PARK CITY WORK SESSION NOTES
SUMMIT COUNTY, UTAH
SEPTEMBER 9, 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; Craig Sanchez, Director of Golf; Matt Twombly, Trails Coordinator; Ken Fisher, Recreation Manager; Kent Cashel, Transportation Director

Charlie Sturgis, White Pine Touring

1. **Council questions/comments** – Mayor Williams expressed his sympathy to Brian Hess' Family and announced a memorial to be held at Miners Hospital on Friday at 6 p.m. He reported on the wind power bus trip to Evanston, Wyoming organized by staff, which was well attended. Additionally, 135 blocks of wind power were sold on Miners Day. Marianne Cone congratulated staff on receiving the Savvy Award for the Citizens Guide, which she believes is a great information tool. Candace Erickson remarked on the progress made by the Historical Society on marketing its new museum and the Board requests to be involved in the planning of the downtown plaza. Joe Kernan also expressed his sadness at the passing of Brian Hess. He continued that he enjoyed the wind power tour.

2. **Review of regular meeting.**

White Pine lease – Craig Sanchez explained that an RFP was issued locally and nationally and the City received one proposal from Jans/White Pine Touring; the same thing occurred seven years ago. The program includes a lease of portions of Hotel Park City, seasonal rental of land to set track, and a contract setting forth grooming services performed by the City. In 1999, the City received restaurant tax monies to purchase a groomer. Staff explored the possibility of the City running the cross-country ski concession but concluded that Jans/White Pine Touring does an excellent job. He commented that this year, the trail property at McPolin Farm is better defined by way of attaching a trail map and revised language in the lease. He explained that the City is reimbursed $28,000 annually for grooming, a portion of which is allocated toward equipment replacement. There was discussion about the term of the lease coinciding with purchase of equipment by White Pine, but Charlie Sturgis didn't feel that timing is a problem. He suggested issuing an RFP a year before termination of White Pine's operation is anticipated.

Farm trailhead parking lot and neighborhood parks – Matt Twombly explained that this project dates back ten years with the creation of the entryway master plan. The lot is planned for the east side of SR224 and the associated CUP received Planning Commission approval in June. The recommended contractor is DVD Paving in the amount of $108,863. There was discussion about access to the lot positioned south from the median for safety reasons. The parking lot will not be lit. Mr. Twombly added that there will be a landscape berm about 30 feet from the curb; signage and/or turn lanes are not suggested.

Neighborhood parks – Matt Twombly stated the neighborhood parks project emerged in 2003 and RAB identified the vacant lot at the intersection of Comstock and Sidewinder as a new park location and recommend enhancements to Prospector Park. There was a discussion of earlier surveys supporting certain park amenities in Prospector Park like basketball and a subsequent petition filed by members of the neighborhood in opposition. There was positive direction from property owners on both the Comstock/Sidewinder park and Racquet Club park and the Planning Commission approved associated CUPs. He added that staff is recommending an award of contract to Design Workshop in the amount of $51,000 for the design of the three neighborhood parks.

He discussed the impacts of the clean-up work on the wetlands which needs to be accomplished to comply with EPA requirements. It is planned to move structures off of the wetland area. Jim Hier asked about savings associated with the removal of the design of the basketball court and Matt Twombly indicated that the cost is minimal. Mr. Hier believed basketball courts should be eliminated as options for neighborhood parks and if money can be saved, it should be removed from the design work. He also felt it important to present options to the neighborhood. In response to a question from Joe Kernan, Ken Fisher explained that the original plan and options can be simply illustrated through overlays. These visuals may also help dismiss misconceptions that improvements will encroach on green space. It was emphasized for the benefit of Marianne Cone, that the City is complying with all regulations.

Water projects – Kent Cashel explained that the contracts relate to two major water projects including the Boothill pipeline construction and Phase II Spiro Treatment Plant upgrade. The Boothill project contemplates a pipeline from the new Park Meadows Well to the Boothill subsurface storage tank and a pipe to Monitor Drive. This is the first of three phases which include the addition of a 2 million gallon subsurface storage tank, located west of the current storage tank on Boothill, and the construction of a pump station. The storage is needed to meet demands in Empire Pass and to stabilize water pressure problems associated with high consumption periods. The pipeline will provide a redundant water supply for Old Town and Deer Valley. It will also provide a vessel for blending Spiro water with Park Meadows Divide Well and Middle School Well Water to address antimony issues. He stated that staff conducted a procurement of pre-qualified contractors and SCI Construction is the successful bidder in the amount of $923,930. In response to a comment from Marianne Cone, Mr. Cashel explained that the excavation for the trench will have a visual impact on the hillside and the neighborhoods will be contacted. It will be vegetated, but it will take a couple of years to fill in. Because the Boothill project is very technical, Stantec Consulting is recommended for award of a construction management services contract in the amount of $46,744.

Spiro Phase II consists of the installation of a 2 million gallon subsurface clear well and the construction of an additional 510 square feet of storage space at the plant. The construction of a clear well is a requirement of the Utah Division of Drinking Water. This will also provide a vessel for blending Spiro and Theriot Springs water and add efficiency to water operations. Staff conducted a procurement with four pre-qualified contractors and the successful bidder is Weyer Construction in the amount of $1,495,275. This is the same company who completed Phase I on time and on budget. Mr. Cashel continued that the construction management contract for Spiro is recommended to be awarded to Montgomery Watson Harza who designed the plant.

See regular meeting minutes.

Prepared by Janet M. Scott, City Recorder

PARK CITY COUNCIL MEETING
SUMMIT COUNTY, UTAH
SEPTEMBER 9, 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, September 9, 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; Ray Milliner, Planner; Kirsten Whetstone, Planner; and Brooks Robinson, Planner.

II COMMUNICATIONS FROM COUNCIL AND STAFF

1. Memorial service for Brian Hess – The Mayor announced that a service will be held at City Park on Friday at 6 p.m.

2. Utah Humanities Award – Mel and Peggy Fletcher – Dana Williams stated that making nominations for this award is one of his favorite things as Mayor and there will be a more formal presentation in Salt Lake next week by the Utah Humanities Council. He thanked Mel and Peggy Fletcher for being great ambassadors of the City. John Wiseberg of the Utah Humanities Council explained that the Fletchers are being recognized for their work in restoring the Glenwood Cemetery. He also thanked Zions Bank for its contributions in supporting this program.

