

Date: December 5, 2023
To: Weber County Board of County Commissioners
From: Scott Mendoza
Community Development Department
Agenda Date: December 12, 2023
Subject: **Request for approval of a Termination and Release of Storm Water Easement.**
Attachments: A - Aerial Vicinity Map
B – Alta Survey with Easement Location
C – Proposed Termination and Release of Easement Document

Summary:

On November 7, 1975, the Ogden Lodge 719 and BPO Elks granted (both) Ogden City and Weber County an easement and right-of-way for storm sewer purposes. The easement is 10 feet wide and 339.5 feet long and is described as being located on part of Lots 5 and 8, Block 19, Plat “A” of the Ogden Survey. In general, the easement runs easterly from a point that is located at approximately 2534 Lincoln Avenue, in Ogden City. See Attachment A and B for an aerial vicinity map and ALTA survey map that shows the easement location.

The Ogden City RDA (RDA) has entered into a real estate purchase contract (REPC) with the State of Utah, Division of Facilities and Construction Management, which is the current owner of the property that is encumbered by the easement. Through this executed REPC, the RDA has gained full control to acquire the encumbered property when it’s most beneficial to the RDA. The RDA and JF Wonder Block Partners QOZB, LLC (LLC) have entered into a development agreement whereby the RDA has agreed to sell the encumbered property to the LLC and the LLC has agreed to construct a mixed-use development which has been referred to as the Wonder Block Redevelopment Project. The Project will be constructed on the south and west portions of the city block that is formed by 25th and 26th Streets, and Lincoln and Grant Avenues.

As part of the Project, a new storm sewer system will be installed; therefore, the existing system (in its current location) will become obsolete and useless. Because of this the RDA and the LLC are requesting that the county release, its interest in the easement and right-of-way, to the State.

The county engineer has coordinated with Ogden City’s engineers and has confirmed that the county has no need for the easement and can terminate and release the easement, as requested by the RDA and LLC.

Attachment C

1 of 8

WHEN RECORDED, RETURN TO:
JF Wonder Block Partners QOZB, LLC
Attn: Legal Department
1216 W. Legacy Crossing Blvd., Ste. 300
Centerville, UT 84014

Affecting Parcel No(s).:

TERMINATION AND RELEASE OF EASEMENT

THIS TERMINATION AND RELEASE OF EASEMENT (“**Termination**”) is made and entered into as of the ____ day of December, 2023, by Ogden City, a Utah municipal corporation (the “**City**”) and Weber County, a political subdivision of the State of Utah (“**County**” and together with the City, collectively, the “**Releasors**”).

RECITALS

A. On November 7, 1975, Ogden Lodge 719, and B.P.O Elks (collectively, the “**Grantor**”) executed that certain *Easement Contract* thereby granting a perpetual easement and right-of-way to Ogden City and the County for storm sewer and appurtenant structures and caused the same to be recorded in the office of the Weber County Recorder in Book 1104 starting on Page 646 (the “**Storm Sewer Easement**”). The property encumbered by the Storm Sewer Easement is identified on Exhibit A and the Storm Sewer Easement is attached hereto as Exhibit B.

B. As of the date of this Termination, the Utah Division of Facilities Construction and Management (the “**State of Utah**”) is fee title owner of the Grantor’s property (the “**Grantor Property**”) on which the Storm Sewer Easement was granted (the “**Easement Area**”).

C. On or around May 30, 2023, the Ogden City Redevelopment Agency (the “**RDA**”) and JF Wonder Block Partners QOZB, LLC, a Utah limited liability company (“**JF Wonder Block**”) entered into that certain *Amended and Restated Land Transfer and Development Agreement* pursuant to which the State of Utah will convey the Grantor Property to the RDA and, following conveyance from the State of Utah, the RDA will convey the Grantor Property to JF Wonder Block, or one or more wholly owned single-purpose entities, for construction of the “WonderBlock” project thereon (the “**Project**”).

D. As part of construction of the Project, a new storm sewer system will be installed on the Grantor Property (the “**Project Storm Sewer System**”) and will ultimately render null and void the existing storm sewer system installed under the terms of the Storm Sewer Easement.

E. On the condition that the construction plans for the Project Storm Sewer System are approved by the City’s engineering department, the Releasors are willing to release and

terminate the Storm Sewer Easement in accordance with the terms and conditions contained herein.

