

INTERLOCAL COOPERATION AGREEMENT

THIS INTERLOCAL COOPERATION AGREEMENT is made and entered into this ____ day of _____, 2015, by and between the **REDEVELOPMENT AGENCY OF WOODS CROSS CITY**, a community development and renewal agency and political subdivision of the State of Utah (the “Agency”), and **DAVIS SCHOOL DISTRICT**, a political subdivision of the State of Utah (the “School District”) in contemplation of the following facts and circumstances:

A. **WHEREAS**, the Agency was created and organized pursuant to the provisions of the Utah Neighborhood Development Act, Utah Code Annotated (“UCA”) §17A-2-1201 *et seq.* (2000), and continues to operate under the provisions of its extant successor statute, the Community Development and Renewal Agencies Act, Title 17C of the UCA (the “Act”), and is authorized and empowered under the Act to undertake, among other things, various community development activities pursuant to the Act, including, among other things, assisting the City of Woods Cross (the “City”) in development activities that are likely to advance the policies, goals and objectives of the City’s general plan, contributing to capital improvements which substantially benefit the City, creating economic benefits to the City, and improving the public health, safety and welfare of its citizens; and

B. **WHEREAS**, this Agreement is made pursuant to the provisions of the Act and the Interlocal Cooperation Act (UCA Title 11, Chapter 13) (the “Cooperation Act”); and

C. **WHEREAS**, the Agency has created the 2600 South Community Development Project Area (the “Project Area”), through the adoption of the 2600 South Community Development Project Area Plan (the “Project Area Plan”), located within the City, which Project Area is described in Exhibit “A” attached hereto and incorporated herein by this reference; and

D. **WHEREAS**, the Project Area contains a significant amount of vacant and underutilized parcels, which are anticipated to be developed, with encouragement and planning by the Agency, into retail, office, and residential uses. The Agency has not entered into any participation or development agreements with developers but anticipates that prior to development of the Project Area, the City and the Agency may enter into one or more Development/Participation Agreements with one or more developer(s) which will provide certain terms and conditions upon which the Project Area will be developed using, in part, increased property tax revenue, referred to as “Tax Increment” (as that term is defined in the Act), generated from the Project Area; and

E. **WHEREAS**, as explained further in the Plan, the City will incur significant costs and expenses to provide redevelopment infrastructure improvements including assistance with demolition, architectural treatments, and streetscapes; and the City may assemble land within the Project Area to incentivize development activity with lower land prices and to promote higher and more beneficial uses of land within the Project Area; and

F. **WHEREAS**, historically, the Project Area has generated a total of \$295,484 per year in property taxes for the various taxing entities, including the City, Davis County (the “County”), the School District, and other taxing entities; and

G. **WHEREAS**, upon full development as contemplated in the Project Area Plan, property taxes produced by the Project Area for the City, the County, the School District, and other taxing entities are projected to total approximately \$475,397 per year; and

H. **WHEREAS**, the Agency has requested the City, the County, the School District, and other taxing entities to participate in the promotion of development in the Project Area by agreeing to remit to the Agency for a specified period of time specified portions of the increased property tax revenues which will be generated by the Project Area; and

I. **WHEREAS**, it is in the best interest of the citizens of the School District for the School District to remit such payments to the Agency in order to permit the Agency to leverage private development of the Project Area; and

J. **WHEREAS**, the Agency has retained Lewis Young Robertson & Burningham, Inc., an independent financial consulting firm with substantial experience regarding community development projects and tax increment funding across the State of Utah, to prepare the Project Area Plan and to provide a report regarding the need and justification for investment of Tax Increment revenues from and within the Project Area. A copy of the report is included in the Project Area Plan attached as Exhibit "B"; and

K. **WHEREAS**, the Agency has also created the 2600 South Community Development Project Area Budget (the "Project Area Budget"), a copy of which is attached as Exhibit "C", which Project Area Budget, generally speaking, outlines the anticipated generation, payment and use of Tax Increment within the Project Area;

L. **WHEREAS**, the parties desire to set forth in writing their agreements regarding the nature and timing of such assistance;

NOW, THEREFORE, the parties agree as follows:

1. **Additional Tax Revenue.** The City has determined that significant additional property tax revenue (*i.e.*, Tax Increment) will likely be generated by the development of the Project Area as described in further detail in the Project Area Plan and Project Area Budget. Each of the parties acknowledge, however, that the development activity required for the generation of the Tax Increment is not likely to occur within the foreseeable future or to the degree possible or desired without Tax Increment participation in order to induce and encourage such development activity.

2. **Offset of Development Costs and Expenses.** The School District has determined that it is in the best interests of its citizens to pay specified portions of its portion of Tax Increment to the Agency in order for the Agency to offset costs and expenses which will be incurred by the Agency in the construction and installation of infrastructure improvements and other development related costs needed to serve the Project Area, to the extent permitted by the Act, as amended from time to time.

