



Ogden City

City Council Meeting Agenda

January 5, 2016 – *immediately following the Special Redevelopment Agency meeting, which begins at 6:00 p.m.*

City Council Chambers

Municipal Building – Third Floor

2549 Washington Boulevard, Ogden, Utah 84401

1. Roll Call.
2. Common Constent (*voice vote*):
 - a. **FY2016 Budget Amendment - Fire Station #3 Public Art Project.** Proposed Ordinance 2016-1 reappropriating \$18,428.00 for public art at the Fire Station #3 site. (*Set public hearing for January 19, 2016*)
 - b. **Central Weber Sewer Improvement District Board.** Consideration of the appointment of Council Member Richard Hyer to the Central Weber Sewer Improvement District Board. (*Approve appointment*)
3. Approval of Minutes (*voice vote*):
 - a. Special Meeting on October 13, 2015 – *Vice Chair White*
 - b. Study Session on October 20, 2015 – *Council member Stephens*
 - c. Work Session on October 27, 2015 – *Council member Blair*
 - d. Study Session on October 27, 2015 – *Council member Garner*
4. Reports from the Administration:
 - a. **Inter-Agency Loan Agreement.** Proposed Resolution 2016-1 approving a promissory note between the Ogden City Redevelopment Agency as borrower and Ogden City as lender, pertaining to the lending of \$340,000 to facilitate property purchase at 550 24th Street and development at 24th and Monroe. (*Adopt/not adopt resolution – roll call vote*)
 - b. **Contribution Agreement – Series 2016 Redevelopment Agency Revenue Refunding Bonds.** Proposed Resolution 2016-2 approving a Contribution Agreement by and between the City and the Ogden City Redevelopment Agency authorizing and approving the issuance by the Agency not to exceed \$30,000,000 revenue refunding bonds. (*Accept public input; adopt/not adopt resolution – roll call vote*)
5. New Business:
 - a. **Election of Council Chair.**
 - i. Nominations for Council Chair.
 - ii. Council Chair candidate(s) comments in order of nomination.
 - iii. Consideration of motion to select Council Chair in order of nomination. (*Approve/not approve candidate for Council Chair – roll call vote*)
 - b. **Election of Council Vice Chair.**
 - i. Nominations for Council Vice Chair.
 - ii. Council Vice Chair candidate(s) comments in order of nomination.
 - iii. Consideration of motion to select Council Vice Chair in order of nomination. (*Approve/not approve candidate for Council Vice Chair – roll call vote*)
 - c. **Administration of Oath of Office for Council Chair and Vice Chair.**
6. Public Comments: This is an opportunity to address the Council regarding your concerns or ideas. Please state your name and address for the record, and limit your comments to three minutes.

7. Comments:
 - a. Mayor
 - b. Council members

8. Adjournment.

Reminder: A City Council Work Session will be held in the Council Work Room immediately following the City Council meeting. The purpose of the Work Session is to receive a Capital Improvement Plan presentation, to discuss FY2015 Carryover Budget Items and to discuss Council Business.

A Redevelopment Agency Work Session will be held in the Council Work Room immediately following the City Council Work Session. The purpose of the work session is to discuss a Brownfields Loan from the Wasatch Brownfields Coalition Revolving Loan Fund and to discuss Board business.

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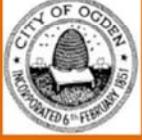
In compliance with the Americans with Disabilities Act, persons needing auxiliary communicative aids and services for these meetings should contact the Management Services Department at 629-8701 (TDD# 629-8949) or by email: [ADACompliance@ci.ogden.ut.us](mailto:ADACompliance@ci.ogden.ut.us) at least 48 hours in advance of the meeting.

CERTIFICATE OF POSTING

The undersigned, duly appointed City Recorder, does hereby certify that the above notice and/or agenda was posted in three public places within the Ogden City Limits on this 30th day of December, 2015. These public places being: 1) City Recorder's Office on the 2nd floor of the Municipal Building; 2) 2nd floor foyer of the Municipal Building; and 3) the Weber County Library. A copy was posted to the Utah State Public Notice Website and the Ogden City Website, as well as provided to the Standard-Examiner.

TRACY HANSEN, MMC  
OGDEN CITY RECORDER

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Ogden City Council Agenda Information Line – 801-629-8159



# City Council Meeting COUNCIL STAFF REVIEW

## **FY2016 BUDGET AMENDMENT (\$18,428)**

- *Transfer of Pooled Art Funds to the New Fire Station #3 Public Art Project*

**DETERMINATION:** Set or Not Set Public Hearing for January 19, 2016

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### *Executive*

#### *Summary*

The Council will consider setting a public hearing on Ordinance 2016-1 which proposes to amend the FY2016 Budget in the amount of \$18,428 by reappropriating pooled art funds in the Capital Improvement Project Fund to the art project for the new Fire Station #3.

### *Background*

#### **June 19, 2012**

The Council authorized \$400,000 for property purchase for a new Station #3 as part of the FY2013 Budget.

#### **June 17, 2014**

The Council authorized \$2,636,100 for construction of a new Station #3 as part of the FY2015 Budget.

#### **September 1, 2015**

The Council adopted Ordinance 2015-38 authorizing an additional \$740,002 for construction of the new Fire Station #3. The projected total cost for the new station, including furnishings, etc., is \$3.65 million.

#### **December 22, 2015**

The Council Office received an Administrative Transmittal requesting additional funding in the amount of \$18,428.00 for public art at the new Fire Station #3. This increase would provide a budget of \$50,000 for the art project.

#### **Percent for Arts**

Title 4, Article C of the Ogden City Municipal Code outlines the City's policy regarding City art projects. Pertinent parts of the code read as follows:



# City Council Meeting

## COUNCIL STAFF REVIEW

### **4-1C-1: PURPOSE:**

. . . [It is the] policy of the city that a portion of the city's appropriations for capital improvements be set aside for the integration of art into the basic design of public facilities and the acquisition of art. This article is enacted and intended for the purpose of establishing general policies and procedures related to public art funded by the city. It is intended that this policy:

- A. Provide opportunities for the citizens of Ogden to experience public art . . . ;
- B. Promote economic benefits from increased tourism and increased retail activity through the enhancement of public spaces;  
. . .
- D. Foster within the city an environment where the arts can thrive and become an integral part of the city's infrastructure; and
- E. Support and lend expertise to the efforts of the mayor, city council and planning commission to enhance the urban design quality of the city.

### **4-1C-3: FUNDS FOR ART:**

- A. Percentage: The city shall expend, as a nondeductible item from any monies appropriated for construction projects, an amount equal to one percent (1%) of such appropriations for the integration, acquisition, and installation of art. . . Such funds shall be expended by the city upon recommendations of the advisory committee.
- B. Maintenance: In addition to the costs of art, such appropriation may be used to provide expenses for the anticipated maintenance costs for the work of art. The maintenance costs shall not exceed ten percent (10%) of each such appropriation for art. . . .
- C. Use Of Funding For Other Projects: If the mayor, upon recommendation of Ogden City arts, determines that inclusion of



# City Council Meeting COUNCIL STAFF REVIEW

art in the design of the construction project providing the source of the funding would not serve the purposes of this article, the appropriated funds may be pooled in the percent for arts account to be reappropriated for other works of art which would better meet the purposes of this article.

A copy of Title 4-1C-1 through 3 is attached.

The City currently has approximately \$750,000 of pooled art funds derived from projects that did not meet the criteria for having art included in the project (water and sewer pipes, etc.).

## ***Proposal***

The Administration is requesting a budget amendment to add an additional \$18,489 from the pooled art funds to increase the budget for the art project at the new station #3. The new station construction project does meet the criteria for incorporating art into the project, but generates only \$36,511 of arts money itself. The arts maintenance fund requirement is ten percent (10%) or \$3,651, leaving \$32,860 for the new station #3 art project.

The Administration is recommending that money from the pooled funds be used to increase the budget to \$50,000. The larger budget would allow for a more significant art project at the site.

## ***Attachments***

Percent for Arts Ordinance, Title 4-1C-1 through 3

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**Council Staff Contact: Janene Eller-Smith, (801) 629-8165**

**Title 4**  
**REVENUE, FINANCE AND GENERAL ADMINISTRATION**  
**ARTICLE C. PERCENT FOR ART**

**4-1C-1: PURPOSE:**

Believing in the value that public art adds to the community, the city council declares it to be a policy of the city that a portion of the city's appropriations for capital improvements be set aside for the integration of art into the basic design of public facilities and the acquisition of art. This article is enacted and intended for the purpose of establishing general policies and procedures related to public art funded by the city. It is intended that this policy:

- A. Provide opportunities for the citizens of Ogden to experience public art resulting from the creative expression of artists;
- B. Promote economic benefits from increased tourism and increased retail activity through the enhancement of public spaces;
- C. Implement the public art master plan for the city, including, but not limited to, projects funded under the provisions of this article;
- D. Foster within the city an environment where the arts can thrive and become an integral part of the city's infrastructure; and
- E. Support and lend expertise to the efforts of the mayor, city council and planning commission to enhance the urban design quality of the city.

(Ord. 2001-24, 4-3-2001)

**4-1C-2: DEFINITIONS:**

For the purposes of this article, unless the context indicates otherwise, words and phrases used in this article are defined as follows:

ART: For the purposes of this article, means all forms of original creations of visual arts, which may be integrated into public works projects, including, but not limited to:

- A. Design work provided by the artist to be incorporated into the construction project, including, but not limited to:
  - 1. Interior or exterior surfaces, fixtures and functional elements;

2. Outdoor space design elements in areas such as plazas, arcades, and pedestrian passageways;
  3. Artistic design of roadways, parkways, pedestrian or bicycle paths or ways, transit system improvements, water and wastewater facilities, garbage transfer stations, and sites with historic, archeological, and unique geological features.
- B. Forms of visual art such as, but not limited to:
1. Sculpture: in the round, bas-relief, high relief, mobile, fountain, environmental, kinetic, electronic, etc., in any material or combination of materials;
  2. Painting: all media, including portable and permanently affixed works such as murals and frescoes;
  3. Photography, filmmaking;
  4. Graphic arts: printmaking, drawing, and calligraphy;
  5. Art forms in clay, fiber and textiles, wood, metal, plastics, glass, mosaics and other materials; and
  6. Mixed media: any combination of forms or media.
- C. Other categories or new technologies that may develop through artistic pursuit such as computer/audio/video generated work, use of lasers, etc.

**CONSTRUCTION PROJECT:** Any capital project approved by the city council as part of the capital improvements plan, managed by the city or its constituent departments, and paid for wholly, or in part, by the city. When other entities contribute funds for such construction, the public art allocation will apply to the entire project appropriation, unless the other entity's share of the public art allocation is specifically disallowed by the outside entity through a contract, granting guidelines or legal requirement. Until July 1, 2007, "construction project" shall not include capital projects applicable to the development of business depot Ogden (the former DDOU). Beginning July 1, 2007, "construction project" shall include capital projects applicable to the development of business depot Ogden (the former DDOU) to the extent the capital project is funded by monies not subject to contractual obligations restricting the use of such revenue sources for such purpose.

**ELIGIBLE FUND:** The source fund for construction projects designated and appropriated for works of art under this article.

**MAJOR PUBLIC PROJECT:** Any construction project with structural or landscaping components that will have a significant or noticeable visual impact on the public when viewed from any public street, sidewalk, park, or other public grounds, including the construction, reconstruction, or remodeling of buildings, decorative or commemorative structures, parking facilities, bridges, viaducts, pedestrian overpasses, new streetscape designs, bikeways, trails, above grade utility facilities, or parks improvements.

OGDEN CITY ARTS: The advisory committee established in [title 3, chapter 16](#) of this code.

PUBLIC ART PROJECT: Any construction project including art in its design that is funded by an art appropriation under this article, or any other real property, buildings, structures, or facilities designated to be the location of art that is funded by an art appropriation under this article.

(Ord. 2001-24, 4-3-2001)

#### **4-1C-3: FUNDS FOR ART:**

- A. Percentage: The city shall expend, as a nondeductible item from any monies appropriated for construction projects, an amount equal to one percent (1%) of such appropriations for the integration, acquisition, and installation of art. All requests for appropriation for construction projects from eligible funds shall include an amount equal to one percent (1%) of the estimated cost of such project for art. Such funds shall be expended by the city upon recommendations of the advisory committee.
- B. Maintenance: In addition to the costs of art, such appropriation may be used to provide expenses for the anticipated maintenance costs for the work of art. The maintenance costs shall not exceed ten percent (10%) of each such appropriation for art. The maintenance funds shall be transferred to a separate, interest bearing account and may be aggregated for the purpose of creating a maintenance endowment.
- C. Use Of Funding For Other Projects: If the mayor, upon recommendation of Ogden City arts, determines that inclusion of art in the design of the construction project providing the source of the funding would not serve the purposes of this article, the appropriated funds may be pooled in the percent for arts account to be reappropriated for other works of art which would better meet the purposes of this article.
- D. Applicable Projects: It is not the intention of the city council that the provisions of this article will apply to previously approved and budgeted capital improvements projects. In the event that an ongoing project is the subject of an appropriation ordinance approved after the effective date of this article, the city council will specifically indicate in such ordinance whether such new appropriation is subject to the provisions of this article.
- E. Grants Or Other Outside Funding: After April 3, 2001, all city departments, divisions and offices shall include a request for percent for art funds in any requests for grants or other outside funding to support capital improvement projects in Ogden.
- F. Location Of Public Arts Projects: All public art projects shall be located on property owned, leased, used or otherwise occupied by the city and within the corporate limits of the city.

(Ord. 2001-24, 4-3-2001; amd. Ord. 2004-3, 1-20-2004)

#### **4-1C-4: PERCENT FOR ARTS FUND:**

- A. Established: There is established in the capital improvements fund a specific account designated "percent for arts", into which shall be deposited all monies appropriated in the capital improvements fund in furtherance of the purposes of this article. Separate accounts shall be established within the capital improvement fund to segregate receipts by capital project source, which receipts shall be designated for an art project included in the design of the construction project providing the source of the funding or reappropriated for other specific works of art from pooled monies. Disbursement from the fund shall be made only in connection with public art projects approved by the mayor, upon recommendation of Ogden City arts. Amounts designated for maintenance shall be retained in the fund and designated for future maintenance of any public art project.
  
- B. Pooled Account; Reappropriation: Monies held in the pooled account shall be held for reappropriation by budget amendment in accordance with an amended capital improvements plan.

(Ord. 2001-24, 4-3-2001)

**RECEIVED**

DEC 22 2015

OGDEN CITY  
COUNCIL OFFICE

**Ogden City Council Transmittal**

Date: December 16, 2015  
To: Ogden City Council  
From: Tom Christopoulos, Director, Community & Economic Development  
RE: Arts Grants / Public Hearing

Staff Contact: Christy McBride  
Requested Timeline: January 2016  
Recommendation: Approve funding increase for Fire Station #3 public art project  
Documents: Call for Proposal, Resolution

**Executive Summary**

Ogden City Arts staff along with a subcommittee of the Ogden City Arts Advisory Committee has created a Call for Proposals for public art at the site of Fire Station #3 (405 E. North Street.) The subcommittee was formed in compliance with the Arts Committee Ordinance and included a representative from the City Council Staff and one from City Planning staff along with Fire Chief Mathieu. After a meeting with the Design Subcommittee and the architects on the project it was determined that it would be prudent to create the potential for funding a wider variety of project proposals. The consideration and allowance of a potentially greater budget might increase the quality and variety of potential art projects submitted.

The Administration recommends that the City Council approve the funding increase based on the Design subcommittee's recommendations.

**Background**

As a Capital Improvement Project, the Fire Station generates a total of \$36,511.00 for the public art portion of the facility. 10% of that amount (\$3651.00) needs to be put into a maintenance account leaving a total of \$32,860.00 for the new art work. After a meeting with the design subcommittee and the architects a recommendation was made to consider expanding the budget to support wider set of potential options for art on the site. The increase would come from pooled funds and would expand the potential budget to \$50,000 for the art project. Should an acceptable submission be submitted that is less than the allowable amount the balance would be returned to pooled fund account.

**Proposal**

The Administration would support increased expenditures if there is a significant art project presented during the RFP period.

**Fiscal Impact**

Additional funding not to exceed \$18,489 from the Percent for Art pooled fund account.

| <b>Fire Station No.3 Public Art</b>          |           |                  |
|----------------------------------------------|-----------|------------------|
| Original CIP Budget for project              | \$        | 2,636,100        |
| Land purchase                                | \$        | 404,040          |
| Increase to original budget                  | \$        | 617,127          |
| <b>Total CIP</b>                             | <b>\$</b> | <b>3,657,267</b> |
| Percent for Art                              | \$        | 36,511           |
| Maintenance fund - 10%                       | \$        | (3,651)          |
| <b>Total for Art Project</b>                 | <b>\$</b> | <b>32,860</b>    |
| Proposed increase from Pooled funds          | \$        | 18,489           |
| Existing fund                                | \$        | 36,511           |
| <b>Proposed total with increase</b>          | <b>\$</b> | <b>55,000</b>    |
| Adjusted Maintenance fund - 10%              | \$        | 5,000            |
| <b>Proposed Total Budget for Art Project</b> | <b>\$</b> | <b>50,000</b>    |

# **OGDEN CITY PUBLIC ART PROGRAM REQUEST FOR PROPOSALS**

**DEADLINE: February 29, 2016**

Ogden City Arts' Design Subcommittee is inviting artists to submit proposals for a 'Percent For Art' commission to be situated at the new Fire Station No. 3, 450 E. North Street, Ogden, Utah. A panel including Ogden Arts Advisory Committee members and others as outlined in city ordinance (3-16-6) will review artists' materials submitted by the posted deadline and then narrow the field to up to 3 semi-finalists. Recommendations will be made to the Mayor.

The Selection Committee has identified the exterior South West and South facing walls and/or the plaza area in front of the South West exterior wall as possible sites for this public art commission but are also open to sites and interpretations offered by the artist(s) The selected artwork will live outside the station and so should be made of appropriate materials.

Submissions must include specific information related to construction requirements necessary to mount or install submitted artwork such as concrete platforms, electrical requirements to operate or light artwork, or mounting needs necessary for installation. Weight and dimensional information must be included for evaluation consideration. A budget to create and install the art must be attached.

Artists will work with architects and contractors to schedule work

Submissions should reflect the identity of the fire station as a fire station or specifically as Fire Station No. 3.

A site visit will be available on February 10th, 2016 at 11am. This will be an opportunity to meet the architects and gather any other information you might want.

Submissions should consider elements of the project that create ties to fire fighting and could include design elements traditional to Firefighters.

- History of the Maltese Cross
- Example: Maltese Cross

When a courageous band of crusaders known as the Knights of St. John, fought the Saracens for possession of the holy land, they encountered a new weapon unknown to European warriors. It was a simple, but a horrible device of war, it wrought excruciating pain and agonizing death upon the brave fighters for the cross. The Saracen's weapon was fire.

**Fire Station No. 3 RFP**

As the crusaders advanced on the walls of the city, they were struck by glass bombs containing naphtha. When they became saturated with the highly flammable liquid, the Saracens hurled a flaming torch into their midst. Hundreds of the knights were burned alive; others risked their lives to save their brothers-in-arms from dying painful, fiery deaths.

Thus, these men became our first firefighters. Since the Knights of St. John lived for close to four centuries on a little island in the Mediterranean Sea named Malta, the cross came to be known as the Maltese Cross.

The Maltese Cross is your symbol of protection. It means that the firefighter who wears this cross is willing to lay down his life for you just as the crusaders sacrificed their lives for their fellow man so many years ago.



### BUDGET

Budget for the project is not to exceed \$50,000 for all related expenses of this Public Art commission(s) including (but not limited to) artist fees, fabrication, insurance, shipping, travel, installation, documentation, etc.

### ELIGIBILITY

American or legal resident artists / artist teams are encouraged to apply. Art Selection Committee members, Ogden City Arts staff and Ogden City Arts Advisory Committee are not eligible to apply for this commission. All Art Selection Committee members will declare any conflict of interest and recuse themselves from the vote when reviewing artist applications.

### SUBMISSION OPTIONS, INSTRUCTIONS AND REQUIRED MATERIALS

Interested artists may submit applications EITHER by email, compact disc/DVD or hard copy by 4pm February 29<sup>th</sup> 2016 The deadline is the same for all methods and **is not a postmark deadline**. Please do not include supplemental materials beyond the requirements listed below:

Application for Proposal submission may be found online at [ogdencityarts.org](http://ogdencityarts.org). Download the application to your desktop as a word file, fill it out and submit it to: [arts@ogdencity.com](mailto:arts@ogdencity.com) along with all supplemental materials. (See application on [ogdencityarts.org](http://ogdencityarts.org) under the "Resources" menu and the "Call for Artists" tab)

Submission materials will not be returned unless the artist makes arrangements and covers costs for doing so.

### SELECTION PROCESS & SCHEDULE

Proposals will be reviewed by the Ogden City Arts Design Selection Subcommittee. A short list of up to three semi-finalists will be selected and offered an honorarium of \$300 to submit a full proposal to be presented on-site to the Ogden City Arts Design Selection Subcommittee. Full proposal will require a rendering and/or model, with construction, fabrication and installation budget for committee review. Artists who submit material for the RFP process will be notified by email of the selection panel's decision. **Only selected semi-finalists will be contacted by telephone.**

Semi-Finalists will be selected by March 8th, 2016

Final Selection will be by March 26<sup>th</sup> 2016

The schedule follows:

|         |                                                                              |
|---------|------------------------------------------------------------------------------|
| 2/10/16 | Site visit opportunity 11am at 450 E. North Street, Ogden                    |
| 2/29/16 | Deadline for Proposal materials and application to be submitted              |
| 3/8/16  | First Round selection of semi-finalists                                      |
| 3/10/16 | Notification of selection and request for full proposals from semi-finalists |
| 3/23/16 | Full Proposals due from semi-finalists                                       |
| 3/26/16 | Presentation of Proposals to Mayor for final selection                       |
| 3/26/16 | Final selection of artwork                                                   |

### DEADLINE and CONTACT INFORMATION

**RFP materials must be received by 4:00pm February 29, 2016.** All supporting material must be included. Incomplete or late proposals will not be accepted. Faxed proposals will be disqualified. Ogden City Arts is not liable for lost or damaged materials.

