PARK CITY COUNCIL MEETING
SUMMIT COUNTY, UTAH
AUGUST 30, 2007

PUBLIC NOTICE IS HEREBY GIVEN that the City Council of Park City, Utah will hold its regularly scheduled meeting at the Marsac Municipal Building, City Council Chambers, 445 Marsac Avenue, Park City, Utah for the purposes and at the approximate times as described below on Thursday, August 30, 2007.

Closed Session
2:00 p.m. Property, personnel and litigation

Work Session
3:50 p.m. Council questions/comments
4:00 p.m. Review of regular meeting

- Contract questions/comments
- Park Bonanza General Plan Element
- Other meeting questions/comments

4:50 p.m. Joint work session with Planning Commission – street vacation
5:50 p.m. Break

Regular Meeting
6:00 p.m.

I ROLL CALL

II COMMUNICATIONS AND DISCLOSURES FROM COUNCIL AND STAFF

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

IV WORK SESSION NOTES AND MINUTES OF MEETING OF AUGUST 9, 2007

V CONSENT AGENDA PUBLIC HEARINGS *(items listed will be open for public hearing prior to consideration for adoption or rejection; hearings may also be continued by vote of the Council)*

1. Consideration of an Ordinance approving a plat amendment at 1617/1621 Lakeside Circle, Park City, Utah **(motion to continue to October 4, 2007)**

2. Consideration of a recommendation to deny a plat amendment for 255 Ridge Avenue, King Ridge Estates **(motion to continue to September 20, 2007)**

3. Consideration of a Master Festival License to be held on September 2, 2007 including a temporary street closure of Doc Holiday Drive on September 2, 2007 from 1 p.m. to 8 p.m. and to allow amplified music for a block party from 2 p.m. to 8 p.m.

4. Consideration of an Ordinance approving a one year extension of the amended Lots 1-3, Block 30 of Snyder's Addition to the Park City Survey plat amendment located at 819 Empire Avenue, Park City, Utah

VI CONSENT AGENDA *(items that have previously been discussed or are perceived as routine and may be approved by one motion. Listed items do not imply a predisposition for approval and may be removed by motion and discussed and acted upon under "Additional Discussion – Agenda Items")*

1. Master Festival License to be held on September 2, 2007 including a temporary street closure of Doc Holiday Drive on September 2, 2007 from 1 p.m. to 8 p.m. and to allow amplified music for a block party from 2 p.m. to 8 p.m.

2. Ordinance approving a one year extension of the amended Lots 1-3, Block 30 of Snyder's Addition to the Park City Survey plat amendment located at 819 Empire Avenue, Park City, Utah

3. Lease with Wintzer-Wolfe Properties, in a form approved by the City Attorney, for space located at 1255 Ironhorse Drive

VII NEW BUSINESS *(new items with presentations and/or anticipated detailed discussions)*

1. Lease with the Boys and Girls Club, in a form approved by the City Attorney, for space located in the City Park Recreation Building

2. Consideration to authorize the City Manager to execute a construction contract, in a form approved by the City Attorney, to Nelson Brothers Construction Company, in the amount of $71,697

3. Consideration to authorize the City Manager to approve Addendum No. 1 to the Professional Services Agreement with Harris and Associates for a total contract amount of $281,425

4. Consideration to authorize the City Manager to enter into an agreement with Jordanelle Special Service District in the amount of $240,000 to design an emergency water supply connection to Quinn's Junction

5. Consideration of a Resolution amending the Park City General Plan creating the Park Bonanza Neighborhood Planning Area and amending related policies in General Plan Elements relating Park City direction, community character, open space, land use, growth management, transportation, environment, and housing
(a) Public hearing
(b) Action

VIII OLD BUSINESS *(items continued from a previous meeting)*

1. Consideration of a Resolution forming a Business Improvement District for the downtown core in Park City, Utah

    (a) Continuation of public hearing
    (b) Action

2. Consideration of awarding of three year contract to Allied Waste, in a form approved by the City Attorney, for hauling services within the Main Street area and City facilities and to implement a $150 tax per license

3. Consideration of an Ordinance approving amendments to the Park City Land Management Code to Chapter 15-2.6 – Historic Commercial Business District and 15-2.5 – Historic Recreation Commercial District relating to prohibiting office, residential, or other non-sales tax generating uses and other similar or associated uses in the HCB and HRC Districts in storefronts as well as related definitional changes to the LMC Chapter 15-15-1 – Definitions

(a) Continuation of public hearing
(b) Action

4. Consideration of an addendum to the lease with Park City Historical Society for property located at 528 Main Street (*continued from Municipal Building Authority meeting*)

(a) Public input

IX ADDITIONAL DISCUSSION – AGENDA ITEMS

X ADJOURNMENT

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

PARK CITY COUNCIL MEETING
SUMMIT COUNTY, UTAH
SEPTEMBER 6, 2006

PUBLIC NOTICE IS HEREBY GIVEN that the City Council of Park City, Utah will **not** hold its regularly scheduled meeting on Thursday, September 6, 2007.

Posted: 08/20/07
See: www.parkcity.org

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

August 2007

16 **Candy gone**
23 **No meeting – Management Meeting**
Jim gone
Candy gone
30 **Dana gone – regular meeting**

Marianne gone 9/20 – 10/3
September 2007

6 **No meeting – Summer Tour**
11 Primary election
13 Park and ride facility
Bond Resolution USSA Conduit Financing
Contract for recycling services for the Main Street core and City park facilities
20 Recommendation to deny a plat amendment for 255 Ridge Avenue, King Ridge Estates
27 **No meeting**
Dana gone

Dana gone 10/04 – 10/21
October 2007

4 Ordinance approving a plat amendment at 1617/1621 Lakeside Circle, Park City, Utah
11
18 **No meeting**
25

November 2007

1 Police facility ribbon-cutting
8
15 Canvass
22 **Thanksgiving**
29

Pending Items:

Addendum to the lease with Park City Historical Society for property located at 528 Main Street
Resolution - Trails Master Plan
Solid waste strategic plan
Market analysis – Phases 1 and 2

Tentative "no meeting" dates:

December 27

City Council and Planning Commission Staff Report

Subject: Echo Spur on Rossi Hill
Author: Brooks T. Robinson
Date: August 30, 2007
Type of Item: Administrative – Plat Amendment; Request for Street Vacation

PARK CITY 1884
PLANNING DEPARTMENT

Summary Recommendations

The Planning Commission requested a joint meeting to get direction on the proposed street vacation per Resolution 8-98, “Resolution adopting a policy statement regarding the vacation of public right-of-ways within Park City, Utah.”

Topic

Applicant:	Park City Real Estate and Development Company, represented by Connie Bilbrey
Location:	Lots 17 through 32, Block 58 Park City Survey
Zoning:	Historic Residential (HR-1)
Adjacent Land Uses:	Residential
Reason for Review:	Plat amendments require Planning Commission review and City Council approval

Background

The City, on April 2, 2007, received a complete application for a plat amendment to lots 17-32, Block 58, of the Park City Survey. These lots are located to the east of the homes fronting on Ontario Avenue in the 400 block. The property is currently vacant.

The applicant proposes to combine the 16 lots into seven lots; two of the lots are of sufficient size to have a duplex built on each although only one is proposed. The applicant further requests the vacation of platted but unbuilt McHenry Avenue from Rossi Hill Drive to platted Third Street.

On July 11, 2007, the Planning Commission held a work session discussion and took public input at the regular hearing (minutes attached). The Planning Commission requested a joint meeting with the City Council to get direction on the street vacation.

Analysis

Central to the project is the issue of the proposed vacation of platted McHenry Avenue. In order to execute the vacation, the City Council after receiving a recommendation from the Planning Commission must make findings of compliance with Resolution No. 8-98, “Resolution adopting a policy statement regarding the vacation of public right-of-ways within Park City, Utah.” The resolution is divided into three sections; each with reviewable criteria necessary for a finding of compliance.

SECTION 1 Good Cause: The City may generally find "good cause" when a proposal evaluated as a whole demonstrates a "net tangible benefit" to the immediate neighborhood and to the City as a whole.

Criteria 1: No increase in density. Existing density shall be determined by counting the lots/units that the petitioner could reasonably obtain a building permit for at the time the petition is filed. The existing density must have existing access and must not require a plat amendment in order to obtain a building permit. Street right-of-ways will generally not be vacated to facilitate greater density, floor area or area disturbance.

Residential density is considered the number of lots per acre. By this standard, the applicant is proposing a reduction in density from 16 lots to seven. A plat amendment would not be required to build on the lots. Although access to all 16 lots can be obtained on platted McHenry, the grade gets steeper to the north and a maximum 10% road grade could be only be maintained with massive grading and retaining walls. Third Street is also a platted un-built right-of-way with extreme difficulties for construction as well. Therefore, some type of turnaround for fire access would be required that would eliminate the use of several lots in the current platted configuration.

The HR-1 zoning district has limiting requirements more than just setbacks and building height. The City uses a footprint formula based on the lot size. The footprint is a measure of all exterior walls projected to the ground, so bay windows and other cantilevered elements are included. As lots are combined, the footprint increases at a lower rate than the amount of area. For example, a single Old Town lot (25 x75) of 1,875 square feet has a footprint of 844 square feet. A two-lot combination of 3,750 has a footprint of 1,519 square feet (about 90% of two single lots). The footprint for 16 homes on standard 25 x 75 Old Town lots would total 13,504 square feet (16 x 844). The current proposal of combined lots decreases the total allowable footprint to 10,339 square feet with footprints ranging from 1,336 square feet to 1,941 square feet.

By combining lots, an applicant is reducing the total footprint for the area and increasing the amount of open space between buildings. However, the size of each of those buildings is larger. This is part of the balance the City evaluates when looking at lot combinations.

In either scenario (existing platted lots and current proposal) the amount of disturbance would cover the entirety of the site.

Criteria 2: Neighborhood Compatibility: The proposal shall be analyzed according to the following criteria: the application complies with all requirements of the LMC; the use will be compatible with surrounding structures in use, scale, mass and circulation; the use is consistent with the Park City General Plan, as amended; and the effects of any differences in use or scale have been mitigated through careful planning. The City shall consider the 15 criteria for a conditional use located in Chapter 15-1-10 of the LMC when considering compatibility.

Staff has reviewed the proposed property against the LMC lot and site requirements and made the following findings:

HR-1 Site Requirements

	Required	**Proposed**
Lot Size	1,875 square feet for a single family house; 3,750 square feet for a duplex.	3,200 square feet, smallest single family; 5,200 square feet for duplex (lot 7). Lot 4 is 4,100 square feet
Building Footprint	844 sf feet is the maximum allowed building footprint on a 1,875 sf standard Old Town lot. Larger lots allow more foot print. Lots range from 3,200 sf to 5,200sf.	1,336 square feet to 1,941 square feet.
Front and Rear Yard	Minimum of 10'.	15 feet in rear (east); buildings set 30 feet from west property line.
Side Yard	Minimum of 5 feet for Lots 1-6, 10 feet for lot 7.	6 feet on all. Lot 7 will need a minimum of 10' with a total of 24'.
Height	27 feet above existing Maximum	27 feet above existing Maximum
Parking	Two spaces, Minimum	Two spaces, Minimum

In addition to meeting the minimum site requirements as stated in the LMC, the applicant would be required to submit an application for Historic District Design Guideline review, as well as a steep slope CUP for any building development on a slope of greater than 30%. Several lots may require this additional review due to slopes greater than 30% in grade.

The vacating of McHenry Avenue allows the proposed houses to be closer to the Silver Pointe condominiums and further from the houses facing Ontario Avenue. However, the driveway and fire access for the proposal is along the east (rear) of the Ontario houses. While there has been a dirt road providing access to the Ontario houses, legal standing of this access has not been established. Legal access is from Ontario Avenue for these lots. The typical layout of lots in Park City, both in Old Town and in newer subdivisions, provides for rear yard to back onto other rear yards, thus providing private space that is not interrupted by vehicular traffic. Although the Ontario homes may be granted access from the proposed private driveway, this configuration is not compatible with the established pattern of development and may be undesirable to the immediate neighborhood.

Criteria 3: Consideration: Proposals must compensate the City for the loss of the right-of-way. Consideration favored by the City will generally be financial (market value based upon square footage); open space dedication above and beyond normal subdivision or development requirements; trail or public access dedication above and beyond normal subdivision or development approval requirements; replacement of right-of-way dedication; and/or any public amenity deemed in the best interests of Park City's citizens.

The Staff has not found the proposed compensation to be acceptable. The applicant has not proposed any financial consideration for the 8,000 square feet of McHenry that would be included into their property. This is the size of over 4.25 Old Town lots. There is an open space lot on the south side of Rossi Hill Drive on the parts of lots 18 and 19 that are owned by the applicant. However, these partial lots could not be built on without a variance. The applicant is proposing to build an extension of Shorty's stairs in the Fourth Street right-of-way.

What has not been made clear is the disposition of the east half of the McHenry right-of-way. In a street vacation, the entire right-of-way is vacated with half going to property owners on either side. If McHenry is vacated, Silver Pointe condominiums and Gateway Estates would also need to compensate the City for the additional land.

Criteria 4: Utility of existing Right-of-Way. The City shall typically dispose of public right-of-way only when the right-of-way is no longer of significant utility to the City. The City shall consider the right-of-way's status as listed in the Streets Master Plan, the recommendation to the City Engineer, existing improvements and utilities within the right-of-way and the Capital Improvement Plan. Replacement of the prior right-of-way alignment or dedication of new right-of-way must meet the construction and width standards in the Streets Master Plan, unless otherwise reduced by the City Engineer.

The 1984 Streets Master Plan lists the platted McHenry R-O-W as "excess R-O-W" meaning it is not of significant value to the City.

No replacement right-of-way is proposed. A private 30 foot wide access driveway and utility easement is proposed on the west side of the property.

Pursuant to State Law, (UCA 10-9a-609.5) a street vacation may not impair the right of way or easements of any lot owners or franchise rights of any public utility. Whether or not this vacation complies with this requirement is currently under review.

SECTION 2. MATERIAL INJURY. The City must find that no person nor the public is "materially injured" by the proposal. "Materially injured" generally means direct or indirect injury to property or a property right as a result of the proposal. The injury must be significant enough to raise to the level of interfering with the injured party's use of his/her property or property right. The injury must be demonstrated by evidence on the record, or the City's reasonable inference there from, and shall not merely be conjecture nor public clamor.

The proposed vacation will not materially injure the adjoining properties. The owners of Silver Pointe condominiums and Gateway Estates would gain additional landscaped separation instead of having a road to their west. Some of the Ontario Avenue homes would have better access to the rear of their properties than currently provided by the dirt road. Other Ontario homes would not take advantage from this access. Compatibility is addressed in Criterion 2.

SECTION 3. JOINT MEETINGS. Joint meetings between the Planning Commission and City Council and Historic Preservation Board, as necessary are encouraged early in the process for large projects and master planned developments, which propose vacation and reconfiguration of public right-of-ways.

The Planning Commission requested a joint hearing.

Department Review
This project has gone through an interdepartmental review on April 24, 2007. Additional information was requested at that time. The questions raised then have not been answered. No additional compensation has been offered for the proposed street vacation.

Notice
The property was posted and notice was mailed to property owners within 300 feet. Legal notice was also put in the Park Record.

Public Input
Staff has received several emails from adjoining neighbors (attached as Exhibit B) and has met with several of those neighbors.

Recommendation
No action is proposed; please provide direction to the staff and applicant on the merits of the street vacation. Discussion points to consider:

- Is there an increase in density?
- Is the proposed vacation and subsequent access compatible with the neighborhood development pattern?
- Is the consideration provided by the applicant sufficient to justify to the Citizens the vacation of a public right-of-way?
- Is there a "net tangible benefit" to the immediate neighborhood and to the City as a whole? *Staff has determined there is not.*

Exhibits
Exhibit A – Minutes from Planning Commission of July 11, 2007.
Exhibit B – Correspondence from staff, applicants, and neighbors.
Exhibit C – Existing Conditions Plan

City Council Staff Report

Subject: Doc Holliday Block Party
Author: Max J. Paap
Department: Sustainability- Implementation
Date: August 30, 2007
Type of Item: Administrative – Master Festival License

Summary Recommendations:
Review the Master Festival License application, conduct a public hearing, and approve the license for the Doc Holliday Block Party, as conditioned, on September 2, 2007 to be held at 2200 block of Doc Holliday Drive.

Description:
Topic:
Review the Master Festival License Application, submitted by Steven Currie, for the Doc Holliday Block Party at 2200 block of Doc Holliday Drive on September 2, 2007.

Background:
Steven Currie submitted an application requesting a Master Festival License to hold a neighborhood party. The event would run from 1:00 pm - 8:00 pm on Sunday, September 2, 2007. The event is a first year community event to invite the neighborhood to gather for the Labor Day holiday in the Prospector area.

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

Analysis:
The event organizers have requested to hold their event on September 2, 2007. The event would begin at 1:00 pm and end at 8:00 pm at the 2200 block of Doc Holliday Drive. Activities would include cooking of barbequed meats and other foods, live amplified music, and dancing. This application is being reviewed as a Master Festival License due to the request to play amplified music in a residential area, request for a variance from the noise ordinance, and a temporary street closure. The applicant has indicated the amplified music would take place between the hours of 2:00 pm and 8:00 pm at the specified location.

Department Review:
All applicable departments have reviewed the Doc Holliday Block Party and their comments have been incorporated into the report.

Alternatives:

Approve the Request:

Approve the Master Festival License allowing the Doc Holliday Block Party as described.

Deny the Request:

Deny the Master Festival License, preventing the addition of the Doc Holliday Block Party to Park City's schedule of events.

Continue the Item:

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

Significant Impacts:

Park City has held many similar events to the Doc Holliday Block Party. The activities will be contained within the venue and will conclude by 8:00 pm.

Consequences of not taking the recommended action:

The Doc Holliday Block Party would not take place.

<u>RECOMMENDATION</u>:

Staff recommends the City Council conduct a public hearing and approve a Master Festival for the Doc Holliday Block Party September 2, 2007 based on the following Findings of Fact, Conclusions of Law and Conditions of Approval.

<u>Findings of Fact:</u>

1. The Doc Holliday Block Party will be held Saturday, September 2, 2007. The event will last from 1:00pm to 8:00pm and will occur at the 2200 block of Doc Holliday Drive.
2. Parking for the anticipated crowd of 60 people can be accommodated with the existing parking in and around the venue. The conduct of the Doc Holliday Block Party will not substantially interrupt or prevent the safe and orderly movement of public transportation or other vehicular and pedestrian traffic in the area of its venue.
3. The event is oriented towards families and youth. The events associated with the Doc Holliday Block Party will not require the diversion of so great a number of police, fire, or other essential public employees from their normal duties as to prevent reasonable police, fire, or other public services protection to the remainder of the City.
4. The event will be held at 2200 block of Doc Holliday Drive. The concentration of persons, vehicles, or animals will not unduly interfere with the movement of police, fire, ambulance, and other emergency vehicles on the streets or with the provision of other public health or safety services.
5. There are other Master Festival and Special Event Licenses that have been granted for September 2, 2007. The table below will show in column (A)- Geographic separation of events; column (B)- Proposed time and duration of the events; column (C)- Anticipated attendance. The Relay for Life will not substantially interfere with the logistics and venue for any event for which a license has already been granted and with the provision of City services in

support of other such events or governmental functions based on the following:

DATE	EVENT	A – Geographic Separation	B - Proposed Time & Duration	C – Anticipated Attendance
September 2	**Doc Holiday Block Holliday Party**	**2200 block of Doc Holliday**	**1PM-8PM Amp. Music (2pm-8pm)**	**60**
September 2	Park Silly Sunday Market	Main Street- Between Heber & 9th St.	9AM-3PM	1000-1500
September 2	Mountain Town Stages	Main Street- Miners Park	1:30PM-1PM	100
September 2	Town Lift Music	Town Lift Plaza	4PM-8PM	100

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

Conclusions of Law:

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

Conditions of Approval:

1. The applicant, at its' cost, shall incorporate such measures as directed by Staff in order to ensure that any safety, health, or sanitation equipment, and services or facilities reasonably necessary to ensure that the event will be conducted with due regard for safety are provided and paid for by the applicant.
2. Applicants shall provide proof of liability insurance in the amount of two million dollars ($2,000,000) or more as may be required by the Special Events Manager or the City Attorney's Office, and shall further name Park City Municipal Corporation as additional insured. All Applicants shall further indemnify the City from liability occurring at the event except for any claim arising out of the sole negligence or intentional torts of the City or its employees.
3. All amplified music shall begin at 2:00 pm cease by 8:00 pm on Sunday, September 2, 2007.
4. Applicant shall notify all adjacent neighbors 48 hours prior to the event.
5. The applicant will work with City Staff to orient the music stage so as to minimize sound impacts to the neighborhood and the applicant shall monitor the following:
   (A) The program manager, or his/her designee, shall provide on-site management for each event.

(B) A sound technician shall provide on-site monitoring for each event with music, amplified or otherwise, and any amplified event.
(C) The program manager shall be responsible to ensure that the sound system maintains the sound at an A-weighted sound level adjustment and maximum decibel level of 90, as measured twenty-five feet (25') in front of the stage.
(D) All events shall be open to the public and free of charge.

6. All plans for tents, stages and other temporary structures shall be submitted to the Building Department for review and permitting by August 31, 2007.

<u>Attachments</u>
Exhibit A- Applicant's Summary of Activities
Exhibit B- Event Plan
Exhibit C- Detail of Event

Exhibit A-

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

A completed electronic copy must be submitted to the Special Events Depa days prior to the event. Applicant must schedule a meeting with City Staff 3 to the event.

Special Events and Facilities Department
435.615.5150
specialevents@parkcity.org

EVENT NAME: Doc Holliday Block Party

EVENT DATE(S): September 2, 2007

TYPE OF EVENT:
☒ Special Event
☐ Master Festival

SITE PLAN
A site plan is required 20 days prior to the event and needs to detail and fully describe the following: street closures, signs, supply trucks, barricades, tents, activities, portable toilets, bleachers, other temporary structures, water stations, headquarters, solid waste containers, entrance/exits, and walkways.

LOCATION: 2200 Block of Doc Holliday between Little Bessie and Samuel Colt Court
Must include written permission from the private property owner.

ANTICIPATED ATTENDANCE: 60

EVENT TIMES: 1:00pm - 8:00pm

EVENT DESCRIPTION: Labor Day Block Party for Neighbors

PARKING FOR EVENT: Street Parking on Doc Holliday
if private property, include written permission from owner.

- will there be transportation services to and from parking lots? ☐yes ☒no
  if yes, who is the transportation provider?
  if an evening event, will there be lighting in the parking lot? ☐yes ☒no
- will you be soliciting volunteers for the event? ☐yes ☒no
  if yes, describe number of volunteers and general duties.

Depending on duties performed, the City may request a list of volunteers with contact information.

APPLICANT: *(name of organization)*
☐ profit or ☒ non-profit

CONTACTS

Event Manager: Steven Currie
Address: 2235 Doc Holliday Drive, Park City, UT
Phone: 435-645-5314 Fax:435-645-8036
Cell Phone: 310-505-9342
E-Mail: steven@scoututah.com

Assistant Event Manager: Randy Waugaman
Address: 2249 Doc Holliday Drive, PArk City, UT
Phone: 435-615-9937 Fax:
Cell Phone:
E-Mail: rwaugaman@comcast.net

SALES AND FOOD VENDING

- will there be the sale of merchandise ☐yes ☒no

  if yes, describe the items for sale:
- will there be sale of concessions or complementary food ☒yes ☐no

  if yes, describe the number of food vendors, types of food to be served, and/or cooking
  performed on site: Hot Dogs cooked on private property, grills provided for personal food.
  if cooking on site please describe types of cooking appliances used (i.e. open flame or electrical): Propane BBQ on Prive Property
  have the individual vendors filled out the local sales tax form? ☐yes ☒no
  has each food vendors received a *Summit County Temporary Food Service Permit*? ☐yes ☒no
  will there be beer, wine and/or liquor sales during the event? ☐yes ☒ no
  has the Park City Finance Department approved your *Beer and Liquor License Application*? ☐yes ☒no
  has the UDABC approved your *Single Event or Temporary Beer Permit*? ☐yes ☒no
  describe the location, hours and type of containers and control of sales:

  do the alcoholic beverage servers have state certified server training? ☐yes ☒no

CITY SERVICES

- request for street closure(s)? ☒yes ☐no

  if yes, then list streets and closure times and dates: Doc Holliday Drive from Samuel Court court north to Little Bessie, Sept 2, 2007 noon-8:00pm
- request for closure of or access to any public parking spaces? ☐yes ☒no

  if yes, then list affected parking spaces/areas and closure time and dates:

- has the Park City Fire District been contacted regarding your event? ☐yes ☒no list Fire District contact person:

Park City Fire District may require on-site medical personnel at an additional charge

- do you desire law enforcement services beyond routine periodic patrol? ☐yes ☒ no

  Park City Police Department may require on-site personnel. The Special Events Department will contact Police Department for determination

- will a separate security company be hired for the event?

  if yes, for what purpose?

  Name of Company:

  Contact Person:

  Phone (Cell):

TEMPORARY IMPROVEMENTS, STRUCTURES AND OTHER ITEMS

- using or storing flammable materials, including fuels, gasses? ☐yes ☒no

  if yes, *Fire Permit Application* must be submitted 20 days prior to the event.

- will you be requesting permits for fireworks? ☐yes ☒no

  if yes, then describe launch site:

  time:

  if yes, *Fire Permit Application* must be submitted 20 days prior to the event.

- any electrical needs? ☐yes ☐no

  if yes, *Fire Permit Application* must be submitted 20 days prior to the event.

- list the number of trash containers and dumpsters at the location:

  will additional trash containers and dumpsters be rented? ☐yes ☒no

  - if yes, how many:
  - name of provider:
  - phone number:
  - installation date and time:
  - removal date and time:

- provide the number and description of existing toilets at the location: Private Property, Private Homes

  will portable toilets be rented? ☐yes ☒no

  - if yes, how many :
  - locations:
  - name of provider:
  - phone number:
  - installation date and time:
  - removal date and time:

- will there be temporary signs for event? ☐yes ☒no

  if yes, list your anticipated signage needs:

please attach a sign plan stating location and sizes of all signs.

- will there be temporary structures such as:
  - ☐ bleachers
  - ☐ generators
  - ☐ tents <200 sq/ft
  - ☐ other electrical needs
  - ☐ tents >200 sq/ft
  - ☐ temporary lighting
  - ☐ stage
  - ☐ other:
  - ☐ trailers
  - ☐ inflatables

  if yes, *Fire Permit Application* or *Electrical Permit Application* and associated material must be submitted 20 days prior to the event .
- will there be animals present at gathering? ☐yes ☒no
  if yes, attach the plan to address nuisances or health hazards associated with the animals.
- will there be the installation of antenna for communications? ☐yes ☒no
  if yes, attach the site plan and specifications of antenna attached

INSURANCE
Park City Municipal requires proof of liability insurance in the amount of two million dollars ($2,000,000) or more, and applicant shall further name Park City Municipal Corporation as an additional insured. This must be submitted 10 days prior to the event.

EVENT LOGISTIC MEETING
Have you scheduled a meeting with the Special Events Department to take place 30 days prior to the event? ☐yes ☒no

EVENT RESOURCE LIST:
PARK CITY CHAMBER/BUREAU- 435.649-6100
WWW.PARKCITYINFO.COM

PARK CITY FIRE DISTRICT- 435.940-2532
sadams@pcfd.org

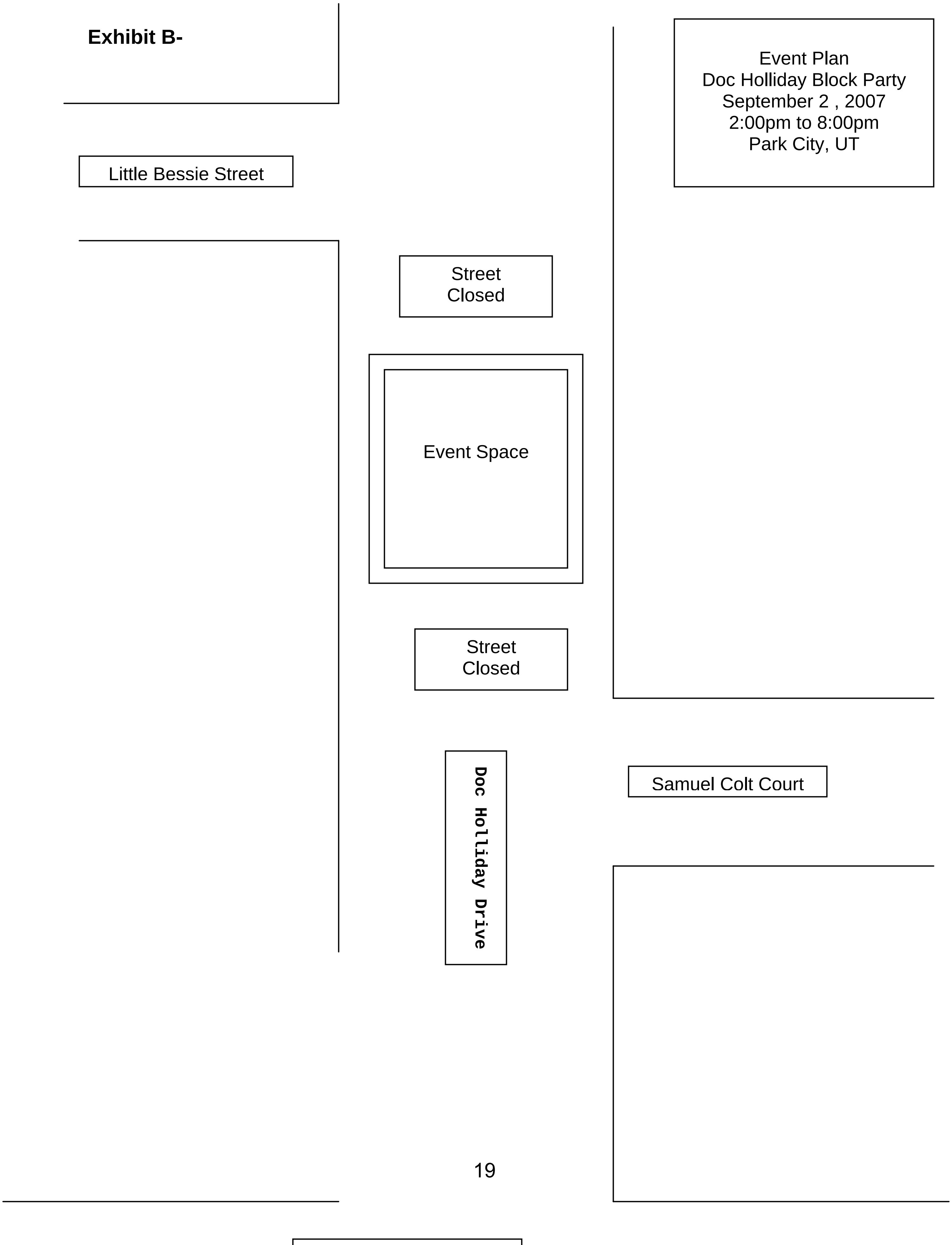
PARK CITY MUNICIPAL CORPORATION- 435.615-5150
WWW.PARKCITY.ORG

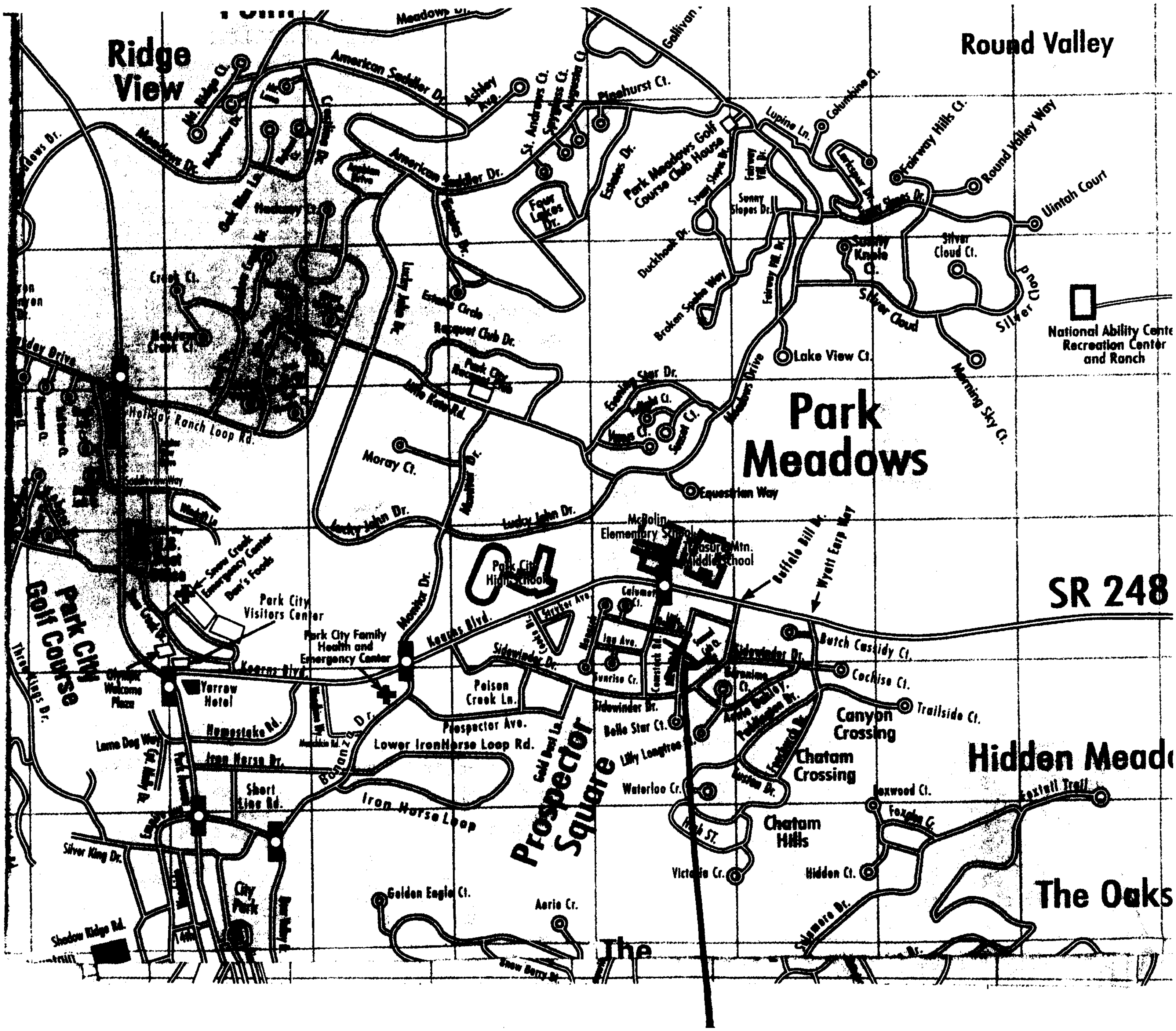
SUMMIT COUNTY HEALTH DEPT.- 435.336.3234
WWW.SUMMITCOUNTYHEALTH.ORG

UDABC- 801.977-6800
WWW.ALCBEV.STATE.UT.US

UTAH STATE TAX COMMISSION- 801.297-2200 OR 800.662-4335
WWW.TAX.UTAH.GOV

Exhibit B-


Event Plan
Doc Holliday Block Party
September 2 , 2007
2:00pm to 8:00pm
Park City, UT
Little Bessie Street
Street Closed
Event Space
Street Closed
Doc Holliday Drive
Samuel Colt Court



DETAIL OF EVENT

City Council Staff Report

PLANNING DEPARTMENT

Author: Ray Milliner
Subject: 819 EMPIRE AVENUE EXTENSION
Date: August 30, 2007
Type of Item: Administrative

Summary Recommendation: Staff requests that the City Council consider the request for a one year extension to the Amended Lots 1-3 Block 30 of Snyder's Addition to the Park City Survey plat amendment originally approved on September 30, 2004 according to the Findings of Fact, Conclusions of Law and Conditions of Approval 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:	New Request

Background

On September 30, 2004 the applicant received approval from the City Council 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. On September 8, 2005, and again on September 12, 2006 the City Council granted the applicant a one year extension to the approval. The newly created lot is located north of the proposed Creole Gulch/Treasure Hill development, and is south of platted Ninth Street. The property is currently vacant, and is located within the HR-1 zone. The applicant did not record the plat prior to the expiration of the subdivision approval and is therefore requesting that the City Council grant another one year extension to the September 30, 2004 approval, September 8, 2005 and September 12, 2006 extensions.

Analysis

The applicant is seeking a one year extension to a plat amendment that was granted by the City Council in 2004. City Policy has been to approve such extensions if the applicant demonstrates good cause and that no change in circumstance has occurred since the previous approval. No change in circumstance to the property has occurred since the time of the original approval as it relates to the Land Management Code requirements, including zoning, height, setbacks, lot size and building footprint. Additionally, no applicable changes to the LMC have occurred in the time since the application was initially approved. The applicant is requesting that the City Council extend the 2004 approval as is, with no changes. Prior to the issue of a building permit, the applicant will be required to submit an application for Historic District Design Guideline review. All conditions of approval from the September 30, 2004 approval will continue to apply as originally written (See Exhibit C).

Alternatives

- The City Council may approve the extension of the Amended Lots 1-3 Block 30 of Snyder's Addition to the Park City Survey plat amendment as conditioned or amended, or
- The City Council may deny the extension of the Amended Lots 1-3 Block 30 of Snyder's Addition to the Park City Survey plat amendment and direct staff to make Findings for this decision. If the Council denies the application, the prior approval will be null and void unless recorded by September 30, 2007.
- The City Council may continue the discussion on the extension of the Amended Lots 1-3 Block 30 of Snyder's Addition to the Park City Survey plat amendment.
- The City Council may remand the extension of the Amended Lots 1-3 Block 30 of Snyder's Addition to the Park City Survey plat amendment to the Planning Commission for a full public hearing and recommendation.

Significant Impacts

There are no significant fiscal or environmental impacts from this application.

Consequences of not taking the Suggested Recommendation

If the Council denies the extension request, the prior approval will be null and void unless recorded by September 30, 2007.

Recommendation

Staff requests that the City Council consider the request for a one year extension to the Amended Lots 1-3 Block 30 of Snyder's Addition to the Park City Survey plat amendment originally approved on September 30, 2004 according to the Findings of Fact, Conclusions of Law and Conditions of Approval in the attached ordinance.

Exhibits

Exhibit A – Proposed Ordinance
Exhibit B – Proposed Plat Amendment
Exhibit C – September 2004 Approved Ordinance

Ordinance No. 07-

AN ORDINANCE APPROVING A ONE YEAR EXTENSION OF THE AMENDED LOTS 1-3 BLOCK 30 OF SNYDER'S ADDITION TO THE PARK CITY SURVEY PLAT AMENDMENT 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 an extension to a plat amendment; and

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

WHEREAS, on September 30, 2004, the City Council approved proposed plat amendment; and

WHEREAS, on September 8, 2005, the City Council approved a one year extension to the plat amendment; and

WHEREAS, on September 12, 2006, the City Council approved a one year extension to the plat amendment; and

WHEREAS, it is in the best interest of Park City Utah to approve the one year extension of 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:

Findings of Fact

1. The property located at 819 Empire Avenue is located in the HR-1 zone.
2. There are no existing buildings on the property.
3. Plat amendments expire one year from the date of City Council approval.
4. The applicant received approval for a subdivision plat amendment on September 30, 2004
5. The applicant received a one year extension to the September 30, 2004 approval on September 8, 2005, and again on September 12, 2006.
6. The applicant is requesting a one year time extension of the plat to combine 3 old town lots into one lot of record, for the purpose of constructing a single family home.
7. No changes to the existing approval are proposed at this time.
8. Because no changes are proposed, no change in circumstance has occurred since the previous approval that would result in an unmitigated impact to the community as a result of the extension.
9. The approval will expire on September 12, 2007.

10. No building permits will be issued for the property until the plat amendment is recorded at the county.

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

Conclusions of Law

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

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

Conditions of Approval

1. The City Attorney and City Engineer will review and approve the final form and content of the plat amendment for compliance with State law, the Park City Land Management Code, and the conditions of approval prior to recordation of the plat.
2. All conditions of approval for the plat amendment will continue to apply as found in the City Council approval on September 30, 2004.
3. 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.

<u>SECTION 4. EFFECTIVE DATE</u>. This Ordinance shall take effect upon publication.

PASSED AND ADOPTED this 30th day of August 2007.

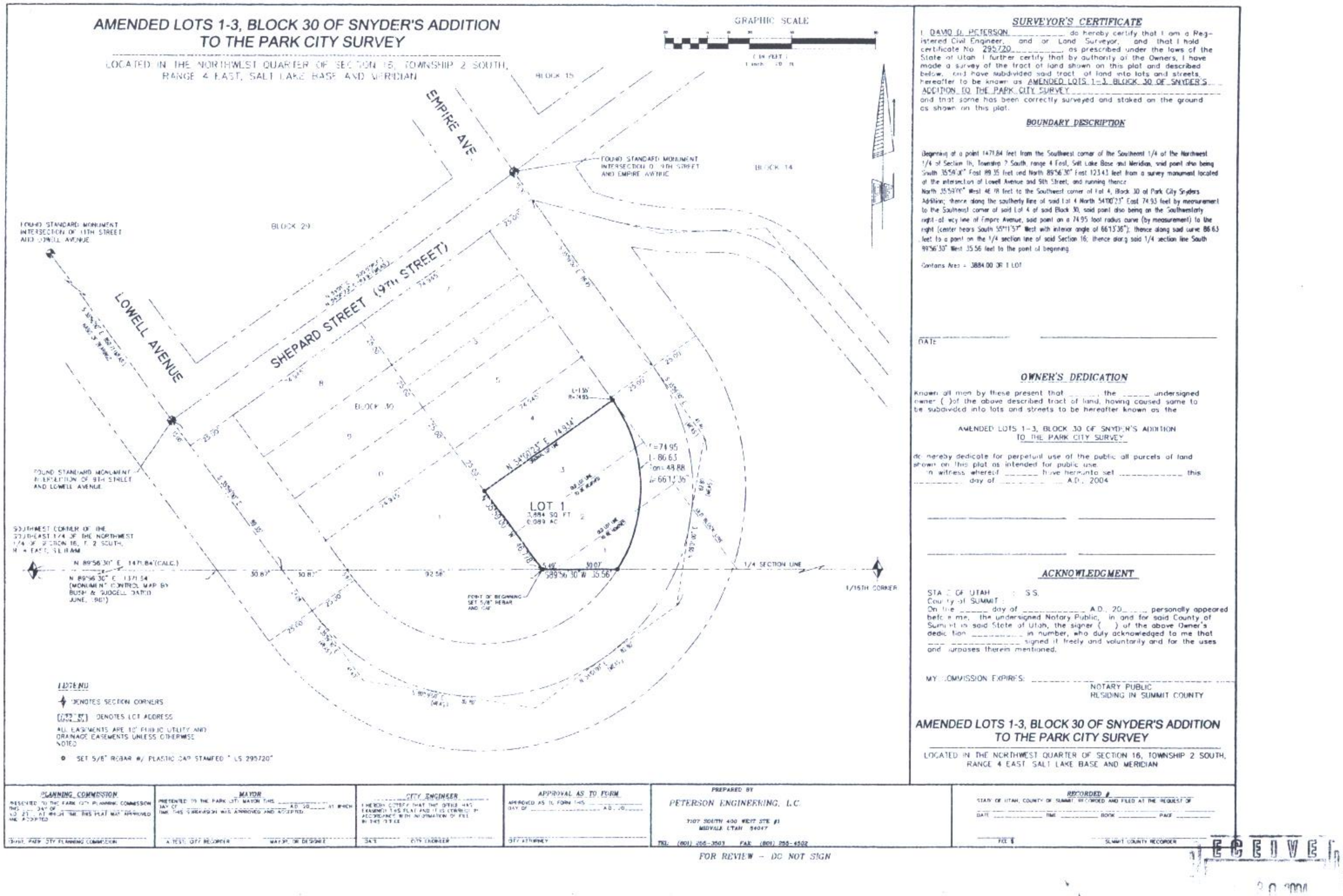


Exhibit A - Proposed Plat Amendment

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. The maximum building footprint for the newly created lot would be 1,737 square feet.
5. Empire Avenue encroaches onto Lots 1-3.
6. The applicant is proposing to construct one single-family dwelling.
7. The minimum lot area is 1,875 square feet for a single-family dwelling and 3,750 square feet for a duplex.
8. The plat amendment will not increase density on the lot.
9. No remnant lot is created.
10. 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 30th day of September 2004.