TERMINATION

NOW, THEREFORE, in exchange for good and valuable consideration and the promises contained herein, the receipt and sufficiency of which are hereby acknowledged, the Releasors do hereby agree as follows:

1. Incorporation of Recitals and Exhibits. The foregoing Recitals and Exhibits that follow are hereby incorporated herein and made a part hereof by this reference.

2. Release and Termination of Storm Sewer Easement. The Releasors do, by this instrument, release the Storm Sewer Easement, it being the intention of the Releasors to terminate the same upon approval of the building permits for the Project by the City. Upon such approval, the Storm Sewer Easement shall be released and terminated without the requirement of any further written or oral approvals.

3. Authority. The City and County each represent and warrant that their respective undersigned has full right, power, and authority to make, execute, deliver, and bind their respective party to the terms and provisions of this Termination and no further approval or authorization is required to execute and record this Termination.

4. Counterparts. This Termination may be executed in counterparts, all or any of which may be treated for all purposes as an original and, when taken together, shall constitute and be one and the same instrument.

[Remainder of page left intentionally blank. Additional pages follow.]

IN WITNESS WHEREOF, the Releasors have executed this Termination as of the date set forth above.

CITY

OGDEN CITY,
a Utah municipal corporation

By: _____
Name: _____
Its: _____

Attest:

Approved as to Form:

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

STATE OF UTAH)
 §
COUNTY OF _____)

On this ___ day of _____, 2023, personally appeared before me _____, whose identity is personally known to me (or proven on the basis of satisfactory evidence) and who by me duly sworn/affirmed, did say that he/she is the _____ of Ogden City and that said document was signed by him/her in behalf of Ogden City with all required authority, and said _____ acknowledged to me that Ogden City executed the same.

(Notary Signature)

(Seal)

COUNTY

WEBER COUNTY,
a political subdivision of the State of Utah

By: _____
Name: _____
Its: _____

Attest:

Approved as to Form:

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

STATE OF UTAH)
 §
COUNTY OF _____)

On this ____ day of _____, 2023, personally appeared before
me _____, whose identity is personally known to me (or proven on the
basis of satisfactory evidence) and who by me duly sworn/affirmed, did say that he/she is
the _____ of Weber County and that said document was signed by
him/her in behalf of Weber County with all required authority, and said _____
acknowledged to me that Weber County executed the same.

(Notary Signature)

(Seal)

EXHIBIT A
(Legal Description of Encumbered Property)

A perpetual easement and right-of-way ten (10) feet wide being four feet on the easterly and northerly side and six feet on the westerly and southerly side of the following described centerline with an additional temporary construction easement fifteen (15) feet wide adjacent to and along the easterly and northerly side of the perpetual easement and right-of-way.

A part of Lots 5 and 8, Block 19, Plat "A", Ogden City Survey.

Beginning at a point 6 feet South $89^{\circ}02'$, East of the Southwest corner of said Lot 8 and running thence North $0^{\circ}58'$ East 6 feet; then North $89^{\circ}02'$ West 339.5 feet, more or less to a point on the west line of said Lot 5.

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14005909-110-10
Part

OGDEN LODGE 719, BENEVOLENT AND PROTECTIVE ORDER OF ELKS, and B.P.O. ELKS, both Corporations of the State of Utah, Grantors, hereby WARRANT AND CONVEY unto OGDEN CITY, a Municipal Corporation of the State of Utah, and WEBER COUNTY, a Public Corporation of the State of Utah, Grantees, an easement and right-of-way for the construction of a storm sewer and appurtenant structures on the Grantors' land situated in Weber County, Utah, to-wit:

A perpetual easement and right-of-way ten (10) feet wide being four feet on the easterly and northerly side and six feet on the westerly and southerly side of the following described centerline with an additional temporary construction easement fifteen (15) feet wide adjacent to and along the easterly and northerly side of the perpetual easement and right-of-way.

A part of Lots 5 and 8, Block 19, Plat "A", Ogden City Survey.

Beginning at a point 6 feet South 89°02' East of the Southwest corner of said Lot 8 and running thence North 0°58' East 6 feet; thence North 89°02' West 339.5 feet, more or less to a point on the west line of said Lot 5.

This conveyance being executed for and in consideration of the sum of One dollar (\$1.00) in hand paid to said Grantors by the said Grantees, Ogden City and Weber County, the receipt of which is hereby acknowledged, said payment being full compensation and settlement for the perpetual and temporary easements described above.

