

**PARK CITY COUNCIL MEETING
SUMMIT COUNTY, UTAH
DECEMBER 17, 2009**

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, December 17, 2009.

Closed Session

3:00 p.m. Property and litigation

Work Session

4:50 p.m. Council questions/comments

5:00 p.m. Municipal carbon reduction goal P. 4 - 14

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 DECEMBER 3, 2009 P. 15 - 24

V 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 acceptance of the City of Park City Comprehensive Annual Financial Report (CAFR) and Independent Auditor's Report for 2009 P. 25 - 27

2. Consideration of a Professional Service Agreement, in a form approved by the City Attorney, with Stantec Consulting Inc. for the construction engineering management and inspection of the Lower Silver Creek Raw Waterline Phase Project in an amount of \$113,746 P. 28 - 48

3. Consideration of letter of intent for furthering reciprocity between Park City and Summit County Libraries P. 49 - 52

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

1. Consideration of Training Site Agreements between FIFA, US Soccer Association, and Park City for use of the Park City Sports Complex as on official training site as part of the US Bid Committee's proposal to host the 2018 or 2022 World Cup.

P. 53 - 60

2. Consideration of a Conservation Easement and Memorandum of Understanding for the Clissold/Quarry Mountain Property with Summit Land Conservancy, in a form approved by the City Attorney

P. 61 - 84

3. Consideration of an appeal of the recommendation for award of construction contract for the Lower Silver Creek Raw Waterline Project – appellants Silver Spur Construction

P. 85 - 104

- (a) Overview by staff
- (b) Presentation by appellant
- (c) Deliberation/action

4. Consideration of Construction Agreement, in a form approved by the City Attorney, with BD Bush Excavating for the construction of the Lower Silver Creek Raw Waterline for a lump sum amount of \$1,943,821

P. 105 - 130

VII ADDITIONAL DISCUSSION – AGENDA ITEMS

VIII ADJOURNMENT

A majority of 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.

See: 12/14/09

www.parkcity.org

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

December 2009

- 17 See agenda
- 24 **No meeting – Christmas Eve**
- 31 **No meeting – New Year's Eve**

January 2010

- 7 Swearing-in ceremony
Lower Park Avenue RDA
Anti-discrimination ordinance - work
Senior survey needs assessments
US Postal Service – gang box proposal
Resolution – census
Find bond resolution
Alliance Engineering contract
Meeting date resolutions – Council, RDA and MBA
Ordinance – 1440 Empire Avenue – KS
Ordinance – 3615 Sun Ridge Drive (motion to continue to 1/14) – JM
Ordinance – 2001 Park Avenue – BR
Ordinance – 7447 Royal Street #351 – BR
Ordinance – 801-817 Park Avenue Park Place - BR
- 11-12 *Council Visioning Session*
- 14 (light meeting)
Ordinance – 3615 Sun Ridge Drive – JM
- 21 **No meeting – Sundance opening**
- 28 Open space maintenance (work)
Ordinance – LMC amendment for MPD in HR-2 – KW
Final Series 2010 Water Revenue Bonds

February 2010

- 4
- 11
- 18
- 25

March 2010

- 4
- 11
- 18
- 25 **No meeting**

Pending Items:

Quinn's WTP Building Construction Contract – TT
Special event prioritization – work
Performance measures (work)
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

Note: This future meeting schedule is TENTATIVE and subject to change.
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City Council Staff Report

Subject: Municipal Carbon Footprint Reduction Goal
Author: Tyler Poulson and Diane Foster
Department: Sustainability
Date: December 17, 2009
Type of Item: Administrative Policy - Direction

Summary Recommendations:

Review the municipal carbon reduction goals presented and provide direction on whether City Council would like to adopt a goal for 2012.

Staff recommends that City Council adopt a 12% Below 2012 BAU emissions goal (Alternative B) and that direction is provided to begin identification of the carbon reduction items to pursue included in Exhibit C. Items identified should enable us to exceed our 12% goal as long as they are included during the spring, 2010 budget process. Staff also suggests that direction is given to research and pursue future, additional carbon reduction items which are financially prudent.

Background:

Staff began formally reporting carbon emissions for Park City Municipal's operations in 2008. The emissions inventories for 2007 and 2008 were presented as part of an August 2009 Work Session (minutes attached, Exhibit A) along with an initial proposal for a municipal carbon reduction goal. During the August Work Session, Council asked that the provided carbon reduction action items be reassessed and that savings estimates be confirmed. Council also requested that staff return with a revised list of action items, including more granular energy and cost savings data, prior to Council taking action and potentially adopting a carbon reduction goal.

In August, staff also reviewed carbon reduction goals set by other governments and communities. These goals are typically longer in term and more aggressive in carbon reduction than what staff is recommending. The two primary differences between the recommended goal in this Staff Report and goals set by other governments and communities are:

1. Many communities have not, and are currently not, experiencing the growth that is still underway in Park City; and
2. Longer-term, more aggressive goals typically forecast minor reductions in the first few years and then hope for major technological, policy, and/or energy-industry structural changes which will show significant reductions in the latter years leading up to the target goal year.

An example of the second point occurred in July of 2008 when the state of Utah set a goal for reducing the state's greenhouse-gas emissions to 2005 levels by 2020. Rick Sprott, the Director of the Utah Department of Environmental Quality at the time, said that most of the reductions would come through cleaner energy, a cap-and-trade program for emissions, more efficient cars, and better transportation systems.

Analysis and Discussion Items:

The Municipal Carbon Footprint

Staff reassessed the greenhouse gas emissions factors used in previous municipal footprint calculations and adjusted the electricity emissions coefficient (how much carbon-equivalent is emitted per kWh consumed) to be more in line with electricity generated in Utah, rather than electricity produced in the entire Northwest EPA region which includes a significant amount of hydropower. This change, from 0.9 lbs. CO₂e/kWh (pounds of carbon equivalent per kilowatt-hour) to 2.1 lbs. CO₂e/kWh, is consistent with the emissions coefficients used for the community carbon footprint and it more accurately portrays the emissions associated with the City's electricity consumption. After updating this emissions factor, Park City Municipal's carbon footprint was calculated to be 15,764 short tons CO₂e for 2007 and 17,012 short tons CO₂e for 2008. These new totals will be used to forecast 2012 emissions and set a reduction goal.

Carbon Reduction Action Items

Staff revisited the previous carbon reduction action items with managers and personnel from the Maintenance, Fleet, Transit, Water, and I.T. groups in an attempt to get more specific data and finalize the list for this Staff Report. Staff also worked with the Budget Department to review and validate the methodologies used. The Building Energy and Vehicle Fuel lists were reduced in order to wrap the completed Johnson Controls upgrades, completed Marsac Building upgrades, and a potential future 5% Fuel Efficiency goal into aggregated savings figures. The action item list includes some already completed and currently planned actions, where noted, in addition to potential actions. Completed and currently planned action items were included to portray an accurate representation of conservation measures put in place after the 2007 emissions baseline year. Inclusion of these items allows the City to take credit for the carbon reduction measures already implemented. A complete list of all completed, currently planned, and potential action items is included in Exhibit B.

Carbon reduction action items which haven't been completed and aren't currently planned are also included for assessment on their own in Exhibit C. These additional action items are representative of potential next steps that the City can take to reduce its municipal carbon footprint before 2012. Note that these items came out of meetings with the relevant departments and that the included items were based on whether they were viewed as feasible in the near future and if the savings associated with them could be reasonably forecasted.

Figure 1 is a graphical representation of the completed and planned action items that shows the categories in which they'll reduce carbon emissions. Figure 2 shows similar data for the additional action items (Exhibit C) which currently require some level of approval before implementation.

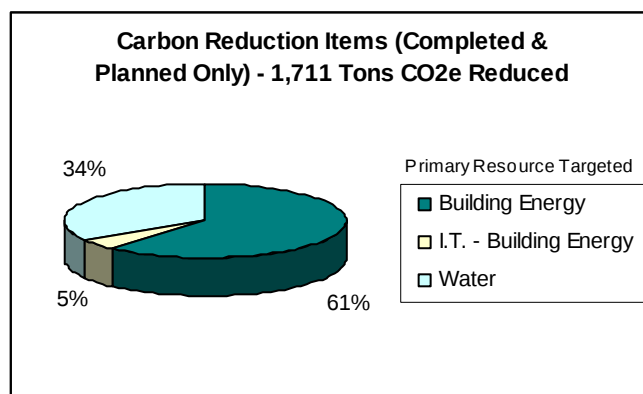


Figure 1. Completed & Planned Carbon Reduction Items

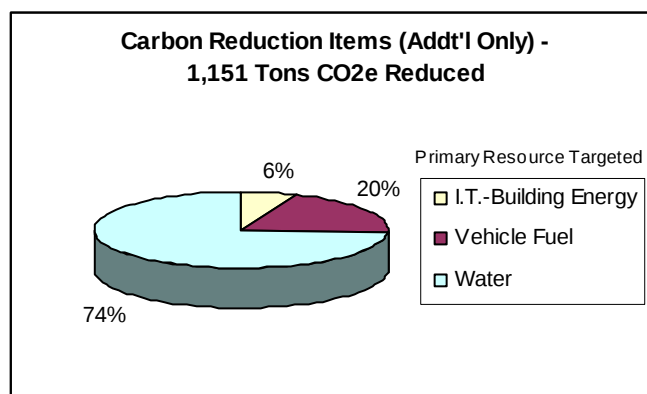


Figure 2. Additional Carbon Reduction Items

Note that there are other potential carbon reduction action items not included in the exhibits. These items are conceptual at this point and were excluded due to some uncertainty with their implementation or inability to confidently estimate energy savings at this time. Some examples of these ideas include elimination of extraneous power-consuming items, acquisition of more renewable energy resources, idle-reduction technology for Police cruisers, and additional water-saving ideas dependent on Automated Meter Reading technology. Staff expects the list of carbon reduction items to evolve over time as technology improves and the amount of imperfect information associated with their savings calculations is reduced. These additional savings measures, though not represented in the action item tables, may play a role in the City reaching a potential 2012 carbon reduction goal.

Business-as-Usual (BAU) Emissions Forecasts and Potential Carbon Reduction Goals

There are communities in the U.S. that have met their climate change goals, but few of them have experienced the past and current growth of Park City. While our community is 85% built out, new public facilities and new developments demand the services of all City departments and this often translates into an increase in our municipal carbon footprint. It is for this reason that the goals established are targets versus “Business as Usual” forecasts.

Staff created a forecast for 2012 carbon emissions based on 2007 baseline data and emissions growth estimates. The growth estimates were derived from a combination of data in the previously released Municipal Carbon Reduction Action Plan (Exhibit D), ongoing discussions with specific departments, and emissions forecasts from the Western Climate Initiative and other local governments. Staff chose 2007 as the baseline year due to a few factors such as that it was pre-Marsac transition, pre-Johnson Controls upgrades, and that 2007 was the initial year for calculating the City’s municipal carbon footprint. The emissions forecast data is displayed in Table 1 below.

The BAU trajectory has been graphed in Figure 3 along with paths for a variety of carbon-saving scenarios. The *BAU + Completed / Planned* line is based on the savings measures which the City has already implemented, or has existing plans to implement, between 2007 and 2012. This line shows that Park City’s municipal operations are on track to be 8.2% below the BAU trajectory thanks to the Johnson Controls project and other savings measures. The *BAU + Completed / Planned / All Current Addt’l* line shows where the municipal footprint is headed if all carbon reduction items in Exhibit B are pursued. The *BAU + Completed / Planned / Partial Addt’l* line reflects a 12% savings over the BAU scenario and assumes that only some of the additional items, or perhaps some unlisted measures, are pursued before 2012 to reduce the City’s footprint. Trajectories for the Utah GHG Reduction Goal and Western Climate Initiative goal have been included in Figure 3 for reference. These two goals have a more distant goal year (2020) and the emissions paths are based on the assumption that they make consistent progress between 2007 and 2020.

Given the current financial climate, it’s important to note that the upfront costs for the additional emissions reduction items in Exhibit C are not yet budgeted. Despite this, staff feels that funding for items with a net financial gain to the City can be prioritized with other budget requests in the FY 2011 budget (consistent with budget policies) in advance of the 2012 goal year. It’s important to note that the financial payback time, if all items in Exhibit C are pursued, is forecasted to occur within one year of implementation. By creating a carbon reduction target, staff will have clear direction to plan for the additional emissions reduction items mentioned in Exhibit C and possibly other action items depending on improved information, technology changes, available financing, and a proven financial payback.

Table 1. *Municipal Carbon Footprint Forecast – 2007 - 2012*

Municipal Carbon Footprint Forecast - Totals are in Tons of CO₂-equivalent					
Emissions Source	2007 (Actual) - Baseline Year	2008 (Actual)	2012 BAU Estimate	% TOTAL Increase (2007-to- 2012)	Assumption Used for BAU Estimates
Buildings, Facilities & Streetlights	6,979	7,217	8,091	16%	3% annual increase assumption*
Water Distribution & Infrastructure	4,479	5,011	6,660	49%	8% annual increase ~ department forecast of 25% more water distributed in 2012 than 2008. Also, included a UV Filtration System added in '08 and the energy forecast for Quinn's WTP.
Vehicle Fleet + Transit (Buses)	2,968	3,446	4,652	57%	9% annual increase ~ rough forecast from Muni Carbon Reduction Report and meetings with departments
Vehicle Fleet w/o Buses	921	1,115	1,292	40%	7% annual increase ~ rough forecast from Muni Carbon Reduction Report and meetings with departments
Transit Dept (Buses)	2,047	2,331	3,360	64%	10% annual increase ~ rough forecast from Muni Carbon Reduction Report and meetings with Transit
Employee Commute	1,072	1,072	1,243	16%	3% annual increase assumption*
Solid Waste Generation (est.)	266	266	308	16%	3% annual increase assumption*
TOTAL	15,764	17,012	20,954	33%	5.9% overall annual forecasted increase
<i>*Note: 3% annual increase assumptions were used in cases where related forecast information and/or empirical data wasn't available. Items taken into consideration when deciding on the 3% figure included the 1990 - 2007 emissions growth forecast (2.8%) for Park City Municipal provided by Environmental Performance Group and a range of other emissions growth forecasts, including those by The Western Climate Initiative.</i>					

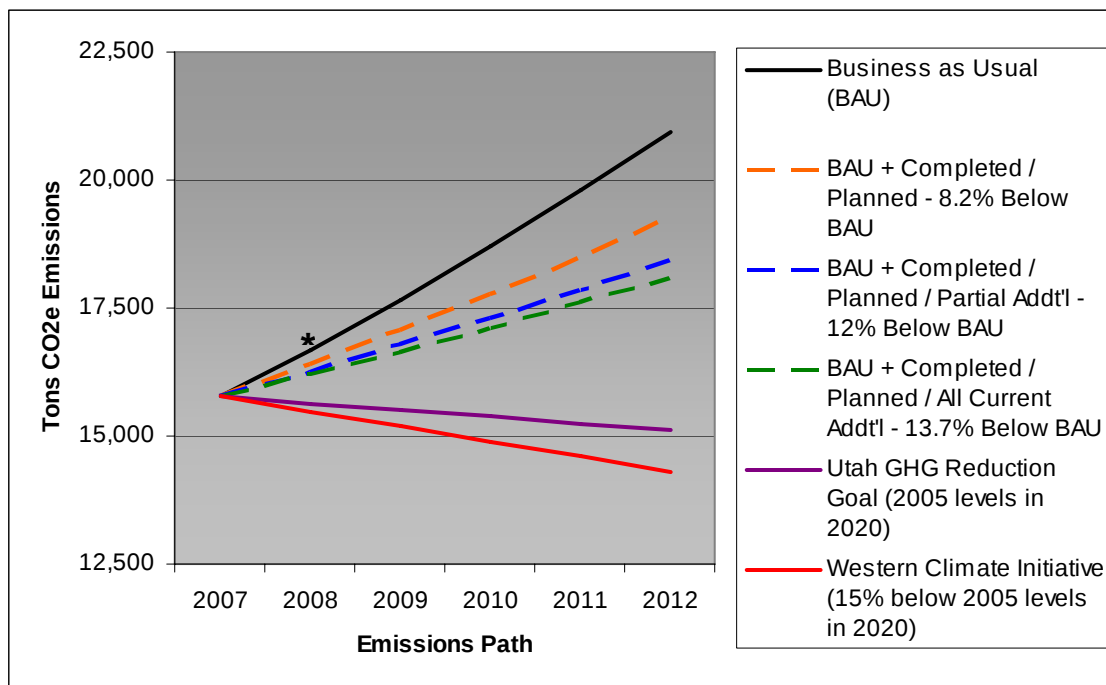


Figure 3. Emissions Forecasts, 2007 – 2012; Note that the Asterisk Represents 2008 Actual Emissions

Department Review:

All applicable departments have reviewed the details presented and their comments have been incorporated within this Staff Report.

The City Manager and City Attorney suggest consideration for framing the goals as Municipal Carbon Footprint Mitigation Goals. By more squarely owning our City's economic/budget measurements of resort community "success" (e.g., growth in spending, events, and visitors) and the reality that projections of expanded City services will continue to increase our footprint, they assert that our program will be more credible, and able to focus on policy choices that may otherwise conflict with a carbon reduction policy, if the City squarely acknowledges that we are merely mitigating the environmental impact of our growth. Being a leader in picking the low hanging fruit of carbon reduction strategies has minimal on the ground impact if at the same time we are avidly taking overt economic development and operational actions that conflict with actual emissions reductions. If, and when, our economic and operational goals result in diminished growth and a flatline BAU forecast, then we can honestly focus on "reduction".

Alternatives:

A. BAU + Completed / Planned Goal – 8.2% Below BAU in 2012

Adopt an emissions reduction goal based on completed and currently planned conservation measures.

B. BAU + Completed / Planned / Partial Addt'l Goal – 12% Below BAU in 2012

Adopt an emissions reduction goal based on completed and currently planned conservation measures, in addition to a partial mix of additional items in Exhibit C. This will require future prioritization of some of the items in Exhibit C.

C. BAU + Completed / Planned / All Current Addt'l Goal – 13.7% Below BAU in 2012

Adopt an emissions reduction goal based on completed and currently planned conservation measures, in addition to implementation of all additional items in Exhibit C. This will require future prioritization of all of the items in Exhibit C.

D. Council Proposes Other Carbon Reduction Goal – TBD% Below BAU in 2012

Adopt an emissions reduction goal based on criteria other than what is stated in alternatives A through C.

E. Do Not Adopt a Carbon Reduction Goal

Significant Impacts:

If a goal is adopted, the Environmental Sustainability Department will partner with each department in their contributions toward meeting a carbon emissions reduction goal. The Sustainability staff can manage this task with existing resources as long as there are not significant changes to the current environmental strategic plan (Exhibit E).

Consequences of not taking the recommended action:

- The City will continue to incur growing costs associated with utilities (electricity, natural gas, and water) and vehicle fuel consumption.
- The City will lack formal direction from Council on its carbon emissions reduction targets.
- The City will miss an opportunity to proactively enact a carbon reduction plan before potential formal policy measures are passed down on a national, regional, or state level.
- The City will not earn Milestone 2 of the ICLEI: Local Governments for Sustainability process.

Recommendation:

Staff recommends that City Council adopt a 12% Below 2012 BAU emissions goal (Alternative B) and that direction is provided to begin identification of the carbon reduction items to pursue included in Exhibit C. Items identified should enable us to exceed our 12% goal as long as they are included during the spring, 2010 budget process. Staff also suggests that direction is given to research and pursue future, additional carbon reduction items which are financially prudent.

Exhibits (Attached):

Exhibit A - Related Meeting Minutes from the August 20, 2009 Work Session

Exhibit B - Completed / Planned and Potential Carbon Reduction Action Items

Exhibit C - Potential Carbon Reduction Action Items Only

Exhibit D - The Municipal Carbon Reduction Action Plan, July 2009 (available online at http://www.parkcitygreen.org/Documents/PCMC-Municipal-Carbon-Reduction-Action-Plan_8-14-0.aspx -OR- reference copy available in Sustainability Department)

Exhibit E – Environmental Strategic Plan

Exhibit A – Related Meeting Minutes from the August 20, 2009 Work Session

PARK CITY COUNCIL WORK SESSION NOTES SUMMIT COUNTY, UTAH AUGUST 20, 2009

Tyler Poulson, Environmental Sustainability Coordinator, directed Council's attention to Municipal Carbon Footprint Reduction Goals. Council reviewed the Municipal Carbon Reduction Action Plan in July and directed Staff to return with a formal recommendation of a carbon reduction goal for municipal emissions. Staff compared Greenhouse Gas Emission Reduction Goals for Park City to those set by local and national organizations. Staff recommended that Council discuss the municipal carbon reduction targets and adopt the "Low Hanging Fruit" municipal reduction, which represents a 6.4% reduction from Business as Usual (BAU) in 2012.

Ms. Foster explained the goals took into consideration some of the Johnson Controls programs. She noted some areas would decrease, but others would increase due to increased service levels projected over the next few years.

Mr. Hier asked whether the potential reductions and estimated costs and savings outlined in Table 2 were hard savings that would be reflected in operating budgets. Mr. Poulson explained the savings were a combination of energy, vehicle fuel, water savings, etc., and Staff sees the "low hanging fruit goal" as achievable by pursuing the no- and low-cost actions. Ms. Foster explained Staff did not recommend the medium cost goals because those funds were not presently budgeted. Staff clarified that implementation costs were fixed, upfront costs, with the savings accrued in subsequent years.

Mr. Hier requested additional documentation regarding the figures presented in Table 2 and Staff agreed to return to Council with that information. Ms. Simpson requested cost estimates for Goal B, 12% by 2012 and mid-range action items. Ms. Foster asked if Council was requesting a delay for further clarification of numbers. Council members indicated they were considering a combination of 12% by 2012 Goal and Medium Cost Implementation Actions.

Manager Bakaly noted this was a direction shift from Council's previous discussion to pursue low hanging fruit. Staff felt there were significant savings from pursuing the low hanging fruit now and considering more aggressive actions later. If Council's direction was to pursue medium cost actions, Staff should present additional information on the numbers so Council can understand the savings. Mr. Bakaly noted that would require prioritization for funding as well as Staff resources.

Exhibit B - Completed / Planned and Potential Carbon Reduction Action Items

Item #	Primary Resource Targeted	Carbon Reduction Action	Implementation Cost Figure (\$)	Implementation Timeframe	Annual Savings Estimates					Time for Nominal Payback Energy Savings Only (Years)	Estimated Lifetime for Upgrade (Years)
					Electricity kWh	Natural Gas Therms	Water (Kgal)	CO2e (tons)	Dollar Savings (Energy Only)		
1	Building Energy	Johnson Controls Upgrades Implemented in 2008 and 2009	Completed Item - \$1,273,277	Completed	668,948	54,550	2,549	1,051	\$99,138*	12.8	10-20+
2	Building Energy	Marsac Upgrades High-efficiency Lighting; Geothermal Heat Pump System; Efficient Temperature Regulation	Completed Item - Efficiency Upgrade Costs were Part of Entire Project	Completed	TBD	TBD	TBD	TBD	TBD	TBD	10+
3	IT - Building Energy	Computer Desktop Tower to PowerSave City-wide, After 1 hour	Staff Time	2.5 Days	41,360			44	\$3,185	Immediate	5+
4	IT - Building Energy	Computer Monitor to PowerSave City-wide, After 1 hour	Staff Time	2.5 Days	23,540			25	\$1,813	Immediate	5+
5	IT - Building Energy	Server Virtualization Reduce 28 current servers down to 4 servers	Budgeted - Approx \$35,000 - Part of Upgrade and Replacement Schedule	Spring 2010	78,164			83	\$6,018	5.8**	3+
6	Vehicle Fuel	5% Fuel Reduction Goal Eco-driving; Idle reduction; Improved Trip Planning; Acquisition of More Efficient Vehicles; Improved Vehicle Maintenance, etc.	Staff Time / Some Upgrade Costs / TBD - Behavioral and planning changes. Note that fuel reduction strategies are also being considered on their own apart from the Carbon Reduction Plan	Varies - <1 year in general				233	\$69,167	Immediate	5+

Exhibit B Cont... - Completed / Planned and Potential Carbon Reduction Action Items

Item #	Primary Resource Targeted	Carbon Reduction Action	Implementation Cost Figure (\$)	Implementation Timeframe	Annual Savings Estimates					Time for Nominal Payback Energy Savings Only (Years)	Estimated Lifetime for Upgrade (Years)
					Electricity KWh	Natural Gas Therms	Water (Kgal)	CO2e (tons)	Dollar Savings (Energy Only)		
7	Water	Irrigation Timers	\$29,000 - One-time cost for 200 customers	Summer 2010, if approved	16,597	46	7,000	18	\$1,306	22.2**	6+
8	Water	10% Increase in Water Rates - 2 to 4% residential - 5 to 8% commercial	Completed Item - \$5,000	Summer 2009	TBD	TBD	TBD	TBD	TBD	TBD	10+
9	Water	Landscape Water Checks	\$10,000 - One-time cost for 100 customers	Summer 2010, if approved	23,236	64	9,800	25	\$1,829	5.5**	7
10	Water	Water Budgeting	\$60,000 - One-time Cost - There will likely be some ongoing admin costs	Summer 2012, if approved	749,978	2,070	316,313	806	\$59,024	1**	10+
11	Water	Micro-hydro Power Turbines at the Quimm's WTP	Budgeted - \$230,000 for Phase I (40 kW) - Cost and Energy Estimates Subject to Change	Summer 2011 for Phase I of Turbines	262,800			278	\$20,236	10+**	10+
12	Water	Variable Frequency Drives/Soft Starts - Retrofit existing stations	Budgeted - \$40,000 - \$80,000 per station	Retrofits are in progress; est. one pump station per year through 2012	80,000			204	\$6,160	10+**	3+
13	Water	Raw Water Pipes - Using Raw Water for Irrigation and Snowmaking saves Treatment and Pumping Costs	Budgeting TBD - part of upgrade and replacement schedule	2012, Roughly 2 years for implementation	90,000			95	\$6,930	10+**	10+
TOTALS					2,034,623	56,730	335,662	2,862	\$274,806		
Notes for Carbon Reduction Table 1) Light green cells are either completed since 2007 or in the budget process to be completed as part of normal department business; non-highlighted line items are awaiting approval either as part of the Municipal Carbon Reduction Plan or otherwise. 2) There are numerous other potential energy savings projects, either known or unknown at this time, that may be technically and financially feasible before 2012. These additional items were not included due to some uncertainty or need for a pilot project before making part of a formal plan. These other potential items include idle-reduction technology for the Police fleet, water-saving technologies incorporated into Automated Meter Reading (leak detection), elimination of extraneous power consuming items, acquisition of more renewable energy resources, etc. *The Johnson Controls savings estimate (\$99,138) is the guaranteed annual savings figure for the project. Some financial estimates related to water savings were included in the Johnson Controls financial figure. **The payback time on items with two asterisks will likely be quicker than what's displayed since there are financial benefits, outside of just energy savings, that weren't fully accounted for in this process											

Exhibit C - Potential Carbon Reduction Action Items Only

Item #	Primary Resource Targeted	Carbon Reduction Action	Implementation Cost Figure (\$)	Implementation Timeframe	Annual Savings Estimates					Time for Nominal Payback Energy Savings Only (Years)	Estimated Lifetime for Upgrade (Years)
					Electricity kWh	Natural Gas Therms	Water (Kgal)	CO2e (tons)	Dollar Savings (Energy Only)		
3	IT - Building Energy	Computer Desktop Tower to PowerSave City-wide, After 1 hour	Staff Time	2.5 Days	41,360			44	\$3,185	Immediate	5+
4	IT - Building Energy	Computer Monitor to PowerSave City-wide, After 1 hour	Staff Time	2.5 Days	23,540			25	\$1,813	Immediate	5+
6	Vehicle Fuel	5% Fuel Reduction Goal Eco-driving; Idle reduction; Improved Trip Planning; Acquisition of More Efficient Vehicles; Improved Vehicle Maintenance, etc.	Staff Time / Some Upgrade Costs / TBD - Behavioral and planning changes. Note that fuel reduction strategies are also being considered on their own apart from the Carbon Reduction Plan	Varies - <1 year in general				233	\$69,167	Immediate	5+
7	Water	Irrigation Timers	\$29,000 - One-time cost for 200 customers	Summer 2010, if approved	16,597	46	7,000	18	\$1,306	22.2**	6+
9	Water	Landscape Water Checks	\$10,000 - One-time cost for 100 customers	Summer 2010, if approved	23,236	64	9,800	25	\$1,829	5.5**	7
10	Water	Water Budgeting	\$60,000 - One-time Cost - There will likely be some ongoing admin costs	Summer 2012, if approved	749,978	2,070	316,313	806	\$59,024	1**	10+
TOTALS					854,711	2,180	333,113	1,151	\$136,324	9 Months	5-10+
Notes for Carbon Reduction Table 1) There are numerous other potential energy savings projects, either known or unknown at this time, that may be technically and financially feasible before 2012. These additional items were not included due to some uncertainty or need for a pilot project before making part of a formal plan. These other potential items include idle-reduction technology for the Police fleet, water-saving technologies incorporated into Automated Meter Reading (leak detection), elimination of extraneous power consuming items, acquisition of more renewable energy resources, etc. **The payback time on items with two asterisks will likely be quicker than what's displayed since there are financial benefits, outside of just energy savings, that weren't fully accounted for in this process											

Exhibit E – Environmental Strategic Plan – Adopted January 2009

GOAL 1. Preserve and enhance the ecological systems and diversity of the City and, in turn, the Region

Objective	1.0	Reduce Municipal carbon & greenhouse gas emissions.
Objective	1.1	Reduce Municipal water consumption.
Objective	1.2	Reduce Park City's <i>community</i> CO2 emissions.
Objective	1.3	Reduce Park City's <i>community</i> water consumption.
Objective	1.4	Minimize liability and proactively address potential environmental issues
Objective	1.5	Complete environmental regulatory commitments

GOAL 2. Encourage the efficient use of all resources in order to ensure a future with a secure and sustainable energy supply

Objective	2.0	Develop General Municipal Building Efficiency Measures
Objective	2.1	Develop Internal Municipal Policies that encourage conservation
Objective	2.2	Increase Park City's community-wide recycling rates.
Objective	2.3	Increase utilization and visibility of renewable energy in Park City
Objective	2.4	Explore city-supported environmental sustainability programs for residents

GOAL 3. Encouraging environmental stewardship and protection of Park City's natural environment through sharing of environmental information with the community and active, meaningful community participation

Objective	3.0	Support local organizations that educate the public, schools, other jurisdictions, professional associations, business and industry about reducing global warming pollution.
Objective	3.1	Support discussions for transit options between Park City and
Objective	3.2	Strengthen the State Residential Energy Code through strongly advocating for state and national policies that:
Objective	3.3	Play an active role in environmental community education and outreach
Objective	3.4	Stay current on environmental initiatives, concepts & best practices
Objective	3.5	Encourage greater community participation in the creation of renewable energy projects in Park City

GOAL 4. Incorporate environmental considerations as an integral part in assessing growth management options, land use plans, transportation plans and development proposals.

