PARK CITY COUNCIL MEETING
SUMMIT COUNTY, UTAH
APRIL 30, 2009

PUBLIC NOTICE IS HEREBY GIVEN that the City Council of Park City, Utah will hold its regularly scheduled meeting at the Library and Education Center, Room 205, 1255 Park Avenue, Park City, Utah for the purposes and at the times as described below on Thursday, April 30, 2009.

Closed Session
3:00 p.m. Property and litigation

Work Session

4:10 p.m.	Council questions/comments	
4:20 p.m.	Cost sharing for Library Reciprocal Borrowing Program	P. 6 - 7
4:40 p.m.	Recycle Utah Annual Report	P. 8
5:00 p.m.	PC Heights annexation	P. 9 - 28
5:50 p.m.	Break	

Regular Meeting
6:00 p.m.

I ROLL CALL

II COMMUNICATIONS AND DISCLOSURES FROM COUNCIL AND STAFF

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

IV 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 award of concession contract for the Park City Golf Club to Silver Star Market and Café for five year terms in the amount of $500 per month for the first two years, $550 a month for the next two years and $600 month for the final year of the contract, in a form approved by the City Attorney P. 29 - 41

2. Consideration of award for Lawn Care Services, in a form approved by the City Attorney, in an amount not to exceed $74,445for the first three year term and optional $52,176 for second 2 year term to Ground Maintenance Services Inc. P. 42 - 59

V ADDITIONAL DISCUSSION – AGENDA ITEMS

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.
Posted: 04/27/09
See: www.parkcity.org

DRAFT (subject to change)
PARK CITY COUNCIL MEETING
SUMMIT COUNTY, UTAH
MAY 7, 2009

PUBLIC NOTICE IS HEREBY GIVEN that the City Council of Park City, Utah will hold its regularly scheduled meeting at the Library and Education Center, Room 205, 1255 Park Avenue, Park City, Utah for the purposes and at the times as described below on Thursday, May 7, 2009.

Closed Session
3:00 p.m. Property and litigation

Work Session
4:15 p.m. Council questions/comments
4:30 p.m. Stimulus bill
5:00 p.m. Ironhorse Transit facility
5:20 p.m. Budget introduction and Capital Improvement Fund overview
5:50 p.m. Break

Regular Meeting
6:00 p.m.

I ROLL CALL

II COMMUNICATIONS AND DISCLOSURES FROM COUNCIL AND STAFF

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

IV WORK SESSION NOTES AND MINUTES OF MEETING OF APRIL 23, 2009

V NEW BUSINESS *(New items with presentations and/or anticipated detailed discussions)*

1. Consideration of concession contract – Park City Sports Complex

2. Consideration of MFL – Wasatch Wellness Fair
   (a) Public hearing
   (b) Action

3. Consideration of 505 Woodside Avenue – Plat [PL-09-00631] KC
   (a) Public hearing
   (b) Action

4. Consideration of award of contract – City website

5. Consideration of the Third Addendum to the Professional Services Agreement with Bowen Collins & Associates, for General Engineering Services in an amount of $230,000

6. Update on water supply and demand and consideration of environmental impacts of the proposed water pipeline interconnection and water treatment plant project located in Summit County and Park City, Utah

(a) Staff presentation
(b) Public hearing

7. Consideration of award of contract for design of Ironhorse Transit facility

8. Consideration of a Resolution adopting a tentative revised budget for fiscal year 2008 and the budget for fiscal year 2009 for Park City Municipal Corporation and its related agencies
(a) Public hearing
(b) Continuation of public hearing to May 21, 2009

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.

PARK CITY COUNCIL MEETING
SUMMIT COUNTY, UTAH
MAY 14, 2009

PUBLIC NOTICE IS HEREBY GIVEN that the City Council of Park City, Utah will **not** hold its regularly scheduled meeting on Thursday, May 14, 2009.

Posted: 05/04/09
See: www.parkcity.org

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

May 2009

14 **No meeting – Dana gone**
21 **Roger gone**
Land Management Code – Historic Guidelines – work TE/DB
Budget – work
Letter of Intent with the Park City Foundation for the development of a community carbon and water website
PC Heights annexation – old business
Contract for Fixed Base Automatic Water Meter Reading project
MFL – 125 Year Celebration
28 Budget – work
Land Management Code – Historic Guidelines - public hearing TE/DB

June 2009

4 Budget
11 **No meeting - Liza gone**
13 *125th Birthday Party*
18
25

July 2009

2
9
16
23
30

Pending Items:

For hire vehicles licensing
Ordinance amending Municipal Code Titles 1 and 2
Sergio ice cream franchise - PM
Amendment to fee resolution - GRAMA
Resolution amending (or replacing) Resolution No. 20-07, adopting Affordable Housing Guidelines and Standards for Park City, Utah
Carrying capacity/market analysis survey
Wild land interface issues

City Council Staff Report

Author: Linda Tillson
Subject: Cost Sharing for Reciprocal Borrowing Program
Date: April 30, 2009
Type of Item: Informational/Direction

Recreation Library Department

Summary Recommendations:
Request Council direction regarding whether to formally pursue a request for Park City School District to share in reciprocal borrowing costs that allow children ages 5-18, who reside outside Park City Limits, to obtain a free Park City Library card.

Description:
Topic:
Reciprocal borrowing cost sharing request.

Background:
In September 2007 the library began offering free "student" cards to Summit County kids and teens from ages 5 to18 who reside outside of Park City limits. The budget option to cover the costs associated with serving this additional group was $21,000. This number was based upon a survey conducted prior to instituting the program which estimated that approximately 60 additional students would sign up for Park City Library cards. Summit County agreed to fund half of this cost through an inter-local agreement.

From September of 2007 to September 2008 the free student cards issued totaled 163. The resulting number of items circulated for this group was 2,053. The greatest increase in usage by County students was anticipated to be on Sundays, when the County Library is closed. An examination of the Sunday door count following the institution of free student cards revealed an average increase of 12% compared to the prior year. This is at least in part attributable to the increased service population of County students residing outside of the City limits.

This program has been more successful than anticipated and has allowed the Library to serve larger number of kids and teens in the area.

Analysis:
During a library board discussion about the higher than expected number of cards issued Roger Harlan suggested sharing the numbers with the Park City School District and asking if they would have interest in providing part of the funding for this program. Though there was not a formal vote, board members generally agreed that it wouldn't hurt to ask. Roger attended a school board meeting and brought the idea up. He also drafted a letter requesting that the school consider helping to fund reciprocal borrowing.

Park City School District has asked for a more formal request in order to consider this proposal. Staff is looking for direction as to whether this is something Council wishes to formally pursue or discuss at a work session. If Council wishes to request funds from the school district a possible sum could be $7000 which is one third of the cost.

The Library Director is neutral on the topic of whether or not funding from the school district should be requested. It is likely that a number of the school aged students served by the program attend Park City Schools. In the past, the City has contributed funds to the School District for its ESL Program. By this standard asking PCSD for funding makes sense. This precedent, however, brings up the question of whether private schools and home schoolers should also be asked to share in the cost.

Accepting funds from Summit County for the program is logical since both PCMC and Summit County are in the business of providing public library service to the broad community. Schools are a different type of entity, so the question of whether or not they should share in the cost of a public library program is more complex.

Department Review:
The Recreation Library Team and City Manager have reviewed this report.

Alternatives:

A. **Direct staff to move forward with a formal request.**
   This would result in a formal request being drafted and presented to PCSD.
B. **Direct staff not to pursue a formal request.**
   No formal request would be drafted and submitted to PCSD.
C. **Continue the item.**
   A decision could be made at a later date if further discussion is deemed necessary.
D. **Do nothing.**
   Same result as option B. No request would be submitted.

Recommendation:
Provide direction on whether or not to move forward with formally requesting funds from the Park City School District for this program.

City Council Staff Report

Subject: Recycle Utah Annual Report
Author: Jerry Gibbs & Diane Foster
Department: Public Works & Sustainability
Date: April 30, 2009
Type of Item: Informational

Summary Recommendation:
No action is required.

Topic/Description: Recycle Utah Bi-annual Report

Background:
Recycle Utah has been located on Munchkin Drive since the mid 90's. Recycle Utah is a community recycling center offering drop off services for glass, metals, paper & cardboard, e-waste, plastics and EPS foam. Other programs include printer cartridges, batteries, mercury contained items (florescent bulbs, thermometers, etc) and some building materials (Good Wood Project). And while Recycle Utah operates the only full-service recycling drop off center in Summit County, their primary mission is environmental education.

Recycle Utah is a recipient of a Special Service Contract award as part of our budget process. A special service contract has a term of two years. Special service providers are required to submit current budgets and evidence of contract compliance (as determined by the contract) by March 31st of the first contract year.

The intent of the presentation is to comply with the City's requirement and keep Council up to date on the various programs run by the non-profit. The Executive Director of Recycle Utah, Insa Riepen, members of her staff and board will be present.

Recommendation:
No action is required.

City Council
Staff Report

Subject:	**Park City Heights Annexation**
Author:	**Mark Harrington**
	Thomas Eddington, AICP
	Kirsten A. Whetstone, AICP
Date:	**April 30, 2009**
Type of Item:	**Legislative – work session only**

PARK CITY
1884
PLANNING DEPARTMENT

Summary Recommendation

The purpose of the work session is to:

- Provide Council with an update regarding the pending Park City Heights Annexation petition, Annexation Agreement, and Water Agreement
- Discuss any remaining unresolved issues to enable both sides to proceed to final action.

Description

Project Name:	Park City Heights Annexation
Applicant:	Boyer Plumb Park City L.L.C.; Talisker
Location:	South West corner of the intersection of Highways 248 and 40
Proposed Zoning:	Community Transition (CT-MPD)
Adjacent Land Uses:	Municipal open space; City Ice Arena and Fields Complex;
Reason for Review:	Annexations require a recommendation from the Planning Commission with final action by the City Council

Background

This staff report is supplemental to the previous Park City Heights Annexation staff reports dated April 24, May 22, June 5, June 19, July 17, August 28, September 11, September 18, and October 16, 2008, and refers to the project history, Staff analysis, exhibits, and background materials attached to those reports. This matter was continued without substantive comment from several meetings in October/November and most recently, December 18, 2008.

