



Ogden City

City Council Special Meeting Agenda

January 12, 2016 – 6:00 p.m.

City Council Chambers

Municipal Building – Third Floor

2549 Washington Boulevard, Ogden, Utah 84401

1. Roll Call.
2. Pledge of Allegiance.
3. Moment of Silence.
4. Request to be on the Agenda.
 - a. **Family Promise of Ogden** – Presentation by Nancy Davis Broderick
5. Approval of Minutes (*voice vote*):
 - a. Closed Executive Session of September 15, 2015 – *Vice Chair Blair*
 - b. Closed Executive Session of October 13 and November 17, and the Regular Meeting of October 27, 2015 – *Council member Hyer*
 - c. Closed Executive Session of October 27, and the Board of Canvass of November 17, 2015– *Council member Garner*
 - d. Special Meeting of November 10, 2015 – *Council member Stephens*
6. Common Consent (*voice vote*):
 - a. **Martin Luther King, Jr. Day of Service.** Joint Proclamation declaring January 18, 2016 “Martin Luther King, Jr. Day of Service” in Ogden City. (*Adopt joint proclamation*)
7. Reports from Planning Commission:
 - a. **Accessory Dwelling Unit Amendments.** Proposed Ordinance 2016-2 amending the Ogden Municipal Code as it relates to standards for Accessory Dwelling Units. (*Accept public input; Adopt/not adopt ordinance – roll call vote*)
8. Reports from Administration:
 - a. **RDA Wasatch Brownfields Coalition Loan Guaranty.** Proposed Resolution 2016-3 approving a loan guaranty for a \$400,000 loan between the Redevelopment Agency and Salt Lake County for environmental cleanup in the Trackline Economic Development Project Area. (*Adopt/not adopt resolution – roll call vote*)
9. 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.
10. Comments:
 - a. Mayor
 - b. Council members
11. Adjournment.

REMINDER: A Redevelopment Agency meeting will be held in the Council Chambers immediately following the Special City Council meeting which begins at 6:00 p.m.

A City Council work session will be held in the Council Work Room immediately following the Redevelopment Agency meeting. The purpose of the work session includes presentations and discussions regarding:

- GOAL Foundation;
- Fiscal Year 2016 Arts Grants;
- Mobile Food Trucks Ordinance Amendments;
- Annexation Plan Amendment; and
- Council 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 8<sup>th</sup> day of January, 2016. 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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# City Council Meeting COUNCIL STAFF REVIEW

## PRESENTATION REGARDING FAMILY PROMISE OF OGDEN

### COUNCIL STAFF REVIEW

**ACTION:**               None

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#### ***Background***

Nancy Davis Broderick has requested to provide a presentation about Family Promise of Ogden. Family Promise is a national non-profit organization and an interfaith hospitality network that is designed to help those experiencing homelessness. These services are provided through partnering agencies and volunteers to provide homeless families with the support they need to secure safe, affordable housing and to regain independence.

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



# City Council Meeting COUNCIL STAFF REVIEW

## **JOINT PROCLAMATION DECLARING JANUARY 18, 2016 “MARTIN LUTHER KING, JR. DAY OF SERVICE” IN OGDEN CITY**

### **COUNCIL STAFF REVIEW**

**ACTION:**                    **Adopt joint proclamation**

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***Request***

This joint proclamation recognizes the significance of Martin Luther King, Jr. Day and encourages residents to celebrate this as a day of community service.

This item will be read and presented at the Annual NAACP/WSU Martin Luther King, Jr. Day events that will be held at the Marshall White Center on January 18, 2016.

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

# *A JOINT PROCLAMATION OF THE OGDEN CITY COUNCIL AND MAYOR*

## **DECLARING JANUARY 18, 2016 “MARTIN LUTHER KING, JR. DAY OF SERVICE” IN OGDEN CITY**

- WHEREAS,** Rev. Dr. Martin Luther King, Jr. was an American pastor, activist and humanitarian who is best known for his role in the advancement of civil rights using nonviolent civil disobedience, for which he received the Nobel Peace Prize in 1965. Dr. King also focused on issues including poverty and war. He was posthumously awarded the Presidential Medal of Freedom and the Congressional Gold Medal; and
- WHEREAS** President Ronald Reagan signed a bill into law in 1983 making the third Monday in January a national holiday to celebrate the birth of Dr. King, following years of lobbying by millions of Americans. Martin Luther King, Jr. Day was first observed in 1986; and
- WHEREAS,** In 1988, close friends of Dr. King discussed the irony of how so many Americans had fought for a federal holiday honoring Dr. King, and yet in the two years since the first national observance, it had become to millions just another day off of work. They knew Dr. King would be disheartened by the disengagement on the day set aside to honor his devotion for social justice, so the King Day of Service was established in Philadelphia; and
- WHEREAS,** Federal legislation was signed into law by President Bill Clinton in 1994 challenging all Americans to honor Dr. King by devoting the day to citizen action and volunteer service. Several communities, universities and organizations across the United States have accepted the challenge and participate in the Martin Luther King, Jr. Day of Service; and
- WHEREAS,** The Ogden Branch of the National Association for the Advancement of Colored People (NAACP), Ogden/Weber Community Action Partnership, Marshall White Community Center and Weber State University have united to sustain the national call to action by honoring Dr. King through “A Day of Service” with volunteers from cities throughout Weber County and Davis County. They strive to retain Dr. King’s legacy of service through the day of remembrance.

**NOW, THEREFORE, BE IT RESOLVED,** that the Ogden City Council and Mayor Michael P. Caldwell hereby proclaim January 18, 2016:

## **“MARTIN LUTHER KING, JR. DAY OF SERVICE”**

in Ogden City. We encourage residents, schools, businesses and community groups to celebrate Martin Luther King, Jr. Day. We appreciate the efforts of those in our community to build upon Dr. King’s legacy by helping others and encourage all residents to engage in service on this special holiday.

**PASSED AND ADOPTED** this 12<sup>th</sup> day of January 2016.

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Marcia L. White, Council Chair

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Michael P. Caldwell, Mayor

ATTEST:

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Tracy Hansen, City Recorder



# City Council Meeting COUNCIL STAFF REVIEW

## AMENDMENT TO ALLOW ACCESSORY DWELLING UNITS IN ALL RESIDENTIAL ZONES

### COUNCIL DETERMINATION:

- Approve/not approve ordinance amendment

### PLANNING COMMISSION

RECOMMENDATION: Approval of the amendment (6-0)

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### *Executive Summary*

In 2008, an amendment was approved that would allow accessory dwelling units, or ADUs, in certain parts of the City through a zoning overlay process. Areas were to be identified in various community plans that the City felt were best suited to accommodate ADUs. As of 2015, there were only three areas in the City with the ADU overlay approved. Recently, the City Council requested that the Planning Commission review and provide a recommendation on a proposal to allow ADUs in all residential areas of the City. The Planning Commission has provided a recommendation of approval for ADUs in all residential zones with the exception of specific areas within the Mt. Ogden Community Plan area. The proposal would remove the need to have an overlay zone and would allow a homeowner to apply for a license to have an ADU in any residential zone.

### *Background*

Accessory dwelling units, or ADUs, are housing units that are subordinate to a main dwelling unit and which are either attached to the main dwelling or on the same property. They are intended to be limited in scope and impact and are designed to blend into the main home and property. Under Ogden City's ordinance, ADUs may only be permitted if the home is a single-family unit and is owner occupied. No additional parking is permitted and all entrances must be incorporated into the overall design of the home. In addition, the occupancy is limited to two adults, either related or unrelated, and their minor children. This differs from a duplex use where the units are equal and occupancy standards are governed by the family definition for each unit. With a duplex use, one unit is not subordinate to another and there is no owner-occupancy requirement.

Accessory dwelling units are generally intended to serve as infill housing and to provide options for younger families, couples, single, or older persons who wish not to or who cannot afford to live in a single-family home. The stricter standards for ADUs are intended to limit the impact on



# City Council Meeting COUNCIL STAFF REVIEW

the nature and character of the single-family residential neighborhood while still providing this housing option.

Accessory dwelling units were first reviewed in 2000 within the larger discussion and action of downzoning large portions of the City. Although there was discussion, no proposal was formalized or considered. In 2007, ADUs were discussed again and at that time a proposal was developed and brought forward. The Planning Commission reviewed a proposal to allow ADUs in all residential zones throughout the City through the approval of an overlay zone. The proposal would allow a property owner to apply for a license to have an ADU if that owner's property was included within an ADU overlay zone. The discussion about ADUs in 2007 was associated with the development and adoption of the Mt. Ogden Community Plan. In that plan, the proposal was to allow ADUs only in residential areas directly to the north of Weber State University. The proposed ADU ordinance disallowed ADUs in the Mt. Ogden plan area if they were not located within the predesignated area.

The Planning Commission's 2007 recommendation to the Council on ADUs was to allow them in all residential areas if the ADU overlay zone was approved for that area. The overlay zone had a minimum area of 10 acres, or one city block, and would be approved through the rezoning process. Once the overlay zone was in place, a property owner within that overlay zone area could apply for a license to operate the ADU. However, as the Council reviewed the proposal, it was determined that a more limited approach should be taken with ADUs. In 2008, the Council approved an amended proposal that would allow ADUs in an overlay zone but limited the eligible overlay zone areas to those which had been included in a given area's community plan.

Since the adoption of the ADU ordinance in 2008, there have been three overlay zones approved; one in the Mt. Ogden Community Plan area, one in the Southeast Ogden Community Plan area, and one in the East Central Community Plan area. The community plans adopted prior to the adoption of the ADU ordinance did not include any language regarding ADUs as the overlay zone was not yet an option. Of the community plans approved after the ADU ordinance was in place, only the East Central Community Plan included specific language for the allowance of ADUs. Planning Staff has indicated that within the three existing overlay zones, only one resident has applied for a license to have an ADU. This, of course, does not mean that others do not exist, but rather only one person has taken the required steps to have an ADU.



# City Council Meeting COUNCIL STAFF REVIEW

Recently, the Council has shown interest in having the Planning Commission provide a recommendation for allowing ADUs in all residential zones. No specific standards were directed for the allowance of ADUs city-wide. As a result of the Council's interest, the Planning Department developed a proposal and the Planning Commission forwarded a recommendation to the Council for allowing ADUs in residential zones throughout the City.

*December 1, 2015*

The proposal was reviewed at the Council's December 1, 2015 work session meeting. During the meeting, the issue of how best to address the existing language in the Mt. Ogden Community Plan was discussed. It was felt that the Mt. Ogden plan should be revisited to reassess that community's feelings toward ADUs. Discussion centered on whether the proposal should be delayed until the plan was revisited or whether the current proposal should move forward with the revisit taking place afterward. No clear direction was given at that meeting and direction was given to discuss the matter further with Council leadership.

After Council Staff discussed the options with Council leadership regarding the order of consideration, it was determined that the current proposal would move forward with the revisit taking place after the consideration of the city-wide ADU ordinance. As a way to try to get the word out to residents on the issue, Council Staff developed a communications plan in which a press release was developed and sent to the media along with a fact sheet. It was felt that this would help to provide additional public awareness of the issue while still allowing the proposal to move forward in a reasonable timeframe.

***Current Proposal*** The current proposal differs from the proposal forwarded to the Council in 2007. The current proposal maintains all of the design and application requirements but eliminates the need for an overlay zone. This is a departure from the previous proposal and the existing ordinance. The proposed ordinance would allow any owner-occupant in a single-family home in any residential zone to apply for an ADU. The proposal maintains the standards for the number of units per parcel, occupancy, dwelling size, appearance, outside entrances, parking, and compliance with building codes.

The proposal would allow ADUs as a permitted use, with the proper license and approval, in all single-family and multi-family residential zones in the City with the exception of those areas within the Mt. Ogden Community Plan area that have been designated as not permitting ADUs. [CS Note: After further research, Council Staff felt that there was similar



**OGDEN CITY COUNCIL TRANSMITTAL**

**DATE:** April 2, 2015  
**TO:** Ogden City Council  
**THRU:** Mark Johnson, CAO  
**FROM:** Tom Christopulos, CED Director  
**RE:** Elimination of Chapter 15-32 for ADU's, Amendment of all residential zones to allow ADU's except in certain areas of the Mount Ogden Community, Amendment of Chapter 15-13-28 to create standards for ADU's.

**RECEIVED**

**APR 21 2015**

**OGDEN CITY  
COUNCIL OFFICE**

**STAFF CONTACT:** Greg Montgomery, Planning Manager

**REQUESTED TIMELINE:** May 19, 2015

**RECOMMENDATION:** Approval

**DOCUMENTS:** Ordinance, Planning Staff report

**DISCUSSION:**

The Planning Staff explained that in 2008 ADU's were permitted in certain parts of the City. The reason was for a single-family owner to have a subordinate living space on the same lot or in the same buildings so the owner makes sure the property is maintained. Staff explained the benefits of ADU's with some of those being the ability for a young family to be able to purchase a home while an older individual feels security with someone nearby. Discussion occurred that rentals have increased in Ogden and ADU's would be a means to encourage home ownership plus the residential housing demand.

Staff explained the Council has requested this be considered City wide. As part of this review it was noted that the only community that specifically didn't want ADU's was in certain portions of the Mount Ogden Community Plan. Staff noted that the proposed ordinance would leave this area out but may be included at a later date if the community plan is amended.

Staff then discussed current ADU standards such as the appearance shall remain as a single-family, 2 legal off street parking spaces and the current standards and process staying the same. These standards help ADU's integrate into the area. The proposal is to locate the standards in Chapter 13 All Zones and eliminate Chapter 32 since it would no longer be an overlay zone. Discussion occurred if vacation rentals should be part of an ADU. The Commission felt that they should not be allowed due to potential parking conflicts and the short term basis associated with vacation rentals in a neighborhood.

**PLANNING COMMISSION ACTION**

The Planning Commission reviewed this item on April 1, 2015. A motion was made based on the proposed ADU ordinance meets the general plan goals and increasing homeownership, providing for a variety of housing styles and strengthens neighborhoods.

| PLANNING COMMISSIONERS VOTE | <u>Yes</u> | <u>No</u> |
|-----------------------------|------------|-----------|
| Blaisdell.....              | X          |           |
| Holman.....                 | X          |           |
| Orton.....                  | X          |           |
| Patterson.....              | X          |           |
| Schade .....                | X          |           |
| Wright.....                 | X          |           |

**CONCERNS OF CITIZENS:**

None

ORDINANCE NO. 2016-2

AN ORDINANCE OF OGDEN CITY, UTAH, AMENDING THE OGDEN MUNICIPAL CODE BY AMENDING CHAPTER 13 OF TITLE 15 TO ADOPT A NEW SECTION 39 REGARDING STANDARDS FOR ACCESSORY DWELLING UNITS; AMENDING SECTIONS 15-15-2, 15-16-2, 15-17-2, 15-18-2, 15-19-2, 15-35-2 AND 15-36-2 TO ALLOW ACCESSORY DWELLING UNITS AS PERMITTED USES IN VARIOUS ZONES; RESERVING CHAPTER 32 OF TITLE 15; AND BY PROVIDING THAT THIS ORDINANCE SHALL BECOME EFFECTIVE IMMEDIATELY UPON POSTING AFTER FINAL PASSAGE.

The Council of Ogden City hereby ordains:

SECTION 1. Chapter amended. Chapter 13 of Title 15 of the Ogden Municipal Code is hereby amended by adopting a new Section 38 to read and provide as follows:

**15-13-38 [RESERVED]**

SECTION 2. Chapter amended. Chapter 13 of Title 15 of the Ogden Municipal Code is hereby amended by adopting a new Section 39 to read and provide as follows:

**15-13-39 [STANDARDS FOR ACCESSORY DWELLING UNITS:]**

In all residential zones, unless a more restrictive standard has been adopted within this Title, accessory dwelling units shall meet the following requirements:

- A. **[Purpose:]** It is the purpose of this section to establish regulations controlling the use and construction of accessory dwelling units; to encourage individuals to become and remain homeowners by allowing limited opportunities for rental income; to allow the provision of security or services to owner occupants of the dwelling; to provide options for structures designed as single-family dwellings to meet the needs of owner occupants at a variety of stages in their life cycle; and to protecting the stability of neighborhoods.
- B. **[Number Of Accessory Units Per Parcel:]** An accessory dwelling unit (ADU) shall be allowed only on parcels containing a single-family dwelling. No more than one accessory dwelling unit shall be allowed for a lot or parcel which also contains the single-family dwelling. ADUs shall not be allowed on lots or units which are part of a PRUD, apartment building, group dwelling or a condominium project.
- C. **[Occupancy:]** The property owner, which includes titleholders, must occupy either the primary or accessory dwelling as their permanent and principal residence in order to qualify for an ADU.
  - 1. As long as the owner occupies the main dwelling or the ADU then the other unit is allowed to be rented under this ADU provision.
  - 2. The owner is permitted to have a separate seasonal residence but during the time away from the permanent residence they are not allowed to rent out their vacant permanent residence unit. For the purposes of this subsection "seasonal

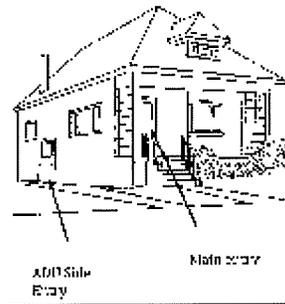
residence" shall mean living in another location up to four (4) months in one calendar year.

3. The property owner shall conform to the definition of "family" as described in chapter 2 of this title.
4. The non-owner occupied unit is limited to no more than two (2) related or unrelated adults, with or without minor children of the two (2) adults.
5. Neither the single-family dwelling nor the ADU may be used or licensed as a residential vacation rental.

D. **[Size:]** The ADU shall not occupy more than forty percent (40%) of the building's total habitable square footage or for detached units shall not be less than three hundred (300) square feet or more than eight hundred (800) square feet. Detached units shall not occupy more than twenty five percent (25%) of the rear yard area of the lot.

E. **[Appearance:]** The appearance of the dwelling shall remain that of a single-family residence and not be altered with the exception of required egress windows from bedrooms or entry doors. Any new detached building to accommodate an accessory dwelling unit shall be designed to follow the architectural design, style, and character of the main building. The exterior surfaces shall have the same visual appearance of the exterior material and color of the main building. The height of the building shall not exceed one story if the main building is one story nor be taller than twenty five feet (25') to the peak of the roof if the main building is taller than one story.

F. **[Outside Entrances:]** The entrances to the ADU and main dwelling shall use existing entrances to the dwelling if possible. If a separate entrance is required to be installed to one of the units, it shall be by means of a door located in the side or rear of the building.



G. **[Parking:]** A single-family dwelling with an accessory dwelling shall have in existence the required two (2) off street parking spaces that meet the legal location and requirements for off street parking for a single-family dwelling. No additional off street parking in the front or side yard for the ADU is to be provided such as a side yard parking slab or widened driveway. Tandem parking (1 vehicle behind another) in the driveway that leads to legal parking for the main unit shall be the means of providing parking provided the tandem parking does not extend over the property line and the public sidewalk.

H. **[Compliance with Building Codes:]** The ADU unit shall comply with all applicable building, health and fire codes with special attention for existing buildings given to providing the required emergency access from bedrooms.

**I. [Application Procedure:]**

1. Any homeowner who resides in a single-family dwelling and whose property is in a residential zone and desires an accessory dwelling shall obtain an accessory dwelling permit. The accessory dwelling permit shall be in addition to any building permits that may be necessary to create the accessory dwelling unit. The applicant shall submit as part of the application for an accessory dwelling permit:
  - a. A site plan drawn accurately to scale that shows property lines and dimensions, the location of existing buildings and building entrances, any proposed building and its dimensions from buildings and property lines, and the location of parking stalls.
  - b. Detailed floor plans drawn to scale with labels on rooms indicating uses or proposed uses.
  - c. Written verification that the applicant is the owner of the property and has permanent residency in the existing single-family dwelling where the request is being made. The verification also requires the applicant to acknowledge that they are the owner-occupant and will remain an owner-occupant in order for an accessory dwelling unit to be permitted.
2. After review by the building services and fire divisions, the planning division shall approve or deny the application based on compliance with these regulations and payment of the same business license fee, including any disproportionate fee, as an owner occupied duplex under title 5, chapter 1, article B of this code. The required fee may be reduced by any discounts available to an owner occupied duplex.
3. Noncompliance with the standards of this section shall be just cause for the denial of an application or revocation of an accessory dwelling permit if the original conditions are not maintained that allowed the accessory dwelling unit. Revocation shall be decided based upon the findings of fact at an administrative hearing before a hearing officer, pursuant to title 5, chapter 1, article C of this code, as such provisions may be applicable. If the permit is revoked the accessory dwelling unit shall be removed within thirty (30) days of the final determination.
4. The approval of a permit for an accessory dwelling is valid for one year from the date of the approval and must be renewed annually. Change of property ownership voids the accessory dwelling permit. A new permit must be applied for according to these requirements if the new owner desires an ADU.

**SECTION 3.** Section amended. Section 15-15-2 of the Ogden Municipal Code is

hereby amended to read and provide as follows:

**15-15-2: [PERMITTED USES:]**

Accessory buildings and uses customarily incidental to any permitted use.

Accessory dwelling unit (see section 15-13-39 of this title for ADU requirements), except within:

- A. The Mount Ogden Community Planning Area where accessory dwelling units are not allowed between Harrison Boulevard and Polk Avenue from 26<sup>th</sup> Street to the north side of 35<sup>th</sup> Street and between Polk Avenue and the eastern city limits from 26<sup>th</sup> Street to the north boundary line of lots on 36<sup>th</sup> Street; and
- B. The East Central Community Planning Area where accessory dwelling units are not allowed between Harrison Boulevard and Monroe Boulevard from 23<sup>rd</sup> Street to 18<sup>th</sup> Street and from 30<sup>th</sup> Street to 27<sup>th</sup> Street; between Harrison Boulevard and Quincy Avenue from 27<sup>th</sup> Street to 26<sup>th</sup> Street; and between Harrison Boulevard and Jackson Avenue from 26<sup>th</sup> Street to 25<sup>th</sup> Street.

Agriculture.

Church, synagogue or similar permanent building used for regular religious worship.

Cluster subdivision, in accordance with chapter 9 of this title.

Daycare centers, provided the facility is located on the same site as an educational institution.

Educational institution.

Golf course, except miniature golf course.

Greenhouse, noncommercial only.

Home occupation.

Household pets.

Pigeon loft for the housing of racing pigeons (only allowed on single-family residential lots), in accordance with the standards contained in section 15-13-19 of this title.

Public building, public park, recreation grounds and associated buildings.

Residential facilities for persons with a disability (see section 15-13-15 of this title for facility requirements).

Residential garage sales or yard sales.

Single-family dwelling.

Temporary building for use incidental to construction work. Such building shall be removed upon the completion or abandonment of the construction work.

**SECTION 4.** Section amended. Section 15-16-2 of the Ogden Municipal Code is hereby amended to read and provide as follows:

**15-16-2: [PERMITTED USES:]**

Accessory buildings and uses customarily incidental to any permitted use.

Accessory dwelling unit (see section 15-13-39 of this title for ADU requirements).

Agriculture.

Church, synagogue or similar permanent building used for regular religious worship.

Cluster subdivision, in accordance with chapter 9 of this title.

Daycare centers, provided the facility is located on the same site as an educational institution.

Educational institution.

Golf course, except miniature golf course.

Greenhouse, noncommercial only.

Home occupation.

Household pets.

Pigeon loft for the housing of racing pigeons (only allowed on single-family residential lots), in accordance with the standards as contained in section 15-13-19 of this title.

Public building, public park, recreation grounds and associated buildings.

Residential facilities for elderly persons (see section 15-13-25 of this title for facility requirements).

Residential facility for persons with a disability (see section 15-13-15 of this title for facility requirements).

Residential garage sales or yard sales.

Single-family dwelling.

Temporary building for use incidental to construction work. Such building shall be removed upon the completion or abandonment of the construction work.

