

**Resolution No. 15-17**

**RESOLUTION OF SOUTH OGDEN CITY APPROVING AN AGREEMENT WITH WEBER STATE UNIVERSITY FOR RESEARCH PROJECT, AND PROVIDING THAT THIS RESOLUTION SHALL BECOME EFFECTIVE IMMEDIATELY UPON POSTING AND FINAL PASSAGE.**

**WHEREAS**, the City Council finds that the City of South Ogden ("City") is a municipal corporation duly organized and existing under the laws of Utah; and,

**WHEREAS**, the City Council finds that in conformance with Utah Code ("UC") § 10-3-717 the governing body of the city may exercise all administrative powers by resolution including, but not limited to regulating the use and operation of municipal property and programs; and,

**WHEREAS**, the City Council finds that it necessary to address 2015 Research projects within the city; and,

**WHEREAS**, the City Council finds that the city staff recommends that the city contract with Weber State University for the provision of Research project services; and,

**WHEREAS**, the City Council finds that Weber State University has the professional ability to provide for these services to meet the city's needs; and,

**WHEREAS**, the City Council finds that City now desires to further those ends by contracting with Weber State University to provide such services; and,

**WHEREAS**, the City Council finds that the public convenience and necessity requires the actions contemplated,

**NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF SOUTH OGDEN AS FOLLOWS:**

**SECTION II - CONTRACT AUTHORIZED**

That The "Research Agreement" Attached Hereto As Attachment "A" And By This Reference Fully Incorporated Herein, Is Hereby Approved And Adopted; And That The City Manager Is Authorized To More Fully Negotiate Any Remaining Details Under The Agreement On Behalf Of The City And Then To Sign, And The City Recorder Authorized To Attest, Any And All Documents Necessary To Effect This Authorization And Approval.

**SECTION III - PRIOR ORDINANCES AND RESOLUTIONS**

The body and substance of all prior Resolutions, with their provisions, where not otherwise in conflict with this Resolution, are reaffirmed and readopted.

**SECTION IV - REPEALER OF CONFLICTING ENACTMENTS**

All orders, and Resolutions regarding the changes enacted and adopted which have been adopted by the City, or parts, which conflict with this Resolution, are, for such conflict, repealed, except this repeal shall not be construed to revive any act, order or resolution, or part repealed.

**SECTION V - SAVINGS CLAUSE**

If any provision of this Resolution shall be held or deemed or shall be invalid, inoperative or unenforceable such shall not have the effect of rendering any other provision or provisions invalid, inoperative or unenforceable to any extent whatever, this Resolution being deemed the separate independent and severable act of the City Council of South Ogden City.

**SECTION VI - DATE OF EFFECT**

This Resolution shall be effective on the 5<sup>th</sup> day of May, 2015, and after publication or posting as required by law.

**PASSED AND ADOPTED BY THE CITY COUNCIL OF SOUTH OGDEN CITY,  
STATE OF UTAH, on this 5<sup>th</sup> day of May, 2015**

**SOUTH OGDEN CITY**

\_\_\_\_\_  
James F. Minster  
Mayor

**ATTEST:**

\_\_\_\_\_  
Leesa Kapetanov  
City Recorder

# **ATTACHMENT “A”**

## **Resolution No. 15-17**

Resolution Of South Ogden City Approving An Agreement With Weber State University For Research Project, And Providing That This Resolution Shall Become Effective Immediately Upon Posting And Final Passage.

05 May 15

## RESEARCH AGREEMENT

BY AND BETWEEN  
SOUTH CITY OGDEN

AND

THE WEBER STATE UNIVERSITY

This research agreement (“Agreement”) is entered into and effective as of January 1, 2015, by and between South Ogden City, having its principal place of business at 3950 Adams Ave, Suite #1 South Ogden, Utah 84403, (“Sponsor”) and the Weber State University, a body politic and corporate of the State of Utah, (“University”).

### RECITALS

WHEREAS, Sponsor wishes to have certain research performed in accordance with the scope of work outlined in this Agreement; and

WHEREAS, the performance of such research is consistent, compatible and beneficial to the academic role and mission of University as an institution of higher education; and

WHEREAS, University is qualified to provide such research required under this Agreement.

### AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual covenants, conditions and undertakings herein set forth, the parties agree as follows:

1. Scope of Work. University agrees to perform for Sponsor certain research described in the Scope of Work set forth in Appendix A (Research), which is attached hereto and incorporated herein by this reference.

2. Period of Performance. The Project period under this Agreement is intended to commence on January 1, 2015 and continue until June 30, 2016 (Project Period, see scope of work Appendix A). This Agreement may be extended for additional periods of performance beyond the Initial Term, upon written approval by Sponsor and University.

