

RESOLUTION #18-14 C

A RESOLUTION AUTHORIZING THE EXECUTION OF AN INTERLOCAL COOPERATION AGREEMENT BETWEEN SANDY SUBURBAN IMPROVEMENT DISTRICT AND SANDY CITY RELATING TO IMPROVEMENTS TO 8800 SOUTH PIPELINE FROM STATE STREET TO CENTER STREET (150 EAST)

BE IT KNOWN AND REMEMBERED that the City Council of Sandy City, State of Utah, finds and determines as follows:

WHEREAS, Title 11, Chapter 13, Utah Code Annotated 1953, as amended, permits public agencies to enter into cooperative agreements to provide joint undertakings and services; and

WHEREAS, City desires to construct road improvements in 8800 South Street from State Street to Center Street (150 East) (the “8800 South Reconstruction Project”); and

WHEREAS, the District desires the City to replace a portion of its sanitary sewer system in 8800 South Street as part of the 8800 South Reconstruction Project; and

WHEREAS, the City and the District intends to set the obligations and responsibilities of both parties in completion of these improvements; and

WHEREAS, it has been determined that the best interests of the City and the general public will be served by the execution of the attached Interlocal Cooperation Agreement and by participating as required therein; and

WHEREAS, the attached agreement has been prepared to accomplish such purpose.

NOW, THEREFORE, BE IT RESOLVED by the City Council of Sandy City, Utah:

1. It does hereby approve the attached agreement described as an interlocal agreement between Sandy Suburban Improvement District and Sandy City relating to improvements to 8800 South pipeline from State Street to Center Street (150 East).

2. The Hon. Kurt Bradburn, Mayor of Sandy City, is hereby authorized to execute the agreement on behalf of Sandy City Corporation and to act in accordance with its terms.

DATED this ____ day of _____, 2018.

Linda Martinez Saville, Chairman
Sandy City Council

ATTEST:

City Recorder

RECORDED this ____ day of _____, 2018.

INTERLOCAL COOPERATION AGREEMENT
between
SANDY CITY
and
SANDY SUBURBAN IMPROVEMENT DISTRICT
FOR IMPROVEMENTS TO 8800 SOUTH PIPELINE FROM
STATE STREET TO CENTER STREET (150 EAST)

THIS INTERLOCAL COOPERATION AGREEMENT ("Agreement") is made and entered into this ____ day of _____, 2018 (the "Effective Date") between SANDY CITY, a municipal corporation of the State of Utah ("City"), and SANDY SUBURBAN IMPROVEMENT DISTRICT, a local district organized in Salt Lake County (the "District"). The City and District are collectively referred to herein as the "Parties."

WITNESSETH:

WHEREAS, UTAH CODE ANN. § 11-13-101, *et seq.* (the "Interlocal Cooperation Act"), authorizes public agencies to enter into joint agreements with each other on a basis of mutual advantage to provide services and facilities in a manner consistent with best geographic, economic, population, and other factors influencing the needs and development of local communities; and

WHEREAS, the City intends to construct road improvements in 8800 South Street from State Street to Center Street (150 East) (the "8800 South Reconstruction Project"); and

WHEREAS, the District desires the City to replace a portion of its sanitary sewer system in 8800 South Street as part of the 8800 South Reconstruction Project; and

WHEREAS, the City and the District desire to enter into this interlocal cooperation agreement to set forth the obligations and responsibilities of both Parties in completion of these improvements.

AGREEMENT:

NOW, THEREFORE, for and in consideration of the mutual promises, covenants, and provisions contained herein, the Parties mutually hereby agree as follows:

1. 8800 South Reconstruction Project. The City shall include as part of the 8800 South Reconstruction Project a schedule for repairing and replacing the existing sanitary sewer pipeline (the "Sanitary Sewer Replacement Schedule"), as shown in Exhibit A of this Agreement, attached hereto and incorporated herein by this reference. The City hereby agrees that the 8800 South Reconstruction Project, inclusive of the Sanitary Sewer Replacement Schedule, will be competitively bid in accordance with all laws, ordinances, rules and procedures applicable to Sandy City construction projects.

2. **Sanitary Sewer Pipeline Access.** The District hereby grants to the City all required permission and access for work to be performed in accordance with the Sanitary Sewer Replacement Schedule.

3. **Public Bid Opening; District Deposit.** City shall inform the District of the date and time of the public bid opening for the 8800 South Reconstruction Project, and a representative of District shall attend. Within thirty (30) days after the bid opening, District shall deposit with City an amount equal to one hundred percent (100%) of the bid amount for the Sanitary Sewer Replacement Schedule, plus a twenty percent (20%) contingency (the “Deposit”).