At the December 18 meeting the Council provided direction on the following items:
Staff requests Council direction on the following questions (see Exhibit A- meeting minutes of December 18, 2009):

1. Does Council agree that intersection improvements are the responsibility of the applicant? *The Council agreed with the analysis and assessment of responsibility by the City's staff as presented in the December 18, 2009 report (Exhibit B).*

2. Does Council agree that all of the signal intersection improvements should be constructed with Phase I of the project? *The Council discussed and agreed that the signal improvements should be constructed with Phase I of the project.*

3. Does Council agree with utilizing the downstream traffic impact methodology, as recommended by staff, based upon the projects percentage of traffic growth? *Council discussed the methodology and agreed with Staff's recommendation.*

4. Does Council agree with the proposed trail improvements (including the requirement for a trail easement east of US 40)? *Council agreed with Staff's current direction but left further details to further meetings with the City Transportation Department.*

Additional items discussed at the December 18 meeting included an update on the Water Agreement, and Nightly Rentals within a future MPD. Council disagreed with the staff recommendation to condition that UPK and Talisker amend their Flagstaff Mine Inventory to include mine hazards in the Annexation Area, subject to the same requirements of the amended Supplemental Plan as approved by the Planning Commission. Council did however express their assumption that such environmental and mine hazard matters would be addressed by the PC Heights MPD phase.

Analysis

Staff and the applicants have been meeting regularly since the last meeting in December to address several remaining issues which primarily revolved around: 1) mitigation of traffic impacts by terms outlined in the Annexation Agreement; and 2) water infrastructure and phasing in the Water Agreement. Staff will provide an update on these issues at the work session.

Remaining issues have been complicated by the fact that the applicants have not resolved their internal cost sharing agreement and Talisker/UPK continue to explore alternative water tank and infrastructure plans. Staff is also exploring increased City financing of the 248 intersection improvements.

Recommendation

No direction is requested at this time. This item will be formally scheduled for the May 21, 2009, meeting for a public hearing and possible action.

Exhibits

Exhibit A- Minutes of the December 18, 2008 meeting
Exhibit B- December 18, 2008, staff report (excluding exhibits)

City Council Staff Report

Subject: Park City Heights Annexation
Author: Thomas Eddington, AICP
Kirsten A. Whetstone, AICP
Date: December 18, 2008
Type of Item: Legislative

PARK CITY 1884
PLANNING DEPARTMENT

Summary Recommendation

Staff recommends that the City Council review the Park City Heights Annexation at the regular meeting, conduct a public hearing, and provide Staff and the applicant direction regarding the Annexation Agreement and Water Agreement.

The purpose of this meeting is to:

- Conduct a public hearing;
- Review and provide direction regarding Annexation Agreement and associated Water Agreement; and
- Identify any remaining issues to enable both sides to proceed to final action.

Description

Project Name:	Park City Heights Annexation
Applicant:	Boyer Plumb Park City L.L.C.; Talisker
Location:	South West corner of the intersection of Highways 248 and 40
Proposed Zoning:	Community Transition (CT-MPD)
Adjacent Land Uses:	Municipal open space; City Ice Arena and Fields Complex;
Reason for Review:	Annexations require a recommendation from the Planning Commission with final action by the City Council

Background

This staff report is supplemental to the previous Park City Heights Annexation staff reports dated April 24, May 22, June 5, June 19, July 17, August 28, September 11, September 18, and October 16, 2008, and refers to the project history, Staff analysis, exhibits, and background materials attached to those reports. This matter was continued without substantive comment from several meetings in October/November and most recently, December 4, 2008. The proposed annexation plat is attached as Exhibit A.

Analysis

Staff and the applicant have been meeting regularly to address several remaining issues which primarily revolve around: 1) mitigation of traffic impacts by terms outlined in the Annexation Agreement; and 2) water infrastructure and phasing in the Water Agreement.

Annexation Agreement – Traffic.

Paragraph 17 of the draft Annexation Agreement (Exhibit B) addresses the traffic mitigation and "downstream" traffic impacts of the proposed project.

A traffic impact study for the project was submitted by the applicant in 2007. In November of 2008, Staff engaged Interplan Transportation Consultants to provide a peer review of the applicant's 2007 traffic study and to update the study to incorporate current traffic data and reflect project phasing (a copy of the Interplan technical memorandum is attached as Exhibit D).

Staff presented the Interplan Technical Memo to the applicant and has utilized the information contained in that memorandum for determining the applicant's responsibility for traffic mitigation. Subsequently, the applicant had their consultant review the Interplan Technical Memorandum and presented Staff with an extremely rough draft of yet another traffic study. A final copy of this study had not been provided by the applicant at the time of this report.

Staff believes that all three studies indicate:

- the need for intersection improvements, including signalization, is triggered by the addition of project traffic.

- the differences in traffic numbers between the three studies will be immaterial and that the parties can reach agreement on one set of traffic numbers in a reasonably short period of time.

Staff has worked to ensure that the responsibilities for traffic mitigation costs for the Park City Heights annexation are determined in a manner consistent with the methodology utilized for the recent IHC\USSA annexation. The IHC annexation agreement included the following traffic mitigation requirements:

- Applicant was required to pay the project's proportionate share of downstream traffic impacts on SR-248.
- Applicant incurred cost for intersection improvements (including signalization) in phase 1 of project construction.
- Applicant's costs of intersection improvements (including signalization) were credited towards satisfying Applicant's downstream obligation for traffic mitigation.

Staff does not believe it productive to focus Council discussion, at this time, on the technical aspects of any particular traffic study. However, there are several policy issues that Staff and the applicant need Council direction on in order to resolve these issues and move toward a final draft annexation agreement.

Paragraph 17 sets forth Staff's interpretation of the applicant's responsibility for the following traffic mitigation items:

1. Improvements to Richardson Flat Road
2. Improvements to the Intersection of Richardson Flat Road and SR-248
3. Contribution to projects downstream – SR-248 traffic impacts

1. Improvements to Richardson Flat Road

Paragraph 17-d, e, f detail the applicant's obligations for improvements to Richardson Flat Road. Initial road requirements included 5' wide bike paths along both sides of Richardson Flat Road from SR-248 to US40. Staff supports the applicant's proposal to construct separated bike paths rather than the 5' wide on-road bicycle paths. These separated paths will provide a connection from the project to the rail trail, and Quinn's Junction (via existing tunnel under SR-248).

Paragraph 17-e includes the requirement for United Park City Mines Company (UPK) to provide the City a trail easement along the north side of Richardson Flat road from US 40 to the Park and Ride entrance road. This easement will allow the City to extend the separated path trail eastward to the Phoston Spur of the rail trail and the park and ride if the City should choose to finance and build that project in the future. It is important to note that this grant of easement will not guarantee any required regulatory or environmental approval of a future trail project.

Staff believes that the separated bike paths, including the identified easement east of US-40, provide acceptable pedestrian bicycle connections to the project (a graphic showing the locations of these improvements is attached to this report as Exhibit C). This approach will substantially reduce construction cost for the applicant and eliminate significant wetland impacts that would result from expanding the road width to accommodate bike lanes.

Staff believes the applicant has agreed to provisions of Paragraph 17 sections d, e, and f, at least in principal; however the applicant has provided no formal confirmation of this at the time of writing this report.

2. Improvements to the Intersection of Richardson Flat Road and SR-248

Paragraph 17 sets forth requirements to improve the intersection of Richardson Flat Road and SR-248. The intersection improvements detailed in Paragraph 17 have been identified as necessary in numerous traffic impact studies conducted by both the applicant and City Staff.

Staff and the applicant have not reached agreement on two key issues regarding these improvements. Those issues are:

1. Timing of intersection improvements; and

2. Applicant's responsibility for improvements.

<u>Timing of intersection improvements</u>

Staff's position and recommendation are that the intersection improvements, including signalization, should be constructed in one phase – at the time the project begins its first phase of construction. Intersection improvements (including signalization) for the IHC\USSA annexation were constructed and paid for by the applicant in conjunction with phase 1 of the project.

Staff's recommendation is based upon consistency with previous annexations and the fact that any phased approach will:

- significantly increase construction related traffic impacts

- require multiple UDOT approvals

- result in multiple pavement disruptions with associated pavement maintenance impacts

- significantly increase City staff time required for project management

- require City to accept risk that the improvements will be constructed in their entirety.

The applicant has proposed a two phased approach that would time intersection improvements to coincide with project phasing as more units come on line. This approach would construct improvements as follows

Phase 1	Eastbound de-acceleration lane on SR-248, and a westbound turn lane on SR-248.
Phase 2	Complete all required intersection improvements, including signalization, in Phase two of the project.

Staff recommends the City require construction of all intersection improvements at the same time as commencement of phase one of the Park City Heights project.

Applicant's responsibility for intersection improvements
Multiple traffic studies indicate that the intersection improvements identified in Paragraph 17 are triggered by the traffic generated by the applicant's project. Staff believes that given the fact that the project triggers the need for intersection improvements; the applicant should be responsible for financing and constructing those improvements.

The applicant does not agree with Staff's position and argues that the project's responsibility for these intersection improvements should be limited to the project's proportionate share of overall traffic volumes. Staff believes this approach is not consistent with that utilized with the IHC\USSA annexation.

Staff recommends that the City require the applicant to finance and construct the identified intersection improvements.

3. Contribution to Downstream Traffic Impacts

The City's Entry Corridor Strategic Plan includes the objective "*Ensure that land use and planning decisions balance traffic impacts of development and road capacity while providing for mitigation of those impacts.*" Traffic generated from the Park City Heights development will impact not only the intersection of

Richardson Flat Road and SR-248 but also the entire SR-248 corridor (US 40 to SR-248).

Staff has calculated the applicant's obligation for the project's impact to the SR-248 corridor consistent with the City's Entry Corridor Strategic Plan, and with the methodology utilized for the IHC\USSA annexation,. These impacts are referred to in this report as "downstream impacts."

Paragraph 17 contains language that sets forth the applicant's obligation to mitigate the project's traffic impacts to the SR-248 corridor. Staff utilized the project's percentage of overall traffic growth along SR-248 (2008-2020). This 7% proportionate share was then multiplied by the City's estimated corridor improvement costs of $15,000,000 (as identified in initial findings of SR-248 study presented to Council on November 20, 2008) to arrive at an estimate of $1,050,000 for the applicant's obligation for downstream traffic mitigation. This approach is consistent with that which was utilized to calculate responsibility for downstream impacts of the recent Quinn's-IHC annexation.

