



## CITY COUNCIL MEETING

MARCH 26, 2024 AT 6:00 PM

**MEETINGS NOW HELD IN THE PUBLIC SAFETY BUILDING AT 515 E 2600 N | NORTH OGDEN, UT 84414**

### AGENDA

#### **PUBLIC CAN ATTEND:**

In person OR: Click the link to join the Webinar: <https://us02web.zoom.us/j/89936086567>

Webinar ID: 899 3608 6567

Telephone Dial: 1 346 248 7799 or 1 669 900 9128 or 1 253 215 8782

YouTube: <https://www.youtube.com/channel/UCriqbePBxTucXEzRr6fclhQ/videos>

**Welcome:** Mayor Berube

**Invocation/Thought & Pledge of Allegiance:** Council Member Dalpiaz

#### **PRESENTATIONS**

1. Youth Council Leadership Conference Presentation  
Presenter: North Ogden City Youth Council

#### **CONSENT AGENDA**

2. Call for Conflict of Interest Disclosure
3. Action to approve the February 27, 2024, City Council Meeting Minutes
4. Discussion and/or action to approve the selection of the 2024 Audit Committee Members  
Presenter: Mayor Berube
5. Discussion and/or action on the Conditional Acceptance of Rock Pointe Estate  
Presenter: Public Works Inspector Dylan Hill
6. Discussion and/or action on the Final Acceptance of Barker Depot  
Presenter: Public Works Inspector Dylan Hill

#### **ACTIVE AGENDA**

7. Public Comments\*
8. Discussion and/or action to approve a Franchise Agreement A3-2024 with CenturyLink QC  
Presenter: City Manager/Attorney Jon Call
9. Discussion and/or action to approve the North Ogden City Cherry Days Committee becoming a 501c3  
Presenter: City Manager/Attorney Jon Call

#### **CERTIFICATE OF POSTING**

The undersigned, duly appointed City Recorder, does hereby certify that the above notice and agenda were posted within the North Ogden City limits on this 21st day of March 2024 at North Ogden City Hall, on the City Hall Notice Board, on the Utah State Public Notice Website at <https://www.utah.gov/pmn/>, and at <http://www.northogdencity.com>. The 2024 meeting schedule was posted on December 13, 2023.

Rian Santoro, North Ogden City Recorder.

The Council at its discretion may rearrange the order of any item(s) on the agenda. Final action may be taken on any item on the agenda. The Council reserves the right to enter into a closed meeting at any time in accordance with 52-4-204. In compliance with the Americans with Disabilities Act, those needing special accommodation (including auxiliary communicative aids and service) during the meeting should notify the City Recorder at 801-782-7211 at least 48 hours prior to the meeting. In accordance with State Statute, City Ordinance, and Council Policy, one or more Council Members may be connected via speakerphone or may by a two-thirds vote to go into a closed meeting.

10. Discussion and/or action to consider amending North Ogden Code Title 11-19-3, C, 5 Design and Location of Parking Spaces to reduce the required parking setback on Washington Boulevard  
Presenter: Community and Economic Development Director Scott Hess
11. Discussion and/or action on the partnership on a RAMP grant application for an LED screen and chairs at the Barker Park Amphitheater.  
Presenter: City Manager/Attorney Jon Call
12. Discussion on budget highlights, revenues, priorities, and future plan  
Presenter: Finance Director Jami Jones
13. Council Department Reports:
  - a. Council Member Watson – Administration & Recreation Departments
  - b. Council Member Pulver – Public Works Department
  - c. Mayor Berube – Finance Department
  - d. City Manager/Attorney Jon Call – Capital Projects
14. Public Comments\*
15. Mayor/Council/Staff Comments
16. Adjournment

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#### **Public Comments/Questions**

- a. Time is made available for anyone in the audience to address the Council and/or Mayor concerning matters pertaining to City business.
- b. When a member of the audience addresses the Mayor and/or Council, he or she will come to the podium and state his or her name and city residing in.
- c. Citizens will be asked to limit their remarks/questions to five (5) minutes each.
- d. The Mayor shall have discretion as to who will respond to a comment/question.
- e. In all cases the criteria for response will be that comments/questions must be pertinent to City business, that there are no argumentative questions and no personal attacks.
- f. Some comments/questions may have to wait for a response until the next regular Council Meeting.
- g. The Mayor will inform a citizen when he or she has used the allotted time.

## NORTH OGDEN CITY COUNCIL MEETING MINUTES

February 27, 2024

The North Ogden City Council convened on February 27, 2024, at 6:00 p.m. at the North Ogden City Office at 505 East 2600 North.

Notice of time, place, and agenda of the meeting was posted on the bulletin board at the municipal office and posted to the Utah State Website on February 22, 2024.

Notice of the annual meeting schedule was posted on the bulletin board at the municipal office and posted to the Utah State Website on December 13, 2023.

**Note: The time stamps indicated in blue correspond with the recording of this meeting, which can be located on YouTube: <https://www.youtube.com/channel/UCriqbePBxTucXEzRr6fclhQ/videos> or by requesting a copy of the audio file from the North Ogden City Recorder.**

### PRESENT:

S. Neal Berube	Mayor
Ryan Barker	Council Member (excused)
Blake Cevering	Council Member
Jay D Dalpias	Council Member
Chris Pulver	Council Member
Christina Watson	Council Member

### STAFF PRESENT:

Jon Call	City Manager/Attorney
Rian Santoro	City Recorder
Jami Jones	Finance Director
Scott Hess	Community and Economic Development Director
Eric Casperson	City Engineer
Dave Espinoza	Public Works Director/Assistant City Manager
Crystal Polson	Public Works Inspector
Ryan Nunn	Planner
Dirk Quinney	Police Chief (Zoom)

### VISITORS:

Sandy Cochran	Nate Allen
Kevin Burns	Kerry Wangsguard
Stefanie Casey	Phil Swanson
Candice Hasenyager	Anya Korfine
Branda Ashdown	K. Udy
Zachery Frankel	
Merrill Sunderlund	

Mayor Berube called the meeting to order. Council Member Cevering invited Ascension Lutheran Church Pastor Debra Jimenez to offer the invocation and lead the audience in the Pledge of Allegiance.

## **PRESENTATIONS**

### **1. ALTERNATIVE METHODS PILOT PROGRAM - APPROVAL VOTING**

**0:05:50** Nate Allen with Utah Approves began by expressing gratitude for the opportunity to present on approval voting. The benefits and differences from the current system were discussed, emphasizing its simplicity, cost-effectiveness, and ability to reflect voter values. Additionally, concerns about compliance with voting rights acts were addressed and it was clarified that approval voting maintains the principle of one person, one vote.

During the Q&A session, Council Members raised questions about cost savings, compliance with voting rights acts, and the potential impact on elections. They discussed issues such as ballot spoilage, voter education, and the possibility of eliminating primary elections. Opinions varied, with some expressing support for approval voting and others raising concerns about its implications. Some concerns raised were that approval voting could encourage "bullet voting" where people only vote for one candidate. However, others thought it could give an advantage to minority candidates or those without as much name recognition.

Ultimately, the Council agreed to draft a letter expressing support for exploring approval voting as an option for municipalities to be presented to the legislature. The letter would serve to indicate continued interest in the voting method and its potential implementation in future elections.

*(See Attachment A: Approval Voting Presentation)*

## **CONSENT AGENDA**

### **2. CALL FOR CONFLICT OF INTEREST DISCLOSURE**

**0:36:37** No conflict of interest was disclosed.

3. **DISCUSSION AND/OR ACTION TO CONSIDER THE APPROVAL OF THE FOLLOWING CITY COUNCIL MEETING MINUTES:**

- February 6, 2024
- February 13, 2024

**0:37:00 Council Member Pulver motioned to approve the listed City Council Minutes. Council Member Cevering seconded the motion.**

**Voting on the motion:**

<b>Council Member Barker</b>	<b>excused</b>
<b>Council Member Cevering</b>	<b>aye</b>
<b>Council Member Dalpiaz</b>	<b>aye</b>
<b>Council Member Pulver</b>	<b>aye</b>
<b>Council Member Watson</b>	<b>aye</b>

**The motion passed unanimously.**

**ACTIVE AGENDA**

4. **PUBLIC COMMENTS**

**0:38:05** Candice Hasenyager, a North Ogden resident, and the Director of the Division of Water Resources, addressed the Council regarding the critical need for water conservation in Utah due to ongoing drought conditions. She highlighted the severity of recent droughts and emphasized the importance of conservation efforts in ensuring drought resilience for the future. She commended the City for its focus on water conservation and expressed her support for any additional measures discussed in the upcoming meeting. She emphasized the significance of landscaping choices in water usage and encouraged the Council to consider measures to promote more water-wise landscaping practices. Candice addressed the urgency of water conservation efforts and offered her support to the Council in their decision-making process.

0:41:17 Phillip Swanson, a North Ogden resident began by expressing gratitude for the Council's service. He voiced support for agenda item number 7, the Rain Harvest Program, citing its success in the previous year and recommending the City's continued participation. Regarding agenda item number 10, the RDA Grant Program, Mr. Swanson suggested clarifying that there should be a maximum participation percentage by the City in project applications. It was his recommendation to set this maximum at 10 or 15% to ensure that the owners seeking City and taxpayer dollars have a significant stake in the projects.

0:42:27 John Arrington, a North Ogden resident expressed his understanding of the voting process under the presented system. He noted that individuals could still vote for one person if they wished, but the system allowed for voting based on philosophy rather than just individuals. He clarified that a ballot is not invalidated if someone only votes "Yes" and does not vote "No." Additionally, he mentioned that voters are not required to vote for every person for or against. Mr. Arrington concluded by expressing his understanding and thanking the Council for the opportunity to speak.

5. **DISCUSSION AND/OR ACTION TO CONSIDER THE RECOMMENDATION ON A LEGISLATIVE APPLICATION TO AMEND RESIDENTIAL FENCING STANDARDS TO CONSIDER 8-FOOT-TALL DEER FENCING FOR THE PROTECTION OF PRIVATE PROPERTY:**

0:43:37 Planner Ryan Nunn explained the proposal to amend the City's fencing ordinance. The proposal was initiated by a former Council Member who presented it to the Fire Department for consideration. It was subsequently discussed by the Planning Commission, which ultimately decided against making any changes to the existing ordinance regarding fencing, including the addition of a deer fencing ordinance. City Manager/Attorney Jon Call clarified that the current ordinance restricts fence heights to six feet but acknowledged a request to allow for up to eight feet. He explained that since the Planning Commission recommended no amendments, there was no specific language to amend at that point. However, he suggested that if the Council wished to pursue an amendment, new language could be crafted based on their discussion for future consideration.

During the discussion, Council members expressed various perspectives on the proposed amendment, considering factors such as visual impact, practicality, and the necessity of addressing deer-related issues. Some Council members proposed amending the ordinance to allow for eight-foot fencing around the perimeter of yards, while others suggested waiting for further community input or demonstrated need before making any changes.

Mayor Berube conducted a straw poll to gauge the Council's interest in pursuing amendments to the ordinance, but no Council members indicated an immediate desire to move forward with any changes. Consequently, it was decided to wait and monitor the situation before revisiting the issue.

6. **DISCUSSION AND/OR ACTION TO APPROVE ORDINANCE 2024-05**  
**AMENDING HILLSIDE PROTECTION ZONES ACCESSORY BUILDING LOT**  
**COVERAGE**

0:52:53 Planner Ryan Nunn addressed an inconsistency that was discovered in the site development standards for the hillside protection zone, specifically regarding the allowed maximum rear coverage of 25%, which was missing. The Council aimed to align this with the standards set for other residential zones to ensure consistency throughout the City.

Mayor Berube confirmed that this adjustment would maintain consistency across residential areas, recalling a previous decision made for this purpose. There were no questions raised regarding the amendment.

**Council Member Cevering motioned to approve Ordinance 2024-05 amending Hillside Protection Zones Accessory Building Lot Coverage. Council Member Dalpiaz seconded the motion.**

**Voting on the motion:**

<b>Council Member Barker</b>	<b>excused</b>
<b>Council Member Cevering</b>	<b>aye</b>
<b>Council Member Dalpiaz</b>	<b>aye</b>
<b>Council Member Pulver</b>	<b>aye</b>
<b>Council Member Watson</b>	<b>aye</b>

**The motion passed unanimously.**

7. **DISCUSSION AND/OR ACTION ON NORTH OGDEN CITY'S PARTICIPATION IN THE 2024 UTAH RIVERS COUNCIL RAIN HARVEST PROGRAM**

0:55:02 Council Member Dalpias addressed the Council regarding North Ogden's participation in the Utah Rivers Council Rain Barrel Program. Last year, the City subsidized 70 rain barrels out of the 100 initially committed, costing \$1,960 from the Stormwater Fund. This year, the Council was asked to commit potentially \$2,800 for 100 barrels. The rain barrels collect rainwater for gardening and other purposes, promoting water conservation.

Council Member Dalpias proposed limiting the subsidy to residents who did not receive a barrel last year, with a maximum of two barrels per residence. Concerns were raised about tracking previous subsidies and the durability of the barrels. It was clarified that the cost would come from the Stormwater Fund, not affecting the General Fund. A representative from Utah Rivers Council joined the discussion via Zoom and said they could likely track past recipients. Barrels were said to last 10+ years. The Council debated whether to approve the participation, with Council member Pulver suggesting budgeting for it next year instead. Council member Dalpias emphasized the importance of water conservation, especially in a desert region like North Ogden.

**Council Member Dalpias motioned to approve North Ogden City's participation in the 2024 Utah Rivers Council Rain Harvest Program to subsidize 100 barrels for a maximum of \$2800.00 with a limit of 2 barrels per residence. Council Member Watson seconded the motion.**

**Voting on the motion:**

<b>Council Member Barker</b>	<b>excused</b>
<b>Council Member Cevering</b>	<b>nay</b>
<b>Council Member Dalpias</b>	<b>aye</b>
<b>Council Member Pulver</b>	<b>aye</b>
<b>Council Member Watson</b>	<b>aye</b>

**The motion passed with a 3 to 1 vote.**

Council Member Cevering offered an explanation to his vote by stating that despite his personal commitment to water conservation, he is not in favor of using City funds to subsidize this particular program.

**8. DISCUSSION AND/OR ACTION ON THE CITY FUNDS REQUEST SUBMISSION PROGRAM**

**1:09:22** City Manager/Attorney Jon Call began with a recap of a past request from the 4-H Club for funding, which prompted the need to formalize a process for future requests. The Council deliberated on whether to restrict funding to public safety-related initiatives or to consider a broader range of requests. Some Council members advocated for a narrower focus on public safety, citing guidelines from a municipal handbook that emphasized the importance of using public funds responsibly and for the benefit of the community.

There was also debate over the use of City assets for events and activities. While some Council members expressed support for allowing certain groups to use City facilities for community-building purposes, others raised concerns about liability and the potential for misuse of resources.

Ultimately, the Council agreed to seek input from the Police Chief to help define public safety-related initiatives and establish clear criteria for determining which requests would be considered. They also planned to draft guidelines for city-sponsored events and separate discussions on funding from those on asset usage to streamline the decision-making process.

**9. DISCUSSION AND/OR ACTION TO RECESS THE CITY COUNCIL MEETING AND CONVENE THE REDEVELOPMENT AGENCY (RDA)**

**Council Member Cevering** motioned to recess the City Council meeting and convene the Redevelopment Agency (RDA). **Council Member Pulver** seconded the motion.

**Voting on the motion:**

<b>Council Member Barker</b>	<b>excused</b>
<b>Council Member Cevering</b>	<b>aye</b>
<b>Council Member Dalpiaz</b>	<b>aye</b>
<b>Council Member Pulver</b>	<b>aye</b>

**Council Member Watson**

**aye**

**The motion passed unanimously.**

**10. DISCUSSION AND/OR ACTION TO APPROVE THE RDA GRANT PROGRAM LETTER**

**1:39:01** City Manager/Attorney Jon Call explained that the RDA (Redevelopment Agency) grant program letter aimed at revitalizing a specific area. The letter would be sent to property owners in the redevelopment area to encourage them to apply for funds to improve their properties in alignment with the area's redevelopment goals. The Board deliberated on criteria for granting funds, including the percentage of funding the City should contribute and whether to prioritize projects based on potential returns for the City. Various suggestions were made, including setting a minimum contribution requirement for applicants (ranging from 10% to 20%), with the City matching their investment based on the projected benefit to the City, which is usually measured in increased sales tax revenue or property tax revenue. There was also discussion about whether to prioritize projects that generate significant revenue for the City or focus on beautification projects. Mayor Berube emphasized the need for projects to demonstrate a potential return on investment for the City, aligning with the RDA's purpose of generating revenue. Board Member Cevering expressed concerns about setting a rigid percentage, suggesting flexibility based on project viability. City Manager/Attorney Jon Call proposed sending a letter of interest to gauge project interest, with specific application requirements to follow. The Board ultimately agreed to the 10% minimum investment but left room for higher percentages to be weighted favorably.

**Board Member Cevering motioned to approve the RDA Grant Program Letter with a 10% minimum investment requirement. Board Member Watson seconded the motion.**

**Voting on the motion:**

<b>Board Member Barker</b>	<b>excused</b>
<b>Board Member Cevering</b>	<b>aye</b>
<b>Board Member Dalpiaz</b>	<b>aye</b>
<b>Board Member Pulver</b>	<b>aye</b>

Board Member Watson                      aye

The motion passed unanimously.

**11. DISCUSSION AND/OR ACTION TO ADJOURN THE RDA MEETING AND  
CONVENE IN THE REGULAR CITY COUNCIL MEETING**

**2:16:50** Board Member Watson motioned to adjourn the RDA Meeting and convene to Regular City Council Meeting. Board Member Pulver seconded the motion.

**Voting on the motion:**

Board Member Barker	excused
Board Member Cevering	aye
Board Member Dalpiaz	aye
Board Member Pulver	aye
Board Member Watson	aye

The motion passed unanimously

**12. DISCUSSION AND/OR ACTION FOR THE PURCHASE OF WEBER COUNTY  
SURPLUS PROPERTY, PARCEL 17-045-0030**

**2:17:48** Community and Economic Development Director, Scott Hess, explained that the City was approached by Weber County regarding a piece of property acquired through a delinquent tax sale, which the County wishes to sell to the City. The property, located near 300 East North of Elberta and west of Washington Boulevard in North Ogden, is seen as a potential future road right-of-way. Staff recommends the City acquire the property to prevent it from being sold to private individuals who might hinder development by holding it for a higher price. The proposed purchase price is \$308.00. The funds for the purchase will come from the City's Miscellaneous General Fund account.

