PARK CITY COUNCIL MEETING
SUMMIT COUNTY, UTAH
OCTOBER 15, 2009

PUBLIC NOTICE IS HEREBY GIVEN that the City Council of Park City, Utah will hold its regularly scheduled meeting at the Marsac Municipal Building, City Council Chambers, 445 Marsac Avenue, Park City, Utah for the purposes and at the times as described below on Thursday, October 15, 2009.

Closed Session
3:30 p.m. Property and litigation

Work Session
5:15 p.m. Council questions/comments
5:30 p.m. City website presentation
5:50 p.m. Break

Regular Meeting
6:00 p.m.

I ROLL CALL

II COMMUNICATIONS AND DISCLOSURES FROM COUNCIL AND STAFF

III PUBLIC INPUT ***(Any matter of City business not scheduled on agenda)***

IV WORK SESSION NOTES AND MINUTES OF MEETING OF OCTOBER 1, 2009
P. 5 - 13

V NEW BUSINESS ***(New items with presentations and/or anticipated detailed discussions)***

1. Consideration of Master Festival License for the Mountain Town Stages Pub Crawl, including a partial closure of Main Street from 7 p.m. to 9 p.m. on Saturday, October 24, 2009 P. 14 - 20
   (a) Public hearing
   (b) Action

2. Consideration of the First Amendment to Park City Municipal Corporation and Summit County Interlocal Transportation Agreement, in a form approved by the City Attorney P. 21 - 36

3. Consideration of the First Amendment to the Mine Maintenance Agreement, in a form approved by the City Attorney, with Jordanelle Special Services District (JSSD) for a term of one year at a rate of $30,000/month P. 37 - 59

VI OLD BUSINESS ***(Continued items)***

Consideration of an Appeal of the Planning Commission's July 8, 2009 approval of a conditional use permit application submitted by North Silver Lake Lodge LLC – appellants, adjacent owner associations represented by Clyde Snow, Attorneys at Law

P. 60 - 85

VII ADDITIONAL DISCUSSION – AGENDA ITEMS

VIII ADJOURNMENT

A majority of members may meet socially after the meeting. If so, the location will be announced by the Mayor. City business will not be conducted. Pursuant to the Americans with Disabilities Act, individuals needing special accommodations during the meeting should notify the City Recorder at 435-615-5007 at least 24 hours prior to the meeting.

PARK CITY COUNCIL MEETING
SUMMIT COUNTY, UTAH
OCTOBER 22, 2009

PUBLIC NOTICE IS HEREBY GIVEN that the City Council of Park City, Utah will **not** hold its regularly scheduled meeting on Thursday, October 22, 2009.

Posted: 10/12/09
See: www.parkcity.org

Note: This future meeting schedule is TENTATIVE and subject to change.
PARK CITY COUNCIL TENTATIVE MEETING SCHEDULE

October 2009

8 **Joe gone**
22 **No meeting**
29 The Montage field trip 3 p.m. – 4:30 p.m.
No-idling policy - work
Hot air balloon update – work (20 min) – MD
RAB visioning (40 min) - work
Sundance supplemental agreement - work
Ordinance approving the Glory Hole Subdivision, located at 518 Deer Valley Drive, Park City, Utah - FA
Ordinance approving the 1440 Empire plat amendment, located at 1440 Empire Avenue, Park City, Utah – KS
Ordinance – LMC amendment for MPD in HR-2 (motion to continue to 12/03 – KW/TE
Sandridge design contract – MC

November 2009

3 *General Election*
5 Marsac Building open house 4 p.m. – 7 p.m. (light agenda)
Certificate of appreciation of Jack Thomas
Resolution Re-dedication of Marsac Building
Ordinance approving amendments to the Land Management Code of Park City, Utah to address revisions to Sections 15-2.1-5, 15-2.2-5, and 15-2.3-5 clarifying attic space and Section 15-15, Definitions
12 *General election canvass*
VCBO presentation on the Racquet Club (30 min)
Lower Park Avenue RDA (work)
Comstock sidewalk (work)
19 Park Silly Market economic analysis findings (work)
26 Thanksgiving

December 2009

3 Extraordinary funding requests review
Ordinance – LMC amendment for MPD in HR-2
10 Insurance Placement for 2010
17 Agency minutes

Pending Items:

Business license policy
Performance measures
Resolution amending (or replacing) Resolution No. 20-07, adopting Affordable Housing Guidelines and Standards for Park City, Utah
Carrying capacity/market analysis survey
Wild land interface issues

PARK CITY COUNCIL WORK SESSION NOTES
SUMMIT COUNTY, UT
OCTOBER 1, 2009

Present: **Mayor Dana Williams; Council members, Candace Erickson, Roger Harlan, Jim Hier, and Joe Kernan**

Tom Bakaly, City Manager; Mark Harrington, City Attorney; Shelley Hatch, Analyst II; Wade Carpenter, Chief of Police; Heinrich Deters, Trails Coordinator; Jonathan Weidenhamer, Economic Development Manager; and Matt Cassel, City Engineer

Donnie Novelle, PC Transportation; Rob O'Brien, 649-TAXI; Kyle Jesson, Comstock Drive resident, Shirin Spangenberg, Prospector resident; and Mark Olson, Comstock Drive resident

Absent: **Council member Liza Simpson**

1. Council questions/comments. Jim Hier discussed promotions and business presented at the HMBA meeting, and a Chamber reception planned at Little America on October 20 for the state legislature. Roger Harlan spoke about the trend of promoting bicycling in communities and pledged to use alternative transportation once a month to Council meetings rather than driving. He felt it important for members to lead by example and proposed encouraging high school students to use the free bus rather than driving to school. Joe Kernan thanked Diane Foster and others for their participation in the successful Save Our Snow event last night. The Mayor agreed and commented on meetings on Gambel Oak, EPA, and the Air Force held in Washington DC last week and added that he was honored to speak to the National Academy of Science on sustainable communities while there.

2. For-hire vehicles licensing. Shelly Hatch explained that on March 27, 2009 the Council received an email from a provider describing problems during peak times, specifically the high number of for-hire vehicles operating in town. In May, staff met with business owners to address their concerns and some approaches discussed included separating black tie service from taxi service, restricting the number of provider vehicles, banning payola, requiring stickers for drop-off, setting up a central phone system, increasing enforcement, franchising the taxi industry and prohibiting idling. She emphasized, however, that there was no consensus as to which to pursue. In June 2009, another meting was held to survey businesses to identify the preferred approach but staff was unable to garner clear direction. She proposed conducting a transportation study to reveal the needs of Park City and a way to cap the number of cabs at the appropriate level.

Ms. Hatch summarized the topics discussed at the meetings including (1) a separate black shuttle service from taxi service (enacted in 2002); (2) conduct a market study and limit the number of cabs within Park City; (3) ban payola (difficult to enforce); (4) change the Municipal Code to require stickers for drop-offs (prohibited by interstate commerce law); (5) require providers to have an office in Park City (prohibited by interstate commerce law); (6) implement central phone system (only industry can do); (7) set up staging areas (not favored by operators); (8) increase enforcement; (9) franchise the industry (limited to a few companies); (10) prohibit idling; (11) do nothing; and (12) conduct a transportation study.

She reported that the estimated cost of a study is $32,000, acknowledging the need to explore funding options and possibly requesting a budget adjustment for the study in the spring.

Candace Erickson suggested making applicants wait 90 days before receiving a license to avoid attracting renegade taxis during peak times like Sundance and it was pointed out that the Code has a ten day turn-around period once an application is complete. Mark Harrington interjected that the problem is that Sundance is in the winter but the idea can be explored. She felt the goals of the study outlined in the staff report fall under the role of the transportation companies not the City and she did not support enforcing stronger ordinances. Roger Harlan stated that he shares Ms. Erickson's reservations and discussion ensued on the sticker program and level of enforcement. Chief Wade Carpenter spoke about monitoring taxies and not confronting taxi drivers about violations until the passenger is dropped off. Unfortunately, business license information is not in a database officers can access on-site. Ms. Hatch explained the significant effort on behalf of the City to get all vehicles licensed as a matter of equity.

Donnie Novelle, Park City Transportation, emphasized that they have been in business for 30 years, 365 days of the year. As of 2003, there were 20 for-hire companies and six years later, there are 84 in Park City. She spoke about not requiring businesses to operate from an office and companies not contributing to Park City in the way of property taxes. The high number of licensed vehicles contributes to congested traffic conditions and pollution in town for the small price of a business license and the public would be better served with fewer vehicles operated by several companies. Ms. Novelle stated that she is very supportive of the study and feels the cost could be covered by increasing the business license fee for the 84 or more 2010 for-hire taxi companies.

Rob O'Brien. 649-TAXI, relayed that the City can't show favoritism toward businesses with offices in town but 84 companies seem like over-kill and he acknowledged that the issues have been on-going problems for 15 years. He admitted that he was surprised by the $32,000 price for the study and wasn't sure if it is worth it. The City can continue to license businesses or the service can be franchised. He continues to be interested in learning about the criteria to qualify for a franchise.

Ms. Novelle again expressed her support for a study and having it done now, not waiting until the spring. Tom Bakaly interjected that action is not requested on the study tonight but pointed out the longevity of the issues. The amount is an estimate and the City would solicit requests for proposals and if a study is greater than $20,000, Council approval is required. He believes some expertise is needed that would allow the City to use its current system and perhaps benefit local companies more. Mr. Bakaly felt that proceeding with a RFP would be helpful. There was discussion about the goals of the study outlined in the staff report. Jim Hier didn't feel these issues are of interest to the general public. The problems are from the industry, of the industry and the City has tried to arrive at solutions in a void and for these reasons, it may be wise to hire a qualified consultant to provide options. Mr. Hier did not feel comfortable legislating an answer and collecting more data is probably prudent. He personally does not use the service and has not heard complaints about taxis from his constituency. The Mayor agreed. Joe Kernan expressed interest in regulating unreasonable fares and would like more information on problems the Council can solve.

The Mayor summarized that all members are supportive of proceeding with a RFP. In response to a question from Joe Kernan, the City Manager stated that if the study provides solutions, it will save a significant amount of staff time spent on these issues. It was pointed out that fares must be posted inside the cab. Jim Hier suggested that a task force be formed to analyze and recommend options from the study

3. Comstock Drive sidewalk project. Heinrich Deters explained that Comstock is bordered by residential and commercial zones and provides an important pedestrian corridor for the nearby schools. For the past several years, the neighborhood has been working with staff to find a balance with traffic calming and walkability measures and the culmination of these efforts lead to the passage of the walkability bond in November 2007. On February 21, 2008, members of WALC held a Prospector neighborhood meeting to better gauge needs and at WALC's meeting of February 25, public input was taken and possible walkability measures were presented. WALC recommended $400,000 for traffic calming features and $540,000 to recrown the roadway, narrow travel lanes and install a sidewalk. Mr. Deters stated that at Council's May 22, 2008 meeting, WALC presented its recommendations and members deferred the $540,000 sidewalk project on the east side of Comstock Drive in favor of an incremental approach. Council directed staff to return in a year to evaluate the success of the five foot at-grade pedestrian lane adjacent to the bike lane.

He continued to explain that in February 2009, the City entered into a contract with Fehr & Peers to perform an evaluation of traffic calming measures associated with WALC recommendations and specifically evaluate the five foot at-grade pedestrian zone. He indicated that a lot of data was collected and based on technical information, Fehr & Peers recommended a sidewalk being installed on the east side of Comstock. On April 21, an open house was held by the consultants to assess public opinion of the different recommendations and on June 18, the consultants addressed Council seeking direction on traffic calming measures, including the sidewalk on the east side of Comstock, and members provided direction to proceed with the improvements.

Mr. Deters emphasized that the sidewalk would fit within the existing pavement section of the at-grade pedestrian zone, not affecting residents' landscaping. Parking was removed on the east side of Comstock to accommodate the at-grade pedestrian lane and no additional parking measures are anticipated. Currently $7.7 million has been released for walkability projects. The City will be providing services to maintain the sidewalk and the sidewalk meets the overall goals of walkability including efficiency, connectivity and safety, specifically for school children. The Mayor invited the audience to comment, noting that he met with Kyle Jesson about the sidewalk proposal.

Kyle Jesson, Comstock Drive resident, stated that he is representing the neighborhood where many families have lived there for years. He referred to a letter distributed last night intended to give the residents a heads-up on the issues and urging residents to contact Council members. City Council and staff have attempted on three separate occasions over a period of seven or eight years to make significant changes to Comstock without notifying residents or asking for input or agreement. Affected residents do not agree with the recommendations. He again complained about not being notified about the June meeting where WALC recommendations were approved by members, specifically the *end-to-end* sidewalk which has the potential of being located in the City's right-of-way or in landscaped yards.

Mr. Jesson suggested that the Kearns and Comstock intersection be widened. Originally Comstock was intended for two lanes of traffic and parking on both sides, but now Comstock is being asked to accommodate one lane of parking, two four foot bike lanes, one six foot pedestrian lane, two lanes of vehicular traffic and a right turn lane heading toward US40. He emphasized that this will not work because there simply is not enough road. Residents of

Prospector suggest that rather than spending nearly $600,000 on an end-to-end sidewalk on Comstock that the City widens the intersection at an estimated cost of less than $50,000. This option will have minimal disturbance on the street and will work until Kearns Boulevard is finally improved. He pointed out that the use lanes significantly narrow as they approach Kearns creating problems, and again discussed widening the intersection. The road was designed for two parking lanes and two traffic lanes and it now has three vehicle lanes, including the right-hand turn lane, two four feet bike lanes and one six foot pedestrian lane. It is not wide enough. He reiterated that widening the intersection only affects state and city land and the cost is minimal. Residents would also like a nice bus stop with a bench as the current one is a mud hole. Comstock has already given up 50% of its parking which is significant. There has never been an incident involving a pedestrian and a vehicle on Comstock and there have not been any complaints about the temporary pedestrian lane. The neighborhood is generally happy with the recommendations, except for the full sidewalk, which was approved without the input of the neighborhood. The driver feed-back signs work and the other proposed improvements will slow or reduce vehicular traffic on Comstock. He urged members to consider widening the intersection and to monitor its effectiveness.

Shirin Spangenberg, Prospector resident, expressed her support of the sidewalk and added that she collected 62 signatures in one day and there was overwhelming support from every household she visited. She also has letters of support from Mo Hickey, Shannon O'Neal, Carolyn Frankenberg, and Liza Pickering and stated that she could have collected even more signatures but felt the petition was adequate. The sidewalk will benefit the greater Park City area; it is a huge connector to areas which was a goal of WALC, and the tunnels will make a big difference. Personally, the sidewalk adds another layer of safety for her children. With regard to Mr. Jesson's comment about no incidences on Comstock, she stated that she is not willing to take the risk of having one of her children be the first incident.

Heinrich Deters clarified that the recommendation does not call for four foot bike lanes, but sharrows which is a shared use approach.

Mark Olson, 2214 Comstock Drive, stated that he raised his children during his 19 years at this address and has never witnessed an incident. Problems are created by speeding. There are only 33 households on Comstock and people who actually live on the street should have more say. He felt the City could save a lot of money by manning the intersection with a police officer in the morning to ensure the safety of kids going to school. A sidewalk will make the area look like a commercial neighborhood and it is a waste of money.

Candace Erickson pointed out that most residential areas have sidewalks. She felt a raised sidewalk provides more safety and would like more information why some people are opposed to it, other than financially. She is pleased that the feed-back signs are working and appreciated the input about the condition of the bus stop which should be addressed.

Jim Hier felt that the real issue sounds as if it is speeding and not the sidewalk. He requested more information on the cost of widening the intersection before the contract proceeds and how both the street and sidewalk will be kept clear of snow. He really doesn't want to spend $500,000 if it is unnecessary but ensuring safety for the kids walking to school is his priority. Roger Harlan added that Comstock is a major pedestrian corridor and emphasized that the City has no intention of disturbing landscaping with the installation of the sidewalk. He explained that the $540,000 includes more than just the sidewalk and the sidewalk being constructed on Little Kate will serve a lot less kids than the Comstock area. Installing a sidewalk on Comstock is a consistent approach. Joe Kernan felt that the sidewalk will create a better area for the bus stop. A sidewalk is a long-term commitment to walkability and he supports the work of WALC in stressing the importance of the spine system where Comstock is key. In response to a question from Jim Hier, Mr. Deters explained that the $540,000 includes recrowning the road and other improvements that have to be made before a sidewalk can be properly installed.

Jonathan Weidenhamer stated that the consultant can look at the concept of widening the intersection and at some point, Comstock would have to be recrowned anyway. Dana Williams relayed that sidewalks can create a perception of safety and often speeds increase when a sidewalk is installed. He stated that the project is not contemplated until next summer and suggested that this be discussed again in the spring. Tom Bakaly noted that there are timing issues with regard to bidding the project and it was decided to revisit this in November. Jim Hier invited input on the sidewalk, excluding the cost argument, and emphasized the high number of children that can be served. Candace Erickson pointed out that the neighborhood has changed in 20 years, traffic has increased, and she hoped that the kids will actually use a sidewalk. She also would also like to hear the reasons people are opposed to the sidewalk, other than the cost of the project. Jon Weidenhamer spoke about surveying the area and discussion ensued on knowing exactly where the sidewalk is located and if there is an issue with the intersection. Matt Cassel assured members that there are no issues relating to the Comstock/Kearns intersection and indicated that UDOT is anxious to construct the tunnel. The only issue with regard to property boundaries relate to the school. The at-grade crossing will be eliminated to encourage people to use the tunnel. It was decided to again discuss this in a couple of weeks.

Prepared by Janet M. Scott, City Recorder

PARK CITY COUNCIL MEETING
SUMMIT COUNTY, UTAH
OCTOBER 1, 2009

I ROLL CALL

Mayor Dana Williams called the regular meeting of the City Council to order at approximately 6 p.m. at the Marsac Municipal Building on Thursday, October 1, 2009. Members in attendance were Dana Williams, Candace Erickson, Roger Harlan, Jim Hier, and Joe Kernan. Liza Simpson was excused. Staff present was Tom Bakaly, City Manager; Mark Harrington, City Attorney; Brooks Robinson, Planner; Jacquelyn Mauer, Planner; Francisco Astorga, Planner; Marin Decker, Intern; and Bret Howser, Budget Manager.

II COMMUNICATIONS AND DISCLOSURES FROM COUNCIL AND STAFF

None.

III PUBLIC INPUT *(Any matter of City business not scheduled on agenda)*

None.

IV WORK SESSION NOTES AND MINUTES OF MEETINGS OF SEPTEMBER 17, 2009

Roger Harlan, "I move approval of work session notes and minutes of the meeting of September 17, 2009". Candace Erickson seconded. Motion carried.

Candace Erickson	Aye
Roger Harlan	Aye
Jim Hier	Aye
Joe Kernan	Aye
Liza Simpson	Absent

V NEW BUSINESS *(New items with presentations and/or anticipated detailed discussions)*

1. Consideration of an Ordinance approving a plat for Gigaplat, located at 1897 Prospector Avenue, Park City, Utah – The Mayor opened the public hearing; there were no comments from the audience, and asked for a motion to continue to a date uncertain. Roger Harlan, "I so move". Joe Kernan seconded. Motion carried.

