

**AN INTERLOCAL AGREEMENT BY AND BETWEEN
PLEASANT VIEW CITY AND NORTH OGDEN CITY
FOR 2019 STREET MAINTENANCE PROJECT**

This Interlocal Agreement is made by and between North Ogden City, a body politic and political subdivision of the State of Utah, having its principal business address as 505 E. 2600 N., North Ogden, Utah (hereinafter “North Ogden”) and Pleasant View City, a body politic and political subdivision of the State of Utah, having its principal business address as 520 W. Elberta Dr., Pleasant View, Utah (hereinafter “Pleasant View”), individually referred to as “Party” or collectively referred to as “Parties.”

RECITALS

WHEREAS, the Utah Interlocal Cooperation Act, Title 11, Chapter 13, Utah Code Annotated 1953, as amended, permits public agencies to enter into agreements with one another for the purpose of exercising, on a joint and cooperative basis, powers and privileges that will benefit their citizens and make the most efficient use of their resources;

WHEREAS, all of the parties hereto are public agencies as defined by the Interlocal Cooperation Act;

WHEREAS, North Ogden is a municipal corporation duly organized under Title 10 of the Utah Code Annotated, as amended;

WHEREAS, Pleasant View is a municipal corporation duly organized under Title 10 of the Utah Code Annotated, as amended;

WHEREAS, the Parties are neighboring communities which each complete an annual street maintenance project;

WHEREAS, North Ogden intends to include a section of Pleasant View Drive within its city terminating at the shared city boundary in its 2019 annual street maintenance project;

WHEREAS, Pleasant View intends to include a section of Pleasant View Drive within its city terminating at the shared city boundary in its 2019 annual street maintenance project;

WHEREAS, the Parties desire to work cooperatively to increase efficiency and uniformity and possibly decrease costs by combining their respective 2019 annual street maintenance projects into one project (hereinafter “Project”);

NOW, THEREFORE, for the reasons cited above, and in consideration of the mutual covenants and agreements contained herein, North Ogden and Pleasant View do mutually agree and undertake as follows:

Section One

Scope of Agreement

Intent. The Parties intend by this Agreement to combine their respective annual street maintenance projects into one (1) for the purposes of bidding and construction. The Scope of the Project is outlined on the attached Request for Proposals document.

Specifically, this Agreement addresses the obligations of North Ogden and Pleasant View in relation to preparing, bidding, awarding, and managing Project. Each Party remains responsible for the selection of their portion of Project area, bid schedule, project drawings, technical specifications, and inspections of their portion of the Project. North Ogden shall be the lead agency with each Party's responsibilities defined in Sections 2 and 3.

Section Two

North Ogden's Responsibilities

North Ogden agrees to:

1. Oversee and manage the administration of Project from bidding to completion, including:
 - a. Advertise Project in accordance with North Ogden City procurement procedures;
 - b. Prepare Project bidding and construction documents in accordance with the Engineer's Joint Contract Documents Committee (EJCDC) documents (hereinafter "Project Manual");
 - c. Separate the Bidding Schedule into sections, one for North Ogden and one for Pleasant View;
 - d. Conduct a Public Bid Opening;
 - e. Select and award the Projects to the contractor in compliance with current North Ogden's policies and procedures (hereinafter "Contractor");
 - f. Collect required performance bonds, payment bonds, and insurance from Contractor;
 - g. Conduct a pre-construction meeting with all Parties and Contractor;
 - h. Issue the Notice to Proceed to Contractor;
 - i. Process and pay all Contractor pay requests;
 - j. Issue Project Change Order(s) to Contractor, where necessary
 - k. Issue Project Certificate of Substantial Completion to Contractor; and
 - l. Issue Project Notice of Final Acceptance to Contractor.