**Council Member Dalpias motioned to approve the purchase of Weber County Surplus Property, Parcel 17-045-0030. Council Member Cevering seconded the motion.**

**Voting on the motion:**

<b>Council Member Barker</b>	<b>excused</b>
<b>Council Member Cevering</b>	<b>aye</b>
<b>Council Member Dalpias</b>	<b>aye</b>
<b>Council Member Pulver</b>	<b>aye</b>
<b>Council Member Watson</b>	<b>aye</b>

**The motion passed unanimously.**

**13. COUNCIL DEPARTMENT REPORTS:**

**a. Council Member Watson – Administration & Recreation Departments**

**2:21:22** Council Member Watson stated that during a recent conversation with the HR Director, updates were provided on various employees and announcements.

Dylan Hill from Public Works received praise for assisting a mother and son during a snowstorm, earning recognition from a citizen.

School Resource Officer Preece was commended for her kind and caring demeanor.

Trent Wilkins, the Sanitary Sewer Superintendent, helped a resident with a sewer backup, saving them from expensive repairs.

Retirement announcements were made for several individuals, including Chief Quinney after 28 years of service to North Ogden, Lieutenant Crowther after 44 years of service, Lieutenant Hindes after 24 years of service, and Sergeant Dives after 22 years of service. Additionally, two promotions to Lieutenant and three to Sergeant were announced.

In recreation, the lifeguarding class began with 15 new participants.

Council Member Watson announced the transition from Movies in the Park event to Flick and Floats.

Swim lesson registrations are set to open on April 1, 2024.

b. Council Member Pulver – Public Works Department

2:24:39 Council Member Pulver announced that water runoff has begun, causing some issues for residents near the reservoir that is currently under construction. Efforts are underway to address issues related to dirt overloading.

The Public Safety Building also requires attention to various minor tasks. Council Member Pulver stated he plans to become more involved in overseeing Public Works activities moving forward.

c. Mayor Berube – Finance Department

2:25:30 Mayor Berube began by announcing an upcoming Open House at the new Public Safety Building, inviting the public to attend.

He then discussed the City's financial situation, noting potential shortfalls in revenues and overspending on expenses. Despite some positive aspects, such as higher excavation fees and sales tax revenues, the overall financial outlook indicates a potential \$200,000 shortfall.

The Mayor also highlighted some budget priorities requested by Council members, which could further strain finances. Mayor Berube emphasized the need for careful consideration and decision-making moving forward, particularly regarding potential fee increases and budget allocations. His presentation ended with a discussion on fluctuating sales tax revenues and a call for remaining optimistic amidst financial challenges.

*(See Attachment B – Financial Report)*

d. City Manager/Attorney Jon Call – Capital Projects

2:38:26 City Manager/Attorney Call began by presenting the plans for a play feature at the proposed Waterworks Park, detailing a system where kids can manually pump water from holding tanks into troughs and other structures, including an Archimedes screw. He emphasized the uniqueness of this interactive feature and its funding through a Development Agreement.

Additionally, updates on various City projects were provided, including the completion of the water reservoir, the upcoming move to the new Public Safety Building, progress on the Lomond View pickleball courts with considerations for nearby residents, and advancements in the 2550 Detention Basin project.

Mr. Call also mentioned a newly approved major piping project which will be spanning two years and clarified that the Council's commitment to the second year's funding was not required at this time.

Overall, the projects aim to enhance city amenities and infrastructure while addressing community needs and future challenges.

2:49:59 Mayor Berube took the opportunity to acknowledge Chief Quinney's retirement after 28 years of service, highlighting the challenges and sacrifices associated with being a Police Chief.

The Mayor expressed appreciation for Chief Quinney's dedication to North Ogden City and his care for his officers during his five-year tenure and emphasized the importance of recognizing Chief Quinney's contribution to the community.

#### 14. **PUBLIC COMMENTS**

2:51:32 Brenda Ashdown, a North Ogden resident expressed a concern about the water conservation aspect of the proposed waterpark and questioned the use of the artesian well if it wasn't utilized for the waterpark. City Manager/Attorney Jon Call responded, explaining that the water from the well would be directed to the 2550 Basin to prevent stagnation and would likely be reused in the City's water system.

Brenda also shared her opinion on the RDA 50/50 funding model, advocating for businesses to fully invest in beautification projects without relying heavily on City funding.

Additionally, she expressed gratitude to Chief Quinney, acknowledging him as the best Police Chief she had encountered and wishing him well in his retirement.

2:54:01 Kevin Burns, a North Ogden resident clarified a point regarding RAMP (Redevelopment Agency Municipal Project) grants, stating that while a 50/50 grant is not required for RAMP applications, having more money can lead to scoring more points. He emphasized that no money has been received yet this year from RAMP and that the decision is still pending from the County Commission.

The City Manager/Attorney Jon Call acknowledged the clarification and noted that they haven't officially received the funds yet.

Mr. Burns suggested reaching out to the Weber Housing Authority for insights on housing proposals for first responders and teachers.

Additionally, he reminded everyone that RAMP is on the ballot this year, urging consideration of its impact on the budget.

2:56:17 Susan Kilborn, a North Ogden resident expressed sadness at Chief Quinney's departure and proposed an amendment to the donation program to organize a retirement party for him. She offered to plan the event and joked about her cost being only smiles.

2:58:12 Kerry Wangsguard, a North Ogden resident raised concerns about the maintenance of the detention basin once completed, citing examples of poorly maintained ponds in other areas. He expressed worries about potential challenges and costs associated with maintenance, highlighting issues such as rodent infestation, mosquito breeding, and contamination.

Mayor Berube and City Manager/Attorney Jon Call responded, mentioning preliminary estimates of water usage for maintenance, and acknowledged the importance of addressing potential challenges.

15. **MAYOR/COUNCIL/STAFF COMMENTS**

The opportunity for input from the Mayor, Council, and Staff was not afforded.

16. **ADJOURNMENT**

**Council Member Watson motioned to adjourn the meeting.**

**The meeting adjourned at 9:00 p.m.**

**ATTACHMENTS**

All Publicly distributed materials associated with this meeting are noted as the following attachments:

- A. Approval Voting Presentation
- B. Financial Statement

\_\_\_\_\_  
S. Neal Berube, Mayor

\_\_\_\_\_  
Rian Santoro  
City Recorder

\_\_\_\_\_  
Date Approved

DRAFT



Utah  
Approves.

# Approval Voting

Savings, Simplicity, and Security

# What is Approval Voting?

- Voting 'yes' or 'no' for each candidate, rather than 'yes' to only one
- The candidate with the most 'yes' votes, the highest approval rating, wins

## Current Ballot

Vote for ONE Candidate

Business Betty	<input type="radio"/>
Education Eddy	<input checked="" type="radio"/>
Parks Pablo	<input type="radio"/>
Public Transit Tiana	<input type="radio"/>
Taxes Terry	<input type="radio"/>

## Approval Ballot

Mark ALL NAMES you approve of

Business Betty	<input checked="" type="radio"/>
Education Eddy	<input checked="" type="radio"/>
Parks Pablo	<input type="radio"/>
Public Transit Tiana	<input checked="" type="radio"/>
Taxes Terry	<input type="radio"/>

# How is Approval Different?

	Current System (Plurality)	Approval Voting
<b>Elects based on</b>	Exclusive support	Favorability rating
<b>Tends to favor</b>	Candidates with a passionate base of support	Candidates with broad- based appeal
<b>Works well with</b>	Races with <b>only 2</b> candidates	Races with <b>any number</b> of candidates

# Why Approval Voting?

- Better reflects voter values
- Produces broadly supported consensus winners
- Limits vote splitting and spoiled elections
- Incredibly cost-effective
- Cost savings (if no Primary Election)
- Secure, transparent, easily audited
- Simple and easy to administer and explain
- More expressive

Approval Voting  
Support your favorites

Alice



Bob



Carey



Drew



Edith



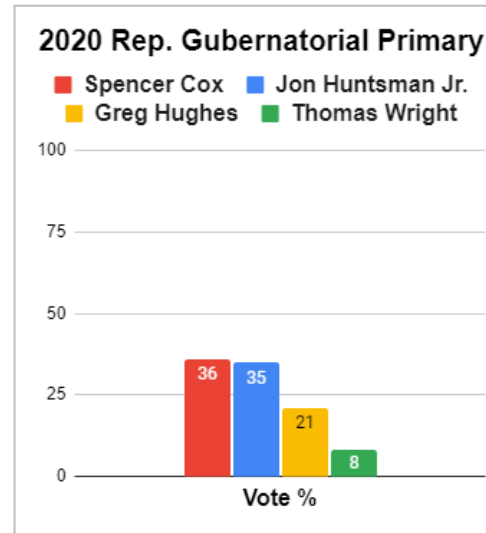
Frank



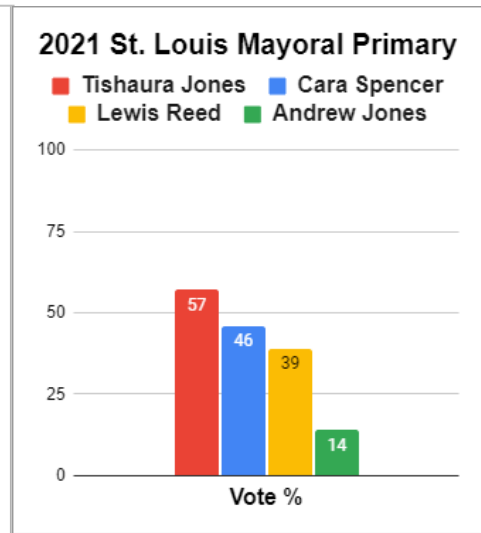
# Voter Values and Consensus Candidates

- Higher winning percentage gives winner stronger mandate to lead
- Shows true levels of support for each candidate
- No splitting the vote -> Broadly supported candidates
- Candidates have a simple strategy: appeal to as many people as possible

## Plurality Election



## Approval Election

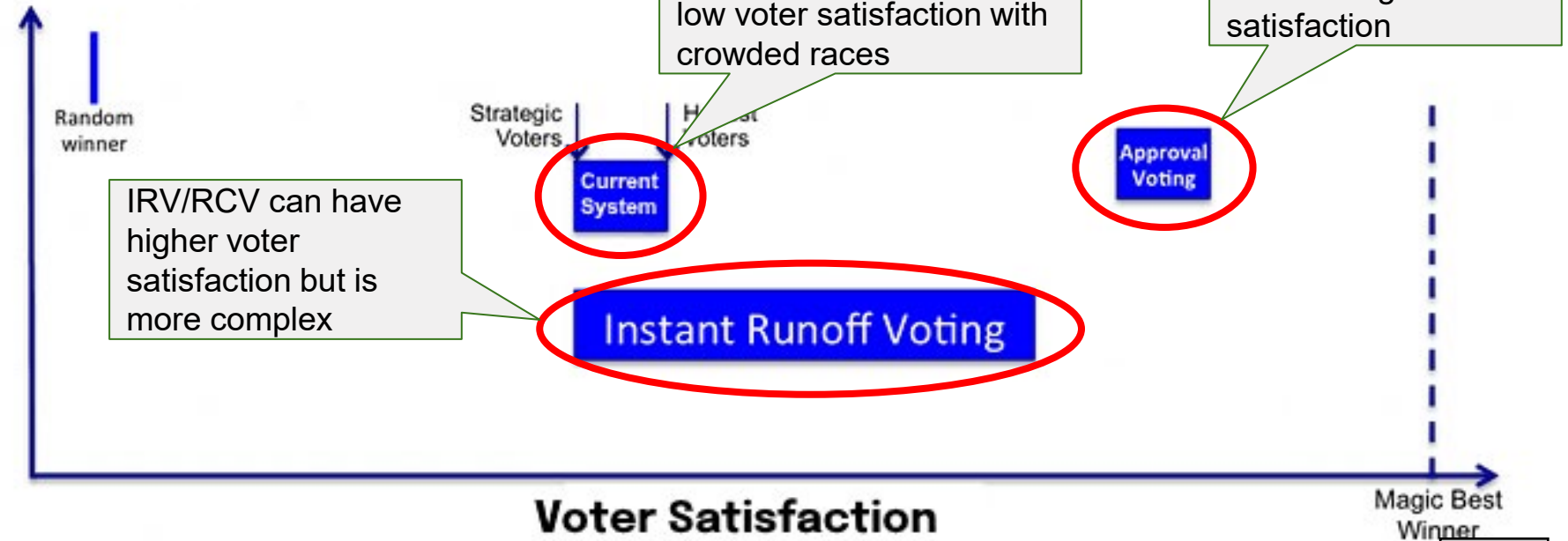


# Voter Satisfaction

Based on computer simulation with 5 candidates and 200 voters

Warren D. Smith, 2000

Simplicity



# Security and Administration

- Precinct summable unlike other alternatives
- The county clerks have stated approval voting is the only alternative that “has an audit trail they are comfortable with”
  - Ricky Hatch, Weber County Clerk, is supportive of implementing approval voting if cities want to try it
- Fewer spoiled ballots

# Cost-Effectiveness

- No new voting machines or software
- Ballot size stays the same (mail-in and printing)
- Voter education is extremely cost efficient and simple
  - Candidates don't need to explain the method
- No additional cost for administration like RCV

Number of participating municipalities	Allocated costs
1	\$ 36,156
2	\$ 18,078
3	\$ 12,052
4	\$ 9,039
5	\$ 7,231
6	\$ 6,026
7	\$ 5,165
8	\$ 4,520
9	\$ 4,017
10	\$ 3,616
11	\$ 3,287
12	\$ 3,013

Number of participating municipalities	Allocated costs
13	\$ 2,781
14	\$ 2,583
15	\$ 2,410
16	\$ 2,260
17	\$ 2,127
18	\$ 2,009
19	\$ 1,903
20	\$ 1,808
21	\$ 1,722
22	\$ 1,643
23	\$ 1,572

Additional RCV Costs

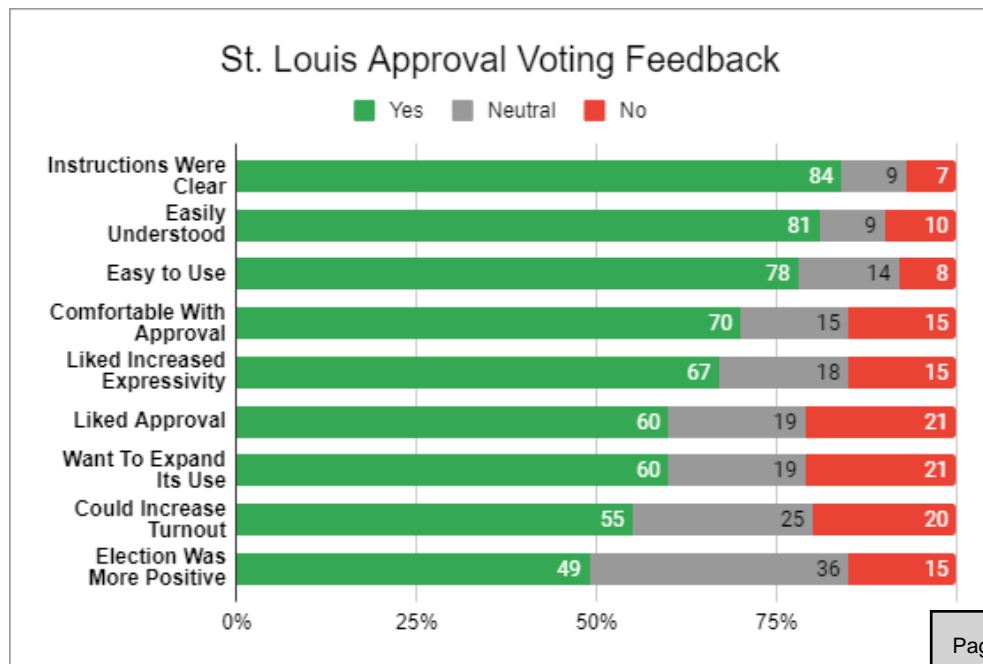
*Estimated Costs	Ranked Choice	Approval Voting
Voter Education	\$31,950	\$10,650

\*Estimates based on per capita spending by other cities

North Ogden 2021	Primary	General
Election Costs	\$11,354	\$21,447

# Where has Approval Voting been used?

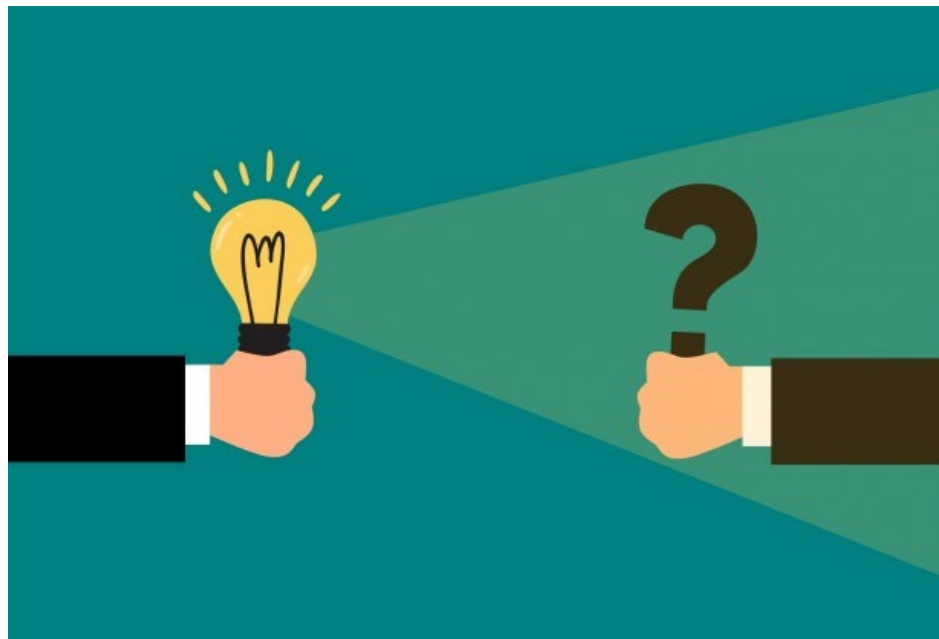
- International Elections
  - Papal Conclaves
  - Venice, Italy
  - Greek Legislature
  - UN General Secretary
- US Elections
  - Fargo, ND
  - St. Louis, MO



# Comparison of Voting Systems

	Current System	Approval	Ranked Choice
<b>Cost</b>	High (2 elections)	Low (1 election)	Moderate
<b>High Winning Percentage</b>	No	Yes	Yes (Artificial)
<b>Voter Satisfaction</b>	Low	High	Moderate
<b>Ballot Spoilage</b>	Moderate	Low	High
<b>New Voting Software</b>	No	No	Yes
<b>Ballot Size</b>	Small	Small	Large
<b>Counting Complexity</b>	Low	Low	High
<b>Precinct Summable</b>	Yes	Yes	No
<b>Voter Education</b>	Low	Moderate	High

# Questions?



**General Fund**

<b>Revenues</b>	Reduced Amount
Building Permits	(\$100,000.00)
Recreation	(\$30,000.00)
Public Safety Impact Fees	(\$35,000.00)
Excavation Fees (Increased amount)	\$70,000.00
	<u>(\$95,000.00)</u>

**Expenses**

Retirements	\$170,000.00
Budgeted Retirements	(\$90,000.00)
Health Insurance Adj	\$22,000.00
	<u>\$102,000.00</u>

**Over Budget** (\$197,000.00)

Sales Tax	\$140,000.00
Interest Income	\$0.00

Insurance next year (\$57,000.00)  
(\$42,000.00)

Parks and Rec Dept Head	\$125,000.00
Events Coordinantor	\$50,000.00
Sidewalks	\$200,000.00
Officer	\$150,000.00
3% Salary	\$225,000.00
Shortfall	\$100,000.00
	<u>\$850,000.00</u>



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## **NORTH OGDEN CITY STAFF REPORT**

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**TO: NORTH OGDEN CITY COUNCIL**

**FROM: DYLAN HILL**

**PUBLIC WORKS INSPECTOR**

**DATE: 02-29-24**

---

I HAVE COMPLETED THE CONDITIONAL INSPECTION ON ROCK POINTE ESTATES. THE IMPROVEMENTS ARE UP TO CITY CODE AND STANDARDS.