City Council
Staff Report

Author: Alison Butz
Subject: Marsac Building Seismic Upgrade
Temporary Relocation of City Offices
Date: August 30, 2007
Type of Item: Lease of Property

Summary Recommendations:
Authorize the City Manager to execute a Lease with Wintzer-Wolfe Properties for 1255 Ironhorse Drive in a form approved by the City Attorney.

Topic:
Marsac Building Seismic Upgrade – Lease for Temporary City Offices

Background:
The Marsac Building Staff must be entirely vacated during the remodel. As previously reported to the Council, staff is looking at Miners Hospital, the Park Avenue Fire Station Administrative Building and trailers as potential temporary offices. The relocation of City offices has been budgeted at $350,000 and depends on the location; costs could include the need for fiber optic lines to be connected to facilities.

The City Manager provided Staff with criteria for looking at potential sites for City Offices during the upgrade. One of which was proximity of all offices to each other to maintain the current level of service during the relocation period. Staff analyzed existing City facilities as well as potential facilities to rent during the seismic upgrade to the Marsac Building. In May 2007 Staff developed a plan that was thoroughly designed to take into consideration: file storage, and file security, number of closed door offices, meeting space and accessibility needed from the public.

Staff has always discussed the possibility of using trailers for the Planning, Building, Engineering and Finance Departments since their square footage need is so large. However, in order to explore all options, Staff placed a public notice in the Park Record and contacted some commercial real estate agents to see if there were any additional locations available that could work for City offices. Staff did look at a few possibilities which were ruled out due to disadvantages such as no windows in the space to the distance from other City offices.

Based upon the options submitted, Staff pursued discussions with Charlie and Mary Wintzer who responded to the notice by proposing the use of space located at 1255 Ironhorse Drive. The space is currently rented to Dr. Don Cofer and was used as a health clinic and gym. Dr. Cofer has moved his office across the street and had been looking for a tenant to assume the remainder of his lease.

Staff visited the site and immediately saw the potential to move the Building, Planning, Engineering and Finance Departments into the space during the relocation. There is adequate parking assigned to the space for both employees and the public. All of these departments would be under one roof. Additional pros for the site are the current wall configuration, existing front counter and meeting space. No construction of walls would need to occur to comfortably fit the departments.

The location also met the proximity requirement set by the City Manager. The location backs right up to the Poison Creek trail which easily accesses Miners Hospital where additional offices would be placed. The Ironhorse location also is a half-block away from Public Works, increasing the proximity of City offices to that site. Staff has suggested finding a few un-used bikes in employees garages and getting them tuned up to use as commuter bikes between offices.

Analysis
Staff has outlined the following negotiation points and recommendations. The City will have responses from the Wintzers on certain points available during the closed session discussions.

Term
At the requirement of Dr. Cofer, the City would need to commence the lease on September 1, 2007 to guarantee the ability to the use the space during the remodel timeframe which is May 2008 through July 2009.

Sublease
To help offset costs, the City has requested the ability to sublease the space from October 15th through February 28th to the Sundance Institute. Staff and Sundance are working on outlining terms for the potential sublease. The ability to sublease the space would reduce the overall rent the City would pay for the space.

Rate
The total square footage of the space is 8,000 which includes the space currently used as a pool. The rate for the space, including CAMS (snowplowing, taxes, insurance), for the term of the lease is $16.45 per square foot. The City is looking into applying for a property tax waiver for the property while we are renting. If we are able to do this we would save around $1.80 on the CAM for the space.

Financial Components
The budget for the relocation of City offices is set at $350,000. Staff compared the cost of the trailers against the cost of renting 1255 Ironhorse Drive. The trailers would cost approximately $195,000 for installation, rental and removal. The rent for the space on Ironhorse is at $263,000 without the potential reductions from a sublease and relief from property tax. With the anticipated reductions rent would run approximately $203,000. Staff has not included utilities in either analysis. It is likely utilities would be higher for the trailers.

Renting the space at Ironhorse also keeps the funds spent on the temporary location in Park City instead of renting trailers from a Salt Lake company.

Employee Morale
Staff knows that placing the Building, Planning, Engineering and Finance Departments in trailers can work. However, trailers have a limited level of comfort for their employees. During the wintertime, keeping a constant temperature in the trailer is difficult when the exterior door is in constant use, such as would be the case with these departments that receive a large amount of customer traffic. Employees will also need to walk outside to a separate restroom trailer. Over two-thirds of the Mawhinney lot will be taken up by the trailers, eliminating parking used during large events in Santy Auditorium including the Sundance Film Festival.

The Ironhorse location would provide one door for the public to enter in which they can communicate and take care of all business in the same location.

Significant Impacts
The budget for the Marsac Remodel allocates $350,000 towards the temporary relocation of City Hall. Staff has compared the costs of the Ironhorse location with the remaining options in the plan and is comfortable that there is adequate money in the budget to accomplish the task.

Recommendation:
Authorize staff to proceed with the negotiations and provide deal parameters concerning the potential lease of space at 1255 Ironhorse Drive for City offices during the seismic upgrade of the Marsac Building.

Exhibits
Exhibit A – Draft Lease

RETAIL LEASE ADJUSTMENT SHEET

IRONHORSE PARK COMMERCIAL SPACE

FOR PERIOD FROM: September 1, 2007 TO: August 1,2009

Space: 1255 (Downstairs) Ironhorse Drive

Tenant:

Business Name: Park City Municipal Corporation

Use of Space: City Offices Lease Term: 1 year and 11 months

Expiration Date: July 31,2009

Rent Commencement Date: September 1,2007

Square Footage: 8000 sq. ft.

Base Rent: **September 1,2007 to July 31,2008** ....$8,000.00 per month, $88,000.00 annually

August 1, 2008 to July 31, 2009....$11,333 per month, $136,000.00 annually A 5% discount on the base rent will be given if annual rent is paid in lump sums on August1, 2008 for 5 months and January 1, 2009 for 7 months. If lease is extended there will be a 5% increase on August 1,2009.

Additional Rent: $2000.00/month Taxes and Insurance based on current year, subject to annual change, and Tenant is responsible for actual charges if greater or lesser than the estimate for additional rent items defined in lease.
Common Area fees billed monthly

Security Deposit: $ 10,000

Number of parking places: 40

Emergency Contacts for Tenant:

Tenant: Park City Municipal Corp.
Ph Number:435-615-5151 / Alison Butz
Mailing Address: P.O. Box 1480, Park City, UT 84060
Alarm Company:
Other:

This summary is for convenience only, and does not waive any obligations under the lease.

Tenant: Park City Municipal Corporation

Space: 1255 (Downstairs) Ironhorse Drive

Expiration Date: July 31,2009

LEASE

THIS LEASE AGREEMENT IS MADE by and between Wintzer-Wolfe Properties, Ltd., a Utah limited partnership, referred to below as "Landlord" and **Park City Municipal Corporation** referred to below as "Tenant". For good and valuable consideration and the mutual observances of the terms and covenants below, the parties agree as follows:

1. Property. The Property affected by this agreement is located in Park City, Summit County, Utah, and is described as follows:

> The building known as **1255 (Downstairs) Ironhorse Drive**, Park City, Utah, which contains approximately **8000** square feet, together with the right to use appurtenant parking areas, driveways and common areas associated with that space, all of which is referred to below as the Property.

2. Term. This Lease shall be in effect for a term of **1 year and 11 months** commencing on **September 1,2007,** and ending **July 31,2009.** Tenant may take possession for purposes of completing Tenant Improvements immediately upon execution of this Lease, payment of initial deposits, and providing evidence of insurance.

3. Rent. Tenant agrees to pay rent for the property. The rent will be comprised of a Base Rent, and Additional Rent which includes property taxes, insurance, building maintenance, and subdivision common area fees. Rent will be computed and paid as follows:

(a) Tenant will pay Base Rent in the amount of **$88,000.00** from **September 1,2007 to July 31, 2008** and a sum of **$136,000.00** from **August 1, 2008** to **July 31,2009** during the term of the Lease. This is payable in monthly installments of **$8000.00** per month beginning **September 1, 2007 to July 31,2008.** The monthly installments increase to **$11,333.00** beginning **August 1, 2008.** A 5% discount will be given on the sum of $136,000.00 for year two if rent is paid in two installments on August 1,2008 for five months rent and January 1, 2009 for 7 months rent. If the lease is extended past July 31, 2009 the Base Rent will be increased by **5%** of the previous month for the next year. The lease cannot be terminated during October 2009 through April 2010.

(b) In addition to the Base Rent stated above, Tenant shall be responsible for the following costs and charges, which shall be treated as Additional Rent:

(1) An equitable apportionment of the assessments levied against the Property by the Owners Association under the Covenants, Conditions and Restrictions, which assessments are to provide those services and maintenance functions described in the Covenants, which include (or may include from time to time as the association sees fit) snow removal, landscape maintenance, water, sewer, and garbage collection fees. These fees are estimated at **$12,100.00** per year for the current year. This is an estimate only, and Tenant is responsible for the actual charges, which are expected to increase over time.

(2) An equitable apportionment of the property taxes, special assessments, and improvement district assessments levied against the Property, including land and improvements. Tenant shall have the right to contest the amount of any such assessment, provided that Tenant shall first pay any assessments under protest. Tenant shall in no event allow the property taxes to be delinquent. Taxes are estimated at **$10,700.00** per year for the current year. This is an estimate only, and Tenant is responsible for the actual charges, which are expected to increase over time.

(3) An equitable apportionment of the costs of providing fire, casualty, flood, and public liability insurance on the Property as described below. Insurance costs are estimated at **$1200.00** per year for the current year. This is an estimate only, and Tenant is responsible for the actual charges, which are expected to increase over time.

Additional Rent is due and payable, as estimated, in advance on the same date as Base Rent. The failure to pay any item of Additional Rent when due is a failure to pay rent under this Lease, and will be treated as a Default under this Lease for which Landlord is entitled to any and all remedies available under law for the collection of rent or termination of the Lease. The items of Additional Rent will, in most cases, be billed to Landlord. Landlord will make an apportionment of these charges among all tenants in the Building, which shall be based on their proportionate share of the total leaseable space in the building (unless Tenant and Landlord otherwise agree in writing). Landlord will bill Tenant for one twelfth of the estimated Additional Rent each month; provided that this estimate is made only for convenience, and if actual Additional Rent expenses are greater or less than the estimate, Landlord shall be entitled to full reimbursement, or Tenant entitled to a refund of any surplus. Each installment of Additional Rent will be paid with the monthly payment of Base Rent. Additional Rent is estimated to be approximately **$24,000.00** per year, or **$2,000.00** per month at the start of this Lease. This is only an estimate, and Tenant is responsible for the actual charges of the items included in Additional Rent. Landlord may increase installments on 30 days written notice when Landlord learns of material changes in any item of Additional Rent.

4. Late Payment Penalty. If Base Rent or the bill for Additional Rent is not paid by the tenth day of the month in which it is due, a late payment fee of **$200** will be assessed. In addition, interest will accrue at the rate of 1.5% monthly (18% per annum) on the unpaid balance owing, beginning on the tenth day of the month in which the installment is due, and continuing until fully paid. Subsequent payments will be applied first to interest and then to those items defined as Additional Rent, and last to the Base Rent.

5. Security Deposit. Tenant will pay Security Deposit of **$10,000.00** which will equal one month's rent due on the execution of this Lease. Landlord shall have the right to deduct any future Rent or Additional Rent from the Security Deposit upon Tenant's Default. Tenant agrees to maintain the Security Deposit throughout the term of the Lease, and in the event that Landlord expends any of the Security Deposit to cure a default in payments by Tenant, or to repair damages caused by Tenant, Tenant will be notified in writing. Tenant will have 5 business days to restore the Deposit to its original balance, and if Tenant fails to do so, Tenant will be in Default under the Lease, and Landlord shall be able to exercise all remedies available at law or in equity to collect the amount owed or terminate the Lease. At the end of the Lease term, if Tenant is not in Default and has surrendered the Property, Landlord will refund the Security Deposit to Tenant, less the costs of any repairs to the Property which should have been made by Tenant. The Security Deposit will not earn interest. Landlord may commingle the Security Deposit with other funds. Tenant may not opt to use security deposit in lieu of rent payment.

6. Advancement of Funds by Landlord. If any item of Additional Rent is not paid when due, Landlord shall have the right, but not the obligation, to pay the Additional Rent directly, and charge the amount paid to Tenant's account. Any such advancement of costs by Landlord shall accrue interest at the rate of 1.5% (18% per annum) from the date of payment until fully reimbursed by Tenant. Landlord will make a reasonable effort to notify Tenant of the Default, and allow Tenant a reasonable opportunity to cure the non-payment, but

in no event will Landlord be required to allow the Property to go un-insured, taxes or other assessments to go delinquent, or otherwise place the Property in jeopardy while attempting to obtain payment through Tenant. The amount of any Advanced Funds will be treated as Additional Rent due from Tenant. Subsequent payments will be applied first to interest and then to those items defined as Additional Rent, and last to the Basic Rent.

7. Utilities. All utilities are extended to the Property in sufficient capacity to meet Tenant's reasonable needs. Tenant is solely responsible for its utility service costs for gas, electric and telephone service. To the extent possible, utilities to the various spaces within the building will be separately metered, and Tenant will be responsible for any security deposits with the utility companies, and the costs of physical connection and installation of fixtures and appliances within its portion of the Building. Tenant will not terminate gas or electric service without giving Landlord two weeks' written notice, so that heat may be maintained in the buildings to prevent damage from freezing. Tenant will be responsible for any damages resulting to the building from the discontinuance of utility services during the Lease. Where it is impractical to provide separate meters or services, such as water and sewer services, Landlord will obtain service, and bill the proportionate costs of those services to Tenant as Additional Rent.

8. Operating Expenses. In addition to all of the foregoing, Tenant is solely responsible for janitorial service, re-lamping of light fixtures, hand snow removal, and all other services, supplies, and labor associated with the use and occupancy of the Property.

9. Insurance. (a) Landlord will obtain fire and property insurance on the Property for Landlord's benefit. The cost of this insurance will be apportioned among the various tenants as Additional Rent. Fire insurance shall be maintained at a level approved on an annual basis by Landlord, which shall be sufficient to provide full coverage without any co-insurance or participation by Landlord in the costs of replacement or repair of the building. Landlord's fire insurance will not cover any of Tenant's contents or Tenant Improvements. Tenant waives subrogation claims against Landlord for damage to Tenant's personal property, inventory, or loss of income in the event of a casualty loss to the Property. If required by Landlord's mortgage holder, Tenant will also pay for a proportionate share of Landlord's cost of providing flood insurance. Tenant agrees that it shall not keep, use, sell or offer for sale in or upon the Premises any article or material which may be prohibited by the standard

form fire insurance policy.

(b) Landlord will obtain general liability insurance for those claims arising in the common areas of the Ironhorse Park project. The cost of this insurance will be apportioned among the various tenants as Additional Rent. Landlord's insurance will not cover claims arising within Tenant's Leased space or arising from Tenant's negligent or deliberate acts.

(c) Tenant is solely responsible for all insurance on Tenant's business operations, contents, Tenant Improvements, personal property, and general liability. Tenant will provide commercial general liability insurance in the face amount of at least $500,000 per occurrence and $1 million aggregate, which shall be reviewed annually and adjusted as appropriate and customary for similar types of businesses in similar areas. Landlord and Landlord's mortgage holder will be named as an additional insured on all policies, and shall have the right to review and approve policies before they are placed. All insurance policies shall have a 30 cancellation or non-renewal notice provision giving advance notice to Landlord and Landlord's mortgage holder of the termination of coverage. If Tenant fails to obtain insurance, Landlord may purchase such insurance as it feels appropriate to protect its interest, and charge Tenant for the full cost of that insurance as Advanced Funds. Any insurance obtained by Landlord may reduce the scope of coverage to include only losses to the Landlord, and exclude any coverage of Tenant's personal property or liability. Tenant assigns its insurance proceeds to Landlord, but only to the extent necessary to restore any Tenant Improvements which would have become the property of Landlord at the end of the Lease (and which were not covered by Landlord's fire insurance). Landlord has no rights to insurance proceeds applicable to Tenant's personal property, contents, or business interruption coverage.

10. <u>Use of Property.</u> Unless otherwise agreed to in writing by Landlord, Tenant agrees that its use and occupancy of the property will be limited as follows: **City offices.**

(a) Tenant will make no structural alterations or material alterations, including construction or removal of partition walls, penetration of exterior walls or roofs without the prior written consent of Landlord.

(b) Tenant may make no exterior modifications to the Building without the written consent of Landlord, specifically including, but not limited to, the placement of signs on the exterior of the Building.

(c) Tenant will comply with all applicable building and fire codes, zoning and health codes, and all federal, state, and local laws and regulations concerning the use, storage and disposal of materials which may be classified as hazardous or toxic. Tenant will indemnify Landlord for any clean-up action or enforcement action brought under any environmental laws concerning or resulting from Tenant's use, storage, or disposal of any hazardous or toxic material on the property. This indemnity is specifically intended to survive the termination or expiration of the Lease.

(d) Tenant shall not conduct any business from the property that is deemed extra-hazardous, or will result in an increase in fire insurance premiums on the Property, on inability to obtain fire insurance at standard rates.

(e) Tenant agrees that it, and Tenant's employees, customers, or others will not leave any vehicle or other property or equipment parked outside of the building overnight. Parking areas will not be used for long- or short-term storage of vehicles, boats, campers, or other equipment. No vehicles will be repaired in the parking areas. Tenant agrees to pay any expenses incurred by Landlord in removing any such vehicles or property.

(f) Except as specifically provided below, all additions or improvements shall become the property of Landlord at the termination of the Lease, provided that trade fixtures and equipment installed by Tenant which can be removed without damage to the building may be removed at the expiration of the Lease. All removal must be completed prior to the last day of the Lease term. For the purposes of this lease, lights and light fixtures are not considered trade fixtures and any installation of lights or light fixtures shall be considered permanent fixtures and, upon installation, will become the property of the Landlord.

(g) The provisions and limitations of the Covenants, Conditions and Restrictions of the Ironhorse Park Commercial Subdivision are incorporated into this Lease, and Tenant agrees to occupy the Property in a manner that is in full compliance with those Covenants, Conditions, and Restrictions. Exterior signs must comply with the general signage plan approved by Landlord, Park City, and the Owners Association. The costs of exterior signs are borne entirely by Tenant.

(h) Upon the expiration of the Lease, Tenant will surrender the property to Landlord in substantially the same condition as existed on the date Tenant commenced doing business from the Property, normal wear and tear, removal of approved trade fixtures and equipment, and insured casualty losses excepted. Tenant shall commit no waste on the property. Tenant shall not use a painting technique commonly known as "faux painting" on any part of the property without first obtaining prior, written consent from the Landlord. If consent is obtained, it is understood that upon the expiration of the Lease, Tenant is responsible for removing the "faux painting" from the wall surfaces and returning them to the original surface.

(i) Tenant will use the Property to conduct the following business, and any substantial change in the nature or character of the business will require prior consent of Landlord: **City offices.**

(j) Tenant has the right to occupy **40** parking spaces adjacent to the building. These are not reserved or specifically designated for Tenant's use, and will be used in common with the tenants and customers of other businesses in the building. No change in the nature of Tenant's business will be permitted which creates a demand for more than the allotted number of parking spaces under the Park City Land Management Code.

11. Hazardous Materials. (a) Tenant will not store, use, or dispose of Hazardous Materials or Toxic Wastes on the Property, (except in such limited quantities as are reasonable and customary in the routine operation of Tenant's business). For purposes of this Lease, "Hazardous Materials" means such materials, waste, contaminants or other substances designated or defined as toxic, dangerous to health, or otherwise hazardous in any applicable statute, ordinance, regulation or administrative rule adopted by any governmental authority with jurisdiction over the premises. It shall be Tenant's sole responsibility to remain informed about, and to comply with, all such statutes, ordinances, regulations and rules. Violation of any such statutes, ordinances, regulations or rules by Tenant shall constitute a breach of this Lease. Tenant shall not cause or permit any Hazardous Materials to be brought, kept or used upon the premises without the prior written consent of the Landlord, which may be withheld in its sole discretion.

(b) Tenant will comply with applicable federal, state, and local laws and regulations concerning the storage, use, and disposal of Hazardous Materials.

(c) Tenant will indemnify Landlord against any and all liability under the foregoing statutes or later enactments, against claims for personal injury, property damage, and clean-up actions or enforcement actions under the environmental laws of Utah or the United States. This indemnity will survive the termination of the Lease, and will apply even if Landlord has knowledge of and consented to the use, storage, or disposal of the Hazardous Materials.

(d) Any specialized pollution control equipment, sewage pretreatment or chemical recovery systems, specialized ventilation equipment required for Tenant to comply with environmental laws and regulations will be installed at Tenant's sole expense.

12. Maintenance of Structure. Tenant is solely responsible for the maintenance of the interior of its portion of the Building, including all thresholds, plumbing, heating, and other mechanical systems. Landlord is solely responsible for the maintenance of the exterior of the Building, including the roof and exterior walls, and the structural maintenance and integrity of the Building, including interior load-bearing walls and columns, unless such damage was caused by the acts or negligence of Tenant. With the exception of glass breakage resulting from Tenant's actions or negligence and acts of outside vandalism, Landlord is responsible for repair of exterior window glass. Landlord is responsible for mechanical systems that serve more than one Tenant.

13. Assignment. This Lease is not assignable in whole or in part without the advance written consent of Landlord. Landlord agrees that it will not unreasonably withhold consent to assignment of the Lease, provided that the proposed Assignee is credit worthy, and enters into guarantee and security agreements in form and substance similar to those entered into by Tenant and its principals in conjunction with this Lease, and the proposed tenancy complies with applicable zoning and the conditions of this Lease. The sale of Tenant's business, or sale of a controlling interest in that business, is deemed an assignment for purposes of this Lease. Tenant will notify Landlord of any proposed assignment or sale of Tenant's business in advance. Tenant shall have no right to sub-let the Property in whole or in part.

14. Sale of Property. This Lease shall be binding on the successors and assigns of Landlord in the event of a sale or transfer of the title to the underlying Property. No sale or transfer of title shall disturb Tenant's possession or quiet enjoyment of the Property.

15. Abatement or Termination Following Casualty Loss. In the event of a fire or other casualty loss which makes the property uninhabitable for a period of more than 60 days, Landlord shall have the option of terminating the Lease, or abating the rent during the actual period of repairs and

extending the Lease term by an equal period. If the nature of the damage is such that the property cannot reasonably be fully restored to its condition prior to the loss within 120 days, Tenant may terminate the Lease by written notice to Landlord. All insurance proceeds are payable to Landlord in the event of a termination by Tenant, except for proceeds applicable to Tenant's fixtures, equipment, or other personal property. Early termination by Tenant under this provision will not relieve Tenant from any obligations arising prior to the date of termination, specifically including any past due Rent or Additional Rent, or violations of the environmental and hazardous waste provisions, which are all intended to survive until those obligations are fully satisfied. Early termination shall not relieve Tenant from any claims from Landlord or subrogation claims from Landlord's insurance carrier related to damage to the property caused by Tenants actions or negligence. Landlord is not liable to Tenant for lost profits, rent on temporary locations, or other costs incurred by Tenant as a result of the loss.

16. Remedies. (a) In the event of a monetary breach of this Lease, including non-payment of Rent or any item of Additional Rent, Landlord shall have all remedies available at law including the right to enter and re-take possession of the Property, or to re-let the Property on Tenant's account and hold Tenant liable for the balance of the Lease term, or an action against Tenant for the amounts owed. In the case of financial defaults, Landlord will give Tenant a written notice of the default, stating the nature of the breach and amount owed. Tenant shall have 5 days from the date of notice to pay all sums owing, and if not cured within 5 days, Landlord may exercise its legal and equitable remedies.

(b) In the event of breaches or defaults other than the payment of Rent, Landlord shall give Tenant 30 days written notice of the default, and if the condition complained of is not cured within 30 days (or when the conditions giving rise to the breach are such that the default cannot be reasonably cured within 30 days, Tenant has admitted the default and undertaken the work necessary to effect a cure within the 30 day notice period), Landlord shall have the right to exercise all available legal and equitable remedies against Tenant to enforce the terms of this Lease or re-possess the Property. Notwithstanding the time limits contained in this provision, Tenant agrees to take such actions as reasonable and necessary in the case of an emergency to secure the Property and prevent further damage until a permanent repair can be made.

(c) The obligations of Tenant under this Lease shall survive termination of Tenant's possession until fully paid. In addition to amounts due under this Lease, Tenant shall be liable for Landlord's reasonable attorney's fees and costs incurred in the enforcement of this Lease and collection of amounts owed.

17. Recording. Landlord and Tenant may record a Notice of Lease outlining the basic terms of this agreement, and record it in the office of the Summit County Recorder. The Notice shall request that notice of any foreclosure under Landlord's mortgage on the Property, or Tenant's leasehold mortgage, be sent to both parties to the Lease.

18. Non-Subordination. Landlord will not subordinate this Lease to any security agreements or leasehold mortgages entered into by Tenant for the purpose of financing Tenant Improvements to the Property. Any such security arrangements are fully subject to Tenant's faithful performance of this Lease. Landlord consents to Tenant placing Leasehold Mortgages on the Leasehold Estate for the purposes of financing Tenant Improvements, provided that any such Leasehold Mortgages acknowledge that they are subordinate to this Lease, and subject to all of its terms and conditions. Landlord will provide notice of default to any Leasehold Mortgagee who requests notice. Landlord will also provide statements of account to Leasehold Mortgagees showing Tenant's status under the Lease.

19. Tenant Improvements. (a) The Property is leased "as is." Tenant has inspected the property and finds it acceptable for Tenant's intended use, and all remodeling work necessary for Tenant's intended use will be performed at Tenant's expense. At the expiration of the Lease, Tenant may remove any trade fixtures that are of a type or nature that might reasonably be removed without significant damage to the Building. All lights, light fixtures, heating and air conditioning, plumbing, partitions, doors, and floor coverings are deemed to be fixtures, and will remain with the Building as property of Landlord upon the expiration of the Lease.

(b) All Tenant Improvements will be installed by properly licensed contractors, pursuant to permits issued by Park City at Tenant's expense. Tenant shall not permit any liens to attach to the property. If the aggregate cost of Tenant Improvements would reasonably be expected to exceed **$5,000.00,** Landlord may require a labor and material payment bond from Tenant or Tenant's contractor prior to commencement of work. Landlord will be permitted to review all plans and specifications for Tenant Improvements, and no work will begin without Landlord's consent. Tenant's contractor will provide Landlord with Certificates of Insurance showing the contractor to have general liability and workman's compensation insurance in amounts reasonably approved by Landlord and customary in the industry. Insurance on building materials, equipment, or fixtures stored on site, but not yet affixed to the building is the obligation of Tenant and/or the contractor, and Landlord shall have no liability for loss or damage.

(c) Tenant will not permit mechanics' liens related to Tenant's construction of Tenant Improvements attach to the property. In the event liens are filed, Landlord may give Tenant written notice to either remove the lien, or, in the alternative, to post an amount equal to twice the amount of the lien claim in escrow pending the resolution of the dispute with the lien claimant. If Tenant fails to do obtain the lien release or bond over it within 5 days, Tenant is in monetary default on the Lease, and Landlord shall have all remedies Available under the Lease, including termination of the Lease. Termination will not, however, absolve Tenant of the obligations to remove the lien or indemnify Landlord against the lien.

20. Landlord's Right to Inspect. Landlord shall have the right to inspect the Property and reasonable times to insure compliance with the Lease. Inspection during Tenant's normal business hours is permitted.

21. No Right to Renew. Tenant has no right to renew or extend the Lease, and at the end of the Lease term, Tenant will vacate the Property. If Tenant holds over, Tenant is a tenant at will.

22. No Waiver. Failure on the part of Landlord to complain of any action or non-action on the part of Tenant, no matter how long the same may continue, shall never be deemed to be a waiver by Landlord of any of its rights hereunder. Further, it is covenanted and agreed that no waiver at any time of any of the provisions hereof by Landlord shall be construed as a waiver at any subsequent time of the same provisions. The consent or approval by Landlord to or of any action by Tenant requiring Landlord's consent or approval shall not be deemed to waive or render unnecessary Landlord's consent or approval to or of any subsequent similar acts by Tenant.

23. Condemnation. In the event that a portion of the Property is taken by a governmental entity for public purposes, the entire award shall be paid to Landlord, and there shall be no reduction in Rent, unless the portion of the Property taken materially damages Tenant's intended use of the Property. If the taking is such that it materially impairs Tenant's business, such as a loss of Building area, or a significant loss of parking, the award will be apportioned as

the parties may agree at the time. In the event of a total taking, or a partial taking of such magnitude that the operation of Tenant's business with the remaining Property becomes commercially unreasonable, the award will be apportioned. Tenant shall have the right to appear on its own behalf in any condemnation suit to defend the value of the leasehold interest. If the parties are not able to agree on an apportionment of any award (and apportionment is not made in the condemnation proceeding) the apportionment will be submitted to binding arbitration under the rules of the American Arbitration Association, with each party to bear its own costs.

24. Notices. Notices that may be required from time to time under this Lease may be sent or delivered to the following addresses:

To Landlord:
Wintzer-Wolfe Properties, Ltd.
1040 Ironhorse Drive
P.O. Box 4199
Park City, Utah 84060

To Tenant:
Park City Municipal Corporation
P.O. Box 1480
Park City,UT 84060

Or delivered in person to the Property at **1255 (Downstairs) Ironhorse Drive**, Park City, Utah.

Notices are effective upon personal delivery, or three days after mailing, registered mail, return receipt requested, whether actually picked up or not. Either party may change its address or request additional notices be sent to others by written notice.

25. Covenant of Quiet Enjoyment. For so long as Tenant is faithfully performing its obligations under this Lease, Landlord promises to provide Tenant with quiet enjoyment of the Property. Landlord shall pay all mortgages placed on the Property by Landlord. Tenant shall have the right to pay rent to any mortgage holder if necessary to avoid foreclosure of Landlord's interest, and to deduct such payments from the Rent and Additional Rent due under this Lease.

26. Lease Subordinate to Landlord's Mortgage. In order to construct the Building on the Property, Landlord has, or will, place a deed of trust or mortgage on the Property to secure construction and long-term financing. Regardless of

the order of recording of documents, Tenant agrees that this Lease shall be subordinate to, and subject to, Landlord's construction and first mortgage (or deed or trust) long-term financing of the construction of the Building. This Lease is not subordinate to any other financing Landlord may place on the Property for purposes other than the construction and long-term financing of the Building constructed for Tenant's benefit.

27. Commissions. Tenant has not used a broker or agent, and will indemnify Landlord against any claims from brokers or agents claiming to represent Tenant in this transaction.

28. Invalidity of Particular Provision. If any term or provision of this Lease, or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

29. Governing Law. This Lease shall be governed exclusively by the provisions hereof and by the laws of the State of Utah.

30. Construction of Lease. The paragraph headings throughout this Lease are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Lease. If used, words of any gender used in the Lease shall be held to include any other gender, and words of singular number shall be held to include the plural when the context requires.

Dated this _____ day of __________, 2007.

LANDLORD:
Wintzer-Wolfe Properties, Ltd.,
a Utah Limited Partnership,

By: ____________________________
Mary C. Wintzer, its
General Partner

TENANT: Park City Municipal Corp.

By: ____________________________
Tom B. Bakaly, City Manager
Marc Larson

City Council
Staff Report

Subject:	**Boys and Girls Club**
Author:	**Max J. Paap**
Date:	**August 30, 2007**
Department:	**Sustainability- Implementation**
Type of Item:	**Administrative – Lease Authorization**

Summary Recommendations:
Staff recommends that Council approve the two year lease renewal of the Rec Building to the Boys and Girls Club of Greater Salt Lake from September 1, 2007 to May 31, 2009 in a form approved by the City Attorney. The terms would include 2- nine (9) month terms.

Description:

Topic:
The Boys and Girls Club is looking to again lease the Rec Building to provide community programs to youth in the Park City School District. At this time they have requested assistance in maintaining a temporary space in the City's Rec Building to hold programs while a more permanent location is found.

Background:
Prior to the renovation, The Boys and Girls Club offered programs at Mc Polin Elementary in Park City and has maximized their available space the School District has offered to them. There are 200 registered members in the Park City School District, and with the expansion plans they plan to increase the registered members to 500. When fully operational, the Boys and Girls Club would offer kids in the community programs in Education and Career Development; Health and Life Skills; Character and Leadership Development; Sports, Fitness and Recreation; and the Arts. Boys and Girls Club Services also extend into before and after school care, and after school drop-in.

The Boys and Girls Club is pursuing a permanent home within Park City and continue this endeavor with assistance from their current board members.

The Rec Building has undergone a recent renovation that has provided an additional 1865 sq. ft. on the main floor that would be available for community programming. New restrooms have been added within the facility, and are for the sole use of the indoor programming. Access to the outdoor restrooms has been maintained for users of the park and general public.

The Boys and Girls Club would use the entire main floor building to provide their programs and services with the goal to be open as many non-school hours as possible. While the Boys and Girls Club can provide transportation to and from school, a central location in town and on the bus route is convenient for the evening and weekend attendees.

PCMC Recreation has requested use of the facility for their Dog Obedience and various Adult and Youth Enrichment programs during the hours of 6:00 pm to 10:00 pm during the 9 months that Boys and Girls Club would be using the space, PCMC Recreation has also indicated that it may need occasional weekend use of the facility during the nine month term and would provide the Boys and Girls Club 30 day's written notice of such need. The need for mid-week use would require 5 days written notice.

Analysis:
After the renovation of the Rec Building staff reviewed the list of city facility users and found that it could reschedule the various meetings at Miners Hospital and other facilities to the Recreation Building if needed. By securing the 6:00 pm to 10:00 pm time frame on a year round basis, many of the users of the Miners Hospital who may be affected by the Marsac remodel could be accommodated when PCMC Recreation has no programming. The Summer Camp cannot be easily relocated.

The Summer Day Camp program has been offered by Park City Recreation for over 20 years. It is a valuable and popular program for Park City residents, as evidenced by the past three summers when the camp operated at or close to capacity (for the building and staff:camper ratio).

The location of the Recreation Building in City Park is ideal for Day Camp. Staff can easily utilize the skatepark and the soccer/softball fields for games. The library is easily accessible. Being on the bus route allows for short "in-town" field trips to other parks, and to the Racquet Club for swimming.

The lease has been written to allow PCMC Recreation to continue their use of the building during the summer. Staff has offered the Boys and Girls Club use of the building from September 1st to May 31st with the exception of the 6:00 pm to 10:00 pm hours and with 5 days prior notice on weekends.

PCMC Staff has received a letter from the Boys and Girls Club President/CEO requesting amendments to the following terms of the lease agreement. Staff is not in agreement and has the following concerns in regards to:

<u>Lease Rate</u>

A. An adjustable per square-foot lease rate; or
B. A percentage-based discount to the lease price;or
C. Boys and Girls Club would be allowed to rent or sublet the space to PCMC for a reasonable daily or hourly rate

D. Increase in the required amount of liability insurance

Insurance Requirement

- Increase in the amount of liability insurance

Exclusive use of Space

- PCMC ability to use the space from 6:00 pm to 10:00 pm

The attached lease will be in effect upon execution. Staff agrees and has amended the lease to reflect this.

Significant Impacts/Staff Response:
Renting the Rec Building to the Boys and Girls Club adherent to the above-mentioned terms will cause little impact to any other existing meetings/programs in the building. Staff is confident that by keeping the 6:00 pm to 10:00 pm times available to PCMC Recreation programs, as well as those groups being displaced at the Miners Hospital, the impacts will be minimal. However the City has not programmed this space and will remain flexible in programming opportunities.

By not agreeing to the terms of this lease agreement, and continuing the Council action, it will jeopardize Boys and Girls Club programming beginning on the proposed September 10th start date.

PCMC will look to provide liability insurance at its own cost to cover the Three Million Dollar ($3,000,000) per incident or occurrence. The Boys and Girls Club can pursue a Special Service Contract through PCMC to help to cover insurance costs in future years.

The Boys and Girls Club will be paying rent at $15.75 per square foot. The total for nine months of rent comes to Twenty-Two Thousand and Thirty Dollars and Twenty-Nine Cents ($22,030.29) for the lease term.

ALTERNATIVES

A. Recommend the lease be approved, thereby allowing the Boys and Girls Club to rent the Rec Building in City Park.
B. Modify terms of the lease and approve, in order to allow for the Boys and Girls Club to rent the Rec Building in City Park.
C. Recommend denial of the lease thereby preventing the Boys and Girls from locating their programming in the Rec Building.
D. The City Council may be continued until the September 13 meeting for more information and discussion.

Consequences of not taking the recommended action:
The Boys and Girls Club would need to find another suitable location to expand their programming in Park City.

RECOMMENDATION:
Staff recommends that Council approve the lease thereby allowing the Boys and Girls Club to occupy the Rec Building from September 1^{st} through May 31^{st} for two years.

Exhibits
Exhibit A – Lease Agreement Between the Boys and Girls Club and Park City Municipal Corporation
Exhibit B- Boys and Girls Club Letter

Exhibit A-

Boys and Girls Club of Greater Salt Lake
Park City Municipal Corporation
2007 Property Lease

THIS AGREEMENT is made by and between Park City Municipal Corporation (hereinafter referred to as "Landlord") and Boys and Girls Club of Greater Salt Lake (hereinafter referred to as "Tenant") to set forth the terms and conditions under which Landlord will lease space in Recreation Building at 1400 Sullivan Road, Park City Utah (hereinafter referred to as "Rec Building") to Tenant. The parties agree as follows:

1. Property. The property leased is within Rec Building as described in Exhibit A (attached and hereafter referred to as Premises). The leased space includes the following property on the Main Floor of the Rec Building with the exception of the locked cabinet spaces as is. The Premises contains approximately One Thousand and Eight Hundred and Sixty-Five (1,865) square feet.

2. Term. The Lease term shall commence on September 1, 2007, and shall run for up to two (2) consecutive nine-month (9) month terms, through May 31, 2009. The property being leased is currently surplus municipal space, but may be required for municipal purposes by Landlord at the conclusion of the lease term. The Premises will be used for PCMC recreation programming from 6:00 pm to 10:00 pm on a daily basis. The Premises may be used for PCMC recreation programming on occasional weekends with 30 days written notice to Tenant. Landlord may terminate this lease upon three (3) months prior written notice if the leased space is required for municipal purposes. No option of first refusal is granted to Tenant.

3. Rent. The rent for the leased space shall be as follows:

(1) Rate: Twenty-Two Thousand and Thirty Dollars and Twenty-Nine Cents ($ 22,030.29) for each nine month term.

(2) Payments: Rent shall be paid in nine (9) equal monthly installments of Two Thousand and Four Hundred and Forty-Seven Dollars and Eighty-One Cents ($2.447.81). Rent shall be due on the first of each month, and past due if not paid by the tenth (10^{th}) of the month.

(3) Deposit: No deposit is required.

(4) Credit for Early Payment. If Tenant pays Landlord the annual rent in full by September 15, then rent will be reduced by four percent (4%).

5. Utility Service. Landlord shall be responsible for natural gas, electricity, sewer, security systems, refuse collection and water for the leased space. Tenant will be responsible for any other utilities such as telephone and cable television and shall establish an account with each of these utilities in its own name.

6. Use of the Premises. The premises shall be used only for programs associated with the Boys and Girls Club of Greater Salt Lake.

7. Telephone, Cable and Microwave. The Tenant will install its own telephone, television,

computer and other communication equipment in the leased space. Any specialized communication facilities, equipment, wiring, cables or installations will be the Tenant's responsibility, with prior approval by Landlord.

8. Insurance. Tenant will carry a primary and non-contributory policy of general liability insurance, in an amount of at least Two Million Dollars ($2,000,000) per person and Three Million Dollars ($3,000,000) per incident or occurrence, to cover Tenant's patrons and employees during the course of its business. Tenant shall carry a primary and non-contributory property insurance policy covering property and contents located in Tenant's space, which are owned or leased by the Tenant.
Tenant's policies shall include an endorsement naming Landlord an additional insured on the policy, and an endorsement Waiver of Transfer of Rights of Recovery Against Others To Us (form CG 24 04 10 93), as part of the 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.

Landlord will carry property insurance covering the structure for casualty loss, and boiler and machinery insurance for boiler and mechanical systems loss.

The Tenant will not store or keep any product or equipment within the space that will, because of its nature, increase the risk of casualty losses to the overall building, or that will require additional premiums or specialty coverage.