Objective	4.0	Reduce community-wide energy consumption & reduce community-wide energy costs
Objective	4.1	Increase utilization of alternative transportation
Objective	4.2	Maintain air quality at current levels
Objective	4.3	Improve visibility of night sky
Objective	4.4	Pursue a regulatory role to increase energy efficiency in new construction as well as remodels

GOAL 5. Continue to review and investigate best practices that have the potential of substantially improving the environment

Objective	5.0	Ensure the Environmental Sustainability Plan keeps pace with technology, nation-wide trends and the community's collective interests
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**PARK CITY COUNCIL WORK SESSION NOTES
SUMMIT COUNTY, UT
DECEMBER 3, 2009**

Present: Mayor Dana Williams; Council members, Candace Erickson, Roger Harlan, Jim Hier, Joe Kernan, and Liza Simpson

Tom Bakaly, City Manager; Polly Samuels McLean, Assistant City Attorney; Marin Decker, Intern; Nate Rockwood, Budget Analyst; Ken Fisher, Recreation Manager; Jon Weidenhamer, Economic Development Manager; Rick Ryan, Captain; Matt Twombly, Project Manager; and Heinrich Deters, Project Manager

Myles Ivers and Daren Wilde, hot air balloon pilots; Tom Cammermeyer, Norwegian Outdoor Exploration Center; Brent Tippetts, VCBO Architect; Steve Brown, Millcreek Construction; Rob Sunderlidge, Horracks Engineering

1. Council questions/comments. Jim Hier indicated that he and Candace Erickson met with staff on the funding requests scheduled for review this afternoon. He also attended Chamber and HMBA meetings. With regard to the Park Silly Sunday Market discussion last week, he understood that Council directed staff to work on a five year contract and simultaneously work on a one year agreement, in the event the five year was not finalized in time. He also understood that the City would take on more responsibility to help program upper Main Street.

Liza Simpson reported that Black Friday on Main Street was very busy. Roger Harlan discussed a project built by Mountainlands Community Housing in Jeremy Ranch designed for families. The Racquet Club open house was well attended and he learned a lot. Mr. Harlan discussed Wasatch Back meetings hosted by UDOT. Joe Kernan stated that he attended the Summit County Council meeting where the appointment of Robert Jasper as the County Manager was announced.

2. Hot air balloons. Marin Decker explained that currently launchings and landings take place in the North 40 parking lot and the City was contacted by Myles Ivers and Daren Wilde to consider other locations for regular and pre-emergency landings within the City limits. These include City Park, Racquet Club, McPolin Farm, Park and Ride lot, and the Triangle and Talisker parcels off of Highway 40. Ms. Decker emphasized that the recommendation is only for temporary use and she described the area at the ice arena which may be suitable to use on a limited basis until the next phase of fields are built. There are conflicts with hot air balloons landing in residential areas and the Triangle and Talisker parcels are located away from homes but slated for development in the future.

Myles Ivers, resident and owner of Park City Balloon Adventures, explained that the landing sites are requested mainly for safety purposes and have been used by them

over the years. He asserted that at one time the City Council asked operators to use the Quinns Junction property which works better for landing than launching. There has been no damage to light poles at the Sports Complex and if damage occurs, they will pay for it. He believed the odds for conflicts with the hospital helicopter are slim and not an issue. The McPolin Farm field, for instance, is listed for emergencies which he defined. He believed complaints have decreased because of changes in their flight patterns, eliminating 15 and 30 minute flights, which resulted in a significant decrease in revenues but helped with land owner relations.

Daren Wilde, Morning Star Balloons, agreed with Mr. Ivers statements. He explained that they were asked by the Code Enforcement and Police Departments to provide a list of locations for pre-emergency situations. They are not looking for permanent spots but areas to land to prevent situations from becoming hazardous. He understood that having authorization to use these locations prior to emergencies eliminates the need to send Police or Code Enforcement Officers out. Callers could be advised that they have permission to use those locations and the vast majority of calls are people that are concerned. He and Mr. Ivers take extraordinary precautions to make sure they have permission to land in locations. The whole purpose of the request to the City was to allow them in certain situations, various locations to land so that there is no question from the public when they are used. The City has requested that they call Dispatch when traveling over the City although most of their flying is done in Snyderville Basin. He discussed eliminating the 30 minute ride which has the potential of decreasing revenues by \$1,000 per balloon per day which is a huge sacrifice. The FAA has very strict guidelines and he did not feel additional guidelines need to be put in place with regard to injury and damage. They are looking for the ability to operate safely in town.

Discussion ensued on the requirement to call Dispatch when landing in Park City and incidents filed over the past few months. Myles Ivers added that almost every complaint would have been eliminated if the Quinns Junction area was available which could become a more regular landing site. City Park, the McPolin Farm or Racquet Club would be considered emergency landing sites. The City Manager distinguished Quinns as including the Triangle Parcel and the 22 acres at PC Heights as a more regular landing site. The Mayor encouraged contacting Summit County for joint permission to use of the Triangle Parcel.

Tom Bakaly acknowledged the arguments of designating emergency landing sites but clarified that staff is not recommending this but rather recommending providing additional non-emergency landing sites and tightening this up with ordinance language. Joe Kernan stated that he is comfortable with this because it provides more options and clearer procedures, however, hot air balloon companies should be required to call Dispatch for every pre-emergency landing. Liza Simpson stated that she agrees with Mr. Kernan and could support an ordinance, but because of the low number of incidences, she felt the perceived problem is overblown.

Daren Wilde believed that problems have declined because they have decided to move out of the Park City area and to fly farther north. He and Mr. Ivers prompted the

improvements rather than any kind of restrictions placed on them and the credit was misplaced in the staff report.

The Mayor summarized that members are comfortable with working with the County and Boyer on the south Quinns Junction property and also feel comfortable with the North 40 parcel as a temporary non-emergency site. He has difficulty understanding the pre-emergency concept and Mr. Wilde described pushing a situation to an allowed area to avoid receiving a punishment for landing in an unauthorized location. This does not happen very often, but there may be a time it is needed. Myles Ivers interjected that he prefers landing in a parking lot as opposed to a street lane where it is permitted by ordinance in an emergency situation. He spoke about the police giving citations in front of guests. Contacting Dispatch was again discussed and Liza Simpson stated that rather than creating pre-emergency sites, she prefers working on better communication and establishing temporary landing zones. Mr. Wilde emphasized that checking in with the police is a fairly recent suggestion. The Mayor also expressed concern about the problems associated with creating pre-emergency sites and Police Captain Rick Ryan agreed.

Marin Decker explained that in order to obtain a business license an operator must show proof of insurance and staff is recommending some sort of permitting system with a picture ID. Messrs. Ivers and Wilde felt this is a good idea. Mr. Wilde explained that people mistakenly blamed balloonists in Wasatch County for damage to private fences and posting a bond was included in Heber's ordinance. Mayor Williams discussed potential damage to the artificial turf at the Sports Complex and Myles Ivers noted that they carry insurance. Polly Samuels McLean explained that if the City is providing permission to use its property, it can require bonding. Jim Hier felt it would be helpful to formalize a process which protects everyone. He personally loves to see balloons and believes they benefit our resort community. Tom Bakaly clarified that staff is not recommending use of the fields for launching and landing. Mr. Wilde indicated that they are more interested in the parking lots than the fields and the scope of the area of the Sports Complex area for use by balloonists was clarified.

3. Extraordinary funding requests review. Nate Rockwood explained that the budget policy provides that extraordinary requests for funding be reviewed every six months. Two requests were received in July but Council delayed consideration for another six months so any other new requests could be reviewed concurrently. Since that time, three additional requests were submitted for a total of five extraordinary requests including Arts Kids, Norwegian Outdoor Exploration Center, Park City Education Foundation, KPCW and Mountain Fellowship. Mr. Rockwood noted that there is a balance in the special service contract fund and the Boys and Girls Club refunded its grant. The special service contract committee was reassembled to evaluate each application and to recommend a funding amount. The number of kids served by Art Kids and the Norwegian School was brought up by Council member Roger Harlan and Director Tom Cammermeyer detailed the Norwegian School programs for students.

Jim Hier, committee member, discussed the evaluation of applications and the reasons why KPCW and Mountain Fellowship are not recommended for funding. All members expressed agreement with the recommendation. The Mayor invited public input; there was none.

4. Racquet Club presentation. Matt Twombly introduced Project Manager Steve Brown, Millcreek Constructing and Architect Brent Tippetts of VCBO. The design team includes staff, architects, and RAB members who have been working on schematic designs since last summer. Council provided direction to incorporate some amenities in the project and he encouraged members to review the presentation in terms of design, programming, meeting needs, layout, and future phases of the project. The project is currently in the MPD process before the Planning Commission.

Through illustration of a PowerPoint presentation, Mr. Tippetts pointed out the footprint difference of the current and proposed buildings which have similar parameters. The existing outdoor amenities will remain including the tennis courts, tennis bubble, and outdoor pools. The parking configuration is similar.

He reviewed the floor plans. The main floor has two elevations because of a four foot grade transition from the leisure pool to the gymnasium. The reception area provides more control for front desk personnel and he described offices, the party room and other uses. He explained the lounge area which can be used as a spectator area for tennis. He pointed out the bouldering/climbing area, teen game room, and locker rooms. The current courts are under-sized and the new courts will be regulation. There is also a new storage room.

Mr. Tippetts pointed out that the upper level accommodates the running track, cardio exercise equipment and a glass wall separates the fitness and tennis areas. The level contains studios, mechanical space and the track provides open visibility to the tennis court and gymnasium. Jim Hier questioned the open space feature; Mr. Tippetts explained that it provides natural light to the main level which is considered a sustainability element. The sizes of the studios and the game room were discussed. In response to a question from Joe Kernan about public gathering places, Mr. Tippetts pointed out several areas. He displayed and explained elevations as they relate to interior space and relayed that green elements include a planted green roof, drought tolerant plants, day-lighting, evaporative cooling, recycled materials, solar, energy envelope design, and automated low energy lighting. Joe Kernan was pleased to see new recreational features incorporated in the design and the Mayor asked that the green systems be tracked and measured.

5. Comstock sidewalk. Heinrich Deters explained that on June 18, 2009, the City Council directed staff to construct a sidewalk on the east side of Comstock Drive and staff is seeking to reaffirm the decision. On October 1, 2009 during work session, the sidewalk was again discussed and Council received public input and asked staff to return with additional information on three items, including (1) confirmation that the sidewalk will fit into the existing pavement section, (2) the cost estimate for widening the

Kearns Blvd. intersection to extend the at-grade striped pedestrian lane, and (3) improving the bus stop at Comstock. He referred to public comments included in the meeting packet collected at an October 28, 2009 open house mainly for the Comstock tunnel project, but the sidewalk and traffic calming measures were also addressed.

Consultant Rob Sunderlidge explained that Horracks was directed to implement some of the traffic calming measures from the walkability study, provide an opportunity for a safe pedestrian way, and avoid impacts to any of the existing residences. He displayed and explained Option A, which includes two 11 foot travel lanes, maintains the parking along the west side and provides 13 feet of excess area open for future design. The 13 foot area is currently paved and the travel lane introduced at the intersection at Kearns Blvd. leaves eight feet as opposed to 13 feet of excess area. He explained that Option A contemplates a sharrow which designates the travel lane for pedestrians and bicycles.

Option B includes a sidewalk, parking and separate four foot bike lanes and would have zero to one foot impacts on residences in the corridor. In response to a question from Joe Kernan, Mr. Sunderlidge explained that staff believes that a path of some sort within the 13 foot strip is recommended but there is no consensus on details and staff is looking for direction on project parameters. He added that small measures may need to be taken to align grades, but Option A does not contemplate disturbing landscaping, even within the City's right-of-way.

Heinrich Deters pointed out the positive ratings from studies regarding the effectiveness of sharrows. Staff was directed to explore widening the intersection at Kearns to continue the at-grade pedestrian area which is not recommended. He pointed out that improvements to the bus stop are supported by the transit staff but not to the extent of installing a pull-out lane. The Mayor invited public input.

Mark Olsen, Comstock Drive, stated that we've all heard a lot about walkability but how about liveability for the residents on Comstock Drive. Street parking has already been taken away on the east side of the road and he would like to see the road left alone. Mr. Olsen suggested that project funding should be used instead for speeding enforcement. Give the neighborhood the parking back. Plowing sidewalks could be a hassle and people walk in the middle of the street. There is no place for guests to park. Mr. Olsen felt that people living on the street should be given consideration but if a sidewalk is constructed, he urged hiring local contractors.

Heinrich Deters clarified that the plan does not contemplate removing parking from the west side.

Carol Potter, Mountain Trails Foundation, Share the Road, and WALC, thanked staff for all of the hard work devoted to this project. She supports Option A which is part of a City-wide plan and expressed that liveability and walkability go hand-in-hand.

Kathy Herschberg, Comstock Drive, stated that she has no parking in front of her house. She relayed that it has been her observation that the kids are walking where they are supposed to be walking but adults walk in the middle of the street. She questioned how the sidewalk will be kept free of snow. Liveability is an important concept for the neighborhood and if *it ain't broke, don't fix it*.

Jody Woods, Prospector resident, felt that Option A can work and suggested that a multi-use lane for pedestrians and bicyclists be considered within the 13 foot strip eliminating the need for a designated bike path.

Kyle Jesson, Comstock resident, emphasized that this is a short-term solution to a long-term problem, however if the sidewalk is constructed it is very unlikely that it will be removed. He prefers Option A because it impacts the fewest amount of people in the shortest amount of time. He encouraged monitoring temporary measures before the sidewalk is installed and the intersection should be addressed.

Goldy Travis, resident, believed that the signal at Kearns and Comstock created commercial traffic. She recommended providing parking on both sides of the street, maintaining the striping and manning the area with police for speed enforcement.

Nani Hogle, Prospector resident, expressed that Comstock should be left alone. Marking the roadway for pedestrian lanes is effective.

Kathy Kahn, WALC, views Comstock as dynamic because it has changed over the years as the community has evolved. Comstock has been identified as part of the walkability spine which is very important. She understood that residents are reluctant to accept changes but it is for the greater good of the community and she supports Option A.

Joe Kernan indicated his support of Option A but hoped there is some way to increase parking. Jim Hier felt 13 feet provides enough room for a five foot sidewalk and allows parking on the east side of the street. Mr. Deters acknowledged that it is a possibility. Mr. Hier pointed out that parked cars calm traffic and the plan could be a compromise for the neighborhood. Liza Simpson agreed and would like to see an option for parking on the east side when Option A returns. Matt Twombly discussed potential problems with snowplowing with parked cars. The Mayor felt that the same problem will occur with the sidewalk. Jim Hier noted that the same overnight parking regulations apply for snow removal here. Roger Harlan stated that he does not want the width of the sidewalk compromised because of the number of children using it as a route to school and safety trumps other considerations. Mayor Williams summarized that members are supportive of Option A and the City Manager added that staff will look at the parking issue.

Prepared by Janet M. Scott, City Recorder

**PARK CITY COUNCIL MEETING
SUMMIT COUNTY, UTAH
DECEMBER 3, 2009**

I ROLL CALL

Mayor Dana Williams called the regular meeting of the City Council to order at approximately 6 p.m. at the Marsac Municipal Building on Thursday, December 3, 2009. Members in attendance were Dana Williams, Candace Erickson, Roger Harlan, Jim Hier, Joe Kernan, and Liza Simpson. Staff present was Tom Bakaly, City Manager; Polly Samuels McLean, Assistant City Attorney; and Katie Cattan, Planner.

II COMMUNICATIONS AND DISCLOSURES FROM COUNCIL AND STAFF

None.

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

None.

IV WORK SESSION NOTES AND MINUTES OF MEETING OF NOVEMBER 12, 2009

Roger Harlan, "I move approval of the work session notes and minutes of the meeting of November 12, 2009". Joe Kernan seconded. Motion unanimously carried.

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

1. Consideration of a Resolution Declaring Park City as a "Concussion Aware Town" and proclaiming December 6 through December 12, 2009 as "The Grateful Head Project Week" in Park City, Utah – The Mayor read the Resolution and presented a signed version to the Leadership Class. Tim Preston detailed program activities with various segments of the community. Roger Harlan, "I move approval of the Resolution declaring Park City as a Concussion Aware Town". Liza Simpson seconded. Motion unanimously carried.

2. Consideration of an Ordinance amending the Land Management Code regarding Master Plan Developments in the HR-2 District – The Mayor reported that this matter is still before the Planning Commission but opened the public hearing; there was no input. Joe Kernan, "I move to continue Item 2 to January 28, 2010". Liza Simpson seconded. Motion unanimously carried.

3. Consideration of an Ordinance approving the Glory Hole Subdivision, located at 518 Deer Valley Drive, Park City, Utah – The Mayor opened the public hearing and there were no comments from the audience. Roger Harlan, "I move to continue to a

date uncertain". Liza Simpson seconded. Motion unanimously carried.

4. Consideration of an Ordinance approving a plat amendment for 1150 Deer Valley Drive, Snow Country Condominiums, Park City, Utah – The Mayor opened the public hearing and no comments were rendered. He asked for a motion to continue to a date uncertain. Roger Harlan, "I so move". Joe Kernan seconded. Motion unanimously carried.

5. Consideration of an appeal of the approval of a Steep Slope Conditional Use Permit for 108 Park Avenue granted by the Planning Commission on October 14, 2009 – appellant Carol Rixey – Mayor Williams asked members if they are comfortable accepting public input. Joe Kernan, "I move we open the scope of the appeal to include public input". Liza Simpson seconded. Motion unanimously carried. Members had no ex parte communications to disclose and the Mayor described the process for the appeal.

Planner Katie Cattan pointed out the location of the 108 Park Avenue lot and Carol Rixey's Alaska House by way of a PowerPoint presentation. There is 23 feet between the edge of the curb to the property line and the home is situated on a lot that is 50 feet wide, the shortest point being 33 feet deep and the longest 52 feet deep. Part of the Alaska House's roof encroaches over the property line. A ten foot front yard setback, ten foot rear yard setback, and five foot side yard setbacks exist and within that area, the building footprint is created. In this instance, it is unique because the configuration is not typical. She explained that the owner applied for a variance through the Board of Adjustment but it was denied. The applicant utilized the exception for bay windows which exempts bay windows (two feet deep but no wider than ten feet) from the footprint calculation. She pointed out her error when the project was before the Planning Commission which was caught by the appellant. Initially two of the bays in the garage did not have windows but the architect has redesigned them so they are compliant.

Ms. Cattan pointed out that the design included angled walls which are not typical in Old Town and was an issue during the Historic District Design Review. The architect agreed to change the design which did not have to return to the Planning Commission for approval. The applicant applied for a conditional use permit on August 15, 2006. There were problems with the original plat because the recorded plat was different from the survey and a plat amendment was needed. She stated that this application has been vested since August 2006, however, some provisions of the new LMC were applied by limiting the structure to three stories but the applicant was not required to step the top façade back ten feet. The project is being reviewed under the previous LMC. She explained that with regard to the issue of drainage in the appeal, the owner hired an engineer to analyze the site before construction and the City Engineer has signed off. Snow-shedding has been approved by the Building Department. The garage was also cited in the appeal and the City Engineer has certified that the garage has adequate depth and width. The bay windows in the garage have been modified so the entire project is compliant with the LMC.

Architect Kevin King, agent for Carol Rixey, expressed that the bay windows are not compliant and the garage is not a 10 x 20 foot space and is substandard. He read the definition of a bay window emphasizing that it cannot be directly supported by the foundation which is the case here. Since they are not bay windows they are encroaching into the back yard setback. He questioned the vesting, pointing out the denial by the Board of Adjustment. The project cannot be vested if the application is incomplete because a topographic survey was missing until a later date. The LMC should be enforced to preserve the historic character and context of the area. Mr. King requested that this application be remanded to the Planning Commission and reviewed in accordance with the existing LMC to create a better design that doesn't have to rely on bending the rules in order to get it approved.

The Mayor stated that he didn't see vesting identified as a concern in the appeal and Ms. Cattan clarified that the appeal speaks to which LMC version the project is applied under. Kevin King added that the owner created his own variance by including the bay windows in the garage when they don't meet the definition of the LMC. The Code should be defined better.

David White, architect for owner, pointed out that the areas called bays in the rear are not supported directly by the foundation underneath the walls or the windows. In no place on the lower floor does any of the foundation or exterior walls project over the setback line. They are in fact bay windows because they project beyond the foundation walls. The Planning Commission held three meetings on the steep slope CUP process and at each meeting additional information was requested including elevations, cross-canyon views and a comparison of the square footage of the surrounding houses. At the third meeting, the Commission seemed to be satisfied because they unanimously approved the project. Mr. White stated that he is the second architect on the project and was not involved in the variance process.

Greg Vagstadd, property owner, explained that the application was submitted in August 2006. Snow shed agreements and survey errors were resolved which was accomplished by June 2006. The variance approach was unsuccessful and an amendment to the plat was pursued and approved. He acknowledged that the process has been lengthy and they have done all they can to mitigate impacts on neighbors.

Kevin King asked when the new project was submitted and Ms. McLean explained that once an application is deemed complete by staff, it is vested which is August 15, 2006. As long as the application remains active, the vesting date remains valid. Mr. King indicated that nothing happened in 2007 and Ms. Cattan explained that the survey was completed, the plat amendment took place and there was regular communication with the owner and staff. Ms. McLean explained the notice process for closing an application because of inactivity.

Ruth Meisma, resident, discussed in detail her input not getting in the Planning Commission packet. She felt that graphically imposing the new structure in a photograph would be helpful in the review process to evaluate visual context with

surrounding historical buildings. However, the Planning Commission did not feel the Main Street view was relevant which she feels is in conflict with the LMC and the General Plan. She explained that she presented her idea to the HPB on requiring applications to provide in-fill visual information because cross-canyon or streetscapes may not be adequate. The Mayor asked for clarification on her comments relating to 108 Park Avenue and Ms. Meisma indicated that she doesn't know what the project will look like once it is built.

Discussion ensued on the definition of bay windows and Mr. White explained working with the City Engineer to ensure that the garage dimensions are compliant. For the benefit of Joe Kernan, David White described the setbacks on neighboring buildings and on this project. Liza Simpson stated that she attended the Planning Commission meetings where members expressed that they didn't need a Main Street view, suggested by Ms. Meisma and there is nothing in the appeal that compels her to remand the project to the Planning Commission. Roger Harlan agreed. Jim Hier stated that he does not find that the Planning Commission erred in any way. The concept of having additional views from Main is not specific to the appeal points or required at this point.

Roger Harlan, "I move that we deny the appeal of the approval of a steep slope conditional use permit for 108 Park Avenue granted by the Planning Commission on October 14, 2009". Liza Simpson seconded. Motion unanimously carried.

VI ADDITIONAL DISCUSSION – AGENDA ITEMS

VII ADJOURNMENT

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

MEMORANDUM OF CLOSED SESSION

The City Council met in closed session at approximately 3 p.m. Members in attendance were Mayor Dana Williams, Candace Erickson, Roger Harlan, Jim Hier, Joe Kernan, Liza Simpson; and Council-elect Alex Butwinski and Cindy Matsumoto. Staff present was Tom Bakaly, City Manager; Tom Daley, Deputy City Attorney; and Mark Harrington, City Attorney. Jim Hier "I move to close the meeting to discuss property". Liza Simpson seconded. Motion carried unanimously. The meeting opened at approximately 3:30 p.m. Jim Hier, "I move to open the meeting". Roger Harlan seconded. Motion unanimously carried.

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

Prepared by Janet M. Scott

Janet M. Scott, City Recorder

City Council Staff Report



Subject: FY 2009 Audit Report
Authors: Lori W. Collett, Finance Manager
Chelese M. Rawlings, Accounting Manager
Date: December 17, 2009
Type of Item: Administrative

FINANCE DEPARTMENT

Summary Recommendations:

City Council should formally accept the audit. No other action is required.

Description:

Topic: Audit report for the Fiscal Year Ended June 30, 2009.

Background: City of Park City Comprehensive Annual Financial Report (CAFR) and Independent Auditor's Report

The CAFR includes all funds of the City of Park City (City) and is presented in four sections: Introductory, Financial, Statistical, and Single Audit, Internal Control and Compliance Reports.

The Introductory Section contains a letter of transmittal, a directory of principal officials and an organizational chart of the City. The Financial Section contains management's discussion and analysis (MD&A), the basic financial statements, notes to the financial statements, individual fund statements for which data are not provided separately within the basic financial statements, as well as the independent auditor's report on these financial statements and schedules. The Statistical Section includes selected financial and demographic information, generally presented on a multi-year basis. The Single Audit, Internal Control and Compliance Reports include the independent auditors' reports on internal control and compliance as required by *Government Auditing Standards*, Office of Management and Budget Circular A-133, *Audits of States, Local Governments, and Non-Profit Organizations*, and state compliance as required by the *State of Utah Legal Compliance Audit Guide*.

The CAFR is the major document used to communicate the City's financial condition. It is distributed to various bond-rating agencies, investors in City debt and the State Auditor for use in evaluating City finances. The first two basic financial statements, the Statement of Net Assets (Page 23-24) and the Statement of Activities (Page 25-26), now present information on a government-wide, full-accrual accounting basis which reflect the overall financial position of the City and its various funds, not just the amounts available for budgetary purposes. Fiscal operations in the government-wide statements are organized into two major activities: governmental and business-type.

Fund information is also presented for major funds individually and nonmajor funds combined in a single column in the basic financial statement (Pages 29 through 41).

Because the focus is so different between fund statements and government-wide statements, a reconciliation between the two types of statements is necessary to understand how the numbers differ. Such reconciliations are provided on pages 30 and 32. Comparisons of “budget-to-actual” results for the General Fund are presented on Page 33.

Staff suggests attention be focused on the MD&A (Pages 4 through 21) and the notes to the basic financial statements (Pages 43 through 70). The notes to the basic financial statements in the Financial Section provide required detailed disclosures and a description of the financial statements.

The Statement of Net Assets (Page 23-24) may serve as a useful indicator of a government’s financial position. The City had positive net assets of \$230.1 million at fiscal year end. The largest portion of the net assets, \$140.8 million, represents the investment in capital assets. Restricted net assets of \$25.6 million are resources that are subject to external restrictions on how they may be used. The remaining \$63.7 million in net assets are unrestricted and may be used to meet the City’s ongoing obligations. Again, this is an overall financial position indicator and is not the amount of current resources available for budgetary purposes.

