



**PARK CITY COUNCIL MEETING
SUMMIT COUNTY, UTAH
SEPTEMBER 30, 1999**

PUBLIC NOTICE IS HEREBY GIVEN that the City Council of Park City, Utah will hold its regularly scheduled meeting at the Marsac Municipal Building, 445 Marsac Avenue, Park City, Utah for the purposes and at the times as described below on Thursday, September 30, 1999.

A G E N D A

Work Session - City Council Chambers - Lower Level

- 5:00 p.m. Council questions and comments
- 5:20 p.m. Park Avenue zoning and enforcement
- 5:40 p.m. Review of regular meeting
Old Town Center overview

Regular Meeting - City Council Chambers - Lower Level

6:00 p.m.

I ROLL CALL

II PUBLIC INPUT

- 1. Park Avenue zoning issues - John Plunkett
- 2. Motorcycle race - Max Miller

III COMMUNICATIONS FROM COUNCIL AND STAFF

IV WORK SESSION NOTES AND MINUTES OF THE MEETING OF SEPTEMBER 2, 1999

V PUBLIC HEARINGS

- 1. Ordinance approving the plat amendment to combine Lots 17 and 18, Block 29, Snyder's Addition to the Park City Survey, located at 952 Lowell Avenue, Park City, Utah

2. Ordinance approving a plat amendment to combine into one lot, Lots 14 - 20, Block 8, Snyder's Addition to the Park City Survey, located at 1167 Woodside Avenue, Park City, Utah
3. Ordinance approving the final subdivision plat and amendment to the Park City Survey for the Old Town Transit Center Subdivision, 558 Swede Alley, Park City, Utah

VI CONSENT AGENDA

1. Ordinance approving the plat amendment to combine Lots 17 and 18, Block 29, Snyder's Addition to the Park City Survey, located at 952 Lowell Avenue, Park City, Utah
2. Ordinance approving a plat amendment to combine into one lot, Lots 14 - 20, Block 8, Snyder's Addition to the Park City Survey, located at 1167 Woodside Avenue, Park City, Utah
3. Ordinance approving the final subdivision plat an amendment to the Park City Survey for the Old Town Transit Center Subdivision 558 Swede Alley, Park City, Utah

VII NEW BUSINESS

1. Award of construction contract for improvements to Deer Valley Drive
2. Authorization of change orders for design contract for Old Town Transit Center

VIII ADJOURNMENT

**PARK CITY COUNCIL MEETING
SUMMIT COUNTY, UTAH
OCTOBER 7, 1999**

PUBLIC NOTICE IS HEREBY GIVEN that the City Council of Park City, Utah will **not hold** its regularly scheduled meeting on Thursday, October 7, 1999.

**PARK CITY COUNCIL SPECIAL MEETING
SUMMIT COUNTY, UTAH
OCTOBER 11, 1999**

PUBLIC NOTICE IS HEREBY GIVEN that the City Council of Park City, Utah will hold a special meeting as the Board of Canvassers on Monday, October 11, 1999 at the Park City Racquet Club, 1200 Little Kate Road, Park City, Utah at 9 a.m. for the purpose of canvassing the votes of the Primary Election held on Tuesday, October 5, 1999.

Posted: 09/27/99
See parkcity2002.org



**PARK CITY COUNCIL MEETING
SUMMIT COUNTY, UTAH
SEPTEMBER 30, 1999**

I ROLL CALL

Mayor Pro Tem Hugh Daniels called the regular meeting of the City Council to order at approximately 6 p.m. at the Marsac Municipal Building on Thursday, September 30, 1999. Members in attendance were Hugh Daniels, Shauna Kerr, Chuck Klingenstein, and Paul Sincock. Mayor Brad Olch and Council Member Roger Harlan were excused. Staff present were Toby Ross, City Manager; Interim City Attorney Mark Harrington; Kirsten Whetstone, Planner; Pat Putt, Planning and Zoning Administrator; and Tom Bakaly, Director of Capital Projects and Budget.

II PUBLIC INPUT

1. Park Avenue zoning issues - John Plunkett - See Work Session Notes and Minutes from September 23, 1999. Mr. Plunkett thanked Council members and staff for the amount of time given these issues. Through illustration of a drawing displayed on the bench projector, he discussed the Gaddis project where there is a retaining wall nine feet above the natural grade of the slope, making a level platform. The Gaddis project received a public easement for the ADA access and Mr. Plunkett asked why it was placed over residential lots as 35 businesses on Main Street don't have access to Park Avenue lots and their ADA requirement is met in the commercial zone. Messrs. Bamberger and Gaddis should not receive preferential treatment because they own residential lots on Park Avenue. The building should be low enough so it doesn't require an ADA access or install an elevator. There is a dumpster on the Gaddis property on the Park Avenue side, but this issue may have been resolved by the City. Mr. Plunkett pointed out that the Gaddis project received an occupancy permit several years ago and there is still a parking lot and no landscaping. Also, the Claimjumper lot has not been landscaped. When he asked the City about this, the building inspector told him that the City lost all files on this project and there is nothing the City can do to enforce this. He pointed out that several years ago, the owners of the Claimjumper sold the parking lot next door to Mr. Gaddis, put the money in their pockets, and their rotting meat in their dumpsters and rolled them up to his house on Park Avenue. Gaddis and the Claimjumper should look where they can contain garbage physically in their structures. Mr. Plunkett complained about a bright light on a utility pole, which unshielded by the trees, lights up the whole neighborhood. The light is illegal and should be removed.

He read a section of the newly adopted Land Management Code regarding preserving vegetation. Mr. Bamberger may argue that this occurred prior to adoption and he is grandfathered-in, but the building permit he applied for and received was for the Main Street property only and he is clearly in violation of the Park City law. He wondered if a 40 foot tree can be planted and survive. The soil has to be good and there has to be an irrigation system. Single family homes are appropriate

in the neighborhood, but the trees can not be torn down to make room for houses. He pointed out that the City right-of-way for the ADA sidewalk doesn't have good drainage and can be dangerous in the winter, and reiterated his preference to have the access in the HCB zone. The neighborhood is prepared to keep commercial creep from Park Avenue and Mr. Plunkett emphasized that it is common sense that it is not the intent of the zoning to have commercial uses in residential zones.

He continued that on September 1, well after the need for staging, Bamberger brought in truck loads of dirt, significantly altering the grade and leveling out the lots. He and neighbors are required to maintain natural grade and he believes that these lots have been altered by as much as six feet. Bamberger should reapply for a permit and this time, with complete documentation from the City and the boards approval. He discussed his confusion on if or how much Bamberger has bonded for the project with the City. The zoning laws are very good and the Planning Department does a good job of interpreting those laws when approving plans, but something is not happening at the enforcement end. When problems are taken to building inspectors, there is no action or interest in taking action. He asked if the City was going to prosecute Bamberger for infractions, and was told that it takes too much time and money to prosecute these and in the end all that he'll get is a Class C misdemeanor with a fine of \$500. It turns out that the fines and penalties are not that low and these particular building violations are Class B misdemeanors and the court could send Mr. Bamberger to jail for a year or impose a fine of \$1,000 per day per violation as long as the violations continue to exist.

Mr. Plunkett stated that Joe Tesch, attorney, has agreed to represent certain residents of Park Avenue, if the need arises. He read a letter from Mr. Tesch to the City Council into the record in which Mr. Tesch states that he has been retained by the 500 block of Park Avenue residents to review violations of the Land Management Code by businesses on Main Street who appear to be using HR-1 lots for commercial purposes. Mr. Tesch referred to the importance of historic preservation and Old Town will be lost unless the City government is constantly diligent in enforcing zoning restrictions. He is appalled by the creeping commercialism on the east side of Park Avenue apparently unabated by City enforcement; historic vegetation has been removed. The code calls out for strict interpretation and enforcement and the cost of enforcement argument ignores the most important remedy, injunction against illegal uses and replacement of destroyed vegetation. The City's lack of enforcement of Old Town protection is difficult to understand. The suggestion that individual residents may file expensive legal actions to redress violations is not the answer, as they pay taxes and expect enforcement of ordinances. Mr. Tesch's letter continued to encourage the City Council to direct enforcement personnel and legal resources to rigorously take all necessary action to immediately enforce strict interpretation of ordinances protecting historic Old Town and abate all creeping commercial violations.

2. Motorcycle race - Max Miller - Mr. Miller stated that he is representing the Thaynes Canyon neighborhood. Mayor Pro Tem Daniels informed him of the October 11 meeting on the event debriefing. Mr. Miller spoke of his past and relayed that Park City is a residential and not a

resort town and felt that it is a matter of perception. People live here because of quality of life. Mr. Miller commented on the amount of publicity on this event; even bad publicity is good publicity. He discussed the mess of straw strewn on the highway and throughout the streets in the neighborhood. Residents were greatly inconvenienced in getting to and from their residences in Thaynes Canyon that weekend. Mr. Miller admitted that he wasn't in town for the race but a neighbor told him that patrons were asking residents to use their bathrooms. There was also trash in the yards and a no parking sign thrown in his yard.

With no further comments, the public input session was closed.

III COMMUNICATIONS FROM COUNCIL AND STAFF

None.

IV WORK SESSION NOTES AND MINUTES OF THE MEETING OF SEPTEMBER 2, 1999

Chuck Klingenstein clarified Council's direction on the Bonanza Drive intersection project. Shauna Kerr, "I move approval as corrected". Paul Sincock seconded. Motion carried.

Hugh Daniels	Aye
Roger Harlan	Absent
Shauna Kerr	Aye
Chuck Klingenstein	Aye
Paul Sincock	Aye

V PUBLIC HEARINGS

1. Ordinance approving the plat amendment to combine Lots 17 and 18, Block 29, Snyder's Addition to the Park City Survey, located at 952 Lowell Avenue, Park City, Utah - Kirsten Whetstone stated that the Planning Commission forwarded a positive recommendation to the City Council on September 8, 1999 with the conditions in the staff report. Staff also recommends approval of the combination of two lots into one lot. She explained that the owners are intending to remodel the residence. With no comments or questions from the Council or the public, the public hearing was closed.

2. Ordinance approving a plat amendment to combine into one lot, Lots 14 - 20, Block 8, Snyder's Addition to the Park City Survey, located at 1167 Woodside Avenue, Park City, Utah - Ms. Whetstone explained that this is a request to combine seven historic lots into one 13,000 square foot lot to accommodate the historic bus barn, which is listed on the Historic Registrar. The structure was renovated in 1996 and one of the conditions of approval was to combine the lots. The

City will also receive a facade easement. With no further comments or questions from the public or the City Council, the public hearing was closed.

3. Ordinance approving the final subdivision plat and amendment to the Park City Survey for the Old Town Transit Center Subdivision, 558 Swede Alley, Park City, Utah - Pat Putt explained that this area totals 2.5 acres, consists of four platted Park City Survey lots and a metes and bounds piece which was originally part of the Millsite Reservation, and combines it all into one lot. The Planning Commission forwarded a positive recommendation on June 16, 1999. Eric DeHaan explained that this portion of Swede Alley is not a dedicated street and is actually located in the Farrell Avenue right-of-way. With no further comments or questions, the public hearing was closed.

VI CONSENT AGENDA

Chuck Klingenstein, "I move approval of the Consent Agenda". Paul Sincock seconded. Motion carried.

Hugh Daniels	Aye
Roger Harlan	Absent
Shauna Kerr	Aye
Chuck Klingenstein	Aye
Paul Sincock	Aye

1. Ordinance approving the plat amendment to combine Lots 17 and 18, Block 29, Snyder's Addition to the Park City Survey, located at 952 Lowell Avenue, Park City, Utah - See staff report and public hearing.

2. Ordinance approving a plat amendment to combine into one lot, Lots 14 - 20, Block 8, Snyder's Addition to the Park City Survey, located at 1167 Woodside Avenue, Park City, Utah - See staff report and public hearing.

3. Ordinance approving the final subdivision plat an amendment to the Park City Survey for the Old Town Transit Center Subdivision 558 Swede Alley, Park City, Utah - See staff report and public hearing.

VII NEW BUSINESS

1. Award of construction contract for improvements to Deer Valley Drive - See work session notes and staff report. Tom Bakaly noted that staff is requesting that the Mayor Pro Tem execute a contract for \$106,000 to Keller Construction Company for the construction of a retaining wall and driveway improvements on Deer Valley Drive. This is the first step of the project for the

Old Town Transit Center. Paul Sincock, "I move approval of the award of a construction contract for improvements to Deer Valley Drive in the amount of \$106,000" - Chuck Klingenstein seconded. Motion carried unanimously.

2. Authorization of change orders for design contract for Old Town Transit Center - Tom Bakaly explained that there are two change orders; one for environmental issues relating to the design and engineering contract for \$149,335 and the other for \$108,450 for changes in architectural scope relating to the design and engineering of the Old Town Transit Center. The total change order amount is \$257,785 and funds are budgeted. Paul Sincock stated that the project is within budget but increased since April 15, 1999 because of committee involvement. Chuck Klingenstein explained that the committee treated the City like it would any developer and the project changed in the process. Last spring, the City had no idea of the cost of dealing with environmental issues. Shauna Kerr suggested that the \$27,000 contingency be pulled as it would be a great incentive to keep the project on budget and staff could always come back to the City Council for additional funding, if necessary. Hugh Daniels and Paul Sincock agreed. It was clarified that the total would be \$230,785. Shauna Kerr "I move that the Council approve that amount". Paul Sincock seconded. Motion carried.

Hugh Daniels	Aye
Roger Harlan	Absent
Shauna Kerr	Aye
Chuck Klingenstein	Aye
Paul Sincock	Aye

VIII ADJOURNMENT

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

* * * * *

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



**PARK CITY WORK SESSION NOTES
SUMMIT COUNTY, UTAH
SEPTEMBER 30, 1999**

Present: Council Members Hugh Daniels; Shauna Kerr; Chuck Klingenstein; and Paul Sincock

Toby Ross, City Manager; Mark Harrington, Interim City Attorney; Frank Bell, Olympic Planning Director; Myles Rademan, Public Affairs Director; Rick Lewis, Community Development Director; Ron Ivie, Community Development Director; Pat Putt, Planning and Zoning Administrator; and Tom Bakaly, Director of Capital Projects & Budget

Tammy Ringwood, owner Claimjumper Restaurant; Craig Terry, attorney for Bamberger

Absent: Mayor Brad Olch and Council Member Roger Harlan

1. Council questions and comments. Chuck Klingenstein suggested that a traffic calming task force be formed as dealing with this problem could be long-term and involve phasing improvements. It would be beneficial to have a representative group working on a program. The City Manager explained that staff has been considering this, as it was mentioned last week, and will come back to Council with the issues related to programs and processes for a long-term strategy. Paul Sincock commented that the new reception area in the Marsac Building is not very user-friendly. There was discussion about cleaning up the straw from the motorcycle race which was performed by City crews, but staff costs will be reimbursed to the City for these services. Ms. Kerr suggested that the locals performing as the Divas who appeared at the Eccles Center be recognized. Hugh Daniels felt that there is still a problem with kids not wearing protective equipment at the skateboard park. He suggested that a thank-you be sent to the members of the legislature who visited the community last week.

