



SPECIAL COMMUNITY DEVELOPMENT AND RENEWAL AGENCY OF HERRIMAN CITY AGENDA

Wednesday, April 8, 2020

NOTICE IS HEREBY GIVEN that the Herriman Community Development and Renewal Agency shall hold a meeting at the Herriman City Hall Council Chambers, located at 5355 West Herriman Main Street, Herriman, Utah.

This Meeting will be conducted Electronically

7:00 PM: (OR AS SOON AS POSSIBLE THEREAFTER)

1. Call to Order

- 1.1. Motion for review and outline of the finalization process to approve the minutes of April 8, 2020

2. Discussion and Action Items

- 2.1. Discussion and consideration of a resolution approving an Interlocal Cooperative Agreement between Herriman City and the Community Development and Renewal Agency of Herriman City regarding the Herriman Innovation District property tax – Heather Upshaw, Economic Development Manager
- 2.2. Discussion and consideration of a resolution approving a Participation Agreement with Herriman Industrial #1 located in the Herriman Innovation District – Heather Upshaw, Economic Development Manager

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 and provide at least 48 hours advance notice of the meeting.

ELECTRONIC PARTICIPATION: Members of the Community Development and Renewal Agency 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 2019

*Jackie Nostrom, MMC
City Recorder*

5355 W. Herriman Main St. • Herriman, Utah 84096
(801) 446-5323 office • (801) 446-5324 fax • herriman.org





STAFF REPORT

DATE: March 31, 2020

TO: The Community Development and Renewal Agency of Herriman City

FROM: Heather Upshaw; Economic Development Manager

SUBJECT: Interlocal Agreement between the Community Development and Renewal Agency of Herriman City and Herriman City

RECOMMENDATION:

Staff recommends approval of the resolution approving an interlocal agreement between the Community Development and Renewal Agency of Herriman City and Herriman City regarding property tax generated in the Herriman Innovation District Community Reinvestment Area (CRA).

BACKGROUND:

The Herriman Innovation District (CRA) was approved in an effort to develop the Herriman Innovation District. The property tax will be used to reimburse for the public infrastructure required to support the development.

FISCAL IMPACT:

The approved budget for the Herriman Innovation District CRA estimates property tax over 15 years (after expenses) of \$7,157,075. This amount is generated from other taxing entities, in addition to Herriman City's portion of property tax.

HERRIMAN, UTAH
RESOLUTION NO. -

**A RESOLUTION APPROVING AN INTERLOCAL COOPERATIVE AGREEMENT
BETWEEN THE COMMUNITY DEVELOPMENT AND RENEWAL AGENCY OF
HERRIMAN AND HERRIMAN WITH RESPECT TO PROPERTY TAX (HERRIMAN
INNOVATION)**

WHEREAS, the Herriman City Council (“*Council*”) met in regular session on April 8, 2020, to consider, among other things, approving an Interlocal Cooperative Agreement with the Community Development and Renewal Agency of Herriman with respect to property taxes (Herriman Innovation); and

WHEREAS, the Utah Interlocal Cooperative Act (UTAH CODE ANN. § 11-13-101, *et seq.*) (the “*Act*”) provides that any two or more government entities are authorized to enter into agreements with each other to do what each agency is authorized by law to perform; and

WHEREAS, the Herriman City (“*Herriman*”) and the Community Development and Renewal Agency of Herriman (“*Agency*”) are government entities as contemplated by the *Act*; and

WHEREAS, Herriman and the Agency are authorized to enter into agreements with each other for cooperative action; and

WHEREAS, the Council finds that it is in the best interests of the inhabitants of Herriman to enter into an Interlocal Cooperative Agreement with the Agency (“*Agreement*”) with respect to property tax (Herriman Innovation); and

WHEREAS, the Agreement has been prepared for approval, which sets forth the purpose thereof, the extent of participation of the parties, and the rights and duties and responsibilities of the parties. A copy of the Agreement is attached hereto.

NOW, THEREFORE, BE IT RESOLVED that the Agreement is approved, and the City Manager and Recorder are hereby authorized and directed to execute and deliver the same.

This Resolution, assigned No. 20-____, shall take effect immediately upon passage and acceptance as provided herein.

PASSED AND APPROVED by the Council of Herriman, Utah, this 8th day of April, 2020.

HERRIMAN

David Watts, Mayor

Jackie Nostrom, MMC
City Recorder

**COMMUNITY DEVELOPMENT AND RENEWAL AGENCY OF HERRIMAN CITY
RESOLUTION NO. _____**

**A RESOLUTION OF THE COMMUNITY DEVELOPMENT AND
RENEWAL AGENCY OF HERRIMAN CITY APPROVING AN
INTERLOCAL COOPERATIVE AGREEMENT WITH HERRIMAN CITY**

WHEREAS, the Redevelopment Agency of Herriman City (the “Agency”) met in special open and public meeting on April 8, 2020, to consider, among other things, approving an interlocal cooperative agreement with Herriman City; 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 (the “Act”); and

WHEREAS, pursuant to Section 17C-4-101 et seq. of the Act the Agency is authorized to negotiate with a taxing entity for the Agency to receive all or a portion of the taxing entity tax increment for the purpose of providing funds to carry out an adopted community development project area plan; and

WHEREAS, Herriman City is a taxing entity under the Act and the Agency has negotiated with Herriman City to receive property tax increment the terms of which are set forth in the attached interlocal agreements (“Interlocals”).

NOW THEREFORE BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE REDEVELOPMENT AGENCY OF HERRIMAN CITY that the Interlocals be approved, that the Chairperson and Secretary are hereby authorized and directed to execute and deliver the same, and that the Secretary is hereby authorized and directed provide notice as set forth in Section 17C-4-402 of the Act.

ADOPTED by the Board of Directors of the Redevelopment Agency of Herriman City, this 8th day of April 2020.

HERRIMAN

ATTEST:

David Watts, Chairperson

**Jackie Nostrom, MMC
Secretary**

**INTERLOCAL AGREEMENT
BETWEEN THE COMMUNITY DEVELOPMENT AND RENEWAL AGENCY OF
HERRIMAN AND HERRIMAN CITY**

THIS INTERLOCAL AGREEMENT is entered into as of the 8th day of April, 2020, by and between the **COMMUNITY DEVELOPMENT AND RENEWAL AGENCY OF HERRIMAN** (the “**Agency**”) and **HERRIMAN CITY** (the “**Taxing Entity**”) (collectively, the “**Parties**”).