2. Project Manual shall include the following additional requirements/language:
 - a. Contractor shall list both “North Ogden City” and “Pleasant View City Corporation” as an additional insured on required insurance certificate; and
 - b. Actual construction limits may be modified based on bid prices.
3. Coordinate with Pleasant View in the selection of the Contractor.
4. Provide inspections of all Project work completed within the boundaries of North Ogden.
5. Coordinate Project inspections with Pleasant View by providing notification to the Pleasant View Public Works Director one (1) working day prior to the work being done in Pleasant View or within 500 feet of the Parties shared boundary line.
6. Notify Pleasant View of all Contractor payment requests that contain Pleasant View items and obtain concurrence from Pleasant View of pay request prior to approving pay request and issuing payment.
7. Notify Pleasant View of all Contractor change order that contain Pleasant View items and obtain concurrence from Pleasant View of change order prior to approving.
8. Maintain and oversee Project records and provide electronic versions to Pleasant View.
9. Indemnify Pleasant View City for all work, payments made, and liability for any work completed in North Ogden City.

Section Three
Pleasant View’s Responsibilities

Pleasant View agrees to:

1. Coordinate with North Ogden and provide necessary information for the preparation of the Project Manual.
2. Provide a representative to attend all Project related meetings.
3. Coordinate with North Ogden on the selection of Contractor using North Ogden’s “Choosing by Advantages” process (See Exhibit A).

Choosing by Advantages” (CBA) decision making evaluation. Choosing by Advantages “CBA” is the process adopted by North Ogden to aid in awarding contracts. CBA is based on the fundamental rule of decision making that “Decision must be based on the importance of advantages.” An advantage is defined as a positive difference between two alternatives. The advantages of a proposal are compared to the advantages found in other proposals to determine which is preferred.

CBA weighs the advantage of the preferred proposal to the additional cost when awarding contracts. Consequently, the CBA analysis may result in awarding the project to a contractor other than the low bidder. In the evaluation the lowest Bidder's qualifications and proposal will be compared to the other bidder's qualifications and proposals. The project will be awarded independently of cost when distinct advantages in the proposal are found to be of significance by the evaluation committee. This occurs when the cost to gain the advantage is considered appropriate. Predetermined factors listed in the Choosing by Advantages Decision Making Form will govern the evaluation process and selection of the successful bidder. Some factors may be more important than others and will carry more weight in the decision making process.

4. Provide inspections of all Project work completed within the boundaries of Pleasant View.
5. Within three (3) business days of request from North Ogden:
 - a. Provide written approval or comments for pay requests.
 - b. Provide written approval or denial of change order requests.
6. Indemnify North Ogden City for all work, payments made, and liability for any work completed in Pleasant View City.

Section Four Payment

North Ogden and Pleasant View will establish and maintain their own budgets for expenses related to this Agreement. For the Project, each party shall make payment in full to Contractor and request reimbursement from Pleasant View.

1. Parties will equally share the actual cost of the Project advertisement in the local newspaper. North Ogden shall invoice Pleasant View for one-half (1/2) of the advertisement cost.
2. Within seven (7) days after approving pay request issue check(s) to Contractor to be mailed with North Ogden payments for full payment of invoice.

Section Five General Provisions

1. **Limitations.** Except as outlined by this Agreement or by agreement separate from this, neither party assumes any responsibility to inspect, install, operate or otherwise maintain the other party's roadway/street system. Further, this Agreement does not impose on either party any duty, fees, inspections, or any other types of activity outside the scope of this Agreement.
2. **Official Representative.** Parties respectively designate the following persons to act as their authorized representative in matters and decisions pertaining to the timely performance of this Agreement.

North Ogden

M Brent Chugg

Mayor

801-782-7211

bchugg@nogden.org

Pleasant View

Leonard Call

Mayor

801-940-6231

lcall@pleasantviewcity.com

The authorized representative(s) shall have full power to bind North Ogden and Pleasant View, respectively, in decisions related to Project and not require approval from North Ogden or Pleasant View elected representatives, unless otherwise required by their individual Purchasing Policy. Each may designate an authorized representative upon written notice to the other party.