The applicant does not agree with Staff's approach of utilizing the project's proportionate contribution to 2008-2020 traffic growth to calculate the project's responsibility for mitigation of downstream impacts. The applicant has recommended a substantially lower financial cap on this obligation (e.g. $20,000).

It is important for Council to note that final corridor improvement costs are still a work in progress, and that the applicant and Staff are still in the process of refining the final traffic impact analysis. The final proportionate share and dollar value of the applicant's responsibility for downstream impacts will likely change from those contained in Paragraph 17 contained below. Staff has included language in Paragraph 17 to enable the applicant to challenge the City's calculation by filing an independent impact fee calculation in accordance with Title 12, Chapter 13 of the Park City Municipal Code.

Paragraph 17 contains a provision that allows the applicant to credit the costs it incurs in improving the Richardson Flat\SR-248 intersection towards meeting its obligation for mitigation of downstream impacts.

Staff recommends the City utilize the project's proportionate share of 2008-2020 traffic growth on SR-248 to calculate the project's financial responsibility for mitigating downstream traffic impacts.

Below is the annexation agreement language as recommended by staff which requires all of the specified signaled intersection improvements to be done in the first phase of development and sets forth the applicant's obligations for those improvements:

> ***17. <u>Traffic Mitigation.</u> A comprehensive traffic review and analysis of the Property and surrounding properties, including existing and future traffic and circulation conditions was performed by Petitioner's traffic consultant, Hales Engineering, dated June 7, 2007 (Exhibit C). The mitigation measures identified in the study and the traffic calming***

measures outlined in the Hales study shall be implemented in a manner consistent with the first phase of any MPD. The Parties anticipate that the Petitioner (or, as specified in connection with any such assignment, its assigns) shall bear all financial costs, except land acquisition costs, for the construction of a signalized intersection on State Road 248 and the connection of that intersection with a roadway to the Property, as shown in the Traffic Impact Study. Construction of this intersection and its connection with Richardson Flat Road shall meet all applicable Utah Department of Transportation and Park City Municipal Corporation standards and include the improvements detailed in a-d below:

a. A southbound left turn lane, deceleration lane and taper shall be constructed on SR-248 to accommodate more than 10 vehicles per hour making left-hand turning movements.

b. A northbound right turn pocket, deceleration lane and taper shall be constructed on SR-248 to accommodate more than 25 vehicles per hour making right-hand turning movements.

c. A westbound to northbound right turn acceleration lane and taper shall be constructed on SR-248 to accommodate more than 50 vehicles per hour. When the intersection is signalized, this improvement would not be necessary.

d. The Old Dump Road (Richardson Flat Road) shall be built to Park City Municipal Corp. standards at a minimum width of 29 feet back-of-gutter to back of gutter within a 66 foot right-of-way. This width is not inclusive of turn pockets or the improvements described in 1-2 below) to the easternmost Park City Heights intersection with Richardson Flats Road at the expense of the Petitioner. Turn pockets shall be constructed on Richardson Flat Road at each of the Property's intersections with the Richardson Flat Road. These turn pockets will be constructed per standards set forth in the Manual of Uniform Traffic Control Devices (MUTCD) and/or by the American Association of Highway Transportation Officials (AASHTO). The Richardson Flat Road at its intersection with SR-248 will be of sufficient paved width to accommodate (at the stop bar):

1. 18' wide eastbound lane tapered per standards set forth in the MUTCD and/or by the AASHTO.

2. ***12' wide westbound left-hand/thru traffic lane (with adjoining right turn lane) for a minimum of 150', then tapered per standards set forth in the MUTCD and/or by the AASHTO.***

e. ***The Petitioner shall construct, at its cost, a 10' separated and paved bicycle-pedestrian trail that connects (at its western terminus) to the existing Quinn's Junction trail on the north side of Richardson Flat Road. This trail shall run eastward (crossing the rail trail) with an eastern terminus at US-40. The trail shall be separated from Richardson Flat Road along its entire length. The design and construction of this trail, and its intersections must meet all applicable AASHTO safety standards as approved by the Park City Engineer. In the event the Petitioner is unable to obtain any third party approvals required to construct this trail the Petitioner shall then include 5' bike lanes on both sides of Richardson Flat Road (from its intersection with SR-248 eastward to US 40). The Petitioner shall provide the City with an easement on UPK property sufficient to continue this separated trail eastward along the north side of Richardson Flat Road (north side) to the Park and Ride entrance.***

f. ***The Petitioner shall construct, at its cost, a 10' separated and paved bicycle-pedestrian trail that starts at the Rail Trail (at its south west intersection to the Richardson Flat Road) and continue east along the south side of Richardson Flat Road, turning south along the frontage road leading to the PC Heights subdivision to the south property line for future connection to adjacent development. The Petitioner shall obtain any third party approvals or the trail shall be constructed on the Park City Heights property. The Park City Heights trails/sidewalks/pathways constructed as part of the subdivision shall connect to this trail. The trail shall be separated from the Richardson Flat Road and the frontage road along its entire length. The design and construction of this trail, and its intersections must meet all applicable AASHTO safety standards as approved by the Park City Engineer.***

g. ***The cost sharing methodology (between Petitioner and any assigns) for the above projects shall be agreed to by the Petitioner and assigns prior to any Final MPD approval.***

In addition to the improvements to the Old Dump Road and its intersection with SR-248, each Petitioner (or, as specified in connection with any such assignment, its assigns) shall bear its proportionate share of financial costs of traffic mitigation improvements to be made to SR-248 (between US-40 and SR-224). The total cost of these traffic mitigation measures shall not exceed $15,000,000 (measured in 2008 dollars). The proportionate share of the Petitioners' costs for these capacity enhancements shall be 7% or $1,050,000. The costs as approved by the City of the intersection signalization and items a-c above shall be deducted from the Petitioners proportionate share. If the Petitioners disagree with the City calculation, they may file an Independent Fee Calculation in accordance with Title 12, Chapter 13 of the Park City Municipal Code.

Requested Action(s)

Staff requests Council direction on the following issues:

1. Does Council agree that intersection improvements are the responsibility of the applicant?

2. Does Council agree that all of the signal intersection improvements should be constructed with Phase I of the project?

3. Does Council agree with utilizing the downstream traffic impact methodology, as recommended by staff, based upon the projects percentage of traffic growth?

4. Does Council agree with the proposed trail improvements (including the requirement for a trail easement east of US 40)?

The Water Agreement

The water agreement stipulates that the MPD will be staged in phases. Phase I is limited to 90 UEs (180,000 square feet of residential development) and 90,000 gallons of water per day of demand. Boyer Plumb and UPK agree that the City will not issue a temporary or permanent Certificate of Occupancy for development within Phase I prior to October 15, 2009; thereafter, the Phase I units will not be denied permanent certificates of occupancy based on the availability of water. No exterior irrigation would be allowed during Phase I. Once the 90 UEs or 180,000 square feet of development are completed, the City would stop issuing Certificates of Occupancy (Cos). Nintey (90) UEs allows IHC and Talisker to construct all of the affordable units (51.58 UEs) and still leaves 38.42 UEs (market rate units) for Boyer Plumb in Phase I.

The Water Agreement also makes it clear that Boyer Plumb and UPK further understand and agree that the City anticipates the water treatment plant will be operational and capable of increasing City's water source capacity by a minimum of one-thousand five-hundred gallons per minute (1,500 gpm) on or before November 30, 2010. Accordingly, Boyer Plumb and UPK understand and agree that City will not issue a temporary or permanent Certificate of Occupancy to any development beyond Phase I of the Project prior to either (1) the date on which the water treatment plant is operational and capable of increasing City's water source capacity by a minimum of one-thousand five-hundred gallons per minute (1,500 gpm); or (2) November 30, 2010, whichever shall first occur. If the plant is not operational by 11/30/10, the City bears the risk of providing alternative water delivery.

Other notable elements of the water agreement include:

- Location and construction of a culinary water tank,
- Provision of rights of way for potential future City-owned water infrastructure including a raw water tank,
- Cost sharing to upsize the culinary water tank and associated transmission lines, and
- Clarification regarding what infrastructure each party is responsible for providing.

Staff also recommends that the Water Distribution and Water Transmission lines be installed in Phase I of the development. The applicant wants the ability to phase construction of the Transmission lines. The applicant also questions their ability to get Certificates of Occupancy and financing without outdoor irrigation in Phase I and want flexibility to use some water for outdoor irrigation in Phase I if they do not build all of the 90 UEs. Staff does not believe it will have any ability to enforce any limitations on outdoor irrigation use and does not recommend such use. The Building Department has met with the Legal Department and determined it can issue COs with the outdoor irrigation restriction.

- Does Council agree with the proposed Phasing strategy, including the City risk of completion of the water treatment plant?
- Does Council agree that the water infrastructure should be part of Phase I?
- Does Council agree that no outdoor irrigation is permitted in Phase I regardless of the number of UEs built?

<u>Additional issues</u>
Nightly Rental: The Planning Commission requested during a recent meeting that the Council specifically address whether nightly rental were allowed in the PC Heights annexation. On December 11, 2008, Council remanded the Land Management Code (LMC) changes, including Nightly Rentals as a Conditional Use in the CT zone, back to the Planning Commission for further review. The Planning Commission was particularly concerned with the difficulty of enforcement in the affordable housing areas. Nightly rental of affordable units is expressly prohibited in every affordable housing deed restrictions that are filed for each unit. There is also a minimum lease term of six months required for all units designated as affordable rental units. The CT zone only allows Short-Term Athlete Housing as a conditional use within an approved MPD. Does Council wish to restrict the nightly rental of market rate units, as well? Staff recommends that the issue of permitting nightly rental of market rate units be addressed as part of the MPD application review rather than as part of the annexation agreement. Does Council agree?

Mine Hazards: In light of the problems with the Mine Adit near the rail trail and the known presence of at least one mine on the annexation area, Staff recommends that the Annexation Agreement require that UPK and Talisker amend their Flagstaff Mine Inventory to include mine hazards in the Annexation Area, subject to the same requirements of the amended Supplemental Plan as approved by the Planning Commission. Does the Council agree?

Recommendation

Staff recommends that the City Council review the attached Annexation and Water Agreements, conduct a public hearing, and provide direction on the areas of disagreement.

