

RESOLUTION NO. 16-27

A RESOLUTION APPROVING AND AUTHORIZING THE EXECUTION OF AN AGREEMENT BETWEEN SOUTH OGDEN CITY AND WASATCH FRONT REGIONAL COUNCIL AND IBI GROUP FOR THE PROVISION OF FORM BASED CODE IMPLEMENTATION AND EXTENSION AND RELATED SERVICES ON BEHALF OF SOUTH OGDEN CITY; AUTHORIZING THE CITY MANAGER TO SIGN SUCH AN AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE

SECTION 1 - RECITALS

WHEREAS, the City Council finds that the City of South Ogden (“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 Utah Code (“UC”) §10-3-717, the City Council as the governing body of the City may exercise all administrative powers by resolution; and,

WHEREAS, the City Council finds that in conformance with UC §10-3-717, the City Council as the governing body of the City may exercise all administrative powers by resolution; and,

WHEREAS, the City Council finds it has need for assistance in implementation of certain aspects of its current Form Based Code together with extending those zoning processes and techniques into other areas of the city and related services on behalf of the City in a manner that is beneficial to each other (the “Agreement”); and,

WHEREAS, the City Council finds that entering into and supporting the Agreement is in the best interest of the citizens of South Ogden City; and,

WHEREAS, the City Council finds it will be beneficial to the City to enter into a contractual relationship with Wasatch Front Regional Council and IBI Group, for the provision of these mutually beneficial services; and,

WHEREAS, the City Council finds that such agreements require the signature of an authorized official of the City; and,

WHEREAS, the City Council finds that the City Manager of South Ogden is the chief administrative officer and representative of the City;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SOUTH OGDEN UTAH THAT:

The City Council Of South Ogden City, State Of Utah, Authorizes Entry Into An Agreement Between South Ogden City And Wasatch Front Regional Council And IBI Group, For The Provision Of Assistance In Implementation Of Certain Aspects Of The City’s Current Form Based Code Together With Extending Those Zoning Processes And Techniques Into Other Areas Of The City As Set Out In That Document Entitled “**Transportation and Land Use Connection Agreement**” (Said Agreement Attached Hereto As “**Attachment A**” And Incorporated By This Reference), And Authorizes The City Manager To Sign All Contracts, Agreements, Or Other Documents Necessary To Consummate Said Agreement; And,

Authorizes The City Recorder To Sign Any Documents As May Be Required Attesting To The Fact That The City Manager Has Been Duly Authorized To Enter Into Such Arrangements On Behalf Of The City.

BE IT FURTHER RESOLVED this Resolution shall become effective immediately upon its passage.

SECTION 2 - REPEALER OF CONFLICTING ENACTMENTS:

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

SECTION 3 - PRIOR 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 - SAVINGS CLAUSE:

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

SECTION 5 - DATE OF EFFECT

This Resolution shall be effective on the 16th day of August, 2016, 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 16th day of August, 2016.

SOUTH OGDEN CITY

James F. Minster,
Mayor

ATTEST:

Leesa Kapetanov, CMC
City Recorder

RESOLUTION NO. 16-27

A Resolution Approving And Authorizing The Execution Of An Agreement Between South Ogden City And Wasatch Front Regional Council And IBI Group For The Provision Of Form Based Code Implementation And Extension And Related Services On Behalf Of South Ogden City; Authorizing The City Manager To Sign Such An Agreement; And Providing For An Effective Date

16 Aug 16

CERTIFICATION OF CONSULTANT

I certify that I, Ray Whitchurch and Dave Nicholas, are duly authorized representatives of the Consultant and that neither I nor the above CONSULTANT I represent has:

- (a) Employed or retained for commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above CONSULTANT) to solicit or secure this Agreement,
- (b) Agreed, as an express or implied condition for obtaining this contact, to employ or retain the services of any firm or person in connection with carrying out the Agreement, or
- (c) Paid, or agreed to pay to any firm, organization or person (other than a bona fide employee working solely for me or the above CONSULTANT) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the Agreement; except as expressly stated (if any):

This certificate is to be furnished to the Wasatch Front Regional Council, and the Federal Highway Administration for this Agreement if it involves participation of Federal-Aid Funds, and is subject to applicable State and Federal laws, both criminal and civil.