RECITALS

A. The Agency was created and continues to operate pursuant to the provisions of the Limited Purpose Local Government Entities – Community Reinvestment Agency Act, Title 17C of the Utah Code (the “**Community Reinvestment Agency Act**”) and its predecessor statutes, and is authorized thereunder to conduct urban renewal, economic development, community development, and community reinvestment activities within Herriman, Utah, as contemplated by the Community Reinvestment Agency Act; and

B. Pursuant to Resolution No. R2019-__ adopted by the Agency on June 26, 2019 and Ordinance No. _____ adopted by Herriman City on June 26, 2019, the Agency established the Herriman Innovation District Community Reinvestment Project Area (the “**Project Area**”) through adoption of the proposed Project Area Plan, a copy of which is attached hereto as **Exhibit “A”** and incorporated herein by this reference (referred to in this Interlocal Agreement as the “**Project Area Plan**,” which includes the legal description and a map of the Project Area); and

C. The Agency desires to facilitate new development within the Project Area that includes the encouragement, promotion, or provision of business park development that brings good-paying jobs to the area; and

D. Pursuant to Resolution No. R2019-__, adopted by the Agency on June 26, 2019, the Agency adopted a Project Area Budget for the Project Area (the “**Budget**”), which sets forth the Agency’s estimates and projections for development and generation of property tax revenues for the Project Area; and

E. The Agency may issue one or more bonds, including bonds secured by tax increment revenues, to finance the construction of certain infrastructure improvements for the Project Area; and

F. The Taxing Entity has determined that it is in the best interests of the Taxing Entity to provide certain financial assistance through the use of Tax Increment (as defined below) in connection with the development of the Project Area; and

G. The Agency anticipates using tax increment (as defined in Utah Code Ann. § 17C-1-102(60) (hereinafter “**Tax Increment**”)) from the Project Area, to assist in the development of the Project Area and for funding the implementation of the Project Area Plan; and

H. Utah Code Ann. § 17C-5-204 authorizes the Taxing Entity to consent to the payment by Salt Lake County (the “**County**”) to the Agency of a portion of the Taxing Entity’s share of Tax Increment generated from the Project Area attributable to the Taxing Entity’s tax levy on property within the Project Area, for the purposes set forth herein and in accordance with the terms of this Agreement; and

I. Utah Code Ann. § 11-13-215 further authorizes the Taxing Entity to share its tax and other revenues with the Agency; and

J. In order to facilitate development of and in the Project Area and to provide funds to carry out the Project Area Plan, the Taxing Entity desires to consent that the Agency receive certain Tax Increment from the Project Area attributable to the Taxing Entity’s tax levy, in accordance with the terms of this Agreement; and

K. This Agreement is entered into by the Parties pursuant to the authority of applicable State law, including the Community Reinvestment Agency Act and the Interlocal Cooperation Act, Utah Code Ann. § 11-13-101 *et seq.*, 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. **Taxing Entity’s Consent.**

a. The Parties agree that for purposes of calculation of the Taxing Entity’s share of Tax Increment from the Project Area to be paid by the County to the Agency pursuant to this Agreement, the base year shall be 2018, and the base taxable value shall be \$ 696,711, which base taxable value is subject to adjustment by law in accordance with the provisions of the Community Reinvestment Agency Act. Pursuant to Section 17C-5-204 of the Community Reinvestment Agency Act and Sections 11-13-202.5 and 11-13-215 of the Cooperation Act, the Taxing Entity hereby agrees and consents that the project area funds collection period (the “**Project Area Funds Collection Period**”) shall be fifteen (15) years. During the Project Area Funds Collection Period, the Agency shall receive and be paid one hundred percent (100%) of the tax increment attributable to the Taxing Entity’s tax levy on both real and personal property within the Project Area (the “**Taxing Entity Share**”), for the purpose of providing funds to the Agency to carry out the Project Area Plan. The Project Area Funds Collection Period shall commence with any tax year from 2020 through 2022 at the Agency’s election and determination as evidenced by written notice to the Taxing Entity and to the Salt Lake County Auditor and Assessor; provided, however, that the total amount of such Tax Increment attributable to the Taxing Entity’s tax levy that is paid to the Agency over the Project Area Funds Collection Period under this Agreement shall not exceed \$ 348,933; and provided further, that any portion of the Taxing Entity’s taxes resulting from an increase in the Taxing Entity’s tax rate pursuant to applicable hearing procedures (truth in taxation), that occurs after the Effective Date (defined below) of this Agreement, shall not be paid to the Agency unless the Taxing Entity specifically so consents in writing pursuant to an amendment to this Agreement or in a separate agreement. All tax increment from the Project Area attributable to the Taxing Entity’s tax levy for tax years beyond the Project Area Funds Collection Period shall be paid by Salt Lake County to the

Taxing Entity. The calculation of the Taxing Entity's portion of annual Tax Increment to be paid by the County to the Agency shall be made as required by Utah Code Ann. § 17C-1-102(60) (a), using the then current tax levy rate (subject to the limitation set forth above regarding increases in the City's tax rate pursuant to applicable hearing procedures).

b. Salt Lake County shall pay directly to the Agency the Taxing Entity Share in accordance with Utah Code Ann. § 17C-5-204 during the Project Area Funds Collection Period described in Section 1.a. above.

2. **Consent to Budget.** As required by Utah Code § 17C-5-304, the Taxing Entity hereby consents to the Budget as adopted by the Agency.

3. **Authorized Uses of Tax Increment.** The Parties agree that the Agency may use the Taxing Entity Share for any purposes authorized under the Project Area Plan or the Community Reinvestment Agency Act, 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.

4. **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.

5. **Due Diligence.** Each of the Parties acknowledges for itself that it has performed its own review, investigation, and due diligence regarding the relevant facts concerning the Project Area and Project Area Plan and expected benefits to the community and to the Parties, and each of the Parties relies on its own understanding of the relevant facts and information, after having completed its own due diligence and investigation.

6. **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 Utah Code Ann. § 11-13-202.5;

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

c. A duly executed original counterpart of this Agreement shall be filed immediately with the keeper of records of each Party pursuant to Utah Code Ann. § 11-13-209;

d. The Chair of the Agency is hereby designated the administrator for all purposes of the Cooperation Act, pursuant to Utah Code Ann. § 11-13-207;

e. The term of this Agreement shall commence on the Effective Date and shall terminate on the date when all of the Taxing Entity Share has been paid to the Agency as provided for herein, or the date when the Agency ceases to receive such Tax Increment pursuant to Section 1 hereof;

f. Following the execution of this Agreement by both Parties, the Agency, at its sole expense, shall cause a notice regarding this Agreement to be published on behalf of both of the Parties in accordance with Utah Code Ann. § 11-13-219 and on behalf of the Agency in accordance with § 17C-5-205;

g. The Parties agree that they do not, by this Agreement, create an interlocal entity;

h. There is no financial or joint or cooperative undertaking and no budget shall be established or maintained;

i. No real or personal property will be acquired, held or disposed of or used in conjunction with a joint or cooperative undertaking.

7. **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.

8. **Further Assurance.** 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.

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

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

11. **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.

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

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

14. **Effective Date.** This Agreement shall become effective upon the publication of the summary of this Agreement as provided by law.

