

Ogden City

Redevelopment Agency Agenda

March 13, 2012 – immediately following the Special City Council meeting which begins at 6:00 p.m.

City Council Chambers – Third Floor Municipal Building, 2549 Washington Boulevard rdaboard@ci.ogden.ut.us

- 1. Roll call.
- 2. Approval of Minutes (voice vote):
 - a. Minutes of the joint study session of December 13, 2011 Council member Stephens
 - b. Minutes of the special meeting and the work session of January 17, 2012 Council member Hyer
- 3. Reports from Administration:
 - a. **IRS Phase III Boyer Development Agreement.** Proposed Resolution 2012-3 approving the terms and conditions of a Development Agreement between the Ogden City Redevelopment Agency ("Agency") and The Boyer Company, L.C. ("Developer") under which the Agency will reimburse Developer up to a certain portion of cost overruns incurred by Developer in connection with Phase III of the IRS campus portion of The Lincoln Avenue Project Area"). (Accept public input; Adopt/not adopt resolution roll call vote)
- 4. Closed Executive Session. Consideration of adjourning into a Closed Executive Session pursuant to the provisions of Sections 52-4-205 (1)(d) and (e) of the Open and Public Meeting Law for the purpose of discussing the purchase, sale, exchange or lease of real property. (Adjourn/not adjourn into Closed Executive Session roll call vote)
- 5. Public Comments: This is an opportunity to address the Council regarding your concerns or ideas. Please limit your comments to three minutes. In this form of government, all City personnel are the responsibility of the Administration, not of the Council. Please discuss any concerns you may have regarding staff with the Mayor, Chief Administrative Officer, or Department Directors.
- 6. Comments:
 - a. Administration
 - b. Council Staff
 - c. Council members
- 7. Adjournment.

REMINDER:

A CITY COUNCIL WORK SESSION WILL BE HELD IMMEDIATELY FOLLOWING THE REDEVELOPMENT AGENCY MEETING. THE PURPOSE OF THE WORK SESSION IS TO DISCUSS THE CULINARY WATER MASTER PLAN, THE STORM WATER MASTER PLAN, AND COUNCIL BUSINESS.

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In compliance with the Americans with Disabilities Act, persons needing auxiliary communicative aids and services for these meetings should contact the Management Services Department at 629-8701 (TDD# 629-8949) or by email: <a href="mailto:ADACompliance@ci.ogden.ut.us">ADACompliance@ci.ogden.ut.us</a> at least 48 hours in advance of the meeting.

#### **CERTIFICATE OF POSTING**

The undersigned, duly appointed City Recorder, does hereby certify that the above notice and agenda was posted in three public places within the Ogden City Limits on this  $\underline{9}^{th}$  day of March, 2012. These public places being: 1) City Recorder's Office on the 2nd floor of the Municipal Building; 2) 2nd floor foyer of the Municipal Building; and 3) the Weber County Library. A copy was also provided to the Standard-Examiner and posted on the Ogden City Website on the  $\underline{9}^{th}$  day of March, 2012.

CINDI MANSELL, MMC/CRM OGDEN CITY RECORDER

## **IRS PHASE III**

- Development Agreement with the Boyer Company, L.C.

**DETERMINATION:** Adopt or Not Adopt Resolution

## **Background**

## Lincoln Avenue Redevelopment Project Area

The Lincoln Avenue Redevelopment Project Area was established in 1987 and encompasses 25.54 acres between Lincoln and Wall Avenue and between 23rd and 25th Streets. This project area was formed to help with the redevelopment of the blighted area west of the Ogden Park Hotel and adjacent to Historic 25th Street. The City participated in the acquisition and improvements related to the redevelopment of the former Burton Walker Lumber Company site to accommodate Amalgamated Sugar's corporate headquarters and to develop parking for Historic 25th Street.

A significant addition to the project area has been the acquisition and renovation of the Scowcroft Building by Cottonwood Partners for lease space for GSA/IRS use.

The Agency also worked closely with the GSA to identify a site for a new IRS facility on the NW corner of the intersection of Lincoln Avenue and 24th Street. This site is located within the Lincoln Avenue Redevelopment Project Area. In December 2010, The Boyer Company was selected by GSA as the developer for a 149,500 SF four story office building. There will be approximately 750 employees in the building which is scheduled to be completed by March 2012.

In 2005 a portion of the tax increment revenue from ten (10) project areas-- including the Lincoln project area--was pledged to repay the bonds issued for construction of the recreation center at The Junction. Lincoln RDA tax increment is also used to cover a portion of RDA administrative costs and for housing purposes. Beginning in 2018, tax increment may only be used for recreation center purposes until 2024.

