

REQUEST FOR OFFER

-OGDEN CITY – 23rd Street Parking Structure

Ogden City ("City") is requesting offers from qualified architects and/or design/build construction firms for services that will assist the City in making decisions and determining feasibility in regard to the design and construction of a new multi-level parking structure at 23rd Street and Washington, Ogden, Utah.

Information may be obtained by contacting:

BRANDON COOPER, Construction Project Coordinator,
Business Development Department
2549 Washington Blvd. #420
Ogden, Utah 84401,
(801) 629-8947.

Proposals are to be submitted to:

OGDEN CITY PURCHASING DEPARTMENT
2549 Washington Blvd. Suite #510
Ogden, Utah 84401
by **4:00 p.m. on Wednesday, July 1, 2009. Late Bids will not be accepted.**

The City reserves the right to accept or reject any offer that best serves its convenience and/or is in the best interest of the City.

The City welcomes and encourages offers from disadvantaged business enterprises.

Published:



April 28, 2009

**REQUEST FOR OFFERS
ARCHITECTURAL – DESIGN/BUILD SERVICES**

Multi-Level Parking Structure
Approximately 23rd & Washington
Ogden, Utah

Community and Economic Development
Business Development
2549 Washington Blvd. Suite 420
Ogden, UT 84401
801-629-8910

SECTION 1 – PROJECT INFORMATION/SCOPE OF OFFERING

A. INTRODUCTION

Ogden City (“City” or “Agency”) is seeking offers from licensed, qualified architectural, developer, and/or design/build construction firms (“Offeror” or “Consultant”) for the **conceptualization, design, and construction of above ground, multi-level parking structures**. This project will be located on the 23rd block of Washington Blvd in Ogden, Utah and will consist of 2 phases:

PHASE I: Request for Offers

- Offer Submissions
- Negotiations
- Best and Final Offers
- Offeror Selection
- Execution of Design and Final Costing

PHASE II: Construction (***actual construction is contingent on the results of the final design and costing and the ability of the CITY to secure the required funds***)

Submissions must meet the following requirements:

1. The offer must include a commitment to keep the design/developer/construction team intact from award until after construction is complete
2. The offer is prepared by a Design/Construction Team (Architects, Engineers, Contractors) licensed in the State of Utah with demonstrable experience in designing and constructing this type of project
3. The project will be designed and constructed with lasting quality emphasizing low maintenance and low operating costs
4. The project will be designed and constructed to occupy 1 – 3 stories and be deliverable within a budget of \$2 - \$4 million dollars.

B. CONTENT OF OFFER

As part of this request, the Offeror shall provide the items described in the CONTENT of OFFER (Exhibit “A”). Offerors may retain the services of other professionals on a subcontract basis for the purpose of this proposal. Proposals of Offerors shall provide information of sub-consultants, if any, along with the delineation of what types of services would be provided by the Offeror versus the sub-consultant. The City may select and enter into an Agreement with as many as three (3) Offerors under this Request for Offer (“RFO”), and my request one or all of the selected consultants to work with the City with respect to the same project. The City reserves the right to solicit similar services on a Request for Offer basis during the term of the selected Offeror’s

Agreement, even if the services are included within the Content of Offer described in Exhibit "A" or elsewhere in this RFO.

For each assignment, the selected Offeror will be required to work closely with various CITY staff, and as required, with the Ogden City Planning Commission, Ogden City Economic Development Department, community property owners, the CITY's other consultants, the City Council, and/or other relevant parties as determined by the CITY.

REQUIRED SITE VISIT: there will be NO required site visit. Please contact Brandon Cooper at 801.389.0183 for clarifications on offer requirements.

C. QUALIFICATIONS

The selected Offeror shall be a qualified architectural, developer, or design/build firm with experience in the design and construction of above ground, multi-level parking structures in urban areas of Utah and/or the western United States. The firm shall have responded to Request for Offerings/Proposals from government entities offering development opportunities and be shall be prepared to provide the CITY with insights and suggestions to solving the long term parking problems of the city and making the agency's development efforts more successful.

