

Interlocal Agreement

THIS INTERLOCAL AGREEMENT is entered into as of this the 11th day of October, 2016, by and between the **REDEVELOPMENT AGENCY OF TOOELE COUNTY BOARD** (the "**AGENCY**") and the **BOARD OF EDUCATION OF THE TOOELE COUNTY SCHOOL DISTRICT** (the "**SCHOOL DISTRICT**") (collectively, the "**Parties**").

A. WHEREAS Tooele County, Utah (the "**County**"), created the Redevelopment Agency of Tooele County (the "**Agency**") which currently operates under the Utah 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 the County, as contemplated by the Act; and

B. WHEREAS the County is working to attract developers and businesses to locate and develop in the Deseret Peak Commercial Community Development Project Area (the "**Project Area**") and may need to offer certain financial incentives to secure the first anchor tenant, as described in paragraph C, for the Project Area;

C. WHEREAS the Agency has proposed to offer a financial incentive in order to assist a company doing business as "Purple" to locate its manufacturing and distribution facility in the building formerly known as the "Reckitt Benckiser" building, which is located within the Project Area, in the amount not to exceed \$3,270,115, to be paid from Tax Increment (as defined below) over a 13-year period for locating in the Project Area and leasing and investing in the distribution facility (the "**Developer Incentive**"); and

D. WHEREAS the development of the distribution facility will be undertaken pursuant to the Deseret Peak Commercial Community Development Project Area Plan which is attached hereto as **Exhibit A** and incorporated herein by this reference (the "**Project Area Plan**," which includes the legal description and map of the Project Area); and

E. WHEREAS the Developer Incentive would be funded with Tax Increment generated only by the property and building currently constructed, the legal description of which will be attached hereto as **Exhibit B** (the "**Site**"); and

F. WHEREAS the County seeks financial assistance from the Agency in order to encourage, promote and provide for development within the Project Area; and

G. WHEREAS the Agency anticipates providing tax increment (as defined in Utah Code Annotated ("UCA") § 17C-1-102(60) (hereinafter "Tax Increment"), generated within the Site, as contemplated in the Project Area Plan and described above in paragraph C; and

H. WHEREAS UCA §17C-4-201(1) authorizes the School District to consent to the payment to the Agency of a portion of the School District's share of Tax Increment

generated by taxes levied by the Tooele County School District on property within the Project Area for the purposes set forth therein; and

I. WHEREAS UCA §11-13-215 further authorizes the School District to share its tax and other revenues with the Agency; and

J. WHEREAS in order to facilitate development of the Project, the School District desires to pay to the Agency a portion of the School District's share of Tax Increment generated by taxes levied by the Tooele County School District on property within the Project Area in accordance with the terms of this Agreement; and

K. 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. School District's Consent.

a. Pursuant to Section 17C-4-201(2) (b) of the Act and Section 11-13-215 of the Cooperation Act, and subject to the limit in the following sentence, the School District hereby agrees and consents that the Agency shall be paid 100% of the School District's share of the annual Tax Increment from the Site generated by taxes levied by the Tooele County School District on all taxable property within the Site for Thirteen (13) years starting with the 2017 tax year. The maximum annual amount the Agency shall retain from the School District's portion of the Tax Increment shall be \$167,000. The Agency will remit to the School District, within 30 days after the incentive payment has been made, all additional Tax Increment received by the Agency from the School District's share above \$167,000. The School District Share shall be used for the purposes set forth in UCA § 17C-4-201(1) as reflected in the Project Area Plan and shall be disbursed as specified herein. The calculation of Tax Increment each year shall be made using the School District's 2015 tax levy rate. The Parties agree that the Base Year Tax value of the Site is the assessed value for 2007, the year the Project Area was created.

