PARK CITY COUNCIL MEETING
SUMMIT COUNTY, UTAH
APRIL 13, 2006

PUBLIC NOTICE IS HEREBY GIVEN that the City Council of Park City, Utah will hold its regularly scheduled meeting at the Marsac Municipal Building, City Council Chambers, 445 Marsac Avenue, Park City, Utah for the purposes and at the times as described below on Thursday, April 13, 2006.

Closed Session – Executive Conference Room
2:30 p.m. Property, litigation and personnel

Work Session – City Council Chambers
3:45 p.m. Council questions/comments
4:00 p.m. Tour of Utah MFL – August 12, 2006
4:10 p.m. Review of regular meeting:

- 2006 Art Festival – Friday night opening
- New loan request – Mountainlands Community Housing Trust
- Affordable Housing Resolution
- Questions/comments on MOU for liquor store, golf concession, and/or project contracts
- Other meeting questions/comments

5:50 p.m. Break

Regular Meeting – City Council Chambers
6:00 p.m.

I ROLL CALL

II COMMUNICATIONS AND DISCLOSURES FROM COUNCIL AND STAFF

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

IV WORK SESSION NOTES AND MINUTES OF MEETING OF MARCH 23, 2006 AND MARCH 30, 2006

V CONSENT AGENDA PUBLIC HEARINGS

1. LMC amendments Chapter 1: General Provisions; Chapter 3: Off-Street Parking; Chapter 4: Supplemental Regulations; Chapter 6: Master Planned Developments; Chapter 7: Subdivision General Provisions; Chapter 8: Annexations relating to changes in the Utah State Code and to modify the use of the term Community Development Department and Community Development Director **(motion to continue to April 27, 2006)**

2. Master Festival License for the Park City Food and Wine Classic to be held on Main Street on July 7, 2006

3. Master Festival License for the Park City Rugby Fundraiser to be held at City Park on August 19, 2006

4. Third Addendum to the Park City Municipal Corporation Master Festival and City Services Agreement with the Kimball Art Center which outlines the terms for the Friday Free Locals Event on August 4, 2006

VI CONSENT AGENDA

1. Master Festival License for the Park City Food and Wine Classic to be held on Main Street on July 7, 2006

2. Master Festival License for the Park City Rugby Fundraiser to be held at City Park on August 19, 2006

3. Authorization to staff to execute a professional services agreement with Hotel Park City, in a form approved by the City Attorney, for a food and beverage concession at the Park City Golf Club in the amount of $500 per month plus 5% of gross revenues for golf course booked events

4. Third Addendum to the Park City Municipal Corporation Master Festival and City Services Agreement with the Kimball Art Center which outlines the terms for the Friday Free Locals Event on August 4, 2006

5. Authorization to the Mayor to enter into a Memorandum of Understanding with the State of Utah Division of Facilities and Construction Management regarding local consultation for a new State Liquor Store at Snow Creek

VII NEW BUSINESS

1. Resolution repealing and replacing Resolution No. 17-99 in its entirety and adopting revised affordable housing guidelines and standards for Park City, Utah
(a) Public hearing
(b) Action

2. Additional loan request in the amount of $250,000 for The Line Condominiums – Mountainlands Community Housing Trust

3. Authorization to the Mayor to execute a Project Cooperation Agreement, in a form approved by the City Attorney, with the U S Army Corp of Engineers for water and sewer line replacements on Prospect Avenue in an amount not to exceed $800,000

4. Authorization to the Mayor to execute an amendment to the Professional Service Provider Contract with FFKR Architects, in a form approved by the City Attorney, in an amount not to exceed $297,000 for Police Facility Design Services

5. Acceptance of Bernolfo Family Partners annexation petition for a metes and bounds parcel located off of Snows Lane, west of the Thaynes Canyon Subdivision and north of the Spiro Tunnel Annexation, containing 6.545 acres

VIII ADJOURNMENT

A majority of City Council members may meet socially after the meeting. If so, the location will be announced by the Mayor. City business will not be conducted.

Pursuant to the Americans with Disabilities Act, individuals needing special accommodations during the meeting should notify the City Recorder at 435-615-5007 at least 24 hours prior to the meeting.

Posted: 04/10/06
See: parkcity.org

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

April 2006

20 Jan gone
Art Advisory Board update - work
Wasatch Back Relay MFL – June 24, 2006 – public hearing/action
Ordinance approving plat to combine three Old Town lots into two lots of record, located at 1161 Park Avenue – Ray
Award of contract for the Prospect Street Reconstruction Project - Eric
Ordnance approving the Creekside subdivision plat, creating two lots of record, located at 2360 Holiday Ranch Loop Road – Jon
Ordinance – 130 Sandridge Avenue plat amendment - Ray
Corps of Engineers 575 funding agreement for Prospect
Sidewalk dining lease – Eating Establishment, 317 Main Street
Ratification of approval of an Ordinance approving a subdivision of Lots 7, 8, 9, 10, 11 and one-half of Lot 12 of the Snyder's Addition to the Park City Survey, located at 1021 Park Avenue, Park City, Utah (a) Reopen public hearing (b)Action

27 Solid waste - work
Ordinance – Larkspur 5, Units 27-32 Village at Empire Pass Record of Survey – Brooks
Ordinance – Larkspur 4, Units 21-26 Village at Empire Pass Record of Survey - Brooks
Ordinance – 438 Ontario Avenue plat amendment – David
Ordinance – 911 Empire Avenue plat amendment - David
LMC amendments Chapter 1: General Provisions; Chapter 3: Off-Street Parking; Chapter 4: Supplemental Regulations; Chapter 6: Master Planned Developments; Chapter 7: Subdivision General Provisions; Chapter 8: Annexations relating to changes in the Utah State Code and to modify the use of the term Community Development Department and Community Development Director
Deer Valley water agreement – Jerry
Resolution repealing and replacing Resolution No. 17-99 in its entirety and adopting revised affordable housing guidelines and standards for Park City, Utah

May 2006

4 Budget work session and public hearing
11 **No meeting**
13 Community Clean-up Day
18 Budget work session and public hearing
Construction contract for 2 MG Boothill Tank - Kathy
25 Budget work session and public hearing
29 Memorial Day – offices closed

June 2006

1 Budget work session and public hearing and tentative adoption
8 Budget work session and public hearing
15 Budget work session, public hearing and final adoption
22
29

July 2006
6
13
20
27

August 2006
3
10
17
24
31
One year review of Ordinance No. 05-49, outdoor display of merchandise – August 2006
One year review of land use associated with purchase of Aerie Drive/Deer Valley Drive property – August 2006

Pending Items:
Main Street real estate office mix – Jon
Mosquito Abatement District update - John Yassi, District Director
Eagle Pointe V annexation public hearing/action - Brooks
Amendment to LMC creating Community Transition Zone and amending Chapter 6 Master Planned Developments creating unit equivalent multiplier for (I) occupancy buildings
KPCW lease
General Plan update
Regional bus service SLC
Conveyance of easement from Iron Mountain & Associates
Briefing on parking regulations and event parking permits for Sundance – Fall 2006

City Council Staff Report

Author: Alison Butz and Max Paap
Subject: Tour of Utah
Date: April 13, 2006
Type of Item: Administrative – Master Festival License

PARK CITY 1884

Special Events and Facilities Department

Summary Recommendations:
Provide Staff with policy direction on the Tour of Utah Master Festival License for August 12, 2006. If Council is supportive of the direction the event is proceeding, Staff will return for approval of the Master Festival License on May 4, 2006.

Description:

Topic:
Review the Master Festival License Application, submitted by Three Peaks Promotions, for the Tour of Utah on August 12, 2006.

Background:
The Tour of Utah, produced by Three Peaks Promotions, is scheduled for August 7 through 12, 2006. The event holds a cycling race each day at a different location in order to showcase specific Utah towns and areas. The event is in its first year and plans to increase the ridership in 2007 to include national teams and will spread the race locations throughout the state. The template for this event is similar to the Tour of Georgia and Tour of California.

The races in 2006 will be focused around the Salt Lake area with one stage on Saturday, August 12th going through Park City. The proposed route would start racers in Salt Lake City. The racers would ride up through Emmigration Canyon, continue Eastbound on I-80 and travel through Park City South on SR 224 and east on SR 248. The racers would ride south on Hwy 40 through Midway and onto Hwy. 189. The racers would proceed on the Alpine scenic hwy descend and wind through Salt Lake area and finishing at the top of Little Cottonwood Canyon. Saturday's race is a total of 110 miles.

The route involves state roads and municipalities with whom the organizers are working closely with all parties. The racers will be escorted by Utah Highway Patrol, and they will be followed by team cars and broom wagon. Through the logistic planning the organizers have not looked at street closures during the race, just the temporary holding of traffic for a total of 15 minutes as the racers move through Park City.

Analysis:

Tour of Utah
The event takes place in Park City on Saturday, August 12. The start and finish of the race takes place outside of Park City.

The race organizers anticipate the racers to ride through Park City between 9:00 am and 10:00 am. The traffic along SR 224 and SR 248 will be required to pull over at that time, and volunteers will be placed along all driveways onto those roads to prevent vehicles from entering as the racers go by.

The proposed roads are owned by the State of Utah and the organizers are working with the state organizations to obtain all required permits.

Mustang Roundup
Staff has taken into consideration the Northern Utah Mustang Owners Association car show on Main Street. The show entrants will begin to arrive on Main Street at 7:00 am to start to stage the show cars. The event will open at 10:00 am and run through 3:00 pm that afternoon.

Due to the fact that the events take place in separate areas of town, times of the events, and that the traffic hold will be 15 minutes or less for the cycling event, staff does not envision any concerns with traffic.

Parking
The China Bridge Parking Structure and surface parking along Swede Alley should accommodate car show spectators at that time of day. Parking for the Tour of Utah spectators can be spread out along the course as they enter on SR 224 and depart along SR 248.

Department Review:
All applicable departments have reviewed the Tour of Utah.

Alternatives:
Approve the Request:
Approve the Master Festival License allowing the Tour of Utah to occur as described.
Deny the Request:
Deny the Master Festival License, preventing the addition of the Tour of Utah to Park City's schedule of events.
Continue the Item:
The City Council may continue the discussion in order to receive additional information

Significant Impacts:
Park City has held a similar event to the Tour of Utah. The activities will be contained along the specified route venue and will conclude by 10:00 am.

Consequences of not taking the recommended action:
The Tour of Utah would not take place in Park City.

Issues for Discussion:

- Does Council support the event as proposed on Saturday, August 12?

Recommendation:
Provide Staff with policy direction on the Tour of Utah Master Festival License for August 12, 2006. If Council is supportive of the direction the event is proceeding, Staff will return for approval of the Master Festival License on May 4, 2006.

PARK CITY WORK SESSION NOTES
SUMMIT COUNTY, UTAH
MARCH 23, 2006

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

Tom Bakaly, City Manager; Mark Harrington, City Attorney; Jerry Gibbs, Public Works Director; Kent Cashel, Deputy Public Works Director; Brooks Robinson, Senior Planner; Alison Butz, Special Events and Facilities Manager; Eric DeHaan, City Engineer

Kevin Callahan, Summit County Public Works Director; Jennifer Guetschow, Summit Land Conservancy

1. Council questions/comments

Roger Harlan stated the success of the ice arena was gratifying and his fellow officials should be proud of moving forward with the construction of the arena. He also announced that the transit system reached its 1,000,000th passenger milestone earlier this year than last. He emphasized it was good to remind themselves that while there may be stress and strain in civic life, there were home runs and they need to be saluted.

Joe Kernan reported the Great Salt Cup Hockey Sled Tournament would be held at the Park City Ice Arena from March 30th to April 1st.

Candace Erickson discussed a message received from an anonymous caller who complained about the $8 charge to use the rink, and also felt the rink was unattractive and not well done for the amount of tax dollars that were spent. Had she been able to have a conversation with the caller, she would have stressed that Council requested that the rink be built as economically as possible since it was built with taxpayer money. Further, she felt there should be a user fee to sustain it.

Jim Hier reported that Inter Agency Task Force discussed trash and transportation updates. He also attended the Transportation Subcommittee meeting where they reported that the Five Year Plan developed two years ago is nearly complete and it is time to create a new plan, as well as begin discussions on cost sharing possibilities with the County for new facilities.

Mayor Williams Dana thanked Utah Olympic Park for hosting the skeleton race last week-end which provided a bonding experience for the Governor and Mayors of Salt Lake City, Salt Lake County, Park City, and a Summit County Commissioner. He reported that Park City has been asked to make a presentation at the next quarterly Energy Forum meeting which is sponsored by Utah Power and Light, and run by Dr. Laura Nelson, the Governor's "energy czar." The presentation will focus on green building practices, open space preservation and renewal energy. He also reported that

Staff was preparing recommendations and options for the UPCM/PCMR Task Force to review.

Mayor Williams announced that Events and Facilities Manager Alison Butz is leaving the City. He stated she personifies what is good about City government and has done a good job for the City. He is sad to see her leave, but happy for her future endeavors.

Alison Butz announced that Staff has been working with the Kimball Art Center to draft a long-term agreement. Due to their planning efforts for the 2006 Festival, they would like to enter into a one-year contract and take additional time to develop the long-term agreement. Staff will present the one-year contract to Council for discussion at the next meeting.

2. Conservation Easements – McPolin Farm

Brooks Robinson, Senior Planner, explained that Summit Land Conservancy had created baseline documentation for the City's open space in Round Valley and Flagstaff. Jennifer Guetschow, Summit Land Conservancy thanked Council for allowing them to monitor the lands. She requested that the Mayor Council Members review the books at their convenience and formally accept them at a future meeting.

Ms. Guetschow explained these are Type 1 Lands, open space lands as defined by the Internal Revenue Service and the Land Trust Alliance, and do not contain significant natural features or exceptional conservation potential. They were protected to prevent development from occurring on them. They conducted a baseline review of existing wildlife, vegetation, weeds, etc. They also included information from the Flagstaff Development Agreement for reference.

Ms. Guetschow noted that Summit Land Conservancy does not have the expertise to evaluate the historic structures in adherence to the Flagstaff Historic Preservation Plan. They recommend that a preservation specialist do the work this summer to ensure that responsibilities of the developer are adhered to and followed-up.

Ms. Guetschow believed aerial photography and survey markers would provide an effective way to monitor development encroachments onto easement lands. She suggested a signing program to identify the lands and provide "rules of the road" information to the public. They identified a weed management issue in Round Valley and will monitor the revegetation.

Mayor Williams requested that Council members review the reports to see whether they accomplished their needs.

Jennifer Guetschow stated that both Brooks Robinson and Jeffrey Schoenbacher had provided assistance and thanked them for their efforts.

Mr. Robinson noted the City collects .005% from every sale in Empire Pass for open space monitoring and administration and the City should be able to assist Summit Lands with their future monitoring.

Jim Hier commented it was difficult to differentiate between the Gillmor and Round Valley purchase properties. He suggested future discussions about extending the easements into portions of the Gillmor property.

Brooks Robinson turned the discussion to McPolin Farm. Staff sought direction from Council about placing a conservation easement on the fields and open space outside of the areas immediately surrounding the buildings. Excluding the areas around the buildings would provide flexibility for events and future uses in and around the buildings. Council members concurred and requested that Staff return with documents for their review.

City Attorney Mark Harrington reminded Council members of Political Activities Guidelines for City officers and employees. He asked them to contact him for clarification of any points.

Mayor Williams reported the Prospector neighborhood would like to hold a party this summer to celebrate the delisting of the Prospector Area through successful efforts of our environmental management system.

3. Solid Waste issues:

- **Swede Alley trash discussion**
- **Summit County**

Staff sought discussion from Council on several items: trash handling in the Main Street Swede Alley area; financing County solid waste programs; solid waste master plan; commercial trash; and, a Summit County operated residential trash service.

Public Works Director Jerry Gibbs commented on the consistent problem with restaurants and business on Main Street placing trash outside of the containers. He stated the eight-yard containers were difficult to use because of the height of the lids. In additional some businesses are not breaking down boxes, which take up a lot of space inside the dumpsters. The situation improved somewhat following distribution of flyers to all Main Street businesses and coverage by KPCW and the Park Record; however, the City spends two man hours every day dealing with trash pick-up in Swede Alley.

He explained businesses are required to use the commercial dumpsters unless they have adequate space on their property to house and enclose their trash. They are not allowed to place cans and dumpsters in the City right-of-way. The new compactor will be installed mid-April and many of the eight-yard containers will be removed from Swede alley. The two remaining containers (Wasatch Brew Pub lot and behind Cicero’s) will be screened to comply with Land Management Code requirements.

Mr. Gibbs' recommendation is to monitor Swede Alley; continue communications with Main Street businesses; and make another assessment after the compactor has been installed.

Joe Kernan suggested if the County chooses to proceed with open competition for commercial waste, then it might be a good idea to create a business district so they can negotiate directly with haulers.

Mr. Gibbs noted much depended on the direction the County pursues for commercial trash. The County has subsidized commercial waste by not charging a tipping fee and part of the Committee's recommendation will be that a tipping fee, estimated at 35%, will be required for commercial trash. They don't know whether competition will drive pricing down enough to off-set the potential 35% increase in fees, so the City needs to consider its position. He expressed concern about multiple commercial trucks added to traffic congestion on Main Street.

Marianne Cone expressed concern about the City continuing spending money to clean up trash and hoped pressure would come from other business owners or from the HMBA. Candace Erickson noted it costs everyone more if they have to dump more often. Mr. Gibbs added that all efforts on Swede Alley and Main street are funded through the General Fund. The few businesses on Main that have adequate space for trash storage pay Allied Waste directly. The others are part of a community system and Allied Waste bills them based on their square footage and type of business; however, there is no collection process available because they are community dumpsters. Similarly, there is no way to provide incentives for recycling.

Summit County Public Works Director Kevin Callahan stated that tourism in Summit County generates a lot of commercial waste and very few establishments were set up with recycling programs in mind. The Committee will likely recommend a phased tipping fee for commercial uses. An option could be to provide grant programs to commercial areas that could partially fund recycling facilities.

Joe Kernan requested that Council discuss the five issues identified in the Staff Report.

1) <u>Trash handling in Main Street/Swede Alley area</u>. Council supported ongoing management and observation in the Main Street area.
2) <u>Financing a County Solid Waste Program</u>; and
3) <u>Solid Waste Master Plan</u> – If additional fees are to be imposed for capital improvements and equipment, Council desired specific information about those items. In addition, there needs to be financial analysis done on how much longer the County wants to be in the land-fill business and to identify financial implications of making that decision. There will be costs associated with closing the landfill and using transfer stations or constructing MRFs (materials recovery facilities). While recycling is a noble effort, the economics of recycling must be considered when making these decisions.

4) Commercial trash – Council members expressed concern about multiple carriers coming downtown for commercial trash pickup.

Joe Kernan felt it made sense to create a business district for Main Street/Swede Alley so the business could work together to get the most reasonable rates.

Roger Harlan asked whether anyone had penciled out a scenario where the City provided that function for a fee. He agreed it would not be cost efficient, but we might be able to do it better and more efficiently. Mr. Gibbs stated we do need to consider how to best provide that service; and, the HMBA and businesses need to be a part of the decision-making process.

5) Summit County may consider operating a residential trash service – Council members would need to evaluate a cost analysis before they could support this option. They feel it is better handled by the private sector.

City Manager Tom Bakaly suggested that Staff draft a letter outlining goals and objectives relating to solid waste and recycling, borrowing from the sustainability goals Council recently reviewed. That could provide the foundation of our vision and help establish guidelines for consideration of individual projects, such as a MRF.

Candace Erickson wanted to hear the concerns of the Main Street business owners before Council formulated a position. Jerry Gibbs stated that Paul Marsh was the HMBA representative. He has been attending the meetings and talking with Jerry and they will continue that dialogue.

Council directed Staff to return to them with objectives and goals.

5. Summit County Corridor Preservation Fee

Kent Cashel, Deputy Public Works Director, and Kevin Callahan, Summit County Public Works Director discussed the request for Park City to provide a letter of Support for Summit County to impose a fee to be used for corridor preservation. The Legislature codified SB-8 "Local Corridor Preservation Funding" which allows a county legislative body to impose a $10.00 fee on every vehicle registration. Funds are collected by the Utah State Tax Commission, deposited into the Local Transportation Corridor Preservation Fund, and administered by the Utah Department of Transportation. The monies may be used for planning, or right-of-way acquisition to preserve transportation corridors. Time is of the essence because April 1st is the deadline to adopt an ordinance to impose fees this year. All municipalities within Summit County will have to enter into an Inter-local Agreement to establish a Council of Government comprised of nine individuals: mayors from each of the six municipalities and the three County Commissioners. The agreement will establish a process by which projects would be prioritized and submitted to UDOT to draw funding out of the fund. Staff requests that Council direct the Mayor to execute the draft letter attached to the Staff Report.

Summit County Public Works Director Kevin Callahan explained that the legislation had not been implemented by any jurisdiction, although Salt Lake County, Davis county and Summit County were very interested. Realistically, this is a funding source designed for areas that are urbanizing. He noted the need for new road infrastructure is fairly small, but they could explore ways to garner support of the communities in eastern Summit County. He noted many of the smaller communities need road maintenance programs and have difficulty with the scale. Perhaps the County may be able to fund an equivalent to their contribution through County funding, which would keep the tables even.

Council members supported the concept but requested the letter communicate to the Summit County Commission that Park City supports this, but does want there to be a connection between where the fee is collected and where it is spent. Staff will revise the letter and prepare it for the Mayor’s signature.

Dedication of new Parking Structure
Council members held a “ribbon-cutting” ceremony to celebrate the opening of the new parking garage. Economic Development Director Colin Hilton and Mayor Williams gave short speeches. The ceremony was highlighted by the Mayor driving through the ribbon while being “pursued” by a motorcycle officer.

PARK CITY COUNCIL MEETING
SUMMIT COUNTY, UTAH
MARCH 23, 2006

I ROLL CALL

Mayor Dana Williams called the regular meeting of the City Council to order at 6:00 p.m. at the Marsac Municipal Building on Thursday, March 23, 2006. Members in attendance were Dana Williams, Marianne Cone, Candace Erickson, Roger Harlan, Jim Hier and Joe Kernan. Staff present was Tom Bakaly, City Manager; Mark Harrington, City Attorney; Ron Ivie; Chief Building Official; Jeffrey Schoenbacher, Environmental Specialist; Gary Hill, Budget Manager; Ray Milliner, Planner

II COMMUNICATIONS AND DISCLOSURES FROM COUNCIL AND STAFF

Marianne Cone reported that following the work session discussions regarding trash, Mike Sweeney retrieved two boxes from the dumpster that was full of cardboard that had not been broken down; one from a residential delivery and one from a Main Street business.

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

There was no public input.

IV PUBLIC HEARINGS

1. LMC amendments Chapter 1: General Provisions; Chapter 3: Off-Street Parking; Chapter 4: Supplemental Regulations; Chapter 6: Master Planned Developments; Chapter 7: Subdivision General Provisions; Chapter 8: Annexations relating to changes in the Utah State Code and to modify the use of the term Community Development Department and Community Development Director (motion to continue to April 13, 2006) - **Roger Harlan, "I move to continue discussion of LMC amendments to April 13, 2006" . Marianne Cone seconded. Motion unanimously carried.**

2. Ordinance approving The National Garage Subdivision of Lots 16, 17, 18, 21, 22 and a portion of Lot 20 of Block 6 of the Park City Survey and the Snyders Addition to the Park City Survey, located at 703 Park Avenue and 664 Woodside Avenue, Park City, Utah – Planner Ray Milliner explained the parcels would be combined into two lots, one would house the proposed whiskey distillery, and one the single family home. Staff recommends approval subject to Conclusions of Law, Findings of Fact and Conditions of Approval outlined in the Staff Report.

Planner Milliner clarified for Candace Erickson that structures on the parcels will continue to be governed by the City's Historic District Guidelines. The Mayor opened the public hearing and hearing no input, closed the public hearing.

3. Ordinance amending Chapter 15, Park City Landscaping and Maintenance of Soil Cover, to expand the Soils Ordinance Boundary to include property located at the Park City High School – Chief Building Official and Environmental Specialist Ron Ivie, Jeffrey Schoenbacher explained this was a map amendment which added the property

involved in the high school renovation and associated fields to the Soils Ordinance Boundary. The Mayor opened the public hearing and hearing no input, closed the public hearing.

Mayor Williams expressed appreciation to Jeffrey Schoenbacher for his work with the EPA. He had done a great job and was instrumental in getting an area cleared.

V CONSENT AGENDA

Candace Erickson, "<u>I move approval of Consent Agenda Items 1 and 2"</u>. Jim Hier seconded. <u>Motion unanimously carried</u>.

1. <u>Ordinance approving The National Garage Subdivision of Lots 16, 17, 18, 21, 22 and a portion of Lot 20 of Block 6 of the Park City Survey and the Snyders Addition to the Park City Survey, located at 703 Park Avenue and 664 Woodside Avenue, Park City, Utah</u>

2. <u>Ordinance amending Chapter 15, Park City Landscaping and Maintenance of Soil Cover, to expand the Soils Ordinance Boundary to include property located at the Park City High School</u>

VI NEW BUSINESS

1. <u>Resolution authorizing the issuance and confirming the sale of up to $4,450,000 Park City, Utah Water Revenue Bonds, Series, 2006; authorizing the execution and delivery of a second supplemental indenture of trust to secure said bonds, and other documents required in connection therewith; and related matters</u> - Gary Hill reviewed the Staff Report, explaining this was a negotiated bond sale with the Community Impact Fund Board. The proceeds will be used for the (1) Boothill Pump Station; (2) Boothill Water Storage Tank; and (3) Park Meadows Treatment Facility. The debt service is paid for out of water fees. The Mayor opened the public hearing. Hearing no comment, the hearing was closed.