D. PROCEDURES FOR SUBMISSION OF REQUEST FOR OFFERS

Offerors shall submit one (1) copy of all documents required as a part of the Request. Submissions lacking one or more of the requested documents may be considered non-responsive. It is the Offeror's sole responsibility to read and interpret this Request and the written instructions contained herein. Responses to the Request shall be submitted to:

Ogden City Purchasing Department
2549 Washington Boulevard, Suite 510
Ogden, UT 84401

Responses to the Request are due on July 1, 2009 by 4:00 PM.

Ogden City reserves the right to reject any irregular submission and reserves the right to waive any irregularity in submissions.

Responses to the Request that are not received in the **Ogden City Purchasing Office** prior to the time and date specified will be considered late. **LATE RESPONSES WILL NOT BE CONSIDERED FOR AWARD.** The CITY reserves the right to reject any and all responses.

It is the Offeror's responsibility to assure the delivery of its responses to Ogden City Purchasing Department prior to or at the designated date and time. In order to facilitate; please submit materials in the following format:

OFFER:

Tabbed 3 ring binder

Table of Contents (see Exhibit "A" for outline)

FEE SCHEDULE:

Sealed Envelope

E. SELECTION CRITERIA

An agency appointed Selection Committee will evaluate all offers. Qualifications of the Offerors will be evaluated using the following selection criteria:

- A. The extent of experience of the Offeror and the Offeror's proposed sub-consultants along with their personnel and their time commitments to this project
- B. The degree and depth of professional qualifications of the Offeror and the Offeror's proposed sub-consultants and their personnel.
- C. Past performance of the Offeror and the Offeror's proposed sub-consultants on similar projects
- D. The Offeror's proposed design and approach to managing the services described in the Scope of Services, including the Offeror's ability to meet the CITY's schedules, budget, and design objectives; and
- E. The ramifications to the CITY of the suggested changes to the Agreement.

The Selection Committee will review each of the Offerors on the basis of the selection criteria and will select up to six (6) of the top Offerors (provided that more than 6 offers are received), or the most highly responsive and qualified and ranked in that order. These will be named the "Short List" of the most highly responsive Offerors. The Selection Committee will then open the sealed fee proposals of the Short-Listed Offerors and provide to the CITY staff a ranking of the firms on the Short-List. The CITY staff, subject to final approval of the City CAO, will then negotiate with the most highly responsive and qualified Offeror a fair and reasonable fee and, if modifications to the proposed form of the Agreement attached as Exhibit "B" have been proposed in the Offeror's proposal, modifications to the Agreement. The CITY is not required to accept any of the Short-Listed Offeror's suggested modifications to the proposed Agreement and may decline to further negotiate with any Short-Listed Offeror proposing terms of the Agreement unacceptable to the CITY. The CITY shall not be bound by any Short-Listed Offeror's fee proposal in negotiating a fair and reasonable fee.

The CITY shall have the right to verify the accuracy of all information submitted and to make such investigation, as it deems necessary to determine the ability of a prospective Offeror to perform the obligations in the response. The CITY and the staff of the Ogden City Business Development Department reserve the right to reject any response where the available evidence or information does not satisfy Ogden City Business

Development, the prospective Offeror is not qualified to carry out properly the obligations of the offer, or if the prospective Offeror refuses to cooperate with and assist Ogden City Business Development in the making of such investigation.

F. EQUAL OPPORTUNITY REQUIREMENTS

The Offeror, its employees, and primary subcontractors will not discriminate against or with respect to any person or group of persons in the basis of race, color, creed, sex, marital status, age, religion, disability, or national origin in the construction, sale, transfer, use, occupancy, tenure or enjoyment of the Project or any improvements erected or to be erected thereon, or any part thereof.