Looking at results on a fund basis (Page 29), the City’s governmental funds reported combined ending fund balance of \$66.4 million, a decrease of \$2.5 million compared to the beginning of year fund balance amount. A transfer of \$2.8 million was made from the General Fund to the Capital Improvements Fund to be spent on capital projects in accordance with the City’s budget.

Utah State code establishes a 5.0 percent minimum (\$1,250,584) and an 18.0 percent maximum (\$4,502,103) limit to the amount that may be accumulated as the fund balance in the General Fund. As of June 30, 2009 the unreserved, undesignated fund balance of the General Fund was \$3,747,296 and was \$754,807 below the 18.0 percent limit. The unreserved, undesignated fund balance increased by \$75,164 in 2009 as compared to a decrease of \$941,883 in fiscal year 2008.

General Obligation Bonds - Audit of Bond Expenditures

Resolution No.16-98, *Resolution to Appoint a Citizens Committee to Advise the City Council on Community Priorities for Open Space Acquisition, Methods to Permanently Preserve Open Space, and to Account for Expenditure of Open Space Bond Proceeds should Voters Approve a General Obligation Bond to Preserve Open Space*, requires the City to annually audit bond expenditures and report the results of such audit to the public.

Single Audit Report

As a recipient of Federal and State funds, the City is responsible for ensuring that an adequate internal control structure is in place in order to maintain compliance with applicable laws and regulations related to the purpose of the funds.

As a part of the City’s single audit, tests were made to determine the adequacy of the internal control structure, including that portion of the structure related to Federal

financial assistance programs, as well as to determine that the City complied with all applicable laws and regulations. The results of the City's single audit for fiscal year 2008-09 indicated no instances of material weaknesses in the internal control structure or violation of applicable laws and regulations.

Comments from the City's Audit Firm of Wisan, Smith, Racker & Prescott LLP

The auditors identified no major improvement areas or areas involving material weakness in the operations or internal control structure of the City.

Consequences of Not Taking Recommended Action: The audit must be approved and accepted by Council by December 31, 2009. Failure to approve the audit would make Park City Municipal non-compliant under Utah State Law.

City Council Staff Report



Author: Todd Touchard, Jon Oldam
Subject: LOWER SILVER CREEK RAW WATERLINE
PROJECT, CONSTRUCTION ENGINEERING MANAGEMENT
AND INSPECTION CONTRACT
Department: Public Works
Date: December 17, 2009
Type of Item: Administrative

Summary Recommendations:

Staff recommends Council authorize the City Manager to execute a Professional Service Agreement, in a form approved by the City Attorney, with Stantec Consulting Inc. for the Construction Engineering Management and Inspection of the Lower Silver Creek Raw Waterline Phase Project in an amount of \$113,746.

Description:

Water Strategic Plan: Source Strategies & Policies

- Maximize the availability of Park City's water from the Rockport Importation project

Topic:

Park City Raw Water Infrastructure Project for the Lower Silver Creek Phase of the raw water line from Promontory to Quinn's Junction Water Treatment Plant. The three segments of this raw waterline are as follows: Promontory Phase, Silver Creek Phase, and Quinn's Phase.

Background:

Design of the raw waterline from the Signal Hill reservoir to proposed location of new treatment plant began in the fall of 2008. Stantec Consulting, Inc. was contracted to provide design, environmental, and engineering evaluation services. The raw waterline was broken into three phases. Each phase has a unique set of issues that controls the schedule to complete the design.

This project includes the construction of a new 24" to 28" High Density Polyethylene Pipe (HDPE) water line approximately 8,200 feet in length. The project will traverse Lower Silver Creek and an area impacted by hazardous materials which will require special environmental considerations.

Construction management and inspection is required for all construction projects. The inspector verifies contractor compliance with construction documents. The construction manager (CM) coordinates all project paperwork between the contractor and the owner

and engineer. The CM verifies contractor pay requests, prepares change orders, and prepares non-compliance notices among other tasks discussed in detail in the attached Scope of Work. For this project, the CM and inspection work will be performed by the same individual which provides some cost savings.

For additional reference, the attached Project Matrix shows all of the water projects for this construction season and the corresponding contracts and Professional Services Agreements (PSA's). With all of the construction contracts and PSA's being brought to Council for Authorization, Staff hoped the matrix could be useful in seeing the big picture of water projects.

Analysis:

The City's purchasing policies exempts professional service contracts from any requirement for competitive bidding. According to this policy contractors are chosen by selecting the firm whose experience, capabilities, and past performance best meet the needs of the project. The selection committee, comprised of Public Works, Engineering, Building, Snyderville Basin Reclamation District, and other representatives, used the following criteria as guidance in evaluating the RFP's:

- Experience with applicable construction of project: membrane treatment plant, HDPE pipe, raw water lines, ductile iron pipe, directional drilling, etc
- Knowledge of local regulations: Park City Standards, MRWSSD, Promontory, Summit County Soils Ordinance, Wetlands, DDW, Federal, American Water Works Association (AWWA), American Public Works Association (APWA).
- Cost effectiveness in providing the desired services/product
- Quality of example daily reports and logs, process of providing service, organization
- Experience for with type of construction, availability of staff, ability to be responsive

Ten consultants submitted Statements of Qualifications for the RFP. The cost of construction management and inspection had the following ranges:

- Construction Management: \$189/hr to \$90/hr
- Inspection: \$125/hr to \$60/hr

Consultant Costs

Consultant	Construction Manager (per hour)	Inspector (per hour)	Clerical (per hour)	Mileage (per mile)
Alliance Engineering	\$105	\$65	\$40	None
Epic Engineering	\$117	\$63	\$45	\$0.55
Carollo	\$189	\$125	\$125	\$0.49
MWH	\$110	\$67	\$78	\$0.55
Stanley Consultants	\$105	\$78	\$67	\$0.85
Stantec Consultants	\$100	\$83	\$70	\$0.50
Gilson Engineering	\$95	\$60	\$45	\$0.58
SCI	\$90	\$72	\$90	\$1.00
HDR	\$134	\$112	\$90	\$900/month
Bowen Collins & Assoc.	\$96	\$96	\$60	\$0.75

Based on the selection criteria, the committee unanimously agreed to recommend Stantec Consulting Inc. for inspection services for this project. Their inspector, Steve Yorgason has specific experience working on similar projects, including several projects for Park City in the past 10 years.

Staff has provided the Scope of Work and negotiated the fee with Stantec Consulting Inc. This is included as Addendum A in the Professional Services Agreement and is an amount of \$113,746. Staff feels that the fee is usual and customary with projects of this type and scope (\$1.8 million construction cost).

Department Review:

This staff report has been reviewed by Public Works, Legal, and City Manager.

Alternatives:

A. Approve the Request:

Staff recommends Council authorize the City Manager to execute an Agreement, in a form approved by the City Attorney, Stantec Consulting Inc., for the Construction Engineering Management and Inspection in an amount of \$113,746.

B. Deny the Request:

Council could deny Staff's request. Denying the request would delay the design of the time-critical project as described above.

C. Continue the Item:

Council could continue the request. Continuing the request would delay the design of the time-critical project as described above.

D. Do Nothing:

Staff does not recommend this alternative. Doing nothing would also delay the design of the time-critical project as described above.

Significant Impacts:

The fee associated with this construction management PSA is included in the project in the approved FY2010 CIP budget.

If Council does not authorize the execution of the Agreement with Stantec, the delivery of the raw water to the new treatment plant will be delayed. If Council authorizes the PSA, Park City will be able to import raw water to the treatment site by summer of 2010.

Recommendation:

Staff recommends Council authorize the City Manager to execute an Agreement, in a form approved by the City Attorney, with Stantec Consulting Inc., for the design of the Park City Raw Water Infrastructure Project Design in an amount of \$113,746.

Project	Task	Contractor/ Consultant	Contract/ Agreement Authorized by Council?	Amount
PCWIP				
1. Promontory	a. Design b. Construction Mgmt/Inspection c. Construction (2009)	a. Stantec b. MRWSSD c. Counterpoint	Y In Progress Y	\$460,610 (plus \$338,260) Hourly rate (\$75/hr) \$1,433,884
2. Quinn's	a. Design b. Construction Mgmt/Inspection c. Construction (2009)	a. Stantec b. BCA c. Allied Construction	Y Y Y	\$460,610 (plus \$338,260) \$89,792 \$2,183,495
3. Lower Silver Creek	a. Design b. Construction Mgmt/Inspection c. Construction (2009)	a. Stantec b. Stantec c. BD Bush	Y N N	\$460,610 (plus \$338,260) \$113,746 \$1,933,821
4. Phase 2, 3, 4	a. Preliminary Design Construction begins 2010	a. Stantec	Y	\$460,610 (plus \$338,260)
Judge Tunnel Waterline	a. Preliminary Design Construction begins 2010	a. Stantec	Y	\$460,610 (plus \$338,260)
Fairway Hills Finished Waterline	a. Design b. Construction Mgmt/Inspection c. Construction (2009)	a. BCA b. Alliance	Y Y	\$78,000 \$39,115 \$573,011 (estimate)
Water Treatment Plant	a. Design b. Construction Mgmt/Inspection c. Construction (2009/2010)	a. Carollo b. Not chosen	Y	\$795,000 (plus \$124,000) \$8,100,000 (estimate)
Boothill Transmission Line Phase 2 and 3	a. Design b. Construction Mgmt/Inspection c. Construction (2009/2010)	a. BCA b. City Staff (ph2), Stanley (ph3) c. Granite Construction(2009)	Y Y Y	\$72,600 \$29,410 (phase 3) \$500,000 \$766,000 (2010 estimate)
Hillside Waterline	a. Design b. Construction Mgmt/Inspection c. Construction (2009)	a. BCA b. Ward Engineering c. Granite Construction	Y Y Y	\$22,300 \$101,840
HR Loop Rd Irrigation Waterline	a. Design b. Construction Mgmt/Inspection c. Construction (2009/2010)	a. Jack Johnson b. City Staff	NA	 \$337,814 (estimate)

PARK CITY MUNICIPAL CORPORATION SERVICE PROVIDER/PROFESSIONAL SERVICES AGREEMENT

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 Stantec Consulting 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 "Addendum A" and incorporated herein (the "Project"). The total fee for the Project shall not exceed **113,746 dollars.**

2. TERM.

The term of this Agreement shall commence on the date of execution on this Agreement and shall terminate on December 31, 2010 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 “Addendum 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 negligent performance or failure to perform any aspect of this Agreement; provided, however, that if such claims are caused by or result from the concurrent negligence of the City, its agents, employees, and officers, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the Service Provider; and provided further, that nothing herein shall require the Service Provider to hold harmless or defend the City, its agents, employees and/or officers from any claims arising from the sole negligence of the City, its agents, employees, and/or officers. The Service Provider expressly agrees that the indemnification provided herein constitutes the Service Provider's limited waiver of immunity as an employer under Utah Code Section 34A-2-105; provided, however, this waiver shall apply only to the extent an employee of Service Provider claims or recovers compensation from the City for a loss or injury that Service Provider would be obligated to indemnify the City for under this Agreement. This limited waiver has been mutually negotiated by the parties, and is expressly made effective only for the purposes of this Agreement. The provisions of this section shall survive the expiration or termination of this Agreement.
- B. No liability shall attach to the City by reason of entering into this Agreement except as expressly provided herein.

8. **INSURANCE.**

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

- A. General Liability insurance written on an occurrence basis with limits no less than 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 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.

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

Address:

Tax ID#: _____

Signature

Printed name

Title

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

ADDENDUM "A"

SCOPE OF SERVICES

Lower Silver Creek Raw Water Line Construction Services Scope of Work

- 1.1 Coordinate with Contractors, Park City personnel, utility companies, and Summit County as required. Stantec will be available to respond to questions raised by these entities and coordinate responses with the City and DESIGN ENGINEER as required.
- 1.1.1 Dispute Resolution- Make recommendations and implement procedures for reducing the likelihood of disputes and claims. Assist CITY in gathering applicable data, reviewing CONTRACTOR'S documents, substantiating disputes or claims, and resolving construction disputes. Make recommendations for Alternate Dispute Resolution methods, as required.
- 1.2 Pre-Construction Meeting. Stantec will coordinate and conduct a pre-construction meeting with the selected Contractor and Park City.
- 1.3 Construction Review. Monitor the quality of construction, and assist in guarding the PROJECT against defects and deficiencies in the work of the CONTRACTOR. Coordinate third-party inspections and any required special inspections and review these inspection reports. Review the work for compliance with the contract documents. The CONSTRUCTION ENGINEERING MANAGER will maintain daily reports/field logs detailing the progress of the work, manpower and equipment assigned to the PROJECT, and schedule of activities. Reject work and transmit to CITY and CONTRACTOR a notice of nonconforming work when it does not conform to the requirements of the contract documents. Maintain a daily diary of events at the jobsite, including but not limited to the following: CONTRACTOR and subcontractor's personnel and equipment, observed delays and causes, weather conditions, daily activities and progress by stationing, data relative to claims for extras or deductions, material received on site, and test results.

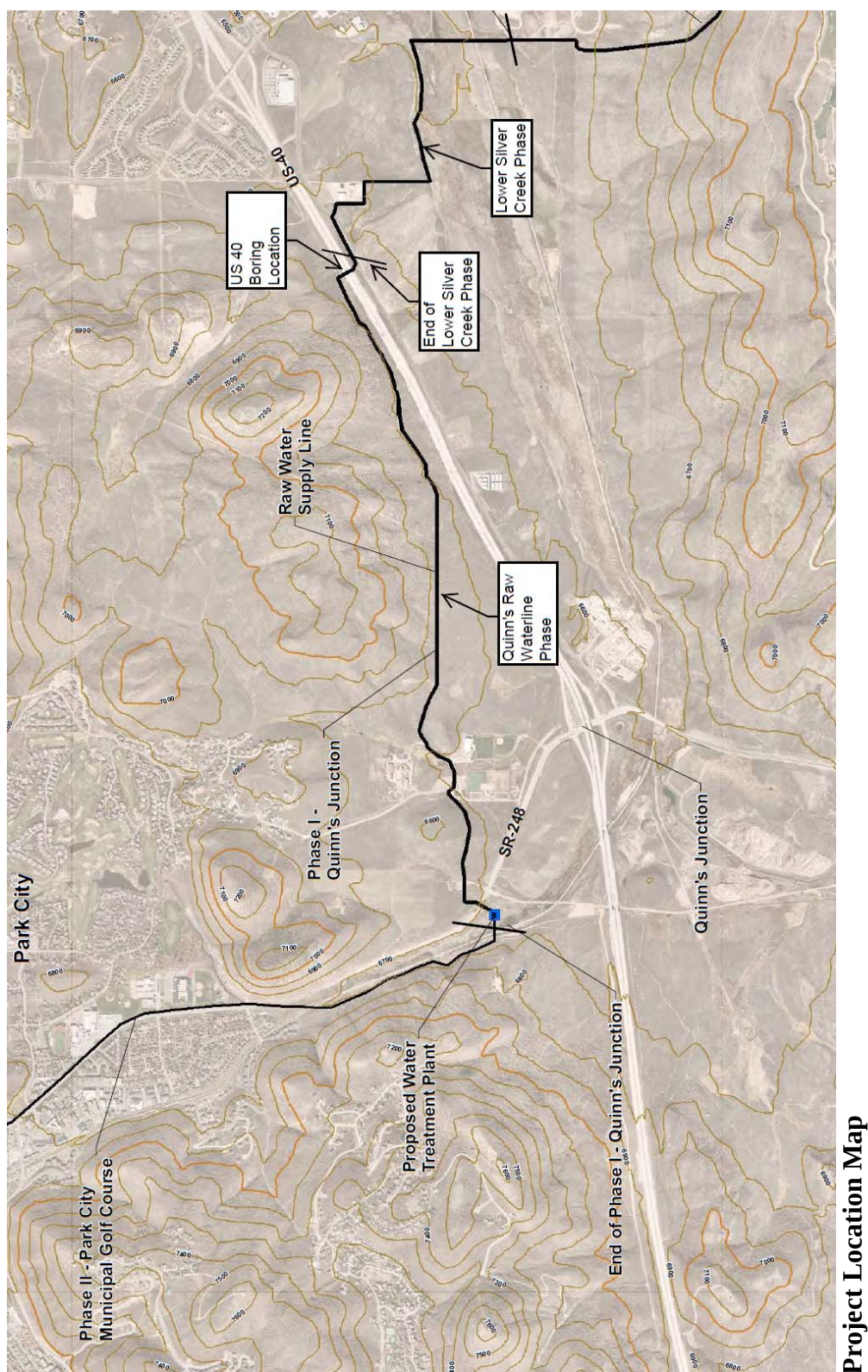
Review the required permits, bonds and insurance obtained by CONTRACTOR and OWNER. Monitor contractor activities to oversee that the conditions of permits are adhered to by the CONTRACTOR. Such action by CONSTRUCTION ENGINEERING MANAGER shall not relieve the CONTRACTOR of its responsibility to comply with the provisions of the Contract Documents. Provide onsite inspectors certified in erosion and sediment control during the riparian area crossing. Provide periodic observation by wetland specialist as well as personnel for contaminated soil management oversight.

- 1.3.1 Full Time Construction Review. Stantec has estimated a 12-week construction time period with a 40 hour per week construction review effort, including travel time and daily

- reports. Our representative will be on-site to observe and document the construction progress to substantial completion. Daily construction logs will be prepared and submitted to Park City.
- 1.3.2 Part Time Construction Review. Stantec has estimated a 4-week construction time period with a 24 hour per week part time construction review effort, including travel time and daily reports. Our representative will be on-site to observe and document the work to final completion.
- 1.4 Weekly Construction Meetings. Stantec will conduct weekly construction meetings with Park City and the Contractor.
- 1.5 Stantec will coordinate submittal review between the Contractor, Design Engineer, and Park City. Submittals will be delivered to the Design Engineer and Park City for comments. Stantec will compile and relay the comments to the Contractor. Stantec will create a submittal log and track the completion status of the submittals in the weekly construction meeting.
- 1.6 Respond to Requests for Information (RFI's). All questions from the Contractor will be required to be submitted in writing. Stantec will interpret the construction documents, consult with Park City and the Design Engineer, and coordinate a written response to each RFI. An RFI log will be created and updated in the weekly construction meeting.
- 1.7 Prepare Change Orders. Stantec will prepare change orders for additions to or reductions from the work, as required.
- 1.8 Prepare a Photo Log. Stantec will take photographs at the beginning of the project before construction begins and as the construction progresses. These photos will be compiled into a binder for final delivery to Park City at the conclusion of the project.
- 1.9 Progress payment assistance. Stantec will assist with processing of payment requests. Stantec will review the work completed with the Contractor and submit a list of completed items to Park City for payment.
- 1.10 Third Party Testing Coordination. Stantec will coordinate with the Contractor and Park City on compaction tests and concrete testing. Stantec will review these reports and note any deficiencies.
- 1.11 Prepare a Punch List. Once the Contractor has requested that the project be considered substantially complete, Stantec will conduct a review of the work and prepare a punch list of items required for substantial completion.
- 1.12 Prepare Notice of Substantial Completion. Once the punch list items have been completed, Stantec will prepare the Notice of Substantial Completion.

- 1.13 Coordination of Record Drawings. Stantec will review the redline drawings prepared by the Contractor, which identify any changes to the work, and delivery the redlines to the Design Engineer for preparation of Record Drawings. Stantec will map the location of valves, bends and appurtenances with a sub meter GPS unit. Points will be provided to the Design Engineer for preparation of Design Drawings.
- 1.14 Coordination with Park City for Acceptance. Stantec will work with Park City throughout the project so that at the completion of the work Park City will be able to accept the raw water line.
- 1.15 Field XRF Services. Stantec will provide the labor and equipment to conduct field screening of excavated materials to meet the upland trenching soils management plan, as described in the amended Soils Study, submitted to Summit County. Costs are based on providing 6 weeks (12 hours/wk) of time for staff engineer, John Liu, PE. He will provide daily log when on site and maintain a log of test results. John is OSHA-40 hr. trained and has experience screening materials utilizing XRF technology for management purposes. For the approximate 7,200 lf of trenching in the upland portion of the LSC alignment, Stantec will screen a minimum of 3 locations, to determine if the threshold value of 500 ppm Lead is met. Stantec will rent a Nikon XL3t600, environmental analyzer to conduct the field screening. The basis of the costs for the machine includes two time periods, 1- four week rental (including shipping and calibration) and 1- two week rental (including shipping and calibration). Stantec will collect and transport QA/QC soil samples to a laboratory of the Owner's choice, estimated 3 -5 samples. Laboratory analyses costs for the QA/QC samples to be paid by the owner.
- 1.16 Complete and deliver all PROJECT files and documents to CITY. All submittals, RFIs, O&M manuals, daily reports, photos, shall be submitted to the CITY in a digital format (CD or DVD).

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City Council Staff Report



Author: Linda Tillson
Subject: Letter of Intent re: Expanded
Reciprocal Borrowing with Summit County
Department: Recreation Library
Date: December 17, 2009
Type of Item: Administrative

Summary Recommendations:

Approve the attached letter of intent for furthering reciprocity between Park City and Summit County Library and direct staff to proceed with the steps outlined in the document.

Topic/Description:

Letter of Intent for further study and potential implementation of full reciprocity between Park City & Summit County Libraries

Background:

The Park City and Summit County Library Boards held a joint meeting on October 6. During the joint meeting the question of how further reciprocity between the two libraries might be achieved was discussed. There was general consensus that the community would be better served if all residents could check out materials at both libraries. At the conclusion of the meeting the Boards agreed that the topic merited more discussion among elected officials, executive management and budget representatives from the County and City. Maddy Shear, Summit County Library Board Member, contacted these individuals and arranged a meeting where, Jim Cooper, Salt Lake County Library Director, spoke about their reciprocal borrowing agreement with Salt Lake City. Following Jim's presentation and some discussion, Tom Bakaly, City Manager, suggested drafting a letter of intent to outline steps for further study and potential resolution of this issue. The library directors for each entity and budget staff were tasked with drafting the letter. Diana Remington, Linda Tillson and Bret Howser met to draft the letter on October 19. The letter has been reviewed and approved by the Summit County and Park City Library Boards.

Analysis:

The Park City and Summit County Library Boards agree in concept that the community would be better served if all residents could check out materials at both libraries. One of the major obstacles to implementing full reciprocity is the current tax structure. Park City residents pay property taxes to support both libraries while Summit County residents outside of the Park City limits only pay taxes to fund the Summit County Library. Many of the residents of the basin area surrounding the Park City limits come to the Park City Library to register for a library card. Under the current system these potential library users do not qualify for a free library card, which creates a difficult customer service issue.

An estimate of the cost for Park City Library to provide service to County residents without diminishing current services levels was calculated based upon a survey of potential users done in 2007. The cost was estimated to be approximately \$146,000 based upon the anticipated number of users and a line item analysis of the library's budget. Currently Park City residents contribute approximately \$150,000 in property taxes to support the Summit County Library.

The letter of intent that is attached describes some possible mechanisms by which the tax disparity could be addressed allowing full reciprocity to be implemented and additional costs to be covered.

Department Review:

The Recreation Library Team, Budget Manager, Legal Department and City Manager have reviewed this report.

Alternatives:

A. Approve:

Approve the attached letter of intent and direct staff to proceed with the outlined steps.

B. Deny:

Direct staff and the library boards to discontinue this effort toward furthering library reciprocity.

C. Continue the Item:

Direct staff and the library boards to make revisions to the letter and present the revised version to Council at a future date.

D. Do Nothing:

This will result in maintaining the status quo with reciprocity limited to the student cards program, which may or may not continue to receive funding from Summit County in the future.

Significant Impacts:

By giving direction to staff and the library boards the effort to increase reciprocity and provide a seamless service to County and City residents will continue.

Consequences of not taking the recommended action:

This effort to furthering reciprocity between the Park City and Summit County Library Boards will be discontinued.

Recommendation:

Approve the letter of intent and direct staff to proceed with the steps outlined in the document.

Attachment 1: Summit County and Park City Libraries - Letter of Intent

Attachment 1

Summit County and Park City Libraries - Letter of Intent – November 10, 2009

Purpose

The purpose of this Letter of Intent is to articulate Park City Municipal Corporation and Summit County's desire to further reciprocity between the City and County libraries. PCMC and SC agree in concept that the community would be better served if all residents could check out materials at both libraries. One of the major obstacles to implementing full reciprocity is the current tax structure. Park City residents pay property taxes to support both libraries while Summit County residents outside of the Park City limits only pay taxes to fund the Summit County Library. Potential mechanisms that have been discussed for removing this disparity and offering a seamless use of both libraries are listed below.

Summit County could address the taxing disparity by:

- A. Creating a library special service district mill levy allowing the County to collect taxes for the library from County residents while excluding those living in the Park City limits.
- B. Reimbursing Park City for the use of the Park City Library by residents residing outside of the Park City limits. This is how the current student reciprocal cards are funded and PCMC splits this cost 50/50 with the County.
- C. Adding library services to the municipal services fund and negotiating with cities in Summit County other than Park City to contribute for services.

In order to determine the best method for proceeding toward full reciprocity, the following steps should be carried out by Park City Municipal Corporation and Summit County.

1. Evaluation of alternatives by staff and/or consultant by February 12, 2010.
2. Boards co-select desired alternative and make joint recommendation by March 31, 2010.
3. It is suggested that Park City and Summit County Councils reach a decision on the Boards' recommendation by May 31, 2010, in order to allow for implementation by the 2011 budget year.
4. Both groups agree that ending the current free student cards program prior to identifying an agreed upon alternative to offer further reciprocity would be a step backward at a time when the goal is to move forward.

5. Staff from both entities will be directed to work on task assignments. It is agreed there will be no charge for staff time or indirect overhead costs of either entity during the planning and construction phases. The parties agree that attorney's fees for preparation and/or review of contractual documents will be paid by each party independently.

6. The staff work group will investigate the feasibility of hiring a consultant with expertise on the topic of reciprocal borrowing including library comparison methods and potential models for addressing tax and funding issues.

7. A joint budget of consultant fees, and other anticipated direct expenses, will be set in an amount not to exceed \$5,000. Each party agrees to pay half of the consultant's fees. The budget may be amended by approval of both parties.

8. By January 15 2011 the staff work group will propose an Interlocal Cooperation Agreement for approval by PCMC and SC. The term of this letter of intent will expire on January 15, 2011.

Acknowledgment:

Park City Municipal Corporation

Acknowledgment:

Summit County

City Council Staff Report



Author: Bob Kollar and Jonathan Weidenhamer
Subject: Consideration of a Training Site Agreement between FIFA, US Soccer Association, and Park City for use of the Park City Sports Complex as on official training site as part of the US Bid Committee's proposal to host the 2018 or 2022 World Cup
Date: December 17, 2009
Type of Item: Administrative - Award of Contract

Summary Recommendation

Authorize the City Manager to enter into a Training Site Agreement between FIFA, US Soccer Association, and Park City for use of the Park City Sports Complex as on official training site as part of the US Bid Committee's proposal to host the 2018 or 2022 World Cup.

Topic: Potential use of the Park City Sports Complex during the 2018 or 2022 Soccer World Cup.

Background:

The United States Soccer Federation created a Bid Committee in January 2009 to facilitate the submission of official bid documents to FIFA, the international governing body of soccer, for the right to host in the United States the 2018 or 2022 FIFA World Cup. Currently, FIFA has indicated that nine other national entities are currently planning to submit official bid documents: England, Spain/Portugal, Belgium/Netherlands, Russia, Qatar, Japan, Australia, and Indonesia.

The U.S. Bid Committee must submit all bid documents to FIFA no later than May 1, 2010. The Bid Committee must obtain commitments (in the form of an executed FIFA Training Site Agreement) from 64 training sites. To be eligible for consideration executed contracts are required by December 31, 2009. Any special event or MFL license would need to be separately applied. No regulatory approval is given by this agreement.

Park City was identified as a potential training site after the U.S. Soccer Federation received positive comments from the U.S. Men's and Women's National Soccer Teams, both of which have trained at the Park City Sports Complex prior to respective international matches. Positive comments also came from Major League Soccer's Real Salt Lake which trained and played the team's B-level games at the Park City Sports Complex over the past couple years. Major League Soccer, when searching for its headquarters and training site for its 2009 MLS All Star Game (to be played at Rio Tinto Stadium), selected Park City thanks to Real Salt Lake's recommendation of the Park City Sports Complex. In addition to the positive reviews of the aforementioned teams, Everton FC, an English Premier League team that has trained twice at the Park City

Sports Complex prior to matches in Salt Lake City, also provided to the U.S. Soccer Federation positive comments about Park City as a potential FIFA World Cup training site.

