# **THANKSGIVING**

# **COMMUNITY REINVESTMENT PROJECT AREA**

# **INTERLOCAL AGREEMENT**

# **by and between the**

# **BOX ELDER COUNTY REDEVELOPMENT AGENCY**

# **and**

# **BOX ELDER COUNTY**

**THIS INTERLOCAL AGREEMENT** (this “**Agreement**”) is entered into as of this\_\_\_\_ day of \_\_\_\_\_\_\_\_, 2020 (the “**Effective Date**”), by and between the **BOX ELDER COUNTY REDEVELOPMENT AGENCY,** a political subdivision of the State of Utah (the “**Agency**”), and **BOX ELDER 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 Box Elder County, Utah (the “**County**”), as contemplated by the Act; and

**B. WHEREAS** the Agency created the Thanksgiving Project Community Reinvestment Project Area (the **“Project Area”**) and adopted the Thanksgiving Project Community Reinvestment Project Area Plan for the Project Area (the “**Project Area Plan**”), a copy of which is attached hereto as **EXHIBIT A** and incorporated herein by this reference, which includes the legal description and a map of the Project Area, pursuant to which the Agency desires to encourage, promote and provide for development in 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) in connection with the development of the Project Areas as set forth in the Project Area Plan; and

**D. WHEREAS** the Agency anticipates providing tax increment (as defined in Utah Code Annotated **(“UCA”)** § 17C-1-102(60) (hereinafter “**Tax Increment**”)), generated from 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-5-202(1) authorizes the County to consent to the payment to the Agency the full amount of the County’s share of Tax Increment generated within the Project Area (the “**County Tax Increment**”) for the purposes set forth therein; and

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

**G. WHEREAS** in order to facilitate development of the Project, the County desires to pay to the Agency a portion of the County 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.**  **Tax Increment.**

 a. Pursuant to Sections 17C-5-202(1) and 204 of the Act and Section 11-13-215 of the Cooperation Act, the County hereby agrees and consents that the Agency shall be paid one hundred percent (100%) of the County Tax Increment generated within the Project Area for up to eleven (11) consecutive years on Personal Property only. If required by law, the Agency anticipates allocating up to ten percent (10%) of such funds for housing in accordance with UCA § 17C-5-307. The Agency may begin collecting increment, or “trigger” the collection of Tax Increment, upon written notice to the County. 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, 2032. 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, 2022 in order to receive the full eleven years of Tax Increment contemplated by this Agreement.

 b. The County hereby authorizes and directs County officials and personnel to pay directly to the Agency all amounts due to the Agency under this Agreement in accordance with UCA § 17C-5-204 for the periods described herein.

 c. The County shall maintain records of all amounts paid to the Agency under this Agreement on a parcel-by-parcel basis.

 **2. Authorized Uses of Tax Increment.** The Parties agree that the Agency may apply the County Tax Increment collected hereunder to encourage development within the Project Area as deemed appropriate by the Agency and contemplated in the Project Area Plan, including but not limited to incentives to developers or participants within the Project Area, administrative, overhead, legal, affordable housing, and other operating expenses of the Agency, and any other purposes deemed appropriate by the Agency, all as authorized by the Act.

**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 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. Return of Tax Increment to the County.** If the Agency, in its sole discretion, is unable to utilize the full amount of the County Tax Increment for the uses authorized in Section 2, above, then the Agency shall return to the County that portion of the County Tax Increment that the Agency is unable to utilize.

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

**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 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.

**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 on behalf of each Party pursuant to and in accordance with the Section 11-13-202.5(3) of the Cooperation Act.

 c. An executed 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. 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 required by Section 17C-5-205 of the 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, 2040.

 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.

**8. 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.

**9. 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. The Parties further agree to take any actions as may be required by or in compliance with the Act or the Cooperation Act as necessary.

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

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

**12. Severability.** If any provision of this Agreement is 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.

**13. 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.

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

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

**16. 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.

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

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

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

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

*AGENCY’S SIGNATURE PAGE TO INTERLOCAL AGREEMENT*

**BOX ELDER COUNTY REDEVELOPMENT AGENCY**

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

**Name:**

**Title:**

***Attest:***

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

**Name:**

**Title:**

**Attorney Review for the Agency:**

The undersigned, as attorney for the Box Elder County 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]*

*COUNTY’S SIGNATURE PAGE TO INTERLOCAL AGREEMENT*

 **BOX ELDER COUNTY COMMISSION**

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

 Name:

 Title:

***Attest:***

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

Name:

Title:

**Attorney Review for the County:**

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

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name:

**EXHIBIT A**

*Project Area Plan*

(attached)