Frank Bell announced that on Monday, October 11 from 7 p.m. to 9 p.m., a public debriefing of the motorcycle race will be held. Notes from this meeting will be part of a formal report. Myles Rademan reported that the City is applying to the Utah Quality Growth Commission for financial assistance under the LeRay McAlister Critical Land Conservation Fund. The City is applying to help purchase the first 1,000 feet of the Rail-Trail owned by the Union Pacific. Tom Bakaly stated that there will be an open house on the McPolin Farm on October 6 at the Miners Hospital from 5 p.m. to 8 p.m.

2. Park Avenue zoning and enforcement. Hugh Daniels noted that public input was taken from Park Avenue residents as well as the developer, Mr. Bamberger at length last week. This

is not a public hearing and the purpose of this meeting is to allow Council to ask questions of the staff concerning its role in resolving the problems that have emerged on Park Avenue. There are also legal issues involved that the Legal Department has not yet completed. Chuck Klingenstein requested an overview.

Rick Lewis explained that the zone behind the commercial property on Main Street on Park Avenue does not permit dumpsters. Over the years, there haven't been a lot of complaints until the residential properties have filled-in on Park Avenue. Businesses were contacted about 30 days ago to remove the dumpsters on Park Avenue by October 7, 1999 and some businesses will have to haul garbage to Swede Alley or Main Street. G&F does not pick up on Sunday morning and staff is working on arranging a Sunday pick-up, including that the City pick-up on an interim period. The contract with BFI is currently being negotiated and the necessity of Sunday pick-up on Main Street has been emphasized. Ms. Kerr explained that G&F currently picks up trash from dumpsters on Sundays all year long and to a greater extent during the ski season. Collecting garbage from cans involves a different truck and three workers and G&F suggests that the Swede Alley dumpsters be used rather than can containers during the interim. As soon as the ski resorts open, a sweep up Main Street would be possible. There was discussion about formally writing the County Commissioners about Park City's collection needs. Paul Sincock relayed that there will be negotiations with BFI, the new provider, about daily pick-ups in the Old Town District and other restaurant districts. Rick Lewis added that two large dumpsters can be added to Swede Alley by the Elks Building which will help relieve the flow from the Park Avenue area. Ron Ivie strongly urged that all of the business districts be included in an improved service program. Hugh Daniels pointed out that there is a City easement between the Claimjumper and the Gaddis Building which might be used as a possible temporary location for garbage cans for the restaurant. Rick Lewis pointed out a letter from the Claimjumper requesting an extension of the removal of the dumpsters, but the City Council was firm with October 7, 1999.

Tammy Ringwood, Claimjumper Restaurant, emphasized that the Swede Alley option is not viable as there are 59 outdoor stairs that the kitchen staff would have to negotiate and 500 feet to get to a dumpster in Swede Alley. The Elks Building dumpster would be even further. She spoke of OSHA requirements and providing a safe working environment for her employees. She continued that G&F is very difficult to work with as she has been dealing with them for 15 years, and they have never picked up on Sunday. There was discussion about using the alleyway for temporarily storing garbage and the Chief Building Official stated that he will look at the area. Ms. Ringwood asked if Council would be willing to retain the status quo for a while, and the City Council denied that request.

Paul Sincock asked for clarification of parking on the HR-1 lots fronting Park Avenue. Pat Putt explained that there have been parking lots that have been there for many years, including the Claimjumper parking lot as well as the Old Town Shoppes parking lot. The parking areas behind the new Gaddis Building and the Bamberger Building were permitted as temporary

staging areas which included temporary construction parking while the buildings were being built. Both projects involved construction mitigation plans and staff considered three alternatives for staging: (1) Main Street or; (2) Park Avenue, which were both problematic; or (3) allow the property owners use of their HR-1 lots and rehabilitate those areas after the construction is completed. In the case of Gaddis, a financial security and a landscaping plan for the lots was received. There will be large landscape boulders along the Park Avenue frontage to preclude parking in those lots, and the occupancy permit will be conditioned prohibiting commercial parking. With regard to the Bamberger property, there was some grading and fill allowed and as a part of the construction mitigation plan, and some wildflower seeding was proposed after the completion of the building. Given the fact that trees were removed on site, on the neighbor's property, and a tree that was partially within the City right-of-way, a more substantial mitigation plan has been requested to address the loss of trees. Mr. Putt continued that there has never been a request made or an application filed that any of those lots would be converted into a permanent parking lot.

Both the Gaddis and the Bamberger Buildings were constructed entirely in the HCB; Paul Sincock interjected that there is a large power panel on the Bamberger Building on the HR-1 side. Pat Putt explained that there is no specific language in the HR-1, HTO, or the HR-2 zones that preclude public pedestrian accesses through those zones. The Gaddis project has committed to gating the access for only ADA and emergency egress which is the same proposal for the Bamberger sidewalk. Also, there are conditions of approval on the Gaddis project that prior to an occupancy permit, all of the interior and exterior lights will be reviewed for compliance with the code and to every extent possible, minimize any impact on the Park Avenue residents. Ron Ivie explained that the large power box on the Gaddis Building is out of the City's control, since larger buildings require transformers for utility service, which is under the purview of the power company. Chuck Klingenstein emphasized that temporary lots for staging construction should be monitored so that they don't turn into commercial parking lots. There was discussion about the grade being too severe to accommodate the ADA sidewalk on the HCB property for the Bamberger Building. Mr. Putt added that staff is waiting to review a landscape plan, easement, and financial security for the Bamberger project. Mr. Ivie explained that the landscape plan was just received this afternoon and staff will look at this as soon as possible. Paul Sincock pointed out the planter box in the Claimjumper parking lot which should be planted with trees or shrubs. Ron Ivie commented that there has been a complaint about that and staff is working with the Claimjumper on this and the dumpster issue.

Interim City Attorney Mark Harrington stressed that the City is holding some money on the Bamberger property and additional funds will be secured for the new landscape plan. Ms. Kerr expressed appreciation to staff for their efforts in resolving these issues and Hugh Daniels requested that there be an update. With regard to discussion on a stop order on the Bamberger project, Mr. Ivie understood that if the landscape plan and financial guarantee just submitted are acceptable, that the landscaping plan be initiated now so that the site is reclaimed this year. He asked that staff be trusted with regard to the status of the stop order. Ms. Kerr explained that the Council

had concerns about the location of the sidewalk on the plans and that there wasn't a valid permit to proceed with work. If that situation is remedied, there is no reason to continue a stop work order. Hugh Daniels agreed that the trees need to be planted now in the fall. Chuck Klingenstein suggested that the soil be prepared for the planting and Paul Sincock pointed out that Council's direction is that Park Avenue become more of a residential community than it has been in the last few years.

Craig Terry, attorney with Parsons Behle & Latimer, stated that he is representing the Bambergers and submitted plans for the walkway and a landscape and mitigation plan today. It is the intent of the Bambergers to move ahead with construction on the residential lots, consequently the plan proposed is the landscaping to be done after the home on Lot 32 is constructed. Once the plan is approved and after the home is built, the Bambergers are willing to bond for the construction of those landscaping improvements. He emphasized that it doesn't make any sense to install new landscaping and attempt to build a house around it. Toby Ross stated that delaying landscaping until subsequent construction would probably not be acceptable to staff or the City Council. Ms. Kerr explained that the review process required for the house would eliminate the window of opportunity for planting trees this year. The trees were taken out this season and need to be back this season ; she believed that his client will have to build the house around the trees as if the trees that he destroyed were still there. Mr. Terry argued that this is not practical. Mark Harrington interjected that this is the wrong venue for this discussion and suggested that the Chief Building Official be provided an opportunity to comment on the plan.

3. Old Town Transit Center overview. Tom Bakaly explained that adjustments to the design were made in response to comments at the open house in mid-June, most notably better pedestrian access on Swede Alley and restrooms on both floors. Since approval of a conditional use permit by the Planning Commission, the entire project has been scheduled to be bid probably in January or February. It is proposed to proceed with a retaining wall this construction season on the east side of Deer Valley Drive which ties into construction next year. If approval on the contract for Deer Valley Drive is approved tonight, construction may begin as early as Monday. The other items requested for action deal with the design contract and change orders. Mr. Bakaly explained that in the original scope of the contract, environmental testing or remediation was not included, because that information was not available at that time. This is Change Order #1 in the amount of \$149,335 which is budgeted in the Transportation Fund, as remedial work is not eligible for FTA funds. Item two amounts to \$108,450 which involves changes to architectural scope of the project as a result of nine review meetings of the task force and Planning Commission. Issues ranged from the historic wall, dumpsters/tash compactor, grade changes, etc. There is a contingency in this change order of roughly \$27,000. There will be a separate construction contract with its own contingency before Council this winter on the project. There was discussion about the enhancements made by the committees and Chuck Klingenstein added that the building changed significantly in many ways as the Planning Commission, Historic District Commission and others reviewed it. Mr. Bakaly indicated that staff will be coming back to Council with a construction mitigation plan and explained

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City Council Work Session
September 30, 1999

in detail the contingency of \$27,000 for issues that may come up between now and the construction. Overall, the City is within budget and within the grant allocation from the federal government.

See regular meeting minutes.

Prepared by Janet M. Scott

PARK CITY

1884

CITY COUNCIL STAFF REPORT

DATE: September 21, 1999 (September 30, 1999 meeting)
DEPARTMENT: Planning Department
AUTHOR: Kirsten A. Whetstone, AICP *KAW*
TITLE: 952 Lowell Avenue
TYPE OF ITEM: Legislative plat amendment to combine two platted lots

SUMMARY RECOMMENDATIONS Staff requests the City Council review the request to combine two platted lots for an existing house, hold a public hearing, and approve the plat amendment as conditioned in this staff report.

DESCRIPTION

A. Topic

Applicant:	Bill Mammen for Lance L. Young, owner
Location:	952 Lowell Avenue
Zoning:	HR-1
Adjacent Land Uses:	Single family residential
Date of Application:	September 22, 1998
Reasons for Review:	Plat amendments require Planning Commission Review and City Council approval.

B. Background

The property is legally described as Lots 17 and 18, Block 29 of the Snyder's Addition to the Park City Survey (Exhibit A). The property is on the downhill side of Lowell Avenue. Platted, unbuilt Tenth Street is adjacent to and north of Lot 17. Both lots are standard 25'x75' old town lots. Constructed in approximately 1962, the existing structure straddles the common lot line. The lot is landscaped, including several mature evergreen trees. Access to this lot is from Lowell Avenue.

This application is a request to remove the common lot line between Lots 17 and 18, to create a single lot for an existing house (Exhibit B).

On December 16, 1998 the Planning Commission held a public hearing and discussed this plat amendment proposal, as well as a request to encroach in the 10th Street right-of-way for a private driveway off of Empire. The Commission also held a public hearing on this item on August 25, 1999. Concerns raised at these meetings included relocation of a power pole on Empire, impacts on parking, snow storage and drainage, preserving options for constructing a street in the future, and net tangible benefits to the City if the encroachment request were granted.

This application is only for a plat amendment to combine two old town lots into one to accommodate an existing non-historic structure. The existing parking situation remains unchanged with access to this lot from Lowell Avenue. The property owner also has a parking easement off of Empire with pedestrian access to his house on Lowell across several lots on Empire.

On September 8, 1999 the Planning Commission voted to forward to the City Council, a positive recommendation on the plat amendment, as conditioned in this staff report.

C. Analysis

The purpose of this plat amendment is to combine into one lot all of the contiguous property under common ownership at this location to accommodate an existing house on one lot. There is no net increase in density due to this amendment. The amendment cleans up the property lines for an existing structure and is consistent with the LMC and State subdivision law. Parking for 952 Lowell remains on Lowell Avenue or in a parking easement already existing off of Empire Avenue.

D. Department Review

This proposal has been reviewed by the City's interdepartmental review team. The final plat shall be submitted for review by the City Engineer and City Attorney as to form and compliance with the Land Management Code prior to plat recordation.

E. Public Notice

Notice of this amendment and the public hearing were properly published and posted. On December 2, 1998 letters were sent to all property owners of record within 300' of the property for the initial hearing. A second mailing was sent out on June 28, 1999. Several letters were included in the Planning Commission packets outlining neighborhood concerns with a separate request to encroach into the 10th Street ROW for a private driveway off of Empire, as well as describing existing drainage, snow storage, and parking problems in this neighborhood. Those letters are not attached to this report because the request is for a plat amendment request only. Neither parking, snow storage, nor drainage are impacted by this plat amendment, as the owner will continue to park on Lowell or on the parking easement on Empire. The letters are on file at the Planning Department.

ALTERNATIVES

- A. Approve the proposed plat amendment combining Lots 17 and 18, Block 29, of the Snyder's Addition to the Park City Survey allowing the parcels to accommodate an existing non-historic house.
- B. Deny the plat amendment and retain the original lot configuration which may allow for the

individual development of each lot.

- C. Continue the item and request further evaluation from the Staff.

SIGNIFICANT IMPACTS

The proposed amendment will result in one (1) lot which meets the minimum lot requirement for the HR-1 District and provides a single platted lot for an existing non-historic house. There are no significant impacts associated with the plat amendment.

CONSEQUENCES OF NOT TAKING THE RECOMMENDED ACTION

If the plat amendment is not approved as proposed the existing structure will continue to straddle various lot lines and permits for any significant remodel or additions could not be issued.

RECOMMENDATION

Staff recommends the City Council consider the Planning Commission's recommendation, hold a public hearing, consider input, and consider approving the plat amendment to combine two lots into one based on the following:

Findings of Fact

1. The parcels are located in the HR-1 District.
2. The site currently contains a non-historic structure that straddles two lots.
3. The proposed plat amendment will combine two (2) lots to accommodate an existing single family residence. The new lot is 3,750 square feet in area.
4. Dedication of a ten (10) foot non-exclusive snow storage easement on Lowell Avenue is necessary to provide adequate snow removal services.
5. Future additions to 952 Lowell Avenue require review and approval by the Community Development Department with notice to the Historic District Commission.
6. Construction activity on this property will have impacts on Lowell Avenue and adjacent properties. A Construction Mitigation Plan (CMP) is necessary to mitigate any adverse impacts on neighboring properties and streets.
7. Access will continue off of Lowell Avenue, unless otherwise approved by the City.

