



**AGENDA FOR THE REGULAR MEETING  
OF THE REDEVELOPMENT AGENCY  
OF THE CITY OF SPRINGVILLE, UTAH  
COUNCIL CHAMBERS, 110 SOUTH MAIN STREET  
MAY 03, 2016 – 6:30 P.M.**

**CALL TO ORDER**

**AGENDA**

1. Presentation and discussion of the Redevelopment Agency tentative budget for Fiscal Year 2016-2017, and a request to schedule a Public Hearing date and time for formal adoption of the Final Budget on June 07, 2016 – Bruce Riddle, Assistant City Administrator/Finance Director
2. Consideration of a resolution that approves an Interlocal Agreement between Springville City and the Springville City Redevelopment Agency regarding the Springville North Community Development Project Area.
3. Consideration of a resolution that approves a participation agreement between the Springville City Redevelopment Agency and HWP Properties, Inc., for development within the Springville North Community Development Project Area – John Penrod, City Assistant Administrator/City Attorney
4. Motion for review and finalization of the May 03, 2016 minutes.

**ADJOURNMENT**

This meeting was noticed in compliance with Utah Code 52-4-202 on April 29, 2016. Agendas and minutes are accessible through the Springville City website at [www.springville.org/agendasminutes](http://www.springville.org/agendasminutes). Council Meeting agendas are available through the Utah Public Meeting Notice website at <http://www.utah.gov/pmn/index.html>. Email subscriptions to Utah Public Meeting Notices are available through their website.

In compliance with the Americans with Disabilities Act, the City will make reasonable accommodations to ensure accessibility to this meeting. If you need special assistance to participate in this meeting, please contact the City Recorder at (801) 489-2700 at least three business days prior to the meeting.



## STAFF REPORT

**DATE:** May 3, 2016  
**TO:** Honorable Mayor and City Council  
**FROM:** Bruce Riddle, Finance Director  
**SUBJECT: REDEVELOPMENT AGENCY FY 2017 TENTATIVE BUDGET**

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### **RECOMMENDED MOTION**

The Finance Department recommends that the Board of Directors of the Redevelopment Agency of Springville City approve a RESOLUTION BY THE REDEVELOPMENT AGENCY OF THE CITY OF SPRINGVILLE, UTAH TO ADOPT THE TENTATIVE BUDGET FOR FISCAL YEAR 2016-2017 AND SET A PUBLIC HEARING FOR ADOPTION OF THE FINAL BUDGET ON JUNE 7, 2016, AT 6:50 P.M.

### **SUMMARY OF ISSUES/FOCUS OF ACTION**

State statute (Utah Code 17B-1-607) requires the board to adopt a tentative budget on or before the first regular meeting in May for the ensuing year and set a date and time for a public hearing on the tentatively adopted budget wherein interested parties are provided an opportunity to comment on the tentatively adopted budget. State statute (Utah Code 17B-1-614) also requires that the Board of Directors adopt a budget for the ensuing fiscal year after holding the public hearing.

### **BACKGROUND**

A budget message and tentative budget documents along with presentation materials were distributed to the Board of Directors prior to the budget retreat held in April.

### **DISCUSSION**

The budget for the RDA is comprised of tax increment payments associated with the RDA area and associated projects established when the zone was created.

### **ALTERNATIVES**

The Council can provide additional direction on items in the proposed Tentative Budget; however, the Council is required by State statute to adopt a final budget.

### **FISCAL IMPACT**

The FY2017 RDA budget anticipates \$125,000 in revenues only \$15,000 in minor project expenses with the balance of revenues going to fund balance.



**SPRINGVILLE CITY  
FISCAL YEAR 2017  
TENTATIVE BUDGET**

RDA

ESTIMATED BEGINNING FUND BALANCE<sup>1</sup> 219,287

<u>GL Acct</u>	<u>Line Description</u>	<u>FY2015 ACTUAL</u>	<u>FY2016 APPROVED BUDGET</u>	<u>FY2016 MIDYEAR ACTUAL</u>	<u>FY2017 TENTATIVE BUDGET</u>	<u>FY2017 VS FY2016 INC/(DEC)</u>
<b><u>REVENUES</u></b>						
61-3800-850	TRANSFERS FROM OTHER FUNDS					-
61-3800-860	PROPERTY TAXES	109,096	110,000	108,326	125,000	15,000
	<b>TOTAL REVENUES</b>	<b>109,096</b>	<b>110,000</b>	<b>108,326</b>	<b>125,000</b>	<b>15,000</b>
<b><u>EXPENDITURES</u></b>						
61-5100-220	PUBLIC NOTICES	-	1,000	-	1,000	-
61-5100-315	PROFESSIONAL FEES					-
61-5100-316	PROJECT EXPENSES				15,000	
	INCREASE RESERVES				109,000	109,000
	<b>TOTAL EXPENDITURES</b>	<b>-</b>	<b>1,000</b>	<b>-</b>	<b>125,000</b>	<b>124,000</b>
	<b>SURPLUS / (DEFICIT)</b>	<b>109,096</b>	<b>109,000</b>	<b>108,326</b>	<b>-</b>	
	<b>ESTIMATED ENDING FUND BALANCE</b>				<b>328,287</b>	
	Reserved for:					
	Impact Fees				-	
	Class C Roads				-	
	Joint Venture				-	
	Debt Service				-	
	Capital Projects				129,960	
	Endowments				-	
	Unrestricted				198,327	

**Notes:**

1. Estimated Beginning Fund Balance subject FY 2015 Actual results and audit entries.

RESOLUTION NO. \_\_\_\_

A RESOLUTION BY THE REDEVELOPMENT AGENCY OF THE CITY OF SPRINGVILLE, UTAH TO ADOPT THE TENTATIVE BUDGET FOR FISCAL YEAR 2016-2017 AND SET A PUBLIC HEARING FOR ADOPTION OF THE FINAL BUDGET ON JUNE 7, 2016, AT 6:50 P.M.

WHEREAS on May 3, 2016, the Executive Director submitted a tentative budget to the Redevelopment Agency of the City of Springville, Utah; and

WHEREAS the Board of Directors of the Redevelopment Agency of the City of Springville, Utah desires to adopt the tentative budget as required by State law; and

WHEREAS the Board of Directors of the Redevelopment Agency of the City of Springville, Utah desires to make the tentative budget available for public review and comment at least ten days prior to the public hearing; and

WHEREAS the Board of Directors of the Redevelopment Agency of the City of Springville, Utah desires to set a public hearing for June 7, 2016, at 6:50 p.m. to receive additional public input on the budget.

NOW, THEREFORE, BE IT RESOLVED BY BOARD OF DIRECTORS OF THE REDEVELOPMENT AGENCY OF SPRINGVILLE, UTAH, as follows:

1. The Board of Directors of the Redevelopment Agency of the City of Springville, Utah hereby adopts the tentative budget attached as Exhibit "A."
2. The Board of Directors of the Redevelopment Agency of the City of Springville, Utah will conduct a public hearing to accept the final budget for fiscal year 2016-2017 on June 7, 2016, at 6:50 p.m.