#### December 2010

The Boyer Company was selected by the General Services Administration (GSA) to construct and lease the building associated with Phase III of the IRS complex. Construction is currently underway.

#### **December 14, 2010**

Mayor Godfrey issued a letter (Letter of Agreement) outlining the terms and conditions of an agreement between Ogden City and The Boyer Company, LC (Boyer) that would allow Boyer to proceed with construction of the IRS Phase III building. The Letter of Agreement also outlined the terms of a lease/purchase for property located at 185 23<sup>rd</sup> Street owned by the RDA.

#### June 21, 2011

The Administration submitted a Transmittal recommending approval of a Purchase Agreement for sale of property located at 185 23<sup>rd</sup> Street to the Boyer Company.

#### June 28, 2011

The RDA Board approved Resolution #2011-11 which authorized the sale of property located at 185 23<sup>rd</sup> Street to The Boyer Company.

#### **February 7, 2012**

The Board Office received a Transmittal requesting authorization to use tax increment generated from the Lincoln Avenue Redevelopment Project Area to reimburse cost overruns incurred by The Boyer Company, LC, in developing the IRS Phase III project.

#### February 21, 2012

The Board held a work session to discuss the proposed Development Agreement.

## **Proposal**

The Administration is requesting approval of a Development Agreement with The Boyer Company L.C. which will allow Boyer to receive the tax increment generated by the IRS Phase III project in an amount not to exceed \$500,000. The tax increment will reimburse Boyer for cost overruns and improvements on the project as follows:

- Environmental Remediation Costs up to \$243,000
- Carrying Costs up to \$201,000
- Lincoln Avenue Improvements up to \$51,000
- Interest Carrying Costs up to \$5,000

Under the Agreement, Boyer will be able to receive tax increment on the four (4) parcels involved in the IRS Phase III project from January 1, 2012 through December 31, 2017.

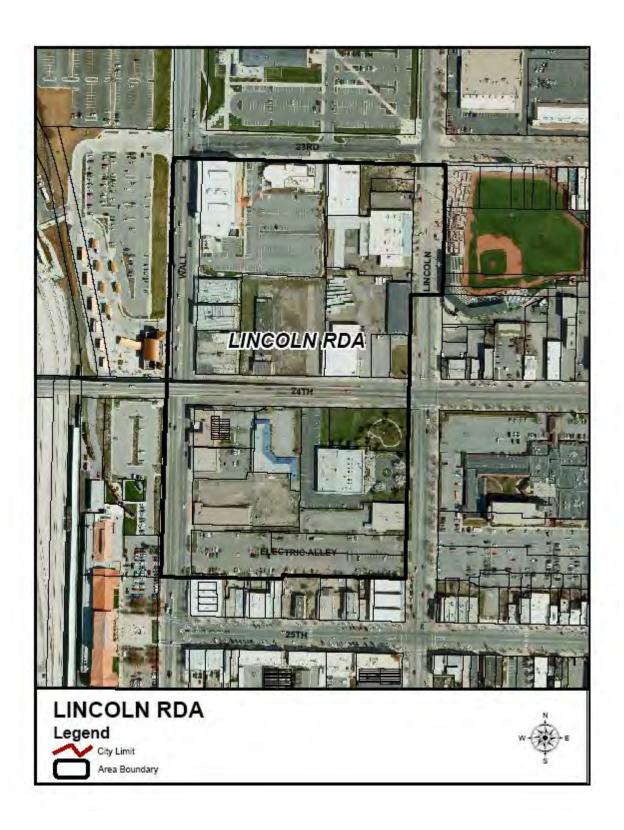
## Questions

- 1. Discuss the proposed Development Agreement and explain the City's responsibilities as outlined in the Agreement.
- 2. Please review the benefits to the City of the Agreement.

#### Attachment

Lincoln Redevelopment Area Map

Council Staff Contact: Janene Eller-Smith, (801)629-8165



## Ogden City Redevelopment Agency Transmittal

**DATE:** January 10, 2012

TO: Ogden City Council

FROM: Tom Christopulos, Deputy Director CED

**RE:** Boyer Development Agreement

**STAFF CONTACT:** Tom Christopulos

**REQUESTED TIMELINE:** Agreement is dated January 1, 2012

**RECOMMENDATION:** Approve the development agreement

**DOCUMENTS:** Development Agreement (attached); Original letter

between Mayor and Boyer Company (attached); Original plot map (attached); Resolution approving Development

Agreement

#### DISCUSSION.

Background. Since the project has significant long-term value to the community in terms of property tax creation (we anticipate an \$18-\$22 million dollar valuation), indirect economic benefit by having employees in the Central Business District, and the continued value of increasing the presence of additional employment through Phases IV and V, the past administration signed a letter indicating that we would allow Boyer to participate in the benefits of the tax increment that the project will create. (Original letter is attached.)

