EAGLE MOUNTAIN REDEVELOPMENT AGENCY BOARD MEETING

September 3, 2019, 7:00 PM
Eagle Mountain City Council Chambers
1650 E Stagecoach Run, Eagle Mountain, Utah 84005

REDEVELOPMENT AGENCY BOARD MEETING - CITY COUNCIL CHAMBERS

1. CALL TO ORDER

2. MINUTES

2.A June 18, 2019 Minutes
Redevelopment Agency Board Meeting
2019-06-18 RDA Minutes - DRAFT

3. RESOLUTIONS

3.A RESOLUTION - A Resolution Approving a CRA Participation Agreement between the Redevelopment Agency of Eagle Mountain City and Eagle Mountain City, Oquirrh Wood Ranch, LLC, Utah County and Tyson Fresh Meats, Inc.
BACKGROUND: (Presented by City Staff) The proposed agreement details the allocation of tax increment from the Pole Canyon Community Reinvestment Area.
RES--Pole Canyon CRA Participation Agreement with Tyson Meats, Inc.
Participation Agreement DRAFT 8-28 (00452166xB00C1)

4. ADJOURNMENT

THE PUBLIC IS INVITED TO PARTICIPATE IN PUBLIC MEETINGS FOR ALL AGENDAS.
In accordance with the Americans with Disabilities Act, Eagle Mountain City will make reasonable accommodation for participation in all Public Meetings and Work Sessions. Please call the City Recorder's Office at least 3 working days prior to the meeting at 801-789-6610. This meeting may be held telephonically to allow a member of the public body to participate. This agenda is subject to change with a minimum 24-hour notice.

CERTIFICATE OF POSTING

The undersigned, duly appointed City Recorder, does hereby certify that the above agenda notice was posted on this 29th day of August, 2019 on the Eagle Mountain City bulletin boards, the Eagle Mountain City website www.emcity.org, posted to the Utah State public notice website http://www.utah.gov/pmn/index.html, and was emailed to at least one newspaper of general circulation within the jurisdiction of the public body.

Fionnuala B. Kofoed, MMC, City Recorder

	EAGLE MOUNTAIN CITY **REDEVELOPMENT AGENCY BOARD MEETING** **SEPTEMBER 3, 2019**
TITLE:	June 18, 2019 Minutes
ITEM TYPE:	Minutes
FISCAL IMPACT:	
APPLICANT:	

GENERAL PLAN DESIGNATION	CURRENT ZONE	ACREAGE	COMMUNITY

PUBLIC HEARING:
No

PREPARED BY:
Fionnuala Kofoed, Recorder's Office

PRESENTED BY:

RECOMMENDATION:

BACKGROUND:

ITEMS FOR CONSIDERATION:

REQUIRED FINDINGS:

PLANNING COMMISSION ACTION/RECOMMENDATION:

ATTACHMENTS:

2019-06-18 RDA Minutes - DRAFT

EAGLE MOUNTAIN
REDEVELOPMENT AGENCY BOARD MEETING Minutes

June 18, 2019, 8:00 p.m.
Eagle Mountain City Council Chambers
1650 East Stagecoach Run, Eagle Mountain, Utah 84005

REDEVELOPMENT AGENCY BOARD MEETING - CITY COUNCIL CHAMBERS

ELECTED OFFICIALS PRESENT: Board Chair Tom Westmoreland, Board Members Colby Curtis, Donna Burnham, Benjamin Reaves, and Melissa Clark. Board Member Stephanie Gricius was excused.

CITY STAFF PRESENT: Paul Jerome, Assistant City Administrator/Finance Director; Jeremy Cook, City Attorney; Fionnuala Kofoed, City Recorder; Lianne Pengra, Recording Secretary; Chris Trusty, City Engineer; Linda Peterson, Communications Director; Aaron Sanborn, Economic Development Director; Ross Fowlks, Fire Chief; and Eric McDowell, Chief Deputy.

1. CALL TO ORDER

Board Chair Westmoreland called the meeting to order at 8:13 p.m.

2. MINUTES

2.A. May 21, 2019 Minutes

MOTION: ***Board Member Clark moved to approve the May 21, 2019 minutes. Board Member Reaves seconded the motion. Those voting aye: Colby Curtis, Melissa Clark, Donna Burnham, and Benjamin Reaves. The motion passed with a unanimous vote.***

3. RESOLUTION/PUBLIC HEARING

3.A. RESOLUTION - A Resolution of the Redevelopment Agency of Eagle Mountain City Amending the Fiscal Year 2018-2019 Budget - Final Amendment.

Assistant City Administrator Paul Jerome stated the change accounts for the increase in the Economic Development Area (EDA) 2012-1 and Parkside Community Development Project Area (CDA) values.

Economic Development Director Aaron Sanborn explained the EDA expires after twenty years, in 2036, or once $635,000 has been paid out, whichever comes first; currently, approximately $150,000 has been paid out. The CDA expires after ten years, in 2023, or $500,000 has been paid out. This project recently reached the increment threshold to begin receiving payouts, so it will likely expire before the full $500,000 is paid out.

Board Chair Westmoreland opened the public hearing at 8:22 p.m. As there were no comments, he closed the public hearing.

MOTION: ***Board Member Clark moved to approve a resolution of the Redevelopment Agency of Eagle Mountain City amending the Fiscal Year 2018-2019 Budget. Board Member Reaves seconded the motion. Those voting aye: Colby Curtis, Melissa Clark, Donna Burnham, and Benjamin Reaves. The motion passed with a unanimous vote.***

3.B. RESOLUTION – A Resolution of the Redevelopment Agency of Eagle Mountain City, Utah, Adopting the Fiscal Year 2019-2020 Budget.

Mr. Jerome said the proposed budget is identical to previously presented versions. It is based on projections and as areas in the City grow, amendments may be required.

Board Chair Westmoreland opened the public hearing at 8:28 p.m. As there were no comments, he closed the public hearing.

