

**Resolution No. 18-09**

**RESOLUTION OF SOUTH OGDEN CITY RATIFYING AN AGREEMENT WITH COLDWELL BANKERS COMMERCIAL, 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 it necessary to address certain Real Estate Brokerage and Marketing needs within the city; and,

**WHEREAS**, the City Council finds that the city staff has studied those continuing needs and recommends that the city council approve the contract with Coldwell Bankers Commercial for the provision of Real Estate Brokerage and Marketing; and,

**WHEREAS**, the City Council finds that Coldwell Bankers Commercial has demonstrated the professional ability to provide for these services to meet the city's Real Estate Brokerage and Marketing needs; and,

**WHEREAS**, the City Council finds that City now desires to approve these ends by ratifying the contract with Coldwell Bankers Commercial who will 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 "**Exclusive Representation Agreement**" For Real Estate Brokerage and Marketing Services, Attached Hereto As **Attachment "A"** And By This Reference Fully Incorporated Herein, Is Hereby Approved, Ratified, And Adopted Together With Those Prior Actions Taken To Approve Use Of Services From Coldwell Bankers Commercial Prior To The Adoption Of This Resolution, If Any; 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.

That the foregoing recitals are incorporated herein.

### **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 render 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 6<sup>th</sup> day of March, 2018, 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 6<sup>th</sup> day of March, 2018.**

### **SOUTH OGDEN CITY**

\_\_\_\_\_  
Russell Porter  
Mayor

**ATTEST:**

\_\_\_\_\_  
Leesa Kapetanov, CMC  
City Recorder

# **ATTACHMENT "A"**

## **Resolution No. 18-09**

Resolution Of South Ogden City Ratifying An Agreement With Coldwell Bankers Commercial, And Providing That This Resolution Shall Become Effective Immediately Upon Posting And Final Passage.

06 Mar 18



ADVISORS

## EXCLUSIVE REPRESENTATION AGREEMENT Buyer

This agreement is entered into on this 28 day of February, 2018 by and between COLDWELL BANKER COMMERCIAL ADVISORS (Broker), and South Ogden City (Buyer).

1. **RETAINER AGREEMENT:** Buyer hereby retains and authorizes Broker on an exclusive basis to locate or negotiate for the purchase of properties, as shown in exhibit A.
2. **TERM:** This Agreement begins on the date first shown above and shall end on September 1, 2018 or upon earlier closing of the properties under this Agreement.
3. **BROKER'S OBLIGATIONS:** Broker will (a) exercise reasonable diligence in locating a property acceptable to Buyer; (b) use professional knowledge and skills to negotiate for the purchase of the property; (c) assist Buyer throughout the transaction and act in Buyer's best interest at all times.
4. **BUYER'S OBLIGATIONS:** The Buyer will: (a) work exclusively with Broker for the purchase of a property; (b) furnish Broker with relevant personal and financial information to facilitate Buyer's ability to purchase property; (c) in all communications with other real estate agents, notify the agents that Buyer has entered into this Exclusive Representation Agreement with Broker; (d) disclose to Broker all properties in which Buyer is either negotiating to purchase or has a present interest in purchasing.
5. **COMPENSATION:** Buyer agrees to retain Broker on an exclusive basis. Buyer agrees to pay Broker the sum of \$10,000 per transaction. Further, Buyer authorizes Broker to participate in a payment of any commission by the Seller if the property is listed by the Seller.
6. **AGENCY RELATIONSHIP:** By signing this Exclusive Representation Agreement, Buyer designates that Buyer's Agent and Broker will represent Buyer and will work diligently to locate a property for the Buyer, the Buyer also authorizes the Buyer's Agent or the Broker to appoint another Agent in the company to represent the Buyer in the event the Buyer's Agent or Broker will be temporarily unavailable to service the Buyer. As the Buyer's Agent, they will act consistent with their fiduciary duties to Buyer of loyalty, full disclosure, confidentiality, and reasonable care. Buyer understands, however, that the Buyer's Agent and Broker may now, or in the future, agree to act as agent for a Seller who may wish to negotiate for the sale of Property. Then the Buyer's Agent and Broker would be acting as Limited Agent representing both Buyer and the Seller at the same time.

Limited Agency is allowed under Utah law only with the informed consent of the Seller and Buyer. For consent to be informed, Buyer and Seller must understand that conflicting duties of disclosure, loyalty and confidentiality to each party may arise. To resolve these conflicting duties, the Limited Agent will be bound by a further duty of neutrality. Being neutral, the Limited Agent will not disclose to either party information likely to weaken the bargaining position of the other, for example, the highest price the Buyer will offer or the lowest price the Seller will accept. However, the Limited Agent must disclose to both parties material information known to the Limited Agent regarding a defect in the property and the ability of the other party to fulfill all obligations under their agreement.

\_\_\_\_\_ By initialing here, Buyer understands and consents that Buyer's Agent and Broker are authorized to represent both Buyer and Seller as Limited Agents when Buyer's Agent presents a Property for sale. When another agent from Coldwell Banker Commercial Advisors presents a property, that agent will exclusively represent the Seller as a Seller's Agent, and Buyer's Agent will exclusively represent Buyer as Buyer's Agent, and the Broker will act as a Limited Agent.

7. **INTERPRETATION:** This Agreement and all provisions thereof shall be according to the laws of the State of Utah.
8. **MODIFICATIONS:** This Agreement shall not be modified or amended except in writing signed by both parties agreeing to such amendment or modification.
9. **JURISDICTION / VENUE:** This Agreement shall be governed by the laws of the State of Utah.

10. ENTIRE AGREEMENT: This Agreement contains the entire agreement between the parties relating to the subject matter of this Agreement. Any and all prior agreements or representations respecting the subject matter of this Agreement, or the rights or duties of either party relating thereto, not expressly set forth in this Agreement are superseded by this Agreement.
11. CHOICE OF LAW: Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction only, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Furthermore, all other provisions not so prohibited or unenforceable shall remain effective.
12. DISPUTE: Every dispute concerning the interpretation or effect of this Agreement, if not first submitted to mediation, shall be resolved in the Third Judicial District Court in and for Salt Lake County, State of Utah. To the maximum extent permitted by law, Owner and Broker consent and voluntarily submit themselves to the personal jurisdiction, subject matter jurisdiction and venue of said court.
13. SEVERABILITY: In the event that a party breaches this Agreement, such breaching party shall pay, in addition to any liability, all costs and expenses incurred by or on behalf of the non-breaching party or its sublessor-in-interest in enforcing, or in exercising any remedies under this Agreement, including but not limited to reasonable attorney's fees, whether or not any action or proceeding is brought to enforce the provisions, hereof.

**COLDWELL BANKER COMMERCIAL ADVISORS, BROKER:**

I agree to render services to Buyer based upon the terms and conditions set forth herein.

Date: \_\_\_\_\_, 20\_\_\_\_

Agent: \_\_\_\_\_

Principal Broker: \_\_\_\_\_

Principal Broker Signature: \_\_\_\_\_

**BUYER:** \_\_\_\_\_

I agree to retain Broker in accordance with the terms and conditions set forth herein. I further acknowledge and represent that I have signed no other agreement with any other Broker.

Date: \_\_\_\_\_, 20\_\_\_\_

Buyer/Authorized by: \_\_\_\_\_

The above duties of real estate agent/broker in a real estate transaction do not relieve a Buyer or Seller from the responsibility to exercise good business judgement in protecting their prospective interests. You should carefully read all agreements to assure that they adequately express your understanding of the transaction. If legal or tax advice is desired, consult a competent professional attorney or accountant.