Two-family dwelling, in accordance with the requirements of section 15-13-27 of this title.

**SECTION 5.** Section amended. Section 15-17-2 of the Ogden Municipal Code is hereby amended to read and provide as follows:

**15-17-2: [PERMITTED USES:]**

Accessory buildings and uses customarily incidental to any permitted use.

Accessory dwelling unit (see section 15-13-39 of this title for ADU requirements).

Agriculture.

Church, synagogue or similar permanent building used for regular religious worship.

Educational institution.

Golf course, except miniature golf course.

Greenhouse, noncommercial only.

Group dwelling with eight (8) or less dwelling units in accordance with chapter 10 of this title.

Home occupation.

Household pets.

Library or museum, public or nonprofit.

Multiple-family dwelling with eight (8) or less dwelling units, in accordance with the requirements of section 15-13-27 of this title.

Pigeon loft for the housing of racing pigeons (only allowed on single-family residential lots), in accordance with the standards contained in section 15-13-19 of this title.

Public building, public park, recreation grounds and associated buildings.

Residential facilities for elderly persons (see section 15-13-25 of this title for facility requirements).

Residential facility for persons with a disability (see section 15-13-15 of this title for facility requirements).

Residential garage sales or yard sales.

Single-family dwelling.

Temporary building for use incidental to construction work. Such building shall be removed upon the completion or abandonment of the construction work.

Transitional housing facility (see section 15-13-26 of this title for facility requirements).

Two-family dwelling, in accordance with the requirements of section 15-13-27 of this title.

**SECTION 6.** Section amended. Section 15-18-2 of the Ogden Municipal Code is hereby amended to read and provide as follows:

**15-18-2: [PERMITTED USES:]**

Accessory buildings and uses customarily incidental to any permitted use.

Accessory dwelling unit (see section 15-13-39 of this title for ADU requirements).

Adult daycare.

Agriculture.

Bed and breakfast inn, subject to the following standards:

- A. Two (2) parking spaces shall be provided for the host family, plus one space for each guestroom;
- B. Proprietor or owner must occupy the property;
- C. Meals may only be served to overnight guests; and
- D. Signs are limited to nameplate signs not exceeding two (2) square feet in residential zones. In addition, a freestanding identification sign not to exceed four (4) square feet is permitted. If illuminated, only indirect spotlighting is allowed, thus prohibiting backlighted signs.

Boarding and lodging house; provided that no boarding or lodging house shall be located within one thousand feet (1,000'), measured in a straight line between the closest property lines of the lots or parcels of any of the following similar facilities:

- A. Any other boarding or lodging house,
- B. A protective housing facility,
- C. A transitional housing or rehabilitation/treatment facility,
- D. A residential facility for persons with disability or residential facility for the elderly of more than five (5) people, or
- E. An assisted living facility.

Church, synagogue or similar permanent building used for regular religious worship.

Daycare center.

Educational institution.

Golf course, except miniature golf course.

Greenhouse, noncommercial only.

Group dwelling with eight (8) or less dwelling units in accordance with chapter 10 of this title.

Home occupation.

Household pets.

Library or museum, public or nonprofit.

Multiple-family dwelling with eight (8) or less dwelling units, in accordance with the requirements of section 15-13-27 of this title.

Pigeon loft for the housing of racing pigeons (only allowed on single-family residential lots), in accordance with the standards contained in section 15-13-19 of this title.

Protective housing facility lodging up to fifteen (15) individuals, excluding support staff.

Public building, public park, recreation grounds and associated buildings.

Rehabilitation/treatment facility (see section 15-13-26 of this title for facility requirements).

Residential facilities for elderly persons (see section 15-13-25 of this title for facility requirements).

Residential facility for persons with a disability (see section 15-13-15 of this title for facility requirements).

Residential garage sales or yard sales.

Single-family dwelling.

Temporary building for use incidental to construction work. Such building shall be removed upon the completion or abandonment of the construction work.

Transitional housing facility (see section 15-13-26 of this title for facility requirements).

Two-family dwelling, in accordance with the requirements of section 15-13-27 of this title.

**SECTION 7.** Section amended. Section 15-19-2 of the Ogden Municipal Code is hereby amended to read and provide as follows:

**15-19-2: [PERMITTED USES:]**

Accessory buildings and uses customarily incidental to any permitted use.

Accessory dwelling unit (see section 15-13-39 of this title for ADU requirements).

Adult daycare.

Agriculture.

Bed and breakfast inn, subject to the following standards:

- A. Two (2) parking spaces shall be provided for the host family, plus one space for each guestroom;
- B. Proprietor or owner must occupy the property;
- C. Meals may only be served to overnight guests;
- D. Signs are limited to nameplate signs not exceeding two (2) square feet in residential zones. In addition, a freestanding identification sign not to exceed four (4) square feet is permitted. If illuminated, only indirect spotlighting is allowed, thus prohibiting backlighted signs.

Boarding and lodging house; provided that no boarding or lodging house shall be located within one thousand feet (1,000'), measured in a straight line between the closest property lines of the lots or parcels of any of the following similar facilities:

- A. Any other boarding or lodging house,
- B. A protective housing facility,
- C. A transitional housing or rehabilitation/treatment facility,
- D. A residential facility for persons with disability or residential facility for the elderly of more than five (5) people, or
- E. An assisted living facility.

Church, synagogue or similar permanent building used for regular religious worship.

Daycare center.

Educational institution.

Golf course, except miniature golf course.

Greenhouse, noncommercial only.

Group dwelling with forty nine (49) or less dwelling units in accordance with chapter 10 of this title.

Home occupation.

Household pets.

Library or museum, public or nonprofit.

Multiple-family dwelling with forty nine (49) or less dwelling units, in accordance with the requirements of section 15-13-27 of this title.

Pigeon loft for the housing of racing pigeons (only allowed on single-family residential lots), in accordance with the standards contained in section 15-13-19 of this title.

Private park, playground, recreation area, but not including privately owned commercial amusement businesses.

Protective housing facility lodging up to fifteen (15) individuals, excluding support staff.

Public building, public park, recreation grounds and associated buildings.

Rehabilitation/treatment facility (see section 15-13-26 of this title for facility requirements).

Residential facilities for elderly persons (see section 15-13-25 of this title for facility requirements).

Residential facility for persons with a disability (see section 15-13-15 of this title for facility requirements).

Residential garage sales or yard sales.

Retirement home.

Single-family dwelling.

Temporary building for use incidental to construction work. Such building shall be removed upon the completion or abandonment of the construction work.

Transitional housing facility (see section 15-13-26 of this title for facility requirements).

Two-family dwelling, in accordance with the requirements of section 15-13-27 of this title.

**SECTION 8.** Chapter reserved. Chapter 32 of Title 15 of the Ogden Municipal Code is hereby amended to reserve said Chapter:

**Chapter 32**

**RESERVED**

**~~[ACCESSORY DWELLING UNIT OVERLAY ZONE ADU~~**

**15-32-1: PURPOSE AND INTENT:**

**15-32-2: SCOPE AND APPLICATIONS:**  
**15-32-3: STANDARDS AND CRITERIA:**  
**15-32-4: APPLICATION PROCEDURE:**

**15-32-1: PURPOSE AND INTENT:**

The purpose of the accessory dwelling unit overlay zone (ADU overlay zone) is to encourage individuals to become and remain homeowners by allowing limited opportunities for rental income, allowing the provision of security or services to owner occupants of the dwelling, and providing options for structures designed as single-family dwellings to meet the needs of owner occupants at a variety of stages in their life cycle while protecting the stability of neighborhoods.

**15-32-2: SCOPE AND APPLICATIONS:**

A. The ADU overlay zone applies to those properties defined by the overlay district on the zoning map of Ogden City. The overlay zone may be considered upon petition only for those areas designated in a duly adopted community plan as suitable potential areas for accessory dwelling units. Upon approval of a petition, the ADU overlay zone may be applied in combination with the single-family dwelling requirements in any of the following residential zones: R-1, R-2, R-2EC, R-3, R-3EC, R-4 or R-5.

B. The provisions of the ADU overlay zone shall supplement the provisions of the zone applicable to single-family dwellings. If a conflict arises between the provisions of the ADU overlay zone and the provisions of any zone dealing with single-family dwellings with which it is combined, the provisions of the ADU overlay zone shall be deemed controlling.

**15-32-3: STANDARDS AND CRITERIA:**

All accessory dwelling units must conform to the following standards:

A. Number Of Accessory Units Per Parcel: An accessory dwelling unit (ADU) shall be allowed only on parcels containing a single-family dwelling. No more than one accessory dwelling unit shall be allowed for a lot or parcel which also contains the single-family dwelling. ADUs shall not be allowed on lots or units which are part of a PRUD, apartment building, group dwelling or a condominium project.

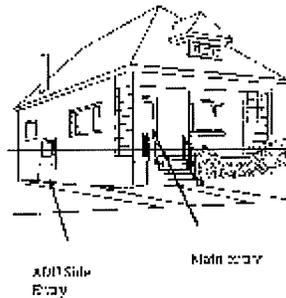
B. Occupancy: The property owner which includes titleholders must occupy either the primary or accessory dwelling as their permanent and principal residence in order to qualify for an ADU. As long as the owner occupies the main dwelling or the ADU then the other unit is allowed to be rented under this ADU provision. The owner is permitted to have a separate seasonal residence but during the time away from the permanent residence they are not allowed to rent out their vacant permanent residence unit. For the purposes of this subsection "seasonal residence" shall mean living in another location up to four (4) months in one calendar year. The property owner shall conform to the definition of "family" as described in chapter 2 of this title. The nonowner-occupied unit is limited to no more than two (2) related or unrelated adults, with or without minor children of the two (2) adults.

C. Size: The ADU shall not occupy more than forty percent (40%) of the building's total habitable square footage or for detached units shall not be less than three hundred (300)

square feet or more than eight hundred (800) square feet. Detached units shall not occupy more than twenty five percent (25%) of the rear yard area of the lot.

~~D. Appearance: The appearance of the dwelling shall remain that of a single-family residence and not be altered with the exception of required egress windows from bedrooms or entry doors. Any new detached building to accommodate an accessory dwelling unit shall be designed to follow the architectural design, style, and character of the main building. The exterior surfaces shall have the same visual appearance of the exterior material and color of the main building. The height of the building shall not exceed one story if the main building is one story nor be taller than twenty five feet (25') to the peak of the roof if the main building is taller than one story.~~

~~E. Outside Entrances: The entrances to the ADU and main dwelling shall use existing entrances to the dwelling if possible. If a separate entrance is required to be installed to one of the units, it shall be by means of a door located in the side or rear of the building.~~



~~F. Parking: A single-family dwelling with an accessory dwelling shall have in existence the required two (2) off street parking spaces that meet the legal location and requirements for off street parking for a single-family dwelling. No additional off street parking in the front or side yard for the ADU is to be provided such as a side yard parking slab or widened driveway. Tandem parking (1 vehicle behind another) in the driveway that leads to legal parking for the main unit shall be the means of providing parking provided the tandem parking does not extend over the property line and the public sidewalk.~~

~~G. Compliance With Building Codes: The ADU unit shall comply with all applicable building, health and fire codes with special attention for existing buildings given to providing the required emergency access from bedrooms.~~

**15-32-4: [APPLICATION PROCEDURE:]**

~~A. Any homeowner who resides in a single-family dwelling and whose property is in the ADU overlay zone and desires an accessory dwelling shall obtain an accessory dwelling permit. The accessory dwelling permit shall be in addition to any building permits that may be necessary to create the accessory dwelling unit. The applicant shall submit as part of the application for an accessory dwelling permit:~~

- ~~1. A site plan drawn accurately to scale that shows property lines and dimensions, the location of existing buildings and building entrances, any proposed building and its dimensions from buildings and property lines, and the location of parking stalls.~~
- ~~2. Detailed floor plans drawn to scale with labels on rooms indicating uses or proposed uses.~~
- ~~3. Written verification that the applicant is the owner of the property and has permanent residency in the existing single-family dwelling where the request is being made. The verification also requires the applicant to acknowledge that they are the owner-occupant and will remain an owner-occupant in order for an accessory dwelling unit to be permitted.~~

~~B. After review by the building services and fire divisions, the planning division shall approve or deny the application based on compliance with these regulations and payment of the same business license fee, including any disproportionate fee, as an owner-occupied duplex under title 5, chapter 1, article B of this code. The required fee may be reduced by any discounts available to an owner-occupied duplex.~~

~~C. Noncompliance with the standards of this section shall be just cause for the denial of an application or revocation of an accessory dwelling permit if the original conditions are not maintained that allowed the accessory dwelling unit. Revocation shall be decided based upon the findings of fact at an administrative hearing before a hearing officer, pursuant to title 5, chapter 1, article C of this code, as such provisions may be applicable. If the permit is revoked the accessory dwelling unit shall be removed within thirty (30) days of the final determination.~~

~~D. The approval of a permit for an accessory dwelling is valid for one year from the date of the approval and must be renewed annually. Change of property ownership voids the accessory dwelling permit. A new permit must be applied for according to these requirements if the new owner desires an ADU.]~~

**SECTION 9.** Section amended. Section 15-35-2 of the Ogden Municipal Code is

hereby amended to read and provide as follows:

**15-35-2: [PERMITTED USES:]**

Accessory buildings and use customarily incidental to any permitted use.

Accessory dwelling unit (see section 15-13-39 of this title for ADU requirements).

Agriculture.

Church, synagogue or similar permanent building used for regular religious worship.

Cluster subdivision, in accordance with chapter 9 of this title.

Educational institution.

Greenhouse, noncommercial only.

Home occupation.

Household pets.

Pigeon loft for the housing of racing pigeons (only allowed on single-family residential lots), in accordance with the standards contained in section 15-13-19 of this title.

Public building, public parks, recreation grounds and associated buildings.

Residential facilities for elderly persons (see section 15-13-25 of this title for facility requirements).

Residential facility for persons with a disability (see section 15-13-15 of this title for facility requirements).

Residential garage sales or yard sales.

Single-family dwelling.

Temporary building for use incidental to construction work. Such building shall be removed upon the completion or abandonment of the construction work.

Two-family dwelling, in accordance with the requirements of section 15-13-27 of this title.

**SECTION 10. Section amended.** Section 15-36-2 of the Ogden Municipal Code is hereby amended to read and provide as follows:

**15-36-2: [PERMITTED USES:]**

Accessory buildings and use customarily incidental to any permitted use.

Accessory dwelling unit (see section 15-13-39 of this title for ADU requirements).

Agriculture.

Boarding and lodging house; provided that no boarding or lodging house shall be located within one thousand feet (1,000'), measured in a straight line between the closest property lines of the lots or parcels of any of the following similar facilities:

- A. Any other boarding or lodging house,
- B. A protective housing facility,

C. A transitional housing or rehabilitation/treatment facility,

D. A residential facility for persons with disability or residential facility for the elderly of more than five (5) people, or

E. An assisted living facility.

Church, synagogue or similar permanent building used for regular religious worship.

Educational institution.

Greenhouse, noncommercial only.

Group dwelling with eight (8) or less dwelling units in accordance with chapter 10 of this title.

Home occupation.

Household pets.

Library or museum, public or nonprofit.

Multiple-family dwelling with eight (8) or less dwelling units, in accordance with the requirements of section 15-13-27 of this title.

Pigeon loft for the housing of racing pigeons (only allowed on single-family residential lots), in accordance with the standards contained in section 15-13-19 of this title.

Public building, public park, recreation grounds and associated buildings.

Rehabilitation/treatment facility (see section 15-13-26 of this title for facility requirements).

Residential facilities for elderly persons (see section 15-13-25 of this title for facility requirements).

Residential facility for persons with a disability (see section 15-13-15 of this title for facility requirements).

Residential garage sales or yard sales.

Retirement home.

Single-family dwelling.

Temporary building for use incidental to construction work. Such building shall be removed upon the completion or abandonment of the construction work.

Transitional housing facility (see section 15-13-26 of this title for facility requirements).

Two-family dwelling, in accordance with the requirements of section 15-13-27 of this title.



**APRIL 1, 2015**  
**OGDEN CITY PLANNING COMMISSION**

**AGENDA ITEM \_\_\_\_\_**

**SUBJECT:** Public Hearing for elimination of Chapter 15-32 for ADU's, Amendment of all Residential Zones to allow ADU's for single-family dwellings except in certain areas of the Mount Ogden Community, Amendment of Chapter 15-13-38 to create Standards for ADU's.

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**REQUESTED ACTION:** Approval for elimination of Chapter 15-32 for ADU's, Amendment of all Residential Zones to allow ADU's for single-family dwellings except in certain areas of the Mount Ogden Community, Amendment of Chapter 15-13-38 to create Standards for ADU's.

**FINDINGS FOR ACTION**

The Commission will need to determine whether or not the proposed ADU ordinance meets the general plan goals of increasing homeownership, providing for a variety of housing styles, and strengthens neighborhoods.

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**CONTACTS**

Petitioner: Ogden City Planning

Staff report: Rick V. Grover

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**PAST ACTIONS**

**August 1, 2012-** Amendment regarding the definition of an ADU to clarify it is not an independent dwelling unit.

**August 31, 2008-** Approval of ADU standards and requirements for Chapter 32.

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**APPLICABLE ORDINANCES**

15-2-2 DEFINITIONS:

**ACCESSORY DWELLING UNIT:** A functionally separate living space developed subordinate to a single-family dwelling on the same lot or in the same building as the single-family dwelling; but which is not an independent residence or dwelling unit.

15-32: ACCESSORY DWELLING UNIT OVERLAY ZONE (ADU)

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**A. DESCRIPTION OF PROJECT**

An Accessory Dwelling Unit (ADU) is a single family owner occupied home where a portion of the building can have an additional dwelling unit or a free standing accessory building (see pictures on following page) on the same lot as the main home that houses no more than two adults with or without minor children. Traditionally these have been named granny flat or mother-in-law apartment. ADU's create a subordinate living space to a single-family unit.



*Accessory ADU*



*Front Primary Structure / Rear ADU Structure accessed from alleyway*

In 2008 the City approved regulations for ADU's to be allowed in certain overlay zones. The purpose of ADUs was to encourage home ownership, both encouraging people to buy and live in Ogden but also keep homeowners in Ogden. The ADU provides a separate additional living space, including separate kitchen, sleeping, and bathroom facilities. ADUs under current regulations are also subordinate in size, location, and appearance to the primary unit.

In 2000 when the City did a massive down zoning of areas that were zoned R-2 there was consideration of exploring different ways of meeting the need for housing in Ogden City.

One of the ways was to consider ADU's however, this item got tabled for several years. Then in 2007 ADU's was revisited and in 2008 the Commission approved overlay zones near Weber State University to provide additional student housing. At that time consideration of ADU's was discussed in all residential zones City wide but the Commission and Council decided to see how ADU's would integrate into the neighborhoods were the overlay zones were established. Seven years later the Council suggested that ADU's be considered City wide. Staff is recommending the Commission review ADU's city wide except for certain areas in the Mount Ogden Community Plan where the community plan prohibited consideration of ADU's.

**B. SUMMARY OF ISSUES**

1. Should ADUs be allowed City wide but excluded in certain areas of the Mount Ogden Community Plan?
2. Do the benefits of ADUs add to Ogden City neighborhoods?
3. Do the current ADU regulations integrate them into the neighborhoods?
4. How do ADU's fit in with vacation rentals?

**C. STAFF ANALYSIS OF PROPOSAL**

The housing cycle for families fluctuate with the home first being owned by a young couple as they begin their family. The impact is low to begin with. As children come into the family and they grow older there may be more cars in the driveway. The house is either enlarged or unfinished rooms in the basement are finished off. As the children leave the family wants to stay in the home but it is too large. The impact has been reduced in terms of cars parked in the area. The family makes a decision to either move to a smaller place and this house start the cycle again or the extra space is rented out while the couple still lives in the home. This cycle happens all over the neighborhood and generally there is little change in the character of the area.

Today there are many changes in what had been the traditional family, but for most home ownership is still a desired result. Staff mapped out the City showing single family lots versus owner occupied and rental/not owner occupied it was interesting to see how many single-family rentals there are in the city as shown in an attached map (*Data from Weber County Assessor*). Between 1990 and 2010 the census count shows a steady increase in rentals versus owner occupied as shown in the table below. The ADU option is one way to address this issue as it requires owner occupancy to take advantage of it.

| <b>Census Counts</b>   | <b>1990</b> | <b>2000</b> | <b>2010</b> |
|------------------------|-------------|-------------|-------------|
| <i>Owner Occupied</i>  | 14256       | 16752       | 17093       |
| <i>Renter Occupied</i> | 9383        | 10632       | 12538       |

Some of the benefits of ADU's for a community is that ADU's encourage efficient use of existing housing stock and infrastructure, by using surplus space in single-family homes. This surplus space is a result of lower fertility rates, a reduction in family size preference, a growing elderly population, and smaller average households.

ADU's tend to integrate affordable housing into a community. While this may not be a need for Ogden City. Some communities have adopted provisions that limit concentrations of ADU's by controlling the number of conversions that may occur within a particular area. ADU's add affordability both from the perspective of potential tenants, for whom rents are usually cheaper than for market units, and from the perspective of homeowners, who can use the rental income from an ADU to ease the burden of home mortgage and maintenance expenses.

By allowing ADU's, communities can encourage better upkeep of the existing housing stock since homeowners can apply a portion of the income from their rental unit to maintaining their property. Homeowners can also exchange rent reductions for maintenance done by tenants. The ability to exchange reduced rents for services will also benefit many other groups of homeowners, including young families, the elderly, single parents, and handicapped persons. For example, a mother with young children may rent an ADU to a student and make an arrangement for reduced rent in exchange for regular babysitting. An elderly widow can still keep up her yard because of the young couple in the basement is taking care of the yard for a reduced rent or they can provide a feeling of security that there is someone to call if help is needed. Disabled people often face limited opportunities for housing that can meet their special needs.

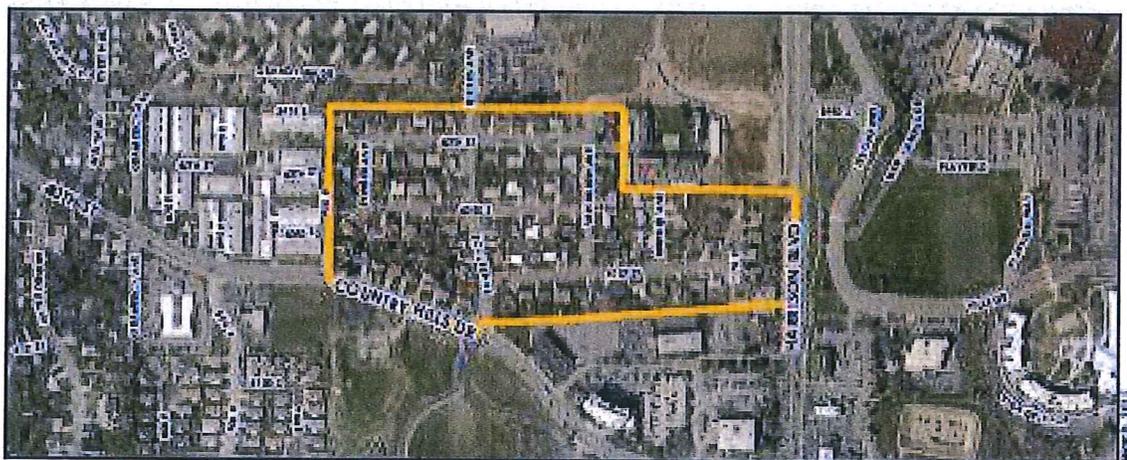
ADU's also help to enhance neighborhood stability since they can provide homeowners with the extra income they may need to remain in their homes for longer periods. ADU's can provide many homeowners with needed additional income to meet high mortgage and maintenance costs. The additional income may be particularly helpful for elderly homeowners who are living on fixed incomes. ADU's may allow some of these elderly homeowners to stay in their homes with the extra income from an ADU to help offset their rising living expenses.

