

PUBLIC NOTICE

Notice is Hereby Given that the Tooele City Redevelopment Agency of Tooele City, Utah, will meet in a Business Meeting, on Wednesday, December 5, 2018 at Approximately 8:00 p.m. or soon Thereafter. The Meeting will be Held at the Tooele City Hall Council Room Located at 90 North Main Street, Tooele, Utah.

- 1. Open RDA Meeting**
- 2. Roll Call**
- 3. RDA Resolution 2018-08 A Resolution of the Redevelopment Agency of Tooele City, Utah, Authorizing the Execution of a Tax Increment Reimbursement Agreement (LKQ Auto Parts of Utah) Relating to a Commercial Development in the Tooele Army Depot Economic Development Project Area
Presented by Randy Sant**
- 4. Project Update
Presented by Randy Sant**
- 5. Minutes**
 - **November 7, 2018**
- 6. Adjourn to Closed**
 - **Property Acquisition**
 - **Personnel**

Michelle Y. Pitt
Tooele City Recorder/RDA Secretary

Pursuant to the Americans with Disabilities Act, Individuals Needing Special Accommodations Should Notify Michelle Y. Pitt, Tooele City Recorder, at 843-2110 or michellep@tooelecity.org, Prior to the Meeting.

REDEVELOPMENT AGENCY OF TOOELE CITY, UTAH

RESOLUTION 2018-08

A RESOLUTION OF THE REDEVELOPMENT AGENCY OF TOOELE CITY, UTAH AUTHORIZING THE EXECUTION OF A TAX INCREMENT REIMBURSEMENT AGREEMENT (LKQ AUTO PARTS OF UTAH) RELATING TO A COMMERCIAL DEVELOPMENT IN THE TOOELE ARMY DEPOT ECONOMIC DEVELOPMENT PROJECT AREA.

WHEREAS the Redevelopment Agency of Tooele City (the “Agency”) has been created by the City Council of Tooele City to transact the business and exercise all of the powers provided for by Title 17C of the Utah Code Annotated, “Limited Purpose Local Government Entities—Community Reinvestment Agency Act” (the “Act”); and,

WHEREAS, the Agency, in furtherance of the purposes of the Act and the Project Area Plan for the Tooele Army Depot Economic Development Project Area (the “Project Area”), desires to enter into a Tax Increment Reimbursement Agreement (the “Agreement”) with LKQ Auto Parts of Utah, LLC, substantially in the form attached hereto as **Exhibit A**, encouraging and promoting a commercial development project within the Project Area:

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE REDEVELOPMENT AGENCY OF TOOELE CITY THAT:

The Agreement in substantially the form attached hereto as **Exhibit A** is hereby approved, and the Executive Director of the Agency is authorized and directed to execute the same for and on behalf of the Agency. The Executive Director is authorized to approve any minor modifications, amendments, or revisions to the Agreement as may be in the Agency’s best interest and in harmony with the overall intent and purpose of the Agreement, and the Executive Director’s signature upon the final Agreement will constitute the Agency Board’s acceptance of all such minor modifications, amendments, or revisions.

This Resolution is necessary for the immediate preservation of the peace, health, safety, or welfare of Tooele City and its Redevelopment Agency and shall become effective upon passage, without further publication, by authority of the Tooele City Charter.

IN WITNESS WHEREOF, this Resolution is passed by the Redevelopment Agency of Tooele City, Utah, this 5th day of December, 2018.