J**im Hier, "<u>I move approval of the resolution authorizing issuance of up to $4,450,000 Park City, Utah Water Revenue Bonds, Series, 2006"</u>. Joe Kernan seconded. <u>Motion unanimously carried</u>.**

VII ADJOURNMENT

With no further business, the regular meeting of the City Council was adjourned at 6:10 p.m. and Council convened as the Park City Housing Authority.

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

Prepared by Sharon Bauman

PARK CITY COUNCIL WORK SESSION NOTES
SUMMIT COUNTY, UTAH
MARCH 30, 2006

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

Planning Commission members Charlie Wintzer and Jack Thomas

Tom Bakaly, City Manager; Kirsten Whetstone, Planner; Polly Samuels-Mclean, Assistant City Attorney; Jonathan Weidenhamer, Planner; Ben Davis, Planning Intern; Seth Atkinson, Budget Analyst

Bruce Erickson, Stantec consultant; Tim Henney, Bonanza Drive property owner; Heather Colson, Homestake Condominiums HOA; Carol Potter, Mountain Trails Foundation; Cindy Matsumoto, Bonanza Drive merchant; Terry Frank, NOMA Board Member; Jenny Smith, Park City Mountain Resort; Jennifer Guetschow, Summit Land Conservancy; Greg Freedman, Claimjumper Condominiums HOA; Rodman Jordan, Centura Development; and Mary Wintzer, Iron Horse Drive property owner

1. Analysis of Main Street business uses. Jonathan Weidenhamer explained that after the Olympics, the City began to develop an economic development strategic plan and one component addressed commercial mix. A trend of real estate offices moving to Main Street prompted concerns, and some Council members expressed interest in exploring an ordinance to control the proliferation of real estate offices on Main Street. He pointed out the decrease in retail from 1998 to 2002 and the increase of real estate offices fronting on the street from seven to twelve. At that time, however, Council decided not to pursue an ordinance and directed staff to monitor uses.

He added that the economic development plan has been in place for the past several years and at the January 2006 Visioning Session, Council discussed conducting a market analysis of the entire town and updating the 2002 information. Ben Davis explained that the 2002 study area included the Main Street corridor, including Heber Avenue and Swede Alley. This project only looked at Main Street and although the numbers are a little different, the percentages are the same. The number of business licenses, in the 220 to 230 range, has remained relatively consistent. Mr. Davis discussed Aspen's ordinance, which prohibits real estate offices on the street level. Since 2002, restaurant uses have remained constant at 35%, the retail presence has grown by about 9%, and he explained the drop in vacancies in buildings. Office uses total 8.4% which was at 11% in 2002. General office uses are up from 2% to 2.4% while real estate offices have decreased from 9% to 6%.

Seth Atkinson explained that the Budget Department maintains a data base of sales tax collected which can be broken down by geographic area or business type. He explained that foregone sales tax revenue was determined by calculating the retail sales tax generated on Main Street and a retail square foot sales tax rate. Staff estimated a range of $29,000 to $49,000 annually and estimate that in 2006 about $740,000 will be collected in sales tax revenue for Main Street, representing roughly 47% of all sales tax revenue. There was discussion about the boundaries of the study area and Jonathan Weidenhamer explained that this work is the first step in establishing a market analysis. Staff recommends not pursuing an ordinance. In response to a question from Candace Erickson about the defensibility of an ordinance, Polly Samuels McLean explained that *office use* could be prohibited on street level, not specifically identifying real estate offices. Aspen's ordinance is drafted in this manner. Council concurred with staff's recommendation.

2. Joint Work Session with Planning Commission - General Plan amendments – Kearns/Bonanza commercial redevelopment area. Mayor Dana Williams explained that the purpose of the work session is to invite community dialog with regard to redevelopment in the area. The City is interested in a proactive approach by including stakeholders early in the discussions. Kirsten Whetstone explained that staff and Stantec are drafting General Plan amendments specific to this area, which will form the framework for a long-term strategic plan. These amendments have the potential of triggering Land Management Code changes as well as transportation and/or economic development plans. The draft was discussed jointly by the Planning Commission and City Council on March 16, 2006 and staff was directed to contact property owners for this meeting. She emphasized that there will be other opportunities for the public to comment. This area will be described in the General Plan like other districts and it is hoped that the draft will be refined as the process unfolds. She asked for direction on the next steps and the City's role in redevelopment. Kirsten Whetstone described the boundaries of the area.

Tim Henney, property owner, questioned the purpose of the analysis since the area is built-out. Mayor Williams responded that as a part of a potential redevelopment plan it seems appropriate to include all property owners and comprehensively look at improvements. Mr. Henney asked if there is a development plan for properties outside the boundaries. Candace Erickson pointed out that there is zoning in place for properties and when the redevelopment proposal was presented, Council acknowledged opportunities to make this a more attractive area and promote economic development. In response to a question from Mr. Henney about the composition of the district, Mr. Hier explained that the parcels impacted by traffic on Bonanza are included. Mayor Williams added that the goal is to create synergy in the area.

Heather Colman, Homestake Condominiums, relayed that she has seen preliminary plans to support the commercial area and asked how that affects residential properties. The Homestake HOA is prepared to spend $500,000 in renovation costs and she asked if there are long-term impacts which may affect their decision to proceed with improvements. Bruce Erickson, consultant, stated that residential areas are included to encourage preserving this use and when redevelopment occurs, it is intended to focus on efforts like minimizing traffic impacts. Connections to the Rail-Trail from this neighborhood are contemplated. Mayor Williams emphasized that there is no plan to remove condominium stock and replace it with new development. Carol Potter, Mountain Trails, stated that the Rail-Trail is a major trail and connectors for residents are very important. A safe connection to the Rail-Trail from Poison Creek should be pursued.

Dana Williams discussed different types of open space. Cindy Matsumoto, business owner, expressed concerns about paying for redevelopment. Mr. Erickson stated that at this point, the plan is designed to allow for redevelopment by the private sector; this is not an imminent domain issue. The idea is to promote a plan that encourages improvements. There was discussion about the features of a redevelopment agency. Cindy Matsumoto stated that she would like the big power poles removed and enhancements, like flowers. The area should be inviting to tourists and locals. Candace Erickson asked Ms. Matsumoto if she considers plazas as a type of open space. She responded that as a business owner, gathering spaces are important but the people who live there should have more to say about open space. Mayor Williams reiterated that the City's approach is to be proactive. Terry Frank, No Place Like Home, read a prepared statement. He spoke about dealing with the competition at Kimball Junction and it is not the intention of NOMA to compete with Main Street. Mr. Frank added that he has made a large financial commitment to his business knowing that changes are forthcoming. Mr. Henney addressed the possibility of parking lots becoming development parcels and suggested including them to proactively plan the area. Kirsten Whetstone referred to the map and explained that those parcels are already identified in Prospector Square. She pointed out the variety of residential support businesses which makes the area unique. Joe Kernan asked if curb cuts could be reduced, especially in residential areas. Bruce Erickson responded that the intersections on Bonanza will be analyzed but it is not anticipated to change land uses. Tim Henney expressed his support of the process and specifically redefining open space in an urban area. Commissioner Jack Thomas commented that the nature of open space reflects its immediate adjacency. Jenny Smith stated that she would also love to see the power lines removed and relayed that PCMR is still planning on constructing employee housing on its Munchkin lot. She expressed concerns about the safety of pedestrians, specifically citing there is no safe way to cross Bonanza Drive. This is a great opportunity for the community to pull together and make this a unique district in Park City which can compliment Main Street. Ms. Smith supported the parking and transit center proposals, acknowledging that parking lots will be developed. Jennifer Guetschow, Summit Land Conservancy, stated that the North Horse units should be included in the planning area even though change in use is not suggested. She strongly urged not using the term *open space* for hard surface gathering areas.

Greg Freedman, Claimjumper HOA, expressed concerns about Homestake Drive which could become a driveway to or a parking area for a commercial project. He suggested that a road for commercial traffic be constructed parallel to Homestake Drive and that sidewalks be installed. He spoke about the difficulty in safely crossing Kearns Boulevard. Carol Potter discussed the concept of *greenways*. Rodman Jordan expressed his support of the process and hoped there will be future opportunities for input on specific issues and Kirsten Whetstone felt that the open houses will accommodate those discussions. The Mayor discussed preserving *mom and pop* businesses and Marianne Cone agreed and added that a 20,000 square foot anchor is too large for the area. Mr. Jordan referred to the various elements of the General Plan, and suggested creating a new chapter called *pedestrianization* or *walkability*. Heather Colson expressed concerns about national brands moving in and changing the character of the community. Cindy Matsumoto emphasized the importance of accommodating pedestrians and pointed out the dangerous situation at the intersection at Iron Horse and Bonanza.

Mary Wintzer agreed with comments about sustaining small businesses and focusing on pedestrian connections, however, the entire area is very poorly lighted. Simple things like street lights can make a real difference. She is not in favor of building another parking garage, because it draws more cars, and suggested considering park and ride programs. Ms. Wintzer further stated that she is not in favor of local government subsidizing private industries, i.e., parking facilities. As a business owner, she has satisfied her parking obligations and it is a matter of equity. She urged considering long-range economic consequences and discussed the number of failed businesses on lower Main Street, and warned against creating a false market by increasing retail without demographic support. Better lighting and landscaping go a long way. Park City doesn't need to duplicate the commercial development at Kimball Junction. Marianne Cone commented on the visual benefits of parking cars behind buildings.

Bruce Erickson explained that the City has formed an internal working group who will update the draft to include input and technical analyses. The revised draft will be available at the open house and feedback on the type and balance of retail, the availability of retail commercial space, and sustainability of local shops will be useful. There may be a second open house before the document is reviewed by the Planning Commission. The City's General Plan follows the required elements of the state and *pedestrianization* will be addressed in both the transportation and open space elements. Charlie Wintzer, Planning Commissioner and property owner, asked why the current zoning doesn't work and if this exercise will affect Prospector. He also expressed concerns of increasing allowable density and requested that a *real* traffic study be conducted. Dana Williams pointed out that with the sale of Anderson Lumber there will definitely be more density. He felt trade-offs are likely as the properties are redeveloped. Roger Harlan believed there should be a focus on connecting the area to the Resort and Main Street.

Tom Bakaly explained that the product will be General Plan amendments for which development applications will be measured against; staff will not be returning with a master plan. The Main Street RDA had a master plan, including City capital projects. The Downtown Revitalization Plan and the Downtown Improvement Study focused on capital projects while the lower Park Avenue Study was more characteristic of a master plan. Jim Hier relayed that he supports that direction but would like to keep the option open of forming a redevelopment agency in the area, primary for traffic calming and pedestrian enhancements. He felt that getting people safely across Bonanza may require building an expensive underpass, which could be accomplished with funding from an RDA rather than the private sector. Tom Bakaly felt that forming an RDA for this area would be difficult and suggested forming an economic development area. Jim Hier then suggested using tax increment funding through bonding to help assist with traffic mitigation. Roger Harlan discussed successes associated with both the Main Street RDA and lower Park Avenue RDA. He felt that the study area may be another example of where the City could partner with other entities. Bruce Erickson explained, for the benefit of Marianne Cone, that the change from 35 feet to 40 feet is to allow for second story housing and only applies to MPD. It is not a change to the GC Zone height allowance. In response to comments made by Joe Kernan, Bruce Erickson explained that after technical input to changes to the General Plan is rendered, there is typically a resulting list of recommendations. These could include additional amendments to the General Plan to accommodate some uses or improvements. Land uses will not be designated by the City. Tom Bakaly again interjected that a General Plan is just that, and he feared expectations for more specific guidelines, like a master plan. He feels there needs to be more dialog on the output of the plan. Mr. Erickson pointed out that action steps in a General Plan element may be advanced and budgeted as a capital project. Tom Bakaly again mentioned the Old Town Improvement Study and Downtown Revitalization Plan as products of the transit center. Jim Hier referred to the action items outlined in the General Plan that guide development of affordable housing, recreation, etc. All applications are measured against the General Plan. The Mayor discussed negotiating features like height in exchange for better planning and/or community amenities and Charlie Wintzer agreed. In response to a comment from Roger Harlan, Bruce Erickson expressed that the values of the seated Council will be reflected in the document and the LMC may need to be amended to accommodate trade-offs, but with clear limits. Marianne Cone asked if there is a way to encourage residential development adjacent to the Homestake and Claimjumper Condominiums. There was discussion among members regarding buffering residential areas. Bruce Erickson relayed that it is best to include these types of decisions into the document now.

Prepared by Janet M. Scott, City Recorder

PARK CITY COUNCIL MEETING
SUMMIT COUNTY, UTAH
MARCH 30, 2006

I ROLL CALL

Mayor Dana Williams called the regular meeting of the City Council to order at approximately 6 p.m. at the Marsac Municipal Building on Thursday, March 30, 2006. Members in attendance were Dana Williams, Marianne Cone, Candace Erickson, Roger Harlan, Jim Hier, and Joe Kernan. Staff present was Tom Bakaly, City Manager; Polly Samuels McLean, Assistant City Attorney; Kent Cashel, Assistant Public Works Director; Jonathan Weidenhamer, Planner; Alison Butz, Special Events and Facilities Manager; Patrick Putt, Planning Director; and David Maloney, Planner.

II COMMUNICATIONS AND DISCLOSURES FROM COUNCIL AND STAFF

Roger Harlan, as liaison, discussed School District business. Jim Hier reported on the Chamber/Bureau meeting he attended, more specifically its interest in maintaining a presence in the Historical Society's expansion project and the increase in transient room tax. He commented on a meeting on sharing maintenance facilities with Summit County and a meeting on traffic mitigation in Park Meadows with resident Stacy Dymalski. Mayor Williams relayed his condolences to the Corliss Family. He felt it important to talk to our congressional delegation about proposed immigration legislation which promotes local police enforcing immigration laws. He referred to comments made by Summit County Commissioner Ken Woolstenhume in the *Park Record* about the $10 license fee and the fact that Park City's position was not reported. The Council is very concerned about the fee's affect on other Summit County cities and this is not a Park City-driven idea. Joe Kernan clarified that Park City is supportive of providing cities with voting rights to influence on how funds will be spent. Jim Hier added that the *Park Record's* Editorial on the topic was also inaccurate and misleading.

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

1. Computer services - Mike Sweeney asked that the memory for emails for City employees be upgraded so he can share documents with the planning staff. He also recommended that a computer be available for public use in the Marsac Building.

2. Park Meadows traffic calming program – Stacy Dymalski read a statement from Carolyn Frankenburg stating that the neighborhood wants Option D, acknowledging that it is too expensive to implement now. They ask that the City use the funds which would be applied to the sidewalk at the Racquet Club to fund a City-wide safe route study. She urged Council to use Park Meadows as a pilot project and Ms. Frankenburg wrote that they are building a coalition to include input from all interested parties, including other neighborhoods, alternative transportation, Mountain Trails Foundation, Sundance, School District, etc. A sidewalk halfway down Little Kate doesn't address safety issues; all City neighborhoods need to be studied and a master plan needs to be devised. Park

Meadows has been in the process for 14 months, and she repeated that this would serve as a great pilot program when implementing the City-wide pedestrian program.

Ms. Dymalski stated that Option B estimated at $160,000 is recommended by staff which is considerably less than Option D at $1.5 million. Option B does not address the needs of the neighborhood and improvements may not be used by residents. She reiterated that a City-wide study should be conducted with input from other neighborhoods and that Park Meadows be the pilot. They have gone through this process for 14 months and Public Works recommends something they don't want and there should be a consensus. She is unsure what everyone in the neighborhood agrees on and it may be premature to install a sidewalk.

Candace Erickson expressed concern about building clear consensus in the neighborhood and a delay means missing this budget cycle and waiting a year. Ms. Dymalski stated that she prefers it is done right even if it takes longer. Ms. Erickson again expressed her concerns about a delay as she received phone calls from residents, including Ms. Dymalski earlier in the process about waiting for improvements. Stacy Dymalski relayed that what they want is not recommended by staff. In response to a comment from Roger Harlan about the sidewalk on Monitor Drive, Ms. Dymalski felt that because there is no raised curb, it's like an extension of the street which is very unsafe. Mr. Harlan expressed his frustration when a municipality wants to do something for the community and because of differences in opinion, nothing gets done. Ms. Dymalski responded that *you make your best effort*. Mr. Harlan pointed out that *best effort* may not be acceptable to some citizens and asked if everyone in the neighborhood is comfortable with delaying the project for another year. Stacy Dymalski stated that Carolyn Frankenburg has spoken with everyone and this seems to be the consensus. There are funding options like bonds, federal monies, etc. out there that haven't been explored. She suggested hiring or assigning an employee to monitor this project. Joe Kernan expressed interest in exploring funding options in the interim.

Jim Hier felt that planning transportation throughout the City is extremely critical, as evident in the work session discussion. There is a Trails Master Plan, but it may need to be updated to examine pedestrian and vehicular challenges in a number of corridors. A transportation plan could incorporate all areas with a prioritized capital plan based on the degree of need. There may be improvements that can be made to Little Kate that won't be wasted in the long term and may alleviate some problems sooner. This should be discussed as a part of the budget. Candy Erickson agreed that there should be a study and it should be produced in a timely manner.

Stacy Dymalski believed the neighborhood should be involved in deciding the phasing of improvements. Tom Bakaly reiterated that this discussion will be part of the budget review, specifically how these projects compare with Old Town improvements, the plaza, or Quinns Junction for example. Staff will attempt to balance this directive with other capital priorities; this is the second year of implementing a 15 year Old Town Improvement Study. OTIS cost about $100,000, not including staff's time. In response to a question from Marianne Cone, Eric DeHaan stated that hard curbs are no safer than rolled curbs.

Carol Potter, Mountain Trails Foundation, stated that her organization would love to see a City-wide study and an updated master plan. She advised that there are transportation enhancement funds available every January and if a study is prepared in time, it would provide relevant information for the grant request. She discussed the efforts of the alternate transportation committee and the *walkable-bikeable community* project adopted by the Leadership Class this year. Ms. Potter suggested the first step of a five-year plan to be Park Meadows. Mayor Williams stated that he would like to keep that decision open and pointed out that 12 to 15 kids regularly travel Little Kate but about 400 children walk to school from his neighborhood where there are no sidewalks.

IV WORK SESSION NOTES AND MINUTES OF MEETING OF MARCH 16, 2006

Jim Hier, "I move approval of the work session notes and minutes of the meeting of March 16, 2006". Roger Harlan seconded. Motion unanimously carried.

V CONSENT AGENDA PUBLIC HEARINGS

1. Resolution adopting the Entry Corridors Transit/Transportation Strategic Plan – Jim Hier suggested an amendment to the following language in the Resolution:

- Develop processes and procedures to ensure all ***master planned*** *development**s*** and annexation proposals are contingent on full mitigation of the development's or annexation's traffic impacts on the City's road network.

Kent Cashel felt the change is appropriate and with no further comments, the Mayor closed the public hearing.

2. Ordinance approving the Edwards Subdivision which will combine Lots 29 and the southerly half of Lot 28, Block 31 of the Park City Survey into one lot of record, located at 208 Norfolk Avenue, Park City, Utah – Jonathan Weidenhamer explained that the Planning Commission forwarded a positive recommendation at its March 22, 2006 meeting. The proposal is to tear down a contemporary house and build a new structure which requires a plat amendment to combine the lots. There was discussion about the impacts of construction in Old Town and applying a construction mitigation plan. The Mayor opened the public hearing, and hearing no comments, closed the hearing.

3. Second Addendum to Park City Municipal Corporation Master Festival and City Services Agreement with the Kimball Art Center – Alison Butz explained that staff has been working with the Kimball Art Center on a new agreement to guarantee the location of the Arts Festival on Main Street. The Director requested an extension of her current 2005 contract with the same conditions because at this point in the year, the selected artists need to be contacted. The financial components are similar to the 2005 agreement and realigns funding sources based on a future budget discussion on a proposed *festival facilitation fee* on business licenses. Council member Erickson

understood KAC is eliminating the Friday night opener because of perceived ticket revenue losses, and asked if the street will be closed to set up. Ms. Butz stated that they would like to close the street at noon on Friday to allow for set-up in the middle of the street, but the booths would be closed. The gallery stroll is still planned. The Mayor opened the public hearing.

Mike Sweeney, HMBA, stated that members would prefer to see Friday expanded. If the KAC doesn't want the Festival opened on Friday, then booths should be set up early Saturday morning so merchants don't lose business on Friday. The HMBA is even willing to advertise an expanded Festival. Jim Hier understood that setting up in the middle of the street takes more time than lining the booths up along the curb. He asked if the HMBA would support a compromise of setting up tents along the curb if it reduces the length of the street closure. Mr. Sweeney explained that setting up in the middle of the street was a goal of the HMBA for years, and he felt it was very successful. Alison Butz introduced Dave Gustafson who is also a contract employee for the KAC specifically for the Arts Festival.

Dave Gustafson explained that in order to open on Saturday at 9 a.m. without a noon closure on Friday, the set-up would have to revert to both sides of the street. He explained in detail the methods for set-up and associated time restraints. The KAC prefers the 2004 plan by closing the street at noon on Friday. He felt that many patrons don't arrive on Main Street until 9 p.m. or later and the booths were closed at 9 p.m. last year. If the closure doesn't occur on Friday, it is difficult to guarantee that all artists will show up as early as 2 a.m. to allow enough time. If they all show up at 5 a.m., for instance, the Festival won't open on time. In response to comments made by Marianne Cone, he emphasized that there are 305 new parking spaces in the downtown core so there is plenty of parking which was significantly diminished last year. Jim Hier asked if paid parking will be in affect on Saturday and Sunday. Ms. Butz noted that it is not being addressed in the contract at this point. Council member Hier suggested that the Festival open on Friday for the locals and that there be an honor system for ticket donations. The City could share revenues from the parking structure that could offset lost ticket revenue. He felt closing the street at noon in order to set up properly is the appropriate approach, but not at a cost to the merchants. Candace Erickson suggested pushing back the street closure to 3 p.m. so the business owners aren't impacted as much on Friday. There was discussion about the time required to get cars off of Main Street and Alison Butz explained that last year, no parking after 11 a.m. signs were posted and the street was cleared by noon. Marianne Cone expressed her preference in having the Festival open Friday night.

Tom Bakaly explained that the KAC estimates forfeiting $25,000 with a free Friday night opening because residents are not returning the rest of the weekend. This year, KAC requested that the City cover the $25,000 needed in order to open the Festival Friday night which the City was unwilling to pay. Mayor Williams felt that the City has stepped up in responding to requests to support the Festival over the years. Jim Hier pointed out that KAC is very appreciative of our efforts and felt this is a short-term issue that can be resolved. Ms. Butz explained that the Director is very interested in discussing a number of issues, but wants some assurances in planning for 2006. Mike Sweeney suggested that the HMBA meet with KAC and return with a recommendation.

Roger Harlan felt that closing Main Street for three days is a burden for merchants and the Mayor countered that the Festival brings thousands of people to Main Street over the weekend. Dave Gustafson pointed out that more people are on the street from 6 p.m. to 11 p.m. and there might be conflicts if tents are being installed. He again discussed the availability of parking this year and the benefits of setting up in the middle of the street for Main Street merchants.

Tom Bakaly suggested that Council approve the MFL as recommended, i.e., closing at noon on Friday and directing staff to work with the HMBA and KAC which may result in modifications for a Friday evening activity. He added that this will most likely result in a cost to the City. Candace Erickson recalled that the Friday night opening was considered an experiment in 2005 to attract locals. Jim Hier felt tickets sales should be explored for Friday. He suggested that Council approve the MFL as presented with instructions to staff to work with the HMBA and KAC to try to formulate an equitable arrangement and to explore charging on Saturday and Sunday for parking and sharing parking revenue with the Kimball to make up part of the $25,000 foregone ticket sales. Roger Harlan indicated that he will support the motion if the topic is brought back to the next City Council meeting on April 13, 2006.

VI CONSENT AGENDA

Joe Kernan disclosed that KAC is a customer of his, "I move we approve the Consent Agenda Items 1 through 4 with the amendment (to Item 3) on the hours to be determined later for the Arts Festival". Jim Hier seconded. Motion unanimously carried.

1. Resolution adopting the Entry Corridors Transit/Transportation Strategic Plan – See staff report and public hearing.

2. Ordinance approving the Edwards Subdivision which will combine Lots 29 and the southerly half of Lot 28, Block 31 of the Park City Survey into one lot of record, located at 208 Norfolk Avenue, Park City, Utah - See staff report and public hearing.

3. Authorization to the City Manager to execute the Second Addendum to Park City Municipal Corporation Master Festival and City Services Agreement with the Kimball Art Center, in a form approved by the City Attorney - See staff report and public hearing.

4. Authorization to the City Manager to enter into an agreement, in a form approved by the City Attorney, with Archer Construction for Racquet Club locker room improvements in the amount of $128,271 - See staff report.

