Inc., Attached Hereto As **Attachment "A"** and by This Reference Fully Incorporated Herein, Is Approved And Adopted With The Condition That The City Manager, With The Concurrence Of The City Attorney, Is Authorized To More Fully Negotiate And Resolve Any Remaining Details, Or Changes, Under The Agreement On Behalf Of The City And Then To Sign, And The City Recorder Is Authorized To Attest, Any And All Documents Necessary To Effect This Authorization And Approval. If The City Manager Is Unable To Successfully Resolve Any Remaining Details, Or Changes, This Authorization And Approval Shall Be Void And The City Manager Shall So Notify The Council.

That the foregoing recitals are incorporated herein.

## **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 render no 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 3<sup>rd</sup> day of January, 2023, 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 3<sup>rd</sup> day of January, 2023.

**SOUTH OGDEN CITY**

---

Russell Porter, Mayor

**ATTEST:**

---

Leesa Kapetanov, CMC  
City Recorder

## **ATTACHMENT "A"**

### **Resolution No. 23-02**

Resolution Of South Ogden City Authorizing And Approving A Franchise Agreement With VAIX Inc. For Work In The City's Rights-Of-Way, And Providing That This Resolution Shall Become Effective Immediately Upon Posting And Final Passage.

03 Jan 23

FRANCHISE AGREEMENT  
SOUTH OGDEN CITY, UTAH

THIS FRANCHISE AGREEMENT (hereinafter "Agreement") is entered into by and between SOUTH OGDEN CITY, Utah (hereinafter "CITY"), a municipal corporation and political subdivision of the State of Utah, with principal offices at 3950 Adams Ave., South Ogden, Utah, 84403, and Vaix Inc dba Senawave Communications (hereinafter "Franchisee"), a Utah corporation with its principal offices at 2075 S Pioneer Road Salt Lake City UT.

**WITNESSETH:**

WHEREAS, FRANCHISEE desires to provide telecommunications services, as more particularly defined in the "Municipal Telecommunications License Tax Act," (the "Act"), Utah Code Ann. §§10-1-401, et seq., as amended, and establish a telecommunications network, system and/or facilities in, under, along, over and across present and future rights-of-way of the CITY; and

WHEREAS, the CITY has enacted Title 7, Chapter 4 of the Revised Ordinances of South Ogden City (hereinafter the "Telecommunications Ordinance" or "ordinance") which governs the application and review process for Telecommunication Franchises in the CITY; and

WHEREAS, the CITY, in the exercise of its management of public Rights-of-Way, believes that it is in the best interest of the public to provide FRANCHISEE a nonexclusive franchise to operate a telecommunications network in the CITY.

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties contained herein, and for other good and valuable consideration, the CITY and FRANCHISEE agree as follows:

**AGREEMENT**

**ARTICLE 1. FRANCHISE AGREEMENT AND ORDINANCE**

**1.1 Agreement.** Upon execution by the parties, this Agreement shall be deemed to constitute a contract by and between CITY and FRANCHISEE.

**1.2 Ordinance.** The CITY has adopted the Telecommunications Ordinance which is attached to this Agreement as Exhibit "A" and incorporated herein by reference. FRANCHISEE acknowledges that it has had an opportunity to read and become familiar with the Telecommunications Ordinance. The parties agree that the provisions and requirements of the Ordinance are material terms of this Agreement, and that each party hereby agrees to be contractually bound to comply with the terms of the Ordinance. The definitions in the Ordinance shall apply herein unless a different meaning is set forth in the Act or is otherwise indicated. Nothing in this Section shall be deemed to require FRANCHISEE to comply with any provision of the Telecommunications Ordinance which is determined to be unlawful or beyond the CITY's

authority.

**1.3 Ordinance Amendments.** The CITY reserves the right to amend the Ordinance at any time. Provided, however, CITY shall not enact any amendments to the Ordinance that will adversely impact FRANCHISEE without allowing FRANCHISEE 30 days, or such longer time as is necessary if 30 days is insufficient, in which to comply with the amendment. The CITY shall give FRANCHISEE notice and an opportunity to be heard concerning any proposed amendment. If there is any inconsistency between FRANCHISEE's rights and obligations under the Ordinance as amended and this Agreement, the provisions of this Agreement shall govern during its term. Otherwise, FRANCHISEE agrees to comply with any such amendments.

**1.4 Franchise Description.** The Telecommunications Franchise provided hereby shall confer upon FRANCHISEE the nonexclusive right, privilege, and franchise to construct and maintain a telecommunications network in, under, above and across the present and future public Rights-of-Way in the City. The franchise does not grant to FRANCHISEE the right, privilege or authority to engage in community antenna (or cable) television business; although, nothing contained herein shall preclude FRANCHISEE from: (1) permitting those with a cable franchise who are lawfully engaged in such business to utilize FRANCHISEE's System within the CITY for such purposes; or (2) from providing such service in the future if an appropriate franchise is obtained from the City and all other legal requirements have been satisfied.

**1.5 Licenses.** FRANCHISEE acknowledges that it has obtained the necessary approvals, licenses or permits required by federal and state law to provide telecommunication services consistent with the provisions of this Agreement and with the Ordinance.

**1.6 Relationship.** Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties and neither party is authorized to, nor shall either party act toward third persons or the public in any manner that would indicate any such relationship with each other.

## **ARTICLE 2. FRANCHISE FEE**

**2.1 Franchise Fee.** For the Franchise granted herein, FRANCHISEE shall pay to the CITY a tax in accordance with the Municipal Telecommunications License Tax Act (Utah Code Ann. 10-1-401 to 10-1- 410 as amended from time to time), less any business license fee or business license tax enacted by the CITY. All payments shall be made to the Utah State Tax Commission, and sent as follows:

Utah State Tax Commission  
210 North 1950 West  
Salt Lake City, Utah 84134

**2.2 Equal Treatment.** CITY agrees any fees or taxes charged to FRANCHISEE under this Agreement shall be of the same nature and calculation of fees or tax currently charged or charged in the future to other similarly situated entities.

## **ARTICLE 3. TERM AND RENEWAL**

**3.1 Term and Renewal.** The franchise granted to FRANCHISEE shall be for a period of ten (10) years commencing on the first day of the month following this Agreement, unless this Franchise be sooner terminated as herein provided. At the end of the initial ten (10) year term of this Agreement, the franchise granted herein may be renewed by FRANCHISEE upon the same terms and conditions as contained in this Agreement for an additional five (5) year term, by providing to the CITY's representative designated herein written notice of FRANCHISEE's intent to renew not less than ninety (90) calendar days before the expiration of the initial franchise term.

**3.2 Rights of Franchisee Upon Expiration or Revocation.** Upon expiration of the franchise granted herein, whether by lapse of time, by agreement between FRANCHISEE and the CITY, or by revocation or forfeiture, FRANCHISEE shall have the right to remove from the Rights-of-Way any and all of its System, but in such event, it shall be the duty of FRANCHISEE, Immediately upon such removal, to restore the Rights-of-Way from which such System is removed to as good condition as the same was before the removal was effected.

## **ARTICLE 4. POLICE POWERS**

The CITY expressly reserves, and FRANCHISEE expressly recognizes, the CITY's right and duty to adopt, from time to time, in addition to provisions herein contained, such ordinances and rules and regulations as the CITY may deem necessary in the exercise of its police power for the protection of the health, safety and welfare of its citizens and their properties.

## **ARTICLE 5. CHANGING CONDITIONS AND SEVERABILITY**

**5.1 Meet to Confer.** FRANCHISEE and the CITY recognize that many aspects of the telecommunication business are currently the subject of discussion, examination and inquiry by different segments of the industry and affected regulatory authorities and that these activities may ultimately result in fundamental changes in the way FRANCHISEE conducts its business and the way the CITY regulates the business. In recognition of the present state of uncertainty respecting these matters, FRANCHISEE and the CITY each agree, upon request of the other during the term of this Agreement, to meet with the other and discuss in good faith whether it would be appropriate, in view of developments of the kind referred to above during the term of this Agreement, to amend this Agreement or enter into separate, mutually satisfactory arrangements to effect a proper accommodation of any such developments.

**5.2 Severability.** If any section, sentence, paragraph, term or provision of this Agreement or the Ordinance is for any reason determined to be or rendered illegal, invalid, or superseded by other lawful authority, including any state or federal, legislative, regulatory or administrative authority having jurisdiction thereof, or is determined to be unconstitutional, illegal or invalid by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision, all of which shall remain in full force and effect for the term of this Agreement or any renewal or renewals thereof. If the invalidated portion is considered a material consideration for entering into this Agreement, the parties will negotiate, in

good faith, an amendment to this Agreement. As used herein, "material consideration" for the CITY is its ability to collect the Franchise Fee during the term of this Agreement and its ability to manage the Rights-of-Way in a manner similar to that provided in this Agreement, the Ordinance, and the City's Excavation Permit Policy. For FRANCHISEE, "material consideration" is its ability to use the Rights-of-Way for telecommunication purposes in a manner similar to that provided in this Agreement, the Ordinance, and the CITY's Excavation Permit Policy.