MOTION: ***Board Member Reaves moved to approve a resolution of the Redevelopment Agency of Eagle Mountain City, Utah, adopting the Fiscal Year 2019-2020 Budget. Board Member Curtis seconded the motion. Those voting aye: Colby Curtis, Melissa Clark, Donna Burnham, and Benjamin Reaves. The motion passed with a unanimous vote.***

4. ADJOURNMENT

MOTION: ***Board Member Clark moved to adjourn the meeting at 8:29 p.m. Board Member Reaves seconded the motion. Those voting aye: Colby Curtis, Melissa Clark, Donna Burnham, and Benjamin Reaves. The motion passed with a unanimous vote.***

The meeting was adjourned at 8:29 p.m.

Approved by the Redevelopment Agency Board on September 3, 2019.

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Fionnuala B. Kofoed, MMC
City Recorder

	EAGLE MOUNTAIN CITY **REDEVELOPMENT AGENCY BOARD MEETING** **SEPTEMBER 3, 2019**
TITLE:	RESOLUTION - A Resolution Approving a CRA Participation Agreement between the Redevelopment Agency of Eagle Mountain City and Eagle Mountain City, Oquirrh Wood Ranch, LLC, Utah County and Tyson Fresh Meats, Inc.
ITEM TYPE:	Resolution
FISCAL IMPACT:	
APPLICANT:	

GENERAL PLAN DESIGNATION	CURRENT ZONE	ACREAGE	COMMUNITY
Industrial	Industrial	80	

PUBLIC HEARING:
No

PREPARED BY:
Aaron Sanborn, Admin

PRESENTED BY:
Staff

RECOMMENDATION:
Staff recommends the Board adopts a resolution approving a participation agreement between the Redevelopment Agency of Eagle Mountain City and Eagle Mountain City, Oquirrh Wood Ranch, LLC, Utah County and Tyson Fresh Meats, Inc., and allows staff to work through final details.

BACKGROUND:
This project is proposed for a large case ready fresh meat facility to locate on the Pole Canyon Industrial Site. The project would bring in a very large capital investment and develop an underserved area of the City. This would allow for future development of the area, with increased jobs and tax revenue coming to the City as a result.

The participation agreement directs the payment of the tax increment generated through the investment of Tyson Fresh Meats, Inc. The Project Area Plan and Budget were adopted by the Eagle Mountain Redevelopment Agency on May 7th, 2019. The projected amount of tax increment generated through this project (over the 20-year life of the CRA) is $16,916,496. It is proposed that those funds go towards bringing in necessary infrastructure to serve this site and the surrounding area. That infrastructure will be provided by Eagle Mountain City, Oquirrh Wood Ranch, LLC, Utah County, and Tyson Fresh Meats, Inc.

The participation agreement stipulates the reimbursement amounts and timeline for repayment. Eagle Mountain City will specifically receive tax increment funds to pay for required water shares (handled through separate water agreement) and impact fees required for the project.

ITEMS FOR CONSIDERATION:

REQUIRED FINDINGS:

PLANNING COMMISSION ACTION/RECOMMENDATION:
NA

ATTACHMENTS:

RES--Pole Canyon CRA Participation Agreement with Tyson Meats, Inc.

Participation Agreement DRAFT 8-28 (00452166xB00C1)

RDA RESOLUTION NO. R-_____-2019

A RESOLUTION OF THE EAGLE MOUNTAIN REDEVELOPMENT AGENCY APPROVING THE POLE CANYON CRA PARTICIPATION AGREEMENT BETWEEN THE EAGLE MOUNTAIN REDEVELOPMENT AGENCY AND EAGLE MOUNTAIN CITY, OQUIRRH WOOD RANCH, LLC, UTAH COUNTY AND TYSON FRESH MEATS, INC.

PREAMBLE

WHEREAS, the Eagle Mountain Redevelopment Agency (the “Agency”) created the Pole Canyon Community Reinvestment Project Area (the “Project Area”) and adopted a Community Reinvestment Project Area Plan for the Project Area for the purposes of facilitating development and job growth within the Project Area; and

WHEREAS, the Agency has been working with Tyson Fresh Meats, Inc. (the “Participant”), to develop a meat packaging facility within the Project Area that will create a significant economic benefit within the Project Area; and

WHEREAS, after careful analysis and consideration of relevant information, the Agency desires to enter into a Participation Agreement with the Participant whereby the Agency agrees to pay to the Participant a portion of the tax increment generated by the development within the Project Area as provided in the Participation Agreement attached hereto as Exhibit A (the “Participation Agreement”).

NOW, THEREFORE, BE IT RESOLVED by the governing board of the Eagle Mountain Redevelopment Agency as follows:

1. The Participation Agreement, substantially in the form attached hereto as Exhibit A, is approved and shall be executed for and on behalf of the Agency by the Chair and Secretary of the Agency Board.

2. This Resolution shall take effect upon adoption.

APPROVED AND ADOPTED by the governing body of the Eagle Mountain Redevelopment Agency this ____ day of ____________, 2019.

____
Tom Westmoreland, Chair

ATTEST:

____
Aaron Sanborn, Executive Director

CERTIFICATION

The above resolution was adopted by the Eagle Mountain Redevelopment Agency on the 3rd day of September, 2019.

Those voting aye:	Those voting nay:	Those excused:
☐ Donna Burnham	☐ Donna Burnham	☐ Donna Burnham
☐ Melissa Clark	☐ Melissa Clark	☐ Melissa Clark
☐ Colby Curtis	☐ Colby Curtis	☐ Colby Curtis
☐ Stephanie Gricius	☐ Stephanie Gricius	☐ Stephanie Gricius
☐ Benjamin Reaves	☐ Benjamin Reaves	☐ Benjamin Reaves

____

Aaron Sanborn, Executive Director

Exhibit A

Participation Agreement

CRA Participation Agreement

between

The Redevelopment Agency of the City of Eagle Mountain

and

Eagle Mountain City, Oquirrh Wood Ranch, LLC, Utah County and Tyson Fresh Meats, Inc.