15. **Entire Agreement.** This Agreement and its exhibits constitute the entire agreement between the Parties hereto pertaining to the subject matter hereof, and the final, complete and exclusive expression of the terms and conditions thereof. All prior agreements, representations, negotiations and understandings of the Parties hereto, oral or written, express or implied, are hereby superseded and merged herein.

16. **Waivers.** No waiver of any breach of any covenant or provision herein contained shall be deemed a waiver of any preceding or succeeding breach thereof or of any other covenant or provision herein contained. No extension of time for performance of any obligation or act shall be deemed an extension of the time for performance of any other obligation or act.

17. **Assignment.** No Party may assign its rights, duties or obligations under this Agreement without the prior written consent first being obtained from all Parties.

18. **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.

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

20. **Disclosure and Waiver of Conflict.** In connection with the preparation of this Agreement, the City and the Agency acknowledge that: (i) the attorneys that prepared this Agreement, cooperated and acted as legal counsel to the City with respect to the creation of the

Agency; and (ii) the City and Agency are hereby advised that the interest of the City and Agency may be opposed to each other and, accordingly, the attorneys representation of the City and the Agency may not be in the best interests of the City and/or the Agency. Notwithstanding the foregoing, the City and the Agency (i) desire the attorneys to represent the City and the Agency with respect to the preparation of this Agreement; and (ii) jointly and severally forever waive any claims that the attorneys' representations of the City and/or Agency constitute a conflict of interest.

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

**COMMUNITY DEVELOPMENT AND
RENEWAL AGENCY OF HERRIMAN**

By: _____
Chair

Attest:

By: _____
Secretary

Attorney Review for the Agency:

The undersigned, as counsel for the Community Development and Renewal Agency of Herriman, has reviewed the foregoing Interlocal Agreement and finds it to be in proper form and in compliance with applicable state law.

Attorney for Community Development and
Renewal Agency of Herriman

ADDITIONAL SIGNATURES TO INTERLOCAL AGREEMENT

HERRIMAN CITY

By: _____
Brett geo Wood, City Manager

ATTEST:

Jackie Nostrom, MMC City Recorder

Attorney Review for City:

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

Attorney for Herriman City

Exhibit “A”

Project Area Plan



STAFF REPORT

DATE: March 31, 2020

TO: The Community Development and Renewal Agency of Herriman City

FROM: Heather Upshaw, Economic Development Manager

SUBJECT: Participation Agreement with Herriman Industrial #1, in the Herriman Innovation District Community Reinvestment Area (CRA)

RECOMMENDATION:

Staff recommends approval of the proposed participation agreement between the Community Development and Renewal Agency of Herriman City and Herriman Industrial #1, an Idaho limited liability company qualified to do business in Utah.

BACKGROUND:

The Herriman Innovation District (CRA) was approved in an effort to develop the Herriman Innovation District. The property tax will be used to reimburse for the public infrastructure required to support the development.

Staff met with the Community Development and Renewal Agency in a work meeting held on March 5, 2020 to discuss the key points of the participation agreement.

The participant, Herriman Industrial #1, has developed and constructed a new leisure recreation product and equipment manufacturing facility. In addition, the participant has constructed or will construct several infrastructure components, listed as Exhibit A in the participation agreement. The participant will be reimbursed through the tax increment generated through the CRA.

FISCAL IMPACT:

Herriman City's impact is in the amount of \$348,933, which is 100% of the property taxes generated over the 15 year duration of the CRA.

**COMMUNITY DEVELOPMENT AND RENEWAL AGENCY OF HERRIMAN CITY
RESOLUTION NO. _____**

**A RESOLUTION OF THE COMMUNITY DEVELOPMENT AND
RENEWAL AGENCY OF HERRIMAN CITY APPROVING A
PARTICIPATION AGREEMENT WITH HERRIMAN INDUSTRIAL #1 LLC**

WHEREAS, the Community Development and Renewal Agency of Herriman City (the “Agency”) met in special open and public meeting on April 8, 2020, to consider, among other things, approving a participation agreement with Herriman Industrial #1 LLC; 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 Reinvestment Agency Act and any subsequent, replacement or amended law or act (the “Act”); and

WHEREAS, pursuant to the Act, and more particularly Utah Code Section 17C-1-202, the Agency is authorized to enter into participation agreements with developers or property owners; and

WHEREAS, Herriman Industrial #1 LLC and the Agency have negotiated a contract for repayment of certain infrastructure costs from property taxes which are set forth in the participation agreement (“Agreement”) attached hereto as exhibit “A”.

NOW THEREFORE BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE COMMUNITY DEVELOPMENT AND RENEWAL AGENCY OF HERRIMAN CITY as follows:

1. that the Agreement be approved, with such minor changes and recommendations as deemed necessary by the Agency.
2. that the Chairperson and Secretary are hereby authorized and directed to execute and deliver the Agreement on behalf of the Agency.
3. that this resolution takes effect upon adoption.

**COMMUNITY DEVELOPMENT AND
RENEWAL AGENCY OF HERRIMAN CITY**

ATTEST:

David Watts, **Chairperson**

Jackie Nostrom, MMC
Secretary

EXHIBIT A
to Resolution No. _____

Participation Agreement

**PARTICIPATION AGREEMENT by and between the COMMUNITY
DEVELOPMENT AND RENEWAL AGENCY OF HERRIMAN CITY and
PARTICIPANT for the
HERRIMAN INNOVATION DISTRICT PROJECT AREA**

This Participation Agreement (the “**Agreement**”) is made and entered into as of this 8th day of April, 2020 (the “**Effective Date**”), by and among the COMMUNITY DEVELOPMENT AND RENEWAL AGENCY OF HERRIMAN CITY (the “**Agency**”), a political subdivision of the State of Utah operating under the Utah Community Reinvestment Agency Act (the “**Act**”; § 17C-1-101 *et seq.*, or its predecessor statutes), and HERRIMAN INDUSTRIAL #1, an Idaho limited liability company qualified to do business in Utah (“**Participant**”). Participant and the Agency may from time to time hereinafter be referred to individually as a “**Party**” and collectively as the “**Parties.**”

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 Herriman Innovation District Community Reinvestment Project Area (the “**Project Area**”) by providing for reimbursements to entice Participant to develop a new leisure recreation product and equipment manufacturing facility in the Project Area (the “**Facility**”), and to specify the terms and conditions pursuant to which the Agency and Participant will cooperate in bringing about such development, including funds the Agency will provide to assist in Participant’s development of the Facility, which will benefit the entire Project Area.

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

This Agreement is in the vital and best interests of the Herriman City, Utah (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 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 Project Area Plan and Budget

This Agreement is subject to the provisions of the Plan, as adopted and ordained on June 26, 2019, by the Agency and the Herriman City Council (the “**Council**”) in accordance with the Act and is incorporated herein by this reference. This Agreement is also subject to the provisions of the project area budget (the “**Budget**”), as adopted by the Agency on June 26, 2019.

