Next

Community Development and Renewal Agency of Herriman City Agenda

Wednesday, December 11, 2024

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

Call to Order - 7:00 p.m. (or as soon as possible thereafter)

1. **Approval of Minutes**

   1.1. Motion for review and outline of the finalization process to approve the minutes of December 11, 2024

2. **Discussion and Action Items**

   2.1. Consideration of a Tax Increment Participation Agreement with Elevated Acquisitions, LLC for various infrastructure and site improvements associated with the Commons at Herriman Towne Center Project – Blake Thomas, Community Development Director

   2.2. Consideration of a Tax Increment Participation Agreement with Rosecrest Communities for reimbursement of costs incurred to install infrastructure improvements associated with the Rosecrest Development – Blake Thomas, Community Development Director

3. **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 5th day of December, 2024 Jackie Nostrom, City Recorder

HERRIMAN CITY

STAFF REPORT

DATE: **December 6, 2024**

TO: Herriman Community Development and Renewal Agency Board of Directors

FROM: Blake Thomas, Community Development Director

SUBJECT: **Consideration of a tax increment participation agreement with Elevated Acquisitions, LLC. to facilitate infrastructure and site improvements associated with The Commons at Herriman Towne Center Mixed-Use Development Project**

RECOMMENDATION:
Staff recommends that the Board approve the participation agreement.

ISSUE BEFORE COUNCIL:
Should the Board approve a tax increment participation agreement with Elevated Acquisitions, LLC for The Commons and Herriman Towne Center Project?

BACKGROUND/SUMMARY:
Herriman City created a Community Development and Renewal Area (CDRA) for the Herriman Towne Center area to facilitate a funding source to pay for infrastructure improvements in the Towne Center . This is accomplished because a CDRA allows the CDRA Board to enter into agreements with other public agencies (i.e. Salt Lake County and Jordan School District) allowing the CDRA Board to receive a portion of the property tax revenue the other agency would normally receive from the property within the CDA boundary for a certain amount of time. The CDRA Board can then enter into an Interlocal Agreement with the City, which can in-turn use the revenues to fund infrastructure and site improvements for the benefit of development in the CDRA area.

There is an existing participation agreement with Herriman Towne Center (HTC) Communities, LLC, who has constructed all existing infrastructure for the Herriman Towne Center. The agreement HTC Communities will have priority over the proposed agreement with Elevated Acquisitions, LLC if approved by the CDRA Board, meaning they will receive their reimbursement prior to Elevated receiving their reimbursement.

DISCUSSION:

The Commons at Herriman Towne Center Mixed-Use project will be required to install improvements to 13400 South to help facilitate safe ingress and egress of the project site. These improvements will include a traffic signal, center median, and right-hand turn pocket at the main entrance to the center. The developer will also be installing the landscaping improvements along Mountain View Corridor and in the center median of 13200 South. These improvements, along with the incorporation of increased site development standards, will result in significant cost increases to the developer as they proceed with construction of the project. As a result, the developer has requested assistance from Herriman for some of the anticipated costs. It is anticipated that the CDRA will generate the funding necessary to provide the requested funds to the developer, which will help facilitate the complete development of this project.

ALTERNATIVES:

Option	Pros	Cons
1. Approve the participation agreement as written. **RECOMMENDED**	Reimbursement is based on sound reasoning and in accordance with the city standards and ordinance.	None
2. Approve the participation agreement with changes.	Changes may address an issue that has not yet been contemplated	Could delay the approval of the agreement and reimbursement to the developer.
3. Elect not to enter into the reimbursement agreement with the Developer.	None	Could postpone the project.

FISCAL IMPACT:

All funds provided to the developer with this agreement will be exclusively from tax increment funding generated from the HTC CDRA.

ATTACHMENTS

1. Participation Agreement

TAX INCREMENT PARTICIPATION AGREEMENT

This Tax Increment Participation Agreement (this "Agreement") is made and entered into by and between the Community Development and Renewal Agency of Herriman, a Utah Limited Purpose Local Government Entity (the "Agency"), and Elevated Acquisitions, LLC ("Developer"), to be effective as of ___________________, 2024 (the "Effective Date"). Agency and Developer may sometimes be referred to separately as a "Party" and collectively as the "Parties."

Recitals:

A. Agency is a Utah Limited Purpose Local Government Entity with authority under Utah Code §17C-1-101 *et seq.* and other statutes and applicable laws to enter into participation agreements relating to the development of real property within its defined and adopted Community Development Area.

B. The Agency has created a Community Development Area known as the Herriman Town Center Community Development Area ("Area"); Developer owns certain real property located within the Area ("Property") and Developer intends to develop the Property (the "Project") and the Agency has determined that the Project is in the best interests of the Agency.

C. The Project has and will require the installation of infrastructure and other improvements. To facilitate development of the Property, Developer is willing to contract for the construction of the improvements ("Improvements") as described in Exhibit "A" attached hereto and Agency is willing to reimburse Developer from sales tax revenue, tax increment, and certain other impact fees as provided in this Agreement.

D. Pursuant to that certain Tax Increment Participation Agreement dated July 14, 2023 (the "Prior Agreement"), by and between Agency and HTC Communities, LLC ("HTC"), Agency did cause to be issued the SAA Bonds, did require HTC to perform certain Improvements, and did obligate itself to reimburse HTC using Tax Increment payments generated from the Area.

E. Pursuant to those certain Interlocal Cooperative Agreements identified on Exhibit B, attached hereto (the "Interlocal Agreement"), certain agencies have agreed to cede portions of Tax Increment that would otherwise be payable to them in order to cause such monies to be paid over to HTC, whereupon once HTC has recovered its annual reimbursement payment due to it thereunder, Agency confirms that the remainder of such monies may be paid over to Developer hereunder.

F. Capitalized terms not defined herein shall have the meanings ascribed to them in the HTC Agreement.

Agreement:

NOW, THEREFORE, in consideration of the premises, covenants, and undertakings set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties intending to be legally bound, agree as follows:

1. **Agency's Obligations**. The Agency will utilize funding sources for payment to Developer, as follows:

(a) **Tax Increment**.

(i) Under the terms of a previously executed Participation Agreement, the Agency is first obligated to satisfy its repayment of annual Tax Increment Bonds and second to satisfy of CDA Participation Agreement to HTC Communities. Any excess funds collected by the Agency will be remitted to Developer. Upon completion of Agency's annual obligations, Agency agrees to reimburse Developer, for the purpose of constructing site improvements identified in Exhibit A. The Agency shall make the annual Reimbursement[1] payments no later than thirty (30) days after receipt of the final calendar year tax settlement from Salt Lake County and only if such Tax Increment is received by the Agency. If no Tax Increment is received during a specific year, then no reimbursement to Developer for that specific year shall be due or payable; provided, however, that in the event that such monies are later received, the same shall be paid over to Developer when received. The Agency shall provide to the Developer on an annual basis a summary of all Tax Increment collected by the Agency and all payments made. Agency recognizes that Developer would not have undertaken to perform the Improvements absent the repayment herefrom and, accordingly, Agency represents that there is sufficient Tax Increment remaining prior to the expiration of the Interlocal Agreement that Developer will be able to realize full repayment for the Improvements.

