

**INTERLOCAL AGREEMENT by and between the SOUTH OGDEN CITY  
COMMUNITY DEVELOPMENT AND RENEWAL AGENCY and WEBER  
COUNTY for the CITY CENTER COMMUNITY REINVESTMENT PROJECT  
AREA**

**THIS INTERLOCAL AGREEMENT** is entered into as of this \_\_\_ day of \_\_\_\_\_, 2020, by and between the **SOUTH OGDEN CITY COMMUNITY DEVELOPMENT AND RENEWAL AGENCY**, a political subdivision of the State of Utah (the “**Agency**”), and **WEBER COUNTY**, a political subdivision of the State of Utah (the “**Taxing Entity**”). The Agency and the Taxing Entity shall be referred to individually as a “**Party**” and collectively as the “**Parties**”.

**A. WHEREAS** the Agency was created pursuant to the provisions of, and continues to operate under, the Limited Purpose Local Government Entities – Community Reinvestment Agency Act, Title 17C of the Utah Code (the “**Act**”), and is authorized thereunder to conduct project area development activities within South Ogden, Utah, as contemplated by the Act; and

**B. WHEREAS** the Agency created the City Center Community Reinvestment Project Area (the “**Project Area**”) and adopted a community reinvestment project area plan and project area budget for the Project Area (the “**Project Area Documents**”), which are incorporated herein by this reference, which include the legal description and a map of the Project Area, pursuant to which the Agency desires to encourage, promote and provide for project area development in the Project Area; and

**C. WHEREAS** the Taxing Entity and the Agency have determined that it is in the best interests of the Taxing Entity to provide certain financial assistance through the use of Tax Increment (as defined below) in connection with the development of the Project Area as set forth in the Project Area Documents; and

**D. WHEREAS** the Agency anticipates providing a portion of the tax increment (as defined in Utah Code Annotated (“**UCA**”) § 17C-1-102(60) (hereinafter “**Tax Increment**”)) created in the Project Area to assist in the Agency project area development activities within the Project Area as contemplated in the Project Area Documents; and

**E. WHEREAS** UCA § 17C-5-204(3) authorizes the Taxing Entity to consent to the payment to the Agency of all or a portion of the Taxing Entity’s share of Tax Increment generated in the Project Area; and

**F. WHEREAS** UCA § 11-13-215 further authorizes the Taxing Entity to share its tax and other revenues with the Agency; and

**G. WHEREAS** in order to facilitate development within the Project Area, the Taxing Entity desires to pay to the Agency a portion of the Taxing Entity's share of Tax Increment generated by development within the Project Area in accordance with the terms of this Agreement; and

**H. WHEREAS** the provisions of applicable Utah State law shall govern this Agreement, including the Act and the Interlocal Cooperation Act, Title 11 Chapter 13 of the UCA, as amended (the "**Cooperation Act**").

**NOW, THEREFORE**, in consideration of the mutual promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

**1. Taxing Entity's Consent.**

**a.** Pursuant to Section 17C-5-204(4) of the Act and Section 11-13-215 of the Cooperation Act, the Taxing Entity hereby agrees and consents that the Agency shall be paid seventy five percent (75%) of the Taxing Entity's share of the Tax Increment from the Project Area (the "**Taxing Entity's Share**") for up to twenty (20) consecutive years. The cumulative total of the Taxing Entity's Share paid to the Agency under this Agreement shall not exceed four million dollars (\$4,000,000). The Agency may begin collecting increment, or "trigger" the collection of Tax Increment, upon written notice to Weber County; such notice must be provided to Weber County prior to January 1 of the year for which the Agency desires to begin collecting increment. Regardless of the date for which the Agency begins collecting Tax Increment under this Agreement, the Agency shall not collect Tax Increment for any period beyond December 31, 2042. The date that the Agency begins collecting Tax Increment under this Agreement shall be on January 1 of the particular year. For the sake of illustration only, this subsection requires that the Agency begin collecting Tax Increment no later than January 1, 2023 in order to receive the full twenty years of Tax Increment contemplated by this Agreement.

