PARK CITY COUNCIL WORK SESSION NOTES
SUMMIT COUNTY, UTAH
MAY 25, 2006

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

Tom Bakaly, City Manager Mark Harrington, City Attorney; Kent Cashel, Assistant Public Works Director; Matt Twombly, Project Manager; Gary Hill, Budget Manager; Colin Hilton, Economic Development Director; and Jerry Gibbs, Public Works Director

Absent: **Council member Roger Harlan**

1. **Council questions/comments.** Jim Hier discussed the proposed increase for business licenses and concerns raised by the HMBA and Chamber. There is a feeling that because the County has experienced significant increases in sales tax revenues that RAP tax revenues could cover costs. Marianne Cone reported on alternate transportation events and Library business. The Utah Arts Council was in town soliciting input on projects for Park City. Joe Kernan commented on the number of people participating in the bike to work day which is great for the community's image. Candace Erickson thanked everyone for their cards and calls over the past week and specifically Jay Hamburger for his article in the *Park Record*. She reported a 40% increase in the hazmat collection last weekend by Recycle Utah and the next event is scheduled on October 7 to be held again at The Canyons. Mayor Williams referred to an article on Park City's ice rink in a trade magazine. Jim Hier relayed a request for designating motorcycle parking spaces on Main Street. Kent Cashel responded that the parking manager has identified spaces and is moving forward with a plan. Mayor Williams suggested promoting an alternative transportation day once a month. Matt Twombly added that the Alternative Transportation Committee is already working on this but the City's support would be appreciated.

2. **Budget overview:**

Business license fees. Gary Hill explained the two components of the business license fee including the administrative charge, which is a fixed rate for all business, and a service enhanced portion. The administrative fee is $46 for most business with the exception of taxis which is higher because of enforcement. The enhanced portion of the fee is used to support the City's free transit system, and is based on a square footage calculation, skier days, or per vehicle or employee depending on the type of business. He explained that last fall, staff began to examine the costs of facilitating special events which total about 50 a year. The study was prompted by the City's efforts to secure a long time agreement with the Sundance Institute. A special events facilitation fee is proposed as a part of the enhanced portion of the business license fee and the amount is calculated on a sliding scale based upon the degree a business benefits from events. He referred to his staff report summary outlining recommended changes to the fee by business type. He clarified that the taxi, bus, limousine category is $75.58, the portion supporting transit is $30, and the unit increase is $1.75 per vehicle. Liquor and solicitors licenses are not subject to the proposal and will remain the same. There is a significant difference for warehouse or office uses versus resorts, lodging, restaurants, and retail. Restaurant/retail is a 56% increase or $.10 per square foot for 1,000 square feet. It is estimated that the City will raise $160,000 and the majority of the revenue will be used to support the Sundance Film Festival per the agreement. Sundance became ineligible for the Salt Lake County RAP Tax, totaling approximately $500,000, because of its headquarters' move to Park City. As a result, the City and Chamber's commitment increased from a $50,000 contribution to $160,000 a year, the business fee allocation is now $110,000, and Summit County grants about $120,000 in restaurant tax and RAP Tax a year. Mr. Hill explained that the agreement stipulates that if Sundance is able to secure additional funding that contributions would be decreased proportionally on a one-to-one basis. A corresponding reduction in business license fees, for instance, would occur the following year as well as a reduction in the City's and Chamber's budgets.

Mr. Hill emphasized that additional licensing revenue is intended to support year-round festivals. Currently applicants request fee waivers, usually in-kind services, and it is proposed that these fees cover some fixed costs eliminating the need for a fee waiver process. Joe Kernan stated that he has heard concerns from retail businesses. Mr. Hill indicated that retail is charged the same as restaurants and emphasized that the event fee supports year-round festivals not just Sundance, which benefits different businesses depending on the nature of the special event. It was reiterated that some costs for events would be covered with this fee, but there will no longer be an ability to ask for other fees to be waived. Larger festivals would experience a slight increase in costs, smaller ones a decrease, and all costs would be tracked.

Mr. Hill continued that reviewing the special events fee prompted looking at the general enhanced service fee used to support the transit system. The purpose of the bus system is to enhance our resort marketability. This fee has not changed since 1997 and staff looked at the incremental change in costs. In 1997, about 26% of the operating costs of the transit system were paid for through business license fees, exclusive of regional transit subsidies. In 2005, the level of support dropped to about 19.8% which is forecasted to decrease to around 18% in 2006 while there has been about a 34% increase in total rider-ship. However, there hasn't been a corresponding increase in sales tax revenue which is a concern many business owners expressed. While operational expenditures have increased 85% since 1997, business license revenue has only increased 36% because of no change in fees. The transit fund sales revenue is comprised of both the transit tax and a quarter of the resort communities sales tax which has only increased 55% during the same time frame. For this reason, staff is recommending a 25% increase across-the-board for all business types which will provide a stable source of revenue for the transit system. He recommended considering a mechanism identifying what portion of transit expenditures the business community should cover, which is recommended at 23% to 25%. The taxi, bus, limousine increase is $7.50 per vehicle as opposed to $18.90 per vehicle.

The Budget Manager relayed that the combination of the two increased percentages result in an increase of 31% for resorts, 87% for lodging, and 81% for restaurant/retail (equating to about $.15 per square foot). An escort service administrative fee is proposed because of the amount of administrative work associated with processing these licenses which is now recommended at $46 per business and $52.16 per employee. There was discussion about the current 18 escort services licensed with the City which must be located in offices. Mark Harrington advised that there will be additional modifications made to the Code relating to requirements for escort services.

Regional collaboration and economic development. Colin Hilton discussed this concept which was introduced at Council's annual work shop and staff has developed a tool in attracting businesses which support our economic development goals. USA Rugby is a good example but there was no process in place to award an economic development grant and as a result, staff formulated criteria which are included in the meeting packet. In response to a comment made by Joe Kernan, Mr. Hilton explained that the strategy is not to attract businesses with large numbers of employees, but rather businesses that compliment our resort economy. There is existing funding within the operating budget that could be used as the funding source and no new money is contemplated to be needed. Applicants must achieve all six criteria and an economic development program committee will review applications and make a recommendation to the City Council. Grants are anticipated not to exceed $20,000 and it is contemplated that the City will assist in start-up and location costs. In response to a question from Marianne Cone, Mr. Hilton indicted that the City would expect a three-year commitment from the business and if that is not met, the money would be returned. Mayor Williams felt that it may be appropriate to consider assisting businesses which cater to residents, but meets other criteria, and Jim Hier felt that a nexus can be made for almost any business to resort economy and suggested that criteria also address overnight visitors. He particularly favors the resort component and asked about the economic development plan. Mr. Hilton explained that the application form, budget policy, and economic development plan are available on-line or at City Hall. Candace Erickson agreed with the overnight visitor component but sees no reason to assist a for-profit business who should have a sound business plan. Colin Hilton advised that there are also public service contracts which accommodate community-oriented services and programs. This proposal is designed to achieve doubling the amount of return in direct taxable benefits to the City. It was emphasized that this funding would not apply to one-time events and staff will be returning to City Council next week with an application from the Center for Applied Media.

In response to a comment made by Candace Erickson about the increases in franchise tax revenue, Mr. Hill indicated that this trend will level out. Mr. Hier suggested that more information be provided on the monthly monitor report to explain fluctuations and Gary Hill stated he will follow-up. Tom Bakaly explained that the economic development grant program policy will become effective with the adoption of the budget.

3. Review of regular meeting:

Solid waste resolution. Jerry Gibbs distributed a revised version of the resolution, affecting Goal 2, specifically addressing equity for residential customer classes. The document provides general information on the City's position on solid waste to be shared with Summit County and Jim Hier suggested providing more specific information for the benefit of the County Commission when reviewing its solid waste contract and budget. Mr. Gibbs indicated that more information could be provided at that point in time, but it was felt that having a strategic plan in place is a better approach. Jim Hier emphasized the importance of relaying equity issues before the contract is negotiated. Jerry Gibbs assured him that the City will have opportunities to participate in the public process in 2007 when the review of the solid waste contract is scheduled. Composting programs were discussed.

Boothill construction management contract. Mr. Gibbs discussed the process for soliciting responses for services and staff found that Harris &Associates was about 20% to 30% less than Montgomery Watson and is recommended for the award of the contract. Construction is slated in spring of 2007. Marianne Cone pointed out the number of horse properties in the area that may be affected by noise, and asked that they be notified.

Prepared by Janet M. Scott, City Recorder

PARK CITY COUNCIL MEETING
SUMMIT COUNTY, UTAH
MAY 25, 2006

I ROLL CALL

Mayor Dana Williams called the regular meeting of the City Council to order at approximately 6 p.m. at the Marsac Municipal Building on Thursday, May 25, 2006. Members in attendance were Dana Williams, Marianne Cone, Candace Erickson, Jim Hier, and Joe Kernan. Roger Harlan was excused. Staff present was Tom Bakaly, City Manager; Mark Harrington, City Attorney;

II COMMUNICATIONS AND DISCLOSURES FROM COUNCIL AND STAFF

With regard to the solid waste resolution scheduled for action tonight, Joe Kernan stated that he is the owner of a recycling business.

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

None.

IV CONSENT AGENDA PUBLIC HEARINGS

Ordinance approving a Record of Survey Plat for the Jupiter Inn Condominiums, located at 2260 Park Avenue, Park City, Utah – Patrick Putt explained that this project was formerly the Brookfield Inn. He explained the history of the project which included a hotel and office use. The proposal is now for a 23 room condominium project and approval will enable the sale of individual units. There was some public input at the Planning Commission level on access which has since been resolved. The Mayor opened the public hearing and hearing no comments, closed the hearing.

V CONSENT AGENDA

Ms. Erickson asked about remediation of road damage caused by franchise holders and whether franchise fees are used to repair street cuts. She specifically referred to the situation on Monitor Drive. Eric DeHaan agreed that this is an on-going issue. Much of the trench work is substandard and often the street is the only option to install infrastructure. The agreement specifies compliance with street standards but enforcement is somewhat problematic. The franchise agreement also serves as a guarantee. Mark Harrington interjected that there is pending federal legislation which may substantially curtail our authority to enter into these types of franchise agreements. The telecommunications industry is receiving a lot of attention.

Jim Hier, "I move we approve Consent Agenda Items 1 through 3". Marianne Cone seconded. Motion carried.

Marianne Cone	Aye
Candace Erickson	Aye
Roger Harlan	Absent
Jim Hier	Aye
Joe Kernan	Aye

1. Ordinance approving a Record of Survey Plat for the Jupiter Inn Condominiums, located at 2260 Park Avenue, Park City, Utah – See staff report and public hearing.

2. Authorization to the Mayor to execute a Right-of-Way and Easement Grant, in a form approved by the City Attorney, with Questar Gas – See staff report.

3. Authorization to the Mayor to execute a Telecommunications Franchise Agreement with All West/Utah, Inc., in a form approved by the City Attorney – See staff report.

VI OLD BUSINESS

Resolution adopting goals and strategies for solid waste for Park City, Utah – See staff report and work session notes. Marianne Cone, "I move that we adopt the resolution outlining our goals and strategies for solid waster for Park City". Joe Kernan seconded. Motion carried.

Marianne Cone	Aye
Candace Erickson	Aye
Roger Harlan	Absent
Jim Hier	Aye
Joe Kernan	Aye

VII NEW BUSINESS

Authorization to the City Manager to execute an Agreement, in a form approved by the City Attorney, with Harris & Associates, for Construction Management Services for the construction of the Boothill 2 MG Tank and Pump Station in an amount not to exceed $118,000 – See staff report. Candace Erickson, I move to authorize the City Manager to execute an Agreement, in a form approved by the City Attorney, with Harris & Associates, for Construction Management Services for the construction of the Boothill 2 MG Tank and Pump Station in an amount not to exceed $118,000". Jim Hier seconded. Motion carried.

Marianne Cone	Aye
Candace Erickson	Aye

Roger Harlan	Absent
Jim Hier	Aye
Joe Kernan	Aye

VIII PUBLIC HEARING

Tentative budget for fiscal year 2006-2007 for Park City Municipal Corporation and its related agencies – The Mayor opened the public hearing.

1. Proposal to increase business license fees:

Ken Davis, owner of Java Cow and President of HMBA, relayed that he has not received a response from staff on previous public input on parking issues. He was contacted *in the middle of the season* about the prospect of increasing business license fees and was assured that he would hear back from staff but that did not happen. About two weeks ago, the membership heard that this was proceeding. He felt that restaurants and retail should not be *lumped together.* It is not fair because retail does not do nearly the amount of business as restaurants during Sundance.

He read from a prepared statement indicating the business community's support of locking in the Sundance Film Festival for future years, but felt that some decisions were made in haste in order to accommodate the agreement, specifically increasing business license fees. Mr. Davis compared this approach to Jesse James' famous quote, *"that's where the money is"* (whereby the City has concluded that businesses have excess funds for its needs). This can not be further from reality. Main Street is important to the City as a tourist destination and he referred to a desire shared by the City to discourage real estate offices and chain stores/restaurants on the street. The City has discussed ways to preserve Main Street but ultimately, nothing has been done. Mr. Davis urged Council not to make a wrong decision which would hurt businesses. Despite everyone's observations, the overall sales collections for the Main Street area have been rising approximately 3% to 4% annually over the past five years and with a 2% inflation factor, results in 1% to 2% in real growth. The total sales on the street have not changed in five years and sales increases and declines probably net to zero while operating costs have escalated. Mr. Davis noted that things have changed dramatically over the past year with Summit County's reassessment of real estate on Main Street; the valuation doubled as did tax bills which are passed on to business operators. The business license increase is intended to raise an additional $110,000 to cover one-third of the $330,000 shortfall associated with Salt Lake County's decision to not grant RAP funding because of Sundance's relocation to Park City. Additionally, business owners are being asked to cover $58,000 for fee waivers for special events and another 25% to support the bus system. Mr. Davis emphasized that requests for money are being made to the wrong people and are unfair, especially in consideration that County businesses benefit from the Park City name and our special events. There seems to be ample County funds to cover these costs. The transient room tax was designed to provide marketing resources for the Chamber. Since it is a County-wide tax it may be the most appropriate source to cover the Sundance shortfalls. The Chamber contributes $50,000 annually to Sundance and has agreed to provide an additional $110,000. He suggested that they cover the remaining $250,000 as well so that the event is secured and identified the Redstone Theater as being a Sundance venue. Revenues to the Chamber will probably exceed $4 million this year. Another option is use of the restaurant tax and $85,000 is granted annually to Sundance. Restaurant tax funds will total more than $1 million this year. Mr. Davis stated that the money is there; just get it from the right sources.

Bill Malone, Executive Director of the Chamber/Bureau, explained that the Chamber is increasing its budget from $50,000 to $160,000 toward sponsorship of the Sundance Film Festival. In discussions on this topic, the Park City Restaurant and Lodging Associations agreed that the best mechanism was an adjustment to business license fees. He acknowledged that some businesses benefit more than others and he felt that the City has worked hard to fairly allocate costs. In addition to the $160,000, the Chamber is also contributing another $450,000 toward special events and transient room dollars are being used to foster events. Mr. Malone emphasized the variety of events hosted in the community. The Chamber supports the business license increase relating to events, but the Board is reserving judgment on the 25% across-the-board for transit, acknowledging that increases will have to occur at some point. The percentage for increases in fees should reflect the percentage of increases for transit operations and Mr. Malone thanked staff for providing the Chamber board members with helpful information for their deliberations.

Mike Sweeney, business owner, asked what percentage each group is assuming as a burden as opposed to the percentage of increase. He relayed that Gary Hill has been very helpful to the HMBA by providing information. There was discussion about the definition of a "solicitor".

Sara Henry, Art of Wine owner, relayed that she is not located on Main Street and doesn't cater to tourists but rather residents. The Sundance Film Festival hurts her business. *It is the ultimate slap in the face* to not only be subjected to the negative effects of the Festival but now to asked to subsidize Sundance. She urged Council to think about businesses outside the Main Street area and discussed the struggles of small businesses. She is a member of the NOMA Board, but not speaking on their behalf, and asked that consideration be given to all businesses in Park City proper.

Hans Fuegi, Grubsteak Restaurant, stated that he represented other restaurants in discussions associated with the business license increase to support the future of the

Sundance Film Festival. However, the other 25% across-the-board increase seems a bit harsh. Operations increased for all businesses not just transit. He urged Council to look at businesses as its customers.

2. Traffic light request – Aspen Sprilngs/SR224 - Brent Ferron, Aspen Springs resident, asked Council to consider funding a traffic light at the intersection of Aspen Springs Drive and Meadows Drive on SR224. He also encouraged consideration of a lane for parking for the cross-country tail users.

The City Manager noted that staff will return to Council with draft business license fee ordinances with public hearings. Jim Hier expressed that he was offended by Ken Davis' comment that the City has done nothing for Main Street and Mr. Davis clarified that he meant with regard to the business mix on the street. He pointed out that the Redstone Cinemas are not a venue for Sundance and suggested exploring a policy for establishing and/or phasing-in the across-the-board 25% increase for transit. Overall, he didn't feel the increase is onerous to most license holders. He asked that the cost and revenue data be shared with the Chamber. Candace Erickson questioned whether 25% is the right percentage and if it should be phased. Costs have nearly doubled, rider-ship is only up 34%, and the growth of business licenses may not be adequate to maintain support of the transit system. She felt these points need to be discussed by Council. Marianne Cone referred to Ms. Henry's comments and agreed that the assessment may seem unequal as far as Sundance is concerned and relayed that she experienced the same drop in business when she operated a gallery at the TMI. Gary Hill emphasized that the fee is not just for Sundance but supports all year-round festivals. There was discussion about the action on the proposal which is scheduled next week. Jim Hier requested an analysis delineating between retail and restaurant businesses with regard to the festival fee. The Mayor pointed out that certain festivals benefit specific types of businesses and felt it appropriate to consider phasing in the 25% increase. Mr. Hier stated that in the initial years, transit revenues exceeded expenditures but five to ten years out, the City experienced significant negatives and as a result, committed to planning and budgeting for future operating costs. Park City's free bus system is an important asset in a resort community and another source of funding could be raising sales tax. He emphasized that the operating costs will continue to rise and pointed out that the Council has to balance requests for City services.

Mr. Hill understood that staff will bring back scenarios for phasing. For future consideration, not this budget cycle, staff will look at separating restaurants and retail and developing some sort of a metric defining what the business contribution should be and if that should be capped at a certain amount. Joe Kernan stated that he is comfortable with the philosophy of the festival fee. He felt it appropriate to explore equity issues and establishing a policy for businesses to pay for long-term transit needs. With no further comments, the Mayor closed the public hearing.

IX ADJOURNMENT

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

MEMORANDUM OF CLOSED SESSION

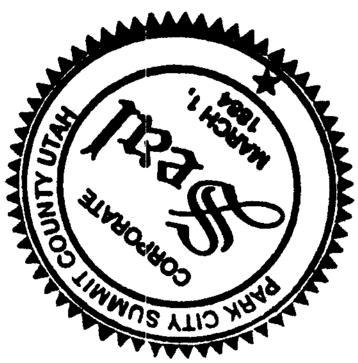
The City Council met in closed session at approximately 3 p.m. Members in attendance were Mayor Dana Williams, Marianne Cone, Candace Erickson, Jim Hier, and Joe Kernan. Roger Harlan was excused. Staff present was Tom Bakaly, City Manager; Mark Harrington, City Attorney; and Polly Samuels McLean, Assistant City Attorney. Marianne Cone, "I move to close the meeting to discuss property and litigation". Candace Erickson seconded. Motion carried.

Marianne Cone	Aye
Candace Erickson	Aye
Roger Harlan	Absent
Jim Hier	Aye
Joe Kernan	Aye

The meeting opened at approximately 4:30 p.m. with the convening of work session. The meeting for which these minutes were prepared was noticed by posting at least 24 hours in advance and by delivery to the news media two days prior to the meeting.

Prepared by Janet M. Scott

Janet M. Scott, City Recorder



CITY COUNCIL
Staff Report

PARK CITY
1884

Author: Ray Milliner
Subject: Jupiter Inn Condominiums
Date: May 25, 2006

PLANNING DEPARTMENT

RECOMMENDATION: Staff requests that the City Council review the proposed condominium record of survey application, conduct a public hearing and approve it according to the findings of fact, conclusions of law, and conditions of approval outlined in the attached ordinance.

DESCRIPTION

Project Name:	Jupiter Inn Condominiums
Applicant:	James Gaddis
Location:	2260 Park Avenue
Zone:	Residential Development Medium (RDM) and the Frontage Protection Zone Overlay (FPZ)

BACKGROUND

On March 22, 2006 the applicant submitted a complete record of survey plat application for a 23 unit condominium, the Jupiter Inn. The property has frontage on both Park Avenue and Jupiter View Drive and is in the RDM zone. The Commission approved a Master Planned Development application for the property on April 26, 2006 A development agreement for the project has yet to be executed. The Planning Commission previously considered various Neutracutical applications for this site.

The purpose of a condominium record of survey plat is to identify private, limited common and common areas within the project. Recordation of a record of survey plat enables the owner to sell individual condominium units. This record of survey plat identifies 23 residential units.

ANALYSIS

The project is located at 2260 Park Avenue, within the Park City limits. The property is zoned RDM with the FPZ overlay, and is subject to the 2260 Park Avenue MPD. The proposed condominium locations are consistent with the zoning district and the approved MPD. The record of survey plat is for the entire project. Primary access to the project is from Park Avenue and Jupiter View Drive. The plat is consistent with the approved MPD, in terms of size and location of the buildings, proposed uses, and required parking. All conditions of approval of the 2260 Park Avenue MPD approval continue to apply.

Because the Jupiter Inn is located within two existing buildings and will reduce the number of units from 42 to 23, staff finds that there is good cause for this application and will not directly harm adjacent property owners. No substantive changes to the exterior of the building are proposed. The requirements of the FPZ have been met.

DEPARTMENT REVIEW
This request was discussed at a Staff Review Meeting on April 25, 2006, where representatives from local utilities and City Staff were in attendance. No additional issues or concerns were identified.

NOTICE
The property was posted and notice was mailed to property owners within 300 feet on April 12, 2006. Legal notice was published in the Park Record on April 5, 2006.

ALTERNATIVES
1. The City Council may approve the Jupiter Inn Condominiums Record of Survey Plat to the as conditioned, or
2. The City Council may deny the Jupiter Inn Condominiums Record of Survey Plat and direct staff to make Findings for this decision, or
3. The City Council may continue the discussion on the Record of Survey Plat for the Jupiter Inn Condominiums.

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

RECOMMENDATION
Staff requests that the City Council review the proposed condominium record of survey application, conduct a public hearing and approve it according to the findings of fact, conclusions of law, and conditions of approval outlined in the attached ordinance.

EXHIBITS
Exhibit A – Proposed Ordinance
Exhibit B – Proposed Record of Survey plat

Ordinance No. 06-

AN ORDINANCE APPROVING A RECORD OF SURVEY PLAT FOR THE JUPITER INN CONDOMINIUMS, LOCATED AT 2260 PARK AVENUE, PARK CITY, UTAH

WHEREAS, the owner of the property known as Jupiter Inn Condominiums, has petitioned the City Council for approval of the record of survey; and

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

WHEREAS, on May 10, 2006 the Planning Commission held a public hearing to receive public input on the proposed record of survey and forwarded a positive recommendation of approval to the City Council; and

WHEREAS, on May 25, 2006 the City Council held a public hearing on the proposed record of survey; and

WHEREAS, the proposed record of survey plat allows the property owner to create an 23 unit condominium project; and

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

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

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

1. The property is located in the Residential Density Medium (RDM) zone.
2. The purpose of the RDM zone is to allow the continuation of medium density residential and resort related housing in the newer areas of Park City.
3. The RDM zone is characterized by a mix of contemporary multi-unit condominium residences and single family homes.
4. On April 26, 2006 the Planning Commission approved a Master Planned Development application for the project.
5. The location and design of the proposed structures is consistent with the approved MPD site plan and design.
6. The property is located within the Frontage Protection Zone (FPZ).
7. The purpose of the FPZ is to provide a significant landscaped buffer between development and highway uses.
8. The applicant is proposing 23 units totaling 21,081 square feet of residential floor area.
9. No substantive changes to the exterior of either of the two buildings are proposed.
10. No additional units are created by this record of survey amendment.
11. The applicant stipulates to the conditions of approval.

