

## CONSULTING AGREEMENT

**THIS CONSULTING AGREEMENT (the "Agreement") is made and entered into this 14th day of August, 2012 (the "Effective Date") by and between North Ogden City, a governmental entity duly organized under law as a political subdivision of the State of Utah (hereinafter referred to as the "City") and American Municipal Consultants LLC, a Utah limited liability company (hereinafter referred to as the "Firm"). The City and the Firm may be referred to herein individually as "Party", or, collectively, as "Parties".**

**WHEREAS**, the City wishes to engage the Firm to provide the services described herein and the Firm agrees to provide the services for the compensation and otherwise in accordance with the terms and conditions contained in this Agreement,

**NOW THEREFORE**, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, accepted and agreed to, the City and the Firm, intending to be legally bound, agree to the terms set forth below.

**1. TERM.** Commencing as of the Effective Date, and continuing for a period of twelve (12) months (the "Term"), unless earlier terminated pursuant to Section 7 hereof, the Firm agrees that it will provide consultant services to the City. This Agreement will be automatically renewed for an additional 12 months unless cancelled in writing before the expiration of the Term by either Party.

**2. DUTIES AND SERVICES.** The Firm's duties and responsibilities ("Services") shall be to perform economic development work on behalf of the City. This will include, but not be limited to facilitating the development of existing commercially zoned land, assisting in the redevelopment of exiting commercial properties, recruiting of tenants and investment, job creation strategies, gathering community input for economic plans and strategies and other duties that would pertain to the economic vitality of the City. Such work will be identified and prioritized by the City.

(a) The Firm represents and warrants to the City that the Firm is under no contractual or other restrictions or obligations which are inconsistent with the execution of this Agreement, or which will interfere with the performance of the Services. The Firm represents and warrants that the execution and performance of this Agreement will not violate any policies or procedures of any other person or entity for which the Firm performs similar services concurrently with those performed herein.

(b) City will assist the Firm in providing the corresponding City information and data gathering that is necessary to perform the scope of Services outlines above and will do so in a timely manner.

**3. CONSULTING FEE.**

(a) Subject to the provisions hereof, the City shall pay the Firm consulting fees based on an hourly rate that will not exceed the sum of thirty-eight thousand five hundred (\$38,500) within the twelve month period outlined in section 1 unless specifically authorized by the City in writing. The hourly rate will be based on the following schedule, and billed in 15 minute intervals:

Matthew Godfrey	\$175/Hour
Stafford Toone	\$175/Hour
Dean Graham	\$125/Hour
Mark Kubricky	\$125/Hour
Adam Hughes	\$125/Hour
Future Employees	\$125/Hour

The Firm shall be paid monthly by the City for such Services within 5 working days of the first day of each month following the month for which the work is billed.

(b) In addition to the hourly rate described in paragraph “a” of section 3, the Firm reserves the right to negotiate a payment structure that will be generated from the projects that are orchestrated by the Firm on behalf of the City. The City shall maintain the right to review and approve any such payment structures.

(c) The Firm shall be reimbursed for any direct expenditures that are incurred while working on behalf of the City and will be subject to City approval before these expenditures are made.

(d) The Firm agrees that all Services will be rendered by employees of the Firm as independent contractors and that this Agreement does not create an employer-employee relationship between the Consultant and the Firm. The Firm shall have no right to receive any employee benefits including, but not limited to, health and accident insurance, life insurance, sick leave and/or vacation. The Firm agrees to pay all taxes including self-employment taxes due in respect of the Consulting Fees and to indemnify the City in the event the City is required to pay any such taxes on behalf of the Firm.

**4. AUTHORIZED REPRESENTATIVES.** Each Party shall name an individual, specified in Sections 4a and 4b, as its authorized representative for purposes of representation and notices.