THE ORIGINAL SUM OF THE ESCROW IS \$141311.39 FOR IMPROVEMENT COSTS, WHICH HAVE BEEN RELEASED THROUGHOUT THE IMPROVEMENT PROCESS. ESCROW RELEASES SHOW A REMAINING \$12,846.49 WILL REMAIN WITH THE ESCROW AGENT THROUGH THE ONE YEAR PERIOD AFTER CONDITIONAL ACCEPTANCE BY CITY COUNCIL.





E# 3270458 PG 1 OF 7

LEANN H KILTS, WEBER CTY. RECORDER  
18-JAN-23 4:19 PM FEE \$40.00 DC  
REC FOR: RICK SCADDEN

Item5.



\*W3270458\*

### SUBDIVIDER'S ESCROW AGREEMENT

Agreement made this 8<sup>th</sup> day of November, 2022,

between North Ogden City, a municipal corporation of the State of Utah,

located in Weber County, Utah, (the "City"), and **Rick Scadden**

of **Weber County, Utah**, (the "Subdivider") and **Old Republic Title,**

**of Weber County, Utah** (the "Escrow Agent").

## RECITALS

1. City and Subdivider have entered into a Developer's Agreement, dated 9<sup>th</sup> of November, 2022, attached hereto as Exhibit A, for the subdivision and construction of improvements on certain land located in the City to be known as **Rock Point Estate Subdivision** and has requested formal approval and acceptance thereof by the North Ogden City Council.

2. Due to financial limitations, timing, or other considerations, the Subdivider is unable to install the improvements required by the Subdivision Ordinance of the City upon the entire proposed subdivision. Subdivider has, therefore, requested the City to permit development of the Subdivision in accordance with the Subdivision Ordinance of the City whereby the Subdivider may make payments upon the proposed subdivision by filing necessary deposits in escrow to cover the improvements.

3. Subdivider now desires to enter into this Escrow Agreement as security for his compliance with the ordinances, rules, regulations, requirements, and standards of the City and of the Developer's Agreement.

## AGREEMENT

NOW THEREFORE, the Parties hereto mutually agree as follows:

1. Appointment of Escrow Agent. **Old Republic Title** is hereby appointed Escrow Agent and Escrow Agent shall hold, in a separate escrow account or by sufficient guarantee outlined in NOC 12-4-1, the sum reflected in paragraph 2 hereof, subject to the terms and conditions hereinafter set forth.

2. Deposits in Escrow. The Subdivider shall deposit with Escrow Agent, or provide for sufficient guarantee as allowed under North Ogden Code 12-4-1 the sum of **\$141,311.39** representing 110% of the entire cost of all improvements enumerated in paragraph 2 of the Developer's Agreement, a copy of which is attached hereto, marked Exhibit A and incorporated herein by this reference. The cost of the improvements shall be determined by the City Engineer for each off-site improvement item.

3. Application of Escrow Funds. It is agreed by all parties to this agreement that the sum of money indicated in paragraph 2 of this agreement shall be used exclusively for the purposes of paying for the costs of materials and the construction and installation of all improvements required by the City Subdivision Ordinance. The undersigned further agrees that the money held in the Escrow Account shall be distributed to appropriate contractors and subcontractors or released to Subdivider only upon written authorization by an authorized officer of the City. Such written authorization shall be made upon the City stationary and will bear the City's corporate seal indicating review and approval by the City.

4. Retention of Escrow Funds. A sum equal to 10% of the escrowed amount or **\$12,846.49** shall remain with the Escrow Agent for a period of one year after conditional acceptance by the City, pursuant to the terms of Exhibit A.

5. Application and Return of 10% Security. All demands by the City to perform corrections or completion of improvements, if not performed or completed in accordance with City Ordinance, rules and regulations, shall be made by certified mail, with a copy also sent to the Escrow Agent. If the defect

or default is not corrected or improvements completed within 30 days following service of such demand, the City may recover the defect or complete improvements and charge the Subdivider such costs, unless Subdivider requests in writing, served by certified mail, with a copy likewise served upon the Escrow Agent by certified mail, a hearing before the North Ogden City Council within the aforementioned 30 day period of time respecting the alleged defects or incompleteness. The Escrow Agent, upon receiving instructions from the City of the defect and that the City has incurred the cost of correcting the defect, pay to the City from the Escrow Account the cost of correcting the defect, and the Escrow Agent shall be held harmless by the parties for its payments to the City.

6. Release of Escrow. One year after the accepted improvements and the improvements remain substantially free from latent defects, the City shall certify such fact to the Escrow Agent, who shall release to the Subdivider any money still held in the Escrow Account and the Escrow Agent shall be discharged of its obligations to the City.

IN WITNESS WHEREOF, the parties have executed this agreement the day  
and year first above written.

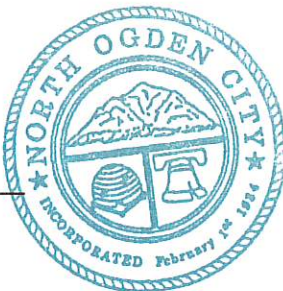
NORTH OGDEN CITY, a  
Municipal Corporation,  
State of Utah

By:   
Mayor

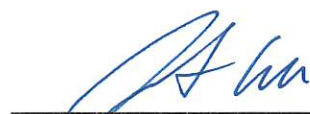
Attest:



City Recorder




Approved as to Form:



North Ogden City Attorney

By:   
By: Escrow Agent  
Name: Michael Hendry  
Phone: 801-479-1191  
Email:  
mlhendry@oldrepublictitle.com

  
By: MEMBER  
Subdivider (sign with Notary  
on next page)

State of Utah }

§

County of WEBER}

On this 7 day of November, 2022, personally appeared  
before me, Michael Hendry & Rick Seadden, proved to me  
on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to on this instrument and acknowledged that he/she/they executed  
the same.



  
\_\_\_\_\_  
Notary Public

## Exhibit A



PROJECT TITLE:  
Rock Point Subdivision  
North Ogden, Utah

Eric Casperson, PE  
City Engineer  
[ecasperson@nogden.org](mailto:ecasperson@nogden.org)

Developer: Rick Scadden, George Evans  
November 2, 2022  
ESCROW SUMMARY

Item	Description	Total Quantity	Units	Unit Price	Total Amount	Escrow Amount
<b>Paving - Asphalt</b>						
1	Mobilization, Clearing, and Site Preparation	1	LS	\$10,000.00	\$ 10,000.00	\$ 10,000.00
2	Sawcut Existing Asphalt	41	LF	\$10.00	\$ 410.00	\$ 410.00
3	Subgrade Preparation	9985	SF	\$1.00	\$ 9,985.00	\$ 9,985.00
4	8" Gravel Base course	9985	SF	\$1.20	\$ 11,982.00	\$ 11,982.00
5	3" Bituminous Surface Course	7345	SF	\$1.70	\$ 12,486.50	\$ 12,486.50
6	Mirifi 600X Fabric Under Road Base if Needed	7345	SF	\$0.50	\$ 3,672.50	\$ 3,672.50
7	Seal Coat	7345	SY	\$0.22	\$ 1,615.90	\$ 1,615.90
8	30" Curb and Gutter	416	LF	\$25.00	\$ 10,400.00	\$ 10,400.00
9	4' Sidewalk	1664	SF	\$7.00	\$ 11,648.00	\$ 11,648.00
10	Connect to Existing Culinary Water	1	Each	\$430.00	\$ 430.00	\$ 430.00
11	8" C900 DR 14 235 psi Culinary Water	200	LF	\$54.00	\$ 10,800.00	\$ 10,800.00
12	Furnish and Install 8-inch Gate Valve	1	Each	\$1,700.00	\$ 1,700.00	\$ 1,700.00
13	Fire Hydrant with Valve, Tee, Thrust	0	Each	\$9,580.00	\$ 0.00	\$ 0.00
14	Relocate 8" Culinary Gate Valve	1	Each	\$2,200.00	\$ 2,200.00	\$ 2,200.00
15	3/4" Water Service	3	Each	\$1,950.00	\$ 5,850.00	\$ 5,850.00
16	3/4" Water Latereal Pipeline	71	LF	\$35.00	\$ 2,485.00	\$ 2,485.00
17	Culinary Line End Cap and Thrust Block	1	Each	\$800.00	\$ 800.00	\$ 800.00
18	Collars on Valves	1	Each	\$600.00	\$ 600.00	\$ 600.00
19	Water Samples and Testing	1	LS	\$1,500.00	\$ 1,500.00	\$ 1,500.00
20	Connect to Existing Sewer	4	Each	\$500.00	\$ 2,000.00	\$ 2,000.00
21	8" SDR35 PVC Sewer Pipeline	525	LF	\$32.00	\$ 16,800.00	\$ 16,800.00
22	4' Diameter Sewer Manhole	1	Each	\$4,000.00	\$ 4,000.00	\$ 4,000.00
23	4" Sewer Lateral	1	Each	\$1,200.00	\$ 1,200.00	\$ 1,200.00
24	Sewer Manhole Collars	1	Each	\$600.00	\$ 600.00	\$ 600.00
25	Sewer Line End Cap and Thrust Block	1	Each	\$800.00	\$ 800.00	\$ 800.00
26	Sewer Testing, Cleaning, Video	1	LF	\$1,500.00	\$ 1,500.00	\$ 1,500.00
27	Abandon Existing Gravel Road	1	LS	\$3,000.00	\$ 3,000.00	\$ 3,000.00
<b>Total:</b>						<b>\$ 128,464.90</b>
<b>Sub-total</b>					\$ 128,464.90	<b>\$ 128,464.90</b>
<b>10% Guarantee</b>					\$ 12,846.49	<b>\$ 12,846.49</b>
<b>TOTAL</b>					<b>\$ 141,311.39</b>	<b>\$ 141,311.39</b>

Escrow Cost Estimate Approval

Eric Casperson, PE  
City Engineer

Date

11/2/2022



\*W3270459\*

**DEVELOPER'S AGREEMENT WITH NORTH OGDEN CORPORATION**

This Agreement entered into this 8<sup>th</sup> day of November, 2022, between **Rick Scadden** County of Weber, State of Utah, or its assigns, hereinafter referred to as Developer, and **NORTH OGDEN CITY CORPORATION**, a municipal corporation of the State of Utah located in Weber County, hereinafter referred to as the City, hereby agrees as follows:

1. FINAL. Developer has obtained approval of a final plat from North Ogden City for the subdivision of, and construction of improvements on, certain land in North Ogden City to be known as **Rock Point Estate Subdivision**. Developer has presented to the North Ogden City Planning Commission and the North Ogden City Council a proposed final plat for the subdivision of, and construction of improvements, on the subdivision. On **September 1, 2022**, a Notice of Decision was sent and is attached hereto for convenience as Exhibit "A" (the "Notice of Decision"). As consideration for the granting of said approval and acceptance, Developer has agreed and does now agree to the provisions hereof and all other ordinances of North Ogden City.

2. COMPLIANCE WITH SUBDIVISION STANDARDS. Developer agrees to comply with all of the ordinances, rules, regulations, requirements and standards of the City with respect to the construction and completion of said subdivision, and particularly to install and complete all of the off-site improvements required, within the time hereinafter stated, including but not limited to the following:

- A. Rough grading and finish grading and surfacing of streets.
- B. Curbs, gutters, waterways, and driveway approaches.
- C. Sanitary sewers, including laterals to property line of each lot.
- D. Street drainage and drainage structures.
- E. Water lines, including laterals to each property line of lot.
- F. Fire hydrants.
- G. Sidewalks and walkways.
- H. Traffic control signs.
- I. Street signs with numbers.
- J. Screening when required.
- K. Chip and seal coat on new streets.
- L. Monuments.
- M. Fencing.
- N. Pressure irrigation, including laterals to each property line of lot.
- O. 10% Contingency Fund.

Said improvements and any others designated shall be done according to the specifications

and requirements of the City. All work shall be subject to the inspection of North Ogden City and any questions as to conformity with the City specifications or standards or as to the technical sufficiency of the work shall be decided by the City Engineer and his/her decision shall be final and conclusive. For convenience a plat map is attached as Exhibit "B".

Developer agrees as consideration for City issuing building permits after initial acceptance of improvements to allow the City to collect and retain utility fees for the time between initial and final acceptance of the utility lines.

Building permits will be issued on condition that all improvements necessary to satisfy fire code requirements have been installed and that enough security is held in escrow to complete all required improvements for the subdivision, including any repairs or replacement after initial installation.

3. TIME FOR COMPLETION AND EXTENSION OF TIME. All of the said off-site improvements shall be fully installed and completed within two (2) years from the date of the recordation of the Final Plat. If not completed within two (2) years, the Developer may apply to the Planning Commission and the City Council for an extension of time of one year with additional one-year extensions after the first extension if the Planning Commission and City Council agree. Said extensions shall be subject to adequate security for the completion of said improvements being made by increasing the amount of the escrow account.

4. SECURITY FOR COMPLIANCE. As security for compliance by Developer with the ordinance, rules, regulations, requirements and standards of the city and of Developer's agreements herein stated, Developer has delivered to the City an acceptable Escrow Agreement for **Rock Point Estate Subdivision**, and agrees to hold \$ **141,311.39** (which represents the cost of all required improvements as determined by the City Engineer plus 10% contingencies) in escrow for the use of the city in the event of Developer's failure or refusal to install, complete, construct, repair, or replace any off-site improvements in accordance with the provisions of this agreement, the escrow agreement and all City codes and ordinances. For convenience the Escrow Agreement is attached as Exhibit "C". The decision of the City as to whether an improvement needs to be installed, constructed, completed or replaced will be final.

Should Developer fail or refuse to complete the said off-site improvements in accordance with the provisions hereof, and particularly within the time stated, or should Developer become insolvent before a completion thereof, then the City may, at its option, determine the cost of completing said off-site improvements on the basis of reliable estimates and bids and may apply all sums deposited in escrow against the said cost of completion and may proceed to legally obtain the escrow funds and use the proceeds therefrom to pay the cost of completing the said off-site improvements and to pay all related expenses including but not limited to court cost and attorney's fees.

The 10% of above stated, shall constitute a guarantee that the said off-site improvements are installed in accordance with the subdivision standards of the City as to quality and serviceability and shall be held by the City for a period of one (1) year from the time the last improvement is "conditionally accepted" by the City or until one (1) year after the time the last improvements needing repair or placement is again accepted. At the end of the one year period the said 10% shall be returned to Developer provided the off-site

improvements have proved to have been constructed or installed in accordance with the standards of the City as to quality and serviceability, otherwise, to be applied toward construction or installation of said improvements in accordance with City standards or the repair or replacing the same so as to bring them into conformity with City standards, Developer will pay the difference to the City on demand. The city shall not issue any building permits until the improvements needing repair, replacement, etc., are completed and again accepted.

5. **APPLICABILITY OF ORDINANCE.** This agreement does not supersede but implements the North Ogden City Subdivision Ordinance and all other ordinances and regulations applicable to the subdivision of land and construction of improvements thereon, and Developer agrees to comply in all respects with the provisions of said ordinances. No provision of this agreement shall limit the City in its rights or remedies under said subdivision ordinance or other applicable building ordinances.

6. **SUCCESSORS ENFORCEMENT.** The terms of this agreement shall be binding upon the parties hereon, their heirs, executors, administrators, assigns or any parties legally acquiring the parties interest through foreclosure, trust deed, sale, bankruptcy or otherwise. In the event either party must take legal action to enforce the terms of this agreement, the prevailing party shall have costs of court, including a reasonable attorney's fee.

7. **NO REVISION OF REQUIREMENTS.** Except as set forth herein, the terms of this agreement shall not be construed as amending or modifying any requirements of the ordinances of North Ogden City or supersede or supplement any conditions of approval by the City Staff, Planning Commission, Engineer, or any other approving or advisory body which has already given approvals of **Rock Point Estate Subdivision**. Developer is still required to comply with any conditions previously imposed by the Planning Commission.

IN WITNESS WHEREOF, the undersigned parties have executed this agreement this November 8, 2022.

BLOX DEVELOPMENT

Company Name

Rick Egan

Signature, Manager (with Notary on next page)

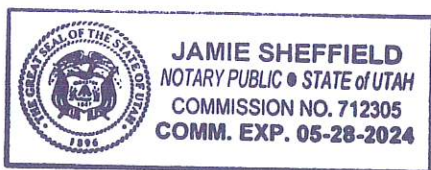
## ACKNOWLEDGEMENT OF DEVELOPER OF CORPORATION

State of Utah }

§

County of Weber }

On this 7<sup>th</sup> day of November, 2022, personally appeared before me, Jamie Sheffield, proved to me on the basis of satisfactory evidence to be the person (s) whose name(s) is/are subscribed to on this instrument, and acknowledged that he/she/they executed the same.