Conclusions of Law

1. There is good cause for this plat amendment in that two contiguous parcels under common ownership are combined into one lot to accommodate an existing structure on one lot.
2. Neither the public nor any person will be materially injured by the proposed plat amendment

as conditioned.

3. The proposal as conditioned is consistent with all applicable sections of the Land Management Code.

Conditions of Approval

1. City Attorney and City Engineer review and approval of the final form and content of the plat for compliance with State law, the Land Management Code, and the conditions of approval is a condition precedent to plat recordation.
2. A financial guarantee, for the value of all public improvements to be completed, shall be provided to the City prior to plat recordation. All public improvements shall be completed according to City standards and accepted by the City Engineer prior to release of this guarantee.
3. Any future additions to the existing house or any proposed garage shall be consistent with the Park City Historic District Design Guidelines in effect at the time of application and approved by the Planning Department or Historic District Commission prior to issuance of any building permits.
4. The final plat shall be recorded at the County within one year from the date of City Council approval. If recordation has not occurred within the one year time frame, this approval and the plat shall be considered null and void.
5. A Construction Mitigation Plan, submitted to and approved by the Community Development Department, will be required prior to any construction on the newly created lot.
6. The ten foot (10') non-exclusive utility and snow storage easement along the Lowell Avenue frontage shall be shown on the plat.
7. All standard project conditions apply.
8. The applicant stipulates to the conditions of approval.

EXHIBITS:

Exhibit A- Proposed plat amendment

Exhibit B- Location map

MACDD\KAW\CC\CC99\LOWL952.ccr.wpd

Ordinance No. 99-

**AN ORDINANCE APPROVING THE PLAT AMENDMENT TO COMBINE LOTS 17
AND 18, BLOCK 29, SNYDER'S ADDITION TO THE PARK CITY SURVEY,
LOCATED AT 952 LOWELL AVENUE, PARK CITY, UTAH**

WHEREAS, the owners of Lots 17 and 18, Block 29, Snyder's Addition to the Park City Survey, have petitioned the City Council for approval of a plat amendment to combine two lots into one lot for an existing house; and

WHEREAS, the property was properly noticed and posted according to the requirements of the Land Management Code; and

WHEREAS, proper legal notice was sent to all affected property owners; and

WHEREAS, the Planning Commission held public hearings on December 16, 1998 and August 25, 1999 to receive input on the proposed plat amendment;

WHEREAS, the Planning Commission, on August 25, 1999, forwarded a positive recommendation to the City Council on the proposed plat amendment and,

WHEREAS, on September 30, 1999, the City Council held a public hearing to receive input on the proposed plat amendment; and

WHEREAS, it is in the best interest of Park City, Utah to approve the record of survey and plat amendment.

NOW, THEREFORE BE IT ORDAINED by the City Council of Park City, Utah as follows:

SECTION 1. FINDINGS. The following findings are hereby adopted.

1. The parcels are located in the HR-1 District.
2. The site currently contains a non-historic structure that straddles two lots.
3. The proposed plat amendment will combine two (2) lots to accommodate an existing single family residence. The new lot is 3,750 square feet in area.
4. Dedication of a ten (10) foot non-exclusive snow storage easement on Lowell Avenue is necessary to provide adequate snow removal services.

5. Future additions to 952 Lowell Avenue require review and approval by the Community Development Department with notice to the Historic District Commission.
6. Construction activity on this property will have impacts on Lowell Avenue and adjacent properties. A Construction Mitigation Plan (CMP) is necessary to mitigate any adverse impacts on neighboring properties and streets.
7. Access will continue off of Lowell Avenue, unless otherwise approved by the City.

SECTION 2. CONCLUSIONS OF LAW. The City Council hereby concludes that there is good cause for the above-mentioned plat amendment, that neither the public nor any person will be materially injured by the proposed amendment and that the proposal is consistent with both the Park City Land Management Code and State subdivision requirements.

SECTION 3. PLAT APPROVAL. The plat amendment to combine Lot 17 and 18, Block 29 of the Park City Survey known as 952 Lowell Avenue, is approved as shown on Exhibit A, with the following conditions:

1. City Attorney and City Engineer review and approval of the final form and content of the plat for compliance with State law, the Land Management Code, and the conditions of approval is a condition precedent to plat recording.
2. A financial guarantee, for the value of all public improvements to be completed, shall be provided to the City prior to plat recording. All public improvements shall be completed according to City standards and accepted by the City Engineer prior to release of this guarantee.
3. Any future additions to the existing house or any proposed garage shall be consistent with the Park City Historic District Design Guidelines in effect at the time of application and approved by the Planning Department or Historic District Commission prior to issuance of any building permits.
4. The final plat shall be recorded at the County within one year from the date of City Council approval. If recording has not occurred within the one year time frame, this approval and the plat shall be considered null and void.
5. A Construction Mitigation Plan, submitted to and approved by the Community Development Department, will be required prior to any construction on the newly created lot.
6. The ten foot (10') non-exclusive utility and snow storage easement along the Lowell Avenue frontage shall be shown on the plat.
7. All standard project conditions apply.

1. The applicant stipulates to the conditions of approval.

SECTION 4. EFFECTIVE DATE. This Ordinance shall take effect upon publication.

PASSED AND ADOPTED this 30th day of September, 1999.

PARK CITY MUNICIPAL CORPORATION

Mayor Bradley A. Olch

Attest:

Janet M. Scott, City Recorder

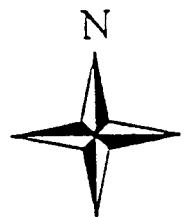
Approved as to form:

Mark D. Harrington, Interim City Attorney

952 L DWELL AVE



EXHIBIT B
Vicinity Map



CITY COUNCIL STAFF REPORT

DATE: September 22, 1999 (September 30, 1999 meeting)
DEPARTMENT: Planning Department
AUTHOR: Kirsten A. Whetstone, AICP *KAW*
TITLE: 1167 Woodside Avenue - Plat Amendment
TYPE OF ITEM: Legislative

SUMMARY RECOMMENDATIONS: Staff requests the City Council review the request to combine seven platted lots to accommodate an existing historic structure and accessory garage, conduct a public hearing and approve the plat amendment as conditioned in this staff report.

DESCRIPTION

A. Topic

PROJECT STATISTICS

Applicant: David Belz, DB Holding, Inc
Owners: same
Location: 1167 Woodside Avenue
Proposal: Plat amendment
Zoning: Historic Residential (HR-1)
Adjacent Land Uses: Residential and Park City Library and Education Center

B. Background

The owner of Lots 14-20, Block 8 of the Snyder's Addition to the Park City Survey, David Belz, submitted an application to combine seven lots into one (1) 13,125 square foot lot to accommodate an existing historic structure and associated accessory garage and yard area. The proposed project is located on the west side of Woodside Avenue, south of the Park City Library and Education Center. Each of these lots is a standard 25' x 75' "old town lot". The existing bus barn structure at 1167 Park Avenue was built on Lots 15, 16, 17, and 18 and encroaches onto Lots 14 and 19. An accessory garage structure constructed in 1998 was built on Lots 18, 19, and 20.

The existing bus barn structure at 1167 Woodside is an historically significant building and is listed on the National Register of Historic Places. The bus barn was constructed in 1936 as an accessory structure to the Park City High School (now the Park City Library and Education Center). In 1996 the applicant renovated the bus barn structure and converted it to professional office space.

Located within the HR-1, Historic Residential, zoning district the building and uses, as professional offices, are legal non-conforming uses. On August 1, 1995 the Board of Adjustment granted a change of non-conforming use from bus storage to professional offices and art studios. One of the conditions of approval was for the underlying lots to be combined into a single lot.

On September 8, 1999 the Planning Commission voted to forward to the City Council a positive recommendation on the plat amendment, as conditioned in this staff report.

C. Analysis

This request is to combine seven (7) lots to create one (1) 13,125 square foot parcel to accommodate an existing historic structure and associated new accessory garage. Staff has evaluated the overall project against the Land Management Code (February 25, 1998) and (December 31, 1998) regulations for the HR-1 District. Staff determined the proposed lot combination complies as presented with all requisite City codes and as conditioned, is in conformance with the August 1, 1995 Board of Adjustment non-conforming use and side yard variance approval. Given that the structures are existing, no variances to parking requirements were granted by the Board of Adjustment. The Board of Adjustment approval of August 1, 1995 permitted up to 3,200 square feet of the bus barn to be utilized for professional office space. This condition was based on the applicant's ability to provide code compliant parking, which at the time was 16 spaces (5 per 1,000sf). Revisions to the LMC, when adopted, would require 10 spaces (3 per 1,000sf).

Staff is recommending a condition of approval that a facade easement for the historic bus barn be recorded at the time of plat recording. All applicable conditions from the August 1, 1995 Board of Adjustment approval shall continue to apply. Staff is also recommending a condition of approval that the new accessory garage shall be used for either parking for the bus barn or for the private use of the property owner and shall not be separately leased out. Any change to the non-conforming use, such as use of the new garage for other uses, shall be reviewed by the Board of Adjustment according to provisions in the Land Management Code as amended.

D. Public Notice

Notice of this amendment and public hearing were properly published and posted. On August 24, 1999 letters were sent to property owners of record within 300' of the property. One neighbor called staff to ask whether the owner was proposing to construct additional buildings on this lot as part of the amendment. No additional construction on this lot is proposed.

E. Department Review

The Community Development Department has reviewed this request. The City Engineer and City Attorney's Office will review the plat prior to recording. The request was discussed at a Staff Review Meeting on June 22, 1999, where representatives from the local utilities and City Staff were in attendance and found it to be in conformance with all current requisite City development codes.

ALTERNATIVES

A. Approve the proposed plat amendment combining Lots 14-20, Block 8, of the Snyder's

Addition to the Park City Survey and thereby allowing for the parcels to accommodate an existing historic bus barn and a new accessory garage.

B. Deny the plat amendment and retain the original lot configuration which may allow for the individual development of up to three of these lots.

C. Continue the item and request further evaluation from the Staff.

SIGNIFICANT IMPACTS

The proposed amendment will result in one (1) lot which meets the minimum lot requirement for the HR-1 District and provides a single platted lot for an existing historic bus barn, a new accessory garage, and associated parking. The plat amendment will reduce the potential density of additional residential units on the lots.

CONSEQUENCES OF NOT TAKING THE RECOMMENDED ACTION

If the plat amendment is not approved as proposed the existing structures will continue to straddle various lot lines. Additionally, up to three (3) lots could potentially be developed separately, provided the new garage structure is demolished and parking requirements for the non-conforming use are diminished with a less intense use of the bus barn.

RECOMMENDATION

Staff recommends that the Council conduct a public hearing, consider public input and consider approving the plat amendment for 1167 Woodside Avenue based on the following:

Findings of Fact

1. The property is located in the HR-1 District.
2. The site currently contains an historic bus barn structure, currently used as professional office space and storage, and a new accessory garage. Both structures straddle several lot lines.
3. The proposed plat amendment will combine seven (7) lots to accommodate a 4,500 square foot historic structure and a 1,150 square foot accessory garage. The property subject to this plat amendment contains approximately 13,125 square feet.
4. Dedication of a ten (10) foot non-exclusive snow storage easement along Norfolk Avenue is necessary to provide adequate snow removal services.
5. Historic structures are a valuable asset which contribute to the distinct character of the Park City community.
6. On August 1, 1995 the Board of Adjustment granted the owner of this property a change of non-conforming use from a bus barn to professional offices and storage subject to certain conditions of approval. Those conditions of approval remain in full force and effect, unless amended by the Board of Adjustment according to provisions of the Land Management

Code.

7. The applicant stipulates to the conditions of approval.
8. On September 8, 1999 the Planning Commission voted to forward to the City Council a positive recommendation to approve the plat amendment, as conditioned in this staff report.

Conclusions of Law

1. There is good cause for the amendment as the existing historic structure and associated accessory structure and parking are located on a single lot.
2. Neither the public nor any person will be materially injured by the proposed plat amendment.
3. The proposal is consistent with both the Park City Land Management Code (February 25, 1998 and December 31, 1998 amended) and State subdivision requirements.

Conditions of Approval

1. City Attorney and City Engineer review and approval of the plat amendment for compliance with the Land Management Code and conditions of approval is a condition precedent to plat recording.
2. A ten (10) foot non-exclusive snow storage easement along Norfolk Avenue shall be dedicated to the City on the plat.
3. This approval shall expire one year from the date of City Council approval, unless this plat amendment is recorded prior to that date.
4. All standard project conditions shall apply.
5. There shall be a note on the plat, and a Grant of Easement in a form approved by the City Attorney and Community Development Department, granting a facade easement for the historic structure at 1167 Woodside Avenue as a condition precedent to plat recording.

EXHIBITS

Exhibit A - Proposed Plat

Exhibit B - Location Map

Ordinance No. 99-

AN ORDINANCE APPROVING A PLAT AMENDMENT TO COMBINE INTO ONE LOT, LOTS 14- 20, BLOCK 8, SNYDER'S ADDITION TO THE PARK CITY SURVEY, LOCATED AT 1167 WOODSIDE AVENUE, PARK CITY, UTAH

WHEREAS, the owners of Lots 14 - 20, Block 8, of the Snyder's Addition to the Park City Survey, have petitioned the City Council for approval of a plat amendment to combine seven lots into one lot for an existing historic bus barn structure and an associated garage and yard area; and

WHEREAS, the property was properly noticed and posted according to requirements of the Land Management Code; and

WHEREAS, proper legal notice was sent to all affected property owners; and

WHEREAS, the Planning Commission held a public hearing on September 8, 1999 to receive input on the proposed plat amendment;

WHEREAS, the Planning Commission, on September 8, 1999, forwarded a positive recommendation to the City Council on the proposed plat amendment and,

WHEREAS, on September 30, 1999, the City Council held a public hearing to receive input on the proposed plat amendment; and

WHEREAS, it is in the best interest of Park City, Utah to approve the record of survey and plat amendment.

NOW, THEREFORE BE IT ORDAINED by the City Council of Park City, Utah as follows:

SECTION 1. FINDINGS. The following findings are hereby adopted.

1. The property is located in the HR-1 District.
2. The site currently contains an historic bus barn structure, currently used as professional office space and storage, and a new accessory garage. Both structures straddle several lot lines.
3. The proposed plat amendment will combine seven (7) lots to accommodate a 4,500 square foot historic structure and a 1,150 square foot accessory garage. The property subject to this plat amendment contains approximately 13,125 square feet.

