PARK CITY
1884

COUNCIL AGENDA REPORT

DATE: June 28, 1995
DEPARTMENT: Legal
AUTHOR: Anita Sheldon
TITLE: City Recorder
TYPE OF ITEM: Legislative

SUMMARY RECOMMENDATIONS: Pass and adopt an ordinance amending Section 3-1-16 of the Park City Municipal Code to clarify reporting of campaign expenses and to comply with new state disclosure law.

DESCRIPTION:

A. **Topic**: Ordinance amending Title 3, Section 1 of the Park City Municipal Code.

B. **Background**: In December, 1991, the City Council passed and adopted Ordinance 91-22, a portion of which dealt with campaign finance reporting, which is codified in the Park City Municipal Code as Section 3-1-16. That ordinance is not as clear or as comprehensive as it could be and deserves technical and substantive review prior to the 1995 campaign season. Additionally, last month, Council members expressed a desire to control or limit campaign spending and contributions. What follows is a suggestion for revisions to Municipal Code Section 3-1-16 and a discussion of policy options for limitations on campaign contributions and spending.

C. **Analysis**: In February, 1995 the legislature passed HB47 requiring third class cities (with populations in excess of 10,000) to adopt an ordinance establishing specific campaign finance disclosure requirements by August 1, 1995. While Park City is not regulated by the new legislation, and had already adopted a campaign finance disclosure ordinance, our ordinance does not meet what appear to be reasonable requirements of this new legislation. Under the statute, larger cities must define "contributions" and "expenditures" in their campaign disclosure laws. This seems to be a reasonable addition to our ordinance, especially in light of the controversy associated with in kind and anonymous campaign contributions during the last County election. Section 3-1-16 of the Park City Municipal Code requires a report of individual

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Phone (801) 645-5000 • FAX (801) 645-5078

campaign contributions of $100 or more. That standard is somewhat lower that the requirement in the state ethics code, and HB47, which require reporting of donations of $50 or more.

Additionally, during the 1993 campaign, it came to light that the multiple disclosure reports required by Section 3-1-16, seemed unnecessary and possibly redundant. It made more sense to file a campaign finance disclosure report before each election and a final report after the general election (or after the primary if the candidate is eliminated in the primary). Section 3-1-16 was also unclear on whether contributions of more than $50 should be reported or if $50 was the cut-off. Language has been added to clarify that the amount to be reported is **$50 or more**.

Finally, Council has directed staff to look into limiting campaign donations and expenditures. Limitations on campaign spending and contributions implicate the free speech protections of the First Amendment. As such, any restrictions imposed on this type of conduct are subject to "strict scrutiny," by the judiciary. The limitations will be upheld only if they prove to be narrowly tailored to serve a compelling state or local interest. In general, candidate expenditure limitations have consistently been struck down as violative of the First Amendment.

However, Council candidates could agree to abide by a spending limit, the ***moral*** obligation of which would be enforced in part by the effect of our new campaign finance disclosure rules, and in balance by the weight of public opinion. In the past, Council candidates disclosed that they spent up to $5500. Mayoral candidates spent up to $4000. These numbers may be a good start. However, any other number upon which the candidates will agree, would be reasonable. In setting a figure, Council should consider the fact that an incumbent's campaign to retain a seat may cost less than a challenger's campaign to obtain a seat.

Unlike spending limitations, campaign contribution limitations are somewhat easier to impose without First Amendment implications. However, the limitation must be imposed to serve a compelling government interest, and must be so narrowly tailored as to avoid chilling political speech. We will have some proposals for contribution limits for counsel to consider on Thursday. Staff is presently uncertain of the Councils' desire in this regard.

Something short of an actual campaign contribution limitation that nevertheless serves a very valid campaign reporting concern is a limit on cash contributions. Our ordinance could be amended to prohibit cash, but not check, contributions in excess of $50. Additional wording could be added to prohibit anonymous contributions and to provide consequences for accepting them.

Additional protection for pubic disclosure purposes is a requirement to pass all funds through a separate campaign account that is distinct from the candidate's personal bank account(s).

Attached is a suggested ordinance amending Section 3-1 to meet the above-expressed concerns. We have requested additional information from the Association of National Municipal Law Officers and Sandy City which has not arrived in time to include in this report. However, we will share with you any ideas that we glean from them at the meeting.

D. Department Review: Legal Department

ALTERNATIVES:

A. **Consider the matter and direct staff regarding policy concerns addressed above.** This is the recommended action. Staff would then draft the agreed policy and ordinance changes an schedule the matter for action on July 27.

B. **Direct staff to further draft an ordinance compelling campaign spending limitations**: The current recommendation is to address campaign spending limits by moral suasion. Council could direct staff to attempt to draft a legal mandate to limit campaign spending.

C. **Continue the Item**: The City Council could continue the public hearing on this matter to July 27th if you need more information.

D. **Direct staff to table the matter during this election season and address it later.**

E. **Do nothing.**

SIGNIFICANT IMPACTS: This ordinance would add a great deal more clarity to the campaign disclosure rules, would create an obligation to disclose in-kind contributions in the same manner as monetary contributions, and would address some, but not all, contribution and spending limitation issues.

CONSEQUENCES OF NOT TAKING THE RECOMMENDED ACTION: Less public disclosure of campaign finance information.

RECOMMENDATION: Consider and hold a public hearing on the draft ordinance amending Section 3-1-16 of the Municipal Code of Park City, Utah.

ORD. 95-___

AN ORDINANCE AMENDING SECTION 3-1-16 OF THE MUNICIPAL CODE OF PARK CITY, UTAH, TO CLARIFY REPORTING OF CAMPAIGN CONTRIBUTIONS AND EXPENDITURES AND TO SET GUIDELINES FOR CAMPAIGN EXPENDITURES

WHEREAS, the City Council enacted Ordinance 91-22 which included Section 3.1.16 Campaign Expenses to be Reported; and

WHEREAS, the ordinance would be well-served by technical amendments to clarify the Council's intent; and

WHEREAS, the Council has determined that increased campaign finance disclosure, at times relevant to the public's need for information about candidates for public office, is in the pubic interest; and

WHEREAS, the Council has further determined that guidelines for maximum campaign contributions and campaign expenditures are necessary to prevent the appearance of undue influence of candidates, or the election process, by any individual or special interest;

NOW, THEREFORE, BE IT ORDAINED AS FOLLOWS:

SECTION 1. The following definitions shall be added to Section 3-1-2 of the Municipal Code of Park City, Utah:

(A) **BUSINESS ENTITY** - any business, proprietorship, firm, partnership, person in representative or fiduciary capacity, association, venture, trust or corporation.

(B) CANDIDATE - any person who:

(1) Files a declaration of candidacy for an elected office of the City; or

(2) Received contributions or made expenditures or consents to another person receiving contributions or making expenditures with a view to bringing about such person's nomination or election to such office; or

(3) Causes on his behalf, any written material or advertisement to be printed, published, broadcast, distributed or disseminated which indicates an intention to seek such office.

(C) CONTRIBUTION - (1) any of the following, when done for political purposes:

(i) a gift, subscription, donation, unpaid or partially unpaid loan, advance, or deposit of money or anything of value to, or on behalf of, a candidate or a candidate's election committee.

(ii) an express, legally enforceable contract, promise, or agreement to make a gift, subscription, donation, loan, advance, or deposit of money or anything of value to or on behalf of a candidate or a candidate's election committee;

(iii) any transfer of funds from a political committee, a party committee, another candidate, an officeholder, or a campaign committee to a candidate or a candidate's election committee;

(iv) compensation paid by any person or committee other than the candidate or the candidate's election committee for personal services rendered for, but without charge to, the candidate or the candidate's election committee;

(v) compensation paid by any person or committee other than the candidate or the candidate's election committee for personal services rendered for, but without charge to, the candidate or the candidates election committee;

(vi) compensation paid by any person or committee other than an officeholder for personal services rendered for, but without charge to, the officeholder;

(vii) goods or services provided at less than fair market value to, or for the benefit of, a candidate or a candidate's election committee.

(2) "Contribution" does not include:

(i) services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or a candidate's election committee;

(ii) money lent to a candidate or a candidate's election committee, at market rate, in the ordinary course of business.

(D) EXPENDITURE:

(1) any disbursement from receipts or from the separate bank account required in Section ______

(2) a purchase, payment, donation distribution, loan, advance, deposit, gift of money, or anything of value made by or on behalf of a candidate (or the candidate's election committee) for political purposes;

(3) an express, legally enforceable contract, promise, or agreement to make any purchase, payment, donation, distribution, loan, advance, deposit, gift of money, or anything of value by or on behalf of a candidate (or the candidate's election committee) for political purposes;

(4) a transfer of funds between political or party committees and a candidate's election committee; or

(5) goods or services provided to or for the benefit of another candidate or another candidate's election committee for political purposes at less than fair market value.