The Lincoln Avenue Project area was established in 1987 and constitutes 25.54 acres between Lincoln and Wall Avenue and between 20<sup>th</sup> and 25<sup>th</sup> Streets. This project area was originally formed to help with redevelopment of this blighted area.

Over the years the area has become the campus for three IRS projects including the Scowcroft Building (Phase I) and the development of the Boyer IRS facility (Phase II). In December of 2010 the GSA awarded the development of Phase III of the IRS expansion to the Boyer Company after a competitive bidding process that took three years and initially started with over 20 submissions. Due to the length of the project a number of increases in the cost of the project to the developer were incurred.

#### ISSUES.

Environmental Costs. The primary costs detailed below were related to environmental costs that had to be absorbed in the development. Without the environmental costs it would have been necessary to return the property to the land owner for remediation. Due to the time delay, this event would have led to the postponement or cancellation of the project. Based on GSA input, we were led to believe that the latter would be the most likely outcome.

Carrying Costs. Additional costs during that period included holding costs in the form of lease payments to the owner that were required for the two primary parcels constituting the site.

The lease payments due to continuous delays were substantial. Further causes of additional costs were redesign and site selection. These costs were predominately attributed to the holding costs associated with payments to land owners to tie up their property. In both cases, payments to the major property owners lasted over two years.

Upon GSA approval of the development to Boyer, the City entered an agreement outlining the potential of offsetting some of the increased costs incurred by Boyer. The increased costs included various changes in the scope of the development, the design of the properties, and the holding period of the properties.

Land Acquisition. Land acquisition costs also increased, partially due to the significant amount of parking required by the GSA for the benefit of IRS employees. The parking requirements are part of a labor negotiation contract.

Miscellaneous Costs. Additional costs as outlined below were also incurred.

#### DETAILS OF EXPENSES INCURRED BY BOYER.

The increased costs would have made the project unfeasible due to yield rates that would have been too low to ensure a reasonable rate of return. The agreement between the City and Boyer was necessary to prevent the GSA from requiring a new bidding process and to assure a reasonable yield for the investor. Such bidding process would have caused greater uncertainty with the existing property owners and the likelihood of additional cost overruns. The details of the costs are outlined below:

Environmental Remediation. There were some known environmental issues on the IRS building site from preliminary Phase I assessments. Ogden City committed to the GSA that the site would be delivered free of any environmental contamination before construction could begin. City staff investigated the remediation and created a budget of \$120,000 to deal with underground contamination of the Geisler parcels. This amount was to be offset from the purchase price of the Geisler parcels at closing, prior to any remediation work being performed.

However, the remediation timeline became condensed when the award was finally made. Due to the Boyer's ability to expedite the process by constructing and remediating simultaneously, Boyer took on the remediation obligation. Boyer solicited bids and contracted for the work, with the understanding that Ogden City would reimburse any costs above \$120,000 but capped at a total cost of \$400,000. The final cost of the remediation was \$363,137. As a result, the additional cost to the developer was a \$243,137 reimbursement from project TIF.

• Ogden City Carrying Cost. Ogden City asked Boyer to provide \$200,935 in funds to the City for reimbursement of contract costs, extensions, and preliminary expenses for delivery of the land for the project prior to the contract award by the GSA. This money would have come directly from the department's budget and was committed based to the project based on being reimbursed by the eventual awardee.

While this was not a specific point of negotiation with Boyer or GSA, it was imperative to the ongoing operation of Community Development that these advances be returned for use in other budgeted expenses for other development areas within the City. Boyer recognized the value of the work done to obtain and hold these properties and in compensation agreed to reimburse the City for their direct costs to the department's budget. Boyer reimbursed the city for these costs with the understanding that those funds would be reimbursed with project TIF.

• Land Acquisition. The negotiated price of the Geisler property was \$1,250,000. The final price following difficult negotiations, involving obtaining mutual releases from Geisler and Ogden City, was \$1,278,000. The IRS building was originally slated to be located on the Rio Grande and Geisler parcels, with the Rio Grande building being retrofitted and restored as a part of the project. Due to preexisting issues with liens against the Rio Grande parcel, the City and Boyer worked with the GSA to move the building to the east. This required Boyer to acquire additional properties. Boyer acquired the International Armoring building and property as well as two RDA-owned parcels to provide a location and parking for the project.

