



Herriman City Fire Safety Area Agenda

Wednesday, August 23, 2023

NOTICE IS HEREBY GIVEN that the Herriman City Council shall assemble for a meeting in the City Council Chambers, located at
5355 WEST HERRIMAN MAIN STREET, HERRIMAN, UTAH

1. Call to Order - 6:50 p.m. (or as soon as possible thereafter)

2. Approval of Minutes

2.1. Motion for review and outline of the finalization process to approve the minutes of August 23, 2023

3. Consent Agenda

3.1. Consideration of an Interlocal Agreement with the Herriman Community Development and renewal Agency providing certain financial assistance through the use of Tax Increment in the Herriman Towne Center, Herriman Business Park, and Anthem project areas

4. Adjournment

In accordance with the Americans with Disabilities Act, Herriman City will make reasonable accommodation for participation in the meeting. Request assistance by contacting Herriman City at (801) 446-5323 or info@herriman.org and provide at least 48 hours advance notice of the meeting.

ELECTRONIC PARTICIPATION: Members may participate electronically via telephone, Skype, or other electronic means during this meeting.

I, Jackie Nostrom, certify the foregoing agenda was emailed to at least one newspaper of general circulation within the geographic jurisdiction of the public body, at the principal office of the public body, on the Utah State Public Notice website www.utah.gov/pmn/index.html and on Herriman City's website at www.herriman.org

Posted and Dated this 17th day of August, 2023

Jackie Nostrom, City Recorder

5355 W. Herriman Main St. • Herriman, Utah 84096
(801) 446-5323 office • herriman.org

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STAFF REPORT

DATE: July 13, 2023

TO: The Herriman Fire Safety Area Board of Directors

FROM: Nathan Cherpeski, City Manager

SUBJECT: Consideration of an Interlocal Agreement with the Herriman Community Development and Renewal Agency to provide certain financial assistance through the use of Tax Increment in the Herriman Towne Center, Herriman Business Center, and Anthem Town Center project areas

RECOMMENDATION:

Staff recommends adopting the attached Interlocal Agreements.

ISSUE BEFORE COUNCIL:

Should the Board approve the attached Interlocal Agreements?

BACKGROUND/SUMMARY:

When the three project areas were created, the City was a member of the Unified Fire Service Area (UFSA). Incremental taxes collected by UFSA were contributed to the Agency to fund development in the project areas. When the City left UFSA, no determination was made by the new Herriman City Fire Service Area Board to participate or not. At a recent Board meeting, the Board directed staff to return with the attached Interlocal Agreements for consideration by the Board.

DISCUSSION:

When the City withdrew from the UFSA, the increment that would have gone to the Agency and used to meet obligations was no longer collected. The impact for each area is as follows:

CDA Area	% Participation	Annual (Calendar Year 2024)	Cumulative	Ending Year (Calendar Year)
Herriman Towne Center	80%	\$614,011	\$8,714,065	2033

Herriman Business Center	75%	\$229,898	\$3,590,503	2038
Anthem	75%	\$114,415	\$1,465,397	2035
Totals		\$958,324	\$13,769,965	

The proposed Interlocal Agreements are not retroactive but will begin participation next calendar year (2024).

ALTERNATIVES:

1. Approve the attached agreements as presented
2. Approve the agreements as amended by the Board of Directors
3. Decline to act and provide staff further direction.

FISCAL IMPACT:

The impact for the district is shown above. The idea behind such financing is that the development would not have occurred without some investment by the agency. Once the investment is satisfied, each taxing entity will receive higher taxes than if the incentive had not been given.

ATTACHMENTS:

Interlocal Agreements:

Herriman Towne Center
Herriman Business Center
Anthem

INTERLOCAL COOPERATION AGREEMENT

This Interlocal Cooperation Agreement ("Agreement") is between _____, a Utah _____ ("Agency"), and _Herriman City Fire Services Area ("Fire District"). This Agreement is effective when the last party executes this Agreement as indicated by the date stated under that party's signature line ("Effective Date").

Recitals

A. The Agency was created and organized pursuant to the Limited Purpose Local Government Entities - Community Reinvestment Agency Act, Title 17C of the UCA (the "Act"), and is authorized and empowered under the Act to undertake, among other things, various community development activities pursuant to the Act, including, among other things, assisting Herriman City ("City") in development activities that are likely to advance the policies, goals and objectives of the City's general plan, contributing to capital improvements which substantially benefit the City, creating economic benefits to the City, and improving the public health, safety and welfare of its citizens.