(ii) Developer and Herriman City ("City") are parties to that certain Sales Tax Agreement of even date herewith (the "Sales Tax Agreement"), pursuant to which Developer will similarly receive reimbursement payments towards monies expended on the Improvements, and the parties agree that the aggregate amount of Reimbursement tendered by Agency and City to Developer pursuant to this Agreement and the Sales Tax Agreement shall be $36,900,466.00 (the "Aggregate Limit"), unless either Herriman City or the Agency requests additive change orders to the Improvements or the construction of additional Improvements, whereupon the parties shall modify the Increment Limit to provide for the reimbursement thereof.

(iii) Pursuant to a footnote marker on Exhibit A of the Prior Agreement, HTC is only eligible for reimbursement of the SAA Bond payments following the date that the SAA Bonds have been paid off, with all Reimbursement payments prior thereto being known as the "Threshold Payments". Accordingly, in the event that, following the completion of the Threshold Payments, there remains a period of time prior to the retirement of the SAA Bonds, Developer shall forthwith begin to receive Tax Increment reimbursement payments in the manner set forth hereinabove. Further, following the retirement of the SAA Bonds, Developer's payments hereunder shall thereafter be suspended for such period of time as is necessary for the Agency to reimburse HTC for the SAA Bond payments.

2. **Developer's Obligations**. Provided that the Project is approved and Developer proceeds with the same, Developer agrees to fund One hundred percent (100%) of the cost for construction of the Improvements shown and listed in Exhibit "A".

3. **Offset/ Payment Diversion Rights.** Developer agrees that, in addition to any other rights and remedies available under this Agreement, at law, or in equity, the Agency may offset against any payments otherwise due and owing to Developer under this Agreement any amount due and owing to the Agency by the Developer under this Agreement. Agency may also choose to temporarily postpone reimbursement to the Developer pursuant to any other reimbursement agreements between Agency and

[1] Because this term is not defined in the HTC Agreement, the parties agree that "Reimbursement" shall mean the payment or remittance to Developer by Agency for construction costs incurred by Developer for the construction of improvements agreed between the parties.

Developer in the event Developer has payments due and owing Agency. Similarly, Agency agrees that Developer and Agency are parties to other agreements and that, in the event that Developer may refrain from paying over amounts owing under this or any other agreement in the event that monies due and owing from Agency to Developer remain outstanding.

4. **Representation and Warranties**.

a. Agency's Representations and Warranties. Agency represents, warrants, and agrees as follows as of the Effective Date:

i. Agency shall encourage the diligent and timely collection of all Tax Increment that has accrued and is due and owing and that it is legally obligated to disburse pursuant to this Agreement.

ii. Agency has full power and authority to enter into and perform all obligations under this Agreement and to execute and deliver this Agreement. Any and all hearings, ordinances, warrants, and approvals requisite to the execution and delivery of this Agreement have been held, enacted, or granted, and full compliance with notices all and hearing requirements under applicable law have been achieved.

iii. The execution and delivery of this Agreement and the documents required hereunder and the consummation of the transactions contemplated by this Agreement will not (i) conflict with or contravene any law, order, rule, or regulation applicable to the Agency or to the Agency's organizational or governing documents, (ii) result in the breach of any of the terms or provisions or constitute a default under any agreement or other instrument to which the Agency is a party or by which it may be bound or affected, or (iii) permit any party to terminate any such agreement or instruments or to accelerate the maturity or any indebtedness or other obligation of the Agency.

iv. This Agreement constitutes a valid and binding obligation of the Agency, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency, and other laws of general application affecting creditors' rights. The Agency will defend the validity of this Agreement in the event of any litigation arising hereunder that names the Agency as a party or that attacks or questions the authority of the Agency to enter into or perform its obligations hereunder.

v. That all Improvements under the Prior Agreement were heretofore performed and accepted by the Agency as complete.

vi. That no default has occurred under the Prior Agreement or the Interlocal Agreement, that the same are in full force and effect and enforceable by their terms and that they have not been modified, amended or terminated, and the foregoing shall be confirmed by provision of an estoppel certificate from HTC in a form reasonably agreed between the parties hereto.

vii. Agency will not, without Developer's consent, modify, amend or terminate the Prior Agreement or the Interlocal Agreement without Developer's prior written consent.

viii. All of the agreements and instruments comprising the Prior Agreement and the Interlocal Agreement are listed on Exhibit B and Exhibit C, respectively. A true and complete copy of each of the agreements and instruments comprising the (I) Prior Agreement is attached as Exhibit B, Schedule 1, and (II) Interlocal Agreement is attached as Exhibit C, Schedule 1.

b. Developer's Representations and Warranties. Developer represents, warrants, and agrees as follows as of the Effective Date:

i. Developer has the unencumbered right and full authority to enter into this Agreement without the consent or approval of any other person or entity.

ii. Developer is duly organized, validly existing, and in good standing under the laws of Utah;

iii. The execution and delivery of this Agreement and the documents required hereunder and the consummation of the transactions contemplated by this Agreement will not (i) conflict with or contravene any law, order, rule, or regulation applicable to Developer or to the Developer's organizational or governing documents, (ii) result in the breach of any of the terms or provisions or constitute a default under any agreement or other instrument to which the Agency is a party or by which it may be bound or affected, or (iii) permit any party to terminate any such agreement or instruments or to accelerate the maturity or any indebtedness or other obligation of Developer.

iv. This Agreement constitutes a valid and binding obligation of Developer, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency, and other laws of general application affecting creditors' rights.

v. Developer agrees to comply with the applicable provisions of Utah Code Ann. §17C-1-101 et seq. and applicable interlocal agreements between the Agency and various taxing entities.

6. **Miscellaneous Provisions**.

(a) Governing Law. This Agreement shall be interpreted and construed in accordance with the laws of the State of Utah.

(b) Force Majeure. Neither party shall be liable or deemed to be in default for any delay, failure, or interruption in performance under the Agreement resulting, directly or indirectly, from acts of God, acts of civil or military authority, acts of public enemy, war, accidents, fires, explosions, earthquakes, floods, failure of transportation, machinery or supplies, vandalism, strikes or other work interruptions, or any other cause beyond the control of either party. Both Parties, however, agree to make good faith efforts to perform under this Agreement in the event of any such circumstance.