The cost of the International Armoring parcel was \$1,500,000, and the cost of the RDA parcels were \$248,000. Additionally, Boyer had to demolish the International Armoring building at a cost of \$88,928. Lastly, in order to meet the IRS requirement of 350 parking stalls for the project Boyer continued to pursue, and eventually acquired, the Rio Grande parcel at foreclosure auction for \$464,801. The total cost for land acquisitions (including additional demolition work) for the project went from \$1,699,225 to \$2,301,729. This resulted in a net negative impact of \$602,504 to Boyer. Some of the net negative impact costs are a strategic investment by Boyer in support of the potential development of IRS Phase IV. As a result, an allowance was granted by the City against this cost in the negotiation.

- Relocation of the Project. The relocation of the project did result in some savings, as Boyer was able to avoid the remodeling costs associated with the Rio Grande building. The cost of relocating from the Rio Grande building to the International Armoring building and the RDA parcels resulted in a net savings of \$675,159.
- Lincoln Avenue Improvements. Rather than simply replacing the sections that are affected by construction, Boyer is improving and replacing the old "deep" curb and gutter (the asphalt and grading approximately 12 feet into the street) on Lincoln Avenue between 23<sup>rd</sup> and 24<sup>th</sup> Streets. The cost for the curb sections affected by construction is \$18,000, and the cost for the entire road is \$51,015.

#### SUMMARY OF COSTS.

| Boyer Company's Budgeted & Actual Co | osts |
|--------------------------------------|------|
|--------------------------------------|------|

| Activity                  | Budget Cost | Actual Cost | Difference  | Reimbursement |
|---------------------------|-------------|-------------|-------------|---------------|
| Environmental             | \$0         | \$243,137   | \$243,137   | \$243,000     |
| Carrying Costs            | \$0         | \$200,935   | \$200,935   | \$201,000     |
| Land Acquisition          | \$1,669,225 | \$2,301,729 | \$602,504   | \$0           |
| Relocation                | \$2,998,559 | \$2,323,400 | (\$675,159) | \$0           |
| Lincoln Ave. Improvements | \$18,000    | \$51,015    | \$33,015    | \$51,000      |
| Interest Carry            |             |             |             | <b>7</b> 000  |
| Allowance                 |             |             |             | 5,000         |
| Total                     | \$4,685,784 | \$6,398,216 | \$1,712,432 | \$500,000     |

#### FISCAL IMPACTS.

Property tax impact is estimated between \$250,000 and \$312,000 dollars annually beginning in 2018. There are no direct costs to the general budget of the City.

The City will receive tax increment during the agreement period estimated between \$1 million to \$1.44 million. Boyer's spilt based on these estimates will be 35 percent to 50 percent – an allowance with a cap has been negotiated to assure that the negotiated revenue will be received by Boyer.

#### RECOMMENDATION.

It is recommended that, due to the long-term economic benefit to the City, the RDA honor the negotiation entered into by the City and accepted by its Mayor and Boyer to recapture part of these cost overruns. These overruns are due to circumstances beyond the control of either Boyer or the City and are due in great measure to the method of project procurement utilized by the GSA.

The GSA's project procurement methods resulted in higher carrying costs and environmental remediation costs. These costs, as well as the Lincoln Avenue improvements, are legitimate costs that will benefit the community through increased employment in the area. Additionally, this use of TIF will not affect revenues already received in the district and in fact will add to those revenues.

It is recommended that the RDA approve a 75 percent participation in TIF through 2017. This 75 percent participation is anticipated to provide the necessary \$500,000 of increment. The increment has been allocated to address the following cost overruns:

| Environmental Remediation   | \$243,000 |
|-----------------------------|-----------|
| Carrying Costs              | \$201,000 |
| Lincoln Avenue Improvements | \$51,000  |
| Interest on Carrying Costs  | \$5,000   |
| Total Reimbursement         | \$500,000 |

The reimbursement is capped and will not exceed \$500,000.



December 14, 2010

Mr. Jacob Boyer The Boyor Company 1150 South Depot Drive Onden, Utah 84404

RB: Termination of Purchase Interest in Property Described as parcel numbers 01-030-0001, 01-030-0002, and 01-030-0025 in Wober County, State of Utah (the "properties").

Doar Mr. Boyou,

The following are the terms and conditions of an agreement between Ogden City (the "City") and the Boyer Company ("Boyer") that will allow the Boyer Company to proceed with the construction of the IRS building on the aforementioned parcel numbers, in desyntown Ogden.

