

**PARK CITY COUNCIL MEETING
SUMMIT COUNTY, UTAH
SEPTEMBER 9, 2004**

PUBLIC NOTICE IS HEREBY GIVEN that the City Council of Park City, Utah will hold its regularly scheduled meeting at the Marsac Municipal Building City Council Chambers, 445 Marsac Avenue, Park City, Utah for the purposes and at the times as described below on Thursday, September 9, 2004.

AGENDA

Work Session – City Council Chambers

4:00 p.m. Council questions/comments

4:15 p.m. Review of regular meeting contracts:

- Lease with White Pine Touring
- Farm trailhead parking lot, skate park, neighborhood parks
- Water projects

Dinner Break – Executive Conference Room

5:15 p.m. Closed Session - property

Regular Meeting – City Council Chambers

6:00 p.m.

I ROLL CALL

II COMMUNICATIONS FROM COUNCIL AND STAFF

1. Utah Humanities Award – Mel and Peggy Fletcher
2. Summit County Solid Waste Committee update

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

IV WORK SESSION NOTES AND MINUTES OF MEETING OF AUGUST 26, 2004

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V PUBLIC HEARINGS

1. Amendment to the 1999 Flagstaff Development Agreement relating to access, parking and modification to Pod D Empire Day Lodge, located at 9200 Marsac Avenue **(motion to continue to September 23, 2004)**

2. Ordinance to combine all of Lot 28 and portions of Lot 29, 30 and 31 of Block 32 of the Park City Survey into one lot of record, located at 52 King Road, Park City, Utah

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3. Ordinance to combine Lots 1 – 3 in Block 30 of the Snyder's Addition to the Park City Survey into one lot of record, located at 819 Empire Avenue, Park City, Utah

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4. Amendments to the Land Management Code regarding definitions and zoning districts for timeshare, fractional ownership, and private residence club ownership units and projects

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VI CONSENT AGENDA

1. Ordinance to combine all of Lot 28 and portions of Lot 29, 30 and 31 of Block 32 of the Park City Survey into one lot of record, located at 52 King Road, Park City, Utah

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2. Ordinance to combine Lots 1 – 3 in Block 30 of the Snyder's Addition to the Park City Survey into one lot of record, located at 819 Empire Avenue, Park City, Utah

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3. Authorization to the City Manager to execute contracts, in a form approved by the Legal Department, with Jans/White Pine Touring for lease of City property and for the performance of grooming operations

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4. Authorization to the City Manager to execute a professional services contract, in a form approved by the Legal Department, for construction management services on the Boothill Pipeline project with Stantec Consulting in the amount of \$46,744

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5. Authorization to the City Manager to enter into professional services contract with Design Workshop, in a form approved by the Legal Department, for the neighborhood parks projects in the amount of \$51,000

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6. Authorization to the City Manager to execute a construction contract, in a form approved by the Legal Department, for the McPolin Farm trail head parking lot, in the amount of \$108,863

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7. Resolution declaring the week of September 6 – 11, 2004 as Wind Power Week in Park City, Utah

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VII NEW BUSINESS

1. Authorization to the City Manager to execute a construction contract, in a form approved by the City Manager, to SCI for the construction of Boothill vault and pipeline in the amount of \$923,930

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2. Authorization to staff to execute a construction contract for construction of Phase II of the Spiro Treatment Plant upgrade with Weyer Construction in the amount of \$1,495,275

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3. Authorization to staff to execute a professional services contract for construction management services on the Spiro Phase II upgrade project with Montgomery Harza Watson in the amount of \$125,213 P. 112 - 114

4. Appeal of Planning Commission approval of The Red Cloud Pod D Master Planned Development – Mayflower Mountain Fonds P. 115 - 122

VIII ADJOURNMENT

A majority of City Council members may meet socially after the meeting. If so the location will be announced by the Mayor. City business will not be conducted.

Posted: 09/07/04

See: parkcity.org

Note: This future meeting schedule is TENTATIVE and subject to change.

PARK CITY COUNCIL TENTATIVE MEETING SCHEDULE

September 2004

- 2 **No meeting**
- 6 *Labor Day*
- 8 *Windpower tour to Evanston – 11:30 a.m. or 1:30 p.m. - Alison*
- 9 *See agenda*
- 13-14 *Quinns Junction Recreation Complex public design workshop – Council Chambers – 5 – 7:30 p.m. - Colin*
- 16 **No meeting – City tour**
- 23 Crime mapping presentation - Lloyd
- Ordinance - 1412 and 1416 Park Avenue condominium record of survey final plat – Jonathan
- Ordinance amending Section 9 – Parking, Chapter 4 – Seasonal, and Section 14 – Streets – Chapter 4 Snow Removal of the Municipal Code of Park City, Utah
- Ordinance – 819 Empire Avenue plat amendment - Ray
- Ordinance - 64 Ontario final subdivision plat – Brooks
- Proposal to rezone Lots 2 – 16, Block 5 Snyder's Addition (portion of Park Avenue) from HR-1 to HRM – public hearing
- LMC amendments – private residence club ownership – public hearing/action
- Authorization to the City Manager to execute a design contract for the skate park expansion project
- 27-28 *Downtown Projects public design workshop – Council Chambers – 5 – 7:30 p.m. - Colin*
- 30 Conservation easements - Brooks

October 2004

- 7 **No meeting**
- Kay gone**
- 14 Triple Crown Sports Festival License and service agreement - Alison
- Sign Code amendments - Ray
- 21
- 28 **No meeting**

November 2004

- 4
- 11
- 18
- 25 **Thanksgiving**
- 26 **Thanksgiving holiday**

December 2004

- 2
- 9
- 16

23

30

Pending Items:

Hoffman annexation - Kirsten

Water Service District – Grant of easement from Iron Mountain Associates

Transit Center Land Match Resolution – Gary

City-owned buildings – Pat

January – update on temporary liquor and beer licenses – Alison

Ordinance - 2409 Gilt Edge Circle – Arrowwood Subdivision plat amendment

Ordinance – final subdivision plat for the Red Cloud Subdivision

**PARK CITY WORK SESSION NOTES
SUMMIT COUNTY, UTAH
AUGUST 26, 2004**

Present: Mayor Dana Williams; Council members, Kay Calvert; Marianne Cone, Candace Erickson; Jim Hier and Joe Kernan

Tom Bakaly, City Manager; Mark Harrington, City Attorney; Patrick Putt, Planning and Zoning Administrator; Colin Hilton, Economic Development Director; Ken Fisher, Recreation Manager; Eric Nessett, Transportation Manager; Eric DeHaan, City Engineer

Rich Miller, Dave Stahle and Liza Simpson, Recreation Advisory Board Members

1. **Council questions/comments** – Kay Calvert reported on the progress of the work of the cultural task force. Candace Erickson stated that Recycle Utah will be holding its native plant sale at the Center on September 11 and composting workshops on Wednesdays and Saturdays. Jim Hier noted that the HMBA met this week. Comments on the Arts Festival were generally positive, specifically the new tent locations but not the Friday afternoon set-up. Additionally, the lower Main Street merchants indicated that the realignment of drop-off points was negatively impacted their businesses. Mr. Hier emphasized that HMBA members continue to support the Main Street location for the Festival and its future in Park City. The group is in the process of forming subcommittees on noise, outdoor dining, and outdoor display of merchandise and membership has grown to 110 members. He continued that he and staff met with four Brighton Estates property owners, and representatives of UDOT, Deer Valley, Talisker, and Wasatch County. The biggest concern expressed by the property owners related to the preference of the old parking area at the base of the connector road, because the new one is more difficult to navigate in the winter. Deer Valley and Talisker expressed a commitment to find a solution to the parking. Mr. Hier also reported on the Chamber Bureau Board meeting. At the Interagency Task Force meeting, traffic control, weed abatement and a special service district for Brighton Estates were topics of discussion. Marianne Cone commended Council member Hier on attending Planning Commission meetings, which can be very time-consuming. Mayor Williams thanked staff on its work on the bike races. With regard to the Brighton Estates issue, he felt that property owners are extremely divided making it difficult to assist in long-term solutions. He recognized the passing of Ted Larremore which is a great loss to the community. The Leadership Class is promoting Wind Power Week and Mayor Williams discussed Park City's nomination in the Take Pride in America Program, which acknowledges volunteer organizations.

2. **Review of regular meeting:**

Annexation petition – Quinns Junction – Patrick Putt stated that on August 11, 2004, the City and the National Ability Center filed an annexation petition for property

located in the Quinns Junction area. The land consists of approximately 136 acres, including open space purchased by and conveyed to the City, and NAC property, proposed to be zoned ROS. Acceptance of the petition triggers a 30 day certification period to ensure that all requirements of state code have been met. The public hearing process begins upon certification of the petition. Mr. Putt added that the petition is consistent with the City's annexation boundary and uses are considered to be consistent with the Quinns Junction principles. In response to a question from Kay Calvert, Mr. Putt explained that both the Planning Commission and City Council will hold public hearings.

Inter-local agreement – ice facility. Colin Hilton presented Council with a final draft, which reflects some minor edits. The SBSRD unanimously approved the inter-local agreement last night and look forward to moving ahead with the joint planning efforts of the ice rink. The changes to the agreement include the addition of bond language in the recitals, and identifying reserve funds for capital replacement and the expansion fund. Article 2 defines design, planning and construction responsibilities of the City and SBSRD and use of the facility now falls in this section as opposed to being an attachment. Mr. Hilton addressed Section 6.3, Disposition of Assets Upon Termination, which specifies that the City will retain ownership to the ice facility and pay SBSRD a settlement amount equal to the depreciated value of its total capital contributions. He pointed out that Year 40 is now included in the annual payment distribution schedule which bumps up the capital replacement expenditure from about \$900,000 to roughly \$1.3 million. The matrix on Page 18 clearly forecasts the contributions of SBSRD over a 40 year period, in addition to its \$2 million upfront payment. It will also be contributing \$90,000 toward the operating deficit in the first two years, \$1.85 million to the capital replacement fund, which is almost the entire amount needed during the period, and \$725,000 to the expansion fund. A great deal of effort has been directed to spell out specific elements and still allow the agreement to be modified every three years, if desired.

In response to a question from Jim Hier about the language in the disposition of assets section, Colin Hilton stated that there is no definition of *depreciation*. He relayed that Finance Manager Lori Collett suggested this method, which provides for a group of financial experts to determine the depreciated value of assets for each of the parties. Mark Harrington pointed out the challenges of writing an agreement for two public agencies which is consistent with governmental accounting principles. This is still a compromise and one of the last hinging points of the deal. He added that the parties could not get to any greater degree of specificity without running afoul of certain principles. Joe Kernan pointed out verbiage on Page 7, *construction* contributions, and Mr. Hilton agreed that it should read *funding* contributions so allocations are not limited to construction. Mr. Kernan also corrected Page 8, Subsection (5) to read grant *writing*, not *underwriting*. Mark Harrington advised that these minor changes do not require subsequent action upon agreement by legal counsel. Candace Erickson specifically thanked Colin Hilton and Bonnie Park.

Quinns Junction recreation complex design contract - Mr. Hilton explained that last spring staff issued RFPs to solicit design teams and there was an overwhelming response to the proposal. With the help of a selection committee consisting of Bonnie Park of SBSRD, Ken Fisher, Troy Dayley, Jon Weidenhamer, Grant Thomas, and Matt Twombly, 14 firms were reduced to four by applying selection criteria. On August 13, the four were interviewed and the committee selected Elliott Mahoney Architecture for the Phase 1 schematic design in the amount of \$140,000. He discussed the quality of the responses, but the EMA team demonstrates a breadth in experience in both ice and fields and is located in Park City and Salt Lake. SBSRD also endorses the recommendation. In response to a question from Marianne Cone regarding maintaining a committee, Mr. Hilton explained that upon approval of the contract, staff will organize targeted design workshops with different interest groups, i.e, skating, field groups, School District, and SBSRD. In addition, there will be two public input sessions tentatively scheduled on September 13 and 14 from 5 p.m. to 7:30 p.m., which will be well publicized. The schematic design should be completed by the third week of October when costs are projected. By mid-November, Council will be presented with information before proceeding with the next phases of design. EMA and the internal team will facilitate the public sessions.

Phase 1 Downtown Project programming and schematic design services – Mr. Hilton continued that FFKR Architects is recommended for the award of contract in the amount of \$188,186. This includes the design of the expansion of the parking structure, the town plaza, the Marsac Building renovation, and a police headquarters. A similar RFP process was conducted and 12 design team proposals were received. The selection committee included Doug Stephens, Pat Putt, Ron Ivie, Roger Evans, Eric Nessett, Jerry Gibbs, Andrew Volkman, Lloyd Evans, Jonathan Weidenhamer, and Grant Thomas. The 12 firms were reduced to four and using selection criteria, FFKR was ultimately selected. Mr. Hilton described FFKR's credentials, experience, and the strengths of the design team. There will be meetings with targeted stakeholders on concepts on September 27 and 28. A determination on whether the police component will work with the other projects will be decided at this time. There is also a thought of reactivating the downtown task force. In response to a question from Mayor Williams, Mr. Hilton indicated that about \$9,000 of the contract amount will be devoted to the design of the police facility if this element is feasible. The programming has already been identified. Mark Harrington clarified that the contracts are written with a not to exceed amount, but the firm is still paid for work performed at an hourly rate, which is designated on an attachment. There was discussion about the possibility of integrating post office property as a part of the downtown plaza element.

Bus advertising contract – Eric Nessett explained that this is a three-year contract to solicit interior advertising, and install and maintain advertising panels on the fleet. Staff is recommending a new contractor, Utah Outdoor Advertising. Before the Olympics, the City issued an RFP but there were no other responses. Recently, staff issued another RFP and was pleased to receive a proposal which met selection criteria. Mr. Nessett emphasized that the City can not discriminate against those who want to advertise but can focus on marketing local businesses. In response to a question from

Kay Calvert, Mr. Nessett explained that there was a feeling that the City could gain a better value from another provider, however there isn't a lot of interest in the marketplace, since there aren't opportunities to advertise on the exterior of buses or bus stops. Mark Harrington emphasized the difference between preferential treatment and a focused marketing plan.

RAB Annual Visioning Session – Ken Fisher reported that replacing the City Park playground is complete and expanding the skate park is underway. Installing curb and gutter at the north end has not yet been initiated. RAB is recommending that the basketball court be located west of the tennis courts where noise is not an issue and lighting already exists. There was discussion about contacting the Snow County Condominiums HOA about the proposal and the City Manager advised that this would require a CUP which would be noticed and perhaps formal action may be taken on a design contract. There was discussion about constructing restrooms as an additional project and combining it with the court work contemplated at the north end.

Mr. Fisher continued that the irrigation system is about 20 years old and has only a 50% efficiency rate after improvements over the years. New systems are about 90% efficient and an 85% rate would result in saving 1.2 million gallons per year in irrigating City Park. In response to questions from Kay Calvert, the technology of new systems was discussed. Mr. Fisher relayed that the irrigation systems for the school fields and the golf course are efficient, and staff will continue to monitor water conservation on all City properties. The Mayor suggested including the Library and Education Center campus in the irrigation upgrade as there could be realized long-term savings. There was consensus to include restrooms, and the irrigation systems for City Park and the Library in one project.

With regard to improvements to the north end of the park, like curb and gutter, Mr. Fisher explained that because Sullivan Drive was built to drain in the center, it would have to be redesigned and reconstructed. There was agreement that the initial thought was cleaning up the look of the area by installing curb and gutter. Jim Hier discussed installing just curb so that the street is defined from adjacent properties. Eric DeHaan explained that this could be done, but not easily because of the fluctuating grades of driveways which would result in significant asphalt patching. Liza Simpson interjected a better focus may be defining park and condominium parking. Rich Miller continued that adding parking behind 7-11 and other City-owned parcels is recommended, acknowledging that determining privately owned parking and public rights-of-way will take a great deal of research. He asked if this is a project Council wants staff to undertake. Joe Kernan felt that the property lines will have to be identified for landscaping purposes in any event. Jim Hier agreed that it would be beneficial to have this information. Eric DeHaan understood direction to be to analyze property ownership so that an optimal parking plan can be developed. There was discussion about the limitations of the budget. Rich Miller emphasized that this is a visioning session intended to forecast a long range plan and Dave Stahle expressed that he views these proposals as one-year projects. Jim Hier believed that the information on the property boundaries will affect the scope of the projects. There was agreement that RAB hold a

meeting with the affected property owners, after obtaining hard property line information. Tom Bakaly pointed out that many of these items are budgeted and construction could occur next spring, like irrigation and restrooms. He added that RAB does a good job of involving the public. Mark Harrington emphasized that Sullivan *Drive* is an internal driveway to the City Park and is not a dedicated or platted right-of-way. As a result, there will be references to park boundary lines and not necessarily road boundaries.

Ken Fisher explained that the recreation building was constructed in the mid-1980s and is not very functional. RAB suggests forming an internal task force to analyze this asset and proposed options which could range from moderate improvements to tearing it down and perhaps using that funding for higher priorities in the park. However, he recognized a demonstrated need for community meeting space and a facility for summer day camp. Jim Hier agreed with comments made by Liza Simpson that the *park-like* projects like landscaping and irrigation work should be addressed first and the building element later.

Prepared by Janet M. Scott, City Recorder

**PARK CITY COUNCIL MEETING
SUMMIT COUNTY, UTAH
AUGUST 26, 2004**

I ROLL CALL

Mayor Dana Williams called the regular meeting of the City Council to order at approximately 6 p.m. at the Marsac Municipal Building on Thursday, August 26, 2004. Members in attendance were Dana Williams, Kay Calvert, Marianne Cone, Candace Erickson, Jim Hier, and Joe Kernan. Staff present was Tom Bakaly, City Manager; Mark Harrington, City Attorney; Jonathan Weidenhamer, Planner; and Colin Hilton, Economic Development Director.

II COMMUNICATIONS FROM COUNCIL AND STAFF

1. Announcements from Mayor – Dana Williams congratulated City Attorney Mark Harrington for his ten year anniversary with the City. He relayed that he sent his daughter off to college in Washington D C and the turn-out at their home to wish her well was overwhelming. He stated that what this community does for its children and how we support each other makes him proud to be Mayor.

2. Resolution extending the Mayor's and City Council's appreciation of the patriotic commitment of Captain Jason M. Dougherty honored to serve our country – The Mayor welcomed the Dougherty Family, read the resolution and presented it to Kris Dougherty. She indicated that her husband will be returning from Falujah in September.

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

None.

**IV WORK SESSION NOTES AND MINUTES OF MEETINGS OF AUGUST 5, 2004
AND AUGUST 12, 2004**

Kay Calvert, "I move to approve the minutes of August 5 and August 12, 2004". Marianne Cone seconded. Motion unanimously carried.

V CONSENT AGENDA PUBLIC HEARINGS

1. Proposal to rezone Lots 2 – 16, Block 5 Snyder's Addition (portion of Park Avenue) from HR-1 to HRM (motion to continue to September 23, 2004) – It should be noted that this was originally posted on the agenda as a continuance to September 9, 2004. The Mayor requested a motion to continue to September 23. Jim Hier, "I so move". Kay Calvert seconded. Motion unanimously carried.

2. Ordinance approving a final subdivision plat for the Red Cloud Subdivision (motion to continue to September 23, 2004) – The Mayor requested a motion.

Candace Erickson, "I so move". Marianne Cone seconded. Motion carried unanimously.