PASSED AND APPROVED this 3<sup>rd</sup> day of May 2016.

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Wilford W. Clyde, Chairman

ATTEST:

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Kim Rayburn, Secretary



## STAFF REPORT

**DATE:** April 28, 2016

**TO:** Springville Redevelopment Agency

**FROM:** John Penrod, City Attorney

**SUBJECT: CONSIDERATION OF APPROVING AN INTERLOCAL AGREEMENT BETWEEN THE AGENCY AND SPRINGVILLE CITY WHEREIN THE CITY CONSENTS TO THE AGENCY RECEIVING A PORTION OF SALES TAX REVENUES GENERATED BY SALES WITHIN THE SPRINGVILLE NORTH COMMUNITY DEVELOPMENT PROJECT AREA.**

### RECOMMENDED ACTION

Motion to Approve Resolution No. \_\_\_ that approves an interlocal agreement between the Agency and Springville City wherein the City consents to the Agency receiving a portion of sales tax revenues generated by sales within the Springville North Community Development Project Area.

### BACKGROUND

HWP Properties, Inc. is currently developing a Mitsubishi new and used car dealership within the Springville North Community Development Project Area (the "Project Area"). In November 2015, the Agency adopted the Plan for the Project Area. One of the stated purposes of the Plan is to provide sales tax incentives to the Mitsubishi dealership in order to encourage the dealership to locate in the Project Area. The attached interlocal agreement provides the City's approval of providing a portion of the sales tax revenues generated from the Mitsubishi and Tracker boat dealerships to the Agency. In return, the Agency will be permitted to enter into a participation agreement to provide sales tax incentives to HWP Properties, Inc., which owns both the Mitsubishi and Tracker dealerships.

The proposed agreement includes the following provisions:

1. Sales Tax. The agreement defines the sales tax revenues that the City receives as one-half of a percent of tax revenue from transactions occurring within the City, which is also defined as the point-of-sale tax ("POST").
2. Site. The agreement limits the Site for which the sales tax will be collected and provided to the Agency to only include the Mitsubishi and Tracker boats dealership sites.
3. Amount of Sales Tax. The Agency will receive up to fifty percent (50%) of the POST sales tax revenue generated by sales within the Site for a maximum of \$200,000 over a

### CITY COUNCIL AGENDA

maximum five (5) year period. Fifty percent of the POST sales tax is equal to twenty-five-one-hundredths (25/100) of one percent (0.25%) of taxable sales.

4. Incentives to Developers. The Agency is allowed under the agreement to provide the sales tax it receives as an incentive to developers. Before any developers receive an incentive, they must enter into a participation agreement with the Agency.
5. 30 Day Notice. Before the agreement becomes effective, a notice of the agreement must be publicized and allow for a 30 day period for objections to be filed.

The interlocal agreement must be approved by both the City and the Agency before it is executed.

The estimated amount of sales tax received by the City that will be generated from the Site will be between \$385,000 and \$596,000. That amount is based on a possible low starting year of \$8 million to a high fifth year of \$26 million worth of annual sales occurring on the Site.

#### **FISCAL IMPACT**

The City will pay up to \$200,000 to the Agency, which amount could be paid to HWP Properties, Inc. through a participation agreement.

Attachments: Proposed Resolution and Interlocal Agreement

**SPRINGVILLE NORTH  
COMMUNITY DEVELOPMENT PROJECT AREA  
INTERLOCAL AGREEMENT  
by and between the  
SPRINGVILLE CITY REDEVELOPMENT AGENCY  
and  
SPRINGVILLE CITY**

**THIS INTERLOCAL AGREEMENT** is entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2016, by and between the **SPRINGVILLE CITY REDEVELOPMENT AGENCY**, a political subdivision of the State of Utah (the “**Agency**”) and **SPRINGVILLE CITY, UTAH**, a political subdivision of the State of Utah (the “**City**”); the Agency and the City may also be individually referred to as “**Party**” and collectively as “**Parties**”).

**A. WHEREAS**, the City created the Agency pursuant to the provisions of the Utah Redevelopment Law and the Agency continues to operate under the Limited Purpose Local Government Entities – Community Development and Renewal Agencies Act, Title 17C of the Utah Code (the “**Act**”), and is authorized thereunder to conduct urban renewal, economic development, and community development activities within the City, as contemplated by the Act; and

**B. WHEREAS**, the Agency created the Springville North Community Development Project Area (the “**Project Area**”) and adopted a community development project area plan for the Project Area (the “**Project Area Plan**”), a copy of which 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 provide for the development of an automobile and boat dealership (the “**Project**”) in the Project Area; and

**C. WHEREAS**, the City receives tax revenue from sales occurring within its borders in the amount of one-half (1/2) percent pursuant to Utah Code Ann. § 59-12-205(2)(b) and the City and the Agency have determined that it is in the best interests of the residents of the City to provide certain financial assistance through the use of a fifty percent portion of that tax in connection with the development of the Project as allowed for in the Project Area Plan; and

**D. WHEREAS**, the Agency anticipates providing a portion of the sales tax revenue, generated by sales occurring within the site of the proposed automobile and boat dealerships as more specifically described on **EXHIBIT B** and shown on the map attached hereto as **EXHIBIT**

C (the “Site”) due to the Project, to assist in the development and completion of the Project as provided in the Project Area Plan; and

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

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

**G. WHEREAS** the provisions of applicable Utah State law shall govern this Agreement, including the Act and the Interlocal Cooperation Act, Title 11 Chapter 13 of the UCA, as amended (the “**Cooperation Act**”).

**NOW, THEREFORE**, in consideration of the mutual promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

**1. Point of Sale Tax.** Sales occurring within the boundaries of the City are currently subject to a one (1) percent sales tax (the “**Local Sales Tax**”) per Title 59, Chapter 12, Part 2 of the UCA, the Local Sales and Use Tax Act, and more particularly per UCA § 59-12-204. The City retains fifty (50) percent of that one-percent tax as set forth in UCA § 59-12-205(2)(b) based on the transaction occurring within the boundaries of the City (the “**Point-of-sale Tax**” or “**POST**”). If changes are made to Utah laws during the term of this Agreement that affect the amount of or calculation of the POST, the POST shall be defined as that Local Sales Tax revenue that is retained by or distributed to the City on the basis of taxable transactions occurring within the boundaries of the City, whether that amount be more or less than the current amount.

**2. City's Consent.** Pursuant to Section 17C-4-201 of the Act and Section 11-13-215 of the Cooperation Act, the City hereby agrees and consents that the Agency shall be paid fifty (50) percent of the POST generated by sales within the Site as an incentive (the “**Incentive**”). The Incentive paid to the Agency shall be limited to a total maximum payment of \$200,000 over a maximum five (5) year period, beginning on the date for which the Agency is first paid the Incentive.