**b.** The Taxing Entity's Share shall be used for the purposes set forth in the Act as reflected herein and in the Project Area Documents and shall be disbursed as specified herein. The calculation of annual Tax Increment shall be made using (a) the Taxing Entity's tax levy rate during the year for which Tax Increment is to be paid and (b) the base taxable value for purposes of calculating Tax Increment shall be \$185,799,031, which taxable value is subject to adjustment as required by law.

**c.** The Taxing Entity hereby authorizes and directs Weber County to pay directly to the Agency the Taxing Entity's Share in accordance with UCA § 17C-5-206 for the period described herein.

d. Of the amounts received by the Agency, the Agency may retain five percent (5%) of the total Taxing Entity's Share each year to be used as described in UCA § 17C-5-307(3).

2. **Authorized Uses of Tax Increment.** The Parties agree that the Agency may apply the Taxing Entity's Share to engage in project area development activities as described herein and contemplated in the Project Area Documents, including but not limited to the cost and maintenance of public infrastructure and other improvements located within the Project Area, reimbursements or incentives to developers or participants within the project area, administrative, overhead, legal, and other operating expenses of the Agency, and any other purposes deemed appropriate by the Agency, all as authorized by the Act. For purposes of this paragraph, "**Public Infrastructure and Public Improvements**" shall mean any and all improvements and infrastructure that provide a benefit to the public generally and shall include, but not be limited to, the items listed on **Exhibit A** to this Agreement. The Agency agrees to utilize at least fifty percent (50%) of the Taxing Entity's Share received by the Agency pursuant to this Agreement toward expenditures directly related to the installation of, upgrade to, and maintenance of Public Infrastructure and Public Improvements within the Project Area or Public Infrastructure and Public Improvements located outside of the Project Area, which directly benefit the Project Area. The Agency shall provide a detailed accounting of the money used for Public Infrastructure and Public Improvements; this detailed accounting must be submitted to the Taxing Entity by April 1 of each fifth year. The fifty-percent threshold shall be calculated based on the total cumulative expenditures by the Agency toward Public Infrastructure and Public Improvements compared to the cumulative amount Taxing Entity's Share received by the Agency pursuant to this Agreement. If the fifty-percent threshold is not met for five consecutive years, the Agency shall be in default under this Agreement. Upon written notice to the Agency from the Taxing Entity, the Agency shall have thirty (30) days to cure or to commence to cure such default (provided such cure is diligently pursued). If the Agency fails to cure or commence to cure such default within the specified time period, the Taxing Entity may terminate this Agreement upon written notice to the Agency.

3. **Return of Tax Increment to the Taxing Entity.** If the Agency, in its sole discretion, is unable to utilize the full amount of the Taxing Entity's Share for the uses authorized in Section 2, above, then the Agency shall return to the Taxing Entity that portion of that Taxing Entity's Share that the Agency is unable to utilize. Any portion of the Taxing Entity's Share returned to the Taxing Entity shall not be counted in evaluating the Agency compliance with the fifty-percent threshold as described in the preceding paragraph.

4. **Consent to Project Area Budget.** As required by UCA § 17C-5-304, the Taxing Entity consents to the Project Area Budget adopted by the Agency for the Project Area on June 2, 2020.

5. **No Third-Party Beneficiary.** Nothing in this Agreement shall create or be read or interpreted to create any rights in or obligations in favor of any person or entity not a party to

this Agreement. Except for the parties to this Agreement, no person or entity is an intended third-party beneficiary under this Agreement.

6. **Due Diligence.** Each of the Parties acknowledges for itself that it has performed its own review, investigation, and due diligence regarding the relevant facts upon which this Agreement is based, including representations of the Agency concerning the anticipated benefits to the community and to the Parties, and each Party relies upon its own understanding of the relevant law and facts, information, and representations, after having completed its own due diligence and investigation.

