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REC FOR: NORTH OGDEN CITY

**INTERLOCAL AGREEMENT BETWEEN
THE REDEVELOPMENT AGENCY OF NORTH OGDEN CITY
AND WEBER BASIN WATER CONSERVANCY DISTRICT**

THIS INTERLOCAL AGREEMENT is entered into as of this 6th day of June, 2015, by and between the **REDEVELOPMENT AGENCY OF NORTH OGDEN CITY** (the "Agency") and **WEBER BASIN WATER CONSERVANCY DISTRICT** (the "District") (collectively, the "Parties" or individually "Party").

RECITALS

- A. The Agency was created pursuant to the provisions of the Limited Purpose Local Government Entities - Community Development and Renewal Agencies Act, Title 17C of the Utah Code (the "Act"), and is authorized thereunder to conduct urban renewal, economic development, and community development activities within North Ogden City, Utah, as contemplated by the Act; and
- B. Pursuant to the North Ogden City Redevelopment Agency Resolution No. 20-2015 adopted by the Agency on October 6, 2015, the Agency authorized steps to be taken for the creation of the Washington Boulevard Community Development Project Area (the "Project Area") and has prepared a draft community development project area plan for the Project Area, a copy of which is attached hereto as exhibit "A" and incorporated herein by this reference (referred to in this Interlocal Agreement as the "Project Area Plan," which includes the legal description and a map of the Project Area), pursuant to which the Agency desires to encourage, promote and provide for the development of the Washington Boulevard area (the "Project") in the Project Area; and
- C. Pursuant to Ordinance 2015-20, adopted by the city of North Ogden ("City") on October 6, 2015 the Agency and City established the Project Area through adoption of the proposed Project Area Plan; and
- D. The District is a "taxing entity" as defined in Utah Code Annotated §17C-1-102(48) or a "public entity" as defined in Utah Code Annotated §17C-1-102(40); and

- E. The District and the Agency have determined that it is in the best interests of the citizens of the District to provide certain financial assistance through the use of Tax Increment (as defined below) in connection with the development of the Project as set forth in the Project Area Plan; and
- F. The Agency anticipates using a portion of the tax increment (as defined in Utah Code Ann. § 17C-1-102(47) (hereinafter "Tax Increment")), created by the Project, to assist in the development and completion of the Project as provided in the Project Area Plan; and
- G. Utah Code Ann. § 17C-4-201(1) authorizes the District to consent to the payment to the Agency of a portion of the District's share of Tax Increment generated from the Project Area for the purposes set forth herein; and
- H. Utah Code Ann. § 11-13-215 further authorizes the District to share its tax and other revenues with the Agency; and
- I. In order to facilitate development of the Project, the District desires to authorize the payment to the Agency of a portion of the District's share of Tax Increment generated by the Project Area in accordance with the terms of this Agreement; and
- J. The provisions of applicable Utah State law shall govern this Agreement, including the Act and the Interlocal Cooperation Act, Utah Code Ann. § 11-13-101 et seq. 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. District's Consent.

a. Pursuant to Utah Code Ann. §§.17C-4-201(2)(b) and 11-13-215, the District hereby agrees and consents that the Agency shall be paid 50% of the District's share of the Tax Increment from the Project Area (the "District Share") for fifteen (15) years. The base year, for purposes of calculation of the Base Taxable Value (as that term is defined in the Act), shall be 2014, meaning the Base Taxable Value shall, to the extent and in the manner defined by the Act, be equal to the equalized taxable value shown on the 2014 Weber County assessment rolls for all property located within the Project Area (which is currently estimated to be \$16,913,911, but is subject to final adjustment and verification by the County and Agency). The first year ("Year One") of payment of Tax Increment from the District to the Agency shall be determined by the Agency, but shall be no later than 2019 (the Agency currently anticipates triggering the payment in the beginning of 2017). Each subsequent year, beginning with the first year after Year One, shall be defined in sequence as Year Two through Year Fifteen. The Agency may trigger the collection of Tax Increment by timely delivering a letter or other written request to the Weber County Auditor's office. The District Share shall be used for the purposes set forth in Utah Code Ann. § 17C-4-201(1) as reflected herein and for the purpose of providing funds to the Agency to carry out the Project Area Plan and shall be disbursed as specified in the Project Area Plan. The calculation of the annual Tax Increment shall be made as required by Utah Code Ann. § 17C-1-102(47)(a), using the District's then current tax levy rate.

b. The District authorizes Weber County to pay directly to the Agency the District Share in accordance with Utah Code Ann. § 17C-4-203 for the 15-year period described in Section 1.a. above.

2. Amendments to Project Area Plan.

In the event the Agency or the City makes any substantive changes to the Project Area Plan, then the Agency shall provide the District with a copy of such revised Project Area Plan. If the District, in its sole discretion, approves such revised Project Area Plan, then the Parties shall amend this Agreement to jointly adopt and approve the revised Project Area Plan, and the revised Project Area Plan shall be the Project Area Plan.