_____ Date _____ CONSULTANT Signature / Title

CERTIFICATION OF THE WASATCH FRONT REGIONAL COUNCIL

I certify that I am a duly authorized representative of the Wasatch Front Regional Council, and that the above CONSULTANT or its representative has not been required, directly, or indirectly as an express or implied condition in connection with obtaining or carrying out this Agreement, to:

- (a) Employ or retain, or agree to employ or retain, any firm or person, or
- (b) Pay, or agree to pay, to any firm, person, organization, any fee, contribution, donation, or consideration of any kind; except as expressly stated (if any):

_____ Date _____ WFRC Signature / Title

ATTACHMENT A

Standard Terms and Conditions

1. Employment of CONSULTANT

The WFRC agrees to engage CONSULTANT, and CONSULTANT agrees to perform the services identified in Attachment A based on the budget in Attachment C.

2. Scope of Services by CONSULTANT.

Consultant shall perform these services at the direction of WFRC under commonly accepted professional standards and to WFRC's satisfaction without increase or decrease in cost or fee payable to Consultant. WFRC reserves the right to refine or amend these work tasks, as necessary.

3. Contract Changes.

Changes to this Contract may be made with the written approval of both parties. In the event that a proposed change in scope proposed by either party will cause an increase or decrease in the agreed contract price, Consultant will notify WFRC before performing or amending such work. The parties will negotiate a price adjustment and will execute a modification to this contract before commencing or amending such work. Such modifications will be identified as Change Orders and will be numbered consecutively beginning with the number "1".

4. Project Oversight.

WFRC will be responsible for supervisory project management, including approval of schedules and schedule changes, approval of Consultant work, payment of invoices, and coordination with other Project participants. The WFRC Project Manager assigned to this Project is Megan Townsend, mtownsend@wfr.org.

6. Personnel.

Consultant represents that it has, or will obtain at its own expense, all personnel required to perform the services under this Agreement and all personnel engaged in the work shall be fully qualified and shall be authorized under State and local laws to perform such services.

7. Subcontractors.

Consultant shall not employ subcontractors in performance of this work unless approved in writing by the WFRC.

8. Time Performance.

The services of Consultant are to commence immediately after the execution of this Agreement and shall be completed no later than 01/15/18, 18 months from the date of this Agreement unless this date is extended by contract amendment. If Consultant's services are suspended, delayed, or interrupted for the convenience of the WFRC, no additional cost shall accrue and no additional compensation shall be made because of such suspension, delay or interruption.

9. Compensation.

It is understood and agreed that CONSULTANT will complete the work in Attachment B for a lump sum of **\$ 20,000**.

10. Method of Payment.

Consultant shall submit an electronic copy and physical copy of the monthly invoice to WFRC program staff Megan Townsend at mtownsend@wfr.org, **295 North Jimmy Doolittle Road, Salt Lake City Utah, 84116**. For all services and materials pertinent hereto, CONSULTANT shall bill WFRC monthly for the completed percentage of the tasks outlined in the scope of work. All invoices must be submitted with a monthly progress report outlining the deliverables and tasks completed to the invoice. Invoices must identify costs by key project milestones and the portion of each milestone completed. Labor hours shall be directly traceable and supported by monthly time sheets, and such documentation shall be provided to the WFRC upon request. Copies of receipts, bills, sub consultant invoices, or other documentation supporting direct charges shall be provided to the WFRC upon request. To avoid imposing undue hardship on CONSULTANT, the WFRC shall pay CONSULTANT for all undisputed accounts, shown on the invoice, within 60 days after receiving the invoice.

11. Records.

CONSULTANT shall maintain complete and accurate records regarding costs incurred under this Agreement. All such records shall be maintained in accordance with generally accepted accounting requirements and shall be clearly identified and readily accessible. CONSULTANT shall provide free access to such pertinent portions of books and records to the representatives of the WFRC at all reasonable times. The WFRC may examine and audit the same, and make transcripts therefrom as necessary to allow inspection of all work data, documents, proceedings and activities related to this Agreement for three (3) years from final payment under this Agreement. All accounting records shall readily provide a breakdown of costs charged to this Agreement. Such records, with supporting documents, shall be kept separate from other documents and records and shall be maintained for three (3) years after receipt of final payment.

12. Products.

This contract is for such time and materials as may be necessary to complete the tasks identified in Attachment B.

13. Disputes.

It is WFRC's desire and intent to resolve any issues arising during the Project through informal means rather than through a formal process. If CONSULTANT and the WFRC Project Manager cannot satisfactorily resolve an issue, it shall be referred to the WFRC Executive Director for resolution prior to commencing any formal disputes resolution.