(E) **INTEREST** - means direct or indirect pecuniary or material benefit accruing to a city officer or employee as a result of an official act or action by or with the City, except for such contracts or transactions which by their terms and by the substance of their provisions confer the opportunity and right to realize the accrual of similar benefits to all other persons and/or property similarly situated. For the purposes of this Chapter, a city officer or employee shall be deemed to have an interest in the affairs of:

(1) Any person related to him by blood or marriage in a degree closer than the fourth degree of consanguinity or affinity (determined by the civil law method), and a divorce or separation between spouses shall not be deemed to terminate any such relationship;

(2) Any person or business entity with whom a contractual relationship exists with the city officer or employee;

(3) Any business entity in which the city officer or employee is an officer, director, or member having a financial interest in, or employed by;

(4) Any business entity in which the stock of, or legal or beneficial ownership of, in excess of five percent (5%) of the total stock or total legal and beneficial ownership, is controlled or owned directly or indirectly by the city officer or employee.

(F) **OFFICIAL ACT OR ACTION** - any legislative, administrative, appointive or discretionary act of any officer or employee of the City or any agency, board, committee or commission thereof.

(G) POLITICAL PURPOSE - an act done with intent or in such a way as to influence or tend to influence, directly or indirectly, the election of a candidate or any issue on the ballot at a municipal election.

SECTION 2. The following is hereby added to Section 3.1 as Subsection 16 and the remaining section will be renumbered accordingly:

3.1.16. SEPARATE BANK ACCOUNT REQUIRED. Each candidate or candidate's election committee shall deposit any montary contribution received in one or more separate accounts in a financial institution that is/are dedicated only to that purpose. A Candidate or a candidate's election committe may not deposit or mingle any contributions received in a personal or business account.

SECTION 3. Section 3.1.16 of the Municipal Code of Park City, Utah, is hereby renumbered as Section 3.1.17 and amended as follows:

3- 1-17. CAMPAIGN EXPEN~~SES~~DITURES TO BE REPORTED. Every candidate running for the office of Mayor or City Council shall file ~~two~~ a sworn election campaign expenditure~~expense~~ statements~~, one to be filed with the city recorder within 15 calendar days preceding the date of the primary election, and one to be filed~~ with the city recorder ~~within 15 calendar~~no more than 15 nor less than eight days ~~after~~preceding the date of the primary election. Those candidates eliminated in the Primary Election must file a final sworn election campaign expenditure~~expense~~ statement within 15 days after the Primary Election.

Every candidate eligible for the office of Mayor or City Council in the general election shall file a~~two~~ sworn election campaign expenditure~~expense~~ statements~~, one to be filed with the city recorder within 15 calendar days preceding the date of the general municipal election, and one to be filed with the city recorder within 15~~no more than 15 nor less than eight calendar days ~~after~~preceding the date of the general municipal election.

All candidates in the General Election must file a final sworn election campaign expenditure statement within 15 days after the General Election.

The disclosure statements shall be submitted to the city recorder and shall be available to the public for review in the office of the city recorder. The sworn statements shall state election and campaign expenses, the names of persons making campaign contributions, and the carry-over total of the statement from the previous reporting period, as outlined below:

(A) A list of each contribution ~~in excess of One Hundred Dollars ($100)~~ of Fifty Dollars ($50.00) or more received by, or on behalf of, the candidate or his/her election~~designated campaign~~ committee, the name and address of each contributor, and the date on which each such contribution was received.

(B) An aggregate total of all contributions less than ~~of One Hundred Dollars ($100)or less~~ Fifty Dollars ($50.00) received by, or on behalf of, a candidate or his/her election~~designated campaign~~ committee.

(C) A list of expenditures made and obligations incurred as a part of the campaign effort, the name and address of every recipient to whom disbursement was made, and the purpose of the expenditure made or obligation incurred and the amount and date of payment. The disposition of any surplus moneys~~monies~~ shall also be reported.

SECTION 4. The following shall be added as Section 3-1-18 and the balance of Title 3, Section 1 shall be renumbered accordingly:

3- 1-18. CONTRIBUTIONS TO CANDIDATES - LIMITATIONS

(A) No person shall make cash contributions, the total of which exceeds fifty dollars, during any one reporting period as set forth in this Chapter, to any candidate or his or her authorized election campaign committee, or to any political committee with respect to any election for City office; *however, there shall be no limit as to the amount contributed by a person or entity to an election committee or candidate if that contribution is made in the form of a personal or certified check or bank draft.* **[Alternatively, "There shall be a contribution limit of $ _____ if the contribution is made in the form of in-kind services or personal or certified check or bank draft."]**

(B) The acceptance of anonymous contributions is prohibited. Any anonymous contributions received by a candidate or election committee shall be transmitted to the City Treasurer for deposit in the general fund.

3-1-19 SPENDING LIMITATIONS:

No Council candidate nor his/her election committee should feel compelled to make expenditures which total in excess of $_____ on a Council campaign, nor $_____ on a Mayoral campaign.

SECTION 5. This ordinance shall take effect upon its publication.

DATED this ___ day of _______________, 1995.

PARK CITY MUNICIPAL CORPORATION

____

BRADLEY A. OLCH, MAYOR

ATTEST:

PARK CITY
1884

COUNCIL AGENDA REPORT

DATE: 7/7/95
DEPARTMENT: **Legal**
AUTHOR: Mark Harrington
TITLE: Main Street Liquor Store Lease Renewal
TYPE OF ITEM: Administrative

SUMMARY RECOMMENDATIONS:

Hold a public hearing and determine whether it is in the City's best interest to continue to provide the basement level of the Old City Hall (528 Main) for one dollar-a-month to the Utah Department of Alcohol Beverage Control. If the City Council decides not to renew the lease, direct staff to explore other uses for the space.

DESCRIPTION:

A. Topic.

Renewal of the Main Street Liquor Store Lease.

B. Background.

In 1987, the City and the Utah Department of Alcohol Beverage Control ("ABC") entered into a seven-year Lease for the basement level of the Old City Hall. The Lease established a rental rate of one dollar-a-month. The Lease was the result of the **City's request** for a liquor store on Main Street. The ABC had been unable to locate a feasible site that it could afford, so the City offered the space essentially rent free. It was the City's desire at that time to assure a convenient outlet to its tourists and old town residents. Providing the space essentially rent free seemed to be the only way to achieve that goal. Staff recommends that you visit the store if you have never been in it.

The initial Lease term expired on October 31, 1994, and the City has been attempting to negotiate with the ABC since that time. The Lease gives the ABC the option to renew for another seven years, but at a rent rate negotiated between the parties. Pursuant to the terms of the Lease, the Lease continues on a month-to-month basis until renewed or either party gives **sixty days** written notice of termination. However, the ABC has indicated that they would only need thirty days to vacate.

Negotiations culminated at a ABC Commission ("Commission") meeting on June 23, 1995, at which the Commission informed staff that any increase in rent would result in the removal of the liquor store, but they would be willing to leave the store in place if the rent stays the same.

C. **Analysis**.

Staff told the Commission that the City's desire to raise the rent was primarily based on the following three factors that have arisen since 1987:

1) The rental rates for Main Street have increased dramatically. The Chamber Bureau estimates that current rates are $20-25 per square foot for retail space. Wyoming Woolens rents the first floor of the same building from the City and is proposing $22 per square foot for their renewal.

2) Surplus municipal space has become less available while subject to a higher demand. The City is continuously subject to requests from non-profit organizations for the use of surplus municipal space (See recent grant requests).

3) The Liquor Store has turned out to be surprisingly profitable for the ABC. Part of the justification for the one dollar rent was the expectation that the store would not do very well in that location. Last year's numbers show that the store had a gross profit of $393,764 and a net profit of $185,497. Although the volume of sales is admittedly low compared to the other Park City store, the net profit for transfer to sales is 22.5%, a fairly high profit rate for a store in Utah.

The Commission's reply was that while it is a nice surprise to have the store be so profitable, the bottom line is that without the rent-free offer in 1987, the ABC would not have chosen to locate a second store in Park City, and without the continued benefit of that arrangement- they cannot justify keeping the second store there now. The reasons are as follows:

1) The ABC can only have so many stores (one for every 48,000 residents) in the state and keeping the Main St. store deprives them of opening another store in an alternative, more desirable location. (They currently are one below the limit and are exploring possible suitable locations, including somewhere in the Snyderville Basin.)