**Please deliver RFP proposal materials to:**

Ogden City Arts  
Fire Station No 3 RFP  
2549 Washington Blvd.  
Ogden, UT 84401

**Please contact our office with any questions or concerns:**

Diane Stern 801-629-8719 or Robin McCaul 801-629-8718 or email: [arts@ogdencity.com](mailto:arts@ogdencity.com)

### ARTIST SELECTION PANEL

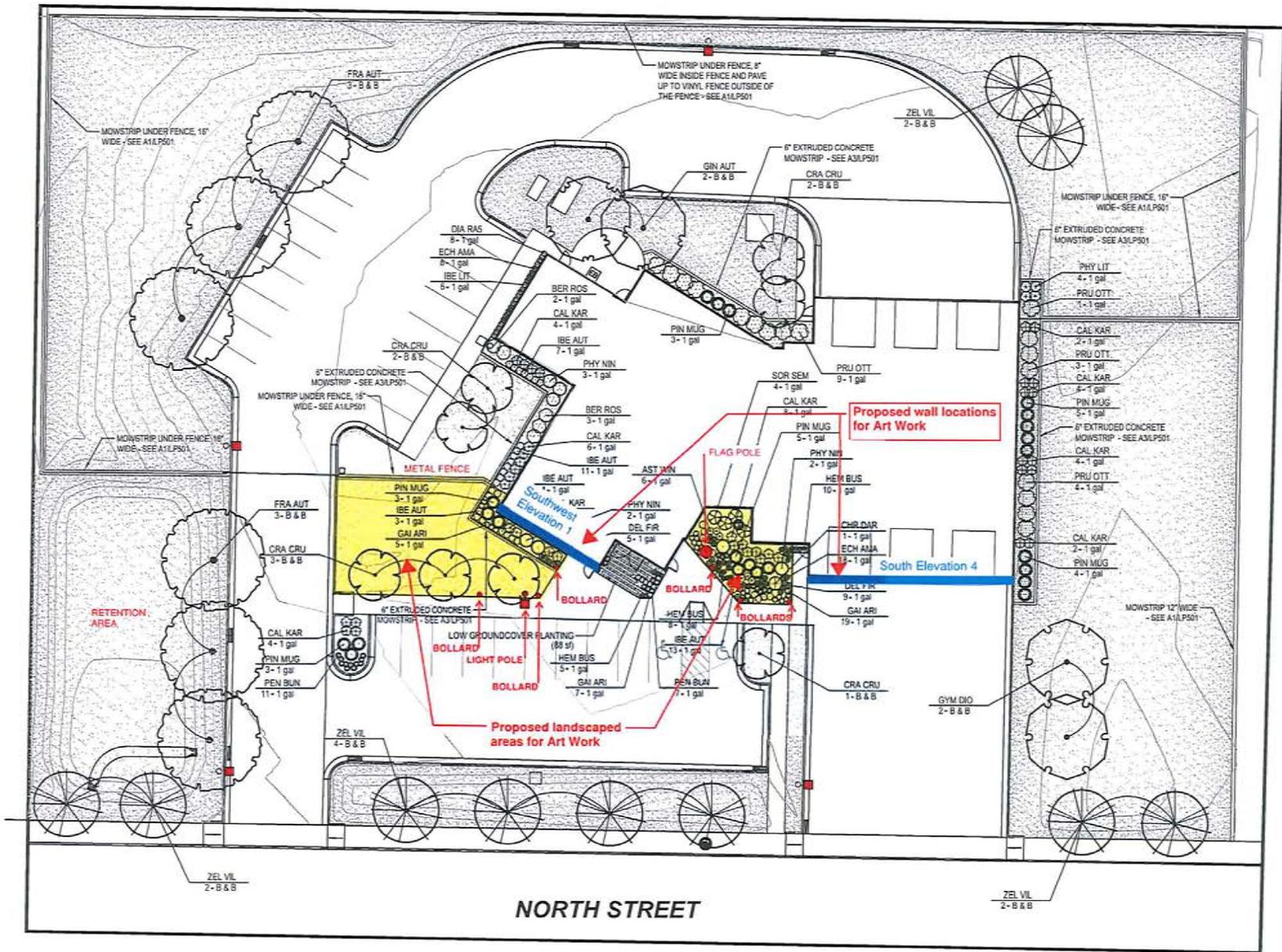
|                    |                                      |
|--------------------|--------------------------------------|
| Chief Mike Mathieu | Ogden City Fire Department           |
| Brandi Bosworth    | Ogden City Arts Advisory Committee   |
| Brandon Long       | Ogden City Arts Advisory Committee   |
| Scott Patria       | Ogden City Arts Advisory Committee   |
| Debra Muller       | Ogden City Arts Advisory Committee   |
| Janene Eller-Smith | Ogden City Council Staff, Ex Officio |
| Greg Montgomery    | Ogden City Planning, Ex Officio      |
| Diane Stern        | Ogden City Arts administrator        |
| Robin McCaul       | Ogden City Arts administrator        |

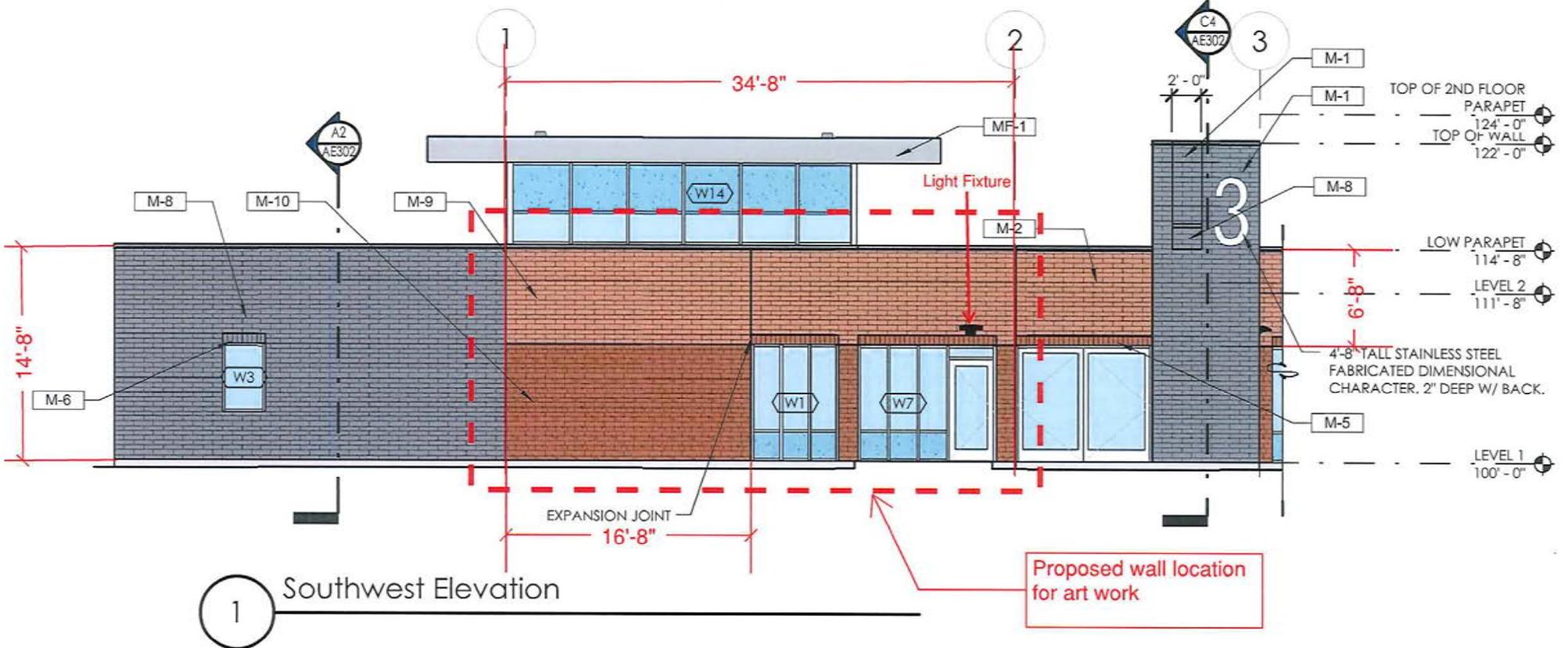
### GENERAL CONDITIONS

- 1) Ogden City may accept or reject any or all proposals, under any circumstances, for any reason, without explanation.
- 2) This RFP shall not obligate Ogden City in any manner and shall not impose any liability upon Ogden City. Ogden City shall at no time be liable to artist, or any other party, for costs incurred by artist.
- 3) Vendor must read and be thoroughly familiar with the terms, conditions and specifications of this RFP. Failure to do so shall not relieve artist from any of its obligations.
- 4) Ogden City may postpone the date and time announced for submission of proposals at any time prior to the submission date by giving written notice to potential artists.
- 5) Ogden City reserves the right to award a contract to the artist(s) it determines will provide the best long-term value for Ogden City.
- 6) Insurance requirements. Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by Contractor, its agents, representatives, employees or subcontractors. The cost of such insurance shall be included in Contractor's bid. The amount of insurance shall not be less than:
  - a. Commercial General Liability: Minimum of \$2,000,000 commercial general liability coverage with \$1,000,000 for each occurrence. Policy to include coverage for operations, contractual liability, personal injury liability, products/completed operations liability, broad-form property damage (if applicable) and independent contractor's liability (if applicable) written on an occurrence form.
  - b. Business Automobile Liability: \$1,000,000 combined single limit per occurrence for bodily injury and property damage for owned, non-owned and hired autos.
  - c. Workers' Compensation and Employer's Liability: Worker's Compensation limits as required by the Labor Code of the State of Utah and employer's liability with limits of \$1,000,000 per accident.
  - d. Insurance is to be placed with insurers acceptable to and approved by the City. Contractor's insurer must be authorized to do business in Utah at the time the contract is executed (and throughout the time period the contract is maintained), unless otherwise agreed in writing by the City. Failure to maintain or renew coverage or to provide evidence of renewal will be treated by City as a material breach of contract.
  - e. Limits of liability amounts must meet contract requirements before contract is initiated.
  - f. The City, and its elected officials, officers, employees, agents and volunteers are to be named as additional insureds with primary coverage and not contributing.
  - g. The City shall be furnished with original certificates of insurance and endorsements effecting coverage required within, signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements are to be received by the City Recorder's Office before work commences.
  - h. The City reserves the right to require complete, certified copies of all required insurance policies at any time.
  - i. Each policy shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty days prior written notice by certified mail, return receipt requested, has been given to the City.
  - j. Contractor's insurance shall be primary insurance and any insurance or self-insurance maintained by the City, its officers, officials, employees, and volunteers shall be excess of Contractor's insurance and shall not contribute with it.
  - k. Contractor shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

- I. Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its elected officials, officers, employees, agents and volunteers; or Contractor shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations claim administration and defense expenses.
- 7) Interest in Contract. No officer, employee or agent of the City who exercises any functions or responsibilities in connection with the review, approval or administration of this contract shall have any personal interest, direct or indirect, in this contract.
- 8) Right to Reject Proposals and Negotiate Contract Terms. The City reserves the right to reject any and all proposals or accept any proposal deemed to be in the best interest of the City



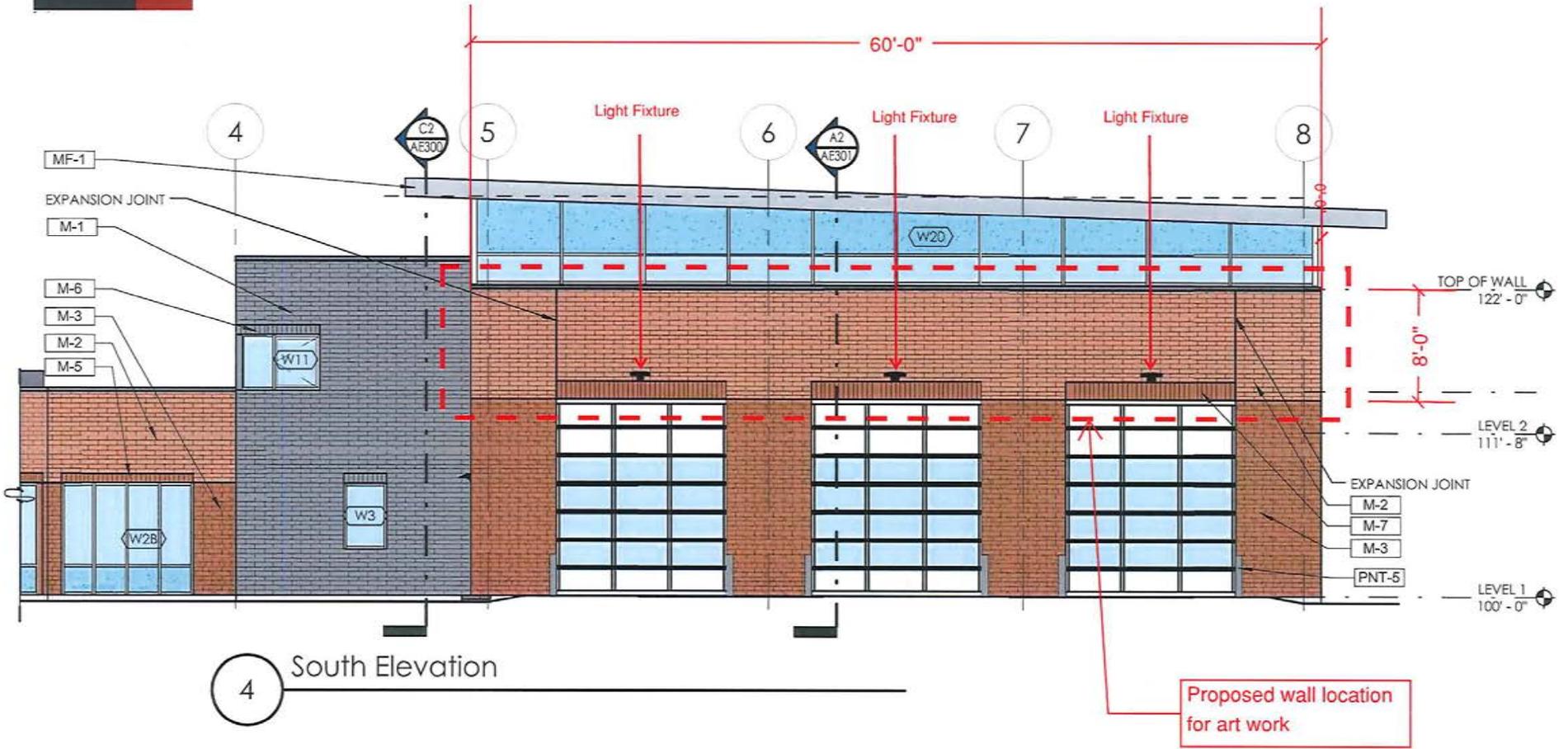




1 Southwest Elevation

Proposed wall location for art work

Ogden City Fire Station #3



**ORDINANCE NO. 2016-1**

**AN ORDINANCE OF OGDEN CITY REAPPROPRIATING \$18,428.00 FOR PUBLIC ART AT THE SITE OF FIRE DISTRICT #3 AS DETAILED IN THE BODY OF THIS ORDINANCE; AND PROVIDING THAT THIS ORDINANCE SHALL BECOME EFFECTIVE IMMEDIATELY UPON POSTING AFTER FINAL PASSAGE.**

**WHEREAS**, the Ogden City Council has authorized the allocation of one percent of all capital improvement projects for use in public art projects.

**WHEREAS**, public art projects are integrated into capital improvement projects and are also intended to be located in other public areas of the city.

**WHEREAS**, Ogden City Arts has proposed that a portion of the available public art funds be reappropriated to increase the amount available for public art at the site of Fire Station #3 (450 E. North Street).

**WHEREAS**, there is sufficient revenue available in the percent for arts account (4100-1-01-200100-33000) that has been pooled for reappropriation by the Council of Ogden City to fund the proposed public art project.

**WHEREAS**, the Council of Ogden City finds that the acquisition and placement of public art as proposed by Ogden City Arts at this location will serve the public interest by allowing for a more substantial piece of art at the site of Fire Station #3 than would otherwise be available under the original one percent allocation.

**NOW THEREFORE**, the Council of Ogden City hereby ordains as follows:

**SECTION 1. Reappropriation of funds within the percent for arts account.**

There is hereby reappropriated \$18,428.00 from pooled funds in the percent for art account (4100-1-01-200100-33000) to establish and maintain public art at Fire Station #3 (405 E. North Street).





# City Council Meeting COUNCIL STAFF REVIEW

## **CENTRAL WEBER SEWER IMPROVEMENT DISTRICT BOARD APPOINTMENT**

### **COUNCIL STAFF REVIEW**

**ACTION:**                    **Approve Appointment**

---

#### ***Background***

It has been requested that Council Member Richard Hyer serve as a City Council representative on the Central Weber Sewer Improvement District Board.

Central Weber Sewer Improvement District provides sewer treatment service for approximately 185,000 people located in Weber and Davis Counties. The cities of Ogden, Farr West, Harrisville, North Ogden, Pleasant View, Riverdale, South Ogden, South Weber, Washington Terrace and West Haven, along with Uintah Highlands Special Service District, are completely serviced by the District. Portions of Hooper, Marriott-Slaterville, Plain City, Roy and unincorporated Weber County are also serviced by the District. The District averages 32,700,000 gallons of water treated per day.

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**Council Staff Contact: Amy Sue Mabey, (801)629-8629**



Office of the Mayor  
Mike Caldwell

*Rec'd 12/22/15*

December 19, 2015

Members of the Ogden City Council  
2549 Washington Boulevard  
Ogden, UT 84401

Re: Advice and Consent Consideration of Appointment to the Central Weber Sewer Board

City Council Members:

I respectfully recommend the following individual be appointed to the Central Weber Sewer Board:

**APPOINTMENT**

*Council member Richard A. Hyer* – Council member Hyer would serve a four-year term.

Your favorable consideration is appreciated.

Sincerely,

A handwritten signature in blue ink, appearing to read "Mike Caldwell". The signature is fluid and cursive, with a large initial "M" and a long, sweeping underline.

Mike Caldwell  
Mayor of Ogden



# City Council Meeting COUNCIL STAFF REVIEW

## INTERAGENCY LOAN AGREEMENT AND PROMISSORY NOTE AUTHORIZATION

- *RDA Village Center Development Site Demolition (\$60,000) and 550 24<sup>th</sup> Street Property Purchase (\$280,000) from Ogden City HELP Funds*

**DETERMINATION:**                      **Adopt or Not Adopt Resolution**

---

### *Executive*

#### *Summary*

The Council will consider a Resolution authorizing an interagency loan agreement with the Ogden Redevelopment Agency for the transfer \$340,000 from City HELP Program funds to the RDA Housing fund. The transfer of funds will facilitate the purchase of property at 550 24<sup>th</sup> Street and demolition at 24<sup>th</sup> and Monroe.

### *Background*

#### **July 7, 2015**

The Redevelopment Agency Board adopted Resolution 2015-9 appropriating \$1,000,000 for economic development projects.

#### **November 17, 2015**

The Board approved Resolution 2015-19 authorizing the Executive Director to execute two Real Estate Purchase Contract's (REPC's); the first with Bailey Ogden Boris, LLC and the second with KZ, LLC. The subject properties of the REPC's are located at 24<sup>th</sup> and Monroe—the Rite-Aid and surrounding adjacent properties. The total purchase price for all properties was \$2,462,000 with \$1,355,000 due at closing.

The Administration identified several options for future development of the site. Concept drawings for the Village Center Development are attached. CED staff will bring a proposal to the Board when other aspects of the project are finalized.

The Administration indicated it intended to use the \$1 Million economic development funds appropriated by the Board July 7, 2015 toward the purchase of the properties. The remaining \$450,000--which includes funds for closing costs, broker commissions, and demolition--would be



# City Council Meeting COUNCIL STAFF REVIEW

financed with RDA housing funds and a bridge loan from the City's HELP funds. CED staff are looking for alternative financing which will be used to refund the RDA housing and HELP funds.

It was noted by Administrative and Council staff that an RDA Budget Amendment would be necessary to finalize the transfer of funds.

## **November 24, 2015**

The Board adopted Resolution 2015- 22 authorizing the purchase of properties located at 550 24<sup>th</sup> Street and 2355 Porter Avenue for a future housing development. The Administration identified the following funding sources for the property purchases and demolition:

| FUNDING SOURCES                            | AMOUNT              | BUDGET YEAR       |                   |
|--------------------------------------------|---------------------|-------------------|-------------------|
|                                            |                     | FY2016            | FY2017            |
| Sale of Property - 24th/Adams (City funds) | \$ 248,000          | \$ 248,000        | \$ -              |
| Trade of Property - Shupes Lane (City)     | \$ (100,000)        | \$ (100,000)      | \$ -              |
| RDA Housing Funds - Purchase               | \$ 692,000          | \$ 172,000        | \$ 520,000        |
| RDA Housing Funds - Demolition             | \$ 200,000          | \$ 100,000        | \$ 100,000        |
| <b>TOTAL</b>                               | <b>\$ 1,040,000</b> | <b>\$ 420,000</b> | <b>\$ 620,000</b> |

The closing date on the property at 550 24<sup>th</sup> Street is January 11, 2015.