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

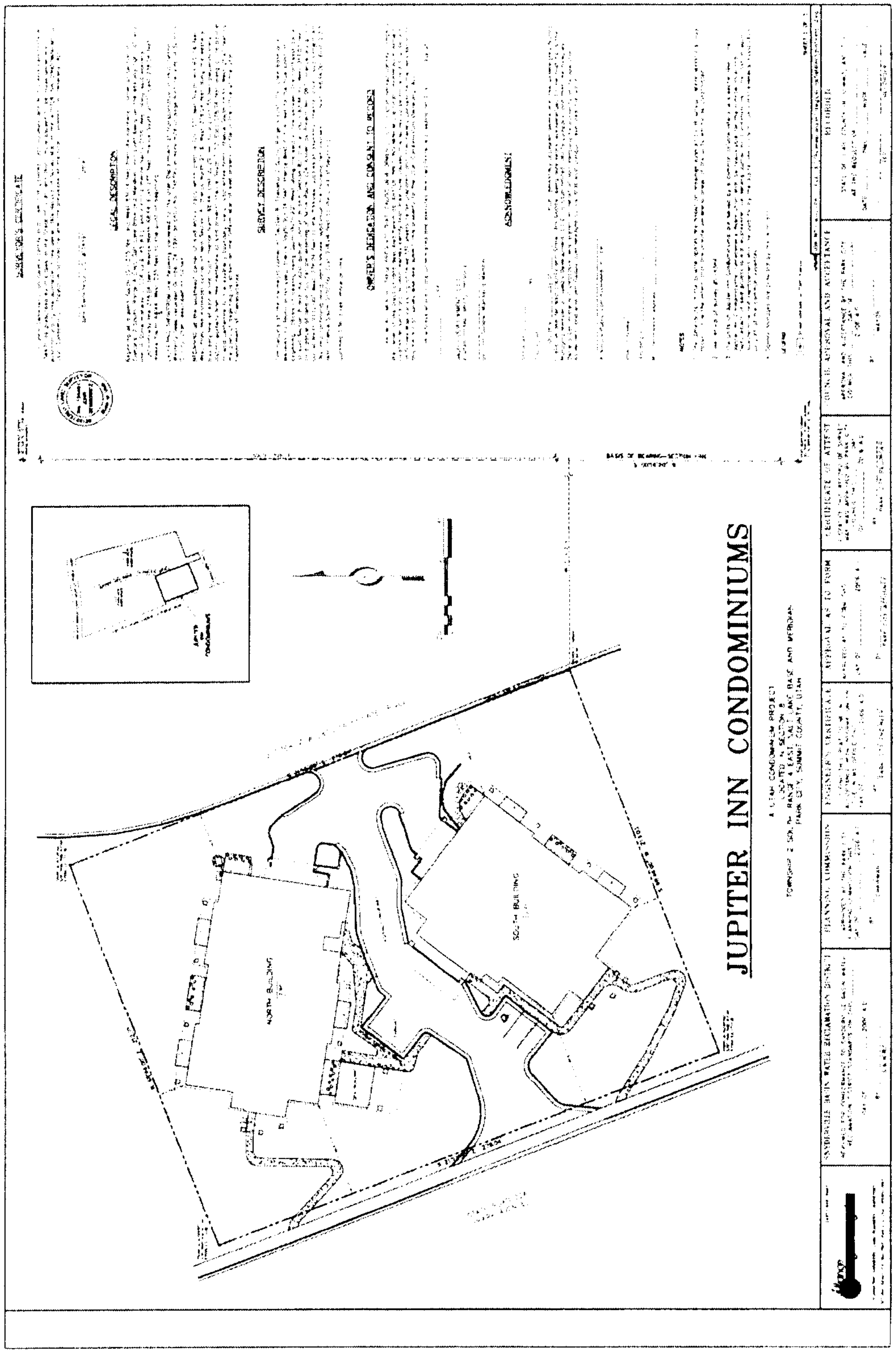
1. There is good cause for this Record of Survey.
2. The Record of Survey is consistent with the Park City Land Management Code and applicable State law regarding condominium plats.
3. Neither the public nor any person will be materially injured by the proposed Record of Survey, as conditioned.
4. Approval of the Record of Survey, subject to the conditions stated below, does not adversely affect the health, safety and welfare of the citizens of Park City.
5. The proposed record of survey plat is consistent with the approved 2260 Park Avenue MPD.

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

1. The City Attorney and City Engineer will review and approve the final form and content of the amended Record of Survey for compliance with State law, the Land Management Code, and the conditions of approval, as a condition subsequent to plat recordation.
2. The City Attorney will review and approve the final form of the Condominium Declaration and CCR's, as a condition subsequent to plat recordation.
3. The applicant will record the Record of Survey 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 for the plat will be void.
4. All conditions of approval of the 2260 Park Avenue MPD continue to apply.

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

PASSED AND ADOPTED this 25th day of May 2006.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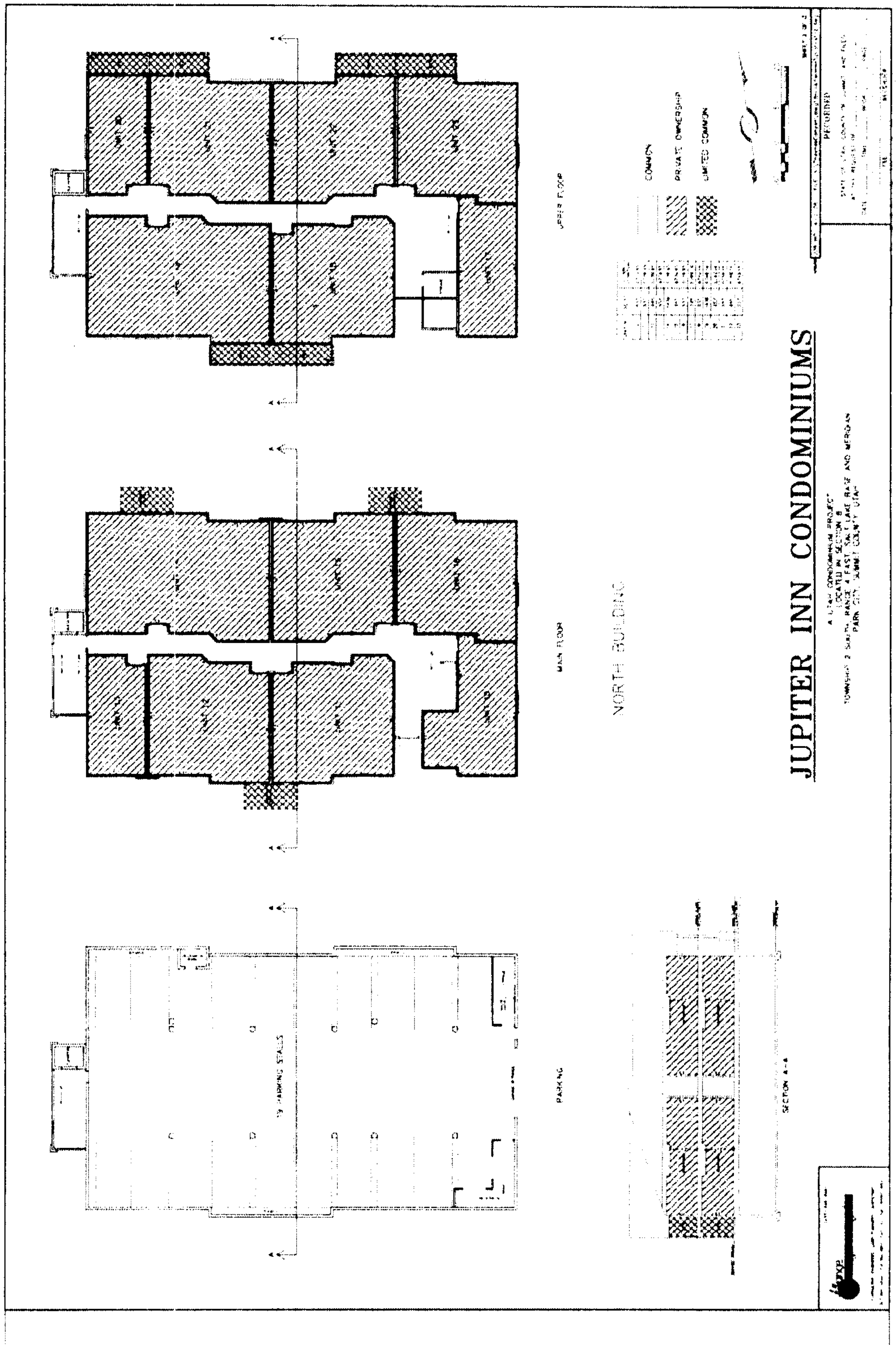
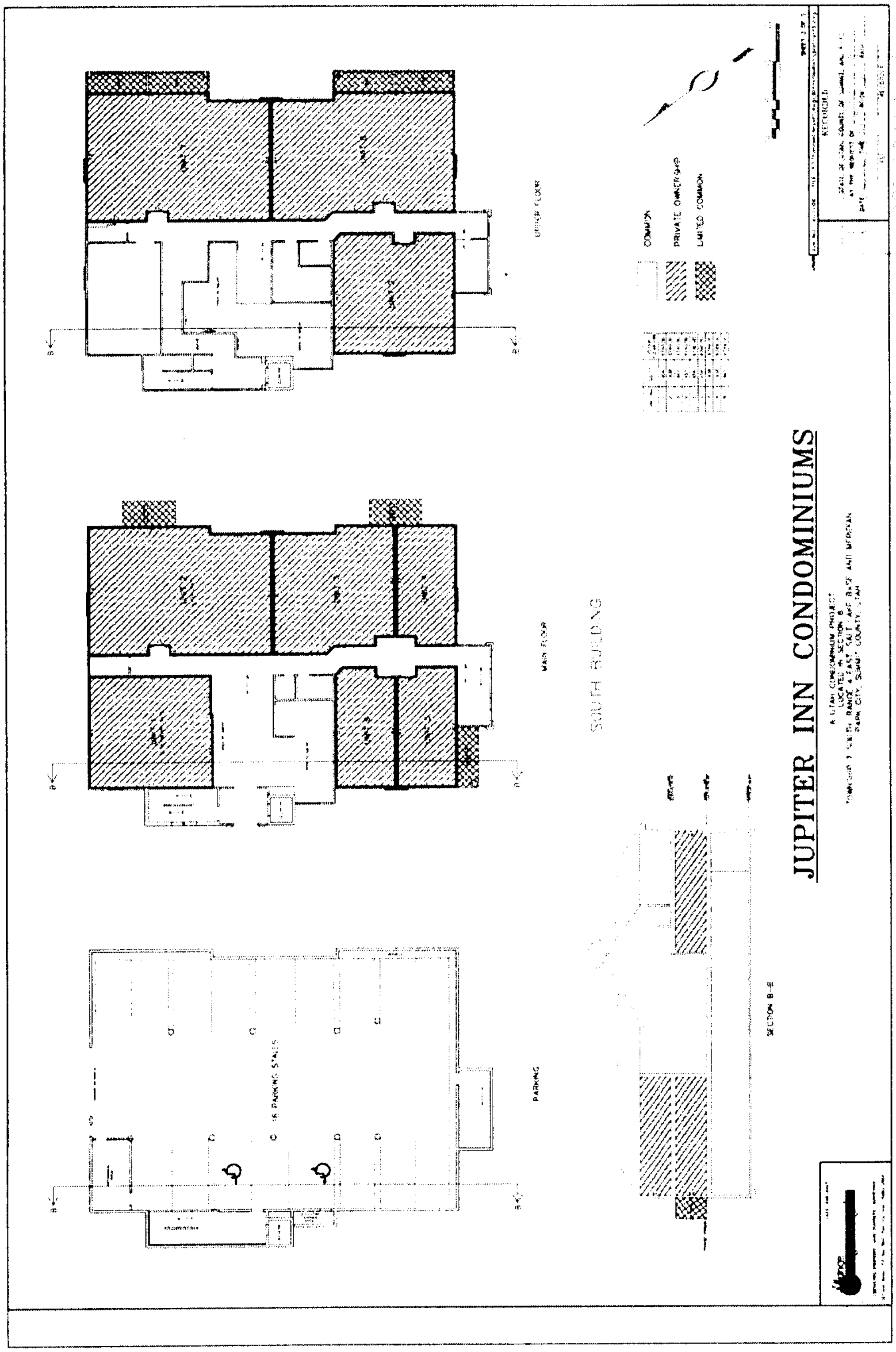

JUPITER INN CONDOMINIUMS
NORTH BUILDING
UPPER FLOOR
MAIN FLOOR
PARKING
SECTION A-A
COMMON
PRIVATE OWNERSHIP
LIMITED COMMON


JUPITER INN CONDOMINIUMS
SOUTH BUILDING
UPPER FLOOR
MAIN FLOOR
PARKING
16 PARKING STALLS
SECTION B-B
COMMON
PRIVATE OWNERSHIP
LIMITED COMMON

City Council Staff Report

CITY ENGINEER

Author: Eric DeHaan, P.E.
Subject: Questar Gas Line Easement At Golf Course
Date: May 25, 2006
Type of Item: Grant of Easement

Summary Recommendations:
The City Council should authorize the Mayor to approve the attached Right-of-Way and Easement Grant in a final form to be approved by the City Attorney.

Description:
Topic:
Questar Gas has approached the City with a request to grant a right-of-way and easement across the west portion of the driving range at the Park City Golf Course. If the right-of-way and easement is granted it will allow Questar to connect the Thaynes area with the Park City Mountain Resort area with a looped gas line, resulting in better service for these neighborhoods.

Background:
Questar Gas Company has requested an easement across the driving range at our golf course. The easement will allow for the installation of a new 4-inch gas line at the end of the driving range, about where a four-iron shot off the driving range tee would come to rest. Although the new gas line was triggered by construction of Silver Star, Questar wants to proceed with the new gas line regardless of Silver Star in an effort to improve their gas distribution infrastructure in the neighborhood in general. Questar has met with a representative of the Golf Course while researching the alignment of the proposed gas line.

Analysis:
The easement is illustrated on the attached map. The easement will save Questar some money in the installation of the gas line compared to being in the street, where traffic control and asphalt replacement costs would be substantial. It is probably also in Park City's interest not to have Questar in the street because their gas line would lie over the top of water and sewer lines, complicating emergency repairs to those utilities when necessary.

Questar submitted a $1 bill as consideration for proposed easement. On a more realistic level, Questar remits franchise fees to the City in excess of $700,000 per year ($715,000 in the adjusted 2006 budget, according to our Budget Department.) These

fee revenues arguably constitute adequate consideration for granting the easement since our 1973 franchise agreement speaks vaguely to the use of City streets and "other public places" for gas line locations.
Gas line installation would occur this summer in anticipation of heavier usage of natural gas next winter, in part due to the massive Silver Star project coming on line.

Department Review:
This report has been reviewed by Budget and Grants, Legal, Recreation, Golf, and Planning/Building/Engineering. All departmental concerns have been addressed. The City Engineer and City Attorney have obtained Questar's agreement that in the event franchise fees are ever eliminated by State or Federal legislation, then Questar will negotiate in good faith for additional consideration back to Park City for this easement. This modification will be made to the easement prior to its recordation, together with other reasonable modifications as recommended by the City Attorney.

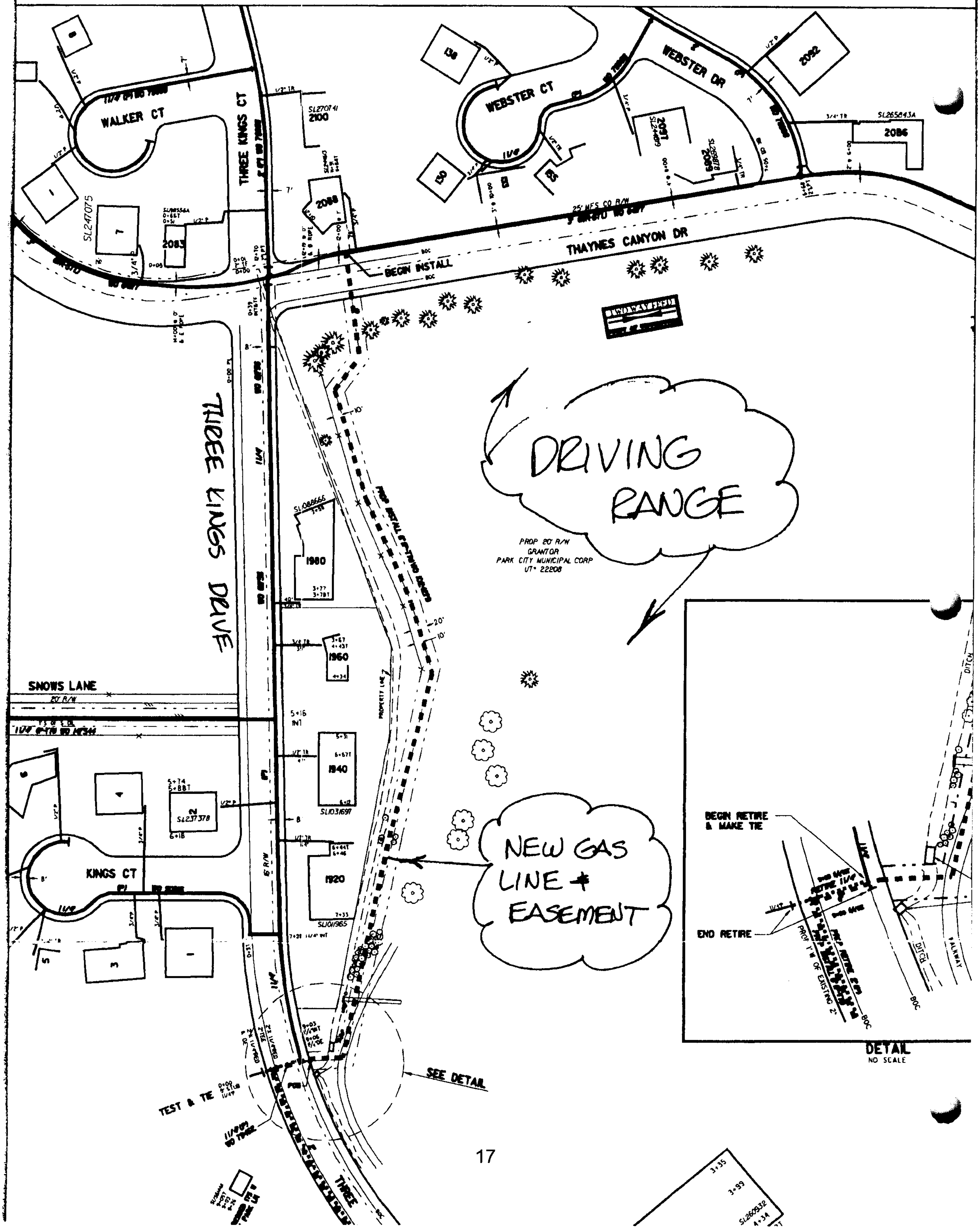
Alternatives:
Approve the Request:
It is Staff's recommendation that the Questar right-of-way and easement grant should be approved, allowing for orderly service of natural gas to the Thaynes/Mountain Resort area.

Deny the Request:
The Council can deny the easement request. This will cause Questar to install the gas line in Thaynes Canyon Drive and Three Kings Drive, which would negatively affect traffic and City Utilities.

Continue the Item:
If the Council requires more information the item can be continued.

Significant Impacts:
Approving the easement will lead to installation of a gas line in the driving range. This will not affect use of the driving range because Questar will use ball-resistant backhoes and their contractors will wear hard hats. Questar will coordinate the construction in such a manner as to minimize disruption to the aspen trees on the golf course south of the house addressed as 1920 Three Kings Drive. Gas line construction will not disturb the nearby flumes measuring water flow in the stream channels.

Recommendation:
The City Council should authorize the Mayor to approve the attached Right-of-Way and Easement Grant in a final form to be approved by the City Attorney.


WALKER CT
THREE KINGS CT
WEBSTER CT
WEBSTER DR
THAYNES CANYON DR
BEGIN INSTALL
DRIVING RANGE
PROP 20' R/W
GRANTOR
PARK CITY MUNICIPAL CORP
THREE KINGS DRIVE
SNOWS LANE
KINGS CT
NEW GAS LINE + EASEMENT
BEGIN RETIRE & MAKE TIE
END RETIRE
DETAIL
NO SCALE
SEE DETAIL
TEST & TIE

WHEN RECORDED MAIL TO:
Questar Gas Company
P.O. Box 45360, Right-of-way
Salt Lake City, UT 84145-0360
3048park.cc; RW01

Space above for County Recorder's use
PARCEL I.D.# PCA-1001-B-1-X
PCA-25-A-1-X

RIGHT-OF-WAY AND EASEMENT GRANT
UT 22208

PARK CITY MUNICIPAL CORP.,
a municipal corporation of the State of Utah, Grantor, does hereby convey and warrant to QUESTAR GAS COMPANY, a corporation of the State of Utah, Grantee, its successors and assigns, for the sum of ONE DOLLAR ($1.00) in hand paid and other good and valuable consideration, receipt of which is hereby acknowledged, a right-of-way and easement 20.00 feet in width to lay, maintain, operate, repair, inspect, protect, remove and replace pipelines, valves, valve boxes and other gas transmission and distribution facilities (hereinafter collectively called "facilities"), said right-of-way being situated in the County of Summit, State of Utah, and more particularly described as follows, to-wit:

Land of the Grantor located in Section 8, Township 2 South, Range 4 East, Salt Lake Base and Meridian;

the centerline of said right-of-way and easement shall extend through and across the above-described land and premises as follows, to-wit:

> Beginning at a point South 396.86 feet and West 1,661.42 feet from the East Quarter Corner of said Section 8, said point being on the East line of Three Kings Drive Street; running thence North 87°22'29" East 40.00 feet; thence North 11°35'46" East 263.26 feet; thence North 12°39'18" East 192.80 feet; thence North 17°02'48" West 77.55 feet; thence North 23°51'34" West 127.36 feet; thence North 16°17'59" West 127.83 feet; thence North 37°04'38" East 46.43 feet; thence North 07°55'22" West 67.64 feet.

TO HAVE AND TO HOLD the same unto said QUESTAR GAS COMPANY, its successors and assigns, so long as such facilities shall be maintained, with the right of ingress and egress to and from said right-of-way to maintain, operate, repair, inspect, protect, remove and replace the same. During temporary periods, Grantee may use such portion of the property along and adjacent to said right-of-way as may be reasonably necessary in connection with construction, maintenance, repair, removal or replacement of the facilities. Grantor shall have the right to use said premises except for the purposes for which this right-of-way and easement is granted to Grantee, provided such use does not interfere with the facilities or any other rights granted to Grantee hereunder.

Grantor shall not build or construct, nor permit to be built or constructed, any building or other improvement over or across said right-of-way, nor change the contour thereof, without written consent of Grantee; provided, however, that nothing contained herein shall prohibit Grantor from building or constructing, or permitting to be built or constructed curb and gutter, sidewalks, pavement, landscaping or similar improvements over and across said right-of-way, so long as said improvements do not damage said facilities.

Grantee, following the installation or maintenance, of the facilities, shall restore the surface of the right-of-way and easement, and any improvements, to, as near as practicable, the condition of the surface, prior to said installation or maintenance.

This right-of-way shall be binding upon and inure to the benefit of the successors and assigns of Grantor and the successors and assigns of Grantee, and may be assigned in whole or in part by Grantee.

It is hereby understood that any parties securing this grant on behalf of Grantee are without authority to make any representations, covenants or agreements not herein expressed.

IN WITNESS WHEREOF, Grantor has caused its corporate name and seal to be hereunto affixed this ____ day of ____________________, 20___.

PARK CITY MUNICIPAL CORP.

By:______________________________

Its:______________________________

STATE OF UTAH)
) ss.
COUNTY OF SUMMIT)

On the _____ day of __________________________, 20___ personally appeared before me__________________________________, who, being duly sworn, did say that he/she is the _________________, of PARK CITY MUNICIPAL CORP., and that the foregoing instrument was signed on behalf of said corporation by authority of a resolution of its City Council or its Bylaws, and said _________________________ acknowledged to me that said corporation duly executed the same.

____

Notary Public

City Council
Staff Report

CITY ENGINEER

Author:	**Eric DeHaan, P.E.**
Subject:	**Franchise Agreement/ All West Communications**
Date:	**May 25, 2006**
Type of Item:	**Agreement**

Summary Recommendations:
The Council should approve the attached Telecommunications Franchise Agreement with All West/Utah, Inc.

Description:

Topic:
Franchise agreement for a 15-year period to allow All West to operate within Park City under certain conditions.

Background:
As provided by Utah State Statute, Park City enters into franchise agreements with utility providers. In exchange for Park City allowing the regulated use of our streets and easements by the franchisee in the provision of utility service, the franchisee remits a fee to the City and provides services to our residents and visitors. Park City has been in negotiations with All West since 2004 on this agreement. We have similar agreements with several other utility providers.

Analysis:
All West Communications is a small telecommunications firm which has been contracted to serve as the telecommunications provider for Flagstaff (now known as Empire Pass). All West is based in Kamas, and they propose to provide cable TV, telephone, and high-speed Internet access to subscribers in Flagstaff. All West will therefore be operating in Park City. All West has already installed fiber-optic lines through the Ontario Drain tunnel, so they get up to Flagstaff from underground. They will be constructing additional lines in the future, and they have requested a franchise agreement (see attached letter). The things that are important to Park City, such as joint use of utility trenches, are included.

