

**PARK CITY COUNCIL MEETING
SUMMIT COUNTY, UTAH
APRIL 21, 2005**

PUBLIC NOTICE IS HEREBY GIVEN that the City Council of Park City, Utah will hold its regularly scheduled meeting at the Marsac Municipal Building City Council Chambers, 445 Marsac Avenue, Park City, Utah for the purposes and at the times as described below on Thursday, April 21, 2005.

Closed Session – Executive Conference Room

4:00 p.m. Property, personnel and litigation

Regular Meeting – City Council Chambers

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 MARCH 31 AND APRIL 7, 2005

V CONSENT AGENDA PUBLIC HEARINGS

VI CONSENT AGENDA

Approval of leases for sidewalk dining:

- Eating Establishment, 317 Main
- Main Street Pizza & Noodle, 530 Main
- Java Cow, 402 Main

VII NEW BUSINESS

1. Amendment #1 to the Jacobsen Construction Inc. Contract, in a form approved by the City Attorney for work related to the China Bridge parking expansion and utility relocation project in the amount of \$6,200,000

2. Authorization to the City Manager to enter into a professional service provider contract for the China Bridge and Quinn's Junction Recreation projects in a form approved by the City Attorneys Office to Consolidated Engineering Laboratories in the amount of \$44,737.00

VIII OLD BUSINESS

Lease amendment for additional space within the Old City Hall Building, located at 528 Main Street, to the Park City Historical Society.

IX 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.

Posted: 04/18/05

See: parkcity.org

**TENTATIVE - PARK CITY COUNCIL MEETING
SUMMIT COUNTY, UTAH
APRIL 28, 2005**

PUBLIC NOTICE IS HEREBY GIVEN that the City Council of Park City, Utah will hold its regularly scheduled meeting at the Marsac Municipal Building City Council Chambers, 445 Marsac Avenue, Park City, Utah for the purposes and at the times as described below on Thursday, April 28, 2005.

Closed Session – Executive Conference Room

1:30 p.m. Property

Work Session – City Council Chambers

2:00 p.m. Council questions/comments

2:15 p.m. Water rates

3:45 p.m. Goals update/departmental updates (performance measurements and goals)

5:15 P.M. Park City Cycling Festival MFL June 17 - July 3, 2005

5:30 P.M. Review of regular meeting

5:45 p.m. Break

Regular Meeting – City Council Chambers

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)

V CONSENT AGENDA PUBLIC HEARINGS

1. Ordinance – Village at Empire Pass West Side, Pod A, final subdivision plat

2. Continuation of hearing on Ordinance approving a plat amendment and conveyance of right-of-way located at 713 Norfolk Avenue, Park City, Utah

3. Continuation of hearing on Acceptance of certain public improvements at Empire Pass Subdivision

VI CONSENT AGENDA

1. Ordinance – Village at Empire Pass West Side, Pod A, final subdivision plat

2. Ordinance approving a plat amendment and conveyance of right-of-way located at 713 Norfolk Avenue, Park City, Utah

3. Ordinance accepting certain public improvements at Empire Pass Subdivision
4. Boys and Girls Club MOU
5. Adoption of Final Bond Resolution
6. Approval of RDA agreement

VII NEW BUSINESS

1. Contract, Hogan Construction – Quinn's Recreation Complex - Guaranteed Maximum Price Approval
2. Approval of Union Square Development Agreement

VIII ADJOURNMENT

RDA meeting - Adoption of Final Bond Resolution and Approval of RDA agreement - Gary

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.

Posted: 04/18/05

See: parkcity.org

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

March 2005

- 17 **No meeting**
- 31 Jan gone
Joint meeting with Planning Commission – work
Cross-country skiing – work
Public safety impact fees - work
Contract – Quinns Recreation Complex Part A– New Business
Change order for color concrete at the Farm parking lot

May 2005

- 5 Budget –work
Resolution – Arbor Day
Ordinance - 1127 Woodside plat amendment – JW
Ordinance – 2300 Deer Valley Drive East, St. Regis Resort Deer Crest record of survey plat -- KW
Park City Cycling Festival MFL - consent
Approval of Auditor Contract – Lori
Municipal Code Amendments, Title 12, Sign Code – KW/RM
Municipal Code Amendments, LMC Title 15, Section 7- relating to outdoor art placement and amending front yard setback exception in all zoning districts except HCB and POS – KW/PP
- 7 *Clean-up Day*
- 12 Kay gone
Budget – work and regular
Resolution adopting a strategic plan for City owned properties
Arts Festival MFL and City Services Agreement - consent
Wasatch Back Relay MFL, June 18, 2005 – consent
Peace House Fundraiser MFL, June 28, 2005 - consent
- 19 Marianne gone
Budget – work and regular
Arbor Day Resolution (May 21, 2005)
Resolution adopting a strategic plan for City owned properties26 Ordinance – 909
Park Avenue Plat Amendment
Ordinance 1414 Empire Avenue plat amendment
- 30 *Memorial Day*

June 2005

- 2 Adoption of tentative budget
- 9 Adoption of final budget
- 14-17 *Innovations in Local Government - Sarasota*
- 16 **No meeting**

23 *America's Cities* - Atlanta
30

July 2005

7
14
21
25 *Pioneer Day*
28 **No meeting**

August 2005

4
11 **No meeting**
18
25

Pending Items:

Taxi regulations - May
General Plan Update – May/June

Regional bus service SLC - work
Water Service District – Grant of easement from Iron Mountain Associates
Transit Center Land Match Resolution – Gary
CDBG preliminary hearing -- July
Garbage cans

**PARK CITY COUNCIL MEETING
SUMMIT COUNTY, UTAH
MARCH 31, 2005**

I ROLL CALL

Mayor Dana Williams called the regular meeting of the City Council to order at 6:00 p.m. at the Marsac Municipal Building on Thursday, March 31, 2005. Members in attendance were Dana Williams, Kay Calvert, Marianne Cone, Candace Erickson, Jim Hier and Joe Kernan. Staff present were Tom Bakaly, City Manager; Mark Harrington, City Attorney; Kirsten Whetstone, Planner; Matt Twombly, Parks Planner; and Eric DeHaan, City Engineer

II COMMUNICATIONS AND DISCLOSURES FROM COUNCIL AND STAFF

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

Peter Barnes read into the record his letter written to Patrick Putt on March 28, 2005. He re-stated his ongoing issues with the City. He emphasized that everyone had been polite and helpful, but they were not making any progress. He compared a set of approved building plans from 1990 with a current set of plans that were rejected because they did not meet the check list. He was willing to provide the information, but wanted to know who was going to pay for it. He just found out at this meeting that a checklist existed, but he had not been involved in any discussions even though he had repeatedly stated he wanted to be involved.

IV CONSENT AGENDA PUBLIC HEARING

1. Continuation of a hearing on an Ordinance approving the Silver Star Subdivision, creating four platted lots from three metes and bounds parcel located at 1825 Three Kings Drive, in the Southeast Quarter of Section 8, township 2 South, Range 4 East, Salt Lake Base and Meridian, Park City, Utah

Planner Kirsten Whetstone reviewed the staff report. Jim Hier clarified that the item required in condition 12 did not yet appear on the plat, but would before recordation. Mayor Dana Williams invited the public to comment. Hearing no input, the public hearing was closed.

V CONSENT AGENDA

Jim Hier, "I move to remove Consent Agenda Item 2 to New Business." Kay Calvert seconded. Motion carried unanimously.

Kay Calvert, "I move to approve the Consent Agenda". Candace Erickson seconded. Motion carried unanimously.

