

**PARK CITY COUNCIL MEETING
SUMMIT COUNTY, UTAH
DECEMBER 20, 2012**

REVISED

PUBLIC NOTICE IS HEREBY GIVEN that the City Council of Park City, Utah will hold their regularly scheduled meeting at the Marsac Municipal Building, City Council Chambers, 445 Marsac Avenue, Park City, Utah for the purposes and at the times as described below on Thursday, December 20, 2012.

Closed Session

1:30 p.m. Personnel, litigation and property

Work Session

2:30 p.m. Council Questions and Comments

2:40 p.m. MindMixer Demonstration

3:00 p.m. Prospector Drain Administrative Order on Consent

3:30 p.m. Project Management Scope RDA

3:50 p.m. Liquor License Amendments and Amendments for Sundance Film Festival
Special Event Liquor Licenses Effective 2014

4:00 p.m. Capital Budget Check-In and Capital Spending Philosophy

4:45 p.m. Water Conservation

5:40 p.m. Break

6:00 p.m. Newtown, Connecticut Vigil (Council will announce location)

Regular Meeting

6:45 p.m.

I ROLL CALL

II COMMUNICATIONS AND DISCLOSURES FROM COUNCIL AND STAFF

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

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

1. Consideration of an adoption of the 2012 Letter of Consent between Park City Municipal and Snyderville Basin Recreation District in a form approved by the City Attorney

2. Consideration of an award of a Professional Service Contract with Design Workshop, LLC in the amount of \$55,716 for the Park Avenue Pathway in a form approved by the City Attorney

3. Consideration of a Construction Management/General Contractor services related to the design of Deer Valley Drive with Geneva Rock in the amount of \$62,238 in a form approved by the City Attorney

4. Consideration of a contract with Stanton Constructability Services in the amount of \$28,710 in a form approved by the City Attorney
5. Consideration of an award of a Professional Service Contract for Consulting Services for Historic Preservation and an Intensive Level Survey of the Main Street National Register Historic District to CRSA/SWCA for the amount of \$219,205 in a form approved by the City Attorney
6. Consideration of an approval for a one year trial period contract with Summit Energy, LLC in a form approved by the City Attorney.

V NEW BUSINESS

1. An Ordinance amending the Land Management Code of Park City, Utah, revising Sections 15-1, 15-2.3, 15-2.4, 15-2.5, 15-2.6, 15-2.16, 15-3, 15-4, 15-5, 15-9, 15-10, 15-11, and 15-15 regarding development regulations; process and appeals for Historic District Design Review and Conditional Use Permits; clarifying that community locations must be a minimum of 200 feet from Main Street; uses within the HR-2 zone; open space calculations in the RC and HRM zones; landscaping requirements; removing Special Exceptions; requiring building permits for fences/retaining walls and impervious surfaces such as patios, driveways, and non-bearing construction in all Districts; revising the process for relocation or reorientation of and for disassembly and reassembly of historic structures; setback exceptions for screened mechanical equipment; timing of seasonal lighting; up lighting of public art; conversion of non-conforming uses to less intensive uses; and definitions related to these amendments.
 - (a) Public Hearing
 - (b) Action
2. Consideration of a Summit County/Snyderville Basin Recreation District & Park City Open Space Purchase/Exchange Agreement
 - (a) Public Hearing
 - (b) Action

VI ADJOURNMENT

A majority of City Council members may meet socially after the meeting. If so, the location will be announced by the Mayor. City business will not be conducted. Pursuant to the Americans with Disabilities Act, individuals needing special accommodations during the meeting should notify the City Recorder at 435-615-5007 at least 24 hours prior to the meeting. Wireless internet service is available in the Marsac Building on Wednesdays and Thursdays from 4 p.m. to 9 p.m.

PARK CITY COUNCIL MEETING SUMMIT COUNTY, UTAH DECEMBER 27, 2012

PUBLIC NOTICE IS HEREBY GIVEN that the City Council of Park City, Utah will **not** hold its regularly scheduled meeting on Thursday, December 27, 2012.

Posted: 12/17/12

Revised: 12/19/12

See: www.parkcity.org

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

December 2012

27 **Holiday recess**

January 2013

3 **Holiday recess**

10 Legislative Preview – 20 min DF
Update on new Transit AVL 15-20 min DD
RMP Substation Expansion/Relocation – work, 1.5. MC
Resolutions setting forth annual meeting dates and appointment of officers
Appointment of Mayor Pro Tem
Appointment to EDTAB (Employee Discharge /Transfer Appeal Board)
City Park Tennis Subdivision - Francisco
Parking software contract approval with T2 Systems Inc.
Resignation of Judy McKie, HPB
481 Woodside Avenue plat amendment - KW

17 **No meeting - Sundance**

24 Community bulk solar – TP

31

February 2013

7

14

21

28

Pending Items:

Wasatch Front and Back mountain resort expansions – Mayor Becker team

Latino Community outreach and engagement – study

RDA and other economic districts strategic plan

Resolution establishing a strategic plan for City-owned property with development potential in Park City, Utah and repealing and replacing Resolution No. 22-05 in its entirety

Visioning w/City - Phyllis

Visioning w/County - Phyllis

City Council Staff Report



Author: Phyllis Robinson, Communications & Public Affairs
Subject: MindMixer Preview
Date: December 20, 2012
Type of Item: Informational

Summary Recommendation –

This item is for Council information only. No formal action is required.

Topic: Demonstration of MindMixer Platform for Citizen Engagement

Background:

Staff will be providing a preview of our newest civic engagement opportunity – **LetsTalkParkCity** – a 24/7 virtual town hall. Our goal is creating this site is to provide broader opportunities for facilitated, effective civic engagement. The site is hosted on the MindMixer platform, founded by urban planners frustrated with holding public meetings that few people, if anyone, attended. More than 150 communities around the country are MindMixer communities.

The MindMixer platform is based on citizens become active contributors to community-driven conversations and initiatives. For Park City, **LetsTalkParkCity** is an on-line platform available 24/7 where full and part-time residents, non-resident workers, and guests can come together to share ideas, help others evolve ideas, and ultimately “vote” on ideas that to benefit Park City.

Over the past several months staff from multiple departments including Sustainability, Executive, IT, Budget, Recreation, Ice, Golf, Planning, Building, Engineering, Police, have participated in developing this platform.

Staff is providing Council with a preview of the site before its official launch.

Analysis

LetsTalkParkCity is a place for Parkites to come together and share ideas, help others evolve ideas, and ultimately vote on ideas that are best for the community.

LetsTalkParkCity has broad applications for every department in the City, from a quick poll on whether yoga class participants at the MARC would attend a class at a different time, to where residents encounter bike or walkability challenges or thoughts about future redevelopment opportunities in Lower Park Avenue.

LetsTalkParkCity is another tool in our public participation toolbox that we can use to solicit input and ideas and foster community engagement. It is not a replacement for neighborhood meetings or public input. It allows fuller public participation as ideas are being shaped, not just at the end of the process. For example, the soon-to-be formed

COSAC or the Blue Ribbon Soils Commission could use **LetsTalkParkCity** to solicit input as the groups are doing their work rather than at the of the process.

Another opportunity we have through the MindMixer platform is to create specific work groups or member-only groups. We are going to test using this feature during the construction season as a way of keeping in touch with Main Street merchant and/or residents affected by neighborhood construction projects as a way of getting feedback, putting issues out to the residents for their ideas and solutions and generally keeping residents informed.

Staff believes that MindMixer can be a powerful platform for citizen input and a fun way to foster greater civic engagement. In the 2009 visioning process one of the overarching messages was that many Parkites were attracted to Park City for its recreational opportunities, but that the sense of community keeps them here. **LetsTalkParkCity** provides another opportunity for people to stay engaged with each other and their government and foster collective public and private responsibility for our long term success. Too often, great community ideas are lost because residents don't know how or don't feel comfortable getting involved, or that life is just busy and filled with good intentions. **LetsTalkParkCity** also provides a venue for folks to share or vet their "big ideas" with other community members -- ideas whose implementation may be completely apart from local government. So, the next time someone says "*I have an idea,*" or "*how come nobody ever...*" or "*you know what would be fun*" we can point them to **LetsTalkParkCity** so we can collect and discuss these ideas at the community level.

Next Steps

We will begin the outreach and marketing process immediately using a broad range of media. Staff has identified a number of opportunities to present LetsTalkParkCity including service organizations, nonprofit board meetings, "pop up" demonstrations in local businesses. In addition, LetsTalkParkCity will be part of the upcoming public presentation trainings to be offered by the City Attorney in early 2013.

Department Review: This report has been reviewed by department representatives of Sustainability, Legal and the City Manager's Office and their comments have been integrated into this report.

Significant Impacts:

For less than \$5,000 annually MindMixer hosts and maintains the site as well as monitors for inappropriate contact. As most of its clients are government entities they are well versed with the GRAMA requirements. The site provides powerful analytics that can sort and map comments and ideas by neighborhood, age, gender and other demographic data.

	World Class Multi-Seasonal Resort Destination (Economic Impact)	Preserving & Enhancing the Natural Environment (Environmental Impact)	An Inclusive Community of Diverse Economic & Cultural Opportunities (Social Equity Impact)	Responsive, Cutting-Edge & Effective Government
Which Desired Outcomes might the Recommended Action Impact?	+ Accessible and world-class recreational facilities, parks and programs + Safe community that is walkable and bike-able Balance between tourism and local quality of life	Abundant preserved and publicly-accessible open space Managed natural resources balancing ecosystem needs Reduced municipal, business and community carbon footprints	Part-time residents that invest and engage in the community	+ Engaged and informed citizenry Ease of access to desired information for citizens and visitors
Assessment of Overall Impact on Council Priority (Quality of Life Impact)	Positive 	Positive 	Positive 	Very Positive 

Funding Source:
 Funding for MindMixer was included in the FY2013 Community and Environment budget.

Staff Recommendations: This item is for Council information only. No formal action is required.

City Council Staff Report



Subject: Proposed Prospector Drain Administrative Order on Consent
Author: Joan Card and Jim Blankenau
Department: Sustainability
Date: December 20, 2012
Type of Item: Work Session

Summary Recommendations:

Council is advised to review the attached Proposed Administrative Order on Consent for Prospector Drain negotiated by Park City Municipal Corporation staff, the Environmental Protection Agency, the U.S. Fish and Wildlife Service, the Bureau of Land Management and the Utah Department of Environmental Quality.

Council is advised to take public comment on this item in the Work Session and to direct staff to prepare for a public hearing and regular session item for Council action in January 2013.

Background:

In 2009, EPA Region 8 notified Park City that the Prospector Drain is a “point source discharge” under the federal Clean Water Act and directed Park City to obtain a Utah Pollutant Discharge Elimination System (UPDES) permit for the Prospector Drain. The Prospector Drain is a shallow groundwater drain installed by the developer of the Prospector Park subdivision to drain the shallow aquifer in order to facilitate the construction of houses in the eastern portion of the neighborhood known as Prospector Square. The Drain is installed under the City right-of-way and the City-owned Prospector Park.

In 2008, Park City completed construction on an engineered wetland to treat a portion of the flow from the Prospector Drain. The engineered wetland is known as the Biocell and when it was installed, the Utah Division of Water Quality (DWQ) supported the action as a “best management practice” for contamination from Prospector Square; the DWQ did not determine the Drain to be a “point source discharge” at that time. Council advised staff to comply with the EPA directive and apply for a UPDES permit for the Drain (in addition to the Judge Tunnel and Spiro Tunnel).

EPA indicated its interest in designating the Prospector Drain as Operable Unit 4 (OU4) of the Richardson Flat Superfund Site. EPA’s stated intent is a complete cleanup of the lower Silver Creek watershed. According to EPA, it will address the cleanup of middle and lower Silver Creek (OU3) with the mine company under an AOC much like the Prospector Drain AOC. Please see AOC Appendix A for the EPA map of OU3 and OU4.

Analysis:

Staff worked diligently for several months on the proposed AOC with EPA, the Department of the Interior agencies and the Utah Department of Environmental Quality. Staff believes the attached proposed AOC, including the Appendices *are agreeable* and staff recommends that Council proceed with a public hearing and regular session item for January 10, 2013 in anticipation of signing the AOC.

The proposed AOC would require, in general terms, the following:

- Requires PCMC to perform an Engineering Evaluation/Cost Analysis (EE/CA) that will include a complete investigation of the Drain and its zone of groundwater influence, in addition to an evaluation of cleanup alternatives and their associated cost estimates;
- Requires PCMC to conduct a Removal Action (the cleanup) as directed by EPA based on the results of the EE/CA;
- Requires PCMC to complete a Natural Resource Damages Draft Assessment and Restoration Analysis in concert with the EE/CA;
- Requires PCMC to pay for EPA, UDEQ and DOI oversight (these costs are required by law, routinely collected and unfortunately unknown);
- Requires PCMC to pay penalties for late submittals;
- Requires PCMC to maintain a \$100,000 letter of credit for EPA's benefit.

The benefits of the proposed AOC include the following:

- Provides a Covenant Not to Sue *from* EPA, Utah and DOI to PCMC for Superfund liability for the Drain and its impacts;
- Provides a Covenant Not to Sue *to* EPA, Utah and DOI from PCMC for the Drain and its impacts;
- Provides PCMC Contribution Protection from UPCM and others for the Drain (other potentially responsible parties cannot sue the City for costs the cleanup the Drain and its impacts)
- Limits the scope of Park City's activities in the lower Silver Creek watershed cleanup to Prospector Drain, its zone of influence and the Biocell.
- May offer flexibility or more options to clean up the Drain than the Clean Water Act may.
- Creates goodwill with EPA and demonstrates cooperation in any future Superfund liability allocation matter.
- Requires EPA to maintain an administrative record for public viewing at the Park City Library.

The federal Superfund law imposes "strict liability" on entities or individuals who qualify as "potentially responsible parties." The law also affords EPA, Utah and DOI a great deal of discretion to take actions consistent with EPA's cleanup goals. Staff believes, on balance, the benefits of the AOC outweigh the costs, largely because of EPA's discretion to order actions and impose large civil penalties. This reports explores this further in the section "Consequences of not taking the recommended action" below.

Department Review:

This report has been reviewed by Legal and Executive Departments.

Alternatives:**A. Approve:**

Direct staff to prepare for a public hearing and Council action on the AOC at a regulator session in January in anticipation of approving the AOC for execution.

B. Deny:

Decline to enter the AOC and expect the consequences described in this report.

C. Modify:

Council may opt to propose adjustments to the AOC as proposed. This would require additional negotiations with EPA, DOI and UDEQ.

D. Continue the Item:

Council may take more time to review the AOC.

E. Do Nothing:

This alternative runs the risk of having the same consequences as denial.

Significant Impacts:

	World Class Multi-Seasonal Resort Destination (Economic Impact)	Preserving & Enhancing the Natural Environment (Environmental Impact)	An Inclusive Community of Diverse Economic & Cultural Opportunities (Social Equity Impact)	Responsive, Cutting-Edge & Effective Government
Which Desired Outcomes might the Recommended Action Positively Impact?		Mitigate Mining Legacy Including Mine Waste, Soils and Physical Hazards		Facilitate Citizen Engagement, Public Participation and Timely Communication
Which Desired Outcomes might the Recommended Action Negatively Impact?				
Assessment of Overall Impact on Council Priority (<i>Quality of Life Impact</i>)	Neutral	Very Positive	Neutral	Positive

Funding Source:

There are currently sufficient environmental cleanup funds within the adopted Capital Improvement Plan (CIP) for this project. Initial costs will be for the completion of the Engineering Evaluation/Cost Analysis (EE/CA) and Natural Resource Damages data collection and analyses, which staff estimates will cost \$250,000-\$300,000 in Professional Services Contracts. Upon Council approval of the AOC, staff will procure professional services for these tasks and costs will be re-estimated and presented to Council. Once a project cost is established, the CIP will be adjusted as part of the regular prioritization process. Upon EPA approval of the EE/CA, PCMC will be directed by EPA to perform the next phase, the Removal Action, or the cleanup project. An early

cost estimate has been prepared, but this estimate is subject to change based on EPA's directive after the completion of the EE/CA. Operation and maintenance (O&M) costs have not been estimated. O&M will be determined once EPA issues its cleanup directive. At that time, staff will present to Council its recommendation for funding the O&M as part of the regular budgeting for outcomes process.

Consequences of not taking the recommended action:

City staff has negotiated the AOC with EPA, the DOI and UDEQ in good faith for several months in anticipation of reaching an agreement. If Council elects not to execute the AOC, the agencies may believe Park City is acting in bad faith. Also, cooperation with EPA is a factor when Superfund liability is allocated to a potentially responsible party. EPA may conclude that Park City is not a cooperator and Park City could be penalized in any future allocation of liability for cleanup or payment of cleanup costs.

Perhaps most importantly, EPA and the other agencies could, and staff believes they likely would, issue a Unilateral Administrative Order (UAO). A UAO would be very unfavorable to the City. A UAO would:

- Be non-negotiable
- Include penalties
- Require triple damages (EPA costs multiplied by 3)
- Not include protection from lawsuits by others
- Not include a promise by the agencies not to sue.

Staff believes a key point here is that PCMC will be required to cleanup Prospector Drain either under the requirements of the Clean Water Act or this AOC (or a UAO if the City does not execute the AOC). EPA's preference is that the City address the Drain under this AOC to coordinate its cleanup plans for the lower Silver Creek watershed and, given the UAO alternative, staff sees no down side for the City. In addition, staff believes this AOC may allow more flexibility in cleanup options than the Clean Water Act, and ultimately may save the City significant capital and O&M costs.

Summary Recommendations:

Council is advised to review the attached Proposed Administrative Order on Consent for Prospector Drain negotiated by Park City Municipal Corporation staff, the Environmental Protection Agency, the U.S. Fish and Wildlife Service, the Bureau of Land Management and the Utah Department of Environmental Quality.

Council is advised to take public comment on this item in the Work Session and to direct staff to prepare for a public hearing and regular session item for Council action in January 2013.

Attachments:

Proposed AOC with Appendices

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8,
UNITED STATES BUREAU OF LAND MANAGEMENT,
UNITED STATES FISH AND WILDLIFE SERVICE,
THE UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY,
AND
THE STATE OF UTAH NATURAL RESOURCE TRUSTEE

IN THE MATTER OF:	)	ADMINISTRATIVE SETTLEMENT
	)	AGREEMENT AND ORDER ON
Richardson Flat Tailings Site	)	CONSENT FOR EE/CA INVESTIGATION
Operable Unit 4	)	AND REMOVAL ACTION
Park City, Utah	)	
	)	
Park City Municipal Corporation,	)	
	)	
Respondent.	)	
	)	
Proceeding Under Sections 104, 106(a),	)	U.S. EPA Region 8
107 and 122 of the Comprehensive	)	CERCLA Docket No. _____
Environmental Response, Compensation,	)	
and Liability Act, as amended,	)	
42 U.S.C. §§ 9604, 9606(a), 9607	)	
and 9622.	)	
_____	)	

I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent (Settlement Agreement) is entered into voluntarily by the Respondent, Park City Municipal Corporation (Park City), and the U.S. Environmental Protection Agency (EPA), the Bureau of Land Management (BLM), the U.S. Fish and Wildlife Service (FWS), the Utah Department of Environmental Quality (UDEQ), and the State of Utah Natural Resource Trustee. This Settlement Agreement provides for the preparation and performance of an Engineering Evaluation/Cost Analysis (EE/CA) and a non-time critical removal action (Removal Action) for operable unit 4 (OU4) of the Richardson Flat Tailings Site located near Park City, Utah, as depicted on the map attached as Appendix A. This Settlement Agreement also provides for the reimbursement of Future Response Costs incurred by EPA and BLM in connection with the EE/CA and Removal Action for OU4. In addition, this Settlement Agreement provides for the preparation of a Natural Resource Injury Assessment and Restoration Alternatives Analysis for OU4 and the reimbursement of the Natural Resource Trustees' Future Assessment Costs.

2. This Settlement Agreement is issued under the authority vested in the President of the United States by Sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622, as amended (CERCLA). This authority was delegated to the Administrator of EPA and the Secretary of the Interior on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987), as amended. This authority was further delegated by the EPA Administrator to Regional Administrators on May 11, 1994, by EPA Delegation Nos. 14-14-C and 14-14-D and by the Interior Secretary to the Director of FWS and the Director of BLM pursuant to Part 207, Chapter 7 of the Department of the Interior's Manual. The authority delegated to the Regional Administrator of EPA Region 8 was further delegated to the Assistant Regional Administrator, Office of Ecosystem Protection and Remediation by EPA Delegation No. 14-14-C. The authority delegated to the Directors of BLM and FWS was further delegated to the BLM State Directors and FWS Regional Directors, respectively.

3. In accordance with Sections 104(b)(2) and 122(j)(1) of CERCLA, 42 U.S.C. §§ 9604(b)(2) and 9622(j)(1), the EPA notified the U.S. Department of the Interior and the State of Utah of the release of hazardous substances that may have resulted in injury to the natural resources under federal and state trusteeship at OU4 and of negotiations with potentially responsible parties.

4. The Parties recognize that this Settlement Agreement has been negotiated in good faith and that the actions undertaken by Park City in accordance with this Settlement Agreement do not constitute an admission of any liability. Park City does not admit, and retains the right to controvert in any subsequent proceedings, other than proceedings to implement or enforce this Settlement Agreement, the validity of the findings of facts, conclusions of law, and determinations in Sections V and VI of this Settlement Agreement. Furthermore, Park City does not admit any responsibility or liability for environmental nor contaminant issues at the Site. The

Parties agree to comply with and be bound by the terms of this Settlement Agreement and further agree that they will not contest the basis or validity of this Settlement Agreement or its terms.

II. PARTIES BOUND

5. This Settlement Agreement applies to and is binding upon the Parties and their successors and assigns. Any change in ownership or corporate status of Park City including, but not limited to, any transfer of assets or real or personal property shall not alter Park City's responsibilities under this Settlement Agreement.

6. Park City shall ensure that its contractors, subcontractors, and representatives receive a copy of this Settlement Agreement and comply with this Settlement Agreement. Park City shall be responsible for any noncompliance with requirements of this Settlement Agreement.

7. Each undersigned representative of the Parties certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement Agreement and to execute and legally bind his or her Party to this Settlement Agreement.

III. STATEMENT OF PURPOSE

8. In entering into this Settlement Agreement, the objectives of the Parties are: (a) to determine the nature and extent of contamination and any threat to the public health, welfare, or the environment caused by the release or threatened release of hazardous substances, pollutants or contaminants at or from OU4 by conducting an engineering evaluation as more specifically set forth in the EE/CA Work Plan for OU4 attached as Appendix C to this Settlement Agreement; (b) to identify and evaluate alternatives to prevent, mitigate or otherwise respond to or remedy any release or threatened release of hazardous substances, pollutants or contaminants at or from OU4 by conducting a cost analysis as more specifically set forth in the EE/CA Work Plan; (c) to conduct all actions necessary to implement the Removal Action to be selected in the Action Memorandum for OU4, in accordance with the Removal Action Work Plan for OU4 to be developed hereunder; (d) to assess injuries to natural resources and identify and evaluate opportunities for coordinating or integrating implementation of natural resource restoration with the Removal Action to be selected for OU4; and (e) to recover response and assessment costs incurred by the Environmental Agencies with respect to this Settlement Agreement.

9. The Work conducted under this Settlement Agreement is subject to oversight and approval by EPA and, with respect to the Work occurring on or affecting land under the jurisdiction, custody or control of BLM (identified herein as the "Silver Maple Claims"), the concurrence of BLM, and shall provide all appropriate and necessary information to assess conditions at OU4 and evaluate alternatives to the extent necessary to select a response action that will be consistent with CERCLA and the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300 (NCP). Park City shall conduct all Work under this Settlement Agreement in

compliance with CERCLA, the NCP, and all applicable EPA guidance, policies, and procedures.

10. Park City shall be responsible for preparing the Natural Resource Injury Assessment and Restoration Alternatives Analysis for OU4. The Natural Resource Injury Assessment and Restoration Alternatives Analysis prepared pursuant to this Settlement Agreement is subject to the approval of the Natural Resource Trustees and shall provide all appropriate and necessary information to identify and quantify any actual and potential injuries to natural resources at OU4, including injuries that may have already occurred as a result of the release of hazardous substances at or from OU4, and injuries that could result from potential removal actions and evaluate restoration alternatives to the extent necessary to prepare a restoration plan to restore, rehabilitate or replace injured resources.

11. In implementing this Settlement Agreement, Park City shall coordinate with the Natural Resource Trustees. As further described in the Scope of Work attached hereto as Appendix D, the Natural Resource Trustees shall be provided with substantial and meaningful opportunities to review and comment on plans, reports, and other items submitted to EPA for approval under this Settlement Agreement in order to ensure (a) that the EE/CA activities undertaken hereunder are coordinated with the Natural Resource Injury Assessment and Restoration Alternatives Analysis; and (b) that the development, evaluation, and selection of removal action alternatives can take into consideration the anticipated effects of such removal actions on natural resources and, where appropriate, can take into consideration opportunities for efficient coordination of removal actions and natural resource restoration measures.

IV. DEFINITIONS

12. Unless otherwise expressly provided in this Settlement Agreement, terms used in this Settlement Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement Agreement or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

“Action Memorandum for OU4” shall mean the Action Memorandum that will be issued for OU4 upon completion of the EE/CA for OU4.

“BLM” shall mean the United States Bureau of Land Management and any successor departments or agencies of the United States.

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 *et seq.*

“Day” shall mean a calendar day. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

“EE/CA Work Plan” shall mean the work plan for the performance of the EE/CA for OU4 attached hereto as Appendix C. The EE/CA Work Plan is incorporated into this Settlement Agreement and is an enforceable part of this Settlement Agreement. In the event of a conflict between this Settlement Agreement and the EE/CA Work Plan, this Settlement Agreement shall control.

“Effective Date” shall be the effective date of this Settlement Agreement as provided in Section XXXIV.

“Environmental Agencies” shall mean EPA, BLM, FWS, UDEQ, and the State Natural Resource Trustee.

“EPA” shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

“Federal Environmental Agencies” shall mean EPA, BLM, and FWS.

“Federal Trustees” shall mean BLM and FWS.

“Future Assessment Costs” shall mean all costs incurred by the Natural Resource Trustees consistent with 43 C.F.R Part 11 in the oversight, review, comment and technical assistance provided on the Natural Resource Injury Assessment and Restoration Alternatives Analysis as further described in the Scope of Work attached hereto as Appendix D.

“Future Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that EPA and BLM incur in reviewing or developing plans, reports and other items pursuant to this Settlement Agreement, verifying the Work, or otherwise implementing, overseeing, or enforcing this Settlement Agreement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, Agency for Toxic Substances and Disease Registry (“ATSDR”) costs, the costs incurred pursuant to Paragraph 50 (costs and attorneys fees and any monies paid to secure access, including the amount of just compensation), Paragraph 70 (emergency response), and Paragraph 98 (work takeover).

“FWS” shall mean the United States Fish and Wildlife Service and any successor departments or agencies of the United States.

“Institutional Controls” shall mean proprietary controls and state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices that: (i) limit land, water, and/or resource use to minimize the potential for exposure to Waste Materials at the Site; (ii) limit land, water, and/or resource use to implement, ensure non-interference with, or ensure the protectiveness of the Removal Action; and/or (iii) provide information intended to modify or guide human behavior at the Site.

Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

“Middle Reach” shall mean that portion of OU3, consisting of approximately 116 acres, that is near the eastern end of the Prospector Park in Park City, Utah, and extends to U.S. Highway 40 and includes the Silver Maple Claims portion of the Site. OU3 is depicted generally on the map attached as Appendix A and the Silver Maple Claims portion of OU3 is depicted generally on the map attached as Appendix B.

“National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

“Natural Resource Trustees” shall mean FWS, BLM, and the State Natural Resource Trustee

“Natural Resource Injury Assessment and Restoration Alternatives Analyses” shall mean the activities described in Section X of this Settlement Agreement and the Scope of Work attached hereto as Appendix D.

“OU1 Repository” shall mean the mine waste repository constructed in accordance with the July 7, 2005 Record of Decision selecting the remedy for OU1 of the Site.

“OU3” shall mean an area beginning at the southern and most up gradient portion of the Silver Maple Claims and then proceeding downstream to the Middle Reach and including parcels formerly addressed by the RI/FS for OU2 identified as all or a portion of Summit County Assessor parcel numbers SS-28-A-1-X, SS-27-B-X, SS-28-A-X, SS-56, SS-56-A-1, SS-56-UP-X, SS-56-A, SS-64-A, SS-64-1000-UP-X, SS-65-A-3-1, SS-65-A-5, SS-65-A-3, SS-65-1, SS-65-A-6, SS-88 and excluding any areas within OU4. OU3 is depicted generally on the map attached as Appendix A and the Silver Maple Claims are depicted generally on the map attached as Appendix B.

“OU4” shall mean the discharge from the Prospector Drain, which is identified by EPA and UDEQ as a point source pursuant to the Clean Water Act that has caused or has the potential to cause a release of hazardous substances at or from the Site and includes any areas in close proximity necessary to accomplish the response action goals. OU4 is depicted generally on the map attached hereto as Appendix A.

“Paragraph” shall mean a portion of this Settlement Agreement identified by an Arabic numeral.

“Parties” shall mean EPA, BLM, FWS, UDEQ, the State Natural Resource Trustee, and Park City.

“Park City” shall mean Park City Municipal Corporation.

“Removal Action” shall mean all actions necessary to implement the non-time critical removal action remedy to be selected in the Action Memorandum for OU4 at the conclusion of the EE/CA for OU4 including post-removal site control.

“Removal Action Work Plan” shall mean the work plan to be developed in accordance with this Settlement Agreement for the implementation of the Removal Action for OU4. The Removal Action Work Plan will be incorporated into this Settlement Agreement and will be an enforceable part of this Settlement Agreement as are any modifications made thereto in accordance with this Settlement Agreement. In the event of a conflict between this Settlement and the Removal Action Work Plan, this Settlement Agreement shall control.

“Section” shall mean a portion of this Settlement Agreement identified by a Roman numeral.

“Settlement Agreement” shall mean this Administrative Settlement Agreement and Order on Consent and all appendices attached hereto (listed in Section XXXIII). In the event of conflict between this Settlement Agreement and any appendix, this Settlement Agreement shall control.

“Silver Maple Claims” shall mean that portion of the Site comprising public land under the jurisdiction, custody, or control of the BLM, consisting of approximately 34 acres, near the eastern end of the Prospector Park in Park City, Utah, as depicted generally on the map attached as Appendix B.

“Site” shall mean the areas depicted generally as OU1, OU2, OU3 and OU4 on the map attached as Appendix A. The Site shall also include any areas in close proximity to the property previously described and necessary to accomplish the response action goals.

“State” or “State of Utah” shall mean the State of Utah by and through UDEQ and the State Natural Resource Trustee.

“State Natural Resource Trustee” shall mean the Natural Resource Trustee for the State of Utah.

“UDEQ” shall mean the State of Utah Department of Environmental Quality.

“UPCM” shall mean United Park City Mines Company.

“Waste Material” shall mean 1) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14) and 2) any “pollutant or contaminant” under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33).

“Work” shall mean all activities Park City is required to perform under the EE/CA Work Plan, the Removal Action Work Plan or any other work plan developed and approved pursuant to this Settlement Agreement, except those activities required by Section XV (Retention of Records).

V. FINDINGS OF FACT

13. Mining operations undertaken by various entities within the Park City Mining District reportedly produced approximately 16 million tons of ore between 1875 and 1982. As a result of contamination resulting from such operations, EPA proposed to include the Richardson Flat Tailings Site on the National Priorities List (NPL) on June 24, 1988. Due to scoring issues and comments received during the public comment period, the Site was removed from NPL consideration in February 1991. The Site was re-proposed for the NPL on February 7, 1992. No action has been taken with regard to finalizing this proposed listing.

14. Since the proposed listing, the Site has been expanded and EPA has organized the Site into four operable units (OUs).

15. On July 7, 2005, EPA, with the concurrence of UDEQ, issued a Record of Decision (ROD) selecting the remedy for OU1, an area covering approximately 258 acres, which acreage includes a tailings impoundment covering approximately 160 acres of land immediately southeast of the junction of U.S. Highway 40 and Utah Highway 248 in Summit County, Utah. The selected remedy provided for removing contaminated sediments from nearby wetlands and covering contaminated sediments in diversion ditches. In addition, the remedy provided for the consolidation and capping of waste material in a repository, and imposing deed restrictions on future land and ground water use. The ROD was subsequently modified to allow for the removal of contaminated sediments in the diversion ditches. UPCM is implementing this remedy in accordance with the provisions of the OU1 Consent Decree.

16. EPA initially designated OU2 of the Site to address mine waste and tailings created by various entities that had been transported downstream of OU1 along the banks of Lower Silver Creek, from U.S. Highway 40 on the southern end to Interstate 80 on the northern end. UPCM agreed to perform a remedial investigation and feasibility study pursuant to the RI/FS AOC for OU2 executed in September 2009. Thereafter, EPA determined that OU2 should be expanded and reconfigured to include two additional operable units.

17. OU3 encompasses approximately 836 acres located east of Park City in areas along Silver Creek. OU3 includes the Middle Reach, and parcels comprising approximately 720 acres of land along the flood plain of Silver Creek that were formerly part of OU2 (all or portions of Summit County Assessor parcel numbers SS-28-A-1-X, SS-27-B-X, SS-28-A-X, SS-56, SS-56-A-1, SS-56-UP-X, SS-56-A, SS-64-A, SS-64-1000-UP-X, SS-65-A-3-1, SS-65-A-5, SS-65-A-3, SS-65-1, SS-65-A-6, and SS-88).
18. OU4 consists of the outfall from Prospector Drain, an underground pipe that runs in the vicinity of a subdivision of Park City known as Prospector Square and a municipal park named Prospector Park. The Prospector Drain collects shallow groundwater from areas in and around Prospector Park and Prospector Square. It then discharges a portion of this flow to a constructed treatment wetland and the remainder to a natural wetland area on or near the Silver Maple Claims. OU4 also includes any areas in close proximity to the Prospector Drain necessary to accomplish the response action goals. The Prospector Drain was constructed in conjunction with the development of the Prospector Park and Prospector Square area during the late 1970s when buildings were built atop tailings material.
19. Water samples from the Prospector Drain have indicated elevated concentrations of cadmium, lead, zinc, and arsenic. Surface water sampling in certain stretches of Silver Creek has identified concentrations of cadmium, lead, and zinc that exceed water quality standards.
20. Park City is a municipal corporation organized and existing under the laws of the State of Utah. Park City is the current owner of portions of the property through which the Prospector Drain runs and is the current operator of the outfall from the Prospector Drain.
21. On behalf of the United States, BLM manages the Silver Maple Claims.
22. Exposure to heavy metals including lead, cadmium and arsenic may cause adverse health effects in humans. Ecosystems near sources of heavy metals may also experience adverse effects including loss of biodiversity, changes in community composition, decreased growth and reproductive rates in plants and animals, and neurological effects in vertebrates.

VI. CONCLUSIONS OF LAW AND DETERMINATIONS

23. Based on the Findings of Fact set forth above, and the administrative record supporting this response action, EPA has determined that:
- a. OU4 is a “facility” as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
 - b. The contamination found at OU4, as identified in the Findings of Fact above, includes “hazardous substances” as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

c. The conditions described in the Findings of Fact above constitute an actual and/or threatened “release” of hazardous substances from the facility as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

d. Park City is a “person” as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

e. Park City is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). Park City is an “owner” and “operator” of a facility as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

f. The actions required by this Settlement Agreement are necessary to protect the public health, welfare or the environment, are in the public interest, 42 U.S.C. § 9622(a), are consistent with CERCLA and the NCP, 42 U.S.C. §§ 9604(a)(1), 9622(a), and will expedite effective removal actions and minimize litigation, 42 U.S.C. § 9622(a).

g. EPA and BLM have determined that Park City is qualified to conduct the Work pursuant to this Settlement Agreement within the meaning of Section 104(a) of CERCLA, 42 U.S.C. § 9604(a), and will carry out the Work properly and promptly, in accordance with Sections 104(a) and 122(a) of CERCLA, 42 U.S.C. §§ 9604(a) and 9622(a), by complying with the terms of this Settlement Agreement.

VII. SETTLEMENT AGREEMENT AND ORDER

24. Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the administrative record for this Site, it is hereby ordered and agreed that the Parties shall comply with all provisions of this Settlement Agreement, including, but not limited to, all appendices to this Settlement Agreement and all documents incorporated by reference into this Settlement Agreement.

VIII. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, AND ON-SCENE COORDINATOR

25. EE/CA

a. All Work conducted under this Settlement Agreement in performance of the EE/CA shall be under the direction and supervision of qualified personnel.

b. Park City has notified EPA that it intends to use the following personnel in carrying out the EE/CA Work for OU4: Park City personnel under the direction of James Blankenau and URS Corporation under the direction of Donald Champenois, Senior Project Manager. EPA hereby approves Park City’s selection of the foregoing contractors and personnel. Park City shall

notify EPA in writing of any changes or additions in the contractors or personnel used to carry out such Work, providing names, titles, and qualifications. EPA shall have the right to disapprove changes and additions to contractors or personnel in its discretion. If EPA disapproves in writing of any person's or contractor's technical qualifications, Park City shall notify EPA of the identity and qualifications of the replacement within thirty (30) days of the written notice. .

c. Park City has designated James Blankenau as its project coordinator who shall be responsible for administration of all actions by Park City required pursuant to this Settlement Agreement. EPA hereby approves Park City's selection of the foregoing project coordinator. To the greatest extent possible, the project coordinator shall be present on the Site or readily available during the Work. Park City shall have the right to change its project coordinator, subject to EPA's right to disapprove. Park City shall notify EPA thirty (30) days before such a change is made. The initial notification may be made orally, but shall be promptly followed by a written notification. If EPA disapproves of the designated project coordinator, Park City shall retain a different project coordinator and shall notify EPA of that person's name, address, telephone number and qualifications within fifteen (15) days following EPA's disapproval.

26. Removal Action.

a. All Work conducted under this Settlement Agreement by Park City in performance of the Removal Action shall be under the direction and supervision of qualified personnel. Within sixty (60) days following issuance of the Action Memorandum for OU4, and before the OU4 Removal Action Work commences, Park City shall notify EPA in writing of the names, titles, and qualifications of the personnel, including contractors, subcontractors, consultants and laboratories to be used in carrying out such Work. With respect to any proposed contractor, Park City shall demonstrate that the proposed contractor has a quality system which complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standards Institute, 1994, or more recent version), by submitting a copy of the proposed contractor's Quality Management Plan (QMP). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)," (EPA/240/B-01/002, March 2001 or subsequently issued guidance) or equivalent documentation as determined by EPA. The qualifications of the persons undertaking the Work for Park City shall be subject to EPA's review, for verification that such persons meet minimal technical background and experience requirements. This Settlement Agreement is contingent on Park City's demonstration to EPA's satisfaction that it is qualified to perform properly and promptly the Work. If EPA disapproves in writing of any person's technical qualifications, Park City shall notify EPA of the identity and qualifications of the replacement within thirty (30) days following the written notice. If EPA subsequently disapproves of the replacement, EPA reserves the right to terminate this Settlement Agreement, to conduct the removal, and to seek reimbursement of costs and penalties from Park City. Park City shall notify EPA in writing of any changes or additions in the personnel used to carry out the Work, providing their names, titles, and qualifications. EPA shall have the same

right to disapprove changes and additions to personnel as it has hereunder regarding the initial notification.

b. Within fifteen (15) days following issuance of the Action Memorandum for OU4, Park City shall designate a project coordinator who shall be responsible for administration of the OU4 Removal Action Work and shall submit to EPA the designated project coordinator's name, address, telephone number, and qualifications. To the greatest extent possible, project coordinator shall be present on the Site or readily available during performance of the Work. EPA retains the right to disapprove of a designated project coordinator. If EPA disapproves of the designated project coordinator, Park City shall retain a different project coordinator and shall notify EPA of that person's name, address, telephone number, and qualifications within fifteen (15) days following EPA's disapproval. Receipt by Park City's project coordinator shall constitute receipt by Park City of any notice or communication from EPA relating to this Settlement Agreement.

27. EPA has designated Kathryn Hernandez of EPA's Ecosystems Protection and Remediation Office, Region 8, as its project coordinator. EPA will notify Park City of a change of EPA's designated project coordinator. Park City shall direct all submissions required by this Settlement Agreement regarding the Work to EPA's project coordinator at:

Kathryn Hernandez
Project Manager
Superfund Remedial Section, 8EPR-RA
US EPA, Region 8
1595 Wynkoop Street
Denver, Colorado 80202

28. EPA's project coordinator shall have the authority lawfully vested in a remedial project manager (RPM) and on-scene coordinator (OSC) by the NCP. In addition, EPA's project coordinator shall have the authority consistent with the NCP, to halt any Work required by this Settlement Agreement, and to take any necessary response action when she determines that conditions at OU4 may present an immediate endangerment to public health or welfare or the environment. The absence of the EPA project coordinator from the Site shall not be cause for the stoppage or delay of Work.

29. EPA is the party responsible for oversight of Park City's performance of the Work pursuant to this Settlement Agreement with opportunity for substantial and meaningful involvement by UDEQ. EPA shall arrange for a qualified person to assist in its oversight and review of both the conduct of the EE/CA as required by Section 104(a) of CERCLA, 42 U.S.C. § 9604(a). Such person shall have the authority to observe all Work and make inquiries in the absence of EPA, but not to modify the EE/CA Work Plan.

30. EPA and Park City shall have the right, subject to Paragraph 25 or 26, to change their designated project coordinator. Park City shall notify EPA thirty (30) days before such a change is made. The initial notification may be made orally, but shall be promptly followed by a written notice. If EPA disapproves of the change in any designated project coordinator, Park City shall retain a different project coordinator and shall notify EPA of that person's name, address, telephone number and qualifications within fifteen (15) days following EPA's disapproval.

IX. EE/CA WORK TO BE PERFORMED

31. Park City shall conduct the Work activities related to performance of the OU4 EE/CA and the Removal Action in accordance with the provisions of this Settlement Agreement, the EE/CA Work Plan attached hereto as Appendix C, the Removal Action Work Plan to be developed hereunder, CERCLA, the NCP, and EPA guidance.

32. The Engineering Evaluation (EE) shall consist of collecting data to characterize conditions at OU4, determining the nature and extent of the contamination at or from OU4, and conducting treatability testing as necessary to evaluate the potential performance and cost of the treatment technologies that are being considered. The Cost Analysis (CA) shall determine and evaluate (based on treatability testing, where appropriate) alternatives for removal actions to prevent, mitigate or otherwise respond to or remedy the release or threatened release of hazardous substances, pollutants or contaminants at or from OU4. The alternatives evaluated must include but shall not be limited to the range of alternatives described in the NCP, and shall include removal actions that utilize permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable. In evaluating the alternatives, Park City shall address the factors required to be taken into account by Section 121 of CERCLA, 42 U.S.C. § 9621, and Section 300.415 of the NCP, 40 C.F.R. § 300.415 and applicable guidance. Upon request by EPA, Park City shall submit in electronic form all portions of any plan, report or other deliverable required to be submitted pursuant to provisions of this Settlement Agreement.

33. Upon receipt of the draft EE/CA Report (which shall contain Park City's evaluation of the durability, reliability and effectiveness of any proposed Institutional Control) EPA will evaluate, as necessary, the estimates of risk to the public and environment that are expected to remain after a particular remedial alternative has been completed and will evaluate the durability, reliability and effectiveness of any proposed Institutional Controls. Upon completion of the EE/CA, and following a public comment period, EPA, and to the extent removal activities will occur on or affect the Silver Maple Claims, BLM, with Park City's input, will issue the Action Memorandum detailing the scope of removal actions, if any, required for OU4.

34. Modification of the EE/CA Work Plan

a. If Park City identifies a need for additional data, Park City shall submit a memorandum documenting the need for additional data to the EPA project coordinator within seven (7) days of

identification. EPA in its discretion will determine whether the additional data shall be collected by Park City and whether it will be incorporated into plans, reports and other deliverables.

b. In the event of unanticipated or changed circumstances at OU4, Park City shall notify the EPA project coordinator within twenty-four (24) hours following discovery of the unanticipated or changed circumstances. In the event EPA determines that the immediate threat or the unanticipated or changed circumstances warrant changes in the EE/CA Work Plan, EPA shall modify or amend the EE/CA Work Plan in writing accordingly in a manner not inconsistent with Park City's obligations under this Settlement Agreement. Park City shall perform the EE/CA Work Plan as modified or amended.

c. EPA may, after consultation with Park City, determine that in addition to tasks defined in the initially approved EE/CA Work Plan, other additional Work consistent with Section III (Statement of Purpose) may be necessary to accomplish the objectives of the EE/CA. Park City agrees to perform these actions in addition to those required by the initially approved EE/CA Work Plan, including any approved modifications, if EPA determines that such actions are necessary for a complete EE/CA.

d. Park City shall confirm its willingness to perform the additional Work in writing to EPA within seven (7) days of receipt of the EPA request. If Park City objects to any modification determined by EPA to be necessary pursuant to this Paragraph, Park City may seek dispute resolution pursuant to Section XIX (Dispute Resolution). The EE/CA Work Plan shall be modified in accordance with the final resolution of the dispute.

e. Park City shall complete the additional Work according to the standards, specifications, and schedule set forth or approved by EPA in a written modification to the EE/CA Work Plan or written EE/CA Work Plan supplement. Subject to Paragraph 98, EPA reserves the right to conduct the Work itself at any point, to seek reimbursement from Park City and/or to seek any other appropriate relief.

f. Nothing in this Paragraph shall be construed to limit EPA's or BLM's authority to require performance of further response actions at the Site.

35. Meetings. Park City shall make presentations at, and participate in, meetings with the Environmental Agencies at the request of EPA during the initiation, conduct, and completion of the EE/CA. In addition to discussion of the technical aspects of the EE/CA, topics will include anticipated problems or new issues. Meetings will be scheduled at EPA's discretion.

36. Progress Reports. In addition to the plans, reports and other deliverables set forth in this Settlement Agreement, Park City shall provide to the Environmental Agencies quarterly progress reports by the 15th day of each January, April, July and October following the Effective Date until completion of the EE/CA. At a minimum, with respect to the preceding quarter, these progress reports shall (1) describe the actions which have been taken by Park City to comply with

this Settlement Agreement during that quarter, (2) include all results of sampling and tests and all other data received by Park City, (3) describe Work planned for the next two quarters with schedules relating such Work to the overall project schedule for EE/CA completion, and (4) describe all problems encountered and any anticipated problems, any actual or anticipated delays, and solutions developed and implemented to address any actual or anticipated problems or delays. These quarterly progress reports shall be delivered to each of the recipients designated in this Paragraph 36 electronically.

37. Quality Assurance. Park City shall assure that Work performed, samples taken and analyses conducted conform to the requirements of the EE/CA Work Plan, the QAPP and guidances identified therein. Park City will assure that field personnel used by Park City are properly trained in the use of field equipment and in chain of custody procedures. Park City shall only use laboratories which have a documented quality system that complies with “EPA Requirements for Quality Management Plans (QA/R-2)” (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA.

38. Sampling

a. All results of sampling, tests, modeling, or other data (including raw data) generated by Park City, or on its behalf, during the period that this Settlement Agreement is effective, shall be submitted to the Environmental Agencies in the next quarterly progress report. EPA will make available to Park City validated data generated by EPA unless it is exempt from disclosure by any federal or state law or regulation.

b. Park City shall verbally notify the Environmental Agencies at least thirty (30) days prior to conducting significant field events as described in the EE/CA Work Plan or Sampling and Analysis Plan. At EPA’s verbal or written request, or the request of EPA’s oversight contractor, Park City shall allow split or duplicate samples to be taken by the Environmental Agencies (and their authorized representatives) of any samples collected in implementing this Settlement Agreement. All split or duplicate samples shall be analyzed by the methods identified in the QAPP. Upon request, EPA shall allow Park City to take split or duplicative samples of any samples collected by EPA as part of EPA’s oversight of Park City’s performance of Work.

39. Park City shall submit to the Environmental Agencies two (2) copies of all plans, reports or other submissions required by this Section IX, the EE/CA Work Plan, and any other approved work plans. Upon request by EPA, Park City shall submit such documents in electronic form.

**X. NATURAL RESOURCE INJURY ASSESSMENT AND RESTORATION
ALTERNATIVES ANALYSES TO BE PERFORMED**

40. Park City shall prepare a Natural Resource Injury Assessment and Restoration Alternatives Analysis for OU4 in accordance with the NRDA Scope of Work attached hereto as Appendix D

concurrently with its development of the OU4 EE/CA and in coordination with the Natural Resource Trustees. Park City shall collect data in coordination with the Natural Resource Trustees to determine and quantify any actual or potential natural resource injuries at OU4. As provided in the NRDA Scope of Work attached hereto as Appendix D, these data collection activities shall be coordinated or integrated with data collection activities conducted by Park City in preparing its EE/CA to the extent practicable. Upon issuance of the final EE/CA Report and in accordance with the provisions of 43 C.F.R Part 11, Park City shall, in coordination with the Natural Resource Trustees, identify potential restoration projects that can be coordinated with the preferred removal action alternative identified for OU4. Such projects shall be evaluated consistent with 43 C.F.R §11.82. Restoration alternatives must be consistent with NRDA restoration under CERCLA and must be analyzed under the National Environmental Policy Act (NEPA) consistent with the procedures outlined in Appendix D. The Natural Resource Trustees intend to prepare NEPA documents and/or other documentation that may be required of them pursuant to 43 C.F.R. Part 11 and the NCP.

XI. PERFORMANCE OF REMOVAL

41. Park City shall implement the Action Memorandum for OU4 and perform all actions necessary for the performance of the Removal Action for OU4. The actions to be implemented will be identified in a separate Removal Action Work Plan for OU4 to be developed in accordance with this Settlement Agreement. The Action Memorandum shall be issued no sooner than sixty (60) days after approval of the final EE/CA Report for OU4.

42. Removal Action Work Plan and Implementation.

a. Within ninety (90) days after issuance of the Action Memorandum for OU4, Park City shall submit to EPA for approval a draft OU4 Removal Action Work Plan for performance of OU4 Removal Action. The draft Removal Action Work Plan shall provide a description of and an expeditious schedule for the actions required to implement the OU4 Removal Action and post- removal site control.

b. EPA may, after a reasonable opportunity for substantial and meaningful involvement by UDEQ, approve, disapprove, require revisions to, or modify the draft Removal Action Work Plan in whole or in part. EPA approval of Work activities affecting the Silver Maple Claims is subject to BLM concurrence. If EPA requires revisions, Park City shall submit a revised draft Removal Action Work Plan within thirty (30) days following receipt of EPA's notification of the required revisions. Park City shall implement the Removal Action Work Plan as approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the Removal Action Work Plan, the schedule, and any subsequent modifications shall be incorporated into and become fully enforceable against the Park City under this Settlement Agreement.

c. Park City shall not commence any Work except in conformance with the terms of this Settlement Agreement. Park City shall not commence implementation of the Removal Action Work Plan until receiving written EPA approval pursuant to Paragraph 42(b).

d. Post-Removal Site Control. On or around 180 days prior to completion of the Work to the extent practicable, Park City shall make an application to obtain a Utah Pollutant Discharge Elimination System Permit to address continuing discharges from Prospector Drain, if any are expected to remain following completion of the Work. The timing of any such application shall be set forth in the OU4 Removal Action Work Plan schedule. After Park City completes all necessary action to obtain the permit, the Parties anticipate that the State of Utah will then issue a Utah Pollutant Discharge Elimination System Permit to Park City to address any such continuing discharges from the Prospector Drain at OU4. The receipt and implementation of the permit shall constitute the post-removal site controls for OU4 consistent with Section 300.415 (l) of the NCP and OSWER Directive No. 9360.2-02.

43. Removal Health and Safety Plans. Within ninety (90) days after EPA issues the Action Memorandum for OU4, Park City shall submit for EPA review and comment a plan that ensures the protection of the public health and safety during performance of the OU4 Removal Action. The plan shall be prepared in accordance with EPA's Standard Operating Safety Guide (PUB 9285.1-03, PB 92-963414, June 1992). In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration (OSHA) regulations found at 29 C.F.R. Part 1910. If EPA determines that it is appropriate, the plan shall also include contingency planning. Park City shall incorporate all changes to the plan recommended by EPA and shall implement the plans during the pendency of the Removal Action.

44. Removal Quality Assurance and Sampling.

a. Park City shall prepare a Quality Assurance Project Plan (QAPP) in accordance with "EPA Requirements for Quality Assurance Project Plans (QA/R-5)" (EPA/240/B-01/003, March 2001), and "EPA Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/240/R-02/009, December 2002).

b. All sampling and analyses performed pursuant to this Settlement Agreement shall conform to EPA direction, approval, and guidance regarding sampling, quality assurance/quality control (QA/QC), data validation, and chain of custody procedures. Park City shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate EPA guidance. Park City shall follow, as appropriate, "Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures" (OSWER Directive No. 9360.4-01, April 1990), as guidance for QA/QC and sampling. Park City shall only use laboratories that have a documented Quality System that complies with ANSI/ASQC E-4 1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standards Institute, 1994 or more recent version), and "EPA Requirements for Quality

Management Plans (QA/R-2) (EPA/240/B-01/002, March 2001),” or equivalent documentation as determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP) as meeting the Quality System requirements.

c. Upon request by EPA, Park City shall have such a laboratory analyze samples submitted by EPA for QA monitoring. Park City shall provide to EPA the QA/QC procedures followed by all sampling teams and laboratories performing data collection and/or analysis.

d. Upon request by EPA, Park City shall allow EPA or its authorized representatives to take split and/or duplicate samples. Park City shall notify EPA not less than thirty (30) days in advance of any sample collection activity, unless shorter notice is agreed to by EPA. EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall allow Park City to take split or duplicate samples of any samples it takes as part of its oversight of Park City’s implementation of the Work.

45. Removal Reporting.

a. Park City shall submit a quarterly written progress report to the Environmental Agencies concerning its actions undertaken pursuant to this Settlement Agreement on every 15th day of January, April, July and October after the date of receipt of EPA’s approval of its Removal Action Work Plan until termination of this Settlement Agreement, unless otherwise directed in writing by the EPA project coordinator. These reports shall describe all significant developments during the preceding reporting period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

b. Park City shall, at least thirty (30) days prior to the conveyance of any interest in real property at OU4, give written notice to the transferee that the property is subject to this Settlement Agreement and written notice to the Environmental Agencies of the proposed conveyance, including the name and address of the transferee. Park City also agrees to require that its successors comply with this notice requirement and Sections XII (Site Access and Institutional Controls) and XIV (Access to Information).

46. Final Removal Report. Within thirty (30) days after completion of all Work required under this Settlement Agreement, Park City shall submit for EPA review and approval a final report summarizing its actions taken to comply with this Settlement Agreement. The final report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled “OSC Reports.” The final report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Settlement Agreement, a listing of

quantities and types of materials removed off-site or handled on-site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the Removal Action (*e.g.*, manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

“Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

47. Park City shall submit to the Environmental Agencies two (2) copies of all plans, reports or other submissions required by this Section XI and any approved work plan. Upon request by EPA, Park City shall submit such documents in electronic form.

48. Off-Site Shipments.

a. If and when it becomes necessary to send Waste Material to an off-site location for disposal, Park City shall, prior to any off-site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification of such shipment of Waste Material to the appropriate state environmental official in the receiving facility’s state and to the EPA project coordinator. However, this notification requirement shall not apply to any off-site shipments when the total volume of all such shipments will not exceed ten (10) cubic yards.

i. Park City shall include in the written notification the following information: 1) the name and location of the facility to which the Waste Material is to be shipped; 2) the type and quantity of the Waste Material to be shipped; 3) the expected schedule for the shipment of the Waste Material; and 4) the method of transportation. Park City shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

ii. The identity of the receiving facility and state will be determined by Park City following the award of the contract for the Removal Action. Park City shall provide the information required by Paragraph 48 (a) and (b) as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

b. Before shipping any hazardous substances, pollutants, or contaminants from the Site to an off-site location, Park City shall obtain EPA’s certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3), 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Park City shall only send hazardous substances, pollutants, or contaminants from the Site to an off-site facility that complies with the requirements of the statutory provision and regulation cited in the preceding sentence.

Consistent with EPA's previous determinations regarding the applicability of the off-site rule at the Site, the OU1 Repository shall not be considered an off-site location for the purposes of this Paragraph.

XII. SITE ACCESS AND INSTITUTIONAL CONTROLS

49. If any portion of the Site, or any other property where access is needed to implement this Settlement Agreement, is owned or controlled by Park City, Park City shall, commencing on the Effective Date, provide the Environmental Agencies and their representatives, including contractors, with access at all reasonable times to such property, for the purpose of conducting any activity related to this Settlement Agreement. To the extent practicable, EPA shall provide advance notice to Park City of the times EPA or its contractors plan to access Park City's property.

50. Where any action under this Settlement Agreement is to be performed in areas owned by or in possession of someone other than Park City, Park City shall use its best efforts to obtain all necessary access agreements within thirty (30) days after Park City becomes aware that such access is needed, or as otherwise specified in writing by the EPA project coordinator. Park City shall notify EPA if after using its best efforts it is unable to obtain such agreements. Park City shall describe in writing its efforts to obtain access. If Park City cannot obtain access agreements, EPA may either (i) obtain access for Park City or assist Park City in gaining access, to the extent necessary to effectuate the response actions described herein, using such means as EPA deems appropriate; (ii) perform those tasks or activities with EPA contractors; or (iii) terminate the obligation under the Settlement Agreement that requires the access agreement in question. Park City shall reimburse EPA for all costs and attorney's fees incurred by the United States in obtaining such access, in accordance with the procedures in Section XVIII (Payment of Response Costs and Assessment Costs). If EPA performs those tasks or activities with EPA contractors, Park City shall perform all other tasks or activities not requiring access to that property, and shall reimburse EPA for all costs incurred in performing such tasks or activities. Park City shall integrate the results of any such tasks or activities undertaken by EPA into its plans, reports and other deliverables.

51. BLM shall, with respect to the Silver Maple Claims, provide EPA, Park City, and the State, and their representatives, contractors, and subcontractors, with access at all reasonable times to this property to conduct any activity related to this Settlement Agreement.

52. Notwithstanding any provision of this Settlement Agreement, EPA and UDEQ retain all of their access authorities and rights, including enforcement authorities related thereto, under CERCLA, Resource Conservation and Recovery Act, 42 U.S.C. §6901 *et seq.* (RCRA), and any other applicable statutes or regulations.

XIII. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

53. After review of any plan, report or other item that is required to be submitted for approval pursuant to this Settlement Agreement, in a notice to Park City, EPA shall, after a reasonable opportunity for review and comment by UDEQ: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that Park City modify the submission; or (e) any combination of the above. Any disapproval or modification shall be consistent with the purposes of this Settlement Agreement set forth in Section III. However, EPA shall not modify a submission without first providing Park City at least one notice of deficiency and an opportunity to cure within thirty (30) days, except where doing so would cause serious disruption to the Work, would delay an emergency response, or where previous submission(s) have been disapproved due to material defects. EPA approval of any Work on or affecting the Silver Maple Claims shall be subject to the concurrence of BLM.

54. In the event of approval, approval upon conditions, or modification by EPA, pursuant to subparagraphs 53 (a), (b), (c) or (e), Park City shall proceed to take any action required by the plan, report or other deliverable, as approved or modified by EPA subject only to its right to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution) with respect to the modifications or conditions made by EPA. Following EPA approval or modification of a submission or portion thereof, Park City shall not thereafter alter or amend such submission or portion thereof unless directed by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to subparagraph 53(c) and the submission had a material defect, EPA retains the right to seek stipulated penalties, as provided in Section XXI (Stipulated Penalties).

55. Resubmission.

a. Upon receipt of a notice of disapproval, Park City shall, within thirty (30) days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other deliverable for approval. Any stipulated penalties applicable to the submission, as provided in Section XXI, shall accrue during the 30 day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 53 and 54.

b. Notwithstanding the receipt of a notice of disapproval, Park City shall proceed to take any action required by any non-deficient portion of the submission, unless otherwise directed by EPA. Implementation of any non-deficient portion of a submission shall not relieve Park City of any liability for stipulated penalties under Section XXI (Stipulated Penalties).

c. EE/CA.

(i) Park City shall not proceed further with any subsequent Work until receiving EPA approval, approval on condition or modification of the following deliverables: EE/CA Sampling and Analysis Plan, Preliminary Engineering Evaluation, Treatability Testing Work Plan if any, and Draft EE/CA Report. While awaiting EPA approval, approval on condition or modification of these deliverables, Park City shall proceed with all other tasks and activities which may be conducted independently of these deliverables, in accordance with the schedule set forth under this Settlement Agreement.

(ii) For all remaining deliverables not listed above in this subparagraph, Park City shall proceed with all subsequent Work including all tasks, activities and deliverables without awaiting EPA approval on the submitted deliverable. EPA reserves the right to stop Park City from proceeding further, either temporarily or permanently, on any task, activity or deliverable at any point during the EE/CA.

d. Removal Action. Designation of the Removal Action deliverables that require Respondents to halt any subsequent activities or tasks until receiving EPA approval, approval on condition or modification, shall be identified in the Removal Action Work Plan.

56. If EPA disapproves a resubmitted plan, report or other deliverable, or portion thereof, EPA may again direct Park City to correct the deficiencies. EPA shall also retain the right to modify or develop the plan, report or other deliverable. Park City shall implement any such plan, report, or deliverable as corrected, modified or developed by EPA, subject only to Park City's right to invoke the procedures set forth in Section XIX (Dispute Resolution).

57. If upon resubmission, a plan, report, or other deliverable is disapproved or modified by EPA due to a material defect, Park City shall be deemed to have failed to submit such plan, report, or other deliverable timely and adequately unless Park City invokes the dispute resolution procedures in accordance with Section XIX (Dispute Resolution) and EPA's action is revoked or substantially modified pursuant to a dispute resolution decision issued by EPA or superseded by an agreement reached pursuant to that Section. The provisions of Section XIX (Dispute Resolution) and Section XXI (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during dispute resolution. If EPA's disapproval or modification is not otherwise revoked, substantially modified or superseded as a result of a decision or agreement reached pursuant to the dispute resolution process set forth in Section XIX, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XXI.

58. In the event that EPA takes over some of the Work, but not the preparation of the Preliminary EE Report or the EE/CA Report, Park City shall incorporate and integrate information supplied by EPA into the final report.

59. All plans, reports, and other deliverables submitted to EPA under this Settlement Agreement shall, upon approval or modification by EPA, be incorporated into and enforceable under this Settlement Agreement. In the event EPA approves or modifies a portion of a plan, report, or other deliverable submitted to EPA under this Settlement Agreement, the approved or modified portion shall be incorporated into and enforceable under this Settlement Agreement. Attached hereto as Appendix E is a list of the major deliverables under this Settlement Agreement.

60. Neither failure of EPA to expressly approve or disapprove of Park City's submission within a specified time period, nor the absence of comments, shall be construed as approval by EPA. Regardless of whether EPA gives express approval for Park City's deliverables, Park City is responsible for preparing deliverables acceptable to EPA.

XIV. ACCESS TO INFORMATION

61. Upon request, Park City shall provide to the Environmental Agencies copies of all documents and information within its possession or control or that of its contractors or agents relating to activities at OU4, the Work, or to the implementation of this Settlement Agreement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Park City shall also make available to EPA, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work. With the exception of confidential or privileged information described in paragraphs 62 and 63 below, EPA shall make all such information, upon request, available to the Parties.

62. Park City may assert business confidentiality claims covering part or all of the documents or information submitted to the Environmental Agencies under this Settlement Agreement to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, or if EPA has notified Park City that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to Park City. Park City may assert business confidentiality claims covering part or all of the documents or information submitted to the State under this Settlement Agreement to the extent permitted by and in accordance with Utah Government Records Access and Management Act, Utah Code § 63G-2-309, and where applicable, the Utah Environmental Quality Code, Utah Code § 19-1-306. If Park City provides the State a record that it believes should be protected, Park City must submit with the record a written claim of business confidentiality and a concise statement of reasons supporting the claim, or the public may be given access to such records without further notice to

Park City. Park City shall segregate and clearly identify all documents or information submitted under this Settlement Agreement for which Park City asserts business confidentiality claims.

63. Park City may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by applicable law. If Park City asserts such a privilege in lieu of providing documents, it shall provide the Environmental Agencies with the following: (i) the title of the document, record, or information; (ii) the date of the document, record, or information; (iii) the name and title of the author of the document, record, or information; (iv) the name and title of each addressee and recipient; (v) a general description of the contents of the document, record, or information; and (vi) the privilege asserted by Park City.

64. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around OU4.

65. In entering into this Settlement Agreement, Park City waives any objections to any data gathered, generated, or evaluated by the Environmental Agencies in the performance or oversight of the Work that has been verified according to the quality assurance/quality control (QA/QC) procedures required by the Settlement Agreement or any EPA-approved work plans or sampling and analysis plans. If Park City objects to any other data, Park City shall submit to EPA a report that specifically identifies and explains its objections, describes the acceptable uses of the data, if any, and identifies any limitations to the use of the data. The report must be submitted to EPA within fifteen (15) days of the quarterly progress report containing the data.

XV. RECORD RETENTION

66. During the pendency of this Settlement Agreement and for a minimum of ten (10) years after Park City's receipt of EPA's notification pursuant to Section XXXI (Notice of Completion of Work), Park City shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or the liability of any person under CERCLA with respect to OU4, regardless of any corporate retention policy to the contrary. Until ten (10) years after Park City's receipt of EPA's notification pursuant to Section XXXI (Notice of Completion of Work), Park City shall also instruct its contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to performance of the Work.

67. At the conclusion of this document retention period, Park City shall notify EPA and UDEQ at least ninety (90) days prior to the destruction of any such records or documents, and, upon request by EPA or UDEQ, Park City shall deliver any such records or documents to EPA or UDEQ. Park City may assert that certain documents, records and other information are

privileged under the attorney-client privilege or any other privilege recognized by federal law. If Park City such a privilege, it shall provide EPA or UDEQ with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a general description of the subject of the document, record, or information; and 6) the privilege asserted by Park City.

68. Park City hereby certifies individually that to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information (other than identical copies) relating to its potential liability regarding OU4 since notification of potential liability by EPA or the State and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XVI. COMPLIANCE WITH OTHER LAWS

69. Park City shall perform all actions required pursuant to this Settlement Agreement in accordance with all applicable state and federal laws and regulations except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-site actions required pursuant to this Settlement Agreement shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements (ARARs) under federal environmental or state environmental or facility siting laws. Park City shall identify ARARs, subject to EPA approval, as part of the EE/CA. As provided in Section 121(e) of CERCLA, 42 U.S.C. § 121(e), no permit shall be required for any portion of the Work conducted entirely on site, including without limitation any Utah Pollutant Discharge Elimination System Permit or National Pollutant Discharge Elimination Permit for the Prospector Drain. The Parties acknowledge that such permits may be required after the Work is completed. Accordingly, on or around 180 days prior to completion of the Work to the extent practicable, Park City shall make an application to obtain a Utah Pollutant Discharge Elimination System Permit to address continuing discharges from Prospector Drain, if any as provided in Paragraph 42.d.

XVII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

70. In the event of any action or occurrence resulting from performance of Work which causes or threatens a release of Waste Material from OU4 that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Park City shall immediately take all appropriate action. Park City shall take these actions in accordance with all applicable provisions of this Settlement Agreement, including, but not limited to, the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Park City shall also immediately notify the EPA project coordinator or, in the event of his/her unavailability, an on scene coordinator (OSC) or Laura Williams, Emergency Response Unit, EPA Region 8 Preparedness, Assessment and Emergency

Response Program, at 303-312-6108, and the Region 8 Emergency Response Spill Report Hotline, at 1-800-227-8914 of the incident or conditions at OU4. In the event that Park City fails to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Park City shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XVIII (Payment of Response Costs and Assessment Costs).

71. In addition, in the event that Park City becomes aware of or should have been aware of any release of a hazardous substance from OU4, Park City shall immediately notify the EPA project coordinator, an OSC or the Regional Duty Officer at Region 8 Emergency Response Spill Report Hotline, at 1-800-227-8914 and the National Response Center at (800) 424-8802. Park City shall submit a written report to EPA within seven (7) days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004, *et seq.*

XVIII. PAYMENT OF RESPONSE COSTS AND ASSESSMENT COSTS

72. Payments of Future Response Costs.

a. Park City shall pay to EPA all Future Response Costs incurred by EPA not inconsistent with the NCP for OU4. On a periodic basis, EPA will send Park City a bill requiring payment that includes a Region 8 cost summary. Park City shall make all payments within thirty (30) days following receipt of each bill requiring payment, except as otherwise provided in Paragraph 74 of this Settlement Agreement. Payment shall be made to EPA by Electronic Funds Transfer (EFT) in accordance with current EFT procedures to be provided to Park City by EPA Region 8, and shall be accompanied by a statement identifying the name and address of the party making payment, the Site name, the EPA Region and Site/Spill ID Number 08-94, and the EPA docket number for this action.

b. At the time of payment, Park City shall send notice that its payment has been made to:

Martha Walker
Finance Program Manager
Superfund Remedial Section, 8TMS-FMP
US EPA, Region 8
1595 Wynkoop Street
Denver, Colorado 80202

and to:

Maureen O'Reilly
Superfund Enforcement
U.S. EPA Region 8
8ENF-RC
1595 Wynkoop Street
Denver, CO 80202

and by email to acctsreceivable.cinwd@epa.gov, and to:

EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, Ohio 45268

c. The total amounts to be paid pursuant to subparagraph (a) above shall be deposited in the Richardson Flat Tailings Site Special Account within the EPA Hazardous Substance Superfund to be retained and used by EPA to conduct or finance response actions at or in connection with the Site or to be transferred by EPA to the EPA Hazardous Substance Superfund.

d. Park City shall pay to BLM all Future Response Costs incurred by BLM not inconsistent with the NCP and related to Work for OU4 on or affecting the Silver Maple Claims. On a periodic basis, BLM will send Park City a bill requiring payment that includes a cost summary. Park City shall make all payments within 30 days of receipt of each bill requiring payment, except as otherwise provided in Paragraph 74 of this Settlement Agreement. Payment shall be made to the Department of the Interior's (DOI) Central Hazardous Materials Fund (CHF) by automated clearing-house known as the Department of the Treasury's Automated Clearing House (ACH)/Remittance Express program as follows:

Receiver name: Central Hazardous Materials Fund
ALC 14010001

Receiver Tax ID Number: 53-0196949

Receiver address: 7401 West Mansfield Ave.
Mailstop D-2777
Lakewood, CO 80235

Receiver bank: Federal Reserve Bank
New York, NY
ABA # 051036706

Receiver ACH Account No.: 312024

Park City shall send notification of its payment referencing the amount of its payment, the Site name, and the time period for which reimbursement of response costs is being provided to the following individuals:

Courtney Hoover
Fund Manager
Central Hazardous Materials Fund
Department of the Interior
1849 C Street, N.W., Mail Stop 2342
Washington, D.C. 20240

and to:

Casey S. Padgett
Assistant Solicitor
Office of the Solicitor
1849 C Street, N.W., Mail Stop 5530
Washington, D.C. 20240

e. Park City shall pay to the Natural Resource Trustees all Future Assessment Costs incurred by the Natural Resource Trustees for OU4. On a periodic basis, the Federal Trustees and the State Natural Resource Trustee will send Park City a bill requiring payment that includes a cost summary. Park City shall make all payments within thirty (30) days following receipt of each bill requiring payment, except as otherwise provided in Paragraph 74 of this Settlement Agreement. Payment shall be made and notification of such payment shall be given in accordance with the instructions included with the bill.

73. If Park City does not pay Future Response Costs or Future Assessment Costs within thirty (30) days following its receipt of a bill, Park City shall pay Interest on the unpaid balance of such Future Response Costs or Future Assessment Costs. The Interest on unpaid Future Response Costs or Future Assessment Costs shall begin to accrue on the date of the bill and shall continue to accrue until the date of payment. If EPA, BLM or the Natural Resource Trustees receives a partial payment, Interest shall accrue on any unpaid balance. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available by virtue of Park City's failure to make timely payments under this Section, including but not limited to, payments of stipulated penalties pursuant to Section XXI. Park City shall make all payments required by this Paragraph in the manner described in Paragraph 72.

74. a. Park City may contest payment of any Future Response Costs or Future Assessment Costs under Paragraph 72 if it determines that EPA, BLM or the Natural Resource Trustees have made an accounting error, made claims for future assessment costs inconsistent with 43 C.F.R Part 11, or if it believes EPA or BLM incurred excess costs as a direct result of an EPA or BLM action that was inconsistent with the NCP. Such objection shall be made in writing within thirty (30) days following receipt of the bill and must be sent to the appropriate agency. Any such

objection shall specifically identify the contested Future Response Costs or Future Assessment Costs and the basis for objection. In the event of an objection, Park City shall within the thirty (30) day period pay all uncontested Future Response Costs or Future Assessment Costs to the appropriate agency in the manner described in Paragraph 72.

b. Park City shall, at the time of submitting its objection in writing in accordance with subparagraph (a) above, establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of Utah and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs or Future Assessment Costs. Park City shall send to the appropriate agency a copy of the transmittal letter and check paying the uncontested Future Response Costs or Future Assessment Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, Park City shall initiate the dispute resolution procedures in Section XIX (Dispute Resolution). If the billing agency prevails in the dispute, within five (5) days of the resolution of the dispute, Park City shall pay the sums due (with accrued interest) to the billing agency in the manner described in Paragraph 72. If Park City prevails concerning any aspect of the contested costs, Park City shall pay that portion of the costs (plus associated accrued interest) for which it did not prevail to the billing agency in the manner described in Paragraph 72. Park City shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XIX (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Park City's obligation to reimburse the Federal Environmental Agencies for their Future Response Costs or Future Assessment Costs.

XIX. DISPUTE RESOLUTION

75. Unless otherwise expressly provided for in this Settlement Agreement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes involving the Federal Environmental Agencies and Park City arising under this Settlement Agreement. The Parties shall attempt to resolve any disagreements concerning this Settlement Agreement expeditiously and informally.

76. a. If Park City objects to any EPA or BLM action taken or decision made with respect to Park City's obligations pursuant to this Settlement Agreement, including billings for Future Response Costs, it shall notify EPA and BLM in writing of its objection(s) within thirty (30) days following such action, unless the objection(s) has/have been resolved informally. The agency whose action is subject to dispute and Park City shall have thirty (30) days following the agencies' receipt of Park City's written objection(s) to resolve the dispute through formal negotiations (Negotiation Period). The Negotiation Period may be extended at the sole discretion of the agency whose action is subject to dispute.

b. Any agreement reached between EPA, BLM and Park City pursuant to this Section shall be in writing and shall, upon signature of the affected Parties, be incorporated into and become an enforceable part of this Settlement Agreement. If the agency whose action is subject to dispute and Park City are unable to reach an agreement within the Negotiation Period, an EPA management official at the Assistant Regional Administrator level or higher will issue a written decision on the dispute to Park City. EPA's decision shall be incorporated into and become an enforceable part of this Settlement Agreement. No obligations under this Settlement Agreement shall be suspended by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, Park City shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

77. a. If Park City objects to any action taken or decision made with respect to Park City's obligations pursuant to this Settlement Agreement by the Natural Resource Trustees, including billings for Future Assessment Costs, it shall notify the Natural Resource Trustees in writing of its objection(s) within thirty (30) days following such action, unless the objection(s) has/have been resolved informally. The Natural Resource Trustees and Park City shall have thirty (30) days following receipt of Park City's written objection(s) to resolve the dispute through formal negotiations. The Negotiation Period may be extended at the sole discretion of the Natural Resource Trustees.

b. Any agreement reached between the Natural Resource Trustees and Park City pursuant to this Section shall be in writing and shall, upon signature of the affected parties, be incorporated into and become an enforceable part of this Settlement Agreement.

c. If the Natural Resource Trustees and Park City are unable to reach an agreement within the Negotiation Period with respect to disputes other than those pertaining to billings for Future Assessment Costs, the DOI Authorized Official will issue a written decision with the concurrence of the State Natural Resource Trustee on the dispute to Park City. The DOI Authorized Official's decision shall be incorporated into and become an enforceable part of this Settlement Agreement.

d. If the Federal Trustees and Park City are unable to reach an agreement within the Negotiation Period with respect to disputes pertaining to billings by the Federal Trustees for Future Assessment Costs, the DOI Authorized Official will issue a written decision on the dispute to Park City. The DOI Authorized Official's decision shall be incorporated into and become an enforceable part of this Settlement Agreement.

e. If the State Natural Resource Trustee and Park City are unable to reach an agreement within the Negotiation Period on any dispute pertaining to billings by the State Natural Resource Trustee for Future Assessment Costs, the State Natural Resource Trustee will issue a written decision on the dispute to Park City. The State Natural Resource Trustee's decision shall be incorporated into and become an enforceable part of this Settlement Agreement.

f. No obligations under this Settlement Agreement shall be suspended by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, Park City shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with the written decision, whichever occurs.

78. The dispute resolution process set forth in Paragraph 79 below pertains to all disputes between EPA and BLM regarding all EE/CA and Removal Action activities affecting the Silver Maple Claims.

79. EPA and BLM will cooperate to the fullest extent possible to ensure that EE/CA activities and Removal Action activities on or affecting the Silver Maple Claims are performed and fully and completely implemented. In the event of a disagreement between EPA and BLM, these agencies agree to attempt to negotiate a mutually acceptable resolution of the issues to the fullest extent possible, as specified by the following provisions:

a. EPA and BLM have coordinated their respective CERCLA response authorities at the Silver Maple Claims portion of the Site. EPA plans to issue the action memorandum for OU4 under CERCLA authorities with the concurrence of BLM. If a dispute between EPA and BLM arises concerning any matter addressed under this Settlement Agreement, and the dispute cannot be resolved at the project manager/staff attorney level, the disputing party shall identify the dispute to the other party in writing. EPA and BLM shall have fourteen (14) days to resolve the dispute informally if possible.

b. At the end of the fourteen (14) day informal dispute period, if the dispute is not resolved, the disputing party shall again state the dispute in writing in a letter addressed to the BLM District Manager, and the Deputy Assistant Regional Administrator for Office of Enforcement, Compliance, and Environmental Justice (EPA Deputy ARA), EPA Region 8. The other party shall have seven (7) days to respond to this dispute letter. The BLM District Manager and the EPA Deputy ARA shall then have fourteen (14) days to resolve the dispute.

c. If, at the end of this fourteen (14) day period, the dispute cannot be resolved, all dispute letters and responses shall be forwarded to the Assistant Regional Administrator for Office of Enforcement, Compliance, and Environmental Justice (EPA ARA), EPA Region 8, and the BLM State Director. The EPA ARA and BLM State Director shall consult concerning the dispute and shall attempt to issue a joint decision regarding the issue within fourteen (14) days of receipt of the dispute letters. In the event the EPA ARA and BLM State Director are unable to issue a joint determination, the EPA ARA will issue a decision. The EPA ARA shall consider the BLM position in this matter in light of the BLM's responsibilities and authorities as the federal land management agency responsible for the management and stewardship of the Silver Maple Claims and the BLM's CERCLA response action authorities with regard to the Silver Maple Claims.

d. If unsatisfied with the decision of the EPA ARA, the BLM may initiate consultation with the responsible Assistant Section Chief, Environmental Enforcement Section, US Department of Justice, regarding the EPA ARA decision. The EPA ARA will participate in that consultation process and consider the results of that consultation before making a final decision that will represent the final remedial action decision. Any final decision reached pursuant to this Paragraph 79 shall not be subject to judicial review by any Party, including EPA and BLM. The time periods listed herein may be increased or decreased by mutual agreement of EPA and BLM.

XX. FORCE MAJEURE

80. Park City agrees to perform all Work within the time limits established under this Settlement Agreement, unless the performance is delayed by a *force majeure*. For purposes of this Settlement Agreement, a *force majeure* is defined as any event arising from causes beyond the control of Park City, or of any entity controlled by Park City, including but not limited to its contractors and subcontractors, which delays or prevents performance of any obligation under this Settlement Agreement despite Park City's best efforts to fulfill the obligation. *Force majeure* does not include financial inability to complete the Work or increased cost of performance.

81. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement Agreement, whether or not caused by a *force majeure* event, Park City shall notify EPA verbally within forty-eight (48) hours following of the time when Park City first knew that the event might cause a delay. Within five (5) days thereafter, Park City shall provide to EPA in writing an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Park City's rationale for attributing such delay to a *force majeure* event if it intends to assert such a claim; and a statement as to whether, in the opinion of Park City, such event may cause or contribute to an endangerment to public health, welfare or the environment. Failure to comply with the above requirements shall preclude Park City from asserting any claim of *force majeure* for that event for the period of time of such failure to comply and for any additional delay caused by such failure.

82. If EPA agrees that the delay or anticipated delay is attributable to a *force majeure* event, the time for performance of the obligations under this Settlement Agreement that are affected by the *force majeure* event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the *force majeure* event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a *force majeure* event, EPA will notify Park City in writing of its decision. If EPA agrees that the delay is attributable to a *force majeure* event, EPA will notify Park City in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure* event.

XXI. STIPULATED PENALTIES

83. Park City shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 84 and 85 for its failure to comply with the requirements of this Settlement Agreement specified below, unless excused under Section XX (Force Majeure). “Compliance” by Park City shall include completion of the Work in accordance with all applicable requirements of law, this Settlement Agreement, the EE/CA Work Plan, the Removal Action Work Plan and any plans or other documents approved by EPA pursuant to this Settlement Agreement, and within the specified time schedules established by and approved under this Settlement Agreement.

84. Stipulated Penalty Amounts.

a. The following stipulated penalties shall accrue per day against Park City for failure to submit or timely submit any of the following: the Preliminary EE Report, the EE/CA Report, the Removal Action Work Plan or the final removal report:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 250	1st through 14th day
\$ 1,000	15th through 30th day
\$ 37,500	31st day and beyond

b. The following stipulated penalties shall accrue per day against Park City for failure to submit timely or adequate reports pursuant to the EE/CA Work Plan or the Removal Action Work Plan where an extension for the report has not been granted in writing prior to the due date by the EPA project coordinator:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 100	1 st through 14 th day
\$ 700	15 th through 30 th day
\$ 5,000	31 st day and beyond

c. The following stipulated penalties shall accrue per day against Park City for failure to meet any other requirement of this Settlement Agreement or to submit timely or adequate quarterly progress reports:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 100	1 st through 14 th day
\$ 500	15 th through 30 th day
\$ 2,000	31 st day and beyond

85. In the event that EPA assumes performance of a portion or all of the Work required of Park City during performance of the EE/CA pursuant to Paragraph 98 (Work Takeover), Park City shall be liable for a stipulated penalty in the amount of \$50,000. In the event that EPA assumes performance of a portion or all of the Work required by Park City during performance of the Removal Action, pursuant to Paragraph 98 (Work Takeover) of Section XXIII (Reservations of Rights by Environmental Agencies), Park City shall be liable for a stipulated penalty in the amount of \$100,000.

86. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (i) with respect to a deficient submission under Sections IX (EE/CA Work to be Performed) or XI (Performance of Removal), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Park City of any deficiency; and (ii) with respect to a decision by the EPA management official designated in Paragraph 76 of Section XIX (Dispute Resolution), during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that the EPA management official issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

87. Following EPA's determination that Park City has failed to comply with a requirement of this Settlement Agreement, EPA may give Park City written notification of the failure and describe the noncompliance. EPA may send Park City a written demand for payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified Park City of a violation.

88. All penalties accruing under this Section shall be due and payable to EPA within thirty (30) days following Park City's receipt from EPA of a demand for payment of the penalties, unless Park City invokes the dispute resolution procedures in accordance with Section XIX (Dispute Resolution). All payments to EPA under this Section shall indicate that the payment is for stipulated penalties; shall reference the EPA Region, the Site/Spill ID Number 08-94, the EPA Docket Number for this Settlement Agreement, the name and address of the party making payment; shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund"; and shall be mailed to:

Regular mail:

Mellon Bank
EPA Region 8
Attn: Superfund Accounting
Post Office Box 360859
Pittsburgh, Pennsylvania 15251-6859

Express Mail:

Mellon Bank
3 Mellon Bank Center
ROOM#153-2713
Pittsburgh, Pennsylvania 15259

or other such address as EPA may designate in writing, or by wire transfer to:

ABA=021030004
TREAS NYC/CTR/
BNF=/AC-68011008

Wire transfers must be sent to the Federal Reserve Bank in New York.

Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s) shall be sent to:

Martha Walker
Finance Program Manager, TMS-FMP
US EPA, Region 8
1595 Wynkoop Street
Denver, Colorado 80202

and to:

Maureen O'Reilly
Superfund Enforcement, ENF-RC
U.S. EPA Region 8
8ENF-RC
1595 Wynkoop Street
Denver, CO 80202

89 At the time of payment, Park City shall send notice that payment has been made by email to acctsreceivable.cinwd@epa.gov, and to:

EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, Ohio 45268

90. The payment of penalties shall not alter in any way Park City's obligation to complete performance of the Work required under this Settlement Agreement.

91. Subject to Paragraph 94, penalties shall continue to accrue as provided in Section XIX (Dispute Resolution) during any dispute resolution period, but need not be paid until fifteen (15) days after the dispute is resolved by agreement or by receipt of EPA's decision.

92. If Park City fails to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties, as well as Interest. Park City shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 88.

93. Nothing in this Settlement Agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Park City's violation of this Settlement Agreement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Sections 106(b) and 122(l) of CERCLA, 42 U.S.C. §§ 9606(b) and 9622(l), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Provided, however, that EPA shall not seek civil penalties pursuant to Section 122(l) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of willful violation of this Settlement Agreement or in the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 98 (Work Takeover). Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Settlement Agreement.

94. **Penalty Exception.** Penalties shall apply, as set forth in this Section, in all circumstances related to the EE/CA and the Removal Action with the following specific exception. Within thirty (30) days following issuance of the OU4 Action Memorandum and notwithstanding any other provision contained in this Settlement Agreement, Park City may decide not to implement the Removal Action. Notwithstanding the foregoing, this Settlement Agreement shall remain in full force and effect. In the event Park City decides not to implement the Removal Action, EPA may choose, in its sole discretion, to amend the Action Memorandum and Park City shall have thirty (30) days following the amendment to decide whether to implement the Removal Action as set forth in the amended Action Memorandum. Alternatively, EPA may (i) bring a claim in federal district court to obtain an injunction for performance of the Removal Action; (ii) issue a unilateral administrative order pursuant to Section 106(a) of CERCLA, 42 U.S.C. §9606(a), against Park City and seek judicial enforcement; or (iii) perform the Removal Action and seek cost recovery against Park City. If Park City decides not to implement the Removal Action pursuant to this Paragraph it shall not be subject to stipulated penalties or statutory penalties for non-performance of the Removal Action unless and until the federal district court issues a final non-appealable order enforcing EPA's injunctive claim or the unilateral administrative order, or directing Park City to pay the response costs of the Removal Action. Any stipulated or statutory penalties assessed following resolution by the federal district court under this Paragraph shall not be retroactive, but may be assessed to address future or continuing failures to comply with the requirements of this Settlement Agreement as specified in Section XXI.

XXII. COVENANT NOT TO SUE BY ENVIRONMENTAL AGENCIES

95. a. Federal Environmental Agencies

1. In consideration of the actions that will be performed and the payments that will be made by Park City under the terms of this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement, EPA and BLM covenant not to sue or to take administrative action against Park City pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work and Future Response Costs. This covenant not to sue shall take effect upon the Effective Date and is conditioned upon Park City's complete and satisfactory performance of all of its obligations under this Settlement Agreement, including, but not limited to, payment of Future Response Costs pursuant to Section XVIII. This covenant not to sue extends only to Park City and does not extend to any other person.

2. In consideration of the actions that will be performed and the payments that will be made by Park City under the terms of this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement, the Federal Trustees covenant not to sue or to take administrative action against Park City pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Natural Resource Injury Assessment and Restoration Alternatives Analysis and Future Assessment Costs. This covenant not to sue shall take effect upon the Effective Date and is conditioned upon Park City's complete and satisfactory performance of all of its obligations under this Settlement Agreement, including, but not limited to, payment of Future Assessment Costs pursuant to Section XVIII. This covenant not to sue extends only to Park City and does not extend to any other person

b. State Natural Resource Trustee

1. In consideration of the actions that will be performed and the payments that will be made by Park City under the terms of this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement, the State Natural Resource Trustee covenants not to sue or to take administrative action against Park City pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Natural Resource Injury Assessment and Restoration Alternatives Analysis and Future Assessment Costs. This covenant not to sue shall take effect upon the Effective Date and is conditioned upon Park City's complete and satisfactory performance of all of its obligations under this Settlement Agreement, including, but not limited to, payment of Future Assessment Costs pursuant to Section XVIII. This covenant not to sue extends only to Park City and does not extend to any other person.

XXIII. RESERVATIONS OF RIGHTS BY ENVIRONMENTAL AGENCIES

96. Except as specifically provided in this Settlement Agreement, nothing in this Settlement Agreement shall limit the power and authority of the Environmental Agencies or the United

States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing in this Settlement Agreement shall prevent the Environmental Agencies from seeking legal or equitable relief to enforce the terms of this Settlement Agreement, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Park City in the future to perform additional activities pursuant to CERCLA or any other applicable law.

97. The covenant not to sue set forth in Section XXII above does not pertain to any matters other than those expressly identified therein. The Environmental Agencies reserve, and this Settlement Agreement is without prejudice to, all rights against Park City with respect to all other matters, including, but not limited to:

- a. claims based on a failure by Park City to meet a requirement of this Settlement Agreement;
- b. liability for costs not included within the definition of Future Response Costs or Future Assessment Costs;
- c. liability for response costs incurred by but not reimbursed to the State;
- d. liability for performance of response actions other than the Work;
- e. criminal liability;
- f. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments, excluding performance of the Natural Resource Injury Assessment and Restoration Alternatives Analyses and Future Assessment Costs paid to the Natural Resource Trustees pursuant to this Settlement Agreement;
- g. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of OU4; and
- i. claims based upon a failure to implement the Removal Action subsequent to a period of thirty (30) days after EPA's issuance of the Action Memorandum for OU4 except as provided in Paragraph 94 (Penalty Exception).

98. Work Takeover. In the event EPA determines that Park City has ceased implementation of any portion of the Work, is seriously or repeatedly deficient or late in its performance of the Work, or is implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portion of the Work as EPA determines necessary (Work Takeover). EPA shall issue a written notice (Work Takeover Notice) to Park City before a Work Takeover. Any Work Takeover Notice will specify the

grounds upon which such notice was issued and will provide Park City a period of ten (10) days within which to remedy the circumstances. If, after expiration of the 10-day notice period, Park City has not remedied to EPA's satisfaction the circumstances giving rise to EPA's issuance of the Work Takeover Notice, EPA may at any time thereafter assume performance of all or any portion of the Work as EPA determines necessary. EPA shall notify Park City of a Work Takeover in writing. In the event, however, where an emergency situation or immediate threat to public health or welfare or the environment exists, EPA will not issue a Work Takeover Notice and may at any time assume performance of all or any portion of the Work as EPA determines necessary. Park City may invoke the procedures set forth in Section XIX (Dispute Resolution) to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. Costs incurred by EPA or BLM in performing the Work pursuant to this Paragraph shall be considered Future Response Costs that Park City is responsible for performing such Work shall pay pursuant to Section XVIII (Payment of Response Costs and Assessment Costs). Notwithstanding any other provision of this Settlement Agreement, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

XXIV. COVENANT NOT TO SUE BY PARK CITY

99. a. Park City covenants not to sue and agrees not to assert any claims or causes of action against the Environmental Agencies, or their contractors or employees, with respect to the Work, Future Response Costs, Future Assessment Costs or this Settlement Agreement, including, but not limited to:

i. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

ii. any claim arising out of response actions at or in connection with OU4, including any claim under the United States Constitution, the Utah Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

iii. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Work, Future Response Costs, or Future Assessment Costs.

b. Park City reserves and this Settlement Agreement is without prejudice to Park City's right to challenge EPA's remedy selection in the event Park City elects not to implement the Removal Action and EPA commences a judicial enforcement action.

100. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

XV. OTHER CLAIMS

101. By issuance of this Settlement Agreement, the Environmental Agencies assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Park City. No Environmental Agency shall be deemed a party to any contract entered into by Park City or its respective directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Settlement Agreement.

102. Except as expressly provided in Section XXII (Covenant Not to Sue by Federal Environmental Agencies) and Section XXIV (Covenant Not to Sue by Park City), nothing in this Settlement Agreement constitutes a satisfaction of or release from any claim or cause of action against Park City or any person not a party to this Settlement Agreement, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, or creates a cause of action on behalf of any person not a party to this Settlement Agreement.

103. No action or decision by EPA or any other Environmental Agency pursuant to this Settlement Agreement shall give rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XVI. CONTRIBUTION

104. a. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that Park City is, as of the Effective Date, entitled to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for “matters addressed” in this Settlement Agreement. The “matters addressed” in this Settlement Agreement are the Work, the Natural Resource Injury Assessment and Restoration Alternatives Analyses, Future Response Costs, and Future Assessment Costs.

b. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which Park City, as of the Effective Date, resolved its liability to the Federal Environmental Agencies for the Work, the Natural Resource Injury Assessment and Restoration Alternatives Analyses, Future Response Costs, and to the Natural Resource Trustees for Future Assessment Costs paid by Park City to the Natural Resource Trustees.

c. Nothing in this Settlement Agreement precludes the Environmental Agencies or Park City from asserting any claims, causes of action, or demands for indemnification, contribution, or cost recovery against any persons not a party to this Settlement Agreement. Nothing in this Settlement Agreement diminishes the right of EPA, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)(3), to pursue any such persons to obtain additional response

costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

XXVII. INDEMNIFICATION

105. Park City shall indemnify, save and hold harmless the Environmental Agencies, their officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Park City, its officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Settlement Agreement. In addition, Park City agrees to pay the Environmental Agencies all costs they incur, including but not limited to attorneys fees and other expenses of litigation and settlement, arising from or on account of claims made against the Environmental Agencies based on negligent or other wrongful acts or omissions of Park City, its officers, directors, employees, agents, contractors, subcontractors and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Settlement Agreement. The Environmental Agencies shall not be held out as a party to any contract entered into by or on behalf of Park City in carrying out activities pursuant to this Settlement Agreement. Neither Park City nor any of its contractors shall be considered an agent of any Environmental Agency.

106. The appropriate Environmental Agency shall give Park City notice of any claim for which it plans to seek indemnification pursuant to this Section and shall consult with Park City prior to settling such claim.

107. Park City waives all claims against the Environmental Agencies for damages or reimbursement or for set-off of any payments made or to be made to any Environmental Agency arising from or on account of any contract, agreement, or arrangement between Park City and any person for performance of Work on or relating to OU4, including, but not limited to, claims on account of construction delays. In addition, Park City shall indemnify and hold harmless the Environmental Agencies with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Park City and any person for performance of Work on or relating to OU4, including, but not limited to, claims on account of construction delays.