The federal Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613) will govern all formal disputes. Formal disputes or claims will be submitted in writing to the WFRC Executive Director. All disputes will be adjudicated by WFRC. After exhausting these steps, CONSULTANT may proceed with litigation.

14. Termination of Agreement.

The WFRC may terminate this Agreement by giving written notice to CONSULTANT of such termination and specifying the effective date thereof. If termination occurs, or upon completion of contractual obligation, all finished documents, data, studies, surveys, drawings, maps, photographs, and records prepared by CONSULTANT shall become the WFRC's property, and CONSULTANT may receive just and equitable compensation for any work completed to WFRC's satisfaction under the requirements of such documents and other materials, said payment to CONSULTANT or reimbursement to the WFRC (whichever the case may be) shall be based upon the time and expense records required to be kept by CONSULTANT under paragraph 10 of this Agreement.

15. Law Abiding.

CONSULTANT shall comply with all federal, state and local laws, ordinances or regulations affecting their employees, or those engaged by CONSULTANT on the project for the materials or equipment used or for the conduct of the work, and will procure all necessary licenses, permits and claims arising out of any acts of CONSULTANT during this agency relationship.

16. Trust.

CONSULTANT represents that it has not employed or retained any company or person and that it has not paid, or agreed to pay, any company or person any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from award or making of this Agreement. For breach or violation of this warranty, the WFRC may annul this Agreement without liability.

17. Certification Regarding Debarment, Eligibility, Indictments, Convictions or Civil Judgments.

CONSULTANT represents that neither it nor any person associated therewith (in the capacity of director, officer, principal investigator, project director, manager, auditor, or any position involving the administration of Federal Funds, except as may be noted), is under suspension, debarment, voluntary exclusion, or determination of ineligibility by any Federal agency, nor has it, or any associated person, been debarred or otherwise excluded in the last three years.

18. Certification Regarding Restrictions on Lobbying.

CONSULTANT represents that no appropriated federal funds will be used for activities precluded by Title 31 U.S.C, Section 1352. CONSULTANT certifies compliance with this provision under this Project.

19. Interest of Members of WFRC and Others.

No officer, member or employee of the WFRC, no member of its governing body, and no other public official of the governing body of the locality or localities in which the Project is situated or being carried out, who exercised any functions or responsibilities in the review or approval of the undertaking or carrying out of this Project, shall participate in any decision relating to this Agreement which affects his or her personal interest nor may any such member have any personal or pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof.

20. Findings Confidential.

Reports, information, data, or other Project materials given to, prepared, or assembled by CONSULTANT shall not be made available to any individual or organization by CONSULTANT without the prior written approval of the WFRC, except as required by law or subpoena.

21. Publication, Reproduction and Use of Material.

Reports, maps or other documents produced under this Agreement shall not be the subject of an application for copyright by or on behalf of CONSULTANT. The WFRC shall have the authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data, or other materials prepared under this Agreement. Original documents and related source files, methodological explanations, drawings, designs, and reports generated under the terms of this Agreement shall belong to and be the property of WFRC under accepted standards relating to public works contracts. Any additional copies, or materials not otherwise provided for herein, shall be the responsibility and property of WFRC.

Documents, including drawings and specifications, prepared by CONSULTANT under this Agreement are not intended or represented to be suitable for reuse by WFRC or others. Any reuse of completed documents, or use of partially completed documents, without written verification of, or concurrence by, Consultant for any purpose other than the specific purpose and project which is the subject of this agreement will be at WFRC's sole risk and without liability or legal exposure to Consultant; and WFRC shall indemnify and hold harmless Consultant from all claims, damages, losses, and expenses, including attorney's fees arising out of or resulting from re-use or misuse.

22. Limitation of Rights.

The services to be performed by CONSULTANT are intended solely for the benefit of the WFRC. Nothing in this Agreement shall confer any rights upon, or create any duties on, the part of CONSULTANT toward any person or persons not a party to this Agreement.

23. Hold Harmless.

CONSULTANT shall defend, indemnify and save harmless the WFRC, and its officers and employees, against all damages to property or injuries to or death of any person or persons, including property and employees or agents of the WFRC, for all claims, demands, suits, actions, or proceedings, including workers' compensation claims, to the extent they result from or arise out of the sole tortuous or negligent acts, errors, or omissions of CONSULTANT, its agents, officers and employees.

