

RESOLUTION NO. 21-41C

A RESOLUTION OF THE CITY COUNCIL OF SANDY CITY, SALT LAKE COUNTY, UTAH (THE “CITY”), AUTHORIZING THE EXECUTION OF A LOAN AGREEMENT BY AND BETWEEN THE STATE OF UTAH (acting through the Utah Department of Transportation – State Infrastructure Bank) AND THE CITY; SAID LOAN TO BE AUTHORIZED IN AN AGGREGATE AMOUNT NOT TO EXCEED FIFTEEN MILLION DOLLARS (\$15,000,000), WITH THE MAXIMUM TERM OF THE LOAN NOT TO EXCEED 15 YEARS, THE MAXIMUM INTEREST RATE NOT TO EXCEED 4% WHICH MAY BE PAID ON THE LOAN; DELEGATING TO CERTAIN OFFICERS OF THE CITY THE AUTHORITY TO APPROVE THE FINAL TERMS AND PROVISIONS OF THE LOAN WITHIN THE PARAMETERS SET FORTH HEREIN; PROVIDING FOR THE PUBLICATION OF A NOTICE OF ENTERING INTO AN AGREEMENT FOR THE LOAN AND INTERLOCAL AGREEMENT WITH THE REDEVELOPMENT AGENCY OF SANDY (“AGENCY”); PROVIDING FOR THE RUNNING OF A CONTEST PERIOD; AUTHORIZING THE USE AND DISTRIBUTION OF THE LOAN; AUTHORIZING AND APPROVING THE EXECUTION OF THE LOAN DOCUMENTS, A TAX INCREMENT INTERLOCAL PLEDGE AND LOAN AGREEMENT, AND OTHER DOCUMENTS REQUIRED IN CONNECTION THEREWITH; AND RELATED MATTERS.

WHEREAS, the State of Utah, acting through the Utah Department of Transportation (“UDOT”) and its Transportation Commission (the “Commission”) and pursuant to 72-2-204, Utah Code Annotated 1953, as amended, approved a loan in the aggregate amount of \$15,000,000 (the “State Infrastructure Loan”) to the City on Oct 22, 2021;

WHEREAS, the City has established the Cairns District as a significant regional mixed-use development area with economic importance and vitality to the residents of the City and have approved the Cairns Master Plan, as the guiding planning document for this specific area;

WHEREAS, within the Cairns District is The Summit @ Cairns Project, which is one of the iconic developments anticipated to occur within this area and is anticipated to be a significant contributor to the long-term financial viability and sustainability of this area;

WHEREAS, in order for The Summit @ Cairns Project to be able to sustain and support the proposed development, a parking structure will be required and constructed (the “Parking Structure”);

WHEREAS, the City, working closely with the Redevelopment Agency of Sandy City (the “Agency”), desires to ensure the long-term financial viability of The Summit @ Cairns Project and to work with the developer to gather resources in order to construct the Parking Structure;

WHEREAS, as described herein, the City has applied for and received approval from the Commission to receive the State Infrastructure Loan and desires to provide its intent of securing the State Infrastructure Loan from certain County of the First Class Highway Projects Fund revenues, as described in 72-2-121, Utah Code Annotated 1953, as amended;

WHEREAS, the City and the Agency desire to enter into an Interlocal Cooperation Agreement in order to further secure the State Infrastructure Loan between the City and UDOT, a copy of the City/Agency Interlocal Agreement is attached in **Exhibit A** and incorporated by this reference;

WHEREAS, a form of the State Infrastructure Loan Agreement, attached hereto and incorporated by this reference, is included in **Exhibit B** and is anticipated to be entered into by the City and UDOT in accordance with the terms and conditions of this Resolution;

WHEREAS, in the event that the Designated Officers (as defined herein) determine that it is in the best interests of the City to execute the terms of the State Infrastructure Loan Agreement with UDOT, the City desires to authorize the use and distribution of the funds to the Agency as prescribed in the City/Agency Interlocal Agreement;