3. Ordinance amending the Arrowwood Condominium Record of Survey plat, located at 2409 Gilt Edge Circle, Park City, Utah – Jonathan Weidenhamer explained that this is a request to convert about 400 square feet of limited common area into private area. The Planning Commission found that this application meets all state statutes and LMC requirements for condominium plat amendments. There was concern expressed at the Planning Commission public hearing that the additional private space would adversely impact the neighborhood. Subsequently, the following Finding No. 11 and Condition No. 3 are proposed to be added to address concerns expressed by Queen Esther.

11. Three bedrooms currently exist in 2409 Gilt Edge Circle – Unit 2 Arrowwood Condominiums

3. The total number of bedrooms in 2409 Gilt Edge Circle – Unit 2 Arrowwood Condominiums will be limited to four (4).

The Mayor opened the public hearing:

Keith Golan, 2434 Gilt Edge Circle, explained that this matter also relates to a private lawsuit. He stated that he and the applicant agreed today that this would be the last expansion of Arrowwood #2 and rentals are prohibited on the property for three years. He has no objections to the plat amendment with these two stipulations.

With no further comments or questions, the public hearing was closed.

4. Ordinance amending Lots 15 and 16, Block 13 of the Park City Survey plat, located at 160 Park Avenue, Park City, Utah – Jonathan Weidenhamer clarified that the application is to combine two lots into one lot of record consisting of about 2,500 square feet. There was no negative public input at the Planning Commission hearing and a positive recommendation is rendered. With no comments or questions from the Council or the audience, the Mayor closed the public hearing.

VI CONSENT AGENDA

Joe Kernan, "I move we approve Consent Agenda Items 1 through 5". Candace Erickson seconded. Motion unanimously carried.

1. Resolution extending the Mayor's and City Council's appreciation of the patriotic commitment of Captain Jason M. Dougherty honored to serve our country – See resolution and Communications from Council and Staff.

2. Ordinance amending the Arrowwood Condominium Record of Survey plat, located at 2409 Gilt Edge Circle, Park City, Utah – See staff report and public hearing.

3. Ordinance amending Lots 15 and 16, Block 13 of the Park City Survey plat, located at 160 Park Avenue, Park City, Utah – See staff report and public hearing.

4. Authorize staff to execute a three-year professional services agreement with Utah Outdoor Advertising, in a form approved by City Attorney, for sales and placement services for the interior advertising space on the Park City Transit bus fleet – See staff report and work session notes.

5. Acceptance of annexation petition for the Quinn's Junction Recreation Complex and National Ability Center – See staff report and work session notes.

VII OLD BUSINESS

Resolution adopting an inter-local agreement with the Snyderville Basin Special Recreation District for a regional ice facility – See staff report and work session notes. The Mayor invited comments or questions from the Council or the audience. There were no comments. Jim Hier, “I move to approve the Resolution adopting the inter-local agreement with the Snyderville Basin Special Recreation District for a regional ice facility as presented to us (Council) under separate cover with the adjustments noted in work session”. Marianne Cone seconded. Motion unanimously carried.

VIII NEW BUSINESS

1. Authorize staff to enter into a service provider contract with Elliott Mahoney Architecture, in a form approved by the City Attorney, for Phase 1 Quinn's Junction Recreation Complex programming and schematic design services in an amount not to exceed \$140,000 – See staff report and work session notes. Mark Harrington explained that the term *approved as to form* allows legal counsel to make minor changes. Additionally, he clarified that the award of the subsequent phases will not trigger another RFP process, but contracts will still require Council authorization. Kay Calvert, “I move to authorize staff to enter into a service provider contract with Elliott Mahoney Architecture, in a form approved by the City Attorney, for Phase 1 Quinn's Junction Recreation Complex programming and schematic design services in an amount not to exceed \$140,000”. Joe Kernan seconded. Motion unanimously carried.

2. Authorize staff to enter into a service provider contract with FFKR Architects, in a form approved by the City Attorney, for Phase 1 Downtown Projects programming and schematic design services in an amount not to exceed \$188,786 – Candace Erickson disclosed that as a part of this project, FFKR has chosen a subcontractor in a partnership which is Stantec, for which her husband currently works. He is not a part of this design group. Joe Kernan, “I move that we authorize staff to enter into this contract not to exceed \$188,786”. Jim Hier seconded. Motion unanimously carried.

IX ADJOURNMENT

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

MEMORANDUM OF CLOSED SESSION

The City Council met in closed session at approximately p.m. Members in attendance were Mayor Dana Williams, Kay Calvert, Marianne Cone, Candace Erickson, Jim Hier, and Joe Kernan. Staff present was Tom Bakaly, City Manager; and Mark Harrington, City Attorney. Candace Erickson, "I move to close the meeting to discuss property". Kay Calvert seconded. Motion carried unanimously.

The meeting opened at approximately 3:30 p.m.

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

MEMORANDUM

TO: Mayor, City Council & City Manager
FROM: Jerry W. Gibbs
Date: September 9, 2004
Subject: County Solid Waste Discussion

The Summit County Commission formed a citizens group with representation from other cities and areas within the county. The purpose was to solicit input from citizens for possible directions on funding and the future of solid waste programs for collection and disposal. Joe Kernan was selected as the representative from Park City with Jerry Gibbs as staff support. Other members are from Coalville, Henefer, Kamas, Oakley, Snyderville Basin and Recycle Utah.

Existing Conditions

- The Solid Waste Program is budgeted at \$1,746,000. The General Fund contributes 80% and the Henefer and Three Mile Landfill contribute 15% & 5% of the additional revenue respectively. Residents do not currently pay a fee for weekly garbage disposal.
- Three Mile Canyon Landfill has one active cell that is used for residential/commercial solid waste with a remaining life expectancy of 10-12 years.
- Three Mile Canyon Landfill encompasses 115 acres and can be expanded to accommodate another landfill cell.
- Henefer Landfill disposes of all of construction debris for the county.
- BFI's contract has hauling rights to residential/commercial waste. Their contract expires December 2006.
- The cost per household for residential collection under the BFI contract is \$5.93 per month.
- Curbside recycling has expanded to Kamas and Oakley and now serves 3200 households countywide. The average collection for all curbside recycling is 80+ tons/month).
- 179 tons of material was recycled in December 2003 at Recycle Utah Center.
- 70% of the fee for a second residential can goes to County's recycling program.
- 99.9% of material dropped at Recycle Utah is recycled.
- Recycle Utah has experienced a 20% increase in volume since the expanded residential curbside program started; it was assumed that the amount received would cause a net decrease.

The committee is now in the position to finalize recommendations based on the information and discussions taken place over the last five months. They are still wrestling with a few issues. Issues all have agreed upon are:

- Expand the Three Mile Canyon Landfill at a cost of \$3 to \$4.5 million.
- Make a policy decision on new solid waste service well prior to December 2006.
- Keep landfill operations in-house.

- Support staff request for additional staffing at landfills

Outstanding issues are:

- Funding of the landfill expansion. (GF bond or enterprise/revenue bond?)
- Should solid waste be an enterprise fund? (If yes, what about the related tax implication.)
- Recycling incentives for residential
- Open up the competition on commercial solid waste.
- Funding sources for recycling program (hazardous, electronics, etc.) and coordination with Recycle Utah
- Should the county get into trash collection or continuing using a third party contractor?

Councilman Kernan and staff would appreciate any input, observations, or concerns on the outstanding issues to better develop recommendation from the committee to the County Commission.

CITY COUNCIL Staff Report

Subject: 52 King Road
Date: September 9, 2004
Type of Item: Administrative; Plat Amendment



PLANNING DEPARTMENT

RECOMMENDATION: Staff recommends that the City Council review the proposed plat amendment, conduct a public hearing and consider approving the application according to the findings of fact, conclusions of law and conditions of approval found in the attached ordinance.

DESCRIPTION

Name:	52 King Road
Project Planner:	Ray Milliner
Representative:	David White
Owner of Property:	David and Alice Wright
Location:	52 King Road
Zone:	Historic Residential (HR-1)

BACKGROUND

The applicant is requesting a plat amendment to combine all of Lot 28 and portions of Lots 29, 30 and 31 of Block 32 of the Park City Survey into one lot of record for the purpose of demolishing an existing home and building a new home on the property. An adjacent property owner separately owns those portions of lots 29, 30 and 31 of Block 32 that are not included in this amendment. If approved, the plat amendment will create a lot of approximately 5,760 square feet. The property is located on the corner of Upper Norfolk Avenue and King Road.

On August 17, 1998, the Historic District Commission reviewed an application for a Determination of Historical Significance submitted by then owner Mary Putman-Gates. The Commission applied the LMC Standards of Review and found that the dwelling was not historically significant. The applicant is now seeking a demolition permit to remove the existing non-historic structure, in preparation for a new single family home. On August 24, 2004 this application was reviewed by the Planning Commission, who forwarded a positive recommendation to the City Council.

ANALYSIS

The property is located in the HR-1 zone. The proposed plat amendment will create a single lot of approximately 5,760 square feet. Lots of this size are limited to a building footprint of 2,073 square feet, with setbacks of 10 feet in the front and rear and 10 feet for a total of 24 feet on the sides. The property has frontage on both Upper Norfolk Avenue as well as King Road, and as a result will have two front yards, both with 10-foot setbacks. There is a significant slope (greater than 30%) to the lot, which will necessitate, pursuant to LMC Section 15-2.2-6, Planning Commission review and approval of a Steep Slope CUP.

Review and approval of all property access points will be done by the City Engineer, compliance with all Land Management Code related issues including height, setbacks, building footprint, and design guideline compliance will be conducted by the Planning Department, all prior to the issue of a building permit.

NOTICE

Notice of this hearing was sent to property owners within 300' on August 11, 2004. Staff has received no comments from the public at the time of this writing.

DEPARTMENT REVIEW

The Planning, Engineering and Building Departments have reviewed this request. The City Attorney and City Engineer will review the plat for form and compliance with the LMC and State Law prior to recording. The request was discussed at a Staff Review Meeting on August 3, 2004, where representatives from local utilities and City Staff were in attendance. No additional issues were raised.

RECOMMENDATION

Staff recommends that the City Council review the proposed plat amendment, conduct a public hearing and consider approving the application according to the findings of fact, conclusions of law and conditions of approval found in the attached ordinance.

EXHIBITS

Exhibit A – Proposed Ordinance

Exhibit B – Plat Amendment

Ordinance No. 04-

AN ORDINANCE TO COMBINE ALL OF LOT 28 AND PORTIONS OF LOTS 29, 30 AND 31 OF BLOCK 32 OF THE PARK CITY SURVEY INTO ONE LOT OF RECORD, LOCATED AT 52 KING ROAD PARK CITY, UTAH

WHEREAS, the owner of the property known as 52 King Road, has petitioned the City Council for approval of a plat amendment; and

WHEREAS, proper notice was sent and the property posted according to requirements of the Land Management Code and State Law; and

WHEREAS, on August 25, 2004 the Planning Commission held a public hearing to receive public input on the proposed plat amendment and forwarded a positive recommendation of approval to the City Council; and

WHEREAS, the proposed plat amendment allows the property owner to remove the lot lines between five lots of record creating one lot of record; and

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

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

SECTION 1. FINDINGS OF FACT. The above recitals are hereby incorporated as findings of fact. The following are also adopted by City Council as findings of fact:

1. The property is located in the Historic Residential (HR-1) zone.
2. The HR-1 zone is a residential zone characterized by a mix of larger contemporary residences and smaller historic homes.
3. The amendment will combine all of Lot 28 and portions of Lots 29, 30 and 31 of Block 32 of the Park City Survey into one lot of record.
4. On August 17, 1998, the Historic District Commission found that the existing single-family home on the property is not historically significant.
5. Access to the property is available from either Upper Norfolk Avenue or King Road.
6. The proposed lot size is 5,760 square feet.
7. There is an existing non-historically significant home on the property.
8. No remnant lots will be created as a result of this application.

SECTION 2. CONCLUSIONS OF LAW. The City Council hereby adopts the following Conclusions of Law:

1. There is good cause for this plat amendment.
2. The plat amendment is consistent with the Park City Land Management Code and applicable State law.
3. Neither the public nor any person will be materially injured by the proposed plat amendment.
4. As conditioned the plat amendment is consistent with the Park City General Plan

SECTION 3. CONDITIONS OF APPROVAL. The City Council hereby adopts the following Conditions of Approval:

1. The City Attorney and City Engineer review and approval the final form and content of the plat for compliance with the Land Management Code and conditions of approval is a condition precedent to recording the plat.
2. Prior to the receipt of a building permit, the applicant shall submit an application for review for compliance with the Historic District Design Guidelines.
3. Prior to the receipt of a building permit, the applicant shall submit a Steep Slope CUP application for review by the Planning Commission.
4. No building permits shall be issued prior to the final recordation of the plat at the County Recorder's Office.
5. The applicant will record the plat amendment at the County within one year from the date of City Council approval. If recordation has not occurred within one year's time, this approval and the plat will be void.

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

CITY COUNCIL Staff Report

Subject: 819 Empire Avenue
Date: September 9, 2004
Type of Item: Administrative; Plat Amendment



PLANNING DEPARTMENT

Summary Recommendation: Staff recommends that the City Council review the proposed plat amendment, conduct a public hearing and consider approving the application according to the findings of fact, conclusions of law and conditions of approval found in the attached ordinance.

TOPIC

Owners:	Magnus Floden
Location:	819 Empire Avenue
Zoning:	HR-1
Adjacent Land Uses:	Historic Residential
Project Planner:	Ray Milliner
Date of Application:	June 30, 2004

APPLICATION REQUEST

The proposed application is to combine Lots 1-3 in Block 30 of the Snyder's Addition to the Park City Survey into one 3,884 square foot lot. The newly created lot is located north of the proposed Creole Gulch/Treasure Hill development, and is south of platted Ninth Street. The applicant also owns Lots 4 and 11, but has elected not to combine the two lots as part of this application request since they are lots of record and can be developed per the HR-1 development standards and Conditional Use Permit Steep Slope standards. On August 25, 2004 the Planning Commission reviewed the proposed plat amendment and forwarded a positive recommendation to the City Council.

ANALYSIS

The property is zoned HR-1. The proposed plat amendment creates a 3,884 square foot lot and would have access off Empire Avenue. The HR-1 minimum lot area is 1,875 square feet for a single-family dwelling and 3,750 square feet for a duplex. The minimum lot width for construction is twenty-five (25) feet, measured fifteen (15') feet back from the front lot line. The proposed plat amendment complies with the Land Management Code, Section 15-2.2-3 (A) Lot Size. Lots 1-3 are unusually configured, restricted by the curve of Empire Avenue and Lowell Avenue. Empire Avenue encroaches onto the existing lots. Staff is recommending that the applicant dedicate the section of the property under Empire Avenue to the City pursuant to a review by the Legal and Engineering Departments, and that the setback be measured from the newly created property line. Staff further recommends that as a condition of approval, the building pad be defined by a 10-foot front and rear yard setback and provide a minimum of 5 feet on the side yards.

Use

The applicant's future single-family use is permitted in the HR-1 District pursuant to the LMC Section 15-2.2-2 (A) Allowed Uses. The applicant is proposing to combine Lots 1-3 into one lot to allow for the future construction of a single-family dwelling. If the proposed construction is built within a slope greater than 30%, the applicant will need to file a conditional use permit application for a steep slope and have the Planning Commission review and approve such request. The development pattern in this area consists of single-family dwellings.

Density

As currently platted, the applicant may be able to pursue the construction of two single-family dwellings on Lots 2 and 3, but becomes problematic considering that a significant portion encroaches onto Empire Avenue. Staff is recommending that the applicant dedicate the section of the lots that encroach into Empire Avenue, as part of the review process by the Legal and Engineering departments prior to recordation of the Plat. The applicant is requesting that all three lots (1-3) be combined into a single lot for one single-family dwelling, thus reducing the density to one single-family dwelling. The proposed amendment will not increase the density of what the zone allows.

DEPARTMENT REVIEW

The Planning, Engineering, Building, and Legal Departments have reviewed this request. The City Attorney and City Engineer will review the plat before the plat is recorded.

RECOMMENDATION

Staff recommends that the City Council review the proposed plat amendment, conduct a public hearing and consider approving the application according to the findings of fact, conclusions of law and conditions of approval found in the attached ordinance.

EXHIBITS

Exhibit A - Proposed Ordinance

Exhibit B – Proposed Plat Amendment

Ordinance No. 04-

AN ORDINANCE TO COMBINE LOTS 1-3 IN BLOCK 30 OF THE SNYDER'S ADDITION TO THE PARK CITY SURVEY INTO ONE LOT OF RECORD, LOCATED AT 819 EMPIRE AVENUE PARK CITY, UTAH

WHEREAS, the owner of the property known as 819 Empire Avenue, has petitioned the City Council for approval of a plat amendment; and

WHEREAS, proper notice was sent and the property posted according to requirements of the Land Management Code and State Law; and

WHEREAS, on August 25, 2004 the Planning Commission held a public hearing to receive public input on the proposed plat amendment and forwarded a positive recommendation of approval to the City Council; and

WHEREAS, the proposed plat amendment allows the property owner to remove the lot lines between three lots of record creating one lot of record; and

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

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

SECTION 1. FINDINGS OF FACT. The above recitals are hereby incorporated as findings of fact. The following are also adopted by City Council as findings of fact:

1. The property is located at 819 Empire Avenue and is in the Historic Residential (HR-1) District.
2. The applicant proposes to combine Lots 1, 2 and 3 of the Snyder's Addition to the Park City Survey into one lot of record.
3. The newly created lot would be 3,884 square feet in size.
4. Empire Avenue encroaches onto Lots 1-3.
5. The applicant is proposing to construct one single-family dwelling.
6. The minimum lot area is 1,875 square feet for a single-family dwelling and 3,750 square feet for a duplex.
7. The plat amendment will not increase density on the lot.
8. No remnant lot is created.
9. Any development that encroaches onto 30% slope shall require a steep slope conditional use permit.

SECTION 2. CONCLUSIONS OF LAW. The City Council hereby adopts the following Conclusions of Law:

1. There is good cause for this plat amendment.
2. The amended plat is consistent with the Park City Land Management Code and applicable State law regarding subdivision plats.
3. Neither the public nor any person will be materially injured by the proposed amended plat.

SECTION 3. CONDITIONS OF APPROVAL. The City Council hereby adopts the following Conditions of Approval:

1. The City Attorney and City Engineer review and approve the final form and content of the Plat Amendment for compliance with the Land Management Code and conditions of approval prior to recordation.
2. The City Attorney and City Engineer shall review and approve the dedication of the portion of the property under Empire Avenue to the City prior to the issue of a building permit.
3. The applicant shall record the plat amendment at the County within one year from the date of City Council approval. If recordation has not occurred within one year's time, this approval and the plat will be void.
4. All standard Project Conditions shall apply and Land Management Codes shall apply.
5. A Construction Management Plan (CMP) shall be submitted to and approved by the Community Development Department prior to the issuance of any building permits. The plan shall address staging, material storage, construction time lines, special signs, parking, fencing, and any other construction related details to the satisfaction of the Community Development Department.
6. Prior to building plans submittal, the applicant shall obtain approval for a Historic Design Review/Conditional Use Permit for steep slope application, if required.
7. The applicant shall place a Plat note specifying the front and rear yard setback have a 10-foot setback and the side yards have 5 feet.
8. Dedication of right-of-way for Empire Avenue in accordance with the adopted master streets plan is required.

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

PASSED AND ADOPTED this 9th day of September 2004.