Jamie Sheffield  
Notary Public

Bingham, UT  
Residing at:

My Commission Expires:

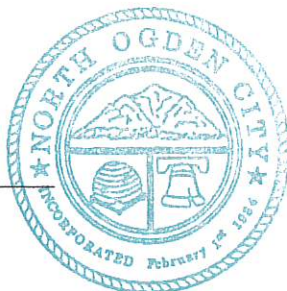
5-28-2024

NORTH OGDEN CITY CORPORATION

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
City Recorder





## NOTICE OF DECISION

September 1, 2022

Rick Scadden & George Evans  
Rock Point LLC  
118 E. Lomond View Dr.  
North Ogden, UT 84414

Re: Updated Preliminary Plat Approval for Rock Point Subdivision

The North Ogden City Planning Commission met on August 11, 2022 and made a motion to grant preliminary approval of the updated three lot Rock Point Subdivision, subject to the following conditions:

- Requirements of the North Ogden City Engineer's Report must be met prior to final plat approval (unless superseded in the PC Staff Report).
- All will-serve letters must be submitted and their requirements for approval met prior to final approval of the Subdivision.

Copies of the Engineer's Report, the Technical Review Committee Meeting Letter (if applicable), and Planning Commission Staff Report are attached to the email this letter is being sent with so that you have copies of the additional conditions of approval listed in those documents.

If you have any questions regarding this application, please contact the Planning Department at (801) 782-7211, or at my direct number listed below.

Regards,

**Scott A. Hess, Planning Director**

NORTH OGDEN CITY  
505 E. 2600 N.  
North Ogden, Utah, 84414  
Phone: (801)737-9841

[www.northogdencity.com](http://www.northogdencity.com)





Exhibit C

Item5.



### SUBDIVIDER'S ESCROW AGREEMENT

Agreement made this 8<sup>th</sup> day of November, 2022,

between North Ogden City, a municipal corporation of the State of Utah,

located in Weber County, Utah, (the "City"), and **Rick Scadden**

of **Weber County, Utah**, (the "Subdivider") and **Old Republic Title,**

**of Weber County, Utah** (the "Escrow Agent").

## RECITALS

1. City and Subdivider have entered into a Developer's Agreement, dated 9<sup>th</sup> of November, 2022, attached hereto as Exhibit A, for the subdivision and construction of improvements on certain land located in the City to be known as **Rock Point Estate Subdivision** and has requested formal approval and acceptance thereof by the North Ogden City Council.

2. Due to financial limitations, timing, or other considerations, the Subdivider is unable to install the improvements required by the Subdivision Ordinance of the City upon the entire proposed subdivision. Subdivider has, therefore, requested the City to permit development of the Subdivision in accordance with the Subdivision Ordinance of the City whereby the Subdivider may make payments upon the proposed subdivision by filing necessary deposits in escrow to cover the improvements.

3. Subdivider now desires to enter into this Escrow Agreement as security for his compliance with the ordinances, rules, regulations, requirements, and standards of the City and of the Developer's Agreement.

## AGREEMENT

NOW THEREFORE, the Parties hereto mutually agree as follows:

1. Appointment of Escrow Agent. **Old Republic Title** is hereby appointed Escrow Agent and Escrow Agent shall hold, in a separate escrow account or by sufficient guarantee outlined in NOC 12-4-1, the sum reflected in paragraph 2 hereof, subject to the terms and conditions hereinafter set forth.

2. Deposits in Escrow. The Subdivider shall deposit with Escrow Agent, or provide for sufficient guarantee as allowed under North Ogden Code 12-4-1 the sum of **\$141,311.39** representing 110% of the entire cost of all improvements enumerated in paragraph 2 of the Developer's Agreement, a copy of which is attached hereto, marked Exhibit A and incorporated herein by this reference. The cost of the improvements shall be determined by the City Engineer for each off-site improvement item.

3. Application of Escrow Funds. It is agreed by all parties to this agreement that the sum of money indicated in paragraph 2 of this agreement shall be used exclusively for the purposes of paying for the costs of materials and the construction and installation of all improvements required by the City Subdivision Ordinance. The undersigned further agrees that the money held in the Escrow Account shall be distributed to appropriate contractors and subcontractors or released to Subdivider only upon written authorization by an authorized officer of the City. Such written authorization shall be made upon the City stationary and will bear the City's corporate seal indicating review and approval by the City.

4. Retention of Escrow Funds. A sum equal to 10% of the escrowed amount or **\$12,846.49** shall remain with the Escrow Agent for a period of one year after conditional acceptance by the City, pursuant to the terms of Exhibit A.


5. Application and Return of 10% Security. All demands by the City to perform corrections or completion of improvements, if not performed or completed in accordance with City Ordinance, rules and regulations, shall be made by certified mail, with a copy also sent to the Escrow Agent. If the defect

or default is not corrected or improvements completed within 30 days following service of such demand, the City may recover the defect or complete improvements and charge the Subdivider such costs, unless Subdivider requests in writing, served by certified mail, with a copy likewise served upon the Escrow Agent by certified mail, a hearing before the North Ogden City Council within the aforementioned 30 day period of time respecting the alleged defects or incompleteness. The Escrow Agent, upon receiving instructions from the City of the defect and that the City has incurred the cost of correcting the defect, pay to the City from the Escrow Account the cost of correcting the defect, and the Escrow Agent shall be held harmless by the parties for its payments to the City.

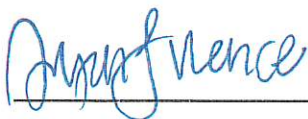
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IN WITNESS WHEREOF, the parties have executed this agreement the day  
and year first above written.

NORTH OGDEN CITY, a  
Municipal Corporation,  
State of Utah

By:   
Mayor


Attest:

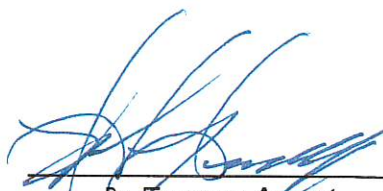



City Recorder



Approved as to Form:

  
North Ogden City Attorney

  
By: Escrow Agent  
Name: Michael Hendry  
Phone: 801-479-1191  
Email:  
mlhendry@oldrepublictitle.com

  
By: MEMBER  
Subdivider (sign with Notary  
on next page)

State of Utah }

§

County of WEBER}

On this 7 day of November, 2022, personally appeared  
before me, Michael Hendry & Rick Seadden, proved to me  
on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to on this instrument and acknowledged that he/she/they executed  
the same.



  
\_\_\_\_\_  
Notary Public

Exhibit A

Eric Casperson, PE  
City Engineer[ecasperson@nogden.org](mailto:ecasperson@nogden.org)PROJECT TITLE:  
Rock Point Subdivision  
North Ogden, UtahDeveloper: Rick Scadden, George Evans  
November 2, 2022  
ESCROW SUMMARY

Item	Description	Total Quantity	Units	Unit Price	Total Amount	Escrow Amount
<b>Paving - Asphalt</b>						
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20	Connect to Existing Sewer	4	Each	\$500.00	\$ 2,000.00	\$ 2,000.00
21	8" SDR35 PVC Sewer Pipeline	525	LF	\$32.00	\$ 16,800.00	\$ 16,800.00
22	4' Diameter Sewer Manhole	1	Each	\$4,000.00	\$ 4,000.00	\$ 4,000.00
23	4" Sewer Lateral	1	Each	\$1,200.00	\$ 1,200.00	\$ 1,200.00
24	Sewer Manhole Collars	1	Each	\$600.00	\$ 600.00	\$ 600.00
25	Sewer Line End Cap and Thrust Block	1	Each	\$800.00	\$ 800.00	\$ 800.00
26	Sewer Testing, Cleaning, Video	1	LF	\$1,500.00	\$ 1,500.00	\$ 1,500.00
27	Abandon Existing Gravel Road	1	LS	\$3,000.00	\$ 3,000.00	\$ 3,000.00
<b>Total:</b>						<b>\$ 128,464.90</b>
<b>Sub-total</b>					\$ 128,464.90	\$ 128,464.90
<b>10% Guarantee</b>					\$ 12,846.49	\$ 12,846.49
<b>TOTAL</b>					\$ 141,311.39	\$ 141,311.39

Escrow Cost Estimate Approval

Eric Casperson, PE  
City Engineer

Date

11/2/2022



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## **NORTH OGDEN CITY STAFF REPORT**

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**TO: NORTH OGDEN CITY COUNCIL**

**FROM: DYLAN HILL**

**PUBLIC WORKS INSPECTOR**

**DATE: 03-19-24**

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BASED ON RECOMMENDATION FROM OUR CITY ENGINEER, ERIC CASPERSON, FINAL INSPECTIONS HAVE BEEN COMPLETED ON BARKER DEPOT (FORMERLY KNOWN AS NORTH OGDEN COMMERCIAL SQUARE). AND IT HAS BEEN FOUND UP TO CITY CODE AND STANDARDS.

THE ORIGINAL SUM OF THE ESCROW IS \$404195.00 FOR IMPROVEMENT COSTS, WHICH HAVE BEEN RELEASED THROUGHOUT THE IMPROVEMENT PROCESS. ESCROW RELEASES SHOW A REMAINING \$36745.00 A REQUEST TO RELEASE ALL REMAINING FUNDS HAS BEEN PROVIDED TO THE ESCROW AGENT ASSIGNED TO THIS SUBDIVISION. UPON CITY COUNCIL APPROVAL, NORTH OGDEN CITY WILL TAKE OVER ALL RESPONSIBILITY FOR THE INFRASTRUCTURE AND ROADWAY.





\*W2992364\*

EN 2992364 PG 1 OF 16  
LEANN H KILTS, WEBER COUNTY RECORDER  
22-JUL-19 1235 PM FEE \$1.00 DEP DC  
REC FOR: NORTH OGDEN CITY

### SUBDIVIDER'S ESCROW AGREEMENT

Agreement made this 22nd day of July, 2019,  
between North Ogden City, a municipal corporation of the State of Utah,  
located in Weber County, Utah, (the "City"), and **SEC 070, LLC**,  
of Salt Lake County, Utah, (the "Subdivider") and **Cottonwood Title**,  
Of Davis County, Utah (the "Escrow Agent").

## RECITALS

1. City and Subdivider have entered into a Developer's Agreement, dated **22nd of July, 2019**, attached hereto as Exhibit A, for the subdivision and construction of improvements on certain land located in the City to be known as **Barker Depot (formerly known as North Ogden Commercial Square)** and has requested formal approval and acceptance thereof by the North Ogden City Council.

2. Due to financial limitations, the Subdivider is unable to install the improvements required by the Subdivision Ordinance of the City upon the entire proposed subdivision. Subdivider has, therefore, requested the City to permit development of the Subdivision in accordance with the Subdivision Ordinance of the City whereby the Subdivider may make payments upon the proposed subdivision by filing necessary deposits in escrow to cover the improvements.

3. Subdivider now desires to enter into this Escrow Agreement as security for his compliance with the ordinances, rules, regulations, requirements, and standards of the City and of the Developer's Agreement.

## AGREEMENT

NOW THEREFORE, the Parties hereto mutually agree as follows:

1. Appointment of Escrow Agent. **Cottonwood Title** is hereby appointed Escrow Agent, and as Escrow Agent shall hold, in a separate escrow account, the sum reflected in paragraph 2 hereof, subject to the terms and conditions hereinafter set forth.

2. Deposits in Escrow. The Subdivider shall deposit with Escrow Agent the sum of **\$404,195.00** representing 110% of the entire cost of all improvements enumerated in paragraph 2 of the Developer's Agreement, a copy of which is attached hereto, marked Exhibit A and incorporated herein by this reference. The cost of the improvements shall be determined by the City Engineer for each off-site improvement item.

3. Application of Escrow Funds. It is agreed by all parties to this agreement that the sum of money indicated in paragraph 2 of this agreement shall be used exclusively for the purposes of paying for the costs of materials and the construction and installation of all improvements required by the City Subdivision Ordinance. The undersigned further agrees that the money held in the Escrow Account shall be distributed to appropriate contractors and subcontractors only upon written authorization by an authorized officer of the City. Such written authorization shall be made upon the City stationary and will bear the City's corporate seal indicating review and approval by the City.

4. Retention of Escrow Funds. A sum equal to 10% of the escrowed amount or **\$36,745.00** shall remain with the Escrow Agent for a period of one year after conditional acceptance by the City, pursuant to the terms of Exhibit A.

5. Application and Return of 10% Security. All demands by the City to perform corrections or completion of improvements, if not performed or completed in accordance with City Ordinance, rules and regulations, shall be made by certified mail, with a copy also sent to the Escrow Agent. If the defect

or default is not corrected or improvements completed within 30 days following service of such demand, the City may recover the defect or complete improvements and charge the Subdivider such costs, unless Subdivider requests in writing, served by certified mail, with a copy likewise served upon the Escrow Agent by certified mail, a hearing before the North Ogden City Council within the aforementioned 30 day period of time respecting the alleged defects or incompleteness. The Escrow Agent, upon receiving reasonable proof from the City of the defect and that the City has incurred the cost of correcting the defect, pay to the City from the Escrow Account the cost of correcting the defect, and the Escrow Agent shall be held harmless by the parties for its payments to the City.

6. Release of Escrow. One year after the accepted improvements and the improvements remain substantially free from latent defects, the City shall certify such fact to the Escrow Agent, who shall release to the Subdivider any money still held in the Escrow Account and the Escrow Agent shall be discharged of its obligations to the City.

IN WITNESS WHEREOF, the parties have executed this agreement the day  
and year first above written.

NORTH OGDEN CITY, a  
Municipal Corporation,  
State of Utah



Attest:

S. Annette Spendlove

City Recorder

By: [Signature]  
Mayor

SEC 070, LLC  
By: [Signature]  
Subdivider

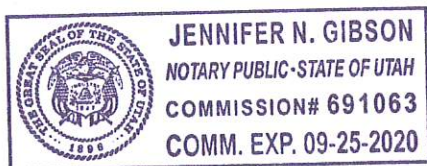
COTTONWOOD TITLE INSURANCE AGENCY  
By: [Signature]  
Escrow Agent  
Print name Jim C. Markis  
Phone # 801-991-1317

Approved as to Form:

[Signature]  
North Ogden City  
Attorney

State of Utah        }  
                              §  
County of Weber    }

On this 19<sup>th</sup> day of July, 2019, personally appeared  
before me, Jim C. Morris FBO Cottonwood Title Insurance Agency, proved to me  
on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to on this instrument, and acknowledged that he/she/they executed  
the same.



  
Notary Public

## Exhibit A Developer's Agreement

## DEVELOPER'S AGREEMENT WITH NORTH OGDEN CORPORATION

This Agreement entered into this \_\_\_\_ day of \_\_\_\_\_, 2019, between **SEC 070, LLC**, County of Weber, State of Utah, or its assigns, hereinafter referred to as Developer, and **NORTH OGDEN CITY CORPORATION**, a municipal corporation of the State of Utah located in Weber County, hereinafter referred to as the City, hereby agrees as follows:

1. **FINAL.** Developer has obtained approval of a final plat from North Ogden City for the subdivision of, and construction of improvements on, certain land in North Ogden City to be known as **Barker Depot (formerly known as North Ogden Commercial Square)**. Developer has presented to the North Ogden City Planning Commission and the North Ogden City Council a proposed final plat for the subdivision of, and construction of improvements, on the subdivision. On **January 24, 2018**, a Notice of Decision was sent and is attached hereto for convenience as Exhibit "A" (the "Notice of Decision"). As consideration for the granting of said approval and acceptance, Developer has agreed and does now agree to the provisions hereof and all other ordinances of North Ogden City.

2. **COMPLIANCE WITH SUBDIVISION STANDARDS.** Developer agrees to comply with all of the ordinances, rules, regulations, requirements and standards of the City with respect to the construction and completion of said subdivision, and particularly to install and complete all of the off-site improvements required, within the time hereinafter stated, including but not limited to the following:

- A. Rough grading and finish grading and surfacing of streets.
- B. Curbs, gutters, waterways, and driveway approaches.
- C. Sanitary sewers, including laterals to property line of each lot.
- D. Street drainage and drainage structures.
- E. Water lines, including laterals to each property line of lot.
- F. Fire hydrants.
- G. Sidewalks and walkways.
- H. Traffic control signs.
- I. Street signs with numbers.
- J. Screening when required.
- K. Chip and seal coat on new streets.
- L. Monuments.
- M. Fencing.
- N. Pressure irrigation, including laterals to each property line of lot.
- O. 10% Contingency Fund.

Said improvements and any others designated shall be done according to the specifications and requirements of the City. All work shall be subject to the inspection of North Ogden City and any questions as to conformity with the City specifications or standards or as to the technical sufficiency of the work shall be decided by the City Engineer and his/her decision shall be final and conclusive. For convenience a plat map is attached as Exhibit "B".

Developer agrees as consideration for City issuing building permits after initial acceptance of improvements to allow the City to collect and retain utility fees for the time between initial and final acceptance of the utility lines.

Building permits will be issued on condition that all improvements necessary to satisfy fire code requirements have been installed and that enough security is held in escrow to complete all required improvements for the subdivision, including any repairs or replacement after initial installation.

3. TIME FOR COMPLETION AND EXTENSION OF TIME. All of the said off-site improvements shall be fully installed and completed within two (2) years from the date of the recordation of the Final Plat. If not completed within two (2) years, the Developer may apply to the Planning Commission and the City Council for an extension of time of one year with additional one-year extensions after the first extension if the Planning Commission and City Council agree. Said extensions shall be subject to adequate security for the completion of said improvements being made by increasing the amount of the escrow account.

4. SECURITY FOR COMPLIANCE. As security for compliance by Developer with the ordinance, rules, regulations, requirements and standards of the city and of Developer's agreements herein stated, Developer has delivered to the City an acceptable Escrow Agreement for **Barker Depot**, and agrees to hold \$ 404,195.00 (which represents the cost of all required improvements as determined by the City Engineer plus 10% contingencies) in escrow for the use of the city in the event of Developer's failure or refusal to install, complete, construct, repair, or replace any off-site improvements in accordance with the provisions of this agreement, the escrow agreement and all City codes and ordinances. For convenience the Escrow Agreement is attached as Exhibit "C". The decision of the City as to whether an improvement needs to be installed, constructed, completed or replaced will be final.

Should Developer fail or refuse to complete the said off-site improvements in accordance with the provisions hereof, and particularly within the time stated, or should Developer become insolvent before a completion thereof, then the City may, at its option, determine the cost of completing said off-site improvements on the basis of reliable estimates and bids and may apply all sums deposited in escrow against the said cost of completion and may proceed to legally obtain the escrow funds and use the proceeds therefrom to pay the cost of completing the said off-site improvements and to pay all related expenses including but not limited to court cost and attorney's fees.

The 10% of above stated, shall constitute a guarantee that the said off-site improvements are installed in accordance with the subdivision standards of the City as to quality and serviceability and shall be held by the City for a period of one (1) year from the time the last improvement is "conditionally accepted" by the City or until one (1) year after the time the

last improvements needing repair or placement is again accepted. At the end of the one year period the said 10% shall be returned to Developer provided the off-site improvements have proved to have been constructed or installed in accordance with the standards of the City as to quality and serviceability, otherwise, to be applied toward construction or installation of said improvements in accordance with City standards or the repair or replacing the same so as to bring them into conformity with City standards, Developer will pay the difference to the City on demand. The city shall not issue any building permits until the improvements needing repair, replacement, etc., are completed and again accepted.

