

# Cedar City

10 North Main Street • Cedar City, UT 84720  
435-586-2950 • FAX 435-586-4362  
www.cedarcity.org

**Mayor**  
Maile L. Wilson

**Council Members**  
Ronald R. Adams  
Paul Cozzens  
Terri W. Hartley  
Craig E. Isom  
Fred C Rowley

## REDEVELOPMENT AGENCY MEETING

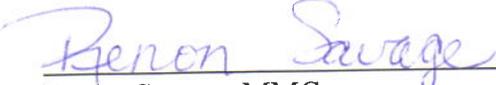
AUGUST 17, 2016

5:30 p.m. or as soon thereafter as the meeting is called

The Cedar City Redevelopment will be held in the Council Chambers at the City Office, 10 North Main Street, Cedar City, Utah. The agenda will consist of the following items:

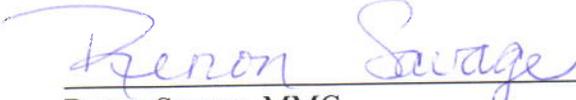
- I. Call to Order
- II. Business Agenda
  1. Public Hearing to consider a resolution amending the terms of the Port 15 Economic Development Project Area. Paul Bittmenn
  2. Consider approval of the second amendment to the agreement for the development of land related to the Port 15 Economic Development Project Area. Paul Bittmenn

Dated this 15<sup>th</sup> day of August, 2016.

  
\_\_\_\_\_  
Renon Savage, MMC  
City Recorder

### CERTIFICATE OF DELIVERY:

The undersigned duly appointed and acting recorder for the municipality of Cedar City, Utah, hereby certifies that a copy of the foregoing Notice of Agenda was delivered to the Daily News, and each member of the governing body this 15<sup>th</sup> day of August, 2016.

  
\_\_\_\_\_  
Renon Savage, MMC  
City Recorder

Cedar City Corporation does not discriminate on the basis of race, color, national origin, sex, religion, age or disability in employment or the provision of services.

If you are planning to attend this public meeting and, due to a disability, need assistance in accessing, understanding or participating in the meeting, please notify the City not later than the day before the meeting and we will try to provide whatever assistance may be required.

CEDAR CITY COUNCIL  
AGENDA ITEMS - |  
DECISION PAPER

**TO:** Mayor and City Council

**FROM:** Paul Bittmenn

**DATE:** August 14, 2016.

**SUBJECT:** Resolution amending the Port 15 Economic Development Project Area Plan and Budget

**DISCUSSION:**

In 2006 and 2007 the Redevelopment worked with Port 15 Utah, LLC, to form the Port 15 Economic Development Project Area Plan and Budget. The attached resolution would amend both the plan and budget.

The plan and budget amendment would increase the life of the project area for an additional 10 years or until the RDA has made payments to Port 15 Utah totaling \$7,178,500.00, whichever comes first. This proposal will resolve a dispute between Port 15 Utah LLC and the RDA, please see the recitals in the attached resolution.

As noted in the attached resolution the proposed amendment will allow the project area to achieve its stated purposes and maintain its original budget.

Please review the attached resolution as it sets forth a very good history of the dispute and the proposed resolution. The Taxing Entity Committee approved a resolution in June of this year with the same concepts as this proposed resolution. Attached is also a copy of the Taxing Entity Committee's resolution.

One item that may have an impact on the proposed resolution. I have sent it to the attorney for Port 15 Utah LLC to see if that group has any comments. They may request changes, if they do staff will let you know what they are and we can discuss.

Please consider adopting the attached resolution.

CEDAR CITY REDEVELOPMENT AGENCY RESOLUTION NO. \_\_\_\_\_  
A RESOLUTION OF THE CEDAR CITY REDEVELOPMENT AGENCY ADOPTING AMENDMENTS TO THE PORT  
15 ECONOMIC DEVELOPMENT PROJECT AREA AND RELATED MATTERS.