The Redevelopment Agency of Ogden City reserves the right to reject any irregular submission and reserves the right to waive any irregularity in submissions.

Responses to the Request that are not received in the Ogden City Purchasing Office prior to the time and date specified will be considered late. **LATE RESPONSES WILL NOT BE CONSIDERED FOR AWARD.** Ogden City Business Development reserves the right to reject any and all responses.

SECTION 2 - MISCELLANEOUS

Any additional information that the Offeror wishes to submit may be attached to its response to the Request in the form of appendices. Statements should be complete but as brief as possible.

Prospective Offerors are urged to give full consideration to the Supplemental Exhibits and all other documents relating to this Project.

Contractors are encouraged to confer with Ogden City Business Development prior to submitting their response.

The Offeror, by submitting a response to the Request for Offers, waives all rights to protest or seek any legal remedies whatsoever regarding any aspect of the Request, Ogden City Business Development's selection of a consultant with whom to enter into negotiations, Ogden City Business Development's rejection of any or all responses.

A. RIGHT TO REJECT/WAIVER OF IRREGULARITIES

Ogden City Business Development reserves the right to reject any and all offers and to waive any irregularity, informality or technicality in offers received, in the interest of Ogden City Business Development and the CITY.

B. PUBLIC INFORMATION

Offerors are hereby advised that the information provided as a part of all submissions shall become Ogden City Business Development property at the time of submission. Information contained in the submissions will be available to the public upon inquiry immediately following the execution of a written agreement with the selected consultant by Ogden City Business Development.

C. AGENCY'S RIGHT TO NEGOTIATE CHANGES

Ogden City Business Development reserves the right to negotiate changes in the terms of the offer with the selected Offeror as may be required.

D. PROJECT MANAGER:

Contact: BRANDON COOPER, Construction Project Coordinator
Business Development Department
2549 Washington Blvd. # 420
Ogden, Utah 84401
(801) 629-8910

E. EXHIBITS/ATTACHMENTS:

1. Exhibit A: Content of Offer
2. Exhibit B: Example Contract
3. Exhibit C: Aerial Photo

EXHIBIT “A”

Content of Offer

1. EXECUTIVE SUMMARY NARRATIVE

1a. Describe your understanding and familiarity with the development requirements and goals of the CITY and this RFO.

1b. Demonstration of progress from Existing Site through Design, Approval, Construction, and Occupancy

2. DESIGN/CONSTRUCTION TEAM

1a. Narrative of Experience/Past Performance (give detailed references)

Architect

General Contractor

Consultants

1b. Qualifications of Key Personnel

Architect

General Contractor

Consultants

3. DESIGN CONCEPT

3a. Preliminary Design Concept Narrative

1. Architect's design statement

2. Site Civil concept

3. Site Landscape concept

4. Building Flow concept (including floor plan, number of stories, column spacing, stall number and spacing, efficiency of design, relationship to surrounding buildings)

5. Building Construction

6. Code Analysis

7. Security

3b. Design Drawings (preliminary quality)

1. Exterior Perspective

2. Site Study

3. Site Plan (with lighting)

4. Floor plans

5. Elevations

6. Sections

7. Landscaping

8. 3-D model

4. BUILDING QUALITY NARRATIVE

4a. Systems Narrative

1. Structural System
2. Proposed Electrical System
3. Proposed Lighting System
4. Sustainable Design

4b. Exterior Narrative

1. Building Construction
 - Choice of Exterior Materials
 - Level of Quality
 - Reasons for the Selections
 - Proposed Site Landscaping
2. Pictures of Samples

5. TECHNICAL APPROACH

5a. Management Plan Narrative

1. Management Plan
2. Design Schedule
3. Construction Schedule
4. Cost and Schedule Control

FEE SCHEDULE:

Sealed Envelope

EXHIBIT "B"

EXAMPLE CONTRACT

PROVISION OF SERVICES AGREEMENT

THIS AGREEMENT, entered into as of the ____ day of _____, 2008, by and between **OGDEN CITY**, a Utah municipal agency, hereinafter "CITY and/ or Owner," and _____, a Utah Corporation, herein after "Consultant."

