



HURRICANE CITY UTAH

Mayor

City Manager

Nanette Billings Kaden DeMille

City Council

*David Hirschi
Kevin Thomas
Clark Fawcett
Drew Ellerman
Joseph Prete*

Hurricane City Council Special Meeting Agenda

April 8, 2025
6:00 PM

The Buffalo Grill at Zion Mountain Ranch, 9065 West Highway 9, Mount Carmel, Utah

Notice is hereby given that the City Council will hold a Special Meeting at the Buffalo Grill at Zion Mountain Ranch, 9065 West Highway 9, Mount Carmel, UT.

6:00 p.m. - Dinner, Business, and Work Meeting

Consideration and possible approval of a Cooperative Agreement for Improvements at Sand Hollow State Park Between The Division of State Parks and The Utah Department of Transportation and Hurricane City and Washington County Water Conservancy District.

Discussion regarding 2025-2026 Fiscal Year Budget

Adjournment

I hereby certify that the above notice was posted to the city website, (www.cityofhurricane.com) posted to the state public notice website, and at the following locations:

1. City office – 147 North 870 West, Hurricane, UT
2. The Post Office – 1075 West 100 North, Hurricane, UT
3. The library – 36 South 300 West, Hurricane, UT

_____ for the City Recorder

DRAFT

COOPERATIVE AGREEMENT FOR IMPROVEMENTS AT SAND HOLLOW STATE PARK BETWEEN THE DIVISION OF STATE PARKS AND THE UTAH DEPARTMENT OF TRANSPORTATION AND HURRICANE CITY AND WASHINGTON COUNTY WATER CONSERVANCY DISTRICT

This Cooperative Agreement (“Agreement”) is made and entered into by and between the State of Utah, Department of Natural Resources, Division of State Parks, an agency of the State of Utah (“State Parks”), the Utah Department of Transportation, an agency of the State of Utah (“UDOT”), Hurricane City, a political subdivision of the State of Utah (“Hurricane” or “the City”), and the Washington County Water Conservancy District, a political subdivision of the State of Utah (“the District”). The signatories of the Agreement shall hereafter be collectively referred to as “the Parties.”

RECITALS

WHEREAS the current entrance to Sand Hollow State Park (“the Park”) is limited to eastbound exit and entrance ramps, and the interchange does not provide public access to the Park.

WHEREAS this Agreement has been reviewed and approved by the Parties respective directors;

WHEREAS, the Parties desire to cooperate to construct a second public access into the Park, including construction of westbound exit and entrance ramps, the construction of 3200 West to connect Exit 19 to the Park, and the construction of Park entrance station buildings and associated utilities (hereinafter sometimes referred to as “the Project”).

WHEREAS the Project is intended to relieve vehicular pressures on the Park’s west entrance and provide a route for off-highway vehicles to access the Park besides the existing tunnel underneath SR-7;

WHEREAS the District owns the property where the Park is located, including where the entrance station buildings will be located;

WHEREAS State Parks manages the Park, UDOT has jurisdiction over SR-7 and has already acquired the property where the westbound ramps will be constructed, and the Project is located entirely within the City’s city limits; and

WHEREAS the Project furthers each of the Parties interests;

DRAFT

NOW THEREFORE, the Parties agree as follows:

I. RECITALS.

- A. The above recitals are incorporated herein as essential terms of the Agreement.

II. AUTHORITY.

- A. State Parks. Utah Code Ann. § 79-4-204 provides that State Parks “may enter into contracts and agreements with [...] any other department or agency of the state [...] to [...] improve and maintain state parks and the areas administered by the division.”
- B. Hurricane City. Utah Code Ann. §§ 10-6-122, 10-8-1 *et seq*, and 11-13-101 *et seq* authorize the City to construct, award contracts for the construction, and contract with other entities for the construction of public improvements, including roadways, necessary and proper to provide for the safety and preserve the health, and promote the prosperity, improve the morals, peace and good order, comfort, and convenience of the City and its inhabitants.

C. XXX. OTHER PARTIES TO ADD THEIR AUTHORITIES HERE

III. RESPONSIBILITIES.

- A. Purpose and Functions. The Project scope encompasses: design and construction of on/off ramp for SR7 in UDOT’s right-of-way; design and construction of a five lane roadway entering the Park, with three lanes entering the Park, condensing down to two lanes, with two lanes exiting the Park; at the entrance of the Park, an entrance booth of around 500 square feet with a restroom, designed such that it will allow two lanes of traffic on each side of the building; utilities and infrastructure to support the entrance station building; and utility and other infrastructure to support construction of a larger visitor station.