(c) Agreement Binding on Successors. This Agreement shall be binding upon the successors and assignees of Agency and Developer. Developer may, without consent, (i) assign this Agreement in conjunction with any financing for the Project or the Property, and (ii) sell or similarly dispose of one or more portions of the Project or the Property to other parties and, while such parties are not parties to this Agreement, Developer shall nevertheless enjoy the benefits herefrom irrespective of the fact that such parties may own some portion of the Property and/or perform some of the Improvements. Furthermore, Agency acknowledges that Developer has not yet acquired the Property and that, when Developer does so acquire the Property, it intends to do using an entity that is affiliated with the named Developer entity here and this Agreement is expressly assignable to such party. Finally, any subsequent owner of the Project or Property shall enjoy the benefits hereof. Developer shall tender notice to Agency of any such transfer and in the event that Developer fails to so tender such notice, Agency may suspend such further payments under this Agreement until such time as Developer provides the same (whereupon Agency shall resume payments, including prompt repayment of any monies so suspended).

(d) No Modification Except in Writing. This Agreement cannot be modified except in writing signed by both the Agency and Developer.

(e) Construction. The Parties stipulate that this Agreement and all agreements or documents incorporated herein shall not be subject to the rule of construction that a written agreement is construed against the Party preparing or drafting that Agreement.

(f) Headings. The descriptive headings of the paragraphs of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

(g) Exhibits. Any exhibit referenced herein shall be deemed to have been incorporated herein by this reference with the same force and effect as if fully set forth in the body hereof.

(h) Validity. Invalidity of any portion or provisions of this Agreement by reason of the laws of Utah or for any other reason shall not render any other provisions or portions of this Agreement invalid.

(i) No Waiver. The failure of either Party to exercise in any respect a right provided for in this Agreement shall not be deemed to be a subsequent waiver of the same right or of any other right.

(j) Counterparts/Digital Version. This Agreement may be executed in any number of counterparts each of which, when executed and delivered, shall be deemed to be an original with all the counterparts constituting but one and the same instrument. The execution of this Agreement by any Parties hereto will not become effective until counterparts hereof have been executed by all Parties. Additionally, signatures delivered electronically shall bind the undersigned.

(k) Entire Agreement. This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof. All prior and contemporaneous agreements, representations, and understandings of the Parties, oral or written, regarding the subject of the infrastructure are hereby superseded and merged herein. Notwithstanding the above, the Parties acknowledge and agree that this Agreement is one of several agreements entered into between the Parties and Herriman City related to reimbursement of construction costs incurred by Developer for the construction of improvements on the Property.

(l) Amendments. No change or addition is to be made to this Agreement, except by a written amendment executed by the Parties.

(m) Severability. If any provision of this Agreement is declared void or unenforceable, such provision shall be severed from this Agreement, which shall otherwise remain in full force and effect. If any applicable law or court of competent jurisdiction prohibits or excuses the Agency from undertaking any contractual commitment to perform any act hereunder, this Agreement shall remain in full force and effect, but the provision requiring such action shall be deemed to permit the Agency to take such action at its discretion. In such event, the Agency agrees to negotiate in good faith and reach an alternative agreement or solution to meet the original intent of the provision to the maximum extent permitted by law.

[Signature Page Follows]

IN WITNESS WHEREOF, this Participation Agreement is entered as of the Effective Date.

COMMUNITY DEVELOPMENT AND RENEWAL AGENCY OF HERRIMAN

By__________________________________
Chair

ATTEST:

____
Jackie Nostrom, City Recorder

STATE OF UTAH)
: ss.
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this ______ day of _______, 2024, by Nathan Cherpeski and Jackie Nostrom, as the City Manager and the City Recorder, respectively, of Herriman City, a Utah municipality.

____
Notary Public

DEVELOPER

ELEVATED ACQUISITIONS, LLC, an Idaho limited liability company

By____________________________________
Its:

State of Utah)
ss.
County of Salt Lake)

On the __ day of ___________, _______ personally appeared before me, __________ who duly acknowledged that he executed the within document as the Manager of ___________________the Manager of _______________________.

____
NOTARY PUBLIC

Residing at:___________________

Exhibit A

IMPROVEMENTS

ID	Name
1	Survey, Staging Rock, Entrances, Dust Control, Traffic Control, Etc.
2	Earthwork, Excavation, Soil Improvement
3	Retaining Walls
4	Water Infrastructure
5	Sewer Infrastructure
6	Storm Drain
7	Gas
8	Site Concrete
9	Asphalt & Paving
10	Landscape & Irrigation
11	Electrical & Site Lighting
12	Relocation/Removal Rocky Mountain Power - Overhead Lines & Transformers
13	Relocation/Removal of Communication Boxes/Install Sump Pump
14	Removal Enbridge/Questar Gas Lines
15	Traffic Signal 13400 S
16	Center Medians 13400 S
17	Traffic Impact Study, Traffic Signal Design
18	Deceleration Lane at Entrance 13400 S
19	Landscape Center Medians 13200 S
20	Sidewalks Fort Herriman Parkway
21	Water Feature & FF&E

Exhibit B

Exhibit C

Exhibit B

ENTITIES WITH INTERLOCAL AGREEMENTS WITH THE CDRA

- Salt Lake County
- Jordan School District
- Herriman City
- Herriman City Fire Safety Area
- Jordan Valley Conservancy District
- Jordan Basin Improvement District (Formerly South Valley Sewer district)
- Central Utah Water Conservancy
- Salt Lake County Library

Agenda

Previous

S T A F F R E P O R T

DATE: **December 2, 2024**

TO: The Herriman Community Development and Renewal Agency Board of Directors

FROM: Blake Thomas, Community Development Director

SUBJECT: **Consideration of a Tax Increment Participation Agreement with Rosecrest Communities to reimburse for costs incurred to construct infrastructure improvements associated with the Rosecrest Development and the Herriman Business Center Community Development and Renewal Area– Blake Thomas, Community Development Director**

RECOMMENDATION:
Staff recommends that the City Council **approve** the Tax Increment Participation Agreement.

ISSUE BEFORE COUNCIL:
Should the Herriman Community Development and Renewal Agency (CDRA) approve a Tax Increment Participation Agreement with Rosecrest Communities for the purpose of reimbursing costs incurred to install major infrastructure improvements?

BACKGROUND/SUMMARY:
The Herriman Business Center Community Development and Renewal Area (HBCCDA) was approved in 2016 and activated to begin generating tax increment funding revenues for Herriman in 2019. The area encompasses 277.5 acres and includes a mix of housing and commercial development including Academy Village. Tax increment funding from the HBCCDA was anticipated to be utilized to fund the infrastructure improvements required for the development of the HBCCDA.