1. Ordinance approving the Silver Star Subdivision, creating four platted lots from three metes and bounds parcel located at 1825 Three Kings Drive, in the Southeast

Quarter of Section 8, township 2 South, Range 4 East, Salt Lake Base and Meridian, Park City, Utah

2. Change order to DVD Paving LLC's paving contract in an amount not to exceed \$21,183 for color concrete at the Farm parking lot

The Mayor and Council applauded Rory Murphy for his extraordinary community outreach on this project.

VI New Business

1. Change order to DVD paving LLC's paving contract in an amount not to exceed \$21,183 for color concrete at the Farm parking lot. – Matt Twombly presented the Staff Report. Council members briefly discussed the berm which will be installed, but will not completely block the visibility of the parking lot. There is no irrigation and native grasses will be planted on the bermed area. City Engineer DeHaan indicated the asphalt would turn to “evening charcoal” over time, as a result of hydrocarbon evaporation.

Jim Hier, “I move to move forward with the contract as designed.” Kay Calvert seconded. Motion unanimously approved.

VII ADJOURNMENT

With no further business, the regular meeting of the City Council was adjourned at 6:30 p.m.

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.

MEMORANDUM OF CLOSED SESSION

The City Council met in closed session at approximately 3:00 p.m. Members in attendance were Mayor Dana Williams, Kay Calvert, Marianne Cone, Candace Erickson, Jim Hier, and Joe Kernan. Staff present were Tom Bakaly, City Manager; and Mark Harrington, City Attorney. Candace Erickson “I move to close the meeting to discuss “. Jim Hier seconded. Motion carried unanimously. The meeting opened at approximately 3:30 p.m.

The meeting for which these minutes were prepared was noticed by posting at least 24 hours in advance and by delivery to the news media two days prior to the meeting.

Prepared by Sharon Bauman

**PARK CITY COUNCIL MEETING
SUMMIT COUNTY, UTAH
APRIL 7, 2005**

I ROLL CALL

Mayor ProTem Kay Calvert called the meeting to order at 6:00 p.m. at the Marsac Municipal building on Thursday, April 7, 2005. Members in attendance were Kay Calvert, Marianne Cone, Candace Erickson, Jim Hier and Joe Kernan. Mayor Dana Williams was excused. Staff present were Tom Bakaly, City Manager; Mark Harrington, City Attorney; Chief Lloyd Evans; Colin Hilton, Capital Projects/Economic Development; Patrick Putt, Planning Director; Brooks Robinson, Planner; Ray Milliner, Planner; and Eric DeHaan, City Engineer.

II COMMUNICATIONS AND DISCLOSURES FROM COUNCIL AND STAFF

Marianne Cone reported that the bus shelter art project was proceeding and the Historic Preservation Board was starting an inventory of historic buildings. She received a message from a resident of Chambers who had witnessed a dump truck whose brakes were burning. She wondered if there was interest in having random brake inspections.

Manager Bakaly reported that he would work with Chief Evans. They have confirmed that the City is not hauling snow and the construction at Empire Pass is not permitted to haul snow. The Building Department is contacting other construction companies to ask them to not haul snow, even though it was not prohibited in their construction mitigation plans. Jim Hier reported following trucks that entered the Empire Pass area and he encouraged Staff to investigate it. Council members felt it was a good time to start the brake check program. They also mentioned the runaway truck ramp was blocked again by snow.

Candace Erickson reported that numerous applications had been received for the special service contracts and a committee was in the process of reviewing them.

Joe Kernan received a repeat comment from a Woodside resident regarding garbage cans. Also a Main Street merchant had complained about cans sitting out in the mornings.

Kay Calvert presented preliminary statistics from the 2005 Sundance Film Festival: there were 20,000 first-time attendees, and a total of 47,000 people in attendance; visitor stays averaged 5.33 nights; 70% came from outside of Utah; 96% indicated they planned to return to Park City for reasons other than attending the festival. Also, the average patron skied for four days during the festival, which is double last year. This information will be presented to the State to be incorporated into a marketing initiative.

Jim Hier, "I move to appoint Marianne Cone as Mayor ProTem until the Mayor or Mayor ProTem return this week-end." Candace Erickson seconded. Motion unanimously carried.

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

There was no public input.

IV WORK SESSION NOTES AND MINUTES OF MEETING OF MARCH 24, 2005

Marianne Cone, "I move to approve the work session notes and minutes of March 24, 2005 as written". Jim Hier seconded. Motion unanimously carried.

V CONSENT AGENDA PUBLIC HEARINGS

1. Continuation of hearing on Ordinance approving a plat amendment and vacation of right-of-way located at 713 Norfolk Avenue, Park City, Utah (continue to April 28, 2005) – Marianne Cone, "I move to continue to April 28, 2005". Candace Erickson seconded. Motion carried unanimously.

2. Ordinance approving an amendment to the record of survey plat for The Lodge, located at 2900 Deer Valley Drive, Park City, Utah – Brooks Robinson reviewed the Staff Report and noted technical changes that affected the title and expandable area. The applicant has requested a name and address change. It will be called Silver Baron Lodge and the address will be 2800 Deer Valley Drive. In addition, they requested that areas south and east of the building be changed from common area to expandable area. All requests were acceptable to the Staff. The Planning Commission forwarded a positive recommendation to City Council. Planner Robinson clarified for Jim Hier that this building, and any future buildings associated with this record of survey, could be a residency club subject to approval of conditional use permits. The Mayor ProTem opened the public hearing. Hearing no input, the hearing was closed.

3. Ordinance approving a plat amendment for 9 Hillside Avenue
A letter dated April 7, 2005 from Joanna M. Heath, was accepted into the record as part of the public hearing.

Administrator Patrick Putt explained that Steve Stanton, the owner of this parcel, had previously received approval for this plat amendment but it had expired. He is again seeking approval to create one lot of record from Lots 2, 3, 4, 16, 17, & 18 of Block 19 of the Park City Survey that would allow him to remodel the existing historic house and historic barn and to construct an addition. Mr. Putt noted that the Planning Commission forwarded a positive recommendation.

Mr. Putt noted there were two existing encroachments on portions of Mr. Stanton's property from a deck at 14 Prospect, and a stone wall. Both are addressed by separate

easements shown on the plat. He noted the house was undergoing a separate historic design review process and Staff had received a letter appealing the preliminary determination of compliance with Historic District Guidelines.

Mr. Putt clarified for Mayor ProTem Calvert that the letter accepted into the record tonight pertained to the work being proposed for the historic house and barn. Staff believes the plat amendment remedies the encroachment situations.

Paula McGee, 14 Prospect, stated she was generally in favor in plat amendment. However, she expressed concern about easements included on the plat regarding the encroachment of her desk and asked whether she, as the party in question, would receive any notification. City Attorney Mark Harrington clarified that the easements are dedicated on the plat, and what Ms. McGee sees on the plat will be the only language. The note language dedicates the easement in perpetuity. Mayor ProTem Calvert felt there should be consideration give to notifying people in writing when something like this occurs. Hearing no additional input, the hearing was closed.

4. Ordinance approving a condo conversion for 2180-2186 Monarch Drive

Planner Ray Milliner reviewed the staff report and explained that two existing duplexes would be converted into a condominium project, totaling four units. Mayor ProTem Calvert opened the hearing. With no input, the hearing was closed.

VI CONSENT AGENDA

Jim Hier, "I move to continue Consent Agenda Items 1 and 3." Candace Erickson seconded. Motion carried unanimously.

Jim Hier, "I moved to approve Consent Agenda Items 2, 4, and 5". Joe Kernan seconded. Motion carried unanimously.

1. Continuation of hearing on Ordinance approving a plat amendment and vacation of of right-of-way located at 713 Norfolk Avenue, Park City, Utah (continue to April 28, 2005)

2. Ordinance approving an amendment to the record of survey plat for The Lodge, located at 2900 Deer Valley Drive, Park City, Utah – see staff report and public hearing

3. Ordinance accepting certain public improvements at Empire Pass Subdivision (continue to April 28, 2005)

4. Ordinance approving a plat amendment for 9 Hillside Avenue - see staff report and public hearing.

5. Ordinance approving a condo conversion for 2180-2186 Monarch Drive – see staff report and public hearing.

VII NEW BUSINESS

1. Historical Society Lease – Mayor ProTem Calvert announced that Jim Taddison requested that the item be moved to 21st of April.