3. Summit County Solid Waste Committee update – Kevin Callahan, Summit County Public Works Director, explained that the Solid Waste Committee consists of elected officials from each city in the county and six citizens. The charge is to complete a comprehensive review of solid waste collection and disposal in the County. The main landfill cell, constructed in 1986, probably has about 10 to 12 years left. Participation in recycling programs have reduced volumes coming to the landfill to a small degree. The committee is looking at alternatives, including shutting the landfill down and becoming part of a consortium or using the landfill for only residential waste and hauling commercial out of the County. Mr. Callahan noted that the tentative recommendation of the committee is that the landfill property, consisting of 115 acres, should be retained as a resource and another cell should be developed meeting higher standards. This would take about three to four years and cost about $3 million and the Commission will review financing options. He added that now there are scales at the landfills so exact tonnages can be measured and reported to the state.

He spoke about BFI's exclusive rights to haul all residential and commercial waste until 2006 and as mentioned earlier, the renewal may just address residential collection. He discussed the challenges with commercial recycling programs and expanding the residential program. Committee recommendations should be available for Commission review by late October in preparation of the 2005 budget and the challenge is financing a different system in the future. Mr. Callahan explained that currently the landfill is largely supported by the County's general fund and it may be more appropriate to treat it as an enterprise fund.

Joe Kernan clarified that constructing a new landfill and capping the old one are established projects and getting feedback from Council on options like expanding recycling, or establishing an electronic and/or hazardous waste program would be helpful. He also asked for comments on equity issues and pointed out that single family units receive free trash pick-up and curb-side recycling while multi-family and commercial structures are charged. It is likely that programs will be funded with new fees. Jim Hier felt it would be appropriate for Council to individually render comments to Council member Kernan by the end of September, before the next meeting of the committee. The City Manager suggested that a work session be held the end of September so a consensus opinion is presented to the committee.

4. Savvy Award – Myles Rademan discussed the improvements made to the citizen guide which won the 3CMA award for the 2004 best citizen guide for communities of 7,500 – 65,000. There were over 700 entrants and this is quite an honor.

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

Elizabeth Swank, Arts Council, relayed that Brian Hess truly enjoyed working with City staff and stated that the group is committed to his memory and vision. Peter Roberts assured Council that they would carry on his work.

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

Jim Hier, "I move approval of the work session notes and minutes of the meeting of August 26, 2004". Kay Calvert seconded. Motion unanimously carried.

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)** – The Mayor requested a motion to continue this matter to September 23. Jim Hier, "I so move". Kay Calvert seconded. Motion unanimously carried.

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 – Ray Milliner explained that the combination of lots will accommodate the construction of a single family home and the Planning Commission forwarded a positive

recommendation. The Mayor opened the public hearing. Hearing none, the public hearing was closed.

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 – Ray Milliner relayed that the applicant requested that this hearing be continued to September 30, 2004. Hearing no comments or questions from the City Council or the audience, the public hearing was continued to the 30th of September. Candace Erickson, "I so move". Marianne Cone seconded. Motion carried unanimously.

4. Amendments to the Land Management Code regarding definitions and zoning districts for timeshare, fractional ownership, and private residence club ownership units and projects – Kirsten Whetstone explained that currently the Land Management Code does not differentiate between fractionally owned units and defines them as timeshares. On August 11, 2004, the Planning Commission held a work session, public hearing, and voted to forward a positive recommendation on the amendments. The Commission requested an additional amendment requiring 24 hour reservation and property management services. It also requested Council direction on whether conversions should be processed as a conditional use or master planned development. She reviewed the definitions section and explained in detail the addition of a private residence club, which is not a timeshare. The ownership configuration consists of four to 12 owners and would be allowed in the RD, RDM, RC, GC, LI, RCO, HRC, and HCB with conditional use permit approval. She emphasized that staff is not recommending that timeshares be allowed in other zones. Councilman Hier brought up the popularity of corporate ownership. Mark Harrington advised that if it is structured for interval ownership, it would require registration with the state and compliance with the City's zoning laws with regard to timeshares. Mr. Hier believed some applicants avoid meeting state regulations and the City should be cognizant of these situations. Kirsten Whetstone emphasized that timeshares are not allowed in the RD zone. Joe Kernan agreed with Mr. Hier's comments and felt it prudent to be ahead of the curve with regard to the market. The Mayor opened the public hearing.

Bob Wells, Deer Valley Resort, stated that he participated in a task force with staff to formulate the amendments with the goal to keep it simple. It is important to address *residence clubs* because of their success in resort areas and currently, the RD zone is prohibited from this use. Deer Valley is in support of the ordinance. Mark Harrington disclosed that there have been concerns raised by the Building and Engineering Departments, which will be addressed in the next round of amendments.

With no further comments or questions from Council or the audience, the Mayor requested a motion to continue the public hearing. Marianne Cone, "I move to continue the public hearing to September 23, 2004". Kay Calvert seconded. Motion unanimously carried.

VI CONSENT AGENDA

Joe Kernan disclosed that he has a small contract with White Pine Touring. Candace Erickson stated that her husband is employed by Stantec Engineering, Item 4, but she does not perceive a conflict. Jim Hier, "I move approval of Consent Agenda Items 1, 3, 4, 5, 6, 7". Marianne Cone seconded. Motion unanimously carried.

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 – See staff report and public hearing.

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 – See staff report. Item continued.

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 – See staff report and work session notes.

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 – See staff report and work session notes.

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 – See staff report and work session notes.

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 – See staff report and work session notes.

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

VII NEW BUSINESS

1. Authorization to the City Manager to execute a construction contract, in a form approved by the Legal Department, to SCI for the construction of Boothill vault and

pipeline in the amount of $923,930 – See staff report and work session notes. Kent Cashel stated that staff completed procurement in compliance with all state and local regulations. Kay Calvert, "I move to authorize the City Manager to execute a construction contract, in a form approved by the Legal Department, to SCI for the construction of Boothill vault and pipeline in the amount of $923,930". Candace Erickson seconded. Motion unanimously carried.