**3. Use of Tax Increment and other Taxes.** Real or personal property tax incentives are not planned to be used in the funding of this Project on the Site.

4. **Requirement for Written Participation Agreement.** The incentives contemplated herein will only be paid to a participant who has entered into a written Participation Agreement with the Agency and such Participation Agreement has been approved by resolution of the Agency Board.

2. **Authorized Uses of POST.** The Parties agree that the Agency may apply the Agency's share of the POST to the payment of any of the components of the Project as described herein or contemplated in the Project Area Plan, including but not limited to the cost and maintenance of public infrastructure and other improvements located within the Project Area, incentives to developers or participants within the project area, administrative, overhead, legal, and other operating expenses of the Agency, and any other purposes deemed appropriate by the Agency, all as authorized by the Act.

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. **Due Diligence.** Each of the Parties acknowledges for itself that it has performed its own review, investigation, and due diligence regarding the relevant law and facts upon which this Agreement is based, including representations of the Agency concerning the Project and the Project's benefits to the community and to the Parties, and each Party relies upon its own understanding of the relevant law and facts, information, and representations, after having completed its own due diligence and investigation.

5. **Interlocal Cooperation Act.** In satisfaction of the requirements of the Cooperation Act in connection with this Agreement, the Parties agree as follows:

a. This Agreement shall be authorized and adopted by resolution of the legislative body of each Party pursuant to and in accordance with the provisions of Section 11-13-202.5 of the Cooperation Act;

b. This Agreement shall be reviewed as to proper form and compliance with applicable law by a duly authorized attorney in behalf of each Party pursuant to and in accordance with the Section 11-13-202.5(3) of the Cooperation Act;

c. 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;

e. The term of this Agreement shall commence on the publication of the notice required by Section 17C-4-202 of the Act and shall continue through the date on which all of the Incentive has been paid to and disbursed by the Agency as provided herein.

f. Following the execution of this Agreement by both Parties, the Parties shall cause a notice regarding this Agreement to be published in accordance with Section 11-13-219 of the Cooperation Act and Section 17C-4-202 of the Act.

6. **Modification and Amendment.** Any modification of or amendment to any provision contained herein shall be effective only if the modification or amendment is in writing and signed by both Parties. Any oral representation or modification concerning this Agreement shall be of no force or effect.

7. **Further Assurances.** Each of the Parties hereto agrees to cooperate in good faith with the other, to execute and deliver such further documents, to adopt any resolutions, to take any other official action, and to perform such other acts as may be reasonably necessary or appropriate to consummate and carry into effect the transactions contemplated under this Agreement.

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

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

10. **Severability.** If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction or as a result of future legislative action, and if the rights or obligations of any Party hereto under this Agreement will not be materially and adversely affected thereby,

a. such holding or action shall be strictly construed;

b. such provision shall be fully severable;

c. this Agreement shall be construed and enforced as if such provision had never comprised a part hereof;

d. the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the invalid or unenforceable provision or by its severance from this Agreement; and

e. in lieu of such illegal, invalid, or unenforceable provision, the Parties hereto shall use commercially reasonable efforts to negotiate in good faith a substitute, legal, valid, and enforceable provision that most nearly effects the Parties' intent in entering into this Agreement.

11. **Authorization.** Each of the Parties hereto represents and warrants to the other that the warranting Party has taken all steps, including the publication of public notice where necessary, in order to authorize the execution, delivery, and performance of this Agreement by each such Party.

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

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

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

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

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

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

**SPRINGVILLE CITY REDEVELOPMENT  
AGENCY**

By: \_\_\_\_\_  
Wilford W. Clyde, Chair

ATTEST:

By: \_\_\_\_\_  
Kim Rayburn, Secretary

Attorney Review for the Agency:

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

\_\_\_\_\_  
Attorney for the Springville City  
Redevelopment Agency

*[Signatures continue on next page.]*

**ADDITIONAL SIGNATURES TO INTERLOCAL AGREEMENT**

**SPRINGVILLE CITY, UTAH**

By: \_\_\_\_\_  
Mayor, Springville City

ATTEST:

By: \_\_\_\_\_  
Kim Rayburn, City Recorder

Attorney Review for the City:

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

\_\_\_\_\_  
Attorney for Springville City, Utah

**EXHIBIT A**

SPRINGVILLE NORTH COMMUNITY DEVELOPMENT PROJECT AREA  
PROJECT AREA PLAN

## **EXHIBIT B**

### **SITE LEGAL DESCRIPTION**

LOT 1, PLAT D, SPRING POINTE RETAIL CENTER SUBDIVISION (AN AMENDMENT OF LOT 1, PLAT A, SPRING POINTE RETAIL CENTER SUBDIVISION), SPRINGVILLE, UTAH COUNTY, UTAH, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE IN THE OFFICE OF THE UTAH COUNTY RECORDER. AREA 2.450 ACRES.

TAX ID NO. 66:465:0001

LOT 2, PLAT D, SPRING POINTE RETAIL CENTER SUBDIVISION (AN AMENDMENT OF LOT 1, PLAT A, SPRING POINTE RETAIL CENTER SUBDIVISION), SPRINGVILLE, UTAH COUNTY, UTAH, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE IN THE OFFICE OF THE UTAH COUNTY RECORDER. AREA 1.471 ACRES.

TAX ID NO. 66:465:0002



**RDA RESOLUTION No. \_\_\_\_\_**

**A RESOLUTION APPROVING AN INTERLOCAL AGREEMENT WITH SPRINGVILLE CITY REGARDING THE SPRINGVILLE NORTH COMMUNITY DEVELOPMENT PROJECT AREA.**

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

**WHEREAS**, the Springville City Redevelopment Agency (the “**Agency**”) and Springville City, Utah (the “**City**”) are public agencies for purposes of the Act; and

**WHEREAS**, after careful analysis and consideration of relevant information, the City desires to enter into an Interlocal Agreement with the Agency whereby the City consents to the Agency receiving a portion of sales tax revenues generated by sales within the Springville North Community Development Project Area, to assist in the development and of the Project Area as provided in the Project Area Plan; and

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

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF SPRINGVILLE CITY, UTAH:**

**SECTION 1. Agreement Approval.** The Interlocal Agreement, substantially in the form attached as EXHIBIT A, is approved and shall be executed by the Agency.

**SECTION 2. Legal Review.** As required by Section 11-13-202.5 of the Act, the Interlocal Agreement has been submitted to legal counsel of the Agency for review and approval as to form and legality.

**SECTION 3. Filing with Records Keeper.** As required by Section 11-13-209 of the Act and upon full execution of the Interlocal Agreement, an executed original counterpart of the Interlocal Agreement shall be filed immediately with the keeper of records of the Agency.