As more specifically described below in Section III.B, State Parks will provide all of the funding for the Project, with the exception of the City’s contribution of a \$2 million grant obtained from the Utah Division of Outdoor Recreation. The City will act as the Project manager and coordinator except as otherwise expressly set forth in this Agreement. The District will authorize access to the Park from Exit 19 and the construction of Park entrance stations buildings on its property. UDOT authorizes construction within its SR-7 right-of-way. Each Party will participate in good faith, and attend Project team meetings, as scheduled.

- B. Responsibilities of the Parties.

- i. State Parks will:

- a. Provide all funding from the Project except for the City’s contribution of \$2,000,000. Parks shall may payments on Project work from time to time as the work progresses, but not more than once each month

DRAFT

after the date work on the Project commences, and only upon receipt of an invoice containing sufficient detail to justify the amount of payment requested. Payment shall be made within thirty days of State Parks receipt of the City's invoice, except that this requirement shall not apply to any amount:

1. for which the City's invoice does not provide sufficient detail to demonstrate is due,
 2. that State Parks disputes is due under the terms of the Agreement, or
 3. reasonably withheld by State Parks to cover any default or failure to perform by the City. State Parks shall provide written notice to the City of any adjustment to or rejection of the City's invoice.
- b. Coordinate with UDOT and the District to secure all rights and permissions necessary to construction of the Project;
 - c. Except as otherwise expressly set out in this Agreement, provide all construction management necessary to completion of the project.

ii. Hurricane City will:

- a. Provide \$2,000,000 to State Parks towards the design and construction of the Project;
- b. Pursuant to the provisions of Utah law, engage in the procurement of all design and construction services necessary to the Project's completion, including retention of the Project's general contractor ("Contractor");
- c. Ensure the City's contract with the Contractor contains the following provisions:
 1. Indemnity. To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless the Division of State Parks and the State of Utah from and against all claims, damages, losses and expenses, including, but not limited to, attorneys' fees, attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the work itself) including the loss of use resulting therefrom, arising out of or resulting from the performance of the work by Contractor or any subcontractor of any tier. The obligation to indemnify shall be effective even if the active or passive negligence or misconduct of State Parks or another indemnified party contributes to the loss or claim. This indemnity will not extend to claims demands, liability or expense arising out of the sole negligence or willful misconduct of State Parks or another indemnified party. In any and all claims against the indemnified parties identified hereunder by any employee of Contractor, any subcontractor, any sub-subcontractor, anyone directly or indirectly employed

DRAFT

- by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this paragraph shall not be limited in any way by any limitation on the amount or types of damages, compensation or benefits payable by or for Contractor, any subcontractor or any sub-subcontractor under worker's or workman's compensation acts, disability benefit acts or other employee benefit acts.
2. The Work. Contractor shall perform all Project work in strict compliance with the contract. Contractor waives the execution of any unexecuted contract and agrees to be bound by the terms of such contract to the same extent as if they were executed at the time of execution of this contract. contract shall be the property of State Parks and shall not be used by Contractor for any other project without the written permission of State Parks. If there are any conflicts or inconsistencies within or between documents comprising the contract, Contractor shall provide the better quality or greater quantity of Work or materials, as applicable, unless directed otherwise by State Parks in writing.
 3. Time. Time is of the essence of this contract. Contractor acknowledges that State Parks will suffer damage if the Work is not completed by the Completion Date. Contractor shall be liable for and shall pay to State Parks: (a) if Liquidated Damages are agreed to, such Liquidated Damages; or, (b) if Liquidated Damages are not agreed to, all damages, including compensatory damages, consequential damages and all other direct and indirect damages suffered by State Parks as a result of Contractor's failure to complete the Work by the Completion Date.
 4. Quality/Warranty. Contractor shall perform the Work in a good and workmanlike manner, using high quality materials and personnel skilled in the type of work required and in compliance with all applicable laws, regulations, ordinances, industry standards and requirements of governmental entities having jurisdiction over the Work. State Parks may reject Work which is not in accordance with the contract or which is otherwise defective in which event Contractor shall correct such Work at Contractor's cost. If within one (1) year of the Completion Date any of the Work is found to be not in accordance with the contract or is found to be otherwise defective, Contractor shall promptly correct it at Contractor's cost, however this one (1) year correction period shall not alter the terms of any special warranties required by the contract or limit any other remedy available to State Parks.
 5. SubContractors. Contractor shall not employ any subcontractor for the Work to whom State Parks objects in