Jim Hier, "I move to continue the Historical Society Lease to April 21, 2005." Candace Erickson seconded. Motion carried unanimously.

2. Contract for Quinn's Recreation Complex - Hogan Construction, Addendum

Capital Projects Manager Colin Hilton explained that Staff was seeking approval of an Addendum to the existing Hogan & Associates Construction Agreement in the amount of \$1,304,703. This would be the first construction contract expenditure for the Quinn's Recreation Complex project. This will allow mobilization and set up on the site and Staff will return to Council on April 28, 2005, for approval of the Guaranteed Maximum Price. The facility has been designed so construction can be phased based on available funding, and Staff is confident that additional funding will be raised for the design level we are ultimately seeking. Critical path items outlined in this first addendum relate to general conditions, rink earthwork and concrete, CM fees, bond money and contingency fees totaling \$1,304,703. Staff recommends moving into the first phase of the contract award.

Joe Kernan, "I move approval of the addendum for Quinn's Recreation Complex contract with Hogan Construction." Jim Hier seconded. Motion carried unanimously.

3. Contract for Downtown Parking Structure – Jacobsen Construction, Addendum

Mr. Hilton noted this request for the Downtown Projects was similar to the previous item for Quinn's. Staff anticipates mobilization within two weeks, and will return to Council on April 21, 2005 with the overall Guaranteed Maximum Price. Approval of this addendum will authorize \$127,024.

Mayor ProTem Calvert referred to the selection committee members for these contracts, and wondered about citizen involvement. Mr. Hilton explained that Charlie Wintzer and Rex Dabbling, who both have extensive construction experience, served on the committee.

Mayor ProTem Calvert explained that at the State level, every selection committee included an architect and a construction industry representative. These members were able to share their expertise, while gaining knowledge about the State's process.

Mr. Hilton explained that Staff would communicate impacts to the public through an aggressive communications campaign.

Candace Erickson, "I move approval of an Addendum to the Jacobson Construction Inc. Agreement in a form to be approved by the legal department for work related to the downtown parking structure in the amount of \$127,024." Jim Hier seconded. Motion carried unanimously.

IX ADJOURNMENT

With no further business, the regular meeting of the City Council adjourned at 6:55 p.m.

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.

The meeting for which these minutes were prepared was noticed by posting at least 24 hours in advance and by delivery to the news media two days prior to the meeting.

Prepared by Sharon Bauman

City Council Staff Report

Author: Jonathan Weidenhamer
Subject: Sidewalk Dining - Leases
Date: April 21, 2005
Type of Item: Administrative



PLANNING DEPARTMENT

Summary Recommendations:

Provide direction regarding the continuation of sidewalk dining on City sidewalks; and consider approving leases for sidewalk dining for each of the applicants as presented.

Topic:

Outdoor Dining on Main Street sidewalks.

- 317 Main Street – Eating Establishment
- 402 Main Street – Java Cow Café & Bakery
- 530 Main Street – Main Street Pizza & Noodle

Background:

Section 15-2.6-12 of the Land Management Code allows Outdoor Dining on “leased public property” as an Administrative Conditional Use Permit. On May 24, 2004, the City Council provided direction that they would like to continue sidewalk dining, but preferred to continue to sign only annual leases. The leases under consideration are consistent with the direction provided by City Council on May 24, 2004. Further extension of the sidewalk dining season, from April 22 – October 30, has also been requested.

Analysis:

The City did not receive any complaints regarding the sidewalk dining program conducted in 2004. Any seasonal lease the City enters would: regulate the time and duration of the use, provide for consistency in look and materials, ensure the aesthetic value of the Historic District by preventing visual clutter, prevent conflicts with Special Events/MFL’s, mitigate for conflicting uses in the public right-of-way, ensure for cleanly sidewalks, and provide an ongoing monitoring mechanism and revocation provision for failure to comply with regulation.

Staff has prepared a draft lease template that would be executed with each individual applicant prior to approving any Outdoor Dining on City Sidewalks (Exhibit A). At this time staff has made a preliminary determination that the following applications meet the standards for outdoor dining provided at LMC Section 15-2.6-12 as well as the proposed operational restrictions (Exhibit C):

317 Main Street – The Eating Establishment
402 Main Street – Java Cow Café & Bakery

530 Main Street – Main Street Pizza & Noodle

Per LMC requirement, notification of these applications was sent to adjacent property owners. The notices for 317 Main Street and 402 Main Street were sent on May 28, 2004. The notices for 530 Main street were sent on June 3, 2004. Each of them has an approved Administrative Conditional Use Permit for Outdoor Dining on City Sidewalks (conditioned upon a current, approved lease). These Administrative Conditional Use Permits do not have expiration dates, and run with the land, or until City Council provides direction to not allow use of City-side walks for outdoor dining. The site plans for each of these are attached as Exhibit B.

Alternatives:

- A) Provide direction to continue Outdoor Dining on City sidewalks; and approve the leases for sidewalk dining for each of the applicants as presented; or
- B) Provide direction to not continue Outdoor Dining on City sidewalks; or
- C) Provide direction to continue Outdoor Dining on City sidewalks, but modify the lease language or operational restrictions and then provide direction to approve the lease(s) as amended; or
- D) Continue the hearing for more information or discussion.

Recommendation:

Staff recommends Alternative A.

Exhibits

Exhibit A – Typical Lease

Exhibit B – Site Plans

Exhibit C – Operational Restrictions

Exhibit A
MAIN STREET SIDEWALK
OUTDOOR DINING LEASE

(typical)

This LEASE AGREEMENT is made and executed this 21st day of April 21, 2005, by and between Park City Municipal Corporation, a municipal corporation and political subdivision of the state of Utah ("Park City") and *restaurant name*, a Utah LLC, located at *address* Main Street, Park City, Utah ("Tenant").

The Parties agree as follows:

PROPERTY. The property affected by this lease is generally described as the sidewalk area directly fronting Tenant's restaurant located at xxx Main Street, and more specifically described via site plan at Exhibit A, attached hereto and incorporated herein by reference (hereinafter referred to as the "Premises").

2. RENT. Tenant shall be solely responsible for payment of any and all costs associated with Tenant's performance under this lease, including but not limited to City additional business licensing fees, insurance, sales taxes and other expenses.
3. TERM. The term of this Agreement shall commence on April 22, 2005 and shall terminate on October 30, 2005, unless terminated earlier as provided herein.
4. USE OF PREMISES. Tenant may use the Premises only for the provision of outdoor dining services in a manner consistent with Section 15-2.6-12(B)(1) of the Park City Land Management Code and the terms of this Agreement. Additional operational restrictions are attached hereto at Exhibit C, if applicable. Park City makes no representations regarding the premises and tenant accepts the premises "as is".
5. IMPROVEMENTS TO THE PREMISES. Tenant shall not make any improvements to the Premises without first obtaining Park City's written consent. Any improvements approved by Park City shall be completed at Tenant's sole expense and removed at Tenant's sole expense upon expiration of this Agreement.
6. SIGNS. No signs shall be permitted on the Premises except as specifically approved pursuant to the Park City Sign Code and/or Tenant's Master Sign Plan.
7. INSURANCE. Tenant shall, at Tenant's sole expense, carry a policy of general liability insurance in an amount of at least One Million Dollars (\$1,000,000) per person and One Million Dollars (\$1,000,000.00) per incident or occurrence. Park City shall be named as an additional insured by endorsement on each policy. Tenant's insurance is to be primary to Park City's and Park City's insurance shall be non-contributory. A certificate of insurance with a thirty (30) day cancellation notice provision shall be provided to Park City on or before the lease commencement date, and maintained continuously during the term of the lease. Tenant may carry whatever other insurance Tenant deems appropriate. The parties agree that Tenant's sole remedy in the event of business interruptions,

fire, windstorm, or other loss from hazard shall be its own insurance and Tenant will have no action against Park City. Park City is protected by the Utah Governmental Immunity Act, and nothing herein is intended to waive or limit the protection of the Act in behalf of either entity, but to the extent it is consistent with this intent, it is the purpose of this provision to protect Park City for liability or allegations arising out of the Tenant's use of the Premises.