**SECTION 5. Publishing of Notice.** Upon full execution of the Interlocal Agreement, the Agency Secretary is directed to publish or cause to be published a notice of the Interlocal Agreement, in substantially the form attached as EXHIBIT B, as required by Section 11-13-219 of the Act and Section 17C-4-202 of the Utah Code, and to make a copy of the Interlocal Agreement available for public inspection and copying at the Agency’s offices during regular business hours for a period of at least 30 days following publication of the notice.

**SECTION 4. Effective Date.** This resolution shall become effective immediately upon passage.

**PASSED AND ADOPTED BY THE BOARD OF THE SPRINGVILLE CITY REDEVELOPMENT AGENCY, STATE OF UTAH, ON THIS 3<sup>rd</sup> DAY OF MAY, 2016.**

\_\_\_\_\_  
Wilford W. Clyde, Chair  
Springville City Redevelopment Agency

Attest:

\_\_\_\_\_  
Kim Rayburn, Agency Secretary

**EXHIBIT A**

INTERLOCAL AGREEMENT

## **EXHIBIT B**

### **NOTICE OF INTERLOCAL AGREEMENT BETWEEN THE SPRINGVILLE CITY REDEVELOPMENT AGENCY AND SPRINGVILLE CITY**

The Springville City Redevelopment Agency (the "Agency") and the Springville City, Utah jointly provide this notice of an Interlocal Agreement entered into by and between the Agency and the City, in which the City consents to the Agency receiving a portion of sales tax revenues generated by sales within a portion of the Springville North Community Development Project Area for the purpose of facilitating development within the Project Area. A copy of the Interlocal Agreement is and will be available for public inspection and copying at the Agency offices located at 110 South Main Street, Springville, Utah 84663, between the hours of 9:30 am and 5:00 pm, Monday through Friday, for a period of at least 30 days following the publication of this notice. During that 30-day period, any person in interest may contest the Interlocal Agreement, or the procedure used to adopt it, for failure to comply with any applicable statutory requirements. After that 30-Day Period, no person may contest the Interlocal Agreement for any cause.



## STAFF REPORT

**DATE:** April 28, 2016

**TO:** Springville Redevelopment Agency

**FROM:** John Penrod, City Attorney

**SUBJECT: CONSIDERATION OF APPROVING A RESOLUTION THAT APPROVES THE AGENCY ENTERING INTO A PARTICIPATION AGREEMENT WITH HWP PROPERTIES, INC. TO PROVIDE SALES TAX INCENTIVES FOR THE DEVELOPMENT AND OPERATION OF MITSUBISHI AND TRACKER BOAT DEALERSHIPS.**

### RECOMMENDED ACTION

Motion to Approve Resolution No. \_\_\_\_ that approves the Agency entering into a participation agreement with HWP Properties, Inc. for incentives to encourage the development and operation of auto and boat dealerships.

### BACKGROUND

HWP Properties, Inc. (“HWP”) has developed a Tracker boat dealership and is currently developing a Mitsubishi new and used car dealership within the Springville North Community Development Project Area (the “Project Area”). In November 2015, the Agency adopted the Plan for the Project Area. One of the stated purposes of the Plan is to provide sales tax incentives to the Mitsubishi dealership in order to encourage the dealership to locate in the Project Area. The attached participation agreement approves providing a portion of the sales tax revenues generated from the Mitsubishi and Tracker boat dealerships as an incentive to HWP.

The proposed agreement includes the following provisions:

1. Purpose. The purpose of the agreement is to help carry out the Springville North Community Development Project Area Plan by providing sales tax incentives to HWP in order to encourage the development and operation of an auto dealership.
2. Assignment of the Agreement. Nothing in the agreement limits HWP from selling the properties on which the dealerships are located. However, HWP cannot assign the agreement without the prior written consent of the Agency. Furthermore, the agreement states that HWP is in breach of the agreement should HWP transfers the property to a tax-exempt organization.
3. Incentive Payments. The incentive payments under the agreement will be fifty percent of the City’s point-of-sales tax (or 0.25% of the total sales tax) for sales actually occurring on HWP’s site (both Mitsubishi and Tracker) for a maximum payment of up to \$200,000 to be paid within a maximum of five years.

### CITY COUNCIL AGENDA

4. Trigger Date. The sales tax incentive will start on the date that Mitsubishi sells its first vehicle.
5. Conditions Precedent to Incentive Payment. Before any incentive is paid, an interlocal agreement needs to be entered into between Springville and the Agency; the participation agreement needs to be executed; HWP has to develop and operate the dealerships; and the Agency must actually receive the incentive payment from the City. In the event that the City, County, or State takes action or the law is changed resulting in the Agency not receiving the incentive payment amount, the Agency shall not be required to pay the incentive to HWP. If all conditions of the agreement are met and the Agency does receive the incentive payment amount, the Agency is required to make the incentive payment to HWP within 30 days of receiving the incentive payment.
6. HWP Requirements. HWP is required to develop and operate the dealerships in order to receive the incentive payment.
7. 30 Day Notice. Before the agreement is executed and becomes effective, a notice of the underlying interlocal agreement between the City and Agency must be publicized and allow for a 30 day period for objections.

The estimated amount of sales tax received by the City that will be generated from the Site in the next five years will be between \$385,000 and \$596,000. That amount is based on a possible low starting year of \$8 million to a high fifth year of \$26 million worth of annual sales occurring on the Site.

### **FISCAL IMPACT**

The Agency will pay up to \$200,000 to HWP in sales tax generated from HWP's auto and boat dealerships.

Attachments: Proposed Resolution and Participation Agreement

**SPRINGVILLE NORTH  
COMMUNITY DEVELOPMENT PROJECT AREA  
PARTICIPATION AGREEMENT**  
**by and between the**  
**SPRINGVILLE CITY REDEVELOPMENT AGENCY**  
**and**  
**HWP PROPERTIES, LLC**

The parties hereto, the **Springville City Redevelopment Agency**, a political subdivision of the State of Utah (the “**Agency**”), and **HWP Properties, LLC**, a Utah limited liability company, (the “**Participant**”, the Agency and the Participant may also be individually referred to as “**Party**” and collectively as “**Parties**”), as of the date this Agreement is signed by the Agency, hereby agree as follows:

**1. SUBJECT OF AGREEMENT**

**1.1. Purpose of the Agreement**

The purpose of this Participation Agreement (the “**Agreement**”) is to carry out in part the Project Area Plan (the “**Plan**”) for the Springville North Community Development Project Area (the “**Project Area**”) by providing for sales tax incentives to entice the Participant to develop a franchised new and used Mitsubishi automobile dealership and Tracker boat dealership (the “**Facility**”) to the Project Area. The Plan is attached hereto as **Exhibit A**.