2. Authorization to staff to execute a construction contract for construction of Phase II of the Spiro Treatment Plat upgrade with Weyher Construction in the amount of $1,495,275 – See staff report and work session notes. Candace Erickson, "I move to authorize staff to execute a construction contract, in a form approved by the City Attorney, for construction of Phase II of the Spiro Treatment Plat upgrade with Weyher Construction in the amount of $1,495,275 for the construction of a 200,000 gallon clear well and 510 square feet of additional storage space at the Spiro treatment plant". Kay Calvert seconded. Motion unanimously carried.

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 – See staff report and work session notes. Jim Hier, "I move to authorize staff to execute a professional services contract with Montgomery Harza Watson, in a form approved by the City Attorney, in the amount of $125,213". Candace Erickson seconded. Motion unanimously carried.

4. Appeal of Planning Commission approval of The Red Cloud Pod D Master Planned Development – Mayflower Mountain Fonds – Mark Harrington advised that appeals are *quasi judicial* in nature and Council is charged to determine whether the Planning Commission erred as a matter of law in its application of the Land Management Code and the applicable Development Agreement to the master planned development approval. This is the scope of the appeal unless the Council votes otherwise. This is not a public hearing and comments should be limited to staff and the Mayflower group. He pointed out minor corrections to the staff report, specifically the Conclusions of Law and advised that No. 4 should be removed from this section and identified as *Order* and a new No. 4 should read *The Planning Commission did not err in approving the Red Cloud MPD.*

Brooks Robinson, Planner, acknowledged the voluminous amount of material submitted by Attorney Craig Smay, but the matter before Council is quite simple and that is whether the Planning Commission erred in approving the Red Cloud MPD. This area is also known as Pod D and/or the Northside Neighborhood in the Development Agreement. Staff contends that the Planning Commission did not err and that the appellant's rights have not been diminished in any manner. On June 24, 1999, the City Council adopted Ordnance No. 99-30, which approved the annexation and

Development Agreement for 1,655 acres of the Flagstaff Mountain Resort. United Park City Mines Company was and is the primary land owner, but not the only one. However, United Park, Deer Valley, and Park City Municipal Corporation were the only signatories on the Development Agreement. He continued that the Agreement set forth the types and locations of land use, maximum densities, the timing of development, and the development approval process, as well as development conditions and amenities. Within the Development Agreement, Pod D, was defined as 63 acres of property owned by five different property owners: United Park, Deer Valley, Park Star, Bransford, and Mayflower. Pod D may receive approval for a maximum of 38 single family homes, if and only if, all land owners provide written acceptance of the Development Agreement. Without such acceptance, United Park and Deer Valley could apply for a maximum of 30 single family homes. Consistent with this section of the Agreement, an MPD for 30 singly family homes was applied for to be constructed on 49.7 acres of the 63 acres, which meets an average of density of 38 units:63 acres.

Mr. Robinson continued that after several hearings, the Planning Commission approved the Red Cloud master planned development on August 11, 2004. An appeal of this action was received on August 20, 2004 from Mayflower Mountain Fonds asking for consideration of five points which staff analyzed. Mr. Robinson stated that most of these are irrelevant and have no bearing on the appeal. The criteria of the appeal is quite specific as to a finding of error in approving the MPD. With regard to one of the points, he acknowledged that there are differing configurations of pods in various exhibits in both the annexation resolution and Development Agreement. The Planning Commission has expressly conditioned the MPD on the action of the Council to amend Exhibit A to conform with the Red Cloud MPD. At this point, no action has been taken because it has to be scheduled before the City Council, rendering this aspect of the appeal irrelevant. Mr. Robinson continued that the appellant has chosen not to apply for an MPD or boundary change. The point about density allocation for Mayflower is also irrelevant; an application with the City needs to be submitted and reviewed before density allocation is determined. The fact that United Park applied for an MPD does not diminish Mayflower's rights at all. This is also true with Point 3, the configuration and location of the Mayflower density can not be determined without an application.

Mr. Robinson stated that one relevant point is Footnote 9 on Page 12 which granted the City the right to connect utility lines and grants limited access to the roads to serve the remaining property owners, which include Mayflower and Bransford. However, the specifics of the utility and access points have not yet been determined through a subdivision action, and this issue is not ripe for an appeal. Finally, with regard to the dedication of the road, the City recognizes Marsac Avenue as SR224, and will continue to do so unless determined otherwise. He concluded that staff has prepared findings of fact and conclusions of law affirming the Planning Commission's decision.

Craig Smay, attorney representing Mayflower Stichting, introduced Bob Theobald who distributed copies of drawings and maps appended to the Development Agreement. He referred to Exhibit A of the Development Agreement, Flagstaff Mountain Resort, delineating annexation boundaries and pods. Mayflower owns a substantial amount of acreage in the outside boundary of the annexation, within the Northside Neighborhood (Pod D), and within the Village. However, only one owner negotiated and executed the Development Agreement and the Code clearly provides that all signatures of the owners are required. Mr. Smay added that the reason Mayflower didn't sign was because they were not treated the same way as United Park at the time. The deal with United Park was "*we'll fix your densities and make you a representation of what you'll get out of this Agreement, if you'll sign up to it*". That accommodation was not offered to the Mayflower people, who were simply expected to sign and come in later to make an application. Mr. Smay continued to explain that Mayflower didn't sign and it became clear to them that the Planning Commission seemed to believe that they were represented by United Park. Mayflower then sent written statements to the City that they *were not part of this* and were ignored. The Development Agreement was entered into and Mayflower is bound by it as their land is down-zoned to non-development. All of the development credits, except for eight lots in Pod D, are assigned to United Park and if Mayflower wishes to protest or obtain development rights, they must first sign the Development Agreement waiving their objections.

