

INTERLOCAL COOPERATION AGREEMENT

between

SALT LAKE COUNTY

and

SANDY CITY

THIS INTERLOCAL COOPERATION AGREEMENT (this “Agreement”) is entered into by and between **SALT LAKE COUNTY**, a body corporate and politic of the State of Utah (the “County”), and **SANDY CITY**, a municipal corporation of the State of Utah (the “City”). County and City may each be referred to herein as a “Party” and collectively as the “Parties.”

R E C I T A L S:

A. The County is a county existing pursuant to Article XI, Section 1 of the Utah Constitution, and the Department of Community Services is a department of the County pursuant to Salt Lake County Ordinances, § 2.15.010.

B. The City is a municipality and a political subdivision of the State of Utah as provided for in Utah Code Ann. §§ 10-1-201 & 202, 1953 as amended.

C. On March 1, 2017, the County issued Sales Tax Revenue Bonds, Series 2017B (“Bonds”) pursuant to Salt Lake County Resolution No. 5125 and a General Indenture of Trust, as amended and supplemented from time to time, which Bonds are payable from the county option sales and use taxes levied by the County pursuant to the County Option Sales and Use Tax Act, Utah Code Ann. §§ 59-12-1101 *et seq.*

D. The County desires to grant proceeds from the Bonds (the “Bond Proceeds”) to the City to pay for a portion of the costs of constructing, furnishing, and equipping a capital improvement program project. Specifically, the County desires to grant Bond Proceeds to the City to pay for a portion of the costs of constructing, furnishing, and equipping a new approximately 130,000 square foot performing arts facility located at 9886 S. Monroe Street, Sandy, Utah, as more fully described in the renderings attached hereto as **EXHIBIT A** (hereinafter, the “New Facility”).

E. The New Facility is being financed in large part by the City through sales tax revenue bonds issued by the City in 2015. The New Facility will be owned by the City and will be used primarily for live theatre shows. The Hale Centre Theatre, a Section 501(c)(3) nonprofit organization, and the City have entered into a lease agreement for the New Facility that commences August 1, 2015 and expires January 31, 2042.

F. The Parties are “public agencies” as defined by the Utah Interlocal Cooperation Act, Utah Code Ann. §§ 11-13-101 *et seq.* (the “Interlocal Cooperation Act”), and, as such, are authorized by the Interlocal Cooperation Act to enter into this Agreement to act jointly and cooperatively in a manner that will enable them to make the most efficient use of their resources and powers. Additionally, Section 11-13-215 of the Interlocal Cooperation Act authorizes a county, city, town, or other local political subdivision to share its tax and other revenues with other counties, cities, towns, local political subdivisions, or the state.

G. The Parties have determined that it is mutually advantageous to enter into this Agreement and believe that the County’s assistance under this Agreement will contribute to the prosperity, peace, and comfort of Salt Lake County residents.

A G R E E M E N T:

NOW THEREFORE, in consideration of the premises and in compliance with and pursuant to the terms hereof and the provisions of the Interlocal Cooperation Act, the Parties hereby agree as follows:

1 . BOND PROCEEDS – CONTRIBUTION AND USE.

A. Grant of Bond Proceeds. Within ninety (90) days of the Effective Date of this Agreement, the County shall grant Four Million Seven Hundred Thousand Dollars and No Cents (\$4,700,000.00) of Bond Proceeds to the City, all on the terms and subject to the conditions of this Agreement.

B. Use of Bond Proceeds. The City shall use the Bond Proceeds to pay for a portion of the costs of constructing, furnishing, and equipping the New Facility (hereinafter, the “New Facility Construction Project”).

C. No Private Payments With Respect to County’s Grant of Bond Proceeds The County and the City acknowledge that the Bonds were not issued as 501(c)(3) bonds, and thus that the Hale Centre Theatre’s use of the New Facility will be considered private business use for purposes of the Bonds. However, the Parties represent and agree that the City is not paying and will not pay to the County any amounts with respect to the grant of Bond Proceeds under this Agreement. Furthermore, the City represents and agrees that any payments made by the City to the County in the past, and any payments that may be made by the City to the County in the future, are and will be for services the County provides to the City or otherwise unrelated to the New Facility Construction Project. Therefore, the Parties acknowledge and agree that there are no private payments being made to the County with respect to the New Facility Construction Project.

2 . CITY’S OBLIGATIONS AND REPRESENTATIONS.

A. Deadline to Expend Bond Proceeds; Requirement to Return Funds. The City shall expend all Bond Proceeds received under this Agreement in accordance with Section 1B, above, prior to **December 31, 2018**. If the City does not fully expend or is unable to fully

expend the Bond Proceeds prior to December 31, 2018, the City shall immediately return any remaining Bond Proceeds to the County, unless such date is otherwise extended by the County for reasonable and just cause via an instrument in writing signed by both Parties.