Benefits of selection as FIFA World Cup Training Site

While the positive comments of teams that have trained at the Park City Sports Complex are validation of the efforts of the Joint Venture and the Sustainability Department to market Park City as a high-altitude training destination, these efforts must continue in order to further bolster Park City's reputation as a world-class high-altitude training destination. Serving as a Base Camp Training Site for the FIFA World Cup is a wonderful opportunity to showcase Park City on an international stage.

The FIFA World Cup 2018 will consist of 32 teams playing games in 18 venues over the course of 30 days from mid-June to mid-July. Each of these 32 teams will have a Base Camp Training Site not necessarily (and most likely not) in the same cities as the 18 competition venues. Base Camp Training Sites will become the "home away from home" for each of these 32 teams. Each of these 32 teams will typically arrive at the Base Camp Training Site ten days prior to its first official World Cup match. A typical team will travel with approximately 75 players/coaches/trainers/staff all of whom will stay in a selected Park City lodging property. In addition to the 75 official team members, there will also be family, friends, and fans who travel with the team to its Base Camp Training Site and stay in the team hotel (where possible) or at another Park City lodging property. One day prior to its first official match, the team will fly to the competition venue, train at the competition venue, play the match, and then travel back to its Base Camp Training Site until the day before its next match. This travel schedule repeats for the 30 days of tournament play.

In addition to room nights and food & beverage revenue for the Park City lodging property that is ultimately selected, the ancillary spending in Park City by team members, family, friends, and fans, could have a significant economic impact on the local economy. (See attached Economic Impact Summary)

Burdens of selection as FIFA World Cup Training Site

The benefits that come from Park City's serving as a FIFA World Cup Training Site do not come without a cost. The FIFA Training Site Agreement obligates Park City to meet certain criteria that have a cost (financial or otherwise) to them. The criteria that cause the most concern include the following:

- Covered spectator seating

One such contractual obligation is to provide covered stands for five hundred spectators/media. Although the stands at the Stadium Field of the Park City Sports Complex are sufficient in size to hold 500 spectators, the stands do not currently have a permanent (or temporary) cover to protect spectators from the sun and the elements. An estimate of the cost of a permanent structure would be approximately \$100,000,

according to Dave Gustafson. A temporary structure would be less costly but not significantly so.

- Lighted field of play

The Park City Sports Complex currently does not have lights installed on the Stadium Field. Installing lights on the Stadium Field and thus meeting this contractual obligation will cost, according to Matt Twombly, approximately \$150,000. This amount is currently included in estimates for Phase III of the Park City Sports Complex Development Plan.

- Security fencing surrounding the field of play

Approximately 1500 linear feet of fencing and protective scrim at approximately \$50/foot plus installation = \$75,000.

- Advertising-free site

The current Coca Cola sponsorship at the Park City Ice Arena will have expired before 2018. Future sponsorship agreements should be drafted with language insuring compliance with this contractual obligation in the FIFA Training Site Agreement.

- Press conference room for 100

The official team hotel can provide a press conference room for 100 without additional expenses incurred.

- Two dressing rooms with 11 showers

The current configuration of 4 dressing rooms with 3 showers each can accommodate the 11 shower requirement. If the shower configuration needs to be adapted to meet the contractual requirement of 11 showers in two dressing rooms, an additional expense of approximately \$40,000 will be incurred.

- Emergency/Secondary power source

The cost to secure a generator as a backup power source for the 40 days of training will be approximately \$50,000.

- Displaced Community Use of Fields/Facilities

There will be some conflict with programming and local use of the existing facilities during this time.

Analysis:

Park City Municipal and the Park City Chamber/Bureau formed a Joint Venture in 2006. One of the goals of the Joint Venture is to develop, brand, and market Park City as a high altitude training destination for both summer and winter sports. The facilities at the Park City Sports Complex, the Utah Olympic Park, the USSA's Center of Excellence, and each of the three resorts have allowed the Joint Venture to attract national and international teams and events to Park City. Serving as a Training Site for FIFA World Cup 2018/2022 will certainly bolster Park City's reputation as a world-class high altitude training destination.

Timeline

The US Bid Committee will submit official Bid Documents to FIFA in March 2010 and then host FIFA in September/October 2010 for site visits of proposed competition venues and training sites. FIFA will announce the selection of official host countries for World Cups 2018 and 2022 in December 2010. If the United States is selected as a host country, the U.S. Bid Committee will form a local organizing committee ("LOC") to begin negotiations with the Host Cities (18 competition venues and 64 training sites) to draft and execute Competition Venue Use Agreements and Training Site Use Agreements, respectively.

Estimated Economic Impact

- **INDIRECT BENEFITS**

The indirect benefits come in the form of marketing/advertising and exposure, including media coverage, relationships with international and national governing bodies, and exposure of locals to world class athletics. Economic Development sees this as a primary way to differentiate Park City from other destination resort communities. We have not put a value to these benefits at this time.

- **REVENUE**

Lodging

75 players/coaches/staff x 40 days of lodging x \$100/night	\$300,000
50 family/friends/media/fans x 40 days of lodging x \$100/night	\$200,000

Food & Beverage (hotel or restaurant)

75 players/coaches/staff x 40 days x 3 meals per day x \$15/meal	\$135,000
50 family/friends/media/fans x 40 days x 3 meals per day x \$15/meal	<u>\$90,000</u>

TOTAL REVENUE **\$725,000**

- **DIRECT REVENUES**

Park City

Sales tax (2%)	\$14,500
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County

County Option	\$1,800
RAP:	\$725
Restaurant Tax:	\$7,250
TRT:	<u>\$21,750</u>

TOTAL LOCAL DIRECT REVENUE **\$46,025**

- EXPENSES

Contractual Obligations

Covered Spectator Seating	\$100,000
**Lighted Field of Play	\$150,000
**Security Fencing for Field of Play	\$75,000
Showers for Dressing Rooms	\$40,000
Emergency/Secondary Power Source	\$50,000
Field Turf Preparation	\$50,000
Additional Labor	<u>\$50,000</u>

Subtotal \$515,000

~~**-\$225,000~~

TOTAL CONTRACTUAL EXPENSES \$290,000

**already budgeted in Quinn's Phase III budget, or are supplies anticipated for purchase through the course of normal business

Some of the improvements that would be required are already budgeted for the complex. For instance field lighting is included for the Phase III fields, and staff has previously contemplated if we would get better “bang for the buck” if we put those lights on the stadium field. Secondly with, at minimum, 9 years to plan any necessary upgrades, it is likely the any necessary upgrades can be accommodated though the capital budget prioritization process with minimal impact to other projects.

Displaced Community Use of Fields/Facilities

It is likely there will be some limited conflict with programming of the ice rink facility. The extent of which is unclear based on future use forecasts. However, staff believes through the ongoing detailed contract negotiations, we can minimize these impacts. There will also be limited impacts on availability of the stadium field; however local use of the stadium field has been minor the past two years, and this use agreement would only take the field out of play for two-three more weeks.

Conclusion

The FIFA Training Site Agreement obligates Park City to meet certain criteria that have a cost (financial or otherwise) to them. However, it is a starting point by which to begin specific negotiations should the US Soccer Bid be chosen. Staff firmly believes that the building on the success of the facility to date, the direct and indirect benefits far outweigh the costs.

It is necessary that Park City Municipal execute the attached Training Site Cover Agreement no later than December 31, 2009.

Department Review: This report has been reviewed by representatives of the Joint Venture with the Chamber, Sustainability, Budget, Recreation, Legal Departments and the City Manager's Office.

Alternatives:

- A. Approve the request, and authorize the City Manager to execute the Agreement as attached: (Staff recommendation – this does not constitute any regulatory, Special Event or other approval).**
- B. Modify the request: Council could choose to modify the Agreement, which would preclude Park City from entering into the Agreement.
- C. Deny the request: Council could choose to not enter into the Agreement
- D. Continue the Item: Council may feel there is not enough information to make a decision, which would preclude Park City from entering into the Agreement.

Significant Impacts:

Should the City Council choose not to enter into the Agreement, we would not be eligible for consideration as a training site for the World Cup bids. We would lose some of the momentum towards this economic development goal and our ability to position Park City as a high altitude training destination.

Serving as a World Cup training site will not provide an immediate or direct return on the investment. Should Council choose to enter the Agreement, and subsequently Park City be chosen as a Training site, we will have committed to providing up to \$290,000 in capital improvements at the Sports Complex.

Staff Recommendations:

Authorize the City Manager to enter into a Training Site Agreement between FIFA, US Soccer Association, and Park City for use of the Park City Sports Complex as an official training site as part of the US Bid Committee's proposal to host the 2018 or 2022 World Cup.

Exhibits:

Exhibit A – Agreement Table of Contents

Exhibit B & C – 2018 Training Site Agreement - Attached under separate cover due to length. The 2022 Agreement is identical save for the dates.

Exhibit A

The Agreement includes the following sections. The entire Agreement has been submitted under separate cover due to length and is available electronically by request to jweidenhamer@parkcity.org; or online at www.parkcity.org.

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City Council Staff Report

Subject: Clissold/Quarry Mountain Conservation Easement
Author: Diane Foster, Mark Harrington, Matt Twombly & Heinrich Deters
Department: Sustainability & Legal
Date: December 17, 2009
Type of Item: Property- Administrative Action

Summary Recommendation:

Staff recommends Council review the proposed Conservation Easement and associated Memorandum of Understanding and approve these documents.

Background:

On December 28, 2007 Park City and Summit County jointly finalized the purchase of 183.7 acres on Quarry Mountain known as the Clissold Parcel. This purchase was recommended by both COSAC and BOSAC. The City and County each contributed \$2 million to the purchase price.

In accordance with the open space bond language (Exhibit C) and City Council's desire to protect open space purchases in perpetuity, the proposed conservation easement (Exhibit A) was developed.

Analysis:

Prior Council direction was to limit use restrictions to mirror the bond language so maximum public use would be retained and left to future police decision makers. However, this was a joint purchase and the County has a slightly different process, taking into account further recommendations from BOSAC on the use issues. Accordingly, both BOSAC and COSAC have reviewed and discussed the draft with various parties to jointly recommend a list of Permitted Uses. Council should carefully review the Permitted Uses in Section III.

The proposed conservation easement was developed by Summit Land Conservancy in consultation with COSAC, BOSAC, Summit County staff and Park City staff. In July 2008 City Council approved a three-year contract with Summit Land Conservancy to hold and monitor any new conservation easements, including the Clissold easement.

There are three major use issues in this conservation easement that Council should specifically consider:

1. A prohibition on hunting on the parcel; and
2. The possibility that trails can be closed temporally to protect wildlife.
3. Possibility for future location of small-scale renewable energy generation facility.

Hunting Prohibition

A hunting prohibition is included in the conservation easement (see section 3.3H of conservation easement). Without a prohibition of hunting in the conservation easement,

public hunting would likely be permitted on this parcel in accordance with state law. The primary reason to specifically prohibit hunting on this parcel is the high potential for conflict in usage and proximity to residences and roads; this is a public safety issue. A limited exception permits

The Memorandum of Understanding (Exhibit C) specifically describes the role of Summit Land Conservancy in this prohibition. The Land Trust Alliance recommends to its members that they not include a hunting prohibition in an easement because of the difficulty in enforcement.

Temporary Closure of Trails

Because this area is frequented by all types of wildlife and because there have been documented cases of elk calving in this area, the easement includes the ability to post a sign noticing the public that the trail is closed temporarily (see section 3.3C4 of conservation easement). The peak of the moose and elk calving season is between late April and May, a time when most trails are still snow-covered and, therefore, see the lowest traffic.

Staff has received comment from one member of the public expressing concern regarding the exercising of this section of the conservation easement. This person commented that he has not seen wildlife in the area and therefore does not believe we need this provision in the easement.

Small-scale renewable energy facility

Because of Park City Council and Mayor's interest in carbon reduction and renewable energy, Section 4 H of conservation easement describes the process by which a small-scale renewable energy facility (likely solar or wind) might be allowed in the future. If Council is interested in preserving this, it is important to allow this possibility and specify under what conditions/standards Grantee prior approval may be obtained. Currently the conservation easement specifies that small-scale renewable energy facility may be allowed if: (i) co-location in the excluded Summit County parcel has been explored in good faith and is not feasible; and (ii) design and location are compatible with existing site conditions to reasonably minimize impacts and all other government approvals are obtained.

Department Review:

This report has been reviewed by the Sustainability and Legal Departments.

Alternatives:

- A. Approve:** A conservation easement would be placed on the Clissold parcel.
- B. Deny:** A conservation easement would not be placed on the Clissold parcel. The property remains protected by deed restriction and enforcement of the bond.

C. **Modify:** Staff could modify the easement in accordance with Council direction and return at a later date to seek approval of the easement.

D. **Continue the Item:** Staff could return at a later date to seek approval of the easement

E. **Do Nothing:** This would be the same as denial.

Significant Impacts:

The aforementioned prohibition on hunting could upset some local hunters who wish to hunt on Quarry Mountain. Temporary trail closure during moose and elk calving season could result in some people not being able to snowshoe or hike in the area during that time. Allowing the possibility for a future renewable energy facility could result in a small-scale wind turbine being placed on the property. Some people do not like the look of wind turbines.

Consequences of not taking the recommended action:

Should Council wish to modify the conservation easement, staff can work with Summit County and Summit Land Conservancy to do so. This will delay the enactment of the conservation easement.

Recommendation:

Staff recommends Council review the proposed Conservation Easement and associated Memorandum of Understanding and approve these documents.

Appendix A: Conservation Easement

Appendix B: Memorandum of Understanding

Appendix C: Open Space Bond Language

WHEN RECORDED, MAIL TO:

Summit Land Conservancy
P.O. Box 1775
Park City, Utah 84060

SUMMIT COUNTY
DEED OF CONSERVATION EASEMENT AGREEMENT

THIS DEED OF CONSERVATION EASEMENT AGREEMENT ("Agreement"), is entered into this ____ day of December, 2009, by Summit County, a Utah County, and Park City Municipal Corporation (collectively, "Grantor"), and the Summit Land Conservancy ("Grantee")

EXHIBITS AS FOLLOWS

Exhibit A: Property Legal Description
Exhibit B: Property Map
Exhibit C: Allowed trails map and related facilities
Exhibit D: Trails Construction, Maintenance and Management Plan
Exhibit E: Memorandum of Understanding
Exhibit F: Signed "Acknowledgement of Property Condition"

WITNESSETH:

WHEREAS, Grantor is the owner of all the real property in Summit County, State of Utah, known as the Clissold Property and described in the attached Exhibit A ("Property") and approximately located on the map attached as Exhibit B; and

WHEREAS, the Property has significant passive recreational; wildlife habitat, ecological, scenic, and open space values as recognized in the Utah Land Conservation Easement Act, (Utah Code Ann. §§ 57-18-1 to 57-18-7); and Grantor intends to convey a Conservation Easement on the Property ("Easement") under the statutory provisions of that Act and other applicable provisions of Utah statutory and common law; and

WHEREAS, the Property constitutes significant natural habitat including its ecosystem and the ecosystem's, scenic, aesthetic and open space values, including flora, fauna, and soils. All these natural wildlife corridors and habitat, ecological, scenic, recreational and open space values ("Conservation Values") are worthy of conservation and of great importance to Grantor, Grantee, and the State of Utah; and

WHEREAS, Grantor desires and intends that the Conservation Values of the Property be conserved and maintained by significantly restricting uses on the Property to only those that will not compromise the Conservation Values, especially the wildlife habitat values; and

WHEREAS, Grantor, as the fee owner of the Property, holds the right to identify, conserve, enhance, and protect in perpetuity the Conservation Values of the Property; and

WHEREAS, the Property was purchased with unanimous approval of the Basin Open Space Advisory Committee (BOSAC), a committee appointed by the Summit County Board of Commissioners, and the Citizens' Open Space Advisory Committee (COSAC) appointed by the Park City Council, whose missions include promoting the protection of valuable open space throughout the Snyderville Basin and Park City; and

WHEREAS, the Property has been determined by BOSAC and COSAC to meet the land evaluation criteria established by the committees to aid in determining land valuable for open space protection; and

WHEREAS, Grantor and Grantee value the undeveloped nature of the Property and its wildlife habitat, scenic value and the Conservation Values as a furtherance of the Grantee's stated purpose; and

WHEREAS, the maintenance and preservation of the viewshed along the Highway 224 corridor is identified in the Snyderville Basin General Plan as a priority and the preservation of such viewsheds are vital to the long-term economic health of the Summit County and Park City; and

WHEREAS, the State of Utah has recognized the importance of both public and private efforts to conserve and protect the state's natural resources by the enactment of Utah Code Ann. §§ 57-18-1 to 57-18-7; and

WHEREAS, Grantee's mission includes the conservation and protection of open space and natural areas for ecological, scientific, recreational, and educational purposes; and Grantee is a qualified conservation easement holder under Utah Code Ann. § 57-18-3; and Grantee is a qualified organization under the Internal Revenue Code to receive and hold conservation easements; and

WHEREAS, the parties desire that any interpretation of this Agreement be construed to further the conservation, protection, and enhancement of the Property's open and scenic value, wildlife habitat, and recreational uses in that order.

NOW, THEREFORE, in consideration of the recitals as set forth above and the covenants terms and conditions and restrictions contained herein, which the parties hereby agree constitute adequate consideration for this Agreement, and pursuant to the laws of the State of Utah and, in particular, Utah Code Ann. 57-18-1 et seq. (1985), Grantor hereby irrevocably grants and conveys to Grantee and its successors in interest the Easement. This Easement shall constitute a perpetual conservation easement and is granted and vested over and across all of the Property to preserve and protect the natural, ecological, wildlife habitat, recreational, public access, open space, scenic and other values present on the Property. This Agreement and the Easement forever binds Grantor and Grantor's successors in ownership and use of the Property as well as Grantee and any qualified successor of Grantee as identified in Section XI below. The Easement is granted in perpetuity and any mortgage lien or other encumbrance, other than encumbrances visible on the land or observable by reasonable inspection or of record existing at the recordation of this Agreement, shall be subordinate to the rights and intentions of this Agreement and the Easement and Grantee's ability to enforce the protection of the Conservation Values described

herein. The scope of this Easement and the interests protected by this Agreement are defined in this Agreement.

SECTION I - PURPOSE

1.1 The purpose of this Agreement and the Easement is to enable the Grantor and Grantee to use the Property for the permitted uses in Section III; to allow the Property to remain forever open and accessible to the public, protecting in perpetuity its natural, scenic open and undisturbed character, its wildlife values, and its ecological, recreational use and utility; and to prevent any use of the Property that may materially impair or interfere with the Conservation Values.

SECTION II - RIGHTS OF GRANTEE

2.1 Affirmative Rights of Grantee. GRANTOR hereby grants the following rights to Grantee, which rights shall be in addition to, and not in limitation of, all other rights and remedies available to Grantee and the general purpose described above:

A. to prevent Grantor or third persons (whether or not claiming by, through, or under Grantor) from conducting any activity on or use of the Property that is inconsistent with the purpose of this Agreement and the Easement, and to require of Grantor or third persons the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use; and

B. to enter upon the Property at reasonable times and in a reasonable manner in order to monitor Grantor's compliance with and otherwise enforce the terms of this Agreement; and

C. to enter onto the Property in the case of an emergency as determined by Grantee, in which event Grantee shall notify Grantor of the emergency prior to entering onto the Property, if possible, or as soon thereafter as is reasonably practical; and

D. to obtain injunctive and other equitable relief against any violations, including restoration of the Property to the condition that existed prior to any such violation (it being agreed that Grantee has no adequate remedy at law); and

E. to enforce this Agreement in the case of breaches by Grantor or by third persons (whether or not claiming by, through, or under Grantor) by appropriate legal proceedings, after providing Grantor with reasonable notice and a reasonable opportunity to cure.

SECTION III - PERMITTED USES AND PRACTICES

3.1 The following uses and practices on the Property, while not an exhaustive recital of permitted uses and practices, are consistent with this Agreement. The uses and practices described in this Section may not be precluded or prevented by this Agreement, except under the following circumstances. Uses and practices by Grantor may be precluded when this Agreement requires Grantee's prior approval of an activity as provided in Section III of this Agreement or when such uses or practices are conducted or allowed to take place in a manner which violates

the terms of this Agreement, poses a serious threat of material damage to the Conservation Values protected by this Agreement, or constitutes a prohibited use or practice as set forth in Section V of this Agreement.

3.2 Without prior written notice to Grantee, the right to use the Property as an undeveloped park and recreational land. Such uses will include non-motorized recreational activities, including, but not limited to, hiking, snowshoeing, cross-country skiing, horseback riding, and other similar passive recreational uses on designated trails and facilities listed on Exhibit C.

3.3 The Grantor will notify Grantee in writing prior to any exercise of the permitted uses listed below:

A. Recreation. The right to install improvements on the Property limited to those reasonably necessary to protect natural amenities and provide public access and use of the Property.

B. Trails. The right to construct new backcountry, unpaved trails in accordance with an approved Snyderville Basin Recreation District and Park City trails plan and to maintain current and future trails, provided such trails do not violate the five foot protections strip on the north Property boundary, as provided in the Special Warranty Deed, Dated 12/27/07, and recorded at Entry No. 00833547, Book 1906, Pg. 1746. Trails will be designed and maintained to support limited, non-motorized passive recreation, and placed to minimize impact on critical wildlife areas.

C. Signs. The right to place a limited number of signs on the Property for the following purposes:

1. To state the purpose of the Easement and the terms of this Agreement; and
2. To identify trails or interpretive sites on the Property; and
3. To state rules and regulations, safety, or hazardous conditions found on the Property in accordance with the Grantor and Grantee's established guidelines for properties they own; and
4. To close trails temporarily on the Property in order to protect wildlife.

D. Water Resources. The right to enhance, if applicable, water quality on the Property recognized as necessary or beneficial to wildlife, ecological or habitat values on the Property, provided such enhancements are consistent with the terms of this Agreement and the Conservation Values protected herein, and comply with all applicable laws and regulations.

E. Chemicals and Biological Controls. In accordance with all applicable federal, state and local laws and regulations, the right to use agrichemicals and biological controls on the Property as necessary to control noxious weed, pests and for mosquito abatement.

Chemical and biological controls may only be used in accordance with all applicable laws, and in those amounts and with that frequency of application constituting the minimum necessary to accomplish reasonable noxious weed, pest and mosquito abatement objectives. The use of such agents shall be conducted in a manner to minimize any adverse effect on the natural values of the Property and to avoid any impairment of the natural ecosystems and their processes.

F. Problem or Diseased Animals. The right to use legal methods to control diseased and problem animals as permitted by state and federal laws.

G. Fire Suppression. The right to remove brush and vegetation necessary to minimize the risk of wildfire on the Property. Potential means to reduce or remove high risk fuel loads may include, but would not be limited to: mechanized methods; biological controls, including short-duration grazing; slash, stack and burn; or controlled burns.

H. Utilities. The right to use and maintain existing utilities and easements of record. With prior approval, the right to replace and reconstruct existing utilities, including an overhead transmission line that crosses the site, provided any disturbance to the Property is restored, as much as is practical to the original undisturbed nature of the Property following such activity. With prior approval, the right to install alternative energy generation facilities provided: (i) co-location in the excluded Summit County parcel has been explored in good faith and is not feasible; and (ii) design and location are compatible with existing site conditions to reasonably minimize impacts and all other government approvals are obtained.

3.4 Management Practices. All recreational uses of the Property shall be effectuated in a manner that is consistent with Grantor's rules and regulations, as referenced herein and made a part hereof in Exhibit D, guiding the management of the Property and the recreational use thereof, and not inconsistent with the purpose of this Agreement, as specified in Section I, and that each such use or practice shall neither significantly impair the public view of and over the Property nor in general result in a significant injury to or the destruction of a Conservation Value or otherwise conflict with a prohibited use set forth in Section V.

3.5 Residual Rights. Except as expressly limited by this Agreement, Grantor may exercise and enjoy all rights as owner of the Property, identified in this Agreement and the right to use the Property for any purpose not inconsistent with this Agreement.

SECTION IV - PRIOR APPROVAL

4.1 If any provision of this Agreement requires Grantor to obtain Grantee's approval prior to performing any act or undertaking any enterprise, Grantor shall not perform that act or undertake that enterprise until the notice and approval provisions of this Section have been fully satisfied. Nothing in this Section shall in any way prohibit or limit the Grantee's ability to obtain writs or injunctive relief relating to any violation of this Agreement.

A. Grantor's Written Notice. Prior to the commencement of any activity, use, or enterprise which requires Grantee's approval, Grantor will first notify Grantee in writing of the proposed activity, use, or enterprise. The notice must fully inform Grantee of all material aspects of the proposed activity, use or enterprise. Grantor will send such notices to Grantee by

registered or certified mail, return receipt requested, addressed to Grantee at its address listed in this Agreement.

B. Grantee's Response. Grantee shall have forty-five (45) days from the date such notice is received (as indicated by the registered or certified return receipt) to review the proposed activity, use, or enterprise and to notify Grantor of any objections it may have to the activity, use, or enterprise. The objections, if any, shall be based upon Grantee's opinion that the proposed activity, use or enterprise is likely to cause material damage to the Conservation Values or is otherwise inconsistent with the purpose and/or provisions of this Agreement. If, in the Grantee's judgment, the proposal presented by Grantor can be modified to avoid material damage to the Conservation Values and otherwise comply with the purpose and provisions of this Agreement, then the response shall inform Grantor how the proposed activity, use or enterprise may be modified to conform with this Agreement. Except as provided in Subsection C of this Section IV, Grantor may commence the proposed activity, use, or enterprise only after it receives Grantee's express written approval, and only in the manner explicitly proposed by the Grantor and approved by Grantee. Grantee will send such response to Grantor by registered or certified mail, return receipt requested, addressed to the Summit County Council, Attn: Council Chair; P.O. Box 128, Coalville, UT 84017 and to Park City Council, PO Box 4180, Park City, UT 84060 or to such other address as Grantor may designate in writing.

C. Grantee's Failure to Respond. If Grantee fails to post its response to a proposal presented by Grantor within forty-five (45) days after it receives the proposal by registered or certified mail, or within forty-five (45) days after Grantee has received adequate information to evaluate the proposed activity, whichever is later, then the proposed activity, use or enterprise shall be deemed consistent with the terms of this Agreement, and Grantee will have no further right to object to the activity, use or enterprise described in the proposal. The forty-five (45) day period shall not begin to run for purposes of this Section until such time Grantee has received adequate information from Grantor to effectively evaluate the proposed activity. In the event the Grantee requires additional information to evaluate the proposed activity, Grantee shall request the information from Grantor as soon as practicable and in any case not later than forty-five (45) days after the receipt of the notice of the proposed activity.

4.2 Force Majeure. Grantor will not be obligated to send a notice to Grantee, and Grantee will not be entitled to bring an action against Grantor for undertaking any prudent activity in a bona fide emergency situation to prevent, abate, or mitigate the immediate threat of significant damage to the Property resulting from causes beyond Grantor's control, including fire, flood, storm, and earth movement. Grantor will promptly notify Grantee of any injury to the Property caused by such events or the efforts to prevent, abate, or mitigate any damage caused by such events.

SECTION V - PROHIBITED USES AND PRACTICES

5.1 Any activity on or use of the Property inconsistent with the purpose of this Agreement and which is likely to cause material damage to the Conservation Values is expressly prohibited. Grantor agrees that the following uses and practices, though not an exhaustive recital of inconsistent uses and practices, are explicitly deemed inconsistent with the purposes of this Agreement, and shall be prohibited.

A. Subdivision. Any attempt be made to create additional or separate parcels, divide, subdivide, or take any action which creates an actual or de facto subdivision of the Property.

B. Construction. Unless otherwise a Permitted Use, construction of any structures or facilities on the Property for use in human habitation or any commercial or industrial activities.

C. Wildlife Disturbance or Harassment. Harassment of wildlife on the Property by people, vehicles or domestic animals is prohibited. The taking, removal, translocation or captivity of wildlife is prohibited, except as allowed by law.

D. Alteration of Intermittent Watercourses and Topography. Any change, disturbance, alteration, excavation, or impairment any watercourse, if any, or the topography of the ground on the Property, except as expressly permitted by Section III of this Agreement. Grantor shall conform to all state and federal laws when constructing or altering watercourses and wildlife habitat.

E. Non-native Species. Any introduction into the Property any non-native plant or animal species other than those generally accepted for habitat improvement or as mutually agreed upon by Grantor and Grantee.

F. Roads. The construction of roads over, through, or across the Property, except that access will be permitted for maintenance of the existing cell towers and utility improvements as specified in the associated easement for that utility line, provided that the maintenance of such access shall not be improved with an impervious surface.