## **December 1, 2015**

The Council Office received approval of the loan agreement and promissory note for \$340,000 to facilitate the purchase of property at 550 24<sup>th</sup> Street and complete demolition at 24<sup>th</sup> and Monroe.

The RDA Board Office also received an Administrative Transmittal requesting a budget amendment and approval of the loan agreement and promissory note for \$340,000 to facilitate the property purchase.

## **December 8, 2015**

The City Council adopted Ordinance 2015-56 authorizing the transfer of the sale proceeds from 24<sup>th</sup> and Adams to the RDA. The Board also



# City Council Meeting COUNCIL STAFF REVIEW

adopted Resolution 2015-20 recognizing the transfer of the sale proceeds from 24<sup>th</sup> and Adams to the RDA.

## **December 15, 2015**

The RDA Board set a public hearing on Resolution 2015-24 which proposes to amend the FY2016 budget to loan \$340,000 from City HELP Program funds to the RDA Housing fund. The Resolution also authorizes an interagency loan agreement with Ogden City for the \$340,000. The transfer of funds will facilitate the purchase of property at 550 24<sup>th</sup> Street and demolition at 24<sup>th</sup> and Monroe.

### ***Proposal***

The Administration is recommending the Council approve the loan agreement with the RDA authorizing a City loan to the RDA for \$340,000 from funds appropriated in the Home Exterior Loan Program (HELP) to cover demolition expenses at 24<sup>th</sup> and Monroe (\$60,000) and the additional funds required to close on the property at 550 24<sup>th</sup> Street (\$280,000). The RDA Housing funds originally identified for the 550 24<sup>th</sup> purchase were needed temporarily to meet the closing deadlines for 24<sup>th</sup> and Monroe. Funds from the loan will replenish the RDA Housing Fund and allow the closing on 550 24<sup>th</sup> Street to close as scheduled.

### ***Questions***

Please review the proposed loan agreement.

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**Board Staff Contact: Janene Eller-Smith, (801) 629-8165**

RECEIVED

DEC 01 2015

OGDEN CITY  
COUNCIL OFFICE

## OGDEN CITY TRANSMITTAL

Date: November 30, 2015  
To: Ogden City Council  
From: Lisa Stout, Comptroller  
RE: Loan Agreement – City Housing Funds Loan to the RDA

Staff Contact: Lisa Stout, Comptroller, ext. 8713   
Ward Ogden, Community Development Manager, ext 8942

Recommendation: Set public hearing and adopt resolution.

### Documents:

- Resolution
- Exhibit A (Loan Documents)
- Loan Documents; Exhibit A (Scope of Services)
- Loan Documents; Exhibit B (Budget)
- Loan Documents; Exhibit C (Promissory Note)

### Executive Summary

The attached resolution will allow the City to enter into a loan agreement with the RDA, in the amount of \$340,000.

The RDA Board approved the purchase of property at 24<sup>th</sup> and Monroe on November 17<sup>th</sup>, 2015, see RDA resolutions 2015-19. RDA Housing Funds in the amount of \$389,000 are being used for this property purchase, with the intent to reimburse the RDA Housing Funds. The RDA Housing Funds will be reimbursed by securing debt against the 24<sup>th</sup> and Monroe property.

The RDA will continue securing the financing on 24<sup>th</sup> and Monroe, to further redevelopment work and to repay the RDA Housing Funds of \$389,000, as outlined in the November 17<sup>th</sup> sources and uses provided to the RDA Board for the RDA Village Center Project.

During the process of securing financing, an additional \$65,000 is necessary for demolition expenses at 24<sup>th</sup> and Monroe and an additional \$275,000 is necessary for the acquisition of property at 550 24<sup>th</sup> Street. The City Housing Fund Loan of \$340,000 will cover any gap between contract deadlines and the RDA securing additional financing on 24<sup>th</sup> and Monroe.

No budget action will be required by the City to allow this loan, the funds have been budgeted under the HELP program. The commitments on the HELP money are such that allow the loan of \$340,000 to the RDA.

### **Background**

City Council action is required to authorize a loan from Ogden City Housing Funds to the RDA.

### **Proposal**

Review and adopt resolution.

### **Fiscal Impact**

Authorizes a loan to the RDA, which is required to be paid back to the City by July 31, 2016. The loan may be drawn down as the RDA needs the loan proceeds. An interest rate will be charge on any principal drawn down at the rate the City would earn in the Public Treasurers Investment Fund (PTIF), which is currently .65% annually.

**RESOLUTION NO. 2016 - 1**

**A RESOLUTION OF THE OGDEN CITY COUNCIL APPROVING A PROMISSORY NOTE BETWEEN THE OGDEN CITY REDEVELOPMENT AGENCY AS BORROWER AND OGDEN CITY AS LENDER, PERTAINING TO THE LENDING OF \$340,000.00 TO PURSUE REDEVELOPMENT OF PROPERTY LOCATED AT 24<sup>th</sup> STREET AND MONROE BOULEVARD.**

**WHEREAS**, the Executive Director of the Ogden City Redevelopment Agency (RDA) is prepared to execute a Promissory Note on behalf of the RDA that would allow the RDA to borrow \$340,000.00 from Ogden City to fund redevelopment expenses associated with RDA property owned or to be owned on the block bounded by 24<sup>th</sup> Street, 25<sup>th</sup> Street, Monroe Boulevard, and Quincy Avenue.

**WHEREAS**, the RDA would be obligated to pay the City the loan balance, together with interest on amounts drawn from the loan at the rate of 0.65% per annum, on or before July 31, 2016.

**WHEREAS**, Ogden city is a “public entity” as defined by the Community Development and Renewal Agencies Act and pursuant to Utah Code Ann. §17C-1-207 is authorized to lend, grant, or contribute funds to the Agency for an urban renewal, economic development, or community development project.

**WHEREAS**, the Council of Ogden City has reviewed this transaction and the accompanying Promissory Note between the RDA and the City and finds the document acceptable in its terms, and that the transaction complies with Utah State law.

NOW, THEREFORE, BE IT RESOLVED BY THE OGDEN CITY COUNCIL:

1. That the Council hereby approves the loan of \$340,000.00 from Ogden City to the Ogden City Redevelopment Agency according to the terms contained in the Loan Agreement attached hereto as Exhibit “A” and incorporated herein by reference.
  
2. This resolution shall become effective immediately after final passage.



EXHIBIT A

LOAN DOCUMENTS

## **LOAN AGREEMENT**

**CONTRACT PARTIES:** This Agreement is made by and between OGDEN CITY, a Utah Municipal Corporation, hereinafter "City", and OGDEN CITY REDEVELOPMENT AGENCY, a Utah political entity, hereinafter "Borrower."

WHEREAS, the parties are desirous of entering into an agreement to facilitate the redevelopment of the block bounded by 24<sup>th</sup> Street, 25<sup>th</sup> Street, Monroe Boulevard, and Quincy Avenue.

NOW, THEREFORE, in consideration of the mutual promises and considerations set forth below, the parties agree to the following:

### **TERMS**

1. **PURPOSE:** The purpose of this Loan Agreement is to provide funding for redevelopment expenses associated with Borrower property owned or to be owned on the block bounded by 24<sup>th</sup> Street, 25<sup>th</sup> Street, Monroe Boulevard, and Quincy Avenue.
2. **CONTRACT TERM:** The term of this Agreement shall run from the date of execution hereof and remain in effect until the expiration of the Promissory Note set forth as Exhibit "C."
3. **SCOPE OF WORK:** Borrower shall use funds for the tasks to be performed and according to the schedule for completing the tasks as described in Exhibit "A," which is attached hereto and by this reference incorporated herein.
4. **FUNDING:** Funding for this Agreement shall be derived from City funds.
5. **BUDGET:** The City shall provide the amount of \$340,000 for costs as contemplated by the terms of this Agreement. The basis for said compensation is set forth in Exhibit "B," which is attached hereto and by this reference incorporated herein.
6. **REPAYMENT:** Borrower acknowledges that the sums received by Borrower hereunder are loaned to Borrower by the City. Borrower assures the City that repayment, interest, and other return on the investment of City funds are to be remitted to the City, as required under applicable parts of this Agreement, the Promissory Note to be executed by Borrower as set forth as Exhibit "C" hereto.

7. **ADMINISTRATIVE REPRESENTATIVE:** The designated representative of the parties for purposes of administering this Agreement shall be:

Tom Christopulos  
Community and Economic Development Director  
Ogden City  
2549 Washington Boulevard, Suite  
Ogden, Utah 84401

8. **BILLINGS DISBURSEMENT REQUESTS:** The Borrower may request disbursement of all funds under the Agreement in one lump sum payment upon execution of this Agreement.

9. **INDEMNIFICATION:** Borrower covenants and agrees to indemnify, save harmless and defend Ogden City, its elected officials, authorized agents, officers, employees, and volunteers from and against any and all claims, damages, demands, actions, costs and charges of any nature arising out of or by reason of Borrower, its principals, staff, agents, contractors, subcontractors, employees or volunteers performance or failure to perform this agreement.

10. **OBLIGATION:** Borrower shall remain fully obligated under the provisions of this Agreement notwithstanding its contract with or designation of any third party or subcontractor for the responsibilities of the Agreement.

11. **SETOFF:** Notwithstanding any provision appearing to the contrary, Borrower shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Agreement by Borrower. The City may withhold payment of compensation to Borrower for the purpose of setoff until such time as the exact amount of damage incurred by the City which would be due from Borrower is determined and paid.

12. **WHEN RIGHTS AND REMEDIES NOT WAIVED:** In no event shall any payment by the City hereunder constitute or be construed to be a waiver by City of any breach of conditions or any default which may then exist, or while any such breach or default shall exist, in no way impair or prejudice any right or remedy available to City with respect to such breach or default.

13. **INTEGRATED DOCUMENT:** This Agreement embodies the entire agreement between City and Borrower for the scope of services and their terms and conditions. No verbal agreements or conversation with any officer, agent or employee of the City prior to the execution of this Agreement shall affect or modify any of the terms or obligations contained in any documents comprising this Agreement. Any such verbal agreement shall be considered as unofficial information and in no way binding upon the City.

14. **AMENDMENTS:** This Agreement may be amended only by written agreement of the parties hereto.

15. **SEVERABILITY OF PROVISIONS:** If any provisions of this Agreement are held invalid, the remainder of this Agreement shall not be affected thereby if such remainder would then continue to conform to the terms and requirements of applicable law.

16. **NON-ASSIGNABILITY:** Borrower shall not assign any interest in this Agreement, and shall not transfer any interest in this Agreement without written consent of the City thereto.

17. **SUCCESSORS:** Borrower covenants that the provisions of this Agreement shall be binding upon heirs, successors, subcontractors, representatives and agents.

18. **HEADINGS:** The headings of this agreement are for the convenience of the parties only and in no way alter, modify, amend, limit, or restrict the contractual obligations of the parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed this \_\_\_ day of \_\_\_\_\_, 20\_\_.

OGDEN CITY, A Utah Municipal Corporation

By: \_\_\_\_\_  
Michael P. Caldwell, Mayor

ATTEST:

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

Approved as to form:

\_\_\_\_\_  
Corporation Counsel

Borrower:  
OGDEN CITY REDEVELOPMENT AGENCY  
a Utah political entity

By: \_\_\_\_\_  
Michael P. Caldwell, Executive Director

ATTEST:

\_\_\_\_\_  
Agency Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
Agency Attorney

**EXHIBIT "A"**  
**SCOPE OF SERVICES**

The commercial property located at 24<sup>th</sup> Street and Monroe Boulevard was purchased by Borrower in November 2015 for the purpose of redevelopment. Multiple fund sources were used for the acquisition, including the RDA Housing Fund which is owned and controlled by Borrower. The balance of the RDA Housing Fund was essentially depleted by this transaction. The Borrower will obtain a loan from an outside entity, secured against the property, which will be used to repay applicable portions of the amount used from the RDA Housing Fund towards the acquisition of said property. This outside loan will be in place on or before July 31, 2016.

Other projects require the use of RDA Housing Fund before the outside loan described above repays to the RDA Housing Fund the applicable portions of the amount used in the acquisition of the property described above. Therefore, it is proposed that this Agreement provide funds from the City to be placed in the RDA Housing Fund to replace a portion of those funds used to acquire the property described above. Funds provided in this Agreement will be repaid to the City when the outside loan is obtained by Borrower, and no later than July 31, 2016.

**EXHIBIT "B"**  
**BUDGET**

Sources

\$340,000      City Funds

Uses

\$340,000      Replace RDA Housing Funds Used for 24<sup>th</sup> & Monroe Acquisition

**EXHIBIT "C"**

**PROMISSORY NOTE**

## PROMISSORY NOTE

Borrower: Ogden City Redevelopment Agency

Amount: \$340,000

Date:

1. FOR VALUE RECEIVED, the undersigned jointly and severally promise(s) to pay to the order of the Ogden City, a Utah Municipal Corporation (hereinafter called the "CITY"), the sum of THREE HUNDRED FORTY THOUSAND DOLLARS (\$340,000). Interest on amounts drawn down shall accrue at the rate of 0.65% per annum, until paid. The loan balance, together with accrued interest, shall be due and payable on or before July 31, 2016.

2. RIGHT TO PREPAY NOTE

The undersigned reserve(s) the right to prepay at any time all or any part of the principal amount of this Note without the payment of penalties or premiums.

3. DEFAULT AND LATE PAYMENT PROVISIONS

IN THE EVENT the undersigned shall fail to pay the principal amount of this Note when due, and if such failure be subsisting fifteen days beyond said due date, the unpaid principal amount of this Note, together with late charges, and together with unpaid and accrued interest, if any, shall at once become due and payable, at the option of the CITY, without notice to the undersigned. Failure of the CITY to exercise such option shall not constitute a waiver of such default. No default shall exist by reason of nonpayment of any required installment of principal so long as the amount of the optional prepayments already made pursuant hereto equals or exceeds the amount of the required installments.

If the principal of this Note is not paid within 15 days of the due date, the undersigned shall pay to the CITY a one-time late charge of four percent (4%) on any installment not paid within 15 days of its due date. If this Note be reduced to judgment, such judgment should bear the statutory interest rate on judgments, but not to exceed twelve percent (12%) per annum.

4. SALE, ASSIGNMENT, CONVEYANCE OR TRANSFER OF INTEREST CLAUSE, ETC.

The undersigned further covenants and agrees that:

- a. In the event that the undersigned sells, conveys, disposes, or assigns any interest in the property used to secure this Note, or makes any intervivos transfer of said property, or allows title thereto to become vested in any other person or persons in any manner whatsoever, or agrees to do any of the acts specified herein without the express written consent of the CITY being first obtained; or,

- b. In the event that the undersigned or its assignee(s) shall die, become insolvent, become bankrupt, either voluntary or involuntary, or make a general assignment for the benefit of creditors; or if any proceeding for enforcement of a judgment is commenced against the property of undersigned, or other person liable on this Note; or if a petition for any relief under any law relating to the relief of debtors or readjustment of indebtedness shall be filed by undersigned; or if a writ or order of attachment is issued against any of the property used to secure this title; or if the property used to secure this Note shall be rented or used in any way other than as the principal residence of the undersigned or its assignees;

then it is understood and agreed by the undersigned that, notwithstanding any other provisions of this Note or the accompanying security instrument used to secure this Note, the entire unpaid balance amount of this Note, together with late charges, shall become immediately due and payable on demand in one lump sum, at the option of the CITY, without notice to the undersigned. Failure of the CITY to exercise such option shall not constitute a waiver of such default.

5. COSTS AND ATTORNEY'S FEES

If suit is instituted by the CITY to recover on this Note, the undersigned agree(s) to pay all costs of such collection including reasonable attorney's fees and court costs.

6. WAIVER OF DEMAND, PROTEST, AND NOTICE

DEMAND, protest and notice of demand and protest are hereby waived, and the undersigned hereby waives, to the extent authorized by law, any and all homestead and other exemption rights which otherwise would apply to the debt evidenced by this Note.

IN WITNESS WHEREOF, this Note has been duly executed by the undersigned as of this date.

Borrower:  
OGDEN CITY REDEVELOPMENT AGENCY  
a Utah political entity

By: \_\_\_\_\_  
Michael P. Caldwell, Executive Director

ATTEST:

\_\_\_\_\_  
Agency Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
Agency Attorney



# City Council Meeting COUNCIL STAFF REVIEW

## **SERIES 2016 RDA REFUNDING REVENUE BONDS - CBD MALL REDEVELOPMENT PROJECT AREA**

### **- *Contribution Agreement***

#### **DETERMINATION:**

**Adopt or Not Adopt Resolution**

---

#### ***Executive***

##### ***Summary***

The Council will consider a Resolution authorizing a Contribution Agreement pledging franchise tax revenues as the primary source of the debt service payments for the Series 2016 RDA Refunding Bonds. The Series 2016 RDA Bonds are refunding the CBD Project Area Series' 2009 and 2011 Tax Increment bonds.

#### ***Background***

##### **Central Business District Mall Redevelopment Area**

The CBD Mall Redevelopment Project Area was established in 1977 and encompasses 48.45 acres of land in Ogden's core downtown area. The Area was established to facilitate the development of an 800,000 square foot regional mall.

The mall was largely successful until the mid-1990s when it entered into an extended period of decline. In December 2001 the RDA purchased the mall. Funding for the purchase came from a \$10 million loan to the RDA from the City's General Fund. The RDA paid off the outstanding parking garage bonds, demolished the mall building, and prepared the overall site for new development.

In December 2005, the Agency approved a Development and Lease Agreement between the Agency and The Boyer Company. In accordance with the agreement, the Agency renovated the parking garage and developed a high adventure recreation center, thereafter named the Salomon Center, to anchor the development. Construction was funded with tax increment bonds issued by the RDA. Bond proceeds were also used to repay the \$10 million loan to the City.



# City Council Meeting COUNCIL STAFF REVIEW

In 2009 the RDA Board approved an extension of the CBD Mall Redevelopment Project Area for an additional twelve (12) years through 2026.

## **Tax Increment Bonds - General**

Tax Increment bonds are a funding mechanism for Redevelopment Areas. State law defines how and when tax increment bonds may be issued. Debt service on the bonds is derived from tax increment and other revenues derived from the redevelopment project.

The term “tax increment” refers to the difference between the tax paid on property before it is developed and the taxes paid after development. For example, undeveloped property that is valued at \$100,000 may be assessed \$1,000 in annual property tax. If the property is developed as an office building it could be valued at \$2,000,000 and assessed \$20,000 in annual property tax. The difference between the original \$1,000 in property tax and \$20,000 after development—the \$19,000—is the tax increment.

## **December 14, 2004**

The Ogden City Redevelopment Agency Board approved Resolution 2004-19 authorizing the following:

- a. Negotiation of a long-term ground lease with Health Fitness Holding, LLC to construct and operate a recreational facility with the former Ogden Mall site;
- b. Negotiation to borrow \$7.1 million in the form of bond proceeds by pledging additional tax increment;
- c. Negotiation to borrow \$8.9 million in the form of private financing by pledging the land, buildings and lease revenue associated with the recreational facility.

These authorizations allowed planning for the new development at the Junction to move forward.



# City Council Meeting COUNCIL STAFF REVIEW

## 2005 Series Bonds – Background

### October 25, 2005

The Board authorized funding for The Junction development by adopting Resolutions 2005-20, 2005-21, 2005-22 which authorized issuance of the Series 2005A (\$8,500,000), 2005B (\$9,500,000) and 2005C bonds (\$23,000,000), respectively.

The 2005A bonds were issued at a variable rate backed by a Letter of Credit issued by the Wells Fargo Bank. The 2005B and 2005C bonds were also issued at a variable rate, but were backed by a Letter of Credit (LOC) issued by Bank of New York.

The Board also authorized Resolution 2005-23 which authorized the executive director to negotiate and execute documents necessary to effect a swap transaction relating to one or more of the Series 2005A, 2005B, or 2005C bonds. The Administration recommended this action as a way to hedge against the uncertainty of the variable interest rates on these bonds.

*CS Note: A swap is an agreement between two parties to exchange sequences of cash flows for a set period of time. Usually, at the time the contract is initiated, at least one of these series of cash flows is determined by an uncertain variable, such as an interest rate, foreign exchange rate, equity price or commodity price. (An Introduction to Swaps, Michael McCaffrey on April 18, see investopedia.com)*

Swap agreements were executed on the 2005B and 2005C bonds with Bear Stearns Bank (now JP Morgan) for a ten (10) year term which expires December 15, 2015. The interest rate for the swaps agreements has averaged 5.7%.

## 2009 Series Bonds - Background

### September 8, 2009

The Board approved Resolution 2009-5 authorizing the reissuance of the Series 2005B, 2005C-1 and 2005C-2 bonds as follows:



# City Council Meeting COUNCIL STAFF REVIEW

- a. Series 2009A (\$8.6 M) – reissue to refinance the cost of the recreation center and pay costs associated with issuance;
- b. Series 2009B-1 (\$20.1 M) – Reissue to refinance the cost of acquiring the Ogden City Mall site, refinance the loan obtained to pay the Woodbury settlement, pay issuance costs, etc.
- c. Series 2009B-2 (\$2 M) – reissue to refinance construction of the American Can parking structure and cover issuance costs.

The Administration's efforts to refinance the bonds covered by the swap agreements were hampered by the nationwide financial crises. Wells Fargo was the only bank with an acceptable bond rating that would agree to issue a LOC. However, Wells Fargo wanted additional security for the bonds to minimize its risk with the LOC. Changing the collateral required that the bonds be re-issued to ensure that the bond documents accurately represented the bond security.