The Boyer Company will pay Ogdon City, via check or whre transfer, \$225,392.00 (the "Reimbursement") to reimburse the City for (1) carrying costs the City has incurred in securing the properties from Richard Geisler ("Mr. Geisler"), for eventual Boyor purchase; and (2) environmental remediation investigation on the properties. This will occur at a time concurrent with the time Boyor executes their agreement with Mr. Geisler. The City will also, at the same time, release Mr. Geisler from the City's option agreement to purchase Mr. Geisler's properties, and will receive \$48,000.00 from Mr. Geisler out of the current escrey account in place between the City and Mr. Geisler. Mr. Geisler will then retain any additional amount in the escrey account.

It is our understanding the Boyer will enter into a separate contract with Mr. Golsler to purchase the same properties for \$1,278,000.00. The contract will also give Boyer a credit of \$120,000.00 for environmental remediation costs. Boyer will then continue the environmental remediation, and Boyer's final costs for that additional remediation, less the \$120,000.00 credit in the purchase contract between Boyer and Mr. Golsler, shall be reimbursed to Boyer out of the proceeds of the contract between Boyer and An-Ookier (the "Additional Remediation").

City as entired below.

We further understand that the Reimbursement and Additional Remediation shall accome interest at 8% animally beginning January 1, 2011 and shall be repaid from the tax increment that is created by the project or other city funding sources. All documentation, acceptable to the City for the expenses shall be maintained by Boyer and provided to Ogdon City within one year from the date of this letter. The City shall have the discretion to determine what repayment source shall be used should the city choose not to, or cannot, use tax increment. To the degree that tax increment is used as a source of rephyment, the use of tax increment will be subject to the consent and approval of the City Council. The City's repayment obligation may commence at any time, but shall be

a, hul including interesti

complete by December 31, 2018. The full relimbricament in any event shall not exceed \$400,000.00 from any source.

Additionally, Boyor shall lease two parcels, owned by the Ogden City Redevelopment

Agency, located at the corner of 23<sup>rd</sup> and Lincoln (the "RDA Parcels"), for \$12,500 per year and will he memorialized under a separate lease agreement between the City and Boyor. The term of the lease shall be twenty (20) years, beginning January 1, 2011. Boyor shall have the right to purchase those two parcels together for a total payment of \$250,000, or appraised value acceptable to the City, and its lease payments paid by Boyer to the City shall be credited towards the purchase price if Boyer exercises its right to purchase within two (2) years. If the lease is continued for a longer term, then the buyout of the lease after the second year shall be \$250,000, or appraised value, loss any lease payments made, but including interest on the principal amount calculated at 8% beginning January 1, 2011. Any lease payments for the RDA Parcels will operate as a credit towards the repayment obligation of the City for the Reimbursement and Additional Remediation expenses.

The City will also, in their discretion, consider additional Boyer-incurred expenses in the acquisition and any additional remediation of the property if they do not exceed the Reimbursement.

We look forward to a successful completion of this project.

Sincerely,

Mayor Matthew Godfrey

Accepted by:

The Bover Company

## RESOLUTION NO. 2012-3

A RESOLUTION OF THE OGDEN CITY REDEVELOPMENT AGENCY ("AGENCY") APPROVING THE TERMS AND CONDITIONS OF A DEVELOPMENT AGREEMENT BETWEEN THE AGENCY AND THE BOYER COMPANY, L.C. ("DEVELOPER") UNDER WHICH THE AGENCY WILL REIMBURSE DEVELOPER UP TO A CERTAIN PORTION OF COST OVERRUNS INCURRED BY DEVELOPER IN CONNECTION WITH PHASE III OF THE IRS CAMPUS PORTION OF THE LINCOLN AVENUE PROJECT AREA").

WHEREAS, the Agency is a separate body corporate and politic, duly and regularly created, established, organized and existing under and by virtue of the Constitution and laws of the State of Utah; and

WHEREAS, the Agency operates and is authorized to transact business and exercise its powers under and pursuant to Limited Purpose Local Government Entities – Community Development and Renewal Agencies, Title 17C, Utah Code Annotated 1953, as amended (the "Act"), previously known as the Utah Redevelopment Agencies Act; and

**WHEREAS**, the Act provides that an Agency may exercise its powers for the purpose of urban renewal, economic development and community development as such terms are defined in the Act; and

WHEREAS, the Project Area has significant long-term value to the community by increasing property tax revenue and increased employment; and

WHEREAS, Developer has incurred various Project Area pre-development cost overruns related to environmental remediation, land acquisition, carrying costs, and infrastructure improvements; and

WHEREAS, such cost overruns were unanticipated, were significantly caused by project procurement policies of the federal General Services Administration, and were necessarily incurred in order to avoid possible postponement, or even outright termination, of development of the Project Area; and

**WHEREAS**, the City of Ogden has previously agreed to reimburse the Developer for a certain portion of such cost overruns; and

WHEREAS, the Development Agreement attached to this Resolution as <a href="Attachment A">Attachment A</a> sets forth the terms and conditions of the manner in which the Agency will reimburse Developer up to a certain portion of such cost overruns, and imposes certain limitations on such reimbursement including a specific limit on total amount of such reimbursement.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Directors of the Ogden City Redevelopment Agency that the terms and conditions of the Development Agreement are hereby approved.