With regard to the staff's objection that it is inappropriate at this point for Mayflower to appeal, Mr. Smay argued that approvals are being obtained under the large scale MPD and if the large scale MPD is simply invalid for failure to obtain the proper consents, then the approvals are invalid. For example, Mr. Smay pointed out that the approval of the Planning Commission recites that the Red Cloud MPD is satisfactory because it complies with the open space requirement by providing 88%, but this is Mayflower's property. The MPD specifies a road requirement, but the private road from Red Cloud to SR224 has been illegally reconstructed across land belonging to the Mayflower people without their consent. There is in excess of 200 feet of the new SR224 in trespass. He stated that it seems appropriate at this point to present Mayflower's concerns, rather than waiting for an amendment to Pod D. Before the City Council or Planning Commission proceed with approvals, it should be recognized that the appropriate consents were never obtained. Furthermore the imposed zoning is a result of the Development Agreement and there were not regular zoning proceedings held. United Park made it perfectly clear that unless they got what they wanted, they wouldn't submit an annexation petition.

Mayor Williams interjected that he attended almost all meetings relating to Flagstaff and doesn't find Mr. Smay's testimony germane to the appeal as annexations are negotiated. The City Attorney agreed and added that the opportunities to appeal the zoning and annexation have both long passed and from a due process sense, the City

Council has no ability to adjudicate and proclaim those actions invalid. Without defining time lines for due process, any sense of finality of land use decisions relied upon by the public, would be eviscerated. Mr. Harrington continued that parties rely on actions and to use this fairly administrative approach to contest a legislative act in 1999, in staff's opinion, is beyond the scope of Council's jurisdiction. The City Council has a very limited reconsideration window which has long passed by virtue of the LMC. He emphasized that the City believes the Development Agreement, LMC, and zoning map are valid.

Craig Smay countered that there is no provision for individual land owners to appeal annexations. If the Agreement is void in the first place, it doesn't gain status by the passage of time if the appropriate authority to enter the Agreement never existed. This is true of the zoning as well. The City made an agreement with United Park to zone the property in a particular way. It had no authority to make such an agreement and the passage of time simply doesn't work. Mr. Smay stated that the City set up a *reciprocal zoning system* so that if you're not in a development pod, you're in open space. Every time there is a proposal under the Development Agreement, the validity issue is raised again. Changing the boundaries of the development pod can only be done, according to the Code, with Mayflower's consent now. The pre-application stage dictates consent from all owners of land affected, which has not been obtained from the Mayflower people. Each approval affects Mayflower's rights because their land is used as open space and the road. Mr. Smay stated that Mayflower should have been accorded the same rights as United Park by way of knowing what they are going to get. Mayflower made a proposal for seven of the eight lots in Pod D which United Park objects to as well as interest in the Village. Mayor Williams requested that Mr. Smay keep to the parameters of the appeal. Craig Smay continued that there is an essential road in the area which is discontinuous because several hundred feet of it is in trespass. Mr. Smay suggested that if we want to force the Mayflower people into some sort of injunctive action against use of the road, there will be a combination action with UDOT. He suggested that it seems much more sensible to go back to where, as the staff acknowledges, the City has always assumed United Park would obtain consent of the other owners. This was represented to the City before the Development Agreement was signed, but it never happened and Mr. Smay asked why United Park approvals move forward. The reciprocal zoning scheme was put into place for the purpose of maintaining an overall development "person" in the area. If the other areas are down-zoned to mountain development so that the number provided to United Park is maintained, the City runs the risk that there will be further proceedings for substantially more development on property contemplated as open space. He relayed that there is a quick and simple solution to this which is to negotiate with Mayflower who is not asking for anything outside the parameters of the Agreement. The City excluded Mayflower's land from Pod D and down-zoned it to open space and he alleged that submitting an application puts them at tremendous risk. If the City is willing to go forward with approvals under a large scale MPD and enforce zoning imposed as a result of the Agreement between the land owner and the City, against the rights of other land owners who have nothing, Mayflower is prepared to assert its rights, including taking action with respect to the road, the zoning, and the Development Agreement. Mr. Smay recommended that Council intervene now and conduct negotiations with Mayflower.

Kay Calvert asked why Mayflower waited so long. Craig Smay stated that they haven't waited long; the approvals are just happening. They are in a lawsuit with United Park and a judgment has been issued giving some of the lots to Mayflower, but no final order has been issued. Ms. Calvert stated that she doesn't see the role of the Council to mitigate problems between two private land owners. Mr. Smay responded that the Code requires consent from all land owners before a large scale MPD is imposed. Mayor Williams indicated that obviously this is a debatable point. Mr. Smay objected and Mr. Harrington clarified that Mayflower is not part of the MPD in terms of the Development Agreement. Mayflower assumes none of the benefits or obligations of the Agreement and the zoning and annexation are two separate actions. Mr. Smay reiterated his opinion on *reciprocal zoning* and Kay Calvert expressed that she didn't feel the City entered into a *devil's agreement* with United Park. At this point in the meeting, Mayor Williams excused himself to attend another community function, and Mayor Pro Tem Jim Hier presided. He relayed for the benefit of Mr. Smay, that as Mayor, he is not able to vote.

Jim Hier understood that the reconfiguration of the pod of the Red Cloud MPD being challenged differed from a prior depiction of the boundary. Brooks Robinson agreed this is an issue and explained that the reconfiguration is approximately 50 acres while the Development Agreement allowed up to 63 acres of development in Pod D. There are still about 14 acres that could become a part of the Pod D development. Mr. Robinson emphasized that final action has not been taken yet by the City Council on the amendment to Pod D. The Mayor Pro Tem asked if any of Mayflower's property was excluded as a part of realigning the boundaries. Planner Robinson explained that it refines the boundary to 49.7 acres and Mayflower could apply to rezone it. This was done with the Treasure Hill Subdivision which was rezoned in tandem with processing the application so that locations of development are planned. Mark Harrington reiterated that Council has not taken final action so the issue is not ripe for appeal. With regard to questions from Council member Hier about initial renderings, Brooks Robinson explained that some of Mayflower's property appeared in the initial Pod D outlines relating to 38 units on 63 acres. He again explained that this application proportionately reflects 30 units on 49 acres. Ms. Cone asked if Mayflower has the ability to develop eight units. Mark Harrington responded not at this time, and emphasized that there has been no density determination for Mayflower because there has been no application. He explained the provision of an eight unit maximum, viewed as a density bonus, available if all of the owners cooperated to apply for approval of a coherent development plan. Absent that, property owners are entitled to apply for their own MPD and receive a density determination based on review of the application, but until that occurs, Mayflower has no vested rights to density and any discussion about density would be premature.