2) Their budget is already final and there is no alternative revenue allocation to pay for the increase in rent.

3) The building does not meet their ADA nor delivery standards.

4) The building is un-expandable and has a very low volume of sales compared to other stores.

The Commission does not view the profitability of the store as a significant issue because they feel the Prospector store would account for any loss attributed to the Main Street store. The Commission further believes that the low sales volume implies that the need of the Main Street area could be met by a "package agency" which would operate in conjunction with another business.

Staff also feels that the Main Street area could be adequately served by a package agency. However, the problem is that, since you need a business that is willing to host the package agency, there is no guarantee that one will open despite the Commissions commitment to look favorably upon an application for such an operation.

D. Department Review.

The Legal and Administrative Departments have reviewed this matter.

ALTERNATIVES:

After the public hearing,

1. Direct staff to renew the Lease at one dollar-per-month.

2. Direct staff to deliver sixty days notice to vacate to the ABC and to explore alternative uses of the space.

SIGNIFICANT IMPACTS:

1. If the City renews the Lease, the City is essentially forfeiting $12,000 per year to $24,840 per year over the next five years. However, the City continues to assure convenient access to a liquor store outlet for its Main Street tourists and old town residents.

2. If the City terminates the Lease, it risks the further perception by tourists that it is hard to by alcohol in Utah and the decision probably will upset a number of Old Town residents. However, the City is free to rent the facility to another commercial entity or provide space to a non-profit organization. The City has received one such proposal from Gordon Strachan. Gordon currently rents the upstairs of the building for his law offices. The Historical Society uses a room on Gordon's floor without rent to the City. Gordon proposes to move the Historical Society downstairs to where the Liquor Store presently is located and increase his rent to augment the loss of some or all commercial rent resulting from the use of the basement by the Historical Society. Gordon also is proposing to do significant improvements to his floor in exchange for an extension of his lease term. Gordon recently offered this proposal as a possible alternative and the specifics have not yet been formally discussed at this time. If Council is receptive to this proposal it should direct staff accordingly.

CONSEQUENCES OF NOT TAKING THE RECOMMENDED ACTION:

If the City Council delays in making a decision, the ABC shall continue occupy the building on a month-to-month basis for one dollar-pr-month.

RECOMMENDATION:

Determine whether it is in the City's best interest to continue to provide the basement level of the Old City Hall (528 Main) for one dollar-a-month to the Utah Department of Alcohol Beverage Control, and direct staff accordingly.

PARK CITY
1884

COUNCIL AGENDA REPORT

DATE: July 5, 1995
DEPARTMENT: Public Affairs
AUTHOR: Myles C. Rademan, Director
TITLE: Olympic Parkway Entry Corridor Master Plan
ACTION: Resolution to Adopt with Suggested Modifications

SUMMARY RECOMMENDATION: Adopt the Olympic Parkway Entry Corridor Master Plan with modifications by council resolution.

DESCRIPTION:

A. Topic: Adoption of Olympic Parkway Entry Corridor Master Plan.

B. Background: A draft master plan was completed in late 1994 and distributed to the City Council and the Parks, Recreation and Beautification Advisory Board. The Parks, Recreation and Beautification Advisory Board held public meetings on the plan and forwarded a set of recommendations to the City Council on April 20, 1995. The Council then held public hearings on the plan and suggested certain modifications to the recommendations after hearing from the staff and the public.

C. Analysis: The suggested modifications to the master plan, based on the recommendations of the Parks, Recreation and Beautification Advisory Board, the staff and the public input are as follows:

1. **Future changes in the 'open space' character of the city-owned portion of the entry corridor shall be governed by the following procedure:**
No sale or substantial change in the 'open space' character of the city-owned properties included in this master plan, or changes in the intent of this master plan to protect open space, shall be undertaken without an affirmative vote of 4 out of 5 City Council members. This vote must further be affirmed by 60% of the voters voting in a locally scheduled special election within 180 days of the

Council's decision. Nothing in this provision shall affect bonds currently secured by the property or preclude or hinder the City using this property as security or collateral for future bonding.

2. **Trails:**

(a) the trail section (pages 16 - 24) will be removed and added to an appendix for greater clarity.

(b) to avoid unnecessary expense, trail location and usage will be determined after further consultation with the Army Corp of Engineers, the City's environmental consultants, the Parks, Recreation and Beautification Advisory Board, and the public.

3. **Winter Use:** in order to provide for the long-term provision of winter sports activities and amenities on the property, the city will prepare for open and competitive proposals a 'request for provision of services' beginning with the 1996-1997 season. The term of the contract will be for no more than five (5) years, with a three (3) year renewal option at the city's discretion. Nothing shall preclude the Council from determining that the City should directly provide the desired services.

4. **Capital Expenditures:** capital expenditures will be geared toward grant criteria and opportunities. The Parks, Recreation and Beautification Advisory Board recommended trails, security in the barn area, access road improvements, restrooms and parking as priorities. Every effort will be made to implement these priorities in a timely fashion.

5. **Pond:** a pond near the barn will only be constructed if it meets the following criteria: a) it aids in fire control; b) it serves a valid recreational need without negatively affecting the area in which it is located; and c) it does not negatively affect the fishery in the stream.

6. **Agricultural:** agricultural practices shall maintain the pastoral and visual appearance of the area and shall be conducted in an environmentally sound manner.

7. **Special Events:** special events will be limited so as not to interfere with the 'open space' character of the farm. The Parks, Recreation and Beautification Advisory Board's recommendation of only permitting summer events sponsored or co-sponsored by the City of not more than 50-100 people in the vicinity of the barn will be the guideline. Winter spectator activities in conjunction with cross-country ski racing and biathlon races are acceptable uses.

ALTERNATIVES:

A. Approve the Request: Approve the master plan with the above noted modifications suggested by the Parks, Recreation and Beautification Advisory Board, staff and public. If approved the text of the draft master plan will be amended to reflect these changes and will then become the adopted master plan.

B. Alter the Request: Make further modifications or alterations prior to adoption which will then be reflected in the final version of the master plan.

SIGNIFICANT IMPACTS: The Olympic Parkway Entryway Master Plan will provide a policy and management tool to guide the community in using and improving its entry corridor.

RECOMMENDATION. Approve the Master Plan as presented or with minor modifications. With Council approval staff will modify the draft report and publish a final report for use by advisory bodies, staff and the general public.

Resolution No. -95

RESOLUTION ADOPTING AN OLYMPIC PARKWAY (SR224) ENTRY CORRIDOR MASTER PLAN WITH MODIFICATIONS FOR PARK CITY, UTAH

WHEREAS, the Olympic Parkway (SR224) Entry Corridor is a critical feature of our community, as it provides visual open space, recreational opportunities and expresses a statement about the character of Park City, Utah to visitors and residents alike; and

WHEREAS, because of its importance, the City Council authorized that a Master Plan be developed, and a draft was completed in late 1994; and

WHEREAS, public hearings were conducted by the Parks, Recreation, and Beautification Advisory Board on February 8, 1995 and March 8, 1995; and the City Council held a public hearing on May 18, 1995 on the draft Master Plan; and

WHEREAS, the City Council finds it in the best interest of the community to modify the draft Olympic Parkway Entry Corridor Master Plan to incorporate the recommendations of the Parks, Recreation, and Beautification Advisory Board and public input;

NOW, THEREFORE, BE IT RESOLVED by the Mayor and the City Council as follows:

SECTION 1. OLYMPIC PARKWAY ENTRY CORRIDOR MASTER PLAN ADOPTED. Staff is hereby directed to modify the draft Olympic Parkway Entry Corridor Master Plan, as follows. The amended document is hereby adopted as the Olympic Parkway Entry Corridor Master Plan.

1. **Open Space**. Future changes in the "open space" character of the city-owned portion of the entry corridor shall be governed by the following procedure:

   No sale of substantial change in the "open space" character of the City-owned properties included in this Master Plan, or changes in the intent of this Master Plan to protect open space, shall be undertaken without an affirmative vote of four out of five City Council members. This vote must further be affirmed by 60% of the voters in a locally scheduled special election within 180 days of the Council's decision. Nothing i this provision shall affect bonds currently secured by the property or preclude or hinder the City using this property as security or collateral for future bonding.

2. **Trails.** The trail section (Pages 16-24) will be removed and added to an appendix for greater clarity. To avoid unnecessary expense, trail location and usage will be determined after further consultation with the Army Corp of Engineers, the City's environmental consultants, the Parks, Recreation, and Beautification Advisory Board, and the public.