Exhibits

Exhibit A- Annexation Plat
Exhibit B- Annexation Agreement (Exhibits A-C not included, Exhibit D - Water Agreement included)
Exhibit C- Park City Heights Paths
Exhibit D- Interplan Transportation Memorandum

She explained that award of these contracts is the first step of the project, as the membrane drives the design of the system. It is staff's intent to provide some form of online temporary treatment for next summer. The lowest bidder is not recommended in this instance because its system is new and untested and staff is recommending Pall Corporation because of its experience. In response to a question from Joe Kernan, Mr. Christiansen explained that the membrane will remove organic particles greater than .1 microns in size and explained that treated surface water results in dissolved carbon in a variety of forms. The membrane releases chemicals to filter the carbon from the water at a water recovery rate of 93%. The solids are removed from the remaining 7% and recycled to the head of the plant. Jim Hier, "<u>I move we that we authorize the City Manager to execute a procurement contract in a form approved by the City Attorney, with Pall Corporation for the water treatment plant membrane equipment for a lump sum amount of $2,011,132 and for the temporary treatment equipment for a lump sum amount of $272,265 and for the engineering services in the amount of $132,100</u>". Liza Simpson seconded. <u>Motion unanimously carried</u>.

4. <u>Consideration of a Cost Sharing Agreement, in a form approved by the City Attorney, related to the joint property acquisition of approximately 107 of the estimated 112 acres of Parcel #SS-57-1, property owned by the Boyer Company located to the southeast of the UDOT facility</u> – Diane Foster distributed an updated version of the cost sharing agreement. The only substantive change appears on Page 2 with an added sentence stating that all parties agree that the environmental work would commence within 120 days of an approved work plan for the site. During the due diligence period, City staff conducted soil studies and some of the readings suggested that some remediation is necessary which is estimated at $200,000 to $500,000. The four parties agree that they will commit approximately $50,000 to $200,000. She pointed out that even though the Boyer Company will only own this parcel for a very short period of time, it has agreed to participate in the project in good will and good faith. She explained that the City agrees to indemnify the Boyer Company for anything over $200,000 related specifically to the remediation associated with this parcel. In response to a question from Jim Hier, the City Manager explained that the closing and funding are scheduled on Monday. Jim Hier asked about the status of defining the five acres and Ms. Foster stated that staff is confident that before closing, it will be described. The Mayor invited public input; there was none. Jim Hier, "<u>I move we approve the cost sharing agreement related to the property known as the Triangle Parcel as defined in the cost sharing agreement presented this evening</u>. Roger Harlan seconded. <u>Motion unanimously carried</u>.

VII OLD BUSINESS *(Continued items))*

<u>Consideration of an Ordinance annexing approximately 286.64 acres of property located at the southwest corner of the SR248 and US40 interchange in the Quinn's</u>

Junction area, known as the Park City Heights Annexation, into the corporate limits of Park City, Utah, and approving a Water Agreement, and amending the Official Zoning Map of Park City to zone the property in the Community Transition Zoning District (CT) – Kirsten Whetstone explained that the staff and the applicants are seeking direction from Council on the Annexation and Water Agreements and additional items identified in the staff report. The Heights Annexation was first presented to Council in April 2008 and the property consists of 286 acres located at the southwest corner of the intersection of US40 and SR248 with CT zoning. The applicant and staff have been meeting regularly to address remaining issues, including traffic mitigation. She continued to explain that there are questions regarding allowing nightly rentals in the CT Zone as well as mine hazard mitigation. At a recent meeting, the Planning Commission requested that Council address the appropriateness of nightly rentals in the annexation area. On December 11, the Council remanded the LMC amendments, including nightly rentals as a conditional use in the CT Zone, to the Planning Commission for further review. She explained that short term athlete housing is contemplated which requires a conditional use and the LMC is silent on the issue of nightly rentals in the CT Zone. Staff is recommending permitting nightly rentals in the market rate units and she pointed out that affordable housing is generally deed restricted to prohibit nightly rentals. Staff is recommending that the Annexation Agreement require the applicant to amend the Flagstaff mine inventory to include these mine hazards in the Annexation Agreement subject to the same requirements in the supplemental amended plan approved by the Planning Commission. Ms. Whetstone referred to a letter received today from Talisker which was distributed to members of the Council.

Kent Cashel explained that staff and the applicant have been working together over the last several weeks to reach agreement on traffic mitigation measures. Staff is seeking policy decisions on four issues from Council which are needed in order to move forward. The first issue deals with change from on-road bicycle trails to a separated trail, the second and third deal with intersection improvements of the Richardson Flats Road and SR248, including timing and responsibility for cost of construction; and fourth, the downstream (corridor) traffic impacts.

Mr. Cashel explained that general requirements specify five foot wide bicycle paths on both sides of the road from SR248 all the way out to US40. A bike path section crosses wetlands and a stream and in order to provide the adequate width for the bike path, impacts to the wetlands would be significant as well as the cost to build up the road. The applicant proposes to continue the current trail to the east and north sides of the Richardsons Flat Road and bridge the wetlands connecting to the Rail Trail over to US40. The separated trail could connect eastward to the Phoston Spur and eventually the Park and Ride and the City is requesting an easement from the applicant so this section could be accomplished at some point. He noted that staff supports this approach and feels it is a better solution.

Mr. Cashel asked for direction on the timing of and responsibility for improvements to the intersection at Richardsons Flat Road and SR248. Existing multiple studies generally indicate that Phase 2 will trigger the need for a signal but staff believes that preparation for the signal should be constructed in Phase 1. He added that the applicant does not agree with the timing and would like to phase improvements and there is disagreement with regard to responsibility for intersection improvements. Staff believes the residential component will prompt the demand for the signal long before a traffic warrant for a light, much like Meadows Drive. The applicant disagrees on this point with an argument based on its proportionate contribution to the traffic. Mayor Williams emphasized that the light would not be necessary if there was no project. Kent Cashel commented that at some point in time as traffic grows, a signal will be warranted and the turning movements off the highway together with residential traffic will generate the need.

He asked for direction on whether the developer is responsible for *downstream* impacts. Consistent with methodologies used in previous annexations and with the City's entry corridor strategic plan, staff calculated an estimate of associated costs. The approach was to use incremental growth figures, not total traffic counts, and proportional costs for improvements similar to the manner impact fees are calculated. Mr. Cashel stated that the applicant disagrees with the concept of downstream impacts and the incremental growth calculation and all parties are looking for Council feed-back. Exact costs are unknown because there a specific project has not been selected, but the Annexation Agreement language provides some flexibility. Mr. Cashel stated that these are not additive items. The applicant's estimate for the signal is roughly $1 million and for downstream impacts $1 million. The Agreement language contains a provision to credit funding in Phase 1 toward meeting the downstream obligation for improvements.

Mr. Cashel asked if members agree that intersection improvements are the responsibility of the applicant. Does Council agree that all of the intersection improvements should be constructed in Phase 1 or another phase? Does Council agree with utilizing downstream traffic methodology as staff has recommended or based upon the project's percentage of growth, or nothing at all? Does Council feel comfortable with the recommended trail improvements rather than constructing an on-road trail.

David Smith, counsel for Talisker, stated that the wetland issues were challenging and separating the bicycle path from the road seems to be a better solution. He just received the new language a couple of days ago but felt that bike trail issues could be worked out with staff. Of the $1.1 million dedicated for intersection improvements, the cost of the signal only represents $200,000 to $250,000. Remaining improvements include the turn lanes and widening the road, etc. When the Hale studies were conducted, the premise was looking at total traffic impacts through 2020 and the analysis drove the list of improvements. Park City Height's impact to the intersection is calculated at 3% to 6% at build-out through the 2020 time period. He felt they are a tiny piece of the total beneficiaries of those improvements and they worked with outside engineers to arrive at a phasing plan, which is supported by the traffic studies. The traffic study reveals that there is no need for a signal until Phase 2.

With regard to downstream impacts, Mr. Smith stated that the impact from Park City Heights is about 3%. He described the methodology as speculative since the money could be called for regardless of whether or when anything is built at Quinns Junction. He felt that the credit piece should be dropped altogether if there is agreement on the intersection improvements.

Jim Hier stated that he has no problem with an off-road bike path in this instance. He recalled that the intersection improvements were always to be the responsibility of the development from the onset. The proportionate share of costs was designed to cover downstream impacts which he felt was consistent with the approach for the IHC annexation. He recalled that the proportionate share would be determined by actual counts at the time the improvements were needed so that the share of and total costs would be known and distributed accordingly. Mr. Hier commented that he is comfortable with changing the approach to a future count and proportionate share at the time the improvements are needed through 2020. He felt that intersection improvements are the responsibility of the applicant, favored having the signal infrastructure installed in Phase 1 and spending the majority of the money. David Smith explained that a complete signal totals $200,000 to $250,000 and $850,000 remains for the rest of the improvements. Roger Harlan recalled that the task force agreed that the installation of the signal and intersection improvements is the responsibility of the applicant and that they occur in the first phase; he supports Items 1 and 2 and 4.

Walt Plum, applicant, stated that the annexation process began four years ago and conditions have substantially changed throughout that time. The entire project has basically become an affordable housing project and as a result, can only bear so much cost. In these economic times, no one in the development business would consider beginning a subdivision. This type of project can not bear the cost of downstream costs for road improvements. In his 30 years in the business, Mr. Plum noted that is the first time he has been asked to pay for downstream use of a road. He pointed out that IHC and USSA do not pay property taxes and the IHC analogy is not really applicable because even with affordable housing, they will be paying property taxes. Roger Harlan acknowledged that the economic climate has changed since the project's inception. Mr. Plum added that through the task force process, the density was reduced to 150 units mainly allocated to affordable housing for IHC, Talisker and Park City Heights.

Candace Erickson stated she appreciated Mr. Plum's comments but strongly felt that a signal is warranted in the first phase because no one in the project will be able to turn left onto SR248 during peak hours. Mr. Plum emphasized that they agree with the signal but have issues with regard to the downstream impact concept. Ms. Erickson believed that 100 units will result in 200 cars. She referred to the purpose of the CT Zone, specifically the resort nature of development, and is concerned about housing being solely affordable and not a mix of types. Mr. Plum explained that he is referring to *affordable* in general terms, mainly price range as Talisker will be building *more affordable* units not affordable housing as defined by the City. Ms. Erickson pointed out that once the property is sold, the Boyer Company will no longer be paying property taxes on the property.