Many baby-boomers are now facing the prospect of having to arrange for the care and housing of their aging parents or other close relatives. By allowing ADU's the community can give these families the options of providing for either live-in care in their parents' house or having their parents move in with the adult child if the parent still wants a separate unit but in close proximity to their child.

ADU's also offer housing opportunities in more desirable single-family neighborhoods for some who might not otherwise be able to afford to live there. For many single individuals, single parents, or others with modest incomes, the only other housing option available may be apartment complexes. Living in an ADU would give these households the opportunity to enjoy the amenities typically found in many single-family neighborhoods, including more privacy, a quieter environment, and less traffic congestion.

At the present time there are three overlay zones found in the City. In all these areas there is one ADU that has been permitted as shown in the map on the following page.

# Accessory Dwelling Units



 Accessory Dwelling Unit Overlay  Existing Accessory Dwelling Units

The current ordinance allows overlay districts to be considered with a petition if the community plan identifies areas potential for ADUs. They are allowed to be located in the R-1, R-2, R-2EC, R-3, R-3EC, R-4 and R-5 Zones. The only community plan area that specifically indicates that ADUs should not be considered is in the Mount Ogden Community Plan primarily north of 35<sup>th</sup> Street and south of 26<sup>th</sup> Street east of Harrison Boulevard as shown in attachment.

In determining the location of ADUs as shown on the previous page it started out in the 36<sup>th</sup> Street area east of Harrison and west of Harrison on 4050 S. near Weber State University. In 2014 an ADU area was created in the East Central between 24<sup>th</sup> and 22<sup>nd</sup> Street. Since that time only one ADU has been created @ 1598 36<sup>th</sup> Street. We have found that just because an area is zoned for ADUs doesn't mean they will be used for that use. This also reinforces national trends that indicate because an area is zoned for ADUs not all individuals desire to have an ADU and their site may not allow for it. Allowing ADUs City wide will provide options for residences who may desire to have an ADU but because of the current approval process have chosen not to. The General Plan is clear about the intent to look at ADU's as a housing option. 7.D.8 states, "Identify opportunities for inclusion of 4,700 new dwelling units in Ogden to accommodate continued population growth. There is limited vacant land available to accommodate for this population growth. Strategies to accommodate for this could include in-fill development, allowing density increase in certain areas, providing opportunities to create alternative dwelling choices, such as live/work units or ADU's. The East Central Community Plan also indicated in 14.B.12 about providing ADU's in certain multi and single-family zones.

Although Ogden City's housing goals clearly support ADU's, some homeowners may view them as a potential threat to the stability of single-family neighborhoods. These homeowners may believe that ADU's should not be allowed, or at least, closely controlled to void any negative impacts. Presently there are many illegal accessory dwellings in the community but people tend not to report them because the homeowner is also a neighbor and they have adjusted to it. The real concern for most neighborhoods is when both units become rentals. In many ways an adoption of an ADU ordinance in 2000 could have reduced the number of homes that have the top and bottom rented out because at the time, some of the homes had the homeowners renting out their basements. With the legal conforming certificates this allowed those homes now to have rentals in both units rather than the homeowner protection the ADU provision provides.

The proposed ordinance would be to consider ADUs as a permitted use in all residential zones excluding portions of the Mount Ogden Community Plan because this is the only plan that doesn't desire them in certain areas.

The current ADU language found in Chapter 32 deals with creating overlay zones for ADU's and then sets standards of size, appearance, design and parking which creates the ability for ADUs to integrate into neighborhoods. This language would be eliminated from Chapter 32 since an overlay zone would no longer be required. The standards for

ADU's would be moved to Chapter 13 Regulations for all Zones with the chart below showing some of those standards.

|                                                                                             |
|---------------------------------------------------------------------------------------------|
| <b>ADU Regulations</b>                                                                      |
| ADUs allowed in all residential zones except in certain areas of the Mount Ogden Community. |
| <i>1 Accessory Unit per parcel</i>                                                          |
| Owner Occupied (can't rent out their unit if away from it)                                  |
| <i>Vacation rental not allowed</i>                                                          |
| Limited to 2 related or unrelated adults, with minor children                               |
| <i>Size: Not occupy more than 40% of building</i>                                           |
| Appearance shall remain as a single-family                                                  |
| <i>One front entrance and one side or rear</i>                                              |
| Parking: 2 legal off street parking spaces                                                  |
| <i>Comply with building codes</i>                                                           |
| Permit valid for 1 year & renewed annually                                                  |

The only additional language added would clearly state that vacation rentals are not permitted as part of an ADU. The combination of an ADU and vacation rental could pose a change of neighborhood character. The character would be altered with an ADU being a permanent residence with two separate living spaces and a vacation rental being used on a short term basis. Vacation rentals are primarily employed for family and group gatherings which could impact the ability for one lot to service both uses. The intent of an ADU and vacation rental is that the appearance of the unit will remain a single family home and with both uses on one lot a parking problem could occur. This could lead to an enforcement issue and it would also be difficult for code enforcement to know if the site is an ADU or a vacation rental.

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**D. ALTERNATIVE ACTIONS**

- Deny the proposed ordinance.
- Approve with additional conditions.

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**E. STAFF RECOMMENDATION**

Approval.

Attachment

1. Proposed Ordinance
2. Map Single Family Lots
3. Public Notice

LAND USE

**6. Allow Accessory Dwelling Units**

Another form of increased density is Accessory Dwelling Units (ADUs). Weber State University students create a demand for small apartments with close proximity to the campus. The strong demand for this housing has prompted some property owners to rent out both the primary and accessory units without proper zoning approval. Consequently, some single-family areas are morphing into multi-unit rental areas. One strategy to deal with this issue is to make accessory dwelling units possible but to create rules regarding their use such as owner occupancy and off-street parking requirements. Enforcement of regulation regarding accessory dwelling units is essential to making this form of housing complementary to the surrounding neighborhoods.

Accessory dwelling units can also benefit the community, especially in light of the fact that the Mt. Ogden Neighborhood has seen an increase in rental housing. Accessory dwelling units encourage efficient use of existing housing stock, provide homeowners with additional income, allow aging homeowners to remain in their homes longer, and require home ownership.

**Vision Objectives**

1. Consider an accessory dwelling unit overlay in a limited area close to Weber State University that would allow accessory dwelling units. Requirements for such an overlay would include the following:
  - a. Owner occupied;
  - b. Off-street parking requirements;
  - c. Size requirements to ensure accessory apartment remains subordinate to the primary residence;
  - d. Design and appearance standards.



*Examples of neighborhood friendly accessory dwelling units*

## LAND USE

### **12. Provide for Accessory Dwelling Units (ADU's) in certain areas of the neighborhood.**

Accessory Dwelling Units (ADU's) are a zoning terminology for what had traditionally been called a granny flat but was an illegal land use. Home owner occupancy is important to maintain a stable neighborhood. ADU's become a way a home owner can stay in their home through the various phases of their life and rent out a portion of the home when times dictate a need or desire to do this. This type of housing arrangement allows for persons who may otherwise leave the home as their family grows up, to stay in the house and have companionship, rental income or help around the house. The areas zoned R-2EC and R-3EC would be the most appropriate places to initiate this use as those areas currently allow duplexes. Concerns were expressed that changes to the existing regulations would need to be made with other design standards.

### **Vision Objectives**

- 12.A Consider an ADU overlay in the areas currently zoned R-3EC and the areas to be rezoned to R-1-5 from R-2EC and modify the requirements to consider including:
1. Adequate lot size and off street parking.
  2. Good landlord certification and current business license.
  3. Deed restricted and code compliant.





# ACCESSORY DWELLING UNITS (ADU)

## WHAT IS AN ADU?

An Accessory Dwelling Unit is a small apartment or living space within or on the same property as an owner-occupied, single-family home. These are commonly referred to as granny flats, mother-in-law apartments or basement apartments.

Accessory dwelling units may house up to two adults and their minor children. Units cannot change the appearance of the home and off-street parking must be available to tenants.

## WHY ACCESSORY DWELLING UNITS?

An Accessory Dwelling Unit (ADU) can provide many benefits to a community and to homeowners. It can serve as an apartment for newly married couples, students, single adults, older and retired persons, or small families. In addition to providing another housing option, ADUs can help a homeowner stay in a home longer by supplementing housing expenses and can also provide additional income to homeowners who wish to rehabilitate larger, historic homes in the city.

## PROPOSED CITY ORDINANCE

The City Council will consider an ordinance to simplify the process and allow more ADUs on January 12, 2016, 6:00 pm, at the Ogden Municipal Building (2549 Washington Blvd). The public is invited to attend and provide input.

### Q: Where would ADUs be permitted?

A: An ADU would be permitted in any owner-occupied, single-family home in the city, with the exception of specific areas within the Mt. Ogden and the East Central community planning areas.

### Q: Is an approval required to create an ADU?

A: Yes. If a homeowner wishes to create an ADU, that homeowner must apply for a business license with the City to rent the unit and must have a site plan and floor plan reviewed and approved by the Planning Department. Permit fees are \$156 per year or \$13 per year if the owner participates in the Good Landlord Program.

### Q: What are the standards for ADUs?

A: The creation of an ADU must not alter the appearance of the home, and a minimum of two off-street parking spaces must be available for the unit. Any new construction for an ADU must be architecturally compatible with the original home, and any new entrances must be located to the side or rear of the home. The home must be the owner's primary residence, and the ADU must comply with all building, health, and fire codes with specific focus on emergency access from bedrooms. The occupancy of an ADU is limited to two adults and their minor children.

For more information, please contact the Ogden City Council Office at (801) 629-8153 or the Planning Department at (801) 629-8930.

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*"ADUs are a community asset. They provide a great housing option for young people and the elderly while also promoting homeownership and a long-term investment in our neighborhoods."*

*- Council Member Rich Hyer*

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# City Council Meeting COUNCIL STAFF REVIEW

## TRACKLINE ECONOMIC DEVELOPMENT PROJECT AREA – OGDEN BUSINESS EXCHANGE

- *Loan Guaranty– Redevelopment Agency Wasatch Brownfields Coalition  
Loan (\$400,000)*

### DETERMINATION:

**Approve or Not Approve Resolution**

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#### *Executive*

#### *Summary*

The Council will consider a Resolution authorizing a Loan Guarantee for the Redevelopment Agency’s loan (\$400,000) from Wasatch Coalition Brownfields Revolving Loan Fund—EPA funds administered by Salt Lake County. Loan proceeds will be used to cover environmental remediation at the Ogden Business Exchange.

#### *Background*

##### **April 23, 2013**

The Redevelopment Agency Board adopted Resolution 2013-7 terminating the golden Spike Redevelopment Area and 2013-8 authorizing creation of the TrackLine Economic Development Project Area.

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

The Board adopted Resolution 2014-9 authorizing the purchase of approximately fifty (50) acres of property within the Trackline Economic Development Area, also known as the Ogden Business Exchange. This property was the former home of the Ogden Stockyards.

##### **January 15, 2015**

The Board approved Resolution 2015-1 authorizing the terms and conditions of a Master Land Transfer and Development Agreement (MLTDA) with OBE Vision, LLC, for development of the Ogden Business Exchange property.

Because City funds were also being pledged towards, the City Council also approved Resolution 2015-1 authorizing the terms and conditions of the MLTDA.



# City Council Meeting

## COUNCIL STAFF REVIEW

A summary of the key points of the agreement follows:

### **Parties to the Agreement**

- Agency
- OBE Vision, LLC (a division of Ascent Construction)

### **Developer Funding/Investment**

- \$6M – Debt/Financed
- \$100k – Equity/Developer funds

### **Agency Funding**

- \$230,175 – Equity/CIP
- \$550,000 – Equity/HUD
- \$3.34M - Debt/HUD Loan
- \$7M – Equity/Tax Increment over 18 years

### **Takedown Schedule**

- Developer must “takedown” or develop 7 acres per year of Commercial Space and Open Space
- All infrastructure pertaining to each 7-acres development phase must be completed by Developer and will be reimbursed as a project cost

### **Developer Obligations**

- Infrastructure development
- Sale of land to third parties
- Annual job creation reporting
- Management of common space via Owner’s Association
- Compliance with Master Plan Design Guidelines, Community Covenants, and Trackline EDA Plan
- Fundraising for Exchange Building

### **Agency Obligations**

- Transfer land to Developer
- Contribute tax increment up to \$7M
- Provide oversight of development and annual reporting



# City Council Meeting

## COUNCIL STAFF REVIEW

- Complete predevelopment work
- Fundraising for Exchange Building
- Construction of 24" waterline (offsite infrastructure)

The RDA Board and the City Council also acknowledged that future actions would be necessary to make the project successful. Those actions were identified as follows:

- Committing \$250,000 of BDO lease revenue funds for budget years FY2016 through FY2019
- Repaying HUD 108 Loan in the amount of \$3.34 M
- Amending the Trackline Economic Development Area to extend the term of the Area for an additional five (5) years from the current end date of June 2033 to June 2038. An extension would be subject to Taxing Entity Committee approval
- Making 75% of the Tax Increment Revenue available to the project with up to \$5 M going to Developer as Developer's Return
- Committing approximately \$700,000 in Water Utility CIP funds as match for the EDA grant of \$1.4 M for a total of \$2.38
- Paying Developer monthly interest payments (5%) plus a quarterly administrative fee from Project revenues (Project Costs)
- Rezoning the property
- Approving Community Covenants, Design Guidelines, and an Architectural Master Plan in future legislative actions
- ***Completing environmental Closure and satisfying UDEQ requirements***
- Giving Developer the option to dedicate Open Space to the City or to provide a Public Easement to provide public access

### **February 25, 2015**

Administrative Staff was notified by the Wasatch Brownfields Coalition Revolving Loan Fund Board that the Agency's application for a \$400,000 loan for environmental remediation at the Trackline EDA had been approved.



# City Council Meeting COUNCIL STAFF REVIEW

## **December 1, 2015**

The Board Offices received an Administrative Transmittal requesting authorization for and approval of a \$400,000 loan from Wasatch Coalition Brownfields Revolving Loan Fund—EPA funds administered by Salt Lake County. Salt Lake County also requested a Loan Guaranty executed by Ogden City as additional security for repayment of the Loan.

## **December 5, 2015**

The Board held a work session to review and discuss the proposed loan from Wasatch Coalition Brownfields Revolving Loan Fund.

### ***Proposal***

The Administration is requesting the Council approve a Loan Guaranty for the loan agreement with Salt Lake County from the Wasatch Coalition Brownfields Revolving Loan Fund (WBCRLF). Loan proceeds will be used to fund environmental remediation costs at the Ogden Business Exchange.

The WBCRLF, administered by Salt Lake County, will provide \$400,000 in loan funds and requires a match of \$90,500. Sources for the Agency's matching funds will be the City's Community Development Block Grant and Section 108 Loan Guarantee Program funds.

Terms and conditions of the RDA Loan Agreement are summarized below:

- Funds will be available until October 1, 2016. Agency must drawdown 100% of the loan amount by that date
- Agency shall pay interest of 2% per annum from October 1, 2016 until the November 30, 2019
- Financing costs are as follows
  - Application Fee: 0.5% of loan amount or \$500.00
  - Origination Fee: 2.0% of the loan amount or \$1,000.00 whichever is greater.
- Loan Service Fee: \$25.00 per month until loan amount and all accrued interest has been paid in full



# City Council Meeting COUNCIL STAFF REVIEW

- At least 50% of the loan proceeds must cover petroleum cleanup. The remaining 50% must be used for hazardous substance cleanup
- Agency must submit a Certification of Completion issued by the UDEQ
- Agency must provide matching funds equal to 20% of the total budgeted Reimbursable Remediation Work.
- Agency must abide by Equal Employment Opportunity, Davis-Bacon Act, OSHA and other pertinent federal rules and regulations
- ***Ogden City must Guarantee the Loan and agree to the repayment of the loan if RDA is unable***
- The Agreement becomes effective immediately up the approval of the governing bodies of the County and the Agency

A complete outline of the budget is included with the loan documents.

## ***Question***

Please review the terms and conditions of the Loan Guaranty.

## ***Attachment***

Redevelopment Agency Loan Documents - Wasatch Brownfields Coalition Loan (\$400,000)

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

**OGDEN CITY REDEVELOPMENT AGENCY TRANSMITTAL**

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**DATE:** November 23, 2015

**TO:** Ogden City Redevelopment Agency Board

**THRU:** Mark Johnson, CAO

**FROM:** Tom Christopulos, CED Director

**RE:** Wasatch Coalition Brownfields RLF – Ogden Business Exchange

**STAFF CONTACT:** Brandon Cooper, CED Deputy Director

**REQUESTED TIMELINE:** as soon as possible

**RECOMMENDATION:** Approval of terms and conditions of loan

**DOCUMENTS:** Loan Documents, Resolution

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**BACKGROUND**

The Ogden Redevelopment Agency has been approved for a \$400,000 loan from the Wasatch Brownfields Coalition Revolving Loan Fund (“**WBC RLF**”) for environmental remediation of its 50-acre Ogden Business Exchange site located at 600 West Exchange Road in the Trackline Economic Development Area (“**EDA**”).

The Ogden Business Exchange site was formerly utilized as a stockyard and livestock exchange and has also been used for the storage of equipment and containers of unknown origins and type. There is a railroad spur that ran through the property for stock transportation which historically can have contamination from creosote, which is a blend of hundreds of chemicals. Chemical products that may have been historically transported and offloaded from rails cars could impact the site from unregulated and unreported spills. Ultimately, the resulting historic contaminants may include a comingling of hazardous substances and petroleum such as semi-volatiles, oils, and grease associated with the railroad ties/line and unidentified substances in the unmarked containers.

The Agency has enrolled in the Utah Department of Environmental Quality (“**DEQ**”) Voluntary Cleanup Program (“**VCP**”) and has been performing predevelopment tasks needed to make the master-planned “lifestyle” business park economically feasible, including: property acquisition, environmental remediation, demolition, infrastructure improvements, and other site preparation. The RDA has also partnered with a private developer who will be responsible for building, selling and leasing buildings in the business park. The business park will feature office,

manufacturing, light industrial, and distribution facilities that incorporate historical design and have connections to the Weber River, open space, pedestrian/bike trails, and access to the county-wide trail network. Ogden City is currently working with several companies planning to locate at the Business Exchange.

The WBC RLF provides \$400,000 in loan funds and requires that the Agency contribute a local match of \$90,500, in addition to loan fees (2.5% of the loan funds). The source of the local match will be Community Development Block Grant (“**CDBG**”) and Section 108 Loan Guarantee Program funds from the Department of Housing and Urban Development. The loan is a 4-year interest-only loan, with an interest rate of 2% per annum and a balloon payment at the end of the loan term. Disbursements of loan funds and interest payments will both be made on a quarterly basis. The loan is to be repaid through project revenues (land sales proceeds and tax increment) and is guaranteed by Ogden City Corporation. The WBC has also agreed to allow loan proceeds to be disbursed for up to \$330,000 of already-incurred eligible cleanup expenses.

For further information please contact Brandon Cooper at (801) 629-8947.

## Wasatch Brownfields RLF Loan Repayment Schedule

for Ogden Cleanup Project

### Inputs

|                       |           |        |
|-----------------------|-----------|--------|
| Loan Amount           | \$400,000 |        |
| Annual Interest Rate  | 2.00%     |        |
| Amortization Period   | 120       | months |
| # of Regular Payments | 48        | months |
| Begin Date            | 10/1/2016 |        |

### Assumptions

- \* Interest compounds monthly
- \* Payments made at end of quarter
- \* Balloon amount paid a month after the last regular quarterly payment

### Summary

|                            |                     |                                                   |
|----------------------------|---------------------|---------------------------------------------------|
| Monthly Payment            | \$666.67            | <input checked="" type="checkbox"/> Interest Only |
| Balloon Payment            | \$ 400,666.67       |                                                   |
| Balloon Payment w/Rounding | <b>\$400,666.67</b> |                                                   |
| <br>                       |                     |                                                   |
| Total Payments             | \$ 432,666.83       |                                                   |
| Total Interest Paid        | \$ 32,666.83        |                                                   |

### Payment Schedule

| Quarter | Date         | Payment           | Interest         | Principal         | Balance     |
|---------|--------------|-------------------|------------------|-------------------|-------------|
| 1       | 1/1/2017     | 2,000.01          | 2,000.01         | 0.00              | 400,000.00  |
| 2       | 4/1/2017     | 2,000.01          | 2,000.01         | 0.00              | 400,000.00  |
| 3       | 7/1/2017     | 2,000.01          | 2,000.01         | 0.00              | 400,000.00  |
| 4       | 10/1/2017    | 2,000.01          | 2,000.01         | 0.00              | 400,000.00  |
| 5       | 1/1/2018     | 2,000.01          | 2,000.01         | 0.00              | 400,000.00  |
| 6       | 4/1/2018     | 2,000.01          | 2,000.01         | 0.00              | 400,000.00  |
| 7       | 7/1/2018     | 2,000.01          | 2,000.01         | 0.00              | 400,000.00  |
| 8       | 10/1/2018    | 2,000.01          | 2,000.01         | 0.00              | 400,000.00  |
| 9       | 1/1/2019     | 2,000.01          | 2,000.01         | 0.00              | 400,000.00  |
| 10      | 4/1/2019     | 2,000.01          | 2,000.01         | 0.00              | 400,000.00  |
| 11      | 7/1/2019     | 2,000.01          | 2,000.01         | 0.00              | 400,000.00  |
| 12      | 10/1/2019    | 2,000.01          | 2,000.01         | 0.00              | 400,000.00  |
| 13      | 1/1/2020     | 2,000.01          | 2,000.01         | 0.00              | 400,000.00  |
| 14      | 4/1/2020     | 2,000.01          | 2,000.01         | 0.00              | 400,000.00  |
| 15      | 7/1/2020     | 2,000.01          | 2,000.01         | 0.00              | 400,000.00  |
| 16      | 10/1/2020    | 2,000.01          | 2,000.01         | 0.00              | 400,000.00  |
|         | 11/1/2020    | 400,666.67        | 666.67           | 400,000.00        | 0.00        |
|         | <b>Total</b> | <b>432,666.83</b> | <b>32,666.83</b> | <b>400,000.00</b> | <b>0.00</b> |

**RESOLUTION NO. 2016-3**

**A RESOLUTION OF THE OGDEN CITY COUNCIL AUTHORIZING AND APPROVING A LOAN GUARANTY FOR A \$400,000 LOAN BETWEEN THE OGDEN CITY REDEVELOPMENT AGENCY AND SALT LAKE COUNTY FOR ENVIRONMENTAL CLEANUP IN THE TRACKLINE ECONOMIC DEVELOPMENT PROJECT AREA**

**WHEREAS**, the City Council adopted Resolution 2013-20 approving the project area plan and budget for the Trackline Economic Development Project Area (“**Project Area**” or “**Project**”) and establishing steps and criteria for redevelopment of the Project; and

**WHEREAS**, the City Council approved Resolution 2015-1 authorizing the terms and conditions of a Master Land Transfer and Development Agreement (MLTDA) with OBE Vision, LLC, for development of the Ogden Business Exchange property; and

**WHEREAS**, the Redevelopment Agency enrolled the Project Area in the Utah Department of Environmental Quality Voluntary Cleanup Program and has performed , and continues to perform along with the Developer, necessary environmental remediation and other site preparations; and

**WHEREAS**, in the process of inspection, investigating and developing the Project Area, the Agency and Developer found certain historic contaminants including hazardous substances and petroleum products such as semi-volatiles, oils, and grease associated with the railroad ties and lines and other substances in unmarked containers (“**Contamination**”); and

**WHEREAS**, all such Contamination must be removed to prepare the lots within the Project Area for sale and construction and occupation of buildings thereupon; and

**WHEREAS**, the Redevelopment Agency has been approved for a \$400,000 loan (“**Loan**”) for remediation of the Contamination within the Project Area from the Wasatch Brownfields Coalition Revolving Loan Fund, a loan fund administered by Salt Lake County; and

**WHEREAS**, the Loan is favorable to the Redevelopment Agency and carries an interest rate of 2% per annum, starts accruing interest on October 1, 2016, and requires interest only payments each quarter until November 1, 2020, at which time the principle balance, together with any unpaid accrued interest thereon, will be due and payable; and

**WHEREAS**, securing the Loan is necessary for the continued success of the Project, and the Loan will provide needed funding to complete the cleanup of the Contamination; and

**WHEREAS**, the Redevelopment Agency expects to pay back the Loan from the sale of lots and tax increment generated from the Project, and

**WHEREAS**, as a condition of the Loan, Salt Lake County requires a Loan Guaranty (“**Guaranty**”) from Ogden City as additional commitment and security for repayment of the Loan;

**WHEREAS**, the City Council finds and determines it is in the best business and proprietary interests of the City to assist the Agency in securing the loan; and

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

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

1. The Loan Guaranty in substantially the form presented to the Council at this meeting is in all respects authorized, approved and confirmed.
2. The Mayor is hereby authorized to execute and carry out all necessary and reasonable actions to complete the transaction contemplated by this Resolution.
3. The Resolution shall become effective immediately upon its adoption.