Department Review:
The agreement has been reviewed by Engineering and Legal. This report has also been reviewed by Budget and Grants, Public Works, and the City Manager's office. All comments and concerns have been incorporated.

Alternatives:

Approve the Request:
This is the Staff recommendation.

Deny the Request:
This action would jeopardize telecommunications service to Empire Pass.

Continue the Action:
If the Council desires more information, the action can be continued.

Significant Impacts:
Approximately 5% of Park City's FY 2007 revenues are projected to come from franchise taxes. This is substantial revenue source which allows the City to avoid raising property taxes or other increasing revenue sources. Although there is some impact on City rights-of-way from utility installation and maintenance, the City undoubtedly enjoys a stronger financial position because of the good working relationship we have with utilities through franchise agreements. The impact of the agreements on City staff is generally focused on Engineering and Public Works and generally does not occupy a large portion of staff time.

Consequence of Not Taking the Recommended Action:
Empire Pass would need to make other arrangements for telecommunications service.

Recommendation:
The Council should approve the attached Telecommunications Franchise Agreement with All West/Utah, Inc. in a form approved by the City Attorney.

TELECOMMUNICATIONS FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT (hereinafter "Agreement") is entered into by and between the PARK CITY MUNICIPAL CORPORATION (hereinafter "City"), a municipal corporation of the State of Utah, with principal offices at 445 Marsac Avenue, Post Office Box 1480, Park City, Utah 84060, and ALL WEST/UTAH, INC. (hereinafter "Provider"), a Utah corporation with its principal offices at 50 West 100 North, Post Office Box 588, Kamas, Utah 84036.

WITNESSETH:

WHEREAS, the Provider desires to provide telecommunications services within the City and in connection therewith to establish a telecommunications system in, under, along, over and across present and future rights-of-way of the City; and

WHEREAS, the City has enacted Title 4, Chapter 14 of the Municipal Code of Park City (hereinafter the "Telecommunications and Rights-of-Way Ordinance") which governs the application and review process for Telecommunications Franchises in the City; and

WHEREAS, the City has enacted Title 4, Chapter 14a of the Municipal Code of Park City (hereinafter the "Telecommunications Tax Ordinance") which levies a municipal telecommunications license tax on the gross receipts from telecommunications service attributed to Park City; and

WHEREAS, the City, in exercise of its management of public Rights-of-Way, believes that it is in the best interest of the public to provide the Provider a nonexclusive franchise to operate a telecommunications system in the City.

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties contained herein, and for other good and valuable consideration, the City and the Provider agree as follows:

ARTICLE 1. FRANCHISE AGREEMENT AND ORDINANCE.

1.1 **Agreement**. Upon approval by the City Council and execution by the parties, this Agreement shall be deemed to constitute a contract by and between City and Provider.

1.2 **Ordinance.** The City has adopted the Telecommunications and Rights-of-Way Ordinance which is attached to this Agreement as "Exhibit A" and incorporated herein by reference. The Provider acknowledges that it has had an opportunity to read and become familiar with the Telecommunications and Rights-of-Way Ordinance. The parties agree that the provisions and requirements of the Telecommunications and

Rights-of-Way Ordinance are material terms of this Agreement, and that each party hereby agrees to be contractually bound to comply with the terms of the Telecommunications and Rights-of-Way Ordinance. The definitions in the Telecommunications and Rights-of-Way Ordinance shall apply herein unless a different meaning is indicated. Nothing in this Section shall be deemed to require the Provider to comply with any provision of the Telecommunications and Rights-of-Way Ordinance which is determined to be unlawful or beyond the City's authority.

1.3 **Ordinance Amendments.** The City reserves the right to amend the Telecommunications and Rights-of-Way Ordinance at any time. The City shall give the Provider written notice and an opportunity to be heard concerning any proposed amendments. If there is any inconsistency between the Provider's rights and obligations under the Telecommunications and Rights-of-Way Ordinance as amended and this Agreement, the provisions of this Agreement shall govern during its term. Otherwise, the Provider agrees to comply with any such amendments.

1.4 **Franchise Description.** The Telecommunications Franchise provided hereby shall confer upon the Provider the nonexclusive right, privilege, and franchise to construct and maintain a telecommunications system in, under, above and across the present and future public Rights-of-Way in the City. The franchise also grants to the Provider the right, privilege and authority to engage in the telecommunications business and to provide any telecommunications service to any person in the City. Nothing contained herein shall preclude the Provider from permitting another provider of telecommunications services with a telecommunications franchise who is lawfully engaged in such business to utilize the Provider's System within the City for such purposes. The franchise does not grant to the Provider the right, privilege or authority to engage in cable television or other video system service business; although, nothing contained herein shall preclude the Provider from (1) permitting those with a cable franchise who are lawfully engaged in such business to utilize the Provider's System within the City for such purposes, or (2) from providing such service in the future if an appropriate franchise is obtained and all other legal requirements have been satisfied.

1.5 **Licenses.** The Provider acknowledges that it has obtained the necessary approvals, licenses or permits required by federal and state law to provide telecommunications services consistent with the provisions of this Agreement and with the Telecommunications and Rights-of-Way Ordinance.

1.6 **Relationship.** Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties and neither party is authorized to, nor shall either party act toward third persons or the public in a manner that would indicate any such relationship with each other.

ARTICLE 2. TELECOMMUNICATIONS TAX; ADMINISTRATIVE FEES

2.1 **Telecommunications Tax Ordinance.** Pursuant to the Utah Municipal Telecommunications Tax Act, Utah Code Annotated §§ 10-1-401 to -410, as amended, Park City has levied a municipal telecommunications license tax on the gross receipts from telecommunications service attributed to Park City. The Park City Telecommunications Tax ordinance, codified at Title 4, Chapter 14a of the Municipal Code of Park City., is hereby incorporated by reference into this Agreement and attached hereto as "Exhibit B." In accordance with state law, the municipal telecommunications tax is levied by Park City in lieu of franchise fees (except for administrative fees discussed at subsection 2.2 herein) and imposed upon telecommunications providers.

2.2 **Administrative Fees.** The Provider shall pay to the City any and all applicable administrative fees pursuant to Section 4-14-4 of the Municipal Code of Park City, as amended.

ARTICLE 3. TERM AND RENEWAL.

3.1 **Term and Renewal.** The franchise granted to the Provider shall be for a period of fifteen (15) years commencing on the first day of the month following execution of this Agreement, unless this Franchise be sooner terminated as herein provided. At the end of the fifteen (15) year term of this Agreement, the franchise granted herein will be renewed upon the same terms and conditions as contained in this Agreement for an additional fifteen (15) year term, unless the Provider gives written notice to the City's representative designated herein of the Provider's intent not to renew within ninety (90) calendar days ofthe expiration of the initial franchise term.

3.2 **Rights of Provider upon Expiration or Revocation.** Upon expiration of the franchise granted herein, whether by lapse of time, by agreement between the Provider and the City, or by revocation or forfeiture, the Provider shall have the right to remove from the Rights-of-Way any and all of its System, subject to the limitations and conditions of the Telecommunications and Rights-of-Way Ordinance Section 4-14-9(D). In such event, it shall be the duty of the Provider, immediately upon such removal, to restore the Rights-of-Way from which such System is removed to as good condition as the same was before the removal was effected.

ARTICLE 4. PUBLIC USE RIGHTS

4.1 **City Use of Poles, Underground Trenches or Infrastructure, and Overhead Structures.** The City shall have the right, without cost, to use all poles, underground trenches or infrastructure, and overhead structures owned or leased by the Provider within the City for fire alarms, police signal systems, or any lawful public use; provided, however, any said uses by the City shall be for activities owned, operated or used by the City for any public purposes and shall not include the provision of telecommunications service to third parties.

4.2 **Limitations on Use Rights.** Nothing in this Agreement shall be construed to require the Provider to increase pole or underground capacity, alter the manner in which the Provider attaches equipment to the poles, or alter the manner in which the Provider operates and maintains its equipment. Such City attachments and other lawful public uses of Provider's underground trenches, infrastructure and overhead structures shall not interfere with Provider's equipment or ability to provide telecommunications services and shall be installed and maintained in accordance with the reasonable requirements of the Provider and the current National Electrical Safety Code. City attachments and other lawful public uses permitted by this Agreement shall be attached or installed only after written approval by the Provider, which approval will be processed in a timely manner and will not be unreasonably withheld.

4.3 **Maintenance of City Facilities.** The City agrees to maintain the City's facilities.

ARTICLE 5. POLICE POWERS

The City expressly reserves, and the Provider expressly recognizes, the City's right and duty to adopt, from time to time, in addition to provisions herein contained, such ordinances and rules and regulations as the City may deem necessary in the exercise of its police power for the protection of the health, safety and welfare of its citizens and their properties.

ARTICLE 6. CHANGING CONDITIONS AND SEVERABILITY

6.1 **Changing Conditions.** The Provider and the City recognize that conditions in the telecommunications industry may change in ways that affect the way the Provider offers telecommunications services and the way the City regulates the telecommunications industry. In recognition of that possibility, the Provider and the City each agree, upon request of the other during the term of this Agreement, to meet with the other to discuss in good faith whether it would be appropriate, in view of new developments in the industry during the term of this Agreement, to amend this Agreement or to enter into separate, mutually satisfactory arrangements to effect a proper accommodation of any such developments.

6.2 **Severability.** If any section, sentence, paragraph, term or provision of this Agreement or the Telecommunications and Rights-of-Way Ordinance is for any reason determined to be or rendered illegal, invalid or superseded by other lawful authority, including any state or federal, legislative, regulatory or administrative authority having jurisdiction thereof, or is determined to be unconstitutional, illegal or invalid by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision, all of which shall remain in full force and effect for the term of this Agreement or any renewal or renewals thereof. Provided that if the invalidated portion is considered a material consideration for entering into this Agreement, the parties will negotiate, in good faith, an amendment to this Agreement. As used herein, "material consideration" for the City is its ability to collect the Franchise Fee during the term of this Agreement and its ability to manage the Rights-of-Way in a manner similar to that provided in this Agreement, the

Telecommunications and Rights-of-Way Ordinance, and the City's excavation ordinance. For the Provider, "material consideration" is its ability to use the Rights-of-Way for telecommunications purposes in a manner similar to that provided in this Agreement, the Telecommunications and Rights-of-Way Ordinance, and the City's excavation ordinance.

ARTICLE 7. EARLY TERMINATION, REVOCATION OF FRANCHISE AND OTHER REMEDIES

7.1 **Grounds for Termination.** The City may terminate or revoke this Agreement and all rights and privileges herein provided for any of the following reasons:

(a) The Provider fails to make timely payments of fees as required under Article 2 of this Agreement and does not correct such failure within sixty (60) calendar days after written notice by certified mail from the City of such failure;

(b) The Provider, by act or omission, materially violates a material duty herein set forth in any particular within the Provider's control, and with respect to which redress is not otherwise herein provided. In such event, the City, acting by or through its City Council, may determine, after hearing, that such failure is of a material nature, and thereupon, after written notice by certified mail giving the Provider notice of such determination, the Provider, within sixty (60) calendar days of such notice, shall commence efforts to remedy the conditions identified in the notice and shall have ninety (90) calendar days from the date it receives notice to remedy the conditions. After the expiration of such 90-day period and failure to correct such conditions, the City may declare the franchise forfeited and this Agreement terminated, and thereupon, the Provider shall have no further rights or authority hereunder; provided, however, that any such declaration of forfeiture and termination shall be subject to judicial review as provided by law, and provided further, that in the event such failure is of such nature that it cannot be reasonably corrected within the 90-day time period provided above, the City shall provide additional time for the reasonable correction of such alleged failure if the reason for the noncompliance was not the intentional or negligent act or omission of the Provider;

(c) The Provider becomes insolvent, unable or unwilling to pay its debts; is adjudged bankrupt; or all or part of its facilities should be sold under an instrument to secure a debt and is not redeemed by the Provider within sixty (60) days; or

(d) The Provider fails to commence construction of the System in the City within two (2) years of the effective date of this Agreement.

7.2 **Termination by Provider**. The Provider may terminate this Agreement with or without cause one hundred and twenty (120) calendar days after giving the City and the Provider's customers written notice of the Provider's intent to terminate.

7.3 **Reserved Rights.** Nothing contained herein shall be deemed to preclude the Provider from pursuing any legal or equitable rights or remedies it may have to challenge the action of the City.

7.4 **Remedies at Law.** In the event the Provider or the City fails to fulfill any of its respective obligations under this Agreement, the City or the Provider, whichever the case may be, shall have a breach of contract claim and remedy against the other, in addition to any other remedy provided herein or by law; provided, however, that no remedy that would have the effect of amending the specific provisions of this Agreement shall become effective without such action that would be necessary to formally amend the Agreement.

7.5 **Third Party Beneficiaries.** The benefits and protection provided by this Agreement shall inure solely to the benefit of the City and the Provider. This Agreement shall not be deemed to create any right in any person who is not a party and shall not be construed in any respect to be a contract in whole or in part for the benefit of any third party (other than the permitted successors and assigns of a party hereto).

ARTICLE 8. PARTIES' DESIGNEES

8.1 **City Designee and Address.** The City Attorney or his/her designee(s) shall serve as the City's representative regarding administration of this Agreement. Unless otherwise specified herein or in the Telecommunications and Rights-of-Way Ordinance, all notices from the Provider to the City pursuant to or concerning this Agreement, shall be delivered to the City's representative at Post Office Box 1480, 445 Marsac Ave., Park City Utah 84060, or such other officer and address as the City may designate by written notice to the Provider.

8.2 **Provider Designee and Address.** The Provider's Utah Manager or his designee(s) shall serve as the Provider's representative regarding administration of this Agreement. Unless otherwise specified herein or in the Telecommunications and Rights-of-Way Ordinance, all notices from the City to the Provider pursuant to or concerning this Agreement, shall be delivered to Provider's Utah address at 50 West 100 North, Post Office Box 588, Kamas, Utah 84036, with copies to be sent to Stephen F. Mecham, 10 East South Temple Street, Suite 900, Salt Lake City, Utah 841333, and such other office as the Provider may designate by written notice to the City.

8.3 **Failure of Designee.** The failure or omission of the City's or the Provider's representative to act shall not constitute any waiver or estoppel by the City or the Provider.

ARTICLE 9. INSURANCE AND INDEMNIFICATION

9.1 **Insurance.** Prior to commencing operations in the City pursuant to this Agreement, the Provider shall furnish to the City evidence that it has adequate general liability and property damage insurance. The evidence may consist of a statement that the Provider is effectively self-insured if the Provider has substantial financial resources, as evidenced by its current certified financial statements and established credit rating, or substantial assets located in the state of Utah. Any and all insurance, whether purchased by the Provider from a commercial carrier, whether provided through a self-insured program, or whether provided in some other form or other program, shall be in a form, in an amount and of a scope of coverage acceptable to the City.

9.2 **Indemnification.** The Provider agrees to indemnify, defend and hold the City harmless from and against any and all claims, demands, liens, and all liability or damage of whatsoever kind on account of or arising from the Provider's acts or omissions pursuant to or related to this Agreement, and to pay any and all costs, including reasonable attorneys' fees, incurred by the City in defense of such claims. The City shall promptly give written notice by certified mail to the Provider of any claim, demand, lien, liability, or damage with respect to which the City seeks indemnification and, unless in the City's judgment a conflict of interest may exist between the parties with respect to the claim, demand, lien, liability, or damage, the City shall permit the Provider to assume the defense of such with counsel of the Provider's choosing, unless the City reasonably objects to such counsel. Notwithstanding any provision of this section to the contrary, the Provider shall not be obligated to indemnify, defend or hold the City harmless to the extent any claim, demand, lien, damage, or liability arises out of or in connection with negligent acts or omissions of the City.

ARTICLE 10. GENERAL PROVISIONS

10.1 **Binding Agreement.** The parties represent that (a) when executed by their respective parties, this Agreement shall constitute legal and binding obligations of the parties; and (b) that each party has complied with all relevant statutes, ordinances, resolutions, by-laws and other legal requirements applicable to their operation in entering into this Agreement.

10.2 **Utah Law.** This Agreement shall be interpreted pursuant to Utah law.

10.3 **Time of Essence.** Time shall be of the essence of this Agreement.

10.4 **Interpretation of Agreement.** The invalidity of any portion of this Agreement shall not prevent the remainder from being carried into effect. Whenever the context of any provision shall require it, the singular number shall be held to include the plural number, and vice versa, and the use of any gender shall include any other and all genders. The paragraphs and section headings in this Agreement are for convenience only and do not constitute a part of the provisions hereof.

10.5 **No Presumption.** All parties have participated in preparing this Agreement. Therefore, the parties stipulate that any court interpreting or construing the Agreement shall not apply the rule of construction that the Agreement should be more strictly construed against the drafting party.

10.6 **Amendments.** This Agreement may be modified or amended by written agreement only. No oral modifications or amendments shall be effective.

10.7 **Assignment.** Neither the City nor the Provider may assign this Agreement to a successor or assign without the written consent of the other. Such consent shall not be unreasonably withheld.

10.8 **Binding Agreement.** This Agreement shall be binding upon the heirs, successors, administrators and assigns of each of the parties.

EXIBIT "A"

CHAPTER 14 - TELECOMMUNICATIONS AND RIGHTS-OF-WAY

4-14- 1. SCOPE OF ORDINANCE.

This Ordinance shall provide the basic local scheme for Providers of Telecommunications Services and Systems that require the use of the Rights-of-Way, including Providers of both the System and Service, those Providers of the System only, and those Providers who do not build the System but who only provide Services. This Ordinance shall apply to all future Providers and to all Providers in the City prior to the effective date of this Ordinance, whether operating with or without a Franchise as set forth in §4-14-12(B) . This Ordinance shall not apply to cable television operators otherwise regulated by a Franchise granted by the City, nor Personal Wireless Service Facilities. Providers excused by other law that prohibits the City from requiring a Franchise shall not be required to obtain a Franchise, but all of the requirements imposed by this Ordinance through the exercise of the City's police power and not preempted by other law shall be applicable.

4-14- 2. DEFINED TERMS.

(A) **APPLICATION**. The process by which a Provider submits a request and indicates a desire to be granted a Franchise to utilize the Rights-of-Way of all, or a part, of the City. An Application includes all written documentation, verbal statements and representations, in whatever form or forum, made by a Provider to the City concerning: the construction of a Telecommunications System over, under, on or through the Rights-of-Way; the Telecommunications Services proposed to be provided in the City by a Provider; and any other matter pertaining to a proposed System or Service.

(B) **CITY**. Park City, Utah.

(C) **COMPLETION DATE**. The date that a Provider begins providing Services to customers in the City.

(D) **CONSTRUCTION COSTS**. All costs of constructing a System, including make ready costs, other than engineering fees, attorneys or accountants fees, or other consulting fees.

(E) **CONTROL OR CONTROLLING INTEREST**. Actual working control in whatever manner exercised, including, without limitation, working control through ownership, management, debt instruments or negative control, as the case may be, of the System or of a Provider. A rebuttable presumption of the existence of Control or a Controlling Interest shall arise from the beneficial ownership, directly or indirectly, by any Person, or group of Persons acting in concert, of more than twenty-five percent (25%) of any Provider, which Person or group of Persons is hereinafter referred to as "Controlling

Person". "Control" or "Controlling Interest" as used herein may be held simultaneously by more than one Person or group of Persons.

(F) **FCC**. The Federal Communications Commission, or any successor thereto.

(G) **FRANCHISE**. The rights and obligation extended by the City to a Provider to own, lease, construct, maintain, use or operate a System in the Rights-of-Way within the boundaries of the City. Any such authorization, in whatever form granted, shall not mean or include:

(1) any other permit or authorization required for the privilege of transacting and carrying on a business within the City required by the ordinances and laws of the City;

(2) any other permit, agreement or authorization required in connection with operations on Rights-of-Way or public property including, without limitation, permits and agreements for placing devices on or in poles, conduits or other structures, whether owned by the City or a private entity, or for excavating or performing other work in or along the Rights-of-Way.

(H) **FRANCHISE AGREEMENT**. A contract entered into in accordance with the provisions of this Ordinance between the City and a Franchisee that sets forth, subject to this Ordinance, the terms and conditions under which a Franchise will be exercised.

(I) **GROSS REVENUE**. Includes all revenues of a Provider that may be included as gross revenue within the meaning of U.C.A. §11-26 , as amended.

(J) **INFRASTRUCTURE PROVIDER**. A Person providing to another, for the purpose of providing Telecommunication Services to customers, all or part of the necessary System which uses the Rights-Of-Way.

(K) **OPEN VIDEO SERVICE**. Any video programming services provided to any Person through the use of Rights-of-Way, by a Provider that is certified by the FCC to operate an Open Video System pursuant to sections 651, et seq., of the Telecommunications Act, to be codified at 47 U.S.C. Title VI, Part V, regardless of the System used.

(L) **OPEN VIDEO SYSTEM**. The system of cables, wires, lines, towers, wave guides, optic fiber, microwave, laser beams, and any associated converters, equipment, or facilities designed and constructed for the purpose of producing, receiving, amplifying or distributing Open Video Services to or from subscribers or locations within the City.

(M) **OPERATOR**. Any Person who provides Service over a Telecommunications System and directly or through one or more Persons owns a Controlling Interest in such System, or who otherwise controls or is responsible for the operation of such a System.

(N) **ORDINANCE** or **TELECOMMUNICATIONS ORDINANCE** . This Telecommunications Ordinance concerning the granting of Franchises in and by the

City for the construction, ownership, operation, use or maintenance of a Telecommunications System.

(O) **PERSON**. Includes any individual, corporation, partnership, association, joint stock company, trust, or any other legal entity, but not the City.

(P) **PERSONAL WIRELESS SERVICES FACILITIES** . Has the same meaning as provided in Section 704 of the Act (47 U.S.C. 332(c)(7)(c)), which includes what is commonly known as cellular and PCS Services that do not install any System or portion of a System in the Rights-of-Way.

(Q) **PROVIDER**. An Operator, Infrastructure Provider, Resaler, or System Lessee.

(R) **PSC**. The Public Service Commission, or any successor thereto.

(S) **RESALER**. Any Person that provides local exchange service over a System for which a separate charge is made, where that Person does not own or lease the underlying System used for the transmission.

(T) **RIGHTS-OF-WAY**. The surface of and the space above and below any public street, sidewalk, alley, or other public way of any type whatsoever, now or hereafter existing, and owned by or otherwise dedicated to the City.

(U) **SIGNAL**. Any transmission or reception of electronic, electrical, light or laser or radio frequency energy or optical information in either analog or digital format.

(V) **SYSTEM OR TELECOMMUNICATIONS SYSTEM**. All conduits, manholes, poles, antennas, transceivers, amplifiers and all other electronic devices, equipment, Wire and appurtenances owned, leased, or used by a Provider, located in the Rights-of-Way and utilized in the provision of Services, including fully digital or analog, voice, data and video imaging and other enhanced Telecommunications Services. Telecommunications System or Systems also includes an Open Video System.

(W) **SYSTEM LESSEE**. Any Person that leases a System or a specific portion of a System to provide Services.

(X) **TELECOMMUNICATIONS**. The transmission, between or among points specified by the user, of information of the user's choosing, e.g., data, video, and voice, without change in the form or content of the information sent and received.

(Y) **TELECOMMUNICATIONS SERVICES OR SERVICES**. Any telecommunications services provided by a Provider within the City that the Provider is authorized to provide under federal, state and local law, and any equipment and/or facilities required for and integrated with the Services provided within the City, except that these terms do not include "cable service" as defined in the Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992, 47 U.S.C.§ 521, et seq., and the Telecommunications Act of 1996. Telecommunications System or Systems also includes an Open Video System.

(Z) **WIRE**. Fiber optic Telecommunications cable, wire, coaxial cable, or other transmission medium that may be used in lieu thereof for similar purposes.

4-14- 3. FRANCHISE REQUIRED.

(A) **NON-EXCLUSIVE FRANCHISE**. The City is empowered and authorized to issue non-exclusive Franchises governing the installation, construction, and maintenance of Systems in the City's Rights-of-Way, in accordance with the provisions of this Ordinance. The Franchise is granted through a Franchise Agreement entered into between the City and Provider.

(B) **EVERY PROVIDER MUST OBTAIN**. Except to the extent preempted by federal or state law, as ultimately interpreted by a court of competent jurisdiction, including any appeals, every Provider must obtain a Franchise prior to constructing a Telecommunications System or providing Telecommunications Services using the Rights-of-Way, and every Provider must obtain a Franchise before constructing an Open Video System or providing Open Video Services via an Open Video System. Any Open Video System or Service shall be subject to the customer service and consumer protection provisions applicable to the Cable TV companies to the extent the City is not preempted or permitted as ultimately interpreted by a court of competent jurisdiction, including any appeals. The fact that particular Telecommunications Systems may be used for multiple purposes does not obviate the need to obtain a Franchise for other purposes. By way of illustration and not limitation, a cable operator of a cable system must obtain a cable franchise, and, should it intend to provide Telecommunications Services over the same System, must also obtain a Telecommunications Franchise.