XXVIII. INSURANCE

108. At least thirty (30) days prior to commencing any on-Site work under this Settlement Agreement, Park City shall secure, and shall maintain for the duration of this Settlement Agreement, comprehensive general liability insurance and automobile insurance with limits of one million dollars, combined single limit, naming EPA as an additional insured. Within the same time period, Park City shall provide EPA with certificates of such insurance and a copy of each insurance policy. Park City shall submit such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of the Settlement

Agreement, Park City shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Park City in furtherance of this Settlement Agreement. If Park City demonstrates by evidence satisfactory to EPA that any of its contractors or subcontractors maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then Park City need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

XXIX. FINANCIAL ASSURANCE

109. a. Within sixty (60) days following the Effective Date, Park City shall establish and maintain financial security for the benefit of EPA for the performance of the EE/CA for OU4 in the amount of \$100,000.

b. Within sixty (60) days following EPA's issuance of the Action Memorandum for OU4, Park City shall establish and maintain financial security for the benefit of EPA for the performance of the Removal Action for OU4. The amount of financial security to be established and maintained by Park City shall be based upon the cost of implementing the Work set forth in the Removal Action Work Plan.

c. The financial security shall be in one or more of the following forms, in order to secure the full and final completion of Work:

- i. a surety bond unconditionally guaranteeing payment and/or performance of the Work;
- ii. one or more irrevocable letters of credit, payable to or at the direction of EPA, issued by financial institution(s) acceptable in all respects to EPA; or
- iii. a trust fund administered by a trustee acceptable in all respects to EPA.

Park City shall provide a copy of its financial security mechanism, and any accompanying transmittal letter(s) to:

Daniela Golden
Financial Analyst, 8ENF-RC
Superfund Technical Enforcement Program
US EPA, Region 8
1595 Wynkoop Street
Denver, Colorado 80202

110. Any and all financial assurance instruments provided pursuant to this Section shall be in form and substance satisfactory to EPA, determined in EPA's sole discretion and follow: (i) the

model draft letter of credit dated December 2004, see <http://www.epa.gov/compliance/resources/policies/cleanup/suprefund/fa-credit-mod.pfd>; (ii) the model payment surety bond dated July 2005, see <http://www.epa.gov/compliance/resources/policies/cleanup/suprefund/fa-surety-paybond-mod.pfd>; or (iii) the trust fund model see <http://www.epa.gov/compliance/resources/policies/cleanup/suprefund/fa-trust-mod.pfd>.

In the event that EPA determines at any time that the financial assurances provided pursuant to this Section (including, without limitation, the instrument(s) evidencing such assurances) are inadequate, Park City shall, within sixty (60) days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph 109 above. If EPA notifies Park City that the anticipated cost of completing any Work as set forth in Paragraph 109, is more than originally estimated, then, within sixty (60) days of such notification, Park City shall obtain and present to EPA for approval a revised form of financial assurance (otherwise acceptable under this Section) that reflects such cost increase. Park City's inability to demonstrate financial ability to complete the Work shall in no way excuse performance of any activities required under this Settlement Agreement.

111. If, after the Effective Date, Park City can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 109 of this Section, Park City may, on any anniversary date of the Effective Date, reduce the amount of the financial security provided under this Section to the estimated cost of completing the remaining Work associated with such Work. Park City shall submit a proposal for such reduction to EPA, in accordance with the requirements of this Section, and may reduce the amount of the security after receiving written approval from EPA. In the event of a dispute, Park City may seek dispute resolution pursuant to Section XIX (Dispute Resolution). Park City may reduce the amount of security in accordance with EPA's written decision resolving the dispute.

112. Park City may change the form of financial assurance provided under this Section at any time, upon notice to and prior written approval by EPA, provided that EPA determines that the new form of assurance meets the requirements of this Section. In the event of a dispute, Park City may change the form of the financial assurance only in accordance with the written decision resolving the dispute.

XXX. MODIFICATIONS

113. The affected Parties may agree to modifications to any plan, schedule, work plan or statement of work in writing or verbally. Any verbal modification will be promptly memorialized in writing. Any requirements of this Settlement Agreement relating to the Work may be modified in writing by mutual agreement of Park City and EPA. Any other requirements may be modified in writing by mutual agreement of the affected Parties.

114. If Park City seeks permission to deviate from any approved work plan or schedule, Park City's project coordinator shall submit a written request to EPA for approval outlining the

proposed modification and its basis. Park City may not proceed with the requested deviation until receiving oral or written approval from the EPA project coordinator pursuant to Paragraph 113.

115. No informal advice, guidance, suggestion, or comment by the EPA project coordinator or other representatives of the Environmental Agencies regarding reports, plans, specifications, schedules, or any other writing submitted by Park City shall relieve Park City of its obligation to obtain any formal approval required by this Settlement Agreement, or to comply with all requirements of this Settlement Agreement, unless it is formally modified.

XXXI. NOTICE OF COMPLETION OF WORK

116. When EPA determines, after EPA's review of a final report that all Work has been fully performed in accordance with this Settlement Agreement, with the exception of any continuing obligations required by this Settlement Agreement, including payment of Future Response Costs, or record retention, EPA will provide written notice to Park City. If EPA determines that any such Work has not been completed in accordance with this Settlement Agreement, EPA will notify Park City, provide a list of the deficiencies, and require Park City to modify the Removal Action Work Plan if appropriate in order to correct such deficiencies. Park City shall implement the modified and approved Removal Action Work Plan and shall submit a modified final report in accordance with the EPA notice. Failure by Park City to implement the approved modified Work Plan shall be a violation of this Settlement Agreement.

XXXII. ADMINISTRATIVE RECORD

117. EPA will determine the contents of the administrative record file. Park City shall submit to EPA documents developed during the course of the EE/CA upon which selection of any response action will be based. Upon request of EPA, Park City shall provide to EPA copies of plans, task memoranda for further action, quality assurance memoranda and audits, raw data, field notes, laboratory analytical reports and other reports. Upon request of EPA, Park City shall additionally submit any previous studies conducted under state, local or other federal authorities relating to the EE/CA, and all communications between Park City and state, local or other federal authorities concerning the EE/CA. A copy of the administrative record file shall be maintained in the current information repository located at the Park City Library, 1255 Park Avenue, Park City, Utah.

XXXIII. INTEGRATION/APPENDICES/NOTICES

118. This Settlement Agreement and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those

expressly contained in this Settlement Agreement. The following appendices are attached to and incorporated into this Settlement Agreement:

Appendix A: Site Map
Appendix B: Silver Maple Claims Map
Appendix C: EE/CA Work Plan for OU4
Appendix D: NRDA Scope of Work for OU4
Appendix E: Major Deliverables

Unless otherwise provided in this Settlement Agreement, when written notice is required to be given or a report or other document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses set forth below, unless those individuals or their successors give notice of a change to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided.

As to EPA:

Kathryn Hernandez
Remedial Project Manager
Superfund Remedial Section, 8EPR-RA
US EPA, Region 8,
1595 Wynkoop Street
Denver, Colorado 80202
Phone: (303) 312-6101
Email: hernandez.kathryn@epa.gov

Andrea Madigan
US EPA, Region 8
1595 Wynkoop Street
Denver, Colorado 80202
Phone: (303) 312-6904
Email: madigan.andrea@epa.gov

As to UDEQ:

Mo Slam
UDEQ Project Manager
DERR P.O. Box 144840
Salt Lake City, Utah 84114-4840
Phone: (801) 536-4179
Email: mslam@utah.gov

Kari Lundeen
Permits, Compliance, and TMDL Branch
Division of Water Quality
Utah Department of Environmental Quality
P.O. Box 144870
Salt Lake City, Utah 84114-4870
Phone - 801-536-4335
Email - klundeen@utah.gov

Sandra K. Allen
Assistant Attorney General
P.O. Box 144873
Salt Lake City, Utah 84114-0873
Phone: (801) 536-4122
Email: skallen@utah.gov

As to the State Natural Resource Trustee

Brad T Johnson
State Natural Resource Trustee
195 North 1950 West
4th Floor
P.O. Box 144810
Salt Lake City, UT 84114-4810
Phone: (801) 536-4402
Email: btjohnson@utah.gov

Sandra K. Allen
Assistant Attorney General
DERR P.O. Box 144840
Salt Lake City, Utah 84114-4840
Phone: (801) 536-4122
Email: skallen@utah.gov

Mo Slam
State Trustee Technical Advisor
For Richardson Flat OU4
DERR P.O. Box 144840
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XXXIV. EFFECTIVE DATE

119. This Settlement Agreement shall be effective the day upon which it has been fully executed by all Parties.

The undersigned representatives certify that they are fully authorized to enter into the terms and conditions of this Settlement Agreement and to bind the Party they represent to this document.

Agreed this ____ day of _____, 2013.

PARK CITY MUNICIPAL CORPORATION:

By:_____

ATTEST:

City Recorder's Office

APPROVED AS TO FORM;

City Attorney's Office

The undersigned representatives certify that they are fully authorized to enter into the terms and conditions of this Settlement Agreement and to bind the Party they represent to this document.

Agreed this ____ day of _____, 2013.

BY:

Amanda Smith, Executive Director
Utah Department of Environmental Quality

BY:

Brad T Johnson
State of Utah Natural Resource Trustee

It is so ORDERED AND AGREED this _____ day of _____, 2013.

BY:

Bureau of Land Management
Title

BY:

Fish and Wildlife Service
Title

It is so ORDERED AND AGREED this _____ day of _____, 2013.

BY:

DATE: _____
Andrea Madigan, Supervisory Attorney
Legal Enforcement Program
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

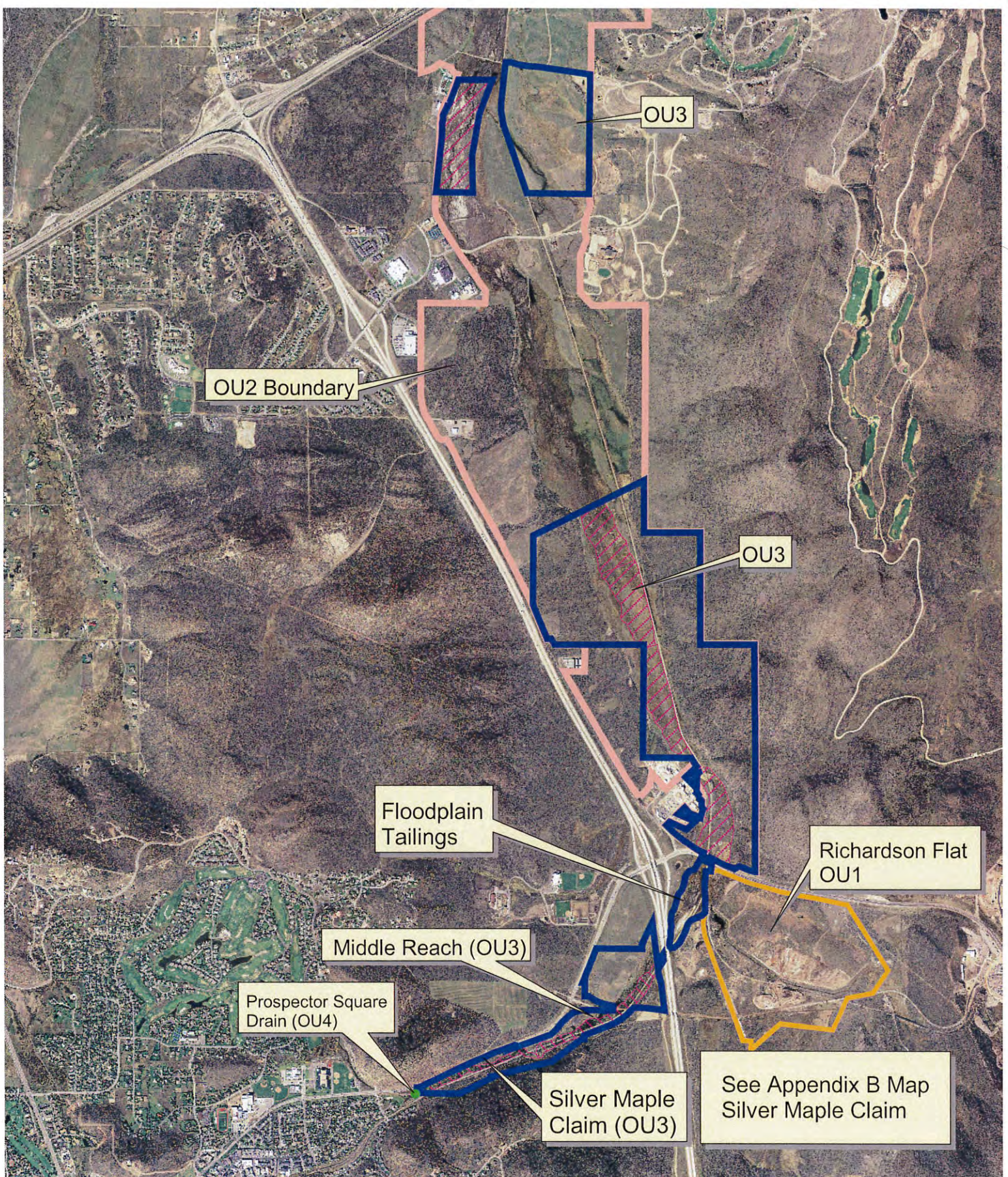
BY:

DATE: _____
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U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

BY:

DATE: _____
Bill Murray, Director
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EFFECTIVE DATE: _____



- Prospector Square Drain (OU4)
- LSC-MR (OU3) Boundary
- LSC Boundary (OU2)
- Richardson Flat (OU1) Study Area
- ▨ LSC OU3 Tailings
- ▨ Middle Reach OU3 Tailings

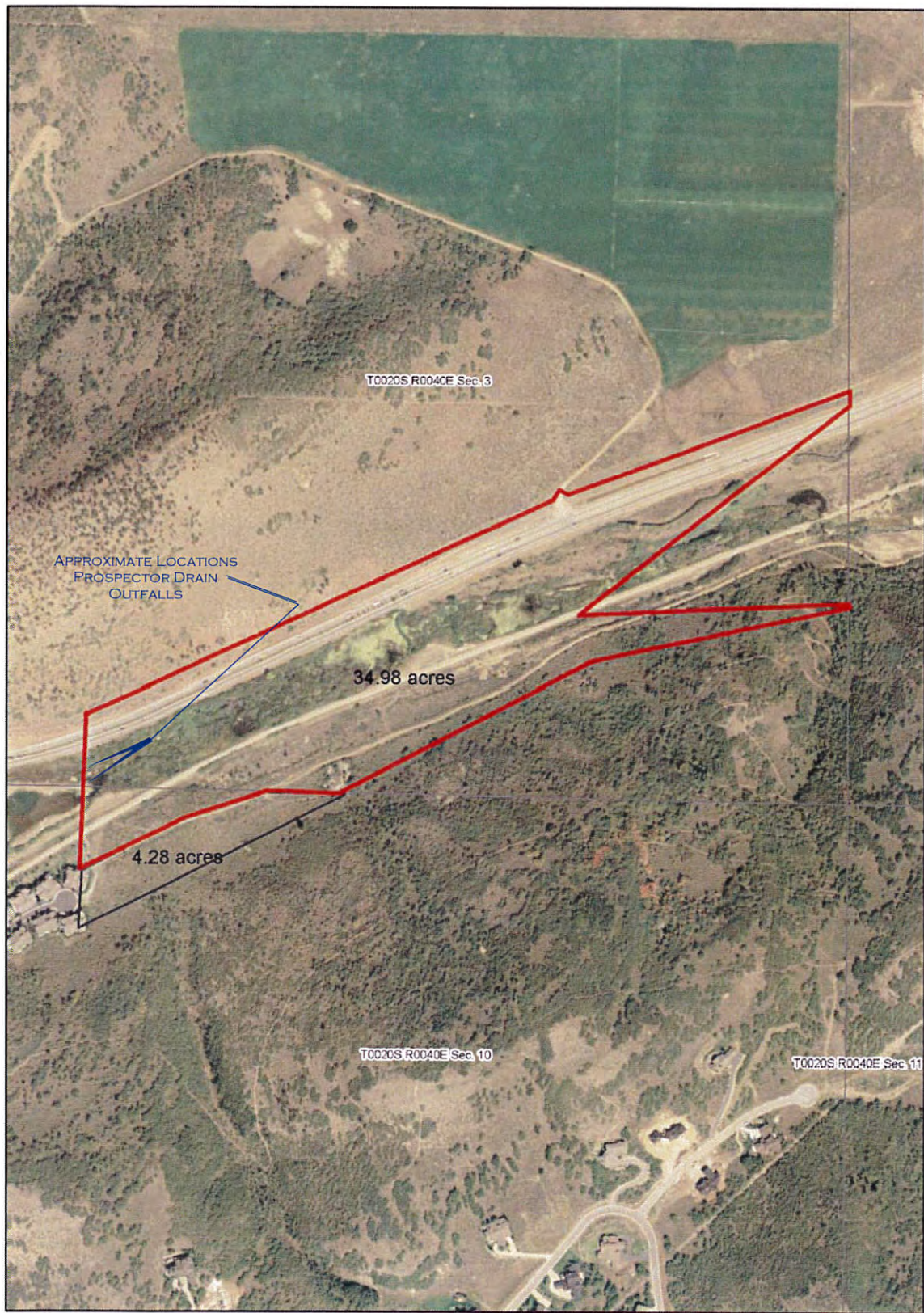
0 0.4 0.8 1.2 1.6 2 Miles

Appendix A

Map Date
02-24-2012



BLM Sliver Maple Parcel



SILVER MAPLE CLAIM
APPENDIX B

APPENDIX C
ENGINEERING EVALUATION / COST ANALYSIS
OU4 (PROSPECTOR DRAIN)

Park City, Utah

WORK PLAN

Prepared for

Park City Municipal Corporation



December 2012

Prepared by

URS Corporation
756 East Winchester, Suite 400
Salt Lake City, Utah 84107

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LIST OF ACRONYMS AND ABBREVIATIONS

amsl	above mean sea level
ANL	Argonne National Laboratory, Environmental Research Division
ARARs	Applicable or Relevant and Appropriate Requirements
bgs	below ground surface
BLM	U.S. Bureau of Land Management
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
CERCLIS	Comprehensive Environmental Response, Compensation, and Liability Information System
CFR	Code of Federal Regulations
cfs	cubic feet per second
CLP	Contract Laboratory Program
CSM	Conceptual Site Model
CWA	Clean Water Act
DERR	State of Utah Division of Environmental Response and Remediation
DOI	U.S. Department of the Interior
DQO	data quality objectives
EDDs	electronic data deliverables
EE	Engineering Evaluation
EE/CA	Engineering Evaluation / Cost Analysis
EPA	U.S. Environmental Protection Agency
ERA	Ecological Risk Assessment
ERM	Environmental Resources Management
°F	degrees Fahrenheit
FWS	U.S. Fish and Wildlife Service
gpm	gallons per minute
HHRA	Human Health Risk Assessment
HASP	Health and Safety Plan
IC	Institutional Control
IDW	investigation derived waste
LUC	Land Use Control
MCL	maximum contaminant level
MDL	method detection limit
µg/kg	micrograms per kilogram
µg/L	micrograms per liter
mL	milliliter
NCP	National Oil and Hazardous Substances Contingency Plan
ND	non-detect
NPL	National Priorities List

NRDA	Natural Resource Damage Assessment
O&M	Operation & Maintenance
OU3	Richardson Flat Tailings Site Operational Unit 3
OU4	Richardson Flat Tailings Site Operational Unit 4 (Prospector Drain)
Park City	Park City Municipal Corporation
PRGs	preliminary remediation goals
PRPs	Potentially Responsible Parties
QA	Quality Assurance
QC	Quality Control
QAPP	Quality Assurance Project Plan
RAA	Restoration Alternative Analysis
RAOs	remedial action objectives
RI/FS	Remedial Investigation / Feasibility Study
ROD	Record of Decision
SAP	Sampling and Analysis Plan
SETTLEMENT AGREEMENT	
	Administrative Settlement Agreement and Order on Consent for EE/CA
	Investigation and Removal Action
SOW	Scope of Work
TMDL	Total Maximum Daily Load
UDNR	Utah Department of Natural Resources, Division of Water Rights
UDEQ	State of Utah Department of Environmental Quality
URS	URS Corporation
UPCM	United Park City Mines Company
USCWG	Upper Silver Creek Watershed Group
VCP	State of Utah Voluntary Cleanup Program

1.0 INTRODUCTION

1.1 Background

This Work Plan is part of and incorporated into the Administrative Settlement Agreement and Order on Consent for EE/CA Investigation and Removal Action (Settlement Agreement) for the Richardson Flat Tailings Site in Park City, Utah. Unless otherwise expressly provided in this Work Plan, the terms used herein that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or such regulations. Whenever terms defined in the Settlement Agreement are used in this Work Plan, they shall have the same meaning assigned to them in the Settlement Agreement.

1.2 Purpose and Objectives

The purpose of this Engineering Evaluation / Cost Analysis (EE/CA) Work Plan is to present the site-specific approach Park City will employ to complete the site investigation and removal action development and analysis required for an EE/CA at OU4. The goals of an EE/CA are to gather sufficient data to allow for the development of removal action alternatives, to analyze the effectiveness of those alternatives, and to ultimately recommend a preferred alternative.

Park City is responsible for conducting the OU4 EE/CA as outlined in the Settlement Agreement.

In conjunction with the EE/CA, Park City is preparing a separate natural resources Assessment Plan and performing an assessment to develop an Injury Assessment and Restoration Alternatives Analysis as required under the Settlement Agreement. Such assessment and analysis is structured in a manner that is in coordination with and consistent with the provisions of the EE/CA prepared for OU4. Park City expects to use EE/CA data and analysis and to supplement that data with additional data collection performed concurrently with the work performed under this Work Plan to support the Injury Assessment and Restoration Alternatives Analysis.

1.3 Work Plan Organization

The EE/CA will present the results of the investigation activities conducted at the site, and evaluate non-time critical removal action alternatives to meet water quality objectives. The report will be organized into the following sections:

- Section 1 – Introduction: This section summarizes the historical background, presents the basis for the work, and outlines the remaining sections.
- Section 2 – Site Background and Setting: This section provides an overview of previous site investigations and the environmental setting.
- Section 3 – Project Planning: this section identifies data gaps and develops data quality objectives for performance of the EE/CA.

- Section 4 – Site Characterization Task: This section summarizes the approach Park City will use to characterize OU4, including the sampling required to fill data gaps and how the data will be analyzed and presented in the Site Characterization Report.
- Section 5 – Engineering Evaluation / Cost Analysis: This section summarizes the approach Park City will use to develop and analyze removal alternatives for the site, as well as presents some potential passive and active technologies to be considered in developing those alternatives.

The EE/CA report will be submitted to EPA in a phased approach starting with a Preliminary Engineering Evaluation (EE), which will summarize findings from the Site Characterization Report, and will present all of the evaluations performed up to and including the identification and evaluation of passive and active removal action alternatives necessary to meet the Remedial Action Objectives.

Once the EPA has approved the Preliminary EE, the Draft EE/CA will be prepared and submitted to EPA, which will add a comparative analysis of removal actions and identification of the preferred removal action alternatives.

Once the EPA has reviewed and commented on the Draft EE/CA, the Final EE/CA will be prepared, which will incorporate response to review comments, and the Final EE/CA will be submitted to the EPA.

- Section 6 – References: This section presents the references used in the document.

2.0 SITE BACKGROUND AND SETTING

Prospector Square is located adjacent to Silver Creek on the northeast side of Park City. Silver Creek flows through the historic district, then heads northeast along the south border of Prospector Square, continues through the wetlands downstream, passing U.S. Highway 40, and then at Keetley Junction turns north-northwest toward Interstate Highway 80. Figure 1-1, the Site Location and Vicinity Map, shows the general location of Prospector Square.

The Prospector Drain collects groundwater from the northeastern portion of Prospector Square and conveys it to a junction box where a portion is directed to an engineered wetland known as the Biocell for treatment and the remainder is directed into an underground bypass pipe (see Attachment A for the presumed design drawings of the drain). Both effluents discharge into the wetlands on or near the Silver Maple Claims. OU4 is the Prospector Drain and those areas within its zone of influence necessary to accomplish the response action goals.

2.1 Previous Site Investigations

Prospector Square has undergone several investigations beginning in 1975 with the groundwater and foundation study conducted to support economic development of the northeast subdivision of the former tailing area. The following sections summarize previous investigations and studies in chronological order.

Report of Groundwater and Foundation Investigation, Northeastern Portion of Prospector Square Development Site, Park City, Utah (Dames & Moore, 1975)

Dames & Moore conducted a groundwater and geotechnical investigation in 1975 to support economic development of the former tailings pond. The purpose of the study was to develop overall drainage, foundation and earthwork recommendations for utilization in planning the layout of the development and design of structures within the former tailings area.

The field work generally consisted of site reconnaissance and excavation of 10 test pits for geotechnical samples and lithologic descriptions. Based on the test pits results, it was determined that the former mine tailings, now capped, were found to cover most of the site at thicknesses ranging from 0.5 to 3 feet thick.

The former tailings consisted of loose, light grayish-brown to gray, fine to medium-grained silty sand. Underlying the former tailings was a compressible, fine grained, cohesive soil (clayey silt) extending down to approximately 3-8 feet bgs. Underlying the cohesive soils was a granular material ranging from medium-dense to dense, silty sand and sandy gravel with cobbles.

Groundwater was encountered ranging from near the surface in the eastern portions of the site to greater than 10 feet bgs in the western portions of the site. The shallow groundwater in the northeastern portion of the site was attributed in the study to the impedance of groundwater flow, caused partially by the constriction/accumulation of alluvium in the valley to the northeast and by the flattening of the Silver Creek stream gradient east of the site.

The general recommendations of the Dames & Moore Investigation are:

1. Silver Creek should be deepened along the southeastern and eastern portion of the site and to the northeast of the site to decrease flooding potential.
2. A subsurface drain (Prospector Drain) should be installed to help lower the water table within the northeastern portion of the Prospector Square tailings area.
3. The irrigation diversion channel (Pace Homer Ditch) near the northeastern portion of the site should be lined.
4. Foundations should not be established upon the compressible cohesive soil or tailings.

Hydrology of the Prospector Square Area, Summit County, Utah (USGS, 1988)

The United States Geological Survey (USGS), in 1988, conducted a study to characterize the former mine tailings, surface water system, stream sediment, and groundwater system in the vicinity of the former Silver Creek tailings site in the Prospector Square area. The results of the study were used by the EPA and the Utah Department of Health to determine if selected constituents are being released from the former tailings to Silver Creek and unconsolidated valley-fill aquifers.

The general findings of the study are:

1. The unconsolidated valley fill consists of poorly sorted mixtures of clay, silt, sand, and gravel with intermittent layers of clay. The hydraulic conductivity of the unconsolidated valley-fill aquifer ranged from 1 to 14 feet per day.
2. The generalized groundwater gradient was northeast towards the Pace Homer ditch. The depths to groundwater, shown in Figure 2-1, range from approximately 43 feet bgs on the west side of Prospector Square to 7 ft bgs on the east side of Prospector Square.
3. Pump tests indicated that groundwater located in unconsolidated valley-fill deposits did not move towards a pumped municipal well completed in consolidated rock aquifer.
4. Silver Creek surface water samples collected downstream of the former tailings site indicated that concentrations of dissolved and particulate cadmium, manganese, and zinc were greater than background levels.
5. Groundwater samples collected from six wells overlaid by tailings indicated that concentrations of dissolved and particulate cadmium, manganese, and zinc were greater than background levels.

Figure 2-1 presents the results from this study for the analytes that have a current screening value being used throughout Upper and Lower Silver Creek (Table 3-1). Many of the results in Figure 2-1 are elevated above those screening values. The method detection limits for cadmium and lead in groundwater are not low enough to determine if concentrations are above the screening value for some samples. Future water quality sampling must use EPA laboratory analytical method SW846-6020A to ensure proper detection limits are achieved.

Hydrology and Snowmelt Simulation of Snyderville Basin, Park City, and Adjacent Areas, Summit County, Utah – Technical Publication No.115 (USGS, 1998)

The USGS, in cooperation with the Utah Department of Natural Resources, Division of Water Rights, Park City, Summit County, and the Weber Basin Water Conservancy District, completed this study to assess the quantity and quality of the water resources of the Snyderville Basin and surrounding areas in Summit County. The study found that the consolidated rocks and unconsolidated valley fill in the study area form a heterogeneous, anisotropic, interconnected groundwater system.

During this study, observations from Silver Creek indicated that large stream flows were not generated by the spring snowmelt runoff in the spring of 1995. The lack of large snowmelt runoff within Upper Silver Creek suggests that most of the runoff from snowmelt seeps into the subsurface before reaching the Silver Creek stream channel. Silver Creek peak stream flows in 1995 occurred in March and reached a maximum flow of approximately 140 cfs.

Geology of Snyderville Basin, Western Summit County, Utah, and its Relation to Groundwater Conditions (UGS, 2001)

The Utah Geologic Society (UGS) performed a study in 2001. The purpose of this study was to provide geologic information important in assessing groundwater resources and siting of wells within the Snyderville basin. The study found that groundwater does not readily flow across shale beds, and hydraulic communication only occurs between wells and springs in the same stratigraphic groundwater compartments.

The lack of hydraulic communication among the shallow wells (completed in the valley fill aquifer) and the municipal wells (completed within the consolidated rock aquifer) within the Park Meadows and Prospector Square area indicates that little to no hydraulic communication is likely occurring between the valley-fill and the consolidated rock aquifer (Woodside Shale Formation) underlying Prospector Square.

QuickSite® Investigation for the Upper Silver Creek Watershed, Utah: Regional Analysis and Recommendations (ANL, 2004)

The objectives of this study were to characterize the hydrology of the Upper Silver Creek watershed; characterize the hydrologic system with respect to surface water and groundwater; develop conceptual models of the hydrologic systems for four CERCLIS sites (Marsac Mill, Prospector Square, Silver Maple Claims, and Richardson Flats; and use the models to reduce uncertainties, focus investigations and guide decisions on regulation and environmental remediation. The study identified a series of uncertainties and recommended additional monitoring, aquifer tests, and groundwater flow modeling.

Groundwater Flow Modeling for Prospector Square and Silver Maple Claims Tailings Sites (Kolm and Yan, 2005)

In 2005, the BLM conducted initial groundwater flow modeling for the Prospector Square and Silver Maple Claims (SMC) sites. The objective of the work was to quantitatively understand the site-specific groundwater flow system and evaluate the potential impacts of lining Silver Creek, lining the Pace Homer Ditch, and blocking flow through the Prospector Drain. The modeling indicated that groundwater from the Park City Formation (bedrock aquifer flow) is contributing to the alluvial aquifer below the Prospector Square pipe discharge and may affect groundwater flow into the southern boundary of Prospector Square-Silver Maple Claims. The modeling also indicated that: 1) lining Silver Creek would affect water levels and flow paths throughout the area; 2) lining the Pace Homer Ditch would affect the water levels and flow paths throughout the part of Silver Maple Claims evaluated; and 3) blocking flow through the Prospector Drain would affect water levels throughout the area.

Data-collection Activities by the US Geological Survey (USGS) in support of groundwater flow modeling being conducted by the Bureau of Land Management (BLM) near the Prospector Square Tailings Site, Park City, Utah (USGS, 2005)

The objectives of this study were to better define boundary conditions within the Prospector Square area to support the Bureau of Land Management (BLM) groundwater flow model. Generally, the study found a downward vertical gradient existing within the western and middle portions of the Prospector Square area, resulting in Silver Creek losing surface water to groundwater in this area. Silver Creek is likely gaining water within the eastern portions of the site from groundwater seepage.

2.2 Environmental Setting

The following subsections provide a description of the general environmental setting within and in the vicinity of Prospector Square. The description includes: geology and terrain, soils, climate, surface water, and groundwater.

2.2.1 Geology and Terrain

Prospector Square, located in Park City, Utah, is bounded by Silver Creek on the south and east, Kearns Boulevard and Park Meadows on the north, and Bonanza Boulevard on the west (see Vicinity and Site Location Map, Figure 1-1).

The terrain generally slopes north to northeast towards Park Meadows from Bonanza Boulevard. Elevations range from approximately 6820 feet above mean sea level (amsl) to approximately 6720 feet amsl at the northern portion of Park Meadows.

The consolidated strata under Prospector Square have undergone reverse faulting during the Sevier Orogeny, approximately 66 to 100 million years ago, resulting in structural deformation (folding and fracturing) of the consolidated rock.

Prospector Square is underlain by a thick layer (100+ feet) of unconsolidated glacial outwash and alluvium valley fill. The valley fill consists of poorly sorted gravels and cobbles intermixed with

silt, and clay. Consolidated rocks beneath the valley fill of Prospector Square primarily consist of Triassic Age Woodside Shale.

2.2.2 Soils

Prospector Square has been developed as residential and commercial property. The area is covered by imported topsoil and asphalt and concrete pavement. Underneath this cap lies the original tailings pond or other mine waste. Park City manages a strict soil ordinance as an institutional control that was initially enacted in 1988 and enhanced in 2003.

Below this imported surface material, a thin (0 to 3 feet) and discontinuous layer of mine tailings exists. Below the mine tailings, the native soils consist of clay, silt, sand, gravel, and cobbles.

2.2.3 Climate

The Prospector Square site receives 16-22 inches of average annual precipitation and has 80 to 100 days in the annual frost-free period (USDA, 2002). The average monthly temperature highs range from 37°F to 87°F with extremes ranging from over 100°F in summer months to below 0°F in winter months.

2.2.4 Surface Water

The Park City area is generally divided by a slight topographic ridge (Cemetery Hill) located southwest of Park meadows and west of Prospector Square. Drainage separates to the east towards Silver Creek, and north towards McLeod Creek.

Prospector Square is almost entirely drained by Silver Creek, a tributary to the Weber River (see Figure 1-1). The headwater to Silver Creek is located in Empire Canyon and flows north to the west side of Prospector Square, where a slight topographic ridge diverts Silver Creek to the east.

The headwater of McLeod Creek is located in Thaynes Canyon and flows northwestward becoming a tributary to East Canyon Creek. McLeod Creek drains the north western portion of Park City.

2.2.5 Groundwater

Prospector Square is a shallow basin that slopes gently to the northeast. Groundwater is present at 5-35 feet bgs. The groundwater gradient / flow direction likely mirrors the topographical gradient (approximately 0.015 feet per foot) to the east-northeast towards Park Meadows, the Pace-Homer Ditch, and the Prospector Drain.

Prospector Drain intercepts a portion of this groundwater. A portion of the groundwater collected by the Prospector Drain is conveyed to the Biocell and treated before discharging on or near OU3. The remaining portion is conveyed, via an underground bypass pipe, directly to an adjacent discharge point on or near OU3.

Figure 2-2 shows measured flows from Prospector Drain, and downstream flows at the Biocell and the bypass to Silver Creek.

Generally, a downward vertical gradient exists within the western and middle portions of the Prospector Square area, resulting in Silver Creek losing surface water to groundwater in this area (USGS, 2005). Silver Creek may gain water in the eastern portions of the site from groundwater seepage.

The unconsolidated valley-fill aquifer is likely greater than 100 feet thick within the Prospector Square area, and underlain by a consolidated rock aquifer comprised mainly of Woodside Shale formation and, to a lesser extent, the lower Thaynes Formation. The hydraulic conductivity of the unconsolidated valley-fill aquifer ranges from 1 to 14 feet per day (USGS, 1989). Impacts from past mining activities are likely limited to the uppermost portion of the shallow unconfined aquifer (USGS, 1989).

2.2.6 Wetlands and Ecological Systems

Prospector Drain discharge enters wetlands downstream on or near the Silver Maple Claims that is a part of OU3.

2.2.7 Ecological Systems

Prospector Drain discharges to the wetlands downstream on or near the Silver Maple Claims that is a part of OU3.

3.0 PROJECT PLANNING

3.1 Scope

The purpose of project planning is to define the type, extent and level of investigation and analysis necessary to characterize the site sufficiently to adequately inform the evaluation of appropriate removal actions for the Prospector Drain and to ensure that the removal action alternatives developed comply with the Remedial Action Objectives (RAOs).

The scope must identify any data gaps in existing available information, as well as define the data quality objectives (DQOs) required for the project. A Conceptual Site Model will be submitted to the EPA for comment and approval with or prior to the Sampling and Analysis Plan submittal.

3.2 Identification of Data Gaps

A better understanding of the area of groundwater influenced by the Prospector Drain is needed in order to evaluate the incremental contribution of its discharge to downstream contamination. Data gaps identified in this understanding include:

- Zone of influence of the Prospector Drain.
- Groundwater seasonal variations within the zone of influence of the Prospector Drain.
- Sources of water contributing to the shallow groundwater within the zone of influence of the Prospector Drain.
- The surface water and groundwater zone of influence on the Prospector Drain.
- Contributions from Silver Creek, Pace-Homer Ditch, the Kearns Boulevard swale, or other surface water sources into the Prospector Drain.
- Baseline and seasonal water quality data for Silver Creek at several locations upstream of the Prospector Drain outfall, to establish the background values for constituents of concern (arsenic, cadmium, lead and zinc).
- Seasonal water quality data for the Prospector Drain and Biocell outfalls for the primary constituents of concern.
- Seasonal water quality data for the groundwater influence on the Prospector Drain.
- Seasonal water quality data in Silver Creek and the shallow groundwater in the zone of influence to the Prospector Drain.

3.3 Development of Data Quality Objectives for Performance of the EE/CA

DQOs define the type, quantity and quality of data necessary to meet the project objectives (EPA, 2000). There are several project-specific DQOs for OU4:

- Determine the area of groundwater influence on the Prospector Drain.
- Determine the time-variable contaminant loads and concentrations from the Prospector Drain and Biocell discharges to the downstream Silver Maple Claims.
- Determine the surface water and shallow groundwater sources and contributions to contaminant loading in the reaches of Silver Creek that influence the Prospector Drain. This includes the area of Silver Creek adjacent to the Silver Creek Tailings area that has an influence on the Prospector Drain.
- Determine the influence of the Pace Homer Ditch on the Prospector Drain.

Table 3-1 presents the established screening values used to evaluate surface water and groundwater at the Site.

Table 3-1: Established Screening Values for Heavy Metals					
Heavy Metal	Soil¹	Sediment¹	Surface Water	Shallow Groundwater	Groundwater
Pb	500 mg/kg	310 mg/kg	2.50 µg/L	2.50 µg/L	15.0 µg/L
As	100 mg/kg		150 µg/L	150 µg/L	10.0 µg/L
Zn			118 µg/L	118 µg/L	5000* µg/L
Cd			0.250 µg/L	0.250 µg/L	5.0 µg/L
NOTES	Soil samples: • 0-2" surface • 2-12" sub-surface	Use sediment values when sampling in irrigation ditches, drainages and any wetlands.	Dissolved concentrations. Hardness value in LSC surface water = 100 mg/L	Dissolved concentrations.	Drinking Water MCLs. *Zinc does not have an MCL but a secondary MCL

¹ Soil values are included for informational purposes to assist in evaluation of passive removal alternatives. Sediment values are included for the sake of completeness.

Note: Water samples shall be analyzed by analytical method SW846-6020A to meet the required detection limits for cadmium. Soil/sediment samples can be analyzed by analytical method SW846-6010C.

3.3.1 Field Data Quality Objectives

The objectives of the site characterization are to physically and chemically define the zone of influence contributing to groundwater discharges from the Prospector Drain and Biocell outfalls and to gather data sufficient to inform the evaluation of appropriate removal alternatives for the Prospector Drain.

A second objective is to generate adequate data to conduct a streamlined risk evaluation for OU4.

3.3.2 Laboratory Data Quality Objectives

Laboratory DQOs will be developed and presented in the Site QAPP after the Effective Date of the Settlement Agreement. All samples will be analyzed by a certified laboratory. All analytical data will be validated by a URS chemist, per the project QAPP, prior to reporting results, to ensure that all data is defensible and useful for the intended purpose. In addition, EPA will be sent electronic data deliverables and Level 4 QA/QC packages directly from the laboratory to allow EPA to confirm data validation for all sample results.

3.4 Community Relations

EPA will develop and implement community relations activities for OU4. Park City shall, as requested by EPA, assist EPA by providing information regarding the Site and/or OU4 history, participating in public meetings, developing graphics, placing newspaper ads developed by EPA, or distributing fact sheets developed by EPA.

4.0 SITE CHARACTERIZATION TASK

Site characterization is necessary in order to evaluate appropriate removal alternatives for the Prospector Drain. A Site Characterization Report will be submitted to EPA for comment and approval prior to evaluating removal action alternatives for Prospector Drain.

4.1 Develop SAP (FSP and QAPP) and HASP

The Sampling and Analysis Plan (SAP) (comprised of the Field Sampling Plan [FSP] and Quality Assurance Project Plan [QAPP]) and the HASP will be prepared within ninety days after the Effective Date of the Settlement Agreement. The SAP and HASP will be submitted to and approved by EPA prior to field mobilization.

4.2 Field Investigation

The proposed field investigation at the site consists of a combination of surface water sampling, groundwater sampling, and soil sampling, as summarized below.

- Quarterly collection of chemical and physical (stream flow and elevation) data from four surface water sample locations, as shown on Figure 4-1.
- Monthly collection of surface water level data from 7 measuring points in Silver Creek and 4 measuring points in the Pace Homer Ditch, as shown on Figure 4-1. If there is no flow at the lower surface water monitoring location, the sample will be collected and flow monitored above it at Wyatt Earp Drive.
- Surface water chemical sampling and associated flow measurement will be conducted quarterly, with surface water elevation measurements collected monthly.
- Installation of a network of at least 24 piezometers (shown in Figure 4-1), followed by data collection from the piezometers. Should the initial water level data collected from these piezometers indicate that the groundwater zone influencing the Prospector Drain has not been delineated, additional piezometers will be installed.
- Soil sample profile logs and analytical chemistry composite soil samples will be collected at four foot intervals and, in general, from different stratigraphic units, to the maximum depth of the piezometer (anticipated to be 25 feet).
- Surface water collection from the outfalls for the Biocell and the Prospector Drain bypass.

The intent of the investigation is to gain a better understanding of the local groundwater regime adjacent to the Prospector Drain (see Attachment A for a presumed design drawing of the Prospector Drain), to define the hydrogeologic area that the drain captures, and to gather data to support evaluation of removal efforts that may be implemented to reduce metal concentrations in the outfall from the Biocell and Prospector Drain Bypass.

4.2.1 Proposed Piezometer Installation

Piezometers will be installed in the area of the Prospector Park subdivisions to better understand the local groundwater in the area of the Prospector Drain. According to available data (USGS, 1989, pages 51-56), depth to groundwater across Prospector Square varies from near 40 feet bgs in the western portion to less than 5 feet bgs in the eastern portion. Installation of piezometers in areas where depth to groundwater is less than 30 feet bgs can be accomplished using a direct-push drill rig. Installation of piezometers in areas where depth to groundwater is greater than 30 feet bgs will require use of a different drill rig, likely sonic, due to the depth and geology.

Therefore, since mobilization of two different drill rigs would be required in order to install piezometers across the length of Prospector Square, piezometers will be installed in phases, if necessary, with the shallower to medium depth piezometers (less than 30 feet in depth) installed and surveyed first.

It is anticipated that installation of the shallow to medium depth piezometers, using the direct-push drill rig, will provide sufficient data to delineate the shallow groundwater influence on the Prospector Drain. However, should initial groundwater depth data collected after installation of these piezometers indicate that delineation has not occurred, Park City will work with EPA and UDEQ to identify any additional deeper locations required and will then mobilize the sonic drill rig to install those piezometers.

A total of twenty three (24) shallow to medium depth 1-inch diameter piezometers will be installed as shown on Figure 4-1, using 3-inch diameter direct-push rods to the depth required to reach the groundwater table, in accordance with the specifications included in Attachment B. The piezometers will be installed in the late spring/early summer, during a period of high groundwater levels. All piezometers will be screened across the water table, taking into consideration its seasonal fluctuation. Three (3) of the piezometers will be hand augered in the bottom of Silver Creek to a maximum depth of 5 feet below ground surface (bgs) to better understand base flow within the coarse grain sediments of Silver Creek during low water periods (Figure 4-1). Elevation measurement points will be established along Silver Creek and the Pace Homer Ditch to facilitate an understanding of water levels. Surface water elevations will be monitored on a monthly basis at the time of piezometer elevation monitoring.

Soil profiles will be continuously logged during installation of the piezometers and composite soil samples will be collected at four foot intervals (and, in general, from different stratigraphic units) to the maximum depth (anticipated to be 30 feet) of each boring.

Piezometers and surface water measuring points will be surveyed by a Utah Licensed surveyor. Investigation-derived waste (soil cuttings and purge water) will be appropriately handled for disposal.

4.2.2 Proposed Data Collection and Sampling

During the installation of the 24 shallow to medium-depth, and any additional piezometers, soil profiles will be collected with soil liner sleeves that will be cut open to fully view and log the soil profile and also allow for composite soil samples to be collected at four foot intervals (and, in general, from different stratigraphic units), per the project SAP.

Data collection and sampling will be conducted for a period of one year to physically and chemically characterize surface water, OU4 discharge water (comprised of the discharge at the outfalls from the Biocell and the Prospector Drain Bypass), and groundwater in order to evaluate the sources of flow for OU4 and their contaminant loading throughout the year. Surface water flow will be monitored at the four surface water locations shown on Figure 4-1 to aid in the estimation of the relative contribution of the Drain to downgradient areas.

Water levels will be measured monthly at all piezometers and surface water elevation measuring points shown on Figure 4-1 in accordance with the project SAP. This data will be collected and evaluated monthly in order to determine the temporal effect on the shallow groundwater at OU4 and determine the area contributing flows to Prospector Drain.

Quarterly groundwater, surface water, and discharge water sampling will be conducted at the piezometers and sample points shown on Figure 4-1 in accordance with the project SAP. Samples will be collected and analyzed for metals as described below, and water quality parameters (temperature, dissolved oxygen, pH, hardness, conductivity, total suspended solids, nitrates, and alkalinity) will be recorded for each sample location. Surface water flow measurements will be collected quarterly at all surface water sampling locations. This data, in conjunction with the results of the metals analyses described below, will be used to evaluate contaminant loading to the Prospector Drain and from OU4, comprised of discharges from the Prospector Drain Bypass and Biocell outfalls and facilitate the site characterization effort. This sampling will be conducted quarterly, as opposed to monthly, because contaminant concentrations are not expected to fluctuate significantly on a monthly basis.

4.3 Sample Analysis and Data Validation

Laboratory preparation and analytical methods will be consistent throughout the project to facilitate comparison with agency split samples. All detection limits will be sufficient to compare to the screening levels shown in Table 3-1. Groundwater and surface water samples will be analyzed for the heavy metals (dissolved and total concentrations) shown in Table 4-1 by method SW846-6020A, in accordance with the project QAPP. These analytes are the metals for which there is a Utah aquatic wildlife water quality standard in the Utah Administrative Code R317-2-7. The samples will also be analyzed for temperature, dissolved oxygen, pH, hardness, conductivity, total suspended solids, nitrates, and alkalinity.

Soil samples collected during piezometer installation will be analyzed for the heavy metals shown in Table 4-1 (with the exception of mercury) by method SW846-6010C. All soil sample analysis will be conducted in accordance with the project QAPP.

Table 4-1: Summary of Analytes per Method in Groundwater Samples (Total and Dissolved) and Soil Samples		
Analyte	Preparation Method	Analytical Method
Aluminum	SW846 3050 or 3051 for soil 3010A for groundwater	SW846 6010C for soil 6020A for groundwater
Arsenic		
Barium		
Cadmium		
Calcium		
Chromium		
Copper		
Lead		
Magnesium		
Nickel		
Selenium		
Silver		
Zinc		
Additional Groundwater Analyte (Total and Dissolved)		
Mercury	SW846 7470A	SW846 7470A

All sample results will be provided to the EPA in electronic data deliverable format with corresponding Level 4 Quality Assurance/Quality Control package from the laboratory. EPA will perform data validation in accordance with the project QAPP to ensure data usability according to the data quality objectives.

4.4 Data Evaluation

Monthly groundwater level data will be evaluated to determine depth to groundwater and groundwater elevations at each sample point. This data will be contoured on a monthly basis and be used to create a monthly potentiometric groundwater surface, and to determine the extent of groundwater contributing to OU4 (comprised of the Biocell and Prospector Drain Bypass outfalls).

Quarterly groundwater sample data will be tabulated and used to evaluate overall and seasonal contaminant loading to the OU4 discharge points and the groundwater and surface water in the immediate vicinity of the Prospector Drain. Sample results will be statistically analyzed (to the extent possible based on statistical method), to determine any spatial or temporal trends. Surface water and Prospector Drain metals loadings will be calculated based on the quarterly sampling data. In addition all sample results will be compared to the established Silver Creek screening values presented in Table 3-1.

Composite soil samples collected during piezometer installation will be analyzed by analytical chemistry at a four foot interval (and, in general, from different stratigraphic units). Sample

profile results will be plotted on a site map to facilitate evaluation of passive and active removal actions for OU4.

The relative contribution of the Prospector Drain to down gradient areas will be estimated from a mass loading analysis using Drain, surface water and groundwater data. The Drain and surface water mass loading calculations will use Biocell, bypass, and surface water concentration and flow data collected during the site characterization. The groundwater mass loading calculation will use concentration and gradient data collected during the site characterization, in conjunction with the a hydraulic conductivity value estimated from the 1989 USGS Prospector Square area hydrology study (USGS, 1989).

4.5 Streamlined Human Health and Ecological Risk Evaluation

Park City recognizes that the quality of the water discharging from OU4 via the Biocell and the Prospector Drain bypass requires the actions being initiated with this EE/CA Work Plan. Park City will conduct a Streamlined Risk Evaluation for the water discharging from OU4 as outlined in EPA's *Guidance on Conducting Non-Time Critical Removal Actions Under CERCLA* (EPA, 1993).

As stated in the EE/CA guidance manual, the Streamlined Risk Evaluation (SRE) should focus on the specific problem that the removal action is intended to address. Therefore, since the removal action is intended to address the contamination discharging from the Prospector Drain, it is appropriate that the Streamlined Risk Evaluation only addresses that contamination. However, it is important that the SRE provide information on contaminant source(s) and locations, environmental media impacted, degree of site contamination (quantity, concentrations), potential receptors, and valuable natural resources. The Conceptual Model will be used to integrate the above information for the Prospector Drain and will be based on information gathered during the Site Characterization.

The objectives of the SRE are to:

- Identify principal chemicals of concern and exposure pathways from the Prospector Drain bypass and Biocell outfalls,
- Identify risks to human health and the environment from Prospector Drain in the absence of a removal action that should be addressed.

To address the objectives, the SRE may use analytical data collected from the Biocell and bypass during the site characterization and compare the appropriate values to the screening levels established for heavy metals in Table 3-1 to provide an assessment of the environmental and health effects associated with the OU4 outfalls.

The results of the Streamlined Risk Evaluation and the results of the mass loading analysis, conducted as part of data evaluation, will be discussed in the risk section of the EE/CA to inform a risk management decision.

4.6 Site Characterization Reporting

Site characterization reporting comprises the interim reports required to provide EPA and UDEQ a timely notification of site activities, as well as the more comprehensive Site Characterization Report that will be the basis for the subsequent Preliminary EE Report. Both of these site characterization reporting tasks are described below.

4.6.1 Interim Site Characterization Summary Reports

The following interim summary reports will be prepared and submitted to EPA and UDEQ:

- An interim Piezometer Installation report which will include a summary of installation activities, boring logs, survey data, development logs, and IDW disposal documentation.
- Monthly letter reports summarizing the results of each monthly water level collection effort, including potentiometric mapping and quarterly letter reports summarizing the results of each quarterly sampling effort.
- Monthly letter reports will include a summary of Prospector Drain Bypass and Biocell Outfall flows and laboratory reports.

4.6.2 Site Characterization Report

At the culmination of the year-long data collection and sampling effort, a Site Characterization Report will be produced that summarizes all of the field activities, presents and analyzes all of the data, presents the nature and extent of contamination based on that analysis, and provides a fate and transport evaluation. The Site Characterization Report shall include an outline for the EE/CA and shall be submitted within 90 days of Park City's receipt of all analytical laboratory data. The Site Characterization report will be included as an appendix to the EE, Draft EE/CA, and Final EE/CA reports.

5.0 ENGINEERING EVALUATION/COST ANALYSIS REPORT TASKS

The EE/CA uses information presented in the Site Characterization Report (which will be included in the EE/CA appendix), in conjunction with the Remedial Action Objectives (RAOs) developed by EPA and UDEQ to identify and evaluate alternatives, such that the most cost effective and appropriate removal action may be selected for OU4. The tasks necessary to perform the EE/CA are presented below.

5.1 Identification of Remedial Action Objectives

This section will be authored collectively by EPA and UDEQ to adequately address site conditions based on the findings of the Site Characterization Report.

5.2 Identification of Potential Removal Action Technologies

Both passive and active technologies will be identified for use in developing removal action alternatives. Examples of potential technologies are presented below. However, the technologies included in the EE/CA will be based on the results of the Site Characterization Report and the RAOs developed by EPA and UDEQ.

5.2.1 Passive Technologies to Reduce Impacted Flows to Prospector Drain

As part of the analysis of data collected during the project, actions may be considered singly or in combination that reduce the groundwater inflows into and through the Prospector Drain zone of influence that would reduce metal contamination in the drain, and thus the mass transport in the Biocell influent/effluent and bypass. These may include, depending on the results of the Site Characterization Report, but are not limited to:

1. Lining Silver Creek in the upstream losing segment close to Prospector Square.
2. Lining the Kearns Boulevard swale to reduce infiltration into Prospector Drain.
3. Lining Pace-Homer Ditch to reduce infiltration into Prospector Drain.
4. A hydraulic cutoff wall in one or more areas where groundwater is entering the zone of influence of the Prospector Drain.
5. Improvements to surface runoff management.
6. Irrigation management.

5.2.2 Active Technologies to Reduce Contaminant Discharges from Prospector Drain

There are several technologies that in combination can be used to treat discharges from Prospector Drain in order to meet water quality requirements. The exact mix of processes

depends on the constituents that must be removed since removal performance varies by metal. Metals to be removed may include arsenic, cadmium, lead and zinc but the specific contaminants of concern for removal actions will be determined during performance of the EE/CA.

The removal processes may include but are not limited to:

- Processes to precipitate / settle / filter dissolved and suspended metals through coagulation and/or pH adjustment.
- Filtration processes via activated media, conventional media, or membranes (microfiltration, ultrafiltration, nanofiltration, or reverse osmosis).
- Adsorption processes via various types of activated media (greensand or similar, granular activated carbon).
- Electrodialysis and ion exchange.
- Effluent conditioning including pH / alkalinity adjustment.
- Adaptation or expansion of the Biocell in conjunction with other treatment steps.

Each mix of technologies will be evaluated for its ability to comply in a consistent manner with water quality requirements, ease of operation, and the attendant capital and O&M costs.

5.3 Treatability Study – Bench Scale or Pilot Testing

The need for treatability studies (bench scale or pilot testing) will be determined based on the results of the site investigation and the potential removal action technologies identified. If such studies or tests are indicated, an appropriate work plan to accomplish that task will be developed and submitted by Park City to EPA and UDEQ for approval.

5.4 Identification and Evaluation of Removal Action Alternatives

A range of removal action alternatives will be developed that consist of the identified applicable technologies, individually or in combination, as appropriate. The alternatives will address the RAOs developed for OU4 by EPA and UDEQ and will be evaluated based on their compliance with the EPA and UDEQ identified Applicable or Relevant and Appropriate Requirements (ARARs), effectiveness, implementability, and cost.

5.5 Preliminary Engineering Evaluation Report

A Preliminary EE Report will be submitted to EPA and UDEQ for review, comment and approval prior to incorporating Cost Analysis and preparing the Draft EE/CA. This Preliminary EE will ensure that the agencies are in agreement with the proposed engineering and/or removal action alternatives prior to conducting detailed comparative and costs analysis. The Preliminary EE shall be submitted within 60 days after EPA approval of the Site Characterization Report. The Parties acknowledge that additional time may be needed if treatability studies are required.

5.6 Comparative Analysis of Removal Action Alternatives

A comparative analysis of the alternatives will be conducted to evaluate the relative performance of the alternatives with respect to effectiveness, implementability, and cost. The purpose of this analysis is to identify the relative advantages and disadvantages of the alternatives to assist in the selection of the appropriate removal action alternative.

5.7 Preferred Removal Action Alternative

Based on the evaluation and comparative analysis of removal action alternatives, the preferred removal action alternative will be identified. The preferred removal action may incorporate one or more passive and active technologies to achieve the RAOs.

5.8 EE/CA Report

The EE/CA report will be submitted to EPA in a phased approach in accordance with Paragraph 53 of the Settlement Agreement, starting with a Preliminary EE, which will present all of the evaluations performed up to and including the identification and evaluation of passive and active removal action alternatives, as described through Section 5.4 above.

Within 60 days after the EPA has approved the Preliminary EE, a Draft EE/CA will be completed and submitted to EPA, which will add a comparative analysis of removal actions, which includes the cost analysis, and identification of the preferred removal action alternatives, as described in Sections 5.6 and 5.7 above, to the Preliminary EE.

Once EPA has reviewed and commented on the Draft EE/CA, a Final EE/CA will be prepared, responding to review comments, and will be submitted to the EPA.

6.0 REFERENCES

ANL, 2004. Argonne National Laboratory, *QuickSite® Investigation for the Upper Silver Creek Watershed, Utah: Regional Analysis and Recommendations*, 2004.

D&M, 1975. Dames & Moore, *Report of Groundwater and Foundation Investigation, Northeastern Portion of Prospector Square Development Site, Park City, Utah*, 1975.

EPA, 1988. United States Environmental Protection Agency, *Guidance for Conducting Remedial Investigation and Feasibility Studies Under CERCLA*, October 1988.

EPA, 1993. United States Environmental Protection Agency, *Guidance on Conducting Non-Time-Critical Removal Actions under CERCLA*, August 1993.

EPA, 2000. United States Environmental Protection Agency, *Guidance for the Data Quality Objectives Process*, August 2000.

EPA, 2003. United States Environmental Protection Agency, *Draft Park City Environmental Management System (EMS) dated August 18, 2003*, letter to Park City Municipal Corporation, dated September 29, 2003.

UDNR, 1998. Utah Department of Natural Resources, Technical Publication No.115, *Hydrology and Snowmelt Simulation of Snyderville Basin, Park City, and Adjacent Areas, Summit County, Utah*, 1998.

UGS, 2001. Utah Geological Survey, *Geology of Snyderville Basin, Western Summit County, Utah, and its Relation to Groundwater Conditions*, 2001.

USGS, 1989. United States Geological Survey, *Hydrology of the Prospector Square Area, Summit County, Utah*, 1989.

USGS, 2005. United States Geological Survey, *Data-Collection Activities by the USGS in Support of Groundwater Flow Modeling Being Conducted by the Bureau of Land Management (BLM) near the Prospector Square Tailings Site, Park City, Utah*, 2005.

Figures



Path: T:\Park City\24585232 - Mine Waste Services\09_Data\Maps\EECA_WorkPlan\Revised\Fig1-1_Vicinity_SiteLocationMap.mxd
 Aerial Source: 2011 National Agricultural Imagery Program (NAIP)

-  Vault
-  Stream / River
-  Approximate Location of Drain
(Dashed where Perforated)
-  Prospector Square Area

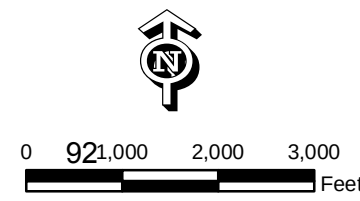
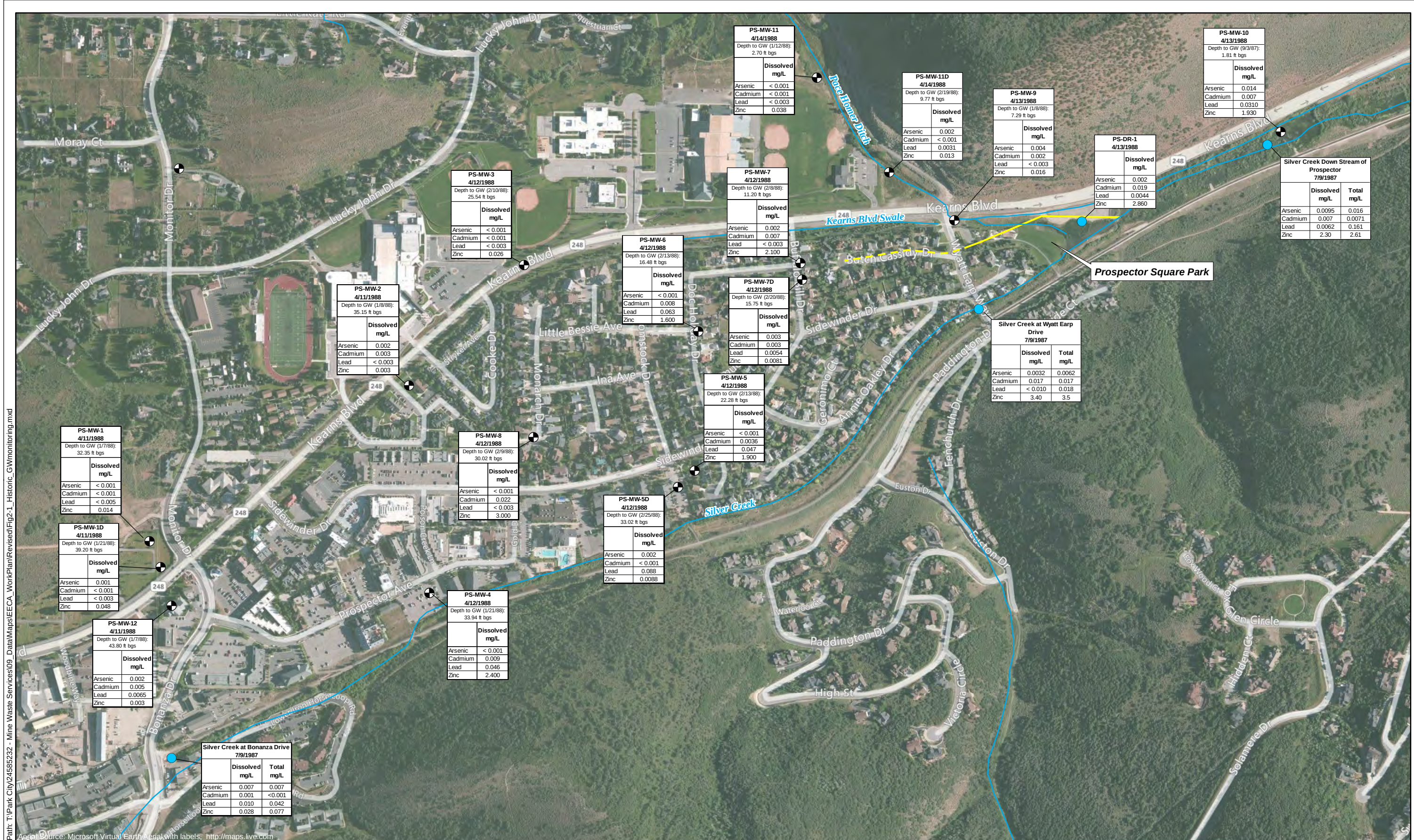


Figure 1-1
 Vicinity and Site Location Map
 Park City
 Summit County, Utah

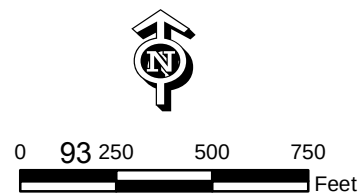




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Aerial Source: Microsoft Virtual Earth Aerial with labels: <http://maps.live.com>

- Approximate Monitoring Well Location
- Approximate Surface Water Sample Location
- Approximate Location of Drain (Dashed where Perforated)

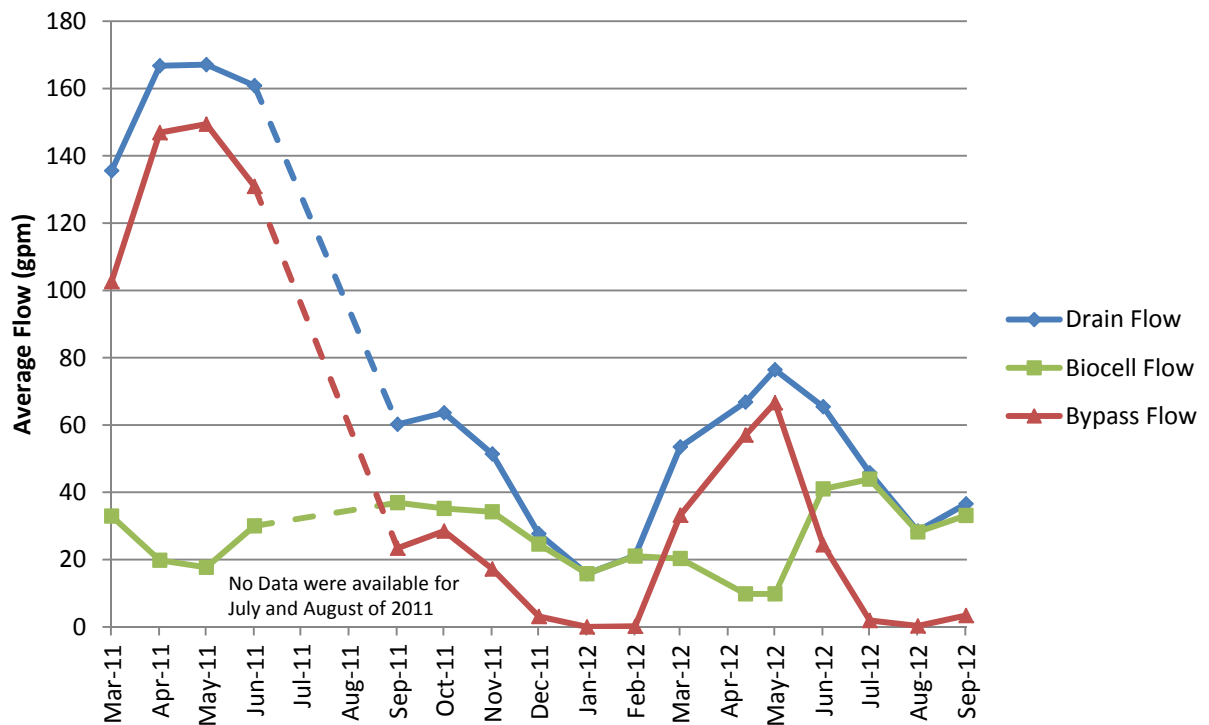
Well Data Source:
Hydrology of the Prospector Square Area, Summit County, Utah (USGS 1989)



Notes:
- ft bgs = feet below ground surface
- GW = groundwater
- GW depth shown is the deepest measured during the study and was measured on the date shown.

Figure 2-1
Historic Groundwater Monitoring and Water Quality Data
Park City
Summit County, Utah





OU4 Average Flows			
Year/Month	Prospector Drain (gallons per minute)	Bio-Cell (gallons per minute)	Bypass to Silver Creek (gallons per minute)
2011			
March	135.6	32.9	102.6
April	166.8	19.8	146.9
May	167.1	17.7	149.4
June	160.9	30.0	130.9
July	No Data	No Data	No Data
August	No Data	No Data	No Data
September	60.2	36.9	23.4
October	63.6	35.2	28.5
November	51.4	34.2	17.2
December	27.7	24.6	3.1
2012			
January	15.8	15.8	0.0
February	21.2	21.0	0.2
March	53.5	20.3	33.2
April	66.8	9.8	57.0
May	75.4	9.8	66.6
June	65.4	41.0	24.4
July	45.8	43.9	1.9
August	28.5	28.2	0.3
September	36.6	33.1	3.4

Figure 2-2
Recent Prospector Drain
Related Flow Data
Park City
Summit County, Utah



Path: T:\Park City\24585232 - Mine Waste Services\09_Data\Maps\IECA_WorkPlan\Revised\Sep2012\Fig4-1_SamplePoints.mxd
Aerial Source: Microsoft Virtual Earth Aerial with labels, http://www.bing.com/maps/

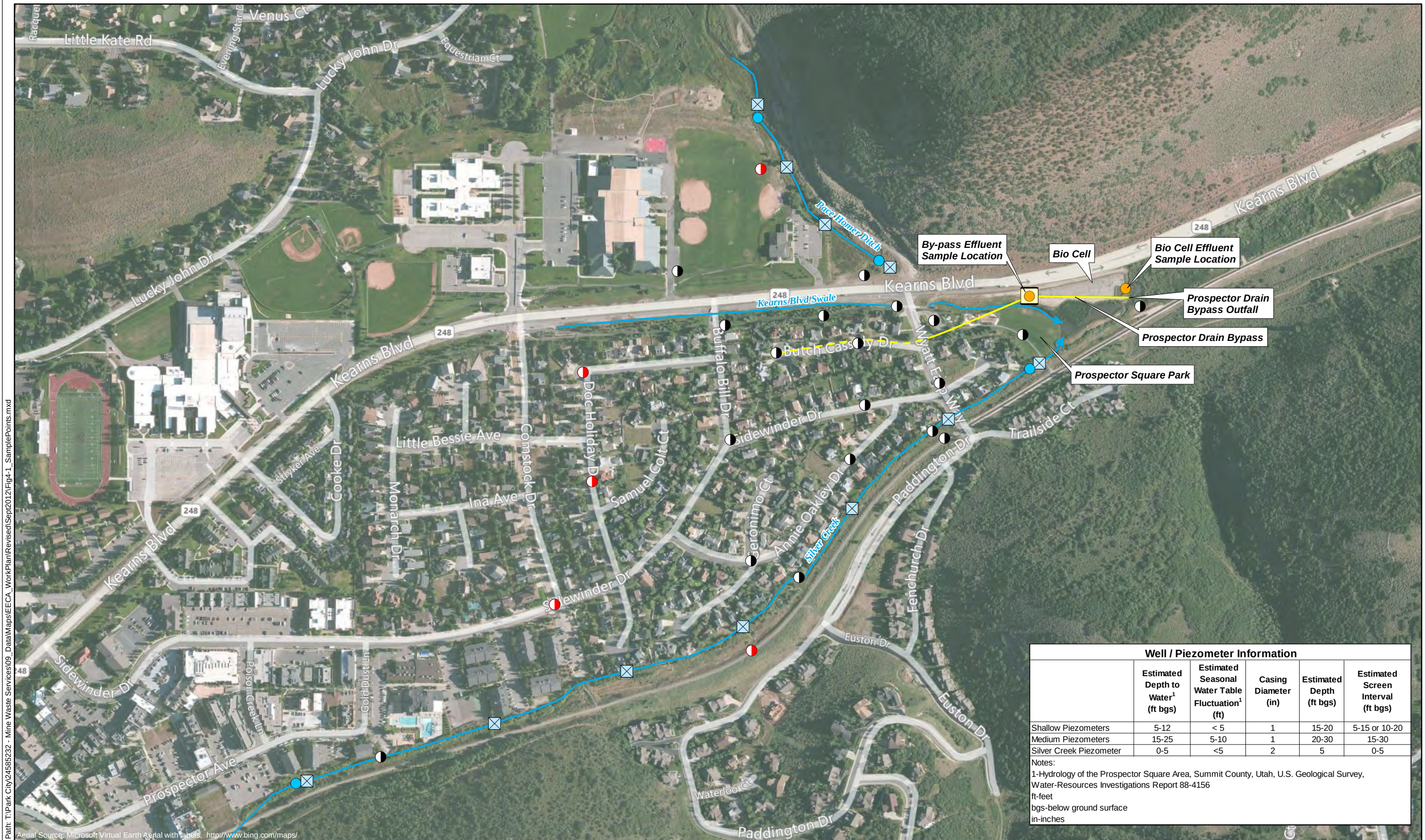
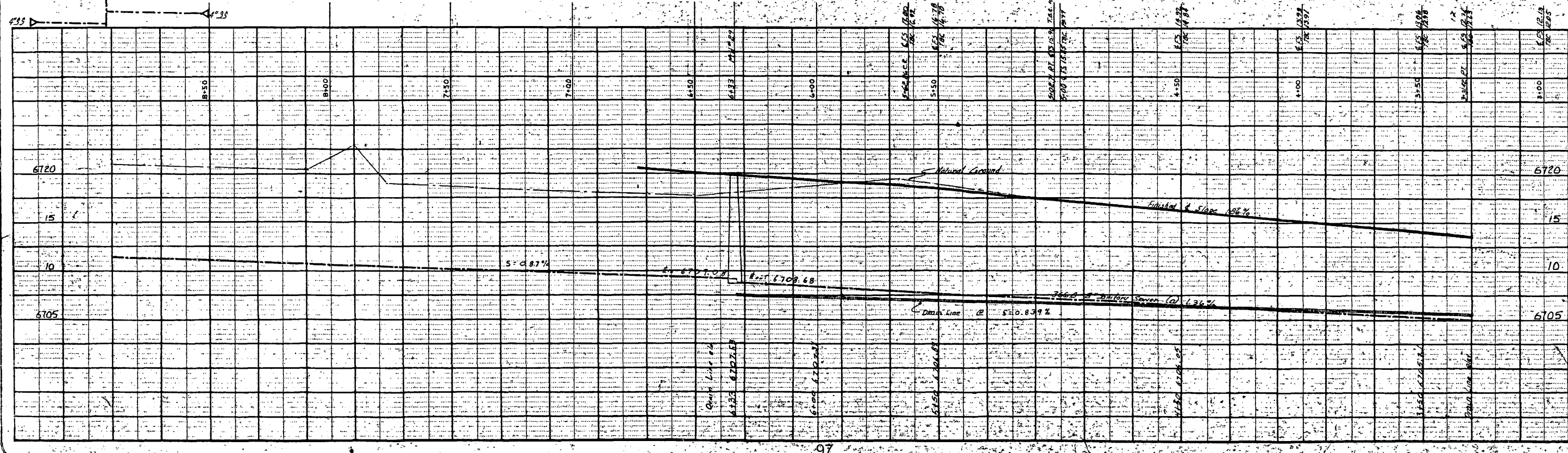
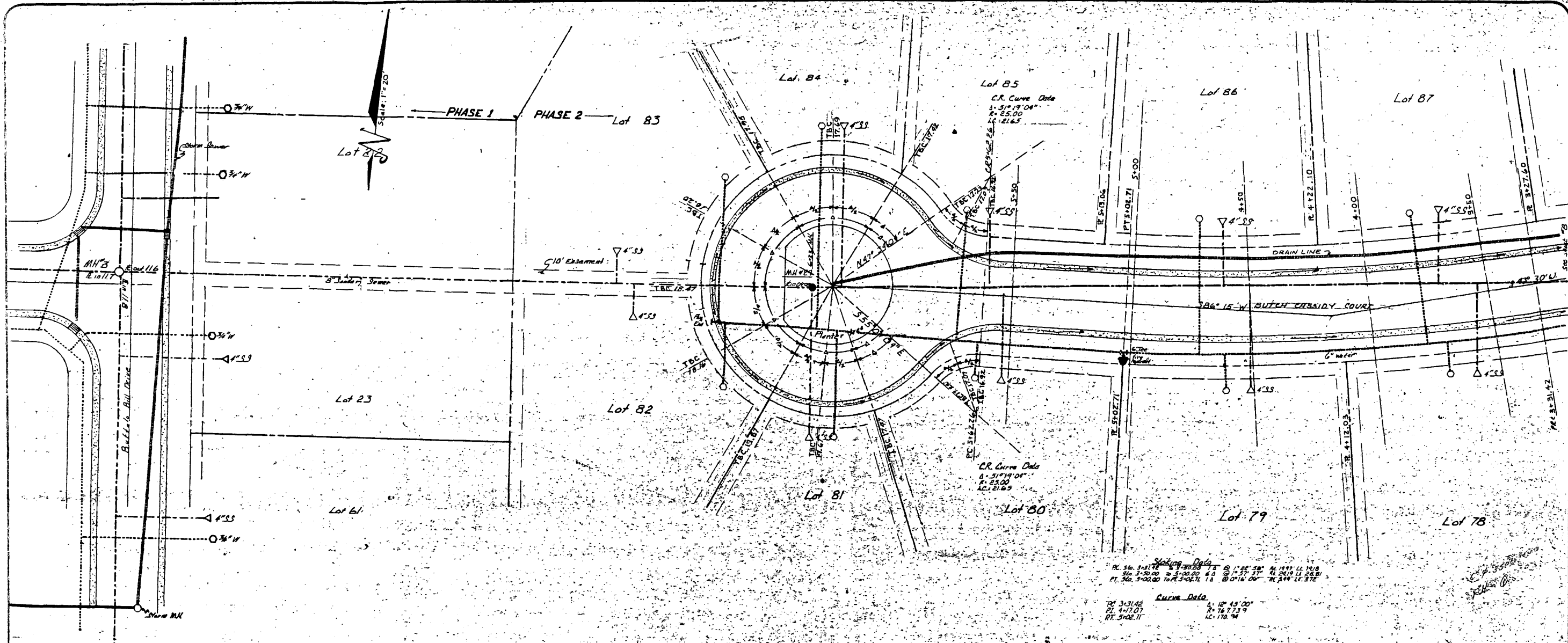
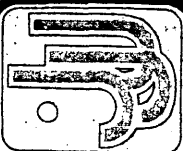


Figure 4-1
Proposed Groundwater Monitoring Network
and Sample Point Locations
Park City
Summit County, Utah

Attachment A

Prospector Drain Presumed Design Drawings





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Drawn **R. Hovey**

Checked **JD**

Approved

Date **Jul 17 '78**



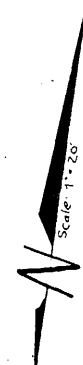
PROSPECTOR PARK SUBDIVISION PHASE
Butch Cassidy Court

FOR THE LEARNING CENTER ASSOCIATES

Sheet **7**

13

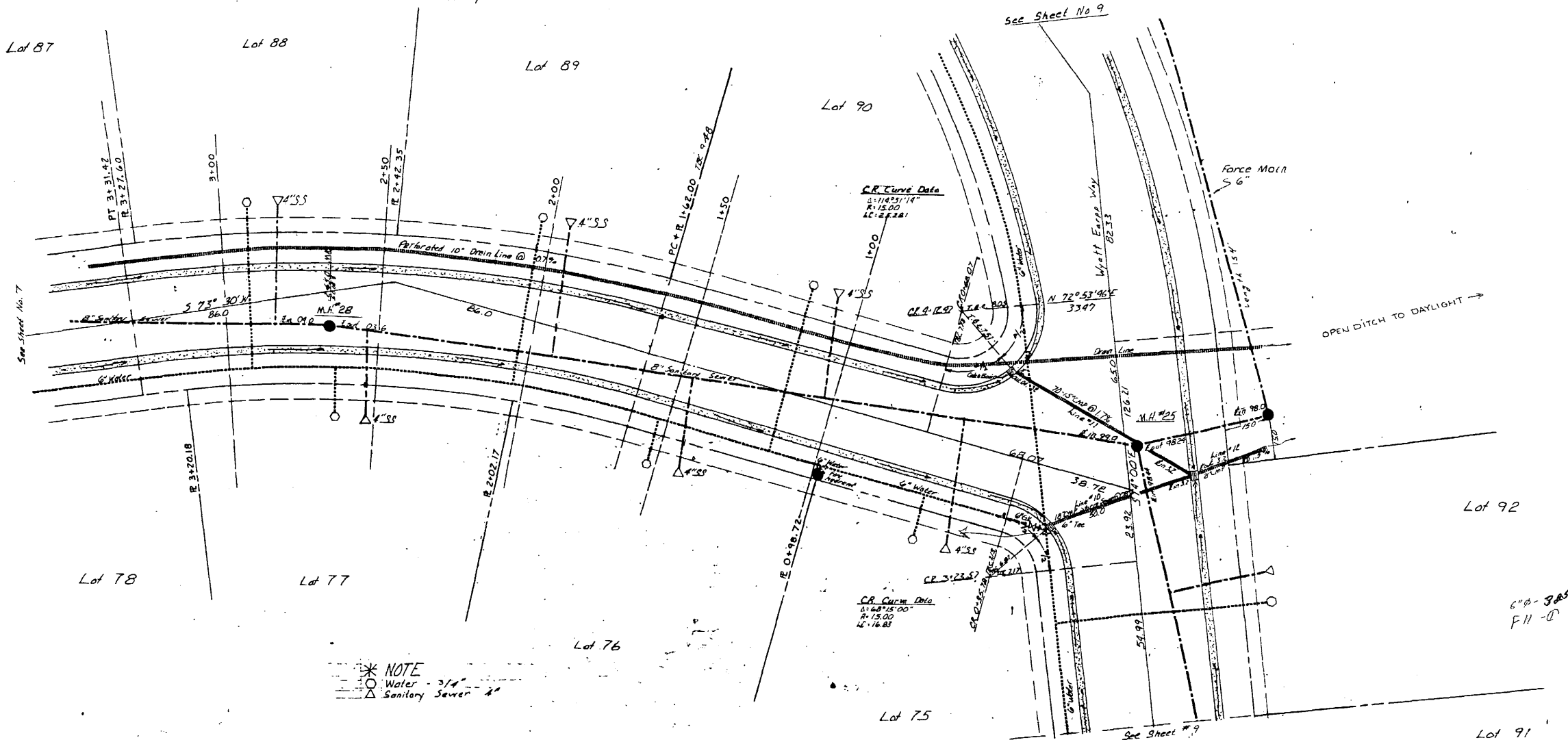
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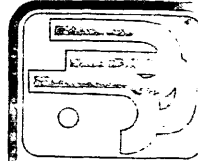
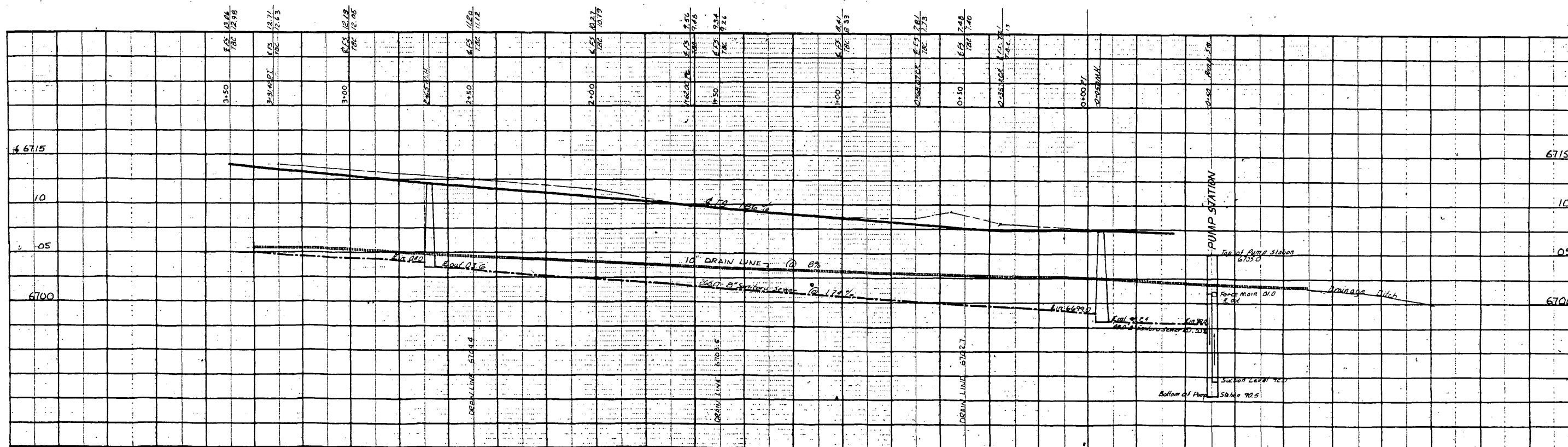
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Staking Data
 PC Sta. 1+62.00 To 1+75.00 1/4 @ 1°51'39" R=13.81 L=12.19
 SC Sta. 1+75.00 To 3+25.00 6/8 @ 3°34'42" R=26.36 L=23.43
 ST Sta. 3+25.00 To PT 3+31.42 1/8 @ 0°55'08" R=6.82 L=6.02

Curve Data
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 PT 2+16.71 ST 3+31.42
 Δ=24°15'00"
 R=100.30'
 LC=168.16



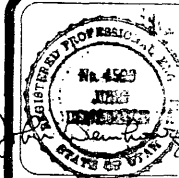
*** NOTE**
 ○ Water - 3/4"
 △ Sanitary Sewer - 4"



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(801) 649-9811

Drawn R. HOVEY
 Checked JD
 Approved
 Date July 1978



PROSPECTOR PARK SUBDIVISION PHASE 2
 Butch Cassidy Court

For THE LEARNING CENTER ASSOCIATES

Sheet 8
 of 13

Attachment B Piezometer Specifications

SPECIFICATION: DIRECT PUSH PIEZOMETERS INSTALLATION

A total of twenty-three (24) direct push borings (3-inch diameter) will be advanced and completed as 1-inch diameter piezometers. Continuous soil sampling will be performed using soil liner sleeves to document the soil profile and obtain XRF (one foot intervals) or grab soil samples at four foot intervals. Piezometers will be screened across the water table and will be completed according to the general specifications listed below.

To ease installation, it is suggested that the piezometers consist of Geoprobe Prepacked Well Screens, or equivalent, designed for setting small diameter monitoring wells. The pre-packed screens consist of a standard, slotted 0.75 to 1½ inch diameter PVC well screen pipe surrounded by a stainless steel mesh. An end cap will be placed on the bottom of the well screen. Sand is packed between the slotted PVC and the stainless steel mesh. Because the sand is packed around the slotted PVC before the well screen is installed, using prepacks assures that sand will be directly around the well screen. That makes well installation quicker and more efficient than traditional methods. To install monitoring wells with the prepacks, probe rods are first driven to depth and continuous soil samples can be obtained. The well assembly is then lowered into the probe rod string with a threaded PVC riser pipe. Once the well assembly is lowered to the bottom of the probe rod string, the probe rods are retracted to a point above the screen. A sand barrier will be introduced by gravity installation of 10-20, well-rounded silica sand through the rod annulus. With the barrier in place, granular bentonite or bentonite slurry is then placed above the sand and hydrated to the ground surface. The wells will be allowed to stabilize for at least 24-hours before well development. All piezometer installation shall follow EPA's March 1991 Handbook of Suggested Practices for the Design and Installation of Ground-Water Monitoring Wells (<http://www.epa.gov/oust/cat/wwelldct.pdf>).

(24) Shallow Piezometers (approximately 15-20' bgs)

- 14" diameter core cut through asphalt or concrete
- 1" PVC blank from 0-5'
- 1" PVC prepack screen (0.020 slots) from 5-15'
- slip cap on bottom (no cement)
- lockable pressure cap on top
- 10-20 silica sand from 3-15'
- hydrated bentonite seal from 1-2'
- concrete from 0-1'
- 7" flush mount

APPENDIX D

SCOPE OF WORK – Park City

FOR

**INJURY ASSESSMENT AND RESTORATION ALTERNATIVES ANALYSIS FOR THE
RICHARDSON FLAT TAILINGS SITE, OPERABLE UNIT 4, PARK CITY, UTAH**

Introduction and Objectives

This Statement of Work (SOW) is an attachment to the Administrative Settlement Agreement and Order on Consent for EE/CA Investigations and Removal Action (Settlement Agreement). Park City Municipal Corporation (Park City or RESPONDENT herein) is a respondent to the Settlement Agreement. Capitalized terms used in this SOW shall have the meaning assigned to them in the Settlement Agreement, unless the term is defined in the SOW.

This SOW describes the work to be performed by RESPONDENT to fulfill the requirements of Section X of the Settlement Agreement by conducting a Natural Resource Injury Assessment and Restoration Alternatives Analysis ("Injury Assessment and Restoration Alternatives Analysis") for OU4. RESPONDENT shall coordinate with the Natural Resource Trustees in performing this work. RESPONDENT shall provide all documents and responses required by this SOW to the Natural Resource Trustees, the Lead Administrative Trustee (LAT) and to the State Trustee's technical advisors identified in Section XXXIII of the Settlement Agreement. The Natural Resources Trustees have identified DOI as the LAT, to be represented by the Fish and Wildlife Service. Should the Natural Resources Trustees change the LAT, it shall notify the RESPONDENT of the change in designation. The Natural Resource Trustees intend to have the LAT provide coordinated comments to RESPONDENT regarding all activities and deliverables performed or prepared by the RESPONDENT.

All activities performed and deliverables prepared by RESPONDENT pursuant to this SOW shall be subject to the review, comment, and approval of the Natural Resource Trustees. The activities and deliverables specified in Tasks 1 - 6 of this SOW shall be used by RESPONDENT to prepare the Draft Injury Assessment and Restoration Alternatives Analysis required by Task 7. Thereafter, the Natural Resource Trustees will prepare the Final Injury Assessment and Restoration Alternatives Analysis.

In coordination and concurrence with the authorities of the Trustees for Natural Resources as set forth in Subpart G of the National Contingency Plan, 40 C.F.R. Part 300, Subpart G, and as described in an Assessment Plan that is prepared by RESPONDENT, RESPONDENT shall collect data to determine and quantify injuries to natural resources resulting from the release of hazardous substances at or from OU4. In consultation with the LAT and in coordination with the performance of the EE/CA Work Plan, RESPONDENT shall collect various data types which may include but are not limited to geological (e.g. soils, sediments), biological (e.g. vegetation, biota), surface water, ground water, and air samples and at analytical detection concentrations sufficient to determine potential injury to federal and state natural resources and their supporting ecosystems. RESPONDENT shall coordinate with the Natural Resource Trustees and EPA to ensure that the sampling required for the EE/CA and the Injury Assessment and Restoration Alternatives Analysis is integrated to the extent practicable. All work shall be technically and legally defensible and in full compliance with the National Contingency Plan (NCP) and Natural Resource Damage Assessment (NRDA) Regulations, 43 C.F.R. Part 11. The Natural Resources Trustees acknowledge that the procedures and tasks established and identified in this SOW are consistent with Subpart G of the NCP and the NRDA Regulations.

In accordance with 43 C.F.R. §11.82, RESPONDENT shall, in consultation with the Natural Resource Trustees, develop and evaluate a range of alternatives for the restoration, rehabilitation, replacement and/or acquisition of the equivalent of injured natural resources and the services those resources provide to baseline conditions (hereafter referred to as “restoration alternatives”). Such restoration alternatives will identify and evaluate opportunities for coordinating or integrating implementation of restoration with the Removal Action Alternative selected for OU4. Restoration alternatives must be appropriate for NRDA restoration under the NRDA Regulations and must be described in sufficient detail to be analyzed under the National Environmental Policy Act that the Federal Natural Resource Trustees intend to prepare. The Injury Assessment and Restoration Alternatives Analysis shall be consistent with the outline presented in Attachment A of this SOW. RESPONDENT will perform all necessary technical analyses, edit the documents, prepare graphics, and provide any other necessary technical products for distribution to and review by the Natural Resource Trustees.

This SOW defines the specific tasks to be performed by RESPONDENT to develop its Draft Injury Assessment and Restoration Alternatives Analysis. RESPONDENT will work closely with the Natural Resource Trustees to develop the Injury Assessment and Restoration Alternatives Analysis for OU4, including all related components and reports, and remain in close communication with representatives of the Natural Resources Trustees throughout the work period. Upon request, RESPONDENT shall submit all deliverables in electronic form to the LAT.

Project Description and Tasks

RESPONDENT will be responsible for completing the following tasks for OU4:

Task 1 - Coordinate Assessment Planning and Data Collection and Review with Natural Resource Trustees

RESPONDENT shall coordinate with the Natural Resource Trustees in developing an Assessment Plan that ensures the assessment is performed in a planned and systematic manner. The Assessment Plan shall be prepared by RESPONDENT in a manner consistent with the NRDA regulations and the tasks listed in this SOW, and shall be structured in a manner that is in coordination with and consistent with the provisions of the EE/CA that is prepared for OU4.

RESPONDENT shall conduct data collection and interpretation activities to determine and quantify potential injuries resulting from the releases of hazardous substances to natural resources at or from OU4. RESPONDENT shall coordinate with the Natural Resource Trustees on various data collection activities which may include but are not limited to collecting geological (e.g. soils, sediments), biological (e.g. vegetation, biota), surface water, ground water, and air samples. The Natural Resource Trustees shall review and approve all data collection methods, analytical procedures and results, quality assurance/quality control measures, and all other methods, procedures, or practices needed to determine potential injury to or loss of federal and state natural resources and their supporting ecosystems. These data collection activities shall be coordinated or integrated with data collection activities conducted by RESPONDENT in preparing the EE/CA for OU4 to the extent practicable.

Task 2- Assist Natural Resource Trustees with a Baseline Resources and Services Analysis

RESPONDENT shall assist the Natural Resource Trustees with preparing a "Baseline Services Analysis," consistent with the definition of the term "baseline" as defined in 43 C.F.R. Part 11, regarding resources and services within OU4. The Baseline Services Analysis will later be used in preparing the Injury Assessment and Restoration Alternatives Analysis. During preparation of this analysis, RESPONDENT will regularly communicate and interact with the Natural Resource Trustees (via conference calls, meetings and/or the exchange of written material) as injury determination and quantification proceeds. This analysis will provide the basis for assessing potential natural resource injuries and service losses and evaluating the effects of the Removal Action Alternative selected for OU4 on such potential injuries and service losses.

Task 3 - Assist Natural Resource Trustees with Identification of Restoration Objectives and the Identification and Quantification of Injuries to Natural Resources

RESPONDENT shall assist the Natural Resource Trustees to identify restoration objectives for OU4. RESPONDENT shall participate in meetings with the Natural Resource Trustees to identify criteria for selection of restoration alternatives that should be used to support development of potential primary and compensatory restoration alternatives as part of Task 5.

RESPONDENT will use readily available information identified in Attachment B to this SOW and, in coordination with the Natural Resource Trustees, will use data collected under Task 1 to identify and quantify potential injuries to natural resources, including injuries that may have already occurred as a result of the release of hazardous substances at or from OU4 and injuries that would result from the selected Removal Action Alternative for OU4. As necessary, the Natural Resource Trustees will provide RESPONDENT (or vice-versa) with available documents associated with the CERCLA removal and NRDA processes, other environmental investigations at the RFT Site, and preliminary findings on injuries to natural resources. RESPONDENT will assist the Natural Resource Trustees to develop an analysis of potential past injuries and anticipated injuries that may result from the Removal Action Alternative selected for OU4 to estimate appropriate compensation for lost services using a valuation methodology and technical approaches to quantify injuries in a manner consistent with applicable federal and state statutes and the NRDA Regulations. Such analysis shall be included in the Draft Injury Assessment and Restoration Alternatives Analysis.

Task 4 - Assist Natural Resource Trustees with Evaluation of Lost Human Use Services

In coordination with the Natural Resource Trustees, RESPONDENT shall assist the Natural Resource Trustees in an assessment of lost and/or diminished recreational uses that may have resulted from the release of hazardous substances at or from OU4. This assessment will include, but shall not be limited to, reviewing existing information, assisting with the assessment of lost and/or diminished recreational use, and documenting and presenting determined human use losses, if any. Primary and compensatory restoration for lost recreational opportunities or human uses will be analyzed under Task 5 below. Such analysis shall be included in the Draft Injury Assessment and Restoration Alternatives Analysis.

Task 5 - Identification, Scaling and Costing of Primary and Compensatory Restoration Projects

Upon issuance of the Final EE/CA for OU4, RESPONDENT shall, in coordination with the Natural Resource Trustees, identify potential restoration alternatives that can be coordinated with the preferred Removal Action Alternative for OU4 identified by the Final EE/CA. In coordination with the Natural Resource Trustees, RESPONDENT will, during the identification of potential restoration projects, develop preliminary estimates of project scale and costs and/or implement valuation approaches, all based on methods consistent with NRDA regulations. Restoration alternatives will include restoration for lost and/or diminished human use and ecological services. Such analysis shall be included in the Draft Injury Assessment and Restoration Alternatives Analysis.