CRA Participation Agreement

This CRA Participation Agreement (this "Agreement") is entered into as of June 26, 2019 (the "**Effective Date**"), by the Redevelopment Agency of the City of Eagle Mountain, a political subdivision of the State of Utah (the "**Agency**"), and Oquirrh Wood Ranch, LLC, a Utah limited liability company ("**Oquirrh Wood**"), Eagle Mountain City, a political subdivision of the State of Utah ("**Eagle Mountain**"), Utah County, a political subdivision of the State of Utah (the "**County**") and Tyson Fresh Meats, Inc., a Delaware corporation ("**Tyson**"). The Agency, Oquirrh Wood, Eagle Mountain, County and Tyson may be referred to herein collectively as "**Parties**" or individually as a "**Party**". Oquirrh Wood, Eagle Mountain, County and Tyson may be referred to herein collectively as "**Participants**" or individually as a "**Participant**".

1. SUBJECT OF AGREEMENT

1.1 Purpose of the Agreement

The purpose of this CRA Participation Agreement (the "**Agreement**") is (a) to implement the Project Area Plan for the Pole Canyon Community Reinvestment Area (the "**Project Area Plan**") adopted by the Agency, by providing for the potential development of a meat processing facility, including construction of a building for meat processing (the "**Building**") as well as certain accessory uses or buildings located on the Project Area (as defined below) and other related or associated uses, buildings or structures such as utility buildings, structures, improvements and appurtenances located on, adjacent or near the Project Area that are reasonably related to the meat processing facility (collectively, the "**Project**") on approximately 80 acres of land, as more particularly described below, located in the City of Eagle Mountain, Utah (the "**City**"), comprising the Pole Canyon Community Reinvestment Area (the "**Project Area**"), and (b) to specify the terms and conditions pursuant to which the Agency, Oquirrh Wood, Eagle Mountain, County and Tyson will cooperate in bringing about this objective, including the funds the Agency will provide to assist in the development of the Project Area. The fulfillment of this Agreement is vital to and in the best interests of the City and the health, safety, and welfare of its residents, and in accord with public purposes and will provide a benefit to the City and its residents. This Agreement is carried out pursuant to the Limited Purpose Local Government Entitites – Community Reinvestment Agency, Title 17C of the Utah Code Annotated, in effect when the Project Area Plan was adopted (the "**Act**").

1.2 The Project Area Plan

The Agency adopted Resolution No_____________ on ______________, which authorized the preparation of a draft community reinvestment project area plan. This Agreement is subject to the provisions of the Project Area Plan, as approved and adopted on ________________, by the City Council of the City, in Ordinance No. _______________ (the "**Ordinance**"), in accordance with Section 17C-5-104 of the Act. The Project Area Plan and the Ordinance are attached hereto as **Exhibit A** and **Exhibit B**, respectively.

1.3 The Project Area

The Project Area is located within the boundaries of the City. The exact boundaries of the Project Area are specifically and legally described in **Exhibit C** attached hereto. The Project Area is shown on the Project Area Map which is attached hereto as **Exhibit D.**

1.4 The Project Area Budget

Pursuant to the Act, a Project Area Budget has been adopted by the Agency for the Project Area (the "**Project Area Budget**"). A copy of the Project Area Budget is attached hereto as **Exhibit E**.

1.5 Interlocal Agreements

On or before the Effective Date, the Agency has entered into separate interlocal agreements (collectively, the "**Interlocal Agreements**") with various Taxing Entities (defined below) as follows:

(a) that certain Interlocal Cooperation Agreement between the Agency and the City, a copy of which is attached hereto as **Exhibit F**;

(b) that certain Interlocal Cooperation Agreement between the Agency and Utah County, Utah (the "**County**"), a copy of which is attached hereto as **Exhibit G**;

(c) that certain Interlocal Cooperation Agreement between the Agency and Alpine School District (the "**School District**"), a copy of which is attached hereto as **Exhibit H**;

(d) that certain Interlocal Cooperation Agreement between the Agency and the Unified Fire Service Area (the "**UFSA**"), a copy of which is attached hereto as **Exhibit I**; and

(e) that certain Interlocal Cooperation Agreement between the Agency and the Central Utah Water Conservancy District (the "**Water District**"), a copy of which is attached hereto as **Exhibit J**.

1.6 Parties to the Agreement

(a) Agency

The Agency is a public body, corporate and politic, exercising governmental functions and powers, and organized and existing under the Act. The address of the Agency for purposes of this Agreement is: Redevelopment Agency of the City of Eagle Mountain, 2565 North Pony Express Parkway, Eagle Mountain, Utah 84005, Attention: Aaron Sanborn.

(b) Oquirrh Wood

Oquirrh Wood Ranch, LLC is the developer of the Project Area and adjacent property. The address of the Oquirrh Wood for the purposes of this Agreement is: 14034 South 145 East, Suite 204, Draper, Utah 84020.

(c) Eagle Mountain

Eagle Mountain is a political subdivision of the State of Utah and the Project Area is located within the boundaries of Eagle Mountain. The address of Eagle Mountain for the purposes of this Agreement is: 1650 E. Stagecoach Run, Eagle Mountain City, Utah 84005, Attention: City Recorder.

(d) County

Utah County is a political subdivision of the State of Utah. The address of County for the purposes of this Agreement is: Attn: County Commission, 100 E. Center Street, Provo, UT 84606.

(e) Tyson

Tyson Fresh Meats, Inc., is a Delaware corporation and is purchasing property within the Project Area. The address of Tyson for the purposes of this Agreement is: 2200 W. Don Tyson Parkway, Springdale, AR 72762

1.7 No Additional Approvals. Upon the approval of this Agreement by the Agency, and the expiration of all statutory notice and contest periods, no additional legislative action is required for the Agency to perform its obligations hereunder.

2. ASSIGNMENT

Participants agree for themselves and any successor in interest that during the term of this Agreement the Participants shall not assign or transfer or attempt to assign or transfer all or any part of its obligations under this Agreement without the prior written consent of the Agency, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, Tyson may assign this Agreement to its parent, subsidiaries or affiliates upon reasonable advance notice but without prior written consent of the Agency.