Craig Smay again referred to Exhibit A where an extension of Mayflower's land is shown in Pod D but the property was eliminated on the annexation map in July 1999. Mark Harrington stated that this is irrelevant because a second sheet governs Exhibit A for the purpose of amending the map by the Council by adding Mayflower, for example. This is also incorporated in the zoning and density provisions in the Development Agreement. The City Attorney continued that pods were shown on the annexation plat for illustrative purposes and Exhibits A through P have varying discrepancies, but the provisions that incorporate each one for each particular purpose are very clear. Mr. Smay countered that the annexation resolution says it will be zoned according to the drawing which cuts off Mayflower's land. The Mayor Pro Tem invited the Talisker group to comment.

Doug Clyde introduced Mandy Scully and Dave Smith, Vice President and General Counsel for Talisker. Mr. Smith stated that Talisker acquired United Park last year and indicated he did not have much to add to staff's presentation or his written response. It is true that Mayflower is not a part of the Development Agreement and the *devils bargain* comment is interesting because there are enormous exactions demanded of United Park at great cost. Because they don't have the other signatories to the Development Agreement, United Park has only applied for 30 lots and has been very careful that the application complies with the Development Agreement. The eight bonus lots were offered to the other property owners, if and when they signed the Agreement. Those are still available and Mayflower has made no submittal to obtain anything at this point. Talisker is concerned that this is an effort to circumvent the process by getting the City to agree and establish density and development rights without having to go through the process. Mr. Smith clarified that Red Cloud by way of careful design, has no Mayflower property. Mayflower had concerns with the project at the time, but chose not to appeal or contest it. From Talisker's perspective, their biggest concern is the settlement discussions with Mayflower which have occurred over a very long time, and as recently as a couple of days ago. He explained that the common thread of most of Mayflower's submittals is to stop Talisker's development until some density and development rights are determined for them. He continued that there is concern that Mayflower is not willing to engage in the municipal process and is attempting to halt Talisker from developing its own lands on Red Cloud. There is fear that this is an effort to leverage even higher settlement payments and other considerations on the table. Mr. Smith felt this is the only explanation because Mayflower is not a party to the Development Agreement and has made no submittal. Until they make application and have development rights determined, it is hard to claim that Mayflower is damaged or has standing. Mr. Smith explained that the lawsuit between United Park and Mayflower, which Mr. Smay referred to, was an action to divide jointly owned property. It is not located in Red Cloud but near it. Last month, the court split the property and with regard to the same issues raised here by Mayflower about the enforceability of the Development Agreement, determined that Mayflower's claims are without merit. What Mayflower gets is four bonus lots in the Northside Neighborhood if it subjects its land to the Development Agreement. The final findings have not been prepared but this is the direction of the court and the ruling has been provided to the City Attorney. Again, Mr. Smith emphasized that they fear that Mayflower is using this forum to acquire rights inconsistent with the court ruling and Talisker does not want to do anything afoul of the Development Agreement.

Craig Smay contended that the judge stated that he will make no decisions about the enforceability of the Development Agreement against Mayflower. The settlement discussions have largely failed because Mayflower will not sell Talisker its property at a discounted rate. With regard to comments made by the City Attorney, Mr. Smay noted that the City can not enter into an agreement with United Park which decides zoning for other people's property. He repeated that the Development Agreement was a bargain between United Park and the City for its signature on an annexation document.

Bob Theobald, agent for Mayflower, displayed and discussed at length the differences of various maps delineating property ownership, including the annexation plat. Mr. Theobald contended that the area was planned with no regard for ownership boundaries. When Pod D was created, Mayflower had no development on the property and received no density. United Park used all of the land, received the density and told the City it would negotiate with other property owners. Had an accurate map been prepared from the onset, mistakes could have been avoided.

Jim Hier stated that it is his belief that the Planning Commission's approval of Red Cloud was based on the City's position that the Development Agreement is valid and the property was zoned in accordance with the LMC. It is his position that the zoning occurred in a lawful manner and he recommended that Council uphold the Planning Commission's decision approving the MPD based on the drafted findings of fact and conclusions of law, as modified by the City Attorney earlier this evening. Candace Erickson, "I move that we deny the appeal of the Planning Commission approval and uphold its decision based on the findings of fact and conclusions of law". Kay Calvert seconded. Motion carried unanimously. Mark Harrington noted for the record that the Mayor Pro Tem voted.

VIII 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 5:15 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. Joe Kernan "I move to close the meeting to discuss property". Marianne Cone seconded. Motion carried unanimously.

The meeting opened at approximately 6 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

Janet M. Scott, City Recorder

MARCH 1, 1884
Seal
CORPORATE
PARK CITY SUMMIT COUNTY UTAH

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

PARK CITY
1884

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

PARK CITY 1881

PLANNING DEPARTMENT

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

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

PARK CITY 1881

Planning

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

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

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6. <u>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)</u>

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:

- Additions to the definitions sections to include revised definitions for timeshare unit, timeshare project, and timeshare estate;
- 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;
- 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
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.
445 Marsac Avenue
P. O. Box 1480
Park City, Utah 84060

If to Tenant:
Russ J. Coburn
Jan's LTD Dba White Pine Touring
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 for 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 partys 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, sever able 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 service the termination of this Agreement.

6. <u>Entire Agreement</u>
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. <u>Time of Essence</u>
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. <u>Captions</u>
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. <u>Governing Law</u>
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. <u>Counterparts</u>
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. <u>Successors, No Third Party Benefits</u>
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. <u>Further Assurances</u>
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 is 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

PARK CITY
1884

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 a 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 polices exempts 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 a 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 proved 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

PARK CITY 1881

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. <u>REPORTS AND INSPECTIONS</u>.