The WFRC shall defend, indemnify and save harmless CONSULTANT, and its officers and employees, against all damages to property or injuries to or death of any person or persons, including property and employees or agents of CONSULTANT, for all claims, demands, suits, actions, or proceedings, including workers' compensation claims, to the extent they result from or arise out of the sole tortuous or negligent acts, errors, or omissions of the WFRC, its agents, officers, employees, or subcontractors.

24. Insurance.

CONSULTANT maintains, at its own expense, workers compensation, commercial general

liability (professional liability @ \$500,000 per occurrence), and automobile liability insurance policies with limits at or above that which is reasonably required in the industry for comparable planning studies and will, upon request, furnish certificates of insurance to the WFRC.

25. Independent Contractor.

CONSULTANT is an independent contractor for the performance of all services herein.

26. Notices.

Any notices required to be given in writing under this Agreement may be given by depositing the same in the United States Postal Service, postage prepaid, by certified mail addressed as follows, or through other mail courier services that can be adequately traced:

Ray Whitchurch

Principal

IBI Group

10 Exchange Place, Suite 112

Salt Lake City, UT 84111

Andrew Gruber

Executive Director

Wasatch Front Regional Council

295 North Jimmy Doolittle Road

Salt Lake City, UT 84116

27. Representative of WFRC.

The WFRC's representative in the performance, implementation, and administration of this Contract shall be the member of the WFRC staff designated to act on behalf of the Executive Director as Project Manager for this Project as identified in paragraph 4 (Project Oversight) above. All direction and official communication to the CONSULTANT from WFRC shall be from that single source.

ATTACHMENT B

Scope of Work and Services to be provided by the Consultant

Scope of Work

Project Understanding

Recently, South Ogden adopted a form based code (FBC) that was based on the WFRC FBC model. This code integrated form based regulations for the downtown area and 40th Street Corridor of South Ogden. The City of South Ogden, with the assistance of the Wasatch Front Regional Council, is now seeking to expand and calibrate this code to other commercial areas within the City, with residential zone R-5, being used as a transitional zone to residential zones.

IBI Group has been requested to provide this code to the City. It is our understanding that the WFRC will manage the funding for this project and coordinate with the City. South Ogden will lead the project content directly and provide input to IBI Group. In addition, South Ogden will take the code through the adoption process, with the assistance of IBI Group.

Along with the code, and concurrent with the public outreach process, IBI Group will formulate a complete streets policy for South Ogden City, and provide direction to the City with the goal of adopting a complete streets policy. IBI Group will lead this discussion through presentations to the City Planning Commission and City Council.

Project Overview:

1. Write an extension of the existing Form-Based Code, assisting with the adoption process per scope of work. This will be an extension of the existing “City Center and 40th Street Corridor” Form Based Code (FBC) developed August 2015, which was based on the Wasatch Choices model template.
2. Formulate a policy for Complete Streets and provide street sections of street types in this district as examples. These may be integrated into the Form Based Code.
3. Conduct a public outreach process including one developer meeting and two public information sessions/open houses.
4. Assist South Ogden City with adopting the code and policy per scope of work in this document.

Form Based Code and Complete Streets Tasks

Task 1: Visioning

Task 1a - Form Based Code Vision: One meeting with the City Manager, Planner, and other participants to discuss the vision for the area to visualize the contents of the form based code.

Task 1b – Complete Streets Policy Calibration: This meeting will also discuss the vision and goals for the complete streets policy. This meeting will be incorporated into Task 1a.

Task 2: Calibration and City Staff Coordination

Task 2a - Form Based Code Calibration: IBI Group will draft the form based code, including three meetings with the City to review progress for congruence between the code and the vision, leading to the production of a complete product. These meetings will be dispersed throughout the process. These meetings will preferably take place in South Ogden City or via an agreed upon electronic communication method. The Form Based Code will regulate existing commercial and zone R-5 as a transition from commercial areas to residential areas.

Task 2b – Complete Streets Policy Calibration: The Complete Streets Policy will also be addressed in the calibration meetings to develop a basic framework for implementing the

complete streets policy when improvements are made, for example, new construction, reconstruction, maintenance, and prioritized projects. During these meetings, recommendations will be made for an action plan or next steps to include future improvements such as a full-scale Active Transportation Plan with identified improvement typologies and locations.

Task 3: Developer Meeting

IBI Group will attend and present at a developer meeting to gather feedback on the draft code from local developers. The City will invite attendees. IBI will then work with City Staff to incorporate appropriate feedback into the final draft code.