Candace Erickson	Aye
Roger Harlan	Aye
Jim Hier	Aye
Joe Kernan	Aye
Liza Simpson	Absent

2. Consideration of an Ordinance approving the 593 Park Avenue plat amendment, located at 593 Park Avenue, Park City, Utah – Planner Francisco Astorga stated that the Planning Commission forwarded a positive recommendation on the plat combination. For the benefit of Roger Harlan, he relayed that there are no outstanding issues. The Mayor opened the public hearing; there was no public input and the hearing was closed. Jim Hier, "I move we approve

the Ordinance approving the 593 Park Avenue plat amendment according to the findings of fact, conclusions of law, and conditions of approval". Roger Harlan seconded. Motion carried.

Candace Erickson	Aye
Roger Harlan	Aye
Jim Hier	Aye
Joe Kernan	Aye
Liza Simpson	Absent

3. Consideration of an Ordinance extending the approval of the Kentay Subdivision, a replat of a portion of Lots 7 and 8, Block 23 of the Park City Survey, and including an adjacent parcel, located at 430 Main Street, Park City, Utah – Brooks Robinson explained that this is a request for an extension to complete utility plans and record the final plat. Architect Steve Swanson, representing the owner, referred to Condition of Approval No. 10, *The applicant shall obtain written approval from adjacent property owners affected by relocation of existing utilities impacted by the easement vacation".* He explained that the neighbors were approached over a year ago and simply did nothing and will not provide a reason for not cooperating. The applicant has received preliminary planning approval and Mr. Swanson suggested rewording of No. 10, *Applicant shall work cooperatively with the neighbors affected by the utility relocation by the scheduled time change to minimize the disruption of service of work and provide written notice of same".*

Mark Harrington advised that the Council does not have the ability to consider the request to modify the condition of approval. This is an administrative process to simply grant an extension so there is adequate opportunity to fulfill conditions of approval originally adopted. Additionally this matter has not been property noticed for changing conditions of approval. Mr. Harrington stated that staff believes there is good cause to approve the Ordinance as written. The Mayor opened the public hearing; there was no input and the hearing was closed. Jim Hier, "I move we grant the extension for the approval of the Kentay Subdivision replat". He added that he would like to request some consideration for sending this back to the Planning Commission for rewording of Condition No. 10 in a manner that can help complete the project. Mark Harrington explained that the owner would have to apply for the consideration. Roger Harlan seconded. Motion carried.

Candace Erickson	Aye
Roger Harlan	Aye
Jim Hier	Aye
Joe Kernan	Aye
Liza Simpson	Absent

4. Consideration of an Ordinance approving the Sandstone Cove Plat Amendment, located at the Sandstone Cove Subdivision, Park City, Utah – Planner Jacquelyn Mauer explained that the application requests an amendment to the plat note regarding adjustments to the restrictive existing landscaping regulations. Jim Hier requested clarification with regard to the survey required to accurately assess water fees and Ms. Mauer explained that some owners have landscaped outside of the approved area described on the plat and water user fees need to be assessed accordingly. This is not an adjustment to water impact fees. Steve Dority, HOA, indicated that the plat is quite old and some notes don't make a lot of sense. This matter arose from dealing with the Building Department on other Building Code and architectural issues implicated with the plat notes. He stated that they agree with all conditions, even the new one regarding lighting restrictions brought up in a public meeting and he stated that they met with

the individual about her concern. The Mayor invited public input. Joe Kernan, "I move we approve the Ordinance amending the Sandstone Cove plat, as written in the staff report". Candace Erickson seconded. Motion carried.

Candace Erickson	Aye
Roger Harlan	Aye
Jim Hier	Aye
Joe Kernan	Aye
Liza Simpson	Absent

5. Consideration of an Ordinance amending Ordinance No. 07-57 increasing the Business Promotion Tax on all businesses within the boundaries of the Main Street Business Improvement District – Intern Marin Decker explained that an increase is needed to support expanded services. In May, Council directed staff to increase fees as part of the 2010 budget. The Business Improvement District was created in 2007 for the primary purpose of providing management and marketing for the street. Bret Howser discussed the timing of payments to the HMBA and Jim Hier suggested that the Ordinance be clarified in this regard as he has in the past. Roger Harlan pointed out the high level of support among the membership. The Mayor opened the public hearing, and with no comments from the audience requested a motion. Candace Erickson, "I move we approve the Ordinance increasing the Business Promotion Tax by $87 a year which will now make it $243 per year". Jim Hier seconded. Motion carried.

Candace Erickson	Aye
Roger Harlan	Aye
Jim Hier	Aye
Joe Kernan	Aye
Liza Simpson	Absent

6. Consideration a four-year contract, in a form approved by the City Attorney, with Ampco System Parking for parking services in the annual amount of $244,970 – Brian Anderson discuss the process for selecting a contractor and Ampco was determined to be the best qualified bidder. He recommended entering into another four year contract; after two years, Ampco has the ability to negotiate a price increase based on the Consumer Price Index. Ms. Erickson noted that she is not aware of any recent complaints about the parking system from the public and Mr. Anderson indicated that most relate to problems with the meters. The Mayor invited the public to comment; there was no input. Mr. Anderson added that Ampco has a good Salt Lake support base for staffing special events. Roger Harlan, "I move approval of a four year contract in a form approved by the City Attorney with Ampco System Parking for an annual amount of $244,970". Joe Kernan seconded. Motion carried.

Candace Erickson	Aye
Roger Harlan	Aye
Jim Hier	Aye
Joe Kernan	Aye
Liza Simpson	Absent

VI ADDITIONAL DISCUSSION – AGENDA ITEMS

VII ADJOURNMENT

With no further business, the regular meeting of the City Council was adjourned.

MEMORANDUM OF CLOSED SESSION

The City Council met in closed session at approximately 2 p.m. Members in attendance were Mayor Dana Williams, Candace Erickson, Roger Harlan, Jim Hier, and Joe Kernan. Liza Simpson was excused. Staff present was Tom Bakaly, City Manager; Tom Daley, Deputy City Attorney; Diane Foster, Sustainability Manager; Kathy Lundborg, Water Manager; Tom Eddington, Planning Manager; and Mark Harrington, City Attorney. Joe Kernan, "I move to close the meeting to discuss property, litigation and personnel". Jim Hier seconded. Motion carried. The meeting opened at approximately 4:30 p.m. Jim Hier, "I move to open the meeting". Roger Harlan seconded. Motion carried.

Candace Erickson	Aye
Roger Harlan	Aye
Jim Hier	Aye
Joe Kernan	Aye
Liza Simpson	Absent

The meeting for which these minutes were prepared was noticed by posting at least 24 hours in advance and by delivery to the news media two days prior to the meeting.

Prepared by Janet M. Scott

____
Janet M. Scott, City Recorder

City Council
Staff Report

Subject: Main Street Music Crawl
Author: Tommy Youngblood
Department: Sustainability
Date: October 15, 2009
Type of Item: Application - Master Festival License

Summary Recommendations:
Review the Master Festival License application, conduct a public hearing, and approve the license for the Main Street Music Crawl, as conditioned, on October 24, 2009 to be held in Old Town on Main Street.

Description:

Topic:
Review the Master Festival License Application, submitted by Mountain Town Music for the Main Street Music Crawl on Main Street on Saturday, October 24, 2009.

Background:
Mountain Town Music submitted an application requesting a Master Festival License to hold their Main Street Music Crawl. In the past few years this has been mostly an informal event held on the street and in private clubs. This year the organizer wanted to expand the event to span the entirety of Main Street including involvement and opportunities for businesses, locals and visitors. The organizer has been working with the Historic Main Street Business Alliance along with individual Main Street businesses and building owners.

PCPD has been notified and will be involved in the public safety coordination of the soft road closure should Council approve the event. However, the organizer (in addition to individuals) is responsible for security and ensuring open container violations do not occur as participants transfer from one licensed premise to another. Nothing in this approval relieves alcohol license holders or individual participants from complying with all applicable DABC, local and state laws and regulations regarding alcohol. At no time shall the secure area be considered a beer garden as no Single Event Beer License has been secured by the event organizer with the DABC. The organizer expects 125 participants Saturday, October 24, 2009. The applicant has met with Special Events staff to go over any logistical challenges or other issues.

The Main Street Music Crawl was presented at the September 22nd HMBA Board of Directors meeting at there were no dissenting comments.

The Main Street Music Crawl is consistent with the City Council's Goal #4 which is to continue to promote Park City as multi-seasonal resort by maintaining its status as a World Class Resort which hosts such events as this and to increase the number of events.

Analysis:

Main Street Music Crawl

The event organizers have requested to hold their event on Saturday, October 24, 2009. Participants will buy a ticket that allows them to see live music at different businesses along Main Street without having to pay additional cover charges. At 9:00pm the participants will meet in front of the Star Bar located at 268 Main; they will proceed down the sidewalks toward Heber Ave. Lower Main Street from Heber to 9th Street will be signed " No Street Parking" from 7:00pm to 10:00pm. The Lower Main Street area will be closed down to all street traffic beginning at 9:00pm. At no time will there be a closure of any portion of Main Street south of Heber Avenue or any parking restrictions on that portion of Main Street. At 9:25 pm a band will play from the balcony of 625 Main (building owners have given consent) and play until 9:45pm. The group will then cross onto Lower Main Street at Heber Ave. This area will employ a soft closure that will include the use of bicycle barricades at the intersection of Main Street and Heber Avenue which will encourage use of the crosswalks to enter the secure area north of Heber Avenue. Additionally, 7th Street will be secured at Park Avenue, and Main Street and 9th Street secured so as to eliminate vehicular traffic into the secure area.

From 9:45 pm – 10:00 pm a band located on the bridge over lower Main Street (controlling owners have given consent) will play. At 10:00 pm the street is cleared of people and the secure area will re-open to vehicular traffic at 10:30 pm..

Parking

Other than no parking on Lower Main; we foresee no negative parking impacts for this event. Parking for this event will be accommodated in China Bridge and other public and private parking areas in Old Town.

At the time of this report there are no projects planned that would hinder this activity and there has been no request for any temporary structures or signs. The Building Department will conduct a pre-inspection of the bridge prior to the event to establish an occupant load and ensure that required access is maintained. This event will be publicized with the Park City Chamber/Bureau, KPCW and Local newspaper outlets.

This application is being reviewed as a Master Festival License due to the request to the request for a temporary street closure, use of City property and Amplified Music.

Department Review:

All applicable departments have reviewed the application for the Main Street Music Crawl and their comments have been incorporated into the report.

Alternatives:

Approve the Request:
Approve the Master Festival License allowing the Main Street Music Crawl as described.

Deny the Request:
Deny the Master Festival License, preventing the addition of the Main Street Music Crawl to Park City's schedule of events.

Continue the Item:
The City Council may continue the discussion in order to receive additional information.

Significant Impacts:
No parking on Lower Main from 7:00 pm – 10:00 pm
Closure of Lower Main to all traffic from Heber Ave to 9th Street from 9:00 pm to 10:00 pm. Park City has held similar events to the Main Street Music Crawl.

Consequences of not taking the recommended action:
The Main Street Music Crawl would take place without the outdoor music or street closure element.

RECOMMENDATION:
Staff recommends the City Council conduct a public hearing and approve a Master Festival for the Main Street Music Crawl on Saturday, October 24, 2009 based on the following Findings of Fact, Conclusions of Law and Conditions of Approval.

Findings of Fact:

1. The Main Street Music Crawl will be held on Saturday, October 24, 2009. The event will last from 9:00 pm to 10:00 pm and will occur on Main Street.
2. Parking for the participants can be handled within China Bridge and other private parking lots for the Old Town venue. The conduct of the Main Street Music Crawl will not substantially interrupt or prevent the safe and orderly movement of public transportation or other vehicular and pedestrian traffic in the area of its venue other than noted.
3. The events associated with the Main Street Music Crawl will not require the diversion of so great a number of police, fire, or other essential public employees from their normal duties as to prevent reasonable police, fire, or other public services protection to the remainder of the City.
4. The event will be held on Main Street. The concentration of persons, vehicles, or animals will not unduly interfere with the movement of police, fire, ambulance, and other emergency vehicles on the streets or with the provision of other public health or safety services.
5. There are no other Master Festival or Special Event licenses that have been granted for Saturday, October 24, 2009.

6. The size of the crowd and nature of the event will not create an imminent possibility of violent disorderly conduct likely to endanger public safety or cause significant property damage.
7. The applicant has been working with City Staff and applicable departments to address all event concerns. The Applicant demonstrates an ability and willingness to conduct the event pursuant to the terms and conditions of this Chapter and has not failed to conduct a previously authorized event in accordance with the law or the terms of a license, or both.

Conclusions of Law:

1. The application is consistent with the requirements of the Park City Municipal Code, Title 4, Chapter 8.

Conditions of Approval:

1. The applicant, at its' cost, shall incorporate such measures as directed by Staff in order to ensure that any safety, health, or sanitation equipment, and services or facilities reasonably necessary to ensure that the event will be conducted with due regard for safety are provided and paid for by the applicant.
2. Applicants shall provide proof of liability insurance in the amount of two million dollars ($2,000,000) or more as may be required by the Special Events Manager or the City Attorney's Office, and shall further name Park City Municipal Corporation as additional insured. All Applicants shall further indemnify the City from liability occurring at the event except for any claim arising out of the sole negligence or intentional torts of the City or its employees.
3. The applicant shall barricade and provide detour signage for the street closure in accordance with the Manual of Uniform Traffic Control Devices (MUTCD) for the duration of the event.
4. All plans for tents, fireworks, stages, signs and other temporary structures shall be submitted to the Building Department for review and permitting by October 20^{th} , 2009

Attachments

Exhibit A- Applicant’s Summary of Activities

Submit by Email | Print Form

PARK CITY MUNICIPAL CORPORATION
SPECIAL EVENT AND MASTER FESTIVAL LICENSE
EVENT APPLICATION - PART I

PARK CITY 1884

Special Events
435.615.5150
specialevents@parkcity.org

PART I of the Special Event and Master Festival License (MFL) must be completed and **submitted electronically** to the Special Events Department no less than **90 days prior to a MFL** or no less than **60 days prior to a Special Event**.
The application will be reviewed by the Special Events Department. ***Granting of the permit is not guaranteed.***

APPLICANTION FEES – DUE AT TIME APPLICANT SUBMITS PART I
All new applications require a $100 application processing fee.
All applications for returning events require a $50 application processing fee.
The Application Fee is NON-REFUNDABLE.

ADDITIONAL FEES
Additional fees for other services, including Health Department, Fire Department, and City Services will be estimated and provided to the applicant. Applicant will receive a final invoice approximately two weeks after the event concludes.

APPLICANT AND SPONSORING ORGANIZATION INFORMATION		
NAME	MOUNTAIN TOWN MUSIC	
STREET ADDRESS	P O BOX 680 896	
CITY, STATE, ZIP CODE	PARK CITY UT 84060	
DAY PHONE	435-901-7664	
FAX PHONE	N/A	
E-MAIL ADDRESS	MOUNTAIN TOWN MUSIC @ GMAIL.COM	
SPONSORING ORGANIZATION	MOUNTAIN TOWN MUSIC	
Contact Person "ON SITE" Day of Event	Name: BRIAN RICHARDS	Cell Number: 435-901-7664

EVENT INFORMATION					
Type of Event (Check all that apply):					
Master Festival Criteria: A PUBLIC EVENT (If one box is checked, the event is automatically a MFL)	☐ Attraction of crowds over 500	☐ Street Closure	☐ Use of City park, building or property	☐ Use of off-site parking facility	☒ Use of amplified music
Special Event Criteria: PRIVATE OR PUBLIC EVENT	☐ Causes significant public impacts via disturbance, crowd, traffic/parking	☐ Disruption of the normal routine of the community or affected neighborhood	☐ Necessitates temporary business or liquor licensing	☐ Events signs, visible from public property	☐ Temporary structures

☐ Run/Walk	☐ Parade	☐ Trail Event
☐ Road Bike Event	☐ Park Festival	☐ OTHER (please specify):
☐ Street Fair	☐ Concert	

EVENT TITLE:	MAIN STREET MUSIC CRAWL			
FIRST TIME OR ANNUAL EVENT (IF ANNUAL, HOW MANY YEARS?)	ANNUAL - 6th YEAR			
EVENT DATE (S)	Oct 24th			
EVENT HOURS	**START:**	~~OCT 24~~ 9:00	**END:**	~~OCT 24~~ 9:45
SET-UP	**DATE:**	OCT 24	**TIME:**	9:00
BREAK DOWN	**DATE:**	OCT 24	**TIME:**	9:45

ATTENDANCE	PARTICIPANTS: 125	SPECTATORS: —	TOTAL: 125
LOCATION	MAIN STREET		

OVERALL EVENT DESCRIPTION (Briefly explain event and activities):
THE MAIN STREET MUSIC CRAWL WILL INCLUDE A WALK DOWN MAIN STREET AND AN ACOUSTIC MUSICIAN PLAYING IN BACK OF TRUCK ON THE WAY DOWN. AT THE BOTTOM THERE WILL BE A BAND PLAYING ON BALCONY FOR 15-20 MIN.

MARKETING YOUR EVENT (Your Marketing Plan is criteria for approval of your event)		
Contact the Park City Chamber/Bureau to help market y our event	435.649.6100	www.parkcityinfo.com
PLEASE DESCRIBE MARKETING AND PROMOTIONAL EFFORTS FOR YOUR EVENT: PARK RECORD, KPCW, CITY WEEKLY, WEBSITE, EMAIL BLAST, ONLINE CALENDARS.		

RULES AND REGULATIONS

- A non-refundable application fee is required at the time the application is submitted to Park City Municipal Corporation. For new events the application fee is $100, for returning events the application fee is $50.00.
- Part I of the application must be submitted a minimum of 90 days prior to a Master Festival License (MFL) and 60 days prior to a Special Event. Part II of the application for both a MFL and a Special Event must be submitted 45 days prior to the requested event date.
- A site plan of your event is required with your application identifying street closures, signs, supply trucks, barricades, tents, activity location, portable toilets, bleachers, other temporary structures, water stations, headquarters, solid waste containers, entrance/exits, walkways and any other details that would assist the Special Event Staff with understanding the setup of your event.
- For runs, walks and parades a site plan outlining your route must be submitted along with your Special Event Permit application. If your event will generate additional traffic, or interrupt existing traffic on any city street, a traffic control plan outlining necessary street closures is required before a Special Event Permit will be issued.
- Permit Applications may require review by the City Council for approval or denial. Need for review is based on size, location, scope and impact of event.
- An applicant must schedule a meeting with Special Event Staff 30 working days prior to event.
- A certificate of insurance must be filed with Special Event Services ten (10) working days before the event in the amount of $2,000,000. The City of Park City requires all certificates of insurance to be submitted on a standard ACORD form, or on the insurance company's letterhead. Park City Municipal Corporation must be listed as additionally insured. If you do not have insurance, the City of Park City is able to provide you insurance, at a cost, through the TULIP Program. Please visit our website at; www.parkcity.org/Special Events & Facilities/applications/index.html.
- All debris and trash must be removed from an event site immediately after the event. Failure to do so may require more City Services. All expenses will be the responsibility of the event applicant. It is highly recommended that the applicant provide recyclable receptacles at the event. Please contact a local recycle company (information provided in Application Part II). Thank you.
- Depending on the duration of your event and the availability of public restrooms, you may need to rent portable chemical toilets to accommodate participants. Park City Municipal Corporation City Code requires one (1) chemical toilet for every 65 people. The figure is based upon the maximum number at your event during peak time. The total number of toilets will be determined on a case-by-case basis.
- You must receive approval for your event before you promote market or advertise your event. Conditional

approval will be made after the event organizer submits the application and it is initially screened. Acceptance of your Special Event Application by the City is not a guarantee of the date, location or an automatic approval of your event.