**1.2. Agreement in the Best Interests of the City and Residents**

This Agreement is in the vital and best interests of Springville City (the “**City**”), and the health, safety and welfare of its residents, and in accord with public purposes. This Agreement is carried out pursuant to the Limited Purpose Local Government Entities – Community Development and Renewal Agencies Act, 17C *et seq*, Utah Code Annotated as amended (the “**Act**”).

**1.3. The Project Area**

The Project Area is located within the boundaries of the City. The exact boundaries of the Project Area are specifically and legally described in the Plan.

**1.4. The Plan and Budget**

This Agreement is subject to the provisions of the Plan, as adopted and ordained on November 17, 2015 by the Agency and the City Council of Springville City (the “**Council**”) in accordance with Section 17C-3-106 of the Act.

**1.5. Description of the Site**

The site of the Facility (the “**Site**”) within the Project Area shall consist of two parcels that total approximately 3.92 acres. The Site is shown in detail on the Site Map, attached hereto as **Exhibit B**, and described in the description, attached hereto as **Exhibit C**. The Site is owned by the Participant.

**1.6. Parties to the Agreement**

**1.6.1. The Agency**

The Agency is a public body, corporate and political, exercising governmental functions and powers, and organized and existing under the Act. The address of the Agency for purposes of this Agreement is:

**Springville City Redevelopment Agency**  
110 South Main Street  
Springville, Utah 84663

**1.6.2. The Participant**

The Participant is **HWP Properties, LLC**, a Utah limited liability company, lawfully registered to do business in Utah. The Participant’s address for purposes of this Agreement is:

**HWP Properties, LLC**  
285 West Ash Cir.  
Woodland Hills, Utah 84653-2065

With a copy to:

**1.7. Prohibition against Certain Changes**

**1.7.1. Assignment or Transfer of Agreement**

The Participant represents and agrees for itself and its successors and assigns that during the term of this Agreement the Participant will not assign or transfer or attempt to assign or transfer all or any part of this Agreement, or any rights herein or obligations hereunder, without the prior written consent of the Agency. The assignment or delegation of this Agreement without the prior written consent of the Agency is a material breach of this Agreement and will entitle the Agency, in its sole discretion, to terminate this Agreement and cease further payments under this Agreement to the Participant or its successors or assigns. As a condition of the Agency approving an assignment of this Agreement by the Participant the Agency may, among other things, require the proposed assignee to execute an acknowledgement of its acceptance to perform all duties and obligations of the Participant under this Agreement.

**1.7.2. Transfer to Tax-Exempt Organization**

Notwithstanding anything in this Agreement to the contrary, any attempt by the Participant or its successor(s) in interest to transfer any of the real or personal property within the Site to a tax-exempt organization or otherwise to exempt any of the real or personal property within the Project Area from *ad valorem* property taxation without the prior written consent of the Agency constitutes a material breach of this Agreement and will entitle the Agency, in its sole discretion, to terminate this Agreement and cease further payments under this Agreement to the Participant or its successors or assigns.

**1.7.3. Continuing Obligations**

In the absence of a specific written agreement by the Agency, no assignment or transfer of this Agreement, in whole or in part, or approval of this Agreement by the Agency, relieves the Participant from any obligation under this Agreement. All of the terms, covenants, and conditions of this Agreement are and will remain binding upon the Participant and its successors and assigns.

## **2. OBLIGATIONS OF THE PARTIES**

### **2.1. Incentive Payments to the Participant**

The Agency agrees that beginning on the date of the first new vehicle sale at the Mitsubishi Facility (the “**Trigger Date**”), for a maximum period of five (5) years so long as the Participant fulfills all of its obligations set forth herein, the Agency will pay to the Participant fifty (50) percent of the City’s Point-of-sale Tax, as defined below, for sales actually occurring within the Site (the “**Incentive**”). The contemplated payments shall be made by the Agency within thirty (30) days after the Agency actually receives the annual payment of the Incentive from the City (or, if the Agency receives the payment of the Incentive for a particular year from the City in multiple payments, within thirty (30) days after the Agency receives the final Incentive payment relating to the particular calendar year) and the Participant has satisfied all conditions set forth in this Agreement.

#### **2.1.1. POST defined**

The Sales occurring within the boundaries of the City are currently subject to a one (1) percent sales tax (the “**Local Sales Tax**”) per Title 59, Chapter 12, Part 2 of the UCA, the Local Sales and Use Tax Act, and more particularly per UCA § 59-12-204. The City retains fifty (50) percent of that one-percent tax as set forth in UCA § 59-12-205(2)(b) based on the location of the transaction within the boundaries of the City (the “**Point-of-sale Tax**” or “**POST**”). If changes are made to Utah statutes during the term of this Agreement that affect the amount of or calculation of the POST, the POST shall be defined as that Local Sales Tax revenue that is retained by or distributed to the City on the basis of sales occurring within the boundaries of the City.

#### **2.1.2. Incentive Trigger**

The Agency shall not begin paying Incentive to the Participant unless the Participant makes a written request for such payment to the Agency within three (3) months of the Trigger Date. Failure by the Participant to make such a request for payment shall not serve to change or extend the Expiration Date.

#### **2.1.3. Incentive Limits**

##### **2.1.3.1. Time Limit**

**2.1.3.2. The Participant shall be entitled to receive the Incentive, subject to other restrictions and limitations as set forth in this Agreement, for a period of no longer than five (5) years from the Trigger Date (the “Expiration Date”). Regardless of the amount of Incentive paid up to the Expiration Date as described in this section, even if less than the overall limit set forth**

**in Section 2.1.3.2., no Incentive will be paid to the Participant for transactions occurring after the Expiration Date. Overall Limit**

Deleted: ¶

The total Incentive paid to the participant under this Agreement shall be limited to no more than \$200,000.

### **2.1.3.3. Percentage Limit**

Notwithstanding any other provisions of this Agreement, the Incentive paid to the Participant under this Agreement shall not be greater than fifty (50) percent of one-half (1/2) percent of taxable sales actually occurring within the Site. Or, expressed in absolute terms, the Incentive paid to the Participant shall not be greater than twenty-five-one-hundredths (25/100) of one percent (0.25%) of taxable sales actually occurring within the Site.

## **2.2. Building Permits and Fees**

The Participant shall pay all building permit fees and other fees required to construct the Facility.

## **2.3. Conditions Precedent to Payment of Incentive to the Participant**

The Agency has no obligation to remit to the Participant the Incentive unless and until the following conditions precedent are all satisfied: (a) the governing board of the Agency has approved this Agreement by resolution of the Agency, (b) the Agency is entitled to receive the Incentive from the City; (c) the Participant has commenced and continues operation of the Facility; and (d) the Agency has received actual payment of the Incentive intended for the Participant for the particular year. The Incentive must be remitted by the Agency to the Participant within thirty (30) days from the date of the receipt of the Incentive from the City and satisfaction of the conditions described in this Agreement. However, notwithstanding all other provisions in this Agreement, the Agency is not obligated to pay to the Participant in any one (1) year more than the Incentive attributable to the immediately preceding tax year.