City Council
Staff Report



Author: Kirsten Whetstone
Subject: Land Management Code Amendments
Work session
Date: September 9, 2004
Type of Item: Legislative

Planning

Summary Recommendations:

Discuss proposed revisions to the Land Management Code and take public comment.
No action is requested at this meeting.

Description:

Topic:

Project Name: LMC Amendments
Applicant: Planning Department
Proposal: Revisions to the Land Management Code
Project Planner: Planning Staff

Background

The Planning Department is preparing amendments to the Land Management Code (LMC) to address the definitions of fractional ownership of units, ie. Timeshare units and private residence club units, and considering appropriate zoning districts for these different kinds of fractional ownership units. Currently the LMC does not differentiate between different types of fractional ownership units and projects. The LMC considers any fractional ownership to be a timeshare unit.

The purpose of this discussion is to better define the types of fractional ownership, specifically "private residence club" ownership, sometimes referred to a "fractional fee club" ownership, and to identify zoning districts where these fractional ownership units and projects would be appropriate, as either allowed or conditional uses. The proposed amendments do not permit traditional timeshare units or projects in zoning districts where they are not currently allowed as a conditional use.

On August 11, 2004 the Planning Commission discussed the amendments in work session, held a public hearing, and voted to forward a positive recommendation to the City Council (see attached minutes).

Mr. Wells, from Deer Valley spoke in favor of the amendments. He stated that "the primary motivation is to acknowledge the emergence of this type of land ownership and its popularity and to be able to achieve it on a conditional use basis within the Deer Valley Master Plan."

Mr. Pat Sweeney also spoke in favor of the amendments and asked the Council to consider adding the Estate MPD zone to this consideration, stating “that it is a good opportunity to provide active bed base for Main Street with appropriate connection... and this would provide a vehicle for ownership of the land that makes it economically feasible to create an active bed base.” The Treasure Hill CUP, currently under review by the Planning Commission, is in the E-MPD zoning district.

The Planning Commission requested that rather than requiring a 24-hour front desk there could be a requirement for 24- reservation and property management. The Commission included in the motion a request for the staff to provide guidance to the City Council as to whether the private residence club use should be reviewed as a Conditional Use or a Master Planned Development.

Analysis

Staff is presenting redlines for the following LMC amendments for City Council discussion and public input:

- 1) Additions to the Definition Section (Section 15-15-1) to include revised definitions of Timeshare Unit, Timeshare Project, and Timeshare Estate;
- 2) Additions to the Definition Section to include definitions for Private Residence Club, Private Residence Club Project, and Private Residence Club Conversion; and
- 3) Revisions to the Residential Development (RD), Residential Development Medium Density (RDM), Resort Commercial (RC), General Commercial (GC), Limited Industrial (LI), Resort Commercial Overlay (RCO), Historic Commercial Business (HCB), and Historic Recreation Commercial (HRC), to include Private Residence Club Units and Projects as uses in these zones subject to a Conditional Use Permit.

Currently timeshare units, projects, and conversions are conditional uses in the above listed zoning districts, with the exception of the RD, RDM, RCO, and LI, where they are prohibited. Multi-unit dwellings, hotels and condominium projects are conditional uses in all of the districts recommended for Private Residence Club units and projects. A typical timeshare project in Park City is the Marriott Mountain Resort or Marriott Summit Watch Resort. An example of a Private Residence Club is the Deer Valley Club at Silver Lake, which was built before the LMC Timeshare definition became an all-encompassing definition for any type of fractional ownership use.

LMC DEFINITION REVISIONS

Staff proposes the following revisions to the Timeshare Unit, Timeshare Use, and Timeshare Estate (changes shaded or strike out):

Timeshare Unit. That unit of Property and time where possession and Use are allowed under a contract from seller to purchaser, excluding Private Residence Club units.

Timeshare Use. Any contractual right of exclusive occupancy created by a Timeshare Instrument which does not fall within the definition of a "Timeshare Estate", including without limitation, a vacation license, ~~club membership~~, general partnership interest, limited partnership interest, vacation bond, or beneficial interest in a trust, and the documents by which the right of exclusive occupancy is transferred, excluding Private Residence Club use.

Timeshare Estate. ~~An ownership or leasehold estate in Property devoted to a timeshare fee, including without limitation, tenants in common, time span ownership, interval ownership, and cooperative timeshare ownership, created by a Timeshare Instrument and the documents by which it is granted~~ A Timeshare Estate shall be defined in accordance with Utah Code Section 57-19-2, as amended., excluding Private Residence Club ownership.

Staff is proposing the addition of the following definitions.

Private Residence Club. Residential use real estate, in which ownership or use of a condominium Dwelling Unit or group of Dwelling Units is shared by not less than four (4) or more than twelve (12) owners or members per Dwelling Unit and whose use is established by a reservation system and is managed on site with a front desk operating 24 hours a day, seven days a week providing reservation and registration capabilities. Membership in a Private Residence Club may be evidenced by: (i) a deeded interest in real property; (ii) an interest or membership in a partnership, limited partnership, limited liability company, non-profit corporation or other business entity; (iii) a non-equity membership in a non-profit corporation, non-incorporated association or other entity; (iv) beneficial interest in a trust; or (iv) other arrangement providing for such use and occupancy rights.

Private Residence Club Project. Any condominium Property that is subject to a Private Residence Club deed, interest, trust, or other arrangement for providing for use and ownership as a Private Residence Club and contains at least 4 units.

Private Residence Club Conversion. The conversion of Condominium Units and associated Common areas within an existing Condominium project to the exclusive use as a Private Residence Club.

LMC USE TABLE REVISIONS

Staff proposes that a Private Residence Club use and associated uses be considered an Administrative Conditional Use in a Condominium Project that has already obtained a Conditional Use Permit or is in and of itself a Master Planned Development during the project entitlement and design review approval process.

Any Residence Club Conversion shall be subject to an Administrative Conditional Use Permit, including noticing to affected property owners and review for compliance with LMC Section 15-1-10- Conditional Use Permit review.

DISCUSSION REQUESTED

Staff has reviewed the above revisions to the Land Management Code and requests the City Council discuss whether these revisions 1) are consistent with the Park City General Plan, 2) reflect the goals and objectives of the current City Council, 3) are consistent with quality world class development, 4) are not harmful to the health, safety, and welfare of the residents of Park City, and 5) are consistent with the purpose statements of the proposed zoning districts and overall purposes of the Land Management Code.

The Council should consider whether Private Residence Club ownership, as a use, will create any additional impacts on the surrounding property owners in terms of intensity of use, increased traffic, off-street parking, utilities, density issues, etc. and whether there are good reasons to allow them as an Administrative Conditional Use in the proposed districts. During the CUP review process these land use issues, including ownership issues, are addressed.

Planning Staff does not believe that the Master Planned Development review process is the appropriate process for analyzing a private residence club proposal, which is essentially a form of ownership issue. The MPD process is established to create a public review process for design flexibility. The CUP process is primarily set up to measure and offset neighborhood impacts resulting from specific land uses. Staff finds the CUP process is a more appropriate review process for private residence clubs.

Multi-unit dwelling projects (of 4 units and greater) require a Conditional Use Permit in all of the zoning districts proposed for Private Residence Clubs, with the exception of the HCB where multi-unit dwellings are an Allowed Use. In addition, nightly rental of units is an Allowed Use in all of the zoning districts proposed for Private Residence Club use.

Staff also requests the Council review a possible alternative to the above amendments to revise the use tables for the RD, RDM, RCO, and LI to include Timeshare Use and Projects in these zoning districts where Timeshare Use and Conversions are not currently allowed. In this alternative, the definition of Timeshare would remain as it is now, as it currently includes club type ownership. In this scenario, standard timeshare projects, such as the Marriott Summit Watch, would then be allowed as a CUP in the RD, RDM, RCO, and LI. Standard timeshare projects tend to be a more intensive land use and it is primarily for this reason that staff is not supportive of this alternative.

Following discussion, staff requests the Council consider any public comment and then continue the discussion until September 23, 2004, the date noticed for the official public hearing on these amendments.

Department Review

These amendments have been reviewed by the Planning, Building, Engineering, Legal, and Finance Departments. Comments from these departments are reflected in the final staff report.

Recommendation:

Staff recommends the Council discuss these proposed amendments to the Land Management Code, consider any public comment, and continue the item until the September 23, 2004 meeting for a public hearing. The Council should discuss whether the proposed amendments 1) are consistent with the Park City General Plan, 2) reflect the goals and objectives of the current City Council, 3) are consistent with quality world class development, 4) are not harmful to the health, safety, and welfare of the residents of Park City, and 5) are consistent with the purpose statements of the proposed zoning districts and overall purposes of the Land Management Code.

Exhibits (Attached under separate cover)

- A. Redlines to LMC Section 15-15-1 Defined Terms
- B. Redlines to RD Zoning District Section 15- 2.13-2
- C. Redlines to RDM Zoning District Section 15- 2.14-2
- D. Redlines to RC Zoning District Section 15- 2.16-2
- E. Redlines to GC Zoning District Section 15-2.18-2
- F. Redlines to LI Zoning District Section 15-2.19-2
- G. Redlines to RCO Zoning District Section 15-2.17-2
- H. Redlines to HCB Zoning District Section 15- 2.6-2
- I. Redlines to HRC Zoning District Section 15- 2.5-2
- J. Minutes of PC work session and regular meeting of August 11, 2004

6. Land Management Code Amendments regarding definitions and zoning districts for timeshare, fractional ownership, and club ownership units and projects. Amendments to Sections 15-15-1 (Definitions), 15-2.5 (HRC Zoning District), 15-2.6 (HCB District), 15-2.13 (RD District), 15-2.14 (RDM District), 15-2.15 (RM District), 15-2.16 (RC District), 15-2.17 (RCO District), 15-2.18 (GC District), 15-2.19 (LI District)

The Planning Commission started to discuss this item during work session and continued the discussion to the regular session.

Director Putt reported that a public hearing is scheduled for possible amendments to the Land Management Code. The amendments deal with three primary items:

- o Additions to the definitions sections to include revised definitions for timeshare unit, timeshare project, and timeshare estate;
- o New inclusions and additions to the definitions section to include definitions for a private residence club, private residence club project, and private residence club conversion;
- o The additional conditional use permit inclusions in the LMC in the RD, RDM, RC, GC, LI, RCO, HCB, and HRC zones to include private residence club and private residence club projects into these zones as a conditional use permit.

The Staff recommended that the Planning Commission conduct a public hearing and consider public input. A red-line, strike-out amendment to the LMC had been prepared in the event the Planning Commission chooses to forward a positive recommendation to the City Council this evening.

Chair Barth opened the public hearing.

Pat Sweeney, representing his brothers and the Sweeney Land Company, asked the Planning Commission, Staff, and City Council to consider adding the Estate MPD zone to this consideration. Based on his knowledge of what it takes to create active bed base, quarter shares, twelve shares, and time shares create the most active bed base and provide a vehicle for ownership of the land that makes it economically feasible. He believed the two Marriott projects in Park City had done a good job with that. He referred to a project he is proposing on the hillside that has a great opportunity to provide active bed base for Main Street with appropriate connections and asked that the Planning Commission include that opportunity in this consideration. He stated that active management is another advantage of this type of project which is a benefit to Park City by dealing with good managers when it comes to City issues and interface.

Bob Wells, representing Deer Valley, stated that Deer Valley participated with Staff in developing this recommendation. The residence club has emerged as a big competitor in the market place, and in their particular zone, Deer Valley RD, having the residence club included under the timeshare definition prohibits this use. Deer Valley would like to have the use from a competitive standpoint, particularly with respect to resorts in Colorado where this use has been successful. Mr. Wells stated that a number of

projects have gone through the Planning Commission with the inference that fractional use would be present or that the residence club concept would be present. That includes the North Silver Lake Lodge project and the Chateau project. The hotel at Deer Crest is different because of the split zone situation. The Roosevelt Gap side of Deer Crest is the RC zone which would accommodate this type of use. The zoning on the Snow Park side is RD, which creates a conflict. Mr. Wells stated that the primary motivation is to acknowledge the emergence of this type of land ownership and its popularity and to be able to achieve it on a conditional use basis within their project.

Chair Barth closed the public hearing.

Commissioner Erickson stated that he generally supports the residence club concept in the definitions included in the text and that he supports expanding it into the proposed zones. He was interested in hearing whether they would need to be conditional uses or part of an MPD. He was not interested in expanding fractional ownership timeshares into those zones and would consider additional restrictions on fractional ownership until the parking requirements are revised to adequately reflect the true parking use. He verified with Director Putt that the amendments would only add definitions for residence clubs and not expand timeshares. Director Putt explained that expanding the zones in which a private residence club could be permitted is also included. This action would not allow the expansion of timeshares. Commissioner Erickson stated that he was not prepared to include the Estate MPD zone as requested by Mr. Sweeney without further guidance from the Staff.

Director Putt stated that the proposed draft currently includes the language, Awhose use is established by a reservation system and is managed on site with a front desk operating 24 hours a day, seven days a week providing reservation and registration capabilities.@ If the language were modified to say, Awhose use is established by a reservation system and 24 hour a day management,@ it could allow a 24-hour-a-day front desk, or it could be operated by a 24-hour-a-day management that could potentially be off site. Commissioner Erickson stated that he would be comfortable with that suggestion.

Chair Barth referred to language stating that the private residence club allows a minimum of four members and up to 12 owners per unit and asked if a unit is considered property. Director Putt replied that it is.

MOTION: Commissioner Erickson moved to forward a POSITIVE recommendation to the City Council for the revisions to the Land Management Code relative to the residence club definitions as presented in the staff report and the expansion of the residence club uses to the RD, RDM, RCO, and LI zones as presented in the staff report, with the revision made by Planning Staff that it is a 24-hour management and not 24-hour on-site activities.

Commissioner Erickson asked if the Commissioners wanted to leave the requirement as a CUP or change it to an MPD. Chair Barth and Commissioner O'Hara indicated that they were leaning toward an MPD. Commissioner Erickson suggested leaving the

motion as stated with the request that the Staff provide guidance to the City Council with respect to these uses requiring MPD. This will allow the Staff time to analyze the situation and have the City Council make the decision.

Commissioner Powers seconded the motion.

VOTE: The motion passed unanimously.

Land Management Code Amendments regarding definitions and zoning districts for timeshare, fractional ownership, and club ownership units and projects. Amendments to Sections 15-15-1 (Definitions), 15-2.5 (HRC Zoning District), 15-2.6 (HCB District), 15-2.13 (RD District), 15-2.14 (RDM District), 15-2.15 (RM District), 15-2.16 (RC District), 15-2.17 (RCO District), 15-2.18 (GC District), 15-2.19 (LI District)

Planning Director Patrick Putt stated that the Planning Commission will hold a public hearing and discuss proposed amendments to the Land Management Code as it pertains to various forms of interval ownership. They will look at definition changes, additional definitions, and potentially at additional zoning district changes where some of the uses may be inserted. He commented that over the last several years, the Staff has frequently been approached by existing condominium associations and developers of potential projects with questions about the development of "private residence clubs". Currently, the State Code defines ownership in one of two manners--whole ownership and fractional or interval ownership. Fractional or interval ownership is defined in the State Code to include timeshares and club ownership. In an attempt to address the reoccurring questions, the Staff proposes amendments to further clarify and define the subtle differences between timeshare ownership and private residency clubs. In the event the Planning Commission moves in that direction, a second issue would be in what zoning districts and under what conditions these would be allowed. Currently, the Land Management Code allows timeshares, which include traditional timeshares and club ownership, as a conditional use permit in the RC, GC, HCB, and HRC zones. The Staff proposes a series of definitions that further clarify or refine the definition of a timeshare unit, timeshare use, and a timeshare estate to exempt private club ownership and establish a separate definition for private residence clubs, a private residence club project, and private residence club conversions.

Director Putt explained that the Staff suggests the Planning Commission add private residence clubs in the existing zones, RC, GC, HCB, and HRC, and include them in the RD, RDM, RC, GC, LI, RCO, HCB, and HRC zoning districts. If the Planning Commission chooses to insert these uses into these zones and forwards a positive recommendation to the City Council, the Staff recommends that they be identified under the conditional use permit table as administrative CUP=s, but only in condominium projects that have already been through the CUP or MPD process as it would be redundant to go through another CUP process. In going through the administrative review process, an applicant would be held to the same standards as the

timeshare review and the CUP criteria compliance, and there would be the standard courtesy noticing to affected property owners. As part of the administrative review noticing process, any issues raised by property owners could be brought to the Planning Commission as a regular CUP with a public hearing.

Director Putt noted that the Staff report contained an analysis and full detail of the specific definitions. He requested work session discussion on the pros and cons associated with the proposed amendments. Based on that discussion and the public hearing this evening, the Planning Commission could forward a positive recommendation to the City Council.

Commissioner Erickson asked if it is necessary to keep a front desk open 24 hours in order to meet the definition. Director Putt replied that 24-hour operation would not be required. The language in the definitions that requires the front desk to be open 24 hours a day, seven days a week could be modified or stricken. Commissioner Erickson asked about parking for these types of units. Director Putt stated that the unit size would remain the same and the parking requirement would be the same. The building size and the nature of the building would not change. The frequency of occupancy changes, but the Code addresses such issues as parking demand and impacts as though the project had 100% occupancy.

Chair Barth asked if anything in State law allows the prohibition of interval ownership in the City. Mark Harrington, City Attorney, did not believe the City could prohibit the use completely, and they would have to make findings to show why it should be prohibited. He explained that this is a limited exception, and there are continued arguments over whether registration with the State is required. If it is required, residence clubs are prohibited from all zones where timeshares are prohibited, even though they do not operate as a traditional timeshare. The City looked at a number of jurisdictions that allow this higher end use, including Colorado, Florida, and California, and felt that the Colorado approach was most applicable to Park City. This approach was used to carve out a limited exception for these higher end products that operate in a manner that is no different from a nightly rental pool. Mr. Harrington stated that the Staff used nightly rentals as the focus in their analysis regarding parking and other neighborhood impacts. Chair Barth asked if the modifications will bring Park City more into conformity with State law. Mr. Harrington replied that these amendments do not address State law, and these ownership arrangements would have to register with the State to see if they meet the State Code definition of a timeshare. This will allow an operation under the definition of a private residence club that meets the timeshare definition and must register with the State to go into zones where it is currently not allowed. Director Putt noted that the City has experienced the greatest amount of interest in this form of ownership in the RD zone.

Mr. Harrington explained that the Planning Commission has the ability under the ownership statement requirements, MPD application criteria, and the CUP to have the applicant declare their intention to be a timeshare at the time the application is

processed. If they do not, they must apply through the timeshare CUP or private residence club CUP after the fact. He understood there are separate policy questions as to whether or not the Planning Commission wants to facilitate additional interval or fractional ownership units. If not, they should be having a different discussion. Mr. Harrington explained that this proposal is in response to community requests.

Commissioner O'Hara felt it would be reasonable to apply this to the zones that already have timeshare units. He assumed the recommendation to apply this to the RD, RDM, RCO, and LI zones is because they already have multiple unit dwellings and hotels. Director Putt replied that is correct. Commissioner O'Hara believed this might be a stretch. Commissioner Erickson stated that allowing private residence clubs in a standard RD district may be complicated, but he felt it could work in an RD-MPD. Commissioner O'Hara agreed.

Author: Craig Sanchez
Subject: Cross Country Concession
Date: August 26, 2004
Type of Item: Administrative

Summary Recommendation:

Enter into a five year contract, in a form to be approved by the City Attorney with Jan's / White Pine Touring to continue to provide a cross country ski venue at Park City Golf Club and McPolin Farm.