(C) **NATURE OF GRANT**. A Franchise shall not convey title, equitable or legal, in the Rights-of-Way. A Franchise is only the right to occupy Rights-of-Way on a non-exclusive basis for the limited purposes and for the limited period stated in the Franchise; the right may not be subdivided, assigned, or subleased. A Franchise does not excuse a Provider from obtaining appropriate access or pole attachment agreements before collocating its System on the property of others, including the City's property. The Franchise Agreement may impose additional limitations upon the Provider, such as location of utilities. This section shall not be construed to prohibit a Provider from leasing conduit to another Provider, so long as the Lessee has obtained a Franchise from the City.

(D) **CURRENT PROVIDERS**. Except to the extent exempted by federal or state law, any Provider acting without a Franchise on the effective date of this Ordinance shall request issuance of a Franchise from the City within 90 days of the effective date of this Ordinance. If such request is made, the Provider may continue providing service during the course of negotiations. If a timely request is not made, or if negotiations cease and a Franchise is not granted, the Provider shall comply with the provisions of Section 4-14-

9(D) .

(E) **NATURE OF FRANCHISE**. The Franchise granted by the City under the provisions of this Ordinance shall be a nonexclusive Franchise providing the right and consent to install, repair, maintain, remove and replace its System on, over and under the Rights-of-Way in order to provide Services, unless otherwise specified by the Franchise Agreement.

(F) **REGULATORY APPROVAL NEEDED**. Before offering or providing any Services pursuant to the Franchise, a Provider shall obtain any and all regulatory approvals, permits, authorizations or licenses for the offering or provision of such Services from the appropriate federal, state and local authorities, if required, and shall submit to the City upon the written request of the City evidence of all such approvals, permits, authorizations or licenses.

(G) **TERM**. No Franchise issued pursuant to this Ordinance shall have a term of less than five (5) years or greater than fifteen (15) years. Each Franchise shall be granted in a nondiscriminatory manner.

4-14- 4. COMPENSATION AND OTHER PAYMENTS.

(A) **COMPENSATION**. As fair and reasonable compensation for any Franchise granted pursuant to this Ordinance, a Provider shall have the following obligations:

(1) **APPLICATION FEE**. In order to offset the cost to the City to review an Application for a Franchise and in addition to all other fees, permits or charges, a Provider shall pay to the City, at the time of Application, $500 as a non-refundable Application fee.

(2) **FRANCHISE FEES**. The Franchise fee, if any, shall be set forth in the Franchise Agreement. The obligation to pay a Franchise fee shall commence on the Completion Date. The combination of the Franchise Fee and any other business license fee or franchise license fee enacted by the City shall not in total exceed the state limitation on franchise fees, currently 6% of gross revenue, as amended.

(B) **EXCAVATION PERMITS**. The Provider shall also pay fees required for an excavation permit as provided in the City's Fee Resolution or applicable code.

(C) **TIMING**. Unless otherwise agreed to in the Franchise Agreement, all Franchise Fees shall be paid on a monthly basis within forty-five (45) days of the close of each calendar month.

(D) **FEE STATEMENT AND CERTIFICATION**. Unless a Franchise Agreement provides otherwise, each fee payment shall be accompanied by a statement showing the manner in which the fee was calculated and shall be certified as to its accuracy.

(E) **FUTURE COSTS**. A Provider shall pay to the City or to third parties, at the direction of the City, an amount equal to the reasonable costs and reasonable expenses that the City incurs for the services of third parties, including but not limited to attorneys and other consultants, in connection with any renewal or Provider-initiated renegotiation, or amendment of this Ordinance or a Franchise, provided, however, that the parties shall agree upon a reasonable financial cap at the outset of negotiations. In the event the parties are unable to agree, either party may submit the issue to binding arbitration in accordance with the rules and procedures of the American Arbitration Association.

(F) **TAXES AND ASSESSMENTS**. To the extent taxes or other assessments are imposed by taxing authorities, other than the City on the use of the City property as a result of a Provider's use or occupation of the Rights-of-Way, the Provider shall be responsible for payment of its pro rata share of such taxes, payable annually unless otherwise required by the taxing authority. Such payments shall be in addition to any other fees payable pursuant to this Ordinance.

(G) **INTEREST ON LATE PAYMENTS**. In the event that any payment is not actually received by the City on or before the applicable date fixed in the Franchise, interest thereon shall accrue from such date until received at the rate charged for delinquent state taxes.

(H) **NO ACCORD AND SATISFACTION**. No acceptance by the City of any fee shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of such fee payment be construed as a release of any claim the City may have for additional sums payable.

(I) **NOT IN LIEU OF OTHER TAXES OR FEES**. The fee payment is not a payment in lieu of any tax, fee or other assessment except as specifically provided in this Ordinance, or as required by applicable law. By way of example, and not limitation, excavation permit fees and fees to obtain space on the City owned or leased poles are not waived and remain applicable.

(J) **CONTINUING OBLIGATION AND HOLDOVER**. In the event a Provider continues to operate all or any part of the System after the Term of the Franchise, such operator shall continue to comply with all applicable provisions of this Ordinance and the Franchise, including, without limitation, all compensation and other payment provisions throughout the period of such continued operation, provided that any such continued operation shall in no way be construed as a renewal or other extension of the Franchise, nor as a limitation on the remedies, if any, available to the City as a result of such continued operation after the term, including, but not limited to, damages and restitution.

(K) **COSTS OF PUBLICATION**. A Provider shall assume any publication costs associated with its Franchise that may be required by law.

4-14- 5. FRANCHISE APPLICATIONS.

(A) **FRANCHISE APPLICATION**. To obtain a Franchise to construct, own, maintain or provide Services through any System within the City, to obtain a renewal of a Franchise granted pursuant to this Ordinance, or to obtain the City approval of a transfer of a Franchise, as provided in Section 4-14-7(A)(2) , granted pursuant to this Ordinance, an Application must be filed with City. The Application form may be changed by the City Manager so long as such changes request information that is consistent with this Ordinance.

(B) **APPLICATION CRITERIA**. In making a determination as to an Application filed pursuant to this Ordinance, the City may, but shall not be limited to, request the following from the Provider:

(1) A copy of the order from the PSC granting a Certificate of Convenience and Necessity.

(2) Certification of the Provider's financial ability to compensate the City for Provider's intrusion, maintenance and use of the Rights-of-Way during the Franchise term proposed by the Provider;

(3) Provider's agreement to comply with the requirements of Section 4-14-6 of this Ordinance.

(C) **FRANCHISE DETERMINATION**. The City, in its discretion, shall determine the award of any Franchise on the basis of these and other considerations relevant to the use of the Rights-of-Way, without competitive bidding.

4-14- 6. CONSTRUCTION AND TECHNICAL REQUIREMENTS.

(A) **GENERAL REQUIREMENT**. No Provider shall receive a Franchise unless it agrees to comply with each of the terms set forth in this Section governing construction and technical requirements for its System, in addition to any other reasonable requirements or procedures specified by the City or the Franchise, including requirements regarding locating and sharing in the cost of locating portions of the System with other Systems or with City utilities. A Provider shall obtain an excavation permit before commencing any work in the Rights-of-Way.

(B) **QUALITY**. All work involved in the construction, maintenance, repair, upgrade and removal of the System shall be performed in a safe, thorough and reliable manner using materials of good and durable quality, and in accordance with the City's Design Standards, Construction Specifications, and Standard Drawings, latest edition. If, at any time, it is determined by the FCC or any other agency granted authority by federal law or the FCC to make such determination, that any part of the System, including, without limitation, any means used to distribute Signals over or within the System, is harmful to the public health, safety or welfare, or quality of service or reliability, then a Provider shall, at its own cost and expense, promptly correct all such conditions.

(C) **LICENSES AND PERMITS**. A Provider shall have the sole responsibility for diligently obtaining, at its own cost and expense, all permits, licenses or other forms of approval or authorization necessary to construct, maintain, upgrade or repair the System, including but not limited to any necessary approvals from Persons and/or the City to use private property, easements, poles and conduits. A Provider shall obtain any required permit, license, approval or authorization, including but not limited to excavation permits, pole attachment agreements, etc., prior to the commencement of the activity for which the permit, license, approval or authorization is required.

(D) **RELOCATION OF THE SYSTEM**.

(1) **NEW GRADES OR LINES**. If the grades or lines of any Rights-of-Way are changed at any time in a manner affecting the System, then a Provider shall comply with the requirements of the excavation ordinance or other applicable City regulation.

(2) **THE CITY AUTHORITY TO MOVE SYSTEM IN CASE OF AN EMERGENCY**. The City may, at any time, in case of fire, disaster or other emergency, as determined by the City in its reasonable discretion, cut or move any parts of the System and appurtenances on, over or under the Rights-of-Way of the City, in which event the City shall not be liable therefor to a Provider. The City shall notify a Provider in writing prior to, if practicable, but in any event as soon as possible and in no case later than the next business day following any action taken under this Section. Notice shall be given as provided in Section11.4.

(3) **A PROVIDER REQUIRED TO TEMPORARILY MOVE SYSTEM FOR THIRD PARTY**. A Provider shall, upon prior reasonable written notice by the City or any Person holding a permit to move any structure, and within the time that is reasonable under the circumstances, temporarily move any part of its System to permit the moving of said structure. A Provider may impose a reasonable charge on any Person other than the City for any such movement of its Systems.

(4) **RIGHTS-OF-WAY CHANGE - OBLIGATION TO MOVE SYSTEM**. When the City is changing a Rights-of-Way and makes a written request, a Provider is required to move or remove its System from the Rights-of-Way, without cost to the City, to the extent provided in the excavation ordinance. This obligation does not apply to Systems originally located on private property pursuant to a private easement, which property was later incorporated into the Rights-of-Way, if that private easement grants a superior vested right. This obligation exists whether or not the Provider has obtained an excavation permit.

(5) **PROTECT STRUCTURES**. In connection with the construction, maintenance, repair, upgrade or removal of the System, a Provider shall, at its own cost and expense, protect any and all existing structures belonging to the City and any historically significant structure or building, as designated by the Historic District Commission. A Provider shall obtain the prior written consent of the City to alter any water main, power facility, sewerage or drainage system, or any other municipal structure on, over or under

the Rights-of-Way of the City required because of the presence of the System. Any such alteration shall be made by the City or its designee on a reimbursable basis. A Provider agrees that it shall be liable for the costs incurred by the City to replace or repair and restore to its prior condition in a manner as may be reasonably specified by the City, any municipal structure or any other Rights-of-Way of the City involved in the construction, maintenance, repair, upgrade or removal of the System that may become disturbed or damaged as a result of any work thereon by or on behalf of a Provider pursuant to the Franchise.

(6) **NO OBSTRUCTION**. In connection with the construction, maintenance, upgrade, repair or removal of the System, a Provider shall not unreasonably obstruct the Rights-of-Way of fixed guide way systems, railways, passenger travel, or other traffic to, from or within the City without the prior consent of the appropriate authorities.

(7) **SAFETY PRECAUTIONS**. A Provider shall, at its own cost and expense, undertake all necessary and appropriate efforts to prevent accidents at its work sites, including the placing and maintenance of proper guards, fences, barricades, security personnel and suitable and sufficient lighting, and such other requirements prescribed by OSHA and Utah OSHA. A Provider shall comply with all applicable federal, state and local requirements including but not limited to the National Electric Safety Code.

(8) **REPAIR**. After written reasonable notice to the Provider, unless, in the sole determination of the City, an imminent danger exists, any Rights-of-Way within the City which are disturbed or damaged during the construction, maintenance or reconstruction by a Provider of its System may be repaired by the City at the Provider's expense, to a condition as good as that prevailing before such work was commenced. Upon doing so, the City shall submit to such a Provider an itemized statement of the cost for repairing and restoring the Rights-of-Ways intruded upon. The Provider shall, within thirty (30) days after receipt of the statement, pay to the City the entire amount thereof.

(9) **SYSTEM MAINTENANCE**. A Provider shall:

(a) Install and maintain all parts of its System in a non-dangerous condition throughout the entire period of its Franchise.

(b) Install and maintain its System in accordance with standard prudent engineering practices and shall conform, when applicable, with the National Electrical Safety Code and all applicable other federal, state and local laws or regulations.

(c) At all reasonable times, permit examination by any duly authorized representative of the City of the System and its effect on the Rights-of-Way.

(10) **TRIMMING OF TREES**. A Provider shall have the authority to trim trees, in accordance with all applicable utility restrictions, ordinance and easement restrictions, upon and hanging over Rights-of-Way so as to prevent the branches of such trees from coming in contact with its System. See Title 14.

4-14- 7. FRANCHISE AND LICENSE NON-TRANSFERRABLE.

(A) **NOTIFICATION OF SALE**.

(1) **NOTIFICATION AND ELECTION**. When a Provider is the subject of a sale, transfer, lease, assignment, sublease or disposed of, in whole or in part, either by forced or involuntary sale, or by ordinary sale, consolidation or otherwise, such that it or its successor entity is obligated to inform or seek the approval of the PSC, the Provider or its successor entity shall promptly notify the City of the nature of the transaction. The notification shall include either:

(a) the successor entity's certification that the successor entity unequivocally agrees to all of the terms of the original Provider's Franchise Agreement, or

(b) the successor entity's Application in compliance with Section 4-14-5 of this Chapter.

(2) **TRANSFER OF FRANCHISE**. Upon receipt of a notification and certification in accordance with Section 4-14-7(A)(1)(a) , the City designee, as provided in Section 4-14-9(A)(1) , shall send notice affirming the transfer of the Franchise to the successor entity. If the City has good cause to believe that the successor entity may not comply with this Ordinance or the Franchise Agreement, it may require an Application for the transfer. The Application shall comply with Section 4-14-5 .

(3) **IF PSC APPROVAL NO LONGER REQUIRED**. If the PSC no longer exists, or if its regulations or state law no longer require approval of transactions described in Section 4-14-7(A) , and the City has good cause to believe that the successor entity may not comply with this Ordinance or the Franchise Agreement, it may require an Application. The Application shall comply with Section 4-14-5 .

(B) **EVENTS OF SALE**. The following events shall be deemed to be a sale, assignment or other transfer of the Franchise requiring compliance with Section 7.1:

(1) the sale, assignment or other transfer of all or a majority of a Provider's assets to another Person;

(2) the sale, assignment or other transfer of capital stock or partnership, membership or other equity interests in a Provider by one or more of its existing shareholders, partners, members or other equity owners so as to create a new Controlling Interest in a Provider;

(3) the issuance of additional capital stock or partnership, membership or other equity interest by a Provider so as to create a new Controlling Interest in such a Provider; or

(4) the entry by a Provider into an agreement with respect to the management or operation of such Provider or its System.

4-14- 8. OVERSIGHT AND REGULATION.

(A) **INSURANCE, INDEMNITY, AND SECURITY**. Prior to the execution of a Franchise, a Provider will deposit with the City an irrevocable, unconditional letter of credit as required by the terms of the Franchise, and shall obtain and provide proof of the insurance coverage required by the Franchise. A Provider shall also indemnify the City as set forth in the Franchise.

(B) **OVERSIGHT**. The City shall have the right to oversee, regulate and inspect periodically the construction, maintenance, and upgrade of the System, and any part thereof, in accordance with the provisions of the Franchise and applicable law. A Provider shall establish and maintain managerial and operational records, standards, procedures and controls to enable a Provider to prove, in reasonable detail, to the satisfaction of the City at all times throughout the Term, that a Provider is in compliance with the Franchise. A Provider shall retain such records for not less than the applicable statute of limitations.

(C) **MAINTAIN RECORDS**. A Provider shall at all times maintain:

(1) On file with the City, a full and complete set of plans, records and "as-built" hard copy maps and, to the extent the maps are placed in an electronic format, they shall be made in electronic format compatible with the City's existing GIS system, of all existing and proposed installations and the types of equipment and Systems installed or constructed in the Rights-of-Way, properly identified and described as to the types of equipment and facility by appropriate symbols and marks which shall include annotations of all Rights-of-Ways where work will be undertaken. As used herein, "as-built" maps includes file construction prints. Maps shall be drawn to scale. "As-built" maps, including the compatible electronic format, as provided above, shall be submitted within 30 days of completion of work or within 30 days after completion of modification and repairs. "As- built" maps are not required of the Provider who is the incumbent local exchange carrier for the existing System to the extent they do not exist.

(2) Throughout the term of the Franchise, a Provider shall maintain complete and accurate books of account and records of the business, ownership, and operations of a Provider with respect to the System in a manner that allows the City at all times to determine whether a Provider is in compliance with the Franchise. Should the City reasonably determine that the records are not being maintained in such a manner, a Provider shall alter the manner in which the books and/or records are maintained so that a Provider comes into compliance with this Section. All financial books and records which are maintained in accordance with the regulations of the FCC and any governmental entity that regulates utilities in the State of Utah, and generally accepted accounting principles shall be deemed to be acceptable under this Section.

(D) **CONFIDENTIALITY**. If the information required to be submitted is proprietary in nature or must be kept confidential by federal, state or local law, upon proper request by a Provider, such information shall be classified as a Protected Record within the meaning of the Utah Government Records Access and Management Act ("GRAMA"), making it available only to those who must have access to perform their duties on behalf of the City, provided that a Provider notifies the City of, and clearly labels the information which a Provider deems to be confidential, proprietary information. Such notification and labeling shall be the sole responsibility of the Provider.

(E) **PROVIDER'S EXPENSE**. All reports and records required under this Ordinance shall be furnished at the sole expense of a Provider, except as otherwise provided in this Ordinance or a Franchise.

(F) **RIGHT OF INSPECTION**. For the purpose of verifying the correct amount of the franchise fee, the books and records of the Provider pertaining thereto shall be open to inspection or audit by duly authorized representatives of the City at all reasonable times, upon giving reasonable notice of the intention to inspect or audit the books and records, provided that the City shall not audit the books and records of the Provider more often than annually. The Provider agrees to reimburse the City the reasonable costs of an audit if the audit discloses that the Provider has paid ninety-five percent (95%) or less of the compensation due the City for the period of such audit. In the event the accounting rendered to the City by the Provider herein is found to be incorrect, then payment shall be made on the corrected amount within thirty (30) calendar days of written notice, it being agreed that the City may accept any amount offered by the Provider, but the acceptance thereof by the City shall not be deemed a settlement of such item if the amount is in dispute or is later found to be incorrect.

4-14- 9. RIGHTS OF CITY.

(A) ENFORCEMENT AND REMEDIES.

(1) **ENFORCEMENT - CITY DESIGNEE**. The City is responsible for enforcing and administering this Ordinance, and the City or its designee, as appointed by the City Manager, is authorized to give any notice required by law or under any Franchise Agreement.

(2) **ENFORCEMENT PROVISION**. Any Franchise granted pursuant to this Ordinance shall contain appropriate provisions for enforcement, compensation, and protection of the public, consistent with the other provisions of this Ordinance, including, but not limited to, defining events of default, procedures for accessing the Bond/Security Fund, and rights of termination or revocation.

(B) **FORCE MAJEURE**. In the event a Provider's performance of any of the terms, conditions or obligations required by this Ordinance or a Franchise is prevented by a cause or event not within a Provider's control, such inability to perform shall be deemed excused and no penalties or sanctions shall be imposed as a result thereof. For the purpose of this section, causes or events not within the control of a Provider shall include, without limitation, acts of God, strikes, sabotage, riots or civil disturbances, failure or loss of utilities, explosions, acts of public enemies, and natural disasters such as floods, earthquakes, landslides, and fires.

(C) **EXTENDED OPERATION AND CONTINUITY OF SERVICES**.

(1) **CONTINUATION AFTER EXPIRATION**. Upon either expiration or revocation of a Franchise granted pursuant to this Ordinance, the City shall have discretion to permit a Provider to continue to operate its System or provide Services for an extended period of time not to exceed six (6) months from the date of such expiration or revocation. A Provider shall continue to operate its System under the terms and conditions of this Ordinance and the Franchise granted pursuant to this Ordinance.

(2) **CONTINUATION BY INCUMBENT LOCAL EXCHANGE CARRIER**. If the Provider is the incumbent local exchange carrier, it shall be permitted to continue to operate its System and provide Services without regard to revocation or expiration, but shall be obligated to negotiate a renewal in good faith.

(D) **REMOVAL OR ABANDONMENT OF FRANCHISE PROPERTY**.

(1) **ABANDONED SYSTEM**. In the event that:

(a) the use of any portion of the System is discontinued for a continuous period of twelve (12) months, and thirty (30) days after no response to written notice from the City to the last known address of Provider;

(b) any System has been installed in the Rights-of-Way without complying with the requirements of this Ordinance or Franchise; or

(c) the provisions of Section3-5 are applicable and no Franchise is granted, a Provider, except the Provider who is an incumbent local exchange carrier, shall be deemed to have abandoned such System.

(2) **REMOVAL OF ABANDONED SYSTEM**. The City, upon such terms as it may impose, may give a Provider written permission to abandon, without removing, any System, or portion thereof, directly constructed, operated or maintained under a Franchise. Unless such permission is granted or unless otherwise provided in this Ordinance, a Provider shall remove within a reasonable time the abandoned System and shall restore, using prudent construction standards, any affected Rights-of-Way to their former state at the time such System was installed, so as not to impair their usefulness. The City shall have the right to inspect and approve the condition of the Rights-of-Way cables, wires, attachments and poles prior to and after removal. The liability, indemnity and insurance provisions of this Ordinance and any security fund provided in a Franchise shall continue in full force and effect during the period of removal and until full compliance by a Provider with the terms and conditions of this Section.

(3) **TRANSFER OF ABANDONED SYSTEM TO CITY**. Upon abandonment of any

(C) **NEW DEVELOPMENTS**. It shall be the policy of the City to liberally amend this Ordinance, upon Application of a Provider, when necessary to enable the Provider to take advantage of any developments in the field of Telecommunications which will afford the Provider an opportunity to more effectively, efficiently, or economically serve itself or the public.

(D) **NOTICES**. All notices from a Provider to the City required under this Ordinance or pursuant to a Franchise granted pursuant to this Ordinance shall be directed to the officer as designated by the City Manager. A Provider shall provide in any Application for a Franchise the identity, address and phone number to receive notices from the City. A Provider shall immediately notify the City of any change in its name, address, or telephone number.

(E) **EXERCISE OF POLICE POWER**. To the full extent permitted by applicable law either now or in the future, the City reserves the right to adopt or issue such rules, regulations, orders, or other directives that it finds necessary or appropriate in the lawful exercise of its police powers.

4-14-12. FEDERAL, STATE AND CITY JURISDICTION.

(A) **CONSTRUCTION**. This Ordinance shall be construed in a manner consistent with all applicable federal and state statutes.

(B) **ORDINANCE APPLICABILITY**. This Ordinance shall apply to all Franchises granted or renewed after the effective date of this Ordinance. This Ordinance shall further apply, to the extent permitted by applicable federal or state law to all existing Franchises granted prior to the effective date of this Ordinance and to a Provider providing Services, without a Franchise, prior to the effective date of this Ordinance.

(C) **OTHER APPLICABLE ORDINANCES**. A Provider's rights are subject to the police powers of the City to adopt and enforce ordinances necessary to the health, safety and welfare of the public. A Provider shall comply with all applicable general laws and ordinances enacted by the City pursuant to its police powers. In particular, all Providers shall comply with the City zoning and other land use requirements.

(D) **CITY FAILURE TO ENFORCE**. A Provider shall not be relieved of its obligation to comply with any of the provisions of this Ordinance or any Franchise granted pursuant to this Ordinance by reason of any failure of the City to enforce prompt compliance.

(E) **CONSTRUED ACCORDING TO UTAH LAW**. This Ordinance and any Franchise granted pursuant to this Ordinance shall be construed and enforced in accordance with the substantive laws of the State of Utah.

EXHIBIT "B"

CHAPTER 14A - TELECOMMUNICATIONS TAX

(Chapter created by Ord. No. 04-26)

4-14A- 1. DEFINITIONS.

As used in this Chapter:

(A) "Commission" means the State Tax Commission.

(B) (1) Subject to Subsections (B)(2) and (3), "customer" means the person who is obligated under a contract with a telecommunications provider to pay for telecommunications service received under the contract.

(2) For purposes of this ordinance, "customer" means:

(a) the person who is obligated under a contract with a telecommunications provider to pay for telecommunications service received under the contract; or

(b) if the end user is not the person described in Subsection (B)(2)(a), the end user of telecommunications service.

(3) "Customer" does not include a reseller:

(a) of telecommunications service; or

(b) for mobile telecommunications service, of a serving carrier under an agreement to serve the customer outside the telecommunications provider's licensed service area.

(C)(1) "End user" means the person who uses a telecommunications service.

(2) For purposes of telecommunications service provided to a person who is not an individual, "end user" means the individual who uses the telecommunications service on behalf of the person who is provided the telecommunications service.

