

COTTONWOOD HEIGHTS

RESOLUTION NO. 2015-01

A RESOLUTION APPROVING AN INTERLOCAL AGREEMENT WITH THE REDEVELOPMENT AGENCY OF SALT LAKE COUNTY FOR CHANGE OF PROJECT AREAS

WHEREAS, the Community Development and Renewal Agency (the "*City Agency*") of the city of Cottonwood Heights (the "*City*") was created to transact the business and exercise all of the powers provided for in the Limited Purpose Local Government Entities - Community Development and Renewal Agencies act (Title 17C, Chapters 1 through 4, UTAH CODE ANNOTATED (1953 as amended) and any subsequent, replacement or amended law or act (the "*CDRA Act*"); and

WHEREAS, the Redevelopment Agency of Salt Lake County (the "*County Agency*") was created by Salt Lake County (the "*County*") pursuant to the provisions of Utah redevelopment law and the County Agency continues to operate under the CDRA Act, whereunder it is authorized to conduct urban renewal, economic development, and community development activities within the County; and

WHEREAS, the County Agency and City Agency are "public agencies" under the Utah Interlocal Cooperation Act, UTAH CODE ANN. §§ 11-13-101 *et seq.* (the "*Cooperation Act*"), and, as such, are authorized by the Cooperation Act to enter into agreements to act jointly and cooperatively on the basis of mutual advantage; and

WHEREAS, the County Agency approved and the County adopted the "Fort Union Neighborhood Development Plan" dated August 13, 1990 (the "*Fort Union Project Area Plan*") for the geographic area specified therein (the "*Fort Union Project Area*") on October 22, 1990 and October 24, 1990, respectively; and

WHEREAS, the County Agency approved and the County adopted the "Cottonwood Corporate Center Economic Development Plan" dated February 20, 1997 (the "*CCC Project Area Plan*") for the geographic area specified therein (the "*CCC Project Area*") on July 30, 1997 and October 6, 1997, respectively; and

WHEREAS, the geographic area in which the Fort Union Project Area and the CCC Project Area (collectively, the "*Project Areas*") are located became part of the City as a result of the City's incorporation in January 2005 (a portion of the CCC Project Area is also located in City of Holladay, which was incorporated in November 1999); and

WHEREAS, prior to the City's incorporation, the County Agency collected tax increment from the Project Areas and performed redevelopment activities in the Project Areas; and

WHEREAS, pursuant to Section 17C-1-205 of the CDRA Act, the City Agency and the City now desire to adopt the Project Areas as their own urban renewal and economic development project areas and the County Agency desires to transfer and assign to the City Agency all of its real property, rights, indebtedness, obligations, tax increment, and other assets and liabilities related to the Project

Areas on the terms and conditions specified in a proposed interlocal agreement (the "Agreement") between the County Agency and the City Agency; and

WHEREAS, the City Agency's governing board (the "Board") met on 13 January 2015 to consider, among other things, approving the City Agency's entry into the Agreement; and

WHEREAS, the Board has reviewed the form of the Agreement, a photocopy of which is annexed hereto; and

WHEREAS, after careful consideration, the Board has determined that it is in the best interests of the City Agency to approve the City Agency's entry into the Agreement as proposed;

NOW, THEREFORE, BE IT RESOLVED by the governing board of the Cottonwood Heights Community Development and Renewal Agency that the attached Agreement with the County Agency be, and hereby is, approved, and that the City Agency's chairman and secretary are authorized and directed to execute and deliver the Agreement on behalf of the City Agency; and

BE IT FURTHER RESOLVED by the governing board of the Cottonwood Heights Community Development and Renewal Agency that the Agreement is so approved with such additions, modification, deletions or other changes as within one year hereafter may be deemed necessary or advisable by the chairman of the Board and/or the City Agency's chief executive officer in consultation with the City Agency's legal counsel; and

BE IT FURTHER RESOLVED by the governing board of the Cottonwood Heights Community Development and Renewal Agency that the Agency shall provide such notices, make such filings and perform such other acts as may be required by applicable law in connection with approval and adoption of the Agreement.

This Resolution, assigned no. 2015-01, and the Agreement shall take effect following the City Agency's provision of such notices and filings as may be required by the CDRA Act.

PASSED AND APPROVED effective 13 January 2015.

ATTEST:

By:

Kory Solorio
Kory Solorio, Secretary



COTTONWOOD HEIGHTS COMMUNITY DEVELOPMENT AND RENEWAL AGENCY

By:

Kelvyn H. Cullimore, Jr.
Kelvyn H. Cullimore, Jr., Chairman

VOTING:

Kelvyn H. Cullimore, Jr.	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Michael L. Shelton	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
J. Scott Bracken <i>Excused</i>	Yea <input type="checkbox"/>	Nay <input type="checkbox"/>
Michael J. Peterson	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Tee W. Tyler	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>

DEPOSITED in the office of the Secretary of the Cottonwood Heights Community Development and Renewal Agency this 13th day of January 2015.