4. Dedication of a ten (10') foot non-exclusive snow storage easement on Norfolk Avenue is necessary to provide adequate snow removal services.
5. Historic structures are a valuable asset which contribute to the distinct character of the Park City community.
6. On August 1, 1995 the Board of Adjustment granted the owner of this property a change of non-conforming use from a bus barn to professional offices and storage subject to certain conditions of approval. Those conditions of approval remain in full force and effect unless amended by the Board of Adjustment according to provisions of the Land Management Code.
7. The applicant stipulates to the conditions of approval.

SECTION 2. CONCLUSIONS OF LAW. The City Council hereby concludes that there is good cause for the above-mentioned plat amendment, that neither the public nor any person will be materially injured by the proposed amendment and that the proposal is consistent with both the Park City Land Management Code and State subdivision requirements.

SECTION 3. PLAT APPROVAL. The plat amendment to combine Lots 14 - 20, Block 8 of the Snyder's Addition to the Park City Survey, known as 1167 Woodside Avenue, is approved as shown on Exhibit A, with the following conditions:

1. City Attorney and City Engineer review and approval of the plat amendment for compliance with the Land Management Code and conditions of approval is a condition precedent to plat recording.
2. A ten (10) foot non-exclusive snow storage easement along Norfolk Avenue shall be dedicated to the City on the plat.
3. This approval shall expire one year from the date of City Council approval, unless this plat amendment is recorded prior to that date.
4. All standard project conditions shall apply.
5. There shall be a note on the plat, and a Grant of Easement in a form approved by the City Attorney and Community Development Department, granting a facade easement for the historic structure at 1167 Woodside Avenue as a condition precedent to plat recording.

SECTION 4. EFFECTIVE DATE. This Ordinance shall take effect upon publication.

PASSED AND ADOPTED this 30th day of September, 1999.

PARK CITY MUNICIPAL CORPORATION

Mayor Bradley A. Olch

Attest:

Janet M. Scott, City Recorder

Approved as to form:

Mark D. Harrington, Interim City Attorney

WINTER FROM THE

1167 Woodside Ave.

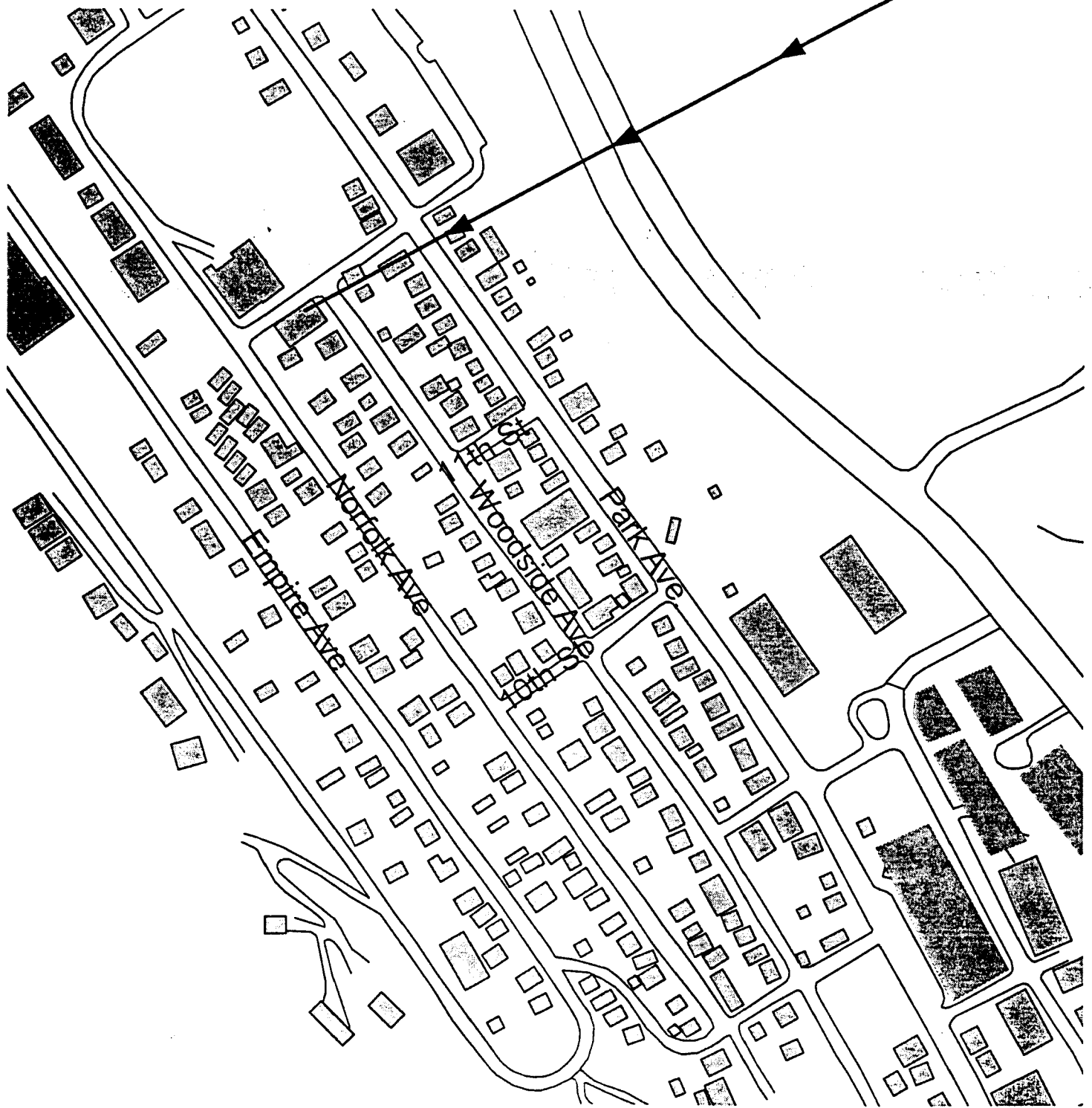
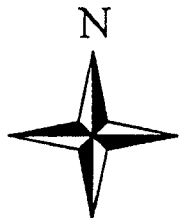


EXHIBIT B
Vicinity Map

32



PARK CITY

1884

CITY COUNCIL STAFF REPORT

DATE: September 14, 1999 (September 30, 1999 Meeting)
DEPARTMENT: Planning Department
AUTHOR: Patrick Putt
TITLE: 558 Swede Alley--Old Town Transit Center Subdivision Plat
TYPE OF ITEM: Subdivision Plat (Combined Preliminary and Final Plat)

SUMMARY RECOMMENDATIONS: Staff requests that the City Council hold a public hearing and approve the proposed subdivision plat with findings of fact, conclusions of law, and conditions of approval as outlined in this staff report.

DESCRIPTION:

A. TOPIC

This matter involves the City Council's review and approval on a proposal to create a one lot subdivision in the HCB District. The purpose for the subdivision is to create a lot of record for the development of the Old Town Transit Center.

B. PROJECT STATISTICS

Applicant: Park City Municipal Corporation
Location: 558 Swede Alley
Zoning: Historic Commercial Business (HCB)
Adjacent Land Uses: Commercial, Municipal Uses (City Hall), Public Parking, and Residential

C. PROJECT BACKGROUND

The subject property is a 2.56 acre site located south of Heber Avenue between Marsac Avenue and Swede Alley. The site is currently platted as four (4) Park City Survey lots and unplatted (*former millsite reservation*) property. The property is located in the Historic Commercial Business (HCB) District and currently includes public parking areas and a driveway to the Marsac Building's north parking lot, as well as municipal flagpoles and a changeable-copy sign. The site also contains a historic remnant of the Marsac Mill wall. The property is to be redeveloped as a municipal transit facility. Inasmuch as the proposed improvements will cross the existing interior common parcel lines, recordation of the proposed one-lot subdivision is necessary prior to the commencement of construction.

On June 7, 1999, the Old Town Center Transit Design Review Task Force approved the proposed transit building for this site and forwarded a positive recommendation to the Planning Commission concerning site design alternatives. On June 16, 1999, the Planning Commission forwarded a positive recommendation to the City Council for approval of the Plat Amendment and approved the Transit Center C.U.P.

D. ANALYSIS

The proposal is to consolidate Lots 10 through 14 in Block 56, Park City Survey and one (1) metes and bound parcel between the Marsac Avenue and Swede Alley right-of-ways into one (1) platted lot, which will total 2.56 acres (See Exhibit B). The proposal is to create a single lot in order to accommodate the the proposed transit building. The proposed subdivision complies with all requisite HCB lot size and configuration requirements. The proposal is consistent with all requisite Land Management Code subdivision requirements. The City Engineer and City Attorney City have reviewed the plat for compliance with the Land Management Code and Utah State Subdivision law.

Various landscaping features, parking lots, drives, a historic masonry wall (which was part of the old Marsac Mill), and a historic building which house the Park City Municipal offices currently occupy the site. The proposal shall incorporate a reconfiguration of the landscaping and vehicular access in order to construct the proposed transit building adjacent to the historic masonry wall and existing historic building. The existing footprint of the historic building and masonry wall will not be altered.

Staff has added a condition to the Plat which would restrict any additional commercial uses within the proposed transit building, or on the newly created lot. Additional uses on the site could negatively affect the neighborhood in terms of vehicular access and surrounding traffic patterns. Upon reviewing the proposal, the Planning Commission finds that the creation of the new lot is in compliance with the Land Management Code, and supports the subdivision.

The Subdivision is being processed through the Planning Commission and City Council procedure due to the fact that State Law prohibits use of the administrative approval when the action results in the removal of more than one intermediate lot line.

D. NOTICE

Notice of this amendment and the public hearing were properly published and posted. As of the date of this report, staff has not received input on this subdivision plat.

E. DEPARTMENTAL REVIEW

The Community Development Department has reviewed this request. The City Attorney and City Engineer will review the plat prior to recordation. The request was discussed at a Staff Review Meeting where representatives from local utilities and City Staff were in attendance. Discussion focused on vehicular and utility access to the site. Please note that the newly created lot will need to be served by water lines, a gas line, and overhead phone service, none of which are currently available on site. Water and gas will need to come from Deer Valley Drive under the roundabout. No other outstanding issues were identified.

Alternatives

- A. Approval of the proposed subdivision to combine Lots 10 through 14 in Block 56, Park City Survey and one (1) metes and bound parcel between the Marsac Avenue and Swede Alley right-of-ways into one (1) platted lot to accommodate the proposed transit building.
- B. Deny the subdivision and retain the original Record of Survey which would prohibit the City from constructing the proposed transit building.
- C. Continue the item and request further evaluation from the Staff.

SIGNIFICANT IMPACTS:

The subdivision will result in one (1) platted lot which will meet the lot requirement for the HCB zone. The incorporation of additional commercial uses within the proposed transit building and on the newly created lot will increase the density of the lot, and have a negative impact on surrounding parking/vehicular traffic patterns.

CONSEQUENCES OF NOT TAKING THE RECOMMENDED ACTION:

If the subdivision is not approved, the construction of the proposed transit building will not be permitted.

F. RECOMMENDATION:

Staff recommends that the City Council conduct a public hearing and consider Staff's recommendation to approve the combination of Lots 10 through 14 in Block 56, Park City Survey and one (1) metes and bound parcel between the Marsac Avenue and Swede Alley right-of-ways, into one (1) platted lot to accommodate the proposed transit building based on the following:

Findings of Fact

- 1. The property is located in the Historic Commercial Business (HCB) District.
- 2. The proposed subdivision plat will create one platted lot from the combination of Lots 10 through 14 in Block 56, Park City Survey, and a large parcel located between the Marsac and Swede Alley right-of-ways for the purpose of redeveloping the site as a municipal transit center.
- 3. The lots are occupied by various landscaping elements, parking lots, drives, a historic masonry wall that was part of the old Marsac Mill, and an existing historic structure which currently houses the Park City Municipal offices.
- 4. On June 7, 1999, the Old Town Transit Center Design Review Task Force approved the proposed transit building for this site and forwarded a positive recommendation to the Planning Commission concerning site design alternatives.
- 5. On June 16, 1999, the Planning Commission conducted a public hearing and forwarded a positive recommendation to the City Council regarding this subdivision.
- 6. The project is located at or near the intersection of Deer Valley Drive, Heber Avenue, Marsac Avenue, and Swede Alley, one of Old Town's most heavily used vehicular and pedestrian areas.
- 7. Construction impacts on and near this site will create impacts to vegetation, and to the operations of normal vehicular and pedestrian business and activity in the immediate area.
- 8. The applicant stipulates to the conditions of approval.

9. Adding commercial uses to the lot would negatively impact the neighborhood by increasing traffic and parking demands.
10. The snow storage along Swede Alley is very important, as are utilities.

Conclusions of Law

1. The proposal is consistent with both the Park City Land Management Code Chapter 7 and Chapter 15 and State subdivision requirements.
2. There is good cause for the subdivision as the proposed plat reflects the current ownership of the City and enables the construction of a municipal facility.
3. Neither the public nor any person will be materially injured by the proposed subdivision.

Conditions of Approval

1. City Attorney and City Engineer review and approval of the subdivision plat for compliance with the Land Management Code and conditions of approval is a condition precedent to plat recordation.
2. Community Development Department approval of a construction mitigation plan is a condition precedent to the issuance of any building permits.
3. A note shall be added to the plat stating that no additional commercial uses shall be permitted as part of the proposed transit building, or on this newly created lot.
4. A ten foot (10') non-exclusive utility and snow storage easement shall be incorporated in the first ten feet off of Heber Avenue, Marsac Avenue, and Swede Alley.
5. All significant vegetation removed during this project, shall be replanted on the lot.
6. All Standard Project Conditions shall apply (Please see Exhibit D - Standard Project Conditions).
7. The final plat shall be recorded at the County within one year from the date of City Council approval. If recordation has not occurred by September 30, 2000, this approval and the plat shall be considered null and void.

