

**INTERLOCAL AGREEMENT by and between the
GRANTSVILLE CITY REDEVELOPMENT AGENCY and TOOELE COUNTY for the
LAKEVIEW BUSINESS PARK COMMUNITY REINVESTMENT PROJECT AREA**

THIS INTERLOCAL AGREEMENT (“Agreement”), is entered into as of this ^{22nd} day of December, 2020 by and between the **GRANTSVILLE CITY REDEVELOPMENT AGENCY**, a political subdivision of the State of Utah (the “Agency”), and **TOOELE COUNTY**, a political subdivision of the State of Utah (the “County”). The Agency and the County may be referred to individually as a “Party” and collectively as the “Parties”.

A. WHEREAS the Agency was created pursuant to the provisions of Utah redevelopment law, 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 its boundaries, as contemplated by the Act; and

B. WHEREAS the Agency created the Lakeview Business Park Community Reinvestment Project Area (the “Project Area”) and adopted a project area plan for the Project Area on April 15, 2020 and amended it on November 4, 2020 (as amended, the “Project Area Plan”), which is incorporated herein by this reference and which includes the legal description and map of the Project Area, pursuant to which the Agency desires to provide for redevelopment within the Project Area; and

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

D. WHEREAS the Agency anticipates providing funds equal to a portion of the tax increment (as defined in Utah Code Annotated (“UCA”) § 17C-1-102(61) (hereinafter “Tax Increment”)), created by development within the Project Area, to assist in project area development within the Project Area as provided in the Project Area Plan; and

E. WHEREAS the Act authorizes the County to consent to the payment to the Agency of amounts equal to all or a portion of the Tax Increment generated from the Project Area for the purposes set forth therein; and

F. WHEREAS in order to facilitate development of the Project, the County desires to pay to the Agency an amount equal to a portion of the Tax Increment generated by the Project Area attributable to the County’s tax levy on taxable property within the Project Area in accordance with the terms of this Agreement; and

G. WHEREAS UCA § 11-13-215 further authorizes the County to share its tax and other revenues with the Agency; 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. Tax Increment.

a. Pursuant to the Act and Section 11-13-215 of the Cooperation Act, the County hereby agrees and consents that the Agency shall be paid an amount equal to ninety percent (90%) of the County’s portion of the Tax Increment generated within the Project Area for the Repayment Period (defined below) and thereafter seventy percent (70%) of the County’s portion of the Tax Increment generated within the Project Area (the “**Agency Share**”) as further described in this Agreement. The Agency Share shall be paid to the Agency as follows:

i. The Agency Share shall be paid to the Agency from the entire Project Area for the period commencing on January 1, 2022 and continuing through December 31, 2052 (the “**Collection Period**”).

ii. The Agency Share shall be used for the purposes set forth in the Act and in the Project Area Plan and shall be disbursed as specified herein. The calculation of annual Tax Increment, and thereby the Agency Share, shall be made using (a) the County’s tax levy rate during the year for which Tax Increment is to be paid and (b) the base year value for purposes of calculating Tax Increment shall be the combined assessed value of all property within the Project Area last equalized prior to the date of this Agreement, which taxable value is subject to adjustment as required by law.

b. The County hereby authorizes and directs Tooele County officials and personnel to pay directly to the Agency all amounts due to the Agency under this Agreement in accordance for the periods described herein.

c. The Agency Share shall be paid to the Agency no later than April 1st of the year following the tax year for which the Agency Share is to be paid.

d. The Agency Share may be paid to the Agency from any funding source available to the County.

2. Infrastructure Advance. Separate from and in addition to the Agency Share, the County shall advance to the Agency Six Million Dollars (\$6,000,000) for certain public infrastructure items (the “**Infrastructure Advance**”). The County and Agency shall pay, use, and repay the Infrastructure Advance as set forth below:

- a. The County shall deposit the Infrastructure Advance with the Agency on or before January 5, 2021. If the Infrastructure Advance is not deposited with the Agency on or before this date, this Agreement shall be null and void.
- b. The Agency shall only use the Infrastructure Advance for Qualifying Improvements, as defined and further described in that certain Agreement to Amend, Restate and Terminate Master Development Agreement for Lakeview Business Park by and between County and RG Lakeview, LLC, a Utah limited liability company (“**Master Developer**”), having an effective date of approximate even date herewith (the “**ARMDA**”).
- c. To secure the repayment of the Infrastructure Advance, the Agency shall use one hundred percent (100%) of Tax Increment attributable to the County’s levy on taxable property within the Project Area (“**County TI**”) to reimburse the County, until the County is repaid for the entire amount of the Infrastructure Advance, plus interest at the same rate as interest is paid to Master Developer as “Participant” under that certain Participation Agreement for the Lakeview Business Park Community Reinvestment Project Area dated April 15, 2020 (the “**Participation Agreement**”, see Ex. E to the ARMDA). Interest shall begin to accrue on January 5, 2021. In addition to receiving the County TI, the County shall also be entitled to be paid from the remaining Project Area Funds (as defined in the Participation Agreement) excluding County TI, which other Project Area Funds is defined herein as the “**Other TI**”, on a pro rata basis until such time as the County is repaid for the full amount of the Infrastructure Advance, with interest. The pro rata share percentage for distribution of the Other TI shall be determined annually as of January 1 by determining the total amounts expended by Master Developer as “Participant” for “Infrastructure Improvements” and all other reimbursable expenses under the Participation Agreement, and that remain unreimbursed, and then determining a percentage by comparing such unreimbursed expenditures by Participant to the County’s \$6,000,000 Infrastructure Advance. By way of example only, if as of January 1 the total amount expended by Participant under the Participation Agreement that have not been reimbursed is \$2,000,000, then the Other TI for that year shall be allocated as follows: 67% to the County and 33% to Participant.
- d. The allocation of the Other TI shall occur annually until such time as those entitled to reimbursement under the Participation Agreement are reimbursed. The Agency shall make all payments within thirty (30) days of the receipt of the County TI and Other TI by the Agency, less administrative costs allowed to be charged, if any, by the Agency under the Participation Agreement. Payment of County TI, and a pro rata share of the Other TI, shall continue until all of the Infrastructure Advance is fully repaid, plus interest at the same interest rate paid to Master Developer under the Participation Agreement. The repayment of the entire amount of the Infrastructure Advance, plus interest, shall be collectively referred to as “**County Repayment.**” County Repayment must continue annually, as described above, from the County TI and Other TI, until repaid (the “**Repayment Period**”).

- i. Notwithstanding any other provision in this Agreement, the Repayment Period shall not extend beyond the end of the Collection Period. If the County TI and the County portion of the Other TI, together, are insufficient to achieve full repayment of the Infrastructure Advance, including interest, at or before the end of the Collection Period, then any remaining amounts due to the County toward repayment of the Infrastructure Advance shall be forgiven and shall not be repaid by the Agency to the County.
- e. The Agency shall not amend the Participation Agreement with Master Developer to reduce or eliminate the interest payable to Master Developer in the Participation Agreement until the Agency has repaid the County the entire amount of the Infrastructure Advance, plus interest, as set forth herein.
- f. In the event of a dispute relating in any way to the Infrastructure Advance or the repayment thereof, or relating in any way to the ARMDA, the Agency's costs relating thereto shall be, at the Agency's sole and absolute discretion, paid from the Infrastructure Advance and the County TI.
- g. The Agency may, at any time, opt to fully repay the outstanding amount of the Infrastructure Advance to the County; upon such occurrence, the Infrastructure Advance shall be treated as having been made by the Agency, with the Agency receiving repayment and interest from Tax Increment for the Infrastructure Advance on the same terms as agreed to by the County in this Agreement.

3. **Authorized Uses of Tax Increment and Agency Share.** The Parties agree that the Agency may apply the funds collected hereunder to encourage the development of the Project Area as deemed appropriate by the Agency and contemplated in the Project Area Plan, including but not limited to the installation, construction, and maintenance of public infrastructure and other improvements located within or benefitting the Project Area, incentives or reimbursements 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.

4. **Sole Source of Funding.** The entirety of the repayment of the Infrastructure Advance contemplated in this Agreement will be funded solely by the Project Area Funds (as defined in the Participation Agreement) and distributed as contemplated by this Agreement. The County is not, and shall not be, entitled to any other funds collected by the Agency for the Project Area or any other funds held by the Agency. Agency may, at its sole and absolute discretion, cooperate in efforts to have bonds or other financing issued based upon the revenue streams generated from the Project Area pursuant to this Agreement, provided that any such bonds or financing are non-recourse to the Agency and the bond or financing proceeds are used for purposes described in the Project Area Plan. Other than the repayment of the Infrastructure Advance as contemplated by this Agreement, the Agency shall have no obligation to make any payment to the County from Tax Increment or from any other source in connection with the Project Area or the development thereof.

5. **Consent to Project Area Budget.** The County hereby consents to the Project Area Budget as adopted and approved by the Agency on April 15, 2020, and as amended in accordance with applicable law (the “**Budget**”).