INTERLOCAL COOPERATION AGREEMENT

between

REDEVELOPMENT AGENCY OF SALT LAKE COUNTY

and

**COTONWOOD HEIGHTS COMMUNITY
DEVELOPMENT AND RENEWAL AGENCY**

THIS INTERLOCAL COOPERATION AGREEMENT (this "Agreement") is entered into by and between the **REDEVELOPMENT AGENCY OF SALT LAKE COUNTY** ("County Agency") and the **COTONWOOD HEIGHTS COMMUNITY DEVELOPMENT AND RENEWAL AGENCY** ("City Agency"). County Agency and City Agency may each singly be referred to hereinafter as a "Party," and collectively be referred to hereinafter as the "Parties."

RECITALS

A. County Agency and City Agency are "public agencies" as defined by the Utah Interlocal Cooperation Act, Utah Code Ann. §§ 11-13-101 *et seq.* (the "Cooperation Act"), and, as such, are authorized by the Cooperation Act to enter into this Agreement to act jointly and cooperatively on the basis of mutual advantage. Additionally, Section 11-13-215 of the Cooperation Act authorizes a county, city, town, or other local political subdivision to share its tax and other revenues with other counties, cities, towns, or local political subdivisions.

B. County Agency was created by Salt Lake County (the "County") pursuant to the provisions of the Utah Redevelopment Law and the Agency continues to operate under 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 Salt Lake County, Utah.

C. City Agency was created by the city of Cottonwood Heights (the "City") pursuant to the Act and is authorized thereunder to conduct urban renewal, economic development, and community development activities within the City.

D. County Agency approved and the County adopted the "Fort Union Neighborhood Development Plan" dated August 13, 1990 (the "Fort Union Project Area Plan") for the geographic area specified therein (the "Fort Union Project Area") on October 22, 1990 and October 24, 1990, respectively.

E. County Agency approved and the County adopted the "Cottonwood Corporate

Center Economic Development Plan” dated February 20, 1997 (the “CCC Project Area Plan”) for the geographic area specified therein (the “CCC Project Area”) on July 30, 1997 and October 6, 1997, respectively.

F. The geographic area in which the Fort Union Project Area and the CCC Project Area (collectively, the “Project Areas”) are located became part of the City as a result of the City’s incorporation in January 2005. (A portion of the CCC Project Area is also located in City of Holladay, which was incorporated in November 1999). Prior to the City’s incorporation, the County Agency collected tax increment from the Project Areas and performed redevelopment activities in the Project Areas.

G. Pursuant to Section 17C-1-205 of the Act, City Agency and the City now desire to adopt the Project Areas as their own urban renewal and economic development project areas and County Agency desires to transfer and assign to City Agency all of its real property, rights, indebtedness, obligations, tax increment, and other assets and liabilities related to the Project Areas.

AGREEMENT

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 . TRANSFER AND ASSIGNMENT.

A. Transfer and Assignment. Subject to Paragraph 1C below and pursuant to Section 11-13-215 of the Cooperation Act, County Agency hereby transfers and assigns to City Agency all of its real property, rights, indebtedness, obligations, tax increment, and other assets and liabilities related to the Project Areas. The transfer and assignment effectuated by this Agreement is made in fulfillment and final settlement of any and all potential obligations, liabilities, or claims that either Party may have under Section 17C-1-205 of the Act with respect to real property, rights, indebtedness, obligations, tax increment, and other assets and liabilities related to the Project Areas.

B. Tax Increment. With respect to the transfer of tax increment, the Parties agree that:

(i) The total amount of tax increment that County Agency shall transfer to City Agency in relation to the Project Areas is \$1,925,698, comprised of \$442,934 for the CCC Project Area and \$1,482,764 for the Fort Union Project Area.

(ii) The City Agency shall not pursue additional tax increment from County Agency or the County in relation to the Project Areas beyond the \$1,925,698 specified above.

(iii) County Agency shall transfer such tax increment to City Agency no later than ninety (90) days after the events described in Paragraph 1C have occurred.

C. Transfer and Assignment Subject to Approval and Adoption. The transfer and assignment described in Paragraph 1A, including the County Agency's obligation to transfer tax increment under Paragraph 1B, will be void and of no effect unless the following events have occurred within sixty (60) days after the Execution Date of this Agreement, pursuant to Section 17C-1-205 of the Act:

(i) City Agency has, by resolution, approved and adopted the Fort Union Project Area Plan and CCC Project Area Plan (collectively, the "Project Area Plans") as project area plans of the City Agency.

(ii) City has, by ordinance, adopted the Project Area Plans approved by the City Agency.

2 . GENERAL PROVISIONS.

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

(i) This Agreement shall be authorized by a 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.

(ii) 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 Section 11-13-202.5 of the Cooperation Act.

(iii) 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.

(iv) The term of this Agreement shall not exceed fifty (50) years pursuant to Section 11-13-216 of the Cooperation Act.

(v) Except as otherwise specifically provided herein, each Party shall be responsible for its own costs of any action done pursuant to this Agreement, and for any financing of such costs.