EXHIBITS:

Exhibit A - Location Map
Exhibit B - Existing Plat
Exhibit C - Proposed Plat
Exhibit D - Standard Project Conditions

M:\CDD\OTTC\OTTCPLAT.CC

558 Swede Alley



Exhibit A Vicinity Map



SE 1/4 SECTION 10

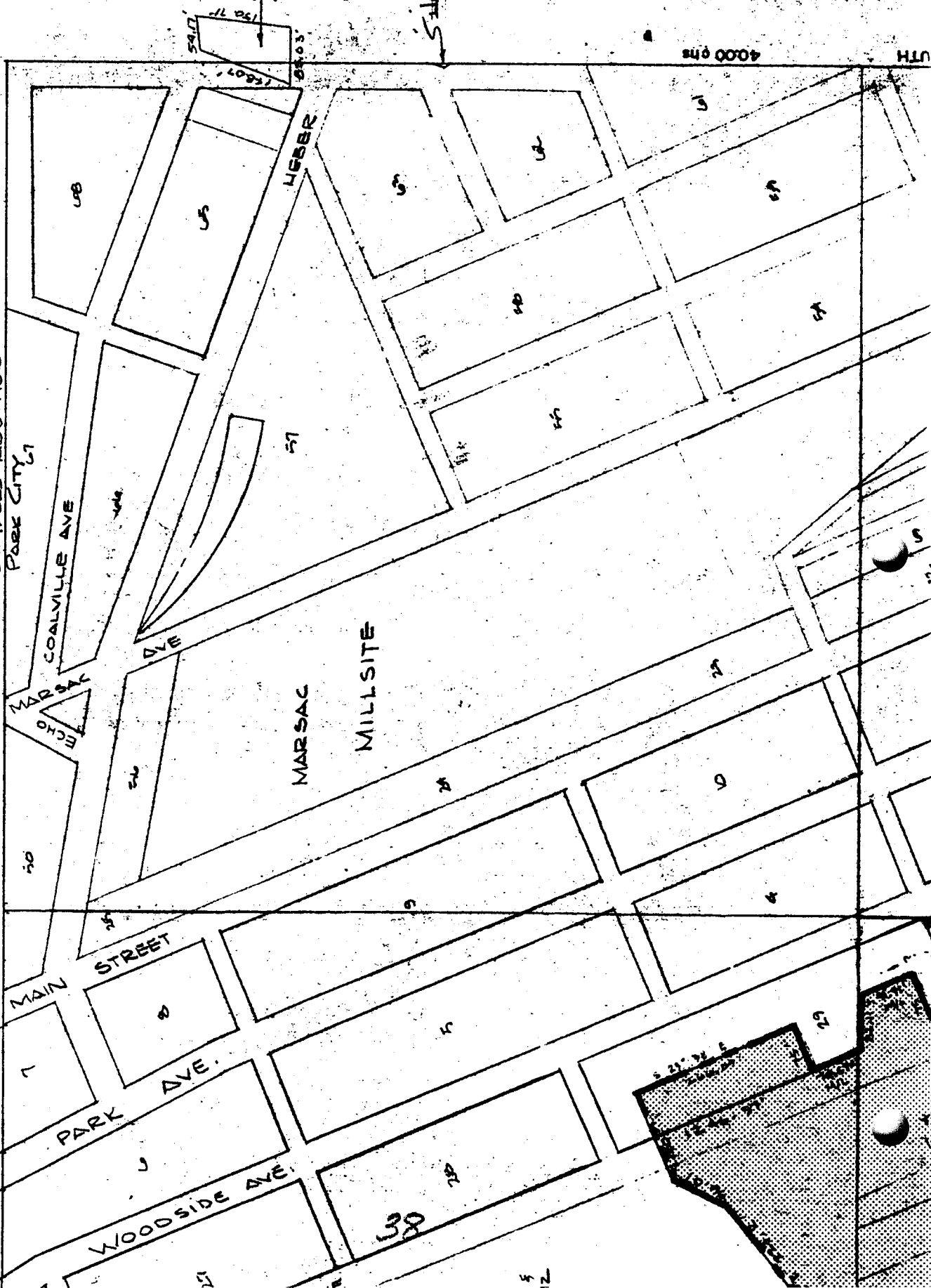
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SALT LAKE BASE & MERIDIAN

NE 1/4

SNYDER ADDITION
PARK CITY, UT

NOTE: * REFERS TO
STREET ADDRESS



Ordinance No. 99-

**AN ORDINANCE APPROVING THE OLD TOWN TRANSIT CENTER SUBDIVISION
TO COMBINE LOTS 10 THROUGH 14 IN BLOCK 56, PARK CITY SURVEY AND
ONE (1) METES AND BOUNDS PARCEL BETWEEN THE MARSAC AVENUE AND
SWEDE ALLEY RIGHT-OF-WAYS, INTO ONE (1) PLATTED LOT LOCATED AT 558
SWEDE ALLEY, PARK CITY, UTAH**

WHEREAS, the owner of portions of several platted lots, and one (1) metes and bounds parcel between Marsac Avenue and Swede Alley, in Block 56, Park City Survey have petitioned the City Council for approval of a revision to the final plat; and

WHEREAS, the property was properly noticed and posted according to the requirements of the Land Management Code; and

WHEREAS, proper legal notice was sent to all affected property owners; and

WHEREAS, the Planning Commission held a public hearing on June 16, 1999, to receive input on the proposed plat;

WHEREAS, the Planning Commission, on June 16, 1999, forwarded a positive recommendation to the City Council; and,

WHEREAS, on September 30, 1999, the City Council held a public hearing to receive input on the proposed subdivision; and

WHEREAS, it is in the best interest of Park City, Utah to approve the record of survey and subdivision.

NOW, THEREFORE BE IT ORDAINED by the City Council of Park City, Utah as follows:

SECTION 1. FINDINGS. The following findings are hereby adopted.

1. The property is located in the Historic Commercial Business (HCB) District.
2. The proposed subdivision plat will create one platted lot from the combination of Lots 10 through 14 in Block 56, Park City Survey, and a large parcel located between the Marsac and Swede Alley right-of-ways for the purpose of redeveloping the site as a municipal transit center.
3. The lots are occupied by various landscaping elements, parking lots, drives, a historic masonry wall that was part of the old Marsac Mill, and an existing historic structure which currently houses the Park City Municipal offices.

4. On June 7, 1999, the Old Town Transit Center Design Review Task Force approved the proposed transit building for this site and forwarded a positive recommendation to the Planning Commission concerning site design alternatives.
5. On June 16, 1999, the Planning Commission conducted a public hearing and forwarded a positive recommendation to the City Council regarding this subdivision.
6. The project is located at or near the intersection of Deer Valley Drive, Heber Avenue, Marsac Avenue, and Swede Alley, one of Old Town's most heavily used vehicular and pedestrian areas.
7. Construction impacts on and near this site will create impacts to vegetation, and to the operations of normal vehicular and pedestrian business and activity in the immediate area.
8. The applicant stipulates to the conditions of approval.
9. Adding commercial uses to the lot would negatively impact the neighborhood by increasing traffic and parking demands.
10. The snow storage along Swede Alley is very important, as are utilities.

SECTION 2. CONCLUSIONS OF LAW. The City Council hereby concludes that there is good cause for the above-mentioned subdivision, that neither the public nor any person will be materially injured by the proposed subdivision and that the proposal is consistent with both the Park City Land Management Code and State subdivision requirements.

SECTION 3. SUBDIVISION APPROVAL. The subdivision to combine Lots 10 through 14 in Block 56, Park City Survey, and one (1) metes and bounds parcel located between the Marsac and Swede Alley right-of-ways, known as the Old Town Transit Center Subdivision, is approved as shown on Exhibit C, with the following conditions:

1. City Attorney and City Engineer review and approval of the subdivision plat for compliance with the Land Management Code and conditions of approval is a condition precedent to plat recordation.
2. Community Development Department approval of a construction mitigation plan is a condition precedent to the issuance of any building permits.
3. A note shall be added to the plat stating that no additional commercial uses shall be permitted as part of the proposed transit building, or on this newly created lot.
4. A ten foot (10') non-exclusive utility and snow storage easement shall be incorporated in the first ten feet off of Heber Avenue, Marsac Avenue, and Swede Alley.
5. All significant vegetation removed during this project, shall be replanted on the lot.

6. All Standard Project Conditions shall apply (Please see Exhibit D - Standard Project Conditions).
7. The final plat shall be recorded at the County within one year from the date of City Council approval. If recordation has not occurred by September 30, 2000, this approval and the plat shall be considered null and void.

SECTION 4. EFFECTIVE DATE. This Ordinance shall take effect upon publication.

PASSED AND ADOPTED this 30th day of September, 1999.

PARK CITY MUNICIPAL CORPORATION

Mayor Bradley A. Olch

Attest:

Janet M. Scott, City Recorder

Approved as to form:

Mark D. Harrington, Interim City Attorney



COUNCIL AGENDA REPORT

DATE: September 30, 1999
DEPARTMENT: Office of Capital Management and Budget
AUTHOR: Tom Bakaly, Director of Capital Programs and Budget
TITLE: Old Town Transit Center: Amendment of Existing Engineering & Design Services Contract and Award of Retaining Wall Construction Contract
TYPE OF ITEM: Legislative/Administrative

SUMMARY RECOMMENDATIONS: The City Council should authorize the Mayor to:

- 1) Execute change order #1 in the amount of \$149,335 to the contract with Cooper/Roberts, Architects for environmental and geotechnical issues related to the engineering and design of the Old Town Transit Center and Deer Valley Drive Roundabout;
- 2) Execute change order #2 in the amount of \$108,450 to the contract with Cooper/Roberts, Architects for changes in architectural scope related to the engineering and design of the Old Town Transit Center and Deer Valley Drive Roundabout; and
- 3) Execute a contract, as attached and approved as to form by the City Attorney, to Keller Construction Company in an amount not to exceed \$106,000 for retaining wall and driveway construction related to the Deer Valley Drive Roundabout project.

DESCRIPTION:

A. Topic: Amendment of contract for engineering and design services for the Old Town Transit Center and Deer Valley Roundabout and award of contract for retaining wall and driveway construction for the Deer Valley Roundabout.

B. Background:

On April 15, 1999, the City Council authorized the Mayor to execute a contract in the amount of \$600,015 for engineering and design services for the Old Town Transit Center and Deer Valley Roundabout in a fixed price with delivery incentives amount not to exceed \$600,015.

Environmental and geotechnical engineering and design services (change order number 1) were intentionally not included in the original contract scope of services that was authorized on April 15, 1999. Staff chose this direction due to the lack of information at the time concerning environmental and geotechnical issues related to the site. We had not yet submitted the Site Investigation Plan for review and approval by the Utah Department of Environmental Quality (UDEQ) and could not know the price of field investigations and the remediation design costs without UDEQ's review and approval of the Site Investigation Plan. Staff intended to return to City Council once more definitive environmental and geotechnical design cost information was available. That information is now available.

On June 30, 1999, the Old Town Transit Center and Deer Valley Roundabout project received a Conditional Use Permit (CUP) from the Planning Commission. In the course of 2 ½ months, staff conducted five (5) Old Town Transit Center Design Review Task Force sessions, three (3) Planning Commission CUP review sessions and one public open house on the Old Town Transit Center project. During the course of this extensive and accelerated review process, features were added to the architectural scope, additional services were provided, and design costs grew due to building cost issues. Credits for services not provided were also applied. The net result is that a change order in the amount of \$108,450 is necessary to complete the design and engineering of the Old Town Transit Center and Roundabout.

Construction drawings for the project are being finalized. Change order #2 will allow for the completion of the construction drawings. Staff anticipates bidding the construction for the entire project in February of 2000 so construction can begin in April of 2000. Staff is hoping that construction will be substantially completed in December of 2000 so that the transit center can be used during the 2000-01 Winter season. Landscaping for the project will be completed in the Spring of 2001. At the September 30, 1999 City Council meeting, staff will update the City Council on the project using the Old Town Transit Center model.

In order to meet this tentative construction schedule, staff would like to construct a retaining wall this Fall along the east side of Deer Valley drive, just north of the current Deer Valley Drive and Marsac Avenue intersection. Construction of the retaining wall will also include driveway improvements to the northern most duplex on Deer Valley Drive (North of Marsac Ave.). If Council awards the retaining wall construction contract on September 30, 1999, Staff is hopeful that the construction of the retaining wall will be completed by mid November. Staff is not anticipating significant traffic impacts on Deer Valley Drive due to the retaining wall construction, and the owner of the Deer Valley Drive duplex is aware of the City's plans to proceed with the construction this Fall.

C. Analysis:

Change Order #1 - \$149,835: This change order is for geotechnical (\$11,289) and environmental (\$138,046) issues. The environmental issues and costs relate to the development of the site investigation plan (testing plan), implementation of the investigation plan (testing) interpretation of the investigation plan (sample analysis), and development of the Voluntary Cleanup Program (VCP) remediation plan. The implementation of the remediation plan will be part of the construction phase of the project that will commence in April, 2000. In July of 1999, the City Council authorized staff to enter into the VCP for the Old Town Transit Center project.

Change Order # 2 - \$108,450: Costs related to recommended change order #2 can be characterized as: 1) Features and services added to architectural scope; 2) Design costs due to building cost issues; and 3) Credits and incentive fees. It is important to point out that if the change order of \$108,450 is approved, \$27,500 would remain in contingency for possible other future changes. If Council so chooses, they could authorize a change order in the amount of \$80,950 and thus eliminate the contingency.

1) Features and services added to architectural scope = \$71,646: Examples of these types of costs include design services relating to; The tunnel under Heber Ave., the historic wall, the tower or vertical element, the art component of the project and the trash enclosure needed to relocate existing Swede Alley dumpsters that are on the project site. These costs are directly related to the comments received in the design review process. Of this amount, \$30,989 would not be needed for the change order if City Council directed Staff to not proceed with construction documents relating to these features.

2) Design costs due to building cost issues = \$42,500: Once staff and the design team began to design the transit center building, it became clear that the building would need to be two stories in order to accommodate grade changes and ADA accessibility issues. Adding elevators, mechanical improvements, additional bathrooms and entrances to the building to improve pedestrian access increased the design cost of the building by \$42,500. The overall cost of the project is estimated to be \$8,500,000 (not including land) which is still within the parameters of the City's Federal Transit Administration (FTA) grant agreement.

3) Credits and Incentive Fees = -\$5,696 The net effect of credits and adjustments of incentive fees need to be subtracted from the total change order amount to account for the reduction and addition of architectural services.

Award of Retaining Wall and Driveway Construction Costs: Staff conducted a formal bid process for the construction of the retaining wall and driveway improvements along Deer Valley Drive. The bid was advertised pursuant to City bid policies and in accordance with FTA requirements. Staff received bids as follows:

<u>Company</u>	<u>Bid Amount</u>
Keller Construction	\$106,000
Thiede Construction	\$118,777
Granite Construction	\$119,700
Weyher Construction	\$136,900
D.R.D. Paving	\$160,640

One bid was received after the deadline and was not opened or accepted. Staff has determined that Keller Construction is the lowest responsive bidder and recommends awarding a contract in the amount of \$106,000 for the construction of the retaining wall and driveway improvements along Deer Valley Drive.

D. Department Review: This report has been reviewed by the Public Works Department, the Legal Department and the City Manager's Office.

