

**Resolution No. 17-39**

**RESOLUTION OF SOUTH OGDEN CITY APPROVING INTERLOCAL AGREEMENTS WITH THE SOUTH OGDEN CITY COMMUNITY DEVELOPMENT AND RENEWAL AGENCY FOR THE SOUTH OGDEN AUTOMALL COMMUNITY REINVESTMENT PROJECT AREA**

**WHEREAS** pursuant to the provisions of the Interlocal Cooperation Act, Title 11, Chapter 13, Utah Code Annotated 1953, as amended (the “**Act**”), public agencies, including political subdivisions of the State of Utah as therein defined, are authorized to enter into mutually advantageous agreements for joint and cooperative actions, including the sharing of tax and other revenues; and

**WHEREAS** the South Ogden City Community Development and Renewal Agency (the “**Agency**”) and South Ogden City (the “**City**”) are “public agencies” for purposes of the Act; and

**WHEREAS** after careful analysis and consideration of relevant information, the City desires to enter into interlocal agreements with the Agency (the “**Interlocal Agreements**”) whereby the City agrees to share with the Agency a portion of the City’s sales tax revenue and property tax revenue generated within the South Ogden Automall Community Reinvestment Project Area (the “**Project Area**”); and

**WHEREAS** Section 11-13-202.5 of the Act requires that certain interlocal agreements be approved by resolution of the legislative body of a public agency.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF SOUTH OGDEN CITY AS FOLLOWS:**

1. The Interlocal Agreements, substantially in the form attached hereto as **EXHIBIT A** and **B**, and with such changes as may be deemed advisable or necessary by the Mayor, are approved and shall be executed by the City.

2. Pursuant to Section 11-13-202.5 of the Act, the Agreement has been submitted, or will be submitted prior to execution, to legal counsel of the City for review and approval as to form and legality.

3. Pursuant to Section 11-13-209 of the Act and upon full execution of the Interlocal Agreement, a copy thereof shall be filed immediately with the keeper of records of the City.

4. As required by Utah Code § 17C-5-304, the City hereby consents to the Project Area Budget for the Project Area as adopted by the Agency on July 18, 2017.

5. This Resolution shall take effect upon adoption.

**PASSED AND ADOPTED BY THE CITY COUNCIL OF SOUTH OGDEN CITY,  
STATE OF UTAH, on this 17<sup>th</sup> day of October, 2017.**

**SOUTH OGDEN CITY**

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James F. Minster, Mayor

**ATTEST:**

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Leesa Kapetanov, MMC, City Recorder

**EXHIBIT A**  
to South Ogden City Resolution No. 17-39

*Sale Tax Interlocal with the South Ogden City Community Development and Renewal  
Agency*

**SOUTH OGDEN AUTOMALL  
COMMUNITY REINVESTMENT PROJECT AREA**

**INTERLOCAL AGREEMENT by and between the SOUTH OGDEN CITY  
COMMUNITY DEVELOPMENT AND RENEWAL AGENCY and THE CITY OF  
SOUTH OGDEN**

**THIS INTERLOCAL AGREEMENT** is entered into as of this 17<sup>th</sup> day of October, 2017, by and between the **SOUTH OGDEN CITY COMMUNITY DEVELOPMENT AND RENEWAL AGENCY**, a political subdivision of the State of Utah (the “**Agency**”) and **THE CITY OF SOUTH OGDEN, UTAH**, a political subdivision of the State of Utah (the “**City**”); the Agency and the City may also be individually referred to as “**Party**” and collectively as “**Parties**”).