WITNESSETH:

WHEREAS, the CITY desires specific design and construction services for the proposed above ground parking structure located approximately 23rd and Washington, Ogden, Utah 84401.

WHEREAS, Consultant has proposed to provide such services.

NOW, THEREFORE, in consideration of the mutual covenants and agreements stated herein and of the payments for services hereinafter described, the parties hereto do mutually agree as follows:

1. Performance of Services. The CITY hereby agrees to engage Consultant, and Consultant hereby agrees to perform the services (Scope of Work) as depicted in **Exhibit B** attached and made part hereof.

2. Time of Performance. Consultant shall commence work pursuant to this Agreement on _____. Consultant shall complete the Scope of Work under this Agreement no later than _____. This Agreement shall terminate upon completion of the Scope of Work. For each day that the construction work remains uncompleted beyond the specified completion date, the sum of **TWO HUNDRED-FIFTY DOLLARS (\$250.00)** shall, at the option of the CITY, be retained as and for stipulated and agreed upon liquidated damages.

3. Compensation and Schedule of Values. For such services, Consultant shall be paid the total compensation of _____. Said total shall constitute full payment for all services rendered and costs incurred by Consultant in performing this Agreement unless otherwise mutually agreed upon by Change Order. A detailed schedule of values is attached as **Exhibit C** depicting a cost summary of quantities and unit pricing.

Progress payments may be made monthly based on invoices from Consultant not to exceed percentage completed. Retention totaling 5% shall be withheld from Consultant's monthly billings and released as per this Agreement.

4. Change Orders and Authorizations. The CITY may add or deduct the work required by this Agreement and any changes so made shall be defined by CITY's written Change Order and Authorization setting forth the changes involved and the value and time impact thereof, which value and time impact shall be mutually agreed upon between CITY and Contractor, provided, the unit price for any existing Exhibit C values shall be the price for any such change. Consultant shall not proceed with any additional work without written authorization from the Owner.

5. Payments Withheld. Payments otherwise due to Consultant, including payment of retainage and final payment, may be withheld by CITY on account of: (1) failure of Consultant to provide acceptable and current certificates of insurance as defined in this Agreement, (2) defective work of Consultant not remedied, (3) failure of Consultant to make payments owing to its employees, suppliers or subcontractors for material, services or labor, (4) failure of Consultant to complete Owner's subcontractor and supplier affidavit and lien release forms (5) claim(s) filed by or involving Consultant or reasonable evidence indicating the probability of such a claim being filed, (6) failure of Consultant to perform per a schedule or commitment made by Consultant, or (7) a reasonable doubt that Consultant can complete the work of this Agreement for the balance then unpaid. If any of the foregoing conditions exist and are not removed within **three** (3) days of Owner's written notice to Consultant, Owner may rectify the same at Consultant's expense.

6. Specific Representations and Warranties. By executing this Agreement, Consultant makes the following express representations and warranties to Owner:

- 6.1. Consultant is professionally qualified to act as the contractor for the Project and has, and shall maintain, any and all licenses, permits, and other authorizations necessary to act as the Contractor for the Project and to perform the Services required hereunder.
- 6.2. Consultant has become familiar with the project documents generated to date and will become familiar with all generated hereafter, and has become familiar with the Project site and the local conditions under which the Project is to be completed.
- 6.3. Consultant has the capability and experience, including sufficient qualified and competent supervisory personnel, to efficiently and timely accomplish the Work and perform the Services, and Consultant will continuously furnish sufficient personnel to accomplish the Work and perform the Services in a timely and proper manner.
- 6.4. Consultant shall comply, and shall cause all Subcontractors to comply, with all Applicable Laws.
- 6.5. Consultant assumes full responsibility to CITY for the acts and omissions of its officers, employees, Subcontractors, consultants, and others

employed or retained by it or them in connection with the performance of the Services or the Work.