IT IS FURTHER RESOLVED by the Board of Directors of the Ogden City Redevelopment Agency that the Executive Director of the Agency is hereby authorized to execute, deliver and carry out the terms and conditions of said Development Agreement.

| PA      | ASSED AND ADOPTED this | _ day of January, 2012. |  |
|---------|------------------------|-------------------------|--|
|         |                        |                         |  |
|         |                        | CHAIRPERSON             |  |
|         |                        |                         |  |
| ATTEST: | City Recorder          |                         |  |
|         |                        |                         |  |

APPROVED AS TO FORM:

# ATTACHMENT A to RDA Resolution

<u>Development Agreement</u> <u>between Ogden City Redevelopment Agency and The Boyer Company, L.C.</u> <u>consisting of six (6) total pages</u>

#### DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "Agreement") is made and entered into as of February \_\_\_\_\_, 2012 by and between OGDEN CITY REDEVELOPMENT AGENCY, a body politic and political subdivision of the State of Utah ("Agency") and THE BOYER COMPANY, L.C., a Utah limited liability company ("Boyer"). The Agency and Boyer are sometimes individually referred to as a "Party" and collectively referred to as "Parties".

#### **RECITALS**

- A. The Lincoln Avenue Project Area ("Project Area") which is located between Lincoln and Wall Avenue and between 20<sup>th</sup> Street and 25<sup>th</sup> Street, has become the campus for three IRS projects including the Scowcroft Building (as Phase 1 of the campus) and the Boyer IRS facility (as Phase 2 of the campus).
- B. In December of 2010 the federal General Services Administration ("GSA") awarded Boyer development of the 3<sup>rd</sup> phase of the IRS expansion. Due to the length of the IRS campus project, Boyer incurred a number of increases in the cost of the project (collectively and generally referred to herein as "Cost Overruns").
- C. The Cost Overruns resulted from the extended period of time the Agency had to hold and control various parcels of real property for this future development and support the GSA's process of bidding, as well as certain additional environmental costs and remediation.
- D. The Agency has agreed to reimburse Boyer for up to a certain portion of the Cost Overruns.
- E. The purpose of this Agreement is to set forth the terms and conditions of such reimbursement of certain Cost Overruns.

IN CONSIDERATION of the mutual promises and covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

#### I. COST OVERRUNS

The Parties mutually acknowledge and agree that, subject to Section II of this Agreement, the Agency will reimburse Boyer only for the following "Reimbursed Cost Overruns":

#### A. Reimbursed Cost Overruns.

- 1. <u>Environmental Remediation Costs</u> These costs included remediation of various environmental issues related to the Project site, including soliciting bids and contracting for the work (collectively, the "Environmental Remediation Costs"). Subject to Section II of this Agreement, the Agency agrees to reimburse Boyer up to <u>Two Hundred Forty-Three Thousand Dollars (\$ 243,000)</u> for such Environmental Remediation Costs.
- 2. <u>Carrying Costs</u> These costs included contract costs, extensions and preliminary expenses for delivery of the land for the project prior to the contract award by the GSA (collectively, the "Carrying Costs"). Subject to Section II of this Agreement, the Agency agrees to reimburse Boyer up to <u>Two Hundred One Thousand Dollars (\$ 201,000)</u> for such Carrying Costs.

- 3. <u>Lincoln Avenue Improvements Costs</u> These costs included improvement and replacement of the old curbs and gutters, as well as asphalt and grading, of that portion of Lincoln Avenue between 23<sup>rd</sup> and 24<sup>th</sup> Streets (collectively, the "Lincoln Avenue Improvements Costs"). Subject to Section II of this Agreement, the Agency agrees to reimburse Boyer up to <u>Fifty-One Thousand Dollars (\$ 51,000)</u> for Lincoln Avenue Improvements Costs
- 4. <u>Interest Carrying Costs</u> Subject to Section II of this Agreement, the Agency has also agreed to reimburse Boyer up to <u>Five Thousand Dollars (\$ 5,000)</u> to cover interest on the Carrying Costs.