9. Payment of Taxes and Other Assessments. As a tax exempt entity, the Landlord does not expect to be assessed real estate and personal property taxes and other related assessments or taxes on the Premises. However should the Tenant change the tax status or should other circumstances cause taxes or assessments to be imposed on the Premises, then Tenant shall pay real estate and personal property taxes and other related assessments or taxes on the Tenant's Premises during the term of this lease.

10. 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 received notice of any such against the property, Tenant shall promptly discharge the lien at Landlord's request, or post fund sufficient to satisfy the lien during any period of good faith contest of the lien by Tenant. In the event Landlord reasonably 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. The Tenant agrees to pay all reasonable costs incurred by the Landlord in the defense or discharge of any liens on the property.

11. Tenant Improvements. The Premises are being leased to Tenant in as-is condition. Any additional interior finish or furnishings desired by the Tenant must be approved in advance by the Landlord and Owner in writing and are the responsibility of the Tenant, with no allowance made for the costs of the Tenant improvements unless agreed to by Landlord in writing. At the expiration or termination of the Lease, all Tenant improvements become property of the Landlord unless specifically exempted in writing prior to installation.

12. Signs. Landlord reserves the right to specifically review and approve or reject proposed signs on or in the building. Landlord's approval for signs will not be unreasonably withheld, so long as the sign is directional rather than promotional, meets the requirements of the Park City Sign Code, and conforms with the historic nature and architectural detailing of the building. Signs shall be removed and any damage resulting from removal shall be repaired at the end of each lease term.

13. Assignment/Sublease. The Lease may not be assigned or the Premises sublet without the advance written consent of Landlord except that any space within the building may be sublet to any other tenant within the building. Landlord's consent to assignment or sublease will not be unreasonably withheld.

14. Remedies. In the event the Tenant fails to pay monthly installment payments when due, or violates or reaches any other term or condition of the Lease, Landlord shall have the right to exercise the following remedies, and any other remedies available at law or equity:

(1) Landlord may, by written notice to Tenant, demand that Tenant either pay rental installments due within ten (10) days, or quit the premises within fifteen (15) days;

(2) Landlord may permit the Tenant to remain in possession and sue for the installments that are past due;

(3) Landlord may re-let the premises for Tenant's account at the rate and on such terms as are commercially reasonable at the time and under the circumstances, and charge Tenant for any difference in the rental received and the rental agreed to herein, provided that any re-letting shall be done in good faith under the circumstances;

(4) Landlord may agree to a payment of damages in such amount as the parties then agree, and release the Tenant from obligations under this Lease entirely. Unless Landlord has released Tenant's continued performance under this Lease, Tenant is deemed to be in possession of the Premises, and any re-letting by Landlord in on Tenant's account. Tenant is responsible for all payments and obligations under the Lease until Landlord releases Tenant.

15. Covenant of Quiet Possession. Landlord covenants with Tenant that Landlord owns or controls the Premises and that 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. However, Tenant acknowledges the Premises are part of a larger public park and recreation facility. Therefore, Tenant may experience temporary impacts to operations, noise, and parking access customarily found with park events.

16. Maintenance. The Landlord shall be responsible for all structural maintenance of the Premises, including the roof, foundation, structural members, and exterior wall surfaces. The Landlord will be responsible for janitorial service in areas used in common with the Rec Building and other tenants and cleaning the outside of the glass and replacement in the event of damage from an outside source. Tenant shall be responsible for all interior maintenance, including mechanical and electrical fixtures to the extent that they are located within and exclusively benefit the Premises, janitorial service, and glass maintenance (both cleaning the inside and replacement in the event of damage from an inside source) which is within the leased premises or solely serves the Premises. Landlord shall be responsible for mechanical systems, which serve space as reasonably necessary to maintain the structure and to service common

utility facilities. Exterior maintenance of the site and snow removal shall be Landlord's responsibility.

17. Access to Other Spaces. Tenant shall not interfere with the access to other spaces within the building or obstruct the entrances to those other spaces in any way. Landlord shall have such access through Tenant's space as reasonably necessary to maintain the structure, service common utility facilities, and program use. Landlord shall have the right to inspect the leased space during the Tenant's normal business hours.

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 private educational entity or similar establishment or that the Landlord may not lease to a private entity either under existing state and federal law regulation or future state and federal law regulation.

19. Increased Insurance Risk. Tenant will not permit said premises to be used for any purpose which would render the fire insurance on the building or the premises void or cause cancellation thereof or increase the insurance risk or increase the insurance premium in effect at the time of the terms of this Lease. Tenant will not keep, use or sell, or allow to be kept, used or sold in or about the Premises any article or materials which are prohibited by law or by standard fire insurance policies of the kind customarily in force with respect to the Premises of the same general type as those covered by this Agreement.

20. Care and Repair of Premises by Tenant. Tenant will inspect and accept the Premises for the purposes of this agreement prior to taking occupancy. Tenant will not commit any waste on 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. Tenant may, with the prior written consent of the Landlord, but at its own cost and expense, in a good workmanlike manner, make such alterations and repairs to the leased space as Tenant may require for the conduct of its business without, however, materially altering the basic character for the building or improvements or weakening the structure on the leased premises. Any permanent alterations or improvements to the Premises shall become the property of the Landlord upon expiration or termination of this Lease unless specifically exempted in writing prior to commencing work.

21. Damage or Destruction. If the Premises or any part thereof shall be damaged or destroyed by fire or other casualty, Landlord shall promptly repair all such damage and restore the premises without expense to the Tenant subject to delays due to adjustment in insurance claims, strikes and other causes beyond the Landlord's control. If such damage or destruction shall render the Premises uninhabitable in whole or in part, the rent shall be abated wholly or proportionately until the damage shall be repaired and the premises restored. If the damage or destruction shall be of which may require removal of Tenant's operations from the Premises, either Landlord or Tenant may elect to terminate this lease by written notice to the other within thirty (30) days after the occurrence of such damage or destruction. Tenant shall receive permission from Landlord to use space heaters and/or any other electrical equipment which may overload the system. If we choose to hold a deposit; is this where we address payment?

22. Surrender of Premise. Tenant agrees to surrender the 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. Ordinary war, tear and damage by the elements or other acts of God excepted.

23. Hold Over. Should Tenant hold over the 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 provided for herein.

24. Available Space. If additional space becomes available in the Rec Buidling, Landlord agrees to offer such space to tenants in the Rec Building before making it available to non-tenants. Landlord reserves the right to use space that becomes available and to assign the space through a competitive bid process with tenants of the Rec Building who have been in the building for one (1) year or more, at the time the space becomes available.

25. Indemnity.

(1) The Tenant 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 Tenant'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 Tenant; and provided further, that nothing herein shall require the Tenant 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 Tenant expressly agrees that the indemnification provided herein constitutes the Tenant'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 Tenant claims or recovers compensation from the City for a loss or injury that Tenant 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.

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

26. 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.

27. 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.

28. 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.

29. Rights of Successors and Assigns. The covenants and agreements contained within the Lease shall apply to the benefit of successors in interest and legal representatives, except as expressly otherwise hereinbefore provided.

30. Security. The Landlord will install doors with locking hardware. The Tenant is entitled to put locks on the doors to its space, provided the Landlord is given keys for reasonable access and building maintenance. Both parties will attempt to keep the exterior doors locked after their use of the building is completed for the day, and the Tenant shall have the obligation of checking all exterior doors and setting of alarm at the conclusion of each day to make sure that they are locked, and that windows in the rooms used by the Tenant are secured. Lights and radiators should be turned off at the conclusion of the Tenant's use each day.

31. 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:
Max J. Paap
Park City Municipal Corporation
P.O. Box 1480
Park City, Utah 84060

If to Tenant:
Allison Barclay
Boys and Girls Club of Greater Salt Lake
675 East 2100 South, Suite 270
Salt Lake City, UT 84106

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

DATED this ______ day of MONTH AND YEAR LEASE SIGNED.

PARK CITY MUNICIPAL CORPORATION

____
Dana Williams, Mayor

Attest:

____
Janet M. Scott, City Recorder

Approved as to form:

____
City Attorney's Office

NAME OF TENANT

____
SIGNATOR, TITLE

ACKNOWLEDGMENT

STATE OF UTAH)
: ss.
COUNTY OF SUMMIT)

On this ______ day of MONTH, YEAR, personally appeared before me, NAME who being duly sworn, did say that she is the TITLE for the NAME OF ORGANIZATION, and acknowledged to me that the preceding Agreement was signed on behalf of said entity, and he acknowledged that the entity did execute the same for its stated purpose.

____
Notary Public

BOYS & GIRLS CLUBS
OF GREATER SALT LAKE

Boys & Girls Clubs
of Greater Salt Lake
Administrative Offices
669 S 200 E, Ste. 100
SLC, UT 84111
Tel 801-322-4411
Fax 801-322-4435
www.bgcgsl.org

Park City Council Members
c/o Max Paap
Park City Municipal Corporation
P.O. Box 1480
Park City, Utah 84060

Council Members:

On behalf of the Board of Directors of Boys & Girls Clubs of Greater Salt Lake (BGCGSL) I am respectfully requesting your review of the terms of a lease agreement between PCMC and BGCGSL being submitted by the Park City Recreation Department for your approval. Please be aware that we have had a wonderful relationship with PCMC that we continue to enjoy. We are also deeply appreciative of the support we have received from the Council over the years, both in terms of funding and in advocacy for the kids we serve. By this letter, we are in no way suggesting ill feelings toward PCMC or any PCMC staff. To the contrary, we believe every effort has been made by staff to be fair and helpful but they have simply reached the limits of their authority to address our concerns.

As you are aware, BGCGSL has leased the Recreation Building located at 1400 Sullivan Road since 2004 to offer youth development programming during the school year. During the 2006-07 school year we moved our programming to McPolin Elementary School to accommodate the remodeling of the Recreation Building with the full expectation of renegotiating a lease with PCMC at the conclusion of the remodel. However, we have some concerns about the terms of the new lease agreement that we are hopeful you will take under advisement.

The terms of our lease agreement from 2004 through 2006 were as follows:

1. Lease of the main floor of the building (1553 sq.ft.) from September through May for $18,344.81.
2. Provision by tenant of $500,000 in comprehensive liability insurance coverage.

Terms of the new lease agreement have changed as follows:

1. Lease of the main floor of the building (now 1865 sq. ft) from September through May for $22,030.29.
2. The premises will be used for PCMC recreation programming from 6:00pm to 10:00pm on a daily basis. The Premises may be used for PCMC recreation programming on occasional weekends with 30 days written notice to Tenant.
3. Provision by tenant of $2,000,000 per occurrence, $3,000,000 aggregate liability insurance.

THE POSITIVE PLACE FOR KIDS

We have two primary concerns with the new terms as presented:

First, we believe that a standard lease agreement presumes tenant occupancy and use of the premises 24-hours per day, 7-days per week for the term of the lease. We feel strongly that the new provision permitting PCMC use of the premises on a prescribed basis amounts to a sublease for no recompense. We understand that the reason behind this provision is the shortage of meeting and programming space that is expected during the Marsac Building renovation. We are more than happy to accommodate the needs of PCMC to use the premises and have, in fact, already agreed to eliminate evening programming for teens that we provided previously as long as necessary. However, we feel it is not equitable for us to carry the entire burden of the lease cost if we are not the sole tenants of the premises.

We would like to propose some possible compromise solutions for Council consideration: (1) an adjusted per square-foot lease rate, or (2) a percentage-based discount to the lease price, or (3) BGCGSL be allowed to rent or sublet the space to PCMC for a reasonable daily or hourly rate.

Our second concern is the increased liability insurance requirement in the new lease agreement. I have been advised that this amount of coverage is a new standard adopted by PCMC consistent with Utah State law. We have had several contracts with the State and other municipalities and have never been required to provide more than $1,000,000 in coverage. While we understand that these larger amounts of coverage might be advisable for large public events, we would ask the Council to consider whether it is a reasonable requirement for a fairly simple lease arrangement to provide 20 hours per week of youth development programs.

BGCGSL currently carries $1,000,000 per occurrence and $2,000,000 in aggregate liability insurance and are happy to name PCMC as an additional insured on our policy. If, however, this new provision cannot be modified, it would cost between $7,000 and $14,000 for BGCGSL to obtain insurance sufficient to meet the new standard. It is very unlikely that our board of directors would be able to secure that much in new funding to purchase additional insurance prior to our desired opening date of September 10th.

We have a deep commitment to the kids and families in Park City who have come to rely on us and are highly motivated to come to mutually agreeable resolution. We would be happy to provide clarification of our concerns or answer any questions you have. Thank you, again, for all you have done to enable us to serve the kids in Park City and for your consideration of our request.

Warmest Regards,

LeAnn Saldivar

LeAnn Saldivar
President/CEO

City Council
Staff Report

Author:	**Matt Twombly, Project Manager**
Subject:	**Prospector Drain Vault**
Date:	**August 30, 2007**
Type of Item:	**Request for Award of Contract**

Summary Recommendation:
Staff recommends City Council authorize the City Manager to proceed with the Prospector Drain Vault project and execute a Construction Contract in a form approved by the City Attorney's Office to Nelson Brothers Construction Company, in the amount of Seventy One Thousand Six Hundred Ninety Seven Dollars ($71,697.00).

Description:
Topic: Construction Agreement Award – Prospector Drain Vault

Background:
As part of the remediation efforts for the Silver Creek Tailings Site (Prospector) CERCLIS # UTD98051404, the Prospector Drain is the final remedial measure. The drain receives shallow ground water that saturates the tailings contained within the Prospector Development, which was previously a mine tailings impoundment. The water that outfalls the drain pipe significantly exceeds Utah State Water Quality Standards for heavy metals and also exceeds the TMDL effluent levels.

City staff has been working with Dr. Fitch from the University of Missouri, Rolla to develop a plan to treat the water for heavy metals. With the help of Dr. Fitch, staff created a test anaerobic treatment unit which has been operating and monitoring since June of 2004. The results of the pilot have shown a significant reduction of heavy metals as required by the TMDL. Due to the success of the pilot, design work on the full scale treatment facility (Biocell) was coordinated, completed and approved by the EPA through the East Canyon Creek Watershed Group.

Evergreen Engineering separate from the design of the Biocell developed plans for a vault that would intercept and bypass the drain to feed into a full-scale treatment unit also developed by Dr. Fitch. The vault consists of a precast concrete, 12' deep by 8' square 2 piece unit, and is equipped with pinch valves, flow meters, electrical monitoring equipment, platform, ladder, and piping. The vault will be connected to the existing drain and will feed the treatment unit and also act as bypass during periods of excessive flows. This drain is considered a regulated "point source" under Clean Water Act and has been deemed by USEPA and UDEQ as a major contributor to the impairment of the Silver Creek Watershed and needs to be monitored separately than the treatment facility. The City has received a grant from USEPA in the amount of $8,000 for the construction of the vault.

As a separate project from the vault, the full scale treatment unit (biocell) was advertised for bids and there were two bidders on the project. The entire project budget

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Warmest Regards,

LeAnn Saldivar

LeAnn Saldivar
President/CEO

including the vault is $200,000. The bids were in the amounts of $570,000 and $837,000. PCMC has rejected all the bids on the treatment unit project. Staff will work with the consultant Dr. Fitch to modify the plans where possible without impacting the necessary requirements of the treatment unit. Staff will also seek grant funding where possible to offset the costs and try and bid earlier in the season for more competitive bids on this larger treatment unit.

Analysis:
Staff requested quotes on the vault project from three known contractors that specialize in this type of water project who have worked for the City on previous projects. The quote from Nelson Brothers Construction Company, in the amount of Seventy One Thousand Six Hundred Ninety Seven Dollars ($71,697.00) was the lowest. Weyher Construction Company LLC., was the next lowest bidder at Seventy Seven Thousand Five Hundred Dollars ($77,500.00). Staff was unable to receive a quote from PLMW. Staff recommends Nelson Brothers to receive the award of the Construction Agreement based on their performance on other City projects.

Department Review: This report was reviewed by City Manager, Legal Department, Sustainability Implementation Team, Budget Debt and Grants, Building.

Alternatives:

A. **Approve the Request:** Staff is requesting authorization to proceed with the Prospector Drain Vault project and award the construction contract on a form approved by the City Attorneys Office to Nelson Brothers Construction Company, in the amount of Seventy One Thousand Six Hundred Ninety Seven Dollars ($71,697.00).

B. **Deny the Request:** The construction of the vault will not proceed at this time.

C. **Continue the Item:** This would delay the project which would likely impact the completion of this phase of the remediation.

D. **Do Nothing:** This will have the same impact as delaying the request.

Significant Impacts / Consequences of not taking the recommended action:
A delayed contract approval would impact completing the project prior to the winter. The project is anticipated to begin soon after the execution of the contract upon receipt of bonds and insurance. There is $200,000 in the Prospector Drain CIP project. The City has received an $8,000 grant for the vault.

Recommendation:
Staff is requesting authorization to proceed with the Prospector Drain Vault project and award the construction contract on a form approved by the City Attorneys Office to Nelson Brothers Construction Company, in the amount of Seventy One Thousand Six Hundred Ninety Seven Dollars ($71,697.00).

Attachments:
Construction Agreement
Written Quote

CONSTRUCTION AGREEMENT

THIS AGREEMENT is made and entered into as of this ____ day of _____________, 2007, 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 Nelson Brothers Construction Company, 347 West 1600 South, Salt Lake City, UT 84115, which is a (*check one*) X_ corporation ___ partnership ___ sole proprietorship ___ limited liability company (hereinafter "Contractor").

PURPOSE: For the project known as the Prospector Drain Vault (hereinafter "Project"), which briefly consists of furnishing and installing piping, valves, flow meters, monitoring equipment, electrical hookup, platform, ladder, and other miscellaneous work as shown on the drawing prepared for the project and as proposed by Nelson Brothers.

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

SECTION 1. SCOPE OF WORK. Contractor shall furnish all labor, materials and equipment to complete the Project, consisting of the work described in the Information for Bidders as the Basic Bid, 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 plan and proposal, collectively referred to as the Contract Documents, all of which are incorporated herein by reference, and on file in the Sustainability Department. 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 plan and proposal, 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 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 ($3,000,000) 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 **Seventy One Thousand Six Hundred Ninety Six and 62/100 Dollars ($71,696.62)**, ("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 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 **December 1, 2007**. 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 **No Dollars ($00.00)**, 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. 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 therefore 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 9:00 p.m. Monday through Saturday and 9:00 a.m. to 7:00 p.m. 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. 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 22. 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 23. 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 24. 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 25. 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: Bill F. Lewis, 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 26. 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.

Nelson Brothers Construction Company
347 West 1600 South, Salt Lake City, UT 84115
Phone: (801) 487-5401 Fax: (801) 487-5418

NELSON BROS.
CONSTRUCTION COMPANY
SALT LAKE CITY, UTAH

8/24/07

Park City Municipal Corporation
1053 Iron Horse Drive
Park City, Utah 84060

Subject: Quote to Prepare site, Set Vault, Install Mechanical devices, Install Electrical, and Backfill site at the Vault location near Prospector Park at Wyatt Earp Way & Kearns Blvd.

C/O Jeff Shoenbacher

Nelson Brothers submits this quote for the work described below:
Mobilization
Provide and Install Silt Fence and/or straw bales for Storm Water Pollution Prevention.
Extend existing culvert for access with large excavator and delivery trucks
Grade the access road for delivery of materials.
Excavate, provide and place sump w/ gravel filter and casing for dewatering.
Proved and operate 1ea. 6" Mobile Trash Pump to dewater site. Discharge point to be within 50' of excavation. (Any additional pumping to keep up with flows will be provided by Park City)
Excavate to sub grade and install gravel base for vault.
Provide and install OSHA approved Pit shoring.
Set Vault to grade. (Vault, cover, and delivery provided by Park City)
Core drill holes and connect 10" DIP from Vault to existing 10 "concrete piping.
Provide and install interior mechanical piping including: Pinch Valve, Flow Meters, Meter Read Outs, overflow piping, effluent piping w/ flow meter, and observation platform w/ Safety barrier added to drawings.
Provide electrical re-installation from existing line and provide and install electrical requirements for flow meters and readouts.
Backfill and grade site area.
Demolish and dispose of manhole sections that have been displaced at the site.
Grade access road to condition acceptable to Park City.
Remove culvert extension and re-grade area.
Bond Requirements
Park City will assume the responsibility of any damage to existing asphalt, concrete, vegetation, sprinkling system, or landscaping.
Park City will assume responsibility for any permits required.

The price for the work is $71,696.62 to complete the work as described and with exclusions listed above.

Please sign here to accept this quote:______________________________

Title:______________________________

Thank you,

Bill F. Lewis
Nelson Brothers Construction

City Council
Staff Report

Author:	**Kathy Lundborg**
Subject:	**HARRIS & ASSOCIATES PROFESSIONAL SERVICES AGREEMENT AMENDMENT NO 1**
Department:	**Public Works**
Date:	**August 30, 2007**
Type of Item:	**Administrative**

Summary Recommendations:
Staff recommends Council authorize the City Manager to execute the First Addendum to the Professional Services Agreement, in a form approved by the City Attorney, with Harris & Associates, for Project Management and Construction Management Services for water capital projects in an amount of $183,375.

Description:

Topic:
Water Department Capital Projects Project Management and Construction Management.

Background:
Harris & Associates was selected for Construction Management services for the Boothill Pump Station and Tank after advertising an RFP and receiving proposals in the Spring of 2006, prior to the start of construction of these projects. A Professional Services Agreement was executed in June 2006.

The performance of Harris & Associates has been very well on these projects. Several more Water capital projects are budgeted for the next two fiscal years, and years beyond.

Analysis:
With all of the issues with drought, water importation, master planning, and new technology, Staff needs additional resources to ensure all of the needed projects are completed.

Staff has negotiated the fine-tuning of the Scope of Work and fee for the Project Management and Construction Management services with Harris & Associates. This is included as Exhibit A in the First Addendum to the Professional Services Agreement and is an increased amount of $183,375. Harris & Associates will bill at their hourly rate as work is performed. Staff feels that the fee is usual and customary with projects of this type and scope.

Adequate funding to finance this project is available in the Water Fund.

Department Review:
This staff report has been reviewed by Public Works, Legal, and City Manager.

Alternatives:

A. Approve the Request:
Staff recommends Council authorize the City Manager to execute the First Addendum to the Professional Services Agreement, in a form approved by the City Attorney, with Harris & Associates, for Project Management and Construction Management Services for water capital projects in an amount of $183,375.

B. Deny the Request:
Council could deny Staff's request. Denying the request could jeopardize the ability to get all of the needed and budgeted projects completed.

C. Continue the Item:
Council could continue the request. Continuing the request would delay the ability to get all of the projects designed in time as Harris & Associates will be acting as Project Manager through the design process.

D. Do Nothing:
Staff does not recommend this alternative. Denying the request could jeopardize the ability to get all of the needed and budgeted projects completed.

Significant Impacts:
The funds for this contract are coming from budgeted capital projects that have come in under budget so the funds are part of the approved FY08 budget.

Recommendation:
Staff recommends Council authorize the City Manager to execute the First Addendum to the Professional Services Agreement, in a form approved by the City Attorney, with Harris & Associates, for Project Management and Construction Management Services for water capital projects in an amount of $183,375.

EDEN CONTRACT NO. ____________

FIRST ADDENDUM TO PARK CITY MUNICIPAL CORPORATION SERVICE PROVIDER/PROFESSIONAL SERVICES AGREEMENT

THIS FIRST ADDEMDUM is made and entered into in duplicate this _____ day of ________________, 2007, by and between PARK CITY MUNICIPAL CORPORATION, a Utah municipal corporation and political subdivision of the State of Utah ("City"), and Harris & Associates, a Utah Corporation ("Service Provider") to amend the Service Provider/ Professional Services Agreement signed and executed by the Parties on June 6, 2006.

WITNESSETH;

WHEREAS, the parties entered into a Professional Services Agreement on June 6, 2006 (hereinafter "Original Agreement"); and

WHEREAS, both parties to the Original Agreement agreed in writing in June 2007 to extend the term of the Original Agreement to December 31, 2007; and

WHEREAS, both parties to the Original Agreement agreed in writing in July 2007 to increase the Original Agreement by $18,000 and, additionally, $10,000 of additional fees were paid by the Contractor; and

WHEREAS, both parties to the Original Agreement desire to amend the Original Agreement to include additional scope, fees and time to complete additional projects of similar scope to those described in the Scope of Services in the Original Agreement; and

WHEREAS, the parties desire to amend the Original Agreement to include additional funding as approved by City Council August 30, 2007; and

NOW, THEREFORE, in consideration of the mutual promises made herein and other valuable consideration, the parties hereto now amend the Original Agreement as follows:

1. **INCREASE of $183,375**. Park City shall pay Service Provider for professional services in an amount not to exceed $301,425, which is an increase to the Original Agreement of $18,000 agreed to in July 2007, an additional $10,050 paid by the Contractor, and of $155,375 for additional professional services. The amended Scope of Services is attached hereto as Exhibit A.

2. **EXTENSION OF TERM**. The term of the Original Agreement shall be extended to a termination date of June 30, 2009, or upon the date on which both parties have performed all obligations under the Original Agreement , whichever is later in time.

3. **OTHER TERMS**. All other terms and conditions of the Original Agreement shall continue to apply.

4. **ENTIRE AGREEMENT**. This First Addendum is a written instrument pursuant to Paragraph 23 of the Original Agreement between the parties and cannot be altered or amended except by written instrument, signed by both parties.

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

EDEN CONTRACT NO. ____________

PARK CITY MUNICIPAL CORPORATION
445 Marsac Avenue
P.O. Box 1480
Park City UT 84060-1480

____
Thomas B. Bakaly, City Manager

Attest:

____
City Recorder's Office

Approved as to form:

____
City Attorney's Office

SERVICE PROVIDER

Address:

Tax ID#: _______________________

____
Signature

____
Printed name

____
Title

STATE OF UTAH)
) ss.
COUNTY OF SUMMIT)

On this ____ day of ________________, 2007, personally appeared before me _____________________________, whose identity is personally known to me/or proved to me on the basis of satisfactory evidence and who by me duly sworn/affirmed, did say that he/she is the _________________________ (*title or office*) of ____________________ Corporation by Authority of its Bylaws/Resolution of the Board of Directors, and acknowledged that he/she signed it voluntarily for its stated purpose as _______________________ *(title)* for _______________________________, a _______ corporation.

_________________________________Notary Public

EDEN CONTRACT NO. ____________

First Addendum

Exhibit A

General duties will include, but not be limited to, Project Management and Construction Management of Water Department capital projects as assigned by the Water Manager. Typical tasks for Project Management are described below. Construction Management task descriptions are included the Original Agreement Scope of Services.

PROJECT MANAGEMENT

Harris and Associates shall provide construction management services for the project(s). Harris and Associates shall be responsible for managing its construction management team, developing the processes and procedures for construction management, providing the resources to complete the project. In addition, Harris and Associates will also be responsible for monitoring the project budget and schedule, coordinating design reviews and questions with design engineer, conducting project team meetings, implementing the quality assurance/quality control program, and communicating with Park City Municipal Corporation. In addition, Harris and Associates shall perform the following duties as required:

- Project Documentation and Filing of all correspondence and meeting minutes
- Perform Neighborhood Liaison duties as required including developing the strategy and making the contacts with neighborhoods in coordination with Park City Municipal Corporation staff.
- Sub-consultant management to include procurement of services and management of services per negotiated agreements.
- Provide Construction Strategies for projects.
- Negotiate fair and equitable third-party contracts for Park City Municipal Corporation.

Project Management and Construction Management duties will be applied to the following projects, but other projects may be exchanged or added at the discretion of the Water Manager:

Project	Construction Estimate	Estimated PM/CM
· Boothill Tank Fee Paid by Contractor		**$10,050**
· Complete Boothill Tank and Boothill Pump Station Construction		**$18,000**
Expanded Scope:		
· Water Infrastructure Improvements		
Empire Ave Fireflow upgrades	$250,000	$18,750
Rossi Hill Fireflow upgrades	$310,000	$23,250
· Solamere Pump Station Upgrade (design & construction)	$150,000	$11,250
· Fairway Hills Pump Station Upgrade (design & construction)	$130,000	$9,750

· Meter Reading Technology Procurement & Installation/go-live	$500,000 - $1M	$37,500
· Boothill Transmission Line design, Phase I CM	$1,500,000	$50,000
· Survey and Legal description of waterways	$15,000	$1,125
· Spiro WTP Office Building Upgrades	$50,000	$3,750
Total Additional Fee		**$155,375**
Total Additional Hours Estimate		**1725**
Original Agreement		**$118,000**
Total Amended Fee Not to Exceed		**$301,425**

City Council
Staff Report

Subject: JSSD Water Agreement
Author: Jerry Gibbs
Department: Public Works
Date: August 30, 2007
Type of Item: Administrative-Contractual

Summary Recommendations:
Authorize the City Manager to enter into an agreement with Jordanelle Special Service District in the amount of $240,000 to design an emergency water supply connection to Quinn's Jct.

Topic/Description:
Emergency Water

Background:
Jordanelle Special Service District (JSSD) has entered into two previous agreements with the City. The first agreement was a five year short term lease in 2001 and in 2002 converted the lease to a twenty year term for 1000 ac-ft/1000 gpm. The second agreement is for mine maintenance services (planned and emergency) for Judge and Spiro Tunnels.

Hospitals are required to evacuate their premise if water is shut down to the facility for more than two hours. Hospitals are required to provide water redundancy in the unlikely event of a single source water reservoir going out of service for more than two hours for any reason. IHC is serviced by a single water line running from a reservoir (1 MG Fairway Hills Tank).

The IHC facility does not have an exact fire flow requirement at the time of this report. The actual fire flow requirement will be determined by the design and approved by the Building Department during plan review. The maximum fire flow demand will not exceed 3 hours/3,000 gpm or 540,000 gallons fire storage.

IHC is responsible to provide this redundancy prior to their certificate of occupancy being issued prior to their expected occupancy in May 2009. The IHC Water Development Agreement anticipates either the construction on-site of a reservoir by IHC or $800,000 paid by IHC to Park City to provide the redundancy.

Analysis:
The PCWSD has the ability to provide redundancy from a number of alternatives.

1. Construct a pipeline and pump station to deliver water from the Chatham area along the Rail Trail to Quinn's Jct. utilizing the 3 MG Boothill water storage
2. Connect to one of three adjacent water providers.

Staff initially began talking with Mountain Regional Water Special Service District (MRWSSD) and JSSD. MRWSSD was the most probable partner due to their proximity above Quinn's Jct., our cooperative efforts in importing water from Rockport and their belief they would be the service provider to the Burbidge Development directly east across US 40 from the IHC hospital.
JSSD was a close second due to the flexibility a second delivery point at Quinn's Jct. would provide, for example:

1. Redundancy to deliver our current 1000 ac-ft/1000 gpm if our Deer Valley connection was out of service.
2. JSSD has been willing to provide additional capacity during critical times (Park Meadows well and TMMS well were both down in 2005) and our Deer Valley connection is limited.
3. Park City's Water Strategic Plan, adopted by the city council in 2005, identifies the desire to purchase an additional 500 ac-ft/500 gpm.
4. JSSD would be an importation source creating a positive impact on our critical water balance in East Canyon and Silver Creek drainages.
5. Provides an essential element to the option of JSSD treating Judge Tunnel water and returning it to the Weber River Drainage.
6. JSSD has shown a willingness to cooperate and help the City on a number of water-related issues (tunnel maintenance, treating Judge Tunnel water, leasing water).
7. A second connection would provide water directly into the Boothill zone via Quinn's which could be distributed anywhere in Park City's water delivery system.

Recently in a discussion with Von Burbidge, staff learned they had decided to buy water from Summit Water Distribution Co (SWDC). A new water line will be constructed from the SWDC water reservoir in Silver Summit and extended under US 40 and along the east frontage road. Staff has not made any inquiry to their timing and/or costs for a connection.

Staff believes an agreement with JSSD best serves the District's long-term interests. The main elements of the agreement are:

1. JSSD will deliver capability of 3000 gpm for 3 hours on notice of the City's Fairway Hill Tank going out of service at no cost.
2. City is responsible for all capital cost related to the delivery of 3000 gpm for 3 hours.
3. JSSD water used for non-fire related uses will be charged at City's commercial rate per 1000 gallons (internal use by the hospital during a water emergency).
4. JSSD will design and construct from their water system to the City's water system.
5. JSSD will retain ownership of the portion of waterline up to the "Old Dump Road" where a water meter will be installed. The line within the road could be part of the City's distribution system from the Fairway Hills Tank or a future tank for new development, if annexed to the City, on the south side of the road. (Park City Heights or Richardson Flats area).

The total project is estimated to cost $2,400,000. The engineering is estimated at $240,000. IHC has provided $800,000 toward an emergency connection. This contribution is currently budgeted in the Judge Treatment Project, cp0069. This project also contains $1.2 million in bond proceeds with the remaining $400,000 being funded from the Water Fund balance to fully fund the project. New development needing access to any portion of the line will be required to offset Park City's contribution through a "latecomers" agreement. JSSD has demonstrated their willingness and response to assist and partner with Park City.

Department Review:
The staff report has been reviewed by Legal, Budget and Grants, Executive, and Public Works.

1. **Alternatives:**

A. **Approve the Request:**
Authorize the City Manager to enter into an agreement for the engineering design of the emergency water connection from JSSD (Staff recommended)

B. **Deny the Request:**
1. Request staff to negotiate an emergency connection with Summit Water.
2. IHC constructs an emergency tank on-site or negotiates a separate agreement with Summit Water to meet their emergency needs.

C. **Continue the Item:**
The decision could be delayed.

D. **Do Nothing:**
IHC would be required to provide their redundancy either by building a tank or negotiating with another water provider.

Significant Impacts:
1. Provides an additional connection to provide water during critical times to the Boothill zone and the distribution anywhere in the City's water system.
2. Emergency connection to the IHC hospital
3. Water in the Quinn's Jct zone may be routed into the Boothill zone which would benefit the City as a whole.
4. This waterline could be the main water connection to Park City Heights and the Richardson Flats area.
5. Completion of the engineering work for the emergency connection will allow Staff to finalize the Judge Treatment issues, determine if this project could be included as a potential match with our STAG grants, or move forward independently if the Judge project is delayed further..

Consequences of not taking the recommended action:
IHC would provide their emergency water from either building a tank on-site or negotiating with Summit Water for a connection (Burbidge water supplier).

Recommendation:

Authorize the City Manager to enter into an agreement with Jordanelle Special Service District in the amount of $240,000 to design an emergency water supply connection to Quinn's Jct.

City Council Staff Report

Author: Patrick Putt, Planning Director
Department: Sustainability
Subject: Park-Bonanza District General Plan Amendments
Date: August 30, 2007
Type of Item: Legislative

Summary Recommendations: Staff recommends that Council approve the attached resolution adopting the Park Bonanza District amendments to the Park City General Plan.

Topic/Description: Public hearing on proposed Amendments to the Park City General Plan.

Background:

The City has been working to develop General Plan strategies for new development and redevelopment in General Commercial (GC) and Light Industrial (LI) areas in and around the Bonanza Drive, Kearns Boulevard, and lower Park Avenue neighborhoods. The boundaries of the District are Bonanza Drive to the East, Park Avenue to the west and Kearns Boulevard to the north and Deer Valley Drive to the south. The District includes those properties along both sides of Bonanza from Iron Horse Drive to Kearns Boulevard *(see attached District map).* The purpose of the amendments is to provide more detailed policy direction for the protection and development of properties within the Park Bonanza neighborhood. It is the intent that these amendments further define the overall objectives of the General Plan and Land Management Code, as well as the direction of the Council and Planning Commission.

A community open house was held on this subject on June 14, 2006. Planning Commission public hearings were held on July 26, August 23, and September 27, 2006. Council held an initial public hearing on October 19, 2006. Joint Council/Planning Commission work sessions were held on the proposed General Plan amendments on January 16 and March 9, 2007. The Planning Commission forwarded a positive recommendation on the amendments to City Council on July 11, 2007.

On August 2, 2007, Council held a work session on the proposed Park Bonanza District General Plan amendments. The document forwarded by Staff and the Planning Commission supplements the Park City General Plan and emphasizes:

- Accommodating change, redevelopment, and some growth in the neighborhood, but not at the expense of increased traffic.
- Maintaining the neighborhood as an attractive location for a mix of local small businesses and restaurants.

- Accommodating mixed-use redevelopment that is generally consistent with current buildings and tenant size mixes *(Big-box retail is generally discouraged due to potential traffic impacts and the negative effects on open space and "walkability.")*
- Improving pedestrian, bicycle, and vehicular circulation.
- Enhancing active, passive, natural and urban open areas for public use, activities, circulation and community "connectivity."
- Protecting existing housing areas and improved opportunities for a range of new housing for primary residents *(as opposed to visitors)* and employees.
- Protecting the visual qualities of the neighborhood's mountain-view and entryway corridors.
- Maintaining the neighborhood's existing building height characteristics (35 feet, plus 5 foot height exception for pitched roofs), but allowing consideration of MPD height increases when additional public open space and walkway areas are provided and view corridors are protected.
- Consideration of an inter-modal transportation/parking site in the neighborhood due to its central proximity to the resorts and Main Street. *(The amendments clarify that a decision on such a facility should be made following the result of detailed transportation information and the study of capture rates and reductions of vehicles or vehicle miles traveled.)*
- Improving the pedestrian and vehicular circulation along Bonanza Drive without prematurely widening the street.

Council suggested three additions to the document:

- Strengthen the language to discourage new big box retail;
- Strengthen the language to discourage small/medium size multi-tenant spaces from being combined/redeveloped into larger/big box spaces; and
- Include language emphasizing sustainable design practices.

Analysis: The following excerpts addressing the aforementioned Council comments are from the revised draft amendments are provided for Council review and consideration. The pertinent statements are **bolded**:

1. **<u>Strengthen the language to discourage new big box retail</u>:**

<u>**Section 3.5.2**</u>**:** Future retail and commercial buildings and uses should be generally consistent with the current buildings and tenant size mixes. **Big-box retail uses should be discouraged due to potential traffic impacts and the negative effect on other elements of this plan, including open space and walkability**.

The district currently has a mix of larger and smaller examples of "big" boxes" (previously noted examples are the Rite Aid – 35,218 square feet and Albertsons (57,800 square feet). In the context of this General Plan Supplement, big box retail uses as single tenant spaces over approximately 15,000 square feet are to be reviewed with all of the guidelines in this Supplement for impacts primarily within the Park Bonanza District and adjacent transportation systems. Larger big box projects with retail and commercial single users (approximately 15,000 square feet to approximately 25,000 square feet) should be reviewed carefully within the guidelines of the Supplement and overall General Plan for impacts on the overall town. Big box commercial and retail uses between approximately 25,000 square feet and approximately 50,000 square feet (except as replacement for existing buildings) should be considered for impacts on the entire town, but with awareness and consideration of possible more regional impacts on transportation, housing and open space. **Proposed projects over 50,000 / 60,000 square feet, will be less likely to meet the guidelines of this section to be "consistent with current buildings and tenant size mix" and would be strongly discouraged.** Mixes of uses, and tenant sizes within commercial projects is encouraged. **Projects will need to demonstrate compliance with the objectives of this Element and other Elements of the General Plan. The mix will be determined at the MPD stage.**

2. **Strengthen the language to discourage small/medium size multi-tenant spaces from being combined/redeveloped into larger/big box spaces:**

Section 3.5.3: The combining of existing smaller tenant spaces to into big box spaces in existing projects or after project completion is further discouraged and will be subject to additional reviews by the Planning Commission under the terms of the General Plan and Land Management Code and especially for impacts due to potentially higher parking demands, changes to employee housing requirements and traffic and transportation impacts.

3. **Include language emphasizing sustainable design practices:**

Section 3.5.1: The objective is to create an atmosphere different from traditional shopping centers, with a mix of local and other shops attractive to residents and visitors to Park City.

The current array of land uses within the GC and LI zoning districts continue to be appropriate uses within the Park Bonanza District. **Projects will be encouraged to comply with sustainable design practices noted in Section 3.8.1 and 3.8.2 of the General Plan.** Base upon the most available, recent data, a 2007 private sector study of commercial inventories reports approximately 469,000 square feet of retail, office, restaurant, industrial, and institutional space within the Park Bonanza District – west of Bonanza Drive. This square footage does not include the area of the Park City Public Works Building or Park City Mountain Resort Munchkin site. The portion of the Park Bonanza District east of Bonanza Drive adds an additional approximately 106,000 square feet for a total of approximately 575,000 square feet of these uses.

Section 3.8.1: Sustainable designs for projects sites and buildings are strongly encouraged. Use of formal rating systems (such as LEED ™) is not required but can be used to substantiate a sustainable project design.

Section: 3.8.2: The City Council should consider providing incentives such as building permit fee reductions or priority reviews during the building permit review process for projects that use a documented sustainable design process.

Staff asks that the Council conduct a public hearing on the proposed Park Bonanza District General Plan amendments and provide direction on any necessary final revisions prior to adoption.

Recommendation: Staff recommends that the Council adopt the attached resolution approving the amendments to the Park City General Plan relating to the park Bonanza District.

Stantec

Park City General Plan – Supplement
Park Bonanza Planning District

August 16, 2007

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1.0 Background

The Park City General Plan is a policy document that forms the basis of the zoning and development regulations within the Park City limits and provides land use planning direction for those areas within the Park City Annexation Declaration area. The current General Plan has been under on-going updates on most of the elements of the plan since the 1997 General Plan was adopted.

The area encompassed by the designation of the Park Bonanza district has been cursorily considered in the General Plan within descriptions of other planning areas and in the separate Transportation element of the General Plan. Very little specific direction exists for the Park Bonanza District Planning Area.

The purpose of this document is to provide more detailed policy direction for the protection and development of properties within the district consistent with the overall General Plan, Land Management Codes, and policies and direction of the Park City Council. The adoption of the Park Bonanza Planning District Supplement to the Park City General Plan adds the policy direction to the specific elements of the General Plan. Until the overall General Plan is edited or revised, this document will append to the General Plan.

General District Description

The Park Bonanza District is the oldest commercial district outside of the historic Main Street area. As a planning area, the boundaries of the district are Bonanza Drive to the East, Park Avenue to the west and Kearns Boulevard to the north and Deer Valley Drive to the south. The district includes those properties along both sides of Bonanza from Iron Horse Drive to Kearns.

The area is currently a broad mix of land uses from resort commissary and parking, to shops and restaurants, banking, public works buildings and the former lumber yard. Other uses include storage area, small art and consignment shops, banks and real estate offices. The one, in town, movie theater is within the area as well as one of the two main grocery stores. The area is currently zoned General Commercial (GC) and Light Industrial (LI).

The area includes housing along Kearns Boulevard and within the Rail Central project. Portions of the area are referred to the North of Main Area (NoMa) by a large percentage of the business and property owners in the area. NoMa functions as a joint marketing vehicle and forum for NoMa members to discuss business development.