Task 6 - Assist Natural Resource Trustees with Development of Maps and Graphics

In coordination with the Natural Resource Trustees, RESPONDENT shall support development of GIS exhibits, maps and other graphics that visually illustrate the extent and severity of injury in the assessment area, link restoration and injury analyses, and/or otherwise support the assessment needs.

Task 7 - Prepare Draft and Final Injury Assessment and Restoration Alternatives Analysis

Based on the results of the activities and deliverables required under Tasks 2 through 6, RESPONDENT shall prepare and deliver to the Natural Resource Trustees a Draft Injury Assessment and Restoration Alternatives Analysis 30 days after the Final EE/CA is completed. The RESPONDENT shall assist the Natural Resource Trustees with revising the Draft Injury Assessment and Restoration Alternatives Analysis, as the Natural Resources Trustees deem appropriate. The Natural Resources Trustees shall complete a final version of the Injury Assessment and Restoration Alternatives Analysis and intend to provide it to EPA prior to the time EPA issues its Action Memorandum for OU4.

Task 8- Meetings and other support

RESPONDENT will participate in meetings with the Natural Resource Trustees to facilitate development of the Injury Assessment and Restoration Alternatives Analysis. RESPONDENT should anticipate attending several meetings per year during the period of performance and expect to participate in conference calls each month with the Natural Resource Trustees (in addition to more frequent interaction with the primary contacts for the Natural Resource Trustees). The contacts for the Natural Resource Trustees are included in the AOC.

Schedule for Coordination Activities and Deliverables

The Natural Resource Trustees anticipate that aspects of several of the tasks should be coordinated and implemented prior to RESPONDENT's submission of a final EE/CA and issuance of the Action Memorandum for OU4.

Deliverable	Timeline
Teleconferences and meetings with Natural Resource Trustees	Beginning 30 days after the Effective Date of the Settlement Agreement.
Draft Injury Assessment and Restoration Alternatives Analysis Report for OU4	After the final EE/CA for OU4 is completed

ATTACHMENT A

EXAMPLE INJURY ASSESSMENT AND RESTORATION ALTERNATIVES OUTLINE

(Note: To the extent applicable and appropriate, data and information may be incorporated into documentation by reference.)

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ATTACHMENT B

LIST OF LITERATURE TO BE USED TO SUPPORT ASSESSMENT AS APPLICABLE

A partial list of investigations includes:

- Agra Earth and Environmental (Agra), Inc. 2000. Site Inspection Analytical Results Report, Marsac Mill, Park City, Summit County, Utah. Consultant's report prepared for Park City Municipal Corporation.
- Ashland, F.X., Bishop, C.E., Lowe, M., and B.H. Mayes. 2001. The Geology of the Snyderville Basin, Western Summit County, Utah, and its relation to ground-water conditions, Water Resource Bulletin 28.
- Brooks, L.E., Mason, J.E., and D.D. Susong. 1998. Hydrology and Snowmelt Simulation of the Snyderville Basin, Park City, and Adjacent Areas, Summit County, Utah: U.S. Geological Survey, Water-Resources Investigation Report.
- Broomfield, C.C. and M.D. Crittenden. 1971. Geologic Map of the Park City East Quadrangle Summit and Wasatch Counties, USGS Map GQ-852.
- Bureau of Land Management (BLM). 2005. Removal Site Inspection, Silver Maple Claims. National Science and Technology Center. Denver, CO. April 25, 2005
- Dames and Moore. 1975. Report Of Groundwater and Foundation Investigation Northeastern Portion of Prospector Square Development Site, Park City, Utah for Prospector Square Development Company
- Dynamac Corporation. 2003. Final Silver Maple Wetland Functional Assessment
- Giddings, E.M., Hornberger, M.I., and H.K. Hadley. 2001. Trace metal concentrations in sediment and water and health of aquatic macroinvertebrate communities of streams near Park City, Summit County, Utah: U.S. Geological Survey Water- Resources Investigations Report 01-4213.
- Holmes, W.F., Thompson, K.R., and M. Ehrright. 1986. Water resources of the Park City area, Utah, with emphasis on groundwater: Utah Department of Natural Resources Technical Publication 85.
- Kimball, B.A., Johnson, K.K., Runkel, R.L., and J.I. Steiger. 2004. Quantification of metal loading to Silver Creek through the Silver Maple Claims area, Park City, Utah, May 2002: U.S. Geological Survey Water-Resources Investigations Report 03-4296

- Kimball, B.A., Runkel, R.L., and K. Walton-Day. 2005. Principal Locations of Metal Loading from Floodplain Tailings, Lower Silver Creek, Utah, April 2004: U.S. Geological Survey Scientific Investigations Report.
- Kolm, K.E. and E. Yan. 2004. Quick Site Investigation for the Upper Silver Creek Watershed, Utah: Regional Analysis and Recommendations.
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- Mason, J.L. 1989. Hydrology of the Prospector Square Area, Summit County, Utah, United States Geological Survey, Water Resources Investigation Report 88-4156.
- Michael Baker Jr., Inc. 2004. Silver Creek Total Maximum Daily Load for dissolved zinc and cadmium: Utah Department of Environmental Quality, Division of Water Quality, (http://www.waterquality.utah.gov/TMDL/Silver_Creek_TMDL.pdf)
- Park City Municipal Corporation. 1984. Construction Drawings for Prospector Detention Structure.
- Tetra Tech Inc. 2008. Lower Silver Creek, Utah, Reactive Transport Modeling Under High Flow Conditions for Cadmium and Zinc.
- Tetra Tech, Inc. 2008. Lower Silver Creek Data Summary Report, Park City, Utah.
- Tetra Tech, Inc. 2008. Lower Silver Creek Draft Wetland Delineation, Park City, Utah.
- Tillia, Ann M. 2001. Lower Silver Creek Innovative Assessment Work Plan, Utah Department of Environmental Quality Division of Environmental Response and Remediation.
- Tillia, Ann M. 2002. Innovative Assessment Analytical Results Report, Utah Department of Environmental Quality Division of Environmental Response and Remediation.
- U.S. Environmental Protection Agency and Upper Silver Creek Watershed Stakeholders Group. 2001. Data Interpretation Report Upper Silver Creek Watershed Surface Water/Stream Sediment Monitoring 2000
- United Park City Mines. 2005. Richardson Flat Record of Decision, (<http://www.epa.gov/region8/superfund/ut/richardsonflat/>)
- USDA. 1977. Soil Conservation Service, Soil Survey and interpretations Parleys Park Portion of Soil Survey of Summit Valley Summit County, Utah, Bulletin 495.

- USGS. 2005. Data-collection activities by the U.S. Geological Survey (USGS) in support of groundwater flow modeling being conducted by the Bureau of Land Management (BLM) near the Prospector Square Tailings Site, Park City, Administrative Report.
- Utah Department of Environmental Quality/Division of Environmental Response and Remediation (UDEQ/DERR) and the United States Geological Survey (USGS).1986. Water Resources of the Park City Area, Utah with Emphasis on Groundwater; Technical Publication No. 85.
- Utah Department of Health (UDH).1989. Groundwater and Surface Water Study Report, Silver Creek Tailing Site.

APPENDIX E
MAJOR DELIVERABLES

DOCUMENT/ACTIVITY	REFERENCE	RECEPIENTS	DUE DATE
Names, titles, qualifications of personnel to implement Removal Action	Settlement Agreement Paragraph 26(a)	EPA UDEQ	60 days following EPA's issuance of Action Memorandum
Designation of project coordinator responsible for Removal Action Work	Settlement Agreement Paragraph 26(b)	EPA UDEQ	15 days following EPA's issuance of Action Memorandum
Request for additional data	Settlement Agreement Paragraph 34(a)	EPA UDEQ BLM FWS State NR Trustee	7 days after identification of need
EE/CA Progress Reports	Settlement Agreement Paragraph 36	EPA UDEQ BLM FWS State NR Trustee	Quarterly
Notice of significant field events	Settlement Agreement Paragraph 38(b)	EPA UDEQ BLM FWS State NR Trustee	30 days prior to the event
All EE/CA plans, reports or other submittals	Settlement Agreement Paragraph 39	EPA UDEQ BLM FWS State NR Trustee	As set forth in Settlement Agreement, work plans or SOW.
Draft Removal Action Work Plan	Settlement Agreement Paragraph 42(a)	EPA UDEQ BLM FWS State NR Trustee	90 days following EPA's issuance of Action Memorandum

Health and Safety Plans	Settlement Agreement Paragraph 43	EPA UDEQ BLM FWS State NR Trustee	90 days following EPA's issuance of Action Memorandum
Removal Progress Reports	Settlement Agreement Paragraph 45(a)	EPA UDEQ BLM FWS State NR Trustee	Quarterly on the 15 th day of each January, April, July and October
Notice of transfer of site property	Settlement Agreement Paragraph 45(b)	EPA UDEQ	30 days prior to transfer
Final Removal Report	Settlement Agreement Paragraph 46	EPA UDEQ BLM FWS State NR Trustee	30 days after completion of Work
All Removal Action plans, reports or other submittals required by the Settlement Agreement	Settlement Agreement Paragraph 47	EPA UDEQ BLM FWS State NR Trustee	As set forth in Settlement Agreement, work plans or SOWs.
Notification of off-site shipment of Waste Material	Settlement Agreement Paragraph 48	EPA Project Coordinator Official in receiving state	Prior to shipment
Notice of Force Majeure	Settlement Agreement Paragraph 81	EPA	Verbal notice within 48 hours after Park City first knows the event might cause a delay; written explanation within 5 days thereafter
Certificate of Insurance	Settlement Agreement Paragraph 108	EPA	30 days prior to commencing work on-site
Financial Assurance for EE/CA	Settlement Agreement Paragraph 109(a)	EPA	60 days of Effective Date of Settlement Agreement

Financial Assurance for Removal Action	Settlement Agreement Paragraph 109(b)	EPA	60 days after issuance of Action Memorandum
OU4 Sampling and Analysis Plan , which includes EE/CA Field Sampling Plan, Health & Safety Plan and QAPP	EE/CA Work Plan 4.1	EPA UDEQ BLM FWS State NR Trustee	90 days after Effective Date of Settlement Agreement
Interim Site Characterization Reports including letter reports summarizing monthly results	EE/CA Work Plan 4.6.1	EPA UDEQ BLM FWS State NR Trustee	Monthly during site characterization activities
Piezometer Installation Report	EE/CA Work Plan 4.6.1	EPA UDEQ BLM FWS State NR Trustee	Upon completion at time of monthly report submittal
OU4 Site Characterization Report	EE/CA Work Plan 4.6.2	EPA UDEQ BLM FWS State NR Trustee	90 days from Park City's receipt of all analytical laboratory data
OU4 EE/CA Outline	EE/CA Work Plan 4.6.2	EPA UDEQ BLM FWS State NR Trustee	Concurrent with submittal of Site Characterization Report
Preliminary EE Report	EE/CA Work Plan 5.5	EPA UDEQ BLM FWS State NR Trustee	60 days after EPA approval of Site Characterization Report
Draft EE/CA	EE/CA Work Plan 5.8	EPA UDEQ BLM FWS State NR Trustee	60 days after EPA approval of Preliminary EE Report

Final EE/CA Report	EE/CA Work Plan 5.8	EPA UDEQ BLM FWS State NR Trustee	30 days after receipt of EPA comments on draft EE Report
OU4 Draft Assessment and Restoration Analysis	OU4 NRD SOW, Task 7	EPA UDEQ BLM FWS State NR Trustee State NR Trustee technical advisors	After EPA approval of final EE/CA Report



City Council Staff Report

Author: Jonathan Weidenhamer
Subject: Lower Park Avenue - Development Manager Scope
Department: Sustainability
Date: December 20, 2012
Type of Item: Informational

Summary Recommendation

Affirm support to procure a development/project manager for projects in the Lower Park Avenue RDA. Provide direction on scope.

Background:

On November 8, 2012, the City council reviewed a concept plan and timeline for implementation of the Lower Park Avenue Neighborhood plan which included an expansion and renovation of the Library, creation of a community space on the 3rd Floor of Carl Winters building, a multi-generational housing project, and possible senior and community center. These projects are to be defined and prioritized by the results of a community input and prioritization process. Ultimately they would be approved through the budget process. Council asked staff to consider facilities located at the City Park as well such as Miners Hospital and the recreation building.

Additionally, the City entered into a non-binding letter of intent with Park City Mountain Resort on August 9, 2012 to participate in the design and construction of a parking and transit center.

Analysis:

Staff believes we can manage the design and construction of the library expansion and 3rd floor remodel of the Carl Winters building with existing resources. Due to the complexity of entirety of the neighborhood projects as well as the undefined role in the parking/transit project staff believes hiring outside resources to help manage the projects is the best and most cost efficient way to implement Council goals.

The overall goal for staff and the potential consultant is to identify the City's ownership and financial role as well as ensure the timely completion of high profile public projects as outlined in the approved LPA RDA master and neighborhood plans.

Currently the Economic Development Manager, Community Affairs Manager, Sustainability Senior Project Manager, and limited pre-development input from the Planning Director are the only staff resources allocated to the management of the project. Staff anticipates that by utilizing an outside resource, staff can better utilize existing staff resources for other Council priorities.

The consulting fees will be recovered through defining our ownership and financial roles by property disposition and also through effective project management roles with reduced construction costs. The consultant will report to the Economic Development manager with input from the Sustainability Team, City Manager and Planning Director.

The challenges and tasks include:

- Definition of an overall development pro-forma, ownership structure, and possible joint venture structure with an adjoining property owner;
- Pre-construction and planning requirements (survey, plats and regulatory approval process);
- Separating City roles (owner vs. regulator);
- Competition for City resources available to be dedicated to project management and construction management.

General Duties & Scope (more detailed scope in Exhibit A)

Staff will be seeking demonstrated experience in:

- Financial modeling, including complex public budget and accounting experience related to RDA or similar development;
- Successful (construction) project management (on time, on budget, quality of work) of large and complex projects in Park City including for profit and not for profit work;
- Management of the process between the architect and engineers and general contractor on behalf of the owner;
- Historic district and zoning regulations, traffic, utility and parking issues;
- Public outreach and stakeholder communication;
- Driving the value engineering process with the architect and contractor, including identifying best products, materials and efficient operating systems, and realizing an overall cost savings to the project; and
- Managing projects regionally, including familiarization with local construction companies and practices, soil and construction mitigation regulations, bid processes, and proven track record saving money for owners.

Anticipated Projects

- PCMR parking lot & transit center (tbd);
- Senior & affordable housing project (at current sr. center location);
- Senior and community center
- Limited oversight on Library expansion & C. Winters 3rd floor remodel.

Duration & Timing

Staff anticipates this position will vary from a 10- 30 hours a week depending on the phase of the project and likely average about 20. The conceptual schedule

of the neighborhood projects starts in early 2013 and ends in fall of 2015 (Exhibit B). The parking/transit project is pending additional work and planning.

Staff Recommendations:

Affirm direction to procure a development/ project manager for projects in the Lower Park Avenue RDA. Provide direction on scope.

Exhibits:

Exhibit A – Draft Scope

Exhibit B – Draft Schedule (from 11.18.12)

Exhibit A

Development Manager Preliminary Job Description

Essential Functions

The Development Manager is the individual charged with the responsibility for the complete and satisfactory execution of the entire project. Being thoroughly familiar with the vision for the development area, requirements of the Owners and/or Equity Partners and the general contracts, thereby identifying changes, conflicts, etc., that is beyond the scope of responsibility. Provide the Owners/Equity Partners a general liaison to all project related activities and operations.

General Duties

Development of the project; staff Strategic development phasing and project planning; developing, maintaining and managing project pro formas and budgets; Development Project Schedule coordination with construction schedule; Developing, monitoring, updating and communication of the progress schedule and its periodic revisions; Provide monthly project report to Equity Partners.

Resource Management

Procurement of consultants, design professionals, contractors and suppliers; Developing, executing and managing project contracts; Establishing and maintaining relationships with Equity Partners, design professionals, regulatory agencies and other agencies; Managing the labor force and maintaining labor relationships.

Project Management

Chair weekly Design Team meetings; Coordinating design changes and on-site activities; Identify/resolve all constructability and coordination issues in construction drawings; Value engineering oversight Job acceleration; Organizing and overseeing job-site administration; Organizing and coordinating field supervision; Oversee job-site organization and neighborhood relationships.

Quality Control

Managing project schedules, quality of work, coordination with consultants and trades, and payments Coordinating and monitoring required cost-progress targets with actual production Creating and maintaining a safe/secure job-site Identifying, reviewing and resolving all construction and design change orders and backcharges Review and approve monthly draw requests

- 1) Pursue multigenerational housing at current location of Sr Center;
- 2) need to temporarily relocate sr. center to Carl Winters;
- 3) all options include regularly scheduled b. maint.
- 4) Transit housing completed on Iron Horse/ ok to demo firestation in spring 2014*

* critical dates

Key	
lease terminates	
community planning & stakeholder input charette	
design	
Procure/bid	
Construction	
Lease & Relocation	
Demolition	D



City Council Staff Report

Subject: Liquor License Amendments and Amendments for Sundance Film Festival Special Event Liquor Licenses Effective 2014
Author: Rebecca Gillis and Shelley Hatch
Department: Finance Department
Date: December 20, 2012
Type of Item: Legislative – Work Session

Summary Recommendations:

Hold a work session discussion to consider amending the municipal code as proposed in the attached ordinances. The attached ordinances amend Sections 4-4-1 thru 4-6-6 of the Municipal Code. The amendments clarify Park City's Special Event liquor licensing process, allow the Finance Department to simplify the liquor licensing application process, and provide clarity and ensure internal consistency within the Municipal Code.

Staff also recommends that the City Council retain final approval of all Special Event Liquor Licenses during the Sundance Film Festival starting in 2014 and continue to delegate authority to give local consent regarding all other liquor licenses to the Business License Clerk. If so directed, staff will schedule an ordinance for public hearing and adoption on January 10, 2013 to enable public outreach during the 2013 Festival.

Topic/Description:

Amending the Municipal Code for Beer and Liquor licenses and updating Park City Liquor License application to comport with those changes.

Background:

Throughout the years, Municipal Code sections 4-4-1 thru 4-6-6 were amended to ensure the Municipal Code remained consistent with changes made to State alcoholic beverage control laws. Staff feels the changes made over the years have made the Municipal Beer and Liquor Licensing ordinances hard to read and hard to understand. The last changes made to the Municipal Code occurred on May 20, 2010.

Analysis:

A. General Liquor License Code Amendments

Staff has reviewed the current Municipal Beer and Liquor Licensing ordinances and recommends that changes to the existing ordinance be made. The proposed changes to the Municipal Code fall into the following categories:

1. Delineate a new process for reviewing applications for Special Event Temporary Beer Licenses and Special Event Liquor Licenses

- Under the current Municipal Code applicants for Special Event Temporary Beer Licenses and Special Event Liquor Licenses must comply with the same requirements as applicants for full beer or liquor licenses. The Department of Alcoholic Beverage Control (DABC) has very different requirements for Single Event Permits as compared to regular licenses. The Municipal Code treats Special Event Temporary Beer and Liquor licenses the same as regular liquor licenses which is much more intensive than even the DABC requires. Accordingly, the proposed changes (Exhibit A) would:
 - o Replace the current Special Event Temporary Beer Licenses and Special Event Liquor Licenses with a single Special Event Alcoholic Beverage License. The privileges granted under this new license will be dependent upon the type of license an applicant secures at the state level.
 - o Replace the current procedure that requires applicants to obtain a criminal background check for all officers, board of directors, and partners. Instead, Staff feels it more appropriate to mirror the State's policy and have applicants sign a statement under oath attesting to their criminal background.
 - o Clarify that a license can be revoked immediately if the licensee isn't in compliance.
 - o Only bona fide corporations will be permitted to apply for a license. A bona fide corporation is one that has been in existence for at least one year prior to application.
 - o Prohibit all Special Event Alcoholic Beverage License holders from holding an event unless they secure liquor liability insurance or a liquor liability insurance rider. In reviewing this added provision, Staff contacted two agencies in Utah and one in Colorado and determined that at the \$2/4M insurance coverage level, hosted service (giving away alcohol for no charge) coverage is available without additional fees. Selling alcohol requires an additional fee based on number of event attendees. The rider could cost anywhere from \$100.00 to over \$1000.00 depending on the event.
 - o Require all servers to be TIP certified.
2. Modifying the construction and the order of Municipal Code sections 4-4-1 thru 4-6-6.
- Staff felt the construction and order of Municipal Code sections 4-4-1 through 4-6-6 is cumbersome and fails to account for important variations between temporary and regular alcoholic beverage licenses. Proposed changes address this by establishing separate chapters for General licensing policies (chapter 4), Special Event Alcoholic Beverage Licenses (chapter 4A), Beer Licenses (Chapter 5), and Liquor Licenses (Chapter 6); reorganizing portions of the code; and proposing new sections.
 - Chapter 4 General licensing policies describes general licensing policies in Park City applicable to all beer and liquor licenses.

- Chapter 4A Special Event Alcoholic Beverage Licenses details the changes described above and would replace current references to Special Event Temporary Beer Licenses and Special Event Liquor Licenses to a single Special Event Alcoholic Beverage License.
 - Chapter 5 Beer Licenses continues to detail Park City's beer licenses. For organizational purposes the application process for beer licenses has been moved from Chapter 4 into this section and modified as necessary to pertain only to beer licenses.
 - Chapter 6 Liquor Licenses continues to detail Park City's liquor licenses. For organizational purposes the application process for liquor licenses has been moved from Chapter 4 into this section and modified as necessary to pertain only to liquor licenses.
3. Change the assigned department or designee charged with administering or having authority under the Code to reflect more accurately who actually has those responsibilities.
 4. Clarify that all applications may take up to 10 working days to process.
 - Before an application can be approved or denied it must be reviewed by Police, Planning, and Building. This interdepartmental review takes time and staff feels it would be helpful to give applicants a clear understanding of how long it may take to process an application so applicants may plan accordingly.

In addition to the proposed changes to the Municipal Code, for informational purposes, Staff has provided a revised application for the Special Event Alcoholic Beverage License. (Exhibit B). This application reflects the proposed changes, is easier to read and understand, and more closely resembles the DABC application for Single Event Permits.

B. Sundance Special Event Liquor License Process for Council Approval.

Staff is also recommending that for temporary licenses effective during the Sundance Film Festival, the Council retract the delegated authority giving local consent on behalf of the City from the Business License Clerk. Local consent from the City is required for any liquor license approved by the DABC. Currently, Council has delegated that authority to the Business License Clerk who grants that consent as long as the requirements of our local liquor license are met, including review by the Police Department. The proposed change would mean that by the final Council meeting in December of each year proceeding the festival, the Council will have to approve/deny all temporary special event liquor licenses. This schedule is very consistent with the DABC process and would allow the City to monitor issuance of the licenses collectively, with the benefit of more time to allow staff review of individual applications. Staff is not recommending any additional limitations on the scope or number of licenses issued. However, long term, this process would proactively position the Council to better address issues related to adverse impacts or carrying capacity issues related to the licensed activity and volume, as well as coordinate with the DABC hearing as

necessary. It also allows service departments, event staff and public safety to obtain a more adequate picture of the total public service demands for the festival in a timeframe that provides for service level and cost adjustments. As a benefit to applicants, it provides them greater advance time to address issues that may otherwise delay or result in denial of their event. From a level playing field perspective, the deadline is also closer to the supplemental plan approval and informal application deadline agreement the City has required of Sundance and its sponsors for the actual MFL activities. That deadline is typically early December. Since these activities often directly impact transportation and other service levels, it is only logical the City should be processing all the applications during the same timeframe, rather than in a reactive manner that can stress already allocated resources, and therefore put the public and service standards at risk.

Department Review:

The Interim City Manager, Legal Department, Sustainability Department, Building Department (Section A only) , Police Department, Planning Department (Section A only), and Finance Department reviewed this report.

Alternatives:

A. Direct Staff to Schedule the Ordinance for Public Hearing and Potential Action on January 10th:

The recommended action would enact the changes to the City's Municipal Code as shown in the attached documents. **This is staff's recommendation.**

B. Deny:

Council could deny the request to move forward with the amendments to Municipal Code 4-4-1 thru 4-6-6. If denied, any future changes will not be adopted prior to the 2013 Festival and staff will not be able to take advantage of that communication opportunity.

C. Modify:

Council could direct Staff to modify or add amendments to the current ordinance. Any significant changes to the ordinance would require staff to return at a future Council meeting with an amended ordinance incorporating the Council's changes.

D. Continue the Item:

Council could ask for this ordinance change to be continued for further discussion. Council should provide additional policy clarity and describe what additional information the Council would like to move forward.

E. Do Nothing:

Council could do nothing on this request. Staff does not recommend this alternative.

Significant Impacts:

World Class Multi-Seasonal Resort Destination (Economic Impact)	Preserving & Enhancing the Natural Environment (Environmental Impact)	An Inclusive Community of Diverse Economic & Cultural Opportunities (Social Equity Impact)	Responsive, Cutting-Edge & Effective Government
+ Unique and diverse businesses + Balance between tourism and local quality of life + Varied and extensive event offerings ~ Internationally recognized & respected brand	~ Reduced municipal, business and community carbon footprints	+ Shared use of Main Street by locals and visitors + Vibrant arts and culture offerings + Shared use of Main Street by locals and visitors ~ Primarily locally owned businesses	+ Fiscally and legally sound + Engaged and informed citizenry + Streamlined and flexible operating processes + Ease of access to desired information for citizens and visitors
Very Positive 	Neutral 	Positive 	Very Positive 

The primary impacts of the proposed changes will be to applicants for special event alcoholic beverage licenses. The proposed changes will be more in line with the State requirements (DABC) for special event temporary license. Prompt action will allow Staff to prepare the necessary documents in time to alert Sundance Film Festival participants of the changes to the Municipal Code for 2014. Accordingly, should Council choose to postpone implementing the proposed amendments for more than two weeks, it may be desirable to wait until after the Sundance Film Festival to prevent complications with event planning.

Consequences of not taking the recommended action:

If no action is taken at this time the current ordinance will remain hard to follow and understand. Moreover, applicants for single events will continued to be required to submit to application requirements more suited to applications for full licenses and well above what the State requires of temporary licensees.

Recommendation:

Hold a work session and consider directing staff to return January 10th with an ordinance amending the municipal code as proposed in the attached drafts. The attached ordinances amend Sections 4-4-1 thru 4-6-6 of the Municipal Code. The

amendments clarify Park City's Special Event liquor licensing process, allow the Finance Department to simplify the liquor licensing application process, and provide clarity and ensure internal consistency within the Municipal Code. Retain Council authority to legislatively approve temporary licenses during the Sundance Film Festival effective beginning with the 2014 Festival.

Exhibits:

Exhibit A – Draft Amendments to Code.

CHAPTER 4 - BEER AND LIQUOR LICENSING

4-4-1. POLICY.

It is the policy of Park City Municipal Corporation to permit the operation of establishments serving beer and liquor in a manner consistent with the provisions of the Alcoholic Beverage Control Act and related provisions of State Law. It is also the policy of Park City Municipal Corporation to place the primary responsibility for maintaining order and preventing breaches of the peace within establishments selling and serving beer and liquor on the owners and managers of those establishments.

~~4-4-2. LICENSE APPLICATION.~~

~~Applications for new beer or liquor licenses shall be made in writing to the City Council or its designee upon a form furnished by the Finance Manager to be filed with the Finance Manager and include the information set forth in (A) through (E) below:~~

~~Each application shall state the name, street address, mailing address, age and citizenship of the applicant; and contain an indication as to whether the applicant meets the Licensee qualifications set out in Section 4-4-3;~~

~~A copy of the applicant's criminal history obtained from the Utah Bureau of Criminal Identification completed within three years of application;~~

~~The Street address of the business; whether the applicant has complied with requirements specified in the Alcoholic Beverage Control Act; the location of any other beer or liquor licenses held by the applicant; the name and Utah address for the business' agent for service of process; and any other reasonably pertinent information required by the Finance Manager or City Council;~~

~~The application must be subscribed by the applicant who shall state under oath that the facts therein contained are true; and~~

~~If the applicant is a partnership, association, corporation, or limited liability company the applicant shall include a copy of the articles of incorporation or the written partnership agreement; and the information set forth in (A) and (B) for each officer, partner, or director.~~

~~(Amended by Ord. Nos. 01-32, 10-21)~~

4-4A-2. LOCAL CONSENT.

The issuance of a Park City beer or liquor license ~~may~~ pursuant to Section 4-4-10 below shall constitute local consent for the purpose of any license issued by the state of Utah under the Alcoholic Beverage Control Act.

Retained Council Authority: Effective February 1, 2013, all Special Event Temporary Liquor or Beer Licenses effective during the applicable Sundance Film Festival annual Master Festival License period shall require City Council approval no later than the last regularly scheduled

Field Code Changed

[meeting in the proceeding month of December.](#)

(Amended by Ord. No. 10-21)

4- 4- 3. LICENSEE QUALIFICATIONS.

No beer or liquor license shall be granted to any individual, retailer, partnership, corporation, limited liability company, or association if any partner, director, or officer does not meet the qualifications for a license as set forth in (A) through (D), below:

(A) The licensee shall be over the age of twenty-one (21) years;

(B) No beer or liquor license shall be granted to anyone who has been convicted of or plead guilty to a felony within two (2) years of date of the application, or of misdemeanors involving alcohol or controlled substances during a period of one (1) year prior to the application;

(C) No beer or liquor license shall be granted to any person who has been convicted of any violation of any law or ordinance relating to the importation or sale of intoxicating liquors, or of keeping a gambling or disorderly establishment, or who has plead guilty to or forfeited his bail on a charge of having violated any such law or ordinance within the preceding three (3) years of the date of application; or

(D) Any person whose beer or liquor license was revoked pursuant to this Title is ineligible to reapply for a beer or liquor license until the expiration of three (3) years from the date such license is revoked.

(Amended by Ord. Nos. 01-32, 01-21)

4- 4- 4. APPLICATION FEE.

Each beer and liquor license application shall be accompanied by the regulatory license fee required by ~~Section 4-5-2 or Section 4-4-6~~[this Title](#). If the license is denied, fifty percent (50%) of the license fee will be retained to pay the costs of processing the application.

4- 4- 5. REFERRAL OF LICENSE APPLICATION TO CHIEF OF POLICE.

All applications filed in accordance with this Chapter shall be referred to the Chief of Police ~~or~~[designee](#) for inspection and report. The ~~Chief of~~ Police shall, within ten (10) ~~business~~[business](#) days after receiving such application, conduct an investigation of any criminal violations or charges against the applicant, or partners, officers, or directors; if the application is not an individual; the nature and kind of business to be conducted at such place by the applicant; the nature and kind of entertainment, if any, at such place; and the proximity of such premises to any school or church. The Chief of Police ~~or designee~~[shall](#), upon completion of such investigation, submit ~~his/her~~[his/her](#) recommendation as to whether the license should be granted. In making ~~his/her~~[his/her](#) recommendation, the Chief of Police ~~or designee~~[may](#) refer to the character of other licensed premises owned in full or in part by the applicant. If recommending denial of a ~~special event~~[special event](#)

~~alcoholic beverage.~~ beer or liquor license application, the Chief of Police or designee shall submit a detailed report of ~~his/her/the~~ investigation, record the recommendation on the application, and sign the application. If recommending approval of a beer or liquor license application, the Chief of Police or designee shall record such recommendation on the application, sign the application, and may, at his/her sole discretion, submit a detailed report of the investigation.

(Amended by Ord. No. 01-32)

4- 4- 6. REFERRAL OF APPLICATION TO BUILDING DEPARTMENT AND PLANNING DEPARTMENT.

The Finance Manager or designee shall refer the application to the Building and Planning Departments for review by the Building Official to ensure compliance with the applicable building codes, determination of the maximum number of occupants the premises may safely accommodate at one time given the location and number of emergency exits, and compliance with the Park City Land Management Code, Title 15. The Building and Planning Departments shall, within ten (10) businesses days after receiving such application, submit to the Finance Manager or designee a recommendation to approve or deny the application.

(Amended by Ord. No. 01-32)

4- 4- 7. REFERRAL OF LICENSE APPLICATION TO HEALTH DEPARTMENT.

The Building Department may refer any application filed in accordance with this Chapter to the County Health Department which may inspect all premises to be licensed to assure compliance with all laws and regulations of the State of Utah and the ordinances, rules, and regulations of Park City governing the sanitary preparation, storage, distribution, or sale of beer and food.

(Amended by Ord. No. 01-32)

4- 4- 8. PERIODIC INSPECTION OF PREMISES BY CHIEF OF POLICE.

The Chief of Police or ~~his/her~~ designee shall be permitted to have access to all premises licensed or applying for license under this Chapter, and may make periodic inspections of said premises and may report his/her findings to the ~~City Council~~ Finance Manager or designee.

(Amended by Ord. No. 01-32)

~~4- 4- 9. GROUND~~S~~ FOR LICENSE DENIAL.~~

~~The City Council or its designee may deny a beer or liquor license if:~~

~~(A) The license application does not contain all of the information required by Section 4- 4- 2;~~

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~~(B) The application fee is not paid;~~

~~(C) The premises to be licensed do not comply with the applicable zoning regulations and building codes in force at the time of application;~~

~~(D) The applicant does not meet the licensee qualifications set out in Section 4-4-3;~~

~~(E) The applicant intentionally misrepresented or concealed information required by Section 4-4-2 in an application for the license;~~

~~(F) The proposed premises do not meet all applicable health and building codes, and the applicant does not provide reasonable assurances that the premises will be brought into compliance upon approval of the license;~~

~~(G) The applicant holds other licenses under this Title, which are not in good standing, or on which licensed premises the provisions of this Code and state laws are frequently violated; or~~

~~(H) Applicant does not hold a current Park City business license.~~

4-4-9. GROUNDS FOR LICENSE DENIAL, SUSPENSION, OR REVOCATION.

The City may deny, suspend, or revoke a license for any of the following reasons:

(A) Incomplete Application: The license application does not contain all of the information required by this Title.

(B) Failure To Meet Qualifications: If at any time the applicant, licensee, or any other person subject to this Title fails to meet the qualifications required under this Title and the statutes of the state;

(C) Nonpayment Of Fees: The application or renewal fee is not paid;

(D) Noncompliant Premises: The premises to be licensed does not comply with the applicable zoning regulations and building codes;

(E) Disapproval of Reviewing Department: One of the reviewing departments or divisions of the City provided for in this Title has disapproved the application pursuant to any applicable provision of this code;

(F) False Information: Applicant or licensee provides or has provided false, incomplete, or otherwise misleading information;

(G) Violation Of Applicable Laws: If at any time the applicant or licensee, agents or employees of the applicant or licensee, or the licensed premises are found to be in violation of applicable laws. This may include such things as:

- i. the applicant or licensee has violated or is violating any provisions of this Title or code, state or federal provision of this tile or provisions of this code, state or federal statutes or regulations governing applicant's activities,
 - ii. the applicant holds other licenses under this Title, which are not in good standing, or on which licensed premises the provisions of this Code and state laws are frequently violated,
 - iii. the proposed premises do not meet all applicable health and building codes, and the applicant does not provide reasonable assurances that the premises will be brought into compliance upon approval of the license,
 - iv. the agents or employees of a licensee violate this Title or any other laws while acting as an agent or employee of the licensee, or
 - v. any violation of a provision of this Title or code or any other applicable ordinance or law relating to alcoholic beverages occurs on the licensed premises, whether an infraction or a misdemeanor;
- (H) Nuisance: If the licensed premises is not conducted and kept in a quiet, peaceable and orderly manner. If any nuisance is suffered to be committed or to be maintained upon the licensed premises;
- (I) Illegal Activities: The licensed premises is used for the commission of any illegal act or activity for any reason;
- (J) Failure To Obtain Or Maintain A Business License: If at any time the applicant or licensee does not hold a required Park City business license and a required state license;
or
- (K) Other: Any other reason expressly provided for in this Title.

Emergency Suspension by Police is applicable for violation of any of the provisions listed above pursuant to Section 4-4-15.

(Amended by Ord. No. 01-32)

4- 4- 10. ISSUANCE OF LICENSE CERTIFICATE.

All beer and liquor license certificates shall be signed by the City Manager and Finance Manager, attested by the City Recorder under the seal of the City, and shall contain the following information:

- (A) The street address of the licensed premises and mailing address if different;

- (B) A detailed description of the portion of the building designated as the licensed premises;
- (C) The maximum occupancy of the licensed premises;
- (D) The beer or liquor license classification;
- (E) The name of the person to whom such certificate has been issued and the name of a local contact person;
- (F) The name of the business;
- (G) The term of the license, including commencement and expiration dates; and
- (H) That the license is subject to revocation by the City for violation of this Title or the Alcoholic Beverage Control Act.

(Amended by Ord. No. 01-32)

4- 4-11. CITY LICENSE PERIOD.

Unless otherwise provided under this Title, ~~t~~The license certificate shall be valid through December 31 of the year of issuance, unless revoked or suspended under this Title or unless the licensee's required State license is suspended, revoked or denied.

4- 4-12. CITY RENEWAL PROCEDURE.

On or before December 1 of each year, the City shall send via first class mail, notice to each beer, restaurant liquor or Club Licensee within the City that the regulatory license fee required by ~~Section 4-5-2 or 4-6-6~~this Title is due by December 31st. Upon receipt of the regulatory license fee and finding that renewal is proper pursuant to the criteria set forth herein at Subsections (A) through (E), the ~~City Council~~Finance Manager or ~~its~~ designee shall issue a license certificate valid through December 31st of the next licensing year.

Upon notification by the Police Department, the licensee must close the licensed premises on the expiration date of the license and keep the premises closed for the consumption or storage of beer or liquor until the date his renewal license is issued by the ~~City Council~~Finance Manager or ~~its~~ designee. In the absence of such notice, pending action on license renewals, the license is deemed extended provided a renewal application was filed on or before December 31 of the year in which the prior license was issued. The Finance Manager or designee shall prepare a list or lists of all licenses to be renewed, and the ~~City Council~~Finance Manager or ~~its~~ designee may approve all renewals on that list or lists.

Licenses shall be renewed unless the ~~Council~~Finance Manager or ~~its~~ designee shall find that:

- (A) The licensee has attempted to transfer or assign the license to others in violation of this Title;

(B) The licensee no longer holds the qualifications required of licensee under the provisions of ~~Section 4-4-3~~ of this Title;

(C) The premises have been remodeled or changed in a manner that eliminates required exits, creates closed booths or stalls;

(D) The licensee or his/~~her~~ employees or agents have been convicted of or plead guilty to more than five (5) violations of this Title or state liquor control statutes relative to the conduct of the licensed premises in a single calendar year preceding the renewal, not including violation by patrons; or

(E) Licensee does not hold a current valid Park City business license or has not been exempted under Chapter 2 of this Title.

In the event the ~~Council-Finance Manager~~ or ~~its~~ designee finds any of the foregoing conditions (A) through (E) to exist with respect to a license renewal application, the ~~Council-Finance Manager~~ or ~~its~~ designee may waive the violations and grant a renewal license, grant a probationary renewal for a fixed period of time less than one year, or deny the application for renewal. When deemed appropriate, the Council may hold hearings on specific license renewal applications prior to granting the renewal license.

(Amended by Ord. Nos. 01-32, 10-21)

4- 4-13. LICENSES NON-TRANSFERABLE.

No license issued under this Chapter is transferable from the original licensee to any other person, partnership, corporation or other entity. Each year, as a part of the renewal process, the licensee shall indicate the board of directors, or all partners, and if there are any changes from the previous year, the license shall be reviewed as a new application to the extent of the changes in ownership.

(Amended by Ord. No. 01-32)

4- 4-14. TRAINING REQUIREMENTS FOR THE EMPLOYEES OF BEER AND LIQUOR LICENSE PREMISES.

No ~~person-applicant~~ shall be granted a ~~special event temporary, new~~ beer or liquor license, unless that ~~person-applicant~~ shall show by certificate(s) granted by the DABC or by adequate proof of the existence of such certificate(s), that each employee of the business engaging in the serving, selling or furnishing of such alcohol on the premises has completed the Alcohol Training and Education Seminar, as required in U.C.A. Section 62A-15-401.

Every new employee of a licensee who is required to complete this seminar shall complete the seminar within thirty (30) days of commencing employment. Violation of this Section will result in revocation of the license granted unless the licensee provides to the Finance Manager ~~or~~

| ~~designee~~ proof of compliance within thirty (30) days of the time that licensee is first notified that such violation occurred.

(Amended by Ord. Nos. 01-32, 10-21)

4- 4-15. **EMERGENCY SUSPENSIONS BY POLICE.**

| Licenses under this Chapter may be suspended by the Chief of Police or ~~his/her~~ designee without prior hearing provided that there is probable cause to believe that violations of this Chapter or state law are occurring, and the conditions are such that the public health and safety are endangered. Such temporary suspension shall occur only if the management or the licensee fails to remedy the situation within fifteen (15) minutes of notification by the Chief of Police or
| ~~his/her~~ designee that a suspension will occur if the conditions complained of are not remedied in a manner that eliminates the immediate danger to public health and safety. No emergency
| suspension by the Chief of Police or ~~his/her~~ designee shall extend beyond the ordinary close of business on the day on which the suspension was given.

(Amended by Ord. No. 01-32)

4- 4-16. **OFFENSES OF LICENSEE.**

It shall be unlawful for the holder of any license issued under this Chapter or any employee or agent of the holder to cause or permit to be caused on his or her premise any of the following acts:

(A) **SALE DURING REVOCATIONS.** To sell any beer or liquor during any period of a license revocation or suspension.

(B) **FAILURE TO DISPLAY LICENSE.** To fail to have the license issued under this Chapter on display in the licensed premises.

(C) **EXCESS HOURS OF OPERATION.** Beer may not be sold or offered for sale by any on-premise Beer retailer after 1:00 a.m. and before 10:00 a.m.

(1) Liquor may not be sold or offered for sale at a duly licensed restaurant during the following days or hours:

(a) on any day after 12 midnight and before 12 noon.

| (2) Liquor may not be sold or offered by a Club Licensee ~~during~~ the following days or hours:

(a) all days after 1:00 a.m. and before 10:00 a.m.

Holders of off-premise beer licenses may sell beer for consumption off the premises at any time of day.

(D) **MINORS ON THE PREMISES.** To permit a minor to be in or enter into a licensed

premises which holds an on-premise tavern beer license. There shall be no restriction on the admission of minors being in or remaining in any of the following licensed premises:

- (1) Off-Premise Beer License
- (2) On-Premise Beer License, except taverns
- (3) Restaurant Liquor Licenses
- (4) Temporary Licenses of these classifications

It shall not be a violation of this Chapter for minors to enter a licensed club, provided, however, that minors must be accompanied by a parent or guardian, and shall be only within an area of the licensed premises designated as food service area. It shall be unlawful for any Club Licensee to permit minors to be within the license premises when not accompanied by a parent or guardian, or to permit minors to remain in or about the liquor service portion of the premises. Licensees may prohibit minors from entering the premises at all at their discretion by posting a sign at the entrance that states that minors are not permitted inside.

Except as otherwise provided herein, it shall not be a violation of this Chapter to permit minors to work in any licensed premises, regardless of license classification, provided that minors shall not work in any capacity that involves handling, selling, or serving alcoholic beverages. It shall be unlawful to permit minor employees to sell, serve, or handle alcoholic beverages. Minors may not work on or otherwise be on the premises of an On-Premise Retail Tavern.

(E) **SALE OR SERVICE TO MINORS.** To furnish or sell, directly or indirectly, through its agents or employees, an alcoholic beverage to persons under the age of twenty-one (21) years, or to permit patrons within the licensed premises to provide alcoholic beverages to persons under the age of twenty-one (21) years on the licensed premises.

(F) **NUISANCE.** To keep or permit a nuisance on the premises as defined by ~~Section 4-1-1~~ of this Title.

(G) **UNTAXED LIQUOR.** To possess or sell on the licensed premises any liquor which was not purchased from a Utah State Liquor Store or a package agency of that store, except as provided by State law.

(H) **ADULTERATED ALCOHOLIC BEVERAGES.** To possess or sell on the licensed premises any adulterated, impure, diluted, or misbranded liquor.

(I) **FAILURE TO CONTROL NOISE.** To permit or provide either live or recorded amplified music without first having closed all exterior doors and windows of the licensed premises to control noise. Doors may be opened to provide ingress and egress, but shall not be blocked in the open position to provide ventilation. Doors shall be equipped with automatic closing devices to keep them in the closed position except to permit ingress and egress of patrons.

(J) **OUTDOOR SPEAKERS.** To permit or cause to exist any loud speaker or sound amplification equipment on any outdoor balcony deck, patio, or garden associated with the licensed premises other than speaker systems or sound amplification equipment in conjunction with approved outdoor dining.

(K) **EXCESS HOURS OUTSIDE.** To sell or service alcoholic beverages or to permit patrons to remain on any outdoor balcony, deck, patio, or garden associated with the licensed premises after the hour of 10 p.m. except licensed premises may permit patrons to ingress and egress through a closed door to such an area until 12 a.m. provided that food and alcohol are neither sold nor allowed to be consumed or carried out to the area.

(L) **GAMBLING.** To permit, cause, participate, or allow any gambling or gaming, as defined by the laws of the state of Utah within any licensed premises.

(M) **CONTROLLED SUBSTANCES.** To permit or tolerate, or participate in the use, sale, or possession of any unlawful controlled substance within the licensed premises.

(N) **OVERLOADING.** To permit or tolerate the licensed premises to be occupied by more person than the assigned occupancy load for the building assigned by the Building Official [or Fire Marshal](#) under the [Uniform-applicable Building and Fire Code regulations](#).

(O) **LICENSE VIOLATION.** To permit the consumption of alcohol on any premises licensed with an off-premise beer license, or to open any container for consumption on the premises by the holder of any off-premise beer license or his agents or employees; or to permit, cause, or tolerate on the licensed premises the sale, use, consumption, or possession of alcoholic beverages in a manner that is in violation of the limits imposed by the license granted.

(P) **SERVICE OF INTOXICATED PERSONS.** To sell or serve alcoholic beverages to a person who is obviously intoxicated, or to permit an obviously intoxicated person to remain in or about the premises.

(Q) **OPERATING WITHOUT REQUIRED STATE LICENSES.** To continue to sell, serve or store alcoholic beverages on a licensed premise after the state license required under the Alcoholic Beverage Control Act has been denied, suspended or revoked.

(Amended by Ord. Nos. 01-32; 06-62; 07-38; 10-21)

4- 4-17. OFFENSES BY PATRONS.

It shall be unlawful for any person within a licensed premise under this Chapter, whether as a guest, patron, invitee, supplier, or in any other capacity other than as an employee of the license holder or as the licensee to commit or perform any of the following within the licensed premises:

(A) To enter or remain in any licensed premises holding an on-premise tavern license while under the age of twenty-one (21) years.

- (B) To enter or remain in any premises licensed as a private club while under the age of twenty-one (21) years, except when accompanied by a parent or guardian or as a non-alcoholic handling employee of the licensee.
- (C) To be in or around the portion of any licensed premise holding a private club license which is designated or functioning as a liquor selling portion of the premises, rather than the area primarily designed and intended for the sale of food when under the age of twenty-one (21) years.
- (D) To furnish directly or indirectly alcoholic beverages to any persons under the age of twenty-one (21) years, or to possess or consume alcoholic beverages while under the age of twenty-one (21) years.
- (E) To enter or remain in any licensed premises after being ordered to leave the premises by the licensee or the agent or employees of the licensee.
- (F) To enter or remain in any licensed premises while intoxicated.

(Amended by Ord. No. 10-21)

4- 4-18. CITATIONS/ VIOLATIONS.

The commission of any act or offense listed in Section 4-4-16 or 4-4-17 above shall be a Class "B" misdemeanor, except violations of Section 4-4-16(E) and (Q) shall be Class A misdemeanors. Both the license holder and/or his employee or agent, and the patron of the licensed premises may be charged from the same incident, as the offenses of the licensee and the offenses of the patron are separate offenses. The licensee shall be civilly responsible for all violations permitted or caused by the agent or employee of the licensee and the criminal acts of the employees or agents committed on the premises in the course of employment shall be deemed the acts of the licensee for purposes of revocation, suspension, or non-renewal by the City

4- 4-19. WHOLESALE AND RETAILER NOT TO HAVE COMMON INTERESTS.

It shall be unlawful for any dealer, brewer or wholesaler to either directly or indirectly supply, give or pay for any furniture, furnishings or fixtures of a retailer, and it shall be unlawful for any dealer or brewer to advance funds, money or pay for any license of a retailer or to be financially interested either directly or indirectly in the conduct, operation, or ownership of any premises with a beer license, "club" liquor license or "seasonal" license for any of these license classes.

(Amended by Ord. No. 20-21)

4- 4-20. BUILDING REQUIREMENTS.

It shall be unlawful for any person who obtains a liquor or beer license after the adoption of this Chapter to own, operate or manage any premises licensed for the retail sale or consumption of beer or liquor without complying with the following lighting and view requirements:

(A) During business hours, adequate lighting shall be maintained in all areas of the licensed premises to allow safe movement within the licensed premises, visibility for business activity, and visibility of all areas of the licensed premises from a point within the licensed premises at or near the main public entrance.

(B) A clear, unobstructed view of all areas of the licensed premises shall be available at all times from a point within the licensed premises at or near the main entrance.

Persons who have obtained beer or liquor licenses from the City before adoption of this Chapter and who annually renew their licenses with the City shall not be required to comply with the requirements of this section.

4- 4-21. CLOSED STALLS AND BOOTHS PROHIBITED.

It shall be unlawful for any closed booths or stalls to exist on premises licensed for the retail sale or consumption of beer or liquor. This provision shall not prevent the use and operation of private dining or conference rooms as a part of the licensed premises.

4- 4-22. OCCUPANCY LOAD.

On any premises licensed after the date of this Chapter, the Building Official shall determine the maximum safe occupancy load of the building, as provided in the [Uniform-International Building Code](#), and it shall be unlawful and a Class "B" misdemeanor for any license with an assigned occupancy load to permit more than that number of persons to be within the licensed premises. Once an occupancy limit is assigned, the limit shall be posted with the license in a prominent place within the licensed premises. This provision shall not apply to premises licensed as off-premise beer licenses.

4- 4-23. APPLICABILITY.

The provisions of this Chapter shall apply to all licensed premises and all licensees who are issued either a new license or a renewal of an existing license after the date of this Chapter. Amendments to this Chapter may be made from time to time, and all licenses or renewals issued hereunder are subject to amendments as they become effective, except that amendments which address structural requirements of any licensed premises existing at the time of the amendment shall not apply to existing structures until such time as the license is transferred, forfeited, or allowed to expire. As existing structures are sold, remodeled, or re-licensed, but not on renewal of existing licenses, however, full compliance will be required prior to the issuance of a new license, new class of license, or license to a new licensee at that location.

4- 4- 24. APPEALS OF LICENSE DENIAL.

Denial or revocation may be appealed within five (5) days to the City Manager or the City Manager's designee by written notice of appeal. The notice of appeal shall be filed with the City Recorder. The City Manager or his designee may consider the appeal based upon the written submissions. However, for good cause shown, the City Manager or his designee may also hear oral evidence and argument. The City Manager or his designee shall consider the matter using an error of law standard of review.

CHAPTER 4A – SPECIAL EVENT TEMPORARY ALCOHOLIC BEVERAGE LICENSES DESCRIBED

4- 4A- 1. SPECIAL EVENT TEMPORARY ALCOHOLIC BEVERAGE LICENSE REQUIRED.

It shall be unlawful for any person to sell beer or liquor at any event within the City without first procuring a Special Event Temporary Beer License or Special Event Liquor License as required by this Chapter. No alcoholic beverages may be served at any event(s) at which natural person(s) or entities (including, but not limited to corporations, partnerships, unincorporated associations or joint ventures) will be engaging in business unless a Special Event Temporary Beer License or Special Event Liquor License is secured prior to the event. A City Special Event Temporary Beer License or Special Event Liquor License is required if engaging in business, even if a State license is not required.

In addition to the City license, a State Temporary Beer Event Permit or Single Event Permit shall be required for all sales of beer or liquor at any event. No license may be transferred, assigned or subleased in any manner. Licenses are invalidated by transfer or attempted transfer. All licensees shall comply with the provisions of the Alcoholic Beverage Control Act, and this Title.

4- 4A- 2. LICENSE APPLICATION.

Applications for a Special Event Temporary Alcoholic Beverage License shall be made on behalf of a bona fide association, corporation, church or political organization or a recognized lodge, chapter or other local unit, in writing, to the Finance Manager or designee and include the information set forth in (A) through (G) below:

- (A) Each application shall state the name, street address, mailing address, age and citizenship of the applicant; and contain an indication as to whether the applicant meets the Licensee qualifications set out in this Title;
- (B) A statement detailing applicant's criminal history and certified and signed by the applicant;
- (C) The Street address of the business; whether the applicant has complied with requirements specified in the Alcoholic Beverage Control Act; the location of any other beer or liquor licenses held by the applicant; the name and Utah address for the business' agent for service of process; and any other reasonably pertinent information required by the Finance Manager or designee;

- (D) The application must be subscribed by the applicant who shall state under oath that the facts contained therein are true;
- (E) A copy of the articles of incorporation or the written partnership agreement showing entity has been in existence for at least one (1) calendar year prior to the date of application;
- (F) The name, street address, mailing address, age and citizenship of each officer, partner, or director; and
- (G) Affirmation indicating each officer, partner, or director meets the Licensee qualifications set out in this Title;

Applications may take up to ten (10) business days to process. As provided by this Title, applicants may not store, sell, serve or otherwise facilitate the consumption of alcoholic beverages by others until applicant has procured a license as required by this Title and a sState issued license.

4- 4A- 3. REGULATORY SPECIAL EVENT TEMPORARY ALCOHOLIC BEVERAGE LICENSE FEE.

The regulatory liquor license fee shall be set by resolution for all Special Event Temporary Beer License and Special Event Liquor License licenses. The regulatory license fees shall be used by the City to defray, in part, the costs of alcohol related enforcement and responding to alcohol related offenses within Park City. This fee may be waived by the Finance Manager or designee for special event temporary licenses issued to persons participating in community sponsored events, or in events sponsored by or for the benefit of non-profit, civic, religious, or charitable organizations.

4- 4A- 4. SPECIAL EVENT TEMPORARY ALCOHOLIC BEVERAGE LICENSE.

A Special Event Temporary Alcoholic Beverage License shall grant a bona fide association, corporation, church or political organization or a recognized lodge, chapter or other local unit that is conducting a convention, civic or community enterprise the privilege to store, sell, service and consume alcoholic beverages in accordance with an applicant's State liquor license. The privileges granted by this license shall be limited by the type of temporary license or permit the applicant obtains from the State as follows:

- (A) Where applicant obtains a State Temporary Beer Event Permit, this license shall carry the privileges and responsibilities granted State Temporary Beer Event Permit holders and shall authorize the storage, sale, service and consumption of beer for a period not to exceed thirty (30) days. No person, individual, or association shall in any one (1) calendar year operate under a Special Event Temporary Alcoholic Beverage License for more than a total of ninety (90) days; or

(B) Where applicant obtains a State Single Event Permit this license shall carry the privileges and responsibilities granted State Single Event Permit holders and shall authorize for a period not to exceed one-hundred and twenty (120) consecutive hours or five (5) consecutive days the storage, sale, service and consumption of liquor. In any one (1) calendar year an applicant may obtain up to twelve (12) licenses provided that all such licenses in the calendar year are for seventy-two (72) hours or fewer. If any license issued to an applicant within one (1) calendar year exceeds seventy-two (72) hours, applicant may obtain no more than four (4) special event liquor licenses for that one (1) calendar year.

Special Event Temporary Alcoholic Beverage Licensees must provide the Finance Manager or designee with proof of State licensure not less than ten (10) business days prior to the ~~master festival, special event, or other convention, civic or community~~ event for which the City license has been issued.

Subject to the limitations set forth in (A) and (B), a Special Event Temporary Alcoholic Beverage License shall authorize the storage, sale, service and consumption of alcoholic beverages in conjunction with a master festival, special event, convention, civic or community event and pursuant to the Utah Alcoholic Beverage Control Act, Alcoholic Beverage Control Commission rules and regulations, and the ordinances of Park City.

No person under the age of twenty-one (21) shall sell or serve beer under this license. Special event temporary beer licenses shall be valid only if the licensee has been granted a temporary special event beer permit by the Utah Alcoholic Beverage Control Commission pursuant to U.C.A. Sections 32A-10-301 to 306, as amended, for the same master festival, special event, or other convention, civic or community event. All licensees must notify the Finance Manager or designee immediately if their State license is denied, revoked, or suspended for any reason.

A special event temporary beer license may authorize multiple sales outlets on different properties under one special event temporary beer license.

4- 4A- 5. INSURANCE REQUIREMENTS.

No Special Event Temporary Beer and Special Event Liquor Event may take place until the applicant presents the Finance Manager or designee proof of liquor liability insurance coverage. The Finance Manager or designee will determine whether the insurance limits and coverage are adequate by examining factors such as the nature, size and location of an event.

CHAPTER 5 - BEER LICENSES DESCRIBED

4- 5- 1. BEER LICENSE REQUIRED.

It shall be unlawful for any person to engage in the business of the sale of beer at retail or wholesale within the City without first procuring a beer license as required by this Chapter. In addition to the City license, a State beer license shall be required for all sales of beer for on-premise consumption or for purchase or sale of beer in a container exceeding two liters. A separate license shall be required for each place of retail sale, for each separate premise, except that separate licenses are not required for each retail beer dispensing outlet located in the same building or on the same resort premise owned or operated by the same applicant. No beer license may be transferred, assigned or subleased in any manner. Licenses are invalidated by transfer or attempted transfer. All licensees shall comply with the provisions of the Alcoholic Beverage Control Act, and this Title. No Beer License shall be issued for any club or bar in the HCB District or HRC District that is regulated as a Storefront Property pursuant to LMC Chapter 15-15 unless the general public may join the club, either as an annual member or a temporary visitor, and the cost of that annual membership or temporary visitor card is not more than \$50.00.

(Amended by Ord. Nos. 07-28; 07-69; 10-21)

4- 5- 2. LICENSE APPLICATION.

Applications for new beer licenses shall be made in writing to the Finance Manager or designee and include the information set forth in (A) through (E) below:

- (A) Each application shall state the name, street address, mailing address, age and citizenship of the applicant; and contain an indication as to whether the applicant meets the Licensee qualifications set out in this Title;
- (B) The applicant's criminal history obtained from the Utah Bureau of Criminal Identification completed within three years of application;
- (C) The Street address of the business; whether the applicant has complied with requirements specified in the Alcoholic Beverage Control Act; the location of any other beer or liquor licenses held by the applicant; the name and Utah address for the business' agent for service of process; and any other reasonably pertinent information required by the Finance Manager or designee;
- (D) The application must be subscribed by the applicant who shall state under oath that the facts therein contained are true; and
- (E) If the applicant is a partnership, association, corporation, or limited liability company the applicant shall include a copy of the articles of incorporation or the written partnership agreement; and the information set forth in (A) and (B) for each officer, partner, or director.

4- 5- ~~23~~. **REGULATORY BEER LICENSE FEE.**

The regulatory liquor license fee shall be set by resolution for all beer licenses. The regulatory license fees shall be used by the City to defray, in part, the costs of alcohol related enforcement and responding to alcohol related offenses within Park City. This fee may be waived by the ~~City Council~~ Finance Manager or ~~its~~ designee for special event temporary licenses issued to persons participating in community sponsored events, or in events sponsored by or for the benefit of non-profit, civic, religious, or charitable organizations.

4- 5- ~~43~~. **RETAIL BEER LICENSE CATEGORIES.**

Retail beer licenses issued under the provisions of this Chapter shall be classified and carry the privileges and responsibilities hereinafter set forth in this Chapter:

(A) **OFF-PREMISE BEER LICENSE**. An off-premise retail license shall entitle the licensee to sell bottled or canned beer on the licensed premises in accordance with the Alcoholic Beverage Control Act and the ordinances of Park City.

- (1) Beer may not be sold, provided, or possessed for off-premise consumption in containers larger than two (2) liters.
- (2) A minor may not sell beer for off-premises consumption except under the supervision of a person twenty-one (21) years of age or older who is on the premises.
- (3) A beer retailer shall display beer sold by the retailer in an area that is visibly separate and distinct from the area where nonalcoholic beverages are displayed except that nonalcoholic beer may be displayed with alcoholic beer.
- (4) The beer retailer shall post a sign that reads, "These beverages contain alcohol. Please read the label carefully."
- (5) No consumption of beer or alcoholic beverage shall be permitted on the premises of an off-premise licensee.

(B) **ON-PREMISE RETAIL BEER LICENSE**. Any establishment desiring to sell beer at retail for on-premise consumption shall first obtain a Park City on-premise retail beer license and a State on-premise retail beer license as required under U.C.A. Section 32A-10-201. An on-premise retail beer license shall entitle the licensee to sell beer at retail in bottles, cans or at draft for consumption on the premises.

All State-issued on-premise beer retail licenses expire on the last day of February of each year. Accordingly applicants must submit a renewal application to the DABC no later than January 31st of each year. City beer licenses shall expire on December 31st of each year and the licensee must submit a renewal application to the City prior to December 15th. All licensees must notify

the City immediately if the State license is denied or revoked for any reason. On-premise licensees must provide the City with proof of State licensure by March 1 of each year or be subject to cancellation, revocation or termination of the City's license issued hereunder.

On-premise beer retail license holders may sell beer in open containers, in any size not exceeding two (2) liters, and on draft. Liquor may not be stored or sold on the premises of any on-premise retail beer licensee. Beer sold in sealed containers smaller than two (2) liters by the on-premise Licensee may be removed from the premises.

There are two types of licenses to be issued under this Section:

(1) **ON-PREMISE RETAIL TAVERN LICENSE.** An on-premise retail tavern license shall be required for all premises where the primary or main business is that of selling beer for consumption on the licensed premises. An on-premise retail tavern license shall entitle the licensee to sell bottled, canned, or draft beer for consumption on the licensed premises. No person under the age of twenty-one (21) years shall be employed or otherwise be on the premises licensed as an on-premise retail tavern.

(2) **ON-PREMISE RETAIL BEER LICENSE - ALL OTHERS.** An on-premise retail beer license restaurant shall entitle the licensee to sell beer at retail in bottles, cans or draft for consumption on the premises in conjunction with restaurant food service. No person under the age of twenty-one (21) years shall serve or sell beer under this license.

~~(C) — **SPECIAL EVENT TEMPORARY BEER LICENSES.** A special event temporary beer license shall carry the privileges of either an on-premise or off-premise license. A special event temporary beer license shall authorize the storage, sale, service and consumption of beer in conjunction with a master festival, special event, convention, civic or community event and pursuant to the Utah Alcoholic Beverage Control Act, Alcoholic Beverage Control Commission rules and regulations, and the ordinance of Park City. No person under the age of twenty one (21) shall sell or serve beer under this license. Special event temporary beer licenses shall be valid only if the licensee has been granted a temporary special event beer permit by the Utah Alcoholic Beverage Control Commission pursuant to U.C.A. Sections 32A-10-301 to 306, as amended, for the same master festival, special event, or other convention, civic or community event. Special event temporary beer licenses must provide the City with proof of State licensure not less than ten (10) business days prior to the master festival, special event, or other convention, civic or community event for which the City license has been issued. All licensees must notify the City immediately if their State license is denied, revoked, or suspended for any reason. A temporary beer license shall authorize the storage, sale, service and consumption of beer for a period not to exceed thirty (30) days. No person, individual, or association shall in any one (1) calendar year be licensed for more than a total of ninety (90) days.~~

~~A special event temporary beer license may authorize multiple sales outlets on different properties under one special event temporary beer license.~~

~~(C) **BEER CLUB LICENSE.** A Beer club Licensee shall carry the privileges of a tavern beer license provided that such license shall be issued only to bona fide clubs which are~~

organized, incorporated, bonded, regulated, and operated in compliance with the Alcoholic Beverage Control Act, and the Utah Alcoholic Beverage Control Commission Rules and Regulations.

(Amended by Ord. Nos. 04-19; 08-14; 10-21)

CHAPTER 6 - LIQUOR LICENSE DESCRIBED

4- 6- 1. LIQUOR LICENSE REQUIRED.

No person shall operate a place of business, which allows customers, members, guests, visitors, or other persons to possess, consume, or store liquor on the premises of the place of business without a liquor license issued by the City. A separate license shall be required for each place of business. No liquor license may be transferred, assigned, or subleased in any manner. —All licensees shall comply with the provisions of the Alcoholic Beverage Control Act, Utah Alcoholic Beverage Control Commission rules and regulations, and this Chapter. No Liquor License shall be issued for any club, bar or restaurant in the HCB District or HRC District that is regulated as a Storefront Property pursuant to LMC Chapter 15-15, as described in Sections 4-6-2 and 4-6-3 unless the general public may join the club, either as an annual member or a temporary visitor, and the cost of that annual membership or temporary visitor card is not more than \$50.00.

(Amended by Ord. Nos. 07-28; 07-6; 10-21)

4- 6- 2. LICENSE APPLICATION.

Applications for a new liquor license shall be made in writing to the Financial Manager or designee and include the information set forth in (A) through (E) below:

- (A) Each application shall state the name, street address, mailing address, age and citizenship of the applicant; and contain an indication as to whether the applicant meets the licensee qualifications set out in this Title;
- (B) The applicant's criminal history obtained from the Utah Bureau of Criminal Identification completed within three years of application;
- (C) The Street address of the business; whether the applicant has complied with requirements specified in the Alcoholic Beverage Control Act; the location of any other beer or liquor licenses held by the applicant; the name and Utah address for the business' agent for service of process; and any other reasonably pertinent information required by the Finance Manager or designee;
- (D) The application must be subscribed by the applicant who shall state under oath that the

facts therein contained are true; and

(E) If the applicant is a partnership, association, corporation, or limited liability company the applicant shall include a copy of the articles of incorporation or the written partnership agreement; and the information set forth in (A) and (B) for each officer, partner, or director.

(Amended by Ord. Nos. 01-32, 10-21)

4-6-3. REGULATORY LIQUOR LICENSE FEE.

The regulatory liquor license fee shall be set by resolution for all liquor licenses. The regulatory license fees shall be used by the City to defray, in part, the costs of alcohol related enforcement and responding to alcohol related offenses within Park City. This fee may be waived by the Finance Manager or designee for temporary licenses issued to persons participating in community sponsored events, or in events sponsored by or for the benefit of non-profit, civic, religious, or charitable organizations. This fee may be waived by the Finance Manager or designee for special event temporary licenses issued to persons participating in community sponsored events, or in events sponsored by or for the benefit of non-profit, civic, religious, or charitable organizations.

4-6-~~42~~. RESTAURANT LIQUOR LICENSE.

A restaurant liquor license shall only be issued to persons licensed by the Utah Alcoholic Beverage Control Commission under U.C.A. Section 32A-4-101 to 106, as amended. A "restaurant" liquor license shall entitle the licensee to provide liquor to patrons for consumption on the premise. Only bona fide restaurants shall be entitled to a restaurant liquor license. Patrons must intend to order food, which is prepared, sold, and served on the premises, in accordance with the Alcoholic Beverage Control Act and Utah Alcoholic Beverage Control Commission rules and regulations and the ordinances of Park City. Liquor is to be provided only in conjunction with a meal, and it shall be unlawful to serve or sell liquor except with a meal. No person under the age of twenty-one (21) years shall serve or sell liquor under this license. All liquor must be purchased in the restaurant from a server designated and trained by the licensee. Any alcoholic beverages under this license must be consumed at the patron or guest's table. A restaurant liquor license shall not entitle the storage of liquor on the licensed premises, except as designated on the application.

A restaurant liquor licensee may sell or provide a primary spirituous liquor only in a quantity not to exceed 1.5 ounces per beverage dispensed through a calibrated metered dispensing system approved by the Commission, except that:

(A) A spirituous liquor need not be dispensed through a calibrated metered dispensing system if used as a secondary flavoring ingredient in a beverage subject to the following restrictions:

(1) the secondary ingredient may be dispensed only in conjunction with the purchase of a primary spirituous liquor.

(B) Spirituous liquor need not be dispensed through a calibrated metered dispensing system if used as a flavoring on a dessert; and in the preparation of a flaming food dish, drink, or dessert;

(C) A restaurant patron may have no more than 2.5 ounces of spirituous liquor at a time; and a restaurant patron may have no more than one spirituous liquor drink at a time before the patron.

All holders of restaurant liquor licenses shall maintain records which shall disclose the gross sales of liquor and the gross sales of food served and any other items sold for consumption on or off the premises. Such sales shall be shown separately. Each licensee shall retain all invoices, vouchers, sales slips, receipts, and other records of beer and other commodity purchases from all suppliers. Such records shall be available for inspection and audit by the ~~Director of Finance~~ Finance Manager or ~~his or her~~ designee at any time following the close of the semi-annual period and for one (1) year thereafter, or as required by State regulations. Failure to properly maintain such records for such inspection and audit shall be cause for revocation of the restaurant liquor license.

Each restaurant liquor licensee shall maintain at least seventy percent (70%) of its total restaurant business from the sale of food, which does not include mix for alcoholic beverages or service charges. If any audit or inspection discloses that the sales of food on the licensed premises are below seventy percent (70%) of the gross dollar volume of business for any semi-annual period, the restaurant liquor license shall immediately be suspended and shall not be reinstated until the licensee is able to prove to the satisfaction of the ~~City Council~~ Finance Manager or ~~its~~ designee that in the future, the sales of food on the licensed premises will not fall below seventy percent (70%) of the gross dollar volume of business.

All Park City issued restaurant liquor licenses shall expire on December 31st of each year thereafter. All State-issued restaurant liquor licenses expire on October 31st of each year. All licensees must notify the City immediately if the State liquor license is denied, suspended or revoked for any reason. Restaurant liquor license applicants must provide the City with proof of State licensure by December 1st of each year or be subject to cancellation, revocation or termination of the City's license issued hereunder. All renewal applications must attach a copy of a valid State license.

(Amended by Ord. No. 10-21)

4-6- ~~53~~. PRIVATE CLUB LIQUOR LICENSE.

A liquor club Licensee shall be entitled to serve, sell, and store liquor, pursuant to Utah Alcoholic Beverage Control Commission rules and regulations, and the ordinances of Park City. No person under the age of twenty-one (21) years shall serve or sell liquor. All State-issued club licenses shall expire December 31st of each year. All State-issued club liquor licenses expire on June 30 of each year. All licensees must notify the City immediately if the State-issued club liquor license is denied, suspended or revoked for any reason. Club liquor license applicants

must provide the ~~City Finance Manager or designee~~ with proof of the State licensure by July 1st of each year or be subject to cancellation, revocation or termination of the City's license issued hereunder. All renewal applications must attach a copy of a valid State license.

(Amended by Ord. Nos. 10-21)

4-6- ~~64.~~ SEASONAL LIQUOR LICENSE.

A seasonal liquor license shall carry the privileges of a restaurant liquor license for a period of less than one (1) year to be determined by the ~~City Council~~ Finance Manager or ~~its~~ designee. No person under the age of twenty-one (21) years shall sell or serve liquor under this license.

~~4-6-5. SPECIAL EVENT LIQUOR LICENSE.~~

~~A special event liquor license shall authorize for a period not to exceed one hundred and twenty (120) consecutive hours or five (5) consecutive days the storage, sale, service and consumption of liquor at an event sponsored by a bona fide association, corporation, church or political organization or a recognized lodge, chapter or other local unit that is conducting a convention, civic or community enterprise. The City may not issue more than four (4) special event liquor licenses in any one (1) calendar year to the same association, church, or political organization, chapter, lodge or unit thereof, if any special event liquor license issued in any one (1) calendar year to said association, church, or political organization, chapter, lodge or unit thereof exceeds seventy-two (72) hours. If no special event liquor license exceeding seventy-two (72) hours has been granted to said association, church, or political organization, chapter, lodge, or unit thereof in any one (1) calendar year, the City may issue up to twelve (12) single event liquor licenses provided that all such licenses in the calendar year are seventy-two (72) hours or fewer.~~

~~A special event liquor license may authorize multiple sales outlets on different properties under one special event liquor license.~~

(Amended by Ord. Nos. 04-19; 08-14; 10-21)

~~4-6-6 REGULATORY LIQUOR LICENSE FEE.~~

~~The regulatory liquor license fee shall be set by resolution for all liquor licenses. The regulatory license fees shall be used by the City to defray, in part, the costs of alcohol related enforcement and responding to alcohol related offenses within Park City. This fee may be waived by the City Council or its designee for temporary licenses issued to persons participating in community sponsored events, or in events sponsored by or for the benefit of non-profit, civic, religious, or charitable organizations. This fee may be waived by the City Council or its designee for special event temporary licenses issued to persons participating in community sponsored events, or in events sponsored by or for the benefit of non-profit, civic, religious, or charitable organizations.~~

Field Code Changed



City Council Staff Report

Subject: Capital Budget Check-in and Capital Spending Philosophy
Author: Nate Rockwood – Capital Budget, Debt & Grants Manager
Department: Budget, Debt & Grants
Date: December 20, 2012
Type of Item: Informational

Summary Recommendations:

Council should provide a discussion regarding capital spending philosophy and provide direction to staff regarding adjustment to the additional resort sales tax project allocation plan – Scenario A/B and potentially bonding in FY 2013 for capital projects and open space acquisition related to the Additional Resort Communities Sales Tax.

Topic/Description:

Capital Budget Check-in and Capital Spending Philosophy

Background:

Resort Community Sales Tax

During the 2013 budget process, staff presented City Council with the 5-year Capital Improvement Plan (CIP) as part of the City Manager's Recommended Budget. The proposed plan did not originally include funding for several large projects including the remaining OTIS projects, Historic District/Main Street projects, storm drain improvements and additional open space acquisitions. Council indicated these projects should be funded with an increase to the Resort Community Sales Tax. Staff outlined the process and timeline involved in adjusting the Resort Community Sales Tax. On November 29, 2012 Council adopted an Ordinance enacting the tax.

Because the Additional Resort Community Sales Tax requires an election and waiting period, the earliest that the tax could be applied is April 1, 2013. As the outcome of the election was unknown at the time the 2013 budget was adopted, the FY 2013 Final Budget did not include any additional funding or project budget associated with the additional Resort Community Sales Tax.

During the budget process, staff presented City Council with several scenarios showing possible allocation of the revenue through combinations of cash and debt financing. At that time, Council expressed a desire to allow flexibility in the fund. After much discussion, Council settled on 10 year funding strategy known as Scenario A/B.

The FY 2014 plan and 5-Year CIP were adjusted to include the funding strategy listed in Scenario A/B. Scenario A/B was adjusted per Council direction on June 14th to include an accelerated funding strategy for OTIS. It has always been intended that because this funding scenario begins in FY 2014, City Council would have the FY 2014 budget process to make adjustment and modifications before any project funding was implemented. The A/B scenario is simply one possible funding strategy and plan. It is

recommended that Council continue to reevaluate the plan during each yearly budget process and when presented with bonding or contract agreements related to projects which are associated with the Additional Resort Community Sale Tax revenue.

Analysis:

The City usually begins the budget process in February with City Council identifying objectives for the next year and the presentation of the annual Financial Impact Assessment Report (FIAR). FY 2014 is the second year in the 2-year budget cycle. Staff does not currently anticipate performing a full BFO or CIP prioritization process in the off budget year. However, staff does anticipate limited operating and capital adjustments to the FY2014 budget.

The City recently secured an additional funding source with the Additional Resort Communities Sales and Use Tax (ARST). It is anticipated that the ARST will generate approximately \$3.2 million in FY 2014. The full amount of the anticipated revenue was designated to be received in the City's Capital Improvement Fund.

The A/B scenario designates total funding between 2014 and 2021 to the following capital projects:

Designated Project 2014 - 2021	Total Funding Amount
Historic Park City/ Main Street & Downtown Projects	\$14.5 M
OTIS	\$8.5 M
Open Space	\$15 M
Storm Drain Improvements	\$8.5 M
Total	\$46.5 M

Open Space currently includes open space acquisition and easement monitoring fund allocations

The original Scenario A/B was a mix of cash and bond funding which would allow Council a level of flexibility in project spending. When the scenario was modified for an accelerated OTIS completion date, a portion of this flexibility was removed as more bonding was necessary to complete the projects sooner. The current plan relies on approximately 75% debt and 25% cash. This included debt of \$6 M in FY 2014 for the downtown projects and \$3 M in open space. Open Space and OTIS projects are funded by an additional bond of \$6.3 M in FY 2015 (See table below – a complete text and graph description of the scenario is located in attachment A).

Long Range Financial Model Scenario A/B - Accelerated funding for OTIS										
Project	Funding Type	Total Funding	Funding Available by Fiscal Year							
			FY2014	FY2015	FY2016	FY2017	FY2018	FY2019	FY2020	FY2021
OTIS (Phase A)	Cash	\$ 1,800,000	\$1,800,000							
OTIS (Phase B)	Debt	\$ 2,300,000		\$ 2,300,000						
OTIS (Phase C)	Cash	\$ 1,900,000			\$ 633,333	\$ 633,333	\$ 633,333			
OTIS (Phase D)	Debt	\$ 2,500,000					\$ 2,500,000			
Downtown Projects (Phase II)	Debt	\$ 6,000,000	\$6,000,000							
Downtown Projects (Phase III)	Debt	\$ 3,500,000				\$ 3,500,000				
Downtown Projects (Phase IV)	Debt	\$ 3,200,000						\$ 3,200,000		
Downtown Projects (Cash)	Cash	\$ 1,800,000			\$ 360,000	\$ 360,000	\$ 360,000	\$ 360,000	\$ 360,000	
Additional Open Space (Phase I)	Debt	\$ 3,000,000	\$3,000,000							
Additional Open Space (Phase II)	Debt	\$ 4,000,000		\$ 4,000,000						
Additional Open Space (Phase III)	Debt	\$ 5,000,000				\$ 5,000,000				
Additional Open Space (Cash)	Cash	\$ 3,000,000	\$1,500,000	\$ 1,500,000						
Storm Drain System (Cash)	Cash	\$ 4,000,000		\$ 1,333,333	\$ 1,333,333	\$ 1,333,333				
Storm Drain System (Debt)	Debt	\$ 4,500,000					\$ 1,500,000			\$ 1,500,000

It should be noted that the adopted plan includes \$1.8 M in cash for OTIS 'Phase A'. This cash represents the funds used for the OTIS – Empire Ave. project. Staff had originally grouped all OTIS projects together. Council indicated the ARST should be the funding source of OTIS if the election was approved, however, Council wished to proceed with the road reconstruction of Empire Ave. At that time, at the suggestion of the City Manager, Council directed staff to transfer the amount necessary from the General Fund (GF) fund balance to cover the cost of proceeding with the reconstruction of Empire Ave. It was the intention of Council and staff to replenish the GF fund balance to the 18% limit once the ARST was approved. If Council wishes to continue the policy of maintaining the 18% limit in GF fund balance, staff will make technical adjustments to the FY 2013 budget at year end to achieve this goal. Staff will also document and make Council aware of the 2013 budget adjustment during the 2014 budget process.

Timing of Funds

Currently, cash and bond funding is budgeted starting in FY 2014. Much like the Empire Ave. timing and funding constraints discussed during last year's budget process, Council and staff are currently working on projects and open space acquisition which will require funding in the current fiscal year - FY 2013. Due to the short construction window, staff would like to start the downtown enhancement projects during the next construction cycle (spring 2013). Based on possible open space options and the construction timing of the downtown projects, Council should direct staff on whether or not to prepare an adjustment to the current A/B funding scenario which allows a portion of the anticipated cost to be financed as a FY 2013 sales revenue bond against the ARST.

Capital Spending Philosophy

Pay-as-you-go vs. Debt

Both the Additional Resort Sales Tax and the Lower Park RDA funds are unique funding sources. Both have been restricted to primarily capital projects and both have significant purchasing power especially when viewed in the context of revenue bonds. The RDA funds are restricted geographically and within the scope of the adopted RDA plan. The ARST funds are restricted to capital projects and, to a limited extent, the current funding scenario. However both funding sources are, in a sense, uncommitted until the City issues revenue bonds against the revenue stream. One of the most important issues

that City Council will face regarding these funding sources will be in project allocation and the financing method.

There are two basic ways that these revenue streams can be spent, as they are obtained - the 'pay-as-you-go' option or they can be borrowed against - the bonding or debt financing option. There is no single 'right way' to pay for capital improvements. Arguments can be made for either the 'pay-as-you-go' or the borrowing approach. Neither is there a precise formula for determining an optimal mix of financing methods. One key point which should be evaluated when considering a project is that once a bond is issued, that portion of the revenue stream is obligated and committed to repayment of the project cost for the life of the bond. The key tradeoff is receiving the benefits of the project now vs. losing the flexibility of the funding source in the future. In considering the appropriate mix of pay-as-you-go and borrowing Council should be aware of the advantages and disadvantages of each approach.

The Pay-as-You-Go Approach

The main advantages of pay-as-you-go financing (relative to debt financing) are as follows:

- Reduced interest expense. The savings in interest costs payable on outstanding debt can be used to finance additional capital projects, reduce tax increases, or expand services.
- Increased flexibility. The absence of fixed annual debt costs provided for greater flexibility during economic downturns or for future high priority projects.
- Enhanced debt capacity and credit rating. If an agency has zero outstanding current debt it may find that future ability to borrow for "greater" capital needs is enhanced. If the City borrows now, it may not be able to borrow as much in the future. High current debt burdens may lower credit ratings and raise the cost of future borrowing.
- Increased fiscal responsibility. The likelihood of incurring excessive debt is reduced. Decision makers are *forced* to consider the impact of major capital expenditures on the operating budget.

The main disadvantages of pay-as-you-go financing (relative to debt financing) are as follows:

- Insufficient funds. Current revenues are not likely to be sufficient to pay for significant capital projects unless accumulated in a reserve account.
- Higher cost of construction if inflation costs rise at a rate higher than the interest cost of borrowing.
- Intergenerational inequity: those who benefit in the future from a capital facility do not contribute to the cost of the facility.
- Lumpiness of funding requirements. Unlike debt service payments, the funds necessary for capital projects may be greatly inconsistent from year to year.
- Raiding of accumulated reserves. Reserves may be raided for other uses before they are sufficient to finance capital improvements.
- Waiting for normal cash flow to fund projects will necessarily delay the enjoyment of or economic benefits that could be accelerated if borrowing facilitates earlier construction.

Borrowing - Debt

The main advantages of debt financing (relative to pay-as-you-go) are as follows:

- Acquisition as needed. The City can enjoy prompt use and benefit of capital improvements. Immediate or rapid construction is limited with pay-as-you-go financing.
- Intergenerational equity. The cost of capital expenditures is spread more equally over all of its users.
- Repayment in cheaper dollars. With a positive inflation rate, repayment costs will be less burdensome than would full payment at the time of acquisition.
- Enhanced Stability. Since debt service payments are known and predictable, wide fluctuations in required expenditures are avoided.
- Possible reduced operating cost. For example, older high-maintenance roadways are more quickly replaced by newer, low-maintenance roadways.

The main disadvantages of debt financing (relative to pay-as-you-go) are as follows:

- Interest costs. The cost for the use of money must be added to the total cost of the capital project.
- Encumbered future revenues. Potential revenues are dedicated to the repayment of debt and are thus not available for other uses.
- The temptation to take on too much debt. Because borrowing enables the political credit for that construction to accrue to current officeholders while passing the costs on to future administrations there may be a temptation to take on too much debt. As the knowledge of what constitutes too much debt may not be known until after a default, some argue that it is better to not borrow at all.

Operating Impacts

Through a combination of the ARST, Lower Park RDA extension and the remaining Walkability bonds, the City is likely to see an estimated \$70 to 85 million in project funding over the next 10 years. While these improvements are an obvious boon to the services and economic growth of the City, Council must remain aware that the uses of these funds have been restricted to capital improvement projects. Capital projects often place a burden on the ongoing operating costs of the City.

The operating burden will vary from project to project. Reconstruction of an aging street may gain efficiencies while maintenance of a new main street plaza or transit structure may incur additional costs. Council must consider the impacts of capital improvement projects on the ongoing operating budget of the City. Capital projects which necessitate level of service adjustments could potentially impact other city services. It is staff's recommendation that these impacts should not be evaluated in isolation but should be evaluated as part of the Budgeting for Outcomes process in the context of all other city services. Maintaining the long range sustainability of city services continue to a high priority of city staff.

Future Discussion

Staff will present the FIAR during Visioning in February. The FIAR shows current and long range revenue and expenditure projections of the City. The FIAR projections help determine the 2-year operating and capital budget and the 5-year CIP. During visioning and the CIP preview in March it is anticipated that Council will discuss potential capital projects or issues which may have significant impacts on the current budget.

During Visioning staff will also discuss with the Council the master project scheduling timeline. An understanding of this timeline will allow Council to see not only the funding impacts but the commercial, livability and traffic impacts of the many construction projects scheduled over the next several years in Park City.

Department Review:

Budget, Debt, & Grants, Legal, and the City Manager reviewed this report.

Alternatives:

A. Approve:

Direct staff to return with recommended adjustments to the resort sales tax project allocation plan - Scenario A/B and project timelines, scope and costs in preparation to issue a sales revenue bond in FY 2013 against the Additional Resort Communities Sales Tax.

B. Deny:

Do not provide direction on current allocation plan. Projects start dates will match currently allocated funding and timing.

C. Modify:

Council may direct that changes be made to the current capital plan related to resort sales tax.

D. Continue the Item:

Council may continue the item in order to obtain additional information deemed necessary for direction.

E. Do Nothing:

This has the same effect as Alternative B.

Significant Impacts:

Council and staff are currently working on projects and agreements which may require Additional Resort Communities Sales Tax funding in FY 2013. In order to meet potential obligation, staff would like Council to consider issuing sales revenue bonds in spring FY 2013 against the Additional Resort Communities Sales Tax. This would require an adjustment to the current CIP budget and resort sales tax project allocation plan – Scenario A/B. If Council does not wish to adjust the plan or issue sales revenue bonds in FY 2013 staff recommends waiting on projects until FY2014 when the budgeted funding becomes available.

Consequences of not taking the recommended action:

If funding is not adjusted to include bonding in FY2013, projects start dates must match currently allocated funding and timing beginning in FY 2014. This would negatively impact open space commitments and would delay main street and OTIS projects which could begin in the spring of 2013.

Recommendation:

Council should provide a discussion regarding capital spending philosophy and provide direction to staff regarding adjustment to the additional resort sales tax project allocation plan – Scenario A/B and potentially bonding in FY 2013 for capital projects and open space acquisition related to the Additional Resort Communities Sales Tax.

Attachments:

A – Scenario A/B

Attachment A

Scenario A/B – Hybrid of Scenario A and B Accelerated OTIS Schedule

Scenario A/B is a hybrid of the original A and B scenarios, which, like scenario B, designates \$15 million of the additional sales revenue funds for open space acquisition and conservation easement monitoring. The scenario has been modified to include an accelerated funding schedule for OTIS. Like each option presented, A/B has the full amount of the additional Resort Community Sales Tax being received directly into the Capital Fund. This option relies heavily on cash up front with larger bond issuance occurring in FY2017. This structure will allow Council the flexibility to evaluate project progress and funding requirements before committing large portions of the Resort Community Sales Tax revenue to sales revenue bonds.

Scenario A-B includes a 10 year funding plan through a combination of cash a debt financing. It includes a combination of sales revenue bond for open space acquisition and conservation easement monitoring in FY 2014 for \$3M, FY 2015 for \$4M and FY 2017 for \$5M. It also includes an additional \$3M in cash for open space acquisition and conservation easement monitoring in FY 2014 and 2015. This would potentially provide a total of \$15M in funding for open space acquisition and conservation easement monitoring between FY 2014 and 2017 with \$10M coming in the first two years. Open space funding has been structures with debt up front in order to allow for possible short term acquisition needs. This strategy allows Council the ability to commit revenue for open space acquisition if suitable land becomes available and still have the knowledge that funding would be available for remaining infrastructure and enhancement projects. If suitable land is not available Council could save for future open space acquisition or fund other projects with cash rather than debt such as OTIS phase B or portions of the downtown projects.

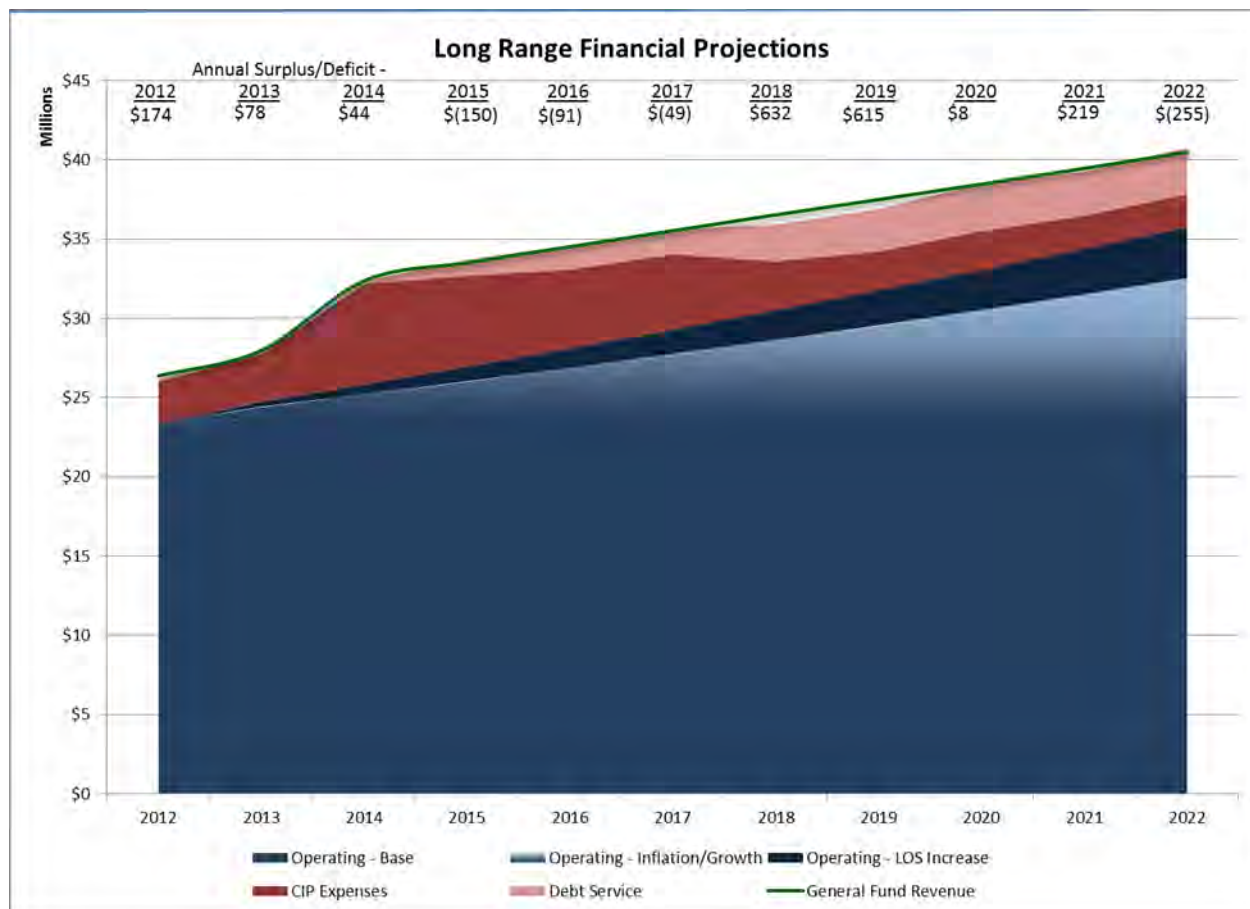
The scenario includes potentially funding Historic Park City/ Main Street projects phases II, III and IV through a combination of three sales tax revenue bonds in FY 2014 for \$6M, FY 2017 for \$3.5M and FY 2019 for \$3.2M. It also includes potentially funding \$1.8M for the project in equal cash payments of \$360,000 from FY 2016 to 2020.

Option A-B also includes a combination of cash and debt funding to cover storm drain improvements. This includes cash funding of approximately \$1.3M in FY 2015, 2016 and 2017 for a total cash amount of \$4M. In addition, \$4.5M in debt would be issued in amounts of 1.5M in FY 2018, 2021 and 2024 for a total cash and bond project amount of \$8.5M.

This option includes funding phases A, B, C and D of OTIS projects. This includes \$1.8M in cash in FY 2014 and debt amount \$2.3M in FY 2015 to cover phase A and B respectively. It also includes a combination of debt and cash to cover Phases C and D. equal cash payments in of \$633,333 in FY 2016, 2017 and 2018, and \$2.5 in debt in FY 2018 for phase D. (OTIS Phase A includes Upper and Lower Empire Ave. Phase B would include Sullivan Road; Hillside Ave. Stairs; and 8th, 10th, 11th, and 14th Street.

Phase C includes Rossi Hill Dr., McHenry St. and Swede Alley. Phase D includes the remaining OTIS projects)

Long Range Financial Model Scenario A/B - Accelerated funding for OTIS											
Project	Funding Type	Total Funding	Funding Available by Fiscal Year								
			FY2014	FY2015	FY2016	FY2017	FY2018	FY2019	FY2020	FY2021	FY2022
OTIS (Phase A)	Cash	\$ 1,800,000	\$1,800,000								
OTIS (Phase B)	Debt	\$ 2,300,000		\$ 2,300,000							
OTIS (Phase C)	Cash	\$ 1,900,000			\$ 633,333	\$ 633,333	\$ 633,333				
OTIS (Phase D)	Debt	\$ 2,500,000					\$ 2,500,000				
Downtown Projects (Phase II)	Debt	\$ 6,000,000	\$6,000,000								
Downtown Projects (Phase III)	Debt	\$ 3,500,000				\$3,500,000					
Downtown Projects (Phase IV)	Debt	\$ 3,200,000						\$3,200,000			
Downtown Projects (Cash)	Cash	\$ 1,800,000			\$ 360,000	\$ 360,000	\$ 360,000	\$ 360,000	\$ 360,000		
Additional Open Space (Phase I)	Debt	\$ 3,000,000	\$3,000,000								
Additional Open Space (Phase II)	Debt	\$ 4,000,000		\$ 4,000,000							
Additional Open Space (Phase III)	Debt	\$ 5,000,000				\$5,000,000					
Additional Open Space (Cash)	Cash	\$ 3,000,000	\$1,500,000	\$ 1,500,000							
Storm Drain System (Cash)	Cash	\$ 4,000,000		\$ 1,333,333	\$ 1,333,333	\$ 1,333,333					
Storm Drain System (Debt)	Debt	\$ 4,500,000					\$ 1,500,000			\$1,500,000	





City Council Staff Report

Subject: Water Conservation Program / Water Customer Service
Author: Jason Christensen, Water Conservation and Technology
Coordinator
Department: Water
Date: 12/20/2012
Type of Item: Informational

Summary Recommendations:

Staff recommends council review this staff report, ask questions of staff and provide direction and input on staff's proposed direction for the water conservation program. Staff also recommends Council approve using the Meter Reading Installation CIP to purchase a customer portal.

Topic/Description:

Water Conservation

Background:

This staff report discusses the history of Park City's conservation programs, recommendations for future programs, and the water outlook for 2013.

History

Park City's location, elevation, and climate provide many of the unique benefits that make Park City a destination resort community. Our location at the top of a watershed also limits water supplies mostly in terms of peak flow rate capacity. Conservation is a necessary element in our plans to meet the water needs of Park City and to manage a natural resource responsibly. The Park City Council first adopted irrigation restrictions in 1984 in response to drought conditions. In 2001, the Park City Council amended the ordinance to allow voluntary every third-day watering. Voluntary third day watering allows residents to opt into watering every third day instead of every other day. In response to another drought in 2007, Park City Council approved a position in the Water Department dedicated to Water Conservation efforts and enforcement and increased the fines for non-compliance with the Water Ordinance.