- Only readily removable barricades may be used for street closures and a 20-ft lane of clearance is required for emergency vehicle access at all times. You may be required to provide advisory signs if your event impacts a major use roadway. Advisory signs are intended to provide advanced notice to the regular users of a roadway of the scheduled closure.
- In some cases, the hiring of officers from the Park City Police Department, a professional security company, or a combination of both may be required in order to obtain a Special Event Permit. The Park City Police Department determines the need, number, and type of security personnel based on expected attendance, location of the event, the presence of alcohol, history of the event, nature of the event, street closures, and the amount of advertising used for an event.
- The Fire Department must review and approve the following: your plans for first aid and/or emergency medical services; your route for emergency vehicle access;
- The Building Department must review parade floats; use of an open flame; use of fireworks or pyrotechnics; handling of vehicle fuel; cooking facilities; the location of power sources; the availability and location of on-site fire suppression equipment; the occupancy and spacing of tables or enclosures; and the use of tents, canopies or any fabric shelters. The Building Department will require an inspection before and/or during the event.
- All temporary structures, i.e. tents, stages, platforms, etc. must be engineered and stamped by a State of Utah Licensed Engineer.
- The applicant(s) shall assume and reimburse the City for any and all costs and expenses determined by City to be unusual or extraordinary, and related to the event for which the permit is sought, including but not limited to:

A. The cost of providing, erecting, and moving barricades and/or signs;
B. The cost of providing and moving garbage or waste receptacles;
C. The cost of city personnel who are required by the city to work overtime hours

- The City may require, as a condition to issuance of a permit, that a sum be deposited with the city to meet such costs. The required deposit shall not exceed one thousand dollars ($1,000.00).

AGREEMENT AND SIGNATURE		
I the undersigned representative have read the rules and regulations with reference to this application and am duly authorized by the organization to submit this application on its behalf. The information contained herein is complete and accurate.		
Name (printed)	BRIAN RICHARDS	
Signature ***(if electronic signature is available)***:	**Date:** 9-17-09	

REMITTAL INFORMATION	
Park City Municipal Corporation (PCMC) **ATTN: Special Events** **PO Box 1480** **Park City, Utah 84060** **435.615.5150**	***If you would like to pay by credit card or make your payment in person please contact Tommy Youngblood at 435.615.5187.***

OFFICE USE ONLY	
PERMIT APPLICATION #:	**ASSIGNED TO:**
NOTES:	

City Council
Staff Report

Subject:	**Amended Inter-local Transit Agreement**
Author:	**Kent Cashel**
Department:	**Public Works**
Date:	**October 15th, 2009**
Type of Item:	**Administrative**

Summary Recommendation:
Authorize the City Manager to execute an Amended Interlocal Transit Agreement in a form approved by the City Attorney.

Background:
In 2002 Park City and Summit County entered into an Interlocal Transportation Agreement. Under this agreement Park City Transit provides transit services to Summit County on a cost recovery basis.

In 2005 this agreement was amended to include a proportional operating cost sharing formula that ensured all operating costs for transit were shared proportionately by each of the entities. No capital costs (costs for the land and buildings at Ironhorse Dr. were not included in the cost sharing formula at this time).

In 2007 Summit County and Park City Municipal Corp formally executed a letter of intent (through Council and Commission action) stating that the two parties would cooperate on the financing design and construction of a joint transit operations facility at the Ironhorse location. This letter of Intent tasked the Joint Transit Advisory Board (JTAB) with recommending a cost sharing formula for the construction and operation of the expanded Ironhorse facility.

The Joint Transit Advisory Board consist of the following members:

Jim Hier	Park City Council
Roger Harlan	Park City Council
Claudia McMullin	Summit County Council
Kevin Callahan	Summit County
Kent Cashel	Park City Municipal

In early 2009 design of the Ironhorse facility was begun With a projected design completion date of November 15th, 2009. Construction is scheduled for completion in April 2011.

The JTAB has completed its review of the attached amended agreement and is forwarding a recommendation to Park City and Summit County Councils. This formula will be included in an Amended Interlocal Transportation Agreement.

Analysis
Staff, after consulting with the JTAB, developed a set of principles to guide the formulation of a capital cost sharing formula. These principles stated that the capital share formula should:

- Be based upon proportional share of capital costs
- Be simple to understand
- Capture the following cost elements:
    - o Design
    - o Construction
    - o Ongoing capital renewal
    - o Any financing costs
- Allow for lump sum or annual payment.
- Allow for change in fleet proportions.
- Be included as part of existing transit agreement.

Staff developed a capital cost sharing formula that satisfied all of the principles set forth above. This formula uses a standard lease payment calculation to determine a one time lump sum, annual or monthly payment amount. A summary of key assumptions in the calculation are found below (Full calculation may be found in Attachment D).

Local Share	This is the amount of the project that will not be paid for with grant funds and must be funded using local dollars or through the donation of project property. Local share for the Ironhorse project is anticipated to be $ 1,400,000. The City plans to cover local share by donating project property.
Proportional Capital Share	Proportional capital share was calculated using the entities number of buses in the fleet as a percentage of total fleet buses. Total bus fleet is 34 buses, City owns 26 the County 8. City proportional share = 76% (26/34) County proportional share = 24% (8/34)
Interest Rate	The interest rate utilized to calculate payments is the Utah State Treasurer's PTIF Pool Rate. The City invests its fund balances in this pool and would receive this interest rate if funds had not been spent on construction of the facility.
Number of Payment Periods	The facility use payment was calculated for a one-time payment, 20 annual payments or 240 monthly payments.
Capital Renewal	Capital Renewal is the cost of replacing building subsystems as they wear out, which include among other things roofs, electrical distribution equipment, HVAC equipment (air handlers, compressors, chillers, boilers), building control systems, paving, and fire protection apparatus. Capital Renewal fees were calculated using 2% of building replacement cost ($9,000,000). Each entity is responsible

for funding its proportional share (entity buses/total buses in fleet) of this fee.

Current Annual Capital Renewal Fee is:

City:	$137,647
County:	$ 42,353

Fees will be maintained in a capital project account and a full record of revenues and expenditures will be maintained by City staff.

The proportional capital share approach identified above is being recommended by the JTAB. This facility use payment is calculated in Attachment D of the attached Transit Agreement.

With the inclusion of the facility use fee all costs of transit will be proportionately shared by the City and Summit County

<u>Amended Agreement</u>
In addition to the language and calculations to cover Ironhorse facility use fee several minor changes (technical clean-ups) to the agreement have been included in the attached amended agreement. Those changes are clearly identified in the attached document and a summary of those changes follows:

<u>Agreement Section</u>	<u>Summary of Change</u>
Preamble	Technical corrections to dates and place names and inclusion of statements regarding expansion of Ironhorse Facility.
Incorporated Documents	Added Facility Use Payment (Attachment D)
Section 1	Technical correction “County Commissioner” to “County Councilor” to reflect change in County governance.
Section 2.1	Technical correction – dates
Section 3.6	Addition of Facility Use Payment clauses
Section 4	Changes in insurance to reflect current policies and coverage levels.
Section 5.4	Changes in emergency procedures to reflect National Incident Management System adopted by both Summit County and Park City.
Signature Page	Technical Correction to reflect change in County governance.

The Joint Transit Advisory Committee has reviewed the Facility Use fee and other changes in the amended agreement and forwards a positive recommendation to the City and County Councils

County Legal Staff has reviewed and commented upon the amended agreement.

Department Review:
This report (including attachments) has been reviewed by the City Manager's office, the City's legal division, The City's Finance and Budget divisions and Public Works. All comments received have been included or addressed in this report.

Alternatives:

Approve the Request:
Council could authorize the City Manager to excute an amended Interlocal Transit Agreement. This is Staff's recommendation.

Amend the Request:
Council could direct Staff to amend agreement language and then authorize the City Manager to execute an amended Interlocal Transit Agreement that included the amended language.

Deny the Request:
Council could deny Staff's request. Staff does not recommend this alternative.

Continuance:
Council could continue the item.

Do Nothing:
Council could do nothing. Staff does not recommend this alternative.

Recommendation:
Authorize the City Manager to execute an Amended Interlocal Transit Agreement in a form approved by the City Attorney.

Attached:
Draft Amended Agreement

FIRST AMENDMENT TO **PARK CITY MUNICIPAL CORPORATION AND SUMMIT COUNTY INTERLOCAL TRANSPORTATION AGREEMENT**

THIS AGREEMENT ("AGREEMENT") is made and entered into this _______ day of ______________________, 2009, by and between the Park City Municipal Corporation (hereafter "the CITY") and the COUNTY of Summit (hereafter "COUNTY"), bodies corporate and politic of the state of Utah.

Deleted: 6

WHEREAS, the Interlocal Cooperation Act, Title 11, Chapter 13, Utah Code Ann. 1953, as amended, authorizes public agencies to enter into AGREEMENT with one another for joint or cooperative action; and

WHEREAS, the COUNTY and the CITY are public agencies desiring to provide quality and efficient transit services for residents within their respective jurisdictions, and

WHEREAS, the COUNTY has established the SNYDERVILLE BASIN TRANSIT DISTRICT to provide partial funding for operational and capital expenses associated with public transit services in the Snyderville Basin area (Identified in Exhibit E); and

Deleted: Kimball Junction

WHEREAS, the CITY has the management and technical personnel and the necessary expertise and assets useful for the support of the COUNTY'S transportation project; and

WHEREAS, the COUNTY desires to obtain such services from the CITY; and

WHEREAS, the CITY is desirous of providing such services; and

WHEREAS, it is in the best interests of both parties to provide efficient delivery of transportation services; and

WHEREAS, the CITY is implementing the construction of its Expanded Ironhorse Transit Facility; and

WHEREAS, the County desires to use a portion of the Expanded Ironhorse Facility according to the terms of this First Amended Agreement;

NOW THEREFORE, in consideration of the foregoing recitals, and the consideration and covenants hereinafter agreed to, the parties commit themselves to the following contractual terms:

INCORPORATED DOCUMENTS: In addition to the terms and conditions of the AGREEMENT, the parties agree that the following documents are hereby incorporated by reference herein and are as fully a part of this AGREEMENT:

1. The Cost Worksheet and Monthly Payment Schedule attached as Exhibits "A" and "B" and hereinafter referred to as "Cost Worksheet" and "Monthly Payment Schedule".

2. The Equipment Inventory attached as Exhibit "C" and hereinafter referred to as "Equipment Inventory".

3. Facility Use Payment attached as Exhibit "D" and herinafter referred to as "Facility Use Payment"

Formatted: Bullets and Numbering

4. The Snyderville Basin Transportation Distict Map attached as Exhibit E and herinafter referred to as "SBTD Map"

Formatted: Indent: Left: 0.33", Hanging: 0.42", Tabs: 0.67", Left

The parties further agree that the precedence of the documents in descending order shall be as follows:

a. This AGREEMENT

b. The Cost Worksheet, Monthly Payment Schedule, Equipment Inventory, and Facility Use Payment.

Deleted: and

c. Summit County Park City Short Range Transit Development Plan – Prepared by LSC – November, 2007.

Deleted: 3

1. SERVICES:

1.1. Purpose: The CITY hereby contracts with the COUNTY to provide transportation management and operations services upon the terms and conditions hereinafter set forth.

1.2 Scope of Work: To provide Management and Staff for the operations of the COUNTY service including: management, accounting, operation, as further detailed in this AGREEMENT.

1.3 Joint Transit Advisory Board: The CITY and COUNTY have established a Joint Transit Advisory Board which will make recommendations to both the CITY and COUNTY regarding service rate fees, scheduling, routes, level of service, look of buses and strategies for supplementing service as well as further regionalization. The Joint Transit Advisory Board shall be comprised of one County Councilor, one City Council representative, Summit County Public Works Administrator and Park City Deputy Public Works Director. Park City Transit staff will provide technical support to the Joint Transit Advisory Board as required. At a minimum, the Joint Transit Advisory Board shall meet:

Deleted: Commissioner

1. in February of each year to prepare an updated transit plan for inclusion in the Statewide Transportation Improvement Plan (STIP); and

2. in August of each year to review this agreement, the service rate fees and develop a draft budget and service plan for the next calendar year.

2. TERM AND TERMINATION

2.1 Contract Term: The term of this AGREEMENT shall be from January 1, 2010 through December 31, 2010 and shall automatically renew for successive one (1) year terms, until such time as either party serves written notice of termination. Such termination notice may only be given on or before August 30th each year. In no circumstances shall this AGREEMENT exceed fifty (50) years in duration.

Deleted: 2006

Deleted: 2006

2.2 Review Process: The CITY and COUNTY shall annually review their transportation services and shall cooperate in resolving issues as they arise in a manner that is mutually beneficial and satisfactory to CITY and COUNTY. The COUNTY will determine what routes and services are provided outside Park City Municipal limits if paid for by the COUNTY. The CITY will determine what routes and services are provided inside Park City Municipal limits if paid for by the CITY. In the event that any modification to this AGREEMENT is required in light of these annual reviews, the parties may enter into amendments, addenda or other written manifestation of any modifications to the AGREEMENT, which modifications must be in writing and signed by both the CITY and the COUNTY.

2.3 Disposition of Property Upon Termination of Agreement: Upon complete or partial termination of this agreement equipment identified in the Equipment Inventory , attached to this AGREEMENT as Exhibit "B", will be disposed of as follows:

1. Equipment funded in whole or in part with United States Federal Transit Administration 5309 or 5311 funds will be disposed of in accordance with all requirements set forth in the current United States of America, Department of Transportation, Federal Transit Adminstration, Master Agreement, herinafter referred to as the Master Agreement. The agency which provided local matching funds for the purchase of each piece of equipment identified in the Equipment Inventory will , subject to provisions of the Master Agreement:
    a. determine disposition of that piece of equipment: and
    b. assume financial responsibility for any remaining federal interest in that piece of equipment.

2. Equipment paid for with local funds will remain the property of the agency which provided the local funds for the purchase of that equipment.

3. COMPENSATION AND PAYMENT

3.1 Maximum Obligation: The COUNTY agrees to pay for COUNTY'S services as described herein as Exhibit A and Exhibit B. The maximum price to be paid by the COUNTY to the CITY each contract year shall not exceed the sums set forth in the Cost Worksheet, attached to this AGREEMENT as Exhibit "B" and reviewed annually except as such Maximum Obligation may be increased upon mutual written AGREEMENT because of an increase in number of Vehicle Service Hours or Vehicle Service Miles, or other material change in the project, above those set forth in Exhibit "B". The timing of payments shall be in accordance with Exhibit "B". Any increase in the Maximum Obligation shall require approval by the applicable governmental funding agencies.

3.2 Price Formula: The COUNTY agrees to pay for performance of the services set forth in the AGREEMENT in accordance with Exhibit "A".

3.3 Equipment and Facilities: The CITY will administer the purchase of equipment and federal or state grants relating to regional transit services. Any federal or state bus allocations in the name of the COUNTY shall be transferred to the CITY. All equipment purchased with Federal Transit Administration 5309 and 5311 funds on behalf of the COUNTY shall be recorded in the Equipment Inventory and shall serve as formal record of the County's interest in this equipment The COUNTY shall pay the local match for any/all such purchases. The COUNTY and CITY will make best efforts to jointly secure future sites and funding for the park and ride facilities, bus maintenance and other capital facilities needed to facilitate the regional transportation system.

3.4 Change. In the event the COUNTY requests changes in the Scope of Work which, during any contract year, comprise a cumulative total of less than fifteen percent (15%) above or below that specified in the Cost Worksheet, compensations shall be adjusted according to the Pricing Formula set forth in Paragraph 3.2, Price Formula, and the Maximum Obligation stated in Paragraph 3.1 shall be adjusted accordingly. Changes in the Scope of Work which, during a contract year, comprise a cumulative total in excess of fifteen percent (15%) above or below that specified in the Cost Worksheet shall result in adjustment of the rates specified in Paragraph 3.2, Price Formula herein to reflect the effect on those rates caused by the requested change. The COUNTY shall issue written Change Orders to the CITY detailing all requested changes in scope. Change orders shall either specify a cost limit or shall be subject to subsequent negotiations and shall require the CITY'S acceptance to become effective.

3.5 Audit: Upon reasonable request, CITY shall permit the authorized representative of the COUNTY, the U.S. Department of Transportation, and the Comptroller General of the United States to inspect and audit all data and records of the CITY relating to performance under this AGREEMENT.

3.6 Expanded Ironhorse Transit Facility. The COUNTY acknowledges that the CITY is undertaking the expansion of the CITY'S existing transit facility located at 1053 Ironhorse Drive in Park City.

3.6.1 City shall , subject to capacity of the Expanded Ironhorse Transit Facility, allow Summit County to use bus storage and maintenance bays for transit buses utilized to provide services under this agreement.

3.6.2 Payment for Use. COUNTY will pay monthly for the twenty (20) year term the payment set forth in Exhibit D to this First Amended Agreement.

3.6.3 Use of Expanded Ironhorse Facility. COUNTY'S use of the Expanded Ironhorse Transit Facility shall be solely for the storage and maintenance of transit buses utilized to provide service under this agreement.

Formatted: Bullets and Numbering

Deleted: on

Formatted: Bullets and Numbering

Deleted: lease

Deleted: to Summit County

Deleted: Lease Term. Twenty (20) years.

Deleted: Lease

Deleted: C

Deleted: . .

3.6.4 Change in Use. Any modification to the Expanded Ironhorse Transity Facility shall be at CITY's expense and shall not impact COUNTY'S use of that facility.

4. INSURANCE

4.1 Comprehensive General Liability Insurance: Throughout the term of this AGREEMENT, the CITY shall procure and maintain a Comprehensive General Liability Policy providing $2,000,000 (TWO MILLION DOLLARS) each occurrence and $4,000,000 general aggregate Bodily Injury and Property Damage. Said coverage may be provided through one or more policies and shall include coverage for premises, personal injury and blanket contractual, but shall not include coverage for vehicle liability and/or vehicle physical damage insurance. Such vehicle insurance shall be provided as specified in Paragraph 4.3 of the AGREEMENT, vehicle insurance. Such policies shall provide that they may not be cancelled without at least sixty (60) days prior written notice to the COUNTY.

Deleted: 3

Deleted: THREE

Deleted: combined Single Limit

Deleted: 2

4.2 Throughout the term of this AGREEMENT, the County shall procure and maintain a Comprehensive General Liability Policy providing $2,000,000 (TWO MILLION DOLLARS) each occurrence and $4,000,000 general aggregate Bodily Injury and Property Damage for County owned and maintained transit centers, bus stops, shelters, rest rooms and other passenger ammenities. Said coverage may be provided through one or more policies and shall include coverage for premises, personal injury and blanket contractual, but shall not include coverage for vehicle liability and/or vehicle physical damage insurance. Such policies shall provide that they may not be cancelled without at least sixty (60) days prior written notice to the CITY.