8. **HOLD HARMLESS.** Tenant covenants and agrees to defend, indemnify, hold Park City harmless from all claims, loss damage, injury or liability (hereafter "Liability") resulting from Tenant's use and occupancy of the Premises to the full extent permitted by law and/or the Utah Governmental Immunity Act, including reasonable attorney's fees, but excluding any Liability resulting from acts or omissions of Park City, its officers, employees or agents. Nothing herein shall be construed as a waiver of any of the rights or defenses under the Utah Governmental Immunity Act (Utah Code Ann. Sections 63-30-1, et seq), as amended. The obligations hereunder shall be determined under principles of tort law including, but not limited to, the Governmental Immunity Act.
9. **ASSIGNABILITY.** Tenant shall not assign or transfer any interest in this Agreement without the prior written consent of Park City. Any assignment or transfer without written approval is void.
10. **PROFESSIONAL PERFORMANCE.** Tenant agrees to perform services under this contract at the highest professional standards, and to the satisfaction of Park City.
11. **APPLICABLE LAW.** This Agreement shall be governed by the laws of the state of Utah.
12. **FORCE MAJEURE.** Any delay or failure of either Party to perform its obligations under this Agreement shall be excused to the extent that it is caused by an event or occurrence beyond its reasonable control, including act of nature, terrorism or war.
13. **ENTIRE AGREEMENT.** This Agreement constitutes the entire and only agreement between parties and it cannot be altered or amended except by written instrument, signed by both parties.

Executed the day and year first above written.

PARK CITY MUNICIPAL CORPORATION

Dana Williams, Mayor

Attest:

Janet M. Scott, City Recorder

Approved as to form:

City Attorney's Office

Restaurant name

xxx Main Street

PO Box xxxx

Park City, Utah 84060

name of owner

ACKNOWLEDGMENT

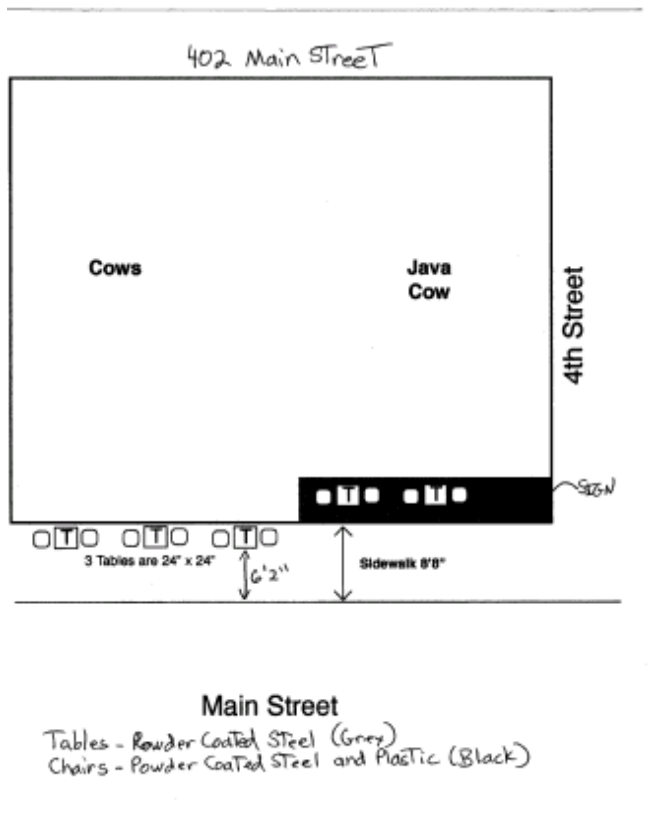
STATE OF UTAH)
) ss.
COUNTY OF SUMMIT)

On this _____ day of _____, 2005, personally appeared before me *name of owner*, who being duly sworn, did say that he is the Owner of *restaurant name*, LLC, and acknowledged to me that the preceding Agreement was signed on behalf of The Eating Establishment, LLC, and he acknowledged that the company did execute the same for its stated purpose.

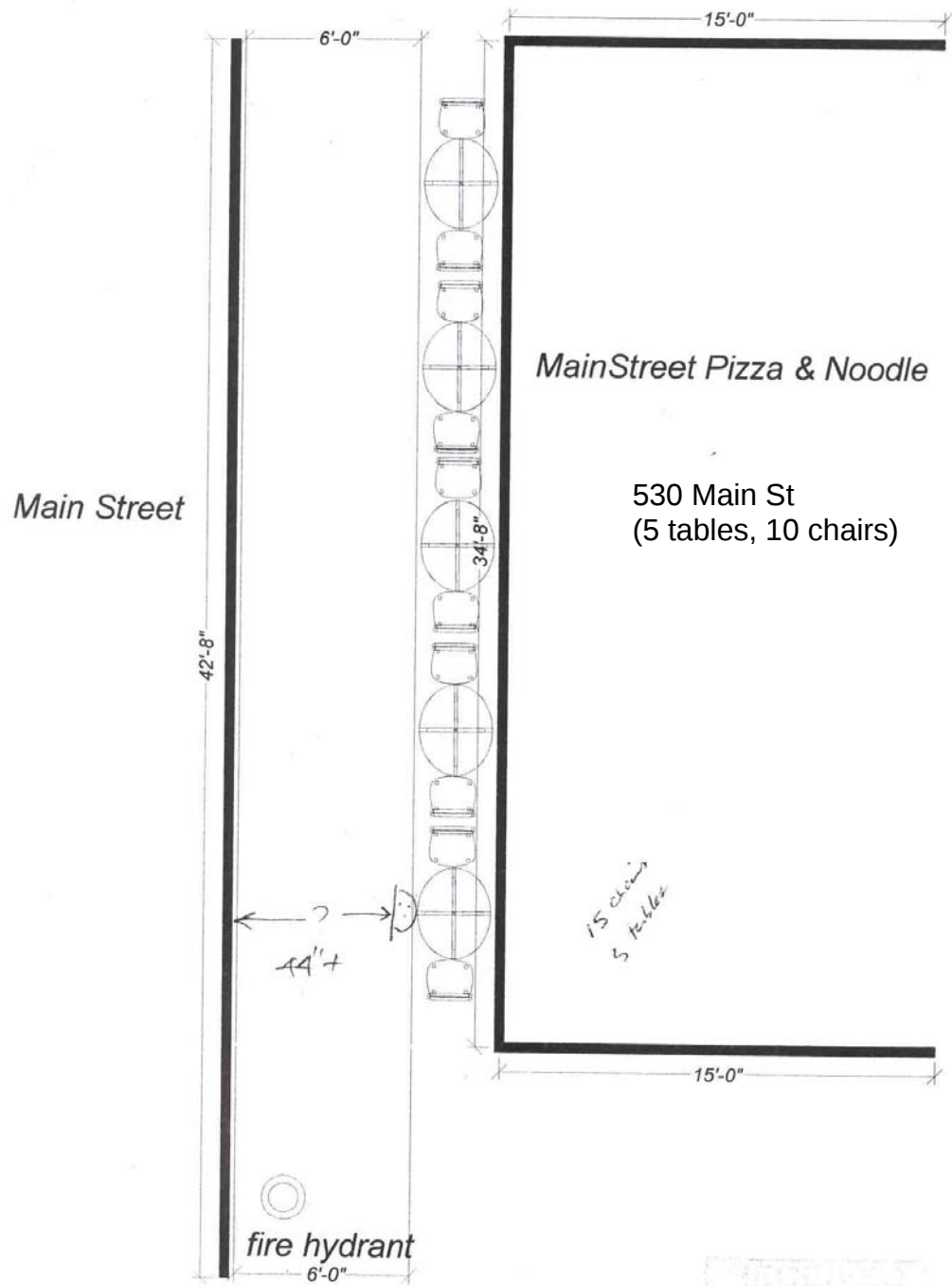
Notary Public

[illegible]