**A. WHEREAS** the City created the Agency pursuant to the provisions of Utah Redevelopment Law and the Agency 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 urban renewal, economic development, community development, and community reinvestment activities within the City, as contemplated by the Act; and

**B. WHEREAS** the Agency created the South Ogden Automall Community Reinvestment Project Area (the “**Project Area**”) and adopted a community reinvestment project area plan for the Project Area (the “**Project Area Plan**”) on July 18, 2017, which is incorporated herein by this reference, which includes the legal description and a map of the Project Area, pursuant to which the Agency desires to provide for redevelopment within the Project Area; and

**C. WHEREAS** the City receives sales tax revenue from sales occurring within its borders and the City and the Agency have determined that it is in the best interests of the residents of the City to provide certain financial assistance through the use of a portion of that local sales tax in connection with the development of the Project Area as set forth in the Project Area Plan; and

**D. WHEREAS** the Agency anticipates providing a portion of the sales tax revenue, generated by sales occurring within the Project Area to assist in the development as contemplated by Project Area Plan; and

**E. WHEREAS** Utah Code Ann (“**UCA**”) § 11-13-215 authorizes the City to share its tax and other revenues with the Agency; and

**F. WHEREAS** in order to facilitate development of the Project, the City desires to pay to the Agency a portion of the City’s sales tax revenue generated within the Project Area in accordance with the terms of this Agreement; and

**G. 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. Point of Sale Tax.** Sales occurring within the boundaries of the City are currently subject to a one (1) percent sales tax (the “**Local Sales Tax**”) per Title 59, Chapter 12, Part 2 of the UCA, the Local Sales and Use Tax Act, and more particularly per UCA § 59-12-204. The City retains fifty (50) percent of that one-percent tax as set forth in UCA § 59-12-205(2)(b) based on the transaction occurring within the boundaries of the City (the “**Point-of-sale Tax**” or “**POST**”).

**a. Changes to Laws.** If changes are made to Utah laws during the term of this Agreement that affect the amount of or calculation of the POST, the POST shall be defined as that Local Sales Tax revenue that is retained by or distributed to the City on the basis of taxable transactions occurring within the boundaries of the City, whether that amount be more or less than the current amount.

**2. City's Consent.** Pursuant to Section 17C-5-204 of the Act and Section 11-13-215 of the Cooperation Act, the City hereby agrees and consents that the Agency shall be paid ten percent (10%) of the POST generated by sales within the Project Area to be used to facilitate development within the Project Area (the “**Agency Share**”).

**3. Restrictions on Agency Share.** The payment of the Agency Share from the City to the Agency shall be subject to the following provisions:

**a. Time Limit.** The Agency Share shall not be paid to the Agency for any period before January 1, 2018 or beyond December 31, 2029.

**b. Incentive Amounts.** The total Agency Share paid to the Agency under this Agreement shall not exceed \$220,000.

**c. Timing of Payment.** The City shall pay the Agency Share to the Agency on at least an annual basis. Such payment shall be made within thirty (30) days after the City receives the final payment of the POST for the preceding calendar year.

**4. Use of Tax Increment and other Taxes.** Any property tax increment to be received by the Agency will be governed by separate interlocal agreement(s).

**5. Authorized Uses of Agency Share.** The Parties agree that the Agency may apply the Agency Share as 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, 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.

**6. Consent to Project Area Budget.** As required by UCA § 17C-5-304, the City consents to the Project Area Budget adopted by the Agency for the Project Area.

**7. 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.

**8. 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 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.

**9. 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 on 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, pursuant to Section 11-13-207 of the Cooperation Act;

**e.** The term of this Agreement shall commence on the publication of the notice required by Section 17C-5-205 of the Act and shall continue through the date on which all of the Agency Share has been paid to and disbursed by the Agency as provided herein.

**f.** Following the execution of this Agreement by both Parties, the Parties shall cause a notice regarding this Agreement to be published in accordance with Section 11-13-219 of the Cooperation Act and Section 17C-5-205 of the Act.

**10. 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.

**11. Further Assurances and Cooperation.** 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. 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.