**WHEREAS**, in 2005 and 2006, in accordance with and in furtherance of the objectives of the Limited Purpose Local Government Entities – Community Development and Renewal Agencies Act, Utah Code Title 17C, Parts 1 through 4 (as amended) (the “Act”), the Cedar City Redevelopment Agency (the “RDA”) commenced the process to create the Port 15 Economic Development Project Area (the “Project Area”); and

**WHEREAS**, in early 2006, the RDA caused to be prepared a Project Area Economic Development Plan (the “Project Area Plan”) and a Project Area Budget for the Project Area. The Project Area Plan included provisions allowing for, among other things, the use of tax increment financing for the construction of Project Area related infrastructure; and

**WHEREAS**, the Cedar City Redevelopment Agency Taxing Entity Committee (the “TEC”) and the RDA adopted the Project Area Plan and Project Area Budget; and

**WHEREAS**, in March, 2006, the Cedar City Council adopted the necessary ordinance to create the Project Area, adopting the Project Area Budget and Project Area Plan pursuant to the resolutions of the RDA and the TEC; and

**WHEREAS**, in furtherance of the adopted Project Area Plan and the Project Area Budget, on or about February, 2007, the RDA entered into an agreement with Port 15 Utah, LLC. Said agreement specified certain terms and conditions related to the development of the Project Area including certain terms and conditions related to tax increment payments to Port 15 Utah, LLC; and

**WHEREAS**, in furtherance of the Project Area Budget and the Project Area Plan, the agreement between the RDA and Port 15 Utah, LLC contains a cap on the total sum of tax increment money that can be paid to Port 15 Utah, LLC (the “Original Cap”). The Original Cap on payments to Port 15 Utah, LLC was \$7,000,000.00; and

**WHEREAS**, Port 15 Utah, LLC, was a major financial participant in extending a main sewer line located outside the Project Area. The main sewer line will serve future facilities within the Project Area, and in furtherance of the Project Area Plan and Project Area Budget, the Original Cap has been increased to \$7,178,500.00 (the “Current Cap”). One of the effects of the cap on tax increment payments to Port 15 Utah, LLC, is to keep the project within the adopted Project Area Budget; and

**WHEREAS**, Port 15 Utah, LLC has spent a substantial sum of money to develop the infrastructure within the Project Area; and

**WHEREAS**, Port 15 Utah, LLC, in conjunction with the Cedar City/Iron County Office of Economic Development, has devoted substantial sums of money and amounts of time to marketing the Project Area; and

**WHEREAS**, shortly after the opening of the Project Area and the development of the infrastructure therein, the financial recession hit and decimated the ability for the rural Utah business park to attract new businesses to locate therein; and

**WHEREAS**, Port 15 Utah, LLC and the RDA have disagreed as to the calculation and distribution of the tax increment revenue from 2009 to present. On one hand, the RDA has taken the position that the tax increment should be calculated using \$8,329,125.00 as the base taxable value pursuant to the agreement between Port 15 Utah, LLC and the RDA. The RDA has employed this methodology since 2009. On the other hand, Port 15 Utah, LLC has taken the position that the calculation of the tax increment should be calculated using \$630.00 as the base taxable value pursuant to the TEC's Project Area Budget; and

**WHEREAS**, in a cooperative effort to resolve this disagreement and to further the purposes of the Project Area in attracting industry and quality employment to Iron County, expanding the local economy, expanding the tax base, and improving available employment opportunities, the RDA and Port 15 Utah, LLC, have proposed a resolution that will extend the term of the Project Area ten (10) years – from 2023 to 2033, keep the project within budget by maintaining the Current Cap on the payments to Port 15 Utah, LLC, close the Project Area when the term expires or the Current Cap in payments to Port 15 Utah, LLC, is reached, whichever occurs first, and adopt and approve the use of \$8,329,125.00 as the base taxable value for calculation of the tax increment going forward; and

**WHEREAS**, the local taxing entities (as represented on the TEC) have adopted a resolution supporting cooperative efforts of Port 15 Utah, LLC, and the RDA so that the goals of the Project Area may be accomplished and are supportive of the resolution Port 15 Utah, LLC, and the RDA have jointly proposed to their disagreement as to the calculation and distribution of tax increment; and

**WHEREAS**, in its approval of said jointly proposed resolution to the disagreement between Port 15 Utah, LLC, and the RDA the TEC found that the proposed resolution comports with the Act, furthers the goals of the Project Area and the taxing entities, and preserves the safeguards of the Project Area Budget.