The past two years have highlighted the variability in precipitation that the City receives. 2011 was a notable for the record snowfall followed by a cool wet spring. 2012 was the exact opposite, with a below average snowfall follow by a hot and very dry spring and summer. Overall, the sequence of these two years significantly contributed to the ability of water providers in the state to meet water demands during the dry times. The benefit from a wet 2011 was that local reservoirs were filled and aquifers recharged. While Park City also benefited from the wet 2011 in the form of increased tunnel flows in 2012, this alone would not have prevented drought restrictions this past summer. The ability to meet peak summer demand without watering restrictions this past season is

due in large part to the Quinn's Junction Water Treatment Plant being brought online, and the additional water this Treatment Plant supplied from the Weber River.

While the City weathered 2012, an additional dry winter followed by a hot and dry spring and summer would likely trigger mandatory water restrictions and shed a brighter light on the need for long term conservation efforts.

In the past the City has offered a program similar to cash for grass. In the late 90's the City offered impact fee rebates to properties that installed water efficient landscaping. Detailed plans of the landscaping were required to be submitted. Once the landscaping was installed, if consistent with the submitted plan, a portion of the impact fee was returned. A document was also recorded that restricted re-landscaping for a period of five years. The program was discontinued with only a handful of projects ever taking part in this rebate program.

Analysis - Current and Future Water Conservation Programs:

Present

Water Audits

In partnership with Weber Basin Water Conservancy District the water department offers free sprinkler system water audits. Under this program, interns from Utah State University visit properties and measure the distribution uniformity of an existing sprinkler system. Based on this information recommendations are made to improve the irrigation system and/or a schedule for the irrigation controller is recommended.

In 2011, eleven properties participated in the water audit program. In 2012, nine properties participated in the water audit program. Although participation numbers are low, these audits provide specific and unique recommendations to assist individuals who are looking to reduce their water consumption. Water Audits also can reduce water demand without requiring landscaping changes. Furthermore, Park City's cost to provide this service is limited, requiring only the staff time necessary to schedule the audit and coordinate with Weber Basin. Staff will continue to offer this service in partnership with Weber Basin. Although Weber Basin currently provides this service at no cost, a CIP budget has previously been approved for this program. Does Council support using up to \$5,000 dollars from this fund to better publicize the water audit program? The current balance in this CIP is \$10,175.

Smart Controller Rebates

Smart irrigation controllers are controllers that adjust irrigation frequency and duration based on weather conditions. The City owns two weather stations that gather rainfall, humidity, and evapotranspiration rate (the rate at which water evaporates due to temperature, humidity, elevation, daylight hours and wind) data and transmit this information and the recommended inches of irrigation to the Utah Division of Water Resources website. These stations are located at the Solamere Tennis Club and in the

Bald Eagle neighborhood. Customers have the option of connecting to one of these stations or using a device with on-site soil moisture or rain sensors. With this information the Smart Controller can adjust the watering timeframe to meet the needs of turf. These controllers address overwatering a turf, one of the larger causes of water waste.

The water department currently offers a \$100 dollar rebate to our customers who install a Smart Controller at their property. Approximately five controller rebates have been issued since the program was initiated. Staff sees value in increasing participation in this program through public outreach. Smart Controllers represent another program that can reduce water demand without changing current landscaping. Does Council support using up to \$5,000 dollars from this fund to better publicize the Smart Controller program? The current account balance is \$17,895.

Watering Ordinance

As discussed above, Park City has long had a Water Conservation Ordinance. The conservation ordinance serves multiple purposes, but the primary purpose of the ordinance is twofold. First, the Ordinance helps conserve water by restricting daytime watering and wasteful watering. Second, the Ordinance helps to manage demand during the summer months. It does this by only authorizing about 50 percent of properties to water each day during the summer.

For those properties that want to further conserve water a third day watering schedule is available. Yard signs are provided to let neighbors know about their commitment to reduce water use and to advertise the program.

Enforcement of this ordinance has decreased in recent years. During the past year, five official warning were given and no citations were issued. This is below the level of education and enforcement staff believes is needed to create community awareness of the water ordinance. Specific recommendations for improving compliance with the Watering Ordinance are found in the subsequent section.

Future Goals

Customer Interactions

Recently the Water Department has focused on improving operations that relate to customer interactions including conservation outreach, education and promotion. These customer interactions are the interactions that most people have with the water department; activities such as paying a bill, disputing/resolving a high water bill, and asking questions about pressure, water quality and water disruptions. Staff believes that providing exceptional customer service will require a more integrated approach to customer service through a dedicated team. This team will likely be created from existing resources and staff is currently developing a plan to implement that team. As part of this process staff is evaluating the business aspects of the Water Department's interactions with our customers. These evaluations will include a review of department policies and an internal evaluation of the rate structure. In many instances this focus on customer service will overlap with conservation programs.

Immediate Feedback to our Customers

Starting in 2009, the Water department began transitioning to a fixed base meter reading system. The basics of this system involve installing radio transmitters that are attached to every customer meter. The radio transmitters read each meter hourly, and transmit readings back to a City database every four hours. This level of data is an evolutionary leap in terms of managing our water system, and discovering use patterns and resolving disputes regarding use.

It is interesting to note that PCMC 13-1-3 requires a minimum of 5 meter reads a year. The radio system can, and often does; collect 8,760 meter reads a year. In practice, only a single meter read per month is necessary to generate an accurate billing statement. The additional data collected provides several opportunities to empower customers to conserve water through immediate feedback on their water use.

The first opportunity is through a customer portal that shares near real-time usage data with a customer. It is envisioned that such a portal would allow customers to set up alerts when usage exceed a customer set level. This would allow customers the ability to manage their water usage and control their bill. It would also allow customers to detect leaks, out of compliance irrigation settings, or excess water usage much earlier. Currently there is a delay of over 45 days between when water at the beginning of a billing cycle is used and when a customer can see that information on their bill. In addition, the billed data is aggregate, showing an entire month of usage instead of daily or hourly usage. The delay and limitations of aggregate data contribute to wasted water and surprise bill amounts.

The Meter Reading Upgrade CIP budget has a remainder amount of \$145,651. Early estimates for the cost of a customer portal range from around \$100,000 for the software, plus \$19,000 in annual support for a non-hosted solution (Park City server) to \$234,000 for three years of a hosted solution (Vendor server). The current CIP balance is \$145,651. Staff recommends using the meter reading installation CIP to purchase a customer portal.

The second opportunity is to provide customers with a tailored report that shows month to month water usage and compares usage with “efficient” neighbors. Rocky Mountain Power has recently begun testing an improved layout for their bill that provides this information. The bill compares an individual’s usage to a pool of 100 similar houses in the neighborhood. Instead of only showing the average use, it also compares a user to the “efficient neighbors.” Providing billing information in this way has been shown to reduce consumption by creating a social norm and more conscientious use of water.

Such billing is gaining acceptance in the power industry, but is relatively untried in the water industry. Staff will be evaluating the possibility of a billing statement similar to Rocky Mountain Power’s.

Identify Water Loss Rate

Every water system has a water loss number. This is the amount of water lost due to leaks in the distribution system, illegal connections; un-metered flow i.e. fire hydrants, and system flushing.

During the Southern Nevada Water Authority (SNWA) presentation at City Tour this year, SNWA identified they have a system loss of 5%. The most recent analysis completed by Park City was in 2003 and found a loss rate of between 10-15 percent. With the availability of the data from the automated reader program we have the ability to better manage our system and understand our system. Currently staff believes it is possible to identify a rough system loss through data available from the automatic meters. This will require a significant staff time commitment. Staff will evaluate this data and propose focused efforts as needs to address different areas of town where it appears the water rate loss is higher than average. In the first iteration this water loss rate will be rough, likely having a large margin of error. Completing this exercise will provide valuable information on system condition and help prioritize repairs and improvements that reduce system water loss. Staff will complete the rough system loss calculation this summer and present the results in a Manager's Report.

Meter Replacement Program

Meters, as mechanical component of the system wear over time resulting in reduced accuracy. This loss in accuracy limits our ability to accurately measure system loss, and reduces the conservation message conveyed to residents, and results in lost revenue. The last meter replacement cycle occurred in 1990, although approximately 100 meters may be older than 1990. Residential meters typically should be replaced or rebuilt every 15 to 20 years. Exceeding the recommended timeframe does not impact water quality, but does increase the apparent water loss figure and reduce water revenues. Due to changes in the safe drinking water act rebuilding most of these meters will not be an option after 2014. This is because of federal legislation that further reduces the allowed lead content in water fixtures. The brass alloy typically used in meters exceeds this new lead standard. This means that replacement will be the only available option. Any program that is proposed should take this into account. Because of the benefit of undertaking such a program, staff will be working to implementing a meter replacement program. Given the scope and likely cost of such a program staff anticipates that it will take a year to develop a meter replacement program. Staff has already begun investigating possible meter replacements and is field testing a possible replacement meter. Once developed, staff will submit a proposal to fund this program.

Re-evaluate rate structure

One of the strongest conservation programs is likely our summer rate structure. Our current rate has two rate seasons: a summer and a winter rate structure. The rate seasons are as follows:

Type	Summer	Winter
Single Family & Multi-Family	4 Tiers (\$4.15, \$6.66, \$10.82 & \$16.66)	1 Tier \$5.84
Irrigation	2 Tiers (\$6.66 & \$10.82)	N/A
Commercial	2 Tiers (\$5.84 & \$9.04)	2 Tiers (\$5.84 & \$9.04)

Depending on the size of the meter the amount of water used before moving to the next tier varies. The base rate charge also increases as the meter increases in size.

As rates change in the future there are opportunities to provide conservation incentives that convey the cost of water and provide the revenue necessary to operate the water system.

Changes that will be evaluated include:

- Elimination of the Winter Rate Structure
- Reducing the Allocations Received per tier
- Increasing the number of Irrigation Tiers
- Increasing the number of Commercial Tiers
- Adding Pumping Surcharge to high elevation connections

Staff will develop these alternatives to determine if specific changes to the rate structure should be proposed if additional revenue is required.

Additional Rebates for water wise landscaping

Park City currently offers rebates for smart controllers. Rebates on these controllers offer a conservation option that does not require landscaping changes, but can result in meaningful water savings.

In order to further reduce water consumption additional rebates can be offered. Examples of additional modifications that would qualify for rebates would include parts for system retrofits or new installations that use less water than a typical spray head or rotor. Items that qualify for a rebate could include drip irrigation parts and high efficient spray rotors. This type of program provides an economic incentive to reduce water use.

The existing Capital Improvement Project budget for Smart Controllers is currently at \$17,895. Staff will evaluate whether to propose expanding the existing Smart Controller budget use to include additional water wise landscaping rebates.

Regardless of whether staff proposes a future expansion of the rebate program, staff intends to redouble efforts to publicize the availability of conservation rebates. Avenues that could be used to increase awareness include bill inserts, KPCW public service announcements, the Water Department website, and the Park Record.

Better understand turf and xeriscape water requirements in Park City

Staff has been evaluating the potential benefits of a “cash for grass” type rebate program. A cash for grass program is a governmental program where residents are paid to remove turf and in more recent programs enter a binding legal agreement not to replant grass in the area where they have received the rebate.

The leader in the cash for grass program is the Southern Nevada Water Authority (“SNWA”). The Mayor, several Council members and staff participated in a presentation given by Doug Bennett of SNWA. SNWA is a leader in cash for grass area. This is likely due to some of the unique features of their water system, demand pattern and climate. First, the desert climate is extremely harsh and turf requires water year around. Second because of the way SNWA’s water allocation works every gallon of water saved becomes 1.7 gallons that the water authority may sell. This is because SNWA receives credit for each gallon of water returned to Lake Mead. Decreasing outdoor irrigation increases the amount of water that returns to Lake Mead. Some portion of this return water will be used again indoors and then returned, resulting in a savings multiplier. Because of structural differences, this equation does not and cannot exist in Park City.

Staff has been in contact with SNWA to understand their cost analysis to the economics of cash for grass.

In the Las Vegas area, a square foot of grass requires 90 inches of water; however an average square foot of grass receives 117.2 inches of water a year. This means that overwatering alone wastes more than 27 inches of water per square foot of grass in Las Vegas. This wasted water alone is almost double the water needed to grow grass in Park City’s climate.

In order to better evaluate a cash for grass program, staff contacted the Jordan Valley Water Conservancy District (JVVCD) to inquire about their thoughts on such a program. The Jordan Valley Water Conservancy district is primarily a wholesaler of water to cities and improvement districts within Salt Lake County. JVVCD does not offer a cash for grass program, but they have a well-regarded conservation program. JVVCD has analyzed a cash for grass program and have found that such a program does not make sense for the district. Instead, JVVCD determined that a better approach is to focus on reducing excess watering.

JVVCD has found that in the Salt Lake Valley, a net¹ of 24 inches of water is needed to irrigate grass. Actual use is above 24 inches, and estimated to be about 25% overwatering.

Data on Park City is less certain, but irrigation demands are certainly less than Salt Lake City. Utah administrative rules estimate that turf in Park City requires approximately 15 inches of irrigated water. That means that Park City turf requires only 17% of the water that turf in Las Vegas requires.

¹ Needed irrigation minus precipitation.

SNWA has found that xeriscape typically uses about a 1/3 of the water that turf requires. In Las Vegas this translates into a reduction of about 90 inches per square foot a year of turf replaced with xeriscape per year. Assuming the 1/3 rule hold true in Park City, and that a similar 25 % margin of overwater exists, Park City would see a reduction of 12 inches per square foot turf replaced with xeriscape per year.

SNWA evaluates the cost/benefit of their program at the price to acquire other water resources. They benchmark this at a cost of \$8,000 dollars per acre foot of water “purchased” through the cash for grass program at a stated cost of \$1.50 a square foot. If we use the same \$8,000 dollar an acre foot cost as our benchmark, the maximum price Park City should offer for a square foot of grass is 20 cents per square foot of turf. This is based on the following assumptions and conversions:

- A typical square foot of turf will receive 19 inches of water a year. (15 inches required per the Division of Drinking Water requirements plus 4 inches of assumed over watering)
- A xeriscape conversion will require 1/3 of this water (6 inches) a year.
- This results in a net savings of 13 inches a year when grass is removed.
- 13 inches a square foot equals approximately 8 gallons a square foot.
- An acre foot equals 325,851 gallons.
- It would take approximately 40,731 square feet of turf removal to equal an acre foot of water. (325,851/8)
- At an \$8,000 dollar price point that would place the rebate at 20 cents per square foot of turf removed. (8,000/40,731).
- The future cost of water is unknown, but for planning purposes staff typically estimates \$10,000 an acre foot. This price could be lower or higher. Because of the uncertainty surrounding this cost estimate, staff decided to use \$8,000 dollars an acre foot as that was the cost SNWA used in their analysis.

Further complicating Park City’s calculation of the value of a cash for grass program is an inability to capture conserved water. Valuing water conserved by the SNWA is simpler as each gallon of water saved by the agency is placed in storage, used, indoor use is returned to Lake Mead, and then reused. Simply put, the storage at Lake Mead increases the value of conserved water. Park City’s system doesn’t benefit from this concept due to the absence of storage facilities. Instead, conserved water becomes increased stream flows for most of the year, except during dry summers when it is placed into the system to meet peak day demands. While increased stream flows are beneficial, they do not provide a monetary benefit to Park City.

Due to the low price that would be economically feasible for Park City to pay for turf removal, and the assumptions made in the analysis, staff will work to gather information on actual water use for turf and xeriscape in Park City to better inform a more detailed analysis of a cash for grass program in Park City.

Seasonal Enforcement of Watering Ordinance

While Park City’s water conservation ordinance provides a solid foundation to conserve water, adherence to the ordinance is loose and enforcement has proven difficult and time

intensive. Presently the Water Department relies on observations from distribution operators and reports from the public to identify resident's non-compliance with the water ordinance. This results in spotty enforcement of the ordinance.

Staff believes that increased awareness of the ordinance combined through more consistent enforcement can improve the effectiveness of the ordinance.

Staff would focus on education on the first offense, and compliance fines per the table below for additional offenses. The compliance fine schedule is as follows:

First Violation	\$150.00
Second Violation	\$200.00
Third Violation	\$400.00
Fourth Violation	\$500.00
Fifth Violation	\$750.00

Staff will be submitting a BFO proposal to fund two seasonal employees to education and enforce the existing water ordinance.

Summary of questions for Council:

Does Council support using up to \$5,000 dollars from this fund to better publicize the water audit program?

Does Council support using up to \$5,000 dollars from this fund to better publicize the Smart Controller program?

Does Council support using the meter reading installation CIP to purchase a customer portal?

Department Review:

Water, Legal, Executive

Significant Impacts:

	World Class Multi-Seasonal Resort Destination (Economic Impact)	Preserving & Enhancing the Natural Environment (Environmental Impact)	An Inclusive Community of Diverse Economic & Cultural Opportunities (Social Equity Impact)	Responsive, Cutting-Edge & Effective Government
Which Desired Outcomes might the Recommended Action Impact?	(+/-) Multi-seasonal destination for recreational opportunities (+/-) (Select Desired Outcome) (+/-) (Select Desired Outcome) (+/-) (Select Desired Outcome) (+/-) (Select Desired Outcome) (+/-) (Select Desired Outcome) (+/-) (Select Desired Outcome)	+ Managed natural resources balancing ecosystem needs + Enhanced water quality and high customer confidence + Effective water conservation program + Adequate and reliable water supply (+/-) (Select Desired Outcome) (+/-) (Select Desired Outcome) (+/-) (Select Desired Outcome)	(+/-) (Select Desired Outcome) (+/-) (Select Desired Outcome) (+/-) (Select Desired Outcome) (+/-) (Select Desired Outcome) (+/-) (Select Desired Outcome) (+/-) (Select Desired Outcome) (+/-) (Select Desired Outcome)	+ Engaged and informed citizenry + Ease of access to desired information for citizens and visitors + Well-maintained assets and infrastructure (+/-) (Select Desired Outcome) (+/-) (Select Desired Outcome) (+/-) (Select Desired Outcome) (+/-) (Select Desired Outcome)
Assessment of Overall Impact on Council Priority (Quality of Life Impact)	Neutral 	Very Positive 	Neutral 	Very Positive 
Comments:				

Funding Source:

Water service fees.

Recommendation:

Staff recommends council review this staff report, ask questions of staff and provide direction and input on staff's proposed direction for the water conservation program. Staff also recommends Council approve using the Meter Reading Installation CIP to purchase a customer portal.



City Council Staff Report

Subject: Ice Arena/Basin Recreation Inter Local Agreement
Author: Jon Pistey
Department: Ice
Date: December 20, 2012
Type of Item: Administrative

Summary Recommendations:

Staff recommends adoption of the 2012 Letter of Consent which is required every 3 years pursuant to the 2004 Inter Local Agreement (ILA) between Park City and Snyderville Basin Recreation District (Basin). The Letter of Consent outlines how Basin contributions to the Capital Replacement and Reserve Fund (CRRF) are to be used by the Ice Arena.

Topic/Description:

Every three years, Ice Arena and Basin Recreation managers meet to discuss and agree to the terms of a Letter of Consent which outlines how the Basin's \$50,000 annual contribution to the Ice Arena is allocated between the Ice Facility Reserve Fund, the CRRF and the Expansion Fund.

Background:

The ILA between Park City and the District was approved August 31, 2004, and the Ice Arena opened in February, 2006. Basin Recreation made a \$2 million contribution to Park City for construction of the facility. It was the City's desire to own, operate and maintain the ice arena in part as an economic development tool envisioned for the overall Quinn's Complex. As the managing entity, Park City committed to the anticipated operational deficit.

The annual contribution from Basin Recreation was set at \$50,000. Per the ILA, the Basin applied for RAP grant funding in the first two RAP grant cycles in order to contribute more to the operational deficit (the Ice Facility Reserve Fund) in the early years.

The ILA requires that the Basin and the City review the allocation of funds every 3 years. It specifically lays out the following:

Section 4.3. Operating Contributions.

...
(a) (2) v. The District and the City agree to review the amount of annual contributions and Use Guidelines every third year following the opening of the Ice

Facility and to mutually agree upon allocations to the Ice Facility Reserve Fund, the CRRF and the Expansion Fund.

a. The review will include a specific evaluation of the allocation to the Ice Facility Reserve Fund, and the allocation to the CRRF to verify growth in the CRRF through an annual transfer to be specified as a line item in the Ice Facility budget. It is the long-term goal of the District for their annual contribution to go to the CRRF and Expansion fund.

b. Any withdrawal from the CRRF by the City will require notice to the District. Fund activity and balance will be reported annually as a part of the City's annual independent audit.

(3) Ongoing Maintenance. The Parties anticipate that the City will recover (to the extent possible) the Ice Facility's maintenance costs through user fees, as assisted by the Parties' annual contributions and the accumulated Ice Facility Reserve Fund. The Parties Agree that the CRRF may be used for Ice Facility replacement items that carry a useful life of more than one year and have a minimum cost of \$1,000.

In 2009, the first letter of consent was entered into by the Parties. In the 2004 ILA, of the Basin's contribution, \$25K went into the CRRF and \$25K went into a rink expansion fund. In 2009 it was determined that the best use of the funds was to put the Basin's entire \$50K into the CRRF. The Letter of Consent also allowed for the existing fund balance in the Expansion Fund to be used for studies related to recreation needs and planning of a potential second sheet of ice in the future. Some of these funds were used in the past year for a study of recreation facilities and a survey of Basin and Park City resident's recreation needs. The funds currently remaining in the Expansion Fund may be used for a recreation master plan for Quinn's Junction.

Analysis:

The 2012 Letter of Consent states that the balance of about \$10,000 in the "Expansion Fund" will be used for the master plan and conceptual design specific to future expansion of the ice facility. The annual District contribution of \$50,000 will be allocated as follows:

Allocation of \$35,000 of the annual District contribution will go to the Capital Facilities Replacement Reserve to be used for Ice Facility replacement items that carry a useful life of more than one year and have a minimum cost of \$1,000.

Allocation of up to \$15,000 of the annual District contribution will be to the Ice Facility Reserve Fund, the use of which will be restricted to costs of repair which exceed \$1,000 of Ice Facility replacement items as defined above. Any funds remaining from this portion of the contribution which are unused shall be allocated to the Capital Facilities Replacement Reserve at the end of each fiscal year.

The Basin approved the LOC on December 12, 2012.

Entering into the Letter of Consent for this 3 year cycle is beneficial to the Ice Arena and the 40-year capital replacement plan. Staff strongly supports this allocation as it will help maintain capital assets as well as support their replacement.

Department Review:

- Ice, Recreation, Library, Golf, Legal, Finance, Budget, Executive

Alternatives:**A. Approve:**

Approving the letter of consent will allow staff to have more flexibility to maintain the ice arena to high standards and keep infrastructure functioning properly without placing an increased burden on the operating budget.

B. Deny:

Denying the request for approval will require another Letter of Consent based on Council feedback.

C. Modify:

This will result in the same outcome as denying the request.

D. Continue the Item:

Staff will return at a later date.

E. Do Nothing:

This will result in the same outcome as denying the request.

Significant Impacts:

Staff will not be able to perform regularly scheduled maintenance and repairs as needed to ensure that Ice Arena infrastructure functions properly. Staff would need an increase to the operating budget of approximately \$20K to be able to fund maintenance and repairs to avoid rink closures due to equipment failures, corresponding loss of revenue, and a decreased level of customer service and satisfaction.

	World Class Multi-Seasonal Resort Destination (Economic Impact)	Preserving & Enhancing the Natural Environment (Environmental Impact)	An Inclusive Community of Diverse Economic & Cultural Opportunities (Social Equity Impact)	Responsive, Cutting-Edge & Effective Government
Which Desired Outcomes might the Recommended Action Impact?	+ Accessible and world-class recreational facilities, parks and programs + Internationally recognized & respected brand + (Select Desired Outcome) + Accessibility during peak seasonal times (+/-) (Select Desired Outcome) (+/-) (Select Desired Outcome) (+/-) (Select Desired Outcome)	(+/-) (Select Desired Outcome) (+/-) (Select Desired Outcome) (+/-) (Select Desired Outcome) (+/-) (Select Desired Outcome) (+/-) (Select Desired Outcome) (+/-) (Select Desired Outcome)	+ Community gathering spaces and places (+/-) (Select Desired Outcome) (+/-) (Select Desired Outcome) (+/-) (Select Desired Outcome) (+/-) (Select Desired Outcome) (+/-) (Select Desired Outcome)	+ Well-maintained assets and infrastructure + Fiscally and legally sound (+/-) (Select Desired Outcome) (+/-) (Select Desired Outcome) (+/-) (Select Desired Outcome) (+/-) (Select Desired Outcome) (+/-) (Select Desired Outcome)
Assessment of Overall Impact on Council Priority (Quality of Life Impact)	Very Positive 	Neutral 	Very Positive 	Very Positive 
Comments: Approving the revised ILA will ensure that staff will be able to perform regularly scheduled maintenance and repairs as needed to ensure that Ice Arena infrastructure functions properly. Staff would need an increase to the operating budget of approximately \$20K to be able to fund maintenance and repairs to avoid rink closures due to equipment failures. there would also be an associated loss of revenue, and a decreased level of customer service and satisfaction.				

Consequences of not taking the recommended action:

Not taking the recommended action will result in delaying entering into a letter of consent, delayed repairs, and staff will not be able to operate and maintain the facility in the most cost-effective manner.

Recommendation:

Staff recommends adoption of the 2012 Letter of Consent which is required every 3 years pursuant to the 2004 Inter Local Agreement (ILA) between Park City and Snyderville Basin Recreation District (Basin). The Letter of Consent outlines how Basin contributions to the Capital Replacement and Reserve Fund (CRRF) are to be used by the Ice Arena.

Exhibit 1 – 2012 Letter of Consent

Exhibit A – 40-year Capital Replacement Schedule

LETTER OF CONSENT

Purpose:

The Interlocal Agreement between Park City and the District was approved August 31, 2004, and the Ice Arena opened in February, 2006. This letter is intended to fulfill obligations of the parties with respect to Article 4, "Operation of the Ice Facility" and specifically Section 4.3 "Operating Contributions" paragraph (a)(2)v.

"The District and the City agree to review the amount of annual contributions and Use Guidelines every third year following the opening of the Ice Facility and to mutually agree upon allocations to the Ice Facility Reserve Fund, the CRRF and the Expansion Fund."

Definitions:

"*Ice Facility Reserve Fund*" shall mean the monies set aside to cover any operating budget deficits.

"*Capital Replacement Reserve Fund*" (*CRRF*) shall mean the monies set aside to fund Capital Equipment Replacement and capital improvements as needed from time to time for long-term upkeep of the Ice Facility.

"*Expansion Fund*" shall mean the monies set aside to fund future Ice Facility expansion which may include but are not limited to contributions by the Parties, and/or grants and gifts.

Background:

On May 6, 2009, the District and the City completed the first three year review. Consent was given by the District for the following reallocation of funds:

- The existing fund balance of \$25,000 in the Expansion Fund, plus interest accrued, shall be reserved and restricted for the master plan and conceptual design specific to future expansion of the facility.
- Allocation of the annual District contribution will go to the Capital Facilities Replacement Reserve (CRRF). Article 4, Section 4.3 (3) of the Interlocal Agreement states that the CRRF may be used for Ice Facility replacement items that carry a useful life of more than one year and have a minimum cost of \$1,000.

Consent to allocation between Funds for the period 2012 - 2015:

This letter is intended to document direction and consent given by the Snyderville Basin Special Recreation District Board at their regularly scheduled meetings on August 15, 2012 and December 12, 2012 for the following allocation of the District's contribution between the Funds.

- In 2011-2012, \$15,000 of the fund balance of \$25,000 in the Expansion Fund was used for future planning, including a Recreation Facilities Demand Study completed in December, 2011 and the Community Interest and Opinion Survey, dated June 1, 2012, leaving a balance of approximately \$10,000 in the "Expansion Fund." The remaining funds are to be used for the master plan and conceptual design specific to future expansion of the ice facility.

- Allocation of \$35,000 of the annual District contribution will go to the Capital Facilities Replacement Reserve to be used for Ice Facility replacement items that carry a useful life of more than one year and have a minimum cost of \$1,000. Qualifying Capital Replacement items are attached as Exhibit A.
- Allocation of up to \$15,000 of the annual District contribution will be to the Ice Facility Reserve Fund, the use of which will be restricted to costs of repair which exceed \$1,000 of Ice Facility replacement items as defined above. Any funds remaining from this portion of the contribution which are unused shall be allocated to the Capital Facilities Replacement Reserve at the end of each fiscal year.
- The District Board reserves the right to modify the distribution at the time of the 3rd year review in 2015.

This Letter of Consent is dated December 12, 2012.

Acknowledgment:

Mayor
Park City Municipal Corporation

Attest:

Acknowledgment:

Chairman
Snyderville Basin Special Recreation District

Attest:

Estimated Capital Replacement Costs by Year Exhibit "A"						
<i>(based on 40-year life cycle)</i>					<i>Updated:</i>	<i>12/17/2012</i>
Year	Equipment Needed	Notes	Individual Equip. Cost	Quantity	Extended	Basin Contribution
2006		No detail available for Feb '06 - June 2008		1		
2007				1		
2008				1	\$20,334	51498
2009	Total Expenses	detail available in Eden	\$40,183	1	\$40,183	37500
2010	Total Expenses	detail available in Eden	\$68,779	1	\$68,779	50000
2011	Total Expenses	detail available in Eden	\$13,320	1	\$13,320	50000
2012	Total Expenses	detail available in Eden	\$36,413	1	\$36,413	50000
2013	Ice Edger		\$8,000	1	\$8,000	50000
	Infrastructure Maintenance	Refrigeration/HVAC/Electrical Maintenance	\$25,000	1	\$25,000	
2014	Rubber Skaters Flooring	Replacement of flooring in high-traffic areas	\$80,000	1	\$80,000	50000
	Infrastructure Maintenance	Refrigeration/HVAC/Electrical Maintenance	\$25,000	1	\$25,000	
2015	Hockey Nets	1 pair of frames	\$1,500	1	\$1,500	50000
	Dehumidifier	Desiccant Wheel Replacement	\$20,000	1	\$20,000	
	Rental Skates	One hundred skates at \$75/pair	\$75	100	\$7,500	
	Infrastructure Maintenance	Refrigeration/HVAC/Electrical Maintenance	\$25,000	1	\$25,000	
2016	Infrastructure Maintenance	Refrigeration/HVAC/Electrical Maintenance	\$25,000	1	\$25,000	50000
2017	Rink Glass	estimate 20 4' x 6' x 1/2" sheets @ \$350 ea	\$350	10	\$3,500	50000
	Plexiglass	20 4' x 6' x 1/2" sheets @ \$300 ea	\$300	10	\$3,000	
	Hockey Nets	1 pair of frames	\$1,500	1	\$1,500	
	Infrastructure Maintenance	Refrigeration/HVAC/Electrical Maintenance	\$25,000	1	\$25,000	
2018	Ice Edger		\$8,000	1	\$8,000	50000
	Rental Skates	One hundred skates at \$75/pair	\$75	100	\$7,500	
	Infrastructure Maintenance	Refrigeration/HVAC/Electrical Maintenance	\$25,000	1	\$25,000	
2019	Water Heaters	Replacement	\$10,000	1	\$10,000	50000
	Rubber Skaters Flooring	Replacement of flooring in high-traffic areas	\$40,000	1	\$40,000	
	Infrastructure Maintenance	Refrigeration/HVAC/Electrical Maintenance	\$25,000	1	\$25,000	
2020	Coolant Pumps	Replacement of two pumps	\$5,000	2	\$10,000	50000
	Hockey Nets	1 pair of frames	\$1,500	1	\$1,500	
	Infrastructure Maintenance	Refrigeration/HVAC/Electrical Maintenance	\$25,000	1	\$25,000	
2021	Skate Sharpener	3-head model	\$20,000	1	\$20,000	50000
	Rental Skates	One hundred skates at \$75/pair	\$75	100	\$7,500	
	Infrastructure Maintenance	Refrigeration/HVAC/Electrical Maintenance	\$25,000	1	\$25,000	
2022	Hockey Nets	1 pair of frames	\$1,500	1	\$1,500	50000
	Infrastructure Maintenance	Refrigeration/HVAC/Electrical Maintenance	\$25,000	1	\$25,000	
2023	Ice Edger		\$8,000	2	\$16,000	50000

	Infrastructure Maintenance	Refrigeration/HVAC/Electrical Maintenance	\$25,000	1	\$25,000	
2024	Skate Sharpener	3-head model	\$20,000	1	\$20,000	50000
	Hockey Nets	1 pair of frames	\$1,500	1	\$1,500	
	Rental Skates	One hundred skates at \$75/pair	\$75	100	\$7,500	
	Rubber Skaters Flooring	Replacement of flooirng in high-traffic areas	\$40,000	1	\$40,000	
	Infrastructure Maintenance	Refrigeration/HVAC/Electrical Maintenance	\$25,000	1	\$25,000	
2025	Rink Glass	estimate 20 4' x 6' x 1/2" sheeets @ \$350 ea	\$350	10	\$3,500	50000
	Plexiglass	20 4' x 6' x 1/2" sheets @ \$300 ea	\$300	10	\$3,000	
	Water Heaters	Estimate 2 Units at \$10,000 each	\$10,000	1	\$10,000	
	Dehumidifier	Desiccant Wheel Replacement	\$20,000	1	\$20,000	
	Scoreboard		\$10,000	1	\$10,000	
	HVAC Units	Estimate 4 Units at \$15,000 each	\$15,000	2	\$30,000	
	Infrastructure Maintenance	Refrigeration/HVAC/Electrical Maintenance	\$15,000	1	\$15,000	
2026	Hockey Nets	1 pair of frames	\$1,500	1	\$1,500	50000
	Chiller	refurbishment	\$10,000	1	\$10,000	
	Condenser	refurbishment	\$10,000	1	\$10,000	
	Infrastructure Maintenance	Refrigeration/HVAC/Electrical Maintenance	\$25,000	1	\$25,000	
2027	Rental Skates	One hundred skates at \$75/pair	\$75	100	\$7,500	50000
	Infrastructure Maintenance	Refrigeration/HVAC/Electrical Maintenance	\$25,000	1	\$25,000	
2028	Ice Edger		\$8,000	1	\$8,000	50000
	Hockey Nets	1 pair of frames	\$2,000	1	\$2,000	
	Infrastructure Maintenance	Refrigeration/HVAC/Electrical Maintenance	\$25,000	1	\$25,000	
2029	Rubber Skaters Flooring	Replacement of flooirng in high-traffic areas	\$40,000	1	\$40,000	50000
	Infrastructure Maintenance	Refrigeration/HVAC/Electrical Maintenance	\$25,000	1	\$25,000	
2030	Rental Skates	One hundred skates at \$75/pair	\$75	100	\$7,500	50000
	Hockey Nets	1 pair of frames	\$2,000	1	\$2,000	
2031	Infrastructure Maintenance	Refrigeration/HVAC/Electrical Maintenance	\$25,000	1	\$25,000	50000
2032	Hockey Nets	1 pair of frames	\$2,000	1	\$2,000	50000
	Infrastructure Maintenance	Refrigeration/HVAC/Electrical Maintenance	\$25,000	1	\$25,000	
2033	Ice edger		\$8,000	1	\$8,000	50000
	Rink Glass	estimate 20 4' x 6' x 1/2" sheeets @ \$350 ea	\$350	10	\$3,500	
	Rental Skates	One hundred skates at \$75/pair	\$75	100	\$7,500	
	Plexiglass	20 4' x 6' x 1/2" sheets @ \$600 ea	\$600	10	\$6,000	
	Infrastructure Maintenance	Refrigeration/HVAC/Electrical Maintenance	\$25,000	1	\$25,000	
2034	Rubber Skaters Flooring	Replacement of flooirng in high-traffic areas	\$40,000	1	\$40,000	50000
	Hockey Nets	1 pair of frames	\$2,000	1	\$2,000	
	Infrastructure Maintenance	Refrigeration/HVAC/Electrical Maintenance	\$25,000	1	\$25,000	
2035	Water Heaters	Estimate 2 Units at \$10,000 each	\$20,000	1	\$20,000	50000
	Dehumidifier	Desiccant Wheel Replacement	\$20,000	1	\$20,000	
	Coolant Pumps	Replacement	\$5,000	2	\$10,000	

	Infrastructure Maintenance	Refrigeration/HVAC/Electrical Maintenance	\$25,000	1	\$25,000	
2036	Hockey Nets	1 pair of frames	\$1,500	1	\$1,500	50000
	Skate Sharpener	3-head model	\$20,000	1	\$20,000	
	Rental Skates	One hundred skates at \$75/pair	\$75	100	\$7,500	
2037	Infrastructure Maintenance	Refrigeration/HVAC/Electrical Maintenance	\$25,000	1	\$25,000	50000
2038	Ice Edger		\$8,000	1	\$8,000	50000
	Hockey Nets	1 set	\$2,000	1	\$2,000	
	Infrastructure Maintenance	Refrigeration/HVAC/Electrical Maintenance	\$25,000	1	\$25,000	
2039	Rental Skates	One hundred skates at \$75/pair	\$75	100	\$7,500	50000
	Rubber Skaters Flooring	Replacement of flooirng in high-traffic areas	\$40,000	1	\$40,000	
	Infrastructure Maintenance	Refrigeration/HVAC/Electrical Maintenance	\$25,000	1	\$25,000	
2040	Hockey Nets	1 set	\$2,000	1	\$2,000	50000
	Infrastructure Maintenance	Refrigeration/HVAC/Electrical Maintenance	\$25,000	1	\$25,000	
2041	Rink Glass	estimate 20 4' x 6' x 1/2" sheeets @ \$350 ea	\$350	20	\$7,000	50000
	Plexiglass	20 4' x 6' x 1/2" sheets @ \$600 ea	\$600	10	\$6,000	
	Infrastructure Maintenance	Refrigeration/HVAC/Electrical Maintenance	\$25,000	1	\$25,000	
2042	Rental Skates	One hundred skates at \$75/pair	\$75	100	\$7,500	50000
	Infrastructure Maintenance	Refrigeration/HVAC/Electrical Maintenance	\$25,000	1	\$25,000	
2043	Ice Edger		\$8,000	1	\$8,000	50000
2044	Infrastructure Maintenance	Refrigeration/HVAC/Electrical Maintenance	\$25,000	1	\$25,000	50000
2045				1	\$0	50000
		Grand Total of Costs for 40 years			\$1,611,029	\$1,888,998
			Surplus/Defecit		\$277,969	

City Council Staff Report



Author: Heinrich Deters
Subject: Park Avenue Pathway Project
Professional Service Provider Contract
Date: December 20, 2012
Type of Item: Administrative - Award of Contract

Sustainability

Summary Recommendation –

Authorize the City Manager to enter into a service provider agreement with Design Workshop, for the Park Avenue Pathway project in the amount of \$55,716 in a form approved by the City Attorney.

Topic: Park Avenue Pathway Project Professional Service Provider Contract Award.

Background:

In 2008, the Walking and Biking Liaison Committee (WALC) identified the Dan's to Jan's corridor as its highest priority for walkability improvements. A project list, including a separated pathway on the west side of Park Avenue, was identified in the State Road 224 corridor study in 2012. The Request for Proposals were advertised on November 11th and 14th, 2012 in the Park Record and November 10th and 11th in the Salt Lake Tribune. Additionally, the RFP was posted on the City's website.

Over the past several months, staff has included the two adjacent landowners, Cole Sport and Park Avenue Condominium Association, throughout the corridor study process, in addition, to the design selection process and other site visits. Staff acknowledges the participation of the adjacent landowners is paramount to the success of the project.

A selection committee including the following participants reviewed the proposals:

- Heinrich Deters- Trails and Open Space Project Manager
- Matt Twombly – Parks Project Manager
- Brooks Robinson- Senior Transportation Planner
- Blake Fannesbeck- Public Works Operations Manager
- Clint Dayley –Parks Department
- Gerry Bush- Park Avenue Condominium HOA Representative

There were seven firms who responded and their cost proposals are as follows:

Design Workshop	\$55,700
PEC Engineers	\$40,051
Alliance Engineering	\$49,000
IBI Group	\$41,560
Bowen & Collins	\$108,201
Alta Engineering	\$37,500

Analysis:

Selection of the consulting firm was based on the following criteria:

1. Experience with roadway design, engineering and consulting services to municipalities, as well as experience with UDOT.
2. Ability to be responsive and available to city staff and the affected neighborhoods.

3. Cost effectiveness in providing the desired services/product.
4. Experience with walking and biking infrastructure.
5. Overall firm experience and approach to the requested scope of services.
6. Nature and extent of requested changes to Park City's standard contract.
7. Consistent with City policy, subject to federal, state and local procurement laws, that Park City Municipal Corporation will make reasonable attempts to support Park City business by purchasing goods and services through local vendors and service providers.

The selection committee met on December 4, 2012 and determined that Design Workshop was the most qualified and responsive firm. Design Workshop's approach to the request for proposals, overall firm experience, experience working with municipalities, understanding of the corridor study and specifically, their approach to design and landscaping associated with the project, set them above the other firms. The fees provided by the consultants ranged from a low of \$37,500 to a high of \$108,201.

Park City's purchasing policy states that Professional Service Contracts are exempt from competitive bidding, where the lowest quote need not necessarily be awarded the contract. Furthermore, the policy states that emphasis will be placed on quality, with cost being the deciding factor when everything else is equal.

Design will begin immediately upon execution of the contract. The scope of services entails: Preliminary Design, Design and Construction Documents, Project Bidding, and Construction Management. As part of the design process, staff and the consultant will meet with adjoining landowners to discuss possible easements associated with proposed options. This aspect of the project will need to be fully vetted and agreed upon with all stakeholders prior to moving into the construction phases. Staff will return to City Council after the bid opening for the award of the Construction contract. The tentative schedule anticipates construction completion by September 15, 2013.

Department Review: This report has been reviewed by department representatives of Sustainability, Legal, Budget, Transit and the City Manager's Office and their comments have been integrated into this report.

Alternatives:

- A. Approve the request, and authorize the City Manager to execute the service provider agreement as attached: (Staff recommendation)**
- B. Modify the request: Council could choose to modify the agreement, which would likely delay the schedule of the project.
- C. Deny the request: Council could choose to not continue with the project at this time.
- D. Continue the Item: Council may feel there is not enough information to make a decision, which will delay the project and the proposed schedule.
- E. Do Nothing: Same effect as continuance.

Significant Impacts:

	World Class Multi-Seasonal Resort Destination (Economic Impact)	Preserving & Enhancing the Natural Environment (Environmental Impact)	An Inclusive Community of Diverse Economic & Cultural Opportunities (Social Equity Impact)	Responsive, Cutting-Edge & Effective Government
Which Desired Outcomes might the Recommended Action Impact?	+ Accessible and world-class recreational facilities, parks and programs + Safe community that is walkable and bike-able			+ Well-maintained assets and infrastructure
Assessment of Overall Impact on Council Priority (Quality of Life Impact)	Very Positive 	(Select from List)	(Select from List)	Positive 
Comments:				

Funding Source:

Funding for this project, as well as other future Walkability projects will need to be acquired through a second Walkability bond issuance this coming spring. Until then, funding will be borrowed from the Capital Fund fund balance to be reimbursed upon issuance of the bonds.

Consequences of not taking the recommended action:

If Council chooses to deny the contract award, implementation and design of the project would not move forward.

Staff Recommendations: Authorize the City Manager to enter into a service provider agreement with Design Workshop, for the Park Avenue Pathway project in the amount of \$55,716 in a form approved by the City Attorney.

Exhibit:

Exhibit A - Park Avenue Pathway Professional Service Scope and Cut Sheet.

Exhibit A - Park Avenue Pathway Professional Service Scope and Cut Sheet.

DW Fee Worksheet

Project Name: Park Avenue Pathway

Project Number:

Date: December 7, 2012

Phase and Task	DW Principal in-Charge TB	DW Project Manager SB	DW PLA MB	Horrocks Sr Engineer RS	Horrocks Engineer TH	Subtotal Hours	Sub-Task %	Sub Task Fee
Task One, Preliminary Design								
3.1 Plan Alternatives	6.0	2.0	24.0	3.0	2.0	37.0	34%	\$ 4,838
3.2 Cross Sections	1.0	1.0	16.0	2.0	5.0	25.0	23%	\$ 2,714
3.3 ROW Impacts / Survey Review / Easements		4.0		10.0	12.0	26.0	24%	\$ 3,252
3.4 Cost Estimate		1.0		2.0	3.0	6.0	6%	\$ 742
3.5 Meetings	2.0	4.0		4.0	2.0	12.0	11%	\$ 1,840
3.6 Project Management		3.0				3.0	3%	\$ 330
Subtotal Hours for Task 1:	9.0	15.0	40.0	21.0	24.0	109.0		
Subtotal Fees:	\$2,700	\$1,650	\$3,600	\$2,982	\$2,784	\$ 13,716		\$ 13,716
Task Two, Design Development and Construction Documents								
4.1 Tree Protection and Demolition			16.0			16.0	8%	\$ 1,440
4.2 Layout Plan	1.0	10.0		4.0	2.0	17.0	8%	\$ 2,200
4.3 Materials Plan	1.0		16.0	1.0	2.0	20.0	9%	\$ 2,114
4.4 Grading / Drainage Plan	1.0		16.0	2.0	12.0	31.0	15%	\$ 3,416
4.5 Planting Plan	1.0	16.0				17.0	8%	\$ 2,060
4.6 Irrigation	1.0	16.0	16.0			33.0	16%	\$ 3,500
4.7 Details	1.0	2.0	16.0	2.0	4.0	25.0	12%	\$ 2,708
4.8 Specifications	1.0	16.0		1.0	2.0	20.0	9%	\$ 2,434
4.9 Cost Estimate		2.0	2.0	2.0	8.0	14.0	7%	\$ 1,612
5 Meetings	4.0	4.0		4.0	2.0	14.0	7%	\$ 2,440
5.1 Project Management		4.0				4.0	2%	\$ 440
Subtotal Hours for Task 2:	11.0	70.0	82.0	16.0	32.0	211.0		
Subtotal Fees:	\$3,300	\$7,700	\$7,380	\$2,212	\$3,712	\$ 24,364		\$ 24,364
Task Three, Bidding & Negotiation								
4.1 Pre Bid	1.0	1.0		2.0	2.0	6.0	21%	\$ 926
4.2 RFI / Addenda/substitutions		8.0		4.0	2.0	14.0	50%	\$ 1,680
4.3 Bid Processes/opening/evaluation/recommendation		2.0		6.0	0.0	8.0	29%	\$ 1,072
Subtotal Hours for Task 3:	1.0	11.0	0.0	12.0	4.0	28.0		
Subtotal Fees:	\$300	\$1,210	\$0	\$1,704	\$464	\$ 3,678		\$ 3,678
Task Four, Construction Management								
4.1 CA site visits / meetings (12) field reports (12) (See Note #1)		30.0		3.0	42.0	75.0	70%	\$ 8,598
4.2 Submittals / RFIs/payment review		22.0		4.0		26.0	24%	\$ 2,988
4.3 As-Builts		4.0			2.0	6.0	6%	\$ 672
Subtotal Hours for Task 4:	0.0	56.0	0.0	7.0	44.0	107.0		
Subtotal Fees:	\$0	\$6,160	\$0	\$994	\$5,104	\$ 12,258		\$ 12,258
Total Hours	21.0	152.0	122.0	56.0	104.0	455.0		
Total Fees:	\$6,300	\$16,720	\$10,980	\$7,952	\$12,064	\$ 54,016		\$ 54,016

Horrocks Engineers will have a full-time construction management inspector available when needed in Park City to handle all questions and issue that arise between contractor and design team throughout project. (2013 Construction Season)

Reimb: \$ 1,700.00

Total: \$ 55,716.00

Project Approach

The general objective for this phase of the work is to prepare design studies and develop an initial understanding of project construction costs. Based on a survey of the area provided by the Client, Design Workshop will prepare Preliminary Design plans.

Task One. Preliminary Design

The following products will be prepared/delivered:

1. Up to three (3) Site Plans including schematic grading, planting and Trail alignments.
2. Up to four (4) Cross Sections / Elevations
3. Schematic opinion of probable construction cost.

The specific tasks to be completed are as follows:

1. Develop and test site plan and trail routing alternatives for the trail with consideration given to existing trees, proximity from traffic, proximity to Park Avenue condominium units and overall impact to existing site features.
2. Illustrate schematic site grading and drainage concepts for all areas including land contouring, landscape berms, swales, walls and drainage features.
3. Review the survey and coordinate with Aerographics and Spencer Lace (PC GIS) to request additional topography and planometrics from the recent LIDAR survey for the pathway corridor as needed. Additional survey points can be shot as needed for specific items not identified in the LIDAR survey.
4. Assess existing drainage conditions and provide designs and input for any additional drainage needs.
5. The design team will address the future intersection re-alignment or Homestake Road and Lane Dog to proof the design of the trail so that it will integrate with a potential re-alignment scenario.
6. Meet with PCMC staff to go over existing conditions, the desired outcome on the

- project, our scope, schedule and to coordinate with the City on water projects, future projects that will come out of the SR 224 corridor plan and to coordinate review periods with Park City staff and the Park Avenue Condominiums HOA.
7. Illustrate and quantify impacts to properties outside of the road right-of-way.
 8. Coordinate required easement discussions as required with property owners. Horrocks Engineers is managing and engineering the portion of the waterline project (Segment A.) and can streamline the establishment of easements and design exhibits.
 9. Prepare an opinion of probable cost.
 10. Present conceptual designs to PCMC and neighboring property owners.

Task Two. Design Development and Construction Documentation

The following products will be prepared/delivered:

1. Demolition and Tree Protection Plans.
2. Layout (Horizontal Control) Plans.
3. Materials Plans.
4. Planting Plans.
5. Grading and Drainage Plans.
6. Irrigation Plans.
7. Details and reference sections.
8. Opinion of probable construction cost.
9. Technical specifications.

The general objective for this phase of the work is to develop the character and detail of a preferred site plan based on comments received by PCMC, Park Avenue Condo's and other stakeholders. Once a preferred plan is developed, Design Workshop will prepare biddable Construction Documents for the project.

The specific tasks to be completed are as follows:

1. Develop demolition and tree protection plans illustrating existing trees and other plant materials to be protected during construction and to clearly illustrate additional existing features to be removed.
2. Prepare plans, cross sections and elevations for pedestrian pavements, site furnishings and other site elements that are a part of the proposed landscape improvements.
3. Develop site grading and drainage for all areas including contouring, retaining structures, swales, flow lines and drainage devices. Indicate alignments, elevations, dimensions, materials and details for retaining or freestanding walls, steps, ramps, etc. Design Workshop will collaborate with the civil engineer selected by the Client to locate hardscape drains, exterior utilities and to coordinate storm water considerations.
4. Prepare planting plans for all landscape areas to illustrate planting composition, plant species, locations and sizes of major planting features. Special attention will be given to ensure that views, solar orientation, erosion control, and snow storage are accommodated in the solution.
5. Prepare Irrigation Plans illustrating overall irrigation intent. This will include a plan for modifying the existing system, determining the extent of modifications and potential upgrades and laying out all components of the modified irrigation system.
6. Identify and arrange for utility and ownership coordination required.
7. Prepare 50%, 75% and 90% Design Development level opinion of probable cost.
8. Prepare a specification for the above-described landscape elements of the project. Specifications will be provided in CSI 2004 short form format.
9. Attend up to four (4) meetings with PCMC, Park Avenue Condo's and other stakeholders.

Task Three Bidding and Negotiation

The general objective for this phase of the work will be to assist the bidding Contractors in developing a clear understanding of the project for purposes of preparing construction bids.

This work shall occur in the period after the completion of Construction Documents and prior to awarding a construction contract.

The specific tasks to be completed are as follows:

1. Issue an electronic set of Bid Documents.
2. Advertise for bidding, per PCMC procurement policy.
3. Participate in one (1) Pre-Bid conference with bidders.
4. Prepare addenda to the Construction Documents, as clarification is required.

5. Review Bid Documents to assure that there are no major errors or omissions.
6. Review substitutions and alternatives as requested by the bidders and make recommendations regarding the same.
7. Conduct the bid opening.
8. Evaluate bids, provide bid result including item breakdown and provide notification of bid results.
9. Make a Contractor recommendation.

Task Four Construction Administration

The general objective for this phase of the work is to provide administration of the site construction process and ensure the quality of the final product.

Design Workshop and Horrocks Engineers will make periodic visits to the site to become familiar with the progress and quality of construction and to determine whether the construction of the work is proceeding in accordance with Design Workshop's design intent and contract documents. During such visits and on the basis of observations while at the site, Design Workshop will keep the Client informed of the progress of construction. Design Workshop may recommend rejection of work to the Client if the contractor fails to conform to the contract documents.

The specific tasks to be completed are as follows:

1. Attend regular construction meetings.
2. Review and approve shop drawings, samples, mock-ups and other submissions from the contractor for compliance with the Construction Documents.
3. Respond to requests for clarifications.
4. Prepare and submit landscape architecture related field orders.
5. Review certificates of payment submitted by contractors including final payment once all required paperwork is submitted and site improvements are completed.
6. Observe paving layouts and quality of workmanship of paving materials.
7. Observe layout and installation of irrigation systems and specified coverage tests.
8. Observe location and quality of plant material.
9. Observe landscape grading.
10. Provide progress field reports indicating the progress of the project, quality of construction, specific problem areas and state of completion.
11. Horrocks Engineers will provide on-site inspection, and materials testing as a third party.
12. Conduct a substantial completion punchlist and conduct a final walk-through to review punchlist items.
13. Provide a post construction record survey of constructed facilities along with contractor drawings for the preparation of record drawings and associated easements. Record drawings will be submitted in hard copy form (Mylar) and electronically.

This proposal includes Professional Service time for up to eight (8) site visits / construction observation meetings by Design Workshop. Horrocks Engineers will have a full time site inspector that will present on site during the 2013 construction season so that any immediate needs or questions can be assessed in the field at any time on days that Design Workshop is not on site. Design Workshops visits are as follows:

Construction progress meetings and observations	10
Substantial completion punch list	1
<u>Final Acceptance</u>	<u>1</u>
Total Site Visits	12



City Council Staff Report

Subject: UDOT CM/GC Services Agreement for
Deer Valley Drive Design
Author: Matthew Cassel, P.E., City Engineer
Department: Engineering
Date: December 20, 2012
Type of Item: Administrative

Summary Recommendations:

The Council should authorize the Interim City Manager to sign the UDOT Consultant Services Agreement with Geneva Rock for Construction Management/General Contractor (CM/GC) services related to the design of Deer Valley Drive in the amount of \$62,238.

Topic/Description:

Through the Small Urban Fund program, Park City was granted \$1,000,000 to be used for improvements to Deer Valley Drive. The Small Urban Fund program is a Federal road funding program and is administered by Utah Department of Transportation (UDOT). Park City is considered a small urban community and thus qualifies for these funds. This contract with Geneva Rock is for the CM/GC role for the project. The contract is not attached because it is currently going through the UDOT approval process.

Background:

Park City was awarded \$1,000,000 in Small Urban Fund grant money in 2009 for the reconstruction of Bonanza Drive. Park City has also been awarded an additional \$1,000,000 in Small Urban Fund grant money for the reconstruction of Prospector Avenue in 2016. This grant money does have a matching requirement. Park City is responsible to provide matching funds in the amount of 7.2% of the total Federal grant. In these cases Park City is required to provide \$72,616 in matching funds.

The original grant application to the Small Urban Fund program was made and Park City was awarded the grant money prior to 2008. This original grant did not have a scope of work which defined how the money was going to be used. In 2010, Park City was requested by UDOT to further define the project. This updated application was submitted and included modifications to the existing round-about and pedestrian lighting from the existing round-about to the intersection of Deer Valley Drive and Deer Valley Drive North.

During the September 13, 2012 Council meeting, Council approved a contract with Stanley Consultants for the design of Deer Valley Drive. Once their contract was in place and Stanley started their design work, UDOT shifted their focus on selecting a contractor to fulfill the CM/GC and the Independent Cost Estimator (ICE) role.

Concurrently with this request, a contract is being considered by Council for the Independent Cost Estimator (ICE) portion of this project.

Analysis:

The Deer Valley Drive design will include replacement of the existing collapsed storm drain, replacement of the gas line (work and design to be performed by Questar Gas), replacement of the existing distribution water line, pedestrian modifications at the round-about, left turn lane at the intersection of Deer Valley Drive and Deer Valley Drive North, consistent eight (8) to ten (10) foot wide sidewalks, bus pullouts, speed limit feedback signs, pedestrian lighting from the round-about to the intersection of Deer Valley Drive and Deer Valley Drive North, update of signage and road resurfacing.

The difference between a CM/GC delivery method and the typical design/bid/build delivery method is that the contractor is brought into the project during the design phase on a CM/GC project. The contractor assists the team by providing constructability reviews, estimates the cost of construction and provides innovative ideas to complete the construction in an effective manner. Once the design is complete, the bid package does not go out for public bid; rather, the selected contractor will be the sole bidder. The contractor's bid will be verified and adjusted by the use of an independent cost estimator (ICE), who is hired and is separate from the contractor. The ICE will review the contractor's bid and negotiate a fair bid. If the ICE cannot reach a fair agreement with the contractor, we would then reject the bid and go out for public bid. If staff needs to go to public bid, we will not be able to maximize use of the shoulder seasons.

The use of a CM/GC delivery method for this project was determined at the start of the project for three reasons:

- By bringing on the contractor during the design phase of the project, our team will get a better handle on specific key issues of the project including mitigating for traffic restrictions (the need to close Deer Valley Drive during certain construction activities) and the Buy America constraints (Because Federal funds are being used for this project, all steel and iron products must be certified to be cast and made in America).
- With the contractor on board at the design phase, our team will have better handle on the project schedule, which will allow us to provide better and more accurate information to those affected, and
- Using the CM/GC delivery method reduces the risk of the unknown. In a typical bidding process, if the contractor does not know the answer to a specific issue, they will usually throw a higher cost to the issue or simply not address the issue, thus creating the need for a future change order. This CM/GC process should reduce the risk by including the contractor in the decision making process.

Because this project will be administered by UDOT, the CM/GC was selected using UDOT's selection process. This process included publically advertising the project by UDOT and then a complex and thorough evaluation of the SOQ's submitted. The three contractors that submitted were:

- Geneva Rock,
- Granite Construction, and
- COP Construction

The selection committee included:

- Jeremy Gilbert, UDOT
- Marjorie Rasmussen, UDOT
- Michael Butler, UDOT
- Ritchie Taylor, UDOT
- Rick Campagna, UDOT
- Steve Poulsen, UDOT
- David Osborn, Stanley Consultants
- Roger McClain, PCMC
- Sayre Brennan, PCMC
- Gary Horton, PEC Consultants, and
- Ashford Galbreath, Wadsworth Brothers Construction

Although PCMC only had two participants on the selection committee, PCMC was instrumental in creating the basis for selection. The contractor's proposal addressed the following goals and key issues:

Goals

- Optimize construction to minimize delays and public impacts,
- Construction beginning April 15th and complete by October 15 while maximizing use of the off peak seasons, and
- Complete the project within the established budget.

Key Issues

- Buy America,
- Development and Maintenance of Traffic Restrictions,
- Solution Oriented,
- Staging of Project, and
- Coordination with Questar Gas

After four days of evaluating the contractor's proposals, the selection committee chose Geneva Rock as the best fit for this project. The scope of services and hours to complete the work were negotiated with Geneva Rock. This contract being approved is only for the design phase of the project with the contractor. A construction contract will be brought back in early spring to Council for approval.

The design of Deer Valley Drive is currently 30% complete with 100% completion by mid-March 2013. With the design completed by mid-March the construction should be able to commence by late April to take full advantage of the spring shoulder season.

The Council has approved funding for this project as follows:

Capital Project cp0176 (Deer Valley Drive Reconstruction) contains \$500,000 for the project. Additional monies in the amount of \$1,000,000 have been encumbered through UDOT's STP Small Urban Funds Program. The Water Department will provide funding for the water improvements from water service fees and is part of the proposed FY2013/2014 CIP under Water Department's annual budgeted Asset Management/Replacement Program.

In recent conversations with UDOT representatives and at this time, it does not appear that the Federal money for this project is exposed to the fiscal cliff issue.

Department Review:

This report has been reviewed by City Manager, Planning, Budget Public Works, Sustainability, and Legal. All issues have been resolved.

Alternatives:

A. Approve the Request:

This is the staff's recommendation.

B. Deny the Request:

This would make it difficult for the team to complete the design with the proper mitigation for traffic and special events included and prepare a construction package for the 2013 construction season.

C. Continue the Item:

If the Council needs more information the item can be continued, but this could cause the design team from taking full opportunity of the upcoming spring shoulder season.

D. Do Nothing:

This option would make it impossible to complete the design in a timely manner with the much needed input from the contractor on mitigation for traffic and special event impacts.

Significant Impacts:

	World Class Multi-Seasonal Resort Destination (Economic Impact)	Preserving & Enhancing the Natural Environment (Environmental Impact)	An Inclusive Community of Diverse Economic & Cultural Opportunities (Social Equity Impact)	Responsive, Cutting-Edge & Effective Government
Which Desired Outcomes might the Recommended Action Impact?	+ Accessibility during peak seasonal times + Safe community that is walkable and bike-able			+ Well-maintained assets ▾ infrastructure
Assessment of Overall Impact on Council Priority (Quality of Life Impact)	Positive 	Neutral 	Neutral 	Positive 
Comments:				

The construction of Deer Valley Drive will heavily impact the adjacent homeowners and access to the Solamere neighborhood and Deer Valley Resort, especially because staff believes the road will need to be closed for certain periods of time. These impacts will be addressed through the use of this Construction Management/General Contractor (CM/GC) construction contract. With the contractor on board, we can work directly with them to determine which activities will affect the ability to keep the road open and solutions to these impactful activities.

Staff has already met with Deer Valley on two occasions (with a follow up meeting already scheduled) to share summer programming information and to collaborate on common goals. From these discussions, it is likely that a Deer Valley Drive beautification/signature project will be supported as a second phase. This project would not happen until the following year and after the infrastructure and road work is completed this coming summer. Once this concept is vetted, staff will bring it to Council for direction on the expansion of the Deer Valley Drive scope. Staff anticipates bringing this to Council before the end of February so it could be included in the spring CIP budget process.

Consequences of not taking the recommended action:

Deer Valley Drive is an important transportation link for the City. This project will help to make this transportation corridor more efficient using the existing pavement width. Not commencing with the CM/GC design contract now would delay the contractor from providing the valuable input necessary to the team to properly address and mitigate the traffic and event impacts..

Recommendation:

The Council should authorize the Interim City Manager to sign the UDOT Consultant Services Agreement with Geneva Rock for Construction Management/General Contractor (CM/GC) services related to the design of Deer Valley Drive in the amount of \$62,238.

Exhibit A – Deer Valley Drive CM/GC Scope of Work and Cost Proposal

GENEVA ROCK*Prime***UDOT Work Plan**

Contract Number:	NEW	Mod:			
Project Number:	F-LC43(30)	PIN:	7164	UDOT Project Manager:	Ritchie Taylor
PIN Description:	DEER VALLEY DRIVE, PARK CITY				

Activity: X001

Project Management -

Activity 1 will be for overall project management. Our primary resources for this activity will be our PM, Construction Manager, and Administrative Assistant. We expect our PM to lead out in the coordination of our various responsibilities working to keep GRP's team focused and productive. Expect to expend 4 hours/week over the course of 3 months in this capacity. Included under this task will be capturing minutes from our meetings, coordination among the design team and GRP's staff, tracking GRP's design hours, and updating and maintaining a schedule for the subsequent construction. Allow 72 hours.

Activity: X002

Project Meetings -

Meetings will include:

semi-weekly design meetings from January through March (9 meetings) - 4 hours each for PM, Estimator, and Const. Manager

outreach meeting/open house(1 meeting) - 4 hours each for PM, Estimator, Const. Manager, General and Project Supers
Allow 128 hours.

Activity: X003

Innovation and Risk -

Over the course of 3 months, we expect to track innovations and risks with registers of each updated weekly. Two hours per week should cover this effort and generate significant input for the cost and schedule updates. The construction manager will be tasked with this responsibility and will be aided by the PM, Estimator, General Superintendent, and Project Superintendent for an average of 1 hour per week per team member. Allow 72 hours.

Activity: X004

Blind Bidding -

RFP asks for 2 blind bid openings. If there are 2 work packages, this will be repeated 2 times. Our lead estimator will spend the greatest effort here, expecting to prepare bids 4 times. Each bid will require a 30 hr commitment. PM and Construction Manager will lend support of 3 hours per blind bid. Additionally, Lead Estimator, PM, Construction Manager, Project Super, and General Super will participate in internal review for 2 hours per bid. Allow 184 hours.

Activity: X005

Project Closeout -

Project closeout will require time by the PM and Admin. Assistant. Allow a week (10 hours) per team member for 20 hours.

Prime: GENEVA ROCK PRODUCTS, INC

UDOT Cost Proposal

Contract Number: NEW **Mod:**

Project Number: F-LC43(30) **PIN:** 7164 **UDOT Project Manager:** Ritchie Taylor

Project Location: DEER VALLEY DRIVE, PARK CITY

Labor Costs

Employee Name	Contract Job Title	Hours	Proposal Rate	Labor Cost
ALBRECHT, SHANE	PROJECT MANAGER	106	\$139.00	\$14,734.00
GREEN, KATHY	ADMIN ASSISTANT	34	\$ 48.00	\$ 1,632.00
NORDQUIST, PHILIP	CONST MANAGER	108	\$115.00	\$12,420.00
ROBERTSON, SHANE	PROJECT SUPER	24	\$ 98.00	\$ 2,352.00
SUSSDORFF, STEVE	LEAD ESTIMATOR	180	\$115.00	\$20,700.00
WARDELL, TODD	GENERAL SUPER	24	\$100.00	\$ 2,400.00
	Total Hours:	476		
		Total Direct Labor:		\$54,238.00
Other Direct Costs:	Potholing (10 @ \$800/ea)			<u>\$ 8,000.0</u>
		Total Contract Cost:		\$62,238.00



City Council Staff Report

Subject: UDOT ICE Services Agreement for
Deer Valley Drive Design
Author: Matthew Cassel, P.E., City Engineer
Department: Engineering
Date: December 20, 2012
Type of Item: Administrative

Summary Recommendations:

The Council should authorize the Interim City Manager to sign the UDOT Consultant Services Agreement with Stanton Constructability Services for independent construction estimator (ICE) services related to the design of Deer Valley Drive in the amount of \$28,710.

Topic/Description:

Through the Small Urban Fund program, Park City was granted \$1,000,000 to be used for improvements to Deer Valley Drive. The Small Urban Fund program is a Federal road funding program and is administered by Utah Department of Transportation (UDOT). Park City is considered a small urban community and thus qualifies for these funds. This contract with Stanton Constructability Services provides our team with the independent construction estimator (ICE) role on the project. The contract is not attached because it is currently going through the UDOT approval process.

Background:

Park City was awarded \$1,000,000 in Small Urban Fund grant money in 2009 for the reconstruction of Bonanza Drive. Additionally, Park City has been awarded an additional \$1,000,000 in Small Urban Fund grant money for the reconstruction of Prospector Avenue in 2016. This grant money does have a matching requirement. Park City is responsible to provide matching funds in the amount of 7.2% of the total Federal grant. In these cases Park City is required to provide \$72,616 in matching funds.

The original grant application to the Small Urban Fund program was made and Park City was awarded the grant money prior to 2008. This original grant did not have a scope of work which defined how the money was going to be used. In 2010, Park City was requested by UDOT to further define the project. This updated application was submitted and included modifications to the existing round-about and pedestrian lighting from the existing round-about to the intersection of Deer Valley Drive and Deer Valley Drive North.

During the September 13, 2012 Council meeting, Council approved a contract with Stanley Consultants for the design of Deer Valley Drive. Once their contract was in place and Stanley started their design work, UDOT shifted their focus on selecting a contractor to fulfill the CM/GC role and the ICE role.

Concurrently with this request, a contract is being considered by Council for the construction management/general contractor (CM/GC) portion of this project.

Analysis:

The Deer Valley Drive design will include replacement of the existing collapsed storm drain, replacement of the gas line (work and design to be performed by Questar Gas), replacement of the existing distribution water line, pedestrian modifications at the round-about, left turn lane at the intersection of Deer Valley Drive and Deer Valley Drive North, consistent eight (8) to ten (10) foot wide sidewalks, bus pullouts, speed limit feedback signs, pedestrian lighting from the round-about to the intersection of Deer Valley Drive and Deer Valley Drive North, updated signage and road resurfacing.

The ICE is hired separately by UDOT and is independent of the contractor. The purpose of the ICE is to provide an independent cost estimate for the construction of Deer Valley Drive. The ICE then compares his estimate with the submitted contractor's cost estimate for the project. The ICE will then negotiate with the contractor to obtain a fair bid. If the ICE cannot reach a fair agreement with the contractor, UDOT would then reject the bid and go out for public bid. It should be noted that If staff needs to go to public bid, we will not be able to maximize use of the spring shoulder season.

Because this project will be administered by UDOT, the ICE was selected using UDOT's selection process. Because of the anticipated low cost for this consultant service, UDOT used their existing consultant pool to select the consultant (This pool is operates similar to the State Contract where Park City is allowed to purchase items directly). Because their overhead rate was established through their inclusion in the UDOT consultant pool, the scope of services and hours to complete the work were negotiated with Stanton Constructability Services.

This contract being considered will end when the contractor's bid is accepted.

The design of Deer Valley Drive is currently 30% complete with 100% completion by mid-March 2013. With the design completed by mid-March the construction should be able to commence by late April to take full advantage of the spring shoulder season.

The Council has approved funding for this project as follows:

Capital Project cp0176 (Deer Valley Drive Reconstruction) contains \$500,000 for the project. Additional monies in the amount of \$1,000,000 have been encumbered through UDOT's STP Small Urban Funds Program. The Water Department will provide funding for the water improvements from water service fees and is part of the proposed FY2013/2014 CIP under Water Department's annual budgeted Asset Management/Replacement Program.

In recent conversations with UDOT representatives and at this time, it does not appear that the Federal money for this project is exposed to the fiscal cliff issue.

Department Review:

This report has been reviewed by City Manager, Planning, Budget, Public Works, Sustainability, and Legal. All issues have been resolved.

Alternatives:**A. Approve the Request:**

This is the staff's recommendation.

B. Deny the Request:

This would make it difficult for the team to complete the proper quality assurance on the construction bid submitted by the contractor.

C. Continue the Item:

If the Council needs more information the item can be continued, but this could cause the design team from taking full opportunity to maximize construction during the upcoming spring shoulder season.

D. Do Nothing:

This option would make it impossible to complete the proper quality assurance on the construction bid submitted by the contractor.

Significant Impacts:

	World Class Multi-Seasonal Resort Destination (Economic Impact)	Preserving & Enhancing the Natural Environment (Environmental Impact)	An Inclusive Community of Diverse Economic & Cultural Opportunities (Social Equity Impact)	Responsive, Cutting-Edge & Effective Government
Which Desired Outcomes might the Recommended Action Impact?	+ Accessibility during peak seasonal times + Safe community that is walkable and bike-able			+ Well-maintained assets + infrastructure
Assessment of Overall Impact on Council Priority (Quality of Life Impact)	Positive 	Neutral 	Neutral 	Positive 
Comments:				

The construction of Deer Valley Drive will heavily impact the adjacent homeowners and access to the Solamere neighborhood and Deer Valley Resort, especially because staff believes the road will need to be closed for certain periods of time. These impacts will be addressed through the use of this Construction Management/General Contractor (CM/GC) construction contract. With the contractor on board, we can work directly with them to determine which activities will affect the ability to keep the road open and solutions to these impactful activities.

Staff has already met with Deer Valley on two occasions (with a follow up meeting already scheduled) to share summer programming information and to collaborate on common goals. From these discussions, it is likely that a Deer Valley Drive beautification/signature project will be supported as a second phase. This project would not happen until the following year and after the infrastructure and road work is completed this coming summer. Once this concept is vetted, staff will bring it to Council for direction on the expansion of the Deer Valley Drive scope. Staff anticipates bringing this to Council before the end of February so it could be included in the spring CIP budget process.

Consequences of not taking the recommended action:

Deer Valley Drive is an important transportation link for the City. This project will help to make this transportation corridor more efficient using the existing pavement width. Not commencing with the ICE contract will not allow our team to adequately review and negotiate a favorable construction cost for the project with the contractor.

Recommendation:

The Council should authorize the Interim City Manager to sign the attached UDOT Consultant Services Agreement with Stanton Constructability Services for independent construction estimator (ICE) services related to the design of Deer Valley Drive in the amount of \$28,710.

Exhibit A – Deer Valley Drive ICE Scope of Work and Fee



Utah Dept of Transportation
2010 South 2760 West
Salt Lake City, Utah 84104

December 6, 12

Attn: Ritchie Taylor

RE: Project F-LC43(30)
Deer Valley Drive
Pin 7164

Dear Mr. Taylor:

As per your request, the following is the approximate breakdown of hours for the above referenced project:

Meetings during pre-construction phase 36 hours

Review plans and specification and site visit 16 hours

Special meetings with UDOT Team 16 hours

Complete ICE on project with quantity takeoff
and estimate setup. 110 hours

Contractor, Owner and Stanton estimate reviews 20 hours

Approximate total hours and costs: 198 x \$145.00 \$28710

Thanks for giving us this opportunity.


Gary K. Stanton, Owner



City Council Staff Report

Subject: Consulting Services for Historic Preservation and Intensive Level Survey of the Main Street National Register Historic District

Author: Anya Grahn, Historic Preservation Planner;
Thomas E. Eddington Jr., Planning Director

Department: Planning

Date: December 20, 2012

Type of Item: Administrative

Summary Recommendations:

The Council should authorize the interim City Manager to execute a contract for consulting services for Historic Preservation and Intensive Level Survey of Main Street National Register Historic District with CRSA/SWCA in the amount of \$219,205.

Topic/Description:

The intent of awarding this contract is: to complete all the intensive level surveys for structures/sites in the City; examine the boundary of the National Register Historic District; and define a path to restoring the integrity of compromised historic buildings on Main Street. Intensive Level Surveys provide a basic approach to systematically documenting and evaluating historic buildings for their National Register of Historic Places eligibility as well as their historic integrity. The intent of this survey is to identify historic buildings within the current National Register District as well as expand the boundaries of this District to include additional historically significant buildings. In addition, CRSA/SWCA will create construction documents that restore the architectural integrity to seven buildings on Main Street.

Background:

CRSA/SWCA is an experienced private consulting firm specializing in cultural and natural resource management. Founded in 1975, the Salt Lake City firm has completed nearly fifty (50) projects throughout Utah including intensive level surveys of over one-hundred (100) buildings, many development project surveys subject to Section 106 of the National Historic Preservation Act (NEPA), and National Register of Historic Places (NRHP) nominations.

The firm is also familiar with historic preservation activities in Park City, as evident by:

- Work completed on the Ironhorse Transit Operations Center Employee Housing, Kimball Junction Transit Center, and High West Distillery.
- CRSA's Preservation Studio Director, Allen Roberts, AIA, served on the Park City Landmarks Commission for eight years, four of which as its chairman.
- Roberts has also co-authored *Summit County History* and completed the City's first Reconnaissance Level Survey.

- CRSA's Park City restoration projects include the Washington School, 543 Park Avenue; 521 Main Street; 541 Main Street; Memorial Building, 427 Main Street; Masonic Hall, 540 Main Street; Flanagan's, 438 Main Street; and Kimball Duplex, 698 Park Avenue.

Consistent with the City's policies regarding professional services, the Planning Department posted a Request for Proposal (RFP) on the website. The following consultants with expertise in this area submitted RFPs based on our request:

1. CRSA/SWCA in Salt Lake City, UT
2. Preservation Solutions (Dina Blaes) in Salt Lake City, UT
3. Logan Simpson Design, Inc. (LSD) in Salt Lake City, UT

Analysis:

The following provides a comparison of the three (3) bids received:

	CRSA/SWCA	Preservation Solutions	Logan Simpson Design, Inc.
Task 1: Modify the Geographic Boundaries of the National Register Historic District	\$5,200	\$2,625	\$2,877
Task 2: Nominate Individual Buildings to the National Register	\$2,700	\$3,780	\$14,895
Task 3: Re-Establish Architectural Integrity to Seven Buildings on Main Street	\$14,270	\$121,054	\$5,850
Task 4: Conduct Intensive Level Surveys on Buildings within the Main Street National Register Historic District	\$46,315	\$52,530	\$12,510
Task 5: Conduct Intensive Level Surveys for All Sites Listed in the Historic Sites Inventory	\$150,720	\$564,672	\$68,901
Additional Expenses	\$0	\$0	\$1,053
Total Cost	\$219,205	\$744,661	\$106,086

Staff recommends that Council consider awarding the project to CRSA/SWCA for the amount of \$219,205. This is based on CRSA/SWCA's proposal, expertise, and previous experience working in Park City. Though approximately \$113,000 greater than Logan Simpson Design, Inc. and approximately \$525,000 less costly than Preservation Solutions, Staff strongly feels that CRSA/SWCA is the strongest candidate given:

- Their detailed, well-developed proposal that addressed each of the five tasks.

- The thoroughness of their approach in re-establishing the architectural integrity of seven buildings on Main Street, providing detailed descriptions of restoration work and necessary changes to facades.
- The thirty-seven (37) years of expertise held by their Historic Preservation Studio that will be conducting the work of the intensive level survey.
- CRSA is well-respected historic preservation firm having been honored by over 140 awards for their design excellence in historic building documentation or restoration/renovation projects.
- Since 1976, CRSA has provided a range of historic preservation services which include research and documentation of Park City's historic commercial buildings; created the original historic district and the City's first Reconnaissance Level Survey; and assisted in creating and administering the City's grant program for historic commercial buildings.
- The strength of the firm's local office includes a staff of sixty-eight (68) highly-trained professionals, specializing in architecture; architectural history; metropolitan planning, policy, and design; as well as historic preservation.
- Their experience in conducting intensive level surveys, biographical research, and title research, as well as their ability to produce architectural drawings for the seven (7) Main Street buildings.
- Their proven expertise in building documentation, planning, building design, renovations, restorations, and architectural drawings and drafting.
- Their demonstrated experience in conducting archival research and preparing National Register of Historic Places (NRHP) nominations. The firm has nominated and listed over 100 individual Utah sites as well as completed or assisted in completing NRHP nominations for eight (8) historic districts, including Park City's Main Street Historic District.
- Principal In Charge Allen Robert's familiarity and knowledge of Summit County, evident by his co-authored book *Summit County History*.
- The firm's ability to complete restoration/renovation feasibility studies and cost estimates, their full A/E services for restoration/renovation/conservation design, as well as "Green Preservation" evaluations.

Additional Use of Funds:

This project was initially budgeted through the CIP process for \$700,000, \$300,000 for FY 2013 and \$400,000 for FY 2014. The remaining unused funds will be reallocated through the CIP process. Planning Staff may return to Council to recommend that Council allocate some of these funds towards the Historic District Preservation Grant Program, the rehabilitation/restoration of the city-owned property at 644 Woodside Avenue, and the establishment of a revolving loan fund for historic preservation-related projects in the historic districts.

Department Review:

This report has been reviewed by the City Manager and the Legal Department. All issues have been appropriately resolved.

Alternatives:

A. Approve the Request:

This is the staff's recommendation.

B. Deny the Request:

If this request is denied, the Council could choose to deny the need for an intensive level survey of the Main Street National Register Historic District.

C. Continue the Item:

If the Council needs more information, the item can be continued; however, the City runs the risk of delaying the progress of this project.

D. Do Nothing:

This option would delay the historic preservation work that the Council considered in its last Council Visioning session.

Consequences of not taking the recommended action:

The Planning Department has long desired to have a clearer understanding of the quality of the City's National Register sites. This project will allow us to update our Historic Structures Inventory (HSI) and create a series of plans to address the City's valued historic resources. Additionally, the proposed work will allow us to improve upon our past efforts to protect these valued historic resources.

Significant Impact:

	World Class Multi-Seasonal Resort Destination (Economic Impact)	Preserving & Enhancing the Natural Environment (Environmental Impact)	An Inclusive Community of Diverse Economic & Cultural Opportunities (Social Equity Impact)	Responsive, Cutting-Edge & Effective Government
Which Desired Outcomes might the Recommended Action Impact?	+ Balance between tourism and local quality of life + Multi-seasonal destination for recreational opportunities	+ Reduced municipal, business and community carbon footprints + Enhanced conservation efforts for new and rehabilitated buildings	+ Preserved and celebrated history; protected National Historic District + Shared use of Main Street by locals and visitors ~ Community gathering spaces and places + Vibrant arts and culture offerings	+ Well-maintained assets and infrastructure + Streamlined and flexible operating processes + Ease of access to desired information for citizens and visitors
Assessment of Overall Impact on Council Priority (Quality of Life Impact)	Very Positive 	Very Positive 	Positive 	Positive 
Comments:				

Funding has been budgeted through CP0298 - Historic Preservation.

Recommendation:

The Council should authorize the City Manager to execute a contract for consulting services for Historic Preservation and Intensive Level Survey of the Main Street National Register Historic District with CRSA/SWCA in the amount of \$219,205.



City Council Staff Report

Subject: Contract for Natural Gas Services for City Buildings
Author: Jennifer Danowski
Department: Budget, Debt, & Grants
Date: December 20, 2012
Type of Item: Administrative

Summary Recommendations:

Staff recommends City Council authorize the City Manager to enter into a one-year Agreement with Summit Energy to provide natural gas services to select City buildings in a form approved by the City Attorney's Office.

Topic/Description:

Contract for natural gas services

Background:

This item was presented to Council in work session on December 13, 2012.

Many of Park City Municipal Corporation's (PCMC) buildings require natural gas to heat the building and to maintain crucial mechanical functions. Historically, PCMC has utilized services from Questar Gas to provide this natural gas. Currently, City gas meters are charged the "GS Rate Schedule" (General Service) for gas usage and administration. This rate schedule one of several rate schedules that Questar offers. All of Questar's rate schedules are approved by the Utah Public Service Commission.

In September, 2012, members of Staff were approached by Summit Energy, a natural gas wholesaler. After reviewing our historical gas usage, Summit Energy proposed that we switch from a "GS Rate Schedule" to a "TS Rate Schedule" (Transportation Service). With a TS Rate Schedule, PCMC would buy natural gas wholesale from a private company, and essentially rent Questar's existing pipeline to transport the gas. The current cost of gas for the four proposed meters is \$160,000 annually. Summit Energy estimated that our savings would be approximately \$35,000 annually by switching to a TS Rate Schedule (See Attachment A).

After receiving Summit Energy's initial proposal, Staff requested quotes from several other natural gas wholesalers in Utah who are approved to offer Transportation Service through Questar. Three companies (including Summit Energy) prepared and presented proposals to a team of Staff, made up of representatives from the Budget, Building Maintenance, Finance, and Sustainability departments. All three proposals were scored, along with our current service with Questar on the GS Rate Schedule, and Staff unanimously selected Summit Energy as the vendor of choice.

Analysis:

Prior to recommendation, Staff went through a thorough analysis of our gas usage, and identified the City meters with the largest natural gas usage, as a larger usage promotes a larger savings (See *Appendix A*). These meters are located at the Public Works building on Iron Horse Drive and at the PC MARC on Little Kate Road. Staff recommends switching the four largest meters over to a TS Rate Schedule based on this analysis.

As natural gas is a market resource, Staff also analyzed the associated risk in switching from a GS to a TS Rate Schedule. Questar's rates must be approved by the Utah Public Service Commission, and rate changes happen every quarter on average. When buying from a wholesaler, where gas is sold on the open market, the price of gas can change daily. This creates a market risk to the City. Staff has worked with Summit Energy to identify solutions for mitigating this risk. First, PCMC can "lock in" current market rates, meaning that we will pay the current market value for natural gas for the length of the contract. This protects the City from paying more if the market rate for natural gas rises. Additionally, Summit Energy will conduct a detailed analysis each quarter which delineates what we have paid on the TS Rate Schedule for our natural gas versus what we would have paid on the GS Rate Schedule. With this tool, we can make informed decisions in the future as to what rate is the best for Park City.

Switching to a TS Rate Schedule, regardless of the third party provider, would require several actions from PCMC. Predominantly, the City will need to install new meters at the selected buildings. These meters will allow us to track our natural gas usage on a daily basis wirelessly. Questar and Summit would also have access to our usage information, as this installation is a requirement from Questar to be on the TS Rate Schedule. The capital cost to install each meter is approximately \$2500. PCMC will also need to officially request a rate schedule change with Questar, which must be done by February 28, 2013, in order to take effect beginning July 1.

Department Review:

This report has been reviewed by the Budget, Legal, Building, Finance, Sustainability, and City Manager Offices.

Alternatives:**A. Approve:**

Staff recommends that Council approve the contract with Summit Energy for natural gas services. This is expected to create savings of up to \$35,000 annually.

B. Deny:

Council could deny this contract. This action is not recommended, as the City would not realize the potential savings described above.

C. Modify:

Council could modify the terms of the contract. This is not suggested, as this contract had been negotiated by Staff to provide the greatest possible benefit to the City.

D. Continue the Item:

Council could continue this item. This is not recommended, as the deadline to switch meters to the TS Rate Schedule for FY 2014 is in February 2013.

Significant Impacts:

	World Class Multi-Seasonal Resort Destination (Economic Impact)	Preserving & Enhancing the Natural Environment (Environmental Impact)	An Inclusive Community of Diverse Economic & Cultural Opportunities (Social Equity Impact)	Responsive, Cutting-Edge & Effective Government
Which Desired Outcomes might the Recommended Action Impact?				+ Fiscally and legally sound + Well-maintained assets and infrastructure 
Assessment of Overall Impact on Council Priority (Quality of Life Impact)	Neutral 	Neutral	Neutral 	Very Positive 
Comments: This contract is expected to provide approximately \$30,000 in savings annually in City utility costs. As part of this project, we will also install new meters that will allow is to track usage and performance daily.				

Funding Source:

Utilities are currently budgeted for in several departments, including Building Maintenance, Water, Transit, and Golf. There is an upfront cost of \$2,500 per meter, which is equal to \$10,000 for the four meters recommended above. As this contract is expected to save the City money, additional funding outside of what is currently budgeted will not be needed to pay utility costs. Under this contract, we are billed for our usage, so there is no "Not to Exceed" price. If gas usage goes up dramatically this fiscal year, a one-time budget request would be taken to the Results Team for consideration.

Consequences of not taking the recommended action:

If Council does not approve this contract, the City may not realize the potential savings available when using a private natural gas wholesaler.

Recommendation:

Staff recommends City Council approve a contract with Summit Energy to provide natural gas services to select City buildings.

Attachment A- Summit Energy Projected Savings

Attachment B- Contract for Natural Gas Services

Park City Corporation
Attn: Jennifer Danowski
City Hall
Park City, Utah

Indication Only
October 2012

Summit Energy Companies
1245 Brickyard Road
Suite 210
Salt Lake City, UT 84106
(801) 869-1700



Location:	1053 Iron Horse Dr., Park City, UT													
GS Rate (Current)	July	August	September	October	November	December	January	February	March	April	May	June	Total Annual	
Monthly Burn Dth (Historic data, 11-12)	10	20	120	315	420	420	1,250	1,200	1,200	800	480	30	6,265	
Questar Charges (Service) (Discount 50%)	\$ 77.23	\$ 149.47	\$ 780.17	\$ 1,738.57	\$ 2,946.65	\$ 2,946.65	\$ 8,639.92	\$ 8,296.95	\$ 8,296.95	\$ 4,861.26	\$ 2,940.75	\$ 221.70	\$ 41,896.26	
TS Rate (Proposed)														
Questar Charges (Service)	\$ 310.49	\$ 312.75	\$ 335.39	\$ 379.53	\$ 403.30	\$ 403.30	\$ 591.18	\$ 579.87	\$ 579.87	\$ 489.32	\$ 416.88	\$ 315.01	\$ 5,116.87	
Summit Charges (Natural Gas)	\$ 40.63	\$ 81.68	\$ 490.59	\$ 1,300.51	\$ 1,586.66	\$ 1,720.11	\$ 5,194.41	\$ 4,980.42	\$ 4,908.38	\$ 3,168.76	\$ 1,894.80	\$ 118.95	\$ 25,485.90	
TS Rate Total	\$ 351.12	\$ 394.43	\$ 825.98	\$ 1,680.04	\$ 1,989.95	\$ 2,123.41	\$ 5,785.59	\$ 5,560.29	\$ 5,488.25	\$ 3,658.07	\$ 2,311.67	\$ 433.97	\$ 30,602.77	
Monthly Savings (loss) by Switching to TS	\$ (273.89)	\$ (244.97)	\$ (45.81)	\$ 58.52	\$ 956.69	\$ 823.24	\$ 2,854.33	\$ 2,736.67	\$ 2,808.70	\$ 1,203.19	\$ 629.07	\$ (212.27)	\$ 11,293.50	

Location:	1053 Iron Horse Dr., Park City, UT 2nd Meter													
GS Rate (Current)	July	August	September	October	November	December	January	February	March	April	May	June	Total Annual	
Monthly Burn Dth (Historic data, 11-12)	10	24	1	220	680	955	680	591	394	203	197	98	4,053	
Questar Charges (GS)	\$ 77.23	178	12	\$ 1,216.50	\$ 4,730.08	\$ 6,616.41	\$ 4,730.08	\$ 4,119.60	\$ 2,768.30	\$ 1,278.30	\$ 1,242.29	\$ 648.13	\$ 27,617.52	
TS Rate (Proposed)														
Questar Charges (Service)	\$ 468.02	\$ 471.19	\$ 465.98	\$ 515.55	\$ 619.68	\$ 681.94	\$ 619.68	\$ 599.54	\$ 554.94	\$ 511.71	\$ 510.35	\$ 487.94	\$ 6,506.51	
Summit Charges (Natural Gas)	\$ 40.63	\$ 98.02	\$ 4.09	\$ 908.30	\$ 2,568.87	\$ 3,911.20	\$ 2,825.76	\$ 2,452.86	\$ 1,611.59	\$ 804.07	\$ 777.66	\$ 388.58	\$ 16,391.61	
TS Rate Total	\$ 508.65	\$ 569.20	\$ 470.07	\$ 1,423.85	\$ 3,188.55	\$ 4,593.13	\$ 3,445.44	\$ 3,052.39	\$ 2,166.53	\$ 1,315.78	\$ 1,288.00	\$ 876.52	\$ 22,898.12	
Monthly Savings (loss) by Switching to TS	\$ (431.42)	\$ (390.85)	\$ (457.84)	\$ (207.35)	\$ 1,541.53	\$ 2,023.27	\$ 1,284.64	\$ 1,067.20	\$ 601.77	\$ (37.48)	\$ (45.71)	\$ (228.38)	\$ 4,719.40	

Location:	1200 Little Kate Rd., Park City, UT													
GS Rate (Current) (ID 285000024)	July	August	September	October	November	December	January	February	March	April	May	June	Total Annual	
Monthly Burn Dth (Historic data, 11-12)	390	373	432	30	744	995	1,240	1,195	790	735	620	759	8,303	
Questar Charges (GS) (Discount 50%)	\$ 2,400.60	\$ 2,298.58	\$ 2,652.67	\$ 171.54	\$ 5,169.08	\$ 6,890.78	\$ 8,571.33	\$ 8,262.66	\$ 5,484.61	\$ 4,471.16	\$ 3,780.97	\$ 4,615.20	\$ 54,769.18	
TS Rate (Proposed)														
Questar Charges (Service)	\$ 395.98	\$ 392.13	\$ 405.49	\$ 314.49	\$ 476.12	\$ 532.93	\$ 588.39	\$ 578.21	\$ 486.53	\$ 474.08	\$ 448.05	\$ 479.51	\$ 5,571.90	
Summit Charges (Natural Gas)	\$ 1,584.73	\$ 1,523.37	\$ 1,766.12	\$ 123.86	\$ 2,810.65	\$ 4,075.02	\$ 5,152.85	\$ 4,959.67	\$ 3,231.35	\$ 2,911.29	\$ 2,447.44	\$ 3,009.50	\$ 33,595.86	
TS Rate Total	\$ 1,980.71	\$ 1,915.51	\$ 2,171.61	\$ 438.35	\$ 3,286.76	\$ 4,607.95	\$ 5,741.25	\$ 5,537.88	\$ 3,717.88	\$ 3,385.37	\$ 2,895.49	\$ 3,489.01	\$ 39,167.76	
Monthly Savings (loss) by Switching to TS	\$ 419.89	\$ 383.07	\$ 481.06	\$ (266.81)	\$ 1,882.32	\$ 2,282.83	\$ 2,830.08	\$ 2,724.78	\$ 1,766.73	\$ 1,085.79	\$ 885.48	\$ 1,126.19	\$ 15,601.42	

Location:	1200 Little Kate Rd. Ct., Park City, UT 2nd Meter													
GS Rate (Current) (ID 23100015)	July	August	September	October	November	December	January	February	March	April	May	June	Total Annual	
Monthly Burn Dth (Historic data, 11-12)	202	226	147	99	553	913	928	860	613	453	404	370	5,768	
Questar Charges (GS)	\$ 1,272.30	\$ 1,416.34	\$ 942.21	\$ 551.56	\$ 3,858.94	\$ 6,328.31	\$ 6,431.21	\$ 5,964.77	\$ 4,270.50	\$ 2,778.70	\$ 2,484.63	\$ 2,280.57	\$ 38,580.04	
TS Rate (Proposed)														
Questar Charges (Service)	\$ 524.52	\$ 529.95	\$ 512.07	\$ 501.20	\$ 603.97	\$ 685.47	\$ 688.86	\$ 673.47	\$ 617.56	\$ 581.34	\$ 570.25	\$ 562.55	\$ 7,051.20	
Summit Charges (Natural Gas)	\$ 820.81	\$ 923.01	\$ 600.97	\$ 408.73	\$ 2,089.10	\$ 3,739.19	\$ 3,856.33	\$ 3,569.30	\$ 2,507.37	\$ 1,794.31	\$ 1,594.79	\$ 1,467.08	\$ 23,370.98	
TS Rate Total	\$ 1,345.33	\$ 1,452.96	\$ 1,113.04	\$ 909.94	\$ 2,693.07	\$ 4,424.65	\$ 4,545.19	\$ 4,242.77	\$ 3,124.92	\$ 2,375.65	\$ 2,165.03	\$ 2,029.63	\$ 30,422.18	
Monthly Savings (loss) by Switching to TS	\$ (73.03)	\$ (36.62)	\$ (170.83)	\$ (358.37)	\$ 1,165.87	\$ 1,903.66	\$ 1,886.01	\$ 1,722.00	\$ 1,145.58	\$ 403.06	\$ 319.59	\$ 250.94	\$ 8,157.86	

Contract for Sale and Purchase of Natural Gas

This Contract for Sale and Purchase of Natural Gas (the "Contract") is entered into this ____ day of _____, 20____ by and between Seller and Buyer as set forth below. Seller and Buyer may be referred to herein individually as "Party" and collectively as "Parties". The Parties agree as follows:

Seller:	Summit Energy, LLC	Buyer:	Park City Corporation
Address:	1245 Brickyard Rd., Ste 210 Salt Lake City, Utah 84106	Address:	
Phone:	(801) 869-1700	Phone:	(435)
Fax:	(435) 940-9002	Fax:	(435)

SECTION 1. TERM, DELIVERY PERIOD, CONTRACT QUANTITY, PRICE, DELIVERY POINT, AND SERVICE LEVEL

1.1. This Contract shall be effective as of the date set forth above and shall endure until the expiration of the Delivery Period as set forth herein including any extension thereof. The obligations to make payment hereunder and the obligation of either party to indemnify the other pursuant hereto shall survive the termination of this Contract.