3. **Base Year and Base Year Value.** The base year, for purposes of calculation of the Base Taxable Value (as that term is defined in the Act), shall be 2014, meaning the Base Taxable Value shall, to the extent and in the manner defined by the Act, be equal to the equalized taxable value shown on the 2014 Davis County assessment rolls for all property located within the Project Area (which is currently estimated to be \$23,347,368, but is subject to final adjustment and verification by the County and Agency).

4. **Agreement(s) with Developer(s).** The Agency is authorized to enter into one or more agreements with one or more developers which may provide for the payment of certain amounts of Tax Increment (to the extent such Tax Increment is actually paid to and received by the Agency from year to year) to the developer(s) conditional upon the developer(s)'s meeting of certain performance measures as outlined in said agreement. Such agreement shall be consistent with the terms and conditions of this Agreement, shall require as a condition of the payment to the Developer that the Developer, or its approved successors in title as owners of the Property, shall pay any and all taxes and assessments which shall be assessed against the Property in accordance with levies made by applicable municipal entities in accordance with the laws of the state of Utah applicable to such levies, and such other performance measures as the Agency may deem appropriate.

5. **Payment Trigger.** The first year (“Year One”) of payment of Tax Increment from the School District to the Agency shall be determined by the Agency, but shall be no later than 2018. Each subsequent year, beginning with the first year after Year One, shall be defined in sequence as Year Two through Year Fifteen. The Agency may trigger the collection of Tax Increment by timely delivering a letter or other written request to the Davis County Auditor’s office

6. **Total Payment to Agency.** The County is authorized and instructed to remit to the Agency, beginning with property tax receipts in Year One, and continuing through Year Fifteen, 50% of the School District’s annual Tax Increment generated from the Project Area. The County will pay the remaining 50% portion of the Tax Increment directly to the School District annually.

7. **Property Tax Revenue Increase.** This Agreement provides for the payment of the increase in real and personal property tax revenue collected from the Project Area by the County acting as the tax collection agency for the School District. Real and personal property taxes which are the subject of this Agreement shall not include taxes collected from the Project Area by the County, acting in its capacity as the tax collection agency for the City, which are to be paid to or utilized by abatement districts, special service or improvement districts or other entities for which the County acts as the tax collection agency, nor shall it include any component of real property taxes retained by the County as payment for costs incurred in the collection of real property taxes for itself or other applicable agencies. It is expressly understood that the real property taxes which are the subject of this Agreement are only those real and personal property taxes actually collected by the County from the Project Area. The Agency shall be entitled to payment of 50% of all Tax Increment legally available and provided for under the Act, as amended from time to time. The School District will keep 50% of all Tax Increment.

8. **No Independent Duty.** The School District shall be responsible to remit to the Agency only Tax Increment actually received by the County. The School District shall have no independent duty to pay any amount to the Agency other than the Tax Increment actually received by the School District on an annual basis from and including Year One through and including Year Fifteen.

9. **Authority to Bind.** Each individual executing this Agreement represents and warrants that such person is authorized to do so, and, that upon executing this Agreement, this Agreement shall be binding and enforceable in accordance with its terms upon the party for whom such person is acting.

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

11. **Notices.** Any notice, request, demand, consent, approval or other communication required or permitted hereunder or by law shall be validly given or made only if in writing and delivered to an officer or duly authorized representative of the other party in person or by Federal Express, private commercial delivery or courier service for next business day delivery, or by United States mail, duly certified or registered (return receipt requested), postage prepaid, and addressed to the party for whom intended, as follows:

If to School District:
Davis School District
Attn: Business Administrator
45 E. State Street
P.O. Box 588
Farmington, UT 84025-0588
Facsimile: (801) 402-5249

If to Agency:
Redevelopment Agency of
Woods Cross City
Attn: Agency Board
1555 S. 800 W.
Woods Cross, UT 84087
Facsimile: (801) 292-2225

Any party may from time to time, by written notice to the others as provided above, designate a different address which shall be substituted for that specified above. Notice sent by mail shall be deemed served or delivered seventy-two (72) hours after mailing. Notice by any other method shall be deemed served or delivered upon actual receipt at the address or facsimile number listed above. Delivery of courtesy copies noted above shall be as a courtesy only and failure of any party to give or receive a courtesy copy shall not be deemed to be a failure to provide notice otherwise properly delivered to a party to this Agreement.

12. **Entire Agreement.** This Agreement is the final expression of and contains the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior understandings with respect thereto. This Agreement may not be modified, changed, supplemented or terminated, nor may any obligations hereunder be waived, except by written instrument signed by the party to be charged or by its agent duly authorized in writing or as otherwise expressly permitted herein. This Agreement and its exhibits constitute the entire agreement between the parties hereto pertaining to the subject matter hereof, and the final, complete and exclusive expression of the terms and conditions thereof. All prior agreements, representations, negotiations and understandings of the parties hereto, oral or written, express or implied, are hereby superseded and merged herein.