3. Compensation and Payment.

3.1 Compensation. Sponsor shall pay to University a total of eight hundred twenty five Dollars (\$825) (“Compensation”) for performance of the Research under this Agreement. A budget itemizing the costs for providing the Research is set forth in Appendix B, which is attached hereto and incorporated herein by this reference. This agreement is **cost reimbursement**.

3.2 Payment. Sponsor shall pay the Compensation in three equal payments. The first payment shall equal one-third (1/3) of the total Compensation and shall be paid upon the effective date of this Agreement. The second payment shall equal one-third (1/3) of the total Compensation and shall be paid upon substantial completion. The third and final payment shall equal the remaining one-third (1/3) of the total Compensation and shall be paid upon completion of the project deliverables as determined by sponsor.

Invoices shall be delivered to:

Matt Dixon  
\_\_\_\_\_  
3950 Adams Ave Suite #1  
\_\_\_\_\_  
South Ogden, UT 84403  
\_\_\_\_\_

Compensation checks shall be payable to "The Weber State University" and shall be delivered to :

ROXANN KING  
WEBER STATE UNIVERSITY  
GRANT AND CONTRACT ACCOUNTING  
3850 Dixon parkway, Dept 1014  
OGDEN UTAH 84408

4. Technical Supervision

4.1 Supervision by Sponsor. The person with primary responsibility for supervision of the performance of the Research on behalf of Sponsor shall be Andrew Hyder, or such other person as may be designated by Sponsor, who shall have primary responsibility for technical supervision of the Project.

4.2 Supervision by University. The person with primary responsibility for supervision of the performance of the Research on behalf of University shall be Brenda Kowaleski. No other person shall replace or substitute for him/her in the supervisory responsibilities hereunder without the prior written approval of University, which may be granted or withheld at University's sole discretion.

5. Reporting Requirements. University shall provide written reports to Sponsor on the progress of the performance of Research as outlined or required in the Scope of Work. A final written report shall be furnished to Sponsor upon completion of the Research within 60 days of the last day of the project period and prior to the final payment being received.

6. Equipment. All equipment, instruments and materials purchased or used by University in connection with performance of the Research shall at all times remain under the sole control and ownership of University.



7. Publication and Confidentiality.

7.1 Publication. In furtherance of University's role as a public institution of higher education, it is necessary that significant results of Research activities be reasonably available for publication by the University, and Sponsor acknowledges that University may publish the results of Research conducted in connection with this Agreement.

Notwithstanding the foregoing, University agrees that it shall not publish the results of Research conducted in connection with this Agreement, without the prior written consent of Sponsor, until the expiration of six (6) months following the first to occur of either the termination of this Agreement or submission of the final written report required under Section 4 hereof. In the event University wishes to publish Research results prior to the expiration of the above described six (6) month period, University shall first provide to Sponsor written notice of University's intent to publish and a draft of such publication. Sponsor shall have thirty (30) days after receipt of the draft publication to request in writing the removal of portions deemed by Sponsor to contain confidential or patentable material owned by Sponsor, or to request a delay in submission of the draft for publication pending Sponsor's application for patent protection. In either event, University shall have no obligation to delay publication of the draft for longer than six (6) months following delivery of University's notice to Sponsor of intent to publish. If University does not receive Sponsor's written response to the notice of intent to publish within the thirty (30) day period, then Sponsor shall be deemed to have consented to such publication. Information supplied to University by Sponsor and identified by Sponsor as proprietary information shall not be included in any material published by University without prior written consent of Sponsor.

7.2 Confidentiality. University is a governmental entity subject to the Government Records Access and Management Act, Utah Code §§ 63G-2-101 to -901, as amended ("GRAMA") and Utah Code §§ 53B-16-301 to -305 as amended. Under GRAMA certain records within University's possession or control, including without limitation, the Agreement, may be subject to public disclosure; and University's confidentiality obligations shall be subject in all respects to compliance with GRAMA. Pursuant to GRAMA, Sponsor may submit a single claim of business confidentiality concerning confidential business records exchanged during the project with a concise statement of reasons supporting such claim. Notwithstanding any provision to the contrary in the Agreement, University may disclose any information or record to the extent required by GRAMA or as otherwise required by law.