B. Recordkeeping. The City agrees to maintain its books and records in such a way that any Bond Proceeds received from the County will be shown separately on the City's books. The City shall maintain records adequate to identify the use of the Bond Proceeds for the purposes specified in this Agreement and for a minimum of five (5) years after termination of this Agreement. The City shall make its books and records available to the County at reasonable times. If the County requests an audit, the City agrees to cooperate fully with the County and its representatives in the performance of the audit

C. Public Funds and Public Monies.

(i) The City agrees that the Bond Proceeds are "public funds" and "public monies," meaning monies, funds, and accounts, regardless of the source from which they are derived, that are owned, held, or administered by the State or any of its boards, commissions, institutions, departments, divisions, agencies, bureaus, laboratories, or similar instrumentalities, or any county, city, school district, political subdivision, or other public body. The terms also include monies, funds or accounts that have been transferred by any of the aforementioned public entities to a private contract provider for public programs or services. Said funds shall maintain the nature of "public funds" while in the City's possession.

(ii) The City, as the recipient of "public funds" and "public monies" pursuant to this and other agreements related hereto, expressly agrees that it, its officers, and its employees are obligated to receive, keep safe, transfer, disburse and use these "public funds" and "public monies" as authorized by law and this Agreement. The City understands that it, its officers, and its employees may be criminally liable under Utah Code Ann. § 76-8-402 for misuse of public funds or monies. The City expressly agrees that the County may monitor the expenditure of Bond Proceeds by the City.

(iii) The City agrees not to make Bond Proceeds or proceeds from such funds available to any public officer or employee or in violation of the Public Officers' and Employees' Ethics Act, Utah Code Ann. §§ 67-16-1, *et seq.* (1953, as amended).

D. Compliance. The City shall comply with Section 1B, above, and shall comply with all laws and directives regarding the use of public funds.

E. Representations.

(i) No Officer or Employee Interest. The City represents and agrees that no officer or employee of the County has or shall have any pecuniary interest, direct or indirect, in this Agreement or the proceeds resulting from the performance of this Agreement. No officer or employee of the City or any member of their families shall serve on any County board or committee or hold any such position which either by rule,

practice, or action nominates, recommends, or supervises the City's use of Bond Proceeds under this Agreement.

(ii) Ethical Standards. The City represents that it has not: (a) provided an illegal gift in connection with this Agreement to any County officer or employee, or former County officer or employee, or to any relative or business entity of a County officer or employee, or relative or business entity of a former County officer or employee; (b) retained any person to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, other than bona fide employees of bona fide commercial agencies established for the purpose of securing business; (c) breached any of the ethical standards in connection with this Agreement set forth in State statute or Salt Lake County Code of Ordinances § 2.07; or (d) knowingly influenced, and hereby promises that it will not knowingly influence, in connection with this Agreement, any County officer or employee or former County officer or employee to breach any of the ethical standards set forth in State statute or Salt Lake County ordinances.

3 . GENERAL PROVISIONS:

A. Entire Agreement. This Agreement and the documents referenced herein, if any, constitute the entire Agreement between the Parties with respect to the subject matter hereof, and no statements, promises, or inducements made by either Party, or agents for either Party, that are not contained in this written Agreement shall be binding or valid; and this Agreement may not be enlarged, modified or altered, except in writing, signed by the Parties.

B. Term of Agreement. This Agreement will become effective immediately upon the completion of the following: (i) the approval of the Agreement by the governing bodies of the County and the City, including the adoption of any necessary resolutions or ordinances by the County and the City authorizing the execution of this Agreement by the appropriate person or persons for the County and the City, respectively, (ii) the execution of this Agreement by a duly authorized official of each of the Parties, (iii) the submission of this Agreement to an attorney for each Party that is authorized to represent said Party for review as to proper form and compliance with applicable law, pursuant to Section 11-13-202.5 of the Interlocal Cooperation Act, and the approval of each respective attorney, and (iv) the filing of a copy of this Agreement with the keeper of records of each Party (the "Effective Date"). This Agreement shall terminate upon the City's full expenditure of the Bond Proceeds received under this Agreement, unless terminated earlier as provided in Sections 3H, 3I, and 3J below. However, the City's obligations in Sections 2A, 2B, 2C and 2D above and Section 3F below shall survive the expiration or termination of this Agreement.

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

(i) This Agreement shall be authorized as provided in Section 11-13-202.5 of the Interlocal Cooperation Act.

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

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

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

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

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

(vii) Pursuant to Section 11-13-207 of the Interlocal Cooperation Act, the County Mayor and the City Mayor are hereby designated as the joint administrative board for all purposes of the Interlocal Cooperation Act.