1.5. Interlocal Agreements

Subject to the terms of various interlocal agreements with other taxing entities (collectively, the “**Interlocal Agreements**”), the Agency is entitled to receive, for a period of up to 15 years, a portion of the tax increment generated by the development on the Site (the “**Agency Share**”). For clarity, the Agency Share consists of only those funds that are generated by taxes paid on development within the Site that are received by the Agency pursuant to the Interlocal Agreements; the Agency Share does not include any funds received by the Agency attributable taxes paid for any portion of the Project Area not within the Site.

1.6. Description of the Site

The Facility is constructed on property that is a portion of the Project Area consisting of approximately 38 acres (the “**Site**”).

1.7. Description of the Investment

Pursuant to the terms of this Agreement, Participant has developed and constructed the Facility. As part of that development and construction, Participant has constructed the Midas Creek storm drain improvements, Rocky Mountain main line extension, Dominion Energy main line extension, and 11800 South improvements in an amount of \$ 1,280,441 (collectively the “**Investment**”). A listing of the Investment is attached hereto as **Exhibit “A.”**

1.8. The Reimbursement

As used in this Agreement, the term “**Reimbursement**” means eighty seven and one tenth percent (87.1 %) of the Agency Share. Participant acknowledges that the Agency shall use two and nine tenths percent (2.9%) of the Agency Share for application to Agency administrative and overhead costs relating (“**Administrative Allocation**”) and ten percent (10%) of the Agency Share for housing as required by the Act (the “**Housing Allocation**”).

1.9. Parties to the Agreement

1.9.1. The Agency

The address of the Agency for purposes of this Agreement is:

Community Development and Renewal Agency of Herriman City
Attn: Executive Director
5355 W, Main St
Herriman, UT 84096

With a copy to:

John Brems
5355 W, Main St
Herriman, UT 84096

1.9.2. The Participant

Participant's address for purposes of this Agreement is:

c/o Riverbend Management Inc.
Executive Office
4609 West 65th South
Idaho Falls, Idaho 83402

With a copy to:

David Dance
PO Box 50277
Idaho Falls, ID 83405

1.10. Prohibition against Certain Changes

1.10.1. Acknowledgement by Participant

Participant acknowledges the importance of the development of the Project Area to the general welfare of the community, the public assistance set forth in this Agreement that has been made available by law and by the Agency for the purpose of making the Investment within the Project Area possible, that a significant change in the identity of Participant, as prohibited by this Section 1.9, may be considered, for practical purposes, a transfer or disposition of the Investment, the qualifications and identity of Participant are of particular concern to the Agency, and that it is because of such qualifications and identity that the Agency is entering into this Agreement with Participant.

1.10.2. Representation as to Investment Intent

Participant represents and agrees that its Investment in and use of the Site, and Participant's other undertakings reflected in this Agreement are and shall only be for the purpose of Participant's Investment in the Site and not for speculation in land holding or otherwise.

1.10.3. Assignment or Transfer of Agreement

Participant represents and agrees for itself and its successors and assigns that 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, during the term of this Agreement except as explicitly allowed herein or as agreed to in a writing signed by the Parties. The Agency may only withhold its consent to such an assignment or transfer if such transfer or assignment would result in the economic development goals of the Agency and the Project area not being met.

The attempted or actual assignment or delegation of this Agreement in violation of the above provisions is a material Default that shall be subject to the provisions of Article 5 of this Agreement.

1.10.4. Transfer to Tax-Exempt Organization

Notwithstanding anything in this Agreement to the contrary, any attempt by 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 taxable property within the Site from *ad valorem* property taxation without the prior written consent of the Agency will entitle the Agency, at its sole discretion, to immediately and without prior notice terminate this Agreement and cease further payments under this Agreement to Participant or its successors or assigns.

1.10.5. Continuing Obligations

Any permitted assignment or transfer of this Agreement, in whole or in part, shall relieve Participant from any and all obligations under this Agreement; provided, however, that the assignee has accepted the assignment and assumed all duties, obligations and liabilities of Participant under this Agreement in writing. Except as otherwise provided herein, all of the terms, covenants, and conditions of this Agreement are and will remain binding upon Participant and its successors and assigns until the expiration or termination of this Agreement.

2. OBLIGATIONS OF THE PARTIES

2.1. Payment of Reimbursement

2.1.1. Payment Obligation

So long as Participant fulfills all of its obligations under this Agreement, the Agency will pay to Participant the Reimbursement.

The Agency expects to receive the full amount of the annual Agency Share approximately 120 days after the end of the calendar year for which property taxes were paid (e.g., the Agency will receive full payment of the Agency Share during the second quarter of 2022 for property taxes paid by Participant during 2021). After the end of the calendar year for which the Agency is collecting the Agency Share, the contemplated payment of the Reimbursement shall be made by the Agency within sixty (60) days after the date on which all of the conditions precedent as set forth in Section 2.3 have been met.

2.1.2. Triggering of Payments of Agency Share

The Agency shall have sole authority to begin, or “trigger,” collection of the Agency Share pursuant to the Interlocal Agreements. Notwithstanding, Agency agrees to use reasonable efforts to timely begin the collection of the Agency Share.

2.2. Sole Source of Funding for the Reimbursement

The entirety of Participant’s Reimbursement contemplated in this Agreement will be funded solely by the Agency Share payments received by the Agency pursuant to the Interlocal Agreements generated solely by the Site. Participant is not, and shall not be, entitled to any other funds collected by the Agency for the Project Area or any other funds held by the Agency.

2.3. Conditions Precedent to the Payment of the Reimbursement to Participant

In addition to other provisions in this Agreement, the Agency has no obligation to remit to Participant the Reimbursement unless and until all the following conditions precedent, as detailed in the following subsections, are satisfied:

2.3.1. Agency is Entitled to Receive the Agency Share

The Agency is not obligated to pay to Participant the Reimbursement unless the Agency is legally entitled to receive the Agency Share pursuant to the Interlocal Agreements.

2.3.2. Agency has Actually Received the Agency Share Payment

The Agency is obligated to pay to Participant the Reimbursement only to the extent the Agency has actually received the Agency Share payment(s) from Salt Lake County for the particular calendar year.

2.3.3. Continued Operation of the Facility

The Agency is not obligated to pay to Participant the Reimbursement unless Participant has continuously Operated (defined in Section 2.12) the Facility as described in Section 2.14 for the entire year for which payment of the Reimbursement is being sought or, in the case of the first year of such Operation, for the portion of the year after the date of the initial start of Operations of the Facility.

2.3.4. Payment of Taxes

Participant shall not receive any payments from the Agency for any period until the Agency has received documentation from Participant that all real and personal property taxes attributable to the Site and Facility have been paid for the particular year of the Reimbursement Term. Documentation contemplated by this Subsection 2.3.4. shall include copies of all forms or other documents sent to the Salt Lake County Assessor or the Utah State Tax Commission for the

purpose of reporting property owned by Participant within the Site. Such documentation shall be provided to the Agency by March 31 of the year following the year for which the Reimbursement is sought.