## **ARTICLE 6. EARLY TERMINATION, REVOCATION OF FRANCHISE AND OTHER REMEDIES**

**6.1 Grounds for Termination.** The CITY may terminate or revoke this Agreement and all rights and privileges herein provided, upon ninety (90) days prior notice, for any of the following reasons:

(a) FRANCHISEE fails to make timely payments of the franchise fee as required under Article 2 of this Agreement and does not correct such failure within sixty (60) calendar days after written notice by the CITY of such failure;

(b) FRANCHISEE, by act or omission, materially violates a material duty herein set forth in any particular provision within FRANCHISEE's control, and with respect to which redress is not otherwise herein provided. In such event, the CITY, acting by or through its CITY Council, may determine, after hearing, that such failure is of a material nature, and thereupon, after written notice giving FRANCHISEE notice of such determination; FRANCHISEE, within sixty (60) calendar days of such notice, shall commence efforts to remedy the conditions identified in the notice and shall have ninety (90) calendar days from the date it receives notice to remedy the conditions. After the expiration of such 90-day period and failure to correct such conditions, the CITY may declare the franchise forfeited and this Agreement terminated, and thereupon, FRANCHISEE shall have no further rights or authority hereunder; provided, however, that any such declaration of forfeiture and termination shall be subject to judicial review as provided by law, and provided further, that in the event such failure is of such nature that it cannot be reasonably corrected within the 90-day time period provided above, the CITY shall provide additional time for the reasonable correction of such alleged failure if the reason for the noncompliance was not the intentional or negligent act or omission of FRANCHISEE; or

(c) FRANCHISEE becomes insolvent, unable or unwilling to pay its debts, is adjudged bankrupt, or all or part of its facilities should be sold under an instrument to secure a debt and is not redeemed by FRANCHISEE within sixty (60) days.

**6.2 Reserved Rights.** Nothing contained herein shall be deemed to preclude FRANCHISEE from pursuing any legal or equitable rights or remedies it may have to challenge the action of the CITY.

**6.3 Remedies at Law.** In the event FRANCHISEE or the CITY fails to fulfill any of its respective obligations under this Agreement, the CITY or FRANCHISEE, whichever the case may be, may assert a breach of contract claim and remedy against the other, in addition to any other remedy provided herein or by law; provided, however, that no remedy that would have the effect

of amending the specific provisions of this Agreement shall become effective without such action that would be necessary to formally amend the Agreement. In the event of any controversy, claim or action being filed or instituted between the CITY and FRANCHISEE relating to or arising out of this Agreement, the prevailing party shall be entitled to recover from the other party reasonable attorneys' fees and costs through all levels of action incurred by the prevailing party.

**6.4 Third Party Beneficiaries.** The benefits and protection provided by this Agreement shall inure solely to the benefit of the CITY and FRANCHISEE. This Agreement shall not be deemed to create any right in any person who is not a party and shall not be construed in any respect to be a contract in whole or in part for the benefit of any third party (other than the permitted successors and assigns of a party hereto).

**6.5 Assignment.** This Agreement may not be assigned by FRANCHISEE except to a wholly owned subsidiary of FRANCHISEE without the prior written consent of the CITY, which consent shall not be unreasonably withheld.

## **ARTICLE 7. PARTIES' DESIGNEES**

**7.1 CITY Designee and Address.** The City Manager or his or her designee(s) shall serve as the CITY's representative regarding administration of this Agreement. Unless otherwise specified herein or in the Ordinance, all notices from FRANCHISEE to the CITY pursuant to or concerning this Agreement, shall be delivered to the CITY's representative at:

South Ogden City  
Attn: City Manager  
3950 Adams Ave.  
South Ogden, Utah 84403

or such other officer and address as the CITY may designate by written notice to FRANCHISEE.

**7.2 Franchisee Designee and Address.** FRANCHISEE's President or his or her designee(s) shall serve as FRANCHISEE's representative regarding administration of this Agreement. Unless otherwise specified herein or in the Telecommunications Ordinance, all notices from the CITY to FRANCHISEE pursuant to or concerning this Agreement, shall be delivered to FRANCHISEE's offices at:

2075 S Pioneer Road  
Salt Lake City UT 84104

or such other officer and address as FRANCHISEE may designate by written notice to the CITY.

**7.3 Failure of Designee.** The failure or omission of the CITY's or FRANCHISEE's representative to act shall not constitute any waiver or estoppels by the CITY or FRANCHISEE.

## **ARTICLE 8. INSURANCE AND INDEMNIFICATION**

**8.1 Insurance.** Prior to commencing operations in the CITY pursuant to this Agreement,

FRANCHISEE shall furnish to the CITY evidence that it has adequate general liability and property damage insurance. The evidence may consist of a statement that FRANCHISEE is effectively self-insured if FRANCHISEE has substantial financial resources, as evidenced by its current certified financial statements and established credit rating, or substantial assets located in the State of Utah. Any and all insurance, whether purchased by FRANCHISEE from a commercial carrier, whether provided through a self-insured program, or whether provided in some other form or other program, shall be in a form, in an amount and of a scope of coverage acceptable to the CITY.

**8.2 Indemnification.** FRANCHISEE agrees to indemnify, defend and hold the CITY harmless from and against any and all third-party claims, demands, liens, and all liability or damage of whatsoever kind on account of or arising from FRANCHISEE's acts or omissions pursuant to or related to this Agreement, and to pay any and all costs, including reasonable attorneys' fees, incurred by the CITY in defense of such claims. The CITY shall promptly give written notice to FRANCHISEE of any claim, demand, lien, liability, or damage, with respect to which the CITY seeks indemnification and, unless in the CITY's judgment a conflict of interest may exist between the parties with respect to the claim, demand, lien, liability, or damage, the CITY shall permit FRANCHISEE to assume the defense of such with counsel of FRANCHISEES' choosing, unless the CITY reasonably objects to such counsel. Notwithstanding any provision of this Section to the contrary, FRANCHISEE shall not be obligated to indemnify, defend or hold the CITY harmless to the extent any claim, demand, lien, damage, or liability arises out of or in connection with negligent acts or omissions of the CITY.

## **ARTICLE 9. INSTALLATION**

**9.1 Coordinated Installation.** In order to prevent and/or minimize the number of cuts to and excavations within the CITY Rights-of-Way, FRANCHISEE shall coordinate with the CITY and other providers or users of the CITY Rights-of-Way, when such cuts and excavations will be made. Unless otherwise permitted, installation, repairs, or maintenance of lines and facilities within the CITY Rights-of-Way shall be made at the same time other installations, repairs or maintenance of facilities are conducted within the CITY Rights-of-Way.

**9.2 Underground Installation.** Notwithstanding the provisions of Article 1.3 of this Agreement, FRANCHISEE expressly agrees to install and maintain all of its underground facilities in accordance with CITY Ordinances regarding the undergrounding of utility lines, in effect at the time this Agreement Is entered into and as subsequently amended during the term of this Agreement.

**9.3 Aerial Installation:** Notwithstanding the provisions of Article 1.3 of this Agreement, FRANCHISEE expressly agrees to install and maintain all of its aerial facilities in accordance with CITY Ordinances regarding the installation of aerial utility lines and pole attachment agreement terms, In effect at the time this Agreement is entered into and as subsequently amended during the term of this Agreement. Nothing herein shall require FRANCHISEE to convert existing overhead facilities to underground facilities until and unless other similarly situated providers in the same location are required to do so.

**9.4 Prior Approval.** FRANCHISEE shall not perform any work within CITY Rights-of-Way without having first obtained a written permit from the CITY authorizing such work.

## **ARTICLE 10. GENERAL PROVISIONS**

**10.1 Binding Agreement.** The parties represent that: (a) when executed by their respective representatives, this Agreement shall constitute legal and binding obligations of the parties; and (b) each party has complied with all relevant statutes, ordinances, resolutions, by-laws and other legal requirements applicable to its operation in entering into this Agreement. This Agreement shall be binding upon the heirs, successors, administrators and assigns of each of the parties.

**10.2 Governing Law.** This Agreement shall be interpreted pursuant to Utah law and jurisdiction and venue for any legal action pertaining to this Agreement shall be in the District Court of Weber County State of Utah.

**10.3 Time of Essence.** Time shall be of the essence of this Agreement.

**10.4 Interpretation of Agreement.** The invalidity of any portion of this Agreement shall not prevent the remainder from being carried into effect. Whenever the context of any provision shall require it, the singular number shall be held in include the plural number and vice versa, and the use of any gender shall include the other gender. The paragraphs and section headings in this Agreement are for convenience only and do not constitute a part of the provisions hereof.

**10.5 No Presumption.** Both parties have participated in preparing this Agreement. Therefore, the parties stipulate that any court interpreting or construing this Agreement shall not apply the rule of construction that the Agreement should be more strictly construed against the drafting party.

**10.6 Entire Agreement and Amendments.** This Agreement and all attachments hereto constitute the entire agreement and understanding between the parties and replaces any previous agreement, understanding or negotiation between the parties with respect to its subject matter, and may be modified or amended, supplemented, or changed only by the written agreement of the parties, including the formal approval of the City Council. No oral modifications or amendments shall be effective.

