



HIGHLAND CITY

SPECIAL CITY COUNCIL AGENDA

Thursday, July 26, 2018

Highland City Council Chambers, 5400 West Civic Center Drive, Highland Utah 84003

7:00 P.M. SPECIAL SESSION *(MAIN CONFERENCE ROOM)*

Call to Order – Mayor Rod Mann

1. ACTION: APPROVAL OF A COOPERATIVE AGREEMENT FOR THE DESIGN AND CONSTRUCTION OF THE MURDOCK CONNECTOR (Highland City – 4800 South / SR 74 East – West Connector Road)

The Council will consider approval of a cooperative agreement between the Utah Department of Transportation (UDOT), Utah County and Highland City related to the design and construction of the Murdock Connector (Highland City – 4800 South/SR 74 East – West Connector Road). The Council will take appropriate action.

ADJOURNMENT

In accordance with Americans with Disabilities Act, Highland City will make reasonable accommodations to participate in the meeting. Requests for assistance can be made by contacting the City Recorder at (801) 772-4505 in advance of the meeting.

ELECTRONIC PARTICIPATION

Members of the City Council may participate electronically via telephone, Skype, or other electronic means during this meeting.

CERTIFICATE OF POSTING

I Cindy Quick, the duly appointed City Recorder certify that the foregoing agenda was posted in three public places within Highland City limits. The agenda was also posted at the principal office of the public body, on the Utah State website (<http://pmn.utah.gov>) and on Highland City's website (www.highlandcity.org).

Please note the order of agenda items are subject to change in order to accommodate the needs of the City Council, staff and the public.

Posted and dated this 25th day of July, 2018

Cindy Quick, CMC
City Recorder

THE PUBLIC IS INVITED TO PARTICIPATE IN ALL CITY COUNCIL MEETINGS.



CITY COUNCIL AGENDA REPORT ITEM #1

DATE: July 26, 2018
TO: Honorable Mayor and Members of the City Council
FROM: Erin Wells, Assistant City Administrator and Todd Trane, PE, City Engineer
SUBJECT: **ACTION-** Approval of a Cooperative Agreement between the Utah Department of Transportation (UDOT), Utah County and Highland City related to the design and construction of the Murdock Connector (Highland City - 4800 South/SR 74 East-West Connector Road).
Administrative

STAFF RECOMMENDATION:

City Council review and approve the Cooperative Agreement for the design and construction of the Murdock Connector.

BACKGROUND:

The Murdock Connector in an approved transportation project by the Mountainland Association of Governments (MAG). The project has also been approved on the UDOT Statewide Transportation Improvement Program. At the request of MAG, UDOT has been chosen to administer the project. As a result, a Cooperative Agreement is needed between MAG, UDOT, Highland City, and Utah County. The key aspects of the agreement are as follows:

- MAG, Highland City, and Utah County will be invited to participate in all aspects of the project.
- UDOT will be responsible for all right of way acquisition.
- The engineers cost estimate is \$3,501,119. Once the project is ready for bid, MAG, Utah County and Highland will work together to obtain sufficient funding before the project is sent to bid.
- Upon completion, Highland City will own and maintain the street.

With the adoption of the revised impact fees, the City has been collecting money for this project.

This item was discussed at the July 17, 2018 City Council meeting where City Council directed staff to reach out to the Attorney General's Office to see if they would be willing to amend the contract to include language referencing the final clause in House Joint Resolution 7 regarding taking reasonable steps to mitigate negative impact on private property. Staff did so and was told no by the Attorney General's Office. Please see the attached letter. As such, staff is re-presenting the contract to Council for approval. There are no changes between the current proposed contract and the one that was presented to Council on Tuesday, July 18.

ATTACHMENTS:

1. Letter from the Office of the Attorney General
2. Proposed Cooperative Agreement

STATE OF UTAH
OFFICE OF THE ATTORNEY GENERAL



SEAN D. REYES
ATTORNEY GENERAL

Spencer E. Austin
Chief Criminal Deputy

Parker Douglas
Chief Federal Deputy
& General Counsel

Tyler R. Green
Solicitor General

Ric Cantrell
Chief of Staff

Brian Tarbet
Chief Civil Deputy

July 23, 2018

Mayor Rod Mann
Highland City
5400 W Civic Center Drive, Suite 1
Highland , Utah 84003

Re: Request to include language from the resolution passed by the Utah Legislature

Dear Mayor Mann:

I cannot recommend to UDOT that the agreement include intent language from the Joint Resolution Granting Legislative Approval for the Sale or Long-Term Lease of Utah State Developmental Center Land. In this joint resolution, the legislature authorized the Utah State Development Center ("USDC") to approve the sale or long-term lease of land for the construction of the east-west connector road.

I do not believe the legislature intended that its direction create a contractual obligation. Adding the language will create a contractual obligation with a potential of a possible breach of that obligation. In addition, the use of reasonable steps to mitigate is subject to differing opinions as to when sufficient action is taken to meet the reasonable steps. Any new highway will negatively impact any neighboring property because property will need to be taken for transportation purposes. Current UDOT policies, rules, and state statutes define the process for construction and taking property for transportation purposes. In addition, the language creates a possible third-party cause of action against the signing entities, which will be mostly directed at UDOT because UDOT is contracting with the contractor for the construction of the project. A property owner could claim that UDOT did not take all the reasonable steps even though UDOT fully complied with its policies, rules, and applicable state statutes.