VII NEW BUSINESS

Ordinance approving a subdivision of Lots 7, 8, 9, 10, 11 and one-half of Lot 12 of the Snyder's Addition to the Park City Survey, located at 1021 Park Avenue, Park City, Utah – Patrick Putt, Planning Director, pointed out the structures on the property including the home built by Otto Carpenter in the early 1940s. In November 2004 upon request, the Planning Department gave the Carpenter Family a copy of Ellen Beasley's 1982 Historic Buildings Survey which identified the structure as *non-contributory* with a comment indicating that *most post-1930 buildings are categorized as non-contributory*. There is also a Planning Department stamp stating that the building is *non-contributory and non-historic*. Mr. Putt added that this is relevant because the re-platting process relates to the house. The stamp does not authorize the demolition of the building nor is it a certificate of appropriateness for demolition. He explained that the Carpenter Family then applied for a determination of significance which was reviewed by the Historic Preservation Board. The HPB evaluated the structure and contributions made by Otto Carpenter to the community. The HPB did not take final action on the determination of significance and prior to completing the process the property was sold to the current property owner. He explained that the HPB was interested in saving the building, acknowledging there would be development on the reconfigured lots. Staff met with the current property owner, Connie Bibrey, to explore development scenarios which would accomplish this.

The application was reviewed on January 25, 2006 by the Planning Commission who discussed what could be allowed by obtaining a building permit and not having to go through a plat amendment or other processes. It was determined that the owner could build two additional structures on Lot 10 and Lot 11. Allowing more density involves adjusting lot lines and the plan is based on relocating the house on its own new lot and subdividing the property to the HR-1 minimum lot size requirements. Mr. Putt stated that the garage on the south property line is permitted to be razed as determined through the CAD process. The Planning Commission forwarded a recommendation to deny based on its finding that approving the plat amendment would increase the number of units that can be developed on the property beyond what exists today.

David Maloney added that the Planning Commission, at its January 25 meeting, brought up the density issue and in response to that concern, he was directed to conduct a density study of the neighborhood and he included this information for discussion at the February 8, 2006 meeting. The analysis is broken down by block and the results show that the proposed five housing units are consistent with the existing density in the neighborhood. However, the Planning Commission denied the proposal based on some key findings of fact, which he read:

7. There are currently five (5) platted lots on the property, plus remnant pieces of six (6) lots.
8. The proposed plat amendment results in an increase in the number of platted, buildable lots on the property, given the location of the existing platted lots and the historic house.
9. There are two (2) platted, vacant lots that are currently buildable.
10. The proposal would increase the number of platted, vacant lots to four (4).

Planner Dave Maloney stated that the conclusion of law is that there is not good cause for this plat amendment based on the increase in the number of buildable lots and staff is now recommending denial. At this point in the meeting, Mayor Dana Williams left because of a previous commitment.

Connie Bibrey stated that he is the owner of Park City Development Company and Resort Real Estate and is a resident. This is a family project and he explained that he approached the Planning Department with a plan to move and restore the historic home and remove the garage which is dangerous. There are actually parts of 12 lots to be combined into 5 ½ lots because of remnants. The family does not want to be forced to build large structures and it is important to them to renovate Otto Carpenter's house because of his part in Park City's ski history. He spoke about using a great deal of memorabilia from the house, family members, and Snow Park Lodge and the current poor condition of the house. Mr. Bibrey indicated that the two original lift stations now stored in the back yard will be donated to Deer Valley Resort.

Connie Bibrey felt that his team was diligent in meeting each request during the process and the density argument doesn't seem to make sense. If Planning Commissioner O'Hara's interpretation of density is applied, it would mean that no one could build on a vacant lot because it would add density and he argued that the Snyders Addition Survey is basically a master plan for Old Town. He pointed out that staff has recommended approval twice to the Planning Commission because it found the plan met all of the requirements of the City. Staff has determined that there is good cause for the amendment and found that the application is consistent with the Park City General Plan and LMC. He expressed his confusion with the Planning Commission's decision to deny when there was a recommendation by staff to approve and they have been working with professionals. Saving the Carpenter home comes at a significant cost and the density is needed as part of the plan. He displayed a photo of the Carpenter home and adjacent properties and a rendering of the design for perspective homes.

Connie Bibrey introduced Ascenzo Di Giacomo from Jack Johnson Company who complemented the Council on a well-run meeting and amicable public forum. He felt it important that mass and scale is consistent in an area and the proposal is completely complimentary and true to typical historic development. Mr. Di Giacomo noted that they have to replat in any event because the remnants need to be eliminated and the lot lines redrawn.

Candace Erickson made a motion <u>to approve the Ordinance and the findings of fact and the conclusions of law from the original staff report</u>. Jim Hier suggested that <u>staff be directed to prepare findings of fact and conditions of approval from this meeting</u> and Polly Samuels Mclean felt it appropriate to write new findings associated with the discussion this evening. Candace Erickson amended her motion. Jim Hier seconded. Marianne Cone asked for support to remand the application to the Planning Commission with direction to renovate the Carpenter house but allow only three other homes. Jim Hier stated that Council would still have to make a new motion to deny the

Ordinance so that the applicant can return with another plan and there is currently a motion on the table that needs to be voted upon. The Mayor Pro Tem requested a vote:

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

Motion carried. Tom Bakaly explained that staff will return with revised findings, conclusions and conditions for the April 13, 2006 Council meeting. Council member Hier expressed interest in holding another public hearing.

VIII 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 2:30 p.m. Members in attendance were Mayor Dana Williams, Marianne Cone, Candace Erickson, Roger Harlan, Jim Hier, and Joe Kernan. Staff present was Tom Bakaly, City Manager and Mark Harrington, City Attorney (not present for regular meeting). Candace Erickson, "I move to close the meeting to discuss property, litigation and personnel ". Jim Hier seconded. Motion carried unanimously.

The meeting opened at approximately 3:30 p.m.

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

Prepared by Janet M. Scott

City Council Staff Report

Special Events and Facilities Department

Author: **Alison Butz**
Subject: **Park City Food and Wine Classic – Main Street Stroll**
Date: **April 13, 2006**
Type of Item: **Administrative – Master Festival License**

Summary Recommendations:
Review the Master Festival License application, conduct a public hearing, and approve the license for the Park City Food and Wine Classic Main Street Stroll to be held July 6 through 8, 2006.

Description:
Topic:
Review the Master Festival License Application, submitted by TeamSage Productions, for the Park City Food and Wine Classic on July 6 though 8, 2006.

Background:
TeamSage Productions has submitted an application to hold the Park City Food and Wine Classic in Park City on July 6 through July 8, 2006. The event is in its second year, and event organizers are looking to expand their presence on Main Street. On Thursday, July 6th, the event kick-off will be held at Deer Valley Resort's Snow Park Lodge. On Friday, July 7th the organizers propose a "Stroll of Park City - Grand Tasting". Participants could sample wines and dine on a variety of great eats from select Park City restaurants at eight (8) locations along Main Street. The Saturday event on July 8th is the signature event "Toast of Park City – Grand Tasting". This event features a Steel Chef competition and entertainment.

The Park City Food and Wine Classis is consistent with the City Council's Goal #4 which is to continue to promote Park City as multi-seasonal resort by maintaining its status as a World Class Resort which hosts such events as this and to increase the number of events.

Analysis:
The City Council, per the Municipal Code, reviews all new applications for Master Festival Licenses and shall either approve, approve with conditions or deny the applications. The Park City Food and Wine Classic is reviewed as a Master Festival due to use of City property during the Friday "Stroll of Park City", temporary amplified music, and possible attraction of large crowds. No event license would be required for the Thursday event at Deer Valley. The applicant is responsible to pull all applicable permits with Summit County for the event at the Canyons.

During the Stroll, wine festival guests will have the opportunity to walk Park City's Main Street while sampling a wide variety of wines along their journey. Wine pavilions will be set up down Main Street and side streets as well as in participating restaurants. A map detailing each location will be handed to each guest partaking in the Stroll along with a personal wine glass and a wristband identifying the guests at each stop along the route. Festival banners/flags will identify each wine stop throughout Main Street along with directional signs to help assist along the route.

The Park City Stroll Route:

Wine Stop 1 – Town Lift Plaza
Wine Stop 2 – Fiore - Summit Watch Plaza
Wine Stop 3 – Butchers (TBD)
Wine Stop 4 – Buona Vita (TBD)
Wine Stop 5 – Bangkok Thai on Main
Wine Stop 6 – Wahso (TBD)
Wine Stop 7 – Miner's Park
Wine Stop 8 – 350 Main

Staff will update Council through a Managers Report at a future meeting on the locations that are still to be determined

Alcohol Regulation

Patrons of the Stroll will be identified with a colored wristband, wineglass, and a map detailing the route, as they meander up and down Main Street. The Wine Stops will be identified by a 2 x 3 banner. All Stops are licensed under the overall festival license as permitted by Park City and the DABC. All wine will be consumed within the Wine Stop boundaries. Upon departure from each wine stop, the event security will ensure that consumers have consumed or properly discarded wine from their wine glasses. All Stops will be managed by festival staff and its volunteers.

Parking

The organizers are expecting a total crowd of 500 for the Friday evening event. Patrons of the event will be directed to park in the Swede Alley parking areas. Directions within the event's printed materials will be used to direct traffic to these parking areas.

Amplified Music

Live music will be performed at the Town Lift Plaza, Fiore, and Miner's Park. The music will coincide with the event and will be between 4:00pm to 7:00pm. All music has been booked through the Park City Jazz Festival. Even though the music is expected to be background music, Staff has added the condition that the sound level be no more than 90 decibels, as measured twenty five feet (25') in front of the stage.

Other Items

Building permits will be required for all temporary structures associated with this event. All information regarding temporary structures will be submitted to the

Building Department for approval, and will be located on private property. No use is requested of the City open space across Bonanza Drive.

Department Review:
All applicable departments have reviewed the Park City Food and Wine Classic and their comments have been incorporated into the report.

Alternatives:
Approve the Request:
Approve the Master Festival License allowing the Park City Food and Wine Classic to occur as described.
Deny the Request:
Deny the Master Festival License, preventing the addition of the Park City Food and Wine Classic to Park City's schedule of events.
Continue the Item:
The City Council may continue the discussion in order to receive additional information

Significant Impacts:
Park City has held many similar events to the Park City Food and Wine Classic. The activities are scheduled to conclude by 7pm to allow patrons of the festival to visit Main Street restaurants.

Consequences of not taking the recommended action:
The Park City Food and Wine Classic would not take place.

<u>RECOMMENDATION</u>:
Review the Master Festival License application, conduct a public hearing, and approve the license for the Park City Food and Wine Classic Main Street Stroll on July 7, 2006, based on the following Findings of Fact, Conclusions of Law and Conditions of Approval.

<u>Findings of Fact:</u>
1. The Park City Food and Wine Classic will be held on Friday, July 7, 2006. The event will last from 4:00pm to 7:00pm and will occur at eight venues along Main Street.
2. Parking for the anticipated crowd of 500 people can be accommodated with the existing parking in and around Main Street. The conduct of the Park City Food and Wine Classic will not substantially interrupt or prevent the safe and orderly movement of public transportation or other vehicular and pedestrian traffic in the area of its venue.
3. The event is oriented towards wine enthusiasts. The event will not require the diversion of so great a number of police, fire, or other essential public employees from their normal duties as to prevent reasonable police, fire, or other public services protection to the remainder of the City.
4. The event will be held at eight venues along Main Street. The concentration of persons, vehicles, or animals will not unduly interfere with the movement of

police, fire, ambulance, and other emergency vehicles on the streets or with the provision of other public health or safety services.

5. No other Master Festival and Special Event License has been issued for July 7, 2006.
6. The organizer will provide adequate insurance for the event.
7. The size of the crowd and nature of the event will not create an imminent possibility of violent disorderly conduct likely to endanger public safety or cause significant property damage.
8. The applicant has been working with City Staff and applicable departments to address all event concerns. The Applicant demonstrates an ability and willingness to conduct the event pursuant to the terms and conditions of this Chapter and has not failed to conduct a previously authorized event in accordance with the law or the terms of a license, or both.

Conclusions of Law:

1. The application is consistent with the requirements of the Park City Municipal Code, Title 4, Chapter 8.

Conditions of Approval:

The applicant, at its' cost, shall incorporate such measures as directed by Staff in order to ensure that any safety, health, or sanitation equipment, and services or facilities reasonably necessary to ensure that the event will be conducted with due regard for safety are provided and paid for by the applicant.

The applicant shall provide to the Special Events Manager proof of liability insurance as may be required by the Special Events Manager or the City Attorney's Office, and shall further name Park City Municipal Corporation as an additional insured if necessary.

Noise levels for the live music will be restricted to be no greater than 90 decibels as measured 25 feet from the stage.

Attachments

Exhibit A – Applicant’s Summary of Activities

PARK CITY MUNICIPAL CORPORATION
SPECIAL EVENT AND MASTER FESTIVAL LICENSE
EVENT APPLICATION-PART i
A completed electronic copy submitted to the Special Events Department

Special Events and Facilities Department
435.615.5150
specialevents@parkcity.org

APPLICATION FORM

Part I of the application form (pages 1 and 2) must be completed and submitted to the Special Events Department no less than 90 days prior to a Master Festival or no less than 60 days prior to a Special Event. Part II of the application form (pages 3-6) which are more comprehensive, must be submitted 45 days before all events. Parts I and II of the application must be sent electronically to the Special Events Department at specialevents@parkcity.org. The application will be reviewed by the Special Events Department and compared to master calendar for date availability. Applicant must schedule a meeting with City Staff 30 days prior to the event to review logistics. Granting of the permit is not guaranteed.

EVENT NAME: Park City Food & Wine Classic

EVENT DATE(S): July 6-8, 2006

EVENT TIME(S): July 6: 6p-8p, July 7:5p-7p, July 8:3p-6p

EVENT LOCATION(S): *Please describe in detail the exact location(s)*
July 6: Deer Valley Resort - Snowpark Lodge
July 7: In and around Main Street Park City
July 8: The Forum at The Canyons Resort

ANTICIPATED ATTENDANCE: 1,500 - 2,000

EVENT DESCRIPTION: *Please describe in detail the activities associated with the event*
Wine and food festival showcasing wines throughout the world and Park City's fine cuisine
See attachment for more detailed information

APPLICANT: *(name of organization)* Jason Ornstein, TeamSage Productions

CONTACTS

Event Manager: Jason Ornstein
Mailing Address: 1539 Platte Street, Suite 206 Denver, CO 80202
Phone: 303-777-6887 Fax:303-777-3095
Cell Phone: 303-475-2789
E-Mail: jason@teamsage.com

Assistant Event Manager: Doug Larson
Mailing Address: See above

Phone: Fax:
Cell Phone:
E-Mail: doug@teamsage.com

TYPE OF EVENT: *to be confirmed by the Special Events Department*

☒ **Master Festival;** *(If even one box is checked, the event is automatically a Master Festival)*
A public event which any one of the following:
☒attraction of large crowds, (Over 500)
☐street closure,
☒use of City park, building or property,
☐use of off-site parking facility,
☐use of amplified music.

☒ **Special Event;**
A private or public event, which creates significant public impacts through:
☒causes significant public impacts via disturbance, crowd, traffic/parking,
☐disruption of the normal routine of the community or affected neighborhood,
☒necessitates temporary business or liquor licensing
☒event signs, visible from public property
☒temporary structures

CITY SERVICES

- request for street closure(s)? ☐yes ☒no
  if yes, then list street(s) and closure time and date:
- request for closure of or access to any public parking spaces? ☒yes ☐no
  if yes, then list lot and closure times and dates: TBD
  if yes, complete and attach *Request for Special Use of Public Parking* form.
- request for use of any City owned bleachers? ☐yes ☒no

SALES AND FOOD VENDING

- will there be beer, wine and/or liquor sales during the event? ☒yes ☐no
  if yes, have you filed a *Beer and Liquor License Application* with Park City Finance Department? ☐yes ☒no
  if yes, have you filed a Single Event *or* Temporary Beer Permit *application w/ UDABC?* ☐*yes* ☒*no*

City Council Staff Report

Special Events and Facilities Department

Author: Alison Butz
Subject: Park City Rugby Clambake Fundraiser
Date: April 13, 2006
Type of Item: Administrative – Master Festival License

Summary Recommendations:
Review the Master Festival License application, conduct a public hearing, and approve the license for the Park City Rugby Clambake Fundraiser on August 19, 2006.

Description:
Topic:
Review the Master Festival License Application, submitted by the Park City Rugby Club, for their fundraiser in City Park on August 19, 2006.

Background:
The Park City Rugby Club submitted an application requesting a Master Festival License to hold a fundraiser on Saturday, August 19 in City Park. The event would run from 5:00pm to 8:00pm. The event includes the cooking and sale of food, beer and amplified music.

The Park City Rugby Clambake Fundraiser is consistent with the City Council's Goal #4 which is to continue to promote Park City as multi-seasonal resort by maintaining its status as a World Class Resort which hosts such events as this and to increase the number of events.

Analysis:
The event organizers have requested to hold their event on August 15, 2005. The event would begin at 6:00pm at the park with a band performing live music and food.
This application is being reviewed as a Master Festival License due to its location on City property and the request for a variance from the noise ordinance.

<u>City Park Activities</u>
The band will perform in the bandshell located in the south end of City Park. In that area there will be food vendors and beer sales. The activity in the park will be similar to what is seen during Fiesta del Sol and Miners Day. The activities in City Park will begin at 4:00pm and will conclude by 8:00pm. No other activities are planned for City Park on August 19, 2006.

<u>Parking</u>

Parking for the anticipated crowd size can be accommodated within City Park and on Park Avenue.

Department Review:
All applicable departments have reviewed the Park City Rugby Clambake Fundraiser and their comments have been incorporated into the report.

Alternatives:
Approve the Request:
Approve the Master Festival License allowing the Park City Rugby Clambake Fundraiser to occur as described.
Deny the Request:
Deny the Master Festival License, preventing the addition of the Park City Rugby Clambake Fundraiser to Park City's schedule of events.
Continue the Item:
The City Council may continue the discussion in order to receive additional information

Significant Impacts:
City Park has held many similar events to the Park City Rugby Clambake Fundraiser. The activities will be contained within the venue and will conclude by 8:00pm.

Consequences of not taking the recommended action:
The Park City Rugby Clambake Fundraiser would not take place.

<u>RECOMMENDATION</u>:
Review the Master Festival License application, conduct a public hearing, and approve the license for the Park City Rugby Clambake Fundraiser on August 19, 2006, based on the following Findings of Fact, Conclusions of Law and Conditions of Approval.

<u>Findings of Fact:</u>

1. The Park City Rugby Clambake Fundraiser will be held Saturday, August 19, 2006. The event will last from 4:00pm to 8:00pm and will occur in City Park.
2. Parking for the anticipated crowd of 200 people can be accommodated with the existing parking in and around City Park. The conduct of the Park City Rugby Clambake Fundraiser will not substantially interrupt or prevent the safe and orderly movement of public transportation or other vehicular and pedestrian traffic in the area of its venue.
3. The event is oriented towards families and youth. The event will not require the diversion of so great a number of police, fire, or other essential public employees from their normal duties as to prevent reasonable police, fire, or other public services protection to the remainder of the City.
9. The event will be held in City Park. The concentration of persons, vehicles, or animals will not unduly interfere with the movement of police, fire, ambulance, and other emergency vehicles on the streets or with the provision of other public health or safety services.
10. No other Master Festival and Special Event License has been issued for August

19, 2006.

11. The organizer will provide adequate insurance for the event.
12. The size of the crowd and nature of the event will not create an imminent possibility of violent disorderly conduct likely to endanger public safety or cause significant property damage.
13. The applicant has been working with City Staff and applicable departments to address all event concerns. The Applicant demonstrates an ability and willingness to conduct the event pursuant to the terms and conditions of this Chapter and has not failed to conduct a previously authorized event in accordance with the law or the terms of a license, or both.

Conclusions of Law:

1. The application is consistent with the requirements of the Park City Municipal Code, Title 4, Chapter 8.

Conditions of Approval:

1. The applicant, at its' cost, shall incorporate such measures as directed by Staff in order to ensure that any safety, health, or sanitation equipment, and services or facilities reasonably necessary to ensure that the event will be conducted with due regard for safety are provided and paid for by the applicant.
2. The applicant shall provide to the Special Events Manager proof of liability insurance as may be required by the Special Events Manager or the City Attorney's Office, and shall further name Park City Municipal Corporation as an additional insured if necessary.

Attachments

Exhibit A – Applicant's Summary of Activities

PARK CITY MUNICIPAL CORPORATION
SPECIAL EVENT AND MASTER FESTIVAL LICENSE
EVENT APPLICATION-PART i
A completed electronic copy submitted to the Special Events Department

Special Events and Facilities Department
435.615.5150
specialevents@parkcity.org

APPLICATION FORM
Part I of the application form (pages 1 and 2) must be completed and submitted to the Special Events Department no less than 90 days prior to a Master Festival or no less than 60 days prior to a Special Event. Part II of the application form (pages 3-6) which are more comprehensive, must be submitted 45 days before all events. Parts I and II of the application must be sent electronically to the Special Events Department at specialevents@parkcity.org. The application will be reviewed by the Special Events Department and compared to master calendar for date availability. Applicant must schedule a meeting with City Staff 30 days prior to the event to review logistics. Granting of the permit is not guaranteed.

EVENT NAME: Park City Rugby 2006 - Games and Fundraiser

EVENT DATE(S): June 17, June 24, July 4, July 29, August 19, August 26, September 23, September 30 and Octoer 1.

EVENT TIME(S):

EVENT LOCATION(S): *Please describe in detail the exact location(s)*
August 19, 2006 – Clambake Fundraiser

ANTICIPATED ATTENDANCE: 100 people at games; 200 - 300 at Fundraiser

EVENT DESCRIPTION: *Please describe in detail the activities associated with the event*
Rugby Games; Fundraiser includes food, music and lawn games

APPLICANT: *(name of organization)* Park City Rugby Football Club

CONTACTS

Event Manager: Jack Walzer
Mailing Address: PO Box 2136, Park City UT 84060
Phone: 435.649-1020 x107 Fax:435-649-7511
Cell Phone: 435-640-4850
E-Mail: jackw@jans.com

Assistant Event Manager: Al Short
Mailing Address: 12774 Deer Mt Blvd. Apt 1405, Deer Mountain UT 84036
Phone: 801-822-2213 Fax:
Cell Phone:
E-Mail: clutch4444@yahoo.com

TYPE OF EVENT: *to be confirmed by the Special Events Department*

☒ **Master Festival;** *(If even one box is checked, the event is automatically a Master Festival)*

A public event which any one of the following:

☐ attraction of large crowds, (Over 500)
☐ street closure,
☒ use of City park, building or property,
☐ use of off-site parking facility,
☐ use of amplified music.

☐ **Special Event;**

A private or public event, which creates significant public impacts through:

☐ causes significant public impacts via disturbance, crowd, traffic/parking,
☐ disruption of the normal routine of the community or affected neighborhood,
☐ necessitates temporary business or liquor licensing
☐ event signs, visible from public property
☐ temporary structures

CITY SERVICES

- request for street closure(s)? ☐ yes ☒ no
  if yes, then list street(s) and closure time and date:
- request for closure of or access to any public parking spaces? ☐ yes ☒ no
  if yes, then list lot and closure times and dates:
  if yes, complete and attach *Request for Special Use of Public Parking* form.
- request for use of any City owned bleachers? ☐ yes ☒ no

SALES AND FOOD VENDING

- will there be beer, wine and/or liquor sales during the event? ☒ yes ☐ no
  if yes, have you filed a *Beer and Liquor License Application* with Park City Finance Department? ☒ yes ☐ no
  if yes, have you filed a Single Event *or* Temporary Beer Permit *application w/ UDABC?* ☒ *yes* ☐ *no*

City Council
Staff Report

Special Events and Facilities Department

Author:	**Alison Butz**
Subject:	**Art Festival MOU and City Services Agreement**
Date:	**April 13, 2006**
Type of Item:	**Administrative- Master Festival License**

Summary Recommendations:
Review the Third Addendum to Park City Municipal Corporation Master Festival and City Services Agreement with the Kimball Art Center and authorize the City Manager to execute as attached in a form approved by the City Attorney.

Description:
Topic:
Third Addendum to Park City Municipal Corporation Master Festival and City Services Agreement for the Park City Arts Festival.

Background:
On March 30, the City Council authorized the City Manager to execute the Second Addendum to the Master Festival and City Services Agreement with the Kimball Art Center. The Second Addendum outlined the financial components to reflect the same amount provided to the Kimball in 2005.

<u>Financial Components of Services Agreement</u>

	2005	**2006**
Police	$11,995	$13,400
Transportation	$3,230	$17,921
Parking	$17,483	$0
Barricades	$2,602	$0
MFL Fees	$50	$0
Main Street Cleaning	$0	$1,852
Building Department Fees	$1,140	$0
Electronic Signs	$0	$960
SubTotal	**$36,500**	**$34,133**
VIK Contributions	$8,000	$10,500
Total	**$44,500**	**$44,633**

At the meeting the Council received comment from the Main Street Business Alliance regarding the elimination of the Free Friday Locals Event. The Council directed Staff to meet with the Kimball and Main Street merchants to outline the conditions in which a Free Friday Locals' Event could take place.

Analysis

As a result of the meeting between the Kimball, Main Street Merchants, and Jim Hier, the City Council's Event Liaison, the following was outlined:

1. Amendment to the agreement between the City and Kimball guaranteeing $10,000 collected from charging for use of the China Bridge garage on Friday, Saturday and Sunday. Any amount collected over $10,000, less the City's expenses to operate the pay system will be split 50/50 between the City and Kimball.
2. The Main Street Business Alliance will contribute $3000 to the Friday night FREE event being held between 6-9pm.
3. The Kimball will set up satellite stations at strategic locations on Friday night to sell gallery stroll maps for $5 in addition to selling the maps at the Kimball Art Center.
4. Main Street will close on Friday August 4, 2006 at 11am in order to set up the booths for the evening event. All booth set ups must be ready at 5pm.