### **2.3.1. Requirement that the Agency Receive Incentive**

The Agency has entered into an interlocal agreement (“the **“Interlocal Agreement”**”, attached hereto as **Exhibit D**) with the City to receive the Incentive to be paid to the Participant under this Agreement. The Agency shall not be obligated to pay any Incentive to the Participant unless the Agency has actually received the Incentive from the City. If actions or inaction of the City, Utah County, or the State of Utah result in the Agency not receiving the Incentive, the Agency shall have no obligation to pay such Incentive to the Participant. Additionally, if changes to any law or regulation prevent or prohibit the Agency from receiving the Incentive contemplated by the Interlocal Agreement, the Agency shall have no obligation to pay the Incentive to the Participant. Notwithstanding the foregoing, the Agency shall use its best efforts

to work with the City, Utah County, and the State of Utah and to ensure that the Incentive is received by the Agency and distributed to the Participant pursuant to the terms of this Agreement.

**2.3.2. Payment of Real Property and *Ad Valorem* Taxes**

During the term of this Agreement, the Participant and any successors in interest agree to pay all real property and other *ad valorem* taxes and assessments assessed against any portion of the Site or improvements thereon or any other property, including personal property, located within the Site. The Participant must remove, or must cause to be removed, any levy or attachment made on the Site or any portion thereof, or must assure the satisfaction thereof within a reasonable time but in any event prior to a sale thereunder or default on any lease thereof.

**2.3.3. Declaration of Invalidity**

If a court of competent jurisdiction declares that the Agency cannot receive the Incentive, invalidates the Project Area, or takes any other action which eliminates or reduces the amount of Incentive paid to the Agency, the Agency's obligation to annually pay the Participant the Incentive in accordance with this Agreement will be proportionately reduced or eliminated.

**2.3.4. Dispute over Receipt of Payment of Incentive**

In the event a dispute arises as to the person or entity entitled to receive the Incentive under this Agreement due to a claimed assignment or claimed successor in interest to the Incentive or otherwise, the Agency may withhold payment of the Incentive until the dispute is resolved either by agreement or by a court of competent jurisdiction. The Agency shall be entitled to deduct from its payment of the Incentive any costs or expenses, including reasonable attorneys' fees, incurred by the Agency due to the dispute.

**2.4. Nature of the Participant' Obligations**

To qualify to receive the Incentive payments set forth herein, the Participant shall fulfill all of the obligations in this Agreement.

**2.5. Construction of the Facility**

The Participant shall construct the Facility and improve the Site in compliance with the Plan, and shall at its own expense construct upon the Site buildings and structures reasonably required for the operation of a full-service, franchised, new-car dealership. The construction of the Facility shall be to a level meeting or exceeding the standards of other such dealerships in the area and meeting or exceeding the standards set by the franchisor auto manufacturer. The construction shall include the installation of all public and private utilities necessary for

operation of the Facility not already otherwise provided. The Agency shall comply with all of the obligations set forth in the Plan for the Project Area.

**2.6. Operation of the Facility**

The Participant shall operate on the Site a full-service, franchised, Mitsubishi new-car dealership and Tracker boat dealership including, among other things, facilities for new boat and car sales and a full-service auto repair facility.

**2.7. Commencement of Operations**

Such operations as described in Section 2.6 shall begin no later than 18 months from the date of this Agreement. For purposes of this section, the Facility shall be deemed to be in operation on the date that new vehicles are offered for sale to the public, the showroom is open to the public, and the service facilities are open for business. If the Participant fails to comply with the requirements of this section, the Agency shall be released from all obligations and duties under this Agreement.

**2.8. Funding Responsibility**

The Parties understand and agree that funding for the construction upon the Site of the Facility and related improvements comes entirely from the Participant's internal capital or from financing obtained by the Participant. The Agency shall not be liable or responsible for providing, obtaining, or guaranteeing such financing.

**3. OPERATION AND DEVELOPMENT OF THE SITE**

**3.1. Development of the Facility**

The Participant will at all times be responsible for all development and operation of the Facility pursuant to the Plan and this Agreement. Recognizing the level of capital investment by the Participant in the development of the Facility, the Agency has determined that it is in the best interests of the residents of the City to provide a portion of the City's Point-of-sale Tax to the Participant as an incentive to undertake the development and continued operation of the Facility as contemplated in this Agreement and in the Plan.

**3.2. Responsibility for Development Plans and Permits**

The Participant must responsibly prepare all plans and secure all permits, subject to the provisions of Section 2.2 above, for the development of the Facility. All plans must be in accordance with all applicable federal, state and local laws and regulations, subject to any legally obtained concessions, special permits and/or variances. Before commencing construction of the Facility, the Participant must secure or cause to be secured all zoning or land-use approvals and

permits required in order to proceed with the construction of the Facility. Expenses for such permits and approvals shall be borne by the Parties as set forth in Section 2.2 hereof.

### **3.3. Construction and Operation**

The Participant agrees to construct and operate the Facility on the Site according to the terms of this Agreement. During the term of this Agreement, the Participant and the Agency hereby agree as follows:

#### **3.3.1. Hold Harmless Agreement**

The Participant agrees to defend and hold the Agency and its directors, officers, agents, employees, representatives, contractors, attorneys and consultants harmless for any and all claims, liability, and damages arising out of any work or activity on the Facility or the Site by the Participant and its directors, officers, agents, employees, consultants and contractors.

#### **3.3.2. Hazardous, Toxic, and/or Contaminating Materials**

The Participant agrees to defend and hold the Agency its directors, officers, agents, employees, representatives, contractors, attorneys and consultants, harmless from any and all claims, liability, costs, fines, penalties, charges and/or claims of any kind whatsoever relating to the existence and removal of hazardous, toxic and/or contaminating materials on or from the Facility or the Site, except where such claims, liability, costs, fines, penalties, charges and/or claims are due to the actions of the Agency or where such claims existed (regardless of whether asserted) prior to the effective date of this Agreement.

#### **3.3.3. Indemnification**

The Participant agrees to and shall indemnify and hold the Agency and its directors, officers, agents, employees, representatives, contractors, attorneys and consultants harmless from and against all liability, loss, damage, costs, or expenses (including reasonable attorneys' fees and court costs) arising from or as a result of the death of any person, or any accident, injury, loss, or damage whatsoever caused to any person or to the property of any person, directly or indirectly caused by any acts done or any errors or omissions of the Participant and its directors, officers, agents, employees, consultants and contractors on the Facility or the Site except for willful misconduct or negligent acts or omissions of the Agency or its directors, officers, agents, employees and consultants. Likewise, the Agency agrees and shall indemnify and hold the Participant and its directors, officers, agents, employees, consultants and contractors harmless from and against all liability, loss, damage, costs, or expenses (including reasonable attorneys' fees and court costs) arising from or as a result of the death of any person, or any accident, injury, loss, or damage whatsoever caused to any person or to the property of any person, directly or indirectly caused by any acts done thereon or any errors or omissions of the Agency and its directors, officers, agents, employees and consultants except for willful misconduct or

negligent acts or omissions of the Participant or its directors, officers, agents, employees, consultants and contractors.