7. **Interlocal Cooperation Act.** In satisfaction of the requirements of the Cooperation Act in connection with this Agreement, the Parties agree as follows:

a. This Agreement shall be authorized and adopted by resolution of the legislative body of each Party pursuant to and in accordance with the provisions of Section 11-13-202.5 of the Cooperation Act.

b. This Agreement shall be reviewed as to proper form and compliance with applicable law by a duly authorized attorney in behalf of each Party pursuant to and in accordance with the Section 11-13-202.5(3) of the Cooperation Act.

c. A copy of this executed Agreement shall be filed immediately with the keeper of records of each Party pursuant to Section 11-13-209 of the Cooperation Act.

d. The Chair of the Agency is hereby designated the administrator for all purposes of the Cooperation Act.

e. No separate legal entity is created by the terms of this Agreement and no facility, improvement, or other asset shall be jointly owned, jointly acquired, or jointly operated by the Parties to this Agreement.

f. The term of this Agreement shall commence on the publication of the notice described in Section 17C-5-205 of the Act and Section 11-13-219 of the Cooperation Act and shall continue through the date that is 180 days after the date on which the final payment as contemplated herein has been paid to the Agency. Notwithstanding any provision in this Agreement to the contrary, this Agreement shall automatically terminate on December 31, 2045.

g. Following the execution of this Agreement by all Parties, the Agency shall cause a notice regarding this Agreement to be published on behalf of all parties in accordance with Section 11-13-219 of the Cooperation Act and Section 17C-5-205 of the Act.

6. **Modification and Amendment.** Any modification of or amendment to any provision contained herein shall be effective only if the modification or amendment is in writing and

signed by all Parties. Any oral representation or modification concerning this Agreement shall be of no force or effect.

7. **Further Assurance.** Each of the Parties hereto agrees to cooperate in good faith with the others, to execute and deliver such further documents, to adopt any resolutions, to take any other official action, and to perform such other acts as may be reasonably necessary or appropriate to consummate and carry into effect the transactions contemplated under this Agreement. Further, in the event of any question regarding the calculation or payment of amounts contemplated hereunder, the Parties shall cooperate in good faith to resolve such issue.

8. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties hereto pertaining to the subject matter hereof and the final, complete, and exclusive expression of the terms and conditions thereof. All prior agreements, representations, negotiations, and understandings, whether oral or written and whether express or implied, of the Parties hereto are hereby superseded and merged herein.

9. **Governing Law.** This Agreement shall be governed by, and construed and interpreted in accordance with, the laws of the State of Utah.

10. **Interpretation.** The terms “include,” “includes,” “including” when used herein shall be deemed in each case to be followed by the words “without limitation.”

11. **Disputes.** In the event a dispute arises between the Parties with respect to the terms of this Agreement or the performance of any contractual obligation by one or both of the Parties, the Parties agree to submit the matter to formal and confidential non-binding mediation before any judicial action may be initiated, unless an immediate court order is needed or a statute of limitations period will run before mediation can be reasonably completed. A mediator will be selected by mutual agreement of the parties. The parties must mediate in good faith to resolve the dispute in a timely manner. Each party will be responsible for its own costs and one-half of the cost of the mediator. The place of mediation shall be Weber County, Utah.

12. **Severability.** If any provision of this Agreement is held to be invalid or unenforceable by any court of competent jurisdiction or as a result of future legislative action, and if the rights or obligations of any Party hereto under this Agreement will not be materially and adversely affected thereby,

- a. such holding or action shall be strictly construed;
- b. such provision shall be fully severable;
- c. this Agreement shall be construed and enforced as if such provision had never comprised a part hereof;

d. the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the invalid or unenforceable provision or by its severance from this Agreement; and

e. in lieu of such illegal, invalid, or unenforceable provision, the Parties hereto shall use commercially reasonable efforts to negotiate in good faith a substitute, legal, valid, and enforceable provision that most nearly effects the Parties' intent in entering into this Agreement.

13. **Assignment.** No Party may assign any rights, duties, or obligations under this Agreement without the prior written consent of all Parties hereto.