Topic:

Winter Cross Country skiing concession at the Park City Golf Club.

Background:

White Pine Touring has been involved in providing cross country skiing in the Park City area for 32 years. Since 1981 White Pine Touring has operated as the cross country concessionaire on the property of Park City Golf Club. In 2002 White Pine Touring merged with Jan's LTD. In 2004 the current 7 year (5 year with 2 year extension) contract With White Pine Touring expired. This summer Park City Golf Club put out a Request for Proposals for the cross country ski concession. Ads were placed locally; Park City and Salt Lake; and also nationally in the Cross Country Ski Area Association newsletter and website. Jan's / White Pine Touring was the only proposal received.

In 1999 Park City Golf Club applied for and received a Summit County restaurant tax grant for the purchase of a Bombardier snow cat. After this purchase the Club was responsible for the grooming of 22 Kilometers (K) of cross country ski track. White Pine touring has funded the grooming of the track and contributes to the replacement fund for a new snow cat pursuant to a grooming services agreement since 1999. The current snow cat is scheduled for replacement in 2005. Currently the replacement fund has a balance of \$92,061. This puts us on track to replace the current snow cat in fall of 2005. The cost for a new machine is \$155,000; trade in value for the current machine is \$65,000.

Analysis:

The proposed contract has 3 separate revenue components:

1: The seasonal rental of the retail space at the Park City Golf Club: This area totals 2175 square feet. It consists of 1350 square feet in the golf shop, 700 square feet in the Yurt, and a small office space of 125 square feet. Monthly rent would be as follows:

Year	2004-06	2006-08	2008-10
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Monthly Rent	\$2400	\$2650	\$2900
Annual Rent *	\$12,000	\$13,250	\$14,500
\$'s per square ft.	\$1.10	\$1.22	\$1.33

* Based on five months rent.

Current market rates are between \$2.00 and \$2.80 per foot for retail space in the Lower Park Ave area. Having received one proposal, and realizing that White Pine Touring adds a year-around presence, and an amenity that is vital to our resort economy, staff feels the rental rate is adequate.

2: The seasonal rental of the golf course and McPolin Farm to set the cross country track. This lease only applies to the cross country ski course set by the golf course staff. Under the former cross country concessions agreement, Park City Golf Club received 6% of daily gross track fees and season pass track fees. There is a 3K and a 5K track set on the golf course. There is also a 14K track set on McPolin Farm. Pursuant to the new proposal the golf course will continue to receive 6%, but the revenues will grow if cross-country skiing grows. Park City Golf Club received \$6,550 in revenue for the 2003-04 winter season. This number has grown about 28% over the last 5 years.

3. The grooming contract for the 22K of track: The base rate for the snow cat grooming of the track is for 300 hours, which will be \$28,000. This will fund the capital replacement for the snow cat, employee costs, prepping and clean up of the track area of the golf course (Attachment A). Time over the allotted 300 hours will be paid to the golf course at a rate of \$83.33 per hour, as addressed in the contract.

Year	2004-2006	2006-2008	2008-2010
Rent – Retail Space, Yurt *	\$12,000	\$13,250	\$14,500
Rent – track space (6% daily gross) **	\$6,917	\$7,284	\$8,017
Grooming (300 hours) ***	\$28,000	\$28,000	\$28,000
Total Estimated Annual Value	\$46,917	\$48,534	\$50,517

* based on 5 months rent

** estimate based on 5.6% annual growth

*** time over 300 hours paid at \$83.33 / hour

Levels of service:

The proposal also touched on level of services to be provided. White Pine offers ski instruction, ski rentals, ski repairs, and ski and snowshoe guided tours. Annually they host local and regional cross country ski events. Occasional free clinics are also conducted during the week and on weekends. Hours of operation are 9-5, seven days a week, from November 15th to April 5th. These dates may vary due to weather conditions. White Pine offers about 200 pairs of skis for rental and demo purposes. They replace about one-third of their inventory annually.

Daily rates	Full Day	After 3 PM	10 day punch pass	
	\$18.00	\$10.00	\$140.00	
Season Pass Rates	Jr. Full Season	Individual Full Season	Family Full Season	Corporate Full Season
	\$50.00	\$175.00-\$225.00 **	\$235.00-\$300.00**	\$900.00-\$1050.00**

* Rates increase November 1st, and December 15th for Corporate passes.

The term of this lease will be for three years with an option for a two-year extension.

City operated Cross Country Skiing (not recommended by staff):

Another option for the golf course is to have the city operate the cross country venue. It would take a capital investment of \$40-50,000 to offer ski rentals. Salary expenses would be between \$100-125,000 per year, other expenses would include: advertising, insurance, supplies, utilities, and cost of retail goods. Annual revenue projections would be between \$200,000 and \$250,000. The main barrier to this approach is the substantial capital needed to get into the cross country business. With the expenses involved we believe it would be in the community's best interest to keep the cross country venue as a concession. The partnership with White Pine has been a positive one.

The non-financial benefits of renewing the contract with White Pine Touring:

- * Quality of Product
- * Quality of Service
- * Professional, certified, experienced staff
- * Marketing expertise
- * Established local business
- * Selection of retail goods (ability to transfer goods from main store)

Department Review:

The City Manager's office, the Office of Budget, Debt, and Grants, Public Works Department, and the Recreation-Library Department have reviewed this report.

Alternatives:

Approve the Request

Deny the Request

Council could deny the request and issue another Request for Proposals.

Continue the Item:

Council could continue the item and direct staff to provide further information at a future date.

Do Nothing:

This would have the same effect as alternative B.

Significant Impacts:

Cross Country Skiing adds breadth and depth to Park City's recreation offering which benefits local skiers and helps attract destination visitors. By continuing the relationship with White Pine Touring / Jan's LTD the city is getting a proven concessionaire with an extensive background in cross country skiing. By having White Pine Touring / Jan's LTD manage the facility, visitors and locals alike will have a positive experience at the facility, and will help to keep Park City at the forefront of world class destination resorts.

Recommendation:

Enter into a five year contract, in a form to be approved by the City Attorney with Jan's / White Pine Touring to continue to provide a cross country ski venue at Park City Golf Club and McPolin Farm.

**LEASE AGREEMENT FOR
Park City Golf Club, and McPolin Farm**

THIS AGREEMENT is made by and between the PARK CITY MUNICIPAL CORPORATION ("Landlord") and Jans LTD, a Utah corporation ("Tenant") d.b.a. White Pine Touring, to set forth the terms and conditions under which Tenant will lease certain property owned by Landlord in Park City, Utah. The parties agree as follows:

1. **Property.** The property affected by this Lease is Park City Golf Club Shop and accompanying temporary yurt located at 1541 Thaynes Canyon Dr., and those portions of the real property known as the Park City Golf Course and McPolin Farm upon which a cross country skiing track is set pursuant to this Lease, as generally depicted on Exhibit A, attached hereto and incorporated by reference herein.

The Parties hereby acknowledge and agree that the yurt included within the lease property is a temporary structure intended for seasonal use in conjunction with this Tenant's cross country ski operations pursuant to this Lease. As of the date of execution of this Lease, the yurt exists in its completed form and at its approved location and is ready for use and occupation by Tenant pursuant to this Lease. Not later than thirty (30) days after the end of each seasonal term as described herein, Tenant shall be solely responsible (including all associated costs) for disassembling and storing the yurt at a location to be provided by Landlord. Tenant shall also be solely responsible (including all associated costs) for reassembling the yurt prior to the beginning of each seasonal term in the same location in a manner to be approved by the Park City Building Department applying all applicable building codes.

2. **Term.** The term of this Lease shall consist of three (3) consecutive seasonal terms running from November 15 through April 5 of the following calendar year (e.g., the first seasonal term shall run from November 15, 2004 through April 5, 2005; the second seasonal term shall run from November 15, 2005 through April 5, 2006; and the third seasonal term shall run from November 15, 2006 through April 5, 2007) unless terminated earlier as provided herein. This Lease shall automatically renew for two (2) additional seasonal terms (the first running from November 15, 2007 through April 5, 2008 and the second from November 15, 2008 through April 5, 2009)

unless either Party provides written notice to the other of its intent to not renew on or before May 30, 2007. The property being leased is currently surplus municipal space, but may be required for municipal or other purposes by Landlord. Landlord may terminate this lease upon one month prior written notice to Tenant if the space is required for municipal or other purposes. Upon termination by Landlord, Landlord will refund any pre-paid rent on a pro rata basis.

3. **Rent.** Tenant shall pay to Landlord a monthly minimum guaranteed rental fee amount (hereinafter "Base Rent") plus a Percentage Rental fee of Six Percent (6.00%) of all gross track daily pass revenues (including season passes) as described below.

All checks shall be sent to Finance Department, Park City Municipal Corporation, P.O. Box 1480, Park City, Utah 84060.

(a.) **Base Rent.** Tenant shall pay to Landlord the minimum guaranteed monthly rental fee for each seasonal term in accordance with the following fee schedule:

First Seasonal Term (2004-2005): Two Thousand Four Hundred Dollars (\$2400.00)

Second Seasonal Term (2005-2006): Two Thousand Four Hundred Dollars (\$2400.00)

Third Seasonal Term (2006-2007): Two Thousand Six Hundred Fifty Dollars (\$2650.00)

Fourth Seasonal Term (if applicable) (2007-2008): Two Thousand Six Hundred Fifty Dollars (\$2650.00)

Fifth Seasonal Term (if applicable) (2008-2009): Two Thousand Nine Hundred Dollars (\$2900.00)

Base Rental fees shall be due by the first day of each month during the term of the lease. Base Rental fees for any partial month will be calculated on a pro-rata basis to equal amount of days in shop.

(b.) **Percentage Rental Fee.** For each and every month during the lease term, Tenant shall pay to Landlord SIX PERCENT (6%) of gross track sales per month as additional rental. Gross track sales shall be calculated by the Parties and payment

remitted to Landlord on or before June 15 following each seasonal term. Pre-season track pass sales, including season passes shall be included in the calculation of percentage rental and shall be remitted to Landlord with the Gross track sales records and financial statements.

(c.) "Gross Track Sales" as used herein is hereby defined to mean the total amount in dollars of all track passes and season pass sales, whether for cash, credit, or services. Gross track sales shall not include any sum collected for any sales, use or gross receipts tax imposed by any federal, state, municipal or other governmental authority directly on sales to customers and paid by Tenant to such governmental authorities.

(d.) Financial Statements. No later than June 15 of each annual rental period, Tenant shall furnish landlord a written income statement certified by the Tenant's CPA on annual gross receipts.

4. **Grooming Services Agreement.** In conjunction with this Lease, the Parties have entered into a Grooming Service Agreement wherein Landlord will provide grooming services upon the cross country skiing track subject to this Lease. The Grooming Services Agreement between the Parties attached hereto as Exhibit B and incorporated by reference herein. Pursuant to that Grooming Service Agreement, Tenant will pay to Landlord a base grooming services fee of Twenty Eight Thousand Dollars (\$28,000.00) per seasonal term (fee adjusted per the terms of the Grooming Services Agreement) and Landlord will provide grooming services on the cross country skiing track up to an including three hundred (300) hours. Tenant shall pay for any/all grooming services provided by Landlord over and above 300 hours in any seasonal term at a rate of \$83.33 per hour. Tenant hereby agrees to pay the full base grooming services fee (\$28,000.00) for the first seasonal term at the time of signing this Lease.

5. **Utility Services.** Landlord will provide no utilities.

6. **Use of the Premises.** The premises shall be used only for the purpose of cross country skiing, and associated retail and rentals.

7. **Liens.** Tenant shall not permit any liens to attach to the property for work done at Tenant's request or for Tenant's benefit. If Landlord receives notice of any

such lien against the property, Tenant shall promptly discharge the lien at Landlord's request or post funds sufficient to satisfy the lien during any period of good faith contest of the lien by Tenant. In the event Landlord feels its title to the property is in jeopardy because of any lien Tenant has elected to attach to the property, Landlord may discharge the lien and collect the amount paid from the Tenant. Tenant agrees to pay all reasonable costs incurred by Landlord in the defense or discharge of any liens on the property.

8. **Insurance.** Tenant shall, at Tenant's sole expense, carry a policy of general liability insurance, including professional liability, in an amount of at least One Million Dollars (\$1,000,000) per person and One Million Dollars (\$1,000,000.00) per incident or occurrence. Landlord shall be named as an additional insured on each policy. A certificate of insurance with a thirty (30) day cancellation notice provision shall be provided to Landlord on or before the lease commencement date, and maintained continuously during the term of the lease. Tenant may carry whatever other insurance Tenant deems appropriate. The parties agree that Tenant's sole remedy in the event of business interruptions, fire, windstorm, or other loss from hazard shall be its own insurance and Tenant will have no action against Landlord.

9. **Assignment/Sublease.** This lease may not be assigned or the premises sublet.

10. **Remedies.** In the event that Tenant is in violation of some provision of this lease, Landlord shall be entitled to maintain an action for specific performance or injunctive relief, or upon written notice, to give Tenant thirty (30) days in which to cure the violation. If the breach continues after the expiration of the thirty (30) day notice period, Landlord may exercise any and all remedies available at law or equity, including re-entry and taking possession of the premises, or re-letting the premises for Tenant's account.

11. **Notice Provision.** Any and all notices required by this Lease Agreement shall be in writing and delivered personally to the party to whom the notice is to be given, or mailed by certified mail, postage prepaid, and addressed as follows:

If to Landlord:
City Manager
Park City Municipal Corp.
Touring
445 Marsac Avenue
P. O. Box 1480
Park City, Utah 84060

If to Tenant:
Russ J. Coburn
Jan's LTD DbA White Pine
PO Box 280
1600 Park Ave
Park City, Utah 84060

15. **Covenant of Quiet Possession.** Landlord covenants with Tenant that Landlord is the owner of the premises and that, unless otherwise provided by the Agreement, Tenant's possession will not be disturbed by acts or omissions of the Landlord so long as Tenant faithfully performs the obligations of this lease.

18. **Force Majeure.** This lease agreement shall automatically terminate upon any holding, interpretation or determination by a court, legislative, or administrative body, that Landlord may not lease to a retail establishment or that the bonds issued by Park City Municipal Corporation or Municipal Building Authority of Park City will not qualify as tax exempt if the property is leased to a private entity or monies are received for so leasing, or that Landlord may not lease to a private entity, either under existing state and federal law regulation or future state and federal law regulation.

12. **Care and Repair of Premises by Tenant.** Tenant has inspected the premises and accepts it as is as acceptable for the purposes of this agreement. The Tenant will not commit any waste on leased premises nor shall it use or permit the use of the premises in violation of any state law or county or municipal ordinance or regulation applicable thereto. Any permanent alterations or improvements to the leased premises shall become the property of the Landlord upon expiration or termination of this lease.

13. **Surrender of Premises.** Tenant agrees to surrender the leased premises at the expiration or sooner termination of this agreement or any extension thereof in the same condition or as altered pursuant to the provisions of this agreement. Exceptions: ordinary wear, tear and damage by the elements or other acts of God.

14. **Holdover.** Should Tenant holdover the leased premises or any part thereof after the expiration of the term of this lease unless otherwise agreed in writing, such holding over shall constitute a tenancy from month to month only, and Tenant shall pay as monthly rental the same monthly rental.

15. **Indemnity.** Tenant covenants and agrees to indemnify, hold harmless and defend the Landlord, its agents and employees, from all fines,

suits, claims, demands and actions of any kind including attorney's fees and nature by reason of any and all of its operations hereunder and agrees to assume all the risk in the operation of its business hereunder and is solely responsible and answerable in damages for any and all accidents or injuries to person or property.

Tenant agrees to indemnify, save harmless and defend Landlord, its agents and employees, from all claims, damages, demands, actions, costs and charges, including attorney's fees, arising out of or by reason of any of its agents' or employees' acts or omissions hereunder, or the Tenant's use of the property.

16. **Landlord Liable only for Negligence.** Except where caused by Landlord's negligence, Landlord shall not be liable for any failure of water supply, natural gas supply or electrical supply; or for any injury or damage to persons or property caused by gasoline, oil, steam, gas or electricity; or hurricane, tornado, flood, wind or similar storms or disturbances; or water, rain or snow which may leak or flow from the street, sewer, gas mains or any subsurface area or from any part of the building or buildings or for an interference with light.

17. **Nondiscrimination.** Tenant agrees not to discriminate against anyone on the basis of race, color, national origin, age, sex or handicap in its hiring practices, services or operation of its business hereunder.

18. **Waiver of Covenants.** It is agreed that the waiver of any of the covenants of this Lease Agreement by either party shall be limited to the particular instance and shall not be deemed to waive any other breaches of such covenant or any provisions herein contained.

19. **Days and Hours of Operation.** Tenant will have the leased premises open for business at least five days per week throughout each seasonal term. Tenant shall be open for business a minimum of eight (8) hours per day. The hours of operation shall be coordinated and agreed to in writing by Tenant and the Golf Course manager as Landlord's agent. Tenant may close at its discretion during slow periods for remodeling or vacations. Closure by Tenant shall not result in any waiver or reduction in rent due.

20. **Type of Operation.** Tenant will maintain and operate the cross country skiing concession in a professional manner and will keep the leased premises in a safe, clean, orderly and inviting condition at all times. The business is to be operated in conformance with all federal, state and local laws, ordinances and regulations.

21. **Tenant's Independent Contractors.** Tenant will agree to retain active, qualified, competent, experienced and licensed independent contractor at the store to supervise the operations. All independent contractors are the authorized agents of the Tenant and represent and act in behalf of the Tenant in complying with or violating the terms of this Lease. Tenant's independent contractors will be professional, courteous, efficient and neat in appearance.

22. **Rights of Successors and Assigns.** The covenants and agreements contained within the lease shall apply to the benefit of and be binding upon the parties hereto and upon their respective successors in interest and legal representatives, except as .expressly otherwise hereinbefore provided.

23. **Costs and Attorney's fees.** The Landlord and Tenant each agree that in the event of any dispute or litigation involving this lease or the recovery of the premises herein, the prevailing party shall be entitled to all costs of suit, including reasonable attorney's fees.

24. **Entire Agreement.** This agreement constitutes the entire and only agreement between parties and it cannot be altered except by written instrument, signed by both parties.

DATED this 9th day of September, 2004.

AGREEMENT BETWEEN PARK CITY MUNICIPAL CORPORATION AND WHITE PINE TOURING FOR THE PERFORMANCE OF GROOMING OPERATIONS

This Agreement is made by and between Park City Municipal Corporation (hereinafter City) and Jans LTD, a Utah corporation d.b.a. White Pine Touring (hereinafter Jans) to set forth the terms and conditions under which City will provide to Jans grooming services;

Whereas, the City and Jans (hereinafter collectively the Parties) executed on September 9, 2004 a lease agreement (hereinafter Lease Agreement) whereby Jans leased the Pro-Shop and certain areas of the Park City Municipal Golf Course set apart for cross country as described in Paragraph 1 of the Lease Agreement; and

Whereas, Jans desires to contract for grooming services upon the cross country ski track;

Whereas, nothing herein shall modify the Lease Agreement, the City is contracting to perform certain services; and

Whereas, the City owns the necessary equipment to provide grooming services and desires to contract with Jans accordingly;

Now therefore, based upon adequate and valuable consideration, the Parties agree as follows:

I. THE CITY AGREES TO:

1. Perform all grooming operations as defined within the Scope of Services, attached hereto and incorporated by reference herein as Exhibit A;
2. Repair all damage to the Park City Municipal Golf Course caused by grooming operations, including but not limited to sprinkler heads and re-seeding of turf;
3. Perform all end of season garbage clean up including the removal of stakes for the track layout;
4. Rope off all tees and greens;
5. Stake track layout;
6. Construct temporary bridges (by insertion of pipe allowing water to flow through and supporting snow and skiers above) to accommodate the crossing of all streams on the Golf Course; and

7. Defend, indemnify, and hold harmless Jans, its officials, employees, directors, and its tenants against any and all damages, claims, liabilities, costs, suits or expenses, to the intent caused by any negligent act of the City, or its agents or employees arising from or connected with the City's operations or services hereunder, including workers compensation suits, liability, or expenses arising from or connected with services by any person pursuant to this agreement, including but not limited to attorneys fees and costs.

