

RESOLUTION NO. 5085

May 24, 2016

A RESOLUTION OF THE SALT LAKE COUNTY COUNCIL APPROVING EXECUTION OF AN INTERLOCAL COOPERATION AGREEMENT WITH SANDY CITY PROVIDING FOR THE TRANSFER OF \$2,500,000 OF EXCISE TAX ROAD REVENUE BOND PROCEEDS TO THE CITY TO BE USED BY THE CITY FOR CERTAIN TRANSPORTATION PURPOSES.

WITNESSETH

WHEREAS, Salt Lake County (the "County") and Sandy City (the "City") are "public agencies" as defined by the Utah Interlocal Cooperation Act, Utah Code Ann. §§ 11-13-101 *et seq.* (the "Interlocal Act"), and, as such, are authorized by the Interlocal Act to enter into an agreement with one another for joint or cooperative action;

WHEREAS, pursuant to Section 41-1a-1222, UTAH CODE ANN., the County has imposed a local option highway construction and transportation corridor preservation fee on each motor vehicle registration within the County; and

WHEREAS, fifty-percent of the revenue generated by said fee is deposited into the County of the First Class State Highway Projects Fund pursuant to Section 72-2-121, UTAH CODE ANN.; and

WHEREAS, during the 2013 General Session, the State legislature amended Section 72-2-121, UTAH CODE ANN., to provide a portion of the revenue in the County of the First Class State Highway Projects Fund be transferred to the legislative body of Salt Lake County to be used for certain purposes; and

WHEREAS, the County has issued Excise Tax Road Revenue Bonds ("Bonds") pursuant to Salt Lake County Resolution No. 4752 and a General Indenture of Trust, as amended and supplemented from time to time, which Bonds are payable from the excise tax revenue transferred to the County from the County of the First Class State Highway Projects Fund pursuant to Subsection 72-2-121(4)(g), UTAH CODE ANN.; and


WHEREAS, the County desires to use proceeds from the Bonds (the "Bond Proceeds") to further regional development in Salt Lake County by financing all or a portion of the costs of certain highway construction, reconstruction, and maintenance projects, or the enforcement of state motor vehicle and traffic laws throughout the County; and

WHEREAS, the County and the City now desire to enter into the interlocal cooperation agreement attached hereto as ATTACHMENT A (the "Interlocal Agreement") wherein the County agrees to transfer \$2,500,000 of Bond Proceeds to the City to be used by the City as described in the Interlocal Agreement;

APPROVED AND ADOPTED in Salt Lake City, Salt Lake County, Utah, this 24TH
day of May, 2016.


Max Burdick, Chairperson


ATTEST:


Sherrie Swensen
Salt Lake County Clerk

Voting:

Council Member Bradley	"A/B"
Council Member Bradshaw	Absent
Council Member Burdick	"A/B"
Council Member DeBry	"A/B"
Council Member Granato	"A/B"
Council Member Jensen	"A/B"
Council Member Newton	"A/B"
Council Member Snelgrove	"A/B"
Council Member Wilson	Absent

APPROVED AS TO FORM:


Digitally signed by
Stephen Barnes
Date: 2016.05.24
11:08:21 -06'00'

Deputy District Attorney

INTERLOCAL COOPERATION AGREEMENT

between

SALT LAKE COUNTY

and

SANDY CITY

This Interlocal Cooperation Agreement (this "Agreement") is dated this 2nd day of June, 2016, and 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"). The County and the City may each be referred to herein as a "Party" and collectively as the "Parties."

WITNESSETH:

WHEREAS, the County and the City are "public agencies" as defined by the Utah Interlocal Cooperation Act, Utah Code Ann. §§ 11-13-101 *et seq.* (the "Interlocal Act"), and, as such, are authorized by the Interlocal Act to enter into an agreement with one another for joint or cooperative action; and

WHEREAS, pursuant to Section 41-1a-1222, UTAH CODE ANN., the County has imposed a local option highway construction and transportation corridor preservation fee on each motor vehicle registration within the County; and

WHEREAS, fifty-percent of the revenue generated by said fee is deposited into the County of the First Class State Highway Projects Fund pursuant to Section 41-1a-1222, UTAH CODE ANN., for use in accordance with Section 72-2-121, UTAH CODE ANN.; and

WHEREAS, during the 2013 General Session, the State legislature amended Section 72-2-121, UTAH CODE ANN., to provide a portion of the revenue in the County of the First Class State Highway Projects Fund be transferred to the legislative body of Salt Lake County to be used for certain purposes; and