3. **Winter Use.** In order to provide for the long-term provision of winter sports activities and amenities on the property, the City will prepare for open and competitive proposals a "request for provision of services" beginning with the 1996-97 season. The term of the contract will be for no more than five years, with a three year renewal option at the City's discretion. Nothing shall preclude the Council from determining that the City should directly provide the desired services.

4. **Capital Expenditures.** Capital expenditures will be geared toward grant criteria and opportunities. The Parks, Recreation, and Beautification Advisory Board recommended trails, security in the barn area, access road improvements, restrooms and parking as priorities. Every effort will be made to implement these priorities in a timely fashion.

5. **Pond.** A pond near the barn will only be constructed if it meets the following criteria (a) it aids in fire control; (b) it serves a valid recreational need without negatively affecting the area in which it is located; and (c) it does not negatively affect the fishery in the stream.

6. **Agriculture.** Agricultural practices shall maintain the pastoral and visual appearance of the area and shall be conducted in an environmentally sound manner.

7. **Special Events.** Special events will be limited as not to interfere with the "open space" character of the farm. The Parks, Recreation, and Beautification Advisory Board's recommendation of only permitting summer events sponsored or co-sponsored by the City of not more than 50 to 100 people in the vicinity of the bard will be the guideline. Winter spectator activities in conjunction with cross-country ski racing and biathlon races are acceptable uses.

SECTION 2. EFFECTIVE DATE. This Resolution shall take effect upon adoption.

PASSED AND ADOPTED this 13th day of July, 1995.

PARK CITY MUNICIPAL CORPORATION

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Mayor Bradley A. Olch

Attest:

____

Janet M. Scott, Deputy City Recorder

Approved as to form:

____

Mark D. Harrington, Asst. City Attorney

PARK CITY 1884

COUNCIL AGENDA REPORT

DATE: July 13, 1995
DEPARTMENT: Public Works
AUTHOR: Jerry Gibbs
TITLE: Keetley Well Engineering
TYPE OF ITEM: Consulting Contract

SUMMARY RECOMMENDATIONS: Authorize the Director of Public Works to negotiate an engineering contract with Hansen, Allen and Luce to develop plans and specifications, construction drawings and construction observation for the Keetley Well project.

DESCRIPTION:

A. Topic. Engineering consulting contract for the development of the Keetley well water supply.

B. Background. Last winter Council approved an engineering consultant contract with Eckhoff, Watson and Preator (EWP) to provide preliminary engineering to facilitate the completion of a test well in conjunction with the United State Geological Survey (USGS). Permission was granted by the owner of the property to drill a test well. No long term agreement was reached to drill a permanent well. Staff decided the risk was too high to drill a test well without having the ability to provide a finished municipal well if water was found.

I have been in contact with David Bird, the attorney representing Florence Gilmore. He has indicated they are willing to work out an agreement for a permanent well location. That negotiation is currently underway.

EWP has performed most of our water work over the last five to seven years. They were used originally on this project because of the short time frame necessary to develop easements and they had completed an aerial photo contract which provided all the necessary mapping. Staff has discussed the importance of spreading the engineering work out to select qualified firms so that a pool of engineers are available to work on numerous City projects.

USGS will be in Utah drilling other test wells in October. If we are able to reach an agreement with Ms. Gilmore in time, USGS can complete their test drilling. If it is later than October it will be necessary for us to hire our own test drilling crew.

C. Analysis. Hansen, Allen and Luce (HAL) is a much smaller firm than EWP. They have a very experienced staff and perform numerous complicated water related projects for Salt Lake City and other water entities along the Wasatch Front.

HAL worked with us on the development of the Spiro flume project. Previous engineering firms had indicated that it was impossible to construct the flume at the 6,600 foot area. HAL developed a solution that was agreeable to United Park City Mines and the project has been completed.

Their contract would be in three phases. The first phase is to coordinate with USGS for the development of the test well. The second phase would be implemented if we are unable to obtain the easements on a timely basis, private well drilling will be contracted for a test well. The third phase would be the final plans and specifications to drill a municipal well and transmission line to Park Meadows Tank #15. Construction observation would be on an hourly basis.

D. Department Review. This has been reviewed by Public Works and general administration.

ALTERNATIVES:

A. **Award the contract to Hansen, Allen and Luce.**
B. **Award the contract to EWP.**
C. **Select proposals from other engineering firms.**
D. **Do nothing.**

SIGNIFICANT IMPACTS: By having a contract in place efforts can proceed quickly to have all necessary State approvals, drawings and easements to drill a test well, install a permanent well and transmission line. If the negotiations for access to the property exceed the October time frame and an engineering contract is not in place, it could delay the test drilling until 1996.

CONSEQUENCES OF NOT TAKING THE RECOMMENDED ACTION: EWP is eager to work on this project. Their engineering services would be adequate. An award to EWP could discourage other engineering firms from proposing on future water projects.

RECOMMENDATION: Authorize the Public Works Director to negotiate a three phase contract in an amount not to exceed $55,000 with Hansen, Allen and Luce for the completion of a test well, a finished municipal well and transmission line. Each phase would need to be completed before authorization is granted to proceed with the next phase.

EWP would be retained to complete a final Source Protection Plan as required by the State of Utah Drinking Water Department. They had completed a preliminary plan last April.

HANSEN ALLEN & LUCE INC

SALT LAKE AREA OFFICE
6771 South 900 East
Midvale, Utah 84047
Phone: (801) 566-5599

July 3, 1995

Mr. Jerry Gibbs
Director
Park City Municipal Works
#10 Ironhorse Drive
P.O. Box 1480
Park City, Utah 84060-1480

RE: Keetley Junction Well.

Dear Jerry:

We have evaluated to the best of our understanding the scope of work outlined last week and provide herein a preliminary scope of work and cost estimate for completion of the project as identified. We consider the information contained herein to be preliminary and subject to revision by Park City based upon the City's desires and needs. We would be happy to discuss the scope of work with you in more detail and make adjustments as required. Assumptions made related to the scope of work is provided below.

ASSUMPTIONS

PHASE I

TASK 100 - EASEMENTS AND PROJECT COORDINATION

- Two meetings will be held at the offices of Park City.
- One meeting has been assumed with Mrs. Gillmore or her representative in Park City.
- Easements have been prepared by Park City and need only minor coordination and follow through.
- 6 Hours project coordination including phone calls and miscellaneoud correspondance.

TASK 200 - TEST WELL SERVICES

- Four, four hour well site visits have been assumed to review overall exploratory drilling operations and coordinate with Park City and USGS.

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PHASE II

TASK 300 - DESIGN PRODUCTION WELL

- 15 Sets of Bidding Documents will be prepared.

TASK 400 - WELL DRILLING SERVICES

- Costs include newspaper advertising fees.
- Construction observation services have not been specifically determined. Because of the uncertainty in time and review commitment desired by the City, these costs will be performed at a frequency to be determined between HA&L and Park City at a future date, and would be reimbursed either on a time and materials basis, or at a fixed cost assuming a "to be determined" site visit frequency.
- Well testing services would be performed on a similar basis as construction observation services.

PHASE III

TASK 500 - DESIGN OF PUMPING STATION AND PIPELINE

- For proposal purposes, it has been assumed that the well will be designed with a constant discharge pump which is controlled by reservoir water elevation.
- A total of 15 building, piping, electrical, and pipeline drawings will be required.
- No major easement issues are encountered.
- 15 Sets of Bidding Documents will be required.

TASK 600 - WELLHOUSE AND PIPELINE CONSTRUCTION OBSERVATION SERVICES

- Construction Observation services will be performed at a frequency to be determined between HA&L and Park City, and would be reimbursed under a similar arrangement to that agreed upon for well construction.
- Upon completion, Park City will be responsible for taking and submitting water quality samples for analysis and State approval.

PHASE IV

TASK 700 - DWSP FINAL REPORT

- It is recommended that the final DWSP report be modified and submitted by EWP engineering since they prepared the draft submittal to the State.

We look forward to working with you on this project, are excited about being able to serve the City, and are ready to being our efforts at your earliest convenience. We have attached our standard short form contract and fee schedule for consideration for this project, or if desired, we would be happy to review the City's proposed agreement. Should you have any questions or suggestions, please call.

Sincerely,

HANSEN, ALLEN & LUCE, INC.

David E. Hansen, Ph.D., P.E.
Principal

PARK CITY 1884

COUNCIL AGENDA REPORT

DATE:	July 13, 1995
DEPARTMENT:	Public Works
AUTHOR:	Jerry Gibbs
TITLE:	Utility Billing Consultant
TYPE OF ITEM:	Award of Contract

SUMMARY RECOMMENDATIONS: Authorize staff to enter into an agreement with Utility Cost Management Consultants to review the City's use of electric, gas and telephone services.