The City Council also approved Resolution 2009-27 authorizing a contribution agreement which provided the City's full faith and credit to the RDA's bond issue. Note, however that the franchise tax was a secondary source of payment with the tax increment and lease proceeds serving as the primary debt service source.

## **Series 2011 Bonds - Background**

### **February 8, 2011**

The Board adopted Resolution 2010-14 authorizing the issuance and sale of Tax Increment Bonds to fund construction of the parking garage adjacent to the Hilton Garden Hotel in the Junction. The City agreed to issues this bonds as part of a larger incentive and development package outlined in the Junction Hotel Project Development Agreement with Western States Lodging.

The 2011 Tax Increment Bonds were issued for \$1,600,000 at a fixed interest rate of 5.10%. Debt service on the bonds is derived from tax increment generated by the project and franchise tax revenues pledged by the City, pursuant to a Contribution Agreement. The term of the 2011



# City Council Meeting COUNCIL STAFF REVIEW

Bonds expires in 2026. These bonds were issued subordinate to the Series 2009 Bonds for which tax increment and franchise tax was also pledged. Issuance of these bonds was the last step in completing the City's and RDA's responsibilities under the Junction Hotel Project Development Agreement.

## **January 9, 2014**

The Board Officer received a Transmittal from the Administration recommending reissuance of the Series 2009 Bonds. As proposed, the RDA would be able to exit the swap agreement and recognize significant savings in interest over the next two years.

## **January 28, 2014**

The RDA Board adopted Resolution 2014-1 authorizing the refunding of Series 2009 Bonds and establishing parameters for the refunding. The authorization for the refunding was based on information received by the Board indicating the Agency could exit its Swap Agreement with JPMorgan Chase & Co. and recognize a savings of almost \$750,000 in interest and fees.

The City Council also adopted Resolution 2014-3 authorizing the execution of a Contribution Agreement that pledged the City's franchise tax as additional collateral for the bonds.

## **March 11, 2014**

The Administration was informed by the City's financial advisor that the savings initially calculated could not be realized. Therefore, refunding the Series 2009 Bonds was no longer in the best interest of the Agency. The Board adopted Resolution 2014-3 rescinding Resolution 2014-1 and giving public notice the bonds would not be refunded to establish a clear record of the Agency's actions.

## **December 8, 2015**

The Council Officer received an Administrative Transmittal requesting consideration of Parameters Resolution authorizing the issuance and sale of up to \$30,000,000 in refunding bonds to refund the RDA Series' 2009 and 2011 Revenue Bonds.



# City Council Meeting COUNCIL STAFF REVIEW

An Administrative Transmittal was also submitted to the City Council requesting consideration of a Resolution approving a Contribution Agreement with the Redevelopment Agency, pledging franchise tax as the revenue source, and authorizing the issuance and sale of up to \$30,000,000 in refunding bonds.

## **December 15, 2015**

The Board held a work session to review the proposed bond refunding. The City's financial advisor provided background information, reviewed the proposal, and answered questions. The expiration of the swap agreements on the Series 2009 Bonds provides an opportunity to refinance these bonds at a low fixed rate.

## ***Proposal***

The Administration is proposing that City Council approve a Contribution Agreement pledging the City's franchise tax as the primary source of the debt service payments for the RDA's Series 2016 Revenue Bonds which will be issued to refund the 2009A, B-1 and B-2 Bonds and the 2011 Bonds.

The proposed Resolution notes that the RDA will issue Tax Increment Bonds as follows:

- Issue amount will be not more than \$30,000,000
- Not to exceed 6% interest rate on a tax exempt basis and not to exceed 8% on a taxable basis
- Shall not be sold at less than 97% of the total principal amount
- The term of the Bonds will be twenty (20) years (expiration 2017)
- Debt service on the bonds will come from franchise tax revenues pledged by the City, pursuant to a Contribution Agreement, and from tax increment derived from the Project Area.

Under the Contribution Agreement, the City pledges the following:

- The City pledges franchise tax revenues to assist the Agency in repaying the 2016 Series Bonds



# City Council Meeting COUNCIL STAFF REVIEW

- The City will continue to impose the franchise tax until the Bonds have been paid
- The City will not issue any other bonds on parity with the 2016 RDA bonds using franchise tax revenues as the source of debt service unless the City proves it receives more that 200% of the debt service required by the RDA Series 2016 bonds

## *Questions*

1. Please review the proposed Contribution Agreement.
2. Please review the RDA's ability to repay the debt service to the bonds.
3. Please explain why it is beneficial to the City, as a whole, for the City to pledge franchise tax revenues as a repayment source for the RDA bonds.

---

**Council Staff Contact: Janene Eller-Smith, (801)629-8165**

2005

2008

2009

2011

Dec 2, 2015  
Remaining Liability

Proposed  
2016

2005 A  
\$7,280,000  
Recreation Center  
(Tax Increment-  
Various Districts)

10 Year SWAP - 12/15/15  
2005 B  
\$8,900,000  
Recreation Center  
(Lease Revenue)

10 Year SWAP - 12/15/15  
2005 C-1  
\$20,300,000  
Mall Site Purchase  
Woodbury Settlement  
2005 C-2  
\$2,100,000  
American Can Parking

Financial Crisis - 2008  
Letter of Credit Not Renewed

10 Year Swap - Exp 12/15/15  
2009 A  
\$8,780,000  
Recreation Center  
Construction  
(Lease Revenue)

10 Year SWAP - Exp 12/15/15  
2009 B-1  
\$19,545,000  
2009 B-2  
\$2,020,000

2011  
\$1,600,000  
Hotel Parking  
Structure  
Fixed 5.10%

2005A  
\$3,270,000

2009A  
\$6,770,000

2009 B 1-2  
\$15,570,000

2011  
\$1,285,000

Up to \$30,000,000  
Revenue  
Refunding Bonds  
2016A  
52% Taxable

2016B  
48% Tax Exempt

Total \$26,895,000

Ogden, Utah

January 5, 2016

The City Council (the "Council") of Ogden City (the "City"), met in regular public session at the regular meeting place of the City Council in Ogden, Utah, on January 5, 2016, at the hour of 6:00 p.m. with the following members of the Council being present:

|               |               |
|---------------|---------------|
| Richard Hyer  | Chair         |
| Marcia White  | Vice Chair    |
| Bart Blair    | Councilmember |
| Neil Garner   | Councilmember |
| Luis Lopez    | Councilmember |
| Ben Nadolski  | Councilmember |
| Doug Stephens | Councilmember |

Also present:

|               |               |
|---------------|---------------|
| Mike Caldwell | Mayor         |
| Tracy Hansen  | City Recorder |

Absent:

After the meeting had been duly called to order and after other matters not pertinent to this resolution had been discussed, the following resolution was introduced in written form along with a Certificate of Compliance with Open Meeting Law with respect to this January 5, 2016, meeting, a copy of which is attached hereto as Exhibit A.

The following resolution was then fully discussed, and pursuant to motion duly made by Councilmember \_\_\_\_\_ and seconded by Councilmember \_\_\_\_\_ was adopted by the following vote:

AYE:

NAY:

The resolution is as follows:

**RESOLUTION NO. 2016- 2**

A RESOLUTION OF THE CITY COUNCIL OF OGDEN CITY APPROVING A CONTRIBUTION AGREEMENT BY AND BETWEEN THE CITY AND THE OGDEN CITY REDEVELOPMENT AGENCY, UTAH (THE “AGENCY”); AUTHORIZING AND APPROVING THE ISSUANCE BY THE AGENCY OF ITS NOT TO EXCEED \$30,000,000 REVENUE REFUNDING BONDS, FOR THE PURPOSE OF REFUNDING A PORTION OF ITS PRIOR OBLIGATIONS; AUTHORIZING THE TAKING OF ALL OTHER ACTION NECESSARY TO THE CONSUMMATION OF TRANSACTIONS CONTEMPLATED BY THIS RESOLUTION; AND RELATED MATTERS.

WHEREAS, the City Council (the “Council”) is the legislative body for Ogden City, Utah (the “City”), a municipal corporation duly created, established, organized and existing under and by virtue of the Constitution and laws of the State of Utah; and

WHEREAS, the Ogden City Redevelopment Agency, Utah (the “Agency”), is a redevelopment agency (a public body, corporate and politic) duly created and established by the City and authorized to transact business and exercise its powers, all under and pursuant to the Limited Purpose Local Government Entities—Community Development and Renewal Agencies Act, Title 17C, Chapters 1-4, Utah Code Annotated 1953, as amended (the “Redevelopment Act”) and the powers of such Agency include the power to issue bonds for any of its corporate purposes; and

WHEREAS, the Agency has previously issued its Taxable Variable Rate Revenue Refunding Bonds, Series 2009A, Series 2009B-1, and Series 2009B-2 (collectively the “Series 2009 Bonds”) and Tax Increment Revenue Bonds, Series 2011 (Taxable—Subordinate) (the “Series 2011 Bonds”) and

WHEREAS, in order to continue the efficient financing of the projects financed with the proceeds of the Series 2009 Bonds and Series 2011 Bonds (the “Projects”), the Board of Directors of the Agency has determined that it would be in furtherance of its public purposes to issue not more than \$30,000,000 of Revenue Refunding Bonds (the “Bonds”) (to be issued in one or more series and with such additional or alternate designations as the Board may determine) to provide funds to refund and retire all or a portion of the outstanding Series 2009 Bonds and Series 2011 Bonds (collectively, the “Refunded Bonds”); and

WHEREAS, the Board of Directors of the Agency on the date hereof has adopted or will adopt a resolution authorizing the issuance of the Bonds pursuant to an Indenture of Trust and Pledge (the “Indenture”), substantially in the form attached hereto as Exhibit B to (1) refund the Refunded Bonds and (2) pay costs associated with the issuance of the Bonds and the refunding of the Refunded Bonds; and

WHEREAS, the City does hereby find and determine it to be advisable and in the best business and proprietary interests of the City and its inhabitants to assist the Agency with the refinance of the Refunded Bonds (the “Refinance”); and

WHEREAS, in connection with the issuance of the Refunded Bonds, the City has entered into one or more Contribution Agreements whereby the City has agreed to grant to the Agency certain moneys to assist in the repayment of the Refunded Bonds; and

WHEREAS, in furtherance of the Refinance, the City desires to execute a Contribution Agreement (the “Contribution Agreement”) in substantially the form attached hereto as Exhibit C, to be entered into by the City and the Agency whereby the City will agree to pledge certain franchise tax moneys to be received by the City (previously pledged to the repayment of the Refunded Bonds) to assist in repaying the Bonds and the Agency will agree to use the tax increment revenues and lease payments from the project financed with the proceeds of the Refunded Bonds previously pledged to the Refunded Bonds, to the extent available, to pay or repay to the City amounts sufficient to pay amounts due with respect to the Bonds; and

WHEREAS, the Council desires to approve the Contribution Agreement and to authorize its execution and delivery for and on behalf of the City;

NOW, THEREFORE, the City Council of Ogden City, Utah, does hereby resolve as follows:

Section 1. The terms defined or described in the recitals hereto shall have the same meanings assigned thereto when used in the body of this resolution.

Section 2. All actions heretofore taken not inconsistent with the provisions of this resolution by the officers and staff of the Agency and the City directed toward the consummation of the transactions contemplated herein are hereby ratified, approved and confirmed.

Section 3. The City hereby authorizes and approves the issuance of the Bonds by the Agency for the purposes of (i) refunding the Refunded Bonds and (ii) paying costs associated with the issuance of the Bonds and the refunding of the Refunded Bonds.

Section 4. As required by the Redevelopment Act, the Bonds shall be made payable as to both principal and interest solely from the income, proceeds, revenue and funds of the Agency, particularly the assistance from the City pursuant to the Contribution Agreement.

Section 5. The Council hereby finds and determines that it is in the best business and proprietary interests of the residents of the City for the Agency to refund the Refunded Bonds and the Agency and the City to execute and deliver the Contribution Agreement and that such Agreement is necessary and in furtherance of the purposes of the City and the Agency and of the health, safety and welfare of the citizens of the City.

Section 6. The Contribution Agreement in substantially the form presented to the Council at this meeting is in all respects authorized, approved and confirmed. The Mayor is hereby authorized to execute and the City Recorder to attest and to affix the seal of the City to the Contribution Agreement on the date hereof and such officers are authorized to deliver the same on behalf of the City.

Section 7. The appropriate officers of the City and the Agency are authorized to take all action necessary or reasonably required to carry out, give effect to and consummate the transaction contemplated hereby and are authorized to take all action necessary in conformity with State law to refund the Refunded Bonds including, without limitation, the execution and delivery of any closing and other documents required to be delivered in connection with the sale and delivery of the Bonds and the execution of the Contribution Agreement.

Section 8. The Mayor is hereby authorized to make any alterations, changes or additions in the Contribution Agreement herein approved and authorized necessary to correct errors or omissions therein, to remove ambiguities therefrom, or to conform the same to the provisions of the Indenture, to the provisions of this resolution, or the provisions of the laws of the State of Utah or the United States, the execution of which shall conclusively establish said approval of the Mayor.

Section 9. Upon their issuance, the Bonds will constitute special limited obligations of the Agency payable solely from and to the extent of the sources set forth in the Indenture. No provision of this resolution, the Contribution Agreement, the Indenture, the Bonds, nor any other instrument, shall be construed as creating a general obligation of the Agency, the City, the State of Utah or any political subdivision thereof, nor as incurring or creating a charge upon the general credit of the Agency or the City.

Section 10. If any provisions of this resolution should be held invalid, the invalidity of such provisions shall not affect the validity of any of the other provisions of this resolution.

Section 11. All resolutions of the City or parts thereof inconsistent herewith, are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed as reviving any bylaw, order, resolution or ordinance, or part thereof.

Section 12. After any of the Bonds are issued and upon receipt of payment therefor, this resolution shall be and remain irrevocable until the principal of and interest on the Bonds are, or are deemed to have been, fully discharged in accordance with the terms and conditions of the Indenture.

Section 13. This resolution shall become effective immediately upon its adoption.

ADOPTED AND APPROVED this January 5, 2016.

(SEAL)

By: \_\_\_\_\_  
Chair

ATTEST:

By: \_\_\_\_\_  
City Recorder

PRESENTATION TO MAYOR

The foregoing resolution was presented by the Council to the Mayor for his approval or disapproval this 5th day of January, 2016.

\_\_\_\_\_  
Chair

MAYOR’S APPROVAL OR DISAPPROVAL

The foregoing resolution is hereby approved this 5th day of January, 2016.

\_\_\_\_\_  
Mayor

STATE OF UTAH                    )  
                                          : ss.  
COUNTY OF WEBER                )

I, Tracy Hansen, the duly appointed, qualified and acting City Recorder of Ogden City, Utah, do hereby certify as follows:

That the foregoing pages constitute a full, true and correct copy of the record of the proceedings of the City Council of Ogden City, Utah, at its public meeting held on January 5, 2016, insofar as said proceedings relate to the issuance by Ogden City Redevelopment Agency, Utah of its Revenue Refunding Bonds, Series 2014, as the same appears of record in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of said City as of this January 5, 2016.

(SEAL)

By: \_\_\_\_\_  
                                          City Recorder

EXHIBIT A

CERTIFICATE OF COMPLIANCE WITH OPEN MEETING LAW

I, Tracy Hansen, the undersigned City Recorder of Ogden City, Utah (the “City”), do hereby certify, according to the records of the City in my official possession, and upon my own knowledge and belief, that in accordance with the requirements of Section 52-4-202, Utah Code Annotated, 1953, as amended, I gave not less than twenty-four (24) hours public notice of the agenda, date, time, and place of the January 5, 2016, public meeting held by the City Council of the City (the “City Council”), as follows:

(a) By causing a Notice, in the form attached hereto as Schedule 1, to be posted at the City’s principal offices on December \_\_, 2015 at least twenty-four (24) hours prior to the convening of the meeting, said Notice having continuously remained so posted and available for public inspection until the completion of the meeting;

(b) By causing a copy of such Notice, in the form attached hereto as Schedule 1, to be delivered to the Standard Examiner on December \_\_, 2015, at least twenty-four (24) hours prior to the convening of the meeting; and

(c) By causing a copy of such Notice, in the form attached hereto as Schedule 1, to be published on the Utah Public Notice Website (<http://pmn.utah.gov>) at least twenty-four (24) hours prior to the convening of the meeting.

In addition, the 2016 Notice of Annual Meeting Schedule for the City Council (attached hereto as Schedule 2) was given specifying the date, time and place of the regular meetings of the City Council to be held during the year, by causing said Notice to be (i) posted on January 1, 2016 at the principal office of the City, (ii) provided to at least one newspaper of general circulation within the geographic jurisdiction of the City on January 1, 2016 and (iii) published on the Utah Public Notice Website (<http://pmn.utah.gov>) during the current calendar year.

---

City Recorder

(SEAL)

SCHEDULE 1

NOTICE OF MEETING

SCHEDULE 2

ANNUAL MEETING NOTICE

EXHIBIT B

INDENTURE

(See Transcript Document No. \_\_\_\_\_)

INDENTURE OF TRUST

Dated as of February 1, 2016

between

OGDEN CITY REDEVELOPMENT AGENCY

and

U.S. BANK NATIONAL ASSOCIATION,  
as Trustee

Relating to the

\$ \_\_\_\_\_  
OGDEN CITY REDEVELOPMENT AGENCY  
TAXABLE REVENUE REFUNDING BONDS, SERIES 2016A

And

\$ \_\_\_\_\_  
OGDEN CITY REDEVELOPMENT AGENCY  
REVENUE REFUNDING BONDS, SERIES 2016B

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THIS INDENTURE OF TRUST dated as of February 1, 2016 (hereinafter sometimes referred to as the “Indenture”), by and between the Ogden City Redevelopment Agency (the “Agency”), and [U.S. Bank National Association], as trustee, a national banking association organized under the laws of the United States, and authorized to accept and execute trusts of the character herein set out (the “Trustee”),

WITNESSETH:

WHEREAS, the Agency is a redevelopment agency (a public body, corporate and politic) duly created, established, and authorized to transact business and exercise its powers, all under and pursuant to the Limited Purpose Local Government Entities—Community Development and Renewal Agencies Act, Title 17C, Utah Code Annotated 1953, as amended (the “Redevelopment Act”); and

WHEREAS, the CBD Mall Redevelopment Project Area Plan and the American Can Redevelopment Plan (collectively, the “Redevelopment Plans”) for the CBD Redevelopment Project Area and the American Can Redevelopment Project Area, respectively (collectively, the “Redevelopment Project Areas”) have heretofore been adopted and approved and all requirements of law for, and precedent to, the adoption and approval of said plans have been duly complied with; and

WHEREAS, the Agency has previously issued its Taxable Variable Rate Revenue Refunding Bonds, Series 2009A (the “Series 2009A Bonds”), Taxable Variable Rate Revenue Refunding Bonds, Series 2009B (the “Series 2009B Bonds”) and Tax Increment Revenue Bonds, Series 2011 (Taxable—Subordinate) (the “Series 2011 Bonds” and, collectively with the Series 2009A Bonds and the Series 2009B Bonds, the “Refunded Bonds”); and

WHEREAS, the Agency has determined that it would be in furtherance of its public purposes to issue its (i) \$\_\_\_\_\_ Ogden City Redevelopment Agency Taxable Revenue Refunding Bonds, Series 2016A (the “Series 2016A Bonds”) and (ii) \$\_\_\_\_\_ Ogden City Redevelopment Agency Revenue Refunding Bonds, Series 2016B (the “Series 2016B Bonds” and collectively with the Series 2016A Bonds, the “Series 2016 Bonds”) to provide funds to (a) refund the Refunded Bonds and (b) pay costs associated with the issuance of the Series 2016 Bonds; and

NOW, THEREFORE, the Agency, in consideration of the premises and the acceptance by the Trustee of the trusts hereby created and of the purchase and acceptance of the Bonds, as hereinafter defined, by the owners thereof, and for other good and valuable consideration, the receipt of which is hereby acknowledged, in order to secure the payment of the principal of, premium, if any, and interest on the Bonds according to their tenor and effect and the performance and observance by the Agency of all of the covenants expressed or implied herein and in the Bonds, does hereby grant, convey, pledge, transfer and assign to the Trustee and to its successors in trust the following (herein called the “Trust Estate”):

FIRST, the amounts required by this Indenture to be deposited in the funds and accounts created herein or in any indenture supplemental hereto (except the Rebate Fund), subject to the uses provided herein, and any investments and reinvestments of such amounts and the proceeds thereof (except amounts deposited in the Rebate Fund); and

SECOND, all Pledged Revenues (as defined herein) received by the Agency, together with all investments and reinvestments of such amounts (except amounts deposited in the Rebate Fund); and

THIRD, any and all property of every kind or description which may from time to time hereafter be sold, transferred, conveyed, assigned, hypothecated, endorsed, deposited, pledged, mortgaged, granted, or delivered to, or deposited with the Trustee as additional security by the Agency or anyone on its behalf or with its written consent.

TO HAVE AND TO HOLD the said Trust Estate whether now owned or held or hereafter acquired, unto the Trustee or its successor and assigns, forever,

IN TRUST NEVERTHELESS, upon the terms and trusts herein set forth, all as herein set forth.

IT IS HEREBY COVENANTED, DECLARED AND AGREED that this Indenture creates a continuing lien equally and ratably (except as otherwise provided herein or in any indenture supplemental hereto) to secure the payment in full of the principal of and premium, if any, and interest on all Bonds which may, from time to time, be outstanding hereunder, and that the Bonds are to be issued, authenticated and delivered, and that the Trust Estate is to be held, dealt with and disposed of by the Trustee, upon and subject to the terms, covenants, conditions, uses, agreements and trusts set forth in this Indenture, as follows:

## ARTICLE I

### SHORT TITLE, DEFINITIONS, INTERPRETATION

Section 1.1 Short Title. This Indenture may hereafter be cited by the Agency as the “Indenture of Trust” or the “Indenture.”