In addition to remitting to the School District the balance of the School District's share of all Tax Increment above \$167,000 after the annual incentive payment has been made, the Agency shall remit to the District 30% of any available tax increment that would be collected on the facility by other taxing entities on any amount of assessed value which is over and above the 2015 assessed value. (For purposes of this Agreement, the 2015 assessed value is \$28,705,300 and the annual property tax on that assessed value is \$415,624.) This additional Tax Increment payment shall be paid to the School District until the end of the Thirteen (13) year period established in the prior paragraph or until the incentive cap of \$3,270,115 has been reached (whichever is sooner), at which time this Agreement and the required additional payments shall terminate. The Parties agree that notwithstanding this provision to pay the School District additional tax increment above the School District portion, the Agency shall be entitled to retain adequate Tax Increment to make the Developer Incentive payment each year from all available Tax Increment and this right shall take priority

over any other payment obligation outlined in this Agreement. (A diagram illustrating the anticipated payments under this Agreement is attached as Exhibit C. In the event of a conflict between the diagram and the terms of this paragraph, the terms of the paragraph shall govern.)

b. The School District hereby authorizes and directs Tooele County to pay directly to the Agency the School District Share in accordance with UCA § 17C-4-203 for the 13-year period described in Section 1.a. above.

c. Notwithstanding the foregoing, if sooner than the expiration of the Thirteen (13) year term of this Agreement the Agency has received Tax Increment in the amount of \$3,270,115 total from all Tax Increment collected from the Taxing Entities participating in the incentive and pursuant to this Agreement, the Agency will cease collecting Tax Increment under this Agreement and this Agreement will terminate.

d. The School District's consent is contingent upon the Developer, Purple, leasing the building located on the Site and complying with all terms and conditions outlined in the participation agreement entered into with the Agency. The Agency shall send a copy of said participation agreement within 30 days after it has been approved by the Agency and Purple.

e. In the event that Purple does not locate in the Project Area, this Agreement shall become null and void and the Agency shall not receive the School District Share of Tax Increment.

2. **Authorized Uses of Tax Increment.** The Parties agree that the Agency may apply the School District Share to the payment of the Developer Incentive to the Developer, Purple, as authorized by the Act and contemplated by the Project Area Plan.

3. **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 Purple, or 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.

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

5. **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 Section 11-13-202.5(3) of the Cooperation Act;

c. A duly executed original counterpart of this 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, pursuant to Section 11-13-207 of the Cooperation Act;

e. The term of this Agreement shall commence on the date of full execution of this Agreement by both Parties and shall continue through the earliest of (1) the date on which all of the School District Share has been paid to and disbursed by the Agency as provided herein, (2) the Agency ceases to receive such Tax Increment pursuant to Section 1.a. hereof, or (3) this Agreement becomes null and void pursuant to Section 1.e.

f. Following the execution of this Agreement by both Parties, each Party shall cause a notice regarding this Agreement to be published in accordance with Section 11-13-219 of the Cooperation Act and Section 17C-4-202 of the Act. The Agency and School District hereby designate the Tooele Transcript Bulletin as the official newspaper for purposes of publishing the required notice of the Agreement.

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 both 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 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.

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

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

10. **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 the Agreement

11. 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.

12. Time is of the Essence. Time shall be of the essence of this Agreement.

13. Incorporation of Recitals. The recitals set forth above, "A" through "K," are hereby incorporated by reference as part of this Agreement.

[Signatures follow on next page]

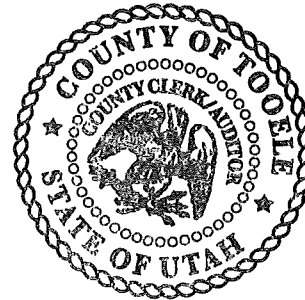
ENTERED into as of the day and year first above written.

REDEVELOPMENT AGENCY OF TOOEELE
COUNTY BOARD

By: Wade B. Bitner
Chair, Redevelopment Agency
of Tooele County Board

ATTEST:

By: Marilyn K. Lellette
Secretary




Attorney Review for the Agency:

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

Scott A. Brewer
Attorney for the Redevelopment Agency of
Tooele County

[Signatures continue on next page]

TOOELE COUNTY SCHOOL DISTRICT

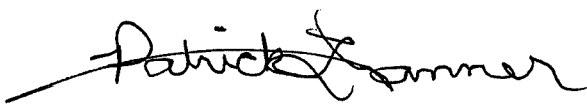
By: 
President, Board of Education of the
Tooele County School District

ATTEST:


Business Administrator, Tooele County School District

Attorney Review for the School District:

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


Attorney for Tooele County School District