(D) "Gross Receipts attributed to the municipality" means those gross receipts from a transaction for telecommunications services that is located within the municipality for the purposes of sales and use taxes under Utah Code Title 59, Chapter 12, Sales and Use Tax Act and determined in accordance with Utah Code Section 59-12-207.

(E) "Gross receipts from telecommunications service" means the revenue that a telecommunications provider receives for telecommunications service rendered except for amounts collected or paid as:

(1) a tax, fee, or charge:

(a) imposed by a governmental entity;

(b) separately identified as a tax, fee, or charge in the transaction with the customer for the telecommunications service; and

(c) imposed only on a telecommunications provider.

(2) sales and use taxes collected by the telecommunications provider from a customer under Utah Code Title 59, Chatper 12, Sales and Use Tax Act; or

(3) interest, a fee, or a charge that is charged by a telecommunications provider on a customer for failure to pay for telecommunications service when payment is due.

(F) "Mobile telecommunications service" is as defined in the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

(G) "Municipality" means Park City Municipal Corporation.

(H) "Place of primary use":

(1) for telecommunications service other than mobile telecommunications service, means the street address representative of where the customer's use of the telecommunications service primarily occurs, which shall be:

(a) the residential street address of the customer; or

(b) the primary business street address of the customer; or

(2) for mobile telecommunications service, is as defined in the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

(I) Notwithstanding where a call is billed or paid, "service address" means:

(1) if the location described in this Subsection (I)(1) is known, the location of the telecommunications equipment:

(a) to which a call is charged; and

(b) from which the call originates or terminate;

(2) if the location described in Subsection (I)(1) is not known but the location described in this Subsection (I)(2) is known, the location of the origination point of the signal of the telecommunications service first identified by:

(a) the telecommunications system of the telecommunications provider; or

(b) if the system used to transport the signal is not a system of the telecommunications provider, information received by the telecommunications provider from its service provider; or

(3) if the locations described in Subsection (I)(1) or (2) are not known, the location of a customer's place of primary use.

(J)(1) Subject to Subsections (J)(2) and (J)(3), "teleocmmunications provider" means a person that:

(a) owns, controls, operates, or manages a telecommunications service; or

(b) engages in an activity described in Subsection (J)(1)(a) for the shared use with or resale to any person of the telecommunications service.

(2) A person described in Subsection (J)(1) is a telecommunications provider whether or not the Public Service Commission of Utah regulates:

(a) that person; or

(b) the telecommunications service that the person owns, controls, operates, or manages.

(3) "Telecommunications provider" does not include an aggregator as defined in Utah Code Section 54-8b-2.

(K) "Telecommunications service" means:

(1) telephone service, as defined in Utah Code Section 59-12-102, other than mobile telecommunications service, that originates and terminates within the boundaries of this state; and

(2) mobile telecommunications service, as defined in Utah Code Section 59-12-102:

(a) that originates and terminates within the boundaries of one state; and

(b) only to the extent permitted by the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 116 et seq.

4-14A- 2. LEVY OF TAX.

There is hereby levied a municipal telecommunications license tax on the gross receipts from telecommunications service attributed to Park City.

4-14A- 3. RATE.

The rate of the tax levy shall be four percent (4%) of the telecommunication provider' s gross receipts from telecommunications service that are attributed to the municipality. If the location of a transaction is determined to be other than this municipality then the rate imposed on the gross receipts for telecommunications services shall be determined pursuant to the provisions of Utah Code Section 10-1-407.

4-14A- 4. RATE LIMITATION AND EXEMPTION THEREFROM.

This rate of this levy shall not exceed four percent (4%) of the telecommunication provider's gross receipts from telecommunication service attributed to Park City unless a higher rate is approved by a majority vote of the voters in Park City that vote in:

(A) a municipal general election;

(B) a regular general election; or

(C) a local special election.

4-14A- 5. EFFECTIVE DATE OF TAX LEVY.

This tax shall be levied beginning July 1, 2004.

4-14A- 6. CHANGES IN RATE OR REPEAL OF TAX.

This ordinance is subject to the requirements of Utah Code Section 10-1-403. If the tax rate is changed or the tax is repealed, then the appropriate notice shall be given as provided in Utah Code Section 10-1-403.

4-14A- 7. INTERLOCAL AGAREEMENT FOR COLLECTION OF TAX.

On or before the effective date of the ordinance, Park City shall enter into the uniform interlocal agreement with the Commission as described in Utah Code Section 10-1-405 for the collection, enforcement, and administration of this municipal telecommunications license tax.

4-14A- 8. PROCEDURES FOR TAXES ERRONEOUSLY RECOVERED FROM CUSTOMERS.

Pursuant to the provisions of Utah Code Section 10-1-408, a customer may not bring a cause of action against a telecommunications provider on the basis that the telecommunications provider erroneously recovered from the customer the municipal telecommunication license tax except as provided in Utah Code Section 10-1-408.

4-14A- 9. REPEAL OF INCONSISTENT TAXES AND FEES.

Any tax or fee previously enacted by Park City under authority of Utah Code Section 10-1-203 or Utah Code Title 11, Chapter 26, Local Taxation of Utilities Limitation is hereby repealed.

Nothing in this ordinance shall be interpreted to repeal any municipal ordinance or fee which provides that the municipality may recover from a telecommunications provider the management costs of the municipality caused by the activities of the telecommunications provider in the rights-of-way of the municipality, if the fee is imposed in accordance with Utah Code Section 72-7-102 and is not related to the telecommunications provider in a right-of-way, or increased deterioration of a highway as a result of the activities of the telecommunications provider in a right-of-way nor does this ordinance limit Park City's right to charge fees or taxes on persons that are not subject to the municipal telecommunications license tax under this ordinance and locate telecommunications facilities, as defined in Utah Code Section 72-7-2-108, in this municipality.

DATE: May 25, 2006
DEPARTMENT: Public Works
AUTHOR: Jerry W. Gibbs, P.E.
TITLE: Solid Waste Strategic Plan
TYPE OF ITEM: Legislative

SUMMARY RECOMMENDATIONS: **Adopt by resolution the 2006 Solid Waste Strategic Plan**

DESCRIPTION:

Topic: Solid Waste Strategic Plan

Background:

On March 23, 2006, staff discussed with the City Council:

- Dumpster litter on Swede Alley and the resources necessary to maintain
- County's consideration of making trash an Enterprise Fund and removing the General Fund contribution
- Determine the right mix of recycling in County Solid Waste Master Plan
- Park City's role in commercial trash hauling
- Assurances Park City would need if the County operated a residential trash service

Staff returned on April 27 to discuss the Prioritization of Solid Waste Initiatives. There were no comments on the proposed Vision. The discussion centered on solid waste as an essential service being provided by Summit County and equity within customer classes.

Analysis:
Strategies 2-1, 2-2, and 4-1 have been modified slightly from what was in the May 18, 2006 Council packet to better reflect the comments made at the April 27 work session meeting. The tone of the goals and strategies are intended to reflect the areas of importance of the general City Council to the Board of County Commissioners and suggest the BCC take into consideration as they consider solid waste issues.

Vision: Park City believes that sustainability today will benefit generations to come. Summit County should continue to provide environmentally sound integrated solid waste management (waste reduction, landfilling, recycling, household hazardous materials diversion & composting) services for Park City citizens and businesses.

GOALS	STRATEGIES	ACTIONS

1. Enhance the look of Main Street and Swede Alley by eliminating dumpster blight.	1-1. Have all dumpster screened or removed by June 2007 1-2. PCMC and HMBA to partner to develop strategies to improve trash handling by summer 2006 1-3. Cooperate with Summit County, Recycle Utah, commercial areas, PCMC and solid waste /recycle contractors to develop a commercial recycling program by Summer 2007
2. The county should develop an integrated solid waste management plan by 2011 (the length of the next contract).	2-1. Summit County should consider a pay as you throw volume based rate structure for only commercial and C& D (construction & demolition) solid waste disposal. 2-2. Summit County should adopt multiple tier customer classes to ensure equity within each tier and consider equity within each class. 2-3. Property tax is an appropriate source to fund solid waste services. Funding levels should remain adequate to support the residential customer class cost of collection, processing and disposal. 2-4. Develop waste reduction strategies & goals based on the length of time the landfill should remain open and growth rates 2-5. Investigation of an urban composting and trash sorting operation
3. The county should enhance its support for recycling.	3-1. Summit County should partner with PCMC to fund a permanent home for Recycle Utah. 3-2. Support of Recycle Utah in obtaining five tub grinders for yard and construction waste
4. Summit County should	4-1. When considering a change

explore the most cost-effective, safe, & environmental friendly method to remove residential and commercial trash and recycling	from private waste services to public, complete a comparative analysis taking into consideration: national trends; financial risk and liability; capital investment; improved level of service; health and safety concern; lack of a competitive market; and health and safety related issues.

Department Review:
The following departments have had an opportunity to provide input to the process, Budget & Grants, Public Affairs, Public Works, Special Events, Economic Development and the City Administration.

ALTERNATIVES:

A. **Adopt the 2006 Solid Waste Strategic Plan resolution** (Staff recommended)

B. **Continue the Item:**

D. **Do Nothing:**

SIGNIFICANT IMPACTS:
The Summit County Commission is looking for input on how to proceed with trash collection. A citizen committee representing each town and populated areas in the Basin are reviewing selected issues. A comprehensive vision, goals and strategies from Park City may be helpful to the Commission to take a broader look at solid waste issues prior to the conclusion of the new trash-handling contract.

CONSEQUENCES OF NOT TAKING THE RECOMMENDED ACTION:
The lack of a clear direction will not optimize the solid waste services being provided.

RECOMMENDATION:
Adopt the 2006 Solid Waste Strategic Plan.

Resolution No. -06

RESOLUTION ADOPTING A SOLID WASTE STRATEGIC PLAN FOR PARK CITY, UTAH

WHEREAS, The Board of County Commissioners are responsible for the collection, processing and disposal of municipal solid waste in Summit County; and

WHEREAS, Solid Waste removal is an essential service provided by Summit County: and

WHEREAS, The citizens of Park City expect solid waste services to be provided in a cost effective and environmentally sensitive manner to our community; and

WHEREAS, The City Council has determined that it is in the public's best interest to have a strategic plan to communicate our Vision, Goals, and Strategies to the Summit County Board of County Commission.

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

SECTION 1. STRATEGIC PLAN. This Resolution constitutes public notice that the Vision, Goals and Strategies listed herein are intended to guide decision-making. The Park City Municipal Corporation Solid Waste Strategic Plan is hereby adopted as outlined below.

SOLID WASTE STRATEGIC PLAN

Vision: Park City believes that sustainability today will benefit generations to come. Summit County should continue to provide environmentally sound integrated solid waste management (waste reduction, landfilling, recycling, household hazardous materials diversion and composting services) for Park City citizens and businesses.

GOALS	STRATEGIES	ACTIONS
1. Enhance the look of Main Street and Swede Alley by eliminating dumpster blight.	1-1. Have all dumpster screened or removed by June 2007	
	1-2. PCMC and HMBA to partner to develop strategies to improve trash handling by summer 2006	
	1-3. Cooperate with Summit County, Recycle Utah, commercial areas, PCMC and solid waste /recycle contractors to develop a commercial recycling program by Summer 2007	
2. The county should develop an integrated solid	2-1. Summit County should consider a pay as you throw	

waste management plan by 2011 (the length of the next contract).	volume based rate structure for only commercial and C& D (construction & demolition) solid waste disposal. 2-2. Summit County should adopt multiple tier customer classes to ensure equity within each tier and consider equity within each class. 2-3. Property tax is an appropriate source to fund solid waste services. Funding levels should remain adequate to support the residential customer class cost of collection, processing and disposal. 2-4. Develop waste reduction strategies & goals based on the length of time the landfill should remain open and growth rates 2-5. Investigation of an urban composting and trash sorting operation
3. The county should enhance its support for recycling.	3-1. Summit County should partner with PCMC to fund a permanent home for Recycle Utah. 3-2. Support of Recycle Utah in obtaining five tub grinders for yard and construction waste
4. Summit County should explore the most cost-effective, safe, & environmental friendly method to remove residential and commercial trash and recycling	4-1. When considering a change from private waste services to public, complete a comparative analysis taking into consideration: national trends; financial risk and liability; capital investment; improved level of service; health and safety concern; lack of a competitive market; and health and safety related issues.

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

PASSED AND ADOPTED this twenty-fifth day of May 2006.

City Council Staff Report

Author: Kathy Dunks
Subject: BOOTHILL 2MG TANK & PUMP STATION CONSTRUCTION MANAGEMENT CONTRACT
Date: May 18, 2006
Type of Item: Administrative

PUBLIC WORKS

Summary Recommendations:
Staff recommends Council authorize the City Manager to execute an Agreement, in a form approved by the City Attorney, with Harris & Associates, for Construction Management Services for the construction of the Boothill 2 MG Tank and Pump Station in an amount of $118,000.

Description:

Topic:
Boothill 2MG Tank & Pump Station Construction Management.

Background:
The Boothill Tank and Pump Station are the next steps in a multi-step system upgrade. Last summer new pipelines were installed on Boothill from the Park Meadows and Divide Wells to the new valve vault on Boothill and another pipeline was constructed from the vault to Monitor Dr.

The new 2 million gallon underground storage tank (reservoir) is scheduled to be constructed next to the existing Boothill tank and will be tied into the new valve vault. The pump station is also scheduled to be constructed this summer at the base of Boothill, north of the eastern corner of the cemetery, behind the Boothill Condos. The next and final step will be to build a new transmission line from Monitor Dr, across Kearns, up Bonanza to Deer Valley Drive, Deer Valley Drive to about 12th, across City Park where it will be tied in with the transmission line that extends from Woodside. The transmission line will not be constructed until at least 2008, depending on funding.

Once the tank is constructed, it will go online immediately to help provide the much needed equalization storage to meet current peak day demands. Once the pump station and transmission line are constructed, the pump station will be able to provide source redundancy to Old Town and will be a primary way of providing water to the Empire Pass area.

Bids for the Boothill 2MG Tank construction were opened on May 4, 2006. Construction is scheduled to begin in early June and is scheduled to take 5 months. The Boothill Pump Station is still in the design phase and will be bid for construction in late summer. Due to long lead times on equipment, the pump station construction will not be finalized until early next year.

Due to the proximity of the two separate construction projects and the potential overlap in construction schedules, Staff wanted to combine Construction Management services for the two construction projects to save project costs.

A Request For Proposals (RFP) was advertised in the Park Record and Salt Lake Tribune. Two proposals were received in response to the RFP. The design engineers for both the tank and the pump station declined on proposing on the Construction Management contract due to heavy workloads and lack of available staff. Montgomery Watson Harza (MWH) and Harris & Associates were the two firms that submitted proposals.

Analysis:
The City's purchasing policies exempts professional service contracts from any requirement for competitive bidding. According to this policy contractors are chosen by selecting the firm whose experience, capabilities, and past performance best meet the needs of the project. The following weighted criteria were used in evaluating each firm:

- Project Approach/Understanding (25%)
- Project Team Experience/Qualifications (40%)
- Project Team knowledge of PC Standards (25%)
- References (10%)

Each member of the selection committee scored each of the firms under each of the criteria. From the scoring, it was shown that the qualifications of the two firms were considered to be nearly equal. The fee proposals were then opened. The RFP had stated how many hours of work to assume in preparing fee proposals. Each firm had submitted an hourly rate for the Construction Manager. MWH's fee was $120/hour, and Harris & Associates fee was $89.70/hour. Based on the similar technical qualifications, the committee decided to invite Harris & Associates to an interview, and after the interview, it was unanimous to recommend Harris & Associates for the Construction Management Contract.

Staff has negotiated the fine-tuning of the Scope of Work and fee for the Construction Management services with Harris & Associates. This is included as Exhibit A in the Professional Services Agreement and is an amount of $118,000. Staff feels that the fee is usual and customary with projects of this type and scope.

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 an Agreement, in a form approved by the City Attorney, with Harris & Associates, for Construction Management Services for the construction of the Boothill 2 MG Tank and Pump Station in an amount of $118,000.

B. Deny the Request:
Council could deny Staff's request. Denying the request could jeopardize the quality of the construction process of the Boothill Tank and Pump Station.

C. Continue the Item:
Council could continue the request. Continuing the request would delay getting a Construction Manager onboard with the Construction of the tank beginning soon.

D. Do Nothing:
Staff does not recommend this alternative. Doing nothing could jeopardize the quality of the construction process of the Boothill Tank and Pump Station.

Significant Impacts:
The design and construction of this project is being funded with a Permanent Community Impact Fund Loan. The same loan is funding the Park Meadows Well Treatment Facility, the new Boothill Tank construction, and the Boothill Pump Station design and construction.

Recommendation:
Staff recommends Council authorize the City Manager to execute an Agreement, in a form approved by the City Attorney, with Harris & Associates, for Construction Management Services for the construction of the Boothill 2 MG Tank and Pump Station in an amount of $118,000.

PARK CITY MUNICIPAL CORPORATION SERVICE PROVIDER/PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into in duplicate this 25th day of May, 2006, by and between PARK CITY MUNICIPAL CORPORATION, a Utah municipal corporation, ("City"), and HARRIS & ASSOCIATES, a Utah corporation ("Service Provider").

WITNESSETH:

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

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

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

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

1. **SCOPE OF SERVICES**.

The Service Provider shall perform such services and accomplish such tasks, including the furnishing of all materials and equipment necessary for full performance thereof, as are identified and designated as Service Provider responsibilities throughout this Agreement and as set forth in the 'Scope of Services' attached hereto as 'Exhibit A' and incorporated herein (the "Project"). The total fee for the Project shall not exceed **($118,000) One Hundred Eighteen Thousand Dollars**.

2. **TERM**.

The term of this Agreement shall commence on the date of execution on this Agreement and shall terminate on **June 30, 2007**, or earlier, unless extended by mutual written agreement of the Parties.

3. **COMPENSATION AND METHOD OF PAYMENT**.

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

B. No payment shall be made for any service rendered by the Service Provider except for services identified and set forth in this Agreement.

C. For all 'extra' work the City requires, the City shall pay the Service Provider for work performed under this Agreement according to the schedule attached hereto as "Exhibit B" or if none is attached, as subsequently agreed to by both parties in writing. .

D. The Service Provider shall submit to the City Manager or his designee on forms approved by the City Manager, an invoice for services rendered during the pay period. The City shall make payment to the Service Provider within thirty (30) days thereafter. Requests for more rapid payment will be considered if a discount is offered for early payment. Interest shall accrue at a rate of six percent (6%) per annum for services remaining unpaid for sixty (60) days or more.

E. The Service Provider reserves the right to suspend or terminate work and this Agreement if any unpaid account exceeds sixty (60) days.

4. REPORTS AND INSPECTIONS.

A. The Service Provider, at such times and in such forms as the City may require, shall furnish the City such statements, records, reports, data, and information as the City may request pertaining to matters covered by this Agreement.

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

5. INDEPENDENT CONTRACTOR RELATIONSHIP.

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

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

6. **SERVICE PROVIDER EMPLOYEE/AGENTS**.

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

7. **HOLD HARMLESS INDEMNIFICATION**.

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

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

8. INSURANCE.

The Service Provider shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Service Provider, their agents, representatives, employees, or subcontractors. The Service Provider shall provide a Certificate of Insurance evidencing:

A. General Liability insurance written on an occurrence basis with limits no less than one million dollars ($1,000,000) combined single limit per occurrence and two million dollars ($2,000,000) aggregate for personal injury, bodily injury and property damage.

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

C. Professional Liability (Errors and Omissions) insurance written on a per claim basis with limits no less than one half million dollars ($500,000) combined single limit per occurrence.

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

E. The City shall be named as an additional insured on the insurance policies (except for worker's compensation and professional liability), as respect to work performed by or on behalf of the Service Provider and a copy of the endorsement naming the City as an additional insured shall be attached to the Certificate of Insurance. The Certificate of insurance shall warrant that the City shall receive thirty (30) days advance notice of cancellation. The City reserves the right to request certified copies of any required policies.

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

9. TREATMENT OF ASSETS.

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

10. COMPLIANCE WITH LAWS.

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

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

11. NONDISCRIMINATION.

A. The City is an equal opportunity employer.

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

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

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

12. **ASSIGNMENTS/SUBCONTRACTING**.

A. The Service Provider shall not assign its performance under this Agreement or any portion of this Agreement without the written consent of the City, and it is further agreed that said consent must be sought in writing by the Service Provider not less than thirty (30) days prior to the date of any proposed assignment. The City reserves the right to reject without cause any such assignment.

B. Any work or services assigned hereunder shall be subject to each provision of this Agreement and property bidding procedures where applicable as set forth in local, state or federal statutes, ordinance and guidelines.

C. Any technical/professional service subcontract not listed in this Agreement, must have express advance approval by the City.

13. **CHANGES**.

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

14. **MAINTENANCE AND INSPECTION OF RECORDS**.

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

B. The Service Provider shall retain all books, records, documents and other material relevant to this Agreement for six (6) years after its expiration. The Service Provider agrees that the City or its designee shall have full access

and right to examine any of said materials at all reasonable times during said period.

15. **POLITICAL ACTIVITY PROHIBITED**.

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

16. **PROHIBITED INTEREST**.

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

17. **MODIFICATIONS TO TASKS AND MISCELLANEOUS PROVISIONS**.

A. All work proposed by the Service Provider is based on current government ordinances and fees in effect as of the date of this Agreement.

B. Any changes to current government ordinances and fees which affect the scope or cost of the services proposed may be billed as an "extra" pursuant to Paragraph 3(C), or deleted from the scope, at the option of the City.

C. The City shall make provision for access to the property and/or project and adjacent properties, if necessary for performing the services herein.

18. **TERMINATION**.

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

B. If the Service Provider fails to perform in the manner called for in this Agreement, or if the Service Provider fails to comply with any other provisions of the Agreement and fails to correct such noncompliance within three (3) days written notice thereof, the City may immediately terminate this Agreement for cause. Termination shall be effected by serving a notice of termination on the Service Provider setting forth the manner in which the Service Provider is in default. The Service Provider will only be paid for services performed in accordance with the manner of performance set forth in this Agreement.

19. **NOTICE**.

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

20. ATTORNEYS FEES AND COSTS.

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

21. JURISDICTION AND VENUE.

A. This Agreement has been and shall be construed as having been made and delivered with the state of Utah, and it is agreed by each party hereto that this Agreement shall be governed by laws of the state of Utah, both as to interpretation and performance.

B. Any action of law, suit in equity, or judicial proceeding for the enforcement of this Agreement, or any provisions thereof, shall be instituted and maintained only in any of the courts of competent jurisdiction in Summit County, Utah.

22. SEVERABILITY.

A. If, for any reason, any part, term, or provision of this Agreement is held by a court of the United States to be illegal, void or unenforceable, the validity of the remaining provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.

B. If it should appear that any provision hereof is in conflict with any statutory provision of the state of Utah, said provision which may conflict therewith shall be deemed inoperative and null and void insofar as it may be in conflict therewith, and shall be deemed modified to conform in such statutory provisions.

23. ENTIRE AGREEMENT.

The parties agree that this Agreement is the complete expression of the terms hereto and any oral representations or understandings not incorporated herein are excluded. Further, any modification of this Agreement shall be in writing and signed
by both parties. Failure to comply with any of the provisions stated herein shall constitute material breach of contract and cause for termination. Both parties

recognize time is of the essence in the performance of the provisions of this Agreement. It is also agreed by the parties that the forgiveness of the nonperformance of any provision of this Agreement does not constitute a waiver of the provisions of this Agreement.

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

Exhibit A

Park City Municipal Corporation

Boothill Tank & Boothill Pump Station

SCOPE OF SERVICES

Task 1.0 PRE-CONSTRUCTION SERVICES

1.01 **Plans and Specifications** – Review construction documents including: project plans, general, special, and technical specifications, addenda and permits.

1.02 **Preconstruction Conference** – Help coordinate and attend the pre-construction conference prior to the start of any field activities. Prepare minutes of the meeting and distribute to CITY, CONTRACTOR, all attendees and others as requested by CITY.

Task 2.0 CONSTRUCTION MANAGEMENT SERVICES

2.01 **Construction Administration Procedures**- Log-in and track the CONTRACTOR'S requests for clarification/requests for information, shop drawings, samples, submittals, contract schedule adjustments, change order proposals, written proposals for substitutions, payment applications and permits. CONSULTANT shall forward to ENGINEER for review any requests for clarification/information, shop drawings, samples, or other submittals and shall coordinate such requests with various CITY divisions. CONSULTANT shall review ENGINEER'S comments on shop drawings, samples and other submittals, and coordinate transmittals to the CONTRACTOR, including all information provided by the ENGINEER. Maintain the following documents at the job site: correspondence files; contract addenda; copy of the contract documents and progress reports. Keep record of the names, addresses, and telephone numbers of the CONTRACTOR'S and all subcontractor's emergency contact personnel. Maintain reports of job site conferences, meetings and discussions between CITY and CONTRACTOR.