(vi) No separate legal entity is created by the terms of this Agreement and no facility or improvement will be jointly acquired, jointly owned, or jointly operated by the Parties under this Agreement.

(vii) To the extent this Agreement requires administration other than as set forth herein, it shall be administered by the chief administrative officer of each Party pursuant to Section 11-13-207 of the Cooperation Act.

B. Effective Date. This Agreement will become effective upon execution by both

Parties (the "Execution Date") and upon filing with the keeper of records of each Party as provided by Section 11-13-209 of the Cooperation Act.. The Execution Date of this agreement will be the date this Agreement is signed by the last Party to sign it, as indicated by the date associated with that Party's signature.

C. 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.

D. 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 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. In explanation of the foregoing, the Parties acknowledge that:

(i) The County and the County Agency are the principal repositories of official records relating to the Project Areas and Project Area Plans;

(ii) Locating a complete set of records for the Project Areas and Project Area Plans (the "*Records*") has been difficult or reasonably impossible due to, *inter alia*, the passage of time. Subject to that possible records limitation, the County Agency performed all due diligence that was reasonably possible concerning the real property, rights, indebtedness, obligations, tax increment, and other assets and liabilities related to the Project Areas;

(iii) To the best of County Agency's knowledge, information and belief based on its due diligence described above in Section 2Dii, but subject to the records limitations explained therein, a document prepared by or on behalf of the County Agency that is dated 22 December 2014 and is entitled "Cottonwood Corporate Centre & Ft. Union Project Areas--Tax Increment Fund Balance Close-Out Report" (the "*Report*") accurately contains the material information concerning the matters described in Section 2Dii;

(iv) Both Parties are relying on the information and analysis contained in the Report for purposes of their entry into and performance under this Agreement.

E. Liability.

(i) City Agency assumes all real property, rights, indebtedness, obligations, tax increment, and other assets and liabilities related to the Project Areas as of the Execution Date of this Agreement and agrees to pay such indebtedness, obligations, and liabilities. Without limiting the foregoing, the City Agency additionally releases the County Agency and the County and their officers, agents, and employees from any claim of gross or ordinary negligence that could or would have been avoided if a complete set of Records had been accessible for purposes of preparing the Report.

F. Governmental Immunity. Each of the Parties is subject to the Governmental Immunity Act of Utah (the "Immunity Act"), Utah Code Ann. §§ 63G-7-101, *et seq.* Each Party shall only be liable within the parameters of the Immunity Act. Nothing contained in this Agreement shall be construed in any way, to modify the limits of liability set forth in the Immunity Act or the basis for liability as established in the Immunity Act.

G. Entire Agreement. This Agreement constitutes the entire Agreement between the Parties, and no statements, promises, or inducements made by either party, or agents for either Party, that are not contained in this written Agreement shall be binding or valid; and this Agreement may not be enlarged, modified or altered, except in writing, signed by the Parties.

H. 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.

I. Governing Law. This Agreement is governed by, and will be construed and interpreted in accordance with, the laws of the State of Utah.

J. Severability. If any provision of this Agreement is ever 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:

- (i) such holding or action shall be strictly construed;
- (ii) such provision shall be fully severable;
- (iii) this Agreement shall be construed and enforced as if such provision had never comprised as part hereof;
- (iv) 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
- (v) 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.

K. 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.

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

M. Counterparts. This Agreement may be executed in several counterparts and all so executed shall constitute one agreement binding on all the parties, notwithstanding that each of the parties are not signatory to the original or the same counterpart. Further, executed copies of this Agreement delivered by facsimile or email shall be deemed an original signed copy of this Agreement.

Each Party hereby signs this Interlocal Cooperation Agreement on the date written by each Party on the signature pages attached hereto.

[The balance of this page was left blank intentionally – Signature pages follow]

INTERLOCAL AGREEMENT -- SIGNATURE PAGE FOR COUNTY AGENCY

REDEVELOPMENT AGENCY OF SALT LAKE COUNTY

By: _____

Arlyn Bradshaw
Chairman of the Board of Directors

Date: _____

Approved as to Form and Legality:

SALT LAKE COUNTY
DISTRICT ATTORNEY:

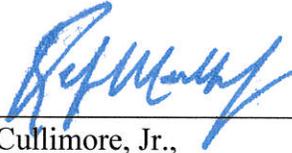
By _____
Deputy District Attorney

Dated: _____, 2015

[Signatures continue on next page.]

INTERLOCAL AGREEMENT -- SIGNATURE PAGE FOR CITY AGENCY

COMMUNITY DEVELOPMENT AND RENEWAL
AGENCY OF COTTONWOOD HEIGHTS CITY

By: 
Kelvyn H. Cullimore, Jr.,
Chairman of the Board of Directors

Date: 13 January 2015



ATTEST:

By: 
Kory Solorio, Secretary

Date: 13 January 2015

Approved as to Form and Legality:

By _____
Wm. Shane Topham,
Attorney for the City Agency

Dated: _____ 2015