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. <u>INDEPENDENT CONTRACTOR RELATIONSHIP</u>.

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. <u>COMPLIANCE WITH LAWS</u>.

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. <u>NONDISCRIMINATION</u>.

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

PARK CITY
1881

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 party 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.

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Resolution No.

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

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

PASSED AND ADOPTED this 9th day of September 2004.

City Council
Staff Report

PARK CITY 1884

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

Public Works

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.
- 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 to 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:

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

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.

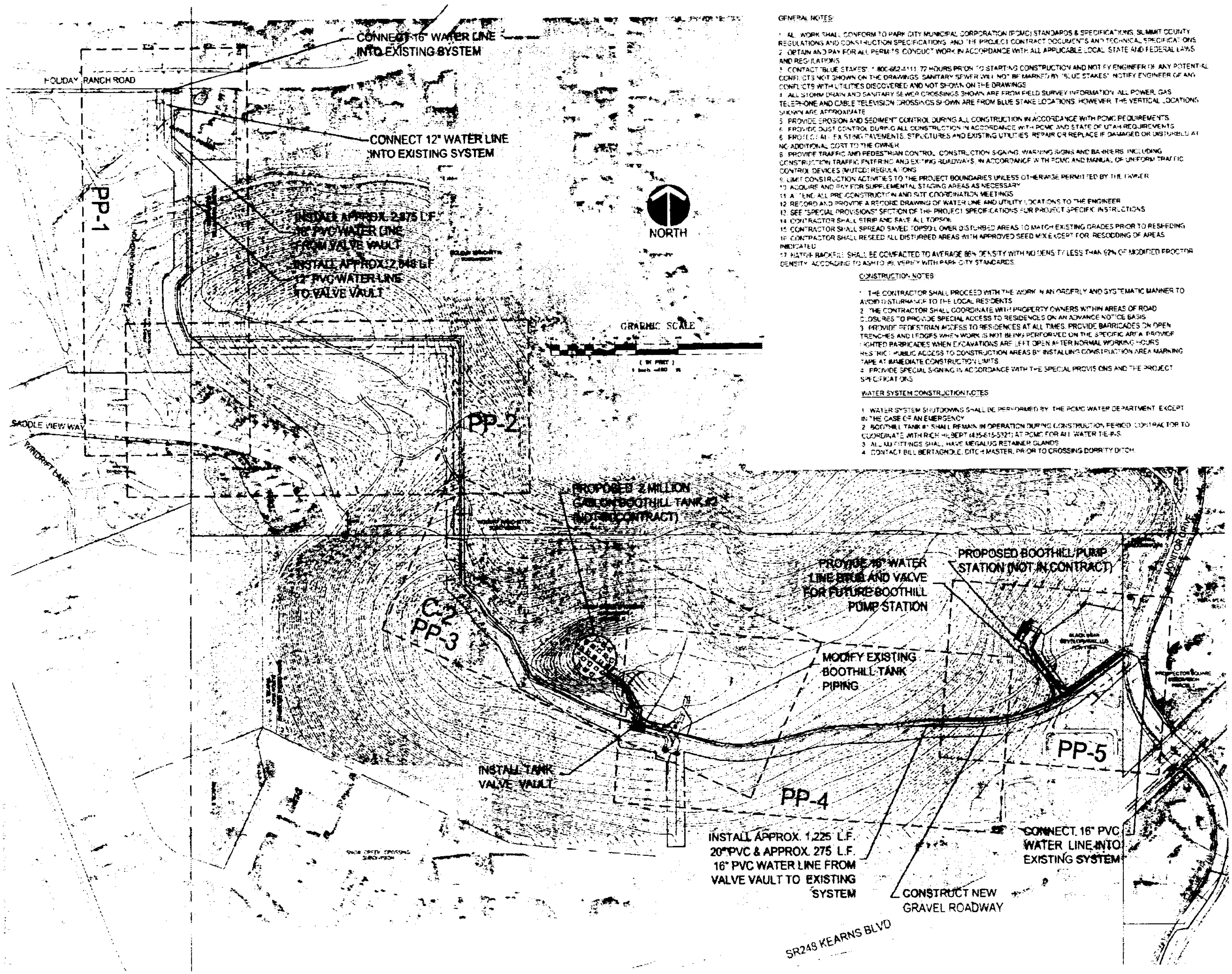
Continue the Item: This action would have the same impact as Alternative B.

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.

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.



GENERAL NOTES:

1. ALL WORK SHALL CONFORM TO PARK CITY MUNICIPAL CORPORATION (PCMC) STANDARDS & SPECIFICATIONS, SUMMIT COUNTY REGULATIONS AND CONSTRUCTION SPECIFICATIONS, AND THE PROJECT CONTRACT DOCUMENTS AND TECHNICAL SPECIFICATIONS.
2. OBTAIN AND PAY FOR ALL PERMITS. CONDUCT WORK IN ACCORDANCE WITH ALL APPLICABLE LOCAL, STATE AND FEDERAL LAWS AND REGULATIONS.
3. CONTACT "BLUE STAKES", 1-800-662-4111, 72 HOURS PRIOR TO STARTING CONSTRUCTION AND NOTIFY ENGINEER OF ANY POTENTIAL CONFLICTS NOT SHOWN ON THE DRAWINGS. SANITARY SEWER WILL NOT BE MARKED BY "BLUE STAKES". NOTIFY ENGINEER OF ANY CONFLICTS WITH UTILITIES DISCOVERED AND NOT SHOWN ON THE DRAWINGS.
4. ALL STORM DRAIN AND SANITARY SEWER CROSSINGS SHOWN ARE FROM FIELD SURVEY INFORMATION. ALL POWER, GAS, TELEPHONE AND CABLE TELEVISION CROSSINGS SHOWN ARE FROM BLUE STAKE LOCATIONS. HOWEVER, THE VERTICAL LOCATIONS SHOWN ARE APPROXIMATE.
5. PROVIDE EROSION AND SEDIMENT CONTROL DURING ALL CONSTRUCTION IN ACCORDANCE WITH PCMC REQUIREMENTS.
6. PROVIDE DUST CONTROL DURING ALL CONSTRUCTION IN ACCORDANCE WITH PCMC AND STATE OF UTAH REQUIREMENTS.
6. PROTECT ALL EXISTING PAVEMENTS, STRUCTURES AND EXISTING UTILITIES. REPAIR OR REPLACE IF DAMAGED OR DISTURBED AT NO ADDITIONAL COST TO THE OWNER.
8. PROVIDE TRAFFIC AND PEDESTRIAN CONTROL, CONSTRUCTION SIGNING, WARNING SIGNS AND BARRIERS, INCLUDING CONSTRUCTION TRAFFIC ENTERING AND EXITING ROADWAYS, IN ACCORDANCE WITH PCMC AND MANUAL OF UNIFORM TRAFFIC CONTROL DEVICES (MUTCD) REGULATIONS.
9. LIMIT CONSTRUCTION ACTIVITIES TO THE PROJECT BOUNDARIES UNLESS OTHERWISE PERMITTED BY THE OWNER.
10. ACQUIRE AND PAY FOR SUPPLEMENTAL STAGING AREAS AS NECESSARY.
11. ATTEND ALL PRE-CONSTRUCTION AND SITE COORDINATION MEETINGS.
12. RECORD AND PROVIDE A RECORD DRAWING OF WATER LINE AND UTILITY LOCATIONS TO THE ENGINEER.
13. SEE "SPECIAL PROVISIONS" SECTION OF THE PROJECT SPECIFICATIONS FOR PROJECT SPECIFIC INSTRUCTIONS.
14. CONTRACTOR SHALL STRIP AND SAVE ALL TOPSOIL.
15. CONTRACTOR SHALL SPREAD SAVED TOPSOIL OVER DISTURBED AREAS TO MATCH EXISTING GRADES PRIOR TO RESEEDING.
16. CONTRACTOR SHALL RESEED ALL DISTURBED AREAS WITH APPROVED SEED MIX EXCEPT FOR RESODDING OF AREAS INDICATED.
17. NATIVE BACKFILL SHALL BE COMPACTED TO AVERAGE 96% DENSITY WITH NO DENSITY LESS THAN 92% OF MODIFIED PROCTOR DENSITY, ACCORDING TO ASHTO 99. VERIFY WITH PARK CITY STANDARDS.

CONSTRUCTION NOTES:

1. THE CONTRACTOR SHALL PROCEED WITH THE WORK IN AN ORDERLY AND SYSTEMATIC MANNER TO AVOID DISTURBANCE TO THE LOCAL RESIDENTS.
2. THE CONTRACTOR SHALL COORDINATE WITH PROPERTY OWNERS WITHIN AREAS OF ROAD CLOSURES TO PROVIDE SPECIAL ACCESS TO RESIDENCES ON AN ADVANCE NOTICE BASIS.
3. PROVIDE PEDESTRIAN ACCESS TO RESIDENCES AT ALL TIMES. PROVIDE BARRICADES ON OPEN TRENCHES AND LEDGES WHEN WORK IS NOT BEING PERFORMED ON THE SPECIFIC AREA. PROVIDE LIGHTED BARRICADES WHEN EXCAVATIONS ARE LEFT OPEN AFTER NORMAL WORKING HOURS. RESTRICT PUBLIC ACCESS TO CONSTRUCTION AREAS BY INSTALLING CONSTRUCTION AREA MARKING TAPE AT IMMEDIATE CONSTRUCTION LIMITS.
4. PROVIDE SPECIAL SIGNING IN ACCORDANCE WITH THE SPECIAL PROVISIONS AND THE PROJECT SPECIFICATIONS.

WATER SYSTEM CONSTRUCTION NOTES:

1. WATER SYSTEM SHUTDOWNS SHALL BE PERFORMED BY THE PCMC WATER DEPARTMENT EXCEPT IN THE CASE OF AN EMERGENCY.
2. BOOTHILL TANK #1 SHALL REMAIN IN OPERATION DURING CONSTRUCTION PERIOD. CONTRACTOR TO COORDINATE WITH RICH HILBERT (435-615-5321) AT PCMC FOR ALL WATER TIE-INS.
3. ALL MJ FITTINGS SHALL HAVE MEGALUG RETAINER GLANDS.
4. CONTACT BILL BERTAGNOLE, DITCH MASTER, PRIOR TO CROSSING DORRITY DITCH.

Stantec

Stantec Consulting Inc.

Legend

	EXISTING CONTOURS
	PROPOSED CONTOURS
	WATER LINES
	FENCE LINE
	LIMITS OF DISTURBANCE
	TEMPORARY EASEMENT
	OVERHEAD POWER LINES
	UNDERGROUND ELECTRICAL LINES
	STREAMS / DITCHES
	PONDS
	WATER VALVES
	POWER POLES
	COMBINATION AIR-VAC

Notes

Revision

Issued

Permit-Seal

7/14/09

Client/Project

PARK CITY MUNICIPAL CORPORATION

BOOTHILL VALVE VAULT AND PIPELINES
Park City, UT U.S.A.

Title

OVERALL SITE PLAN & INDEX

Project No.	Scale
186200494	1"=120 FT.
Drawing No.	**Sheet**
C-1	2 of 22

Revision: 0

City Council
Staff Report

PARK CITY
1884

Public Works

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

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:

- 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).

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.

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:

Bidder	Total Bid Price
Weyher Construction	$1,495,275
Counterpoint Construction	$1,706,000
Gerber Construction	$1,790,000
Peck Ormsby Construction	$2,257,000

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:
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.

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.

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.

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.

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

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

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.

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.

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 Contact 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 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 Contact 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.

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 Contact 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

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.

City Council
Staff Report

PARK CITY 1884

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

Public Works

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.

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.

- Groundwater on the clearwell site will require dewatering and will complicate construction and project timeline.
- Numerous utilities must be relocated without interrupting service to the Spiro Plant or Parks maintenance shed.
- Control valves and meters must be integrated with current plant control system in a manner that does not disturb system operation.

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.

Analysis:

The City's purchasing polices 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.

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:

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.

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.

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

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.

City Council
Staff Report

PARK CITY 1884

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 DEPARTMEN

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.