District Issues

Because the Park Bonanza District includes such a broad array of uses and provides services to the community at large, the District is an important part of the commercial life of Park City. The District is under pressure from competing commercial projects outside of the city, exemplified by the closure of the lumber yard last year. Movie theaters and restaurants in themed mall atmospheres have developed near the junction of the interstate and the state highways that form the entry corridor to Park City.

Local restaurants and shopping continues to be an active part of the district, despite commercial competition from the junction areas. The cost of rental space in the district is less than the Main Street area, and parking is generally available.

The District is central to the daily flow of traffic to the resort areas and to the Main Street area. Four of the City's six stop lights are located on the District Boundaries. Many intersections and driveways affect the flow of traffic in the District and to the resort areas and Main Street.

Several of the buildings and developments have undergone redevelopment in the past 5 years, including the Rail Central Project, the theater complex, and the Centura Emporium project. These projects represent significant efforts by the private sector to provide community level services in this area.

2.0 District Objectives

The overall objective for the Park Bonanza District is shown below:

> **The District will primarily continue to serve the needs of the residents and visitors to Park City, consistent with changing consumer demands for services, restaurants, shopping and housing. Local businesses will be strongly encouraged. National brands will not be prominent in design or placement. The District is intended to act synergistically with Main Street, by providing a different lifestyle and commercial environment. Differences will be evident in architecture, urban design, and mix of commercial and residential uses in the District. The more detailed objectives for the area are found in the individual Plan Elements that follow.**

Development or re-development is not required by this General Plan amendment in this District. The intent of the is plan is to establish the framework that accomplished the overall objectives of the City and guides land use decisions that affect private property proposals.

Because of the nature of the district as a combination of land uses, changes to the district are nearly inevitable. Changes can either occur by individual parcel, collections of properties or from outside forces, such as increased development elsewhere requiring roads to be widened in the district.

The goals and measures to achieve the overall planning objective for the district is to identity those elements that should be incorporated in development plans to guide change in a positive direction.

> **For Park Bonanza District a positive direction is defined as increased pedestrianization, maintenance of the attractiveness of local and small business and restaurants, protection of existing housing areas, improved opportunities for a range of new housing, and coordinated direction for re-development proposals. Bicycle and vehicular circulation will be improved. Open spaces will provide for public areas, circulation, activities and community connectivness, with active, passive, natural and urban open areas. Mountain views will be maintained.**

Facilitation of the overall success for the District is achieved by coordination of land use and transportation plans, definition and incorporation of uses that contribute to the overall success of the District. Facilitation includes consideration for modification of the current City zoning regulations, consistent with the intent of this section and the overall Park City General Plan. Facilitation also includes identifying the opportunities to contribute to the overall quality of life for all of Park City. Housing, shops and services that can be served by the existing transit system, parking areas that can serve the demands of the district plus provide supplemental parking for the resorts and Main Street are examples of the current range of opportunities presented within the district. Facilitation includes the possible identification of projects where City resources can be contributed to assist with overall benefits to the Park City community.

3.0 Amendments and Revisions to General Plan Elements

The Park City General Plan is comprised of elements related to the management of land uses, future development and growth management. The Park Bonanza District Planning Area Supplement is intended to be appended to the overall General Plan and modify the General Plan as outlined in the following sections.

3.1 GENERAL PLAN ELEMENT I. INTRODUCTION

No changes required

3.2 GENERAL PLAN ELEMENT II. PARK CITY DIRECTION

No changes required. The planning direction for the Park Bonanza District is consistent with the stated goals.

3.3 GENERAL PLAN ELEMENT III. COMMUNITY CHARACTER

3.3.1 The Park Bonanza District is included within the Developing Area Policies section of this Element. The current planning direction for the District is consistent with the current Developing Area Policies.

3.4 GENERAL PLAN ELEMENT IV. OPEN SPACE

Open space in this area is established through the provisions in the Land Management Code for the General Commercial (GC) and Light Industrial (LI) zones. Under basic zoning, the open space on a parcel is determined by the setbacks from the property line. Properties along Park Avenue, Kearns Boulevard and Deer Valley Drive are subject to the provisions of the Frontage Protection Zone, which requires additional Front Yard setbacks and a Conditional Use Permit approval for development within 100 feet of the Right of Way along these streets. Bonanza Drive is not currently subject to the Frontage Protection Zone requirements. In addition to the aesthetic importance of Open Space in this area, Open Space along roads provides a critical function for snow storage for snow storage and for adequate room for sidewalks, bus zones and walkways.

Additional Open Space is required for larger projects that are approved under the Master Development Plan (MPD) section of the Land Management Code rather than simply as an Allowed or Conditional Use within the zone.

3.4.1 Open Space requirements would remain as in the current code to maintain equity between all GC and LI zoned properties whether in the District or in other Planning Areas. Plazas, decks at or near ground surfaces, outdoor seating areas, outdoor displays of public art areas; areas for outdoor music and similar uses are appropriate for consideration as Open Space. These spaces must be open to the public for use. Areas of plazas, decks and outdoor seating areas that are part of restaurant, bar or other similar uses are not considered to meet the Open Space requirements.

3.4.2 The Frontage Protection Zone (FPZ) requirements of a 30-foot setback from Park Avenue, Kearns Boulevard and Deer Valley Drive would be maintained. The FPZ setback of 30 feet should be maintained along both sides of Bonanza Drive to allow for improved sidewalks and snow storage areas. At grade plazas and decks are appropriate within the 30-foot setback as long as snow storage and walkways meet the intent of the other element of the Planning Area. Decks may be up to one foot above grade within the setback area, but grading, and / or berms, may not be used to increase the height of the deck above the elevation of the existing roadway and adjacent properties.

3.4.3 Parking that is completely below grade, except for Open Space plaza spaces on the exposed level, not exceeding existing grade level, could be considered between the 30 foot setback area and the zone required setback and can be considered to be appropriate within the Planning Area in an MPD and without entrances and exits on Park Avenue, Kearns or Deer Valley Drive.

3.4.4 Within MPD's setbacks between buildings can be reduced to the minimum Fire Code requirements and Open Space combined in the most appropriate area. Snow storage must be considered in determining the appropriate amount and location of setbacks and Open Space.

3.4.5 For redevelopment of housing areas, Open Space requirements should not be less than the existing project. Required Open Space could be located within an MPD in the most appropriate location to support all the intentions of the Planning Area.

3.5 GENERAL PLAN ELEMENT V. LAND USE

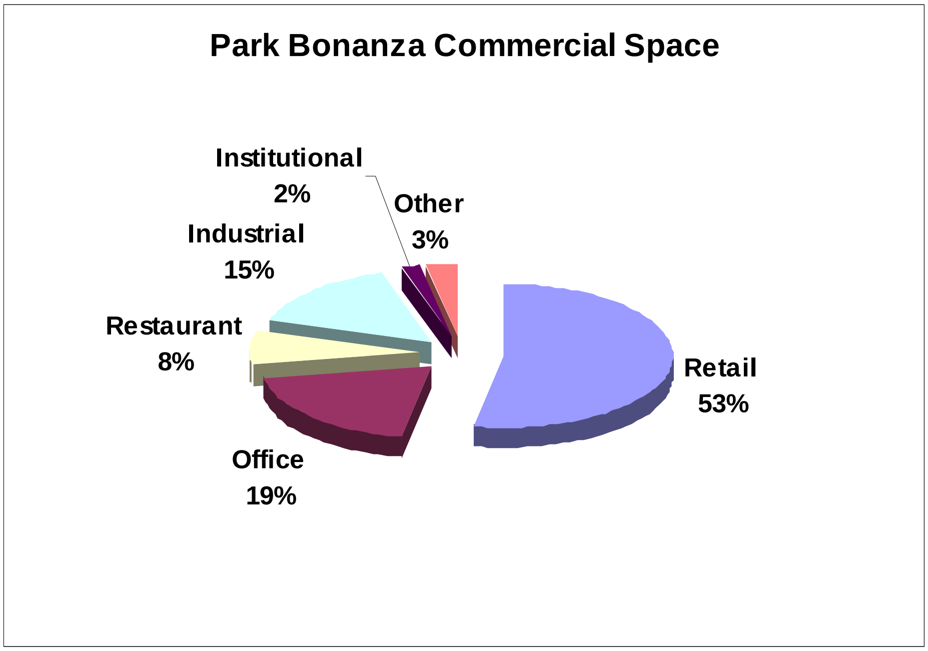
The mix of commercial uses, tenants, retailers and restaurants is critical to meeting the goals and objectives for the district. The mix of uses may change over the course of a project and over the course of time as development proceeds. For this reason, the mix of potential uses and tenants within a proposed project is to be reviewed on a project by project basis by the Planning Commission. The criteria for review is established by the goals and objective of this planning area, combined with the overall General Plan, and policies and goals of the City Council.

3.5.1 The objective is to create an atmosphere different from traditional shopping centers, with a mix of local and other shops attractive to residents and visitors to Park City.

The current array of land uses within the GC and LI zoning districts continue to be appropriate uses within the Park Bonanza District. Projects will be encouraged to comply with sustainable design practices noted in Section 3.8.1 and 3.8.2 of the General Plan.

Base upon the most available, recent data, a 2007 private sector study of commercial inventories[1] reports approximately 469,000 square feet of retail, office, restaurant, industrial, and institutional space within the Park Bonanza District – west of Bonanza Drive. This square footage does not include the area of the Park City Public Works Building or Park City Mountain Resort Munchkin site. The portion of the Park Bonanza District east of Bonanza Drive adds an additional approximately 106,000 square feet for a total of approximately 575,000 square feet of these uses. A breakdown of the commercial land use categories in the district is shown in the chart following.

[1] James Barth (2007) *Commercial Inventory for Park City and the Snyderville Basin*. Commerce CRG



The Park Bonanza District commercial square footage includes large retail tenants:

Albertson's	57,800 square feet
Sports Authority (Gart's)	25,000 square feet
Rite Aid	35,218 square feet

By comparison, Jan's Mountain Outfitters is approximately 12,500 square feet. Commercial buildings with several individual tenants such as the Emporium (19,000 total square feet) and Park City Plaza (18,192 total square feet) produce a raw average of approximatly 2,000 square feet per tenant.

3.5.2 Future retail and commercial buildings and uses should be generally consistent with the current buildings and tenant size mixes. Big-box retail uses should be discouraged due to potential traffic impacts and the negative effect on other elements of this plan, including open space and walkability.

The district currently has a mix of larger and smaller examples of "big" boxes" (previously noted examples are the Rite aid – 35,218 square feet and Albertsons (57,800 square feet). In the context of this General Plan Supplement, big box retail uses as single tenant spaces over approximately 15,000 square feet are to be reviewed with all of the guidelines in this Supplement for impacts primarily within the Park Bonanza District and adjacent transportation systems. Larger big box project with retail and commercial single users (approximately 15,000 square feet to approximately 25,000 square feet) should be reviewed carefully within the guidelines of the Supplement and overall General Plan for impacts on the overall town. Big box commercial and retail uses between approximately 25,000 square feet and approximately 50,000 square feet (except as replacement for existing buildings) should be considered for impacts on the entire town, but with awareness and consideration of possible more regional impacts on transportation, housing and open space. Proposed projects over 50,000 / 60,000 square feet, will be less likely to meet the guidelines of this section to be "consistent with current buildings and tenant size mix" and would be strongly discouraged. Mixes of uses, and tenant sizes within commercial projects is encouraged. Projects will need to demonstrate compliance with the objectives of this Element and other Elements of the General Plan. The mix will be determined at the MPD stage.

3.5.3 The combining of existing smaller tenant spaces to into big box spaces in existing projects or after project completion is further discouraged and will be subject to additional reviews by the Planning Commission under the terms of the General Plan and Land Management Code and especially for impacts due to potentially higher parking demands, changes to employee housing requirements and traffic and transportation impacts.

3.5.4 Existing and proposed housing areas should be protected from intrusions of commercial development, through increased commercial setbacks, significant landscaping and routing of traffic and deliveries away from these areas. Reviews of development and redevelopment proposals shall minimize shadow incursions into residential areas. Lighting should also not intrude into residential areas.

3.5.5 The design of proposed projects should carefully consider the location, geometry and access of loading and unloading areas. Loading and unloading of delivery vehicles should not restrict travel lane or pedestrian routes.

3.5.6 Some variation of building heights is allowed under the Master Development Plan (MPD) provisions of the Land Management Code. The Land Management Code does not specify the heights of buildings that could be conceptually approved under an MPD. Buildings at or below height allowed by the General Commercial and Light Industrial zones (currently up to 35 feet) are most consistent with building heights throughout Park City, with the exception of Main Street and some resort areas adjacent to mountainsides. Small increases in height from the zone height (less than 5 feet) can be considered if the height increase is not applied over the entire building and other considerations of this plan and the Land Management Code are applied. Large increases in building height (over 5 feet) can be considered in compliance with General Plan, if the height increases result in additional open space areas, protection of sun exposures and minimization of shade on pubic open space and walkway areas.

3.5.7 Additional height is generally more appropriate on the easterly, internal, areas of the planning district. Large height increases are not appropriate along the perimeter of the district, especially along the northern perimeter and adjacent to residential areas. Height increases must result in variations of height within a project and within the Planning District.

3.5.8 Potential height increased should consider the protection of mountain views, when viewed from Kearns Boulevard, Bonanza Drive and Homestake Drive. The goal of the view protection is to minimize any reduction of the current views from these roads. This goal is further achieved by locating any height increases within the more central areas of the Planning District and minimizing height along the perimeter.

3.5.9 The amount of parking in the district, as required under the existing Land Management Code, appears to be appropriate – that is, there are only a few situations where too much parking (Payless Drugs and Park City Plaza) is found, and some areas where parking and circulation is less than adequate (Iron Horse Drive, Rail Central). Within the Park Bonanza District, it is appropriate to consider "off-site" parking, within the Park Bonanza District if it results in an improved project form and improved walkability. Parking can also be combined in properly located parking garage(s). Combinations of parking from various uses should not result in a reduction of the Land Management Code required parking unless it can be definitely shown that a fewer number of parking spaces is appropriate.

3.5.10 The potential for rezoning the existing residential areas from General Commercial to one of the Land Management Code Residential zones would provide additional control over the preservation of housing uses, but could limit potential re-development opportunities for the properties in the future. Property owners and Homeowner associations should take the lead regarding rezoning proposals. The Planning Commission would weigh acceptance of the rezone proposals and City Council using the direction of the Park Bonanza District plan, the overall General Plan and City policies.

3.5.11 A range of housing is appropriate within the district. Housing would be reviewed under the Housing element of the General Plan. The objectives are to accommodate some of the employee housing demand generated by local employers, provide for housing opportunities to populate the district with primary residents (as opposed to visitors), and to provide housing opportunities, such as apartments over commercial areas, that are not found in other areas of the city. Housing should be considered in the context of other elements of the General Plan, including the effects on transportation and Open Space. Market rate housing should not cause the degradation of other elements of the General Plan.

3.5.12 Resort type housing units such as time-share and interval ownership products are acceptable but also should not be a dominant element in a project or cause negative effects on transportation, open space or primary resident housing (i.e., changing a condominium project with primary residents as tenants and owners to an interval ownership project. Hotel type uses are consistent with the goals and objectives of the General Plan and should be encouraged, subject to the other elements of the General Plan.

3.6 GENERAL PLAN ELEMENT VI. GROWTH MANAGEMENT

The Growth Management Element describes the planned capacity of Park City for developments and provides planning direction for the potential annexation areas as well as neighborhoods within the City limits. The Park Bonanza District plays a key role in the long-term growth management strategy. First, redevelopment of the district will allow for current and future needs of Park City residents and tourists to be served within the current developed areas, moving some of the potential demand from undeveloped areas, such as Quinn's Junction. Second, by facilitating re-development the City can allow for some additional uses in the area without significant increases in traffic demands. Third, by encouraging a range of housing opportunities in the district, a reduction in demand for this use outside the City is possible. This focus of housing in the City limits reduces the need to extend City Services, such as transit, to outlying areas in order to minimize traffic demands.

3.6.1 It should be recognized that the district cannot be the target of all required employee housing projects that will come forward in the future. However, encouraging employee, affordable and attainable housing in this area allows for a population located patronizing the local shops of the area. Other housing types and prices are needed to encourage the young professional, local empty-nesters and artists to the area. Such housing, shops, and development mixes are flexible experiments. Projects should be allowed to proceed if they can show compliance with all the district objectives and criteria.

3.6.2 Certain areas of the Planning District are underutilized in terms of types of use and the size of the uses within each parcel. Examples include the former Anderson Lumber site, and the Munchkin parking and commissary site for Park City Mountain Resort. Other areas are overused from their original intent due to lack of parking, inadequate circulation and land uses that are no longer adequately sized for the use. Examples of this situation occur along Woodside Road and Munchkin Road.

3.6.3 It is the intent of this plan for the Park Bonanza District that redevelopment embraces change and a reorganization and distribution of land use to meet the other goals of the plan. Maximizing the development potential of each parcel, without direct consideration on the effect on transportation, adjacent land uses and the overall intent to exchange the viability of the entire City is not the intent of this plan.

3.6.4 Growth of some land uses in this district can be very important in limiting sprawl of outlying areas by encouraging infill in the Park Bonanza District. Each proposal to develop in the district must be evaluated against all the elements in the Plan including this portion of the Growth Management Element.

3.7 GENERAL PLAN ELEMENT VII TRANSPORTATION

The Park Bonanza District forms the hub of the major transportation corridors within Park City. It is the only Planning Area surrounded by existing transit routes on all sides. It is also on of the few areas with major frontage on the two main routes in and out of town – Highway U-224 (Park Avenue) and Highway U-248 (Kearns Boulevard). With this situation, a careful balance of change, growth and design are required to meet the transportation requirements for the future and reduce the current set of conflicts in the area.

Conditional Use Permits, including Master Planned Developments require that traffic considerations be reviewed when considering approval of a project (Land Management Code 15-1-10 (E)). As an overall policy of the Park City General Plan, the City should continue to develop procedures and processes to evaluate the traffic and transportation impacts of a proposed project adjacent to the project location and on the overall City transportation framework.

The major traffic congestion area is Bonanza Drive. Bonanza functions as both a through route for to and from Deer Valley and Main Street and well as access to the land uses in the Park Bonanza District. The five driveways on the West side of Bonanza and three driveways on the east side of Bonanza cause much of the congestion. Changes in the area land use will change traffic patterns and timing. Re-development and intensification of uses has the high potential to create additional traffic. It is the intent of this element of the plan to accommodate change and some growth but not at the expense of increased traffic.

3.7.1 A transportation study, completed under the direction of the City, is required as soon as possible. The study should not be an attempt to only quantify future changes in traffic; rather, the focus of the study should be on feasible mechanisms to achieve the goals of all elements of the Park Bonanza District. Trip generation studies and estimates of Level of Service can be used as underpinnings of the transportation study.

3.7.2 Changes in land uses outside of the district will have more of an effect on this district than the changes inside the district. Traffic impacts from land use decisions at Quinn's Junction may force Bonanza Drive toward expansion to four lanes. Shifting land uses to Quinn's Junction, south or eastward will increase congestion on U248 in and out of town and could reduce the positive effect of redevelopment in the Park Bonanza district. For this reason, planning along Bonanza Drive should consider the undesirable effect of a forced widening of Bonanza due to eastward sprawl, but the acquisition of any potential right of way needs not promoted.

3.7.3 All Master Planned Development proposals, annexation requests, and "big box" retail proposals (as defined in section 3.5.2) shall include a transportation and traffic impact study and a transportation mitigation plan that adequately addresses the objectives of the other overall Park City General Plan, the Park Bonanza Amendments to the General Plan, with the intent that a proposed project not adversely impacts the City's road and pedestrian network.

3.7.4 The location of the district, central to resort and Main Street transportation flows, creates a potential opportunity to locate an inter-modal transportation center and parking area closer to activity areas in the town, rather than more remote locations being considered at Quinn's or Kimball Junctions. With frontage on both U 248 and Bonanza Drive, direct transit access is possible to the resorts and Main Street. Any facility of this type should be the result of detailed transportation information and study of capture rates and reductions of vehicles or vehicle miles traveled. An inter-modal facility accessed from Park Avenue or Deer Valley Drive is discouraged due to current traffic and turning movements. An intermodal facility in this district allows for shared parking uses, possible remote parking support for the resorts and Main Street. For this reason, City participation may be necessary to consider project potential, users, costs and impacts Careful coordination is necessary between street design, transit and intersections and signalization.

3.7.5 Through traffic from Deer Valley Drive to Park Avenue and Deer Valley Drive to Kearns should be discouraged, to prevent disruption of potential neighborhood walking circulation patterns.

3.7.6 Every effort should be made to reduce intersections with the roads surrounding the project area. Minor roads and driveways should be combined and directed to acceptable intersection locations. Individual drives and parking accesses should be discouraged and considered for elimination during re-development planning. The desired objective is to smooth the traffic flow along Bonanza and reducing the need for expansion of Bonanza due to developments within the Park Bonanza District.

3.7.7 Development within Park Bonanza should be planned so as not to cause Bonanza Drive to be widened. Traffic signals along Bonanza are strongly discouraged.

3.7.8 It is possible that that an additional signal may be warranted in the future between Park Avenue and Bonanza on Kearns Boulevard. This signal must be electronically coordinated and synchronized with the existing signal system. To the degree possible, north exiting traffic from Park Bonanza should be routed through this intersection.

3.7.9 Round-abouts have been considered over the past 10 years as a solution to intersection difficulties along Bonanza Drive. Redevelopment planning can allow for the round-abouts to be considered seriously. The round-abouts have the potential to reduce intersection conflicts and eliminate the need for additional signalization and driving /turn lanes. They will have the result of slowing circulation on Bonanza Drive. The use of round-abouts should not promote the widening of Bonanza except at the round-about. Adequate geometry is essential to accomplishing successful roundabouts in the planning area and will require close cooperation with adjacent property owners and the City.

3.7.10 School bus and transit routes along Kearns Boulevard and Bonanza Drive affect traffic flow due to the lack of turnouts and loading areas. Bus turnouts and protected loading areas should be coordinated with the school district and Park City Transit and incorporated into land plans along these roads.

3.7.11 Inadequate space for bicycles exists along Bonanza Drive. Adequate space should be provided or a separate bicycle route planned on internal connector streets in the District.

3.7.12 Pedestrian circulation and walkability within the District are key elements to accomplish the overall goals for the district. Sidewalks are required along the entire perimeter of the district. Sign plans, walking routes, snow removal and parking must take in to consideration and illustrate how pedestrian and bicycles are promoted and accommodated in designs.

3.7.13 Bonanza Drive presents a significant obstacle to the termination of the Rail Trail and the connection of the Rail Trail to the remainder of the Park City trail system. The City and adjacent property owners need to cooperate to resolve this conflict. Tunnels under Kearns should be considered if roadway and utility conflicts could be resolved.

3.7.14 The potential for aerial lift transportation between parking areas and the resorts has been presented as part of private party land use planning in the district. This type of transportation system, or a similar surface guideway system can be considered for future implementation. Considerations of building clearances and alignment will require careful coordination between landowners and the City.

3.8 GENERAL PLAN ELEMENT VIII ENVIRONMENTAL

Redevelopment of the District as planned has the potential to reduce land use sprawl, reduce the potential for remote junction commercial development and over-extension of transit services to remote locations.

3.8.1 Sustainable designs for projects sites and buildings are strongly encouraged. Use of formal rating systems (such as LEED ™) is not required but can be used to substantiate a sustainable project design.

3.8.2 The City Council should consider providing incentives such as building permit fee reductions or priority reviews during the building permit review process for projects that use a documented sustainable design process.

3.9 GENERAL PLAN ELEMENT IX HOUSING

The redevelopment of the Park Bonanza District presents some positive opportunities to meet housing demand in an in-fill process and reduce (however slight) the demand to develop outlying properties. This is especially true for meeting employee housing demands and the desire for resort-urban lifestyles for young professionals and empty-nesters.

3.9.1 Care must be taken to balance the housing types, prices and locations of these types of housing to avoid prejudicing an area with a certain type of housing. Proposals should also reference section 3.5.11 of this Park Bonanza General Plan Supplement.

3.9.2 Additional housing in the area should not be encouraged to the extent that the other elements in the General Plan are negatively affected, particularly the Transportation Element.

PARK BONANZA AREA

City Council
Staff Report

Subject: **Main Street Business Improvement District**
Author: **Bret Howser, Jerry Gibbs**
Department: **Budget, Debt, & Grants**
Date: **August 30, 2007**
Type of Item: **Legislative**

Summary Recommendation:
Staff recommends that Council conclude the public hearing on the proposed Main Street Business Improvement District and create the Main Street BID by resolution for the purpose of regulating commercial solid waste removal on Main Street and business promotion in the historic downtown area. Based on HMBA's proposal, staff also recommends that Council direct staff concerning the proposed $156 per business tax on businesses in the District for the purposes outlined in this report.

Topic Description:
Main Street Business Improvement District – Resolution establishing the Main Street Business Improvement District for the purpose of regulating commercial trash collection in the Main Street area and promoting businesses in the proposed district.

Background:
On August 16, Council discussed a proposal to create the Main Street Business Improvement District (BID). The District had two proposed functions: 1) act as a mechanism for establishing a single service provider for commercial solid waste collection within the District's boundary, and 2) provide business promotion services to the businesses within the District.

Council opened a public hearing to solicit public input on the matter. Council continued the hearing and directed staff to return with more detailed information from the Historic Main Street Business Alliance (HMBA) regarding the proposed business promotion activities as well as justifications for an appropriate tax to be levied on businesses within the District for those services.

Analysis:
Business Promotion Proposal
Staff met with the executive board of Historic Main Street Business Alliance (HMBA) to discuss in further detail what kinds of activities the BID should carry out. As a result of that meeting, "business promotion" has been broken down into four categories: 1) Member Services, 2) Marketing & Advertising, 3) Downtown Events & Activities, and 4) Commercial Solid Waste & Recycling.

"Member Services" focuses on increasing communication and collaboration among the businesses in the BID. These services would include:

- Regular board meetings to facilitate communication on pertinent issues
- A regular newsletter to highlight important events and information affecting businesses in the District
- Collaboration with the City on issues important to Main Street merchants

"Marketing and Advertising" is a more direct approach to business promotion. The BID would:

- Have a website dedicated to the Main Street area and its businesses
- Take responsibility for updating, improving, and otherwise maintaining the information kiosks on Main Street
- Update and maintain rack cards
- Pursue other means of advertising and promoting the Main Street area

The BID would participate in coordination of "Downtown Events & Activities". The BID would:

- Work with the Special Events arm of the City in both large and small events happening on and around Main Street in both planning for and carrying out these activities
- Be responsible for communicating with businesses about aspects of these events that require attention, such as parking, City ordinances, and other such issues

The BID would also assist in the continued dealings with the "Commercial Solid Waste and Recycling" issue. While the District does not provide nor charge for solid waste removal itself, the BID would:

- Be responsible for the administration of the contract with the service provider
- Engage in contract review, negotiation of rates, service provider performance review, etc.
- Develop a plan for a recycling program and work to incorporate the recycling strategy into the contract and rate structure for trash

While the BID would have the responsibilities outlined above, many or perhaps all of these responsibilities could be outsourced to a service provider. Attachment A shows a breakdown of the programs proposed to be handled HMBA as well as an associated estimated cost. This breakdown is provided to the City by HMBA and represents what a service provider might do to handle the business promotion side of the BID. Ultimately, though, the City owns and operates the BID and Council is responsible for decisions on the BID's activities. Business promotion activities that Council deems appropriate would be included in an RFP for a service provider.

Administering the Business Promotion Side of the BID

Staff outlined options for administering the BID on the 16th. Staff agreed that the best option to administer the business promotion side of the BID involved contracting with a service provider to handle the services listed above. If Council directs staff to move forward with this plan, staff would prepare an RFP based on the information above and select an appropriate service provider. It is already anticipated that HMBA would apply to be the service provider, and staff is unaware of any others interested in applying for such an RFP. However, the City would consider any and all responses to the RFP.

Once a service provider is selected, a set of performance measures will be put in place to evaluate adherence to the contract and assure that the goals of the BID are met. The service contract and these performance measures will be re-evaluated periodically and the City would have the option to adjust the goals of the BID or add, modify, or discontinue activities of the BID.

<u>Tax for the Business Promotion Activities of the BID</u>
After working with HMBA to get a better idea of what the activities of the BID would be, staff has revisited the question of an appropriate tax on businesses within the District. Staff recommends that the BID be established with a $156 per business tax. This is based on the estimated costs as laid out in Attachment A and the number of businesses currently in the District ($40,802 ÷ 262 businesses).

HMBA has requested that the tax be levied equally upon all businesses, i.e, that each business be assessed $156. It was suggested that that the tax could be scaled or apportioned to collect a different amount from different businesses proportionate to the benefit received by those businesses. However, upon considering the proposed activities of the BID, staff has come to the conclusion that there is no appropriate way to distinguish different levels of benefit among the many businesses. For example: Does one business benefit more from a newsletter than another? That probably depends on what's in the newsletter, and in this case the newsletter would contain any information that's pertinent or important for any Main Street business, regardless of size or type. It certainly doesn't cost any more to print and deliver a newsletter to a large business than it does to provide the same newsletter to a small business. Since most of the activities of the BID are in the vein of collaboration and communication rather than services that are more directly quantifiable in terms of volume, dollars, or some other measure that would vary by business size or type, staff could not see a rationale for charging different amounts to different businesses.

Staff recommends that City Council adopt the resolution creating the BID for solid waste management and business promotion on August 30th. Staff also recommends that Council approve the staff request to adopt a tax of $156/business, but that the tax be levied for the BID only after the District is established by resolution, in accordance with State statute. The recommendation is that Council discuss the tax on August 30th and provide direction on their intent to levy a tax in the district and the nature of that tax. Staff would then return on September 13 with an ordinance establishing a tax in the district as well as modifying the business license ordinance.

Department Review:
Budget, Finance, Public Works, Sustainability (Economic Development and Community & Public Affairs), Legal, City Manager

Alternatives:

A. Approve the request: Staff recommends that Council conclude the public hearing on the proposed Main Street Business Improvement District and adopt a resolution to do the following:

   1. Create the Main Street BID for the purpose of regulating commercial solid waste removal on Main Street and business promotion in the historic downtown area.

   2. Declare the City's intent to levy a tax of $156 per business on businesses in the District for the purposes outlined in this report.

B. Continue the item. Council could continue the public hearing and ask staff to return with more information.

C. Modify the Request: Council could modify the resolution to limit the BID's primary function to solid waste management or amount the requested tax amount or methodology.

D. Deny the request: Council is obligated by statute to hold the public hearing and approve a resolution creating the BID. Council has discretion, though, on the activities carried out by the BID as well as the existence or level of the tax.

Significant Impacts:
By holding a public hearing and adopting the resolution creating the Main Street Business Improvement District, a 15 day protest period is set in motion. If more than 50% of businesses in the district protest the creation of the BID during that time, Council must abandon the BID. If not, the BID and a $156 per business tax will be in place for the purpose of requiring a single service provider for commercial solid waste removal in the Main Street area as well as business promotion.

Recommendation: Staff recommends that Council conclude the public hearing and establish the BID by resolution.

Attachments
A – HMBA's BID Plan (revised)
B – Resolution creating the Main Street Business Improvement District

HISTORIC MAIN STREET BUSINESS ALLIANCE

Preserve, Promote, Protect
PO Box 1348
Park City, UT 84060
435-658-9612

HMBA PROPOSED PROGRAM ACTIVITIES FOR FISCAL YEAR 2008

The HMBA is pursuing the establishment of a Business Improvement District (BID), whose goal is to preserve, protect and promote the Historic Main Street District. The HMBA, incorporated March 15, 1999, holds as its central focus the mission of representing the business interest with Park City Municipal Corporation and the Park City community. The following are the programs and program activities for fiscal year 2008. The major cost component of the programs is the administrative hours which are budgeted at a total of 791 hours for fiscal year 2008 at an hourly rate of $22.00.

Member Services

On an ongoing basis the HMBA provides communication to all the Main Street merchants through various channels (i.e., newsletter, emails, phone calls) in regard to City & County news and updates, local event information that may impact the Main Street corridor and other pertinent and impacting information.

Administrative Hours:	**Hours**	
Monthly E-newsletters	60	
Board of Directors/Executive Committee Meetings & Write-ups	120	
Annual Membership Meeting	30	
Board of Directors Annual Elections	24	
Total Administrative Hours: (29.58% of budgeted hours)	**$22/hour x 234**	**$5,148**
Other Program Costs		
Office Supplies (pens, pencils, paper, toner, envelopes, etc.)		1,000
Director and General Liability Insurance		1,300
Annual Refreshment Budget for Meetings		1,600
Total Other Program Costs		**$2,600**
Member Services Program Total		**$9,048**

Downtown Events & Activities

The HMBA works throughout the year with outside groups to help coordinate special events in the historic district. The HMBA's role includes the coordination of Main Street activities with local merchants (including specifically targeted communications), meetings with the City event department in cooperation with planning organization, and administering the contractual involvement of the HMBA with organizations (e.g. Kimball Arts Festival, Sundance Film Festival).

Administrative Hours:	**Hours**
Major Events	
Kimball Arts Festival	20
Holidays on Main/Santa (with PCMR)	32

Halloween on Main	20	
Park Silly Sunday Market	20	
4th of July	10	
Miner's Day (Labor Day)	10	
Sundance Film Festival	40	
Total Major Event Hours	**$22/hour x 152**	**$3,344**
Minor Events		
Mustang Roundup	1	
Monthly Gallery Stroll	2	
NORBA Race	1	
Wasatch Back Relay	1	
Unidentified Events (10)	10	
Total Minor Event Hours	**$22/hour x 15**	**$308**

Total Administrative Hours: (21.11% of budgeted hours) 167 hours x $22/hour **$3,674**
Downtown Events & Activities Program Total **$3,674**

Marketing/Advertising

The HMBA, with the assistance of some grants, incorporates a minimal advertising and marketing program to encourage collective local exposure to member businesses. (*The programs supported by grants are not included in this summary).

New Branding (Logo and Image Mark)	
Administrative 10 hours x $22/hour	$220
Designer Cost	$3,000
Member Website Design and Maintenance	
Administrative 80 hours x $22/hour	$1,760
Designer/Contractor/Hosting	$13,000
Main Street Kiosks Updates & Maintenance	
Administrative 35 hours x $22/hour	$770
Annual Maintenance	$1,000
Main Street Kiosk Map Annual Updates	
Administrative 30 hours x $22/hour	$660
Annual Maintenance	$500
Printing 8 ½" x 11" maps	$2,000
Main Street Tourist Brochure Updates	
Administrative 20 hours x $22/hour	$440
Publication of Electronic Business Directory for HMBA Members	
Administrative 20 hours x $22/hour	$440

Administrative Hours: (24.65% of budgeted hours) $22/hour x 195 hours	**$4,290**
Program Costs (Production)	**$18,500**
Marketing/Advertising Program Total*	**$23, 790**

Solid Waste & Recycling Coordination

The HMBA, who approached the City in 2007 to address the historic district's new trash and recycling efforts, is pursuing the establishment of a Business Improvement District (BID) in order to work with the City to help coordinate the process. The HMBA's role in this capacity will include regularly interfacing with HMBA members regarding the program protocol and information and the formation of a committee to oversee and assess the efficacy of the program's contract on an annual basis. Additional efforts will include working with the City to develop a recycling program to accompany the solid waste management efforts.

Administrative Hours:	**Hours**	
Monthly Communication	75	
Committee Formation and Management	40	
Management of BID assessment	30	
Other (City coordination, accounting, etc.)	50	
Administrative Hours: (24.65% of budgeted hours)	**$22/hour x 195**	**$4,290**
Solid Waste & Recycling Management Program Total		**$4,290**

Total Fiscal Year Budget Request ***$40,802***

Resolution No.

RESOLUTION CREATING THE MAIN STREET BUSINESS IMPROVEMENT DISTRICT IN PARK CITY FOR THE PURPOSE OF GENERAL PROMOTION OF BUSINESS ACTIVITIES WITHIN THE DISTRICT AND DECLARING THE INTENT OF THE CITY COUNCIL TO LEVY A TAX WITHIN THE DISTRICT

WHEREAS, the Utah Parking and Business Improvement District Act, Utah Code Ann. §§ 17A-3-401 to 414, 1953, as amended allows counties and municipalities to establish Parking and Business Improvement Districts; and

WHEREAS, 17A-3-404 (2) provides that a county or a municipality which has established a parking and business improvement district may levy a tax on businesses within said district which is in addition to all other taxes levied upon businesses, and shall not be limited by levy limitations imposed upon counties or municipalities by law; and

WHEREAS, 17A-3-405 (2) provides that it shall be the duty of the governing authority of a county or municipality to adopt such a resolution, upon presentation to the governing authority of a petition proposing the establishment of a parking and business improvement district and setting forth the boundaries of the proposed district, if the petition is approved by 10% or more of the business owners located in the proposed district; and

WHEREAS, the City Council received a petition on June 21, 2007, by more than 10% of the business owners in the proposed district requesting the establishment of a Business Improvement District within the boundaries specifically described in Section 6 below; and

WHEREAS, the City Recorder gave notice of intention to establish the District in the Park Record pursuant to Utah Code Ann. §§ 17A-3-406 to 407, on July 21, 28, and August 4, 2007, describing the boundaries of the District, stating that taxes will be annually levied upon businesses in the District, and designating August 16, 2007, as the date for the public hearing at City Hall; and

WHEREAS, protests against the establishment of the District, its tax, and related matters were given full consideration by the governing authorities of the municipality prior to and during the public hearing held on August 16, 2007, and on August 30, 2007; and

WHEREAS, the City Council hereby declares that the public health, convenience, and necessity requires the establishment of the District;

WHEREAS, it is the intent of the City Council of Park City to establish a business improvement district, to be known as the “Main Street Business Improvement District” pursuant to the Utah Parking and Business Improvement Act;

NOW THEREFORE, be it resolved by the City Council of Park City as follows:

SECTION 1. MAIN STREET BUSINESS IMPROVEMENT DISTRIST ESTABLISHED.

1) The City Council of Park City hereby establishes the Main Street Business Improvement District (hereinafter "District") which boundaries are specifically described in Section 6 hereafter, pursuant to the Utah Parking and Business Improvement Act. The recitals above are herby incorporated as findings.

2) The District will have all powers and authorities expressed in Utah Code Ann. 17A-3-4, with the primary purpose of the District the provision of solid waste management and business promotion.

3) The City will have power to levy a tax on all businesses within the District, pursuant to Utah Code Ann. §§ 17A-3-404(2) and hereby declares its intent to enact by ordinance a tax of $156 upon each business located with the District boundaries described in Section 6 hereafter.

4) The City will establish a separate fund to be known as the Main Street Business Improvement District Fund. All tax monies received from the tax authorized hereunder shall be deposited in the fund to the credit of the Main Street Business Improvement District Fund and shall be used for no other purpose other than operation and expenses of the District.

5) If persons constituting and consisting of over 50% of the business owners of the territory proposed to be included within the district file written protests within 15 days after the conclusion of the hearing against the establishment of the district, the proposed establishment of the district shall be abandoned.

6) The boundary of the proposed Main Street Business Improvement District is defined as all businesses located in the following area:

> The proposed BID boundary shall follow the centerline of the following streets: beginning at the intersection of Main Street and Deer Valley Drive, then proceeding westerly on Main Street to the intersection of Main Street and 9th Street, then west on 9th Street to the intersection of 9th Street and Park Avenue, then proceeding southerly on Park Avenue to the intersection of King Road, then easterly on King Road to Main Street, then southerly on Main Street to Hillside Avenue, then proceeding easterly along Hillside to Marsac Avenue, then proceeding northward on Marsac Avenue to the intersection of Deer Valley Drive and the point of beginning.

7) Control of the District, including funds of the District and disestablishment, shall be governed by the Utah Parking and Business Improvement District Act, as amended.

8) Any expansion or change by the governing authority of the powers, duties, purpose, or tax outlined in this Resolution shall only be done following a properly noticed public hearing.

SECTION 2. EFFECTIVE DATE. This Resolution shall become effective upon adoption.

PASSED AND ADOPTED this 30th day of August, 2007.

City Council Staff Report

Subject: Main Street Trash
Author: Jerry W. Gibbs
Department: Public Works
Date: August 30, 2007
Type of Item: Administrative

Summary Recommendations:
Authorize the City Manager to enter into a contract on a form approved by the City Attorney setting a rate structure for commercial trash services for the Main Street area with the effective date of the BID and City Facilities Rate Structure to Allied Waste for a three year term renewable at the City's election for an additional three years.

Main Street Area Rate Structure
Trash and restaurant grease only w/cardboard recycling

Container Size	Frequency per Week						
	1	2	3	4	5	6	7
Toters	$13	$26	$39	$52	$65	$78	$91
90 gal	$13	$26	$39	$52	$65	$78	$91
2 Yds	$32	$59	$87	$115	$145	$177	$211
3 Yds	$43	$87	$131	$175	$220	$266	$310
4 Yds	$59	$115	$175	$235	$290	$350	$465
6 Yds	$92	$177	$263	$360	$445	$540	$640
8 Yds	$120	$235	$350	$470	$590	$710	$830
Roll offs	Per haul charge of $135 & $21/ton disposal						
Cardboard Compactor	Per haul charge of $175						

City Facilities Rate Structure

Container Size	Frequency per Week						
	1	2	3	4	5	6	7
2 Yds	$32	$59	$87	$115	$145	$177	$211
6 Yds	$90	$175	$260	$360	$445	$540	$640
8 Yds	$120	$230	$345	$460	$560	$705	$820
Roll off	Per haul charge of $135 & $21/ton disposal						

Special Services- Pull out & push in containers per stop $ 6.00

Topic/Description:
Main Street Commercial and City Facilities Trash Services

Background:
Effective July 1, 2007, Summit County opened commercial trash collection to any County licensed trash hauler. Individual businesses were free to contact and negotiate their best deal. The Historic Main Street Business Alliance (HMBA) and City Council determined it would be in Main Street's best interest to have a single contract for trash service.

Allied Waste (AW) began contacting all of their commercial customers to enter into a service contract with them. Included in this effort was trash removal at city facilities. Staff determined they would include city facilities trash removal in with the Main Street RFP.