- (a) The City designates:
  - Ron Chandler
  - 505 East 2600 North
  - North Ogden City, UT 84414
  - [Rchandler@nogden.org](mailto:Rchandler@nogden.org)

- (b) The Consultant designates:  
Matthew Godfrey  
[Matthew@bettercity.us](mailto:Matthew@bettercity.us)  
1100 Country Hills Drive, Suite 300  
Ogden, UT 84401

5. **INDEMNIFICATION.** The Firm agrees and covenants to hold harmless and indemnify the City from any claims, losses, injury, expenses and attorneys' fees proximately caused by any negligent conduct or omissions that constitute a form of tortious behavior on the part of the Firm, its officers, employees, or agents in the execution of the work performed in accordance with this Agreement, or which constitutes a breach of this Agreement.

The City agrees and covenants to hold harmless and indemnify the Firm from any claims, losses, injury, expenses and attorneys' fees proximately caused by any negligent conduct or omissions that constitute a form of tortious behavior on the part of the City, its officers, employees, or agents in the execution of the work performed in accordance with this Agreement, or which constitutes a breach of this Agreement.

6. **SUCCESSORS.** The Firm and City agree that the provisions of this Agreement shall be binding on heirs, permitted assigns and successors and agents.

7. **TERMINATION.** This contract may be terminated by either Party upon 30 days notice to the designated representative of the other Party. At the time of termination, the Firm will provide to City all work completed or in process as of the date of termination. Within 30 days of termination, City will make payment to the Firm for all authorized fees and expenses outstanding as of the date of termination.

8. **CONFIDENTIALITY OF DATA.** The Parties shall treat all data that each Party receives from or through, the other Party or is otherwise exposed to within the course of completing the scope of work, with the highest degree of confidentiality and in compliance with all applicable federal and state laws and regulations.

Each Party acknowledges that it may be provided or come into contact with Confidential Information of the other Party or other related parties (collectively, "Confidential Information"). In recognition of the foregoing, the Parties covenant and agree that each Party will:

- Keep and maintain the other Party's Confidential Information in strict confidence, using such degree of care as is appropriate to avoid unauthorized use or disclosure;
- Use and disclose the other Party's Confidential Information solely for the purposes for which such information, or access to it, is provided, and not use or disclose Confidential Information for its own purposes or for the benefit of anyone other than the Party providing the Confidential Information or related parties;
- Not directly or indirectly disclose any of the other Party's Confidential Information to any third party, except with such Party's prior written consent or as otherwise provided herein;
- Not directly or indirectly use any of the other Party's Confidential Information to gain an unfair business advantage;

- Upon the earlier of (i) completion of the Term of this Agreement, (ii) determination by a Party that it has no need for the other Party's Confidential Information, or (iii) at any time either Party may so request, dispose of all records, electronic or otherwise (including all backup records and/or other copies thereof) regarding or including any of the requesting Party's Confidential Information that the other Party may then possess or control. Disposal shall be achieved through prompt delivery of the records to the disclosing Party or destruction in a manner that renders the records unreadable and undecipherable by any means. Upon any occurrence of (i), (ii), or (iii) above, the Party to whom Confidential Information shall have been disclosed shall, upon request of the other Party, promptly certify in writing, in a form mutually acceptable to the Parties and executed by an authorized officer of certifying Party, that all of the other Party's Confidential Information has been destroyed or returned.

**9. ENTIRE AGREEMENT.** This Agreement contains the complete agreement and understanding of the Parties hereto and supersedes any previous understandings commitments, proposals or agreements whether oral or written and may only be modified or amended in writing or executed by authorized individuals of the City and Firm.

**10. JURISDICTION.** This Agreement shall be governed by the laws of the State of Utah.

**11. DISPUTE RESOLUTION.** Any dispute relating to this agreement will be resolved by binding arbitration in Weber County, Utah.

**12. SIGNATURES.**

EXECUTED as of the Effective Date.

NORTH OGDEN CITY

MATTHEW R GODFREY

By: \_\_\_\_\_  
Mayor Richard G. Harris  
North Ogden City

\_\_\_\_\_  
CEO,  
American Municipal Consultants LLC

Hereunto Duly Authorized

Attested By: \_\_\_\_\_  
S. Annette Spendlove  
City Recorder  
North Ogden City