G. Motorized Vehicles. The operation of motorized vehicles, including snowmobiles, except for:

1. Emergency vehicles;
2. Vehicles used in routine maintenance of the Property provided these vehicles are in sound working order;

H. Vehicles necessary to carry out a permitted use as identified under Section III of this Agreement, provided these vehicles are in sound working order.

I. Agricultural Uses. Agricultural uses, except in conjunction with a permitted use as identified in Section III.

J. Dumping. Dumping, placement or disposal of trash, debris, ashes, sawdust, and other non-compostable refuse.

K. Utilities. Granting or installation of new utility corridors, except for corridors with the same width/footprint used as a replacement for an existing corridor to the extent feasible and at the expense of the utility company, provided the existing corridor is extinguished and/or vacated and remediated and any liability for the previous utility corridor is

born solely by the utility company. Existing Cell Towers and utility structures may not be expanded in anyway that would increase the footprint.

L. Mineral Activities. Exploration or extraction of oil, gas, rock, gravel, sand, minerals, artifacts, or other materials found in, on, or under the Property is prohibited. No sub-surface exploration or extraction of oil, gas, rock, gravel, sand, minerals, artifacts, or other materials (including the lease, sale, or other disposition of the rights to such materials) are permitted.

M. Billboards. Construction, maintenance, leasing, or erection any commercial signs or billboards on the Property.

N. Hazardous Waste. Dumping, or otherwise disposing of any toxic and/or hazardous material on the Property. This Agreement does not permit Grantee to control any use of the Property by Grantor which may result in the storage, dumping or disposal of hazardous or toxic materials; provided, however, Grantee may bring an action to protect the Conservation Values of the Property. This prohibition does not impose liability on Grantee, nor shall Grantee be construed as having liability as a “responsible party” under CERCLA or other similar state or federal statutes.

O. Hunting. Hunting activities, except to remove dangerous or damaged animals, by wildlife authorities in accordance with the Memorandum of Understanding attached as Exhibit E.

SECTION VI - BREACH, RESTORATION, AND REMEDIES

6.1 Breach and Restoration. Where Grantee becomes aware of a violation or potential violation of any restriction contained in this Agreement, or becomes aware of any damage or potential damage to the Conservation Values associated with the Property, whether precipitated by Grantor or by a third party, Grantee may notify Grantor in writing of such violation, potential violation, damage or potential damage. Upon Grantor’s receipt of such notice, Grantor agrees to immediately take action to prevent or stop the activity which potentially or actually violates the terms or intent of this Easement. Grantor shall have thirty (30) days after receipt of such notice to undertake actions, including restoration of the Property, that are reasonably calculated to swiftly correct the conditions caused by such violation. If Grantor fails to take such corrective action, Grantee may undertake appropriate action, including legal action, to effect such corrections. The cost of such corrections, including Grantee’s expenses, court costs, and attorney’s fees, shall be paid by Grantor. In the event Grantor is found not in violation of this Agreement, then Grantor’s attorney’s fees shall be paid by Grantee.

6.2 Injunctive and Other Relief. In the event Grantor undertakes or causes to be undertaken any activity on the Property that requires Grantee’s prior approval and such approval is not obtained consistent with Section IV of this Agreement, or where Grantor undertakes or causes to be undertaken any activity in violation or potential violation of the terms of this Agreement, Grantee shall have the right to obtain injunctive relief or writs from courts of competent jurisdiction to stop any unauthorized activities and/or force the restoration of that portion of the Property affected by such activity to a similar or equivalent condition that existed

prior to the unauthorized activity. Such restoration may include, but is not limited to, restoring soils, replanting suitable native vegetation, and/or taking such other action as Grantee deems necessary to achieve restoration. In such case, the costs of restoration and litigation, including reasonable attorneys' fees, shall be borne by Grantor or those of its successors or assigns against whom a judgment is entered. In the event a judgment is entered against Grantee in an effort to seek injunctive relief or restoration and Grantor is held not to be in violation of this Agreement, Grantee shall pay Grantor's costs of litigation, including reasonable attorneys' fees.

6.3 Actual or Threatened Non-Compliance. Grantor acknowledges that actual or threatened instances of non-compliance under this Agreement constitute immediate and irreparable harm. Grantee is entitled to invoke the equitable jurisdiction of any court to enforce this Agreement.

6.4 Cumulative Remedies. Grantee's remedies set forth in this Agreement are cumulative. Any, or all, of the remedies may be invoked by Grantee if there is an actual or threatened violation of this Agreement.

6.5 Delay in Enforcement. A delay in enforcement shall not be construed as a waiver of Grantee's right to enforce the terms of this Agreement.

SECTION VII - COSTS, TAXES & FEES

7.1 Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Property, including responsibility for the control of noxious weeds in accordance with all applicable Utah laws. Grantor agrees to bear all costs of operation, upkeep and maintenance of the Property, and agrees to reimburse Grantee and its successors and assigns for all claims and obligations arising from the operation, upkeep, and maintenance of the Property incurred by the Grantee. Grantor shall pay any and all lawful taxes, assessments, fees, and charges levied by competent authority. Grantor shall bear all costs associated with trail development and maintenance of trails and recreational activity associated therewith.

SECTION VIII - INDEMNITY

8.1 Grantor also agrees to defend and indemnify Grantee against obligations arising from past, present or future dumping of hazardous materials on the Property, if any, and any obligations associated with their cleanup or containment, if any, provided such obligation(s) do not arise out of the action of Grantee or its assigns.

SECTION IX - ASSIGNMENT OF EASEMENT

9.1 Grantee may only transfer or assign its interest in the Property created by this Agreement to a "qualified organization" (within the meaning of Section 170(h) (3) of the Internal Revenue Code) which is organized or operated primarily or substantially for one or more of the conservation purposes specified in Section 170(h) (4) (a) of said Code. Such qualified organization shall agree to enforce the conservation purposes protected by this Agreement.

SECTION X - BASELINE DATA

10.1 A Baseline inventory has been completed prior to the signing of this Agreement. The parties acknowledge that this collection of baseline data contains an accurate representation of the Property's condition and natural resources as of the date of the execution of this Agreement in accordance with Treasury Regulation 1.170A-14(g)(5)(I). The parties agree that subsequent updates to the Baseline Inventory will be provided to the Grantors annually. Copies of this inventory of baseline data and subsequent updates to the Baseline inventory are on file in Grantee's offices. Grantee and Grantor have acknowledged the condition of the Property pursuant to the terms of Exhibit F.

10.2 Notwithstanding the foregoing, should a future controversy arise over the biological and/or physical condition of the Property, the parties may use all relevant documents, surveys, reports and other information to assist in resolving the controversy.

SECTION XI - SUBSEQUENT SALE, EXCHANGE, OR INVOLUNTARY CONVERSION

11.1 Grantor and Grantee agree that the conveyance of the Easement creates a property right immediately vested in Grantee. Grantee's property right in the Easement shall be based on the condition and improvements on the Property at the time the Easement is established, and this condition shall be documented as referred to in Section X. For purposes of this Section, the property right shall be deemed to have a fair market value at least equal to the proportionate value the Easement bears to the entire value of the Property as a whole at the time of its creation. That proportionate value of Grantee's property rights shall remain constant. Should a change in conditions give rise to the extinguishment of the Easement, as provided in Treasury Regulation Section 1.170A-14(g)(6)(I), or any subsequent revision to that section of the IRS Code, or extinguishment of a portion of Grantee's rights under the Easement, Grantee on a subsequent sale, exchange, conveyance, or involuntary conversion of the Property or a portion of the Property shall be entitled to a portion of the proceeds at least equal to such proportionate value of the Easement as established at the time of its creation. All interpretations of Grantee's property rights shall follow Treasury Regulation Section 1.170.

11.2 Grantor agrees that reference to this Agreement will be made in any subsequent deed, or other legal instrument, by means of which any interest in the Property (including any leasehold interest) is conveyed, and that a copy of this Agreement will be attached thereto. Grantee's acceptance of this Agreement is contingent upon Grantor's placement of such encumbrance on title of the Property. Grantor will notify Grantee in writing of any conveyance of interest by sending written notice to Grantee as provided in Section 4.1.A. Grantor agrees to provide notice of this Agreement to all successors in interest, and to any potential purchasers or subsequent owners. In the event Grantor elects to sell the Property, Grantor agrees to provide notice of this Agreement in any sale or solicitation materials or information. Any failure to comply with the terms of this paragraph shall in no manner render the Easement or any provisions of this Agreement unenforceable.

SECTION XII - AMENDMENTS

12.1 Limitation on Amendment. If circumstances arise under which an amendment to or modification of this Agreement would be appropriate, Grantor and Grantee may by mutual written agreement jointly amend this Agreement; provided that no amendment shall be made that will adversely affect the qualification of the Easement or the status of Grantee under any applicable laws, including Sections 170(h) and 501(c)(3) of the Code and the laws of the State of Utah. Any such amendment shall be consistent with the purpose of this Agreement, shall not affect the perpetual duration of the Easement, shall not permit residential, commercial or industrial development of the Property and shall not permit any impairment of the significant Conservation Values of the Property. Any such amendment shall be filed in the County Recorder's office of Summit County, Utah. Nothing in this paragraph shall require Grantor or Grantee to agree to any amendment or to consult or negotiate regarding any amendment.

SECTION XIII - MISCELLANEOUS PROVISIONS

13.1 Hold Harmless. Grantor shall hold harmless, indemnify, and defend Grantee and its members, directors, officers, employees, agents, and contractors (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands or judgments, including, without limitation, reasonable attorneys' fees arising from or in any connection with injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, unless due solely to the negligence of any of the Indemnified Parties. Nothing herein shall waive any defense or limitation in the Utah Government Immunity Act.

13.2 Partial Invalidity. If any provision of this Agreement, or the application of this Agreement, or the application of this Agreement to any person or circumstance is found to be invalid, the remainder of the provisions of this Agreement, and the application of such provisions to persons or circumstances other than those to which it is found to be invalid, shall not be affected thereby.

13.3 Enforcement. Grantor intends that enforcement of the terms and provisions of this Agreement shall be at the discretion of Grantee, and that Grantee's failure to exercise its rights under this Agreement, in the event of any breach by Grantor, shall not be considered a waiver of Grantee's rights under this Agreement in the event of any subsequent breach.

13.4 "Grantor" and "Grantee". The term "Grantor", as used in this Agreement, and any pronouns used in place thereof shall mean and include the above-named Grantor, and its successors and assigns. The term "Grantee", as used in this Agreement and any pronouns used in place thereof shall mean the Summit Land Conservancy and its successors and assigns.

13.5 Titles. Section and Subsection titles and subtitles are for convenience only and shall not be deemed to have legal effect.

13.6 Liberal Construction. This Agreement shall be liberally construed in favor of maintaining the Conservation Values of the Property, and in accordance with Utah Code Ann. §§ 57-18-1 to 57-18-7. The parties acknowledge that each has reviewed and revised this

Agreement with the assistance of counsel, and that no rule of construction resolving ambiguities against the drafting party shall be employed in interpreting this Agreement.

13.7 Successors. This Agreement is binding upon, and will inure to the benefit of Grantor's and Grantee's successors in interest and assigns. All subsequent owners of the Property are bound to all provisions of this Agreement to the same extent as Grantor

13.8 Governing Law. This Agreement will be interpreted and construed in accordance with applicable Utah laws.

13.9 Entire Agreement. This Agreement sets forth the entire agreement of the parties. It is intended to supersede all prior discussions or understandings.

13.10 Compliance With Law. All uses and practices permitted by this Agreement, shall comply with all applicable state and federal laws.

13.11 Effective Date. The effective date of this Agreement will be the date signed by all parties.

13.12 Notice Requirements. Grantor hereby acknowledges that Grantee, at least three days prior to the execution of this Agreement, discussed with it the types of conservation easements available, the legal effect of each easement, and the advisability of consulting legal counsel concerning the possible legal and tax implications associated with granting the Easement.

13.13 Merger. The parties intend that this Agreement will not merge into the Property. It being the intent of the Parties that the Easement never be extinguished but remains in full force enjoining Grantor or its successor in interest to perpetually comply with its terms and conditions regardless of who holds title to the underlying fee interest.

13.14 Change of Conditions. The fact that any use of the Property expressly prohibited by this Agreement or otherwise determined inconsistent with the purpose of this Agreement may become significantly more valuable or economical than permitted uses, or that neighboring properties may in the future be put entirely to uses inconsistent with this Agreement, has been considered by Grantor in granting the Easement. It is Grantor's belief that any such changes will increase the public's benefit and interest in the continuation of the Easement, and it is the intent of both Grantor and Grantee that any such changes not be considered circumstances sufficient to terminate the Easement, in whole or in part. In addition, the inability to carry on any or all of the permitted uses, or the unprofitability of doing so, shall not impair the validity of the Easement or be considered grounds for its termination.

13.15 Superiority of Easement. Any mortgage, trust deed, lien, judgment, or other financial interest executed or entered against the Property hereafter shall be subordinate to this Agreement and in no way enable the holder of such interest or their successor(s) in interest to breach the terms of this Agreement or otherwise compromise the Conservation Values protected thereby.

IN WITNESS WHEREOF, Grantor and Grantee execute this Easement.

GRANTOR:

SUMMIT COUNTY, a Utah County

By: _____
Interim County Manager

PARK CITY MUNICIPAL CORPORATION

By: _____
Chair, City Council

GRANTEE:

Summit Land Conservancy

By: _____
Chair, Governing Board

APPROVED AS TO FORM:

Summit County Attorney's office

STATE OF UTAH)
 : ss.
COUNTY OF SUMMIT)

On this ____ day of _____, 2009, _____, representing _____, known to me to be the persons whose names are subscribed to the instrument set forth above, personally appeared before me, _____, a Notary Public for the State of _____, and acknowledged that they executed the same on behalf of Summit County.

IN WITNESS WHEREOF, I hereunto set my hand and affix my notaries seal on the date above written.

NOTARY PUBLIC

Residing at: _____

My Commission Expires:

STATE OF UTAH)
 : ss.
COUNTY OF SUMMIT)

On this ____ day of _____, 2009, who is known to me to be the person whose name is subscribed to the instrument set forth above, personally appeared before me, _____, a Notary Public for the State of Utah, and acknowledged that he executed the same on behalf the Snyderville Basin Special Recreation District.

IN WITNESS WHEREOF, I hereunto set my hand and affix my notary seal on the date above written.

NOTARY PUBLIC

Residing at: _____

My Commission Expires:

EXHIBITS

Exhibit A: Property Description

Exhibit B: Property Map

Exhibit C: Allowed trails map and related facilities

Exhibit D: Trails Construction, Maintenance and Management Plan

Exhibit E: Memorandum of Understanding

Exhibit F: Signed “Acknowledgement of property Condition”

**EXHIBIT A
TO
SUMMIT COUNTY DEED OF CONSERVATION EASEMENT**

Property Description

PP-122-X

S 32 T 1S R 4E S1/2 SW1/4 SEC 32 T1SR4E SLBM CONT 80.0 AC M15-196A IQC-185 SMI-
I6 WWD-275 JQC-57 M10-148 M17-369 M182-249 M184-355 M219-320 403-543-53 411-
795-805 533-507 1669-1333 (1669-1335-1337) 1906-667-1746

PP-118-X

S 31 T 1S R 4E BEG SE COR SEC 31 T1SR4E SLBM; TH N 89°40'42" W ALONG SEC
LINE 472.71 FT; N 462.80 FT; E 466 FT; S 0°49'32" E ALONG SEC LINE 465.50 FT TO
BEG CONT 5.0 AC SMI68 JQC57 M10-148 M17-569 M54-640 IQC185 M99-656 M107-108
M15-196 M182-249 M184-355 403-543-53 411-795-805 533-507 1669-1333 (1669-1335-1337)
1906-667-1746

PP-17-C-X

S 5 T 2S R 4E N1/2 NW1/4 SEC 5 T2SR4E SLBM CONT 80 AC
(LESS 0.53 AC PP-17-B-1)
(LESS .23 AC M189-487 PP-17-C-X)
(LESS 1.11 AC 651-170 UDOT PP-17-X)
(LESS 0.16 AC 1763-1070 PP-17-C-2-X) BAL 77.97 AC M17-569 M49-181 M121-403-418
M182-249 M184-355 403-543-53 411-795-805 533-507 1669-1333 (1669-1335-1337) 1906-
667-1746



Quarry Mountain₈₀ Trail System

1 inch equals 500 feet



Exhibit D
Snyderville Basin Special Recreation District
Public Trail Maintenance and Management Plan
Clissold/Quarry Mountain

Natural Surface Trail

Natural dirt surface trails are generally located in front country and backcountry areas where a natural and undeveloped feel is desired. Natural surface trails are designed to accommodate hikers, runners, mountain bikers, equestrians, snowshoers and backcountry skiers. Trails on the Quarry Mountain conservation easement will only be constructed away from important wildlife areas, may be closed during certain seasons to allow wildlife to remain undisturbed, and will be designed primarily for foot traffic.

Trail design and construction techniques such as outslope, backslope, rolling grade, drainage dips, tread hardening and general maintenance are all by products of trail shaping.

Finish surface should be naturally compacted with all organic material scarified, large rocks removed, tree stumps and roots removed. The bench clearing width is typically 4' wide, however, tread width after re-vegetation is anywhere from 1'-3' depending on the volume of use and types.

Many of the design and drainage issues are addressed during the construction phase in the field on a case by case basis, and as part of the Storm Water Protection Plan for narrow natural surface backcountry trails, developed in part with the Summit County Engineer. This plan details all necessary controls and measures for the protection of the land, in compliance with Summit County Ordinance 381.

Outlined below is a maintenance and management schedule for Natural Surface Trails. Critical information on construction standards, materials, signage, bridging, etc. are found in the Snyderville Basin Special Recreation District Community-wide Trail System Design and Development Standards and should be referenced as part of this Plan.

<i>Periodically throughout the year as needed</i>	<i>Every 2-3 years as needed</i>
Address drainage and tread issues	Treat wooden structures and bridges
Clear deadfall and blow downs	Cut back trees, shrubs and other vegetation
Inspect wooden bridges and boardwalks	
Inspect for weeds and spray herbicides if necessary	

Tread and drainage issues are addressed as needed throughout the year. The amount of run-off and use often drives the amount of maintenance needed. Dead fall and blow downs are also cleared as needed depending on storms and winds that pass through the area at any given time.

Trees and shrubs are cut back with hand tools every 2-3 years as needed to help define and maintain site distances.

Wooden structures, such as signage and bridge crossings, are constructed with weather treated materials for sustainability and checked 2-3 times a year for safety. Treatments for sustainability and protection of wood are applied every 2-3 years, depending on sun exposure and amount of moisture and snow received in any given year.

Equipment Used for Natural Surface Trails Maintenance:

ATV and small trailer; ASV-RC-30 trail machine; mini excavator for lager drainage projects; chainsaw; hand tools.

MEMORANDUM OF UNDERSTANDING

Park City Municipal Corporation and Summit County have granted a conservation easement on the Clissold/Quarry Mountain Parcel (the "Property") to the Summit Land Conservancy, a Utah non-profit corporation for the purpose of protecting forever and enhancing the natural, scenic qualities, wildlife habitat, and passive recreational uses of the Property.

The described conservation easement specifically prohibits hunting on the Property, unless deemed necessary by state wildlife officials for the removal of dangerous, diseased or damaged animals. The purpose of this Memorandum of Understanding is to explain how the parties to the easement shall allocate responsibilities related to the prohibition of hunting.

1. As fee owners of the Property, Summit County and the Park City Municipal Corporation will post "No Hunting" signs on the Property.

2. As fee owners of the Property, neither Summit County nor the Park City Municipal Corporation will grant permission to any individual who seeks access to the Property for the purpose of hunting.

3. Summit County and Park City Municipal Corporation will be solely responsible for enforcing the no-hunting provision in the conservation easement.

4. Summit Land Conservancy will monitor the Property at least one time in each calendar year to insure that the "No Hunting" signs are in place, and to check for evidence of any hunting activities. Summit Land Conservancy may, but shall not be required to inform neighboring residents to the prohibition against hunting on the Property.

5. In the event that state wildlife officials decide that a dangerous, diseased or damaged animal exists on the Property and must be removed by hunting, the City and Summit County will notify the Summit Land Conservancy immediately, and before the hunting activity takes place. The City and County will also endeavor to inform neighboring residents of the planned hunt.

Agreed upon this _____ of December, 2009.

Park City Municipal Corporation,
Mayor Dana Williams

Summit County, Interim County Manager
Brian Bellamy

Summit Land Conservancy,
Richard Sheinberg, Board Chair

Summit Land Conservancy

ACKNOWLEDGEMENT OF PROPERTY CONDITION

In compliance with Section 1:170A-14(g)(5) of the federal tax regulations, the undersigned accepts and acknowledges that this Baseline Documentation is an accurate representation of the property at the time the conservation easement was transferred to the grantee.

Property Name:

Clissold/Quarry Mountain

Easement Grantor(s):

Date:_____

Date:_____

Easement Grantee:

By:_____

Date:_____

Title:_____

OFFICIAL BALLOT FOR
PARK CITY, UTAH
SPECIAL BOND ELECTION

November 7, 2006

(Facsimile Signature)

City Recorder, Park City

CITY PROPOSITION NUMBER 1

Shall Park City, Utah be authorized to issue general obligation bonds in an amount not to exceed \$20,000,000 and to mature in no more than 21 years from the date or dates of such bonds to acquire, improve and forever preserve park and recreational land, together with related historical or cultural improvements, to protect the conservation values thereof, to remove existing unneeded man-made improvements, and to make limited improvements for public access, parking and use?

To vote in favor of the above bond issue, select the box to the left of the words "FOR THE ISSUANCE OF BONDS."

To vote against the bond issue, select the box to the left of the words "AGAINST THE ISSUANCE OF BONDS."

☐

FOR THE ISSUANCE OF BONDS

☐

AGAINST THE ISSUANCE OF BONDS



City Council Staff Report

Author: Todd Touchard
Subject: LOWER SILVER CREEK RAW WATERLINE
BID PROTEST
Date: December 17, 2009
Type of Item: Administrative PUBLIC WORKS

Summary Recommendations:

Staff recommends Council deny the appeal of Silver Spur Construction.

Description:

Water Strategic Plan Topic: Infrastructure, Strategy/Policy: Implement Capital Facilities Plan

Topic:

Park City Raw Water Infrastructure Project for the Lower Silver Creek Phase of the raw water line from Promontory to Quinn's Junction Water Treatment Plant. The three segments of this raw waterline are as follows: Promontory Phase, Lower Silver Creek Phase, and Quinn's Phase.

Background:

In 2009, the Expanded Lost Creek Canyon Project was completed to deliver Park City's 2,500 acre-feet of water to the top of Promontory (Signal Hill Reservoir). Many alignment alternatives were investigated from Signal Hill Reservoir to the proposed treatment plant site.

The construction of the raw waterline to the treatment plant has been phased into three sections. The Promontory Phase will deliver water from the Signal Hill Reservoir to the southwest corner of the Promontory subdivision. The Lower Silver Creek phase will continue the line west through the Lower Silver Creek area to Highway 40. The Quinn's phase will cross Highway 40 and then follow Highway 40 south to the treatment plant site (see attached map).

The raw waterline will provide water to the new treatment plant and the future raw water system. The raw water system will immediately reduce the demands on the current culinary water system by providing water to the Quinn's Junction fields. The future raw water system will provide water to the Park City Golf Course, City Park, Park City School District, snow making, and other City landscaped areas.

Summary of Protest:

The City bid the Lower Silver Creek Project on October 30, 2009. The project consists of the Lower Silver Creek pipeline segment of the overall raw waterline. The project crosses wetlands and an area impacted by hazardous materials along Lower Silver Creek. The environmental considerations on this project are key to its success. The City has worked with Summit County, the State of Utah, and EPA to obtain the needed environmental permits for the Project.

The bid schedule included two alternatives for crossing Lower Silver Creek, either drilling or open trenching. Because of environmental and constructability concerns, the preferred method to cross the creek is to drill. The apparent low bidder at the time of bid for the drilling alternative was Silver Spur Construction. During a review of the bids, it was discovered that Silver Spur Construction had neglected to submit a key component of the bid package, an Environmental Work Plan. The Additional Information For Bidders sent to the contractors as part of Addendum No. 3 issued on October 2, 2009 included the following.

WORK PLAN FOR WETLAND CROSSING. The BIDDER ***shall submit*** with the BID, a work plan describing the BIDDER'S intended means and methods for management of soil and groundwater while crossing the Lower Silver Creek riparian area, from Station 195+40 to Station 208+53. The BIDDER'S ***work plan will be reviewed for adequacy*** in regard to proper storage and disposal of excess soil, and in regard to proper treatment and/or storage and disposal of groundwater, and in regard to compliance with permits and ordinances. If BIDDER intends to treat groundwater, the work plan shall show the target contaminant levels of the treated water, and the means and methods of treatment. If the plan for management of soil and groundwater treatment is deemed by the OWNER to be inadequate, the BID may be rejected. (Emphasis added).

ITEMS TO BE SUBMITTED WITH BID. The following shall be submitted with BID. Failure to submit the following or not fully complete the required information will render the BID informal and may cause its rejection.

INFORMATION REQUIRED OF BIDDER (including list of subs & suppliers)
BID, BID SCHEDULE and BID BOND
ADDENDA (IF ISSUED)
LIST OF REFERENCES
WORK PLAN FOR CROSSING LSC RIPARIAN AREA (Sta. 195+40 to 208+53)
(Emphasis Added)”

Silver Spur acknowledged receiving all addenda on their bid form, though the signature on the form was dated 25 September 2009, before Addendum 3 was issued. Silver Spur's date was an obvious error as the last addendum was not issued until October 28, 2009.

Because of the importance of the environmental compliance on the Project, the bid from Silver Spur Construction was deemed non-responsive. The next lowest bid was from BD Bush Excavation.

It is important to note that half of the bidding contractors on this project *did* note this requirement, and were responsive in supplying Park City with a Work Plan. Further, Silver Spur's disregard for this significant element of the bid, in and of itself, was a significant factor in staff's decision.

All bidders were provided the Construction Dewatering Permit, Silver Creek Total Maximum Daily Load Report, and an EPA (Tetra Tech) report of the existing site conditions. Addendum #5 also provided a summary of information contained in these reports to address contractor questions during bidding. The bids to treat the groundwater and dispose of it through the wetlands did range from \$15,000 to \$469,000. The BD Bush environmental work plan clearly shows their understanding that they will treat the groundwater and meet effluent requirements for their bid of \$15,000.

The Measurement and Payment Specification 01025 in the Bid Documents describes the overall requirement as shown below:

“Item No. 4.6: COLLECTED GROUNDWATER TREATMENT AND DISPOSAL

1. Measurement: This item is a lump sum item; therefore, measurement shall be by the completed job.
2. Payment: Payment shall be made at lump sum price and shall be full compensation for the treatment and disposal of all collected groundwater, including but limited to all equipment, materials, and labor required to treat (to meet the requirements of the specifications and permits) and dispose of the collected groundwater.”

Department Review:

This staff report has been reviewed by Public Works, Legal, and City Manager.

Alternatives:

A. Approve the Protest:

Council could deny Staff's recommendation. Denying the recommendation could result in bid protests from other Contractors who did submit all of the required bid documents which would delay the project.

B. Deny the Protest:

Staff recommends Council deny the protest and authorize the City Manager to execute a Construction Agreement with BD Bush Excavation and to provide a written decision of appeal to Silver Spur within one-week.

C. Continue the Item:

Council could continue the request. Continuing the request and not awarding the contract to BD Bush Excavation would delay the project. Potentially a new bidding process may be necessary if BD Bush Excavation does not agree to extend their bid time. Staff may be required to re-negotiate construction easements that are set to expire May 15, 2010.

D. Do Nothing:

Staff does not recommend this alternative. Doing nothing would also delay the project causing the potential problems described in paragraphs A and C above. Further, a written decision by the City Council is specifically required by Park City's bid appeal policies. (See Administrative Policies & Procedures Section 3, Part II, Subpart (F)(8)).

Significant Impacts:

The installation of the raw waterline is critical to the operation of the treatment plant and delivery of culinary and raw water to meet demands. Recent water shortages have resulted in a need for this project. The project has a tight time schedule. Without the timely completion of the Project, PCMC will not be able to supply the critical water needs of its citizens.

The environmental work plan provided Staff the ability to determine if the Contractor understands the permit requirements and environmental concerns with the site. By allowing the Silver Spur to be awarded the Contract, it increases the potential for change orders related to the environmental compliance of this project. The decision for this appeal will be used on future appeals when Contractors are rejected for not complying with the Bid Documents.