<u>Parking Garage Revenues</u>

The Council made mention at the March 30th meeting that an option to explore would be revenues collected from the sale of parking in China Bridge during the Festival. The Kimball has agreed upon hosting the Friday night event if the Council could contribute $10,000, above the amount already outline in the agreement. Staff suggests charging $5 for parking after 5pm on Friday, August 4th and $10 for parking between 7am and 6pm on Saturday and Sunday. Adding together the surface parking in Swede and in the Flag Pole lot, the Kimball still requires 270 parking spaces in the garage. This leaves 350 for the increased daily rate. Potential revenue estimates are as follows:

	Friday after 5pm @ $5	Saturday @ $10	Sunday @ $10
No Turnover	$1,750	$3,500	$3,500
1 Turnover in Users		$7,000	$7,000
2 Turnover in Users	NA	$10,500	$10,500
Potential Revenue Total	**$24,250** ($26,250 - $2,000 estimated expenses)		

Any amount collected over $10,000, less the City's expenses to operate the pay system will be split 50/50 between the City and Kimball. With a potential total revenue of $24,250 the Kimball could potentially receive $17,000 from the City and $3,000 from the Main Street Merchants for a potential total of $21,000.

<u>Friday Closure of Main Street</u>

The representatives from Main Street Merchants felt comfortable with Main Street closing at 11am to allow the set up of the booth in the center of the street. No parking on Main Street will begin at 10am to facilitate the street closure.

The Kimball is interested in discussing a longer agreement with the City to secure Main Street as the venue for the Park City Kimball Arts Festival. Staff will return to Council with a longer term agreement for review during the early Summer of 2006.

Significant Impacts

The Friday closure of Main Street allows the ability for the Kimball to set up the booths in the center of the street, which is preferable to the Main Street Merchants. The City would be guaranteeing the Kimball $10,000 of revenue from the charge of use of the China Bridge garage. This is new revenue which has not been allocated as part of the FY2007 budget process which is not an optimal alignment in staff's opinion.

Consequences of not taking recommended action:

If Council does not approve the Third Amendment, the Kimball would set up booths beginning at 2am on Saturday, August 5th. The booths would need to be placed along the curb if set up during the middle of the night.

Alternatives

1. Approve the Master Festival License and Service Agreement for the Park City Arts Festival.
2. Modify the parameters of the Master Festival License and Service Agreement for the Park City Arts Festival.
3. Deny the Master Festival License and Service Agreement, thereby prohibiting the Park City Arts Festival.
4. The City Council may continue the hearing for more information and discussion.

Recommendations

Review the Master Festival License and Service Agreement with the Kimball Art Center and authorize the City Manager to execute a Service Agreement with the Kimball Art Center as attached in a form approved by the City Attorney.

Exhibits

Exhibit A - Third Addendum to Master Festival License and City Services Agreement

THIRD ADDENDUM TO PARK CITY MUNICIPAL CORPORATION MASTER FESTIVAL LICENSE AND CITY SERVICES AGREEMENT

THIS THIRD ADDEMDUM is made and entered into in duplicate this 13th day of April, 2006, by and between PARK CITY MUNICIPAL CORPORATION, a Utah municipal corporation and political subdivision of the State of Utah ("City"), and the KIMBALL ART CENTER, a Utah non-profit corporation ("Kimball) to amend the Master Festival License and City Services Agreement signed and executed by the Parties on June 24, 2003.

WITNESSETH;

WHEREAS, the parties entered into a City Services Agreement on June 24, 2003 (hereinafter "Original Agreement"); and

WHEREAS, there is a desire from both the City and the Main Street Merchants to keep the Free Friday Locals' Event; and

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

1. AMENDMENTS TO ORIGINAL AGREEMENT.: The following shall supersede and replace the responding sections of the Original Agreement:

E. FINANCIAL.

10. **Service Contract**. Subject to budget appropriation, the City hereby agrees to make the following contribution to Kimball towards the cost of the Festival: $10,500 Value in Kind contribution of Additional City Services for the 2006 Festival. In additional to the amount described above, the City agrees to contribute an additional $10,000 to the Kimball from revenue received through the sale of parking in the parking garage during the Festival. Any amount collected over $10,000, less the City's expenses to operate the pay system will be split 50/50 between the City and Kimball.

2. OTHER TERMS. All other terms and conditions of the Original Agreement shall continue to apply.

3. EFFECTIVE DATE. The terms of this Second Addendum to the Lease shall be effective beginning March 31, 2006.

4. **ENTIRE ARGEEMENT**. This Second Addendum is a written instrument pursuant to the Original Agreement between the parties and it cannot be altered or amended except by written instrument, signed by both parties.

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

EXHIBIT "A" TO MASTER FESTIVAL LICENSE AND CITY SERVICES AGREEMENT

USE AREA: Main Street and Swede Alley

Use Area:	Main Street, including Lower Main Street, all associated side streets and Swede Alley
Use Period:	8/4 - 8/6, 2006
Contact Person:	Chris Crowley, Art Festival Director
Intended Use:	Artists Displays, Festival Operations, Entertainment Stages and Food Vendors. Booth layout down the center of the street and specific locations are subject to approval by City Event Manager and Building Department.
Type of Use:	Exclusive (Friday, August 4, 2006: from 11:00am until 5:00pm for booth set-up; 6:00pm – 9:00pm Free Friday Locals' Event; Saturday and Sunday, August 5-6, 2006)
Basic City Services:	Park City shall provide it's regular schedule of trash removal and sidewalk cleaning.
Access Control:	Kimball
Traffic Control:	Kimball and Park City

Author: Craig Sanchez
Subject: Food and Beverage Concession at Park City Golf Club
Date: April 13, 2006
Type of Item: Lease agreement

Summary Recommendation:
Approve lease agreement, as approved by Legal, with Hotel Park City for the on course food and beverage concession at Park City Golf Club.

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

Background

For the last three golf seasons the food and beverage concessionaire for Hotel Park City has operated the food and beverage concession at the golf course. This concession is currently managed in house by Hotel Park City. The storage and kitchen resources the Hotel concessionaire has available to them on property has proved beneficial in the operation of the on course concession. The concession operates from a golf cart, which tours the course serving players.

Analysis

Staff put out a Request for Proposal for this concession. This RFP was published in the Park Record for two weeks. The applicants were to address: rent, logistics for product storage and delivery, menu, and pricing. One proposal was received.

Hotel Park City: proposed rent of $500 per month, plus a percentage of golf course booked catered events. This would generate approximately $4,000-$4,500 in rent for the season. They have on site storage for product and a menu and pricing similar to past year's concession.

Department Review:

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

Alternatives:

A. **Approve the Request:**
B. **Deny the Request:**
This would require staff to post a new RFP.
C. **Continue the Item:**
Council could continue the item and direct staff to provide further information at a future date.
D. **Do Nothing:**

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

Recommendation:
Approve lease agreement, as approved by Legal, with Hotel Park City for the on course food and beverage concession at Park City Golf Club.

CONCESSION AGREEMENT
PARK CITY GOLF CLUB

This Agreement is made and entered into as of this 13th day of April, 2006, by and between **PARK CITY MUNICIPAL CORPORATION** (hereinafter "City") and **Hotel Park City**, ("Concessionaire").

WITNESSETH:

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

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

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

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

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

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

2. **Term**. The term of this Agreement shall be from opening day 2006 (usually April) through October 31, 2009.

3. **Rent**. Concessionaire agrees to pay the City as rent for the use of the premises the sum of Five Hundred Dollars ($500.00) per month , beginning opening day and closing day of the season on the first day of each month during the term. The rent shall be paid to the Park City Golf Club, P O Box 2067, Park City UT 84060. The rent shall be pro-rated for any partial month that the Club is open. Any payment not

made within fifteen (15) days of due date shall automatically bear interest at the rate of eighteen (18) percent per annum from the date payment became due. Daily closings because of weather will not reduce this monthly rent.

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

5. **Accounting**. Tenant shall provide City with an accurate accounting of their operation no later than November 15, 2006 and thereafter on a monthly basis due the first day of each month to include the following information:

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

(B) Total gross receipts from sales.

(C) A profit or loss statement.

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

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

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

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

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

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

A. Public Liability
   Each person - $1,000,000
   Each occurrence - $2,000,000
   This shall include but not be limited to products liability.

B. Property damage
   Each Occurrence - $250,000

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

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

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

10. **City Liable only for Negligence**. Except where caused by City's negligence, City shall not be liable for any failure of water supply, natural gas supply, or electrical supply; or for any injury or damage to persons or property caused by gasoline, oil, steam, gas or electricity; or hurricane, tornado, flood, wind or similar storms or disturbances; or water, rain or snow which may leak or flow from the street, sewer, gas mains, or any subsurface area or from any part of the building or buildings or for an interference with light.

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

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

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

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

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

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

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

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

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

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

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

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

22. **Failure to Perform Covenant**. Any failure on the part of either party to this concession to perform any obligation hereunder and any delay in doing an act required hereby shall be excused if such failure or delay is caused by any strike,

lockout, governmental restriction or act of God, or any similar cause beyond the control of the parties so failing to perform. To the extent and for the period that such cause continues, save and except under the provisions of this paragraph, shall not excuse a non-payment of rent hereunder on its due date.

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

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

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

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

Park City Municipal Corp. City Attorney P O Box 1480 Park City UT 84060	Hotel Park City 2001 Park Ave Park City, UT 84060

27. **Independent Contractor Relationship**.

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

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

28. **Prohibited Interest**.

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

29. **Severability**.

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

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

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

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

EXHIBIT A
SCOPE OF SERVICES

Description of Food and Beverage service:

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

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

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

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

City Council
Closed Session - Staff Report

Author: Alison Butz
Subject: New State Liquor Store at Snowcreek
Date: April 13, 2006
Type of Item: Administrative – Review of MOU

Special Events and Facilities Department

Summary Recommendations

Authorize the Mayor to enter into a Memorandum of Understanding regarding Local Consultation for a new State Liquor Store at Snowcreek in a form approved by the City Attorney.

Topic

State Liquor Store at Snowcreek

Background

Since 2003 the Department of Alcoholic Beverage Control (DABC) has been looking to construct a new liquor store in Park City. State funds are available for the construction of a new store and the retail sales from the Prospector Square store would be moved to this location. Due to both wholesale and retail sales and storage, the current store has inadequate space to serve its customers. Parking in the area is limited making it difficult for patrons to find a space to park. The Prospector Square store would transition to serve restaurant/wholesale customers only.

The DABC and the Snowcreek property owner, Sanford Sugar, initially met to assess the potential of adding a new liquor store within the existing commercial buildings in the Snowcreek center. The first approach was to carve square footage out of the Dan's grocery store and construct a wall to create a space for the liquor store. Since the DABC needs to own their location, the construction cost to build a wall between property lines was significant. Other issues, such as the loading dock and ultimate layout of the store did not meet the DABC's requirements for a new location.

The DABC then approached the property owner with the idea of locating the store in the parking lot, directly south of Dan's and behind the existing bus shelter. The State is very interested in the Snow Creek location and has the ability, by the State, to develop land outside the codes of local jurisdictions. The DABC would like to complete construction and open the new store by January 1, 2007. The heightened timeline is partially due to spend down requirements relating to bonds the State has issued.

Analysis

The Snow Creek Shopping Center is subdivided into five development lots and three Open Space Parcels. The sixth development lot as purchased by the City for the Olympic Welcome Plaza and the three Open Space parcels were dedicated to the City with the subdivision plat. The five lots comprise 11.36 acres. The zoning for the site is Residential Medium Density (RDM) with the Regional Commercial Overlay (RCO) for larger commercial development options.

The approved MPD for Snow Creek permitted 90,500 square feet of commercial space. The current density is 380 square feet under the maximum unit equivalents allowed per acre in an MPD. The MPD does not have remaining unit equivalents to construct a 12,000 square foot liquor store.

Currently there are 446 parking spaces for the center which is above the requirements for a shopping center (3.5 spaces per thousand net leasable square feet). A 12,000 square foot liquor store would require 42 parking spaces. There would remain an excess of 45 spaces. Depending on the specific location and design of the liquor store and the amount of parking removed, there should be adequate parking based on Land Management Code requirements.

The State is very interested in the Snow Creek location and has the ability, by the State, to develop land outside the codes of local jurisdictions. The Division of Facilities and Construction Management (DFCM) is required to consult with the local government when expanding services within Park City. The DABC and DFCM are interested in developing the store in a manner which is compatible with Park City land use regulations.

Staff views the Snow Creek shopping center as a good location for the new liquor store. The center is an area of town currently developed and the synergy created between the Liquor Store and current tenants could result in a positive tax revenue increase to the City.

Staff has drafted the attached Memorandum of Understanding between the DFCM/DABC and the City to outline specific land use regulations and review by the City. The agreement includes compliance with architectural, landscape, sign and lighting requirements as outlined in the Snowcreek MPD. The agreement also calls for a courtesy hearing with the Planning Commission where the Commission can comment on the site plan and building design. A similar agreement and process were used for the U.S. Post Office which was also exempt from the Land Management Code.

Significant Impacts

The DABC has the ability under State code, to develop and build a liquor store in Park City and consult with the local government. The State code does not require them to abide by local land use regulations. By entering into an agreement for the new Liquor Store at Snowcreek the City can ensure substantial compatibility with the Land Management Code.

ALTERNATIVES

A. Authorize the Mayor to enter into a Memorandum of Understanding between Park City Municipal and the DFCM for a new State Liquor Store at Snowcreek that will generally comply with Park City land regulations.

B. Deny the ability for the Mayor to enter into a Memorandum of Understanding between Park City Municipal and the DFCM for a new State Liquor Store at Snowcreek. This alternative will not necessarily prevent the construction of a Liquor Store at Snowcreek.

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

Recommendation

Authorize the Mayor to enter into a Memorandum of Understanding regarding Local Consultation for a new State Liquor Store at Snowcreek in a form approved by the City Attorney.

Exhibits

Exhibit A - Memorandum of Understanding regarding Local Consultation for a new State Liquor Store at Snowcreek.

Memorandum of Understanding Regarding Local Consultation between the Utah State Division of Facilities Construction and Management, State of Utah (“DFCM”) and Park City Municipal Corporation, a political subdivision of the state of Utah (“City”), for a State Liquor Store operated by the Department of Alcoholic Beverage (“DABC” to be located at Snow Creek Shopping Center in Park City.

Whereas, the DFCM explored several alternatives for expanding its services within the Park City area; and

Whereas, the DFCM and the City agree that the Snow Creek shopping center best meets the DABC’s site selection criteria and local needs; and

Whereas, the City acknowledges that the site is or may be acquired under the threat of condemnation by the state of Utah, which is exempt from local land use regulations; and

Whereas, the DFCM wishes to fully consult with the City in developing the store in a manner compatible with local land use regulations.

Now therefore, for mutual consideration the receipt and sufficiency of which is hereby acknowledged, the DFCM and City agree as follows:

A. Property. The location of the store will be the south side of the Snow Creek parking lot as approximately shown on Exhibit A.

B. Subdivision. The location is not currently a separate lot of record. The owner of the property and/or the DFCM shall file an administrative subdivision plat application to the Planning Department pursuant to UCA § 10-9a-605 to create a new lot of record. The Planning Department shall expedite approval of the plat provided the new lot does not substantially create any new degree of noncompliance with the Park City Land Management Code. The DFCM shall obtain and grant reciprocal cross easements as necessary so that use of the remaining parking area and circulation with the Snow Creak development remains substantially the same as currently exists. As a condition of approval, the Planning Department shall require the owner to address traffic circulation, pedestrian connections and parking drainage issues reasonably related to the increase in density and/or construction in the parking lot.

C. The DFCM will use reasonable efforts to comply with the architectural and landscape regulations attached as Exhibits B and C, respectfully.

D. The DFCM shall submit a site plan and elevations to the Planning Department. After approval of this MOU by the City Council, the Planning Department shall schedule a courtesy hearing at the first available Planning Commission meeting. The scope of the hearing shall be limited to the DFCM consulting with Commission regarding the site plan and building design. Public comment may be taken at the discretion of the Planning Commission.

E. The DFCM agrees to follow applicable sign and lighting regulations. Approved master plans are attached as Exhibit D.

F. The DFCM agrees to consult with the Chief Building Official regarding construction mitigation, deliveries, fire and building code issues.

G. Jurisdiction. Nothing herein shall give the City land use jurisdiction over property owned by the State of Utah.

IN WITNESS WHEREOF, the parties have duly executed this Memorandum of Understanding this ____ day of April, 2006.

PARK CITY MUNICIPAL CORPORATION	**DFCM**
______________________________	______________________________
Dana Williams Mayor	Alyn C. Lunceford Real Estate and Debt Manager

Attest:

____

Janet M. Scott, City Recorder

Approved as to form:	Approved as to form:
______________________________	______________________________
Mark Harrington, City Attorney	Attorney General's Office

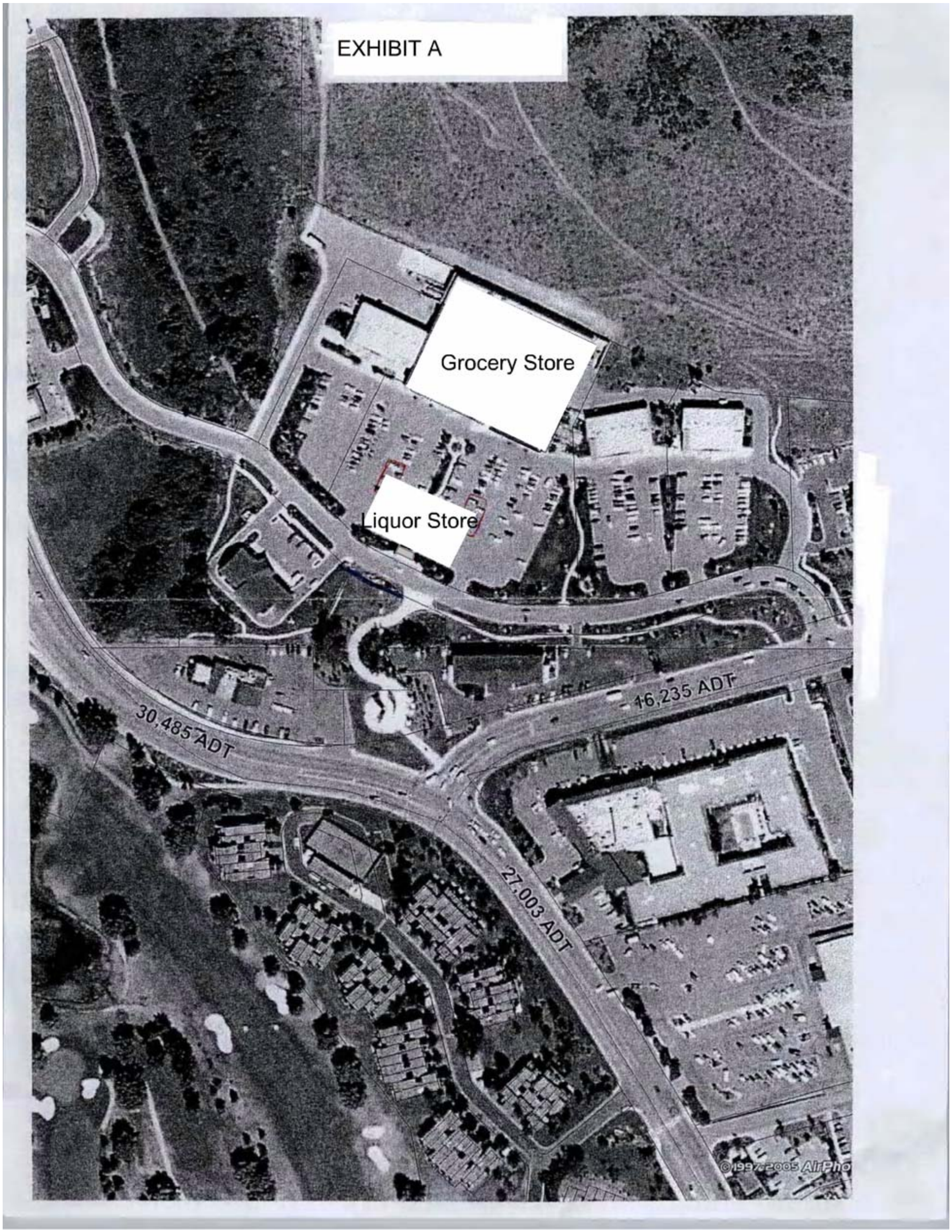
EXHIBIT A
Grocery Store
Liquor Store
16,235 ADT
30,485 ADT
27,003 ADT
©1997-2005 AirPho

EXHIBIT B
PARK CITY LAND MANAGEMENT CODE
ARCHITECTUAL DESIGN GUIDELINES

15-5 -5. ARCHITECTURAL DESIGN GUIDELINES.

(A) **PROHIBITED ARCHITECTURAL STYLES AND MOTIFS.** The following architectural styles and motifs are prohibited in Park City:

(1) A-frame Structures;
(2) Geodesic dome Structures;
(3) Mediterranean motifs;
(4) Tudor or mock tudor, half timbering;
(5) "Swiss" chalets;
(6) Highly ornate victorian;
(7) Rustic frontier;
(8) Colonial;
(9) Nouveau-Chateau, French Provincial, Fairy Tale or Castle. Tower features and turrets may be allowed if roofs are not conical and if the roof line is integrated into the main Structure. Round exterior walls are permitted but not as semi-detached round rooms, i.e., a round room may not exceed 270 degrees;
(10) Other historical or period design motifs that have a strong connection or association with other regions, or which have no historical connection with Park City;
(11) New Structures designed to imitate Historic Structures built in Park City or elsewhere, unless the project complies with the Historic District Architectural Guidelines.

Exemption: The above provisions addressing tudor, victorian, and colonial styles and tower elements shall not apply in the Prospector Park Subdivision.

(B) **PROHIBITED SIDING MATERIALS.** The following materials have proved to be unsuitable for Use in Park City due to the extreme climate, or because their appearance is such that the values of adjoining or abutting Properties are adversely affected:

(1) Thick shake shingles;
(2) Ceramic tiles;
(3) Slump bloc, weeping mortar;
(4) Plastic or vinyl siding;
(5) Used brick;
(6) Simulated stone or brick, cultured stone or brick, synthetic stone products, pre-cast stone or concrete imbedded with stone fragments;
(7) Lava rock, clinkers;
(8) Asphalt or hardboard siding;
(9) Plywood siding;
(10) Aluminum siding is generally not considered an appropriate material. The Planning Commission may, however, consider requests for the Use of aluminum siding. The design of the Structure shall be consistent with the Park City Design Guidelines. The Applicant will be required to bring a sample of the type and color of siding to be approved by the Planning Commission. When aluminum siding is

approved by the Planning Commission, it shall have a minimum thickness of .019 inches and shall be backed or insulated with a minimum of 3/8 inch fiberboard of polystyrene foam;

Exemption: In Prospector Village, Park Meadows and Prospector Park Subdivisions, aluminum and vinyl siding may be permitted for new Single Family Dwellings when such Structures are located in Areas predominately developed with Structures utilizing the same types of materials.

In order to avoid architectural styles which are foreign to Park City, particularly mediterranean, southwestern, or adobe, Building designs which include large, unbroken expanses of stucco will not be approved. Stucco must be of earth tones; white or pastel colors are prohibited.

(C) **DESIGN ORNAMENTATION.** Architectural design in Park City has historically been simple. Highly ornate Buildings are inconsistent with the architectural patterns of the community, and due to the close proximity of one Development to another, inconsistent ornamentation may become unsightly and detract from Property values. To add architectural interest to Buildings, special ornamental siding materials may be used, provided that no more than twenty five percent (25%) of any facade of the Building is covered with ornamental siding. Examples of ornamental siding, provided for information purposes only and not as a limitation, are as follows:
(1) Fish scale cut shingles;
(2) Half-timbered stucco;
(3) Match-sticked wood or other inlays.

(D) **NUMBER OF EXTERIOR WALL MATERIALS.** Different exterior siding materials add interest to a Building, and to the community as a whole, however, the Use of too many exterior materials, like excessive ornamentation, detracts from the values of adjoining Properties. Exterior walls of any Building may be sided with up to three (3) different materials per Building, but no more than three (3) materials may appear on any one (1) wall, including ornamental siding. Trim shall not be counted as a siding material, but ornamentation is counted as a siding material. If trim covers more than ten percent (10%) of a side of the Building, it shall be counted as a siding material on that side.

(E) **ROOFING MATERIALS.** Because of the steep Grade changes within Park City, and the fact that residents and visitors are frequently in a position to look down on the City from the adjoining mountains, the appearance of roofs in Park City is of more significance than in other communities. Some roof types do not perform well in Park City's harsh climate. In addition, the Area's dry climate creates a high potential for wildland fires which makes the Use of wood roofs unsafe in some Areas. For these reasons, the following roof types are prohibited in Park City:
(1) Untreated aluminum or metal, except that copper may be used;
(2) Reflective materials;
(3) Brightly colored roofing such as bright red, blue, yellow, green or similar colors are highly visible. Exception: Green is allowed if it is determined that its hue, color, chroma and other attributes of color are similar to other earth tone colors currently

approved in Park City. In no case shall the color be determined to be bright or highly reflective or towards the yellow tones of the color spectrum;
(4) Wood shingles, including fire retardant, prohibited only in wildland interface zones. Wood roofs may be allowed on additions to existing Structures with wood roofs. In addition, wood roofing may be allowed on later phases which continue the specific design of existing projects and where the original phase has wood roofing. Existing non-conforming Structures must comply with this section when the Structure's roof is replaced;
(5) Except on Historic renovations or reconstructions with adequate documentation, roof ornamentation such as scroll work, finials, and bead-and-dowel work are prohibited.