2.3.5. Request for Payment by Participant

The Agency is not obligated to pay the Reimbursement to Participant unless Participant has made a Request for Payment in writing pursuant to Section 2.6 for the year for which payment of the Reimbursement is being sought.

2.3.6. Minimum Investment Amounts

The Agency is not obligated to pay the Reimbursement to Participant unless Participant has commenced Operating and met the requirements of Sections 2.7, 2.12, and 3.1 of this Agreement.

2.3.7. Infrastructure Development Costs

Reimbursement is available to the Participant only upon verification of actual costs incurred by Participant for construction of the infrastructure improvements listed on **Exhibit "A"** that are acceptable to the Agency.

2.4. Effect of Failure to Meet Conditions Precedent to Payment of Reimbursement

In the event that the conditions precedent as described in Section 2.3 are not met for any given calendar year during the term of this Agreement, and Participant is thus not entitled to receive the Reimbursement attributable to that calendar year, but is otherwise not in default under this Agreement, such failure shall not constitute a Default under this Agreement. Such failure shall result in the forfeiture by Participant of the Reimbursement for that particular calendar year.

2.5. Limitations on Reimbursement

The Reimbursement shall not be paid for a period of greater than 15 years from the date for which Participant first receives the Reimbursement (the "**Reimbursement Term**"). The Reimbursement Term shall begin when the Agency triggers collection of the Agency Share as described in Section 2.1.2. The total amount of the Reimbursement paid to Participant pursuant to this Agreement shall be limited to the amount of verified costs incurred by Participant. Notwithstanding the foregoing, the total Reimbursement paid to Participant under this Agreement shall not exceed \$1,280,441, unless addition amounts are approved in writing by the Agency for reimbursement. .

Participant further acknowledges that the Reimbursement paid by the Agency to Participant under this Agreement is limited by the Reimbursement Term and the amount of Agency Share actually received by the Agency. Participant further acknowledges that the Agency does not guarantee that Participant will receive a minimum dollar amount during the Reimbursement Term. The amount of Tax Increment generated by the Facility is determined by the taxable value of Participant's property within the Site as determined by the Salt Lake County Assessor and/or the Utah State Tax

Commission. The Agency does not guarantee a particular taxable value of the Facility and Site nor does the Agency control or influence such values.

Notwithstanding all other provisions in this Agreement, the Agency is not obligated to pay to Participant in any one calendar year more than Reimbursement attributable to the immediately preceding calendar year. The Reimbursement Term and the Reimbursement shall not be increased by any future extension of or modification to the Budget or the Interlocal Agreements; for purposes of clarification, if the Agency were to amend the Interlocal Agreements at some point in the future so that the Agency receives a greater percentage of Tax Increment from the Project Area or from a greater portion of the Project Area, the Agency shall not be obligated to pay to Participant any amount greater than Participant would have received under the terms of this Agreement and the Interlocal Agreements as effective as of the date of this Agreement.

The Agency shall not support any modification or amendment to the Interlocal Agreements that would reduce, on a percentage basis, the amount of Reimbursement that Participant is entitled to receive under this Agreement or the term during which Participant is entitled to receive the Reimbursement.

Reimbursement will be reduced by any funds paid to the Participant by the City, the Agency, or other entities that are attributable to the Investment (e.g. transportation impact fees waived or paid by the City to Participant will reduce the Reimbursement since they are attributable to 11800 South expansion). Any amount received by Participant attributable to the Rocky Mountain service extension or Dominion Energy main line extension shall be paid to Agency before Agency pays Participant any Reimbursement.

2.6. Request for Reimbursement

Participant shall submit in writing a request for payment to the Agency by March 31st of the year following the calendar year for which payment of the Reimbursement is sought. The Participant shall include in the request proof of payment of all *ad valorem* real and personal property taxes subject to and as described in Section 2.7 (the “**Request for Payment**”). Participant’s Request for Payment shall include written documentation of actual costs incurred for infrastructure development costs for which the Reimbursement is sought. Unless the Agency sends written notice to Participant of deficiency in the Request for Payment within thirty (30) days of receipt of a Request for Payment, such Request for Payment shall be deemed complete. Participant shall have a reasonable time not to exceed thirty (30) days in which to rectify any deficiencies specified in a notice, and the Request for Payment shall be deemed timely delivered in the event any such deficiencies are rectified within that period.

Notwithstanding the foregoing, nothing in this Agreement shall require the Agency to pay Reimbursement to Developer for non-qualified costs as determined by the Agency, in its sole discretion.

2.7. Payment of Taxes

During the term of this Agreement, to the extent applicable, Participant and any of its successors-in-interest in any portion of the Site or Facility agree to pay, prior to delinquency, all undisputed real property and other *ad valorem* taxes and assessments assessed against any portion of the Site or Facility or any other taxable property, including personal property, located within the Site to the extent owned by Participant or any of its successors-in-interest; provided, however, that Participant expressly retains any and all rights to: (a) challenge, object to, or appeal any real property or personal property and other *ad valorem* taxes and assessments; and (b) petition for the reduction thereof.

2.8. Reduction or Elimination of Reimbursement

The Parties agree that Participant assumes and accepts the risk of possible alteration of Federal or State statute, regulation, or adjudication rendering unlawful or impractical the collection, receipt, disbursement, or application of the Reimbursement to the Agency as contemplated in and by this Agreement. If the provisions of Utah law which govern the payment of the Reimbursement to the Agency are changed or amended so as to reduce or eliminate the amount paid to the Agency under the Interlocal Agreements, the Agency's obligation to pay Participant annually the Reimbursement, as applicable, will be proportionately reduced or eliminated, but only to the extent necessary to comply with the changes in such law. Further, Participant agrees and acknowledges that it has made such investigations as necessary and assumes all risk as to whether the Project Area, the Plan, the Budget, and the Interlocal Agreements were properly approved, adopted and made effective. Notwithstanding any change in law, Participant specifically reserves and does not waive any right it may have to challenge, at Participant's cost and expense, the constitutionality of any law change(s) that would reduce or eliminate the payment of Reimbursement to the Agency and/or Participant and nothing herein shall be construed as an estoppel, waiver or consent to reduce or eliminate payment of the Reimbursement to the Agency and/or Participant. Participant acknowledges, understands, and agrees that the Agency is under no obligation to challenge the validity, enforceability, or constitutionality of a change in law that reduces or eliminates the payment of Reimbursement to the Agency and/or Participant, or to otherwise indemnify or reimburse Participant for its actions to independently do so.