Rosecrest Communities has constructed a considerable amount of infrastructure improvements to support the HBCCDA as part of their master-planned development. There is an existing participation agreement in place outlining a process for reimbursement of the costs incurred by the developer for the design and construction of the infrastructure improvements, but many details are lacking in the existing agreement. As a result, the developer and city have mutually agreed to execute a new participation agreement to provide more clarity on the reimbursement and supersede the previous participation agreement. This Tax Increment Participation Agreement will operate in conjunction with an Impact Fee Reimbursement Agreement that will require approval from the City Council. Tax increment funds are much less restricted than impact fee funds and may be used for various infrastructure projects associated with the Rosecrest Development.

DISCUSSION:

Rosecrest Communities has completed $32.9 million of reimbursable infrastructure improvements as part of their master-planned development. Herriman has either offset, waived, and/or reimbursed a total of $9.8 million to date. These funds have come from impact fee funds and tax increment funding from the CDRA. Notwithstanding the previously reimbursed amounts, the total amount eligible for impact fee reimbursement is as follows:

Impact Fee Fund	Amount
Transportation Impact Fees	$13,622,947
Water Impact Fees	$13,151,923
Storm Drain Impact Fees	$5,723,072

The amounts shown in the table are the total amounts eligible for reimbursement from each impact fee fund, however, the total aggregate amount eligible for reimbursement to the developer is $23,090,950 since there have been previous reimbursements made under the old reimbursement agreements. This new agreement clearly identifies the maximum amount eligible for reimbursement and references the Impact Fee Reimbursement Agreement so that both agreements work together to ensure the developer is reimbursed for the costs incurred by completing the design and construction of the improvements without negatively impacting the city. This agreement and the Impact Fee Reimbursement Agreement nullify and replace all old reimbursement agreements with Rosecrest Communities.

ALTERNATIVES:

Alternative	Pros	Cons
1. Approve the agreement as written. **[RECOMMENDED]**	Creates a new agreement that has an identified revenue source and verified total amount to be reimbursed.	None identified.
2. Approve the agreement with conditions.	Conditions may be identified by the CDRA Board that have not been considered by staff that could improve the effectiveness of the agreement.	Could delay execution of the agreement.
3. Continue the item to a future meeting	Could provide additional time to address concerns identified by the CDRA Board.	Could delay execution of the agreement.
4. Deny approval of the reimbursement agreement	None Identified	The CDRA and City would be required to reimburse per the existing agreements, which are not clear and leave the city vulnerable.

FISCAL IMPACT:

With the creation of a PID for the Panorama and Wasatch developments, impact fee revenues are anticipated to be significantly reduced. An analysis of the reimbursement amount and anticipated revenues from impact fees and tax increment funding is provided in the table below:

Fund	Anticipated Revenue	Obligation	Difference	Comments
Transportation Impact Fee	$ 4,656,660	$13,508,333	$(8,851,673.)	Deficit will paid for by CDA funds
Water Impact Fee	$1,361,021	$9,428,911	$(8,067,890)	Deficit will paid for by CDA funds
Storm Drain Impact Fee	$154,510	$5,370,643	$(5,216,133)	Deficit will paid for by CDA funds
CDA Funds	$27,493,551	$22,135,696[1]	$5,357,855	CDA funds will be enough to fund deficits.

ATTACHMENTS:

A. New Tax Increment Participation Agreement
B. Old Participation Agreement

[1] The CDA Fund Obligation is the sum of the Transportation, Water, and Storm Drain impact fee deficits.

TAX INCREMENT PARTICIPATION AGREEMENT

This Tax Increment Participation Agreement (this "**Agreement**") is made and entered into by and between the Community Development and Renewal Agency of Herriman, a Utah Limited Purpose Local Government Entity (the "**Agency**"), and Sorenson Legacy Foundation ("**SLF**") and Sorenson Impact Foundation ("SIF", and together with SLF, the "**Foundations**") to be effective as of ____________________, 2024 (the "**Effective Date**"). Agency and the Foundations may sometimes be referred to separately as a "**Party**" and collectively as the "**Parties**."

Recitals:

A. The Agency is a Utah Limited Purpose Local Government Entity with authority under Utah Code §17C-1-101 *et seq.* and other statutes and applicable laws to enter into participation agreements relating to the development of real property within its defined and adopted Community Development Area.

B. The Agency has created a Community Development Area known as the Herriman Business Center Community Development Area (the "**Area**"), and the Agency has determined that the Project referred to below is in the best interests of the Agency.

C. Development of the Area required the installation of infrastructure consisting of a culinary water system, secondary water system, certain roads, storm drain system, and sanitary sewer improvements. As provided in that certain Tax Increment Participation Agreement dated July 8, 2016, between Rosecrest Communities, LLC ("**Rosecrest**") and the Agency, (the "**Original TIF Agreement**"), Rosecrest contracted for and completed the construction of the improvements (the "**Improvements**") listed in Exhibit "A" attached hereto and developed the property within the Area (the "**Project**").

D. Rosecrest has assigned its rights to payment under the Original TIF Agreement to the Foundations.

E. Rosecrest has completed all work that was required under the Original TIF Agreement and Agency is willing to reimburse the Foundations from tax increment as provided in this Agreement.

F. The Foundations and Herriman City (the "**City**") have entered into a Reimbursement Agreement dated _______, ____, 2024, which provides an additional source of payment to the Foundations for the work performed by Rosecrest on the Project ("**Reimbursement Agreement**").

G. This Agreement replaces in its entirety the Original TIF Agreement.

Agreement:

NOW, THEREFORE, in consideration of the premises, covenants, and undertakings set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties intending to be legally bound, agree as follows:

1. **<u>Agency's Obligations</u>**. The Improvements, which have qualified for Reimbursement under this Agreement began to be constructed by Rosecrest in calendar year 2012. Since calendar year 2012, the City and Rosecrest has expended funds to construct qualifying Improvements within the Area. Agency shall pay the Foundations, on an annual basis, all tax increment generated from the Area excluding tax increment attributable to Salt Lake County-Countywide Tax Levy and Library Levy, until the Total Reimbursement Amount (defined below) has been paid to the Foundations. "**Tax increment**" shall mean the difference between (a) the total amount of real property tax revenues generated in any given current tax year by taxing authorities that have entered into an interlocal cooperative agreement with the Agency with respect to such tax increment based upon the real property situated within the Area using the then current assessed value of such real property and (b) the total amount of real property tax revenues that were generated from the Area using the taxable value of the real property located within the Area as set forth in the interlocal cooperative agreement between the taxing authorities and the Agency and referred to in the interlocal cooperative agreement as the base year ("Tax Increment"). The Agency shall make the annual payments no later than thirty (30) days after receipt of the final calendar year tax settlement from Salt Lake County and only if such Tax Increment is actually received by the Agency. If no Tax Increment is received during a specific year, then no reimbursement to the Foundations for that specific year shall be due or payable. The Agency shall provide to the Foundations on an annual basis a summary of all Tax Increment collected by the Agency.