(F) **ROOF SHAPES.** The following roof shapes are prohibited in Park City because they either do not perform well in the harsh climate, or tend to detract from the value of adjoining Property:
(1) Mansard or fake mansard roofs;
(2) Gambrel roofs;
(3) Curvalinier roofs;
(4) Domed roofs;
(5) Geodesic domes;
(6) Conical roofs;
(7) A-frame or modified A-frame roofs.

Mechanical equipment on roofs must be hidden with a visual barrier so it is not readily visible from nearby Properties.

(G) **SKYLIGHTS AND SOLAR PANELS.** Any skylight or other translucent roof material which allows the transmission of light from the interior of the Building to the exterior shall be designed as follows:
(1) The feature is limited to no more than twenty-five percent (25%) of the roof Area;
(2) The design shall facilitate the Use of natural light into the Building and any light emitted from the feature shall be shielded from adjacent Properties;
(3) The feature may not be the highest point of the Structure; and
(4) The feature shall be designed to fit as flush as possible with the roof. In no case shall the feature exceed two feet (2') above the roof plan.

Solar panels shall be designed so as to be incorporated into the roof plan or architectural feature to the best extent possible.

(H) **WINDOW TREATMENTS.** Windows other than rectangular windows may be used as accents and trim, but arched, rounded, or Bay Windows as the primary window treatment are prohibited. Untreated aluminum or metal window frames are prohibited. Small pane colonial style windows are not allowed.

(I) **LIGHTING.**
Refer to Exhibit D

(J) **TRASH ENCLOSURES.** In addition to County health standards, the following trash enclosure design standards shall apply:

(1) Trash and storage Areas shall be Screened by landscaping, Fencing, berms or other devices integral to overall Site and Building design;

(2) Trash and storage enclosures shall be constructed of materials that are Compatible with the proposed or existing Building and with surrounding Structures;

(3) Trash and storage Areas shall be well maintained including prompt repair and replacement of damaged gates, Fences and plants;

(4) Openings of trash enclosures shall be oriented away from public view or Screened with sturdy gates wide enough to allow easy Access for trash collection, where practical;

(5) The consolidation of trash Areas between Businesses and the Use of modern disposal techniques is encouraged.

Exception: These standards shall not apply to existing Structures that have been built with zero Setbacks or when such enclosures would negatively impact Access, circulation, or snow removal efforts.

(K) **MECHANICAL EQUIPMENT.** All electrical service equipment and sub-panels and all mechanical equipment, including but not limited to, air conditioning, pool equipment, fans and vents, utility transformers, except those owned and maintained by public utility companies, and solar panels, shall be painted to match the surrounding wall color or painted or Screened to blend with the surrounding natural terrain. Roof mounted equipment and vents shall be painted to match the roof and/or adjacent wall color and shall be Screened or integrated into the design of the Structure.

15-5 -6. PERMITTED DESIGN FEATURES.

Any design, or any material that is not expressly prohibited by this Chapter, or a resolution adopted to supplement it, or by the Historic District Architectural Design Guidelines are permitted.

15-5 -7. EXCEPTIONS.

In some cases, the Community Development Director may vary from these standards if warranted by unusual or unique circumstances. In Single-Family Subdivisions, the Community Development Department will consider the predominant architectural style and materials in the neighborhood to determine Compatibility. This may result in variation from the strict interpretation of this section and may be granted by the Community Development Department.

15-5 -8. FACADE LENGTH AND VARIATIONS.

(A) Structures greater than sixty feet (60'), but less than 120 feet in length must exhibit a prominent shift in the facade of the Structure so that no greater than seventy five percent (75%) of the length of the Building Facade appears unbroken. Each shift shall be in the form of either a ten foot (10') change in Building Facade alignment or a ten foot (10') change in roof line height, or a combined change in facade and roof line totaling ten feet (10').

(B) Structures which exceed 120 feet in length on any facade shall provide a prominent shift in the mass of the Structure at each 120 foot interval, or less if the Developer desires, reflecting a change in function or scale. The shift shall be in the form of either a fifteen foot (15') change in Building Facade alignment or a fifteen foot (15') change in roof line. A combination of both a roof line and facade change is encouraged and to that end, if the combined change occurs at the same location in the Building plan, a fifteen foot (15') total change will be considered as full compliance.

(C) The special facade and volume requirement of the Historic District are found in LMC Chapter 15-2 and in the Historic District Architectural Design Guidelines.

(D) The facade length and variation requirements apply to all sides of a Building.

Exhibit C
LANDSCAPE REQUIREMENTS

15- 3- 3D.

(5) **INTERIOR LANDSCAPING**. Parking should generally be located to the rear of Buildings or Screened so it does not dominate the Streetscape. In the design of large Parking Areas, bays of stalls shall generally be separated by landscaping to break up the mass of Hard-Surface paving. The Parking Area must be designed to provide adequate snow storage in winter.

Landscaped Areas shall generally not be less than five feet (5') wide. A reduction in the landscape area width may be granted by the Community Development Director if the Applicant provides acceptable mitigation to vegetate and buffer the unenclosed Parking Area.

(6) **PERIMETER LANDSCAPING**. Unless a driveway exception is used, unenclosed Parking Areas shall generally include landscaping on all perimeter Property Lines. This provision shall not be required in zoning districts that allow zero Lot Line Development, or within the Historic District Zones, unless required as part of an approved Master Planned Development.

Landscaped areas shall generally not be less than five feet (5') wide. A reduction in the Landscape Area width may be granted by the Community Development Director if the Applicant provides acceptable mitigation to vegetate and buffer the unenclosed Parking Area.

The Applicant shall generally maintain a minimum of one (1) tree and five (5) shrubs per twenty-five linear feet (25') of Landscaped Area. Trees and shrubs may be clustered as part of good design.

The Frontage Protection Overlay Zone (FPZ) requires a minimum landscaped buffer of thirty feet (30') in width, abutting the Street.

(7) **SNOW STORAGE**. Snow storage areas may be included in the Interior or Perimeter Landscaped Areas if they are landscaped to accommodate snow storage.

(8) **STORM WATER DETENTION/ POLLUTION CONTROL**. Landscaped Areas used for storm water detention and pollution control may count towards the landscaping requirements.

(9) **CLEAR VIEW OF INTERSECTION**.

(a) Corner Lots. No landscape obstruction is allowed in excess of two feet (2') in Height above Street Grade within the Sight Distance Triangle. A reasonable number of trees with lower branches pruned to six feet (6') to permit automobile drivers and pedestrians an unobstructed view of the intersection may be allowed by Administrative Permit.

(b) Driveway Access. The same criteria as used on corner lots apply to driveway

Access except that the triangular area is defined by the intersection of the road Right-of-Way, the line extending from the point-of-curve at the top-back-of-curb, and a line connecting them at points twenty-five feet (25') from their intersection.

Exhibit D
LIGHTING AND SIGN REQUIREMENTS
(this is out of the LMC, may need to be replaced with Snowcreek MPD)

LIGHTING.

(1) PURPOSE. The functional objectives in providing exterior Area lighting are to illuminate Areas necessary for safe, comfortable and energy efficient Use. The number of fixtures shall be limited to provide for safe entry and egress and for sign or Business identification.

Illumination of new Building features for architectural enhancement is prohibited. Historic Structures may be illuminated under the terms prescribed in this Code.

With the exception of Americans with Disabilities Act lighting requirements, the minimum lighting standards generally applied and recommended by the Illuminating Engineering Society of North America (IES), are observed by this Code.

(2) CONFORMANCE WITH APPLICABLE CODES. All outdoor electrically powered illuminating devices shall be installed in conformance with the provisions of this Code, the Building Code, the Electrical Code, and the Sign Code under the appropriate permit and inspection. When discrepancies in these Codes exist, the most restrictive shall apply.

(3) APPROVED MATERIALS AND METHODS OF CONSTRUCTION OR INSTALLATION/OPERATION. The provisions of this Code are not intended to prevent the Use of any design, material or method of installation or operation not specifically prescribed by this Code, provided any such alternate has been approved. The Chief Building Official may approve any such proposed alternate providing he/she finds that:

(a) The alternative provides approximate equivalence to the applicable specific requirement of this Code;

(b) The alternative is otherwise satisfactory and complies with the intent of this Code; or

(c) The alternate has been designed or approved by a registered professional engineer and the content and function promotes the intent of this Code.

(4) SUBMISSION OF PLANS AND EVIDENCE OF COMPLIANCE WITH CODE.

(a) The Applicant for any permit required by any provisions of the laws of this jurisdiction in connection with proposed work involving outdoor lighting fixtures shall submit, as part of the Application for permit, evidence that the proposed lighting fixtures and Light Source will comply with this Code. The submission shall contain the following:

(i) Plans indicating the location on the premises, and the type of illumination devices, fixtures, lamps, supports, reflectors, and installation and electrical details;

(ii) Description of illuminating devices, fixtures, lamps, supports, reflectors, and other devices. The description may include, but is not limited to, catalog cuts by manufacturers, and drawings, including section where required;

(iii) Photometric data, such as that furnished by manufacturers or similar showing the angle of the cut off or light emission. A point by point light plan may also be required to determine the adequacy of lighting over the entire Site.

Additional information may be required elsewhere in the laws of this jurisdiction upon Application for the required permit.

(b) Lamp or Fixture Substitution. On commercial Structures if any outdoor light fixture or the type of Light Source therein is proposed to be changed after the permit has been issued, a change request must be submitted to the Community Development Department for approval. Adequate information to assure compliance within this Code must be provided and the request must be received prior to substitution.

(5) SHIELDING. All non-exempt outdoor lighting fixtures shall have shielding as required by Table 1 of this Chapter below.

(a) Historic District Shielding and Fixture Exemption. Fixtures in the HR-1, HR-2, HCB and HRC Zoning Districts that replicate a Historic fixture shall be permitted to be installed without partial shields with the approval of the Community Development Director. All fixtures shall be filtered and refractors that direct the light downward shall be installed if the bulb is exposed. Historic fixtures that are fifty (50) years or older and contribute to the architectural and cultural character of the Historic District are exempt from these requirements. Architectural features on Historic Structures may be illuminated with fully shielded fixtures.

(6) WATTAGE/FIXTURE AND LIGHT SOURCE REQUIREMENTS. Wattage, fixture and Light Source requirements as outlined in Table 1 below apply to all zones throughout the City:

Table 1

High Pressure Sodium - Required Standard: Partially Shielded, 50 Watt Maximum per Fixture. This is the standard Light Source for Park City and Summit County unless otherwise noted in a specific section. Fully shielded fixtures are preferred but not required with this Light Source. Other sources are only permitted as noted. Wattages outlined are the maximum and can be decreased under the Building Permit review process depending on the number and location of the fixture on each project. In no case shall the levels be reduced to levels below the Illuminating Engineering Society (IES) minimum standards.

Low Pressure Sodium - Required Standard: Partially Shielded, 55 Watt Maximum per Fixture.

Metal Halide - Required Standard: Fully Shielded, 1000 Watt Maximum per Fixture.

Metal Halide sources shall be permitted only for recreational sport field or ski area Uses and installed only in one hundred percent (100%) fully enclosed Luminaries. Metal Halide lights shall also be filtered.

Low Voltage/Halogen - Required Standard: Partially Shielded, 50 Watt Maximum per Fixture. Low voltage/halogen sources are permitted in landscaping lighting only.

Compact Fluorescent - Required Standard: Partially Shielded, 75 Watt maximum per Fixture.

Other Sources: As approved by the Community Development Director

SNOW CREEK MASTER SIGN PLAN

1. Each tenant will be permitted one fascia sign. If cases of single tenants the sign size shall be governed by the criteria outlined in Municipal Sign Code.

2. Signs shall be limited in content to the name of the business.

3. Signs shall be individual lettered style with ivory plexiglass faces and black returns.

4. Maximum allowable letter height is twelve inches (12☺. Letters shall not exceed a 7” projection from the building face. Sign area shall be determined by calculating the area of the smallest rectangle that will enclose the sign entirely.

City Council
Staff Report

Executive

Author:	**Phyllis McDonough Robinson**
Subject:	**Affordable Housing Guidelines and Standards**
Date:	**April 13, 2006**
Type of Item:	**Legislative**

Summary Recommendations: Review the proposed Affordable Housing Guidelines and Standards, conduct a public hearing and adopt the Resolution with any revisions deemed necessary.

Description:

Topic: Affordable Housing

Background:
In December 2005, the City Council held a work session on the Park City Housing Needs Assessment. Among the findings of the assessment is that employment and population growth exert a strong demand in a supply-constrained housing market. Accelerating demand pressure resulting from continued job and population growth will push prices higher over the next several years, exacerbating the existing affordability challenges. This pressure will result in higher prices for single family home and condominiums, as well as higher rents.

On January 26, 2006, Council held a work session on the proposed Affordable Housing Guidelines and Standards. Council provided staff with direction on the following issues:

- Target Market, Housing Type and Design.
- Minimum Sizes for Deed Restricted Units:
- Provision of Seasonal Units
- Employee generation guidelines
- Residential and commercial mitigation rates
- Methods of meeting minimum requirements
- Fee in Lieu payment methodology

Analysis
Council raised the following issues at the January 2006 work session. Below is a summary of the issues and how they are addressed within the proposed resolution.

- ***Reduction in unit size***. Rather than reduce what are already minimum unit sizes, staff added Council flexibility to consider reduction in overall Unit

Equivalents for the incorporation of sustainable building practices and systems in the unit design and development.

- ***Employee Generation Guidelines***. Council raised the issue that a condominium hotel is a hybrid between a residential and a commercial (hotel) product. Staff has added language that allows the City to require the mitigation as the greater of the calculations as a residential project or a hotel project.

- ***Payment of In Lieu Fees***. The reference to a discount in the fees if paid in total at the time of Building Permit was removed. As proposed, one-half of the fee would be paid at the time of building permit and the remainder prior to a certificate of occupancy (temporary or permanent). The Developer retains the ability to pay the fee in full at the time of building permit and avoid the potential increase in the fee between the time of building permit and Certificate of Occupancy.

- ***In Lieu Administrative Fee***. Council directed staff to evaluate the adoption of an administrative fee as part of the in lieu payment. The rationale is that the acceptance of an in lieu fee places the administrative and developmental responsibility to produce units upon the City. This is addressed by other communities (including Santa Fe, New Mexico, Montgomery County, Maryland, Aspen/Pitkin County, Colorado) by either an administrative fee as a percentage of the in lieu fee, or the increase in the number of the base units on which the fee is calculated. The surcharge or administrative fee ranged from 2 percent to 25 percent. Staff recommends that the in lieu fee be 15% of the calculated affordability gap. The 2006 Affordability Gap is $75,313. The Administrative Fee is $11,297. The total 2006 Fee in Lieu of Development payment will be set at $86,616.

Additional Issues for Discussion
The Planning Commission and the City Council raised two additional issues for consideration. The first is whether a different mitigation rate for institutional/nonprofit uses should be established. The second issue was how to treat Redevelopment, Additions and Conversions of Use.

- ***Reduction in Employee Mitigation Rates.*** Staff researched other codes to determine if certain types of uses (hospitals, institutions of higher education, or nonprofit sponsored service) were generally exempted from meeting affordable housing requirements. In a review of more than 40 ordinances, most contained an exemption for affordable housing requirements. Several exempted residential care facilities and other projects that described as "non-commercial or non-residential in nature."

  Section 8C of the proposed Resolution recommends that Council **"**reduce the base employee generation rate from twenty percent of employees generated to ten percent for uses that are "*non-commercial or non-residential in nature, which* *provide educational, social or related services to the community and which are proposed by public agencies, nonprofit agencies, foundations and other similar organizations* " upon findings that the benefits/impacts of such Development as they relate to other general plan goals and/or action items outweigh the housing impacts*."*

- ***Redevelopment: Additions and Conversions of Use.*** The issue of how to assess affordable housing requirements for projects that were not previously required to provide affordable housing was also discussion at the joint City Council/Planning Commission work session. In Section 8E staff recommends that the uses and areas that existed prior to the redevelopment or remodeling shall be exempt from the requirements of this Resolution. Any new area or unit or any change in use that creates additional Employee Generation as determined in Table 1: Employee Generation by Type of Use shall be subject to this provisions of this Resolution.

Relationship between Affordable Housing Requirement and Total Project Density. Housing Resolution 17-99 required that fifteen percent of the total units constructed shall be provided for affordable housing. This requirement remains the same under the proposed Housing Resolution. Staff wishes to clarifies that number of affordable housing units required are a direct result of the total residential and/or commercial units approved. The number of affordable units required is calculated based upon the approved number of residential units or commercial square footage. Thus, affordable units are not included in the maximum project density determination. This is consistent with the application of housing requirements for MPDs/Annexations processed under 17-99 including Flagstaff Mountain, Silver Star, and Union Square. Staff has added the following clarifying statement in Section 8A: *" Affordable units developed on-site in fulfillment of this requirement are not included in the density calculation for the project."*

Department Review: The Planning and Legal Departments and the City Manager reviewed this report.

Alternatives

A. Approve the Request:
The City Council could approve the housing resolution and adopt the new standards and guidelines. This is Staff's recommendation.

B. Deny the Request:
The City Council could deny the request. This would have the effect of leaving Resolution 17-99 in place.

C. Continue the Item:
The City Council could continue the item and direct Staff to return with additional information.

Significant Impacts:

The proposed changes will adopt new standards and guidelines for affordable housing projects assisted by Park City Municipal Corporation and for housing requirements for annexations and Master Planned Developments. If the Council chooses not to implement the proposed changes, the 1999 guidelines will remain in effect.

Recommendation: Staff recommends that Council review the proposed Affordable Housing Guidelines and Standards, conduct a public hearing and adopt the Resolution with any revisions deemed necessary.

Attachments:
Attachment A: Proposed 2006 Housing Resolution
Attachment B: In Lieu Fee Calculation Sheet
Attachment C: 2006 Affordable Housing Vision, Goals and Objectives
Attachment D: Housing Resolution 17-99 (current resolution)

Resolution xx-06

RESOLUTION ADOPTING AFFORDABLE HOUSING GUIDELINES AND STANDARDS FOR PARK CITY, UTAH

WHEREAS, the livability and viability of Park City is directly affected by the availability of a sufficient amount of housing affordable to all residents; and

WHEREAS, the City Council desires to establish policies to ensure a reasonable opportunity for a variety of housing and which bears an essential nexus to maintaining the social, economic and political fabric of the community; and

WHEREAS, the 2005 Park City Housing Assessment and Demand Analysis concluded that the rise of housing costs has outpaced the increase in wages in the service sector areas of the resort based economy and has resulted in making housing unaffordable to working residents of the City; and

WHEREAS, the 2005 Park City Housing Assessment and Demand Analysis projects in the Leisure and Hospitality employment sector will continue to drive the demand for additional workforce housing in Park City; and

WHEREAS, it is in the best interest of the community and a legitimate government interest to formulate guidelines and standards to establish a consistent criteria for review of Master Planned Development applications and annexation petitions and other development actions where affordable housing is needed to mitigate the impact of the project on the community; and

WHEREAS, the cost of providing affordable housing and any solutions should equitably apportion the cost based on impact generation, growth inducement and the underlying goal to provide a diversity of housing types and prices in our community in order to maintain a healthy economy and diverse population.

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

SECTION 1. ADOPTED HOUSING STANDARDS AND GUIDELINES. The following housing standards and guidelines are hereby adopted. Unless otherwise defined separately herein, all words and terms shall have the same meaning as defined in the Land Management Code, as amended.

SECTION 2. APPLICABILITY. These standards shall apply to all new Housing and Commercial Development created under Title 15, Chapter 6 Master Planned Developments and Title 15, Chapter 8 Annexations of the Park City Land Management Code. These standards shall apply to prior agreements on density or configuration unless specifically addressed within Development Agreements.

SECTION 3. PURPOSE. The purpose of this Resolution is to ensure that new development does not adversely affect the supply of affordable housing in the City and to maintain Park City's social, economic and political fabric of its community character. It is intended that the requirements imposed herein are roughly proportionate and reasonably related to the impacts of the Development.

SECTION 4. REVIEW. This Resolution shall be reviewed by the City Council at least biennially to ensure that these standards are meeting the housing goals and objectives.

SECTION 5. DEFINITIONS

Affordable Housing: Housing costs – rent plus basic utilities or mortgage, tax, insurance and/or Homeowners Association payments – that consume no more than 30 percent of a household's income.

Affordable Housing Unit: Dwelling units that are deed restricted to the housing size and type for individuals meeting occupancy guidelines approved by the Park City Council.

Affordable Unit Equivalent: A two-bedroom unit with 850 square feet of Net Livable Space shall be considered one Affordable Unit Equivalent.

Bedroom: Designed to be used for sleeping purposes and which contains closets and meets all applicable City Building Code requirements for light, ventilation, sanitation and egress.

Deed Restriction: A contract entered into between Park City Municipal Corporation and the owner or purchaser of real property identifying the conditions or occupancy and resale.

Household: All individuals occupying a unit regardless of legal status.

Household Income: Combined gross income of all individuals who will be occupying the unit regardless of legal status. Adjustments to the gross for business expenses can be made for persons who are self-employed.

Net Livable Square Footage: Is calculated on interior living area and is measured interior wall to interior wall, including all interior partitions. Also included, but not limited to, habitable basements and interior storage areas, closets and laundry areas. Exclusions include, but are not limited to, uninhabitable basements, mechanical areas, exterior storage, stairwells, garages (either attached or detached), patios, decks and porches.

Park City Housing Wage: The median wage of the core Park City workforce as determined annually by the City Council.

Studio Unit: Living quarters designed around a relatively large single room incorporating the features of a living room, bedroom, dining room/kitchen and bathroom.

SECTION 6. EXEMPTIONS. The development of affordable housing units as defined by the Land Management Code is exempt from the requirements of this Resolution. This may include projects developed by or sponsored by nonprofit organizations and projects for which agreements have been executed that provided affordable housing or land for said purpose.

SECTION 7. FEE WAIVERS . Section 11-12-13 of the Municipal Code provides that "any part of the fees included in this Title may be waived by the City Council upon recommendation of the City Manager, for those projects which are deemed to serve a beneficial public purpose that would be harmed by the City requiring the payment of such fees, such as low income housing projects." Pursuant to Section 11-13-4(A) of the Municipal Code, the City Council can waive impact fees for construction of affordable housing up to $5,000 per unit.

SECTION 8. CALCULATION OF MINIMUM AFFORDABLE HOUSING REQUIREMENTS

A. Residential Development.
For projects where units are offered for sale or rent, the Developer shall provide affordable housing units in an amount equal to fifteen percent (15%) of the total residential units constructed. Affordable units developed on-site in fulfillment of this requirement are not included in the density calculation for the project.

RESIDENTIAL GENERATION CALCULATION EXAMPLE
An Applicant has received approval for a 128 unit Master Planned Development.
1. 128 units (total units approved) multiplied by .15 (residential mitigation rate) equals 19.2 Affordable Unit Equivalents.
2. One Affordable Unit Equivalent is 850 square feet of net livable space.
3. The total approved units for this MPD is 128 market rate units plus 19.2 affordable unit equivalents

B. Commercial Development
The Developer shall be required to mitigate 20 percent of the employees generated. For projects with a commercial component, the minimum affordable housing requirements shall be determined according to the following formulas:

Table 1: Employee Generation by Type of Use.

Type of Use	FTEs per 1,000 net leasable square feet
Restaurant/Bar	6.5
Education	2.3
Finance/Banking	3.3
Medical Profession	2.9
Other professional services	3.7
Personal services	1.3
Real Estate/Property management	5.9
Commercial/Retail	3.3
Recreation/amusements	5.3
Utilities	2.9
Lodging/hotel	0.6/room
Condominium Hotel	Greater of lodging/hotel calculation

	or residential mitigation rate
Overall/General	**4.4**

The Overall/General Type of Use shall apply to any use not listed in the Employee Generation Table if an Independent Calculation is not performed.

EMPLOYEE GENERATION CALCULATION EXAMPLE
An application for a Master Planned Development of 20,000 square feet of commercial space and 100 hotel rooms has been submitted. The commercial uses include:

10,000 square feet of retail space
5,000 square feet of restaurant/bar space
5,000 square feet of professional services

1. Using the above Employee Generation Table, the project will generate 114 employees.
Retail at 3.3 employees per 1,000 square feet equals 33 employees
Restaurant/Bar at 6.5 employees per 1,000 square feet equals 32.5 employees
Professional Services at 3.7 employees per 1,000 square feet equals 18.5 employees
Hotel at .3 employees per unit equals 30 employees.

2. 114 (total number of employees) multiplied by .20 (mitigation rate) equals 22.8 employees.

3. 22.8 employees divided by 1.3 (workers per household) equals 17.54 employee unit equivalents required.

4. 17.54 employees is equivalent to 8.77 Affordable Unit Equivalents configured as two-bedroom, 850 net livable square foot units.

5. The Developer is required to provide 8.77 Affordable Unit Equivalents in addition to approved commercial and hotel density.