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**

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

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 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 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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September 7, 2004

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Re: STAFF RESPONSE

The Staff Response takes the head-in-the-sand position that the appeal Aseems to challenge specific elements of the 1999 Development Agreement and not the approval of the Red Cloud MPD.@ Further, Aunless and until determined otherwise by UDOT and/or a court of competent jurisdiction@, the City should Arecognize the Utah Department of Transportation (AUDOT@) acceptance of Marsac Avenue as State Road 224.@ In fact, a court of competent jurisdiction has decided all that needs to be decided about the part of SR 224 in issue. Further, of course, any direct challenge to the Development Agreement (ADA@) necessarily challenges any approval thereunder. For reasons including the following, until the consent to the DA of all owners intended to be affected by it is obtained, approvals fixing density rights under it should be stayed.

The zoning within the Flagstaff Annexation was defined and imposed as part of the DA; it is no more or less valid than the Agreement.

Appeal of the Annexation and DA in 1999 was unnecessary to assert that the DA has no effect upon owners who did not sign. That matter remains before the Council under ' ' 15-6-4 (C), (G) and (I), Land Management Code (ALMC@). An action to contest any effort to impose the DA on appellants will lie from the date of any approval.

AChanges in a Master Planned Development (AMPD@), which constitute a change in concept, density, unit type or *configuration of any portion or phase of the MPD* will justify review of the entire master plan and Development Agreement by the Planning Commission . . . .@ ' 15-6-4 (I), LMC. The authority of the City Council on an appeal is set out in ' 15-1-18 (H)(3): AThe City Council may affirm, reverse, or affirm in part and reverse in part any properly appealed decision of the Planning Commission . . . .@ In doing so, A[t]he appellate body shall direct staff to prepare detailed written: . . . (2)

conclusions as to how a contrary decision would violate the provisions of the LMC, other City ordinances, or applicable state or federal laws or regulations.@ ' 15-1-18 (G). Necessarily, therefore, the Council can, and must, dispose of all colorable claims that the underlying basis of the action appealed, the Flagstaff Mountain Annexation and DA, or the present proceeding to amend it, violates the LMC, or state law limiting the power of cities to zone.

Insofar as the DA controls overall development by down-zoning to non-development virtually all of the land of non-consenting owners, to the extent it fails to bind non-consenting owners, it fails of its purpose. This is true whether the DA is void because it constitutes illegal contract zoning, or simply because it violates the LMC.

The Large Scale Master Planned Development granted by the DA includes large tracts of appellants= land, some of it in both Pod A and Pod D as originally defined. The zoning within the LSMPD is reciprocal: in order to control overall development, land not zoned for development is zoned for non-development. Every change in Pod A or Pod D necessarily affects the interests of appellants, to the extent appellants are affected by the MPD. The Staff=s position that appellants= land is controlled by the LSMPD, and its included zoning, notwithstanding appellants did not apply for the MPD or sign the DA, but that appellants cannot complain of changes in the MPD because they did not apply or sign the DA, is contradictory. In fact, under the LMC, as well as under ordinary contract law, because appellants did not apply or sign the Agreement, the LSMPD is invalid (LMC ' ' 15-6-4 (C), (G); 15-15-1.155); if appellants were bound by the MPD it could not be changed in any way which affects them without their consent. ' 15-6-4 (I), LMC.

AExhibit A@ to the DA, which defines the development Pods A and D, as well as the surrounding open space zone, differs substantially from AExhibit A@ to the Annexation Resolution (AAR@), which purports to establish zoning. In Exhibit A to the DA, Pod D includes a large eastward extension encompassing a substantial parcel of appellants= property. Sometime after the June 24, 1999 adoption of the DA and the AR, a different map, prepared in July 1999, was attached as AExhibit A@ to the AR and made AExhibit P@ to the DA. This drawing eliminates the eastern extension of Pod D, which is drawn on its southeastern side along the boundary of United Park City Mine Co.=s (AUPCM=s@) ownership, to eliminate any of appellants= property. It is the latter drawing which UPCM now purports to amend by contracting the boundary of Pod D to eliminate land belonging to Deer Valley in which appellants hold the development rights. While the Staff response indicates that the approval Aamend(s) Exhibit A of the Development Agreement@, thus affecting substantial Mayflower properties, Talisker now asserts, apparently under AExhibit A@ to the AR, that Mayflower does not own lands within Red Cloud.@ If the DA has any affect on appellants= land, the Council must resolve what status, if any, AExhibit A@ to the AR (AExhibit P@ to the DA) has, and whether any modification of AExhibit A@ to the DA can occur without appellants= consent under ' 15-6-4 (I), LMC.

Even if the zoning under the AR and DA were valid, treatment of lands within zones must be non-discriminatory. Permitting development on lands in Pod A only if it belongs to UPCM, or reducing Pod D to exclude all land except that belonging to UPCM, violates this principle.

A Acourt of competent jurisdiction@ *has* determined that the appellants own, and at all pertinent times owned, the Marsac Claim, which contains a long stretch of re-built Marsac Avenue. No further action is required to void any Aacceptance@ by UDOT of dedication of that stretch of SR 224 by anyone but appellants. Further action would be required for UDOT to obtain ownership or jurisdiction of this stretch. Thus, presuming that physical access is a requirement for MPD=s under the LMC, further MPD approvals in the Flagstaff Mountain LSMPD cannot comply with ' 15-6-6 (A), LMC.

Appellants assume that the City intends the DA to bind appellants= lands, in order to maintain the overall limits on development in the Flagstaff Annexation. Otherwise, the City must negotiate what development is appropriate on appellants= land, treating them non-discriminatorily with UPCM=s land. Appellants must resist any effort to restrict development of its lands by agreement between the City and UPCM, or to use the DA to assign a fixed quantum of development to UPCM only. Appellants= endorsement of the DA should be obtained before attempting further approvals thereunder. The appropriate resolution of this matter is to obtain appellants= consent now by fixing the density entitlement of the appellants in Pods A and D at an agreeable level, to be developed at the appropriate time, and not subject to diminishment without appellants= consent.

Very truly yours,

E. Craig Smay