I have attached the document UDOT will accept. If you have any questions, please contact me.

Sincerely,

A handwritten signature in blue ink that reads "Renee Spooner".

Renee Spooner
Assistant Attorney General

COOPERATIVE AGREEMENT

THIS COOPERATIVE AGREEMENT, made and entered into this _____ day of _____, 2018, by and between the **UTAH DEPARTMENT OF TRANSPORTATION**, hereinafter referred to as “**UDOT**”, **MOUNTAINLAND ASSOCIATION OF GOVERNMENTS**, hereinafter referred to as “**MAG**”, **UTAH COUNTY**, and **HIGHLAND CITY**.

WITNESSETH:

Whereas, Project S-LC49(165); PIN 14088; *Alpine Hwy. to No. County Blv; Connector Road, is an approved local government project in the **MAG** Transportation Improvement Program. This roadway will be a city street; and

Whereas, the project was approved on the **UDOT** Statewide Transportation Improvement Program; and

Whereas, **UDOT** will be administering the project at the request of **MAG**, **UTAH COUNTY** and **HIGHLAND CITY**;

AGREEMENT:

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

1. **MAG**, **UTAH COUNTY**, **HIGHLAND CITY** and **UDOT** shall cooperatively work together on the various phases of the project, including design and construction. Items of this cooperation shall include:
 - a. **UDOT** shall invite **UTAH COUNTY** and **HIGHLAND CITY** to participate in any consultant engineering firm selection.
 - b. **UDOT** shall invite **UTAH COUNTY** and **HIGHLAND CITY** to all project level design meetings.
 - c. **UDOT** shall solicit **UTAH COUNTY** and **HIGHLAND CITY** approval of the final design package before being advertised by **UDOT**.
 - d. **UDOT** shall obtain **UTAH COUNTY** and **HIGHLAND CITY** approval of all out of scope change orders/contract modifications.
2. **UDOT** will acquire the property interests necessary to construct the project for **Highland City**. The right-of-way acquisition costs are part of the project costs.
3. **UTAH COUNTY** and **UDOT** will involve **HIGHLAND CITY** in all of the project discussions and meetings.

4. Within 30 days of the execution of this agreement, **UTAH COUNTY** shall pay \$3,501,119 to **UDOT**.
5. **UTAH COUNTY** will act as the lead agency for **MAG** and **HIGHLAND CITY** and will sign consultant contracts, consultant invoices, project advertising documents, and contractor change orders and overruns.
6. **UDOT** shall administer the project in accordance with its current accepted practices and procedures including public involvement.
7. If the project engineer's estimate is more than \$3,501,119 once the project is ready to bid, **MAG, UTAH COUNTY, and HIGHLAND CITY** will work together to obtain sufficient funds to match or exceed the project engineer's estimate. Any additional required funding must be received by **UDOT** before the project is sent out to bid. If additional funding is not available, the project may be delayed until sufficient funds are obtained.
8. **MAG, UTAH COUNTY and HIGHLAND CITY** will work together to pay **UDOT** if project cost overruns and change orders during construction exceed the project budget. They shall pay the additional costs within 30 days from the date of invoice from **UDOT**.
9. **UDOT** shall return any unexpended **UTAH COUNTY** funds to **UTAH COUNTY** upon final closeout of the project.
10. Upon completion of the project, **HIGHLAND CITY** will own and maintain the street.
11. **MISCELLANEOUS**
 - A. Each party agrees to undertake and perform all further acts that are reasonably necessary to carry out the intent and purpose of the Agreement at the request of the other party.
 - B. This Agreement in no way creates any type of agency relationship, joint venture, or partnership between **UDOT** and **UTAH COUNTY, or HIGHLAND CITY**.
 - C. This Agreement shall be deemed to be made under and shall be governed by the laws of the State of Utah in all respects. Each person signing this Agreement warrants that the person has full legal capacity, power and authority to execute this Agreement for and on behalf of the respective party and to bind such party. This Agreement may be executed in one or more counterparts, each of which shall be an original, with the same effect as if the signatures were made upon the same instrument. This Agreement may be delivered by facsimile or electronic mail
 - D. This Agreement contains the entire understanding of the parties concerning the project. Any verbal or representations concerning this Agreement are not binding. Any amendment to this agreement must be in writing and signed by both parties.

E. All parties are subject to the provisions of the Utah Governmental Immunity Act (Utah Code Ann. § 63G-7-101, *et. seq.*, as amended). Consistent with the terms of this Act, it is mutually agreed that each party is responsible and liable for its own wrongful or negligent acts which it commits, 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.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their duly authorized officers as of the day and year first above written.

ATTEST:

MAG

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

ATTEST:

UTAH COUNTY

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

ATTEST:

HIGHLAND CITY

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

**RECOMMENDED FOR APPROVAL:
TRANSPORTATION**

UTAH DEPARTMENT OF

By: _____
Region 3 Utilities and Railroads Leader

By: _____
Region Director

Date: _____

Date: _____

APPROVED AS TO FORM:

COMPTROLLER OFFICE

By: _____
Asst Attorney General

By: _____
Contract Administrator

Date: _____

Date: _____