2.9. Declaration of Invalidity

In the event any legal action is filed in a court of competent jurisdiction that seeks to invalidate the Project Area or this Agreement or that otherwise seeks to or would have the possible result of reducing or eliminating the payment of the Reimbursement to the Agency, the Agency shall provide written notice of such legal action to Participant. In the event such an action is filed, the Agency shall have no obligation to challenge that action or defend itself against such action. If requested by Participant, the Agency may, at its sole discretion, take such actions as may be reasonably required to defend such legal action and to address the grounds for any causes of action that could result in the reduction or elimination of the payment of the Reimbursement to the Agency. Participant specifically reserves and does not waive any right it may have to intervene, at Participant's cost and expense, in any such legal action and challenge the basis for any causes of action or any remedy sought that would reduce or eliminate the payment of the Reimbursement to the Agency and/or Participant, and nothing herein shall be construed as an estoppel, waiver or

consent to reduce or eliminate payment of the Reimbursement to the Agency and/or Participant. In the event that the court declares that the Agency cannot receive the Reimbursement, invalidates the Project Area or this Agreement, or takes any other action which eliminates or reduces the amount of Reimbursement paid to the Agency, and the grounds for the legal determination cannot reasonably be addressed by the Agency, the Agency's obligation to annually pay to Participant the Reimbursement in accordance with this Agreement will be reduced or eliminated to the extent that the Agency Share is not received by the Agency.

2.10. Dispute over Receipt of Payment of the Reimbursement

If not due to the act, error or omission of the Agency, in the event a dispute arises as to the person or entity entitled to receive the Reimbursement under this Agreement due to a claimed assignment or claimed successor-in-interest to the Reimbursement or otherwise, the Agency may withhold payment of the Reimbursement and may refrain from taking any other action required of it by this Agreement until the dispute is resolved either by agreement or by a court of competent jurisdiction and sufficient evidence of such resolution is provided to the Agency. The Agency shall be entitled to deduct from its payment of the Reimbursement any costs or expenses, including reasonable attorney fees, incurred by the Agency due to the dispute, except in the instance that the dispute arises due to the act, error or omission of the Agency, in which case the Agency shall be responsible for all costs and expenses including reasonable and actual attorney fees.

2.11. Nature of Participant's Obligations and Limitation

To qualify to receive the Reimbursement as set forth herein, Participant shall fulfill all of its obligations as set forth in this Agreement. The failure of Participant to fulfill its obligations may result in a failure to qualify to receive the Reimbursement or termination of this Agreement but shall not give rise to any other right or remedy in favor of the Agency.

2.12. Operation of the Facility

Participant shall utilize the Facility in a commercially reasonable manner and in accordance with industry standards. For purposes of this Agreement, "**Operating**", "**Operational**" or "**Operations**" of the Facility shall mean when the following conditions are satisfied: (1) any required permits, licenses, or other approval have been obtained for Participant or the Participant's tenant to occupy the Facility and (2) Participant or the Participant's tenant shall have received a business license issued by the City. For purposes of this Section, Participant shall be deemed to have continuously operated the Facility if the foregoing standards are substantially met or exceeded, notwithstanding temporary cessation of Operations for inspection, maintenance, repair, replacement, line down-time, and/or events of *force majeure* or destruction.

2.13. Commencement of Operations

For purposes of this Section, the Facility shall be deemed Operational if the conditions and standards in Section 2.12 are met. If Participant fails to commence Operations of the Facility as required by this Section for any reason other than events of force majeure, the Agency shall have the right to terminate this Agreement upon written notice to Participant, subject, however, to any notice and cure periods set forth in Article 5.

2.14. Continuing Operations

Operations of the Facility as described in Section 2.12 shall be commenced as described in Section 2.13 and shall continue throughout the term of this Agreement as set forth in Article 4. For purposes of this Section, the Facility shall be considered to be in Operation if the Facility is Operating as described in Section 2.12 of this Agreement. If Participant ceases to operate the Facility for a continuous period of more than eighteen (18) months for any reason other than events of *force majeure* or destruction, the Agency shall have the right to terminate this Agreement upon written notice to Participant at any time during such cessation of Operations.

2.15. Funding Responsibility

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

2.16. Potential Shortfall

Participant agrees and acknowledges that the only funds available to the Agency for compensation or reimbursements to Participant are those funds received by the Agency under the Interlocal Agreements from tax increment generated by the Investment by Participant within the Site and that the amount of Reimbursement paid to Participant under this Agreement is dependent on the taxable value of Participant's taxable property within the Site or the taxes paid thereon.

2.17. Audits, Appeals, and Reassessments

As noted in Section 2.7, above, Participant may object to, challenge, or appeal any *ad valorem* property taxes that may be owed by Participant for property within the Site. However, in the event that such an action is pursued by Participant and is eventually successful in reducing the taxable valuation of Participant's property within the Site, Participant shall immediately repay to the Agency the portion of the Reimbursement for that year proportionate to the reduction in taxable value. In the event that Participant does not timely make such payment to the Agency, the Agency may correspondingly reduce the Reimbursement paid to Participant for the next year of the Reimbursement Term. The Agency, at its sole discretion, may withhold payment of the Reimbursement for the final year of the Reimbursement Term until such date as Participant can no longer appeal or contest the assessed value of Participant's property within the Site.

Likewise, if an audit, reassessment, or similar action by the Salt Lake County Assessor or the Utah State Tax Commission results in an increased valuation of Participant's property within the Site,

the Agency shall pay additional Reimbursement for that year in proportion to the increase in taxable value of Participant's personal property within the Site, subject to compliance with the terms of this Agreement.

3. ADDITIONAL TERMS

3.1. Investment

Participant will at all times be responsible for its Investment at the Facility. Recognizing the level of Investment by Participant, the Agency has determined that it is in the best interests of the residents of the City to provide the Reimbursement to Participant as a Reimbursement to develop the Facility on the Site and undertake the continued Operation and Investment requirements as contemplated in this Agreement.

3.2. Responsibility for Development Plans and Permits

The Agency shall not have any responsibility to obtain permits, licenses, or other approvals for Participant's Operation of the Site.

3.3. Other Terms

3.3.1. City Land Use Authority

Participant acknowledges that nothing in this Agreement shall be deemed to supersede, waive, or replace the City's authority over land use, zoning, and permitting within the City.

3.3.2. Restriction Against Parcel Splitting

If applicable, during the term of this Agreement, Participant shall not, without the prior written approval of the Agency, (a) convey its interest in the Site or any portion thereof, if any, in such a way that a parcel of real property would extend outside the Project Area, or (b) construct or install any building or structure within the Project Area in such a way that any portion of the Facility or structure would extend outside of the Project Area. Participant understands and acknowledges that these requirements are intended to avoid the splitting of any parcels of real property within the Project Area and to avoid the joining of any parcels of real property inside of the Project Area with parcel(s) outside of the Project Area in such a way that Salt Lake County could no longer identify the periphery of the Project Area by distinct parcels.

3.3.3. Deannexation

Participant agrees that it will not cooperate with any person, group, or municipality in any effort to remove, deannex, disconnect, or disincorporate the Site or any portion thereof from the City during the Reimbursement Term. In the event that the Site or a portion thereof is disconnected, deannexed, disincorporated, or otherwise removed from the municipal boundaries of the City, the Agency's obligations to pay the Reimbursement for that portion of the Site outside of the City shall immediately cease.

