

OFFICE OF CITY ATTORNEY  
Gary R. Williams,  
City Attorney



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March 10, 2023

Wildlife Rehabilitation Center  
of Northern Utah  
Ray N. Marthaler, Director  
3127 North Pelican Drive  
Farr West, UT 84404

Wildlife Rehabilitation Center  
of Northern Utah  
Ray N. Marthaler, Director  
1490 Park Boulevard  
Ogden, UT 84401

**Sent Via Certified Mail, Return Receipt Requested**

Re: Notice of Termination of Educational Services Agreement of 22 November 2010  
Notice to Vacate Premises Within 180 Days

Dear WRCNU Director,

On or about November 22, 2010, Ogden City and Wildlife Rehabilitation Center of Northern Utah ("WRCNU") entered into an Educational Services Agreement (hereinafter, "Agreement") for the premises comprising the City's former Animal Services Building. The Agreement provided for WRCNU "a temporary home for its wildlife rehabilitation services while it coordinates its efforts to seek a long term permanent facility." See Agreement, attached. The Agreement was for a term of one year, with the possibility of annual renewals, and is terminable upon 180 days written notice of termination. See Agreement, Section 2 and 5.

Ogden City has allowed WRCNU use of the premises as a temporary facility for more than 12 years. The premises were never intended to be a permanent facility for the WRCNU and were always intended to be used for Dinosaur Park expansion. The time has come for the City to redevelop the premises for other important public purposes, as planned. The purpose of this letter is to provide the agreed upon 180 days notice of termination, as more particularly set forth below.

Notice is hereby given to WRCNU that Ogden City exercises its right to terminate the Agreement pursuant to Section 5 of the Agreement. WRCNU is hereby directed to quit and vacate the premises described in the Agreement within 180 days of the date that this letter is postmarked. This letter will be postmarked March 10, 2023, which yields a 180 day deadline of September 6, 2023, by which date WRCNU must vacate the premises.

Please note that Section 2 of the Agreement requires WRCNU to remove all exhibits and property from the premises: "When provider vacates the premises, provider shall take all exhibits and property belonging to provider from the premises...." Please remove all WRCNU property by the above deadline. Any items remaining on the premises after the deadline will be deemed to be waste or debris and may be discarded.

You may contact me or other city officials to coordinate your removal of property/exhibits or to ask questions. However, to avoid any misunderstanding, please be advised that this written notice of termination shall not be waived, altered, or rescinded by any alleged verbal representation by a city official.

Sincerely,



Gary R. Williams  
Ogden City Attorney

**EDUCATIONAL SERVICES AGREEMENT**

**THIS AGREEMENT**, entered into as of the 22<sup>nd</sup> day of November, 2010 ("Effective Date"), by and between **OGDEN CITY CORPORATION**, a municipal corporation of the State of Utah, hereinafter "City," and **Wildlife Rehabilitation Center of Northern Utah**, a non profit corporation, hereinafter "Provider."

**WITNESSETH:**

**WHEREAS**, City is continuously looking for cost effective ways to add additional educational programs and services available to the general public; and

**WHEREAS**, Provider is a wildlife education and wildlife rehabilitation entity, focusing primarily on the rehabilitation of wildlife that are sick, injured or orphaned; and

**WHEREAS**, Provider is in need of a temporary home for its wildlife rehabilitation services while it coordinates its efforts to seek a long term permanent facility; and

**WHEREAS**, Provider is in a position to educate the general public on wildlife rehabilitation and wildlife education using non-releasable wildlife under federal education permits as primary teaching sources; and

**WHEREAS**, Provider has proposed to provide such educational services to the general public, in conjunction with the educational services provided by the Ogden Dinosaur Park.; and

**WHEREAS**, Provider has a strong desire to educate and serve the youth of the area and feels that it can best do so by integrating and incorporating some of the programs it provides with those already provided by the Ogden Dinosaur Park.

**NOW, THEREFORE**, in consideration of the mutual covenants, conditions and agreements stated herein and of the payments for services hereinafter described, the parties hereto do mutually agree as follows:

1. **Performance of Services.** City hereby agrees to engage Provider, and Provider hereby agrees to perform the services set forth in Exhibit "A," attached hereto and incorporated herein by reference. Any services not specifically described therein but which may be reasonably necessary to complete the work for the use or purpose intended, shall be within the scope of services to be provided hereunder.

2. **Term of Agreement.** This Agreement shall commence on November 22, 2010, and shall continue on a year to year basis ending each year on November 30<sup>th</sup>. Either party shall have the right to terminate this Agreement at any time, as outlined under sections 4 and 5 below. In the event that notice of termination is given within the One Hundred Eighty day window leading up to the end of an annual term, Provider shall still have the full One Hundred Eighty days to vacate the premises. When provider vacates the premises, provider shall take all exhibits and property belonging to provider from the premises as outlined under Exhibit B attached hereto and incorporated herein by reference.