2.1 Continuing Obligations

Except as otherwise provided herein, and except for a transfer or assignment of this Agreement which has been consented to by the Agency, no assignment or transfer of this Agreement, any part hereof, any right herein, or approval hereof, by the Agency shall be deemed to relieve the Participant from any obligation under this Agreement. Upon the approval by the Agency of an assignment of this Agreement, the assigning Participant will be relieved of all obligations under this Agreement arising from and after the date of such assignment and the Agency shall look solely to the assignee for performance of the obligations under this Agreement from and after the date of such assignment. All of the terms, covenants, and conditions of this

Agreement shall be binding upon and shall inure to the benefit of the Participant and its permitted successors and assigns.

3 FINANCING OF THE DEVELOPMENT OF THE PROJECT AREA

3.1 Nature of Participant's Obligations

(a) Oquirrh Wood

Oquirrh Wood is responsible for construction of the following pubic infrastructure improvements associated with the Project, which improvements constitute system improvements, and Oquirrh Wood will be reimbursed through this Agreement for a portion of its costs associated with such public improvements, as follows:

1. Construction of a portion of Pole Canyon Boulevard road. The estimated cost for construction of this improvement is $2,250,000.00.

2. Construction of a portion of Tyson Parkway road. The estimated cost for construction of this improvement is $900,000.00.

3. Construction of fiber, sewer collection, natural gas, and system water lines plus the million gallon water tank rehabilitation.

The total anticipated cost of the improvements to be constructed by Oquirrh Wood and dedicated to Eagle Mountain is $12,987,000.00. A portion of this amount, equal to approximately $3,200,000.00, consists of an allocation to the Project of capacity in an existing water system. Notwithstanding the foregoing anticipated costs of these public improvements, the amount of the reimbursement made available to Oquirrh Wood pursuant to this Agreement for such costs shall not exceed the amount of $12,900,000 less the amount of the Eagle Mountain Contribution and the County Contribution (the "**Oquirrh Wood Contribution**"). Accordingly, it is anticipated that the Oquirrh Wood Contribution will be approximately Four Million Eight Hundred and Thirty-One Thousand Five Hundred Dollars ($4,831,500.00).

(b) Eagle Mountain

Eagle Mountain has agreed to provide the following for the Project:

1. Eagle Mountain shall provide up to 500 acre feet of water rights for the Project through a separate Public Water Supply Agreement (the "**Water Rights**"). The Parties agree that for purposes of this Agreement, the cost of the Water Rights shall be Ten Thousand Ninety Dollars ($10,090.00) per acre foot or a total cost of $5,045,000.00 (the "**Water Cost**"). For purposes of this Agreement, the Parties agree that the full Water Cost shall originally be included in the Eagle Mountain Contribution. If the amount of CWP Water that is utilized by Tyson is reduced in accordance with paragraph 3 of the Public Water Supply Agreement, the Eagle Mountain Contribution will be reduced by the number of acre feet not utilized by Tyson times Ten Thousand Ninety Dollars ($10,090.00). For example, if in year eight of the Public Water Supply Agreement, fifty (50) acre feet of the CWP Water reverts back to the City, the Eagle

Mountain Contribution shall be reduced by Five Hundred and Four Thousand Five Hundred Dollars ($504,500.00).

2. Eagle Mountain agrees to defer payment of all the required Impact Fees for the Project (including, but not limited to water, wastewater, transportation, road, sewer and storm), which impact fees are to be reimbursed through this Agreement (the "**Deferred Impact Fees**").

The total anticipated amount of the Water Costs and Deferred Impact Fees is Six Million Seven Hundred and Sixty-Eight Thousand Five Hundred Dollars ($6,768,500.00) (the "**Eagle Mountain Contribution**").

(c) County

Utah County agrees to reimburse Oquirrh Wood for the cost to construct a portion of 4000 North road up to a maximum amount of One Million Three Hundred Thousand Dollars ($1,300,000.00) (the "**County Contribution**"). This reimbursement shall be made by the County to Oquirrh Wood as costs are incurred by Oquirrh Wood, and during the course of construction of such 4000 North, with progress payments being made within ten (10) business days following the date Oquirrh Wood provides to the County reasonable evidence of its costs incurred (provided that reimbursements shall be made no more frequently than one time per month).

(d) Tyson

Tyson will construct the Building and obtain a temporary certificate of occupancy on or before the Trigger Date such that the maximum amount of Tax Increment contemplated by this Agreement is distributed.

4 TAX INCREMENT

4.1 Tax Increment Reimbursement

The Project Area Plan will be funded in part by Tax Increment pursuant to the provisions of the Act. Under the Act, the Interlocal Agreements and the Project Area Budget, the Agency is entitled to receive (a) sixty percent (60%) of the Net Project Area Funds attributable to the Real Property Tax Increment and (b) sixty percent (60%) of the Net Project Area Funds attributable to the Personal Property Tax Increment generated by and within the Project Area (collectively, the "**Project Area Funds**") over a period of twenty (20) full calendar years (the "**Increment Period**") commencing with the Trigger Year (as defined below). In accordance with the Project Area Budget and the Interlocal Agreements, the Agency shall begin to receive the Project Area Funds generated by the Project in the Trigger Year. Project Area Funds are to be paid into a separate account of the Agency used solely for the Tax Increment Reimbursement and other uses permissible hereunder and in accordance with the Act and shall be applied for the purposes described in the Project Area Plan, the Project Area Budget, the Interlocal Agreements and this Agreement.

For purposes of this Agreement, the following terms shall have the following corresponding meaning:

(a) "**Administrative Costs**" means 2% of the Project Area Funds to be paid to the City annually to reimburse the City for the administrative costs associated with the Project Area;

(b) "**Affordable Housing**" has the meaning set forth in the Act;

(c) "**Affordable Housing Funds**" means ten percent (10%) (the "**Maximum Affordable Housing Percentage**") of the Project Area Funds, provided, however, if a change in law reduces the percentage of Project Area Funds the Agency is required to allocate to Affordable Housing, the Maximum Affordable Housing Percentage shall, from and after the effective date of such change in law, be automatically reduced to the minimum percentage required by such change in the law, provided, further, nothing herein shall require the Agency to pay any Affordable Housing Funds collected by the Agency prior to such change in applicable law to the Participant; and, if the Agency would have received at least $100,000 per year in Affordable Housing Funds prior to the change in the law, the Agency shall be entitled to receive $100,000 per year in Affordable Housing Funds notwithstanding such change in the law, which Affordable Housing Funds will be used for Affordable Housing and/or other economic development within the City pursuant to applicable law;