(a) The Agency has expended $20,002 to repair the Juniper Canyon Dam (Exhibit A, Project SD-2) and $309,616 to design water tanks that were not constructed, and City intends to expend funds to enlarge the regional detention basin at the Salt Lake Community College property (Exhibit A, Project SD-3) in the amount of $1,500,000, referred to collectively hereafter as "**Agency Work**." The Agency shall have the right to reimburse itself with tax increment collected by the Agency for costs associated with Agency Work prior to releasing tax increment funds to the Foundations. The costs associated with Agency Work shall not result in any change to the amount reimbursed to the Foundations for Actual Costs, as defined below.

(b) The total aggregate amount of reimbursement that the Agency and the City shall reimburse to the Foundations is $23,090,950 ("**Total Reimbursement Amount**"). All amounts payable to the Foundations shall be allocated, and the Agency shall make all payments hereunder, 7/8ths to SLF and 1/8th to SIF. Subject to 1(a) above, the Agency shall pay all Tax Increment to the Foundations until the Total Reimbursement Amount has been paid to the Foundation pursuant to this Agreement and the Reimbursement Agreement. The amounts payable under this Agreement shall not be decreased or delayed by reason of any amounts paid to the Foundations under the Reimbursement Agreement, provided that the total reimbursement provided to the Foundations per the terms of both this Agreement and the Reimbursement Agreement shall not exceed the Total Reimbursement Amount.

2. **<u>Approval of Actual Costs</u>**. Rosecrest has funded One hundred percent (100%) of the cost for construction of the Improvements listed in Exhibit "A", and the costs incurred by

Rosecrest for the Projects have been approved by the Agency for the Improvements in the amounts listed in exhibit "A" under the *Completed Projects* table and shall be referred to herein as the "**Actual Costs**". Rosecrest has provided to the Agency all of the invoices and payments made for Actual Costs.

3. **Representation and Warranties**.

a. Agency's Representations and Warranties. The Agency represents, warrants, and agrees as follows as of the Effective Date:

i. Agency shall diligently and timely collect all Tax Increment that has accrued and is due and owing and that it is legally obligated to collect pursuant to this Agreement.

ii. Agency has full power and authority to enter into and perform all obligations under this Agreement and to execute and deliver this Agreement. Any and all hearings, ordinances, warrants, and approvals requisite to the execution and delivery of this Agreement have been held, enacted, or granted, and full compliance with notices all and hearing requirements under applicable law have been achieved.

iii. The execution and delivery of this Agreement and the documents required hereunder and the consummation of the transactions contemplated by this Agreement will not (i) conflict with or contravene any law, order, rule, or regulation applicable to the Agency or to the Agency's organizational or governing documents, (ii) result in the breach of any of the terms or provisions or constitute a default under any agreement or other instrument to which the Agency is a party or by which it may be bound or affected, or (iii) permit any party to terminate any such agreement or instruments or to accelerate the maturity or any indebtedness or other obligation of the Agency.

iv. This Agreement constitutes a valid and binding obligation of the Agency, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency, and other laws of general application affecting creditors' rights. The Agency will defend the validity of this Agreement in the event of any litigation arising hereunder that names the Agency as a party or that attacks or questions the authority of the Agency to enter into or perform its obligations hereunder.

v. The Agency has entered into an amendment to the Interlocal Cooperation Agreement with Salt Lake County dated May 24, 2016 as amended effective January 1, 2022, in order to modify Section 2a. to increase the number of acres allowed for residential housing to 78.5 acres and eliminate the maximum number of residential units and maximum density contained therein.

b. The Foundations' Representations and Warranties. Each of the Foundations, for itself, represents, warrants, and agrees as follows as of the Effective Date:

i. The Foundations have the unencumbered right and full authority to enter into this Agreement without the consent or approval of any other person or entity.

ii. The Foundations are duly organized, validly existing, and in good standing under the laws of Utah.

iii. The execution and delivery of this Agreement and the documents required hereunder and the consummation of the transactions contemplated by this Agreement will not (i) conflict with or contravene any law, order, rule, or regulation applicable to each Foundation or to such Foundation's organizational or governing documents, (ii) result in the breach of any of the terms or provisions or constitute a default under any agreement or other instrument to which each Foundation is a party or by which it may be bound or affected, or (iii) permit any party to terminate any such agreement or instruments or to accelerate the maturity or any indebtedness or other obligation of such Foundation.

iv. This Agreement constitutes a valid and binding obligation of the Foundations, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency, and other laws of general application affecting creditors' rights.

4. **Miscellaneous Provisions**.

(a) Governing Law. This Agreement shall be interpreted and construed in accordance with the laws of the State of Utah.

(b) Agreement Binding on Successors. This Agreement shall be binding upon the successors and assignees of Agency and the Foundations.

(c) No Modification Except in Writing. This Agreement cannot be modified except in writing signed by both the Agency and the Foundations.

(d) Construction. The Parties stipulate that this Agreement and all agreements or documents incorporated herein shall not be subject to the rule of construction that a written agreement is construed against the Party preparing or drafting that Agreement.

(e) Headings. The descriptive headings of the paragraphs of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

(f) Exhibits. Any exhibit referenced herein shall be deemed to have been incorporated herein by this reference with the same force and effect as if fully set forth in the body hereof.

(g) Validity. Invalidity of any portion or provisions of this Agreement by reason of the laws of Utah or for any other reason shall not render any other provisions or portions of this Agreement invalid.

(h) <u>No Waiver</u>. The failure of either Party to exercise in any respect a right provided for in this Agreement shall not be deemed to be a subsequent waiver of the same right or of any other right.

(i) Attorneys' Fees. In the event any action or proceeding is taken or brought by either party concerning this Agreement, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees, whether such sums are expended with or without suit, at trial, on appeal or in any bankruptcy or insolvency proceeding

(j) <u>Counterparts/Digital Version</u>. This Agreement may be executed in any number of counterparts each of which, when executed and delivered, shall be deemed to be an original with all the counterparts constituting but one and the same instrument. The execution of this Agreement by any Parties hereto will not become effective until counterparts hereof have been executed by all Parties. Additionally, signatures delivered electronically shall bind the undersigned.