Formatted: Bullets and Numbering

4.3 Vehicle Insurance:

1. Throughout the terms of this AGREEMENT the CITY shall provide vehicle liability insurance in the amount of $2,000,000 (TWO MILLION DOLLARS) each occurrence and $4,000,000 general aggregate Bodily Injury and Property Damage. Coverage may be provided through one or more policies and shall include: Collision and Comprehensive physical damage coverage with a $10,000 (TEN THOUSAND DOLLAR) deductible Uninsured Motorist (UM) and Personal Injury Protection (PIP) with coverage limits as required by law. The CITY shall name the COUNTY as additional insured and shall furnish the COUNTY with evidence of insurance. Such policy or policies shall provide that they may not be cancelled without at least sixty (60) days prior written notice to the COUNTY.

Formatted: Indent: Left: 0.75"

Formatted: Bullets and Numbering

Deleted: ¶

Formatted: Indent: Left: 0", Hanging: 1.5"

Deleted:

Deleted: $3,000,000 (THREE MILLION DOLLARS) combined Single Limit

Deleted:

Deleted:

Deleted:

Deleted:

Deleted:

Deleted:

2. In case of damage or destruction of any vehicle or vehicles provided by the COUNTY under the terms of this AGREEMENT, the COUNTY agrees that liability for the CITY for said damage or destruction shall be limited to the appraised fair market value of the vehicle(s) at the time of the loss.

Formatted: Indent: Left: 0", Hanging: 1.42"

Deleted:

Deleted:

Deleted:

Deleted:

3. In the event that addition, deletion, or acquisition of new vehicles results in changes in the vehicle fleet, the compensation paid to the CITY for the purpose of maintaining insurance coverage on said vehicles shall be subject to immediate renegotiations (up or down) to equitably adjust the documented actual premium cost under the insurance policy then in effect.

5. RESPONSIBLITIES OF THE CITY

5.1 MANAGEMENT: During the term of this AGREEMENT, the CITY shall provide sufficient executive and administrative personnel as shall be necessary and required to perform its duties and obligations under the terms hereof. The Summit County - Park City Short Range Transit Development Plan should be used as a basis when making management decisions.

5.2 Medical Assistance to Passengers: In the event of injury or illness on board a vehicle, the driver shall advise the dispatcher and request directions or follow established City policy.

5.3 Uniform: CITY shall require its employees to wear uniforms for the COUNTY service consistent with the CITY'S uniform policy.

5.4 Emergency Procedures: In the event of a major emergency such as an earthquake, dam failure, fire or man-made catastrophe, CITY shall be entitled to make transportation and communication resources available to a degree possible for emergency assistance. If the normal line of direct authority from the COUNTY is intact, the CITY shall follow the instructions of authorized COUNTY officials. If the normal line of direct authority is broken, and for the period while it is broken, the CITY shall make best use of transportation resources following to the degree possible, under the direction of, but not limited to, the Incident Commander, the Incident Liaison, the City Emergency Operations Center (EOC) or other responsible entity Emergency use of transportation may include evacuation, transportation of injured, temporary shelter during inclement weather and movement of people to food and/or shelter. CITY shall be reimbursed in accordance with the normal "Price Formula" identified on Exhibit "A" or if the normal method does not cover the types of emergency services involved, then on the basis of fair, equitable and prompt reimbursement of City's actual costs. Reimbursement for such major emergency services shall be over and above "Maximum Obligation" specified in Paragraph 3.1 of this AGREEMENT. As soon as practicable after the emergency condition ceases, CITY shall reinstitute normal transportation services.

Deleted: the

Deleted: an organization such as the Police, Red Cross, or National Guard, or other such responsible entity which appear to have assumed responsibility

Deleted: .

Deleted: imate

5.5 Reporting: On monthly basis, the CITY shall prepare and forward to the COUNTY a performance monitoring report, providing at a minimum the following information:

1. Total ridership over the period, by route
2. Vehicle service-hours and service-miles provided
3. Percent on-time performance
4. Number/percent of missed trips
5. Number of missed passenger

6. Management and marketing activities conducted
7. Financial summary, including budget versus actual expenditures
8. Performance Indicators
9. Any press coverage or articles regarding the transit service

5.6 Financial Assistance: The City shall be responsible for receiving and distributing Federal and State transit financial assistance awarded to the City/County using the following distribution methodology:

Capital Assistance: funds will be distributed to the projects identified in the associated capital assistance grant application and included in the approved Utah Statewide Transit Improvement Plan (STIP) prepared by the Joint Transit Advisory Board and submitted annually to the Utah Department of Transportation (UDOT).

Operating Assistance: funds will be distributed to the County and City using a ratio of each entity's award year budget as a percentage of the entity's combined budgets (e.g., County Transit Budget/(City Transit Budget + County Transit Budget)).

6. AUTHORIZATION

6.1 Control: The CITY shall render all services under this AGREEMENT in a manner consistent with the policies of the COUNTY and the Joint Transit Advisory Board. Modification of existing policies or adoption of new policies during the term of this AGREEMENT which affect the CITY'S performance of services shall be treated as "Changes" pursuant to Paragraph 3.4 herein.

6.2 The COUNTY shall not interfere with the management of the CITY'S normal internal business affairs and shall not attempt to directly discipline or terminate the CITY'S employees. The COUNTY will advise the CITY of its inadequate performance which has a negative effect on the service being provided and the CITY shall take prompt action to remedy the situation.

6.3 Communications: all notices to be given by parties to this AGREEMENT shall be in writing and served by depositing the same in the Untied States mail, postage prepaid, registered or certified mail

6.4 Notices to the CITY shall be addressed to:

Park City Municipal Corporation
Attn: Kent Cashel
P.O. Box 1480
Park City, UT 84060

6.5 Notice to the COUNTY shall be addressed to
Summit County

Attn: Kevin Callahan
P.O. Box 128
Coalville, UT 84017

6.6 Either the CITY or the COUNTY may change its officer or address of record for receipt of official notice by giving the other written notice of such change and any necessary mailing instructions.

7. UNANTICIPATED EVENTS

7.1 Force Majeure: Neither party shall be held responsible for losses, delays, failure to perform or excess costs caused by events beyond the control of such party. Such events may include, but are not restricted to, the following: Acts of God; fire; epidemics; earthquake; floods or other natural disaster; acts of the state or federal government; riots; strikes, war or civil disorder; unavailability of fuel.

7.2 Major Costs Impact: The AGREEMENT shall be subject to timely renegotiation in scope in the event that:

1. The inflation rate, as measured by the Consumer Price Index for all Urban Consumers (CPI-U), exceeds a rate of ten percent (10%) in any 12-month period during the term hereof;

2. Travel and/or insurance costs increase to a level ten percent (10%) greater than the industry prevailing rates in effect as of the date of this AGREEMENT.

3. Diesel fuel price per gallon paid by the City increases to a level ten percent (10%) greater than the per gallon price the City paid to its fuel supplier on July 1st of the current City fiscal year.

4. Mandated minimum wage applicable to project employees is raised to a level above the wages then being paid to those employees; or

5. National health care program mandates medical coverage for all employees.

In the event that one or more of the conditions occur, the parties shall, in a timely manner, meet to negotiate a mutually acceptable adjustment to the rates of compensation specified in Paragraph 3.2, Price Formula and Maximum Obligations specified in Paragraph 3.1 and/or modifications of the services to be provided pursuant to the Scope of Work. If the parties are unable to reach a mutually-acceptable resolution, either party may exercise their rights of termination pursuant to Paragraph 2.1

7.3 Shortages and Delays: In the event that the COUNTY fails to provide or delays providing items as herein provided in the number, size and/or condition required, then the CITY shall not be responsible for any delays or resulting decline in the quality of service

8. GENERAL TERMS AND CONDITIONS

8.1 Civil Rights Requirements: CITY shall comply with all applicable federal, state, and local laws, rules, and regulations with regard to discrimination in employment because of age, race, religion, color, sex, physical or mental disability, martial status or national original.

8.2 Disadvantaged Business Enterprise: In connection with the performance of this AGREEMENT, the CITY shall cooperate with the COUNTY in meeting its commitments and goals for DBE participation.

8.3 Lobbying: No member of or delegate to the Congress of the United States shall be admitted to any share or part of this AGREEMENT or to any benefit arising there from.

8.4 Complete AGREEMENT. This AGREEMENT contains the entire AGREEMENT of the parties and there are no other promises or conditions in any other AGREEMENTS whether oral or written. The invalidity in whole or in part of any provisions of this AGREEMENT shall not affect the validity of other provisions.

8.5 Severability: In the event that any one or more of the phrases, sentences, clauses, paragraphs or sections contained in the AGREEMENT shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of the AGREEMENT which are herby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders the AGREEMENT meaningless.

8.6 Modification: the covenants and conditions contained in this AGREEMENT fully express all understandings of the parties concerning all matters covered and shall constitute the total AGREEMENT. Except as may otherwise be provided herein, no addition to or alteration of, the terms of this AGREEMENT, whether by written or verbal understanding of the parties, their officer, agents or employees, shall be valid unless made in the form of a written amendment to this AGREEMENT, which is formally approved and executed by the parties.

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed by and through their respective officer duly authorized on the date written below their signatures:

SUMMIT COUNTY COUNTY COUNCIL	PARK CITY MUNICIPAL CORPORATION
By____________________________	By___________________________

Deleted: COUNTY OF SUMMIT

Date ____________________ Date____________________________

ATTEST: ATTEST:

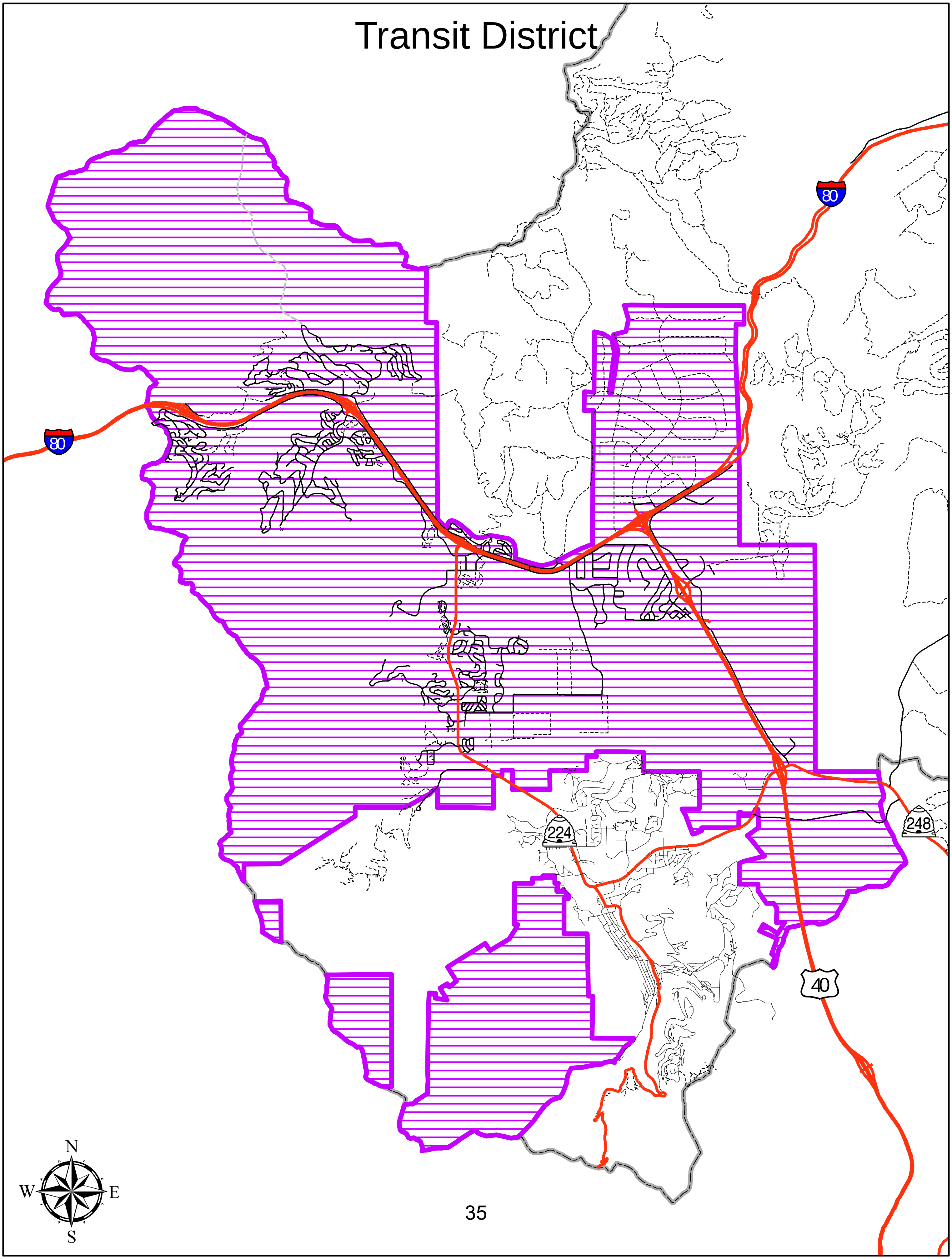
________________________ ____________________________

Approved as to form:

___________________________ _____________________________

Date_______________________ Date__________________________

Transit District



Facility Costs		
Facility Design and Engineering Cost	$	1,100,000
Facility Construction Cost	$	8,900,000
	$	**10,000,000**
ARRA Funding	$	(3,000,000)
Remainder	$	7,000,000
Federal Share	$	5,600,000
Local Share (20% of remainder)	$	1,400,000

Facility Payment		
Annual Interest Rate		0.0093
Monthly Interest Rate		**0.000775**
Mosly Periods		240
Annual Payments		20
County Present Value	$	329,412
Future Value		0
Payment		1
Lump Sum		($329,412)
Monthly Payment		($1,503.46)
Annual Payment		($17,958.36)

Capital Renewal		
Replacement Cost	$	9,000,000
Annual Capital Renewal as % of Relacement Cost		2%
Total Annual Capital Renewal	$	180,000
County Annual Payment	$	42,353
County Monthly Payment	$	3,529

Lump Sum Payment	($329,412)	Annual or Monthly Capital Renewal Still Applies Throughout Term of Lease
Annual Lease Payment	($60,311.31)	
Monthly Lease Payment	($5,032.87)	

Fleet Breakdown

Canyons Ski Service	2	
Canyons Circulator	1	
Kimball Shuttle	4	
ADA	0	
Spare Bus	1	
County Fleet	**8**	
City Buses	22	
City Trolley	1	
City 25' Cutaways	2	
City ADA	1	
City Fleet	**26**	
Combined Fleet		**34**
		Fleet %
County Buses	8	24%
City Buses	26	76%
	34	

Fleet Percentage and Capital Renewal fund recalibrated with each SRTDP
Interest Rate using August Utah State Treasurer PTIF Pool Rate, rate adjusted each august
Does not reflect any finance costs that may be required if grant fund timing requires bridge financing
Capital Renewal fund will not be utilized for general facility maintenance only for the replacement of facility systems and subsystems to maintain or extend the facility's useful
The City shall maintain ongoing accounting record of the capital renewal fund sufficient to describe and document revenues, expenditures and fund balance.

City Council
Staff Report

Subject:	**JSSD Mine Maintenance Agreement Amendment**
Author:	**Kathy Lundborg**
Department:	**Public Works/Water**
Date:	**October 15, 2009**
Type of Item:	**Administrative**

Summary Recommendations:
Staff recommends Council authorize the City Manager to execute the First Amendment to the Mine Maintenance Agreement, in a form approved by the City Attorney, with Jordanelle Special Services District (JSSD) for a term of one year at a rate of $30,000/month.

Topic/Description:
Water Strategic Plan

Source: Maintain tunnel sources to enable maximum source delivery.

Background:
The City and JSSD entered into a mine maintenance Agreement in October of 2003. Since that time the JSSD miners have been performing annual maintenance work on the tunnels. For the past couple of years, the City has increased the mine maintenance budget by 1.5 trimes to catch up with needed maintenance work. Significant progress has been made in the Judge Tunnel as there were areas that were close to cave-in. Steel bracing has been installed to secure these areas. Now the focus has turned to the Spiro Tunnel where areas are "moving". Rock has come down close above the bulkhead line near the portal, additional areas are in need of bracing further back in the tunnel, and the track support is in need of replacement for about 9,000 feet. The track is critical to the tunnel because if there are problems far back, there is no way to get repair equipment and heavy parts in without the railcars which need the track. The hourly rate of $90/hour for a two-man crew plus equipment plus the cost of materials has been the basis for billing since the agreement was executed.

Recently, JSSD Staff proposed alternative mine maintenance terms to City Staff due to budget cuts, including personnel cuts, JSSD was implementing.

Analysis:
With the work needed in our tunnels, the miners are critical to Park City. Their historic knowledge of the tunnels is irreplaceable. The options JSSD laid out included either Park City taking on a four-man crew fulltime for a year or they would furlough all but two of their miners. A more detailed explanation follows.

1. Park City pays for a 4-man crew full time for a year at $30,000/month. The rate is based on the hourly rate established in the existing Agreement. If there are a few weeks during the year that the City has to get the miners out of the tunnels for water

supply issues, JSSD will credit the City up to 6 weeks after the year is up. After the year's time, we will revaluate the situation with the intention of going back to the original Agreement of using the miner's services on an as-needed basis. JSSD would cease maintenance work in the Ontario Drain Tunnel for the year period.

Staff feels that the miners can be kept busy in the tunnels for a year. The challenge is water supply while working around them. When they are working in the water in the tunnels, the water source is out of commission. Depending on how far back they are in the tunnels, the source can clear up in about one to 8 hours. Therefore, at certain times the water source can come back online for part of a day or night. However, unforeseen situations can occur such as extreme demand in a hot dry period. In the case of water shortage, Staff would have the option of either recommending a Stage 1 or Stage 2 Drought and keeping the miners working, or stopping the miners from working to try to prevent the Drought declarations.

The estimated budget impact would be an additional $360K to bring the total budget to $530K. In addition to manpower, materials and supplies consisting mainly of steel are needed.

2. JSSD furloughs their miners except for two. Their services to the City would be limited to inspections. In case of a failure in the Spiro or Judge Tunnels, JSSD would expect the City Water Workers to be the labor for the repair crew with the two miners acting as crew leaders and repairmen.

   With the known maintenance needs in the Spiro Tunnel and some more work in the Judge Tunnel, this option is not viable without sacrificing needed maintenance on the water distribution system. Besides not having the surplus of Water Workers to put into tunnels to work, underground work is not in their job description and more importantly they do not have the training. Finding volunteers for the job assignment would be problematic and could have budget impacts. Staff does not recommend this option.

3. JSSD furloughs their miners except for two. The City could try to contract with the furloughed miners.

   The City does not have the equipment or the leadership and knowledge for tunnel maintenance. Staff does not see this as a viable option.

Staff recommends Option 1. The work the miners do is critical to keeping the tunnels as viable water sources. The Agreement would be subject to a 30-day termination by the City without cause, so if anything unforeseen occurs which would cause the City to want to terminate, the Agreement allows it.