Joe Kernan asked how this compares with other annexations beyond IHC, specifically the methodology and distribution of costs. Kent Cashel explained that annexations must mitigate traffic impacts and the shift in this case may be addressing downstream impacts; every application is different. Jim Hier referred to the Flagstaff Annexation where the mine road had to be improved at the beginning of the development. The Mayor recalled that improvements were not based on traffic counts, and were negotiated as part of the Annexation Agreement and Ms. Erickson interjected that the fee was $2 million.

Dave Smith pointed out that providing affordable housing is another mitigation requirement of annexations but is phased in Flagstaff. All of the affordable housing projects constructed in Park City over the past 15 years are all built on high volume streets and none of them, to his knowledge, were imposed with significant traffic mitigation exactions. Given the proposed phasing of Park City Heights, the affordable component is required *out of the gates* and based on the drafts of the Annexation Agreement, the net effect would be to load millions of dollars on the affordable housing infrastructure. Mayor Williams commented that this is different because the Flagstaff Annexation encourages on-site affordable housing.

Mr. Kernan stated that he feels that intersection improvements should be the responsibility of the applicants which is consistent with City practices. He also supports the off-road trail solution. Candace Erickson relayed that she needs more information about the downstream corridor impacts. Liza Simpson understood that if the applicant spends $1 million improving the intersection and installing the signal in Phase 1, the $1 million goes towards the $1,050,000 calculated for downstream impacts. Kent Cashel agreed confirming that the cost of improving the intersection would be credited toward the downstream impact obligation. She didn't understand why the applicant prefers to wait since the cost of construction is unlikely to decrease and didn't see how basing costs on counts would harm the City. She agreed with the recommendations for Items

1, 2 and 4. The Mayor stated he is in agreement with 1, 2 and 4 as well, and felt the signal is needed in Phase 1.

Jim Hier emphasized that the Flagstaff affordable housing requirement for Empire Pass will be satisfied within the Park City Heights development, however, if the affordable housing units were built on site, the SR248 costs would not exist. The signalization and the improvements should occur in Phase 1 which has always been contemplated and he confirmed his concurrence with Items 1, 2, and 4. The Mayor suggested removing Item 3 altogether because it probably only represents $30,000 and the exact costs will be unknown for some time. Kent Cashel acknowledged that staff does not have an actual cost associated with the improvements which may be significant. Jim Hier felt that the timing of all improvements for SR248 be considered for better planning and cost efficiency. Kent Cashel confirmed that Council agrees with Items 1, 2 and 4 as staff recommended and Item 3 is gone. Liza Simpson expressed her confusion because she understood the Agreement states that the applicant will pay for some downstream traffic impact and indicated that she doesn't care how that is determined but staff should have some direction on this point. Jim Hier recommended that Item 3 remain and for all intensive purposes, the impact to the developer will be negligible. He encouraged staff and the applicants to reach consensus of whether the obligation is based on current traffic count estimates or future actual numbers. In either case, it should not be a significant amount one way or the other. All other members agreed to include Item 3 and Kent Cashel stated that staff will determine the methodology.

The Mayor requested that water be addressed. Kathy Lundborg explained that the City is asking the applicant, like any other developer, to provide the infrastructure needed to provide water for the project. A phasing strategy has been developed based on the completion of the water treatment plant. She is recommending prohibiting outdoor irrigation until the water treatment plant is built because of the risk of drought next summer and expressed that her initial reaction as not to provide water at all until the plant was on line because of the potential strain on the City's water resources. No outdoor irrigation during the first phase was the compromise reached and the applicant is required to build the infrastructure for water delivery. Discussion ensued on when and how many certificates of occupancy would be issued and Jim Hier pointed out that occupancy could not occur until October 15, 2009. The Mayor invited comments from the applicants.

Patrick Moffat, Boyer Company, explained that the water improvements required by the applicant will be built concurrently with the first phase, not prior to. David Smith stated that this point is critical because other language in the Agreement could be read to suggest that these things could be required before Phase 1 begins. He asked for clarification that it is the intent of the City that nothing has to be done until Phase 1 begins. Kathy Lundborg advised that building codes dictate that water be available before any flammable construction materials are stored on site. Mr. Moffat explained that initial construction will be vertical (framing) only. There was discussion about not being able to begin construction until the MPD is approved and not knowing how long the process will take. Ms. Lundborg added that the Water Agreement specifies that water improvements must be complete concurrent with the completion of the water treatment plant. Jim Hier suggested revised wording regarding the timing of water related obligations and Mark Harrington was confident that staff can draft language which distinguishes between system improvements independent of the project, if any, and look to see if those need to be addressed upfront or delayed pending the start of Phase 1. Dave Smith pointed out the temporary connection contemplated for Phase 1 and felt completion of the plant should be tied to Phase 2. Mayor Williams advised that November 2010 is the completion date for the plant.

Kathy Lundborg felt it important to meet with the applicants on specifics because the City is trying to design a water treatment plant to deliver water in certain ways. Mr. Smith explained the problem with an over-riding provision that all of the traffic and water improvements will be done in any event, before the completion of the water treatment plant. He again asked for clarification on the traffic issue and asked if it is tied to Phase 1 construction as well. Mayor Williams stated that the signal needs to be installed before the project is occupied. Mr. Moffat stated that they understand that outdoor irrigation is not an option until the water treatment plant is operational but asked if they could have some water for slope stabilization through re-vegetation of native species in some disturbed areas. Jim Hier stated that he is amenable to the request, as long as it is defined.

Mr. Hier stated that nightly rentals were never contemplated for the development and nightly rentals prompt service worker traffic trips. He is against nightly rentals as a conditional use in the CT Zone and favored deferring this issue to the Planning Commission in its review of the Land Management Code amendments. Walt Plum, Jr. noted that Park City Heights is also a resort development, including second homes which typically allow nightly rentals. Jim Hier felt that most residential zones do not allow nightly rentals and again stated that this is not an appropriate area for nightly rentals which may contribute to traffic impacts in a manner never contemplated. Candace Erickson was not supportive of nightly rentals. Members agreed to omit it from the Annexation Agreement and defer the determination to the Planning Commission.

Jim Hier felt that mine hazards in the project area should be addressed independently and not linked to the Flagstaff mine inventory. David Smith believed this is the right approach and Mr. Hier suggested that a technical report on mine hazards may be required. Phyllis Robinson explained that minimum lease terms for affordable housing would appear in the development agreement. Joe Kernan felt that the length of time shouldn't really matter in rental units and he warned against too many restrictions leaving the units empty. Ms. Robison noted that rental provisions are addressed in the housing resolution and owned housing can be rented for a minimum of six months. Mark Harrington added that some units need to be factored into the Flagstaff overall targets which may or may not warrant further restrictions.

The Mayor opened the public hearing.

Morgan Bush, Project Manager for Intermountain Health Care, stated that IHC is very supportive of the Park City Heights annexation proposal by providing affordable housing in a community setting. The treatment plant for Park City Heights is tied to the Water Agreement with IHC in terms of providing a second source of water. If the timing changes on this, the Water Agreement may have to be amended. He acknowledged that IHC had concerns about using the downstream methodology and when given the choice of current estimated counts versus future actual counts, they chose current estimates. Cost certainty was more important to them. During the MPD process, the methodology worked very well and there were no future unanticipated costs. IHC's experience was positive once the project went through the MPD process.

Mary Cook, resident, felt the signal should be installed before there is construction traffic. If there is a need for other traffic signals, the infrastructure should be installed all at one time which is less disruptive and cheaper.

With no further comments, the public hearing was closed. Roger Harlan, "I move that we continue consideration of an Ordinance to annex Park City Heights to a date uncertain in 2009". Liza Simpson seconded. Motion unanimously carried.

VIII ADDITIONAL DISCUSSION – AGENDA ITEMS

IX ADJOURNMENT

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

MEMORANDUM OF CLOSED SESSION

The City Council met in closed session at approximately 3:15 p.m. Members in attendance were Mayor Dana Williams, Candace Erickson, Roger Harlan, Jim Hier, Joe Kernan, and Liza Simpson. Staff present was Tom Bakaly, City Manager; Tom Daley, Deputy City Attorney; Brooks Robinson, Planner; Ron Ivie, Chief Building Official, and Mark Harrington, City Attorney. Roger Harlan, "I move to close the meeting to discuss property and litigation". Joe Kernan seconded. Motion carried unanimously. The

Author: Craig Sanchez
Subject: Food and Beverage Concession at Park City Golf Club
Date: April 30, 2009
Type of Item: Lease agreement

Summary Recommendation:

- Authorize the City Manager to execute a leases agreement in a form approved by Legal, with Silver Star Market and Cafe for the on course food and beverage concession at Park City Golf Club.

Topic:
Food and beverage lease agreement at the Park City Golf Club.

Background

For the last five golf seasons the food and beverage concessionaire for Hotel Park City has operated the food and beverage concession at the golf course. The concession operates from a golf cart, which tours the course serving players. The concessionaire was in the last year of a three year agreement in March of 2009 when the General Manager of Hotel Park City notified golf staff that the Hotel no longer had interest in providing the on course concession.

Analysis

Staff put out a Request for Proposal for this concession on February 25, 2009. The RFP was published in the Park Record for two weeks. The applicants were to address: rent, logistics for product storage and delivery, menu, and pricing. Three proposals were received.

Four members of staff plus one member of the Recreation / Library team reviewed all three proposals. Golf staff then conducted in person interviews with all three applicants.

Criteria for selection were as follows: rankings of each category are in parenthesis.

1. Detail of Food and Beverage experience
2. Rental Fee proposal
3. Location (logistical compatibility)
4. Menu
5. Interview

Vendor	Experience	Rental Fee	Location	Menu	Interview
Silver Star Market and Cafe	James Dumas – 10+ years in the	\$500 per month 1st 2 years, \$550	Across the street from #13 tee box (1)	Not cart menu, items could be	Brought sample sandwiches, will to work

	resort F & B business (1)	month 2nd 2 years, $600 month final year (2)		improved (3)	with staff to diversify menu. Logistics questions answered. Beer license will be in place by May 1st. (1)
Pig Pen	Kevin Mackaben – 10+ ears in the resort F& B business (1)	$3250 per year (1)	Located at PCMR (2)	Menu not provided, stadium food $4.00 price point (2)	Concerned about location of business, restocking cart. (2)
John Stafsholt	John Statsholt – Principal, no food and beverage experience. Craig Weaver – experience in local F & B business (3)	No rental fee, would own building. 30 year lease. (3)	Would build shack to house F & B operation, limited plan to provide service until building is operational (3)	Diverse well planned menu (1)	Building shack would financially impact course, neighborhood, deliveries an issue, how to provide service before the shack is built. CUP necessary. (3)

The group was unanimous in selecting the Silver Star Market and Café proposal. The main reasons for selection were: location of business in proximity to golf course, experience in the Food and Beverage industry, willingness to work with staff to develop a menu and the ability to store supplies without impacting the golf course.