REDEVELOPMENT AGENCY OF TOOELE CITY, UTAH

(For)

(Against)

ABSTAINING: _____

ATTEST:

Michelle Y. Pitt, RDA Secretary

S E A L

Approved as to Form: _____
Roger Evans Baker, RDA Attorney

Exhibit A

Form of Agreement

TAX INCREMENT REIMBURSEMENT AGREEMENT

THIS TAX INCREMENT REIMBURSEMENT AGREEMENT (this “**Agreement**”) is made effective as of this 5th day of December, 2018 (“**Effective Date**”) by and between **LKQ AUTO PARTS OF UTAH, LLC, a Utah limited liability company** (the “**Company**”) and the **Redevelopment Agency of Tooele City, a political subdivision of the State of Utah** (the “**Agency**”). The Agency and the Company agree as follows:

1. Background.

1.1. On January 18, 1995, the Agency adopted a resolution approving the Tooele Army Depot Economic Development Project Area Plan (the “**Plan**”) for the Tooele Army Depot Economic Development Project Area (the “**Project Area**”).

1.2. The Company presented to the Agency preliminary development concept plans for an automotive recycling facility within the boundaries of the Project Area (the “**Project**”). The Company leases or owns the fee title to all the land on which the Project is located (the “**Land**”), which Land is described in Exhibit A attached hereto, and currently covers the list of property tax identification numbers attached hereto as Exhibit B. Due to its location within the Project Area, the Land generates tax increment revenues that are diverted to the Agency pursuant to a Project Area Budget adopted by the Agency for the Project Area.

1.3. The Company has also presented to the Agency and its consultants sufficient information, including development plans and alternatives, financial statements, and other information, showing justification for the Agency’s participation in certain costs for the construction of the Project. This Agreement sets forth the terms of, and conditions to, the Agency’s agreement to reimburse the Company for certain development costs.

2. Tax Increment. This Agreement refers to “tax increment” which is a term defined by Utah Code Ann. § 17C-1-102(60) (2018). 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 ad valorem tax revenues generated by the increase in value of taxable real and personal property resulting from new development and construction. The Agency is entitled to collect a portion of tax increment from the property located within the Project Area boundaries as expressly provided under the Project Area Budget adopted by the Agency for the Project Area. A copy of the Project Area Budget is attached hereto as Exhibit C.

3. Company Commitments. As a condition to all obligations of the Agency under this Agreement, the Company agrees to do each of the following, unless waived by the Agency in the Agency’s sole and absolute discretion (each a “**Company Commitment**”):

3.1. By or before November 1, 2019 (except that the deadline will be extended as and to the extent the completion of the Project, or the delivery of the certificate of occupancy, is delayed as a result of a Force Majeure Event as defined in Section 25 below), the Company must obtain a temporary or final certificate of occupancy for the Project; and

3.2. The Company must, before receiving any tax increment from the Agency, provide reasonable proof to the Agency that the Company or the owner of the Land invested at least

\$15,000,000.00 in capital costs for the Project, including without limitation Land acquisition costs and the costs of all improvements constructed or installed on the Land; and

3.3. The Company must provide the Agency with a jobs report showing that during the previous calendar year the Company employed at the Project an average of at least 30 individuals in each month of the calendar year. The Company must have advertised at least 20 of those 30 jobs to residents in Tooele County before soliciting candidates outside of Tooele County. Only if the Company was unable to fill the 20 positions with qualified candidates residing in Tooele County after making reasonable solicitation efforts within Tooele County, then the Company will have been authorized to fill those positions with qualified candidates outside of Tooele County. The 30 jobs must have an average salary (not including benefits) of at least \$42,500.00. The Company agrees to provide any supporting or backup materials reasonably requested by the Agency to verify any information in each annual jobs report. The Agency has the right to audit any information reasonably necessary to verify each annual jobs report.

4. Company Restrictions. The Company agrees that, for at least one year after date on which the Agency makes the final payment of tax increment to the Company under this Agreement, the Company will (each of the following being a “Company Restriction”):

4.1. Continue operating its business activities at the Project in substantially the same manner as the Company had been operating while receiving tax increment payments from the Agency under this Agreement, and

4.2. Continue to employ at the Project an average of at least 30 individuals in each month of such year, with the same obligation to attempt to fill at least 20 of those 30 jobs with Tooele County residents, and with the same requirement for the average salary (not including benefits) of at least \$42,500.00, as described in Section 3.3 above.