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

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

**14. 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.

**15. 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.

**16. Time of the Essence.** Time shall be of the essence of this Agreement.

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

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

**19. Counterparts.** This Agreement may be executed in duplicate originals, each of which shall be deemed an original.

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

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

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

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James F. Minster, Chairperson

ATTEST:

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Leesa Kapetanov, Secretary

Attorney Review for the Agency:

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

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Adam S. Long  
Attorney for the Agency

*[signatures continue on next page.]*

*[additional signatures to Interlocal Agreement]*

**CITY OF SOUTH OGDEN**

By: \_\_\_\_\_  
James F. Minster, Mayor

ATTEST:

Leesa Kapetanov, MMC, City Clerk

Attorney Review for the City:

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

\_\_\_\_\_, Attorney for the City

**EXHIBIT B**

to South Ogden City Resolution No. 17-39

*Tax Increment Interlocal with the South Ogden City Community Development and Renewal Agency*

**SOUTH OGDEN AUTOMALL  
COMMUNITY REINVESTMENT PROJECT AREA**

**INTERLOCAL AGREEMENT by and between the SOUTH OGDEN CITY  
COMMUNITY DEVELOPMENT AND RENEWAL AGENCY and THE CITY OF  
SOUTH OGDEN**

**THIS INTERLOCAL AGREEMENT** is entered into as of this 17<sup>th</sup> day of October, 2017, by and between the **SOUTH OGDEN CITY COMMUNITY DEVELOPMENT AND RENEWAL AGENCY**, a political subdivision of the State of Utah (the “Agency”) and **THE CITY OF SOUTH OGDEN, UTAH**, a political subdivision of the State of Utah (the “City”; the Agency and the City may also be individually referred to as “Party” and collectively as “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 urban renewal, economic development, community development, and community reinvestment activities within its boundaries, as contemplated by the Act; and

**B. WHEREAS** the Agency created the South Ogden Automall Community Reinvestment Project Area (the “Project Area”) and adopted a community reinvestment project area plan for the Project Area (the “Project Area Plan”) on July 18, 2017, which is incorporated herein by this reference, which includes the legal description and a map of the Project Area, pursuant to which the Agency desires to provide for redevelopment within 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 Plan; 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 by development within the Project Area, to assist in the development of the Project Area as provided in the Project Area Plan; and

**E. WHEREAS** UCA § 17C-5-204(3) authorizes the Taxing Entity to consent to the payment to the Agency of a portion of the Taxing Entity’s share of Tax Increment generated from the Project Area for the purposes set forth therein; 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 of the Project, the Taxing Entity desires to pay to the Agency a portion of the Taxing Entity's share of Tax Increment generated by 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. Tax Increment.**

**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 one hundred percent (100%) of the Taxing Entity's portion of the Tax Increment generated within the Project Area (the "**Taxing Entity's Share**") for 12 years, for tax years 2018 through 2029 (to be paid in 2030), inclusive. Each Taxing Entity's 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 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 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. All centrally assessed property within the Project Area, if any, shall be excluded from the calculation of Tax Increment under this Agreement.

**b.** The total cumulative Taxing Entity's Share paid to the Agency pursuant to this Agreement shall not exceed \$170,000.00.

**c.** The Taxing Entity hereby authorizes and directs Weber County officials and personnel to pay directly to the Agency all amounts due to the Agency under this Agreement in accordance with UCA § 17C-5-206 for the periods described herein.

**2. Authorized Uses of Tax Increment.** The Parties agree that the Agency may apply the Tax Increment 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 cost and maintenance of public infrastructure and other improvements located within or benefitting the Project Area, 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.

**3. 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.

**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 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.

**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 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, pursuant to Section 11-13-207 of the Cooperation Act.

**e.** The term of this Agreement shall commence on the publication of the notice required by Section 17C-5-205 of the Act and shall continue through the date on which all of the final payment of Tax Increment as described herein has been paid to the Agency as provided herein.

**f.** 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. 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,” “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 this Agreement.

**11. 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.

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

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

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

**15. Counterparts.** 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

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

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

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

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James F. Minster, Chairperson

ATTEST:

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Leesa Kapetanov, Secretary

Attorney Review for the Agency:

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

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Adam S. Long  
Attorney for the Agency

*[signatures continue on next page]*

*[additional signatures to Interlocal Agreement]*

**CITY OF SOUTH OGDEN**

By: \_\_\_\_\_  
James F. Minster, Mayor

ATTEST:

\_\_\_\_\_  
Leesa Kapetanov, MMC, City Clerk

**Attorney Review for the City:**

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

\_\_\_\_\_  
\_\_\_\_\_, Attorney for the City