

Resolution No. 16-39C

A RESOLUTION OF THE SANDY CITY COUNCIL APPROVING AN INTERLOCAL COOPERATION AGREEMENT WITH THE REDEVELOPMENT AGENCY OF SANDY CITY, REGARDING RESTRUCTURING A LOAN FROM THE CITY TO THE AGENCY.

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

WHEREAS under the Interlocal Cooperation Act, Title 11, Chapter 13, Utah Code Annotated 1953, as amended (the “Interlocal Act”), public agencies, such as the City and the Agency, are authorized to enter agreements for joint and cooperative actions, including the sharing of tax and other revenues;

WHEREAS, the City desires to enter into an Interlocal Cooperation Agreement (the “Agreement”), substantially in the form attached hereto as **Exhibit A**, with the Agency, which Agreement will replace a prior Interlocal Cooperation Agreement entered into by and between the City and the Agency effective December 4, 2012.

NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATIVE BODY OF SANDY CITY:

1. The Agreement in substantially the form attached hereto and incorporated herein as **Exhibit A** is approved, and the Mayor is authorized and directed to execute the Agreement for and on behalf of the City. The Mayor may approve any minor modifications, amendments, or revisions to the Agreement as may be in the City’s best interest and in harmony with the intent and purpose of the Agreement as substantially set forth in the attached **Exhibit A**.
2. This resolution takes effect upon adoption.

THIS RESOLUTION IS APPROVED AND ADOPTED on June 7, 2016.

Kris Coleman-Nicholl, *Chair*

Thomas M. Dolan, *Mayor*

Attest:

Molly Spira, *City Recorder*

Exhibit A
Form of Interlocal Cooperation Agreement

Interlocal Cooperation Agreement

THIS INTERLOCAL COOPERATION AGREEMENT (this “**Agreement**”) is entered into as of the 7th day of June, 2016 (the “**Effective Date**”), by and between the **REDEVELOPMENT AGENCY OF SANDY CITY**, a Utah political subdivision (the “**Agency**”) and **SANDY CITY**, a Utah municipal corporation (the “**City**”) (collectively, the “**Parties**”).

A. WHEREAS, the Agency was created and continues to operate under the provisions of the Limited Purpose Local Government Entities — Community Reinvestment Agency Act, Title 17C of the Utah Code, and its predecessor statutes (the “**Act**”);

B. WHEREAS, pursuant to the Act and the Interlocal Cooperation Act, Title 11, Chapter 13 of the Utah Code (the “**Cooperation Act**”), the Agency and City entered into an Interlocal Cooperation Agreement dated December 4, 2012 (the “**2012 ILA**”), pursuant to which the City loaned funds to the Agency (the “**Loan**”) for the Agency’s use in acquiring certain real property in or near the Agency’s Civic Center North Redevelopment Project Area; and

C. WHEREAS, the Agency has repaid, or immediately upon approval of this Agreement will repay, all but \$2,000,000.00 of the Loan balance to the City, in the following general manner: \$3,310,885.00 to be loaned from the South Towne Ridge Economic Development Project Area to the Civic Center North Redevelopment Project Area, and then paid to the City; \$1,523,740.00 to be loaned from the City Center (South Towne) Redevelopment Project Area to the Civic Center North Redevelopment Project Area, and then paid to the City; \$1,244,183.00 to be loaned from the Civic Center South (Automall) Redevelopment Project Area to the Civic Center North Redevelopment Project Area, and then paid to the City; \$104,111.00 sales proceeds from the Agency’s sale of the Sandy Center Parking Structure in the Civic Center North Redevelopment Project Area; and \$1,103,550 in-kind contribution in the form of real property donated by the Agency to the City for the widening of Monroe Street;

D. WHEREAS, the Agency and the City desire to restructure the terms of the Agency’s obligation to repay the remaining \$2,000,000.00 Loan balance, as set forth below;

NOW, THEREFORE, in consideration of the mutual promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each Party hereto, the Parties hereby agree as follows:

1. **2012 ILA.** This Agreement terminates, supersedes and entirely replaces the 2012 ILA. Under the 2012 ILA, the Agency executed in favor of the City a Promissory Note in the stated principal amount of \$9,286,469.00 (the “**2012 Note**”). The 2012 Note is hereby canceled and terminated. The repayment obligations of the Agency to the City under the 2012 Note are replaced entirely with the payment obligations of the Agency to the City set forth in this Agreement.