4. **Award of Bid.** Based on the bids received and applicable laws, ordinances, rules and procedures applicable to Sandy City construction projects, and in City’s sole discretion, City shall select the lowest responsive and responsible bidder. City shall thereafter inform District of the City’s selection and the selected contractor’s bid amount for the Sanitary Sewer Replacement Schedule. If District determines to proceed with the Sanitary Sewer Replacement Schedule work (the “Sanitary Sewer Improvements”), and the bid amount is more or less than the Deposit, the Deposit shall be adjusted accordingly within fifteen (15) days. If the District determines not to proceed with the Sanitary Sewer Improvements, the District may terminate this Agreement upon written notice to the City given within fifteen (15) days, and the City shall refund the Deposit.

5. **Use of Deposit.** The City shall require its contractor to account separately for the Sanitary Sewer Improvements in the contractor’s pay requests and shall pay that amount from the Deposit, less any standard retention held in accordance with City’s ordinances, rules, regulations and policies generally applicable to City construction projects and to the 8800 South Reconstruction Project. In the event the actual costs of the Sanitary Sewer Improvements are higher than the Deposit, the District shall pay the additional amount required within thirty (30) days of receiving an invoice from the City. In the event the actual costs of the Sanitary Sewer Improvements are lower than the Deposit, the City will refund the balance of the amount deposited within thirty (30) days of determining the final cost of the Sanitary Sewer Improvements.

6. **Construction Management, Contract Administration, and Inspection.**

(a) The City shall perform all construction management and contract administration relating to the 8800 South Reconstruction Project and the Sanitary Sewer Improvements at no additional cost to the District. The City shall manage and administer the construction contract in accordance with the City’s ordinances, rules, regulations and policies generally applicable to City construction projects and the 8800 South Reconstruction Project.

(b) The City shall not perform inspections of the Sanitary Sewer Improvements. The District shall provide inspectors and perform inspections based on the District’s standards and specifications. The District shall have access at all times to visit and inspect the site during performance of any and all work related to the Sanitary Sewer Improvements. The District shall also have access to the City’s contractor to schedule inspections and to give instruction or direction to the contractor in the field; provided that the

District shall inform the City's representative of all communications that may affect the cost or schedule of the 8800 South Reconstruction Project and/or the Sanitary Sewer Improvements.

(c) The City shall designate on the plans for the 8800 South Reconstruction Project that the existing sanitary sewer line will be removed and replaced with a new sanitary sewer line meeting the District's standards. The Sanitary Sewer Improvements shall be designed and constructed in accordance with all of the District's rules and regulations. The District shall be responsible for inspection of the improvements.

7. Modifications and Change Orders.

(a) The District agrees that if it modifies or cancels this Agreement at any time after it has been signed, the District shall pay any cancellation penalties or costs incurred by the City as a result of the Sanitary Sewer Improvements scope being modified or cancelled.

(b) The District shall be responsible for all actual costs associated with the Sanitary Sewer Improvements. Any costs incurred by the City as a result of any Sanitary Sewer Improvements scope or schedule changes will be the responsibility of the District. The City may approve change orders for the 8800 South Reconstruction Project in its sole discretion; however, the City shall consult with the District prior to approving any change order affecting the schedule or cost of the Sanitary Sewer Improvements. The District shall promptly respond to any changed site conditions affecting the Sanitary Sewer Improvements with reasonable modifications as needed to keep the 8800 South Reconstruction Project and Sanitary Sewer Improvements on schedule.

(c) The District shall notify the City of any desired revisions to the Sanitary Sewer Replacement Schedule or Sanitary Sewer Improvements scope, and the City shall determine, in its sole discretion, whether such changes or additions may be incorporated. If the District requests changes in the scope of the Sanitary Sewer Improvements work associated with extra work, or changes in the planned Sanitary Sewer Improvements scope, and City determines to incorporate such changes or additions, a modification to this Agreement approved in writing by the Parties hereto and an adjustment to the Deposit is required prior to the start of work on any requested changes or additions. If the changes in the scope are associated with changed site conditions or other emergency, work may commence immediately, and the costs may be paid from the Deposit as contingency costs; upon reasonable request from the City, the District shall replenish the contingency portion of the Deposit to twenty percent (20%) of the remaining Sanitary Sewer Improvements work within fifteen (15) days of such request.

8. Ownership, Operation, and Maintenance of Sanitary Sewer Improvements.

After acceptance of the Sanitary Sewer Improvements, the District shall be responsible for all operation and maintenance costs related to the Sanitary Sewer Improvements. The City shall continue to own and operate the right-of-way for 8800 South Street, and the District shall comply with the City's requirements for permitting prior to performing any future maintenance, repair or replacement of the Sanitary Sewer Improvements.

