

RESOLUTION 2016-06

RESOLUTION OF TOOELE COUNTY APPROVING AN INTERLOCAL AGREEMENT WITH THE REDEVELOPMENT AGENCY OF TOOELE COUNTY BOARD FOR THE DESERET PEAK COMMUNITY DEVELOPMENT PROJECT AREA

WHEREAS, after consideration of relevant information, Tooele County (the "**Taxing Entity**") and the Redevelopment Agency of Tooele County Board (the "**Agency**") desire to approve and enter into the amended Interlocal Agreement attached hereto as Exhibit "A," whereby the Taxing Entity consents to the Agency receiving certain property tax increment from the Deseret Peak Community Development Project Area (the "**Project Area**") attributable to the Taxing Entity's tax levy and that such tax increment be used to fund the Project Area and the Deseret Peak Community Development Project Area Plan (the "**Plan**"); and

WHEREAS, Section 11-13-202.5, Utah Code Annotated 1953, as amended, requires certain interlocal agreements be approved by resolution of the legislative body, governing board, council or other governing body of a public agency; and

WHEREAS, Section 17C-4-201, Utah Code Annotated 1953, as amended, allows for the consent of a Taxing Entity to be expressed in an interlocal agreement.

NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE LEGISLATIVE BODY OF TOOELE COUNTY THAT:

1. The Interlocal Agreement between the Taxing Entity and the Agency attached hereto is approved and shall be executed by Tooele County, by signature of the Commission Chairman; and
2. The Agency is allowed to collect the Taxing Entities portion of the tax increment in accordance with the terms and conditions outlined in the Interlocal Agreement; and
3. Pursuant to Section 11-13-202.5, Utah Code Annotated, 1953 as amended, said Interlocal Agreement shall be submitted to legal counsel of the Taxing Entity for review and signature indicating approval as to proper form and compliance with applicable law; and
4. Pursuant to Section 11-13-209, Utah Code Annotated, 1953 as amended, a duly executed original counterpart of said Interlocal Agreement shall be filed immediately after adoption with the County Recorder; and
5. Pursuant to Section 11-13-219(3) (c) (ii), Utah Code Annotated, 1953 as amended, this Resolution and the Interlocal Agreement shall be available at the principal place of business of the Agency, during regular business hours for 30 days after the publication of the notice of this Resolution and/or the Interlocal Agreement pursuant to Section 11-13-219.

Res. 2016-06

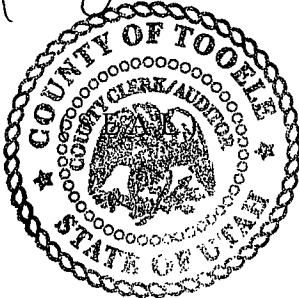
ADOPTED by the legislative body of Tooele County this 16th day of August 2016.

ATTEST:

TOOELE COUNTY COMMISSION:


Marilyn K. Gillette, Clerk/Auditor


WADE B. BITNER, Chairman



Commissioner Bateman voted aye
Commissioner Bitner voted aye
Commissioner Milne voted aye

APPROVED AS TO FORM:

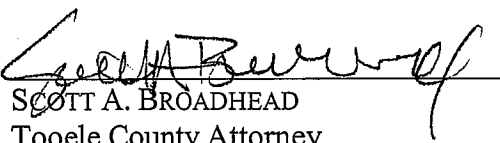

SCOTT A. BROADHEAD
Tooele County Attorney

EXHIBIT A

INTERLOCAL AGREEMENT

THIS INTERLOCAL AGREEMENT is entered into as of this 16th day of Aug, 2016, by and between the **REDEVELOPMENT AGENCY OF TOOELE COUNTY BOARD** (the "AGENCY") and **TOOELE COUNTY, UTAH** (the "COUNTY") (collectively, the "Parties").