II. JANS AGREES TO:

1. Perform all snow removal and/or snow plowing services to the entrance to the Pro Shop building;
2. Perform snow blowing of snow onto the cross-country ski track;
3. Patrol the cross-country ski track and assist patrons in the event of any ski track accidents;
4. Perform set-up services for all races held on the cross-country ski track;
5. Maintain the Pro-Shop premises and restrooms in a neat, clean, and safe manner, including garbage removal and janitorial services; and
6. Defend, indemnify, and hold harmless the City, its agents, employees and officers of City for any and all damages, claims, liabilities, costs, suits or expenses, to the extent caused by any negligent act of Jans, or its agents or employees arising from or connected with the City's operations or services hereunder, including workers compensation suits, liability or expenses arising from or connected with the base service pursuant to this agreement; including but not limited to attorneys fees and costs, including allocated costs of City's staff attorneys.

III. SHARED DUTIES OF THE CITY AND JANS:

1. Perform all garbage removal from the Golf Course, parking lots, and/or all City property used by Jans in its cross country ski operations during the ski season; and
2. The Parties agree to comply with all Federal, State, and Local laws and ordinances applicable to both parties under this agreement.

IV. TERM

The term of this agreement shall run for the same seasonal terms (generally November 15 through April 5) and shall renew and/or terminate pursuant to the terms as defined in the Lease Agreement. The City reserves the right to terminate this agreement with thirty (30) days advance written notice if Jans defaults in its payments to the City or any other obligation as provided for in this agreement. Jans reserves the right to terminate this agreement with at least thirty (30) days advance written notice if the City fails to perform its obligations as provided for in this agreement.

V. PAYMENT

1. Definition

As used herein, the term "grooming operations" means grooming and/or track-setting services performed with the use of a snowmobile and/or snow cat.

2. Invoice/Payment

The City shall submit to Jans at the end of each month an invoice documenting all hours of grooming operations performed by the City. Jans shall make payment to the City within thirty- (30) days of receipt of the invoice.

3. Rates

The payment rate for the City's performance of grooming operations shall be governed by the following two-tiered system:

- a. \$28,000 Flat Fee: Jans shall pay to City a flat fee of Twenty Eight Thousand Dollars (\$28,000.00) per seasonal term as defined at Paragraph 2 of the Lease Agreement. This Flat Fee shall be payment in full for all grooming operations performed by City up to and including three hundred (300) hours in any seasonal term. The Parties agree that Jans shall pay the \$28,000 flat fee in five (5) installments as follows:

- | | | |
|-----|---------------|---------|
| (1) | December 1st: | \$5,600 |
| (2) | January 1st: | \$5,600 |
| (3) | February 1st: | \$5,600 |
| (4) | March 1st: | \$5,600 |
| (5) | April 1st: | \$5,600 |

- b. Hourly Rate: For all grooming operations performed by City in excess of three hundred (300) hours in any seasonal term, Jans shall pay the City at a rate of \$83.33 per hour. Jans shall request in writing any grooming in excess of the three hundred (300) hours included in the flat fee.
- C. Overtime: The City will perform grooming operations up to forty (40) hours per week at a regular rate included in the flat fee program if within the first 300 hours or within the \$83.33 hourly rate if over 300 hour of grooming.. For grooming operations in excess of forty- (40) hours in a week, the City shall be paid at an overtime rate of an additional \$9.75 per hour. This rate will be charged separately and is not included in the flat or hourly rate.

4. Maintenance

Normal/routine maintenance of the City's snow cat (e.g., fuel, fluid and filter changes) is included in the hourly rate for grooming operations. At the end of each ski season, the City will review service requirements and costs. Following this review and upon mutual written agreement, the Parties may adjust the rates for grooming operations in order to maintain a revenue neutral operation.

5. Track Improvements

All track improvements, if any, shall be paid for by Jans or through charitable donation of a third party.

6. Cost Review

At the end of each ski season, Park City Municipal Corporation shall review actual costs versus projected costs (e.g., fuel consumption, insurance). After such review and upon mutual written agreement of the Parties, the hourly rates for grooming operations may be adjusted.

VI. MISCELLANEOUS PROVISIONS

1. Waivers

The waiver by either party of the breach of any terms, provision, covenant, or conditions contained in this Agreement, or the failure of either party to insist on strict performance by the other, shall not be deemed to be a waiver of any breach or default by the other party, regardless of the non-defaulting party's knowledge of such breach or default at the time of acceptance of performance.

2. Assignment, Successors and Assigns

Neither party shall assign, delegate or otherwise transfer its rights or obligations under this agreement without the prior written consent of the other party. This Agreement shall be binding upon and shall ensure to the benefit of the permitted successors and assigns of the parties hereto.

3. Independent Contractor Relationship

A. The parties intend that an independent contractor relationship will be created by this Agreement. No agent, employee, or representative of the City shall be deemed to be an employee, agent, or representative of Jans for any purpose. The City will be solely and entirely responsible for its acts and for the acts of its agents, employees, subcontractors or representatives during the performance of this Agreement.

B. In the performance of the services herein contemplated, the City is an independent contractor with the authority to control and direct the performance of the details of the work.

C. Jans agrees to provide training in the performance of grooming operations to one or more City staff member. It shall be Jans's sole responsibility to ensure that City staff is performing grooming operations to specifications. It shall also be Jans's sole responsibility to notify City staff when and how often to perform grooming operations.

4. Notices

All notices, approvals, demands, reports and other communications provided for in this Agreement (individually, a Notice) shall be in writing and shall be given to such party at its address as set forth below or such address as such party any hereafter specify for the purpose by Notice to the other party listed below. Each Notice shall be deemed delivered to the party to whom it is addressed (a) if personally served or delivered, upon delivery, (b) if given by certified or registered mail, return receipt requested, deposited with the United States Mail with first-class postage prepaid, seventy-two (72) hours after such Notice is deposited with the United States mail, or if given by overnight courier with overnight courier charges prepaid, twenty-four (24) hours after delivery to said overnight courier, or (d) if given by any other means, upon delivery when delivered at the address specified in the section.

For the City: To: Park City Municipal Corporation
 Attn: City Attorney
 P.O. Box 1480
 Park City, UT 84060

For Jans: To: Russ Coburn
 Jans LTD
 d.b.a. White Pine Touring
 P.O. Box 280

Park City, Utah 84060

5. Attorneys Fees

If any action be commenced (including a appeal thereof) to enforce any of the provisions of this Agreement or to enforce a judgment, whether or not such action is prosecuted to judgment ("Auction"), (a) the unsuccessful party therein shall pay all costs incurred by the prevailing party therein, including reasonable attorneys fees and costs, court costs, and reimbursements for any other expenses incurred in connection therewith, and (b) as a separate right, severable from any other rights set forth in this Agreement, the prevailing party therein shall be entitled to recover its reasonable attorneys fees and costs incurred in enforcing any judgment against the unsuccessful party therein, which right to recover post-judgment attorneys fees and costs shall be included in any such judgment. The right to recover post-judgment attorneys fees included in any judgment, (2) survive the final judgment in Action, and (1) not be deemed merged into such judgment. The rights and obligations of the parties under this Section shall survive the termination of this Agreement.

6. Entire Agreement

This Agreement (including all exhibits attached herein) in the final expression of, and contains the entire agreement between, the Parties with respect to the subject matter hereof and supersedes all prior negotiations, understandings and agreements with respect therein. This Agreement may not be modified, changed, amended, supplemented or terminated, except by mutual written Change Order, or as otherwise expressly permitted in this Agreement.

7. Time of Essence

The parties hereby acknowledge and agree that time is of the essence with respect to each and every term condition, obligation, and provision of the Agreement.

8. Captions

The paragraph and section handling herein are solely for convenience of reference and are not a party of and are not intended to govern, limit of aid in the construction of any term or provision of this Agreement.

9. Governing Law

The parties acknowledge that this Agreement has been negotiated and entered into in the State of Utah. Accordingly, this agreement shall be governed by interpreted under, construed and enforced in accordance with the laws of the State of Utah.

10. Counterparts

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute but one and the same instrument.

11. Successors, No Third Party Benefits

This Agreement is for the sole and exclusive benefit of the parties hereto and subject to limitations on assignment herein their respective permitted successors and assigns; the parties neither intend to confer any benefit hereunder on any person, firm or corporation other than the parties hereto, nor shall any such third party have any rights hereunder.

12. Further Assurances

The parties agree, without any additional consideration or any unreasonable delay, to execute all such other instruments and documents and to take all actions as may be reasonably necessary or desirable to further implement the transactions contemplated herein.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed this 9th day of September, 2004.

CROSS COUNTRY SKI GROOMING COSTS

PERSONNEL COSTS - Hourly rate including benefits - \$21.61 per hour.

One contract employee for the Winter season.

Hourly wage - 13.46 per hour (T-04).

Single health insurance - \$1.59 per hour.

Works comp. / FICA - \$1.57 per hour.

City administration cost \$16.62 + 30% - \$4.99

EQUIPMENT

SNOW CAT

- < Original purchase price 2000 Bombardier snow cat \$129,000
- Trade in value after 6 years - \$ 65,000 (Anticipating a 50% trade in value).
- Estimated replacement cost in 2005 - \$152,563.60

Total recovery needed - \$87,563.60 over 6 years = 14,593.94 per year

- < Maintenance and fuel cost - \$2,552.50 per year.
 - Fuel – 3 gallons per hour at \$1.77 per gallon = \$1,327.50 / year (based on 250 hrs).
 - Maintenance - \$1,225.00 per year.

SNOWMOBILE

- < Replacement cost - \$8,000.00 over a six-year period. (\$1,168.22 per year)
 - Inflation of replacement machine - 2% per year = \$1,009.30
 - Trade in value - \$2,000
- < Maintenance and fuel cost - \$205.00 per year.
 - Fuel cost – 1 gallons per hour at \$2.10 per gallon = \$105.00 (based on 50 hrs).
 - Maintenance - \$100.00 per year.

SET-UP CHARGES

The City will operate the grooming maintenance function in a revenue neutral manner. The cost associated with the cross-country set-up and take down is passed on to the concessionaire. Cost for these duties - \$3,000.00

1. Staking track
2. Roping greens and tees
3. End of season clean up

4. Temporary bridge installation at Farm
5. Equipment storage
6. Grooming Program oversight

TOTAL COST PER SEASON BASED ON 300 HOURS-

Personnel - \$6,483.00
Fuel & maintenance - \$2,757.50
Snow cat replacement - \$14,593.94
Snowmobile replacement - \$1,168.22
Set up charges - \$3,000.00

Total - \$28,002.66

LUMP PAYMENT

A \$28,000 lump charge would be divided into 5 payments and charged throughout the winter season. This fee would pay for all hours of grooming up to 300 hours of service. For each hour over 300, an hourly rate of * \$83.33 would be assessed. Grooming hours over 300 would be charge April 1st. Billing dates would be as follows:

December 1st - \$5,600.00
January 1st - \$5,600.00
February 1st - \$5,600.00
March 1st - \$5,600.00
April 1st - \$5,600 plus hours groomed over 300, if any

* Note –

The above hourly rate was calculated on two hundred and fifty hours of snow cat use and 50 hours of snowmobile use. Total hours worked of 300 are divided by the seasonal cost of \$25,000 (not including setup), which equals \$83.33 per hour.

City Council
Staff Report



Author: Kent Cashel, Asst PW Director.
Subject: Boothill Pipeline
Construction Mgmt. Contract
Date: September 9, 2004
Type of Item: Administrative

Public Works

Summary Recommendations: Authorize staff to execute a professional services agreement with Stantec Consulting, Inc., in a form approved by the City Attorney, for construction management services on the Boothill Pipeline Project in amount of \$46,744.

Background:

This pipeline is the first phase of a three phased project to ensure adequate water storage capacity for service and fire flow within Park Meadows and Prospector neighborhoods. The project will also add redundancy to Old Town and Deer Valley and will enable the City to meet service obligations to Empire Pass. The second phase of the project will include a 2 million gallon subsurface water tank. The third phase consists of the construction of 2200 GPM pump station.

The existing 1 million gallon Boothill reservoir is a central distribution point for Park Meadows, Prospector and Deer Valley. The reservoir accepts water from Spiro, the Middle School well, the divide well and the Park Meadows well (when brought back on-line).

The new subsurface reservoir will be located just west of the existing Boothill tank above the cemetery. Once completed the 2,000,000-gallon reservoir (similar to the current tank) will not be visible from the roads or houses located below Boothill.

Phase one of the project (requested contract authorization) consists of approximately 7,000 feet of pipeline (1500' of 20" pipe from tank site to Monitor Drive, 2800' of 12" pipe from tank site to the Park Meadows well, 2800' of 16" pipe from tank site to tie into existing system at Park Meadows well).

This construction project faces the following technical challenges:

- ❑ Much of pipeline right of way is on Boothill and is very visible from streets and homes located at the base of the slope.

- ❑ Geotechnical work indicates that much of the excavation may encounter subsurface rock.
- ❑ Bedding and backfill of excavation must be completed properly to ensure full useful life of PVC pipe.

Given the technical challenges and scope of this pipeline project, Staff believes it is in the City's best interest to secure the services of a qualified engineering firm to provide construction management support.

Analysis:

The City's purchasing policies exempt professional service contracts from any requirement for competitive bidding based solely on price. According to the policy, staff selects a firm whose experience, past performance and capabilities best meet the needs of the project. Stantec had been one of three approved water consultants for design and construction management services when the project began. Staff determined it was more important to continue the continuity and not bring a third party construction management services into the project.

Staff developed and negotiated a scope of work for construction management services with Stantec Consulting, Inc (see attached scope). Stantec provided a quote of \$46,744 to provide required services during construction. Staff, based upon experience with other projects, believes this quote is usual and customary for a project of this type, and technical scope.

Stantec was engaged as the design engineers for this project and this contract is a continuation of that work. Staff believes the firm is uniquely qualified given their involvement and performance with the project to date.

Funds for this project were approved as part of the Water fund capital improvement projects budget during the 2004 budget process.

Staff recommends the City Council authorize staff to execute professional services agreement with Stantec Consulting, Inc. in a form approved by the City Attorney, for construction management services on the Boothill Pipeline Project in amount of \$46,744.

Alternatives:

- A. **Approve the Request:** Authorize staff to execute a professional services agreement with Stantec Consulting, Inc., in a form approved by the City Attorney,

for construction management services on the Boothill Pipeline Project in the amount of \$46,744.

- B. **Deny the Request:** Council could deny Staff's request. This alternative would require Staff to invest City resources to conduct a search for another construction management firm. Based upon the technical requirements of this project and Stantec's past performance and qualifications staff does not recommend this alternative.
- C. **Continue the Item:** Council could continue the item. Continuance beyond more than two weeks would severely impact the construction schedule.
- D. **Do Nothing:** Staff does not recommend this alternative.

Consequences of Not Taking Recommended Action:

Staff believes that given the scope and technical difficulty of this project it is prudent to engage a qualified engineering firm to provide construction management support services. If Council denies the recommended course of action, Staff would need to manage the project utilizing only City resources. Staff believes this action would not result in overall cost savings to the City and would significantly increase the City's exposure to project delays, quality issues and cost overruns.

Recommendation:

Staff recommends the City Council authorize staff to execute a professional services agreement with Stantec Consulting, Inc., in a form approved by the City Attorney, for construction management services on the Boothill Pipeline Project in the amount of \$46,744.

Scope of Work For Construction Support Services

Boothill Pipeline Project
Stantec Consulting Inc.

Submittal Review	\$1,402
Respond to requests for information	\$996
Construction Meetings	\$2,303
Prepare Change Orders	\$996
Review and coordinate pay requests	\$2,010
Construction Review Services	\$28,538
Start-up Assistance	\$1,618
Prepare Photo Log	\$1,429
Prepare Punch list	\$1,314
Prepare Notice of Substantial Completion	\$792
Prepare Notice of Final Completion	\$792
Prepare O&M Manuals	\$1,252
Prepare Construction Record Drawings	\$2,746
Submittal for Operating Permit	\$556
	\$46,744

City Council
Staff Report

Author: Matthew A. Twombly
Subject: Neighborhood Parks Professional
Service Provider contract
Date: September 9, 2004
Type of Item: Administrative:
Service Provider Contract



**ECONOMIC
DEVELOPMENT AND
CAPITAL PROJECTS**

Summary Recommendation:

Authorize the City Manager to enter into a professional service provider contract (attached) for the Neighborhood Parks project(s) in a form approved by the City Attorneys Office to Design Workshop in the amount of Fifty One Thousand Dollars (\$51,000.00).

Description:

Topic: Neighborhood Parks Professional Service Provider Contract

Background:

In 2003, City Council directed the Recreation Advisory Board (RAB) and staff to proceed with the formation of a Neighborhood Parks Committee in order to solicit input from neighborhood parks area residents and plan for the (re)construction of Parks in the neighborhoods throughout the City. The RAB committee solicited input on the three proposed parks through neighborhood meetings and on-line surveys. On February 5, 2004 the City Council directed staff, based on the recommendation of RAB, to hire the firm of Design Workshop to develop concept plans for the two Prospector parks based on the input of the neighborhood residents.

The concept plans were reviewed by the Planning Commission in May, and the City Council reviewed the plans at the beginning of June, 2004. After this initial review of the plans, staff and Council were contacted by some of the area residents who were not in favor of the basketball courts at the existing Prospector Park, and were concerned with the projects impact with the Sensitive Lands Ordinance. The proposed park at the corner of Comstock and Sidewinder, on the other hand, received a Conditional Use Permit by the Planning Commission on July 14, 2004. Based on comments regards the existing Prospector Park, staff had Design Workshop develop alternative concepts for the project as part of their previous contract, but did not proceed further until there was more direction at the RAB Visioning Session with Council on this issue. Staff also received a petition, on August 13, 2004 mainly against installing a basketball half-court in the existing Prospector Park.

On August 26th, 2004 during the RAB Visioning session, Council directed staff and the RAB committee to proceed with the planning, design and construction documents for the three neighborhood parks at; Comstock and Sidewinder, the existing Prospector Park at Wyatt Earp Way, and the development of a Park at the Racquet Club. Each park is at a different stage of the process and the design process is addressed in the Scope of Services portion of the contract (attached as Exhibit A).

The RFP for design was completed prior to the RAB session on August 26, 2004, but provisions are made for neighborhood and Planning Commission public meetings as part of Design Workshop's proposal. Staff recommends presenting the design options including the basketball half-court through a public open house, prior to going to the Planning Commission for a CUP. Staff does not recommend excluding the basketball half-court as a design option, where the initial public meetings had rated basketball very high as a desired amenity in the existing Prospector Park. The Sensitive Lands Ordinance and proposed improvements will be addressed through the Planning Commission CUP process, and through the adopted Environmental Management System for Park City. The concerns of the neighbors will be addressed through the design alternatives, the public open house, and the Planning Commission CUP permitting and public process. The overall intent is to produce parks that a majority of the neighbors want.