(d) "**Net Project Area Funds**" means the Project Area Funds less the Affordable Housing Funds, the Administrative Costs and the Expense Reserve (defined below);

(e) "**Personal Property**" or "**personal property**" has the meaning set forth in Section 59-2-102 of the Utah Code Annotated;

(f) "**Personal Property Tax Increment**" means Tax Increment arising from or attributable to tangible or intangible personal property within the Project Area;

(g) "**Property Tax Increment**" shall mean the sum of (i) the Real Property Tax Increment, plus (ii) the Personal Property Tax Increment;

(h) "**Real Property**" or "**real property**" has the meaning set forth in Section 59-2-102 of the Utah Code Annotated;

(i) "**Real Property Tax Increment**" means Tax Increment arising from or attributable to land and real property improvements within the Project Area;

(j) "**Tax Increment**" is a term defined by Utah Code Ann. § 17C-1-102(60) (2019); the term "Tax Increment" in this Agreement has the same meaning as defined by that statute (as amended, replaced, or superseded from time to time); the parties acknowledge that Tax Increment generally refers to the additional Taxes generated by the increase in value of taxable real and personal property resulting from new development and construction;

(k) "**Taxes**" shall mean all levies on an *ad valorem* basis upon land, real property improvements, personal property, or any other property with the Project Area;

(l) "**Taxing Entities**" shall mean each "taxing entity" as defined in the Act; and

(m) "**Trigger Date**" means the date that is the day on which the Interlocal Agreements provide that Tax Increment will begin to be collected. In the event the date on which Tax Increment is triggered under each Interlocal Agreement differ from each other, the Trigger Date shall be the last trigger date to occur under the Interlocal Agreements.

4.2 Agency Expenses

The Participants acknowledge and agree that the Agency has no other funds or revenue to use to make payment hereunder other than Project Area Funds it receives. Accordingly, the Agency shall have the right to reserve in the account in which the Tax Increment Reimbursement is held, an amount not to exceed twenty-five thousand dollars ($25,000) at any one time (the "**Expense Reserve**"). Participants further acknowledges and agrees that in addition to the Administrative Costs, all third party fees and costs (including reasonable legal fees, financial advisor fees, administrative fees and overhead costs and expenses) that relate only to the administrative costs with regards to the establishment of the Project Area, the Project Area Plan, the infrastructure (roads, water, sewer and electric infrastructure) for the Project Area, development agreements, interlocal agreements, and water agreements related to the Project Area, and this Agreement in an amount not to exceed $30,000.00 may be paid by the City and the Agency shall reimburse the City for all such expenses from the Property Tax Increment prior to any other payments established herein.

4.3 Net Project Area Funds Payments

The Agency will pay the Net Project Area Funds annually, by April 1 of each year. Each annual payment will relate to the Tax Increment collected by the Agency for the immediately preceding tax year. The Agency agrees to promptly provide, and in all events within ten (10) days of the Trigger Date, written notice of the occurrence of such Trigger Date to all Taxing Entities in accordance with the terms of the Interlocal Agreements. The Agency will pay the Tax Increment Reimbursement annually, by April 1 of each year. Each annual payment will relate to the Tax Increment collected by the Agency for the immediately preceding tax year.

4.4 Tax Increment Priority

The annual distribution of the Net Project Area Funds collected by the Agency for the preceding calendar year shall be based on the pro-rata amount of the unreimbursed Oquirrh Wood Contribution, Eagle Mountain Contribution and County Contribution as of December 31 of the immediately preceding calendar year. For example, if as of December 31 of a year in which Property Tax Increment was generated, the total unreimbursed amount of the Eagle Mountain Contribution is Five Million Dollars, the total unreimbursed amount of the Oquirrh Wood Contribution is Four Million Dollars, and the total unreimbursed amount of the County Contribution is One Million Dollars, Eagle Mountain would receive 50% of the Net Project Area Funds, Oquirrh Wood would receive 40% of the Net Project Area Funds and County would receive 10% of the Net Project Area Funds (each a "**Tax Increment Reimbursement**").

If the Agency fully reimburses the Oquirrh Wood Contribution, Eagle Mountain Contribution and County Contribution prior to the end the Increment Period, any remaining Net Project Area Funds shall be distributed to Tyson.

4.5 Conditions Precedent to Payment of the Tax Increment Reimbursement

In addition to the conditions stated elsewhere in this Agreement, the Agency shall have no obligation to make payment hereunder until the following conditions precedent are satisfied: (a) Tyson has constructed and received a temporary certificate of occupancy for the Building; and (b) the Agency has actually received payment of the Project Area Funds.

4.6 Agency's Encumbrance/Preservation of Project Area Funds

The Agency represents and warrants that it has not encumbered or pledged the Net Project Area Funds. The Agency agrees that the Agency shall not, without the prior written consent of the Participants, which may be withheld in the Participants' sole and absolute discretion, either (i) issue any bonds or other indebtedness that are secured by Project Area Funds from the Project Area or otherwise take any action which could restrict or impede the payment of the Tax Increment Reimbursement to Participant, in each case, in whole or in part, or (ii) cause, permit or consent to any modifications or amendments to any of the Interlocal Agreements in a manner that reduces the amount of tax increment to be paid to the Agency, on either an annual or cumulative basis, from the Project Area, until the expiration of all Increment Periods, but in no event later than twenty (20) years after the Trigger Date.

4.7 Payment of Real Property and *Ad Valorem* Taxes

Participants understand and agree that the sole source of Project Area Funds is the payment of the Taxes within the Project Area. Nothing herein contained, however, shall be deemed to prohibit the Participants from contesting the validity or amount of any tax assessment, encumbrance, or lien, or to limit the remedies available to the Participants in respect thereto.