#### B. Reimbursement Limitations.

Boyer understands and agrees that the Agency's obligation to reimburse Boyer for the Reimbursed Cost Overruns is subject to the following limitations:

- Under no circumstances will the total amount of such reimbursement exceed the combined dollar amount of the Reimbursed Cost Overruns specified in Subsection I.A., above, which totals Five Hundred Thousand Dollars (\$500,000) (the "Total Reimbursement").
- Because the Agency's repayment of the Reimbursed Cost Overruns is subject to those limitations set forth under Section II of this Agreement, the Agency does not and cannot guarantee, warrant or represent that Boyer will receive the Total Reimbursement.

#### C. Non-Reimbursed Costs, Fees and Expenses.

Boyer understands and agrees that, although Boyer may have incurred various increased costs related to the Project, the Agency has agreed to reimburse Boyer solely for the Reimbursed Cost Overruns specifically identified in Subsection I.A., above. The Parties mutually acknowledge and agree that the Reimbursed Cost Overruns are intended to reimburse Boyer for certain costs, fees and expenses that were identified prior to Boyer's acquisition of the Boyer Parcels. The Parties mutually acknowledge and agree that Boyer will not receive from the Agency, nor from any other agency or subdivision of the Agency, any further reimbursement whatsoever for any other costs, fees or expenses that Boyer has incurred or may incur prior to, during or subsequent to Boyer's acquisition, ownership or development of the Boyer Parcels including, without limitation, any costs directly or indirectly related to or arising out of land acquisition, carrying costs, environmental remediation or infrastructure improvements.

#### II. REIMBURSEMENT

The Agency agrees to reimburse Boyer for the Reimbursed Cost Overruns subject to the conditions and limitations set forth in this Section II.

#### A. Source of Reimbursement.

The Parties mutually acknowledge and agree that the sole source of the Total Reimbursement, or any portion thereof, will be the Tax Increment Allocation generated from the Boyer Parcels (as defined below). The Parties further mutually acknowledge and agree that no Tax Increment generated from any other portion of the Project will be used for the Total Reimbursement, or any portion thereof..

- 1. <u>Tax Increment Allocation</u>. As used in this Agreement, the term "**Tax Increment Allocation**" shall mean Seventy-Five Percent (75%) of the total Tax Increment that is generated from the Boyer Parcels (including any improvements thereon) and actually received by the Agency, during the time period beginning on January 1, 2012 and ending on December 31, 2017.
- 2. <u>Boyer Parcels</u>. As used in this Agreement, the term "Boyer Parcels" shall mean the following parcels located within the Project Area:

001-030-0017 001-030-0018 001-030-0026 001-030-0027

- 3. <u>Tax Increment</u>. As used in this Agreement, the term "Tax Increment" means the monies which the Agency actually receives from the Boyer Parcels each Tax Increment Year pursuant to the provisions of Subsections 17C-1-404 and 17C-2-204 of the Community Development and Renewal Agencies Act (the "Act"), as amended, as a result of any and all improvements Boyer constructs and installs, or causes to be constructed and installed, on the Boyer Parcels. The term "Tax Increment" does not include any property tax monies which the Agency may receive from real or personal property located within the Project Area but lying outside the geographic boundaries of the Boyer Parcels. Tax Increment from the Boyer Parcels shall be calculated as prescribed by the Act and may be generally described as being calculated by subtracting the total base year or pre-development ad valorem real property and personal property taxes, from the total amount of post-development of said taxes of the base year for each year going forward.
- 4. <u>Tax Increment Year/Period</u>. The term "Tax Increment Year" means a calendar year beginning January 1<sup>st</sup> when real property is deemed to be assessed for purposes of taxation by the Office of the Weber County Assessor pursuant to law, through and including December 31<sup>st</sup> of the same calendar year. The term "Tax Increment Period" means the statutory length of time the Taxing Entity Committee ("TEC") has authorized the Agency's collection of Tax Increment from the Project Area. For purposes of this Agreement, the Tax Increment Period for the Project Area is scheduled to end on December 31, 2017 and shall not extend beyond that date without TEC approval as authorized by Utah State Law.

- B. <u>Boyer Parcel Assessment</u>. Boyer acknowledges and understands that Tax Increment is calculated based upon an assessment of the value of the Boyer Parcels by the Office of the Weber County Assessor. The Agency makes no representations whatsoever as to the current or future value of the Boyer Parcels. Boyer acknowledges and understands that the Tax Increment Allocation will not be revised or adjusted to offset or compensate for the occurrence of any lowered assessed value of the Boyer Parcels.
- C. <u>RDA Board Approval</u>. Boyer understands and acknowledges that the Agency's reimbursement for any Reimbursed Cost Overruns is subject to final approval by the Agency of Ogden Redevelopment Agency ("RDA").
- D. <u>Reimbursement Schedule</u>. Provided such reimbursement has been approved by the RDA, Boyer will annually receive Tax Increment Allocation over a period of five (5) years until either (A) Boyer receives the entire Total Reimbursement; or (B) expiration of the Tax Increment Period.