Analysis:

Staff advertised for the Request for Proposals in the Park Record and Salt Lake Tribune. There were five firms submitting proposals: G. Brown Design Inc., Design Workshop, MGB&A, Landmark Design and the IBI Group. A selection panel of four City staff and Rich Miller of RAB rated the proposals based mainly on experience, past performance, and local work. Cost was considered as a deciding factor, but most of the emphasis in the review of the proposals was quality and ability to perform the services required. The selection panel rated the firm of Design Workshop the highest, and therefore recommend that Council authorize the City Manager to enter into a contract with Design Workshop for the Neighborhood Parks project(s). Their proposal anticipated many of the neighborhood issues, which may also be reflected in their cost to perform the scope required.

Department Review:

City Manager, Economic Development and Capital Projects, and Recreation departments have reviewed and all comments have been incorporated into the report.

Alternatives:

Approve the Request:

Authorize the City Manager to enter into a Professional Service Provider contract on a form approved by the City Attorneys Office with Design Workshop, in the amount of Fifty One Thousand Dollars (\$51,000.00).

Deny the Request:

The Council could decide to no longer proceed with the project, leaving the proposed sites for parks in their current condition.

Modify the Request:

Council could modify the project, proceeding with 1 or 2 of the parks only. Staff and the recommended Design Firm would need to modify the scope and contract amount.

Continuance:

Delaying a decision would delay the proposed schedule and possible completion of the Comstock/Sidewinder Park this season.

Do Nothing:

Delay would impact the project schedule.

Significant Impacts:

There is \$750,000 out of the 1.2 million dollar Parks Bond budgeted for the Design and Construction of the three parks. The design fee would be approximately 6.8 percent of the project(s) total. There was previously, approximately \$8,000 spent on concept (semi-schematic) plans for 2 of the 3 parks.

Consequences of not taking the recommended action:

Delay would impact the project schedule and discontinuing the project(s) would .

Recommendation:

Staff recommends that Council authorize the City Manager to enter into a professional service provider contract for the Neighborhood Parks project(s) in a form approved by the City Attorney's Office with Design Workshop in the amount of Fifty One Thousand Dollars (\$51,000.00).

PARK CITY MUNICIPAL CORPORATION SERVICE PROVIDER/PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into in duplicate this ____ day of _____, 2004, by and between PARK CITY MUNICIPAL CORPORATION, a Utah municipal corporation, ("City"), and DESIGN WORKSHOP, 1796 Prospector Avenue, Suite 200, Park City, UT 84060, a Utah corporation ("Service Provider").

WITNESSETH:

WHEREAS, the City desires to have certain services and tasks performed as set forth below requiring specialized skills and other supportive capabilities; and

WHEREAS, sufficient City resources are not available to provide such services; and

WHEREAS, the Service Provider represents that the Service Provider is qualified and possesses sufficient skills and the necessary capabilities, including technical and professional expertise, where required, to perform the services and/or tasks set forth in this Agreement.

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

1. SCOPE OF SERVICES.

The Service Provider shall perform such services and accomplish such tasks, including the furnishing of all materials and equipment necessary for full performance thereof, as are identified and designated as Service Provider responsibilities throughout this Agreement and as set forth in the "Scope of Services" attached hereto as "Exhibit A" and incorporated herein (the "Project"). The total fee for the Project shall not exceed Fifty One Thousand and no/100 Dollars (\$51,000.00).

2. TERM.

The term of this Agreement shall commence on the date of execution on this Agreement and shall terminate on December 1, 2005 or earlier, unless extended by mutual written agreement of the Parties.

3. COMPENSATION AND METHOD OF PAYMENT.

A. Payments for services provided hereunder shall be made monthly following the performance of such services.

- B. No payment shall be made for any service rendered by the Service Provider except for services identified and set forth in this Agreement.
- C. For all "extra" work the City requires, the City shall pay the Service Provider for work performed under this Agreement according to the schedule attached hereto as "Exhibit B," or if none is attached, as subsequently agreed to by both parties in writing.
- D. The Service Provider shall submit to the City Manager or his designee on forms approved by the City Manager, an invoice for services rendered during the pay period. The City shall make payment to the Service Provider within thirty (30) days thereafter. Requests for more rapid payment will be considered if a discount is offered for early payment. Interest shall accrue at a rate of six percent (6%) per annum for services remaining unpaid for sixty (60) days or more.
- E. The Service Provider reserves the right to suspend or terminate work and this Agreement if any unpaid account exceeds sixty (60) days.

4. REPORTS AND INSPECTIONS.

- A. The Service Provider, at such times and in such forms as the City may require, shall furnish the City such statements, records, reports, data, and information as the City may request pertaining to matters covered by this Agreement.
- B. The Service Provider shall at any time during normal business hours and as often as the City may deem necessary, make available for examination of all its records and data with respect to all matters covered, directly or indirectly, by this Agreement and shall permit the City or its designated authorized representative to audit and inspect other data relating to all matters covered by this Agreement. The City may, at its discretion, conduct an audit at its expense, using its own or outside auditors, of the Service Provider's activities, which relate directly or indirectly, to this Agreement.

5. INDEPENDENT CONTRACTOR RELATIONSHIP.

- A. The parties intend that an independent Service Provider/City relationship will be created by this Agreement. No agent, employee, or representative of the Service Provider shall be deemed to be an employee, agent, or representative of the City for any purpose, and the employees of the Service Provider are not entitled to any of the benefits the City provides for its employees. The Service Provider will be solely and entirely

responsible for its acts and for the acts of its agents, employees, subcontractors or representatives during the performance of this Agreement.

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

6. SERVICE PROVIDER EMPLOYEE/AGENTS.

The City may at its sole discretion require the Service Provider to remove an employee(s), agent(s), or representative(s) from employment on this Project. The Service Provider may, however, employ that (those) individuals(s) on other non-City related projects.

7. HOLD HARMLESS INDEMNIFICATION.

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

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

8. INSURANCE.

The Service Provider 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 Service Provider, their agents, representatives, employees, or subcontractors. The Service Provider shall provide a Certificate of Insurance evidencing: *(amend the following insurance requirements as applicable)*

- A. General Liability insurance written on an occurrence basis with limits no less than one million dollars (\$1,000,000) combined single limit per occurrence and two million dollars (\$2,000,000) aggregate for personal injury, bodily injury and property damage.
- B. Automobile Liability insurance with limits no less than five hundred thousand dollars (\$500,000) combined single limit per accident for bodily injury and property damage.
- C. Professional Liability (Errors and Omissions) insurance written on an occurrence basis with limits no less than one half million dollars (\$500,000) combined single limit per occurrence.
- D. Workers Compensation insurance written on an occurrence basis with limits no less than one half million dollars (\$500,000) combined single limit per occurrence.
- E. The City shall be named as an additional insured on the insurance policies, as respect to work performed by or on behalf of the Service Provider and a copy of the endorsement naming the City as an additional insured shall be attached to the Certificate of Insurance. The Certificate of insurance shall warrant that the City shall receive thirty (30) days advance notice of cancellation. The City reserves the right to request certified copies of any required policies.
- F. The Service Provider's insurance shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

9. TREATMENT OF ASSETS.

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

10. COMPLIANCE WITH LAWS.

- A. The Service Provider, in the performance of this Agreement, shall comply with all applicable federal, state, and local laws and ordinances, including regulations for licensing, certification and operation of facilities, programs and accreditation, and licensing of individuals, and any other standards or criteria as described in this Agreement to assure quality of services.
- B. The Service Provider specifically agrees to pay any applicable fees or charges which may be due on account of this Agreement.

11. NONDISCRIMINATION.

- A. The City is an equal opportunity employer.
- B. In the performance of this Agreement, the Service Provider 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 Service Provider 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 Service Provider 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 Service Provider 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 Service Provider shall take such action as may be required to ensure full compliance with the provisions in the immediately preceding paragraphs herein.

12. ASSIGNMENTS/SUBCONTRACTING.

- A. The Service Provider shall not assign its performance under this Agreement or any portion of this Agreement without the written consent of the City, and it is further agreed that said consent must be sought in writing by the Service Provider not less than thirty (30) days prior to the date of any proposed assignment. The City reserves the right to reject without cause any such assignment.
- B. Any work or services assigned hereunder shall be subject to each provision of this Agreement and property bidding procedures where applicable as set forth in local, state or federal statutes, ordinance and guidelines.
- C. Any technical/professional service subcontract not listed in this Agreement, must have express advance approval by the City.

13. CHANGES.

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

14. MAINTENANCE AND INSPECTION OF RECORDS.

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

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

15. POLITICAL ACTIVITY PROHIBITED.

None of the funds, materials, property or services provided directly or indirectly under the Agreement shall be used for any partisan political activity, or to further the election or defeat of any candidate for public office.

16. PROHIBITED INTEREST.

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

17. MODIFICATIONS TO TASKS AND MISCELLANEOUS PROVISIONS.

- A. All work proposed by the Service Provider is based on current government ordinances and fees in effect as of the date of this Agreement.
- B. Any changes to current government ordinances and fees which affect the scope or cost of the services proposed may be billed as an “extra” pursuant to Paragraph 3(C), or deleted from the scope, at the option of the City.
- C. The City shall make provision for access to the property and/or project and adjacent properties, if necessary for performing the services herein.

18. TERMINATION.

- A. Either party may terminate this Agreement, in whole or in part, at any time, by at least thirty (30) days written notice to the other party. The Service Provider shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Service Provider shall promptly submit a termination claim to the City. If the Service Provider has any property in its possession belonging to the City, the Service Provider will account for the same, and dispose of it in a manner directed by the City.
- B. If the Service Provider fails to perform in the manner called for in this Agreement, or if the Service Provider fails to comply with any other provisions of the Agreement and fails to correct such noncompliance

within three (3) days written notice thereof, the City may immediately terminate this Agreement for cause. Termination shall be effected by serving a notice of termination on the Service Provider setting forth the manner in which the Service Provider is in default. The Service Provider will only be paid for services performed in accordance with the manner of performance set forth in this Agreement.

19. NOTICE.

Notice provided for in this Agreement shall be sent by certified mail to the addresses designated for the parties on the last page of this Agreement.

20. ATTORNEYS FEES AND COSTS.

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

21. JURISDICTION AND VENUE.

- A. This Agreement has been and shall be construed as having been made and delivered with the state of Utah, and it is agreed by each party hereto that this Agreement shall be governed by laws of the state of Utah, both as to interpretation and performance.
- B. Any action of law, suit in equity, or judicial proceeding for the enforcement of this Agreement, or any provisions thereof, shall be instituted and maintained only in any of the courts of competent jurisdiction in Summit County, Utah.

22. SEVERABILITY.

- A. If, for any reason, any part, term, or provision of this Agreement is held by a court of the United States to be illegal, void or unenforceable, the validity of the remaining provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.
- B. If it should appear that any provision hereof is in conflict with any statutory provision of the state of Utah, said provision which may conflict therewith shall be deemed inoperative and null and void insofar as it may be in

conflict therewith, and shall be deemed modified to conform in such statutory provisions.

23. ENTIRE AGREEMENT.

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

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

City Council
Staff Report

Author: Matthew A. Twombly
Subject: McPolin Farm Trail-head
Parking Lot
Date: September 9, 2004
Type of Item: Administrative:
Construction Contract



**ECONOMIC
DEVELOPMENT AND
CAPITAL PROJECTS**

Summary Recommendation:

Authorize the City Manager to enter into a construction contract (attached) for the Farm Trail-head Parking Lot project in a form approved by the City Attorneys Office with D.R.D. Paving L.L.C., in the amount of One Hundred Eight Thousand Eight Hundred Sixty Three and 42/100 Dollars (\$108,863.42).

Description:

Topic: McPolin Farm Trail-head Parking Lot

Background:

In 2003, City Council directed staff to proceed with the formation of a Task Force in order to construct the trail-head parking lot on the East side of SR-224. Through the winter of 2003-2004 the Task Force recommended to go forward with the construction of the Trail-head parking lot. On May 12, 2004 the Planning Commission approved an amendment to the Land Management Code relating to the Frontage Protection Zone/Entry Corridor Protection Overlay to allow trail-head parking as a Conditional Use. The City Council adopted the amendments on May 20, 2004. On June 9, 2004 the Planning Commission reviewed and approved the Conditional Use Permit for the parking lot.

In conjunction with the trail-head parking, staff planned other necessary improvements for the McPolin Farm project. Through the Fall and Spring, staff and the Friends of the Farm have constructed concrete pads for all of the outbuildings. In addition, the ADA walkway, stairway and patio at the McPolin Farmhouse were completed in July. Other projects yet to be completed, are the paved trail connections from the underpass to the Farm compound, paving the McLeod Creek trail from Meadows drive to the underpass, and some drainage and erosion control issues on the East side of the compound.

Analysis:

Stantec Consulting was hired to design the trail-head parking on the East side of SR-224 adjacent to the underpass. Written quotations were solicited from three

known contractors based on the plans and specifications prepared for the project by Stantec Consulting, Inc. The contractors had approximately 7 days to review the plans. D.R.D. Paving L.L.C. was the lowest written quote at \$108,863.42, then Preferred Paving at \$112,685.93, and Cottonwood Builders, Inc. at \$119,000.00.

Upon execution of the Agreement (Park City standard Construction Agreement attached as Exhibit A) as approved by the City Attorney's Office, the contractor will complete the project by November 1, 2004, with the asphalt paving to be completed by October 15, 2004. The scope of the project includes grading, curb and gutter, drainage and a small detention basin for storm water run-off (consistent with the City's Best Management Practice), stop sign, asphalt paving for driveway and parking, striping, and a concrete ADA ramp from the parking lot to the tunnel, landscape berm, topsoil and seeding of disturbed areas. There is no irrigation to the project site so seeding with Park City's standard mix (containing wildflowers) is the extent of landscaping.

Department Review:

City Manager, City Engineer, Economic Development and Capital Projects, and Special Events and Facilities departments have reviewed and all comments have been incorporated into the report.

Alternatives:

Approve the Request:

Authorize the City Manager to enter into a construction contract on a form approved by the City Attorneys Office with D.R.D. Paving L.L.C., in the amount of One Hundred Eight Thousand Eight Hundred Sixty Three and 42/100 Dollars (\$108,863.42).

Deny the Request:

The area would remain in its current condition without trail-head parking.

Continuance:

Delaying a decision would jeopardize the desired completion this construction season.

Do Nothing:

Delay would jeopardize the desired completion this construction season.

Significant Impacts:

Staff had budgeted \$127,000 out of the Farm Phase II Capital Improvement Account for the trail-head parking lot project. Remaining funds will be used for trail access to the Farm compound from the parking lot, scheduled for 2005. Currently, the majority of trail users park along Meadows Drive at Aspen Springs and many visitors park within the

highway right of way. The parking lot will help alleviate the impacts of trail user and sight-seer parking.

Consequences of not taking the recommended action:

Delaying the project would jeopardize the desired construction completion this season.

Recommendation:

Authorize the City Manager to enter into a construction contract on a form approved by the City Attorneys Office with D.R.D. Paving L.L.C., in the amount of One Hundred Eight Thousand Eight Hundred Sixty Three and 42/100 Dollars (\$108,863.42).

EXHIBIT A

DRAFT CONSTRUCTION AGREEMENT

THIS AGREEMENT is made and entered into as of this ____ day of _____, 2004, by and between PARK CITY MUNICIPAL CORPORATION, P O Box 1480, Park City UT 84060, a municipal corporation of the state of Utah (hereinafter "City"), and D.R.D. PAVING L.L.C., 27 West 3900 South, Murray, UT 84107, which is a (check one) ____ corporation ____ partnership ____ sole proprietorship _X_ limited liability company (hereinafter "Contractor").

PURPOSE: For the project known as McPolin Farm Trail-head Parking Lot (hereinafter "Project"), which consists of grading, curb and gutter, drainage and a small detention basin for storm water run-off (consistent with the City's Best Management Practice), stop sign, asphalt paving for driveway and parking, striping, and a concrete ADA ramp from the parking lot to the tunnel, landscape berm, topsoil and seeding of disturbed areas.

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 and, 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 a proposed form agreement which may have been submitted as part of the bid specifications, 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 ten (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 ten percent (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. All materials, equipment, parts and labor and any necessary corrections to the Project shall be guaranteed for a period of

one (1) year following the date of substantial completion of the Project under the terms of the performance bond.

SECTION 2. PERFORMANCE AND PAYMENT BONDS. Contractor shall furnish to the City payment and performance bonds satisfactory to the City guaranteeing Contractor's payment and performance, in the amount, for each separately, of one hundred percent (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.

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

The City shall be named as an additional insured on the insurance policies 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 Contractor's insurance shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit 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 One Hundred Eight Thousand Eight Hundred Sixty Three and 42/100 Dollars (\$108,863.42) ("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.

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 five percent (5%) 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 five percent (5%) 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 ten percent (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 days of receipt of the Notice to Proceed and shall be completed by October 15, 2004, for the Asphalt Paving and November 15, 2004 for the entire project. 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 **Dollars (\$)** (NOTE: liquidated damages clause must be agreed to by Contractor—if no mutual agreement, then no liquidated damages), 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 percent (10%) 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 thirty (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 seventy-two (72) hours;
- D.** If Contractor (1) shall become insolvent in a bankruptcy sense; (2) shall be generally not paying its debts as they become due, or within a reasonable time thereafter; (3) 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 ninety (90) days; (4) 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 ninety (90) days; (5) 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 ninety (90) days; (6) shall be dissolved; (7) 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 ninety (90) days; (8) shall voluntarily suspend substantially all of its business operations; (9) 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 (10) 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(s).

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, 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, 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, employees and/or officers from any claims arising from the sole negligence of the City, its agents, employees, and/or officers. The Contractor expressly agrees that the indemnification provided herein constitutes the contractor's waiver of immunity under Utah Code Section 34A-2-105 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. UNENFORCEABLE CONTRACT, WAIVERS. In the event that any provision of this contract shall be ruled invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties. 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. COMMENCEMENT OF WORK. Contractor will commence work as required by the specifications within ten calendar days after receiving the NOTICE TO PROCEED.

SECTION 19. 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 20. HOURS AND DAYS OF WORK. All work performed by the Contractor, its subcontractors, materialmen, agents and employees shall be performed during work hours of 7:00 a.m. to 7:00 p.m. Monday through Saturday unless otherwise specified in a Conditional Use Permit or Construction Mitigation Plan. In individual Construction Mitigation Plans, the Building Official may further reduce the hours or days of work for Special Events or as other circumstances may reasonably warrant. When work is prohibited, no exterior construction, excavation or delivery of supplies and concrete are allowed. Interior work, however, may be allowed Monday through Sunday, with no limitation on hours for the following types of construction:

- A. Interior work on individual single-family home construction or addition projects not involving materials or supply deliveries
- B. Construction of decks, patios, landscape walls less than 4 feet in height, and fences on individual single-family lots
- C. Non-mechanized exterior painting on individual single-family residences
- D. Non-mechanized landscaping on individual single-family residences
- E. Survey work not involving grading or use of power equipment to cut vegetation.

Extended Hours Special Permit. The Building Official may authorize extended hours for construction operations or procedures which, by their nature, require continuous operation or modify or waive the hours of work on projects in generally isolated areas where the extended hours do not impact upon adjoining property occupants. In such cases, the Building Official shall issue a Special Permit identifying the extended hours. Contractor shall display the special permit on site.