**3.3.4. Discrimination**

The Participant agrees for itself and its successors and assigns that it will not unlawfully discriminate against any employee or applicant for employment, or any contractor or any bidder on any contract.

**3.3.5. Local, State, and Federal Laws**

The Participant shall construct and operate the Facility thereon in conformity with all applicable laws; provided, however, that nothing herein shall limit the right of the Participant to properly challenge any such law or the applicability of such law.

**3.3.6. City and Other Governmental Agency Permits**

The Participant shall, at its own expense, except as detailed in Section 2.2, secure or cause to be secured, any and all permits which may be required by the City or any other governmental agency affected by the development or operation of the Facility. The Agency shall use its best efforts to work with the City any other governmental agencies to ensure that the Participant secures the necessary permits for the development and continued operation of the Facility.

**3.3.7. Rights of Access**

Representatives of the Agency shall have the right of reasonable access to the Site and any and all improvements thereon, including the Facility, for purposes of inspection, with reasonable and prior notice to and consent from the Participant, which consent shall not be unreasonably withheld, and without charges or fees, during normal business hours or as otherwise agreed to in writing by Participant. Such representatives of the Agency and other visitors to the Site shall observe any reasonable rules adopted by the Participant for purposes of maintaining safety and security on the Site, including requirements that such representatives or visitors be escorted by the general manager or other designated agent of the Participant at all times. Such representatives of the Agency shall be those who are so identified in writing by the Agency.

**3.3.8. Responsibility of the Agency**

The Agency shall not have any obligation under this Agreement other than those specifically provided for herein. Nothing herein shall be construed as requiring the Agency to pre-approve or prejudge any matter, or as otherwise binding the Agency's discretion or judgment

on any issue prior to appropriate hearing (if required), review, or compliance with any other requirement.

#### **4. EFFECT AND DURATION OF COVENANTS; TERM OF AGREEMENT**

The covenants, including but not limited to conformance with federal, local, and state laws, established in this Agreement shall, without regard to technical classification and designation, be binding on the Parties and any successors in interest for the benefit of each of the respective Parties, their successors and assigns during the term of this Agreement, which shall terminate upon the final Incentive payment as set forth in Article 2 of this Agreement, or expiration of the Plan, whichever occurs first.

#### **5. DEFAULTS, REMEDIES AND TERMINATION**

##### **5.1. Default**

If either the Agency or the Participant fails to perform or delays performance of any material term or provision of this Agreement, such conduct constitutes a default of this Agreement (“**Default**”). The Party in default must immediately commence to cure, correct or remedy such failure or delay and shall complete such cure, correction or remedy within the periods provided in Section 5.3 hereof.

##### **5.2. Notice**

If a Default under this Agreement occurs, the non-defaulting Party shall give written notice (a “**Default Notice**”) of the Default to the defaulting Party, specifying the nature of the Default. Failure or delay in giving such notice shall not constitute a waiver of any Default, nor shall it change the time of Default, nor shall it operate as a waiver of any rights or remedies of the non-defaulting Party; but the non-defaulting Party shall have no right to exercise any remedy hereunder without delivering the Default Notice as provided herein. Delays by either Party in asserting any of its rights and remedies shall not deprive the other Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.

##### **5.3. Cure Period**

The non-defaulting Party shall have no right to exercise a right or remedy hereunder unless the subject Default continues uncured for a period of thirty (30) days after delivery of the Default Notice with respect thereto, or, where the default is of a nature which cannot be cured within such thirty (30) day period, the defaulting Party fails to commence such cure within thirty (30) days and to diligently proceed to complete the same. A Default which can be cured by the payment of money is understood and agreed to be among the types of defaults which can be cured within thirty (30) days. If the Default is not cured, or commenced to be cured if such

default is of a nature which cannot be cured within thirty (30) days, by such Party within thirty (30) days of delivery of the Default Notice, such failure to cure shall be an Event of Default, and the non-defaulting Party, at its option, may institute an action for specific performances of the terms of this Agreement or pursue such other rights and remedies as it may have.

**5.3.1. Rights and Remedies**

Upon the occurrence of a Default (following the expiration of the applicable cure period provided herein or by law), the non-defaulting Party shall have all rights and remedies against the defaulting Party as may be available at law or in equity to cure, correct or remedy any Default, to terminate this Agreement, to obtain specific performance, to recover damages for any default, or to obtain any other remedy consistent with the purposes of this Agreement. Such rights and remedies are cumulative, and the exercise of one or more of such rights or remedies shall not preclude the exercise, at the same or different times, of any other rights or remedies for the same Default or any other Default by the defaulting Party.

**5.3.2. Legal Actions**

**5.3.2.1. Venue**

All legal actions between the Parties, arising under this Agreement, shall be conducted exclusively in the Fourth District Court for the State of Utah located in Utah County, Utah, unless they involve a case with federal jurisdiction, in which case they shall be conducted exclusively in the Federal District Court for the District of Utah.

**5.3.2.2. Services of Process**

Service of process on the Agency shall be made by personal service upon the Chairman or Executive Director of the Agency or in such other manner as may be provided by law.

Service of process on the Participant shall be by personal service upon its Registered Agents, or in such other manner as may be provided by law, whether made within or without the State of Utah.

**5.3.2.3. Applicable Law**

The laws of the State of Utah shall govern the interpretation and enforcement of this Agreement.

## **6. GENERAL PROVISIONS**

### **6.1. Notices, Demands, and Communications between the Parties**

Formal notices, demands, and communications between the Agency and the Participant shall be sufficiently given if personally delivered or if dispatched by registered or certified mail, postage prepaid, return-receipt requested, to the principal offices of the Agency and the Participant, as designated in Sections 1.6.1 and 1.6.2 hereof. Such written notices, demands, and communications may be sent in the same manner to such other addresses as either Party may from time to time designate by formal notice hereunder. Delivery of notice shall be complete upon mailing or making physical delivery of the writing containing the notice.

### **6.2. Severability**

In the event that any condition, covenant or other provision herein contained is held to be invalid or void by a court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect any other covenant or condition herein contained unless such severance shall have a material effect on the terms of this Agreement. If such condition, covenant or other provision shall be deemed invalid due to its scope, all other provisions shall be deemed valid to the extent of the scope or breadth permitted by law.

### **6.3. Nonliability of Agency Officials and Employees**

No director, officer, agent, employee, representative, contractor, attorney or consultant of the Agency shall be personally liable to the Participant, or any successor in interest, in the event of any default or breach by the Agency or for any amount which may become due to the Participant or to its successor, or on any obligations under the terms of this Agreement.