1.2. The Delivery Period, Contract Quantity, Contract Price, Delivery Point, and Service Level shall be as follows:

Delivery Period:	Beginning with Questar billing period encompassing July 1, 2013 and continuing for a period of one year, unless mutually agreed to by both parties to extend the Delivery Period.
Quantity:	100% of Buyer's natural gas requirements to Meter.
Contract Price:	Questar Monthly Index as quoted by Platts Inside FERC's Gas Market Report plus \$0.15/Dth (Subject to market refresh upon transaction), plus SNG (Supplier Non-Gas Cost) of \$0.176/Dth, plus fuel costs as published in the tariff for Questar Pipeline Company (currently 1.41%).
Delivery Point:	Questar Citygate.
Service Level:	Firm.
Special Provisions:	Buyer is responsible for all Questar Gas Company costs.

SECTION 2. DEFINITIONS

The terms set forth below shall have the meaning ascribed to them below. Other terms are also defined elsewhere in the Contract and shall have the meanings ascribed to them herein.

2.1. "British thermal unit" or "Btu" shall mean the International BTU, which is also called the Btu (IT)

2.2. "Business Day" shall mean any day except Saturday, Sunday or Federal Reserve Bank holidays.

2.3. "Contract" shall mean the legally-binding relationship established by this Contract for the Purchase and Sale of Natural Gas.

- 2.4. "Contract Price" shall mean the amount expressed in U.S. Dollars per MMBtu to be paid by Buyer to Seller for the purchase of Gas as set forth in Section 1.
- 2.5. "Contract Quantity" shall mean the quantity of Gas to be delivered and taken as set forth in Section 1.
- 2.6. "Day" shall mean a period of 24 consecutive hours, coextensive with a "day" as defined by Questar Gas Company.
- 2.7. "Delivery Period" shall be the period during which deliveries are to be made as set forth in Section 1.
- 2.8. "Delivery Point(s)" shall mean such point(s) as set forth in Section 1 where Gas will be delivered by Seller to Buyer.
- 2.9. "Firm" shall mean that either party may interrupt its performance without liability only to the extent that such performance is prevented for reasons of Force Majeure.
- 2.10. "Gas" shall mean any mixture of hydrocarbons and noncombustible gases in a gaseous state consisting primarily of methane.
- 2.11. "MMBtu" shall mean one million British thermal units, which is equivalent to one dekatherm.
- 2.12. "Month" shall mean the period beginning on the first Day of the calendar month and ending immediately prior to the commencement of the first Day of the next calendar month.

SECTION 3. SERVICE LEVEL, AGENCY AGREEMENT, NOMINATIONS, AND IMBALANCES

- 3.1. Seller agrees to sell and deliver, and Buyer agrees to receive and purchase, the Contract Quantity at the service level set forth in Section 1 herein.
- 3.2. Seller shall deliver Gas at the Delivery Point(s) for redelivery by Questar Gas Company to Buyer's facility. The delivery of Gas by Questar Gas Company from the Delivery Point(s) to Buyer's facility shall be transported subject to a Utah Transportation Service Agreement between Buyer and Questar Gas Company ("Buyer's TS Agreement"). Seller shall act as Buyer's agent for the purposes of scheduling and balancing Gas under Buyer's TS Agreement for the redelivery of Gas to Buyer's facility. Any positive imbalance (Gas quantity delivered by Seller at the Delivery Point in excess of the quantity of Gas consumed by Buyer at Buyer's facility) shall be owned by Seller. Any negative imbalance (gas consumed by Buyer at Buyer's facility in excess of the quantity of Gas delivered by Seller at the Delivery Point) shall be the responsibility of Seller.
- 3.3. Buyer shall promptly communicate any material change to its Gas usage quantity to help facilitate the scheduling of Gas to the Delivery Point(s) and on Buyer's TS Agreement.

SECTION 4. QUALITY AND MEASUREMENT

All Gas delivered by Seller shall meet the pressure, quality and heat content requirements of Questar Gas Company. The unit of quantity measurement for purposes of this Contract and the measurement of Gas quantities hereunder shall be in accordance with the established procedures of Questar Gas Company.

SECTION 5. TAXES

Seller shall pay or cause to be paid all taxes, fees, levies, penalties, licenses or charges imposed by any government authority ("Taxes") on or with respect to the Gas prior to the Delivery Point(s). Buyer shall pay or cause to be paid all Taxes on or with respect to the Gas at and after the Delivery Point(s). If a party is required to remit or pay Taxes that are the other party's responsibility hereunder, the party responsible for such Taxes shall promptly reimburse the other party for such Taxes. Any party entitled to an exemption from any such Taxes or charges shall furnish the other party any necessary documentation thereof.

SECTION 6. BILLING, PAYMENT, AND AUDIT

- 6.1. Seller shall invoice Buyer each month for Gas delivered and received in the preceding Month at Buyer's facility including all applicable charges including Gas, transportation charges, fuel, or other costs incurred to deliver Gas to Buyer's facility. Said invoice shall include supporting documentation acceptable in industry practice to support the amount charged. If the actual quantity delivered to Buyer's facility is not known by the billing date, billing will be prepared based on an estimated quantity calculated using the volume of Gas scheduled for delivery by Questar Gas Company to Buyer's facility. The invoiced quantity will then be adjusted to the actual quantity on the following Month's billing or as soon thereafter as actual delivery information is provided by Questar Gas Company.
- 6.2. Buyer shall remit the amount due hereunder within 10 Days after receipt of the invoice by Buyer provided that if the Payment Date is not a Business Day, payment is due on the next Business Day following that date.
- 6.3. If the invoiced party, in good faith, disputes the amount of any such invoice or any part thereof, such invoiced party will pay such amount as it concedes to be correct; provided, however, if the invoiced party disputes the amount due, it must provide supporting documentation acceptable in industry practice to

support the amount paid or disputed. In the event the parties are unable to resolve such dispute, either party may pursue any remedy available at law or in equity to enforce its rights pursuant to this Section.

6.4. If the invoiced party fails to remit the full amount payable when due, interest on the unpaid portion shall accrue from the date due until the date of payment at a rate equal to the lower of (i) the then-effective prime rate of interest published under "Money Rates" by The Wall Street Journal, plus two percent per annum; or (ii) the maximum applicable lawful interest rate.

6.5. A party shall have the right, at its own expense, upon reasonable Notice and at reasonable times, to examine and audit and to obtain copies of the relevant portion of the books, and records of the other party only to the extent reasonably necessary to verify the accuracy of any statement, charge, payment, or computation made under the Contract. This right to examine, audit, and to obtain copies shall not be available with respect to proprietary information not directly relevant to this Contract. All invoices and billings shall be conclusively presumed final and accurate and all associated claims for under or overpayments shall be deemed waived unless such invoices or billings are objected to in writing, with adequate explanation and/or documentation, within one year after the Month of Gas delivery.

SECTION 7. TITLE, WARRANTY, AND INDEMNITY

7.1. Unless otherwise specifically agreed, title to the Gas shall pass from Seller to Buyer at the Delivery Point(s). Seller shall have responsibility for and assume any liability with respect to the Gas prior to its delivery to Buyer at the specified Delivery Point(s). Buyer shall have responsibility for and any liability with respect to said Gas after its delivery to Buyer at the Delivery Point(s).

7.2. Seller warrants that it will have the right to convey and will transfer good and merchantable title to all Gas sold hereunder and delivered by it to Buyer, free and clear of all liens, encumbrances, and claims.

7.3. Seller agrees to indemnify Buyer and save it harmless from all losses, liabilities or claims including reasonable attorneys' fees and costs of court ("Claims"), from any and all persons, arising from or out of claims of title, personal injury or property damage from said Gas or other charges thereon which attach before title passes to Buyer. Buyer agrees to indemnify Seller and save it harmless from all Claims, from any and all persons, arising from or out of claims regarding payment, personal injury or property damage from said Gas or other charges thereon which attach after title passes to Buyer.

SECTION 8. NOTICES

8.1. All invoices, payments and other communications made pursuant to this Contract ("Notices") shall be made to the addresses specified in writing by the respective parties from time to time.

8.2. All Notices required hereunder may be sent by facsimile or mutually acceptable electronic means, a nationally recognized overnight courier service, first class mail or hand delivered.

8.3. Notice shall be given when received on a Business Day by the addressee. In the absence of proof of the actual receipt date, the following presumptions will apply. Notices sent by facsimile shall be deemed to have been received upon the sending party's receipt of its facsimile machine's confirmation of successful transmission. If the day on which such facsimile is received is not a Business Day or is after five p.m. on a Business Day, then such facsimile shall be deemed to have been received on the next following Business Day. Notice by overnight mail or courier shall be deemed to have been received on the next Business Day after it was sent or such earlier time as is confirmed by the receiving party. Notice via first class mail shall be considered delivered five Business Days after mailing.

SECTION 9. CREDIT WORTHINESS

9.1. If Seller has reasonable grounds for insecurity regarding the payment by Buyer for gas sold hereunder (including, without limitation, the occurrence of a material change in the creditworthiness of Buyer), Seller may demand Adequate Assurance of Performance. "Adequate Assurance of Performance" shall mean sufficient security in the form, amount and for the term reasonably acceptable to Seller, including, but not limited to, a standby irrevocable letter of credit or a prepayment.

9.2. In the event (each an "Event of Default") either party (the "Defaulting Party") or its guarantor shall: (i) make an assignment or any general arrangement for the benefit of creditors; (ii) file a petition or otherwise commence, authorize, or acquiesce in the commencement of a proceeding or case under any bankruptcy or similar law for the protection of creditors or have such petition filed or proceeding commenced against it; (iii) otherwise become bankrupt or insolvent (however evidenced); (iv) be unable to pay its debts as they fall due; (v) have a receiver, provisional liquidator, conservator, custodian, trustee or other similar official appointed with respect to it or substantially all of its assets; (vi) fail to give Adequate Assurance of Performance; or (vii) not have paid any amount due the other party hereunder on or before the fifth Business Day following written notice that such payment is due; then the other party (the "Non-Defaulting Party") shall have the right, at its sole election, to immediately withhold and/or suspend deliveries upon notice and/or to terminate the Contract.

SECTION 10. FORCE MAJEURE

10.1. Except with regard to a party's obligation to make payment(s) or to indemnify the other party as set forth herein, neither party shall be liable to the other for failure to perform an obligation, to the extent such failure was caused by Force Majeure. The term "Force Majeure" as employed herein means any cause not reasonably within the control of the party claiming suspension, as further defined herein.

10.2. Force Majeure shall include, but not be limited to, the following: (i) physical events such as acts of God, landslides, lightning, earthquakes, fires, storms or storm warnings, such as hurricanes, which result in evacuation of the affected area, floods, washouts, explosions, breakage or accident or necessity of repairs to machinery or equipment or lines of pipe; (ii) weather related events affecting an entire geographic region, such as low temperatures which cause freezing or failure of wells or lines of pipe; (iii) interruption and/or curtailment or recalling of transportation and/or storage by Transporters; (iv) acts of others such as strikes, lockouts or other industrial disturbances, riots, sabotage, insurrections or wars; and (v) governmental actions such as necessity for compliance with any court order, law, statute, ordinance, regulation, or policy having the effect of law promulgated by a governmental authority having jurisdiction. Seller and Buyer shall make reasonable efforts to avoid the adverse impacts of a Force Majeure and to resolve the event or occurrence once it has occurred in order to resume performance.

10.3. The party whose performance is prevented by Force Majeure must provide Notice to the other party. Initial Notice may be given orally; however, written Notice with reasonably full particulars of the event or occurrence is required as soon as reasonably possible. Upon providing written Notice of Force Majeure to the other party, the affected party will be relieved of its obligation, from the onset of the Force Majeure event, to make or accept delivery of Gas, as applicable, to the extent and for the duration of Force Majeure, and neither party shall be deemed to have failed in such obligations to the other during such occurrence or event.

SECTION 11. LIMITATIONS

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY. A PARTY'S LIABILITY HEREUNDER SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, A PARTY'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY. SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

SECTION 12. MISCELLANEOUS

12.1. This Contract shall be binding upon and inure to the benefit of the successors, assigns, personal representatives, and heirs of the respective parties hereto, and the covenants, conditions, rights and obligations of this Contract shall run for the full term of this Contract. No assignment of this Contract, in whole or in part, will be made without the prior written consent of the non-assigning party (and shall not relieve the assigning party from liability hereunder), which consent will not be unreasonably withheld or delayed; provided, either party may (i) transfer, sell, pledge, encumber, or assign this Contract or the accounts, revenues, or proceeds hereof in connection with any financing or other financial arrangements, or (ii) transfer its interest to any parent or affiliate by assignment, merger or otherwise without the prior approval of the other party. Upon any such assignment, transfer and assumption, the transferor shall remain principally liable for and shall not be relieved of or discharged from any obligations hereunder.

12.2. If any provision in this Contract is determined to be invalid, void or unenforceable by any court having jurisdiction, such determination shall not invalidate, void, or make unenforceable any other provision, agreement or covenant of this Contract.

12.3. No waiver of any breach of this Contract shall be held to be a waiver of any other or subsequent breach.

12.4. This Contract sets forth all understandings between the parties and any prior contracts, understandings and representations, whether oral or written, relating to such transactions are merged into and superseded by this Contract. This Contract may be amended only by a writing executed by both parties.

12.5. The interpretation and performance of this Contract shall be governed by the laws of the State of Utah.

12.6. This Contract and all provisions herein will be subject to all applicable and valid statutes, rules, orders and regulations of any governmental authority having jurisdiction over the parties, their facilities, or Gas supply, this Contract or transaction or any provisions thereof.

12.7. There is no third party beneficiary to this Contract.

12.8. Each party to this Contract represents and warrants that it has full and complete authority to enter into and perform this Contract. Each person who executes this Contract on behalf of either party represents and warrants that it has full and complete authority to do so and that such party will be bound thereby.

12.9. The headings and subheadings contained in this Contract are used solely for convenience and do not constitute a part of this Contract between the parties and shall not be used to construe or interpret the provisions of this Contract.

12.10. During the Term of this Contract, neither party shall disclose directly or indirectly without the prior written consent of the other party the terms of this Contract to a third party (other than the employees, lenders, counsel, accountants and other agents of the party, or prospective purchasers of all or substantially all of a party's assets or of any rights under this Contract, provided such persons shall have agreed to keep such terms confidential) except (i) in order to comply with any applicable law, order, regulation, or exchange rule, or (ii) to the extent necessary for the enforcement of this Contract.

IN WITNESS WHEREOF, the parties hereto have executed this Base Contract in duplicate.

Seller:	Summit Energy, LLC
By:	
Title:	
Date:	

Buyer:	Park City Corporation
By:	
Title:	
Date:	

City Council Staff Report



Subject: Land Management Code
Amendments
Author: Kirsten Whetstone, MS, AICP
Date: December 20, 2012
Project Number: PL-12-01631
Type of Item: Legislative

Planning Department

Summary Recommendations

Staff recommends City Council conduct a public hearing, review and discuss the proposed LMC amendments as outlined in this staff report, and consider approving the amendments based on the findings and conclusions in the attached Ordinance.

Staff also recommends the City Council continue to a date uncertain amendments to Chapter 2 that relate to Stories, Height, and roof pitch in a structure in the Historic Residential zones, Chapter 6 on Master Planned Developments and Chapter 15 as to associated definitions for Chapter 2 and 6.

Proposal

Staff has prepared the following amendments as part of the 2012 annual review of the Park City Land Management Code (LMC) which have been forwarded by the Planning Commission to Council for review:

Listed by Chapter

- Chapter One- General Provisions and Procedures (Exhibit A)
 - o Review process for Historic District Design Review and Administrative Conditional Use applications
 - o Revisions to notice and notice matrix
- Chapter Two- Zoning Districts
 - o Revise Conditional Use process within historic districts
 - o Revise Conditional Use open space requirements in HRM and RC zone
 - o Revise Allowed and Conditional Uses in HR2, HCB, and HRC
- Chapter Three- Off-Street Parking
 - o Reduce parking requirements for multi-family dwellings
 - o Include manager parking for and bed and breakfast inns
 - o Require building permits for driveways and parking pads in all zones.
- Chapter Four- Supplemental Regulations
 - o Require building permits for fences and retaining walls greater than six feet in Height, and greater than four feet in Height in Historic District zones.
 - o Amend requirements and process for Special Events and Overcrowding
 - o Remove overcrowding permits and replace with temporary change of occupancy permits.
- Chapter Five- Architectural Review
 - o Add landscaping to Policy and Purpose statements

- o Add landscape plan requirements to Architectural Design Guidelines for all exterior building permits, CUPs, MPDs, and HDDRs
- o Require licensed Landscape Architect for landscape plans for all CUPs, MPDs, and HDDRs
- o Require building permits for patios, driveways, and other impervious surfaces in all zones.
- o Allow minor setback exceptions for screened mechanical equipment as part of the Architectural Review
- o Revise Lighting requirements- Seasonal Lighting Display to conform to Municipal Code and lighting for public art.
- Chapter Nine- Non-conforming Uses
 - o Revise criteria and applicability of change of non-conforming use to another non-conforming use of similar or less-intensive land use type
 - o Chapter Ten- Board of Adjustment (Remove Special Exceptions.
- Chapter Eleven- Historic Preservation (Exhibit B)
 - o Amend pre-HDDR application requirements to have pre-application conference strongly recommended as opposed to a mandatory review
 - o Revise review process for Historic District Design Review applications including appeals, public hearing, and extensions of approval
 - o Amend and clarify criteria for permitting relocation and/or reorientation of historic structures
 - o Amend and clarify criteria for permitting disassembly and reassembly of historic structures
- Chapter Fifteen – Definitions **(these definitions are part of the Code Sections that were forwarded)**
 - o Amend or add definitions for Impervious Surface, Public Art, Temporary Improvement, and Xeriscape

Listed by Issue/Topic

1. Pre-application process, review and appeal process for Historic District Design Review and revisions to the notice matrix (Chapters 1 and 11).
2. Clarify open space and uses, including restriction of uses within 200' of Main Street. These amendments apply to the HR-2, HRM, HRC, HCB, and/or RC zones (Chapters 2.3, 2.4, 2.5, 2.6 and 2.16).
3. Revise parking requirements for multi-family units and bed and breakfast inns and require building permits for driveways and parking areas (Chapter 3).
4. Revise Special Event and overcrowding permitting process and require building permits for fences and walls over four feet in the Historic District (Chapter 4).
5. Incorporate landscape plan requirements; require building permits for driveways, patios and flat work; clarify seasonal lighting; add lighting for public art; and revise mechanical equipment and screening in the Architectural Guidelines (Chapter 5).
6. Clarify criteria for change of a non-conforming use to another non-conforming use of similar or less intensive use (Chapter 9).
7. Remove Special Exception process from Board of Adjustment chapter (Chapter 10)
8. Revise permitting process for relocation and/or reorientation, as well as Disassembly and Reassembly, of Historic Structures (Chapter 11).

9. Revise, clarify, and add definitions associated with above items (Chapter 15).

Background

The Planning Department, on an annual or bi-annual basis, reviews the LMC to address planning and zoning issues that have come up in the past year. These amendments provide clarification and streamlining of processes, procedures, and definitions and provide consistency of code application between Chapters as well as consistency with the General Plan, Council Goals, Utah Code, and the Historic District Design Guidelines. The proposed revisions for discussion listed above are further described in the Analysis section below.

On August 22, 2012, Staff provided the Planning Commission with a report and ordinance outlining proposed amendments to the LMC. The Planning Commission discussed the proposed amendments at a work session and provided staff with direction to provide additional information and continued the item to September 12th. On September 12th and 26th, November 28th, and December 12th the Planning Commission conducted public hearings and forwarded positive recommendations to City Council on the LMC Amendments described in this report (Exhibit E- Planning Commission minutes). In addition, the Historic Preservation Board reviewed the amendments pertaining to the Historic Districts and recommended adopting the amendments as proposed here (Exhibit G).

A recommendation was not forwarded on amendments to Chapter 2 that relate to Stories, Height, and roof pitch in a structure in the Historic Residential zones, Chapter 6 on Master Planned Developments, and Chapter 15 as to associated definitions from Chapter 2 and 6. Therefore, Staff is requesting those items be continued to a date uncertain.

Analysis

Analysis for each topic is included following the proposed amendment language. (Also refer to Exhibits A and B at the end of the report for Chapter 1 and 11. The Exhibits to the Ordinance contain the same amendments laid out in the report below).

1. Pre-application process, review and appeals process for Historic District Design Review (HDDR) and revisions to the notice matrix (Chapters 1 and 11).

A) Proposed language- Pre HDDR applications (see redlines): 15-11-12. HISTORIC DISTRICT OR HISTORIC SITE DESIGN REVIEW.

(A) PRE-APPLICATION CONFERENCE.

- (1) It is strongly recommended that the ~~The~~ Owner and/or Owner's representative ~~shall be required to~~ attend a pre-Application conference with representatives of the Planning and Building Departments for the purpose of determining the general scope of the proposed Development, identifying potential impacts of the Development that may require mitigation, providing information on City-sponsored incentives that may be available to the Applicant, and outlining the Application requirements.

Analysis: Staff recommends that the pre-Application for HDDRs be highly recommended as opposed to being required. This will expedite the process for those who want it and clarify that the submittals associated with a pre-application are not vested. Comments that come out of the DRT meetings are typically based on informal conceptual plans and not a full set of architectural plans. At the same time, Staff is committed to the value of these meetings to explain the Guidelines and process to applicants, for all of the reasons stated in the pre-application conference language included herein (see Exhibits A and B of the report). HPB also supported this amendment.

B) Proposed language- Appeals process for administrative applications (HDDRs and Administrative CUPs) including revisions to the Notice Matrix:

(There are numerous redlines for this topic, please refer to Exhibits A and B for redlines to Chapters 1 and 11).

Analysis: Based upon Planning Commission's direction at the September 22, 2012 meeting, staff is proposing language which would add a public hearing to Planning Staff's review of the HDDR and make the HPB the appeal authority. Appeals of HPB decisions on an HDDR appeal would be made to the District Court. HPB also supported this amendment (see Exhibit G- Minutes of the HPB meeting on November 7th).

2. Clarify open space and uses, including restriction of uses within 200 feet of Main Street (Applies to HR-2, HRM, HRC, HCB, and/or RC (Chapters 2.3, 2.4, 2.5, 2.6 and 2.16)).

Proposed language- see redlines below regarding HR2, HRM, HRC and HCB zones for uses and open space:

HR-2 ZONE

15-2.3-2

(B) CONDITIONAL USES:

(29) Bar⁸

(30) Special Events⁸

⁸In Historic Structures and within Sub-Zones A and B-only. ~~S~~ subject to compliance with all criteria and requirements of Section 15-2.3-~~98~~ for Sub-Zone A and Section 15-2.3-9 for Sub-Zone B. ~~Except that these Uses are permitted in Sub-Zone A only when all criteria of Section 15-2.3-8 are met.~~

15-2.3-3 **CONDITIONAL USE PERMIT REVIEW.**

The Historic Preservation Board shall review any Conditional Use permit (CUP) Application in the HR-2 District and shall forward a recommendation to the Planning Commission regarding the application's compliance with the Design Guidelines for Park City's Historic Districts and Historic Sites. The Planning Commission shall review any Conditional Use permit (CUP) this Application in the HR-2 District according to the Conditional Use permit criteria set forth in Section 15-1-10 as well as the following:

(A) Consistent with the Design Guidelines for Park City's Historic Districts and Historic Sites, Section 15-4, and the Historic Preservation Board's recommendation.

HRM ZONE

15-2.4-5. SPECIAL REQUIREMENTS FOR MULTI-UNIT DWELLINGS.

(A) **FRONT YARD.** The Front Yard for any Triplex, or Multi-Unit Dwelling is twenty (20') feet. All new Front-Facing Garages shall be a minimum of twenty-five feet (25') from the Front Property Line. All Yards fronting on any Street are considered Front Yards for the purposes of determining required Setbacks. See Section 15-2.4-4(D), Front Yard Exceptions.

(B) **REAR YARD.** The Rear yard for a Triplex or Multi-Unit Dwelling is ten feet (10'). See Section 15-2.4-4(F), Rear Yard Exceptions.

(C) **SIDE YARD.** The Side Yard for any Triplex, or Multi-Unit Dwelling is ten feet (10'). See Section 15-2.4-4(H), Side Yard Exceptions.

(D) **OPEN SPACE.** The Applicant must provide Open Space equal to at least sixty percent (60%) of the total Site for all Triplex and Multi-Unit Dwellings. If reviewed as a Master Planned Development, then the Open Space requirements of Section 15-6-5 (D) shall apply. Parking is prohibited within the Open Space. See Section 15-15 Open Space.

15-2.4-3. CONDITIONAL USE PERMIT REVIEW.

The Planning Director shall review any Conditional Use permit (CUP) Application in the HRM District and shall forward a recommendation to the Planning Commission regarding compliance with the ~~Historic District Design Guidelines~~ Design Guidelines for Park City's Historic Districts and Historic Sites. The Planning Commission shall review the Application according to Conditional Use permit criteria set forth in Section 15-1-10, as well as the following:

(A) Consistent with the ~~Historic District Design Guidelines~~ Design Guidelines for Park City's Historic Districts and Historic Sites., Section 15-4.

(B) The Applicant may not alter the Historic Structure to minimize the residential character of the Building.

(C) Dedication of a Facade Preservation Easement to assure preservation of the Structure is required.

(D) New Buildings and additions must be ~~in scale and~~ Compatible with existing Historic Buildings in the neighborhood. ~~New Structures and additions must be two (2) stories in height or less. Primary facades should be one (1) to one and a half (1 ½) stories at the Street.~~ Larger Building masses should be located to rear of the Structure to minimize the perceived mass from the Street.

HRC ZONE

15-2.5-2. USES.

Uses in the HRC are limited to the following:

(A) **ALLOWED USES**.....

(B) **CONDITIONAL USES**⁹.....

⁹No community locations as defined by Utah Code 32B-1-102 (Alcoholic Beverage Control Act) are permitted within 200 feet of Main Street unless a variance is permitted for an outlet, as defined by Utah Code 32B-1-202, to obtain a liquor license.

HCB ZONE

15-2.6-2. USES.

Uses in the Historic Commercial Business (HCB) District are limited to the following:

(A) **ALLOWED USES**.

(B) **CONDITIONAL USES**¹⁰.

¹⁰No community locations as defined by Utah Code 32B-1-102 (Alcoholic Beverage Control Act) are permitted within 200 feet of Main Street unless a variance is permitted for an outlet, as defined by Utah Code 32B-1-202, to obtain a liquor license.

RC ZONE

15-2.16-3. LOT AND SITE REQUIREMENTS.

(J) **OPEN SPACE**. On any Lot greater than 25,000 sq. ft. in Area, at least sixty percent (60%) of the Lot must be devoted to ~~Transferred Development Right (TDR)~~ Open Space ~~if the Lot is not developed as a Master Planned Development. This is in addition to any Open Space required as part of a Master Planned Development. TDR Open Space may be either Natural or Landscaped Open Space. If the Lot is developed as a Master Planned Development then the Open Space requirements of Section 15-6-5. (D) shall apply.~~

Analysis: Staff recommends adding a footnote to the Conditional Uses list within the HRC and HCB zones to restrict community locations, such as schools, churches, play grounds from locating within 200 feet of Main Street if the Use would restrict liquor licenses on Main Street, which is one of Park City's primary business districts.

Adding "Bar" and "Special Event" uses to the HR-2 zone, for Subzone A and B, provides consistency in the code language for the review of Conditional Use permits (CUP) for HCB uses within the HR-2 Subzones, when meeting all criteria of a Conditional Use Permits for commercial uses in the HR-2 subzones. Bars and Special Events are permitted uses in the HCB Zone and therefore if a Main Street business is granted a CUP for its use to extend into the HR-2 zone, this amendment would include uses such as Bars and Special Events. In order to be granted a CUP, the application continues to be required to a use below the grade of Park Avenue in subzone A, and in an historic structure in subzone B, and all criteria spelled out in the LMC are met.

Open space requirements in the RC and HRM districts are clarified and tied to the open space requirements of the MPD, Chapter 6 for an MPD in these zones.

3. Revise parking requirements for multi-family units and bed and breakfast inns and require building permits for driveways and parking areas (Chapter 3).

Proposed language- (see redlines):

CHAPTER THREE- OFF-STREET PARKING

15-3-3. GENERAL PARKING AREA AND DRIVEWAY STANDARDS.

(L) **PERMIT.** A Building Permit is required for construction of all non-bearing concrete flatwork, asphalt, and/or any impervious surface, regardless of area or amount of paving. This includes any repairs, alterations, modifications, and expansions of existing flatwork.

15-3 -4. SPECIFIC PARKING AREA AND DRIVEWAY STANDARDS FOR SINGLE FAMILY RESIDENCES AND DUPLEXES, PARKING AREAS WITH 5 OR MORE SPACES, AND PARKING STRUCTURES.

(A) SINGLE FAMILY RESIDENCES AND DUPLEXES.

(2) **CIRCULAR DRIVEWAYS.** Circular driveways are permitted for Single Family and Duplex Dwellings provided one leg leads directly to and from a legally located garage or carport, subject to the following conditions:

(a) Such drives shall be paved with a hard surface.

(b) Such drives shall be a minimum of ~~fifteen feet (15')~~twelve (12') and a maximum of twenty-four feet (24') in width.

(c) There shall be a Landscaped Area at least fifteen feet (~~15'~~) in depth from the Front Property Line to the inside of the drive.

15-3 -6. PARKING RATIO REQUIREMENTS FOR SPECIFIC LAND USE CATEGORIES.

(A) **RESIDENTIAL USES.** Off-Street parking shall be provided for each land Use as listed in this section, in the Parking Ratio Requirements tables. When applying the tables, the parking requirements stated for each Use, or combination of Uses, applies to each Dwelling Unit within the Structure. Specific Uses, and the related parking ratio requirements are also shown below: Also refer to 15-15 Definitions for clarification of Uses.

Multi-Unit Dwelling	Apartment/Condominium not greater than 650-1,000 sf floor Area	1 per Dwelling Unit	Bed and Breakfast Inn	1 space per bedroom <u>and one space per on duty manager.</u>
	Apartment/Condominium greater than 1,000 650 sf and less than 2,000 1000 sf floor Area	1.5 per Dwelling Unit		
	Apartment/Condominium of greater than 2,000 1,000 sf and less than 2,500 sf floor Area <u>or greater</u>	2 per Dwelling Unit		
	Apartment/Condominium 2,500-sf floor Area or more	3 per Dwelling Unit		

Analysis: The amendment to require a building permit for flat work is a request of the Building and Engineering Departments. These building permits will be, for the most part, simple over the counter permits. The importance of the building permit in these cases is to be able to review sites for impacts on the Soils Ordinance, City Streets and ROWs, utilities, property lines, and other issues that can be better identified and addressed before the work begins than once it has

begun on the ground, including any property line or neighborhood issues. These permit fees are based on the value of the work, and therefore are not unreasonable.

The parking amendments reduce parking requirements for multi-family dwelling units (condominiums and apartments) based on size, allowing 1 parking space for units up to 1,000 sf, 1.5 spaces for units up to 2,000 sf, and 2 spaces for units greater than 2,000 sf. Parking for single family dwellings, duplexes and tri-plexes remains at two spaces per unit. Due to alternative modes of transportation and shuttle vans provided for guests, the existing parking requirements have created excess parking, increasing the building mass, amount of impervious paving, and traffic in neighborhoods. These figures are consistent with the reductions often granted by the Planning Commission during project specific review of Master Planned Developments.

4. **Revise Special Event and overcrowding permitting process and require Building Permits for fences and retaining walls over four feet in the Historic District (Chapter 4).**

Proposed language (see redlines):

15-4-2. (1) EXCEPTION. The height of retaining walls in the Front Yard may exceed four feet (4'), measured from Final Grade, subject to approval by the Planning Director and City Engineer, and may exceed six feet (6') in height subject to approval of an Administrative Conditional Use permit or as approved as part of a Master Planned Development (MPD) or Conditional Use permit. Prior to issuance of an Administrative Conditional Use permit the Property shall be posted and affected adjacent Property Owners shall be noticed ten (10) days prior to Final Action.

The height of retaining walls in the Side or Rear Yards may exceed six feet (6'), measured from Final Grade, subject to approval of an Administrative Conditional Use permit or as approved as part of a Master Planned Development or Conditional Use permit. Prior to issuance of an Administrative Conditional Use permit the Property shall be posted and affected adjacent Property Owners shall be noticed ten (10) days prior to Final Action.

~~Any Fence or retaining wall greater than six feet (6') in height requires a Building Permit~~

(D) **PERMIT.** A building permit is required for construction of any Fence or retaining wall greater than six feet (6') in height. Within any of the Historic zoning districts construction of any Fence or retaining wall greater than four feet (4') in height requires a Building Permit.

Analysis: The LMC amendment is the change to require a building permit for fences and retaining walls greater than 4 feet in height in the Historic Zones. Permits are already required for fences and walls greater than 6 feet in height. The reasoning is the same as the amendment requiring building permits for flat work, to be proactive and be able to identify and address issue of the site,

property lines, Soils Ordinance, engineering, etc. before the work has begun and also to provide guidance to property owners and contractors before they have begun the project.

15-4 -20. SPECIAL EVENTS ~~AND OVERCROWDING~~ AND TEMPORARY CHANGE OF OCCUPANCY PERMITS.

(A) **PURPOSE.** The intent of these regulations is to allow ~~temporary overcrowding~~ Administrative Permits for Special Events and temporary change of occupancy activities only if adverse impacts on the character of neighboring Property can be mitigated and issues of public safety, traffic and parking are provided for. Such Uses will be permitted where the adjacent Street system is sufficient to accommodate the traffic impacts generated by said ~~overcrowding~~ Special Events and temporary change of occupancy; where the Property can accommodate adequate Off-Street parking; where the Structures are designed to safely accommodate said Special Event and temporary change of occupancy ~~overcrowding~~; and where the type of Use, and impacts are Compatible with the Uses otherwise permitted in the zone.

(B) **DURATION.** ~~For non-code approved overcrowding, an overcrowding Special Event and temporary change of occupancy Administrative Permits permit allows the increase in occupancy may be issued for a duration of for a total of~~ fifteen (15) days per permit and for no more than twelve (12) times per year per Building. These days are not required to be consecutive.

(C) **APPLICATION.** An Application must be submitted no less than fifteen (15) ~~ten (10) thirty (30)~~ days prior to the Special Event or temporary change of occupancy Use. The Planning Director may reduce this timeframe to ten (10) days upon written request of the Applicant. Applications shall be filed with the Planning Department and shall include the following information:

(1) **GENERAL DESCRIPTION.** A narrative of the Use and Site plan of the proposed Special Event and temporary change of occupancy shall be submitted with the application Use, including hours of operation, ~~maximum occupancy~~, private or public activity, number of invitations sent; if a private event, or estimate of overall attendance, crowd management plan, security, deliveries, music or sound plan, including use of speakers, any beer or liquor license, any sign or lighting plan, parking plan, and any other applicable information.

(2) **FLOOR PLAN.** A floor plan drawn to ~~Fe~~ scale, indicating in detail how the proposal will comply with applicable sections of the International Building Code shall be submitted with the application. This plan will indicate any chairs, tables, exits, sanitation, heating, food service/handling, etc. This floor plan shall be prepared and stamped by a licensed Utah Architect or Engineer, who shall indicate the maximum occupancy number for the specific use and floor plan for the Special Event and/or temporary change of occupancy Permit. Multiple floor plan layouts during the dates applied for will require individual stamped floor plan drawings by the Architect or Engineer. The Chief Building Official, or his or her designee, will review this information and the application for compliance with the IBC.

(3) **ALL APPLICABLE FEES.** Refer to Fee Resolution.

(4) Any requested additional City or governmental services or equipment.

Analysis:

“Overcrowding” permits will no longer be approved by the Chief Building Official. Any use or occupancy that violates the IBC requirements for occupancy loads for a specific Building or Use will not be approved for Special Events or other temporary uses. If an applicant is able to provide an interior layout plan, certified by a licensed Architect or Engineer, that would allow a temporary change of occupancy for a Special Event or other temporary use, that complies with the IBC requirements as well as with the other criteria listed in this Section, then the Planning and Building Departments would be able to issue an Administrative Permit for the temporary change of occupancy for a Special Event or temporary use.

5. Incorporate landscape plan requirements; require building permits for driveways, patios and flat work; clarify seasonal lighting; add lighting for public art; and revise mechanical equipment and screening in the Architectural Guidelines (Chapter 5).

Proposed language- (see redlines):

CHAPTER FIVE- ARCHITECTURAL REVIEW

15-5 -1. POLICY AND PURPOSE.

As a community dependent upon the tourism industry, the atmosphere and aesthetic features of the community take on an economic value for the residents and Property Owners of Park City.

It is in the best interests of the general welfare of the community to protect the aesthetic values of the community through the elimination of those architectural styles, and those Building and Landscape materials, which, by their nature, are foreign to this Area, and this climate, and therefore tend to detract from the appearance of the community.

Most of Park City’s Main Street and many homes in Park City’s older neighborhoods are listed on the National Register of Historic Places as well as being locally designated as Historic Sites, which is a point of considerable importance to the tourism industry. New Development, while distinct from surrounding Historic Sites, should not detract from them. Park City is densely developed due to the shortage of level, buildable land.

The effect of one Development is felt on the community as a whole. It is the policy of the City to foster good design within the constraints imposed by climate, land ownership patterns, and a Compatible architectural theme.

It is also the intent of this section to encourage lighting practices and systems which will minimize light pollution, glare, and light trespass; conserve energy and resources while maintaining night time safety, utility, and security; and curtail the degradation of the night time visual environment.

It is recognized that the topography, atmospheric conditions and resort nature of Park City are unique and valuable to the community. The enjoyment of a starry night is an experience the community desires to preserve. The City of Park City, through the provisions herein contained, promotes the reduction of light pollution that interferes with enjoyment of the night sky.

It is also the intent of this section to encourage and implement water conservation practices for landscaping. Park City is in a mountainous, semi-desert environment where much of the precipitation occurs as snow during the winter months and the highest demand for water occurs during the summer months. The largest single water demand is for irrigation of landscaping. The use of water wise Xeriscaping will protect the health, safety, and welfare of the community from impacts of water shortages likely to occur during cycles of drought. Xeriscaping is a concept of landscaping with plants that use little or no supplemental irrigation and are typically native to the region. The concept also requires water conserving irrigation practices, such as drip irrigation and effective mulching with plant based mulches.

15-5 -5. ARCHITECTURAL DESIGN GUIDELINES.

(I) LIGHTING.

(1) **PURPOSE.** The functional objectives in providing exterior Area lighting are to illuminate Areas necessary for safe, comfortable and energy efficient Use. The number of fixtures shall be limited to provide for safe entry and egress and for sign and Business identification. Illumination of new Building features for architectural enhancement is prohibited. Historic Structures may be illuminated under the terms prescribed in this Code.

With the exception of Americans with Disabilities Act lighting requirements, the minimum lighting standards generally applied and recommended by the Illuminating Engineering Society of North America (IES), are observed by this Code.

(13) **SEASONAL DISPLAY OF LIGHTS.** Seasonal restrictions apply to the HCB, GC, LI and HRC zones. Residential Uses in the HR-1, HR-2, E, HRL, SF, RM, R-1, RDM, and RD zones are exempt from these requirements. Winter seasonal displays are permitted from the first of November to the ~~31st of March~~ 15th of April per the Park City Municipal Code. Displays should be turned off at midnight. Any color of lights may be used; however, the lights shall not be used to create advertising messages or signs. Spelling out the name of a Business is prohibited.

(16) OTHER EXEMPTIONS.

(a) **Nonconformance.** All other outdoor light fixtures lawfully installed prior to and operable on the effective date of the ordinance codified in this Chapter, including City owned or leased Street lights, are exempt from all requirements of this Code. On commercial projects, all such fixtures shall be brought into compliance with this Code upon any Application for any exterior Building Permit. On residential Structures, only new exterior fixtures on remodels or new additions must comply with this ordinance.

(b) **Fossil Fuel Light.** All outdoor light fixtures producing light directly by the combustion of natural gas or other fossil fuels are exempt from the requirements of this Code.

(c) **Up-lighting.** Up-lighting is permitted under the following conditions:

(i) The use of luminaires for up-lighting on any residentially or commercially zoned Lot or Property or within a City ROW or Open Space zone, is permitted only for City-funded or owned statues, public monuments, ground-mounted Public Art, or flags of the United States of America.

(ii) All up-lighting shall be shielded and/or have beam-angle control and shall be aimed to limit the directed light to the illuminated object only.

(iii) Up-lighting is permitted thirty (30) minutes before sunset and until 11:00 p.m.; or, one hour after the close of location based on normal hours of operation, whichever is later.

(K) **MECHANICAL EQUIPMENT.** All electrical service equipment and sub-panels and all mechanical equipment, including but not limited to, air conditioning, pool equipment, fans and vents, utility transformers, except those owned and maintained by public utility companies, and solar panels, shall be painted to match the surrounding wall color or painted or Screened to blend with the surrounding natural terrain. Roof mounted equipment and vents shall be painted to match the roof and/or adjacent wall color and shall be Screened or integrated into the design of the Structure. Minor exceptions to Setback requirements for Screened mechanical equipment may be approved by the Planning Director where the proposed location is the most logical location for the equipment and impacts from the equipment on neighboring properties, historic facades, and streetscapes can be mitigated and roof top mechanical placement and visual clutter is minimized.

(L) **PATIOS AND DRIVEWAYS.** A Building Permit is required for all non-bearing concrete flatwork, asphalt, and /or any Impervious Surface, regardless of size or area. This includes any repairs, alterations, modifications, and expansions of existing flatwork.

(M) **LANDSCAPING.** A complete landscape plan must be prepared for all Building Permit applications for all exterior work that impacts existing vegetation. The landscape plan shall utilize the concept of Xeriscaping for plant selection and location, irrigation, and mulching of all landscaped areas. The plan shall include foundation plantings and ground cover, in addition to landscaping for the remainder of the lot. The plan shall

indicate the percentage of the lot that is landscaped and the percentage of the landscaping that is irrigated. The plan shall identify all existing Significant Vegetation.

Materials proposed for driveways, parking areas, patios, decks, and other hardscape areas shall be identified on the plan. A list of plant materials indicating the botanical name, the common name, quantity, and container or caliper size and/or height shall be provided on the plan. All mulches shall consist of natural organic, plant based materials, as opposed to stone based materials..

A licensed landscape architect shall prepare all materials for submittal of the landscape plan for Conditional Use Permits, Master Planned Developments, and Historic District Design Reviews when the proposed work impacts existing vegetation.

To the extent possible, existing Significant Vegetation shall be maintained on Site and protected during construction. When approved to be removed, based on a Site Specific plan, Conditional Use, Master Planned Development, or Historic District Design Review approval, the Significant Vegetation shall be replaced with equivalent landscaping in type and size. Multiple trees equivalent in caliper to the size of the removed Significant Vegetation may be considered instead of replacement in kind and size. Where landscaping does occur, it should consist primarily of native and drought tolerant species, drip irrigation, and all plantings shall be adequately mulched with natural plant based mulch.

Irrigated lawn and turf areas are limited to a maximum percentage of the allowed Limits of Disturbance Area of a Lot or Property that is not covered by Buildings, Structures, or other Impervious paving, based on the size of the Lot or Property according to the following table:

<u>Lot Size</u>	<u>Maximum Turf or Lawn Area as a percentage of the allowed Limits of Disturbance Area of the Lot that is not covered by Buildings, Structures, or other Impervious paving</u>
<u>Greater than one (1) acre</u>	<u>25%</u>
<u>0.50 acres to one (1) acre</u>	<u>35%</u>
<u>0.10 acres to 0.49 acres</u>	<u>45%</u>
<u>Less than 0.10 acres</u>	<u>No limitation</u>

Where rock and boulders are allowed and identified on the Landscape Plan, these shall be from local sources. All noxious weeds, as identified by Summit County, shall be removed from the Property in a manner acceptable to the City and Summit County, prior to issuance of Certificates of Occupancy.

Analysis: Staff is proposing amendments to the Architectural Design Guidelines requirements for screening of mechanical equipment, permits for patios and flat work, and landscape plans for all Building Permit applications that impact existing vegetation. Landscape plans are already required for HDDRs, Conditional Use Permits and Master Planned Developments, as well as often required as a condition of approval for plat amendments and subdivisions.

Staff recommends that landscape plans utilize Xeriscaping concepts for water conservation and recommends limits on the percentage of the lot that can be irrigated.

Staff also recommends adding language allowing a site specific review of the placement of screened mechanical equipment and minor exceptions to setback requirements for such equipment if approved by the Planning Director upon finding that the proposed location is the most logical location, and allows consideration of historic houses, minimizes roof top impacts and visual clutter provided that impacts on the neighboring properties are mitigated.

Currently, the LMC requires lighting to be down directed and shielded. This dark skies ordinance provides safe and energy-efficient lighting that prevents light pollution, as addressed in Title 15, Chapter 5 of the LMC on outdoor lighting. After comparing the existing outdoor lighting ordinance to the model Dark Skies ordinance, Staff recommends that the Planning Commission approve amendments to the LMC that would allow up-lighting in certain situations that foster the enhancement of community character, support public art, and reinforce the resort-atmosphere of Park City. This change to the LMC will not significantly impact dark skies and has been reviewed by the City's Sustainability Department. Moreover, the proposed changes are limited in scope and allow the City to use discretion when up-lighting publicly owned statues, monuments, and public art. These restrictions and guidance are included to mitigate impacts to dark skies and the City's municipal carbon footprint.

The end date for seasonal lighting is amended to be consistent with the Park City Municipal Code. Staff is working on a comprehensive review of the entire Lighting Section of the Code, including Seasonal Lighting and other outdoor lighting display, to review zones where it is allowed and not permitted and to make recommendations on outdoor lighting that can contribute to and enhance the community character and reinforce the resort atmosphere. There have been requests from the community to allow this type of lighting throughout the year. Those amendments and discussion will be presented to the Commission later in 2013.

8. Clarify criteria for change of a non-conforming use to another non-conforming use of similar or less intensive use (Chapter 9).

Proposed language (see redlines):

CHAPTER NINE - NON-CONFORMING USES AND NON-COMPLYING STRUCTURES.

15-9-1. PURPOSE.

This Chapter regulates the continued existence of Non-Conforming Uses and Non-Complying Structures as defined in Chapter 15. While Non-Conforming Uses, Non-Complying Structures and improvements may continue, this Chapter is intended to limit enlargement, alteration, restoration, or replacement which would increase the discrepancy between existing conditions and the Development standards prescribed by this Code. In addition, Applications are reviewed to ensure that they are reducing the degree of non-conformity and improving the physical appearance of the Structure and site through such measures as landscaping, Building design, or the improved function of the Use in relation to other Uses.

15-9-5. MOVING, ENLARGING, OR ALTERING NON-CONFORMING USES.

No Non-Conforming Use may be moved, enlarged, altered, or occupy additional land, except as provided in this Section.

(E) **HISTORICALLY SIGNIFICANT BUILDINGS EXCEPTION: CHANGE OF NON-CONFORMING USE TO ANOTHER NON-CONFORMING USE OF SIMILAR OR LESS-INTENSIVE LAND USE TYPE.**

Subject to the criteria below, a Non-Conforming Use located [on a Lot or Parcel containing a within a Building or Structure included on the Park City Historic Sites Inventory designated as historically significant pursuant to LMC Section 4.13](#), may be changed to another Non-Conforming Use of a similar or less intensive land Use type. A Non-Conforming Use, which satisfies the criteria provided in Section 165-9-5(E)(4) herein shall be considered a similar or less intensive land Use type.

(1) **APPLICATION.** Application for any Non-Conforming Use must be made upon forms provided by the Planning Department. Upon filing of a Complete Application, the City shall post the Property indicating that an Application for modification of a Non-Conforming Use has been filed and that more detailed information may be obtained from the City.

(2) **NOTIFICATION OF ABUTTING PROPERTY OWNERS.** Notice shall be provided pursuant to the Notice Matrix in Chapter 1. See Section 15-1-19.

(3) **BOARD OF ADJUSTMENT HEARING.** Within thirty (30) working days of the Planning Department's receipt of a Complete Application, and after giving public notice, the Board of Adjustment shall hold a public hearing on the Non-Conforming Use Application. The Board of Adjustment shall either grant the Application in whole or in part, with or without modifications or conditions, or deny the Application. The

Board of Adjustment's decision shall be made pursuant to criteria provided in Section 15-9-5(E)(4) below.

(4) **CRITERIA.** The Board of Adjustment shall approve an Application to change a Non-Conforming Use to another Non-Conforming Use if the ~~Applicant proves~~ Application complies with the following criteria:

- (a) All reasonable measures will be undertaken to alleviate or reduce the incompatibility or adverse effects of the Non-Conforming Use or Building upon abutting Properties or in the neighborhood;
- (b) All changes, additions, or expansions comply with all current laws except as to Use;
- (c) The new Use will provide for enclosed storage of necessary equipment, materials, and refuse, rather than create a need for additional outside storage; and
- (d) The new Use does not increase the parking requirement; or if there is an increase, the site plan meets the parking requirement and the Board of Adjustment finds that adjoining Properties and the neighborhood will not be adversely impacted by the increased parking demand.

Analysis: These amendments clarify that the historic structure is one listed on the Historic Sites Inventory. The code currently allows the Board of Adjustment to approve a change of use from a non-conforming use to a less intensive non-conforming use for historically significant structures and this provides clarification.

9. **Remove Special Exceptions process from Board of Adjustment chapter (Chapter 10).**

Proposed language (see redlines):

15-10-3. POWERS AND DUTIES.

(A) The Board of Adjustment shall hear and decide:

(1) Appeals from zoning decisions applying Title 15, Land Management Code;

~~(2) Special exceptions to the terms of the Land Management Code;~~

~~(3)~~ Variances from the terms of the Land Management Code; and

~~(4)~~ Appeals and call-ups of Final Action by the Planning Commission at the request of the City Council for City Development.

~~**15-10-8. SPECIAL EXCEPTIONS.**~~

The Board may hear Applications for special exceptions to the terms of the Land Management Code, which apply to variances, modifications of Non-Conforming Uses, appeals and other matters upon which the Board is required to pass judgment. Applications for special exceptions must be filed with the Planning Department, and the required fee paid in advance. No Application for a special exception shall be approved unless the Board of Adjustment shall determine that the proposed special exception is appropriate in the location proposed based upon its consideration of the general standards set forth below:

- (A) — The proposed Use and Development will be in harmony with the general and specific purposes for which the Land Management Code was enacted and for which the regulations of the district were established.
- (B) — The proposed Use and Development will not substantially diminish or impair the value of the Property within the neighborhood in which it is located.
- (C) — The proposed Use and Development will not have a material adverse effect upon the character of the Area or the public health, safety, and general welfare.
- (D) — The proposed special exception will be constructed, arranged and operated so as to be Compatible with the Use and Development of neighboring Property in accordance with the applicable district regulations.
- (E) — The proposed Use and Development will not result in the destruction, loss or damage to natural, scenic or historic features of significant importance.
- (F) — The proposed Use and Development will not cause material air, water, soil or noise pollution or other types of pollution.

The Board of Adjustment may impose conditions and limitations as may be necessary or appropriate to prevent or minimize adverse effects upon other Property and other improvements in the vicinity of the special exception or upon public facilities and services. These conditions may include but are not limited to: conditions concerning Use, construction, operation, character, location, landscaping, Screening and other matters relating to the purposes and objectives of the Land Management Code. Such conditions shall be expressly set forth in the motion granting the special exception. Violation of any such condition or limitation shall be a violation of this section and shall constitute grounds for revocation of the special exception.

Analysis: State Code no longer includes review of “Special Exceptions” as a duty of the Board of Adjustment. The State Code is now silent regarding Special Exceptions. Currently Special Exceptions in the LMC are heard by the Board of Adjustment based upon consideration of six general standards. Staff has found these criteria broad and difficult to apply and is therefore recommending that “Special Exception” be removed from the code. Variances will continue to be considered by the Board of Adjustment.

10. Revise permitting process for relocation and/or reorientation, as well as Disassembly and Reassembly, of Historic Structures (Chapter 11).

Proposed language (see redlines):

15-11-13. RELOCATION AND/OR REORIENTATION OF A HISTORIC BUILDING OR HISTORIC STRUCTURE.

It is the intent of this section to preserve the Historic and architectural resources of Park City through limitations on the relocation and/or orientation of Historic Buildings, Structures, and Sites.

(A) CRITERIA FOR THE RELOCATION AND/OR REORIENTATION OF THE HISTORIC BUILDING(S) AND/OR STRUCTURE(S) ON A LANDMARK SITE OR A SIGNIFICANT SITE.

In approving a Historic District or Historic Site design review Application involving relocation and/or reorientation of the Historic Building(s) and/or Structure(s) on a Landmark Site or a Significant Site, the Planning Department shall find ~~fine~~ the project complies with the following criteria:

~~(1) — A portion of the Historic Building(s) and/or Structure(s) encroaches on an adjacent Property and an easement cannot be secured; or~~

~~(2) — The proposed relocation and/or reorientation will abate demolition of the Historic Building(s) and/or Structure(s) on the Site; or~~

~~(23)~~ The Planning Director and the Chief Building Official¹, determine that unique conditions warrant the proposed relocation and/or reorientation on the existing Site; or

~~(43)~~ The Planning Director and the Chief Building Official¹, determine that unique conditions warrant the proposed relocation and/or reorientation to a different Site.

2 The HPB shall make this determination if the HPB is hearing the Application on appeal. The Planning Director and the Chief Building Official shall, at the appeal, submit a written statement or testify concerning whether unique conditions warrant the proposed relocation and/or reorientation on the existing Site or to a different site.

(B) PROCEDURE FOR THE RELOCATION AND/OR REORIENTATION OF A LANDMARK SITE OR A SIGNIFICANT SITE.

All Applications for the relocation and/or reorientation of any Historic Building(s) and/or Structure(s) on a Landmark Site or a Significant Site within the City shall be reviewed by the Planning Department pursuant to Section 15-11-12 of this Code.

15-11-14. DISASSEMBLY AND REASSEMBLY OF A HISTORIC BUILDING OR HISTORIC STRUCTURE.

It is the intent of this section to preserve the Historic and architectural resources of Park City through limitations on the disassembly and reassembly of Historic Buildings, Structures, and Sites.

(A) **CRITERIA FOR DISASSEMBLY AND REASSEMBLY OF THE HISTORIC BUILDING(S) AND/OR STRUCTURE(S) ON A LANDMARK SITE OR SIGNIFICANT SITE.** In approving a Historic District or Historic Site design review Application involving disassembly and reassembly of the Historic Building(s) and/or Structure(s) on a Landmark Site or Significant Site, the Planning Department shall find the project complies with the following criteria:

- (1) A licensed structural engineer has certified that the Historic Building(s) and/or Structure(s) cannot reasonably be moved intact; or
- (2) The proposed disassembly and reassembly will abate demolition of the Historic Building(s) and/or Structure(s) on the Site; or
- (3) The Historic Building(s) and/or Structure(s) are found by the Chief Building Official to be hazardous or dangerous, pursuant to Section 116.1 of the International Building Code; or
- (4) The Planning Director and the Chief Building Official² determine that unique conditions and the quality of the Historic preservation plan warrant the proposed disassembly and reassembly;

Under all of the above criteria, the Historic Structure(s) and or Building(s) must be reassembled using the original materials that are found to be safe and/or serviceable condition in combination with new materials; and

The Building(s) and/or Structure(s) will be reassembled in their original form, location, placement, and orientation.

² The HPB shall make this determination if the HPB is hearing the Application on appeal. The Planning Director and the Chief Building Official shall, at the appeal, submit a written statement or testify concerning whether unique conditions warrant the proposed relocation and/or reorientation on the existing Site or to a different site.

Analysis: Staff proposes amendments to Chapter 11 to remove encroachment as one of the criteria for permitting relocation and/or reorientation. Also proposed, are amendments to the process for determining if the criteria for unique conditions are met for permitting relocation and/or reorientation and disassembly and reassembly. These amendments are more in-line with the Historic District Design Guidelines that discourage historic structures from being moved from the historic location in order preserve the character and context of the structure and site. The two sentences at the end will show up as footnotes in the Chapter (see Exhibit B of this report).

11. Revise, clarify, and add definitions (Chapter 15).

Proposed language (see redlines):

15-15-1. DEFINITIONS

IMPERVIOUS SURFACE. Any hard-surfaced, man-made area that does not readily absorb or retain water, including but not limited to building roofs, parking and driveway areas, sidewalks, patios, and paved recreation areas.

PUBLIC ART: Any visual work of art displayed for two weeks or more in an open city-owned area, on the exterior of any city-owned facility, inside any city-owned facility in areas designated as public areas, or on non-city property if the work of art is installed or financed, either wholly or in part, with city funds or grants procured by the city.

TEMPORARY IMPROVEMENT. A Structure built, or installed, and maintained during construction of a Development, activity or during a Special Event or activity, and then removed prior to release of the performance Guarantee. Does not include temporary storage units, such as PODs, or other similar structures used for temporary storage, that are not related to a Building Permit for construction of a Development and are not part of an approved Special Event or activity.

XERISCAPE. A landscaping method developed especially for arid and semiarid climates utilizing water-conserving techniques (such as the use of drought-tolerant plants, mulch, and efficient irrigation).

Analysis: These definitions are either revisions to existing code language or new additions that are associated with amendments that were forwarded to the Council. As revised and/or added to the Code, these terms provide clarity as to the meaning of these terms as they are utilized in the interpretation and application of the language and regulations in the LMC.

Department Review

These amendments have been reviewed by the Planning, Engineering, Sustainability and Special Events, and Legal Departments and were reviewed by the Development Review Committee. Concerns of the Committee are reflected in the proposed language.

Process

Amendments to the Land Management Code require Planning Commission recommendation and City Council adoption and become pending upon publication of legal notice. City Council action may be appealed to a court of competent jurisdiction per LMC Section 15-1-18.

Notice

The public hearing was legally noticed in the Park Record. The legal notice was also posted according to requirements of the Land Management Code.

Public Input

Public hearings were noticed for the September 12th and 26th, October 24th, November 28th, and December 12th Planning Commission meetings and the December 20th City Council meeting. Public input on these amendments was provided as reflected in the minutes. Staff received many emails expressing concerns regarding the change to allow the MPD process in the HRC district and will include these emails when the MPD Chapter 6 amendments are presented to the Council.

Recommendation

Staff recommends City Council conduct a public hearing, review and discuss the proposed LMC amendments as outlined in this staff report, and consider approving the amendments based on the findings and conclusions in the attached Ordinance.

Staff also recommends the City Council continue to a date uncertain amendments to Chapter 2 that relate to Stories, Height, and roof pitch in a structure in the Historic Residential zones, Chapter 6 on Master Planned Developments and Chapter 15 as to associated definitions for Chapter 2 and 6.

Exhibits

Exhibit A- Chapter 1- General Provisions and Procedures

Exhibit B- Chapter 11- Historic Preservation

Exhibit C- Process flow chart for Administrative Approvals

Exhibit D- List of types of Conditional Use Permits

Exhibit E- Minutes of the Planning Commission meetings 9.12, 9.26, 11.28

Exhibit F- Public Art locations and examples of up lighting

Exhibit G- Minutes of HPB meeting on 11.7.12

Exhibit H- Draft minutes of Planning Commission meeting 12.12.12

Ordinance (including Exhibits A-I of the Ordinance)

EXHIBIT A

CHAPTER ONE- GENERAL PROVISIONS AND PROCEDURES

15-1 -8. REVIEW PROCEDURE UNDER THE CODE.

RECOMMENDATION (y) and FINAL ACTION (X) and APPEAL (z)					
	Planning Department	HPB	Board of Adjustment	Planning Commission	City Council
Allowed	X				
Allowed-Historic (HDDR)	X	z			
Administrative Permits	X			z	
Conditional Use				X	z
Conditional Use Admin.	X			z	
MPD				X	z
Change of Non-Conforming Use			X		
Plat Amendment				y Recommendation to CC	X
Variance/Special Exception			X		
Subdivision				y Recommendation to CC	X
Annexation and Zoning				y Recommendation to CC	X
Zoning Appeal			X		
LMC Amendments				y Recommendation to CC	X

(E) **REVIEW.** The Planning Department and/or Planning Commission must review each of the following items when considering whether or not the proposed Conditional Use mitigates impacts of and addresses the following items:

- (1) size and location of the Site;
- (2) traffic considerations including capacity of the existing Streets in the Area;

- (3) utility capacity, including Storm Water run-off;
- (4) emergency vehicle Access;
- (5) location and amount of off-Street parking;
- (6) internal vehicular and pedestrian circulation system;
- (7) Fencing, Screening, and landscaping to separate the Use from adjoining Uses;
- (8) Building mass, bulk, and orientation, and the location of Buildings on the Site; including orientation to Buildings on adjoining Lots;
- (9) usable Open Space;
- (10) signs and lighting;
- (11) physical design and Compatibility with surrounding Structures in mass, scale, style, design, and architectural detailing;
- (12) noise, vibration, odors, steam, or other mechanical factors that might affect people and Property Off-Site;
- (13) control of delivery and service vehicles, loading and unloading zones, and Screening of trash and recycling pickup Areas;
- (14) expected Ownership and management of the project as primary residences, Condominiums, time interval Ownership, Nightly Rental, or commercial tenancies, how the form of Ownership affects taxing entities; and
- (15) within and adjoining the Site, ~~impacts on~~ Environmentally Sensitive Lands, Physical Mine Hazards, Historic Mine Waste and Park City Soils Ordinance, Steep and Slopes retention, and appropriateness of the proposed Structure to the existing topography of the Site.

15-1 -11. SPECIAL APPLICATIONS.

(D) **ADMINISTRATIVE CONDITIONAL USE PERMITS**. The Planning Director, or his or her designee, shall review and take Final Action on Administrative Conditional Use permits. Review process shall be consistent with Section 15-1-10(A-H), with the exception that no published notice, as described in 15-1-12(B), shall be required.

(E) **ADMINISTRATIVE PERMITS**. The Planning Department shall review and take Final Action on Administrative Permits. Review process shall be consistent with the requirements

herein for those Uses requiring an Administrative Permit, such as temporary tents, Structures, and vendors; temporary Special Event and ~~overcrowding permits~~ [temporary change of occupancy permits](#); regulated Accessory Apartments; specified outdoor events and Uses; Family Child Care in specified Zoning Districts; and temporary telecommunication Antennas, where these Uses are designated as requiring Administrative Permits. These Uses may require Administrative Conditional Use permits or Conditional Use permits in some Zoning Districts pursuant to Section 15-2.

15-1 -12. NOTICE.

Notice of a public hearing before the City Council, Planning Commission, Board of Adjustment, and Historic ~~District Commission~~ [Preservation Board](#) must be provided in accordance with this section. All notices, unless otherwise specified in this Code or State law, must describe the proposed action affecting the subject Property or the proposed modification to the Park City General Plan or to the Land Management Code and shall state the time, place and date set for public hearing on the matter. Notice shall be given according to Section 15-1-21 Notice Matrix and as follows:

15-1 -18. APPEALS AND RECONSIDERATION PROCESS.

(A) **STAFF**. Any decision by either the Planning Director or Planning Staff regarding Application of this LMC to a Property may be appealed to the Planning Commission. Appeals of decisions regarding the Design Guidelines for Historic Districts and Historic Sites shall be reviewed by the Historic Preservation Board as described in 15-11-12(E). All appeals must be filed with the Planning Department within ten (10) days of Final Action.

There shall be no additional notice for appeal of the staff determination other than listing the matter on the agenda, unless notice of the staff review was provided in which case the same notice must be given for the appeal.

(B) **HISTORIC PRESERVATION BOARD (HPB)**. [The City or any Person with standing adversely affected by any decision of the Historic Preservation Board regarding the Design Guidelines for Historic Districts and Historic Sites may petition the District Court in Summit County for a review of the decision. Appeal of all other](#) Final Actions by the Historic Preservation Board may be appealed to the Board of Adjustment.

(C) **PLANNING COMMISSION**. [The City or any Person with standing adversely affected by a](#) Final Actions by the Planning Commission on appeals of Staff action may ~~be appealed to the Board of Adjustment~~ [petition the District Court in Summit County for a review of the decision](#). Final Action by the Planning Commission on Conditional Use permits and Master Planned Developments (MPDs) involving City Development may be appealed to the Board of Adjustment at the City Council's request. All other Final Action by the Planning Commission concerning Conditional Use permits [\(excluding those Conditional Use permits decided by Staff](#)

and appealed to the Planning Commission; final action on such an appeal shall be appealed to the District Court) and MPDs may be appealed to the City Council. When the City Council determines it necessary to ensure fair due process for all affected parties or to otherwise preserve the appearance of fairness in any appeal, the City Council may appoint an appeal panel as appeal authority to hear any appeal or call up that the Council would otherwise have jurisdiction to hear. The appeal panel will have the same scope of authority and standard of review as the City Council. Only those decisions in which the Planning Commission has applied a land Use ordinance to a particular Application, Person, or Parcel may be appealed to an appeal authority.

15-1 -21. NOTICE MATRIX.

NOTICE MATRIX			
ACTION:	POSTED:	COURTESY MAILING:	PUBLISHED:
Zoning and Rezoning	14 days prior to each hearing before the Planning Commission and City Council	14 days to each affected entity.	Once 14 days prior to each hearing before the Planning Commission and City Council.
LMC Amendments	14 days prior to each hearing before the Planning Commission and City Council.	14 days to each affected entity.	Once 14 days prior to each hearing before the Planning Commission and City Council.
General Plan Amendments	14 days prior to each hearing before the Planning Commission and City Council.	14 days to each affected entity.	Once 14 days prior to each hearing before the Planning Commission and City Council.
Master Planned Developments (MPD)	14 days prior to the hearing before the Planning Commission.	14 days prior to the hearing before the Planning Commission, to Owners within 300 ft.	Once 14 days prior to the hearing before the Planning Commission.
Appeals of Planning Director, Historic Preservation Board, or	7 days prior to the date set for the appeal or call-up hearing.	To all parties who received mailed notice for the original Administrative or Planning Commission hearing 7 days prior to the hearing.	Once 7 days before the date set for the appeal or call-up hearing.

NOTICE MATRIX			
ACTION:	POSTED:	COURTESY MAILING:	PUBLISHED:
Planning Commission decisions or City Council Call-Up			
Conditional Use Permit	14 days prior to the hearing before the Planning Commission.	14 days prior to the hearing before the Planning Commission, to Owners within 300 ft.	Once 14 days prior to the hearing before the Planning Commission.
Administrative Conditional Use Permit	10 days prior to Final Action.	10 days prior to Final Action, to adjacent Property Owners.	No published notice required.
Administrative Permit	10 days prior to Final Action.	10 days prior to Final Action, to adjacent affected Property Owners.	No published notice required.
Variance Requests, Non-conforming Use Modifications and Appeals to Board of Adjustment	14 days prior to the hearing before the Board of Adjustment.	14 days prior to the hearing before the Board of Adjustment, to owners within 300 ft.	Once 14 days prior to hearing before the Board of Adjustment.
Certificate of Appropriateness for Demolition (CAD)	45 days on the Property upon refusal of the City to issue a CAD ; 14 days prior to the hearing before the Historic Preservation Board.	14 days prior to the hearing before the Historic Preservation Board, to Owners within 300 ft.	Once 14 days prior to the hearing before the Historic Preservation Board.
Designation of Sites to the Historic Sites Inventory	7 days prior to hearing before the Historic Preservation Board.	-----	Once 7 days prior to hearing before the Historic Preservation Board.

NOTICE MATRIX

ACTION:	POSTED:	COURTESY MAILING:	PUBLISHED:
Historic District or Historic Site Design Review	First Posting: The Property shall be posted for a 14 day period once a Complete Application has been received. <u>The date of the public hearing shall be indicated in the first posting.</u> Other posted legal notice not required. Second Posting: For a 10 day period once the Planning Department has determined the proposed plans comply or does not comply with the Design Guidelines for Historic Districts and Historic Sites. Other posted legal notice not required.	First Mailing: To Owners within 100 feet once a Complete Application has been received, establishing a 14 day period in which written public comment on the Application may be taken. <u>The date of the public hearing shall be indicated.</u> Second Mailing: To Owners within 100 feet and individuals who provided written comment on the Application during the 14 day initial public comment period. The second mailing occurs once the Planning Department determines <u>whether</u> the proposed plans comply or do not comply with the Design Guidelines for Historic Districts and Historic Sites and no later than 45 days after the end of the initial public comment period. This establishes a 10 day period <u>in-after</u> which the Planning Department's decision may be appealed.	<u>If appealed, then once 7 days before the date set for the appeal. See appeals from Planning Director, Historic Preservation Board, Planning Commission, including City Council Call Up. Section 15-1-18.</u>
Annexations	Varies, depending on number of Owners and current State law. Consult with the Legal Department.		
Termination of Project Applications	-----	Mailed Notice: To Owner/Applicant and certified Agent by certified mail 14 days prior to the Planning Director's termination and closure of	-----

NOTICE MATRIX

ACTION:	POSTED:	COURTESY MAILING:	PUBLISHED:
		files.	
Lot Line Adjustments: Between 2 Lots without a plat amendment.	10 days prior to Final Action on the Property. Other posted legal notice not required.	To Owners within 300 ft. at time of initial Application for Lot line adjustment. Need consent letters, as described on the Planning Department Application form, from adjacent Owners.	-----
Preliminary and Final Subdivision Plat Applications	14 days prior to the hearing before the Planning Commission.	14 days prior to the hearing before the Planning Commission, to Owners within 300 ft.	Once 14 days prior to the hearing before the Planning Commission.
Condominium Applications; Record of Survey Plats	14 days prior to the hearing before the Planning Commission.	14 days prior to the hearing before the Planning Commission, to Owners within 300 ft.	Once 14 days prior to the hearing before the Planning Commission.
Record of Survey Amendments	14 days prior to the hearing.	14 days prior to the hearing, to Owners within 300 ft.	Once 14 days prior to the hearing.
Subdivision Plat Amendments	14 days prior to the hearing.	14 days prior to the hearing, to Owners within 300 ft.	Once 14 days prior to the hearing.
Vacating or Changing a Street	-----	14 days prior to the hearing before the City Council, to Owners within 300 ft. and to affected entities.	Once a week for 4 consecutive weeks prior to the hearing before the City Council.

Note: For all Applications, notice will be given to the Applicant of date, time, and place of the public hearing and public meeting to consider the Application and of any Final Action on a pending Application.

Appendix A – Official Zoning Map (Refer to the Planning Department)

NOTICE MATRIX			
ACTION:	POSTED:	COURTESY MAILING:	PUBLISHED:

EXHIBIT B

CHAPTER ELEVEN- HISTORIC PRESERVATION

15-11-12. HISTORIC DISTRICT OR HISTORIC SITE DESIGN REVIEW.

The Planning Department shall review and approve, approve with conditions, or deny, all Historic District/Site design review Applications involving an Allowed Use, a Conditional Use, or any Use associated with a Building Permit, to build, locate, construct, remodel, alter, or modify any Building, accessory Building, or Structure, or Site located within the Park City Historic Districts or Historic Sites, including fences and driveways.

Prior to issuance of a Building Permit for any Conditional or Allowed Use, the Planning Department shall review the proposed plans for compliance with the Design Guidelines for Historic Districts and Historic Sites, LMC Chapter 15-11, and LMC Chapter 15-5. Whenever a conflict exists between the LMC and the Design Guidelines, the more restrictive provision shall apply to the extent allowed by law.

(A) PRE-APPLICATION CONFERENCE.

(1) It is strongly recommended that ~~the~~ Owner and/or Owner's representative ~~shall be required to~~ attend a pre-Application conference with representatives of the Planning and Building Departments for the purpose of determining the general scope of the proposed Development, identifying potential impacts of the Development that may require mitigation, providing information on City-sponsored incentives that may be available to the Applicant, and outlining the Application requirements.

(2) Each Application shall comply with all of the Design Guidelines for Historic Districts and Historic Sites unless the Planning Department determines that, because of the scope of the proposed Development, certain guidelines are not applicable. If the Planning Department determines certain guidelines do not apply to an Application, the Planning Department staff shall communicate, via electronic or written means, the information to the Applicant. It is the responsibility of the Applicant to understand the requirements of the Application.

(3) The Planning Director, or his designee, may upon review of a Pre-Application submittal, determine that due to the limited scope of a project the Historic District or Historic Site Design Review process as outlined in LMC Sections 15-11-12(B-E) is not required and is exempt.

If such a determination is made, the Planning Director, or his designee may, upon reviewing the Pre-Application for compliance with applicable Design Guidelines, approve, deny, or approve with conditions, the project. If approved, the Applicant may submit the project for a Building Permit.

(D) **PUBLIC HEARING AND DECISION.** Following the fourteen (14) day public notice period noted in Section 15-1-21 of this Code, ~~the~~ Planning Department staff shall hold a public hearing and make, within forty-five (45) days, written findings, conclusions of law, and conditions of approval or reasons for denial, supporting the decision and shall provide the Owner and/or Applicant with a copy. Staff shall also provide notice pursuant to Section 15-1-21.

(1) Historic District/Site design review Applications shall be approved by the Planning Department staff upon determination of compliance with the Design Guidelines for Park City's Historic Districts and Historic Sites. If the Planning Department staff determines an Application does not comply with the Design Guidelines, the Application shall be denied.

(2) With the exception of any Application involving the Reconstruction of a Building, Accessory Building, and/or Structure on a Landmark Site, an Application associated with a Landmark Site shall be denied if the Planning Department finds that the proposed project will result in the Landmark Site no longer meeting the criteria set forth in 15-11-10(A)(1).

(3) An Application associated with a Significant Site shall be denied if the Planning Department finds that the proposed project will result in the Significant Site no longer meeting the criteria set forth in 15-11-10(A)(2).

(E) **APPEALS.** The Owner, Applicant, or any Person with standing as defined in Section 15-1-18(D) of this Code may appeal any Planning Department decision made on a Historic District/Site design review Application to the Historic Preservation Board.

All appeal requests shall be submitted to the Planning Department within ten (10) days of the decision. Appeals must be written and shall contain the name, address, and telephone number of the petitioner, his or her relationship to the project, and a comprehensive statement of the reasons for the appeal, including specific provisions of the Code and Design Guidelines that are alleged to be violated by the action taken. All appeals shall be heard by the reviewing body within forty-five (45) days of the date that the appellant files an appeal unless all parties, including the City, stipulate otherwise.

Notice of all pending appeals shall be made by staff, pursuant to Section 15-1-21 of this Code. The appellant shall provide required stamped and addressed notice envelopes within fourteen (14) days of the appeal. The notice and posting shall include the location and description of the proposed Development project. The scope of review by the Historic Preservation Board shall be the same as the scope of review at the Planning Department level.

(1) The Historic Preservation Board shall either approve, approve with conditions, or disapprove the ~~proposal~~ Application based on written findings, conclusions of law, and conditions of approval, if any, supporting the decision, and shall provide the Owner and/or Applicant with a copy.

~~(2) — Any Historic Preservation Board decision may be appealed to the Board of Adjustment pursuant to Section 15-10-7 of this Code. Appeal requests shall be submitted to the Planning Department within ten (10) days of the Historic Preservation Board decision. Notice of all pending appeals shall be made by staff, pursuant to Section 15-1-21 f this Code. Appeals shall be considered only on the record made before the Historic Preservation Board and will be reviewed for correctness.~~

(E) EXTENSIONS OF APPROVALS.

Unless otherwise indicated, Historic District Design Review (HDDR) approvals expire one (1) year from the date of the Final Action. The Planning Director, or designee, may grant an extension of an HDDR approval for one (1) additional year when the Applicant is able to demonstrate no change in circumstance that would result in an unmitigated impact or that would result in a finding of non-compliance with the Park City General Plan or the Land Management Code in effect at the time of the extension request. Change of circumstance includes physical changes to the Property or surroundings. Notice shall be provided consistent with the original HDDR approval per Section 15-1-12. Extension requests must be submitted to the Planning Department in writing prior to the date of expiration of the HDDR approval.

15-11-13. RELOCATION AND/OR REORIENTATION OF A HISTORIC BUILDING OR HISTORIC STRUCTURE.

It is the intent of this section to preserve the Historic and architectural resources of Park City through limitations on the relocation and/or orientation of Historic Buildings, Structures, and Sites.

(A) CRITERIA FOR THE RELOCATION AND/OR REORIENTATION OF THE HISTORIC BUILDING(S) AND/OR STRUCTURE(S) ON A LANDMARK SITE OR A SIGNIFICANT SITE. In approving a Historic District or Historic Site design review Application involving relocation and/or reorientation of the Historic Building(s) and/or Structure(s) on a Landmark Site or a Significant Site, the Planning Department shall find ~~fine~~ the project complies with the following criteria:

~~(1) A portion of the Historic Building(s) and/or Structure(s) encroaches on an adjacent Property and an easement cannot be secured; or~~

~~(2) —~~ The proposed relocation and/or reorientation will abate demolition of the Historic Building(s) and/or Structure(s) on the Site; or

~~(23)~~ The Planning Director and the Chief Building Official¹, determine that unique conditions warrant the proposed relocation and/or reorientation on the existing Site; or

~~(43)~~ The Planning Director and the Chief Building Official¹, determine that unique conditions warrant the proposed relocation and/or reorientation to a different Site.

¹ The HPB shall make this determination if the HPB is hearing the Application on appeal. The Planning Director and the Chief Building Official shall, at the appeal, submit a written statement or testify concerning whether, unique conditions warrant the proposed relocation and/or reorientation on the existing Site or to a different site.

(B) **PROCEDURE FOR THE RELOCATION AND/OR REORIENTATION OF A LANDMARK SITE OR A SIGNIFICANT SITE.** All Applications for the relocation and/or reorientation of any Historic Building(s) and/or Structure(s) on a Landmark Site or a Significant Site within the City shall be reviewed by the Planning Department pursuant to Section 15-11-12 of this Code.

(Created by Ord. No. 09-23)

15-11-14. DISASSEMBLY AND REASSEMBLY OF A HISTORIC BUILDING OR HISTORIC STRUCTURE.

It is the intent of this section to preserve the Historic and architectural resources of Park City through limitations on the disassembly and reassembly of Historic Buildings, Structures, and Sites.

(A) **CRITERIA FOR DISASSEMBLY AND REASSEMBLY OF THE HISTORIC BUILDING(S) AND/OR STRUCTURE(S) ON A LANDMARK SITE OR SIGNIFICANT SITE.** In approving a Historic District or Historic Site design review Application involving disassembly and reassembly of the Historic Building(s) and/or Structure(s) on a Landmark Site or Significant Site, the Planning Department shall find the project complies with the following criteria:

- (1) A licensed structural engineer has certified that the Historic Building(s) and/or Structure(s) cannot reasonably be moved intact; or
- (2) The proposed disassembly and reassembly will abate demolition of the Historic Building(s) and/or Structure(s) on the Site; or
- (3) The Historic Building(s) and/or Structure(s) are found by the Chief Building Official to be hazardous or dangerous, pursuant to Section 116.1 of the International Building Code; or
- (4) The Planning Director and the Chief Building Official² determine that unique conditions and the quality of the Historic preservation plan warrant the proposed disassembly and reassembly;

Under all of the above criteria, the Historic Structure(s) and or Building(s) must be reassembled using the original materials that are found to be safe and/or serviceable condition in combination with new materials; and

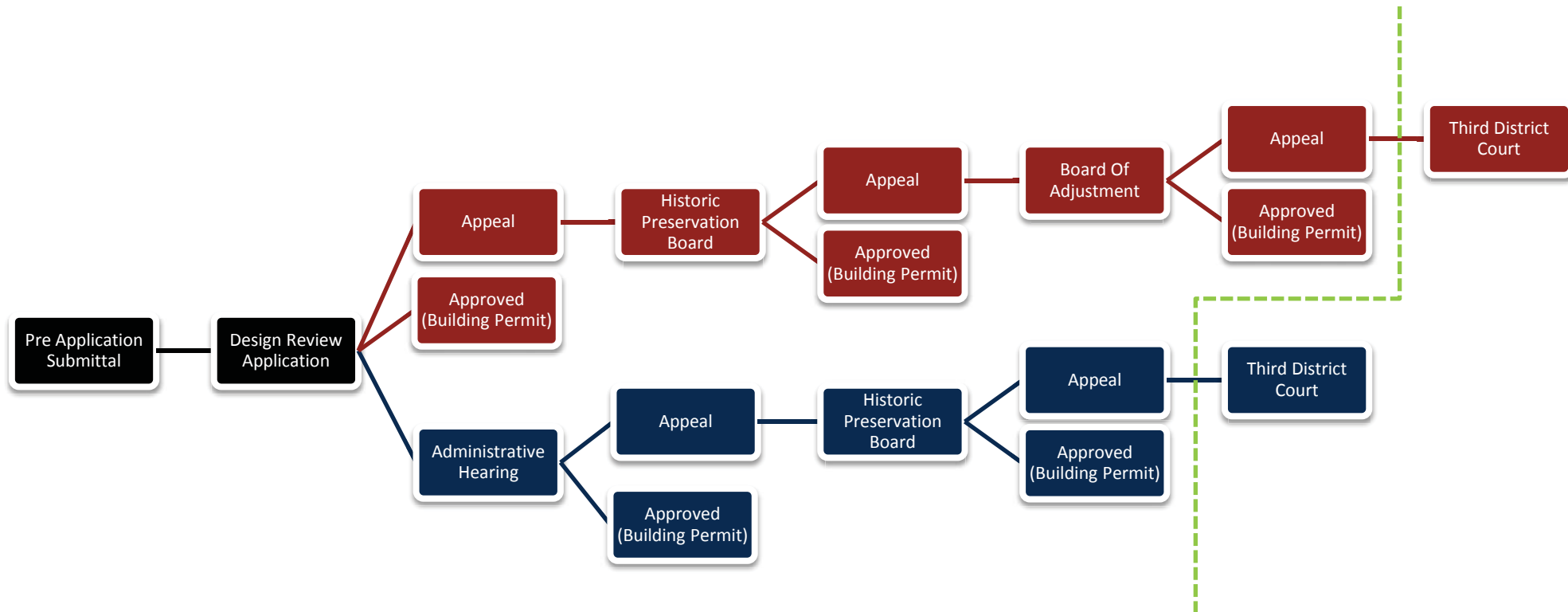
The Building(s) and/or Structure(s) will be reassembled in their original form, location, placement, and orientation.

² The HPB shall make this determination if the HPB is hearing the Application on appeal. The Planning Director and the Chief Building Official shall, at the appeal, submit a written statement or testify concerning whether, unique conditions and the quality of the Historic preservation plan warrant the proposed disassembly or reassembly.

(B) **PROCEDURE FOR THE DISASSEMBLY AND REASSEMBLY OF A LANDMARK SITE OR A SIGNIFICANT SITE.** All Applications for the disassembly and reassembly of any Historic Building(s) and/or Structure(s) on a Landmark Site of a Significant Site within the City shall be reviewed by the Planning Department pursuant to Section 15-11-12 of this Code.

If an Application involving the disassembly and reassembly of Historic Building(s) and/or Structure(s) on a Landmark Site or a Significant Site also includes relocation and/or reorientation of the reassembled Historic Building(s) and/or Structure(s) on the original Site or another Site, the Application must also comply with Section 15-11-13 of this Code.

Historic District Design Review Appeal Process



Current Design Review Appeal Process

Proposed Alternative Design Review Appeal Process

USES THAT REQUIRE ADMINISTRATIVE CONDITIONAL USE PERMITS

Accessory Building, less than 600 sq. ft. (ROS, CT)

Anemometer and Anemometer Towers (ROS, CT)

Bed & Breakfast (HRC, HCB)

Café, Outdoor Dining (HRM, GC)

Essential Municipal Public Utility Use, Service, or Structure, less than 600 sq. ft. (ROS, CT)

Fences greater than 6 ft. in height from final grade (HRL, HRM, HRC, HCB, POS, E-40, E, SF, R1, RD, RM, GC, LI, CT)

Fences & retaining walls exceeding 4 ft. from final grade within any front yard or street side yard (HRL, HRM, HRC, HCB, POS, E-40, E, SF, R1, RD, RM, GC, LI, CT)

Fences & retaining walls exceeding 6 ft. from final grade within any rear or side yard (HRL, HRM, HRC, HCB, POS, E-40, E, SF, R1, RD, RM, GC, LI, CT)

Outdoor Dining (HR2, HRC, HCB, RD, RDM, RC, RCO, GC, PUT)

Outdoor Dining & Support Retail associated with Support Uses with an MPD (CT)

Outdoor Display of Art (FPZ)

Outdoor Event & Uses (HRM, HRC, HCB, E-40, SF, R1, RD, RDM, RM, RC, RCO, GC, LI, CT)

Outdoor Recreation Equipment (ROS, FPZ, CT)

Parking Area or structure with 5 or fewer spaces (SF)

Parking Area or structure with 4 or fewer spaces (ROS, POS, CT)

Private Residence Club Project and Conversion (HRC, HCB, RD, RDM, RC, RCO, LI)

Raising, grazing of horses (ROS)

Raising, grazing of livestock (ROS)

Retaining Walls (SLO, CT)

Ski-related Accessory Building, less than 600 sq. ft. (ROS)

Special Events (HRC, HCB, RC, CT)

Temporary Construction Improvement (ROS)

Temporary Improvement (HRL, HR1, HRM, E-40, E, SF, R1, RD, RDM, RM, RC, RCO, GC, LI, CT)

Trail & Trailhead Improvement (ROS, CT)

EXHIBIT E

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hazards, utility easements, or other features, including ridge lines, which will reasonably be harmful to the safety, health, and general welfare of the present or future inhabitants of the Subdivision and/or its surrounding Areas, shall not be subdivided or developed unless adequate methods are formulated by the Developer and approved by the Planning Commission, upon recommendation of a qualified engineer, to solve the problems created by the unsuitable land conditions. The burden of the proof shall lie with the Developer. Such land shall be set aside or reserved for Uses as shall not involve such a danger.”

Conclusions of Law – 200 Ridge Avenue

1. There is no good cause for this plat amendment given that the six (6) combined proposed lots could not be supported by the existing road. Access from Ridge Avenue would be extremely difficult due to the steepness of the slope off of Ridge Avenue to the proposed lots. There are significant issues related to traffic and environmental concerns.
2. It is unknown at this time whether sewer service can be provided to the proposed lots due to the lack of sewer infrastructure on Ridge Avenue, and due to the fact that the Snyderville Basin Water Reclamation District will not allow a private sewer lateral to service the proposed six (6) lots to be placed on a private sewer line that connects to the sewer main on Daly Avenue.
3. The plat amendment is not consistent with the Park City Land Management Code and applicable State law regarding lot combinations.
6. **Land Management Code Amendments – Chapter 1-General Provision and Procedures; Chapter 2-Zoning; Chapter 3-Off-Street Parking; Chapter 4-, Supplemental Regulations; Chapter 5-Architecture Review; Chapter 6- Master Planned Development; Chapter 7-Subdivisions; Chapter 8-Annexation; Chapter 10- Board of Adjustment; Chapter 11-Historic Preservation; Chapter 12-Planning Commission; Chapter 15-Definitions (Application #PL-12-01631)**

Planner Whetstone reported that the Staff was working on an annual update to the Land Management Code. The proposed amendments were before the Planning Commission for review. Based on input this evening, the Staff would finalize the amendments and prepare a recommendation for consideration on September 26th. Additional amendments were being prepared for review in October.

Planner Whetstone noted that page 222 of the Staff report identified changes in the different chapters.

Clarification of Exception to Roof Pitch Requirements in the Historic District.

Planner Whetstone noted that the proposed change was a clarification of roof pitches to address instances in roof styles where the main roof would not be a 7/12 or 12/12 pitch. The Staff proposed to leave the language that the roof pitch be between and 7/12 to 12/12, but then allow an exception to the roof pitch that allows roof pitches consistent with certain historic styles where the main roof pitch is less than 7/12, such as hips, pyramids and other architectural styles. The exception would be approved at the time of the design review.

Commissioner Thomas understood that if someone proposes a hip roof with a different configuration, the Staff would accept a 5/12 pitch because it is consistent with the design vernacular of a hip roof. He asked if the exception would pertain to all of the roof or a portion of the roof. Commissioner Thomas clarified that if they move forward with the modification to the number of stories, as discussed during the work session, or the height of 37-1/2 feet to the ridgeline, it would not impact this proposed amendment. He pointed out that this was an example of an unintended consequence of not restricting the number of stories, because someone could crowd another story.

Assistant City Attorney McLean stated that currently the Code does not count attics as long as they are not habitable. Commissioner Thomas remarked that if the roof slope was changed, it could be habitable.

Commissioner Strachan stated that prior to amending the LMC in 2009, there was not a steepness provision in the LMC. They saw the same problems they were describing this evening and that was the reason for adding the 7/12 pitch.

Commissioner Hontz clarified that the proposed change was only to allow an exception to the roof pitch. Planner Whetstone replied that this was correct. Commissioner Thomas was comfortable with the 5/12 pitch as long as it would not become the predominant form.

Commissioner Thomas thought a 5/12 pitch was a reasonable exception on a historic building, but he would not favor it for new construction. Director Eddington agreed that a 5/12 pitch should be a challenging exception because it allows more use of space. He believed most of the 5/12 pitch construction had to be new construction because people have utilized that space. He remarked that in some cases the higher pitched roofs have worked as a benefit, but in other situations it was an awkward result.

Commissioner Strachan stated that regardless of what they did, they would avoid the awkward results because every home is different and every compatibility analysis is on a case by case basis. He recalled clearly that in 2009 the 7/12 pitch was recommended to the Planning Commission because it was the predominant roof pitch of historic structures throughout the HR zones. Director Eddington remarked that it was still the predominant pitch, with the exception of hip roofs.

Planner Whetstone stated that the exception could only apply for additions to historic structures. Commissioner Thomas remarked that if the height is limited to a maximum of 37-1/2 feet and the number of stories is limited to three, he would not care about the roof pitch. Director Eddington reiterated that obtaining the 5/12 exception should be difficult because the result is the appearance of greater mass.

Commissioner Hontz was completely opposed to having a 5/12 exception and she preferred to strike the entire last paragraph of the proposed language. Commissioner Thomas suggested allowing a 5/12 on a historic structure. Commissioner Gross thought it should be for structures on the Historic Sites Inventory, as opposed to "historic style". Commissioner Thomas concurred.

Planner Whetstone read the exact language from Exhibit B in the Staff report.

The Commissioners discussed whether the exception should apply to additions to historic structures. Director Eddington clarified that additions are considered new construction in the design guidelines.

The Planning Commission revised the language and agreed on the following:

Exceptions to the minimum roof pitch requirements may be granted by the Planning Director during the Historic District Design Review approval process based on compliance with review criteria as stated in the park City Design Guidelines for Historic Districts and Historic Sites. Such exceptions to roof pitch may be granted to allow original roof forms for historic structures, and for new construction when the proposed roof pitch is consistent with the historic structure. Roof pitch for new construction shall be visually compatible with the roof shapes and orientation of surrounding historic sites.

Director Eddington noted that currently the LMC allows an exception for flat roofs if they are green roofs; "green" meaning that they are vegetated flat roofs. He asked if the Planning Commission wanted to consider flat roofs if the house starts to achieve net zero energy use, and encourage that kind of sustainability within the historic district. Commissioner Thomas pointed out that flat roofs are allowed in many areas of the community, and in that condition the height is reduced. Director Eddington agreed that having a flat roof is not all bad, because it accentuates the historic fabric. Commissioner Thomas suggested that they look at other Districts and the reduction for anything under a certain roof slope.

Using Echo Spur as an example, Director Eddington asked if flat roofs would be acceptable on that development if there were energy efficient designs. Commissioner Thomas replied that flat roofs would be acceptable if it reduces the height and the visual impact.

Commissioner Strachan suggested that they hold the flat roof discussion to a later time. He asked if the Commissioners were comfortable with the revised language regarding roof pitch. Director Eddington noted that it was a starting point for the Staff and the Planning Commission would have the opportunity to review and/ or revise the language again at the next meeting.

Require building permits for driveways, parking, patios, and other non-bearing construction.

Planner Whetstone remarked that because these items do not always require approval there is no site plan review. Without a building permit the Staff does not have the opportunity to look at materials and design or address setback issues. This was a request to add the requirement for a building permit to Chapters 4 and 5.

Commissioner Hontz thought the building permit requirement might help with the issue of people removing landscaping to put in parking pads. She has seen a number of cases where people use their garage for living space and remove vegetation on the property to put in a parking pad. That is currently prohibited by the LMC, but unless a neighbor files a complaint, it is not enforced. Director Eddington clarified that the LMC was not strong on that issue. Currently, the only mechanism is HDDR in the Historic District. There is no other permit, which is why the Staff recommends a building permit requirement.

Commissioner Strachan remarked that increasing the square footage of living space inside the structure should trigger the building permit requirement. He did not think people should need a building permit to build a patio or deck on their property. The City should encourage improvements to homes. Director Eddington stated that decks and patios already come in for building permits if they are greater than 30 inches off the ground. The bigger issue is parking areas and driveways that gradually get expanded to where the entire front yard is paved. Those situations create run-off and aesthetic issues. Commissioner Strachan pointed out that the proposed language did not address those situations. Director Eddington stated that the Staff would rework the language to make sure it includes flatwork and addresses those issues.

After further discussion, Assistant City Attorney McLean stated that she had received feedback from the Building Department and the City Engineer suggesting this amendment. She recalled an application where someone paved over the right-of-way and it turned into an enforcement issue. The Building Department felt it could have been caught earlier and easier if a permit had been required.

Commissioner Thomas cautioned them to be careful about specifying impervious surfaces because a number of surfaces that would not apply could be considered impervious. Director Eddington remarked that the problems are primarily in the Historic District. Director Eddington remarked that they could look at the issue more holistically and start to talk about an impervious percent of lot coverage. Commissioner Thomas favored that approach.

Commissioner Hontz thought the requirement could be as simple as a checklist. Someone would pay \$15.00 and check off the list of criteria.

Commissioner Strachan thought it was appropriate to place the requirement in the HR zones to see how it plays out. It was obviously a bigger problem there than in the other zones and it was as good a place to start. Commissioner Thomas suggested that they could add specific conditions and limit it to the front property. Director Eddington stated that it could be limited to parking, driveways, entry walkways, etc. Patios and decks would be taken out of the requirement.

The Planning Commission agreed to start with a requirement in the historic zones and to refine the language regarding impervious surfaces.

Master Planned Developments in the Historic District

Commissioner Hontz did not think the language as written was clear and reflected the intent. There needed to be some clarification of where the actual MPD is allowed.

Director Eddington explained that the intent, which is currently stated, is that the MPD is allowed everywhere except HR-1, HR-2, HRC, HCB and HRL. A large scale master plan project over 10,000 square feet or ten residential units is required to do an MPD. An MPD is allowed, but not required, in the HR-1 and HR-2 zones, but only when the property in question is combined with an HRC or HCB zone. He clarified that in all cases, the mitigating MPD criteria must be met. Commissioner Hontz clarified that an MPD was only required for the four items listed in the Staff report. Director Eddington answered yes, and noted that the Code has always read that way. Director Eddington noted that the next section of the redlined language states that an MPD is only allowed if you cross over a historic residential and commercial zone.

Commissioner Hontz reiterated that the language should be revised for clarity in Section (A). Director Eddington understood her concern and offered to wordsmith the language. He understood that the Planning Commission was comfortable with the intent of the language to require MPDs in all zones except the historic zones.