3. **Consideration / Provider Requirements.** Provider shall be required to perform all educational services set forth in Schedule A of this Agreement, attached hereto. In consideration of such services, Provider shall be paid any additional fees collected by dinosaur park staff above the general admission rates for the dinosaur park, which allows the general public access to Provider's facility.

Provider may also collect any other revenues generated from Provider's activities on the premises described in Exhibit B, attached hereto. Rates charged by Provider for on-site educational activities, educational services and/or educational exhibits, either through general admission pricing in connection with dinosaur park admission fees or through other fees generated at Provider's exhibit itself, and adjustments thereto, shall be subject to the advanced

review and approval by City, prior to inception.

Approval by City of any contemplated on-site revenue generation model proposed by Provider shall not be unreasonably withheld or delayed unless said revenue model is in substantial conflict with City ordinance or dinosaur park policy as determined by the City.

Provider shall have the ability to conduct independent on-site and off-site activities, which are not subject to the terms of this Agreement. Provider does however covenant that said on-site and off-site activities shall not interfere with any obligations or terms agreed to by Provider under this Agreement and shall not conflict with any of Provider's proposed on-site Dinosaur Park events.

4. **Termination of Agreement for Cause.** If, through any cause, Provider shall fail to fulfill its obligations under this Agreement in a timely and proper manner, or if Provider shall violate any of the covenants, agreements or stipulations of this Agreement, City shall have the right to terminate this Agreement by giving written notice to Provider of City's intent to terminate and right to cure specifying the reasons for the City's termination of this agreement for cause. Provider shall have thirty (30) days to cure the violations indicated in City's notice of intent to terminate and right to cure. After the cure period has passed, and Provider has not taken the steps necessary to cure the violations specified in notice of termination and right to cure, City shall give Provider at least one hundred eighty (180) days starting from the first day after the thirtieth day of the cure period, to vacate the premises.

5. **Termination for Convenience.** The City or Provider may terminate the Agreement at any time by giving written notice to the other and specifying the effective date thereof. Should either party exercise their rights to terminate this Agreement under this section, said party shall give notice as given by the date of postmark of the written correspondence, and Provider shall

have One Hundred Eighty (180) days starting from date of notice, to vacate the premises.

6. **Non-assignability.** Provider shall not assign nor transfer any interest in this Agreement without the prior written consent of the City thereto.

7. **Providers Right to Use Facility** Provider shall be allowed to use the premises owned by the City located at 1490 Park Blvd. Ogden UT 84403. Provider shall not be required to lease the premises from the City, nor shall it be required to pay the City for the right to showcase its birds and exhibits within City's facility. Both parties agree that Provider may install fixtures on the premises for use in their wildlife education and rehabilitation services. City agrees that any and all fixtures installed on premises by Provider shall remain the property of Provider and can be taken with Provider in the event City exercises its right to terminate this agreement.

8. **Restrictions on Outdoor Exhibit Placement.** Provider shall be allowed to utilize any portion of the outdoor area behind the building, as well as the lawn areas that make up the western border of the property, which are already inside the existing security fence, and which shall be within the dinosaur park boundaries, to install, construct or maintain exhibit space for any and all animals Provider wishes to showcase to the general public who have paid admission to dinosaur park.

Provider shall be allowed to utilize the east lawn portion of the outdoor area in front of the building described in Exhibit B. In the event Provider wishes to exhibit wildlife in the east lawn portion of the front outdoor area of the building, Provider shall utilize their newer display equipment and shall consult with Ogden City prior to placement of any display on the east lawn portion of the outdoor area in front of the building.

Ogden City shall, at its option, install security fencing around the any portion of the east lawn portion of the outdoor area in front of the building described in Exhibit B, if desired.