DESCRIPTION:

A. **Topic**. Contracting with a utility billing consultant to audit utility bills for errors, identify rate schedule changes and opportunities for future savings.

B. **Background**. The Wasatch Brew Pub, Park City Ski Area and Deer Valley have used utility consultants to reduce their electric bills. Park City Ski Area estimated their savings in the tens of thousands of dollars.

Utah Power and Light recently performed an audit of our account at our request. Their audit resulted in few changes and no substantial savings.

A consultant can provide two approaches to reviewing the utility bills: a contingency fee or a cost per hour basis. If the savings are substantial, a cost per hour is the preferred method of payment. However, if the savings are small, a contingency is more beneficial to the customer.

C. **Analysis**. I contacted two firms to provide a proposal, Utility Cost Management Consultants and George A. Koteen Associates, Inc. Both companies offered similar programs. Utility Cost Management Consultants offer an additional benefit by including onsite inspections. This allows them to identify billing errors that are impossible to identify from only an analysis of the bills. This process will allow them to detect incorrect meter constants, meters that are not being reset each month and meters that are not reading accurately.

Both companies will work on a contingency basis. Utility Management Consultants did offer an hourly rate. The method of choice is dependent on the anticipated savings.

Work Plan: The selected firm would audit the most recent 12 months of utility bills for errors. If a substantial error is found a request for a refund would include the previous two to three years depending on the regulations governing refunds.

If a meter error is suspected, UCMC would inspect and check the meter, with the option of installing their own meter to check the accuracy of Utah Power and Light meters.

Contingency Approach: The standard agreement allows the consultant to receive 50 percent of all savings which result from recommendations Park City chooses to enact. Payment would be monthly, for a period of three years, from the date savings first appears on the client's billing. If a refund is received, the utility consultant would receive 50 percent on the one time payment. The standard agreement is in effect for five years with renewable extensions. Utility bills are reviewed once annually during this time frame.

If the work is performed on an hourly basis, the work plan would remain the same, however there is a $10,000 retainer fee required.

Both the contingency plan and the hourly basis plan would target the larger accounts first where greater potential savings would occur. Smaller accounts would receive an overview where savings would be minimal.

The utility consultant will receive 50 percent of any ongoing savings that Park City implemented. UCMC has agreed to limit that time period to no more than three years. One time savings or refunds will be collected when the City receives their refund. UCMC will bill monthly beginning when the City receives the first savings on their bill.

Park City spends approximately $532,000 for all utilities. It is broken down by utilities as follows:

Name of Company	Annual Expenditure
UP&L	$371,900
Mountain Fuel	40,000
Telephone	108,400
SBSID	12,000

D. Department Review. Staff is mixed on a contingency vs hourly basis. The break even point between contingency and hourly is $20,000 of savings over three years.

ALTERNATIVES:

A. Award the contract to Utility Cost Management Consultants.

B. Award the contract to George A. Koteen Associates, Inc.

C. Do nothing.

SIGNIFICANT IMPACTS:
A utility cost billing review could pay big dividends. Four out of five businesses in America overpay their utility bills. Park City would be able to realize some savings.

CONSEQUENCES OF NOT TAKING THE RECOMMENDED ACTION:
There would be no noticeable difference. There could be a loss of potential savings.

RECOMMENDATION:
A. **Authorize the Public Works Director to contract on a contingency basis with Utility Cost Management Consultants.** All City accounts would be reviewed for gas, electric and telephone usage.

UTILITY COST MANAGEMENT CONSULTANTS

A Division of SUDECO USA, Inc.

Specializing in the Control of Utility Costs

AGREEMENT

Client: Park City Municipal Corporation
Address: # 10 Ironhorse Drive / P.O. Box 1480
City: Park City, Utah

Telephone: 801-645-5120
Contact: Mr. Jerry W. Gibbs
Zip: 84060-1480

1. The undersigned (CLIENT) authorizes Utility Cost Management Consultants (UCMC) to audit the following utility accounts and to recover all overcharges caused by errors, misclassifications or other factors, if possible. Auditing will occur periodically during the term of this agreement. Please see attached sheet for locations under this agreement.

   Telephone ___ Sewer___ Electric___ Gas___

2. UCMC will also review the utilities indicated above to identify opportunities to reduce costs. The review may occur periodically during the term of this agreement. All recommendations shall be made in writing and are subject to CLIENT'S approval. Any recommendations implemented by CLIENT shall be deemed approved.

3. There are no up front costs or service fees. Payment to UCMC shall be as follows:

   a. CLIENT shall pay UCMC 50 percent of all refunds or credit adjustments to their utility accounts secured by UCMC's efforts. Pursuant to paragraph therein.

   b. CLIENT shall pay UCMC 50 percent of all savings which result from UCMC's recommendations which CLIENT chooses to enact pursuant to paragraph 2 herein. Payment shall be monthly for a period of 3 years from the date savings first appears on CLIENT'S billing, or 3 years from the date of this agreement whichever is later.

   c. CLIENT agrees to pay UCMC after the refund, credit or savings is received or reflected in the CLIENT's bill and upon receipt of an invoice from UCMC. In the event of default, court costs, attorney fees and collection cost will be charged. If CLIENT's bills are needed by UCMC for billing purposes, CLIENT will send copies to UCMC as soon as possible after receipt.

4. This agreement is for a period of 3 years. This agreement is the complete agreement.

Agreed and accepted this __________ day of __________, 1995.

CLIENT
By: X______________________________

As: ______________________________

UCMC
By: ______________________________

As: Director of Sales and Marketing

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UTILITY COST MANAGEMENT CONSULTANTS

A Division of SUDECO USA, Inc.

Specializing in the Control of Utility Costs

AUTHORIZATION

Date: ______________________

To: ______________________

____

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Utility Cost Management Consultants is hereby engaged and authorized to act as agent and consultant for the undersigned in all matters pertinent to our __________________ bill(s).

Client: Park City Municipal Corporation

Address: # 10 Ironhorse Drive / P.O. Box 1480

City: Park City, Utah 84060-1480

Account Number(s): Please see attached list for accounts

______________________ ______________________

______________________ ______________________

______________________ is authorized and requested to respond to Utility Cost Management Consultants in all matters pertaining to our bill/account with your company. We request that you provide Utility Cost Management Consultants with billing records, equipment records, service records, or any additional information deemed necessary by Utility Cost Management Consultants to adequately audit our present bill. This letter of authorization is valid through

Agreed: ______________________

Title: ______________________

Date: ______________________

authoriz

4688 South Riverside Drive • Murray, Utah 84123 • Telephone: (801) 262-7252 • FAX: (801) 262-3510

PARK CITY
1884

COUNCIL AGENDA REPORT

DATE: July 6, 1995
DEPARTMENT: Legal
AUTHOR: J. Craig Smith
TITLE: Agreement between PCMC and GPCC regarding Spiro Tunnel Water
TYPE OF ITEM: Approval of Contract

SUMMARY RECOMMENDATIONS: It is recommended that the Council consider approval of the attached Agreement which consolidates three prior agreements into a single agreement regarding use of Spiro Tunnel water by Park City and Greater Park City Corporation (GPCC).

DESCRIPTION:

A. Topic: Water

B. Background: During the past five years, Park City and GPCC have entered into a number of agreements regarding the use of water emanating from Spiro Tunnel. Park City owns some Spiro Tunnel water, GPCC owns some, and other own the balance. Park City's agreements with GPCC allow the use of GPCC's water during summer months by Park City while GPCC uses Park City water, along with its own, during winter months for snow making. The additional water for nominal cost during Park City's peak usage period is of benefit to Park City.

C. Analysis: GPCC approached Park City about consolidating three agreements into a single agreement. The attached Agreement is the result of this effort. It carries forward the elements of those previous agreements without material change. The previous agreements were carefully reviewed and compared to the language of this Agreement to assure that Park City was maintaining the benefit of its previous bargains.

However, several points regarding determination of surplus water for the use of GPCC and "As is" quality of water provided to GPCC have been clarified. The clarifications protect Park City.

D. **Department Review**: Craig Smith, special counsel, has taken the lead in reviewing the Agreement, proposing changes to GPCC counsel Gordon Strachan and Steve Clyde. The current Agreement was also compared to prior agreements. City Attorney Jodi Hoffman, City Manager Toby Ross and Public Works Director Jerry Gibbs have also had the opportunity to review this Agreement.