In the bid protest, the Silver Spur states that there were "scores of pages of technical materials" and requirement to submit the work plan was "obscure and largely incoherent". Contractors are to read and understand all of the technical requirements of the project. As per the Contract Documents, Contractor questions are to be in writing, and sent to the Engineer by October 26, 2009. By accepting the second lowest bid for an additional \$39,168, we limit the potential for future change orders. We do not know what other part of the project specifications that Silver Spur has not read or understands. BD Bush Excavation did not have an issue with reading the entire contract and could understand what was need to be included in the work plan.

Recommendation:

Silver Spur failed to comply with the bid requirements. Staff recommends Council deny the protest from Silver Spur Construction.

Attachments:

- Silver Spur Bid Protest
- Silver Spur Acknowledgement of Receiving Addendums
- BD Bush Work Plan
- Contracting and Purchasing Policy



Site Location Map

NELSON, SNUFFER, DAHLE & POULSEN, P.C.

DENVER C. SNUFFER, JR.
J. DAVID NELSON
ROBERT D. DAHLE
MARK L. POULSEN

ATTORNEYS AT LAW
10885 SOUTH STATE STREET
SANDY, UTAH 84070
TELEPHONE (801) 576-1400
TELEFAX (801) 576-1960

DANIEL B. GARRIOTT
STEVEN R. PAUL
TAHNEE L. HAMILTON
MATTHEW K. BROADBENT

BRET W. REICH
OF COUNSEL

ALSO ADMITTED IN ILLINOIS

*ALSO ADMITTED IN TEXAS

December 2, 2009

Tom Bakaly
City Manager
445 Marsac Ave.
P.O. Box 1480
Park City, Utah 84060

RE: Subject: Bid Protest for the Lower Silver Creek Project
Protester: Silver Spur Construction, Inc.
Engineer: Stantec

Dear Mr. Bakaly:

Please accept this letter as notice to you under Article 8 of your appeals procedure that Silver Spur Construction, Inc., as the low bidder on the referenced project, hereby protests its rejection as the lowest responsible bidder for the project, and the City's expressed intention to let the contract to BD Bush. This appeal request supplements my letter to your City attorney of last week. The basis of this protest is as follows:

1. The bid invitation documents were vague, ambiguous, and unfair. As you know, the bid documents consisted of scores of pages of technical materials. Hidden in a 42 page Addendum No. 3 is an obscure and largely incoherent requirement that the bidding contractor submit a "work plan" as a part of the bid. The "work plan" requirement appears to be trivial and is positioned as an after-thought to the bid requirements. Few reasonable estimators would have picked it up as a material and substantial requirement for a responsive bid. If it was noticed by an estimator, most or many contractors would not have regarded it as a non-material bid requirement, such that failing to provide it would not render the bid non-responsive. The immateriality of the "work plan" seems to be confirmed from the owner's perspective by the fact that the bid opening check-list did not even include a column for work plan requirement. Moreover, the ambiguous and unfair nature of the work plan requirement is manifest by the fact that of the ten contractors who bid the project, five of them missed the work plan sheet requirement entirely. Stated differently, 50% of the bids on your project were either confused by, or missed entirely the obligation to provide a work plan. The sheer number of bidders who missed the work plan requirement demonstrates the hopeless flaws in the bid invitation. This fact, more than any other, shows that the bid documents were fatally defective, and the bids results are in disrepute.

Tom Bakaly
City Manager
December 2, 2009
Page 2

2. The bid invitation documents contain an ambiguous scope of work requirement related to de-watering during construction. In addition to the obscure work plan requirement, the bid documents are defective in respect to the de-watering requirements of the project. There is a line item requirement for costs associated with de-watering on the project. Silver Spur as the low bidder has \$390,000 in its bid for de-watering. The bid of the next lowest bidder has \$15,000 in the de-watering line item. Given this enormous disparity in interpreting the scope of work and the contract requirements, the City is opening itself up for claims related to this item. It should be obvious from this discrepancy that the bid invitation documents are ambiguous on this point. The result is that the City has received unbalanced bids, with all of the attendant risk to both the City and the contractor from those unbalanced bids. The plans and specifications in their present form are problematic, and will result in conflict as the project progresses.

Based upon the foregoing, Silver Spur requests that the City declare the work plan as a non-materials deviation from the bid invitation, making Silver Spur's bid responsive and low. We request that the contract be given to Silver Spur. Alternatively, and at a minimum, the City should declare all bids void and re-let the project with a new bid process and a new bid opening.

After you have had the opportunity to consider this bid protest, please let me know your intentions. If you wish to discuss any aspect of this protest further, please do not hesitate to give to me a call. Meanwhile, I strongly urge the City to not proceed with signing a contract based upon the BD Bush bid.

Sincerely,

NELSON, SNUFFER, DAHLE & POULSEN, P.C.

A handwritten signature in black ink, appearing to read 'Mark L. Poulsen', with a stylized, flowing script.

Mark L. Poulsen

cc: Silver Spur Construction, Inc.
Kerry A. Gaines
Assistant City Attorney for Park City

BID

Proposal of Silver Spur Construction LLC [hereinafter called "BIDDER"], organized and existing under the laws of the State of Utah doing business as a Partnership*, To Park City Municipal Corporation [hereinafter called "OWNER"].

In compliance with your Advertisement for Bids, BIDDER hereby proposes to perform all WORK for the construction of Phase I Raw Water Supply Line - Lower Silver Creek in strict accordance with the CONTRACT DOCUMENTS, within the time set forth therein, and at the prices stated below.

By submission of this BID, each BIDDER certifies, and in the case of a joint BID each party thereto certifies as to his own organization, that this BID has been arrived at independently, without consultation, communication, or agreement as to any matter relating to this BID with any other BIDDER or with any competitor.

BIDDER hereby agrees to commence WORK under this contract on or before a date to be specified in the NOTICE TO PROCEED and to fully complete the PROJECT by the dates shown in Section 01013, Time of Completion. BIDDER further agrees to pay as liquidated damages, the sum of \$750.00 for each consecutive calendar day thereafter as provided in Section 15 of the General Conditions.

BIDDER acknowledges receipt of the following ADDENDA:

#1 9-10-09, #2 9-10-09, #3 10-2-09, #4 10-8-09, #5 10-21-09
#6 10-28-09,

* Insert "a corporation," "a partnership," or "an individual" as applicable.

BIDDER:

The name of the BIDDER submitting this Proposal is:

Silver Spur Construction LLC
(Name)
392 E 12300 S Ste E1
(Address)
Draper, UT 84020
(City, State & Zip)

(Phone) 801-501-8803

(Fax) 801-501-7385

which is the address to which all communications concerned with this Proposal and the Contract shall be sent.

The names of the principal officers of the corporation submitting this Proposal, or of the partnership, or of all persons interested in this Proposal as principals are as follows:

Shaun Hayward, President

Calvin Peel, Vice President

which is the address to which all communications concerned with this Proposal and with the Contract shall be sent.

If Corporation

IN WITNESS WHEREOF the undersigned corporation has caused this instrument to be executed and its seal affixed by its duly authorized officers this 25 day of September, 2009

(Seal)

(Name of Corporation)
Shaun Hayward

(By)

President

(Title)

ATTEST:

Bill Ward

Project manager
President^{SH}

(Title)

(Title)

If Sole Proprietor or Partnership

IN WITNESS hereto the undersigned has set his (its) hand this 25 day of September, 2009

B.D. BUSH EXCAVATION

Raw Water Supply Line – Lower Silver Creek

Work Plan for Crossing the Riparian Wetland Area

October 30, 2009



938 S. Main Street
P.O. Box 225
Pleasant Grove, UT
84062

PHONE (801)785-2905
FAX (801)785-0583

B.D. BUSH EXCAVATION

Step by Step Work Plan

Scope of Work: Directional Drill, Furnish and Install 28" IPS HDPE 4710 DR-9 Pipe from Station 195+40 to 208+53 complete (wetland/EPA Area).

Step 1: Begin fusing HDPE pipe

BD Bush crew will arrive on site prior to drilling in order to begin fusing the HDPE pipe. A sufficient amount of HDPE will be fused prior to drilling in order to increase productivity.

Step 2: Excavate drill pits

When the Certified Drilling Subcontractor is ready to begin, two drill pits will be dug at 15'x30'. If dewatering is needed, please see step dewatering.

Step 3: Drill Pilot Hole

The Certified Drilling Subcontractor will begin drilling test holes in order to find the correct spot for the final drill. At this point the Certified Drilling Subcontractor will know the conditions of the material in the ground. (Soupy, rocky etc...) Depending on the ground conditions, the Certified Drilling Subcontractor will pre-ream the hole with or without dragging steel back out of the hole. During the drilling process a mud will be used to assist in the drilling process. Once used, the excess mud will be stored in the drill pit and recycled through a regenerator machine. The regenerator machine will then clean and re-circulate the mud for re-use in the drill hole.

Step 4: Clean pits and dispose of excess mud

When the HDPE has been pulled through the drill hole and all connections have been made, the drill pits will be cleaned and the mud will be cleaned and disposed of at a state approved landfill.

Step 5: Backfill drill pits

After all mud has been cleaned and disposed of properly, each drill pit will be backfilled according to the specifications.

Step Dewatering:

If dewatering is needed the following steps will be taken to ensure that the water is treated and disposed of properly. We shall meet discharge limits as outlined in the UPDES Construction Dewatering and Hydrostatic Testing Permit, and Utah Water Quality Standards. Testing of the water shall begin as soon as dewatering has begun, and shall continue at the intervals shown in the general permit. We shall provide a settling tank and treatment system to meet the effluent requirements. All necessary permits for the discharge of the water will be obtained.

B.D. BUSH EXCAVATION

Step by Step Work Plan

Scope of Work: Furnish and Install 28" HDPE 4710 DR-9 Pipe from Sta 195+40 to 208+53 (Complete open cut trench within EPA designated wetland area) Including excavation, stockpiling, protecting excess excavated material, bedding, and backfill.

Step 1: Begin fusing HDPE pipe

BD Bush crew will arrive on site prior to excavation in order to begin fusing the HDPE pipe. A sufficient amount of HDPE will be fused prior to drilling in order to increase productivity.

Step 2: Blast Trench Zone

If the HDPE pipe alignment encounters rocky conditions and blasting is deemed necessary, the Certified Blasting Subcontractor will drill and place charges along the alignment of the pipe. All OSHA safety standards will be met and exceeded during any blasting process. All blasting permits will be obtained in order to blast.

Step 3: Excavate Trench

Once the pipe alignment is suitable for excavation, the BD Bush crew will strip topsoil and begin excavating the trench. When tailings are encountered in the soil, a separate pile of this contaminated soil will be protected and treated properly according to the specs before re-entry into the ground or disposed of at the proper state approved facility. If water is encountered during the trenching of the pipe alignment please see Step Dewatering.

Step 4: Install Pipe and Backfill

Once trench is open and pipe is fused, the HDPE pipe will be installed and backfilled according to the specs. If water is encountered during the trenching of the pipe alignment please see Step Dewatering.

Step 5: Replace Topsoil and Reseed

Once the trench has been backfilled according to the specs, the affected area will be final graded and groomed for topsoil and reseeded according to the specs.

Step Dewatering:

If dewatering is needed the following steps will be taken to ensure that the water is treated and disposed of properly. We shall meet discharge limits as outlined in the UPDES Construction Dewatering and Hydrostatic Testing Permit, and Utah Water Quality Standards. Testing of the water shall begin as soon as dewatering has begun, and shall continue at the intervals shown in the general permit. We shall provide a settling tank and treatment system to meet the effluent requirements. All necessary permits for the discharge of the water will be obtained.

PART II - CONTRACTING AND PURCHASING POLICY

A. Purpose

These rules are intended to provide a systematic and uniform method of purchasing goods and services for the City. The purpose of these rules is to ensure that purchases made and services contracted are in the best interest of the public and acquired in a cost-effective manner.

Authority of Manager: The City Manager or designate shall be responsible for the following:

1. Ensure all purchases for services comply with these rules;
2. Review and approve all purchases of the City;
3. Establish and amend procedures for the efficient and economical management of the contracting and purchasing functions authorized by these rules. Such procedures shall be in writing and on file in the office of the manager as a public record;
4. Maintain accurate and sufficient records concerning all City purchases and contracts for services;
5. Maintain a list of contractors for public improvements and personal services who have made themselves known to the City and are interested in soliciting City business;
6. Make recommendations to the City Council concerning amendments to these rules.

B. Definitions

Building Improvement: The construction or repair of a public building or structure (Utah Code 11-39-101).

City: Park City Municipal Corporation and all other reporting entities controlled by or dependent upon the City's governing body, the City Council.

Contract: An agreement for the continuous delivery of goods and/or services over a period of time greater than 15 days.

CPI: The Consumer Price Index for All Urban Consumers as published by the Bureau of Labor Statistics of the United States Department of Labor.

Manager: City Manager or designee.

Public Works Project: The construction of a park, recreational facility, pipeline, culvert, dam, canal, or other system for water, sewage, storm water, or flood control (Utah Code 11-39-101). "Public Works Project" does not include the replacement or repair of existing infrastructure on private property (Utah Code 11-39-101), or emergency work, minor alteration, ordinary repair, or maintenance

necessary to preserve a public improvement (such as lowering or repairing water mains; making connections with water mains; grading, repairing, or maintaining streets, sidewalks, bridges, culverts or conduits).

Purchase: The acquisition of goods (supplies, equipment, etc.) in a single transaction such that payment is made prior to receiving or upon receipt of the goods.

C. General Policy

1. All City purchases for goods and services and contracts for goods and services shall be subject to these rules.
2. No contract or purchase shall be so arranged, fragmented, or divided with the purpose or intent to circumvent these rules.
3. City departments shall not engage in any manner of barter or trade when procuring goods and services from entities both public and private.
4. No purchase shall be contracted for, or made, unless sufficient funds have been budgeted in the year in which funds have been appropriated.
5. Subject to federal, state, and local procurement laws when applicable, reasonable attempts should be made to support Park City businesses by purchasing goods and services through local vendors and service providers.
6. All reasonable attempts shall be made to publicize anticipated purchases or contracts in excess of \$10,000 to known vendors, contractors, and suppliers.
7. All reasonable attempts shall be made to obtain at least three written quotations on all purchases of capital assets and services in excess of \$10,000.
8. When it is advantageous to the City, annual contracts for services and supplies regularly purchased should be initiated.
9. All purchases and contracts must be approved by the manager or their designee unless otherwise specified in these rules.
10. All contracts for services shall be approved as to form by the city attorney.
11. The following items require City Council approval unless otherwise exempted in these following rules:
 - a. All contracts (as defined) over \$20,000
 - b. All contracts and purchases awarded through the formal bidding process.
 - c. Any item over \$10,000 that is not anticipated in the current budget.
 - d. Accumulated "Change Orders" which would overall increase a previously approved contract by:
 - i. the lesser of 20% or \$20,000 for contracts of \$200,000 or less
 - ii. more than 10% for contracts over \$200,000.
12. Acquisition of the following Items must be awarded through the formal bidding process:

- a. All contracts for building improvements over the amount specified by state code, specifically:
 - i. for the year 2003, \$40,000
 - ii. for each year after 2003, the amount of the bid limit for the previous year, plus an amount calculated by multiplying the amount of the bid limit for the previous year by the lesser of 3% or the actual percent change in the CPI during the previous calendar year.
 - b. All contracts for public works projects over the amount specified by state code, specifically:
 - i. for the year 2003, \$125,000
 - ii. for each year after 2003, the amount of the bid limit for the previous year, plus an amount calculated by multiplying the amount of the bid limit for the previous year by the lesser of 3% or the actual percent change in the CPI during the previous calendar year.
 - c. Contracts for grading, clearing, demolition or construction in excess of \$2,500 undertaken by the Community Redevelopment Agency.
- 13. The following items require a cost benefit analysis as defined by the Budget, Debt, and Grants Department before approved:
 - a. All contracts, projects and purchases over \$20,000
 - b. All contracts and purchases awarded through the formal bidding process.
 - c. Any item over \$10,000 that is not anticipated in the current budget process.

D. Exceptions

Certain contracts for goods and services shall be exempt from bidding provisions. The manager shall determine whether or not a particular contract or purchase is exempt as set forth herein.

- 1. Emergency contracts which require prompt execution of the contract because of an imminent threat to the safety or welfare of the public, of public property, or of private property; circumstances which place the City or its officers and agents in a position of serious legal liability; or circumstances which are likely to cause the City to suffer financial harm or loss, the gravity of which clearly outweighs the benefits of competitive bidding in the usual manner. The City Council shall be notified of any emergency contract which would have normally required their approval as soon as reasonably possible.
- 2. Projects that are acquired, expanded, or improved under the "Municipal Building Authority Act" are not subject to competitive bidding requirements.
- 3. Purchases made from grant funds must comply with all provisions of the grant.

4. Purchases from companies approved to participate in Utah State Division of Purchasing and General Services agreements and contracts and under \$100,000 are not subject to competitive bidding requirements.

E. General Rules

1. **Purchases of Materials, Supplies and Services** are those items regularly purchased and consumed by the City. These items include, but are not limited to, office supplies, janitorial supplies, and maintenance contracts for repairs to equipment, asphalt, printing services, postage, fertilizers, pipes, fittings, and uniforms. These items are normally budgeted within the operating budgets. Purchases of this type do not require "formal" competitive quotations or bids.
2. **Purchases of Capital Assets** are "equipment type" items which would be included in a fixed asset accounting system having a material life of three years or more and costing in excess of \$5,000. These items are normally budgeted within the normal operating budgets. Purchases of this type do not require "formal" bids. All reasonable attempts shall be made to obtain at least three written quotations on all purchases of this type. A reasonable attempt will be made to notify any business with a Park City business license that, in the normal course of business, sells the equipment required by the City.
3. **Contracts for Professional Services** are usually contracts for services performed by an independent contractor, in a professional capacity, who produces a service predominately of an intangible nature. These include, but are not limited to, the services of an attorney, physician, engineer, accountant, architectural consultant, dentist, artist, appraiser or photographer. Professional service contracts are exempt from competitive bidding. The selection of professional service contracts shall be based on an evaluation of the services needed, the abilities of the contractors, the uniqueness of the service, and the general performance of the contractor. The lowest quote need not necessarily be the successful contractor. Usually, emphasis will be placed on quality, with cost being the deciding factor when everything else is equal. The manager shall determine which contracts are professional service contracts. Major professional service contracts (\$20,000 and over) must be approved by the City Council.
4. **Contracts for Public Improvements** are usually those contracts for the construction or major repair of roads, highways, parks, water lines and systems (i.e., Public Works Projects); and buildings and building additions (i.e. Building Improvements). Where a question arises as to whether or not a contract is for public improvement, the manager shall make the determination.
Minor public improvements (less than the amount specified by state code.): The department shall make a reasonable attempt to obtain at least three written competitive quotations. A written record of the source and

the amount of the quotations must be kept. The manager may require formal bidding if it is deemed to be in the best interest of the City.

Major public improvements (greater than or equal to the amount specified by state code): Unless otherwise exempted, all contracts of this type require competitive bidding.

5. **Contracts for Professional Services, where the Service Provider is responsible for Public Improvements (Construction Manager / General Contractor “CMGC” Method)** are contracts where the owner contracts with a Construction Manager for services to construct public improvements. The CMGC contract is exempt from competitive bidding. The selection of CMGC contracts shall be based on an evaluation of the services needed, the abilities of the contractors, the uniqueness of the service, the cost of service, and the general performance of the contractor. The lowest quote need not necessarily be the successful contractor. Usually, emphasis will be placed on quality, with cost being the deciding factor when everything else is equal. The manager shall determine which contracts are CMGC contracts. Major CMGC contracts (over \$20,000) must be approved by the City Council. The selected CMGC will then implement all bid packages under a competitive bid requirement.

F. Bidding Provisions

1. **Bid Specifications:** Specifications for public contracts shall not expressly or implicitly require any product by any brand name or make, nor the product of any particular manufacturer or seller, unless the product is exempt by these regulations or the City Council.
2. **Advertising Requirements:** An advertisement for bids is to be published at least twice in a newspaper of general circulation, printed and published in the city and in as many additional issues and publications as the manager may determine, at least five days prior to the opening of bids. Advertising for bids relating to Class B and C road improvement projects shall be published in a newspaper of general circulation in the county at least once a week for three consecutive weeks.

All advertisements for bids shall state the following:

- a. The date and time after which bids will not be accepted;
 - b. The date that pre-qualification applications must be filed, and the class or classes of work for which bidders must be pre-qualified if pre-qualification is a requirement;
 - c. The character of the work to be done or the materials or things to be purchased;
 - d. The office where the specifications for the work, material or things may be seen;
 - e. The name and title of the person designated for receipt of bids;
 - f. The type and amount of bid security if required;
 - g. The date, time, and place that the bids will be publicly opened.
3. **Requirements for Bids:** All bids made to the city shall comply with the following requirements:
 - a. In writing;
 - b. Filed with the manager;
 - c. Opened publicly by the manager at the time designated in the advertisement and filed for public inspection;
 - d. Have the appropriate bid security attached, if required.
 4. **Award of Contract:** After bids are opened, and a determination made that a contract be awarded, the award shall be made to the lowest responsible bidder. "Lowest responsible bidder" shall mean the lowest bidder who has substantially complied with all prescribed requirements and who has not been disqualified as set forth herein. The successful bidder shall promptly execute a formal contract and, if required, deliver a bond, cashier's check, or certified check to the manager in a sum equal to the contract price, together with proof of appropriate insurance. Upon execution of the contract, bond, and insurance, the bid security shall be returned. Failure to execute the contract, bond, or insurance shall result in forfeit of the bid security.
 5. **Rejection of Bids:** The manager or the City Council may reject any bid not in compliance with all prescribed requirements and reject all bids if it is determined to be in the best interest of the City.

6. **Disqualification of Bidders:** The manager, upon investigation, may disqualify a bidder if he or she does not comply with any of the following:
- a. The bidder does not have sufficient financial ability to perform the contract;
 - b. The bidder does not have equipment available to perform the contract;
 - c. The bidder does not have key personnel available, of sufficient experience, to perform the contract;
 - d. The person has repeatedly breached contractual obligations with public and private agencies;
 - e. The bidder fails to comply with the requests of an investigation by the manager.
7. **Pre-qualification of Bidders:** The City may require pre-qualification of bidders. Upon establishment of the applicant's qualifications, the manager shall issue a qualification statement. The statement shall inform the applicant of the project for which the qualification is valid, as well as any other conditions that may be imposed on the qualification. It shall advise the applicant to notify the manager promptly if there has been any substantial change of conditions or circumstances which would make any statement contained in the pre-qualification application no longer applicable or untrue. If the manager does not qualify an applicant, written notice to the applicant is required, stating the reasons the pre-qualification was denied, and informing the applicant of his right to appeal the decision within five business days after receipt of the notice. Appeals shall be made to the City Council. The manager may, upon discovering that a pre-qualified person is no longer qualified, revoke pre-qualification by sending notification to the person. The notice shall state the reason for revocation and inform the person that revocation will be effective immediately.
8. **Appeals Procedure:** Any supplier, vendor, or contractor who determines that a decision has been made adversely to him, by the City, in violation of these regulations, may appeal that decision to the City Council. The complainant contractor shall promptly file a written appeal letter with the manager, within five working days from the time the alleged incident occurred. The letter of appeal shall state all relevant facts of the matter and the remedy sought. Upon receipt of the notice of appeal, the manager shall forward the appeal notice, his investigation of the matter, and any other relevant information to the City Council. The City Council shall conduct a hearing on the matter and provide the complainant an opportunity to be heard. A written decision shall be sent to the complainant.



City Council Staff Report

Author: Todd Touchard
Subject: LOWER SILVER CREEK
CONSTRUCTION CONTRACT
Date: December 17, 2009
Type of Item: Administrative

PUBLIC WORKS

Summary Recommendations:

Staff recommends Council authorize the City Manager to execute a Construction Agreement, in a form approved by the City Attorney, with BD Bush Excavating for the construction of the Lower Silver Creek Raw Waterline for a lump sum amount of \$1,943,821. The price includes the base bid of \$1,933,821 and a \$10,000 alternative to have workers OSHA 40 hour trained.

Description:

Water Strategic Plan Topic: Infrastructure, Strategy/Policy: Implement Capital Facilities Plan

Topic:

Park City Raw Water Infrastructure Project for the Quinn's Phase of the raw water line from Promontory to Quinn's Junction Water Treatment Plant. The three segments of this raw waterline are as follows: Promontory Phase, Lower Silver Creek Phase, and Quinn's Phase.

Background:

In 2009, the Expanded Lost Creek Canyon Project was completed to deliver Park City's 2,500 acre-feet of water to the top of Promontory (Signal Hill Reservoir). Many alignment alternatives were investigated from Signal Hill Reservoir to the proposed treatment plant site.

The construction of the raw waterline to the treatment plant has been phased into three sections. The Promontory Phase will deliver water from the Signal Hill Reservoir to the southwest corner of the Promontory subdivision. The Lower Silver Creek phase will continue the line west through the lower Silver Creek area to Highway 40 (see attached map). The Quinn's phase will cross Highway 40 and then follow Highway 40 south to the treatment plant site.

The 11,700 LF of waterline for the Promontory Phase has been installed. The Contractor is currently installing the meter vault and pigging facilities. Final site restoration will be completed in the Spring of 2010.

The Quinn's Phase is also currently under construction. The Contractor has installed over 2,000 LF of pipe and has bored more than half way across Highway 40. The Contractor plans on having the waterline completed this winter and ready for use in the Spring.

The Lower Silver Creek phase has been scheduled to start this winter and be completed by spring. Once all three phases are completed, raw water can be delivered to the treatment plant site and will provide irrigation water to the Quinn's fields for summer use.

Proposed Construction and Contractor:

A 22-inch minimum inside diameter (ID) raw waterline has been designed from the Signal Hill Reservoir to the Quinn's Treatment Plant location (approximately 6 miles).

The Lower Silver Creek Phase of this project includes the construction of a new High Density Polyethylene Pipe (HDPE) water line approximately 8,200 feet in length. The base bid for this project includes a 1,300 LF directional drill through the riparian zone.

The entire length of the project is within the Summit County Soils Ordinance Boundary. Environmental studies in the area indicate that the pipeline alignment will cross a riparian area with one to two feet of tailings and surface contamination in the uplands area. The groundwater along Silver Creek has also been identified as being contaminated due to past mining activities.

The proposed construction methods for managing the soils and groundwater have been approved by the EPA and County. In the uplands area, the Owner's Environmental Consultant will screen for lead levels and the Contractor will segregate the surface soil exceeding 500 ppm lead along the easement. The segregated soil will be replaced once the waterline is installed and backfilled. The depth of surface soil to be segregated will depend on onsite environmental soil sampling test results. The intent is that soil containing lead over 500 ppm will not be put back into the trench at lower depths than original, thus preventing cross-contamination deeper into the trench. Environmental reports generally show that the highly contaminated soil is less than one-foot deep in the upland area.

The riparian area (1,300 LF) contains the highest and deepest levels of contamination. Contractors were asked to provide costs to install the pipe using open trenching and directional drilling methods. Each method will require the Contractor to manage the contaminated groundwater that cannot be discharged into the creek without treatment. The chosen method to be used under this contract is the directional drilling method due to constructability issues with an open cut trench through the riparian zone. In the case that the drilling fails for any reason, all permits are in place to open trench.

The regulatory agencies are very concerned with cross contamination. In the riparian area, the soils consist of a sand tailings layer, a wetlands clay layer, then loose sands

and gravels. To get final regulatory approval for the project, we have agreed that if the pipe is installed using open trenching methods, all of the excavated soils would be removed and replaced with clean backfill.

Contractors provided alternative bids for open trenching of the wetlands assuming only the tailings would be removed and replaced, which was estimated at 2,345 cubic yards. To comply with the new regulatory requirements of clean backfill, we expect a total of 10,000 cubic yards of material would be required to be removed, disposed, and replaced. Change order estimates of a clean trench are in excess of \$400,000. If direction drill were to fail due to the loose sands and gravels, we would have to negotiate with the Contractor to amend their alternative bid to include the new requirements.

It is anticipated that approximately 3,400 feet of the pipeline alignment will require rock excavation equipment or blasting in the uplands area.

The Lower Silver Creek Raw Waterline Phase construction project was advertised this fall in the Park Record and Intermountain Contractor. A non-mandatory pre-bid meeting was held and ten bids were received and opened on October 30, 2009.