Section 1.2 Definitions. As used in this Indenture (a) terms defined in the recitals shall have the meanings assigned and (b) the following terms shall have the following meanings:

“Act” means collectively, the Limited Purpose Local Government Entities–Community Development and Renewal Agencies Act, Title 17C, Utah Code Annotated 1953, as amended, and the Utah Refunding Bond Act, Title 11, Chapter 27, Utah Code Annotated 1943, as amended.

“Additional Bonds” means any Bonds issued pursuant to Section 2.6 hereof having a parity lien on the Pledged Revenues pledged to the payment of principal of and interest on the Series 2016 Bonds or any portion thereof.

“Agency” means the Ogden City Redevelopment Agency.

“Annual Debt Service Requirement” means with respect to particular Bonds issued hereunder or parity lien debt issued by the City under the Contribution Agreement and Section 2.7 hereof as computed from time to time, the sum obtained for a given Bond Year by totaling the following for such Bond Year:

(a) The principal amount of all such Bonds and other debt outstanding on the date of computation which mature or are subject to mandatory redemption during such Bond Year; plus

(b) The interest payable during such Bond Year on all such Bonds and other debt outstanding on the date of computation, provided, however, when calculating interest payable during such Bond Year for any Bonds or other debt bearing interest at a variable rate which cannot be ascertained for any particular Bond Year, it shall be assumed that such Bonds or other debt will bear interest at such market rate of interest applicable to such Bonds or other debt, as shall be established for this purpose in the opinion of the Agency’s financial advisor, purchaser, underwriter, or similar agent (which market rate of interest may be based upon a recognized comparable market index, an average of interest rates for prior years or otherwise).

“Authorized Representative” means the Executive Director of the Agency, or any other officer of the Agency so designated in writing by an Authorized Representative of the Agency to the Trustee.

“Bond Fund” means the fund by that name established by Section 4.1 hereof.

“Bond Year” means the twelve-month period beginning on July 1 of each year and ending on the next following June 30 except that the initial Bond Year for any series of Bonds shall commence on the date of original issuance and delivery of such series of the Bonds and shall end on the next succeeding June 30.

“Bondowner” or “Registered Owner” or “Owner” means the registered owner of any Bond issued under this Indenture.

“Bonds” means, collectively, the Series 2016 Bonds and any Additional Bonds issued, authenticated, and delivered under and pursuant to this Indenture.

“Business Day” means any day (A) on which banking business is transacted, but not including any day on which banks are authorized to be closed in Salt Lake City or (B) as otherwise provided in a Supplemental Indenture.

“City” means Ogden City, Utah, a political subdivision of the State of Utah.

“Code” means the Internal Revenue Code of 1986, as amended.

“Contribution Agreement” means the Contribution Agreement dated as of February 1, 2016 between the City and the Agency, pursuant to which the City has agreed to contribute to the Agency its Franchise Tax Revenues to secure the Series 2016 Bonds as provided therein.

“Costs of Issuance Fund” means the fund by that name established in Section 4.1 hereof.

“DTC” means The Depository Trust Company, New York, New York, a limited-purpose trust company organized under the laws of the State of New York.

“Event of Default” means any of the events specified in Section 10.1 hereof.

“Franchise Tax Revenues” means, as described in the Contribution Agreement, the franchise tax revenues received by the City pursuant to Municipal Energy Sales and Use Tax revenues received by the City pursuant to Title 10, Chapter 1, Part 3, Utah Code Annotated 1953, as amended and the Municipal Telecommunications License Tax revenues received by the City pursuant to Title 10, Chapter 1, Part 4, Utah Code Annotated 1953, as amended and pledged under the Contribution Agreement.

“Indenture” means this Indenture and all indentures supplemental hereto.

“Interest Payment Date” means with respect to the Series 2016 Bonds each April 1 and October 1 commencing \_\_\_\_\_ 1, 2016.

“Investment Income” means the net gain derived from the investment of moneys held in the Bond Fund and the Rebate Fund created in this Indenture.

“Original Issue Date” means, with respect to the Series 2016 Bonds, the initial date of delivery of the Series 2016 Bonds.

“Outstanding” when used with reference to Bonds, shall mean, as of any date, all Bonds theretofore or thereupon being authenticated and delivered under this Indenture except: (a) any Bond cancelled by the Trustee or delivered to the Trustee for cancellation at or prior to such date; (b) any Bond in lieu of or in substitution for which other Bonds shall have been authenticated and delivered pursuant to Article VI hereof; and (c) any Bond deemed to have been paid as provided in Article IX hereof.

“Paying Agent” means any paying agent appointed by the Agency pursuant to this Indenture. Initially the Paying Agent shall be [U.S. Bank National Association], Salt Lake City, Utah.

“Permitted Investments” shall mean and include: (a) any investments or securities permitted for the investment of public funds under the State Money Management Act, Title 51, Chapter 7, Utah Code Annotated 1953, as amended, or (b) investments in the fund held by the Treasurer for the State of Utah and commonly known as the Utah State Public Treasurer’s Investment Fund.

“Pledged Revenues” means the sum of the Franchise Tax Revenues and any Investment Income.

“Rebate Fund” means the fund by that name established by Section 4.1 hereof.

“Record Date” means the fifteenth day immediately preceding each Interest Payment Date or if such fifteenth day is not a business day, the business day next preceding such fifteenth day.

“Redevelopment Act” means the Limited Purpose Local Government Entities—Community Development and Renewal Agencies Act as cited in the Recitals hereof.

“Redevelopment Plans” means collectively, the CBD Mall Redevelopment Project Area Plan and the American Can Redevelopment Plan, and includes any amendment of said plans hereafter made pursuant to law.

“Redevelopment Project Areas” means collectively, the CBD Redevelopment Project Area and the American Can Redevelopment Project Area, described and defined in the Redevelopment Plans.

“Refunded Bonds” means collectively, the Agency’s Taxable Variable Rate Revenue Refunding Bonds, Series 2009A, Taxable Variable Rate Revenue Refunding Bonds, Series 2009B (the “Series 2009B Bonds”) and Tax Increment Revenue Bonds, Series 2011 (Taxable—Subordinate).

“Refunding Funds” means the fund by that name established by Section 4.1 hereof.

“Series” means all of the Bonds authenticated and delivered on original issuance and identified pursuant to the supplemental indenture authorizing such Bonds as a separate Series of Bonds, and any Bonds thereafter authenticated and delivered in lieu thereof or in substitution therefor.

“Series 2016 Bonds” means collectively, the Series 2016A Bonds and Series 2016B Bonds.

“Series 2016 Cost of Issuance Account” means the account by that name established within the Cost of Issuance Fund by Section 4.1 hereof.

“Series 2016A Bonds” means the Taxable Revenue Refunding Bonds, Series 2016A of the Agency authorized by this Indenture.

“Series 2016B Bonds” means the Revenue Refunding Bonds, Series 2016B of the Agency authorized by this Indenture.

“Special Record Date” means such date as may be fixed for the payment of defaulted interest on the Bonds in accordance with this Indenture.

“State” means the State of Utah.

“Trustee” means U.S. Bank National Association, Corporate Trust Department and its successors and assigns, and any other corporation or association which may at any time be substituted in its place, as provided in this Indenture.

“Underwriter” means \_\_\_\_\_.

### Section 1.3 Interpretation.

(a) The terms “hereby,” “hereof,” “herein,” “hereunder,” and similar terms, as used in this Indenture, refer to this Indenture and the term “heretofore” means before, and the term “hereafter” means after the date of this Indenture;

(b) Words of the masculine gender mean and include correlative words of the feminine and neuter genders, and words importing a singular number mean and include the plural number and vice versa;

(c) Words importing persons shall include firms, associations, partnerships (including limited partnerships), trusts, corporations, and other legal entities, including public bodies, as well as natural persons;

(d) Any headings preceding the text of the several Articles and Sections of this Indenture and any table of contents or marginal notes appended to copies hereof shall be solely for convenience of reference and shall not constitute a part of this Indenture, nor shall they affect its meaning, construction, or effect; and

(e) References to Sections and Articles, unless otherwise indicated, refer to Sections and Articles in this Indenture.

Section 1.4 Indenture to Constitute Contract. In consideration of the purchase and acceptance from time to time of any and all of the Bonds authorized to be issued hereunder by the Registered Owners thereof, this Indenture shall be deemed to be and shall constitute a contract between the Agency and the Owners from time to time of the Bonds; and the pledge made in this Indenture and the covenants and agreements herein set forth to be performed by or on behalf of the Agency shall be, for the equal benefit, protection, and security of the Owners of any and all of the Bonds which, regardless of the time or times of their issuance, delivery, maturity, or expiration, shall be of equal rank without preference, priority, or distinction of any of the Bonds over any others, except as expressly provided in or permitted by this Indenture.

ARTICLE II

ISSUANCE OF THE SERIES 2016 BONDS

Section 2.1 Principal Amount, Designation, and Series.

(a) The Series 2016A Bonds are hereby authorized for issuance hereunder for the purpose of providing funds to (i) refund the Refunded Bonds and (ii) pay costs of issuance of the Series 2016 Bonds. The Series 2016A Bonds shall be limited to \$\_\_\_\_\_ in aggregate principal amount, shall be issued in fully registered form, shall be substantially in the form and contain substantially the terms contained in Exhibit A attached hereto and made a part hereof, and shall bear interest at the rates and be payable as to principal or redemption price as specified herein. The Series 2016A Bonds shall be designated as, and shall be distinguished from the Bonds of all other Series by the title, “Ogden City Redevelopment Agency Taxable Revenue Refunding Bonds, Series 2016A.”

(b) The Series 2016B Bonds are hereby authorized for issuance hereunder for the purpose of providing funds to (i) refund the Refunded Bonds and (ii) pay costs of issuance of the Series 2016 Bonds. The Series 2016B Bonds shall be limited to \$\_\_\_\_\_ in aggregate principal amount, shall be issued in fully registered form, shall be substantially in the form and contain substantially the terms contained in Exhibit A attached hereto and made a part hereof, and shall bear interest at the rates and be payable as to principal or redemption price as specified herein. The Series 2016B Bonds shall be designated as, and shall be distinguished from the Bonds of all other Series by the title, “Ogden City Redevelopment Agency Revenue Refunding Bonds, Series 2016B.”

Section 2.2 Date, Maturities, and Interest. (a) The Series 2016A Bonds shall be dated as of their Original Issue Date, shall be in denominations of \$5,000 or integral multiples thereof, and shall mature and shall bear interest from the Interest Payment Date next preceding their date of authentication thereof, unless authenticated as of an Interest Payment Date, in which event such Bonds shall bear interest from such date, or unless such Bonds are authenticated prior to the first Interest Payment Date, in which event such Bonds shall bear interest from their Original Issue Date or unless, as shown by the records of the Trustee, interest on the Series 2016A Bonds shall be in default, in which event such Bonds shall bear interest from the date to which interest has been paid in full, or unless no interest shall have been paid on such Bonds, in which event such Bonds shall bear interest from their Original Issue Date, payable on each Interest Payment Date as follows:

| Due<br>( <u>April 1</u> ) | Principal<br><u>Amount</u> | Interest<br><u>Rate</u> |
|---------------------------|----------------------------|-------------------------|
|---------------------------|----------------------------|-------------------------|

Due  
(April 1)

Principal  
Amount

Interest  
Rate

(b) The Series 2016B Bonds shall be dated as of their Original Issue Date, shall be in denominations of \$5,000 or integral multiples thereof, and shall mature and shall bear interest from the Interest Payment Date next preceding their date of authentication thereof, unless authenticated as of an Interest Payment Date, in which event such Bonds shall bear interest from such date, or unless such Bonds are authenticated prior to the first Interest Payment Date, in which event such Bonds shall bear interest from their Original Issue Date or unless, as shown by the records of the Trustee, interest on the Series 2016B Bonds shall be in default, in which event such Bonds shall bear interest from the date to which interest has been paid in full, or unless no interest shall have been paid on such Bonds, in which event such Bonds shall bear interest from their Original Issue Date, payable on each Interest Payment Date as follows:

Due  
(April 1)

Principal  
Amount

Interest  
Rate

(c) The interest on Series 2016 Bonds so payable, and punctually paid and duly provided for, on any Interest Payment Date will be paid to the Registered Owner thereof at the close of business on the Regular Record Date for such interest, which shall be fifteen days (whether or not a business day) immediately preceding such Interest Payment Date. Any such interest not so punctually paid or duly provided for shall forthwith cease to be payable to the registered owner of any Series 2016 Bonds on such Regular Record Date, and may be paid to the registered owner thereof at the close of business on a Special Record Date for the payment of such defaulted interest to be fixed by the Trustee, notice thereof to be given to such registered owner not less than ten days prior to such Special Record Date. The interest on the Series 2016 Bonds shall be paid by check or draft mailed on each Interest Payment Date to the Holder of each of the

Series 2016 Bonds as the name and address of such Holder appears on the Record Date in the Register. Interest shall be calculated on the basis of a year of 360 days comprised of twelve 30-day months. Principal shall be payable upon surrender of the Bonds of any Series at the designated offices of the Paying Agent. The Bonds of any Series shall be payable in lawful money of the United States of America.

Section 2.3 Redemption of the Series 2016 Bonds.

(a) Optional Redemption. (i) The Series 2016A Bonds are not subject to optional redemption prior to maturity.

(ii) [The Series 2016B Bonds are subject to redemption at the option of the Agency on any day on or after \_\_\_\_\_, in such order of maturity as may be designed by the Agency, at a redemption price equal to 100% of the principal amount of the Series 2016B Bonds to be redeemed, plus accrued interest thereon to the date fixed for redemption.]

[Check on Sinking Fund Redemption]

(b) Notice of Redemption. Written notice of any redemption, either in whole or in part, shall be given by the Trustee by mailing a notice of redemption by first class mail, at least thirty (30) but not more than sixty (60) days before the date fixed for redemption, to the Owners of Series 2016 Bonds or portions thereof so called, at their respective addresses as the same may appear on the registry books; provided, however, that failure to give such notice by mailing, or any defect therein, shall not affect the validity of any proceedings for the redemption of any Series 2016 Bond with respect to which no such failure has occurred. Each notice of redemption shall specify (i) the redemption date, (ii) the place of redemption, (iii) by number, the Series 2016 Bonds to be redeemed and the principal amounts thereof to be redeemed, if less than the entire amounts are to be redeemed, and (iv) that interest on the Series 2016 Bonds or portions thereof to be redeemed shall cease to accrue from and after such redemption date and that on said date there will become due and payable on each of such Series 2016 Bonds or portions thereof to be redeemed the redemption price thereof together with interest accrued thereon to the redemption date. If any Series 2016 Bond or any portion thereof shall have been duly called for redemption and payment of the redemption price, including premium, if any, and unpaid interest accrued to the date fixed for redemption, shall have been made or provided for, all as more fully set forth herein, interest on such Series 2016 Bond or such portion thereof shall cease to accrue from the date fixed for redemption, and from and after such date such Series 2016 Bond or the portion thereof duly called for redemption shall no longer be entitled to any benefit or security under this Indenture, except as to the right of the Owner thereof to receive payment of such redemption price. If a portion of any Series 2016 Bond shall be called for redemption, a new Series 2016 Bond or Series 2016 Bonds of the same series in principal amount equal to the unredeemed portion thereof will be issued to the Owner upon the surrender thereof. If less than all the Series 2016 Bonds of any Series and maturity shall be

called for redemption, the particular Series 2016 Bonds or portions of Series 2016 Bonds to be redeemed shall be selected by lot by the Trustee in such manner as the Trustee in its discretion may deem fair and proper; provided, however, that the portion of any Series 2016 Bond of a denomination larger than the minimum denomination may be redeemed in the principal amount of such minimum denomination or an integral multiple thereof and that for purposes of selection and redemption, any such Series 2016 Bond shall be considered to be that number of separate Series 2016 Bonds of such minimum denomination which is obtained by dividing the principal amount of such Series 2016 Bond by such minimum denomination. In addition, the Trustee shall send a second notice of redemption not more than ninety (90) days subsequent to the redemption date to Series 2016 Bondowners of Series 2016 Bonds or portions thereof redeemed but who failed to deliver such Series 2016 Bonds for redemption prior to the 60th day following such redemption date. Failure to give all or any portion of such further notice shall not in any manner defeat the effectiveness of the call for redemption.

If at the time of mailing of any notice of redemption there shall not be on deposit with the Trustee moneys sufficient to redeem all the Series 2016 Bonds called for redemption, such notice shall state that such redemption is subject to the deposit of the redemption moneys with the Trustee not later than the opening of business on the redemption date and that such notice shall be of no effect unless such moneys are so deposited.

Upon receipt by the Trustee of notice that the Agency intends to exercise its option to cause redemption of the Series 2016 Bonds, the Trustee will give prompt written notice to each Bondowner in accordance with this Indenture. Such notice will specify (among other things) the redemption date and the place of redemption, and will state that interest will cease accrue on the Series 2016 Bonds from and after the redemption date if moneys sufficient to effect such redemption are on deposit with the Trustee on the redemption date.

#### Section 2.4 Perfection of Security Interest.

(a) The Indenture creates a valid and binding pledge and assignment of security interest in all of the Pledged Revenues pledged under the Indenture in favor of the Trustee as security for payment of the Series 2016 Bonds, enforceable by the Trustee in accordance with the terms thereof.

(b) Under the laws of the State, such pledge and assignment and security interest is automatically perfected by Section 11-14-501, Utah Code Annotated 1953, as amended, and is and shall have priority as against all parties having claims of any kind in tort, contract, or otherwise hereafter imposed on the Revenues.

Section 2.5 Book-Entry System.

(a) Except as provided in paragraphs (b) and (c) of this Section 2.5 the Registered Owner of all Series 2016 Bonds shall be, and the Series 2016 Bonds shall be registered in the name of Cede & Co. (“Cede”), as nominee of The Depository Trust Company, New York, New York (together with any substitute securities depository appointed pursuant to paragraph (c)(ii) of this Section 2.5, “DTC”). Payment of the interest on any Series 2016 Bond shall be made in accordance with the provisions of this Indenture to the account of Cede on the Interest Payment Dates for the Series 2016 Bonds at the address indicated for Cede in the registration books of the Bond Registrar.

(b) The Series 2016 Bonds shall be initially issued in the form of a separate single fully registered Bond in the amount of each separate Series and stated maturity of the Series 2016 Bonds. Upon initial issuance, the ownership of each such Series 2016 Bond shall be registered in the registration books of the Agency kept by the Registrar, in the name of Cede, as nominee of DTC. With respect to Series 2016 Bonds so registered in the name of Cede, the Agency, Registrar and any Paying Agent shall have no responsibility or obligation to any DTC participant or to any beneficial owner of any of such Series 2016 Bonds. Without limiting the immediately preceding sentence, the Agency, Registrar and any Paying Agent shall have no responsibility or obligation with respect to (i) the accuracy of the records of DTC, Cede or any DTC participant with respect to any beneficial ownership interest in the Series 2016 Bonds, (ii) the delivery to any DTC participant, beneficial owner or other person, other than DTC, of any notice with respect to the Series 2016 Bonds, including any notice of redemption, or (iii) the payment to any DTC participant, beneficial owner or other person, other than DTC, of any amount with respect to the principal or redemption price of, or interest on, any of the Series 2016 Bonds. The Agency, the Bond Registrar and any Paying Agent may treat DTC as, and deem DTC to be, absolute owner of each Series 2016 Bond for all purposes whatsoever, including (but not limited to) (1) payment of the principal or redemption price of, and interest on, each Series 2016 Bond, (2) giving notices of redemption and other matters with respect to such Series 2016 Bonds and (3) registering transfers with respect to such Bonds. So long as the Series 2016 Bonds are registered in the name of Cede, the Paying Agent shall pay the principal or redemption price of, and interest on, all Series 2016 Bonds only to or upon the order of DTC, and all such payments shall be valid and effective to satisfy fully and discharge the Agency’s obligations with respect to such principal or redemption price, and interest, to the extent of the sum or sums so paid. Except as provided in paragraph (c) of this Section 2.5, no person other than DTC shall receive a Bond evidencing the obligation of the Agency to make payments of principal or redemption price of, and interest on, any such Bond pursuant to this Indenture. Upon delivery by DTC to the Registrar of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede, and subject to the transfer provisions of this Indenture, the word “Cede” in this Indenture shall refer to such new nominee of DTC.

Except as provided in paragraph (c)(iii) of this Section 2.5, and notwithstanding any other provisions of this Indenture, the Series 2016 Bonds may be transferred, in whole but not in part, only to a nominee of DTC, or by a nominee of DTC to DTC or a nominee of DTC, or by DTC or a nominee of DTC to any successor securities depository or any nominee thereof.

(c) (i) DTC may determine to discontinue providing its services with respect to the Series 2016 Bonds at any time by giving written notice to the Agency, the Registrar, and the Paying Agent, which notice shall certify that DTC has discharged its responsibilities with respect to the Series 2016 Bonds under applicable law.

(ii) The Agency, in its sole discretion and without the consent of any other person, may, by notice to the Registrar, terminate the services of DTC with respect to the Series 2016 Bonds if the Agency determines that the continuation of the system of book-entry-only transfers through DTC is not in the best interests of the beneficial owners of the Series 2016 Bonds or the Agency; and the Agency shall, by notice to the Registrar, terminate the services of DTC with respect to the Series 2016 Bonds upon receipt by the Agency, the Registrar, and the Paying Agent of written notice from DTC to the effect that DTC has received written notice from DTC participants having interests, as shown in the records of DTC, in an aggregate principal amount of not less than fifty percent (50%) of the aggregate principal amount of the then outstanding Series 2016 Bonds to the effect that: (1) DTC is unable to discharge its responsibilities with respect to the Series 2016 Bonds; or (2) a continuation of the requirement that all of the outstanding Series 2016 Bonds be registered in the registration books kept by the Registrar in the name of Cede, as nominee of DTC, is not in the best interests of the beneficial owners of the Series 2016 Bonds.