It is expressly understood and agreed that said Grantees, Ogden City and Weber County, shall, during the course of the construction, take such action as may be necessary to insure minimal damage to buildings, structures, fences, gates, irrigation pipes and ditches, sidewalks, driveways, grounds, trees, shrubs, and other landscaped areas and property within the construction area included in the above described perpetual and temporary easements. It is also understood and agreed that the limits of the above described temporary construction easement shall be clearly marked by the Grantees prior to commencement of construction, and that said Grantees shall take whatever action is necessary to confine the work, vehicles and materials to the aforementioned temporary construction easement area.

It is further expressly understood and agreed that said Grantees, Ogden City and Weber County, after laying said storm sewer line shall cause the excavation to be backfilled and compacted to prevent settlement, remove from the property excess rocks excavated from the trench, cover the pipeline, remove

excess backfill and overburden, and shall restore or replace all fences, gates, sprinkler systems, irrigation pipes and ditches, sidewalks, driveways, buildings, structures, and other property removed, destroyed, or damaged during the course of the construction; further, said Grantees, Ogden City and Weber County, shall restore or replace, to the extent practicable, any grounds, trees, shrubs, or other landscaped areas removed, destroyed, or damaged during the course of the construction, and shall leave the premises as near as can be to the original condition.

And it is further understood and agreed that the Grantees, Ogden City and Weber County, shall have the right of ingress and egress to and from the said perpetual easement and right-of-way at any and all times for the purpose of inspecting, maintaining, or repairing said storm sewer line. It is also understood and agreed that any trees, shrubbery, landscaped areas, or other property damaged or destroyed during the course of said inspection, maintenance, or repair of said storm sewer line, shall be replaced or restored by the said Grantees, Ogden City and Weber County.

Grantors shall, subject to the Grantees' rights as herein granted, have the right to fully enjoy and use the premises burdened by said easements, but Grantor, his heirs, successors, administrators, representatives or assigns, shall not erect any permanent building or structure upon the lands comprising the perpetual or permanent easement above described without Grantees' consent in writing first had and obtained.

IN TESTIMONY WHEREOF, the Grantee, Ogden City, has caused this easement contract to be executed by its City Manager and attested by its City Recorder pursuant to a motion duly and regularly passed and adopted by the City Council of said City, and the Grantee, Weber County, has caused this easement contract to be signed by the Chairman of the Weber County Commission and attested by the Weber County Clerk, and the said Grantors have executed the same this

7th day of November, A.D., 1975.



OGDEN LODGE 719, BENEVOLENT AND PROTECTIVE ORDER OF ELKS
and
B.P.O. ELKS

BY: Cecil A. Brown
CECIL A. BROWN
President

ATTEST:
W. Arnold Wright
W. ARNOLD WRIGHT
Secretary

STATE OF UTAH)
COUNTY OF WEBER)

On the 7th day of November, A.D., 1975, personally appeared before me CECIL A. BROWN and W. ARNOLD WRIGHT who being by me duly sworn, did say that CECIL A. BROWN is the President and W. ARNOLD WRIGHT is the Secretary, respectively, of OGDEN LODGE 719, BENEVOLENT AND PROTECTIVE ORDER OF ELKS, INCORPORATED, and B.P.O. ELKS, INCORPORATED, and that said instrument was signed in behalf of said Corporations by authority of resolutions of their Boards of Directors and the said CECIL A. BROWN and W. ARNOLD WRIGHT acknowledged to me that said Corporations executed the same.

Herrell Russell
NOTARY PUBLIC

Residing at Ogden Utah

My Commission Expires Sept 10, 1979

OGDEN CITY, A Municipal Corporation

by R.L.

R.L. LARSEN, City Manager

Grantee

ATTEST:

Donna Adam
DONNA ADAM, City Recorder

Approved as to Form: _____

City Attorney

Approved as to Funds: Raymond Hunter

City Director of Finance

WEBER COUNTY, a Public Corporation

by Boyd K. Storey

BOYD K. STOREY
Chairman, Weber County Commission

Grantee

650361

ATTEST:

Wendell L. Hansen
WENDELL L. HANSEN
Weber County Clerk

Approved: Robert L. Reiley

County Attorney

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Ogden City
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NOTARY PUBLIC
WEBER COUNTY, UTAH
DET. Joseph W. Wright