ALTERNATIVES:

A. **Approve the request:** This is the recommended action.

B. **Deny the request**: The status quo of having several agreements would remain if this option was chosen.

C. **Continue the Item**: It is not a particularly urgent item, so continuance would probably not have a major impact.

D. **Do nothing**: See Alternative B Deny the Request above.

SIGNIFICANT IMPACTS:

CONSEQUENCES OF NOT TAKING THE RECOMMENDED ACTION: The status quo would remain. Since this is primarily an effort to consolidate existing agreements, no particularly severe consequence would result from denying the recommended action.

RECOMMENDATION: It is recommended that the Agreement be approved. It will consolidate and clarify existing agreements.

AGREEMENT BETWEEN PARK CITY MUNICIPAL CORPORATION
AND GREATER PARK CITY CORPORATION REGARDING THE
SALE AND LEASE OF WATER IN THE SPIRO TUNNEL FOR
MUNICIPAL USE AND SNOW MAKING USE

This Amended Agreement is made and entered into by and between Greater Park City Corporation (GPCC) and Park City Municipal Corporation, (City), this _________ day of __________________, 1995.

WHEREAS, GPCC and City have entered into several agreements regarding the reciprocal use of each other's water rights in the Spiro Tunnel for municipal and snow making purposes; and,

WHEREAS, GPCC has acquired through the exchange of titles with Salt Lake City an additional interest in the Spiro Tunnel water right which it desires to lease to City for culinary use, during the irrigation season of each year, which interest is in addition to the 10% interest previously leased to City; and,

WHEREAS, GPCC desires to continue purchasing annually City's Surplus Water in the Spiro Tunnel for snow making purposes and also desires to use the additional water it has acquired for snow making purposes; and,

WHEREAS, the parties deem it to be in their mutual interests to enter into a new agreement that addresses in a single agreement all water owned and controlled by either party in the Spiro Tunnel and the right of each party to use each other's water and water rights as provided herein.

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, and for other good and valuable consideration, the parties agree as follows.

1. <u>SUPERSEDE CERTAIN PRIOR AGREEMENTS.</u>

The parties agree that this agreement shall supersede the following agreements by and between them:

a. Surplus Sales Agreement of August 8, 1991, and recorded in Book 628 pages 542 through 546 in the records of Summit County, Utah.

b. Lease of Water in Spiro Tunnel, dated August 8, 1991, and recorded in Book 628, pages 538 through 541 in the records of Summit County, Utah.

c. Letter Agreement of April 5, 1993, regarding the construction of an extension to the City's culinary water distribution system and the interconnection of it with the culinary water distribution of GPCC at the Park City Ski Area, the operation and maintenance of these new facilities, and the price to be paid for the culinary water so delivered and sold to GPCC.

d. This Agreement expressly <u>does not</u> supersede the Agreement of June 3, 1994, by and among GPCC, City and the Park City Water Service District, and this Agreement shall be construed as a supplement to the Agreement of June 3, 1994.

e. This agreement expressly <u>does not</u> supersede the agreement of September 10, 1987 by which GPCC agreed to convey fifty percent (50%) of its then twenty percent (20%) interest in the flow of Spiro Tunnel originating beyond the 6,600 foot point.

2. <u>LEASE OF WATER RIGHT BY CITY</u>.

GPCC hereby agrees to lease to City and City does hereby lease, all of the water available under GPCC's undivided 10% interest in the flow of the Spiro Tunnel which equals fifty percent (50%) of GPCC'S and City's interest in an undivided twenty percent (20%) interest in the Spiro Tunnel Water Right, 35-2708 (a11857) on file in the office of the Utah State Engineer. In addition, and subject to the terms of Paragraph 3., hereof, GPCC hereby agrees to lease and City does hereby take for use during the irrigation season of each lease year, April 1 through September 30, all of the water available under GPCC's twenty-four percent (24%) interest in the flow of the Spiro Tunnel, which interest represents forty percent (40%) of the water right in the Spiro Tunnel awarded to Salt Lake City as described and adjudicated in that Amended Judgment of the Third Judicial District Court of the State of Utah, in and for Salt Lake County, Utah, dated April 8, 1974, in Salt Lake City v. United Park City Mines Company, Civil No. 148,376.[1] This additional twenty-four percent (24%) interest in the Spiro Tunnel Water Right is further identified and has been modified by approved Change Application No. a-11817 (35 Area) on file in the Office of the Utah Division of Water Rights. These combined quantities of water equal thirty-four percent (34%) of the total available flows of the Spiro Tunnel and are referred to hereafter, as the "Leased Flows." GPCC's title to the additional twenty-four percent (24%) interest of the

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[1] Salt Lake City's water right is more particularly described as follows:

Sixty percent (60%) of all of the waters flowing through and from said Spiro Tunnel which are intercepted and collected by means of the existing Spiro Tunnel and its existing connected underground workings beyond the first 6600 feet thereof.

Together with an easement and right of way along and within the Spiro Tunnel and its connected underground workings for the conveyance of City's water through the Spiro Tunnel from the point or points of interceptions or collection to the portal of the Spiro Tunnel, an easement for the construction, operation, maintenance and repair and replacement of a buried water line to convey water from the Spiro Tunnel, and an easement along the relocated channel of Thaynes Canyon Creek to transport the City's Spiro Tunnel water from the mine to East Canyon Creek, all of which are set forth in more detail in an agreement and grant of easement between City, United Park City Mines and Greater Park City Company, which agreement is dated March 20, 1974, and is incorporated herein by reference together with easements and rights of way as described below, all of which is set forth in more detail in an agreement and grant of easement between Salt Lake City, United Park City Mines and Greater Park City Company, which agreement is dated March 20, 1974.

Leased Flow is subject to certain exceptions and reservations and an automatic right of reversion upon the occurrence of certain conditions subsequent. These conditions subsequent are set forth in the agreement between GPCC and Salt Lake City dated June 21, 1993. A copy of this agreement is attached hereto and incorporated herein by this reference.

a. TERM. The term of this lease shall be 20 years from the date of the initial lease of July 1, 1991, and is to continue to June 30, 2011. This lease may be automatically extended for an additional 20 year term on the same terms and conditions, in the absence of a notice of non-renewal by either party.

b. RENT. City agrees to pay as consideration for this lease the sum of ten dollars ($10.00) per year for each year the agreement is in effect. As additional consideration, City shall sell back to GPCC, as Surplus Water under Paragraph 3., hereof, the 10% leased interest in the Spiro Tunnel which water may be used during the non-irrigation season of October 1 through April 1, of the following year for snow making purposes as the Park City Ski Area. This Surplus Water shall be used in accordance with and subject to the terms of Paragraph 3., of this agreement. The parties acknowledge that all lease payments for the lease of the 10% interest in the Spiro Tunnel water right were paid in advance under the terms of the original lease agreement of August 8, 1991, referenced above. The lease payment for the additional 24% interest in the flows of the Spiro Tunnel shall be paid by City to GPCC, in advance, upon the execution of this Agreement. All subsequent lease payments for the full 34% interest in the Spiro Tunnel for any renewal term, shall be paid in advance and prior to the end of the current lease term. Any notice of non-renewal shall be given no sooner than 12 months before the end of the current lease term.

c. USE OF RESERVED FLOW BY GPCC. GPCC hereby reserves the right to use during the winter season of each lease year, (October 1 through April 1, of the following year) all of the additional 24 % interest in the water right it acquired in the Spiro Tunnel (Reserved Flow), for snow making purposes at the Park City Ski Area. City agrees to deliver this Reserved Flow to GPCC through the City's distribution system to the point of delivery and on the terms provided in Paragraph 3., hereof.

d. CONDITION OF TITLE. GPCC acquired title to an undivided 20% interest in the flows of the Spiro Tunnel. It previously sold 10% or 50% of its interest to City, and has leased the remaining 10% to City under the terms of this Agreement. GPCC's title was confirmed by an Order of the District Court entered May 15, 1990, in the matter of United Park City Mines Company vs. Greater Park City Company, *et. al.*, Civil Number C-86-3347 and C-86-8907 in the Third Judicial District Court, Salt Lake County, Utah, which order was upheld by the Utah Supreme Court.[2] The Supreme Court remanded certain issues for trial that may affect the title to the water rights it acquired under the purchase Agreement of 1974 between GPCC and United Park City Mines Company, as confirmed by the District Court. In the event of an adverse ruling on these issues, which adverse ruling is either not appealed or sustained on appeal, and which operates to divest GPCC of its title to all or any portion of its interest in the Leased Water, the lease portion of this agreement shall terminate. The termination of the lease portion of this agreement due to a failure of GPCC's title shall result in the termination of the surplus sales portion of the Agreement, unless the parties otherwise agree to continue that portion of the agreement in force. The parties acknowledge that the additional 24% interest GPCC acquired