Special Event Regulations. The Building Official and/or Police Chief may, at their discretion, restrict construction activity, including governmental or special improvement agencies, in order to assure the public safety during special events within the City. Special events shall include, but not be limited to the Art Festival, Film Festival, ski events, and holiday events.

SECTION 21. CONSTRUCTION MANAGEMENT PLANS. Contractor shall submit a Construction Mitigation Plan to be approved by the Community Development Department, for all building permits. The Community Development Department may waive this requirement for minor remodels, additions and interior construction where the impact on adjacent property is minimal. This plan shall be written and shall address, to the satisfaction of the Community Development Department.

A. Hours and Days of Operation. The Construction Mitigation Plan shall specify the daily construction start and finish times. Construction activity occurring outside of the times specified in Section 11-14-6 of the Park City Municipal Code may only be allowed by Special Permit issued by the Building Official or the City Engineer.

B. Parking. The Construction Mitigation Plan shall include a parking plan. Construction vehicle parking may be restricted at construction sites so as to not block reasonable public and safety vehicle access along streets and sidewalks. Construction parking in paid or permit only parking areas require the Public Works Department review and approve a parking plan. The plan shall also include anticipated temporary parking (e.g. delivery vehicles, large equipment parking).

C. Deliveries. The Construction Mitigation Plan shall identify proposed delivery locations and routes. Deliveries of construction materials and supplies including concrete may be regulated as to time and routing if such deliveries will cause unreasonable noise, parking, or access issues. In order to reduce the number of delivery trips to construction sites, the stockpiling of materials on or near the site may be required. In the case of multiple construction sites in close proximity, a common materials storage and staging site may be required.

D. Construction Phasing. Due to the narrow streets, small lot configuration, topography, traffic circulation, weather, construction parking and material staging problems, projects in the Historic District and other areas of the City may be required to be phased if more than one project is under construction in close enough proximity to create public safety or nuisance problems. In cases where phasing is deemed necessary by the Community Development Department, the first project to receive a building permit shall have priority, however, the Building Official shall have the authority to phase projects as necessary to assure efficient, timely and safe construction.

E. Trash Management and Recycling. Construction sites shall provide adequate storage and a program for trash removal.

F. Control of Dust and Mud on Streets. A program for the control of dust or other airborne debris shall be required. Provision must be made to eliminate the tracking of mud on streets and a program shall be required to remove any such mud daily.

G. Noise. Construction activity shall not exceed the noise standards as specified in Section 6-3-9 of the Park City Municipal Code.

H. Grading and Excavation. Because of the truck hauling involved in grading and excavation, restrictions on trucking routes as well as the hours of operation may be necessary to mitigate the adverse impacts from such operations. Destination and total cubic yards of excavated material shall be noted.

I. Construction Sign Requirements. A sign, indicating the name of the party responsible for the Project shall be posted in a location where such sign is readable from the street or driveway to the construction site. The sign shall not exceed 12 square feet in size, six feet in height and shall not exceed a letter type of 4". Information on the sign shall include, at a minimum:

1. Name, address and phone number of contractor;
2. Name, address, and phone number of person responsible for the project; and
3. Phone number of party to call in case of emergency.

No additional fee is required for this sign.

SECTION 22. TOILET FACILITIES AND CONTAINERIZED TRASH SERVICE REQUIRED.

A. The Contractor shall obtain and maintain on the site a container of suitable size and design to hold and confine trash, scraps, and other construction related refuse created or accumulated on the site. All such construction refuse shall be maintained in a closed container at all times, until transferred to the landfill. Containers may be placed in setback areas, provided that the placement of the container does not obstruct the view of motorists on adjoining streets and thereby create traffic hazards. Contractor shall not permit accumulated debris, litter, or trash on the construction site to blow or scatter onto adjoining properties, including the public street or to accumulate on the site outside of the container, or on transit to the landfill or dump. The owner or contractor shall service the container as frequently as needed to prevent trash from over-flowing.

B. The Project site shall have permanent toilets, or an approved temporary toilet facility positioned in a location approved by the Building Department, at the rate of one toilet per fifteen on-site employees (1-15 employees = one toilet, 16-30 employees= two toilets and so on).

SECTION 23. 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 24. 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 25. 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 26. PROJECT MANAGER/ENGINEER. The Project Manager/Engineer for this Project is Matthew A. Twombly, or such other person designated by the City Engineer or Public Works Director to the Contractor orally or in writing.

SECTION 27. 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: David Harrison, 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 28. 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.

Resolution No.

**A RESOLUTION DECLARING THE WEEK OF SEPTEMBER 6 – 11, 2004 AS
WIND POWER WEEK IN PARK CITY, UTAH**

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WHEREAS, a sustainable energy supply is critical to the well-being of our society; and

WHEREAS, electricity generation is the largest source of industrial air pollution in the Nation, is a major contributor to global warming and fossil fuel resources used to generate electricity are finite resources; and

WHEREAS, energy efficient technology and renewable energy electricity sources are viable and readily available; and

WHEREAS, Park City's procurement of wind power consists of an aggregated load of sufficient size to potentially influence the electricity marketplace on the development of clean and renewable resources; and

WHEREAS, there is general consensus that electricity generated using "zero emissions" sources such as solar, wind, and certain small low-impact hydroelectric sources is clean, renewable, and has fewer environmental consequences than fossil fuel generated power; and

WHEREAS, Park City Municipal Corporation is a member of the Environmental Protection Agency's Green Power Partnership program, and as such has made a commitment to acquire renewable energy resources; and

WHEREAS, the community had demonstrated a desire to increase the amount of clean and renewable energy purchased through involvement in Utah Power's Blue Sky Program;

NOW THEREFORE BE IT RESOLVED that the Mayor and City Council acknowledge their constituency, the Park City Leadership Class X, Wild Oats, Utah Power, Utah Clean Energy, Deer Valley Resort, Park City Mountain Resort, and The Canyons for participating in the cause of renewable energy and accordingly proclaim the week of September 6 – 11, 2004 as:

WIND POWER WEEK, IN PARK CITY, UTAH

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PASSED AND ADOPTED this 9th day of September 2004.

City Council Staff Report



Public Works

Author: Kent Cashel
Subject: BOOTHILL PIPELINE
CONSTRUCTION CONTRACT
Date: September 9th, 2004
Type of Item: Administrative

Summary Recommendations:

Authorize Staff to execute a construction contract, in a form approved by the City Attorney, with SCI , Inc. in the amount of \$923,903 for construction of the Boothill Pipeline.

Description:

Background:

This pipeline is the first phase of a three phased project to ensure adequate water storage capacity for service and fire flow within Park Meadows and Prospector neighborhoods. The project will also add redundancy to Old Town and Deer Valley and to will allow the City to meet service obligations to Empire Pass. The second phase of the project will include a 2 million gallon subsurface water tank . The third phase consists of the construction of 2200 GPM pump station.

The existing 1 million gallon Boothill reservoir is a central distribution point for Park Meadows, Prospector and Deer Valley. The reservoir accepts water from Spiro, the Middle School well, the divide well and the Park Meadows well (when brought back on-line).

The new subsurface reservoir will be located just west of the existing Boothill tank above the cemetery. Once completed the 2,000,000 gallon reservoir(similar to the current tank) will not be visible from the roads or houses located below Boothill.

Phase one of the project (requested contract authorization) consists of approximately 7,000 feet of pipeline (1500' of 20" pipe from tank site to Monitor Drive, 2800' of 12" pipe from tank site to the Park Meadows well, 2800' of 16" pipe from tank site to tie into existing system at Park Meadows well). For a more detailed view of project see attached site plan.

The benefits this project will offer are:

- ☐ Redundancy for water supply to Old Town and Deer Valley.

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- Ensure adequate service and fire flow for Park Meadows, Prospector and Empire Pass.
- Pipeline from Park Meadows well to new tank provides required chlorine contact time for adequate water treatment.
- New reservoir will provide the vessel for blending Spiro water with Park Meadows\Divide\Middle School well water to address Spiro antimony issues.

Adequate funds to cover the cost of this critical project currently exist within the Water fund.

Analysis:

Public Works Staff has worked with Planning and Building to ensure the pipeline design meets applicable planning and building codes.

All required easements for project completion have been secured by Staff.

The Utah State Division of Drinking Water has approved the construction plans for this project as required by State law.

The City's consulting engineer for this project (Stantec Consulting, Inc.) prepared an engineer's estimate for the cost of constructing the clearwell and storage space. The engineer's base estimate was \$951,000.

Staff has conducted a pre-qualification and bid process for construction of the clearwell and storage space in compliance with State law and City policies. Complete bid documents are too voluminous to include with this report, these documents are available for review at Public Works, 1053 Iron Horse Drive during regular business hours and will also be available at the September 9th City Council meeting.

All of pre-qualified contractors submitted bids for the project. The results of the bid are summarized in the table below:

<u>Bidder</u>	<u>Bid Price (Alternate 1)</u>	<u>Bid Price (Alternate 2)</u>
<u>SCI, Inc.</u>	<u>\$983,903</u>	<u>\$923,903</u>
<u>Counterpoint Construction</u>	<u>971,307</u>	<u>\$938,140</u>
<u>Associated Brigham Contractors</u>	<u>\$1,121,629</u>	<u>\$946,292</u>

Bid alternates 1 & 2 are identical with the exception that bid alternate 1 required substantial completion of project on or before November 14, 2004 and bid Alternative 2 allowed for substantial completion on or before July 1st, 2005.

Based upon the cost of bids received Staff recommends bid alternate 2 as this will reduce project construction cost by \$47,404.

The proposal from SCI, Inc. was the lowest bid for bid alternate 2 and was responsive and responsible to all bid requirements. Staff recommends award of this construction contract to SCI, Inc..

Department Review:

This staff report has been reviewed and commented on by The City Manager, The City Attorney's Office, Planning and Building Department, The City Engineer, and Budget, Debt and Grants.

Alternatives:

Approve the Request: Authorize Staff to execute a construction contract, in a form approved by the City Attorney, with SCI , Inc. in the amount of \$923,903 for construction of the Boothill Pipeline.

Deny the Request: Council could deny Staff's request. This would require expenditure of additional City funds and staff resources and would not likely result in any savings.

Modify Staff's Request: Council could authorize Staff to award the contract to Counterpoint Construction under bid alternate 1. While this will result in quicker construction of the project Staff does not believe the additional cost is justified. Staff does not recommend this alternative.

Continue the Item: This action would have the same impact as Alternative B.

Do Nothing: This action would have the same impact as Alternative B.

Significant Impacts:

Staff and Stantec Consulting have, within the engineering requirements of this project, worked diligently to reduce any lasting visual impact this pipeline project may present. Where possible the pipeline route follows ridgeline contours to conceal the trench from vantage points from roads, trails and houses below Boothill. However, the project does involve excavation and backfill of a pipeline trench that will be visible along some stretches of the trench as it ascends and descends Boothill.

Consequences of not taking the recommended action:

This project fills a critical need to address current shortfalls in service and fire flows. The pipeline also is an integral part of the treatment strategy for the Park Meadows well. Denial or delay of this project will seriously impact the City's ability to service current and future demand.

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Recommendation:

Authorize Staff to execute a construction contract, in a form approved by the City Attorney, with SCI , Inc. in the amount of \$923,903 for construction of the Boothill Pipeline.

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City Council
Staff Report



Author: Kent Cashel
Subject: SPIRO CLEARWELL
CONSTRUCTION CONTRACT
Date: September 9th, 2004
Type of Item: Administrative

Public Works

Summary Recommendations:

Authorize Staff to execute a construction contract with Weyher Construction in a form approved by the city attorney in the amount of \$1,495,275 for the construction of a 200,000 gallon clearwell and 510 sq' of additional storage space at the Spiro treatment plant.

Description:

Background:

In 2003 The Mayor and City Council approved "phase 1" of the 2 phase Spiro Treatment plant upgrade. This first phase, completed in the summer of 2004, provided for the treatment and removal of arsenic from Spiro water. After water is filtered in the upgraded plant (finished water) a small amount of the chlorine is allowed to remain in solution to ensure water quality throughout the system. This finished water moves from the treatment hardware into a finished water wetwell where it is stored before being pumped out into the City's water system.

The capacity of the current finished water wetwell is 3680 gallons, which the system fills, when operating at capacity, in 1.6 minutes (detention time). The current 1.6 minute detention span does not provide adequate time for the plant to shut down without overflowing the tank into the Mcleod creek stream on the golf course. Discharging chlorinated water into the stream violates Utah state water quality regulations enforced by the Utah Division of Water Quality.

Phase 2 of the Spiro upgrade (contract authorization request) will include the construction of a below grade 200,000 gallon clearwell and the construction of 510 sq' of storage space at the Spiro treatment plant.

The 200,000 gallon clearwell will provide the following benefits:

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- ❑ Elimination of wetwell overflow issues.
- ❑ A vessel for blending of Spiro and Thiriot Springs Water to achieve required MCL levels for antimony.
- ❑ Allow for more efficient start up and shut down of treatment plan (energy and maintenance savings).

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The additional 510 square feet at the Spiro plant will enable Water staff to move mission critical parts and equipment currently stored in bus bays at the Iron Horse Drive Public Works facility. This move will free up bays needed to house two buses scheduled to arrive in the spring of 2005. An engineer's estimate prepared as part of the City's Short Range Transit Development Plan set the construction cost for two new bus bays at \$205,784.

Adequate funds to finance this project currently exist in the Water capital improvement fund.

Analysis:

Public Works Staff has worked with Planning and Building to ensure the structure design meets planning and building codes. The required amendment to the City's conditional use permit for this project was approved by the planning commission on August 24th, 2004. The City's Building department has reviewed construction drawings for the project and has indicated they are sufficient for the successful contractor to pull required building permits.

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Public Works has worked closely with Golf Course staff to ensure construction does not significantly impact Golf Course play.

The Utah State Division of Drinking Water has approved the construction plans for this project as required by State law.

The City's consulting engineer for this project (Montgomery, Watson, Harza) prepared an engineers' estimate for the cost of constructing the clearwell and storage space. That engineers' base estimate was \$1,425,000.

Staff has conducted a pre-qualification and bid process for construction of the clearwell and storage space in compliance with State law and City policies.

4 of the 6 pre-qualified contractors submitted bids for the project. The results of the bid are summarized in the table below:

<u>Bidder</u>	<u>Total Bid Price</u>
<u>Weyher Construction</u>	<u>\$1,495,275</u>
<u>Counterpoint Construction</u>	<u>\$1,706,000</u>

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<u>Gerber Construction</u>	<u>\$1,790,000</u>
<u>Peck Ormsby Construction</u>	<u>\$2,257,000</u>

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The proposal from Weyher Construction Company was the lowest bid and was responsive and responsible to all bid requirements. Staff recommends award of this construction contract to Weyher Construction Company.

Department Review:

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This staff report has been reviewed and commented included by The City Manager, The City Attorney's Office, Planning and Building Department, The City Engineer, Golf Course and Budget, Debt and Grants.

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Alternatives:

Approve the Request: Authorize Staff to execute a construction contract with Weyher Construction in a form approved by the city attorney in the amount of \$1,495,275 for the construction of a 200,000 gallon clearwell and 510 sq' of additional storage space at the Spiro treatment plant.

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Deny the Request: Council could deny Staff's request. This would require expenditure of additional City funds and staff resources, would not likely result in any savings, and would delay construction of the facility one year due to lack of access to required site on Golf Course. Staff does not recommend this alternative.

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Modify Staff's Request: Council could authorize execution of a construction contract without the additional storage space. This alternative would accelerate the need for the construction of additional bus bays at a higher cost. Staff does not recommend this alternative. Staff does not recommend this alternative.

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Continue the Item: This action would have the same impact as Alternative B. Staff does not recommend this alternative.

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Do Nothing: This action would have the same impact as Alternative B. Staff does not recommend this alternative.

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Significant Impacts:

Construction of the clearwell will require excavation of an area in and around the 12th fairway and green of Park City golf course. Public Works has involved Golf Course staff in planning the timeline allowed the contractor to get into and out of the 12th fairway on Park City golf course. The contractor will not be allowed onto the course until early October and must return the fairway to its original condition on or before April 15th of 2005. This schedule should minimize any impact to Golf course play.

Consequences of not taking the recommended action:

The clearwell is an integral component of the upgraded filtration plant and failure to construct this facility will jeopardize project approvals with State and Federal agencies.

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Recommendation:

Authorize Staff to execute a construction contract with Weyher Construction in a form approved by the city attorney in the amount of \$1,495,275 for the construction of a 200,000 gallon clearwell and 510 sq' of additional storage space at the Spiro treatment plant.

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AGREEMENT

THIS AGREEMENT is made and entered into as of this _____ day of _____, 2004, by and between PARK CITY MUNICIPAL CORPORATION, P O Box 1480, Park City UT 84060, a municipal corporation of the State of Utah (hereinafter "OWNER"), and Weyher Construction Company which is a X corporation partnership sole proprietorship (hereinafter "CONTRACTOR").

PURPOSE: For construction of the Spiro WFP Improvements – Stage 2 (hereinafter "Project"), which consists of a process upgrade for arsenic treatment.

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 as specifically set out in the project Contract Documents, including the following additive alternates: 30 ft x 17 ft building addition, as specifically set out in the Technical Specifications, which is made a part hereof by reference, herein called the "Project".

The Project, located at Spiro Water Filtration Plant, 1884 Three Kings Drive, Park City, Utah 84068, will be bound by the Technical Specifications referenced herein, according to the Contract Documents, which are defined in the General Conditions. In the event one of the aforementioned items is inconsistent with another item, the order of precedence shall be as set forth in Article 3, paragraph 3.4 of the General Conditions. To the extent that this Agreement conflicts in any way with a proposed form agreement which may have been submitted as part of the bid specifications, 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.

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

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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 plus ten percent (10%) of such indebtedness 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.

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. All materials, equipment, parts and labor and any necessary corrections to the Project shall be guaranteed for a period of one (1) year following the date of substantial completion of the Project under the terms of the performance bond.

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 one hundred percent (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. All such insurance required herein (except for worker's compensation and employer's liability) shall name the OWNER, the

ENGINEER, and their consultants and subconsultants and their officers, directors, agents, and employees as "additional insureds" under the policies.

The Contractor shall provide a Certificate of Insurance evidencing:

- A. Automobile Liability insurance with limits no less than one million dollars (\$1,000,000) 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.
- C. Workers Compensation insurance written on an occurrence basis with limits no less than one million dollars (\$1,000,000) combined single limit per occurrence.
- D. Builder's Risk Insurance written in an amount equal to the replacement cost of the completed project.