Effective Date is TWO MILLION DOLLARS (\$2,000,000.00). The Agency agrees to repay the Loan to the City on the following terms:

- a. The outstanding principal balance will accrue interest on the basis of a 360-day year at a per annum interest rate that is subject to change from time to time based on changes in an independent index which is Utah's Public Treasurers' Investment Fund (the "PTIF"). The interest rate shall be equal to the PTIF rate (currently 0.840038690%), plus a margin of 0.250%. The initial interest rate is therefore 1.09003869%. The City will tell the Agency the current PTIF rate upon the Agency's request. The interest rate change will occur anytime there is a change in the PTIF, which is monthly, in the City's discretion.
- b. The Agency may prepay the Loan, in whole or in part, at any time without penalty.
- c. The Agency will pay the City interest-only regular monthly installments on the last day of each month in an amount equal to all accrued unpaid interest. Then, on the date that is exactly five years after the Effective Date (the "Maturity Date"), the Agency will make one final irregular payment on the Maturity Date in an amount equal to the total outstanding principal balance of the Loan plus accrued but unpaid interest due and owing.

3. **Pledge of Agency Funds.** In addition to the regular payments due under the express terms of Section 2 *above*, the Agency also pledges to the City all of the following payments, funds, receipts, and revenues, all of which shall be credited, when received by the City, against the then outstanding principal Loan balance:

- a. The Agency is entitled to payment under the following agreements, and the Agency hereby pledges 100% of the Agency's receipts under these agreements to the City (until the Loan has been repaid in full):
 - i. A Promissory Note dated November 20, 2015, payable by Truong Sandy Properties, LLC, to the Agency, in the original principal amount of \$375,000.00, as secured by a Deed of Trust dated the same date and referencing certain real property known generally as Lot 2, Sandy City Centre Final Plat First Amendment; and
 - ii. A Promissory Note dated November 19, 2015, payable by Truong Sandy Properties, LLC, to the Agency, in the original principal amount of \$1,836,000.00, as secured by a Deed of Trust dated the same date and referencing certain real property known generally as Lots 3, 4, 5 and 6, Sandy City Centre Final Plat First Amendment; and
 - iii. If for any reason the Agency reacquires Lots 2, 3, 4, 5 and/or 6, instead of receiving payment under the notes referenced above, then the Agency agrees to pay 100% of the Agency's net sales proceeds arising from any agreements relating to the eventual sale of Lots 2, 3, 4, 5 and/or 6.

- b. The Agency currently owns and is under contract to sell Lot 1, Sandy Gardner Office Park, and the Agency hereby pledges 100% of the Agency's net sales proceeds received under or in connection with that agreement, or any other agreement for the conveyance of that property, to the City (until the Loan has been repaid in full); the City acknowledges that the Agency may provide seller financing or other deferred payment options to the purchaser, and therefore the City acknowledges that payment under this agreement may not necessarily be made immediately upon the closing of the sale of the property;
- c. The Agency intends to sell the real property known as Lot 7, Sandy City Centre Final Plat First Amendment, in the near future, and the Agency pledges 100% of the net sales proceeds (until the Loan has been repaid in full) arising from the sale of that property;
- d. The Agency intends to sell the real property known as Parcel B, Sandy Gardner Office Park, in the near future, and the Agency pledges 100% of the net sales proceeds (until the Loan has been repaid in full) arising from the sale of that property; and
- e. The Agency pledges all other legally-available and unobligated future revenues and receipts of the Agency relating to or arising from the real property known as Lot 1, Sandy Gardner Office Park, including tax increment revenues and, potentially, designated grant funds, to the City until the Loan has been repaid in full.

4. **No Third Party Beneficiary.** Nothing in this Agreement shall create or be read or interpreted to create any rights in or obligations in favor of any person or entity not a party to this Agreement. Except as otherwise specifically provided herein, no person or entity is an intended third party beneficiary under this Agreement.

