

Resolution No. RD 23-01

A RESOLUTION OF THE REDEVELOPMENT AGENCY OF SANDY CITY APPROVING AN INTERLOCAL COOPERATION AGREEMENT WITH SANDY CITY, REGARDING STATE INFRASTRUCTURE BANK LOAN PROCEEDS FROM THE CITY TO THE AGENCY AND A CORRESPONDING PLEDGE OF CERTAIN TAX INCREMENT REVENUES FROM THE AGENCY TO THE CITY.

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”;

WHEREAS under the Interlocal Cooperation Act, Title 11, Chapter 13, Utah Code Annotated 1953, as amended, 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 has applied for and received approval from the Utah Department of Transportation and its Transportation Commission to receive a state infrastructure bank loan in the amount of \$5,300,000.00 (the “SIB Loan”); and

WHEREAS, the City and the Agency desire to enter into an Interlocal Cooperation Agreement, substantially in the form attached hereto as **Exhibit A** and incorporated by this reference (the “Agreement”), providing, generally for the City to loan the SIB Loan funds to the Agency, and the Agency to pledge certain tax increment revenues to the City for repayment of the SIB Loan and corresponding City loan under the Agreement, all as further provided in the Agreement.

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

1. The Agreement in substantially the form attached hereto and incorporated herein as **Exhibit A** is approved, and the Executive Director of the Agency is authorized and directed to execute the Agreement for and on behalf of the Agency. The Executive Director may approve any minor modifications, amendments, or revisions to the Agreement as may be in the Agency’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 February 21, 2023.

Chair

Attest:

Secretary

Exhibit A
Form of Interlocal Cooperation Agreement

EXHIBIT A

INTERLOCAL COOPERATION AGREEMENT

This INTERLOCAL COOPERATION AGREEMENT (the “Agreement”) is entered into as of February 21, 2023, by and between SANDY CITY, UTAH, a municipal corporation and political subdivision of the State of Utah (the “City”), and the REDEVELOPMENT AGENCY OF SANDY CITY, UTAH (the “Agency”), political subdivision of the State of Utah under the Limited Purpose Local Government Entities—Community Reinvestment Agency Act, Title 17C, Chapter 1, Utah Code Annotated 1953, as amended (the “Reinvestment Act”).

WHEREAS, the Agency has been established by the City for the purpose of developing and redeveloping certain areas within the City to accomplish the purposes of the Reinvestment Act; and

WHEREAS, the City and the Agency have previously authorized the establishment of the Civic Center North Project Area (the “Project Area”) pursuant to a redevelopment plan adopted by the City and the Agency; and

WHEREAS, the City intends to obtain a loan in the amount of \$5,300,000.00 from the Utah State Infrastructure Bank (the “SIB Loan”), as provided under Title 72, Chapter 2, Part 2 of the Utah Code Annotated 1953, as amended (the “SIB Act”), to fund certain transportation project improvements in the Project Area to the extent permitted by the SIB Act and the applicable SIB Loan documents; and

WHEREAS, the City intends to transfer 100% of the proceeds of the SIB Loan (the “Loan Proceeds”) to the Agency, and the Agency then intends to loan 100% of the Loan Proceeds to Riverdale Center Owner, LLC, a Utah limited liability company (the “Developer”), pursuant to a loan agreement and related documents to be entered into by and between the Agency and the Developer (the “Developer Loan Documents”), for use by the Developer in financing certain transportation project improvements within the Project Area as authorized by the SIB Act; and

WHEREAS, the Developer Loan Documents will outline the loan repayment commitments from the Developer (“Developer’s Repayment Obligation”), along with a deed of trust lien interest upon all land owned by the Developer within the Project Area to secure the Developer’s Repayment Obligation (the “Developer Lien”), along with the Agency’s right of setoff—for background purposes, the Agency has entered into a Tax Increment Participation Agreement with the Developer’s affiliate, relating to tax increment generated within the Project Area, and the Agency will have the right to setoff any Developer’s Repayment Obligation with the tax increment otherwise payable to the Developer under that Tax Increment Participation Agreement (the “Setoff Rights”);

WHEREAS, the Agency anticipates that the available tax increment revenue from the Project Area will be sufficient to pay the principal and interest on the SIB Loan, and the Agency desires to pledge to the City all legally available and presently unencumbered tax increment from the Project Area for the purpose of securing repayment of the SIB Loan,

along with all rights and remedies relating to the Developer's Repayment Obligation and/or the Developer Lien and/or arising under the Developer Loan Documents and/or the Setoff Rights; and