14. **Authorization.** Each of the Parties hereto represents and warrants to the other that the warranting Party has taken all steps, including the publication of public notice where necessary, in order to authorize the execution, delivery, and performance of this Agreement by each such Party.

15. **Time of the Essence.** Time is of the essence in the performance of this Agreement.

16. **Incorporation of Recitals.** The recitals set forth above are hereby incorporated by reference as part of this Agreement.

17. **Counterparts and Signatures.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement. This Agreement may be executed by electronic signature, which shall be considered as an original signature for all purposes and shall have the same force and effect as an original signature. Without limitation, “electronic signature” shall include faxed versions of an original signature or electronically scanned and transmitted versions (e.g., via pdf) of an original signature.

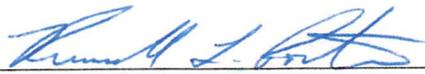
18. **Incorporation of Exhibits.** Any exhibits to this Agreement are hereby incorporated by reference as part of this Agreement.

**ENTERED** into as of the day and year first above written.

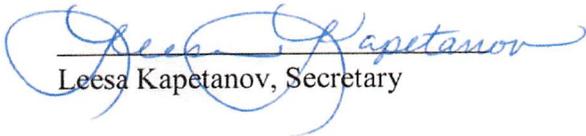
*[Remainder of page intentionally left blank; signature pages to follow]*

Agency:

**SOUTH OGDEN CITY COMMUNITY  
DEVELOPMENT AND RENEWAL AGENCY**

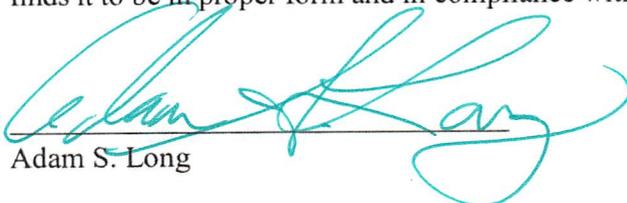
By:   
Russell L. Porter, Chair

*Attest:*

  
Leesa Kapetanov, Secretary

Attorney Review for the Agency:

The undersigned, as counsel for the Agency, has reviewed the foregoing Interlocal Agreement and finds it to be in proper form and in compliance with applicable state law.

  
Adam S. Long

*[Signatures continue]*

*[ADDITIONAL SIGNATURES TO INTERLOCAL AGREEMENT]*

**Taxing Entity:**

**WEBER COUNTY**

By: \_\_\_\_\_

Name: Gage Froerer

Title:

*Attest:*

\_\_\_\_\_  
Name:  
Title:

Attorney Review for the Taxing Entity: \_\_\_\_\_

The undersigned, as attorney for the Taxing Entity, has reviewed the foregoing Interlocal Agreement and finds it to be in proper form and in compliance with applicable state law.

\_\_\_\_\_  
Name:

## **Exhibit A**

### *Public Infrastructure and Public Improvements*

For purposes of this Agreement, the term Public Infrastructure and Public Improvements includes, but is not limited to, the following:

1. improvements of every type that are to be dedicated to the City and are needed to facilitate the development of the Project Area;
2. improvements required as a condition of the approval of a development application for property within the Project Area (for purposes of this Exhibit A, "development application" means a complete application to South Ogden City for development of a portion of the Project Area including a Final Plat, Subdivision application, or any other permit (including, but not limited to, building permits), certificate, or other authorization from the City required for development within the Project Area);
3. improvements in the following categories that are installed or constructed within the Project Area, or which are installed outside of the Project Area and are necessary to enable the installation of the same type of improvements within the Site:
  - a. culinary water infrastructure
  - b. sanitary sewer improvements
  - c. storm water improvements;
  - d. utility infrastructure of every type including, without limitation, electric, gas, fiber, and other communications utilities;
  - e. road infrastructure, including without limitation, bridges and underpasses;
  - f. rail infrastructure;
  - g. street lighting and landscaping within public rights-of-way;