WHEREAS, pursuant to the requirements outlined in 72-2-204(6), Utah Code Annotated 1953, as amended, and the publication requirements outlined in 11-14-316, Utah Code Annotated 1953, as amended, the City desires to publish a Notice of Intent to Enter Into the State Infrastructure Loan Agreement, attached hereto and incorporated by this reference in **Exhibit B** acceptance of the SIB loan and Interlocal Agreement; and

WHEREAS, in order to allow the City (with the consultation and approval of the City's financial advisor, Lewis Young Robertson & Burningham, Inc. (the "Financial Advisor") flexibility in setting terms of the State Infrastructure Loan to minimize debt service costs and maximize debt security, the City Council desires to grant to any two of the following: the Chair, Mayor, the City's Finance Director or the City's Assistant Finance Director (the "Designated Officers"), who may act on behalf of the City Council, the authority to agree to terms and execute the State Infrastructure Loan Agreement provided such terms do not exceed the parameters set forth for such terms in this authorizing Resolution (the "Parameters").

NOW, THEREFORE, it is hereby resolved by the City Council of Sandy City, Utah, as follows:

Section 1. All terms defined in the foregoing recitals hereto shall have the same meanings when used herein.

Section 2. For the purpose of the State Infrastructure Loan, the City hereby authorizes the Designated Officers to execute on behalf of the City the State Infrastructure Loan Agreement provided that: (i) the principal amount of the State Infrastructure Loan shall not exceed the maximum principal amount of Fifteen Million Dollars (\$15,000,000), (ii) the maximum term of the loan obligation shall not exceed more than fifteen (15) years from the date of the loan issuance, (iii) the maximum interest rate for which the State Infrastructure Loan will accrue shall not exceed 4.00% per annum, and (iv) the loan shall not exceed a discount from par greater than 3.00%.

Section 3. The final interest rate or rates, final maturity and final principal amount of the State Infrastructure Loan shall be set by the Designated Officers, in consultation with the Financial Advisor, provided however that the final terms are within the Parameters established in Section 2

above. This Resolution authorizes the Designated Officers to approve, finalize and execute the State Infrastructure Loan Agreement, in substantially the form included hereto in **Exhibit B**.

Section 4. The State Infrastructure Loan Agreement and the City/Agency Interlocal Agreement in substantially the forms presented and attached hereto as **Exhibits A and B** respectively, are hereby authorized, approved, and confirmed. The Mayor is hereby authorized to execute and deliver the State Infrastructure Loan Agreement and the City/Agency Interlocal Agreement in substantially the forms and with substantially the content as the forms presented for and on behalf of the City, with final terms as may be established by the Designated Officers, in consultation with the Financial Advisor, within the Parameters set forth herein, and with such alterations, changes or additions as may be necessary or as may be authorized.

Section 5. The Designated Officers and other appropriate officials of the City are authorized to make any alterations, changes or additions to State Infrastructure Loan Agreement and City/Agency Interlocal Agreement, or any other document herein authorized and approved which may be necessary to conform the same to the final terms of the State Infrastructure Loan Agreement (within the Parameters set by this Resolution), to conform to any applicable statute, financial requirements, insurance or reserve instrument or to remove the same, to correct errors or omissions therein, to complete the same, to remove ambiguities therefrom, or to conform the same to other provisions of said instruments, to the provisions of this Resolution or any resolution adopted by the City Council or the provisions of the laws of the State of Utah or the United States.

Section 6. The Designated Officers and other appropriate officials of the City, and each of them, are hereby authorized and directed to execute and deliver for and on behalf of the City any or all additional certificates, documents and other papers (including, without limitation, any escrow deposit agreements, insurance or reserve instrument guaranty agreements permitted by the State Infrastructure Loan Agreement) and to perform all other acts they may deem necessary or appropriate in order to implement and carry out the matters authorized in this Resolution and the documents authorized and approved herein.