6. **Term and Renewal.** This Agreement shall be for a period of twenty-four (24) months beginning upon the effective date in paragraph 7, or until such time as the construction of Project as described herein is complete, including the one-year warranty period, whichever comes first.
7. **Termination.** This Agreement may be terminated by either party upon ninety (90) days written notice from the Pleasant View Mayor or the North Ogden Mayor provided to the City Recorder. Upon termination of the Agreement, Pleasant View shall have thirty (30) days to pay any outstanding balance owed to North Ogden.
8. **Effective Date.** This Agreement shall become effective upon compliance with state law governing interlocal cooperation agreements and upon ratification by the parties as provided in U.C.A. Title 11, Chapter 13, Part 2, as amended.
9. **Amendment.** This Interlocal Agreement may be changed, modified, or amended by written agreement of the participants, upon adoption of appropriate resolutions from the each Party, along with being approved as to form by the Pleasant View Attorney and North Ogden Attorney, and upon meeting all other applicable requirements of the Interlocal Cooperation Act.
10. **Entire Agreement.** This Agreement, together with any written amendments, shall constitute the entire agreement between the parties and any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding upon either party except for the resolutions of each party herein attached and incorporated by reference.
11. **Indemnification.** Each party agrees to indemnify, defend, and save and hold the other party and its respective officers, trustees, agents, employees, and permitted assigns harmless against and in respect of the following:
 - a. all claims, losses, liabilities, damages, costs, deficiencies, and expenses affecting any persons or property as a result of the indemnifying party's actions;

- b. any misrepresentation, material omission, breach of warranty, or non-fulfillment of any covenant or agreement by the indemnifying party, relating to this Agreement; and
 - c. any and all actions, suits, proceedings, demands, assessments, judgments, costs, legal and accounting fees, and other expenses incident to any of the foregoing.
12. **Employee Status.** It is understood and agreed by the parties that any and all personnel furnished by the parties shall remain employees of the respective parties and shall abide by the personnel policies of the respective parties.
13. **Hired Consultant Status.** It is understood and agreed by the parties that any consultant, including but not limited to the person, firm, or entity serving as City Engineer, Project Engineer, or Contractor, shall not represent themselves as employees of the respective parties.
14. **Warranties.** Each party represents and warrants that it is a public agency within the meaning of the Interlocal Cooperation Act, is authorized to execute and deliver this Agreement and there is no litigation, legal action or investigation between the parties that would adversely affect this Agreement.
15. **Documents on File.** Executed copies of this Agreement shall be placed on file in the office of the North Ogden City Recorder and the Pleasant View City Recorder and shall remain on file for public inspection for the duration of this Agreement.
16. **Governing Law.** It is understood and agreed by the parties that this Agreement shall be governed by the laws of the State of Utah as to interpretation and performance.
17. **Non-transferable.** This rights, duties, powers and obligations of this Agreement may not be transferred, assigned or delegated without the consent of the parties.
18. **Rules of Construction and Severability.** Standard rules of construction, as well as the context of this Agreement, shall be used to determine the meaning of the provisions herein, except as follows: If any of the provisions herein are different from what is normally allowed or required by law, every effort shall be made to construe the clauses to be legally binding and to infer voluntary arrangements which are in addition to what is normally allowed or required by law. If any provision, article, sentence, clause, phrase, or portion of this agreement, including but not limited to any written amendments, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this agreement, unless the invalidation of the provision materially alters the agreement by interfering with the purpose of the agreement or by resulting in non-compliance with applicable law. If the invalidation of the provision materially alters the agreement, then the parties shall negotiate in good faith to modify the agreement to match, as closely as possible, the original intent of the parties. It is thus the intention of the parties that each provision of this agreement shall be deemed independent of all other provisions herein, as long as the overall purpose of the agreement is preserved.

