

Mayor

Robert Houston

City Manager

Joseph Decker

Treasurer

RaeLene Johnson



KANAB
— UTAH —

City Council

Brent Chamberlain

Cheryl Brown

Kirt Carpenter

Joe B. Wright

Kent Burggraaf

KANAB CITY COUNCIL

December 9th, 2014

76 NORTH MAIN, KANAB, UTAH

NOTICE is hereby given that the Kanab City Council will hold its regular council meeting on the 9th day of December, 2014, at the District Courtroom at the Kane County Courthouse at 76 North Main, Kanab, Utah. The Council Meeting will convene at 6:00 p.m., and the agenda will be as follows:

6:00 P.M. Work Meeting

- Golf Course

Business Meeting

1. Call to Order and Roll Call
2. Approval of Agenda
3. Approval of minutes of previous meeting
4. Approval of Accounts payable vouchers
5. Public Comment Period – Members of the public are invited to address the Council. Participants are asked keep their comments to 3 minutes and follow rules of civility outlined in Kanab Ordinance 3-60
6. Discuss approval of the Interlocal finance agreement for the Kanab Airport Terminal Building between Kanab City and the RTSSD.
7. Discuss a possible funding contribution to Earth Day festival.
8. Award engineering contract to Sunrise Engineering for the Tom's Canyon Flood Control Project.
9. Re appoint Byard Kershaw to the Planning Commission with a term ending 12/31/2018
10. Re appoint Teresa Trujillo to the Planning Commission with a term ending 12/31/2018
11. Closed Session:
 - Discuss the character, professional competence, or physical or mental health of an individual.
 - Discuss pending or reasonably imminent litigation.
 - Discuss the purchase, exchange, or lease of real property.

Times listed for each item on the agenda may be accelerated as time permits. If you are planning to attend this public meeting and due to a disability need assistance in understanding or participating in the meeting, please notify the City eight or more hours in advance of the meeting, and we will try to provide whatever assistance may be required. Please contact RaeLene Johnson at the Kanab City offices.

– A Western Classic –

KANAB CITY COUNCIL MEETING

NOVEMBER 11, 2014

KANE COUNTY COMMISSION CHAMBERS

PRESENT: Mayor Robert D. Houston, Council Members Kirt Carpenter, Cheryl Brown, Kent Burggraaf, and Joe B. Wright, City Recorder Joe Decker and City Treasurer RaeLene Johnson. Council Member Brent Chamberlain excused.

WORK MEETING: Work Meeting was opened at 6:35 p.m. Impact fees were discussed. Council Member Wright stated there should be impact fees, but they need to be reasonable. The last impact fees were based on a 50,000 population. Impact fees can be used to create infrastructure. Council Member Burggraaf stated he was concerned about impact fees. He said that impact fees are what are litigated the most. He thinks they need to be re-visited annually and have legal council's advice. The fees should also correlate to what is needed. Council Member Brown agrees that there needs to be impact fees, but it needs to be a reasonable amount. Council Member Carpenter wanted to make sure impact fees could not be paid until they have a building permit and are ready to start to build. Mayor agreed to start to do some research on impact fees.

Mr. Alan Alldredge, Emergency Manager for Kane County, addressed the Council. He passed out invitations to the 2014 Kane County Elected Officials Meeting. There will be a dinner served. There will be discussions about emergency services and talk about the plans needed for emergencies.

Mayor Houston opened the regular City Council at 6:45 p.m. He called the meeting to order and roll call was taken. Council Member Chamberlain was excused.

Prayer was offered by Pastor Doug Hounshell and Pledge was led by Council Member Wright. There was a moment of silence for all the veterans since it is Veteran's Day.

APPROVAL OF AGENDA: A motion was made by Council Member Wright and 2nd by Council Member Carpenter to approve the minutes of October 14, 2014 as amended. Motion passed unanimously. Council Member Chamberlain absent.

APPROVAL OF ACCOUNTS PAYABLE VOUCHERS: A motion was made by Council Member Wright and 2nd by Council Member Brown to approve the following accounts payable: October 28, 2014, \$54,409.30, November 6, 2014, \$128,483.58 and November 10, 2014 \$128,956.13. Motion passed unanimously. Council Member Chamberlain absent.

PUBLIC COMMENT PERIOD: Mr. Leland Freeborn addressed the Council. He wanted to warn the City about World War III. He said there will be a surprise attack between December 17 and December 22. He asked everyone to get prepared with the necessary supplies before Las Vegas is nuked in December.

CONSIDER RESOLUTION 11-1-14 R FOR ADOPTION OF A VEHICLE LEASE PURCHASE AGREEMENT WITH ZIONS BANK: Council Member Burggraaf would like the agreement to be

double indemnity. He feels it is one-sided. A motion was made by Council Member Wright and 2nd Council Member Carpenter to adopt Resolution 11-1-14 R approving the form of the Equipment Lease Agreement with Zions First National Bank, Salt Lake City, Utah. Finding that it is in the best interests of the City of Kanab, Utah to enter into said Agreement, and authorizing the execution and delivery thereof, after legal council's approval. Motion passed unanimously by roll call vote. Council Member Chamberlain absent.