Department Review:

This staff report has been reviewed by Public Works, Budget, Finance, Legal, and City Manager.

Alternatives:

A. **Approve:**
Staff recommends Council authorize the City Manager to execute the First Amendment to the Mine Maintenance Agreement, in a form approved by the City Attorney, with Jordanelle Special Services District (JSSD) for a term of one year at a rate of $30,000/month.

B. **Deny:**
Council could deny Staff's recommendation. Staff does not recommend this as it would put to risk about 50% of the City's water sources.

C. **Modify:**
Council could modify Staff's recommendation. Modifications to the Amendment would need to go back to JSSD for approval.

D. **Continue the Item:**
Council could continue the item. The miners are currently working full time in the Spiro Tunnel. There is enough budget to cover this work for about another 6 weeks. Staff does not recommend this alternative.

E. **Do Nothing:**
Staff does not recommend this alternative.

Significant Impacts:
The amendment will require a FY10 budget adjustment estimated to be $360K. This money could be pulled from a combination of water operations budget and water capital projects that could have deferred expenses.

Consequences of not taking the recommended action:
If the Amendment is not approved, the miners could work for another 6 weeks. At this time, JSSD may have to furlough additional miners and the City could be left in a position of trying to contract with furloughed miners who may not be at the supervisor level and trying to supplement them with water workers who are untrained in mining activities. Staff believes that the year's time will accomplish a lot of needed maintenance in the tunnels. Then the situation can be re-evaluated at the end of the year.

Recommendation:
Staff recommends Council authorize the City Manager to execute the First Amendment to the Mine Maintenance Agreement, in a form approved by the City Attorney, with Jordanelle Special Services District (JSSD) for a term of one year at a rate of $30,000/month.

2009 AMENDMENT TO OCTOBER 20, 2003

MINE MAINTENANCE AGREEMENT
BETWEEN
PARK CITY MUNICIPAL CORPORATION AND
JORDANELLE SPECIAL SERVICES DISTRICT

THE MINE MAINTENANCE AGREEMENT, made and entered into as of October 20, 2003, (the "Agreement") by and between PARK CITY MUNICIPAL CORPORATION, ("City"), and JORDANELLE SPECIAL SERVICE DISTRICT, a special service district organized pursuant to the provisions of Utah Code ("JSSD") (a copy of which is attached hereto for reference purposes), is hereby amended by the Parties as contained herein.

RECITALS

WHEREAS, the Parties entered into a Mine Maintenance Agreement on or about October 20, 2003; and

WHEREAS, it is in the best interests of both Parties to continue the ongoing maintenance program pursuant to the Agreement, as amended herein.

AGREEMENT

NOW, THEREFORE, in consideration of the following promises, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto do hereby agree to Amend the October 20, 2003 Mine Maintenance Agreement as follows:

1. **Full-time maintenance work on behalf of Park City**. The Parties agree that JSSD shall provide four (4) mine maintenance workers who shall be assigned to perform full-time maintenance work on behalf of Park City in the Judge and/or Spiro Mines or other comparable tasks as requested by Park City and agreed to by JSSD. The work to be performed shall be general mine maintenance and related tasks as described in the Agreement, and as has been customary for the past six years that the Agreement has been in force.

   A. Term of Amendment to provide Full-time Maintenance. The term of this Amendment shall commence on October ___, 2009, and terminate on October ___, 2010. The Parties shall meet on or before the date of termination of this

Amendment to determine whether to continue the full-time maintenance program, or to return to the prior method of providing mine maintenance services as outlined in the original Agreement.

B. Rate paid to JSSD for full-time maintenance. Park City shall pay to JSSD a flat rate of $30,000 per month for the full-time mine maintenance work performed pursuant to this Amendment. The monthly payment shall be due on or before the 10th day of each calender month during the term of this Amendment.

C. Park City to determine maintenance work to be performed . Subject to any safety issues as described in the original Agreement, Park City shall meet with the mine maintenance supervisor to determine the type and location of maintenance work to be performed by JSSD personnel pursuant to this Agreement. Park City shall have the right to determine which tunnel the maintenance workers work in, and the nature and extent of the work performed.

D. Make-up work. In the event Park City determines that, because of water quality or other concerns, they are unable to use the full-time mine maintenance workers for a period of time, Park City shall have the option of deferring up to six (6) weeks worth of maintenance work until the end of the term of this Amendment. The monthly flat rate shall continue to be paid by Park City through the twelve (12) month term of this Amendment, but the mine maintenance workers would perform make-up work at no cost after the term of the Amendment.

E. Park City to pay for materials. Park City agrees to pay for all materials, including steel, track, spikes, and timber, used by the mine maintenance workers to perform maintenance work for Park City pursuant to this Amendment. All materials purchases shall be approved in advance by Park City. Park City shall promptly pay for materials when they are delivered.

F. Remainder of 2003 Agreement to remain in full force and effect. This Amendment is intended to provide for a flat-rate payment by Park City for full-time mine maintenance services for a one year term. All of the provisions of the original 2003 Agreement that are not specifically amended by this Amendment shall remain in full force and effect.

G. Termination. Notwithstanding any provision in the 2003 Agreement to the contrary, the Agreement, as amended hereby, is subject to termination by either party for any reason, including without cause, upon giving at least thirty (30) days written notice to the other party. Subparagraphs A and B of Paragraph 15 of the 2003 Agreement are superseded in their entirety by this Amendment. Subparagraphs C and D of Paragraph 15 of the 2003 Agreement remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day herein first above written.

PARK CITY MUNICIPAL CORPORATION

By: ______________________________

Tom Bakaly, City Manager

Attest:

____

Janet M. Scott, City Recorder

Approved as to Form:

____

Thomas A. Daley, Deputy City Attorney

STATE OF UTAH)
) ss.
COUNTY OF SUMMIT)

On this ____ day of ________________, 2009, personally appeared before me Tom Bakaly, whose identity is personally known to me and who by me duly sworn/affirmed, did say that he is the Park City Manager, and said Tom Bakaly acknowledged to me that he executed the same.

____

Notary Public

JORDANELLE SPECIAL SERVICE DISTRICT

By: ___________________________________
Dan Matthews, manager

STATE OF UTAH)
) ss.
COUNTY OF)

On this ____ day of ________________, ______, personally appeared before me Dan Matthews, whose identity is personally known to me/or proved to me on the basis of satisfactory evidence and who by me duly sworn/affirmed, did say that he/she is the General Manager of the Jordanelle Special Service District, and said Dan Matthews acknowledged to me that said Jordanelle Special Service District executed the same.

____
Notary Public

JORDANELLE SPECIAL SERVICE DISTRICT
MINE MAINTENANCE AGREEMENT

THIS AGREEMENT is made and entered into in duplicate this 20 day of October, 2003, by and between **PARK CITY MUNICIPAL CORPORATION**, a Utah municipal corporation, (City), and **JORDANELLE SPECIAL SERVICES DISTRICT (JSSD)**, a special services district organized pursuant to the provisions of Utah Code Annotated Section 17A-2-1301 *et seq.*, (1953, as amended), (JSSD).

WITNESSETH:

WHEREAS, the City receives water from the Spiro Tunnel and the Judge Tunnel, which are old mine tunnels located within the City boundaries; and

WHEREAS, ongoing maintenance is required to keep the Spiro and Judge Tunnels open, and to allow unrestricted flow of the waters therefrom; and

WHEREAS, JSSD currently owns and maintains the Ontario Drain Tunnel and associated drifts, shafts and tunnels for the purpose of keeping those tunnels open to allow unrestricted flow of waters therefrom; and

WHEREAS, JSSD has the equipment and manpower resources necessary to perform maintenance operations on the Ontario Drain Tunnel; and

WHEREAS, JSSD represents that the JSSD is qualified and possesses sufficient skills and the necessary capabilities, including technical and professional expertise, where required, to perform maintenance on the Spiro and Judge Tunnels on behalf of City, and pursuant to the terms and conditions in this Agreement.

NOW, THEREFORE, in consideration of the terms, conditions, covenants, and performance contained herein, the parties hereto agree as follows:

1. <u>SCOPE OF SERVICES</u>.

JSSD shall perform such services and accomplish such tasks, including the furnishing of all materials and equipment necessary for full performance thereof, as are identified and designated as JSSD responsibilities throughout this Agreement and as set forth in the Scope of Services and Annual Needs Assessment Report attached hereto as Exhibit A and incorporated herein.

2. **TERM**.

The term of this Agreement shall commence on the date of full execution of this agreement and shall continue for one (1) year. This Agreement shall automatically renew annually for a five (5) year period unless either Party notifies the other in writing not less than ninety (90) days before the end of the initial term of its intention not to renew the Agreement.

3. **COMPENSATION AND METHOD OF PAYMENT**.

Payments for services provided hereunder shall be made pursuant to the Payment and Rate Schedule, attached hereto as Exhibit B.

4. **REPORTS AND INSPECTIONS**.

A. JSSD, at such times and in such forms as the City may require, shall furnish the City such statements, records, reports, data, and information as the City may request pertaining to matters covered by this Agreement. City shall pay for all costs incurred by JSSD in preparing, assembling and/or furnishing the information requested.

B. JSSD shall at any time during normal business hours and as often as the City may deem necessary, make available for examination of all its records and data with respect to all matters covered by this Agreement.

5. **INDEPENDENT CONTRACTOR RELATIONSHIP**.

A. The parties intend that an independent JSSD /City relationship will be created by this Agreement. No agent, employee, or representative of JSSD shall be deemed to be an employee, agent, or representative of the City for any purpose, and the employees of JSSD are not entitled to any of the benefits the City provides for its employees. JSSD will be solely and entirely responsible for its acts and for the acts of its agents, employees, subcontractors or representatives during the performance of this Agreement.

B. In the performance of the services herein contemplated JSSD is an independent contractor with the authority to control and direct the performance of the details of the work, however, the results of the work contemplated herein must meet the approval of the City and shall be subject to the City's general rights of inspection and review to secure the satisfactory completion thereof.

6. **HOLD HARMLESS INDEMNIFICATION/INDUCEMENT.**

A. JSSD shall indemnify and hold the City and its agents, employees, and officers, harmless from and shall process and defend at its own expense any and all claims, demands, suits, at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, brought against the City arising out of, in connection with, or incident to the execution of this Agreement and/or the JSSD's defective performance or failure to perform any aspect of this Agreement; provided, however, that if such claims are caused by or result from the concurrent negligence of the City, its agents, employees, and officers, this indemnity provision shall be valid and enforceable only to the extent of the negligence of JSSD; and provided further, that nothing herein shall require JSSD to hold harmless or defend the City, its agents, employees and/or officers from any claims arising from the sole negligence of the City, its agents, employees, and/or officers. JSSD expressly agrees that the indemnification provided herein constitutes JSSD's limited waiver of immunity as an employer under Utah Code Section 34A-2-105; provided, however, this waiver shall apply only to the extent an employee of JSSD claims or recovers compensation from the City for a loss or injury that JSSD would be obligated to indemnify the City for under this Agreement. This limited waiver has been mutually negotiated by the parties, and is expressly made effective only for the purposes of this Agreement. The provisions of this section shall survive the expiration or termination of this Agreement.

B. No liability shall attach to the City by reason of entering into this Agreement except as expressly provided herein.

C. City shall indemnify and hold JSSD and its agents, employees, and officers, harmless from and shall process and defend at its own expense any and all claims, demands, suits, at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, brought against JSSD arising out of, in connection with, or incident to the execution of this Agreement and/or the City's failure to perform any aspect of this Agreement; provided, however, that if such claims are caused by or result from the concurrent negligence of JSSD, its agents, employees, and officers, this indemnity provision shall be valid and enforceable only to the extent of the negligence of City; and provided further, that nothing herein shall require City to hold harmless or defend JSSD, its agents, employees and/or officers from any claims arising from the sole negligence of JSSD, its agents, employees, and/or officers. City expressly agrees that the indemnification provided herein constitutes City's limited waiver of immunity as an employer under Utah Code Section 34A-2-105; provided, however, this waiver shall apply only to the extent an employee of City claims or recovers compensation from JSSD for a loss or injury that City would be obligated to indemnify JSSD for under this Agreement. This limited waiver has been mutually negotiated by the parties, and is expressly made effective only for the purposes of this Agreement. The provisions of this section shall survive the expiration or termination of this Agreement.

D. No liability shall attach to JSSD by reason of entering into this Agreement except as expressly provided herein.

E. Inducement. The making and execution of this Agreement has not been induced by any representation, statement, warranty or agreement other than those herein expressed.

7. **INSURANCE.**

JSSD shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by JSSD, its agents, representatives, employees, or subcontractors. JSSD shall provide a Certificate of Insurance evidencing:

A. General Liability insurance written on an occurrence basis with limits no less than one million dollars ($1,000,000) combined single limit per occurrence and two million dollars ($2,000,000) aggregate for personal injury, bodily injury and property damage.

B. Automobile Liability insurance with limits no less than five hundred thousand dollars ($500,000) combined single limit per accident for bodily injury and property damage.

C. Workers Compensation insurance written on an occurrence basis with limits no less than one half million dollars ($500,000) combined single limit per occurrence.

JSSD will provide the certifications of insurance each year on the anniversary date of full execution of this agreement.

8. TREATMENT OF ASSETS.

Title to all property furnished by the City shall remain in the name of the City and the City shall become the owner of the work product and other documents, if any, prepared by JSSD pursuant to this Agreement, contingent on City's performance hereunder..

9. COMPLIANCE WITH LAWS.

A. JSSD, in the performance of this Agreement, shall comply with all applicable federal, state, and local laws and ordinances.

B. City specifically agrees to pay any applicable fees or charges, which may be due on account of this Agreement.

10. ASSIGNMENTS/SUBCONTRACTING.

This Agreement is not assignable by JSSD or City.

11. CHANGES.

Either party may request changes to the scope of services and performance to be provided hereunder, however, no change or addition to this Agreement shall be valid or binding upon either party unless such change or addition be in writing and signed by both parties. Such amendments shall be attached to and made part of this Agreement.

12. MAINTENANCE AND INSPECTION OF RECORDS.

A. JSSD shall maintain books, records and documents, which sufficiently and properly reflect all direct and indirect costs related to the performance of this Agreement and shall maintain such accounting procedures and practices as may be necessary to assure proper accounting of all funds paid pursuant to this Agreement. These records shall be subject at all reasonable times to inspection, review, or audit by the City, its authorized representative, the State Auditor, or other governmental officials authorized by law to monitor this Agreement.

B. JSSD shall retain all books, records, documents and other material relevant to this Agreement for six (6) years after its expiration. JSSD agrees that the City or its designee shall have full access and right to examine any of said materials at all reasonable times during said period.

13. PROHIBITED INTEREST.

No member, officer, or employee of the City shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

14. MODIFICATIONS TO TASKS AND MISCELLANEOUS PROVISIONS.

A. The City shall make provision for access to the property and/or project and adjacent properties, if necessary for performing the services herein.

B. The City shall provide electrical power to the portal of the Judge Tunnel and to the Portal of the Spiro tunnel for use by JSSD in performing the maintenance work pursuant to this Agreement. Power costs shall be paid by the City. The City shall also make provision for shop space at or near the portal of the Spiro tunnel.

15. TERMINATION.

A. If JSSD fails to perform in the manner called for in this Agreement, or if JSSD fails to comply with any other provisions of the Agreement and fails to correct such noncompliance within sixty (60) days written notice thereof, the City may immediately terminate this Agreement for cause. Termination shall be in effect by serving a notice of termination on JSSD setting forth the manner in which JSSD is in default. JSSD will only be paid for services performed in accordance with the manner of performance set forth in this Agreement.

B. It is further understood and agreed that either party may terminate its obligations hereunder for the other party's violation of any of the terms and conditions hereof or for the violation of any ordinances, rules or regulations of the City, JSSD, or of any state or federal agencies, in effect at the time of such violation. Prior to and as a condition of such termination, the party shall provide the other party with written notice specifying in general terms the nature of the violation. The party allegedly in violation shall have sixty (60) days from receipt of such notice to cure the violation, following which cure period this Agreement shall automatically terminate if the cure has not been timely affected.

C. JSSD shall have the right to unilaterally and immediately terminate this Agreement in the event there are serious safety concerns that cannot be resolved as per the terms of this Agreement.

D. Remedies. City's sole remedy for default by JSSD is termination of this Agreement. JSSD's sole remedy for default by City is termination of this agreement. Neither party shall be liable for any special or consequential damages incurred by the other party as a result of any actions or lack thereof performed pursuant to this Agreement.

16. NOTICE.

A. Before commencing Mine Maintenance. Approximately thirty (30) days prior to the anticipated commencement of each annual Work Session, the parties shall meet to conduct the Annual Needs Assessment Report. A Work Session is the twelve-month period between anniversary dates of full execution of this agreement. City shall have the right to set the preferred commencement date for each annual Work Session. City and JSSD agree on actual commencement date. Prior to actual commencement of the Work Session, JSSD shall notify City of its intent to enter the tunnels.

B. Before terminating Mine Maintenance. At least ten (10) days prior to the completion of each annual Work Session, JSSD shall notify City of its anticipated completion date. JSSD shall provide additional notice to City on the last day of each annual Work Session.

C Notification regarding other work performed in Tunnels. JSSD shall not allow any person who is not employed or an agent of JSSD to enter into either the Judge Tunnel or the Spiro Tunnel without the express consent of City. For safety and security reasons, City shall not enter the tunnels during the Work Session, nor allow others to enter the tunnels, without first informing JSSD of its intent to do so, and coordinating with JSSD personnel who are working in the tunnels.

D. Designation of Contact Person. Prior to the commencement of each annual Work Session, the parties shall designate a primary contact person, who shall receive notification on behalf of that party. In addition to the primary contact person, each party shall provide the names, telephone numbers and home addresses of at least one other emergency contact person in the event the primary contact person is not available.

E. Except as may be herein otherwise provided, all other notice required or permitted herein, shall be deemed to have been properly given when sent by certified United States mail, address to Park City or JSSD at the addresses designated for the parties below. The date of such service shall be the date on which the notice is deposited in the United States Post Office. All notices shall be sufficient within the terms of the Agreement when signed by any one or more of the notifying parties or their agents and mailed to any one or more of the opposite parties. Personal delivery of such written notice shall have the same effect as notice given by mail.

The following addresses may be changed for the purposes of this Agreement by notification of the opposite party in writing.

Park City Municipal Corporation
Public Works Director
1053 Iron Horse Drive
P O Box 1480
Park City UT 84060

Jordanelle Special Service District
c/o Dan Matthews
P O Box 519
Heber City UT 84032

With a copy to the City Attorney
445 Marsac Ave.
P O Box 1480
Park City UT 84060

F. Notification of United Park City Mines. The parties acknowledge that the Spiro Tunnel and the Judge Tunnel are owned by United Park City Mining Company, and that City has the right to enter the tunnels pursuant to an Easement Agreement, attached hereto as Exhibit C. The parties agree that JSSD shall enter the tunnels as an invitee of City. United Park City Mining Company has been notified of this Agreement by City as shown on the attached Exhibit D. United Park City Mines is therefore aware of JSSD's intent to enter the Spiro Tunnel and the Judge Tunnel to perform maintenance operations on behalf of the City, and has not objected.