9. **Provider's Responsibilities.** Provider shall be responsible for the maintenance, expense and upkeep of the following: (1) Provider shall be responsible for all utilities and other maintenance costs associated with their use of the building and shall have the utilities listed in their name, except the water and garbage collection bill, which shall be in the name of Ogden City, but for which Provider shall be responsible for paying on a monthly basis; (2) Provider shall provide space to the Humane Society for their use as agreed to between the Humane Society and Provider and shall be responsible for calculating the costs of any utilities associated with the Humane Society's use of the building and billing the Humane Society for those costs; (3) Provider shall be responsible for all interior walls, fixtures, outlets, displays and structures associated with that portion of the building that Provider uses to maintain, preserve, rehabilitate and exhibit the wildlife it cares for; (4) all outside grounds surrounding the building with the exception of any landscaping provided to the facility. This obligation shall be the responsibility of Provider in conjunction with any other entity that utilizes the facility. Said grounds surrounding the building shall be free of litter and debris at all times. (5) Provider shall secure two communications closets located in the building, which closets contain communication equipment for the Dinosaur Park. Provider shall allow Ogden City personnel to gain access to those closets, during normal operating park hours or at another time as agreed upon by Provider and City personnel, in order for Ogden City to maintain the equipment located therein. Provider acknowledges that all equipment located in both closets is the property of Ogden City and shall not remove the equipment or maintain the equipment. (6) In addition, Provider shall be responsible for any assessments, taxes, fees, expenses and costs of any nature, including, but not limited to, any privilege tax in lieu of real property taxes, imposed by third parties as a result of Provider's use of the premises

**10. City's Responsibilities.** The City shall be responsible for the maintenance, expense and upkeep of the following: (1) All exterior walls of the facility as well as all landscaping surrounding the facility. (2) All taxes, assessments, fees, expenses and costs, if any, of any nature currently assessed on an annual basis to the City as a result of City's ownership of said facility. (3) Maintain and operate all communications equipment related to Dinosaur Park communications, which are located in two closets inside the building.

**11. Indemnification.** Each party agrees to indemnify, and save harmless the other party and its authorized agents, officers and employees from and against any and all claims, damages, demands, actions, costs and charges arising out of or by reason of the other party's performance or failure to perform this agreement.

**12. Attorney's Fees.** In the event either party institutes litigation to enforce its rights under this Agreement, the prevailing party in such litigation shall be entitled to an award of its reasonable attorney's fees and costs.

**13. Notice.** Any notice, or notices, required or permitted to be given pursuant to this Agreement, may be personally served on the other party by the party giving such notice, or may be served by certified mail, return receipt requested, to the following addresses:

City:           Ogden City  
                  Attn John Patterson  
                  2549 Washington Blvd  
                  Ogden, UT 84401

Provider:       Wildlife Rehabilitation Center of Northern Utah  
                  3127 North Pelican Drive  
                  Farr West UT 84404

**14. Independent Provider.** Provider is independent of the City and shall perform all services according to its own methods without being subject to the control of the City. The City



shall not carry Worker's Compensation insurance or any health or accident insurance to cover Provider. The City shall not pay nor be responsible for any contribution to Social Security, unemployment insurance, federal or state withholding taxes, nor provide any other contributions or benefits which might be expected in an employer-employee relationship. Provider, as an independent Provider, shall provide and be responsible for any and all of Provider, and its employees or agents, Worker's Compensation contributions, federal and state withholding, unemployment compensation contributions and social security tax withholding, etc. Provider agrees to report and pay any contributions for taxes, unemployment insurance, Social Security and other benefits.

15. **When Rights and Remedies Not Waived.** In no event shall any payment by City hereunder constitute or be construed to be a waiver by City of any breach of conditions or any default which may then exist, or while any such breach or default shall exist, in no way impair or prejudice any right or remedy available to City with respect to such breach or default.

16. **Integrated Document.** This Agreement embodies the entire agreement between City and Provider for the scope of services and the terms and conditions. No verbal agreements or conversations with any officer, agent or employee of City prior to the execution of this Agreement shall affect or modify any of the terms or obligations contained in any documents comprising this Agreement. Any such verbal agreement shall be considered as unofficial information and in no way binding upon City.

17. **Compliance with Laws.** Provider shall comply with all laws, ordinances, regulations, rules, etc., of the federal, state and local governments in connection with the performance of this Agreement.

18. **Employment Status Verification.** Provider shall register and participate in the

Status Verification System and comply with Utah Code Ann. Section 63G-11-103 of the Utah Identity Document and Verification Act.

19. **Severability of Provisions.** If any provisions of this Agreement are held invalid, the remainder of this Agreement shall not be affected thereby if such remainder would then continue to conform to the terms and requirements of applicable law.

20. **Modifications.** No oral modifications or amendments to this Agreement shall be effective, but this Agreement may be modified or amended by written agreement.

21. **Governing Law.** This Agreement, its terms and conditions, shall be governed by Utah law. The venue for litigation of any dispute arising from or related to this agreement shall be the courts of the State of Utah.

IN WITNESS WHEREOF, the parties hereto execute the foregoing instrument as of the day and year first above written.