Commissioner Hontz asked about the Heber Avenue subzone. Director Eddington replied that the Heber Avenue subzone is the 150 feet that is north of Heber Avenue. The Subzone goes from Park Avenue to the west and over to Deer Valley on the east. It includes Poison Creek, Mercantile, Sky Lodge and Kimball Arts Center. He noted that the Sky Lodge came in under an MPD.

Commissioner Strachan asked for the history behind why they have MPDs only when projects span zones. Based on past minutes, Director Eddington assumed it was because there were no big projects in the historic residential zones and MPDs were not applicable. Commissioner Strachan thought it would be beneficial for the Planning Commission to see those minutes to understand the history and the reasoning. Others before them thought this out and they should not reinvent the wheel. Director Eddington remarked that MPDs started out in all zones and over the years some zones were added and others were taken out. Commissioner Strachan believed a Staff analysis of the history would be worth looking at.

Director Eddington reported that the City Council addressed the issue of the Kimball Arts Center during a work session. There was a discussion with regard to the fact that the current proposal as it exists could not come before the Planning Commission or the City Council in the form of an application. If it was submitted to the Planning Department as proposed, it would not meet the zone. If an MPD was allowed, the Staff could at least consider it and work with the Kimball Arts Center on a collaborative win/win situation. Commissioner Strachan stated that if the proposal could not come before the Planning Commission as proposed, they have time to get this right before an application is submitted.

Commissioner Hontz wanted to know how the City Council had responded. Director Eddington stated that the City Council was generally in favor of looking at an opportunity to work with the Kimball Arts Center and expand the MPD. He clarified that the direction did not mean the City Council liked that particular concept or design, but they thought there should be a collaborative opportunity to work with them. The Council suggested that the 32 foot height limit was overly restrictive for what Kimball could do.

Commissioner Hontz stated that after a thorough analysis, if the Planning Commission did not agree with the language stated in Section 3 and forwards that recommendation to the City Council, the Council could make the decision to put the MPD language back in. Director Eddington agreed that the Planning Commission makes the recommendation and the City Council has the final vote.

Commissioner Strachan stated that the Planning Commission has talked about amending the MPD provision in the LMC for years, and now may be the right time to do it. The Kimball Arts Center may be taken out of their hands by the City Council, but at least they would have good LMC language for MPDs for all other applications.

Commissioner Hontz stated that once they open the discussion everything else follows, for example, open space. In looking at an MPD in the historic core or in Bonanza Park, there is a lot of value for not having a significant amount of grass or landscaping where you should be having commercial, residential or mixed uses. However, the question is the trade-off. Commissioner Hontz thought there may be some opportunities for reduced open space with the proper solutions, such as TDRs. A public roof top garden is not the value she would want to see as an open space trade-off.

Director Eddington stated that Gateway Planning is invited to the October 24th meeting. The Staff will try to make it a joint meeting with the City Council so Gateway can do one presentation on the Form Base Code. He thought they would see the challenges related to open space when the Form Base Code is presented.

Special Exception – Board of Adjustment

Planner Whetstone noted that the revised language was straightforward and removed the special exceptions reviewed by the Board of Adjustment from the Code.

Given the late hour, Chair Worel suggested that the Planning Commission open the public hearing and continue the discussion at the next meeting.

Chair Worel opened the public hearing.

Hope Melville, an Old Town resident, commented on the change to the MPD. The City Council wanted to consider whether an MPD would work for the Kimball Arts Center specifically for the idea of more public input. As pointed out, the Planning Department could not accept an application on the current proposal. Ms. Melville was concerned about changing the rules for one specific project and the precedent it creates. In terms of open space, she questioned the justification for the idea to decrease open space for all MPDs from 30% to 20%. She also questioned the justification for defining rooftop gardens as open space.

Jeff Love wanted to comment on the amendment regarding the appeals process.

Planner Whetstone reported that at the last meeting Assistant Attorney McLean gave a summary of some of the issues and problems with the appeals process. Based on that information, the Staff recommended an amendment for compliance with the State Code. The amendment changes the

process to eliminate the double appeal process. Planner Whetstone stated that an action by the Planning Staff would be appealed to the appropriate Board. If that decision was appealed, it would go to the Court system instead of the Board of Adjustment.

Assistant City Attorney McLean stated that the streamlined review stemmed out of a law suit. The court found that as the appeal process was applied in that case, the City has excessive appeals in terms of an appeal from Staff review to HPB to the Board of Adjustment. The Court did not address another section of the State Code, which allows for a streamline review. If the streamline review is contested, it goes to a Board or a land use authority, and from there it requires an appeal. The recommended Code changes are meant to comport with the section of the State Code to allow for that streamlined review, which is basically what the City does already. The amendment better clarifies the process and makes it closer to State Code. Ms. McLean stated that the amendment is most applicable to Historic District Design Review and Administrative CUPs.

Jeff Love, 615 Woodside Avenue, disagreed with Ms. McLean's explanation. It was his application that was denied by Staff and appealed to the HPB. He successfully won at the HPB, after which several neighbors appealed it to the Board of Adjustment. When he went to court he had three strong arguments. One of the arguments was that the City appeals process violates State law. State law says that a municipality cannot require an adversely effected party to go through multiple appeals before they get relief in District Court. Mr. Love stated that Judge Kelly, over the course of one year, determined that the City's ordinance violates State law and it is currently illegal. Mr. Love remarked that the other two arguments in court were never ruled upon because Judge Kelly determined that the Board of Adjustment was illegal. Mr. Love stated that the Park City Legal Department is proposing to change the name of the Historic Preservation Board's appeal from an "appeal" to "formal consideration". He reiterated that Judge Kelly determined that the process is illegal, not the name of the process. In his opinion, playing a semantics game and creating a loophole for yourself to make an illegal process legal is wrong, and it will not hold up in District court if it gets challenged. The way to make the process legal is to eliminate one of the two appeals. In his opinion, the one to remove is the Board of Adjustment. It makes more sense for the Historic Preservation Board to be the appeal authority for HDDRs. If someone appeals to that Board and they do not like the decision, it goes to District Court. Changing the name is making a mockery of Third District Court and Judge Kelly. Mr. Love encouraged the City to make it right and do it legal.

Chair Worel closed the public hearing.

MOTION: Commissioner Thomas moved to CONTINUE the Land Management Code Amendments to September 26, 2012. Commissioner Hontz seconded the motion.

VOTE: The motion passed unanimously.

The Planning Commission met in work session prior to the regular meeting for an LMC discussion regarding story and height. That discussion can be found in the Work Session Minutes dated September 12, 2012.

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The Park City Planning Commission meeting adjourned at 10:15 p.m.

Approved by Planning Commission: _____

MOTION: Commissioner Savage moved to CONTINUE the Richards/PCMC Annexation and Zoning until November 14, 2012. Commissioner Strachan seconded the motion.

VOTE: The motion passed unanimously.

3. Land Management Code Amendments – Chapter 1-General Provision and Procedures; Chapter 2-Zoning; Chapter 3-Off Street parking; Chapter 4-Supplemental Regulations; Chapter 5-Architecture Review; Chapter 6-Master Planned Development; Chapter 7-Subdivisions, Chapter 8-Annexation; Chapter 10-Board of Adjustment; Chapter 11-Historic Preservation; Chapter 12-Planning Commission; Chapter 15-Definitions. (Application #PL-12-01631)

Chair Worel requested that Planner Whetstone review the LMC items that were recommended be continued this evening.

Planner Whetstone stated that the Staff noticed a number of additional changes beyond the analysis and redlined changes in the Staff report, and recommended that those items be continued for further analysis. The 22 items to be continued were outlined on page 79 of the Staff report. Planner Whetstone noted that the items were publicly noticed and they would be continued to the meeting on October 24th.

Planner Whetstone stated that the amendment to Chapter 6 regarding MPDs in the Historic District was redlined in the Staff report per the discussion from the last meeting. However, the Planning Commission had requested a history on MPDs, and since the Staff was still compiling that information they recommended continuing that discussion to October 24th. Planner Whetstone also recommended that the Planning Commission continue items 3, 5 and 7 in the Analysis Section to October 24th.

Commissioner Wintzer suggested that the motion to continue identify the amendments by Chapter as listed on page 80 of the Staff report. Chair Worel clarified that Chapters 2, 6, 7 and 15 would be continued. Commissioner Hontz noted that some items under those chapters were not recommended to be continued. However, she was not prepared to move forward with them this evening and would be comfortable if they were continued as well.

Chair Worel opened the public hearing on the items to be continued.

Chris Schaefer, a property owner in condominiums on Main Street, commented on MPDs in the Historic District, particularly as it pertains to the Kimball Arts Center application. Mr. Schaefer stated that the concept of a master planned development assumes a large area that is going to be developed, possibly multi-use and possibly crossing boundary lines. He noted that the proposed Kimball building does not meet criteria because it is a single building on a single lot within a single zone. He only became aware of the changes that day and had not had time to read and understand the proposed changes. Mr. Schaefer stated that as a property owner and a citizen he was concerned that the Kimball, by applying for master planned development status for their project, was trying to make a run around the Planning Commission. He hoped the proposed

changes would not permit that. The reason for a master planned development does not match the construction of one building in one zone on one lot. He was unsure what changes were being proposed, but he hoped they could prevent that from occurring.

Coleen Webb an owner in the Town Lift condos stated that her building is next to the Kimball Arts Center. She is a part-time resident in Park City and it is difficult to always attend meetings when a subject of interest is being discussed. She tries to attend as often as she can. Ms. Webb stated that she would not be in town on October 24th. She is on the Board of the Town Lift Condominiums HOA. Last week the Board members and residents met with Robin and others from the Kimball Arts Center to express their concerns and the impacts that would be created for the residents living next to the Kimball Arts Center, and what an expansion under an MPD would do to their property. Ms. Webb also had concerns with how a project that size would affect the look and feel of Old Town if the MPD goes through. Ms. Webb was comforted when she saw the concern the Planning Commission had for the neighbors when discussing the Stein Eriksen project and the Richards annexation. As a neighbor to the Kimball and a resident of Old Town, she hoped the Planning Commission continues to be that detailed and that interested in what the change of allowing an MPD could do on Main Street. It is more than a white fence or one house in your face impact. It impacts the Historic District and those who live there and abide by the 84 page guidelines of the Historic Preservation Board. Ms. Webb was not opposed to amending the LMC to make them better over time, but it is important to understand the circumstances as to why they were put in place to protect the Historic District. Ms. Webb stated that everyone respects the Kimball and the HOA and owners want the Kimball Arts Center to expand. They would like the property improved and the programs expanded. They have been great neighbors and have worked together many times with the Kimball Arts Center; but the issues that an MPD would allow has caused them great concern. She asked the Planning Commission to consider the impacts that would be created by allowing MPDs in a community that is so dedicated to keeping the District historic. Changing the LMC for a one-time project would hurt what the rest have tried to maintain and the rules they have lived by in Old Town.

Chair Worel closed the public hearing.

Commissioner Hontz thought the Planning Commission should discuss some of the issues in the Chapters that would be continued to give the Staff direction for the next meeting.

Building Height Measurement and Story Definition

Commissioner Hontz found the exhibits in the Staff report to be helpful, but she had expected additional information based on the discussion at the last meeting. She wanted to see an exercise on a variety of unbuilt lots in Old Town, both downhill and uphill, that maxes out the heights using stories as an example to see what the mass and scale and height would do. She wanted an idea of worst case scenario. Commissioner Hontz remarked that they look at the existing built environment in analyzing the definition and the application. They overlook what type of development could occur on the existing vacant lots. She recalled a recent application where the applicant was asked to do that exercise and he was unable to show that he could build a house on the lot. Commissioner Hontz pointed out that based on the proposed language a house could not be built on a 40% slope.

She believed the analysis was important to make sure they would not make all the vacant lots in Old Town undevelopable.

Planner Francisco Astorga stated that the Staff could provide the variety of examples on unbuilt lots. However, there are a number of lots that are not listed as Landmark or Significant status, and could potentially be demolished and rebuilt. Planner Astorga proposed to come back with the information requested as well as other scenarios he had created for massing and volume on various slopes. He believed they could create specific worst case scenarios. Director Eddington thought that the Planning Commission would be able to see how different aspects of the Code work in each scenario depending on the location of the slope.

MOTION: Commissioner Hontz moved to CONTINUE the LMC amendments for Chapter 2-Zoning Districts; Chapter 6-MPDs; Chapter 7-Subdivisions; and Chapter 15-Definitions as identified in the Staff report to October 24, 2012. Commissioner Strachan seconded the motion.

VOTE: The motion passed unanimously.

The Planning Commission discussed the remaining LMC amendments outlined in the Staff report.

Amendment to require a building permit for driveways, parking areas, patios and other non-bearing construction that create impervious areas.

Planner Whetstone noted that the Planning Commission discussed this change at the last meeting. The Staff had recommended a building permit for all flat work in all zones. Requiring a building permit would ensure that all LMC requirements are met. Currently a building permit is not required and it is difficult to know when flat work is being done and whether it meets the requirements.

City Engineer, Matt Cassel, stated that the amendment allows the City to be proactive on an issue they have struggled with for years. When someone calls to ask if his neighbor has a permit for a patio or driveway, they have to inform that person that a permit was not required. The City then has to follow up to make sure the work was done within the requirements and many times they find Code violations. The intent is to communicate with people before work is started. He used 170 Daly Avenue as an example. They were fortunate enough to catch it before the driveway was poured; otherwise, the owner would have a new driveway that accessed at the intersection. Mr. Cassel explained that it would be a simple permitting process. The owner would be required to pay a minimal fee and have their plans reviewed for Code compliance before starting any work.

Chief Building Official, Chad Root, stated that another factor is to provide guidance for the homeowners who do the work themselves in an effort to reduce the number of neighbor issues. If a permit is required City-wide, the City has control over types of materials, size, and encroachment issues. Mr. Root pointed out that most jurisdictions outside of Utah regulate all flatwork and driveway work. Utah has a State Adopted Code that adopts the minimum standards, and the minimum standards cannot be exceeded. The proposed LMC amendment would provide a mechanism around the provision in the State Building Code and allow the ability to regulate driveways and flatwork in Park City.

Chair Worel asked if this was a City-wide issue and not just in the Historic District. Mr. Root replied that it was City-wide. The majority of complaints to the Building Department come from the Meadows.

Commissioner Savage asked how many of the complaints are legitimate. Mr. Root stated that nearly every complaint has been legitimate. Commissioner Savage asked if the amendment would eliminate the complaints. Mr. Root replied that it would give the Building Department the control to issue a stop work order on a project until they made sure everything was in compliance. City Engineer Cassel noted that it would also allow the City to look at the plat to make sure open space or landscaping requirements were not being violated. Commissioner Savage clarified that currently, anyone who does a project without a building permit, since one is not required, is responsible for making sure their implementation is consistent with all the Code requirements. Requiring a building permit would be preventative maintenance from having to resolve so many issues.

Commissioner Savage asked if a building permit would be required if he wanted to put in a 4 'x 5' concrete slab outside his back door for his trash cans. Mr. Root was unsure how language addresses that type of situation. Planner Astorga stated that the Staff had not proposed a minimum standard but it could be discussed.

Chief Building Official Root stated that another reason for looking at building permits is to address problems in the soils districts where people haul the soils away and the City has no knowledge because there was no permit.

Commissioner Hontz believed the requirement would remedy some situations in the Historic District where owners pull the landscaping and leave it without pouring concrete or laying dirt. The building permit would allow the City to review the plat to see if that space was approved as landscaping. It would also provide a record of improvements that are made over time.

Commissioner Wintzer concurred and commented on several circumstances in Old Town that would not have occurred if this permit process had been in place. He strongly supported the permit process. Director Eddington clarified that the same situations occur in Prospector, the Meadows and everywhere else in the City. Without a proactive measure it is challenging to deal with people once they have done the work and expended the money.

Commissioner Wintzer asked if the permitting process would require inspections or whether it was just a matter of obtain a permit and signing off the plans. Planner Astorga stated that the Staff was working on a preliminary process where the owner would apply for an over-the-counter permit and the Planning Department would check the plan for specific requirements. They were also looking at the first inspection once the forms are in place, and final inspection before the file is closed. The Staff was internally working with the Planning Department to determine who would do the inspections.

Commissioner Savage asked about the cost for a permit. Planner Astorga stated that most building fees are based on the valuation of the work. The fee would be minimal and determined by the Building Department. Chief Building Official Root explained that based on the scale of value of

work, the last driveway permit was a \$32 fee. Mr. Root stated that if a slab or driveway has rebar, it is required by Code to have a permit. He noted that some of the contractors eliminate the rebar to bypass the permit. The building permit fee depends on the amount taking place and they go off the contractor's valuation.

Chair Worel opened the public hearing.

Ruth Meintsma was happy to see this discussion because in Old Town she sees constant paving where there should not be paving. She stated that on the uphill wall of Woodside is approximately 10 feet of City easement. When someone has a project and a lot plan that shows paving and landscaping they put it in, but in many instances the 10 feet from the lot line to the Woodside wall is paved for private parking. Ms. Meintsma noted that much of this work occurs on weekends when no one is around. She wanted to know how they would address weekend projects if a building permit is required and the project is completed by Monday.

Chief Building Official Root stated that the City recently hired a new Code Enforcement Officer to work weekends primarily to catch weekend projects that take place. If someone works without a permit the fee would be doubled. Before the fees begin there would be an outreach to the Homebuilders Association, contractors, and real estate agents to notify everyone of the policy change.

Director Eddington understood that if the policy is codified and a building permit is required, the flatwork would have to be removed if it does not meet Code. Mr. Root replied that this was correct. The City currently does not have that enforcement ability without a permit.

Chair Worel closed the public hearing.

Commissioner Wintzer reiterated his support. Commissioner Strachan stated that he would change his opinion from the last meeting and support it for all zones. However, he did not believe a double permit fee was enough penalty to deter people from violating the requirement. If the policy is put in place for a building permit, the penalty should be to remove any work that was not approved by the Planning Department, particularly in Old Town where it matters most.

Building Official Root explained that the double fee would apply to those who had a plan approved by the Planning Department but did not obtain a building permit or deviated from the approved plans. Any work that was not approved by the Planning Department would need to come out.

Director Eddington recommended that the Planning Commission continue this item to October 24th to allow the Staff time to rework some of the language based on the discussion this evening, including adding some of the landscaping architecture language.

MOTION: Commissioner Hontz moved to CONTINUE the proposed LMC amendment requiring a building permit for flatwork to October 24, 2012. Commissioner Savage seconded the motion.

VOTE: The motion passed unanimously.

Planner Whetstone recommended that the Planning Commission continue the amendment addressing fences and walls until October 24th and discuss everything at the same time.

MOTION: Commissioner Strachan moved to CONTINUE the item regarding fences and walls to October 24, 2012. Commissioner Hontz seconded the motion.

VOTE: The motion passed unanimously.

Removal of "Special Exceptions" that are currently reviewed by the Board of Adjustment.

The Staff recommended removing the entire LMC Section 15-10-8, Special Exceptions for the reasons identified in the Analysis on page 84 of the Staff report. The only other change would be the renumbering of the variances.

The Staff recommended that the Planning Commission review the proposed language and forward a positive recommendation to the City Council on the proposed changes.

Chair Worel opened the public hearing.

There was no comment.

Chair Worel closed the public hearing.

Commissioner Hontz stated that as the liaison to the Board of Adjustment she felt it was best to move this amendment forward.

MOTION: Commissioner Wintzer moved to forward a POSITIVE recommendation to the City Council to remove Sections 15-10-3 and 15-10-8, Special Exceptions, from the Code. Commissioner Hontz seconded the motion.

VOTE: The motion passed unanimously.

Streamline Review Process

Planner Astorga had prepared a color coded flow chart to address the Historic District Design Review Appeal process. He noted that the items in Black and Red identified the current process. The Black was an approval with no issues. The Red showed the three types of appeals allowed per Code. An appeal of the Staff determination would be heard by the HPB. An appeal of the HPB determination would go to the Board of Adjustment. Appeal of the BOA decision would go to Third District Court.

Planner Astorga noted that the Green color represented the proposed change in the Staff report where it starts as a typical HDDR application which they would call a streamlined design review. If the design review is not contested it would follow the same process as an approval under the current Code. A neighboring property owner or the applicant, could contest the review. If it is contested it would automatically go to the HPB and the HPB could approve it for a building permit. If the HPB determination is appealed, it would go to the Board of Adjustment and their

determination could be appealed to the Third District Court. Director Eddington noted that the Green flow line clarifies the process and meets State Code.

Planner Astorga introduced an alternative process identified in Blue that would follow the traditional approach. If contested it would go to the HPB and then to Third District Court. The alternative process would remove the Board of Adjustment from the appeal process. Planner Astorga requested input from the Planning Commission on whether the alternative was better than the contested review where it would go to HPB, not on appeal, but simply contested. It would be called a formal review.

Commissioner Strachan asked for clarification on the "streamlined approved (BP) shown on the flow chart. Planner Astorga replied that it would be an approval with no issues and the applicant could apply for a building permit.

Assistant City Attorney McLean clarified that the process also applies to Administrative CUPs. She stated that either process being proposed was legal.

Commissioner Hontz understood that a CUP would go to the Planning Commission and not the HPB. Ms. McLean replied that this was correct. Commissioner Hontz asked if it would then go to the Board of Adjustment or the City Council. Ms. McLean replied that it would go to the City Council.

Assistant City Attorney McLean referred to the alternative process in Blue and stated that the first level of review did not have to be Staff. It would also be legal to designate it to be the HPB. Currently, under the Staff review there is no public hearing process. It is a streamline process because the Staff reviews it and makes written comment. Under the contested version, someone could contest it and ask for formal consideration and it would go directly to the HPB. In the alternative process, the Planning Commission would need to decide the breadth of the initial review and whether it should be a public hearing and whether the Staff should review it or the HPB. If they establish the land use authority, the question is who should be the appeal authority. The Staff was proposing that it be the HPB, with Staff doing the initial review.

Planner Astorga clarified that the Staff does not hold an official meeting but they do notify property owners within a hundred feet and provide a period of 14 days to allow the public to look at the plans and share their thoughts.

Based on his understanding of the process, Commissioner Savage wanted to know the downside of favoring the alternative process in Blue. Ms. McLean stated that the initial review under the blue process would not be a streamlined review and there would be no public hearing at the initial review. Commissioner Hontz noted that there never is public input unless it is appealed. Commissioner Savage pointed out that public is noticed and has the opportunity to submit comment. Commissioner Hontz pointed out that many owners live in California or Florida. She was told that addresses are on file for out-of-state owners and they are sent letters. Director Eddington stated that owners are notified when the application is received and they are notified when a final decision is made. Commissioner Hontz felt it was more powerful when someone takes the time to attend in person and make their comments versus sending a letter.

Commissioner Strachan clarified that Assistant City Attorney McLean was proposing the process in Green. Ms. McLean stated that under the process identified in Green, the applicant would have the ability to expedite the process and request that it go straight to the HPB for formal review. If the application was uncontested it would be approved by Staff.

Chair Worel opened the public hearing.

Jeff Love, a resident at 615 Woodside, passed out pages he copied from the design guidelines, along with pages of the actual court ruling by Judge Kelly. He believed it would shed light on the situation. Mr. Love was amazed at what was not being discussed in the conversation. He stated that the catalyst for the proposed change to the LMC was a lawsuit that he filed against the City and Judge Kelly in Third District ruled in his favor. He had three arguments in court and the ruling states that Park City's Land Management Code violates State law in respects to the appeal process.

Commissioner Wintzer informed Mr. Love that the Planning Commission was trying to correct the process to meet State Code.

Mr. Love believed the ruling from Judge Kelly was an important part of the process. He referred to LUDMA, the Municipal Land Use Development and Management Act. In the ruling it states that LUDMA governs how a municipality such as Park City may regulate land use within its jurisdiction. He also read Conclusions of Law 50 and 51 in the ruling, which talks about how appeal authorities should be established and how LUDMA delineates the scope of the appeal authority and that the City cannot require an adversely affected party to pursue excessive appeals. Mr. Love also read from page 13 of the ruling which stated that the Court concluded that the petition, Mr. Love, was subjected to an illegal procedure because he was required to pursue successive appeals due to the successive appeal provisions found in the Park City Land Management Code. Those provisions are illegal because they violate the LUDMA provisions.

Mr. Love stated that the change proposed by Park City Legal is to essentially change the name of the Historic Preservation Board appeal from "appeal" to "formal consideration". Mr. Love stated that Judge Kelly did not rule that the name of the process was illegal. He rules that the process was illegal. In his opinion, changing the name of one meeting does not make it legal. He believes that Park City Legal is playing a semantics game and creating a loophole for themselves to make something determined to be illegal, legal.

Mr. Love stated that if the Planning Commission recommends the proposed change to the City Council and they adopt it, it would make a mockery of Third District Court and Judge Kelly. If it is adopted by the City Council, Mr. Love guaranteed that it would be challenged in court. Mr. Loves stated that the way to make the process legal is to eliminate one of the two appeals. He personally felt it was logical to eliminate the Board of Adjustment. If there is an issue with a historic design application and it is appealed, the HPB is the Board that should hear it because they are more qualified to hear the appeal. Mr. Love thought the flow chart was a perfect example to support his comments. The only difference between the red and the green was the words "contested review".

Mr. Love asked the Planning Commission to do the right thing and interpret what has occurred and correct the LMC the way it should be corrected.

Ruth Meintsma, 305 Woodside, understood that the 14 day period was after the HDDR when the public could offer their comment. If someone has a different opinion from the Staff review they would be able to contest it and ask to have the HPB review it. Ms. Meintsma believed that was a necessary step and she did not consider it an appeal. The Historic Preservation Board has a particular purview on looking at historic and it makes sense to have that group look at it according to the comments and opinion of the citizen. Ms. Meintsma liked the fact that an applicant would have the choice to request a review by the HPB to streamlined the process. She stated that people in the neighborhood have more insight and information than the Staff. Being able to contest an application and provide input is a benefit for the citizens. She believed this was an incredible addition to the process.

Chair Worel closed the public hearing.

Commissioner Strachan asked if there was anything in the Code that makes the applicant go through the Green process, or if they could always elect to go through the Blue process. Planner Astorga stated that the Blue is an alternative process. Commissioner Strachan understood that the Blue was an alternative process, but he wanted to know if anything in the Code would make an applicant go through the Green only and never the Blue. Planner Astorga replied that as proposed, the applicant would go through the Green process every time. They could never go through the Blue because it is a separate alternative with different language.

Commissioner Savage understood that if they come out of a design review application and the neighbors have an issue, it would be a contested review with the HPB. If they come out of a design review application and there is an issue between the Planning Department and the applicant, the applicant could appeal the Staff decision. If they come out of the design review and no one has surfaced an issue, it is a streamlined approval. Planner Astorga replied that this was correct. Commissioner Savage clarified that a contested review under the HPB is not an appeal. It is the process used to resolve the difference of opinion between the Planning Department and the neighbor. Therefore the Green is not a three appeal process. It is a mechanism by which a neighbor's issue can be addressed by the Historic Preservation Board.

Commissioner Strachan pointed out that if the HPB rules in favor of the applicant and the neighbor has the same issue, the neighbor has the right to appeal and the applicant goes through the process again.

Commissioner Gross questioned how the language read in Section 15-11-12 on page 128 of the Staff report regarding the Historic District or Historic Site Design Review. Planner Whetstone understood his concern and changed the language to read, "...if the application is uncontested the Planning Department shall approve, approve with conditions or deny all historic design review applications involving an Allowed Use...."

Commissioner Hontz was unable to find the definition of an Administrative CUP. Assistant City Attorney McLean explained that Administrative CUP is defined under each zone in the Code.

Commissioner Hontz stated that in order to feel comfortable with the Administrative CUP process, she would have to research each zone.

Commissioner Savage asked if the alternative process in Blue would resolve Mr. Love's contention. Mr. Love answered yes. Commissioner Savage understood that Mr. Love's motive was to eliminate one step in the current process. Mr. Love stated that his motive was that the City's appeal process violates State law. Commissioner Savage asked if Mr. Love had any other objectives regarding the process, other than to make sure that the City process is consistent with the ruling by Judge Kelly. Mr. Love stated that his objective was to follow the Planning Commission process because he did not like what the Park City Legal Department was proposing and he wanted to make sure the appeal process was changed correctly.

Commissioner Savage wanted to know the reasons why the Planning Commission should not choose the process identified in Blue. Ms. McLean stated that the major policy difference was that the Staff would do the initial review with no opportunity for a public hearing process. The Green process would require a public hearing for every application. Commissioner Savage asked if a public hearing could be held by the Staff or if it would require participation from the HBP review or another Board. Planner Whetstone replied that the Staff could hold a public hearing.

Commissioner Savage clarified that along with public notice, the Staff could announce a public hearing at a certain time and date and anyone who wanted to participate in a public hearing could attend. Commissioner Strachan stated that a public hearing could be a step in the design review application. The public hearing would become part of the Blue process. Commissioner Savage explained that if the application is approved by the Planning Staff subject to public input, it would be the end of the process. If the Planning Department denies the application, the applicant would have the option to appeal and it would go to the HPB. If the HPB supports the Staff's decision, the applicant would have the right to appeal that decision to Third District Court. Commissioner Savage believed that would resolve Mr. Love's issue and the City would have a rapid and efficient process. Commissioner Strachan concurred. Planner Whetstone pointed out that an added benefit is that the Board of Adjustment would not be involved in design review.

Director Eddington noted that the process suggested by Commissioner Savage was similar to the current process with the exception of removing the Board of Adjustment and adding a public hearing to the Staff review. The Staff would draft appropriate language for the next meeting.

Planner Cattin asked if Staff reports would be required for the public hearing. Commissioner Savage recommended that the Staff do nothing more than what they currently for a design review, except notice a public hearing and make the information available on the website.

Commissioner Hontz asked if any of the Commissioners were interested in having the Staff go through the zones and list the uses this would affect. Director Eddington stated that he would have someone go through the zones and list the Administrative CUPs.

MOTION: Commissioner Strachan moved to CONTINUE the streamlined review and appeals process discussion in Chapters 1, 5, 10 and 11 of the Land Management Code to October 24, 2012. Commissioner Hontz seconded the motion.

VOTE: The motion passed unanimously.

Chair Worel noted that two items were scheduled for work session this evening.

Given the late hour and the amount of time the Planning Commission and Staff would like to give to the General Plan, Director Eddington proposed that the Planning Commission schedule a special work session/informational meeting to hear the presentation and discuss the General Plan. The Planning Commission agreed to meet on Tuesday, October 16th at 5:00 p.m. The location would be determined and the Commissioners would be notified. The meeting would be publicly noticed.

The Planning Commission postponed the work session Annual Open and Public Meetings Act to October 10, 2012.

The Park City Planning Commission meeting adjourned at 9:00 p.m.

Approved by Planning Commission: _____

historic nature. Commissioner Gross asked if the applicant needed the accessory structure. Mr. DeGray replied that the accessory building was also a historic structure.

Mr. DeGray spoke to the issue of creep and the philosophical standpoint the Commissioners addressed this evening. For any project that deals with the LMC and the Historic District Guidelines, the notion of creep is never discussed unless they come before the Planning Commission. Projects that do not require Planning Commission review are designed and reviewed by Code. He stated that as designed, the building at 543 Woodside meets every aspect of the Code. It may not meet the philosophical issues raised by the Planning Commission, but those issues are not presented in the Code from the standpoint of the average person looking for guidance and process. This applicant has been through the process with Staff for over a year and the idea of creep has never been raised.

Commissioner Wintzer replied that creep is addressed in the first sentence in the purpose statements of the Code. Regardless of what has happened in the past, he personally felt that was the most important sentence.

MOTION: Commissioner Hontz moved to Deny the Steep Slope Conditional Use Permit for 543 Woodside Avenue based on the analysis provided by the Planning Commission specific to the HR-1 District purpose statements and the Steep Slope CUP criteria, which was also addressed by the Planning Commission, specifically the various criteria mentioned in the discussion.

Commissioner Strachan seconded the motion with the amendment to include that the basis for the motion to deny were the comments made by the Commissioners this evening.

Commissioner Hontz accepted the motion as amended.

VOTE: The motion passed unanimously by all Commissioners present.

Assistant City Attorney McLean stated that the Staff would draft findings for denial for the Planning Commission to ratify at their next meeting to support the vote this evening.

5. Land Management Code Amendments – Chapter 1-General Provision and Procedures; Chapter 2-Zoning; Chapter 3-Offi Street Parking; Chapter 4-Supplemental Regulations; Chapter 5-Architecture Review; Chapter 6-Master Planned Development; Chapter 9-Non-Conforming Uses and Structures; Chapter 11-Historic Preservation; Chapter 15-Definitions.
(Application #PL-12-1637)

Chair Worel referred to page 153 of the Staff Report and the Staff recommendation to continue the following items to January 9, 2013.

- The Transfer of Development Rights (Chapter 2)
- Agricultural uses and restrictions within residential zones (Chapter 2.)
- Review of Allowed and Conditional Uses in all zoning districts (Chapter 2)
- Lighting regulations (Chapters 3 and 5)
 - Financial guarantee process for public improvements (Chapters 1 and 7)
 - Annexation process regarding timing of ratification of annexation agreements (Chapter 8)
 - Associated definitions to the above items (Chapter 15)

Chair Worel opened the public hearing on the items to be continued.

There were no comments.

Chair Worel closed the public hearing.

MOTION: Commissioner Strachan moved to CONTINUE the proposed changes to Chapters 2, 3, 5, 1, 7, 8 and 15 as outlined on Page 153 of the Staff report to January 9, 2013. Commissioner Hontz seconded the motion.

VOTE: The motion passed unanimously by all Commissioners present.

Based on the amount of public interest regarding the proposed amendment to Chapter 6, Master Planned Development, Chair Worel recommended that they rearrange the agenda to move that discussion to the next item. The Commissioners concurred.

Planner Whetstone stated that annually the Staff reviews the Land Management Code for Park City to address planning and zoning issues that have come up over the past year or to look at necessary changes for consistency with State Code, the General Plan, Council Goals or the Design Guidelines. The Staff proposes the recommended changes to the Planning Commission for discussion and recommendation to the City Council. A list of 12 issues and topics were outlined on page 154 of the Staff report.

As requested by Chair Worel, Planner Whetstone moved to Item 8, which addressed changes to Chapter 6 regarding MPDs.

8. Clarify purpose and applicability of the Master Planned Development review process in various zones (Chapter 6).

Planner Whetstone reported that the purpose of the proposed amendment is to clarify the review process in various zoning districts, and to establish additional review criteria to address issues that were raised in reviewing other MPDS and in updating the General Plan, such as open space, building height, landscape requirements, mine hazards and historic mine waste. The intent is to make sure those issues are addressed in any MPD submitted.

Planner Whetstone noted that the first recommended change was the addition of (K) in the purpose statement, "to encourage opportunities for economic diversification within the community." Items A-J currently exist in the purpose statement.

Planner Whetstone referred to Section 15-6-2 of the MPD Chapter – Applicability, and noted that the Section has not been clear. The primary purpose of the amendment is to clarify when an MPD is required, allowed but not required, or not allowed. Planner Whetstone explained that under the current Code, to review a significant project in Park City, particularly in the Historic

District, there is not a requirement for a conditional use permit or a master planned development. The process is currently a Staff review of a design application. There is no review by the Planning Commission or additional review criteria other than the design guidelines and the requirements of the HCB zone.

Planner Whetstone noted that under the current Code, MPDS are required for 1) Any residential project larger than ten lots or units; 2) hotel and lodging projects with more than fifteen residential units; 3) any commercial or industrial projects greater than 10,000 square feet of gross floor area; 4) All projects utilizing transfer of Development Rights Development Credits

As a proposed amendment, the Staff had revised #3 to read, "All new Commercial, public, quasi-public or industrial projects greater than 10,000 square feet Gross Floor Area". Planner Whetstone noted that public or quasi-public projects would be museums, recreation facilities, ice-rinks, etc.

The Planning Staff thought the Planning Commission should use the tool they have to review these projects, including requiring open space, sustainable practices, affordable housing. Currently they only have the ability to require affordable housing in an annexation or a master planned development. The Staff felt that any big project, especially in the Historic District, should require the Planning Commission to look at the criteria specific to a Master Planned Development. That was the reason for suggesting that all projects meeting the four mentioned requirements should require an MPD in all zones except the HR1, the HR-2 and HR-L zones. The Staff did not anticipate larger projects in the exempted zones and they would not want to encourage it.

There is the possibility of projects on 10 lots or larger in the other zones and the Planning Commission would want the tools available to review the criteria.

Planner Whetstone noted that existing language was stricken which allowed, but did not require, the MPD process in the HCB, HRC, HR-1, and HR-2 zones, provided the subject property and proposed MPD includes two or more zoning districts. That language was replaced with "Allowed but not required" if a property crosses zones between HR-2, which is Park Avenue, and the HCB. The Staff also felt that it was appropriate to allow an MPD for property that was not part of the original Park City Survey and it is in either the HR-1 or HR-2 zone.

Planner Whetstone noted that the Staff report contained 50+ emails that were received regarding the Kimball Arts Center expansion project. She clarified that an application has not been submitted to the Planning Department and the majority of the Staff has only seen the concept plan that was made public. Planner Whetstone emphasized that the proposed changes were not being made to accommodate the Kimball Arts Center specifically. However, recognizing that it would be a significant project, the Staff believes that type of project should be reviewed by the Planning Commission. She clarified that allowing an MPD in the HRC zone does not mean that the MPD would be approved.

Commissioner Hontz referred to the Applicability Section on page 171 and asked if the changes identified in red were changes from the last version of the amendments or from the existing Code. Director Eddington replied that it was a change to the existing Code.

Commissioner Hontz understood that the revised language in Section A was only for clarification, and that the only difference in Section A besides cleaned-up language was the addition of Public and Quasi-Public. Planner Whetstone replied that this was correct. Commissioner Hontz clarified that the mechanism under the existing Code would still remain. She referred to Section B, which also clarified the language, and noted that the revised language in B(1) says the same thing as the previous B. However, instead of mixing two zones, her interpretation of the language is that the HR1 or HR2 has to be combined with HRC or HCB in order to do a master planned development. Planner Whetstone replied that this was correct. Commissioner Hontz felt there was a difference between B and 1, but not significant.

Commissioner Hontz referred to B(2) and the added language, "The property is not part of the original Park City Survey or Snyder's Addition" and second part "and the proposed MPD must be for an affordable housing MPD". She understood that to mean that an applicant could not apply for an MPD outside of the Park City Survey or Snyder's Addition unless they apply for affordable housing. Planner Whetstone thought the first sentence regarding the Park City Survey or Snyder's Addition was redlined incorrectly and should actually be in black. She believed it was existing language in the current Code and she would check to make sure.

Planner Whetstone referred to the Exhibit on page 215 of the Staff report, which correctly revised (2) as, "The Property is not a part of the original Park City Survey or Snyder's Addition to the Park City Survey and the proposed MPD is for an affordable housing MPD consistent with Section 15-6-7 herein.

Commissioner Hontz clarified that the differences she saw versus what Planner Whetstone read were different and she wanted to make sure she understood them. She believed she had the correct understanding. Director Eddington emphasized that the language was changed for clarification and nothing was added.

Commissioner Hontz believed the significant changes regarding the actual requirements of the MPD started on page 173 of the Staff report. Planner Whetstone noted that the language crossed out in B had said the process was allowed but not required, and it listed the HCB, the HRC the HRC, HR2 and said, "provided the subject property and proposed MPD includes two or more zoning districts." She explained how that language could be interpreted in different ways. Commissioner Hontz did not favor that language for the same reason.

Commissioner Wintzer referred to the added purpose statement on page 171, "Encourage opportunities for economic development", and questioned whether that would start trumping many of the other purpose statements. He did not want to disregard it as an opportunity, but it was a concern.

Commissioner Gross asked if the language for economic diversification moved away from being a tourist based ski economy. Commissioner Wintzer was concerned that it would be easy for

someone to use that particular purpose statement to get their project approved or considered. Commissioner Strachan agreed. With that language, someone could say that their project would create jobs and according to the LMC the project should be approved. Commissioner Strachan thought the language should be deleted.

Director Eddington stated that reading from the purpose statement in 15-6-1, the goal of the section is to result in projects which are inclusive of A-K. There is an "and" after J and before K to make it clear that the purposes statements are fully inclusive and comprehensive.

The Commissioners discussed alternative language. Chair Wintzer pointed out that there are some neighborhoods where they might not want economic opportunities. He thought the language in K conflicted with B, "to ensure neighborhood compatibility". He suggested that they either strike the language or have the Staff come back with different language. Chair Worel remarked that if the purpose in K could be argued under C, "strengthen the resort character of Park City", there was no reason to have K. Commissioner Strachan noted that it could be argued under several of the existing purpose statements. The Commissioners concurred that the language in K should be stricken.

Additional review criteria for all Master Planned Developments, including open space, building height, landscaping, mine hazards and historic mine waste mitigation (Chapter 6).

Planner Whetstone stated that this was the next topic for discussion related to changes to the MPD Section. She referred to page 172, Section 15-5-6(D), Open Space. Under Item 1, Minimum Required, she noted that under the existing language, Master Planned Developments require a minimum of 60% open space with the exception of the GC, the HRC, the HCB and the HR-1 and HR-2 zones. She noted that Light Industrial (LI) and Historic Medium Density (HRM) were added to the language as well as the following language; In these zoning districts the open space requirement is thirty percent (30%). In all zoning districts, if the MPD is a redevelopment of an existing Development or Developments, or if the MPD is an infill site, the minimum Open Space requirement shall be thirty percent (30%).

Planner Whetstone read revised language to the second paragraph, "The Planning Commission during review of the MPD may reduce the Open Space requirement to 20% in exchange for project enhancement in excess of those otherwise required by the LMC...such as Affording Housing, sustainable design and building construction meeting LEED Gold or equivalent". Language was also added to include restoration of historic structures that are located either on or off the property.

Commissioner Gross asked how many potential areas within the community are subject to a Master Planned Development. Commissioner Wintzer stated that it was all zones except the ones mentioned as exceptions. Planner Whetstone stated that it would also include any new large projects in the Prospector area or the RD zone.

Commissioner Hontz liked the proposal conceptually, but she preferred to that it be less wordy and the language tightened up to avoid potential problems.

Planner Whetstone identified the proposed changes to Item 2, Type of Open Space. The following language was added to the end of the existing paragraph. For redevelopment or infill projects in the GC, HRC, HCB HR-1, HR-2 and LI Districts, publicly accessible plazas and gardens may count toward this Open Space requirement. Fee in lieu for purchase of off-site Open Space may be considered, with the amount to be determined by the Planning Commission, subject to an appraisal, market analysis of the property, and recommendation from the City's Open Space Advisory Committee. Planner Whetstone noted that the current language already identifies specific types of open space. The new language would allow for publicly accessible plazas and gardens to count as open space.

Commissioner Gross asked if publicly accessible would mean the open space is accessible 24/7 or only during specific times. Commissioner Hontz noted that the City ran into that problem in the lower Main Street area in terms of places that are designated as public but are not. This was another area that made sense conceptually, but also had issues. One example would be a gated garden that is designated as open space, but it is only open during the time of events. The question is whether they trust future Planning Commissions to deal with the issue, or if they should deal with it now and define publicly accessible.

Commissioner Wintzer had concerns with the in-lieu fee where someone could pay a fee and not provide open space on site. He believes open space is part of a viable project and he likes the idea of having surprise open spaces through town. Allowing an in-lieu fee to put open space in Round Valley or similar places takes open space away from the community. Commissioner Wintzer felt it was important to keep open space in the neighborhoods.

Planner Whetstone stated that the Commissioners could quantify how much of the required open space must occur on site. Chair Wintzer pointed out that the open space requirement was already reduced to 20%. He thought all 20% should remain on site and the in-lieu fee should be deleted. Commissioner Hontz remarked that an in-lieu fee might be considered for an amazing project, but without knowing that, the unintended consequences are too great. She supported Commissioner Wintzer and thought the in-lieu fee should be eliminated. Commissioner Hontz was not opposed to asking the Staff to rework the percentages and the language. She would like to support publicly accessible plazas and gardens. Commissioner Strachan suggested that they make publicly accessible plazas and gardens a defined term in Chapter 15–Definitions. The Commissioners agreed that was the best solution.

Planner Whetstone noted that the only change to Section 15-6-5(F), Building Height, was under (4); The additional Building Height results in more than the minimum Open Space required and has resulted in the Open Space being more usable and includes publicly accessible Open Space. She noted that Items 1-5 were the requirements for the Planning Commission to consider for increasing height in an MPD.

Planner Whetstone referred to Section 15-6-5(H) - Landscape and Street Scape, and noted that the changes related to Chapter 5, where landscape requirements were added to the overall architectural guidelines. The new language reads, A complete landscape plan to be submitted with an MPD. The landscape plan shall include all softscape and landscape areas on the site.

This includes all landscape materials, including foundation plantings, ground cover, lawn areas, driveway and/or parking lots materials. A list of plant materials proposed indicating the botanical name, the common name, the number of proposed plans and their size shall be provided. A license landscape architect will prepare all materials for submittal.

Additional language added native tolerant species. The maximum limit for lawn or turf was changed from 50% to 25% of the area not covered by buildings and other hard surfaces. No more than 75% of the area not covered by Buildings may be irrigated. Language was also added to state, All noxious weeds, as identified by Summit County shall be removed from the Property in a manner acceptable to the City and Summit County, prior to issuance of Certificates of Occupancy. See Section 15-5-5-10, Landscaping, for additional requirements.

Director Eddington suggested adding revised the language to say, Areas not covered by Buildings and Structures.

Planner Whetstone noted that a new section was added, 15-6-5(M) – Historic Mine Waste Mitigation. Since review criteria for mine waste mitigation was not currently included in the LMC, new language would read, For known historic mine waste located on the property, a soil remediation mitigation plan must be prepared indicating areas of hazardous soils and proposed methods of remediation and/or removal subject to the Park City Soils Boundary Ordinance requirements and regulations. See Title Eleven Chapter Fifteen of the Park City Municipal Code for additional requirements.

Planner Whetstone referred to page 175 of the Staff report and Section 15-6-6 – Required Findings and Conclusions of Law for a master planned development. She noted the (N) and (O) were added to address physical mine hazards and historic mine waste. The Staff had revised the language in (M) to read, The MPD as conditioned, incorporates best planning practices for sustainable development, including energy efficient design and construction per the residential and Commercial Energy and Green Building program and codes adopted by the Park City Building Department in effect at the time of Application, and water conserving landscaping.

Planner Whetstone stated that language was added in Section 15-6.8(G) – Resort Accessory Uses to clarify that the uses are considered typical back of house uses.

Chair Worel opened the public hearing and thanked everyone who took the time to send an email or write a letter. All correspondence was forward to the Planning Commission and it was good to know that there was so much public interest.

Chair Worel reiterated that the Planning Commission was considering proposed changes to the Master Planned Development Sections and no specific project was being reviewed or considered. The Kimball Arts Center has not submitted a formal application.

Jim Tedford handed out a copy of his comments and supporting material.

Jim Tedford stated that he was representing a group of concerned citizens, under the name of Preserve Historic Main Street, and he was speaking against the proposed revisions of Chapter 6 of the Land Management Code regarding Master Planned Developments. Mr. Tedford had attended the City Council Work Session on August 23, 2012 where the Planning Director presented a document to the City Council titled, Old Town Height Discussion-Kimball Arts Center. The work session was scheduled to discuss a proposed addition to the Kimball Arts Center. Mr. Tedford believed that the presentation and the documents were really about convincing the City Council that revising Chapter 6 of the LMC was the best way to accommodate a project application for the proposed Kimball Arts Center Addition. Although the Staff has maintained that the proposed MPD revisions are part of the annual review, most of the MPD revisions were written specifically with the KAC addition in mind.

Mr. Tedford stated that for the last three months Preserve Historic Main Street has been monitoring the process from work session to the meeting this evening. The City Council made in clear in their work session that they have heard considerable concerns from the public regarding the proposed Kimball Arts Center expansion and they wanted an opportunity for more public dialogue. The Council inquired about methods to obtain the dialogue and were told by Staff that the MPD was the best method. With emphasis on an MPD and height, and little mention of other options and restriction, it was easy to see why the City Council felt this might be the best way to get more public dialogue.

Mr. Tedford remarked that one viable option would be to recommend that the Kimball Arts Center modify their proposal to conform to the existing Land Management Code and the Historic District Design Guidelines. The current proposal does not include an additional 1500 square foot section of their lot that would accommodate 6,000 square feet on four floors. Another available option for the Kimball Arts Center is to apply for a conditional use permit and/or an amendment to the zone.

Mr. Tedford stated that since the City Council work session the Staff has been in the process of suggesting revisions to the MPD section of the existing LMC that would accommodate a possible application by the Kimball Arts Center to build an addition to their present facility on Heber Avenue. On November 7, 2012 the Staff made a presentation to the HPB regarding the proposed revisions to the MPD section of the Land Management Code. The HPB recommended 6-1 not to revise the MPD language. Mr. Tedford remarked that the process that has taken place regarding a possible application by the Kimball Arts Center has been flawed from the start. Give the restrictive language in the LMC, the HDD, the General Plan and the Park City 2030 document, it seems strange that the Staff would ask the City Manager to schedule a Council work session, let alone that they would try to convince the City Council to revise the LMC to accommodate an unrealistic proposal. Mr. Tedford stated that the document and presentation to the City Council was incomplete, inaccurate and supported the Kimball Arts Center proposal. There has been extensive discussion of the MPD process and height restrictions; however, there has been very little discussion about other options that would allow the Kimball Arts Center to submit an application without revising the existing Land Management Code. Mr. Tedford pointed out that there was also no mention of Section 15-5-1 of the LMC and several sections of the General Plan that would prohibit the current KAC proposal. He read from Appendix A of his handout, which was the language contained in LMC Section 15-5-1,

Architectural Review, and items from the General Plan also contained in the handout, to support his comments. Mr. Tedford stated that based on those portions of the LMC and the General Plan, even if the LMC was revised to allow an MPD, the current proposal could not be approved.

Mr. Tedford thought the City Council made it clear that they wanted an opportunity for more public dialogue concerning the Kimball Arts Center; however, they never indicated an interest in revising the existing LMC to allow MPDs in the Heber Avenue sub-zone if there was another way to obtain public dialogue. He pointed out that the City has already obtained dialogue through emails, letters to the editor and comments at public hearings without changing the LMC.

Mr. Tedford stated that the Preserve Historic Main Street group supports the Kimball Arts Center the need for an addition to their current facility. However, they believe the expansion can and should be accomplished within the existing Park City LMC and the Park City Design Guidelines for Historic Districts and Historic Sites. For the sake of present and future Historic Main Street, Mr. Tedford urged the Planning Commission to not recommend the proposed changes to Chapter 6 of the LMC to accommodate a development that has not submitted an application and may never be built.

Commissioner Hontz asked about the zoning north of Heber Avenue and east of Park Avenue. Planner Whetstone stated that the darker blue area shown on the Zoning Map was the HCB zone and the lighter blue area was HRC. Commissioner Hontz noted that an MPD is not required for properties in the HRC zone, which was not changed from the current LMC language. She understood that in order to do an MPD in an HRC zone, the HRC property would have to couple with an HR-1 or HR-2 parcel. Planner Whetstone replied that this was correct. Commissioner Hontz wanted it clear that the new proposed language was only for clarification and it would not a change what currently exists under the LMC. Planner Whetstone remarked that the addition of public or quasi-public was a change to the current language. Another change is that MPDs would be required in the HRM zone.

Sanford Melville, stated that he is part of Preserve Historic Main Street group. Mr. Sanford had concerns with the reduction in the Open Space requirements as a proposed revision to the MPD Section. In his opinion, under the proposed revisions, the applicability of the MPDs has been broadened and the potential impacts of changes to the Open Space requirements is also much larger. He realized they were talking about urban open space, but under the existing Code there appears to be a reasonable trade-off regarding open space. If someone wants to build a small building that complies with the Code in the zone, then open space is not an issue because you could still see the mountainsides and look around the buildings. You would not feel dominated by the structure at street level. However, if someone wants to build a larger building with large mass and scale, then open space on the site is important to compensate. Mr. Sanford believed that was a reasonable trade-off that protects the small town feel of the community, and it has worked quite well.

Mr. Sanford stated that under the proposed revised Code, the open space trade-off for an MPD is considerably reduced from 30% to 20% in exchange for project enhancements. Affordable Housing, LEEDS certification and restoration of historic buildings are worthwhile goals, but they do not relate to open space. Even more concerning, the revised Code also allows an applicant to purchase off-site open space on a fee in-lieu basis. There appears to be no limits; therefore, a developer could purchase open space in a suburban area and remove all open space from the downtown project site. He lives in Old Town and believes that the majority of Old Town residents who live on 25' x 75' lots value their limited open space more than other citizens of Park City. Mr. Sanford requested that the Planning Commission not allow the open space to be taken out of Old Town.

Mr. Sanford noted that the General Plan is being updated based on four core values of Small Town, Natural Setting, Sense of Community and Historic Character. He believed the proposed revisions were the exact opposite of the stated cored values by allowing larger, more massive building to be considered in the historic core. As they consider the open space requirements, he urged the Planning Commission to think about why they would do it and whether their decision would be in the public's best interest.

Lila Tedford spoke on behalf of Meg Ryan who was unable to attend the meeting this evening. Ms. Ryan was a member of Preserve Historic Main Street, she is a Park City resident and a former employee of Park City in the Planning Department. Ms. Tedford read a statement Ms. Ryan had prepared with her comments regarding the proposed amendment to Chapter 6 of the Land Management Code. Ms. Ryan stated that there was no time clock running on these items and she advised the Planning Commission to take adequate time to review and discuss the changes before taking any action.

Mr. Ryan congratulated the Planning Commission for their hard work on Form Based Codes in the Iron Horse area. It is great planning tool that will provide well thought out development in this area. She suggested adopting Form Based Codes for all of the General Commercial and Light Industrial Zones. Ms. Ryan believe it was a far better tool than the MPD in this area. From her experience, if it is not mandated, it will not be utilized by the Development community. Ms. Ryan also suggested that they consider increasing heights from three stories in non-view shed areas in the GC and LI Zones. She stated that MPDs served their purpose at one time, but she questioned whether they were the best tool now.

Regarding the MPD changes in the HRC and HCB zones, Ms. Ryan noted that the current draft of Chapter 6 would mandate MPDs in the HCB and HRC zones, which is a significant change. Several questions included 1) what problem they were trying to fix or address in these zones; 2) what is so broken in these underlying zones that requires the MPD process as a cure all; 3) if it is infill development, in what ways do the underlying zones not adequately address infill development and where is the analysis; 4) How many parcels would this change potentially affect in the HC and HRC. Base zoning adequately addresses the few parcels that are left. There may be 3 parcels in the HRC zones and she questioned whether there were any in the HCB zone. Another question is what this change would do for the future of the community in 10-20 years. Ms. Ryan asked that they look at this inventory of parcels this change could affect.

Ms. Ryan proposed eliminating the MPD in the HRC and HCB zones altogether, and look at the HR1 and HR-2 zones as well. If the Planning Commission is inclined to favor an MPD in these areas, Ms. Ryan offered her thoughts on what she believes to be current shortfalls. First, the MPD review criteria as currently drafted is not design to address the dense commercial historic core. Open space, setbacks, parking, and height allowance review criteria are outdated and inadequate. There was no reason to debate open space in the core because the underlying zones do not require it. Secondly, with regard to Historic Design, the Historic District Design Guidelines are mandated in the underlying zone; but they are not in the MPD Chapter. If they mandate that the Historic Core has to have MPDs, then the guidelines should be added as well. The third issue is height. Height criteria are subjective at best. The analysis and process for the Sky Lodge was excellent but it went beyond the requirements in the Code. They should look to that process and mandate it in the Code if they must proceed with the MPD process. The Sky Lodge was approved with 12 roof plane changes and only 2 elements, the elevator and penthouse, that went up a maximum of 64'.

Ms. Ryan had included a chart with her prepared statement that lays out the base zoning for the HRC zone and compared it to the MPD process. She hoped her effort would give the Planning Commission the start for a detailed discussion before they take any action on the changes to Chapter 6 of the LMC.

Ms. Tedford submitted Ms. Ryan's prepared statement and the chart for the record.

Hope Melville, an Old Town resident, was distressed to see in the Staff report that the most recent proposed changes to the LMC would allow MPDs for all projects in the HRC and HCB zones, which is essentially all of Historic Main Street. The only requirement is that the project have 10+ residential units or 15+ hotel units and 10,000+ square feet. In addition, there would no longer be the requirement for two zones for an MPD. Ms. Melville stated that these large MPD projects on Main Street would be more attractive to develop due to the proposed LMC changes to the Open Space. She understood from the discussion that the Planning Commission was considering eliminating the in-lieu fee and she favored that elimination. Otherwise, the change would remove actual open space requirements for MPD projects on Main Street and instead allow open space to be purchases elsewhere.

Ms. Melville believed the MPD changes would allow taller and denser projects on Historic Main Street and would result in Super-Sizing the buildings. She could think of many current buildings on Main Street which could be rebuilt or redeveloped much taller and denser under the proposed changes, particularly if open space is not required on site. Ms. Melville stated that the proposed MPD changes seem entirely at odds with the core values being discussed as the basis for the New General Plan. Like others, she had to ask why they were doing this and for what purpose. She could see no justification for the proposed MPD changes and they were certainly not in the public interest.

Ms. Melville understood the desire to hear public input on projects such as the Kimball 80-foot Tower project that does not meet current Codes. However, she believed there were better ways

to do obtain public input that would not necessitate changing the LMC so that the Kimball Arts Center and other properties on Main Street could submit applications for large dense MPD projects. For example, they could make a very small change to the LMC to provide that applications for projects that do not meet the LMC can nevertheless be provisionally accepted by the Planning Department for purposes of obtaining public input and discussion on the project. Part of that public input and discussion would be whether it is in the public interest to make changes to the LMC for such a project. Ms. Melville urged the Planning Commission to not approve the currently proposed changes to the MPD Code, particularly regarding Applicability and Open Space.

Ms. Melville submitted a written copy of her comments for the record.

Craig Elliott a Park City Resident and the owner of Elliot Work Group Architecture at 364 Main Street. He spent ten years trying to get clarification on the MPD process in the Land Management Code and he commended the Staff for an excellent job of doing very thorough research on what the issues were, where the problems are and how they approached it. Mr. Elliott believed the Staff presented the Planning Commission with a well-thought out revision to the LMC. Mr. Elliott stated that he has processed more MPDs than anyone in town and if anyone is willing to go through that excruciating process they should be welcomed to do so. An MPD allows for intense scrutiny of the project and all the concerns and worries expressed this evening could be address in the process. With all other processes, if it is an allowed use and meets the criteria the project gets built without any public input. Mr. Elliott stated that an MPD is the most interesting public process in Park City.

Regarding the specific revisions, Mr. Elliott that the 25% lawn area could be an issue in something like an affordable housing project where the desire is to have a play area for children or other gathering spaces. He suggested maximizing the percentage to 50% to allow for flexibility on how those spaces could be adapted. Mr. Elliott believed the overall 30% open space was an appropriate number for the zones being addressed. He noted that the open space on 25' x 75' lots in Old Town are well below 60%. It only starts approaching 30% when terrace spaces, driveways, porches, overhangs and other pieces that are not counted as open space are included. Mr. Elliott thought the 30% number was reasonable for the Light Industrial zone because that area is primarily covered in asphalt.

Mr. Elliott asked everyone to look at the big picture in the process. It is a good move to put MPDs in the HRC and it is also good to locate it and identify where and when it should be required. Mr. Elliott supported the amendment as proposed with the exception of reducing the lawn area.

Mike Sweeney, a property owner in Park City, stated that he has been around since 1957 and he has personally gone through probably the longest process in dealing with MPDs. Mr. Sweeney supported the current effort of looking at ways to improve the Land Management Code and provide additional tools to make better decisions. In watching how each individual Commissioner pays attention to the details tells the community at large that the Planning Commission does not make decisions willy-nilly. They are looking at ways of providing better

tools to make better decisions. Mr. Sweeney believed that was the goal of the Staff, as well. He has been working to improve Park City for 30 years and he has participated in many Planning Commission and City Council meetings. Mr. Sweeney stated that Park City was very fortunate to have the people they do serving the community because they have the dedication and the diversity of opinion to look at something and get the job done better. Mr. Sweeney supports the idea of continually looking at ways to improve the way decisions are made to make the community better. He lived in Park City when it was a ghost town and he has seen how the city has progressed as one of the best destination resorts in North America. He would like to continue to participate in the evolution of Park City to make it the best it can be.

Chair Worel closed the public hearing.

Commissioner Wintzer remarked that this was the best public input the Planning Commission has received on both sides of the issue. Everyone came prepared and they were all very civil. He commended the public for their comments this evening.

Commissioner Wintzer felt the current tools available to the Planning Commission were adequate to accomplish what they wanted. He was not ready to go as far as an MPD in this particular zone because it would open too many doors that they do not fully understand at this point. It is important to find a way to dialogue with the public on projects, but he was not ready to consider an MPD. He noted that size and scale is the biggest problem in Park City, which was evident in the last project; and size and scale is eroding the town. Commissioner Wintzer believed allowing MPDs would open the discussion for more mass and size. He was not opposed to all the changes discussed, but he was very nervous about allowing MPDs.

Commissioner Hontz shared Commissioner Wintzer's concerns about size, scale and mass, particularly in Old Town. She believed some of the changes discussed this evening would actually make it better and protect the town because the MPD process is horrific for anyone who has done it. Commissioner Hontz would want anyone who plans a project that meets the four criteria to go through an MPD. However, the issue comes down to compatibility with height, mass and scale. She pointed out that the proposed language was not a change, particularly for the HRC zone. It only strengthens the existing language and helps address the concerns regarding the HRC zone. Her concern is that the open space discussion begins to erode what might otherwise occur in those districts. Based on their comments regarding types of open space, Commissioner Hontz suggested that if the Staff could come back to the Planning Commission with minimum standards or additional language, they may be able to achieve something that makes everyone comfortable. In terms of reducing the turf area to 25%, Commissioner Hontz agreed with the comment that it would greatly reduce the ability to add play areas or gathering spaces. She thought that needed more discussion.

Commissioner Hontz felt it would be important to limit the number of MPDs coming in for these projects. She referred to Section 15-6-5 – Building Height. The current Code reads, "Height exceptions will not be granted for Master Planned developments within the HR-1 and HR-2 zoning districts". She pointed out that the limitation already exists and there would not be additional heights in those two districts. Commissioner Hontz proposed adding HRC and HCB

to the existing language. The heights in those zones are 32 feet and 45 feet. She could possibly be persuaded to go up an additional 10 feet in those zones; however, in looking at the purpose of those two zones, they are meant to be pedestrian friendly, less height, lower elevations and specific setbacks. Commissioner Hontz stated that they would be missing something in the analysis if they do not acknowledge that those zones do not want to encourage height. She believed that issue needed to be addressed by either saying that height exceptions will not be granted in those zones, or by limiting the height upfront.

Commissioner Hontz believed most of the proposed changes were necessary because the Code does not read clearly, particularly in Sections A and B, and the language needs to be cleaned up as soon as possible.

Commissioner Gross felt it was difficult to have the public discussion without an actual application. They were trying to develop the Code in a way that someone could come in and do their business and be part of the community; and unfortunately the community has become separated as a result. Commissioner Gross thought it was important to do something that that gives everyone the ability to control their fate. If they do not have the right Code to accomplish that, the Code needs to be changed. Regardless of whether it is the Kimball Arts Center or another unknown project, if they keep the status quo they would never stand a chance to keep things the way everyone wants it to be moving forward. Commissioner Gross had concerns with the open space, parking and several other issues that needed more discussion. He preferred not to speak to the Kimball Arts Center because it is not a real application. Commissioner Gross thought they should do whatever is possible to ensure that the Planning Commission and the public have as much input as possible in the process.

Commissioner Strachan stated that MPD applications are basically exceptions to the existing zoning, and that is fine as long as it meets certain criteria. He believed the idea works well in theory; however, the most controversial projects over the past ten years have all been MPDs. The reason for the controversy is that MPDs projects are exceptions to the zoning they all agreed on. Commissioner Strachan believed that an MPD sets up the Planning Commission, the City, and the public for controversy every time. They are controversial and they please no one. He thought there was a nice balance now where MPDs are allowed in certain zones. There have been few exceptions that did not come without a fight, and he anticipated that there would be more. Commissioner Strachan could see no need to expand the use of the MPD tool. Rather than make exceptions to the zone, the logical approach is for an applicant to request a zone change if they cannot meet what is allowed in the zone.

Commissioner Strachan thought they could rework the language and change the open space requirements and the percentage of lawn area. The large over-arching changes such as allowing MPDs where they are not currently allowed would not be in anyone's best interest.

Chair Worel asked if it was possible to add language that would allow for public discourse before an application is made. Director Eddington stated that the City used to allow work session opportunities for applicants to hear feedback from the Planning Commission before they spent considerable time and money on a design. He noted that the work session process was

not limited to MPDs. Commissioner Strachan noted that the procedure for a work session was eliminated in the last round of LMC amendments. Director Eddington believed there was an opportunity to re-implement that process. Otherwise, there is no other mechanism unless the Planning Commission puts the burden on the applicant to come in for a zoning change or other types of large scale changes that could result in spot zoning.

Chair Wintzer understood that pre-MPD opportunity is still addressed in the Code, but MPDs are not currently allowed in the HCB and HRC zones. Commissioner Hontz thought it was important to clarify that under the current Code. The Kimball Arts Center or any applicant in that location could not come in under an MPD because the conceptual plan does not meet the criteria to require an MPD. However, adding the words public and quasi public as proposed, would trigger an MPD for that property. Commissioner Hontz stated that if that same building was used for lodging, it could come in with an MPD. She reiterated that the zone was not changing. The change was precipitated by two words, "public and "quasi-public" that would allow that particular application to come in.

Director Eddington pointed out that the Code as currently written was ambiguous, but he believed that Commissioner Hontz was correct. Planner Whetstone remarked that B as written is very confusing, which is why that language was stricken and replaced with better language. Commissioner Hontz stated that if the concern relates to one particular location and the end result, that concern could be resolved by striking "public and quasi-public". However, in her opinion, an applicant could still argue that they meet the four criteria for an MPD. Commissioner Hontz suggested that the best solution would be to address the specific issues of concern to avoid ambiguity.

Based on the comments and concerns, Planner Whetstone recommended that the Planning Commission not take action on this Chapter this evening and allow the Staff time to re-work the type of open space, open space percentage and the in-lieu fee, as well as other issues discussed this evening.

Chair Wintzer stated that he walks Main Street daily and he spends most of the time trying to find the sunny side of the street to walk. If they allow height it may not affect open space but it would affect open sunlight, which is critical to Main Street and an important part of making a community viable. Mountains and sunlight sell in Park City and it would be a huge mistake to spend a lot of time trying to approve something that would take away those elements.

Commissioner Strachan asked for the current HR-1 and HR-2 height limitations. Commissioner Hontz replied that it was 27-feet and 32-feet. She noted that height in the HRC is 32-feet and HCB is 45-feet. Commissioner Wintzer suggested that the Staff come back with an analysis of what would occur with different heights and sun screening.

Commissioner Strachan supported adding the HRC and HCB zones to the proposed Section 15-6-5. The Commissioners concurred. Director Eddington asked if Commissioner Strachan was recommending that it be added with no height exceptions or whether they would consider looking at 50% of the zone height as an addition based on studies. The Commissioners did not want height exceptions allowed in the HRC and HCB zones.

Chair Wintzer requested that the Staff come back with a matrix comparing what could be done under the existing zone versus what could be done with an MPD.

Director Eddington clarified that there was consensus among the Planning Commission regarding the proposed language in 15-6-2(A) – Applicability, to leave in all zones and only address the HRC and HCB in terms of height limits. As currently written, the Code is not clear whether an MPD is allowed in all zones but it was perceived to be. The new language clarifies that it is all zones.

Referring to Commissioner Hontz's comments, Commissioner Strachan thought it was important to have a proposed definition of public or quasi-public. Director Eddington remarked that it was included in the definitions. He read, "Public is defined as a use operated exclusively by a public body to serve the public health, safety and general welfare". A quasi-public use is a use operated by a private, non-private, educational, religious, recreational, charitable, or philanthropic institution serving the general public".

Commissioner Strachan thought Public and Quasi-Public should be capitalized in the definitions, and should say "Public Uses" with "Use" capitalized and "Quasi-Public Use" capitalized.

Commissioner Strachan asked if there was a definition for Industrial, and if so, that should also be capitalized. Director Eddington stated that there was not a definition for Industrial, and the Staff would write one. Commissioner Strachan thought "Commercial and Industrial" was redundant language. Planner Whetstone pointed out that it was actually Light Industrial (LI). Park City does not have a zone that allows straight Industrial business. Planner Whetstone thought that they should also define a "lodging project".

The Planning Commission moved on to the remaining LMC Amendments.

Chair Worel stated that due to the late hour and the number of amendments that still needed to be discussed, Planner Francisco Astorga would give a presentation on Stories and the Planning Commission would discuss the proposed changes at a work session on December 12th.

Planner Astorga referred to page 164 of the Staff report, and an added regulation related to the split level concept. He had failed to put the language in the ordinance and he wanted that mistake clarified. He noted that the regulation language should be added between bullets C and D on pages 198, 200 and 201. The regulation read, "The overall height of a structure measured from the lowest point of the finished floor to the highest exterior ridge point shall not exceed thirty-seven and a half feet (37.5')". Planner Astorga noted that the language was introduced to the Planning Commission on September 12th, at which time the Commissioners had issues with the language and wanted to explore specific scenarios.

Planner Astorga stated that the Staff had prepared the different scenarios and wanted to hear as much input as possible from the Planning Commission. However, due to the late hour this

evening, there was not enough time to sufficiently review the scenarios and give the Planning Commission the opportunity to brainstorm and provide comments. He noted that the regulation was applied to scenarios on a flat lot in the worst case scenario. The same was done on uphill lots at 15% grade, 30% grade, 45% grade and 60% grade. Consideration was given to the fact that many buildings are not historic and could be demolished for brand new construction.

Planner Astorga noted that Commissioner Thomas was absent this evening and his input on the regulation would be valuable based on his professional expertise. Planner Astorga apologized if any members of the public had waited for this discussion, but he felt it was better to wait and give the issue the time it needs to make sure everyone is on the same page and that they fully understand what was adopted in 2009.

Planner Astorga briefly reviewed some of the visuals to give the Planning Commission and the public a preview of the massing scenarios.

Commissioner Hontz was unsure if she could support the regulation because the historic portion of the structure could be on the bottom. She would like to see the step on new construction. Director Eddington stated that the Staff would have drawings to present at the next meeting to help address her concern. Commissioner Hontz felt that by now the Planning Commission should have a good understanding of the changes made in 2009, but it would be important to understand the effects of applying the new definitions. At this point, she was not comfortable with half stories and split levels shown in the scenarios provided. Commissioner Strachan agreed. He suggested that Planner Astorga redraft a couple of options because the ones shown were difficult to understand.

Planner Astorga clarified that he was not speaking about stories at this point. His comments related to the regulation regarding overall height on page 164 of the Staff report. Commissioner Strachan requested that Planner Astorga re-draft the definition of split level and story. Commissioner Wintzer suggested that the Staff draft two or three definitions to give the Planning Commission a choice.

Chair Worel opened the public hearing.

Ruth Meintsma, a resident at 305 Woodside, addressed the overall height of 37.5 feet. She assumed the language, "...from the lowest point of the finished floor..." probably means from the lowest point of the lowest finished floor. Ms. Meintsma thought better language would be, "from the lowest point where grade meets footprint", because often the lowest floor is quite a bit above grade and sometimes on piers. She requested that the Planning Commission consider her suggested revision because where the grade meets footprint is where the massing begins visually.

Commissioner Hontz thought Ms. Meintsma made a good point, however, under the current Code you could not build on piers because of the four-foot return to grade regulation. Planner Astorga noted that it would also not be approved through the design guidelines.

Director Eddington agreed that Ms. Meintsma made a good point and the Staff would discuss her revision.

Craig Elliott commented on the Story issue. He was generally comfortable with the resolution, but he wanted to confirm his understanding of how the zone works. On a very large parcel with multiple structures the height resets with each structure. He wanted to make sure that was still the case.

Commissioner Strachan replied that it was subject to discussion at the work session on December 12th.

Mr. Elliott felt it was important to keep because otherwise the Code, particularly in the HR1 addresses designers to create smaller buildings in scale and mass. If they do not allow that to happen in this form, they would encourage larger buildings in scale and mass on those types of properties. The unintended consequence of trying to limit something would only create what they do not want. Mr. Elliott wanted to make sure this issue was addressed in the process so they get the right things in the historic district.

Commissioner Wintzer asked Mr. Elliott to give an example. Mr. Elliott stated that he has worked on several properties, but he was hesitant to give an example because those projects may come back to the Planning Commission. Mr. Elliott provided a hypothetical example to explain the importance of keeping with what the Code currently allows to keep structures smaller in the historic district. Chair Wintzer was concerned about the cross canyon views. Mr. Elliott stated that the nature of Park City is that looking across the canyon you see a series of buildings that march up and have different colors, shapes and forms. That was the intent of his comments at a previous meeting when he talked about the quality of design and the ability to solve those issues as designers.

Chair Worel closed the public hearing.

Planner Astorga remarked that interpretation of story was the reason why they were having this story discussion. Based on discussions in July and August the height did not reset. Commissioner Strachan believed there was a difference of opinion as to how to read the Code based on Mr. Elliott's comments. The purpose of the work session is to determine what they uniformly believe the Code says.

Planner Whetstone reviewed the list of topics for discussion on page 154 of the Staff report and identified the ones that were time sensitive for recommendations to the City Council.

1. Pre-application process, review process for Historic District Design Review and revisions to the notice Matrix (Chapters 1 and 11.

Planner Whetstone referred to page 157 and noted that language was added to Strongly recommend that the Owners and/or Owner's representative attend a pre-application conference with the Planning and Building Departments. She clarified that the existing language requires a

pre-application conference. She explained that if a pre-application conference is required it becomes an application and can be vested. The Staff felt that changing the language to "strongly recommended" resolved many of the issues. A pre-application conference benefits the applicant and the Staff believed the applicants would still request one.

Chair Worel opened the public hearing.

There were no comments.

Chair Worel closed the public hearing.

MOTION: Commissioner Wintzer moved to forward a POSITIVE recommendation to the City Council for the amendment to Item 1 as written. Commissioner Hontz seconded the motion.

VOTE: The motion passed by all Commissioners present.

Planner Whetstone stated that (B) on page 157 address proposed language to the Appeals process for administrative applications (HDDR and Administrative CUPS) including revisions to the Notice Matrix. She noted that the changes were numerous and they were all included in Exhibit A and H for Chapters 1 and 11 on page 190 of the Staff report.

Planner Whetstone noted that Exhibit A also adds historic mine waste in the Park City Soils Ordinance as a CUP requirement in the criteria in Chapter 1, as reflected on page 191 of the Staff report.

Assistant City Attorney McLean noted that the revisions responded to Planning Commission direction at a previous meeting where the Planning Commission recommended that the Staff come back with a process for a public hearing at the Staff level for HDDR, and an appeal of that decision would go to the HPB. Anything beyond that would go directly to District Court. Planner Whetstone noted that the language was reflected on Exhibit L on page 256.

Commissioner Hontz noted that page 324 of the Staff report lists all the administrative CUPs that would be streamlined through the process by the Planning Director. Assistant City Attorney McLean clarified that an appeal of the Administrative decision would come before the Planning Commission.

Chair Worel opened the public hearing.

There were no comments.

Chair Worel closed the public hearing.

MOTION: Commissioner Strachan moved to forward a POSITIVE recommendation for the changes in Chapters 1 and 11 of the Land Management Code dealing with Administrative

CUPs, notice of Appeals and the Notice Matrix for the appeals process, and the definitions, which includes mining waste in 15-1-10-15. Commissioner Hontz seconded the motion.

VOTE: The motion passed unanimously by all Commissioners present.

2. Roof pitch, horizontal stepping, stories and exceptions for Historic Structures in the Historic District, clarification of open space and uses (Applies to HRL, HR-1, HR-2, HRM, HRC, HCB and RC (Chapters 2.1, 2.2, 2.3, 2.4, 2.5, 2.6 and 2.16)).

Planner Whetstone noted that only two items were time sensitive. One was the conditional Use footprint in the HRC and the HCB to protect the commercial district from community uses that may relocated and create problems with bars and restaurants. The second was the addition of B, to allow bars in the HR-2 zones.

Planner Whetstone commented on the list of conditional uses and noted that there was a footnote for all conditional uses that "no community locations as defined by the Utah Code, which is the Alcohol Beverage Control Act, are permitted within 200 feet of Main Street unless a variance is permitted for an outlet as defined by Utah Code 32B1202.

Commissioner Hontz asked if they should include Swede Alley. Chair Worel could see no reason why Swede Alley should not be included. Planner Astorga referred to the map and noted that Swede Alley was in the HCB zone.

After further discussion regarding Swede Alley, Assistant City Attorney McLean recommended that the Planning Commission move forward with proposed language and direct the Staff to determine if Swede Alley should be included. If it needs to be included the Planning Commission could address it when they discuss LMC amendments on December 12th.

MOTION: Commissioner Hontz moved to forward a POSITIVE Recommendation to the City Council for the changes to Section 15-2.5-2, Uses as written on page 160 of the Staff report; and 15-2.6-2(B) Conditional Uses. Commissioner Wintzer seconded the motion.

VOTE: The motion passed unanimously by all Commissioners present.

Planner Whetstone referred to the handout she had passed out this evening and the page regarding conditional uses in the HR-2 zone. Planner Whetstone stated that the recommendation is to allow a bar and special events with the footnote that these are allowed in historic structures within subzones A and B subject to compliance with the criteria listed for Subzone A and Subzone B.

Planner Whetstone remarked that the criteria for Subzone A has to do with the area between Main Street and the HR-2 zone. The language allows a conditional use permit to expand a Main Street use into the HR-2 Zone provided that it meets the criteria listed in the LMC..

Chair Worel opened the public hearing.

There were no comments.

Chair Worel closed the public hearing.

MOTION: Commissioner Hontz moved to forward a POSITIVE recommendation to the City Council on 15-22.3-2B, Conditional Uses, specifically (29) bar and (30) special events. Commissioner Wintzer seconded the motion.

VOTE: The motion passed unanimously by all Commissioners present.

5. Special Event overcrowding permit process and requirements (Chapter 4).

Planner Whetstone reported that the Chief Building Official will no longer allow overcrowding permits. Any use of occupancy that violates the IBC for occupancy loads, even for special events, will not be approved. However, the applicant can provide a different interior layout by a licensed architect or engineer showing the ability for a higher occupancy load for that particular site plan; but they would still need to fall within a certified occupancy load for that square footage and use. Planner Whetstone noted that the language was revised to replace "overcrowding" with temporary change of occupancy administrative permit.

Planner Whetstone referred to (B) Duration, and noted that the language was changed from 30 days to 10 days prior to the event to submit an application under Planning Director approval.

Commissioner Wintzer asked about public noticing. Director Eddington stated that signs are posted 10 days prior to the event. He noted that the LMC language says no less than 10 days, but 11 days would give the Staff more time to post the signs. Commissioner Wintzer suggested changing it to 15 days. Director Eddington felt it was appropriate to say no less than 15 days prior to the event, and allow the Planning Director to reduce the time frame to ten days.

Commissioner Strachan pointed out that the language did it not specifically say that the maximum occupancy in the IBC could not be exceeded. Director Eddington stated that the Staff worked with the Chief Building Official on this amendment. The IBC no longer allows for overcrowding so that term can no longer be used. The term "temporary change of occupancy" was taken from the IBC. Director Eddington stated that temporary change of occupancy is based on a mathematical equation. The requirement for seated occupants is a higher square footage than for standing occupants.

Commissioner Strachan recommended that they define temporary change of occupancy in the LMC. Commissioner Wintzer thought a better approach would be to reference the IBC because if that language changes they would not have to change the Land Management Code to stay current with the IBC.

Assistant City Attorney McLean stated that one of the additional criteria was the floor plan that has been sketched in the past on napkins or another informal means. A change for the amendment is to require certification by a licensed Utah Architect or Engineer.

Planner Whetstone noted that additional language states that, "The Chief Building Official will review this information for compliance with the IBC." Commissioner Strachan pointed out that the language only applies to the floor plan. It does not say that the application must be reviewed in accordance with the IBC. Planner Whetstone stated that the floor plan language says, "The engineer shall indicate the maximum occupancy number for the specific use and floor plan." Commissioner Strachan was comfortable with the sentence as written.

Chair Worel opened the public hearing.

There were no comments.

Chair Worel closed the public hearing.

MOTION: Commissioner Strachan moved to forward a POSITIVE recommendation to the City Council to approve the amendments to the Land Management Code Section 15-4-20 as outlined on pages 166 and 167 of the Staff report as amended. Commissioner Hontz seconded the motion.

VOTE: The motion passed unanimously by all Commissioners present.

10. Clarify criteria for change of a non-conforming uses to another non-conforming use of similar or less intensive use. (Chapter 9)

Planner Whetstone referred to the changes in her handout regarding Section 15-9-5 and explained the difference between the proposed changes on pages 220 and 221 of the Staff report and the revised changes proposed in her handout.

Planner Whetstone noted that the Code states that "No Non-Conforming Use may be moved, enlarged, altered, or occupy additional land, except as provided in this Section". She pointed out that Section E talks about historically significant buildings. The handout better clarified the intent under E, that Historically significant buildings, that a change of non-conforming use to another non-conforming use of similar or less intensive land use. It is reviewed by the Board of Adjustment and is subject to the criteria that, "A Non-Conforming use located on a Lot or Parcel containing a building or structure that is included on the Park City Historic Sites Inventory, may be changed to another Non-Conforming Use of a similar or less intensive land use type". Planner Whetstone remarked that Park City now has Historically Significant and Landmark Structures. Since the sites inventory can change, referencing the Park City Historic Sites Inventory in the LMC language instead of "Historically Significant" building would address all structures on the Historic Sites Inventory at the time.

Planner Whetstone referred to the criteria and the change to 4 that the application must comply with the following criteria and delete "the applicant approves the following criteria".

Planner Whetstone commented on changes reflected on page 221 (a) of the criteria that talked about including modifications to buildings elevations to bring the building into compliance with the design guidelines. She was concerned that the Board of Adjustment's decision on whether the use is less intense and whether they would allow the change in use would be confused with the Board of Adjustment taking action on the design review. Planner Whetstone clarified that anything historic must go through HDDR. The design review takes place with the Staff and the appeal process then goes to the HPB, as opposed to the Board of Adjustment making the design decision.

Planner Whetstone remarked that the revised language separates the actions of the Board of Adjustment on use from the HPB and Staff review on design.

Chair Worel opened the public hearing.

There were no comments.

Chair Worel closed the public hearing.

MOTION: Commissioner Wintzer moved to forward a POSITIVE recommendation to the City Council for the proposed changes to 15-9.5 as outlined. Commissioner Hontz seconded the motion.

VOTE: The motion passed unanimously by all Commissioners present.

4. Revise parking requirements for multi-family units and bed and breakfast Inns. (Chapter 3)

Planner Whetstone noted that the changes only addressed multi-family apartments and condominiums. The changes were outlined on page 165 of the Staff report. Based on the proposed changes, one parking space is required for up to 1,000 square feet; 1-1/2 spaces between 1,000-2000 square feet; and 2 spaces for greater than 2,000 square feet.

Planner Astorga stated that by definition, a multi-unit building is four or more units.

Planner Whetstone stated that for a bed and breakfast, the change is to add one parking space per on-duty manager.

Chair Worel opened the public hearing.

Craig Elliott believed the proposed Code revisions for parking codify what everyone has been talking about for the last 8 years in terms of parking management and projects.

Chair Worel closed the public hearing.

MOTION: Commissioner Strachan moved to forward a POSITIVE recommendation to the City Council for the amendments to Land Management Code 15-3-6(A) and (B) as outlined on page 165 of the Staff report. Commissioner Hontz seconded the motion.

VOTE: The motion passed unanimously by all Commissioners present.

6. Incorporate landscape plan requirements and mechanical screening in the Architectural Review chapter. (Chapter 5)

Planner Whetstone referred to page 167, 15-5-1 - Purposes and Policy, and noted that landscaping was added to the language purpose statement. A paragraph was also added to the last chapter of the purpose statements, to include the intent of the section to encourage and implement water conservation practices for landscaping. The paragraph identifies specific criteria and recommendations.

Planner Whetstone noted that language was also added to 15-15-5 – Architectural Guidelines to address landscaping and patios. The proposed language was redlined on page 168 of the Staff report. She noted that the Planning Commission had discussed permits for patios and other flatwork at a previous meeting.

Planner Whetstone noted that the proposed language shows a 25% lawn area and she asked if that should be changed to 50% as discussed earlier this evening. Commissioner Wintzer asked if they could leave 25% and add an exception for playgrounds, etc. Director Eddington suggested that they increase the lawn area up to 50%, and if the Staff can find better language prior to the next meeting, they could bring it back to the Planning Commission. He clarified that if the maximum is “up to” 50% that does not mean a project would always have the maximum.

Commissioner Hontz suggested that the percentage should be lower for Old Town. Commissioner Strachan thought they should look at percentages by zone.

Commissioner Strachan was also bothered by the requirement to require a complete landscape plan for all building permit applications, particularly since the City recently passed the requirement to obtain a building permit if someone builds a deck on their home.

After further discussion, Chair Worel recommended that the Planning Commission continue this item and allow Staff time to draft language to address their concerns.

Chair Worel opened the public hearing.

There were no comments.

Chair Worel closed the public hearing.

MOTION: Commissioner Strachan moved to CONTINUE the proposed LMC amendments in 15-5-1 and 15-5-5 to December 12, 2012. Commissioner Wintzer seconded the motion.
VOTE: The motion passed unanimously by all Commissioners present.

7. Clarify seasonal lighting display. (Chapter 5)

Planner Whetstone referred to page 169 of the Staff report. She noted that the Municipal Code states that seasonal lighting is permitted from the November 1st to April 15th. However, the LMC states November 1st to March 31st. The proposed change would revise the dates to tie the LMC to the Municipal Code.

Chair Worel opened the public hearing.

There were no comments.

Chair Worel closed the public hearing.

MOTION: Commissioner Wintzer moved to forward a POSITIVE recommendation to the City Council for the proposed change to 15-5-5 - Seasonal Lighting Displays, as outlined on page 169 of the Staff report. Commissioner Hontz seconded the motion.

VOTE: The motion passed unanimously.

11. Process for permitting relocation and/or reorientation, as well as Disassembly and Reassembly of Historic Structures.

Planner Whetstone reported that the Planning Commission previously discussed this item before the Staff took it to the HPB. The HPB approved of the changes proposed. Planner Whetstone referred to page 179 of the Staff report and noted that the primary revision was to strike Criteria 1 under A - Criteria for the relocation and/or Reorientation of Historic Buildings and/or Structures on a Landmark or Significant Site. The Staff felt the criteria could create problem and felt it was better to remove it.

Planner Whetstone referred to the added footnote on page 179 which clarifies that the Planning Director and Chief Building Official that unique conditions warrant the proposed relocation. She explained that the Planning Director and the Chief Building Official would make the determination if the HPB was hearing the relocation on appeal. She noted that the same language applied under the criteria of disassembly and reassembly. Director Eddington noted that the footnote should be correctly labeled as 1, not 2. Commissioner Hontz noted that deleting the first Criteria would change the numbering for the remaining Criteria.

Chair Worel opened the public hearing.

Ruth Meintsma asked if there was any discussion on what a unique condition would be beyond the definition.

Director Eddington stated that in 2009 the Staff made the decision not to have a definition because each unique condition would be different. They have not written a definition because it would be hard to list what those might be.

Ms. Meintsma asked if reorientation should be defined. She understood that if a historic structure is exactly square and sits on a square footprint, the structure could be spun in a different direction on the same footprint. Director Eddington replied that this was correct.

Planner Whetstone remarked that there was not a definition for reorientation in the LMC and she would check to see if it was defined in the Design Guidelines.

Chair Wintzer closed the public hearing.

MOTION: Commissioner Hontz moved to forward a POSITIVE recommendation for Sections 15-11-12 and 15-11-14 regarding relocation and/or orientation of a historic building and/or historic structure as amended on pages 179 and 180 of the Staff report. Commissioner Strachan seconded the motion.

VOTE: The motion passed unanimously by all Commissioners present.

Commissioner Strachan felt it was best to continue the changes to the Definitions to the next meeting, with the exception of xeriscape and impervious surface, which have already been discussed and forwarded to the City Council. Director Eddington noted that xeriscape would still be included because that was not forwarded to the City Council.

MOTION: Commissioner Strachan moved to CONTINUE the definitions to December 12, 2012. Commissioner Wintzer seconded the motion.

VOTE: The motion passed unanimously.

The Park City Planning Commission meeting adjourned at 10:00 p.m.

Approved by Planning Commission: _____

EXHIBIT F



Park City Public Art

Bench and Bike Rack
1200 Little Kate Rd
Racquet Club Park

Making Tracks
2497 N SR 224
Olympic Sculpture
along Hwy 224

Police Center Art
2060 Park Ave
Inside the Police
Station Lobby

Bus Shelter - Dragon
1723 Kearns Blvd
Adolph's Bus Stop

Bus Shelter - Arts Kids
2262 Kearns Blvd
Learning Center Bus Stop

Bus Shelter - Dogs of Bark City
1776 Park Ave
Albertson's Bus Stop

Brave Heart
Near Rail Central

Bus Shelter - Flames
1751 Park Ave
Park Ave. Condos Bus Stop

Fish
1374 Sullivan Rd
Behind the Old Miners Hospital

Snowflakes
1374 Sullivan Rd
Front of Miners Hospital

Bus Shelter - Copper
1250 Park Ave
Skate Park Bus Stop

Bus Shelter - Good Book
1231 Park Ave
Library Bus Stop

Sound Garden
1200 Sullivan Rd
South of Skate Park, along Poison Creek Trail

Life in Ontario Mine
780 Main St
In tunnel along the Poison Creek Trail

Franz the Bear Bench
560 Main St
Along sidewalk that spans Swede Alley and Main St

Transit Center Mural
564 Swede Alley
Inside the Old Town Transit Center

Muses
564 Swede Alley
Outside the Old Town Transit Center

Sheltering Aspens
445 Marsac Ave
City Hall South Entrance

Miner
405 Main St.
Miner's Park

Bus Shelter - Wild Star
7620 Royal St E
Silver Lake Bus Stop



Fixtures



Fixtures



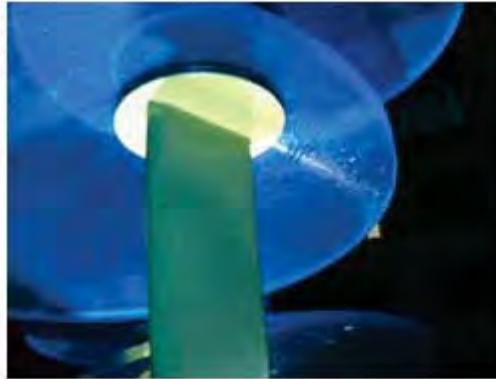
Art



Fixtures



Art



Sculpture

Sculpture



U.S. Flag



PARK CITY MUNICIPAL CORPORATION
HISTORIC PRESERVATION BOARD
MINUTES OF NOVEMBER 7, 2012

BOARD MEMBERS IN ATTENDANCE: Dave McFawn, Puggy Holmgren, Marian Crosby, John Kenworthy, Katherine Matsumoto-Gray, Judy McKie, David White.

EX OFFICIO: Thomas Eddington, Matt Evans, Kirsten Whetstone, Polly Samuels McLean, Patricia Abdullah

ROLL CALL

Chair McFawn called the meeting to order at 5:06 p.m. and noted that all Board Members were present.

Chair McFawn suggested that the Board rearrange the agenda and move the work session discussion to the end of the meeting, since there was only one item under the Regular Meeting agenda that involved an applicant and the public. The Board concurred.

REGULAR MEETING

1. 101 Prospect Street - Grant

Due to a conflict on this project, David White recused himself and left the room.

Planner Matt Evans reviewed the grant application for an accessory structure at 101 Prospect Avenue. Both the main dwelling and the accessory structure are Landmark Sites designated on the Historic Sites Inventory. The applicant recently received approval for Historic District Design Review to replace the foundation under the existing accessory structure, which is a traditional carriage house/garage.

As shown in the photos provided in the packet, the foundation of the existing garage is failing. The applicant proposed a solution to build the foundation as a solid cement foundation, which would create a basement under the existing garage. Planner Evans pointed out how the garage hangs off the downhill side of Prospect Street. The proposal is to rebuild a solid foundation and replace the existing pole structures with board form cement. Board form was typically common in the era the structure was constructed.

Planner Evans noted that the Planning Commission was provided with a copy of the grant breakdown that was submitted by the applicant. The Staff also provided a list of eligible amounts that the applicant could apply for, which included the outside prep and garage door and hardware. The total estimated cost to construction the foundation underneath the garage was \$51,857. The Staff determined that the cost of the eligible work was \$36,105. The ineligible costs would be items associated with making the new basement space habitable space, such as windows, electrical conduit, and other items to finish the interior. The only items that could be considered under the grant are things that reinforce the historic structure.

Under the grant program, that City would match a portion of the eligible cost. The Staff recommended that that the HPB review the grant request and consider awarding

noticing. He noted that the City did receive an appeal on 205 Main Street within that time frame. Chair McFawn outlined the number of places where an application is noticed and noted that during the appeal public input is welcomed. Chair McFawn suggested that Mr. Tedford visit the City website and sign up for electronic communication.

Mr. Tedford asked about the projected schedule for 205 Main Street. Director Eddington did not expect anything to happen with that project until January.

STAFF/BOARD MEMBER COMMUNICATIONS AND DISCLOSURES

Director Eddington thanked the Board members who attended the open house. He introduced Anya Grahn, the new Historic Preservation Planner, to those who had not met her at the open house. Director Eddington stated that Planner Grahn's primary focus would be to work with the HPB and to work on Historic District Design Reviews and other historic projects. She would also be involved in other planning projects. Planner Grahn would be working on updating the Historic Sites Inventory and the Historic District design guidelines.

Planner Whetstone noted that the Staff had discovered preservation easements on historic properties that were tucked away in a binder and those would be reviewed on an annual basis. Planner Grahn would also help with that project.

Patricia Abdullah reviewed an updated list of historic projects that was provided to the Board members.

WORK SESSION

Land Management Code

Planner Whetstone reported that the City updates the Land Management Code on an annual basis. The HPB was given a set of amendments that pertained primarily to historic districts. The Planning Commission would review and discuss the amendment at their meeting on November 28th and the Staff wanted to hear feedback from the HPB on items more specific to the Historic District.

Planner Whetstone noted that page 3 of the Staff report outlined the Chapters that would be amended. She suggested that it might be easier to discuss the LMC amendment by topic rather than Chapter. Planner Whetstone reviewed the five topics as outlined in the Staff report.

1) Pre-application process and the appeals process. (Chapters 1 and 11)

Planner Whetstone explained the current process, where the Staff approves the application and if that decision is appealed it goes before the HPB. If someone appeals that decision, under the current Code it can then be appealed to the Board of Adjustment and the BOA rules on whether the HPB went through the criteria correctly. An appeal of the Board of Adjustment decision goes to the Courts. Planner Whetstone noted that the current process forces an applicant to go through several appeal processes. The proposed amendment streamlines the process.