C. Reduction of Employee Generation for Institutional/Nonprofit Use. The City Council may reduce the base employee generation rate by up to fifty percent for uses that are “non-commercial or non-residential in nature, which provide educational, social or related services to the community and which are proposed by public agencies, nonprofit agencies, foundations and other similar organizations “upon finding that the benefits/impacts of such Development as they relate to other general plan goals and/or action items outweigh the housing impacts*.*

D. Independent Calculation. An applicant may submit an independent calculation of the number of employees to be generated by a proposed development, to be used in place of the Employee Generation Table. The independent calculation shall be accepted by the City Council if the Council determines the calculation constitutes compelling evidence of a more accurate calculation of employee generation than Table

1: Employee Generation Table. Should the independent calculation not be accepted, then the applicable employee generation factor from the Employee Generation Table shall be applied to the proposed Development. Any acceptance of an Independent Calculation shall be site and use specific, non-transferable and be memorialized in a Development Agreement between the property owner and the City. Such Agreement shall be executed prior to the issuance of any building permit.

E. Redevelopment: Additions and Conversions of Use. Redevelopment or remodeling in an existing use or the change in use from one use to another is exempt from the requirements of this Resolution, provided such activity does not create additional employment generation as determined in *Table 1: Employee Generation by Type of Use*. Only the uses and areas that existed prior to the redevelopment or remodeling shall be exempt from the requirements of this Resolution. Any new area or unit or any change in use which creates additional Employee Generation as determined in *Table 1: Employee Generation by Type of Use* shall be subject to this provisions of this Resolution. Mitigation shall be required for the employees generated by the proposed total square footage (including addition) minus the employment generation of the total structure. If the developer converts one land use to another with higher employment generation rates, the mitigation will be based on the increase in FTEs. For example, a conversion of a 1,000 sq. ft. retail establishment with an employee generation rate of 3.3 FTEs per 1,000 square feet to a private club with a generation rate of 6.5 FTEs per 1,000 square feet results in a net increase in 3.2 FTE and would require additional mitigation.

F. Final Unit Requirement Calculations. The final calculations for the number of inclusionary units and the rental or sales price for these units shall be made prior to the issuance of building permits for the covered project.

SECTION 9. METHODS OF HOUSING REQUIREMENT COMPLIANCE

A. Size and Design Standards for Affordable Housing Units

1. Unit Types: The distribution of dwelling unit types that meet the deed restricted affordable unit requirements of this section shall be as follows:

- **Single Family:** In single family detached dwelling unit developments, the required on-site permanently affordable units shall also be single family detached units.

- **Mixed Unit Type:** In developments where there is a mix of two or more unit types: single-family detached units, attached units, multi-family apartment units, or other dwelling unit types, the required on-site deed restricted units shall be comprised of the different unit types in the same proportion as the market rate dwelling units within the development.

- **Alternative Distribution Ratios**: Different unit distribution among the deed restricted affordable unit types may be permitted if doing so would accomplish additional benefits or result in a better design than not using the distribution of units provided for in this section.

2. **Minimum Sizes for Deed Restricted Units:** In order to assure livability, the net livable square footage for affordable units shall be as follows:

Dormitory	150 square feet
SRO	275 square feet
Studio	400 square feet
One Bedroom	650 square feet
Two Bedroom	900 square feet
Three Bedroom	1,150 square feet
Four Bedroom	1,400 square feet

The Planning Department prior to the issuance of any building permits for either the free market or employee housing component of the project must verify square footage. The Building Department may check the actual construction of the employee housing units for compliance with the approved building permit plans.

3. **Winter Seasonal Units.** Pursuant to the applicable City codes, an applicant for a development may, at the sole discretion of the City and subject to certain requirements, satisfy the employee housing requirements by provision of dormitory/lodge units designed for occupancy by seasonal employees. The dormitory/lodge units must satisfy all requirements of the applicable Guidelines and shall be required to meet the following minimum standards:
    - Occupancy of a dormitory unit shall be limited to no more than 8 persons.
    - There shall be 150 s.f. or greater of net livable square footage per person, including sleeping and bathroom uses.
    - At least one bathroom shall be provided for shared use by no more than four persons. The bathroom shall contain at least one toilet, one wash basin, one bathtub with a shower and a total area of at least 60 net livable square feet.
    - A kitchen facility or access to a common kitchen or common eating facility shall be provided subject to the Building Department's approval and determination that the facilities are adequate in size to service the number of people using the facility.
    - Use of 20 net leasable square feet per person of enclosed storage area located within, or adjacent to, the unit.
    - Rents for dormitory units will be set by Special Review on a case-by-case basis, given the unique and varying characteristics of dormitory units, with affordability as the key issue.
    - Seasonal Lodge Developments shall not be restricted to housing employees of their own business, but shall also be required to house qualified employees of the community at large.

4. Affordable Unit Amenities. Inclusionary units may differ from the market units with regard to interior amenities and gross floor area provided that:

- These differences, excluding differences related to size differentials are not apparent in the general exterior appearances of the project's units; and
- These differences do not include insulation, windows, heating systems and other improvements related to the energy efficiency of the project's units.
- The gross floor area of the inclusionary units is not less than the following minimum requirements, unless waived by the City.

B. Methods of Meeting Minimum Requirements.
The following methods, in order of priority, may be used to meet the minimum affordable housing mitigation requirements.

1. Construction of unit(s) on the site on which the development is proposed. Affordable housing units shall be constructed on the project site, unless the developer can demonstrate compelling evidence that an alternative method would result in a better design, enhanced level of affordability or that the construction on-site would adversely affect the design of the project.

2. Construction of the unit(s) within the Park City corporate limits provided such land, site or structure had not been previously deed-restricted to affordable housing by Park City or Summit County.

3. Construction of units outside Park City, but within the Park City School District boundary and/or the boundaries of the free transit system.

4. ***Conveyance of land within the Park City School District boundary and/or the boundaries of the free transit system provided such land has not been previously restricted to employee or affordable housing by Park City or Summit County.*** The developer may elect to (a) convey land to the City or its designee that is of equivalent value to the cash in lieu contributions that would be required under this Resolution, plus an additional 25 percent to cover costs associated with holding, developing, improving or conveying such land; or (b) convey land to the City or its designee that is of equivalent value (as of the date of conveyance) to that land upon which required units would otherwise have been constructed and properly zoned such as to allow construction of at least that number of units for which the obligation of construction is being satisfied by the dedication of the land. Land conveyance shall occur prior to the issuance of any building permit for the free market portion of the development. Should the City Council later elect to sell the land, all proceeds from the sale of the land shall be placed in a dedicated housing fund.

5. ***Dedication of existing units provided such units have not been previously restricted to employee or affordable housing by Park City or Summit County.*** Units shall be located within the City limits unless otherwise approved by the City. Units must be of equivalent value, quality and size of the deed restricted units that would have been constructed on-site. Existing units must be in move-in condition with appliances, windows, heating, plumbing, electrical systems, fixtures and equipment in good working condition. The value of dedicated existing units will be determined, at the expense of the developer, by an appraiser selected by the developer from a list of certified appraisers provide by the City of by such alternative means of valuation as to which a developer and the City may agree. All units shall be inspected and shall meet applicable Park City building codes. Applicant shall bear the costs and expenses of any required upgrades to meet the above standards as well as any reports required to assess the suitability for occupancy and compliance with the standards of the proposed units.

6. ***Payment of Fees in Lieu of Development***. If the City determines that (1) no other alternative is feasible, or (2) such a payment would result in more immediate development of housing or (3) such a payment would leverage additional resources, then a Payment of Fees in Lieu of Development may be accepted. The Payment in Lieu Fee for 2006 is $86,616. The fees shall be reviewed and updated at least biennially. Updates may occur more frequently at the request of the City Council to reflect changing real estate conditions. The funds, and any interest accrued, shall be used only for the purpose of planning for, subsidizing or developing affordable and employee housing.

One-half of the in-lieu fee shall be paid (or a letter of credit posted) prior to issuance of a building permit for all or any part of the MPD. The remainder of the fee shall be paid before a certificate of occupancy (temporary or permanent) is issued for any unit in the Residential Development. The remaining fee will be calculated at the in lieu fee rate in effect at the time of payment. The Developer retains the option of paying the fees in full at time of building permit to avoid any increase in fees.

SECTION 10. DEED RESTRICTION. Prior to the plat recordation provisions to ensure continued affordability of inclusionary units shall be embodied in legally binding agreements and/or deed restrictions, which shall be prepared by the developer, but which shall not be recorded or filed until reviewed and approved by the City Attorney with such modifications as it may deem necessary to carryout the purpose of this Resolution. No building permit application shall be accepted in the absence of proof of the execution of requirement agreements and covenants. In the event such restrictions are voided by bankruptcy or other legal action, the City may revoke the Certificate(s) of Occupancy until such time as subsequent owner complies with the standards herein.

SECTION 11. TIMING OF OCCUPANCY. The affordable units shall be ready for occupancy no later than the date of the initial or temporary occupancy of the free market portion of the project. If the free market units are to be developed in phases, then the affordable housing can be developed in proportion to the phasing of the free market units as approved in the Housing Mitigation plan.

SECTION 12. APPLICABILITY OF RESOLUTION TO PRIOR APPROVALS OR PENDING APPLICATIONS.

A. Prior Development Agreements. Developments, which received development plan approvals prior to the adoption of this housing resolution, shall conform to the provisions of the resolution in place at the time of applicable complete application. Any modifications to an existing Development Agreement that results in an increase in housing units or employee generation shall be subject to the provisions of this Resolution.

B. Prior Annexation. Unless otherwise provided in Conditions of Approval or a Development Agreement, Developments subject to affordable housing requirements imposed by annexation agreements entered into prior to the effective date of this Resolution may develop in conformity with the Resolution in place at the time the Annexation Agreement was approved.

C. Pending Project Approval Actions. Developments for which complete applications were filed prior to the effective date of this Resolution, but have not been reviewed by the appropriate body, must conform to the Resolution in place at time of application.

SECTION 13. HOUSING MITIGATION PLAN. The Applicant shall submit a Housing Mitigation Plan. The Housing Mitigation Plan shall be reviewed by the Planning Commission as part of the application to the City for the Annexations or Master Planned Development with a recommendation forwarded to the City Council. The Housing Mitigation Plan shall include the following:

A. Calculation and Method. The calculation of, and method by which housing is to be provided, in compliance with Section 6 "Calculation of Minimum Affordable Housing Requirement" and Section 7 "Method for Providing Housing"

B. Unit Descriptions. If affordable housing units are to be developed, a site plan and building floor plans (if applicable), illustrating the number of units proposed, their location, the number of bedrooms in and square foot of each unit, and the rental/sale mix of the development. The proposed sale prices and rent levels shall also be included.

SECTION 14. CONSTRUCTION TIMING. Affordable units shall be made available for occupancy on approximately the same schedule as a project's market units, except that Certificates of Occupancy (temporary or permanent) for the last ten percent of the market units shall be withheld until Certificates of Occupancy have been issued for all of the inclusionary units. Other phasing agreements may be accepted, if doing so would accomplish additional benefits fro the City consistent with the purposes of this Resolution. A schedule setting forth the phasing of the total number of units in a covered project, along with a schedule setting forth the phasing of the required inclusionary units shall be approved prior to the issuance of a building permit.

SECTION 15. GOOD FAITH MARKETING REQUIRED. All sellers or owners of deed restricted affordable units shall engage in good faith marketing efforts each time a deed restricted unit is rented or sold such that members of the public who are qualified to rent or purchase such units have a fair chance of becoming informed of the availability of such units. A public marketing plan shall be submitted by the developer for the initial sale or lease of the units.

SECTION 16. LOCAL PREFERENCE OPTION. The Park City area is defined as the Park City School District limits. The following target groups should be given priority in any deed restricted affordable housing project.

- Essential public and private service workers: Park City School District, Park City Fire District, Park City Municipal Corporation and Snyderville Basin Sewer Improvement District.
- Full time (30 hours of employment per week) employees of businesses located in the City limits**.**
- A resident of the City for the prior 24 months.
- An owner or owner's representative of a business within the City limits.
- Senior Citizens
- Physically and/or mentally challenged individuals.

SECTION 17. MAXIMUM RENTS AND SALES PRICES. The following provision shall apply to the calculation of rents, selling prices and/or carrying charges of deed restricted affordable units.

A. Occupancy. In calculating the rents or carrying charges of inclusionary units, the following relationship between unit size and household size shall apply:

Dormitory:	1 person per 150 net livable square feet.
Studio/Efficiency:	1 person per household
One-bedroom:	1.5 person household
Two-bedrooms:	2.5 person household
Three-bedroom:	4 person household
Four-bedroom:	6 person household.

B. Rental Units. Inclusionary rental units in any one development shall be rented at a price, which, on average, is affordable to a household with an annual income of 100% of the Park City Workforce Wage.

C. For Sale Units. The initial sales prices for affordable units in any one development shall average a price affordable to a household earning 150 percent of the Workforce Housing Wage for Park City according to the following guidelines.

a. An available fixed-rate thirty year mortgage, consistent with the First Time Homebuyer Rate offered by the Utah Housing Corporation, plus 50 basis points. A lower rate may be used in calculating affordable prices if the developer can guarantee the availability of a fixed rate, 30-year mortgage at this lower rate for all of the inclusionary units.

b. A down payment of no more than 5 percent of the purchase price

c. A calculation of property taxes; and

d. A calculation of homeowner insurance and/or homeowner association fees.

D. Appreciation Limits. Provisions to ensure continued affordability of inclusionary units offered for sale shall include a formula limiting equity appreciation to either a shared percentage of the equity appreciation or a cap on the equity appreciation, with such adjustments for improvements made by the seller and necessary costs of sale as may be approved by the City. The form of the resale restriction shall be determined by the City at the time of approval of the Housing Mitigation Plan.

E. Limitation on Rental Rates and Terms. The rate at which the Owner shall rent the Units shall not exceed the Maximum Rent. The Maximum Rent shall be adjusted on January 1 of each year by the annual percentage increase in the Consumer Price Index for the western region using a base year of 2006. Unless otherwise approved, the minimum lease term shall be six months.

F. Income Limits. The City reserves the right to place an income/asset limitation for prospective owners or renters as needed to further the goals of this Resolution.

SECTION 18. TERM OF AFFORDABILITY. The Term of Affordability shall be for a period of not less than forty (40) years. At the expiration of the initial forty (40) year term, this Agreement shall be reviewed for additional consecutive ten (10) year terms, unless the City shall determine, based an independent housing needs assessment, that the Unit is no longer necessary to satisfy the affordable/employee housing needs in Park City.

SECTION 19. WAIVERS. The City Council may waive all or part of the requirements of this Resolution in exchange for enhanced project affordability or livability including but not limited to the incorporation of sustainable building practices and systems in the unit design and development.

SECTION 20. ADMINISTRATIVE RELIEF. The City Council may waive all or part of the requirements of this Resolution where the applicant can establish by clear and convincing financial data and other evidence relating to the character of the development or surroundings that the imposition of the requirements set forth in this article shall create an economic hardship. The Council shall use the same standards that it applies to historic properties in making a determination of economic hardship. A waiver under this section shall be granted only to the extent necessary to relieve the hardship or difficulty that serves as the basis for the requested waiver and shall not be considered precedent for future requests for administrative relief.

SECTION 21. SEVERABILITY. If any section, subsection, sentence, clause, phrase or portion of this Resolution is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate distinct and independent provision and such holding shall not affect the validity of the remaining portions of the Resolution.

SECTION 22. EFFECTIVE DATE. This Resolution shall take effect upon adoption by the City Council. All prior Housing Resolutions and parts of Resolutions in conflict with the provisions of this Resolution are hereby repealed. This Resolution repeals and replaces all prior housing resolutions including Resolution s 37-91, 8-93, 6-94, 7-95 and 17-99.

PASSED AND ADOPTED this day of, 2006.

Inputs		
Household Income		
Summit County Median Wage & Salary Income	$26,460	http://jobs.utah.gov/opencms/wi
Other Earnings (tips, bonus, overtime, incentives - % of wages)	3.0%	
Other Income (investments, non-cash benefits - % of wages)	3.0%	
Workers per Household (# FTE)	1.50	
Year Ending	2005	
Affordable UE Price Equivalency	$217,800	
Mortgage Assumptions		
Shelter Cost % of gross income	30%	
Down Payment (% of purchase price)	3.00%	
Mortgage Rate (annual)	6.31%	March 2006 Utah Housing Corp First Time Home Buyers Rate Plus 50 bps
Mortgage Term (years)	30	http://www.utahhousingcorp.org/indexb2b.html
Property Insurance (annual)	$350	
Mortgage Insurance (% of mortgage amount)	0.67%	
Real Estate Taxes (annual - % of purchase price)	0.75%	

2006 Affordable Housing Fee in Lieu Payment Calculation

		Housing & Income Assumptions	Maximum Affordable Purchase Price	Housing Market Price	GAP (affordability shortfall)
Household Income & Affordable Shelter Cost					
Wage & Salary Income (annual)	($12.72 per hour)	$26,460			
Other Earnings (tips, incentives)	(3.0% of wages)	$794			
Other Income (investments, non-cash benefits)	(3.0% of wages)	$794			
Workers per Household (# FTE)		1.5			
Total Household Income (annual)		$42,071			
Shelter Cost % of gross income		30%			
Maximum Monthly Housing Payment		$1,052			
Maximum Purchase Price					
Maximum Monthly Housing Payment		$1,052			
Property Insurance		($29)			
Mortgage Insurance		($77)			
Real Estate Tax		($89)			
Max. Mortgage Payment		$856			
Mortgage Amount		$138,212			
Down Payment		$4,275			
Purchase Price		$142,487			
Affordability Gap			$142,487	$217,800	*$75,313*
Administrative Fee (15%)					*$11,297*
2006 Affordable Housing Fee in Lieu Payment					**$86,610**

Attachment C
AFFORDABLE HOUSING VISIONING SESSION

HOUSING VISION

Promote a range of affordable, quality housing opportunities available for persons of all economic levels.

HOUSING GOALS

- Provide a variety of housing options to meet the socio-economic needs of people who live and work here, including persons with special needs.
- Promote a community that contains a variety of owner-occupied and rental housing types.
- Preserve and develop high quality, accessible and affordable housing to serve the diversity of people who live and work here.
- Promote housing that is energy efficient, environmentally sensitive and that blends with the City's natural environment.

HOUSING POLICIES AND STRATEGIES

- Oversee and coordinate affordable housing development on identified city property.
- Provide a priority for occupancy of deed-restricted units for households with a household member who works in Park City.
- Maximize the use of city resources and access to public-private development capital.
- Assess use of city property for affordable housing prior to disposition.
- Encourage mixed-use residential development in existing commercial areas.
- Encourage links between housing and adjacent uses, such as transportation, commercial and recreation facilities.
- Ensure that the City's regulatory requirements including the General Plan, the Land Management Code and Building Code encourages a range of housing options and that the entitlement process and fees do not unduly burden the development of affordable housing.
- Ensure that the affordable housing requirements for new development are satisfied with respect to income, unit size and timing of development.
- Facilitate private and nonprofit development of affordable housing through regulatory policy, density and financial incentives.
- Participate in planning and implementation of regional housing programs and strategies.
- Support public programs and encourage private efforts to provide affordable housing opportunities throughout the City for its current and projected workforce.
- Encourage creative implementation of affordable housing requirements including the development of mixed-use and employee housing.
- Promote mixed income residential development within the City's annexation boundaries.
- Support programs to increase home ownership among entry level and moderate-income households who work in Park City.

- Preserve and expand the supply of affordable rental housing for low-income households.

Resolution 17-99

RESOLUTION ADOPTING AFFORDABLE HOUSING GUIDELINES AND STANDARDS FOR PARK CITY, UTAH

WHEREAS, the City Council adopted Resolution No. 37-91 on December 5, 1991 which establishes policies to support and increase affordable housing in Park City; and

WHEREAS, in 1994 the City Council convened a Housing Advisory Task Force to review and make recommendations on the City's housing strategies due to the dramatic increase in land costs and a concomitant rise in the cost of all housing in the community; and

WHEREAS, The Housing Advisory Task Force and annual housing studies conducted by the City concluded that the rise of housing costs has outpaced the increase in wages in the service sector areas of the resort based economy and has resulted in making housing unaffordable to working residents of the City; and

WHEREAS, the Task Force and Council targeted the population to be served by these efforts as essential services workers such as police, teachers, firemen, service workers and long time community residents; and

WHEREAS, the out-migration of service and community based workers has resulted in a deterioration of community character and threatens the city's economic success; and

WHEREAS, it is in the best interest of the community to formulate guidelines and standards to establish consistent criteria for review of project applications, annexation petitions, resort or ski area expansions, and other development actions where affordable housing is needed to mitigate the impact of the project on the community; and

WHEREAS, the Council has considered standards in other resort communities, and those implemented by State and Federal Housing and Community Development Departments and has conducted local rental and residential market studies for Park City, and solicited input from the Affordable Housing Task Force; and

WHEREAS, the cost of providing affordable housing should not be disproportionately borne by any single sector of the community and any solutions should equitably apportion the costs based on impact generation, growth inducement and the underlying goal to provide a cross section of units in our community in order to maintain a healthy economy and diverse population; and

WHEREAS , the City Council supports at this time the creation of for-sale properties versus rental properties because of the overwhelming demand for affordable residential homes.

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

SECTION 1. ADOPTED HOUSING STANDARDS AND GUIDELINES. The following housing standards and guidelines are hereby adopted:

SECTION 2. DEFINITIONS/APPLICABILITY.

A. Application: These standards shall apply to all new housing obligations as noticed in Resolution No. 6-94. Prior agreements on density or configuration shall take precedence over these standards. However, all rental and for-sale guidelines and time limitations as described below shall apply.

B. Purpose: The purpose of this Resolution is to ensure that new development does not adversely affect the supply of affordable housing in the City and to maintain the social, economic and political fabric of its community character. The purpose is also to ensure that the affordable housing requirement is satisfied in direct proportion to the original sale of lots or square footage within the project.

C. Review: This ordinance shall be reviewed by the Housing Authority every two years to ensure that these standards are meeting the housing goals and objectives as determined by the City Council.

D. Definition of Affordability: Housing that is deed restricted in perpetuity to limit its end-user costs (rent or mortgage plus taxes and utility allowance) to 30 percent or less of the gross household income. (Household means one or more persons living together as a single housekeeping unit.)

E. Housing Authority: The Housing Authority is composed of the Park City Municipal City Council members and meets according to Utah State statute.

F. Single Room Occupancy - SRO. A single room with shared kitchen and/or living room facilities. Congregate type living for groups of unrelated individuals.

SECTION 3. CITY ASSISTED PROJECTS

Minimum Unit Size Standards for City Assisted Projects

SRO	200 square feet
Studio	400 square feet
1 bedroom	600 square feet
2 bedroom	800 square feet
3 bedroom	1,200 square feet

4 bedroom 1,400 square feet

Modifications to the minimum unit standards may be made by the Housing Authority based upon such factors as housing configuration (detached vs. attached), provisions of public benefits, such as shared common living areas, or additional project amenities such as communal facilities and/or open space areas.

Unit Types for City Assisted Projects

Specific product types shall be determined by the Park City Housing Authority with advice from Mountainlands Community Housing in accordance with site constraints, the market need as outlined in the annual Housing Affordability update published by the City, and the procedures and standards in this resolution. The following are provided as guidelines on appropriate housing types:

Types of Units to serve seasonal employees:
Rental:
Dormitories
Efficiency Apts.
Single Room Occupancy (SRO)
Studios
Accessory Apartments
2/3 bedrooms

Types of Units to serve long - term employees:
For Sale:
Duplex/Triplex
Twinhomes
Detached units
Condominium units
Mixed bedroom size
Assisted/Independent living units

Maximum Rent Guidelines:

The housing units shall be provided for persons in Park City at or below 100% of the Summit County median income.

The maximum rent guidelines will be annually adjusted administratively by using Housing and Urban Development (HUD) Annual Adjustment Factors and the annual Park City Municipal Housing Affordability Update.

For Sale Guidelines:

The housing units shall be provided for persons in Park City at or below 100% of the Summit County median income.

City Assistance Standard.
The Housing Authority may provide financial assistance up to $5,000 per unit regardless of unit size or configuration. Land lease or land acquisition is also negotiable.

Target Groups
Policies and programs should be developed for those who live and work in the Park City area. The Park City area is defined as the Park City School District limits which includes Snyderville Basin. While it is recognized that different solutions will be necessary for different groups and that some individuals may fit several groups, the following target groups should be given priority in any city assisted project.

A. "Essential" public and private service workers: Park City School District, Park City Fire District, Park City Municipal Corporation, Synderville Basin Sewer Improvement District.
B. Full time (30 hours of employment per week) employees of businesses located in the City limits.
C. A resident of the City for the prior 24 months.
D. An owner or owner's representative of a business within City limits.
E. Senior citizens
F. Physically and/or mentally challenged individuals.

Limitation Period.
Limitations shall remain in effect for a minimum of 21 years. First right of refusal and/or option to purchase shall be granted to the Housing Authority. The Authority shall have 90 days to respond or assign the above-described rights. Longer terms of limitation may be negotiated on individual projects as directed by the Housing Authority. This limitation period may also be reduced based upon the provision of additional public benefits such as preservation of historic structures or other community benefits as negotiated by the Housing Authority.

Review
The Housing Authority shall review and approve the housing plan if it complies with these standards, addresses the need for affordable housing, and is consistent with the General Plan and Land Management Code. The Housing Authority may require a bond or other security approved by the City Attorney guaranteeing compliance with the Plan. The Housing Authority shall invite Mountainlands Community Housing to make a formal recommendation to the Housing Authority prior to adoption of the plan. Specific unit types, mix and targeted incomes shall be determined through this process.
a) Criteria for Review
1. Define the need for units at the time the project is proposed.
2. Define the population served.
3. Define how the plan integrates, not segregates, various product types and income levels.
4. How do Mountainlands Community Housing recommendations relate to the plan?