5. APPLICABILITY OF ORDINANCE. This agreement does not supersede, but implements the North Ogden City Subdivision Ordinance and all other ordinances and regulations applicable to the subdivision of land and construction of improvements thereon, and Developer agrees to comply in all respects with the provisions of said ordinances. No provision of this agreement shall limit the City in its rights or remedies under said subdivision ordinance or other applicable building ordinances.

6. SUCCESSORS ENFORCEMENT. The terms of this agreement shall be binding upon the parties hereon, their heirs, executors, administrators, assigns or any parties legally acquiring the parties interest through foreclosure, trust deed, sale, bankruptcy or otherwise. In the event either party must take legal action to enforce the terms of this agreement, the prevailing party shall have costs of court, including a reasonable attorney's fee.

7. NO REVISION OF REQUIREMENTS. Except as set forth herein, the terms of this agreement shall not be construed as amending or modifying any requirements of the ordinances of North Ogden City, or supersede or supplement any conditions of approval by the City Staff, Planning Commission, Engineer, or any other approving or advisory body which has already given approvals of **The Ultimate Express Car Wash**. Developer is still required to comply with any conditions previously imposed by the Planning Commission.

IN WITNESS WHEREOF, the undersigned parties have executed this agreement  
this \_\_\_\_\_, 2019.

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Signature, Manager



NORTH OGDEN CITY CORPORATION

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Mayor

ATTEST:

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City Recorder



**NORTH OGDEN CITY**

SETTLED 1851

EH 2992364 PG 12 OF 16

## NOTICE OF DECISION

January 24, 2018

Ryan Forsyth  
Leading Tech Construction  
1835 South Highway 89  
Perry, Utah, 84302

Re: North Ogden Commercial Square Subdivision, Final Approval

The North Ogden City Planning Commission met on January 24, 2018 and made a motion to grant final approval for the proposed North Ogden Commercial Square subdivision, located at the Southeast corner of 2600 North and the proposed 300 East.

The approval by the Planning Commission is subject to the following conditions, which were specified in their motion:

- Correcting ownership information for the parcel to the west of 300 East on the plat.
- The applicant providing record of approval from UDOT for the intersection of 300 East and 2600 North prior to recording of the plat.
- Conditions specified in the Technical Committee Review Meeting Letter (unless superceded by the Staff Report addressing final approval for this subdivision).
- Minor adjustments to the plat being allowed, if additional right of way is needed for any road widening required by UDOT, and that this issue be delegated to Staff.

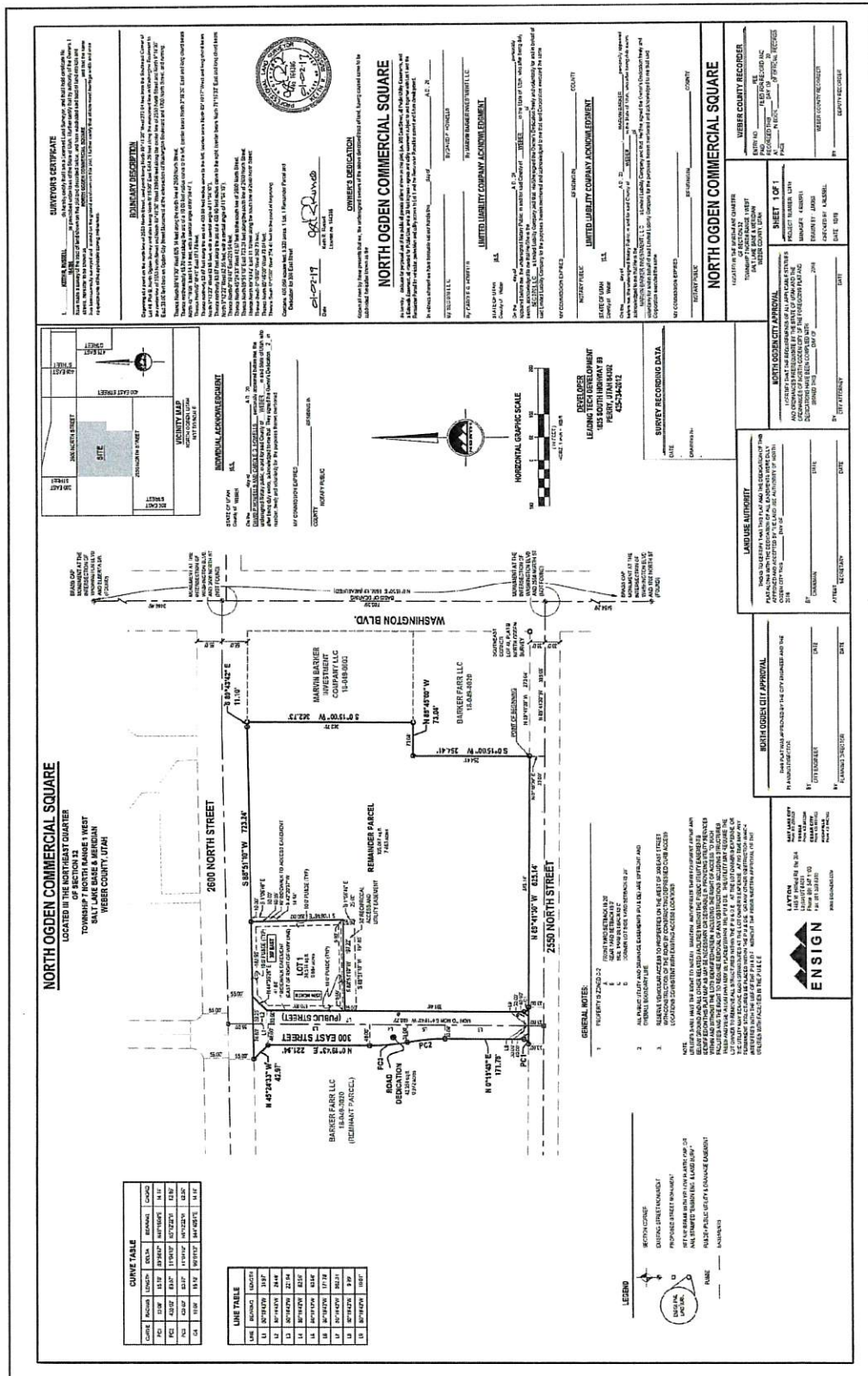
Sincerely,

Brandon Bell, CNU-A

Associate Planner  
505 East 2600 North  
North Ogden, UT 84414  
[bbell@nogden.org](mailto:bbell@nogden.org)  
(801) 737-2216

Item6.

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# NORTH OGDEN CITY

— SETTLED 1851 —

EH 2992364 PG 14 OF 16

**Lorin Gardner**  
**City Engineer**

[lgardner@nogden.org](mailto:lgardner@nogden.org)

North Ogden Commercial Square 1/02/2019 SUMMARY		
	Original Total	Remaining
<b><u>Mobilization</u></b>	\$3,000.00	\$3,000.00
		<b>\$3,000.00</b>
<b><u>SWPPP</u></b>		
Clear and Grub 300 East Street	\$2,000.00	\$2,000.00
Silt Fence	\$3,500.00	\$3,500.00
Truck Entrance	\$2,100.00	\$2,100.00
Inlet Protection	\$500.00	\$500.00
		<b>\$8,100.00</b>
<b><u>Sanitary Sewer</u></b>		
582 LF of 8" main	\$20,370.00	\$20,370.00
2-4' Manholes	\$5,000.00	\$5,000.00
1-5' Manhole (includes saw cut and patch)	\$7,500.00	\$7,500.00
1-6" lateral	\$800.00	\$800.00
		<b>\$33,670.00</b>
<b><u>Storm Drain</u></b>		
418 LF of 15" RCP	\$14,630.00	\$14,630.00
5-Catch Basins	\$10,000.00	\$10,000.00
1-4'x8' Tie in Clean out Vault	\$12,000.00	\$12,000.00
Remove exiting SD grate and replace w/lid (2600 North)	\$1,000.00	\$1,000.00
		<b>\$37,630.00</b>
<b><u>Culinary Water Line</u></b>		
725 LF of 8" main	\$15,950.00	\$15,950.00

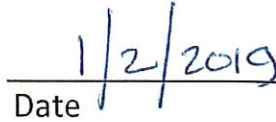
Saw cut and patch UDOT Road	\$25,000.00	\$25,000.00
4 valves	\$6,400.00	\$6,400.00
1-Fire Hydrant	\$5,000.00	\$5,000.00
1-1" lateral	\$800.00	\$800.00
Tee in 2550 North Street	\$1,200.00	\$1,200.00
Hot Tap in 2600 North	\$1,200.00	\$1,200.00
		<b>\$55,550.00</b>
<b><u>Secondary Water</u></b>		
650 LF of 6" main	\$10,400.00	\$10,400.00
1-valve	\$1,500.00	\$1,500.00
1-blow off	\$1,000.00	\$1,000.00
1-connection	\$1,200.00	\$1,200.00
		<b>\$14,100.00</b>
<b><u>Curb and Gutter</u></b>		
1300 LF curb and gutter	\$32,500.00	\$32,500.00
		<b>\$32,500.00</b>
<b><u>Sidewalk</u></b>		
6 foot wide sidewak - 700 LF	\$18,900.00	\$18,900.00
4- Handicap Ramps	\$14,000.00	\$14,000.00
		<b>\$32,900.00</b>
<b><u>Road Surface</u></b>		
18" Structural Fill	\$30,000.00	\$30,000.00
14" UBC	\$52,500.00	\$52,500.00
4" Asphalt	\$49,500.00	\$49,500.00
Remove existing curb and gutter on 2600 North	\$3,500.00	\$3,500.00
Remove existing sidewalk on 2600 North	\$3,000.00	\$3,000.00
		<b>\$138,500.00</b>
<b><u>Miscellaneous</u></b>		
Street Lights	\$6,500.00	\$6,500.00
Street Signage and Striping	\$5,000.00	\$5,000.00
		<b>\$11,500.00</b>
<b>TOTAL IMPROVEMENT COSTS</b>	<b>\$367,450.00</b>	<b>\$367,450.00</b>

10% GUARANTEE		\$36,745.00
<b>TOTAL ESCROW AMOUNT</b>		<b>\$404,195.00</b>

## SUBDIVISION COST ESTIMATE APPROVAL



Lorin Gardner  
City Engineer

  
Date

\*W2992363\*

EN 2992363 PG 1 OF 11  
LEANN H KILTS, WEBER COUNTY RECORDER  
22-JUL-19 1233 PM FEE 4.00 DEP DC  
REC FOR: NORTH OGDEN CITY

## DEVELOPER'S AGREEMENT WITH NORTH OGDEN CORPORATION

This Agreement entered into this 22 day of July, 2019, between **SEC 070, LLC**, County of Weber, State of Utah, or its assigns, hereinafter referred to as Developer, and **NORTH OGDEN CITY CORPORATION**, a municipal corporation of the State of Utah located in Weber County, hereinafter referred to as the City, hereby agrees as follows:

1. FINAL. Developer has obtained approval of a final plat from North Ogden City for the subdivision of, and construction of improvements on, certain land in North Ogden City to be known as **Barker Depot (formerly known as North Ogden Commercial Square)**. Developer has presented to the North Ogden City Planning Commission and the North Ogden City Council a proposed final plat for the subdivision of, and construction of improvements, on the subdivision. On **January 24, 2018**, a Notice of Decision was sent and is attached hereto for convenience as Exhibit "A" (the "Notice of Decision"). As consideration for the granting of said approval and acceptance, Developer has agreed and does now agree to the provisions hereof and all other ordinances of North Ogden City.

2. COMPLIANCE WITH SUBDIVISION STANDARDS. Developer agrees to comply with all of the ordinances, rules, regulations, requirements and standards of the City with respect to the construction and completion of said subdivision, and particularly to install and complete all of the off-site improvements required, within the time hereinafter stated, including but not limited to the following:

- A. Rough grading and finish grading and surfacing of streets.
- B. Curbs, gutters, waterways, and driveway approaches.
- C. Sanitary sewers, including laterals to property line of each lot.
- D. Street drainage and drainage structures.
- E. Water lines, including laterals to each property line of lot.
- F. Fire hydrants.
- G. Sidewalks and walkways.
- H. Traffic control signs.
- I. Street signs with numbers.
- J. Screening when required.
- K. Chip and seal coat on new streets.
- L. Monuments.
- M. Fencing.
- N. Pressure irrigation, including laterals to each property line of lot.
- O. 10% Contingency Fund.

Said improvements and any others designated shall be done according to the specifications and requirements of the City. All work shall be subject to the inspection of North Ogden City and any questions as to conformity with the City specifications or standards or as to the technical sufficiency of the work shall be decided by the City Engineer and his/her decision shall be final and conclusive. For convenience a plat map is attached as Exhibit "B".

Developer agrees as consideration for City issuing building permits after initial acceptance of improvements to allow the City to collect and retain utility fees for the time between initial and final acceptance of the utility lines.

Building permits will be issued on condition that all improvements necessary to satisfy fire code requirements have been installed and that enough security is held in escrow to complete all required improvements for the subdivision, including any repairs or replacement after initial installation.

3. TIME FOR COMPLETION AND EXTENSION OF TIME. All of the said off-site improvements shall be fully installed and completed within two (2) years from the date of the recordation of the Final Plat. If not completed within two (2) years, the Developer may apply to the Planning Commission and the City Council for an extension of time of one year with additional one-year extensions after the first extension if the Planning Commission and City Council agree. Said extensions shall be subject to adequate security for the completion of said improvements being made by increasing the amount of the escrow account.

4. SECURITY FOR COMPLIANCE. As security for compliance by Developer with the ordinance, rules, regulations, requirements and standards of the city and of Developer's agreements herein stated, Developer has delivered to the City an acceptable Escrow Agreement for **Barker Depot**, and agrees to hold \$ **404,195.00** (which represents the cost of all required improvements as determined by the City Engineer plus 10% contingencies) in escrow for the use of the city in the event of Developer's failure or refusal to install, complete, construct, repair, or replace any off-site improvements in accordance with the provisions of this agreement, the escrow agreement and all City codes and ordinances. For convenience the Escrow Agreement is attached as Exhibit "C". The decision of the City as to whether an improvement needs to be installed, constructed, completed or replaced will be final.

Should Developer fail or refuse to complete the said off-site improvements in accordance with the provisions hereof, and particularly within the time stated, or should Developer become insolvent before a completion thereof, then the City may, at its option, determine the cost of completing said off-site improvements on the basis of reliable estimates and bids and may apply all sums deposited in escrow against the said cost of completion and may proceed to legally obtain the escrow funds and use the proceeds therefrom to pay the cost of completing the said off-site improvements and to pay all related expenses including but not limited to court cost and attorney's fees.

The 10% of above stated, shall constitute a guarantee that the said off-site improvements are installed in accordance with the subdivision standards of the City as to quality and serviceability and shall be held by the City for a period of one (1) year from the time the last improvement is "conditionally accepted" by the City or until one (1) year after the time the

last improvements needing repair or placement is again accepted. At the end of the one year period the said 10% shall be returned to Developer provided the off-site improvements have proved to have been constructed or installed in accordance with the standards of the City as to quality and serviceability, otherwise, to be applied toward construction or installation of said improvements in accordance with City standards or the repair or replacing the same so as to bring them into conformity with City standards, Developer will pay the difference to the City on demand. The city shall not issue any building permits until the improvements needing repair, replacement, etc., are completed and again accepted.

5. APPLICABILITY OF ORDINANCE. This agreement does not supersede, but implements the North Ogden City Subdivision Ordinance and all other ordinances and regulations applicable to the subdivision of land and construction of improvements thereon, and Developer agrees to comply in all respects with the provisions of said ordinances. No provision of this agreement shall limit the City in its rights or remedies under said subdivision ordinance or other applicable building ordinances.

6. SUCCESSORS ENFORCEMENT. The terms of this agreement shall be binding upon the parties hereon, their heirs, executors, administrators, assigns or any parties legally acquiring the parties interest through foreclosure, trust deed, sale, bankruptcy or otherwise. In the event either party must take legal action to enforce the terms of this agreement, the prevailing party shall have costs of court, including a reasonable attorney's fee.

7. NO REVISION OF REQUIREMENTS. Except as set forth herein, the terms of this agreement shall not be construed as amending or modifying any requirements of the ordinances of North Ogden City, or supersede or supplement any conditions of approval by the City Staff, Planning Commission, Engineer, or any other approving or advisory body which has already given approvals of **Barker Depot**. Developer is still required to comply with any conditions previously imposed by the Planning Commission.

IN WITNESS WHEREOF, the undersigned parties have executed this agreement  
this 22 July, 2019.

SEC 070, LLC  
Company Name

Alexis Rieys  
Signature, Manager

## ACKNOWLEDGEMENT OF DEVELOPER OF CORPORATION

State of Utah }

§

County of Weber }

On this 22nd day of July, 2019, personally appeared before me,  
Alexis Riggs, proved to me on the basis of satisfactory  
evidence to be the person (s) whose name(s) is/are subscribed to on this instrument, and  
acknowledged that he/she/they executed the same.



Lynne Bexell  
Notary Public

North Ogden UT  
Residing at:

My Commission Expires:

8/16/22

NORTH OGDEN CITY CORPORATION



ATTEST:

S. Annette Spendlove  
City Recorder

  
Mayor



**NORTH OGDEN CITY**

EN 2992363 PG 6 OF 11

— SETTLED 1851 —

## NOTICE OF DECISION

January 24, 2018

Ryan Forsyth  
Leading Tech Construction  
1835 South Highway 89  
Perry, Utah, 84302

Re: North Ogden Commercial Square Subdivision, Final Approval

The North Ogden City Planning Commission met on January 24, 2018 and made a motion to grant final approval for the proposed North Ogden Commercial Square subdivision, located at the Southeast corner of 2600 North and the proposed 300 East.

The approval by the Planning Commission is subject to the following conditions, which were specified in their motion:

- Correcting ownership information for the parcel to the west of 300 East on the plat.
- The applicant providing record of approval from UDOT for the intersection of 300 East and 2600 North prior to recording of the plat.
- Conditions specified in the Technical Committee Review Meeting Letter (unless superceded by the Staff Report addressing final approval for this subdivision).
- Minor adjustments to the plat being allowed, if additional right of way is needed for any road widening required by UDOT, and that this issue be delegated to Staff.