(k) <u>Entire Agreement</u>. This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof. All prior and contemporaneous agreements, representations, and understandings of the Parties, oral or written, regarding the subject of the infrastructure are hereby superseded and merged herein. Notwithstanding the above, the Parties acknowledge and agree that this Agreement is one of two agreements entered into between the Parties and Herriman City related to reimbursement of construction costs incurred by Rosecrest for the construction of improvements on the Property.

(l) <u>Amendments</u>. No change or addition is to be made to this Agreement, except by a written amendment executed by the Parties.

(m) <u>Severability</u>. If any provision of this Agreement is declared void or unenforceable, such provision shall be severed from this Agreement, which shall otherwise remain in full force and effect. If any applicable law or court of competent jurisdiction prohibits or excuses the Agency from undertaking any contractual commitment to perform any act hereunder, this Agreement shall remain in full force and effect, but the provision requiring such action shall be deemed to permit the Agency to take such action at its discretion. In such event, the Agency agrees to negotiate in good faith and reach an alternative agreement or solution to meet the original intent of the provision to the maximum extent permitted by law.

[Signature Page Follows]

IN WITNESS WHEREOF, this Agreement is entered as of the Effective Date.

COMMUNITY DEVELOPMENT AND RENEWAL AGENCY OF HERRIMAN

By___________________________________
Chair

ATTEST:

____
Jackie Nostrom, City Recorder

STATE OF UTAH)
: ss.
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this ______ day of _______, 2023, by Nathan Cherpeski and Jackie Nostrom, as the City Manager and the City Recorder, respectively, of Herriman City, a Utah municipality.

____
Notary Public

SORENSON LEGACY FOUNDATION

By: ______________________
Its: ______________________

SORENSON IMPACT FOUNDATION

By: _______________________
Its: ________________________

State of Utah)
ss.
County of Salt Lake)

On the __ day of ___________, _______ personally appeared before me, __________ who duly acknowledged that he executed the within document as the __________________ of Sorenson Legacy Foundation.

____
NOTARY PUBLIC

Residing at:____________________

State of Utah)
ss.
County of Salt Lake)

On the __ day of ___________, _______ personally appeared before me, __________ who duly acknowledged that he executed the within document as the __________________ of Sorenson Impact Foundation.

____
NOTARY PUBLIC

Residing at:____________________

Exhibit A

IMPROVEMENTS

List of Projects Eligible for Reimbursement						
Project ID	**Project Name**	**Transportation Impact Fee Eligible Costs**	**Water Impact Fee Eligible Costs**	**Storm Drain Impact Fee Eligible Costs**	**Non Impact Fee Eligible Costs**	**Total Reimbursable Amount**
R-1	Rosecrest Road	$ 1,149,309.87	$ 2,394,073.34	$ 0	$ 0	$ 3,543,383.21
R-2	Autumn Crest Boulevard	$ 4,886,784.10	$ 1,768,644.33	$ 0	$ 0	$ 6,655,428.43
R-3	Real Vista Drive	$ 3,442,174.65	$ 608,812.44	$ 0	$ 0	$ 4,050,987.09
R-4	Juniper Crest Road	$ 4,144,678.74	$ 2,000,592.79	$ 0	$ 0	$ 6,145,271.53
SW-1	Secondary Water Pump Station	$ 0	$ 2,959,800.00	$ 0	$ 0	$ 2,959,800.00
CW-1	Culinary Water Pump Station	$ 0	$ 1,380,000.00	$ 0	$ 0	$ 1,380,000.00
CW-2	Water Tank	$ 0	$ 2,040,000.00	$ 0	$ 0	$ 2,040,000.00
SD-2	Juniper Canyon Storm Drain	$ 0	$ 0	$ 3,675,813.92	$ 0	$ 3,675,813.92
SD-3	SLCC Pond	$ 0	$ 0	$ 2,047,257.58	$ 0	$ 2,047,257.58
SS-1	Plat S Sewer Outfall	$ 0	$ 0	$ 0	$ 416,744.31	$ 416,744.31
					Subtotal of Eligible Reimbursement Costs:	$ 32,914,686.07
					Previously Offset or Reimbursed Transportation Funds:	$ (114,614.00)
					Previously Offset or Reimbursed Water Funds:	$ (3,723,012.18)
					Previously Offset or Reimbursed Storm Drain Funds:	$ (352,429.00)
					Previously Reimbursed Tax Increment Funds from CDA:	$ (5,633,682.00)
					Total Amount Eligible for Reimbursement:	$ **23,090,948.89**
					Total Amount Eligible for Reimbursement from Transportation Impact Fees:	$ 13,622,947.36
					Total Amount Eligible for Reimbursement from Water Impact Fees:	$ 13,151,922.90
					Total Amount Eligible for Reimbursement from Storm Drain Impact Fees:	$ 5,723,071.50

Notes:
1-The amounts listed as *Total Amount Eligible for Reimbursement from Impact Fees* represent eligible costs for each restricted fund source
2-Be aware that the *Total Amount Eligible for Reimbursement* is less than the sum of impact fee eligible amounts since funds have also been reimbursed from the CDA tax increment funds.

COMMUNITY DEVELOPMENT AND RENEWAL AGENCY OF HERRIMAN CITY RESOLUTION NO. R2016-14

RESOLUTION OF THE COMMUNITY DEVELOPMENT AND RENEWAL AGENCY OF HERRIMAN CITY APPROVING A TAX PARTICIPATION AGREEMENT

WHEREAS, the Redevelopment Agency of Herriman City (the "Agency") met in special open and public meeting on September 14, 2016, to consider, among other things, approving a tax participation agreement ("Agreement"); and

WHEREAS the Agency was created to transact the business and exercise all of the powers provided for in the former Utah Redevelopment Agencies Act and the current Utah Community Development and Renewal Agencies Act and any subsequent, replacement or amended law or act; and

WHEREAS, the Agency desires to enter into the Agreement.

NOW THEREFORE BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE REDEVELOPMENT AGENCY OF HERRIMAN CITY that the Agreement be approved, that the Chairperson and Secretary are hereby authorized and directed to execute and deliver the same.

ADOPTED by the Board of Directors of the Redevelopment Agency of Herriman City, this 14th day of September 2016.

Community Development and Renewal Agency Herriman, Utah

HERRIMAN

Carmen Freeman, Chairperson

ATTEST:

Cindy Quick, Secretary

Community Development and
Renewal Agency of Herriman City

RESOLUTION NUMBER: **R2016-14**

SHORT TITLE: A RESOLUTION OF THE COMMUNITY DEVELOPMENT AND RENEWAL AGENCY OF HERRIMAN CITY APPROVING A TAX PARTICIPATION AGREEMENT

PASSAGE BY THE DIRECTORS OF THE COMMUNITY DEVELOPMENT AND RENEWAL AGENCY OF HERRIMAN CITY
ROLL CALL

NAME	MOTION	SECOND	FOR	AGAINST	OTHER
Jared Henderson			X		
Nicole Martin			X		
Craig B. Tischner		X	X		
Coralee Wessman-Moser	X		X		
Mayor Carmen Freeman			X		
	TOTALS		5		

This resolution was passed by the Board of Directors of the Community Development and Renewal Agency of Herriman City, Utah on the 14th day of September, 2016, on a roll call vote as described above.