WHEREAS, the County has issued Excise Tax Road Revenue Bonds ("Bonds") pursuant to Salt Lake County Resolution No. 4752 and a General Indenture of Trust, as amended and supplemented from time to time, which Bonds are payable from the excise tax revenue transferred to the County from the County of the First Class State Highway Projects Fund pursuant to Subsection 72-2-121(4)(g), UTAH CODE ANN.; and

WHEREAS, the County desires to use proceeds from the Bonds (the "Bond Proceeds") to further regional development in Salt Lake County by financing all or a portion of the costs of certain highway construction, reconstruction, and maintenance projects, or the enforcement of state motor vehicle and traffic laws throughout the County; and

WHEREAS, the County and the City now desire to enter into this Agreement to transfer \$2,500,000 of Bond Proceeds to the City to be used by the City for certain transportation purposes;

A G R E E M E N T :

NOW, THEREFORE, in reliance on the stated recitals, which are incorporated herein by reference, and for and in consideration of the mutual covenants and agreements hereafter set forth, the mutual benefits to the Parties to be derived herefrom, and for other valuable consideration, the receipt and sufficiency of which the Parties acknowledge, it is hereby agreed as follows:

1. Bond Proceeds – Use.

(a) The County shall transfer Two Million Five Hundred Thousand Dollars (\$2,500,000) of its Bond Proceeds to the City.

(b) The City shall use Five Hundred Thousand Dollars (\$500,000) of the Bond Proceeds for the highway reconstruction and/or maintenance project described in Section 2 below, consistent with Subsection 72-2-121(4)(g) of the Utah Code, and in accordance with all other applicable federal, state and local laws, rules and regulations.

(c) The City shall use the remaining Two Million Dollars (\$2,000,000) of the Bond Proceeds for highway construction, reconstruction, or maintenance projects, or for the enforcement of state motor vehicle and traffic laws, consistent with Subsection 72-2-121(4)(g) of the Utah Code, and in accordance with all other applicable federal, state and local laws, rules and regulations.

(d) No portion of the Bond Proceeds shall be used for any “private business use” within the meaning of Section 141 of the Internal Revenue Code and no portion of the Bond Proceeds shall be used to make any loans. No portion of the Improvements shall be managed by a private person or company pursuant to a management contract with the City. None of the Bond Proceeds shall be used to acquire nongovernmental output property, as defined in Section 141(d) of the Internal Revenue Code.

(e) The City warrants that it will use the Bond Proceeds transferred to the City by the County pursuant to subparagraph 1(a), above, only to pay for highway construction, reconstruction, or maintenance projects, consistent with Subsection 72-2-121(4)(g) of the Utah Code, and in accordance with all other applicable federal, state and local laws, rules and regulations. The City represents that the County has not opined and will not be deemed to have opined on whether any particular use of the Bond Proceeds is allowable under Subsection 72-2-121(4)(g) of the Utah Code, and the City agrees to be liable for and to indemnify the County from any improper use of the Bond Proceeds, as indicated in Subsection 5(b) below. The City shall expend the Bond Proceeds by January 6, 2017.

2. The 3100 East Project. As indicated in Subsection 1(b) above, the City shall use \$500,000 of the Bond Proceeds for highway reconstruction and maintenance of the unincorporated portions of 3100 East in Salt Lake County between Little Cottonwood Road (SR209) and Dimple

Dell Road (approximately 10400 South) (the “3100 East Project”), consistent with Subsection 72-2-121(4)(g) of the Utah Code, and in accordance with all other applicable federal, state and local laws, rules and regulations.

3. Cost Breakdown. Prior to receiving the Bond Proceeds, the City shall prepare and submit to the County a cost breakdown outlining the City’s expenditure of the Bond Proceeds for the 3100 East Project or for any other projects for which Bond Proceeds will be used. Thereafter, if the cost breakdown is acceptable to the Mayor of the County or his/her designee, the County shall transfer the Bond Proceeds (totaling \$2,500,000) to the City for expenditure on the 3100 East Project and any other projects identified in the City’s cost breakdown to the extent that such expenditure is consistent with the requirements of Section 1 above. Upon completion of the 3100 East Project and any other projects for which Bond Proceeds are used, the City shall prepare and provide a final report to the County. The final report shall identify and account for the City’s expenditure of the Bond Proceeds provided to the City under this Agreement.

4. Unexpended Bond Proceeds. If any of the Bond Proceeds that are transferred to the City under this Agreement remain unexpended upon completion of the 3100 East Project and any other projects for which Bond Proceeds are used, then the City shall return any and all such unexpended Bond Proceeds to the County.

5. Liability and Indemnification.

(a) 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.