3. Authorized Uses of Tax Increment.

Except as otherwise provided in this Agreement, the Parties agree that the Agency may apply the District Share to the payment of any of the components of the Project as described herein and contemplated in the Project Area Plan, including, but not limited to the cost and maintenance of public infrastructure and other improvements located within the Project Area, site preparation, and administrative costs, as authorized by the Act.

4. 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.

5. Due Diligence.

Each of the Parties acknowledges for itself that it has performed its own review, investigation, and due diligence regarding the relevant facts concerning the Project Area and Plan and expected benefits to the community and to the Parties, and each of the Parties relies on its own understanding of the relevant facts and information, after having completed its own due diligence and investigation.

6. 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 or governing board of each Party pursuant to and in accordance with the provisions of Utah Code Ann. § 11-13-202.5;

b. This Agreement shall be reviewed as to proper form and compliance with applicable law by a duly authorized attorney on behalf of each Party pursuant to and in accordance with Utah Code Ann. § 11-13-202.5(3);

c. A duly executed original counterpart of this Agreement shall be filed immediately with the keeper of records of each Party pursuant to Utah Code Ann. § 11-13-209;

d. The Chair of the Agency is hereby designated the administrator for all purposes of the Cooperation Act, pursuant to Utah Code Ann. § 11-13-207;

e. The term of this Agreement shall commence on the publication of the notice required by Utah Code Annotated §17C-4-202 of the Act and shall continue through the date on which all of the Entity's Share for the specified fifteen (15) year period has been paid to the Agency as provided for herein or the Agency, but in any event, unless amended, this Agreement shall terminate no later than the end of December 31, 2033. No other termination, in part or in whole, of this Agreement shall be made without the adoption, by resolution, of an amendment to this Agreement by all the Parties;

f. Following the execution of this Agreement by both Parties, the Agency shall cause a notice regarding this Agreement to be published on behalf of both of the Parties in accordance with Utah Code Ann. § 11-13-219 and on behalf of the Agency in accordance with § 17C-4-202;

g. The Parties agree that they do not, by this Agreement, create an interlocal entity;

h. There is no financial or joint or cooperative undertaking and no budget shall be established or maintained;

i. No real or personal property will be acquired, held or disposed of or used in conjunction with a joint or cooperative undertaking.

7. 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 both Parties. Any oral representation or modification concerning this Agreement shall be of no force or effect.

8. Further Assurance.

Each of the Parties hereto agrees to cooperate in good faith with the other, 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.

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. Severability.

If any provision of this Agreement shall be held 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.

12. Agreement(s) with Developer(s).

The Agency is authorized to enter into one or more agreements with one or more developers which may provide for the payment of certain amounts of Tax Increment (to the extent such Tax Increment is actually paid to and received by the Agency from year to year) to the developer(s) conditional upon the developer(s)'s

meeting of certain performance measures as outlined in said agreement. Such agreement shall be consistent with the terms and conditions of this Agreement, shall require as a condition of the payment to the Developer that the Developer, or its approved successors in title as owners of the Property, shall pay any and all taxes and assessments which shall be assessed against the Property in accordance with levies made by applicable municipal entities in accordance with the laws of the state of Utah applicable to such levies, and such other performance measures as the Agency may deem appropriate.

13. Property Tax Increase.

This Agreement provides for the payment of the increase in real and personal property taxes collected from the Project Area by the County acting as the tax collection agency for the District. Real and personal property taxes which are the subject of this Agreement shall not include taxes collected from the Project Area by the County, acting in its capacity as the tax collection agency for the City, which are to be paid to or utilized by abatement districts, special service or improvement districts or other entities for which the County acts as the tax collection agency, nor shall it include any component of real property taxes retained by the County as payment for costs incurred in the collection of real property taxes for itself or other applicable agencies. It is expressly understood that the real property taxes which are the subject of this Agreement are only those real and personal property taxes actually collected by the County from the Project Area. The Agency shall be entitled to payment of 50% of all Tax Increment legally available and provided for under the Act, as amended from time to time. The District will keep 50% of all Tax Increment.

14. No Independent Duty.

The District shall be responsible to remit to the Agency only Tax Increment actually received by the County. The District shall have no independent duty to pay any amount to the Agency other than the Tax Increment actually received by the District on an annual basis from and including Year One through and including Year Fifteen.

15. Authority to Bind.

Each individual executing this Agreement represents and warrants that such person is authorized to do so, and, that upon executing this Agreement, this Agreement shall be binding and enforceable in accordance with its terms upon the party for whom such person is acting.

16. Entire Agreement.

This Agreement is the final expression of and contains the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior understandings with respect thereto. This Agreement may not be modified, changed, supplemented or terminated, nor may any obligations hereunder be waived, except by written instrument signed by the party to be charged or by its agent duly authorized in writing or as otherwise expressly permitted herein. This Agreement and its exhibits constitute 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 of the parties hereto, oral or written, express or implied, are hereby superseded and merged herein.