**WHEREAS**, The RDA has authority to amend the provisions of the Port 15 Economic Development Project Area in conformance with the provisions of Utah Code Annotated §17C-3-109, any such amendments have to be adopted by an ordinance of the Cedar City Council; and

**WHEREAS**, the RDA finds that the public hearing held on August 17, 2016, has been appropriately advertised as required by State Law, and after due consideration of the public input received during said public hearing, if any, and consistent with the recommendations from the Cedar City Redevelopment Agency Taxing Entity Committee, the RDA hereby enters into the following resolutions.

**BE IT RESOLVED BY THE** Cedar City Redevelopment Agency that the Port 15 Project area plan and budget are hereby amended as follows:

1. Extension of Term.

The term during which tax increment may be taken by the RDA and paid to Port 15 Utah, LLC, is extended for an additional ten (10) years, up to and including 2033, or until the Current Cap on payments (\$7,178,500.00) to Port 15 Utah, LLC, has been reached, whichever occurs first.

2. Computation of Tax Increment.

The Port 15 Economic Project Area Plan and Budget are hereby amended to formally incorporate and recognize the current and past use of \$8,329,125.00 as the base taxable value for computation of the tax increment for the Port 15 Economic Development Project Area.

3. Compliance with Budget and Plan.

The RDA adopts the Taxing Entity Committee finding that the Port 15 Economic Development Project Area has been developed in compliance with the project area plan and that the RDA has remained within the Project Area Budget to date. Furthermore, measures approved with this amendment will allow for the Port 15 Economic Development Project Area to accomplish its purposes and remain within budget.

4. Existing Terms Remain Unchanged.

Except as specifically modified herein all existing terms, provisions, rights, obligations, and calculations set forth in the Port 15 Economic Development Project Area Plan, Budget, and associated Resolutions (including RDA Resolution 06-0322-1) shall remain unchanged and in full force and effect.

This Resolution becomes effective immediately upon passage and was considered and approved by the following vote:

Ayes \_\_\_\_\_ Nays: \_\_\_\_\_ Abstained: \_\_\_\_\_

Dated this \_\_\_\_\_ day of August, 2016.

\_\_\_\_\_  
RON ADAMS  
CHAIRPERSON

ATTEST:

\_\_\_\_\_  
PAUL COZZENS  
SECERTARY

**CEDAR CITY REDEVELOPMENT AGENCY TAXING  
ENTITY COMMITTEE RESOLUTION NO. TEC-16-0620.**

**A RESOLUTION OF THE CEDAR CITY REDEVELOPMENT AGENCY TAXING  
ENTITY COMMITTEE CONSENTING TO VARIOUS AMENDMENTS TO THE PORT  
15 ECONOMIC DEVELOPMENT PROJECT AREA.**

**WHEREAS**, in 2005 and 2006, in accordance with and in furtherance of the objectives of the Limited Purpose Local Government Entities – Community Development and Renewal Agencies Act, Utah Code Title 17C, Parts 1 through 4 (as amended) (the “Act”), the Cedar City Redevelopment Agency (the “RDA”) commenced the process to create the Port 15 Economic Development Project Area (the “Project Area”); and

**WHEREAS**, in early 2006, the RDA caused to be prepared a Project Area Economic Development Plan (the “Project Area Plan”) and a Project Area Budget for the Project Area. The Project Area Plan included provisions allowing for, among other things, the use of tax increment financing for the construction of Project Area related infrastructure; and

**WHEREAS**, the Cedar City Redevelopment Agency Taxing Entity Committee (the “TEC”) and the RDA adopted the Project Area Plan and Project Area Budget; and

**WHEREAS**, in March, 2006, the Cedar City Council adopted the necessary ordinance to create the Project Area, adopting the Project Area Budget and Project Area Plan pursuant to the resolutions of the RDA and the TEC; and