317 Main St
Eating Establishment
(4 tables)



402 Main Street
Java Cow
(3 tables)



RECEIVED
JUN 2 8 2023

Exhibit C
SIDEWALK DINING
OPERATIONAL RESTRICTIONS

The following operational restrictions shall apply to all leases for outdoor dining on Main Street sidewalks:

1. Site Plan - This plan shall be to scale and indicate: the proprietors' building as it relates to the exact locations of chairs, tables, stanchions, umbrellas, heaters, curb (width of sidewalk), and any other existing public improvements (light fixtures, fire department connections, parking meters, utility covers, etc.).
2. Details/ Spec Sheets – Shall be submitted for each piece of equipment proposed with this application. This will include all tables, chairs, umbrellas, heaters, lighting sources, and crowd barricades, etc.
3. Parameters of Permit - Sidewalk Dining is allowed from May 1 until October 30, from 8:00 am until 10:00 pm.
4. Violations - Ongoing Monitoring will be provided to ensure compliance with lease parameters. A revocation provision will be included for lessee's failure to comply.

Design Standards

1. **SIZE.** Sidewalk dining area shall be limited to the linear frontage a building has on Main Street.
2. **ADVERTISING.** Additional signing or advertising is prohibited beyond what is allowed by the Sign Code. Umbrellas, table tents, or any other equipment must be free of branding or other promotion.
3. **FURNITURE.** All tables and chairs shall be metal and be either black or gray, and have a powder coated finish.
4. **STANCHIONS.** Any necessary crowd control barricades must be equivalent to the Crowd Controller TensaBarrier & Tape - Model 890 Standard, or T-Max, which has been approved by the Preservation Planner and chosen for its minimal visual intrusion, durability, and functionality. TensaBarrier poles shall be black and powder coated, and the tape shall be black also.
5. **UMBRELLAS.** Umbrellas are prohibited from having any advertising or signing and shall be in solid, primary colors. Umbrellas must be free standing and are prohibited from extending beyond the dining area. Any umbrellas must meet international building code and standards and shall not create any public hazard.
6. **HEATERS.** Any proposed heaters shall be reviewed at the time of initial application. In most cases, additional heating elements may require additional building permits.
7. **LIGHTING.** No additional electric lighting is permitted, including exterior building lighting.
8. **LANDSCAPING/ ATMOSPHERE.** Any proposed landscaping or atmosphere pieces shall be reviewed at the time of initial application, and shall not create any public hazard or unnecessary clutter.

9. **ADDITIONAL EQUIPMENT.** To prevent unnecessary visual clutter, additional equipment beyond those outlined in this section is prohibited. This includes server or bus-stations, garbage receptacles, podiums, pedestals, etc.
10. **LICENSING.** The additional square footage of the dining area must be added to the existing licensed area for the restaurant. The Applicant shall also adhere to other applicable City and State licensing ordinances.
11. **HEALTH & SAFETY.** The Use shall not violate the Summit County Health Code, the Fire Code, or International Building Code.
12. **MUSIC.** The use of outdoor speakers and music is prohibited unless expressly allowed by Park City Municipal Corporation Special Events Director.
13. **SPECIAL EVENTS.** Operation of Sidewalk Dining during Special Events and Master Festival Licenses is prohibited when the boundary of that Special Event includes Main Street unless expressly allowed by Park City Special Events Director.
14. **MAINTENANCE.** The dining area shall be cleanly and maintained in a neat and orderly fashion.
15. **STORAGE.** All equipment and other associated materials must be removed from the sidewalk and stored on private property overnight and during prohibited times.

City Council Staff Report



Author: Colin Hilton
Subject: Downtown Improvements, Parking Structure
Jacobsen Construction, Inc. Contract Amendment #1
For overall Guaranteed Maximum Price (GMP) establishment
Date: 4-21-05
Type of Item: Award of Contract

Summary Recommendation - Staff recommends approval of an Amendment #1 to the existing Jacobsen Construction, Inc. Agreement, in a form to be approved by the Legal Department, for work related to the China Bridge Parking Expansion and Utility Relocation Project in the amount of \$6,231,624.

The total recommended amount of the Contract GMP is for two project categories of costs. \$5,735,646 is for costs associated with the parking structure and \$495,978 is for costs associated with utility relocation and a trash compactor building (Phase 1 work to Swede Alley Improvements / Town Plaza features). Both amounts are within approved funding allocations of Downtown Improvements CIP accounts (\$5.75 million in CIP#481 – Parking structure, \$840,941 in CIP#715 – Downtown Enhancements, and \$2.5 million in CIP#786 – Town Plaza) .

Description:

Topic: Downtown Improvements, Jacobsen Contract Amendment #1

Background:

At a December 2, 2004 meeting, City Council approved a CMGC Construction Agreement with Jacobsen Construction, Inc. for work related to our City Downtown Improvements.

At a February 17, 2005 City Council meeting, Staff reported on design and cost estimates that prompted City Council to authorize a reduction of 34 car spaces in “difficult to build basement locations,” as well as set the funding amount at \$5.75 million for the parking structure portion of the project. Utility relocations, a trash compactor building, and pedestrian improvements would also be included in the Phase 1 work in 2005, and budgeted from the Downtown Enhancements / Town Plaza CIP accounts.

At an April 7th, 2005 meeting, City Council approved an Addendum to the Contract that allowed for early mobilization. That approved addendum awarded \$127,024.

Jacobsen Construction, Inc. has begun mobilization with blue-staking, fencing, tree relocations, office trailer placement, and site clearing activities.

Analysis

The City Council's approval of the Jacobsen CMGC Contract in December of 2004 only committed funds associated with the "Pre-construction services" as outlined above. The Addendum awarded on the April 7, 2005 authorized work for mobilization and early set-up costs.

Through the enclosed contract "Amendment #1," Staff is requesting authorization to approve an overall Guaranteed Maximum Price (GMP) for Phase 1 Downtown Improvements with the following breakdown of costs:

I.	Parking Structure Addition	
a.	Construction Cost Divisions Subtotal	\$5,430,000
b.	Contingency	\$ 100,000
c.	Payment & Performance Bond	\$ 44,000
d.	Construction Manager's Fee (2.9%)	<u>\$ 161,646</u>
e.	Total Construction Costs	\$5,735,646
II.	Utility Relocation & Trash Compactor Building	
a.	Construction Cost Divisions Subtotal	\$ 460,000
b.	Contingency	\$ 15,000
c.	Payment & Performance Bond	\$ 7,000
d.	Construction Manager's Fee (2.9%)	<u>\$ 13,978</u>
e.	Total Construction Costs	\$ 495,978

Total GMP for Phase 1 Work = \$ 6,231,624

Staff will review and update any refinements to these numbers at Thursday's Work Session and Public Meeting.

Park City Municipal Corporation will be responsible for costs associated with testing and inspection services, utility impact and connection fees, property insurance and any initial FF&E items, final landscaping, and other "soft costs." Staff recommends City Council waive fees associated with Building permits and Plan Checks and will ask for a statement to that effect during the City Council meeting.

