

## AGREEMENT

THIS AGREEMENT ("Agreement") for registration of transferrable development rights dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Effective Date") is made between Weber County, a Utah political subdivision, (County), and Ogden City, A Utah municipal corporation ("Applicant"). County and Applicant are referred to collectively herein as the "Parties" and sometimes individually as a "Party."

### RECITALS:

A. Applicant is the fee simple owner of certain property located in Weber County, State of Utah, which property is more particularly described in Exhibit "A" attached hereto and incorporated herein (the "Sending Property"); and

B. The Sending Property is highly visible from throughout the Ogden Valley and is located in an area valued for its agricultural and open space characteristics.

C. The Sending Property is located in an area zoned as Commercial Valley Resort Recreation Zone (CVR-1) which allows for service facilities and goods normally required by the public in the pursuit of general recreation activities and the construction of dwelling units.

D. Applicant desires to register the allowed dwelling units associated with the sending property for use in existing and future areas where the transfer of development rights is allowed.

E. County and Applicant recognize that a transfer of development rights program requires availability of dwelling units for transfer and that the recognition of the units described in this Agreement will assist in operating such a program now and in the future.

F. Applicant intends to use the sending property for the operation of water wells together with treatment or other facilities associated with the production, storage and delivery of water. Applicant is entering into this Agreement with the understanding that such uses will be protected and that it will be able to restrict public access to the sending property and to use the sending property for agricultural purposes and other uses consistent with this Recital F.

NOW, THEREFORE, the Parties hereto intending to be legally bound and in consideration of the respective undertakings made and described herein, do agree as follows:

1. **Sending Property.** The sending property, comprised of 24.047 acres and located generally at 989 North 5900 East (Stringtown Road), is more fully described on Exhibit A, attached hereto and incorporated herein by reference.
2. **Sending Property Details.** The sending property:

- a. Is zoned as CVR-1, which allows for a maximum number of residential units based on parcel size.
  - b. Does not contain slopes of 30% or greater;
  - c. Is not subject to an irrevocable transfer of development rights easement reserved for future development;
  - d. Is not designated as a reserved future development area on an approved transferable development right site plan;
  - e. Is not restricted by a conservation easement or similar instrument restricting residential or commercial development;
  - f. Is not owned by the federal government or a state government agency;
  - g. Is located within the Ogden Valley Area;
  - h. Is not a lot of record subject to the payment of fees for operation and/or maintenance of common areas, open space, amenities and/or private facilities;
  - i. Is not a fractional and/or noncontiguous portion of a lot of record or parcel of land that does not meet or fully exceed the minimum area requirement for the CVR-1 zone.
  - j. Is owned by Applicant in fee simple absolute and is not encumbered by any mortgage, trust deed, loan or other security instrument.
3. **Calculation of Density.** The sending property could be developed in the CVR-1 Zone with 521 dwelling units (Transferable Units) , calculated as follows:

Acres: 24.047 / 1,047,487 sq. ft.	Total Square Footage	Number of Transferrable Units
First 2 Dwelling Units (at 7,500 sq. ft.)	7,500	2
Additional Dwelling Units (at 2,000 sq. ft. per unit)	1,038,000	519
<b>Total</b>	<b>1,045,550</b>	<b>521</b>

The Transferable Units are hereby registered for use as part of existing or future transfer of development rights programs and ordinances adopted by County and as further described in this Agreement.

4. **Applicant's Obligations.** By entering into this Agreement, Applicant agrees to limit its right to develop the number of dwelling units which it would otherwise be allowed to construct under the CVR-1 zone as Transferrable Units are transferred.
- a. Applicant will not fractionalize or transfer Transferrable Units except in whole numbers.
  - b. Applicant reserves the right to restrict public access to the sending property, to use the sending property for agricultural purposes and to use the sending property for the operation of water wells together with treatment or other facilities associated with the production, storage and delivery of water.
  - c. Applicant will participate in a transferrable development rights bank, marketplace or other system that may be established by County and required of all other transferrable rights as part of a transfer of development rights program.