Planner Whetstone noted that the first redline on page 5 of the Staff report was under the Pre-application Conference. The language was amended to recommend a pre-application conference rather than require it. Planner Whetstone remarked that requiring things could lead to vesting issues. The Staff would strongly recommend a pre-application conference because it benefits the applicant to come before the design review team for guidance and solutions. The applicant would still need to apply for a Historic District Design Review if the project qualifies for that review.

Board Member White asked if there was a difference between submitting a pre-application and having a pre-application conference. He understood that a pre-application was required to start a project. Planner Whetstone clarified that a pre-application is required currently, but that would change to "strongly recommended" under the proposed amendment. Board Member White did not think it made sense to submit a pre-application and not meet with the Planners. Director Eddington remarked that the amendment would make the pre-application optional. Board Member White personally recommended a pre-application because it is a benefit to the applicant.

Board Member Matsumoto-Gray thought the current process as described sounded necessary. Director Eddington stated that some of it is necessary and the Staff was not recommending taking away from that. The amendment pertained to larger applications. If an applicant wants to forego the benefits of the design review team meeting they would have that option. He thought applicants would be foolish not to take advantage of the free design review team meeting, but they could if they did not want to go through the dual process.

Chair McFawn understood that the City and the Planning Department have heard feedback that the process is cumbersome and some applicants just want to submit an application. Board Member McKie thought the reason for the DRT was to make the process easier for everyone. She questioned why they were making the change.

Assistant City Attorney McLean stated that she recommended the proposed change from a legal standpoint. One could say that because the pre-application conference is required, that they should be vested from the point where they had to submit the first application. In addition, the pre-application conference is not a formal process. Someone could come in with one application and that could get rejected. The proposed amendment would make it clearer and the vesting would start at the beginning of the HDDR where a complete application is required.

Board Member McKie asked if that language could be put into the HDDR application. Ms. McLean answered no. Under the existing language a pre-application is required. Therefore, an applicant could claim in Court that they should be vested back from the point where they were required to do that step. Ms. McLean pointed out that making it a requirement poses a risk to the City.

Board Member Crosby asked if the Staff was recommending that an applicant could have a pre-app conference without filling out an application. She thought that was already part of the process. Director Eddington clarified that currently the applicant is required to complete a short application free of charge and submit it to the Planning

Department. The Planning Department then schedules a pre-application meeting the following Wednesday. Under the proposed amendment it would be recommended that the same process continue. Planner Whetstone noted that even though the process is required, plans are not required. The purpose of the meeting is to discuss a conceptual plan and ideas.

Planner Whetstone stated that the capacity of the HPB is to discuss the amendments and provide a recommendation to the Planning Commission. The Planning Commission would consider the recommendation in their discussion and make a formal recommendation to the City Council. The City Council would approve or deny the amendments.

Board Member Kenworthy recommended removing the requirement for a pre-application and accept the revised language.

Board Member McKie was less worried about the people who come in with small projects. She was more concerned about those who do a lot of work in town who will see it as one less step in the process; yet they will get upset when their plan does not fit the Code. Board Member Matsumoto-Gray thought it would make more work for the Staff if they review a project and have to send it back to the applicant. Director Eddington stated that it is easier when a project comes in as a pre-application because they can discuss and understand the design guidelines. It is better to know the requirements upfront before they design a project that ends up going back and forth between the Staff and applicant.

Board Member Kenworthy understood that the revised language would better protect the City. Director Eddington replied that this was correct because there is no formal vesting. However, he expected less than 5% of applicants would forego the DRT process.

Board Member White stated that in his experience with the process he has always been told when the applicant was vested. He never makes that assumption with any project. However, he understood the legal concerns in terms of risk.

Assistant City Attorney McLean pointed out that the Board did not need to be unanimous in their recommendation. She referred to the first page of Proposal Section and noted that one of the purposes of the HPB is to recognize the Planning Commission and City Council ordinances that may encourage Historic Preservation. This work session was brought to the HPB for input so the Planning Commission could consider their comments when making their recommendation to the City Council.

Board Member Crosby wanted to know what check and balance would assure that the pre-application meeting was recommended by the Planning Department when an applicant comes, if it is no longer a requirement. Director Eddington remarked that the recommendation could be added to the standard design review application. Planner Whetstone agreed that language could be added with a box to check asking if the applicant applied for or attended a design review. The application would be on file and there would be no question.

Planner Whetstone summarized that she would recommend the revised language to the Planning Commission with the suggestion to add language to the standard design review application.

2. Roof Pitch in the Historic District. (Chapter 2)

Planner Whetstone noted that current language in the Code states that the roof pitch must be between a 7:12 and a 12:12. A green roof or a roof that is not part of a primary roof design, such as a shed roof or a minor roof can be below the required 7:12 pitch. That requirement applies to all of HR1, HR2, HRL and also in the RC zone within two blocks of the Historic District. Planner Whetstone pointed out that the LMC also allows height exceptions for specific items.

Based on comments from Dina Blaes, the current language conflicts with the Design Guidelines because some designs on major roofs in the Historic District are appropriate and the 7:12 pitch would cause compatibility issues with the surrounding historic character. Planner Whetstone remarked that the roof pitch exception would allow the Staff to be more flexible during the design review process, but staying within the design guidelines for roof forms.

Planner Whetstone read the proposed language from page 6 in the Staff report.

Chair McFawn felt the language, “compatible with sites in the area” was ambiguous and he asked for clarification. Planner Whetstone replied that the notification area is 100 feet and a streetscape is typically three structures away. She cautioned against narrowing the area to be within 300 feet.

Director Eddington gave examples to demonstrate that it would need to be based on qualitative common sense. He understood that it is not always popular and some of it is a gray area, but that would be the best approach.

Board Member Matsumoto-Gray supported the proposed amendment regarding roof pitch. There was no opposition from the remaining Board members.

3. Clarification for permitting relocation and reorientation of historic structures and well as disassembly and reassembly (Chapter 11).

The proposed amendment was outlined on page 7 of the Staff report. Planner Whetstone noted that the language on the bottom of page 7, assembly and reassembly, was existing language and was redlined in error. The new proposed language in 15-11-14 was on page 8, and was simply the footnote in subsection (4) and the language of the footnote.

Planner Whetstone reviewed the criteria for the relocation and reorientation on page 7 and noted that criteria 1, “A portion of the Historic Building(s) and/or Structures(s) encroaches on an adjacent Property and an easement cannot be secured” was being removed. Criteria 2, 3 and 4 would remain. The footnote under the criteria was also added, as redlined on page 7 of the Staff report. The footnote says that the Historic

Preservation Board shall make this determination if the Board is formally considering the application. The Planning Director and Chief Building Official shall, at the hearing on formal consideration, submit a written statement or testify concerning whether unique conditions warrant the proposed relocation and/or reorientation on the existing site or to a different site.

Planner Whetstone noted that the intent of this section is to preserve the historic and architectural resources; and primarily preserve them where they exist if possible. Chair McFawn asked if any of the conditions would be changed. Planner Whetstone answered no.

Director Eddington corrected the redlined language to accurately state that the HPB shall make this determination if the HPB is hearing the application on appeal, since that is their formal role. That revision was consistent with the footnote language on page 8.

Board Member Holmgren questioned the reason for eliminating Criteria 1. Assistant City Attorney McLean explained that the recommendation came about in part because that particular exception can be manipulated. She used the example of the Claimjumper as a property that encroaches over the property line. The City would not allow the Claimjumper to move just because the adjacent property owner would not give them an encroachment agreement. If someone has a situation where a neighboring historic house encroaches onto someone's property and the owner refuses to give an encroachment agreement, the issue would need to be settled in District Court. Ms. McLean remarked that the City preferred to address the issue as opposed to creating manipulated situations.

Board Member Matsumoto-Gray understood that the unique conditions determination would still be in place for the HPB to consider if an issue could not be resolved.

The Board was comfortable with the proposed changes.

4. Addition review criteria for all Master Planned Developments. (Chapter 6)

Planner Whetstone stated that there are situations where MPDs are allowed in the Historic District. A typical master planned development for more large scale projects requires 60% open space and looks at architecture, affordable housing, etc. In the Historic District, requiring 60% open space on an infill or urban site would not result in compatible development. The language states that redeveloping projects or infilling and doing a master planned development in the Historic District, the minimum open space requirements is 30%. Language further states that for applications proposing the redevelopment of existing developments or infill sites, the Planning Commission can reduce the required open space to 25%.

Planner Whetstone noted that it was a two-tier process. One is to add redevelopment and infill sites; and the second is that the Planning Commission has the ability to reduce the amount of open space in exchange for project enhancements. Planner Whetstone read the project enhancements as outlined in the Staff report. The added

enhancements were “sustainable building design” and “including historic structures that are either on or off the site”.

Director Eddington explained that another reason for a reduction in open space is that in places like Bonanza Park and other areas a lot of the open space is incorporated in the setbacks around buildings. As the City tries to create a walkable community, those types of open space are not necessitating walkability and the village characteristics they would like. Having the ability to have smaller lots might encourage people to create more walkable districts. Requiring 60% open space for MPDs on Main Street or in Bonanza Park was not feasible, which was the reason for proposing the reduction.

Planner Whetstone noted that a master planned development is not required in the Historic District but they are allowed. An MPD in the Historic District allows flexibility for trade-offs and it gives the Planning Commission a larger review of the project.

Planner Whetstone pointed out that the recommended changes apply to MPDs throughout the City.

Chair McFawn understood that they were not talking about removing Landmark sites and that the changes would help towards restoring them. Planner Whetstone replied that this was correct.

Planner Whetstone noted that type of open space was another issue. The Planning Commission has the ability to designate the preferable type and mix of open space in a master planned development. She explained the different types of open space that can be considered in a project. Planner Whetstone read the proposed added language under Type of Open Space on page 9 of the Staff report, for redevelopment and infill projects in the GC, HRC, HCB and HR-1, HR-2 and HRM zones. The language states that for those zones open space may be utilized for project amenities such as gardens, greenways, pathways, plazas and other similar uses. Another option being considered is a fee-in-lieu for purchase of open space and parkland that may count towards open space requirements at a rate twice as much as the amount of open space required. The fee would be based on an appraisal and market analysis of the property. The in-lieu fee would be set aside in a fund designated for open space. Planner Whetstone stated that the fee-in-lieu process would be similar to the current processes for parking and affordable housing.

Planner Whetstone noted that an MPD allows additional height. The proposed change adds language more specific to the Heber Avenue sub-zone, which is part of the HRC Zone, on the north side of Heber Avenue between Park Avenue and Deer Valley Drive. The properties within the Heber Avenue sub-zone are the Kimball Arts Center and the vacant lot they own, Zoom, Sky Lodge and the Poison Creek Mercantile. She recalled that the current height in the HRC zone is 32 feet.

Board Member Kenworthy asked if the amendment would allow all those properties to go an additional 18 feet. Planner Whetstone replied that Poison Creek Mercantile and Sky Lodge were already an MPD and Zoom is a historic structure. That leaves the Kimball Arts Center.

To address the height question, Director Eddington stated that the current MPD does not have any height restriction. The 32 foot height Planner Whetstone mentioned was the HRC zone height. Director Eddington explained that the HRC zone has a height restriction of 32 feet. If a project qualifies for an MPD based on the criteria outlined on page 10 of the Staff report, the applicant could do an MPD, which allows for height exceptions. He noted that the Sky Lodge qualified to do an MPD several years ago and they were allowed to apply for a height greater than 32 feet.

Planner Whetstone clarified that the exception was not necessarily unlimited height. The current language states that, "The increase in building height does not result in increased square footage or building volume over what would be allowed in the zone with the required height."

In terms of the Sky Lodge, Board Member Kenworthy asked if the reduced height on Easy Street was used to go higher on the hotel portion. Director Eddington replied that it was.

Planner Whetstone pointed out that there were other existing criteria that may limit the height. The Staff recommendation for this LMC amendment is that height exceptions for Master Planned Developments in the Heber Avenue sub-zone shall be limited to 50 feet, even if all the volume has not been used.

Board Member Kenworthy asked about the potential height for the Kimball Arts Center. Planner Whetstone replied that a portion of the Kimball building could be 50 feet above the existing grade. The height can be moved around but it cannot be higher than 50 feet.

Director Eddington noted that there have never been height limits on MPDs and he anticipated an interesting discussion with the Planning Commission. As a comparison, Director Eddington believed the height of the Sky Lodge was 62-68 feet.

Board Member Matsumoto-Gray asked about the status of the Kimball Arts Center application. Director Eddington replied that the Kimball Arts Center has not submitted a formal application to the Planning Department. However, a conceptual design has been presented in terms of changes to the LMC for allowing MPDs. Any public input should relate directly to the LMC and not the Kimball Arts Center.

Board Member Crosby wanted to know what was compelling the need for this specific change to the LMC. In her opinion, if it isn't broken why fix it.

Planner Whetstone noted that on August 23rd the City Council held a work session regarding the Kimball Arts Center. At that time the City Council recommended that the Staff come up with options that would allow public dialogue regarding the award winning design of the Kimball Arts Center. She explained that under the current Code, if that design came into the Planning Department as a formal application, it could not be accepted because it would not meet the requirements of the Land Management Code. There would be no way to put the application out for public input. Planner Whetstone

stated that the City Council can talk about the design, but the Planning Commission is the approval body. The Staff could not bring an application to the Planning Commission unless it complies with the LMC. Director Eddington explained that the City Council directed the Staff to explore some opportunities for public dialogue. The MPD process would allow for that dialogue. The proposed change would also address master plans and clean up the language for other areas, including Bonanza Park. With regard to the Heber Avenue sub-zone, the change in the MPD could potentially open dialogue for the City with regard to the Kimball Arts Center and other properties within the Heber Avenue sub-zone.

Assistant City Attorney McLean pointed out that the proposed LMC amendment should be looked at in the realm of the direction from the City Council and not specific to any application because an application has not been submitted.

Planner Whetstone noted that the Staff did an analysis and looked at heights in that area before determining that 50 feet should be the maximum.

Planner Whetstone remarked that these LMC Amendments have been delayed with the Planning Commission because the Staff was researching historic information on the history of MPDs at the request of the Planning Commission. When that history is compiled, the Staff would present it to the HPB as well.

5. Applicability of Master Planned Developments in the Heber Avenue sub-zone (an overlay zone of the HRC District). (Chapter 6)

Planner Whetstone read the language on page 10 of the Staff report. "The Master Planned Development process shall be required in all zones, except the HR-1, HR-2 and HRL for the following: 1) a project of ten lots or greater; 2) hotels and lodging with 15 or more residential unit equivalents; 3) commercial, public, quasi-public or industrial projects greater than 10,000 square feet gross floor area; 4) all projects utilizing Transfer of Development Rights. Planner Whetstone noted that the primary change is that MPDs would be allowed in the HRM zone, which is the lower Park Avenue area.

Board Member Matsumoto-Gray understood that the Master Planned Development process would be required everywhere for the large projects Planner Whetstone had outlined, except in Old Town. Director Eddington stated that an MPD is required because the project must adhere to 15 stringent criteria. When reviewing a larger project it is important to look at more details and what the project entails. It is not required in the historic zones because large projects are not allowed in most of the historic districts.

Planner Whetstone noted that Part B of the Section identifies where MPDs are allowed but not required. An MPD process is allowed in the HR-1 and HR-2 zones only where HR-1 and HR-2 zones or properties are combined with an adjacent HRC or HCB zoned property. Planner Whetstone explained that there is an allowance for master planned Developments for properties on the west side of Main Street. She cited examples of different situations where an MPD would occur. Director Eddington noted that the

language in Part B was not changed; however, additional language was added for clarification.

Katherine Matsumoto-Gray thought it would be helpful to have a list that specifically identifies where MPDs are required, allowed but not required, and not allowed at all.

Planner Whetstone remarked that the MPD is required everywhere with some exceptions. However, language added as number 3 under Part B states that, "The property is located within the Heber Avenue Sub-zone", which means that a master planned development could be done in the Heber Avenue Sub-zone. That goes back to the City Council work session when the Council asked for a mechanism that allows for public dialogue. Planner Whetstone stated that there were several options, but the only viable option that provides the opportunity for public dialogue with a full application and public hearing is to allow an applicant to propose a master planned development in the HRC zone. Poison Creek and Sky Lodge were MPDs because those properties bisected a zone. The Kimball Arts Center was only in the HRC zone; however, the Staff did not think MPDs should be allowed in the entire HRC zone. Therefore, they decided that properties within the Heber Avenue Subzone should be allowed to do an MPD because the criteria would allow the dialogue.

Chair McFawn noted that the HPB could oppose the recommendation and it could still be included. Director Eddington stated that the Planning Commission also has the opportunity to provide input.

Planner Whetstone clarified that the primary change for the HPB to consider was the recommendation that "allowed but not required" would be the properties located in the Heber Avenue Sub-zone.

Board Member Crosby clarified that the Sky Lodge was allowed an MPD because it met the criteria of being a residential/hotel/commercial project. Planner Whetstone replied that it also met the crossed-out language on page 11 of the Staff report that said, "Provided the subject property and the proposed MPD include two or more zoning designations". That language allowed the Sky Lodge to be submitted under an MPD. She pointed out that the Kimball Arts Center does not cross zones, which is why it cannot submit an MPD under the current LMC.

Board Member Holmgren was opposed to the height limit and preferred to leave it open. Planner Whetstone asked if Ms. Holmgren was suggesting that they allow an MPD to be submitted, but eliminate the height restriction and let the criteria dictate the height. Board Member Holmgren answered yes.

Chair McFawn disagreed with Item 3 on page 11, which would allow MPDs within the Heber Avenue sub-zone. He did not think they should be exclusive to one section. Director Eddington asked if Chair McFawn would allow an MPD up and down Main Street. Chair McFawn thought they should allow it for everyone or not at all. His preference was not to allow any more MPDs in the historic district.

Board Member Matsumoto-Gray concurred with Chair McFawn. She could not see the motivation for singling out the Heber Avenue sub-zone.

Board Member McKie thought the motivation was the ability to open up dialogue. If they make this change the City can open up dialogue specifically with people they know are trying to create a project.

Chair McFawn felt they would be endorsing changes to this section of the Master Planned Development, as opposed to thinking about what they would want to do as the Historic Preservation Board. The Staff will take their recommendations to the Planning Commission and the Planning Commission will send a recommendation to the City Council. He believed the Staff came to the HPB as a courtesy to hear their input on these recommendations and how it affects historic preservation.

After further consideration, Board Members Holmgren, McFawn and Matsumoto-Gray did not favor allowing MPDs at all.

Board Member Kenworthy stated that the Mall is sitting vacant and he believed an MPD would allow something nice. He considers the Mall to be the biggest eyesore on Main Street and he would love to have a developer come in and do the right thing. However, that would probably need to include Park Avenue, similar to the No Name and other projects mentioned that were successful. Board Member Kenworthy was concerned that if they say not at all to MPDs, it would affect the Mall and other potential projects on that side of the street where they still need to address the sensitivities of Park Avenue.

Director Eddington explained that currently that side of Main Street is allowed to come in for an MPD because it bifurcates two zones. Board Member Kenworthy pointed out that the other side of Main Street would not be allowed an MPD and he was concerned about being too selective. He thought they should look at other exceptions that may allow something to function.

Board Member Matsumoto-Gray wanted to know the motivation for deleting the language in (B) on page 11. Director Eddington explained that the language in (B) was re-written for better clarification in new (B), Allowed but not Required, as Item 3 regarding the Heber Avenue Sub-zone.

Board Member Crosby could not support Item 3, allowing MPDs in the Heber Avenue Sub-zone. Planner Whetstone stated that if Item 3 was eliminated, the Kimball Arts Center would not be able to submit an MPD application because it is in the HRC zone, and an MPD would not be allowed in that area unless it crosses two zones. Therefore, it would have to meet the requirements of the zone.

Board Member Matsumoto-Gray understood that striking Item 3 would not prevent the Main Street Mall from being an MPD. Director Eddington replied that this was correct. Board Member Kenworthy noted that without Item 3 they would not be able to have the conversation with the public.

Board Member Crosby clarified that the City Council directed the Staff to explore LMC amendments that would allow public input on the Kimball Arts Center. Director Eddington explained that it was not direction from the City Council to the Staff. The Council only gave an indication that the Staff should consider methodologies and opportunities to possibly open the dialogue.

Planner Whetstone noted that the HRC language could be amended to allow MPDs in the HRC zone and not just specific to the subzone. Chair McFawn clarified that it would be broader than just the subzone area, but it would still allow for dialogue and not just for the Kimball Arts Center. Planner Whetstone noted that HRC is the Heber Avenue sub-zone and the east and west side of Park Avenue from the condos next to Bad Ass Coffee and down to where the bridge lands.

Board Member Kenworthy asked if the other property owners in the Heber Avenue sub-zone would have the same opportunity to come and have their discussions. Director Eddington stated that they would have the same opportunity, but it would depend on their density opportunities. Planner Whetstone noted that two properties were already MPDs, so if they came in with another application they would have to amend their MPD.

Chair McFawn was struggling because he likes historic preservation and he was nervous making changes to a master planned development that would prevent historic preservation. Board Member Crosby agreed. Chair McFawn stated that whether the City Council hinted or gave direction, the Staff came to the HPB for input and they could provide feedback either individually or as a unified Board. The Staff could take their comments under advisement or do whatever they wanted. Director Eddington clarified that their comments would be forwarded to the Planning Commission.

Board Members McFawn, White, Matsumoto-Gray, Crosby, and Holmgren thought the language in Item 3 that would allow MPDs for properties located within the Heber Sub-zone, should be removed.

Board Member Matsumoto-Gray also favored removing the height restrictions as suggested by Board Member Holmgren. She was uncomfortable picking out areas within the Historic District. Chair McFawn agreed because it was like targeting winners and losers.

Planner Whetstone asked if the Board thought the Master Planned Development process should just be allowed in the Historic District. It does have criteria that addresses historic preservation.

Director Eddington clarified that the majority of board members recommended not including the language to allow MPDs in the Heber Avenue sub-zone. He asked if they would allow additional language that allows MPDs in the HRC or HCB zone, which is the Main Street zone.

Board Member White recalled talking about the west side of Main Street that backs up to the residential zone. Director Eddington recalled that the Board was not in favor of that change. He referred to page 11 and asked if they favored the changes to (B) 1 and 2,

Allowed but not Required. That language has been in the Code and the change was only for clarification.

Chair McFawn was comfortable with the change if it was only clarification of existing language. He personally was hesitant to make broad changes.

Board Member McKie was comfortable with the change in just the Heber Avenue sub-zone because there is a project that they want to look at and it does involve historic preservation. The Kimball Arts Center is a historic building and the HPB should be very involved. If this is what it takes to open a dialogue to make sure it retains its historic aspect for the future, she thought the HPB would want to play a role in that and be open-minded.

Board Member Matsumoto-Gray stated that the role is that the Kimball Arts Center has to follow the guidelines. Planner Whetstone noted that they have to follow the guidelines and they also have to follow the Code.

Board Member McKie felt Park City should be an adaptable community where they can adapt their guidelines for future growth and change. Opening a dialogue allows the community to explore a project but it does not imply approval. Board Member White agreed with Board Member McKie.

Board Member Holmgren wanted to know why the Staff could not open the dialogue with the Kimball Arts Center without changing the Code. Director Eddington stated that the conversation would be limited without an application. He assumed the Kimball would prefer to know what they could or could not do before proceeding with an application.

Assistant City Attorney McLean stated that as soon as the Staff engages in a discussion where the concept is not permitted by Code, it creates certain expectations, as well as accusations that the Code is being changed for one specific project, when the LMC amendment should apply to everything. Regardless of whether they like the project, if it does not fit within the Code it is useless.

Board Member Kenworthy stated that if Item 3 was added for one specific project, it creates a slippery slope for a neighbor who wants the same consideration. Board Member Holmgren noted that it was very specific to the Heber Avenue sub-zone and the reason was apparent. Board Member Matsumoto-Gray felt they were putting the cart before the horse by recommending changes that allows someone to come forth with a project they put on the internet. She could not understand why this was even happening.

Assistant City Attorney McLean reiterated that from a legal standpoint, the City could not have a conversation if the plan does not meet the Code. As it currently stands, if they want to talk to the Kimball Arts Center without changing the Code, they should make that recommendation and the applicant should submit an application that meets Code. If they want to consider that the Code change would allow something that fits within the General Plan and the purpose statement of the zone, they should consider recommending the proposed change.

Board Member White asked if any of the projects submitted fit within the Code. Director Eddington replied that the Kimball Arts Center asked the Staff to potentially consider one plan, which is what they took to the City Council. They did not analyze any of the others. Planner Whetstone noted that the Planning Department provided the Kimball Arts Center with the specifics requirements of the zone before the design competition.

Board Member Kenworthy was cautious about their comments being construed or referenced as a pre-approval. Board Member McKie could not see the problem with one specific project if it benefits the entire community. Chair McFawn stated that the benefits to the community were outside of the scope of the HPB. The Board needed to focus on whether the changes proposed were beneficial to historic preservation. Board Member McKie reiterated that the Kimball Arts Center is a historic building and in her opinion it all ties together. She felt it was a disservice to the community to say that they only look at historic preservation by specific and narrow guidelines and they have no interest in making changes.

Dick Peek, the Council liaison, stated that he started on the Historic District Commission and he cares about things historic. He referred to the purpose statements of the MPD section of the LMC. He has seen the application and sat through the presentation. Council Member Peek was not prepared to express his opinion about a future pending application. He noted that the purpose statement talks about infill redevelopment where the MPD process can provide design flexibility necessary for well-planned, mixed-use developments that are compatible with the surrounding neighborhood. It also talks about goals to complement the natural features, ensure neighborhood compatibility, strengthen the resort character of Park City, and result in a positive net contribution of amenities to the community. He asked if that was an appropriate tool for that area to achieve an appropriate infill development on that site.

Chair McFawn called for public input.

Jim Tedford, representing a group called Preserve Historic Main Street, was taken aback that the HPB had not had a lot of input until this evening. He was amazed that the Staff was looking for opinions from the HPB based on an hour of conversation. Mr. Tedford stated that he first got involved on August 23rd and he was still trying to figure it all out. He did not believe the HPB could come close to making a recommendation without an opportunity to study the issues further. Mr. Tedford could find nothing to indicated that the Kimball Arts Center could not build above the old building.

Planner Whetstone stated that it was in the design guidelines.

Mr. Tedford agreed with a previous comment asking why they would change the LMC to accommodate something that may never happen. He had read several recommendations from Staff on different dates and the recommendations keep changing. He believed the continually changes were being done to accommodate the Kimball Arts Center. Tedford stated that he and the group he represents fully support the Kimball Arts Center and their need for an addition to their current facility. However, they believe the expansion can and should be accomplished within the existing Park City

LMC and the Park City Design Guideline for Historic Districts and Historic Site. In terms of options, it was stated this evening that the Kimball Arts Center could submit a proposal that meets the current Code. In addition, the Heber Avenue Sub-zone could be amended to allow for public dialogue. Mr. Tedford and his group were very opposed to changing the Land Management Code.

Planner Whetstone clarified that amending the zone would be amending the LMC. Board Member Matsumoto-Gray asked if a zone change could be initiated by someone outside of the City. Planner Whetstone answered yes, but it would still be a change to the Land Management Code and the change would be for that particular project.

Hope Melville, a resident on Park Avenue, understood that the City Council wanted to explore way for the Kimball Arts Center project to be considered with public input. She was confused about the current proposal to allow MPDs in the Heber Avenue sub-zone with a maximum height of 50 feet. Ms. Melville did not understand how that would allow an application since the design the Kimball is promoting is an 80 foot tower. She was unsure how an 80 foot tower design would be evaluated under the change to allow an MPD in the Heber Avenue sub-zone. Ms. Melville was concerned about potential changes to the LMC for all MPDs without thinking about how that affects other areas and other projects under consideration. She was uncomfortable changing the LMC in the Heber Avenue sub-zone and elsewhere until they understood the long-term affect. Ms. Melville was opposed to changing the LMC to allow an MPD for the Kimball Arts Center at the location. She also felt that changing the Code to a maximum height of 50 feet was not the right thing to do.

Chair McFawn closed public input.

Chair McFawn stated that the Board members could give an up or down vote to approve something, each person could individually state what they would like to see, or they could request more time to think about it.

Assistant City Attorney McLean stated that the Board could request more time, but she believed that the amendments would be moving forward to the Planning Commission and the City Council.

Board Member Kenworthy needed to consider it further before making a decision.

Board Member McKie was open to changing the Land Management Code. She could see no harm in terms of future development and it was not a rubber stamp approval for the Kimball project or any project in that zone. She believed it would open dialogue that otherwise could not occur because the proposed design does not meet Code.

Chair McFawn understood that the Kimball Arts Center could apply for an exception once they submit an application. Director Eddington stated that every property owner can submit an application for a zone change. Chair McFawn believed the Kimball Arts Center has the ability to initiate the conversation but they have not done so.

Board Member McKie did not believe the Staff would have brought this to the HPB if they had not carefully evaluated the best way to open the dialogue. If the concern is changing the Land Management Code for something that might never be built, they need to understand that it definitely will never be built if they do not change the LMC. She was concerned about totally shutting the door and eliminating any possibility to explore it further.

Board Member Matsumoto-Gray would not recommend the changes to the MPD language in the Code because she could see no motivation for a potential sacrifice to historic preservation. She could not understand the reason for opening up this area to MPDs when there is no application for a specific project. It seemed targeted, ad hoc and unmotivated.

Board Member Crosby felt the HPB was not given enough time to adequately address this issue. She has been watching and listening in the community and she did not feel comfortable with what was being proposed. Board Member Crosby remarked that the existing zone was implemented to allow for the expansion and preservation of the Historic District. She was concerned that supporting the proposed changes to the Land Management Code would appear to be a pre-approval on the part of the HPB. Board Member Crosby would feel more comfortable if they could have time to consider it and to hear more public input. She believed an application could be processed under the existing Code. She was supportive of the concept because it has the potential to provide what the community needs. However, talking about an 80 foot structure or to amend the LMC to allow 50 feet in that area was concerning and she could not support what was being proposed.

Board Member White agreed with Council Member Peek about needing a tool for the dialogue. Although it seems that the proposed project does not meet the Code, there are still many things to talk about. Preservation is the most important issue for the HPB in terms of whether any project fits with Main Street and the Historic District. Board Member White wanted more time to consider the proposed changes; however, Director Eddington and Ms. McLean had indicated that there was no time because the amendments would be moving forward to the next level.

Assistant City Attorney noted that the amendments were scheduled to go before the Planning Commission on November 28th. The next HPB meeting would be after that date.

Board Member White did not agree with changing the LMC just for one project. If they did that they would be opening the door for more projects with similar situations. However, he agreed with Board Member McKie on the need to talk about projects; but if changing the LMC was the only way to accomplish that, he was bothered by the process. Board Member White suggested that the City find another vehicle that would allow them to have those discussions.

Board Member Holmgren felt they should not change this portion of the LMC because it is obviously aimed at one project. She agreed that the City should find another vehicle

to address these types of projects. Board Member Holmgren supported eliminating the addition of Item 3 regarding the Heber Avenue sub-zone, and the 50 height limitation.

Planner Whetstone stated that the minutes from this HPB meeting would be included in the Planning Commission packet for the November 28th meeting.

Board Member Kenworthy agreed with the rest of the Board. The Kimball Arts Center is a great asset to the community, but the LMC should not be changed to accommodate one project. The changes clearly address the Kimball Arts Center and neither he nor the other Board members have had enough time to make an appropriate and informed decision. They were blindsided by the proposed changes and knowing that it is specific to one project did not feel right.

Chair McFawn concurred with all the comments of the Board members. He needed more time, and while he wants the City to have a dialogue, his instinct is to avoid change when he feels rushed. Chair McFawn implored the Planning Department to find any possible way to get a dialogue going, even if it is initiated by the applicant in the form of a zone change application.

Chair McFawn remarked that the Staff and the Planning Commission would have the HPB minutes and he felt the Board was very clear on their position.

Director Eddington stated that the discussion would continue as the amendments move through the process. The Staff has no agenda and the question will be whether or not they can open the dialogue.

The meeting adjourned at 7:46 p.m.

Approved by _____
Dave McFawn, Chair
Historic Preservation Board

MINUTES OF PC 12.12.12 DRAFT

Land Management Code Amendments

DRAFT

3. Incorporate landscape plan requirements, require building permits for Driveways, Patios and flat work, add lighting exceptions for up-lighting of Public Art and allow exceptions to screened mechanical setbacks in the Architectural Review chapter. (Chapter 5).

Chapter 5 – Architectural Review

Planner Whetstone noted that at the last meeting the Planning Commission discussed adding the requirement for a landscape plan to this section. Additions were also made to the landscape requirements for using water-wise xeriscaping.

Planner Whetstone referred to page 225 of the Staff report and new language for permitting up-lighting for City funded or owned statues, public monuments, ground mounting public art, or flags of the United States. The language is very restrictive.

- (i) The use of Luminaires for up-lighting on any residentially or commercially zoned Lot or within a City ROW or Open Space Zone is permitted only for City-funded or owned statues, public monuments, ground-mounted Public Art, or flags of the United States of America.
- (ii) All lighting shall be shielded and have a beam-angle control aimed to limit the directed light to the illuminated object.
- (iii) Up-lighting is permitted 30 minutes before sunset and until 11:00 p.m. or one hour after the close of the location.

Vice-Chair Thomas asked if there was a way to control the amount of lumens that reflect off surfaces. Planner Whetstone suggested adding a restriction to address the issue. Commissioner Strachan noted that the language in (ii) says to limit the light to the directed object only. Vice-Chair Thomas thought there should be a limitation on lumens.

Commissioner Hontz suggested that they add a fourth restriction and ask the Staff to come back with proposed numbers for lumens. Planner Whetstone preferred to draft that language this evening so the Planning Commission could forward this chapter to the City Council.

Commissioner Strachan pointed out that the LMC sections regarding lighting and down lighting already have lumen restrictions. Director Eddington remarked that the lumen restrictions in those sections primarily address down-lighting for fields and parking lots.

Commissioner Hontz suggested adding language to indicate that the intent is to only illuminate the object. Commissioner Strachan remarked that the proposed language specifies that intent in (ii), “The up-lighting shall be shielded and/or have a beam-angle control and shall be aimed to limit the directed light to the illuminate object only”. The

Commissioners were comfortable that the language as proposed addressed the concern.

Director Eddington reported that in January the Planning Commission would have a more detailed discussion regarding lighting.

Planner Whetstone referred to page 226 of the Staff report, (L) Patios and Driveways. She noted that the Planning Commission previously discussed this requirement and approved the language in another section of the LMC. The language was being added to the Architectural Design Guidelines as well to say that:

- All non-bearing concrete flatwork, asphalt, and/or any Impervious Surface regardless of size is required to obtain a Building Permit, including any repairs, alterations, modification, and expansion of existing features.

Planner Whetstone clarified that the requirement is intended to be proactive. When people do their own work or hire someone to do repair work or construct a patio or driveway, it often results in issues related to soils, drainage, property lines and neighborhood issues. The permits will be inexpensive and the cost will be based on the value of construction. Requiring a building permit allows the Building Department to review plans and inspect the work.

Planner Whetstone referred to (M) Landscaping. Proposed language requires a complete landscape plan to be prepared for all building permit applications. New language was added to include all exterior work that impacts existing vegetation.

Commissioner Wintzer asked if that applied to minor decks or patios and whether a property owner would have to hire a licensed landscape architect. Planner Whetstone replied that the owner would be required to submit a landscape plan; however, the requirement for a licensed landscape architect only applies to a conditional use permit, a master planned development or historic district design review. Commissioner Wintzer clarified that the homeowner could draw his own landscape plan to comply with the requirement. Planner Whetstone replied that this was correct.

Commissioner Hontz referred to the second paragraph under Landscaping on page 226 and asked if “Organically” was a defined term in the LMC. Planner Whetstone replied that currently it is not a defined term. Commissioner Savage thought the sentence could be removed entirely. Planner Whetstone agreed and deleted the sentence, Mulches do not need to be Organically produced.

Planner Whetstone referred to the paragraph under Landscaping that addressed irrigated lawn and turf area. She thanked Commissioner Hontz for helping the Staff draft appropriate language. A table on page 227 of the Staff report outlined the percentage of Maximum Turf or Lawn Area of the allowed Limits of Disturbance Area of the lot that is not covered by Buildings, Structures, or other Impervious paving. Great

than 1 acre is 25%; .50 to 1 acre is 35%; 0.10 to 0.49 acres is 45%; Less than 0.10 acres – no limitation.

Planner Whetstone noted that additional language requires that rocks and boulders used for pathways, walls, etc., need to be from local sources. Noxious weeds must be removed from the property prior to issuance of a certificate of occupancy.

Commissioner Savage asked why the City would dictate that rocks and boulders must come from local sources. Planner Whetstone replied that it was a sustainability issue. Vice-Chair Thomas asked for a definition of “Local”. Director Eddington stated that it would be the northern part of Utah and typically stone that is seen historically in Browns Canyon and surrounding areas. He clarified that the language was primarily added for HDDR purposes. Planner Whetstone pointed out that LEEDS defines local sources as within a couple hundred miles of the area.

Commissioner Strachan referred to (L) on page 225 of the Staff Report, and suggested that the language related to all non-bearing concrete flatwork be revised to indicate the type of action that requires a building permit. Director Eddington revised the language to read, A building permit is required for the construction of all non-bearing concrete, flatwork, asphalt, or any other Impervious Surface regardless of size, including any repairs, alterations, modifications, and expansions of existing features.

Vice-Chair Thomas opened the public hearing on Chapter 5 – Architectural Review.

There were no comments.

Vice-Chair Thomas closed the public hearing.

MOTION: Commissioner Strachan moved to forward a POSITIVE recommendation for the amendments to Chapter 5 of the Land Management Code subject to the revisions made during this meeting. Commissioner Wintzer seconded the motion.

VOTE: The motion passed unanimously.

DRAFT

Ordinance 12- ____

AN ORDINANCE AMENDING THE LAND MANAGEMENT CODE OF PARK CITY, UTAH, REVISING

SECTIONS 15-1, 15-2.3, 15-2.4, 15-2.5, 15-2.6, 15-2.16, 15-3, 15-4, 15-5, 15-9, 15-10, 15-11, and 15-15 REGARDING DEVELOPMENT REGULATIONS; PROCESS AND APPEALS FOR HISTORIC DISTRICT DESIGN REVIEW AND CONDITIONAL USE PERMITS; CLARIFYING THAT COMMUNITY LOCATIONS MUST BE A MINIMUM OF 200 FEET FROM MAIN STREET; USES WITHIN THE HR-2 ZONE; OPEN SPACE CALCULATIONS IN THE RC AND HRM ZONING DISTRICTS; LANDSCAPING REQUIREMENTS; REMOVING SPECIAL EXCEPTIONS; REQUIRING BUILDING PERMITS FOR FENCES/RETAINING WALLS AND IMPERVIOUS SURFACES SUCH AS PATIOS, DRIVEWAYS AND NON BEARING CONSTRUCTION IN ALL DISTRICTS; REVISING THE PROCESS FOR RELOCATION OR REORIENTATION OF AND FOR DISASSEMBLY AND REASSEMBLY OF HISTORIC STRUCTURES; SETBACK EXCEPTIONS FOR SCREENED MECHANICAL EQUIPMENT; TIMING OF SEASON LIGHTING; UPLIGHTING OF PUBLIC ART; CONVERSION OF NON-CONFORMING USES TO LESS INTENSIVE USES; AND DEFINITIONS RELATED TO THESE AMENDMENTS

WHEREAS, the Land Management Code was adopted by the City Council of Park City, Utah to promote the health, safety and welfare of the residents, visitors, and property owners of Park City; and

WHEREAS, the Land Management Code implements the goals, objectives and policies of the Park City General Plan to maintain the quality of life and experiences for its residents and visitors; and to preserve the community's unique character and values; and

WHEREAS, the City reviews the Land Management Code on an annual basis and identifies necessary amendments to address planning and zoning issues that have come up in the past year, and to address specific LMC issues raised by Staff and the Commission, to address applicable changes to the State Code, and to align the Code with the Council's goals; and

WHEREAS, the City's goals include preservation of Park City's character regarding Old Town improvements, historic preservation, sustainability, affordable housing, and protecting Park City's residential neighborhoods and commercial districts; and

WHEREAS, the City's goals include maintaining effective transportation and parking, maintaining the resort community regarding architectural consistency and

excellent design and enhancing the economic viability of Park City's Main Street Business Districts; and

WHEREAS, Chapter 1, General Provisions and Procedures, provides a description of requirements, provisions and procedures that apply to each zoning district that the City desires to clarify and revise. These amendments concern the review and appeal process for administrative reviews, such as administrative Conditional Use Permits, Historic District design reviews, and plan reviews; and

WHEREAS, Chapters 2.3, 2.4, 2.5, 2.6 and 2.16 Historic Residential Zoning Districts (HR-2, HRM, HRC, and HCB) and the Recreation Commercial Zoning District (RC), provide a description of requirements, provisions and procedures specific to these zoning districts that the City desires to clarify and revise. These revisions concern process for review and permitting of certain uses and open space calculations; and

WHEREAS, Chapter 3 – Off-Street Parking provides regulations, requirements, and procedural requirements regarding Parking within all zoning districts, and the City desires to clarify and revise these regulations and procedures as they pertain to the parking requirements for multi-dwelling units and bed and breakfast inns and requiring building permits for parking areas and driveways in all residential zoning districts; and

WHEREAS, Chapter 4 – Supplemental Regulations, provides regulations, requirements, and procedural requirements regarding supplemental items, and the City desires to clarify and revise these regulations and procedures as they pertain to the requirement of building permits for fences, retaining walls, and impervious areas; and

WHEREAS, Chapter 5 – Architectural Guidelines, provides regulations, requirements, and procedural requirements regarding Architectural Design and Guidelines and the City desires to clarify and revise these regulations and procedures as they pertain to landscaping; lighting; and requiring building permits for driveways, patios and other non-bearing flatwork in all districts; as well as setback exceptions for screened mechanical equipment to minimize impacts this equipment; and

WHEREAS, Chapter 9 – Non-conforming Uses and Structures, provides regulations, requirements, and procedural requirements regarding Non-conforming Uses and the City desires to clarify and revise these regulations and procedures; and

WHEREAS, Chapter 10 – Board of Adjustment, provides regulations and procedural requirements for the Board of Adjustment, and the City desires to clarify and revise these regulations and procedures regarding Special Exceptions; and

WHEREAS, Chapter 11 – Historic Preservation, provides regulations and procedural requirements for the Historic Preservation Board and Historic District Design Review and preservation of historic structures, and the City desires to clarify and revise these regulations regarding the review process for Historic District Design Review

applications including the pre-application process and the review process and criteria for relocating and re-constructing historic structures; and

WHEREAS, Chapter 15 – Definitions provides definitions and clarification of terms used in the Land Management Code and the City desires to add definitions and clarify and revise existing definitions; and

WHEREAS, these amendments are changes identified during the 2011/2012 annual review of the Land Management Code that provided clarification of processes, procedures, definitions, and interpretations of the Code for consistency of application between Sections; and

WHEREAS, the Planning Commission held a work session meeting on August 22nd and regular meetings on September 12th, September 26th, November 28th, and December 12th, 2012 to discuss the proposed LMC amendments as outlined in this report; and

WHEREAS, the Planning Commission duly noticed and conducted public hearings at the regularly scheduled meeting on August 22nd, September 12th, September 26th, November 28th, and December 12th, 2012, and forwarded a recommendation to City Council; and

WHEREAS, the City Council duly noticed and conducted a public hearing at its regularly scheduled meeting on December 20, 2012; and

WHEREAS, it is in the best interest of the residents of Park City, Utah to amend the Land Management Code to be consistent with the Park City General Plan and to be consistent with the values and identified goals of the Park City community and City Council to protect health and safety, maintain the quality of life for its residents, preserve and protect the residential neighborhoods, preserve historic structures, promote economic development within the Park City Historic Districts and general business areas, and preserve the community's unique character.

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

SECTION 1. AMENDMENTS TO TITLE 15 - Land Management Code Chapter 1- General Provisions and Procedures. The recitals above are incorporated herein as findings of fact. Chapter 1 of the Land Management Code of Park City is hereby amended as redlined (see Exhibit A).

SECTION 2. AMENDMENTS TO TITLE 15 - Land Management Code Chapter 2- Sections 15-2.1, 15-2.3, 15-2.4, 15-2.5, 15-2.6, and 15-2.16. The recitals above are incorporated herein as findings of fact. Chapter 15-2.3, 15-2.4, 15-2.5, 15-2.6, and 15-2.16 of the Land Management Code of Park City are hereby amended as redlined (see Exhibit B).

SECTION 3. AMENDMENTS TO TITLE 15 - Land Management Code
Chapter 3- Off-street Parking. The recitals above are incorporated herein as findings of fact. Chapter 3 of the Land Management Code of Park City is hereby amended as redlined (see Exhibit C).

SECTION 4. AMENDMENTS TO TITLE 15 - Land Management Code
Chapter 4- Supplemental Regulations. The recitals above are incorporated herein as findings of fact. Chapter 4 of the Land Management Code of Park City is hereby amended as redlined (see Exhibit D).

SECTION 5. AMENDMENTS TO TITLE 15 - Land Management Code
Chapter 5- Architectural Guidelines. The recitals above are incorporated herein as findings of fact. Chapter 5 of the Land Management Code of Park City is hereby amended as redlined (see Exhibit E).

SECTION 6. AMENDMENTS TO TITLE 15 - Land Management Code
Chapter 9- Non-conforming Use. The recitals above are incorporated herein as findings of fact. Chapter 9 of the Land Management Code of Park City is hereby amended as redlined (see Exhibit F).

SECTION 8. AMENDMENTS TO TITLE 15 - Land Management Code
Chapter 10- Board of Adjustment. The recitals above are incorporated herein as findings of fact. Chapter 10 of the Land Management Code of Park City is hereby amended as redlined (see Exhibit G).

SECTION 9. AMENDMENTS TO TITLE 15 - Land Management Code
Chapter 11- Historic Preservation. The recitals above are incorporated herein as findings of fact. Chapter 11 of the Land Management Code of Park City is hereby amended as redlined (see Exhibit H).

SECTION 10. AMENDMENTS TO TITLE 15 - Land Management Code
Chapter 15- Definitions. The recitals above are incorporated herein as findings of fact. Chapter 15 of the Land Management Code of Park City is hereby amended as redlined (see Exhibit I).

SECTION 11. EFFECTIVE DATE. This Ordinance shall be effective upon publication.

PASSED AND ADOPTED this ____ day of _____, 2012

PARK CITY MUNICIPAL CORPORATION

Dana Williams, Mayor

Attest:

Janet M. Scott, City Recorder

Approved as to form:

Mark Harrington, City Attorney

Exhibits

Exhibit A- Chapter 1- General Provisions and Procedures

Exhibit B- Chapter 2- Zoning Districts

Exhibit C- Chapter 3- Off Street Parking

Exhibit D- Chapter 4- Supplemental Regulations

Exhibit E- Chapter 5- Architectural Review

Exhibit F- Chapter 9- Non-conforming Uses

Exhibit G- Chapter 10- Board of Adjustment

Exhibit H- Chapter 11- Historic Preservation

Exhibit I - Chapter 15- Definitions

EXHIBITS TO THE ORDINANCE FOR THE LMC AMENDMENTS- 12.20.12

EXHIBIT A

CHAPTER ONE- GENERAL PROVISIONS AND PROCEDURES

15-1 -8. REVIEW PROCEDURE UNDER THE CODE.

RECOMMENDATION (y) and FINAL ACTION (X) and APPEAL (z)					
	Planning Department	HPB	Board of Adjustment	Planning Commission	City Council
Allowed	X				
Allowed-Historic (HDDR)	X	z			
Administrative Permits	X			z	
Conditional Use				X	z
Conditional Use Admin.	X			z	
MPD				X	z
<u>Change of</u> Non-Conforming Use			X		
Plat Amendment				y Recommendation to CC	X
Variance/ <u>Special Exception</u>			X		
Subdivision				y Recommendation to CC	X
Annexation and Zoning				y Recommendation to CC	X
Zoning Appeal			X		
LMC Amendments				y Recommendation to CC	X

(E) **REVIEW**. The Planning Department and/or Planning Commission must review each of the following items when considering whether or not the proposed Conditional Use mitigates impacts of and addresses the following items:

- (1) size and location of the Site;
- (2) traffic considerations including capacity of the existing Streets in the Area;
- (3) utility capacity, [including Storm Water run-off](#);
- (4) emergency vehicle Access;
- (5) location and amount of off-Street parking;
- (6) internal vehicular and pedestrian circulation system;
- (7) Fencing, Screening, and landscaping to separate the Use from adjoining Uses;
- (8) Building mass, bulk, and orientation, and the location of Buildings on the Site; including orientation to Buildings on adjoining Lots;
- (9) usable Open Space;
- (10) signs and lighting;
- (11) physical design and Compatibility with surrounding Structures in mass, scale, style, design, and architectural detailing;
- (12) noise, vibration, odors, steam, or other mechanical factors that might affect people and Property Off-Site;
- (13) control of delivery and service vehicles, loading and unloading zones, and Screening of trash and recycling pickup Areas;
- (14) expected Ownership and management of the project as primary residences, Condominiums, time interval Ownership, Nightly Rental, or commercial tenancies, how the form of Ownership affects taxing entities; and
- (15) within and adjoining the Site, ~~impacts on~~ Environmentally Sensitive Lands, Physical Mine Hazards, [Historic Mine Waste and Park City Soils Ordinance](#), [Steep and Slopes retention](#), and appropriateness of the proposed Structure to the [existing](#) topography of the Site.

15-1 -11. SPECIAL APPLICATIONS.

- (D) **ADMINISTRATIVE CONDITIONAL USE PERMITS.** The Planning Director, [or his or her designee](#), shall review and take Final Action on Administrative Conditional Use permits. Review process shall be consistent with Section 15-1-10(A-H), with the exception that no published notice, as described in 15-1-12(B), shall be required.

(E) **ADMINISTRATIVE PERMITS.** The Planning Department shall review and take Final Action on Administrative Permits. Review process shall be consistent with the requirements herein for those Uses requiring an Administrative Permit, such as temporary tents, Structures, and vendors; temporary Special Event and ~~overcrowding permits~~ temporary change of occupancy permits; regulated Accessory Apartments; specified outdoor events and Uses; Family Child Care in specified Zoning Districts; and temporary telecommunication Antennas, where these Uses are designated as requiring Administrative Permits. These Uses may require Administrative Conditional Use permits or Conditional Use permits in some Zoning Districts pursuant to Section 15-2.

15-1 -12. NOTICE.

Notice of a public hearing before the City Council, Planning Commission, Board of Adjustment, and Historic ~~District Commission~~ Preservation Board must be provided in accordance with this section. All notices, unless otherwise specified in this Code or State law, must describe the proposed action affecting the subject Property or the proposed modification to the Park City General Plan or to the Land Management Code and shall state the time, place and date set for public hearing on the matter. Notice shall be given according to Section 15-1-21 Notice Matrix and as follows:

15-1 -18. APPEALS AND RECONSIDERATION PROCESS.

(A) **STAFF.** Any decision by either the Planning Director or Planning Staff regarding Application of this LMC to a Property may be appealed to the Planning Commission. Appeals of decisions regarding the Design Guidelines for Historic Districts and Historic Sites shall be reviewed by the Historic Preservation Board as described in 15-11-12(E). All appeals must be filed with the Planning Department within ten (10) days of Final Action.

There shall be no additional notice for appeal of the staff determination other than listing the matter on the agenda, unless notice of the staff review was provided in which case the same notice must be given for the appeal.

(B) **HISTORIC PRESERVATION BOARD (HPB).** The City or any Person with standing adversely affected by any decision of the Historic Preservation Board regarding the Design Guidelines for Historic Districts and Historic Sites may petition the District Court in Summit County for a review of the decision. Appeal of all other Final Actions by the Historic Preservation Board ~~may~~ be appealed to the Board of Adjustment.

(C) **PLANNING COMMISSION.** The City or any Person with standing adversely affected by a Final Actions by the Planning Commission on appeals of Staff action may ~~be appealed to the Board of Adjustment~~ petition the District Court in Summit County for a review of the decision. Final Action by the Planning Commission on Conditional Use permits and Master Planned Developments (MPDs) involving City Development may be appealed to the Board of Adjustment at the City Council's request. All other Final Action by the Planning Commission concerning Conditional Use permits (excluding those Conditional Use permits decided by Staff

and appealed to the Planning Commission; final action on such an appeal shall be appealed to the District Court) and MPDs may be appealed to the City Council. When the City Council determines it necessary to ensure fair due process for all affected parties or to otherwise preserve the appearance of fairness in any appeal, the City Council may appoint an appeal panel as appeal authority to hear any appeal or call up that the Council would otherwise have jurisdiction to hear. The appeal panel will have the same scope of authority and standard of review as the City Council. Only those decisions in which the Planning Commission has applied a land Use ordinance to a particular Application, Person, or Parcel may be appealed to an appeal authority.

15-1 -21. NOTICE MATRIX.

NOTICE MATRIX			
ACTION:	POSTED:	COURTESY MAILING:	PUBLISHED:
Zoning and Rezoning	14 days prior to each hearing before the Planning Commission and City Council	14 days to each affected entity.	Once 14 days prior to each hearing before the Planning Commission and City Council.
LMC Amendments	14 days prior to each hearing before the Planning Commission and City Council.	14 days to each affected entity.	Once 14 days prior to each hearing before the Planning Commission and City Council.
General Plan Amendments	14 days prior to each hearing before the Planning Commission and City Council.	14 days to each affected entity.	Once 14 days prior to each hearing before the Planning Commission and City Council.
Master Planned Developments (MPD)	14 days prior to the hearing before the Planning Commission.	14 days prior to the hearing before the Planning Commission, to Owners within 300 ft.	Once 14 days prior to the hearing before the Planning Commission.
Appeals of Planning Director, Historic Preservation Board, or	7 days prior to the date set for the appeal or call-up hearing.	To all parties who received mailed notice for the original Administrative or Planning Commission hearing 7 days prior to the hearing.	Once 7 days before the date set for the appeal or call-up hearing.

NOTICE MATRIX			
ACTION:	POSTED:	COURTESY MAILING:	PUBLISHED:
Planning Commission decisions or City Council Call-Up			
Conditional Use Permit	14 days prior to the hearing before the Planning Commission.	14 days prior to the hearing before the Planning Commission, to Owners within 300 ft.	Once 14 days prior to the hearing before the Planning Commission.
Administrative Conditional Use Permit	10 days prior to Final Action.	10 days prior to Final Action, to adjacent Property Owners.	No published notice required.
Administrative Permit	10 days prior to Final Action.	10 days prior to Final Action, to adjacent affected Property Owners.	No published notice required.
Variance Requests, Non-conforming Use Modifications and Appeals to Board of Adjustment	14 days prior to the hearing before the Board of Adjustment.	14 days prior to the hearing before the Board of Adjustment, to owners within 300 ft.	Once 14 days prior to hearing before the Board of Adjustment.
Certificate of Appropriateness for Demolition (CAD)	45 days on the Property upon refusal of the City to issue a CAD ; 14 days prior to the hearing before the Historic Preservation Board.	14 days prior to the hearing before the Historic Preservation Board, to Owners within 300 ft.	Once 14 days prior to the hearing before the Historic Preservation Board.
Designation of Sites to the Historic Sites Inventory	7 days prior to hearing before the Historic Preservation Board.	-----	Once 7 days prior to hearing before the Historic Preservation Board.

NOTICE MATRIX			
ACTION:	POSTED:	COURTESY MAILING:	PUBLISHED:
Historic District or Historic Site Design Review	First Posting: The Property shall be posted for a 14 day period once a Complete Application has been received. <u>The date of the public hearing shall be indicated in the first posting.</u> Other posted legal notice not required. Second Posting: For a 10 day period once the Planning Department has determined the proposed plans comply or does not comply with the Design Guidelines for Historic Districts and Historic Sites. Other posted legal notice not required.	First Mailing: To Owners within 100 feet once a Complete Application has been received, establishing a 14 day period in which written public comment on the Application may be taken. <u>The date of the public hearing shall be indicated.</u> Second Mailing: To Owners within 100 feet and individuals who provided written comment on the Application during the 14 day initial public comment period. The second mailing occurs once the Planning Department determines <u>whether</u> the proposed plans comply or do not comply with the Design Guidelines for Historic Districts and Historic Sites and no later than 45 days after the end of the initial public comment period. This establishes a 10 day period <u>in-after</u> which the Planning Department's decision may be appealed.	<u>If appealed, then once 7 days before the date set for the appeal. See appeals from Planning Director, Historic Preservation Board, Planning Commission, including City Council Call Up. Section 15-1-18.</u>
Annexations	Varies, depending on number of Owners and current State law. Consult with the Legal Department.		
Termination of Project Applications	-----	Mailed Notice: To Owner/Applicant and certified Agent by certified mail 14 days prior to the Planning Director's termination and closure of	-----

NOTICE MATRIX

ACTION:	POSTED:	COURTESY MAILING:	PUBLISHED:
		files.	
Lot Line Adjustments: Between 2 Lots without a plat amendment.	10 days prior to Final Action on the Property. Other posted legal notice not required.	To Owners within 300 ft. at time of initial Application for Lot line adjustment. Need consent letters, as described on the Planning Department Application form, from adjacent Owners.	-----
Preliminary and Final Subdivision Plat Applications	14 days prior to the hearing before the Planning Commission.	14 days prior to the hearing before the Planning Commission, to Owners within 300 ft.	Once 14 days prior to the hearing before the Planning Commission.
Condominium Applications; Record of Survey Plats	14 days prior to the hearing before the Planning Commission.	14 days prior to the hearing before the Planning Commission, to Owners within 300 ft.	Once 14 days prior to the hearing before the Planning Commission.
Record of Survey Amendments	14 days prior to the hearing.	14 days prior to the hearing, to Owners within 300 ft.	Once 14 days prior to the hearing.
Subdivision Plat Amendments	14 days prior to the hearing.	14 days prior to the hearing, to Owners within 300 ft.	Once 14 days prior to the hearing.
Vacating or Changing a Street	-----	14 days prior to the hearing before the City Council, to Owners within 300 ft. and to affected entities.	Once a week for 4 consecutive weeks prior to the hearing before the City Council.

Note: For all Applications, notice will be given to the Applicant of date, time, and place of the public hearing and public meeting to consider the Application and of any Final Action on a pending Application.

Appendix A – Official Zoning Map (Refer to the Planning Department)

NOTICE MATRIX			
ACTION:	POSTED:	COURTESY MAILING:	PUBLISHED:

EXHIBIT B

CHAPTER TWO- ZONING DISTRICTS

HR-2 ZONE

15-2.3-2

(B) CONDITIONAL USES:

(29) Bar⁸

(30) Special Events⁸

⁸ ~~In Historic Structures and within Sub-Zones A and B, only. Subject to compliance with all criteria and requirements of Section 15-2.3-98 for Sub-Zone A and Section 15-2.3-9 for Sub-Zone B. Except that these Uses are permitted in Sub-Zone A only when all criteria of Section 15-2.3-8 are met.~~

15-2.3-3 CONDITIONAL USE PERMIT REVIEW.

~~The Historic Preservation Board shall review any Conditional Use permit (CUP) Application in the HR-2 District and shall forward a recommendation to the Planning Commission regarding the application's compliance with the Design Guidelines for Park City's Historic Districts and Historic Sites.~~ The Planning Commission shall review any Conditional Use permit (CUP) this Application in the HR-2 District according to the Conditional Use permit criteria set forth in Section 15-1-10 as well as the following:

(A) Consistent with the Design Guidelines for Park City's Historic Districts and Historic Sites, Section 15-4, and the Historic Preservation Board's recommendation.

(B) The Applicant may not alter an Historic Structure to minimize the residential character of the Building.

(C) Dedication of a Facade Preservation Easement for Historic Structures is required to assure preservation of Historic Structures and the Historic fabric of the surrounding neighborhood.

(D) New Buildings and additions must be in scale and Compatible with the mass, height, width, and historic character of the surrounding residential neighborhood and existing Historic Structures in the neighborhood. Larger Building masses should be located to rear of the Structure to minimize the perceived mass from the Street.

(E) Parking requirements of Section 15-3 shall be met. The Planning Commission may waive parking requirements for Historic Structures and may consider in-lieu fees for all or a portion of parking requirements for Master Planned Developments. Calculation of

in-lieu fees shall be based on the Park City Municipal Code Section 11-12-16 and any adopted City Council fees in effect at the time a complete application is received. The Planning Commission may allow on-Street parallel parking adjacent to the Front Yard to count as parking for Historic Structures, if the Applicant can document that the on-Street Parking will not impact adjacent Uses or create traffic circulation hazards. A traffic study, prepared by a registered Engineer, may be required.

(F) All Yards must be designed and maintained in a residential manner. Existing mature landscaping shall be preserved wherever possible. The Use of native plants and trees is strongly encouraged.

(G) Fencing and Screening between residential and Commercial Uses may be required along common Property Lines.

(H) All utility equipment and service areas must be fully Screened to prevent visual and noise impacts on adjacent residential Properties and on pedestrians.

HRM ZONE

15-2.4-5. SPECIAL REQUIREMENTS FOR MULTI-UNIT DWELLINGS.

(A) **FRONT YARD.** The Front Yard for any Triplex, or Multi-Unit Dwelling is twenty (20') feet. All new Front-Facing Garages shall be a minimum of twenty-five feet (25') from the Front Property Line. All Yards fronting on any Street are considered Front Yards for the purposes of determining required Setbacks. See Section 15-2.4-4(D), Front Yard Exceptions.

(B) **REAR YARD.** The Rear yard for a Triplex or Multi-Unit Dwelling is ten feet (10'). See Section 15-2.4-4(F), Rear Yard Exceptions.

(C) **SIDE YARD.** The Side Yard for any Triplex, or Multi-Unit Dwelling is ten feet (10'). See Section 15-2.4-4(H), Side Yard Exceptions.

(D) **OPEN SPACE.** The Applicant must provide Open Space equal to at least sixty percent (60%) of the total Site for all Triplex and Multi-Unit Dwellings. [If reviewed as a Master Planned Development, then the Open Space requirements of Section 15-6-5 \(D\) shall apply.](#) Parking is prohibited within the Open Space. See Section 15-15 Open Space.

15-2.4-3. CONDITIONAL USE PERMIT REVIEW.

The Planning Director shall review any Conditional Use permit (CUP) Application in the HRM District and shall forward a recommendation to the Planning Commission regarding compliance with the [Historic District Design Guidelines](#) [Design Guidelines for Park City's Historic Districts and Historic Sites](#). The Planning Commission shall review the Application according to Conditional Use permit criteria set forth in Section 15-1-10, as well as the following:

(A) Consistent with the ~~Historic District Design Guidelines~~ [Design Guidelines for Park City's Historic Districts and Historic Sites](#), ~~Section 15-4~~.

(B) The Applicant may not alter the Historic Structure to minimize the residential character of the Building.

(C) Dedication of a Facade Preservation Easement to assure preservation of the Structure is required.

(D) New Buildings and additions must be in scale and Compatible with existing Historic Buildings in the neighborhood. ~~New Structures and additions must be two (2) stories in height or less. Primary facades should be one (1) to one and a half (1 ½) stories at the Street.~~ Larger Building masses should be located to rear of the Structure to minimize the perceived mass from the Street.

HRC ZONE

15-2.5-2. USES.

Uses in the HRC are limited to the following:

(A) **ALLOWED USES**.....

(B) **CONDITIONAL USES**⁹.....

⁹[No community locations as defined by Utah Code 32B-1-102 \(Alcoholic Beverage Control Act\) are permitted within 200 feet of Main Street unless a variance is permitted for an outlet, as defined by Utah Code 32B-1-202, to obtain a liquor license.](#)

HCB ZONE

15-2.6-2. USES.

Uses in the Historic Commercial Business (HCB) District are limited to the following:

(A) **ALLOWED USES**.

(B) **CONDITIONAL USES**¹⁰.

¹⁰[No community locations as defined by Utah Code 32B-1-102 \(Alcoholic Beverage Control Act\) are permitted within 200 feet of Main Street unless a variance is permitted for an outlet, as defined by Utah Code 32B-1-202, to obtain a liquor license.](#)

RC ZONE

15-2.16-3. LOT AND SITE REQUIREMENTS.

- (J) **OPEN SPACE.** On any Lot greater than 25,000 sq. ft. in Area, at least sixty percent (60%) of the Lot must be devoted to ~~Transferred Development Right (TDR)~~ Open Space if the Lot is not developed as a Master Planned Development. This is in addition to any Open Space required as part of a Master Planned Development. TDR Open Space may be either Natural or Landscaped Open Space. If the Lot is developed as a Master Planned Development then the Open Space requirements of Section 15-6-5. (D) shall apply.

EXHIBIT C

CHAPTER THREE- OFF-STREET PARKING

15-3-3. GENERAL PARKING AREA AND DRIVEWAY STANDARDS.

(L) **PERMIT.** A Building Permit is required for construction of all non-bearing concrete flatwork, asphalt, and/or any impervious surface, regardless of area or amount of paving. This includes any repairs, alterations, modifications, and expansions of existing flatwork.

15-3 -4. SPECIFIC PARKING AREA AND DRIVEWAY STANDARDS FOR SINGLE FAMILY RESIDENCES AND DUPLEXES, PARKING AREAS WITH 5 OR MORE SPACES, AND PARKING STRUCTURES.

(A) SINGLE FAMILY RESIDENCES AND DUPLEXES.

...

(2) **CIRCULAR DRIVEWAYS.** Circular driveways are permitted for Single Family and Duplex Dwellings provided one leg leads directly to and from a legally located garage or carport, subject to the following conditions:

(a) Such drives shall be paved with a hard surface.

(b) Such drives shall be a minimum of ~~fifteen feet (15')~~twelve (12') and a maximum of twenty-four feet (24'') in width.

(c) There shall be a Landscaped Area at least fifteen feet (~~15'~~15') in depth from the Front Property Line to the inside of the drive.

15-3 -6. PARKING RATIO REQUIREMENTS FOR SPECIFIC LAND USE CATEGORIES.

(A) **RESIDENTIAL USES.** Off-Street parking shall be provided for each land Use as listed in this section, in the Parking Ratio Requirements tables. When applying the tables, the parking requirements stated for each Use, or combination of Uses, applies to each Dwelling Unit within the Structure. Specific Uses, and the related parking ratio requirements are also shown below: Also refer to 15-15 Definitions for clarification of Uses.

RESIDENTIAL PARKING RATIO REQUIREMENTS		
USE	PARKING RATIO (NUMBER SPACES)	
Multi-Unit Dwelling	Apartment/Condominium not greater than 650 <u>1,000</u> sf floor Area	1 per Dwelling Unit
	Apartment/Condominium greater than 1,000 <u>650</u> sf and less than 2,000 <u>1,000</u> sf floor Area	1.5 per Dwelling Unit
	Apartment/Condominium greater than 2,000 <u>1,000</u> sf and less than 2,500 <u>sf</u> floor Area or greater	2 per Dwelling Unit
	Apartment/Condominium 2,500-sf floor Area or more	3 per Dwelling Unit

NON-RESIDENTIAL PARKING RATIO REQUIREMENTS	
USES	PARKING RATIO REQUIREMENT (NUMBER SPACES)
Bed and Breakfast Inn	1 space per bedroom <u>and one space per on duty manager.</u>

EXHIBIT D

CHAPTER FOUR- SUPPLEMENTAL REGULATIONS

15-4-2. (1) EXCEPTION. The height of retaining walls in the Front Yard may exceed four feet (4'), measured from Final Grade, subject to approval by the Planning Director and City Engineer, and may exceed six feet (6') in height subject to approval of an Administrative Conditional Use permit or as approved as part of a Master Planned Development (MPD) or Conditional Use permit. Prior to issuance of an Administrative Conditional Use permit the Property shall be posted and affected adjacent Property Owners shall be noticed ten (10) days prior to Final Action.

The height of retaining walls in the Side or Rear Yards may exceed six feet (6'), measured from Final Grade, subject to approval of an Administrative Conditional Use permit or as approved as part of a Master Planned Development or Conditional Use permit. Prior to issuance of an Administrative Conditional Use permit the Property shall be posted and affected adjacent Property Owners shall be noticed ten (10) days prior to Final Action.

~~Any Fence or retaining wall greater than six feet (6') in height requires a Building Permit~~

(D) **PERMIT.** A Building Permit is required for construction of any Fence or retaining wall greater than six feet (6') in height. Within any of the Historic zoning districts construction of any Fence or retaining wall greater than four feet (4') in height requires a Building Permit.

15-4-16. TEMPORARY STRUCTURES, TENTS, AND VENDORS.

Prior to the issuance of an Administrative Permit for any temporary Structure, tent, or vendor, the following requirements shall be met:

(A) **APPLICATION.** An Application must be submitted to the Planning Department including the following information:

(1) **GENERAL DESCRIPTION.** An overview of the proposed activity. Include hours of operation, anticipated attendance, Use of speakers, any beer or liquor license, any sign or lighting plan, and any other applicable information.

(2) **SITE PLAN.** The site plan shall be to scale indicating in detail how the proposal will comply with the International Building Code (IBC). It should indicate the location of the tent on the Property and distances from Property Lines and other Structures. A separate plan for the interior of any tent is required. This plan will indicate any chairs, tables, exits, sanitation, heating, food service/handling etc. A snow removal plan must be included.

(3) **STRUCTURAL INFORMATION AND CALCULATIONS.** For all temporary Structures greater than 200 square feet in Floor Area, structural calculations,

wind load information, fire rating, etc. must be submitted.

(4) **FEES.** All applicable fees.

(5) **BUILDING PERMIT.** A permit issued by the Building Department is required for temporary Structures and tents greater than 200 square feet in Area, or as determined by the Chief Building Official upon review of size, materials, location, weather and proposed Use.

(6) **SPECIAL EVENT PERMITS.** See Section 15-4-20 for regulations related to Special Events and ~~overcrowding~~ temporary change of occupancy Administrative Permits.

(7) **DURATION.** Unless approved by the City Council as part of a Master Festival, in no case shall a tent be installed for a duration longer than fourteen (14) days and for more than five (5) times per year on the same Property or Site, unless a longer duration or greater frequency is approved by the Planning Commission consistent with Conditional Use Criteria in Section 15-1-10.

(8) **NOTICE.** Notice of Administrative Permits shall be consistent with Section 15-1-21.

15-4 -20. SPECIAL EVENTS ~~AND OVERCROWDING~~ AND TEMPORARY CHANGE OF OCCUPANCY PERMITS.

(Created by Ord. No. 05-57)

(A) **PURPOSE.** The intent of these regulations is to allow ~~temporary overcrowding~~ Administrative Permits for Special Events and temporary change of occupancy activities only if adverse impacts on the character of neighboring Property can be mitigated and issues of public safety, traffic and parking are provided for. Such Uses will be permitted where the adjacent Street system is sufficient to accommodate the traffic impacts generated by said ~~overcrowding~~ Special Events and temporary change of occupancy; where the Property can accommodate adequate Off-Street parking; where the Structures are designed to safely accommodate said Special Event and temporary change of occupancy ~~overcrowding~~; and where the type of Use, and impacts are Compatible with the Uses otherwise permitted in the zone.

(B) **DURATION.** ~~For non-code approved overcrowding, an overcrowding~~ Special Event and temporary change of occupancy Administrative Permits ~~permit allows the increase in occupancy may be issued for duration of~~ for a total of fifteen (15) days per permit and for no more than twelve (12) times per year per Building. These days are not required to be consecutive.

(C) **APPLICATION.** An Application must be submitted no less than fifteen (15) ~~thirty (30)~~ days prior to the Special Event or temporary change of occupancy Use. The Planning Director may reduce this timeframe to ~~fifteen (15)~~ ten (10) days upon written request of the Applicant.

Applications shall be filed with the Planning Department and shall include the following information:

- (1) **GENERAL DESCRIPTION.** A narrative of the Use and Site plan of the proposed Special Event and temporary change of occupancy shall be submitted with the application Use, including hours of operation, ~~maximum occupancy~~, private or public activity, number of invitations sent, if a private event, or estimate of overall attendance, crowd management plan, security, deliveries, music or sound plan, including use of speakers, any beer or liquor license, any sign or lighting plan, parking plan, and any other applicable information.
- (2) **FLOOR PLAN.** A floor plan, drawn to 1/8" = 1'-0" scale, indicating in detail how the proposal will comply with applicable sections of the International Building Code shall be submitted with the application. This plan will indicate any chairs, tables, exits, sanitation, heating, food service/handling, etc. This plan shall be prepared and stamped by a licensed Utah Architect or Engineer, who shall indicate the maximum occupancy number for the specific use and floor plan for the Special Event and/or temporary change of occupancy Permit. Multiple floor plan layouts during the dates applied for will require individual stamped floor plan drawings by the Architect or Engineer. The Chief Building Official, or his or her designee, will also review this information and application for compliance with the IBC.
- (3) **ALL APPLICABLE FEES.** Refer to Fee Resolution.
- (4) Any requested additional City or governmental services or equipment.

EXHIBIT E

CHAPTER FIVE- ARCHITECTURAL REVIEW

15-5 -1. POLICY AND PURPOSE.

As a community dependent upon the tourism industry, the atmosphere and aesthetic features of the community take on an economic value for the residents and Property Owners of Park City.

It is in the best interests of the general welfare of the community to protect the aesthetic values of the community through the elimination of those architectural styles, and those Building [and Landscape](#) materials, which, by their nature, are foreign to this Area, and this climate, and therefore tend to detract from the appearance of the community.

Most of Park City's Main Street and many homes in Park City's older neighborhoods are listed on the National Register of Historic Places as well as being locally designated as Historic Sites, which is a point of considerable importance to the tourism industry. New Development, while distinct from surrounding Historic Sites, should not detract from them. Park City is densely developed due to the shortage of level, buildable land.

The effect of one Development is felt on the community as a whole. It is the policy of the City to foster good design within the constraints imposed by climate, land ownership patterns, and a Compatible architectural theme.

It is also the intent of this section to encourage lighting practices and systems which will minimize light pollution, glare, and light trespass; conserve energy and resources while maintaining night time safety, utility, and security; and curtail the degradation of the night time visual environment.

It is recognized that the topography, atmospheric conditions and resort nature of Park City are unique and valuable to the community. The enjoyment of a starry night is an experience the community desires to preserve. The City of Park City, through the provisions herein contained, promotes the reduction of light pollution that interferes with enjoyment of the night sky.

[It is also the intent of this section to encourage and implement water conservation practices for landscaping. Park City is in a mountainous, semi-desert environment where much of the precipitation occurs as snow during the winter months and the highest demand for water occurs during the summer months. The largest single water demand is for irrigation of landscaping. The use of water wise Xeriscaping will protect the health, safety, and welfare of the community from impacts of water shortages likely to occur during cycles of drought. Xeriscaping is a concept of landscaping with plants that use little or no supplemental irrigation and are typically native to the region. The concept also requires water conserving irrigation practices, such as drip irrigation and effective mulching with plant based mulches.](#)

15-5 -5. **ARCHITECTURAL DESIGN GUIDELINES.**

(I) **LIGHTING.**

(13) **SEASONAL DISPLAY OF LIGHTS.** Seasonal restrictions apply to the HCB, GC, LI and HRC zones. Residential Uses in the HR-1, HR-2, E, HRL, SF, RM, R-1, RDM, and RD zones are exempt from these requirements. Winter seasonal displays are permitted from the first of November to the ~~31st of March~~ 15th of April per the Park City Municipal Code.

Displays should be turned off at midnight. Any color of lights may be used; however, the lights shall not be used to create advertising messages or signs. Spelling out the name of a Business is prohibited.

(16) **OTHER EXEMPTIONS.**

(a) **Nonconformance.** All other outdoor light fixtures lawfully installed prior to and operable on the effective date of the ordinance codified in this Chapter, including City owned or leased Street lights, are exempt from all requirements of this Code. On commercial projects, all such fixtures shall be brought into compliance with this Code upon any Application for any exterior Building Permit. On residential Structures, only new exterior fixtures on remodels or new additions must comply with this ordinance.

(b) **Fossil Fuel Light.** All outdoor light fixtures producing light directly by the combustion of natural gas or other fossil fuels are exempt from the requirements of this Code.

(c) **Up-lighting.** Up-lighting is permitted under the following conditions:

(i) The use of luminaires for up-lighting on any residentially or commercially zoned Lot or Property or within a City ROW or Open Space zone, is permitted only for City-funded or owned statues, public monuments, ground-mounted Public Art, or flags of the United States of America.

(ii) All up-lighting shall be shielded and/or have beam-angle control and shall be aimed to limit the directed light to the illuminated object only.

(iii) Up-lighting is permitted thirty (30) minutes before sunset and until 11:00 p.m.; or, one hour after the close of location based on normal hours of operation, whichever is later.

(K) **MECHANICAL EQUIPMENT.** All electrical service equipment and sub-panels and all mechanical equipment, including but not limited to, air conditioning, pool equipment, fans and vents, utility transformers, except those owned and maintained by public utility companies, and solar panels, shall be painted to match the surrounding wall color or painted or Screened to blend with the surrounding natural terrain. Roof mounted equipment and vents shall be painted to match the roof and/or adjacent wall color and shall be Screened or integrated into the design of the Structure. Minor exceptions to Setback requirements for Screened mechanical equipment may be approved by the Planning Director where the proposed location is the most logical location for the equipment and impacts from the equipment on neighboring properties, historic facades, and streetscapes can be mitigated and roof top mechanical placement and visual clutter is minimized.

(L) **PATIOS AND DRIVEWAYS.** A Building Permit is required for all non-bearing concrete flatwork, asphalt, and /or any Impervious Surface, regardless of size or area. This includes any repairs, alterations, modifications, and expansions of existing flatwork.

(M) **LANDSCAPING.**

A complete landscape plan must be prepared for all Building Permit applications for all exterior work that impacts existing vegetation. The landscape plan shall utilize the concept of Xeriscaping for plant selection and location, irrigation, and mulching of all landscaped areas. The plan shall include foundation plantings and ground cover, in addition to landscaping for the remainder of the lot. The plan shall indicate the percentage of the lot that is landscaped and the percentage of the landscaping that is irrigated. The plan shall identify all existing Significant Vegetation.

Materials proposed for driveways, parking areas, patios, decks, and other hardscaped areas shall be identified on the plan. A list of plant materials indicating the botanical name, the common name, quantity, and container or caliper size and/or height shall be provided on the plan. All mulches shall consist of natural plant based materials, as opposed to stone based materials.

A licensed landscape architect shall prepare all materials for submittal of landscape plans for Conditional Use Permits, Master Planned Developments, and Historic District Design Reviews when the proposed work impacts existing vegetation.

To the extent possible, existing Significant Vegetation shall be maintained on Site and protected during construction. When approved to be removed, based on a Site Specific plan, Conditional Use, Master Planned Development, or Historic District Design Review approval, the Significant Vegetation shall be replaced with equivalent landscaping in type and size. Multiple trees equivalent in caliper to the size of the removed Significant Vegetation may be considered instead of replacement in kind and size. Where landscaping does occur, it should consist primarily of native and drought tolerant species, drip irrigation, and all plantings shall be adequately mulched with natural plant based mulch.

Irrigated lawn and turf areas are limited to a maximum percentage of the allowed Limits of Disturbance Area of a Lot or Property that is not covered by Buildings, Structures, or other Impervious paving, based on the size of the Lot or Property according to the following table:

<u>Lot Size</u>	<u>Maximum Turf or Lawn Area as a percentage of the allowed Limits of Disturbance Area of the Lot that is not covered by Buildings, Structures, or other Impervious paving</u>
<u>Greater than one (1) acre</u>	<u>25%</u>
<u>0.50 acres to one (1) acre</u>	<u>35%</u>
<u>0.10 acres to 0.49 acres</u>	<u>45%</u>
<u>Less than 0.10 acres</u>	<u>No limitation</u>

Where rock and boulders are allowed and identified on the Landscape Plan, these shall be from local sources. All noxious weeds, as identified by Summit County, shall be removed from the Property in a manner acceptable to the City and Summit County, prior to issuance of Certificates of Occupancy.

EXHIBIT F

CHAPTER NINE - NON-CONFORMING USES AND NON-COMPLYING STRUCTURES.

15-9-1. PURPOSE.

This Chapter regulates the continued existence of Non-Conforming Uses and Non-Complying Structures as defined in Chapter 15. While Non-Conforming Uses, Non-Complying Structures and improvements may continue, this Chapter is intended to limit enlargement, alteration, restoration, or replacement which would increase the discrepancy between existing conditions and the Development standards prescribed by this Code. In addition, Applications are reviewed to ensure that they are reducing the degree of non-conformity and improving the physical appearance of the Structure and site through such measures as landscaping, Building design, or the improved function of the Use in relation to other Uses.

15-9-5. MOVING, ENLARGING, OR ALTERING NON-CONFORMING USES.

No Non-Conforming Use may be moved, enlarged, altered, or occupy additional land, except as provided in this Section.

(E) **HISTORICALLY SIGNIFICANT BUILDINGS EXCEPTION: CHANGE OF NON-CONFORMING USE TO ANOTHER NON-CONFORMING USE OF SIMILAR OR LESS-INTENSIVE LAND USE TYPE.** Subject to the criteria below, a Non-Conforming Use located on a Lot or Parcel containing within a Building or Structure included on the Park City Historic Sites Inventory, designated as historically significant pursuant to LMC Section 4.13 may be changed to another Non-Conforming Use of a similar or less intensive land Use type. A Non-Conforming Use, which satisfies the criteria provided in Section 165-9-5(E)(4) herein shall be considered a similar or less intensive land Use type.

(1) **APPLICATION.** Application for any Non-Conforming Use must be made upon forms provided by the Planning Department. Upon filing of a Complete Application, the City shall post the Property indicating that an Application for modification of a Non-Conforming Use has been filed and that more detailed information may be obtained from the City.

(2) **NOTIFICATION OF ABUTTING PROPERTY OWNERS.** Notice shall be provided pursuant to the Notice Matrix in Chapter 1. See Section 15-1-19.

(3) **BOARD OF ADJUSTMENT HEARING.** Within thirty (30) working days of the Planning Department's receipt of a Complete Application, and after giving public notice, the Board of Adjustment shall hold a public hearing on the Non-Conforming Use Application. The Board of Adjustment shall either grant the Application in whole or in part, with or without modifications or conditions, or deny the Application. The Board of

Adjustment=s decision shall be made pursuant to criteria provided in Section 15-9-5(E)(4) below.

(4) **CRITERIA.** The Board of Adjustment shall approve an Application to change a Non-Conforming Use to another Non-Conforming Use if the ~~Applicant~~ Application complies with ~~proves~~ the following criteria:

- (a) All reasonable measures will be undertaken to alleviate or reduce the incompatibility or adverse effects of the Non-Conforming Use or Building upon abutting Properties or in the neighborhood;
- (b) All changes, additions, or expansions comply with all current laws except as to Use;
- (c) The new Use will provide for enclosed storage of necessary equipment, materials, and refuse, rather than create a need for additional outside storage; and
- (d) The new Use does not increase the parking requirement; or if there is an increase, the site plan meets the parking requirement and the Board of Adjustment finds that adjoining Properties and the neighborhood will not be adversely impacted by the increased parking demand.

EXHIBIT G

CHAPTER TEN- BOARD OF ADJUSTMENT

15-10-3. POWERS AND DUTIES.

(A) The Board of Adjustment shall hear and decide:

(1) Appeals from zoning decisions applying Title 15, Land Management Code;

~~(2) Special exceptions to the terms of the Land Management Code;~~

~~(32)~~ Variances from the terms of the Land Management Code; and

~~(43)~~ Appeals and call-ups of Final Action by the Planning Commission at the request of the City Council for City Development.

~~15-10-8. SPECIAL EXCEPTIONS.~~

~~The Board may hear Applications for special exceptions to the terms of the Land Management Code, which apply to variances, modifications of Non-Conforming Uses, appeals and other matters upon which the Board is required to pass judgment. Applications for special exceptions must be filed with the Planning Department, and the required fee paid in advance. No Application for a special exception shall be approved unless the Board of Adjustment shall determine that the proposed special exception is appropriate in the location proposed based upon its consideration of the general standards set forth below:~~

~~(A) The proposed Use and Development will be in harmony with the general and specific purposes for which the Land Management Code was enacted and for which the regulations of the district were established.~~

~~(B) The proposed Use and Development will not substantially diminish or impair the value of the Property within the neighborhood in which it is located.~~

~~(C) The proposed Use and Development will not have a material adverse effect upon the character of the Area or the public health, safety, and general welfare.~~

~~(D) The proposed special exception will be constructed, arranged and operated so as to be Compatible with the Use and Development of neighboring Property in accordance with the applicable district regulations.~~

~~(E) The proposed Use and Development will not result in the destruction, loss or damage to natural, scenic or historic features of significant importance.~~

(F) ~~The proposed Use and Development will not cause material air, water, soil or noise pollution or other types of pollution.~~

~~The Board of Adjustment may impose conditions and limitations as may be necessary or appropriate to prevent or minimize adverse effects upon other Property and other improvements in the vicinity of the special exception or upon public facilities and services. These conditions may include but are not limited to: conditions concerning Use, construction, operation, character, location, landscaping, Screening and other matters relating to the purposes and objectives of the Land Management Code. Such conditions shall be expressly set forth in the motion granting the special exception. Violation of any such condition or limitation shall be a violation of this section and shall constitute grounds for revocation of the special exception.~~

EXHIBIT H

CHAPTER ELEVEN- HISTORIC PRESERVATION

15-11-12. HISTORIC DISTRICT OR HISTORIC SITE DESIGN REVIEW.

The Planning Department shall review and approve, approve with conditions, or deny, all Historic District/Site design review Applications involving an Allowed Use, a Conditional Use, or any Use associated with a Building Permit, to build, locate, construct, remodel, alter, or modify any Building, accessory Building, or Structure, or Site located within the Park City Historic Districts or Historic Sites, including fences and driveways.

Prior to issuance of a Building Permit for any Conditional or Allowed Use, the Planning Department shall review the proposed plans for compliance with the Design Guidelines for Historic Districts and Historic Sites, LMC Chapter 15-11, and LMC Chapter 15-5. Whenever a conflict exists between the LMC and the Design Guidelines, the more restrictive provision shall apply to the extent allowed by law.

(A) PRE-APPLICATION CONFERENCE.

(1) It is strongly recommended that ~~the~~ the Owner and/or Owner's representative ~~shall be required to~~ attend a pre-Application conference with representatives of the Planning and Building Departments for the purpose of determining the general scope of the proposed Development, identifying potential impacts of the Development that may require mitigation, providing information on City-sponsored incentives that may be available to the Applicant, and outlining the Application requirements.

(2) Each Application shall comply with all of the Design Guidelines for Historic Districts and Historic Sites unless the Planning Department determines that, because of the scope of the proposed Development, certain guidelines are not applicable. If the Planning Department determines certain guidelines do not apply to an Application, the Planning Department staff shall communicate, via electronic or written means, the information to the Applicant. It is the responsibility of the Applicant to understand the requirements of the Application.

(3) The Planning Director, or his designee, may upon review of a Pre-Application submittal, determine that due to the limited scope of a project the Historic District or Historic Site Design Review process as outlined in LMC Sections 15-11-12(B-E) is not required and is exempt.

If such a determination is made, the Planning Director, or his designee may, upon reviewing the Pre-Application for compliance with applicable Design Guidelines, approve, deny, or approve with conditions, the project. If approved, the Applicant may submit the project for a Building Permit.

(D) **PUBLIC HEARING AND DECISION.** Following the fourteen (14) day public notice period noted in Section 15-1-21 of this Code, ~~the~~ The Planning Department staff shall hold a public hearing and make, within forty-five (45) days, written findings, conclusions of law, and conditions of approval or reasons for denial, supporting the decision and shall provide the Owner and/or Applicant with a copy. Staff shall also provide notice pursuant to Section 15-1-21.

(1) Historic District/Site design review Applications shall be approved by the Planning Department staff upon determination of compliance with the Design Guidelines for Park City's Historic Districts and Historic Sites. If the Planning Department staff determines an Application does not comply with the Design Guidelines, the Application shall be denied.

(2) With the exception of any Application involving the Reconstruction of a Building, Accessory Building, and/or Structure on a Landmark Site, an Application associated with a Landmark Site shall be denied if the Planning Department finds that the proposed project will result in the Landmark Site no longer meeting the criteria set forth in 15-11-10(A)(1).

(3) An Application associated with a Significant Site shall be denied if the Planning Department finds that the proposed project will result in the Significant Site no longer meeting the criteria set forth in 15-11-10(A)(2).

(E) **APPEALS.** The Owner, Applicant, or any Person with standing as defined in Section 15-1-18(D) of this Code may appeal any Planning Department decision made on a Historic District/Site design review Application to the Historic Preservation Board.

All appeal requests shall be submitted to the Planning Department within ten (10) days of the decision. Appeals must be written and shall contain the name, address, and telephone number of the petitioner, his or her relationship to the project, and a comprehensive statement of the reasons for the appeal, including specific provisions of the Code and Design Guidelines that are alleged to be violated by the action taken. All appeals shall be heard by the reviewing body within forty-five (45) days of the date that the appellant files an appeal unless all parties, including the City, stipulate otherwise.

Notice of all pending appeals shall be made by staff, pursuant to Section 15-1-21 of this Code. The appellant shall provide required stamped and addressed notice envelopes within fourteen (14) days of the appeal. The notice and posting shall include the location and description of the proposed Development project. The scope of review by the Historic Preservation Board shall be the same as the scope of review at the Planning Department level.

(1) The Historic Preservation Board shall either approve, approve with conditions, or disapprove the ~~proposal~~ Application based on written findings, conclusions of law, and conditions of approval, if any, supporting the decision, and shall provide the Owner and/or Applicant with a copy.

~~(2) — Any Historic Preservation Board decision may be appealed to the Board of Adjustment pursuant to Section 15-10-7 of this Code. Appeal requests shall be submitted to the Planning Department within ten (10) days of the Historic Preservation Board decision. Notice of all pending appeals shall be made by staff, pursuant to Section 15-1-21 f this Code. Appeals shall be considered only on the record made before the Historic Preservation Board and will be reviewed for correctness.~~

(E) EXTENSIONS OF APPROVALS.

Unless otherwise indicated, Historic District Design Review (HDDR) approvals expire one (1) year from the date of the Final Action. The Planning Director, or designee, may grant an extension of an HDDR approval for one (1) additional year when the Applicant is able to demonstrate no change in circumstance that would result in an unmitigated impact or that would result in a finding of non-compliance with the Park City General Plan or the Land Management Code in effect at the time of the extension request. Change of circumstance includes physical changes to the Property or surroundings. Notice shall be provided consistent with the original HDDR approval per Section 15-1-12. Extension requests must be submitted to the Planning Department in writing prior to the date of expiration of the HDDR approval.

15-11-13. RELOCATION AND/OR REORIENTATION OF A HISTORIC BUILDING OR HISTORIC STRUCTURE.

It is the intent of this section to preserve the Historic and architectural resources of Park City through limitations on the relocation and/or orientation of Historic Buildings, Structures, and Sites.

(A) CRITERIA FOR THE RELOCATION AND/OR REORIENTATION OF THE HISTORIC BUILDING(S) AND/OR STRUCTURE(S) ON A LANDMARK SITE OR A SIGNIFICANT SITE. In approving a Historic District or Historic Site design review Application involving relocation and/or reorientation of the Historic Building(s) and/or Structure(s) on a Landmark Site or a Significant Site, the Planning Department shall ~~find~~ fine the project complies with the following criteria:

~~(1)~~ — A portion of the Historic Building(s) and/or Structure(s) encroaches on an adjacent Property and an easement cannot be secured; or

~~(12)~~ The proposed relocation and/or reorientation will abate demolition of the Historic Building(s) and/or Structure(s) on the Site; or

~~(23)~~ The Planning Director and the Chief Building Official¹, determine that unique conditions warrant the proposed relocation and/or reorientation on the existing Site; or

~~(43)~~ The Planning Director and the Chief Building Official¹, determine that unique conditions warrant the proposed relocation and/or reorientation to a different Site.

¹ The HPB shall make this determination if the HPB is hearing the Application on appeal. The Planning Director and the Chief Building Official shall, at the appeal, submit a written statement or testify concerning whether, unique conditions warrant the proposed relocation and/or reorientation on the existing Site or to a different site.

(B) **PROCEDURE FOR THE RELOCATION AND/OR REORIENTATION OF A LANDMARK SITE OR A SIGNIFICANT SITE.** All Applications for the relocation and/or reorientation of any Historic Building(s) and/or Structure(s) on a Landmark Site or a Significant Site within the City shall be reviewed by the Planning Department pursuant to Section 15-11-12 of this Code.

(Created by Ord. No. 09-23)

15-11-14. DISASSEMBLY AND REASSEMBLY OF A HISTORIC BUILDING OR HISTORIC STRUCTURE.

It is the intent of this section to preserve the Historic and architectural resources of Park City through limitations on the disassembly and reassembly of Historic Buildings, Structures, and Sites.

(A) **CRITERIA FOR DISASSEMBLY AND REASSEMBLY OF THE HISTORIC BUILDING(S) AND/OR STRUCTURE(S) ON A LANDMARK SITE OR SIGNIFICANT SITE.** In approving a Historic District or Historic Site design review Application involving disassembly and reassembly of the Historic Building(s) and/or Structure(s) on a Landmark Site or Significant Site, the Planning Department shall find the project complies with the following criteria:

- (1) A licensed structural engineer has certified that the Historic Building(s) and/or Structure(s) cannot reasonably be moved intact; or
- (2) The proposed disassembly and reassembly will abate demolition of the Historic Building(s) and/or Structure(s) on the Site; or
- (3) The Historic Building(s) and/or Structure(s) are found by the Chief Building Official to be hazardous or dangerous, pursuant to Section 116.1 of the International Building Code; or
- (4) The Planning Director and the Chief Building Official² determine that unique conditions and the quality of the Historic preservation plan warrant the proposed disassembly and reassembly;

Under all of the above criteria, the Historic Structure(s) and or Building(s) must be reassembled using the original materials that are found to be safe and/or serviceable condition in combination with new materials; and

The Building(s) and/or Structure(s) will be reassembled in their original form, location, placement, and orientation.

² The HPB shall make this determination if the HPB is hearing the Application on appeal. The Planning Director and the Chief Building Official shall, at the appeal, submit a written statement or testify concerning whether, unique conditions and the quality of the Historic preservation plan warrant the proposed disassembly or reassembly.

EXHIBIT I

CHAPTER FIFTEEN- DEFINITIONS

15-15-1. DEFINITIONS

IMPERVIOUS SURFACE. Any hard-surfaced, man-made area that does not readily absorb or retain water, including but not limited to building roofs, parking and driveway areas, sidewalks, patios, and paved recreation areas.

PUBLIC ART: Any visual work of art displayed for two weeks or more in an open city-owned area, on the exterior of any city-owned facility, inside any city-owned facility in areas designated as public areas, or on non-city property if the work of art is installed or financed, either wholly or in part, with city funds or grants procured by the city.

TEMPORARY IMPROVEMENT. A Structure built, ~~or installed,~~ and maintained during construction of a Development; ~~activity~~ or ~~during a~~ Special Event ~~or activity~~ and then removed prior to release of the performance Guarantee. ~~Does not include temporary storage units, such as PODs or other similar structures used for temporary storage, that are not related to a Building Permit for construction of a Development and are not part of an approved Special Event or activity.~~

XERISCAPE. A landscaping method developed especially for arid and semiarid climates ~~utilizing~~ water-conserving techniques (such as the use of drought-tolerant plants, mulch, and efficient irrigation).