B. The Fire District has determined that it is in the best interest of the Fire District to provide certain financial assistance through the use of Tax Increment (as defined below) in connection with the development of the project area. Such development and growth will greatly benefit the Fire District in the future.

C. This Agreement is made pursuant to the provisions of the Act and the Interlocal Cooperation Act (UCA Title 11, Chapter 13) ("Cooperation Act").

NOW, THEREFORE, the parties agree as follows:

1. [Terms]. The Parties agree that for purposes of calculation of the Fire District's share of Tax Increment from the Project Area to be paid by the County to the Agency pursuant to this Agreement, the base year shall be 2016, and the base taxable value shall be \$384,642, which base taxable value is subject to adjustment by law in accordance with the provisions of the Community Reinvestment Agency Act. Pursuant to Section 17C-5-204 of the Community Reinvestment Agency Act and Sections 11-13-202.5 and 11-13-215 of the Cooperation Act, the

Fire District hereby agrees and consents that the project area funds collection period (the "Project Area Funds Collection Period") shall be fourteen (14) years and in no instance shall it extend beyond 2038. During the Project Area Funds Collection Period, the Agency shall receive and be paid seventy five percent (75%) of the tax increment attributable to the Fire District's tax levy on both real and personal property within the Project Area (the "Fire District Share"), for the purpose of providing funds to the Agency to carry out the Project Area Plan. The Project Area Funds Collection Period shall commence with 2024 at the by written notice to the Fire District and to the Salt Lake County Auditor and Assessor; and provided further, that any portion of the Fire District's taxes resulting from an increase in the Fire District's tax rate pursuant to applicable hearing procedures (truth in taxation), that occurs after the Effective Date (defined below) of this Agreement, shall not be paid to the Agency unless the Fire District specifically so consents in writing pursuant to an amendment

to this Agreement or in a separate agreement. All tax increment from the Project Area attributable to the Fire District's tax levy for tax years beyond the Project Area Funds Collection Period shall be paid by Salt Lake County to the Fire District, For the fourteen (14) year period described above, the remaining 25% of the Tax Increment attributable to the Fire District's tax levy on both real and personal property within the Project Area shall be paid by Salt Lake County to the Fire District. All tax increment from the Project Area attributable to the Fire District's tax levy for tax years beyond the fourteen (14) year period described above shall be paid by Salt Lake County to the Fire District. The calculation of the Fire District's portion of annual Tax Increment to be paid by the County to the Agency shall be made as required by Utah Code Ann. 17C-1-102(60) (a), using the then current tax levy rate (subject to the limitation set forth above regarding increases in the City's tax rate pursuant to applicable hearing procedures).

2. **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.

3. **Further Documents and Acts.** Each of the parties hereto agrees to cooperate in good faith with the others, and to execute and deliver such further documents and perform such other acts as may be reasonably necessary or appropriate to consummate and carry into effect the transactions contemplated under this Agreement.

4. **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 Fire District:

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.

5. **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.

6. **No Third Party Benefit.** The parties do not intend to confer any benefit hereunder on any person, firm or corporation other than the parties hereto. There are no intended third party beneficiaries to this Agreement.

7. **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.

8. **Partial Invalidity.** If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each such term and provision of this Agreement shall be valid and shall be enforced to the fullest extent permitted by law.

9. **Amendments.** No addition to or modification of any provision contained in this Agreement shall be effective unless fully set forth in writing executed by each of the parties hereto.

10. **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.

11. **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.

12. **Governing Law.** This Agreement and the exhibits attached hereto shall be governed by and construed under the laws of the State of Utah. In the event of any dispute hereunder, it is agreed that the sole and exclusive venue shall be in a court of competent jurisdiction in Utah County, Utah,

and the parties hereto agree to submit to the jurisdiction of such court.

13. **No Separate Legal Entity.** No separate legal entity is created by this Agreement.
14. **Duration.** This Agreement shall terminate forty (40) years after the Effective Date.
15. **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.
16. **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.
17. **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 has been, on or prior to the date hereof, 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 has been, on or prior to the date hereof, 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 provisions of 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; and
 - e. Should a party to this Agreement desire to terminate this Agreement, in part or in whole, each party to the Agreement must adopt, by resolution, an amended Interlocal Cooperation Agreement stating the reasons for such termination. Any such amended Interlocal Cooperation Agreement must be in harmony with any development/participation agreement(s) entered into by the Agency as described in this Agreement.
 - f. Immediately after execution of this Agreement by both Parties, the Agency shall, on behalf of both parties, cause to be published notice regarding this Agreement pursuant to Section 11-13-219 of the Cooperation Act.

g. This Agreement makes no provision for the parties acquiring, holding and disposing of real and personal property used in the joint undertaking as such action is not contemplated as part of this Agreement nor part of the undertaking. Any such provision would be outside the parameters of the current undertaking. However, to the extent that this Agreement may be construed as providing for the acquisition, holding or disposing of real and/or personal property, all such property shall be owned by the Agency upon termination of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day specified above.