3.3.4. Indemnification

Participant agrees to and shall indemnify, defend, and hold the Agency and its directors, officers, agents, employees, and representatives harmless from and against all liability, loss, damage, costs, or expenses (including reasonable attorney 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 third party person or to the property of any third party person, directly or indirectly caused by any acts done or any errors or omissions of Participant or 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, the City, or their respective directors, officers, agents, employees, contractors, and consultants. Likewise, the Agency agrees to and shall indemnify, defend, and hold Participant and its directors, officers, agents, employees, and representatives 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 third party person or to the property of any third party person, directly or indirectly caused by any acts done or any errors or omissions of the Agency, the City, or their respective directors, officers, agents, employees, contractors and consultants except for willful misconduct or negligent acts or omissions of Participant or its directors, officers, agents, employees, consultants, and contractors.

3.3.5. Limits on Liability

In no event shall one Party be liable to the other(s) for consequential, special, incidental, indirect, exemplary, or punitive damages of any kind (including, but not limited to, loss of profits, loss of reputation, or loss of current or prospective business advantage, even where such losses are characterized as direct damages) arising out of or in any way related to the relationship or dealings between Participant and the Agency, regardless of whether the claim under which damages are sought is based upon contract, tort, negligence (of any kind), willful misconduct, strict liability or otherwise, and regardless of whether the parties have been advised of the possibility of such damages at the time of contracting or otherwise.

3.3.6. Local, State, and Federal Laws

Participant shall make the Investment and utilize the Facility in conformity with all applicable laws; provided, however, that unless otherwise addressed elsewhere in this Agreement, nothing herein shall limit the right of Participant to properly challenge any such law or the applicability of such law.

3.3.7. Rights of Access

Representatives of the Agency shall have the right of reasonable access to the Facility for purposes of inspection, with reasonable and prior written notice (but in no event less than 48 hours prior), and without charges or fees, during normal business hours or as otherwise agreed to in writing by Participant, subject, however, to the rules, regulations, security protocols and other access limitations for safety and security purposes as required by Participant.

3.3.8. Responsibility of the Agency

The Agency shall not have any obligation under this Agreement other than those specifically provided for herein. Except as expressly provided for in this Agreement, nothing herein shall be construed as requiring the Agency to pre-approve or prejudice any matter, or as otherwise binding the Agency's discretion or judgment on any issue prior to an appropriate hearing (if required), review, or compliance with any other requirement.

3.3.9. Non-waiver of Governmental Immunity

Nothing in this Agreement shall be construed as a waiver of any immunity, protection, or rights granted to the Agency under the Governmental Immunity Act of Utah, Utah Code 63G-7-101, *et seq.*

3.3.10. Agency and City Publicity

Throughout the term of this Agreement and notwithstanding any agreements to the contrary, the Agency shall have the right to freely use the following facts and information in Agency and City marketing, promotional, and publicity materials (together, "**Promotional Materials**"): (i) the presence of Participant's operations in the City, (ii) the approximate square footage of the Facility, (iii) Participant's approximate total Investment within the City, (iv) timing of Participant's initial and subsequent investments within the City, (v) the details of the Reimbursement and the expected benefits to the City, (vi) the location of the Facility, and (vii) publicly-available information about Participant and its operations and history.

Except as specifically allowed in this Subsection 3.3.10, the Agency shall not disclose any nonpublic information about Participant or Participant's operations within the Project Area as part of any Promotional Materials or press releases.

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 later of: (a) the final payment of the Reimbursement during or upon the expiration of the Reimbursement Term (i.e., year 1 through year 10) as set forth in Article 2 of this Agreement; or (b) upon the written agreement signed by the Parties hereto.

5. DEFAULTS, REMEDIES, AND TERMINATION

5.1. Default

If either the Agency or Participant fails to perform or delays performance of any material obligation of this Agreement and fails to cure as provided for in this Article 5, 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 may pursue such other rights and remedies as it may have, except, however, if Participant fails to commence or continue Operations as required by Sections 2.12 and 2.13, above, then in such case Agency’s sole remedy shall be to terminate this Agreement (for clarity, Agency may not commence an action against Participant for specific performance to commence or continue Operations). Further, in the event of a Default by Participant, past all applicable cure periods, Agency’s sole remedy shall be to terminate this Agreement upon payment of any amounts that may be due from Participant to the Agency under this Agreement.

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, whichever is longer), the non-defaulting Party shall have all remedies provided for in this Agreement and shall have the right to obtain specific performance, unless otherwise limited by the express remedies set forth in this Agreement. Such 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.

Notwithstanding to foregoing, the Agency shall not have to right to compel, through a remedy of specific performance or otherwise, the Participant to make any investment within the Project Area or to Operate the Facility as contemplated by this Agreement.

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 Third District Court for the State of Utah located in Salt Lake 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. Service 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 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. Authority

Each Party hereby represents and warrants to the other that the following statements are true, complete, and not misleading as regards to the representing and warranting party: (a) such Party has full authority to enter into this Agreement and to perform all of its obligations hereunder; (b) those executing this Agreement on behalf of each Party do so with the full authority of the Party each represents; (c) this Agreement constitutes a legal, valid, and binding obligation of each Party, enforceable in accordance with its terms.

6.2. Notices, Demands, and Communications between the Parties

Formal notices, demands, and communications between the Agency and Participant shall be sufficiently given if emailed and: (1) personally delivered; or (2) if dispatched by registered or certified mail, postage prepaid, return-receipt requested, to the principal offices of the Agency and Participant, as designated in Sections 1.8.1 and 1.8.2 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.

6.3. 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.

6.4. No Liability of Officials and Employees

No director, officer, agent, employee, representative, contractor, attorney, or consultant of the Parties hereto shall be personally liable to any other Party hereto, or any successor-in-interest thereof, in the event of any Default or breach by a Party hereto or for any amount which may become due to a Party hereto or to its successor, or on any obligations under the terms of 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, unusually severe weather, or any other causes beyond the reasonable 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 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 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. Attorney Fees

In the event of any litigation arising from or related to this Agreement, the prevailing Party shall be entitled to recover from the non-prevailing party all reasonable costs and attorney fees related to such litigation.

6.9. 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 an enterprise between the Parties hereto.

6.10. 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.

6.11. Mediation

In the event a dispute arises between the parties with respect to the terms of this Agreement or the performance of any contractual obligation by one or both of the parties, the parties agree to submit the matter to formal and confidential non-binding mediation before any judicial action may be initiated, unless an immediate court order is needed or a statute of limitations period will run before mediation can be reasonably completed. A mediator will be selected by mutual agreement of the parties. The parties must mediate in good faith to resolve the dispute in a timely manner. Each party will be responsible for its own costs and one-half of the cost of the mediator. The place of mediation shall be Herriman City, Utah.