Analysis:

The following summarizes the bids:

Contractor	Base Bid (Directional Drilling)	Additive Alternative (OSHA Training)	Total Bid
Engineer's Estimate			\$1,938,525
Silver Spur Const.	\$1,894,453	\$10,200	\$1,904,653
BD Bush Excavating	\$1,933,821	\$10,000	\$1,943,821
Condi Const.	\$1,961,081	\$8,846	\$1,969,927
Lyndon Jones Const.	\$1,998,583	\$18,000	\$2,016,583
MVC Const.	\$2,092,863	\$22,446	\$2,115,309
Counterpoint Const.	\$2,095,955	\$19,683	\$2,115,638
Newman Const.	\$2,265,755	\$25,625	\$2,291,380
Allied Const.	\$2,397,551	\$14,120	\$2,411,671
Spade Const.	\$2,398,158	\$20,000	\$2,418,158
ABCO Const.	\$2,998,918	\$6,892	\$3,005,810

BD Bush Excavating is the lowest responsive bidder. Silver Spur's bid was rejected because it did not contain all of the required information. Qualifications and Bid Documents were verified by our Engineer, Stantec Consulting, Inc and staff (Stantec

Contractor recommendation letter is attached). Staff therefore recommends BD Bush Excavating as the successful bidder.

The City's Project Manager, Todd Touchard, will be working under the guidance of the Water Manager.

Department Review:

This staff report has been reviewed by Public Works, Legal, and City Manager.

Alternatives:

A. Approve the Request:

Staff recommends Council authorize the City Manager to execute a Construction Agreement, in a form approved by the City Attorney, with BD Bush Excavating for the construction of the Lower Silver Creek Raw Waterline for a lump sum amount of **\$1,943,821**.

B. Deny the Request:

Council could deny Staff's request. Denying the request would delay the much-needed additional capacity.

C. Continue the Item:

Council could continue the request. Continuing the request and not awarding the Contract within 60 days of Bid Opening (October 30, 2009) may require staff to re-bid the project or negotiate with BD Bush the expected supplier price increases for next year. The City would incur consultant fees for re-bidding the project and we would have to negotiate with landowners for a construction easement time extension. Continuing the request would also delay the much-needed additional capacity.

D. Do Nothing:

Staff does not recommend this alternative. Doing nothing would also delay the much-needed additional capacity.

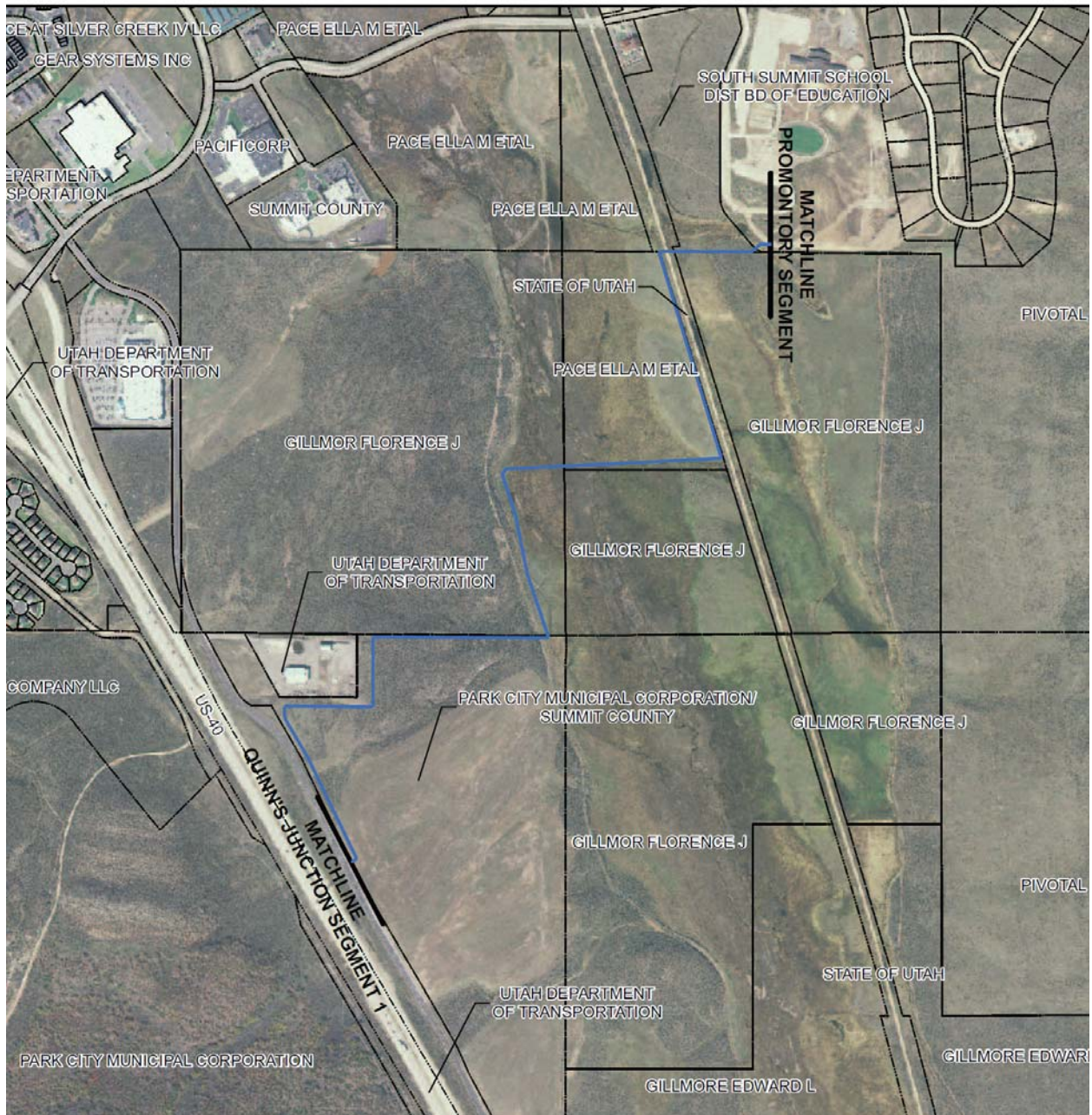
Significant Impacts:

This costs associated with this project are approved in the FY2010 CIP budget.

The installation of the raw waterline is critical to the operation of the treatment plant and delivery of culinary water to meet demands.

Recommendation:

Staff recommends Council authorize the City Manager to execute a Construction Agreement, in a form approved by the City Attorney, with BD Bush Excavating for the construction of the Lower Silver Creek Raw Waterline for a lump sum amount of **\$1,943,821**.



Project Location Map



Stantec

Stantec Consulting Inc.
3995 South 700 East Suite 300
Salt Lake City UT 84107
Tel: (801) 261-0090
Fax: (801) 266-1671

November 20, 2009
File: 186200851

Todd Touchard, P.E.
Park City Municipal Corporation Water Department
1053 Iron Horse Drive
Park City, UT 84060-1480

Project: Park City Municipal Corporation PCMC Phase 1 Raw Water Supply Line – Lower Silver Creek

Subject: Contractor Recommendation

Dear Todd:

The purpose of this letter is to provide a recommendation for the lowest responsible bidder for the Park City Municipal Corporation Phase I Raw Water Supply Line – Lower Silver Creek project, 24" ID Direction Drill alternative.

Bids for the Phase I Raw Water Supply Line – Promontory project were received at the Park City Public Library on Friday October 5 at 2:00 PM. Ten contractors furnished bids for consideration and we have reviewed the bids. Refer to the attached Bid Opening Summary & Checklist, and Bid Tabulation for related information.

Bids ranged from \$2,998,918.80 to \$1,894,452.50. The lowest three bidders for the project were as follows:

Silver Spur. - \$1,894,452.50
BD Bush Excavation - \$1,933,820.66,
Condie Construction - \$1,961,081.00

See the attached bid tabulation for details.

The criteria for evaluating the bids as published in the "Information for Bidders" section of the project specifications are summarized below:

1. A bid bond of 5% of the bid amount is furnished.
2. Active Utah Contractor's License, in good standing, with appropriate classification.
3. The contractor shall have constructed a project of similar type within the past five years.
4. The Contractor shall submit a work plan.

Silver Spur's Bid did not include a Work Plan at the time of bid as required by the bid documents. Silver Spur's price for mobilization exceeded the maximum amount of one percent (1%) of the total bid price as specified in Section 01025 Measurement and Payment. Silver Spur was disqualified for those reasons.

Stantec

November 20, 2009

Page 2 of 2

BD Bush's submittal met the 5% bid bond requirement to satisfy criterion number 1.

Criterion number 2 was met by BD Bush with their E-100 Classification.

BD has completed many successful projects in Salt Lake City as well as other Utah communities. BD Bush submitted a project list to satisfy criterion number 3. Some of the large projects that BD Bush has worked on include:

Big Cottonwood Water project for Salt Lake City \$6,200,000.

American Fork City – Pressure Irrigation line \$2,600,000.

South Valley Sewer District 52" Sewer Line.

The subcontractor for the directional drill is Forest Lake. Forest Lake recently complete a 48" diameter direction drill.

BD Bush's submittal included a Work Plan to satisfy criterion number 4.

BD Bush has constructed large pipeline projects for Salt Lake City, American Fork City, and Spanish Fork City. Stantec Consulting Inc. is recommending BD Bush as the lowest responsible bidder for this project.

If you have any questions, please contact me.

Sincerely,



Neil N. Kunz, PE

STANTEC CONSULTING INC.

Tel: (801) 261-0090

Fax: (801) 266-1671

neil.kunz@stantec.com

- c. Todd Touchard, PCMC
- Rich Hilbert, PCMC
- Frederick Duberow, Stantec
- Curtis Ball, Stantec

Attachment: Bid Tabulation

PARK CITY MUNICIPAL CORPORATION PHASE I RAW WATER SUPPLY LINE - LOWER SILVER CREEK BID SCHEDULE October 30, 2009												
DESCRIPTION	QUANT.	UNIT	BD BUSH EXCAVATING		LYNDON JONES CONST.		COUNTERPOINT CONST.		ALLIED CONST.		ABCO CONST.	
			UNIT PRICE	TOTAL COST	UNIT PRICE	TOTAL COST	UNIT PRICE	TOTAL COST	UNIT PRICE	TOTAL COST	UNIT PRICE	TOTAL COST
1.0 Mobilization	JOB	LS	\$19,000.00	\$19,000.00	\$100,000.00	\$100,000.00	\$20,624.00	\$20,624.00	\$23,608.13	\$23,608.13	\$24,265.00	\$24,265.00
1.1 Construction Staking	JOB	LS	\$33,652.00	\$33,652.00	\$13,000.00	\$13,000.00	\$6,729.00	\$6,729.00	\$9,566.00	\$9,566.00	\$6,639.00	\$6,639.00
Bid Item Sub-total				\$52,652.00		\$113,000.00		\$27,353.00		\$33,174.13		\$39,904.00
2.022" ID HDPE Raw Water Supply Line From Station 149+83 to 231+37												
2.1.1 Combination Air Valve Assembly and Vault Complete at Station 161+86 including the drain to daylight	1	EA	\$9,243.03	\$9,243.03	\$15,000.00	\$15,000.00	\$8,960.00	\$8,960.00	\$9,713.13	\$9,713.13	\$10,820.00	\$10,820.00
2.1.2 Combination Air Valve Assembly and Vault Complete at Station 212+46 including the drain to daylight and vent pipe.	1	EA	\$8,851.32	\$8,851.32	\$15,000.00	\$15,000.00	\$11,294.00	\$11,294.00	\$10,873.55	\$10,873.55	\$10,887.00	\$10,887.00
2.2 Gate Valve Assembly and Vault Complete at Stations 195+30 and 208+43	2	EA	\$37,521.70	\$75,043.40	\$65,000.00	\$130,000.00	\$40,814.00	\$81,628.00	\$40,219.30	\$80,438.60	\$33,894.00	\$67,788.00
2.3.1 Furnish and Install Connection Assembly Station 149+83	1	EA	\$3,831.66	\$3,831.66	\$9,000.00	\$9,000.00	\$2,204.00	\$2,204.00	\$5,670.00	\$5,670.00	\$9,746.00	\$9,746.00
2.3.2 Furnish and Install Connection Assembly Station 231+37	1	EA	\$3,945.12	\$3,945.12	\$9,000.00	\$9,000.00	\$2,204.00	\$2,204.00	\$2,368.00	\$2,368.00	\$9,746.00	\$9,746.00
2.4 Blow-off Assembly Complete at Station 155+80, 195+40, 208+43, 220+41	4	EA	\$10,107.47	\$40,429.88	\$10,000.00	\$40,000.00	\$5,664.00	\$22,656.00	\$7,422.10	\$29,688.40	\$7,230.00	\$28,920.00
2.5 Backfill for Unsuitable Foundation	1,091	CY	\$23.40	\$25,529.40	\$24.00	\$26,184.00	\$34.00	\$37,084.00	\$28.85	\$28,020.35	\$40.00	\$43,640.00
2.6 Furnish and Install 28" IPS HDPE 4710 DR-11 Pipe from Station 149+83 to 172+50 including excavation, bedding and backfill and groundwater management.	2,257	LF	\$95.73	\$216,062.61	\$92.00	\$207,844.00	\$114.75	\$258,960.75	\$98.21	\$221,374.97	\$127.97	\$288,828.29
2.7 Furnish and Install 28" IPS HDPE 4710 DR-9 Pipe from Station 172+50 to 195+40 and 208+43 to 231+37 including excavation, bedding and backfill.	4,574	LF	\$103.02	\$471,213.48	\$103.00	\$471,122.00	\$127.70	\$584,089.80	\$101.36	\$463,757.86	\$142.70	\$652,709.80
2.8 Directional Drill, Furnish and Install 28" IPS HDPE 4710 DR-9 Pipe from Station 195+40 to 208+43 Complete (Wetland/EPA Area)	1,313	LF	\$488.74	\$641,715.62	\$450.00	\$590,850.00	\$522.00	\$685,386.00	\$621.36	\$815,945.68	\$933.87	\$1,228,171.31
2.9 Furnish and Install Meter vault with by-pass, valves and connections complete	JOB	LS	\$199,845.35	\$199,845.35	\$200,000.00	\$200,000.00	\$209,049.00	\$209,049.00	\$248,218.88	\$248,218.88	\$258,749.00	\$258,749.00
2.10 Trench Excavation - Rock (See Soil Reports)	3,400	LF	\$27.00	\$91,800.00	\$30.00	\$102,000.00	\$11.85	\$40,290.00	\$51.00	\$173,400.00	\$29.91	\$101,684.00
2.11 Restoration of Existing Rail Trail Station 223+27 to 224+48	JOB	LS	\$1,600.00	\$1,600.00	\$3,500.00	\$3,500.00	\$8,266.00	\$8,266.00	\$6,500.00	\$6,500.00	\$9,476.00	\$9,476.00
Bid Item Sub-total				\$1,788,110.90		\$1,817,300.00		\$1,952,173.55		\$2,082,898.42		\$2,210,155.40
3.0 Site Work												
3.1 Stabilized Construction Entrances	3	EA	\$500.00	\$1,500.00	\$900.00	\$2,700.00	\$2,136.00	\$6,408.00	\$1,650.00	\$4,950.00	\$1,203.00	\$3,609.00
3.2 Erosion Controls	JOB	LS	\$7,000.00	\$7,000.00	\$6,000.00	\$6,000.00	\$8,193.00	\$8,193.00	\$9,699.00	\$9,699.00	\$13,822.00	\$13,822.00
3.3 Limit of Disturbance Fence	10,824	LF	\$2.75	\$29,766.00	\$1.80	\$19,483.20	\$1.40	\$15,153.60	\$2.00	\$21,648.00	\$2.35	\$25,438.40
3.4 Surface Restoration	JOB	LS	\$20,000.00	\$20,000.00	\$2,700.00	\$2,700.00	\$16,175.00	\$16,175.00	\$79,900.00	\$79,900.00	\$12,046.00	\$12,046.00
3.5 Construct Temporary Access Roads	JOB	LS	\$9,600.00	\$9,600.00	\$14,000.00	\$14,000.00	\$41,873.00	\$41,873.00	\$135,283.48	\$135,283.48	\$199,382.00	\$199,382.00
3.6 24" RCP Culvert installed and sections	24	LF	\$70.46	\$1,691.76	\$125.00	\$3,000.00	\$93.00	\$2,232.00	\$74.94	\$1,798.56	\$95.00	\$2,280.00
3.7 Fence remove and replace	JOB	LS	\$13,000.00	\$13,000.00	\$7,000.00	\$7,000.00	\$4,513.00	\$4,513.00	\$5,390.00	\$5,390.00	\$7,423.00	\$7,423.00
3.8 Final Grading and Clean up	JOB	LS	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00	\$13,481.00	\$13,481.00	\$14,966.00	\$14,966.00	\$13,981.00	\$13,981.00
3.9 Furnish and Install Topsoil Station 195+40 to 208+43	210	CY	\$20.00	\$4,200.00	\$40.00	\$8,400.00	\$40.00	\$8,400.00	\$42.25	\$8,872.50	\$48.00	\$10,080.00
Bid Item Sub-total				\$93,057.76		\$98,263.20		\$116,428.80		\$281,507.54		\$257,859.40
4.0 Alternate				\$1,933,820.66		\$1,995,583.20		\$2,095,945.15		\$2,397,551.06		\$2,948,918.80
4.1 Furnish and Install 28" IPS HDPE 4710 DR-9 Pipe from Station 195+40 to 208+43 (Complete open cut trench within the EPA designated wetland area) including excavation, stockpiling, protecting excess excavated material, bedding and backfill.	1,313	LF	\$95.46	\$125,338.98	\$190.00	\$249,470.00	\$593.00	\$778,609.00	\$202.81	\$266,286.53	\$209.70	\$275,336.10
4.2 Furnish and Install 24" Reinforced Joint DWP Class 550 Bell and Spigot Pipe from Station 195+40 to 208+43 Complete (Wetland/EPA Area) including excavation, stockpiling and protecting excess excavated material, bedding and backfill.	1,313	LF	\$112.65	\$147,909.45	\$200.00	\$262,600.00	\$296.00	\$388,648.00	\$216.36	\$284,120.07	\$242.33	\$318,179.29
4.3 40 hour OSHA training for all construction personnel	JOB	LS	\$10,000.00	\$10,000.00	\$18,000.00	\$18,000.00	\$18,683.00	\$18,683.00	\$14,120.00	\$14,120.00	\$5,892.00	\$5,892.00
4.4 Excess Excavated Soils Hauled to Richardson Flat Disposal Site	2,345	CY	\$8.00	\$18,760.00	\$5.00	\$11,725.00	\$9.00	\$21,105.00	\$42.91	\$100,623.95	\$10.00	\$23,450.00
4.5 Excess Excavated Soils Hauled to State Approved Disposal Site	2,345	CY	\$72.00	\$168,840.00	\$70.00	\$164,150.00	\$93.00	\$218,085.00	\$156.00	\$363,471.00	\$265.00	\$597,975.00
4.6 Collected groundwater treatment and disposal through the Wetland/EPA Area, Station 195+40 to 208+43	JOB	LS	\$15,000.00	\$15,000.00	\$406,000.00	\$406,000.00	\$456,590.00	\$456,590.00	\$469,900.00	\$469,900.00	\$350,429.00	\$350,429.00
OPEN CUT ALTERNATE TOTAL				\$1,461,204.02		\$2,094,928.20		\$2,295,585.15		\$2,432,638.86		\$2,428,854.59
(Minus directional drilling, plus least expensive pipe, OSHA training, haul to R.F. and groundwater)												

PARK CITY MUNICIPAL CORPORATION												
PHASE I RAW WATER SUPPLY LINE - LOWER SILVER CREEK												
BID SCHEDULE												
October-30-2009												
DESCRIPTION	QUANT.	UNIT	Silver Spur		Condit Construction		MVC Construction Inc.		Spade Construction		Newman Construction	
			UNIT PRICE	TOTAL COST	UNIT PRICE	TOTAL COST	UNIT PRICE	TOTAL COST	UNIT PRICE	TOTAL COST	UNIT PRICE	TOTAL COST
1.0 Mobilization												
1.1 Construction Staking	JOB	LS	\$ 23,000.00	\$ 23,000.00	\$ 11,327.00	\$ 11,327.00	\$ 20,928.62	\$ 20,928.62	\$ 23,000.00	\$ 23,000.00	\$ 63,025.00	\$ 63,025.00
Bid Item Sub-total												
	JOB	LS	\$ 6,000.00	\$ 6,000.00	\$ 6,851.00	\$ 6,851.00	\$ 37,688.44	\$ 37,688.44	\$ 8,150.00	\$ 8,150.00	\$ 7,315.00	\$ 7,315.00
				\$ 26,000.00		\$ 18,178.00		\$ 59,817.06		\$ 31,150.00		\$ 70,340.00
2.0 22" ID HDPE Raw Water Supply Line From Station 149+53 to 231+37												
2.1.1 Combination Air Valve Assembly and Vault Complete at Station 161+96 including the drain to daylight	1	EA	\$ 10,500.00	\$ 10,500.00	\$ 7,281.00	\$ 7,281.00	\$ 11,150.43	\$ 11,150.43	\$ 10,500.00	\$ 10,500.00	\$ 9,430.00	\$ 9,430.00
2.1.2 Combination Air Valve Assembly and Vault Complete at Station 212+40 including the drain to daylight and vent pipe	1	EA	\$ 10,500.00	\$ 10,500.00	\$ 7,321.00	\$ 7,321.00	\$ 9,345.11	\$ 9,345.11	\$ 10,500.00	\$ 10,500.00	\$ 10,115.00	\$ 10,115.00
2.2 Gate Valve Assembly and Vault Complete at Stations 195+30 and 209+53	2	EA	\$ 38,000.00	\$ 76,000.00	\$ 31,718.00	\$ 63,436.00	\$ 40,646.96	\$ 81,293.92	\$ 89,000.00	\$ 178,000.00	\$ 165,700.00	\$ 333,700.00
2.3.1 Furnish and Install Connection Assembly Station 149+53	1	EA	\$ 4,700.00	\$ 4,700.00	\$ 2,716.00	\$ 2,716.00	\$ 4,334.44	\$ 4,334.44	\$ 15,000.00	\$ 15,000.00	\$ 16,454.00	\$ 16,454.00
2.3.2 Furnish and Install Connection Assembly Station 231+37	1	EA	\$ 4,700.00	\$ 4,700.00	\$ 2,889.00	\$ 2,889.00	\$ 4,334.44	\$ 4,334.44	\$ 13,500.00	\$ 13,500.00	\$ 12,810.00	\$ 12,810.00
2.4 Blow-off Assembly Complete at Station 165+80, 195+40, 208+53, 220+51	4	EA	\$ 9,100.00	\$ 36,400.00	\$ 7,228.00	\$ 28,912.00	\$ 5,146.78	\$ 20,589.16	\$ 9,150.00	\$ 36,600.00	\$ 12,065.00	\$ 48,200.00
2.5 Backfill for Unsuitable Foundation	1,091	CY	\$ 14.00	\$ 15,274.00	\$ 26.00	\$ 28,366.00	\$ 31.69	\$ 34,573.79	\$ 21.50	\$ 23,466.50	\$ 22.00	\$ 24,002.00
2.6 Furnish and Install 28" IPS HDPE 47'10" DR-11 Pipe from Station 149+53 to 172+50 including excavation, bedding and backfill and groundwater management	2,257	LF	\$ 90.50	\$ 204,285.50	\$ 95.00	\$ 214,415.00	\$ 109.72	\$ 246,887.04	\$ 122.00	\$ 276,354.00	\$ 98.35	\$ 221,975.56
2.7 Furnish and Install 28" IPS HDPE 47'10" DR-9 Pipe from Station 172+50 to 195+40 and 209+53 to 231+37 including excavation, bedding and backfill	4,574	LF	\$ 90.00	\$ 411,680.00	\$ 108.00	\$ 493,992.00	\$ 117.70	\$ 538,359.80	\$ 138.00	\$ 631,212.00	\$ 107.60	\$ 492,162.40
2.8 Directional Drill, furnish and install 28" IPS HDPE 47'10" DR-9 Pipe from Station 195+40 to 208+53 Complete (Wetland/EPA Area)	1,313	LF	\$ 482.00	\$ 635,866.00	\$ 492.00	\$ 645,996.00	\$ 461.44	\$ 605,870.72	\$ 455.00	\$ 597,415.00	\$ 550.78	\$ 723,174.14
2.9 Furnish and Install Meter vault with by-pass, valves and connections complete	JOB	LS	\$ 229,000.00	\$ 229,000.00	\$ 255,530.00	\$ 255,530.00	\$ 248,793.83	\$ 248,793.83	\$ 261,000.00	\$ 261,000.00	\$ 281,800.00	\$ 281,800.00
2.10 Trench Excavation - Rock (See Soil Reports)	3,400	LF	\$ 18.00	\$ 61,200.00	\$ 13.00	\$ 44,200.00	\$ 14.17	\$ 48,178.00	\$ 32.00	\$ 108,800.00	\$ 17.40	\$ 59,160.00
2.11 Restoration of Existing Rail Trail Station 223+27 to 224+48	JOB	LS	\$ 5,000.00	\$ 5,000.00	\$ 2,143.00	\$ 2,143.00	\$ 5,899.22	\$ 5,899.22	\$ 2,650.00	\$ 2,650.00	\$ 2,095.00	\$ 2,095.00
Bid Item Sub-total				\$ 1,702,656.50		\$ 1,797,197.00		\$ 1,853,597.90		\$ 2,074,987.50		\$ 1,982,188.49
3.0 Site Work												
3.1 Stabilized Construction Entrances	3	EA	\$ 2,050.00	\$ 6,150.00	\$ 1,132.00	\$ 3,396.00	\$ 1,263.18	\$ 3,849.54	\$ 2,500.00	\$ 7,500.00	\$ 3,975.00	\$ 11,925.00
3.2 Erosion Controls	JOB	LS	\$ 6,300.00	\$ 6,300.00	\$ 11,083.00	\$ 11,083.00	\$ 8,268.94	\$ 8,268.94	\$ 45,000.00	\$ 45,000.00	\$ 37,960.00	\$ 37,960.00
3.3 Limit of Disturbance Fence	10,824	LF	\$ 17.75	\$ 191,940.00	\$ 2.00	\$ 21,648.00	\$ 2.03	\$ 22,072.92	\$ 2.00	\$ 21,648.00	\$ 1.35	\$ 14,612.40
3.4 Surface Restoration	JOB	LS	\$ 25,600.00	\$ 25,600.00	\$ 15,852.00	\$ 15,852.00	\$ 35,433.22	\$ 35,433.22	\$ 55,000.00	\$ 55,000.00	\$ 23,220.00	\$ 23,220.00
3.5 Construct Temporary Access Roads	JOB	LS	\$ 64,000.00	\$ 64,000.00	\$ 64,960.00	\$ 64,960.00	\$ 57,814.07	\$ 57,814.07	\$ 138,000.00	\$ 138,000.00	\$ 97,675.00	\$ 97,675.00
3.6 24" RCP Culvert installed and sections	24	LF	\$ 83.00	\$ 1,992.00	\$ 70.00	\$ 1,680.00	\$ 161.55	\$ 3,877.20	\$ 78.00	\$ 1,872.00	\$ 142.00	\$ 3,408.00
3.7 Fence remove and replace	JOB	LS	\$ 12,000.00	\$ 12,000.00	\$ 2,467.00	\$ 2,467.00	\$ 13,260.34	\$ 13,260.34	\$ 4,000.00	\$ 4,000.00	\$ 6,780.00	\$ 6,780.00
3.8 Final Grading and Cleanup	JOB	LS	\$ 24,000.00	\$ 24,000.00	\$ 18,510.00	\$ 18,510.00	\$ 30,324.52	\$ 30,324.52	\$ 13,750.00	\$ 13,750.00	\$ 7,340.00	\$ 7,340.00
3.9 Furnish and install Topsoil Station 195+40 to 208+53	210	CY	\$ 21.00	\$ 4,410.00	\$ 29.00	\$ 6,090.00	\$ 27.70	\$ 5,817.00	\$ 25.00	\$ 5,250.00	\$ 47.65	\$ 10,006.50
Bid Item Sub-total				\$ 163,394.00		\$ 145,706.00		\$ 180,647.56		\$ 292,020.00		\$ 213,226.90
4.0 Alternate												
TOTAL BID				\$ 1,854,452.50		\$ 1,961,081.00		\$ 2,092,862.51		\$ 2,308,157.50		\$ 2,265,755.39
4.1 Furnish and Install 28" IPS HDPE 47'10" DR-9 Pipe from Station 165+40 to 208+53 (Complete open cut trench within the EPA designated wetland area) including excavation, stockpiling, protecting excess excavated material, bedding and backfill	1,313	LF		\$ 149,682.00	\$ 160.00	\$ 210,080.00	\$ 253.05	\$ 332,254.65	\$ 200.00	\$ 262,600.00	\$ 153.75	\$ 201,873.75
4.2 Furnish and Install 24" Restrained joint DIP Class 350 Ball and Spigot Pipe from Station 165+40 to 208+53 complete (Open Cut) (Wetland/EPA Area) including excavation, stockpiling and protecting excess excavated material, bedding and backfill	1,313	LF		\$ 168,064.00	\$ 167.00	\$ 219,271.00	\$ 216.11	\$ 283,752.43	\$ 200.00	\$ 262,600.00	\$ 146.45	\$ 192,268.85
4.3 40 hour OSHA training for all construction personnel	JOB	LS		\$ 10,200.00	\$ 8,946.00	\$ 8,946.00	\$ 22,445.99	\$ 22,445.99	\$ 20,000.00	\$ 20,000.00	\$ 25,925.00	\$ 25,925.00
4.4 Excess Excavated Soils Hauled to Richardson Flat Disposal Site	2,345	CY		\$ 50,417.50	\$ 66.00	\$ 154,770.00	\$ 22.90	\$ 53,700.50	\$ 36.00	\$ 84,420.00	\$ 11.25	\$ 26,381.25
4.5 Excess Excavated Soils Hauled to State Approved Disposal Site	2,345	CY		\$ 247,442.50	\$ 66.00	\$ 154,770.00	\$ 93.41	\$ 219,046.45	\$ 90.00	\$ 211,050.00	\$ 40.65	\$ 95,324.25
4.6 Collected groundwater treatment and disposal through the Wetland/EPA Area, Station 195+40 to 208+53	JOB	LS		\$ 323,200.00	\$ 23,228.00	\$ 23,228.00	\$ 429,481.10	\$ 429,481.10	\$ 65,000.00	\$ 65,000.00	\$ 40,500.00	\$ 40,500.00
OPEN CUT ALTERNATE TOTAL				\$ 1,795,086.00		\$ 1,712,009.00		\$ 2,273,371.81		\$ 2,232,762.50		\$ 1,827,376.35
(Minus directional drilling, plus least expensive pipe, OSHA training, haul to R.F. and groundwater)												

CONSTRUCTION AGREEMENT

THIS AGREEMENT is made and entered into as of this ____ day of _____, 2009, by and between PARK CITY MUNICIPAL CORPORATION, P O Box 1480, Park City UT 84060, a municipal corporation of the state of Utah (hereinafter "City"), and BD Bush Excavating, 938 S. Main Street, P.O. Box 225, Pleasant Grove, UT 84062 which is a (*check one*) X corporation ____ partnership ____ sole proprietorship ____ limited liability company (hereinafter "Contractor").