TAX INCREMENT PARTICIPATION AGREEMENT

This Tax Increment Participation Agreement (this "Agreement") is made and entered into by and between the Community Development and Renewal Agency of Herriman, a Utah Limited Purpose Local Government Entity (the "Agency"), and Rosecrest Communities LLC, a Utah limited liability company ("Developer"), to be effective as of July 8, 2016 (the "Effective Date"). Agency and Developer may sometimes be referred to separately as a "Party" and collectively as the "Parties."

Recitals:

A. Agency is a Utah Limited Purpose Local Government Entity with authority under Utah Code §17C-1-101 *et seq.* and other statutes and applicable laws to enter into participation agreements relating to the development of real property within its defined and adopted Community Development Area.

B. The Agency has created a Community Development Area known as the Herriman Business Center Community Development Area ("Area"); Developer owns certain real property located within the Area ("Property") and Developer intends to develop the Property (the "Project") and the Agency has determined that the Project is in the best interests of the Agency.

C. The Project has and will require the installation of infrastructure consisting of a water system, certain roads, storm drain, and sanitary sewer improvements. To facilitate development of the Property, Developer has been and is willing to continue to contract for the construction of a portion of the water system, certain roads, storm drain, and sanitary sewer improvements ("Improvements") as described in Exhibit "A" attached hereto and Agency is willing to reimburse Developer from tax increment and certain other impact fees as provided in this Agreement.

Agreement:

NOW, THEREFORE, in consideration of the premises, covenants, and undertakings set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties intending to be legally bound, agree as follows:

1. **Agency's Obligations**. The Improvements which will qualify for Reimbursement under this Agreement began to be constructed by Developer in calendar year 2012. Since calendar year 2012, other developers have also expended funds to construct qualifying Improvements within the Area. The Parties estimate that the costs of all of the Improvements to be constructed within the Area by all parties could be approximately $67,000,000. The Agency shall remit to and reimburse Developer, on an annual basis, in an amount equal to the Reimbursement (defined below) from tax increment generated from the Area excluding tax increment attributable to Salt Lake County-Countywide Tax Levy and Library Levy. Tax increment shall mean the difference between (a) the total amount of real property tax revenues generated in any given current tax year by taxing authorities that have entered into an interlocal cooperative agreement with the Agency with respect to such tax increment based upon the real property situated within the Area using the then current assessed value of such real property and (b) the total amount of real property tax revenues that were generated from the Area using the taxable value of the real property located within the Area as set forth in the interlocal cooperative agreement between the taxing authorities and the Agency and referred to in the interlocal cooperative agreement as the base year ("Tax Increment"). The Agency shall make the annual Reimbursement payments no later than thirty (30) days after the end of the calendar year in which it was received and only if such Tax Increment is actually received by the Agency. If no Tax Increment is received during a specific year, then no reimbursement to Developer for that specific year shall be due or payable. In distributing the Tax Increment Amount, the Agency shall calculate the Reimbursement as the Agency shall determine based

on factors such as an annual pro-rata basis concept, agreements that the Agency has with other developers, on a first in first out basis based on Improvements listed on Exhibit "A," and on the developer who caused the improvements to be installed that produced tax increment. As an additional source of revenue from which Developer shall be paid the Reimbursement or in the event that the Tax Increment is insufficient to pay Reimbursement, Herriman City shall pay certain water, storm drain and transportation Impact Fees to Developer pursuant to separate agreements between Developer and Herriman City, provided however, Developer shall not be entitled to receive any funds or payments in an aggregate amount that exceed the actual cost of the Improvements.

2. **Developer's Obligations.** The estimated cost of the Improvements that Developer anticipates funding is approximately $30,545,692. Developer agrees to fund One hundred percent (I 00%) for the cost of construction of the Improvements listed on Exhibit "A". The actual cost incurred by Developer that has been approved by the Agency for the Improvements listed on exhibit "A" shall be referred to herein as the "Reimbursement".

3. **Offset/ Payment Diversion Rights.** Developer agrees that, in addition to any other rights and remedies available under this Agreement, at law, or in equity, the Agency may offset against any payments otherwise due and owing to Developer under this Agreement any amount due and owing to the Agency by the Developer under this Agreement. Agency may also choose to temporarily postpone reimbursement to the Developer pursuant to any other reimbursement agreements between Agency and Developer in the event Developer has payments due and owing Agency.

4. **Representation and Warranties.**

a. Agency's Representations and Warranties. Agency represents, warrants, and agrees as follows as of the Effective Date:

i. Agency shall diligently and timely collect all Tax Increment that has accrued and is due and owing and that it is legally obligated to collect pursuant to this Agreement.

ii. Agency has full power and authority to enter into and perform all obligations under this Agreement and to execute and deliver this Agreement. Any and all hearings, ordinances, warrants, and approvals requisite to the execution and delivery of this Agreement have been held, enacted, or granted, and full compliance with notices all and hearing requirements under applicable law have been achieved.

111. The execution and delivery of this Agreement and the documents required hereunder and the consummation of the transactions contemplated by this Agreement will not (i) conflict with or contravene any law, order, rule, or regulation applicable to the Agency or to the Agency's organizational or governing documents, (ii) result in the breach of any of the terms or provisions or constitute a default under any agreement or other instrument to which the Agency is a party or by which it may be bound or affected, or (iii) permit any party to terminate any such agreement or instruments or to accelerate the maturity or any indebtedness or other obligation of the Agency.

IV. This Agreement constitutes a valid and binding obligation of the Agency, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency, and other laws of general application affecting creditors' rights. The Agency will defend the validity of this Agreement in the event of any litigation arising hereunder that names the Agency as a party or that attacks or questions the authority of the Agency to enter into or perform its obligations hereunder.

b. Developer's Representations and Warranties. Developer represents, warrants, and agrees as follows as of the Effective Date:

i. Developer has the unencumbered right and full authority to enter into this Agreement without the consent or approval of any other person or entity.

ii. Developer is duly organized, validly existing, and in good standing under the laws of Utah;

iii. The execution and delivery of this Agreement and the documents required hereunder and the consummation of the transactions contemplated by this Agreement will not (i) conflict with or contravene any law, order, rule, or regulation applicable to Developer or to the Developer's organizational or governing documents, (ii) result in the breach of any of the terms or provisions or constitute a default under any agreement or other instrument to which the Agency is a party or by which it may be bound or affected, or (iii) permit any party to terminate any such agreement or instruments or to accelerate the maturity or any indebtedness or other obligation of Developer.

iv. This Agreement constitutes a valid and binding obligation of Developer, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency, and other laws of general application affecting creditors' rights.

v. Developer agrees to comply with the applicable provisions of Utah Code Ann. §17C-1-101 et seq. and applicable interlocal agreements between the Agency and various taxing entities.