6.12. Headings

Article and Section titles, headings or captions are inserted only as a matter of convenience and for reference and in no way define, limit, extend, or describe the scope of this Agreement or the intent of any provision hereof.

6.13. Contra Proferentum

This is an arm's-length Agreement: The Parties have read this Agreement and have executed it voluntarily after having been apprised of all relevant information and the risks involved and having had the opportunity to obtain legal counsel of their choice. Consequently, no provision of this Agreement shall be strictly construed against either Party.

6.14. Further Assurances

The Parties shall cooperate, take such additional actions, sign such additional documentation, and provide such additional information as reasonably necessary to accomplish the objectives set forth in this Agreement.

6.15. Incorporation of Recitals and Exhibits

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

6.16 Governmental Records and Management Act

The Agency acknowledges that Participant considers all of the information provided to the Agency in connection with this Agreement is protected under the Utah Governmental Records Access and Management Act, § 63-2-101 *et seq.* (“GRAMA”) under a claim of “business confidentiality” so

long as Participant complies with the applicable requirements in making a claim of business confidentiality under § 63G-2-309(1)(a)(i)(A) & (B).

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. Electronic pdf signatures shall be considered original signatures and scans of original documents shall be treated as original documents.

7.2. Integration

This Agreement (including its exhibits) constitutes the entire understanding and agreement of the Parties regarding the subject matter thereof. 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 the subject matter thereof.

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 Participant and the Agency.

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

EXHIBIT A
(List of Investments)

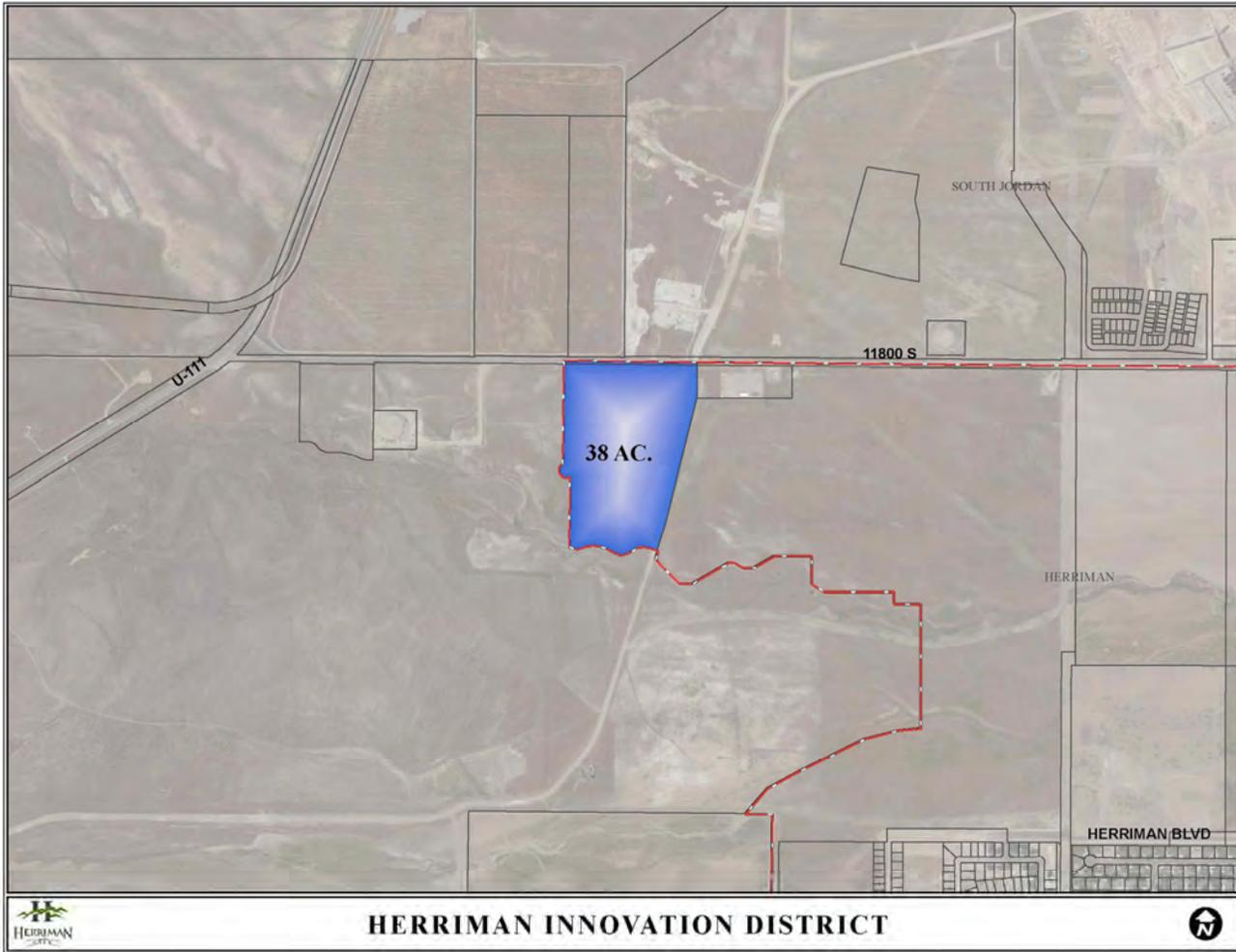
EXHIBIT A
(List of Investments)

LIST OF INVESTMENTS		
#	Scope of Work	Amount
1	118000 South Expansion right of expansion	\$ 400,841
2	Midas Creek Improvements	\$ 27,234
3	Rocky Mountain Service Extension Costs (cable & gear)	\$ 96,328
4	11800 S Main line extension conduits & vaults for Power & Fiber	\$ 507,713
5	Dominion Energy main line extension	\$ 136,416
6	7080 W road section increase per Herriman City Engineering	\$ 36,303
7	7080 W Herriman City Specified light Pole upgrade	\$ 75,607
TOTAL		\$ 1,280,441

COMMUNITY DEVELOPMENT AND RENEWAL AGENCY OF HERRIMAN CITY

APRIL 8, 2020





HERRIMAN INNOVATION DISTRICT



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HERRIMAN INNOVATION DISTRICT CRA

- Commence between 2020-2022
- 15 Year Period
- Base Year Value: \$696,711
- Total Revenues: \$12,458,742
- Total Expenses: \$5,301,667
 - 10% Housing \$1,245,874
 - Jordan School District Mitigation Payment \$3,694,489
 - 2.9% Administration \$361,304
- Remaining Increment: **\$7,157,075**



PARTICIPATION AGREEMENT WITH HERRIMAN INDUSTRIAL #1

- **Subject to interlocal agreements with other taxing entities.**
- Reimbursement up to \$1,280,441.
 - Midas Creek storm drain improvements
 - Rocky Mountain Power main line extension
 - Dominion Energy main line extension
 - 11800 South improvements
 - 7080 W improvements
- Reimbursement available upon verification of actual costs.
- Participant limited by the reimbursement term, and the amount of agency share actually received.