"CITY"  
SOUTH OGDEN CITY

By \_\_\_\_\_  
Matthew J. Dixon, City Manager

ATTEST

---

Leesa Kapetanov,  
City Recorder

FRANCHISEE

Vaix Inc dba Senawave Communications  
2075 S Pioneer Road Salt Lake City UT

---

Signature

David Bradshaw  
Printed Name

President  
Title

# EXHIBIT A

## **CHAPTER 4 TELECOMMUNICATIONS; USE OF RIGHTS-OF-WAY**

7-4-1: Findings And Intent; Authority

7-4-2: Definitions

7-4-3: Administration; General Provisions

7-4-4: Applicability; Exceptions

7-4-5: Franchise Required

7-4-6: Application For Franchise

7-4-7: Compensation, Fees And Payments

7-4-8: Insurance, Record Requirements

7-4-9: Construction, Technical Requirements

7-4-10: Private Property; Obligation To Notify

7-4-11: Transfer Of Franchise And License

7-4-12: Enforcement; Rights Of City

7-4-13: Small Wireless Facilities Deployment

7-4-14: Severability

### **7-4-1: Findings And Intent; Authority**

A. Rights-Of-Way: The City finds that the rights-of-way within the City:

1. Are critical to the travel and transport of persons and property in the business and social life of the City;
2. Are intended for public uses and must be managed and controlled consistent with that intent;
3. Can be partially occupied by the facilities of utilities and other public service entities delivering utility and public services rendered for profit, to the enhancement of the health, welfare and general economic well-being of the City and its citizens; and
4. Are a unique and physically limited resource requiring proper management to maximize the efficiency and to minimize the costs to the taxpayers of the foregoing uses and to minimize the inconvenience to and negative effects upon the public from such facilities' construction, placement, relocation and maintenance in the rights-of-way.

B. Compensation: The City finds that the City should receive fair and reasonable compensation for use of the rights-of-way.

C. Local Concern: The City finds that while telecommunications systems are in part an extension of interstate commerce, their operations also involve rights-of-way, Municipal franchising and vital business and community service, which are of local concern.

D. Promotion Of Telecommunications Services: The City finds that it is in the best interests of its taxpayers and citizens to promote the rapid development of telecommunications services, on a nondiscrimination basis, responsive to community and public interest, and to assure availability for Municipal, educational and community services.

E. Franchise Standards: The City finds that it is in the interests of the public to franchise and to establish standards for franchising providers in a manner that:

1. Fairly and reasonably compensates the City on a competitively neutral and

nondiscriminatory basis as provided herein;

2. Encourages competition by establishing terms and conditions under which providers may use the rights-of-way to serve the public;
3. Fully protects the public interests and the City from any harm that may flow from such commercial use of rights-of-way;
4. Protects the police powers and rights-of-way management authority of the City, in a manner consistent with Federal and State law;
5. Otherwise protects the public interests in the development and use of the City infrastructure;
6. Protects the public's investment in improvements in the rights-of-way; and
7. Ensures that no barriers to entry of telecommunications providers are created and that such franchising is accomplished in a manner that does not prohibit or have the effect of prohibiting telecommunication services, within the meaning of the telecommunications act of 1996 (P.L. No. 104-104) (hereafter, the "act").

F. Power To Manage Rights Of Way: The city adopts this telecommunications chapter pursuant to its power to manage the rights of way, pursuant to common law, the Utah constitution and statutory authority, and receive fair and reasonable compensation for the use of rights of way by providers as expressly set forth by section 253 of the act. (Ord. 989, 11-17-1998, eff. 11-17-1998)

#### **7-4-2: Definitions**

For purposes of this chapter, the following terms, phrases, words and their derivatives shall have the meanings set forth in this section, unless the context clearly indicates that another meaning is intended. Words used in the present tense include the future tense, words in the single number include the plural number, words in the plural number include the singular. The words "shall" and "will" are mandatory, and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

**APPLICATION:** The process by which a provider submits a request and indicates a desire to be granted a franchise to utilize the rights of way of all, or a part, of the city. An application includes all written documentation, verbal statements and representations, in whatever form or forum, made by a provider to the city concerning: the construction of a telecommunications system over, under, on or through the rights of way; the telecommunications services proposed to be provided in the city by a provider; and any other matter pertaining to a proposed system or service.

**CITY:** South Ogden City, Utah.

**COMPLETION DATE:** The date that a provider begins providing services to customers in the city.

**CONSTRUCTION COSTS:** All costs of constructing a system, including make-ready costs, other than engineering fees, attorney or accountant fees, or other consulting fees.

**CONTROL OR CONTROLLING INTEREST:** Actual working control in whatever manner exercised, including, without limitation, working control through ownership, management, debt instruments or negative control, as the case may be, of the system or of a provider. A rebuttable presumption of the existence of control or a controlling interest shall arise from the beneficial ownership, directly or

indirectly, by any person or group of persons acting in concert, of more than twenty five percent (25%) of any provider (which person or group of persons is hereinafter referred to as "controlling person"). Control or controlling interest, as used herein, may be held simultaneously by more than one person or group of persons.

FCC: The federal communications commission or any successor thereto.

FRANCHISE: The rights and obligations extended by the city to a provider to own, lease, construct, maintain, use or operate a system in the rights of way within the boundaries of the city. Any such authorization, in whatever form granted, shall not mean or include:

- A. Any other permit or authorization required for the privilege of transacting and carrying on a business within the city required by the ordinances and laws of the city;
- B. Any other permit, agreement or authorization required in connection with operations on rights of way or public property, including, without limitation, permits and agreements for placing devices on or in poles, conduits or other structures, whether owned by the City or a private entity, or for excavating or performing other work in or along the rights of way.

FRANCHISE AGREEMENT: A contract entered into in accordance with the provisions of this chapter between the city and a franchisee that sets forth, subject to this chapter, the terms and conditions under which a franchise will be exercised.

GROSS REVENUE: Includes all revenues of a provider that may be included as gross revenue within the meaning of Utah Code Annotated title 11, chapter 26, as amended.

INFRASTRUCTURE PROVIDER: A person providing to another, for the purpose of providing telecommunication services to customers, all or part of the necessary system which uses the rights of way.

OPEN VIDEO SERVICE: Any video programming services provided to any person through the use of rights of way by a provider that is certified by the FCC to operate an open video system pursuant to section 651 et seq., of the telecommunications act (to be codified at 47 USC title VI, part V), regardless of the system used.

OPEN VIDEO SYSTEM: The system of cables, wires, lines, towers, wave guides, optic fiber, microwave, laser beams and any associated converters, equipment, or facilities designed and constructed for the purpose of producing, receiving, amplifying or distributing open video services to or from subscribers or locations within the city.

OPERATOR: Any person who provides service over a telecommunications system and directly or through one or more persons owns a controlling interest in such system, or who otherwise controls or is responsible for the operation of such a system.

ORDINANCE OR TELECOMMUNICATIONS ORDINANCE: This telecommunications chapter concerning the granting of franchises in and by the city for the construction, ownership, operation, use or maintenance of a telecommunications system.

PSC: The public service commission or any successor thereto.

PERSON: Includes any individual, corporation, partnership, association, joint stock company, trust or any other legal entity, but not the city.

**PERSONAL WIRELESS SERVICES FACILITIES:** Has the same meaning as provided in section 704 of the act (47 USC 332(c)(7)(c)), which includes what is commonly known as cellular and PSC services that do not install any system or portion of a system in the rights of way.

**PROVIDER:** An operator, infrastructure provider, resaler or system lessee.

**RESELLER:** Refers to any person that provides local exchange service over a system for which a separate charge is made, where that person does not own or lease the underlying system used for the transmission.

**RIGHTS OF WAY:** The surface of and the space above and below any public street, sidewalk, alley or other public way of any type whatsoever, now or hereafter existing as such within the city.

**SIGNAL:** Any transmission or reception of electronic, electrical, light or laser or radio frequency energy or optical information, in either analog or digital format.

**SYSTEM LESSEE:** Refers to any person that leases a system or a specific portion of a system to provide services.

**TELECOMMUNICATIONS:** The transmission, between or among points specified by the user, of information of the user's choosing (e.g., data, video and voice), without change in the form or content of the information sent and received.

**TELECOMMUNICATIONS SERVICE OR SERVICES:** Any telecommunications services provided by a provider within the city that the provider is authorized to provide under federal, state and local law, and any equipment and/or facilities required for and integrated with the services provided within the city, except that these terms do not include "cable service," as defined in the cable communications policy act of 1984, as amended by the cable television consumer protection and competition act of 1992 (47 USC 521 et seq.) and the telecommunications act of 1996. Telecommunications service or services also includes an open video service.

**TELECOMMUNICATIONS SYSTEM OR SYSTEM:** All conduits, manholes, poles, antennas, transceivers, amplifiers and all other electronic devices, equipment, wire and appurtenances owned, leased or used by a provider, located in the rights of way and utilized in the provision of services, including fully digital or analog, voice, data and video imaging and other enhanced telecommunications services. Telecommunications system or systems also includes an open video system.