- 6.6. *Consultant warrants to CITY that all labor furnished to perform the Work under the Contract Documents will be competent to perform the tasks undertaken, that the product of such labor will yield only first-class results, that materials and equipment furnished will be of good quality and new unless otherwise permitted by the Contract Documents, and that the Work will be of good quality, free from faults and defects, and in strict conformance with the Contract Documents. Any Work not strictly conforming to these requirements may be considered defective.*
- 6.6. *All obligations related to or arising from all representations and warranties made in the Contract Documents shall be obligations of, and shall be deemed incorporated in, the performance bond furnished by Consultant.*
- 6.7. *The representations and warranties enumerated in this paragraph operate in addition to, and shall in no way supersede, limit, or restrict any other duty, responsibility, representation, or warranty, express or implied, created or required by the Contract Documents or by law.*

7. *Inspection and Certifications of Completion*

- 7.1 *Inspection of Work. Consultant shall, on a continuous basis as a part of its day-to-day supervision of the Project, inspect the Work to ensure that the quality, quantity and progress of the Work meets the requirements of this Agreement. In making such inspections, Consultant shall reject Work that is defective or deficient, take steps to avoid unexcused delays in the performance of the Work, and protect Owner from overpayment.*
- 7.2 *Standard of Construction and Identification of Defective Work. Consultant shall cause the Project to be demolished, cleared and backfilled in strict compliance with the requirements of the Contract Documents and Applicable Laws. Consultant acknowledges that strict compliance is a more exacting standard than substantial compliance and Consultant agrees that its fee takes into consideration the more exacting standard. Owner will not accept Work which fails to comply with such standards, unless the departure from such standards is specifically identified to, and thereafter authorized in writing by, the Owner. Unless so authorized by the Owner, Consultant shall correct all Work that does not meet the requirements of this Agreement and Applicable Laws.*
- 7.5 *Punch Lists and Correction of Defective Work. Consultant shall, with the assistance of Owner, prepare and enforce punch lists and other itemizations of defective, deficient, or incomplete Work. Consultant shall report to Owner's Representative in a monthly report its progress in correcting and completing such defective, deficient, or incomplete Work. If within one (1) year after Final Completion any of the Work is found to be incomplete, defective or not in strict accordance with the Contract Documents or industry standards, Consultant shall correct such Work*

promptly upon receipt of written notice from Owner, or subsequent Owner. This obligation shall survive Final Payment by Owner and termination of this Agreement

7.6 *Substantial Completion of the Project.* *When Consultant believes that Substantial Completion of the entire Project, or a designated part thereof, has been achieved, it shall notify Owner's Representative in writing and request an inspection for certification of Substantial Completion. Consultant shall thereafter meet on site with Owner's Representative to determine whether Substantial Completion of the Project, or the designated part thereof, has in fact been achieved. Consultant's written request for such inspection shall constitute a representation by Consultant to the Owner that Consultant has made all inspections of the Work required by the Contract Documents and that, to the best of Consultant's information and knowledge, the Work has been performed in strict compliance with, and the quality of the Work meets or exceeds the requirements of, the Contract Documents. If Owner's Representative agree that Substantial Completion of the Project, or the designated part thereof, has been achieved, they shall execute a Certificate of Substantial Completion. If Owner's Representative, upon inspection, conclude that Substantial Completion has not been achieved and that reinspection will be necessary, Consultant shall bear all costs of same.*