2.02 **Change Order Preparation, Negotiation and Processing**- Establish, implement and coordinate systems for processing contract change orders. Prepare independent cost estimates for contract change orders. Negotiate contract change orders with the CONTRACTOR. Coordinate with CITY in preparation of all contract change order documents for execution by the CONTRACTOR and CITY. Prepare other related correspondence for CITY and ENGINEER review and approval of change orders as required.

2.03 **Permits, Bonds and Insurance**- Verify that the required permits, bonds and insurance, have been obtained. Ensure that the conditions of permits are adhered to by the CONTRACTOR. Such action by CONSULTANT shall not relieve the CONTRACTOR of its responsibility to comply with the provisions of the Contract Documents.

2.04 **Construction Schedule**- Review the CONTRACTOR'S construction schedule and updates and verify that the schedule is prepared in accordance with the requirements of the contract documents. Require the CONTRACTOR to prepare and submit a recovery schedule if progress falls behind schedule. Maintain an approved schedule to track the CONTRACTOR'S work efforts during construction and provide current schedule information to CITY.

2.05 **Progress Meetings and Reporting**- Conduct bi-weekly progress meetings attended by CITY, CONTRACTOR, utility companies, outside agencies, and other participants. Such meetings shall serve as a forum for the exchange of information concerning the PROJECT and the review of construction progress. Prepare and distribute agenda and minutes of these meetings to CITY, CONTRACTOR and other PROJECT participants.

2.06 **Progress Payments**- Review the applications submitted by the CONTRACTOR and determine whether the amount requested reflects the actual progress of the CONTRACTOR'S work. Make appropriate adjustments to each payment application, and prepare and forward to CITY a progress payment report. The report shall state the total contract price, payments to date, current payment requested, retainage and actual amounts owed for the current period.

2.07 **Quality Review**- Monitor the quality of construction, and assist in guarding the PROJECT against defects and deficiencies in the work of the CONTRACTOR. Coordinate third-party inspections and any required special inspections and review these inspection reports. Review the work for compliance with the contract documents. The CONSULTANT'S inspector will maintain daily reports/field logs detailing the progress of the work, manpower and equipment assigned to the PROJECT, and schedule of activities. Reject work and transmit to CITY and CONTRACTOR a notice of nonconforming work when it does not conform to the requirements of the contract documents. Maintain a daily diary of events at the jobsite, including but not limited to the following: CONTRACTOR and subcontractor's personnel and equipment, observed delays and causes, weather conditions, daily activities and progress by stationing, data relative to claims for extras or deductions, material received on site, and test results. Inspection shall also include monitoring the leakage test of the water storage tank, reviewing the CONTRACTOR'S Tank Disinfection Plan and observing the execution of this plan.

2.08 **Third Party Inspections and Testing**- Coordinate with third party inspection and testing. Review reports and obtain ENGINEERS recommendations as needed. CONTRACTOR will provide third party inspection and testing as outlined in the project specification.

2.09 **Photographs & Video**- Provide to CITY photographic documentation (both still and video) of both PROJECT sites prior-to and during construction.

2.09 **Contractor's Safety Program**- Review the CONTRACTOR'S safety program for general conformance with the requirements of the specifications.

2.10 **Blasting and Public Safety**- Review and monitor all public safety plans for compliance with all safety laws and regulations.

2.11 **Site Visits**- Maintain a sign-in log for visitors.

2.12 **Coordination with City Divisions and Other Agencies** – Coordinate and communicate with the CITY's Representative to keep informed of the PROJECT status, field encounters, field meetings, and other pertinent information. Coordinate with the CONTRACTOR for the technical inspection, testing, and work required by outside agencies. This shall include utility companies and all affected CITY departments.

2.13 **Detailed Sketches**- Provide detailed sketches to ENGINEER clarifying construction conflicts and/or design changes as requested by CITY.

2.14 **Dispute Resolution**- Make recommendations and implement procedures for reducing the likelihood of disputes and claims. Assist CITY in gathering applicable data, reviewing CONTRACTOR'S documents, substantiating disputes or claims, and resolving construction disputes. Make recommendations for Alternate Dispute Resolution methods, as required.

2.15 **Station Start-Up** - Assist CONTRACTOR, CITY, and any other personnel with bringing the Pump Station on-line.

Task 3.0 POST CONSTRUCTION SERVICES

3.01 **Project closeout**- Complete and deliver all PROJECT files and documents to CITY.

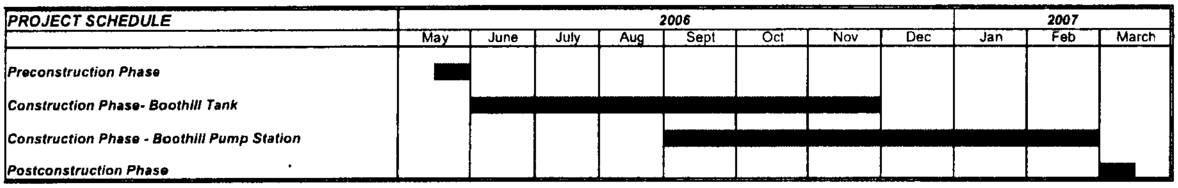
3.02 **Final Inspection and Punchlist**- Conduct final inspection with CITY and other PROJECT participants to prepare a list of construction deficiencies for resolution by CONTRACTOR. Make recommendations to CITY regarding CONTRACTOR'S final progress payment request. Prepare final progress payment report for submission to CITY.

3.03 **Record Drawings**- Maintain one set of field contract documents with up-to-date information regarding all addenda, substitutions, clarifications and change orders. Near the end of construction, transmit corrected set to ENGINEER for producing Record Drawings.

EXHIBIT "A"

Park City Municipal Corporation
Construction Management Services
Boothill Tank and Pump Station

Harris



PROJECT STAFFING PLAN		***2006***								***2007***				
Months	Billing	May	June	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	March	Total	Extension
Hours Per Month	Rate	88	176	160	184	160	176	160	152	176	160	88	Hours	
Preconstruction Services														
Construction Manager	89.70	40	10	10	10								70	6,279.00
Subtotal		40	10	10	10	0	0	0	0	0	0	0	70	$6,279.00
Construction Management Services														
Construction Manager	89.70		132	120	92	100	176	120	76	88	80		984	88,264.80
Construction Manager - Overtime *	134.55		12	12	12	12	24	12	12	12	12		120	16,146.00
Subtotal		0	144	132	104	112	200	132	88	100	92	0	1,104	$104,410.80
Postconstruction Services														
Construction Manager	89.70											80	80	7,176.00
Subtotal		0	0	0	0	0	0	0	0	0	0	80	80	$7,176.00
Totals		**40**	**154**	**142**	**114**	**112**	**200**	**132**	**88**	**100**	**92**	**80**	**1,254**	**$117,865.80**

* Overtime will be on an as-needed basis and will only be used with prior PCMC approval.

City Council Staff Report

Author: Gary Hill, Budget, Debt, and Grants Manager
Subject: FY 2006 Revised Budget, FY 2007 Budget
Date: May 25, 2006
Type of Item: Discussion/Legislative

PARK CITY 1884

Budget, Debt, & Grants

Description:

Topic:
FY 2006 Revised Budget and FY 2007 Budget

Background:
On May 4th, staff delivered the City Manager's Recommended Budget (Tentative Budget) to City Council and discussed proposed changes to the City's operating budget.

My 18th, City Council considered the Capital Improvement Budget (CIP).

Public hearings are currently scheduled for 25th, June 1st, 8th, and 15th. Discussion/action is slated for these dates as follows, barring changes as needed.

May 25th – Regional Collaboration & Economic Development, Business License Fees.

June 1st – City Service Fees, Adoption of the Tentative Budget

June 8th – Policies and Procedures and Outstanding Issues

June 15th – Final Adoption of Budget

Analysis:
On May 18th, staff will focus on the CIP. Topics for discussion will include the following:

1) Economic Development Grants
2) Enhanced Business License Fees
   a) Festival Facilitation Fee
      i) Sundance
      ii) Event Fees
   b) Transit Fee
   c) Escort Services Administrative Fee

Economic Development Grants
Two priority goals for Economic Development were recently reviewed and approved through the City's January 2006 Visioning Session. They included:

- *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.*

Staff is recommending adoption of a new type of grant application process, specifically related to initiatives of the City Economic Development Plan. Staff sees a great benefit in offering a tool (albeit a relatively small one) to assist the City in promoting its vision for economic development.

Staff has drafted a budget policy (attached) that outlines the process for funding and administering these grants. A summary of the policy is as follows:

Funding:

- The City would allocate $20,000 annually out of an already approved operating budget line item (currently holding $50,000/yr for economic development initiatives) within the Economic Development & Capital Projects budget.
- The recommended Economic Development (ED) grants would fall under the current grant allocation / public service contract regulations limiting City funding to up to 1% of the City budget.
- Once the funds were depleted for the fiscal year, applicants would have to wait until the following year.

Criteria necessary to apply for an ED Grant:

Criteria #1 – The organization must demonstrate a sound business plan that strongly supports prioritized Goals of the current City Economic Development Plan.

Criteria #2 – The organization must be unique and innovative; with a forecasted ability to generate overnight visitors who would spend dollars within the City's resort offerings.

Criteria #3 – The organization must be new to Park City or represent a distinctly new enterprise supportive of the current priority Goals of the City's Economic Development Plan. Organizations must commit to and demonstrate the ability to do business in the City limits no less than three years. Funding cannot be used for 1-time events.

Criteria #4 – The organization must produce items or provide services that are consistent with the economic element of the City's General Plan; provides for the safety, health, prosperity, moral well-being, peace, order, comfort, or convenience of the inhabitants of the City.

Criteria #5 – Can forecast and demonstrate at the time of application an ability to achieve direct taxable benefits to the City greater than twice the City's contribution.

Criteria #6 – Fiscal Stability and Other Financial Support: The organization must have the following: (1) A clear description of how public funds will be used and accounted for; (2) Other funding sources that can be used to leverage resources; (3) A sound financial plan that demonstrates managerial and fiscal competence.

Application Process:

- Forms would be available on the City's website or for pick-up at the Economic Development and Capital Projects office at City Hall.
- All applications would be reviewed by the Economic Development Program Committee. The Program Committee membership would be made up of City Staff selected by the Economic Development Director and City Council liaisons for Economic Development.
- Applications would be reviewed by the Program Committee, determining whether the required grant policy criteria were met. If a positive recommendation was made by the

Committee, it would then be forwarded onto City Council where they would make a final determination.

- The City's ED Grant process will conform with State code - UCA Section 10-8-2. This requires that all possible grant awards will have a 14 day public notice period.

Types of ED Grants: ED Grants will be placed in two potential categories:

(1) Business Relocation Assistance – This category of grants will be available for assisting an organization with relocation and new office set-up costs as a part of moving to Park City. Expenses that could be covered through an ED Grant include moving costs, leased space costs, and fixtures/furnishings/ and equipment related to setting up office space within the City limits.

(2) New Business Start-up Assistance - This category of grants will be available for assisting a new organization or business with new office set-up costs. Expenses that could be covered through an ED Grant include leased office space costs and fixtures/furnishings/ and equipment related to setting up office space within the City limits.

It is Staff's desire to have these ED Grants available as a tool to assist the City in fulfilling current Economic Development Goals and Strategies.

Business License Fees

The City business license has two components: an administrative fee ($46.00 for most businesses) and an enhanced service fee (calculated differentially for different businesses). The Enhanced Service Fee, which is dedicated to help fund the City's fare-free transit system, has not changed since 1998. The City Manager's Recommended Budget includes changes to the City's business license fees:

- A new Festival Facilitation enhanced service fee;
- An increase to the Transit enhanced service fee; and
- An increased administrative fee for Escort Services.

Festival Facilitation Fee

Last fall, City staff completed a study of the business license fee system for the purpose of calculating the cost of facilitating special events. While the study was prompted by the community's efforts to secure a long-term commitment with the Sundance Film Festival, the proposed fee recognizes the City's efforts to facilitate special events and festivals year-round. In FY 2005, the Park City hosted approximately 50 different events and festivals.

The fee itself is calculated on a sliding scale proportionate to the degree to which Park City businesses benefit from year-round festivals and events. It should be noted, however, that all businesses benefit from Park City's many festivals that occur on a year-round basis at some level. It is anticipated that the proposed fee will generate approximately $168,000, which will be used to defray fixed costs of hosting special events and festivals. Figure 1 below shows the recommended percent and per unit increase.

Proposed Business License Enhanced Service Fee for <u>Festival Facilitation</u> *Fee Calculation*					
Business Category	Unit of Assessment	Current Fee	Increase Percent	Increase Unit Amount	
Resort	(skier days)	N/A	6%	N/A	
Lodging	(per bedroom)	$15.40	62%	$9.49	(per bedroom)
Restaurant/Retail	(per sq. ft.)	$0.19	56%	$0.10	(per sq. ft.)
Office	(per sq. ft.)	$0.17	5%	$0.01	(per sq. ft.)
Warehouse	(per sq. ft.)	$0.05	5%	$0.002	(per sq. ft.)
Taxi/Bus/Limousine	(per vehicle)	$75.58	6%	$4.41	(per vehicle)
Outdoor Dining	(per sq. ft.)	$0.05	56%	$0.03	(per sq. ft.)
Large Retail (>12,000 sq. ft.)	(per sq. ft.)	$0.13	56%	$0.07	(per sq. ft.)
Amusement	(per user)	$0.83	6%	$0.05	(per user)
Other Commercial Vehicles	(per vehicle)	$6.00	5%	$0.29	(per vehicle)
Employee Based	(per employee)	$3.00	5%	$0.15	(per employee)
Vending/Game /Laundry	(per machine)	$15.00	5%	$0.73	(per machine)
Liquor	(per license)	$50.00	56%	$27.93	(per license)
Solicitor	(per solicitor)	$10.00	5%	$0.49	(per solicitor)

Figure 1 – Proposed Festival Facilitation Fee (by business category)

Sundance - The majority of the revenue ($110,000) will be used to support the Sundance Film Festival, which signed a long-term extension with the City last October. The agreement included a 10-year commitment (and a 10 year extension) from the film festival as well as the relocation of Sundance's corporate headquarters to Park City. In relocating, Sundance is no longer eligible for the same level of Salt Lake County Zoo, Arts, and Parks (ZAP) Tax funding that it has been receiving, resulting in a net loss of over $500,000. In order to secure the long-term agreement with Sundance, the business community, City, and Park City Chamber Bureau agreed to equally share in a contribution of $330,000 to Sundance to partially offset the loss of ZAP funding. The $110,000 generated by the Festival Facilitation Enhanced Business License Fee represents the business community's share of the contribution.

It should be noted that (per the agreement) if the film festival is able to secure additional funding in excess of $150,000 from Salt Lake County, Salt Lake City or any of the quasi-governmental agencies such as the Salt Lake Convention and Visitors Bureau or Downtown Alliance, those funds will be split equally between Sundance and the Park City community. The contributions from Park City, the Park City Chamber Bureau, and the Park City business community will be reduced proportionally (and equally) if that occurs.

In order to ensure that every effort is made to secure additional funding and reduce the obligation by the Park City community, Sundance also agreed to "make every effort" to apply for annual Salt Lake County Zap Tax and/or other governmental funding. This will be verified by Park City each year and, if necessary, a corresponding reduction in business licenses will be recommended to Council for the following year.

Event Fees - Park City provides services to facilitate forty-eight (48) special events per year. Twenty-five (25) of the events receive the services either free or at a reduced cost through the fee waiver policy. The City has not had a process to recoup the costs to provide barricades, bleachers and other services to events. As previously mentioned, some of the Festival Facilitation Fee revenue would be used to offset a portion of event expenditures and the costs of enhanced municipal services. This Festival Fee would take the place of the fee waiver request used by many events. The following specific municipal services would be paid for through this fee: Main Street Cleaning; Electronic Sign Rental; Traffic Control Signs; Police Officer Time directing traffic; and Bus Service.

For many events, these costs are significant and provide a great benefit. Unfortunately there are some costs, previously waived, that now must be paid and additional fee waivers will not be granted. The City's hope is that this fee will free monies currently used to pay these services and could now be used for increasing the scope of the event and marketing thereby increasing the visitor's experience.

The Special Events Department contacted the 25 event organizers in February and provided them with an analysis of the impacts of the new Festival Facilitation Fee on their previous invoice for their last event. At that time there were no significant comments received from the organizations.

Staff will return to City Council on June 1st to discuss fee waivers in some additional detail and a recommended ordinance change for Special Event Fee Waivers.

Transit Fee

The current enhanced business license is assessed to support provision of a fare-free bus system. The purpose of the bus system is to enhance marketability of the Park City resort community, and in so doing to increase visitation and thereby increase sales for local merchants and businesses. This enhanced service fee has not been increased since it was calculated in 1997 (and enacted in 1998). Considering the additional services and costs borne by the Transit Fund since that time, staff is recommending a 25% increase to the Transit Enhanced Business License Fee.

In 1997, Transit operating costs totaled $1,850,114. Business license revenue represented approximately 26.3% of operations. In 2005, with expenditures of $3,414,063, business revenue only represented 19.8% of operations. This decreasing share of almost 1/4 is illustrated in Figure 2 below (please note that all operating costs exclude County Transit operations, for which there is an offsetting revenue source).

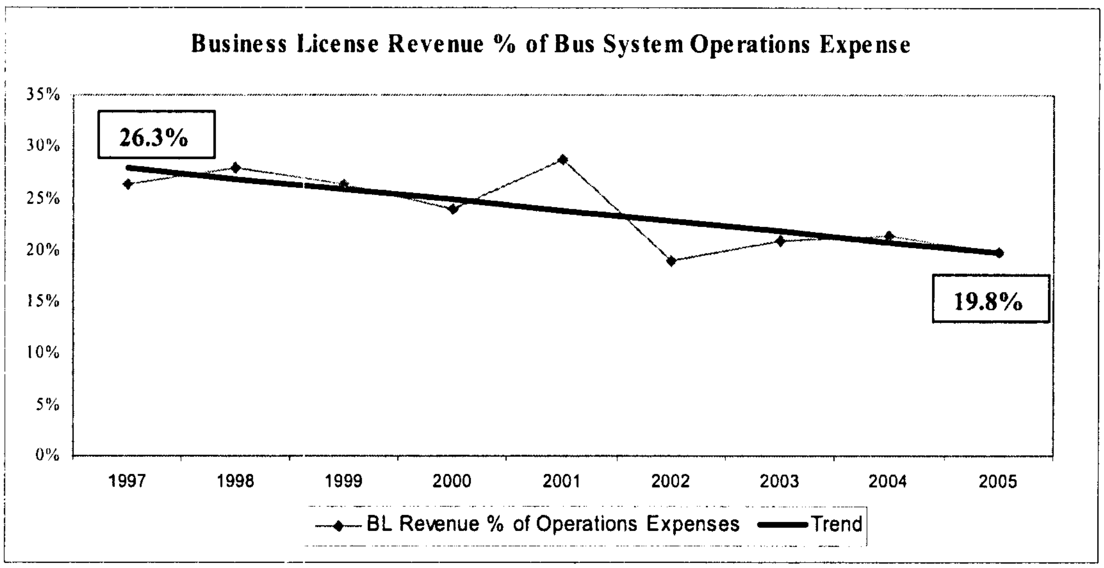


Figure 2 – Business License Revenue as a Percent of Operations

Since 1997, Park City Transit has had an increase of 34% in total ridership, and has enhanced operations with the addition of programs and amenities including the Prospector/Main Street

Express, the Transit Center, and additional covered bus shelters, all of which create additional personnel and maintenance needs. The primary components of increased operating costs between FY 1997 and FY 2005 include personnel (92.4% increase) and fuel and vehicle maintenance (163.8% increase).

Despite the increase in ridership, Transit Fund sales tax revenue growth (which includes Transit Tax and 25% of the Resort Community Tax) has also failed to keep pace with operating needs. Figure 3 shows Transit Fund sales tax revenue as a percentage of operating expenses since 1997.

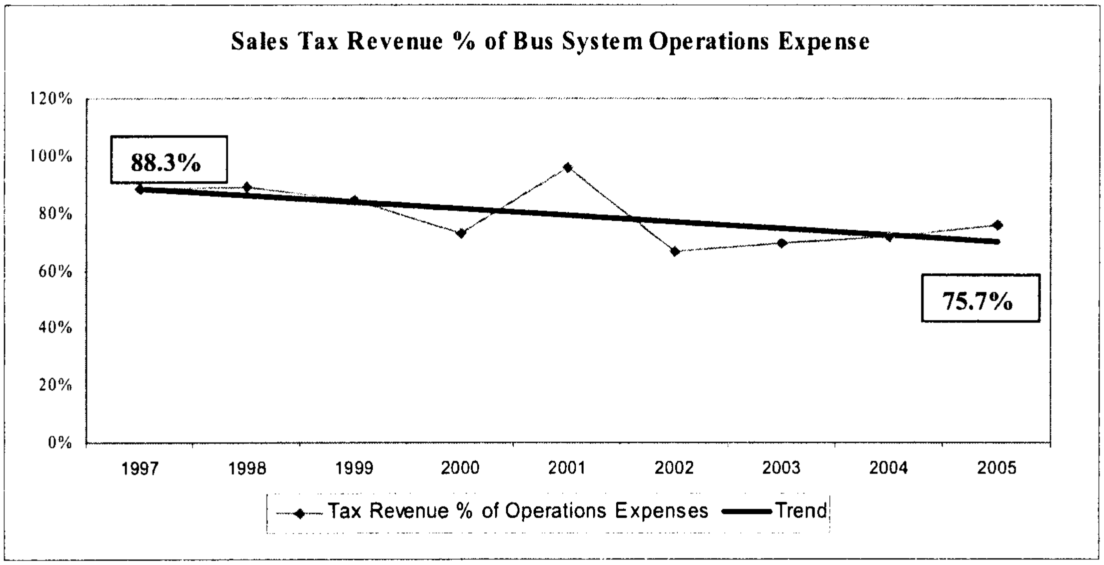


Figure 3 – Transit and Resort Community Sales Tax (25%) as a Percent of Operations

Please note that neither sales tax nor business license fees (in terms of actual growth) have kept pace with operational requirements.

Growth in Transit Operations, Business License Revenue, and Transit Fund Sales Tax

	FY 1997	FY 2005	% Change
Operating Expenditures*	$1,850,114	$3,414,064	85%
Business License Revenue	$511,243	$695,340	36%
Transit Fund Sales Tax Revenue**	$1,713,615	$2,653,747	55%

* All analyses exclude County Transit operations
** Includes Transit Sales Tax and .25 Resort Community Tax

Figure 4 – Revenue and Expenditure Growth in the Transit Fund

The proposed increase is a 25% across the board increase – equal for each licensee (Figure 5).

Proposed Business License Enhanced Service Fee for Transit *Fee Calculation*					
Business Category	Unit of Assessment	Current Fee	Transit Increase		
			Percent	Unit Amount	
Resort	(per skier day)	N/A	25%	N/A	(per skier day)
Lodging	(per bedroom)	$15.40	25%	$3.85	(per bedroom)
Restaurant/Retail	(per sq. ft.)	$0.19	25%	$0.05	(per sq. ft.)
Office	(per sq. ft.)	$0.17	25%	$0.04	(per sq. ft.)
Warehouse	(per sq. ft.)	$0.05	25%	$0.01	(per sq. ft.)
Taxi/Bus/Limousine	(per vehicle)	$75.58	25%	$18.90	(per vehicle)
Outdoor Dining	(per sq. ft.)	$0.05	25%	$0.01	(per sq. ft.)
Large Retail (>12,000 sq. ft.)	(per sq. ft.)	$0.13	25%	$0.03	(per sq. ft.)
Amusement	(per user)	$0.83	25%	$0.21	(per user)
Other Commercial Vehicles	(per vehicle)	$6.00	25%	$1.50	(per vehicle)
Employee Based	(per employee)	$3.00	25%	$0.75	(per employee)
Vending/Game /Laundry	(per machine)	$15.00	25%	$3.75	(per machine)
Liquor	(per license)	$50.00	25%	$12.50	(per license)
Solicitor	(per solicitor)	$10.00	25%	$2.50	(per solicitor)

Figure 5 – Proposed Increase to Enhance Transit Fee (by business category)

The proposed increase in business license fees will renew the diminishing "balance" of business license fees to transit expenditures. This will yield a 25% increase in revenue (approximately $120,000), which means that business will support about 23% of the cost of service – lower that the 1997 cost share of 26% but still higher than the current 2006 share (under no change of rates) of 18%.

As staff has discussed the proposed increases with members of the business community, it has been suggested that the 25% increase for Transit be phased in over time, rather than implemented entirely this year. Both Park City Mountain Resort and the Restaurant Association showed a preference to "phasing" the increase.

Summary

Figure 6 summarizes the proposed changes to the enhanced business license fee for both Festivals and Transit.