9. Termination. This Agreement shall terminate (i)two (2) years after the Effective Date or (ii) when all work related to the Sanitary Sewer Improvements is fully completed and accepted by the District, whichever comes first. Either Party may terminate this Agreement at any time prior to award of the construction contract as set forth above, upon written notice to the other Party.

10. Miscellaneous Provisions. The following provisions are also an integral part of this Agreement:

(a) *Binding Agreement.* This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the respective Parties hereto.

(b) *Captions.* The headings used in this Agreement are inserted for reference purposes only and shall not be deemed to define, limit, extend, describe, or affect in any way the meaning, scope or interpretation of any of the terms or provisions of this Agreement or the intent thereof.

(c) *Counterparts.* This Agreement may be signed in any number of counterparts with the same effect as if the signatures upon any counterpart were upon the same instrument. All signed counterparts shall be deemed to be one original.

(d) *Liability and Indemnification.* The Parties are both governmental entities under the "Utah Governmental Immunity Act" (Utah Code Ann. § 63-30-1, et seq.) (the "Act"). Consistent with the terms of the Act, and as provided herein, it is mutually agreed that each Party is responsible and liable for its own wrongful or negligent acts which are committed by it or by its agents, officials, or employees. Neither Party waives any defenses otherwise available under the Act nor does any Party waive any limits of liability currently provided by the Act.

(e) *Severability.* The provisions of this Agreement are severable, and should any provision hereof be deemed void, voidable, unenforceable or invalid, such void, voidable, unenforceable or invalid provision shall not affect the other provisions of this Agreement, and those other provision shall remain in full force and effect.

(f) *Waiver of Breach.* Any waiver by either Party of any breach of any kind or character whatsoever by the other Party, whether such breach be direct or implied, shall not be construed as a continuing waiver of, or consent to any subsequent breach of this Agreement.

(g) *Amendment.* This Agreement may not be modified except by an instrument in writing signed by the Parties hereto.

(h) *Interpretation.* This Agreement shall be interpreted, construed and enforced according to the substantive laws of the State of Utah. This Agreement is the result of arms-length negotiations between the Parties, and both the City and the District have had substantive input regarding the various provisions of this Agreement. Accordingly, each of the Parties affirms its desire that this Agreement be interpreted in an absolutely neutral fashion with no

regard to any rule of interpretation (or the like) requiring that the provisions of this Agreement be construed to favor of the non-drafting Party.

(i) *Notice.* Any notice required or permitted to be given hereunder shall be deemed sufficient if given by any communication in writing and shall be deemed to have been received (a) upon personal delivery or actual receipt thereof, or (b) within three (3) days after such notice is deposited in the United States Mail, postage prepaid, and certified and addressed to the Parties as set forth below:

District: Sandy Suburban Improvement District
8855 South 700 West
Sandy, Utah 84070

City: Sandy City Public Works Director
10000 S. Centennial Parkway
Sandy, UT 84070

Copy to: Sandy City Attorney's Office
10000 Centennial Parkway, Suite 301
Sandy, UT 84070

(j) *Assignment.* Neither Party may assign its rights or delegate its duties under this Agreement to any other person(s) or entity(ies) without prior written consent of the other Party.

(k) *Survival.* All of the Parties' respective representations, covenants, warranties, and obligations including, without limitation, any obligation to indemnify, set forth herein shall survive the Termination of this Agreement.

(l) *Exhibits and Recitals.* The recitals set forth above and all exhibits to this Agreement are incorporated herein to the same extent as if such items were set forth herein in their entirety within the body of this Agreement.

(m) *Interlocal Cooperation Act.* In satisfaction of the requirements of the Interlocal Cooperation Act, and in connection with this Agreement, the Parties hereby agree as follows:

(i) This Agreement shall be approved by each Party pursuant to 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 on behalf of each Party, pursuant to Section 11-13-202.5 of the Interlocal Cooperation Act;

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

(iv) 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

(v) 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 a joint board of the representatives for both the District and the City, or their designees. 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.

(n) *Protection of the Scrivener.* No provision of this Agreement, nor any ambiguities that may be contained within this Agreement, shall be construed against any Party on the grounds that such Party or Party's counsel drafted the provision at issue or that the provision at issue contains a covert, representation or warranty of such Party.

IN WITNESS WHEREOF, the Parties hereto enter into this Agreement as of the date first written above.

SANDY CITY

By: _____
Mayor Kurt Bradburn

Date: _____

Attest:

By: _____
Molly Spira, Sandy City Recorder

Approved as to Legal Form:

By: _____
Sandy City Attorney

SANDY SUBURBAN IMPROVEMENT DISTRICT

By: _____

Its: _____

Date: _____

Approved as to Legal Form:

By: _____
Sandy Suburban Improvement District Attorney