4.5 Reduction or Elimination of Property Area Funds

If the provisions of Utah law which govern the payment of Project Area Funds to the Agency are changed or amended so as to reduce or eliminate the amount paid to the Agency, the Agency's obligation to pay the Project Area Funds to the Participants hereunder shall be accordingly reduced or eliminated. The Participants specifically reserve and do not waive hereunder any right it may have to challenge any law change that would reduce or eliminate the payment of Project Area Funds to the Agency. The Participants acknowledge, understand and agree that the Agency is under no obligation to challenge a change in law that reduces or eliminates the payment of Project Area Funds to the Agency; provided, the Agency will not oppose the Participants, and, if requested by Participants, Agency will cooperate with Participants, if any of the Participants challenge a change in the law that reduces or eliminates the payment of Project Area Funds to the Agency. The Participants agree that Agency may utilize funds from the Expense Reserve as necessary to pay for such cooperation. If any change in law invalidates the Tax Increment Reimbursement provided in support of the Project, the Participants are hereby released from any and all obligations made by the Participants to the Agency. For purposes of this Section 4.5 and Section 4.6 below, the Agency's agreement to cooperate means the Agency agrees to (i) defend against any legal action seeking specific performance, declaratory relief or injunctive relief, (ii) set court dates at the earliest practicable date(s), (iii) testify on behalf of Participant(s), (iv) to provide information and data necessary to defend against such action, (v) affirmatively support the actions of Participant(s) and (vi) not cause delay in the prosecution/defense of the action, provided such cooperation shall not require any Party to waive any rights against the other Party.

4.6 Declaration of Invalidity

In the event a court of competent jurisdiction after final adjudication (by the highest court to which the matter may be appealed) (i) declares that the Agency cannot receive Project Area Funds or reimburse the Participants from Project Area Funds as provided in this Agreement, (ii) invalidates the Project Area, or (iii) takes any other action which eliminates or reduces the amount Project Area Funds paid to the Agency, the Agency's obligation to pay the Tax Increment Reimbursement to the Participant hereunder shall be accordingly reduced or eliminated. The Participants specifically reserve and do not waive hereunder any right it may have to challenge a ruling, decision or order by any court that would reduce or eliminate the payment of Project Area Funds to the Agency. The Agency hereby assigns to the Participants all rights, standing, and claims of the Agency in connection with the right to receive to the payment of Project Area Funds. The Participants acknowledge, understand and agree that the Agency is under no obligation to challenge a ruling, decision or order by any court that reduces or eliminates the payment of Project Area Funds to the Agency; provided, the Agency will not oppose the Participant(s) and, if requested by Participant(s), will cooperate with Participant(s) if Participant(s) challenge a ruling by any court. The Participant(s) agrees that Agency may utilize funds from the Expense Reserve as necessary to pay for such cooperation. Additionally, if any court invalidates the Project Area Plan or Project Area Budget as a result of a procedural defect, the Agency shall take such actions as are necessary to correct such procedural defect and adopt the Project Area Plan and Project Area Budget. In the event any court invalidates the Tax Increment Reimbursement provided in support of the Project, the Participants are hereby released from any and all obligations made by the Participant to the Agency.

4.7 Central Assessment

In the event of any change in law, or if the type of real property used by Participant results in Taxes not being assessed by a Taxing Entity which has agreed to pay such Taxes to the Agency pursuant to an Interlocal Agreement, the Agency shall use all commercially reasonable efforts to enter into Interlocal Agreements with the governmental agency responsible for assessing such Taxes, to the extent necessary, to cause all Property Tax Increment payable with respect to the real property located in the Project Area to be payable to the Agency and then to the Participants on the terms set forth herein.

5 DEFAULTS, REMEDIES AND TERMINATION

5.1 Default

If either the Agency or the Participants fail to perform or delay performance of any term or provision of this Agreement or any representation or warranty made herein proves to be false or misleading in any material respect when made, such conduct shall constitute default hereunder. The Party in default must commence to cure, correct, or remedy such failure or delay and shall complete such cure, correction, or remedy within the periods provided in Section 5.3 hereof; provided, however, that the payment of annual Tax Increment Reimbursement payments will not, despite anything in this Agreement to the contrary, be subject to any cure or grace period; time is strictly of the essence of the Agency's obligation to annually pay Tax Increment Reimbursement payments to the Participants.

5.2 Notice

If a default under this Agreement occurs, the non-defaulting Party shall give written notice of the default (a "**Default Notice**") to the Party in default, specifying the nature of the default. Failure or delay in giving a Default Notice shall not constitute a waiver of any default or operate as a waiver of any rights or remedies of the non-defaulting Party; but the non-defaulting Party shall have no right to exercise any remedy hereunder without delivering the Default Notice as provided herein. Delays by either Party in asserting any right or remedy hereunder shall not deprive either Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.

5.3 Cure Period

The non-defaulting Party shall have no right to exercise a right or remedy hereunder unless the subject default continues uncured for a period of one hundred eighty (180) days after delivery of the Default Notice with respect thereto or, where the default is of a nature which cannot be cured within such one hundred eighty (180) day period, the defaulting Party fails to commence such cure within one hundred eighty (180) days and to diligently proceed to complete the same.

5.4 Rights and Remedies

Upon the occurrence and during the continuance of an event of default beyond all applicable notice and cure periods hereunder (an "**Event of Default**") by the Agency, the Participants shall have all rights and remedies against Agency as may be available at law or in equity, including, without limitation, the right to obtain specific performance, to recover damages for any default, or to obtain any other remedy consistent with the purposes of this Agreement. Upon the occurrence and during the continuance of an Event of Default by Participants, the Agency may terminate this Agreement and, if the Agency has actual damages (excluding any consequential, punitive, or special damages) as a result of such Event of Default the Agency may seek to recover such damages in an amount not to exceed the amount of the Tax Increment Reimbursement actually received by Participant. Such rights and remedies are cumulative, and the exercise of one or more of such rights or remedies shall not preclude the exercise, at the same or different times, of any other rights or remedies for the Event of Default or any other Event of Default by the defaulting Party.

5.5 Legal Actions

5.5.1 Venue

All legal actions must be instituted in the Fourth Judicial District Court for the State of Utah, unless they involve a case with mandatory federal jurisdiction, in which case they must be instituted in the Federal District Court for the District of Utah.