Proposed Total Business License Fee Increase *Fee Calculation*								
Business Category	Unit of Assessment	Current Fee	Festival % Increase	Transit % Increase	Total		Total Proposed Fee	
					% Increase	Unit Amount		
Resort	(per skier day)	N/A	6%	25%	31%	N/A	N/A	(per skier day)
Lodging	(per bedroom)	$15.40	62%	25%	87%	$13.34	$28.74	(per bedroom)
Restaurant/Retail	(per sq. ft.)	$0.19	56%	25%	81%	$0.15	$0.33	(per sq. ft.)
Office	(per sq. ft.)	$0.17	5%	25%	30%	$0.05	$0.21	(per sq. ft.)
Warehouse	(per sq. ft.)	$0.05	5%	25%	30%	$0.01	$0.06	(per sq. ft.)
Taxi/Bus/Limousine	(per vehicle)	$75.58	6%	25%	31%	$23.31	$98.89	(per vehicle)
Outdoor Dining	(per sq. ft.)	$0.05	56%	25%	81%	$0.04	$0.09	(per sq. ft.)
Large Retail (>12,000 sq. ft.)	(per sq. ft.)	$0.13	56%	25%	81%	$0.10	$0.23	(per sq. ft.)
Amusement	(per user)	$0.83	6%	25%	31%	$0.26	$1.08	(per user)
Other Commercial Vehicles	(per vehicle)	$6.00	5%	25%	30%	$1.79	$7.79	(per vehicle)
Employee Based	(per employee)	$3.00	5%	25%	30%	$0.90	$3.90	(per employee)
Vending/Game /Laundry	(per machine)	$15.00	5%	25%	30%	$4.48	$19.48	(per machine)
Liquor	(per license)	$50.00	56%	25%	81%	$40.43	$90.43	(per license)
Solicitor	(per solicitor)	$10.00	5%	25%	30%	$2.99	$12.99	(per solicitor)

Figure 6 – Total Enhanced Service Fee Increase

Escort Service Administrative Fee

The City is beginning to experience increased demands for enforcing the business licenses of escort services located in the City, and is recommending an increase in fees to allow for enhanced enforcement.

Enhanced enforcement will consist of a photo ID card for each individual, background check, verification of a physical address for the business, and annual meetings with the businesses to ensure understanding of and compliance with the City's ordinances. This increase in enforcement will result in an additional $49.16 per licensee.

Proposed Increase for Escort Service Administrative Fee

Fee Calculation

Administrative Fee		
Current	Increase	Total
$46.00	$49.16	$95.16

Figure 7 – Escort Service Business License Fee Increase (administrative portion only)

Please note that this is an increase in the administrative portion of the fee only; similar to what is done for for-hire vehicles (taxis, limousines, etc).

Staff will return to City Council on June 1st with amendments to the City's Fee Resolution and codes (as necessary) to formally adopt changes as directed on May 25th.

A. Department Review:

The Budget, Debt, and Grants, Public Works, Economic Development and Capital Projects and City Manager departments reviewed this report. Other departments have considered other relevant portions.

Alternatives:

A. Hold a Public Hearing on operating budget requests and provide direction about budget issues

B. Continue the Item: Time will be available on June 1st to address any outstanding issues. Council could choose to give additional direction at that time.

C. Do Nothing

SIGNIFICANT IMPACTS: The City's budget must be balanced. Staff recommends that Council provide policy direction on budget issues. Any unresolved issues should be discussed by June 8th so that the Final Budget can be prepared for adoption on June 15th.

RECOMMENDATION: The City Council should follow the budget presentation schedule described above and provide direction concerning budget policies and issues if needed.

Attachments:

A – Economic Development Grant Policy
B – Economic Development Grant Application
C – Festival Facilitation Cost Share Analysis
D – Transit Fee Cost Share Memo
E – Escort Service Memo

Economic Development Grants

Annually, the City will allocate $20,000 to be used towards attracting and promoting new organizations that will fulfill key priority goals of the City's current Economic Development Plan. Funding will be available for relocation and new business start-up costs only.

ED Grant Distribution Criteria: Organizations must meet the following criteria in order to be eligible for an ED Grant:

> **Criteria #1** – The organization must demonstrate a sound business plan that strongly supports prioritized Goals of the current City Economic Development Plan.
>
> **Criteria #2** – The organization must be unique and innovative; with a forecasted ability to generate overnight visitors who would spend dollars within the City's resort offerings.
>
> **Criteria #3** – The organization must be new to the Park City area or represents a new business type. They must commit to doing business in City limits no less than three years. Funding cannot be used for 1-time events.
>
> **Criteria #4** – The organization must produce items or provide services that are consistent with the economic element of the City's General Plan; provides for the safety, health, prosperity, moral well-being, peace, order, comfort, or convenience of the inhabitants of the City.
>
> **Criteria #5** - Can show an ability to achieve positive economic impacts for the City greater than twice the City's contribution within 3 years from award of grant.
>
> **Criteria #6** - Fiscal Stability and Other Financial Support: The organization must have the following: (1) A clear description of how public funds will be used and accounted for; (2) Other funding sources that can be used to leverage resources; (3) A sound financial plan that demonstrates managerial and fiscal competence.

The City's Economic Development Program Committee will review all applications and submit a recommendation to City Council, who will have final authority in judging whether an applicant meets these criteria.

Economic Development Grant Fund Appropriations: The City currently allocates economic development funds through the operating budget of the Economic Development & Capital Projects department. Of these funds, no more than $20,000 per annum will be available for ED Grants.

ED Grants along with the City's Public Service Contracts are required to stay within 1% of the city's Budget. Unspent fund balances at the end of a year will not be carried forward to future years.

ED Grant Categories: ED Grants will be placed in two potential categories:

(1) Business Relocation Assistance – This category of grants will be available for assisting an organization with relocation and new office set-up costs. Expenses that could be covered through an ED Grant include moving costs, leased space costs, and fixtures/furnishings/ and equipment related to setting up office space within the City limits.

(2) New Business Start-up Assistance - This category of grants will be available for assisting a new organization or business with new office set-up costs. Expenses that could be covered through an ED Grant include leased office space costs and fixtures/furnishings/ and equipment related to setting up office space within the City limits.

Application Process: Application forms may be downloaded from the City's www.parkcity.org website or available for pick-up within the Economic Development Office of City Hall. Funds are available throughout the City's fiscal year on a budget available basis.

Award Process: The disbursement of the ED Grants shall be administered pursuant to applications and criteria established by the Economic Development Department, and awarded by the City Council consistent with this policy and UCA Section 10-8-2.

ED Grants funds will be appropriated through processes separate from the biennial Special Service Contract and ongoing Rent Contribution and Historic Preservation process.

The Economic Development Program Committee will review all applications and forward a recommendation to City Council for authorization. All potential awards of grants will be publicly noticed 14 days ahead of a City Council action.

Nothing in this policy shall create a binding contract or obligation of the City. Individual ED Grant Contracts may vary from contract to contract at the discretion of the City Council. Any award of a contract is valid only for the term specified therein and shall not constitute a promise of future award. The City reserves the right to reject any and all proposals, and to waive any technical deficiency at its sole discretion. Members of the City Council, the Economic Development Program Committee, and any advisory board, Task Force or special committee with the power to make recommendations regarding ED Contracts are ineligible to apply for such Contracts. City Departments are also ineligible to apply for ED Contracts. All submittals shall be public records in accordance with government records regulations ("GRAMA") unless otherwise designated by the applicant pursuant to UCA Section 63-2-308, as amended.

PARK CITY
1884

Economic Development Grant Application Form

Park City Municipal Corporation

Please provide five (5) copies of this application and requested attachments and send to the attention of The Economic Development Program Committee, Economic Development Office, Park City Municipal Corporation, PO Box 1480, Park City Utah 84060.

Criteria for awarding Economic Development Grants are identified in the City's Budget Policy. Please read this policy prior to submitting an application to ensure compliance.

(1) Organization Contact Information

Name ______________________________

Address ______________________________

____

Phone ______________________ Fax ______________________

E-mail ______________________________

(2) Indicate the type of Economic Development Grant category that is applicable for this proposal:

___ **Business Relocation Assistance**
___ **New Business Start-up Assistance**

(3) Grant Request Amount: $______________________

(4) In addition to the above requested information, please provide the following:

A. A description of how your organization meets the ED Grant Criteria #1-#6 outlined in the City's Budget policy.
B. Summarize the economic and community benefits of having this organization in Park City.
C. Provide specific detail on how the requested funds would be used.
D. Detail any milestones or measures of success you would work with the City reporting on.

Signed: ______________________________ **Date:** ______________________

MEMO

DATE: 10/10//05
TO: Gary Hill

FROM: Bob Rosenthal
RE: ***DRAFT*** - Festival Facilitation Cost Share Analysis

Park City Municipal Corporation (PCMC) provides services to facilitate 48 special events per year.[1] The intent of the event series is to promote Park City as a destination resort (particularly important in an increasingly competitive market with shifting market share and expectations for little or no overall growth) and in this way increase name recognition, visitation, and taxable sales, so as to enhance the local business climate.

As part of a de facto plan to promote the series – to increase both the number and notoriety of events – the City has for a number of years subsidized the public sector cost of festival operations (cost for Police, crowd control, traffic control, clean up, permitting and enforcement, etc). In FY 2005 Park City Municipal Corp. (PCMC) paid about 78% of the public sector cost of operations – $462,000 out of a total of $593,000 .

Staff perceives that the series is now well established and because of that Council has determined to reduce the subsidy and implement a program by which beneficiaries – namely, festivals licensees and the business community – pay a larger share of cost.

The purpose of this report is to summarize the cost of service, illustrate methodology by which cost is assigned to each class of beneficiary and proportionate share fees calculated, and to summarize proposed changes to the existing revenue and cost structure.

The new assessment system is based on a plan under which local businesses will pay a part of total cost (28%). Part will be paid by festival licensees (24%), and the remainder (48%) will be paid by PCMC. Cost attributable to festival licensees and local businesses is heavily discounted – nearly 50%compared to attributable cost. That discount is the share funded by PCMC.

COST OF SERVICE

Projected cost of service (Figure 1) consists of personnel, material, supplies, services, pre-event planning and logistical support, the cost of PCMC internal "overhead", and cost for a (proposed) new overcrowding permit.

[1] This analysis is based on number of events, cost of service and total revenue for FY 2005.

Figure 1

PCMC SPECIAL EVENTS FACILITATION

Total Cost of Service

	Total
Special Events (direct bill to licensees - FY 2005 actual)	$312,772
Planning & Logistics (PCMC staff - estimate FY2005)	$206,512
Overcrowding Permit Review (projected FY 2006)	$10,054
Indirect Cost (14% of total)	$74,716
Total	$604,054

Source – Special Events from cost summary by PCMC Special Events Department. Planning & Logistics estimated as shown in Figure 11. Overcrowding Permit projected as shown in Figure 13. Indirect Cost is from PCMC Indirect Cost Analysis (April, 2004)

- *Special Events* is the PCMC cost of "on-the-street" staff, services, materials, and contract labor, along with Planning and Building Department permit review.

- *Planning, & Logistics* is PCMC staff cost for pre-event planning and logistical support for Police, Transportation, Snow Removal, Beautification, and Traffic Control, provided by Police, Public Works, Engineering, Recreation, Finance, and Legal departments.

- *Overcrowding Permit* is the cost of review and approval for a planned new permit which will be required of the numerous film festivals which occur concurrently with the Sundance Film Festival.

- *Indirect Cost* is the cost of PCMC internal "overhead" – cost for support services, including management oversight, legal, accounting and human resource costs associated with personnel, vehicles, fuel, liability and property insurance, etc. Indirect cost is calculated based on PCMC direct expenses excluding contract labor and other contract services. The aggregate indirect cost rate is 14% – 22% for General Fund items and 11% for the Transportation Fund.

COST BY CLASS OF BENEFICIARY

In FY 2005 festival licensees paid about 22% of cost ($131,014) and PCMC paid 78% ($462,000). In future years cost is proposed to be shared among beneficiaries (Figure 2) – 24% by licensees, 28% by local business and the balance, 48%, paid by PCMC. This arrangement, which allocates only about 1/2 of cost to direct beneficiaries, is intended as a way to minimize impact on licensees and local businesses and at the same time provide adequate revenue for the continued operation of a successful and high-quality event series.

Figure 2

PCMC SPECIAL EVENTS FACILITATION

Allocated Cost of Service

	Total Cost	Discount	Net Cost	%Total
Local Businesses (enhanced service fee)	$317,286	149,129	$168,157	28%
Event Licensees	$286,768	138,913	$147,855	24%
PCMC	$0		$288,042	48%
Total	$604,054	$288,042	$604,054	

- Cost to business and festival licensees is discounted about $288,000 – which is the amount of the continuing public subsidy for the event series.

Cost is assigned by class of beneficiary, based on methodology defined by Utah Code and by PCMC past practice.

- The share of cost attributable to local business will be assessed by means of a business license enhanced service fee (as defined by U.C.A 10-1-203), which limits reimbursable costs to certain specific categories of service – Police, Transportation, Snow Removal, Beautification, and Traffic Control.

- Cost to festival licensees will be assessed based on PCMC past practice and includes permitting (review, inspection, and enforcement), facility rental, equipment and supplies, and a part of pre-event planning and logistical support.

Cost allocation is detailed in Figure 3.

Figure 3

PCMC SPECIAL EVENTS FACILITATION
FY 2006 Pro Forma Cost of Service & Total Fee Revenue

	Business License Enhanced Service Fee	Special Event Fees (festival licensees)	Total
ESTIMATED COST OF SERVICE			
Police	$69,420		
Bus	$78,036		
Snow Removal	$200		
Beautification (parks labor)	$30,405		
Traffic Control (signs)	$13,061		
Logistics - Police, Traffic Control	$81,082		
Application Fee		$3,360	
Building Rental		$48,346	
CrowdControl/Barricades		$20,802	
Dumpster & Trash Containers		$2,900	
Equipt/Supplies/Services		$14,646	
Field Rental		$5,485	
Parking Rental		$26,898	
Inspections/Code Enforc./Permits		$10,832	
Planning, Review & Approval		$13,309	
Finance/Legal		$3,311	
Logistics - Police, Traffic Control		$97,190	
Overcrowding Permit - Review & Approval		$10,054	
Sub-Total	$272,203	$257,135	$529,338
Indirect Cost (14%)	$45,083	$29,633	$74,716
Total Cost	$317,286	$286,768	$604,054
ESTIMATED TOTAL FEE REVENUE			
Service Provision Discount (47% and 47%)	($149,129)	($134,785)	($283,915)
City Events (exempt)	$0	($4,128)	($4,128)
Projected Total Revenue	$168,157	$147,855	$316,012
FY2005 Actual (paid)	$0	$131,014	$131,014
Increase (FY 2006)	$168,157	$16,841	$184,998

Source – Cost of service cost from Figure 1. FY 2005 fee revenue from PCMC Special Events Department.

- *Logistics* is assigned in part to local businesses and in part to festival licensees. The business license component is for that part of pre-event planning and logistical support during events, attributable to Police, Transportation, Snow Removal, Beautification, and Traffic Control. The remainder – primarily event specific costs – is assigned to festival licensees. The allocated cost of logistics is derived as shown in Figure 11 based on analysis by the PCMC Special Events Department (Figure 12).

- Certain *City Events* are exempt from the payment of event fees. These exemptions reduce total revenue by about $4,128 (exempt events are listed in Figure 14).

- Note in Figure 3 that *Total Revenue* is slightly understated, compared to expected actual. This is because an existing contract with the Triple Crown series (which expires in 2007), is for a higher amount than that planned under the new fee structure.

BUSINESS LICENSE ENHANCED SERVICE FEE CALCULATION

The enhanced service fee (assessed according to the requirements of U.C.A 10-1-203) is apportioned among classes of business according to relative benefit estimated to accrue from the enhanced service – i.e., the amount of the fee is proportionate to the relative increase in sales estimated to accrue to each class of beneficiary during the festival season (May to October). Marginal sales are estimated based on local sales tax revenue for the period 2001 to 2003 (the most recent years for which data is available).

The *Proposed Festival Facilitation Fee* is summarized as follows, along with the amount of the current enhanced service fee (for a part of the cost of the free bus system):

Figure 4

BUSINESS LICENSE FEE FOR FESTIVAL FACILITATION

Proposed Change in Enhanced Service Fee by Business License Category

Business License Category		Current Enhanced Service Fee (transit)	Proposed Festival Facilitation Fee	Increase
		(per unit)		
Skiing		$205,455	$11,992	6%
Lodging	(per bedroom)	$15.40	$9.49	62%
Restaurant/Retail	(per sq. ft.)	$0.19	$0.10	56%
Office	(per sq. ft.)	$0.17	$0.01	5%
Warehouse	(per sq. ft.)	$0.05	$0.00	5%
Taxies, Buses, Limousine	(per vehicle)	$75.58	$4.41	6%
Outdoor Dining	(per sq. ft.)	$0.05	$0.03	56%
Large Retail (greater than 12,000 sq. ft.)	(per sq. ft.)	$0.13	$0.07	56%
Amusement	(per user)	$0.83	$0.05	6%
Other Commercial Vehicles and Trailers	(per vehicle)	$6.00	$0.29	5%
Employee Based	per employee)	$3.00	$0.15	5%
Commercial Vending, Game, Laundry Machines	(per machine)	$15.00	$0.73	5%
Liquor	(per license)	$50.00	$27.93	56%

Fee calculation methodology is summarized in Figure 5 on the following page.

Figure 5

PROPOSED BUSINESS LICENSE ENHANCED SERVICE FEE FOR FESTIVAL FACILITATION

Fee Calculation

Business License Category	Proposed Festival Facilitation Fee: Estimated Benefit Share		Allocated Cost of Service (FY 2005): % of Total	Allocated Cost of Service (FY 2005): Total	Number of Units (2005)	Proposed Fee per Unit		Current Enhanced Service Fee (per unit)	Cost Burden (increase)
Benefit Share									
Amusement	Share of "off season" (2001 to	7%	7%	$11,992				$205,455	6%
Lodging	2003) gross taxable sales	37%	37%	$61,465	6,478	$9.49	(per bedroom)	$15.40	62%
Restaurant/Retail	estimated to be generated by	53%	53%	$89,102	862,192	$0.103	(per sq. ft.)	$0.185	56%
Office	visitors	2%	2%	$4,060	505,423	$0.008	(per sq. ft.)	$0.165	5%
Total				$166,619					
Enhanced Service Fee									
Skiing		Amusement		$11,992		$11,992		$205,455	6%
Lodging		Lodging		$61,465	6,478	$9.49	(per bedroom)	$15.40	62%
Restaurant/Retail		Rest/Retail		$69,328	670,852	$0.103	(per sq. ft.)	$0.19	56%
Office	Benefit attributable to each	Office		$4,060	505,423	$0.008	(per sq. ft.)	$0.17	5%
Warehouse	business license category is not	Office		$76	33,239	$0.002	(per sq. ft.)	$0.047	5%
Taxies, Buses, Limousine	specifically quantifiable -	Amusement		$1,372	311	$4.41	(per vehicle)	$75.58	6%
Outdoor Dining	enhanced service fee is assigned	Rest/Retail		$913	31,439	$0.029	(per sq. ft.)	$0.052	56%
Large Retail (greater than 12,000 sq. ft.)	based on relative cost burden	Rest/Retail		$11,523	159,901	$0.072	(per sq. ft.)	$0.129	56%
Amusement	equal to:	Amusement		$47	976	$0.048	(per user)	$0.828	6%
Other Commercial Vehicles and Trailers		Office		$149	510	$0.292	(per vehicle)	$6.00	5%
Employee Based		Office		$14	98	$0.146	per employee)	$3.00	5%
Commercial Vending, Game, Laundry Machines		Office		$123	168	$0.73	(per machine)	$15.00	5%
Liquor		Rest/Retail		$7,094	254	$27.93	(per license)	$50.00	56%
TOTAL				$168,157					

Source – Current Enhanced Service Fee and Number of Units from PCMC Budget, Debts, and Grants Department. Cost of service from Figure 2. Marginal increase in event season sales ('Benefit Share") estimated as shown in Figure 15.

The assignment of benefit assumes that the effect of festival promotion is best measured in terms of gross taxable sales and further, that businesses with a greater share of the marginal increase attributable to events realize relatively greater benefit. Estimation of new revenue attributable to events is based on the May to October (off-season) increase in sales, citywide, and assumes that all, or in equal proportion, most, of that increase is attributable to event promotion. Marginal sales can be estimated in this way for four broad categories of business – amusement, lodging, restaurant/retail, and office – each of which show an average share of 7%, 37%, 53%, and 2%, respectively.

Because benefit cannot be estimated directly for the majority of business license categories, the amount of the enhanced service fee is calculated based on cost burden demonstrated by the most closely related benefit class. In this way proportionate increase is taken as the most equitable measure of benefit, meaning that like businesses bear an equal burden and therefore each, an equitable share of cost.

Benefit Share in Figure 5 is the proportion of event-season sales estimated to be attributable to visitors – calculated as the difference between actual total sales and that part attributable to regional and local, year-round residents. Figure 15 in the Technical Reference shows the structure of estimating methodology. Because sales are estimated based on sales tax revenue, and because tax information is both confidential and proprietary, Figure 15 does not shown underlying data or calculations.

Estimation of visitor driven "marginal sales" depends in particular on the correct alignment of sales tax categories, and business types as enumerated in the business license system (the accuracy of estimated benefit share is constrained by the different structure of these two data sources). The assignment of business type by tax category is illustrated in Figure 17 of the Technical Reference.

CHANGE TO EXISTING REVENUE & COST STRUCTURE

Fees proposed in this analysis will reduce (but not eliminate) the subsidy provided by PCMC, add a new fee supported by local businesses, and change the cost of a license for each festival.

Average change by type of festival is estimated as follows:

Figure 6

PCMC SPECIAL EVENTS FACILITATION

Average Special Event Fee

	Sundance	Large Festivals (10)	Small Festivals (38)	Overcrowding Permits
	(average per festival)			
Average Fee				
Proposed (FY 2006)	$63,594	$7,523	$51	$561
Current (FY 2005)	$63,594	$6,179	$148	NA
Increase (decrease)	$0	$1,344	($97)	NA
Average Direct Cost of Service (FY 2006)	$127,950	$9,899	$1,279	$561
Discount	($64,355)	($2,376)	($1,228)	$0

Source – FY 2005 fee revenue from Park City Special Events Department.

The ten largest festivals will experience a small increase (about $1,340 each). The 38 small festivals (those for which cost of service is less than $1,000) will see a minor reduction (about $97 each).

All festivals are planned to continue to receive substantial discounts – about $2,376 and $1,228 each, for large and small festivals, respectively.

Large festivals, of which there are 10, generate most of the fee revenue, as follows:

Figure 7

PCMC SPECIAL EVENTS FACILITATION
Total Special Event Fee Revenue

	Sundance	Large Festivals (10)	Small Festivals (38)	Total
Total Revenue (FY 2005)	$63,594	$61,793	$5,627	$131,014
% of Total	49%	47%	4%	

Source – FY 2005 fee revenue from Park City Special Events Department.

The proposed change in fees for each of the large events is estimated to be roughly as follows. (Specific charges for each festival depend on the structure of billable costs for the FY 2006 season, which will be determined by the Special Events Department.)

Figure 8

PCMC SPECIAL EVENTS FACILITATION
Comparative Special Event Fee Revenue - 10 Largest Events

	FY 2005 (actual)	Proposed (FY 2006)	Change
4th of July	$7	$6,388	$6,381
Arts Festival	$18,421	$23,497	$5,076
DV Freestyle World Cup	$1,500	$4,237	$2,737
Fidelity Investments Park City Jazz Festival	$2,250	$3,793	$1,543
Friends of the Farm Events	$0	$0	$0
Miners Day	$0	$4,155	$4,155
Park City Cycling Festival	$17,598	$4,883	($12,714)
Pedigree Sled Dog	$2,860	$5,571	$2,711
Triple Crown Championships	$19,157	$12,205	($6,952)
Rugby Nationals	$0	$6,528	$6,528
TOTAL	$61,793	$71,256	

- *Friends of the Farm* is an exempt event, sponsored by the City and therefore pays no fees.

- *Triple Crown* will remain at its (higher) 2005 rate until the expiration of the current contract, in FY 2007.

TECHNICAL REFERENCE

Cost of Service

Figure 9 shows FY 2005 actual cost of service. Figure 10 shows cost by event. Planning and Logistics cost is estimated as shown in Figure 11. Figure 13 shows cost for the proposed new Overcrowding Permit (for film festivals concurrent with the Sundance festival). Figure 14 shows a list of PCMC sponsored events which do not pay fees.

Business License Fee Calculation Methodology

The increase in gross sales attributable to the event series is estimated as shown in Figure 15 and Figure 16. Figure 17 shows a comparison of business license categories and sales tax reporting categories – the basis for estimating benefit share.