- d. Applicant will continue to be responsible for and bear all costs and liabilities of any kind related to ownership, operation, upkeep and maintenance of the sending property.
5. **County's Obligations.** The parties understand that County ordinances currently allow for the transfer of density only to the Destination and Recreation Resort Zone (DRR -1). By entering into this Agreement, County agrees that:
  - a. Applicant retains the right to restrict public access to the sending property, to use the sending property for agricultural purposes and the ability to use the sending property for the operation of water wells together with treatment or other facilities associated with the production, storage and delivery of water.
  - b. The Transferable Units may be transferred to the DRR-1 zone and any other zone within Ogden Valley that, at the time of a transfer, is designated as a receiving area for transferrable density, subject to any required administrative process to certify and confirm the number of units being transferred and the number of Transferable Units remaining available under this Agreement and the payment of any applicable fee to recognize the transfer.
  - c. Upon transfer, Applicant's Transferrable Units shall be recognized in no less than a 1 to 1 ratio, so that for each Transferrable Unit transferred to a receiving zone, the receiving area development shall be able to construct at least 1 dwelling unit.
  - d. If bonus units are allowed as part of the ordinance or regulations permitting the transfer of development density to a particular receiving area, the Transferable Units shall be eligible to be considered for such bonus if they otherwise meet the requirements associated with such bonus.
  - e. The rights described in this Agreement are vested and the number of Transferable Units will not be altered or diminished by any future rezoning of the sending property, changes to the general plan or land use ordinances applicable to the sending property.
  - f. The Transferrable Units recognized in this Agreement will not be subject to any inferior treatment or additional limitations that are not imposed on other transferrable rights allowed to be transferred to a particular receiving area.
  - g. The Transferrable Units may be transferred over time and to more than one receiving area and will not be limited based on a receiving area accepting development rights from more than one sending site.
  - h. The sales price for Transferrable Units will not be regulated or limited by County.
6. **Easement.** The parties acknowledge that County ordinances may require the use of a conservation or other easement as part of a transfer of development rights program. Any such easement shall include terms that reflect the provisions and intent as described in this Agreement. Recognizing that Transferrable Units will likely be transferred over time, these documents will be applied to the property from south to north so that the southerly portion of the sending property is subject to restrictions before the north portion of the property is subject to such restrictions.
7. **Term.** The Transferrable Units shall be available for use and transfer under this Agreement for a period of one hundred years from the Effective Date. Any Transferrable Units that have not been transferred at that time shall revert to use on the Sending

Property.

8. **Amendment.** Any amendment, modification, termination, or rescission affecting this Agreement shall be made in writing, signed by the Parties, and attached hereto.
9. **No Joint Venture.** Nothing contained in this Agreement shall be construed as creating a joint venture, partnership or association between the County and Applicant. Each Party hereto is a separate and independent entity acting on its own behalf.
10. **Default.** In the event of default by either Party to this Agreement in any of the terms, provisions, covenants, or agreements to be performed by said Party under this Agreement and said defaulting Party fails to cure such default within sixty (60) days after written demand by the other Party, then the Party providing said notice of default shall thereafter have no further obligations to the defaulting Party hereunder. The defaulting Party shall be liable to the non-defaulting Party for any and all damages, costs and expenses incurred by the non-defaulting Party caused by the defaulting Party. Nothing herein shall limit the remedies in law or in equity available to the non-defaulting Party in the event this Agreement is terminated due to the default of a Party.
11. **Successors.** This Agreement shall be binding upon, and inure to the benefit of, the legal representatives, successors and assigns of the Parties hereto.
12. **Severability.** Should any portion of this Agreement for any reason be declared invalid or unenforceable, the invalidity or unenforceability of such portion shall not affect the validity of any of the remaining portions and the same shall be deemed in full force and effect as if this Agreement had been executed with the invalid portions eliminated.
13. **Governing Law.** This Agreement and the performance hereunder shall be governed by the laws of the State of Utah.
14. **Counterparts.** This Agreement may be executed in one or more duplicate originals, each of which shall be deemed to be an original.
15. **Waiver.** No waiver of any of the provisions of this Agreement shall operate as a waiver of any other provision, regardless of any similarity that may exist between such provisions, nor shall a waiver in one instance operate as a waiver in any future event. No waiver shall be binding unless executed in writing by the waiving Party.
16. **Captions.** The Captions preceding the paragraphs of this Agreement are for convenience only and shall not affect the interpretation of any provision herein.

17. **Integration.** This Agreement contains the entire and integrated agreement of the Parties as of its date, and no prior or contemporaneous promises, representations, warranties, inducement, or understandings between the Parties and not contained herein shall be of any force or effect.
18. **No Presumption.** This Agreement shall be interpreted and construed only by the contents hereof and there shall be no presumption or standard of construction in favor of or against either County or Applicant. Each Party represents and warrants to the other Party that it has been represented by, and has had the opportunity to consult with, legal counsel in connection with the review, negotiation and execution of this Agreement.
19. **Further Acts.** In addition to the acts or documents contemplated to be performed, executed, and delivered by County and Applicant, County and Applicant agree to perform, execute, and deliver or cause to be performed, executed, and delivered any and all such further acts, documents and assurances as may be necessary to consummate the transactions contemplated hereby.
20. **Non-liability of County or Applicant Officials and Employees.** No member, official, or employee of County or Applicant shall be personally liable to the other party, or any successor in interest, in the event of any default or breach by Agency, or for any amount which may become due to County or Applicant, or its successor, or on any obligation under the terms of this Agreement.
21. **Authority and Consent.** The Parties represent and warrant that each has the right, legal capacity and authority to enter into, and perform its respective obligations under this Agreement, and that no approvals or consents of any other person, other than the respective Party, are necessary.
22. **Waiver of Jury Trial.** The Parties waive the right to a jury trial in any action related to this Agreement or the relationship between their respective successors and assigns.