7.7 *Final Completion of the Project.* *When Consultant believes that Final Completion of the entire Project has been achieved, it shall notify Owner's Representative in writing and request an inspection for certification of Final Completion of the Project. Consultant shall thereafter meet on site with Owner's Representative to determine whether Final Completion of the Project has in fact been achieved. Consultant's request for such inspection shall constitute a representation by Consultant to Owner that Consultant has made all inspections of the Work as provided in the contract and that, to the best of Consultant's knowledge and belief, all the Work has been completed in strict compliance with the Contract Documents and that the quality of the Work meets or exceeds the requirements of the Contract Documents. If Owner's Representative agree that Final Completion of the Project has been achieved, they shall execute a Certificate of Final Completion of the Project. If Owner's Representative, upon inspection, conclude that Final Completion has not been achieved and that reinspection will be necessary, Consultant shall bear all costs of same.*

8. **Period Of Limitation** . *Consultant shall warrant product and workmanship to be free from defect for a period of 1 year from date of final completion.*

9. **Termination of Agreement for Cause.** *If, through any cause, Consultant shall fail to fulfill, in a timely and proper manner, its obligations under this Agreement, or if Consultant shall violate any of the covenants, agreements or stipulations of this Agreement, RDA shall have the right to terminate this Agreement by giving written*

notice to Consultant of such termination and specifying the effective date thereof. In the event of termination for cause, Consultant shall be entitled to receive only the share of the total compensation which is equal to any satisfactory work completed as of the date of termination. Notwithstanding the above, Consultant shall not be relieved of liability to the CITY for damages sustained by the CITY by virtue of any breach of the Agreement by Consultant, and the CITY may withhold any payments to Consultant for the purpose of setoff until such time as the exact amount of damages due the CITY from Consultant is determined.

10. Termination for Convenience. The CITY or Consultant may terminate the Agreement at any time by giving written notice to the other and specifying the effective date thereof, at least thirty (30) days before the effective date of such termination. If the Agreement is terminated by the CITY as provided herein, the CITY shall pay Consultant for all work performed as of the date of termination.

11. Non-assignability. Consultant shall not assign any interest in this Agreement, and shall not transfer any interest in the same (whether by assignment or novation) without the prior written consent of the CITY thereto.

12. Interest of Consultant. Consultant covenants that Consultant presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of the services hereunder. Consultant further covenants that in the performance of this Agreement no person having such interest shall be employed.

13. Insurance Requirements. Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by Consultant, its agents, representatives, employees or subcontractors. The cost of such insurance shall be the responsibility of the Consultant. The amount of insurance shall not be less than:

13.1 Commercial General Liability: \$1,000,000 combined single limit per occurrence and \$2,000,000 general aggregate for bodily injury, personal injury and property damage. Policy to include coverage for premises and operations, contractual liability, personal injury liability, products/completed operations liability, broad-form property damage (if applicable) and independent Consultants' liability (if applicable) written on an occurrence form.

13.2 Business Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage for owned, non-owned and hired autos.

13.3 Workers' Compensation and Employers' Liability: Workers' compensation limits as required by the labor code of the State of Utah and employers' liability with limits of \$1,000,000 per accident.

Each insurance policy required by this Agreement shall contain the following clauses:

“This insurance shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty days prior written notice by certified mail, return receipt requested, has been given to Ogden City.” “It is agreed that any insurance or self-insurance maintained by Ogden City, its elected and appointed officials, employees, agents and volunteers shall be excess of Consultant’s insurance and shall not contribute with insurance provided by this policy.”

Each insurance policy required by this Agreement, excepting for Workers’ Compensation shall contain the following clause:

“Ogden City, its elected and appointed officials, employees, agents and volunteers are to be named as additional insured as respect to operations and activities of, or on behalf of, the named insured as performed under Agreement with the RDA.”

Insurance is to be placed with insurers acceptable to and approved by the RDA. Consultant’s insurer must be authorized to do business in Utah at the time the contract is executed and throughout the time period the contract is maintained, unless otherwise agreed to in writing by the RDA. Failure to maintain or renew coverage or to provide evidence of renewal will be treated by the CITY as a material breach of contract.