CONSIDER RESOLUTION 11-2-14 R APPROVAL OF SUBMISSION OF UTAH ENTERPRISE

ZONE APPLICATION: Mr. Kelly Stowell addressed the Council asking for the City to support local businesses qualifying them access to certain state income tax credits where an Enterprise Zone is created. A motion was made by Council Member Burggraaf and 2nd by Council Member Wright to adopt Resolution 11-2-14 R approving submission of a Utah Enterprise Zone Application. Motion passed unanimously by roll call vote. Council Member Chamberlain absent.

CONSIDER ORDINANCE 11-1-14 O AN ORDINANCE AMENDING KANAB CITY LAND USE

ORDINANCE CONCERNING SENSITIVE LANDS: Council Member Burggraaf explained about the changes in the Sensitive Lands Ordinance that the Planning Commission has been reviewing. He said an engineering firm had been hired to help draw up the ordinance. The slope was changed from 10% to 20%. The Planning and Zoning Commission recommended approval. Council Member Carpenter suggested changing Geotechnical Engineer to Geological Engineer. Council Member Wright stated he would like to have a notice put on the Sensitive Lands Overlay map that expansive soil layer is not intended to be inclusive. Utah is a "Buyer Beware" State, and there needs to be some individual accountability. Council Member Wright expressed appreciation to the Planning Commission for all the work and time that has gone into this Ordinance. It is more understandable. A motion was made by Council Member Burggraaf to adopt and approve Ordinance #11-1-14 O, amending Kanab City's land use ordinance based on staff's findings and recommendations which includes the Sensitive Lands chapter as well as the other correlated chapters that were modified. Changing Geotechnical Engineer to be Geological Engineer, and changing geologist to geotechnical engineer and where geotechnical engineer is noted throughout the ordinance have it changed to be geological engineer, and fix the formatting on pages 19 and 20 and direct staff to put notice on map that expansive soils layer is not intended to be inclusive of all lands as recommended by the Planning and Zoning Commission. Motion 2nd by Council Member Wright. Motion passed unanimously by roll call vote. Council Member Chamberlain absent.

DISCUSS ENGINEERING CONTRACT WITH SUNRISE ENGINEERING FOR THE TOM'S CANYON FLOOD CONTROL PROJECT: Tabled.

A motion to adjourn was made by Council Member Wright and 2nd by Council Member Brown. Motion passed unanimously. Council Member Chamberlain absent.

MAYOR ROBERT D. HOUSTON

RECORDER JOE DECKER

INTERLOCAL FINANCE AGREEMENT FOR THE KANAB AIRPORT TERMINAL BUILDING

This *Interlocal Finance Agreement for the Kanab Airport Terminal Building* (the “Agreement”) is made on this _____ day of December 2014 by and between Kanab City (“Kanab”) and the Recreation and Transportation Special Service District (“District”). The District and Kanab are referred to in this Agreement as “parties.”

RECITALS

- A. The parties are “public agencies” under the Utah Interlocal Cooperation Act and are authorized to jointly exercise their governmental powers;
- B. The parties have determined that it is in the public interest to construct a new airport terminal building at the Kanab City Airport (hereinafter the “Terminal”);
- C. The District desires to pay for the construction of the Terminal, but the District does not wish to bear the responsibilities of seeking financing and procuring the design and construction services needed for building the Terminal;
- D. Kanab is willing to obtain financing to construct the Terminal and to procure design and construction services needed for building the Terminal;
- E. The District will pay to Kanab all amounts due under the Terminal loan as they are due;
- F. Kanab City will be the project “owner” for purposes of the construction of the Terminal and will continue to own and operate the Terminal after construction; and
- G. The parties desire to express in writing the terms under which the parties will participate in the funding of the Terminal construction.

NOW THEREFORE in consideration of their mutual promises and covenants set forth in this Agreement, and for good and valuable consideration the receipt of which is acknowledged, the parties agree as follows:

AGREEMENT

1. **Effective Date.** This Agreement is effective when signed by each party’s duly authorized officer.
2. **Financing** Zions Bank has verbally committed a 10-year loan to Kanab for up to \$500,000 (the “Loan”) for the Terminal, and the Loan documents are incorporated by reference into this Agreement. The District hereby consents to pay off the Loan in 6 years, through 6 annual equal payments, even though the Loan will be a 10-year loan. This means that the payment given by the District to Kanab each year will be more than required by the Loan, but will ensure that the Loan will be paid off, in 6 years. Each payment obligation imposed on Kanab by the Loan documents is, by virtue of this Agreement, a payment obligation of the District to Kanab so that Kanab may fully satisfy each obligation

under the Loan using funds received from the District. When any periodic payment becomes due to the Loan lender, that periodic or other payment is due from the District to Kanab under the same terms, except 5 days prior. The District may pay off the Loan even earlier than 6 years by sending the payoff amount to Kanab with the direction to issue that amount to the Loan lender.

3. **Loan Proceeds.** Kanab agrees to use the Loan proceeds only to procure the design and construction services necessary to build the Terminal and for all associated fixtures, landscaping (including parking lot) and interior furnishings of the Terminal.