**WHEREAS**, in furtherance of the adopted Project Area Plan and the Project Area Budget, in or about February, 2007, the RDA entered into an agreement with Port 15 Utah, LLC. Said agreement specified certain terms and conditions related to the development of the Project Area including certain terms and conditions related to tax increment payments to Port 15 Utah, LLC; and

**WHEREAS**, in furtherance of the Project Area Budget and the Project Area Plan, the agreement between the RDA and Port 15 Utah, LLC contains a cap on the total sum of tax increment money that can be paid to Port 15 Utah, LLC (the “Original Cap”). The Original Cap on payments to Port 15 Utah, LLC was \$7,000,000.00; and

**WHEREAS**, Port 15 Utah, LLC, was a major financial participant in extending a main sewer line located outside the Project Area. The main sewer line will serve future facilities within the Project Area, and in furtherance of the Project Area Plan and Project Area Budget, the Original Cap has been increased to \$7,178,500.00 (the “Current Cap”). One of the effects of the cap on tax increment payments to Port 15 Utah, LLC, is to keep the project within the adopted Project Area Budget; and

**WHEREAS**, Port 15 Utah, LLC has spent a substantial sum of money to develop the infrastructure within the Project Area; and

**WHEREAS**, Port 15 Utah, LLC, in conjunction with the Cedar City/Iron County Office of Economic Development, has devoted substantial sums of money and amounts of time to marketing the Project Area; and

**WHEREAS**, shortly after the opening of the Project Area and the development of the infrastructure therein, the financial recession hit and decimated the ability for the rural Utah business park to attract new businesses to locate therein; and

**WHEREAS**, the local taxing entities are Cedar City, the Iron County School District, Iron County, and the Central Iron County Water Conservancy District; and

**WHEREAS**, the taxing entities have previously pledged the use of the tax increment from the Project Area in support of the goals of the Project Area so that the RDA may collect tax increment from the Project Area and so that the RDA may spend the tax increment in furtherance of the objectives of the Project Area Plan in accordance with the Project Area Budget; and

**WHEREAS**, Port 15 Utah, LLC and the RDA have disagreed as to the calculation and distribution of the tax increment revenue from 2009 to present. On one hand, the RDA has taken the position that the tax increment should be calculated using \$8,329,125.00 as the base taxable value pursuant to the agreement between Port 15 Utah, LLC and the RDA. The RDA has employed this methodology since 2009. On the other hand, Port 15 Utah, LLC has taken the position that the calculation of the tax increment should be calculated using \$630.00 as the base taxable value pursuant to the TEC's Project Area Budget; and

**WHEREAS**, in a cooperative effort to resolve this disagreement and to further the purposes of the Project Area in attracting industry and quality employment to Iron County, expanding the local economy, expanding the tax base, and improving available employment opportunities, the RDA and Port 15 Utah, LLC have proposed a resolution that will extend the term of the Project Area ten (10) years – from 2023 to 2033, keep within budget by maintaining the Current Cap on the payments to Port 15 Utah, LLC, close the Project Area when the term expires or the Current Cap in payments to Port 15 Utah, LLC, is reached, whichever occurs first, and adopt and approve the use of \$8,329,125.00 as the base taxable value for calculation of the tax increment going forward; and

**WHEREAS**, the local taxing entities (as represented on the TEC) desire to support the cooperative efforts of Port 15 Utah, LLC and the RDA so that the goals of the Project Area may be accomplished and are supportive of the resolution Port 15 Utah, LLC and the RDA have jointly proposed to their disagreement as to the calculation and distribution of tax increment; and

**WHEREAS**, the TEC approves of said jointly proposed resolution to the disagreement between Port 15 Utah, LLC and the RDA and finds that the proposed resolution comports with the

Act, furthers the goals of the Project Area and the taxing entities, and preserves the safeguards of the Project Area Budget.

**NOW THEREFORE, BE IT RESOLVED** that the TEC consents to the following amendments to the Project Area Plan and Project Area Budget.