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[2] 870 P. 2d 880.

from Salt Lake City, is not directly encumbered by UPCM's claims in GPCC's litigation with UPCM. However, this interest is subject to the terms and conditions of an exchange agreement between Salt Lake City Corporation and GPCC, which provides among other things, that the exchange of titles to water rights will be rescinded and titles revert back to the parties upon the occurrence of certain conditions subsequent. One of those conditions subsequent is the failure of title of the water right exchanged by GPCC to Salt Lake City for this interest in the Spiro Tunnel. These conditions subsequent are set forth in more detail in the Exchange Agreement in on file with GPCC, and is incorporated herein by this reference. City acknowledges receipt of a copy of this agreement.

e. TUNNEL MAINTENANCE. In the event the Spiro Tunnel caves in, neither party to this Agreement shall have any obligation to re-open the tunnel. GPCC shall have no obligation to participate in Park City's costs of maintaining the Spiro Tunnel, or of diverting, treating, storing or distributing the waters leased hereunder.

f. TERMINATION. In the event that GPCC requires all or any portion of this Leased Water for its own purposes, or in the event Park City suspends the delivery of water under Paragraph 3 of this Agreement, GPCC can terminate this lease, upon six months written notice to City. City may terminate this lease without cause, upon its giving GPCC six months written notice.

g. CONDEMNATION. The parties acknowledge that this lease is made primarily as an accommodation, and that the lease rate is not in any way reflective of the value of the water rights leased, or the condition of the titles or either party. In the event of condemnation proceedings brought by Park City to acquire the interest of GPCC, this lease shall not be admissible as evidence of value.

h. QUALITY OF WATER. City agrees to receive the Leased Water in its "as is" condition, and without representations or warranties by GPCC as to the quality or purity thereof, or its suitability for any purpose. GPCC shall be under no obligation whatsoever to render such Leased Water fit or suitable for human consumption or other uses contemplated by City or others.

i. NON-WARRANTY, INDEMNITY. Park City agrees to indemnify and hold GPCC harmless against any and all claims arising from the use of the Leased Water in the City's municipal water distribution system. City's sole remedy in the event the leased water is unsuitable for human consumption, even with reasonable water treatment, or if GPCC's title fails, is to terminate this lease. Neither party shall have any claim for damages of any kind against the other if the agreement is terminated under this provision.

3. <u>SALE OF SURPLUS WATER FOR SNOW MAKING PURPOSES</u>.

The parties anticipate that a portion of the water rights owned by City in the Spiro Tunnel, as well as those water rights leased by City from GPCC and others, will be surplus to the requirements of City and/or its inhabitants, and that the City desires to sell such Surplus Water as authorized by § 10-8-14, U.C.A., as Amended. GPCC desires to purchase such Surplus Water to use for snow making purposes at the Park City Ski Area during the non-irrigation season on the following terms.

a. SALE OF WATER. City agrees to sell all of the raw, untreated water owned or leased and controlled by City in the Spiro Tunnel, and which in the sole discretion of City is surplus to the current needs of the City, including waters leased from GPCC and others (Surplus Water), to be made available in the amount and at the place hereinafter provided. GPCC agrees to pay annually for such raw, untreated Surplus Water made available to GPCC hereunder, whether taken by GPCC or not, at the rates provided herein. The use of this Surplus Water for snow making purposes shall at all times be subject to the provisions of subparagraphs d. and e. hereof.

b. QUALITY OF WATER TO BE PROVIDED: GPCC agrees to receive the Surplus Water in its "as is" condition, and without representations or warranties by City as to the quality or purity thereof, or its suitability for any purpose. City shall only be required to provide GPCC with raw, untreated water from Spiro Tunnel under this surplus sales provision of this Agreement. City shall have no obligation to render such water fit for suitable for human consumption or other uses contemplated by GPCC or others. However, in the event City elects to furnish treated culinary quality water to GPCC for snow making purposes, GPCC shall not be required to pay culinary water prices for such water.

c. USE OF RESERVED FLOW. GPCC shall use its 24% Reserved Flows in the Spiro Tunnel water right in addition to the Surplus Water sold hereunder for snow making purposes at the Park City Ski Area. City agrees to deliver this Reserved Flow to GPCC through its distribution system to the point of delivery specified herein, without additional consideration from GPCC. GPCC shall file any change application required with the State Engineer to enable it to use this Reserved Flow at the Park City Ski Area for this purpose.

d. TERM. The surplus sales portion of this Agreement shall run for a period of twenty years, commencing as of July 1, 1991 and ending June 30, 2011. This surplus sales provision will be automatically extended for an additional twenty (20) year period in the absence of notice of non-renewal by either party. This surplus sales agreement shall terminate upon the termination of the Lease portion of this Agreement, unless the parties otherwise agree to continue the surplus sales portion of this agreement, on such terms and conditions as they then agree to.

e. PRICE FOR WATER. GPCC agrees to pay to City the sum of Ten Dollars ($10.00) per annum for Purchased Water made available by City to GPCC, regardless of the actual flow of water available in any contract year. All purchase payments will be paid in advance upon the execution of this agreement. Payment for Purchase Water during any extended term shall be made in advance prior to the expiration of the current term. GPCC shall not be required to pay City any consideration for use of its 24% reserved interest in the Spiro Tunnel water rights or for the transportation of that water through the City's system to the point of delivery at the golf course ponds.

f. AVAILABILITY AND DELIVERY OF WATER. The Purchased Water sold to GPCC hereunder, (excluding the 24% Reserved Flow during the non-irrigation season) shall be subject at all times to the use requirements of Park City and its inhabitants, and shall cover only such waters as City shall determine to be surplus to the requirements of City as authorized under § 10-8-14, U.C.A., and not prohibited by Art. XI., § 6, Constitution of Utah. Further, the Purchased Water sold hereunder shall be subject to the continued discharge of such waters from the Spiro Tunnel, and shall at all times be subject to shortages resulting from drought, acts of God, and conditions beyond the reasonable control of City. It is expressly understood and agreed that City's obligation to make the Purchased Water available to GPCC hereunder shall at all times be limited to such quantities, if any, City determines to be surplus to its requirements and the requirements of its inhabitants. In the event City determines the Purchased Water sold hereunder is no longer surplus to the requirements of City and its inhabitants, City shall give GPCC six months advance written notice of that fact, prior to suspension of delivery of water. In the event the circumstances causing suspension of delivery ceased to exist, City agrees to resume sales of so much water as is then surplus to its needs in accordance with the terms of this Agreement.

g. POINT OF DELIVERY OF SURPLUS WATER AND RESERVED FLOWS. All Surplus Water sold to GPCC hereunder, and the Reserved Flow, shall be delivered to GPCC at the pond or ponds specified by GPCC on the Pack City Municipal Golf Course beginning on October 1, of each year and ending on April 30, of the following year during each year of this Agreement. City grants GPCC a perpetual easement to store both the Purchased Water and the Reserved Flow in the golf course ponds for snow making purposes. If the sale of Surplus Water is fully suspended due to the lack of available Surplus Water, the lease of GPCC's water in the Spiro Tunnel provided for in Paragraph 2 of this Agreement shall also terminate. GPCC shall retain an easement to store its water in the golf course ponds for use in its snow making system.

h. TERMINATION. Either party may terminate the surplus sales portion of this Agreement upon six month's written notice to the other party at their last known address. The termination of the surplus sales agreement shall also operate as an automatic termination of the lease portion of this Agreement contained in Paragraph 2 of this Agreement.

i. INDEMNITY. GPCC agrees to indemnify, save harmless and defend Park City, its agents and employees, from and against any claims, demands, causes of action, loss, costs or expense, including attorney's fees or other liabilities for damage to property, and injury or death to persons which may arise out of the construction and maintenance of GPCC's facilities to obtain the water furnished hereunder and/r GPCC's use thereof hereunder, including, but not by way of limitation, payments made under Workers' Compensation laws.

j. SUCCESSORS AND ASSIGNS OBLIGATED. The provisions of this Agreement shall apply to and bind the successors and assigns of the parties hereto, but neither this Agreement nor any attempt to assign or transfer this Agreement or the obligations or benefits hereunder shall be valid unless previously approved in writing by both parties.

4. SALE OF CULINARY WATER FOR USE AT RESORT FACILITIES.

The parties acknowledge that pursuant to an agreement of September 10, 1992, City has engineered and constructed a culinary water distribution system extension to the City's water system for the purpose of connecting GPCC's culinary water distribution system on the ski mountain to the City's distribution system. GPCC has reimbursed City the cost of construction as per that agreement.

a. OPERATION AND MAINTENANCE OF SYSTEM FACILITIES. It is agreed that City shall be responsible for and shall pay all costs of operation and maintenance of the following:

1. Woodside pump station.
2. Water line from Woodside Reservoir to King Shop.
3. Installation and maintenance of gate at King Road, Woodside tank.
4. Provide support help as required by GPCC's employees in maintenance of King Shop pump station.