17. Construction.

Headings at the beginning of each paragraph and subparagraph are solely for the convenience of the parties and are not a part of the Agreement. Whenever required by the context of this Agreement, the singular shall include the plural and the masculine shall include the feminine and vice versa. Unless otherwise indicated, all references to paragraphs and subparagraphs are to this Agreement. In the event the date on which any of the parties is required to take any action under the terms of this Agreement is not a business day, the action shall be taken on the next succeeding business day.

18. Counterparts.

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

19. Waivers.

No waiver of any breach of any covenant or provision herein contained shall be deemed a waiver of any preceding or succeeding breach thereof or of any other covenant or provision herein contained. No extension of time for performance of any obligation or act shall be deemed an extension of the time for performance of any other obligation or act.

20. Declaration of Invalidity.

In the event that a court of competent jurisdiction declares that the County cannot pay and/or that the Agency cannot receive payments of the Tax Increment, declares that the Agency cannot pay the Tax Increment to developers, or takes any other action which has the effect of eliminating or reducing the payments of Tax Increment received by the Agency, the Agency's obligation to pay the Tax Increment to developers shall be reduced or eliminated accordingly, the Agency, and the County shall take such steps as are reasonably required to not permit the payment and/or receipt of the Tax Increment to be declared invalid.

21. Duration. This Agreement shall terminate after the final payment of Tax Increment to the Agency for Year Fifteen.

22. Assignment.

No party may assign its rights, duties or obligations under this Agreement without the prior written consent first being obtained from all parties. Notwithstanding the foregoing, such consent shall not be unreasonably withheld or delayed so long as the assignee thereof shall be reasonably expected to be able to perform the duties and obligations being assigned.

23. Termination. Upon any termination of this Agreement resulting from the uncured default of any party, the order of any court of competent jurisdiction or termination as a result of any legislative action requiring such termination, then any funds held by the Agency and for which the Agency shall not be required to disburse to developers in accordance with the agreements which govern such disbursement, then such funds shall be returned to the party originally remitting same to the Agency and upon such return this Agreement shall be deemed terminated and of no further force or effect.

24. Notices.

Any notice, request, demand, consent, approval or other communication required or permitted hereunder or by law shall be validly given or made only if in writing and delivered to an officer or duly authorized representative of the other party in person or by Federal Express, private commercial delivery or courier service for next business day delivery, or by United States mail, duly certified or registered (return receipt requested), postage prepaid, and addressed to the party for whom intended, as follows:

If to District:
Weber Basin Water Conservancy District
Attn: Board Trustees
2837 East Highway 193
Layton, UT 84040
Facsimile: (801) 544-0103

If to Agency:

Any party may from time to time, by written notice to the others as provided above, designate a different address which shall be substituted for that specified above. Notice sent by mail shall be deemed served or delivered seventy-two (72) hours after mailing. Notice by any other method shall be deemed served or delivered upon actual receipt at the address or facsimile number listed above. Delivery of courtesy copies noted above shall be as a courtesy only and failure of any party to give or receive a courtesy copy shall not be deemed to be a failure to provide notice otherwise properly delivered to a party to this Agreement.

25 Incorporation of Recitals.

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

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

AGENCY



BRENT R. TAYLOR, Chair

Attest:


S. ANNETTE SPENDLOVE, Secretary

**WASHINGTON BOULEVARD COMMUNITY DEVELOPMENT PROJECT AREA AND
THE REDEVELOPMENT AGENCY OF NORTH OGDEN CITY**

Attorney Review for the Agency:

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

Attorney for Washington Boulevard Community Development Project and North Ogden City Redevelopment Agency



JONATHAN CALL, Agency Attorney

ADDITIONAL SIGNATURES TO INTERLOCAL AGREEMENT

By: [Signature]

Title: General Manager / CEO

Attest:

[Signature]

Attorney Review for the District

The undersigned, an attorney for the Weber Basin Water Conservancy District, has reviewed the foregoing Interlocal Agreement and finds it to be in proper form and in compliance with applicable state law.

18-134-0001, 0004, 0005
18-143-0001, 0002

Attorney for Weber Basin Water Conservancy District 18-146-0002

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|-------------------|-------------|----------------|-------------------|
| 11-014-0028 | 17-068-0049 | 17-069-0021 | 18-048-0028 |
| 11-014-0040, 0041 | 17-068-0061 | 17-069-0023 | 18-048-0026 |
| 11-014-0048 | 17-068-0068 | 17-069-0033 | 18-049-0003, 0004 |
| 11-014-0069 | 17-068-0072 | 17-362-0004 | 18-049-0007 |
| 11-014-0070-0072 | 17-068-0075 | 18-045-0029 | 18-049-0020, 0022 |
| 11-154-0008-0010 | 17-068-0089 | 18-047-0001 | 18-055-0006-0009 |
| 11-154-0011 | 17-069-0003 | 18-047-0005 | 18-055-0018, 0019 |
| 11-405-0001 | 17-069-0014 | 12 18-046-0014 | 18-055-0027, 0029 |
| 17-068-0010 | 17-069-0017 | 18-047-0016 | 18-055-0035 |
| 17-068-0041 | 17-069-0020 | | 18-090-0002 |

CM