ALTERNATIVES:

- A. Approve the Request: Authorize the Mayor to execute change orders #1 (\$149,335) and #2 (\$108,450) with Cooper/Roberts and execute a contract in the amount of \$106,000, with approval as to form by the City Attorney, with Keller Construction for construction services relating to the Deer Valley Drive retaining wall and driveway improvements.
- B. Deny the Request: This action would cause staff to renegotiate contract terms and scope of services with Cooper/Roberts Architects for the two change orders. Another alternative would be to subtract the remaining contingency reserve (\$27,500) and/or the amount for the construction drawings for the additional architectural features (\$30,989) from the combined cost of the two change orders which is \$257,785. If an acceptable and reasonable contract could not be reached with Keller Construction, staff would begin negotiations with the second lowest bidder, Thiede Construction.
- C. Continue the Item: Continuing the two change order requests would most likely not have a negative impact on the project. Continuing the award of the retaining wall and driveway improvements would adversely impact the project schedule next summer in that improvements would most likely not be completed during this construction season.
- D. Do Nothing: This would essentially have the same impact as continuing the item.

SIGNIFICANT IMPACTS: Sufficient funds are budgeted in the Capital Improvement Program (CIP) Budget for the recommended change orders and construction contract. The City has received an FTA grant for the design and construction of this project. Change order #2 and the construction of the retaining wall and driveway improvements are included in CIP Budget and the approved grant agreement and funds can be drawn down immediately against the grant for those expenditures. The FTA does not reimburse costs associated with environmental remediation. However, sufficient funds to cover change order #1 are budgeted in the Transit Center CIP project (\$433,701) using the City's Transportation Enterprise Fund as a resource.

CONSEQUENCES OF NOT TAKING RECOMMENDED ACTION: Staff will be prepared to discuss the impacts of not taking the recommended action at the September 30th Council meeting. Basically, the schedule provided in this report for the Old Town Transit Center would need to be significantly modified.

RECOMMENDATION: Authorize the Mayor to execute change orders #1 (\$149,335) and #2 (\$108,450) with Cooper/Roberts and execute a contract in the amount of \$106,000, with approval as to form by the City Attorney, with Keller Construction for construction services relating to the Deer Valley Drive retaining wall and driveway improvements.

Park City PO # _____

CONSTRUCTION AGREEMENT

THIS AGREEMENT is made and entered into as of the _____ day of _____, 19____, by and between PARK CITY MUNICIPAL CORPORATION, P.O. Box 1480, Park City, Utah 84060, a municipal corporation of the State of Utah, hereinafter "City" and _____, address, _____

_____ which is a (check one) _____ corporation _____ partnership _____ sole proprietorship, hereinafter "Contractor".

PURPOSE: For the project known as the _____, which consists of _____ (describe work and address of work briefly) _____

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties hereby agree as follows:

SECTION 1. SCOPE OF WORK. Contractor shall furnish all labor, materials and equipment to complete the Project, consisting of the work described in the Information for Bidders as the Basic Bid, and the following additive alternates: _____, as specifically set out in the contract specifications, which is made a part hereof by reference, herein called the "Project."

The Project will be bound by the specifications referenced herein, according to the Advertisement for Bid, the Information for Bidders, the General Project Requirements and Specifications provided by City, the Bid of the Contractor, Bid Bond, Drawings, Notice of Award and Notice to Proceed, collectively referred to as the Contract Documents, all of which are incorporated herein by reference. To the extent that this Agreement conflicts in any way with other Contract Documents or any provision thereof, this Agreement shall control.

Contractor shall also adhere to all requirements of "Exhibit A". If anything in Exhibit A conflicts with the terms of this Agreement, Exhibit A shall control. If anything in AIA Document A201 conflicts with this Agreement, this Agreement shall control.

If any of the work performed by Contractor in any phase of the Project does not meet City standards as outlined in the bid documents and specifications, then Contractor shall immediately repair or correct the work at no additional cost to City.

A. SUBCONTRACTORS. No part of this Contract shall be subcontracted by the Contractor without prior written approval by City through the Project Manager/Engineer. The Contractor shall be fully responsible to the City for the acts and omissions of its Subcontractors and of persons either directly or indirectly employed by them, as it is for the acts and omissions of persons directly employed by it.

The Contractor shall, within 10 days of a submittal of request for final payment, include an affidavit showing satisfactory evidence that all claims of subcontractors, laborers, and materialmen who supplied services or materials to the Project have been fully paid, discharged, or waived. The Contractor shall submit lien waivers for each pay release.

If the City reasonably believes that Contractor has failed to pay Subcontractors, materialmen, or laborers for work on the Project within a reasonable time of when payment is due, then City may, after having notified the Contractor, either pay unpaid bills or withhold from the release of Contractor's payment bond for this Project, a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged and a 10% fee for administering such claims..

B. STANDARDS OF WORKMANSHIP. Contractor shall demonstrate workmanship equal to or better than current industry standards for this Project. Where Park City specifications exist (for example, asphalt, concrete, irrigation, sprinkling system and landscaping), they shall provide the benchmark for determination of acceptability.

C. INSPECTION AND TESTING. All materials and equipment used in the construction shall be subject to inspection by the Project Manager/Engineer. If laws, ordinances, rules or regulations of any public authority having jurisdiction require any work to specifically be inspected, tested or approved by someone other than Project Manager/Engineer, the Contractor shall give the Project Manager/Engineer timely notice of readiness. Inspections, tests or approvals by the City or appropriate authorities will not relieve the Contractor from obligations to perform the work in accordance with the requirements of the Contract Documents and/or provisions. The Project Manager/Engineer and other designated persons will at all times have access to the work. All work shall ultimately be inspected for final acceptance by the Project Manager/Engineer within a reasonable time upon receipt of notice from the Contractor that work is complete and ready for final inspection.

During construction, the work will be inspected and observed by the Project Manager/Engineer or his designated representative. All work that is deficient or does not meet specifications shall be removed and replaced with proper material at Contractor's expense.

D. WARRANTY. Contractor warrants that all materials and supplies used in the construction of the Project shall be new, except as otherwise agreed to in writing by the City's Representative, that the work will be free from defects not inherent in the quality required or permitted, and that the work will conform with the requirements of this Agreement. If required by the Project Manager/Engineer, Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. All materials, equipment, parts and labor and any necessary corrections to the Project shall be guaranteed for a period of one year following the date of substantial completion of the Project under the terms of the performance bond.

E. OMISSIONS AND MISDESCRIPTIONS. Omissions from the drawings or specifications, or the misdescription of details of work which are manifestly necessary to carry out the intent of the drawings and specifications, or which are customarily performed, shall not relieve Contractor from performing such omitted or misdescribed details of work, but they shall be performed as if fully and correctly set forth and described in the drawings or specifications.

F. ACQUAINTANCE WITH CONDITIONS AND REQUIREMENTS. By its execution of this Agreement, Contractor represents that it has visited or has had full

opportunity to examine the site upon which the Project is to be performed and the Contract Documents; that it is satisfied as to the requirements of the work and all conditions which may affect the work; that its entry into this Agreement has not been induced either wholly or in part by any promises, representations or statements on behalf of the City and its agents, employees, and officers other than those set forth in this Agreement. Contractor further represents that the price set forth in this Agreement has been determined with due regard to all such conditions and requirements affecting the work, as well as the difficulties and delays incident to work of the nature contemplated hereby, and agrees that no claim for any increase in such price shall be made except as specifically provided in this Agreement.

SECTION 2. PERFORMANCE AND PAYMENT BONDS. Contractor shall furnish to the City a payment and performance bond satisfactory to the City guaranteeing Contractor's payment and performance, in the amount, for each separately, of 100% of the Contract Amount.

SECTION 3. INSURANCE. Unless otherwise specified in the bid documents, the Contractor 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 the Contractor, their agents, representatives, employees, or subcontractors.

The Contractor shall provide a Certificate of Insurance evidencing:

A. 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.

B. Commercial 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. Coverage shall include but not be limited to: blanket contractual; products/completed operations; broad form property damage; explosion, collapse and underground (XCU) if specifically requested; and employer's liability.

The City shall be named as an additional insured on the insurance policy, with respect to work performed by or on behalf of the Contractor, its subcontractors and assigns and a copy of the endorsement naming the City as an additional insured shall be attached to the Certificate of Insurance. The City reserves the right to request certified copies of any required policies. The Certificate of Insurance shall contain a provision that states that the City shall be given thirty (30) days written notice of cancellation.

The Contractor's insurance shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suite is brought, except with respect to the limits of the insurer's liability.

SECTION 4. CONTRACT AMOUNT, ACCEPTANCE OF WHOLE, ADDITIONS. City shall pay Contractor the total sum of (in words)

_____ DOLLARS
(\$_____) (herein called the Contract Amount) for all work and materials expended to complete this Project, which shall include the cost of all bonds, insurance, and all charges, fees, permits (including water and sewer fees, unless waived), expenses or assessments of whatever

kind or character that are or may be necessary to complete this Project, including any additive alternates listed within the Scope of Work described in Section 1.

This Project, including the additive alternates awarded in Section 1, if any, is awarded in whole to the Contractor; the City will accept the Project in whole. However, nothing contained herein shall prevent the City from reducing the work to be done under this Agreement pursuant to Section 8 herein, nor shall anything herein be construed to require that Contractor be awarded any of the additive alternates bid by the Contractor, or change order(s). The City retains the right to award any of the additive alternates or change order(s), or any part of them, to other contractors at any time, except those awarded to the Contractor in Section 1.

SECTION 5. PERMITS AND FEES. As set out in Section 4 above, the Contract Amount includes the price of all normally applicable fees and permits. The City may, at its discretion, arrange for the waiver of certain fees, permits and expenses.

SECTION 6. TERMS OF PAYMENT. The City shall pay for services provided hereunder according to and in an amount not to exceed that detailed in the attached payment schedule (Attachment A) and only upon Contractor's request on forms approved by and submitted to the Project Manager. The City shall make payment within thirty (30) days thereafter. Requests for a more rapid payment may be considered if a discount is offered for early payment. At no time shall the aggregate amount of money paid to the Contractor in proportion to the Contract Amount be greater than the proportion of the work performed at that point to the total Project work. No payment shall be made for any service rendered by the Contractor except for services set forth and identified in this Agreement. The City reserves the right to withhold payment in whole or part from the Contractor for non-compliance with the provisions of the Contract Documents.

A. RETAINAGE. The City may, in its sole discretion; 1) retain ten (10) percent of the value of all work done and materials or equipment supplied as part security for the fulfillment of the Agreement by the Contractor; or 2) retain the final payment of up to 10% of the total project amount. As work nears completion and solely at the City's discretion, the City may reduce the retainage to an amount more in line with the work remaining. The City reserves the right to retain all amounts previously withheld or due, including any liquidated damages, until all services specified herein are complete. Any money withheld pursuant to this Section shall be placed in an interest bearing account and the interest shall also be payable to the Contractor upon final payment.

Before final payment is made, the Contractor must submit evidence satisfactory to the City that all payrolls, material bills, subcontracts and all outstanding indebtedness in connection with the Project have been paid for.

The City may withhold a reasonable amount of the payment bond sufficient to cover any outstanding indebtedness or monies owed or claimed by any person who supplied work or materials to the Project plus 10% of such indebtedness as the City's cost of administering such claims until Contractor supplies a release satisfactory to the City, signed by all persons who have supplied labor or materials to the Project or, at the City's option if no claim is made, until 105 days after the date on which any person performed the last of the labor or supplied the last of the material for the Project and upon written request from the Contractor. The Contractor shall supply to the Project Manager/Engineer within a reasonable time after his request a signed statement verifying all the suppliers, subcontractors and other persons who have supplied labor or materials to the Project.

B. FINAL PAYMENT. Acceptance by the Contractor of the final payment from the City shall release the City of all claims, demands and liability of the Contractor, its officers, agents, employees and subcontractors, whether communicated or not by the Contractor, except with respect to those matters referred to in writing delivered to the Contractor and approved in a signed writing by the Project Manager.

SECTION 7. COMPLETION TIME. The work on this Project shall commence within ten calendar days of receipt of the Notice to Proceed and shall be completed by _____. Work stoppage due to inclement weather conditions and other factors must be approved in writing by the Project Manager. Inclement weather shall not otherwise constitute cause for delay. Unless otherwise agreed by the City by Change Order, no damages shall become due to Contractor for City caused delay. A Change Order for delay will generally be accepted for delay so excessive and unreasonable that it is beyond the scope of the Contract or delay attributed to direct, active or willful interference by the City. The Change Order must be based upon actual damages sustained by the Contractor which are directly attributed to the delay.

In the event that Contractor fails to complete all of the work required herein within the time limit set out above, then for each partial or complete day during which the work remains uncompleted thereafter, the Contractor agrees to pay the City \$_____, which the parties believe, due to the difficulty of actually assessing the damages the City will suffer in the event of such a delay, is a fair estimate of the loss the City will suffer. The parties agree that the daily liquidated damages provided for herein is reasonable and fair, and is not a penalty. **TIME IS OF THE ESSENCE IN THIS AGREEMENT.**

SECTION 8. ADDITIONAL WORK/CHANGE ORDERS. The City may enlarge or reduce the work to be performed by Contractor hereunder by written notification to Contractor, including changes to the plans and specifications. The City shall pay Contractor for any additional work so requested, and shall reduce the payment to the Contractor for any reduction in labor, materials, overhead and profit margin resulting from the reduction in the work. Except as the City shall so notify the Contractor in writing, it is understood and agreed by the parties hereto that no money will be paid to the Contractor for any new or additional labor or materials furnished unless a written modification is agreed to in a document signed by both parties.

The value of any work covered by a change order or of any claim for increase or decrease in the contract price shall be determined by one or more of the following methods in order of precedence listed below:

- A. An agreed lump sum; or in the event the parties cannot agree; then
- B. The unit rate for the work bid by the Contractor, if applicable, or in the event there was no such rate bid; then
- C. The actual cost for: 1) labor; 2) materials; 3) supplies; 4) equipment; 5) direct overhead (not to exceed 5% of the sum total of items 1-4, unless approved by the City); and 6) other services necessary and approved by the City to complete the work. In the event of a net increase in the Contract Amount for a change order as a whole, the City shall allow a payment to the Contractor of an additional ten (10) percent of the actual cost of the work, not including direct overhead or bond costs, to cover the cost of general overhead and profit. The Contractor may also charge the City for actual cost of the net increase in bond costs as a result of the overall change to the Contract Amount. The City specifically reserves the right to request documentation, including but not limited to payroll stubs, bond bills, and invoices, to validate the Contractor's calculations.

SECTION 9. DISPUTES. Except as otherwise provided in this Agreement, any disputes concerning a question of fact arising under this Agreement which is not disposed of by Agreement shall be decided by the City. The decision of the City shall be final and conclusive unless, within 30 days from the date of receipt of such decision, the Contractor shall mail or otherwise furnish the City a written signed appeal addressed to the Project Manager/Engineer. In connection with any appeal proceeding under this clause, the Contractor will be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Contractor will proceed diligently with the performance of the Contract and in accordance with the City's decision. The decision of the City shall be final and conclusive, but shall not be arbitrary or unreasonable. Although this Contract has been drafted by the City, the Contractor expressly agrees that any ambiguity herein shall be resolved in favor of the City.