### **6.4. Indemnification**

The Participant shall indemnify the Agency against any liability to a third party resulting from this Agreement.

### **6.5. Enforced Delay; Extension of Time and Performance**

In addition to the specific provisions of this Agreement, performance by either Party hereunder shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of a public enemy; terrorist activity; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; litigation; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor or suppliers; acts of the other Party; or any other causes beyond the control or without the fault of the Party claiming an extension of time to perform. An extension of time for any such cause

shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the Party claiming such extension is sent, whether on the part of the Agency's Executive Director or its governing board or on the part of the Participant, to the other Party within thirty (30) days of actual knowledge of the commencement of the cause. Time of performance under this Agreement may also be extended in writing by the Agency and the Participant by mutual agreement.

**6.6. Approvals**

Whenever the consent or approval is required of any Party hereunder, except as otherwise herein specifically provided, such consent or approval shall not be unreasonably withheld or delayed.

**6.7. Time of the Essence**

Time shall be of the essence in the performance of this Agreement.

**6.8. Interpretation**

The Parties hereto agree that they intend by this Agreement to create only the contractual relationship established herein, and that no provision hereof, or act of either Party hereunder, shall be construed as creating the relationship of principal and agent, or a partnership, or a joint venture or enterprise between the Parties hereto.

**6.9. No Third-Party Beneficiaries**

It is understood and agreed that this Agreement shall not create for either Party any independent duties, liabilities, agreements, or rights to or with any third party, nor does this Agreement contemplate or intend that any benefits hereunder accrue to any third party.

**6.10. Incorporation of Exhibits**

All exhibits attached hereto are incorporated into this Agreement as if fully set forth herein.

**7. DUPLICATION, INTEGRATION, WAIVERS, AND AMENDMENTS**

**7.1. Duplicate Originals**

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

**7.2. Integration**

This Agreement (including its exhibits) constitutes the entire understanding and agreement of the Parties. When executed by the Parties, this Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the Site.

**7.3. Waivers and Amendments**

All waivers of the provisions of this Agreement must be in writing. This Agreement and any provisions hereof may be amended only by mutual written agreement between The Participant and the Agency.

**8. TIME FOR ACCEPTANCE OF AGREEMENT BY AGENCY: DATE OF AGREEMENT**

This Agreement, when executed by The Participant and delivered to the Agency, must be authorized, executed, and delivered by the Agency within thirty (30) days thereafter, or else The Participant may withdraw the offer of this Agreement on written notice to the Agency. The effective date of this Agreement shall be the date it is signed by the Agency.

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

**SPRINGVILLE CITY  
REDEVELOPMENT AGENCY**

By: \_\_\_\_\_  
Wilford W. Clyde, Chair

Attest:

By: \_\_\_\_\_  
Kim Rayburn, Secretary

STATE OF UTAH            )  
                                  : ss.  
COUNTY OF UTAH        )

In the County of Utah, State of Utah, on this \_\_\_\_ day of \_\_\_\_\_, 2016, before me, the undersigned notary, personally appeared \_\_\_\_\_ and \_\_\_\_\_, the Chair and the Secretary, respectively, of the Springville City Redevelopment Agency, who are personally known to me or who proved to me their identities through documentary evidence to be the persons who signed the preceding document in my presence and who swore or affirmed to me that their signatures are voluntary and on behalf of the Springville City Redevelopment Agency by authority of a Resolution of its Board of Directors.

\_\_\_\_\_  
Notary signature and seal

*[Signatures continue on next page]*



**EXHIBIT A**  
**to [Mitsubishi] Participation Agreement**

*Project Area Plan*

**RDA RESOLUTION No. \_\_\_\_\_**

**A RESOLUTION APPROVING THE PARTICIPATION AGREEMENT BETWEEN THE SPRINGVILLE CITY REDEVELOPMENT AGENCY AND HWP PROPERTIES, INC, FOR DEVELOPMENT WITHIN THE SPRINGVILLE NORTH COMMUNITY DEVELOPMENT PROJECT AREA**

**WHEREAS** the Springville City Redevelopment Agency (the “**Agency**”) has been created and operates pursuant to Utah Code Annotated Title 17C, Community Development and Renewal Agencies Act (the “**Act**”), for the purpose of promoting urban renewal, economic development, and community development projects undertaken within the Agency boundaries;

**WHEREAS** under authority of the Act, the Agency created the Springville North Community Development Project Area (the “**Project Area**”) and adopted a Plan for the Project Area;

**WHEREAS** the Agency is authorized to enter into agreements with property owners, governmental entities, private entities and others;

**WHEREAS** the Agency finds the proposed Participation Agreement with HWP Properties, Inc., attached as **Exhibit A** in harmony and consistent with the Plan for the Project Area and in the best interests of the Agency and the City of Springville.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE SPRINGVILLE CITY REDEVELOPMENT AGENCY, STATE OF UTAH:**

**SECTION 1. Participation Agreement Approval.** The Board, having reviewed the matter, hereby approves the Participation Agreement attached hereto as **Exhibit A** and authorizes the Chair and Secretary to execute the Participation Agreement on behalf of the Agency.

**SECTION 2. Effective Date.** This Resolution shall become effectively immediately upon passage.

**PASSED AND ADOPTED BY THE BOARD OF THE SPRINGVILLE CITY REDEVELOPMENT AGENCY, STATE OF UTAH, ON THIS 3<sup>rd</sup> DAY OF MAY, 2016.**

\_\_\_\_\_  
Wilford W. Clyde, Chair  
Springville City Redevelopment Agency

Attest:

\_\_\_\_\_  
Kim Rayburn, Agency Secretary

**EXHIBIT A**  
**PARTICIPATION AGREEMENT**

**EXHIBIT B**  
**to [Mitsubishi] Participation Agreement**

*Site Map*



**EXHIBIT C**  
**to [Mitsubishi] Participation Agreement**

*Site Legal Description*

LOT 1, PLAT D, SPRING POINTE RETAIL CENTER SUBDIVISION (AN AMENDMENT OF LOT 1, PLAT A, SPRING POINTE RETAIL CENTER SUBDIVISION), SPRINGVILLE, UTAH COUNTY, UTAH, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE IN THE OFFICE OF THE UTAH COUNTY RECORDER. AREA 2.450 ACRES.

TAX ID NO. 66:465:0001

LOT 2, PLAT D, SPRING POINTE RETAIL CENTER SUBDIVISION (AN AMENDMENT OF LOT 1, PLAT A, SPRING POINTE RETAIL CENTER SUBDIVISION), SPRINGVILLE, UTAH COUNTY, UTAH, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE IN THE OFFICE OF THE UTAH COUNTY RECORDER. AREA 1.471 ACRES.

TAX ID NO. 66:465:0002

**EXHIBIT D**  
**to [Mitsubishi] Participation Agreement**  
*Interlocal Agreement with Springville City*