Department Input & Review: This report has input and comments from the following departments: Economic Development & Capital Projects, Legal Department, Budget Manager, City Engineer, and City Manager's Office.

Alternatives:

- A. Approve the proposed Amendment #1 to the Jacobsen Construction Contract: (Staff recommendation)
- B. Modify the Requested Actions:
- C. Deny the Request:
- D. Continue the Item:
- E. Do Nothing:

Significant Impacts / Consequences of not taking the recommended actions:

A delayed action would negatively impact the project schedule.

Staff Recommendation: Staff recommends approval of an Amendment #1 to the existing Jacobsen Construction, Inc. Agreement, in a form to be approved by the Legal Department, for work related to the China Bridge Parking Expansion and Utility Relocation Project in the amount of \$6,231,624.

Attached Exhibit: Jacobsen Construction, Inc. Contract Amendment #1

**AMENDMENT NO. 1
TO STANDARD FORM OF AGREEMENT
BETWEEN OWNER AND CONSTRUCTION MANAGER**

Pursuant to Paragraph 2.2 of the Standard Form of Agreement between Owner (Park City Municipal Corporation) and Construction Manager (Jacobsen Construction, Inc.), dated _____ April 5, 2005, for construction of the China Bridge Parking Expansion and Swede Alley Utility Relocation, the Owner and the Construction Manager establish a Guaranteed Maximum Price and Contract Time for the Work as set forth below:

**ARTICLE I
GUARANTEED MAXIMUM PRICE**

The Construction Manager's Guaranteed Maximum Price for the Work, including the estimated Cost of the Work as defined in Article 5 of the Agreement and the Construction Manager's Fee as defined in Article 4 of the Agreement, is Dollars (\$_____).

Included in the Guaranteed Maximum Price is the Construction Manager's fee of \$_____.

This Price is for the performance of the Work in accordance with the "Guaranteed Maximum Price Proposal" dated April 14, 2005, from Jacobsen Construction, Inc., and incorporated herein by this reference (the "GMP"). A Contract Addendum, approved by City Council on April 7, 2005, is included in the GMP.

**ARTICLE II
CONTRACT TIME**

The Construction Manager acknowledges that the Substantial Completion Date is December 15, 2005 and the Final Completion Date is January 15, 2006.

OWNER:
Park City Municipal Corporation

CONSTRUCTION MANAGER
Jacobsen Construction, Inc.

City Council Staff Report



Author: Matthew A. Twombly
Subject: China Bridge & Quinn's Recreation
Facilities Professional
Service Provider contract
Date: April 21, 2005
Type of Item: Administrative:
Service Provider Contract

**ECONOMIC
DEVELOPMENT AND
CAPITAL PROJECTS**

Summary Recommendation:

Authorize the City Manager to enter into a professional service provider contract (attached) for the China Bridge and Quinn's Junction Recreation projects in a form approved by the City Attorneys Office to Consolidated Engineering Laboratories in the amount of Forty Four Thousand Seven Hundred Thirty Seven Dollars (\$44,737.00).

Description:

Topic: China Bridge Parking Structure and Quinn's Recreation Facilities
Professional Service Provider Contract

Background:

As part of the Quinn's Junction Recreation and China Bridge Parking Structure facilities, special inspection and materials testing is required as part of the design specifications, permitting and building codes. The testing and inspection must be performed by certified inspectors and testing technicians. The Request for Proposals was sent to numerous known firms. Three firms submitted proposals for the two projects. The firms were Consolidated Engineering Laboratories, Consolidated Engineers and Materials Testing, Inc., and CMT Engineering Laboratories.

Analysis:

The RFP requested an estimated amount for the projects, where testing and inspection is done on hourly rate or unit price basis. The testing and inspection greatly depends on the contractor's schedule and ability to perform the work according to building codes and project specifications. A team of staff members, Dave Gustafson, Eric DeHaan, Roger Evans, and myself, rated the three proposals and Consolidated Engineering was rated the highest by the group.

Department Review:

City Manager, Economic Development and Capital Projects, Engineering and Building departments have reviewed this report and all comments have been incorporated into the report.

Alternatives:**Approve the Request:**

Authorize the City Manager to enter into a Professional Service Provider contract on a form approved by the City Attorneys Office with Consolidated Engineering Laboratories, in the amount of Forty Four Thousand Seven Hundred Thirty Seven Dollars (\$44,737.00).

Deny the Request:

Denying the request would delay the projects, where special inspection and testing is required for the work on the projects.

Continuance:

Delaying a decision would delay the proposed schedule on the projects.

Do Nothing:

Delay would impact the projects schedules.

Significant Impacts:

The costs for the special inspection and materials testing is budgeted in the soft costs for each project. The estimated costs are \$26,313 for China Bridge and \$18,424 for the Quinn's Recreation project for a total estimated cost of \$44,737.

Consequences of not taking the recommended action:

Delay would impact the project schedule.

Recommendation:

Staff recommends that Council authorize the City Manager to enter into a professional service provider contract for the China Bridge and Quinn's Junction Recreation projects in a form approved by the City Attorney's Office with Consolidated Engineering Laboratories in the amount of Forty Four Thousand Seven Hundred Thirty Seven Dollars (\$44,737.00).

PARK CITY MUNICIPAL CORPORATION SERVICE PROVIDER/PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into in duplicate this ____ day of _____, 2005, by and between PARK CITY MUNICIPAL CORPORATION, a Utah municipal corporation, ("City"), and CONSOLIDATED ENGINEERING LABORATORIES, 2130 South 3140 West, Salt Lake City, UT 84119, a Utah corporation ("Service Provider").

WITNESSETH:

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

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

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

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

1. SCOPE OF SERVICES.

The Service Provider shall perform such services and accomplish such tasks, including the furnishing of all materials and equipment necessary for full performance thereof, as are identified and designated as Service Provider responsibilities throughout this Agreement and as set forth in the "Scope of Services" attached hereto as "Exhibit A" and incorporated herein (the "Project"). The total fee for the Project shall not exceed Forty Four Thousand Seven Hundred Thirty Seven Dollars (\$44,737.00).

2. TERM.

The term of this Agreement shall commence on the date of execution on this Agreement and shall terminate on December 31, 2005 or earlier, unless extended by mutual written agreement of the Parties.

3. COMPENSATION AND METHOD OF PAYMENT.

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

- B. No payment shall be made for any service rendered by the Service Provider except for services identified and set forth in this Agreement.
- C. For all "extra" work the City requires, the City shall pay the Service Provider for work performed under this Agreement according to the schedule attached hereto as "Exhibit B," or if none is attached, as subsequently agreed to by both parties in writing.
- D. The Service Provider shall submit to the City Manager or his designee on forms approved by the City Manager, an invoice for services rendered during the pay period. The City shall make payment to the Service Provider within thirty (30) days thereafter. Requests for more rapid payment will be considered if a discount is offered for early payment. Interest shall accrue at a rate of six percent (6%) per annum for services remaining unpaid for sixty (60) days or more.
- E. The Service Provider reserves the right to suspend or terminate work and this Agreement if any unpaid account exceeds sixty (60) days.

4. REPORTS AND INSPECTIONS.

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

5. INDEPENDENT CONTRACTOR RELATIONSHIP.

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

subcontractors or representatives during the performance of this Agreement.