5.5.2 Services of Process

Service of process on the Agency and Participants shall be at the addresses set forth in Section 1.6 unless otherwise designated in writing by Agency or Participants.

5.5.3 Applicable Law

The laws of the State of Utah shall govern the interpretation and enforcement of this Agreement.

5.5.4 Waiver of Jury Trial.

Each Party hereto hereby irrevocably waives any and all rights it may have to demand that any action, proceeding or counterclaim arising out of or in any way related to this Agreement be tried by jury. This waiver extends to any and all rights to demand a trial by jury arising from any source, including but not limited to the Constitution of the United States, the Constitution of any state, common law or any applicable statute or regulation. Each Party hereby acknowledges that it is knowingly and voluntarily waiving the right to demand trial by jury.

GENERAL PROVISIONS

5.6 Notices, Demands, and Communications Among the Parties

Notices, demands, and communications between the Agency and the Participant shall be sufficiently given if personally delivered or if dispatched by registered or certified mail, postage prepaid, return receipt requested, or an overnight commercial delivery service to the principal offices of the Agency and the Participants, as designated in Section 1.6 hereof. Either Party hereto may change its address specified for notices herein by designating a new address by notice in accordance with this Section. All such notices and other communications shall be effective upon actual receipt by the relevant Party or, if delivered by overnight courier service, upon the first business day after the date deposited with such courier service for overnight (next-day) delivery or, if mailed, upon the third business day after the date deposited into the mail or, if delivered by hand, upon delivery.

5.7 Severability

In the event that any condition, covenant or other provision herein contained is held to be invalid or void by a court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect any other condition, covenant or provision herein contained unless such severance shall have a material effect on the terms of this Agreement. If such condition, covenant or other provision shall be deemed invalid due to its scope, all other provisions shall be deemed valid to the extent of the scope or breadth permitted by law.

5.8 Nonliability of Officials and Employees

No member, director, officer, agent, employee, or consultant of the Agency shall be personally liable to the Participants, or any successor in interest, in the event of any default or breach by the Agency or for any amount which may become due to the Participant or its successors or on any obligations under the terms of this Agreement. No member, director, officer, agent, employee, or consultant of Participants shall be personally liable to the Agency, or any successor in interest, in the event of any default or breach by the Participants or for any amount which may become due to the Agency or its successors or on any obligations under the terms of this Agreement.

5.9 Enforced Delay; Extension of Time and Performance

In addition to the specific provisions of this Agreement, neither Party shall be deemed to be in default hereunder when its fails to perform or delays performance of any non-monetary obligations under this Agreement to the extent due to war, insurrection, strikes, lock-outs, riots, floods, earthquakes, fires, casualties, acts of God, acts of a public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, newly enacted governmental restrictions unusually severe weather, inability to secure necessary labor, materials or tools, acts or failure to act of the Agency (with respect to Participant only) or any other public or governmental entity. An extension of time to perform shall be granted as a result of any of the foregoing causes, which extension shall be for the period of the forced delay and shall run from the time of the commencement of the cause, if notice is sent by the Party claiming such extension to the other Party within thirty (30) days of actual knowledge of the commencement of the cause. Time of performance under this Agreement may also be extended in writing by the Agency and the Participant by mutual agreement.

5.10 Approvals

Whenever the consent or approval is required of any Party hereunder, such consent or approval shall not be unreasonably withheld, delayed or conditioned except as otherwise specifically provided herein, and shall be in writing.

5.11 Time of the Essence

Time shall be of the essence of this Agreement.

5.12 Interpretation

The Parties hereto agree that they intend by this Agreement to create only the contractual relationship established herein, and that no provision hereof, or act of either Party hereunder, shall ever be construed as creating the relationship of principal and agent, or a partnership, or a joint venture or enterprise among the Parties hereto.

5.13 No Third-Party Beneficiaries

It is understood and agreed that this Agreement shall not create in either Party hereto any independent duties, liabilities, agreements, or rights to or with any third party, nor does this Agreement contemplate or intend that any of the benefits hereunder should accrue to any third party.

5.14 Effect and Duration of Covenants; Term of Agreement

The covenants contained in this Agreement shall, without regard to technical classification and designation, bind the Participants and Agency and any of their respective successors in interest. The covenants contained in this Agreement shall inure to the benefit of and in favor of the Agency and Participants and to their respective successors and assigns during the term of this Agreement. Except as otherwise provided herein, the term of this Agreement shall run from the Effective Date until the expiration of the Increment Period, provided, the Parties shall continue to have the right to seek to enforce, or commence proceeding to enforce, the obligations of the other Party that arose prior to the termination of this Agreement.

6 ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS

6.1 This Agreement may be executed in duplicate originals, each of which shall be deemed an original. This Agreement, including all Exhibits hereto, constitutes the entire understanding and agreement of the Parties with respect to the matters set forth herein. All Exhibits attached hereto are hereby incorporated herein by reference and are made a part hereof as though fully set forth herein.

6.2 When executed by both Parties, this Agreement integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all negotiations or previous agreements between or among the Parties with respect to all or any part of the Project Area and the development thereof.

6.3 All waivers of the provisions of this Agreement must be in writing. This Agreement and any provisions hereof may be amended only by mutual written agreement by the Participant and the Agency.

6.4 Each Party hereto hereby represents and warrants unto the other as of the Effective Date that (i) this Agreement has been duly authorized by such Party and when executed and delivered will constitute the valid, legal and binding agreement and obligation of such Party enforceable against such Party in accordance with the terms hereof, and (ii) each person signing on behalf of such

Party has been duly authorized by the governing body or board of such Party to bind such Party to the terms and conditions hereof.

6.5 In the event any litigation ensues with respect to the rights, duties and obligations of the Parties under this Agreement, the unsuccessful Party in any such action or proceeding shall pay for all costs, expenses and reasonable attorney's fees incurred by the prevailing party in enforcing the covenants and agreements of this Agreement. The term "prevailing party," as used herein, shall include, without limitation, a Party who obtains legal counsel and (a) brings action against the other Party by reason of the other Party's breach or default and obtains substantially the relief sought, whether by compromise, settlement or judgment or (b) defends an action against brought by the other Party and the other Party fails to obtain substantially the relief sought, whether by compromise, settlement or judgment.