PURPOSE: For the project known as the Lower Silver Creek Raw Waterline (hereinafter "Project"), which consists of a new High Density Polyethylene Pipe (HDPE) water line approximately 8,200 feet in length, valves, meter vault, air/vac vaults, surface restoration, etc. The base bid for this project includes a 1,300 LF directional drill through the riparian zone.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties hereby agree as follows:

SECTION 1. SCOPE OF WORK. Contractor shall furnish all labor, materials and equipment to complete the Project, consisting of the work described in the Information for Bidders as the Base Bid, and the following additive alternates: OSHA 40 Hour Training for construction personnel, as specifically set out in the contract specifications, which is made a part hereof by reference, herein called the "Project."

The Project will be bound by the specifications referenced herein, according to the Advertisement for Bid, the Information for Bidders, the General Project Requirements and Specifications provided by City, the Bid of the Contractor, Bid Bond, Drawings, Notice of Award and Notice to Proceed, collectively referred to as the Contract Documents, all of which are incorporated herein by reference and on file in the Water Department. To the extent that this Agreement conflicts in any way with a proposed form agreement which may have been submitted as part of the bid specifications, this Agreement shall control.

If any of the work performed by Contractor in any phase of the Project does not meet City standards as outlined in the bid documents and specifications, then Contractor shall immediately repair or correct the work at no additional cost to City.

A. SUBCONTRACTORS. No part of this contract shall be subcontracted by the Contractor without prior written approval by City through the Project Manager/Engineer. The Contractor shall be fully responsible to the City for the acts and omissions of its Subcontractors and of persons either directly or indirectly employed by them, as it is for the acts and omissions of persons directly employed by it.

Eden Construction Contract No. _____
Project: _____

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If written approval is granted to subcontract a part of this contract the Contractor shall require each subcontractor that physically performs services within Utah to submit an affidavit to the Contractor stating that the subcontractor has used E-Verify, or equivalent program, to verify the employment status of each new employee.

The Contractor shall, within ten (10) days of submittal of request for final payment, include an affidavit showing satisfactory evidence that all claims of subcontractors, laborers and material men who supplied services or materials to the Project have been fully paid, discharged, or waived. The Contractor shall submit lien waivers for each pay release.

If the City reasonably believes that Contractor has failed to pay Subcontractors, material men, or laborers for work on the Project within a reasonable time of when payment is due, then City may, after having notified the Contractor, either pay unpaid bills or withhold from the release of Contractor's payment bond for this Project, a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged and a ten percent (10%) fee for administering such claims.

B. STANDARDS OF WORKMANSHIP. Contractor shall demonstrate workmanship equal to or better than current industry standards for this Project. Where Park City specifications exist (for example, asphalt, concrete, irrigation, sprinkling system and landscaping), they shall provide the benchmark for determination of acceptability.

C. INSPECTION AND TESTING. All materials and equipment used in the construction shall be subject to inspection by the Project Manager/Engineer. If laws, ordinances, rules or regulations of any public authority having jurisdiction require any work to specifically be inspected, tested or approved by someone other than Project Manager/Engineer, the Contractor shall give the Project Manager/Engineer timely notice of readiness. Inspections, tests or approvals by the City or appropriate authorities will not relieve the Contractor from obligations to perform the work in accordance with the requirements of the Contract Documents and/or provisions. The Project Manager/Engineer and other designated persons will at all times have access to the work. All work shall ultimately be inspected for final acceptance by the Project Manager/Engineer within a reasonable time upon receipt of notice from the Contractor that work is complete and ready for final inspection.

During construction, the work will be inspected and observed by the Project Manager/Engineer or his designated representative. All work that is deficient or does not meet specifications shall be removed and replaced with proper material at Contractor's expense.

D. WARRANTY. Contractor warrants that all materials and supplies used in the construction of the Project shall be new, except as otherwise agreed to in writing by the City's Representative. All materials, equipment, parts and labor and any necessary corrections to the Project shall be guaranteed for a period of at least one (1) year and two (2) years from leaks following the date of substantial completion of the Project under the terms of the performance bond or as provided in the project specifications and construction documents, whichever is longer.

SECTION 2. PERFORMANCE AND PAYMENT BONDS. Contractor shall furnish to the City payment and performance bonds satisfactory to the City guaranteeing

Contractor's payment and performance, in the amount, for each separately, of one hundred percent (100%) of the Contract Amount.

SECTION 3. INSURANCE. Unless otherwise specified in the bid documents, the Contractor 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 Contractor, their agents, representatives, employees, or subcontractors.

The Contractor shall provide Park City Municipal Corporation a Certificate of Insurance evidencing:

A. Commercial 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. Coverage shall include but not be limited to: blanket contractual; products/completed operations; broad form property damage; explosion, collapse and underground (XCU) if specifically requested; and employer's practices.

The Contractor 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. 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

Park City Municipal Corporation shall be named as an additional insured on the insurance policies and a copy of the endorsement naming the City as an additional insured shall be attached to the Certificate of Insurance. The City reserves the right to request certified copies of any required policies.

The Contractor'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.

SECTION 4. CONTRACT AMOUNT, ACCEPTANCE OF WHOLE, ADDITIONS. City shall pay Contractor the total sum of **One Million Nine Hundred Forty Three Thousand Eight Hundred Twenty One Dollars (\$1,943,821)** ("Contract Amount") for all work and materials expended to complete this Project, which shall include the cost of all bonds, insurance, and all charges, fees, permits (including water and sewer fees, unless waived), expenses or assessments of whatever kind or character that are or may be necessary to complete this Project, including any additive alternates listed within the Scope of Work described in Section 1.

SECTION 5. PERMITS AND FEES. As set out in Section 4 above, the Contract Amount includes the price of all normally applicable fees and permits. The City may, at its discretion, arrange for the waiver of certain fees, permits and expenses.

SECTION 6. TERMS OF PAYMENT. The City shall pay for services provided hereunder according to and in an amount not to exceed that detailed in the attached payment schedule (Attachment A) and only upon Contractor's request on forms approved by and submitted to the Project Manager. The City shall make payment within thirty (30) days thereafter. Requests for a more rapid payment may be considered if a discount is offered for early payment. At no time shall the aggregate amount of money paid to the Contractor in proportion to the Contract Amount be greater than the proportion of the work performed at that point to the total Project work. No payment shall be made for any service rendered by the Contractor except for services set forth and identified in this Agreement. The City reserves the right to withhold payment in whole or part from the Contractor for non-compliance with the provisions of the Contract Documents.

A. RETAINAGE. The City may, in its sole discretion; (1) retain five percent (5%) of the value of all work done and materials or equipment supplied as part security for the fulfillment of the Agreement by the Contractor; or (2) retain the final payment of up to five percent (5%) of the total project amount. As work nears completion and solely at the City's discretion, the City may reduce the retainage to an amount more in line with the work remaining. The City reserves the right to retain all amounts previously withheld or due, including any liquidated damages, until all services specified herein are complete. Any money withheld pursuant to this section shall be placed in an interest bearing account and the interest shall also be payable to the Contractor upon final payment.

Before final payment is made, the Contractor must submit evidence satisfactory to the City that all payrolls, material bills, subcontracts and all outstanding indebtedness in connection with the Project have been paid for.

The City may withhold a reasonable amount of the payment bond sufficient to cover any outstanding indebtedness or monies owed or claimed by any person

who supplied work or materials to the Project plus ten percent (10%) of such indebtedness as the City's cost of administering such claims until Contractor supplies a release satisfactory to the City, signed by all persons who have supplied labor or materials to the Project or, at the City's option if no claim is made, until 105 days after the date on which any person performed the last of the labor or supplied the last of the material for the Project and upon written request from the Contractor.

The Contractor shall supply to the Project Manager/Engineer within a reasonable time after his request a signed statement verifying all the suppliers, subcontractors and other persons who have supplied labor or materials to the Project.

B. FINAL PAYMENT. Acceptance by the Contractor of the final payment from the City shall release the City of all claims, demands and liability of the Contractor, its officers, agents, employees and subcontractors, whether communicated or not by the Contractor, except with respect to those matters referred to in writing delivered to the Contractor and approved in a signed writing by the Project Manager.

SECTION 7. COMPLETION TIME. The work on this Project shall commence within ten days of receipt of the Notice to Proceed and shall be completed by **May 15, 2010**. Work stoppage due to inclement weather conditions and other factors must be approved in writing by the Project Manager. Inclement weather shall not otherwise constitute cause for delay. Unless otherwise agreed by the City by Change Order, no damages shall become due to Contractor for City caused delay. A Change Order for delay will generally be accepted for delay so excessive and unreasonable that it is beyond the scope of the Contract or delay attributed to direct, active or willful interference by the City. The Change Order must be based upon actual damages sustained by the Contractor which are directly attributed to the delay.

In the event that Contractor fails to complete all of the work required herein within the time limit set out above, then for each partial or complete day during which the work remains uncompleted thereafter, the Contractor agrees to pay the City **Seven Hundred and Fifty Dollars (\$750.00)**, which the parties believe, due to the difficulty of actually assessing the damages the City will suffer in the event of such a delay, is a fair estimate of the loss the City will suffer. The parties agree that the daily liquidated damages provided for herein is reasonable and fair, and is not a penalty. **TIME IS OF THE ESSENCE IN THIS AGREEMENT.**

SECTION 8. ADDITIONAL WORK/CHANGE ORDERS. The City may enlarge or reduce the work to be performed by Contractor hereunder by written notification to Contractor, including changes to the plans and specifications. The City shall pay

Contractor for any additional work so requested, and shall reduce the payment to the Contractor for any reduction in labor, materials, overhead and profit margin resulting from the reduction in the work. Except as the City shall so notify the Contractor in writing, it is understood and agreed by the parties hereto that no money will be paid to the Contractor for any new or additional labor or materials furnished unless a written modification is agreed to in a document signed by both parties.

The value of any work covered by a change order or of any claim for increase or decrease in the contract price shall be determined by one or more of the following methods in order of precedence listed below:

- A. An agreed lump sum; or in the event the parties cannot agree; then
- B. The unit rate for the work bid by the Contractor, if applicable, or in the event there was no such rate bid; then
- C. The actual cost for: (1) labor; (2) materials; (3) supplies; (4) equipment; (5) direct overhead (not to exceed 5% of the sum total of items 1-4, unless approved by the City); and (6) other services necessary and approved by the City to complete the work. In the event of a net increase in the Contract Amount for a change order as a whole, the City shall allow a payment to the Contractor of an additional ten percent (10%) of the actual cost of the work, not including direct overhead or bond costs, to cover the cost of general overhead and profit. The Contractor may also charge the City for actual cost of the net increase in bond costs as a result of the overall change to the Contract Amount. The City specifically reserves the right to request documentation, including but not limited to payroll stubs, bond bills, and invoices, to validate the Contractor's calculations.

SECTION 9. DISPUTES. Except as otherwise provided in this Agreement, any disputes concerning a question of fact arising under this Agreement which is not disposed of by Agreement shall be decided by the City. The decision of the City shall be final and conclusive unless, within thirty (30) days from the date of receipt of such decision, the Contractor shall mail or otherwise furnish the City a written signed appeal addressed to the Project Manager/Engineer. In connection with any appeal proceeding under this clause, the Contractor will be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Contractor will proceed diligently with the performance of the contract and in accordance with the City's decision. The decision of the City shall be final and conclusive, but shall not be arbitrary or unreasonable. Although this Contract has been drafted by the City, the Contractor expressly agrees that any ambiguity herein shall be resolved in favor of the City.

SECTION 10. DEFAULT, REMEDY AND TERMINATION. The City may terminate this agreement upon the occurrence of one or more of the following events:

- A. If Contractor or any Subcontractor should substantially violate any of the provisions of this contract;
- B. If Contractor substantially fails to perform any part of this Agreement;
- C. If Contractor repeatedly fails or becomes unable to perform the services under this Agreement as required herein, or substantially fails to provide services under this Agreement for a period of seventy-two (72) hours;
- D. If Contractor (1) shall become insolvent in a bankruptcy sense; (2) shall be generally not paying its debts as they become due, or within a reasonable time thereafter; (3) shall suffer, voluntarily or involuntarily, the entry of an order by any court or governmental authority authorizing the appointment of or appointing of a custodian (as that term is defined in 11 U.S.C. '101[10]), receiver, trustee, or other officer with similar powers with respect to it or any portion of its property which remains undismissed for a period of ninety (90) days; (4) shall suffer, voluntarily or involuntarily, with or without judicial or governmental authorization, any such custodian, receiver, trustee, or other officer with similar powers to take possession of any part of its property which third party remains in possession for an excess of ninety (90) days; (5) shall suffer, voluntarily or involuntarily, the filing of a petition respecting an assignment for the benefit of creditors which is not dismissed for a period of ninety (90) days; (6) shall be dissolved; (7) shall become the subject of any proceeding, suit, or action at law or in equity under or relating to any bankruptcy, reorganization or arrangement of debt, insolvency, readjustment of debt, receivership, liquidation, or dissolution law or statute or amendments thereto to be commenced by or against it or against any of its property which remains undismissed for a period of ninety (90) days; (8) shall voluntarily suspend substantially all of its business operations; (9) shall be merged with, acquired by, or otherwise absorbed by any individual, corporation, or other business entity or organization of any kind except for any individual corporation or other business entity or organization which is controlled by, controlling, or under common control with the Contractor; or (10) shall take action for the purpose of any of the foregoing,

After serving ten (10) days written notice on the Contractor and its surety of its intention to terminate the services of Contractor, and if within ten (10) days after serving such notice, the violation is not corrected to City's reasonable satisfaction, the City then may take over the work and prosecute it to completion by contract or by any other method it may deem advisable at the expense of the Contractor. The Contractor and the bonding

company shall be liable to the City for any reasonable cost occasioned by the City in excess of the amount agreed for the service herein.

The Contractor shall be entitled to a hearing before a City hearing officer upon the issue of termination if it submits a written request therefore within seven (7) days of the service of the notice of the City's intent to terminate. The Contractor shall be entitled to be heard at such hearing on the issue of termination. The Contractor shall not bring an action against the City, its officers, agents or employees arising out of or relating to the termination of this Agreement before the decision is issued by the City's hearing officer(s).

Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver of any provision of this Agreement shall not be construed to be modification of the terms of this Agreement, unless stated to be such in writing, signed by the City's authorized representative.

The Contractor shall continue the performance of this agreement to the extent not terminated under the provisions of this section.

The rights and remedies of the City provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this agreement.

SECTION 11. HOLD HARMLESS INDEMNIFICATION. The Contractor clearly and unequivocally agrees to indemnify and to hold the City and its agents, employees, and officers, harmless from and shall process and to 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 Contractor's 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 Contractor or others; and provided further, that nothing herein shall require the Contractor 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 Contractor expressly agrees that the indemnification provided herein constitutes the contractor's waiver of immunity under Utah Code Section 34A-2-105 for the purposes of this Agreement. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement. No liability shall attach to the City by reason of entering into this Agreement except as expressly provided herein.

SECTION 12. CONTROLLING LAW. These general conditions shall be construed in accordance with and enforced under the laws of the State of Utah. Any action of law, suit in equity, or judicial proceeding for the enforcement of the Agreement, or any provisions thereof, shall be instituted and maintained only in any of the courts of competent jurisdiction in Summit County, Utah.

SECTION 13. ASSIGNMENT. The Contractor shall not assign nor transfer any interest in this agreement without the prior written consent of the City, provided however, that claims for compensation due or to become due the Contractor from the City under this agreement may be assigned to a bank, trust company, or other financial institution without such approval. Written notice of any such assignment shall be promptly furnished to City.

SECTION 14. SAFETY AND TRAFFIC CONTROL. Contractor shall take all reasonable precautions to protect the safety of pedestrians, school children, motorists, and others who may use or come near to the Project site, including but not limited to compliance with the Manual of Uniform Traffic Control Devices.

SECTION 15. SAFETY AND PROTECTION OF THE WORK. Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the project work. Contractor shall provide reasonable protection to prevent damage, injury or loss to employees on the Project work and all other persons who may be affected thereby, materials and equipment, whether on or off the site, and other property at the work site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction. In addition, the Contractor shall give all notices and comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the safety of persons or property or their protection from damage, injury or loss.

The Contractor shall erect and maintain, as required by the existing conditions and progress of the work, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, setting safety regulations, and notifying owners and user of adjacent utilities.

The Contractor shall promptly remedy all damage or loss to any property referred to in this Section caused in whole or in part by the Contractor, any subcontractor, sub-subcontractor or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable and for which the Contractor is responsible, except for acts or omissions by the City or anyone directly or indirectly employed by it, or by anyone for whose acts it may be liable, and not attributable to the fault or negligence of the Contractor. Contractor shall remove from the site all cuttings, debris, equipment and unused material.

SECTION 16. UNENFORCEABLE CONTRACT, WAIVERS. In the event that any provision of this contract shall be ruled invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any provision, term or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same provision by the other party.

SECTION 17. ENTIRE AGREEMENT. This contract represents the entire integrated agreement between City and Contractor and supersedes all prior negotiations, representations or agreements, either written or oral. This agreement may be amended only by written modification signed by both parties.

SECTION 18. COMMENCEMENT OF WORK. Contractor will commence work as required by the specifications within ten calendar days after receiving the NOTICE TO PROCEED.

SECTION 19. UTILITIES. The right is reserved to the owners of public utilities and franchises to enter upon the street or work site for the purpose of making repairs or changes of their property that may become necessary by the work. The City shall also have the privilege of entering upon the street or work site for the purpose of repairing culverts, storm drains, water system repairs or adjustments and any and all other necessary City work.

The Contractor takes the whole risk, responsibility and expense with respect to the location of utilities, and in working with utility owners about locating, moving, repairing, and modifying utilities. All utility locations shown on the plans and specifications are approximate and are marked on the plans, if at all, only for convenience. The City makes no representation about the location of any such utilities, and Contractor is encouraged to contact utility companies and owners about the location of all utilities that may be impacted by or impact the Project work.

SECTION 20. HOURS AND DAYS OF WORK. All work performed by the Contractor, its subcontractors, material men, agents and employees shall be performed during work hours of 7:00 a.m. to 7:00 p.m. Monday through Saturday unless otherwise specified in a Conditional Use Permit or Construction Mitigation Plan. In individual Construction Mitigation Plans, the Building Official may further reduce the hours or days of work for Special Events or as other circumstances may reasonably warrant. When work is prohibited, no exterior construction, excavation or delivery of supplies and concrete are allowed. Interior work, however, may be allowed Monday through Sunday, with no limitation on hours for the following types of construction:

- A. Interior work on individual single-family home construction or addition projects not involving materials or supply deliveries

- B. Construction of decks, patios, landscape walls less than 4 feet in height, and fences on individual single-family lots
- C. Non-mechanized exterior painting on individual single-family residences
- D. Non-mechanized landscaping on individual single-family residences
- E. Survey work not involving grading or use of power equipment to cut vegetation.

Extended Hours Special Permit. The Building Official may authorize extended hours for construction operations or procedures which, by their nature, require continuous operation or modify or waive the hours of work on projects in generally isolated areas where the extended hours do not impact upon adjoining property occupants. In such cases, the Building Official shall issue a Special Permit identifying the extended hours. Contractor shall display the special permit on site.

Special Event Regulations. The Building Official and/or Police Chief may, at their discretion, restrict construction activity, including governmental or special improvement agencies, in order to assure the public safety during special events within the City. Special events shall include, but not be limited to the Art Festival, Film Festival, ski events, and holiday events.

SECTION 21. CONSTRUCTION MANAGEMENT PLANS. Contractor shall submit a Construction Mitigation Plan to be approved by the Community Development Department, for all building permits. The Community Development Department may waive this requirement for minor remodels, additions and interior construction where the impact on adjacent property is minimal. This plan shall be written and shall address, to the satisfaction of the Community Development Department.

A. Hours and Days of Operation. The Construction Mitigation Plan shall specify the daily construction start and finish times. Construction activity occurring outside of the times specified in Section 11-14-6 of the Park City Municipal Code may only be allowed by Special Permit issued by the Building Official, City Engineer and County Engineer.

B. Parking. The Construction Mitigation Plan shall include a parking plan. Construction vehicle parking may be restricted at construction sites so as to not block reasonable public and safety vehicle access along streets and sidewalks. Construction parking in paid or permit only parking areas require the Public Works Department review and approve a parking plan. The plan shall also

include anticipated temporary parking, e.g. delivery vehicles, large equipment parking.

C. Deliveries. The Construction Mitigation Plan shall identify proposed delivery locations and routes. Deliveries of construction materials and supplies including concrete may be regulated as to time and routing if such deliveries will cause unreasonable noise, parking, or access issues. In order to reduce the number of delivery trips to construction sites, the stockpiling of materials on or near the site may be required. In the case of multiple construction sites in close proximity, a common materials storage and staging site may be required.

D. Construction Phasing. Due to the narrow streets, small lot configuration, topography, traffic circulation, weather, construction parking and material staging problems, projects in the Historic District and other areas of the City may be required to be phased if more than one project is under construction in close enough proximity to create public safety or nuisance problems. In cases where phasing is deemed necessary by the Community Development Department, the first project to receive a building permit shall have priority, however, the Building Official shall have the authority to phase projects as necessary to assure efficient, timely and safe construction.

E. Trash Management and Recycling. Construction sites shall provide adequate storage and a program for trash removal.

F. Control of Dust and Mud on Streets. A program for the control of dust or other airborne debris shall be required. Provision must be made to eliminate the tracking of mud on streets and a program shall be required to remove any such mud daily.

G. Noise. Construction activity shall not exceed the noise standards as specified in Section 6-3-9 of the Park City Municipal Code.

H. Grading and Excavation. Because of the truck hauling involved in grading and excavation, restrictions on trucking routes as well as the hours of operation may be necessary to mitigate the adverse impacts from such operations. Destination and total cubic yards of excavated material shall be noted.

I. Construction Sign Requirements. A sign, indicating the name of the party responsible for the Project shall be posted in a location where such sign is readable from the street or driveway to the construction site. The sign shall not exceed 12 square feet in size, six feet in height and shall not exceed a letter type of 4". Information on the sign shall include, at a minimum:

1. Name, address and phone number of contractor;
2. Name, address, and phone number of person responsible for the project; and
3. Phone number of party to call in case of emergency.

No additional fee is required for this sign.

SECTION 22. TOILET FACILITIES AND CONTAINERIZED TRASH SERVICE REQUIRED.

A. The Contractor shall obtain and maintain on the site a container of suitable size and design to hold and confine trash, scraps, and other construction related refuse created or accumulated on the site. All such construction refuse shall be maintained in a closed container at all times, until transferred to the landfill. Containers may be placed in setback areas, provided that the placement of the container does not obstruct the view of motorists on adjoining streets and thereby create traffic hazards. Contractor shall not permit accumulated debris, litter, or trash on the construction site to blow or scatter onto adjoining properties, including the public street or to accumulate on the site outside of the container, or on transit to the landfill or dump. The owner or contractor shall service the container as frequently as needed to prevent trash from over-flowing.

B. The Project site shall have permanent toilets, or an approved temporary toilet facility positioned in a location approved by the Building Department, at the rate of one toilet per fifteen on-site employees (1-15 employees = one toilet, 16-30 employees= two toilets and so on).

SECTION 23. OBEY LAWS.

A. The Contractor shall obey all laws, ordinances and regulations of the United States, the State of Utah, and Park City in performing this Agreement.

B. The Contractor shall register and participate in E-Verify, or equivalent program. The Contractor agrees to verify employment eligibility through E-Verify, or equivalent program, for each new employee that is employed within Utah.

SECTION 24. NONDISCRIMINATION.

A. The City is an equal opportunity employer.

B. In the performance of this Agreement, the Contractor 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 Contractor 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 Contractor 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 Contractor 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 Contractor shall take such action as may be required to ensure full compliance with the provisions in the immediately preceding paragraphs herein.

SECTION 25. THIRD PARTY RIGHTS. Nothing herein is intended to confer rights of any kind in any third party. No member, officer, or employee of the City shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

SECTION 26. PROJECT MANAGER/ENGINEER. The Project Manager/Engineer for this Project is Todd Touchard, or such other person designated by the City Engineer or Public Works Director to the Contractor orally or in writing.

SECTION 27. PARTIES' REPRESENTATIVES. For purposes of notice required or desired by the parties, or communication involving the services under this Agreement, such notice or communication shall be deemed to have been given when personally delivered or mailed, or sent by facsimile transmission certified mail, postage pre-paid, to the parties at the following addresses:

Contractor: _____, or such other person designated in writing by the Contractor's chief administrative officer, at the Contractor's address set out first above;

Park City: Project Manager/Engineer, at the address set out first above for the City, or when given to such other person as either of the above representatives shall designate in writing. The designation of any address may be changed by notice given in the same manner as provided in this paragraph.

SECTION 28. SEVERABILITY. Should any part of this Agreement for any reason be declared invalid, such decision shall not affect the validity of any remaining provisions, which remaining provisions shall remain in force and effect as if this Agreement had been executed with the invalid portion thereof eliminated, and it is hereby declared the intention of the parties that they would have executed the remaining portion of this Agreement without including any such part, parts, or portions which may, for any reason, be hereafter declared invalid. If any provision of this Agreement is held invalid or unenforceable with respect to particular circumstances, such provision shall nevertheless remain in full force and effect in all other circumstances.

IN WITNESS WHEREOF, the parties have entered into this agreement on the day and year set out at the top of this Agreement.

PARK CITY MUNICIPAL CORPORATION

Tom Bakaly, City Manager

ATTEST:

City Recorder's Office

APPROVED AS TO FORM:

City Attorney's Office

Eden Construction Contract No. _____
Project: _____

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CONTRACTOR

BD Bush Excavating
938 S. Main Street
P.O. Box 225
Pleasant Grove, Utah 84062

Signator, Title

Utah Contract License No.

Corporate Acknowledgment

STATE OF UTAH)
) ss.
COUNTY OF SUMMIT)

On this ____ day of _____, 2009, personally appeared before me (signator), 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 (Contractor business name) by Authority of its Bylaws/Resolution of the Board of Directors, and acknowledged to me that said Corporation executed the same.

Notary Public