The CITY shall be furnished with original certificates of insurance and endorsements effecting coverage required within, signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements are to be received by the CITY before work commences.

The CITY reserves the right to require complete, certified copies of all required insurance policies at any time.

Any deductibles or self-insured retentions must be declared to and approved by the CITY. At the option of the CITY, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the CITY, its elected and appointed officials, employees, agents and volunteers; or Consultant shall provide a financial guarantee satisfactory to the CITY guaranteeing payment of losses and related investigations, claim administration and defense expenses.

In addition to any other remedies the CITY may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time limits required, the CITY may, at its option: a) obtain such insurance, deduct and retain the amount of premiums for such insurance from any sums due under the Agreement, b) order Consultant to stop work under this Agreement and/or withhold any payment(s) which become due to Consultant until Consultant demonstrates compliance with requirements, c) terminate this Agreement, or d) other reasonable remedy.

Consultant shall include all subcontracts as insureds under its policies or shall furnish separate certificates and endorsements for each subcontract. All coverages for subcontracts shall be subject to all of the requirements stated herein.

Nothing contained herein shall be construed as limiting in any way the extent to which Consultant may be held responsible for payments of damages to persons or property resulting from Consultant's or its subcontractor's performance of the work covered under this Agreement.

14. Payment and Retainage. After completion of all work and punch list items, RDA shall pay the Compensation amount after deducting there from all previous payments, penalties, liquidated damages, and other amounts to be retained. The final payment shall not be due and payable until the expiration of 30 days from the approval of the request for final payment of Consultant by the RDA's finance department. Final payment, constituting the entire unpaid balance of the contract sum, shall be paid by the RDA to the Consultant when the work has been completed, the contract fully performed, and the final certificate for payment has been issued by the RDA. Final payment shall not become due until the Consultant submits to the RDA, (1) an affidavit that all payrolls, bills for materials and equipment and other indebtedness connected with the work for which the RDA might in any way be responsible, have been paid or otherwise satisfied conditional upon receipt of payment; (2) consent of surety to final payment,; (3) if required by the RDA, other data establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of liens arising out of the contract, to the extent and in such form as may be designated by the RDA. If after substantial completion of work, final completion thereof is materially delayed through no fault of the Consultant or by the issuance of change orders affecting final completion, and the RDA so confirms, the RDA shall, upon application by the Consultant and certification by the RDA that without terminating the contract, make payment of the balance due for that portion of the work fully completed and accepted. The making of final payment shall constitute a waiver of all claims by the RDA except those arising from (1) unsettled liens; (2) faulty or defective work; (3) failure of the work to comply with the requirements of the contract documents; or (4) terms of any special warranties required by the contract documents. The acceptance of final payment shall constitute a waiver of all claims by the Consultant except those previously made in writing and identified by the Consultant as unsettled at the time of the final application for payment. All provisions of this Agreement, including without limitation those establishing obligations and procedures, shall remain in full force and effect notwithstanding the making or acceptance of final payment. The payment and acceptance of the final Compensation due and the adjustments and payment for any work done in accordance with any alterations of the same, shall release the RDA from any and all claims of Consultant on account of work performed under the Agreement or any modification thereof, except for those claims specifically agreed to in writing as reserved and unresolved by the RDA.

15. Indemnification. Consultant agrees to indemnify, save harmless and defend RDA and its elected officials, authorized agents, officers, employees, and volunteers from and against any and all claims, damages, demands, actions, costs and

charges but only to the extent arising out of or by reason of Consultant's performance or failure to perform this agreement.

16. Contract Documents. The Contract Documents shall include this Agreement, any supplemental conditions, any special conditions, Change Orders and field orders, any written amendments to this Agreement, and all documents expressly annexed hereto as part of this Agreement including the original Request for Bid and the Proposal Submitted by the Consultant in response to the Request for Bid. Documents not expressly listed above are not Contract Documents and do not constitute part of the contract between the parties.