A. WHEREAS, Tooele County, Utah, created the Redevelopment Agency of Tooele County (the "Agency") which currently operates under the Utah Limited Purpose Local Government Entities - Community Development and Renewal Agencies Act, Title 17C of the Utah Code (the "Act"), and is authorized there under to conduct urban renewal, economic development, and community development activities within the County, as contemplated by the Act; and

B. WHEREAS, the County is working to attract developers and businesses to locate and develop in the Deseret Peak Commercial Community Development Project Area (the "Project Area") and may need to offer certain financial incentives to secure the first anchor tenant, as described in paragraph C, for the Project Area; and

C. WHEREAS, an interlocal agreement had been adopted and approved by the County that provided a tax increment incentive to the Reckitt Benckiser company, upon their completion of terms and conditions defined in a Participation Agreement dated August 7, 2009; and which said terms and conditions were not met and Reckitt Benckiser has since abandon the distribution facility and no longer operates the facility; and

D. WHEREAS, the County through the Agency had offer a financial incentive in order to ensure that Reckitt Benckiser located in the Project Area and only a portion of that incentive had been paid to Reckitt Benckiser; and

E. WHEREAS, the Agency is working with a new company, known as Purple, that has agreed to lease the former distribution facility, formally occupied by Reckitt Benckiser, and this new company is willing to enter into a new participation agreement with the Agency, which will include the creation of new jobs for the County, as well as new investment in the building; and

F. WHEREAS, the new company has requested a developer incentive that would be funded with Tax Increment generated only by the property within the site where the distribution facility has been constructed, and for the terms and cap amount that remains from the original interlocal agreement approved by the County and Agency for the former Reckitt Benckiser development; and

G. WHEREAS, the Agency is requesting the County to participate with funding in order to encourage, promote and provide for the new development proposed for the distribution facility within the Project Area; and

H. WHEREAS, UCA §11-13-215 further authorizes the County to share its tax and other revenues with the Agency; and

I. WHEREAS, in order to facilitate development of the new company, the County desires to pay to the Agency a portion of the County's share of Tax Increment generated by taxes levied by the County on property within the Project Area in accordance with the terms of this Agreement; and

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

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

1. County's Consent.

a. Pursuant to Section 17C-4-201(2)(b) of the Act and Section 11-13-215 of the Cooperation Act, the County hereby agrees and consents that the Agency shall be paid 60% of the County's share of the annual Tax Increment from the former site known as the Reckitt Benckiser development, generated by taxes levied by the County on all taxable property from the assessed value of all real and personal property from this development for thirteen years (13) years starting with the tax year after the company occupies the former Reckitt Benckiser building and meets the terms and conditions as outlined in the participation agreement, between the new company, Purple, and the Agency. The County's share shall be used for the purposes set forth in UCA §17C-4-201(1) as reflected in the Project Area Plan and shall be disbursed as specified herein. The amount to be paid each year shall be based on the assessed value of the building as determined by the Tooele County Assessor, and the base year value will be the same as was determined and agreed to by the County, when the Deseret Peak Commercial Development Project Area was created by the Agency.

b. The County hereby authorizes and directs Tooele County to pay directly to the Agency the County's share in accordance with UCA § 17C-4-203 for the 13- year period described in Section 1.a. above.

c. Notwithstanding the foregoing, if the Agency has received Tax Increment in the amount of \$3,270,115 from the former Reckitt Benckiser building and property pursuant to this Agreement in less than thirteen (13) years, the Agency will cease collecting Tax Increment under this Agreement. This shall be the cap of the total amount of Tax Increment that can be paid to the Agency for the developer incentive.

d. The County's consent is contingent upon the new company, Purple, leasing the former Reckitt facility and meeting all terms and conditions of the participation agreement approved by the Agency.

e. In the event that the new company, Purple, does not lease the former Reckitt facility and meet all of the terms and conditions of the participation agreement, this

Agreement shall become null and void, and the Agency shall not receive the County's share of Tax Increment.

2. **Authorized Uses of Tax Increment.** The Parties agree that the Agency may apply the County's share to the payment of the developer incentive to the new company, Purple, occupying the facility, as authorized by the Act and contemplated by the Project Area Plan.