City Council Staff Report



Subject: Summit County/ Snyderville Basin
Special Recreation District & City Open Space
Purchase/Exchange Agreement
Author: Heinrich Deters
Department: Sustainability & Executive
Date: December 20, 2012
Type of Item: Administrative

Summary Recommendations:

Council should review and approve the attached Open Space Purchase and Exchange Agreement between Summit County, Snyderville Basin Special Recreation District and Park City for the purchase of the 292 acre Gillmor parcel, and related matters. (Exhibit A)

Background:

On May 23, 2012, Summit County acquired 292 acres adjacent to Round Valley from Nadine Gillmor, which ultimately preserved the property from proposed development. Utah Open Lands holds a conservation easement on the property. The County secured the parcel with an initial principal payment of \$6,000,000 with the final installment of \$1,425,000 due by June 25, 2013. Soon after the acquisition, the County approached the City about possibly funding the remaining of the installment balance, in conjunction with an overall coordinated effort to also purchase the 781 acre Toll Canyon Parcel, which was identified by BOSAC as their primary funding project. (Exhibit B- Map)
Public notice per the disposition of the City's interest in the PRI Kimball Open Space was accomplished through the posting of the property on December 3rd, as well as, placing notice in the Park Record, City and Utah Public Notice website.

Analysis:

Due to the size of the Purchase/Exchange Agreement, staff has provided City specific 'excerpts' in the report. The complete Purchase/Exchange Agreement can be found online <http://www.parkcity.org/Modules/ShowDocument.aspx?documentid=10424>

Park City's Obligations and Timeline per Agreement

Staff has provided Council with a quick overview of the agreement timeline and financial obligations.

December 20, 2012

- Park City is required to enter into this binding agreement with Summit County and Snyderville Basin Special Recreation District.

May 1, 2013

- PCMC conveys its interest in PRI Kimball (\$3.5 million or approximately 22% of the original purchase price; City actually is Tenants In Common with the County by deed).
- PCMC would provide cash payment to satisfy the \$1,425,000 Gillmor promissory note.
- PCMC satisfy the \$41,000 soft costs associated with purchase of the parcel and placement of the easement.
- PCMC and County would convey 3 acre Kimball Open Space Parcel [KJS Lot 5] to Utah Athletic Foundation.
- PCMC would receive Title of Gillmor parcel and associated Quit Claims, in addition to, provide the County an interest free promissory note for \$2,500,000, to be **due on November 1, 2014** and secured by the Gillmor parcel.

November 1, 2014

- Final cash payment to satisfy \$2,500,000 Gillmor promissory note.
- County would utilize above funds for closing on Toll Canyon parcels, or as otherwise agreed by consensus decision of a joint committee.

Toll Canyon Purchase timeline

December 2012

The County and Utah Open Lands will need to exercise an option agreement including the down payment on the parcel prior to moving forward.

December 21, 2012

- Utah Open Lands has a purchase option that must be exercised by this date, which includes:
 1. \$2,000,000 down payment. (BOSAC funds)
 2. Utah Open Lands would receive title of the parcel.
 3. An interest free promissory note for \$3,490,000, to be **due on December 21, 2014** and secured by the Toll Canyon parcel.

December 21, 2014

- Final cash payment to satisfy \$3,490,000 Toll Canyon promissory note. (\$2,500,000 City funds from Gillmor sale, remaining BOSAC funds, UOL fundraising monies and possible grant monies)

Park City's Funding mechanism

Staff has identified bond funds associated with the Resort City Sales Tax initiative as the proper funding mechanism for the purchase of the Gillmor parcel. If Council decides to move forward, there will be sufficient time to issue a bond against the RCST by the time of the closing. The amount would not require any adjustments to the current RCST plan/budget.

Department Review:

This report has been reviewed by the Sustainability, Legal, Finance, Budget and Executive Teams.

Alternatives:**A. Approve:**

Council should review and approve the agreement. (Staff Recommendation)

B. Deny:

Council may review and deny adopting the agreement.

C. Modify:

Council may choose to modify the agreement.

D. Continue the Item:

Council may feel that enough information is unavailable and continue the item.

E. Do Nothing:

Council may choose to do nothing and provide no direction pertaining to the agreement

Significant Impacts

	World Class Multi-Seasonal Resort Destination (Economic Impact)	Preserving & Enhancing the Natural Environment (Environmental Impact)	An Inclusive Community of Diverse Economic & Cultural Opportunities (Social Equity Impact)	Responsive, Cutting-Edge & Effective Government
Which Desired Outcomes might the Recommended Action Impact?	+ Accessible and world-class recreational facilities, parks and programs + Balance between tourism and local quality of life + Multi-seasonal destination for recreational opportunities	+ Abundant preserved and publicly-accessible open space + Managed natural resources balancing ecosystem needs		
Assessment of Overall Impact on Council Priority (Quality of Life Impact)	Very Positive 	Very Positive 	(Select from List)	(Select from List)
Comments: Prioritization of this purchase will represent a major percentage of the open space funding in the near future. This has the potential to improve City/County relations. Additionally, improving our relationship with the County and acquiring additional open space would both likely further the recent regional planning efforts.				

Funding Source:

Funds from the Resort City Sales Tax initiative have been identified.

Consequences of not taking the recommended action:

The agreement before Council has a specific timeline which is incumbent on Council's decision. If Council chooses to not take the recommended action, funding for the additional Toll Canyon properties may not be realized.

Recommendation:

Council should review and approve the attached Open Space Purchase and Exchange Agreement between Summit County, Snyderville Basin Special Recreation District and Park City for the purchase of the 292 acre Gillmor parcel, and related matters. (Exhibit A)

Exhibit A- Summit County/SBSRD-City Open Space Purchase/Exchange Agreement

OPEN SPACE PURCHASE AND EXCHANGE AGREEMENT

This Open Space Purchase and Exchange Agreement ("**Agreement**") is made as of this ____ day of December, 2012 (the "**Effective Date**") by and between **Summit County**, a political subdivision of the State of Utah (the "**County**"), **Snyderville Basin Special Recreation District**, a local district of the State of Utah (the "**District**") and **Park City Municipal Corporation**, a municipal corporation (the "**City**") (individually referred to herein as a "**Party**" and jointly referred to herein as the "**Parties**"). The County and the District are collectively referred to herein as the "**County Parties**".

WITNESSETH

The County Parties are the fee title owners of a certain parcel of real property identified as all of Lot 4 of the Gillmor Subdivision, according to the official plat thereof on file with the Summit County Recorder, Summit County Assessor Parcel Number Gillmor-4-X, consisting of approximately 292 acres, which is encumbered by a conservation easement held by Utah Open Lands (the "**Gillmor Open Space**");

The County Parties acquired the Gillmor Open Space on June 25, 2012 for the purchase price of \$7,425,000, of which \$6,000,000 was paid at closing and an interest-free Promissory Note of \$1,425,000 secured by a First Deed of Trust was to be paid on or before June 25, 2013 (the "**Prior Encumbrance**");

At the same time, the County Parties also acquired through quitclaim deeds various parcels of property bordering the Gillmor Open Space which are more particularly described on **Exhibit "A"** hereto (the "**Quitclaim Properties**");

The County Parties and City acquired as tenants in common (78% owned by the County Parties and 22% owned by the City) all of Lots 2 and 3 of the Kimball Junction Subdivision, First Amended, according to the official plat thereof recorded on October 28, 2010, as Entry Number 00909755 in the office of the Summit County Recorder (the "**Kimball Open Space**");

The County Parties and the City jointly own (in the percentage interests identified in the previous recital) all of Lot 5 of the Kimball Subdivision, First Amended (the "**KJS Lot 5**") which the Parties desire to convey to the Utah Athletic Foundation ("**UAF**"), pursuant to the terms of that certain letter agreement dated November 20, 2008, by and between the County and the UAF, a copy of which has been delivered to the Parties;

Simultaneously with the execution of this Agreement, the District intends to execute that certain option agreement attached hereto as **Exhibit "B"** (the "**District Option**"), which effectuates the purchase from Utah Open Lands Conservation Association, Inc., of the approximately 781 acre Toll Canyon property (the "**Toll Canyon Open Space**");

The City wishes to acquire the Gillmor Open Space and Quitclaim Properties from the County Parties. To accomplish this, the City is willing to deed its all of its right, title and interest in the Kimball Open Space to the County Parties, as well as provide \$3,966,000 in cash to the County Parties for the purpose of open space acquisition; and

As a part of the Closing (defined below), the County Parties desire to clarify their respective ownership interests in the Kimball Open Space.

NOW, THEREFORE, for good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, the parties agree as follows:

1. **Purchase Price; Payment Terms.** The purchase price for the Gillmor Open Space and Quitclaim Properties shall be Seven Million Four Hundred Sixty Six Thousand Dollars (\$7,466,000.00) (the "**Purchase Price**"). The Purchase Price shall be paid as follows:
 - (a) At the Closing, by Special Warranty Deed, the City shall convey to the County the Kimball Open Space, having a value of Three Million Five Hundred Thousand Dollars (\$3,500,000.00); and,
 - (b) At the Closing, the City shall pay to the District the sum of One Million Four Hundred Sixty Six Thousand Dollars (\$1,466,000.00) (the "**Down Payment**"); and,
 - (c) At the Closing, the City shall execute and deliver to the District an interest-free promissory note for the balance of the Purchase Price in the principal amount of Two Million Five Hundred Thousand Dollars (\$2,500,000.00), due and payable on or before November 1, 2014 (the "**Promissory Note**"). The Promissory Note shall be secured by a first lien deed of trust, which shall encumber all of the Gillmor Open Space and the Quitclaim Properties (the "**Trust Deed**"). The form of the Promissory Note and Trust Deed are attached hereto as **Exhibits "C"** and **"D"**, respectively.
2. **Trail Master Plan.** The City shall use its best efforts to work in good faith with the District in the mapping of appropriate trails through the Gillmor Open Space. This provision shall survive the Closing as set forth herein.
3. **Consent to Annexation.** The County agrees that it shall not protest the annexation of the Gillmor Open Space into the municipal boundaries of the City.
4. **Environmental Condition of Property.** The County Parties commissioned AGEC Applied Geo Tech to perform a Phase I Environmental Site Assessment, including some limited soils testing, on the Gillmor Open Space, and a report of such was issued on

November 29, 2012 as AGECE Project No. 1120965 (the "Environmental Report"). The City is in receipt of the Environmental Report and is satisfied with the environmental conditions of the Gillmor Open Space.

5. **Use of Proceeds.**

a. **From Down Payment:** The Parties acknowledge that, at the Closing, \$1,425,000 of the proceeds from the Down Payment shall be used by the County Parties to extinguish the Prior Encumbrance on the Gillmor Open Space. The remainder of the Down Payment of approximately \$41,000 reimburses the County Parties for their share of any Closing costs and for costs incurred by them for surveying, engineering, environmental and conservation easement work done in connection with their acquisition of the Gillmor Open Space.

b. **From the Promissory Note:** The County Parties intend to use proceeds from the Promissory Note to help fund the purchase of the Toll Canyon Open Space. In the event that the County Parties do not use all of the proceeds from the Promissory Note to help fund the purchase of the Toll Canyon Open Space ("Unused Proceeds"), then the County Parties shall spend the Unused Proceeds to acquire other open space within the District's boundaries, which parcels shall be owned by the District. The County and the City shall form a six (6) member executive committee (the "**Executive Committee**") to determine which open space property(ies) to purchase. The Executive Committee shall consist of two (2) members of the County Council sitting as members of the Governing Body of the District, one (1) member of the Basin Open Space Advisory Committee, two (2) members of the City Council or their designees, and one (1) member of the City Open Space Advisory Committee.

6. **Escrow Agent; Title Report.** The transactions contemplated by this Agreement shall be escrowed, closed, and settled (collectively, the "**Closing**") at the offices of U.S. Title Insurance Agency, 1630 Shortline Road, P.O. Box 681128, Park City, UT, 84060, (the "**Escrow Agent**") (attention Corinne Woodward; telephone 435-615-1148; email cwoodward@ustitleutah.com). The Escrow Agent has provided title commitments for the Gillmor Open Space and the Kimball Open Space, which are attached hereto as **Exhibit "E"** and **Exhibit "F"**, respectively (the "**Title Commitments**"). Except for Exception #22 in the Title Commitment for the Gillmor Open Space, which exception shall be removed at Closing when the Prior Encumbrance is satisfied, the Parties hereby accept the Title Commitments and the exceptions identified therein (the "**Permitted Exceptions**").

7. **Closing Condition; Closing; Closing Date.** The City's obligations under this Agreement are contingent upon the District's having exercised the District Option to purchase the Toll Canyon Open Space. The Closing shall occur (the "**Closing Date**") on or before May 1, 2013. At the Closing, the parties shall do the following through escrow: (a) the County shall execute and deliver to the District the following deeds: (i) a special warranty deed conveying the County's 19% undivided interest in the Gillmor Open

Space, as more particularly set forth in **Exhibit "G"**, and (ii) a quitclaim deed conveying the County's 19% undivided interest in the Quitclaim Properties, as more particularly set forth in **Exhibit "H"**; (b) the City shall execute and deliver a special warranty deed conveying good and marketable title to all of the City's interest in the Kimball Open Space, subject to the Permitted Exceptions, to the County as more particularly set forth in **Exhibit "I"**; (c) the County shall execute and deliver a special warranty deed conveying an undivided 63% interest in the Kimball Open Space to the District, as more particularly set forth in **Exhibit "J"**; (d) the City shall pay the Down Payment and shall execute and deliver the Promissory Note and Trust Deed; (e) the County Parties shall pay off the debt obligation secured by the Prior Encumbrance; (f) the District shall execute and deliver a special warranty deed conveying good and marketable title to the Gillmor Open Space to the City, subject to the Permitted Exceptions, as more particularly set forth in **Exhibit "K"**; (g) the District shall execute and deliver a quitclaim deed to the Quitclaim Properties to the City, as more particularly set forth in **Exhibit "L"**; (h) the County and the City shall execute and deliver a special warranty deed conveying the KJS Lot 5 to the UAF, as more particularly set forth in **Exhibit "M"**; (i) the District, at its expense, shall purchase a standard A.L.T.A. owners title insurance policy in the amount of \$7,425,000 insuring good and marketable title to the Gillmor Open Space in the City, based upon the Title Commitment and subject only to the Permitted Exceptions and the Trust Deed; (j) the City, at its expense, shall purchase a standard A.L.T.A. owners title insurance policy in the amount of \$3,500,000, insuring good and marketable title in the Kimball Open Space in the District as to an undivided 63% interest and the County as to an undivided 37% interest, based upon the Title Commitment and subject only to the Permitted Exceptions; (k) the District and the City shall equally share in the costs of the escrow; and (l) the Parties shall take all other steps needed to effectuate the transactions contemplated by this Agreement.

8. **Joint Acknowledgment of the Parties.** The Parties agree that they shall enter into a joint press release to announce their involvement in the open space transactions contemplated by this Agreement, which include the Gillmor Open Space, Kimball Open Space, and Toll Canyon Open Space. In addition, to the extent that there are any plaques, monuments, signs, or other public displays or announcements identifying the Gillmor Open Space, the Kimball Open Space, and/or the Toll Canyon Open Space, the Parties shall each be listed therein as contributing partners to the preservation of these open spaces.
9. **Notices.** All notices provided for herein to be deemed delivered when sent to the following:

If to the County:

Summit County Manager
Summit County Courthouse
P.O. Box 128
60 N. Main
Coalville, Utah 84017

If to the District:

District Director
Snyderville Basin Special Recreation District
5715 Trailside Dr.
Park City, Utah 84098

If to the City:

Park City Manager
P.O. Box 1480
445 Marsac Ave
Park City, Utah 84060

10. **Entire Agreement; Amendment Waiver.** This Agreement constitutes the entire agreement between the parties pertaining to any right or interest in and to the Kimball Open Space, Gillmor Open Space, the Quitclaim Properties, or other subject matter contained in it and supersedes all prior agreements, representations, and understandings of the parties. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by all parties. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provisions, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver. Only a writing executed by all parties clearly stating its termination may cancel this Agreement.
11. **Severability.** Any provision hereof which is prohibited or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction will not invalidate or render unenforceable such provision in any other jurisdiction.
12. **Authority.** Each Party represents and warrants that it has full authority to perform as herein provided, and has received all consents necessary or desirable in connection with the execution of this Agreement.
13. **Execution.** This Agreement may be executed by the execution of one of more counterparts and may be executed by sending an electronic copy of an executed Agreement to the other party hereto.
14. **Dispute Resolution.** The parties agree that any dispute, arising related to this Agreement may first be submitted to mediation. If mediation is mutually agreed upon then, the dispute shall be submitted to mediation through a mediation provider unanimously agreed upon by the parties. Each party agrees to bear its own costs of mediation. If, however, any party is required to take legal action to pursue any rights under this Agreement, then the prevailing party shall be entitled to attorneys' fees and costs. Each of the Parties

agrees that the other Parties shall be entitled to enforce specifically this Agreement and the terms and provisions hereof in any action instituted in any court having jurisdiction over the Parties and the matter, in addition to any other remedy to which they may be entitled, at law or in equity.

15. **No Brokers.** All parties represent to each other that they have not engaged a real estate broker or other professional to whom monies might be owed by reason of this transaction. The parties agree to indemnify and hold the other harmless from any and all costs, expenses or damages resulting from any claims for brokerage fees or other similar forms of compensation made by any real estate broker or any other person or entity because of the option and future sale contemplated by this Agreement.
16. **Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the state of Utah. The parties consent to the jurisdiction of the courts of the state of Utah and further agree that any action arising out of or relating to this Agreement may only be commenced in the courts of the state of Utah. The terms and provisions of the Agreement are for the benefit of the County, the District and the City only and no other person shall have any right or cause of action on account thereof.
17. **Prorations.** At Closing, all real estate taxes and assessments, both general and special, shall be prorated as of the Closing Date. Further, the costs of Closing shall be divided as between the parties in the manner typical for this type of transaction.
18. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the County, the District, and the City and their respective successors and assigns.
19. **Assignment.** This Agreement may be assigned with the prior written permission of the non-assigning party or parties, which permission will not be unreasonably withheld.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties hereto as of the date written above.

SUMMIT COUNTY

By: _____

Its: Manager

**SNYDERVILLE BASIN SPECIAL RECREATION
DISTRICT**

By: _____

Its: Chair, Governing Board

PARK CITY MUNICIPAL CORPORATION

By: _____

Its: _____

DRAFT

Exhibit A of Purchase Agreement- Quit Claim Properties

Exhibit "A"

To

Open Space Purchase And Exchange Agreement

Quitclaim Properties

TRACT ONE:

A portion of land lying outside the legal described boundary of Tax Parcel SS-59-A, but within the existing, historic fence lines that are located on Tax Parcel SS-57-2-A-X and Tax Parcel SS-59-X. Located in Section 28, Township 1 South, Range 4 East, Salt Lake Base and Meridian, Summit County, Utah, described as follows:

Commence at the Northeast corner of Section 28, Township 1 South, Range 4 East, Salt Lake Base and Meridian; Thence along the East line of said Section 28 South 01° 02' 41" East a distance of 2,666.45 feet to the East Quarter Corner of said Section 28; Thence continuing along said East Section line South 01° 02' 41" East a distance of 526.31 feet to the Point of Beginning, said point also being the Southeast property corner of Tax Parcel SS-59-A; Thence, backtracking along said East line of Section 28, North 001°02'41" West a distance of 629.4 feet, more or less, to a point of intersection of an existing wire fence and said East line of Section 28; Thence leaving said East line of Section 28 and continuing along said existing wire fence South 1°34'49" East a distance of 817.7 feet, more or less to the point of intersection of an existing East-West wire fence; Thence continuing Westerly along said existing East-West wire fence the following twenty-five (25) calls; (1) South 88°50'35" West a distance of 8.5 feet, more or less; (2) South 88°15'16" West a distance of 67.9 feet, more or less; (3) North 89°58'50" West a distance of 105.4 feet, more or less; (4) North 88°41'59" West a distance of 140.9 feet, more or less; (5) North 87°26'20" West a distance of 316.4 feet, more or less; (6) North 88°44'04" West a distance of 313.1 feet, more or less; (7) North 87°53'00" West a distance of 409.4 feet, more or less; (8) North 88°52'10" West a distance of 133.1 feet, more or less; (9) South 88°03'50" West a distance of 37.8 feet, more or less; (10) South 85°06'02" West a distance of 54.6 feet, more or less; (11) South 82°20'44" West a distance of 138.2 feet, more or less, to the point of a fence corner; (12) South 14°10'26" East a distance of 80.1 feet, more or less, to the point of a fence corner; (13) South 50°51'55" West a distance of 129.7 feet, more or less, to the point of a fence corner; (14) North 67°22'03" West a distance of 208.3 feet, more or less, to the point of a fence corner; (15) North 89°38'34" West a distance of 305.0 feet, more or less; (16) South 87°59'48" West a distance of 116.2 feet, more or less; (17) South 87°39'29" West a distance of 263.4 feet, more or less to the point of a fence corner; (18) North 74°06'23" West a distance of 417.2 feet, more or less; (19) North 75°41'50" West a distance of 114.2 feet, more or less; (20) North 80°21'47" West a distance of 126.1 feet, more or less; (21) North 81°04'47" West a distance of 83.0 feet, more or less; (22) North 81°59'19" West a distance of 232.4 feet, more or less; (23) North 86°00'41" West a distance of 673.3 feet, more or less, to the point of a fence corner; (24) South 4°18'20" West a distance of 347.9 feet, more or less, to the point of a fence corner; (25) South 72°39'52" West a distance of 13.9 feet, more or less; Thence leaving said existing East-West fence, North 00°04'28" East a distance of 15.2 feet, more or less to a South-Westerly boundary corner of

said Parcel SS-59-A; Thence Northerly and Easterly along the boundary line of said Tax Parcel SS-59-A the following two (2) calls: (1) North 00°04'28" East a distance of 350.80 feet to a boundary corner; (2) South 89° 55' 32" East a distance of 4,328.47 feet to the Southeast property corner of said tax parcel SS-59-A, said point also being the point of beginning.

Contains: 16.75 Acres (729,429 s.f.), more or less.

Assessor Parcel No.: SS-59-X

TRACT TWO:

Located in Section 28, Township 1 South, Range 4 East, Salt Lake Base and Meridian, Summit County, Utah, described as follows:

Commence at the Southwest Corner of the Section 28, Township 1 South, Range 4 East, Salt Lake Base and Meridian; thence South 88°25'45" East 1023.00 feet along the section line and North 00°04'28" East 1732.50 feet to the TRUE POINT OF BEGINNING; Thence backtracking South 00°04'28" West a distance of 1732.50 feet to the south line of said Section 28; Thence along said south Section Line North 88°25'45" West a distance of 71.82 feet, more or less, to the east property line of Tax Parcel SS-60-1; Thence along said east property line of Tax Parcel SS-60-1 North 03°19'50" West a distance of 442.31 feet, more or less to the common easterly corner between Tax Parcels SS-60-1 and SS-60-3; thence along the east boundary line of said Tax Parcel SS-60-3 North 03°19'50" West a distance of 444.71 feet, more or less to the common easterly property corner between Tax Parcels SS-60-3 and SS-60; Thence along the easterly property line of said Tax Parcel SS-60 the following two (2) calls: (1) North 01°04'56" west a distance of 398.85 feet, more or less; (2) North 24°57'56" West a distance of 367.09 feet, more or less to the common easterly property corner between Tax Parcels SS-60 and SS-60-F-1; Thence along the northeasterly property line of said Tax Parcel SS-60-F-1 North 55°08'08" West a distance of 199.23 feet, more or less to a southwesterly property corner of Tax Parcel SS-59-A; Thence along the southerly property line of said Tax Parcel SS-59-A South 89°55'32" East a distance of 348.45 feet, more or less to the point of beginning.

Contains 2.70 Acres (117,424 s.f.), more or less.

Assessor Parcel No.: SS-59-A-2-X

Exhibit C of Purchase Agreement- Promissory Note

Promissory Note (the "Note")

Maker:
Park City Municipal Corporation
P.O. Box 1480
445 Marsac Avenue
Park City, Utah 84060

Principal Amount:
\$2,500,000.00

FOR VALUE RECEIVED, the undersigned, Park City Municipal Corporation, a municipal corporation (the "Maker"), promises to pay to the order of the Snyderville Basin Special Recreation District, at 5715 Trailside Dr., Park City, Utah 84098 ("Seller"), or at such other location as designated by Seller, in lawful money of the United States of America, the principal amount of **Two Million Five Hundred Thousand Dollars (\$2,500,000.00)** (the "Principal Amount"), without interest thereon, or such portion thereof as may be outstanding, on or before **November 1, 2014**, (the "Maturity Date").

The financial obligation evidenced by this Note arises from a transaction more fully set forth in a Purchase and Exchange Agreement dated December __, 2012 (the "Agreement"). This Note is secured by a first position trust deed encumbering approximately 292 acres located in Summit County, Utah (the "Trust Deed").

Interest hereunder shall accrue at an annual rate of zero percent (0.0%) per annum. Provided, however, in the event the Maker fails to timely pay the Principal Amount on or before the Maturity Date, the Maker shall pay a five percent (5%) late fee and interest at the rate of twelve percent (12%) per annum, compounded annually, shall accrue on the unpaid Principal Amount from the Maturity Date to and including the date upon which Maker pays in full amounts owing on under this Note. All payments received from Maker shall first be applied towards accrued late fees and accrued interest and then to unpaid principal.

On the Maturity Date, the entire outstanding Principal Amount balance, together with any and all other amounts that may be due and payable under this Note or pursuant to the Trust Deed shall be due and payable in full.

Maker may prepay this Note at any time without penalty.

If a payment on this Note becomes due and payable on a Saturday, Sunday or legal holiday under the laws of the State of Utah, the payment date shall be extended to the next succeeding business day. The Maker waives presentment for payment, protest, notice of protest and of nonpayment of this Note. Maker agrees that failure of Sellers or any holder of this Note to exercise its rights hereunder shall not constitute a waiver of the right to exercise the same in the event of a later default.

This Note shall be construed according to the laws of the State of Utah.

DATED this ___ day of December, 2012.

“Maker”:

Park City Municipal Corporation

By: _____
Print Name: _____
Its: _____

Exhibit D of Purchase Agreement- Trust Deed

WHEN RECORDED MAIL TO:

Snyderville Basin Special Recreation District
Attn: District Director
5715 Trailside Drive
Park City, UT 84098

SPACE FOR RECORDER'S USE

TRUST DEED

THIS TRUST DEED is made and given the ____ day of _____, 2012, by **Park City Municipal Corporation**, a municipal corporation, whose address is P.O. Box 1480, 445 Marsac Avenue, Park City, Utah 84060 as "**Trustor**" to **U.S. Title Insurance Agency, LLC**, 1630 Short Line Road, Park City, UT, 84060; Attention Kathie Johnston, as "**Trustee**", for the benefit of the **Snyderville Basin Special Recreation District**, a local district of the State of Utah, whose address is 5715 Trailside Drive, Park City, Utah 84098, as "**Beneficiary**".

WITNESSETH: That Trustor hereby grants, conveys, transfers, assigns and warrants to Trustee in trust, with power of sale, for the benefit of Beneficiary, the following described Property, situated in Summit County, State of Utah:

SEE EXHIBIT "A" ATTACHED HERETO AND INCORPORATED HEREIN

Together with all the estate, right, title and interest that Trustor now has or may hereafter acquire, either in law or in equity, in and to the property described above; to have and to hold the same, together with all buildings, structures and improvements now or hereafter constructed or placed on the property and all alterations, additions or improvements now or hereafter made thereto, and together with all easements, rights of way, prescriptive rights, covenants benefiting the property, tenements, hereditaments, reversions, remainders, issues, profits, privileges, water rights, water company shares of stock (with all certificates therefor to be delivered to Beneficiary), and appurtenances of every kind and nature thereunto belonging, relating or in any way appertaining, or which may be hereafter acquired and used or related to the property, or any part thereof, and together with all proceeds therefrom including without limitation condemnation awards and insurance proceeds (all of the foregoing shall hereinafter be collectively referred to as the "Property").

FOR THE PURPOSE OF SECURING (1) payment of the indebtedness evidenced by a Trust Deed Note, dated of even date herewith, in the stated principal sum of Two Million Five Hundred Thousand Dollars (\$2,500,000), made by Trustor, payable to the order of Beneficiary at the times, in the manner as therein set forth, and any increases, extensions, renewals or modifications thereof and any restated or replacement promissory note therefor (the "Note"); (2) the payment and performance of all obligations and liabilities of Trustor under the terms of all documents executed for the benefit of Beneficiary in connection with the Note; (3) the performance of each agreement, covenant and representation of Trustor set forth in this Trust Deed; (4) the payment of any other loans or credit made or extended by Beneficiary to Trustor or its successors or assigns; and (5) the payment of all sums expended or advanced by Beneficiary under or pursuant to the terms of this Trust Deed.

An "Event of Default" under this Trust Deed shall occur upon (1) any default or event of default occurring under the Note, (2) any default or event of default occurring under any other obligation secured by this Trust Deed, (3) any failure to meet or comply with Trustor's obligations under this Trust Deed, (4) a receiver or a trustee being appointed for Trustor or with respect to Trustor's property, (5) Trustor making an assignment for benefit of creditors, (6) Trustor becoming insolvent, or (7) a petition being filed by or against Trustor pursuant to any provision of the United States Bankruptcy Code, as amended.

TO PROTECT THE LIENS AND SECURITY INTERESTS GRANTED BY THIS TRUST DEED, TRUSTOR HEREBY AGREES:

1. To keep the Property in good condition and repair; not to remove or demolish any building or improvement or landscaping; to complete or restore promptly and in good workmanlike manner any building or improvement or landscaping which may be constructed, damaged or destroyed thereon; to comply with all laws, regulations, covenants and restrictions affecting the Property including without limitation all applicable local, state and federal laws, rules, regulations and ordinances relating to land use and zoning; not to commit or permit waste on the Property; not to commit, suffer or permit any act upon the Property in violation of law; to do all other acts which from the character or use of the Property may be reasonably necessary to maintain its value.

2. To pay at least 20 days before delinquency all taxes and assessments affecting the Property, including all assessments upon water company stock and all assessments and charges for water and other utilities used in connection with the Property; to pay, when due, all encumbrances, charges, and liens with interest on the Property or any part thereof, which at any time appear to be prior or superior hereto; to pay all costs, fees and expenses incurred by Beneficiary in connection with this Trust Deed.

3. Upon an Event of Default, Beneficiary or Trustee, but without any obligation to do so and without notice to or demand upon Trustor and without releasing Trustor from any obligation under this Trust Deed, may (i) take measures as either may deem necessary to protect and preserve the liens and security interests granted by this Trust Deed, Beneficiary or Trustee being authorized to enter upon the Property for such purposes; (ii) commence, appear in and defend any action or

proceeding purporting to affect the Property, this Trust Deed or the rights or powers of Beneficiary or Trustee under this Trust Deed; (iii) pay, purchase, contest, or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior to this Trust Deed; and (iv) in exercising any such powers, expend whatever amounts it may deem necessary therefor, including title work and the employment of attorneys, with Trustor hereby agreeing to reimburse Beneficiary or Trustee for all such expenses with interest thereon at the applicable interest rate set forth in the Note.

4. To accord Beneficiary the right to inspect the Property upon reasonable notice during usual business hours.

IT IS MUTUALLY AGREED THAT:

5. Should the Property or any part thereof be taken or damaged by reason of any public improvements or condemnation proceeding, Beneficiary shall be entitled to receive independently and solely all compensation, awards, and other payments or relief therefor, and shall be entitled at its option to commence, appear in and prosecute in its own name, any action or proceedings, or to make any compromise or settlement, in connection with such taking or damage. All such compensation, awards, damages, right of action and proceeds, are hereby assigned to Beneficiary, who may, after deducting therefrom all its expenses, including attorney's fees, apply the same on any indebtedness secured by this Trust Deed in such order as Beneficiary may determine. Trustor agrees to execute such further assignments of any compensation, award, damages, and rights of action and proceeds as Beneficiary may request.

6. Trustor hereby assigns absolutely to Beneficiary all leases, rents, issues and royalties generated at or arising in connection with any portion of the Property, whether now existing or hereafter arising. Until an Event of Default or until Beneficiary gives notice otherwise (which notice may be given even if no Event of Default exists), Trustor shall be permitted to collect all such leases, rents, issues and royalties payable prior to such Event of Default or, as the case may be, prior to notice from Beneficiary, as they become due and payable (Trustor may not collect any prepayments thereof). If an Event of Default occurs or upon Beneficiary's notice, Trustor's privilege to collect any of such moneys and enjoy the benefits of such Property shall immediately cease, and Beneficiary shall have the right, as stated above, with or without taking possession of the Property, to collect all leases, rents, issues and royalties and enjoy the benefits of the Property. Failure of or discontinuance by Beneficiary at any time or from time to time to collect any such moneys shall not in any manner affect the subsequent enforcement by Beneficiary of the right, power, and authority to collect the same. Nothing contained herein, nor the exercise of the right by Beneficiary to collect, shall be or be construed to be, an affirmation by Beneficiary of any tenancy, lease, or option, nor an assumption of liability under, nor a subordination of the lien of this Trust Deed to any such tenancy, lease or option.

7. Upon an Event of Default, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court (Trustor hereby consenting to the ex parte appointment of such receiver without the posting of a bond or undertaking and consenting to the appointment of Beneficiary or its affiliate as such receiver and without regard to the value of the Property or the adequacy of any security for the indebtedness secured by this Trust Deed), enter

upon and take possession of the Property or any part thereof, in its own name sue for or otherwise collect leases, rents, issues and royalties including those past due and unpaid, and apply such collections, less costs and expenses of operation and collection, including attorney's fees, upon the indebtedness secured hereby, and in such order as Beneficiary may determine. This right to the appointment of a receiver is a contractual right that may be specifically enforced by Beneficiary with or without adherence to any rule of civil procedure applicable otherwise to the prejudgment appointment of a receiver.

8. The exercise by Beneficiary of the remedies provided by this Trust Deed, including the entering upon and taking possession of the Property, the appointment of a receiver, the collection of leases, rents, issues, and royalties, or the proceeds of fire and other insurance policies, or compensation or awards for any taking or damage of the Property, and the application thereof shall not cure or waive any Event of Default, nor shall it affect or limit the rights of Beneficiary to commence foreclosure proceedings pursuant to the applicable trust deed statute or as otherwise provided by law. The judicial appointment of a receiver shall not affect the rights of Beneficiary to conduct a power of sale foreclosure.

9. Failure on the part of Beneficiary to promptly enforce any right hereunder shall not operate as a waiver of such right and the waiver by Beneficiary of any Event of Default or acceptance of payment of any payment secured hereby after its due date shall not constitute a waiver of any other subsequent Event of Default.

10. Time is of the essence hereof. Upon an Event of Default, all sums secured hereby shall immediately become due and payable in full at the option of Beneficiary. Upon an Event of Default, and without any obligation on Beneficiary to give notice of such acceleration, Beneficiary may execute or cause Trustee to execute and record a "notice of default" pursuant to the applicable trust deed statutes and commence a power of sale foreclosure permitted by those trust deed statutes.

11. At any time after the lapse of such time as may then be required by law following the recordation of a notice of default, and a notice of sale having been given in the manner required or permitted by law, Trustee, without demand on Trustor, may sell the Property on the date and at the time and place designated in such notice of sale, either as a whole or in separate parcels, and in such order as Beneficiary may request, at public auction to the highest bidder, the purchase price payable in lawful money of the United States at the time of sale. The person conducting the sale may, for any reason, postpone the sale from time to time to the extent permitted by law until it shall be completed and, in every such case, notice of postponement shall be given by public declaration thereof by such person at the time and place last appointed for the sale. Trustee shall execute and deliver to the purchaser its trustee's deed conveying the Property so sold, but without any covenant or warranty, express or implied. The recitals in the trustee's deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Beneficiary, may bid at the sale. Except as otherwise directed by applicable law, Trustee shall apply the proceeds of the sale to payment of (1) the costs and expenses of exercising the power of sale and of the sale, including the payment of the Trustee's and attorney's fees; (2) the costs of any appraisals, environmental audits, and evidences of title procured in connection with such sale and any expenses associated with the trustee's deed; (3) all sums expended under the terms of this Trust

Deed not then repaid, with accrued interest from the day of expenditure at the applicable rate set forth in the Note; (4) all other sums then secured hereby; and (5) the remainder, if any, to the person or persons legally entitled thereto, or the Trustee, in its discretion, may deposit or interplead the balance of such proceeds with the county clerk or a court of the county in which the sale took place.

12. Trustor agrees to surrender complete possession of the Property to the purchaser at the trustee's sale immediately after such sale in the event such possession has not previously been surrendered by Trustor.

13. This Trust Deed shall apply to, inure to the benefit of, and bind all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns.

14. Trustor hereby agrees not to sell or transfer any right, title or interest in or to the Property or any portion thereof, whether voluntarily or involuntarily, without the prior written consent of Beneficiary, which consent shall not be unreasonably conditioned, delayed, or withheld. In the event of a permitted transfer, Trustor shall remain obligated to Beneficiary under the Note, the other Loan Documents and this Trust Deed, unless Beneficiary expressly releases Trustor in writing. A prohibited transfer under this paragraph shall include a transfer of more than a fifty percent (50%) ownership interest in Trustor.

15. With respect to Trustor's ownership and use of the Property, Trustor agrees to comply with all laws, statutes and regulations now or hereafter effective with respect to the protection of the environment, or to the generation, use, storage, removal, transportation, handling or disposal of toxic materials, hazardous substances, hazardous waste or other similar materials or substances.

16. This Trust Deed shall be construed according to the laws of the State of Utah.

17. If any provision hereof should be held unenforceable or void, then such provision shall be deemed separable from the remaining provisions and shall in no way affect the validity of this Trust Deed, the liens granted hereby, or the rights of Beneficiary hereunder.

18. Trustor agrees that a copy of any notice default and any notice of sale given in connection with a power of sale foreclosure (or any other notice given in connection with this Trust Deed) may be mailed to Trustor at the Trustor's address set forth above.

SIGNATURE OF TRUSTOR:

Park City Municipal Corporation

By: _____

Print Name: _____

Its: _____

TRUSTOR'S ACKNOWLEDGMENT

STATE OF UTAH)
:ss.

COUNTY OF _____)

On the ____ day of _____, 2012, personally appeared before me _____, the _____ of Park City Municipal Corporation who being duly sworn, did say that the foregoing instrument was signed in behalf of Park City Municipal Corporation, by authority of its governing body and said _____ acknowledged to me that the Park City Municipal Corporation executed the same.

Notary Public

EXHIBIT "A"

Legal Description of Property

All of Lot 4, Gillmor Subdivision, according to the official plat thereon on file with the Summit County Recorder's Office.

Assessor Parcel No.: Gillmor-4-X;

TOGETHER WITH THE FOLLOWING TWO TRACTS:

TRACT ONE:

A portion of land lying outside the legal described boundary of Tax Parcel SS-59-A, but within the existing, historic fence lines that are located on Tax Parcel SS-57-2-A-X and Tax Parcel SS-59-X. Located in Section 28, Township 1 South, Range 4 East, Salt Lake Base and Meridian, Summit County, Utah, described as follows:

Commence at the Northeast corner of Section 28, Township 1 South, Range 4 East, Salt Lake Base and Meridian; Thence along the East line of said Section 28 South 01° 02' 41" East a distance of 2,666.45 feet to the East Quarter Corner of said Section 28; Thence continuing along said East Section line South 01° 02' 41" East a distance of 526.31 feet to the Point of Beginning, said point also being the Southeast property corner of Tax Parcel SS-59-A; Thence, backtracking along said East line of Section 28, North 001°02'41" West a distance of 629.4 feet, more or less, to a point of intersection of an existing wire fence and said East line of Section 28; Thence leaving said East line of Section 28 and continuing along said existing wire fence South 1°34'49" East a distance of 817.7 feet, more or less to the point of intersection of an existing East-West wire fence; Thence continuing Westerly along said existing East-West wire fence the following twenty-five (25) calls; (1) South 88°50'35" West a distance of 8.5 feet, more or less; (2) South 88°15'16" West a distance of 67.9 feet, more or less; (3) North 89°58'50" West a distance of 105.4 feet, more or less; (4) North 88°41'59" West a distance of 140.9 feet, more or less; (5) North 87°26'20" West a distance of 316.4 feet, more or less; (6) North 88°44'04" West a distance of 313.1 feet, more or less; (7) North 87°53'00" West a distance of 409.4 feet, more or less; (8) North 88°52'10" West a distance of 133.1 feet, more or less; (9) South 88°03'50" West a distance of 37.8 feet, more or less; (10) South 85°06'02" West a distance of 54.6 feet, more or less; (11) South 82°20'44" West a distance of 138.2 feet, more or less, to the point of a fence corner; (12) South 14°10'26" East a distance of 80.1 feet, more or less, to the point of a fence corner; (13) South 50°51'55" West a distance of 129.7 feet, more or less, to the point of a fence corner; (14) North 67°22'03" West a distance of 208.3 feet, more or less, to the point of a fence corner; (15) North 89°38'34" West a distance of 305.0 feet, more or less; (16) South 87°59'48" West a distance of 116.2 feet, more or less; (17) South 87°39'29" West a distance of 263.4 feet, more or less to the point of a fence corner; (18) North 74°06'23" West a distance of 417.2 feet, more or less; (19) North 75°41'50" West a distance of 114.2 feet, more or less; (20) North 80°21'47" West a distance of 126.1 feet, more or less; (21) North 81°04'47" West a distance of 83.0 feet, more or less; (22) North 81°59'19" West a distance of 232.4 feet, more or less; (23) North 86°00'41" West a distance of 673.3 feet, more or less, to the point of a fence corner; (24) South 4°18'20" West a distance of 347.9 feet, more or less, to the point of a fence corner; (25) South 72°39'52" West a distance of 13.9 feet, more or less; Thence leaving said existing East-West fence,

North 00°04'28" East a distance of 15.2 feet, more or less to a South-Westerly boundary corner of said Parcel SS-59-A; Thence Northerly and Easterly along the boundary line of said Tax Parcel SS-59-A the following two (2) calls: (1) North 00°04'28" East a distance of 350.80 feet to a boundary corner; (2) South 89° 55' 32" East a distance of 4,328.47 feet to the Southeast property corner of said tax parcel SS-59-A, said point also being the point of beginning.

Contains: 16.75 Acres (729,429 s.f.), more or less.

Assessor Parcel No.: _____

TRACT TWO:

Located in Section 28, Township 1 South, Range 4 East, Salt Lake Base and Meridian, Summit County, Utah, described as follows:

Commence at the Southwest Corner of the Section 28, Township 1 South, Range 4 East, Salt Lake Base and Meridian; thence South 88°25'45" East 1023.00 feet along the section line and North 00°04'28" East 1732.50 feet to the TRUE POINT OF BEGINNING; Thence backtracking South 00°04'28" West a distance of 1732.50 feet to the south line of said Section 28; Thence along said south Section Line North 88°25'45" West a distance of 71.82 feet, more or less, to the east property line of Tax Parcel SS-60-1; Thence along said east property line of Tax Parcel SS-60-1 North 03°19'50" West a distance of 442.31 feet, more or less to the common easterly corner between Tax Parcels SS-60-1 and SS-60-3; thence along the east boundary line of said Tax Parcel SS-60-3 North 03°19'50" West a distance of 444.71 feet, more or less to the common easterly property corner between Tax Parcels SS-60-3 and SS-60; Thence along the easterly property line of said Tax Parcel SS-60 the following two (2) calls: (1) North 01°04'56" west a distance of 398.85 feet, more or less; (2) North 24°57'56" West a distance of 367.09 feet, more or less to the common easterly property corner between Tax Parcels SS-60 and SS-60-F-1; Thence along the northeasterly property line of said Tax Parcel SS-60-F-1 North 55°08'08" West a distance of 199.23 feet, more or less to a southwesterly property corner of Tax Parcel SS-59-A; Thence along the southerly property line of said Tax Parcel SS-59-A South 89°55'32" East a distance of 348.45 feet, more or less to the point of beginning.

Contains 2.70 Acres (117,424 s.f.), more or less.

Assessor Parcel No.: _____

Exhibit E of Purchase Agreement- Title Commitment Gillmor Open Space

Order Number: SU52492CW

SCHEDULE A

Effective Date: November 8, 2012 @ 8:00 a.m.

- | 1. | Policy or Policies to be issued: | Amount | Premium |
|-----|--|----------------|-------------|
| (a) | ALTA 2006 Owner's Policy:
Proposed Insured: | \$7,466,000.00 | \$13,460.00 |

Park City Municipal Corporation, a municipal corporation

- | | | | |
|-----|--|----|--------|
| (b) | ALTA 2006 Loan Policy
Proposed Insured: | \$ | \$0.00 |
|-----|--|----|--------|

Endorsements: \$0.00

2. The estate or interest in the land described or referred to in this Commitment and covered herein is fee simple and title thereto is at the effective date hereof vested in:

Summit County, a political subdivision of the State of Utah and a body politic, as to an undivided 19% interest and Snyderville Basin Special Recreation District, a local district of the State of Utah, as to an undivided 81% interest, as tenants in common

3. The land referred to in this Commitment is described as follows:

All of Lot 4, of the GILLMOR SUBDIVISION; according to the official plat thereof, on file and of record in the Summit County Recorder's Office.

Said property is located in SUMMIT County, State of Utah also known as:

500 SILVER SUMMIT PARKWAY
PARK CITY, UT. 84098

Parcel Identification Number: GILLMORE-4-X

US Title
First American Title Insurance Company

SCHEDULE B - SECTION 1
Requirements

The following are the requirements to be complied with:

1. Pay the Agreed amounts for the interest in the land and/or the mortgage to be insured.
2. Pay us the premiums, fees and charges for the policy.
3. Documents satisfactory to us creating the interest in the land and/or the mortgage to be insured must be signed, delivered and recorded.
4. You must tell us in writing the name of anyone not referred to in this Commitment who will get an interest in the land or who will make a loan on the land. We may then make additional requirements or exceptions.
5. After we have received the information requested in these requirements, together with any other information about the transaction, we will have the right to add requirements to this Schedule B-1 or special exceptions to Schedule B-2.
6. Release(s) or reconveyance(s) for Exception No. 22.
7. Pay any amounts due under Exception No. 9 through 15.
8. Information and indemnification, as necessary, regarding mechanic's and/or materialmen's liens, parties in possession, and any and all other matters which are known to the seller and/or buyer, but not known by the Title Company. The Company will require the seller to sign an Affidavit regarding such matters.
9. This commitment and any requested endorsements must be submitted to our Underwriter for approval. U.S. Title Company may amend this commitment or add additional requirements at the underwriter's request to gain that approval. Failure to fulfill any additional requirements may result in a denial of coverage.

SCHEDULE B - Section 2
Exceptions

Schedule B of the policy or policies to be issued will contain exceptions to the following unless the same are disposed of to the satisfaction of the Company:

Part I:

1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records; (b) proceedings by a public agency that may result in taxes or assessments, or notice of such proceedings, whether or not shown by the records of such agency or by the Public Records.
2. Any facts, rights, interests or claims that are not shown by the public records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
3. Easements, liens or encumbrances, or claims thereof, not shown by the public records.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
5. (a) Unpatented mining claim; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims, or title to water, whether or not the matters excepted under (a), (b) or (c) are shown by the Public Records.
6. Any lien, or right to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown by the public records.
7. Defects, liens, encumbrances, adverse claims or other matters, if any created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed insured acquires of record for value the estate or interest or mortgage thereon covered by this commitment.
8. This property is owned by a tax exempt entity, and its interest is not assessed. Tax ID No. GILLMOR-4-X
9. The property described herein is located within the boundaries of Weber Basin Water Conservancy District, and is subject to any and all charges and assessments thereof.
10. The property described herein is located within the boundaries of Snyderville Basin Water Reclamation District, and is subject to any and all charges and assessments thereof.
11. The property described herein is located within the boundaries of Snyderville Basin Special Recreation District, and is subject to any and all charges and assessments thereof.
12. The property described herein is located within the boundaries of Mountain Regional Water Special Service District and is subject to the charges and assessments thereof.

(Continued)

SCHEDULE B - Section 2
Exceptions

13. The property described herein is located within the boundaries of Old Ranch Road Special Service District, and is subject to the charges and assessments thereof.
14. The property described herein is located within the boundaries of Summit County Special Service District No. 1, and is subject to any and all charges and assessments thereof.
15. All rights, title or interest in oil, gas and other minerals of every kind and description underlying the surface of the land.
16. An Easement, the exact location of which is not described, to construct, operate and maintain such communication systems as may be required, and incidental purposes, as granted to the Mountain States Telephone & Telegraph Company, in the document recorded December 15, 1932 as Entry No. 49017 in Book U of Miscellaneous Records at Page 8 of Official Records.
17. An Easement, the exact location of which is not described, to lay, maintain and operate a pipe line and to erect, maintain and operate a telephone or telegraph line, and incidental purposes, as granted to Salt Lake Pipe Line Co., in the document recorded October 23, 1947 as Entry No. 76757 in Book Z of Miscellaneous Records at Page 51 of Official Records.
18. A Right of Way Easement, which affects said land, to construct, operate and maintain such communication and other facilities, from time to time, as Grantee may require, and incidental purposes, as granted to the Mountain States Telephone and Telegraph Company, in the document recorded April 20, 1988 as Entry No. 289373 in Book 474 at Page 810 of Official Records.
19. An Easement, which affects said land, for the erection, operation and maintenance of electric transmission and distribution lines, communication circuits, fiber optic cables and associated facilities, and 9 poles and 3 guy anchors, with the necessary guys, stubs, cross arms, braces and other attachments affixed thereto, for the support of said lines and circuits, and incidental purposes, as granted to Utah Power & Light Company, in the document recorded October 31, 1988 as Entry No. 299434 in Book 499 at page 9 of Official Records.
20. The effect, if any, of the Snyderville Basin Basin Wetland Advance Identification Study and Wetland Functional Assessment Interpretive Report prepared for the Department of the Army U.S. Corps of Engineers; recorded December 26, 1995 as Entry No. 445167 in Book 934 at page 1 of Official Records.
21. All easements, notes and recitals set forth and shown on the recorded plat.

(Continued)

SCHEDULE B - Section 2
Exceptions

22. A Deed of Trust by and between Summit County, a political subdivision of the State of Utah and a body politic, as to an undivided 19% interest and Snyderville Basin Special Recreation District, a local district of the State of Utah, as to an undivided 81% interest, as tenants in common as Trustor in favor of U.S. Title Insurance Agency, LLC as Trustee and Our Family Cabin, LLC as Beneficiary, to secure an original indebtedness of \$1,425,000.00 and any other amounts or obligations secured thereby, dated June 25, 2012 and recorded June 25, 2012 as Entry No. 947802 in Book 2133 at Page 1984 of Official Records.
23. A Conservation Easement (Open Space and Recreational Uses), which affects said land, for a perpetual conservation easement, and incidental purposes, as granted to Utah Open Lands Conservation Association, Inc., a Utah not-for profit corporation, in the document recorded June 25, 2012 as Entry No. 947803 in Book 2133 at Page 1993 of Official Records.

* * *

The name(s) Summit County, Snyderville Basin Special Recreation District and Park City Municipal Corporation, a government agency exempt from execution pursuant to Utah Code Annotated 63-30-22, has NOT been checked for judgments, State and Federal Tax Liens, or Bankruptcies.

* * *

For inquiries about your closing or other Escrow matters please contact Escrow Officer: Corinne S. Woodward at 435-615-1148. E-Mail: cwoodward@ustitleutah.com

For inquiries about this title commitment or other Title Matters please contact Title Officer: Kathie Johnston at 435-615-1148. E-Mail: mkjohnston@ustitleutah.com.

* * *

NOTE: The Policy(ies) to be issued as a result of this Commitment may contain an Arbitration Clause. When the Amount of Insurance is less than the certain dollar amount set forth in any applicable arbitration clause, all arbitrable matters shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. If you desire to review the terms of the policy, including any arbitration clause that may be included, contact the office that issued this Commitment or Report to obtain a sample of the policy jacket for the policy that is to be issued in connection with your transaction.

CONDITIONS

1. The term mortgage, when used herein, shall include deed of trust, trust deed, or other security instrument.
2. If the proposed Insured has or acquired actual knowledge of any defect, lien, encumbrance, adverse claim or other matter affecting the estate or interest or mortgage thereon covered by this Commitment other than those shown in Schedule B hereof, and shall fail to disclose such knowledge to the Company in writing, the Company shall be relieved from liability for any loss or damage resulting from any act of reliance hereon to the extent the Company is prejudiced by failure to disclose such knowledge. If the proposed Insured shall disclose such knowledge to the Company, or if the Company otherwise acquires actual knowledge of any such defect, lien, encumbrance, adverse claim or other matter, the Company, at its option may amend Schedule B of this Commitment accordingly, but such amendment shall not relieve the Company from liability previously incurred pursuant to paragraph 3 of this Conditions and Stipulations.
3. Liability of the Company under this Commitment shall be only to the named proposed Insured and such parties included under the definition of Insured in the form of policy or policies committed for and only for actual loss incurred in reliance hereon in undertaking in good faith (a) to comply with the requirements hereof, or (b) to eliminate exceptions shown in Schedule B, or (c) to acquire or create the estate or interest or mortgage thereon covered by this Commitment. In no event shall such liability exceed the amount stated in Schedule A for the policy or policies committed for and such liability is subject to the insuring liability and Conditions and Stipulations and the Exclusions from Coverage of the form of policy or policies committed for in favor of the proposed Insured which are hereby incorporated by reference and are made a part of this Commitment except as expressly modified herein.
4. This Commitment is a contract to issue one or more title insurance policies and is not an abstract of title or a report of the condition of title. Any action or actions or rights of action that the proposed Insured may have or may bring against the Company arising out of the status of the title to the estate or interest or the status of the mortgage thereon covered by this Commitment must be based on and are subject to the provisions of this Commitment.
5. The policy to be issued contains an arbitration clause. All arbitrable matters when the Amount of Insurance of \$2,000,000.00 or less shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. You may review a copy of the arbitration rules at [http://www.alta.org/](http://www/alta.org/).

***The First American Corporation
US Title of Utah***

Privacy Policy

We Are Committed to Safeguarding Customer Information

In order to better serve your needs now and in the future, we may ask you to provide us with certain information. We understand that you may be concerned about what we will do with such information - particularly any personal or financial information. We agree that you have a right to know how we will utilize the personal information you provide to us. Therefore, together with our parent company, The First American Corporation, we have adopted this Privacy Policy to govern the use and handling of your personal information.

Applicability

This Privacy Policy governs our use of the information which you provide to us. It does not govern the manner in which we may use information we have obtained from any other source, such as information obtained from a public record or from another person or entity. First American has also adopted broader guidelines that govern our use of personal information regardless of its source. First American calls these guidelines its Fair Information Values, a copy of which can be found on our website at www.firstam.com.

Types of Information

Depending upon which of our services you are utilizing, the types of nonpublic personal information that we may collect include:

- Information we receive from you on applications, forms and in other communications to us, whether in writing, in person, by telephone or any other means;
- Information about your transactions with us, our affiliated companies, or others; and
- Information we receive from a consumer reporting agency.

Use of Information

We request information from you for our own legitimate business purposes and not for the benefit of any nonaffiliated party. Therefore, we will not release your information to nonaffiliated parties except: (1) as necessary for us to provide the product or service you have requested of us; or (2) as permitted by law. We may, however, store such information indefinitely, including the period after which any customer relationship has ceased. Such information may be used for any internal purpose, such as quality control efforts or customer analysis. We may also provide all of the types of nonpublic personal information listed above to one or more of our affiliated companies. Such affiliated companies include financial service providers, such as title insurers, property and casualty insurers, and trust and investment advisory companies, or companies involved in real estate services, such as appraisal companies, home warranty companies, and escrow companies. Furthermore, we may also provide all the information we collect, as described above, to companies that perform marketing services on our behalf, on behalf of our affiliated companies, or to other financial institutions with whom we or our affiliated companies have joint marketing agreements.

Former Customers

Even if you are no longer our customer, our Privacy Policy will continue to apply to you.

Confidentiality and Security

We will use our best efforts to ensure that no unauthorized parties have access to any of your information. We restrict access to nonpublic personal information about you to those individuals and entities who need to know that information to provide products or services to you. We will use our best efforts to train and oversee our employees and agents to ensure that your information will be handled responsibly and in accordance with the Privacy Policy and First American's Fair Information Values. We currently maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

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Exhibit F of Purchase Agreement- Title Commitment to Kimball Open Space

Order Number: SU52482CW Amendment No. 2
SCHEDULE A

Effective Date: November 28, 2012 @ 8:00 a.m.

1.	Policy or Policies to be issued:	Amount	Premium
	(a) ALTA 2006 Owner's Policy:	\$3,500,000.00	\$7,520.00
	Proposed Insured:		

**Snyderville Basin Special Recreation District as to an undivided 63% interest; and
Summit County, as to an undivided 37% interest**

(b)	ALTA 2006 Loan Policy	\$	\$0.00
	Proposed Insured:		

Endorsements: \$0.00

2. The estate or interest in the land described or referred to in this Commitment and covered herein is fee simple and title thereto is at the effective date hereof vested in:

Park City Municipal Corporation and Summit County

3. The land referred to in this Commitment is described as follows:

All of Lots 2 and 3, KIMBALL JUNCTION SUBDIVISION FIRST AMENDED; according to the official plat thereof, on file and of record in the Summit County Recorder's Office.

Said property is located in SUMMIT County, State of Utah also known as:

NO SITUS ADDRESS ASSIGNED

Parcel Identification Number: KJS-2-1AM-X and KJS-3-1AM-X

US Title
First American Title Insurance Company

SCHEDULE B - SECTION 1
Requirements

The following are the requirements to be complied with:

1. Pay the Agreed amounts for the interest in the land and/or the mortgage to be insured.
2. Pay us the premiums, fees and charges for the policy.
3. Documents satisfactory to us creating the interest in the land and/or the mortgage to be insured must be signed, delivered and recorded.
4. You must tell us in writing the name of anyone not referred to in this Commitment who will get an interest in the land or who will make a loan on the land. We may then make additional requirements or exceptions.
5. After we have received the information requested in these requirements, together with any other information about the transaction, we will have the right to add requirements to this Schedule B-1 or special exceptions to Schedule B-2.
6. Pay any amounts due under Exception No. 9 through 13.
7. Information and indemnification, as necessary, regarding mechanic's and/or materialmen's liens, parties in possession, and any and all other matters which are known to the seller and/or buyer, but not known by the Title Company. The Company will require the seller to sign an Affidavit regarding such matters.
8. This commitment and any requested endorsements must be submitted to our Underwriter for approval. U.S. Title Company may amend this commitment or add additional requirements at the underwriter's request to gain that approval. Failure to fulfill any additional requirements may result in a denial of coverage.
9. In order to prevent any delays in your closing, please send the above requested documentation and/or information, as soon as possible to: Kathie Johnston at 1630 Shortline Road, 3rd Floor, Park City, UT 84060.

Upon receipt and review of the requested documentation/information, the Company may add further exceptions and/or requirements to this commitment. Failure to fulfill the requirements shown herein may impair the Company's ability to insure this transaction and may result in a denial of coverage.

10. In the event the transaction for which this commitment is furnished cancels, the Company reserves the right to charge a cancellation fee.

SCHEDULE B - Section 2
Exceptions

Schedule B of the policy or policies to be issued will contain exceptions to the following unless the same are disposed of to the satisfaction of the Company:

Part I:

1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records; (b) proceedings by a public agency that may result in taxes or assessments, or notice of such proceedings, whether or not shown by the records of such agency or by the Public Records.
2. Any facts, rights, interests or claims that are not shown by the public records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
3. Easements, liens or encumbrances, or claims thereof, not shown by the public records.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
5. (a) Unpatented mining claim; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims, or title to water, whether or not the matters excepted under (a), (b) or (c) are shown by the Public Records.
6. Any lien, or right to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown by the public records.
7. Defects, liens, encumbrances, adverse claims or other matters, if any created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed insured acquires of record for value the estate or interest or mortgage thereon covered by this commitment.
8. Said property is owned by a tax exempt entity and as such its interest is not assessed. Tax ID No. KJS-2-1AM-X and KJS-3-1AM-X.
9. The property described herein is located within the boundaries of Weber Basin Water Conservancy District, and is subject to any and all charges and assessments thereof.
10. The property described herein is located within the boundaries of Snyderville Basin Water Reclamation District, and is subject to any and all charges and assessments thereof.
11. The property described herein is located within the boundaries of Summit County Special Service District No. 1, and is subject to any and all charges and assessments thereof.

(Continued)

SCHEDULE B - Section 2
Exceptions

12. The property described herein is located within the boundaries of Snyderville Basin Special Recreation District, and is subject to any and all charges and assessments thereof.
13. The property described herein is located within the bounds of Park City Fire Protection Special Service District and is subject to the charges and assessments thereof

14. Reservations contained in that certain Patent, issued by the United States of America, and recorded June 27, 1898 as Entry No. 6601 in Book J of Miscellaneous Records at Page 169 of Official Records:

"Yet excluding from the transfers by these presents, all mineral lands should any be found to exist in the tract described in the foregoing, but the exclusion and exception, according to the terms of the Statute, shall not be construed to include coal and iron."

15. Reservations contained in that certain Warranty Deed executed by the Union Pacific Railroad Company, and recorded June 2, 1904 as Entry No. 12781 in Book H of Warranty Deeds at Page 276, of Official Records, said reservations being set forth as follows:

"Excepting and reserving to the Union Pacific Railroad Company, its successors and/or assigns:

First: All coal and other minerals within or underlying said lands

Second: The exclusive right to prospect in and upon said land for coal and other minerals therein, or which may be supposed to be therein, and to mine for and remove, from said land, all coal and other minerals which may be found by anyone.

Third: The right of ingress, egress and regress upon said land to prospect for, mine and remove any and all such coal and other minerals, and the right to use so much of said land as may be convenient or necessary for the right of way to and from such prospect places or mines and for the convenient and proper operations of such prospect places, mines and for roads and approaches thereto or for removal therefrom of coal, mineral, machinery or other material.

Fourth: The right to said Union Pacific Railroad Company to maintain and operate its railroad in its present form of construction, and to make any changes in the form of construction of method of operation of said railroad."

The Company makes no assurances as to the current ownership and/or status of any mineral rights reserved therein.

16. Subject to the right of proprietor of a vein or lode to extract and remove his ore should the same be found to penetrate or intersect the premises, as reserved in that certain Deed of Patent issued by the United States of America and recorded October 17, 1904 as Entry No. 13067 (also shown as 14067) in Book H of Warranty Deeds at Page 309 of Official Records.

(Continued)

SCHEDULE B - Section 2
Exceptions

17. An Easement, which affects said land, to lay, construct, operate and maintain pipe lines and appurtenances thereof for the transportation of oil, petroleum, gas, gasoline, water or other substances and to erect, maintain and operate telegraph, telephone or power lines, with the right of ingress and egress, and incidental purposes, as granted to Salt Lake Pipe Line Company, a Nevada corporation, in the document recorded October 23, 1947 as Entry No. 76760 in Book Z of Miscellaneous Records at page 54 of Official Records.

An Affidavit to described the centerline of said easement was recorded October 15, 1948 as Entry No. 77995 in Book Z of Miscellaneous Records at page 302.

A portion of said Easement was released in that certain Release of Easement recorded May 8, 2000 as Entry No. 564981 in Book 1318 at page 175 of Official Records.

18. An Easement, which affects said land, to lay, construct, operate and maintain pipe lines and appurtenances thereof for the transportation of oil, petroleum, gas, gasoline, water or other substances and to erect, maintain and operate telegraph, telephone or power lines, with the right of ingress and egress, and incidental purposes, as granted to Salt Lake Pipe Line Company, a Nevada corporation, in the document recorded October 23, 1947 as Entry No. 76761 in Book Z of Miscellaneous Records at page 56 of Official Records.

An Affidavit to described the centerline of said easement was recorded October 15, 1948 as Entry No. 77994 in Book of Miscellaneous Records at page 301.

19. An Easement, which affects said land, to lay, construct, operate and maintain pipe lines and appurtenances thereof for the transportation of oil, petroleum, gas, gasoline, water or other substances and to erect, maintain and operate telegraph, telephone or power lines, with the right of ingress and egress, and incidental purposes, as granted to Salt Lake Pipe Line Company, a Nevada corporation, in the document recorded October 23, 1947 as Entry No. 76762 in Book Z of Miscellaneous Records at page 57 of Official Records.

An Affidavit to described the centerline of said easement was recorded October 15, 1948 as Entry No. 77993 in Book Z of Miscellaneous Records at page 300.

20. An Easement, which affects said land, to lay, construct, operate and maintain pipe lines and appurtenances thereof for the transportation of oil, petroleum, gas, gasoline, water or other substances and to erect, maintain and operate telegraph, telephone or power lines, with the right of ingress and egress, and incidental purposes, as granted to Salt Lake Pipe Line Company, a Nevada corporation, in the document recorded March 30, 1948 as Entry No. 77267 in Book Z of Miscellaneous Records at page 183 of Official Records.

An Affidavit to described the centerline of said easement was recorded November 23, 1948 as Entry No. 78180 in Book Z of Miscellaneous Records at page 373.

(Continued)

SCHEDULE B - Section 2
Exceptions

21. A Pole Line Easement, which affects said land, fro the erection and continued maintenance of the electric transmission, distribution and telephone circuits of the Grantee, together with all necessary appurtenant structures thereto, and incidental purposes, as granted to Utah Power & Light Company, in the document recorded November 21, 1966 as Entry No. 104315 in Book M-8 at Page 569 of Official Records.

A portion of said Easement was released by that certain Partial Release of Easement, recorded February 25, 2003 as Entry No. 649249 in Book 1513 at page 1881 of Official Records.

22. Said property is subject to a right of way for a transmission line 20 feet wide, as granted to Utah Power & Light Company in that certain Warranty Deed recorded December 6, 1973 as Entry No. 121729 in Book M-52 at page 561 of Official Records.

23. Said property is subject to a right of way for a transmission line 20 feet wide, as granted to Utah Power & Light Company in that certain Warranty Deed recorded December 28, 1975 as Entry No. 126105 in Book M-64 at page 461 of Official Records.

24. A Road and Utility Right-of-Way Option Agreement, which affects said land, for road and utility purposes, and incidental purposes, as granted to Canyon Rim Stake of the Church of Jesus Christ of Latter-Day Saints and Otto Buehner & Company Profit Sharing Trust, and made subject to the terms and conditions contained in the document recorded July 8, 1987 as Entry No. 273777 in Book 437 at Page 382 of Official Records.

The interest of the Otto Buehner & Company Profit Sharing Trust, in and to said agreement was assigned to Property Reserve Inc., by that certain Assignment recorded January 6, 1994 as Entry No. 395417 in book 779 at page 26 of Official Records.

25. The covenants, terms, conditions and recitals contained in that certain Special Warranty Deed, recorded January 6, 1994 as Entry No. 395396 in Book 778 at page 807 of Official Records. See said document for full particulars.

26. The covenants, terms, conditions and recitals contained in that certain Quit Claim Deed, recorded January 6, 1994 as Entry No. 395398 in Book 778 at page 811 of Official Records. See said document for full particulars.

27. The covenants, terms, conditions and recitals contained in that certain Quit Claim Deed, recorded January 6, 1994 as Entry No. 395399 in Book 778 at page 814 of Official Records. See said document for full particulars.

28. A Grant of Easements, which affects said land, for a pipeline, utility and drainage line, waterline, pump station, protection zone and access road, and incidental purposes, as granted to Summit Water Distribution Company, a Utah non-profit mutual water company, in the document recorded February 27, 1996 as Entry No. 448978 in Book 947 at Page 349 of Official Records.

(Continued)

SCHEDULE B - Section 2
Exceptions

29. A Grant of Easement, which affects said land, to construct, operate, repair and maintain sewers and pipes, including all necessary fixtures, and incidental purposes, as granted to Snyderville Basin Sewer Improvements District, in the document recorded April 20, 1999 as Entry No. 536561 in Book 1249 at Page 685 of Official Records.
30. A Grant of Easement, which affects said land, to construct, operate, repair and maintain sewers and pipes, including all necessary fixtures, and incidental purposes, as granted to Snyderville Basin Sewer Improvements District, in the document recorded April 20, 1999 as Entry No. 536562 in Book 1249 at Page 687 of Official Records.
31. **Deleted by US Title Insurance Agency, L.L.C.**
32. An Easement, which affects said land, for the construction thereon of a drainage facility, cut and/or fill slopes and appurtenant parts thereof , and incidental purposes, as granted to Utah Department of Transportation, in the document recorded August 23, 1999 as Entry No. 547056 in Book 1284 at page 150 of Official Records.
33. An Easement, which affects said land, for the construction thereon of a drainage facility and appurtenant parts thereof , and incidental purposes, as granted to Utah Department of Transportation, in the document recorded August 23, 1999 as Entry No. 547057 in Book 1284 at page 163 of Official Records.
34. An Easement, which affects said land, for the construction thereon of a drainage facility and appurtenant parts thereof , and incidental purposes, as granted to Utah Department of Transportation, in the document recorded August 23, 1999 as Entry No. 547060 in Book 1284 at page 171 of Official Records.
35. An Easement, which affects said land, for the construction thereon of a drainage facility, cut and/or fill slopes and appurtenant parts thereof , and incidental purposes, as granted to Utah Department of Transportation, in the document recorded August 23, 1999 as Entry No. 547061 in Book 1284 at page 173 of Official Records.
36. An Easement, which affects said land, for the construction thereon of a drainage facility, cut and/or fill slopes and appurtenant parts thereof , and incidental purposes, as granted to Utah Department of Transportation, in the document recorded August 23, 1999 as Entry No. 547064 in Book 1284 at page 180 of Official Records.
37. An Easement, which affects said land, for the construction thereon of a drainage facility, cut and/or fill slopes and appurtenant parts thereof , and incidental purposes, as granted to Utah Department of Transportation, in the document recorded August 23, 1999 as Entry No. 547065 in Book 1284 at page 183 of Official Records.

(Continued)

SCHEDULE B - Section 2
Exceptions

38. An Easement, which affects said land, for the construction thereon of a drainage facility, cut and/or fill slopes and appurtenant parts thereof , and incidental purposes, as granted to Utah Department of Transportation, in the document recorded August 23, 1999 as Entry No. 547066 in Book 1284 at page 185 of Official Records.
39. An Easement, which affects said land, for the construction thereon of a drainage facility, cut and/or fill slopes and appurtenant parts thereof , and incidental purposes, as granted to Utah Department of Transportation, in the document recorded August 23, 1999 as Entry No. 547068 in Book 1284 at page 190 of Official Records.
40. An Easement, which affects said land, for the construction thereon of a drainage facility and appurtenant parts thereof , and incidental purposes, as granted to Utah Department of Transportation, in the document recorded August 23, 1999 as Entry No. 547070 in Book 1284 at page 194 of Official Records.
41. An Easement, which affects said land, for the construction thereon of a drainage facility, cut and/or fill slopes and appurtenant parts thereof , and incidental purposes, as granted to Utah Department of Transportation, in the document recorded August 23, 1999 as Entry No. 547072 in Book 1284 at page 198 of Official Records.
42. An Easement, which affects said land, for the construction thereon of a drainage facility, cut and/or fill slopes and appurtenant parts thereof , and incidental purposes, as granted to Utah Department of Transportation, in the document recorded August 23, 1999 as Entry No. 547073 in Book 1284 at page 201 of Official Records.
43. An Easement, which affects said land, for the construction thereon of a drainage facility and appurtenant parts thereof , and incidental purposes, as granted to Utah Department of Transportation, in the document recorded August 23, 1999 as Entry No. 547074 in Book 1284 at page 204 of Official Records.
44. An Easement, which affects said land, for the construction thereon of a drainage facility and appurtenant parts thereof , and incidental purposes, as granted to Utah Department of Transportation, in the document recorded August 23, 1999 as Entry No. 547076 in Book 1284 at page 208 of Official Records.
45. An Easement, which affects said land, for the construction thereon of a drainage facility and appurtenant parts thereof , and incidental purposes, as granted to Utah Department of Transportation, in the document recorded August 23, 1999 as Entry No. 547077 in Book 1284 at page 210 of Official Records.
46. An Easement, which affects said land, for the construction thereon of a drainage facility, cut and/or fill slopes and appurtenant parts thereof , and incidental purposes, as granted to Utah Department of Transportation, in the document recorded August 23, 1999 as Entry No. 547079 in Book 1284 at page 214 of Official Records.

(Continued)

SCHEDULE B - Section 2
Exceptions

47. An Easement, which affects said land, for the construction thereon of a drainage facility, cut and/or fill slopes and appurtenant parts thereof , and incidental purposes, as granted to Utah Department of Transportation, in the document recorded August 23, 1999 as Entry No. 547080 in Book 1284 at page 216 of Official Records.
48. An Easement, which affects said land, for the construction thereon of a drainage facility, cut and/or fill slopes and appurtenant parts thereof , and incidental purposes, as granted to Utah Department of Transportation, in the document recorded August 23, 1999 as Entry No. 547081 in Book 1284 at page 219 of Official Records.
49. A Right of Way Easement, which affects said land, for the construction, operation, maintenance and removal of electric power transmission, distribution and communication lines and accessory poles, props, guys and anchors, wires, fibers, cables and other conductors and conduits therefore, and incidental purposes, as granted to PacifiCorp, an Oregon corporation, in the document recorded September 23, 1999 as Entry No. 549240 in Book 1288 at Page 72 of Official Records.
50. Said property is subject to a Drinking Water Source Protection Plan for Summit County, Utah SWDC U224 Well, as disclosed by that certain Agreement recorded July 31, 2000 as Entry No. 569953 in Book 1327 at page 1023 of Official Records.
51. A Right of Way Easement, which affects said land, for the purpose of constructing underground electric power distribution and communication lines, including the right and privilege at any time and from time to time enter on said right-of-way to maintain, repair, enlarge and relocate underground cables, wires, fibers, and other conductors and conduits therefore, and pads, transformers, switches, vaults and cabinets and all appurtenances thereto, and incidental purposes, as granted to PacifiCorp, an Oregon corporation, in the document recorded August 21, 2001 as Entry No. 596295 in Book 1389 at Page 1330 of Official Records.
- A Correction Right of Way Easement was recorded January 13, 2003 as Entry No. 644446 in Book 1503 at page 1568 of Official Records.
52. The terms and conditions of that certain unrecorded Site Lease, by and between Property Reserve, Inc., a Utah non-profit corporation and VoiceStream PCS II Corporation; and disclosed by that certain Memorandum of Lease and Option recorded November 2, 2001 as Entry No. 602316 in Book 1407 at Page 692 of Official Records.
53. The terms and conditions of that certain unrecorded Site License Agreement, by and between VoiceStream PCS II Corporation and Nextel West Corp., a Delaware corporation; and disclosed by that certain Memorandum of Agreement recorded February 4, 2002 as Entry No. 610273 in Book 1432 at Page 1912 of Official Records.

(Continued)

SCHEDULE B - Section 2
Exceptions

54. The terms and conditions of that certain unrecorded Site Lease, by and between Property Reserve, Inc., a Utah non-profit corporation and VoiceStream PCS II Corporation; and disclosed by that certain Memorandum of Lease and Option recorded February 4, 2002 as Entry No. 610274 in Book 1432 at Page 1919 of Official Records.
55. A Waterline & Reservoir Easement Agreement, which affects said land, a perpetual non-exclusive (i) waterline Easement, (ii) reservoir easement and, (iii) an access easement over the existing dirt roads, and incidental purposes, as granted to Summit Water Distribution Company, in the document recorded December 31, 2008 as Entry No. 861933 in Book 1961 at Page 1888 of Official Records.
56. Minerals, water and water rights and other reservations in that certain Special Warranty Deed, issued by Property Reserve, Inc., a Utah non-profit corporation and recorded December 31, 2008 as Entry No. 861936 in Book 1961 at Page 1905 of Official Records.
- The Company makes no assurances as to the current ownership and/or status of any mineral rights and/or water and water rights reserved therein.
57. All easements, notes and recitals set forth and shown on the recorded plat.
58. The easements, terms and conditions of that certain Declaration of Easement by and between Suburban Land Reserve, Inc., a Utah corporation and Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints, a Utah corporation sole; and recorded December 31, 2008 as Entry No. 861938 in Book 1961 at page 1912 of Official Records. See said document for full particulars.
59. Declaration and Notice of Use Restrictions, recorded November 4, 2010 as Entry No. 910221 in Book 2055 at Page 792 of Official Records, but deleting any covenant, conditions or restrictions indicating a preference, limitation or discrimination based upon race, color, religion, sex, handicap, familial status or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604 (c).
60. A Notice of Conditional Use Permit, filed by Summit County; and recorded November 3, 2012 as Entry No. 954396 in Book 2149 at page 1479 of Official Records. See said document for full particulars.

* * *

The name(s) Park City Municipal Corporation, Snyderville Basin Special Recreation District and Summit County, a government agency exempt from execution pursuant to Utah Code Annotated 63-30-22, has NOT been checked for judgments, State and Federal Tax Liens, or Bankruptcies.

(Continued)

SCHEDULE B - Section 2
Exceptions

* * *

For inquiries about your closing or other Escrow matters please contact Escrow Officer: Corinne S. Woodward at 435-615-1148. E-Mail: cwoodward@ustitleutah.com

For inquiries about this title commitment or other Title Matters please contact Title Officer: Kathie Johnston at 435-615-1148. E-Mail: mkjohnston@ustitleutah.com.

* * *

NOTE: The Policy(ies) to be issued as a result of this Commitment may contain an Arbitration Clause. When the Amount of Insurance is less than the certain dollar amount set forth in any applicable arbitration clause, all arbitrable matters shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. If you desire to review the terms of the policy, including any arbitration clause that may be included, contact the office that issued this Commitment or Report to obtain a sample of the policy jacket for the policy that is to be issued in connection with your transaction.

CONDITIONS

1. The term mortgage, when used herein, shall include deed of trust, trust deed, or other security instrument.
2. If the proposed Insured has or acquired actual knowledge of any defect, lien, encumbrance, adverse claim or other matter affecting the estate or interest or mortgage thereon covered by this Commitment other than those shown in Schedule B hereof, and shall fail to disclose such knowledge to the Company in writing, the Company shall be relieved from liability for any loss or damage resulting from any act of reliance hereon to the extent the Company is prejudiced by failure to disclose such knowledge. If the proposed Insured shall disclose such knowledge to the Company, or if the Company otherwise acquires actual knowledge of any such defect, lien, encumbrance, adverse claim or other matter, the Company, at its option may amend Schedule B of this Commitment accordingly, but such amendment shall not relieve the Company from liability previously incurred pursuant to paragraph 3 of this Conditions and Stipulations.
3. Liability of the Company under this Commitment shall be only to the named proposed Insured and such parties included under the definition of Insured in the form of policy or policies committed for and only for actual loss incurred in reliance hereon in undertaking in good faith (a) to comply with the requirements hereof, or (b) to eliminate exceptions shown in Schedule B, or (c) to acquire or create the estate or interest or mortgage thereon covered by this Commitment. In no event shall such liability exceed the amount stated in Schedule A for the policy or policies committed for and such liability is subject to the insuring liability and Conditions and Stipulations and the Exclusions from Coverage of the form of policy or policies committed for in favor of the proposed Insured which are hereby incorporated by reference and are made a part of this Commitment except as expressly modified herein.
4. This Commitment is a contract to issue one or more title insurance policies and is not an abstract of title or a report of the condition of title. Any action or actions or rights of action that the proposed Insured may have or may bring against the Company arising out of the status of the title to the estate or interest or the status of the mortgage thereon covered by this Commitment must be based on and are subject to the provisions of this Commitment.
5. The policy to be issued contains an arbitration clause. All arbitrable matters when the Amount of Insurance of \$2,000,000.00 or less shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. You may review a copy of the arbitration rules at <http://www.alta.org/>.

***The First American Corporation
US Title of Utah***

Privacy Policy

We Are Committed to Safeguarding Customer Information

In order to better serve your needs now and in the future, we may ask you to provide us with certain information. We understand that you may be concerned about what we will do with such information - particularly any personal or financial information. We agree that you have a right to know how we will utilize the personal information you provide to us. Therefore, together with our parent company, The First American Corporation, we have adopted this Privacy Policy to govern the use and handling of your personal information.

Applicability

This Privacy Policy governs our use of the information which you provide to us. It does not govern the manner in which we may use information we have obtained from any other source, such as information obtained from a public record or from another person or entity. First American has also adopted broader guidelines that govern our use of personal information regardless of its source. First American calls these guidelines its Fair Information Values, a copy of which can be found on our website at www.firstam.com.

Types of Information

Depending upon which of our services you are utilizing, the types of nonpublic personal information that we may collect include:

- Information we receive from you on applications, forms and in other communications to us, whether in writing, in person, by telephone or any other means;
- Information about your transactions with us, our affiliated companies, or others; and
- Information we receive from a consumer reporting agency.

Use of Information

We request information from you for our own legitimate business purposes and not for the benefit of any nonaffiliated party. Therefore, we will not release your information to nonaffiliated parties except: (1) as necessary for us to provide the product or service you have requested of us; or (2) as permitted by law. We may, however, store such information indefinitely, including the period after which any customer relationship has ceased. Such information may be used for any internal purpose, such as quality control efforts or customer analysis. We may also provide all of the types of nonpublic personal information listed above to one or more of our affiliated companies. Such affiliated companies include financial service providers, such as title insurers, property and casualty insurers, and trust and investment advisory companies, or companies involved in real estate services, such as appraisal companies, home warranty companies, and escrow companies. Furthermore, we may also provide all the information we collect, as described above, to companies that perform marketing services on our behalf, on behalf of our affiliated companies, or to other financial institutions with whom we or our affiliated companies have joint marketing agreements.

Former Customers

Even if you are no longer our customer, our Privacy Policy will continue to apply to you.

Confidentiality and Security

We will use our best efforts to ensure that no unauthorized parties have access to any of your information. We restrict access to nonpublic personal information about you to those individuals and entities who need to know that information to provide products or services to you. We will use our best efforts to train and oversee our employees and agents to ensure that your information will be handled responsibly and in accordance with the Privacy Policy and First American's Fair Information Values. We currently maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

2001 The First American Corporation* All Rights Reserved

Exhibit I of Purchase Agreement- Special Warranty Deed Kimball Open Space (City-County)

AFTER RECORDED, PLEASE RETURN TO:

Summit County
Attn: County Attorney
P.O. Box 128
Coalville, Utah 84017

SPECIAL WARRANTY DEED

FOR GOOD AND VALUABLE CONSIDERATION, Park City Municipal Corporation, a municipal corporation, having a mailing address at P.O. Box 1480, 445 Marsac Avenue, Park City, Utah 84060 (the "Grantor") hereby CONVEYS AND WARRANTS, against those claiming by, through and under the Grantor and not otherwise, to Summit County, a political subdivision of the State of Utah, having a mailing address at P.O. Box 128, 60 N. Main, Coalville, Utah 84017 (the "Grantee"), the Grantor's right, title and interest in and to that certain tracts of land located in Summit County, State of Utah, as follows:

Lots 2 and 3, Kimball Junction Subdivision, First Amended,
according to the official plat thereof on file with the Summit
County Recorder, entry number 00909755 (the "Subject Property")

SUBJECT TO all restrictions, reservations, conservation easements and other conditions of record as may be disclosed by a record examination of title.

TO HAVE AND TO HOLD the Subject Property, together with all tenements, hereditaments, and appurtenances thereunto belonging, unto the Grantee, and their successors and assigns, forever. The Grantor does hereby covenant to and with the Grantee that the Grantee are owners in fee simple of the Subject Property and that the Grantor will warrant and defend the same from all lawful claims whatsoever arising by, through and under the Grantor and not otherwise.

The undersigned further hereby acknowledges and affirms to the below named Notary Public that the undersigned appeared before such Notary Public and either executed this Deed before such Notary Public or acknowledged to such Notary Public that the undersigned executed this Deed for the purposes stated in it.

DATED as of the _____ day of _____, 2013.

Park City Municipal Corporation

By: _____
Print Name: _____
Title: _____

STATE OF UTAH)
)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2013, by _____, of Park City Municipal Corporation.

NOTARY PUBLIC
Residing at: _____

My Commission Expires:

Exhibit K of Purchase Agreement- Special Warranty Deed Gillmor (District-City)

AFTER RECORDED, PLEASE RETURN TO:

Park City Municipal Corporation
P.O. Box 1480
445 Marsac Avenue
Park City, Utah 84060

SPECIAL WARRANTY DEED

FOR GOOD AND VALUABLE CONSIDERATION, the Snyderville Basin Special Recreation District, a local district of the State of Utah, having a mailing address at 5715 Trailside Drive, Park City, Utah 84098 (the "Grantor") hereby CONVEYS AND WARRANTS, against those claiming by, through and under the Grantor and not otherwise, to Park City Municipal Corporation, (the "Grantee") having a mailing address at P.O. Box 1480, 445 Marsac Avenue, Park City, Utah 84060, the Grantor's right, title and interest in and to that certain tract of land located in Summit County, State of Utah, as follows:

Lot 4, Gillmor Subdivision, according to the official plat thereof on file with the Summit County Recorder, approximately 292 acres (the "Subject Property")

SS-59-A & SS-58-X

SUBJECT TO all restrictions, reservations, conservation easements and other conditions of record as may be disclosed by a record examination of title.

TO HAVE AND TO HOLD the Subject Property, together with all tenements, hereditaments, and appurtenances thereunto belonging, unto the Grantee, and its successors and assigns, forever. The Grantor does hereby covenant to and with the Grantee that the Grantee is owner in fee simple of the Subject Property and that the Grantor will warrant and defend the same from all lawful claims whatsoever arising by, through and under the Grantor and not otherwise.

The undersigned further hereby acknowledges and affirms to the below named Notary Public that the undersigned appeared before such Notary Public and either executed this Deed before such Notary Public or acknowledged to such Notary Public that the undersigned executed this Deed for the purposes stated in it.

DATED as of the ____ day of _____, 2013.

Snyderville Basin Special Recreation District

By: _____
Print Name: _____
Title: _____

STATE OF UTAH)
COUNTY OF _____)
:ss.

The foregoing instrument was acknowledged before me this ____ day of _____, 2013, by _____, of Snyderville Basin Special Recreation District.

NOTARY PUBLIC
Residing at: _____

My Commission Expires:

Exhibit L of Purchase Agreement- Quit Claim Deeds (District-City)

WHEN RECORDED, RETURN TO:

Park City Municipal Corporation
P.O. Box 1480
445 Marsac Avenue
Park City, Utah 84060

Tax Parcel Nos. SS-59-X and SS-59-A-2-X

QUIT-CLAIM DEED

FOR GOOD AND VALUABLE CONSIDERATION, the **SNYDERVILLE BASIN SPECIAL RECREATION DISTRICT**, a local district of the State of Utah, whose address is 5715 Trailside Drive, Park City, Utah 84098 ("Grantors"), hereby quitclaims to **PARK CITY MUNICIPAL CORPORATION**, whose address is P.O. Box 1480, 445 Marsac Avenue, Park City, Utah 84060 ("Grantee"), those certain tracts of land located in Summit County, State of Utah, as described in Exhibit A attached hereto (the "Subject Property").

The undersigned further hereby acknowledges and affirms to the below named Notary Public that the undersigned appeared before such Notary Public and either executed this Quit-Claim Deed before such Notary Public or acknowledged to such Notary Public that the undersigned executed this Quit-Claim Deed for the purposes stated in it.

DATED as of the ____ day of _____, 2013.

Snyderville Basin Special Recreation District

By: _____
Name: _____
Its: _____

STATE OF UTAH)
 : ss
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2013, by _____, the _____ of Snyderville Basin Special Recreation District.

NOTARY PUBLIC
Residing at: _____

My Commission Expires:

EXHIBIT A

Legal Description of Subject Property

TRACT ONE:

A portion of land lying outside the legal described boundary of Tax Parcel SS-59-A, but within the existing, historic fence lines that are located on Tax Parcel SS-57-2-A-X and Tax Parcel SS-59-X. Located in Section 28, Township 1 South, Range 4 East, Salt Lake Base and Meridian, Summit County, Utah, described as follows:

Commence at the Northeast corner of Section 28, Township 1 South, Range 4 East, Salt Lake Base and Meridian; Thence along the East line of said Section 28 South 01° 02' 41" East a distance of 2,666.45 feet to the East Quarter Corner of said Section 28; Thence continuing along said East Section line South 01° 02' 41" East a distance of 526.31 feet to the Point of Beginning, said point also being the Southeast property corner of Tax Parcel SS-59-A; Thence, backtracking along said East line of Section 28, North 001°02'41" West a distance of 629.4 feet, more or less, to a point of intersection of an existing wire fence and said East line of Section 28; Thence leaving said East line of Section 28 and continuing along said existing wire fence South 1°34'49" East a distance of 817.7 feet, more or less to the point of intersection of an existing East-West wire fence; Thence continuing Westerly along said existing East-West wire fence the following twenty-five (25) calls; (1) South 88°50'35" West a distance of 8.5 feet, more or less; (2) South 88°15'16" West a distance of 67.9 feet, more or less; (3) North 89°58'50" West a distance of 105.4 feet, more or less; (4) North 88°41'59" West a distance of 140.9 feet, more or less; (5) North 87°26'20" West a distance of 316.4 feet, more or less; (6) North 88°44'04" West a distance of 313.1 feet, more or less; (7) North 87°53'00" West a distance of 409.4 feet, more or less; (8) North 88°52'10" West a distance of 133.1 feet, more or less; (9) South 88°03'50" West a distance of 37.8 feet, more or less; (10) South 85°06'02" West a distance of 54.6 feet, more or less; (11) South 82°20'44" West a distance of 138.2 feet, more or less, to the point of a fence corner; (12) South 14°10'26" East a distance of 80.1 feet, more or less, to the point of a fence corner; (13) South 50°51'55" West a distance of 129.7 feet, more or less, to the point of a fence corner; (14) North 67°22'03" West a distance of 208.3 feet, more or less, to the point of a fence corner; (15) North 89°38'34" West a distance of 305.0 feet, more or less; (16) South 87°59'48" West a distance of 116.2 feet, more or less; (17) South 87°39'29" West a distance of 263.4 feet, more or less to the point of a fence corner; (18) North 74°06'23" West a distance of 417.2 feet, more or less; (19) North 75°41'50" West a distance of 114.2 feet, more or less; (20) North 80°21'47" West a distance of 126.1 feet, more or less; (21) North 81°04'47" West a distance of 83.0 feet, more or less; (22) North 81°59'19" West a distance of 232.4 feet, more or less; (23) North 86°00'41" West a distance of 673.3 feet, more or less, to the point of a fence corner; (24) South 4°18'20" West a distance of 347.9 feet, more or less, to the point of a fence corner; (25) South 72°39'52" West a distance of 13.9 feet, more or less; Thence leaving said existing East-West fence, North 00°04'28" East a distance of 15.2 feet, more or less to a South-Westerly boundary corner of said Parcel SS-59-A; Thence Northerly and Easterly along the boundary line of said Tax Parcel SS-59-A the following two (2) calls: (1) North 00°04'28" East a distance of 350.80 feet to a boundary corner; (2) South 89° 55' 32" East a distance of 4,328.47 feet to the Southeast property corner of said tax parcel SS-59-A, said point also being the point of beginning.

Contains: 16.75 Acres (729,429 s.f.), more or less.

EXHIBIT A

TRACT TWO:

Located in Section 28, Township 1 South, Range 4 East, Salt Lake Base and Meridian, Summit County, Utah, described as follows:

Commence at the Southwest Corner of the Section 28, Township 1 South, Range 4 East, Salt Lake Base and Meridian; thence South $88^{\circ}25'45''$ East 1023.00 feet along the section line and North $00^{\circ}04'28''$ East 1732.50 feet to the TRUE POINT OF BEGINNING; Thence backtracking South $00^{\circ}04'28''$ West a distance of 1732.50 feet to the south line of said Section 28; Thence along said south Section Line North $88^{\circ}25'45''$ West a distance of 71.82 feet, more or less, to the east property line of Tax Parcel SS-60-1; Thence along said east property line of Tax Parcel SS-60-1 North $03^{\circ}19'50''$ West a distance of 442.31 feet, more or less to the common easterly corner between Tax Parcels SS-60-1 and SS-60-3; thence along the east boundary line of said Tax Parcel SS-60-3 North $03^{\circ}19'50''$ West a distance of 444.71 feet, more or less to the common easterly property corner between Tax Parcels SS-60-3 and SS-60; Thence along the easterly property line of said Tax Parcel SS-60 the following two (2) calls: (1) North $01^{\circ}04'56''$ west a distance of 398.85 feet, more or less; (2) North $24^{\circ}57'56''$ West a distance of 367.09 feet, more or less to the common easterly property corner between Tax Parcels SS-60 and SS-60-F-1; Thence along the northeasterly property line of said Tax Parcel SS-60-F-1 North $55^{\circ}08'08''$ West a distance of 199.23 feet, more or less to a southwesterly property corner of Tax Parcel SS-59-A; Thence along the southerly property line of said Tax Parcel SS-59-A South $89^{\circ}55'32''$ East a distance of 348.45 feet, more or less to the point of beginning.

Contains 2.70 Acres (117,424 s.f.), more or less.

EXHIBIT A

Exhibit M of Purchase Agreement- Special Warranty Deed KJS 5 (County/City- UAF)

AFTER RECORDED, PLEASE RETURN TO:

Utah Athletic Foundation
3419 Olympic Parkway
P.O. Box 980337
Park City, Utah 84098

SPECIAL WARRANTY DEED

FOR GOOD AND VALUABLE CONSIDERATION, Summit County, a political subdivision of the State of Utah, having a mailing address at P.O. Box 128, 60 N. Main, Coalville, Utah 84017, and Park City Municipal Corporation, a municipal corporation, having a mailing address at P.O. Box 1480, 445 Marsac Avenue, Park City, Utah 84060 (the "Grantors") hereby CONVEY AND WARRANT, against those claiming by, through and under the Grantors and not otherwise, to Utah Athletic Foundation, having a mailing address at 3419 Olympic Parkway, P.O. Box 980337, Park City, Utah 84098 (the "Grantee"), the Grantors' right, title and interest in and to that certain tract of land located in Summit County, State of Utah, as follows:

Lot 5, Kimball Junction Subdivision, First Amended, according to the official plat thereof on file with the Summit County Recorder, entry number 00909755 (the "Subject Property")

SUBJECT TO all restrictions, reservations, and other conditions of record as may be disclosed by a record examination of title.

TO HAVE AND TO HOLD the Subject Property, together with all tenements, hereditaments, and appurtenances thereunto belonging, unto the Grantee, and their successors and assigns, forever. The Grantors do hereby covenant to and with the Grantee that the Grantee are owners in fee simple of the Subject Property and that the Grantors will warrant and defend the same from all lawful claims whatsoever arising by, through and under the Grantors and not otherwise.

The undersigned further hereby acknowledges and affirms to the below named Notary Public that the undersigned appeared before such Notary Public and either executed this Deed before such Notary Public or acknowledged to such Notary Public that the undersigned executed this Deed for the purposes stated in it.

DATED as of the _____ day of _____, 2013.

Summit County

By: _____
Print Name: _____
Title: _____

Park City Municipal Corporation

By: _____
Print Name: _____
Title: _____

STATE OF UTAH)
)
:ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2013, by _____, of Summit County.

NOTARY PUBLIC

Residing at: _____

My Commission Expires:

STATE OF UTAH)
)
:ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2013, by _____, of Park City Municipal Corporation.

NOTARY PUBLIC

Residing at: _____

My Commission Expires:

Exhibit B- Map

Gillmor and Toll Canyon Open Space