1. Extension of Term.

The TEC consents to extending the term during which tax increment may be taken by the RDA and paid to Port 15 Utah, LLC for an additional ten (10) years – up to and including 2033, or until the Current Cap on payments (\$7,178,500.00) has been reached, whichever occurs first.

2. Computation of Tax Increment.

The TEC formally recognizes the current and past use of \$8,329,125.00 as the base taxable value for computation of the Project Area tax increment. Furthermore, the TEC adopts \$8,329,125.00 as the base taxable value for the computation of tax increment on an ongoing basis. The Project Area Budget shall be deemed so amended.

3. Compliance with Budget and Plan.

The TEC finds that the Project Area has been developed in compliance with the Project Area Plan and that the RDA has remained within the Project Area Budget to date. Furthermore, the TEC finds that the measures approved with this resolution will keep the Project Area within budget, as amended, and allow for the Project Area to accomplish the purposes for which it was created.

4. Recommendations.

The TEC recommends that the RDA, Cedar City, and Port 15 Utah, LLC take such actions as are appropriate to adopt or amend such agreements, resolutions, and ordinances as are necessary to facilitate the amendments to the Project Area as consented to herein.

5. Existing Terms Remain Unchanged.

Except as specifically modified above, all existing terms, provisions, rights, obligations, and calculations set forth in the Project Area Budget, Project Area Plan, and associated Resolutions (including RDA Resolution 06-0322-1) shall remain unchanged and in full force and effect.

*Remainder of page intentionally left blank.*

This Resolution becomes effective immediately upon passage and was considered and approved by the following vote:

Ayes: 7      Nays: 0      Abstained: 0

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
RON ADAMS  
CHAIRPERSON

ATTEST:

\_\_\_\_\_  
STEPHEN ALLEN  
SECRETARY

CEDAR CITY COUNCIL  
AGENDA ITEMS - 2  
DECISION PAPER

**TO:** Mayor and City Council  
**FROM:** Paul Bittmenn  
**DATE:** August 14, 2016  
**SUBJECT:** Port 15 agreement proposed amendment

**DISCUSSION:**

Attached is a proposed amendment to the agreement the RDA has with Port 15 Utah, LLC, for the development of the Port 15 project. This proposed amendment tracks the proposed resolution previously discussed.

The proposed amendment would have both parties waive any rights to raise claims based on the use of a base taxable value for tax increment calculation purposes of \$8,329,125.00. Also the proposed amendment will extend the life of the contract to 2033 or until the RDA has paid Port 15 Utah, LLC, \$7,178,500, whichever comes first.

If the RDA is inclined to approve this contract amendment, please specify in your motion and vote that the approval is contingent upon the City Council approving the amendments to the project area and budget. That has to be done by an ordinance which is coming to the Council in September.

Please know that this document has been sent to the attorney for Port 15 Utah, LLC, for that group's consideration. If they request changes staff will disclose those to the RDA board and we can discuss.

Please consider adopting the proposed contract amendment.

**SECOND AMENDMENT TO THE PORT 15  
ECONOMIC DEVELOPMENT PROJECT AREA  
AGREEMENT FOR DEVELOPMENT OF LAND**

THIS SECOND AMENDEDMENT TO THE PORT 15 ECONOMIC DEVELOPMENT PROJECT AREA AGREEMENT FOR DEVELOPMENT OF LAND is entered into on or about this \_\_\_ day of \_\_\_\_\_, 2016, between the Cedar City Redevelopment Agency, a governmental entity organized under the laws of the State of Utah (hereinafter referred to as "Agency"), and Port 15 Utah, LLC, a Utah Limited Liability Company (hereinafter referred to as "Developer").