GPCC Shall be responsible for and shall pay all costs of operation and maintenance of the following:

1. King Shop pump station.
2. All water lines within ski runs and located above the King Shop.
3. GPCC to notify City prior to each year's commencement of operations of the King Shop pump station facilities.

b. PRICE OF CULINARY WATER. The parties entered into a certain Agreement of June 3, 1994, titled *Agreement Regarding the Conveyance of Water Rights from Greater Park City Corporation to Park City Municipal Corporation and or Park City Water Special Service District for Culinary Water Distribution Services to Ski Resort Facilities.* Subject to the terms of that Agreement, and in exchange for the conveyance of title by GPCC to certain water and water rights, City and the Park City Water Service District (District) agreed to provide culinary water service to GPCC for use on the ski mountain, free of charge, for a period of 20 years from the date of that Agreement. Upon termination of that Agreement, City or District shall continue to provide culinary water services on the mountain, and GPCC shall pay for all culinary water used by it as provided in Paragraph 1.5 of that Agreement.

c. WATER QUALITY. City hereby agrees to use its best efforts to deliver to GPCC's culinary water distribution system such quantities of culinary water required by GPCC for culinary uses of GPCC. City will use its best efforts to assure that all such water deliveries shall be at such pressures and of a quality that comply with all drinking water standards of the state of Utah or the United States.

d. DISCONNECTION OF GROUP II SOURCES. GPCC hereby warrants and represents that it has physically disconnected the Group II water rights sources identified in the Agreement of June 3, 1994, between GPCC, City and Park City Water Services District from the culinary system.

5. NOTICE.

Any notice required by this agreement shall be in writing and mailed postage prepaid to the following addresses, which may be changed from time to time:

Park City Municipal Corporation
Mr. Toby Ross, City Manager
Park City Municipal Corporation
P.O. Box 1480
Park City, Utah 84060

With copy to:

J. Craig Smith, Esq.
NIELSEN & SENIOR
Suite 1100 Eagle Gate Tower
60 East South Temple
P.O. Box 11808
Salt Lake City, Utah 84147

Greater Park City Company
Park City Ski Area
P.O. Box 39
Park City, Utah 84060

With copy to:

Mr. Gordon Strachan, Esq
Strachan & Strachan
528 Main Street, Upstairs
P.O. Box 3747
Park City, Utah 84060-3747

IN WITNESS WHEREOF, the parties hereto have set their hand the day and year first set forth above.

PARK CITY MUNICIPAL CORPORATION

By: ______________________
Its: ______________________

ATTEST:

____

GREATER PARK CITY COMPANY

By: ______________________
Its: ______________________

ATTEST:

____

PARK CITY
1884

COUNCIL AGENDA REPORT

DATE: July 13, 1995
DEPARTMENT: **Public Works**
AUTHOR: Jerry Gibbs
TITLE: Water User Rates
TYPE OF ITEM: Legislative

SUMMARY RECOMMENDATIONS: Adopt a resolution increasing the water user fees and base rates as recommended by staff.

DESCRIPTION:

A. Topic. An adoption of an increase to water user rates, residential base rates and 3/4" commercial base rates.

B. Background. A public hearing was held on June 29, 1995 as part of the regular City Council meeting. No public comment was received. Council also discussed a user fee increase as part of a work session item on May 18, 1995.

The last increase occurred in 1991 when a water conservation component was added to the existing rate structure. The residential base rates have not changed since 1989.

C. Analysis. Revenues from user rates are anticipated to be insufficient to meet our bonding requirements, increased operational costs and develop a reserve fund for system replacement. A 15 percent increase to user fees and adjustments to the residential base rates are anticipated to produce an additional $400,000 in revenue. Water rates should be reviewed annually to determine sufficiency in meeting expense and bond requirements.

A rate increase in July will be reflected as an increase to the base rate in the August billing, a usage increase will reflected in the September billing. Base charges are billed a month in advance and usage the month following.

D. Department Review. The proposed changes have been discussed with Finance, general

Administration and Public Works. The existing software is capable of handling the proposed changes. If more than four tiers are required a software change is necessary.

<u>ALTERNATIVES</u>:

A. **<u>Approve staff's recommendations.</u>**
B. **<u>Approve a modified increase.</u>**
C. **<u>Do nothing.</u>**

<u>SIGNIFICANT IMPACTS</u>: A rate increase is necessary to protect our water bond rating and generate a capital fund replacement for water facilities not eligible for funding with impact fees. The largest impact will be in residential use in excess of 40,000 gallons per month during the summer.

<u>CONSEQUENCES OF NOT TAKING THE RECOMMENDED ACTION</u>: Postponing a rate increase could cause our water bonds to be re-rated, increasing our interest exposure and requiring a larger rate increase later. Needed capital replacement projects would be delayed until funding could be generated or a new source of revenue could be found.

<u>RECOMMENDATION</u>: The recommendation is to adopt a resolution changing base rates to residential meters and 3/4" commercial meters as follows:

	Base Rate Adjustment	Current	Proposed
Residential	3/4" meter	$12	$15
	1" meter	15	18
	1-1/2" meter	15	21
Commercial	3/4" meter	15	21

Approve a user rate increase of approximately 15% and adjust the rates as follows:

	Water Use	Current	Proposed
S.F.	5,000 - 10,000 gallons	$1.25	$1.44
	10,000 - 20,000 gallons	1.50	1.73
	20,000 - 40,000 gallons	1.90	2.19
	over 40,000 gallons	2.00	2.60
Irrig	5,000 - 10,000 gallons	1.25	1.44
	10,000 - 20,000 gallons	1.50	1.73
	20,000 to 100,000 gallons	1.70	2.21
	Others over 5,000 gallons	1.37	1.58

The rates should reviewed annually for adequacy.

RESOLUTION NO. __-95

THE PARK CITY FEE RESOLUTION

WHEREAS, it is necessary to update the water fee resolution to reflect the changing costs of performing services, and

WHEREAS, a public hearing was held on June 29, 1995 to receive public comments on the user fee increases,

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

SECTION 1. MONTHLY WATER METERED SERVICES FEE SCHEDULE

	Meter size	Current	Proposed Monthly Base/Demand Charges
Residential	5/8" x 3/4"	~~$ 12~~	$ 15
	1"	~~$ 15~~	$ 18
	1-1/2"	~~$ 15~~	$ 21
	Other than Single Family Dwellings		
Commercial	3/4"	~~$ 15~~	$ 21
	1"	~~$ 30~~	$ 30
	1-1/2"	$ 54	$ 54
	2"	$ 102	$ 102
	3"	$ 252	$ 252
	4"	$ 450	$ 450
	6"	$ 840	$ 840
	8"	$1440	$1440
	Construction Meter	~~$ 30~~	$ 50

Construction water will be charged at the rate of $2/1,000 gal.

WATER CONSUMPTION RATES.

All water delivered through each meter servicing commercial customers all year and all other customers between October 1 and May 31 of each year in excess of 5,000 gallons per meter per month shall be charged at the rate of ~~$1.37~~ $1.58 per thousand gallons.

WATER CONSERVATION RATES.

All water delivered through each meter serving single family residential customers in excess of 5,000 gallons per meter per month between June 1 and September 30 of each year shall be billed at the following rates:

	Current	Proposed
5,001 to 10,000 gallons	~~$1.25~~	$1.44 per 1,000 gallons
10,001 - 20,000 gallons	~~1.50~~	1.73 per 1,000 gallons
20,001 - 40,000 gallons	~~1.90~~	2.19 per 1,000 gallons
Over 40,001 gallons	~~2.00~~	2.60 per 1,000 gallons

All water delivered through each meter serving multi-family residential and landscape irrigation customers in excess of 5,000 per meter per month between June 1 and September 30 of each year shall be billed at the following rates:

	Current	Proposed
5,001 to 10,000 gallons	~~$1.25~~	$1.44 per 1,000 gallons
10,001 - 20,000 gallons	~~1.50~~	1.73 per 1,000 gallons
20,001 - 100,000 gallons	~~1.70~~	1.96 per 1,000 gallons
Over 100,000 gallons	~~1.70~~	2.21 per 1,000 gallons

WATER VIOLATION PENALTIES.

$ 50.00	first violation
100.00	second violation
200.00	third violation
400.00	fourth violation