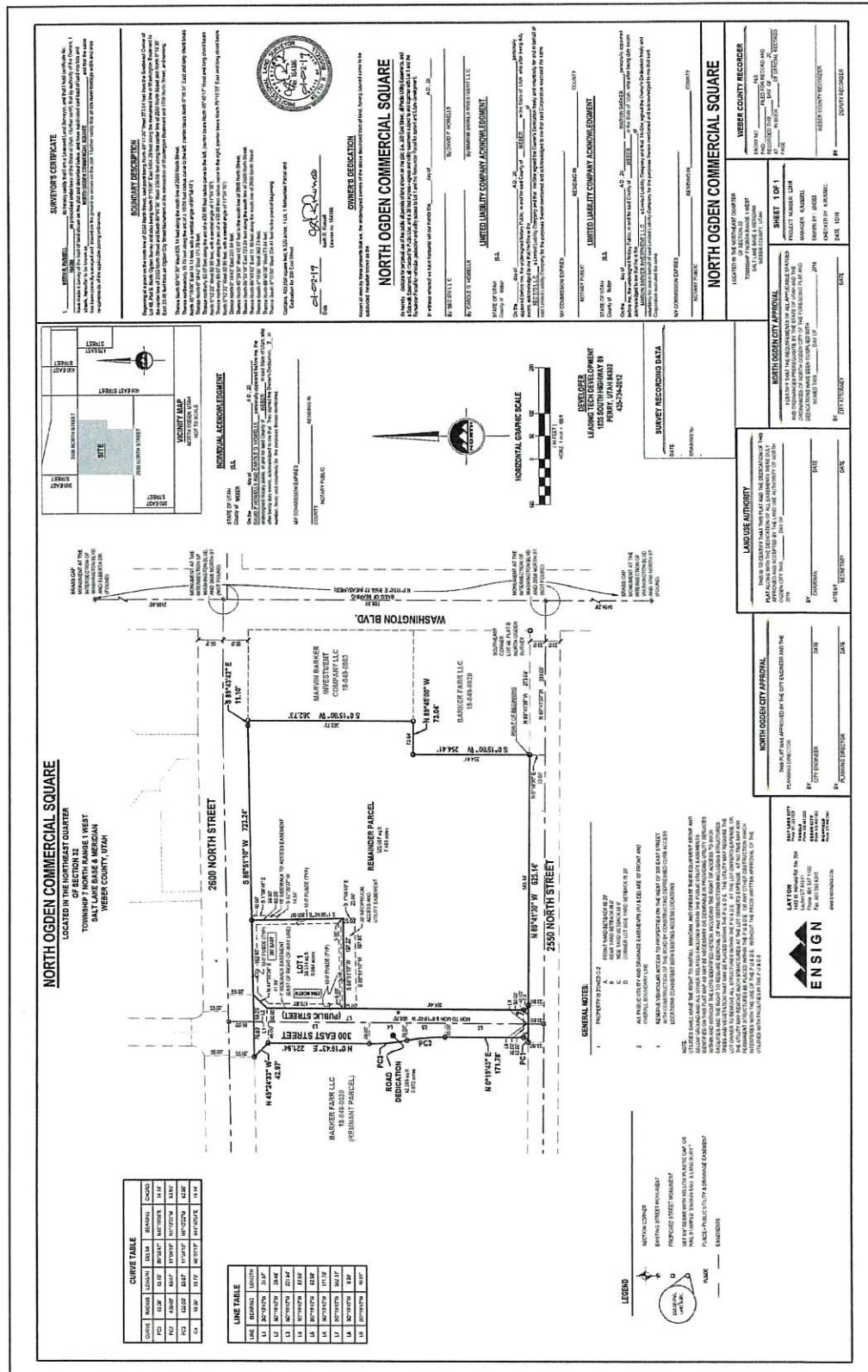
Sincerely,

Brandon Bell, CNU-A

Associate Planner  
505 East 2600 North  
North Ogden, UT 84414  
[bbell@nogden.org](mailto:bbell@nogden.org)  
(801) 737-2216

Item6.

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# NORTH OGDEN CITY

— SETTLED 1851 —

EH 2992363 PG 8 OF 11

**Lorin Gardner**  
**City Engineer**

[lgardner@nogden.org](mailto:lgardner@nogden.org)

North Ogden Commercial Square 1/02/2019 SUMMARY		
	Original Total	Remaining
<b><u>Mobilization</u></b>	\$3,000.00	\$3,000.00
		<b>\$3,000.00</b>
<b><u>SWPPP</u></b>		
Clear and Grub 300 East Street	\$2,000.00	\$2,000.00
Silt Fence	\$3,500.00	\$3,500.00
Truck Entrance	\$2,100.00	\$2,100.00
Inlet Protection	\$500.00	\$500.00
		<b>\$8,100.00</b>
<b><u>Sanitary Sewer</u></b>		
582 LF of 8" main	\$20,370.00	\$20,370.00
2-4' Manholes	\$5,000.00	\$5,000.00
1-5' Manhole (includes saw cut and patch)	\$7,500.00	\$7,500.00
1-6" lateral	\$800.00	\$800.00
		<b>\$33,670.00</b>
<b><u>Storm Drain</u></b>		
418 LF of 15" RCP	\$14,630.00	\$14,630.00
5-Catch Basins	\$10,000.00	\$10,000.00
1-4'x8' Tie in Clean out Vault	\$12,000.00	\$12,000.00
Remove exiting SD grate and replace w/lid (2600 North)	\$1,000.00	\$1,000.00
		<b>\$37,630.00</b>
<b><u>Culinary Water Line</u></b>		
725 LF of 8" main	\$15,950.00	\$15,950.00

Saw cut and patch UDOT Road	\$25,000.00	\$25,000.00
4 valves	\$6,400.00	\$6,400.00
1-Fire Hydrant	\$5,000.00	\$5,000.00
1-1" lateral	\$800.00	\$800.00
Tee in 2550 North Street	\$1,200.00	\$1,200.00
Hot Tap in 2600 North	\$1,200.00	\$1,200.00
		<b>\$55,550.00</b>
<b><u>Secondary Water</u></b>		
650 LF of 6" main	\$10,400.00	\$10,400.00
1-valve	\$1,500.00	\$1,500.00
1-blow off	\$1,000.00	\$1,000.00
1-connection	\$1,200.00	\$1,200.00
		<b>\$14,100.00</b>
<b><u>Curb and Gutter</u></b>		
1300 LF curb and gutter	\$32,500.00	\$32,500.00
		<b>\$32,500.00</b>
<b><u>Sidewalk</u></b>		
6 foot wide sidewalk - 700 LF	\$18,900.00	\$18,900.00
4- Handicap Ramps	\$14,000.00	\$14,000.00
		<b>\$32,900.00</b>
<b><u>Road Surface</u></b>		
18" Structural Fill	\$30,000.00	\$30,000.00
14" UBC	\$52,500.00	\$52,500.00
4" Asphalt	\$49,500.00	\$49,500.00
Remove existing curb and gutter on 2600 North	\$3,500.00	\$3,500.00
Remove existing sidewalk on 2600 North	\$3,000.00	\$3,000.00
		<b>\$138,500.00</b>
<b><u>Miscellaneous</u></b>		
Street Lights	\$6,500.00	\$6,500.00
Street Signage and Striping	\$5,000.00	\$5,000.00
		<b>\$11,500.00</b>
<b>TOTAL IMPROVEMENT COSTS</b>	<b>\$367,450.00</b>	<b>\$367,450.00</b>

10% GUARANTEE		\$36,745.00
TOTAL ESCROW AMOUNT		\$404,195.00

## SUBDIVISION COST ESTIMATE APPROVAL



Lorin Gardner  
City Engineer

1/2/2019  
Date

July 22, 2019

To Whom It May Concern,

Alexis Riggs has authority to sign for and bind for SEC 070, LLC. with regards to the Development Agreement for 300 East in North Ogden, Utah. If you have any questions please call Ryan Forsyth (435) 730-0923, General Counsel.

Thank You,



Ryan W. Forsyth – General Counsel



## Staff Report to the North Ogden City Council

### SYNOPSIS

Description: Lumen (Century Link) would like to get a franchise agreement with the city in place. The old agreement has lapsed.

Date: 2/22/23

### STAFF INFORMATION

Jon Call  
[jcall@nogden.org](mailto:jcall@nogden.org)  
801-737-9846

### QUESTION FOR COUNCIL

Is the Council willing to accept the proposed changes to the Franchise Agreement?

### DISCUSSION

The attached redlined version of the agreement shows the proposed changes from the standard agreement we have implemented with other commercial entities.

### STAFF RECOMMENDATION

Council should review the agreement and proposed changes to see if anything else needs to be included or amended in the agreement. We are not required to accept the changes proposed by Lumen, though most would be pretty benign.

**AGREEMENT A3-2024**

**FRANCHISE AGREEMENT  
QWEST CORPORATION DBA CENTURYLINK QC (“CENTURYLINK”)**

THIS FRANCHISE AGREEMENT (hereinafter “Agreement”) is entered into by and between the City of North Ogden, Utah (hereinafter “CITY”), a municipal corporation and political subdivision of the State of Utah, with principal offices at 505 East 2600 North, North Ogden, Utah, 84414, and Qwest Corporation dba CenturyLink QC, a Colorado Corporation (hereinafter “PROVIDER”) with its principal offices at 1025 Eldorado Blvd, Broomfield, CO 80021.

**WITNESSETH:**

WHEREAS, the PROVIDER desires to provide voice, data or video transmission services within the CITY and in connection therewith to establish a telecommunications network in, under, along, over and across present and future rights-of-way of the CITY; and

WHEREAS, the CITY has enacted Title 8, Chapter 2 of the North Ogden City Municipal Code (hereinafter the “Telecommunication Rights-of-Way Ordinance”) which governs the application and review process for Telecommunication Franchises in the CITY; and

WHEREAS, the CITY, in exercise of its management of public Rights-of-Way, believes that it is in the best interest of the public to provide the PROVIDER 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 the PROVIDER agree as follows:

**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 PROVIDER.

1.2 Ordinance. The CITY has adopted the Telecommunications Rights-of-Way Ordinance which is attached to this Agreement as Exhibit “A” and incorporated herein by reference. The PROVIDER acknowledges that it has had an opportunity to read and become familiar with the Telecommunications Rights-of-Way Ordinance. The parties agree that the provisions and requirements of the Telecommunications Rights-of-Way Ordinance are material terms of this Agreement, and that each party hereby agrees to be contractually bound to comply with the terms of the Telecommunications Rights-of-Way Ordinance to the extent such terms are consistent with applicable federal and state law, and except to the extent otherwise noted in this Agreement, which terms shall not be deemed in conflict with the Telecommunications Rights-of-Way Ordinance. The definitions in the Telecommunications Rights-of-Way Ordinance shall apply herein unless a different meaning is indicated. Nothing in this Section shall be deemed to

require the PROVIDER to comply with any provision of the Telecommunications Rights-of-Way 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 Telecommunications Rights-of-Way Ordinance at any time. The CITY shall give the PROVIDER notice as required under the Utah Open Meetings Act and other relevant provisions of Utah and North Ogden City Code. No special notice is implied or required. An opportunity to be heard concerning any proposed amendment is part of the public meeting legislative process. If there is any inconsistency between the PROVIDER's rights and obligations under the Telecommunications Rights-of-Way Ordinance as amended and this Agreement, or if such amendments materially and adversely impact PROVIDER's rights or increase its risks, the provisions of this Agreement shall govern during its term provided that such terms are not otherwise rendered illegal under state or federal laws. Otherwise, the PROVIDER agrees to comply with any such amendments, subject to and reserving its rights and remedies under applicable state and federal law.

1.4 Franchise Description. The Telecommunications Franchise provided hereby shall confer upon the PROVIDER 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. All equipment which is used to broadcast or receive a signal via wireless, satellite, or other similar way may not be located in the public right of way, but must be located on a separately leased adjoining parcel and comply with all land use ordinances, building department approvals and other relevant City Code sections. All equipment which shall be constructed above ground in the existing right of ways shall receive approval from the appropriate city authority prior to installation, including a review for safety purposes. The franchise does not grant to the PROVIDER the right, privilege or authority to engage in community antenna (or cable) television business; although, nothing contained herein shall preclude the PROVIDER from: (1) permitting those with a cable franchise who are lawfully engaged in such business to utilize the PROVIDER's System within the CITY for such purposes; or (2) from providing such service in the future if an appropriate franchise is obtained and all other legal requirements have been satisfied.

1.5 Licenses. The PROVIDER 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 Telecommunications Rights-of-Way 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, the PROVIDER shall pay to the CITY a tax of 3.5% of the gross receipts in accordance with the Municipal Telecommunication

License Tax Act (Utah Code Ann. 10-1-401 to 10-1-410), less any business license fee or business license tax lawfully enacted by the CITY, which lawfully enacted taxes shall in no event exceed the amount payable pursuant to the Municipal Telecommunications License Tax Act. 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 that if any service forming part of the base for calculating the franchise fee under this Agreement is, or becomes, subject to competition from a third party, the CITY will either (a) impose and collect from such third party a fee or tax on Gross Revenues from such competing service in the same percentage specified herein, plus the percentage specified as a utility revenue tax or license fee in the then current ordinances of the CITY, if applicable, or (b) waive collection of the fees from PROVIDER provided for herein that are subject to such competition.

### ARTICLE 3. TERM AND RENEWAL.

3.1 Term and Renewal. The franchise granted to PROVIDER 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 will be renewed by the PROVIDER upon the same terms and conditions as contained in this Agreement for an additional five (5) year term, by unless providing to the CITY's representative designated herein written notice of the PROVIDER's intent to not renew not less than ninety (90) calendar days before the expiration of the initial franchise term.

3.2 Rights of PROVIDER Upon Expiration or Revocation. Upon final expiration of the franchise granted herein, whether by lapse or time, by agreement between the PROVIDER and the CITY, or by revocation or forfeiture, and failure to the parties to enter a new franchise, the PROVIDER shall have the right to either (a) abandon its System in place or (b) remove from the Rights-of-Way any and all of its System, but in such event, it shall be the duty of the PROVIDER, 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. PUBLIC USE RIGHTS.

4.1 City Uses of Poles and Overhead Structures. The CITY shall have the right, without cost payment of attachment fees, to use all approved poles owned by the PROVIDER within the CITY for fire alarms, police signal systems, or similar governmental, non-commercial purposes and subject to the PROVIDER's reasonable safety and availability review. any lawful public use; provided, however, any said uses by the CITY shall be for activities owned, operated or used by the CITY for any public purposes and shall not include the provision of telecommunications service to third parties.

4.2 Limitations on Use Rights. Nothing in this Agreement shall be construed to require the Provider to increase pole capacity or do any make ready work, alter the manner in which the PROVIDER attached equipment to the poles, or alter the manner in which the PROVIDER operates and maintains its equipment. Such CITY attachments shall be installed and maintained in accordance with the reasonable requirements of the PROVIDER and the current National Electrical Safety Code. CITY attachments shall be attached or installed only after written approval by the PROVIDER, which approval will be processed in a timely manner and will not be unreasonably withheld.

4.3 Maintenance of CITY Facilities. The CITY's use rights shall also be subject to the parties reaching an agreement regarding the CITY's maintenance of the CITY attachments at the CITY's expense.

## ARTICLE 5. POLICE POWERS.

The CITY expressly reserves, and the PROVIDER 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 6. CHANGING CONDITIONS AND SEVERABILITY.

6.1 Meet to Confer. ~~The PROVIDER 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 the PROVIDER conducts its business and the way the CITY regulates the business. In recognition of the present state of uncertainty respecting these matters, t~~The PROVIDER 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 any relevant changes in applicable law 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 legal developments.

6.2 Severability. If any section, sentence, paragraph, term or provision of this Agreement or the Telecommunications Rights-of-Way 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. Provided that if the invalidated portion is considered a material consideration for entering into this Agreement, the parties will meet and confer negotiate, in good faith, as to

whether it would be appropriate to enter 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 Telecommunications Rights-of-Way Ordinance, and the City’s Excavation Permit Ordinance. For the PROVIDER, “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 Telecommunications Rights-of-Way Ordinance, and the CITY’s Excavation Permit Ordinance.

## **ARTICLE 7. EARLY TERMINATION, REVOCATION OF FRANCHISE AND OTHER REMEDIES.**

7.1 Grounds for Termination. Subject to the Telecommunications Rights-of-Way Ordinance provisions concerning incumbent local exchange carriers like the PROVIDER, ~~t~~he CITY may terminate or revoke this Agreement and all rights and privileges herein provided for any of the following reasons:

(a) The PROVIDER 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 receipt of written notice by the CITY of such failure;

(b) The PROVIDER, by act or omission, materially violates a material duty herein set forth in any particular within the PROVIDER’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 the PROVIDER notice of such determination, the PROVIDER, 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, the PROVIDER 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 the PROVIDER; or

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

(d) The PROVIDER, or its contractors damage CITY or private property during the installation and maintenance of its telecommunication network and fails to repair or compensate the ~~property owner~~ CITY for the damage. When not timely cured consistent with Section 7.1(b), above, such failure shall constitute a material breach of this

~~Agreement contract and PROVIDER shall be given sixty (60) days written notice to complete any required repairs follow the timelines outline in 7.1(b) above.~~

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

7.3 Remedies at Law. In the event the PROVIDER or the CITY fails to fulfill any of its respective obligations under this Agreement, the CITY or the PROVIDER, whichever the case may be, shall have 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.

7.4 Third Party Beneficiaries. The benefits and protection provided by this Agreement shall inure solely to the benefit of the CITY and the PROVIDER. 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).

## ARTICLE 8. PARTIES' DESIGNEES.

8.1 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 Telecommunications Rights-of-Way Ordinance, all notices from the PROVIDER to the CITY pursuant to or concerning this Agreement, shall be delivered to the CITY's representative at Attn: City Recorder, 505 East 2600 North, North Ogden, UT 84414, or such other officer and address as the CITY may designate by written notice to the PROVIDER.

8.2 PROVIDER Designee and Address. ~~Designated personnel from the PROVIDER's Network Infrastructure Services Department~~~~CEO David Bradshaw or his or her designee(s)~~ shall serve as the PROVIDER's representative regarding administration of this Agreement. Unless otherwise specified herein or in the Telecommunications Rights-of-Way Ordinance, all notices from the CITY to the PROVIDER pursuant to or concerning this Agreement, shall be delivered to PROVIDER's ~~headquarter~~ offices at 1025 Eldorado Blvd, Broomfield, CO 80021, and such other office as the PROVIDER may designate by written notice to the CITY.

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

## ARTICLE 9. INSURANCE AND INDEMNIFICATION

9.1 Insurance. Prior to commencing operations in the CITY pursuant to this Agreement, the PROVIDER shall furnish to the CITY evidence that it has adequate general

liability and property damage insurance. The evidence may consist of a statement that the PROVIDER is effectively self-insured if the PROVIDER 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 the PROVIDER 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.