If the Company fails to satisfy any Company Restriction within the one-year time period, then the Company agrees to immediately refund to the Agency all tax increment paid by the Agency to the Company under this Agreement, plus interest at the rate of 5.0% annually beginning on the date of the final payment of tax increment from the Agency to the Company. The Company agrees to provide any supporting or backup materials reasonably requested by the Agency to verify compliance with this section. The Agency has the right to audit any Company information reasonably necessary to verify compliance with this section.

5. Project Financing. The Company is solely responsible for all the costs of acquisition, development, construction, maintenance, ownership, repair, etc., of the Project. However, subject to the performance by the Company of each of the Company Commitments, and also subject to Sections 6 and 7 below, the Agency will participate with the Company in financing the construction of the Project, solely by paying tax increment revenues, generated from the Project and actually received by the Agency on an annual basis, and subject to a total cumulative cap of \$100,000.00 (the “Maximum Reimbursement Amount”), to the Company as reimbursement for expenses actually incurred by the Company, in connection with the construction of the Project. The Company will provide, upon request from the Agency at any time, proof of payment of all costs requested to be reimbursed. The Agency will pay to the Company annually, (each such annual payment is referred to as an “Annual Increment Payment”), an amount equal to 35% of all tax increment revenues generated by, and actually received by the Agency from the Tooele County Treasurer under the Project Area Budget from, the Project. The Agency will retain the remaining 65% of tax increment revenues for other Agency uses/obligations as permitted under the Plan and/or the Project Area Budget. The Agency

will continue making Annual Increment Payments until the first to occur of either (i) the Agency has paid to the Company the Maximum Reimbursement Amount, or (ii) the Agency no longer has the right to receive tax increment from the Project Area because the final year of the tax increment collection period under the Project Area Budget has expired. Despite anything in this Agreement to the contrary, the Agency has no obligation to pay any more than the Maximum Reimbursement Amount, and the Agency has no obligation to pay more than 35% of any tax increment actually received by the Agency from the Project annually.

6. Limitations on Tax Increment Participation. Despite anything in this Agreement to the contrary:

6.1. if the Company does not satisfy each of the Company Commitments, then the Agency will have no obligation to pay any Annual Increment Payments to the Company; instead, the Agency will then be entitled to retain all tax increment generated from the Project for other legal and authorized purposes of the Agency;

6.2. all obligations of the Agency to pay any Annual Increment Payment(s) to the Company are conditional on the Company or the property owner timely and properly paying all taxes assessed on or generated from the Land, including but not necessarily limited to real property, personal property, ad valorem, and sales taxes, to the appropriate taxing authorities;

6.3. all obligations of the Agency to pay any Annual Increment Payment(s) to the Company are conditional on the Company actually operating in normal business use, on a consistent basis during the calendar year, the Project; subject to events of casualty and/or any Force Majeure Event, if in any year the Company does not regularly operate the Project for at least 180 days for any reason other than an event of casualty or a Force Majeure Event, then the Agency will have no obligation to pay the Company an Annual Increment Payment for that year and the amount that otherwise would have been paid to the Company for that year will be a corresponding credit against (*i.e.*, cause a reduction of) the Maximum Reimbursement Amount; and

6.4. the Company reserves all, and does not waive or relinquish any, rights available at law or in equity to appeal or contest any taxes or assessments on the Land.

7. Timing of Annual Payments. Subject to Sections 2 and 3 above, the Agency will make the first Annual Increment Payment within thirty days after the Agency receives from the Tooele County Treasurer the final tax increment payment for the calendar year in which any vertical structural improvement(s) constituting part of the Project is/are constructed, assessed and first appear(s) on the tax rolls for Tooele County, and, subject to Section 3 above, the Agency will continue making the Annual Increment Payments each successive year within the same thirty-day period for so long as the Agency is entitled to collect tax increment from the Project Area (as may be extended, if at all, from time to time). For informational purposes, the Agency typically receives tax increment payments from the Tooele County Treasurer in March or April (for the preceding tax year), which means the Agency will likely pay the first Annual Increment Payment to the Company around April or May of the year following the calendar year during which the Company obtains the required temporary certificates of occupancy for the Project, and then the successive payments in April or May of each succeeding year.