SECTION 10. DEFAULT, REMEDY AND TERMINATION. The City may terminate this Agreement upon the occurrence of one or more of the following events:

A. If Contractor or any Subcontractor should substantially violate any of the provisions of this Contract;

B. If Contractor substantially fails to perform any part of this Agreement;

C. If Contractor repeatedly fails or becomes unable to perform the services under this Agreement as required herein, or substantially fails to provide services under this Agreement for a period of 72 hours;

D. If Contractor (i) shall become insolvent in a bankruptcy sense; (ii) shall be generally not paying its debts as they become due, or within a reasonable time thereafter; (iii) shall suffer, voluntarily or involuntarily, the entry of an order by any court or governmental authority authorizing the appointment of or appointing of a custodian (as that term is defined in 11 U.S.C. §101[10]), receiver, trustee, or other officer with similar powers with respect to it or any portion of its property which remains undismissed for a period of 90 days; (iv) shall suffer, voluntarily or involuntarily, with or without judicial or governmental authorization, any such custodian, receiver, trustee, or other officer with similar powers to take possession of any part of its property which third party remains in possession for an excess of 90 days; (v) shall suffer, voluntarily or involuntarily, the filing of a petition respecting an assignment for the benefit of creditors which is not dismissed for a period of 90 days; (vi) shall be dissolved; (vii) shall become the subject of any proceeding, suit, or action at law or in equity under or relating to any bankruptcy, reorganization or arrangement of debt, insolvency, readjustment of debt, receivership, liquidation, or dissolution law or statute or amendments thereto to be commenced by or against it or against any of its property which remains undismissed for a period of 90 days; (viii) shall voluntarily suspend substantially all of its business operations; (ix) shall be merged with, acquired by, or otherwise absorbed by any individual, corporation, or other business entity or organization of any kind except for any individual corporation or other business entity or organization which is controlled by, controlling, or under common control with the Contractor; or (x) shall take action for the purpose of any of the foregoing.

After serving ten (10) days' written notice on the Contractor and its surety of its intention to terminate the services of Contractor, and if within ten (10) days after serving such notice, the violation is not corrected to City's reasonable satisfaction, the City then may take over the work and prosecute it to completion by contract or by any other method it may deem advisable at the expense of the Contractor. The Contractor and the bonding company shall be liable to the

City for any reasonable cost occasioned by the City in excess of the amount agreed for the service herein.

The Contractor shall be entitled to a hearing before a City hearing officer upon the issue of termination if it submits a written request therefor within seven (7) days of the service of the notice of the City's intent to terminate. The Contractor shall be entitled to be heard at such hearing on the issue of termination. The Contractor shall not bring an action against the City, its officers, agents or employees arising out of or relating to the termination of this Agreement before the decision is issued by the City's hearing officer.

Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver of any provision of this Agreement shall not be construed to be modification of the terms of this Agreement, unless stated to be such in writing, signed by the City's authorized representative.

The Contractor shall continue the performance of this Agreement to the extent not terminated under the provisions of this Section.

The rights and remedies of the City provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

SECTION 11. HOLD HARMLESS INDEMNIFICATION. The Contractor clearly and unequivocally agrees to indemnify and to hold the City and its agents, consultants, employees, and officers, harmless from and shall process and to 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 Contractor's 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, consultants, employees, and officers, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the Contractor or others; and provided further, that nothing herein shall require the Contractor to hold harmless or defend the City, its agents, consultants, employees and/or officers from any claims arising from the sole negligence of the City, its agents, consultants, employees, and/or officers. The Contractor expressly agrees that the indemnification provided herein constitutes the contractor's waiver of immunity under Utah Code Section 35-1-60 for the purposes of this Agreement. This waiver has been mutually negotiated by the parties. The provisions of this Section shall survive the expiration or termination of this Agreement. No liability shall attach to the City by reason of entering into this Agreement except as expressly provided herein.

SECTION 12. CONTROLLING LAW. These general conditions shall be construed in accordance with and enforced under the laws of the State of Utah. Any action of law, suit in equity, or judicial proceeding for the enforcement of the Agreement, or any provisions thereof, shall be instituted and maintained only in any of the courts of competent jurisdiction in Summit County, Utah.

SECTION 13. ASSIGNMENT. The Contractor shall not assign nor transfer any interest in this Agreement without the prior written consent of the City, provided however, that claims for compensation due or to become due the Contractor from the City under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Written notice of any such assignment shall be promptly furnished to City.

SECTION 14. SAFETY AND TRAFFIC CONTROL. Contractor shall take all reasonable precautions to protect the safety of pedestrians, school children, motorists, and others who may use or come near to the Project site, including but not limited to compliance with the Manual of Uniform Traffic Control Devices.

SECTION 15. SAFETY AND PROTECTION OF THE WORK. Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Project work. Contractor shall provide reasonable protection to prevent damage, injury or loss to employees on the Project work and all other persons who may be affected thereby, materials and equipment, whether on or off the site, and other property at the work site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction. In addition, the Contractor shall give all notices and comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the safety of persons or property or their protection from damage, injury or loss.

The Contractor shall erect and maintain, as required by the existing conditions and progress of the work, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, setting safety regulations, and notifying owners and user of adjacent utilities.

The Contractor shall promptly remedy all damage or loss to any property referred to in this Section caused in whole or in part by the Contractor, any subcontractor, sub-subcontractor or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable and for which the Contractor is responsible, except for acts or omissions by the City or anyone directly or indirectly employed by it, or by anyone for whose acts it may be liable, and not attributable to the fault or negligence of the Contractor. Contractor shall remove from the site all cuttings, debris, equipment and unused material.

SECTION 16. WAIVERS. One or more waivers by either party of any provision, term or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same provision by the other party.

SECTION 17. ENTIRE AGREEMENT. This Contract represents the entire integrated Agreement between City and Contractor and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written modification signed by both parties.

SECTION 18. UTILITIES. The right is reserved to the owners of public utilities and franchises to enter upon the street or work site for the purpose of making repairs or changes of their property that may become necessary by the work. The City shall also have the privilege of entering upon the street or work site for the purpose of repairing culverts, storm drains, water system repairs or adjustments and any and all other necessary City work.

The Contractor takes the whole risk, responsibility and expense with respect to the location of utilities, and in working with utility owners about locating, moving, repairing, and modifying utilities. All utility locations shown on the plans and specifications are approximate and are marked on the plans, if at all, only for convenience. The City makes no representation about

the location of any such utilities, and Contractor is encouraged to contact utility companies and owners about the location of all utilities that may be impacted by or impact the Project work.

SECTION 19. WORKING HOURS. All work performed by the Contractor, its subcontractors, materialmen, agents and employees shall be performed during work hours of 7:00 a.m. to 9:00 p.m. Monday through Saturday unless special prior arrangements for other hours have been requested and approved by the Project Manager/Engineer. Contractor shall minimize noise disturbance to the surrounding neighborhood by maintaining efficient noise attenuation devices on all noise generating equipment.

SECTION 20. OBEY LAWS. Contractor shall obey all laws, ordinances and regulations of the United States, the State of Utah, and Park City in performing this Agreement.

SECTION 21. NONDISCRIMINATION.

A. The City is an equal opportunity employer.

B. In the performance of this Agreement, the Contractor will not discriminate against any employee or applicant for employment on the grounds of race, creed, color, national origin, sex, marital status, age or the presence of any sensory, mental or physical handicap; provided that the prohibition against discrimination in employment because of handicap shall not apply if the particular disability prevents the proper performance of the particular worker involved. The Contractor shall ensure that applicants are employed, and that employees are treated during employment without discrimination because of their race, creed, color, national origin, sex, marital status, age or the presence of any sensory, mental or physical handicap. Such action shall include, but not be limited to: employment, upgrading, demotion or transfers, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and programs for training including apprenticeships. The Contractor shall take such action with respect to this Agreement as may be required to ensure full compliance with local, state and federal laws prohibiting discrimination in employment.

C. The Contractor will not discriminate against any recipient of any services or benefits provided for in this Agreement on the grounds of race, creed, color, national origin, sex, marital status, age or the presence of any sensory, mental or physical handicap.

D. If any assignment or subcontracting has been authorized by the City, said assignment or subcontract shall include appropriate safeguards against discrimination. The Contractor shall take such action as may be required to ensure full compliance with the provisions in the immediately preceding paragraphs herein.

SECTION 22. THIRD PARTY RIGHTS. Nothing herein is intended to confer rights of any kind in any third party. No member, officer, or employee of the City shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

SECTION 23. PROJECT MANAGER/ENGINEER. The Project Manager/Engineer for this Project is John Chmelir, or such other person designated by the Director of Capital Management and Budget to the Contractor in writing.

SECTION 24. PARTIES' REPRESENTATIVES. For purposes of notice required or desired by the parties, or communication involving the services under this Agreement, such notice or communication shall be deemed to have been given when personally delivered or

mailed, or sent by facsimile transmission certified mail, postage pre-paid, to the parties at the following addresses:

Contractor: _____, or such other person designated in writing by the Contractor's chief administrative officer, at the Contractor's address set out first above;

Park City: Project Manager/Engineer, at the address set out first above for the City, or when given to such other person as either of the above representatives shall designate in writing. The designation of any address may be changed by notice given in the same manner as provided in this paragraph.

SECTION 25. SEVERABILITY. Should any part of this Agreement for any reason be declared invalid, such decision shall not affect the validity of any remaining provisions, which remaining provisions shall remain in force and effect as if this Agreement had been executed with the invalid portion thereof eliminated, and it is hereby declared the intention of the parties that they would have executed the remaining portion of this Agreement without including any such part, parts, or portions which may, for any reason, be hereafter declared invalid. If any provision of this Agreement is held invalid or unenforceable with respect to particular circumstances, such provision shall nevertheless remain in full force and effect in all other circumstances.

IN WITNESS WHEREOF, the parties have entered into this Agreement on the day and year set out at the top of this Agreement.

PARK CITY MUNICIPAL CORPORATION

By: _____
Title: _____

ATTEST:

Jan Scott, City Recorder

APPROVED AS TO FORM:

Mark D. Harrington, Deputy City Attorney

CONTRACTOR

Title _____
Utah Contract License No. _____

CORPORATE ACKNOWLEDGMENT

STATE OF UTAH)
 : ss
County of _____)

On the _____ day of _____, 19____, personally appeared before me
_____ who did say that he/she is the
_____ of _____ corporation, and
that the foregoing instrument was signed on behalf of said corporation by authority of a resolution
of its board of directors; and said persons acknowledged to me that said corporation executed the
same.

NOTARY PUBLIC

EXHIBIT A

1. **ENERGY CONSERVATION REQUIREMENTS:** Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.
2. **CLEAN WATER REQUIREMENTS:** Contractor agrees to comply with all applicable standards, orders or regulations pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq. Contractor agrees to report each violation to City and understands and agrees that City will, in turn, report each violation as required to assume notification to FTA and the appropriate EPA Regional Office. Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.
3. **LOBBYING:** Clause and specific language herein are mandated by 49 C.F.R. part 19, Appendix A. Modifications have been made to the Clause pursuant to Section 10 of the Lobbying Disclosure Act of 1995, P.L. 104-65 to be codified at 2 U.S.C. § 1601, et seq.

Lobbying Certification and Disclosure of Lobbying Activities for third party contracts are mandated by 31 U.S.C. § 1352(b)(5), as amended by Section 10 of the Lobbying Disclosure Act of 1995, and DOT implementing regulation, "New Restrictions on Lobbying," at 49 C.F.R. § 20.110(d). Language in Lobbying Certification is mandated by 49 C.F.R. part 19, Appendix A, Section 7, which provides that service providers file the certification required by 49 C.F.R. part 20, Appendix A. Modifications have been made to the Lobbying Certification pursuant to Section 10 of the Lobbying Disclosure Act of 1995. Use of "Disclosure of Lobbying Activities," Standard Form-LLL set forth in Appendix B of 49 C.F.R. part 20, as amended by "Governmentwide Guidance For New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96) is mandated by 49 C.F.R. part 20, Appendix A.

Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65: Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 C.F.R. part 20, "New Restrictions on Lobbying". Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. § 1352. Such disclosures are forwarded from tier to tier up to the recipient.

4. **ACCESS TO RECORDS:** Where City is the FTA Recipient in accordance with 49 C.F.R. § 18.36(l), Contractor agrees to provide City, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of Contractor which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. § 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Service Provider access to Contractor's records and construction sites pertaining to a major capital Project, defined at 49 U.S.C. § 5302(a)(1), which is receiving Federal financial assistance through the programs described at 49 U.S.C. §§ 5307, 5309 or 5311. Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. Contractor agrees to maintain all books, records, accounts and reports required under this Agreement for a period of not less than three years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case Contractor agrees to maintain same until City, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 C.F.R. § 18.39(i)(11).
5. **FEDERAL CHANGES:** Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Contract (Form FTA Master Agreement dated October 1, 1998) between City and FTA, as they may be amended or promulgated from time to time during the term of this Agreement. Contractor's failure to so comply shall constitute a material breach of this Agreement. If the enactment of changes to Federal statutes significantly increases the costs borne by Contractor, Contractor may request negotiation of this Agreement.
6. **CLEAN AIR:** Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. Contractor agrees to report each violation to City and understands and agrees that City will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.
7. **NO FEDERAL GOVERNMENT OBLIGATION TO THIRD PARTIES:** City and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Agreement and shall not be subject to any obligations or liabilities to City, Contractor, or any other party (whether or not a party to the Agreement) pertaining to any matter resulting from the underlying Agreement. Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.
8. **PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS:** Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801, et seq. and U.S. DOT regulations, "Program Fraud Civil

Remedies," 49 C.F.R. part 31, apply to its actions pertaining to this Project. Upon execution of the underlying Agreement, Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying Agreement or the FTA assisted project for which this Agreement's work is being performed. In addition to other penalties that may be applicable, Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on Contractor to the extent the Federal Government deems appropriate.

Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on Contractor, to the extent the Federal Government deems appropriate.

Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

9. GOVERNMENT DEBARMENT AND SUSPENSION: See the provisions below for a discussion on debarment with regard to this Agreement:

a. Certification Regarding Debarment, Suspension, and Other Responsibility Matters: Lower Tier Covered Transactions; Third Party Contracts Over \$100,000

- (1) By signing and submitting this Agreement, the prospective lower tier participant (Contractor or its subcontractors) is providing the signed certification set out below.
- (2) The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, City may pursue available remedies, including suspension and/or debarment.
- (3) The prospective lower tier participant shall provide immediate written notice to City if at any time the perspective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- (4) The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant" "persons," "lower tier covered transaction" "to principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 (49 C.F.R. part 29). You may contact City for assistance in obtaining a copy of those regulations.