Summit County implemented an additional fee of $21/ton for all waste entering a county landfill. The new proposed fee schedule will reflect the additional fee unless otherwise denoted. The fees prior to July 07 were:

County Commercial Volume Based Rate Structure as of July 07

Container Size	Frequency per Week						
	1	2	3	4	5	6	7
Toters							
90 gal	$8.42	$16.82	$25.23	$33.65	$42.06	$50.48	$58.88
2 Yds	$24.24	$48.47	$72.53	$96.36	$120.20	$144.04	$167.60
3 Yds	$29.68	$65.60	$101.04	$136.50	$171.96	$207.41	$242.88
4 Yds	$39.74	$87.53	$134.40	$181.28	$228.15	$275.01	$321.87
6 Yds	$59.35	$129.51	$201.34	$271.04	$340.75	$410.46	$480.14
8 Yds	$79.47	$171.79	$267.56	$359.70	$451.83	$543.97	$636.08
Roll offs	$133.57 per haul						
Cardboard Compactor							

Special Services- Pull out & push in containers per stop $ 5.82

Analysis:
Michael O'Hara was the County's solid waste consultant in 1999 in the preparation of their residential and commercial contract. He developed the current methodology used to assess and distribute cost to Main Street businesses using the community dumpsters and compactors. Mr. O'Hara volunteered his service to assist staff in reviewing the RFP and options. Staff prepared a Request for Proposals (RFP) (attached) and circulated for comments. Mike Sweeney from the HMBA was also provided an opportunity to review and comment. At the time the RFP was advertised, a petition to form a Business Improvement District (BID) had not been received. An option to only pick up the community dumpsters and compactors was included.

The HMBA expressed an interest in recycling at a higher level than is currently offered by the city provide cardboard compactor and individually contracting with recycle services. The RFP asked the service providers to develop and include options of recycling at 25, 50 and 75% levels. A fourth option was to identify an alternative program. A bidder could provide pricing on any or all options. The City reserved the right to choose the option and provider that best fit the needs of the Main Street area and the City. All options assume the service provider will bill for services to each commercial business except Option 1 and Addendum 1 where the customer is Park City.

Staff advertised as per city policy and sent a courtesy notice to the list of solid waste providers Summit County had contacted for their residential contract. A mandatory pre-bid meeting was required to discuss the information available. Only three of the five trash haulers participated, Waste Management (WM), Ace Disposal (AC) and AW. Humpty Dumpsters and G&F indicated they were not interested in providing a response due to other commitments and equipment limitations respectively. WM requested information related to the size of containers, location and frequency of pick-up for those businesses with private containers. The staff indicated they did not have the level of detail requested and the commercial contract was previously handled by Summit County. AW volunteered to send the information to staff to be distributed to the other service providers. AW provided the number of dumpsters and the frequency of dumping. AW chose not to provide the specific location, dumpster size and frequency of dumps.

Staff provided the following timetable in the RFP. The crossed out dates and times reflect changes to the schedule to accommodate WM's request for additional time:

- RFP Issued June 6, 2007
- Advertise in Park Record June 6 & 9
- Pre-Proposal Conference June 13, 2007 (10 AM.) **Mandatory Attendance Required to respond to RFP**
- Deadline for Written Questions from Proposers was extended from June 18 to June 22, 2007
- Deadline for Amendment(s) Issued June 22, 2007
- Submission Date - Proposals due date was extended from July 10 to July 13, 2007 (3:00 p.m.)

WM requested an extension of time for the submittal of questions and the bid opening date due to AW not providing their information. Staff made minor changes to the timetable to accommodate schedules and requests as shown above. A table listing all of all business within the Main Street area, including information from their business license (square feet, business type, private dumpster, and location) was sent to each bidder. (attached) IND in the Table under Business Type identified a private container.

Staff received a letter dated July 3, 2007 from WM declaring they were not submitting a bid due to a "lack of information and an unrealistic time schedule". The letter from Greg

Walkenhorst of Waste Management is attached. Staff believes there was adequate information and time provided to each bidder to submit a proposal.

Proposals were received on July 13 at 3:00 PM. Only AC and AW were present. AC submitted a “No Bid” citing they did not have all the equipment necessary to provide the services. Staff inquired if AC felt the schedule and the level of detail was adequate. Dawn Beagley of AC stated the information was adequate and AC would have made personal contact with the businesses to better understand their needs.

Allied Waste proposed on Option 1- Community Dumpsters Only, Option 4- Service Provider Option and the Addendum to include City Facilities. All pricing includes the new Summit County tipping fee unless otherwise specified. Their proposal is summarized as follows.

Option 1- Community dumpsters only (2-8 yd), two trash compactor roll offs, and a cardboard compactor roll off.

- Cardboard recycling only.
- Service Provider bills Park City Municipal monthly

Container Size	Frequency per Week						
	1	2	3	4	5	6	7
8 Yds	$120	$230	$345	$460	$580	$705	$820
Compactor Roll offs	Per haul charge of $135 & $21/ton disposal						
Cardboard Compactor/roll-off	Per haul charge of $175						

Special Services- Pull out & push in containers per stop $ 6.00

Option 2- Trash and restaurant grease only w/cardboard recycling (**Staff Recommended**)

Container Size	Frequency per Week						
	1	2	3	4	5	6	7
Toters	$13	$26	$39	$52	$65	$78	$91
90 gal	$13	$26	$39	$52	$65	$78	$91
2 Yds	$32	$59	$87	$115	$145	$177	$211
3 Yds	$43	$87	$131	$175	$220	$266	$310
4 Yds	$59	$115	$175	$235	$290	$350	$465
6 Yds	$92	$177	$263	$360	$445	$540	$640
8 Yds	$120	$235	$350	$470	$590	$710	$830
Roll offs	Per haul charge of $135 & $21/ton disposal						
Cardboard Compactor	Per haul charge of $175						

Special Services- Pull out & push in containers per stop $ 6.00

Option 4- Service Provider option w/restaurant grease

Container Size	Frequency per Week						
	1	2	3	4	5	6	7
Toters	$15	$30	$45	$60	$75	$90	$105
90 gal	$15	$30	$45	$60	$75	$90	$105
2 Yds	$39	$75	$113	$150	$188	$226	$263
3 Yds	$58	$113	$169	$226	$282	$338	$395
4 Yds	$78	$150	$226	$301	$376	$451	$526
6 Yds	$117	$226	$338	$451	$564	$677	$789
8 Yds	$156	$301	$451	$602	$752	$902	$1052
Roll offs	Per haul charge of $150 & $21/ton disposal						
Cardboard Compactor	Per haul charge of $150						

Special Services- Pull out & push in containers per stop $ 6.50

Alternate Recycling Program & percentage
Includes restaurant waste

COMMENTS (Include Recycling/Diversion Plan): Provide funding of $1000/month to Recycle Utah to develop and implement programs to reduce waste in the Main Street area. Recycle Utah letter attached. The recycling option is spread over the rate structure to generate the $1,000/ month.

Addendum I: Additional collection of trash containers for Park City Municipal buildings which would include but not be limited to Miner's Hospital; Education Center; Parks & Golf; Racquet Club; Public Works; and Ice Arena. Cost for collection & landfill fees. Frequency of collection will be determined later.(**Staff Recommended**)

Container Size	Frequency per Week						
	1	2	3	4	5	6	7
2 Yds	$32	$59	$87	$115	$145	$177	$211
6 Yds	$90	$175	$260	$360	$445	$540	$640
8 Yds	$120	$230	$345	$460	$560	$705	$820
Roll off	Per haul charge of $135 & $21/ton disposal						

Special Services- Pull out & push in containers per stop $ 6.00

Comments: None

It is difficult to review one bid to determine if it is reasonable. The information staff has is the monthly billing rate for the Main Street area of $5638 from January thru June 2007 for an annual cost of $67,568. The estimated trash tonnage for Main Street is 1650 tons. Based on the added cost of the Summit County tipping fee of $21/ton, the annual contract should increase $34,650. This represents a 51.2% cost increase. If you apply the percentage approach to each fee, the increase to each size of container and frequency is the following table.

Comparison Rate Change of Option 2 to Volume based & County tipping fee and the County Commercial Volume Based Schedule July 07

Frequency per Week	**1**	**2**	**3**	4	5	**6**	7
Container Size							
90 gal	**54.4%**	**54.6%**	**54.6%**	54.5%	54.5%	**54.5%**	54.6%
2 Yds	32.0%	21.7%	20.0%	19.3%	20.6%	22.9%	25.9%
3 Yds	**44.9%**	**32.6%**	**29.7%**	28.2%	27.9%	28.2%	27.6%
4 Yds	48.5%	31.4%	30.2%	29.6%	27.1%	27.3%	44.5%
6 Yds	**55.0%**	36.7%	30.6%	32.8%	30.6%	31.6%	33.3%
8 Yds	51.0%	36.8%	30.8%	30.7%	30.6%	**30.5%**	30.5%
Roll off	1.07% volume increase plus $21/Ton						

The table would imply an over all net increase of less than an across the board 51.2% in all categories. The percentages highlighted represent the container size and frequency represented on Main Street. The bolded numbers reflect the increase in price to the predominant container sizes and frequency within the Main Street area.

AW has negotiated with several private dumpster users a fixed price for a period of time or until the City initiates a solid waste contract. An example is the Sweeney property (Caledonia, Happy Sumo and others) a monthly price for four yard container/ seven days per week including pullout and push in of $441. The negotiated rate is 9.5% lower than the mutually exclusive contract rate for the same container size and frequency.

Their explanation was there are many contract higher and lower than their proposal amount. Individual accounts are somewhat subject with the field personnel. A proposal like park City's and Summit County are based on corporate decisions. They further explained the proposal represents an overall pricing structure in the mid-range of existing contracts. The pricing structure proposed is similar to the AW bid to the County for multi-family.

I believe the length of time (June 6 to July 10) and all information to the City was made available to each Service Provider was adequate to submit a proposal. In reviewing their pricing structure, it also appears to be reasonable. Staff recommends with the formation of the Business Improvement District to accept Option 2 from Allied Waste. If the BID is not approved, Option 2 would only apply to the community dumpsters. An approval of Option 2 or 4 would be contingent on the effective date of the BID.

Staff also recommends approval of the rate structure for City Facilities as identified by addendum 1 to the Main Street Trash RFP.

The HMBA has inquired if it is possible to review the current cost allocation model used to distribute the cost of the community dumpsters to all businesses that do not have access to a private dumpster on-site. Model was based on trash generation by use categories (restaurants & cafes, bars & clubs, general retail, professional office). The generation rates are based on national averages per 1000 sq ft. The HMBA goal is to try to build an incentive into the model to recognize recycling efforts. AW has agreed to discuss the cost model annually.

Department Review:
The report has been reviewed by Legal, Finance, Public Works and City Administration.

Alternatives:

A. Approve the Request:
Authorize the City Manager to enter into a three year contract with Allied Waste for Option 2 and addendum 1. Staff recommended

B. Deny the Request:

a. Accept Option 1 community dumpsters and addendum 1 or reject all bids and re-bid
b. Accept Option 4 and addendum1
c. Negotiate with AW
d. Open the commercial market.

C. Continue the Item:
The City has a bridge agreement with AW until a new contract is completed. There is not an issue if the item is delayed for a short period of time.

D. Do Nothing:
The City has financial liability for the community dumpsters. The City has to bid trash services to city facilities to be in compliance with our policy and procedures.

Significant Impacts:
Summit County has chosen not to regulate commercial trash services beginning July 1, 2007. Additional staff time will be necessary to monitor this contract and during the business license renewal phase. The direct financial impact should be minimal.

If Option 2 or 4 is accepted, the contract for commercial trash removal will be with Park City. The City will need to modify the business license fees ordinances to allow the City to assess additional fees at the time of their license renewal if their trash bill is not current. Park City would be responsible to collect outstanding trash fees for all Main Street area license renewal.

An award of a single commercial solid waste contract would reduce pollution, congestion and make enforcement of trash related incidents simpler.

If the BID is not successful, the rate structure would still be applicable to the community dumpsters.

Consequences of not taking the recommended action:
The City would be responsible for billing of the community dumpsters and compactors. Potential conflict and problems caused or associated with multiple trash haulers in the same vicinity.

Recommendation:
Authorize the City Manager to enter into a contract on a form approved by the City Attorney setting a rate structure for commercial trash services for the Main Street area with the effective date of the BID and City Facilities Rate Structure to Allied Waste for a three year term renewable at the City's election for an additional three years.

Main Street Area Rate Structure
Trash and restaurant grease only w/cardboard recycling

Container Size	Frequency per Week						
	1	2	3	4	5	6	7
Toters	$13	$26	$39	$52	$65	$78	$91
90 gal	$13	$26	$39	$52	$65	$78	$91
2 Yds	$32	$59	$87	$115	$145	$177	$211
3 Yds	$43	$87	$131	$175	$220	$266	$310
4 Yds	$59	$115	$175	$235	$290	$350	$465
6 Yds	$92	$177	$263	$360	$445	$540	$640
8 Yds	$120	$235	$350	$470	$590	$710	$830
Roll offs	Per haul charge of $135 & $21/ton disposal						
Cardboard Compactor	Per haul charge of $175						

City Facilities Rate Structure

Container Size	Frequency per Week						
	1	2	3	4	5	6	7
2 Yds	$32	$59	$87	$115	$145	$177	$211
6 Yds	$90	$175	$260	$360	$445	$540	$640
8 Yds	$120	$230	$345	$460	$560	$705	$820
Roll off	Per haul charge of $135 & $21/ton disposal						

Special Services- Pull out & push in containers per stop $ 6.00

Request for Proposals

PROJECT NAME:	Park City Municipal Corporation Solid Waste Removal Services for Park City Main Street Business Area - Contract for 2007-2010.
PROPOSAL DUE:	July 10, 2007, Tuesday at 3:00 PM at Public Works, 1053 Iron Horse Drive, P.O. Box 1480, Park City, Utah 84060.
SCOPE OF SERVICES AVAILABLE FOR CONTRACTORS:	Available on Wednesday, June 6, 2007, at Public Works located at 1053 Iron Horse Drive, Park City, UT 84060.
MANDATORY **WALK THROUGH:**	Wednesday, June 13, 2007, 10:00 AM at Park City Public Works at 1053 Iron Horse Drive, Park City, UT 84060.
PROJECT LOCATION:	Main Street Businesses Area, Park City, Utah 84060.
PROJECT DESCRIPTION:	Qualified Service Provider to provide municipal solid waste services including a recycling component for approximately 300 commercial businesses located within Park City's Historic Main Street Area.
Term:	The term of this agreement shall be for three years, with the City's sole option to renew for an additional three years.

Park City reserves the right to reject any or all proposals and to waive any minor irregularities in any proposal.

OWNER:

Park City Municipal Corporation	Jerry Gibbs
P.O. Box 1480	Public Works Director
Park City, UT 84060	(435) 615-5301

Advertised in the Park Record: June 6, 2007; June 9, 2007

Main Street Area
Solid Waste Collection
RFP
June 2007

Introduction:
The Public Works Department of Park City Municipal is issuing this Request for Proposals ("RFP") for Municipal Solid Waste ("MSW") Collection Services for the commercial and business sector within the Main Street area. The Main Street area is defined as the commercial businesses located within the area described as follows: beginning at the intersection of Main Street and Deer Valley Drive, then proceeding westerly on Main Street to the intersection of Main Street and 9th Street, then west on 9th Street to the intersection of 9th Street and Park Avenue, then proceeding southerly on Park Avenue to the intersection of Woodside, then proceeding southerly on Woodside to the intersection of King Road, then easterly on King Road to Main Street, then southerly on Main Street to Hillside Avenue, then proceeding easterly along Hillside to Marsac Avenue, then proceeding northward on Marsac Avenue to the intersection of Deer Valley Drive and the point of beginning. These services will include:

i. MSW Collection and recyclable materials collection from commercial facilities and
ii. Associated transportation and disposal to an approved disposal and/or recycling site.

General Information about the Main Street area includes, among others, the following:

- Approximately 300 commercial business license holders generating approximately 1650 tons per year.
- Average weight for loose trash 75 lbs/loose yard
- Average weight per roll off 5¼ tons
- Summit County Landfill tipping fee $21/ton
- General Use types are Restaurants & Cafes, Bars, Retail, Hotels & Professional
- Main Street area sustainability goals of 25, 50, or 75 percent diversion/recycled
- Promote reduction in air pollution and emission of green house gases
- Reduce the number of individual collection vehicles providing MSW Commercial Collection service in the Main Street area and thereby reduce traffic congestion

The successful Service Provider will be required to sign a "PARK CITY MUNICIPAL CORPORATION SERVICE PROVIDER/PROFESSIONAL SERVICES AGREEMENT" (attached). The project manager is Public Works Director Jerry Gibbs. All questions must be in writing to either the project manager at Park City Municipal Corporation, PO Box 1480, Park City, UT 84060 or e-mail at jerry@parkcity.org. The deadline for questions is C.O.B. June 18, 2007. Park City Municipal Corporations reserves the right to accept or reject any or all bids and waive any irregularities. Price may not be the sole deciding factor.

Proposal Options-
The City will choose an option that best fits their goals and expectations. A Service Provider may bid on one or more options.

Option 1- Community dumpsters only (2-8 yd), two trash compactor roll offs, and a cardboard compactor roll off.

- Cardboard recycling only.
- Service Provider bills Park City Municipal monthly

Container Size	Frequency per Week						
	1	2	3	4	5	6	7
8 Yds							
Compactor Roll offs							
Cardboard Compactor/roll-off							

Special Services- Pull out & push in containers per stop $__________

Comments:

Option 2- All dumpsters, totes, compactor roll offs and cardboard roll off.

- No additional recycling.
- Service Provider bills all businesses monthly

Container Size	Frequency per Week						
	1	2	3	4	5	6	7
Toters							
90 gal							
2 Yds							
3 Yds							
4 Yds							
6 Yds							
8 Yds							
Compactor/Roll offs							
Cardboard Compactor/Roll-off							

Special Services- Pull out & push in containers per stop $___________

COMMENTS:

Option 3a- All dumpsters, roll offs and cardboard roll off(s).

- Service Provider required to provide a diversion effort to obtain a sustainability goal of 25%
- Service Provider bills all businesses

Container Size	Frequency per Week						
	1	2	3	4	5	6	7
Toters							
90 gal							
2 Yds							
3 Yds							
4 Yds							
6 Yds							
8 Yds							
Roll offs							
Cardboard Compactor							

Special Services- Pull out & push in containers per stop $___________

COMMENTS (Describe Recycling/Diversion Plan and other Issues):

Option 3b- All dumpsters, roll offs and cardboard roll off(s).

- Service Provider required to provide a diversion effort to obtain a sustainability goal of 50%
- Service Provider must comply with all City codes.
- Service Provider bills all businesses

Container Size	Frequency per Week						
	1	2	3	4	5	6	7
Toters							
90 gal							
2 Yds							
3 Yds							
4 Yds							
6 Yds							
8 Yds							
Roll offs							
Cardboard Compactor							

Special Services- Pull out & push in containers per stop $__________

COMMENTS (Describe Recycling/Diversion Plan and other Issues):

Option 3c- All dumpsters, roll offs and cardboard roll off(s).

- Service Provider required to provide a diversion effort to obtain a sustainability goal of 75%
- Service Provider must comply with all City codes.
- Service Provider bills all businesses

Container Size	Frequency per Week						
	1	2	3	4	5	6	7
Toters							
90 gal							
2 Yds							
3 Yds							
4 Yds							
6 Yds							
8 Yds							
Roll offs							
Cardboard Compactor							

Special Services- Pull out & push in containers per stop $___________

COMMENTS (Describe Recycling/Diversion Plan and other Issues):

Option 4- Service Provider proposed Option

Container Size	Frequency per Week						
	1	2	3	4	5	6	7
Toters							
90 gal							
2 Yds							
3 Yds							
4 Yds							
6 Yds							
8 Yds							
Roll offs							
Cardboard Compactor							

Special Services- Pull out & push in containers per stop $__________
Alternate Recycling Program & percentage

COMMENTS (Include Recycling/Diversion Plan):

Minimum Criteria Park City Will Use to evaluate each Proposal Submittal:

- City will use the following minimum criteria to evaluate the proposals submitted and determine the responsibility of each Proposer.
- Has the Proposer provided the information (including pertinent SubService Provider information) requested in the RFP?
- Does the Proposer possess the ability, experience, capacity, skill, and financial resources and assurance to provide the service?
- Can the Proposer take upon itself the responsibilities set forth in the RFP (and resultant contract) and produce the required outcomes timely?
- Does the Proposer have the character, integrity, reputation, judgment, experience and efficiency required by the contract?
- Has the Proposer performed satisfactorily in previous contracts of similar size and scope; or if the prime Service Provider has not performed a contract of similar size and scope, has it (and/or its team members) otherwise demonstrated its capability to perform the contract, City seeks to establish through this RFP?
- For Proposals to be reviewed, the submitting company must be in good financial standing and be current on all licenses.

Evaluation Factors

The factors to be considered in the evaluation of Proposals are listed below. These items are ranked in descending order of importance, in evaluating the Proposals.

1. Cost of Service, lowest cost to City for Collection and/or Diversion-Recycling of MSW. (40%)
2. Qualifications, references, and experience in providing services of similar size and scope. (20%)
3. Proposed Services and Diversion Potential. Evaluation of the proposer's plan and ability to recycle and/or divert MSW. (20%)
4. Ability to bill approximately 300 commercial businesses. (10%)
5. Capacity, financial strength and ability to obtain bonding and insurance. (10%)

Project Timetable

The following RFP timetable should be used as a working guide for planning purposes. Park City reserves the right to adjust this timetable, as required, during the course of the RFP process.

- RFP issued June 6, 2007.
- Advertise in Park Record June 6 & 9.
- Pre-Proposal Conference June 13, 2007 (1:30 p.m.). **Mandatory Attendance Required to respond to RFP.**
- Deadline for Written Questions from Proposers June 18, 2007.
- Deadline for Amendment(s) Issued June 22, 2007.
- Submission Date - Proposals due July 10, 2007 (3:00 p.m.)
- Award July 19, 2007 (tentative).
- Service Provider executes within two weeks.
- City Executes within two weeks.

- Contract begins September 1, 2007.

Term
The term of the contract is three (3) years with an option to renew by the City for three (3) additional years.

City-provided Equipment and Services
City owns the compactors and associated roll-offs. City will provide containers and services to pickup trash in pedestrian containers located in Swede Alley and on Main Street.

Service Provider Responsibilities
General Requirements

- Service Provider shall meet at its expense for obtaining and complying with all necessary permits, ordinances and laws. The contract shall also include provisions concerning independent Service Provider status, equal employment opportunity, nonassignment, disclosure of information and records, applicable law, and such other terms and conditions as the City may require.
- Service Provider shall be responsible for providing all onsite and offsite equipment, labor and necessary supplies to perform all services under this Contract.
- Service Provider shall have all necessary license and permits prior to start of this Contract. Any such fees are the responsibility of the Service Provider.
- Hours of operation- No start before 7 AM and completed by 7 PM, Sunday through Saturday.
- An earlier start time may be required by the City for special events (i.e. Sundance, Arts Festival).
- The Service Provider is responsible for providing all customer service functions including informing customers of current services, handling customer requests and resolving customer complaints.
- The Service Provider shall also include, with the proposal a copy of their customer service standards.

Successful Service Provider Performance Requirements
Monthly Reports

1. The actual services provided by service location
2. A list of scheduled services not completed and the reason for each occurrence
3. Any changes that were made in services from the prior reporting period
4. Total volume and weight by user group
5. Total volume and weight of all garbage and recyclable materials collected and where those items were transported
6. All complaints and resolution
7. A description of any vehicle accidents or infractions

Complaints
Acceptance of Service Provider's work will be determined by the Director of Public Works or his/her designee. Work shall be completed in a responsible manner in accordance with the Contract terms. All complaints must be reported to the Director on the date of occurrence. A written or electronic report shall be filed with the Director. The report shall contain:

- Service Provider's Identification Number
- Date and time of call
- Customer name, address, and phone number
- Type of complaint or service needed
- Service Provider's determination as to legitimacy
- Details of all complaints deemed legitimate
- Date, time and action taken to resolve complaint
- Name of responsible contact at Service Provider's location regarding the complaint
- Failure to remedy the cause of any legitimate complaint within 24 hours of the customers call shall be considered a breach of the Contract with the Main Street area

Non-Performance
Non-performance by the Service Provider will cause damage to the City by undermining the City's solid waste management and sustainability goals. The City expects high levels of customer service and collection service provisions. Performance failures will be discouraged, to the extent possible, through penalties for certain infractions and through contract default for more serious lapses in service provisions.

Penalties may be levied if documented in an incident report presented by the City to the Service Provider. Penalties will be assessed monthly by the City on the Service Provider. Disagreements will be subject to the review and resolution procedures provided in the contract.

Action or Omission Penalties

- Commencement of commercial collection prior to 7:00 a.m. or continuance after 7:00 p.m. except as expressly permitted. $100.00 per incident.
- Failure to collect spilled materials. Twice the cost of cleanup to the City plus $1,000 each incident.
- Leakage from Service Provider vehicles or vehicle contents. $500 each vehicle, each inspection.
- Failure to collect any and all garbage and recyclable materials within one business day after notification. $250.00 each incident.
- Collection as garbage of source-separated recycling. $1,000.00 per incident.
- Misrepresentation by Service Provider in records or reporting. $1,500 per incident.
- Failure to make required reports on time. $500.00 per incident.

- Failure to maintain clean and sanitary vehicles. $250.00 per vehicle per occurrence.

The above is not an exclusive list of the acts or omissions for which a penalty may be assessed. Also, the contract shall include provisions detailing those acts and omissions of the Service Provider which shall be considered violations or breaches of the contract. The Contract will reserve to the City the right to exercise any and all remedies it may have with respect to these and other violations and breaches. Any schedule of penalties shall not affect the City's ability to terminate the contract for breach.

Termination

City may terminate the Contract after serving 10 days written notice in whole or in part, and from time to time, whenever they determine that the Service Provider is:

1. Defaulting in performance or is not complying with any provision of the Contract;
2. Endangering the performance of the Contract;
3. Failing to make satisfactory progress in the prosecution of the Contract; or
4. Persistent and repeated failure by Service Provider regarding any obligation under the terms of the Contract.

Prior to a termination for cause, City will send the Service Provider written notice specifying the cause. The notice will give the Service Provider 14 days from the date the notice is issued to cure the default or make progress satisfactory to City in curing the default, unless a different time is given in the notice. If City determines that default contributes to the curtailment of an essential service or poses an immediate threat to life, health or property, City may terminate the Contract immediately upon issuing oral or written notice to the Service Provider without any prior notice or opportunity to cure. In addition to any other remedies provided by law or the Contract, the Service Provider must compensate City for additional costs that would be incurred by the City, whether the costs are actually incurred or not, to obtain substitute performance.

Self-Reliance

The City makes no guarantee on any of the estimates contained in the RFP and provides this data for informational purposes only. Service Providers are expected to conduct their own investigation and research of relevant information used to develop their proposals, including but not limited to the estimated the volume and weight of garbage and recyclables generated by each business type, container weights and all conditions related to the services provided. The Service Provider shall make no claims against the City as a result of estimates or projections used herein, statements, or interpretation of data by City staff or its agents.

Performance Bond

The successful Service Provider shall furnish a Performance Bond or Irrevocable Letter of Credit to be approved by the city attorney conditioned upon the true and faithful performance of the contract in the amount of $50,000.

MAIN STREET / SWEDE ALLEY WASTE COLLECTION FEES

Service	**Frequency**	**Monthly**	**Cost**			**SUMMARY**		
WINTER -- 2-8 yds 7x	**6 months**						**2007 Annual Rate**	
WINTER -- 4-30 yds 25 Hauls per Month	**6 months**						**Other**	
SUMMER -- 6-8 yds 7x	**6 months**						**Clean-up Fee**	
SUMMER -- 2-30 yds 10 Hauls per Month	**6 months**						**Bad Debt-Under/Overbill**	
	ANNUAL FEE =		**$0.00**					
	Assumptions:	**Min. Charge**	**0**				**2007 YEARLY FEE**	
		Hotel Rooms	**300 sf**				**2007 Monthly Fee**	
	Business Types:	**REST =**	**Restaurants and Cafés**			**8.00**		
Clean-Up Fee Assumptions		**BAR =**	**Bars and Private Clubs**			**7.00**		
per 5 min		**RETAIL =**	**General Retail Stores**			**1.66**		
10 minutes per day		**HOTEL =**	**Hotels, Apartments and Inns**			**1.00**		
7 days/week		**FIRE =**	**General and Professional Offices**			**1.00**		
4.345 weeks/month, 12 months		**IND=**	**Contract for Private Container**			**0.00**		
NAME	**BUSINESS ADDRESS**	**Hotel Rooms Description**	**Sq. Ft.**	**Bus. Type**	**Factor**	**Adj. S.Ft.**	**Fee**	**2007 Fees**
122 MAIN	122 MAIN		2 BDRM	BDRM				
CROCODILE DANCER ENTERPRISES	125 MAIN ST #1		806					
ALASKAN HOUSE	125 MAIN ST	**11**	**3,300**	HOTEL	1	3300.0		
GATEWAY CENTER	136 HEBER AVE.		18,390	RETAIL	1.66	30527.4		
GRAPPA	151 MAIN ST		5,500	REST	8	44000.0		
EXTREME HOLDING LLC	186 MAIN ST		2,130					
CHESA	186 MAIN ST		1,500	RETAIL	1.66	2490.0		
PARK CITY POLICE-500 SF	221 MAIN ST		0	non-profit	0	0.0		
IMPERIAL HOTEL	221 MAIN ST	10	3,000	HOTEL	1	3000.0		
UPTOWN FARE - 1291939/S	227 MAIN ST		375	RETAIL	1.66	622.5		
STAR HOTEL - 1259985/A	227 MAIN ST	11	3,300	HOTEL	1	3300.0		

NAME	BUSINESS ADDRESS	Hotel Rooms Description	Sq. Ft.	Bus. Type	Factor	Adj. S.Ft.	Fee	2007 Fees
WASATCH BREW PUB	250 MAIN ST	F/L	6,000	IND	0	0.0		
INTERNET PROPERTIES PC	255 MAIN ST #A		1,160					
WALLACK TRAVEL	255 MAINST #C		900					
ULTIMATE VACATIONS	255 MAIN ST #D		700					
LODGING @ TREASURE MTN. INN	255 MAIN ST		38 BDRM	BDRM				
TREASURE MTN INN	255 MAIN ST	F/L	4,469	IND	0	0.0		
HOPE GALLERY INC	268 MAIN ST	F/L	5,700	IND	0	0.0		
PLAN B NIGHTCLUB	268 MAIN ST	F/L	4,500	IND	0	0.0		
THE STAR BAR	268 MAIN ST		6,600					
WESTGATE RESORT & SPA	268 MAIN ST	F/L	1,600	IND	0	0.0		
BASE CAMP PC	268 MAIN ST	F/L	80	IND	0	0.0		
MT TRAILS GALLERY	301 MAIN ST		2,200	RETAIL	1.66	3652.0		
MEYER GALLERY	305 MAIN ST	Toters	1,500	IND	0	0.0		
PRIME TIME (CISEROS)	306 MAIN ST		3,500	REST	8	28000.0		
TERZIAN GALLERIES	309 MAIN ST		293	RETAIL	1.66	486.4		
APARTMENTS/HART&HOWERTON ARCHITECTS	311 MAIN ST	11	3,300	HOTEL	1	3300.0		
M&M COMPANY	312 MAIN ST #200g		274					
XPRESSIONS OF ELEGANTE	312 MAIN ST		3,000					
TOM CALDER KELLER WILLIAMS	312 MAIN ST	F/L	825	IND	0	0.0		
NATIVO (314 MAIN ST)	312 MAIN ST	F/L	1,274	IND	0	0.0		
MOUNTAIN PROPERTY MGMT. LT	314 MSIN ST #12/13		181					
VILLAGE CANDY SHOP (314 MAIN ST)	314 MAIN ST	F/L	3,285	IND	0	0.0		
TESCH LAW OFFICE	314 MAIN ST	F/L	3,368	IND	0	0.0		
VILLAGE KEEPSAKES (314 MAIN ST)	314 MAIN ST	F/L	2,012	IND	0	0.0		
OC TANNER	416 MAIN ST		2,544					
EATING ESTABLISHMENT	317 MAIN ST	Toters	2,700	IND	0	0.0		
RED BANJO	322 MAIN ST	F/L	1,375	IND	0	0.0		
ALLIANCE ENGINEERING	323 MAIN ST		1,800	FIRE	1	1800.0		
NORTH WOODS USA	323 MAIN ST #1		831	RETAIL	1.66	1379.5		
F MARKS COLLECTIBLES	323 MAIN ST		980	RETAIL	1.66	1626.8		
PC HARLEY-DAVIDSON	324 MAIN ST		2,000					
PARK PLACE UTAH LC/RICH HAINES GALLERIES	324 MAIN ST		1,000	RETAIL	1.66	1660.0		
EGYPTIAN THEATRE	328 MAIN ST	F/L	2,000	IND	0	0.0		
DANCE TECH STUDIOS	333 MAIN ST		980					
DAVID MERRILL GALLERY & STUDIO	333 MAIN ST		1,137					

NAME	BUSINESS ADDRESS	Hotel Rooms Description	Sq. Ft.	Bus. Type	Factor	Adj. S.Ft.	Fee	2007 Fees
HOWE'S CANY HAUS	333 MAIN ST #127		576					
THE SIDECAR	333 MAIN ST.		4,000					
PC GOSSILS & GENS	333 MAIN ST		320					
THE ART IS IN	333 MAIN ST		503					
PARK CITY COLORS	333 MAIN ST #126		969					
STONE ART GALLERY	333 MAIN ST #118B		500					
SOUTHWESTERN EXPRESSIONS	333 MAIN ST		2,500					
NAMES ETC	333 MAIN ST		500					
PC CLOTHING COMPNAY INC	333 MAIN ST		2,000					
SHABU	333 MAIN ST		1,028					
ELAN	333 MAIN ST		1,000					
333 MAIN ST MALL	333 MAIN ST		16,452	RETAIL	1.66	27310.3		
IBI GROUP	340 MAIN ST		1,200					
340 - COMMERCIAL WEST (STEVE HOOKER)	340 MAIN ST	F/L	65	IND	0	0.0		
AMERICAN WEST CONSTRUCTION	340 MAIN ST #202							
THOMAS ANTHONY GALLERY	340 MAIN ST	F/L	1,570	RETAIL	0	0.0		
TERRATRON INC	340 MAIN ST #200		1,400					
ZETA & COMPANY	344 MAIN ST	F/L	2,180	VAC	0	0.0		
MINERVA PROPERTY MGMT.	347 MAIN ST		150	VAC	0	0.0		
THE EXCHANGE	3501/2 Swede Alley		780	RETAIL	1.66	1294.8		
THE SPUR	350 1/2 MAIN ST	F/L	1,838	IND	0	0.0		
350 MAIN (SEAFOOD & OYSTER)	350 MAIN ST	F/L	8,000	REST	0	0.0		
DUGINS WEST TOO	352 MAIN ST		1,800	RETAIL	1.66	2988.0		
BALD EAGLE REALTY	354 MAIN ST	F/L	4,000	IND	0	0.0		
ROCKY MOUNTAIN CHRISTMAS GIFTS	355 MAIN ST		660	RETAIL	1.66	1095.6		
BOARDRIDERS CLUB PARK CTIY DBA Quicksilver	363 MAIN ST		2,400	RETAIL	1.66	3984.0		
IMAGES OF NATURE	364 MAIN ST		2,156	RETAIL	1.66	3579.0		
ELLIOTT WORKGROUP LLC	364 MAINT ST		3,200					
ELEGANTE	364 MAIN ST		3,615	RETAIL	1.66	6000.9		
IN STUDIO DESIGN	364 MAIN ST		600					
CHIMAYO BARKING FROG LC	368 MAIN ST		4,000	REST	8	32000.0		
VACANT	**401 MAIN ST**		**1,034**	**VAC**	**0**	**0.0**		
LA NICHE GOURMET AND GIFT	401 MAIN ST		1,000	RETAIL	1.66	1660.0		
COWS-PARK CITY	402 MAIN ST		988	REST/RET	3.5	3458.0		
AURA SPA FOR THE SPIRIT LLC	405 MAINS ST		1,540					

NAME	BUSINESS ADDRESS	Hotel Rooms Description	Sq. Ft.	Bus. Type	Factor	Adj. S.Ft.	Fee	2007 Fees
SHIRT OFF MY BACK #1	405 MAIN ST		1,100	RETAIL	1.66	1826.0		
PARK CITY PILATES	405 MAIN - UP		1,100	FIRE	1	1100.0		
ROOTS USA INC	408 MAIN ST		2,500	RETAIL	1.66	4150.0		
ELEMENTS OF ELEGANTE	408 MAIN ST-BASE		2,600	RETAIL	1.66	4316.0		
MATT FRANDSEN	421 MAIN ST		1 BDRM	BDRM				
BISTRO 412	412 MAIN ST		1,476	REST	8	11808.0		
O.C. TANNER	418 MAIN ST		2,544	RETAIL	1.66	4223.0		
CROSBY COLLECTION - 1275957/A	419 MAIN ST		750	RETAIL	1.66	1245.0		
CROSBY COLLECTION - 1275957/A	419 MAIN ST #2		800	RETAIL	1.66	1328.0		
FLAT RABBIT GALLERY & FRAMING	421 MAIN ST		900	RETAIL	1.66	1494.0		
CAFE TERIGO	424 MAIN ST		4,008	REST	8	32064.0		
DUGINS WEST	425 MAIN ST		2,200	RETAIL	1.66	3652.0		
MEMORIAL BUILDING LLC	427 MAIN ST	????						
O'SHUCKS	427 MAIN ST	Toters	2,136	IND	0	0.0		
MONKEY BAR	427 MAIN ST		1,000	BAR	7	7000.0		
HARRY O'S	427 MAIN ST	Toters	14,250	IND	0	0.0		
VACANT	**427 MAIN ST**		**3,000**	**VAC**	**0**	**0.0**		
PARK CITY JEWELERS	430 MAIN ST		1,080	RETAIL	1.66	1792.8		
PURPLE SAGE	434 MAIN ST		1,820	REST	8	14560.0		
QUALITY INTERIORS AND GIFTS	436 MAIN ST		1,300	RETAIL	1.66	2158.0		
HUNGRY MOOSE PUB & GRILL	438 MAIN ST		5,912	BAR/REST	7	41384.0		
BANDITS BAR AND GRILL	440 MAIN ST		5,300	REST	8	42400.0		
BACCHUS WINE BAR	442 MAIN ST		2,000	BAR	7	14000.0		
CHRISTMAS ON MAIN DBA MAIN ST	442 MAIN ST		540	RETAIL	1.66	896.4		
OLD TOWN GALLERY	444 MAIN ST		1,300	RETAIL	1.66	2158.0		
NO NAME SALOON & GRILL	447 MAIN ST	Toters	1,700	IND	0	0.0		
THOMAS MCCARTHY GALLERY	449 MAIN ST		3,800	RETAIL	1.66	6308.0		
US POST OFFICE	450 MAIN ST	F/L	3,000	IND	0	0.0		
ARTWORKS	461 MAIN ST	Toters	744	IND	0	0.0		
ANDERSON APTS	465 MAIN ST	**4**	**1,200**	HOTEL	1	1200.0		
BACKSCRATCHER TEE'S	467 MAIN ST		1,244	RETAIL	1.66	2065.0		
ZONA ROSA	501 MAIN ST	Toters	3,048	IND	0	**0.0**		
EXPANDING HEART	505 MAIN ST		1,400	RETAIL	1.66	2324.0		
ALLSTATE	505 MAIN ST	Upstairs	1,400	FIRE	1	1400.0		
PHOENIX EVENTS	508 MAIN ST		3,851	RETAIL	1.66	6392.7		

NAME	BUSINESS ADDRESS	Hotel Rooms Description	Sq. Ft.	Bus. Type	Factor	Adj. S.Ft.	Fee	2007 Fees
ELEGANT LINENS OF PARK CITY - 1341445/A	509 MAIN ST		1,500	RETAIL	1.66	2490.0		
ROCKY MOUNTAIN CHOCOLATE FACTORY	510 MAIN ST		700	RETAIL	1.66	1162.0		
DOLLY'S BOOKS/WASATCH BACK/APT - 1258722/S	510 MAIN ST		2,000	RETAIL	1.66	3320.0		
BUNYA BUNYA	511 MAIN ST		550	RETAIL	1.66	913.0		
CROSBY COLLECTION - 1275957/A	513 MAIN ST		540	RETAIL	1.66	896.4		
ABC RESERVATIONS CENTRAL	514 MAIN ST		133	FIRE	1	133.0		
QUEEN OF ARTS	515 MAIN ST		432	RETAIL	1.66	717.1		
TALISKER GALLERY-TALISKER MAIN ST LLC	515 MAIN ST.		2,304					
VACANT	**515 MAIN ST**		**480**	**VAC**	**0**	**0.0**		
DAVID WHITTEN GALLERY	523 MAIN ST		1,836	RETAIL	1.66	3047.8		
MAIN STREET LIQUOR STORE	524 MAIN ST		1,000	RETAIL	1.66	1660.0		
MAIN STREET DELI	525 MAIN ST		1,250	REST	8	10000.0		
STRACHAN AND STRACHAN LLC	528 MAIN ST		642	FIRE	1	642.0		
JANS MOUNTAIN OUTFITTERS #9	518 MAIN ST		1,056	RETAIL	1.66	1753.0		
PARK CITY MUSUEM	528 MAIN ST	Non-Profit	0	FIRE	1	0.0		
MAIN STREET PIZZA & NOODLE	530 MAIN ST		4,081	REST	8	32648.0		
CHURCH OF JESUS CHRIST	531 MAIN ST		5,454	FIRE	1	5454.0		
TURQUOISE DOOR	537 MAIN ST	F/L	2,210	IND	0	0.0		
ALASKA FUR GALLERY	537 MAIN ST	F/L	1,600	IND	0	0.0		
JANS MOUNTAIN OUTFITTERS #9	540 MAIN ST		1,022					
GREAT GARB INC	540 MAIN ST		1,770	RETAIL	1.66	2938.2		
RIVERHORSE CAFE	540 MAIN ST		1,900	REST	8	15200.0		
RIVERHORSE CAFE	540 MAIN ST		525	REST	8	4200.0		
HILDA	541 MAIN ST		1,840	RETAIL	1.66	3054.4		
MORELIA ART GALLERY	544 Swede Alley		700	RETAIL	1.66	1162.0		
TSH MARKETING	544 MAIN ST		48					
544 MAIN ST VISITOR	544 MAIN ST		750	RETAIL	1.66	1245.0		
APRIL INN	545 MAIN ST	12	3,600	HOTEL	1	3600.0		
COLDWELL BANKER	545 MAIN ST #A		1,536	FIRE	1	1536.0		
SCANLAN'S WINDOWS TO THE WORLD	545 MAIN ST #B		195	RETAIL	1.66	323.7		
MARRIOT VACATION CLUB - 1276088/A	545 MAIN ST #C		1,615	FIRE	1	1615.0		
SOUTHWEST INDIAN TRADERS	550 MAIN ST	F/L	1,350	IND	0	0.0		
BPOE #734	550 MAIN ST	F/L	590	IND	0	0.0		
CHLOE LANE	556 MAIN ST		1,699	RETAIL	1.66	2820.3		
CHLOE LANE	558 MAIN ST		1,321	RETAIL	1.66	2192.9		