IN WITNESS WHEREOF, the Parties hereto have executed and approved this Agreement on the date set forth opposite their respective signatures below.

COUNTY:

Weber County,  
a body politic and political subdivision of the State of Utah

By:

\_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

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Approved As to Form:

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Office of County Attorney

APPLICANT:

**OGDEN CITY**, a Utah municipal corporation

By:

Date: \_\_\_\_\_

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Ben Nadolski  
Mayor

ATTEST:

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City Recorder

Approved As to Form:

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Office of City Attorney

## Exhibit A

### Legal Description of the Sending Property

#### Parcel 1:

Part of the West 1/2 of Section 11, Township 6 North, Range 1 East, Salt Lake Base and Meridian, U.S. Survey;

Beginning 80 Rods South of the Northeast Corner of the Northwest Quarter of said Section and running;

Thence West 984.37 feet;

Thence South 28°03' East 428.2 feet;

Thence South 285.0 feet;

Thence South 69°04" West 333 feet;

Thence North 67°41' West 433 feet;

Thence South 57°23' West 319.8 feet;

Thence South 24°11' East 581 feet;

Thence East 523.16 feet, more or less, to a point 1630.9 feet East of Southwest Corner of Northwest Quarter of said Section;

Thence South 85 feet;

Thence North 81°14' East 177.1 feet;

Thence North 13°47' East 466.2 feet;

Thence North 240 feet;

Thence North 62°30' East 400 feet;

Thence South 57°30' East 59 feet;

Thence North 83°07' East 321.6 feet;

Thence North 503.9 feet to beginning.

Land Serial No. 20-008-0006

#### Parcel 2:

Part of the Southwest Quarter of Section 11, Township 6 North, Range 1 East, Salt Lake Base and Meridian, U.S. Survey;

Beginning 1630.9 feet East from the Northwest Corner of said Southwest Quarter,

Thence South 85 feet;

Thence North 81°14' East 177.1 feet;

Thence North 13°47' East to the north line of said quarter section;

Thence West to beginning.

Land Serial No. 20-008-0011

### **Surveyed Description**

Part of the West 1/2 of Section 11, Township 6 North, Range 1 East, Salt Lake Base and Meridian, U.S. Survey;

Beginning at the Southeast Corner of the Remainder Parcel on the Raccasi Subdivision, recorded in the office of the Weber County Recorder on September 7, 2001 as Entry no. 1793982 in Book 54 at Page 55, said point being South 0°25'02" West 1314.36 feet along the quarter section line from the North Quarter Corner of said Section 11, and running;

Thence South 0°25'02" West 494.84 feet along the quarter section line to a point South 0°25'02" West 1809.20 feet from the North Quarter Corner of said Section 11;

Thence South 83°32'02" West 321.60 feet;

Thence North 57°04'58" West 59.00 feet;

Thence South 62°55'02" West 400.00 feet,

Thence South 0°25'02" West 240.00 feet;

Thence South 14°12'02" West 405.13 feet to the quarter section line;

Thence South 14°12'02" West 60.86 feet;

Thence South 81°39'02" West 169.91 feet;

Thence North 0°25'02" East 85.00 feet to the quarter section line to a point being described as being 1630.9 feet East along the quarter section line from the West Quarter Corner of said Section 11;

Thence North 89°34'58" West 523.16 feet along the quarter section line;

Thence North 23°45'58" West 581.00 feet;

Thence North 57°48'02" East 319.80 feet;

Thence South 67°15'58" East 433.00 feet;

Thence North 69°29'02" East 333.00 feet;

Thence North 0°25'02" East 285.00 feet

Thence North 27°37'58" West 428.20 feet to the Southwest Corner of the Remainder Parcel on the aforementioned Raccasi Subdivision;

Thence South 89°34'58" East 984.37 feet along the south line to the Southeast Corner of the aforementioned Raccasi Subdivision, being the point of beginning.