8. Limitations on Agency Authority. The Company acknowledges that:

8.1. the Agency is a political subdivision of the State of Utah operating and existing under Title 17C of the Utah Code Ann., separate and distinct from the City, for the purpose of, among other things, promoting the urban renewal, economic development and community development in the City;

8.2. the City is not a party to this Agreement and the City will not have any commitments, obligations, duties, liabilities or obligations under this Agreement;

8.3. the Agency has no independent taxing power, and therefore the Agency's sole source of revenue, at least for purposes of this Agreement, is tax increment financing as provided under Utah law;

8.4. if Utah law is amended or superseded by new law that has the effect of reducing or eliminating the amount of tax increment revenue to be paid to the Agency, the Agency's obligation to pay Annual Increment Payments to the Company will be accordingly reduced or eliminated;

8.5. if a court of competent jurisdiction declares that the Agency cannot receive tax increment revenues, or make payments to the Company from tax increment revenues as provided in this Agreement, or takes any other action which eliminates or reduces the amount of tax increment revenues paid to the Agency, the Agency's obligation to make Annual Increment Payments to the Company shall be accordingly reduced or eliminated; and

8.6. the Agency has no power or authority to grant any land use approvals;

8.7. nothing in this Agreement creates, implies, or guarantees any land use approvals; and

8.8. all land use approvals are subject to the standard requirements of applicable law and City policies and procedures.

9. Agreement Term/Breach/Termination. Despite anything else in this Agreement to the contrary, this Agreement will terminate immediately and automatically upon payment of the final Annual Increment Payment as described in Section 3 above. This Agreement may also be terminated earlier as follows: Upon the material breach of this Agreement by either party, the non-breaching party may provide notice to the breaching party. The breaching party shall have 30 days (or, if such breach cannot reasonably be cured within such 30 day period, such longer period as is reasonably necessary to effectuate such cure) to cure the breach, and if the breach is not timely cured, the non-breaching party may then terminate this Agreement by providing final notice to the breaching party. To clarify, however, the Company will not have a 30-day period to cure a failure to satisfy a Company Commitment; and, a failure of the Company to satisfy a Company Commitment is not a material breach of this Agreement, but instead is merely a failure of a condition to the Company receiving tax increment as described in Section 3.

10. Indemnification. The Company agrees to indemnify, defend (with counsel of the Indemnitee's choosing), and hold the Agency and the City, including their respective officers, directors, agents, employees, contractors, and consultants, harmless from and against all liability, loss, damage, costs or expenses, including attorneys' fees and court costs, arising from or as a result of death, injury, accident, loss or damage of any kind caused to any person or property because of the act(s), error(s), or omission(s) of the Company, including its officers, directors, agents, employees, contractors, and

consultants, upon or in connection with the Land or in connection in any way with this Agreement, except in each case to the extent arising out of the negligence, willful misconduct, illegal acts, bad faith or breach of this Agreement by the Agency or the City, including their respective officers, directors, agents, employees, contractors, and consultants (the “Indemnitees”).

11. Parties; Successors and Assigns. Except for the City, which is an intended third-party beneficiary as described in the immediately preceding paragraph regarding indemnification, this Agreement is intended solely for the benefit of the Agency and the Company and there are no intended third-party beneficiaries. The Company has no right to assign this Agreement or its obligations under this Agreement without the Agency’s advance written consent, in the Agency’s sole and absolute discretion; provided, however, that the Company may, without the need for the Agency’s prior written approval, assign this Agreement, and all of its rights and obligations hereunder, to any entity that controls, is controlled by, or is under common control with the Company. This Agreement will be binding upon and inure to the benefit of the parties and their respective permitted successors and assigns.