Fire District:

Attest:

By: _____

Its: Board Chair

Secretary

Approved as to form:

Attorney for Fire District

Agency:

Attest:

By: _____

Its: Chair

Secretary

Approved as to form:

Attorney for Agency

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B. The Fire District has determined that it is in the best interest of the Fire District to provide certain financial assistance through the use of Tax Increment (as defined below) in connection with the development of the project area. Such development and growth will greatly benefit the Fire District in the future.

C. This Agreement is made pursuant to the provisions of the Act and the Interlocal Cooperation Act (UCA Title 11, Chapter 13) ("Cooperation Act").

NOW, THEREFORE, the parties agree as follows:

1. [Terms]. The Parties agree that for purposes of calculation of the Fire District's share of Tax Increment from the Project Area to be paid by the County to the Agency pursuant to this Agreement, the base year shall be 2017, and the base taxable value shall be \$10,248,574, which base taxable value is subject to adjustment by law in accordance with the provisions of the Community Reinvestment Agency Act. Pursuant to Section 17C-5-204 of the Community Reinvestment Agency Act and Sections 11-13-202.5 and 11-13-215 of the Cooperation Act, the

Fire District hereby agrees and consents that the project area funds collection period (the "Project Area Funds Collection Period") shall be ten (10) years and in no instance shall it extend beyond 2035. During the Project Area Funds Collection Period, the Agency shall receive and be paid seventy five percent (75%) of the tax increment attributable to the Fire District's tax levy on both real and personal property within the Project Area (the "Fire District Share"), for the purpose of providing funds to the Agency to carry out the Project Area Plan. The Project Area Funds Collection Period shall commence with 2024 at the by written notice to the Fire District and to the Salt Lake County Auditor and Assessor; and provided further, that any portion of the Fire District's taxes resulting from an increase in the Fire District's tax rate pursuant to applicable hearing procedures (truth in taxation), that occurs after the Effective Date (defined below) of this Agreement, shall not be paid to the Agency unless the Fire District specifically so consents in writing pursuant to an amendment

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Secretary

Approved as to form:

Attorney for Fire District

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10. **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.

11. **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.

12. **Governing Law.** This Agreement and the exhibits attached hereto shall be governed by and construed under the laws of the State of Utah. In the event of any dispute hereunder, it is agreed that the sole and exclusive venue shall be in a court of competent jurisdiction in Utah County, Utah,

and the parties hereto agree to submit to the jurisdiction of such court.

13. **No Separate Legal Entity.** No separate legal entity is created by this Agreement.
14. **Duration.** This Agreement shall terminate forty (40) years after the Effective Date.
15. **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.
16. **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.
17. **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 has been, on or prior to the date hereof, 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 has been, on or prior to the date hereof, 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 provisions of 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; and
 - e. Should a party to this Agreement desire to terminate this Agreement, in part or in whole, each party to the Agreement must adopt, by resolution, an amended Interlocal Cooperation Agreement stating the reasons for such termination. Any such amended Interlocal Cooperation Agreement must be in harmony with any development/participation agreement(s) entered into by the Agency as described in this Agreement.
 - f. Immediately after execution of this Agreement by both Parties, the Agency shall, on behalf of both parties, cause to be published notice regarding this Agreement pursuant to Section 11-13-219 of the Cooperation Act.

g. This Agreement makes no provision for the parties acquiring, holding and disposing of real and personal property used in the joint undertaking as such action is not contemplated as part of this Agreement nor part of the undertaking. Any such provision would be outside the parameters of the current undertaking. However, to the extent that this Agreement may be construed as providing for the acquisition, holding or disposing of real and/or personal property, all such property shall be owned by the Agency upon termination of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day specified above.

Fire District:

Attest:

By: _____

Its: Board Chair

Secretary

Approved as to form:

Attorney for Fire District

Agency:

Attest:

By: _____

Its: Chair

Secretary

Approved as to form:

Attorney for Agency