5. Is the developer's participation at least of equal value to the financial commitment made by the Housing Authority?

SECTION 4. ANNEXATIONS AND MASTER PLANNED DEVELOPEMENTS.

Applicability

This section shall apply to:

1. Annexations; and,
2. Master Planned Developments,(MPD), of 50 residential units or more and/or commercial mixed use projects of 5,000 square feet of space (gross).

Mitigation Required

Any development subject to this section shall mitigate for impacts to affordable housing by satisfying the requirements set forth below.

Housing Mitigation Plan

A Housing Mitigation Plan shall be submitted to the Housing Authority for review. The Housing Mitigation plan shall be evaluated based on the following:

1. compliance with the standards set forth below;
2. ability to address the need for affordable housing; and,
3. consistency with the General Plan and Land Management Code.

Implementation

The strategy for meeting the housing obligation must be specified in the annexation or MPD agreement. Phasing and satisfaction of this obligation shall be described in the annexation agreement for each project and/or further described under the Housing Mitigation Plan. Construction of the restricted units shall be concurrent with the development of market rate units unless other alternatives are specifically agreed upon by the City Council during the annexation process.

Standards:

The following standards shall be met when developing and implementing a Housing Mitigation Plan:

1. Mitigation Requirements

Fifteen percent (15%) of the total residential units constructed shall be provided for affordable housing. Housing shall also be provided for twenty percent (20%) of employees generated by the retail, restaurant, hotel, and office components of the project.

The Housing Authority reserves the right to increase or decrease the mitigation percentages (by amending this resolution) based on the Annual Housing Affordability Update conducted by City and other compelling market data as presented by the staff and community.

2.Unit equivalents, type and size and Maximum rent and for sale restrictions of affordable units

The following table outlines the unit type and maximum rent and sale price for the residential and commercial component of a project. Projects may construct any combination of affordable unit types contained in Table 1 provided that the total required affordable housing unit equivalent is met. The housing unit types, and sizes shall be delineated through the Planning Commission process with advice from Mountainlands Community Housing.

Option A. Average generation and Median Wage Income for project.

The following average project generations are made by the City and may be selected by the developer for satisfaction of the rental/for sale maximums.

Table 1. 1999 Affordable Housing Unit Standards
Average generation and Median wage/income for Projects

Unit Type	Unit Equivalent	Square Footage Note 4	Rent Calculation Note 1 & Note 2	Employee Equivalent	Max. rent monthly Note 3	Purchase Price Note 3
SRO	.25	200	17680 x .30/12 x.57	1	$252	$38,329
Studio	.50	400	17680 x.30/12 x.91	1	$402	$59,781
1 BR	.75	600	17680 x.30/12 x 1.24	1	$548	$80,662
2 BR	1	800	17680 x.30/12 x1.49	2	$658	$96,394
3 BR	1.25	1200	17680 x.30/12 x 1.74	3	$769	$112,269
4BR	1.50	1400	17680 x .30/12 x 2.07	4	$915	$133,150

Note 1. Employment Factor = 2.9 employees per thousand sf of commercial space is an average of data produced by Rosenthal & Associates after an employee generation study was commissioned by Park City Municipal in 1997. Median Wage $8.50 - annualized wage is $17,680 (8.50 x 2080(hours)). The data are based on survey information, interviews with local businesses, Chamber/Bureau data, and State Labor information. Supporting data and assumptions are included in the Park City Housing Data Handbook 1999.
Note 2. Rent calculations assumptions are explained in the Park City Housing Data Handbook 1999. Income adjustments for households are made by adjusting the same factors that the Department of Housing and Urban Development uses for local market conditions.
Note 3. Rent/mortgage will be no more than 30% of the resident's income as defined in Section 2 (D). Purchase price is maximum mortgage for unit type. The maximum rent and purchase price guidelines will be adjusted administratively, annually, using Housing and Urban Development (HUD) Annual Adjustment Factors and the annual Park City Municipal Housing Affordability Update.

Note 4. In order to meet the unit obligation common area and common facility configuration must accommodate unrelated individuals and be according to City health and safety standards.

Example:
A mixed use project with 184 residential unit equivalents (UE's) and 90,000 square feet of commercial space.

The Residential Requirement:
184 UE's X 10%=18.4 units which could be satisfied with a variety of unit configurations (see examples below).

SRO	Studio	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom	Total UE's
	1		18			18.5
10	6	4	3	3	2	18.5
		1	1	10	3	18.75

The Commercial Requirement:
90,000 sf X 20% X 2.9 = 52.2 =53 employees which could be satisfied with a variety of unit configurations (see examples below).

SRO	Studio	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom	Total E.E.'s
	1		26			53
10	6	4	8	3	2	53
		5	1	10	4	53

Option B - Median Wage for Project
This alternative would calculate the actual median wage for the project and direct 100% of the required mitigation to this target group. An employee generation study would be calculated and then the median wage would be determined based on the number of employees generated. The data provided in the Park City Housing Data Handbook1999 allows the developer and staff to calculate the employee generation numbers and the estimated annual average earnings for workers.

The housing unit type, and sizes shall be delineated through the Planning Commission process with direction from Mountainlands Community Housing. Projects may construct any combination of affordable unit types contained in Table 1 provided that the total required affordable housing unit equivalent is met.

Example: See Table 1 and adjust as noted below

Employment factor - calculate employee generation for specific project (see Park City Housing Data Handbook 1999 for numbers)	Median Wage - calculate from handbook once employees types and numbers are known

Decrease in Required units
If the developer elects to provide units below 45% of the Summit County Median Income (SCMI), and the rental or purchase price is below the average wage assumption alternative or independent

calculation, then the Housing Authority may reduce the total obligation of units required by the developer based on the following table:

Median Income Summit County 1999 $64,200	*Rent calculation (2 bed standard)**	*Maximum Mortgage (2 bed standard)**	*Unit reduction per unit equivalent or employee equivalent*
45% $28,890	$577	$84,929	.25
40% $25,680	$513	$75,513	.50
35% $22,470	$449	$66,092	.75
30% $19,260	$385	$56,671	1
Median Income data can be found at http://www.huduser.org	* Income adjustments for households are made by adjusting the same factors that the Department of Housing and Urban Development.	*Calculation methodologies are detailed in the Park City Housing Data Handbook 1999	

Suggested Unit Types

The following are provided as guidelines on appropriate housing types:

Types of Units for seasonal employees:
Rental:
Dormitories
Efficiency Apts.
Single Room Occupancy (SRO)
Studios
Accessory Apartments
2/3 bedrooms

Types of Units for long-term employees:
For Sale:
Duplex/Triplex
Twinhomes
Detached units
Condominium units
Mixed bedroom size

3. <u>Location/Development alternatives.</u>
Affordable Housing units shall be constructed on the project site, unless the developer can demonstrate to the Housing Authority compelling evidence (density or design) that the project should not accommodate on-site units. Subject to Housing Authority approval, the following location alternatives, in order of preference, are available:
1. Construction of affordable units within the Park City limits;
2. Construction of affordable units within the School District boundaries;
3. Land donation;
4. Acquisition of off-site units within Park City limits subject to Housing Authority approval;and,
5. Payment of in lieu fees. The fee is structured on the subsidy gap that is required to construct rental and for-sale units, not on the actual cost of construction. For 1999 the figure is $59,828 per unit.

These figures are based on 1999 costs and will need to be administratively adjusted to reflect market costs at the time of project approval. The in-lieu fee figure can be reduced by the Housing Authority if the payment occurs in the first two years of the development process and results in a partnership that leverages the immediate production or purchase of units. Methodology for the in lieu fee calculation can be found in the <u>Park City Housing Data Handbook 1999.</u>

4. <u>Design/Site criteria</u>
Projects shall be integrated in design and in income. Large scale projects that provide the same unit type at the same price or rent and that are isolated from community services and public transportation are discouraged. Smaller projects located near community services that provide for mixed income levels are mixed unit types are preferred.

5. <u>Limitation Period</u>.
Rental rates and resale price limitations shall remain in place for a minimum of 40 years, with perpetuity being the preferred alternative. First right of refusal and/or option to purchase shall be granted to the Housing Authority. The Authority shall have 90 days to respond or assign the above-described rights. Longer terms of limitation may be negotiated on individual projects as directed by the Housing Authority. This limitation period may also be reduced based upon the provision of additional public benefits such as preservation of historic structures or other community benefits as negotiated by the Housing Authority.

SECTION 5. <u>INDEPENDENT CALCULATION</u>

An applicant may submit an application for independent calculation requesting modification to the following:
a) Unit Standards;
b) Limitation Standards;
c) Unit Equivalents; and,
d) In Lieu Guidelines cost calculations.

The application for independent calculation shall be reviewed by the Housing Authority. If the material in the application demonstrates by substantial competent evidence that there is reasonable basis to modify the standards listed above because of unique circumstances related to the proposed development, the Housing Authority shall approve the independent calculation and make the relevant modification.

SECTION 7. EFFECTIVE DATE. This Resolution shall take effect upon adoption by the City Council.

PASSED AND ADOPTED this 17th day of June, 1999.

PARK CITY MUNICIPAL CORPORATION

Mayor Bradley A. Orch.

Attest:

Janet M. Scott, City Recorder

PARK CITY SUMMIT COUNTY UTAH CORPORATE Seal MARCH 1, 1884

Approved as to form:

Jodi Hoffman, City Attorney

City Council
Staff Report

Executive

Author: **Phyllis McDonough Robinson**
Subject: **Loan to Mountainlands Community Housing Trust**
Date: **April 13, 2006**
Type of Item: **Legislative/Administrative**

Summary Recommendations:
Staff recommends that the City Council approve an additional $250,000 secured loan to Mountainlands Community Housing Trust as outlined under the conditions of approval.

Description: Affordable Housing

Topic:
Approve a $250,000 bridge construction loan to Mountainlands Community Housing to complete construction of the affordable condominium project located at 555 Deer Valley Drive. This loan is in addition to an existing $100,000 promissory note for this project.

Background:
The City Council approved a construction bridge loan for the affordable housing project located at 555 Deer Valley Drive for $100,000 at three percent interest on December 16, 2004. The loan was scheduled for initial repayment with interest by June 30, 2005. Council approved two subsequent requests that extended the repayment of the loan until January 31, 2006. In January 2006, the City Council extended the term of the loan for five years at five percent interest as agreed in a Promissory Note. The loan is unsecured.

Prior City assistance and support for this project includes granting $115,000 in fee waivers and an easement for Encroachment and Ingress/Egress on an unrelated parcel of City property. In addition, the Building Department has assigned a building inspector who is at the project site daily to facilitate project completion.

The project consists of 22 units ranging in size from 520 square feet to 1094 square feet. There are 10 one-bedroom units, 10 two-bedroom units and the rehabilitation of two historic properties. All the units are deed restricted for owner-occupancy except in very limited circumstances, and the appreciation is capped annually at three percent. All 22 units have grants from private foundations for $3,000-$5,000 that lowers the final purchase price.

Analysis:

Project Status

Attachment A is an update on the project status from Scott Loomis, Executive Director of Mountainlands Community Housing Trust. Mr. Loomis indicates that additional funds are needed to complete the project construction. MCHT had anticipated funding the remaining costs out of closing costs and other organizational funds. Due to a longer than anticipated closing schedule, and a federal delay in receiving other organizational funds, the project is facing a construction loan shortfall. MCHT projects that the first eight units will close in mid-April and the balance of the units will close by the end of June. While this time frame is possible, the Building Department believes that it is an aggressive schedule. It is more likely that the initial units will close by the 1st of May and completion will extend into the summer months.

<u>Loan Request</u>
Mountainlands Community Housing Trust is requesting an additional $250,000 construction bridge loan to complete the project. This will be a short-term loan to complete the construction. Given the current progress on the project, it is reasonable to project occupancy of all units in July. The construction line of credit will bridge material and construction cost increases. Staff used the following criteria for reviewing the line of credit request:

(1) ***Current level of city investment in the project*.** The city has granted off-site easement, provided fee waivers, and extended an initial loan of $100,000 towards this project. Timely completion of this project will protect the city's current investment.

(2) ***Current level of MCHT investment in the project*.** Mountainlands has funded approximately $300,000 in hard and soft costs for this project. Approximately $250,000 of these funds will remain in the project as second mortgages.

(3) ***Loan to Value***. While the combined loan to value of all construction debt on the project, including the current City loan request, exceeds the loan appraisal, Staff recognizes that the appraisal is out of date. The appraisal was prepared in 2003 as part of the original construction loan package. A better measure is the loan to restricted sales price. The total projected restricted sales price for all units is $3,160,658. The total anticipated construction debt is $2.5 million and represents 80 percent of the restricted sales price for the project.

(4) ***Impact of not funding the loan request*.** MCHT has fully expended its construction loan from ZIons bank. Zions previously increased the loan amount and extended the repayment date. To request another loan increase, or to seek funds from another lender would take approximately 60 – 90 days and will further delay the project. Until funds are secured, work would likely cease on the project. There will also be additional costs incurred for appraisal, origination and closing costs. MCHT anticipates the total project budget to completion will be $3,150,000. Staff analysis believes this is a reasonable estimate. Based upon a line item evaluation of the project budget and current third party inspection reports staff estimates a final completion budget between $3,110,000 and $3,219,000. Should the City not extend the credit and the project fall into foreclosure, it is likely that the deed restrictions would be removed. Should that occur, it is possible that the units could become market rate units.

Conditions of Approval

Based upon the above analysis, Staff is generally supportive of MCHT's request. The following conditions of approval are recommended to ensure the timely completion of the project and protect City investment.

1. Funds will be structured as a line of credit with an amount up to $250,000. MCHT will repay the loan within 120 days of the first draw.

2. Funds will be disbursed only for capital expenses associated with the construction of the project. Funds may not be used for general operating expenses, administration, project management or developer fees.

3. Disbursed funds will accrue interest at a rate of 5.5 percent. This is consistent with the City's investment policy that requires and the "prudent man rule" of the Utah Money Management.

4. The City will secure the full amount of MCHT's indebtedness with the City against the property, or other alternative collateral, if available, by Trust Deed. This includes the current $100,000 promissory note. Upon successful completion of the project and repayment of the $250,000 loan, the City will release the lien against the property. The City's Trust deed will be subordinate to Zions principal financing and any construction liens on the property.

5. Disbursement will require sign-off from the Building Department and a third-party construction inspection report. The cost of any inspection reports will be paid by MCHT out of loan proceeds. This limits both the city's exposure as well as reduces the overall interest cost to Mountainlands by only releasing funds as approved.

6. All checks will be made payable only to the subcontractor or supplier. Staff has confirmed with Zions Bank that the proceeds from the initial $100,000 loan was applied directly to capital expenses and payment was made to vendors and subcontractors. Staff recommends that the City contract with Zions Bank to administer the construction line of credit. This relieves the City of the responsibility of preparing checks to vendors with whom we have not received services. Staff has spoken with Zions Bank and they can provide fund control for the City. Any fees incurred by the City for these services will be paid by MCHT from loan proceeds.

7. In the unlikely event that the first lien holder begins foreclosure proceedings due to a performance default, Zions Bank will provide the City with an advance notice. This will give the City the opportunity to intervene to either cure the default, or negotiate an assumption of the debt in lieu of foreclosure. This would allow the City or its assignee to complete the project and thus preserve its affordability. Staff recognizes that the likelihood of a performance default is remote, but the consideration of such an event is required as part of the City's due diligence on this loan request. It should not be construed that MCHT cannot complete the project in a timely manner.

Department Review:
Budget, Debt and Grants, Building, Finance and Legal have reviewed this staff report.

Alternatives:

A. Approve the Request:
Council could approve an additional $250,000 loan to Mountainlands Community Housing Trust as outlined under the conditions of approval.

B. Modify the Request:
Council could approve a reduced loan amount or recommend alternative conditions of approval.

C. Deny the Request:
Council could deny the request. Denying the loan request could further delay completion of the project and increase the likelihood of a performance default.

D. Continue the Item:
Council could continue the item and direct Staff to return with additional information. Continuing the item would have the same effect as denying the request.

Significant Impacts:
The funding for this loan is from the Affordable Housing CIP. The accumulated interest offsets the loss of earnings in the CIP. Funding this loan request will delay the City's ability to move forward with other programmed affordable housing until the loan is repaid.

Recommendation:
Staff recommends that the City Council approve an additional $250,000 secured loan to Mountainlands Community Housing Trust as outlined under the conditions of approval.

Attachments: Request from Scott Loomis, Executive Director, Mountainlands Community Housing Trust.

MOUNTAINLANDS COMMUNITY HOUSING TRUST

March 22, 2006

Tom Bakaly
City Manager
Park City Municipal Corporation
445 Marsac Avenue
Park City, Utah 84060

RE: The Line Condominiums

Dear Mr. Bakaly,

The Line Condominium project should be in a position to close the front eight units in the next few weeks. Unfortunately, a structural issue has delayed progress on the back twelve units for more than three months. This issue appears to be resolved so the interior work on those units should proceed in the next few days, which means these units should be completed around the end of May.

When the units were re-priced in December it was contemplated that the back twelve units would be completed in various stages in April and early May. Without certainty, Mountainlands Community Housing Trust (MCHT) contemplated paying for construction costs out of closings and other funds available to MCHT. It appears now that additional funds may be required to complete the project before closing all of the units. The total cost of the project will be approximately $3,150,000. MCHT has agreed to carry second mortgages of approximately $350,000 (which includes the $103,000 lent to MCHT by PCMC) from monies already invested in the project leaving sales proceeds of approximately $2,800,000. If previously qualified buyers choose not to purchase their unit or cannot re-qualify for loans, new buyers will pay a higher price which will generate addition proceeds at closing.

The revised construction loan with Zions Bank is $2,150,000. After closing costs, Zions Bank will receive 95% of the proceeds from the closing of each unit until paid in full. Some of the development costs will not be funded until after closing, but the potential shortfall is about $400,000. By managing funds in

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PH: 435.647.9719 FAX: 435.658.3890
www.housinghelp.org

paying contractors within thirty days of completion of their work it is probable that not all of these funds will be needed. MCHT has already put an additional $50,000 into the project and could fund a portion of this shortfall from its cash flow if certain closings occur as anticipated in April. MCHT is respectfully requesting Park City Municipal Corporation to provide a bridge loan of $250,000 to cover any potential shortfall of funds during the completion phase of this project. If needed, any funds would be paid back from closing proceeds, which should be generated within 30-45 days of the first draw of these funds. By not taking the precaution of having back up short-term construction funds available, it is possible that the project would not be completed for the contemplated prices.

After much time and frustrations on the part of everyone involved in this project, the objective is to finish the construction allowing 22 qualified owners to experience homeownership as soon as possible. Your past assistance and support for this project is greatly appreciated. We hope that your financial assistance will continue for the short term so that we can soon look back with the satisfaction of the completion of this much needed workforce housing.

Thank you for your consideration of this matter.

Sincerely,

Scott Loomis
Executive Director

City Council
Staff Report

Author: Jerry W Gibbs
Subject: WATER
Date: April 13, 2006
Type of Item: Legislative

Public Works

Summary Recommendations:
Authorization to the Mayor to execute a Project Cooperation Agreement, in a form approved by the City Attorney, with the US Army Corp of Engineers for water and sewer line replacements on Prospect Avenue in an amount not to exceed $800,000.

Description:
Topic:
Corp of Engineers Project Cooperation Agreement

Background:
Prospect Avenue is scheduled be reconstructed during the summer of 2006 as part of the Old Town Improvements Program budgeted in the Capital Improvements Program. Eric DeHaan, City Engineer is coordinating the design of the project with Stantec Consulting. The project will include new curb & gutter, storm sewers, replacement of undersized water and sewer lines and a pavement thickness that meets city standards. The Project is a cooperative effort with the Snyderville Basin Water Reclamation District and anticipated to be under construction by late May 2006.

The Corp of Engineers through the Section 595 Program, will provide design and construction assistance for water-related environmental infrastructure and resource protection and development projects for publicly owned utilities in Idaho, Montana, rural Nevada, New Mexico, and rural Utah pursuant to Section 595 of the Water Resources Development Act of 1999, Public Law 106-53, as amended. The Section 595 Program is a reimbursable cost-sharing program where the total eligible project costs shall be shared 75 percent Federal and 25 percent Non-Federal.

Utah received $1 Million in FY 05 and $4 Million in FY 06. Utah was notified in January of the availability of funds. Local governments were given approximately two weeks to submit their projects for consideration to the Intermountain Representative of the US Army Corp of Engineers. Priority was given to projects that could be completed by September 2006.

Analysis:
The eligible project under the Section 595 Program is limited to the “Prospect Avenue Water & Sewer Line Replacement”. The Project includes reconstruction of

approximately 900 feet of water and sewer lines and associated paving repair. The key components of the project are replacing a six-inch diameter clay sanitary sewer with cement-mortared joints with an eight-inch plastic sewer line and replace an existing six-inch cast iron water line with an eight inch mortared lined ductile iron water line. Existing laterals/service lines will be reconnected. New fire hydrants will be added to meet Fire District standards and other improvements necessary to complete the installation.

Section 595 authorization allows credit for reasonable costs of planning, design and environmental work completed by the non-Federal sponsor before entering into a PCA. The scope of work for this project includes all design and environmental work and construction of the water and sewer lines. Through the date of this staff report, Park City has incurred design expenses in the approximate amount of $45,000 for design work including construction drawings for utility replacement. City staff and Stantec Consulting have been coordinating with the US Army Corp of Engineers to have the required environmental review completed by the time the project contract is approved. Any changes identified by the environmental review can be included in the project approval.

The estimated breakdowns of costs are as follows:

	Total Costs	Federal	NonFederal
Design & Environmental:			
Final Design	$ 45,000		$ 45,000
EA Prep	$ 17,000		$ 17,000
Construction:	$ 686,000		$686,000
Park City Labor :	$ 10,000		$ 10,000
Contracts Admin, design reviews, meetings, and audit			
Corps Labor:			
PM (Doc Prep, mtgs, Coord)	$ 19,000	$ 19,000	
Programs (P2)	$ 3,000	$ 3,000	
Programs (Budget Analyst)	$ 3,000	$ 3,000	
Environmental – NEPA Doc	$ 14,000	$ 14,000	
Engineering Review	$ 3,000	$ 3,000	
Total	**$ 800,000**	**$42,000**	**$758,000**

Federal Share = .75 X 800,000 = **$600,000**
NonFederal Share = .25 X 800,000 = **$200,000**
Reimbursement = NF expenditures – NF share = $758,000 - $200,000 = **$558,000**

Park City and the Snyderville Basin Water Reclamation District would share proportionately based on the construction cost of the water and sewer portion of the contract.

Department Review:
The departments of Budget and Grants, City Engineer, Legal, Public Works and City Administration have been involved in the Section 595 discussions.

Alternatives:

E. **Approve the Request:**
Authorize approval of the PCA.

F. **Deny the Request:**

G. **Continue the Item:**

H. **Do Nothing:**

Significant Impacts:
The Prospect Avenue Project is fully funded in the CIP. The Section 595 Program added additional requirements such as Davis Bacon Wage Rates, an environmental process, US Army Corp programming costs, additional consultant costs and additional staff time. The value received from the grant will exceed the added costs.

Consequences of not taking the recommended action:
The grant will free up CIP funding for other needed projects.

Recommendation:
Authorization to the Mayor to execute a Project Cooperation Agreement, in a form approved by the City Attorney, with the US Army Corp of Engineers for water and sewer line replacements on Prospect Avenue in an amount not to exceed $800,000.

AGREEMENT BETWEEN
THE DEPARTMENT OF THE ARMY
AND PARK CITY MUNICIPAL CORPORATION, UTAH
FOR DESIGN AND CONSTRUCTION ASSISTANCE
FOR THE PROSPECT AVENUE WATER AND SEWER LINE REPLACEMENT
PROJECT, PARK CITY, SUMMIT COUNTY, UTAH

THIS AGREEMENT is entered into this ________ day of ________, _____, by and between the Department of the Army (hereinafter the "Government"), represented by the U.S. Army Engineer, Sacramento District and Park City Municipal Corporation, Utah (hereinafter the "Non-Federal Sponsor"), represented by the Mayor.