**APPROVE AND ADOPTED** this \_\_\_\_ day of \_\_\_\_\_ 2016.

\_\_\_\_\_  
CHAIR

ATTEST:

\_\_\_\_\_  
CITY RECORDER

Approved as to Form MS 1-7-16  
LEGAL DATE

## GUARANTY

**THIS GUARANTY** (the “**Guaranty**”) is executed effective as of November 30, 2015 by Ogden City, a Utah municipality (the “**Guarantor**”) for the benefit of **SALT LAKE COUNTY**, a body corporate and politic of the State of Utah (the “**Lender**”).

### WITNESSETH:

A. The Lender has agreed to lend to the Redevelopment Agency of Ogden City, a community development and renewal agency and political subdivision of the State of Utah (the “**Borrower**”), the principal amount of up to \$400,000 (the “**Loan**”). The Loan is represented by (a) that certain Loan Agreement, dated November 30, 2015 between the Borrower and the Lender (the “**Loan Agreement**”), and (b) that certain Promissory Note, executed by Borrower to the order of Lender (the “**Note**” and together the Loan Agreement and this Guaranty, the “**Loan Documents**”). All capitalized terms not otherwise defined herein shall have the meanings given them in the Loan Agreement.

B. As a condition to Lender agreeing to extend the Loan to the Borrower, the Lender has required the Guarantor to execute and deliver this Guaranty.

NOW, THEREFORE, Guarantor hereby agrees as follows:

### ARTICLE I

#### NATURE AND SCOPE OF GUARANTY

Section 1.01. Guaranty of Obligation. Guarantor hereby unconditionally and irrevocably guarantees to Lender the punctual payment when due, whether by lapse of time, by acceleration of maturity, or otherwise, of all principal, interest (including interest accruing after the commencement of any bankruptcy or insolvency proceeding by or against Borrower, whether or not allowed in such proceeding), fees, late charges, costs, expenses, indemnification indebtedness, and other sums of money now or hereafter due and owing, or which Borrower is obligated to pay, pursuant to the terms of the Loan Documents, as the same may from time to time be amended, supplemented, restated or otherwise modified (collectively, the “**Obligations**”). The guaranty of Guarantor as set forth in this Section 1 is a continuing guaranty of payment and not a guaranty of collection.

#### Section 1.02. Nature of Guaranty.

(a) Nature of Guaranty. This Guaranty is absolute, continuing, irrevocable, and unconditional. This Guaranty is a guaranty of payment and performance when due and not

of collection. This Guaranty shall be effective and remain in full force and effect until all Obligations are paid and performed in full, regardless of (i) the genuineness, regularity, legality, validity, or enforceability of any or all of the liens and encumbrances, the Loan Documents, or the Obligations, (ii) any law, regulation, or rule (federal, state, or local) or any action by any Governmental Authorities discharging, reducing, varying the terms of payment, or otherwise modifying any of the Obligations or any of the liens and encumbrances, or (iii) the death, dissolution, or liquidation of Borrower or Guarantor.

(b) Enforcement Against Guarantor Without Other Action. Lender may enforce this Guaranty against the Guarantor without first having sought enforcement of any Loan Documents against Borrower, any other guarantor, or any collateral.

(c) Events Not Affecting Guarantor Obligations. The following shall not affect, impair, or delay the enforcement of this Guaranty, regardless of the impact upon any contribution, exoneration, indemnification, reimbursement, subrogation, and other rights of Guarantor:

(i) The bankruptcy, death, disability, dissolution, incompetence, insolvency, liquidation, or reorganization of Borrower.

(ii) Any defense of Borrower to payment or performance of any or all Obligations (other than the defense of payment or performance), or enforcement of any or all liens and encumbrances securing the Obligations on this Guaranty.

(iii) The disallowance, discharge, modification of the terms of, reduction in the amount of, or stay of enforcement of any or all Obligations, or any or all liens and encumbrances securing the Obligations, in any bankruptcy, insolvency, reorganization, or other legal proceeding or by any law, ordinance, regulation, or rule (federal, state, or local).

(iv) The cessation of liability of Borrower for any or all Obligations without full satisfaction of such Obligations.

(d) Acts and Omissions of Lender Not Affecting this Guaranty. The following acts and omissions shall not affect, delay, or impair this Guaranty, regardless of the impact upon any contribution, exoneration, indemnification, reimbursement, subrogation, or other rights of Guarantor:

(i) Lender may compromise, delay enforcement, fail to enforce, release, settle, or waive any or all Obligations of Borrower or any or all rights and remedies of Lender against Borrower.

(ii) Lender may make disbursements/advances, issue letters of credit, or grant other financial accommodations for Borrower without requiring satisfaction of all conditions precedent in the Loan Documents.

(iii) Lender may obtain, substitute, and release collateral or additional collateral for the Obligations or this Guaranty.

(iv) Lender may fail to perfect, fail to protect the priority of, and fail to insure any or all liens and encumbrances in such collateral.

(v) Lender may fail to inspect, insure, maintain, preserve, or protect any or all such collateral.

(vi) Lender may enforce, compromise, delay enforcement, fail to enforce, settle, or waive any rights and remedies of Lender as to any or all such collateral.

(vii) Lender may assemble, sell, or otherwise dispose of any collateral in any manner and order Lender determines in its absolute and sole discretion, and disposition may be for no value, or for less than fair market value, of the collateral in the absolute and sole discretion of Lender. With respect to any collateral that is personal property, Lender shall give Guarantor ten (10) days' prior written notice of any sale or other disposition, except for personal property collateral that is perishable, threatens to decline speedily in value, is of a type customarily sold on a recognized market, or is cash, cash equivalents, certificates of deposit or the like, and except as to Lender's right of set-off. Guarantor's sole right with respect to all collateral shall be to bid at a sale thereof in accordance with applicable law.

(viii) Lender may obtain additional obligors for any or all Obligations, and may substitute or release Borrower or any other obligor.

(ix) Lender may fail to file or pursue a claim in any bankruptcy, insolvency, probate, reorganization, or other proceeding as to any or all Obligations or any or all liens and encumbrances securing the Obligations.

(x) Lender may subordinate (A) any or all liens and encumbrances securing the Obligations or this Guaranty, or (B) any or all Obligations.

(xi) Lender may amend, modify, extend, renew, restate, supplement, or terminate in whole or in part any or all Loan Documents.

(xii) Lender may assign any or all of its rights and delegate its obligations under the Loan Documents, in whole or in part (including, without limitation, by participation).

(xiii) Lender may do any other act or make any other omission that might otherwise constitute an extinguishment or a legal or equitable discharge of, or defense by, Guarantor.

(e) Notice and Cure Rights. Notwithstanding anything herein to the contrary, Guarantor shall have the notice and cure rights set forth in the Loan Documents, and nothing herein shall be construed as a waiver by Guarantor of such notice and cure rights. No claim shall be made against the Guarantor unless and until the occurrence of any of the following events:

(i) Failure by Borrower or Guarantor to pay the entire outstanding balance of the Note on the maturity date.

(ii) Failure by Borrower or Guarantor to pay any required payment of principal when and as due.

(iii) Failure by Borrower or Guarantor to pay interest, fees or other amounts owing under the Loan Documents, except principal and except at maturity, within ten (10) days after Borrower's and Guarantor's receipt of a written notice of default, unless cured within such ten (10) day period.

(iv) Failure by Borrower or Guarantor to perform any obligation not involving the payment of money, or to comply with any other term or condition applicable to Borrower or Guarantor under any Loan Document upon the expiration of thirty (30) days after written notice of such failure by Lender to Borrower and Guarantor.

#### 1.03 Guarantor' Waivers.

(a) Note and Notice Waivers. Guarantor waives, to the full extent permitted by law, presentment, notice of dishonor, protest, notice of protest, notice of intent to accelerate, notice of acceleration, and all other notices or demands of any kind (including, without limitation, notice of the acceptance by Lender of this Guaranty, notice of the existence, creation, non-payment, or non-performance of any or all Obligations).

(b) Waiver of Acts and Omissions of Lender. Guarantor waives any defense to enforcement of the Obligations or any liens and encumbrances granted by Guarantor based on acts and omissions of Lender.

(c) Waiver of Statutory Provisions. Guarantor waives any and all rights and benefits, if any, under *Utah Code Annotated* § 78B-6-901 (formerly *Utah Code Annotated* § 78-37-1), *Utah Code Annotated* § 57-1-32 and any other similar or replacement statutes or rules now or hereafter in effect and any other statutes or rules now or hereafter in effect that purport to confer specific rights upon, or make specific defenses or procedures available to, Guarantor, or limit the right of Lender to recover a deficiency judgment, or to otherwise proceed, against any person or entity obligated for payment of the Loan, after any trustee's sale, any judicial foreclosure sale or any personal property sale of any collateral securing the Loan.

(d) Waiver of Statute of Limitations. To the full extent permitted by law, Guarantor waives any and all statutes of limitations as a defense to any or all Obligations.

(e) Waiver of Law and Equitable Principles Conflicting With This Guaranty. Guarantor waives any and all provisions of law and equitable principles that conflict with this Guaranty.

(f) Waiver of Any Obligation of Lender to Inform Guarantor. Guarantor waives any right to require Lender, and Lender shall have no obligation, to provide to

Guarantor any information concerning performance of the Obligations, the ability of Borrower to perform the Obligations, or any other matter, regardless of what information Lender may have from time to time.

(g) Waiver of Contribution, Exoneration, Indemnification, Reimbursement, Subrogation, and Other Rights Against Borrower and Other Loan Parties. Until such time as the Obligations have been fully satisfied, Guarantor waives any and all present and future claims, remedies, and rights of Guarantor against Borrower or any other guarantor, any collateral, and any other property, interests in property, or rights to property of Borrower or any other guarantor (i) arising from any performance by Guarantor hereunder, (ii) arising from any application of any collateral or any other property, interests in property, or rights to property of Guarantor to payment or performance of the Obligations, or (iii) otherwise arising in respect of the Loan Documents, regardless of whether such claims, remedies, and rights arise under any present or future agreement, document, or instrument or are provided by any law, ordinance, regulation, or rule (federal, state, or local) (including, without limitation, (A) any and all rights of contribution, exoneration, indemnity, reimbursement, and subrogation, and (B) any and all rights to participate in the rights and remedies of Lender against Borrower, any other guarantor, and any collateral).

## ARTICLE II

Section 2.01. Waiver. No modification or waiver of any provision of this Guaranty, and no consent to depart therefrom, shall be effective unless in writing and no such consent or waiver shall extend beyond the particular case and purpose involved.

Section 2.02. Governing Law. This Guaranty has been prepared, and is intended to be performed, in the State of Utah and the laws of the State of Utah govern the validity, construction, enforcement and interpretation of this Guaranty.

Section 2.03. Invalid Provisions. If any provision of this Guaranty is held to be illegal, invalid, or unenforceable under present or future laws effective during the term of this Guaranty, such provision shall be fully severable and this Guaranty shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Guaranty.

Section 2.04. Entirety and Amendments. There are no unwritten oral agreements between the parties. This Guaranty represents the final agreement between the parties with respect to the matters contained herein and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. This Guaranty may be amended only by an instrument in writing executed by an authorized officer of the party against whom such amendment is sought to be enforced.

Section 2.05. Parties Bound; Assignment. This Guaranty shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives; provided, however, that neither Guarantor nor Lender may, without the prior written consent of the other, assign any of their rights, powers, duties or obligations hereunder.

Section 2.06. Waivers. Guarantor waives any defense arising by reason of any disability or other defense of Borrower or by reason of the cessation from any cause whatsoever of the liability of Borrower, and until all amounts due to Lender from Borrower shall have been paid in full, Guarantor shall have no right of subrogation, and waives any right to enforce any remedy which Lender now has, or may hereafter have against Borrower. Guarantor waives all presentments, demands for performance, notices of non-performance, protests, notices of protest, notices of dishonor.

Section 2.07. Attorneys Fees and Costs. Guarantor shall pay Lender's reasonable attorney's fees and all costs and other expenses incurred by Lender in any collection or attempted collection of, or in any negotiations relative to, the obligations hereby guaranteed, or in enforcing this Guaranty against Guarantor.

Section 2.08. Miscellaneous. The use of the singular herein shall include the plural. The terms and provisions of this Guaranty shall be binding upon and inure to the benefit of the respective heirs, personal representatives, successors, and assigns of the parties herein named.

*[Intentionally Left Blank - Signature Page Follows]*

EXECUTED as of the day and year first above written.

**OGDEN CITY AS GUARANTOR:**

By \_\_\_\_\_

Name: \_\_\_\_\_

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

Dated: \_\_\_\_\_, 20\_\_\_\_

***Approved as to Form and Legality:***

ATTORNEY FOR OGDEN CITY

By \_\_\_\_\_

Name: \_\_\_\_\_

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

Dated: \_\_\_\_\_, 20\_\_\_\_

**LOAN AGREEMENT**  
*between*  
**SALT LAKE COUNTY**  
*and*  
**REDEVELOPMENT AGENCY OF OGDEN CITY**

**THIS LOAN AGREEMENT** (“Loan Agreement”) is dated November 30, 2015 and entered into by and between **SALT LAKE COUNTY**, a body corporate and politic of the State of Utah (“Lender”), and the **REDEVELOPMENT AGENCY OF OGDEN CITY**, a community development and renewal agency and political subdivision of the State of Utah (the “Borrower”). Lender and Borrower may each be referred to hereinafter as a “Party” and collectively as the “Parties.”

**RECITALS:**

A. The Lender and Borrower are “public agencies” as defined by the Utah Interlocal Cooperation Act, Utah Code Ann. §§ 11-13-101 *et seq.* (the “Cooperation Act”), and, as such, are authorized by the Cooperation Act to enter into this Agreement to act jointly and cooperatively on the basis of mutual advantage.

B. The Lender received a grant from the U.S. Environmental Protection Agency (“EPA”) to capitalize the Wasatch Brownfields Revolving Loan Fund (the “Revolving Loan Fund”) from which to make low-interest loans to eligible recipients to cleanup eligible brownfields sites.

C. The Borrower is the owner of certain real property (the “Property”) located at 600 West Exchange Road, Ogden, Utah (known as the Ogden Business Exchange), which property is more particularly defined below.

D. The Lender now desires to extend a loan to the Borrower from the Revolving Loan Fund on a reimbursement basis to finance a portion of cleanup and remediation work to be conducted on the Property pursuant to the cleanup plan(s) submitted to and approved by the Utah Department of Environmental Quality (UDEQ) through the State’s Voluntary Cleanup Program (VCP) (the “Project”).

H. The Lender and the Borrower are entering into this Loan Agreement to establish the terms and conditions of each Party’s respective agreements in connection with the Project and the Loan.

## **AGREEMENT:**

NOW, THEREFORE, in consideration of the mutual representations, covenants, and agreements contained herein, the sufficiency of which is hereby acknowledged, the Parties represent and agree as follows:

### **ARTICLE 1 - INCORPORATION AND DEFINITIONS**

1.1. Incorporation and Definitions. The foregoing recitals and all exhibits hereto are hereby made a part of this Agreement. Unless otherwise defined in this Agreement, terms shall have the meaning set forth in the Act. The following terms shall have the following meanings in this Agreement:

- (a) Act: As defined in the Recitals to this Agreement.
- (b) Borrower: The Redevelopment Agency of Ogden City, which exists and exercises its powers under the Limited Purpose Local Government Entities – Utah Community Development and Urban Renewal Agencies Act, Utah Code Ann. §§ 17C-1-101 *et seq.*
- (c) Default Rate: 14% per annum.
- (d) Effective Date: As defined in Section 7.1 hereof.
- (e) Eligible Expenses: Expenses actually paid or incurred by the Borrower to complete the Reimbursable Remediation Work, but only to the extent such expenses are deemed eligible for reimbursement/disbursement from the Revolving Loan Fund under applicable EPA guidance, agreements, rules and regulations and all other applicable laws and regulations.
- (f) Eligible Expenses Tracking Spreadsheet. The table/spreadsheet, attached as Schedule 1 of the Request for Disbursement attached hereto as Exhibit E, which tracks to total amount of Eligible Expenses incurred by the Borrower.
- (g) Environmental Laws: Any judgment, decree, order, law, license, rule or regulation pertaining to environmental matters, including without limitation, those arising under the Resource Conservation and Recovery Act (“RCRA”), the Comprehensive Environmental Response, Compensation and Liability Act of 1980 as amended (“CERCLA”), the Superfund Amendments and Reauthorization Act of 1986 (“SARA”), the Federal Clean Water Act, the Federal Clean Air Act, the Toxic Substances Control Act or any statute, regulation, ordinance, order or decree relating to health, safety or the environment.
- (h) Event of Default. As defined in Section 6.1 hereof.
- (i) Governmental Authorities: Any and all jurisdictions, entities, courts, boards, agencies, commissions, offices, divisions, subdivisions, departments, bodies, or

authorities of any type of any governmental unit (federal, state, or local) whether now or hereafter in existence.

(j) Guarantor: Ogden City, a Utah municipality.

(k) Guaranty: That certain guarantee agreement, attached hereto as EXHIBIT B, executed by the Guarantor in favor of the Lender, as amended, restated, supplemented or otherwise modified from time to time.

(l) Hazardous Materials: Any hazardous waste (as defined by 42 U.S.C. § 9601(5)), any hazardous substances (as defined by 42 U.S.C. § 9601(14)), any pollutant or contaminant (as defined by 42 U.S.C. § 9601(33)), or any toxic substances, oil or hazardous materials (as defined by Utah Code Ann. § 19-6-302), or other chemicals or substances regulated by any Environmental Laws.

(m) Hazardous Substance: As defined in 42 U.S.C. § 9601(14), as amended.

(n) Legal Requirements: Any and all present and future judicial decisions, statutes (including environmental laws), laws, rulings, rules, regulations, orders, writs, injunctions, decrees, permits, certificates or ordinances of any Governmental Authority in any way applicable to Borrower or the Property, including, without limiting the generality of the foregoing, the ownership, use, occupancy, possession, operation, maintenance, alteration, repair, or reconstruction thereof.

(o) Lender: Salt Lake County, a body politic of the State of Utah.

(p) Loan: The loan evidenced by the Note and governed by this Agreement.

(q) Loan Amount: \$400,000.00 (Four Hundred Thousand Dollars).

(r) Loan Documents: This Loan Agreement, the Note, the Guaranty, and all other documents now or hereafter executed by the Borrower and delivered to the Lender at the Lender's request in connection with the Loan, and all extensions, renewals, modifications and replacements of any or all of such documents.

(s) Loan Opening: The date of the first disbursement of Loan Proceeds.

(t) Loan Proceeds: Funds disbursed under the Note pursuant to the Loan and this Agreement.

(u) Material Adverse Change: Any event, circumstance, fact, condition, development, or occurrence that has had or could be reasonably expected to have a material and adverse effect on any of: (i) the operations, financial condition, liabilities, assets, results of operations, capitalization, or liquidity of the Borrower; (ii) the ability of the Borrower to complete the contemplated Remediation Work on the Property; (iii) the ability of the Borrower to perform its obligations under this Loan Agreement or any of the Loan Documents; or (iv) the validity, enforceability, or binding effect of this Loan Agreement or any of the Loan Documents.

(v) Maturity Date: The date that is forty-eight (48) months from the date first above written, or November 30, 2019.

(w) Note: That certain Promissory Note of even date herewith in the principal sum of the Loan Amount (together with any and all renewals, modifications, reinstatements, enlargements or extensions thereof) executed and delivered by the Borrower payable to the order of the Lender, evidencing the Loan and attached hereto as EXHIBIT A.

(x) Indebtedness: The principal, interest and other sums evidenced by the Note or the Loan Documents and any other amounts, payments or premiums payable under the Loan Documents.

(y) Person: Any natural person, trust, partnership, firm, joint venture, association, corporation, limited liability company, any other form of incorporated or unincorporated business entity, or any public body corporate and politic.

(z) Petroleum: All forms of petroleum, even if CERCLA-listed hazardous substances are indigenous in it or are additives normally added to it during the refining process, regardless of the a presence or absence of soil.

(aa) Phase 1 Eligible Expenses: Eligible Expenses that are identified in the Reimbursable Remediation Work Budget and Schedule as being part of Phase 1.

(bb) Phase 2 Eligible Expenses: Eligible Expenses that are identified in the Reimbursable Remediation Work Budget and Schedule as being part of Phase 2.

(cc) Phase 3 Eligible Expenses: Eligible Expenses that are identified in the Reimbursable Remediation Work Budget and Schedule as being part of Phase 3.

(dd) Pollutant or Contaminant: As defined in 42 U.S.C. § 9601(33), as amended.

(ee) Project: As defined in Recital D above.

(ff) Property: The parcel(s) located at 600 West Exchange Road, Ogden, Utah (known as the Ogden Business Exchange), which is approximately 51 acres, and more fully described by the legal description attached hereto as EXHIBIT C.

(gg) Regular Rate: 2% per annum.

(hh) Remediation Work: The cleanup work items to be completed with respect to the Property under the voluntary cleanup plan submitted to and approved by UDEQ for each phase of the Project.

(ii) Reimbursable Remediation Work: The Remediation Work identified and described in the Reimbursable Remediation Work Budget and Schedule attached hereto as EXHIBIT D.

(jj) Reimbursable Remediation Work Budget and Schedule. The budget and schedule attached hereto as EXHIBIT D, which sets forth the estimated budget for the Reimbursable Remediation Work as well as the phases in which each Reimbursable Remediation Work item or portion thereof will be completed.

(kk) Request for Disbursement: The form attached hereto as Exhibit E.

(ll) Revolving Loan Fund (RLF): As defined in the recitals.

(mm) Revolving Loan Fund Program: The program established by Salt Lake County, the Redevelopment Agency of Salt Lake City, and Ogden City to administer the Revolving Loan Fund.

(nn) Voluntary Cleanup Program (VCP): A program administered by the Utah Department of Environmental Quality (UDEQ) to encourage the investigation and cleanup of sites where there has been a suspected or confirmed contaminant release threatening public health and the environment.

(oo) Wasatch Brownfields Coalition RLF Board Memorandum: The Wasatch Brownfields Coalition RLF Board Memorandum dated February 25, 2015 and attached hereto as **EXHIBIT F**.

## **ARTICLE 2 — THE LOAN**

2.1. Agreement to Lend. The Borrower shall borrow from the Lender, and the Lender shall lend and disburse to or for the benefit of the Borrower, from time to time until October 1, 2016, an amount up to but not in excess of the Loan Amount, all on the terms and subject to the conditions of this Loan Agreement. The Borrower's liability for repayment of interest on account of the Loan shall be limited to and calculated with respect to Loan Proceeds actually disbursed to or on behalf of the Borrower pursuant to the terms of this Loan Agreement and the Note and only from the date or dates of such disbursements. The Lender may, in the Lender's sole discretion, disburse Loan Proceeds directly to third parties to pay costs or expenses required to be paid by the Borrower pursuant to this Loan Agreement. Loan Proceeds disbursed directly by the Lender to third parties to pay costs or expenses required to be paid by the Borrower pursuant to this Loan Agreement, shall be considered a disbursement to the Borrower.