9.2 Indemnification. The PROVIDER 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 to the extent caused by the PROVIDER's negligent or willful acts, including the acts of PROVIDER's contractors, 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 the PROVIDER 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 the PROVIDER to assume the defense of such with counsel of the PROVIDER's choosing, unless the CITY reasonably objects to such counsel. Notwithstanding any provision of this Section to the contrary, the PROVIDER 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 or an unrelated third party.

## ARTICLE 10. INSTALLATION

10.1 Coordinated Installation. In order to prevent and/or minimize the number of cuts to and excavations within the CITY Rights-of-Way, PROVIDER 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 When the same can reasonably be accomplished without significant delay or increased cost to PROVIDER, and subject to applicable law, installation, repairs, or maintenance of lines and facilities within the CITY Rights-of-Way shall be made in the same trench and at the time other installations, repairs or maintenance of facilities are conducted within the CITY Rights-of-Way.

10.2 Underground Installation. The CITY generally requires utilities to be located underground in areas being newly developed. In all locations within the CITY where all utility services are required to be located underground in accordance with permits issued for such new developments, unless otherwise authorized by CITY in writing and subject to applicable law, all of PROVIDER's new facilities shall be constructed underground. Nothing herein shall require PROVIDER to convert existing overhead facilities to underground facilities until and unless all other providers in the same location are required to do so. If undergrounding is caused by or required due to the activities of a third party, PROVIDER's undergrounding costs shall be borne by the third party, and the CITY agrees to make the same a condition of any permits issued to such third party. Unless otherwise provided, all of PROVIDER's facilities within the CITY shall be constructed underground. Notwithstanding the provisions of Article 1.3 of this Agreement,

~~PROVIDER expressly agrees to install and maintain all of its 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. Nothing herein shall require PROVIDER to convert existing overhead facilities to underground facilities until and unless other similarly situated providers in the same location are required to do so.~~

10.3 Damage to Property. If during installation of any facility, line, or equipment under the provisions of this Agreement, PROVIDER, its contractors, agents, or other individuals damage any municipal property, including all street improvements, utility improvements, or third party improvements, PROVIDER agrees to fully restore the property, at ~~their~~ its expense, to their original condition in accordance with established municipal standards. If PROVIDER'S agents, contractors, or other individuals insurance coverage does not fully cover the costs of repairs to the extent required because of any act of PROVIDER, its agents, contractors or other individuals, PROVIDER shall complete the repairs at ~~their~~ its own expense. ~~If property damage occurs~~Under the foregoing circumstances, CITY may require, at its discretion, that PROVIDER complete the necessary repairs. Under no condition is CITY required to complete the repairs and seek to obtain repayment from PROVIDER or insurance companies unless CITY elects to do so.

10.4 Relocation for the Franchising Authority. Upon its receipt of reasonable advance written notice, to be not less than thirty (30) days in the event of a (a) relatively minor, temporary relocation (i.e., where facilities will be returned back to their original state and location) and no less than ninety (90) days for a (b) relatively major temporary or (c) permanent relocation, the PROVIDER shall~~ten (10) business days, the PROVIDER shall do the following at its own expense;~~ protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Public Way, or any property owned by the CITY, or for any City-CITY Pproject, any property of the PROVIDER when lawfully required by the CITY by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, power lines or other municipal utility infrastructure to be used for non-commercial purposes, municipal buildings, or any other type of public structures or improvements which are not used to compete with the PROVIDER'S services. In the event that the CITY requests relocation efforts from PROVIDER for reasons not included in this paragraph, or for aesthetic reasons, then CITY agrees to pay all costs associated with relocation. PROVIDER shall not be required to pay for the relocation of PROVIDER'S equipment, and may require advance payment for costs and expense, to the extent such removal or relocation is requested solely for aesthetic purposes, in cases where the original location of the facilities was approved by the CITY through the permitting process. Likewise, PROVIDER shall not be required to pay for the relocation of PROVIDER'S equipment, and may require advance payment for costs and expense from a third party, to the extent such removal or relocation is made at the request or in support of the activities of such third party; the CITY shall make the same a permitting condition of the third party's permit(s).

In the event of an emergency, the CITY shall notify the PROVIDER, who shall immediately respond to the emergency. Should the PROVIDER be unable to respond in a timely manner, the CITY shall take such action as is necessary to meet the emergency at the expense of PROVIDER, if such action by the CITY would otherwise have been at the expense of PROVIDER.

## ARTICLE 11. GENERAL PROVISIONS

11.1 Binding Agreement. The parties represent that: (a) when executed by their respective parties, 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 their operation in entering into this Agreement.

11.2 Utah Law. This Agreement shall be interpreted pursuant to Utah law.

11.3 Time of Essence. Time shall be of the essence of this Agreement.

11.4 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 to include the plural number and vice versa, and the use of any gender shall include any other and all genders. The paragraphs and section headings in this Agreement are for convenience only and do not constitute a part of the provisions hereof.

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

11.6 Amendments. This Agreement may be modified or amended by written agreement only. No oral modifications or amendments shall be effective.

11.7 Binding Agreement. This Agreement shall be binding upon the heirs, successors, administrators and assigns of each of the parties.

SIGNED AND ENTERED INTO this \_\_\_\_ day of \_\_\_\_\_, 20\_\_

“CITY”  
CITY OF NORTH OGDEN

By: \_\_\_\_\_  
S. Neal Berube, Mayor

ATTEST:

\_\_\_\_\_

Susan Nance, City Recorder

APPROVED AS TO FORM:

\_\_\_\_\_  
Jonathan Call, City Attorney

“PROVIDER”

~~Vaix Inc Dba Senawave~~  
~~Communications~~ Qwest Corporation dba  
CenturyLink QC, an Utah Colorado  
Corporation

By: \_\_\_\_\_  
~~David Bradshaw~~ Shaun Giesler, Chief

~~Executive Officer~~ Manager NIS ROW

## CORPORATE ACKNOWLEDGMENT

STATE OF \_\_\_\_\_ )  
 )ss.  
COUNTY OF \_\_\_\_\_ )

On the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ personally appeared before me ~~David Bradshaw~~Shaun Giesler, who being by me duly sworn did say that he or she is the ~~Chief Executive Officer of Senawave Communications~~Network Infrastructure Manager of CenturyLink, and that the foregoing instrument was signed on behalf of said company by authority of its board of directors and/or its company documents; and he acknowledged to me that said company executed the same.

Notary Public  
Residing at: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**EXHIBIT “A”**  
**Telecommunications Rights-of-Way Ordinance**

**8-2: TELECOMMUNICATIONS; USE OF RIGHTS OF WAY****8-2-1: FINDINGS AND INTENT; AUTHORITY****8-2-2: DEFINITIONS****8-2-3: ADMINISTRATION; GENERAL PROVISIONS****8-2-4: APPLICABILITY; EXCEPTIONS****8-2-5: FRANCHISE REQUIRED****8-2-6: APPLICATION FOR FRANCHISE****8-2-7: COMPENSATION, FEES AND PAYMENTS****8-2-8: INSURANCE, RECORD REQUIREMENTS****8-2-9: CONSTRUCTION, TECHNICAL REQUIREMENTS****8-2-10: PRIVATE PROPERTY; OBLIGATION TO NOTIFY****8-2-11: TRANSFER OF FRANCHISE AND LICENSE****8-2-12: ENFORCEMENT; RIGHTS OF CITY****8-2-13: SEVERABILITY****8-2-1: 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 nondiscriminatory 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 establish standards for franchising providers in a manner that:

Item 8.

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.

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.

#### HISTORY

*Adopted by Ord. 1987 Code § 12.20.010 on 1/1/1987*

### **8-2-2: 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:** North 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 instrument

negative control, as the case may be, of the system or of a provider. A rebuttable presumption of 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.

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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 11-26, 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 1606 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, reseller 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 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.

#### HISTORY

*Adopted by Ord. 1987 Code § 12.20.040 on 1/1/1987*

### **8-2-3: 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.

- 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 mayor. 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 such designated person's name, address or telephone number.
- 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 State 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.

#### HISTORY

*Adopted by Ord. 1987 Code § 12.20.480, 12.20.500, 12.20.510, 12.20.520, 12.20.530, 12.20.540, 12.20.550, 12.20.560, 12.20.570 on 1/1/1987*

*Amended by Ord. 2006 Code on 1/1/2006*

### **8-2-4: 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 CCNO 8-2-3E2.
- B. Excluded Activities:
1. Cable Television Operators: This chapter shall not apply to cable television operators otherwise regulated by 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 them 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 police power and not preempted by other law shall be applicable.

#### HISTORY

*Adopted by Ord. 1987 Code § 12.20.020, 12.20.030 on 1/1/1987*

### **8-2-5: 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 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 CCNO 8-2-12D.
- 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) or greater than fifteen (15) years. Each franchise shall be granted in a nondiscriminatory manner.

Item8.

#### HISTORY

Adopted by Ord. 1987 Code § 12.20.050, 12.20.060, 12.20.070, 12.20.080, 12.20.090, 12.20.100, 12.20.110 on 1/1/1987

### **8-2-6: 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 CCNO 8-2-11A2, 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 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 CCNO 8-2-9.
- 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.

#### HISTORY

Adopted by Ord. 1987 Code § 12.20.220, 12.20.230, 12.20.240 on 1/1/1987

### **8-2-7: 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, a nonrefundable application fee in such amount as established by resolution of the city council.
  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 CCNO 8-1.

- 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.
- 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.

#### HISTORY

*Adopted by Ord. 1987 Code § 12.20.120, 12.20.130, 12.20.140, 12.20.150, 12.20.160, 12.20.170, 12.20.180, 12.20.190, 12.20.200, 12.20.210 on 1/1/1987*

*Amended by Ord. 2006 Code on 1/1/2006*

### **8-2-8: 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.
- 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 way 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.

Item 8.

#### HISTORY

Adopted by Ord. 1987 Code § 12.20.370, 12.20.380, 12.20.390, 12.20.400, 12.20.410, 12.20.420 on 1/1/1987

### **8-2-9: 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 CCNO 8-1, 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:

Item8.

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 CCNO 8-1.
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 CCNO 8-2-3C.
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 CCNO 8-1. 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 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.

#### HISTORY

*Adopted by Ord. 1987 Code § 12.20.250, 12.20.260, 12.20.270, 12.20.280, 12.20.290, 12.20.300, 12.20.310, 12.20.320, 12.20.330, 12.20.340 on 1/1/1987*

### **8-2-10: 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.

#### HISTORY

*Adopted by Ord. 1987 Code § 12.20.470 on 1/1/1987*

### **8-2-11: TRANSFER OF FRANCHISE AND LICENSE**

## A. Notification Of Sale:

Item 8.

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 CCNO 8-2-6.
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 CCNO 8-2-12A1, 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 CCNO 8-2-6.
3. If 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 CCNO 8-2-6.

## 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.

### HISTORY

*Adopted by Ord. 1987 Code § 12.20.350, 12.20.360 on 1/1/1987*

## **8-2-12: 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 mayor, 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:

Item8.

### 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 CCNO 8-2-5D 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.

## HISTORY

Adopted by Ord. 1987 Code § 12.20.430, 12.20.440, 12.20.450, 12.20.460 on 1/1/1987

## **8-2-13: SEVERABILITY**

If any provision of this chapter is held by any federal, state or local court of competent jurisdiction 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' written notice, or a longer period of time as may be reasonably required for a provider to comply with such a rejuvenated provision, of the change before requiring compliance with such provision.

#### HISTORY

*Adopted by Ord. 1987 Code § 12.20.490 on 1/1/1987*



## Staff Report to the North Ogden City Council

### SYNOPSIS

Description: This is a discussion on the viability of moving forward with an independent 501c3 committee for Cherry Days, including the possibility of the city committing to financially support the committee moving forward.

Date: March 21, 2024

### STAFF INFORMATION

Jon Call  
[jcall@nogden.org](mailto:jcall@nogden.org)  
801-737-9846

### QUESTION FOR COUNCIL

Would the Council support the Cherry Days Committee transitioning into a completely independent 501c3 and a continued commitment for financial support to the Committee until they firmly establish their funding sources.

### DISCUSSION

The Cherry Days Committee put on an excellent event last year and would like to continue and move towards becoming an independent organization. This group has taken a significant burden off the recreation/events department and staff supports moving this direction to support the volunteers as much as possible.

Historically, the city has committed between \$25,000 and \$50,000 to cherry days with various levels of sponsor support. Staff believes a specific financial commitment should be made each year to support the group and that can be accomplished in several ways, though a written agreement would likely be the best solution, once the group has fully established bylaws and other formalities figured out.

### STAFF RECOMMENDATION

Staff recommends the Council move forward with encouraging a 501c3 to be created and have discussions about a formal agreement with the group in the future.



# NORTH OGDEN CITY

SETTLED 1851

## Staff Report to the North Ogden City Council

### SYNOPSIS / APPLICATION INFORMATION

Application Request: Public hearing, consideration, and recommendation on a legislative amendment to consider amending North Ogden Code Title 11-19-3, C, 5 Design and Location of Parking Spaces to reduce the required parking setback on Washington Boulevard.

Agenda Date: February 21, 2024 (PC)  
March 26, 2024 (CC)

Applicant: Jason Westbroek, Big O Tires Business Owner

File Number: ZTA 2024-02

### PUBLIC NOTICE:

Mailed Notice: N/A

Newspaper: N/A

City Website: February 9, 2024 (PC)

City Website: March 21, 2024 (CC)

### STAFF INFORMATION

Scott A. Hess  
Community and Economic Development Director  
[shess@nogden.org](mailto:shess@nogden.org)  
(801) 737-9841

### APPLICABLE ORDINANCES

11-19-3, C, 5 Design and Location of Parking Spaces

### LEGISLATIVE DECISION

When the City is considering a legislative matter, the Planning Commission is acting as a recommending body to the City Council. The City has wide discretion in taking legislative action. Examples of legislative actions are general plan, zoning map, and land use text amendments. Legislative actions require that the Planning Commission give a recommendation to the City Council. Typically, the criteria for making a decision, related to a legislative matter, require compatibility with the general plan and existing codes.

### BACKGROUND

Jason Westbroek representing North Ogden business Big O Tires, located at 1893 N. Washington Blvd., needs additional parking space. When the site was originally developed, the City restricted parking along Washington Blvd. based on a required setback. The current ordinance, 11-19-3, C, 5 retains a twenty-foot (20') setback from property line for parking stalls along this major roadway. The applicant has applied to amend the ordinance and reduce the setback in order to construct additional parking on the east side of the site.

## ANALYSIS

Zoning standards may be based on an overall design aesthetic, to address safety, or to meet other functional needs of the community. There is a need to balance aesthetics, landscaping, and design flexibility for the public and businesses. In some cases the City has developed setbacks for visual consistency, or to avoid parked cars in close proximity to a major roadway. In the case of Washington Blvd. the restriction requires 20 feet of separation from the property line to the nearest parking area. This standard has been applied to several years' worth of developments including Smith's, Walgreens, Maverick, Zion's Bank, Taco Time, Pizza Pie Café, and most recently Bank of Utah. The image below shows Washington Blvd. with the approximate setback highlighted in red.



Staff's opinion is that the city's current parking lot landscape requirements meet the needs of our commercial zoning areas. The 20-foot setback area provides visual relief along the corridor, and parked cars remain back from the high-speed travel lanes. Staff recommends leaving the standards as they are written.

However, it is an applicant's right to apply for amendments to the city's Zoning Code, and as such, Jason Westbroek has requested the Code language in section 11-19-3, C, 5. be amended. The applicant's recommendation is to reduce the required parking setback along Washington Blvd. to six feet (6') away

from property line instead of twenty feet (20'). below (see Exhibit A):

#### **11-19-9, C, 5**

Design. All areas of the parking lot, with the exception of necessary points of ingress and egress, shall be no closer than ~~twenty six~~ feet (20' 6') from the front property line. That unoccupied area shall be landscaped and maintained with trees, shrubs, ground cover, undisturbed natural growth, pedestrian walkways, and plazas.

#### **CONFORMANCE WITH THE GENERAL PLAN**

Goals from the General Plan that may relate to this proposed ordinance amendment identified by Staff are as follows:

##### **Southtown Area Goals:**

- Increase safety along Washington Boulevard

##### **Strategies:**

- Evaluate existing crossings for pedestrian use and safety through a traffic study.
- Provide more handicap ramps, bulb outs, medians, and pedestrian activated signals.

The City's General Plan is silent on parking for commercial areas. There is discussion about the design of public spaces, safety, and pedestrian facilities, but no specific call outs to parking or its location along corridors.

The city is the steward of public lands and facilities and needs to strike a balance between providing reasonable access, reasonable costs, and required improvements. Staff is recommending the Planning Commission consider whether a reduced setback for parking is compliant with the General Plan goals. Staff believes that the Planning Commission can find either proposal compliant with the Goals and Strategies of the General Plan.

#### **SUMMARY OF LAND USE AUTHORITY CONSIDERATIONS**

There are some guiding principles that should be considered before there is a change in code standards.

- Is the request a positive change for the City?
- Is there additional language that is appropriate for this ordinance?
- Is the proposal consistent with the General Plan?

#### **PLANNING COMMISSION RECOMMENDATION**

On February 21, 2024 the Planning Commission held a Public Hearing on the requested Rezoning Text Amendment. Staff provided a recommendation and the applicant presented their information. The PC discussion can be found in the Draft Minutes from February 21, 2024 (see Attachment B). After discussion and deliberation, the Planning Commission recommended that the City Council retain the 20-foot parking setback along Washington Blvd, and further recommended that Staff bring back ordinance language that allows a reduced parking setback on side streets off of Washington Blvd that would accommodate parking closer to 1900 N. for the applicant.

Staff recommends that the City Council consider the Planning Commission's recommendation, conduct the public meeting, and act on the Ordinance (see Exhibit C).

**EXHIBITS**

- A. Application
- B. Planning Commission Minutes, February 21, 2024
- C. Ordinance Amendment

## ORDINANCE 2024 - 06

### AN ORDINANCE OF NORTH OGDEN CITY AMENDING THE ZONING ORDINANCE OF NORTH OGDEN CITY TITLE 11, CHAPTER 19, SECTIONS 3, C, 5. TO AMEND THE PARKING SETBACK FOR COMMERCIAL PARKING LOTS

**WHEREAS;** The current City ordinance relating to parking lot setback for Commercial lots requires a 20-foot setback; and

**WHEREAS;** This amendment updates in a reasonable manner the standards relating parking lot set back and landscape buffers; and

**WHEREAS;** Updating these standards will assist North Ogden to appropriately review and approve site plans without being required to meet excessive standards; and

**WHEREAS:** This Ordinance language was requested by a North Ogden City business owner to facilitate additional parking on their site. In a Public Hearing with the Planning Commission on February 21, 2024, the recommendation was to deny the requested rezoning text amendment.