12. No Liability of Officials/Employees. No director, officer, agent, employee, or consultant of the Agency or the Company shall be personally liable to the other party hereto, or any successor in interest, in the event of any default or breach by the Agency or Company or for any amount which may become due to the Company or its successors or on any obligations under the terms of this Agreement.

13. No Legal Relationship. The parties disclaim any partnership, joint venture, fiduciary, agency, or employment status or relationship between them. No party has the authority to make any representation or warranty or incur any obligation or liability on behalf of the other party, nor shall they make any representation to any third party inconsistent with this paragraph.

14. No Public Dedication. Nothing contained in this Agreement shall be deemed to be a gift or dedication of all or any portion of the Land or Project for the general public or for any public purpose whatsoever.

15. Attorneys’ Fees. In the event of litigation between the parties related to this Agreement, the court shall award the prevailing party its costs, expenses, and reasonable attorneys’ fees, such fees to be determined by the court sitting without a jury.

16. Governing Law. The laws of the State of Utah will govern this Agreement. Any action pertaining to or arising under this Agreement must be brought in the applicable state or federal court having jurisdiction in, and located in, Tooele County, Utah, and nowhere else.

17. Waiver. The waiver by any party of any right granted to it hereunder shall not be deemed a waiver of any other right or of a subsequent right obtained by reason of the matter previously waived.

18. Amendment. This Agreement may be modified or amended only by a written instrument authorized and executed by the Company and the Agency, respectively, each in their sole discretion.

19. Entire Agreement/Amendment/Counterparts. The Recitals, and all exhibits, schedules and attachments attached hereto, are incorporated and made an integral part of this Agreement. This Agreement constitutes the entire agreement of the parties with respect to the subject matter addressed. There are no other contracts, understandings, representations, or agreements, written or verbal,

between the parties relating in any way to the subject matter of this Agreement. No party is relying on any verbal or written statements of the other than those expressly in this Agreement.

20. Construction/ Headings. The parties waive the application of any rule of law relating to the construction of this Agreement that provides in effect that ambiguous or conflicting terms or provisions should be construed against the party who prepared this Agreement or any earlier draft thereof. The headings in this Agreement are for reference only and shall not limit or define the meaning of any provision of this Agreement.

21. Severability. If any provision (or portion of any provision) of this Agreement shall be deemed to be invalid or unenforceable, such invalidity or unenforceability shall not alter the remaining portion of such provision, or any other provision hereof, as each provision of this Agreement shall be deemed severable from all other provisions hereof provided the removal of same does not materially alter the overall intent of this Agreement.

22. Time is of the Essence. Time is of the essence with respect to each and every term, condition, obligation and provision hereof.

23. Further Assurances. The parties shall cooperate, take such additional actions, sign such additional documentation, and provide such additional information as reasonably necessary to accomplish the objectives set forth in this Agreement.

24. Waiver of Jury Trial. The Parties irrevocably waive any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement.

25. Force Majeure. The Agency or the Company shall be excused, without penalty, for the period of any delay in the performance of any obligations hereunder when prevented from doing so by causes beyond its control, which shall include without limitation acts of God, governmental restrictions, strikes, labor disturbances, shortages of materials or supplies and the inability to obtain reasonable substitutes, and actions or inactions of governmental authorities (a "Force Majeure Event"). In connection with any Force Majeure Event, the party claiming such Force Majeure Event must use commercially reasonable efforts to mitigate the effect of such Force Majeure Event. Nothing contained in this Section 25 shall excuse either party from paying in a timely fashion any payments due under the terms of this Agreement.

[End of Terms – Signature Page Follows]

IN WITNESS WHEREOF, the Agency and the Company have executed this Tax Increment Reimbursement Agreement effective as of the date shown above.