5. **Due Diligence.** Each of the Parties acknowledges for itself that it has performed its own review, investigation, and due diligence regarding the relevant facts upon which this Agreement is based and each of the Parties relies on its own understanding of the relevant facts, information, and representations, after having completed its own due diligence and investigation.

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

a. This Agreement shall be authorized and adopted by resolution of the legislative body of each Party pursuant to and in accordance with the provisions of Section 11-13-202.5 of the Cooperation Act;

b. 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 the Section 11-13-202.5(3) of the Cooperation Act;

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

d. This Agreement does not create an interlocal entity. The Redevelopment Director of the Agency is hereby designated the administrator for all purposes of this Agreement and the Cooperation Act, pursuant to Section 11-13-207 of the Cooperation Act;

e. The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until satisfaction and/or retirement of the Note. Notwithstanding the previous sentence, as required by Section 11-13-216 of the Cooperation Act, this Agreement shall terminate no later than 50 years after its Effective Date.

f. Immediately after execution of this Agreement by both Parties, each of the Parties shall cause to be published notice, or one of the Parties may publish a joint notice, regarding this Agreement pursuant to Section 11-13-219 of the Cooperation Act.

g. The purchaser of any property acquired in connection with this Agreement shall be entitled to keep such property upon the termination of this Agreement.

7. **Modification and Amendment.** Any modification of or amendment to any provision contained herein shall be effective only if the modification or amendment is in writing and signed by the Parties. Any oral representation or modification concerning this Agreement shall be of no force or effect.

8. **Further Assurance.** Each of the Parties hereto agrees to cooperate in good faith with the other, to execute and deliver such further documents, to adopt any resolutions, to take any other official action, and to perform such other acts as may be reasonably necessary or appropriate to consummate and carry into effect the transactions contemplated under this Agreement.

9. **Governing Law.** This Agreement shall be governed by, and construed and interpreted in accordance with, the laws of the State of Utah.

10. **Severability.** If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction or as a result of future legislative action, and if the rights or obligations of any Party hereto under this Agreement will not be materially and adversely affected thereby,

a. such holding or action shall be strictly construed;

b. such provision shall be fully severable;

c. this Agreement shall be construed and enforced as if such provision had never comprised a part hereof;

d. the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the invalid or unenforceable provision or by its severance from this Agreement; and

e. in lieu of such illegal, invalid, or unenforceable provision, the Parties hereto shall use commercially reasonable efforts to negotiate in good faith a substitute, legal, valid, and enforceable provision that most nearly effects the Parties' intent in entering into this Agreement.

11. **Authorization.** Each of the Parties hereto represents and warrants to the other that the warranting Party has taken all steps, including the publication of public notice, where necessary, in order to authorize the execution, delivery, and performance by each such Party of this Agreement.

12. **Incorporation of Recitals and Exhibits.** Except to the extent they may conflict with any of the express provisions of the body of this Agreement, the recitals set forth above are hereby incorporated by reference as part of this Agreement. Any and all exhibits and/or attachments hereto are incorporated herein.

[Remainder of Page Intentionally Blank – Signature Pages to Follow]

~ SIGNATURES TO INTERLOCAL COOPERATION AGREEMENT ~

REDEVELOPMENT AGENCY OF SANDY CITY

Chair

Executive Director

ATTEST:

Secretary

Attorney Review for Redevelopment Agency:

The undersigned, as counsel for the Redevelopment Agency of Sandy City, has reviewed the foregoing Interlocal Cooperation Agreement and finds it to be in proper form and in compliance with applicable state law.

Attorney for the Agency

[Signatures continue on next page.]

~ ADDITIONAL SIGNATURES TO INTERLOCAL COOPERATION
AGREEMENT ~

SANDY CITY

By: _____
Mayor

ATTEST:

City Recorder

Attorney Review for City:

The undersigned, as attorney for Sandy City, has reviewed the foregoing Interlocal Cooperation Agreement and finds it to be in proper form and in compliance with applicable state law.

City Attorney