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The City and the ENGINEER, and its consultants shall be named as an additional insured on the insurance policies 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 Contractor's insurance shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

SECTION 4. CONTRACT PRICE, ACCEPTANCE OF WHOLE ADDITIONS. City shall pay Contractor the total sum of One Million Four Hundred and Seventy Five Thousand Dollars (\$1,475,000) 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 Price 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 Exhibit A, "Schedule of Values" 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 five percent (5%) of the value of all work done and materials or equipment supplied as part security for the fulfillment of the Agreement by the Contractor; and/or (2) retain the final payment of up to five percent (5%) 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 ten percent (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 days of receipt of the Notice to Proceed and must be substantially completed by April 15, 2005 with final completion by May 30, 2005. Substantial completion will be determined by City in its sole discretion and in accordance with paragraph 14.6 of the General Conditions. 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 or in accordance with Article 12 of the General Conditions, then for each partial or complete day during which the work remains uncompleted thereafter, the Contractor agrees to pay the City One Thousand Dollars (\$1000.00), 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. Change Orders shall be executed in accordance with Articles 10, 11, and 12 of the General Conditions. 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 by Change Order in accordance with Articles 10, 11, and 12 of the General Conditions

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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 thirty (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 by the OWNER or representatives acting on behalf of the OWNER, 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 seventy-two (72) hours;

D. If Contractor (1) shall become insolvent in a bankruptcy sense; (2) shall be generally not paying its debts as they become due, or within a reasonable time thereafter; (3) 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 ninety (90) days; (4) 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 ninety (90) days; (5) 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 ninety (90) days; (6) shall be dissolved; (7) 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 ninety (90) days; (8) shall voluntarily suspend substantially all of its business operations; (9) 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 (10) shall take action for the purpose of any of the foregoing.

After serving seven (7) days written notice on the Contractor and its surety of its intention to terminate the services of Contractor, and if within seven (7) 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(s).

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, the ENGINEER and their agents, employees, officers and Consultants, 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, 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, employees and/or officers from any claims arising from the sole negligence of the City, its agents, employees, and/or officers. The Contractor expressly agrees that the indemnification provided herein constitutes the contractor's waiver of immunity under Utah Code Section 34A-2-105 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. The Contract Documents 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. UNENFORCEABLE CONTRACT, WAIVERS. In the event that any provision of this contract shall be ruled invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties. 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. COMMENCEMENT OF WORK. Contractor will commence work as required by the specifications within ten calendar days after receiving the NOTICE TO PROCEED.

SECTION 19. 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 because of 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 20. HOURS AND DAYS OF WORK. 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 otherwise specified in a Conditional Use Permit or Construction Mitigation Plan. In individual Construction Mitigation Plans, the Building Official may further reduce the hours or days of work for Special Events or as other circumstances may reasonably warrant. When work is prohibited, no exterior construction, excavation or delivery of supplies and concrete are allowed.

Extended Hours Special Permit. The Building Official may authorize extended hours for construction operations or procedures which, by their nature, require continuous operation or modify or waive the hours of work on projects in generally isolated areas where the extended hours do not impact upon adjoining property occupants. In such cases, the Building Official shall issue a Special Permit identifying the extended hours. Contractor shall display the special permit on site.

Special Event Regulations. The Building Official and/or Police Chief may, at their discretion, restrict construction activity, including governmental or special improvement agencies, in order to assure the public safety during special events within the City. Special events shall include, but not be limited to the Art Festival, Film Festival, ski events, and holiday events.

SECTION 21. CONSTRUCTION MANAGEMENT PLANS. Contractor shall submit a Construction Mitigation Plan to be approved by the Community Development Department, for all building permits. The Community Development Department may waive this requirement for minor remodels, additions and interior construction where the impact on adjacent property is minimal. This plan shall be written and shall address, to the satisfaction of the Community Development Department.

A. Hours and Days of Operation The Construction Mitigation Plan shall specify the daily construction start and finish times. Construction activity occurring outside of the times specified in Section 11-14-6 of the Park City Municipal Code may only be allowed by Special Permit issued by the Building Official or the City Engineer.

B. Parking The Construction Mitigation Plan shall include a parking plan. Construction vehicle parking may be restricted at construction sites so as to not block reasonable public and safety vehicle access along streets and sidewalks. Construction parking in paid or permit only parking areas require the Public Works Department review and approve a parking plan. The plan shall also include anticipated temporary parking (e.g. delivery vehicles, large equipment parking).

C. Deliveries The Construction Mitigation Plan shall identify proposed delivery locations and routes. Deliveries of construction materials and supplies including

concrete may be regulated as to time and routing if such deliveries will cause unreasonable noise, parking, or access issues. In order to reduce the number of delivery trips to construction sites, the stockpiling of materials on or near the site may be required. In the case of multiple construction sites in close proximity, a common materials storage and staging site may be required.

D. Construction Phasing Due to the narrow streets, small lot configuration, topography, traffic circulation, weather, construction parking and material staging problems, projects in the Historic District and other areas of the City may be required to be phased if more than one project is under construction in close enough proximity to create public safety or nuisance problems. In cases where phasing is deemed necessary by the Community Development Department, the first project to receive a building permit shall have priority, however, the Building Official shall have the authority to phase projects as necessary to assure efficient, timely and safe construction.

E. Trash Management and Recycling Construction sites shall provide adequate storage and a program for trash removal.

F. Control of Dust and Mud on Streets A program for the control of dust or other airborne debris shall be required. Provision must be made to eliminate the tracking of mud on streets and a program shall be required to remove any such mud daily.

G. Noise Construction activity shall not exceed the noise standards as specified in Section 6-3-9 of the Park City Municipal Code.

H. Grading and Excavation Because of the truck hauling involved in grading and excavation, restrictions on trucking routes as well as the hours of operation may be necessary to mitigate the adverse impacts from such operations. Destination and total cubic yards of excavated material shall be noted.

I. Construction Sign Requirements A sign, indicating the name of the party responsible for the Project shall be posted in a location where such sign is readable from the street or driveway to the construction site. The sign shall not exceed 12 square feet in size, six feet in height and shall not exceed a letter type of 4". Information on the sign shall include, at a minimum:

1. Name, address and phone number of contractor;
2. Name, address, and phone number of person responsible for the project; and
3. Phone number of party to call in case of emergency.

No additional fee is required for this sign.

SECTION 22. TOILET FACILITIES AND CONTAINERIZED TRASH SERVICE REQUIRED.

A. The Contractor shall obtain and maintain on the site a container of suitable size and design to hold and confine trash, scraps, and other construction related refuse created or accumulated on the site. All such construction refuse shall be maintained in a closed container at all times, until transferred to the landfill. Containers may be placed in setback areas, provided that the placement of the container does not obstruct the view of motorists on adjoining streets and thereby create traffic hazards. Contractor shall not permit accumulated debris, litter, or trash on the construction site to blow or scatter onto adjoining properties, including the public street or to accumulate on the site outside of the container, or on transit to the landfill or dump. The owner or contractor shall service the container as frequently as needed to prevent trash from over-flowing.

B. The Project site shall have permanent toilets, or an approved temporary toilet facility positioned in a location approved by the Building Department, at the rate of one toilet per fifteen on-site employees (1-15 employees = one toilet, 16-30 employees= two toilets and so on).

SECTION 23. 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 24. 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 25. 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 26. PROJECT MANAGER/ENGINEER. The Project Manager/ Engineer for this Project is _____, or such other person designated by the City Engineer or Public Works Director to the Contractor in writing.

SECTION 27. 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: _____, or 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 28. 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.

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City Council
Staff Report



Author: Kent Cashel, Asst PW Director
Subject: Authorization of Spiro
Construction Management Contract
Date: September 9, 2004
Type of Item: Administrative

Public Works

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Summary Recommendations: Authorize staff to a execute professional services agreement with Montgomery, Watson, Harza (MWH), in a form approved by the City Attorney, for continued construction management services on the Spiro Treatment Plant Stage 2 Improvement Project in the amount of \$125,213.

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A. Background:

In 2003 the City Council approved "phase 1" of the 2 phase Spiro Treatment plant upgrade. This first phase, completed in the summer of 2004, provided for the treatment and removal of arsenic from Spiro water. After water is filtered in the upgraded plant (finished water) a small amount of the chlorine is allowed to remain in solution to ensure water quality throughout the system. This finished water moves from the treatment hardware into a finished water wetwell where it is stored before being pumped out into the City's water system.

The capacity of the current finished water wetwell is 3680 gallons, which the system will, when operating at capacity, fill in 1.6 minutes (detention time). The current 1.6 minute detention span does not provide adequate time for the plant to shut down without overflowing the tank into the Mcleod creek stream on the golf course. Discharging chlorinated water into the stream would violate Utah state water quality regulations enforced by the Utah Division of Water Quality, so at the outset of this project, the City planned to construct a clearwell to avoid the overflow. The project was broken into 2 phases due to the size and impacts of each component.

Phase 2 of the Spiro upgrade (contract authorization request) will include the construction of a below grade 200,000 gallon clearwell and the construction of 510 sq' of storage space at the Spiro treatment plant.

This construction project faces the following technical challenges:

• Excavation of the site for the clearwell is situated on the 12th fairway of the Park City Golf Course. To minimize impact to Golf Course play a very tight project timeline has been developed.

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• Groundwater on the clearwell site will require dewatering and will complicate construction and project timeline.

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• Numerous utilities must be relocated without interrupting service to the Spiro Plant or Parks maintenance shed.

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• Control valves and meters must be integrated with current plant control system in a manner that does not disturb system operation.

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Given the technical challenges the project poses, Staff believes it is in the City's best interest to secure the services of a qualified engineering firm to provide construction management support.

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B. Analysis:

The City's purchasing policies exempts professional service contracts from any requirement for competitive bidding. According to this policy contractors are chosen by selecting the firm whose experience, past performance and capabilities best meet the needs of the project. Nonetheless, the City solicited firms for prequalification for all Water engineering needs projects, and MWH was selected for Spiro.

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Staff has developed and negotiated a scope of work for construction management services with MWH (see Task 7.2 in attached scope). MWH provided a quote of \$ 125,213 to provide services during construction. Staff, based upon experience with other projects, believes this quote is usual and customary for a project of this type, and technical scope.

MWH was engaged as the design engineers for Stage 1 and stage 2 of the Spiro Treatment Plant upgrade. Phase 1 of the project was completed on time and on budget with MWH providing construction management services. Staff believes MWH is uniquely qualified given their involvement with the project to date.

Funds for this project were approved as part of the Water fund capital improvement projects budget during the 2004 budget process.

Staff recommends Council and the Mayor authorize staff to a execute professional services agreement with Montgomery, Watson, Harza (MWH), in a form approved by the City Attorney,

for construction management services on the Spiro Treatment Plant Stage 2 Improvement Project in the amount of \$125,213.

Alternatives:

~~A~~ Approve the Request: Authorize staff to a execute professional services agreement with Montgomery, Watson, Harza (MWH), in a form approved by the City Attorney, for construction management services on the Spiro Treatment Plant Stage 2 Improvement Project in the amount of \$125,213.

~~B~~ Deny the Request: Council could deny Staff's request. This alternative would require Staff to invest City resources to conduct a search for another construction management firm. Based upon the technical requirements of this project and MWH's past performance and qualifications staff does not recommend this alternative.

~~X~~ Continue the Item: Council could continue the item. Continuance beyond more than two weeks would severely impact the construction schedule.

~~A~~ Do Nothing: Staff does not recommend this alternative.

Consequences of Not Taking Recommended Action:

Staff believes that given the scope and technical difficulty of this project it is prudent to engage construction management support services from a qualified engineering firm. If Council denies the recommended course of action, Staff would need to manage the project utilizing only City resources. Staff believes this action would not result in overall cost savings to the City and would significantly increase the City's exposure to project delays, quality issues and cost overruns.

Recommendation:

Staff recommends the City Council authorize staff to a execute professional services agreement with Montgomery, Watson, Harza (MWH), in a form approved by the City Attorney, for construction management services on the Spiro Treatment Plant Stage 2 Improvement Project in the amount of \$125,213.

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City Council Staff Report



Author: Brooks T. Robinson
Subject: Appeal of Planning Commission's
Decision Approving the Red Cloud (Pod D)
Master Planned Development
Date: September 9, 2004
Type of Item: Quasi-Judicial

PLANNING
DEPARTMENT

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Summary Recommendations:

The Planning Staff requests that the City Council hear the appeal, take input from interested parties including the appellant and the appellers, and discuss the merits of the appeal. Staff recommends that the City Council affirm the Planning Commission decision approving the Red Cloud Master Planned Development. Staff has drafted Findings of Fact and Conclusions of Law for the Council's consideration.

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Topic

Applicant	United Park City Mines / Talisker Corp.
Location	Empire Pass (formerly known as Flagstaff Mountain Resort), top of Northside ski lift
Zoning	Estate (E) as part of the Flagstaff Master Planned Development (MPD)
Adjacent Land Uses	Deer Valley Resort ski terrain, undeveloped land

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Background

On August 11, 2004, the Planning Commission, after holding public hearings, approved a Master Planned Development (MPD) for the proposed Red Cloud subdivision (see Exhibit A, Staff Report). Red Cloud is also known as Pod D of the Flagstaff Annexation and Development. In accordance with the Flagstaff Development Agreement (the DA), a 30-lot subdivision is contemplated on lands wholly owned or controlled by United Park City Mines Company.

On August 20, 2004, the City received an appeal of the Planning Commission's decision by an adjoining property owner, Stichting Mayflower Fonds, et al represented by E. Craig Smay. Appeals must be received within ten calendar days and this appeal is within that time limit.

Appeal

This appeal of the Planning Commission's August 11, 2004 approval of the Red Cloud MPD is properly before the Council pursuant to LMC Section 15-1-18(C). As such

appeals must follow the criteria listed in Section 15-1-18 of the Park City Municipal Code. The form of the appeal (section (F)) must have “a comprehensive statement of all the reasons for the appeal, including specific provisions of the law, if known, that are alleged to be violated by the action taken.”

The submitted appeal (Exhibit B) is certainly comprehensive in its scope yet has very little to do with the action taken by the Planning Commission. Most of the voluminous documentation seems to challenge specific elements of the 1999 Development Agreement and not the approval of the Red Cloud MPD. No specific provisions of law in approving the MPD are cited. However, the appellant requests that the Council address the following issues:

- Discrepancy of the Annexation Plat and Exhibits A and J of the DA
- Density allocation to Mayflower
- Location and configuration of Mayflower density- Pods A and D
- Interpretation of footnote #9 on page 12 of the DA
- Dedication and acceptance of road and utilities through the Marsac parcel

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Staff offers discussion of these issues as follows:

Discrepancy of the Annexation Plat and Exhibits A and J of the DA

The Planning Commission action approving the MPD (1) included a recommendation to the Council to amend Exhibit A of the Development Agreement; and (2) expressly conditioned the approval on such amendment (see Condition of Approval #7). This amendment to the DA would change the zoning and pod D boundary to correspond with the boundaries of the proposed Red Cloud subdivision. Any action by the Council on amendments to the Development Agreement has been stayed with this appeal. This element of the Mayflower appeal is not ripe for appeal because the Council has not taken final action. The Council must either (A) approve the requested amendment to the DA; or (B) deny the amendment, thereby nullifying the MPD per Condition of Approval #7. Furthermore, any discrepancy between A and J is irrelevant. Exhibits A and P control for density and zoning. Exhibit J is attached only to show Lady Morgan Springs.

Density allocation to Mayflower

Mayflower's appeal letter fails to challenge the approved density vis-à-vis the MPD criteria. UPCM is within their rights under the DA to submit an MPD and subdivision for 30 lots as granted in section 2.4 of the Development Agreement. Mayflower is not a signatory to the DA and may submit applications for lands that they own. No application has been received and no density has been allocated to Mayflower.

Location and configuration of Mayflower density- Pods A and D

As of the date of this report, no development application from Mayflower has been received. Regardless, this allegation is irrelevant to the Red Cloud MPD.

Interpretation of footnote #9 on page 12 of the DA

This footnote grants to the City the right to connect to the utility lines and grants limited access to roads within the Northside Neighborhood (Red Cloud) without cost to serve the remaining property owners (Mayflower and Bransford). The proposed subdivision plat has yet to be reviewed by the Planning Commission or the City Council. UPCM is designing the utilities and road to comply with this requirement. Access to Mayflower is proposed at a logical point where the grade is the flattest and the road runs along the Red Cloud boundary. Issues arising from or concerning the proposed subdivision plat are not ripe for appeal as no action has been taken as of this date.

Dedication and acceptance of road and utilities through the Marsac parcel

The City recognizes the Utah Department of Transportation acceptance of Marsac Avenue as State Route 224 unless and until determined otherwise by UDOT and/or a court of competent jurisdiction. The City has no jurisdiction or authority to determine the validity of this issue.

Recommendation:

The Planning Staff requests that the City Council hear the appeal, take input from interested parties including the appellant and the appellers, and discuss the merits of the appeal. Staff recommends that the City Council affirm the Planning Commission decision approving the Red Cloud Master Planned Development. Staff has drafted Findings of Fact and Conclusions of Law for the Council's consideration:

Finding of Facts:

1. The Red Cloud Master Planned Development is located in the Estate-MPD and Recreational Open Space-MPD Districts.
2. The City Council approved the Development Agreement for Flagstaff Mountain Development Agreement/Annexation via Resolution No. 99-30 on June 24, 1999. The Development Agreement is the equivalent of a Large-Scale Master Plan. The Development Agreement sets forth maximum project densities, location of densities, and developer-offered amenities.
3. The Flagstaff Mountain Annexation is approximately 1,655 acres. Mixed-used development is limited to approximately 147 acres in four (4) development areas identified as Pods A, B-1, B-2, and D. The remainder of the annexation area is to be retained as passive and/or recreational open space.
4. The DA defines the Northside Neighborhood, or Pod D, as 63-acres composed of property owned by five separate property owners: United Park City Mines, Deer Valley, Park Star Mining Company, Bransford Land Company, Stichting Beheer

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Mayflower Project. Pursuant to Section 2.4 of the Development Agreement, Pod D is permitted a maximum of 38 detached single-family homes if all landowners provide written acceptance of the Development Agreement; without acceptance by all property owners, United Park and Deer Valley are permitted a maximum of 30 detached single-family homes on lands owned by them.

5. Section 2.4 of the Development Agreement limits development:

- out of the meadows;
- disturbance to a minimum of 50 feet from a ski run;
- structures, roads, and utilities to minimize visual impacts;
- out of the “Enchanted Forest”.

6. All property owners of the Northside neighborhood, including Mayflower, did not provided written acceptance of the Development Agreement. Therefore, United Park proposed a 30-lot subdivision consistent with the DA allocation.

7. The Planning Commission approved the Red Cloud MPD on August 11, 2004 for 30 single-family homes with findings of fact, conclusions of law, and conditions of approval.

8. The Planning Commission found the Red Cloud MPD to be in compliance with the requirements of LMC Chapter 6 on MPDs and section 2.4 of the Flagstaff Annexation and Development Agreement as it relates to the Northside Neighborhood.

9. An appeal of the MPD approval was filed on August 20, 2004, on behalf of Mayflower Fonds, et al.

Conclusions of Law:

1. The Mayflower appeal fails to raise any substantive issues concerning the Planning Commission's application of the MPD review criteria (LMC Chapter 6) in approving the Red Cloud MPD.

2. To the extent Mayflower's appeal challenges elements of the 1999 Development Agreement, those elements of the appeal are denied for failure to timely file such appeal pursuant to LMC Section 15-1-18(E).

3. To the extent the Mayflower appeal challenges elements of the proposed Red Cloud subdivision plat, those elements of the appeal are denied because they are not ripe for appeal, as no final action has occurred.

4. The Mayflower appeal field on August 20, 2004 is therefore denied in its entirety. The Planning Commission's August 11, 2004 decision approving the Red Cloud

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MPD is affirmed.

Exhibits

Exhibit A – Planning Commission Staff Report, Aug 11, 2004

Exhibit B – Appeal and supporting documents

Exhibit C – Response to Appeal by Talisker (UPCM)

Exhibit D – Minutes of August 11, 2004 Planning Commission hearing

Exhibit E – Minutes of July 28, 2004 Planning Commission hearing

Exhibit F – Minutes of July 14, 2004 Planning Commission work session

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