NAME	BUSINESS ADDRESS	Hotel Rooms Description	Sq. Ft.	Bus. Type	Factor	Adj. S.Ft.	Fee	2007 Fees
CHLOE LANE	562 MAIN ST		1,800					
PREVIEW CENTER-WESTGATE@CANYONS	562 MAIN ST		1,800	FIRE	1	1800.0		
WESTGATE RESORTS	562 MAIN ST		900	FIRE	1	900.0		
BURGIES	570 MAIN ST		3,400	REST	8	27200.0		
CLAIM JUMPER PUB & STEAKHOUSE	573 MAIN ST	Toters	5,785	IND	0	0.0		
WAHSO	577 MAIN ST	Toters	5,000	IND	0	0.0		
QUICKSILVER	577 MAIN ST #108							
LANNY BARNARD STUDIO	577 MAIN ST		1,200	RETAIL	1.66	1992.0		
PARK CITY VACATION STORE	577 MAIN ST		1,800	FIRE	1	1800.0		
TOMMY KNOCKERS	577 MAIN ST #1-C		1,470	RETAIL	1.66	2440.2		
LIVIN LIFE	577 MAIN ST #A		1,000	RETAIL	1.66	1660.0		
TASTE OF SAIGON DBA BURGIES	580 MAIN ST		1,002	REST	8	8016.0		
PRUDENTIAL UTAH REAL ESTATE	580 MAIN ST		1,500	FIRE	1	1500.0		
CHANGING HANDS	580 MAIN ST		750	RETAIL	1.66	1245.0		
GALLERIA FLORAL DESIGN	580 MAIN ST		500	RETAIL	1.66	830.0		
CAROL SCHMITT HOTSPOT TAX SERVICE	580 MAIN ST #302		1 BDRM					
PRECISION SKI	580 MAIN ST		485	RETAIL	1.66	805.1		
ALPACA ONE #E - GALLERIA MALL	580 MAIN ST		985	FIRE	1	985.0		
GALLERIA CONDOS	580 MAIN ST	29	8,700	HOTEL	1	8700.0		
ROCKY MTN SHIRT	580 MAIN ST		800	RETAIL	1.66	1328.0		
MILLER MARKETING AND SI TIQUE	580 MAIN ST #301		225					
PARK CITY JEWELERS - 1258953/S	580 MAIN ST		1,080	RETAIL	1.66	1792.8		
KAMPAI	586 MAIN ST		2,000	REST	8	16000.0		
DANCING HANDS GALLERY	591 MAIN ST		1,200					
MAIN STREET ACCOMODATIONS	591 MAIN ST	**4**	**1,200**	HOTEL	1	1200.0		
CLUB REGENT, THE CANYONS/SOLSTICE	592 MAIN ST		3,600	FIRE	1	3600.0		
MTN WOODS FURNITURE	593 MAIN ST		1,855	RETAIL	1.66	3079.3		
OVERLAND SHEEPSKIN & LEATHER	596 MAIN ST		4,200	RETAIL	1.66	6972.0		
PARK HOTEL	605 MAIN ST	18 / Toters	5,400	IND	0	0.0		
BANGKOK THAI ON MAIN	605 MAIN ST	Toters	2,049	IND	0	0.0		
CLUB MONSOON	605 MAIN ST		420					
LOVE YOUR PET	605 MAIN ST	Toters	288	IND	0	0.0		
NORSK LEATHER AND FUR	605 MAIN ST	Toters	1,178	IND	0	0.0		
FACE	608 MAIN ST		1282					
MOUNTAIN BODY	608 MAIN ST		1,100	RETAIL	1.66	1826.0		

NAME	BUSINESS ADDRESS	Hotel Rooms Description	Sq. Ft.	Bus. Type	Factor	Adj. S.Ft.	Fee	2007 Fees
ENVY BOUTIQUE	608 MAINT ST		700					
VACANT	**608 MAIN ST**		**1,080**	**VAC**	**0**	**0.0**		
MONTGOMERY LEE FINE ART	608 MAIN ST		1,055	RETAIL	1.66	1751.3		
VACANT	608 MAIN ST		1,800	VAC	0	0.0		
ENVY BOUTIQUE	608 MAIN ST		700	RETAIL	1.66	1162.0		
DOWN UNDER DREAMING	612 MAIN ST		0	RETAIL	1.66	0.0		
WILD SPIRITS PHOTOGRAPHY	612 MAIN ST		0	RETAIL	1.66	0.0		
THE SPACE	613 MAIN ST		1,200					
FGH 613 LLC (MTN TRADERS, MARY JANES SHOES)	613 MAIN ST		2,800	RETAIL	1.66	4648.0		
MARY JANE'S LLC	613 MAIN ST		1,963					
SHANER DESIGN INC.	614 MAINST #404		358					
PARK CITY POST	614 MAIN ST #406		806					
COMMERCE CRG UTAH	614 MAIN ST #201		2,250					
GREENE PROPERTY	614 MAIN ST #201		100					
CLIFFOR MICHAEL MADISON INC	614 MAIN ST		500					
LEARNING DESIGNS LLC	614 MAIN ST #206		1,063					
SHINDIG MARKETING & EVENTS	614 MAIN ST		230					
614 MAIN BUILDING	614 MAIN ST		9,628	FIRE	1	9628.0		
PRUDENTIAL UTAH REAL ESTATE	625 MAIN ST #200		5,438					
CELSIUS	625 MAIN ST		1,740					
DEER VALLEY SIGNATURES	625 MAIN ST		725					
DEER CREST (SHARES MERCATO)	625 MAIN ST	F/L	6,848	IND	0	0.0		
MARRIOTT OWNERSHIP RESORTS	629 MAIN ST		4,651					
SILVER QUEEN FINE ART	632 MAIN ST #A		1,100					
STERLING REAL ESTATE	632 MAIN ST		100					
CLOCKWORKS CAFÉ	632 MAIN ST		835					
SILVER QUEEN HOTEL	632 MAIN ST	18	5,100	IND	0	0.0		
BAHNHOF SPORTS	639 MAIN ST #101		1,350					
ZOOM RESTAURANT	660 MAIN ST		6,500					
CHENEZ JJ HOSPITALITY LLC	710 MAIN ST		1,472					
OISHI SUSHI BAR	710 MAIN ST		1,507					
LA CASITA MEXICAN RESTAURANT	710 MAIN ST #1		1,693					
BUTCHER'S CHOP HOUSE	751 MAIN ST		5,767					
STANFIELD FINE ART LLC	751 MAIN ST		2,050					
TOURIST INFOR DISCOVERY GALLERY	751 MAIN ST		1,150					

NAME	BUSINESS ADDRESS	Hotel Rooms Description	Sq. Ft.	Bus. Type	Factor	Adj. S.Ft.	Fee	2007 Fees
TOWN BRIDGE REALTY GROUP	751 MAIN ST #7		487					
ALL SPORTS EYEWEAR	751 MAIN ST. #106		800					
WEST LIGHT IMPAGES	738 MAIN ST		590					
ALPINE INTERNET	738 MAIN ST		1,435					
DESTINATION SPORTS INC.	738 MAIN ST		2,860					
OTTO PARTS	751 MAIN ST #C105		1,600					
MY VACATION HOME RENTAL MGMT	751 MAIN ST #214		2 BDRM					
LUNATIC FRINGE	780 MAIN ST		1,000					
CODA GALLERY	804 MAIN ST		2,500					
J.B. MULLIGAN'S CLUB & PUB	804 MAIN ST		2,460					
PRIME STEAK HOUSE	804 MAIN ST		2,400					
MARRIOTT SUMMIT WATCH	804 MAIN ST	135 BDRM + RETAIL						
DIAMOND PARKING INC CALEDONIAN	825 MAIN ST		???					
MOUNTAIN BODY	825 MAIN ST		2,754					
DESTINATION SPORTS INC.	875 MAIN		1,380					
FIORE	900 MAIN ST		2,700					
TALKISKER PROPERTY CORP	900 MAIN ST #6107							
TALISKER CLUB LLC	900 MAIN ST #6111		500					
MOUNTAINLAND BUILDERS	900 MAIN ST		725					
LOYLA DESIGN	255 HEBER AVE #EFG		1,980					
CRMG EXEC. SUITE @ GATEWAY	136 HEBER AVE #204		2,528					
MORGAN STANLEY DW	136 HEBER AVE #207		1,909					
HUNTER CAPITAL GROUP	136 HEBER AVE #304		3,155					
BARLCAY BUTERA	255 HEBER AVE #A		3,200					
AMERICAN SKIING CO	136 HEBER AVE #303		9,546					
DISCOVER PARK CITY IN	136 HEBER AVE #108		550					
JEAN LOUIS RESTAURANT LLC	136 HEBER AVE		2,800					
BACK DOOR DELI/GREEN VALLEY FOODS	136 HEBER AVE #105B		679					
EASY ST /SKY LODGE DESIGN CENTER	201 HEBER AVE		2,100					
NORDIC ESTATE MGMT	136 HEBER AVE #204		60					
KR BOWERS LIMITED	136 HEBER AVE #204		60					
INVESTIGATIVE TRACING SERIVES	135 HEBER #204		100					
KELLER & UNDERHILL LLC	136 HEBER AVE #204		256					
PC DISPUTE RESOLUTION CENTER	136 HEBER AVE #204		100					
AMERICAN HOME MORTGAGE	136 HEBER AVE #V		150					

NAME	0 ADDRESS	Hotel Rooms Description	Sq. Ft.	Bus. Type	Factor	Adj. S.Ft.	Fee	2007 Fees
GMAC MORTGAGE LLC	136 HEBER AVE #204 Q		128					
ASPEN DESIGN KING KRISTINA	572 PARK AVE		182					
B&B LANDSCAPING	259 PARK AVE		150					
UTAH SKI AND GOLF	698 PARK AVE		1,300					
DAVANZA'S	690 PARK AVE		1,550					
MICHAEL JENNIFER GUETSCHOW	325 PARK AVE	4 BDRM						
BALDIS VACATION RENTAL	627 PARK AVE	2 BDRM						

PARK CITY MUNICIPAL CORPORATION SERVICE PROVIDER/PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into in duplicate this ____ day of ______________, 2007, by and between PARK CITY MUNICIPAL CORPORATION, a Utah municipal corporation, (“City”), and _________________, 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 “Addendum A” and incorporated herein (the “Project”).

2. TERM.

The term of this Agreement shall commence on the date of execution on this Agreement and shall terminate on September 4, 2010 or earlier, unless extended three years by mutual written agreement of the Parties.

3. COMPENSATION AND METHOD OF PAYMENT.

A. Payments for services will depend on the option chosen by the City.

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 will negotiate with the Service Provider for work performed.

D. The Service Provider shall submit an invoice for services rendered during the pay period. The City will assist in collecting of payment due the Service Provider for services remaining unpaid for sixty (60) days or more.

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. **PERFORMANCE BOND**. Contractor shall furnish to the City a performance bond satisfactory to the City guaranteeing Service Provider's performance, in the amount not less than $50,000.

9. **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:

A. 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. The Service Provider shall increase the limits of such insurance to at least the amount of the Limitation of Judgments described in Section 63-30d-604 of the Governmental Immunity Act of Utah, as calculated by the state risk manager every two years and stated in Utah Admin. Code R37-4-3. The first increase to Two Million Dollars ($2,000,000) combined single limit per occurrence will take effect July 1, 2007.

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

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

D. 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.

E. 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.

10. DISPUTES AND COMPLAINTS. 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 Service Provider shall mail or otherwise furnish the City a written signed appeal addressed to the Public Works Director. In connection with any appeal proceeding under this clause, the Service Provider 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 Service Provider expressly agrees that any ambiguity herein shall be resolved in favor of the City.

The City expects high levels of customer service and collection service provisions. Performance failures will be discouraged, to the extent possible, through penalties for certain infractions and through contract default for more serious lapses in service provisions. Penalties may be levied if documented in an incident report presented by the City to the Service Provider. Penalties will be assessed monthly by the City on the Service Provider according to the schedule attached as Addendum C.

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

A. If Service Provider should substantially violate any of the provisions of this contract;

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

C. If Service Provider 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;

After serving thirty (30) days written notice on the Service Provider and its surety of its intention to terminate the services of Service Provider, 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 Service Provider. The Service Provider 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 Service Provider shall be entitled to a hearing before a City hearing officer upon the issue of termination if it submits a written request therefore within seven (7) days of the service of the notice of the City's intent to terminate. The Service Provider shall be entitled to be heard at such hearing on the issue of termination. The Service Provider 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 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.

12. **HOURS AND DAYS OF WORK.** All work performed by the Contractor Service Provider shall be performed during work hours of 7:00 a.m. to 7:00 p.m. Sunday through Saturday.

13. **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).

14. **COMPLIANCE WITH LAWS**.

A. The Service Provider, in the performance of this Agreement, shall comply with all applicable federal, state, and local laws and ordinances, including regulations for licensing, certification and operation of facilities, programs and accreditation, and licensing of individuals, and any other standards or criteria as described in this Agreement to assure quality of services.

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

15. NONDISCRIMINATION.

A. The City is an equal opportunity employer.

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

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

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

16. 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 ass

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.

17. 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.

18. 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.

19. 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.

20. PROHIBITED INTEREST.

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

21. 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.

22. TERMINATION.

A. Either party may terminate this Agreement, in whole or in part, at any time, by at least one hundred twenty (120) 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 thirty (30) 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.

23. 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.

24. 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.

25. 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.

26. 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.

27. 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.

PARK CITY MUNICIPAL CORPORATION
445 Marsac Avenue
Post Office Box 1480
Park City UT 84060-1480

____
Tom Bakaly, City Manager

Attest:

____
City Recorder's Office

Approved as to form:

____
City Attorney's Office

SERVICE PROVIDER
Address:

Tax ID#: ________________________

____
Signature

____
Printed name

____
Title

STATE OF UTAH)
) ss.
COUNTY OF SUMMIT)

On this ____ day of _________________, 2007, personally appeared before me ______________________________, whose identity is personally known to me/or proved to me on the basis of satisfactory evidence and who by me duly sworn/affirmed, did say that he/she is the __________________________ (*title or office*) of _____________________ Corporation by Authority of its Bylaws/Resolution of the Board of Directors, and acknowledged that he/she signed it voluntarily for its stated purpose as ________________________ *(title)* for ________________________________, a _______ corporation.

____
Notary Public

ADDENDUM "A"

SCOPE OF SERVICES

Attached as **Main Street Area – Solid Waste Collection RFP June 2007**

ADDENDUM "B"

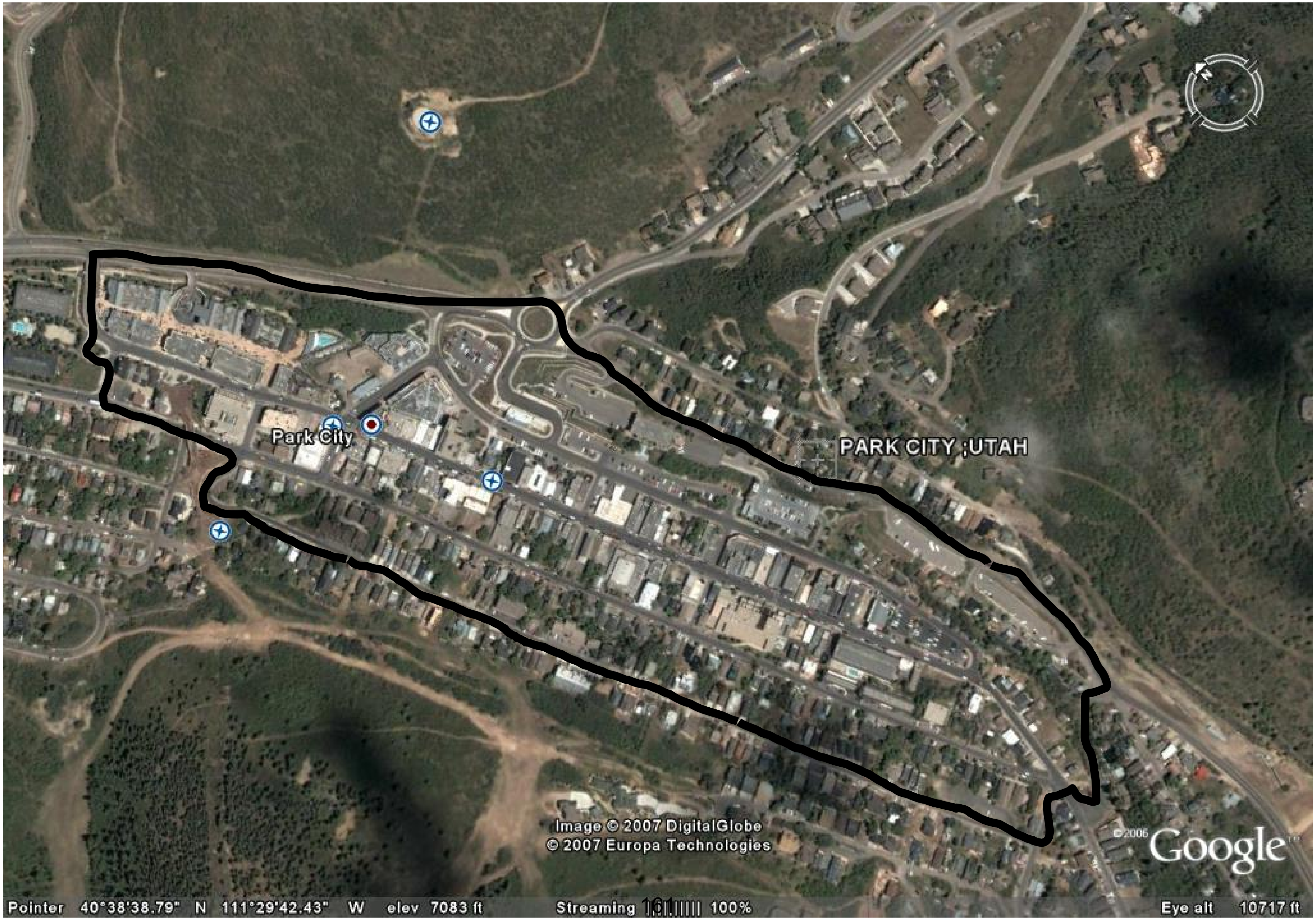
PAYMENT SCHEDULE FOR "EXTRA" WORK

ADDENDUM “C”

<u>PENALITIES</u>

Action or Omission Penalties

- Commencement of commercial collection prior to 7:00 a.m. or continuance after 7:00 p.m. except as expressly permitted. $100.00 per incident .
- Failure to collect spilled materials. Twice the cost of cleanup to the City plus $1,000 each incident
- Leakage from contractor vehicles or vehicle contents. $500 each vehicle, each inspection.
- Failure to collect any and all garbage and recyclable materials within one business day after notification. $250.00 each incident.
- Collection as garbage of source-separated recycling. $1,000.00 per incident.
- Misrepresentation by contractor in records or reporting. $1,500 per incident.
- Failure to make required reports on time. $500.00 per incident.
- Failure to maintain clean and sanitary vehicles. $250.00 per vehicle per occurrence.


Park City
PARK CITY ;UTAH
Image © 2007 DigitalGlobe
© 2007 Europa Technologies
©2006 Google
Pointer 40°38'38.79" N 111°29'42.43" W elev 7083 ft Streaming 100% Eye alt 10717 ft

City Council
Staff Report

Author:	**Jonathan Weidenhamer**
Subject:	**Amendments to the Park City Land Management Code prohibiting office, residential, off-site private residence clubs and other non-sales tax generating uses in the HCB and HRC Districts in storefronts; as well as related definitional changes.**
Date:	**August 30, 2007**
Department:	**Sustainability**
Type of Item:	**Legislative**

Summary Recommendation: Staff recommends the City Council hold a public hearing and consider approving proposed amendments to the LMC to prohibit non-sales tax generating uses and Off-Site Private Residence Clubs from ground level storefronts in the downtown core.

Background
On August 9, 2007 Council provided direction exclude portions of Park Avenue north of 8^{th} Street from the area affected by the proposed ordinance. Direction was also given to further define and clarify "storefront" as it pertains to the proposed ordinance.

Analysis
Staff has generally defined Storefront as the area 50' back from the back of sidewalk and 8' above or below the street grade(Exhibit C); specifically:

<u>**Storefront Property**</u>

<u>**A separately enclosed space or unit that has a window or entrance that fronts on a Public Street. For purposes of this provision, the term "fronts on a Public Street" shall mean a separately enclosed space or unit with:**</u>

1. <u>**A window and/or entrance within 50 lateral/horizontal feet of the back (inside building edge) of the public sidewalk; and**</u>
2. <u>**A window and/or entrance that is not more than 8 feet above or below the grade of the adjacent Public Street.**</u>

<u>**In the case of split-level, multi-level buildings with only one primary entrance, only those fully enclosed spaces or units that directly front the street as set forth above shall be designated to be a "Storefront Property." The Planning Director or their designee shall have the final determination of applicability.**</u>

When applied to typical platted 25'x75' downtown lots the applicability of this definition was intended to:

- o Promote the intent of the ordinance for areas directly adjacent to or visible from downtown streets.
- o Address split-level storefronts so that both upper and lower floors would be affected.
- o Ensure that if a separate business wanted to occupy the rear portion of any ground floor, that it would have to be 50' back from the sidewalk, and be separately enclosed (think a real estate office that sells t-shirts in the first 5' of the store with no wall in- between the 2 businesses).
- o Provide additional clarity to the findings that addressed the "pedestrian experience" as being vertically and horizontally separated from the

In regards to specific application to other mixed-tenant buildings, the applicability is as follows:

- o Poison Creek Mercantile – the horizontal setback would result in the tenant spaces closest to the road to be included (Exhibit M), but not the interior commercial spaces.
- o Caledonian – The vertical setbacks would result in the interior commercial spaces (sun glasses shop & Town Bridge Reality) not being affected by the proposed ordinance.

The previous Background and Analysis Sections from the August 2, 2007 Council meeting and are available upon request, as well as meeting minutes from the following Public Hearings: June 13, June 27, August 2, and August 9, 2007.

<u>Significant Impacts</u>

<u>Non Complying Uses</u>

Adoption of this ordinance will likely result in approximately 17 businesses becoming non-conforming uses

<u>Pending Applications</u>

As of May 26, 2007 the City's notice for the initial public hearing on the proposed ordinance was published. As a result, no new office uses, off-site private residency clubs, etc. will be allowed per the pending ordinance – which prohibits the uses applied for The result is a likely denial of the following pending business license applications which were received after May 26, 2007:

1.	Poison Creek Mercantile	255 Heber	Office
2.	Luxury Residence Group/Sky Lodge	693 Main Street	Real Estate Office

Bob Dillon representing the above businesses, submitted a request that the Council adopt a provision to allow any application received prior to the effective date of the ordinance (Exhibit L). In effect, Council is being requested to revoke application of the pending ordinance doctrine. Council has the legislative authority to consider the request so long as its decision is reasonable and not arbitrary, capricious or illegal.

Staff does not find that allowing either of the above tenant spaces to convert to office uses will significantly affect the overall percentage of non-tax generating uses in downtown storefronts. However, this request is not consistent with the July 27, 2007 recommendation from the Planning Commission. Staff recommends deny the request on the basis that 255 Heber Avenue and 693 Main Street are two highly visible storefronts in the Main Street Core. Allowing non-sales tax generating uses will be inconsistent with the Planning Commission recommendation and intent of the proposed ordinance. Application of this ordinance does not preclude us of these structures for commercial purposes, nor does it preclude the temporary Sky Lodge sales activities from occupying other code-compliant locations in the downtown core.

Staff has also determined that the following 3 businesses were properly approved and considered vested prior to the May 26, 2007 notification:

1.	Talisker	515 Main Street	Real Estate Office
2.	Silver Creek Dlvpt.	875 Main Street	Office
3.	Bald Eagle Realty	354 Main St.	Real Estate Office

Public Input

Previous Municipal Code Amendment – It has been suggested by the HMBA that with consideration of these new LMC amendments that the previous change to the Municipal Code that prohibited local consent for Liquor Licenses for Bars and Private Clubs that do not allow the general public to apply for membership should be amended to only affect storefronts as well. A follow up letter has been submitted to this effect by Mike Neilson (Exhibit M).

Department Review

This has been reviewed by the Sustainability, Planning, Executive and Legal Departments.

Alternatives:

1. Adopt ordinance as prepared by staff. **This is staff's recommendation.**
2. Remand to the Planning Commission
3. Continue for more information.

Recommendation

Staff recommends the City Council hold a public hearing and consider approving proposed amendments to the LMC to prohibit non-sales tax generating uses and Off-Site Private Residence Clubs from ground level storefronts in the downtown core.

Exhibits

Draft Ordinance
Exhibit A – HRC Amendments
Exhibit B – HCB Amendments

Exhibit C – Definitional amendments
Exhibit D - May 24, 2007 Municipal Code Change
Exhibit E – Zoning Map Detail
Exhibit F –Heber Ave overhead photo
Exhibit G– Poison Creek Mercantile site plan
Exhibit H – Public Input Letter re Municipal Code
Exhibit I – Public Input letter - Bob Dillon re: Poison Creek Mercantile & Sky Lodge
Exhibit J – Proposed “Streetfront Store Property” Definition – Bob Dillon

ORD. NO. 07-

AN ORDINANCE APPROVING AMENDMENTS TO THE PARK CITY LAND MANAGEMENT CODE TO CHAPTERS 15-2.6: HISTORIC COMMERCIAL BUSINESS (HCB) DISTRICT AND 15-2.5 HISTORIC RECREATION COMMERCIAL (HRC) DISTRICT, RELATING TO PROHIBITING OFFICE, RESIDENTIAL, NON-SALES TAX GENERATING USES AND OTHER SIMILAR OR ASSOCIATED USES IN THE HCB DISTRICT AND HRC DISTRICT STOREFRONTS; ALSO RELATED AMENDMENT TO LAND MANAGEMENT CODE CHAPTER 15-15-1: DEFINITIONS.

WHEREAS, the Land Management Code is designed and enacted to implement the objectives of the Park City General Plan; to protect the general health, safety, and welfare of Park City's citizen's and property owners; to maintain the quality of life and experience for its residents and visitors; and to preserve the community's unique character and values;

WHEREAS, Park City has an interest in promoting vibrancy and activity in the historic Main Street downtown area located in the Historic Commercial Business (HCB) and the Historic Recreation Commercial (HRC) Districts and finds it is essential to the City's long term economic and financial well-being; and

WHEREAS, The Community Economy Element of the Park City General Plan states that "Temporary or transient real estate project offices should be encouraged to locate in other areas of the City in order for Main Street to retain its primary functions"; and goes on to say Park City should "Maintain and improve the resort ambiance, which includes adequate opportunities for recreation, shopping, dining and culture"; and

WHEREAS, the 2003 Hyett Palma Park City Downtown Economic Study recommends pursuing a broad variety of uses and attractions to draw locals and visitors; and

WHEREAS, The City's Budget Department and The Main Street Business Alliance have submitted Affidavits that support these amendments; and

WHEREAS, Park City's Economic Development Plan identifies the following as Top Priorities: Facilitation and establishment of more "attractions/areas of interest" for both visitors and residents; Maintain and improve the balance of Sustainable Community goals by going beyond just economic initiatives to include social and environmental strategies; and Protect, preserve, and promote the historic Main Street downtown area as the heart of the region; and

WHEREAS, Park City's Economic Development Strategic Plan identifies the following as High Priorities: Further develop and market the uniqueness of Park City and why it is set apart from other mountain resort communities; Proactively target business sectors that will fill voids left by departing companies or for smart redevelopment reasons; and

WHEREAS, in the HCB and HRC Districts, Office uses that are not inviting to the general public to access them will diminish the diverse and eclectic mix of uses and attractions necessary to sustain Park City's unique vibrant Main Street core for the general public, visitors, quests, and locals; and

WHEREAS, the City monitors the downtown business mix and sales tax generation as part of its financial health assessment and finds a diversified business mix is an element of Main Street's attractiveness and a destination center for visitors and locals; and

WHEREAS, the long-term economic sustainability of Park City depends upon the continued economic success and aesthetic attractiveness of commercial and mixed-use buildings and districts in and near the downtown core; and

WHEREAS, a preliminary discussion was held at the joint Planning Commission/City Council work session on April 5, 2007 regarding legislative remedies available to ensure the continuation of a successful business mix on historic Main Street; and

WHEREAS, in the HCB and HRC Districts, Office uses that are not inviting to the general public to access them will have a negative effect upon the overall economy and vitality of the downtown core as visitors find fewer businesses in which to shop or restaurants in which to eat. A reduction in visitor traffic will have a net negative impact to sales tax overall. A reduction in visitor numbers will also signal a change in the culture of Main Street into an elite area that is less inviting to the majority of Park City's visitors, guests, and locals; and

WHEREAS it is in the best interest of the residents of Park City, Utah to amend the Land Management Code to be consistent with the Utah State Code and the Park City General Plan, and to be consistent with the values and identified goals of the Park City community to protect health and safety, maintain the quality of life for its residents, and to preserve the community's unique character.

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

SECTION 2. APPROVAL OF AMENDMENT. CHAPTERS 15-2.5 Historic Recreation Commercial (HRC) District, 15-2.6 Historic Commercial Business (HCB) District, and 15-15-1 Definitions, of the Land Management Code are hereby amended to read as attached hereto on Exhibits "A", "B" and "C".

SECTION 2. EFFECTIVE DATE. This Ordinance shall be effective upon publication.

PASSED AND ADOPTED this ____ day of _____, 2007.

PARK CITY MUNICIPAL CORPORATION

____
Dana Williams, Mayor

Attest:

____
Janet M. Scott, City Recorder

Approved as to form:

____
Mark D. Harrington, City Attorney

EXHIBIT A HRC

<u>TITLE 15 - LAND MANAGEMENT CODE (LMC)</u>
<u>CHAPTER 2.5 - HISTORIC RECREATION COMMERCIAL (HRC) DISTRICT</u>

Chapter adopted by Ordinance No. 00-51

15-2.5-1. PURPOSE.

The purpose of the Historic Recreation Commercial (HRC) District is to:

(A) maintain and enhance characteristics of Historic Streetscape elements such as yards, trees, vegetation, and porches,

(B) encourage pedestrian oriented, pedestrian-scale Development,

(C) minimize visual impacts of automobiles and parking,

(D) preserve and enhance landscaping and public spaces adjacent to Streets and thoroughfares,

(E) provide a transition in scale and land Uses between the HR-1 and HCB Districts that retains the character of Historic Buildings in the Area,

(F) provide a moderate Density bed base at the Town Lift,

(G) allow for limited retail and Commercial Uses consistent with resort bed base and the needs of the local community,

(H) encourage preservation and rehabilitation of Historic Buildings and resources.

<u>(I) maintain and enhance the long term viability of the downtown core as a destination for residents and tourists by ensuring a Business mix that encourages a high level of vitality, public Access, vibrancy, activity, and public/resort-related attractions.</u>

15-2.5-2. USES.

Uses in the HRC are limited to the following:

(A) **<u>ALLOWED USES</u>**.

(1) Single Family Dwelling
(2) Duplex Dwelling
(3) Secondary Living Quarters

(4) Lockout Unit[1]
(5) Accessory Apartment[2]
(6) Nightly Rental
(7) Home Occupation
(8) Child Care, In-Home Babysitting
(9) Child Care, Family[3]
(10) Child Care, Family Group[3]
(11) Child Care Center[3]
(12) Accessory Building and Use
(13) Conservation Activity
(14) Agriculture
(15) Bed and Breakfast Inn[4]
(16) Boarding House, Hostel
(17) Hotel, Minor, fewer than 16 rooms
(18) Office, General[5]
(19) Parking Area or Structure, with four (4) or fewer spaces

(B) **CONDITIONAL USES**.

(1) Triplex Dwelling
(2) Multi-Unit Dwelling
(3) Guest House, on Lots one acre
(4) Group Care Facility
(5) Public and Quasi-Public Institution, Church, School
(6) Essential Municipal Public Utility Use, Facility, Service and Structure
(7) Telecommunication Antenna[6]
(8) Satellite Dish, greater than thirty-nine inches (39") in diameter[7]
(9) Plant and Nursery stock products and sales
(10) Hotel, Major
(11) Timeshare Projects and Conversions
(12) Private Residence Club Project and Conversion[4]

---

[1] Nightly rental of Lockout Units requires a Conditional Use permit

[2] See LMC Chapter 15-4, Supplementary Regulations for Accessory Apartments

[3] See LMC Chapter 15-4-9 for Child Care Regulations

[4] Requires an Administrative Conditional Use permit

[5] **Prohibited in Storefronts adjacent to the Main Street, Swede Alley, Heber Avenue, or Park Avenue (excluding those HRC zoned areas north of the 8th Street) rights-of-way; excluding without limitation, addresses contained within the following Buildings: 702 Main Street, 710 Main Street, 780 Main Street, 804 Main Street, 890 Main Street, and 900 Main Street**.

[6] See LMC Chapter 15-4-14, Supplemental Regulations For Telecommunication Facilities

[7] See LMC Chapter 15-4-13, Supplemental Regulations For Satellite Receiving Antennas

(13) Office, Intensive
(14) Office and Clinic, Medical
(15) Financial Institution, without drive-up window[8]
(16) Commercial Retail and Service, Minor[7]
(17) Commercial Retail and Service, personal improvement[7]
(18) Neighborhood Convenience Commercial, without gasoline sales
(19) Café or Deli[7]
(20) Restaurant, General[7]
(21) Restaurant and café, Outdoor Dining[4]
(22) Outdoor Events[4]
(23) Bar
(24) Parking Area or Structure, with five (5) or more spaces
(25) Temporary Improvement
(26) Passenger Tramway Station and Ski Base Facility
(27) Ski Tow, Ski Lift, Ski Run, and Ski Bridge
(28) Recreation Facility, Commercial, Public, and Private
(29) Entertainment Facility, Indoor
(30) Fences greater than six feet (6') in height from Final Grade[4]
(31) Private Residence Club, Off-Site[5]

(C) **PROHIBITED USES**. Any Use not listed above as an Allowed or Conditional Use is a prohibited Use.

(Amended by Ord. Nos. 04-39; 06-69)

[8] If Gross Floor Area is less than 2,000 sq. ft., the Use shall be considered an Allowed Use

EXHIBIT B

TITLE 15 - LAND MANAGEMENT CODE (LMC)
CHAPTER 2.6 - HISTORIC COMMERCIAL BUSINESS (HCB) DISTRICT

Chapter adopted by Ordinance No. 00-15

15-2.6-1. PURPOSE.

The purpose of the Historic Commercial Business (HCB) District is to:

(A) preserve the cultural heritage of the City's original Business, governmental and residential center,

(B) allow the Use of land for retail, commercial, residential, recreational, and institutional purposes to enhance and foster the economic and cultural vitality of the City,

(C) facilitate the continuation of the visual character, scale, and Streetscape of the original Park City Historical District,

(D) encourage the preservation of Historic Structures within the district,

(E) encourage pedestrian-oriented, pedestrian-scale Development,

(F) minimize the impacts of new Development on parking constraints of Old Town,

(G) minimize the impacts of commercial Uses and business activities including parking, Access, deliveries, service, mechanical equipment, and traffic, on surrounding residential neighborhoods,

(H) minimize visual impacts of automobiles and parking on Historic Buildings and Streetscapes, and

(I) support Development on Swede Alley which maintains existing parking and service/delivery operations while providing Areas for public plazas and spaces.

(J) maintain and enhance the long term viability of the downtown core as a destination for residents and tourists by ensuring a Business mix that encourages a high level of vitality, public Access, vibrancy, activity, and public/resort-related attractions.

15-2.6-2. USES.

Uses in the Historic Commercial Business (HCB) District are limited to the following:

(A) **ALLOWED USES**.

(1) Single Family Dwelling[1]
(2) Multi-Unit Dwelling[1]
(3) Secondary Living Quarters[1]
(4) Lockout Unit[1,2]
(5) Accessory Apartment[1,3]
(6) Nightly Rental[4]
(7) Home Occupation[1]
(8) Child Care, In-Home Babysitting[1]
(9) Child Care, Family[1,5]
(10) Child Care, Family Group[1,5]
(11) Child Care Center[1,5]
(12) Accessory Building and Use[1]
(13) Conservation Activity
(14) Agriculture
(15) Bed and Breakfast Inn[6]
(16) Boarding House, Hostel
(17) Hotel, Minor, fewer than 16 rooms
(18) Office, General[1]
(19) Office, Moderate Intensive[1]
(20) Office and Clinic, Medical[1]
(21) Financial Institution, without drive-up window
(22) Commercial Retail and Service, Minor
(23) Commercial Retail and Service, personal improvement
(24) Commercial Neighborhood Convenience, without gasoline sales
(25) Restaurant, Cafe or Deli
(26) Restaurant, General
(27) Bar
(28) Parking Lot, Public or Private with four (4) or fewer spaces
(29) Entertainment Facility, Indoor
(30) Salt Lake City 2002 Winter Olympic Games Legacy Display[7]

---

[1]**Prohibited in Storefronts adjacent to the Main Street, Heber Avenue, or Swede Alley Rights-of-Way**.

[2]Nightly Rental of Lock Units requires a Conditional Use permit

[3]See LMC Chapter 15-4, Supplementary Regulations for Accessory Apartments

[4]Nightly Rental of residential dwellings does not include the Use of dwellings for Commercial Uses

[5] See LMC Chapter 15-4-9 for Child Care Regulations

[6]Requires an Administrative Conditional Use permit

[7]Olympic Legacy Displays limited to those specific Structures approved under the SLOC/Park City Municipal Corporation Olympic Services Agreement and/or Olympic

(B) **<u>CONDITIONAL USES</u>**.

(1) Group Care Facility[1]
(2) Public and Quasi-Public Institution, Church, School
(3) Essential Municipal Public Utility Use, Facility, Service, and Structure
(4) Telecommunication Antenna[7]
(5) Satellite Dish, greater than thirty-nine inches (39") in diameter[8]
(6) Plant and Nursery stock products and sales
(7) Hotel, Major
(8) Timeshare Projects and Conversions[1]
(9) Timeshare Sales Office, Off-Site within an enclosed Building[1]
(10) Private Residence Club Project and Conversion[5]
(11) Commercial Retail and Service, Major
(12) Office, Intensive
(13) Restaurant, Outdoor Dining[5]
(14) Outdoor Events
(15) Hospital, Limited Care Facility
(16) Parking Area or Structure for five (5) or more cars
(17) Temporary Improvement
(18) Passenger Tramway Station and Ski Base Facility
(19) Ski Tow, Ski Lift, Ski Run, and Ski Bridge
(20) Recreation Facility, Public or Private
(21) Recreation Facility, Commercial
(22) Fences greater than six feet (6') in height from Final Grade[5]
(23) Salt Lake City 2002 Winter Olympic Games Olympic Legacy Displays[9]
(24) Private Residence Club, Off-Site[1]

(C) **<u>PROHIBITED USES</u>**. Any Use not listed above as an Allowed or Conditional Use is a prohibited Use.

(Amended by Ord. No. 02-38; 04-39; 06-69)

Master Festival License and placed on the original Property set forth in the services Agreement and/or Master Festival License.

[7]See LMC Chapter 15-4-14, Supplemental Regulations for Telecommunication Facilities

[8]See LMC Chapter 15-4-13, Supplemental Regulations for Satellite Receiving Antennas

[9]Olympic Legacy Displays limited to those specific Structures approved under the SLOC/ Park City Municipal Corporation Olympic Services Agreement and/or Olympic Master Festival License and placed in an Area other than the original location set forth in the services agreement and/or Master Festival License.

EXHIBIT C

TITLE 15 - LAND MANAGEMENT CODE (LMC)
CHAPTER 15 - DEFINITIONS

Chapter adopted by Ordinance No. 00-25

CHAPTER 15 - DEFINED TERMS.

15-15-1.44. Club.

(E) Club, Private Residence, Off-Site. Any Use organized for the exclusive benefit, support of, or linked to or associated with, or in any way offers exclusive hospitality services and/or concierge support to any defined Owner's association, timeshare membership, residential club, or real estate project. Hospitality includes but is not limited to any of the following services: real estate, restaurant, bar, gaming, locker rooms, storage, salon, personal improvement, Office.

Storefront Property

A separately enclosed space or unit that has a window or entrance that fronts on a Public Street. For purposes of this provision, the term "fronts on a Public Street" shall mean a separately enclosed space or unit with:

1. **A window and/or entrance within 50 lateral/horizontal feet of the back (inside building edge) of the public sidewalk; and**
2. **A window and/or entrance that is not more than 8 feet above or below the grade of the adjacent Public Street.**

In the case of split-level, multi-level buildings with only one primary entrance, only those fully enclosed spaces or units that directly front the street as set forth above shall be designated to be a "Storefront Property." The Planning Director or their designee shall have the final determination of applicability.

Exhibit D
May 24, 2007 Municipal Code Amendment

PARK CITY MUNICIPAL CODE
TITLE 4 - LICENSING

4- 5- 1. BEER LICENSE REQUIRED.

It shall be unlawful for any person to engage in the business of the sale of beer at retail or wholesale within the City without first procuring a beer license as required by this Chapter. In addition to the City license, a State beer license shall be required for all sales of beer for on-premise consumption or for purchase or sale of beer in a container exceeding two liters. A separate license shall be required for each place of retail sale, for each separate premise, except that separate licenses are not required for each retail beer dispensing outlet located in the same building or on the same resort premise owned or operated by the same applicant. No beer license may be transferred, assigned or subleased in any manner. Licenses are invalidated by transfer or attempted transfer. All licensees shall comply with the provisions of the Alcoholic Beverage Control Act, and this Title. **<u>No Beer License shall be issued for any Private Club or Bar in the HCB District or HRC District unless the general public may join the club, either as an annual member or a temporary visitor, and the cost of that annual membership or temporary visitor card is not more than $50.00.</u>**

4- 6- 1. LIQUOR LICENSE REQUIRED.