(iii) Upon the termination of the services of DTC with respect to the Series 2016 Bonds pursuant to subsection (c)(ii)(2) hereof, or upon the discontinuance or termination of the services of DTC with respect to the Series 2016 Bonds pursuant to subsection (c)(i) or subsection (c)(ii)(1) hereof the Agency may within 90 days thereafter appoint a substitute securities depository which, in the opinion of the Agency, is willing and able to undertake the functions of DTC hereunder upon reasonable and customary terms. If no such successor can be found within such period, the Series 2016 Bonds shall no longer be restricted to being registered in the registration books kept by the Registrar in the name of Cede, as nominee of DTC. In such event, the Agency shall execute and the Registrar shall authenticate Series 2016 Bond certificates as requested by DTC of like principal amount, maturity and Series, in authorized denominations to the identifiable beneficial owners in replacement of such beneficial owners' beneficial interest in the Series 2016 Bonds.

(iv) Notwithstanding any other provision of this Indenture to the contrary, so long as any Series 2016 Bond is registered in the name of Cede, as nominee of DTC, all payments with respect to the principal or redemption price

of, and interest on, such Series 2016 Bond and all notices with respect to such Series 2016 Bond shall be made and given, respectively, to DTC.

In connection with any notice or other communication to be provided to Holders of Series 2016 Bonds registered in the name of Cede pursuant to this Indenture by the Agency or the Registrar with respect to any consent or other action to be taken by such Holders, the Agency shall establish a record date for such consent or other action by such Holders and give DTC notice of such record date not less than fifteen (15) days in advance of such record date to the extent possible.

Section 2.6 Additional Bonds. No bonds or other obligations or indebtedness payable on a priority basis to the Series 2016 Bonds from the Pledged Revenues shall be issued by the Agency without the prior written consent of the Registered Owners of one hundred percent (100%) of the Series 2016 Bonds. In addition, no Additional Bonds or other indebtedness, bonds, or notes of the Agency payable on a parity with the Series 2016 Bonds herein authorized out of Pledged Revenues shall be created or incurred, unless the following requirements have been met:

(a) No Event of Default shall have occurred and be continuing hereunder on the date of authentication of such Additional Bonds. This paragraph (a) shall not preclude the issuance of Additional Bonds if (i) the issuance of such Additional Bonds otherwise complies with the provisions hereof and (ii) such Event of Default will cease to continue upon the issuance of Additional Bonds and the application of the proceeds thereof; and

(b) A certificate shall be delivered to the Trustee by the Agency to the effect that the Franchise Tax Revenues for any consecutive twelve (12) month period in the twenty-four (24) months immediately preceding the proposed date of issuance of such Additional Bonds were at least equal to two hundred percent (200%) of the maximum Annual Debt Service Requirement on all Bonds and Additional Bonds to be Outstanding following the issuance of the Additional Bonds and any City debt payable from Franchise Tax Revenues on a parity with the pledge of the Contribution Agreement provided, however, that such coverage test set forth above shall not apply to the issuance of any Additional Bonds to the extent (i) they are issued for the purpose of refunding Bonds issued hereunder and (ii) the maximum Annual Debt Service for such Additional Bonds does not exceed the then remaining maximum Annual Debt Service for the Bonds being refunded therewith; and

(c) All payments required by this Indenture to be made into the Bond Fund must have been made in full, and there must be on deposit in each Fund or Account, the full amount required by this Indenture to be accumulated therein at such time.

Section 2.7 City Debt Payable from Franchise Tax Revenues. Pursuant to the Contribution Agreement, the City has reserved the right to issue bonds or other obligations payable on a parity with the lien of the Bonds if the following requirement

has been met: a certificate shall be delivered to the Agency and the Trustee by an authorized representative of the City to the effect that the Franchise Tax Revenues received by the City for any consecutive twelve (12) months in the twenty-four (24) months immediately preceding the proposed date of issuance of such additional bonds or obligations were at least equal to two hundred percent (200%) of the combined maximum Annual Debt Service on the Bonds and the outstanding and proposed bonds or obligations to be issued on a parity with the Bonds and secured by the Franchise Tax Revenues.

## ARTICLE III

### NATURE, DELIVERY AND EXECUTION OF BONDS

Section 3.1 Nature of the Bonds; Limited Obligations of the Agency. The Bonds shall be and are special obligations of the Agency and, except as otherwise specifically provided herein, are secured by an irrevocable and first lien on and pledge of the Pledged Revenues, and are payable as to principal, premium, if any, and interest solely from, said Pledged Revenues as hereinafter provided. The Bonds, the interest thereon, and any premiums payable upon the redemption, if any thereof, are not a debt of the City, the State, of Utah or any of its political subdivisions; and neither the City, the State or any of its political subdivisions is liable for them, and in no event shall the Bonds, such interest or premium be payable out of any funds or properties other than those of the Agency as in this Indenture set forth. The Bonds do not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction. Neither the members of the Agency nor any persons executing the Bonds are liable personally on the Bonds by reason of their issuance. The Bonds shall be and are equally secured by an irrevocable pledge of the Pledged Revenues and other funds as hereinafter provided, without priority for series, number, date of sale, date of execution, or date of delivery. Nothing in this Indenture shall preclude the payment of the Bonds from the proceeds of refunding bonds issued pursuant to law. Except as hereinabove set forth, nothing in this Indenture shall prevent the Agency from making advances of its own legally available funds, at its sole discretion, howsoever derived, to any of the uses and purposes mentioned in this Indenture and to the extent the Agency advances other funds for payments hereunder such payment shall offset any requirement to use Pledged Revenues for such payments hereunder.

Section 3.2 Issuance and Delivery of Bonds. After their authorization by the Agency, Bonds may be executed by or on behalf of the Agency and delivered to the Trustee for authentication and, upon compliance by the Agency with the requirements of Section 3.3, the Trustee shall thereupon authenticate and deliver such Bonds to or upon the order of the Agency.

Section 3.3 Conditions Precedent to Delivery of Bonds. The Bonds shall be authenticated and delivered upon the order of the Agency, but only upon the receipt by the Trustee of:

(a) a copy of (i) this Indenture, including any supplemental indenture related to any Series of Additional Bonds, executed by the Agency and the Trustee and (ii) the Contribution Agreement or any supplement thereto executed by the Agency and the City.

(b) a bond counsel's opinion to the effect that this Indenture, has been duly authorized, executed and delivered by the Agency and is valid and binding upon the Agency and upon the execution, authentication, and delivery thereof, the Bonds will have been duly and validly authorized and issued in accordance with this Indenture;

(c) a written order as to the delivery of the Bonds, signed by the Executive Director of the Agency; and

(d) evidence of the receipt by the Trustee of the amount of the proceeds of the Bonds to be deposited with the Trustee pursuant to this Indenture, or any supplemental indenture related to any Series of Additional Bonds, which shall be conclusively established by the executed certificate of the Trustee so stating.

Section 3.4 Registration, Transfer, and Exchange Recordkeeping. The Agency shall cause books for the registration or transfer of the Bonds of any Series to be kept at the principal corporate trust office of the Trustee and hereby appoints the Trustee to act as its registrar and transfer agent to keep such books and to make such registration and transfers. Upon surrender for transfer of any Bond at the principal corporate trust office of the Trustee, the Agency shall execute and the Trustee shall authenticate and deliver in the name of the transferee or transferees, a new Bond or Bonds of authorized denomination for the aggregate principal amount which the registered Owner is entitled to receive. Bonds of authorized denominations may be exchanged for Bonds of other authorized denominations of the same maturity, Series, and interest rate upon request of the Owner thereof.

All Bonds presented for transfer, exchange, or payment shall be accompanied by a written instrument or instruments of transfer or authorization for exchange, in form and with guaranty of signature reasonably satisfactory to the Trustee, duly executed by the registered Owner or by his duly authorized attorney.

New Bonds delivered upon any transfer or exchange shall be valid obligations of the Agency, evidencing the same debt as the Bonds surrendered, shall be secured by, and entitled to all of the security and benefits hereof to the same extent as the Bonds surrendered. No service charge shall be made for any exchange, transfer or registration of Bonds, but the Agency may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto. The Agency and the Trustee shall not be required (a) to issue, transfer, or exchange Bonds from the Record Date next preceding any Interest Payment Date through and including such Interest Payment Date or (b) to transfer or exchange any Bonds called for redemption or selected for call for redemption.

Section 3.5 Execution of Bonds. Bonds of any Series shall be signed on behalf of the Agency by its Executive Director by his/her manual or facsimile signature and attested by the City Recorder of the City by his/her manual or facsimile signature, and the seal of the Agency shall be impressed, imprinted, or reproduced thereon and delivered to the Trustee for authentication. In case any one or more of the officers or employees who shall have signed or sealed any of the Bonds shall cease to be an officer or employee before the Bonds so signed and sealed shall have been actually delivered, such Bonds may, nevertheless, be delivered as herein provided, and may be issued as if the person who signed or sealed such Bonds had not ceased to hold such office or be so employed. Any Bond may be signed and sealed on behalf of the Agency by such persons as at the

actual time of execution of such Bond shall be duly authorized or hold the proper office in or employment by the Agency, although at the time of the issuance of the Bonds of such Series such persons may not have been so authorized or held such office or employment.

The proceeds of the Bonds, including accrued interest thereon to the date of delivery, shall be paid over to the Trustee and deposited to the credit of various funds created under this Indenture.

Section 3.6 Authentication. The Bonds of any Series shall bear thereon a certificate of authentication in the form set forth on the form of the Bonds, to be manually executed by the Trustee or by any other duly authorized authenticating agent. No Bond shall be valid for any purpose or entitled to any benefit or right hereunder, until the certificate of authentication shall have been duly executed manually by the Trustee or such other authenticating agent, and such authentication shall be conclusive proof that such Bond has been duly authenticated and delivered under this Indenture and that the Owner thereof is entitled to the benefits of this Indenture.

Section 3.7 Mutilated, Destroyed, Lost, or Stolen Bond. If any Bond shall become mutilated, the Agency shall deliver a new Bond of like tenor and denomination in exchange and substitution for the Bond so mutilated, but only upon the Agency being furnished such reasonable indemnity as it may require therefor. If any Bond shall be reported lost, stolen, or destroyed, evidence as to the ownership thereof and the loss, theft or destruction thereof shall be submitted to the Agency; and if such evidence and indemnity shall be satisfactory to the Agency, the Agency shall execute, and thereupon the Trustee shall authenticate and deliver a new Bond of like Series, tenor, and denomination bearing the same number and prefix as the original Bond, but carrying such additional marking as will enable the Trustee to identify such Bond as a substituted Bond. The cost of providing any substitute Bond under the provisions of this Section shall be borne by the Bondowner for whose benefit such substitute Bond is provided. If a mutilated, lost, stolen, or destroyed Bond shall have matured or be about to mature, the Trustee shall pay to the Bondowner the principal amount of such Bond upon the maturity thereof and the compliance with the aforesaid conditions by such owner, without the issuance of a substitute Bond therefor, and likewise pay to the Bondowner thereof the amount of accrued and unpaid interest to the maturity date. Every substitute Bond issued pursuant to this Section 3.7 shall constitute an additional contractual obligation of the Agency, whether or not the Bond alleged to have been destroyed, lost, or stolen shall be at any time enforceable by anyone, and shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Bonds duly issued hereunder, to the same extent as the Bond for which it has been substituted. All Bonds shall be held and owned upon the express condition that the foregoing provisions are exclusive with respect to the replacement or payment of mutilated, destroyed, lost, or stolen Bonds, and shall preclude any and all other rights or remedies, notwithstanding any law or statute existing or hereafter enacted to the contrary with respect to the replacement or payment of negotiable instruments or investment or other securities without their surrender.

ARTICLE IV

ESTABLISHMENT OF FUNDS AND ACCOUNTS; DISPOSITION OF PROCEEDS;  
APPLICATION OF FUNDS

Section 4.1 Establishment of Funds and Accounts, Disposition of Proceeds.

(a) The following funds and accounts to be held by the Trustee are hereby established:

- (i) a Bond Fund;
- (ii) a Refunding Fund;
- (iii) a Cost of Issuance Fund; and
- (iv) a Rebate Fund

(b) The proceeds from the sale of the Series 2016 Bonds in the amount of \$\_\_\_\_\_ (representing the principal amount of the Series 2016 Bonds, plus an original issue premium of \$\_\_\_\_\_, and less an Underwriter's discount of \$\_\_\_\_\_), shall be used or deposited on the date of issuance of the Series 2016 Bonds as follows:

- (i) An amount equal to \$\_\_\_\_\_ shall be deposited by the Trustee into the Costs of Issuance Fund; and
- (ii) The remaining amount shall be deposited to the Refunding Fund and used to refund in their entirety the outstanding Refunded Bonds.

Section 4.2 Franchise Tax Revenues. Pursuant to the Contribution Agreement, the City has covenanted that it will account for the Franchise Tax Revenues separate and apart from the other funds of the City and to pay to the Agency such amounts of the Franchise Tax Revenues as are needed to make payments of principal and interest on the Bonds. Following payment to the Agency of amounts sufficient for such Bond payments, the City may use its Franchise Tax Revenues for any other lawful purpose.

Section 4.3 Bond Fund. At least 15 days prior to each Interest Payment Date the Agency shall cause Pledged Revenues to be deposited in the Bond Fund in amounts sufficient to pay all principal, interest and premium, if any, on the Bonds payable on such Interest Payment Date. On or before each Interest Payment Date, the Trustee shall withdraw sufficient moneys from the Bond Fund to pay all payments of principal, interest, and premium, if any, then coming due on the Series 2016 Bonds and shall transfer such moneys to the Paying Agent.

Section 4.4 Cost of Issuance Fund. Moneys on deposit in the Cost of Issuance Fund shall be used to pay costs of issuance of the Series 2016 Bonds upon receipt of a Cost of Issuance Disbursement Request in substantially the form attached hereto as

Exhibit C and approved by the Executive Director of the Agency. Any moneys remaining on deposit in the Cost of Issuance Fund on or after ninety (90) days following the initial deposit therein, shall be transferred to the Bond Fund.

Section 4.5 Rebate Fund. In the event a Series of Bonds is subject to the arbitrage rebate requirements of the Code, the Trustee shall establish and thereafter maintain, so long as the Bonds are Outstanding, a Rebate Fund, which shall be held separate and apart from all other funds and accounts established under this Indenture and from all other moneys of the Trustee. All amounts in the Rebate Fund, including income earned from investment of the fund, shall be held by the Trustee free and clear of the lien of this Indenture.

Section 4.6 Deposit and Investment of Moneys in Funds and Accounts. Moneys held by the Trustee in the Bond Fund, the Costs of Issuance Fund, and the Rebate Fund, and Accounts therein, may be invested in Permitted Investments as directed by the Agency, subject to the following restrictions:

(a) Moneys in the Rebate Fund shall be invested only in obligations which will by their terms mature not later than the dates the Agency estimates the moneys represented by the particular investment will be needed for withdrawal from the accounts within such funds. Investment earnings attributable to moneys held in the Rebate Fund shall be held in the related accounts within the Rebate Fund.

(b) Moneys in the Bond Fund shall be invested only in obligations which will by their terms mature on such dates as to insure that before each Interest Payment Date there will be in the Bond Fund, from matured obligations and other moneys already in such fund, cash equal to the interest and principal payable on such date with respect to the Bonds. Obligations purchased as an investment of moneys in said Funds shall be deemed at all times to be a part of such Funds and any loss resulting from any such authorized investment shall be charged to such Funds without liability to the Agency or the members and officers thereof or to the Trustee. The interest accruing on such investments and any gain realized from such investments shall be held and deposited in the Bond Fund.

(c) The Agency or the Trustee, upon direction of the Agency, shall sell at the best price obtainable or present for redemption any obligation so purchased whenever it shall be necessary to do so in order to provide moneys to meet any payment or transfer from such fund as required by this Indenture. For the purpose of determining at any given time the balance in any such fund any such investment constituting a part of such fund shall be valued at the then estimated or appraised market value of such investment.

(d) The Agency acknowledges that to the extent regulations of the comptroller of the currency or any other regulatory entity grant the Agency the right to receive brokerage confirmations of the security transactions as they occur, the Agency specifically waives receipt of such confirmations to the extent

permitted by law. The Trustee will furnish the Agency periodic cash transaction statements which include the detail for all investment transactions made by the Trustee hereunder.

## ARTICLE V

### PLEDGED REVENUES; AGENCY COVENANTS

Section 5.1 Pledged Revenues. The Pledged Revenues are hereby irrevocably pledged to the payment of the principal of, interest on, and premium payable upon redemption of the Bonds and until all of said Bonds and all interest thereon, have been paid (or until moneys for that purpose have been irrevocably set aside) and the Pledged Revenues (except as otherwise specifically provided in this Indenture) shall be applied solely to the payment of said Bonds, the interest thereon, and premium, if any.

Section 5.2 Covenants of the Agency. The Agency shall preserve and protect the security of the Bonds and the rights of the Bondowners and defend their rights against all claims and demands of all persons. Until such time as an amount has been set aside sufficient to pay at maturity, or redemption prior to maturity, all outstanding Bonds, plus unpaid interest thereon to maturity, or to the redemption date, and any redemption premium, the Agency will maintain its existence and organization and (through its proper members, officers, agents, or employees) faithfully perform and abide by all of the covenants, undertakings, and provisions contained in this Indenture or in any Bond issued hereunder, including the following covenants and agreements for the benefit of the Bondowners;

(a) The Agency covenants and agrees that it will duly and punctually pay or cause to be paid the principal of and interest on each of the Bonds issued hereunder together with the premium thereon if any be payable on the date, at the place and in the manner provided in said Bonds, but solely from the Pledged Revenues and other funds as herein provided.

(b) The Agency covenants and agrees that it will at all times keep, or cause to be kept, proper and current books and accounts (separate from all other records and accounts) in which complete and accurate entries shall be made of all transactions relating to the Pledged Revenues and other funds herein provided for, and will cause the City to prepare within 180 days after the close of each of its fiscal years a complete financial statement or statements for such year in reasonable detail covering Pledged Revenues and other funds and certified by a certified public accountant or firm of certified public accountants selected by the Agency, and will furnish a copy of such statement or statements to the Trustee, upon request, each year. Any Registered Owner, upon reasonable request, may inspect all books, records, accounts, funds, or items related to the Bonds hereunder. The Trustee shall have no duty to review or retain said financial statements when received.

(c) The Agency covenants and agrees that it will comply with all requirements and conditions of the Agency in the Contribution Agreement and that it will cooperate with the City in accomplishing the objectives and purposes of the Contribution Agreement.

## ARTICLE VI

### TRUSTEE AND PAYING AGENT

Section 6.1 Appointment of Trustee and Paying Agent. The Agency hereby appoints U.S. Bank National Association, Salt Lake City, Utah, as Trustee to act as the agent and depository of the Agency for the purpose of receiving the proceeds of the Bonds, the Pledged Revenues and other funds as provided in this Indenture, to hold, allocate, use, and apply such Pledged Revenues and other funds as provided in this Indenture, and to perform such other duties and powers of the Trustee as are prescribed in this Indenture and to act as Paying Agent hereunder and [U.S. Bank National Association] hereby accepts the same and the trusts and duties created hereby and agrees to perform said trusts as a corporate trustee ordinarily would perform said trusts under a corporate indenture, but no implied covenants or obligations shall be read into this Indenture against the Trustee. The Agency may appoint additional Paying Agents as shall be reasonably necessary to carry out the provisions of this Indenture.

Section 6.2 Removal and Resignation of Trustee. The Trustee may be removed at any time by an instrument or concurrent instruments (i) in writing delivered to the Trustee, and signed by the Agency, unless there exists any Event of Default or (ii) in writing delivered to the Trustee and the Agency, and signed by the owners of not less than sixty percent (60%) in aggregate principal amount of the Bonds then outstanding if an Event of Default exists; provided that such instrument or instruments concurrently appoint a successor thereto. Any successor shall be a bank or trust company doing business and having an office in the State, having a combined capital, surplus and undivided profits of at least \$25,000,000. The Trustee herein appointed or any substituted Trustee may at any time resign as such in writing filed with the Agency in which event the Agency shall forthwith appoint a substitute Trustee meeting the requirements set forth in the preceding sentence and the resignation of the Trustee shall become effective only upon such appointment and acceptance by such substitute Trustee. In the event that the Trustee or any successor becomes incapable of acting as such the Agency shall forthwith appoint a substitute Trustee. Any bank or trust company into which the Trustee may be converted or merged or with which it may be consolidated or to which it may transfer its corporate trust business shall become the Trustee without action of the Agency. If no successor Trustee shall have been appointed and have accepted appointment within 45 days of giving of removal or notice of resignation as aforesaid, the incumbent Trustee, the Agency or any Bondowner (on behalf of himself and all other Bondowners) may petition any court of competent jurisdiction for the appointment of a successor Trustee, and such court may thereupon, after such notice (if any) as it may deem proper, appoint such successor Trustee.

#### Section 6.3 Responsibility of Trustee.

(a) The Trustee shall not be accountable for the use of the proceeds of any Bonds authenticated or delivered hereunder. A Trustee may become the owner of any of the Bonds authorized by this Indenture with the same rights it would have had if it were not the Trustee.