17. ATTORNEYS FEES AND COSTS.

If any legal proceeding is brought for the enforcement of this Agreement, or because of a dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the prevailing party shall be entitled to recover from the other party, in addition to any other relief to which such party may be entitled, reasonable attorney's fees and other costs incurred in that action or proceeding.

18. JURISDICTION AND VENUE.

A. This Agreement has been and shall be construed as having been made and delivered with the State of Utah, and it is agreed by each party hereto that this Agreement shall be governed by laws of the state of Utah, both as to interpretation and performance.

B. Any action of law, suit in equity, or judicial proceeding for the enforcement of this Agreement, or any provisions thereof, shall be instituted and maintained only in any of the courts of competent jurisdiction.

C. Wherever there is any conflict between any provision contained herein and any present or future statute, law, ordinance or regulation, the latter shall prevail and the provision of this document which is affected shall be curtailed and limited to the extent necessary to bring it within the requirements of the law.

19. SEVERABILITY.

A. If, for any reason, any part, term, or provision of this Agreement is held by a court of the United States to be illegal, void or unenforceable, the validity of the remaining provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.

B. If it should appear that any provision hereof is in conflict with any statutory provision of the State of Utah, said provision which may conflict therewith shall be deemed inoperative and null and void insofar as it may be in conflict therewith, and shall be deemed modified to conform in such statutory provisions.

20. FORCE MAJEURE.

Performance by any party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrections, strikes, lock-outs, floods, earthquakes, fires, casualties, acts of God, epidemics, quarantine, restrictions, inability, when the responsible party is faultless, to secure necessary labor, materials, tools, acts or failure to act of any public or governmental agency or entity, or by any other reason not the fault of the party delayed in performing work or doing acts required under the terms of this Agreement, and in such event, the performance of such work or the doing of such act shall be excused for the period of the delay and the period of performance for any such work or the doing of any such act shall be extended for a period equivalent to the period of such delay.

21. ENTIRE AGREEMENT.

The parties agree that this Agreement is the complete expression of the terms hereto and any oral representations or understandings not incorporated herein are excluded. Further, any modification of this Agreement shall be in writing and signed by both parties. Failure to comply with any of the provisions stated herein shall constitute material breach of contract and cause for termination. Both parties recognize time is of the essence in the performance of the provisions of this Agreement. It is also agreed by the parties that the forgiveness of the nonperformance of any provision of this Agreement does not constitute a waiver of the provisions of this Agreement.

22. WARRANTY OF AUTHORITY.

The individuals executing this Agreement on behalf of the parties hereby warrant that they have the requisite authority to execute this Agreement on behalf of the respected parties and that the respective parties have agreed to be and are bound hereby.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed the day and year first hereinabove written.

PARK CITY MUNICIPAL CORPORATION
1053 Iron Horse Drive
Post Office Box 1480
Park City UT 84060-1480

Jerry W. Gibbs, Public Works Director

PARK CITY SUMMIT COUNTY UTAH CORPORATE Seal MARCH 1, 1884

Attest:

Janet M. Scott, City Recorder

Approved as to form:

Thomas A. Daley, Deputy City Attorney

JORDANELLE SPECIAL SERVICE DISTRICT

Address: 10420 N. Jordanelle Blvd
Heber City, UT 84032

Tax ID#: 87-0528366

Dan Matthews, General Manager

Corporate Acknowledgment

NOTARY PUBLIC
STATE OF UTAH
My Commission Expires
October 01, 2007
JANET CARSON
365 West 400 North
Heber City, Utah 84032

STATE OF UTAH)
) ss.
COUNTY OF WASATCH)

On this 23 day of October, 2003, personally appeared before me Dan Matthews, whose identity is personally known to me/or proved to me on the basis of satisfactory evidence and who by me duly sworn/affirmed), did say that he is the General Manager of Jordanelle Special Service District by Authority of its Bylaws/Resolution of the Board of Directors, and said Dan Matthews acknowledged to me that said Special Service District executed the same.

Janet Carson
Notary Public

EXHIBIT A

NEEDS ASSESSMENT AND SCOPE OF SERVICES FOR 2003/2004

Needs Assessment

The Parties agree that expectations of City shall be communicated clearly, and that JSSD shall make all reasonable efforts to perform only the work agreed to by City. Therefore, with the exception of Emergency Work performed at the specific request of City, all work performed by JSSD pursuant to this Agreement shall be in conformity with the agreed upon Annual Needs Assessment Report.

A. Annual Needs Assessment Report. Immediately subsequent to the execution of this Agreement, representatives from both Parties shall enter into the Spiro Tunnel and the Judge Tunnel and make a thorough inspection of the condition of the tunnels, sets, lagging, rail, air quality, etc. Following the inspection of the tunnels, JSSD shall produce a draft Annual Needs Assessment Report containing detailed recommendations regarding maintenance work that needs to be done, safety concerns, and other information regarding the condition of the tunnels. The Annual Needs Assessment Report shall take into account both immediate needs, as well as long term tunnel improvements.

The Annual Needs Assessment Report shall be updated each year of the anniversary date of this Agreement.

Throughout the course of the work, JSSD shall provide periodic reports of progress made, problems or difficulties encountered, materials used, etc.

B. Emergency Work. JSSD shall provide Emergency Work on an as-needed basis, as long as JSSD, in its sole discretion can provide the manpower to perform the work. The Emergency Work shall be subject to additional charges as set forth in Exhibit B to this Agreement. Emergency Work shall be defined as work which is specifically requested by the City, but which is in addition to the work defined in the Annual Needs Assessment Report.

C. Work Session. JSSD will perform the work defined in the Annual Needs Assessment Report within a twelve-month period between anniversary dates of full execution of this agreement. The Work Session may include work in both the Spring and Fall of each year as defined in the Annual Needs Assessment Report.

Scope of Services

A. JSSD agrees to provide routine Mine Maintenance Services on an annual basis as generally described herein. Mine Maintenance shall include, but not be limited to, the following types of work:

1. Track repair and replacement.
2. Set repair and replacement.
3. Air Flow System repair and replacement.
4. Lagging repair and replacement.
5. Preparing reports and ordering supplies.
6. Handling of materials and supplies.
7. Other general maintenance.

B. Timing of Work. The parties agree that JSSD shall provide approximately 800 man hours per year. JSSD reserves the right to temporarily interrupt the work in the event of an emergency. Time spent by JSSD personnel in preparation of the Annual Needs Assessment and preparation of all required reports and documents shall be included in the 800 man hour total.

JSSD shall have the right to temporarily deviate from the Scope of Services in the event the safety of JSSD personnel, or the integrity of the tunnel is an issue. Any such deviation will be reported to City as soon as possible.

C. Mine Maintenance Personnel. JSSD agrees to provide at a minimum ,a two (2) man crew for Mine Maintenance work performed pursuant to this Agreement. JSSD shall have the right, at its sole discretion, to provide additional crew members in order to more efficiently perform the work. JSSD personnel work four (4) ten(10)-hour shifts per week. Normal working days are Monday through Thursday.

D. Mine Maintenance Equipment. JSSD shall provide all equipment, except as otherwise specifically provided herein, necessary to perform the work defined in the Annual Needs Assessment Report and any Emergency Work requested by the City.

E. Mine Maintenance Supplies. JSSD shall procure all required Mine Maintenance Supplies, such as timber, steel and track, and shall bill City for actual costs of such Supplies. City shall reimburse JSSD for Mine Maintenance Supplies within Thirty (30) days of being billed.

G.Safety.

1. Equipment. JSSD shall provide necessary safety equipment for JSSD personnel.

2. Air Flow System. JSSD shall have the right to install blowers, duct work, and other facilities necessary to provide adequate air flow to the tunnels. The work performed by JSSD on the Air Flow System shall be part of the Annual Needs Assessment Report. Equipment and supplies provided by JSSD to improve the air flow system

shall constitute "materials" under this Agreement and shall be paid for at actual cost by the City.

3. JSSD reserves the unilateral right to immediately terminate any services performed under this Agreement in the event such work, in the opinion of JSSD personnel, constitutes an immediate danger to JSSD personnel and/or equipment. In the event of an interruption of work due to safety concerns, JSSD and City agree to meet immediately and agree upon a means of addressing the safety concerns.

H. Quality of Work. JSSD agrees to perform all Mine Maintenance work as per generally accepted industry standards common to mines in the Park City area. JSSD does not guarantee the integrity of the tunnel and is not responsible for any loss of water quality or quantity, tunnel failure, cave-in, or any damage beyond the reasonable control of JSSD.

PARK CITY MUNICIPAL CORPORATION
1053 Iron Horse Drive
Post Office Box 1480
Park City UT 84060-1480

Jerry W. Gibbs, Public Works Director

Date

JORDANELLE SPECIAL SERVICE DISTRICT
Address: 10420 N. Jordanelle Blvd
Heber City UT 84032

Tax ID#: 87-

Dan Matthews, General Manager

10/20/03
Date

EXHIBIT B

PAYMENT and RATE SCHEDULE

A. Rate Charged by JSSD for Mine Maintenance Services. JSSD shall charge for Mine Maintenance Services provided pursuant to this Agreement according to the following rate schedule:

2 Man crew plus Equipment - $90.00 per hour
(For 800 man hours as set forth in the Annual Needs Assessment Report)

2 Man crew plus equipment - $135.99 per hour
(Emergency Work in excess of agreed upon Annual Needs Assessment Report.)

B. Billing Method. JSSD shall bill on a bi-weekly basis. Invoices shall show the number of man hours spent, materials and supplies, and any remaining credit as set forth below.

C. Payment Due Date. Within 30 days of executing this Agreement, City shall pay JSSD $25,000.00 as a pre-payment for work to be performed during that year. JSSD shall bill against that $25,000.000 until approximately $10,000.00 remains unspent. At that point, JSSD shall bill City for sufficient funds to bring the balance back to $25,000.00. Failure to pay within 60 days of billing shall result in immediate cessation of work by JSSD. At the end of each year, JSSD shall provide an accounting of work performed, and monies spent on materials and supplies. City shall pay any final invoice for each year within Thirty (30) days of receiving the invoice. If neither party chooses to terminate the agreement, all monies remaining on the anniversary date after final annual billing shall be carried forward as all or part of the $25,000 retainer for the following year. If either party chooses to terminate the agreement, all funds remaining after final billing shall be refunded to the City.

D. Annual Cost of Living Expense. The rates set forth above shall be subject to an annual increase which equals the annual increase in the Consumer Price Index to reflect increased costs incurred by JSSD.

E. Interest. Any balance due after the due date set forth herein shall incur interest at the rate of 1.5% per month, until paid.

City Council Staff Report

PLANNING DEPARTMENT

Subject: North Silver Lake Cottages
Author: Katie Cattan
Date: October 15, 2009
Type of Item: Quasi-Judicial - Appeal of CUP Application

Summary Recommendation

Staff requests that the City Council review the appeal of the Conditional Use Permit (CUP) and consider upholding the Planning Commission's approval of the CUP.

Topic

Appellant:	Robert Dillon, Attorney representing adjacent property owners
Location:	Lot 2B Subdivision of Lot 2, North Silver Lake
Zoning:	Residential Development (RD)
Adjacent Land Use:	Ski resort area and residential
Reason for review:	Appeals of Planning Commission are reviewed by City Council

Background

On July 17, 2009, the appellant submitted a complete appeal for the Conditional Use Permit (CUP) approval of the North Silver Lake Subdivision Lot 2B. (Exhibit A – Appeal) The Planning Commission approved the CUP on July 8, 2009 according to the findings of fact, conclusions of law, and amended conditions of approval. (Exhibit B- Staff Report, Exhibit C – Minutes) The Land Management Code (LMC) section 15-1-18 requires that final action by the Planning Commission on CUPs be appealed to the City Council within ten calendar days of the final action. The appellant submitted the appeal on July 17, 2009, within ten calendar days of final action.

Under the Deer Valley Resort Master Plan Development (MPD) the North Silver Lake Subdivision Lot 2B is permitted a density of 54 residential units and 14,552 square feet of commercial and support space. The Deer Valley MPD requires that all developments are subject to the conditions and requirements of the Park City Design Guidelines, the Deer Valley Design Guidelines, and the conditional use review of LMC chapter 15-1-10.

The CUP application was reviewed by the Planning Commission on five different occasions (August 13, 2008, October 22, 2008, February 25, 2009, May 27, 2009, and July 8, 2009). On July 8, 2009, the Planning Commission approved the CUP. The approved CUP consists of 54 units. The design included four central stacked condominium containing 38 units and the remaining 16 units are a mix of single family homes and duplexes creating a horseshoe around the central buildings.

A previous application known as the Harrison Horn project was approved at the same site on December 12, 2001 by the Planning Commission. That approval expired on March 11, 2006.

Burden of Proof and Standard of Review

Pursuant to LMC 15-1-18(G) The appellant has the burden of proving that the Planning Commission erred. The Council “shall review factual matters de novo and it shall determine the correctness of a decision of the [Planning Commission} in its interpretation of application of the land Use ordinance. “

Analysis and Discussion

Within this section on the report, the appellant’s statements are located within the text boxes. Staff responses follow each of the appellant’s statements.

I. **NONCOMPLIANCE OF THE APPROVED PROJECT WITH THE REQUIREMENTS OF THE MPD AND THE LMC AS THEY RELATE TO §15-1-10 OF THE LMC.**

(A) The Eighth Amendment to the MPD states as follows:

> "Unit Size. Except for units with relation to which the owner elects to or is required to utilize the Unit Equivalent formula, there shall be no size limitation for Units constructed on any parcel provided that following construction the parcel proposed to be developed contains a minimum of 60% open space and otherwise complies with MPD and all applicable zoning regulations."

It is clear that this means that there is as a matter of law a size limitation if it takes such a limitation to comply with the provisions of §15-1-10 of the LMC in effect at the time of the CUP Application. The July 8, 2009 Planning Depart Staff Report (the "July 8 Staff Report") confirms that compliance with §15-1-10 of the LMC is required; however, our clients assert that the Project as approved by the Commission on July 8 is in fact noncompliant with the LMC for the reasons set forth herein.

Staff: CUP approval is required under the Deer Valley MPD. The Planning Commission found compliance with the CUP Criteria of Section 15-1-10 on July 8, 2009. The project complies with the Deer Valley Master Plan for Unit Size and all applicable zoning regulations, including the 15 CUP criteria of Section 15-1-10. The Deer Valley MPD specifically allows a density of 54 residential units and 14,552 square feet of commercial and support space. That density is vested under the MPD.

(B) Our clients assert that the Project as approved and depicted on the submitted plans is not compatible in scale and mass with the neighborhoods that completely encircle the Project, which neighborhoods are principally single-family subdivisions, and as such does not promote neighborhood compatibility, all as required as a condition of approval by §15-1-10(D)(2) of the LMC.

Staff: LMC Section 15-1-10(D) lists the standards of review for a CUP. The second standard of review which the appellant refers to is "the use will be compatible with surrounding structures in use, scale, mass, and circulation". Within the Conclusions of Law on the July 8, 2009, Planning Commission staff report, the Planning Commission concluded that the project met this standard. The Planning Commission made this finding based on the comparison of the existing adjacent homes in height, square footage, and setbacks. Within the analysis of the staff report compatibility was discussed. The following is from the *analysis section of the Planning Commission staff report dated July 9, 2009:*

8) Building mass, bulk, and orientation, and the location of Buildings on the site; including orientation to Buildings on adjoining lots; **DISCUSSION REQUESTED**
Building mass and bulk: The applicant has modified the previously reviewed plan by decreasing the over all mass and footprints of the buildings on the site. The total coverage of buildings and pavement has decreased from the original plan (128,660 sq. ft) to the current plan (110,444 sq. ft) by 18,216 square feet. The applicant has been consistent in imposing a self regulated height of 33' for the detached buildings around the periphery of the site with minor exceptions. The site is allowed a height of 45'. The central buildings have utilized the full 45' height allowance. The combination of creating smaller footprints of homes and self imposing a 33' height limit has resulted in a

decrease of building mass and bulk around the periphery of the site, adjacent to the existing neighborhoods. There has been a shift within the central building. The total square footage of the central buildings has increased. The average size of the living units within the central buildings increased from 3,385 square feet to 3,663 square feet. There are 38 units total within the four central buildings. The parking area and common space amenities also increased within the four central units. The overall increase in floor area since the original May 2008 submittal is 36,193 square feet

Orientation and location of buildings on the site: The homes have been relocated on the site in an effort to create more contiguous open space, protect significant existing vegetation, and provide more space between the detached homes internally and from the adjacent properties, as directed by Planning Commission on the October 22, 2008 meeting. The applicant has also decreased the number of detached units from 20 to 16, three of which are duplex dwellings. The space between the homes has been increased substantially to protect areas with significant vegetation. The average setback of structures from the property lines has increased from 17.8 feet to 22.3 feet. This creates a larger buffer from the adjacent properties. The zone setback from the rear property line in the RD zone is 15 feet.

Orientation to buildings on adjoining lots: The applicant has reconfigured the stacked flats to create less massing within the center of the loop road. Three of the four stacked flats are located within the loop road. Building 3 was moved from the central location to the exterior of the loop to assist in creating less impermeable surface area from roads and to create better skier access to the ski run. Building 3 is adjacent to the ski run and the open space of lot 2D. Building 3 will be visible from Main Street and as the public skis around the Silver Dollar. The applicant has added more landscaping in front of Building 3 to help buffer the view of the building from the ski trail and Main Street.

11) Physical Design and Compatibility with surrounding Structures in mass, scale, style, design, and architectural detailing; **DISCUSSION REQUESTED**
Height limitation: As previously mentioned, the applicant has self imposed a 33 foot height limitation for the periphery detached homes in an effort to create compatibility with the adjacent projects. The larger stacked flat condominiums are 50 feet in height, with pitched roofs. They are located within the center of the project and to the north adjacent to open space. The new location of the larger buildings creates less impact on the adjacent neighbors and less impermeable surface area than the previous site plans.

Footprint Decrease: The total coverage of the buildings and pavement has decreased by 18,216 square feet from the original site plan. There is more space between buildings and greater setbacks from the property lines.

Mass and Scale: Staff utilized the Summit County tax records to find total square footages of homes adjacent to the project. Only properties adjacent to the project were included in the calculation. (Exhibit F) According to the Summit County tax records, the average unit size for adjacent properties is 4,917 square feet. The average individual unit size within the four central buildings is 3,663 square feet. The periphery single family homes and duplexes average 5,499 square feet. The average unit size for the 54 units is 4,227 square feet.

The 2001 approval on the property contained greater mass within the buildings. The applicant has provided a full comparison between the proposed project and the previous approval. (Exhibit D) The average unit size of the 2001 approval was smaller, yet the overall gross floor area and footprint of the 2001 approval was greater due to circulation and common areas. Within the 2001 approval the staff report commented in error that the average unit size was approximately 3,500 square feet. The average unit size of the previous approval was approximately 3,867 square feet. The applicant has included an evaluation of the previously approved Horn project within Exhibit D.