4. **Terminal Construction.** Kanab will be the project owner during the design and construction of the Terminal. Kanab will have the sole responsibility and authority to manage and direct the construction of the Terminal, and the District shall have no responsibility or authority to manage or direct the construction of the Terminal. The District's payment obligations as stated in Paragraph 2 will survive notwithstanding any disagreement between the District and Kanab regarding the manner of constructing or operating the Terminal.

5. **Ownership of the Terminal.** Kanab shall own the Terminal during and after construction. Kanab is not obligated to reimburse the District for any amounts received in connection with this Agreement.

6. **Termination.** This Agreement shall terminate when all of Kanab's obligations under the Loan are satisfied.

7. **Interlocal Agreement.** In satisfaction of the requirements of the Interlocal Cooperation Act, Kanab and the District agree as follows:

- a. This Agreement must be approved by each party under section 11-13-202.5 of the Interlocal Cooperation 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 under section 11-13-202.5 of the Interlocal Cooperation Act;
- c. A duly executed original counterpart of the Agreement shall be filed with the keeper of records of each party under section 11-13-209 of the Interlocal Cooperation Act;
- d. This Agreement shall terminate as provided in Paragraph 6, or 50 years from the effective date, whichever is earlier.
- e. Each party shall be responsible for its own costs of any action done pursuant to this Agreement, and for any financing of such costs; and
- f. No separate legal entity is created by the terms of this Agreement. This Agreement shall be administered by the Kanab City Manager. No real or personal property shall be acquired jointly by the parties as a result of this Agreement.

8. **Attorneys' Fees.** If a court action is commenced to interpret or enforce any term of this Agreement, the prevailing party in that action will recover from the other party the prevailing party's reasonable attorneys' fees and costs incurred in the action, including fees and costs incurred during an appeal.

9. **Modifications.** A modification of, or amendment to, any provision contained in this Agreement is effective only if the modification or amendment is in writing and signed by both parties. Any oral representation or modification concerning this Agreement is of no force or effect.

10. **Integration.** This Agreement contains the entire agreement of the parties with respect to the financing and construction of the Terminal.

11. **Interpretation and Severability.** Whenever possible, this Agreement must be interpreted so that each provision is valid under applicable law. If any part of this Agreement is held invalid or prohibited under applicable law, that part must not invalidate the remainder of the provision in which it is located, nor must it invalidate the remaining provisions of this Agreement.

12. **Applicable Law.** This Agreement must be governed, interpreted, and construed by the laws of the State of Utah, including all procedural laws and the applicable statute of limitations. Any breach of this Agreement will be deemed to have occurred in the State of Utah.

13. **Acknowledgement.** The parties acknowledge that they have had an opportunity to fully examine this Agreement and completely understand its terms. The parties acknowledge that their corresponding governing body has reviewed and approved this Agreement, including all of its terms and conditions, and has adopted the Agreement in accordance with applicable law. The parties also acknowledge that the law firm of Snow Jensen & Reece, P.C. has acted solely on behalf of Kanab in drafting this Agreement.

DATED this _____ day of December 2014.

KANAB CITY

DISTRICT

Robert D. Houston, Mayor

By:
Its: President

Attest:

Joseph M. Decker, Recorder

Secretary/Witness

Attorney Approval:

Attorney Approval:

Jeff Stott
Kanab City Attorney

By:
Kane County Recreation and Transportation
Special Service District Attorney

Mayor
Robert D. Houston
City Manager
Joseph M. Decker
Treasurer
RaeLene Johnson



City Council
Brent Chamberlain
Cheryl Brown
Kirt Carpenter
Joe B. Wright
Kent Burggraaf

TO: Mayor Houston and the Kanab City Council
FROM: City Manager
DATE: 11/25/14
SUBJECT: Sunrise Engineering Contract

The engineering contract to provide design services and project oversight for flood control in Tom's Canyon through 200 North to Kanab Creek has been purposed by Sunrise Engineering to complete the project. It is specifically for performing the work as procuring such services is exempt from the bidding process required in Utah Code 11-39. At its discretion, the City may elect to follow alternate provisions of the procurement code. In the Utah Procurement Code, Section 63G-6a-802, it states: "Award of contract without competition," and lists an exception when the City is not required to comply with a multiple bid process, or for RFPs. This is stated in the code "Circumstances under which there is only one source for a procurement item may include: (a) where the most important consideration in obtaining a procurement item is the compatibility of equipment, technology, software, accessories, replacement parts, or service."

After thoroughly researching this decision and consulting with our City Attorney, we have come to the conclusion that it would be prudent to eliminate this step and signing the contract with Sunrise Engineering based on the following performance criteria:

1. The only Engineering Firm with local ties that is qualified
2. They have helped secure funding for the project
3. They possess unique prior experience, expertise, professional stature, and key personnel.
4. Supplies or services can be most reasonably and quickly provided.
5. Scope of capabilities and available equipment.
6. History of cost-effective job performance
7. Working knowledge of their staff of the project.
8. Availability to start the project.
9. The fee is the same or lower than any other firm

Respectfully Yours,

Joe Decker, City Manager

– A Western Classic –