The term for the concession will be opening day 2009 through October of 2013 while the golf course is open.
Rent will be $500 per month for the first two years (2009-2010), $550 per month for the next two years (2011-2012) and $600 per month for the final year (2013). The golf course will also receive 5% commission of the gross sales for any group the Club booked events.

Department Review:

The City Managers Office, the Legal Department, and the Recreation – Library Department have reviewed this report.

Alternatives:

A. Approve the Request:
Agree to staff’s recommendation.

B. Deny the Request:
This would require staff to post a new RFP.

C. Continue the Item:
Council could continue the item and direct staff to provide further information at a future date.

D. Do Nothing:
Council could choose to do nothing. This would have the same effect as alternative B.

Significant Impacts:
By not approving the agreement this would delay the on course food and beverage service that we provide for our patrons.

Recommendation:

- Approve lease agreement, as approved by Legal, with Silver Star Market and Cafe for the on course food and beverage concession at Park City Golf Club.

CONCESSION AGREEMENT
PARK CITY GOLF CLUB

This Agreement is made and entered into as of this 1st day of June, 2006, by and between **PARK CITY MUNICIPAL CORPORATION** (hereinafter "City") and **Silver Star Market and Cafe**, ("Concessionaire").

WITNESSETH:

WHEREAS, the City owns an area known as Park City Golf Club [hereinafter "Club"] which is open and available to the residents and visitors of Park City for recreation; and,

WHEREAS, the City desires to have available at the Club food and beverage refreshment available to the users of the Club; and,

WHEREAS, Concessionaire desires to sell food and beverage refreshment at the Club; and,

WHEREAS, Concessionaire agrees to conduct said food and beverage refreshment business in a professional manner pursuant to the terms and conditions herein set forth,

NOW, THEREFORE, in consideration of the covenants and agreements of the respective parties herein contained, the parties hereto do hereby agree as follows:

1. **<u>Description of Concession</u>**. During the term of the agreement, the Concessionaire will be granted the non-exclusive right, at the Club, to operate a food and beverage concession business, serving food and beverages to patrons of said Club. The scope of service shall be as specified in the proposal attached hereto as Exhibit A unless otherwise specified herein.

2. **<u>Term</u>**. The term of this Agreement shall be from opening day 2009 (usually April) through closing day (usually mid October) of 2013.

3. **<u>Rent</u>**. Concessionaire agrees to pay the City as rent for the use of the premises, for the period when the golf course is open, the sum of Five Hundred Dollars ($500.00) per month, for the first two years (2009, 2010), Five Hundred and Fifty Dollars ($550.00) per month for the next two years (2011,2012) and Six Hundred Dollars ($600.00) per month for the last year (2013). The rent shall be paid to the Park City Golf Club, P O

Box 2067, Park City, UT 84060. The rent shall be pro-rated for any partial month that the Club is open. Any payment not made within fifteen (15) days of due date shall automatically bear interest at the rate of eighteen (18) percent per annum from the date payment became due. Daily closings because of weather will not reduce this monthly rent.

4. **Commission**. Concessionaire agrees to pay as commission on group banquets and any catering the sum of 5% of gross sales less the sales tax payable on sales from Club booked events. Payment for the banquet will be made by the group organizers to the Concessionaire. Concessionaire shall supply detailed financial information on the banquet or catering and shall pay the Clubs commission the first day of each month with the rent payment.

5. **Accounting**. Tenant shall provide City with an accurate accounting of their operation no later than December 15, 2009 and thereafter on an annual basis due on December 15 of subsequent years to include the following information:

(A) The actual number and dates of banquets catered by Concessionaire.

(B) Total gross receipts from sales.

(C) A profit or loss statement.

6. **Authorized Use**. Concessionaire may sell beer, provided that Concessionaire secures proper licenses and complies with all federal, state and municipal laws and ordinances. Sales or service of beer or any other alcoholic beverage is governed by Paragraph 20 below.

7, **Service Provider, Employee/Agents.**

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

8. **Payment of Taxes and Other Assessments**. Concessionaire shall pay all taxes and other assessments for its business during the term of this concession

agreement. Concessionaire shall pay all sales or other taxes assessed on the operation of the concession business.

9. **<u>Insurance and Indemnity</u>**. The Concessionaire covenants and agrees to indemnify, hold harmless and defend the City, its agents and employees from all fines, suits, claims, demands, and actions of any kind including attorneys' fees and nature by reason of any and all of its operations hereunder and agrees to assume all the risk in the operation of its business hereunder and is solely responsible and answerable in damages for any and all accidents or injuries to persons or property.

Concessionaire agrees to maintain a comprehensive general liability insurance policy naming the City as an additional insured satisfactory to the City, protecting both the Concessionaire and the City against public liability, products liability and property damage. Concessionaire is required prior to the execution of this agreement, to furnish to the City a certificate of insurance certifying coverage in the following minimum amounts:

A. Public Liability
   Each person - $2,000,000
   Each occurrence - $4,000,000
   This shall include but not be limited to products liability.

B. Property damage
   Each Occurrence - $250,000

Said Certificate of Insurance shall name the City as an additional insured and shall provide that the City shall receive 30 days written notice of cancellation.

Concessionaire shall also carry a policy of dramshop liability insurance in an aggregate amount of at least ($1,000,000.00) per person and ($500,000.00) per incident or occurrence or a greater amount if required by the State of Utah.

Concessionaire shall also carry and provide proof to the City of payment of Workman's Compensation premiums for all employees.

10. **<u>City Liable only for Negligence</u>**. Except where caused by City's negligence, City shall not be liable for any failure of water supply, natural gas supply, or electrical supply; or for any injury or damage to persons or property caused by gasoline, oil, steam, gas or electricity; or hurricane, tornado, flood, wind or similar storms or

disturbances; or water, rain or snow which may leak or flow from the street, sewer, gas mains, or any subsurface area or from any part of the building or buildings or for an interference with light.

11. **Nondiscrimination**. Concessionaire agrees not to discriminate against anyone on the basis of race, color, national origin, age, sex or handicap in its hiring practices, services or operation of its business hereunder.

12. **Waiver of Covenants**. It is agreed that the waiver of any of the covenants of this concession agreement by either party shall be limited to the particular instance and shall not be deemed to waive any other breaches of such covenant or any provisions herein contained.

13. **Hours of Operation**. The Concessionaire will have the concession open for business to the public during the dates the Club is open to the public. The exact dates and hours the concession will be open by the Concessionaire will be the same as those for the Club's operation.

14. **Type of Operation**. Concessionaire agrees to maintain and operate the concession in a first-class manner and will keep the premises in a safe, clean, orderly and inviting condition at all times. The concession is to be operated as a convenience to the Club patrons, therefore all food, drinks, beverages, confections and other items sold or kept for sale under the concession will be of high quality and pure. All food and merchandise kept for sale will be subject to inspection by the City. The service will be prompt, sanitary, courteous and efficient.

15. **Concessionaire's Employees**. The Concessionaire will agree to retain an active, qualified, competent and experienced employee at the concession to supervise the concession operations. The Concessionaire agrees to be an Equal Opportunity Employer and will hire qualified employees without regard to religion, creed, color, sex, age, national origin or handicap status. The employee must be authorized to represent and act in behalf of the Concessionaire.

The Concessionaire's employees will be clean, courteous, efficient, and neat in appearance. The Concessionaire will not employ any person or person, in or about the premises who shall use improper language or act in a loud, boisterous or otherwise improper manner. The Concessionaire agrees to dispense with the services of any employee whose conduct the Club feels is detrimental to the best interests of the Club.

16. **Laws, Ordinances, Etc**. The Concessionaire will obey all the laws, ordinances, regulations, and rules of the federal, state, county and municipal governments which may be applicable to its operations. The Concessionaire will further agree to follow recommendations of the County Board of Health.

17. **Political Activity Prohibited**.

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

18. **Garbage Disposal**. The Concessionaire will provide and use suitable covered receptacles for all garbage, trash, and other refuse on or in connection with the concession. Piling of boxes, cartons, barrels, or other similar items in an unsightly or unsafe manner, on or about the Club or surrounding premises, will not be permitted and must be removed daily to designated dumpster.

19. **Quality, Price and Product Control**. The Concessionaire will serve and dispense first-quality foods and products in adequate portions, at prices which are reasonable and comparable to those maintained at other similar food dispensing concessions in Park City and Summit County.

20. **Alcoholic Beverages**. Concessionaire may only sell beer or wine coolers which have an alcohol content of 3.2% or less and all beer or wine coolers must be distributed or dispensed by the Concessionaire in cans or bottles packaged by the manufacturer. Additionally, Concessionaire must comply with all federal, state and municipal laws and ordinances relating to alcoholic beverages, beer or liquor. Prior to any beer sales, Concessionaire must obtain the appropriate Park City beer license(s) and provide proof of the required Dramshop coverage.

21. **Party at Fault**. In the event either party shall enforce the terms of this concession by suit or otherwise, the party found to be at fault by a court of competent jurisdiction shall pay the cost and expense thereto including reasonable attorney's fees.

22. **Failure to Perform Covenant**. Any failure on the part of either party to this concession to perform any obligation hereunder and any delay in doing an act required hereby shall be excused if such failure or delay is caused by any strike, lockout, governmental restriction or act of God, or any similar cause beyond the control of the parties so failing to perform. To the extent and for the period that such cause continues, save and except under the provisions of this paragraph, shall not excuse a non-payment of rent hereunder on its due date.

23. **No Assignment Without Prior Consent**. The covenants and agreements contained within this license shall apply to the benefit of and be binding upon the parties hereto and shall not be assigned without the prior written consent of the City and the Concessionaire.