Architectural Detailing: The architectural detailing of the project is compatible with the surrounding area. The proposed materials (metal clad wood windows, cedar/fir fascia, trim and beams in a semi-transparent stain, cedar siding, stone veneer and dry stack stone retaining walls) are typical design elements used through out the Deer Valley area. The applicant will be presenting a materials board to the Planning Commission during the public meeting.

Land Management Code Definition of Compatibility: Characteristics of different uses or designs that integrate with and relate to one another to maintain and/or enhance the context of a surrounding area or neighborhood. Elements affecting compatibility include, but are not limited to, height, scale, mass and bulk of building, pedestrian and vehicular circulation, parking, landscaping and architecture, topography, environmentally sensitive areas, and building patterns. (LMC 15-15-1.52)

The Planning Commission found that the North Silver Lake Cottages complied with criteria 8 and 11 of the CUP and that the use will be compatible with surrounding structures in use, scale, mass, and circulation. The meeting minutes include this discussion within Exhibit C beginning on page 25 of the minute records. The majority of the Commissioners discussed the vested density of 54 units created a more dense development within the MPD and that decision had been made under the original Master Plan.

(C) As to scale and mass, the approved plans for the Project have been made to maximize residential square footage. The Project has been calculated to contain a total of 363,000 square feet. There are 16 perimeter units that contain a total of 91,000 square feet averaging 5,667 square feet in size four central buildings containing 272,000 square feet and 38 stacked residential units averaging 3,663 square feet in size. According to the July 8 Staff Report, the mitigation efforts of the Applicant over the past 11 months has resulted in the size of the Project actually being increased by 36,000 square feet from the plans originally submitted in May, 2008. The mass, size, design, appearance and spacing of all of the buildings in the Project, especially the tall, bulky and blocky central buildings, are not compatible with the surrounding neighborhoods, and will adversely impact the scenic view corridors specified in the Sensitive Lands Overlay Zone provisions of the LMC.

Staff: The total square footage of the project did increase during the review process before the Planning Commission. Of the 36,193 square feet of increased area, 619 square feet went towards the total increase in residential unit size. The remaining 35,547 square feet were allocated to common areas including the underground parking and amenities for the central condominiums. Therefore, the above ground footprint is 81,133 square feet which leaves 72% open space. The Planning Commission reviewed the application for mitigation to mass, scale, design, and compatibility. The Visual Analysis and Sensitive Lands Overlay Zone provisions of the LMC were also reviewed by Planning Commission and also found in compliance. The following is from the staff analysis section of the July 8, 2009 staff report.

Analysis of Additional Square Footage:

Additional Comparison: There have also been numerous comments by the public regarding the size of the units within the proposed project and claims that the units are larger than the original submittal in 2008 throughout the project. Staff has calculated the square footage of the original submittal and compared the totals to the current project. Staff found that the current project has increased in overall square footage by 36,193 square feet. The total increase in the private area within all the units is 619 square feet. Exhibit C contains all the calculations done by staff quantifying the May 2008 submittal verses the Current version of the project. The applicant has explained that the increase in total floor area is due the increase in the parking garage and the common areas.

Gross Floor Area of Entire Project	
May 2008 Submittal	320,563
Current – July 8, 2009	356,756
Increase	36,193

The project has been modified significantly in comparison to the 2008 application. The applicant adjusted the site plan to create more open space and protect additional trees. The increase in total square footage occurred within the central buildings. The average size of the periphery homes got smaller, while the average size within the central living units increased.

Analysis of Massing and Footprints

Building mass and bulk: The applicant has modified the previously reviewed plan by decreasing the over all mass and footprints of the buildings on the site. The total coverage of buildings and pavement has decreased from the original plan (128,660 sq. ft) to the current plan (110,444 sq. ft) by 18,216 square feet. The applicant has been consistent in imposing a self regulated height of 33' for the detached buildings around the periphery of the site with minor exceptions. The site is allowed a height of 45'. The central buildings have utilized the full 45' height allowance. The combination of creating smaller footprints of homes and self imposing a 33' height limit has resulted in a decrease of building mass and bulk around the periphery of the site, adjacent to the existing neighborhoods. There has been a shift within the central building. The total square footage of the central buildings has increased. The average size of the living units within the central buildings increased from 3,385 square feet to 3,663 square feet. There are 38 units total within the four central buildings. The parking area and common space amenities also increased within the four central units. The overall increase in floor area since the original May 2008 submittal is 36,193 square feet

Analysis of Sensitive Lands Overlay Zone:

15) Within and adjoining the site, impacts on Environmentally Sensitive Lands, slope retention, and appropriateness of the proposed structure to the topography of the site.

No Unmitigated Impacts

Planning Staff received two certified arborist reports, a wildlife study, and a steep slope analysis from the applicant. The Planning Director and staff have reviewed the proposed development for compliances with the Sensitive Lands Overlay Zone and for compliance with the Significant Vegetation regulations of the RD zone. Staff and the Planning Director have no further concerns for compliance with the Sensitive Lands Overlay Zone. The current site plan is in compliance with all regulations of this overlay zone.

During an internal review of the current site plan, the Planning Director had concerns for the existing vegetation at Home 14 and for the retaining of the steep slope for the North East corner of Building 3, Home 13, and Home 14. Changes were made to the site plan addressing the Planning Director's concerns. Home14 was moved to protect the existing vegetation. The applicant determined that no retaining walls will be necessary for Home 14.

There are two stepped retaining walls proposed between the north east corner of Building 3 and Home 13. The lower wall is seven feet high at the greatest point and the higher wall is 6.5 feet high at the greatest point. The purpose for the two retaining walls is to retain the driveway and street above as well as create a walk out patio for the lowest level in the stacked flat and a ski out area from the locker room. The Planning Director has found that the impact of two rock walls is minimal and will not impact the development or neighboring developments negatively. The planter between the rock walls must be planted with relatively mature vegetation in order to diffuse any visual impacts.

Several Planning Commissioners requested that the applicant return with a professional opinion on the correlation between the wildlife and the re-vegetation plan. The wildlife specialist contracted by the applicant, SWCA, created a wildlife mitigation plan. The plan identified four actions which will help mitigate the impacts for lost wildlife habitat. These are: 1) using native plants, especially Douglas-fir, to create a natural setting, 2) increasing species diversity through planting of native species, 3) allowing contiguous open space to remain on the parcel, and 4) conducting weed control. Condition of Approval #12 states "The SWCA wildlife mitigation plan dated April 15, 2009 must be included within the construction mitigation plan and followed." The applicant also provided the Temporary Tree and Plant Protection plan from Arborcare to mitigate impacts to existing vegetation.

(D) Throughout the course of the CUP Application process, our clients have consistently maintained that requirements of §15-1-10 of the LMC (other than subsection (D)(2)) and the City's General Plan were violated by the proposed designs for the Project submitted by the applicant. These other violations are cited by Commissioner Adam Strachan in his dissenting vote, and include *inter alia* compliance with §15-1-2(E) regarding preservation of scenic views, compliance with §15-2.13-10 regarding protection of significant vegetation, compliance with §15-1-10-(E)(15) regarding slope retention and appropriateness of the proposed Project to the topography of the site, and compliance with §15-1-10(E)(8) and the General Plan Goal No.1 regarding building mass, orientation and size.[2] We are attaching a copy of Commissioner Strachan's findings of fact related to such vote for your convenience. We believe that Commissioner Strachan's findings of fact are right on point and should be used by the City Council as a basis for reversing the Commission's decision on the approval of the CUP Application.[3] All of the evidence cited by Commissioner Strachan is in the public record. We are also attaching for your convenience some of the e-mails and letters from or on behalf of our clients that are cited by Commissioner Strachan in his finding of facts.

Staff: Commissioner Strachan voted against the CUP on July 8, 2009. Of the five Commissioners present, Commissioner Wintzer, Commissioner Peek, and Commissioner Russack voted in favor, Commissioner Murphy abstained from voting, and Commissioner Strachan voted against the approval. Commissioner Strachan wrote a memo explaining his vote for denial. It is included as an attachment to the appeal. The majority of the Planning Commission voted in favor of the CUP and made a finding of Compliance with the General Plan and the Land Management Code.

Slope retention and appropriateness of the proposed project to the topography of the site (CUP Criteria 15) was discussed during the February 25, 2009 Planning Commission meeting. The following is from the Planning Commission staff report of February 25, 2009.

walls must be planted with relatively mature vegetation in order to diffuse any visual impacts.

Staff and the Planning Director have no further concerns for compliance with the Sensitive Lands Overlay Zone. The current site plan is in compliance with all regulations of this overlay zone.

The Planning Director also made a determination in writing that the application was in compliance with the sensitive lands overlay zone.

(E) Our clients assert that the construction phasing and construction mitigation plans for this Project must be taken into consideration by the Commission before the CUP Application is approved, and they must be made conditions of approval. We believe that construction phasing and mitigation plans are an essential part of the requirements of §15-1-10(D)(2) of the LMC as the definition of Use includes "the purpose or purposes for which land or Structures are occupied, maintained, designed, or intended" as provided in §15-15-1.274 of the LMC. Occupying the land for the purposes of constructing the infrastructure and buildings in the Project falls squarely in the definition of Use in the LMC, and should be a matter of primary concern for the Commission and the City in approving a project of this size, particularly when it is being constructed on a parcel of limited size and in such close proximity to the surrounding neighborhoods.[4] We do not believe that it is proper for the construction phasing and mitigation plans for this Project to be decided in a back-room meeting with the Building Department without the participation of the Commission and the neighbors. The timing and duration of the phasing of the Project, and the financing related to such phasing, is of material concern to our clients. Our clients have been burdened with a gaping hole surrounded by a chain link fence for over six years because the previous developer, Harrison Horne, started and did not complete a project for the site that was approved by the Commission in 2001 (the "Horne Project").[5] Our clients do not want another partially completed Project for a number of years that involves scalping the top of the knoll of all trees to construct a parking garage structure in phase one without assurances that the balance of the Project will be completed on an approved time schedule with adequate financial assurances in the form of escrow deposits or letters of credit and mandatory covenants to remediate the effects of noncompliance with the approved phasing schedules. We believe that these matters are properly the subject of public discussion and conditions of approval for the CUP Application.

Staff: The Building Department manages construction mitigation. The applicant met with the Chief Building Official prior to the May 27, 2009 Planning Commission meeting to discus the staging of the project. The Chief Building official found the three step phasing plan to be adequate, but did not want a specific construction mitigation plan to be approved prior to the CUP approval. The building department has a permitting process in place to manage the impacts of construction. Condition of approval number 2 reinstates the required construction mitigation plan:

"City approval of a construction mitigation plan is a condition precedent to the issuance of any building permits. This plan must address mitigation for construction impacts of noise, vibration, and other mechanical factors affecting adjacent property owners. The Arborcare Temporary Tree and Plant Protection Plan dated April 2, 2009 must be included within the construction mitigation plan."

The future construction mitigation plan will be available for the public to review.

II. THE MPD DOES NOT CREATE ANY VESTED PROPERTY RIGHTS IN THE APPLICANT THAT GIVE THE APPLICANT A RIGHT TO AN UNLIMITED SIZE FOR DWELLING UNITS OR RESIDENTIAL CONDOMINIUM UNITS IN THE PROJECT.

Staff: The following is from the Deer Valley MPD:

B. **Unit Size** . Except for units with relation to which the owner elects to or is required to utilize the Unit Equivalent formula, there shall be no size limitation for Units constructed on any parcel provided that following construction the parcel proposed to be developed contains a minimum of 60% open space and otherwise complies with MPD and all applicable zoning regulations.

The MPD allotted 54 units to the North Silver Lake Lot 2B. The applicant is required to have 60% open space as well as comply with all applicable zoning regulations. A CUP approval was also required within the MPD to address impacts from the development. As stated above no size limitation for units was placed on the 54 units in terms of square footage, but it is limited to the 60 percent open space, the Master Plan Development, and the Land Management Code.

(A) The Applicant has argued that the MPD is static law, and that it creates certain vested development rights that cannot be altered by the passage of time. This is not true, in that the passage of time since the MPD was originally enacted in 1978 has affected the nature of the surrounding neighborhoods that were developed through the approval process, and their current condition is in fact a limiting factor on size pursuant to §15-1-10(D)(2)of the LMC. Clearly, the compatibility issue would not have come into play in 1978 if the Deer Valley Resort Co. (or its predecessors in interest) as the original developer had chosen to commence development on the North Silver Lake parcel first instead of the surrounding neighborhoods. The fact that those surrounding neighborhoods were developed over a substantial period of time with agreed-upon reductions to their actual density requirements does in fact now require the scale and mass of the Project to be limited to achieve compatibility.[6]

Staff: The Planning Commission which approved the Deer Valley MPD contemplated the density at this location. Applicants have a right under Utah law to rely upon this vested density.

The Planning Commission reviewed compatibility in the context of the existing development. The staff reports for each of the Planning Commission meetings reflect the review within the as-built conditions. During the October 28, 2008 Planning Commission meeting, the staff report went into great detail on the existing built conditions. The following analysis is from the October 28, 2008 Planning Commission staff report:

8) <u>Building mass, bulk, and orientation, and the location of Buildings on the site; including orientation to Buildings on adjoining lots;</u>
The condominium buildings in the center of the project are the buildings with the greatest mass and scale. These buildings consist of four floors above grade accommodating the residential units. Parking, the owners lounge and the ski lockers are located on two below grade levels. The height of the four condominiums is at the maximum allowed within the MPD maximum height limit of 45 feet with an additional 5 feet exception for the pitched roof. Height is measured from existing grade.

The single family and duplex dwellings along the periphery of the site are substantially beneath the allowed height of 45 feet. The design attempted to keep the height of these buildings within the zone height of 28 feet with the additional 5 feet exception.

The project is located within the Residential Development (RD) zoning district. The front yard setback within the RD zone is twenty feet. The side yard setback is twelve feet. The rear yard setback is fifteen feet. The proposed development complies with the setback requirements of the RD zone. The entrance off of Silver Lake Drive is considered the front yard, the east property line is the side-yard, and the entire encompassing north and west boundary lines are the rear-yard.

The new site plan has created more spacing between the single family and duplex homes on the site to make room for existing vegetation. There is more variety in the distances between the homes in an effort to protect the existing vegetation. On the new site plan, the existing vegetation is highlighted with yellow. These trees were identified by the arborist as healthy and worthy of saving.

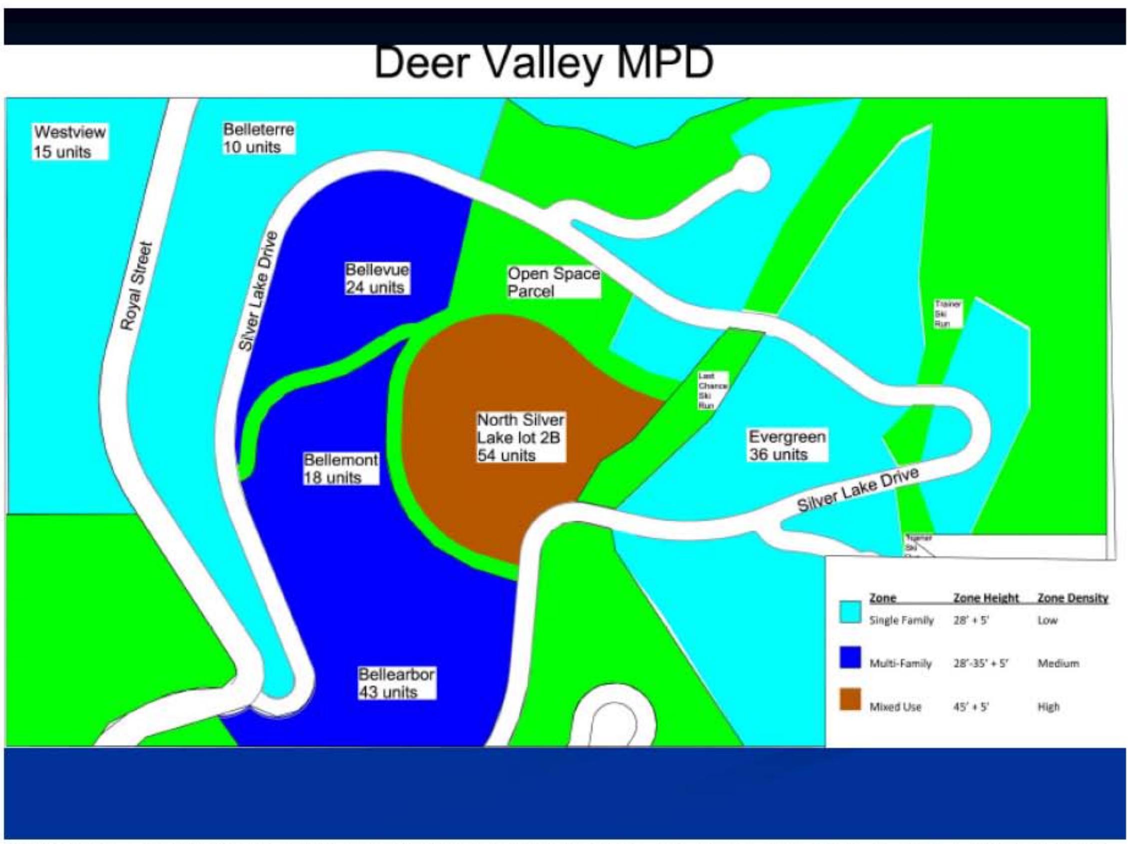
During the August 13, 2008, Planning Commission meeting, most of the discussion focused on the mass, bulk, and orientation of the building on the site and the orientation of these buildings to the adjoining lots (Exhibit B, minutes). The Commission voiced concern over the amount of area to be impacted under the current proposal and the extent of the limits of disturbance. Under the current plan there is an increase in open space on lot 2B, but the limits of disturbance will still be considerable. When evaluating mass and scale including the orientation on adjoining lots a clear understanding of the North Silver Lake Master Plan Development must be achieved.

The North Silver Lake Subdivision is located within the RD zoning district, yet the lots created within the MPD have set limitations for height, number of units, and required open space. The RD zoning controls the setback requirements from the lot lines and the uses allowed on the property, but the MPD acts as the guiding document affecting the mass and scale on the property. Essentially, the MPD has to be evaluated as zoning within a zone. The property lines within the MPD are transition lines between allowed height and number of units. The following is the breakdown of the North Silver Lake MPD from the most recently updated 9th Amended and Restated Large Scale Master Planned Development Permit. The breakdown reflects the allowed density, heights, and parcel sizes as permitted within the North Silver Lake MPD.