WHEREAS, under the Interlocal Cooperation Act, Title 11, Chapter 13 of the Utah Code (the "Cooperation Act"), the parties have the authority to enter into this Agreement; and

NOW, THEREFORE, in consideration of the mutual promises, the covenants contained herein, and other good and valuable consideration, the receipt of which is acknowledged, the parties hereto agree as follows:

Section 1. Pledge by Agency. The Agency covenants and agrees to fully indemnify and hold the City harmless from and against all obligations, claims, or actions arising under or out of the SIB Loan. Without limiting the generality of the foregoing, (i) the Agency agrees to timely provide to the City, or on behalf of the City, all funds necessary for the City to timely make all payments due in connection with the SIB Loan, (ii) the Agency pledges all legally available and presently unencumbered tax increment revenue from the Project Area to the City (the "Pledged Revenues") for purposes of timely repaying the SIB Loan, and (iii) the Agency hereby assigns to the City all rights under the Developer Loan Documents including all enforcement rights and remedies relating to the Developer's Repayment Obligation and the Developer Lien, whether now existing or arising at any time between now and the date the SIB Loan has been repaid in full, including without limitation the Setoff Rights. The Agency agrees and covenants that, until the SIB Loan has been repaid in full by the City, the Agency will not, without the City's consent by amendment to this Agreement, (i) incur any additional obligations relating to or payable from the Pledged Revenues, on a parity with or with priority to the pledge of the Pledged Revenues hereunder, or (ii) extinguish, release, diminish, or waive any of the Agency's rights or remedies relating to the Developer's Repayment Obligation and/or the Developer Lien and/or arising under the Developer Loan Documents and/or the Setoff Rights.

Section 2. Loan Proceeds. The City agrees to transfer the Loan Proceeds to the Agency promptly upon receipt of the same by the City, subject to the terms of this Agreement. The Agency will determine (i) how and when to loan the Loan Proceeds to the Developer, and (ii) the final terms and provisions of the Developer Loan Documents.

Section 3. No Third-Party Beneficiary. Nothing in this Agreement creates or may 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.

Section 4. 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.

Section 5. Interlocal Cooperation Act. In satisfaction of the requirements of the Cooperation Act as relates to this Agreement, the Parties agree as follows:

- a) This Agreement must 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 must 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 must 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 will commence on the Effective Date and will remain in full force and effect until the SIB Loan has been repaid in full. Notwithstanding the previous sentence, as required by Section 11-13-216 of the Cooperation Act, this Agreement will terminate no later than 50 years after its Effective Date. Notwithstanding any of the foregoing, this Agreement will terminate immediately and automatically if the City has not entered into a loan agreement with the Utah Department of Transportation, relating to the SIB Loan, by December 31, 2023, which fact may be conclusively established by a written and signed statement of the Redevelopment Director of the Agency.
- f) Immediately after execution of this Agreement by both Parties, the Agency may publish a joint notice, regarding this Agreement pursuant to Section 11-13-219 of the Cooperation Act.
- g) It is not anticipated that either party will acquire any new property in connection with this Agreement; however, the purchaser of any property acquired in connection with this Agreement will be entitled to keep such property upon the termination of this Agreement.

Section 6. Modification and Amendment. Any modification of or amendment to any provision contained herein will be effective only if the modification or amendment is in writing and signed by the Parties. Any oral representation or modification concerning this Agreement will be of no force or effect.

Section 7. Further Assurance. Each of the Parties 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.

Section 8. Governing Law. This Agreement will be governed by, and construed and interpreted in accordance with, the laws of the State of Utah.

Section 9. Severability. If any provision of this Agreement is ever 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 will be strictly construed;
- b) such provision will be fully severable;
- c) this Agreement will be construed and enforced as if such provision had never comprised a part hereof;
- d) the remaining provisions of this Agreement will remain in full force and effect and will 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 must 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.

Section 10. Authorization. Each of the Parties 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.

IN WITNESS WHEREOF, the parties hereto have entered into this Interlocal Cooperation Agreement as of the day and year first written above.

SANDY CITY, UTAH

(SEAL)

By: _____

Mayor

ATTEST:

By: _____

City Recorder

APPROVED AS TO FORM AND COMPLIANCE
WITH APPLICABLE LAW:

By: _____

City Attorney

REDEVELOPMENT AGENCY OF
SANDY CITY, UTAH

(SEAL)

By: _____

Executive Director

ATTEST:

By: _____

Secretary

APPROVED AS TO FORM AND COMPLIANCE
WITH APPLICABLE LAW:

Redevelopment Agency Attorney