DRAFT

- writing and Contractor shall remove from the Project Location any subcontractor, sub-subcontractor and/or other person or entity to which State Parks objects. Contractor shall pay subcontractors and suppliers as required by Utah Code § 58-55-603. Contractor's subcontracts are contingently assigned to State Parks provided that such assignment shall only be effective after termination of the contract and only as to those subcontracts which State Parks accepts in writing. Pursuant to Utah Code § 78B-4-513, Contractor's causes of action for defective design and/or construction in connection with the Work, if any, are assigned to State Parks, contingent upon acceptance of such assignment by State Parks in writing.
6. Safety. Contractor is responsible for the safety of Contractor's employees and property at the Project Location and for the safety of all other persons and property at the Project Location and shall at all times protect such persons and property at the Project Location from Contractor's operations.
 7. Responsibility for Acts / Omissions of Others. Contractor shall be responsible and liable for the acts and omissions of Contractor's employees at the Project Location, subcontractors, sub-subcontractors and anyone directly or indirectly employed by them or anyone for whose acts any of them may be liable.
 8. Taxes / Fees / Permits. Contractor shall pay all taxes and fees and shall secure and pay for all permits, licenses, tests and inspections necessary for proper execution and completion of the Work.
 9. Hazardous Materials. Contractor shall be responsible for any release of Hazardous Material(s) on or from the Project Location which release is caused in whole or in part by Contractor or by any subcontractor, sub-subcontractor and/or any one directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and Contractor agrees to indemnify, defend and hold harmless State Parks and the other parties indemnified pursuant to the contract's provisions from and against all remediation costs, claims, damages, losses and expenses, including, but not limited to attorneys' fees, arising out of or resulting from such release. In the event Contractor encounters any Hazardous Material(s) at the Project Location, Contractor shall immediately cease work, notify State Parks of such condition by the most expeditious means available and Contractor shall not resume work until any such Hazardous Material(s) have been removed from the Project Location or rendered harmless and Contractor has been directed in writing by State Parks to resume work.

DRAFT

10. Changes. State Parks may order changes in the Work by issuing a written Change Order (which shall be countersigned by Contractor) which shall: (a) describe the changes in the Work; (b) state the change in the Completion Date agreed to by State Parks and Contractor, if any; and (c) state the adjustment to the contract Price, if any, agreed to by State Parks and Contractor for the cost or credit to State Parks resulting from the change. If State Parks and Contractor cannot agree on a change to the Completion Date and/or the cost or credit to the State Parks resulting from a change in the Work, State Parks may issue a written Change Directive directing a change in the Work and stating an adjustment to the Completion Date and/or contract Price as unilaterally determined by State Parks, and Contractor shall promptly proceed with the Work, as changed. If Contractor does not agree with State Parks's final adjustment to the Completion Date and/or contract Price resulting from a Change Directive such dispute shall be resolved in accordance with the provisions of the contract. The Completion Date and contract Price may be changed only by a Change Order or Change Directive. Under no circumstances will the Contractor be entitled to additional compensation for changes in the Work not authorized in a written Change Order or Change Directive signed by State Parks.
11. Contractors Insurance. Prior to Project commencement, Contractor shall purchase from and maintain in a company or companies licensed to do business in the State of Utah and rated "A-" or better by the A. M. Best Company the following insurance coverage (or greater if required by law) with deductibles per claim/occurrence of not greater than \$10,000: (a) Workers' compensation—statutory limits; (b) Employer's liability—\$3,000,000; (c) Comprehensive Automobile Liability Insurance—combined single limits (covering bodily injury liability, death and property damage) of not less than \$1,000,000 each occurrence and \$3,000,000 annual aggregate and which names the Utah Division of State Parks as an additional insured; and (d) General Liability Insurance written on a Commercial General Liability Coverage Form (provided on an "occurrence" form and not on a "claims made" form) which shall name the Utah Division of State Parks as an additional insured by endorsement to the policy and which coverages shall include Broad Form Property Damage, Blanket contractual Liability, Independent Contractor's Liability, Products-Completed Operations (which shall be maintained without interruption by Contractor for a period of 2 years from the Completion Date), Personal and Advertising