LKQ AUTO PARTS OF UTAH, LLC

By: _____
Name:
Title:

REDEVELOPMENT AGENCY OF TOOELE CITY

Executive Director

Attest:

Michelle Y. Pitt, RDA Secretary

Approved as to Form:

Roger Evans Baker, RDA Attorney

[Exhibits A, B and C to be attached]

Exhibit A

Legal Description of the Land

Exhibit B

Tax Id Nos. for the Land

Exhibit C

Project Area Budget

**Tooele City Redevelopment Agency of Tooele City, Utah
Business Meeting Minutes**

Date: Wednesday, November 7, 2018

Time: 8:02 p.m.

Place: Tooele City Hall, Council Chambers
90 North Main Street, Tooele, Utah

Board Members Present:

Brad Pratt
Dave McCall
Melodi Gochis
Steve Pruden
Scott Wardle

City Employees Present:

Mayor Debbie Winn
Glenn Caldwell, Finance Director
Roger Baker, City Attorney
Jim Bolser, Community Development Director
Stephen Evans, Public Works Director
Andrew Aagard, City Planner
Randy Sant, Economic Development Consultant

Minutes prepared by Kelly Odermott

Chairman Pratt opened the meeting at 8:02 p.m.

1. Open Meeting

The meeting is called to order by Chairman Pratt.

2. Roll Call

Brad Pratt, Present
Dave McCall, Present
Melodi Gochis, Present
Steve Pruden, Present
Scott Wardle, Present

3. Resolution 2018 – 07 A Resolution of the Redevelopment Agency of Tooele City, Utah Approving and Ratifying Addendum #3 to a Purchase and Sale Agreement with M-53 for 33 Acres of Land Located at Main Street and 1000 North Street.

Presented by Randy Sant

Mr. Sant stated that the Resolution is an Addendum to an agreement that extended the due diligence period until December 21, 2018. During that period of time the City will be working on

a number of things in order to close the real estate contract. M-53, the company purchasing, will be preparing an application to submit to the City for a subdivision and site plan review. It is anticipated that will be submitted on November 16. The City is working on an agreement with M-53 to cover some of the issues that they have. There are concerns with closing including clean up of the property. There are some soil conditions that need to be met. M-53 is in the process of preparing a master site plan, that will be presented to Council and the Planning Commission for approval. The goal of the site and master plan is to go to Planning Commission December 12 and to City Council December 19th. The resolution is to ratify the addendum that has been made to the agreement. It was signed already to not go out of contract by Chair and Executive Director. It does need to be ratified by Council.

Board Member Pruden stated that this is the property between Denny's and Wendy's on Main Street.

Chairman Pratt asked if the Board had any questions or comments; there weren't any.

Board Member Gochis moved to approve Resolution 2018 - 07. Board Member Pruden seconded the motion. The vote was as follows: Board Member McCall, "Aye," Board Member Wardle, "Aye," Board Member Pruden, "Aye," Board Member Gochis, "Aye," Chairman Pratt, "Aye." The motion passed.

4. Project Update

Presented by Randy Sant

Mr. Sant stated that he did not have any updates at this time.

5. Minutes

Chairman Pratt asked if the Board if they had any concerns or comments about the minutes dated October 17, 2018; there weren't any.

Board Member McCall moved to approve the minutes for the meeting dated October 17, 2018. Board Member Pruden seconded the motion. The vote was as follows: Board Member McCall, "Aye," Board Member Wardle, "Aye," Board Member Pruden, "Aye," Board Member Gochis, "Aye," Chairman Pratt, "Aye." The motion passed.

6. Adjourn

Board Member Wardle moved to adjourn. Board Member Gochis seconded the motion. The vote was as follows: Board Member McCall, "Aye," Board Member Wardle, "Aye," Board Member Pruden, "Aye," Board Member Gochis, "Aye," Chairman Pratt, "Aye." The motion passed.

The meeting was adjourned at 8:07 p.m.

The content of the minutes is not intended, nor are they submitted, as verbatim transcription of the meeting. These minutes are a brief overview of what occurred at the meeting.

Approved this Day of December 2018

Brad Pratt, RDA Chair

DRAFT