8. Indemnification.

8.1 Indemnification by University. University is a governmental entity under the Governmental Immunity Act of Utah, Utah Code §§ 63G -7-101 to -904, as amended (the "Act"). Nothing in the Agreement shall be construed as a waiver by University of any protections, rights, or defenses applicable to University under the Act, including without limitation, the provisions of section 63G-7-604 regarding limitation of judgments. It is not the intent of University to incur by contract any liability for the operations, acts, or omissions of the other Party or any third party and nothing in the Agreement shall be so interpreted or construed. Without limiting the generality of the foregoing, and notwithstanding any provisions to the contrary in the Agreement, any indemnity obligations of University



contained in the Agreement are subject to the Act, are limited to the amounts established in section 63G-7-604 of the Act, and are further limited only to claims that arise from the negligent acts or omissions of University. Subject to the Act, University shall indemnify, defend and hold harmless Company, its directors, officers, agents and employees against any actions, suits, proceedings, liabilities and damages to the extent caused by the negligent acts or omissions of University, its officers, agents or employees in connection with the performance of University's obligations under this Agreement.

8.2 Indemnification by Sponsor. Sponsor shall indemnify, defend and hold harmless University, its directors, officers, agents and employees against any actions, suits, proceedings, liabilities and damages that may result from the negligent acts or omissions of Sponsor, its officers, agents or employees in connection with this Agreement.

9. Compliance With Laws. In performance of the Research, Sponsor and University shall comply with all applicable federal, state and local laws, codes, regulations, rules and orders.

10. Patents and Inventions. The University shall own all right, title and interest in all inventions and improvements conceived or reduced to practice by University or University personnel in the performance of the Research (hereinafter collectively "Invention") and may, at its election, file all patent applications relating thereto. In consideration of Sponsor's support of University in performance of the Research, University hereby grants to Sponsor an option for an exclusive license to said Invention, which shall expire six months after University has provided written notice to Sponsor of any such Invention ("Option Period"). Upon exercise of the option in writing, the parties will meet within thirty (30) days to begin negotiating the terms of the license. The parties agree to negotiate in good faith. In the event a license is not executed within six (6) months from the exercise of the option, or the option is not exercised within the Option Period the University shall be free to license the Invention to others at the University's sole discretion with no further obligation to the Sponsor. In the event the University shall abandon its rights to any such Invention prior to exercise of said option, University shall assign to Sponsor all of the University's rights, title and interest therein.

11. Relationship of Parties. In assuming and performing the obligations of this Agreement, University and Sponsor are each acting as independent parties and neither shall be considered or represent itself as a joint venturer, partner, agent or employee of the other. Neither party shall use the name or any trademark of the other party in any advertising, sales promotion or other publicity matter without the prior written approval of the other party.

12. Termination. This Agreement may be terminated by either party at any time and from time to time, by giving written notice thereof to the other party. Such termination shall be effective thirty (30) days after receipt of such notice. Termination shall not relieve either party of any obligation or liability accrued hereunder prior to such termination, or rescind or give rise to any right to rescind any payments made prior to the time of such termination.

13. Uncontrollable Forces. Neither Sponsor nor University shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to uncontrollable forces the effect of which, by the exercise of reasonable diligence, the nonperforming party could not avoid. The term "uncontrollable forces" shall mean any event which results in the prevention or delay of

performance by a party of its obligations under this Agreement and which is beyond the control of the nonperforming party. It includes, but is not limited to, fire, flood, earthquakes, storms, lightning, epidemic, war, riot, civil disturbance, sabotage, inability to procure permits, licenses, or authorizations from any state, local, or federal agency or person for any of the supplies, materials, accesses, or services required to be provided by either Sponsor or University under this Agreement, strikes, work slowdowns or other labor disturbances, and judicial restraint.

14. Miscellaneous.

14.1 Assignment. Neither party shall assign or transfer any interest in this Agreement, nor assign any claims for money due or to become due under this Agreement, without the prior written consent of the other party.

14.2 Entire Agreement. This Agreement, with its attachments, constitutes the entire agreement between the parties regarding the subject matter hereof and supersedes any other written or oral understanding of the parties. This Agreement may not be modified except by written instrument executed by both parties.

14.3 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties, their successors and permitted assigns.

14.4 Notices. Except as provided in Section 3 hereof regarding payment of invoices, any notice or other communication required or permitted to be given to either party hereto shall be in writing and shall be deemed to have been properly given and effective: (a) on the date of delivery if delivered in person during recipient's normal business hours; or (b) on the date of delivery if delivered by courier, express mail service or first-class mail, registered or certified, return receipt requested. Such notice shall be sent or delivered to the respective addresses given below, or to such other address as either party shall designate by written notice given to the other party as follows:

In the case of University

**Technical**

BRENDA KOWALEWSKI  
Weber State University  
Center for Community Engaged  
Learning  
3910 West Campus Drive Dept 2113  
Ogden Utah 84408

**Contractual**

KATHARINE FRENCH-FULLER  
WEBER STATE UNIVERSITY  
OFFICE OF SPONSORED PROJECTS  
  
3850 DIXON Parkway, Dept 1027  
OGDEN UT 844408

In the case of Sponsor:

**Technical**

**Contractual**



\_\_\_\_\_  
Matt Dixon  
\_\_\_\_\_  
City Manager  
\_\_\_\_\_  
3950 Adams Ave, Suite #1  
\_\_\_\_\_  
South Ogden, UT 84403  
\_\_\_\_\_

\_\_\_\_\_  
Andrew Hyder  
\_\_\_\_\_  
Assistant to the City Manager  
\_\_\_\_\_  
3950 Adams Ave, Suite #1  
\_\_\_\_\_  
South Ogden, UT 84403  
\_\_\_\_\_

14.5 Order of Precedence. In the event of any conflict, inconsistency or discrepancy amount, the Agreement and any other documents listed below shall be resolved by giving precedence in the following order.

- (a) This Agreement including the Exhibits hereto
- (b) Purchase Order issued by Sponsor. In the event a purchase order is issued under this Agreement and such purchase order contains standardized terms and conditions, the terms and conditions of this Agreement shall supersede and replace all such purchase order standardized terms and conditions.

14.6 Governing Law and Disputes. This Agreement shall be interpreted and construed in accordance with the laws of the State of Utah, without application of any principles of choice of laws. Disputes that cannot be resolved by Sponsor and University shall be determined by a court of competent jurisdiction in the State of Utah.

14.7 Nonwaiver. A waiver by either party of any breach of this Agreement shall not be binding upon the waiving party unless such waiver is in writing. In the event of a written waiver, such a waiver shall not affect the waiving party's rights with respect to any other or further breach.

14.8 Use of Name. Sponsor may not use the name of University in any news release or advertising or any publications directed to the general public without written approval of University.

14.9 Attorney Fees. The prevailing Party in any action or suit to enforce the terms or conditions of this Agreement shall be entitled to recover its costs of court and reasonable attorneys' fees incurred in enforcing the terms or conditions of this Agreement.

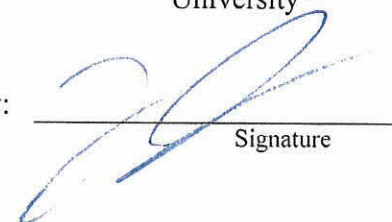
14.10 Insurance. Both parties to this Agreement shall maintain insurance coverage sufficient to meet their obligations hereunder and consistent with applicable law.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives effective as of the day and year first written above.

**SOUTH OGDEN CITY**  
"Sponsor"

**WEBER STATE UNIVERSITY**  
"University"

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

By:   
Signature

Name: \_\_\_\_\_  
(Please print)

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

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

Name:

James Taylor, Esq.  
Title: Director,  
Office of Sponsored Projects

Date: 4/28/2015

## APPENDIX A

### SCOPE OF WORK

This project is a community survey administered to a sample of South Ogden City residents. Weber State University's Center for Community Engaged Learning – Community Research Extension is responsible for: designing and developing the survey, drawing a sample of South Ogden households, advertising and administering the survey online with mail and in-person follow-ups, analyzing survey data, and presenting results to the city. Survey advertising and administration will involve sending postcards to 500 households with the survey link and then following up with those households with postcards, door hangers, and in-person to make sure they complete the survey. Surveys will be mailed or delivered door-to-door or administered face-to-face to those households that have not responded within several weeks of receiving the reminder postcards. Data will be presented to city administration and a report with the results will be compiled no later than June 30, 2016.

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## APPENDIX B

### BUDGET

This budget reflects estimated expenses for the South Ogden City survey of residents. The summary of expenses does not include the City's cost for in-house printing and mailing flyers, letters, and surveys. The summary of expenses below will facilitate the successful completion of the survey:

#### Direct Costs

1. Printing services	
Postcards 4.25 X 5.5 B/W (\$0.0325 x 1,500 postcards) <sup>1</sup>	\$ 48.75
Door hangers (\$0.14 x 300 hangers)	\$ 42.00
<b>Subtotal</b>	<b>\$ 90.75</b>
2. Mailing services	
Stamps to return surveys (\$0.49 x 300 surveys)	\$ 147.00
Envelopes to return surveys (\$0.14 x 300 envelopes)	\$ 42.00
<b>Subtotal</b>	<b>\$ 189.00</b>
3. Translation services	\$ 500.00
4. Transportation costs <sup>2</sup>	
Mileage for door-to-door survey (\$0.38 per mile x 120 miles)	\$ 45.60
<b>Grand Total</b>	<b>\$ 825.35</b>

<sup>1</sup> Printing postcards in color will add an additional \$156.75 to the grand total.

<sup>2</sup> Transportation costs will change based on the actual number of miles driven and the number of trips required to have households complete the survey.