2.2. Interest. The Borrower shall pay interest on amounts disbursed hereunder with respect to the Loan at the Regular Rate from October 1, 2016 until the Maturity Date, as described in the Promissory Note. Interest will be computed upon disbursements of the Loan from and including the date of each disbursement thereof by the Lender to or for the account of the Borrower, on the basis of a three hundred sixty (360) day year and the actual number of days elapsed in any portion of a quarter in which interest is due.

2.3. Financing Costs.

(a) On or before Loan Opening, the Borrower shall pay the Lender:

(1) an application fee of 0.5% of the Loan Amount or \$500.00,

whichever is greater;

(2) an origination fee of 2.00% of the Loan Amount or \$1,000.00, whichever is greater; and

(b) Following Loan Opening, the Borrower shall pay the Lender:

(1) a \$25.00 monthly loan servicing fee (or \$75.00 per quarter) until the date that the Loan Amount and all accrued interest has been paid in full.

2.4. Maturity Date. Prior to the Maturity Date, the Borrower shall make principal payments, if any, as provided herein and in the Note. The Borrower shall pay, in full, the unpaid principal balance of the Note, all accrued and unpaid interest, and all other sums due and payable under the Note or other Loan Documents, if not sooner paid, on the Maturity Date.

2.5. Application of Payments. Unless specifically otherwise provided in the Loan Documents, the Lender shall be entitled to apply any payments or other sums received in such order and priority against the Indebtedness as the Lender may reasonably elect; provided, however, absent the election to the contrary by the Lender such payments shall be applied in the following order and priority:

(a) First, toward payment of all expenses incurred by Lender in collecting any amount of principal or interest that are past due, and the payment of any financing fees that are unpaid and past due;

(b) Second, toward payment of the remaining accrued but unpaid interest;

(c) Third, toward payment of the matured portion of the principal of the Loan;

(d) Fourth, toward prepayment of the unmatured portion, if any, of principal of the Loan applied to installments of principal in inverse order of maturity.

2.6. Use of Loan Proceeds.

(a) In General. Borrower shall use the Loan Proceeds to cover a portion of the Reimbursable Remediation Work listed in EXHIBIT D.

(b) Drawdown. The Borrower shall drawdown 100% of the Loan Amount by October 1, 2016, otherwise the Borrower will not be entitled to further disbursements under this Loan Agreement and the Note.

(c) Hazardous Substance and Petroleum Split. In totality, the Borrower shall use at least 50% of the Loan Proceeds disbursed to the Borrower to cover Eligible Expenses related to Petroleum cleanup, and shall use the remainder of Loan Proceeds to cover Eligible Expenses for Hazardous Substance cleanup.

(d) Compliance with Legal Requirements. The Borrower shall not use any Loan Proceeds received from the Lender under this Loan Agreement in any manner that

would violate any Legal Requirements

### **ARTICLE 3 – REPRESENTATIONS**

3.1. Representations of the Borrower. To induce the Lender to execute and perform this Loan Agreement, the Borrower hereby represents, covenants, and warrants to the Lender as follows:

(a) Duly Organized. The Borrower is duly organized and existing under the laws of the State of Utah and is qualified and in good standing in the State of Utah where it is doing business.

(b) Due Authority. The Borrower has all necessary power and authority to carry out the Remediation Work, to execute, deliver, and perform the terms and obligations of this Loan Agreement and any Loan Documents required of the Borrower herein, and such execution and delivery has been duly and validly authorized by all necessary proceedings. Accordingly, this Loan Agreement constitutes the legal valid and binding obligation of Borrower, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, general principles of equity and other laws generally applicable to creditors.

(c) Corporate Consents. No consent or approval is required to be obtained from, and no action need be taken by, or document filed with, any governmental entity or other business entity in connection with the execution, delivery and performance by the Borrower of this Agreement, except for those which have been obtained prior to the date hereof.

(d) Pending Suits. There are no suits, judgment, bankruptcies or executions pending or, to Borrower's knowledge, threatened against Borrower or the Property that would materially adversely affect the Borrower's ability to perform its obligations under this Loan Agreement or that would, in any material respect, challenge or adversely affect the existence or powers of the Borrower to enter into and carry out the transactions described in or contemplated by the terms and provisions of this Loan Agreement and the Loan Documents.

(e) Legal Requirements. To Borrower's knowledge, Borrower is not in violation of any Legal Requirements and no violation of any Legal Requirements exists with respect to the Property.

(f) Ownership and Sufficiency of Remediation Work. The Borrower has fee simple title to the Property and, to Borrower's knowledge, the Remediation Work will be sufficient to complete cleanup of the Property.

(g) No Violation of Other Agreements. The consummation of the transactions contemplated by this Agreement and the performance of this Agreement will not result in any breach of, or constitute a default under, any mortgage, deed of trust, deed to secure debt, lease, bank loan, loan agreement, credit agreement, partnership or joint venture agreement or other instrument or agreement to which the Borrower is a party or by which

it may be bound or affected.

(h) No Default. No default or Event of Default has occurred under this Agreement beyond any applicable cure period, and no event, circumstance or condition has occurred or exists which, with the passage of time or the giving of notice, or both, would constitute a default or an Event of Default under this Agreement, or, to the Borrower's knowledge, any other material agreement or material instrument to which the Borrower is a party or by which the Borrower is or may be bound.

(i) Information. The information furnished to the Agency by the Borrower in connection with the matters covered in this Agreement are true and correct and do not contain any untrue statement of any material fact and do not omit any material fact required to be stated therein or necessary to make any statement made therein, in light of the circumstances under which it was made, not misleading.

(j) No Material Adverse Change. No Material Adverse Change has occurred since the date that any relevant and material information concerning (i) the Remediation Work, (ii) the Property, or (iii) the financial condition, organization, operation, or personnel of the Borrower, was last provided to the Lender.

(k) No Additional Subordination. The obligations of the Borrower under this Agreement and the Note will not be further subordinated in the right of payment to any other obligation of Borrower, other than that which may be provided under this Agreement, unless otherwise acknowledged or agreed to by the Lender in writing.

(l) Site and Borrower Eligibility. The Property is an eligible Brownfield site and the Borrower is an eligible Borrower under the EPA's Revolving Loan Fund Program.

(m) Environmental Representations. The Borrower further certifies that:

(1) The Property is not listed, or proposed for listing, on the National Priorities List of the U.S. Environmental Protection Agency (EPA);

(2) The Borrower is not, and has not been, subject to any penalties arising from environmental noncompliance at the Property;

(3) The Borrower is not a Potentially Responsible Party under Section 107(a) of CERCLA (42 U.S.C. § 9607(a)).

(4) The Borrower is not a generator, arranger, or transporter of any Hazardous Substances, as described in Section 107(a) of CERCLA, in relation to the Property.

(5) The Borrower acquired the Property after the time of disposal or placement of hazardous substances and has not caused, contributed to, permitted, or exacerbated the release of a hazardous substance on or emanating from the Property.

3.2. Effect of Each Disbursement Request. The Borrower agrees that each Disbursement Request submitted by Borrower, and the receipt of Loan Proceeds thereunder, constitutes an affirmation that the representations made in this Article remain true and correct as of the date thereof, unless Lender is notified to the contrary prior to the disbursement of the requested Loan Proceeds. Borrower agrees that each Disbursement Request will also constitute a representation that the information set forth in such Disbursement Request is true and correct.

#### **ARTICLE 4 – CONDITIONS OF LENDING & DISBURSEMENTS**

4.1. Conditions Precedent to Making the Loan. The Lender shall not be obligated to make the Loan and disburse Loan Proceeds to the Borrower unless and until the following conditions have been satisfied:

(a) Preconditions Satisfied. The preconditions set forth on pages 5 and 6 of the Wasatch Brownfields Coalition RLF Board Memorandum dated February 25, 2015 and attached hereto as EXHIBIT F have been fulfilled to the satisfaction of the Lender, and any documents required to be furnished to the Lender therein have been furnished to the Lender.

(b) Execution and Delivery of Loan Documents. The Borrower has furnished or delivered to the Lender, in form, substance and execution acceptable to the Lender:

(1) The Loan Documents; and

(2) Such other papers and documents as may be required by this Loan Agreement or as the Lender or Lender's counsel may otherwise reasonably require.

(c) Ownership of Premises. The Borrower has fee simple title to the Property and, if requested by the Lender, has furnished to the Lender copies of a deed and current title insurance policy indicating the Borrower's ownership.

(d) Documents of Record. If requested by the Lender, the Borrower has furnished to the Lender copies of all covenants, conditions, restrictions, easements, and matters of record which affect the Property.

(e) Governmental Approval. The Borrower has secured all necessary approvals or consents, if required, of Governmental Authorities having jurisdiction with respect to the contemplated Remediation Work to the Property.

(f) Approval of Others. The Borrower has secured all necessary approvals or consents required with respect to this transaction by any mortgagee, creditor, or other party having any financial interest in the Borrower and, if requested by the Lender, has furnished to the Lender evidence of any such approval.

(g) Approval of Lender's Governing Body. The governing body of the Lender has approved via resolution the execution of this Loan Agreement.

#### 4.2. Disbursements of Loan Proceeds.

(a) Disbursement Process—In General. The Lender shall only disburse Loan Proceeds to or on behalf of the Borrower for Eligible Expenses. For any and all desired disbursements of Loan Proceeds with respect to Eligible Expenses, the Borrower shall submit a Request for Disbursement directly to the Lender and satisfy the requirements for each disbursement of Loan Proceeds set forth below. The Borrower agrees to respond in a timely manner to any reasonable requests made by the Lender for additional information relating to any Request for Disbursement. In the event that the Lender declines to make the full disbursement requested in any Request for Disbursement for failure to comply with the terms of this Agreement, the Lender shall notify the Borrower promptly and shall provide a written explanation of the specific reasons for such decision.

(b) Frequency of Disbursements. Disbursements of Loan Proceeds to cover Eligible Expenses shall occur no more frequently than once in any calendar quarter and the Lender shall not be obligated to make any disbursement of Loan Proceeds hereunder more than once in any thirty (30)-day period.

(c) Amount of Disbursements. Subject to compliance with the terms and conditions of this Agreement, the Lender shall disburse to the Borrower the amount of Loan Proceeds requested by the Borrower in a Request for Disbursement to cover Eligible Expenses. However, the Lender shall not be obligated to disburse Loan Proceeds for a particular Eligible Expense to the extent that the amount of the requested disbursement for such Eligible Expense would, when added to prior disbursements for such Eligible Expense, exceed the total set forth in the Reimbursable Remediation Work Budget and Schedule for such Eligible Expense. Under no circumstances shall the Lender be required to disburse, in aggregate, more than the Loan Amount.

(d) Borrower's Obligation to Pay For and Complete Remediation Work. To the extent that Loan Proceeds disbursed by the Lender for Eligible Expenses are insufficient to reimburse Borrower for all costs required for completion of the Remediation Work, the Borrower shall pay such excess costs with funds derived from sources other than the Loan.

(e) Acquiescence Not a Waiver. To the extent that The Lender may have acquiesced in noncompliance with any conditions precedent to the disbursement of Loan Proceeds, such acquiescence shall not constitute a waiver by the Lender and the Lender at any time after such acquiescence may require the Borrower to comply with all such conditions and requirements under this Agreement.

4.3. Requirements for Each Disbursement of Loan Proceeds. The Lender shall not be obligated to disburse Loan Proceeds to the Borrower for Eligible Expenses unless and until the following conditions have been satisfied:

(a) Completion of Reimbursable Remediation Work. The Borrower has completed a discrete and identifiable element or phase of the Reimbursable Remediation

Work for which Eligible Expenses were incurred by the Borrower and included in a Request for Disbursement submitted to the Lender.

(b) Documents to be Furnished for Each Disbursement. The Borrower has furnished to the Lender, for each and every requested disbursement of Loan Proceeds:

(1) A Request for Disbursement, along with an updated copy of the Eligible Expenses Tracking Spreadsheet; and

(2) A signed statement from the Borrower and the Borrower's environmental consultant certifying that the Eligible Expenses for which disbursement is sought have in fact been incurred and that such Eligible Expenses are eligible for reimbursement/disbursement under all applicable EPA guidance, agreements, rules and regulations and all other applicable laws and regulations; and

(3) Invoices and lien waivers from each contractor, subcontractor, and materialman (supplier) for all work and materials covered by the Request for Disbursement, all in compliance with the construction and mechanics' lien laws of the State of Utah; and

(4) For each invoice, a detailed summary stating the amount of the invoice that constitutes Eligible Expenses and a breakdown showing the total amount of Eligible Expenses related to petroleum versus hazardous substance cleanup;

(5) Documentation evidencing compliance with the requirements of the Davis-Bacon Act.

(c) EPA Disbursement to Lender. For each and every Request for Disbursement submitted by Borrower, the EPA has first disbursed to Lender (through the EPA Revolving Loan Fund grant mentioned in Recital B above) grant funds in an amount sufficient to cover the amount of Loan Proceeds requested for disbursement to the Borrower.

(d) No Default. No Event of Default has occurred under this Loan Agreement, any Loan Document, or any other instrument securing or otherwise relating to the Loan, and no event, circumstance or condition has occurred or exists which, with the passage of time or the giving of notice, would constitute an Event of Default under this Loan Agreement, any Loan Document, or any other instrument securing or otherwise relating to the Loan.

(e) Warranties and Representations True. All warranties and representations made in this Agreement shall have remained true and correct.

4.4. Requirements for Disbursement of Loan Proceeds for Phase 1 Eligible Expenses. In addition to the other conditions found in Section 4.3 above, Agency shall not be obligated to disburse Loan Proceeds for Phase 1 Eligible Expenses unless and until the following conditions have been satisfied:

(a) Submittal and Approval of Phase 1 Cleanup Plan. As specified in Exhibit F, the Borrower has submitted a cleanup plan for Phase 1 of the Project to UDEQ through the State Voluntary Cleanup Program (VCP) and UDEQ has approved the cleanup plan.

(b) Submittal of Approved Phase 1 Cleanup Plan to EPA and Lender. As specified in Exhibit F, The Borrower has submitted an approved copy of the cleanup plan for Phase 1 of the Project to the EPA and to the Lender.

(c) Submittal of Approved Phase 1 CRP to EPA and Lender. As Specified in Exhibit F, the Borrower has submitted a copy of the Community Relations Plan (CRP) for Phase 1 of the Project to the EPA and to the Lender.

(d) Submittal of Approved Phase 1 ABCA to EPA and Lender. As Specified in Exhibit F, the Borrower has submitted a copy of an Analysis of Brownfields Cleanup Alternatives (ABCA) for Phase 1 of the Project to the EPA and to the Lender.

4.5. Requirements for Disbursement of Loan Proceeds for Phase 2 Eligible Expenses. In addition to the other conditions found in Section 4.3 above, Agency shall not be obligated to disburse Loan Proceeds for Phase 2 Eligible Expenses unless and until the following conditions have been satisfied:

(a) Submittal and Approval of Phase 2 Cleanup Plan. As specified in Exhibit F, the Borrower has submitted a cleanup plan for Phase 2 of the Project to UDEQ through the State Voluntary Cleanup Program (VCP) and UDEQ has approved the cleanup plan.

(b) Submittal of Approved Phase 2 Cleanup Plan to EPA and Lender. As specified in Exhibit F, the Borrower has submitted an approved copy of the cleanup plan for Phase 2 of the Project to the EPA and to the Lender.

(c) Submittal of Approved Phase 2 CRP to EPA and Lender. As Specified in Exhibit F, the Borrower has submitted a copy of the Community Relations Plan (CRP) for Phase 2 of the Project to the EPA and to the Lender.

(d) Submittal of Approved Phase 2 ABCA to EPA and Lender. As Specified in Exhibit F, the Borrower has submitted a copy of an Analysis of Brownfields Cleanup Alternatives (ABCA) for Phase 2 of the Project to the EPA and to the Lender.

4.6. Requirements for Disbursement of Loan Proceeds for Phase 3 Eligible Expenses. In addition to the other conditions found in Section 4.3 above, Agency shall not be obligated to disburse Loan Proceeds for Phase 3 Eligible Expenses unless and until the following conditions

have been satisfied:

(a) Submittal and Approval of Phase 3 Cleanup Plan. As specified in Exhibit F, the Borrower has submitted a cleanup plan for Phase 3 of the Project to UDEQ through the State Voluntary Cleanup Program (VCP) and UDEQ has approved the cleanup plan.

(b) Submittal of Approved Phase 3 Cleanup Plan to EPA and Lender. As specified in Exhibit F, The Borrower has submitted an approved copy of the cleanup plan for Phase 3 of the Project to the EPA and to the Lender.

(c) Submittal of Approved Phase 3 CRP to EPA and Lender. As Specified in Exhibit F, the Borrower has submitted a copy of the Community Relations Plan (CRP) for Phase 3 of the Project to the EPA and to the Lender.

(d) Submittal of Approved Phase 3 ABCA to EPA and Lender. As Specified in Exhibit F, the Borrower has submitted a copy of an Analysis of Brownfields Cleanup Alternatives (ABCA) for Phase 3 of the Project to the EPA and to the Lender.

4.7. Requirements Prior to Final Disbursement of Loan Proceeds. The Borrower shall have met the following requirements, in addition to the other requirements of Article 4, prior to a final disbursement of Loan Proceeds for Eligible Expenses:

(a) Completion of Project. The Project shall have been fully completed, free and clear of construction and mechanic's liens.

(b) Certification of Completion. The Borrower shall have furnished to the Lender a certificate of completion issued by UDEQ for each phase of the Project.

(c) Final Inspection. The Lender or its representative, at the Lender's sole option, shall have inspected the Property to sufficiently confirm completion of the Project.

(d) Other Requirements. All other applicable requirements, conditions, and covenants of this Agreement shall have been complied with.

## **ARTICLE 5 — COVENANTS OF THE BORROWER**

5.1. Punctual Payment of the Loan. The Borrower shall pay punctually the principal and interest on the Note according to its terms and conditions and shall pay punctually any other amounts that may become due and payable to the Lender under or pursuant to the terms of this Loan Agreement or the Note.

5.2. Matching Requirement. The Borrower shall pay a "matching share" of the Reimbursable Remediation Work from non-Federal sources of funding. For the purposes of this Loan Agreement, the Borrower's "matching share" is equal to 20% of total budgeted Reimbursable Remediation Work, as outlined in the Reimbursable Remediation Work Budget and Schedule attached hereto as EXHIBIT D.

5.3. Compliance with All Laws. The Borrower shall carry out the Remediation Work in accordance with: (a) the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) (42 U.S.C. § 9601 et seq.), including the relevant requirements of CERCLA § 104(k) (42 U.S.C. § 9604(k)); (b) the Uniform Administrative Requirements for Grants and Cooperative Agreements to States and Local Governments (40 C.F.R. Part 31); (c) Cooperative Agreements for Superfund Response Actions (40 C.F.R. Part 35, Subpart O); (d) the National Oil and Hazardous Substances Contingency Plan (NCP) (40 C.F.R. Part 300); and (e) all other applicable provisions of federal, state, or local law. Additionally, the Borrower shall ensure that the Remediation work protects human health and the environment.

5.4. Compliance with Executive Order 11246. The Borrower shall comply with Executive Order 11246, Equal Employment Opportunity, and implementing regulations at 41 C.F.R. Part 60-4 relating to federally assisted construction contractors.

5.5. Davis-Bacon Act. The Borrower shall carry out the Remediation Work in accordance with the Davis-Bacon Act of 1931 (CERCLA § 104(g)(1) [i.e., 42 U.S.C. § 9604(g)(1)], 40 U.S.C. § 3147, and 42 U.S.C. § 3222). Compliance with the Davis-Bacon Act requires payment of Federal prevailing wage rates for construction, repair or alteration work funded in whole or in part with EPA Revolving Loan Fund proceeds. The Borrower must obtain recent and applicable wage rates from the U.S. Department of Labor and incorporate them into any contract for performance of the Remediation Work.

5.6. Preparation of Safety and Health Program/Plan. The Borrower shall cause all contractors and subcontractors undertaking cleanup activities funded by the loan to prepare a safety and health program/plan in accordance with 29 C.F.R. 1910.120 and Occupational Safety and Health Administration (OSHA) guidelines.

5.7. Nondiscrimination and Equal Opportunity. The Borrower shall comply with the statutes prohibiting discrimination on the grounds of race, color, national origin, sex and disability. In addition, the Borrower will undertake good faith efforts in compliance with 40 C.F.R. 35.6580 to give opportunities for qualified Small Business Enterprises (SBE), Minority Business Enterprises (MBE) and Women-Owned Business Enterprises (WBE) to submit proposals, bids, and provide services on contracts and subcontracts for services and supplies in relation to the Remediation Work. If requested, the Borrower shall submit a report of such efforts to the Lender.

5.8. Documents and Records. The Borrower shall document all uses of the Loan Proceeds and shall maintain adequate financial and programmatic records with respect to the Loan and the Remediation Work in accordance with generally accepted accounting principles (GAAP). The Borrower shall maintain all documents, records, and books related to the Loan and the Remediation Work for a minimum of ten (10) years after the completion of the Remediation Work and repayment of the Loan, whichever is later. Additionally, the Borrower shall obtain written approval from the Lender prior to destroying any records. Furthermore, the Borrower acknowledges that all documents and records related to this Loan Agreement are subject to 40 C.F.R. 35.6710 and therefore agrees to make all loan-related documents and records available in accordance with 40 C.F.R. 35.6710.

5.9. Quality Assurance Project Plan. If conformation sampling and analysis will be conducted as part of the Remediation Work, the Borrower shall, prior to the initiation of such sampling, submit to the EPA, for review and approval, a Quality Assurance Project Plan developed by the environmental professional that conducts the sampling.

5.10. Lender's Right to Audit and Inspect. The Borrower shall permit the Lender or its designated representative to inspect, audit, and examine any of its documents, records, and books related to the Loan, the Property, or the Remediation Work at any time during normal business hours and to copy therefrom any information that the Lender desires.

5.11. Financial Statements and Ongoing Reporting. The Borrower shall furnish to the Lender, so long as amounts remain due under the Note:

(a) Quarterly reports that document that they are in compliance with all relevant Federal and State environmental regulations and that they meet the requirements of the Revolving Loan Fund Program.

(b) Quarterly financial statements, developed and maintained using basic accounting and control mechanisms, to track legitimate use of the Loan Proceeds and to document that the Loan Proceeds are used for authorized purposes. Financial statements are considered to be: (i) an income statement, (ii) a balance sheet, and (iii) a cash flow statement.

5.12. Completion of Project. The Borrower shall complete the Remediation Work within twelve (12) months following the Effective Date of this Agreement. The Borrower shall complete the work in a timely manner in accordance with the final VCP cleanup plan. The Borrower shall notify the Lender when the Remediation Work is complete. The notice shall contain certification or documentation necessary to prepare a Site Manager's Report developed in accordance with Section 300.165 of the NCP (i.e., 40 C.F.R. 300.165).

5.13. Notice of Material Adverse Changes or Event of Default. The Borrower shall immediately notify the Lender in writing of (a) any Material Adverse Change and (b) any event or occurrence that could form the basis of an Event of Default or that would, with notice of lapse of time or both, constitute an Event of Default.

5.14. Expenses of Collection or Enforcement. If at any time the Borrower defaults on any provision of this Loan Agreement, the Borrower shall pay the Lender or its assigns, in addition to any other amounts that may be due from the Borrower, an amount equal to the actual out of pocket costs and expenses incurred by the Lender to collect, enforce, correct, or waive the default, including reasonable attorneys' fees.