3. **No Third Party Beneficiary.** Nothing in this Agreement shall create or be read or interpreted to create any rights in or obligations in favor of the new company, Purple, or any person or entity not a party to this Agreement. Except for the Parties to this Agreement, no person or entity is an intended third party beneficiary under this Agreement.

4. **Due Diligence.** Each of the Parties acknowledges for itself that it has performed its own review, investigation, and due diligence regarding the relevant law and facts upon which this Agreement is based, including representations of the new company, Purple, and the County concerning the Distribution Facility and the benefits thereof to the community and to the Parties, and each Party relies upon its own understanding of the relevant law, facts, information, and representations, after having completed its own due diligence and investigation.

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

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

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

c. A duly executed original counterpart of this Agreement shall be filed immediately with the keeper of records of each Party pursuant to Section 11-13-209 of the Cooperation Act;

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

e. The term of this Agreement shall commence on the date of full execution of this Agreement by both Parties and shall continue through the date on which all of the County's share has been paid to and disbursed by the Agency as provided herein, the Agency ceases to receive such Tax Increment pursuant to Section 1, hereof, or this Agreement becomes null and void pursuant to Section 1 e.

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

hereby designate the Tooele Transcript Bulletin as the official newspaper for purposes of publishing the required notice of the Agreement.

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

7. **Further 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.

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

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

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

a. such holding or action shall be strictly construed;

b. such provision shall be fully severable;

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

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

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

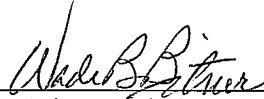
11. **Authorization.** Each of the Parties hereto represents and warrants to the other that the warranting Party has taken all steps, including the publication of public notice where necessary, in order to authorize the execution, delivery, and performance of this Agreement by each such Party.

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

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

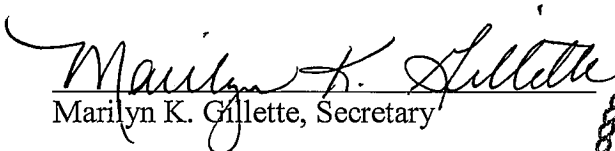
ENTERED into as of the day and year first above written.

REDEVELOPMENT AGENCY
OF TOOEELE COUNTY

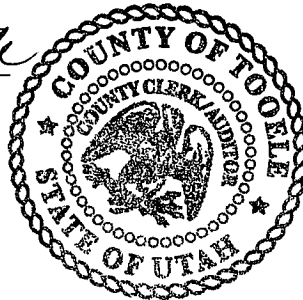


Wade B. Bitner, Chairman
Redevelopment Agency of Tooele County Board

ATTEST:

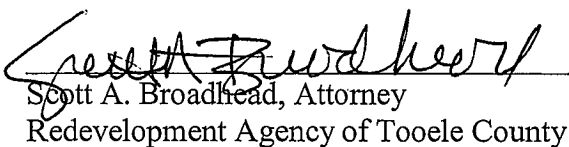


Marilyn K. Gillette, Secretary



Attorney Review for the Agency:

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

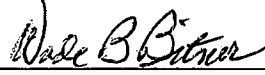


Scott A. Broadhead, Attorney
Redevelopment Agency of Tooele County

[Signatures continue on next page.]

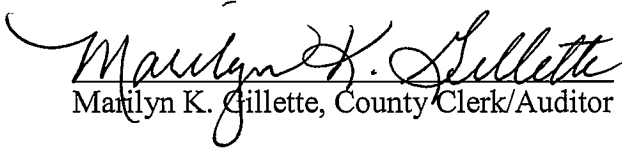
ADDITIONAL SIGNATURES TO INTERLOCAL AGREEMENT

TOOELE COUNTY, UTAH



Wade B. Bitner, Chairman
Tooele County Board of County Commissioners

ATTEST:

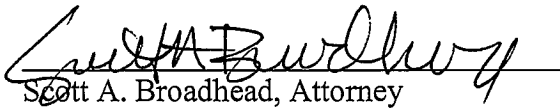


Marilyn K. Gillette, County Clerk/Auditor



Attorney Review for Tooele County, Utah:

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



Scott A. Broadhead, Attorney
Tooele County, Utah