Exhibits

Figure 9

PCMC SPECIAL EVENTS FACILITATION
Special Event Direct Bill (FY 2005, actual)

Service Type	Total Cost
Police	$69,420
Bus	$78,036
Snow Removal	$200
Beautification (parks labor)	$27,355
Traffic Control (signs)	$13,061
Application Fee	$3,360
Building Rental	$48,346
CrowdControl/Barricades	$16,281
Dumpster & Trash Containers	$1,911
Equipt/Supplies/Services	$11,587
Field Rental	$5,485
Parking Rental	$26,898
Inspections/Code Enforc./Permits	$10,832
TOTAL	$312,772

Figure 10

PCMC SPECIAL EVENTS FACILITATION

FY 2005 Special Events

	Event Type	Total Cost	Paid	Waived
Sundance Film Festival	Sundance	$158,753	$63,594	$95,159
Arts Festival	Large	$65,665	$18,421	$47,244
Triple Crown Championships	Large	$29,938	$19,157	$10,781
Park City Cycling Festival	Large	$21,298	$17,598	$3,700
4th of July	Large	$13,830	$7	$13,823
Rugby Nationals	Large	$3,903	$0	$3,903
Pedigree Sled Dog	Large	$2,860	$2,860	$0
Fidelity Investments Park City Jazz Festival	Large	$2,836	$2,250	$586
DV Freestyle World Cup	Large	$2,406	$1,500	$906
Friends of the Farm Events	Large	$1,336	$0	$1,336
Miners Day	Large	$1,239	$0	$1,239
USC Rally	Small	$949	$949	$0
John Fogerty Concert	Small	$610	$610	$0
Light the Night	Small	$520	$0	$520
Children's Fair	Small	$511	$0	$511
Christmas in the Park	Small	$450	$0	$450
Antique Show	Small	$418	$418	$0
Halloween on Main Street	Small	$416	$0	$416
Roxy Snowboard	Small	$400	$400	$0
Notre Dame Rally	Small	$379	$379	$0
Intermountain Mustang	Small	$371	$191	$180
World Superpipe-PCMR	Small	$350	$350	$0
PCMR Snowmobile Exh.	Small	$350	$200	$150
Holiday on Main	Small	$303	$70	$233
Park City Marathon	Small	$290	$290	$0
Mountain Town Stages	Small	$251	$0	$251
NASTAR Nationals	Small	$250	$250	$0
Movies in the Park	Small	$170	$0	$170
Relay for Life	Small	$150	$150	$0
Mtn. Challenge Run, Steeple Chase and Tour de Suds	Small	$150	$150	$0
Real Salt Lake	Small	$115	$115	$0
Heber Valley Olympic Century	Small	$100	$100	$0
Peace House Fundraiser	Small	$100	$100	$0
E100	Small	$100	$100	$0
Arte Latino	Small	$100	$100	$0
Bald Mountain Challenge	Small	$100	$100	$0
Soccer Sprint 5K	Small	$100	$0	$100
Park City Moto Jazz Fest and Raly	Small	$100	$100	$0
Kick-Off Announcement	Small	$100	$100	$0
Wasatch Back Relay	Small	$55	$55	$0
Park City Skate Series	Small	$50	$0	$50
RoaDance	Small	$50	$50	$0
Deer Valley Celebrity Ski	Small	$50	$50	$0
Rail Trail Snowshoe	Small	$50	$50	$0
Rail Trail 1/2 Marathon	Small	$50	$50	$0
Village at the Lift	Small	$50	$50	$0
Royal St. Hillclimb	Small	$50	$50	$0
Wells Fargo Concerts- 2005	Small	$50	$0	$50
Frontier Days	Small	$50	$50	$0
TOTAL		$312,772	$131,014	$181,758

Figure 11

PCMC SPECIAL EVENTS FACILITATION

PCMC Planning & Logistics - Annual Cost of Service

	Estimated Total (FY 2005)								Total Cost		
	Sundance	Large Festivals			Small Festivals			Total	Enhanced Service	Festival Licensees	Total
		# Permits	Hrs Ea	Total Hrs	# Permits	Hrs Ea	Total Hrs				
	(hours and $s)										
Allocation of Effort by Department/Function											
Planning Department	130	10	7.50	75	38	0.50	19	224	$0	$9,416	
Building Department Staff	40	10	5.00	50	38	0.50	19	109	$0	$3,894	
Special Events Manager	600	10	35.00	350	38	12.00	456	1,406	$14,160	$56,640	
Special Events Coordinator	550	10	55.00	550	38	14.00	532	1,632	$10,138	$40,551	
Contract	300	10	15.00	150	38	1.50	57	507	$21,929	$0	
Transit	276	10	7.00	70	38	0.50	19	365	$17,049	$0	
Police	162	10	7.00	70	38	0.75	29	261	$16,240	$0	
Park Department	2	10	5.00	50	38	0.50	19	71	$3,050	$0	
Streets Department	10	10	7.00	70	38	0.50	19	99	$0	$4,521	
Recreation	0	10	1.00	10	38	0.50	19	29	$0	$989	
Parking	10	10	7.00	70	38	0.25	10	90	$0	$3,059	
Finance	6	10	1.00	10	38	0.25	10	26	$0	$697	
Engineering	6	10	1.00	10	38	0.25	10	26	$1,565	$0	
Legal	12	10	2.00	20	38	0.50	19	51	$0	$2,614	
TOTAL	2,104			1,555			1,235	4,894	$84,132	$122,380	$206,512
Cost by Type											
Enhanced Service	$45,881			$23,825			$14,426		$84,132		
Festival Licensees	$46,308			$39,933			$36,140			$122,380	
TOTAL	$92,188			$63,757			$50,566		$84,132	$122,380	$206,512
Cost by Service Type											
Planning, Permit Review & Approval									$0	$13,309	
Logistics - Police, Traffic Control									$81,082	$97,190	
Beautification (parks labor)									$3,050	$0	
Crowd Control/Barricades									$0	$4,521	
Field Rental									$0	$989	
Parking Rental									$0	$3,059	
Finance/Legal									$0	$3,311	
TOTAL									$84,132	$122,380	$206,512

Source – Allocation of Effort by Department/Function from PCMC Special Events Department

In Figure 11 hours and cost are allocated by service type and beneficiary (as an enhanced service or as a service billed to each event licensee) based on the extent to which each function contributes to logistical support for provision of the enhanced service. That allocation is summarized as follows:

Figure 12

PCMC SPECIAL EVENTS FACILITATION
Enhanced Service - Pre-Event Planning and Logistics for Police & Traffic Control

Department/Function	Service Type	% Enhanced Service
Planning Departmnet	Planning, Permit Review & Approval	0%
Building Department Staff	Planning, Permit Review & Approval	0%
Special Events Manager	Logistics - Police, Traffic Control	20%
Special Events Coordinator	Logistics - Police, Traffic Control	20%
Contract	Logistics - Police, Traffic Control	100%
Transit	Logistics - Police, Traffic Control	100%
Police	Logistics - Police, Traffic Control	100%
Park Department	Beautification (parks labor)	100%
Streets Department	CrowdControl/Barricades	0%
Recreation	Field Rental	0%
Parking	Parking Rental	0%
Finance	Finance/Legal	0%
Engineering	Logistics - Police, Traffic Control	100%
Legal	Finance/Legal	

Source – PCMC Special Events Department

- *% Enhanced Service* is the share of each function attributable to pre-event planning and logistical support for Police, traffic control, transit, and beautification, provided by the Police, Public Works, Engineering, Recreation, Finance, and Legal Departments

Cost of service for the proposed new overcrowding permit, planned for FY 2006, is estimated as follows.

The permit is intended to formalize a process of review and approval for the many film festivals which occur concurrently with the Sundance festival. There are expected to be about 20 such reviews during FY 2006.

Figure 13

PCMC SPECIAL EVENTS FACILITATION

Proposed Overcrowding Permit -
Estimated Annual Cost of Service (FY 2006)

		# Permits	Hrs Ea	Total Hrs	Total Cost
		(FY2006 estimate)			
Planning Department	CUP & OC review	20	5.00	100	
Chief Building Official	CUP & OC review	20	1.00	20	
Building Department Staff	CUP & OC review	20	5.00	100	
Special Events Department	CUP & OC review	20	2.00	40	
TOTAL				260	$10,054

Source – PCMC Special Events Department

City sponsored – exempt from the payment of event fees – are as follows:

Figure 14

PCMC SPECIAL EVENTS FACILITATION

City Sponsored Events - Exempt

	Event Type	Calculated Fee (FY 2006)
Friends of the Farm Events	Large	$3,974
Christmas in the Park	Small	$51
Movies in the Park	Small	$51
Park City Skate Series	Small	$51
TOTAL		$4,128

Increased sales attributable to visitors during the "off-season" (May to October) are taken to be representative of relative benefit that derives from the event series. Relative benefit is the basis for estimating fee rates by business license category.

Benefit is estimated based on "off-season" sales (May to October) so as to exclude the influence of ski season.

The share of off-season sales attributable to visitors between 2001 and 2003 (the most recent years for which data is available) is summarized as follows:

Figure 15

PROPOSED FESTIVAL FACILITATION FEE
Benefit Allocation

	Share of Local Sales Tax Revenue Estimated to be Attributable to "Off-Season" Visitors (May to October - 2001 to 2003)			
	Amusement	Lodging	Restaurant/Retail	Office
Total				
Attrib. to Local Residents (estimate)				
Attributable to Visitors				
Share	7%	37%	53%	2%

Source – Sales Tax revenue from PCMC Budget, Debt & Grants Department.

- Figure 15 shows the share of the three year average of sales attributable to visitors
- Total sales are calculated based on the local share of sales tax revenue. Tax information is confidential and can not be shown.

For each class of business in Figure 15, sales attributable to visitors are estimated under the assumption that some part of total annual sales is attributable to in-City and regional, year-round residents (a sales "base") and that the remainder is attributable to visitors.

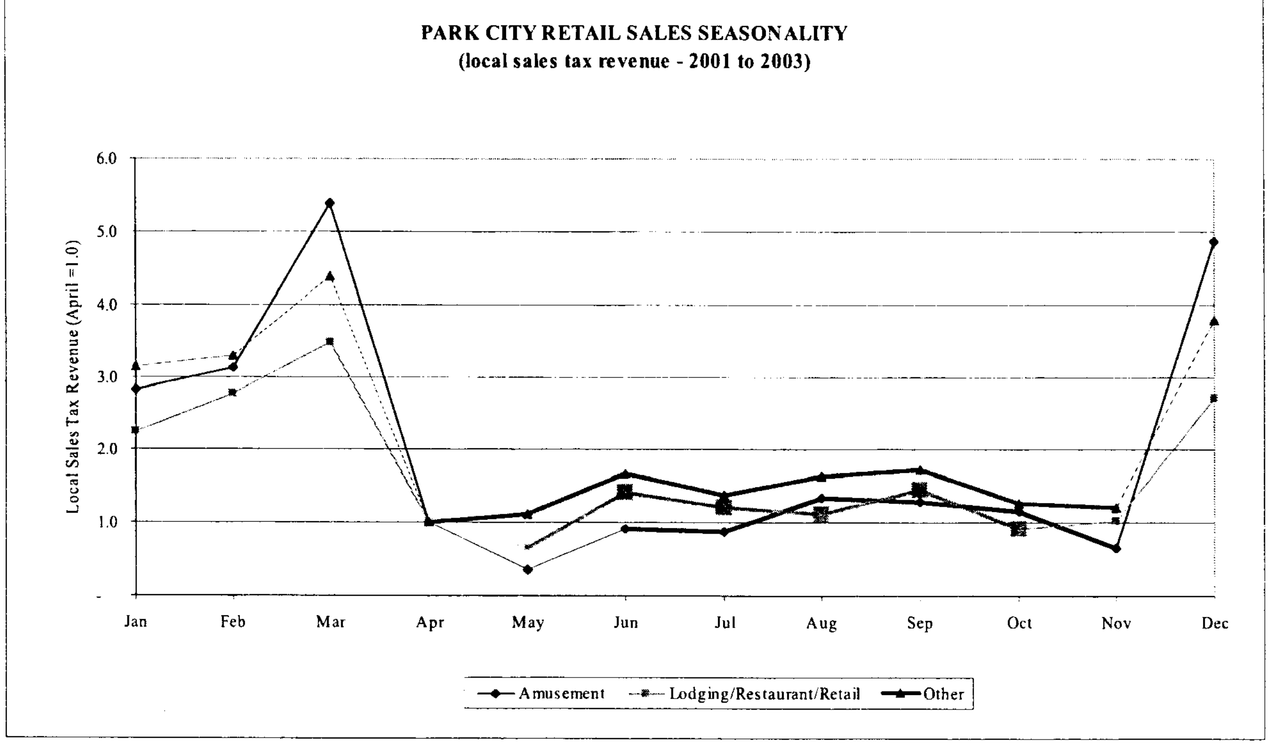
The sales "base" is estimated as the average of sales for two months, defined for each class to be those largely free of visitor impact. Base months for each class are as follows:

- Amusement – June and November.
- Restaurant/Retail – May and October.
- Office – April and November.
- Lodging – lodging is different, in that all revenue is assumed to be attributable to visitors.

The difference between total sales and "base sales" for the six month "off-season" is the visitor "margin".

"Base" months for each class generally match the trend in sales seasonality, which is summarized as follows:

Figure 16



- "Off-season" for tourist related sectors (lodging, restaurant, and retail) runs from May until October.
- "Off-season" for other sectors (those driven only indirectly by tourism) is from April until November.
- The month of May for the Ski industry – which comprises most of the Amusement class – is anomalous. Although 3-year sales show an increase, resorts are closed, and much of resort staff is furloughed... For this reason, the off-season for Amusement is considered to begin in June.

Figure 17 shows a comparison of business license categories and sales tax reporting categories -- the basis for calculating relative sales tax, and benefit allocation by fee analysis category.

Figure 17

FEE ANALYSIS CATEGORY COMPARISON

Fee Analysis Category	Business License Category	Local Sales Reporting Tax Reporting Category
Skiing	Skiing	Amusement & Recreation
Lodging	Nightly Rental	Hotels & Lodging
Restaurant/Retail	Restaurant/Retail	Apparel & Accessory - Auto & Misc. Repair - Building & Garden - Eating & Drinking - Food Stores - Furniture - General Merchandise
Office	Office/Other	Business, Ed, Legal, Social, Health, Finance, Insurance Real estate
Warehouse	Warehouse	
Taxies, Buses, Limousine	Vehicles For Hire	
Outdoor Dining	Restaurant - Outdoor Dining	
Large Retail (greater than 12,000 sq. ft.)	Large Retail	
Amusement	Amusement	
Other Commercial Vehicles and Trailers	Vehicles - Commercial	
Employee Based	Employee Based	
Commercial Vending, Game, Laundry Machines	Vending	
Liquor	Liquor Liquor - minimum fee Liquor Banquet Liquor Package Agency Off Premises Beer On Premises Beer Private Club Restaurant Liquor Limited Restaurant Liquor Seasonal Restaurant Liquor	
Not Used	Admin Fee Admin-Nightly Rental Vehicles For Hire - Admin FranchiseBusiness Inspection NightlyRentalInspection LiquorScientificUse Penalty	Agriculture,Forestry&Fishing Communications Construction Durable Goods Electric & Gas Manufacturing Mining Miscellaneous Motor Vehicle Dealer Nondurable Goods Personal Public Administration Transportation

PARK CITY MUNICIPAL CORPORATION

DRAFT (for discussion purposes only)

MEMO

DATE: 5/19/06
TO: Gary Hill

FROM: Bob Rosenthal
RE: ***DRAFT*** – 2007 Business License Fee Update

This memo discusses the trend in business license revenue since 1997, and illustrates the decline in license revenue as a share of the cost of bus system operations, with the intention of giving context to a proposed 2007 rate increase.

Business license revenue is assessed to support provision of a fare-free bus system (as an enhanced service under business license regulations). The purpose of the bus system is to enhance marketability of the Park City resort, and in so doing to increase visitation and thereby increase sales for local merchants and businesses.

Business license fees as implemented in 1997 were intended to offset only a part of the cost of bus service – fee revenue then paid about 26% of operations expense. Since 1997 there have been no fee increases, and by 2007 (the upcoming renewal year) the share paid by the business community will have dropped by more than ¼, to 18% of cost[1].

The City's funding plan for the bus system has been to assess beneficiaries (local businesses) only a part of total cost and to seek other sources to make up the difference, in order to minimize the impact and maximize benefit, for local business. That business pays a share of cost for a service expressly intended for its benefit is important not only as a way of managing the expense, but also as a way of establishing a defensible relationship between beneficiary and cost of service, which contributes to an appearance of equity and helps justify provision of the service.

The 2007 increase will renew this diminishing "balance. It not only will support provision of a well funded, high quality bus service but also will strengthen a "rational nexus" between assessment (fee rates) and benefit (improved resort competitiveness, increased visitation and increased private sector sales). The 2007 increase is proposed as a 25% across the board rate increase – equal for each licensee. This will yield a 25% increase in revenue, which means that business will support about 23% of the cost of service – lower than the 1997 cost share of 26% but still higher than the 2007 share (given no change in rates) of 18%.

The trend in revenue and cost of service since 1997, and the proposed change in total fee revenue, are illustrated on the following page.

[1] Cost includes in-city bus operations expense only. Cost does not include County bus routes.

Figure 1 shows the trend in business license revenue as a share of bus system operations expense.

Figure 1

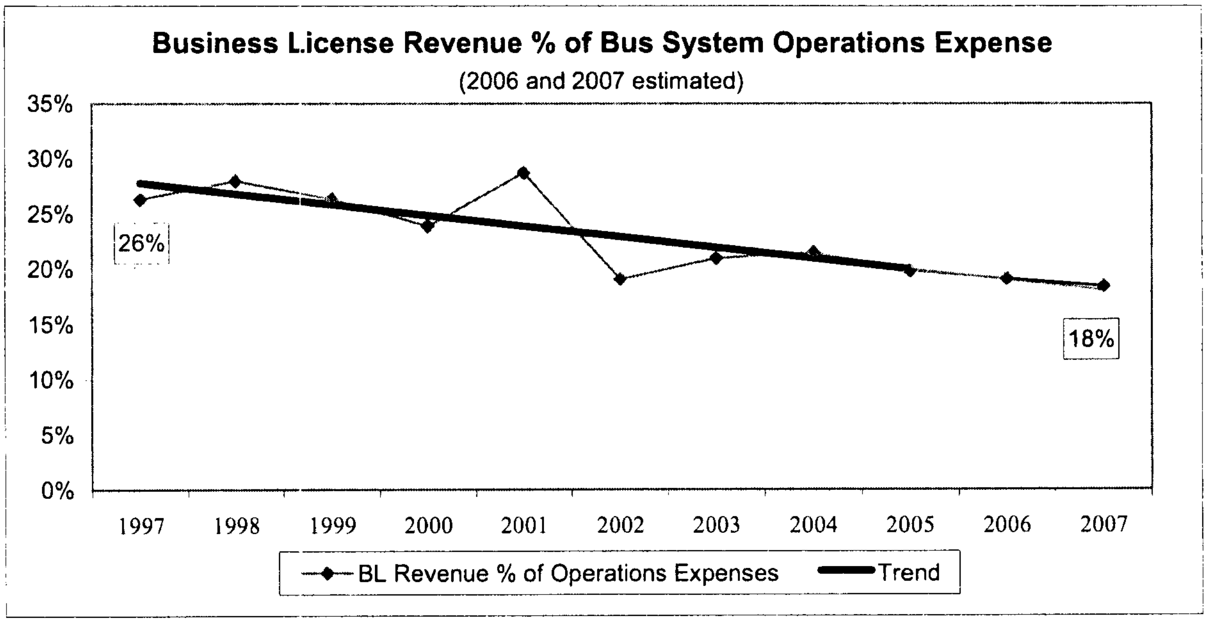
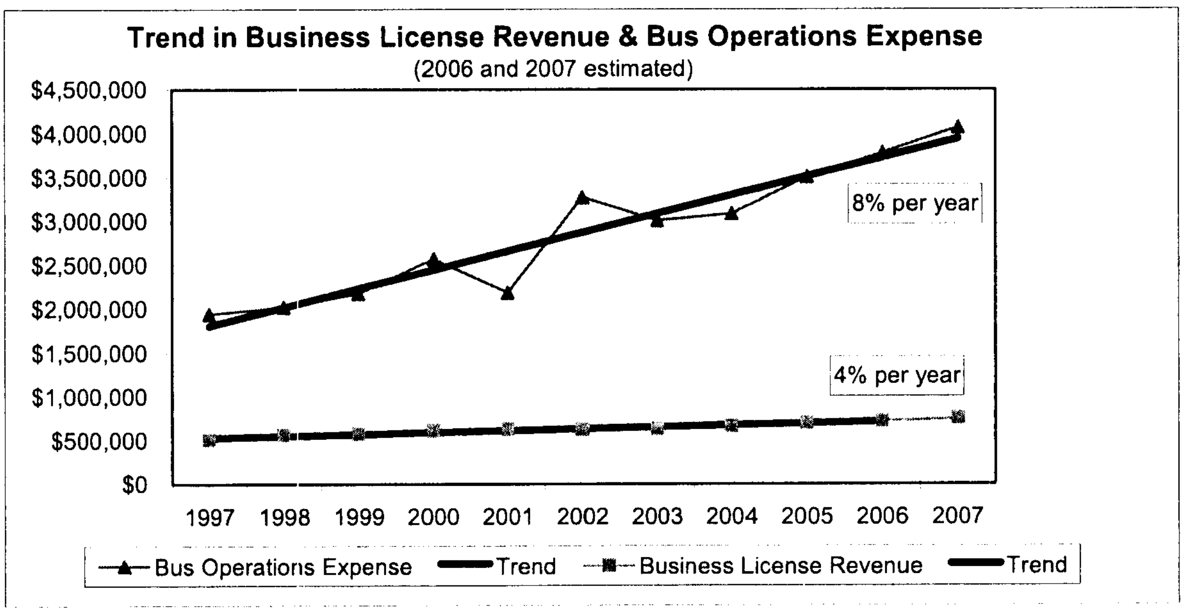


Figure 2 shows a comparison of the change between 1997 and 2007 in cost of operations for the bus system and revenue attributable to the business community.

Figure 2



MEMO

DATE: 5/22/06
TO: Gary Hill

FROM: Bob Rosenthal
RE: ***DRAFT*** – 2006 Escort Service Enhanced Regulation and Enforcement Fee

This describes a plan for providing *Enhanced Regulation* of Escort Services licensed in Park City.

The estimated cost of service to provide enhanced regulation is $1,327, or $49.16 per licensee per year (as shown in Figure 1 on the following page). It is anticipated that owner or managers of each business will be licensed, as well as staff, for a total of 27 licensees. (There are 18 licensed escort services in 2006.)

There are three elements proposed for the program, including *Enhanced Regulation*, *Enhanced Enforcement*, and implementation of a formal *Hearings Process* to review violations. These elements include the following tasks:

Enhanced Regulation

1. Issue photo identification card.
2. Conduct Police background check
3. Verify physical address of business
4. Annual regulatory meeting for all licensees conducted by Chief of Police.

Cost for this element is shown in Figure 1 on the following page

Enhanced Enforcement

5. Police enforcement

No added cost to PCMC is anticipated for this element. This will be undertaken as part of regular Police activities.

Hearings Process

6. Conduct license violation hearings

No added cost to PCMC is anticipated for this element. Cost of the hearing will be paid by licensee.

Figure 1

ESCORT SERVICE ENHANCED REGULATION

Annual Cost of Service

Number of Licensees	
Active business Licenses (2006)	18
Number of Business Owner/Managers	18
Assumed Average Staff per Account	0.5
Estimated Total Licensees	27.0

Task Description	PCMC Staff		Number of Licensees	Per Unit Resource Demand			Cost of Service		
	Employee Class	Employee Cost ($ per hr.)		Staff (hours)	Materials	Total Hours	Staff	Materials	Total
Enhanced Regulation									
1- Photo ID									
Payment Processing (Finance)	Accounting Clerk 2	$25.25	27	0.25		6.75	$170		$170
Application Processing (Code Enforcement)	Planning Tech	$28.45	27	0.25		6.75	$192		$192
Issue Photo ID (Customer Service)	Office Assistant 3	$23.75	27	0.10		2.70	$64		$64
ID blank, photograph, & printing		$0.00	27		$10.00			$270	$270
2 - Background Check (PCMC Police)	Police Records Clerk	$23.48	27	0.50		13.50	$317		$317
3 - Verify Physical Address (Code Enforcement)	Planning Tech	$28.45	27	0.25		6.75	$192		$192
4 - Annual Regulatory Refresher	Chief of Police	$60.88				2.00	$122		$122
Enhanced Enforcement									$0
5 - Police Enforcement - No added cost of service; part of regular police activities									
Hearings Process									$0
6 - Hearings - No added cost of service; hearing cost paid by applicant									
ESTIMATED TOTAL COST									**$1,327**
Number of Licensee									27
Average Cost Per Licensee (annual cost of service, and as needed for new mid-year employees)									**$49.16**