5.15. Indemnification.

(a) Subject to Subsection (b) below, the Borrower (as "Indemnifying Party") shall indemnify, defend, and hold the Lender and its directors, officers, employees, and agents (collectively, the "Indemnified Parties") harmless from and against any and all losses, claims, damages, liabilities, and related expenses that are incurred by any Indemnified Party, or asserted against any Indemnified Party, by any third party or by the

Borrower or the Guarantor arising out of, in connection with, or as a result of:

(1) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the Parties hereto of their respective obligations hereunder or thereunder or the consummation of transactions contemplated hereby or thereby;

(2) the Loan, the use or proposed use of the Loan Proceeds, the Remediation Work, or the Project;

(3) any actual or alleged presence or release or discharge of Hazardous Materials on or from the Property, or any Hazardous Materials claim related in any way to the Borrower;

(4) any material breach of any provision of this Agreement by Indemnifying Party or its personnel;

(5) any negligent or more culpable act or omission of Indemnifying Party or its personnel (including any reckless or willful misconduct) in connection with the performance of its obligations under this Agreement or the remediation, construction, or use of the Property;

(6) any bodily injury, death of any person or damage to real or tangible personal property caused by the negligent or more culpable acts or omissions of Indemnifying Party or its personnel (including any reckless or willful misconduct);

(7) any failure by Indemnifying Party or its personnel to comply with any applicable federal, state or local laws, regulations or codes in the performance of its obligations under this Agreement; or

(8) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory.

(b) The indemnification provided by this Section shall not, as to any Indemnified Party, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final non-appealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnified Party.

(c) The Parties agree that the provisions of this Section shall survive the expiration or sooner termination of this Agreement.

5.16. Liability. The Parties acknowledge that the Lender is a body corporate and politic of the State of Utah, subject to the Governmental Immunity Act of Utah (the “Immunity Act”), Utah Code Ann. §§ 63G-7-101, *et seq.* In no case shall any of the Indemnified Parties be liable to the Borrower or any third-party for consequential damages. The Indemnified Parties shall have no liability for any debts, liabilities, deficits or cost overruns of the Borrower. The Parties agree that the liability of the Lender hereunder shall be limited to the disbursement of Loan Proceeds pursuant to the terms and conditions of this Agreement and that the Lender shall have no other duty or obligation to the Borrower. The Parties agree that the provisions of this Section shall survive the expiration or sooner termination of this Agreement.

## **ARTICLE 6 – DEFAULTS AND REMEDIES**

6.1. Event of Default. The occurrence of any one or more of the following shall constitute an “Event of Default” as such term is used herein:

(a) Non-Payment of Loan. The Borrower fails to pay any of its indebtedness under the Note on or before expiration of the thirty (30)-day period commencing with the date on which such indebtedness is due.

(b) Failure to Perform Certain Non-Monetary Obligations. If the Borrower breaches any of its non-monetary obligations to the Lender under any of the Loan Documents and such breach is not reasonably susceptible to being cured by the Borrower.

(c) Failure to Perform Non-Monetary Obligations Which are Curable. If (i) the Borrower fails to perform any of its non-monetary obligations to the Lender (other than those set forth in Section 6.1(b) above) under any of the Loan Documents; and (ii) if such non-monetary obligation is reasonably susceptible to being cured by the Borrower, the Borrower fails to diligently complete a cure of its breach of such non-monetary obligation on or before expiration of the thirty (30)-day period commencing on the date the Borrower receives written notice from the Lender setting forth such non-monetary breach. Without limiting any of the terms of this Section 6.1(c), the cure period contained in this Section 6.1(c) shall not apply with respect to the Borrower’s breach of any non-monetary obligation of the Borrower that is not reasonably susceptible to being cured by the Borrower.

(d) Incorrect Representation or Warranty. If any request, statement, information, certification, representation, or warranty, whether written or oral, submitted or made by Borrower to the Lender in connection with the Loan or any extension of credit by the Lender to Borrower, now or in the future, is false or misleading in any material respect.

(e) Voluntary Insolvency. The Borrower (i) becomes insolvent or ceases to pay its debts as they mature; (ii) voluntarily files a petition seeking the reorganization of the Borrower, the appointment of a receiver, trustee, or liquidator for the Borrower (or for a material part of the property of the Borrower), or to effect a plan or other arrangement with creditors; (iii) is adjudicated bankrupt; or (iv) makes a voluntary assignment for the

benefit of creditors.

(f) Involuntary Insolvency. A petition is filed against the Borrower under any bankruptcy, insolvency, or similar law seeking the reorganization of the Borrower, or the appointment of any receiver, trustee, or liquidator for the Borrower (or for a material part of the property of the Borrower); or a writ or warrant of attachment or similar process is issued against a material part of the property of the Borrower, and the Borrower fails to cause the petition, writ, warrant of attachment, or similar process to be dismissed or the appointment of any receiver, trustee, or liquidator to be discharged on or before the expiration of a thirty (30)-day period commencing with the date the petition, writ, warrant of attachment, or similar process was filed or the date the receiver, trustee, or liquidator was appointed.

(g) Transfers of Interests. If the Borrower is a corporation, partnership, limited liability company, or other entity, the sale or transfer of an aggregate of more than forty-nine percent (49%) of the beneficial interests in the Borrower without the Lender's prior written consent.

(h) Dissolution. If the Borrower is a corporation, partnership, limited liability company, trust or other entity, the dissolution, liquidation, or termination of existence of the Borrower.

(i) Breach by Guarantor. The Guarantor breaches any of the financial covenants in the Guaranty.

6.2. Lender's Remedies in the Event of Default. Upon the occurrence of any Event of Default, the entire unpaid principal balance of the Note, any unpaid interest accrued thereon, and any other obligation due by reason of the Loan Agreement will become immediately due and payable without presentment, notice or demand, all of which are hereby expressly waived by the Borrower, interest will begin to accrue at the Default Rate, and the obligation of the Lender, if any, to permit further borrowings hereunder shall immediately cease and terminate. Thus, the Parties agree that upon the occurrence of any Event of Default, in addition to all remedies conferred upon the Lender by law and/or equity and other provisions of this Loan Agreement, the Lender may, in its sole discretion, pursue any one or more of the following remedies concurrently or successively, it being the intent hereof that none of such remedies will be to the exclusion of any other:

- (a) Withhold further disbursement of Loan Proceeds to the Borrower; and/or;
- (b) Demand immediate repayment of the entire unpaid principal balance of the Note and any unpaid interest accrued thereon from the Borrower, the Guarantor, or both; and/or
- (c) Terminate this Loan Agreement.

6.3. Secure Site. Upon the occurrence of any Event of Default, the Borrower shall secure the remediation site (i.e., the Property) if the Remediation Work is not yet completed. The cost of securing the site is the responsibility of the Borrower. If the Borrower fails to secure

the site within twenty-four (24) hours of the occurrence of the Event of Default or a written request from the Lender, whichever is earlier, the Lender may do so at the Borrower's sole cost.

## ARTICLE 7 – MISCELLANEOUS

7.1. Interlocal Cooperation Act Requirements. In satisfaction of the requirements of the Cooperation Act, the Parties agree as follows:

- (a) This Loan Agreement shall be approved by each Party pursuant to Section 11-13-202.5 of the Cooperation Act;
- (b) This Loan Agreement shall be reviewed as to proper form and compliance with applicable law by a duly authorized attorney on behalf of each Party, pursuant to Section 11-13-202.5 of the Cooperation Act;
- (c) A duly executed original counterpart of this Loan Agreement shall be filed with keeper of records of each Party, pursuant to Section 11-13-209 of the Cooperation Act;
- (d) Except as otherwise specifically provided herein, each Party shall be responsible for its own costs of any action taken pursuant to this Loan Agreement, and for any financing of such costs; and
- (e) No separate legal entity is created by the terms of this Agreement. To the extent that this Agreement requires administration other than as set forth herein, it shall be administered by the Mayor of the County (Lender) and the Chief Administrative Officer of the Agency (Borrower). No real or personal property shall be acquired jointly by the Parties as a result of this Agreement. To the extent that a Party acquires, holds or disposes of any real or personal property for use in the joint or cooperative undertaking contemplated by this Agreement, such Party shall do so in the same manner that it deals with other property of such Party.

7.2. Effective Date. This Loan Agreement shall be effective immediately upon the completion of the following: (a) the approval of the Agreement by the governing bodies of the County (Lender) and the Agency (Borrower), including the adoption of any necessary resolutions or ordinances by the County (Lender) and the Agency (Borrower) authorizing the execution of this Agreement by the appropriate person or persons for the County (Lender) and the Agency (Borrower, respectively), (b) the execution of this Agreement by a duly authorized official of each of the Parties, (c) the submission of this Agreement to an attorney for each Party that is authorized to represent said Party for review as to proper form and compliance with applicable law, pursuant to Section 11-13-202.5 of the Cooperation Act, and the approval of each respective attorney, and (d) the filing of a copy of this Agreement with the keeper of records of each Party. The date on which the Parties have completed all of the foregoing tasks will be the "Effective Date" of this Agreement.

7.3. Time is of the Essence. Time is of the essence in the performance of each provision of the Loan Documents by the Borrower.

7.4. Notices. Any notices, communications, requests, and waivers required or permitted under this Loan Agreement shall be in writing and shall be (i) delivered in person, (ii) mailed, postage prepaid, either by registered or certified mail, return receipt requested, or (iii) by overnight express carrier, addressed in each case as follows:

To Lender: Salt Lake County  
2001 S. State Street, Suite S2-100  
Salt Lake City, Utah 84190  
Attn: Ms. Emily Farmer

With a copy to: Office of the District Attorney  
2001 S. State Street, Suite S3-600  
Salt Lake City, Utah 84190  
Attn: Mr. Stephen Barnes

To Borrower: Redevelopment Agency of Ogden City  
2549 Washington Blvd., Suite 420  
Ogden, Utah 84401  
Attn: Community and Economic Development Director

With a copy to: Office of the Ogden City Attorney  
2549 Washington Blvd., Suite 840  
Ogden, Utah 84401  
Attn: Ogden City Attorney

or to any other address as to any of the Parties hereto, as such Party may designate in a written notice to the other Party hereto. Notices may also be given by facsimile transmission or email, provided any such communication is concurrently given by one of the above methods. All notices sent pursuant to the terms of this Section shall be deemed received (i) if personally delivered, then on the date of delivery, (ii) if sent by overnight, express carrier, then on the next federal banking day immediately following the day sent, or (iii) if sent by registered or certified mail, then on the earlier of the third federal banking day following the day sent or when actually received.

7.5. Severability. If any provision of the Loan Documents shall be held by any court of competent jurisdiction to be unlawful, voidable, void, or unenforceable for any reason, such provision shall be deemed to be severable from and shall in no way affect the validity or enforceability of the remaining provisions of the Loan Documents.

7.6. Governing Law. The Loan Documents have been negotiated and executed in the State of Utah, are intended to be performed in the State of Utah and therefore it is understood and agreed by the Parties that the Loan Documents are governed by the laws of the State of Utah, without giving effect to the choice of law provisions thereof, both as to interpretation and performance. Venue for any and all legal actions arising hereunder shall lie in the District Court in and for the County of Salt Lake, State of Utah.

7.7. Amendments. The Loan Documents may be amended or supplemented only by

an instrument in writing executed by both the Lender and the Borrower.

7.8. Documents. The form and substance of all documents and instruments which Borrower is required to deliver to the Lender under this Loan Agreement shall be subject to the Lender's approval.

7.9. Survival. All agreements, representations, and warranties made by the Borrower herein or in any other Loan Document or certificate delivered to the Lender in connection with the transactions contemplated by this Loan Agreement shall survive the delivery of the Loan Documents and shall continue in full force and effect so long as the Note is outstanding.

7.10. Further Acts. In addition to the acts and deeds recited herein and contemplated to be performed, executed and delivered by the Lender and the Borrower, the Lender and the Borrower agree to perform, execute and deliver or cause to be performed, executed, and delivered any and all such further acts, deeds and assurances as may be necessary to consummate the transactions contemplated hereby.

7.11. Relationship of the Parties. The Lender shall not be deemed to be, nor do the Lender or Borrower intend that the Lender shall ever become, a partner, joint venturer, trustee, fiduciary, manager, controlling person, or other business associate or participant of any kind in the business or affairs of the Borrower, whether as a result of the Loan Documents or any of the transactions contemplated by the Loan Documents. In exercising its rights and remedies under the Loan Documents, the Lender shall be deemed at all times be acting only as a lender to the Borrower within the normal and usual scope of activities of a lender.

7.12. No Obligations to Third Parties. The Loan Documents are entered into for the sole protection and benefit of the Lender and the Borrower, as applicable, and their respective permitted successors and assigns. No other Person is intended to have any rights or causes of action under the Loan Documents.

7.13. Entire Agreement. The Loan Documents contain the entire agreement concerning the subject matter of the Loan Documents and supersede all prior and contemporaneous negotiations, agreements, statements, understandings, terms, conditions, representations and warranties, whether oral or written, by and among the Lender and the Borrower concerning the Loan which is the subject matter of the Loan Documents.

7.14. No Waiver by Lender. No waiver by the Lender of any of its rights or remedies in connection with the Loan, or of any of the terms or conditions of the Loan Document, shall be effective unless such waiver is in writing and signed by the Lender.

7.15. No Limitation of Rights. The rights and remedies of the parties hereto are in addition to any other rights and remedies provided by law or under the Loan Documents. The parties agree that the waiver of any breach of the Loan Documents by either party shall in no event constitute a waiver as to any future breach.

7.16. Assignment. The Borrower shall not assign, encumber, or otherwise transfer any or all of the Borrower's rights under the Loan Documents, whether voluntarily, involuntarily, or

by operation of law, without the Lender's prior written consent, which consent may be withheld in the Lender's discretion. The Borrower acknowledges and agrees that the Lender's agreement to make the Loan to the Borrower and enter into the Loan Documents is based in material part on the Lender's reliance on the Borrower's particular financial condition, credit history, character, experience, ability, skill, and reputation, as represented by the Borrower to the Lender.

7.17. Waiver. The Borrower waives presentment, demand for payment, protest, notice of demand, dishonor, protest and non-payment, and all other notices and demands in connection with the delivery, acceptance, performance, default under, and enforcement of the Loan Documents. The Borrower waives the right to assert any statute of limitations as a defense to the enforcement of any or all of the Loan Documents to the fullest extent permitted by law. In the event of the Borrower's payment in partial satisfaction of any or all of the Obligations, the Lender shall have the sole and exclusive right and authority to designate the portion of the Obligations that is to be satisfied.

7.18. Successors. Subject to the restrictions contained in the Loan Documents, the Loan Documents shall be binding upon and inure to the benefit of the Lender and the Borrower and their respective permitted successors and assigns.

7.19. Government Records Access Management Act. The Borrower acknowledges that records and documents provided to the Lender may be subject to the Utah Government Records Access and Management Act, Utah Code Ann. §§ 63G-2-101 *et seq.* (1953, as amended). Generally, any document submitted to County is considered a "public record" under GRAMA. Any person who provides to the County a record that the person believes should be protected under subsection 63G-2-305(1) or (2) shall provide both: (1) a written claim of business confidentiality and (2) a concise statement of reasons supporting the claim of business confidentiality. Generally, GRAMA only protects against the disclosure of trade secrets or commercial information that could reasonably be expected to result in unfair competitive injury.

7.20. Counterparts. This Agreement may be executed in several counterparts and all so executed shall constitute one agreement binding on all the Parties, notwithstanding that each of the Parties are not signatory to the original or the same counterpart. Further, executed copies of this Agreement delivered by email or facsimile shall be deemed an original signed copy of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates shown below.

*[Intentionally Left Blank - Signature Pages Follow]*

**LOAN AGREEMENT -- SIGNATURE PAGE FOR LENDER**

**SALT LAKE COUNTY:**

By \_\_\_\_\_  
Mayor Ben McAdams or Designee

Dated: \_\_\_\_\_, 20\_\_\_\_

***Approved by:***

By \_\_\_\_\_  
Carlton Christensen  
Director of Regional Development

Dated: \_\_\_\_\_, 20\_\_\_\_

***Approved as to Form and Legality:***

**SALT LAKE COUNTY DISTRICT ATTORNEY**

By \_\_\_\_\_  
Stephen M. Barnes  
Deputy District Attorney

Dated: \_\_\_\_\_, 20\_\_\_\_

*[Signatures continue on next page.]*

**LOAN AGREEMENT -- SIGNATURE PAGE FOR BORROWER**

**REDEVELOPMENT AGENCY OF OGDEN  
CITY:**

By \_\_\_\_\_

Name: \_\_\_\_\_

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

Dated: \_\_\_\_\_, 20\_\_\_\_

By \_\_\_\_\_

Name: \_\_\_\_\_

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

Dated: \_\_\_\_\_, 20\_\_\_\_

***Approved as to Form and Legality:***

ATTORNEY FOR REDEVELOPMENT AGENCY  
OF OGDEN CITY

By \_\_\_\_\_

Name: \_\_\_\_\_

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

Dated: \_\_\_\_\_, 20\_\_\_\_

## **LIST OF EXHIBITS**

|           |                                                                                 |
|-----------|---------------------------------------------------------------------------------|
| EXHIBIT A | Promissory Note                                                                 |
| EXHIBIT B | Loan Guaranty                                                                   |
| EXHIBIT C | Description of the Property                                                     |
| EXHIBIT D | Reimbursable Remediation Work Budget and Schedule                               |
| EXHIBIT E | Request for Disbursement (with Eligible Expenses Tracking Spreadsheet attached) |
| EXHIBIT F | Wasatch Brownfields Coalition RLF Board Memorandum                              |

# **Exhibit A**

## **Promissory Note**

## PROMISSORY NOTE

\$400,000.00

Dated November 30, 2015

**Borrower:** Redevelopment Agency of Ogden City

**Borrower's Address for Notice:** 2549 Washington Blvd., Suite 420  
Ogden, UT 84401

**Lender:** Salt Lake County

**Lender's Address for Payment:** 2001 S. State Street, Suite S2-100  
Salt Lake City, UT 84190

## PROMISE TO PAY

For value received, the undersigned Borrower promises to pay to the order of Lender the sum of Four Hundred Thousand and No/100 Dollars (\$400,000.00), to the extent disbursed by Lender, together with interest on the unpaid balance of such amount, in lawful money of the United States of America, in accordance with all the terms conditions and covenants set forth below. This Promissory Note ("Note") is the Note referred to in, and issued pursuant to, that certain Loan Agreement between the Borrower and the Lender dated November 30, 2015 (as amended or otherwise modified from time to time, the "Loan Agreement"), and is entitled to all of the benefits and security of the Loan Agreement. All terms with an initial capital letter that are used but not specifically defined in this Note have the meanings ascribed to such terms in the Loan Agreement. In addition, the following terms have the meanings set forth below:

Disbursement: Each disbursement of Loan Proceeds under this Note pursuant to the Loan Agreement.

Maturity Date: The date that is forty-eight (48) months from the date of the Loan Agreement (November 30, 2015), which is November 30, 2019.

Principal Balance: The aggregate unpaid principal balance of all Disbursements.

## TERMS OF THE NOTE

### 1. Interest.

(a) Regular Rate. Interest on this Note shall commence on October 1, 2016 and shall continue thereafter to the Maturity Date of this Note, so long as no Event of Default has occurred, interest shall accrue on the Principal Balance of this Note at the rate of two percent (2.00%) per annum.

(b) Default Rate. From and after either (a) the occurrence of an Event of Default (whether or not the Lender has elected to accelerate unpaid principal and interest under this Note as a result of such Event of Default); or (b) the maturity of this Note (whether the stated Maturity Date of this Note or the maturity date resulting from the Lender's acceleration of unpaid principal and interest), interest on the Principal Balance of this Note shall accrue at a rate equal to fourteen percent (14.00%) per annum. All interest hereunder shall be calculated on the basis of a 360-day year, actual days elapsed.

(c) Calculation of Interest. If any payment of interest is not made when due, at the option of the Lender of this Note, such interest payment shall bear interest at the same rate as principal from and after the due date of the interest payment. Principal and interest shall be payable only in lawful money of the United States of America. Notwithstanding anything to the contrary contained in this Note, interest at the rates provided for in this Note shall be computed on the basis of a three hundred sixty (360) day year for the actual number of days during which the principal balance of this Note is outstanding.

### 2. Payment Terms.

(a) Interest. Accrued interest on the unpaid Principal Balance outstanding shall be due and payable in arrears and on a quarterly basis: The first such quarterly payment shall be due and payable on or before January 1, 2017 for the first quarter of interest for the months of October through December, 2016. On the Maturity Date, all accrued but unpaid interest shall be due and payable.

(b) Principal. On the Maturity Date, a principal installment equal to the aggregate amount of all outstanding Disbursements shall be due and payable.

(c) Payments and Due Dates. Borrower shall make interest only quarterly payments commencing on January 1, 2016, and shall continue regularly and quarterly payments of interest thereafter on the first day of each succeeding quarter until the Maturity Date, on which date a balloon payment of all outstanding principal and all accrued and unpaid interest shall be due and payable in full.

(d) Application of Payments. Unless specifically otherwise provided in the Loan Documents, the Lender is entitled to apply any payments or other sums received in such order and priority as the Lender may reasonably elect; provided, however, absent an election to the contrary by the Lender, such payments will be applied in the following order and priority: (i) first, toward payment of all expenses incurred by Lender in collecting any amount of principal or interest that are past due, and the payment of any financing fees that are unpaid and past due; (ii) second, toward payment of the remaining accrued but unpaid interest; (iii) third, toward payment of the matured portion of the principal of the Loan; and (iv) fourth, toward prepayment of the unmatured portion, if any, of principal of the Loan applied to installments of principal in inverse order of maturity. The receipt of any check or other item of payment by the Lender, at its option, shall not be considered a payment until such payment item is honored when presented for payment at the drawee bank or institution, and the Lender, at its option, may delay the credit of such payment until such payment item is so honored.

(e) Late Payment Charge. In the event the Borrower fails to make any payment of principal and interest on or before expiration of the thirty (30)-day period commencing on the date the payment is due (other than a payment due as a result of the acceleration of the Loan), whether or not the Lender has elected to pursue any remedy following an Event of Default, the Borrower shall pay a late payment charge to the Lender equal to five (5%) percent of the late payment amount or One Thousand Dollars (\$1,000.00), whichever is greater.

### **3. Disbursements and Prepayments.**

(a) Revolving Loan Fund. This Note shall evidence Borrower's indebtedness for Disbursements made from time to time from the EPA Revolving Loan Fund pursuant to the Loan Agreement. Interest will begin to accrue on October 1, 2016, and the liability of the undersigned is limited to the Principal Balance from time to time actually disbursed pursuant to the Loan Agreement, plus unpaid interest actually accrued on such principal, plus any expenses or other charges as more fully provided in this Note, the Loan Agreement, and any other Loan Documents. This Note shall evidence all such indebtedness and this Note and all lien instruments securing it and the liens and security interests thereunder shall remain in effect until this Note is formally terminated in writing, and this Note and such lien instruments, liens and security interests shall not otherwise be terminated by payment of all or any part of the indebtedness hereby represented. Lender shall, and is hereby authorized by Borrower to, endorse on **SCHEDULE A** attached hereto and made a part hereof (or on a continuation of such schedule) an appropriate notation evidencing the date and amount of each Disbursement, the Reimbursable Remediation Work being funded with the Disbursement, and any payments made thereon; provided, however, that the failure of Lender to make such a notation on this Note shall not affect any obligation of Borrower under this Note. Any such notation shall be prima facie evidence as to the date, amount, and monthly payment of such Disbursement or payment.

(f) Prepayment. The Borrower shall have the right to prepay all or part of the outstanding principal balance of this Note and accrued interest (if applicable) at any time without payment to the Lender of a prepayment fee or charge.

4. Guaranty. This note is guaranteed by that certain Guaranty, dated as of the date hereof, executed by Ogden City, a Utah municipality, in favor of the Lender.