PARCEL NAME	PERMITTED DENSITY (UNITS)	DEVELOPED DENSITY (UNITS)	NOTES	HEIGHT (FEET)	PARCEL SIZE (ACRES)
NORTH SILVER LAKE COMMUNITY					
Westview Single Family	15	1		28	40.69
Evergreen Single Family	36	36		28	27.60
NSL Homesite Parcel #1	1	1		35	1.90
Belleterre Single Family	10	10		28	11.42
Bellevue Townhomes (NSL Subdivision Lot 1)	24	14	10	28	4.62
Bellemont Townhomes (NSL Subdivision Lots 2A and 2A-1)	18	12	10	28	3.75
NSL Subdivision Lot 2B	54	0		45	5.96
BelleArbor Townhomes (NSL Subdivision Lot 2C)	43	21	10	28-35	8.25
NSL Subdivision Lot 2D Open Space Lot	0	0	5	0	4.03
Total North Silver Lake Community	201				

As evidenced in the above breakdown, the parcels of North Silver Lake have not been developed to the “permitted density” in terms of units. The proposed development is adjacent to the Bellemont Townhomes and Belle Arbor at Deer Valley Subdivision to the West, the Bellevue Subdivisions to the North, Evergreen Subdivision to the east, and the Woods at Deer Valley and Stag Lodge to the South. The surrounding subdivisions are a mix of single family homes, townhomes, and a lodge. Under the Deer Valley MPD the development parcels for the Bellevue Townhomes, the Bellemont Townhomes, and the Belle Arbor Townhomes were permitted a set number of density units. At the election of the developer, the development density on these parcels is less than the original permitted density within the Deer Valley MPD. However, this data skews the perception of density in this location. Density is controlled by permitted units as well as the 60 percent open space requirement. The Bellemont Townhomes built to the full capacity leaving the minimum open space of 60 percent. Within the North Silver Lake Subdivision, the Bellemont Townhomes and Lot 2B were allowed to utilize Lot 2D toward the 60 percent open space requirement. The Bellemont Townhomes utilized 1.4 acre of lot 2D to comply with the open space requirement. This subdivision had in fact maximized the allowed density per the open space requirement but had not reached the full permitted density in terms of units. The Belle Arbor townhomes elected to use less than half the allowed units and kept approximately 80% open space. The Bellevue Townhomes elected to use half the number of allowed units and preserved approximately 65-70% open space. The Westview Single Family parcel further skews the allowed density because the owner chose to build one home rather than fifteen on the 40.69 acre parcel. The Evergreen single family parcel, the Belleterre single family parcel, and the NSL Homesite parcel #1 utilized the total permitted density allowed in respect to units.

The applicant provided staff with the following map depicting the permitted density and height allowance for each of the North Silver Lake Parcels. This map shows the intent of the single family homes to be on the surrounding parcels, the townhomes to be close to the center and allowed additional height, and the mixed use parcel to be centralized with the most units and greatest height allowance. Furthermore, lot 2B is unique in that it is permitted to utilize the open space of lot 2D toward the 60% open space requirement. This allowed ability to count the open space results in less open space actually located on lot 2B.



Staff has created following two tables showing the allowed density, height, and parcel sizes. Table 1 is organizes the permitted density from lowest to highest. Table 2 is arranged by parcel size smallest to largest. Although there is not a direct correlation between the size of the parcel and the amount of density permitted, it is evident that the single family homes were to be less dense on larger lots, and the townhomes and mixed use parcel 2B were to be denser on smaller lots.

Table 1. Permitted density from lowest to highest

Parcel Name	Density	Height	Parcel Size (Acre)	
NSL Homesite Parcel #1	1 permitted 1 developed	35	1.9	
Belleterre Single Family	10 permitted 10 developed	28	11.42	
Westview Single Family	15 permitted 1 developed	28	40.69	
Bellevue Townhomes	24 permitted 14 developed	28	4.62	
Evergreen Single Family	36 permitted 36 developed	28	27.60	
BelleArbor Townhomes	43 permitted 21 developed	28-35	8.25	
NSL Lot 2B Subdivision	54 permitted	45	9.99 (with lot 2D 5.96	

Table 2. Parcel Size from smallest to largest.

Parcel Name	Density	Height	Parcel Size (Acre)	
NSL Homesite Parcel #1	1 permitted 1 developed	35	1.9	
Bellevue Townhomes	24 permitted 14 developed	28	4.62	
NSL Lot 2B Subdivision	54 permitted	45	9.99 (with lot 2D 5.96	
BelleArbor Townhomes	43 permitted 21 developed	28-35	8.25	
Belleterre Single Family	10 permitted 10 developed	28	11.42	
Evergreen Single Family	36 permitted 36 developed	28	27.60	
Westview Single Family	15 permitted 1 developed	28	40.69	

Staff also reviewed square footage of the adjacent existing homes relative to the proposed development within the July 8, 2009 Planning Commission staff report as follows:

Mass and Scale: Staff utilized the Summit County tax records to find total square footages of homes adjacent to the project. Only properties adjacent to the project were included in the calculation. (Exhibit F) According to the Summit County tax records, the average unit size for adjacent properties is 4,917 square feet. The average individual unit size within the four central buildings is 3,663 square feet. The periphery single family homes and duplexes average 5,499 square feet. The average unit size for the 54 units is 4,227 square feet.

(B) Virtually all decided vested rights cases in Utah and the rest of the country involve the principles of equitable estoppel or zoning estoppel, including the Western Land Equities case cited by both Mr. Tom Bennett on behalf of the Applicant in his July 1, 2009 letter to the Commission regarding the CUP Application and Mr. Jody Burnett in his April 22, 2009 advisory opinion to the Commission regarding the Sweeney MPD.[7] Mr. Burnett specifically recited

substantial acts of partial performance or reliance by the Sweeneys based upon the original Sweeney MPD, including "the rezoning of a substantial portion of the hillside area to recreation open space, the imposition of deed restrictions for the purpose of open space, the granting of easements, dedication and construction of trails, etc." To the contrary, there are absolutely no such acts of reliance by the current Applicant here. The Deer Valley Resort Co., as the original developer under the MPD sold the land to Harrison Horne, et al, who had the Horne project approved in 2001. After such approval, development of the Horne Project was stopped and it was subsequently sold at an enormous profit to North Silver Lake Lodge, LLC, an entity owned or controlled by Val Southwick and his Vescor entity. To try to make the economics work, Southwick submitted plans for a Ritz Carlton that had 550,000 square feet in it and would have dwarfed the surrounding neighborhood structures. Our client group strongly opposed the Ritz Carlton project, and it finally disappeared when Mr. Southwick and his entities bankrupted, mainly related to his conviction for securities fraud for which he currently is serving a jail sentence. The current Applicant (which incidentally is the same applicant that Mr. Southwick used because its current principals were bargain hunting when they bought the LLC from the Southwick/Vescor bankruptcy estate) is now making a vested development rights arguments even though it has a substantially reduced economic starting point instead of a history of acts constituting reliance or partial performance, positing that they are invested with the same equity as a developer who could have started this project in 1978, regardless of the changes over the years and the requirements of §15-1-10 (D)(2)of the LMC. They are wrong and the City Council and the Commission needs to make that determination. The Commission has the legal authority under the LMC to require the reduction of the unit sizes to make the Project have a mass and scale that is in fact compatible with the surrounding neighborhoods, and the City Council has the authority to direct the Commission to make such a size reduction.

Staff: The property owner is vested for 54 units of density on Lot 2B. By the appellants rational any dwelling units within a MPD would be subject to a density reallocation and this is not accurate. The property owner is subject to the Deer Valley MPD and the applicable City Codes. The density was established within the MPD.

(C) The City Council should also take a historical perspective with regard to the original use of the North Silver Lake Parcel under the MPD. From 1978, when the original MPD was approved, through 1985 when the Eighth Amendment to the MPD was approved, hotel projects usually contained hotel rooms that averaged approximately 600 square feet, and were owned and managed by hotel companies. It wasn't until the late 1980s or early 1990s that the concept of condominium hotels came into use when hotel companies began divesting themselves of ownership of projects and became principally managers of projects, and hotel developers began looking for ways to lessen their economic risks by having investors buy the rooms as condominium units. This concept promoted the increase in size of units, along with designs that feature lock-out rooms. Hotel units were never contemplated to be 3,663 square feet in 1978 and 1985. Furthermore, the concept of lock-out rooms has never been discussed during the hearings for this Project. The current floor plans submitted and approved by the Commission do not show any lock-out room floor plans for the stacked units. Allowing lock-out rooms would increase the intensity of use of the units in the four central building. The conditions of approval of this CUP Application should have prohibited the use of lock-out rooms as any such design and use could materially affect the traffic studies and the number of spaces required in the parking garage. [8] Condition of approval #11 as currently written should not allow the Applicant to later change its approved floor plan designs when it submits its condominium/subdivision plans to include lock-out rooms using an argument that such design change does not substantially change the density or intensity of use of the Project as approved.

Staff: If the applicant were to change the floor plans to included lock-out units, the Planning Staff would require the applicant to go before the Planning Commission to discuss the substantial change to the application. The Applicant has communicated to staff that they do not anticipate any substantial modifications to the CUP, such a lockout units, and are willing amend Condition of Approval #11 to "No lockout units are permitted within this approval".

III. THE NOTICE AND HEARING PROCEDURES FOR THE CUP APPLICATION ADOPTED AND USED BY THE CITY AND ITS PLANNING DEPARTMENT VIOLATE OUR CLIENTS' CONSTITUTIONAL RIGHT TO DUE PROCESS.

Staff: Staff followed the noticing requirements for a CUP within the notice matrix of section 15-1-21 of the Land Management Code. A Conditional Use Permit is required to be posted on-site 14 days prior to the hearing before Planning Commission, to send courtesy mailing 14 days prior to the hearing before the Planning Commission to Owners within 300 feet, and to be published once 14 days prior to the hearing before the Planning Commission. These procedures were followed throughout the CUP review. It must be noted that the mailed noticing is a courtesy noticing.

(A) Our client group consists mainly of second home owners in the surrounding neighborhoods to the Project who only seasonally visit their homes. It is difficult and expensive for them to arrange to attend public hearings on short notice, and impossible on no notice. §15-1-12 of the LMC provides for mandatory posted and published notice of CUP hearings; however, it only provides for non-mandatory courtesy notices to owners of property within 300 feet of the Project. The Planning Staff has not been sending out the courtesy notices to all of the owners within 300 feet despite the fact that our client group has been attempting to participate in the public process related to this Project for over 8 years, and in several instances our clients have learned about a scheduled hearing only by someone noticing by chance that there was a posted notice on the Project property. For second home owners who pay a substantial amount of property taxes in excess of the rate paid by permanent residents, this lack of a courtesy notice is not only a discourtesy, but also amounts to a deprivation of due process required by both our federal and state constitutions.

Staff: Staff followed the noticing requirements for a CUP within the notice matrix of section 15-1-21 of the LMC.

(B) Under the circumstances here, constitutional due process standards required more than compliance with the LMC -- they required actual notice to our client group. The key facts supporting the actual notice requirement include the City's knowledge that its published notice was not likely to reach the "absentee" second home owners in the neighborhood surrounding the Project. In addition, given their proximity to the Project, the second home owners are a distinctly impacted, easily identifiable group. Finally, giving them actual notice posed no significant burden. Under these circumstances, Utah and federal law hold that statutory compliance was insufficient to meet constitutional due process standards.

Staff: This statement is inaccurate. Staff is required to follow the noticing matrix of the LMC section 15-1-21. This noticing matrix of the LMC exceeds the noticing requirements of the Utah State Code.

(C) The public hearing procedure used by the City's Planning Department staff and the Commission deprives our client group of any reasonable opportunity to make a proper and timely evaluation of the proposed plans for the Project and to present their case or objections at the hearing. The Commission and staff allow the Applicant to continue to submit plans and other materials up until the day of a scheduled hearing and our clients do not see these plans or materials until they are presented at the hearing itself. At the hearing, the Commission hears the presentation of the Applicant, then gives our client group a limited amount of time to react in the part of the session designated as public input. The Commission does not permit our client group to participate at any other portion of the hearing, and the Applicant is given rebuttal time after the public input. The Commission does not allow the public to question the Applicant on the Project directly.

This procedure amounts to a deprivation of due process required by both our federal and state constitutions.[9]

Staff: The files at the Planning Department were available throughout the entire review process for the public to review. Staff has been available to the public to meet and review the applications. The Planning Commission meetings follows a structured meeting process giving both the applicant and the public an opportunity to speak in an orderly manner and in compliance with City, State, and Federal regulations.

Process

The City Council action on this matter shall constitute Final Action (unless the Council votes to remand the matter back to Planning Commission). The City Council's decision on this appeal may be appealed to the District Court within 30 days of Final Action.

Notice

Property owners who received mailed notice for the original Planning Commission hearing were sent a courtesy mailing seven days prior to the appeal hearing. The property was properly posted and legally noticed seven days prior to the appeal hearing.

Public Input

Staff has not received any additional public input concerning the appeal at the time of writing this staff report.

Alternatives

- The City Council may affirm the Planning Commissions decision to approve in whole or in part the North Silver Lake Cottages CUP as conditioned or amended; or
- The City Council may reverse the Planning Commission decision and deny the North Silver Lake Cottages CUP in whole or in part and direct staff to make Findings for this decision; or
- The City Council may remand the matter to the Planning Commission with direction on specific items; or
- The City Council may continue the discussion on the appeal of the North Silver Lake Cottages CUP.

Significant Impacts

If the City Council chooses to reverse the Planning Commission decision and deny the North Silver Lake Cottages CUP the applicant will have to change the current plans and go through the review process with the Planning Commission for any amended plans.

Recommendation

Staff recommends the City Council review the appeal and consider affirming the Planning Commission decision to approve the North Silver Lake CUP as amended and conditioned.

Findings of Fact

1. The subject property is at 7101 North Silver Lake Drive. This property is also known as Lot 2B of the North Silver Lake Subdivision.
2. The proposed development is located within the Deer Valley Master Plan Development.
3. Within the Deer Valley Master Plan, the North Silver Lake Subdivision Lot 2B is permitted a density of 54 residential units and 14,552 square feet of commercial and support space.
4. The applicant has applied for a conditional use permit for the development of 54 units located on Lot 2B of the North Silver Lake Subdivision. The applicant has included 5102 square feet of support commercial space within this application. The project consists of 16 detached condominium homes and four condominium buildings containing 38 condominium units. The remaining commercial units are not transferable.
5. The North Silver Lake Subdivision Lot 2B is 5.96 acres in area.
6. The Deer Valley Master Plan requires that all developments are subject to the conditions and requirements of the Park City Design Guidelines, the Deer Valley Design Guidelines, and the conditional use review of LMC chapter 15-1-10.

7. The Deer Valley MPD determines densities on parcels as an apartment unit containing one bedroom or more shall constitute a dwelling unit and a hotel room or lodge room shall constitute one-half a dwelling unit. The Deer Valley MPD does not limit the size of units constructed provided that following construction the parcel proposed to be developed contains a minimum of 60% open space and otherwise complies with MPD and all applicable zoning regulations.
8. Within the Deer Valley MPD development parcels exhibit there is a note for the NSL Subdivision Lot 2D Open Space stating "This parcel has been platted as open space, with the open space applying to the open space requirement of Lot 2B." Lot 2D is 4.03 acres in size.
9. Within the original North Silver Lake Subdivision, the Bellemont subdivision was allowed to also utilize Lot 2B towards the 60% open space requirement. The Bellemont Subdivision utilized ¼ acre of the Lot 2B parcel to comply with the open space requirement.
10. The current application site plan contains 74% of open space on the site including the remainder 3.78 acres of open space on Lot 2D.
11. The property is located in the Residential Development zoning district (RD) and complies with the Residential Development ordinance.
12. The property is within the Sensitive Lands Overlay Zone and complies with the Sensitive Lands Ordinance.
13. The height limit for Lot 2B was established at 45 feet within the Deer Valley Master Plan. The development complies with the established height limit, with the exception of five feet for a pitched roof.
14. The onsite parking requirements for the four stacked flat condominiums have decreased 25% in compliance with section 15-3-7 of the Land Management Code. The Planning Commission supports a 25% reduction in the parking for the stacked flats within the development.
15. The Planning Commission held public hearings on August 13, 2008, October 22, 2008, February 25, 2009, May 27, 2009, and July 8, 2009.
16. The Planning Commission approved the CUP on July 8, 2009.
17. An appeal of the CUP approval was received July 17, 2009 within ten days per LMC 15-1-18.

<u>Conclusions of Law</u>

1. The application is consistent with the Deer Valley Master Planned Development and the Park City Land Management Code, particularly section 15-1-10, Conditional Use Permits.
2. The Use is compatible with surrounding structures in use, scale, mass, and circulation.
3. The Use is consistent with the Park City General Plan.
4. The effects of any differences in Use or scale have been mitigated through careful planning.

<u>Conditions of Approval</u>

1. All Standard Project Conditions shall apply.

2. City approval of a construction mitigation plan is a condition precedent to the issuance of any building permits. This plan must address mitigation for construction impacts of noise, vibration, and other mechanical factors affecting adjacent property owners. The Arborcare Temporary Tree and Plant Protection Plan dated April 2, 2009 must be included within the construction mitigation plan.
3. City Engineer review and approval of all appropriate grading, utility installation, public improvements and drainage plans for compliance with City standards is a condition precedent to building permit issuance.
4. The Arborcare Temporary Tree and Plant Protection Plan dated April 2, 2009 must be adhered to. A member of the Planning Staff and Planning Commission will be invited to attend the pre-installation conference. Prior to operating any excavation machinery, all operators of any excavation machinery must sign off that they have read, understand, and will adhere to the Temporary Tree and Plant Protection plan.
5. A landscape plan is required with the building permit. The landscape plan must reflect the site plan and existing vegetation plan as reviewed and approved by the Planning Commission on July 8, 2009.
6. The developer shall mitigate impacts of drainage. The post-development run-off must not exceed the pre-development run-off.
7. Fire Marshall review and approval of the final site layout for compliance with City standards is a condition precedent to building permit issuance. The proposed development shall comply with the regulations of the Urban Wild Land Interface Code. A thirty foot defensible space will be mandatory around the project, limiting vegetation and mandating specific sprinklers by rating and location. The Fire Marshal must make findings of compliance with the urban wild land interface regulations prior to issuance of a building permit.
8. Approval of a sign plan is required prior to installation of any signs on the property.
9. Staff review and findings of compliance with the lighting regulations of LMC Section 15-5-5(I) are required prior to the issuance of an electrical permit.
10. This approval will expire October 15, 2010, 12 months from October 15, 2009, if no building permits are issued within the development. Continuing construction and validity of building permits is at the discretion of the Chief Building Official and Planning Director.
11. Approval is based on plans reviewed by the Planning Commission on July 8, 2009. Building Permit plans must substantially comply with the reviewed and approved plans. Any substantial deviation from this plan must be reviewed by the Planning Commission.
12. No lockout units are permitted within this approval.
13. The SWCA wildlife mitigation plan dated April 15, 2009 must be included within the construction mitigation plan and followed.
14. The two ADA units are to be platted as common space and cannot be separately rented without renting another unit.
15. The Sustainable Design Strategies created by Living Architecture as reviewed by the Planning Commission on July 8, 2009 must be adhered to within the

building permit process. Any substantial deviation from this plan must be reviewed by the Planning Commission.

16. The final condominium plat for North Silver Lake Lot 2B may not exceed the totals for common space and private space within Exhibit C and commercial as defined by the Deer Valley MPD.

Order:

1. The appeal is denied in whole. The MPD is approved with the amended Findings of Fact and Conditions of Approval as stated within the staff report.

Exhibits

A. Appeal
B. July 8, 2009 Planning Commission Staff Report
C. Minutes of July 8, Meeting
D. Letter addressing appeal from Applicant

Exhibits: See separate appeal packet which is on-line at
www.parkcity.org/government/meetingandagendas/citycouncil.html
or call Jan Scott, City Recorder, 435-615-5007 for copies.