Section 7. In accordance with the provisions of 11-14-316, Utah Code Annotated 1953, as amended, the City Recorder shall cause the following “Notice of Intent to Enter into the State Infrastructure Loan Agreement” to be (i) published one (1) time in The Salt Lake Tribune, a newspaper of general circulation in the City, (ii) posted on the Utah Public Notice Website created under Section 63A-16- 601, Utah Code Annotated 1953, as amended, and (iii) posted on the Utah Legal Notices website (www.utahlegals.com) created under Section 45-1-101, Utah Code Annotated 1953, as amended, and shall cause a copy of this Resolution (together with all exhibits hereto) to be kept on file in the Secretary’s office in Sandy, Utah, for public examination during the regular business hours of the Board until at least thirty (30) days from and after the date of publication thereof. The “Notice of Intent to Enter into the State Infrastructure Loan Agreement” shall be in substantially the following form:

**NOTICE OF INTENT TO ENTER INTO
THE STATE INFRASTRUCTURE LOAN AGREEMENT**

NOTICE IS HEREBY GIVEN pursuant to the provisions of the Local Government Bond Act, Title 11, Chapter 14, Part 3, Utah Code Annotated 1953, as amended, and Title 72, Chapter 2, Part 2, Utah Code Annotated 1953, as amended, that on November 16, 2021, the City Council (the “Council”) of Sandy City, Utah (the “City”), adopted a resolution (the “Resolution”) authorizing the City to enter into the State Infrastructure Loan Agreement (to be finalized with title designation as may be determined by the City) (the “State Infrastructure Bank Loan”).

PURPOSE FOR ISSUING THE STATE INFRASTRUCTURE BANK LOAN

The State Infrastructure Bank Loan will be issued for the purpose of (a) funding a parking structure related to the development of The Summit @ Cairns Project, located at 10300 Centennial Parkway, Sandy, Utah (the “Parking Structure”), (b) funding a debt service revenue fund, if necessary, and (c) paying costs associated with the issuance of the State Infrastructure Bank Loan.

REVENUES PROPOSED TO BE PLEDGED

The State Infrastructure Bank Loan shall constitute special limited obligations of the City and, except as otherwise provided in the herein referenced State Infrastructure Bank Loan Agreement, are secured by an irrevocable pledge of, and shall be payable as to principal, premium, if any, and interest solely from certain County of the First Class Highway Projects Fund revenues, as described in 72-2-121, Utah Code Annotated 1953, as amended.

PARAMETERS OF THE STATE INFRASTRUCTURE BANK LOAN

The City intends to issue State Infrastructure Bank Loan in the aggregate principal amount of not more than Fifteen Million Dollars (\$15,000,000), to mature in not more than fifteen (15) years from their date or dates, to be sold at a price not less than ninety-seven percent (97%) of the total principal amount thereof, and to bear interest at a net effective rate of not to exceed four percent (4.0%) per annum. The State Infrastructure Bank Loan is to be issued pursuant this Resolution and the State Infrastructure Bank Loan Agreement, which were before the Council and attached to the Resolution in substantially final form at the time of the adoption of the Resolution, and shall be approved by the authorized officers; provided that the principal amount, interest rate or rates, maturity, and discount from par of the State Infrastructure Bank Loan shall not exceed the maximums set forth above.

A copy of the Resolution and State Infrastructure Bank Loan Agreement are on file in the office of the City, at 10000 Centennial Parkway, Sandy, Utah, where they may be examined during regular business hours of the City, Monday through Friday from 8:00 a.m. to 5:00 p.m., for a period of at least thirty (30) days from and after the date of publication of this notice.

NOTICE IS FURTHER GIVEN that a period of thirty (30) days from and after the date of the publication of this notice is provided by law during which any person in interest shall have the

right to contest the legality of the Resolution and the State Infrastructure Bank Loan Agreement, or the Loan, or any provision made for the security and payment of the Loan, and that after such time, no one shall have any cause of action to contest the regularity, formality, or legality thereof for any cause whatsoever.

DATED this November 16, 2021.

SANDY CITY, UTAH

Chair

Exhibit A
City/Agency Interlocal Agreement

EXHIBIT A

INTERLOCAL COOPERATION AGREEMENT

This INTERLOCAL COOPERATION AGREEMENT (the “Agreement”) is entered into as of November 16, 2021, 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 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 Raddon Summit, 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 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.
- 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.