DRAFT

Injury and X, C and U (explosion, collapse and underground) hazards. The limits of Contractor's General Liability Insurance shall be not less than \$1,000,000 combined single limit (bodily injury, death and property damage combined) each occurrence, \$3,000,000 general annual aggregate limit, \$3,000,000 Products-Completed operations annual aggregate limit and \$3,000,000 personal and advertising injury limit. Contractor shall require Contractor's subcontractors to secure and maintain the same insurance coverages, with the same minimum deductibles, the same minimum limits of liability and for the same period of time as required of Contractor by this paragraph unless this requirement is waived in writing by State Parks. If Contractor employs, directly or indirectly, any "Design Professional(s)" as that term is defined in Utah Code § 13-8-7 in connection with this Project, Contractor shall require such Design Professional(s) to secure and maintain throughout the period of this Project and for a period of 3 years after the Completion Date professional liability insurance for errors or omissions in the design services provided by the Design Professional(s) with respect to this Project, procured from companies authorized to do business in the State of Utah and rated A- or better by the A. M. Best Company, with deductibles per claim of not greater than \$100,000, and with limits of liability of not less than \$1,000,000 per claim; \$3,000,000 annual aggregate. If the professional liability insurance required by this contract contains a design/build exclusion applicable to the design services required by the contract, the policy shall be endorsed to delete such exclusion for the Project. Contractor will supply the Division of State Parks with satisfactory evidence of the insurance required by this contract prior to the Commencement Date. Should Contractor (or any subcontractor or Design Professional directly or indirectly employed by Contractor) fail to obtain and maintain the insurance required by this paragraph the Division of State Parks may, but shall not be obligated to, purchase such insurance, the cost of which shall be charged to Contractor and deducted from the contract Price. Contractor shall bear full responsibility for and shall pay on demand any and all damages suffered by the Division of State Parks and/or other parties indemnified pursuant to the provisions of this Agreement which result from Contractor's failure to comply with the insurance requirements of this contract.

12. Builders Risk Insurance. The City shall maintain Builder's Risk Insurance to protect the interest of the Contractor, subcontractors, or sub-subcontractors subject to all of the

DRAFT

terms, conditions, limitations, exclusions, waivers and/or endorsements stated in the State of Utah Property Insurance Form available on State Parks's website. To the extent that the Builder's Risk Insurance provides for a deductible (including, without limitation, a specific loss deductible, cumulative loss deductible and/or sub-deductible), Contractor's share of any such deductible shall be limited to \$5,000.00. Contractor shall promptly provide State Parks with information and shall cooperate with State Parks respecting any covered loss or Contractor shall bear any and all costs associated with failure to substantiate a loss. If Contractor desires insurance coverage for risks other than those covered by Builder's Risk Insurance and/or insurance coverage on a project that does not qualify for Builder's Risk Insurance under this Agreement, Contractor may obtain such insurance at its own expense.

13. Payment Bonds. Prior to Project commencement, Contractor provides to the City and to State Parks a Performance Bond and Payment Bond on AIA Document A312-2010 in the full amount of the contract price. Unless otherwise directed in writing by State Parks, Contractor shall email the Performance and Payment Bonds to State Parks.

14. Anti-Boycott Israel. In accordance with Utah Code § 63G-27-201, unless Contractor has fewer than 10 full time employees or this contract is otherwise exempt under Utah Code § 63G-27-201: (1) the Contractor certifies that the Contractor is not currently engaged in a boycott of the State of Israel or an economic boycott as that term is defined in Utah Code § 63G-27-102; (2) the Contractor agrees not to engage in a boycott of the State of Israel during the duration of this Agreement; (3) the Contractor shall notify State Parks if the Contractor begins engaging in an economic boycott; and (4) the Contractor acknowledges and agrees that the Contractor's notice under clause (3) of this paragraph may be grounds for termination of this Agreement.

- d. In addition to the provision required by Section III.B.ii.c, ensure all Project contracts and agreement contain provisions that provide:
 - 1. State Parks shall provide all Project Management services;
 - 2. State Parks shall have the right to approve all project design documents prior to Project initiation; and
 - 3. Contractor and all subcontractors are independent Contractors and not agents or employees of either State Parks or any other party.
- e. Provide all draft Project contracts and agreement to State Parks for review and approval prior to execution;

iii. UDOT will:

DRAFT

- a. Provide design review, and construction management of proposed improvements within the UDOT right-of-way;
- b. Allow approved construction within the UDOT right-of-way;
- c. Provide construction inspection of improvements within the UDOT right-of-way; and
- d. Attend construction team meetings as necessary.

iv. The District will:

- a. Review and approve Project plans for all Project improvements located on District property;
- b. Coordinate with the Parties as necessary to facilitate Project construction on District property; and
- c. Attend Project team meetings as necessary.