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

14. **Construction.** Headings at the beginning of each paragraph and subparagraph are solely for the convenience of the parties and are not a part of the Agreement. Whenever required by the context of this Agreement, the singular shall include the plural and the masculine shall include the feminine and vice versa. Unless otherwise indicated, all references to paragraphs and subparagraphs are to this Agreement. In the event the date on which any of the parties is required to take any action under the terms of this Agreement is not a business day, the action shall be taken on the next succeeding business day.

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

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

17. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

18. **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.

19. **Governing Law.** This Agreement and the exhibits attached hereto shall be governed by and construed under the laws of the State of Utah. In the event of any dispute hereunder, it is agreed that the sole

and exclusive venue shall be in a court of competent jurisdiction in Davis County, Utah, and the parties hereto agree to submit to the jurisdiction of such court.

20. **Declaration of Invalidity.** In the event that a court of competent jurisdiction declares that the County cannot pay and/or that the Agency cannot receive payments of the Tax Increment, declares that the Agency cannot pay the Tax Increment to developers, or takes any other action which has the effect of eliminating or reducing the payments of Tax Increment received by the Agency, the Agency's obligation to pay the Tax Increment to developers shall be reduced or eliminated accordingly, the Agency, and the County shall take such steps as are reasonably required to not permit the payment and/or receipt of the Tax Increment to be declared invalid.

21. **No Separate Legal Entity.** No separate legal entity is created by this Agreement.

22. **Duration.** This Agreement shall terminate after the final payment of Tax Increment to the Agency for Year Fifteen.

23. **Assignment.** No party may assign its rights, duties or obligations under this Agreement without the prior written consent first being obtained from all parties. Notwithstanding the foregoing, such consent shall not be unreasonably withheld or delayed so long as the assignee thereof shall be reasonably expected to be able to perform the duties and obligations being assigned.

24. **Termination.** Upon any termination of this Agreement resulting from the uncured default of any party, the order of any court of competent jurisdiction or termination as a result of any legislative action requiring such termination, then any funds held by the Agency and for which the Agency shall not be required to disburse to developers in accordance with the agreements which govern such disbursement, then such funds shall be returned to the party originally remitting same to the Agency and upon such return this Agreement shall be deemed terminated and of no further force or effect.

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

- a. This Agreement shall be authorized and adopted by resolution of the legislative body of each Party pursuant to and in accordance with the provisions of Section 11-13-202.5 of the Cooperation Act;
- b. This Agreement shall be reviewed as to proper form and compliance with applicable law by a duly authorized attorney on behalf of each Party pursuant to and in accordance with the provisions of Section 11-13-202.5(3) of the Cooperation Act;
- c. A duly executed original counterpart of this Agreement shall be filed immediately with the keeper of records of each Party pursuant to Section 11-13-209 of the Cooperation Act;
- d. The Chair of the Agency is hereby designated the administrator for all purposes of the Cooperation Act, pursuant to Section 11-13-207 of the Cooperation Act; and
- e. Should a party to this Agreement desire to terminate this Agreement, in part or in whole, each party to the Agreement must adopt, by resolution, an amended Interlocal Cooperation Agreement stating the reasons for such termination. Any such amended Interlocal Cooperation Agreement must be in harmony with any development/participation agreement(s) entered into by the Agency as described in this Agreement.
- f. Immediately after execution of this Agreement by both Parties, the Agency shall, on behalf of both parties, cause to be published notice regarding this Agreement pursuant to Section 11-13-219 of the Cooperation Act.

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

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

City: DAVIS SCHOOL DISTRICT

Attest:

By: _____
Gordon Eckersley
Its: Board President

Business Administrator

Approved as to form:

Attorney for Davis School District

Agency: REDEVELOPMENT AGENCY OF WOODS CROSS CITY

Attest:

By: _____
Rick Earnshaw
Its: Chair

Secretary

Approved as to form:

Attorney for Agency

EXHIBIT "A
to
INTERLOCAL AGREEMENT

Legal Description of Project

Part of Woods Cross City, located in the East Half of Section 36, Township 2 North, Range 1 West, Salt Lake Base and Meridian. Beginning at the northwest corner of the intersection of Highway 89 and 2600 South Street: thence as follows,

Westerly along the north line of 2600 South Street to the center line of I-15; thence
Northerly 1300.00 feet more or less to an extension of the north line of parcel 06-093-0102; thence
Easterly along said north line to the westerly line of 575 West Street; thence
Northerly along said westerly line to the west line of parcel 06-093-0104; thence
North along the west lines of parcels 06-093-0104 and 06-093-0105 to the north line of parcel 06-093-0105;
thence
East along said north line to the westerly line of 575 West Street; thence
Northerly along said westerly line to a point being west of the north line of parcel 06-093-0060; thence
East to the westerly line of Highway 89; thence
Southerly along said westerly line to the point of beginning.

Containing 1,954,102 square feet or 44.86 acres, more or less.

EXHIBIT "B"
To
INTERLOCAL AGREEMENT

Project Area Plan

EXHIBIT "C"
To
INTERLOCAL AGREEMENT

Project Area Budget