D. No Obligations to Third Parties. The Parties agree that the City's obligations under this Agreement are solely to the County and that the County's obligations under this Agreement are solely to the City. The Parties do not intend to confer any rights to third parties unless otherwise expressly provided for under this Agreement.

E. Agency. No officer, employee, or agent of the City or the County is intended to be an officer, employee, or agent of the other Party. None of the benefits provided by each Party to its employees including, but not limited to, workers' compensation insurance, health insurance and unemployment insurance, are available to the officers, employees, or agents of the other Party. The City and the County will each be solely and entirely responsible for its acts and for the acts of its officers, employees, or agents during the performance of this Agreement.

F. Governmental Immunity, Liability, and Indemnification.

(i) Governmental Immunity. Both Parties are governmental entities under the Governmental Immunity Act of Utah, Utah Code Ann. §§ 63G-7-101 *et seq.* (the "Immunity Act"). Neither Party waives any defenses or limits of liability available under the Immunity Act and other applicable law. Both Parties maintain all privileges, immunities, and other rights granted by the Immunity Act and all other applicable law.

(ii) Liability and Indemnification. The County and the City agree to be liable for their own negligent acts or omissions, or those of their authorized employees, officers, and agents while engaged in the performance of the obligations under this Agreement,

and neither the County nor the City will have any liability whatsoever for any negligent act or omission of the other Party, its employees, officers, or agents. However, the City shall indemnify, defend, and hold harmless the County, its officers, employees and agents from and against any and all actual or threatened claims, losses, damages, injuries, debts, and liabilities of, to, or by third parties, including demands for repayment or penalties, however allegedly caused, resulting directly or indirectly from, or arising out of (i) the City's breach of this Agreement; (ii) any acts or omissions of or by the City, its agents, representatives, officers, employees, or subcontractors in connection with the performance of this Agreement; or (iii) the City's use of the Bond Proceeds. The Parties agree that the respective duty of each Party to defend and indemnify under this Agreement includes all attorney's fees, litigation and court costs, expert witness fees, and any sums expended by or assessed against the indemnified party for the defense of any claim or to satisfy any settlement, arbitration award, debt, penalty, or verdict paid or incurred on behalf of the indemnified party. The Parties agree that the requirements of this Section will survive the expiration or sooner termination of this Agreement.

G. Required Insurance Policies. The Parties to this Agreement shall maintain insurance or self-insurance coverage sufficient to meet their obligations hereunder and consistent with applicable law.

H. Non-Funding Clause.

(i) The County has requested or intends to request an appropriation of Bond Proceeds to be paid to the City for the purposes set forth in this Agreement. If Bond Proceeds are not appropriated and made available beyond December 31 of the county fiscal year in which this Agreement becomes effective, the County's obligation to grant Bond Proceeds to the City under this Agreement beyond that date will be null and void. This Agreement places no obligation on the County to grant Bond Proceeds to the City in succeeding fiscal years. The County's obligation to grant Bond Proceeds to the City under this Agreement will terminate and become null and void on the last day of the county fiscal year for which funds were budgeted and appropriated, except as to those portions of payments agreed upon for which funds are budgeted and appropriated. The Parties agree that such termination of the County's obligation under this Section will not be construed as a breach of this Agreement or as an event of default under this Agreement, and that such termination of the County's obligation under this Section will be without penalty and that no right of action for damages or other relief will accrue to the benefit of the City, its successors, or its assigns as to this Agreement, or any portion thereof, which may terminate and become null and void.

(ii) If Bond Proceeds are not appropriated and made available to fund performance by the County under this Agreement, the County shall promptly notify the City of such non-funding and the termination of this Agreement. However, in no event, shall the County notify the City of such non-funding later than thirty (30) days following the expiration of the County fiscal year for which Bond Proceeds were last appropriated for contribution to the City under this Agreement.

I. Termination.

(i) Event of Default. The occurrence of any one or more of the following constitutes an “Event of Default” as such term is used herein:

(a) Failure of the City to comply with any of the terms, conditions, covenants, or provisions of this Agreement that is not fully cured by the City on or before the expiration of a thirty (30)-day period commencing upon the County’s written notice to the City of the occurrence thereof.

(b) The City no longer qualifies for receipt of Bond Proceeds under federal law, the laws of the State of Utah, or under Salt Lake County ordinances or policy.

(c) The County’s determination to grant Bond Proceeds to the City under this Agreement was based upon the submission of erroneous information, or the County reasonably determines that any representations made by the City under this Agreement are untrue.