19. **Additional Interlocal Cooperation Act provisions.** In satisfaction of the requirements of the Interlocal Cooperation Act, the parties agree as follows:

- a. This Agreement shall be authorized and adopted by resolution of the legislative body of each party, pursuant to Section 11-13-202.5.
- b. This 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.
- c. A duly executed original counterpart of this Agreement shall be filed immediately with the keeper of records of each party pursuant to Section 11-13-209.
- d. This Agreement shall become effective upon (a) its approval and execution by each party and (b) the filing of an executed copy of this Agreement with the keeper of records of each of the parties.
- e. Immediately after execution of this Agreement by both parties, each party shall cause to be published notice regarding this Agreement pursuant to Section 11-13-219.
- f. The parties agree that they do not, by this Agreement, create an interlocal entity or any separate entity.
- g. This Agreement shall be administered by Lorin Gardner as Joint Administrator pursuant to 11-13-207.
- h. This Agreement does not contemplate the acquisition, holding, or disposal of real or personal property and is not authorized pursuant to 11-13-207.
- i. This Agreements function is to provide for economies of scale on road maintenance projects and coordinating the RFP process.
- j. This Agreement shall be financed by the separate budgets and contractual obligations of each Party pursuant to their procurement codes as authorized in 11-13-206. No joint budget is created by this agreement.
- k. Each Party to this Agreement shall have one vote to be cast by the Public Works Director of each respective Party, pursuant to 11-13-206.

(continued on next page)

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NORTH OGDEN CITY AND PLEASANT VIEW CITY
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DATED this ____ day of _____, 2019

North Ogden City

Mayor, North Ogden City

ATTEST:

APPROVED AS TO FORM AND COMPLIANCE
WITH APPLICABLE LAW:

City Recorder

City Attorney

DATED this ____ day of _____, 2019

PLEASANT VIEW CITY:

Mayor, Pleasant View

ATTEST:

APPROVED AS TO FORM AND COMPLIANCE
WITH APPLICABLE LAW:

City Recorder

City Attorney

PLEASANT VIEW CITY CORPORATION
RESOLUTION NO. _____

A RESOLUTION APPROVING AN INTERLOCAL AGREEMENT
BY AND BETWEEN PLEASANT VIEW CITY AND NORTH OGDEN CITY
FOR 2019 STREET MAINTENANCE PROJECT

WHEREAS, the Utah Interlocal Cooperation Act, Title 11, Chapter 13, Utah Code Annotated 1953 as amended, permits governmental units to enter into agreements with one another for the purpose of exercising on a joint cooperative basis powers and privileges that will benefit their citizens and make the most efficient use of their resources; and

WHEREAS, Title 11, Chapter 13 of the Utah Code Annotated, 1953 as amended, requires that governing bodies of governmental units adopt resolutions approving an interlocal agreement before such agreements become effective; and

WHEREAS, Pleasant View City and North Ogden City and have negotiated an Agreement for the purposes of completing 2019 Street Maintenance Project as one combined project;

WHEREAS, Pleasant View City and North Ogden City find that mutual benefit and cost effective government can be achieved through this interlocal agreement for services entailed herein;

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of Pleasant View the attached interlocal agreement is entered with North Ogden City for the purposes of the 2019 Street Maintenance Project as authorized in the Interlocal Agreement, and the Interlocal Agreement is hereby approved and incorporated by this reference. The Council hereby authorizes and directs the Mayor to execute the Interlocal Agreement for and on behalf of Pleasant View City.

PASSED AND APPROVED by the Pleasant View City Council this ____ day of _____, 2019.

Mayor, Pleasant View City

ATTEST: _____
City Recorder

NORTH OGDEN CITY CORPORATION
RESOLUTION NO. _____

A RESOLUTION APPROVING AN INTERLOCAL AGREEMENT
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PASSED AND APPROVED by the North Ogden City Council this ____ day of _____, 2019.

Mayor, North Ogden City

ATTEST: _____
City Recorder