- (5) The prospective lower tier participant agrees by signing this Agreement that, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by City.
 - (6) The prospective lower tier participant further agrees by signing this Agreement that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion- Lower Tier Covered Transaction," without modification, in all lower tier (subcontracts) covered transactions and in all solicitations for lower tier covered transactions (subcontracts). See below.
- b. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion; Lower Tier Covered Transaction: The prospective lower tier participant certifies, by submission of its bid or proposal, that neither it nor its "principals" (as defined at 49 C.F.R. § 29.105(p)) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. When the prospective lower tier participant is unable to certify to the statements in this certification, such prospective participant shall attach an explanation to this proposal.
- (1) The City may rely upon a certification of Contractor in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List issued by U.S. General Service Administration.
 - (2) Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
 - (3) Except for transactions authorized under Paragraph a.5 above, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies as available to the Federal Government, City may pursue available remedies including suspension and/or debarment.
10. **PRIVACY ACT:** The following requirements apply to Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:
- a. Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552A. Among other things, Contractor agrees to obtain the express consent of the Federal Government before Contractor or its employees

operate a system of records on behalf of the Federal Government. Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying Agreement.

- a. Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

11. **CIVIL RIGHTS REQUIREMENTS:** The following requirements apply to the underlying contract:

- a. **Nondiscrimination:** In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, Contractor, agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- b. **Equal Employment Opportunity:** The following equal employment opportunity requirements apply to the underlying contract:
 - (1) **Race, Color, Creed, National Origin, Sex:** In accordance with Title VIII of the Civil Rights Act, as amended, 42 U.S.C. § 2006e, and Federal transit laws at 49 U.S.C. §5332, Contractor, agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal. Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation, and, selection, for training, including apprenticeship. In addition, Contractor agrees to comply with any implementing requirements FTA may issue.
 - (2) **Age:** In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition,

Contractor agrees to comply with any implementing requirement FTA may issue.

- (3) Disabilities: In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. part 1630, pertaining to employment of persons with disabilities. In addition, Contractor agrees to comply with any implementing requirements FTA may issue.
- (4) Inclusion in subcontract: Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

12. **DISADVANTAGED BUSINESS ENTERPRISES:** The Federal Fiscal Year annual DBE goal is set by the City in an attempt to match projected procurements with available qualified disadvantaged businesses. City goals for budgeted service contracts, bus parts, and other material and supplies for Disadvantaged Business Enterprises have been established by City as set forth by the Department of Transportation Regulations 49 C.F.R. part 23, March 31, 1980, and amended by Section 106(c) of the Surface Transportation Assistance Act of 1987, and is considered pertinent to any contract resulting from this request for proposal.

A DBE goal of 10% has been identified for this project. City supports the Department of Transportation's use of DBE firms as defined in 49 C.F.R. part 23, and copies of the City's DBE Program are available upon request. If Contractor is found to have failed to exert sufficient, reasonable, and good faith efforts to meet the DBE goal, City may declare Contractor noncompliant and in breach of contract.

- a. It is the policy of the Department of Transportation and City so that Disadvantaged Business Enterprises, as defined in 49 C.F.R. part 23, and as amended in Section 106(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987, shall have the maximum opportunity to participate in the performance of this Agreement financed in whole or in part with federal funds under this Agreement. Consequently, the DBE requirements of 49 C.F.R. part 23 and Section 106(c) of the STURAA of 1987, apply to this Agreement.

Contractor agrees to ensure that DBEs as defined in 49 C.F.R. part 23 and Section 106(c) of the STURAA of 1987, have the maximum opportunity to participate in the whole or in part with federal funds provided under this Agreement. In this regard, Contractor shall take all necessary and reasonable steps in accordance with the regulations to ensure that DBEs have the maximum opportunity to compete for and perform subcontracts. Contractor shall not discriminate on the basis of race, color, national origin, religion, sex, age or physical handicap in the award and performance of subcontracts.

It is further the policy of City to promote the development and increase the participation of businesses owned and controlled by disadvantaged individuals. DBE involvement in all phases of City procurement activities are encouraged.

- a. Contractor and its subcontractors agree to ensure that DBEs have the maximum opportunity to participate in the performance of contracts and subcontract financed in whole or in part with federal funds provided under this Agreement. In that regard, Contractor and its subcontractors shall take all necessary and reasonable steps in accordance with 49 C.F.R. part 23 as amended, to ensure that minority and women-owned business enterprises have the maximum opportunity to compete for and perform contracts.
- b. Where Contractor is found to have failed to exert sufficient reasonable and good faith efforts to involve DBEs in the work provided, City may declare Contractor noncompliant and in breach of contract.
- c. Contractor will keep records and documents for a reasonable time (as explained above) following performance of this Agreement to indicate compliance with City DBE program. These records and documents will be made available at reasonable times and places for inspection by any authorized representative of City and will be submitted to City upon request.
- d. City will provide affirmative assistance as may be reasonable and necessary to assist Contractor in implementing their programs for DBE participation.

The assistance may include the following upon request:

- (1) Identification of qualified DBE firms
- (2) Available listing of Minority Assistance Agencies
- (3) Holding bid conferences to emphasize requirements
- (4) DBE Program Definitions, as used in the Agreement:

A. Disadvantaged business means "a small business concern":

- i. Which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and
- ii. Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it. Or
- iii. Which is at least 51 percent owned by one or more women individuals, or in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women individuals; and
- iv. Whose management and daily business operations are controlled by one or more women individuals who own it.

- A. "Small business concern" means a small business as defined by Section 3 of the Small Business Act and Appendix B (Section 106(c)) Determinations of Business Size.
- B. "Socially and economically disadvantaged individuals" means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Asian-Indian Americans, or women, and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to section 8(a) of the Small Business Act.
 - i. "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
 - ii. "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuba, Central or South American, or other Spanish or Portuguese culture origin, regardless of race;
 - iii. "Native Americans," which includes persons who are American Indians, Eskimos, Alerts, or Native Hawaiians;
 - 1 "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of Pacific, and the Northern Marinas;
 - i. "Asian-Indian Americans," which includes persons whose origins are from India, Pakistan, and Bangladesh.

- 13. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION TERMS: The preceding provisions include, in part, certain Standard Forms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular- 4220.1D, dated April 15, 1996, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any City requests which would cause City to be in violation of the FTA terms and conditions.
- 14. METRIC SYSTEM: To the extent required by U.S. DOT or FTA, Contractor agrees to use the metric system of measurement in its Project activities, as may be required by 15 U.S.C. § 20a et seq.; Executive Order No. 12770, "Metric Usage in Federal Government Programs," 15 U.S.C. § 205a note; and other regulations, guidelines, and policies issued by U.S. DOT or FTA. To the extent practicable and feasible, Contractor agrees to accept and provide products and services with dimensions expressed in the metric system of measurement.

15. **DISPUTES:** Except as otherwise provided in this Agreement, any dispute concerning a question of fact arising under this Agreement which is not disposed of by the Agreement shall be decided by City. The decision of City shall be final and conclusive unless, within 30 days from the date of receipt of such decision, Contractor shall mail or otherwise furnish to City a written signed appeal addressed to the Project Manager. In connection with any appeal proceeding under this clause, Contractor will be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, Contractor will proceed diligently with the performance of the Agreement and in accordance with City's decision. The decision of City shall be final and conclusive, but shall not be arbitrary or unreasonable. Although this Agreement has been drafted by the City, Contractor expressly agrees that any ambiguity herein shall be resolved in favor of the City.
16. **PROJECT MANAGER/ENGINEER:** The Project Manager for the City on this Project is John Chmelir, or such other person designated by the Director of Capital Management and Budget in writing.
17. **SEISMIC SAFETY:** Contractor agrees that any new building or addition to an existing building will be constructed in accordance with the standards for Seismic Safety required by the Department of Transportation Seismic Safety Regulations 49 C.F.R. part 41 and will certify to compliance to the extent required by the regulation. Contractor also agrees to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certificate of compliance issued on the project.
18. **RECOVERED MATERIALS:** Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. § 6962), including but not limited to the regulatory provisions of 40 C.F.R. part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 C.F.R. part 247.
19. **BUY AMERICA:** Contractor agrees to comply with 49 U.S.C. § 5323(j) and 49 C.F.R. part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment, software, and small purchases (currently less than \$100,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 49 U.S.C. § 5323(j)(2)(C) and 49 C.F.R. § 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 60 percent domestic content.
- A bidder or offeror must submit to the FTA recipient the appropriate Buy America certification with all bids on FTA-funded contracts, except those subject to a general waiver. This requirement does not apply to lower tier subcontractors.
20. **DAVIS-BACON ACT** - The language in this clause is mandated under the U.S. Department of Labor (DOL) regulations at 29 C.F.R. § 5.5.
- a. Minimum Wages:

- (1) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 C.F.R. part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph a.4) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 C.F.R. part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination and the Davis-Bacon poster (WH-1321) shall be posted at all times by Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

- (1) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- (2) If Contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided that the Secretary of Labor has found, upon the written request of Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.
- (3) A. The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the Agreement shall be classified in conformance with the wage determination. The contracting officer

shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

- i. The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- ii. The classification is utilized in the area by the construction industry; and
- iii. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

A. If Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

A. In the event Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

A. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs a.4)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this Agreement from the first day on which work is performed in the classification.

- a. Withholding: City shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this Agreement or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and

helpers, employed by Contractor or any subcontractor the full amount of wages required by the Agreement. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the Agreement, City may, after written notice to Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

b. Payrolls and Basic Records:

- (1) Payrolls and basic records relating thereto shall be maintained by Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 C.F.R. § 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.
- (2)
 - A. Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to City for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 C.F.R. part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. Contractor is responsible for the submission of copies of payrolls by all subcontractors.
 - B. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by Contractor or subcontractor or his or her

agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

- i. That the payroll for the payroll period contains the information required to be maintained under 29 C.F.R. part 5 and that such information is correct and complete;
 - ii. That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Agreement during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 C.F.R. part 3;
 - iii. That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Agreement.
- C. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph c.2)(B) of this section.
- D. The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of Title 18 and section 231 of Title 31 of the United States Code.
- (1) The contractor or subcontractor shall make the records required under paragraph c.1) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 C.F.R. § 5.12.

a. Apprentices and Trainees:

- (1) Apprentices: Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is

employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (2) Trainees: Except as provided in 29 C.F.R. § 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman

wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (3) Equal employment opportunity: The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 C.F.R. part 30.
- a. Compliance with Copeland Act Requirements: Contractor shall comply with the requirements of 29 C.F.R. part 3, which are incorporated by reference in this Agreement.
- b. Subcontracts: Contractor or its subcontractor(s) shall insert in any subcontracts the clauses contained in 29 C.F.R. §5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 C.F.R. § 5.5.
- c. Contract Termination and Debarment: A breach of the contract clauses in 29 C.F.R. § 5.5 may be grounds for termination of the Agreement, and for debarment as a contractor and a subcontractor as provided in 29 C.F.R. § 5.12.
- d. Compliance with Davis-Bacon and Related Act Requirements: All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 C.F.R. parts 1, 3, and 5 are herein incorporated by reference in this Agreement.
- e. Disputes Concerning Labor Standards: Disputes arising out of the labor standards provisions of this Agreement shall not be subject to the general disputes clause of this Agreement. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 C.F.R. parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.
- f. Certification of Eligibility:
 - (1) By entering into this Agreement, Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in Contractor's firm is a

person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 C.F.R. § 5.12(a)(1).

- (2) No part of this Agreement shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 C.F.R. § 5.12(a)(1).
- (3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. § 1001.

23. CONTRACT WORK HOURS

- a. Overtime Requirements: No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- b. Violation; Liability for Unpaid Wages; Liquidated Damages: In the event of any violation of the clause set forth in paragraph (a) of this section, Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a) of this section, in the sum of ten dollars (\$10) for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a) of this section.
- c. Withholding for Unpaid Wages and Liquidated Damages: City shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by Contractor or its subcontractor(s) under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b) of this section.
- d. Subcontracts: Contractor or its subcontractor(s) shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.
- e. Section 107 (OSHA) Contract Work Hours and Safety Standards Act: Contractor agrees to comply with section 107 of the Contract Work Hours and Safety Standards Act, 40 U.S.C. § 333, and applicable DOL regulations, "Safety and

Health Regulations for Construction" 29 C.F.R. part 1926. Among other things, Contractor agrees that it will not require any laborer or mechanic to work in unsanitary, hazardous, or dangerous surroundings or working conditions.

- a. Subcontracts: Contractor also agrees to include the requirements of this section in each subcontract. The term "subcontract" under this section is considered to refer to a person who agrees to perform any part of the labor or material requirements of a contract for construction, alteration or repair. A person who undertakes to perform a portion of a contract involving the furnishing of supplies or materials will be considered a "subcontractor" under this section if the work in question involves the performance of construction work and is to be performed: (1) directly on or near the construction site, or (2) by the employer for the specific project on a customized basis. Thus, a supplier of materials which will become an integral part of the construction is a "subcontractor" if the supplier fabricates or assembles the goods or materials in question specifically for the construction project and the work involved may be said to be construction activity. If the goods or materials in question are ordinarily sold to other customers from regular inventory, the supplier is not a "subcontractor." The requirements of this section do not apply to contracts or subcontracts for the purchase of supplies or materials or articles normally available on the open market.
24. **COPELAND ANTI-KICKBACK ACT**: Contractor shall comply with the requirements of 29 C.F.R. part 3, which are incorporated by reference in this Agreement.

September 24, 1999
Job No. 9-817-002339

Mr. Tom Bakaly
Finance Manager/Project Manager OTITC
Park City Municipal Corporation
445 Marsac Avenue
P.O. Box 1480
Park City, Utah 84060-1480

Subject: Report Transmittal
"Environmental Site Assessment - Voluntary Cleanup Program - Old Town
Intermodal Transit Center - Park City, Summit County, Utah"
dated September 23, 1999

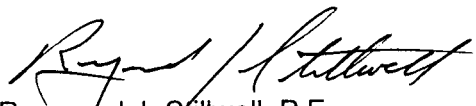
Dear Mr. Bakaly:

AGRA Earth & Environmental, Inc. (AGRA) is transmitting ten bound copies of the subject document by courier to your office this day. This submission reflects all changes resulting from past reviews and discussions.

If you should have any questions regarding this submittal, please feel free to contact me directly at (801) 266-0720.

Sincerely,

AGRA Earth & Environmental, Inc.


Raymond J. Stillwell, P.E.
Manager of Environmental Services

encl. Report

RJS:ka

cc: Mr. Wally Cooper
Cooper-Roberts Architects
700 North 200 West
Salt Lake City, Utah 84103