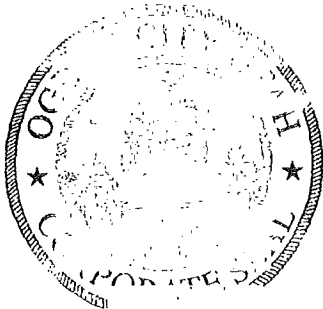
OGDEN CITY CORPORATION

By: [Signature]

Its: CAO

ATTEST:  
City Recorder

[Signature]  
Sudi Mansell



PROVIDER:

By: [Signature]

EIN# 26-4301793

EXHIBIT A

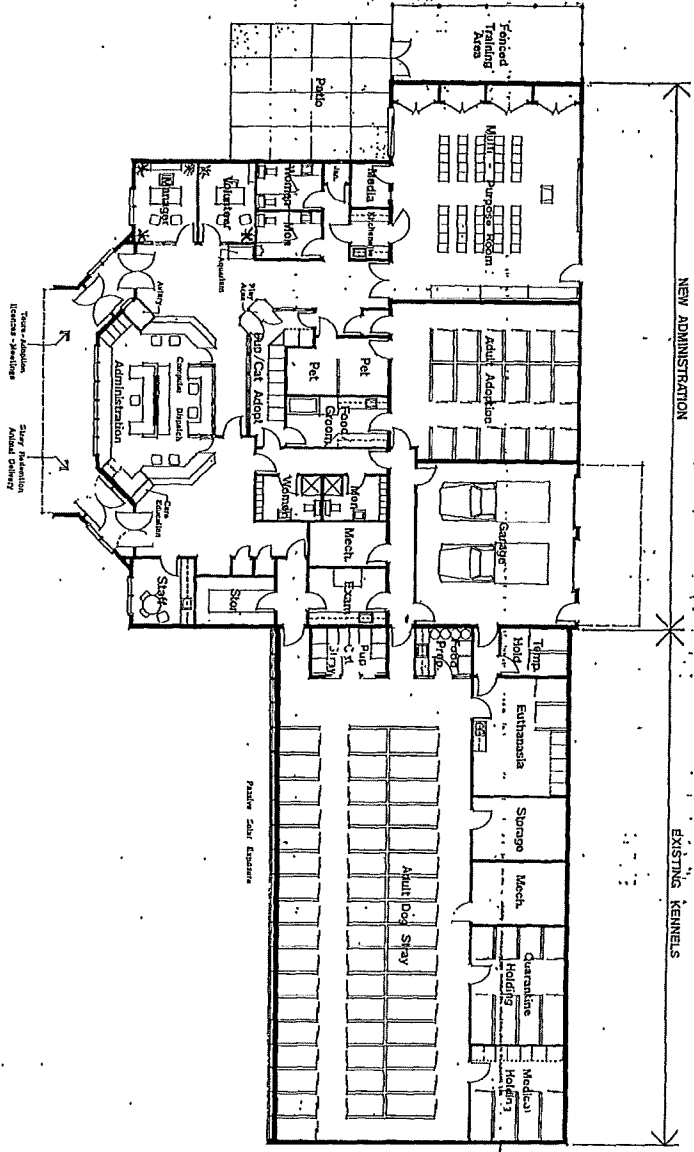
**SCOPE OF SERVICES**

Provider shall perform the following services:

- (1) Provider is required to have non-releasable wildlife under federal education permit, in their custody on exhibit, available for public observation, Monday through Saturday from 10:30 am to 6 pm, excluding holidays:
- (2) Provider will have a minimum of nine (9) half hour workshop classes per week involving educating the public on the wildlife in Provider's possession. Provider shall also maintain educational signage throughout the facility and offer a "self-guided" tour in the facility for the general public.
- (3) Manage and oversee the building as well as any and all additional subtenants of the building. Report any problems to the Dinosaur Park director.
- (4) Become an independent non-profit supplemental educational attraction to Ogden's Dinosaur Park by providing additional wildlife exhibits to the general public who are visiting Dinosaur Park. Provider shall have the right to run an independent operation, subject to the terms of this Agreement.

EXHIBIT B

**SCOPE OF PREMISES**



# Ogden City Animal Services

Ronald D. Hales · Architect

Scale: 0 4 8 12 16 20

<b>2</b> <small>SCALE: 1/8" = 1'-0"</small>	SHEET TITLE <b>Floor Plan</b>	2557 Monroe Blvd Ogden, Utah 84401 (801) 399-9203	<b>RONALD D. HALES</b> <small>Member American Institute of Architects</small> <b>Architects &amp; Associates</b>	PROJECT <b>Ogden City Animal Services</b> <small>4130 Park Boulevard          Ogden, Utah</small>	DATE <b>7/22/20</b>
		SCALE: 1/8" = 1'-0"			