5. Miscellaneous.

(g) Default. Upon the occurrence of an Event of Default, the Lender shall have the remedies specified in the Loan Agreement.

(b) Waiver. Borrower hereby waives all valuation and appraisal privileges, presentment and demand for payment, protest, notice of protest and nonpayment, dishonor and notice of dishonor, bringing of suit, lack of diligence, or delays in collection or enforcement of this Note and notice of the intention to accelerate, the release of any liable party, the release of any security for the debt, and any other indulgence or forbearance, and is and shall be directly and primarily liable for the amount of all sums owing and to be owed hereon, and agrees that this Note, and any or all payments coming due hereunder, may be extended or renewed from time to time without in any way affecting or diminishing Borrower's liability hereunder.

(c) Illegality and Severability. In no event shall the amount paid or agreed to be paid hereunder (including all interest, if applicable, and the aggregate of any other amounts taken, reserved, or charged pursuant to this Note which under applicable law is deemed to constitute interest on the indebtedness evidenced by this Note) exceed the highest lawful rate permissible under applicable law; and if under any circumstances whatsoever, fulfillment of any provision of this Note at the time performance of such provision shall be due, shall involve transcending the limit of validity prescribed by applicable law, then, ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity, and if from any circumstance the Lender should receive as interest an amount which would exceed the highest lawful rate allowable under law, such amount which would be excessive interest shall be applied to the reduction of the unpaid principal balance due under this Note and not to the payment of interest, or if such excess interest exceeds the unpaid balance of principal, the excess shall be refunded to Borrower. If any provision of this Note or any payments pursuant to the terms hereof shall be invalid or unenforceable to any extent, the remaining provisions of this Note and any other payments hereunder shall not be affected thereby and shall be enforceable to the greatest extent permitted by law.

(d) Successors. This Note shall inure to the benefit of the Lender and its successors and assigns.

(e) Subsequent Holder. All references to the Lender in this Note shall also refer to any subsequent owner or holder of this Note by transfer, assignment, endorsement or otherwise.

(f) Successors and Assigns. The provisions of this Note shall be binding upon and for the benefit of the successors, assigns, heirs, executors and administrators of the Lender and the Borrower.

(g) Other Parties Liable. All promises, waivers, agreements and conditions applicable to the Borrower shall likewise be applicable to and binding upon any other parties primarily or secondarily liable for the payment of this Note, including all guarantors, endorsers and sureties.

(h) Modifications. Any modifications agreed to by the Lender relating to the release of liability of any of the parties primarily or secondarily liable for the payment of this Note, or relating to the release, substitution, or subordination of all or part of the security for this Note, shall in no way constitute a release of liability with respect to the other parties or security not covered by such modification.

(i) Borrower's Address for Notice. All notices required to be sent by the Lender to the Borrower shall be sent by United States Mail, postage prepaid, to the Borrower's Address for Notice stated on the first page of this Note, until the Lender shall receive written notification from the Borrower of a new address for notice.

(j) Lender's Address for Payment. All sums payable by the Borrower to the Lender shall be paid at the Lender's Address for Payment stated on the first page of this Note, until the Lender shall notify the Borrower of a new address for payment.

(k) Governing Law. This Note shall be governed by and construed under the laws of the State of Utah without giving effect to the choice of law provisions thereof. Venue for any and all legal actions arising hereunder shall lie in the District Court in and for the County of Salt Lake, State of Utah.

IN WITNESS WHEREOF, Borrower has executed and delivered this Note as of the date first above written.

*[Intentionally Left Blank - Signature Page Follows]*

**PROMISSORY NOTE -- SIGNATURE PAGE FOR BORROWER**

**REDEVELOPMENT AGENCY OF OGDEN CITY:**

By \_\_\_\_\_

Name: \_\_\_\_\_

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

Dated: \_\_\_\_\_, 20\_\_\_\_

By \_\_\_\_\_

Name: \_\_\_\_\_

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

Dated: \_\_\_\_\_, 20\_\_\_\_

***Approved as to Form and Legality:***

**ATTORNEY FOR REDEVELOPMENT AGENCY  
OF OGDEN CITY**

By \_\_\_\_\_

Name: \_\_\_\_\_

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

Dated: \_\_\_\_\_, 20\_\_\_\_

**SCHEDULE A**

Schedule A attached to and forming a part of the Promissory Note dated September 30, 2015 in the principal amount of \$400,000.00.

| <b>Date</b> | <b>Disbursement Amount –<br/>Principal</b> | <b>Reimbursable Remediation Work</b> |
|-------------|--------------------------------------------|--------------------------------------|
|             | \$                                         |                                      |
|             | \$                                         |                                      |
|             | \$                                         |                                      |
|             | \$                                         |                                      |
|             | \$                                         |                                      |
|             | \$                                         |                                      |
|             | \$                                         |                                      |
|             | \$                                         |                                      |
|             | \$                                         |                                      |
|             | \$                                         |                                      |
|             | \$                                         |                                      |
|             | \$                                         |                                      |
|             | \$                                         |                                      |
|             | \$                                         |                                      |

# **Exhibit B**

## **Loan Guaranty**

## GUARANTY

**THIS GUARANTY** (the “**Guaranty**”) is executed effective as of November 30, 2015 by Ogden City, a Utah municipality (the “**Guarantor**”) for the benefit of **SALT LAKE COUNTY**, a body corporate and politic of the State of Utah (the “**Lender**”).

### WITNESSETH:

A. The Lender has agreed to lend to the Redevelopment Agency of Ogden City, a community development and renewal agency and political subdivision of the State of Utah (the “**Borrower**”), the principal amount of up to \$400,000 (the “**Loan**”). The Loan is represented by (a) that certain Loan Agreement, dated November 30, 2015 between the Borrower and the Lender (the “**Loan Agreement**”), and (b) that certain Promissory Note, executed by Borrower to the order of Lender (the “**Note**” and together the Loan Agreement and this Guaranty, the “**Loan Documents**”). All capitalized terms not otherwise defined herein shall have the meanings given them in the Loan Agreement.

B. As a condition to Lender agreeing to extend the Loan to the Borrower, the Lender has required the Guarantor to execute and deliver this Guaranty.

NOW, THEREFORE, Guarantor hereby agrees as follows:

### ARTICLE I

#### NATURE AND SCOPE OF GUARANTY

Section 1.01. Guaranty of Obligation. Guarantor hereby unconditionally and irrevocably guarantees to Lender the punctual payment when due, whether by lapse of time, by acceleration of maturity, or otherwise, of all principal, interest (including interest accruing after the commencement of any bankruptcy or insolvency proceeding by or against Borrower, whether or not allowed in such proceeding), fees, late charges, costs, expenses, indemnification indebtedness, and other sums of money now or hereafter due and owing, or which Borrower is obligated to pay, pursuant to the terms of the Loan Documents, as the same may from time to time be amended, supplemented, restated or otherwise modified (collectively, the “**Obligations**”). The guaranty of Guarantor as set forth in this Section 1 is a continuing guaranty of payment and not a guaranty of collection.

#### Section 1.02. Nature of Guaranty.

(a) Nature of Guaranty. This Guaranty is absolute, continuing, irrevocable, and unconditional. This Guaranty is a guaranty of payment and performance when due and not

of collection. This Guaranty shall be effective and remain in full force and effect until all Obligations are paid and performed in full, regardless of (i) the genuineness, regularity, legality, validity, or enforceability of any or all of the liens and encumbrances, the Loan Documents, or the Obligations, (ii) any law, regulation, or rule (federal, state, or local) or any action by any Governmental Authorities discharging, reducing, varying the terms of payment, or otherwise modifying any of the Obligations or any of the liens and encumbrances, or (iii) the death, dissolution, or liquidation of Borrower or Guarantor.

(b) Enforcement Against Guarantor Without Other Action. Lender may enforce this Guaranty against the Guarantor without first having sought enforcement of any Loan Documents against Borrower, any other guarantor, or any collateral.

(c) Events Not Affecting Guarantor Obligations. The following shall not affect, impair, or delay the enforcement of this Guaranty, regardless of the impact upon any contribution, exoneration, indemnification, reimbursement, subrogation, and other rights of Guarantor:

(i) The bankruptcy, death, disability, dissolution, incompetence, insolvency, liquidation, or reorganization of Borrower.

(ii) Any defense of Borrower to payment or performance of any or all Obligations (other than the defense of payment or performance), or enforcement of any or all liens and encumbrances securing the Obligations on this Guaranty.

(iii) The disallowance, discharge, modification of the terms of, reduction in the amount of, or stay of enforcement of any or all Obligations, or any or all liens and encumbrances securing the Obligations, in any bankruptcy, insolvency, reorganization, or other legal proceeding or by any law, ordinance, regulation, or rule (federal, state, or local).

(iv) The cessation of liability of Borrower for any or all Obligations without full satisfaction of such Obligations.

(d) Acts and Omissions of Lender Not Affecting this Guaranty. The following acts and omissions shall not affect, delay, or impair this Guaranty, regardless of the impact upon any contribution, exoneration, indemnification, reimbursement, subrogation, or other rights of Guarantor:

(i) Lender may compromise, delay enforcement, fail to enforce, release, settle, or waive any or all Obligations of Borrower or any or all rights and remedies of Lender against Borrower.

(ii) Lender may make disbursements/advances, issue letters of credit, or grant other financial accommodations for Borrower without requiring satisfaction of all conditions precedent in the Loan Documents.

(iii) Lender may obtain, substitute, and release collateral or additional collateral for the Obligations or this Guaranty.

(iv) Lender may fail to perfect, fail to protect the priority of, and fail to insure any or all liens and encumbrances in such collateral.

(v) Lender may fail to inspect, insure, maintain, preserve, or protect any or all such collateral.

(vi) Lender may enforce, compromise, delay enforcement, fail to enforce, settle, or waive any rights and remedies of Lender as to any or all such collateral.

(vii) Lender may assemble, sell, or otherwise dispose of any collateral in any manner and order Lender determines in its absolute and sole discretion, and disposition may be for no value, or for less than fair market value, of the collateral in the absolute and sole discretion of Lender. With respect to any collateral that is personal property, Lender shall give Guarantor ten (10) days' prior written notice of any sale or other disposition, except for personal property collateral that is perishable, threatens to decline speedily in value, is of a type customarily sold on a recognized market, or is cash, cash equivalents, certificates of deposit or the like, and except as to Lender's right of set-off. Guarantor's sole right with respect to all collateral shall be to bid at a sale thereof in accordance with applicable law.

(viii) Lender may obtain additional obligors for any or all Obligations, and may substitute or release Borrower or any other obligor.

(ix) Lender may fail to file or pursue a claim in any bankruptcy, insolvency, probate, reorganization, or other proceeding as to any or all Obligations or any or all liens and encumbrances securing the Obligations.

(x) Lender may subordinate (A) any or all liens and encumbrances securing the Obligations or this Guaranty, or (B) any or all Obligations.

(xi) Lender may amend, modify, extend, renew, restate, supplement, or terminate in whole or in part any or all Loan Documents.

(xii) Lender may assign any or all of its rights and delegate its obligations under the Loan Documents, in whole or in part (including, without limitation, by participation).

(xiii) Lender may do any other act or make any other omission that might otherwise constitute an extinguishment or a legal or equitable discharge of, or defense by, Guarantor.

(e) Notice and Cure Rights. Notwithstanding anything herein to the contrary, Guarantor shall have the notice and cure rights set forth in the Loan Documents, and nothing herein shall be construed as a waiver by Guarantor of such notice and cure rights. No claim shall be made against the Guarantor unless and until the occurrence of any of the following events:

(i) Failure by Borrower or Guarantor to pay the entire outstanding balance of the Note on the maturity date.

(ii) Failure by Borrower or Guarantor to pay any required payment of principal when and as due.

(iii) Failure by Borrower or Guarantor to pay interest, fees or other amounts owing under the Loan Documents, except principal and except at maturity, within ten (10) days after Borrower's and Guarantor's receipt of a written notice of default, unless cured within such ten (10) day period.

(iv) Failure by Borrower or Guarantor to perform any obligation not involving the payment of money, or to comply with any other term or condition applicable to Borrower or Guarantor under any Loan Document upon the expiration of thirty (30) days after written notice of such failure by Lender to Borrower and Guarantor.

#### 1.03 Guarantor' Waivers.

(a) Note and Notice Waivers. Guarantor waives, to the full extent permitted by law, presentment, notice of dishonor, protest, notice of protest, notice of intent to accelerate, notice of acceleration, and all other notices or demands of any kind (including, without limitation, notice of the acceptance by Lender of this Guaranty, notice of the existence, creation, non-payment, or non-performance of any or all Obligations).

(b) Waiver of Acts and Omissions of Lender. Guarantor waives any defense to enforcement of the Obligations or any liens and encumbrances granted by Guarantor based on acts and omissions of Lender.

(c) Waiver of Statutory Provisions. Guarantor waives any and all rights and benefits, if any, under *Utah Code Annotated* § 78B-6-901 (formerly *Utah Code Annotated* § 78-37-1), *Utah Code Annotated* § 57-1-32 and any other similar or replacement statutes or rules now or hereafter in effect and any other statutes or rules now or hereafter in effect that purport to confer specific rights upon, or make specific defenses or procedures available to, Guarantor, or limit the right of Lender to recover a deficiency judgment, or to otherwise proceed, against any person or entity obligated for payment of the Loan, after any trustee's sale, any judicial foreclosure sale or any personal property sale of any collateral securing the Loan.

(d) Waiver of Statute of Limitations. To the full extent permitted by law, Guarantor waives any and all statutes of limitations as a defense to any or all Obligations.

(e) Waiver of Law and Equitable Principles Conflicting With This Guaranty. Guarantor waives any and all provisions of law and equitable principles that conflict with this Guaranty.

(f) Waiver of Any Obligation of Lender to Inform Guarantor. Guarantor waives any right to require Lender, and Lender shall have no obligation, to provide to

Guarantor any information concerning performance of the Obligations, the ability of Borrower to perform the Obligations, or any other matter, regardless of what information Lender may have from time to time.

(g) Waiver of Contribution, Exoneration, Indemnification, Reimbursement, Subrogation, and Other Rights Against Borrower and Other Loan Parties. Until such time as the Obligations have been fully satisfied, Guarantor waives any and all present and future claims, remedies, and rights of Guarantor against Borrower or any other guarantor, any collateral, and any other property, interests in property, or rights to property of Borrower or any other guarantor (i) arising from any performance by Guarantor hereunder, (ii) arising from any application of any collateral or any other property, interests in property, or rights to property of Guarantor to payment or performance of the Obligations, or (iii) otherwise arising in respect of the Loan Documents, regardless of whether such claims, remedies, and rights arise under any present or future agreement, document, or instrument or are provided by any law, ordinance, regulation, or rule (federal, state, or local) (including, without limitation, (A) any and all rights of contribution, exoneration, indemnity, reimbursement, and subrogation, and (B) any and all rights to participate in the rights and remedies of Lender against Borrower, any other guarantor, and any collateral).

## ARTICLE II

Section 2.01. Waiver. No modification or waiver of any provision of this Guaranty, and no consent to depart therefrom, shall be effective unless in writing and no such consent or waiver shall extend beyond the particular case and purpose involved.

Section 2.02. Governing Law. This Guaranty has been prepared, and is intended to be performed, in the State of Utah and the laws of the State of Utah govern the validity, construction, enforcement and interpretation of this Guaranty.

Section 2.03. Invalid Provisions. If any provision of this Guaranty is held to be illegal, invalid, or unenforceable under present or future laws effective during the term of this Guaranty, such provision shall be fully severable and this Guaranty shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Guaranty.

Section 2.04. Entirety and Amendments. There are no unwritten oral agreements between the parties. This Guaranty represents the final agreement between the parties with respect to the matters contained herein and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. This Guaranty may be amended only by an instrument in writing executed by an authorized officer of the party against whom such amendment is sought to be enforced.

Section 2.05. Parties Bound; Assignment. This Guaranty shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives; provided, however, that neither Guarantor nor Lender may, without the prior written consent of the other, assign any of their rights, powers, duties or obligations hereunder.

Section 2.06. Waivers. Guarantor waives any defense arising by reason of any disability or other defense of Borrower or by reason of the cessation from any cause whatsoever of the liability of Borrower, and until all amounts due to Lender from Borrower shall have been paid in full, Guarantor shall have no right of subrogation, and waives any right to enforce any remedy which Lender now has, or may hereafter have against Borrower. Guarantor waives all presentments, demands for performance, notices of non-performance, protests, notices of protest, notices of dishonor.

Section 2.07. Attorneys Fees and Costs. Guarantor shall pay Lender's reasonable attorney's fees and all costs and other expenses incurred by Lender in any collection or attempted collection of, or in any negotiations relative to, the obligations hereby guaranteed, or in enforcing this Guaranty against Guarantor.

Section 2.08. Miscellaneous. The use of the singular herein shall include the plural. The terms and provisions of this Guaranty shall be binding upon and inure to the benefit of the respective heirs, personal representatives, successors, and assigns of the parties herein named.

*[Intentionally Left Blank - Signature Page Follows]*

EXECUTED as of the day and year first above written.

**OGDEN CITY AS GUARANTOR:**

By \_\_\_\_\_

Name: \_\_\_\_\_

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

Dated: \_\_\_\_\_, 20\_\_\_\_

***Approved as to Form and Legality:***

ATTORNEY FOR OGDEN CITY

By \_\_\_\_\_

Name: \_\_\_\_\_

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

Dated: \_\_\_\_\_, 20\_\_\_\_

# **Exhibit C**

**Description of the Property**

## **Legal Description of Properties**

All properties are owned by the Ogden City Redevelopment Agency, unless otherwise noted after the parcel number.

### **14-136-0001**

ALL OF LOT 1, OGDEN BUSINESS EXCHANGE SUBDIVISION, OGDEN CITY, WEBER COUNTY, UTAH.

### **14-136-0002 (soon to be conveyed to the first company to locate in the business park)**

ALL OF LOT 2, OGDEN BUSINESS EXCHANGE SUBDIVISION, OGDEN CITY, WEBER COUNTY, UTAH.

### **14-136-0003**

ALL OF LOT 3, OGDEN BUSINESS EXCHANGE SUBDIVISION, OGDEN CITY, WEBER COUNTY, UTAH.

### **14-136-0004**

ALL OF LOT 4, OGDEN BUSINESS EXCHANGE SUBDIVISION, OGDEN CITY, WEBER COUNTY, UTAH.

### **14-136-0006**

ALL OF LOT 6, BUSINESS EXCHANGE SUBDIVISION, OGDEN CITY, WEBER COUNTY, UTAH.

### **14-136-0007**

ALL OF LOT 7, OGDEN BUSINESS EXCHANGE SUBDIVISION, OGDEN CITY, WEBER COUNTY, UTAH.

### **14-136-0008**

ALL OF LOT 8, OGDEN BUSINESS EXCHANGE SUBDIVISION, OGDEN CITY, WEBER COUNTY, UTAH.

### **14-136-0009 (Ogden Business Exchange Subdivision Owners Association)**

COMMON AREAS & OPEN SPACE, OGDEN BUSINESS EXCHANGE SUBDIVISION, OGDEN CITY, WEBER COUNTY, UTAH.

### **14-010-0060**

PARCEL OF LAND LOCATED IN THE NORTHEAST QUARTER OF SECTION 30, TOWNSHIP 6 NORTH, RANGE 1 WEST, SALT LAKE BASE & MERIDIAN, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT A POINT WHICH LIES 454.88 FEET SOUTH 89D21'29" WEST ALONG THE NORTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 30 AND 250.75 FEET NORTH FROM THE EAST QUARTER CORNER OF SAID SECTION 30 AND RUNNING THENCE NORTH 70D24'10" WEST 579.47 FEET, THENCE NORTH 87D17'54" WEST 590.07 FEET THENCE SOUTH 82D31'26" WEST 357.24 FEET, THENCE NORTH 03D43'47" EAST 219.59 FEET, THENCE NORTH 66D43'00" EAST 474.95 FEET, THENCE SOUTH 89D02'46" EAST 775.51 FEET, THENCE SOUTH 00D27'00" WEST 393.12, THENCE SOUTH 56D29'38" EAST 319.79 FEET TO THE POINT OF BEGINNING. CONTAINS 440096.917 SQUARE FEET 10.103 ACRES.



# **Exhibit D**

## **Reimbursable Remediation Work Budget & Schedule**

**Reimbursable Remediation Work  
Budget and Schedule**

| <b>Ogden Business Exchange Remediation - Budget</b> |                  |                   |
|-----------------------------------------------------|------------------|-------------------|
| <b>Sources</b>                                      | <b>Amount</b>    |                   |
| Matching Share (i.e., Cost Share or Local Share)    | \$90,500         |                   |
| Wasatch Brownfields Coalition RLF Remediation Loan  | \$400,000        |                   |
| <b>Total Capitalization</b>                         | <b>\$490,500</b> |                   |
| <b>Uses</b>                                         | <b>Amount</b>    | <b>% of Total</b> |
| <b>SITEWIDE</b>                                     |                  |                   |
| Voluntary Cleanup Program (VCP) Application Fee     | \$2,700          | 0.6%              |
| Health and Safety Plan                              | \$1,500          | 0.3%              |
| SAP/QAPP                                            | \$5,600          | 1.1%              |
| DEQ/Ogden/Consultant Meetings (x3)                  | \$3,000          | 0.6%              |
| <i>Subtotal</i>                                     | <i>\$12,800</i>  | <i>2.6%</i>       |
| <b>Phase 1</b>                                      |                  |                   |
| DEQ/Ogden/Consultant Meetings (x4)                  | \$4,000          | 0.8%              |
| Remedial Action Work Plan                           | \$8,500          | 1.7%              |
| Confirmation Sampling                               | \$105,000        | 21.4%             |
| Site Remediation                                    | \$60,000         | 12.2%             |
| Site Closure Report                                 | \$20,000         | 4.1%              |
| <i>Subtotal</i>                                     | <i>\$197,500</i> | <i>40.3%</i>      |
| <b>Phase 2</b>                                      |                  |                   |
| DEQ/Ogden/Consultant Meetings (x4)                  | \$3,000          | 0.6%              |
| Remedial Action Work Plan                           | \$4,600          | 0.9%              |
| Confirmation Sampling                               | \$110,000        | 22.4%             |
| Site Remediation                                    | \$50,000         | 10.2%             |
| Site Closure Report                                 | \$20,000         | 4.1%              |
| <i>Subtotal</i>                                     | <i>\$187,600</i> | <i>38.2%</i>      |
| <b>Phase 3</b>                                      |                  |                   |
| DEQ/Ogden/Consultant Meetings (x4)                  | \$3,000          | 0.6%              |
| Remedial Action Work Plan                           | \$4,600          | 0.9%              |
| Confirmation Sampling                               | \$25,000         | 5.1%              |
| Site Remediation                                    | \$50,000         | 10.2%             |
| Site Closure Report                                 | \$10,000         | 2.0%              |
| <i>Subtotal</i>                                     | <i>\$92,600</i>  | <i>18.9%</i>      |
| <b>Total Project Cost</b>                           | <b>\$490,500</b> | <b>100%</b>       |

*[Intentionally Left Blank – Schedule on Next Page]*

**Ogden Business Exchange Remediation - Schedule**

| <b>Phase</b> | <b>Completion Date</b> |
|--------------|------------------------|
| Phase 1      | December 2015          |
| Phase 2      | May 2016               |
| Phase 3      | September 2016         |

# **Exhibit E**

## **Request for Disbursement**

(with Eligible Expenses Tracking Spreadsheet attached)

## REQUEST FOR DISBURSEMENT

TO: Salt Lake County

Re: Ogden Business Exchange Cleanup Project

---

Terms not otherwise defined herein shall have the meaning ascribed to such terms in the Loan Agreement between the Salt Lake County (the “County”) and the Redevelopment Agency of Ogden City (the “Agency”). In connection with said Agreement, the undersigned hereby states and certifies that:

1. Each item listed on **Schedule 1** attached hereto is an Eligible Expense and was incurred in connection with the Project.
2. These Eligible Expenses have been paid by the Agency and are reimbursable under the Loan Agreement.
3. Each item listed on **Schedule 1** has not previously been paid by or reimbursed by the County from the Revolving Loan Fund.
4. Invoices and lien waivers for each item listed on **Schedule 1** is attached thereto.
5. There has not been filed with or served upon the Agency any notice of any lien, right of lien or attachment upon or claim affecting the right of any person, firm, or corporation to receive payment of the amounts stated in this request, except to the extent any such lien is being contested in good faith.
6. All Remediation Work for which payment or reimbursement is requested has been performed in a good and workmanlike manner and in accordance with the Loan Agreement and all applicable federal, state or local laws.
7. The Agency is not in default or breach of any term or condition of the Agreement, and no event has occurred and no condition exists which constitutes an Event of Default under the Loan Agreement.
8. All of the Agency’s representations set forth in the Loan Agreement remain true and correct as of the date hereof.