(ii) County’s Remedies in the Event of Default. Upon the occurrence of any Event of Default, the County may, in its sole discretion, and in addition to all remedies conferred upon the County by law or equity and other provisions of this Agreement, pursue any one or more of the following remedies concurrently or successively, it being the intent hereof that none of such remedies shall be to the exclusion of any other:

(a) Withhold the contribution of Bond Proceeds to the City; and/or

(b) Seek repayment of any Bond Proceeds paid to the City under this Agreement; and/or

(c) Terminate this Agreement.

(iii) Termination Prior to Disbursement. The County may terminate this Agreement for convenience by providing thirty (30)-day’s written notice specifying the nature, extent and effective date of the termination. However, the County may not terminate this agreement once the Bond Proceeds have been provided to the City for the purposes set forth by this Agreement.

J. Force Majeure. Neither Party will be considered in breach of this Agreement to the extent that performance of their respective obligations is prevented by an Event of Force Majeure that arises after this Agreement becomes effective. “Event of Force Majeure” means an event beyond the control of the County or the City that prevents a Party from complying with any of its obligations under this Agreement, including but not limited to: (i) an act of God (such as, but not limited to, fires, explosions, earthquakes, drought, tidal waves and floods); (ii) war, acts or threats of terrorism, invasion, or embargo; or (iii) riots or strikes. If an Event of Force Majeure persists for a period in excess of sixty (60) days, the County may terminate this

Agreement without liability or penalty, effective upon written notice to the City.

K. No Waiver. The failure of either Party at any time to require performance of any provision or to resort to any remedy provided under this Agreement will in no way affect the right of that Party to require performance or to resort to a remedy at any time thereafter. Additionally, the waiver of any breach of this Agreement by either Party will not constitute a waiver as to any future breach.

L. Compliance with Laws. The Parties shall comply with all applicable statutes, laws, rules, regulations, licenses, certificates and authorizations of any governmental body or authority in the performance of its obligations under this Agreement, including, but not limited to, those laws requiring access to persons with disabilities as well as the laws governing non-discrimination against all protected groups and persons in admissions and hiring.

M. Records. Financial records, supporting documents, statistical records and all other records pertinent to this Agreement and the Bond Proceeds provided under this Agreement must be kept readily available for review by the County from time to time upon the County's request. Such records must be retained and maintained for a minimum of five (5) years after the termination of this Agreement. If questions still remain, such as those raised as a result of an audit, records must be retained until completion or resolution of any audit in process or pending resolution. Such records may be subject to the Utah Government Records Access and Management Act, Utah Code Ann. §§ 63G-2-101 *et seq.*

N. Assignment and Transfer of Funds. The City shall not assign or transfer its obligations under this Agreement nor its rights to the contribution under this Agreement without prior written consent from the County. The City shall use the Bond Proceeds provided pursuant to this Agreement exclusively and solely for the purposes set forth in the Agreement.

O. Amendments. This Agreement may be amended, enlarged, modified or altered only by an instrument in writing signed by both Parties.

P. Severability. If any provision of this Agreement is found to be illegal or unenforceable in a judicial proceeding, such provision will be deemed inoperative and severable, and, provided that the fundamental terms and conditions of this Agreement remain legal and enforceable, the remainder of this Agreement will remain operative and binding on the Parties.

Q. Governing Law and Venue. The laws of the State of Utah govern all matters arising out of this Agreement. Venue for any and all legal actions arising hereunder will lie in the District Court in and for the County of Salt Lake, State of Utah.

R. Warrant of Signing Authority. The person or persons signing this Agreement on behalf of the City warrants his or her authority to do so and to bind the City. The County may require the City to return all Bond Proceeds paid to the City based upon a breach of warranty of authority.

S. Counterparts. This Agreement may be executed in counterparts and all so

executed will constitute one agreement binding on all the Parties, it being understood that all Parties need not sign the same counterpart. Further, executed copies of this Agreement delivered by facsimile or email will be deemed an original signed copy of this Agreement.

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

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

INTERLOCAL AGREEMENT -- SIGNATURE PAGE FOR THE COUNTY

SALT LAKE COUNTY:

By _____
Mayor Ben McAdams or Designee

Dated: _____, 20____

Approved as to Form and Legality:

SALT LAKE COUNTY DISTRICT ATTORNEY

By _____
Deputy District Attorney

[Signatures continue on next page.]

INTERLOCAL AGREEMENT -- SIGNATURE PAGE FOR THE CITY

SANDY CITY

By _____

Name: _____

Title: _____

Dated: _____, 20____

Attest:

_____, City Recorder
Date signed: _____

Approved as to Form and Legality:

CITY ATTORNEY

By Robert Wall

Name: I. Robert Wall

Dated: 8.18.17, 2017

EXHIBIT A
New Facility Renderings