7 MORTGAGEE PROTECTIONS; ESTOPPEL

7.1 The Parties hereto agree that this Agreement shall not prevent or limit Tyson from encumbering the Project or any estate or interest therein, portion thereof, or any improvement thereon, in any manner whatsoever by one or more mortgages, deeds of trust, sale and leaseback, or other form of secured financing ("**Mortgage**") with respect to the construction, development, use or operation of the Project and parts thereof. The Agency acknowledges that the lender(s) providing such Mortgages may require certain interpretations and modifications to this Agreement and the Agency agrees, upon request, from time to time, to meet with the Participant and representatives of such lender(s) to negotiate in good faith any such request for interpretation or modification. The Agency will not unreasonably withhold its consent to any such requested interpretation or modification, provided such interpretation or modification is consistent with the intent and purposes of this Agreement.

7.2 Notwithstanding any of the provisions of this Agreement to the contrary, the holder of a Mortgage (a "**Mortgagee**") shall not have any obligation or duty pursuant to the terms set forth in this Agreement to perform the obligations of the Participant or other affirmative covenants of the Participant hereunder, or to guarantee such performance.

7.3 The Mortgagee of any Mortgage or deed of trust encumbering the Project, or any part or interest thereof, that has submitted a request in writing to the Agency in the manner specified herein for giving notices shall be entitled to receive written notification from the Agency of any notice of non-compliance by the Participants in the performance of the Participants obligations under this Agreement. If the Agency timely receives a request from a Mortgagee requesting a copy of any notice of non-compliance given to the Participant under the terms of this Agreement, the Agency shall provide a copy of that notice to the Mortgagee within ten (10) days of sending the notice of non-compliance to the Participants. The Mortgagee shall have the right, but not the obligation, to cure the non-compliance for a period of one hundred twenty (120) days after the Mortgagee receives such written notice.

7.4 At any time, and from time to time, Participant(s) may deliver written notice to the Agency, and the Agency may deliver written notice to the Participants, requesting that such Party certify in writing that, to the knowledge of the certifying Party (i) this Agreement is in full force and effect and a binding obligation of the Parties, (ii) this Agreement has not been amended, or if amended, the identity of each amendment, (iii) the requesting Party is not then in breach of this Agreement, or if in breach, a description of each such breach, and (iv) any other factual matters reasonably requested (an "**Estoppel Certificate**"). The Executive Director of the Agency shall be authorized to execute, on behalf of the Agency, any Estoppel Certificate requested by the Participant which complies with this Section within fifteen (15) days of a written request for such Estoppel Certificate. The Agency's failure to furnish an Estoppel Certificate within fifteen (15) days after request therefor shall be conclusively presumed that: (a) this Agreement is in full force and effect without modification in accordance with the terms set forth in the request; and (b) that there are no breaches or defaults on the part of Participant. The Agency acknowledges that an Estoppel Certificate may be relied upon by transferees or successors in interest to the Participants and by Mortgagees holding an interest in the Property.

8 CONFIDENTIALITY

8.1 The Parties acknowledge and agree that this Agreement shall become a public record under Utah law, and that discussion regarding this Agreement shall take place before the Agency board in open session.

8.2 A Participant may designate any trade secrets or confidential business information included in any report or other writing delivered to the Agency pursuant to or in connection with this Agreement by any method intended to clearly set apart the specific material that the Participant claims to be either its trade secrets or confidential business information that, if released, would give an advantage to competitors of the Participant and serve no public purpose (such information, collectively, "**Confidential Business Information**"). Except as otherwise required by law, the Agency shall not allow inspection or provide copies of any such records until the Agency shall have had not less than ten (10) business days excluding the day of receipt to determine whether to contest the right of any party to inspect or receive copies of the records or to inspect such records without redaction of the Confidential Business Information. Any such action to enjoin the release of Confidential Business Information may be brought in the name of the Participant or the Agency. The costs, damages, if any, and attorneys' fees in any proceeding commenced by the Participant or at its request by the Agency to prevent or enjoin the release of Confidential Business Information in any public records relating to this Agreement or the Project shall be borne by the Participant.

[SIGNATURES ON THE FOLLOWING PAGE]

SIGNATURE PAGE TO THE PARTICIPATION AGREEMENT

THE REDEVELOPMENT AGENCY OF THE CITY OF EAGLE MOUNTAIN

By:______________________________
Chairperson

Attest:

By:___________________________________
Executive Director

Oquirrh Wood Ranch, LLC

By:______________________________
Its: ____________________

Tyson Fresh Meats, Inc.

By: _________________________________
Its: _________________________________

STATE OF UTAH)
: ss.
COUNTY OF _________)

In the County of___________, State of Utah, on this _____ day of _________________, 2019, before me, the undersigned notary, personally appeared __________________ and ________________________, the Chairperson and Executive Director respectively, of the Redevelopment Agency of the City of Eagle Mountain, who are personally known to me or who proved to me their identities through documentary evidence to be the persons who signed the preceding document in my presence and who swore or affirmed to me that their signatures are voluntary.

____

Notary signature and seal

STATE OF __________)
: ss.
COUNTY OF ________)

In the County of ___________, State of _______________, on this _____ day of ________________, 2019, before me, the undersigned notary, personally appeared ___________________________, the ______________ of ________________________ limited liability company, who are personally known to me or who proved to me their identities through documentary evidence to be the persons who signed the preceding document in my presence and who swore or affirmed to me that their signatures are voluntary.

____

Notary signature and seal

Exhibit A

Project Area Plan

<u>Exhibit B</u>

Eagle Mountain City Ordinance No. __________

Exhibit C

Legal Description of the Project Area

Exhibit D

Project Area Map

Exhibit E

Project Area Budget

<u>Exhibit F</u>

Interlocal Agreement with City

<u>Exhibit G</u>

Interlocal Agreement with County

Exhibit H

Interlocal Agreement with School District

<u>Exhibit I</u>

Interlocal Agreement with UFSA

<u>Exhibit J</u>

Interlocal Agreement with Water District