*[Intentionally Left Blank – Signature Pages Follow]*

Dated this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

**REDEVELOPMENT AGENCY OF OGDEN CITY**

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

Name: \_\_\_\_\_

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

Approved for Payment this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

**SALT LAKE COUNTY**

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

Name: \_\_\_\_\_

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

**SCHEDULE 1**  
**Eligible Expenses Tracking Spreadsheet**

## SCHEDULE 1 to EXHIBIT E

| <b>ELIGIBLE EXPENSES TRACKING SPREADSHEET</b><br><b>Ogden Business Exchange Site Remediation:</b><br><b>Wasatch Brownfields Coalition RLF Loan – \$400,000</b> |                       |                             |                       |                       |                     |           |                                   |                       |                       |                     |                    |                          |                  |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|-----------------------------|-----------------------|-----------------------|---------------------|-----------|-----------------------------------|-----------------------|-----------------------|---------------------|--------------------|--------------------------|------------------|
| Source of Funds:                                                                                                                                               |                       |                             |                       |                       |                     |           |                                   |                       |                       |                     |                    |                          |                  |
| Ogden RLF Loan (80%)                                                                                                                                           | \$400,000             |                             |                       |                       |                     |           |                                   |                       |                       |                     | Quarter Ending On: |                          |                  |
| Ogden Cost Share (20%)                                                                                                                                         | \$90,500              |                             |                       |                       |                     |           |                                   |                       |                       |                     |                    |                          |                  |
| <b>Total Amount:</b>                                                                                                                                           | <b>\$490,500</b>      |                             |                       |                       |                     |           |                                   |                       |                       |                     |                    |                          |                  |
| BUDGET TRACKING                                                                                                                                                |                       |                             |                       |                       |                     |           |                                   |                       |                       |                     |                    |                          |                  |
| Eligible Expense Categories                                                                                                                                    | Ogden RLF Loan Budget | Costs Incurred this Quarter |                       |                       |                     |           | Cumulative Costs Incurred To-Date |                       |                       |                     |                    | Remaining Budgeted Funds |                  |
|                                                                                                                                                                | Total                 | Total                       | Seeking Reimbursement | Covered as Cost Share | Hazardous Substance | Petroleum | Total                             | Seeking Reimbursement | Covered as Cost Share | Hazardous Substance | Petroleum          |                          |                  |
| Use of Funds:                                                                                                                                                  |                       |                             |                       |                       |                     |           |                                   |                       |                       |                     |                    |                          |                  |
| *SITEWIDE*                                                                                                                                                     |                       |                             |                       |                       |                     |           |                                   |                       |                       |                     |                    |                          |                  |
| VCP Application Fee                                                                                                                                            | \$2,700               |                             |                       |                       |                     |           |                                   |                       |                       |                     |                    | \$2,700                  |                  |
| Health & Safety Plan                                                                                                                                           | \$1,500               |                             |                       |                       |                     |           |                                   |                       |                       |                     |                    | \$1,500                  |                  |
| SAP/QAPP                                                                                                                                                       | \$5,600               |                             |                       |                       |                     |           |                                   |                       |                       |                     |                    | \$5,600                  |                  |
| DEQ/Ogden/Consultant Meetings (x3)                                                                                                                             | \$3,000               |                             |                       |                       |                     |           |                                   |                       |                       |                     |                    | \$3,000                  |                  |
| <i>Subtotal:</i>                                                                                                                                               | <i>\$12,800</i>       | \$0                         | \$0                   | \$0                   | \$0                 | \$0       | \$0                               | \$0                   | \$0                   | \$0                 | \$0                | \$12,800                 |                  |
| *PHASE 1*                                                                                                                                                      |                       |                             |                       |                       |                     |           |                                   |                       |                       |                     |                    |                          |                  |
| DEQ/Ogden/Consultant Meetings (x4)                                                                                                                             | \$4,000               |                             |                       |                       |                     |           |                                   |                       |                       |                     |                    | \$4,000                  |                  |
| Remedial Action Work Plan                                                                                                                                      | \$8,500               |                             |                       |                       |                     |           |                                   |                       |                       |                     |                    | \$8,500                  |                  |
| Confirmation Sampling                                                                                                                                          | \$105,000             |                             |                       |                       |                     |           |                                   |                       |                       |                     |                    | \$105,000                |                  |
| Site Remediation & Conf Sampling                                                                                                                               | \$60,000              |                             |                       |                       |                     |           |                                   |                       |                       |                     |                    | \$60,000                 |                  |
| Site Closure Report                                                                                                                                            | \$20,000              |                             |                       |                       |                     |           |                                   |                       |                       |                     |                    | \$20,000                 |                  |
| <i>Subtotal:</i>                                                                                                                                               | <i>\$197,500</i>      | \$0                         | \$0                   | \$0                   | \$0                 | \$0       | \$0                               | \$0                   | \$0                   | \$0                 | \$0                | \$197,500                |                  |
| *PHASE 2*                                                                                                                                                      |                       |                             |                       |                       |                     |           |                                   |                       |                       |                     |                    |                          |                  |
| DEQ/Ogden/Consultant Meetings (x4)                                                                                                                             | \$3,000               |                             |                       |                       |                     |           |                                   |                       |                       |                     |                    | \$3,000                  |                  |
| Remedial Action Work Plan                                                                                                                                      | \$4,600               |                             |                       |                       |                     |           |                                   |                       |                       |                     |                    | \$4,600                  |                  |
| Confirmation Sampling                                                                                                                                          | \$110,000             |                             |                       |                       |                     |           |                                   |                       |                       |                     |                    | \$110,000                |                  |
| Site Remediation & Conf Sampling                                                                                                                               | \$50,000              |                             |                       |                       |                     |           |                                   |                       |                       |                     |                    | \$50,000                 |                  |
| Site Closure Report                                                                                                                                            | \$20,000              |                             |                       |                       |                     |           |                                   |                       |                       |                     |                    | \$20,000                 |                  |
| <i>Subtotal:</i>                                                                                                                                               | <i>\$187,600</i>      | \$0                         | \$0                   | \$0                   | \$0                 | \$0       | \$0                               | \$0                   | \$0                   | \$0                 | \$0                | \$187,600                |                  |
| *PHASE 3*                                                                                                                                                      |                       |                             |                       |                       |                     |           |                                   |                       |                       |                     |                    |                          |                  |
| DEQ/Ogden/Consultant Meetings (x4)                                                                                                                             | \$3,000               |                             |                       |                       |                     |           |                                   |                       |                       |                     |                    | \$3,000                  |                  |
| Remedial Action Work Plan                                                                                                                                      | \$4,600               |                             |                       |                       |                     |           |                                   |                       |                       |                     |                    | \$4,600                  |                  |
| Confirmation Sampling                                                                                                                                          | \$25,000              |                             |                       |                       |                     |           |                                   |                       |                       |                     |                    | \$25,000                 |                  |
| Site Remediation & Conf Sampling                                                                                                                               | \$50,000              |                             |                       |                       |                     |           |                                   |                       |                       |                     |                    | \$50,000                 |                  |
| Site Closure Report                                                                                                                                            | \$10,000              |                             |                       |                       |                     |           |                                   |                       |                       |                     |                    | \$10,000                 |                  |
| <i>Subtotal:</i>                                                                                                                                               | <i>\$92,600</i>       | \$0                         | \$0                   | \$0                   | \$0                 | \$0       | \$0                               | \$0                   | \$0                   | \$0                 | \$0                | \$92,600                 |                  |
| <b>Total Cost:</b>                                                                                                                                             | <b>\$490,500</b>      | \$0                         |                       |                       |                     | \$0       | \$0                               | \$0                   |                       |                     | \$0                | \$0                      | <b>\$490,500</b> |

# **Exhibit F**

## **Wasatch Brownfields Coalition RLF Board Memorandum**



**WASATCH BROWNFIELDS COALITION**  
**RLF BOARD MEMORANDUM**

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Date: February 25, 2015

Applicant: ***Ogden Redevelopment Agency (RDA)***

Cleanup Site Location: 600 West Exchange Road  
Ogden, Utah 84401

Property Owners/Parcels: The Ogden RDA acquired four of six parcels in September 2014. The RDA is in the process of acquiring and has contractual control over the two, additional parcels – which will be purchased in 2015.  
RDA-owned parcels: 140140019, 140100049, 141350002, and 141350003 (all acquired in September 2014)  
Uintah Homes parcel: 140140015 (RDA to acquire in March 2015)  
Land N Sea parcel: 140140017 (RDA to acquire in Nov. 2015)

Guarantor: Ogden City

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**1 PROJECT SUMMARY**

The Ogden Redevelopment Agency (RDA) (the “Applicant”) is requesting a \$400,000 hazardous substance/petroleum loan (the "Loan") for cleanup planning and remediation of its 51-acre, **Ogden Business Exchange** site located at 600 West Exchange Road (the "Property") in the Trackline Economic Development Area (EDA).

The project site was formerly utilized as a stockyard and livestock exchange and is now being used for the storage of equipment and containers of unknown origins and type. There is also a railroad spur that ran through the property for stock transportation which historically can have contamination from creosote, which is a blend of hundreds of chemicals. Chemical products that may have been historically transported and offloaded from rails cars could impact the site from unregulated and unreported spills. Ultimately, the resulting historic contaminants may include a comingling of hazardous substances and petroleum such as semi-volatiles, oils, and grease associated with the railroad ties/line and unidentified substances in the unmarked containers.

The Ogden RDA has enrolled in the Utah Department of Environmental Quality (DEQ) Voluntary Cleanup Program (VCP) and has been performing predevelopment tasks needed to make the master-planned “lifestyle” business park economically feasible, including: property acquisition, environmental remediation, demolition, infrastructure improvements, and other site preparation. The RDA has also partnered with a private developer who will be responsible for building, selling and leasing buildings in the business park. Ogden City is currently working with several companies planning to locate at the Business Exchange with office, manufacturing, light industrial, and distribution facilities that incorporate historical design and have connections to the Weber River, pedestrian/bike trails, open space, and access to the county-wide trail network.

## 2 PROPOSED LOAN

**Loan Amount:** \$400,000

**Loan Terms:** The proposed \$400,000 loan would be amortized over a ten-year period with interest-only payments (\$2,000/quarter) for the first four years and a final balloon payment of \$402,000 becoming due at the start of the fifth year. Overall, the total payments would amount to **\$416,000** with interest accounting for \$16,000 at a 2% fixed interest rate and a 14% default rate.

| <b>Sources &amp; Uses Statement – Ogden Business Exchange Remediation</b> |                  |                   |
|---------------------------------------------------------------------------|------------------|-------------------|
| <b>Sources</b>                                                            | <b>Amount</b>    | <b>% of Total</b> |
| Local Share (HUD Section 108 Loan or Ogden CIP Funds)                     | \$102,500        | 20%               |
| Wasatch Brownfields Coalition RLF Remediation Loan                        | \$400,000        | 80%               |
| <b>Total Capitalization</b>                                               | <b>\$502,500</b> | <b>100%</b>       |
| <b>Uses</b>                                                               | <b>Amount</b>    | <b>% of Total</b> |
| <b>SITEWIDE</b>                                                           |                  |                   |
| Voluntary Cleanup Program (VCP) Application Fee                           | \$2,500          | 0%                |
| Health and Safety Plan                                                    | \$1,500          | 0%                |
| SAP/QAPP                                                                  | \$4,500          | 1%                |
| DEQ/Ogden/Consultant Meetings (x3)                                        | \$1,500          | 0%                |
| Wasatch RLF Application/Origination/Monthly Service Fees                  | \$11,225         | 2%                |
| <i>Subtotal</i>                                                           | <i>\$21,225</i>  | <i>4%</i>         |
| <b>Phase 1</b>                                                            |                  |                   |
| DEQ/Ogden/Consultant Meetings (x4)                                        | \$2,000          | 0%                |
| Remedial Action Work Plan                                                 | \$8,000          | 2%                |
| Site Remediation and Sampling                                             | \$60,000         | 12%               |
| Disposal of Contaminated Material                                         | \$12,000         | 2%                |
| Site Closure Report                                                       | \$20,000         | 4%                |
| <i>Subtotal</i>                                                           | <i>\$102,000</i> | <i>20%</i>        |
| <b>Phase 2</b>                                                            |                  |                   |
| DEQ/Ogden/Consultant Meetings (x4)                                        | \$2,000          | 0%                |
| Remedial Action Work Plan                                                 | \$20,000         | 4%                |
| Site Remediation and Sampling                                             | \$120,000        | 24%               |
| Disposal of Contaminated Material                                         | \$40,000         | 8%                |
| Site Closure Report                                                       | \$20,000         | 4%                |
| <i>Subtotal</i>                                                           | <i>\$202,000</i> | <i>40%</i>        |
| <b>Phase 3</b>                                                            |                  |                   |
| DEQ/Ogden/Consultant Meetings (x4)                                        | \$2,000          | 0%                |
| Remedial Action Work Plan                                                 | \$20,000         | 4%                |
| Site Remediation and Sampling                                             | \$120,000        | 24%               |
| Disposal of Contaminated Material                                         | \$15,000         | 3%                |
| Site Closure Report                                                       | \$20,000         | 4%                |



|                           |                 |                  |             |
|---------------------------|-----------------|------------------|-------------|
|                           | <i>Subtotal</i> | <i>\$177,000</i> | <i>35%</i>  |
| <b>Total Project Cost</b> |                 | <b>\$502,225</b> | <b>100%</b> |

### **3 PHASED REMEDIATION APPROACH**

The Ogden RDA will be targeting the proposed cleanup planning and remediation of the Ogden Business Exchange development over three (3) phases, which is highlighted in the attached site map and the written description below:

Phase 1 is located on the east portion of the site and is currently undergoing remediation. The goal is to have remediation work complete in March 2015 (subject to change), followed by reporting and facility construction. The purchaser wants a new facility constructed and operational by the end of the year.

Phase 2 is located within the central area of the site. There is a purchaser lined up who would like to close on the north half of Phase 2 and have remediation completed by late April 2015 (subject to change). As a result, Ogden City submitted a cleanup plan on February 17<sup>th</sup> and would like to start cleanup in April 2015, pending the VCP acceptance of the cleanup plan.

Phase 3 is located on the west portion of the site. This area has less sampling data than the other two phases and is not a candidate for a joint characterization/remediation approach with the current level of data. More characterization is necessary before a remediation strategy can be evaluated. Based on discussions with Ogden, they would like to complete the characterization and possibly remediation by the end of the year so the property is available for development.

### **4 ABILITY TO REPAY LOAN**

The Ogden RDA will repay the \$400,000 environmental remediation loan through Trackline EDA tax increment funds (“TIF”) (a projected \$10.9 million over a 25-year term – 2017 is the first revenue year) and proceeds from land sales (an estimated \$6.4 million over the next 5 years) – see attached proforma. The RDA and project developer have jointly contracted with a local real estate broker to market 22.58 acres of the property, of which 11.60 acres have been sold to date and the remaining acreage will be listed/recruited via the broker, developer, and the Ogden City CED office. Ogden City is also expected to guarantee the RDA’s loan, which will provide a strong incentive and additional support for loan repayment.

Ogden City has also contributed \$1.23 million of Capital Improvement Project (CIP) funds, \$550k Community Development Block Grant (CDBG) funds, and \$400k of City Water funds to the project.

There are multiple sources of funds committed to the cleanup and redevelopment of the Ogden Business Exchange site, including: \$3.34 million Housing and Urban Development (HUD) loan, \$2.375 million Economic Development Administration (EDA) loan, the \$400k RLF loan, and a \$6.1 million loan to the developer. Non-federal funds spent on the site remediation can ultimately be applied to the 20% EPA cost share requirement. Federal funds spend on the site



remediation may or may not be applied to the 20% EPA cost share requirement depending on the circumstances and the type of federal funds used.

As outlined in the proforma, the debt payments are staggered throughout the Trackline EDA term with the HUD loan having the longest amortization and both the developer/RLF loans having the shortest repayment schedules. The Ogden RDA is backing all of these loans with varying forms of security (TIF, CDBG funds, land sale proceeds, land collateral) – but in the event of an issue, the RDA is unlikely to default. The RDA has provided a guarantee from Ogden City and has provided assurances that it will find other repayment sources if necessary.

## **5 RECOMMENDATION**

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If the Loan is approved by the Coalition Board, County staff recommends the following conditions be addressed prior to closing:

A loan to the Redevelopment Agency of Ogden City (the “Borrower”) shall be in the amount of 80% of projected eligible cleanup costs [less loan fees], up to \$400,000. The precise amount of the loan shall be determined by County staff in their sole discretion, but in no event shall the loan exceed \$400,000.

The loan shall be made on the following terms and subject to the following conditions:

### Loan Terms:

1. 4 year, interest-only loan with a balloon payment paid a quarter after the last, regular quarterly payment.
2. Interest Rate – 2% per annum
3. Default Rate – 14% per annum
4. Interest accrues upon the first loan disbursement. Interest will be computed on disbursements of loan proceeds from and including the date of each disbursement on the basis of a 360 day year and the actual number of days elapsed in any portion of a quarter in which interest is due.
5. Payments made quarterly beginning with the first quarter following the quarter in which the first loan disbursement is made to the borrower.
6. Loan proceeds will be disbursed quarterly for cleanup work that has been completed and evidenced by certified invoices submitted to the County. The County will disburse loan proceeds equal to 80% of eligible cleanup costs (or a higher percentage if the Borrower has already met a portion of its cost-share requirement) within 45 days following the conclusion of each quarter and receipt of certified invoices.
  - a. Each invoice submitted to the County shall be signed/dated by the borrower, contractor, or consultant who conducted the work and shall contain a certification that the eligible cleanup and remediation work for which disbursement is sought has in fact been completed.

7. Borrower shall drawdown 50% of the total loan proceeds by the close of the 2016 calendar year and 100% of the total loan proceeds by the close of the 2017 calendar year or otherwise Borrower will not be entitled to further disbursements under the Loan Agreement.
8. Borrower shall pay Application Fee of 0.5% of the loan amount or \$500.00, whichever is greater, at loan closing. On a \$400,000 loan, this fee would be \$2,000.
9. Borrower shall pay Origination Fee of 2% of the loan amount or \$1000.00, whichever is greater, at loan closing. On a \$400,000 loan, this fee would be \$8,000.
10. Borrower shall pay \$25 monthly service fee or \$75 per quarter.
11. Ogden City must guarantee the loan.
12. The general policy is to not disburse loan proceeds for eligible expenses that have already been incurred. The Coalition Board is willing to make an exception here and allow loan proceeds to be disbursed for eligible cleanup expenses that the RDA has already incurred up to \$60,000. However, if the Borrower desires to cover all or a portion of already incurred eligible expenses with its own funds so that it can count such amount toward the 20% cost-share requirement, the Borrower must demonstrate to the County that the source of funds used to pay for the already incurred eligible expenses are appropriate and eligible sources from which to pay the cost-share requirement. Whether the funds used to pay for the cost-share requirement are an appropriate or eligible source of funds will be determined by the County in its sole discretion.
13. Any other loan terms recommended by the County's legal counsel.

The County will not be obligated to enter into a loan agreement with the RDA unless and until the following conditions have been met:

1. The EPA Project Officer (PO) has determined that the site is eligible (evidenced by a site eligibility outline signed by EPA) and that the Borrower is eligible.
  - a. EPA approved the site and borrower eligibility on 12/19/2014
2. The County and Coalition Board have approved the project based on the Coalition's Policies and Procedures and the Borrower has satisfied all applicable terms and conditions of the EPA Cooperative Agreement.
3. If necessary, the Borrower has informed the PO of any historic buildings, structures, artifacts, and sites in writing and has provided a copy of such correspondence to the County. The Borrower has provided to the PO 1) a completed Utah Division of State History's SHPO cover page, 2) locational information in township and range, with attached USGS map, 3) a description of the project and an explanation of its impacts, 4) research design, and 5) known archaeological information. The SHPO has 30 days to review the PO's determination.
4. The Borrower has consulted with Fish and Wildlife Service's website to see if any threatened or endangered species will be affected by the cleanup and has notified the PO and the County in writing of such consultation and of the Borrower's findings. If T&E species are identified in the project area, the Borrower will consult with FWS and obtain approval on mitigation measures.

5. The Borrower has submitted a Community Relations Plan (CRP) to the PO and has provided a copy to the County for at least the first phase of the project.
  - a. Submittal of Phase 1 CRP is required for execution of loan agreement.
  - b. Submittal of Phase 2 CRP and Phase 3 CRP will be required before loan proceeds may be disbursed for Phase 2 and Phase 3 eligible cleanup costs.
6. For each phase, the Borrower has submitted an Analysis of Brownfields Cleanup Alternatives (ABCA) to the PO and has provided a copy to the County for at least the first phase of the project.
  - a. Submittal of Phase 1 ABCA is required for execution of loan agreement.
  - b. Submittal of Phase 2 ABCA and Phase 3 ABCA will be required before loan proceeds may be disbursed for Phase 2 and Phase 3 eligible cleanup costs.
7. The Borrower has submitted documentation to the PO showing how the match/cost-share requirement will be met, has provided a copy to the County, and the PO has approved the match/cost-share expenses. The Borrower has submitted documentation to the County demonstrating that the source from which the match/cost-share requirement will be met is an appropriate and eligible source from which the cost-share requirement can be met, as determined by the County in its sole discretion and approved by the PO.
8. The Borrower has enrolled in the State Voluntary Cleanup Program (VCP) for at least the first phase of the project.
  - a. Ogden submitted a VCP Application for the project on April 2014, executed a VCP Agreement for the project in July 2014. The VCP agreement was amended and recorded in November 2014.
9. The Borrower has submitted a cleanup plan to the State VCP and the State VCP has approved the cleanup plan for at least the first phase of the project.
  - a. Submittal of Phase 1 cleanup plan is required for execution of loan agreement.
  - b. Submittal of Phase 2 cleanup plan and Phase 3 cleanup plan will be required before loan proceeds may be disbursed for Phase 2 and Phase 3 eligible cleanup costs.
10. The Borrower has submitted the final cleanup plan to the PO and has provided a copy to the County for at least the first phase of the project.
  - a. Submittal of Phase 1 final cleanup plan is required for execution of loan agreement.
  - b. Submittal of Phase 2 final cleanup plan and Phase 3 final cleanup plan will be required before loan proceeds may be disbursed for Phase 2 and Phase 3 eligible cleanup costs.
11. The Borrower has complied with the Davis-Bacon Act and has documented and evidenced such compliance for eligible expenses already incurred by the Borrower. (Under the terms of the loan agreement, the Borrower will be required to comply with the Davis-Bacon Act and provide documentation and evidence of such compliance as a condition to any future disbursement of loan proceeds).
12. Any other conditions to loan execution recommended by the County's legal counsel.

**ATTACHMENTS:**

1. Project ProForma
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3. Sources and Uses Statement
  4. Loan Amortization Schedule
  5. Site Map: Phases 1-2-3
  6. DEQ Voluntary Cleanup Agreement
  7. EPA Site Eligibility Form
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