**NOW THEREFORE, BE IT ORDAINED** by the North Ogden City Council that the North Ogden City Code 11-19-3, C, 5 be amended as follows:

**SECTION 1:** Text to be amended.

#### **11-19-3: DESIGN AND LOCATION OF PARKING SPACES**

C. All Uses Except as Provided Above.

5. Design. All areas of the parking lot, with the exception of necessary points of ingress and egress, shall be no closer than ~~twenty~~ **six** feet (~~20'~~**6**) from the front property line. That unoccupied area shall be landscaped and maintained with trees, shrubs, ground cover, undisturbed natural growth, pedestrian walkways, and plazas.

**SECTION 2:** This ordinance shall take effect upon adoption.

**PASSED and ADOPTED** this      <sup>th</sup> day of                      2024.

**North Ogden City:**

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**S. Neal Berube**  
**North Ogden City Mayor**

**CITY COUNCIL VOTE AS RECORDED:**

	<b>Aye</b>	<b>Nay</b>
<b>Council Member Barker:</b>	_____	_____
<b>Council Member Cevering:</b>	_____	_____
<b>Council Member Dalpiaz:</b>	_____	_____
<b>Council Member Pulver:</b>	_____	_____
<b>Council Member Watson:</b>	_____	_____
<b>(In event of a tie vote of the Council):</b>		
<b>Mayor Berube</b>	_____	_____

**ATTEST:**

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**Rian Santoro**  
**City Recorder**



# Land Use Development Application

Date: 02/01/2024

## Applicant / Owner

Applicant Name:	Jason R. Westbroek & Jared H. Sewell	Same as Applicant:	<input type="checkbox"/>
Company:	North View Big O Tires	Owner Name:	Westbroek Properties LLC
Address:	1893 N 400 E	Address:	1893 N 400 E
City, State, Zip:	1893 N 400 E	City, State, Zip:	North Ogden, Utah 84414-7228
Phone:	(801)510-2263 / (801)389-6051	Phone:	(801)737-4781
Email:	store044261@bigostores.com	Email:	store044261@bigostores.com

## Contractor Information

Contractor:	Phone:
Address:	Email:
City, State, Zip:	

## Project

Project Name:	Zoning Parking Set Back	Acreage:	.94
Address:	1893 N 400 E	Current Zoning:	Commercial
City, State, Zip:	North Ogden, Utah 84414-7228	Proposed Zoning:	Commercial
Parcel:		# of lots:	
Subdivision:		Existing Sq.Ft.:	
Lot #:		Proposed Sq.Ft.:	
		Land Serial #:	

Project Description: [Description]

## Application Type

<b>Subdivision:</b>	<input type="checkbox"/>	Variance:	<input type="checkbox"/>
Preliminary Approval:	<input type="checkbox"/>	<b>Conditional Use Permit:</b>	<input type="checkbox"/>
Final Approval:	<input type="checkbox"/>	City Fee (With Review):	<input type="checkbox"/>
Special Exception:	<input type="checkbox"/>	City Fee (No Review):	<input type="checkbox"/>
<b>Minor Subdivision:</b>	<input type="checkbox"/>	<b>Planned Residential Unit:</b>	<input type="checkbox"/>
Subdivision without Review:	<input type="checkbox"/>	<b>Subdivision Extension:</b>	<input type="checkbox"/>
Amendment or Vacation:	<input type="checkbox"/>	Fence:	<input type="checkbox"/>
<b>Boundary Line Adjustment:</b>	<input type="checkbox"/>	Fence Interior Lot:	<input type="checkbox"/>
<b>Site Plan Review:</b>	<input type="checkbox"/>	Fence Corner Lot:	<input type="checkbox"/>
With Technical Review:	<input type="checkbox"/>	Patio:	<input type="checkbox"/>
No Technical Review:	<input type="checkbox"/>	RV PADS/Expand Driveway:	<input type="checkbox"/>
<b>Zoning Amendment:</b>	<input type="checkbox"/>	New Structure:	<input type="checkbox"/>
Text:	<input checked="" type="checkbox"/>	Shed:	<input type="checkbox"/>
Map:	<input type="checkbox"/>	Other Structure under 200 sq. ft:	<input type="checkbox"/>
Annexation City:	<input type="checkbox"/>	Deck:	<input type="checkbox"/>
<b>Hearing Officer:</b>	<input type="checkbox"/>	Other:	<input type="checkbox"/>

## Vacation Request

Easement:	<input type="checkbox"/>	Subdivision:	<input type="checkbox"/>
Road:	<input type="checkbox"/>	Subdivision Lot:	<input type="checkbox"/>

**Conditional Use Permit**

Please explain the measures that will take place so that heavy traffic generated by the proposed use will not adversely affect the general traffic patterns of the area.

What measures are going to take place to assure that the building location will not create a pedestrian traffic hazard by causing approaches to sidewalks?

Please explain how the building design is compatible with, or complimentary to, already established adjacent structures.

If the development is adjacent to a residential zone or use, please explain how the building location, lighting, parking, or traffic circulation will not adversely affect the adjacent residential uses.

Please explain how the signage will be complementary to the development and overall aesthetic nature of the immediate area.

Please explain which proposed toxic materials and pollutants would be used in the proposed use and how such materials and pollutants will be handled, stored, and disposed of.

Please explain what measures will take place to avoid adverse effects on the adjacent residential, commercial, and manufacturing uses.

**Residential Conditional Use Permit**

What traffic will be generated by this proposed use?

Please explain how the proposed development / use will not overload the carrying capacity for which local streets were designed.

What measures are you taking to assure that the internal traffic circulation will not adversely affect the adjacent residential property?

How is the proposed structure and parking facilities complimentary to the aesthetics of the general area?

Please explain how the proposed sign(s) will not adversely affect the development itself or the overall aesthetics of the immediate area?

Please explain how the proposed landscaping will be sufficient to enhance the aesthetics of the development and area.

**Special Exception**

Explain how literal enforcement of the Zoning Ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the City Ordinance. (The hardship cannot be self-imposed or an economic hardship.)

Explain what is unique to, or the special circumstances attached to the property that does not generally apply to other properties in the city.

Explain how the granting of the special exception is essential to the enjoyment of a substantial property right possessed by other property in the same district.

Explain how the special exception will not substantially affect the general plan and will not be contrary to the public interest.

Explain how the spirit of the Zoning Ordinance is observed and substantial justice is done.

**Zoning Ordinance Amendment**

STATE THE PHYSICAL DESCRIPTION OF THE AREA PROPOSED TO BE REZONED:

STATE THE LEGAL DESCRIPTION OF AREA PROPOSED TO BE REZONED:

PROPOSED TEXT (attach additional sheets, if needed): Change section 11-19-3 C. 5. to six feet (6') away from property line instead of twenty feet (20'). Design. All areas of the parking lot, with the exception of necessary points of ingress and egress, shall be no closer than six feet (6') from the front property line. That unoccupied area shall be landscaped and maintained with trees, shrubs, ground cover, undisturbed natural growth, pedestrian walkways, and plazas.

**Variance**

Explain how literal enforcement of the Zoning Ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the Zoning Ordinance. (The hardship cannot be self-imposed or an economic hardship.)

Explain what is peculiar to, or the special circumstances attached to the property that does not generally apply to other properties in the same district.

Explain how the granting of the variance is essential to the enjoyment of a substantial property right possessed by other property in the same district.

Explain how the variance will not substantially affect the general plan and will not be contrary to the public interest.

Explain how the spirit of the Zoning Ordinance is observed and substantial justice is done.

---

I do hereby certify that the information contained herein is true and correct.

\_\_\_\_\_  
Jason R. Westbroek

Name

\_\_\_\_\_  
02/01/2024

Date



## NORTH OGDEN PLANNING COMMISSION MEETING MINUTES

February 21, 2024

The North Ogden Planning Commission convened on February 21, 2024, at 6:00 p.m. at the North Ogden City Office at 505 East 2600 North.

Notice of time, place, and agenda of the meeting was posted on the bulletin board at the municipal office and posted to the Utah State Website on February 15, 2024.

Notice of the annual meeting schedule was posted on the bulletin board at the municipal office and posted to the Utah State Website on December 13, 2023.

**Note: The time stamps indicated in blue correspond with the recording of this meeting, which can be located on YouTube: <https://www.youtube.com/channel/UCriqbePBxTucXEzRr6fclhQ/videos> or by requesting a copy of the audio file from the North Ogden City Recorder.**

### COMMISSIONERS:

Eric Thomas	Chairman	
Brandon Mason	Vice-Chairman	excused
Nicole Nancarrow	Commissioner	
Johnson Webb	Commissioner	
Cody Watson	Commissioner	
Nissa Green	Commissioner	via Zoom
Chad Bailey	Commissioner	excused

### STAFF:

Scott Hess	Community and Economic Development Director
Ryan Nunn	Planner

### VISITORS:

Jason R. Westbroek  
Chris Pulver

Chairman Thomas called the meeting to order at 6:00 p.m. Commissioner Webb offered the invocation and Commissioner Nancarrow led the Pledge of Allegiance.

## **CONSENT AGENDA**

### **1. ROLL CALL**

0:02:08 Vice Chairman Mason and Commissioner Bailey were excused. Commissioner Green was participating via Zoom. All other Commission Members were in attendance.

### **2. CONSIDERATION AND ACTION TO APPROVE THE JANUARY 17, 2024, AND FEBRUARY 7, 2024, PLANNING COMMISSION MEETING MINUTES**

0:02:30 Commissioner Nancarrow made a motion to approve the January 17, 2024, and February 7, 2024, Planning Commission Meeting minutes. Commissioner Webb seconded the motion.

Voting on the motion:

Chairman Thomas	aye
Vice Chairman Mason	absent
Commissioner Nancarrow	aye
Commissioner Webb	aye
Commissioner Watson	aye
Commissioner Green	aye
Commissioner Bailey	absent

The motion carried.

### **3. EX PARTE COMMUNICATIONS OR CONFLICTS OF INTEREST TO DISCLOSE**

0:03:38 Chairman Thomas asked if any Commissioners had ex parte communications or conflicts of interest to disclose. No disclosures were made.

## **LEGISLATIVE ITEMS**

### **4. PUBLIC COMMENTS FOR ITEMS NOT ON THE AGENDA**

There were no public comments.

5. **ZTA 2024-02 PUBLIC HEARING, CONSIDERATION AND RECOMMENDATION ON A LEGISLATIVE AMENDMENT TO CONSIDER AMENDING NORTH OGDEN CODE TITLE 11-19-3, C, 5 DESIGN AND LOCATION OF PARKING SPACES TO REDUCE THE REQUIRED PARKING SETBACK ON WASHINGTON BOULEVARD**

0:04:10 Community and Economic Development (CED) Director Scott Hess presented the item, explaining that Jason Westbrook, owner of Big O Tires, has requested a Zoning Text Amendment to reduce the required parking setback on Washington Boulevard. Mr. Hess provided background information on the existing Code, mentioning previous amendments allowing for reduced setbacks on side streets. He emphasized the need for flexibility and suggested retaining the 20-foot setback on Washington Boulevard for visual relief.

Chairman Thomas opened the floor for questions and comments, expressing the desire to hear from the applicant before entering into the Public Hearing.

0:08:13 Jason Westbrook introduced himself as a North Ogden resident and business owner. He outlined the issue, stating that the initial denial for parking along Washington Boulevard was based on green space requirements, which they now exceed. Mr. Westbrook commented that he is requesting a smaller setback, proposing a six to seven-foot buffer to add more parking spaces. He addressed aesthetic concerns and highlighted challenges with the current setbacks.

0:12:03 CED Director Hess discussed potential areas for additional parking, including modifications to the existing layout and addressing green space; he also mentioned potential changes to accommodate Mr. Westbrook's request.

0:17:07 Mr. Westbrook responded to questions about the north side of the property and potential additional parking spaces. He discussed plans to reconfigure the existing parking area due to necessary utility work and expressed the need for more space to accommodate business growth. Commissioner Webb inquired about the impact on the entrance and exit onto Washington Boulevard. Mr. Westbrook acknowledged the challenges during peak times but noted the difficulty in determining the ideal solution. Discussion continued on potential options and challenges in acquiring additional land.

**a. Chairman Thomas opened the Public Hearing at 6:19 p.m.**

There were no persons appearing to be heard.

**Commissioner Nancarrow made a motion to close the Public Hearing. Commissioner Green seconded the motion.**

**Voting on the motion:**

<b>Chairman Thomas</b>	<b>aye</b>
<b>Vice Chairman Mason</b>	<b>absent</b>

<b>Commissioner Nancarrow</b>	<b>aye</b>
<b>Commissioner Webb</b>	<b>aye</b>
<b>Commissioner Watson</b>	<b>aye</b>
<b>Commissioner Green</b>	<b>aye</b>
<b>Commissioner Bailey</b>	<b>absent</b>

**The motion carried.**

**The Public Hearing was closed at 6:20 p.m.**

**0:20:30** Chairman Thomas then facilitated discussion among the Commission regarding setbacks along Washington Boulevard. The current ordinance mandates a 20-foot setback. The discussion highlighted the importance of safety, green spaces, and the desire to promote walkability. The history of form-based code and its impact on building placement was also mentioned. Commissioners agreed with the importance of the 20-foot setback for safety reasons. The conversation included considerations for parking needs, potential adjustments to the setback on the north side, and the challenges of changing the site layout.

**0:31:30** Mr. Westbroek suggested solutions such as moving the building closer to the street or exploring additional parking in specific areas. Concerns were raised about the potential impact on traffic flow and the UDOT access management policy. The discussion also touched on the possibility of reducing setbacks on the north side of the property to accommodate additional parking and other alternatives.

#### **b. Consideration and recommendation**

**Commissioner Nancarrow made a motion to recommend to the City Council that we do not approve this proposed Zoning Text Amendment, amending North Ogden Code Title 11-19-3, C, 5 Design and Location of Parking Spaces to reduce the required parking setback on Washington Boulevard. However, we recommend reduction on the north side of Big O's property in accordance with the proposed Zoning Text Amendment 2024-03, which is to come before Planning Commission in the coming weeks. Commissioner Webb seconded the motion.**

#### **Voting on the motion:**

<b>Chairman Thomas</b>	<b>aye</b>
<b>Vice Chairman Mason</b>	<b>absent</b>
<b>Commissioner Nancarrow</b>	<b>aye</b>
<b>Commissioner Webb</b>	<b>aye</b>
<b>Commissioner Watson</b>	<b>aye</b>
<b>Commissioner Green</b>	<b>aye</b>
<b>Commissioner Bailey</b>	<b>absent</b>

**The motion carried.**

6. **PUBLIC COMMENTS**

There were no public comments.

7. **REMARKS - PLANNING COMMISSIONERS:**

0:41:30 Chairman Thomas informed the Commission that he would be absent for the March 20, 2024 Planning Commission Meeting.

8. **REPORT – COMMUNITY AND ECONOMIC DEVELOPMENT DIRECTOR**

0:42:00 Community and Economic Development Director Hess reported that the legislative session was in its final stretch, with eight days remaining. The housing bill of concern, House Bill 306, has stalled. However, substitute bills are emerging, indicating a dynamic week at the legislature. Mr. Hess anticipates providing an update in March, mentioning that he will be absent during the first week, with Planner Ryan Nunn taking over the meeting and a potential legislative session update from Jon Call. Mr. Hess reported that The South Town Center Project with consultants is completed, awaiting compilation with the active transportation plan for presentation to the Planning Commission and later to the City Council for General Plan updates. Mr. Hess noted that there has been a noticeable uptick in building activities, including minor subdivisions and site plans, with commercial site plans expected in the coming weeks.

9. **REMARKS – CITY MANAGER/ATTORNEY**


Mr. Call was excused.

10. **ADJOURNMENT**

**Commissioner Watson motioned to adjourn the meeting.**

**The meeting adjourned at 6:44 p.m.**

  
Eric Thomas  
Planning Commission Chair

  
Joyce Pierson  
Deputy City Recorder

3-6-2024  
Date Approved



## Staff Report to the North Ogden City Council

### SYNOPSIS

**Description:** This is a discussion about partnering for an LED screen to be installed at the amphitheater, specifically the city's financial commitment of \$5,000 and what is involved in partnering on a RAMP grant application with the Major Brent Taylor Foundation.

**Date:** March 21, 2024

### STAFF INFORMATION

Jon Call  
[jcall@nogden.org](mailto:jcall@nogden.org)  
801-737-9846

### QUESTION FOR COUNCIL

Is the Council willing to enter into this partnership with the Major Brent Taylor Foundation for Veterans Week to be held in October/November of 2024.

### DISCUSSION

The city was approached in December/January about partnering for the 7<sup>th</sup> year with the Major Brent Taylor Foundation (MBTF) for the Veterans Week celebrations. MBTF applied for a RAMP Grant on January 19<sup>th</sup> to provide additional resources to their program including an LED screen to be permanently installed at the amphitheater and given included with the city's AV equipment and additional plastic folding chairs. Other items were included in the grant request to support the Veterans Week programs.

Historically, the city has partnered on the Veterans Week celebration with MBTF which included staff assistance and the use of the Amphitheater, trailheads, and equestrian park during the weeks around Veterans Day. This new request would also require the city to financially support (\$5,000) specifically, the LED screen to be permanently installed at the amphitheater. There would also continue to be a partnership with the use of city facilities and some employee time to get the amphitheater and other areas ready for use and clean up after the corresponding events. The programs cost for all the planned activities, volunteer hours, and equipment is \$258,996.22.

The \$5,000 commitment from the city will come out of the already budgeted dollars in GLs 10-62-500 and 10-62-510 where the city budgets for miscellaneous programs \$7,250 and Municipalities RAMP programs \$21,528. There are sufficient funds to cover the \$5,000 out of

these budget lines and the Community Events department (GL 10-62) will likely be under budget at the end of the fiscal year.

The screen will become a city asset and will be stored at the amphitheater as will the chairs. For maintenance costs there will not be any additional maintenance on the screen, except as damage and malfunctions occur. We can utilize the same company we plan to use for the rest of the amphitheater equipment to help with repairs on the screen if needed.

We estimate \$2500 worth of in-kind donations to help get the amphitheater and other facilities up and running along with the waiver of rental fees for the day's city facilities are used.

### **STAFF RECOMMENDATION**

Staff recommend approving this partnership on the RAMP grant to get some very expensive equipment and additional chairs for a \$5,000 investment on behalf of the city plus the in-kind donations.