**WIRE:** Fiber optic telecommunications cable, wire, coaxial cable or other transmission medium that may be used in lieu thereof for similar purposes. (Ord. 989, 11-17-1998, eff. 11-17-1998; amd. 2001 Code)

### **7-4-3: Administration; General Provisions**

- A. Conflicts: In the event of a conflict between any provision of this chapter and a franchise entered pursuant to it, the provisions of this chapter in effect at the time the franchise is entered into shall control.
- B. New Developments: It shall be the policy of the city to liberally amend this chapter, upon application of a provider, when necessary to enable the provider to take advantage of any developments in the field of telecommunications which will afford the provider an opportunity to more effectively, efficiently or economically serve itself or the public. (Ord. 989, 11-17-1998,

eff. 11-17-1998)

- C. Notices: All notices from a provider to the city required under this chapter or pursuant to a franchise granted pursuant to this chapter shall be directed to the officer as designated by the city manager. A provider shall provide in any application for a franchise the identity, address and phone number of the person designated to receive notices from the city. A provider shall immediately notify the city of any change in its name, address or telephone number. (Ord. 989, 11-17-1998, eff. 11-17-1998; amd. 2001 Code)
- D. Exercise Of Police Power: To the full extent permitted by applicable law either now or in the future, the city reserves the right to adopt or issue such rules, regulations, orders or other directives that it finds necessary or appropriate in the lawful exercise of its police powers.
- E. Construction:
  - 1. Federal And State Statutes: This chapter shall be construed in a manner consistent with all applicable federal and state statutes.
  - 2. Applicability: This chapter shall apply to all franchises granted or renewed after the effective date hereof. This chapter shall further apply, to the extent permitted by applicable federal or state law, to all existing franchises granted prior to the effective date hereof and to a provider providing services, without a franchise, prior to the effective date hereof.
  - 3. Other Applicable Ordinances: A provider's rights are subject to the police powers of the city to adopt and enforce ordinances necessary to the health, safety and welfare of the public. A provider shall comply with all applicable general laws and ordinances enacted by the city pursuant to its police powers. In particular, all providers shall comply with the city zoning and other land use requirements.
  - 4. City Failure To Enforce: A provider shall not be relieved of its obligation to comply with any of the provisions of this chapter or any franchise granted pursuant to this chapter by reason of any failure of the city to enforce prompt compliance.
  - 5. Construed According To Utah Law: This chapter and any franchise granted pursuant to this chapter shall be construed and enforced in accordance with the substantive laws of the state. (Ord. 989, 11-17-1998, eff. 11-17-1998)

#### **7-4-4: Applicability; Exceptions**

- A. Providers: This chapter shall provide the basic local scheme for providers of telecommunications services and systems that require the use of the rights of way, including providers of both the system and service, those providers of the system only and those providers who do not build the system but who only provide services. This chapter shall apply to all future providers and to all providers in the city prior to the effective date hereof, whether operating with or without a franchise as set forth in subsection 7-4-3E2 of this chapter.
- B. Excluded Activities:
  - 1. Cable Television Operators: This chapter shall not apply to cable television operators otherwise regulated by ordinances 650, 656 and 675, and their progeny (the cable television ordinance).
  - 2. Wireless Service Facilities: This chapter shall not apply to personal wireless service

facilities.

- C. Excluded Providers; Provisions Applicable: Providers excused by other law that prohibits the city from requiring a franchise shall not be required to obtain a franchise, but all of the requirements imposed by this chapter through the exercise of the city's police power and not preempted by other law shall be applicable. (Ord. 989, 11-17-1998, eff. 11-17-1998)

#### **7-4-5: Franchise Required**

- A. Nonexclusive Franchise; Authority: The city is empowered and authorized to issue nonexclusive franchises governing the installation, construction and maintenance of systems in the city's rights of way, in accordance with the provisions of this chapter. The franchise is granted through a franchise agreement entered into between the city and provider.
- B. Provider Required To Obtain: Except to the extent preempted by federal or state law, as ultimately interpreted by a court of competent jurisdiction, including any appeals, every provider must obtain a franchise prior to constructing a telecommunications system or providing telecommunications services using the rights of way, and every provider must obtain a franchise before constructing an open video system or providing open video services via an open video system. Any open video system or service shall be subject to the customer service and consumer protection provisions applicable to the cable TV companies to the extent the city is not preempted or permitted as ultimately interpreted by a court of competent jurisdiction, including any appeals. The fact that particular telecommunications systems may be used for multiple purposes does not obviate the need to obtain a franchise for other purposes. By way of illustration and not limitation, a cable operator of a cable system must obtain a cable franchise, and, should it intend to provide telecommunications services over the same system, must also obtain a telecommunications franchise.
- C. Nature Of Grant: A franchise shall not convey title, equitable or legal, in the rights of way. A franchise is only the right to occupy rights of way on a nonexclusive basis for the limited purposes and for the limited period stated in the franchise; the right may not be subdivided, assigned or subleased. A franchise does not excuse a provider from obtaining appropriate access or pole attachment agreements before collocating its system on the property of others, including the city's property. This subsection shall not be construed to prohibit a provider from leasing conduit to another provider, so long as the lessee has obtained a franchise.
- D. Current Providers; Time Limit To Request: Except to the extent exempted by federal or state law, any provider acting without a franchise on the effective date hereof shall request issuance of a franchise from the city within ninety (90) days of the effective date hereof. If such request is made, the provider may continue providing service during the course of negotiations. If a timely request is not made, or if negotiations cease and a franchise is not granted, the provider shall comply with the provisions of subsection 7-4-12D of this chapter.
- E. Nature Of Franchise: The franchise granted by the city under the provisions of this chapter shall be a nonexclusive franchise providing the right and consent to install, repair, maintain, remove and replace its system on, over and under the rights of way in order to provide services.
- F. Regulatory Approval Needed: Before offering or providing any services pursuant to the franchise, a provider shall obtain any and all regulatory approvals, permits, authorizations or licenses for the offering or provision of such services from the appropriate federal, state and local authorities, if required, and shall submit to the city, upon the written request of the city,

evidence of all such approvals, permits, authorizations or licenses.

- G. Term: No franchise issued pursuant to this chapter shall have a term of less than five (5) years or greater than fifteen (15) years. Each franchise shall be granted in a nondiscriminatory manner. (Ord. 989, 11-17-1998, eff. 11-17-1998)

#### **7-4-6: Application For Franchise**

- A. Required; Form: To obtain a franchise to construct, own, maintain or provide services through any system within the city, to obtain a renewal of a franchise granted pursuant to this chapter or to obtain the city approval of a transfer of a franchise, as provided in subsection 7-4-11A2 of this chapter, granted pursuant to this chapter, an application must be filed with city on the form attached to the ordinance codified herein as exhibit A, which is hereby incorporated by reference. The application form may be changed by the mayor or city manager so long as such changes request information that is consistent with this chapter. Such application form, as amended, is incorporated by reference.
- B. Criteria: In making a determination as to an application filed pursuant to this chapter, the city may, but shall not be limited to, request the following from the provider:
1. A copy of the order from the PSC granting a certificate of convenience and necessity.
  2. Certification of the provider's financial ability to compensate the city for provider's intrusion, maintenance and use of the rights of way during the franchise term proposed by the provider.
  3. Provider's agreement to comply with the requirements of section 7-4-9 of this chapter.
- C. Determination By City: The city, in its discretion, shall determine the award of any franchise on the basis of these and other considerations relevant to the use of the rights of way, without competitive bidding. (Ord. 989, 11-17-1998, eff. 11-17-1998)

#### **7-4-7: Compensation, Fees And Payments**

- A. Compensation; Provider Obligations: As fair and reasonable compensation for any franchise granted pursuant to this chapter, a provider shall have the following obligations:
1. Application Fee: In order to offset the cost to the city to review an application for a franchise and in addition to all other fees, permits or charges, a provider shall pay to the city, at the time of application, five hundred dollars (\$500.00) as a nonrefundable application fee.
  2. Franchise Fee: The franchise fee, if any, shall be set forth in the franchise agreement. The obligation to pay a franchise fee shall commence on the completion date. The franchise fee is offset by any business license fee or business license tax enacted by the city.
  3. Excavation Permits: The provider shall also pay fees required for an excavation permit as provided in chapter 3 of this title.
- B. Due Monthly: Unless otherwise agreed to in the franchise agreement, all franchise fees shall be paid on a monthly basis within forty five (45) days of the close of each calendar month.
- C. Statement Of Calculation; Certification: Unless a franchise agreement provides otherwise,

each fee payment shall be accompanied by a statement showing the manner in which the fee was calculated and shall be certified as to its accuracy.