(b) The Trustee shall have a duty or obligation to assist in and/or enforce the collection of or to exercise diligence in the enforcement of the collection of funds assigned to it hereunder, if notified in writing by the Owners of not less than twenty-five percent (25%) in aggregate principal amount of the Bonds then outstanding (exclusive of Bonds, if any, owned by the Agency), and provided indemnification as provided in Section 6.3(j).

(c) The recitals of fact and all promises, covenants, and agreements herein and in the Bonds shall be taken as statements, promises, covenants, and agreements of the Agency, and the Trustee assumes no responsibility for the correctness of the same, and makes no representations as to the validity or sufficiency of this Indenture or of the Bonds, and shall incur no responsibility in respect thereof, other than in connection with the duties or obligations herein or in the Bonds assigned to or imposed upon the Trustee. The Trustee shall not be liable in connection with the performance of its duties hereunder, except for its own gross negligence or willful misconduct.

(d) The Trustee may execute any of the trusts or powers hereof and perform any of its duties by or through attorneys or employees but shall not be answerable for the conduct of the same appointed in accordance with the standard specified herein, and shall be entitled to advice of counsel concerning all matters of trusts hereof and the duties hereunder, and may in all cases pay such reasonable compensation to all such attorneys, agents, receivers, and employees as may reasonably be employed in connection with the trusts hereof. The Trustee may act upon the opinion or advice of any attorney (who may be counsel for the Agency). The Trustee shall not be responsible for any loss or damage resulting from any action or non-action in good faith in reliance upon such opinion or advice.

(e) The Trustee shall not be responsible for any recital herein, or in the Bonds (except in respect to the certificate of authentication of the Trustee endorsed on the Bonds), or for the validity of the execution by the Agency of this Indenture, any supplemental indenture or of any supplements thereto or instruments of further assurance, and the Trustee shall not be bound to ascertain or inquire as to the performance or observance of any covenants, conditions, or agreements on the part of the Agency. The Trustee shall not be responsible or liable for any loss suffered in connection with any investment of funds made by it in accordance with the provisions of this Indenture.

(f) The Trustee shall be protected in acting upon any notice, request, consent, certificate, order, affidavit, letter, telegram, or other paper or document believed to be genuine and correct and to have been signed or sent by the proper person or persons. Any action taken by the Trustee pursuant to this Indenture or any supplemental indenture upon the request or authority or consent of any person who at the time of making such request or giving such authority or consent is the Owner of any Bond shall be conclusive and binding upon all future Owners of the same Bond and upon Bonds issued in exchange therefor or in place thereof.

(g) As to the existence or non-existence of any fact or as to the sufficiency or validity of any instrument, paper or proceeding, the Trustee shall be entitled to rely upon a certificate signed on behalf of the Agency by its Authorized Representative as sufficient evidence of the facts therein contained and prior to the occurrence of a default of which the Trustee has been notified as provided in subsection (h) of this Section, or of which by said subsection it is deemed to have notice, shall also be at liberty to accept a similar certificate to the effect that any particular dealing, transaction or action is necessary or expedient, but may at its discretion secure such further evidence deemed necessary or advisable, but shall in no case be bound to secure the same. The Trustee may accept a certificate of the Authorized Representative of the Agency under its seal to the effect that a resolution in the form therein set forth has been adopted by the Agency as conclusive evidence that such resolution has been duly adopted, and is in full force and effect.

(h) The Trustee shall not be required to take notice or be deemed to have notice of any event of default hereunder (other than payment of the principal of and interest on the Bonds) unless the Trustee shall be specifically notified in writing of such default by the Agency or by any Owners of any Bonds then Outstanding, and all notices or other instruments required by this Indenture to be delivered to the Trustee must, in order to be effective, be delivered at the principal corporate trust office of the Trustee, and in the absence of such notice so delivered the Trustee may conclusively assume there is no default except as aforesaid.

(i) The Trustee shall not be required to give any bond or surety in respect of the execution of the trusts and powers or otherwise in respect of the premises conferred upon the Trustee by this Indenture and any Supplemental Indenture.

(j) The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request, order, or direction of any of the Registered Owners, pursuant to the provisions of this Indenture, unless such Registered Owners, shall have offered to the Trustee security or indemnity satisfactory to the Trustee against the costs, expenses, and liabilities which may be incurred therein or thereby.

#### Section 6.4 Permitted Acts and Functions.

(a) At any and all reasonable times and upon reasonable prior written notice, the Trustee, and its duly authorized agents, attorneys, experts, engineers, accountants, and representatives, shall have the right fully to inspect any and all of the books, papers, and records of the Agency pertaining to the Bonds, and to take such memoranda from and in regard thereto as may be desired.

(b) Notwithstanding anything elsewhere in this Indenture contained, the Trustee shall have the right, but shall not be required, to demand, in respect of

the authentication of any Bonds, the withdrawal of any cash, the release of any property, or any action whatsoever within the purview of this Indenture, any showings, certificates, opinions, appraisals, or other information, or action or evidence thereof, in addition to that by the terms hereof required as a condition of such action by the Trustee, deemed desirable for the authentication of any Bonds, the withdrawal of any cash, or the taking of any other action by the Trustee.

(c) Before taking any action under this Article or Article X, the Trustee may require that an indemnity bond satisfactory to the Trustee be furnished for the reimbursement of all expenses to which it may be put and to protect it against all liability, except liability which is adjudicated to have resulted from its negligence or willful misconduct in connection with any action so taken.

(d) All moneys received by the Trustee or the Paying Agent shall, until used or applied or invested as herein provided, be held in trust for the purposes for which they were received but need not be segregated from other funds except to the extent required by law. Neither the Trustee nor the Paying Agent shall be under any liability for interest on any moneys received hereunder except such as may be agreed upon.

(e) If any event of default under this Indenture exists and is continuing, then the Trustee shall exercise such of the rights and powers vested in it by this Indenture and shall use the same degree of care as a “prudent man” would exercise or use in the circumstances in the conduct of his own affairs.

(f) No provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights and powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

(g) The resolutions, ordinances, opinions, certificates, and other instruments provided for in this Indenture may be accepted by the Trustee as conclusive evidence of the facts and conclusions stated therein and shall be full warrant, protection and authority to the Trustee for the withdrawal of cash hereunder and for the taking or omitting to take of any other action required under this Indenture.

Section 6.5 Compensation. The Trustee shall be entitled to payment and/or reimbursement for reasonable fees for its services rendered hereunder and all advances, counsel fees and other expenses reasonably and necessarily made or incurred by the Trustee in connection with such services as provided under this Indenture. The Trustee shall also be entitled to payment and reimbursement for the reasonable fees and charges of the Trustee as Paying Agent and Registrar for the Bonds.

## ARTICLE VII

### AMENDMENTS AND SUPPLEMENTAL INDENTURES

Section 7.1 Amendments and Supplemental Indentures without Consent of Bondowners. Without notice to or consent of the Owners of any Bonds, the Agency and the Trustee may, from time to time and at any time, enter into such indentures supplemental hereto as shall not be inconsistent with the general terms and provisions hereof (which supplemental indentures shall thereafter form a part hereof), (a) to cure any ambiguity or formal defect or omission in this Indenture or in any supplemental indenture, (b) to grant to or confer upon the Trustee for the benefit of the Bondowners any additional rights, remedies, powers, authority, or security that may lawfully be granted to or conferred upon the Bondowners or the Trustee, (c) to make any other change or modification which is not materially adverse to the interests of the Owners of any of the Bonds Outstanding, and (d) to issue Additional Bonds pursuant to Section 2.6 herein or City Obligation pursuant to Section 2.7 herein.

Section 7.2 Amendments with Consent of Bondowners. This Indenture, and the rights and obligations of the Agency and of the Owners of the Bonds issued hereunder, may be modified or amended at any time by supplemental indentures entered into by the Agency and the Trustee with the consent of Bondowners holding at least sixty percent (60%) in aggregate principal amount of the Outstanding Bonds affected by such amendment or supplement, exclusive of Bonds, if any, held by the Agency or the City, and obtained as hereinafter set forth; provided, however, that no such modification or amendment shall, without the express consent of the Owner of the Bond affected, reduce the principal amount of any Bond, reduce the interest rate payable thereon, make any Bond redeemable prior to its maturity except as otherwise provided in this Indenture, reduce the premium payable upon redemption, extend its maturity or the times for paying interest thereon or change the monetary medium in which principal and interest is payable, nor shall any such modification or amendment reduce the percentage of consent required for amendment or modification. Any act done pursuant to a modification or amendment so consented to shall be binding upon the Owners of all of the Bonds of a designated series, and shall not be deemed an infringement of any of the provisions of this Indenture or of the Redevelopment Act, whatever the character of such act may be, and may be done and performed as fully and freely as if expressly permitted by the terms of this Indenture, and after such consent relating to such specified matters has been given, no Bondowner, shall have any right or interest to object to such action or in any manner to question the propriety thereof or to enjoin or restrain the Agency or any officer thereof from taking any action pursuant thereto. If the Agency shall desire to obtain any such consent, it shall cause notice to be mailed to the Owners of the Bonds at their last addresses as shown on the registration books maintained by the Trustee. Such notice shall briefly set forth the nature of the proposed supplemental indenture and shall state that a copy thereof is on file at the office of the Trustee for inspection by all Bondowners. Whenever at any time the Agency shall receive an instrument or instruments purporting to be executed by the Owners of not less than sixty percent (60%) in aggregate principal amount of the Bonds affected by such action then Outstanding (exclusive of Bonds, if any, owned by the Agency or the City), which instrument or instruments shall refer to the

proposed supplemental indentures described in such notice, and shall specifically consent to and approve the execution thereof in substantially the form of the copy thereof referred to in such notice as on file with the Trustee, thereupon, but not otherwise, the Agency and the Trustee may enter into such supplemental indentures in substantially such form without liability or responsibility to any Owner of any Bonds, whether or not such Owner shall have consented thereto. Upon the execution by the Agency and the Trustee of any supplemental indenture pursuant to the provisions of this Section, this Indenture shall be, and be deemed to be, modified and amended in accordance therewith, and the respective rights, duties, and obligations under this Indenture shall thereafter be determined, exercised, and enforced hereunder, subject in all respects to such modifications and amendments.

## ARTICLE VIII

### PROCEEDINGS CONSTITUTE CONTRACT

The provisions of this Indenture and of any supplemental indenture supplementing or amending this Indenture shall constitute a contract between the Agency and the Bondowners and the provisions thereof shall be enforceable by the Trustee (or if, after notice as provided herein has been given to the Trustee and the Trustee refuses to undertake enforcement, by the Bondowner) for the equal benefit and protection of all Bondowners similarly situated by mandamus or any other suit, action, or proceeding at law or in equity that is now or may hereafter be authorized under the laws of the State of Utah in any court of competent jurisdiction.

## ARTICLE IX

### DEFEASANCE

If the Agency shall pay or cause to be paid, or shall have made provisions to pay, or there shall have been set aside in trust, funds to pay, to the Owners of the Bonds, the principal, interest, and premium, if any, to become due thereon, then the pledge of the Trust Estate (including the Pledged Revenues) with respect to such Bonds and all other rights granted hereby, shall thereupon cease, terminate and become void and be discharged and satisfied. Bonds for the payment and discharge of which upon maturity or time of prior redemption, provision has been made through the setting apart in a fund created pursuant to this Indenture or otherwise to insure the payment thereof, of money sufficient for the purpose or through the irrevocable segregation for that purpose in some fund of moneys sufficient therefor, including, but not limited to, investment income earned or to be earned on direct obligations of the United States of America or bonds or other obligations for which the full faith and credit of the United States of America are pledged for the payment of principal and interest, shall, as provided herein, no longer be deemed to be Outstanding and unpaid; provided, however, that, if the maturity date or the date for prior redemption of any such Bonds shall not have arrived, provision shall have been made by the Agency by deposit for the payment to the Owner of any such Bonds, upon surrender thereof on or after the applicable date, of the full amount to which they would be entitled by way of principal or interest to the date of such maturity or prior redemption, including in the computation of said full amount any income to be earned by way of investment of said deposit, as provided below, and provision shall have been made by the Agency, for mailing of a notice to the Owners of such Bonds that such moneys are or will be available for such payment. Moneys held for payment in accordance with the provisions of this Section shall be invested in direct obligations of the United States of America, or bonds or other obligations for which the full faith and credit of the United States of America are pledged for the payment of principal and interest, to mature or be withdrawable, as the case may be, not later than the time when needed for such payment. Notwithstanding anything to the contrary, if any deposit of funds as contemplated by this Article relies upon investment income to accomplish the defeasance of any Bonds, such deposit shall be accompanied by a standard form verification report of a certified public accountant or firm of certified public accountants.

## ARTICLE X

### DEFAULT PROVISIONS AND REMEDIES

Section 10.1 Events of Default. Each of the following events is hereby declared to constitute an “Event of Default” hereunder:

(a) Failure to make due and punctual payment of the interest and/or principal of, or premium, if any, on, any Bond, whether at the stated maturity thereof or upon proceedings for redemption thereof; or

(b) Failure to perform or observe any other of the covenants, agreements, or conditions on the part of Agency in this Indenture, which failure shall continue for a period of thirty (30) days after written notice from the Trustee specifying such failure and requesting that it be remedied is given to the Agency, unless (i) the Trustee shall agree in writing to an extension of such period prior to its expiration, (ii) during such thirty (30) day period or any extension thereof, the Agency has commenced and is diligently pursuing appropriate corrective action, or (iii) the Agency is by reason of force majeure at the time prevented from performing or observing the agreement or covenant with respect to which it is delinquent or in breach. The term force majeure as used herein means any condition or event beyond the reasonable control of the Agency.

Section 10.2 Remedies. Upon the occurrence of any Event of Default, the Trustee shall have the following enforcement remedies:

(a) The Trustee shall have a right in addition to all other rights afforded it by the laws of the State, to apply to and obtain from any court of competent jurisdiction such decree or order, including mandamus and or specific performance, as may be necessary to require the officials of the Agency to remit Pledged Revenues to meet all requirements of this Indenture, including the right to require the Agency to account as if it were the trustee of an express trust for the owners of the Bonds.

(b) The Trustee may, in addition or as an alternative, pursue any available remedy by suit at law or in equity to enforce the provisions of this Indenture. Any judgment against the Agency shall be enforceable only against the Trust Estate and there shall not be authorized any judgment of any nature against any other funds or properties of the Agency or the City. The Trustee agrees to enforce by mandamus, suit, or other proceeding at law or equity, the covenants and agreements of the Agency.

(c) The Trustee shall have the right to recover all reasonable fees, costs, and economic and compensatory damages (including, but not limited to attorneys’ fees).

No remedy provided herein is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Trustee or to any Bondowner hereunder or now or hereafter existing at law or in equity.

No delay or omission to exercise any right or power accruing upon any default or Event of Default shall impair any such right or power or shall be construed to be a waiver of any such default or Event of Default or acquiescence therein and such right and power may be exercised as often as may be deemed expedient. Every substantive right and every remedy conferred upon the Trustee or the Bondowners may be enforced and exercised as often as may be deemed expedient.

No waiver of any default or breach of duty or contract by the Trustee or any Bondowner shall affect any subsequent default or breach of duty or contract or shall impair any rights or remedies on said subsequent default or breach.

In case any suit, action, or proceeding to enforce any right or exercise any remedy shall be brought or taken and should said suit, action, or proceeding be abandoned, or be determined adversely to the Trustee or the Bondowners, then, and in every such case, the Trustee and the Bondowners shall be restored to their former positions, rights, and remedies as if such suit, action, or proceeding had not been brought or taken.

Section 10.3 Application of Moneys. All moneys received by the Trustee pursuant to any right given or action taken under the provisions of this Article shall, after payment of the cost and expenses of the proceedings resulting in the collection of such moneys and of the expenses, liabilities, fees, and advances incurred or made by the Trustee, be deposited in the Bond Fund and all moneys so deposited in the Bond Fund shall be applied in the following order:

(a) To the payment of the principal of, premium, if any, and interest then due and payable on the Bonds as follows:

(i) Unless the principal of all the Bonds shall have become due and payable, all such moneys shall be applied:

FIRST—To the payment to the persons entitled thereto of all installments of interest then due on the Bonds, in the order of the maturity of the installments of such interest and, if the amount available shall not be sufficient to pay in full any particular installment, then to the payment ratably, according to the amounts due on such installment, to the persons entitled thereto, without any discrimination or privilege; and

SECOND—To the payment to the persons entitled thereto of the unpaid principal of and premium, if any, on the Bonds which shall have become due (other than Bonds called for redemption for the payment of which moneys are held pursuant to the provisions hereof), in the order of their due dates, and, if the amount available

shall not be sufficient to pay in full all the Bonds, then to the payment ratably, according to the amount of principal due on such date, to the persons entitled thereto without any discrimination or privilege.

(ii) If the principal of all the Bonds shall have become due and payable, all such moneys shall be applied to the payment of the principal and interest then due and unpaid upon the Bonds, without preference or priority of principal over interest or of interest over principal, or of any installment of interest over any other installment of interest, or of any Bond over any other Bond, ratably, according to the amounts due respectively for principal and interest, to the persons entitled thereto without any discrimination or privilege.

Whenever moneys are to be applied pursuant to the provisions of this Section, such moneys shall be applied at such times, and from time to time, as the Trustee shall determine, having due regard to the amounts of such moneys available for such application and the likelihood of additional moneys becoming available for such application in the future. Whenever the Trustee shall apply such funds, it shall fix the date (which shall be an interest payment date unless it shall deem another date more suitable) upon which such application is to be made and upon such date interest on the amounts of principal paid on such dates shall cease to accrue.

Section 10.4 Waivers of Events of Default. The Trustee may in its discretion waive any Event of Default hereunder and its consequences and shall do so upon the written request of the Registered Owners of a majority in aggregate principal amount of all the Bonds then Outstanding; provided, however, that there shall not be waived (A) any default in the payment of the principal of any Bonds at the date that a principal installment is due, or (B) any default in the payment when due of the interest on any such Bonds, unless prior to such waiver or rescission, all arrears of interest, with interest (to the extent permitted by law) at the rate borne by the Bonds in respect of which such Event of Default shall have occurred on overdue installments of interest and all arrears of payments of Principal and premium, if any, when due and all expenses of the Trustee, in connection with such Event of Default shall have been paid or provided for, and in case of any such waiver or rescission, or in case any proceeding taken by the Trustee on account of any such Event of Default shall have been discontinued or abandoned or determined adversely, then and in every such case the Agency, the Trustee, the Registered Owners shall be restored to their former positions and rights hereunder, respectively, but no such waiver or rescission shall extend to any subsequent or other Event of Default, or impair any right consequent thereon.

Section 10.5 Cooperation of Agency. In the case of any Event of Default hereunder, the Agency shall cooperate with the Trustee and use its best efforts to protect the Registered Owners.

## ARTICLE XI

### MISCELLANEOUS

Section 11.1 Consents, Etc., of Registered Owners. Any consent, request, direction, approval, objection, or other instrument required hereby to be executed by the Registered Owners may be in any number of concurrent writings of similar tenor and may be executed by such Registered Owners in person or by agent appointed in writing. Proof of the execution of any such consent, request, direction, approval, objection, or other instrument or of the writing appointing any such agent and of the ownership of Bonds, if made in the following manner, shall be sufficient for any of the purposes hereof, and shall be conclusive in favor of the Trustee with regard to any action taken under such request or other instrument, namely, the fact and date of the execution by any person of any such writing may be proved by the certificate of any officer in any jurisdiction who by law has power to take acknowledgments within such jurisdiction that the person signing such writing acknowledged before him the execution thereof, or by affidavit of any witness to such execution. The amount of Bonds held by any person executing such instrument as Registered Owner of Bonds and the fact, amount and numbers of the Bonds held by such person and the date of his holding the same shall be proved by the registration books of the Trustee.

Section 11.2 Limitation of Rights. With the exception of rights herein expressly conferred, nothing expressed or mentioned in or to be implied from this Indenture or the Bonds is intended or shall be construed to give to any person other than the parties hereto and the Registered Owners of the Bonds, any legal or equitable right, remedy, or claim under or in respect hereto or any covenants, conditions, and provisions herein contained, this Indenture and all of the covenants, conditions, and provisions hereof being intended to be and being for the sole and exclusive benefit of the parties hereto and the Registered Owners of the Bonds as herein provided.

Section 11.3 Severability. If any covenant agreement, or provision, or any portion thereof, contained in this Indenture, or the application thereof to any person or circumstances, is held to be unconstitutional, invalid, or unenforceable, the remainder of this Indenture and the application of such covenant, agreement, or provision, or portion thereof, to other persons or circumstances, shall be deemed severable and shall not be affected, and this Indenture and the Bonds issued pursuant hereto shall remain valid and the Bondowners shall retain all valid rights and benefits accorded to them under this Indenture and the Constitution and laws of the State of Utah. If the provisions relating to the appointment and duties of a Trustee or Paying Agent are held to be unconstitutional, invalid, or unenforceable, said duties shall be performed by an appropriate financial officer of the Agency.

Section 11.4 Applicable Laws. This Indenture shall be governed exclusively by the applicable law of the State of Utah.

Section 11.5 Notices. It shall be sufficient service of any notice, request, complaint, demand, or other paper on the Agency if the same shall be duly mailed by first

class mail addressed to it at 2549 Washington Blvd., Ogden, Utah, 84401-3111, Attention: City Attorney, or to such address as the Agency may from time to time file with the Trustee. It shall be sufficient service of any notice or other paper on the Trustee if the same shall be duly mailed by first class mail or by email or facsimile to it at [U.S. Bank National Association, 170 South Main Street, 2<sup>nd</sup> Floor, Salt Lake City, Utah, 84111], Attention: Corporate Trust Department or to such other address as the Trustee may from time to time file with the Agency.