6. **Miscellaneous Provisions**.

(a) Governing Law. This Agreement shall be interpreted and construed in accordance with the laws of the State of Utah.

(b) Force Majeure. Neither party shall be liable or deemed to be in default for any delay, failure, or interruption in performance under the Agreement resulting, directly or indirectly, from acts of God, acts of civil or military authority, acts of public enemy, war, accidents, fires, explosions, earthquakes, floods, failure of transportation, machinery or supplies, vandalism, strikes or other work interruptions, or any other cause beyond the control of either party. Both Parties, however, agree to make good faith efforts to perform under this Agreement in the event of any such circumstance.

(c) Agreement Binding on Successors. This Agreement shall be binding upon the successors and assignees of Agency and Developer.

(d) No Modification Except in Writing. This Agreement cannot be modified except in a writing signed by both the Agency and Developer.

(e) Construction. The Parties stipulate that this Agreement and all agreements or documents incorporated herein shall not be subject to the rule of construction that a written agreement is construed against the Party preparing or drafting that Agreement.

(f) Headings. The descriptive headings of the paragraphs of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

(g) Exhibits. Any exhibit referenced herein shall be deemed to have been incorporated herein by this reference with the same force and effect as if fully set forth in the body hereof.

(h) Validity. Invalidity of any portion or provisions of this Agreement by reason of the laws of Utah or for any other reason shall not render any other provisions or portions of this Agreement invalid.

(i) No Waiver. The failure of either Party to exercise in any respect a right provided for in this Agreement shall not be deemed to be a subsequent waiver of the same right or of any other right.

(j) Counterparts/Digital Version. This Agreement may be executed in any number of counterparts each of which, when executed and delivered, shall be deemed to be an original with all the counterparts constituting but one and the same instrument. The execution of this Agreement by any Parties hereto will not become effective until counterparts hereof have been executed by all Parties. Additionally, signatures delivered electronically shall bind the undersigned.

(k) Entire Agreement. This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof. All prior and contemporaneous agreements, representations, and understandings of the Parties, oral or written, regarding the subject of the infrastructure are hereby superseded and merged herein. Notwithstanding the above, the Parties acknowledge and agree that this Agreement is one of several agreements entered into between the Parties and Herriman City related to reimbursement of construction costs incurred by Developer for the construction of improvements on the Property.

(l) Amendments. No change or addition is to be made to this Agreement, except by a written amendment executed by the Parties.

(m) Severability. If any provision of this Agreement is declared void or unenforceable, such provision shall be severed from this Agreement, which shall otherwise remain in full force and effect. If any applicable law or court of competent jurisdiction prohibits or excuses the Agency from undertaking any contractual commitment to perform any act hereunder, this Agreement shall remain in full force and effect, but the provision requiring such action shall be deemed to permit the Agency to take such action at its discretion. In such event, the Agency agrees to negotiate in good faith and reach an alternative agreement or solution to meet the original intent of the provision to the maximum extent permitted by law.

[Signature Page Follows]

IN WITNESS WHEREOF, this Participation Agreement is entered as of the Effective Date.

Community Development and Renewal Agency Herriman, Utah

COMMUNITY DEVELOPMENT AND RENEWAL AGENCY OF HERRIMAN

By [signature]
Carmen Freeman, Chair

ATTEST:

[signature] Cindy Quick
Cindy Quick, Secretary

STATE OF UTAH)
: ss.
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this 14th day of Sept., 2016, by ~~Brett geo. Wood~~ Carmen Freeman and ~~Jackie Nostrom,~~ Cindy Quick as the ~~City Manager~~ Mayor and the Deputy City Recorder, respectively, of Herriman City, a Utah municipality.

[signature] Nostrom
Notary Public

JACQUELYN NOSTROM
NOTARY PUBLIC-STATE OF UTAH
COMMISSION# 670561
COMM. EXP. 09/11/2017

Corporate Seal Incorporated
HERRIMAN CITY
1999
State of Utah

DEVELOPER

ROSECREST COMMUNITIES LLC,
a Utah limited liability company
By: RE management, L.L.C.
Its: Manager

By [signature]
Its: Manager

TJH

State of Utah)
ss.
County of Salt Lake)

On the 8 day of JULY, 2016 personally appeared before me, GREG TAYLOR who duly acknowledged that he executed the within document as the Manager RE Management, L.L.C. the Manager of Rosecrest Communities LLC.

[signature]
NOTARY PUBLIC

Residing at: SALT LAKE CITY

NATALIE A. TUCKETT
Notary Public State of Utah
My Commission Expires on:
May 15, 2017
Comm. Number: 664991

Exhibit A
to
Tax Increment Participation Agreement

IMPROVEMENTS

Rosecrest Road- Actual Costs (not yet approved by Agency) -$1,512,082
Autumn Crest Blvd-Phase 1- Actual Costs (not yet approved by Agency)- from our North Boundary to SLCC-$3,238,104
Autumn Crest Blvd-Phase 2- Estimated Costs- from North Boundary of SLCC to Bruin View Drive- $2,570,221
Autumn Crest Blvd- Phase 3- Estimated Costs from Bruin View Drive to Real Soccer Boundary- $1,714,178
Bruin View Drive- Phase 1- Actual Costs (not yet approved by Agency) -$2,316,524
Bruin View Drive Phase 2- Estimated Costs for Widening the South Half to the SLCC Entrance- $1,193,641
Juniper Crest Blvd Phase 1- Estimated Costs from Plat S to the Commercial- $5,688,961
Juniper Crest Blvd Phase 2- Estimated Costs through the Commercial- $2,544,121
Offsite Utilities-
- Autumn Crest Detention-Estimated-$824,517
- Plat S Sewer Outfall Ph1&2-Estimated-$983,438
- 138th Sewer Outfall- Estimated-398,026
- Juniper Canyon Storm Drain Basins-Estimated-$1,065,000
- Rose Creek Storm Outfall Channel-Estimated- $117,079

Water System-
- Secondary Water Pump Station-Estimated $4,933,000 in aggregate—to be paid 60% or $2,959,800
- Water Tank-Estimated $3,400,000 in aggregate—to be paid 60% or $2,040,000
- Culinary Water Pump Station—Estimated $2,300,000 in aggregate—to be paid 60% or $1,380,000