- D. Future Costs: A provider shall pay to the city or to third parties, at the direction of the city, an amount equal to the reasonable costs and reasonable expenses that the city incurs for the services of third parties (including, but not limited to, attorneys and other consultants) in connection with any renewal or provider-initiated renegotiation, or amendment of this chapter or a franchise; provided, however, that the parties shall agree upon a reasonable financial cap at the outset of negotiations. In the event the parties are unable to agree, either party may submit the issue to binding arbitration in accordance with the rules and procedures of the American arbitration association. Additionally, any costs associated with any work to be done by the power and public works department to provide space on city-owned poles, if any, shall be borne by the provider.
- E. Taxes, Assessments: To the extent taxes or other assessments are imposed by taxing authorities, other than the city, on the use of the city property as a result of a provider's use or occupation of the rights of way, the provider shall be responsible for payment of its pro rata share of such taxes, payable annually unless otherwise required by the taxing authority. Such payments shall be in addition to any other fees payable pursuant to this chapter.
- F. Interest On Late Payments: In the event that any payment is not actually received by the city on or before the applicable date fixed in the franchise, interest thereon shall accrue from such date until received at the rate charged for delinquent state taxes.
- G. Acceptance Of Fee; Not Construed Satisfaction: No acceptance by the city of any fee shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of such fee payment be construed as a release of any claim the city may have for additional sums payable.
- H. Additional Taxes Or Fees Still Applicable: The fee payment is not a payment in lieu of any tax, fee or other assessment, except as specifically provided in this chapter or as required by applicable law. By way of example, and not limitation, excavation permit fees and fees to obtain space on the city-owned poles are not waived and remain applicable.
- I. Operation After Term; Continuing Obligation And Holdover: In the event a provider continues to operate all or any part of the system after the term of the franchise, such operator shall continue to comply with all applicable provisions of this chapter and the franchise, including, without limitation, all compensation and other payment provisions throughout the period of such continued operation; provided, that any such continued operation shall in no way be construed as a renewal or other extension of the franchise, nor as a limitation on the remedies, if any, available to the city as a result of such continued operation after the term, including, but not limited to, damages and restitution.
- J. Publication Costs: A provider shall assume any publication costs associated with its franchise that may be required by law. (Ord. 989, 11-17-1998, eff. 11-17-1998)

#### **7-4-8: Insurance, Record Requirements**

- A. Insurance Required: Prior to the execution of a franchise, a provider will deposit with the city an irrevocable, unconditional letter of credit or surety bond as required by the terms of the franchise, and shall obtain and provide proof of the insurance coverage required by the franchise. A provider shall also indemnify the city as set forth in the franchise.
- B. Oversight: The city shall have the right to oversee, regulate and inspect periodically the

construction, maintenance and upgrade of the system, and any part thereof, in accordance with the provisions of the franchise and applicable law. A provider shall establish and maintain managerial and operational records, standards, procedures and controls to enable a provider to prove, in reasonable detail, to the satisfaction of the city at all times throughout the term, that a provider is in compliance with the franchise. A provider shall retain such records for not less than the applicable statute of limitations. The provider shall, in a timely manner, notify the city prior to the construction, maintenance and upgrade of the system to allow the city to exercise the oversight rights conferred herein.

C. Records Maintenance: A provider shall at all times maintain:

1. On file with the city, a full and complete set of plans, records and as-built hard copy maps and, to the extent the maps are placed in an electronic format, they shall be made in electronic format compatible with the city's existing GIS system, of all existing and proposed installations and the types of equipment and systems installed or constructed in the rights of way, properly identified and described as to the types of equipment and facility by appropriate symbols and marks, which shall include annotations of all rights of ways where work will be undertaken. As used herein, as-built maps include file construction prints. Maps shall be drawn to scale. As-built maps, including the compatible electronic format, as provided above, shall be submitted within thirty (30) days of completion of work or within thirty (30) days after completion of modification and repairs. As-built maps are not required of the provider who is the incumbent local exchange carrier for the existing system to the extent they do not exist.
2. Throughout the term of the franchise, a provider shall maintain complete and accurate books of account and records of the business, ownership and operations of a provider with respect to the system in a manner that allows the city at all times to determine whether a provider is in compliance with the franchise. Should the city reasonably determine that the records are not being maintained in such a manner, a provider shall alter the manner in which the books and/or records are maintained so that a provider comes into compliance with this section. All financial books and records which are maintained in accordance with the regulations of the FCC and any governmental entity that regulates utilities in the state and generally accepted accounting principles shall be deemed to be acceptable under this section.

- D. Confidentiality: If the information required to be submitted is proprietary in nature or must be kept confidential by federal, state or local law, upon proper request by a provider, such information shall be classified as a protected record within the meaning of the Utah government records access and management act (GRAMA), making it available only to those who must have access to perform their duties on behalf of the city; provided, that a provider notifies the city of, and clearly labels the information which a provider deems to be confidential, proprietary information. Such notification and labeling shall be the sole responsibility of the provider.
- E. Provider's Expense: All reports and records required under this chapter shall be furnished at the sole expense of a provider, except as otherwise provided in this chapter or a franchise.
- F. Right Of Inspection: For the purpose of verifying the correct amount of the franchise fee, the books and records of the provider pertaining thereto shall be open to inspection or audit by duly authorized representatives of the city at all reasonable times, upon giving reasonable notice of the intention to inspect or audit the books and records; provided, that the city shall not audit the books and records of the provider more often than annually. The provider agrees

to reimburse the city the reasonable costs of an audit if the audit discloses that the provider has paid ninety five percent (95%) or less of the compensation due the city for the period of such audit. In the event the accounting rendered to the city by the provider herein is found to be incorrect, then payment shall be made on the corrected amount within thirty (30) calendar days of written notice, it being agreed that the city may accept any amount offered by the provider, but the acceptance thereof by the city shall not be deemed a settlement of such item if the amount is in dispute or is later found to be incorrect. (Ord. 989, 11-17-1998, eff. 11-17-1998)

#### **7-4-9: Construction, Technical Requirements**

- A. Compliance Required; Excavation Permit: No provider shall receive a franchise unless it agrees to comply with each of the terms set forth in this section governing construction and technical requirements for its system, in addition to any other reasonable requirements or procedures specified by the city or the franchise, including requirements regarding locating and sharing in the cost of locating portions of the system with other systems or with city utilities. A provider shall obtain an excavation permit, pursuant to chapter 3 of this title, before commencing any work in the rights of way.
- B. Quality And Performance Of Work: All work involved in the construction, maintenance, repair, upgrade and removal of the system shall be performed in a safe, thorough and reliable manner, using materials of good and durable quality. If, at any time, it is determined by the FCC or any other agency granted authority by federal law or the FCC to make such determination, that any part of the system, including, without limitation, any means used to distribute signals over or within the system, is harmful to the public health, safety or welfare, or quality of service or reliability, then a provider shall, at its own cost and expense, promptly correct all such conditions.
- C. Licenses And Permits: A provider shall have the sole responsibility for diligently obtaining, at its own cost and expense, all permits, licenses or other forms of approval or authorization necessary to construct, maintain, upgrade or repair the system, including, but not limited to, any necessary approvals from persons and/or the city to use private property, easements, poles and conduits. A provider shall obtain any required permit, license, approval or authorization, including, but not limited to, excavation permits, pole attachment agreements, etc., prior to the commencement of the activity for which the permit, license, approval or authorization is required.
- D. Relocation Of System:
  - 1. New Grades Or Lines; Excavation Requirements: If the grades or lines of any rights of way are changed at any time in a manner affecting the system, then a provider shall comply with the requirements of chapter 3 of this title.
  - 2. Emergency; City Authority To Move System: The city may, at any time, in case of fire, disaster or other emergency, as determined by the city in its reasonable discretion, cut or move any parts of the system and appurtenances on, over or under the rights of way of the city, in which event the city shall not be liable therefor to a provider. The city shall notify a provider in writing prior to, if practicable, but in any event as soon as possible and in no case later than the next business day following any action taken under this section. Notice shall be given as provided in subsection 7-4-3C of this chapter.

3. Temporary Move For Third Party: A provider shall, upon prior reasonable written notice by the city or any person holding a permit to move any structure, and within the time that is reasonable under the circumstances, temporarily move any part of its system to permit the moving of said structure. A provider may impose a reasonable charge on any person other than the city for any such movement of its systems.
  4. Change In Rights Of Way; Obligation To Move System: When the city is changing a right of way and makes a written request, a provider is required to move or remove its system from the right of way, without cost to the city, to the extent provided in the excavation ordinance, as provided in chapter 3 of this title. This obligation does not apply to systems originally located on private property pursuant to a private easement, which property was later incorporated into the rights of way, if that private easement grants a superior vested right. This obligation exists whether or not the provider has obtained an excavation permit.
- E. Protection Of Structures, Landmarks: In connection with the construction, maintenance, repair, upgrade or removal of the system, a provider shall, at its own cost and expense, protect any and all existing structures belonging to the city and all designated landmarks, as well as all other structures within any designated landmark district. A provider shall obtain the prior written consent of the city to alter any water main, power facility, sewerage or drainage system, or any other city structure on, over or under the rights of way of the city required because of the presence of the system. Any such alteration shall be made by the city or its designee on a reimbursable basis. A provider agrees that it shall be liable for the costs incurred by the city to replace or repair and restore to its prior condition in a manner as may be reasonably specified by the city, any municipal structure or any other rights of way of the city involved in the construction, maintenance, repair, upgrade or removal of the system that may become disturbed or damaged as a result of any work thereon by or on behalf of a provider pursuant to the franchise.
- F. Obstructions Prohibited: In connection with the construction, maintenance, upgrade, repair or removal of the system, a provider shall not unreasonably obstruct the rights of way of fixed guideway systems, railways, passenger travel or other traffic to, from or within the city without the prior consent of the appropriate authorities.
- G. Safety Precautions: A provider shall, at its own cost and expense, undertake all necessary and appropriate efforts to prevent accidents at its work sites, including the placing and maintenance of proper guards, fences, barricades, security personnel and suitable and sufficient lighting, and such other requirements prescribed by OSHA and Utah OSHA. A provider shall comply with all applicable federal, state and local requirements, including, but not limited to, the national electrical safety code.
- H. Repair Of Rights Of Way: After written reasonable notice to the provider, unless, in the sole determination of the city, an eminent danger exists, any rights of way within the city which are disturbed or damaged during the construction, maintenance or reconstruction by a provider of its system may be repaired by the city at the provider's expense, to a condition as good as that prevailing before such work was commenced. Upon doing so, the city shall submit to such a provider an itemized statement of the cost for repairing and restoring the rights of ways intruded upon. The provider shall, within thirty (30) days after receipt of the statement, pay to the city the entire amount thereof.
- I. Maintenance Of System: A provider shall:

1. Install and maintain all parts of its system in a nondangerous condition throughout the entire period of its franchise.
2. Install and maintain its system in accordance with standard prudent engineering practices and shall conform, when applicable, with the national electrical safety code and all applicable other federal, state and local laws or regulations.
3. At all reasonable times, permit examination by any duly authorized representative of the city of the system and its effect on the rights of way.

J. Trimming Trees; Authority: A provider shall have the authority to trim trees, in accordance with all applicable utility restrictions, ordinance and easement restrictions, upon and hanging over rights of way so as to prevent the branches of such trees from coming in contact with its system. (Ord. 989, 11-17-1998, eff. 11-17-1998)

#### **7-4-10: Private Property; Obligation To Notify.**

Before entering onto any private property, a provider shall make a good faith attempt to contact the property owners in advance and describe the work to be performed. (Ord. 989, 11-17-1998, eff. 11-17-1998)

#### **7-4-11: Transfer Of Franchise And License**

##### **A. Notification Of Sale:**

1. PSC Approval: When a provider is the subject of a sale, transfer, lease, assignment, sublease or disposal, in whole or in part, either by force or involuntary sale, or by ordinary sale, consolidation or otherwise, such that it or its successor entity is obligated to inform or seek the approval of the PSC, the provider or its successor entity shall promptly notify the city of the nature of the transaction. The notification shall include either:
  - a. The successor entity's certification that the successor entity unequivocally agrees to all of the terms of the original provider's franchise agreement; or
  - b. The successor entity's application, in compliance with section 7-4-6 of this chapter.
2. Transfer Of Franchise: Upon receipt of a notification and certification in accordance with subsection A1a of this section, the city designee, as provided in subsection 7-4-12A1 of this chapter, shall send notice affirming the transfer of the franchise to the successor entity. If the city has good cause to believe that the successor entity may not comply with this chapter or the franchise agreement, it may require an application for the transfer. The application shall comply with section 7-4-6 of this chapter.
3. PSC Approval No Longer Required: If the PSC no longer exists or if its regulations or state law no longer require approval of transactions described in subsection A of this section, and the city has good cause to believe that the successor entity may not comply with this chapter or the franchise agreement, it may require an application. The application shall comply with section 7-4-6 of this chapter.

B. Events Of Sale: The following events shall be deemed to be a sale, assignment or other

transfer of the franchise requiring compliance with subsection A of this section:

1. The sale, assignment or other transfer of all or a majority of a provider's assets to another person;
2. The sale, assignment or other transfer of capital stock or partnership, membership or other equity interests in a provider by one or more of its existing shareholders, partners, members or other equity owners so as to create a new controlling interest in a provider;
3. The issuance of additional capital stock or partnership, membership or other equity interest by a provider so as to create a new controlling interest in such a provider; or
4. The entry by a provider into an agreement with respect to the management or operation of such provider or its system. (Ord. 989, 11-17-1998, eff. 11-17-1998)

#### **7-4-12: Enforcement; Rights Of City.**

##### **A. Enforcement; Remedies:**

1. City Designee: The city is responsible for enforcing and administering this chapter and the city or its designee, as appointed by the city manager, is authorized to give any notice required by law or under any franchise agreement.
2. Enforcement Provisions: Any franchise granted pursuant to this chapter shall contain appropriate provisions for enforcement, compensation and protection of the public, consistent with the other provisions of this chapter, including, but not limited to, defining events of default, procedures for accessing the bond/security fund and rights of termination or revocation.

B. Force Majeure: In the event a provider's performance of any of the terms, conditions or obligations required by this chapter or a franchise is prevented by a cause or event not within a provider's control, such inability to perform shall be deemed excused and no penalties or sanctions shall be imposed as a result thereof. For the purpose of this subsection, causes or events not within the control of a provider shall include, without limitation, acts of God, strikes, sabotage, riots or civil disturbances, failure or loss of utilities, explosions, acts of public enemies and natural disasters such as floods, earthquakes, landslides and fires.

##### **C. Extended Operation; Continuity Of Services:**

1. Continuation After Expiration: Upon either expiration or revocation of a franchise granted pursuant to this chapter, the city shall have discretion to permit a provider to continue to operate its system or provide services for an extended period of time not to exceed six (6) months from the date of such expiration or revocation. A provider shall continue to operate its system under the terms and conditions of this chapter and the franchise granted pursuant to this chapter.
2. Incumbent Local Exchange Carrier; Negotiate Renewal: If the provider is the incumbent local exchange carrier, it shall be permitted to continue to operate its system and provide services without regard to revocation or expiration, but shall be obligated to negotiate a renewal in good faith.

##### **D. Removal Or Abandonment Of Franchise Property:**

1. **Abandoned System:** In the event that: a) the use of any portion of the system is discontinued for a continuous period of twelve (12) months, and thirty (30) days after no response to written notice from the City to the last known address of provider; b) any system has been installed in the rights-of-way without complying with the requirements of this chapter or franchise; or c) the provisions of subsection 7-4-5E of this chapter are applicable and no franchise is granted, a provider, except the provider who is an incumbent local exchange carrier, shall be deemed to have abandoned such system.
2. **Removal Of Abandoned System:** The City, upon such terms as it may impose, may give a provider written permission to abandon, without removing, any system, or portion thereof, directly constructed, operated or maintained under a franchise. Unless such permission is granted or unless otherwise provided in this chapter, a provider shall remove within a reasonable time the abandoned system and shall restore, using prudent construction standards, any affected rights-of-way to their former state at the time such system was installed, so as not to impair their usefulness. In removing its plant, structures and equipment, a provider shall refill, at its own expense, any excavation necessarily made by it and shall leave all rights-of-way in as good condition as that prevailing prior to such removal without materially interfering with any electrical or telephone cable or other utility wires, poles or attachments. The City shall have the right to inspect and approve the condition of the rights-of-way cables, wires, attachments and poles prior to and after removal. The liability, indemnity and insurance provisions of this chapter and any Security Fund provided in a franchise shall continue in full force and effect during the period of removal and until full compliance by a provider with the terms and conditions of this section.
3. **Transfer Of Abandoned System To City:** Upon abandonment of any system in place, a provider, if required by the City, shall submit to the City a written instrument, satisfactory in form to the City, transferring to the City the ownership of the abandoned system.
4. **Removal Of Aboveground System:** At the expiration of the term for which a franchise is granted, or upon its revocation or earlier expiration, as provided for by this chapter, in any such case without renewal, extension or transfer, the City shall have the right to require a provider to remove, at its expense, all aboveground portions of a system from the rights-of-way within a reasonable period of time, which shall not be less than one hundred eighty (180) days. If the provider is the incumbent local exchange carrier, it shall not be required to remove its system, but shall negotiate a renewal in good faith.
5. **Leaving Underground System:** Notwithstanding anything to the contrary set forth in this chapter, a provider may abandon any underground system in place so long as it does not materially interfere with the use of the rights-of-way or with the use thereof by any public utility, cable operator or other person. (Ord. 989, 11-17-1998, eff. 11-17-1998)

#### **7-4-13: Small Wireless Facilities Deployment**

Notwithstanding anything in this chapter to the contrary, the requirements of Utah Code section 54-21-101 et seq., shall control the regulation of small wireless facilities deployment in the event there is a conflict between the City's regulations and requirements and the requirements of Utah Code section 54-21-101 et seq. (Ord. 18-15, 11-20-2018, eff. 11-20-2018)

#### **7-4-14: Severability**

If any provision of this chapter is held by any Federal, State or local court of competent jurisdiction to be invalid as conflicting with any Federal or State Statute, or is ordered by a court to be modified in any way in order to conform to the requirements of any such law and all appellate remedies with regard to the validity of the ordinance provisions in question are exhausted, such provision shall be considered a separate, distinct and independent part of this chapter, and such holding shall not affect the validity and enforceability of all other provisions hereof. In the event that such law is subsequently repealed, rescinded, amended or otherwise changed, so that the provision which had been held invalid or modified is no longer in conflict with such law, the provision in question shall return to full force and effect and shall again be binding on the City and the provider; provided, that the City shall give the provider thirty (30) days', or a longer period of time as may be reasonably required for a provider to comply with such a rejuvenated provision, written notice of the change before requiring compliance with such provision. (Ord. 18-15, 11-20-2018, eff. 11-20-2018)



## NOTICE AND AGENDA SOUTH OGDEN CITY ARTS COUNCIL MEETING

TUESDAY, JANUARY 3, 2023 – 6 PM

Notice is hereby given that the South Ogden City Arts Council will hold a meeting on, Tuesday, January 3, 2023, beginning at 6:00 p.m. in the Council Chambers located at 3950 Adams Avenue, South Ogden, Utah, 84403. Any member of the board may be joining the meeting electronically.