16.1. Priority of Documents. In the event of any conflict, discrepancy, or inconsistency among any of the Contract Documents, interpretation will be based on the following descending order of priority:

1. This Agreement including Exhibits except that if any conflict arises between any Exhibit and the primary Agreement, the primary Agreement takes precedence.
2. Supplemental or Special Conditions (if any).
3. Specifications.
4. Plans, and among the Plans, the following:
 - a. As between figures given on plans and scaled measurements, the figures shall govern;
 - b. As between large scale plans and small scale plans, the large scale plans shall govern.

16.2. Substitutions. If Owner elects to accept any items proposed by Consultant as a substitution, Consultant shall assume full responsibility for the proper performance of such substituted items and shall assume the costs of any changes in the Work which may be due to such substitution.

17. Attorney's Fees. In the event either party institutes litigation to enforce its rights under this Agreement, the prevailing party in such litigation shall be entitled to an award of its reasonable attorney's fees and costs.

18. Notice. Any notice, or notices, required or permitted to be given pursuant to this Agreement, may be personally served on the other party by the party giving such notice, or may be served by certified mail, return receipt requested, to the following addresses:

CITY/ Owner: OGDEN CITY
Business Development Division
Attention: Brandon Cooper (Owner's Representative)
2549 Washington Blvd. Suite 420
Ogden, Utah 84401
(801) 629-8910

Consultant: Consultant
 Attention:
 1234 America Drive
 Ogden, Utah 84041
 (801) 444-4444

19. Independent Consultant. Consultant is independent of the CITY and shall perform all services according to its own methods without being subject to the control of the CITY except as to the results obtained. The CITY shall not carry Workers Compensation insurance or any health or accident insurance to cover Consultant. The CITY shall not pay nor be responsible for any contribution to Social Security, unemployment insurance, federal or state withholding taxes, nor provide any other contributions or benefits which might be expected in an employer-employee relationship. Consultant, as an independent consultant, shall provide and be responsible for any and all of Consultant, and its employees or agents, Workers Compensation contributions, federal and state withholding, unemployment compensation contributions and social security tax withholding, etc. Consultant agrees to report and pay any contributions for taxes, unemployment insurance, Social Security and other benefits.

20. When Rights and Remedies Not Waived. In no event shall any payment by the CITY hereunder constitute or be construed to be a waiver by the CITY of any breach of conditions or any default which may then exist, or while any such breach or default shall exist, in no way impair or prejudice any right or remedy available to the CITY with respect to such breach or default.

21. Integrated Document. This Agreement embodies the entire agreement between the CITY and Consultant for the scope of services and the terms and conditions. No verbal agreements or conversations with any officer, agent or employee of the CITY prior to the execution of this Agreement shall affect or modify any of the terms or obligations contained in any documents comprising this Agreement. Any such verbal agreement shall be considered as unofficial information and in no way binding upon CITY.

22. Compliance with Laws. Consultant shall comply with all laws, ordinances, regulations, rules, etc., of the federal, state and local governments in connection with the performance of this Agreement.

23. Severability of Provisions. If any provisions of this Agreement are held invalid, the remainder of this Agreement shall not be affected thereby if such remainder would then continue to conform to the terms and requirements of applicable law.

24. Modifications. No oral modifications or amendments to this Agreement shall be effective, but this Agreement may be modified or amended by written agreement.

25. Governing Law. *This Agreement, its terms and conditions, shall be governed by Utah law.*

IN WITNESS WHEREOF, *the parties hereto execute the foregoing instrument as of the day and year first above written.*

OGDEN CITY

By: _____
Matthew R. Godfrey, Mayor

Attest:

By: _____
Ogden City Recorder

Date

Approved as to form:

By: _____
Office of Agency Counsel

Date

CONSULTANT

By: _____
Name

Date

EXHIBIT "C"

AERIAL PHOTO OF SITE



1 inch = 80 feet