(b) The City agrees to indemnify, hold harmless, and defend the County, its officers, agents, and employees 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 City agrees that its duty to defend and indemnify the County under this Agreement includes all attorney’s fees, litigation and court costs, expert witness fees, and any sums expended by or assessed against the County for the defense of any claim or to satisfy any settlement, arbitration award, debt, penalty, or verdict paid or incurred on behalf of the County.

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

(a) This Agreement shall be approved by each Party pursuant to Section 11-13-202.5 of the Interlocal Act;

(b) This Agreement shall be reviewed as to proper form and compliance with applicable law by a duly authorized attorney on behalf of each Party, pursuant to Section 11-13-202.5 of the Interlocal Act;

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

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

(e) No separate legal entity is created by the terms of this Agreement. To the extent that this Agreement requires administration other than as set forth herein, it shall be administered by the mayors of the City and the County. No real or personal property shall be acquired jointly by the Parties as a result of this Agreement. To the extent that a Party acquires, holds or disposes of any real or personal property for use in the joint or cooperative undertaking contemplated by this Agreement, such Party shall do so in the same manner that it deals with other property of such Party.

7. 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.

8. Notices. Any notice required or permitted to be given hereunder shall be deemed sufficient if given by a communication in writing, and shall be deemed to have been received (a) upon personal delivery or actual receipt thereof, or (b) within three days after such notice is deposited in the United States mail, postage pre-paid, and certified and addressed as follows:

If to Salt Lake County: County Mayor
2001 South State, N2-100
Salt Lake City, Utah 84190

With a copy to: Salt Lake County District Attorney
2001 South State, S3-600
Salt Lake City, Utah 84190

If to the City: Sandy City Recorder
100000 South Centennial Parkway
Sandy, UT 84070

9. County Ethical Standards. The City represents that it has not: (a) provided an illegal gift or payoff 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 set forth in State statutes or Salt Lake County's Ethics Code, Chapter 2.07, Salt Lake County Code of Ordinances, 2001; or (d) knowingly influenced, and hereby promises that it will not knowingly influence, any County officer or employee or former County officer or employee to breach any of the ethical standards set forth in State statutes or Salt Lake County ordinances.

10. Governing Law. This Agreement shall be governed by the laws of the State of Utah both as to interpretation and performance.

11. Resolution of Claims and Disputes. In any action brought to enforce the terms of this Agreement, the Parties agree that the appropriate venue shall be the Third Judicial District Court in and for Salt Lake County, Utah.

12. Entire Agreement. This Agreement contains 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, and signed by the Parties.

13. Amendments. This Agreement may be amended, changed, modified or altered only by an instrument in writing which shall be: (a) approved 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 any amendment, change, modification or alteration of this Agreement by the appropriate person or persons for the County and the City, respectively; (b) executed by a duly authorized official of each of the Parties; (c) submitted 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 Act, and the execution by each respective attorney; and (d) filed with the keeper of the records of each Party.

14. Term of Agreement. This Agreement shall take effect immediately upon the completion of the following: (a) 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; (b) the execution of this Agreement by a duly authorized official of each of the Parties; (c) 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 Act, and the approval of each respective attorney; and (d) the filing of a copy of this Agreement with the keeper of records of each Party. This Agreement shall terminate on the earlier of (i) the completion of the Project and the City's completion of the associated reporting requirements described in Section 4, above, or (ii) January 6, 2017. If on January 6, 2017, the City has not completed the 3100 East Project or any other projects contemplated by the Parties under Section 3 of this Agreement, then all unexpended Bond Proceeds transferred to the City under this Agreement shall be returned to the County. However, the City's indemnification obligations in Section 5, above, will survive the expiration or termination of this Agreement.

15. Termination. Except as set forth in Section 14, above, this Agreement may only be terminated by written consent of the County and the City. Upon termination of this Agreement, if any of the Bond Proceeds transferred to the City remains unexpended, then the City shall return all such unexpended Bond Proceeds to the County. The disposition of any other real or personal property shall be handled as set forth above in Section 6(e).

16. 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 shall remain operative and binding on the Parties.

Each Party hereby signs this 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: May 31, 2016

Approved as to Form and Legality:

 Digitally signed by
Stephen Barnes
Date: 2016.05.24
11:08:53 -06'00'

By _____
Deputy District Attorney

INTERLOCAL AGREEMENT – SIGNATURE PAGE FOR CITY

SANDY CITY

By _____

Name: _____

Title: _____

Dated: _____, 20____

Attest:

_____, City Recorder
Date signed: _____

Approved as to Form and Legality:

CITY ATTORNEY

By _____

Name: _____

Dated: _____, 20____