**I. CALL TO ORDER – Chair Sallee Orr**

**II. CONSENT AGENDA**

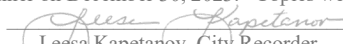
Approval of January 4, 2022 Arts Council Minutes

**III. DISCUSSION/ACTION ITEMS**

Discussion and Vote on RAMP Grant Applications

**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](http://southogdencity.gov)) and emailed to the Standard Examiner on December 30, 2023. 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 24 hours in advance.



## MINUTES OF THE SOUTH OGDEN CITY ARTS COUNCIL MEETING

TUESDAY, JANUARY 4, 2022  
COUNCIL CHAMBERS, CITY HALL

### ARTS COUNCIL MEMBERS PRESENT

Chair Sallee Orr, Council Members Russell Porter, 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, Communications and Events Specialist Jamie Healy, and Recorder Leesa Kapetanov

### CITIZENS PRESENT

No one else besides staff attended this meeting.

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

**[https://www.southogdencity.com/document\\_center/Sound%20Files/2022/CC220104\\_1801.mp3](https://www.southogdencity.com/document_center/Sound%20Files/2022/CC220104_1801.mp3)**  
**or requested from the office of the South Ogden City Recorder.**

Motion from City Council Meeting to convene into Arts Council meeting:

**Council Member Smyth moved to recess City Council Meeting and convene into an Arts Council meeting. The motion was seconded by Council Member Howard. The vote was unanimous in favor of the motion.**

## I. CALL TO ORDER

- Chair Sallee Orr called for a motion to open the Arts Council meeting  
00:26:24

**Arts Council Member Porter so moved. Arts Council Member Strate seconded the motion. Council Members Porter, Strate, Stewart, Howard, and Smyth all voted aye.**

## II. CONSENT AGENDA

### A. Approval of January 5, 2021 Arts Council Minutes

- Chair Orr called for a motion to approve the minutes if no one had questions about them  
00:26:35

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

### III. DISCUSSION / ACTION ITEMS

#### A. Discussion and Vote On RAMP Grant Project Applications

- Staff overview 00:27:13
- Discussion on Heritage Trail Project 00:31:56
- The consensus was that they should ask RAMP for a \$40,000 grant and that the Sons of the Utah Pioneers and the City would contribute \$20,000 between them
- Discussion on projects ranking 00:39:55
- Motion 00:41:50

The chair called for a motion to prioritize the RAMP applications as, 1) the Heritage Trail Project in which the City would request \$40,000, and, 2) the South Ogden Days application in which the City would request \$10,000 for entertainment. Arts Council Member Strate so moved, followed by a second from Arts Council Member Smyth. The voice vote was unanimous in favor of the motion.

### IV. ADJOURN

- Chair Orr called for a motion to adjourn 00:42:40

Arts Council Member Howard moved to adjourn the South Ogden City Arts Council meeting. Council Member Strate seconded the motion. All present voted aye.

The meeting concluded at 6:46 pm.

I hereby certify that the foregoing is a true, accurate and complete record of the South Ogden City Arts Council Meeting held Tuesday, January 4, 2022.

  
Leesa Kapetanov, City Recorder

Date Approved by the Arts Council \_\_\_\_\_



## HERITAGE TRAIL MONUMENTS

### **Monument 1: (Gene Sessions Lead)**

- A. Geology
- B. Geography
- C. Lake Bonneville

### **Monument 2: Native Americans (Gene Sessions Lead)**

- A. Archaic
- B. Fremont Indians/Anasazi Indians
- C. Historic (Shoshone) Indians

### **Monument 3: Area Exploration (Richard Sadler Lead)**

- A. Spanish
- B. American Government (Fremont, Kit Carson, Stansbury, King)
- C. \_\_\_\_\_

### **Monument 4: Trappers/Mountain Men**

- A. Weber, Provo, Ogden
- B. \_\_\_\_\_
- C. Goodyear

### **Monument 5: Pioneers**

- A. Donners (trailblazers)
- B. Mormon Pioneers
- C. Others

### **Monument 6: Railroad & Transportation**

- A. Transcontinental
- B. Builders (Chinese, Irish, Mormons)
- C. Utah Central, Bamberger, Ogden Canyon

### **Monument 7: Americanization**

- A. Culture (newspaper, media, writers, religion)
- B. Territory to Statehood (Weber County)
- C. Governmental & Legal Structure

### **Monument 8: Entrepreneurs**

- A. Browning
- B. Utah Construction
- C. David Eccles, Thomas Dee

#### **Monument 9: War Industries/Locations**

- A. HAFB
- B. DDO/POWs
- C. WWII

#### **Monument 10: Education**

- A. Local District Schools (wards, Burch Creek, H.Guy, Bonneville)
- B. Sacred Heart Academy
- C. Secondary and Higher Ed (WSU)

#### **Monument 11: Water & Conservation**

- A. Irrigation (canals, dams, water districts, etc.)
- B. Conservation
- C. \_\_\_\_\_

#### **Monument 12: Recreation**

- A. Dams, (Pineview Dam, Willard Bay)
- B. Skiing
- C. Trails

#### **Monument 13: Healthcare**

- A. Diseases (Spanish Flu)
- B. Hospitals (McKay Dee, St. Benedicts Ogden Regional)
- C. Nurse Training (Dee Hospital)