24. **Time**. Time is of the essence of this concession and every term, covenant, and condition herein contained.

25. **Paragraph Headings**. The paragraph headings as to the contents of particular paragraphs herein are inset only for convenience and are in no way to be construed as part of such paragraphs or as a limitation in the scope of the particular paragraph to which they refer.

26. **Notices**. Any notice required or permitted to be given hereunder shall be deemed sufficient if given by a communication in writing by United States mail, postage prepaid and registered and addressed to the below-listed address of the party or to such other address as the parties may from time to time designate in writing.

Park City Municipal Corp.	Silver Star Market and Cafe
City Attorney	70 Silver Star Dr.
P O Box 1480	Park City, UT 84060
Park City UT 84060	

27**.** **Independent Contractor Relationship**.

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

B. In the performance of the services herein contemplated the Concessionaire is an independent contractor with the authority to control and direct the performance of the details of the Concession, however, the service and products contemplated herein must meet the approval of the City and shall be subject to the City's general rights of inspection and review to secure the satisfactory fulfillment thereof.

28. **Prohibited Interest**.

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

29. **Severability**.

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

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

27. **<u>Entire Agreement</u>**. This Agreement constitutes the entire and only agreement between the parties and it cannot be altered except by written instrument, signed by both parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above-written.

PARK CITY MUNICIPAL CORPORATION

____
Tom Bakaly, City Manager

Attest:

____
Janet M. Scott, City Recorder

Approved as to form:

____
Polly Samuels McLean, Assistant City Attorney

Silver Star Market and Cafe

____
James Dumas, Food and Beverage Director
70 Silver Star Dr.
Park City, UT 84060

STATE OF UTAH)
) ss.
COUNTY OF SUMMIT)

On this day of , 2006, before me, the undersigned notary public, personally appeared ___________________, personally known to me/proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument, and acknowledged that she executed the same.

Notary Public
My commission expires:

C:\Documents and Settings\csanchez\Local Settings\Temp\AvalancheGolfConcession.wpd

EXHIBIT A
SCOPE OF SERVICES

1. Description of Food and Beverage service:

   a. The Service Provider shall perform the food and beverage concession for Park City Golf Club (herein after "Club"). The Service Provider shall provide food and beverage to the Club patrons, on Club property. Items for sale may include beer and wine coolers having an alcoholic content of 3.2% or less, and non-alcoholic beverages, snack foods, and sandwiches. Service Provider can set up a satellite operation for food and beverage on Club property. Service Provider can set up a BBQ area in this space.

   b. Service Provider warrants that all equipment used during its performance of this agreement is reliable and serviced to avoid major breakdowns during the golf season.

   c. The Service Provider shall be in close communication with Club manager to ensure quality service. Service Provider shall be in close communication with Club manager in regards to seasonal hours of operation.

   d. The Service Provider can use suppliers picked at their discretion. Prices can be set by Service Provider, Club manager will approve pricing before seasonal operations begin.

City Council

Author: Pace Erickson, Clint Dayley
Title: Operations Manager, Parks and Golf Supervisor
Subject: Lawn Care Services Contract
Date: April 30, 2009
Type of Item: Administrative

PUBLIC WORKS

SUMMARY RECOMMENDATIONS: Authorize the City Manager to enter into a three (3) year contract renewable for additional two (2) years in a form approved by the City Attorney's office with Grounds Maintenance Services Inc. for lawn care services in the amount not to exceed:

- 2009 - $24,625.00
- 2010 - $24,815.00
- 2011 - $25,005.00

The total cost for the first three year term is $74,445.00. If the City opts to renew the agreement for an additional two years, the amounts shall not exceed:

- 2012 - $25,661.00
- 2013 - $26,515.00

The total cost of the second term is $52,176

DESCRIPTION:

A. Topic: Lawn Care services for twenty-one City owned properties.

B. Background: The Parks Department has used contract labor for lawn mowing for the past eighteen (18) years. By using contract labor, it has allowed us more flexibility with existing staff as well as reducing the number of in-house staff and equipment. Staff believes this program has been very successful and has achieved positive results.

There are several areas that the Parks Department staff will continue to mow, mainly categorized as large turf areas on fields and parks. We generally maintain these areas due to the fact that we have large enough equipment that makes it more economical to take care of in-house.

The Advantages of Outsourcing:

- Outsourcing can be less costly.
- Ability to utilize the contractor's staff and resources.
- Requires less direct supervision.

Analysis: The bid invitation was advertised in the Park Record for two consecutive weeks starting April 1, 2009. We had six companies express interest in this service project with two submitting a bid. Their bids are listed below:

Contractor	2009, 2010 & 2011 Seasons	2012 & 2013 Seasons
GMS (Grounds Maintenance Service Inc)	$74,445.00	$52,176.00
Action Snow Plow and Lawn Care Inc.	$110,996.14	$78,686.81

The services contract includes but is not limited to:

- Mowing
- Trimming & edging
- Sidewalk blowing and trash removal
- Spraying herbicide around tree wells

Properties to be mowed under the contract are:

Weekly Service:

Park City Racquet Club
Public Works Building
Senior Citizens Center
Huntsman Sign
Hillside Park
Transit Center / parking lot
Trolley Turnaround
Brew Pub Lot
Prospector Park
Roundabout
Police Building
Olympic Park
China Bridge Parking
Thaynes Creek Ranch
Old Miners Plaza
Trash Compactor Building
Oasis Plaza
Coalition Park

Bi-weekly Service:

Thaynes Entry Corridor
McPolin Farm
Prospector Buffer Strip

The criteria used for this recommendation are:

- The proposed charges/fees to be paid to the contractor.
- The demonstrated professional experience of the contractor, including prior experience with Park City.
- The general attitude, ability and apparent willingness of the contractor to cooperate and fulfill the City's requirements.
- Overall content of bid.
- Past customer service history.
- Acceptance of Park City service agreement.

The bids were based on a 25 week lawn care season.

Staff selected GMS based on professional work experience, past work history with Park City, and bid price. GMS had this lawn care contract in the past and their service / workmanship was exceptional.

The draft agreement with Grounds Maintenance Services Inc. is written with anticipated terms of 25 weeks for the 2009 through and 2011 lawn care seasons (amounting to $24,625.00, and $24,815.00 and $25,005.00, respectively). Depending upon climate and weather conditions, staff recognizes the possible need to shorten the lawn care season by subtracting out weekly service according to the weekly and bi-weekly rates provided in the Grounds Maintenance Services Inc. bid. Accordingly, the “not to exceed” amounts provided in this report for the 2009 through 2011 lawn care seasons are calculated on the basis of the maximum 25 week season.

Department Review:

Public Works Department
Executive Office
Legal Department

ALTERNATIVES:

Approve the Request: Authorize staff to enter into a three (3) year contract renewable for additional two (2) years in a form approved by the City Attorney’s office with Grounds Maintenance Services Inc. for lawn care services in the amount not to exceed:

- 2009 - $24,625.00
- 2010 - $24,815.00
- 2011 - $25,005.00

The total cost for the first three year term is $74,445.00. If the City opts to renew the agreement for an additional two years, the amounts shall not exceed:

- 2012 - $25,661.00
- 2013 - $26,515.00

The total cost of the second term is $52,176 **(Staff recommended)**

- **Deny the Request:** Hire additional staff and purchase additional equipment to perform the work in-house. **(Staff does not recommend this option)**

- **Continue the Item:** Reject all proposals and direct staff to issue a new bid. **(Staff does not recommend this option)**

SIGNIFICANT IMPACTS: The Parks Department has funds budgeted for mowing services and would not require additional funds from City Council. If Council chooses to cancel the outsourcing of mowing service, the Park’s Dept. would have to hire additional staff and purchase additional equipment. The Parks & Golf Building is currently in need of additional space for equipment storage and for staffing. Moving the lawn care services in-house will only exacerbate the current space needs problems. Delaying the contract will leave the landscaped areas un-maintained.

<u>RECOMMENDATION</u>: Authorize staff to enter into a three (3) year contract renewable for additional two (2) years in a form approved by the City Attorney's office with Grounds Maintenance Services Inc. for lawn care services in the amount not to exceed:

- 2009 - $24,625.00
- 2010 - $24,815.00
- 2011 - $25,005.00

The total cost for the first three year term is $74,445.00. If the City opts to renew the agreement for an additional two years, the amounts shall not exceed:

- 2012 - $25,661.00
- 2013 - $26,515.00

The total cost of the second term is $52,176

ATTACHMENT:

A: Draft mowing services contract between Park City and Grounds Maintenance Services Inc. for lawn care services in the amount not to exceed $24,625.00 for the 2009 lawn care season, $24,815.00 for the 2010 and $25,005.00 for the 2011 lawn care season (total $74,445.00). If the City opts to renew the agreement for an additional two years, the amounts shall not exceed $25,661.00 for the 2012 lawn care season and $26,515.00 for the 2013 lawn care season.

PARK CITY MUNICIPAL CORPORATION SERVICE PROVIDER/PROFESSIONAL SERVICES AGREEMENT GROUNDS MAINTENANCE SERVICES INCORPORATED

THIS AGREEMENT is made and entered into in duplicate this ____ day of _____________, 2009, by and between PARK CITY MUNICIPAL CORPORATION, a Utah municipal corporation, ("City"), and Ground Maintenance Services Inc., a Utah corporation ("Service Provider").