No person shall operate a place of business which allows customers, members, guests, visitors, or other persons to possess, consume, or store liquor on the premises of the place of business without a liquor license issued by the City. A separate license shall be required for each place of business. No liquor license may be transferred, assigned, or subleased in any manner. All licensees shall comply with the provisions of the Alcoholic Beverage Control Act, Utah Alcoholic Beverage Control Commission Rules and Regulations, and this Chapter. **<u>No Liquor License shall be issued for any Private Club, Bar, or Restaurant in the HCB District or HRC District as described in Sections 4-6-2 and 4-6-3 unless the general public may join the club, either as an annual member or a temporary visitor, and the cost of that annual membership or temporary visitor card is not more than $50.00.</u>**

Exhibit E – Zoning Map Detail

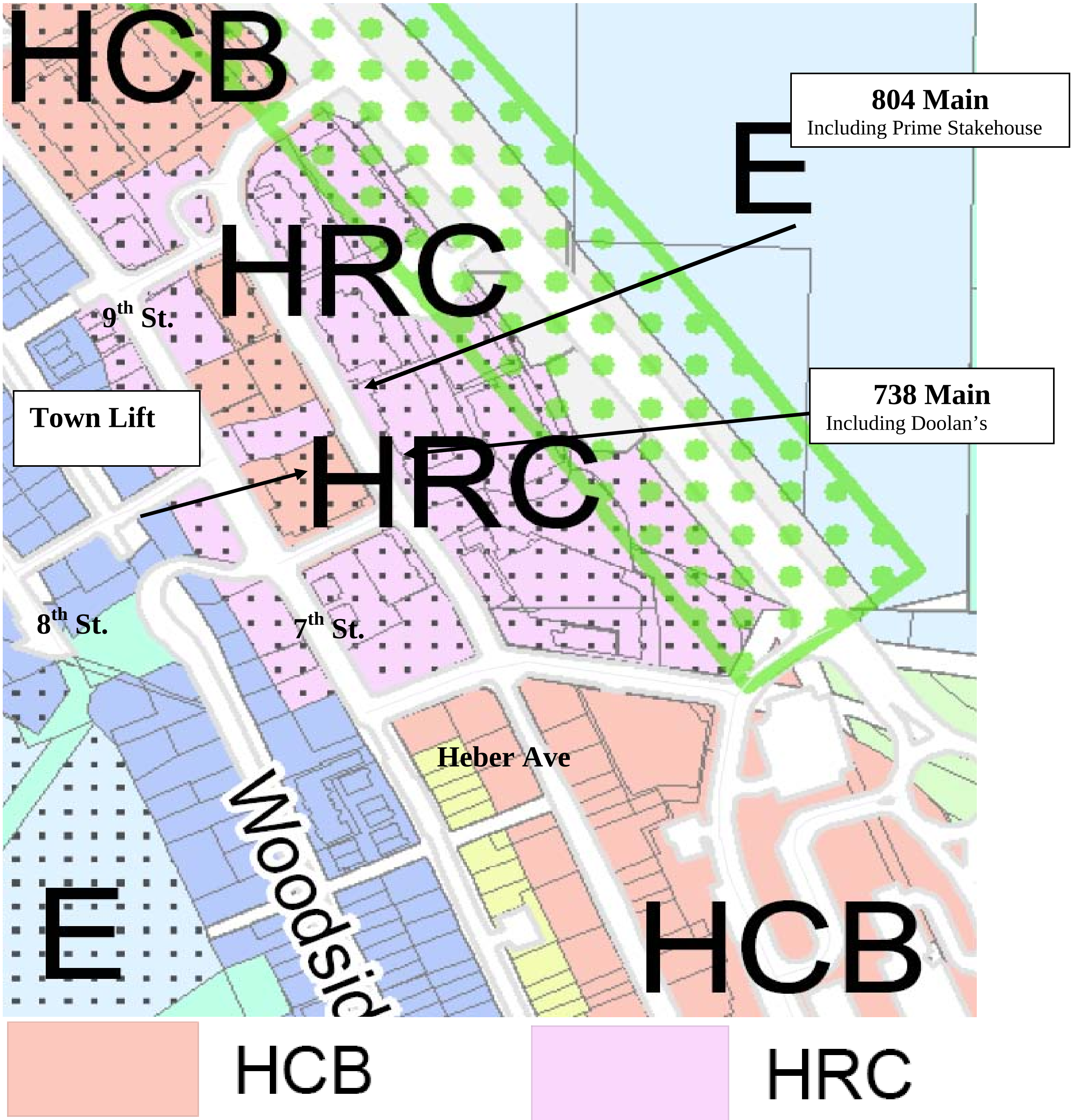


Exhibit F

Poison Creek Mercantile

Heber Ave

Exhibit G
Poison Creek Mercantile Site Plan

Exhibit H
Public Input re: Municipal Code

August 20, 2007

Jonathan Weidenhamer
Park City Planning Department
P.O. Box 1480
Park City, Utah 84060

Re: Municipal Code Amendments

Dear Jonathan:

As you are aware, Park City recently amended Title 4.5.1 and 4.61 of the Park City Municipal Code to restrict the issuance of beer and liquor licenses to Private Clubs or Bars in HCB or HRC districts unless members of the general public can join said club for less than $50 per year. I believe that these newly adopted revisions to the municipal code are overly inclusive and inconsistent with the pending amendments to the Park City Land Management Code ("LMC") regarding vertical zoning and main street store fronts which are intended to allow the establishment of private residence clubs within certain portions of the HBC and HRC districts. It is only proper that such club uses which are established in appropriate areas be allowed to obtain beer and liquor licenses.

On their face, it appears that the municipal code amendments were passed in a blanket effort to accomplish the same result in the entire HRC and HCB districts as is achieved by the proposed amendments to the LMC; namely to avoid the "privatization" of Main Street tenant spaces (i.e. Main Street retail, restaurant, and club establishments not allowing access to the general public). However, throughout the LMC amendments hearings, certain areas within the HRC and HCB have been individually considered and exempted from the proposed LMC amendments because they do not fall within the definition of Main Street "storefront" tenant space.

As a local attorney and resident, I am interested in the overall well being of Main Street due to its worldwide attraction of tourists and visitors. I further applaud the planning department's efforts to avoid privatization of Main Street; however, I do feel that these excepted areas from the proposed LMC amendments should receive consistent exemption from the Municipal Code amendments inasmuch as said areas are not considered Main Street "storefront" tenant space.

Please do not overly restrict the business activities of areas that do not affect Main Street appeal and have already been excluded from the new zoning restrictions by the City planning department. I would ask that the planning department forward a recommendation to exclude from the Municipal Code amendments those same areas excluded in the LMC amendments to maintain zoning and regulatory consistency between the two codes. Thank you.

Regards,

Michael Nielson
Attorney at Law

Exhibit I
Public Input Letters
Re: Poison Creek Mercantile & Sky Lodge

CLYDE SNOW SESSIONS & SWENSON
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

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PARK CITY, UTAH 84060
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www.clydesnow.com

August 23, 2007

HAND DELIVERED AND E-MAIL
City Council
Park City Municipal Corporation
P.O. Box 1480
Park City, UT 84060

Re: Application of Pending Ordinance Statute to Business License Application of CS Financial, Inc. for Office Space Located in Commercial Units F & G at Poison Creek Condominiums located on Heber Avenue (the "Premises")

Dear City Councilors:

As you are aware, this firm represents CS Financial, Inc. (and its affiliate, Mercantile Holdings, LLC and its principal, Jeff Edwards, collectively, the "client") and this letter is sent on our client's behalf.

As I stated in the public hearing at the City Council meeting held on August 9, 2007 relating to what has been referred to as the proposed "vertical zoning ordinance", my client entered into binding contracts in 2006 to purchase the units constituting the Premises, as well as for an additional commercial unit and a residential unit at the Poison Creek Condominium Project. The purpose of acquiring all of these units was for our CS Financial, Inc. and its principal, Jeff Edwards, to open a mortgage office in Park City across from the Gateway Center where one of its largest clients has office space. My client closed under these contracts in July, 2007 as it was legally obligated to so do, or it would have been subject to all of the legal remedies the seller would have had for a buyer's default, which remedies included forfeiture of earnest money deposits, damages for breach of contract, and specific performance. In acquiring the Premises, my client applied for and received an SBA Loan that specifies that the use of the Premises will be for my client's mortgage offices, and failure to use such Premises for such purposes will constitute a default under the loan documents.

application would be entitled to consideration in any such procedure because of the City Council's adoption of the later effective date for the new vertical zoning ordinance.

Thank you for your consideration.

Sincerely,

Robert C. Dillon

cc: Mr. Jeff Edwards

CLYDE SNOW SESSIONS & SWENSON
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

OF COUNSEL
ROBERT C. DILLON
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August 23, 2007

HAND DELIVERED AND E-MAIL
City Council
Park City Municipal Corporation
P.O. Box 1480
Park City, UT 84060

Re: Application of Pending Ordinance Statute to Business License Application and Building Permit Application of Easy Street Partners, LLC for Office Space Located in Commercial Unit A-1 at the Town Lift Condominiums located on Main Street (the "Premises")

Dear City Councilors:

Please be advised that this firm represents Park Avenue Associates, LLC and this letter is sent on our client's behalf.

As I stated in the public hearing at the City Council meeting held on August 9, 2007 relating to what has been referred to as the proposed "vertical zoning ordinance", my client has entered into a lease agreement with Easy Street Partners, LLC ("Easy Street") for the Premises, which Premises would be used as a real estate office for the sale of units in the Sky Lodge, a major approved downtown Park City real estate project, and other projects owned by the Luxury Management Group (an affiliate of Easy Street).

In connection with the lease of the Premises, Easy Street has applied for a business license to operate such Premises as a real estate sales office, a use that is currently permitted under Park City Municipal Corporation's ("PCMC" or the "City") Land Management Code. Easy Street's application for a business license has not been processed by PCMC because of the City's application of the "pending ordinance doctrine" codified in Utah Code Annotated §10-9a-509 and PCMC's Land Management Code at Title 15, Chapter 1, §15-1-17.

Easy Street has been using on an interim basis a real estate sales office for the Sky Lodge Project in the building that it has owned and operated for a number of years as the Easy Street Restaurant. The restaurant operations were suspended because of the construction of the Sky Lodge Project, however, the space could be and has been used as the Sky Lodge sales offices during such construction. It was Easy Street's understanding with PCMC that its business license for the sales office in the Easy Street Restaurant building could be later transferred to another space in downtown Park City so that the restaurant operations could be resumed when the construction of the Sky Lodge was completed. However, it has now been determined that the license is not transferable, and that a new business license for the Premises cannot be issued for new office space because of the pending ordinance statutes as they relate to the proposed vertical zoning ordinance.

Because of the undue hardship that will be inflicted upon Easy Street and our client because Easy Street will either be deprived of a downtown office location near the Sky Lodge Project, or it will have to discontinue its plans to reopen the Easy Street Restaurant upon completion of construction of the Sky Lodge Project so that it can continue its sales offices there, my client requests that the City Council make the effective date of the vertical zoning ordinance the date it is approved by the City Council instead of the date that the first public hearing by the Planning Commission was noticed, thereby revoking the application of the pending ordinance statutes cited above as they apply to any application that our client currently has submitted to the City and that the City has deemed to be a land use application.

We believe that the City Council may properly take such action because there is no compelling, countervailing public interest as to our client's pending application. We believe that from a public policy standpoint this action is warranted because it would not increase the existing office space use in the designated Main Street area which is currently 2-3% below the 11% occupancy rate for office use in the Main Street area in 2002, and it will enable the Easy Street Restaurant, a desirable downtown tourist use and sales tax generator favored by the City (and the underlying reason for the proposed vertical zoning ordinance), to be reopened at the completion of the Sky Lodge Project, and that denial of such request would create undue hardship for both Easy Street and our client under the circumstances set forth above. We also take the legal position that a business license application is not a land use application within the meaning of the pending ordinance statutes.

We understand that if our request is granted and the proposed vertical zoning ordinance is passed with the later effective date, Easy Street would still have to comply with the provisions of Title 15, Chapter 9 of the PCMC Land Management Code dealing with the establishment of Easy Street's current use as an existing non-conforming use, however, Easy Street's pending application would be entitled to consideration in any such procedure because of the City Council's adoption of the later effective date for the new vertical zoning ordinance.

Thank you for your consideration.

Sincerely,

Robert C. Dillon

Exhibit J
Proposed "Streetfront Store Property" Definition –Bob Dillon

"Streetfront Store Property" means any separate commercial non-residential space or condominium unit within a commercial building that has a display window or entrance that directly fronts on the street-level grade of a Designated Tourist Street. For purposes of this provision, the term "directly fronts on the street-level grade" shall mean a commercial non-residential space or unit with a display window and/or entrance within 25 lateral feet of the public sidewalk on a Designated Tourist Street, and, the bottom floor of which space or unit, and the bottom of such display window and/or door, is not more than 6 feet above or below the street-level grade of such public sidewalk. In the case of any enclosed malls or commercial buildings with only one entrance on a Designated Tourist Street and containing multiple street-grade commercial non-residential spaces or condominium units, only those spaces or units that directly front on the street-grade level as set defined above shall be designated to be a Streetfront Store Property.

"Designated Tourist Street" shall mean Main Street, Swede Alley, Heber Avenue, and Park Avenue South of Eighth Street.

Staff Report

Author: Jonathan Weidenhamer
Subject: Historical Society Museum Expansion – Lease Terms
528 Main Street
Date: August 30, 2007
Type of Item: Administrative - Lease Addendum

Sustainability Team

Summary Recommendations

Review the lease with the Park City Historical Society for space within the existing Old City Hall Building and proposed new addition located at 528 Main. Provide specific direction on terms so a lease can be agendized for Council action at a subsequent meeting.

Background

In 2003 the Park City Historical Society entered into a 99 year lease with the City for use of the Old City Hall. To date, the Historical Society has met stated fundraising goals and other milestones of their special service contract and, modified their existing contract with the City to secure the lease for the entirety of the existing building. Lease Addendum #3 identifies a blueprint for Tenant Improvements necessary to allow the Historical Society to move forward with an expansion of the building, and the addition of more City land.

Currently the only other tenant besides the Historical Society in the Building is the DABC, whose lease is month to month. The DABC agreed to move out upon commencement of the museum expansion. Our current lease with the DABC requires 60 days written notice prior to termination of the lease. The Historical Society on July 9 was asked to provide to Park City written notice of intent to commence construction at least 61 days in advance, in order to provide adequate notice to the DABC. To date this has not occurred. However, building permit plans were filed on August 17, 2007. Staff has considered this as notice and on August 20, 2007 provided notice to the DABC of the Historical Society's intent. Because of this prior lease agreement, construction may not be to commence until October 20, 2007. Staff is working with the DABC to address the details of their vacation of the premises.

The proposed addition contemplates: expanding permanent exhibit space, developing educational programs, establishing a revolving gallery space, expanding the library, and a gift shop. The proposed expansion provides for preservation of the existing historic buildings, including all exterior facades. The plan includes an addition to the rear of the existing building(s) that will not obscure the rear façade, but instead feature the existing elevation and bell tower. The proposal improves internal circulation, brings the historic buildings up to ADA and building code standards, provides for better visibility from Swede Alley and the Transit Center, as well as enhances lighting and exhibit viewing and quality (Exhibit B - plans). The overall proposal expands the museum from 8,300 sf to 12,655 sf, and removes the non-historic kiosk at the south west corner (Park City Police). Their proposal does not contemplate removal of any of the existing surface parking on the west side of Swede Alley. However, the Historical Society is requesting use of a portion of the surface parking and the lot across the lot across Swede Alley for construction staging (see “new items” below).

Regulatory Process

The following requirements need to be met for the Historical Society to proceed with their proposed addition:

1. Subdivision plat - Approved by the City Council on May 17, 2007 – recordation is conditioned upon an approved lease.

2. Conditional Use Permit – Approved by the Planning Commission May 23, 2007

3. Administrative Historic District Design Review – Staff made a final determination of compliance with the Guidelines on August 24, 2007. Since the last update to Council on July 12, 2007 staff continued to work with the design team to address the rear façade, mezzanine, stairs, plaza, and landscaping. Attachment A(A) represents the final approved design. These modifications are consistent with direction provided from the HPB on June 18, 2007.

   Per Section 15-11-11(D), the Design Review decision may be appealed, by the Owner, or anyone with standing under 15-1-18(D), to the Planning Director within 10 days of the staff decision (deadline September 3, 2007). Any Planning Director decision may be appealed to the Historic Preservation Board. Any HPB decision may be appealed to the Board of Adjustment.

   The building is currently on the National Register of Historic Places.The City Council provided consent for the Historical Society to proceed with their applications on March 15, 2007. At that meeting, the museum’s design team represented that this project addition is consistent with federal guidelines on historic renovation, and would not cause the building to be “de-listed” from the National Registar; mainly because at any time the proposed addition could be removed, leaving the building intact, as-is. At that meeting Kurt Huffaker of the Utah Heritage Foundation stated his agreement with this.

4. Lease Addendum – This is the final step authorizing the recordation of the subdivision plat and identifies the terms of the expansion. The lease addendum is triggered by the increased square footage, turnover of operations and building maintenance to the Historical Society, and was an express term of the last lease addendum (#3). See next section for additional detail.

Lease Terms

The existing 99 lease terms established a process by which to arrive at this point (establish a long-term commitment to the Historical Society, removal of other tenants, identify benchmarks, identify an expansion plan, etc.). Staff does not believe the City anticipated taking on additional operating costs upon completion of the expansion. The City has however added this building to our Asset Management Program to ensure the long-term capital replacement needs of the facility.

Recent Timeline
The Historical Society has proposed the City would pay for and be responsible for insurance, operations and maintenance. These terms do not comport with prior direction for the Historical Society to take over more operational responsibility. In the course of negotiations, Council provided the direction to pursue the lease terms as identified below that generally ask the Historical Society to assume increased operational responsibilities. On June 1, 2007 staff met with the Historical Society to relay this direction. At that time, a hand delivered a memo was included for clarity (Exhibit B).

Additional discussion has centered on the design and access to the restrooms. On June 14, Council gave further preliminary direction that it would consider not having 24/7 publicly accessible restrooms, so long as the Historical Society agreed to provide maintenance and ADA access during operational hours as well as help to facilitate restroom access during special events. On July 9 staff re-confirmed this direction in writing (Exhibit C).

On July 12, 2007 a draft lease was presented for consideration. The Historical Society has expressed a desire to simply transfer the existing terms of the 99 year lease to the new space. It was not considered for action as the Municipal Building Authority needed to convey ownership of the building to Park City Municipal Corporation. This has been resolved administratively. At that time the Historical Society indicated they were seeking minor edits to the lease document.

At a meeting with staff on August 6, 2007 the Historical Society indicated the following counter proposals:

1. The City assumes all operations and maintenance of the entire building – with the exception of minor day to day housekeeping.
2. The City retains insurance and liability responsibilities.
3. The City retains maintenance and insurance for the restrooms.

Analysis
Staff seeks direction from Council regarding the lease terms for the following :

Staff believes the following terms are agreed upon:

- Property: The lease now addresses the increase square footage post-construction.

- Rent: In the past the Historical Society received an annual Special Service Contract to assist with their rent and other operational and staffing needs. Changes to the Historical Society's Contract will no longer consider rent subsidization, however staffing and other operational services are still considered. In order to reflect this change the rent has been reduced to $1.00

annually. The Historical Society will continue to have the ability to apply for an annual Special Service Contract.

- Tenant Improvements – The Historical Society will install, at its own expense, all specialized equipment and displays needed for the operation of its museum and future exhibitions, offices and other facilities it may require.

- Visitor Information: No previous language required the Museum to provide space to the Chamber of Commerce and Convention Bureau's Visitor Information. This addendum addresses that requirement.

- Public Art: The lease reflects the City's policy to contribute 1% of the cost of construction towards public art.

- Green Policy. The lease reflects the City's previous policy to contribute 4% of the cost of construction towards Green/Sustainable building practices.

Issues for Discussion
Staff believes the following terms are not agreed upon:

Old Items:

- Insurance – In the past the City provided general liability insurance for the building as well as insurance for building contents (exhibits). With anticipated new and revolving exhibits as well as exhibit loans being used to fill the expanded area, providing insurance is problematic due to ongoing administrative difficulty. The draft lease recommends insurance is provided by the Historical Society. This Historical Society has requested that Council consider paying the premium for the Historical Society to hold its own insurance (estimated at $900 annually). The museum would also need additional insurance to address any 3rd-party arrangements or sub-lessees. **Staff recommends the Historical Society be responsible for paying the premium to have them added to the City's Policy; and that the Historical Society is responsible for attaining the necessary insurance for any other sub-leases; as well as any other annual administrative duties necessary.**

- Operations & Maintenance: To date, there has been City discussion about the following specific terms: (**Staff recommends the City will remain responsible for the exterior maintenance of the building, long-term replacement & asset management (structural upgrades), while the museum will assume the day-to-day cost of maintaining the mechanical systems and interior of the structure**):

  Museum Responsible:

  - Cleaning – the Historical Society will be responsible for all "tenant improvement" type items including, but not limited to day to day cleaning, interior painting, carpet cleaning, light bulb changing, drywall repairs, etc.

The estimated cost for cleaning is approximately $21,000 annually. *Currently the City does not provide this service.*

- o Mechanical Systems – These include electrical, plumbing, HVAC, and the new elevator, including all support exterior mechanical equipment. The Historical Society's design team will select these systems specific to the museum use in the building. The tenant will be responsible for day to day and ongoing operations and maintenance of all mechanical systems. Staff further recommends that if any of the equipment chosen by the tenant is materially different than a typical system used by the City, that the Historical Society would pay this incremental cost upon long-term replacement. *Currently the City provides repair services and minimal routine maintenance (ie changing furnace filters). This is done with existing budget.*

City Responsible:

- o Structural Maintenance – the City will be responsible for all structural maintenance of the building, including the roof, foundation, structural members, and exterior wall surfaces. *This service is currently done with existing budget.*

- o Long term Replacement Costs – The City's Asset Management Program will be increased to cover the cost of replacing any applicable infrastructure added due to the expansion.

The City's Building Maintenance Department estimates the total of these 4 O&M items at an approximate total cost of $5/sf. For a 12,655 sf building that cost would be $63,275. Should the Council provide direction for the City to assume either the cleaning or operational maintenance costs, direction would be needed to increase the Building Maintenance budget appropriately.

- <u>Restrooms</u>: The expansion will remove the existing public restrooms at the rear of the building. The City added language to the lease requiring the museum to provide clear and unobstructed public access to the new restrooms during operating hours and provide ADA access through the main entrance during operating hours. The Historical Society would be responsible for all maintenance and paper products. *The City currently is currently responsible for cleaning the restrooms, which costs just under $3,000 annually.*

  This has provided difficulty relating back to insurance. The Historical Society has not agreed to provide maintenance for the restrooms because: 1) They feel they lack the ability to monitor and control the restrooms because they have public access; 2) They feel from an economies of scale standpoint, it will be easier and cheaper to have the City extend it's current contract for restroom maintenance to include this facility.

  Further discussion may be warranted as to whether this is a full "public" restroom or not. If it is “public” and has external access separate from the musuem, maintenance and insurance should likely be provided by the City. If it is public, an ADA lift would have to be re-introduced into the expansion plans. The current design recognizes direction to not include the lift because of the ongoing maintenance headache and the intrusion on the historic façade – and was based on an understanding from Council that the Historical Society had agreed to provide maintenance. **Staff seeks additional discussion on this item.**

New Items

- Construction Lay Down Yard

The Historical Society has asked to use additional City property for their construction staging. This includes the 10 spaces immediately to the east of the expansion area and the 24 spaces in the Historic Wall Lot (immediately north and contiguous to the Shell Space construction area). Agreeing to this would remove all surface parking in Swede Alley. The anticipated duration of construction is approximately 15 months. **Staff recommends Council consider this request favorably.**

- Parking Revenue

The Parking Department charges a full day parking rate anytime a parking space is taken out of available inventory. In Swede Alley, the rate is $9/day. The Historical Society has requested a waiver from this fee. The City Manager has the ability to grant this request. However, due to the magnitude of the request, ($9 x 34 spaces = $306/ day, or $137,700 of forgone revenue over 15 months), **staff seeks direction**. It has been our recommendation in the past, when addressing non-profits to waive 50% of the entire request (Silly Market). This request should be considered understanding there are a number of major for-profit projects currently in the pipeline in and around the downtown core.

- Conduit Financing

The Historical Society has had discussions with staff regarding co-signing on a letter of credit and participating in conduit financing. Per City Policy (Exhibit D), the City would not be able to guarantee the letter of credit from the Historical Society. This is consistent with the USSA request. **Staff recommends Council consider the conduit financing, but not guarantee the letter of credit consistent with Council-adopted criteria.**

Significant Impacts

The proposed lease for 99 years binds future Councils in leasing the building to the Historical Society. This would prevent future municipal use of the building until the lease expired or until the Historical Society terminated the lease.

The Lease of the building would prevent the City from collecting market rate rents on the existing museum space or other spaces; including the expansion onto City-owned property that would be vacated upon recordation of the subdivision plat. The City will also continue to assume expenses for long-term replacement, structural and exterior maintenance, snow removal, and insurance.

Consequences of not taking the recommended action:

The Historical Society may need to relocate the museum and abandon their expansion plans, which could mean that the museum would no longer be located on Main Street.

Department Review:
Legal, City Manager, Sustainability, Budget, and Building Maintenance comments are incorporated into this report.

Alternatives:

A. Consider the request Favorably:
Provide direction to finalize lease terms to allow the Historical Society to expand into City-owned property. <u>This is staff's recommendation.</u>

B. Modify the Request:
Provide direction to change general lease terms

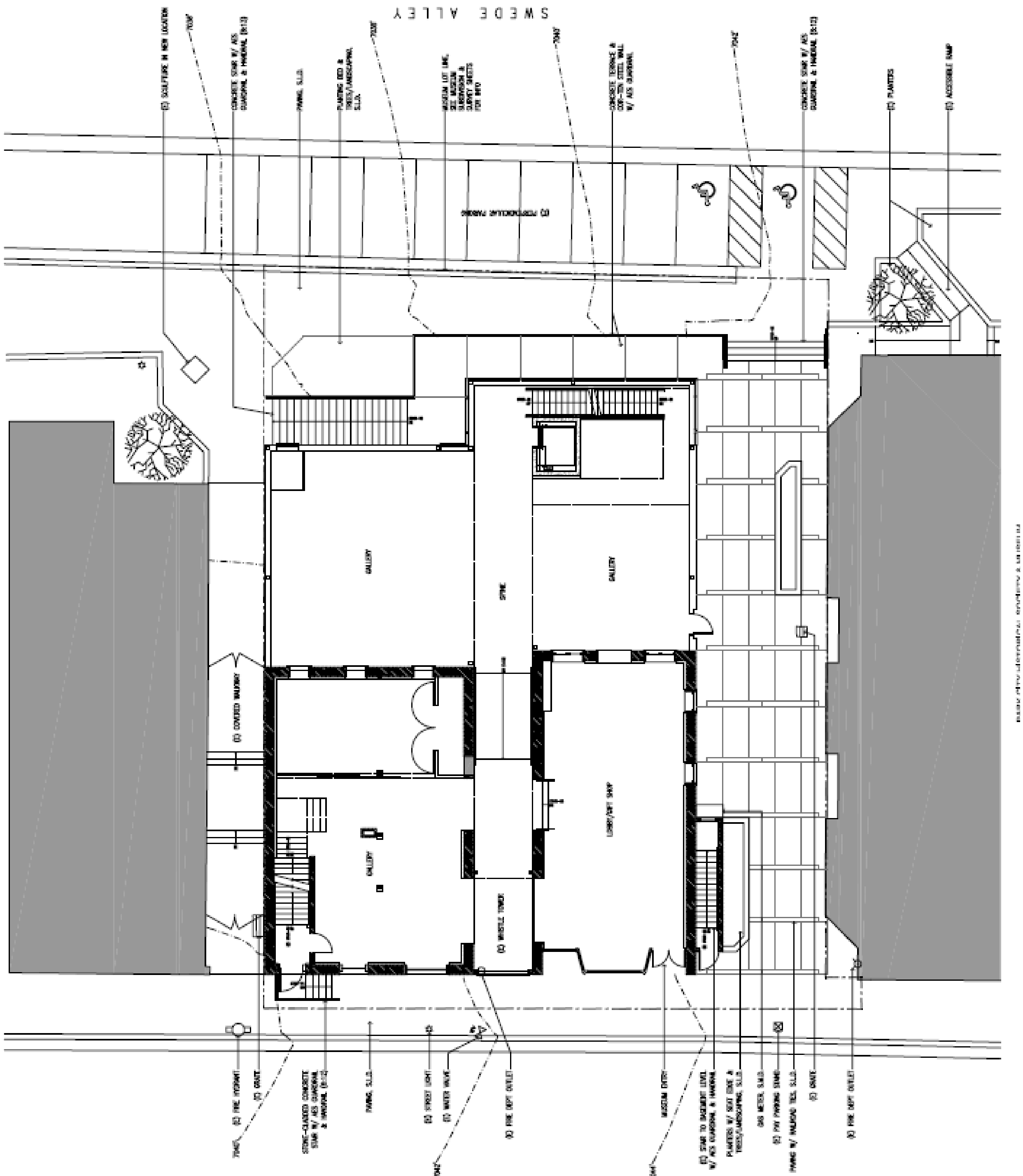
C. Deny the Request:
Do not permit the Historical Society to expand into City owned land.

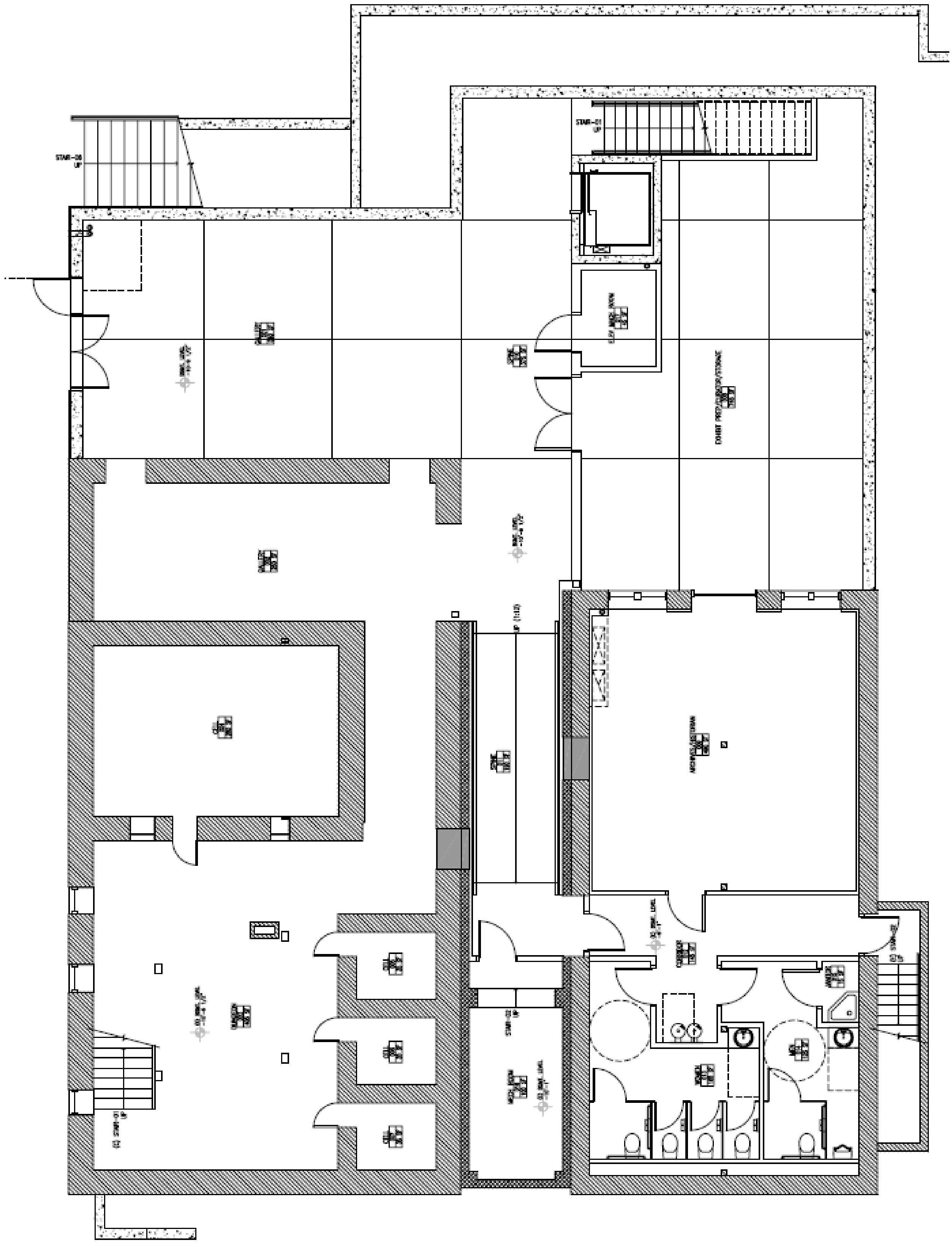
D. Continue the Item:
The City Council may continue the item for more information and discussion.

Recommendation: Review the lease with the Park City Historical Society for space within the existing Old City Hall Building and proposed new addition located at 528 Main. Provide specific direction on terms so a lease can be agendized for Council action at a subsequent meeting.

Exhibits
Exhibit A - Expansion Plans (color elevations to be submitted at the meeting).
Exhibit B – June 1, 2007 memo to Historical Society
Exhibit C – July 9, 2007 email
Exhibit D – Conduit Financing policy
Exhibit E – Original 99 year lease
Exhibit F - Lease addendums I, II, III

Exhibit A
Expansion Plans

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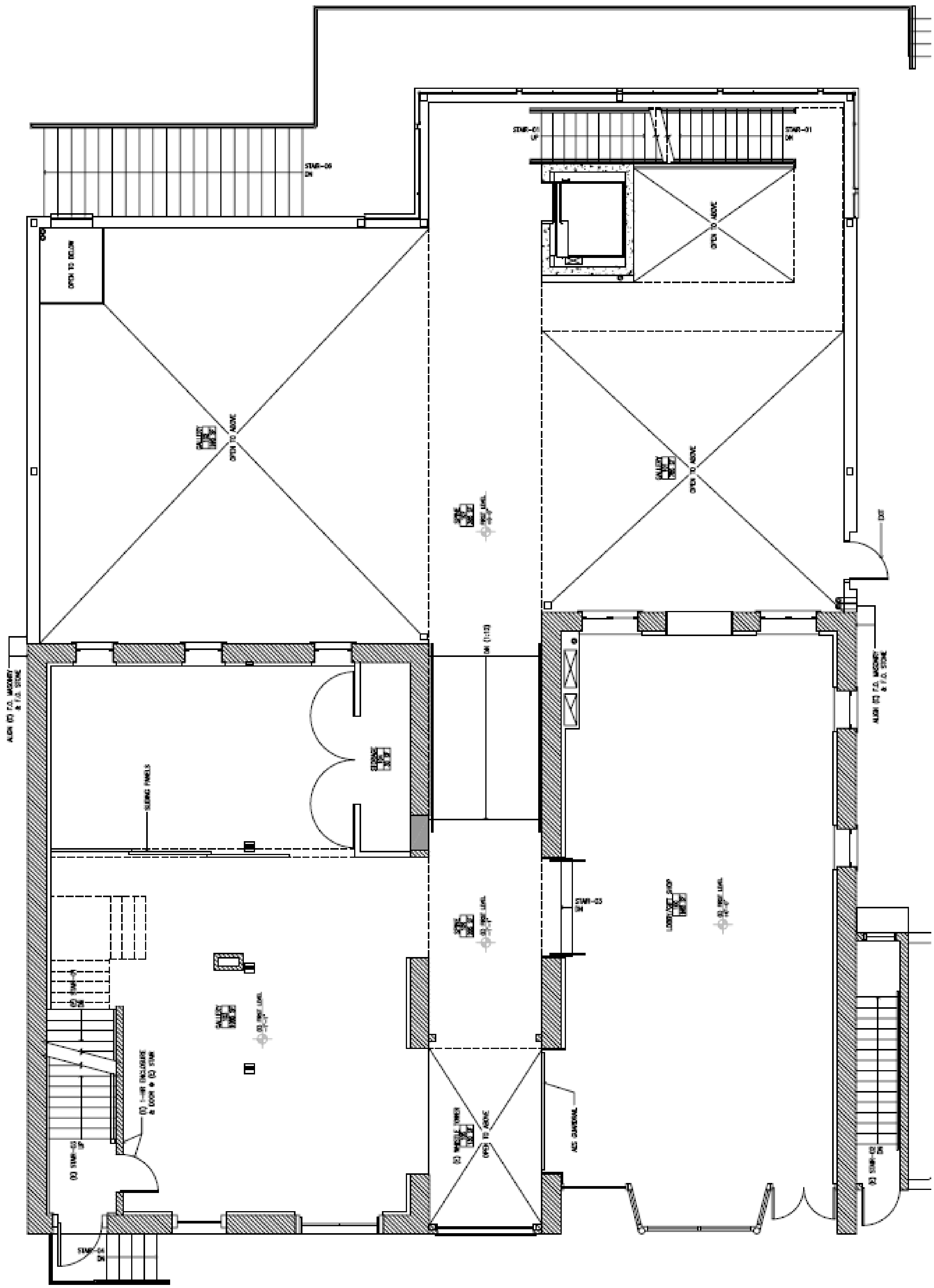
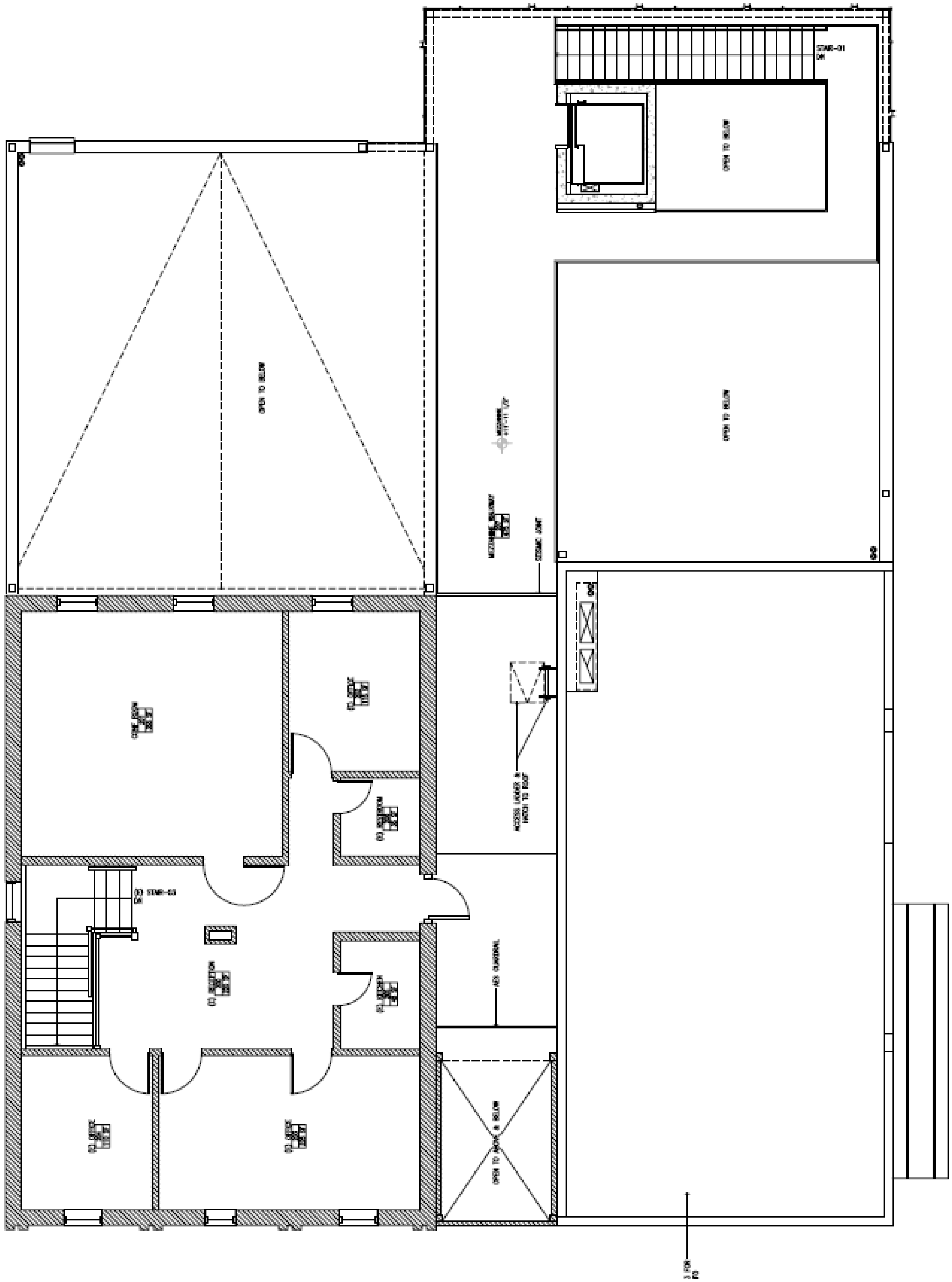
STAIR-01
UP