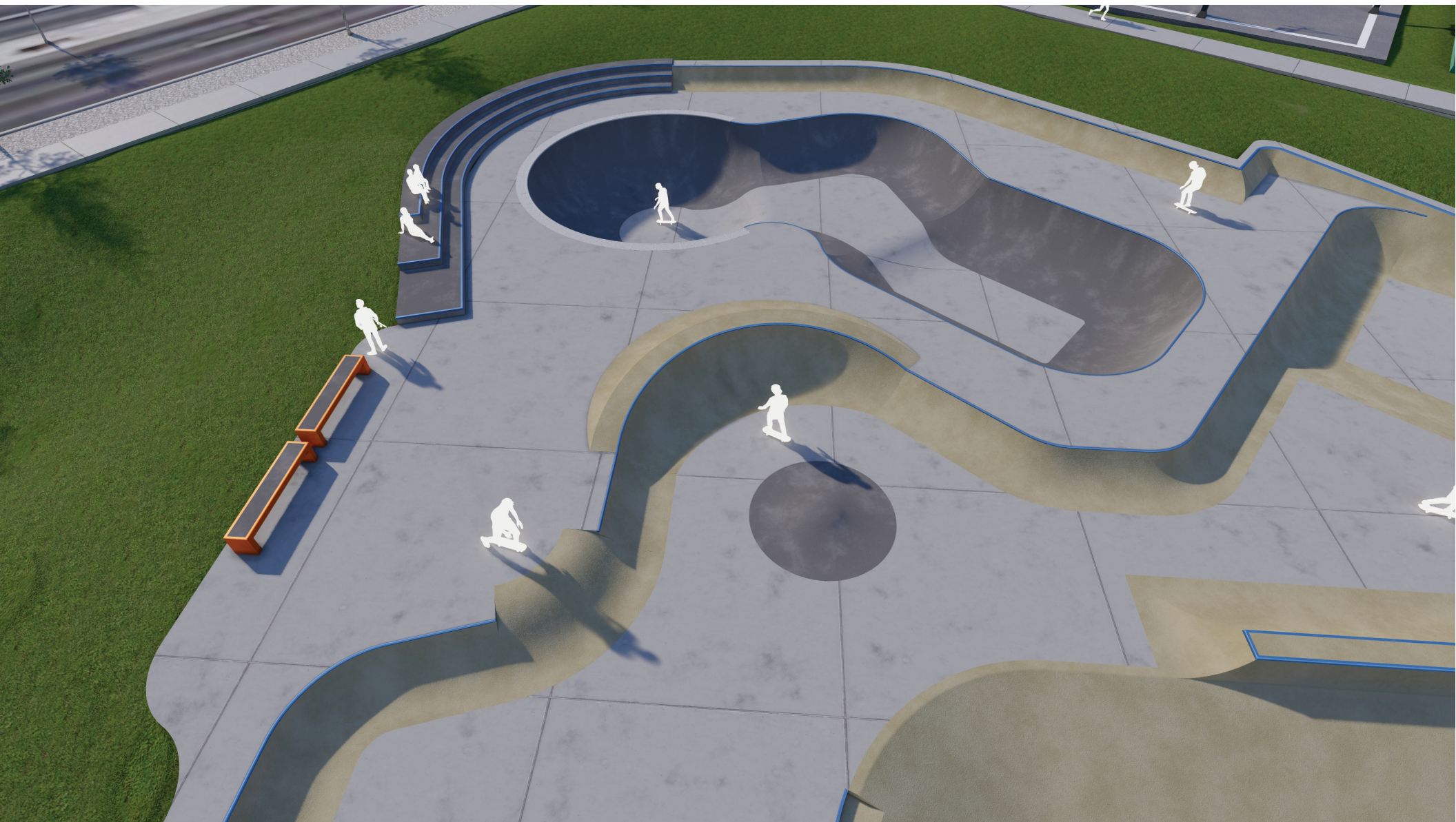
#### **Other Monument Ideas**

- Great Depression
- Religions
- Ethnic Contributions
- Influential Women









# SOUTH OGDEN MEADOWS PARK

## MASTER PLAN



### EXAMPLE IMAGES



Entry Promenade



Basketball Court



Pickleball Courts



Large Pavilion



Playground Equipment 2-5



Playground Equipment 5-12

### LEGEND

- 1 Entry Promenade
- 2 Basketball Court
- 3 Pickleball Courts
- 4 Large Pavilion 24x2
- 5 Play Equipment Ages 2-5\*
- 6 Play Equipment Ages 5-12\*
- 7 Open Lawn
- 8 Perimeter Path
- 9 Retention Pond
- 10 Parking
- 11 Restrooms
- 12 Waterwise Plantings
- 13 Covered Seating

\* Playground equipment is representative only.  
Exact equipment to be determined.

### DESCRIPTION

South Ogden's Meadows Park plays an important role as a key neighborhood park in the southeast portion of the City. This Master Plan envisions a transformation of the currently underutilized site to provide greater recreational benefits to the surrounding residents. In this concept, the park's amenities are oriented around a central plaza, which serves as a place of orientation and gathering. Park visitors enter the plaza via a tree-lined entry promenade from 5700 South or via the parking area at the rear. The plaza serves as an amenity hub with a large pavilion for gathering, a smaller picnic shelter, and restrooms. A new modern playground (10,000sf) is set at the rear of the plaza, expanded with a variety of play equipment for children ages 2-5 years old (2800sf) and 5-12 years old (7200sf). At the front of the park, the promenade is flanked by a full basketball court and two pickleball courts, which have been aligned with 5700 South to maximize usable park space. At the park's rear, open lawn areas allow for the spillover of activity from the plaza and playground. The ample parking area doubles as a service lane for emergency vehicles, with stormwater runoff being managed by the detention basin at the south end of the site. Care was taken to preserve the existing trees and waterwise planting areas are provided to conserve water in areas where lawn is impractical. As a whole, the transformed park will be a true neighborhood destination, delivering key recreational services and social opportunities for the residents it serves.



12-7-2022

**Preliminary Opinion of Probable Costs - South Ogden Meadows Park Master Plan**

ITEM	QUANT.	UNIT	UNIT PRICE	AMOUNT
<b>Bid Schedule - Base Bid</b>			OPINION OF COST	
A-1 Mobilization / Demobilization / Construction Layout	1	LS	\$200,000.00	\$200,000.00
A-2 Erosion Control / SWPPP	1	LS	\$30,000.00	\$30,000.00
A-3 Demolition - Clearing and Grubbing	1	LS	\$100,000.00	\$100,000.00
A-4 Demolition - Remove and Dispose of Existing Utility	1	LS	\$2,000.00	\$2,000.00
A-5 Demolition - Remove and Dispose of Existing Playground	1	LS	\$2,000.00	\$2,000.00
A-6 Demolition - Remove and Dispose of Existing Concrete	1	LS	\$2,000.00	\$2,000.00
A-7 Traffic Control	1	LS	\$15,000.00	\$15,000.00
A-8 Existing Tree Protection	1	LS	\$3,000.00	\$3,000.00
A-9 Earthwork / Site Grading	1	LS	\$60,000.00	\$60,000.00
A-10 Earthwork Cut to Haul Off-Site	1	LS	\$40,000.00	\$40,000.00
A-11 Earthwork Fine Grading	1	LS	\$20,000.00	\$20,000.00
A-12 Structural Fill	1	LS	\$20,000.00	\$20,000.00
A-13 Imported Topsoil - 6"	1	LS	\$35,000.00	\$35,000.00
A-14 Imported Topsoil - 12"	1	LS	\$30,000.00	\$30,000.00
A-15 Utility - Site Electrical Service	1	LS	\$30,000.00	\$30,000.00
A-16 Utility - Electrical Site Lighting	1	LS	\$50,000.00	\$50,000.00
A-17 Utility - Electrical Pickleball Court and Basketball Lighting and Controls	1	LS	\$20,000.00	\$20,000.00
A-18 Utility - Electrical Pavilion Lighting	1	LS	\$5,000.00	\$5,000.00
A-19 Utility - Storm Drainage	1	LS	\$60,000.00	\$60,000.00
A-20 Utility - Sanitary Sewer	1	LS	\$50,000.00	\$50,000.00
A-21 Utility - Culinary Water Fire Hydrant Assembly	2	EACH	\$7,000.00	\$14,000.00
A-22 Utility - Culinary Water	1	LS	\$15,000.00	\$15,000.00
A-23 Curb and Gutter - 30"	510	LF	\$40.00	\$20,400.00
A-24 Asphalt Parking Lot Paving Section (2-1/2" HMA/10" UTBC)	10,063	SF	\$4.00	\$40,252.00
A-25 Concrete Sidewalk (4" Thick) over Base Course (4")	9,010	SF	\$8.00	\$72,080.00
A-26 Concrete Sidewalk (6" Thick) over Base Course (4")	1,066	SF	\$10.00	\$10,660.00
A-27 Traffic Signs (Stop and ADA)	6	EACH	\$500.00	\$3,000.00
A-28 Park Rules Sign	2	EACH	\$1,000.00	\$2,000.00
A-29 Pavement Markings	1	LS	\$1,000.00	\$1,000.00
A-30 Concrete Edge 9" Wide x 12" Tall Playground	430	LF	\$35.00	\$15,050.00
A-31 Pavilion (24x24)	1	LS	\$80,000.00	\$80,000.00
A-32 Picnic Shelter (16x16)	1	LS	\$45,000.00	\$45,000.00
A-33 Trellis Shelter (14x14)	1	LS	\$40,000.00	\$40,000.00
A-34 Bench Shelter (8x12)	4	EACH	\$28,000.00	\$112,000.00
A-35 Bench 6'	11	EACH	\$2,000.00	\$22,000.00
A-36 Picnic Table 6'	4	EACH	\$3,000.00	\$12,000.00
A-37 Picnic Table ADA 6'	2	EACH	\$3,000.00	\$6,000.00
A-38 Litter Receptacle	4	EACH	\$1,750.00	\$7,000.00
A-39 Bike Rack	1	EACH	\$2,000.00	\$2,000.00
A-40 Mulch - Wood Bark 3" Deep	5,020	SF	\$0.75	\$3,765.00
A-41 Mulch - Crushed Stone 3" Deep	6,110	SF	\$1.50	\$9,165.00
A-42 Irrigation System	38,600	SF	\$2.50	\$96,500.00
A-43 Sod	27,470	SF	\$0.70	\$19,229.00
A-44 Tree - 2" Cal	26	EACH	\$520.00	\$13,520.00
A-45 Tree - 5' Tall	2	EACH	\$400.00	\$800.00
A-46 Shrub - 1 Gallon	350	EACH	\$20.00	\$7,000.00
A-47 Shrub - 5 Gallon	335	EACH	\$55.00	\$18,425.00
A-48 Playground Equipment Ages 2-5 and Shade Installation	1	LS	\$250,000.00	\$250,000.00
A-49 Playground Equipment Ages 5-12 and Shade Installation	1	LS	\$450,000.00	\$450,000.00
A-50 Playground Resilient Surfacing Engineered Wood Fiber	11,090	SF	\$5.00	\$55,450.00
A-51 Restroom - 2 Family Rooms	1	LS	\$300,000.00	\$300,000.00
A-52 Pickle Ball Courts - Post-Tensioned (2 courts per slab)	1	EACH	\$75,000.00	\$75,000.00
A-53 Basketball Court and Standards	1	EACH	\$75,000.00	\$75,000.00
<b>Section Subtotal</b>				<b>\$2,667,296.00</b>
<b>City Direct Costs</b>				
Consultant Design Fees ( Civil, Elec, Arch, Landscape Arch, etc.)	1	LS	\$200,000.00	\$200,000.00
Construction Material Testing	1	LS	\$10,000.00	\$10,000.00
<b>Section Subtotal</b>				<b>\$210,000.00</b>
<b>General with % Calculations</b>				
Grand Total Contingency		15.0%	\$400,094.40	\$400,094.40
<b>SUBTOTAL</b>				<b>\$400,094.40</b>
<b>GRAND TOTAL COST including Contingency</b>				<b>\$3,277,390.40</b>