Section 11.6 Counterparts. This Indenture may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 11.7 Immunity of Officers and Directors. No recourse shall be had for the payment of the principal of or premium or interest on any of the Bonds or for any claim based thereon or upon any obligation, covenant or agreement herein contained against any past, present, or future officer, or other public official, employee, or agent of the Agency.

Section 11.8 Holidays. If any date for the payment of principal of or interest on the Bonds is not a Business Day, then such payment shall be due on the first Business Day thereafter and no interest shall accrue for the period between such date and such first Business Day thereafter.

IN WITNESS WHEREOF, the Agency and the Trustee have caused this Indenture to be executed in their respective names and their respective seals to be hereto affixed and countersigned and attested by their duly authorized officials or officers, all as of the date first above written.

OGDEN CITY REDEVELOPMENT  
AGENCY

(SEAL)

By: \_\_\_\_\_  
Executive Director

COUNTERSIGN AND ATTEST:

By: \_\_\_\_\_  
City Recorder

U.S. BANK NATIONAL ASSOCIATION,  
as Trustee

By: \_\_\_\_\_

Title: \_\_\_\_\_

EXHIBIT A

(FORM OF SERIES 2016 BOND)

Unless this certificate is presented by an authorized representative of The Depository Trust Company (55 Water Street, New York, New York) to the Agency or its agent for registration of transfer, exchange or payment, and any certificate issued is registered in the name of Cede & Co. or such other name as requested by an authorized representative of The Depository Trust Company and any payment is made to Cede & Co., ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL since the registered owner hereof, Cede & Co., has an interest herein.

UNITED STATES OF AMERICA  
STATE OF UTAH  
OGDEN CITY REDEVELOPMENT AGENCY  
[TAXABLE] REVENUE REFUNDING BONDS,  
SERIES 2016[A][B]

Registered  
Number R-\_\_\_\_

Registered

Interest Rate

Maturity Date

Original Issue Date

CUSIP

\_\_\_\_\_, \_\_\_\_

Registered Owner: CEDE & CO.

Principal Amount: \_\_\_\_\_

The Ogden City Redevelopment Agency (hereinafter sometimes called the "Agency"), a public body corporate and politic, duly organized and existing under the Constitution and the laws of the State of Utah, for value received, hereby acknowledges itself to be indebted and promises to pay to the Registered Owner named above or registered assigns, out of the special fund hereinbelow designated and not otherwise, the Principal Amount specified above on the Maturity Date specified above with interest thereon until paid at the Interest Rate specified above per annum, payable on \_\_\_\_\_, and semiannually thereafter on \_\_\_\_\_ 1 and \_\_\_\_\_ 1 of each succeeding year (each an "Interest Payment Date"), until said Principal Amount is paid. Principal shall be payable upon surrender of this Bond at the offices of U.S. Bank National Association, \_\_\_\_\_, \_\_\_\_\_ ("Trustee" and "Paying Agent") or its successors. Interest on this Bond shall be payable by check or draft mailed on the Interest Payment Date to the Registered Owner of record hereof as of the fifteenth day immediately preceding each Interest Payment Date (the "Record Date") at the address of such Registered Owner as it appears on the registration books of the

Paying Agent, who shall also act as the Registrar for the Agency, or at such other address as is furnished to the Paying Agent in writing by such Registered Owner. Interest hereon shall be deemed to be paid by the Paying Agent when mailed. Both principal and interest shall be payable in lawful money of the United States of America.

This Bond is one of a duly authorized issue of bonds of the Agency designated “Ogden City Redevelopment Agency [Taxable] Revenue Refunding Bonds, Series 2016[A][B] (the “Series 2016[A][B] Bonds”) limited in aggregate principal amount to \$ \_\_\_\_\_, all of like tenor (except for bond numbers and differences, if any, in interest rate and denomination). In addition to the Series [A][B] Bonds, the Agency has also issued its Ogden City Redevelopment Agency [Taxable] Revenue Refunding Bonds, Series 2016[A][B] (the “Series 2016[A][B] Bonds” and collectively with the Series [A][B] Bonds, the “Series 2016 Bonds”) in aggregate principal amount of \$ \_\_\_\_\_. All of the Series 2016 Bonds have been issued pursuant to and in full conformity with the Constitution and the laws of the State of Utah, particularly Limited Purpose Local Government Entities—Community Development and Renewal Agencies Act, Title 17., Utah Code Annotated 1953, as amended, and the CBD Mall Redevelopment Project Area Plan and the American Can Redevelopment Plan (collectively, the “Redevelopment Plans”) for the CBD Redevelopment Project Area and the American Can Redevelopment Project Area, respectively (collectively, the “Project Areas”) for the purpose of (a) refunding certain outstanding bonds of the Agency and (b) paying costs associated with the issuance of the Series 2016 Bonds, as more fully described within the mentioned Indenture.

This Bond and the interest thereon are not general obligations or debts of Ogden City, Utah (the “City”), the State of Utah or any of its political subdivisions and neither said City, said State nor any of its political subdivisions is liable thereon, nor in any event shall this Bond or said interest give rise to a general obligation or liability of said City, said State or any of its political subdivisions or a charge against their general credit or ad valorem taxing powers, or be payable out of any funds or properties except as payable from the funds of the Agency or City hereinafter mentioned and/or otherwise provided in the Indenture or Contribution Agreement (as defined in the Indenture). This Bond does not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction. Neither the members of the Agency nor any persons executing this Bond are liable personally on this bond by reason of its issuance. The Agency has no taxing power.

All of the Series 2016 Bonds are equally secured in accordance with the terms of the Indenture (including any referenced documents or agreements therein) (the “Indenture”) entered into between the Agency and U.S. Bank National Association (the “Trustee”) dated as of February 1, 2016, reference to which is hereby made for a specific description of the security therein provided for the Series 2016 Bonds, for the nature, extent, and manner of enforcement of such security, for the covenants and agreements made for the benefit of the Owners and for a statement of the rights of the Owners; and by the acceptance of this Bond the owner hereof assents to all of the terms, conditions, and provisions of the Indenture. The Indenture is hereby incorporated in its entirety by reference. In the manner and subject to the requirements provided in the Indenture, said

Indenture and the rights and obligations of the Agency and of the Owners of the Series 2016 Bonds may (with certain exceptions as stated in the Indenture) be modified or amended with the consent of the Owners of sixty percent (60%) in aggregate principal amount of outstanding Bonds affected by such amendment, exclusive of the Bonds owned by the Agency or the City. Capitalized terms used in this Bond which are not defined herein but which are defined in the Indenture shall have the respective meanings set forth in the Indenture when used herein.

The principal of this Bond and the interest thereon are secured by an irrevocable lien on and pledge of, and are payable solely from, the Pledged Revenues (as such term is defined in the Indenture) all as more particularly set forth in the Indenture.

This Bond shall be registered on the books of the Agency to be kept for that purpose at the office of the Paying Agent in \_\_\_\_\_, \_\_\_\_\_, such registration shall be noted hereon, and this Bond shall be transferable only upon said books at said office by the registered owner hereof or by his duly authorized attorney. Such transfers shall be without charge to the owner hereof, but any taxes or other governmental charges required to be paid with respect to the same shall be paid by the owner requesting such transfer as a condition precedent to the exercise of such privilege. Upon any such transfer, the Agency shall execute and the Paying Agent shall authenticate and deliver in exchange for this Bond a new registered bond or bonds of the same maturity, series, and interest rate, registered in the name of the transferee, of Authorized Denominations. The Agency and the Paying Agent may deem and treat the person in whose name this Bond is registered as the absolute owner hereof, whether or not this Bond is overdue, for the purpose of receiving payment and for all other purposes, and the Agency and the Paying Agent shall not be affected by any notice to the contrary. The Agency and the Paying Agent shall not be required (a) to issue, transfer, or exchange Bonds from the Record Date through and including the interest payment date; or (b) to transfer or exchange any Bond called for redemption or selected for call for redemption following notice. The Series 2016 Bonds are issuable as registered bonds in the denominations of \$5,000 or any integral multiple thereof.

The Series 2016 Bonds are subject to redemption as provided in the Indenture.

It is hereby recited, certified, and declared that any and all acts, conditions, and things required to exist, to happen, and to be performed precedent to and in the issuance of this Bond exist, have happened, and have been performed in due time, form, and manner as required by the Redevelopment Plans and the Constitution and statutes of the State of Utah.

This Bond shall not become valid or obligatory for any purpose or be entitled to any security or benefit under the Indenture until the Certificate of Authentication hereon shall have been manually signed by the Trustee.

IN WITNESS WHEREOF, the Ogden City Redevelopment Agency has caused this Bond to be signed on its behalf by the manual or facsimile signature of its Executive Director and attested by the manual or facsimile signature of the City Recorder and the seal of said Agency to be impressed, imprinted, or reproduced hereon.

OGDEN CITY REDEVELOPMENT  
AGENCY

(SEAL)

By: \_\_\_\_\_  
Executive Director

ATTEST AND COUNTERSIGN:

By: \_\_\_\_\_  
City Recorder

CERTIFICATE OF AUTHENTICATION

This Bond is the Series 2016 Bond described in the within mentioned Indenture.

U.S. BANK NATIONAL ASSOCIATION,  
as Trustee

By: \_\_\_\_\_  
Authorized Officer

Date of Authentication: \_\_\_\_\_

ASSIGNMENT

FOR VALUE RECEIVED, \_\_\_\_\_, the undersigned sells, assigns, and transfers unto:

\_\_\_\_\_  
(Social Security or Other Identifying Number of Assignee)

\_\_\_\_\_  
(Please Print or Typewrite Name and Address of Assignee)

the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_ attorney for registration thereof, with full power of substitution in the premises.

DATED: \_\_\_\_\_

Signature: \_\_\_\_\_

NOTICE: The signature to this assignment must correspond with the name of the Registered Owner as it appears upon the face of the within Bond in every particular without alteration or enlargement or any change whatever.

Signature Guaranteed:

\_\_\_\_\_

NOTICE: Signature(s) must be guaranteed by an "eligible guarantor institution" that is a member of or a participant in a "signature guarantee program" (e.g., the Securities Transfer Agents Medallion Program, the Stock Exchange Medallion Program or the New York Stock Exchange, Inc. Medallion Signature Program)

EXHIBIT B

COST OF ISSUANCE DISBURSEMENT REQUEST

U.S. Bank National Association  
Corporate Trust Department  
170 South Main Street, 2<sup>nd</sup> Floor  
Salt Lake City, Utah 84111

Pursuant to Section 4.6 of the Indenture of Trust dated as of February 1, 2016, you are hereby authorized to pay to the following costs of issuance from the Cost of Issuance Fund:

[See Attached Schedule]

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AUTHORIZED REPRESENTATIVE  
OGDEN CITY REDEVELOPMENT  
AGENCY

Costs of Issuance

| <u>Payee</u> | <u>Purpose</u> | <u>Amount</u> |
|--------------|----------------|---------------|
|--------------|----------------|---------------|

EXHIBIT C

CONTRIBUTION AGREEMENT

(See Transcript Document No. \_\_\_\_\_)

CONTRIBUTION AGREEMENT  
(SERIES 2016 BONDS)

This CONTRIBUTION AGREEMENT (the “Agreement”) is entered into as of the 1st day of February, 2016, by and between OGDEN CITY, UTAH, a municipal corporation and political subdivision of the State of Utah (the “City”) and the OGDEN CITY REDEVELOPMENT AGENCY (the “Agency”), a redevelopment agency existing under the Limited Purpose Local Government Entities–Community Development and Renewal Agencies Act, Title 17C, Utah Code Annotated 1953, as amended (the “Redevelopment Act”),

WITNESSETH:

WHEREAS, the Agency has been established by the City for the purpose of redeveloping and developing certain areas within the City in order to accomplish the purposes of the Redevelopment Act; and

WHEREAS, pursuant to the Redevelopment Act and other provisions of law of the State of Utah, the City and the Agency may enter into an agreement whereby the City may grant or contribute funds to the Agency for economic development; and

WHEREAS, the City and the Agency have previously authorized the establishment of the CBD Mall Redevelopment Project Area and the American Can Redevelopment Project Area (collectively, the “Project Areas”); and

WHEREAS, the Agency has previously issued its (i) \$8,780,000 Taxable Variable Rate Revenue Refunding Bonds, Series 2009A (the “Series 2009A Bonds”); (ii) \$19,545,000 Taxable Variable Rate Revenue Refunding Bonds, Series 2009B-1 (the “Series 2009B-1 Bonds”); (iii) \$2,020,000 Taxable Variable Rate Revenue Refunding Bonds, Series 2009B-2 (the “Series 2009B-2 Bonds,” and together with the Series 2009A Bonds and the Series 2009B-1 Bonds, the “Series 2009 Bonds”) and (iv) Tax Increment Revenue Bonds, Series 2011 (Taxable—Subordinate) (the “Series 2011 Bonds” and collectively with the Series 2009 Bonds, the “Refunded Bonds”) to finance certain improvements in the Project Areas (the “Projects”); and

WHEREAS, the Refunded Bonds are payable in part from certain tax increment revenues allocated to the Agency under the Redevelopment Act and certain lease payments from the Projects (the “Tax Increment and Lease Revenues”); and

WHEREAS, because the Tax Increment and Lease Revenues available for the Refunded Bonds were expected to be insufficient to pay the principal and interest due with respect to the Refunded Bonds, the City and the Agency entered into contribution agreements (the “Prior Contribution Agreements”) pursuant to Section 17C-1-207 of the Redevelopment Act whereby the City has agreed (among other things) to grant to the Agency those certain Municipal Energy Sales and Use Tax revenues received by the City pursuant to Title 10, Chapter 1, Part 3, Utah Code Annotated 1953, as amended and the Municipal Telecommunications License Tax revenues received by the City pursuant to

Title 10, Chapter 1, Part 4, Utah Code Annotated 1953, as amended (collectively, the “Franchise Tax Revenues”) to assist in the repayment of the Refunded Bonds; and

WHEREAS, in order to reduce the expected costs of the Refunded Bonds the City and the Agency have found it to be advisable and in the best proprietary and business interests of the City and its inhabitants for the Agency to refund the Refunded Bonds and thereby refinance the Projects (the “Refinance”); and

WHEREAS, to facilitate the Refinance the Agency is issuing its Revenue Refunding Bonds, Series 2016A in the aggregate principal amount of \$\_\_\_\_\_, and Taxable Revenue Refunding Bonds, Series 2016B in the aggregate principal amount of \$\_\_\_\_\_ (collectively, the “Bonds”) pursuant to a Trust Indenture dated as of February 1, 2016 (the “Indenture”), by and between the Agency and \_\_\_\_\_, as trustee (the “Trustee”); and

WHEREAS, the Agency and the City have determined that the most efficient structure for the Bonds to permit the City and the Agency to reduce the overall costs of the Refinance would have the Bonds payable from the Franchise Tax Revenues and to require the Agency to remit to the City the Tax Increment Revenues and Lease Revenue previously pledged for the payment of the Refunded Bonds to pay or repay the City for having advanced the Franchise Tax Revenues for payment of the Bonds; and

WHEREAS, the City and the Agency have found and determined that the pledge of the Franchise Tax Revenues is essential to the Refinance, is in the best proprietary and business interests of the City and will promote the health, safety and welfare of the City and its inhabitants by reducing the debt service and related costs of the Refunded Bonds; and

WHEREAS, in connection with the issuance of the Refunded Bonds and the execution of the Prior Contribution Agreements, the City and the Agency gave notice of the intent to enter into the Prior Contribution Agreements and held public hearings in connection therewith; and

NOW, THEREFORE, in consideration of the mutual promises, the covenants contained herein, and other good and valuable consideration, the receipt of which is acknowledged, the parties hereto agree as follows:

Section 1. Issuance of Bonds. The Agency shall issue the Bonds to effect a more efficient financing structure for the Projects and to achieve a debt service savings and to otherwise further its business and proprietary purposes. As required by the Redevelopment Act, the Bonds are payable as to both principal and interest solely from the income, proceeds, revenues and funds of the Agency derived from or held in connection with its undertaking and carrying out of the redevelopment projects within the Project Areas, in particular from the assistance to be provided by the City hereunder, all in accordance with the provisions of the Redevelopment Act.

Section 2. Franchise Tax Revenues. (a) Pursuant to authority contained in the Redevelopment Act, the City agrees to assist the Agency in repaying the Bonds, and

in furtherance of such agreement, hereby irrevocably grants a senior lien pledge on the Franchise Tax Revenues received from and after the date of execution hereof to the Agency for the purpose of payment of the Bonds. Said pledge of Franchise Tax Revenues shall be a limited obligation of the City, payable solely from the Franchise Tax Revenues and shall not constitute a pledge of the general credit or ad valorem taxing power of the City.

(b) The City covenants that it will continue to impose the Franchise Tax until all of the Bonds have been paid. The City covenants that it will account for the Franchise Tax Revenues separate and apart from the other funds of the City, and take such other actions as may be necessary to maintain the perfected security interest in the Franchise Tax Revenues created for the benefit of the Agency and the holder of the Bonds herein.

(c) The Agency will account for the Franchise Tax Revenues separate and apart from other funds of the Agency and will transfer the Franchise Tax Revenues to the Trustee for payment of the Bonds consistent with the terms of the Indenture.

(d) Other than the Refunded Bonds, the City and the Agency do not currently have any outstanding obligations secured by the Franchise Tax Revenues.

(e) The City hereby agrees and covenants that it will not issue any future franchise tax revenue bonds or obligations on a parity with the lien of the Bonds unless the following requirement has been met: a certificate shall be delivered to the Agency and the Trustee by an authorized representative of the City to the effect that the Franchise Tax Revenues received by the City for any consecutive twelve (12) months in the twenty-four (24) months immediately preceding the proposed date of issuance of such additional bonds or obligations were at least equal to two hundred percent (200%) of the estimated combined maximum annual debt service requirement on the Bonds and the proposed bonds or obligations to be issued on a parity with the Bonds and secured by the Franchise Tax Revenues.

(f) All books, instruments and documents in the Agency's and the City's possession relating to the Projects, the Tax Increment Revenues, Lease Revenues and the Franchise Tax Revenues shall be open to inspection at all times during the City's regular business hours by any accountants or other agents of the Trustee which the Trustee may designate from time to time.

(g) The Franchise Tax Revenues are hereby allocated and pledged as described above, to the payment of the Bonds and until all of the Bonds and all interest thereon, have been paid (or until moneys for that purpose have been irrevocably set aside) the Franchise Tax Revenues (except as otherwise specifically provided in the Indenture and this Agreement) shall be applied first to

the payment of the Bonds, the interest thereon, and premium, if any, then due as provided in the Indenture, and then any other purpose permitted by law.

(h) Once the City and Agency have remitted to the Trustee sufficient moneys for principal and/or interest payments on the Bonds then due as required by the Indenture, and assuming that all payments then due with respect to the Bonds have been paid and are current, any Franchise Tax Revenues then held by the Agency or the City may, subject to the lien of any other obligations, be released to the City for its use for any lawful purpose.

Section 3. Undertaking of Agency Hereunder; Pledge and Use of Tax Increment and Lease Revenues. The City and the Agency recognize that the intent of the parties hereto is to use the tax increment revenues and lease payments from the Projects and previously pledged to the Refunded Bonds (the "Agency Revenues"), to the extent available, to pay or repay to the City amounts sufficient to pay amounts due with respect to the Bonds. In furtherance thereof, the Agency agrees to deposit with the City as such Agency Revenues become available to the Agency, all such Agency Revenues such that the City will have, to the extent available, sufficient Agency Revenues to pay or immediately reimburse the City for having paid, amounts to the Agency for the payment of the Bonds.

Section 4. Third-Party Beneficiary. So long as there are obligations outstanding under the Indenture, the Trustee shall be an express third-party beneficiary of this Agreement. This Agreement shall not be amended without the prior written consent of the Trustee, which consent shall not be unreasonably withheld or delayed.

Section 5. Perfection of Security Interest.

(a) This Agreement creates a valid and binding pledge and assignment of, and security interest in, all of the Franchise Tax Revenues pledged hereunder in favor of the Trustee, as security for payment of the Bonds, enforceable by the Trustee, as its interests may appear, in accordance with the terms hereof.

(b) Under the laws of the State, such pledge and assignment and security interest is automatically perfected by Section 11-14-501, Utah Code Annotated 1953, as amended, and is and shall have priority as against all parties having claims of any kind in tort, contract, or otherwise hereafter imposed on the Franchise Tax Revenues.

(c) This Agreement also creates a valid and binding pledge and assignment of, and security interest in, all of the Agency Revenues pledged hereunder in favor of the City, as security for payment or repayment of amounts required to be advanced by the City hereunder for payment to the Agency of amounts due with respect to the Bonds, enforceable by the City in accordance with the terms hereof.

Section 6. Limited Obligation of the City. Nothing contained in this Agreement shall be construed to create a general obligation of the City. The Bonds shall not be a debt of the City pursuant to any constitutional or statutory debt limitations, and the issuance of the Bonds and the execution of this Agreement shall not require the City to levy any form of ad valorem taxation or to appropriate any other moneys for the payment of the Bonds or amounts otherwise due under this Agreement.

Section 7. Governing Law. This Agreement shall be governed by the laws of the State of Utah.

Section 8. Termination of Prior Contribution Agreements. Upon the issuance of the Bonds and the refunding of the Refunded Bonds, the Prior Contribution Agreements shall terminate.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the day and year first written above.

OGDEN CITY, UTAH

By: \_\_\_\_\_  
Mayor

ATTEST:

By: \_\_\_\_\_  
City Recorder

REDEVELOPMENT AGENCY OF  
OGDEN CITY, UTAH

(SEAL)

By: \_\_\_\_\_  
Executive Director

ATTEST:

By: \_\_\_\_\_  
Ogden City Recorder