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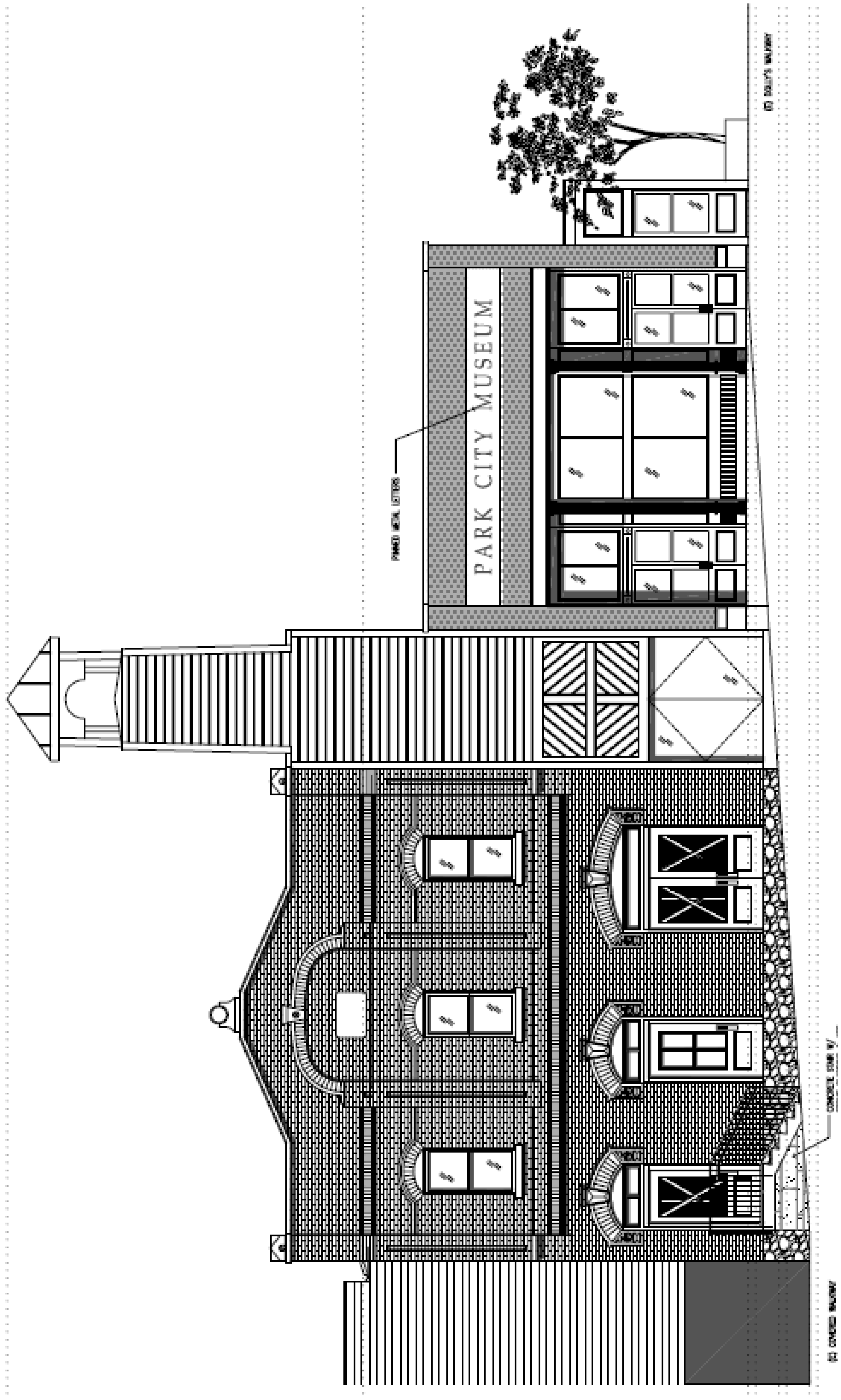
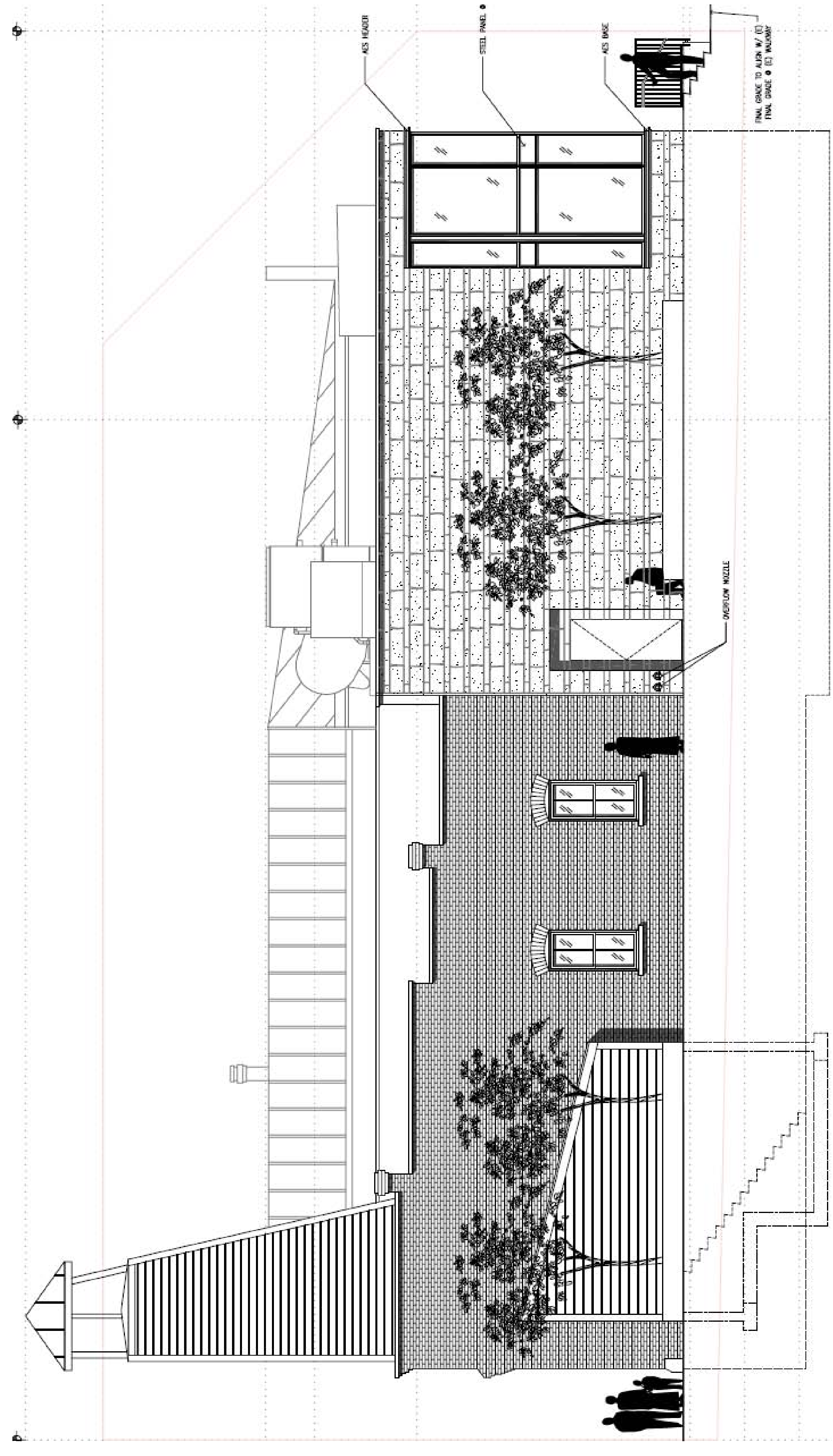
ACCESS LADDER & HATCH TO ROOF


PARK CITY MUSEUM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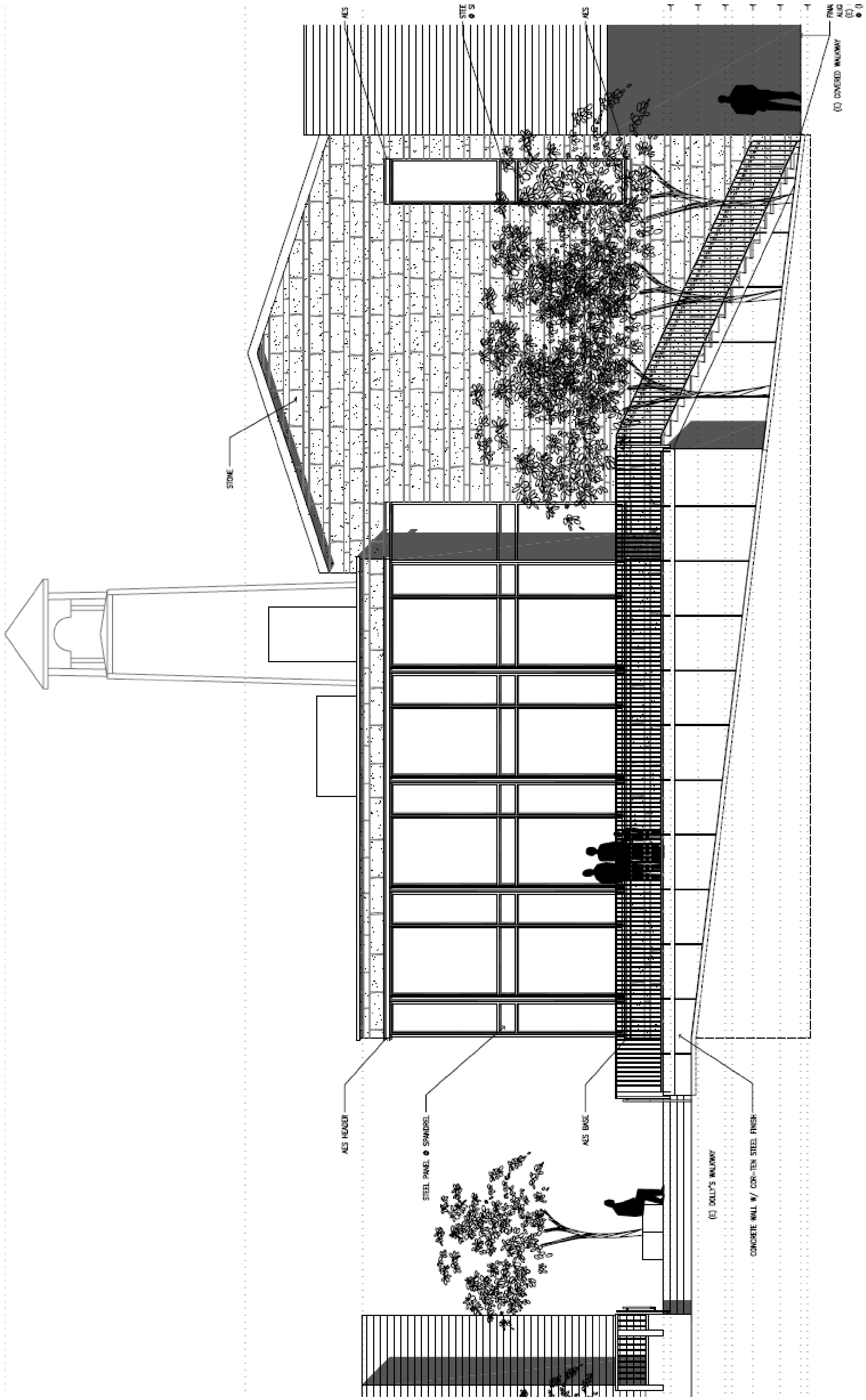
STEEL PANEL @
AES BASE
OVERFLOW NOZZLE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STONE
AES HEADER
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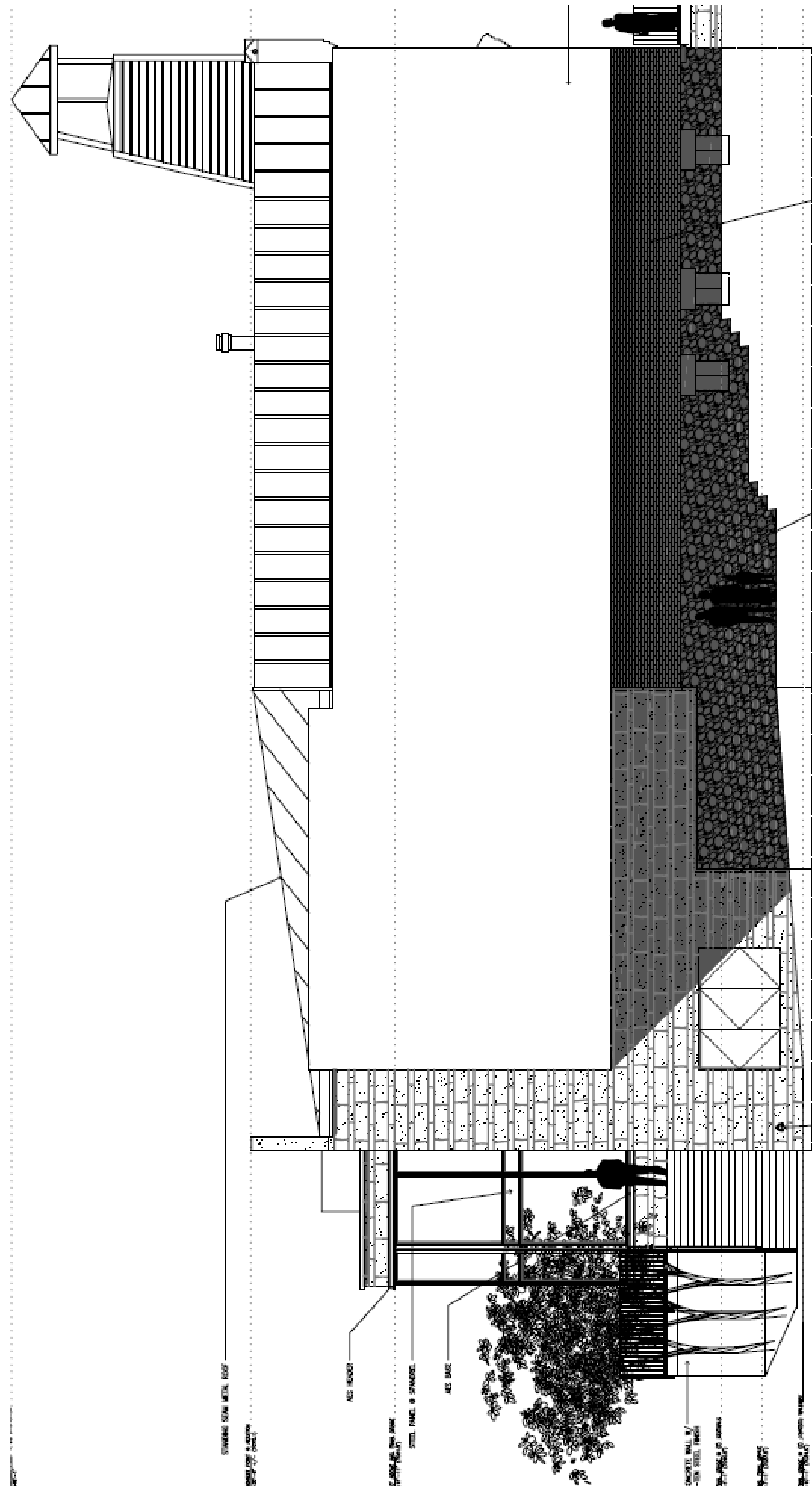
AES BASE
(E) DOLLY'S WALKWAY
CONCRETE WALL W/ COR-TEN STEEL FINISH
(E) COVERED WALKWAY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(E) STONE
OVERFLOW NOZZLE
STANDING SEAM METAL ROOF
AES HEADER
STEEL PANEL @ SPANDREL
AES BASE

Exhibit B
June 1, 2007 Memo

To: Historical Society
From: Jonathan Weidenhamer
Re: Museum Lease Terms
Date: May 31, 2007

The City Council has provided direction on the following lease terms for the museum expansion. This list is not intended to be inclusive of all lease terms, but staff has highlighted some of the major issues:

- <u>Rent</u> - Rate of $1 annually for the entire space, provided the Historical Society continues to provide the following public benefits, included but not limited to:
    - Information & Exhibits on Park City's history;
    - Preserve Park City historic artifacts;
    - Educational programs; and
    - Consistency with Council's economic development and cultural tourism goals

- <u>Utilities</u>

The Historical Society, as of January 1, 2008, shall be responsible for all utilities including light and heating of the space.

- <u>Maintenance</u>
    - Cleaning – The Historical Society shall be responsible for all "tenant improvement" type items including, but not limited to day to day cleaning, interior painting, carpet cleaning, light bulb changing, drywall repairs, etc.
    - Structural Maintenance – The City shall continue to be responsible for all structural maintenance of the building, including the roof, foundation, structural members, and exterior wall surfaces.
    - Snow Removal & Landscaping – The city shall continue to do the exterior snow removal and exterior landscaping
    - Long term Replacement Costs – The City's Asset Management Program shall be increased to cover the cost of replacing any applicable infrastructure added due to the expansion (roof, furnace, structural members)
    - Mechanical Systems – These include electrical, plumbing, HVAC, and the new elevator, including all support exterior mechanical equipment. The Historical Society's design team will select these systems specific to the museum use in the building. The Historical Society shall be responsible for day to day and ongoing operations and maintenance of all mechanical

systems. If any of the replacement equipment chosen by the tenant is materially different than a typical system used by the City, that the Historical Society shall pay this incremental cost.

- VIS – ensure space is kept for the Chamber's Visitor Information Service

- Restrooms – The Historical Society shall provide public restrooms, accessible 24/7. The Council requests that the Historical Society investigate locations to relocate the restrooms. Council would prefer them to be located within the new addition at grade level of either Main Street (walkway) or Swede Alley.

Exhibit C
July 9, 2007 email

Sandra,
Please find my responses to your questions:

1. DABC - They are currently month to month and we would need at least 61+ days notice to terminate their lease. Obviously we don't want to relocate them unnecessarily. We will all have to continue to monitor this closely. It is important that all correspondence with the DABC comes from the City.

2. Restrooms - Based on Council input regarding the lease terms and restrooms, the current draft lease requires the HS to provide all maintenance and paper products for the restrooms - as we have discussed, by not requiring 24/7 public access, the HS would then have to provide maintenance.

The restroom maintenance will be addressed in the draft lease in the staff report for the 12th. I will send you a copy upon publication this afternoon.

jonathan
615-5069

Exhibit D
Conduit Financing Recommended Guidelines

Staff recommends that the following questions be considered when deciding to participate in a conduit bond issuance:

1) What is the purpose of the conduit financing?
   - Does the proposed project comply with Council's goals and objectives?
   - Does it serve a purpose in the interest of Park City and its residents?
   - Is the proposing entity a qualified 501(c)(3)?
   - Is the project qualified for tax-exempt financing?
2) Is the borrower credit worthy?
   - Have we reviewed available credit information?
   - Is there a financial institution willing to provide a guarantee in the form of a letter of credit?
   - Does the borrowing entity have a history of sound financial practice?
   - Does the borrowing entity have a reasonable plan for financing the repayment of bonds?
3) How would this issuance impact Park City's ability to issue debt?
   - Would this issuance push Park City over bank qualification thresholds for the calendar year?
   - Does Park City expect to issue any more bonds in the year for which bank qualification would be a factor?

To solidify and formalize these evaluation criteria, staff recommends the following administrative policy guidelines--

The City may consider issuing conduit financing on behalf of a qualified 501(c)(3) when:

1. The organization is well-established and has a history of corporate management that reflects sound fiscal management;
2. The organization obtains a letter of credit from a respected financial institution guaranteeing the transaction;
3. The purpose of the request is an IRS "qualified use" that is consistent with the City's general plan and/or stated Council goals;
4. The City's bond rating, credit, and bank qualification is not adversely impacted; and
5. Prior to retaining bond counsel and bond issuance, the organization executes an agreement with the City to
   a) be responsible for accuracy of preliminary official statement, and all issuance costs as well as any City costs resulting form an IRS compliance audit or enforcement during the life of the bonds;
   b) establish future procedures to avoid post-issuance violations;
   c) agree to required record retention and continuing disclosure requirements; and
   d) provide notice of any change or default in the Letter of credit from the financial institution guaranteeing the bonds (if applicable).

Exhibit E

Original 99 year lease

THIS AGREEMENT is made by and between Park City Municipal Corporation, a municipal corporation and political subdivision of the state of Utah (hereinafter referred to as “Landlord”) and The Park City Historical Society, Inc., a Utah non-profit corporation hereinafter referred to as “Tenant”) to set forth the terms and conditions under which Park City will lease space at 528 Main Street.

WITNESSETH:

WHEREAS, the Historical Society benefits the residents and guests of Park City by providing information on Park City’s history; Exhibitions of Park City history; Preservation of Park City historic artifacts; and Educational programs; and

WHEREAS, The Historical Society requires a long term lease to assist with fundraising to expand their services; and

WHEREAS, the City Council has identified Cultural Tourism as an important economic development goal, which the Historical Society meets; and

WHEREAS, the City desires to allow the Historical Society to continue their operations at 528 Main Street; and

WHEREAS, the City Council evaluated and approved the 99 year lease for the space at 528 Main Street.

WHEREAS, the Historic District Act, U.C.A. 17A-3-1301 et seq., authorizes the City to expend public funds for the purpose of preserving, protecting or enhancing historic areas and sites; and

WHEREAS, the Old City Hall Building is a historic building within the Historic District, and the City Council hereby finds that this agreement is critical to the successful utilization and preservation of this building, as well as all historic areas and sites within Park City, by generally facilitating and supporting historic preservation and collections relating to these areas and sites;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein set forth, the sufficiency of which is hereby acknowledged, that parties agree as follows:

1. <u>Property</u>. The property leased is located in the Old City Hall Building having a street address of 528 Main Street, Park City, Utah. The leased premises consists of the basement, first floor, and one office area on the upper floor as more specifically depicted on the floor plans attached hereto and incorporated herein as Exhibit A. An additional area is leased in the Library and Education Center having a street address of 1255 Park Avenue, Park City, Utah. The lease premises consist of Room 220 in the Library.

2. <u>Term</u>. The Lease term, for space in the Old City Hall Building, shall be for 99 years beginning September 1, 2003, and continuing until August 31, 2102 unless sooner terminated under the provisions of this Agreement or by joint agreement of the parties. If the Special Service Contract, which outlines fundraising, program and exhibit goals, is

terminated pursuant to the terms of the Special Service Contract Policy in the Park City Municipal Corporation Annual Budget, Policies and Objectives - General Budget Policies, the lease shall be terminated ten (10) years from the date the Special Service Contract is terminated.

The Lease term for Room 220 in the Library shall be for 10 years beginning September 1, 2003 and continuing until August 31, 2013 unless sooner terminated under the provisions of this agreement or by joint agreement of the parties.

3. Rent. The rent for the space shall be Seventeen Thousand Nine Hundred and Nineteen Dollars per year for the space, together with the observance of the other covenants and conditions of the lease and the Special Service Contract between the parties dated 9/1/03. Payment of the rental fees may be waived subject to the annual approval of a Special Service Contract by the City Council of Park City. The Special Service Contract only approved forgone rent for the space, no capital improvement costs will be contributed for use of the space.

   If the Special Service Contract, which outlines fundraising, program and exhibit goals, is terminated pursuant to the terms of the Special Service Contract Policy in the Park City Municipal Corporation Annual Budget, Policies and Objectives- General Budget Policies, the rent shall be due and payable in twelve (12) monthly installments based on the annual rental fee of $17,919. The annual rent for the space shall increase 3% on July 1st of each year with the increase beginning on July 1, 2004. Rent payments shall be due by the first of the month.

4. Acquisition of Additional Building Space. If stated fundraising goals, as stated in Attachment B of the Special Service Contract, are met, additional space within the building at 528 Main Street will first be offered to Tenant at the time it becomes available for lease. If necessary to facilitate a relocation, the landlord may offer a lease extension to the existing tenant in the office space upstairs (Strachan) at the expiration of the existing lease for a period not to exceed fifteen (15) months. Additional space and rent will be added to the lease through an addendum and the terms of the Special Service Contract shall be amended at the time an addendum is approved.

5. Tenant Improvements. The Tenant agrees to install, at its own expense, all specialized equipment and displays needed for the operation of its museum and future exhibitions, offices and other facilities it may require. This includes any additional partitioning, specialized or additional electrical and mechanical equipment, air conditioning, internal heating, and any other tenant improvements that are necessary for the Tenant's intended use of the space. Any tenant improvement items that can be removed at the end of the lease without causing substantial damage to the remaining walls, ceilings, or other finishes may be removed by the Tenant at the termination or expiration of the lease. All work done by the Tenant must comply with the applicable building codes, and more particularly with the Historic District Guidelines for this structure.

6. Utility Service. Landlord shall be responsible for light and heating of the space, as those services are tied into the central mechanical system of the building. Landlord will also provide water and sewer service for the leased space. Tenant will be responsible for any other utilities such as telephone and cable television and shall establish an account with each of these utilities in its own name. As of January 1, 2008, the Tenant shall be responsible for all utilities including light and heating of the space.

7. Insurance. The Landlord will carry insurance on the structure for casualty loss, and public

liability that provides insurance against claims of persons injured in or about the building in amounts in excess of those required by state law. The Landlord policies will only extend to contents of Tenant's space, which is owned by the Tenant and/or the museum, and not to "loaned" exhibits of property, unless prior specific approval in writing is obtained from the Landlord and the property is itemized on the Landlord's policies. The Tenant shall require fully executed Release of Liability and Waivers or written acknowledgments by the owners that the Landlord and the museum do not insure the loaned property prior to including any borrowed or loaned property in the museum displays. In the event that it is determined by the museum and the Landlord that a display is of such value to the citizens of Park City that the loaned display should be insured by the Landlord's content policy, then the museum must obtain an accurate appraisal of the property value prior to the Landlord obtaining any coverage. The Tenant will not store or keep any product or equipment within the space that will, because of its nature, increase the risk of casualty losses to the overall building, or that will require additional premiums or specialty coverage. Landlord's insurance coverage on the contents of Tenant's space owned by Tenant and/or the museum is based on the most recent appraisal provided to the City by Tenant. Tenant is responsible to provide updated content appraisals to the City as necessary, and is solely liable for any loss and/or damage to contents beyond the limits of the City's insurance coverage of said contents.

8. <u>Contribution</u>. In making this lease, the Landlord is recognizing the unique community contribution of the Historical Society to Park City. This lease, subject to the Special Service Contract between the parties dated 9/1/03, as amended or renewed, is a form of grant in aid to Tenant, in lieu of cash donations from the Landlord. The parties acknowledge and agree that the City, through the Special Service Contract, makes a contribution to the Historical Society of leased space. It is the desire of the City Council to continue to support the Historical Society with such contributions of space, utilities, and insurance.

9. <u>Covenant of Quiet Possession</u>. Landlord covenants with Tenant that Landlord owns or controls the Premises and that 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.

10. <u>Maintenance</u>. The Landlord shall be responsible for all structural maintenance of the Premises, including the roof, foundation, structural members, and exterior wall surfaces. Landlord shall be responsible for mechanical systems, which serve space as reasonably necessary to maintain the structure and to service common utility facilities. Exterior maintenance of the site and snow removal shall be Landlord's responsibility.

11. <u>Assignment/Sublease</u>. Unless approved in the sole discretion of Landlord, Tenant has no right to sublet or assign all or any portion of the leased space for any purpose whatsoever, including subleases or assignments to other non-profit organizations, or assignments for the benefit of creditors. Any attempt to sublet or assign shall cause this lease to immediately terminate. Tenant may hold private parties or otherwise charge for exclusive use of the leased space for such activities as filming, educational and fundraising so long as such rentals do not exceed twenty-four (24) hours, unless approved by the Landlord. If such rental occurs during a Master Festival, Tenant may only rent to the Master Festival License holder or its sponsors, unless approved by the Landlord in its sole discretion.

12. <u>Force Majeure</u>. This lease agreement shall automatically terminate upon any holding, interpretation, or determination by a Court, legislative, or administrative body, that bonds issued by Park City Corporation or the Municipal Building Authority will not qualify as tax exempt if the property is leased to a private entity or monies are received for so leasing, or that the MBA may not lease to a private entity, either under existing state and federal law regulation or future state and federal law regulation. In the event of termination pursuant to

this paragraph, Tenant shall have six (6) months to vacate the premises, and the Landlord may, at its option, either eliminate or reduce rent from the date of termination until the date of vacation of the premises so as to not endanger its tax exempt status.

13. Tax Exempt Status. Tenant is a non-profit corporation under the Internal Revenue Code, and the subsidy by the Landlord is made only as long as the non-profit, tax-exempt status remains. In the event Tenant loses it tax-exempt status, the Landlord shall have the option of terminating the lease, or increasing the rental to the fair market value of the space occupied by Tenant on the date that the tax exemption was revoked. Tenant will provide its annual report and, upon request, audit to the Landlord each year.

14. Increased Insurance Risk. Tenant will not permit said premises to be used for any purpose which would render the fire insurance on the building or the premises void or cause cancellation thereof or increase the insurance risk or increase the insurance premium in effect at the time of the terms of this Lease. Tenant will not keep, use or sell, or allow to be kept, used or sold in or about the Premises any article or materials which are prohibited by law or by standard fire insurance policies of the kind customarily in force with respect to the Premises of the same general type as those covered by this Agreement.

15. Care and Repair of Premises by Tenant. Tenant will inspect and accept the Premises for the purposes of this agreement prior to taking occupancy. Tenant will not commit any waste on 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. Tenant may, with the prior written consent of the Landlord, but at its own cost and expense, in a good workmanlike manner, make such alterations and repairs to the leased space as Tenant may require for the conduct of its business. If the Tenant, with the prior written consent of the Landlord, plans to materially alter the basic character of the building the Tenant must comply with all City codes. Any permanent alterations or improvements to the Premises shall become the property of the Landlord upon expiration or termination of this Lease unless specifically exempted in writing prior to commencing work.

16. Damage or Destruction. If the Premises or any part thereof shall be damaged or destroyed by fire or other casualty, Landlord shall promptly repair all such damage and restore the premises without expense to the Tenant subject to delays due to adjustment in insurance claims, strikes and other causes beyond the Landlord’s control. If such damage or destruction shall render the Premises uninhabitable in whole or in part, the rent shall be abated wholly or proportionately until the damage shall be repaired and the premises restored. If the damage or destruction shall be of which may require removal of Tenant’s operations from the Premises, either Landlord or Tenant may elect to terminate this lease by written notice to the other within thirty (30) days after the occurrence of such damage or destruction.

17. Surrender of Premise. Tenant agrees to surrender the 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. Ordinary wear, tear and damage by the elements or other acts of God excepted.

18. Indemnity. Tenant covenants and agrees to indemnify and hold Landlord harmless from all claims, loss damage, injury or liability (hereafter "liability") resulting from Tenant's use and occupancy of the leased premises to the full extent provided in the Utah Governmental Immunity Act, including reasonable attorney's fees, but excluding any liability resulting from acts or omissions of Landlord, its officers, employees or agents. Nothing herein shall be construed as a waiver of any of the rights or defenses under the Utah Governmental

Immunity Act (Utah Code Ann. ' 63-30-1, et seq.). The obligations hereunder shall be determined under principles of tort law including, but not limited to, the Governmental Immunity Act.

Landlord will indemnify and hold Tenant and its employees harmless to the full extent provided in the Utah Governmental Immunity Act, and limited by Paragraph 15 of this lease, from claims, loss, damage, injury, or liability resulting from Landlord's use and occupancy of the leased premises or from the conduct of City's operations; including, but not limited to, Landlord's negligence or intentional acts. Nothing herein shall be construed as a waiver of any of the rights or defenses under the Utah Governmental Immunity Act (Utah Code Ann. ' 63-30-1, et seq.)

19. Default/Termination. If the Landlord determines that Tenant is in default of the observance of any of the covenants of this Agreement or other significant cause determined by City Council, it shall give Tenant notice of the alleged default, and a reasonable period of time, not less than thirty (30) days nor more than sixty (60) days, in which to cure the default. If Tenant fails to cure the default, this lease shall terminate. Tenant will immediately become a Tenant at will of the Landlord, and the Landlord may demand possession of the space upon ten (10) days written notice, or, at the Landlord's option, the Landlord may increase the rental to the fair market value of the space until Tenant has vacated it, and state a date certain by which the space must be vacated.

20. 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.

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

22. 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.

23. Notice Provision. In recognition of the time it takes to move the museum and exhibits, the Landlord will give the Historical Society six (6) months notice of its intention to renew or not renew the lease at the expiration of its term. There is no option for renewal created by this lease, but as soon as the Landlord is reasonably able to determine that the Tenant space is no longer surplus to Landlord needs, it will give notice to Tenant that no future extension will be granted or offered, or that the terms of any future agreement will be substantially changed.

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

DATED this 11th day of September 2003.

PARK CITY MUNICIPAL CORPORATION

____
Tom Bakaly, City Manager

Attest:

____
City Recorder

Approved as to Form:

____
City Attorney's Office

THE PARK CITY HISTORICAL SOCIETY, INC.

____
Cindy Matsumoto, Board President

ACKNOWLEDGMENT

STATE OF UTAH)
: ss.
COUNTY OF SUMMIT)

On this ______ day of September, 2003, personally appeared before me Cindy Matsumoto, who being duly sworn, did say that she is the Board President for The Park City Historical Society, inc., and acknowledged to me that the preceding Agreement was signed on behalf of said corporation, and she acknowledged that the company did execute the same for its stated purpose.

____

Notary Public

Exhibit F
Lease addendums I, II, III

FIRST ADDENDUM TO PARK CITY MUNICIPAL CORPORATION AND PARK CITY HISTORICAL SOCIETY LEASE AGREEMENT

THIS FIRST ADDENDUM is made and entered into in duplicate this ____ day of April, 2005, by and between PARK CITY MUNICIPAL CORPORATION, a Utah municipal corporation and political subdivision of the State of Utah ("Landlord"), and PARK CITY HISTORICAL SOCIETY, ("Tenant") to amend the Lease Agreement executed by both Parties on September 11, 2003.

WITNESSETH:

WHEREAS, the parties entered into a long term Lease Agreement on September 11, 2003 (hereinafter "Original Agreement") for certain property located within the Old City Hall Building, 528 Main Street, Park City, Utah; and

WHEREAS, the parties desire to amend the Original Agreement to include additional leased space on the second floor of the same building,

NOW, THEREFORE, in consideration of the mutual promises made herein and other valuable consideration, the parties hereto now amend the Original Agreement as follows:

1. **<u>PROPERTY</u>**. The additional space leased is on the second floor of the Old City Hall, having a street address of 528 Main Street, Park City, Utah (hereinafter "Additional Space"). The Additional Space contains approximately 480 square feet of office area and 390 square feet of common area for a total of approximately eight hundred and seventy (870) gross square feet with access through the first floor and stairs.

2. **<u>TERM</u>**. The Lease term, for the Additional Space shall commence upon execution and shall run concurrently with the Term of the Original Agreement unless sooner terminated under the provisions of the Original Agreement or by joint agreement of the parties.

3. **<u>RENT</u>.** The base rent for the Additional Space shall be Two Thousand Four Hundred Seventeen Dollars ($2,417) per year. Rent payments shall be waived until July 1, 2005. Payment of the rental fees after July 1, 2005 may be waived subject to the annual approval of a Special Service Contract by the City Council of Park City. The annual rent for the space shall increase 3% on July 1st of each year with the increase beginning on July 1, 2006. Rent payments shall be due by the first of the month.

4. **<u>TENANT IMPROVEMENTS.</u>** The Tenant agrees to install, at its own expense, all specialized equipment and displays needed for the operation of its museum and future exhibitions, offices and other facilities it may require. This includes any additional partitioning, specialized or additional electrical and mechanical equipment, air conditioning, internal heating, and any other tenant improvements that are necessary for the Tenant's intended use of the space. Any tenant improvement items that can be removed at the end of the lease without causing substantial damage to the remaining walls, ceilings, or other finishes may be removed by the Tenant at the termination or expiration of the lease. All work done by the Tenant must comply with the applicable building codes, and more particularly with the Historic District Guidelines for this structure.

Tenant affirmatively represents that no permanent tenant improvements will be done. No written consent is given nor implied by the Landlord through the approval of this Addendum. The parties agree in good faith to execute an Addendum outlining terms under which permanent improvements may occur consistent with the content of the August 3, 2004 letter (Exhibit A) prior to any future Addendums which expand the lease area.

5. **OTHER TERMS**. All other terms and conditions of the Original Agreement shall continue to apply generally and specifically to the Additional Space.

6. **ENTIRE AGREEMENT**. This First Addendum is a written instrument pursuant to Paragraph 25 of the Original Agreement cannot be altered or amended except by written instrument, signed by both parties.

IN WITNESS WHEREOF the parties hereto have caused this First Addendum to be executed the day and year first herein above written.

PARK CITY MUNICIPAL CORPORATION

____
Dana Williams, Mayor

Attest:

____
Janet M. Scott, City Recorder

Approved as to form:

____
City Attorney's Office

PARK CITY HISTORICAL SOCIETY, INC.

____

Linda McReynolds, Board President

ACKNOWLEDGMENT

STATE OF UTAH)
: ss.
COUNTY OF SUMMIT)

On this ___ day of __________, 2005, personally appeared before me Linda McReynolds, who being duly sworn, did say that she is the Board President for the Park City Historical Society, Inc., and acknowledged to me that the preceding First Addendum was signed on behalf of said Park City Historical Society, Inc, and she acknowledged that the Park City Historical Society did execute the same for its stated purpose.

____
Notary Public

SECOND ADDENDUM TO PARK CITY MUNICIPAL CORPORATION AND PARK CITY HISTORICAL SOCIETY LEASE AGREEMENT

THIS SECOND ADDENDUM is made and entered into in duplicate this ____ day of July 2005, by and between PARK CITY MUNICIPAL CORPORATION, a Utah municipal corporation and political subdivision of the State of Utah ("Landlord"), and PARK CITY HISTORICAL SOCIETY, ("Tenant") to amend the Lease Agreement executed by both Parties on September 11, 2003.

WITNESSETH:

WHEREAS, the parties entered into a long term Lease Agreement on September 11, 2003 (hereinafter "Original Agreement") for certain property located within the Old City Hall Building, 528 Main Street, Park City, Utah; and

WHEREAS, the parties amended the Original Agreement through Lease Addendum #1 to include additional leased desire to amend the Original Agreement to include additional leased space located on the second floor of 528 Main Street; and

WHEREAS, the parties desire to amend the Original Agreement to include additional leased space located at 518 Main Street,

NOW, THEREFORE, in consideration of the mutual promises made herein and other valuable consideration, the parties hereto now amend the Original Agreement as follows:

1. **PROPERTY**. The additional space leased is located in the Old Park City Library Building, having a street address of 528 Main Street, Park City, Utah (hereinafter "Additional Space"). The Additional Space contains approximately 1,056 square feet. .

2. **TERM**. The Lease term, for the Additional Space shall commence upon execution and shall run concurrently with the Term of the Original Agreement unless sooner terminated under the provisions of the Original Agreement or by joint agreement of the parties.

4. **RENT.** The base rent for the Additional Space shall be Two Thousand Nine Hundred Thirty-Three Dollars and Seventy-Four Cents ($2,933.74) per year. Payment of the rental fees after July 1, 2005 may be waived subject to the annual approval of a Special Service Contract by the City Council of Park City. The annual rent for the space shall increase 3% on July 1st of each year with the increase beginning on July 1, 2006. Rent payments shall be due by the first of the month.

4. **OTHER TERMS**. All other terms and conditions of the Original Agreement shall continue to apply generally and specifically to the Additional Space.

6. **ENTIRE AGREEMENT**. This Second Addendum is a written instrument pursuant to Paragraph 25 of the Original Agreement cannot be altered or amended except by written instrument, signed by both parties.

IN WITNESS WHEREOF the parties hereto have caused this First Addendum to be executed the day and year first herein above written.

PARK CITY MUNICIPAL CORPORATION

____
Dana Williams, Mayor

Attest:

____
Janet M. Scott, City Recorder

Approved as to form:

____
City Attorney's Office

PARK CITY HISTORICAL SOCIETY, INC.

____
Linda McReynolds, Board President

ACKNOWLEDGMENT

STATE OF UTAH)
: ss.
COUNTY OF SUMMIT)

On this ___ day of __________, 2005, personally appeared before me Linda McReynolds, who being duly sworn, did say that she is the Board President for the Park City Historical Society, Inc., and acknowledged to me that the preceding First Addendum was signed on behalf of said Park City Historical Society, Inc, and she acknowledged that the Park City Historical Society did execute the same for its stated purpose.

____
Notary Public

THIRD ADDENDUM TO PARK CITY MUNICIPAL CORPORATION AND PARK CITY HISTORICAL SOCIETY LEASE AGREEMENT REGARDING TENANT IMPROVEMENTS

THIS THIRD ADDENDUM is made and entered into in duplicate this ____ day of July, 2005, by and between PARK CITY MUNICIPAL CORPORATION, a Utah municipal corporation and political subdivision of the State of Utah ("Landlord"), and PARK CITY HISTORICAL SOCIETY, ("Tenant") to amend the Lease Agreement executed by both Parties on September 11, 2003.

WITNESSETH:

WHEREAS, the parties entered into a long term Lease Agreement on September 11, 2003 (hereinafter "Original Agreement") for certain property located within the Old City Hall Building, 528 Main Street, Park City, Utah; and

WHEREAS, the parties amended the Original Agreement to include additional leased space located at 518 Main Street; and

WHEREAS, the parties desire to amend the Original Agreement to clarify requirements related to Tenant Improvements to leased property,

NOW, THEREFORE, in consideration of the mutual promises made herein and other valuable consideration, the parties hereto now amend the Original Agreement as follows:

1. **TENANT IMPROVEMENTS.**

A. Temporary Displays. The Tenant agrees to install, at its own expense, all specialized equipment and displays needed for the operation of its museum and future exhibitions, offices and other facilities it may require. This includes any additional partitioning, specialized or additional electrical and mechanical equipment, air conditioning, internal heating, and any other tenant improvements that are necessary for the Tenant's intended use of the space. Any tenant improvement items that can be removed at the end of the lease without causing substantial damage to the remaining walls, ceilings, or other finishes may be removed by the Tenant at the termination or expiration of the lease.

B. Permanent Improvements. All permanent improvements require the written consent of Landlord prior to Building Permit issuance. Such consent is solely at the discretion of Landlord and is not limited to code compliance issues. All work done by the Tenant must comply with the applicable building codes including but not limited to the Park City Land Management Code, International Building Code, applicable ADA requirements, and Historic District Guidelines. Tenant shall use a competitive and open selection process, although price need not be the sole determining factor. Tenant's contract shall use standard public contract protections including: payment and performance bonds, insurance, payment retention, liquidated damage and construction mitigation plans. Tenant shall grant Landlord participation on design/selection committees and use best efforts to coordinate construction with any pending adjacent city project. Any permanent alterations or improvements to the Premises shall become the property of the Landlord upon expiration or termination of this Lease unless specifically exempted in writing prior to commencing work.

2. **OTHER TERMS**. All other terms and conditions of the Original Agreement shall continue to apply generally and specifically to the Additional Space.

3. **ENTIRE AGREEMENT**. This Third Addendum is a written instrument pursuant to Paragraph 25 of the Original Agreement cannot be altered or amended except by written instrument, signed by both parties.

IN WITNESS WHEREOF the parties hereto have caused this First Addendum to be executed the day and year first herein above written.

PARK CITY MUNICIPAL CORPORATION

____
Dana Williams, Mayor

Attest:

____
Janet M. Scott, City Recorder

Approved as to form:

____
City Attorney's Office

PARK CITY HISTORICAL SOCIETY, INC.

____
Linda McReynolds, Board President

ACKNOWLEDGMENT

STATE OF UTAH)
: ss.
COUNTY OF SUMMIT)

On this ___ day of __________, 2005, personally appeared before me Linda McReynolds, who being duly sworn, did say that she is the Board President for the Park City Historical Society, Inc., and acknowledged to me that the preceding First Addendum was signed on behalf of said Park City Historical Society, Inc, and she acknowledged that the Park City Historical Society did execute the same for its stated purpose.______________________________
Notary Public