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

6. SERVICE PROVIDER EMPLOYEE/AGENTS.

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

7. HOLD HARMLESS INDEMNIFICATION.

- A. The Service Provider shall indemnify and hold the City and its agents, employees, and officers, harmless from and shall process and defend at its own expense any and all claims, demands, suits, at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, brought against the City arising out of, in connection with, or incident to the execution of this Agreement and/or the Service Provider's defective performance or failure to perform any aspect of this Agreement; provided, however, that if such claims are caused by or result from the concurrent negligence of the City, its agents, employees, and officers, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the Service Provider; and provided further, that nothing herein shall require the Service Provider to hold harmless or defend the City, its agents, employees and/or officers from any claims arising from the sole negligence of the City, its agents, employees, and/or officers. The Service Provider expressly agrees that the indemnification provided herein constitutes the Service Provider's limited waiver of immunity as an employer under Utah Code Section 34A-2-105; provided, however, this waiver shall apply only to the extent an employee of Service Provider claims or recovers compensation from the City for a loss or injury that Service Provider would be obligated to indemnify the City for under this Agreement. This limited waiver has been mutually negotiated by the parties, and is expressly made effective only for the purposes of this Agreement. The provisions of this section shall survive the expiration or termination of this Agreement.
- B. No liability shall attach to the City by reason of entering into this Agreement except as expressly provided herein.

8. **INSURANCE.**

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

- A. General Liability insurance written on an occurrence basis with limits no less than one million dollars (\$1,000,000) combined single limit per occurrence and two million dollars (\$2,000,000) aggregate for personal injury, bodily injury and property damage.
- B. Automobile Liability insurance with limits no less than five hundred thousand dollars (\$500,000) combined single limit per accident for bodily injury and property damage.
- C. Professional Liability (Errors and Omissions) insurance written on an occurrence basis with limits no less than one half million dollars (\$500,000) combined single limit per occurrence.
- D. Workers Compensation insurance written on an occurrence basis with limits no less than one half million dollars (\$500,000) combined single limit per occurrence.
- E. The City shall be named as an additional insured on the insurance policies, as respect to work performed by or on behalf of the Service Provider and a copy of the endorsement naming the City as an additional insured shall be attached to the Certificate of Insurance. The Certificate of insurance shall warrant that the City shall receive thirty (30) days advance notice of cancellation. The City reserves the right to request certified copies of any required policies.
- F. The Service Provider's insurance shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

9. **TREATMENT OF ASSETS.**

Title to all property furnished by the City shall remain in the name of the City and the City shall become the owner of the work product and other documents, if any,

prepared by the Service Provider pursuant to this Agreement (contingent on City's performance hereunder).

10. COMPLIANCE WITH LAWS.

- A. The Service Provider, in the performance of this Agreement, shall comply with all applicable federal, state, and local laws and ordinances, including regulations for licensing, certification and operation of facilities, programs and accreditation, and licensing of individuals, and any other standards or criteria as described in this Agreement to assure quality of services.
- B. The Service Provider specifically agrees to pay any applicable fees or charges which may be due on account of this Agreement.

11. NONDISCRIMINATION.

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

discrimination. The Service Provider shall take such action as may be required to ensure full compliance with the provisions in the immediately preceding paragraphs herein.

12. ASSIGNMENTS/SUBCONTRACTING.

- A. The Service Provider shall not assign its performance under this Agreement or any portion of this Agreement without the written consent of the City, and it is further agreed that said consent must be sought in writing by the Service Provider not less than thirty (30) days prior to the date of any proposed assignment. The City reserves the right to reject without cause any such assignment.
- B. Any work or services assigned hereunder shall be subject to each provision of this Agreement and property bidding procedures where applicable as set forth in local, state or federal statutes, ordinance and guidelines.
- C. Any technical/professional service subcontract not listed in this Agreement, must have express advance approval by the City.

13. CHANGES.

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

14. MAINTENANCE AND INSPECTION OF RECORDS.

- A. The Service Provider shall maintain books, records and documents, which sufficiently and properly reflect all direct and indirect costs related to the performance of this Agreement and shall maintain such accounting procedures and practices as may be necessary to assure proper accounting of all funds paid pursuant to this Agreement. These records shall be subject at all reasonable times to inspection, review, or audit by the City, its authorized representative, the State Auditor, or other governmental officials authorized by law to monitor this Agreement.
- B. The Service Provider shall retain all books, records, documents and other material relevant to this Agreement for six (6) years after its expiration. The Service Provider agrees that the City or its designee shall have full access and right to examine any of said materials at all reasonable times during said period.

15. POLITICAL ACTIVITY PROHIBITED.

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

16. PROHIBITED INTEREST.

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

17. MODIFICATIONS TO TASKS AND MISCELLANEOUS PROVISIONS.

- A. All work proposed by the Service Provider is based on current government ordinances and fees in effect as of the date of this Agreement.
- B. Any changes to current government ordinances and fees which affect the scope or cost of the services proposed may be billed as an “extra” pursuant to Paragraph 3(C), or deleted from the scope, at the option of the City.
- C. The City shall make provision for access to the property and/or project and adjacent properties, if necessary for performing the services herein.

18. TERMINATION.

- A. Either party may terminate this Agreement, in whole or in part, at any time, by at least thirty (30) days written notice to the other party. The Service Provider shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Service Provider shall promptly submit a termination claim to the City. If the Service Provider has any property in its possession belonging to the City, the Service Provider will account for the same, and dispose of it in a manner directed by the City.
- B. If the Service Provider fails to perform in the manner called for in this Agreement, or if the Service Provider fails to comply with any other provisions of the Agreement and fails to correct such noncompliance within three (3) days written notice thereof, the City may immediately terminate this Agreement for cause. Termination shall be effected by serving a notice of termination on the Service Provider setting forth the manner in which the Service Provider is in default. The Service Provider will only be paid for services performed in accordance with the manner of performance set forth in this Agreement.

19. NOTICE.

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

20. ATTORNEYS FEES AND COSTS.

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

21. JURISDICTION AND VENUE.

- A. This Agreement has been and shall be construed as having been made and delivered with the state of Utah, and it is agreed by each party hereto that this Agreement shall be governed by laws of the state of Utah, both as to interpretation and performance.
- B. Any action of law, suit in equity, or judicial proceeding for the enforcement of this Agreement, or any provisions thereof, shall be instituted and maintained only in any of the courts of competent jurisdiction in Summit County, Utah.

22. SEVERABILITY.

- A. If, for any reason, any part, term, or provision of this Agreement is held by a court of the United States to be illegal, void or unenforceable, the validity of the remaining provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.
- B. If it should appear that any provision hereof is in conflict with any statutory provision of the state of Utah, said provision which may conflict therewith shall be deemed inoperative and null and void insofar as it may be in conflict therewith, and shall be deemed modified to conform in such statutory provisions.

23. ENTIRE AGREEMENT.

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

shall constitute material breach of contract and cause for termination. Both parties recognize time is of the essence in the performance of the provisions of this Agreement. It is also agreed by the parties that the forgiveness of the nonperformance of any provision of this Agreement does not constitute a waiver of the provisions of this Agreement.

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

City Council Staff Report



Author: Phyllis McDonough Robinson
Subject: Historical Society Lease Amendment
Date: April 21, 2005
Type of Item: Administrative

Budget, Debt and Grants

Summary Recommendations:

Review and approve the lease amendment for additional space within the Old City Hall Building located at 528 Main Street to the Park City Historical Society.

Description:

Topic:

Lease amendment for additional rental space Old City Hall Building to the Park City Historical Society.

Background:

The Park City Historical Society has a 99 year lease with the City for certain space located at 528 Main Street. The lease includes terms allowing the Historical Society to acquire additional space within the building at the time it becomes available for lease. The lease for the 2nd Floor space occupied by Strachan and Strachan Law Offices expired on March 31, 2005. Park City Historical Society wishes to exercise its right-of-first refusal for this additional space, which will add approximately 870 square feet to the Historical Society's current lease.

Analysis:

The Historical Society has been working on a long-term plan to increase their presence in the community and increase private funding support. The increase in rental space for museum expansion is a key component of this strategy. The current Special Service Contract between Park City Municipal Corporation and the Park City Historical Society outlines milestones that must be met in order for the Park City Historical Society to exercise its right-of-first refusal. The organization has exceeded its fund raising milestone.