Task 4: Public Engagement

IBI Group will hold two public workshops on the Form Based Code, the first of which is to help the stakeholders understand the code and its implications to the City. IBI Group will also gather public input at this meeting and discuss our findings with City staff to determine the next steps in moving forward with the FBC. We will then hold an additional public presentation on the Code. The City will be responsible for public notification.

Task 5: Adoption

Task 5a - Form Based Code Adoption: IBI Group will work with the City in support of the adoption process, making necessary edits to the code for one revision, based on comments from the City Planning Commission, and one revision based on comments from the City Council. We will present the code to the Planning Commission and City Council, and conduct up to two joint planning commission/council workshops, as necessary.

Task 5b – Complete Streets Policy: A complete streets policy document will be produced that outlines the City's commitment to complete streets, and will be recommended for adoption by resolution, unless another method is preferred by the City Manager.

Task 6: Complete Streets Implementation Checklist

After the final adoption or during the process of adoption IBI Group will create a checklist to be reviewed by the City Manager, Planner, Engineer, and/or Public Works as an implementation element to determine when complete streets principles are implemented.

Project Budget

Fee:

\$20,000

Meeting Timeline

Meeting 1 (Task 1: Vision): A meeting with City Staff to kick off project and discuss vision.

Meeting 2 (Task 2: Calibration): A meeting with City Staff for initial review of the code calibration and complete streets to prepare for first public meetings.

Meeting 3 (Task 3&4: Public Meetings): A public meeting with first half of meeting dedicated to the developer meeting, and second half dedicated to general public engagement meeting.

Meeting 4 (Task 2: Calibration): A meeting with City Staff for second review of the code calibration and complete streets policy with public comments (from Meeting 3) integrated.

Meeting 5 (Task 4: Public Meetings): A public meeting to present a draft of the code to the general public.

Meeting 6 (Task 5: Adoption): A workshop with the Planning Commission and City Council to review the code, ask questions and provide feedback.

Meeting 7 (Task 2: Calibration): A meeting with City Staff for a third and final review of the code calibration and complete streets policy with public comments and city staff comments integrated.



TRANSPORTATION
AND
LAND USE CONNECTION

Meeting 8 (Task 5: Adoption): A presentation of a final draft of the form based code to the Planning Commission. Also, a presentation of the final draft of the complete streets policy (if requested by City Manager).

Meeting 9 (Task 5: Adoption): A presentation of a final draft of the form based code to the City Council. Also, a presentation of the final draft of the complete streets policy (if requested by City Manager).

ATTACHMENT C

Budget

Responsibilities and Budget

Consultant fees for the above services are a lump sum of \$20,000.

The following responsibilities and budget has been agreed to:

- (1) Completion: All work shall begin with seven (7) days of the notice to proceed and shall be completed by DATE: January 15th, 2018
- (2) Project / Contract Period: The project / contract will terminate on DATE: 01/15/18, unless otherwise extended or canceled under the terms and conditions of this contract. If additional time is required beyond the project completion date, the CONSULTANT shall submit a "Contract Time Extension Modification" to the WASATCH FRONT REGIONAL CONCIL for approval and processing.

- (a) Certification of Insurance

ATTACHMENT D

Local Government Understanding and Agreement

LOCAL GOVERNMENT INFORMATION

Local Government: City of South Ogden

Project Manager, Contact Person: Matt Dixon

Contact Address: 3950 Adams Ave. Suite 1
South Ogden, UT 84403

Contact Phone: 801-622-2702

The LOCAL GOVERNMENT has reviewed the consultant's qualifications, scope of work, schedule, budget, and deliverables and agrees with such.

Further, the LOCAL GOVERNMENT will work with both the CONSULATANT and the WFRC to make this effort a success.

Further, the LOCAL GOVERNMENT will provide all needed support and assistance as outlined in the scope of work.

A LOCAL GOVERNMENT representative, listed above or otherwise modified in writing, will manage the project with support and assistance from WFRC and will provide periodic updates of the project's progress to the LOCAL GOVERNMENT governing body, appointed boards or commissions, and interested LOCAL GOVERNMENT stakeholders.

WFRC will compensate the consultant under the Agreement, with review and consultation from the LOCAL GOVERNMENT.

Finally, it is understood that the governing body of the LOCAL GOVERNMENT will consider the final products for formal adoption.

Date

Mayor