IV. TERMS AND CONDITIONS.

- A. This Agreement shall be in full force and effect until the Parties have completed their obligations as set forth under the terms of this Agreement.
- B. Except as otherwise specifically provided herein, each Party shall be responsible for its own costs of any action arising pursuant to this Agreement, and for any financing of such costs, and no joint or cooperative financing or budget will be created or maintained pursuant to this Agreement.
- C. No real or personal property shall be acquired jointly by the Parties because of this Agreement, nor shall the administrators have the right to dispose of any real or personal property independently owned by either of the Parties.
- D. The Parties to this Agreement are governmental entities working together for mutual advantage. Good faith efforts should be made to resolve any differences before making any allegations that either of the Parties are in breach or have failed to comply with the terms of this Agreement.
- E. This Agreement is intended solely for the mutual benefit of the Parties hereto, and there is no intention, express or otherwise, to create any rights or interests for any party or person other than the Parties. Without limiting the generality of the foregoing, no rights are intended to be created for the public, any client, any employer, or any future or prospective employer.
- F. Neither party may assign its rights or duties under this Agreement, directly or indirectly, in whole or in part, without the prior written consent of an authorized representative of the other party.

DRAFT

- G. The Parties are subject to the provisions of the Utah Governmental Immunity Act (Utah Code Ann. § 63G-7-101, *et. seq.*, as amended). Consistent with and subject to the terms of that Act, it is mutually agreed that each party is responsible and liable for its own wrongful or negligent acts and omissions, or which are committed by its agents, officials, or employees; provided that any amount of damages awarded and payable under this provision are limited to the amounts set forth in the Utah Governmental Immunity Act in effect at the time judgment is entered. It is also agreed that under this paragraph neither party waives any procedural or substantive defense or benefit provided or to be provided by the Governmental Immunity Act or comparable legislative enactment.
- H. It is the intent and understanding of the Parties that the liability protections in the Utah Limitations on Landowner Liability Act (Utah Code §§ 57-14-101, *et seq.*) shall apply to the public's use of the Property and the Parties' actions in managing and maintaining the Property, it being the intent of the Parties that nothing in this Agreement shall be construed as waiving or diminishing the protections afforded by the Act.
- I. The Agreement may only be amended or modified in writing and signed by both Parties.
- J. Each Party will use its best and reasonable efforts to successfully carry out and complete each task, covenant, and obligation as sated herein. Each of the Parties shall cooperate in good faith with the other and shall do any and all acts and execute, acknowledge, and deliver any and all documents so requested in order to satisfy the conditions set forth herein and carry out the intent and purposes of the Agreement.
- K. This Agreement may be executed on two or more counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.
- L. Any uncertainty or ambiguity existing herein shall not be interpreted against any Party because such party prepared any portion of this Agreement but shall be interpreted according to the application of rules and interpretation of contracts generally.
- M. This Agreement shall be governed by the laws of the State of Utah both as to interpretation and performance.
- N. Neither any other provisions contained in this Agreement nor any acts of any party shall be deemed or construed by another party or by any third person to create the relationship of partnership or of shared venture of any association between the Parties, other than contractual relationships stated in this Agreement.
- O. Points of contact. Each Party designates below a primary point of contact ("POC") to coordinate all matters concerning the carrying out of activities under this MOU. Any modifications to the POC will be provided in writing to the other parties. The contacts for work related to the project are:

DRAFT

Party	Point of Contact	Address	Telephone	e-mail
State Parks	Chase Prince	646 North Main Cedar City, UT 84721	435-680-1624	chaseprince@utah.gov
UDOT	Tracy Munson	5340 W. 200 S. Hurricane, UT	(435) 590-0252	tmunson@utah.gov
City	Arthur LeBaron	187 N. 870 W. Hurricane, UT	(435) 632-3462	arthur@hurricane.utah.gov
District	Trevor Brown	533 East Waterworks Drive, St. George, UT	(435) 218-9848	trevor@wcwcd.gov

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed on the date set forth above by their duly authorized representatives.

UTAH DEPARTMENT OF TRANSPORTATION

By: _____
[Name]
[Title]

Date: _____

HURRICANE CITY

By: _____
[Name]
[Title]

Date: _____

WASHINGTON COUNTY WATER CONSERVANCY DISTRICT

By: _____
[Name]
[Title]

Date: _____

DRAFT

UTAH DEPARTMENT OF NATURAL RESOURCES, DIVISION OF STATE PARKS

By: _____
Scott Strong, Director

Date: _____