Performance goals related to submittal of plans to the building department have been modified to reflect a more comprehensive planning process. Initial performance goals indicated a submission date of 2004. More recently, the Park City Historical Society has taken a step back from the development of building or renovation plans in order to more fully analyze its exhibit, programming, education and administrative space needs prior to developing building renovation and/or expansion plans. It is anticipated that this milestone will be met in summer 2005. This will be reflected in any future Special Service Contracts.

The Historical Society expects its expansion to begin in winter 2006. Prior to any such work occurring and any additional space being leased, Staff will be returning to City Council for a Lease Addendum addressing the conditions under which tenant improvements can occur that were outlined in the August 3, 2004 letter (Exhibit A to the Lease Addendum). Staff would prefer that the conditions in the August 3, 2004 letter be incorporated into this Lease Addendum, but is willing to address tenant improvement processes at a later date as requested by the Historical Society. This strategy of delaying the determination of tenant improvement processes may prove problematic. Staff is recommending that the Tenant Improvement Addendum be completed prior to the any further Lease Addendums for space or contracts for rent contribution, if awarded.

The rent for the additional space will be \$2,417 to cover the MBA debt payment. The Historical Society has made a rent contribution request through a Special Service Grant application. The MBA debt payment sets the baseline for future rent payments by the Historical Society. Based on the rent charged to the previous for-profit tenant, the lease for this space to the Historical Society is substantially below market and represents approximately \$11,286 in foregone income.

The proposed lease amendment will further Council's goal of economic development and cultural tourism by preserving and expanding the museum's role on Main Street.

Department Review:

Legal, City Manager, Special Events and Facilities, Planning and Budget, Debt and Grants have reviewed this staff report.

Alternatives:

Approve the Request:

Approve the lease amendment and allow the Historical Society to expand into the 2nd floor space at 528 Main.

Modify the Request:

Modify the terms and approve the lease, allowing the Historical Society to lease the space at 528 Main Street.

Deny the Request:

Deny the lease, thereby requiring the Historical Society to relocate the museum.

Continue the Item:

The City Council may continue the item for more information and discussion.

Significant Impacts:

The proposed First Amendment to the Lease binds future Councils in leasing the additional space to the Historical Society. This would prevent future municipal use of the additional space until the lease expired or until the lease is otherwise lawfully terminated.

All discussions regarding the Special Service Contract and the City's contribution contemplated forgone rent. No capital improvement costs will be contributed by the City for the improvement of the additional space.

Consequences of not taking the recommended action:

The Historical Society would need to either abandon/delay their planned expansion or relocate the museum, which could mean that the museum would no longer be located on Main Street.

Recommendation: Approve the First Amendment to the Lease allowing the Park City Historical Society to occupy additional space within the Old City Hall Building located at 528 Main Street.

Exhibits:

Exhibit A – First Amendment to Lease Agreement

EXHIBIT A
FIRST ADDENDUM TO PARK CITY MUNICIPAL CORPORATION AND
PARK CITY HISTORICAL SOCIETY LEASE AGREEMENT

THIS FIRST ADDENDUM is made and entered into in duplicate this ____ day of April, 2005, by and between PARK CITY MUNICIPAL CORPORATION, a Utah municipal corporation and political subdivision of the State of Utah ("Landlord"), and PARK CITY HISTORICAL SOCIETY, ("Tenant") to amend the Lease Agreement executed by both Parties on September 11, 2003.

WITNESSETH:

WHEREAS, the parties entered into a long term Lease Agreement on September 11, 2003 (hereinafter "Original Agreement") for certain property located within the Old City Hall Building, 528 Main Street, Park City, Utah; and

WHEREAS, the parties desire to amend the Original Agreement to include additional leased space on the second floor of the same building,

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

PROPERTY. The additional space leased is on the second floor of the Old City Hall, having a street address of 528 Main Street, Park City, Utah (hereinafter "Additional Space"). The Additional Space contains approximately 480 square feet of office area and 390 square feet of common area for a total of approximately eight hundred and seventy (870) gross square feet with access through the first floor and stairs.

2. **TERM.** The Lease term, for the Additional Space shall commence upon execution and shall run concurrently with the Term of the Original Agreement unless sooner terminated under the provisions of the Original Agreement or by joint agreement of the parties.

3. **RENT.** The base rent for the Additional Space shall be Two Thousand Four Hundred Seventeen Dollars (\$2,417) per year. Rent payments shall be waived until July 1, 2005. Payment of the rental fees after July 1, 2005 may be waived subject to the annual approval of a Special Service Contract by the City Council of Park City. The annual rent for the space shall increase 3% on July 1st of each year with the increase beginning on July 1, 2006. Rent payments shall be due by the first of the month.

4. **TENANT IMPROVEMENTS.** The Tenant agrees to install, at its own expense, all specialized equipment and displays needed for the operation of its museum and future exhibitions, offices and other facilities it may require. This includes any

additional partitioning, specialized or additional electrical and mechanical equipment, air conditioning, internal heating, and any other tenant improvements that are necessary for the Tenant's intended use of the space. Any tenant improvement items that can be removed at the end of the lease without causing substantial damage to the remaining walls, ceilings, or other finishes may be removed by the Tenant at the termination or expiration of the lease. All work done by the Tenant must comply with the applicable building codes, and more particularly with the Historic District Guidelines for this structure.

Tenant affirmatively represents that no permanent tenant improvements will be done. No written consent is given nor implied by the Landlord through the approval of this Addendum. The parties agree in good faith to execute an Addendum outlining terms under which permanent improvements may occur consistent with the content of the August 3, 2004 letter (Exhibit A) prior to any future Addendums which expand the lease area.

5. **OTHER TERMS.** All other terms and conditions of the Original Agreement shall continue to apply generally and specifically to the Additional Space.
6. **ENTIRE AGREEMENT.** This First Addendum is a written instrument pursuant to Paragraph 25 of the Original Agreement cannot be altered or amended except by written instrument, signed by both parties.

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



Office of The Mayor
Dana Williams

August 3, 2004

Cindy Matsumoto, Chair
Board of Trustees
Park City Historical Society & Museum
P.O. Box 555
Park City, Utah 84060

RE: Museum Expansion Project

Dear Cindy:

I received your July 16, 2004 letter in which the Historical Society requests written permission from the City to make alterations and repairs to your leased premises at 528 Main Street.

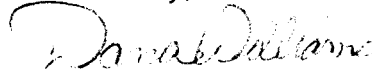
Thank you for taking this step and keeping the Council liaison, Kay Calvert, informed of your progress. As you know, the City remains committed to supporting this new project, which we hope will enhance historic old town and create additional opportunities for Park City residents and visitors to experience and remember the proud history of the City.

However, the City will require more information and an agreement as to the process followed before the City will execute written permission. I suggest you work with staff to create a lease addendum that could be approved by both the Historical Society and the City Council. The addendum should address the following:

1. Proposed concept plan and construction schedule, including museum closures;
2. City staff participation on your design review team/project oversight;
3. Use of a competitive and open selection process, although price need not be the sole determining factor;
4. Use of standard public building contract protections including: payment and performance bonds, insurance, payment retention, liquidated damages and construction mitigation plans. Copies of city standard contracts are included for your reference;
5. Delineation of which improvements become City property at the end of the lease term;
6. Historical Society responsibility to meet all applicable building and LMC code provisions, including ADA.

Please call Alison Butz at 615-5151 to initiate a meeting on the lease addendum. Thank you and everyone at the City is excited to see the implementation of the next phase of your long-term plan.

Sincerely,

A handwritten signature in cursive script, appearing to read "Dana Williams".

Dana Williams
Mayor

Enc.

cc: Alison Butz
Mark Harrington
Tom Bakaly