## III. GENERAL PROVISIONS.

A. <u>Notices, Demands and Communications Between the Parties</u>. Formal notices, demands and communications between the Agency and Boyer regarding this Agreement shall be deemed sufficiently given in person or if dispatched by registered or certified mail, postage prepaid, return receipt requested, to the following addresses:

#### If to the Agency:

Ogden City Redevelopment Agency Attention: Executive Director 2549 Washington Boulevard, Suite 900 Ogden, Utah 84401

#### With copy to:

Ogden Agency Attorney 2549 Washington Boulevard Suite800 Ogden, Utah 84401-3111

#### If to Boyer:

Boyer Company Jake Boyer, President 90 South 400 West Suite 200 Salt Lake City, UT 84101

#### With copy to:

Boyer Company Blake Wahlen, BDO Manager 1150 South Depot Drive Ogden, UT 84404 Notices, demands and communications shall be deemed delivered on the date delivered in person or on the date postmarked when mailed in the manner set forth in this Article IV Section A. A Party may change its address for purposes of notice by delivering to the other Party notice of such change in the manner provided in this Section.

- B. <u>Headings.</u> Any titles of the several parts and sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions. "Paragraph" and "Section" may be used interchangeably.
- C. <u>Assignment</u>. Boyer shall not have the right to assign or transfer this Agreement without the prior written consent of the Agency, which consent shall not by unreasonably withheld.
- D. Entire Agreement, Waivers and Amendments. This Agreement is executed in one or more duplicate originals, each of which is deemed to be an original. 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 all or any part of the subject matter hereof. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the Agency and Boyer, and all modifications or amendments of this Agreement must be in writing and signed by the appropriate authorities of the Agency and Boyer.
- E. <u>Severability</u>. In the event that any condition, covenant or other provisions herein contained is held to be invalid or void by any 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. If such condition, covenant or other provision shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.
- F. <u>Counterparts</u>. 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.
- G. <u>No Presumption</u>. This Agreement shall be interpreted and construed only by the contents hereof and there shall be no presumption or standard of construction in favor of or against either Party. Each Party represents and warrants to the other Party that it has been represented by, and has had the opportunity to consult with, legal counsel in connection with the review, negotiation and execution of this Agreement, and that this Agreement was negotiated at arm's-length between sophisticated parties.
- H. <u>Governing Law</u>. This Agreement shall be governed, construed and enforced in accordance with the laws of the State of Utah.
- I. <u>No Third Party Beneficiaries</u>. The provisions of this Agreement are solely for the benefit of the Parties and their respective successors and permitted assigns and are not intended to confer upon any other party any rights or remedies hereunder. There are no third party beneficiaries of this Agreement, and this Agreement shall not provide any third party with any right, remedy, claim, or cause of action whatsoever.
- J. <u>Attorney Fees</u>. In the event of any controversy, claim or dispute between the Parties arising out of or relating to this Agreement or the breach thereof results in arbitration or litigation, the

prevailing Party in such proceedings shall be entitled to recover from the losing party reasonable expenses, attorney's fees and costs.

K.

Authority. The Parties represent and warrant to each other that the individuals executing

| this Agreement on behalf of each Party have the power and authority to do so and to bind the entities for which they are executing this Agreement, that all corporate and/or legislative approvals, as the case may be, have been secured and obtained, and that this Agreement is a binding obligation of the entity for which they are executing this Agreement. |                                               |  |  |  |  |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------|--|--|--|--|
| IN WITNESS WHEREOF, the Parties have executed this Agreement on the date set forth opposite their respective signatures below.                                                                                                                                                                                                                                     |                                               |  |  |  |  |
| DATE:                                                                                                                                                                                                                                                                                                                                                              | OGDEN CITY REDEVELOPMENT AGENCY               |  |  |  |  |
|                                                                                                                                                                                                                                                                                                                                                                    | By<br>Michael P. Caldwell, Executive Director |  |  |  |  |
| ATTEST:                                                                                                                                                                                                                                                                                                                                                            |                                               |  |  |  |  |
| Ogden Agency Recorder                                                                                                                                                                                                                                                                                                                                              |                                               |  |  |  |  |
| Approved As to Form:  2   3   12  Office of Agency Attorney                                                                                                                                                                                                                                                                                                        |                                               |  |  |  |  |
| DATE:                                                                                                                                                                                                                                                                                                                                                              | THE BOYER COMPANY                             |  |  |  |  |
|                                                                                                                                                                                                                                                                                                                                                                    | By: Name: Title:                              |  |  |  |  |