6. **Reduction or Elimination of Tax Increment.** The Parties agree that the County and Master Developer as an intended third-party beneficiary, assume and accept the risk of possible alteration of federal or state statute, regulation, or adjudication rendering unlawful or impractical the collection, receipt, disbursement, or application of the County TI and the Other TI as contemplated in and by this Agreement. If the provisions of Utah law which govern the payment or use of the County TI and the Other TI are changed or amended so as to reduce or eliminate the amount paid to the Agency under this Agreement, the Agency’s obligation to repay the Infrastructure Advance to the County, or the terms under which the Infrastructure Advance may be repaid, the Agency’s obligation to repay the Infrastructure Advance to the County will be proportionately reduced or eliminated, but only to the extent necessary to comply with the changes in such law. The County agrees and acknowledges that it has made such investigations as necessary and assumes all risk as to whether the Project Area, the Project Area Plan, the Budget, and this Agreement were properly approved, adopted and made effective. The County acknowledges, understands, and agrees that the Agency is under no obligation to challenge the validity, enforceability, or constitutionality of a change in law that reduces or eliminates the payment of repayment of the Infrastructure Advance to the County, or to otherwise indemnify or reimburse the County for its actions to independently do so.

7. **Acknowledgement by County.** The County agrees and acknowledges that the development of the Project Area, the installation of public infrastructure, and the generation of Tax Increment is the responsibility of the developer of and/or property owners in the Project Area and that the Agency has no obligations relating to development within or for the benefit of the Project Area other than those express obligations as may be contained in this Agreement or in the Participation Agreement.

8. **Declaration of Invalidity.** In the event any legal action is filed in a court of competent jurisdiction that seeks to invalidate the Project Area or this Agreement or that otherwise seeks to or would have the possible result of reducing or eliminating the repayment of the Infrastructure Advance to the County, the Agency shall provide written notice of such legal action to the County. In the event such an action is filed, the Agency shall have no obligation to challenge that action or defend itself against such action but agrees not to enter into any settlement, consent, decree, or other resolution without first providing the County a reasonable opportunity to intervene and defend the rights and privileges provided under this Agreement. If requested by the County, the Agency may, at its sole discretion, take such actions as may be reasonably required to defend such legal action and to address the grounds for any causes of action that could result in the reduction or elimination of the repayment of the Infrastructure Advance. In the event that the court declares that the Agency cannot receive the County TI or the Other TI or cannot repay all or a portion of the Infrastructure Advance, invalidates the Project Area, or this Agreement, or takes any other action which eliminates or reduces the amount of Tax Increment received by the Agency, and the grounds for the legal determination cannot reasonably be addressed by the Agency, the Agency’s obligation to repay to the County the Infrastructure Advance in accordance with this Agreement will be reduced or eliminated to the extent required by law.

9. **Third-Party Beneficiary.** Except for the Master Developer, which is an intended third-party beneficiary under this Agreement, this Agreement is solely for the benefit of the Parties hereto and shall be enforceable by no other individual or entity.

10. **Limits on Liability.** In no event shall one Party be liable to the other(s) for consequential, special, incidental, indirect, exemplary, or punitive damages of any kind (including, but not limited to, loss of profits, loss of reputation, or loss of current or prospective business advantage, even where such losses are characterized as direct damages) arising out of or in any way related to the relationship or dealings between the County and the Agency, regardless of whether the claim under which damages are sought is based upon contract, tort, negligence (of any kind), willful misconduct, strict liability or otherwise, and regardless of whether the Parties have been advised of the possibility of such damages at the time of contracting or otherwise.

11. **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 Project and the Project's 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.

12. **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. Once executed, a copy 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.

e. 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.

f. The term of this Agreement shall commence on the publication of the notice described in Section 11-13-219 of the Cooperation Act and shall continue through the date that is 180 days after the date on which all of 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, 2060.

13. **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 and with Master Developer's consent. Any oral representation or modification concerning this Agreement shall be of no force or effect.

14. **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.

15. **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.

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

17. **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 Grantsville, Utah.

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

19. **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.

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

21. **Authorization.** Each of the Parties hereto represents and warrants to the others 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.

22. **Time of the Essence.** Time shall be of the essence in the performance of this Agreement.

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


24. **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.

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


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

AGENCY:

GRANTSVILLE CITY
REDEVELOPMENT AGENCY,
a political subdivision of the State of Utah


Name: Brent K. Marshall
Title: Chairman


Attest:


Name: Christine Webb
Title: Recorder



Attorney Review for the Agency:

The undersigned, as counsel for the Grantsville City Redevelopment 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 on next page]

COUNTY:


TOOELE COUNTY,
a political subdivision of the State of Utah



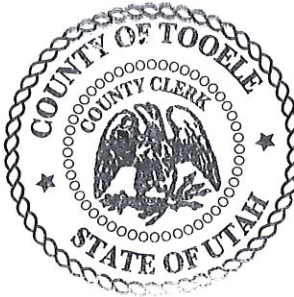
Name: Tom Tripp

Title: Tooele County Commission, Chair

Attest:



Name: Marilyn K Gillette
Title: County Clerk



Attorney Review for the County:

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

Colin Winchester 01/07/2021

Name: COLIN WINCHESTER
DEPUTY TOOELE COUNTY ATTORNEY