WITNESSETH:

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

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

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

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

1. SCOPE OF SERVICES.

The Service Provider shall perform such services and accomplish such tasks, including the furnishing of all materials and equipment necessary for full performance thereof, as are identified and designated as Service Provider responsibilities throughout this Agreement and as set forth in the "Scope of Services" attached hereto as **"Exhibit A"** and incorporated herein (the "Project"). The total not to exceed fee for the initial term of the Project shall be as follows:

2009 Lawn Care Season: May 4 through October 23 (25 weeks):
Weekly Lawn Care Services: $790.00 x 25 = $19,750.00
Bi-Weekly Lawn Care Services: $375.00 x 13 = $4,875.00
Total Fee for 25 Weeks = $24,625.00

2010 Lawn Care Season: May 3 through October 22 (25 weeks):
Weekly Lawn Care Services: $795.00 x 25 = $19,875
Bi-Weekly Lawn Care Services: $380.00 x 13 = $4,940
Total Fee for 25 Weeks = $24,815.00

2011 Lawn Care Season: May 2 through October 21 (25 weeks):
Weekly Lawn Care Services: $800.00 x 25 = $20,000.00
Bi-Weekly Lawn Care Services: $385.00 x 13 = $5,005.00
Total Fee for 25 Weeks = $25,005.00

The total not to exceed fees for the 2012 and 2013 Lawn Care Seasons, if the City exercises its right to renew this Agreement pursuant to Section 2 herein, shall be as follows:

2012 Lawn Care Season: May 7 Through October 26 (25 weeks):
Weekly Lawn Care Services: $820.00 x 25 = $20,500.00
Bi-Weekly Lawn Care Services: $385.00 x 13 = $5,161.00
Total Fee for 25 Weeks = $25,661.00

2013 Lawn Care Season: May 6 Through October 25 (25 weeks):
Weekly Lawn Care Services: $850.00 x 25 = $21,250.00
Bi-Weekly Lawn Care Services: $385.00 x 13 = $5,265.00
Total Fee for 25 Weeks = $26,515

If due to weather conditions or other reasons, lawn care services are not provided for the entire 25 weeks, the fee will be pro-rated accordingly.

2. TERM.

The term of this Agreement shall run for three (3) successive lawn care seasons, as described herein. The first lawn care season shall run from May 4, 2009 through October 23, 2009; the second lawn care season shall run from May 3, 2010 through October 22, 2010; the third lawn care season shall run from May 2, 2011 through October 21, 2011. At its sole discretion, the City may renew this Agreement for two (2) additional lawn care seasons (2012 and 2013) by providing written notice of its intent to renew to Service Provider no later than January 31, 2012. The dates of the 2012 and 2013 lawn care seasons are May 7, 2012 through October 26, 2012 for the first season and May 6, 2012 through October 25, 2013 for the second season.

3. COMPENSATION AND METHOD OF PAYMENT.

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

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

C. The lawn care seasons are estimates and subject to change based on climate and weather-related conditions. On the basis of such climate and weather-related conditions the lawn care seasons may not extend pass the maximum term of 25 weeks each. The Service Provider shall be compensated pursuant to the weekly and bi-weekly rates provided at Section 1 herein. For all extra work the City requires, the City shall pay the Service Provider for work performed under this Agreement according to the schedule attached hereto as **"Exhibit B",** or if none is attached, as subsequently agreed to by both parties in writing.

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

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

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

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

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

5. INDEPENDENT CONTRACTOR RELATIONSHIP.

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

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

6. SERVICE PROVIDER EMPLOYEE/AGENTS.

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

7. HOLD HARMLESS INDEMNIFICATION.

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

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

8. <u>INSURANCE</u>.

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

A. General Liability insurance written on an occurrence basis with limits no less than two million dollars ($2,000,000) combined single limit per occurrence and four million dollars ($4,000,000) aggregate for personal injury, bodily injury and property damage.

The Service Provider shall increase the limits of such insurance to at least the amount of the Limitation of Judgments described in Section 63-30d-604 of the Governmental Immunity Act of Utah, as calculated by the state risk manager every two years and stated in Utah Admin. Code R37-4-3.

B. Automobile Liability insurance with limits no less than two million dollars ($2,000,000) combined single limit per accident for bodily injury and property damage.

C. Professional Liability (Errors and Omissions) insurance written on claims made basis with limits no less than one million dollars ($1,000,000) combined single limit per occurrence.

D. Workers Compensation insurance limits written as follows:
Bodily Injury by Accident $500,000 each accident;

Bodily Injury by Disease $500,000 each employee, $500,000 policy limit

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

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

9. TREATMENT OF ASSETS.

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

10. COMPLIANCE WITH LAWS.

A. The Service Provider, in the performance of this Agreement, shall comply with all applicable federal, state, and local laws and ordinances, including regulations for licensing, certification and operation of facilities, programs and accreditation, and licensing of individuals, and any other standards or criteria as described in this Agreement to assure quality of services. Unless otherwise exempt, the Service Provider is required to have a valid Park City Business License.

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

11. NONDISCRIMINATION.

A. The City is an equal opportunity employer.

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

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

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

12. ASSIGNMENTS/SUBCONTRACTING.

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

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

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

13. CHANGES.

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

14. MAINTENANCE AND INSPECTION OF RECORDS.

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

B. The Service Provider shall retain all books, records, documents and other material relevant to this Agreement for six (6) years after its expiration. The Service Provider agrees that the City or its designee shall have full access and right to examine any of said materials at all reasonable times during said period.

15. POLITICAL ACTIVITY PROHIBITED.

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

16. PROHIBITED INTEREST.

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

17. MODIFICATIONS TO TASKS AND MISCELLANEOUS PROVISIONS.

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

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

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

18. TERMINATION.

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

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

19. NOTICE.

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

20. ATTORNEYS FEES AND COSTS.

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

21. JURISDICTION AND VENUE.

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

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

22. SEVERABILITY.

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

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

23. ENTIRE AGREEMENT.

The parties agree that this Agreement is the complete expression of the terms hereto and any oral representations or understandings not incorporated herein are excluded. Further, any modification of this Agreement shall be in writing and signed by both parties. Failure to comply with any of the provisions stated herein shall constitute material breach of contract and cause for termination. Both parties recognize time is of the essence in the performance of the provisions of this Agreement. It is also agreed by the parties that the forgiveness of the nonperformance of any provision of this Agreement does not constitute a waiver of the provisions of this Agreement.

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

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

____
Tom Bakaly, City Manager

Attest:

____
City Recorder's Office

Approved as to form:

____
City Attorney's Office

SERVICE PROVIDER
GMS – Grounds Maintenance Services Inc.
P.O. Box 3886
Park City Utah 84060

Tax ID#: ______________________

____
Mark B. Dean, President

STATE OF UTAH)
) ss.
COUNTY OF SUMMIT)

On this ____ day of ________________, 2009, personally appeared before me _____________________________, whose identity is personally known to me/or proved to me on the basis of satisfactory evidence and who by me duly sworn/affirmed, did say that he/she is the _________________________ (*title or office*) of ____________________ Corporation by Authority of its Bylaws/Resolution of the Board of Directors, and acknowledged that he/she signed it voluntarily for its stated purpose as _______________________ *(title)* for _______________________________, a _______ corporation.

____
Notary Public

EXHIBIT "A"

SCOPE OF SERVICES

1. Description of Lawn Care Services:

A. Service Provider shall perform mowing, trimming, edging, and blowing of all properties. Service Provider shall remove all trash from properties, and shall remove all debris from all adjacent sidewalks, including all feasible curbside areas being power edged on a weekly or Bi-weekly basis per schedule. The bagging of grass clipping is not recommended.

B. The turf area underneath each of the trees and shrubs within these parks shall be sprayed with a pre and post emergent herbicide. Tree rings shall be sprayed once a year, first week of June. Chemical used shall be Round-up and Surflan or approved Equal. All chemical applications shall follow label directions. An application report shall be submitted to the City following treatment.

C. All property damage or related problems resulting from Service Provider's performance of this Agreement, including broken sprinkler heads, scalping, rutting by equipment, damage done to trees and shrubs, and overall maintenance of properties will be monitored by Service Provider on a weekly basis. Service Provider assumes all responsibility for any property damage caused by Service Provider, its agents, employees, and officers during the performance of this Agreement.

D. Service Provider warrants that all equipment used by Service Provider during its performance of this Agreement is reliable and serviced as needed in order to avoid any major breakdowns in peak season. Blades shall be sharpened and balanced as needed to ensure a clean cut. Tire pressure shall be checked each day to avoid scalping, and uneven cutting.

E. Service Provider warrants that each property will be completed in compliance with the City Noise ordinance.

F. In the event that water restrictions prevent adequate irrigation, Park City Municipal may request mowing of weekly areas to be reduced thus reducing monthly cost to Park City Municipal.

G. Service Provider shall provide and require all staff working on city properties to wear uniforms at all times along with follow all safety rules and regulations as required by the equipment manufactures, chemical manufactures, the State Utah, Department of Agriculture, OSHA and all other governing safety regulators.

H. During inclement weather, mowing services shall be postponed to the first day weather conditions permit mowing, or as directed by the City.

2. Locations and Schedule of Service: All lawn care services shall be completed before Wednesday of each week, pursuant to the schedule provided below.

a. Lawn Care Services at the properties listed below shall be performed once per week, on the day provided:

1	Tuesdays	Racquet Club	Monitor Dr. and Little Kate Rd.
2	Tuesdays	Public Works Building	1053 Iron Horse Dr.
3	Tuesdays	Olympic Plaza,	Corner of Kearns Blvd. and Park Ave.
4	Tuesdays	Police Building	Hwy 224 and Snow Creek Dr.
5	Tuesdays	Miner's Plaza	Approx. 4th Main Street
6	Tuesdays	Oasis Plaza	Approx. 175 Main street
7	Tuesdays	Roundabout	Deer Valley Dr. and Masac Ave
8	Tuesdays	China Bridge Parking	Swede Alley to Heber
9	Tuesdays	Hillside Park	Approx. 140 Main Street
10	Tuesdays	Transit Center & Parking lot	Swede Alley
11	Tuesdays	Trolley Turn Around	9th Main Street
12	Tuesdays	Trash Compactor	6th Swede Alley
13	Tuesdays	Senior Center	1361 Woodside Ave
14	Tuesdays	Thaynes Creek Ranch	Payday Dr. HWY 224 North East side
15	Tuesdays	Coalition Park	9th and Main Street
16	Tuesdays	Prospector Park	Wyatt Earp HWY 248
17	Tuesdays	Brew Pub Parking lot	Swede Alley & Main Street
18	Tuesday	Huntsman Site	North-east Holiday Ranch Loop & HWY 224

* The day of week each area is mowed can be changed upon written permission by the City.

b) Lawn Care Services at the properties listed below shall be performed once every two (2) weeks, on the day provided:

1	Tuesdays	Thaynes Entry Corridor	HWY 224 Payday Dr. to Park Ave Condo's
2	Tuesdays	Prospector Entry Corridor	Hwy 248 From Wyatt Earp Way to Cooke Dr. south side of road.
3	Tuesdays	McPolin Farm	Hwy 224

* The day of week each area is mowed can be changed upon written permission by the City.

EXHIBIT "B"

PAYMENT SCHEDULE FOR "EXTRA" WORK

None requested, none provided