**WHEREAS**, on or about March 14, 2007, Developer and Agency entered into an Agreement for Development of Land related to the Port 15 Economic Development Project Area. A copy of the Agreement for Development of Land is recorded in the office of the Iron County Recorder in Book 1080 beginning at page 1124. Also reference recording number 00549321; and

**WHEREAS**, on or about August 1, 2007, Developer and Agency entered in to the first amendment to the Port 15 Economic Development Project Area Agreement for Development of land. The First Amendment to the Port 15 Economic Development Project Area Agreement for Development of land is recorded in the office of the Iron County Recorder in book 1339 beginning at page 1553. Also reference recording number 00681701; and

**WHEREAS**, Developer and Agency have disagreed as to the calculation and distribution of tax increment revenue from 2009 to present. The Agency has taken the position that the tax increment should be calculated using the \$8,329,125.00 as the base taxable value pursuant to the above referenced agreement for development of land. Developer has taken the position that the calculation of the tax increment should be done using \$630.00 as the base taxable as per the project area budget; and

**WHEREAS**, in a cooperative effort to resolve this disagreement and to further the purpose of the Port 15 Project Area in attracting industry and quality employment to Iron County, expanding the local economy, expanding the tax base, and improving available employment opportunities, the Agency and the Developer have cooperatively advanced a resolution through the Redevelopment Agency Taxing Entity Committee, the Redevelopment Agency, and The Cedar City Council.

**WHEREAS**, the mutually agreed upon resolution involves that impacts the agreement for development of land includes recognizing the past and future use of \$8,329,125.00 as the base taxable value for the calculation of the tax increment; extending the life of the project area, and; keeping in place all other existing terms.

**NOW THEREFOR** Agency and Developer agree that this amendment to the Agreement to the Development of Land in conjunction with the duly adopted amendments to the Port 15 Economic Development Project Area by the Taxing Entity Committee, Redevelopment Agency, and Cedar City Corporation, all of which are incorporated herein by this reference, resolve any and all past, present, or future disagreements or disputes related to the use of \$8,329,125.00 as the base taxable value for the calculation of the tax increment for the Port 15 Economic Development Project Area. Both the Agency and Developer agree that this resolution is beneficial to both parties, in each party's individual and collective best interests, and hereby waives any claim in law, contract, or equity that would assert error by using \$8,329,125.00 as the base taxable value for the calculation of the Port 15 Economic Development Project Area tax increment.

**NOW THEREFORE** Agency and Developer further agree that in order to complete the resolution of the above referenced dispute paragraph 1.18 of the Agreement for Development of Land shall be amended by removing the struck through language and including the underlined language as follows:

1.18 Tax Increment Payment Period.

The Term "Tax Increment Payment Period" means the period commencing with Tax Increment Year 2009, and continues through and including Tax Increment Year ~~2023-2033~~ or until the current Not to Exceed Amount of Tax Increment Payments (\$7,178,500.00) has been reached, whichever occurs first.

**NOW THEREFORE** Agency and Developer agree that all other terms in the Agreement for Development of Land not specifically amended by the provisions of this second amendment shall remain in force and effect.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2016.

Cedar City Redevelopment Agency

\_\_\_\_\_  
Ron Adams, Chairperson

\_\_\_\_\_  
Paul Cozzens, Secretary

STATE OF UTAH    )  
                              :SS.  
COUNTY OF IRON )

This is to certify that on the \_\_\_\_ day of \_\_\_\_\_, 2016, before me, the undersigned, a Notary Public, in and for the State of Utah, duly commissioned and sworn as such, personally appeared Ron Adams, known to me to be the Chairperson of the Cedar City Redevelopment Agency, and Paul Cozzens, known to me to be the Cedar City Redevelopment Agency Secretary, and acknowledged to me that he the said Ron Adams and he the said Paul Cozzens executed the foregoing instrument as a free and voluntary act and deed of said corporation, for the uses and purposes therein, and on oath state that they were authorized to execute said instrument, and that the seal affixed is the corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year hereinabove written.

\_\_\_\_\_  
NOTARY PUBLIC

.....  
Dated this \_\_\_\_ Day of \_\_\_\_\_, 2016.

Port 15 Utah, LLC.

\_\_\_\_\_  
Tomas A. Pugh, Manager

STATE OF UTAH    )  
                              :SS.  
COUNTY OF IRON )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2016, personally appeared before me Thomas A. Pugh who duly acknowledged to me that he signed the above and foregoing document.

\_\_\_\_\_  
NOTARY PUBLIC