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REC FOR: NORTH OGDEN CITY

**AGREEMENT #A25-2015  
INTERLOCAL AGREEMENT BETWEEN  
THE REDEVELOPMENT AGENCY OF NORTH OGDEN CITY  
AND BEN LOMOND CEMETERY MAINTENANCE DISTRICT**

**THIS INTERLOCAL AGREEMENT** is entered into as of this 10 day of Feb, 2015, by and between the **REDEVELOPMENT AGENCY OF NORTH OGDEN CITY** (the "Agency") and **BEN LOMOND CEMETERY MAINTENANCE DISTRICT** (the "District") (collectively, the "Parties" or individually "Party").

**RECITALS**

- A. The Agency was created pursuant to the provisions of the Limited Purpose Local Government Entities - Community Development and Renewal Agencies Act, Title 17C of the Utah Code (the "Act"), and is authorized thereunder to conduct urban renewal, economic development, and community development activities within North Ogden City, Utah, as contemplated by the Act; and
- B. Pursuant to the North Ogden City Redevelopment Agency Resolution No. 20-2015 adopted by the Agency on October 6, 2015, the Agency authorized steps to be taken for the creation of the Washington Boulevard Community Development Project Area (the "Project Area") and has prepared a draft community development project area plan for the Project Area, 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), pursuant to which the Agency desires to encourage, promote and provide for the development of the Washington Boulevard area, (the "Project") in the Project Area; and
- C. Pursuant to Ordinance 2015-20, scheduled to be adopted by the city of North Ogden ("City") on October 6, 2015 the Agency and City established the Project Area through adoption of the proposed Project Area Plan; and

*NO Rec.*

- D. The District is a "taxing entity" as defined in Utah Code Annotated §17C-1-102(48) or a "public entity" as defined in Utah Code Annotated §17C-1-102(40); and
- E. The District and the Agency have determined that it is in the best interests of the District to provide certain financial assistance through the use of Tax Increment (as defined below) in connection with the development of the Project as set forth in the Project Area Plan; and
- F. The Agency anticipates providing tax increment (as defined in Utah Code Ann. § 17C-1-102(47) (hereinafter "Tax Increment")), created by the Project, to assist in the development and completion of the Project as provided in the Project Area Plan; and
- G. Utah Code Ann. § 17C-4-201(1) authorizes the District to consent to the payment to the Agency of a portion of the District's share of Tax Increment generated from the Project Area for the purposes set forth herein; and
- H. Utah Code Ann. § 11-13-215 further authorizes the District to share its tax and other revenues with the Agency; and
- I. In order to facilitate development of the Project, the District desires to authorize the payment to the Agency of a portion of the District's share of Tax Increment generated by the Project Area in accordance with the terms of this Agreement; and
- J. The provisions of applicable Utah State law shall govern this Agreement, including the 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. District's Consent.**

a. Pursuant to Utah Code Ann. §§ 17C-4-201(2)(b) and 11-13-215, the District hereby agrees and consents that the Agency shall be paid 50% of the District share of the Tax Increment from the Project Area (the "District Share") for fifteen (15) years. The Agency anticipates starting with tax year of 2017 but will trigger at the discretion of the Agency no later than 2019, with the base year being 2014. The Project Area will be the Washington Boulevard Area. (see P. 12-13 Project Area Plan, Exhibit A). Based upon review of the Weber County and Utah State Tax Commission records, the Parties believe that the 2014 base taxable value of the Project Area is approximately \$16,913,911, which base taxable value is subject to adjustment by law in accordance with the provisions of the Act. The District Share shall be used for the purposes set forth in Utah Code Ann. § 17C-4-201(1) as reflected herein and for the purpose of providing funds to the Agency to carry out the Project Area Plan and shall be disbursed as specified in the Project Area Plan. The calculation of the annual Tax Increment shall be made as required by Utah Code Ann. § 17C-1-102(47)(a), using the District's then current tax levy rate.

b. The District authorizes Weber County to pay directly to the Agency the District Share in accordance with Utah Code Ann. § 17C-4-203 for the 15-year period described in Section 1.a. above.

**2. Amendments to Project Area Plan.**

In the event the Agency or the City makes any substantive changes to the Project Area Plan, then the Agency shall provide the District with a copy of such revised Project Area Plan. If the District approves such revised Project Area Plan, then the Parties shall amend this Agreement to jointly adopt and approve the revised Project Area Plan, and the revised Project Area Plan shall be the Project Area Plan.

**3. Authorized Uses of Tax Increment.**

Except as otherwise provided in this Agreement, the Parties agree that the Agency may apply the District Share to the payment of any of the components of the Project as described herein and contemplated in the Project Area Plan,

including, but not limited to the cost and maintenance of public infrastructure and other improvements located within the Project Area, site preparation, and administrative costs, 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 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 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 terms of this Agreement shall commence on the date of full execution of this Agreement by both Parties and shall continue through the date on which all of the District Share has been paid to and disbursed by the Agency as provided for herein, or the Parties terminate this Agreement by mutual written agreement and the Agency ceases to receive such Tax Increment, but in any event, unless amended or terminated earlier by mutual agreement, this Agreement shall terminate no later than December 31, 2036;

f. Following the execution of this Agreement by both Parties, the Agency 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 Area in accordance with § 17C-4-202;

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.

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

**AGENCY**

  
BRENT R. TAYLOR, Chair

Attest:

S. Annette Spendlove  
S. ANNETTE SPENDLOVE, Secretary



**WASHINGTON BOULEVARD COMMUNITY DEVELOPMENT PROJECT AREA AND  
THE REDEVELOPMENT AGENCY OF NORTH OGDEN CITY**

**Attorney Review for the Agency:**

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

**Attorney for Washington Boulevard Community Development Project and North Ogden City Redevelopment Agency**

  
JONATHAN CALL, Agency Attorney

ADDITIONAL SIGNATURES TO INTERLOCAL AGREEMENT

By: *Leon J. Call*

Title: *Chairman*

Attest:

*William T. Wayment*

Attorney Review for the District

The undersigned, an attorney for the *Ben Lomond Cemetery Maintenance District*, has reviewed the foregoing Interlocal Agreement and finds it to be in proper form and in compliance with applicable state law.

Attorney for *Ben Lomond Cemetery Maintenance District*

*Rachel S. Anderson*