(SEAL)

SANDY CITY, UTAH

By: _____
Mayor

ATTEST:

By: _____
City Recorder

APPROVED AS TO FORM AND COMPLIANCE
WITH APPLICABLE LAW:

By: _____
City Attorney

(SEAL)

REDEVELOPMENT AGENCY OF
SANDY CITY, UTAH

By: _____
Executive Director

ATTEST:

By: _____
Secretary

APPROVED AS TO FORM AND COMPLIANCE
WITH APPLICABLE LAW:

Redevelopment Agency Attorney

Exhibit B
State Infrastructure Bank Loan Agreement

EXHIBIT B



State of Utah Department of Transportation

Loan Agreement State Infrastructure Bank Loan Fund

THIS LOAN AGREEMENT made and entered into on [Date], by and between the **UTAH DEPARTMENT OF TRANSPORTATION**, hereinafter referred to as "UDOT", and **Sandy City**, a political subdivision of the State of Utah, hereinafter referred to as the "Public Entity."

RECITALS

WHEREAS, the Public Entity has applied for an infrastructure loan from the Utah State Infrastructure Bank Fund.

WHEREAS, the purpose of this infrastructure loan is to construct a new Sandy City parking structure within the Public Entity jurisdiction.

WHEREAS, the Transportation Commission has approved the infrastructure loan application on [Month Day], 2021.

THIS LOAN AGREEMENT is made to set out the terms and conditions of UDOT loaning the money from the Transportation Infrastructure Loan Fund to the Public Entity.

AGREEMENT

NOW THEREFORE, it is agreed by and between the parties hereto as follows:

1. UDOT will loan the Public Entity \$15,000,000.00 from the Transportation Infrastructure Loan Fund to enable the Public Entity to construct the parking structure facilities referenced above within the Public Entity jurisdiction.

2. The Public Entity shall only use funds for transportation projects as described in Utah Code Section 72-2-201.

3. At the end of the transportation project, all unused funds will be applied to the principal amount.

4. The interest rate will be the rate of the bond (X.XX% per annum interest plus 0.50%) with a loan duration of FIFTEEN years.

5. Public Entity will pay the principal and interest according to Exhibit A, which is incorporated by reference. The Public Entity will use funds from Utah Code Section 72-2-121(4)(l) to pay the loan. The first payment referenced in Exhibit A will be made on or before May 31, 2023. All subsequent payments will be made on or before May 31 of each year until the loan is paid in full.

6. In the event the Public Entity is 30 days delinquent on a due date as shown in Exhibit A, UDOT shall have the right to pursue the remedies contained in Utah Code Section 72-2-204. UDOT will not issue any more loans to Public Entity while the loan is in default.

7. If Public Entity breaches any terms of this Agreement, UDOT may seek any legal or equitable remedy to obtain compliance or payment of damages. In the event an action is filed in district court, the venue shall be Salt Lake County, Third District Court.

8. Public Entity represents that notice was published of its intention to obtain an infrastructure loan at least once in accordance with the publication of notice requirements under Section 11-14-316; and

adopted an ordinance or resolution authorizing the infrastructure loan in compliance with Utah Code Section 72-2-204(4).

9. Each party to this Agreement shall designate a representative as the contact to address questions and issues as they arise under this agreement.

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

11. This Agreement may be executed in counter parts by the parties.

12. Each party represents that it has the authority to enter into this Agreement.

13. This Agreement shall constitute the entire agreement and understanding of the Parties with respect to the subject matter hereof, and shall supersede all offers, negotiations and other agreements with respect thereto. Any amendment to this Agreement must be in writing and executed by an authorized representatives of each party.

This Agreement will become effective when all parties have signed. The effective date of this agreement is the date this Agreement was signed by the last party.

[PUBLIC ENTITY]				Utah Department of Transportation			
By		Date		By		Date	
				Becky Bradshaw, UDOT Finance Director			
By		Date		By		Date	
				Recommended for approval Lyle McMillan, UDOT Director of Strategic Investments			
By		Date		By		Date	
Title/Signature of additional official if required				UDOT Comptroller Office			