WITNESSETH, THAT:

WHEREAS, the Secretary of the Army is authorized to provide design and construction assistance, which may be in the form of grants or reimbursements of the Federal share of project costs, for water-related environmental infrastructure and resource protection and development projects in Idaho, Montana, rural Nevada, New Mexico, and rural Utah (hereinafter the "Section 595 Program") pursuant to Section 595 of the Water Resources Development Act of 1999, Public Law 106-53, as amended (hereinafter "Section 595");

WHEREAS, Section 595 provides that the Secretary of the Army may provide assistance for a water-related environmental infrastructure and resource protection and development project only if the project is publicly owned;

WHEREAS, Section 595 provides that $25,000,000 in Federal funds are authorized to be appropriated for design and construction assistance for projects undertaken in rural Utah pursuant to the Section 595 Program;

WHEREAS, the U.S. Army Engineer, Sacramento District (hereinafter the "District Engineer") has determined that the Prospect Avenue Water and Sewer Line Replacement Project in Park City, Summit County, Utah (hereinafter the "*Project*", as defined in Article I.A. of this Agreement) is eligible for implementation under Section 595;

WHEREAS, Section 595 provides that the Secretary of the Army shall not provide assistance for any water-related environmental infrastructure and resource protection and development projects until each non-Federal sponsor has entered into a written agreement to furnish its required cooperation for the project;

WHEREAS, Section 595 specifies the cost-sharing requirements applicable to the *Project* including that the Secretary of the Army shall afford credit for the reasonable costs of design completed by the non-Federal interest before entering into a written agreement with the Secretary;

WHEREAS, Section 102 of the Energy and Water Development Appropriations Act, 2006, Public Law 109-103, provides that credits and reimbursements afforded for all applicable general authorities and under specific project authority shall not exceed $100,000,000 for all applicable programs and projects in each fiscal year;

WHEREAS, the Government and the Non-Federal Sponsor desire to enter into an agreement (hereinafter the "Agreement") for the provision of design and construction assistance for the *Project*;

WHEREAS, the Government and Non-Federal Sponsor have the full authority and capability to perform as hereinafter set forth and intend to cooperate in cost-sharing and financing of the *Project* in accordance with the terms of this Agreement; and

WHEREAS, the Government and the Non-Federal Sponsor, in connection with this Agreement, desire to foster a partnering strategy and a working relationship between the Government and the Non-Federal Sponsor through a mutually developed formal strategy of commitment and communication embodied herein, which creates an environment where trust and teamwork prevent disputes, foster a cooperative bond between the Government and the Non-Federal Sponsor, and facilitate the successful implementation of the *Project*.

NOW, THEREFORE, the Government and the Non-Federal Sponsor agree as follows:

ARTICLE I - DEFINITIONS

A. The term "*Project*" shall mean Prospect Avenue Water and Sewer Line Replacement Project in Park City, Summit County, Utah as generally described in the Scope of Work, dated February 23, 2006. Work shall include the design and reconstruction of approximately 900 feet of water and sewer lines and associated repaving. It will include replacing a six-inch diameter clay sanitary sewer with cement-mortared joints with an eight-inch plastic sewer line and replace an existing six-inch cast iron water line with an eight inch mortared lined ductile iron water line. Existing laterals/service lines within the city right of way will be reconnected. New fire hydrants will be added to meet Fire District standards and associated improvements necessary to complete the installation.

B. The term "*total project costs*" shall mean the sum of all costs incurred by the Non-Federal Sponsor and the Government in accordance with the terms of this Agreement that the District Engineer determines are directly related to design and construction of the *Project*. Subject to the provisions of this Agreement including audits conducted in accordance with Article X.C. of this Agreement to determine the reasonableness, allocability, and allowability of such costs, the term shall include, but is not necessarily limited to: the costs of the Non-Federal Sponsor's *pre-Agreement* *design work* determined in accordance with Article II.N. of this Agreement; the Non-Federal Sponsor's design costs incurred after the effective date of this Agreement; the Government's costs of review in accordance with Article II.A.1. of this Agreement; the Government's costs of preparation of environmental compliance documentation in accordance with Article II.A.2. of this Agreement; the Government's costs of inspection in accordance with Article II.A.6. of this Agreement; the Government's costs of technical assistance in accordance with Article II.A.1. and Article II.A.6. of this Agreement; the Non-Federal Sponsor's and the Government's costs of investigations to identify the existence and extent of hazardous substances in accordance with Article XIV.A.1. and Article XIV.A.2. of this Agreement; the Non-Federal Sponsor's and the Government's costs of historic preservation activities in accordance with Article XVII.A. and Article XVII.B. of this Agreement; the Non-Federal Sponsor's construction costs; the Non-Federal Sponsor's supervision and administration costs; the Non-Federal Sponsor's costs of identification of legal and institutional structures in accordance with Article II.J. of this Agreement not incurred pursuant to any other agreement for the *Project*; the Non-Federal Sponsor's and the Government's costs of participation in the Project Coordination Team in accordance with Article V of this Agreement; the Non-Federal Sponsor's costs of contract dispute settlements or awards; the value of lands, easements, rights-of-way, *relocations*, and permit costs determined in accordance with Article IV of this Agreement but not to exceed 25 percent of total project costs; the Non-Federal Sponsor's and the Government's costs of audit in accordance with Article X.B. and Article X.C. of this Agreement; and any other costs incurred by the Government pursuant to the provisions of this Agreement. The term does not include any costs of activities performed under any other agreement for the *Project*; any costs for operation, maintenance, repair, rehabilitation, or replacement of the *Project*; any costs of establishment and maintenance of legal and institutional structures in accordance with Article II.J. of this Agreement; any costs of *betterments*; any costs incurred in advertising and awarding any construction contracts prior to the effective date of this Agreement; any construction costs incurred prior to the effective date of this Agreement; any interest penalty paid in accordance with Article VI.B.4. of this Agreement; any costs of dispute resolution under Article VII of this Agreement; the Government's costs for data recovery activities in accordance with Article XVII.D. and Article XVII.E. of this Agreement; or the Non-Federal Sponsor's costs of negotiating this Agreement.

C. The term "*period of design and construction*" shall mean the time from the effective date of this Agreement to the date that construction of the *Project* is complete, as determined by the Government, or the date that this Agreement is terminated in accordance with Article II.E. or Article XIII or Article XIV.C. of this Agreement, whichever is earlier.

D. The term "*highway*" shall mean any highway, roadway, street, or way, including any bridge thereof, that is owned by a public entity.

E. The term "*relocation*" shall mean providing a functionally equivalent facility to the owner of a utility, cemetery, *highway*, railroad, or public facility when such action is authorized in accordance with applicable legal principles of just compensation.

Providing a functionally equivalent facility may take the form of alteration, lowering, raising, or replacement and attendant demolition of the affected facility or part thereof.

F. The term "*betterment*" shall mean a difference in the design or construction of an element of the *Project* that results from the application of standards that the Government determines exceed those that the Government would otherwise apply to the design or construction of that element. The term does not include any design or construction for features not included in the *Project* as defined in paragraph A. of this Article.

G. The term "*fiscal year*" shall mean one year beginning on October 1 and ending on September 30.

H. The term "*Federal program funds*" shall mean funds provided by a Federal agency, other than the Department of the Army, plus any non-Federal contribution required as a matching share therefor.

I. The term "*sufficient invoice*" shall mean submission of all of the following three items: (1) a written certification by the Non-Federal Sponsor to the Government that it has made specified payments to contractors, suppliers, or employees for performance of work in accordance with this Agreement, or a written certification by the Non-Federal Sponsor to the Government that it has received bills from contractors, suppliers, or employees for performance of work in accordance with this Agreement; (2) copies of all relevant invoices and evidence of such payments or bills received; and (3) a written request for reimbursement for the amount of such specified payments or bills received that identifies those costs that have been paid or will be paid with *Federal program funds*.

J. The term "*Section 595 Program Limit for rural Utah*" shall mean the amount of Federal funds authorized to be appropriated for projects undertaken in rural Utah pursuant to the Section 595 Program. As of the effective date of this Agreement, such amount is $25,000,000.

K. The term "*Section 102 Limit*" shall mean the annual limit on credits and reimbursements imposed by Section 102 of the Energy and Water Development Appropriations Act, 2006, Public Law 109-103.

L. The term "*pre-Agreement design work*" shall mean the work performed prior to the effective date of this Agreement by the Non-Federal Sponsor that is directly related to design of the *Project* and that was not performed pursuant to any other agreement for the *Project*.

ARTICLE II - OBLIGATIONS OF THE GOVERNMENT AND THE NON-FEDERAL SPONSOR

A. Using its funds, the Non-Federal Sponsor expeditiously shall design and construct the *Project* in accordance with Federal laws, regulations, and policies.

1. The Non-Federal Sponsor shall require all contractors to whom it awards design contracts to provide 30 percent and 100 percent design information to enable in-progress review of the design. The Government may participate in the review of the design at each stage of completion and may provide technical assistance to the Non-Federal Sponsor on an as-needed basis until the end of the *period of design and construction*. The Government shall perform a final review to verify that the design is complete and is necessary for the *Project*. Upon completion of design, the Non-Federal Sponsor shall furnish the District Engineer with copies of the completed design.

2. Using information developed by the Non-Federal Sponsor, the Government shall develop and coordinate as required, an Environmental Assessment and Finding of No Significant Impact or an Environmental Impact Statement and Record of Decision, as necessary, to inform the public regarding the environmental impacts of the *Project* in accordance with the National Environmental Policy Act of 1969 (hereinafter "NEPA"). The Non-Federal Sponsor shall not issue the solicitation for the first construction contract for the *Project* or commence construction of the *Project* using the Non-Federal Sponsor's own forces until all applicable environmental laws and regulations have been complied with, including, but not limited to NEPA and Section 401 of the Federal Water Pollution Control Act (33 U.S.C. 1341).

3. The Non-Federal Sponsor shall obtain all permits and licenses necessary for the design and construction of the *Project* and, in the exercise of its rights and obligations under this Agreement, shall comply with all applicable Federal, state, and local laws, regulations, ordinances, and policies including the laws and regulations specified in Article XI of this Agreement. As necessary to ensure compliance with such laws, regulations, ordinances, and policies, the Non-Federal Sponsor shall include appropriate provisions in its contracts for the design and construction of the *Project*.

4. The Non-Federal Sponsor shall afford the Government the opportunity to review and comment on the solicitations for all contracts for the *Project*, including relevant plans and specifications, prior to the Non-Federal Sponsor's issuance of such solicitations. To the extent possible, the Non-Federal Sponsor shall afford the Government the opportunity to review and comment on all proposed contract modifications, including change orders. In any instance where providing the Government with notification of a contract modification is not possible prior to execution of the contract modification, the Non-Federal Sponsor shall provide such notification in writing at the earliest date possible. To the extent possible, the Non-Federal Sponsor also shall afford the Government the opportunity to review and comment on all contract claims prior to resolution thereof. The Non-Federal Sponsor shall consider in good faith the comments of the Government, but the contents of solicitations, award of contracts or commencement of design or construction using the Non-Federal Sponsor's own forces, execution of contract modifications, resolution of contract claims, and performance of all work on the *Project* shall be exclusively within the control of the Non-Federal Sponsor.

5. At the time the Non-Federal Sponsor furnishes a contractor with a notice of acceptance of completed work for each contract for the *Project*, the Non-Federal Sponsor shall furnish a copy thereof to the Government.

6. The Government may perform periodic inspections to verify the progress of construction and that the work is being performed in a satisfactory manner. In addition, the Government may provide technical assistance to the Non-Federal Sponsor on an as-needed basis until the end of the *period of design and construction*. Further, the Government shall perform a final inspection to verify the completion of construction of the entire *Project* or completed portion thereof as the case may be. The Non-Federal Sponsor hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, upon property that the Non-Federal Sponsor now or hereafter owns or controls for the purpose of performing such inspections.

B. In accordance with Article III of this Agreement, the Non-Federal Sponsor shall provide all lands, easements, and rights-of-way, including those required for *relocations*, the borrowing of material, and the disposal of dredged or excavated material, and shall perform or ensure performance of all *relocations* that the Non-Federal Sponsor and the Government jointly determine to be required or to be necessary for construction, operation, and maintenance of the *Project*. In addition, the Non-Federal Sponsor shall obtain all permits necessary for construction, operation, and maintenance of the *Project* on publicly owned or controlled lands.

C. The Government shall determine and include in *total project costs* any costs incurred by the Non-Federal Sponsor that the District Engineer determines are directly related to design and construction of the *Project*, subject to the conditions and limitations of this paragraph.

1. Pursuant to paragraph A.6. of this Article, all work performed by the Non-Federal Sponsor for the *Project* is subject to on-site inspection and determination by the Government that the work was accomplished in a satisfactory manner and is suitable for inclusion in the *Project*.

2. The Non-Federal Sponsor's costs for design and construction that may be eligible for inclusion in *total project costs* shall be subject to an audit in accordance with Article X.C. of this Agreement to determine the reasonableness, allocability and allowability of such costs.

3. No costs shall be included in *total project costs* for any construction of the *Project* that was performed prior to compliance with all applicable environmental laws and regulations, including, but not limited to NEPA and Section 401 of the Federal Water Pollution Control Act (33 U.S.C. 1341).

4. In the performance of all work for the *Project*, the Non-Federal Sponsor must comply with applicable Federal labor laws covering non-Federal construction,

including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq*.), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq*.) and the Copeland Anti- Kickback Act (formerly 40 U.S.C. 276c)). Notwithstanding any other provision of this Agreement, inclusion of costs for construction in *total project costs* may be withheld, in whole or in part, as a result of the Non-Federal Sponsor's failure to comply with its obligations under these laws.

5. The Non-Federal Sponsor's costs for design and construction that may be eligible for inclusion in *total project costs* pursuant to this Agreement are not subject to interest charges, nor are they subject to adjustment to reflect changes in price levels between the time the work is completed and the time the costs are included in *total project costs*.

6. The Government shall not include in *total project costs* any costs paid by the Non-Federal Sponsor using *Federal program funds* unless the Federal agency providing the Federal portion of such funds verifies in writing that expenditure of such funds for such purpose is expressly authorized by Federal law.

D. The Government shall reimburse the Non-Federal Sponsor, in accordance with Article VI.B. of this Agreement, the amount necessary so that the Federal contribution towards *total project costs* equals 75 percent; however, any reimbursement by the Government is subject to the availability of funds and is limited by the *Section 595 Program Limit for rural Utah*.

E. Notwithstanding any other provision of this Agreement, Federal financial participation in the *Project* is limited by the following provisions of this paragraph.

1. As of the effective date of this Agreement, $10.789 M of Federal funds have been provided by the Congress of the United States (hereinafter the "Congress") for the Section 595 Program in rural Utah of which $450,000 is currently projected to be available for the *Project*. The Government makes no commitment to request Congress to provide additional Federal funds for the Section 595 Program in rural Utah or the *Project*. Further, the Government's financial participation in the *Project* is limited to the Federal funds that the Government makes available to the *Project*.

2. In the event the Government projects that the amount of Federal funds the Government will make available to the *Project* through the then-current *fiscal year*, or the amount of Federal funds the Government will make available for the *Project* through the upcoming *fiscal year*, is not sufficient to meet the Federal share of *total project costs* and the Federal share of costs for data recovery activities in accordance with Article XVII.D. and Article XVII.E. of this Agreement that the Government projects to be incurred through the then-current or upcoming *fiscal year*, as applicable, the Government shall notify the Non-Federal Sponsor in writing of such insufficiency of funds and of the date the Government projects that the Federal funds that will have

been made available to the *Project* will be exhausted. Upon the exhaustion of Federal funds made available by the Government to the *Project*, the Government's future performance under this Agreement shall be suspended and the parties shall proceed in accordance with Article XIII.B. of this Agreement. However, if the Government cannot make available sufficient Federal funds to meet the Federal share of *total project costs* in the then-current *fiscal year* solely due to the *Section 102 Limit*, only the Government's future performance related to reimbursement pursuant to paragraph D. of this Article shall be suspended.

3. If the Government determines that the total amount of Federal funds provided by Congress for the Section 595 Program in rural Utah has reached the *Section 595 Program Limit for rural Utah*, and the Government projects that the Federal funds the Government will make available to the *Project* within the *Section 595 Program Limit for rural Utah* will not be sufficient to meet the Federal share of *total project costs* and the Federal share of costs for data recovery activities in accordance with Article XVII.D. and Article XVII.E. of this Agreement, the Government shall notify the Non-Federal Sponsor in writing of such insufficiency of funds and of the date the Government projects that the Federal funds that will have been made available to the *Project* will be exhausted. Upon the exhaustion of Federal funds made available by the Government to the *Project* within the *Section 595 Program Limit for rural Utah*, the parties shall terminate this Agreement and proceed in accordance with Article XIII of this Agreement.

F. During the *period of design and construction*, the Non-Federal Sponsor shall prepare and furnish to the Government for review a proposed Operation, Maintenance, Repair, Rehabilitation and Replacement Manual (hereinafter the "OMRR&R Manual"). The failure of the Non-Federal Sponsor to prepare an OMRR&R Manual acceptable to the Government shall not relieve the Non-Federal Sponsor of its responsibilities for operation, maintenance, repair, rehabilitation, and replacement of the entire completed *Project*, or any completed portion thereof as the case may be, in accordance with the provisions of this Agreement.

G. Upon completion of construction and final inspection by the Government in accordance with paragraph A.6. of this Article, the Non-Federal Sponsor shall operate, maintain, repair, rehabilitate, and replace the entire *Project*, or a completed portion thereof as the case may be, in accordance with Article VIII of this Agreement. Further, after completion of all contracts for the *Project*, copies of all of the Non-Federal Sponsor's Written Notices of Acceptance of Completed Work for all contracts for the *Project* that have not been provided previously shall be provided to the Government.

H. Upon conclusion of the *period of design and construction*, the Government shall conduct an accounting, in accordance with Article VI.C. of this Agreement, and furnish the results to the Non-Federal Sponsor.

I. The Non-Federal Sponsor and the Government, in consultation with appropriate Federal and State officials, shall develop a facilities or resource protection and development plan. Such plan shall include necessary design, completion of all necessary NEPA compliance, preparation of appropriate engineering plans and specifications, preparation of an OMRR&R Manual, and any other matters related to design and construction of the *Project* in accordance with this Agreement.

J. The Non-Federal Sponsor shall identify, establish, and maintain such legal and institutional structures as are necessary to ensure the effective long-term operation of the *Project*. The Non-Federal Sponsor shall provide to the Government a description of such legal and institutional structures and such descriptions shall be included in the OMRR&R Manual prepared by the Non-Federal Sponsor. The Non-Federal Sponsor's costs of identification of such legal and institutional structures shall be included in *total project costs* and shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. The Government shall have no obligation under this Agreement for any costs of establishment and maintenance of such legal and institutional structures.

K. The Non-Federal Sponsor shall not use *Federal program funds* to meet any of its obligations for the *Project* under this Agreement unless the Federal agency providing the Federal portion of such funds verifies in writing that expenditure of such funds for such purpose is expressly authorized by Federal law.

L. The Non-Federal Sponsor may request the Government to acquire lands, easements, or rights-of-way or to perform *relocations* for the *Project* on behalf of the Non-Federal Sponsor. Such requests shall be in writing and shall describe the services requested to be performed or provided. If in its sole discretion the Government elects to perform or provide the requested services or any portion thereof, it shall so notify the Non-Federal Sponsor in a writing that sets forth any applicable terms and conditions, which must be consistent with this Agreement. In the event of conflict between such a writing and this Agreement, this Agreement shall control. The Non-Federal Sponsor shall be solely responsible for all costs of the services performed or provided by the Government under this paragraph and shall pay all such costs in accordance with Article VI.D. of this Agreement. Notwithstanding the acquisition of lands, easements, or rights-of-way or performance of *relocations* by the Government, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for any costs of cleanup and response in accordance with Article XIV.C. of this Agreement.

M. In the event that the Non-Federal Sponsor elects to include *betterments* in the design or construction of the *Project* during the *period of design and construction*, the Non-Federal Sponsor shall notify the Government in writing and describe the *betterments* it intends to design and construct. The Non-Federal Sponsor shall be solely responsible for all costs due to *betterments*, including costs associated with obtaining permits therefor, and shall pay all such costs without reimbursement by the Government.

N. The Government shall determine and include in *total project costs* the reasonable costs incurred by the Non-Federal Sponsor for *pre-Agreement design work*, subject to the conditions and limitations of this paragraph, that have not been incurred pursuant to any other agreement for the *Project*. The Non-Federal Sponsor in a timely manner shall provide the Government with such documents as are sufficient to enable the Government to determine the amount of costs to be included in *total project costs* for *pre-Agreement design work*.

1. *Pre-Agreement design work* shall be subject to a review by the Government to verify that the work was accomplished in a satisfactory manner and is necessary for the *Project*.

2. Where the Non-Federal Sponsor's cost for completed *pre-Agreement design work* is expressed as fixed costs plus a percentage of construction costs, the Non-Federal Sponsor shall renegotiate such costs with its Architect-Engineer based on actual costs.

3. The Non-Federal Sponsor's costs for *pre-Agreement design work* that may be eligible for inclusion in *total project costs* shall be subject to an audit in accordance with Article X.C. of this Agreement to determine the reasonableness, allocability and allowability of such costs.

4. The Non-Federal Sponsor's costs for *pre-Agreement design work* that may be eligible for inclusion in *total project costs* pursuant to this paragraph are not subject to interest charges, nor are they subject to adjustment to reflect changes in price levels between the time the *pre-Agreement design work* was completed and the time the costs are included in *total project costs*.

5. The Government shall not include in *total project costs* any costs for *pre-Agreement design work* paid by the Non-Federal Sponsor using *Federal program funds* unless the Federal agency providing the Federal portion of such funds verifies in writing that expenditure of such funds for such purpose is expressly authorized by Federal law.

ARTICLE III - LANDS, EASEMENTS, RIGHTS-OF-WAY, RELOCATIONS, AND COMPLIANCE WITH PUBLIC LAW 91-646, AS AMENDED

A. The Non-Federal Sponsor and the Government jointly shall determine the lands, easements, and rights-of-way required for construction, operation, and maintenance of the *Project*, including those required for *relocations*, the borrowing of material, and the disposal of dredged or excavated material. Upon reaching such determination, the Government shall provide written confirmation to the Non-Federal Sponsor thereof including a description of the lands, easements, and rights-of-way jointly determined to be required. Prior to the issuance of the solicitation for each contract for construction of the *Project*, or prior to the Non-Federal Sponsor incurring any financial obligations for construction of a portion of the *Project* using the Non-Federal Sponsor's own forces, the Non-Federal Sponsor shall acquire all lands, easements, and rights-of-way the Non-Federal Sponsor and the Government jointly determine the Non-Federal Sponsor must provide for that work and shall certify in writing to the Government that said interests have been acquired. Furthermore, prior to the end of the *period of design and construction*, the Non-Federal Sponsor shall acquire all lands, easements, and rights-of-way required for construction, operation, and maintenance of the *Project*. The Non-Federal Sponsor shall ensure that lands, easements, and rights-of-way required for the *Project* and that were provided by the Non-Federal Sponsor are retained in public ownership for uses compatible with the authorized purposes of the *Project*.

B. The Non-Federal Sponsor and the Government jointly shall determine the *relocations* necessary for construction, operation, and maintenance of the *Project*, including those necessary to enable the borrowing of material or the disposal of dredged or excavated material. Upon reaching such determination, the Government shall provide written confirmation to the Non-Federal Sponsor thereof including a description of the *relocations* jointly determined to be necessary. Prior to the issuance of the solicitation for each contract for construction of the *Project*, or prior to the Non-Federal Sponsor incurring any financial obligations for construction of a portion of the *Project* using the Non-Federal Sponsor's own forces, the Non-Federal Sponsor shall prepare or ensure the preparation of plans and specifications for, and perform or ensure the performance of, all *relocations* the Non-Federal Sponsor and the Government jointly determine to be necessary for that work and certify in writing to the Government that said work has been performed. Furthermore, prior to the end of the *period of design and construction*, the Non-Federal Sponsor shall perform or ensure performance of all *relocations* necessary for construction, operation, and maintenance of the *Project*.

C. The Non-Federal Sponsor shall comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended (42 U.S.C. 4601-4655), and the Uniform Regulations contained in 49 C.F.R. Part 24, in acquiring lands, easements, and rights-of-way required for construction, operation, and maintenance of the *Project*, including those required for *relocations*, the borrowing of material, or the disposal of dredged or excavated material, and shall inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.

ARTICLE IV - VALUE OF LANDS, EASEMENTS, RIGHTS-OF-WAY, AND RELOCATIONS AND COSTS OF PERMITS

A. The Government shall include in *total project costs* the value of the lands, easements, and rights-of-way that the Non-Federal Sponsor and the Government jointly determine must be provided by the Non-Federal Sponsor pursuant to Article III.A. of this Agreement and the value of the *relocations* that the Non-Federal Sponsor and the Government jointly determine must be performed by the Non-Federal Sponsor or for which it must ensure performance pursuant to Article III.B. of this Agreement. The Government also shall include in *total project costs* the reasonable costs incurred by the Non-Federal Sponsor that are associated with obtaining permits pursuant to Article II.B. of this Agreement that are necessary for construction, operation, and maintenance of the *Project* on publicly owned or controlled lands. However, the Government shall not include in *total project costs* the value of any lands, easements, rights-of-way, or *relocations* that have been provided previously as an item of cooperation for another Federal project. Further, the Government shall not include in *total project costs* the value of lands, easements, rights-of-way, or *relocations* that were acquired or performed using *Federal program funds* or the costs of obtaining permits paid using *Federal program funds* unless the Federal agency providing the Federal portion of such funds verifies in writing that reimbursement for the value and costs of such items is expressly authorized by Federal law. Finally, no value or costs of such items shall be included in *total project costs* pursuant to this Article, and no reimbursement shall be provided to the Non-Federal Sponsor, for any value or costs in excess of 25 percent of *total project costs*.

B. The Non-Federal Sponsor in a timely manner shall provide the Government with such documents as are sufficient to enable the Government to determine the value of any contribution provided pursuant to Article III.A. or Article III.B. of this Agreement and to determine the reasonable costs incurred by the Non-Federal Sponsor that are associated with obtaining permits pursuant to Article II.B. of this Agreement. Upon receipt of such documents, the Government in a timely manner shall determine the value of such contributions and the reasonable costs for obtaining such permits and include in *total project costs* the amount of such value and costs that does not exceed 25 percent of *total project costs*.

C. For the sole purpose of determining the value to be included in *total project costs* in accordance with this Agreement and except as otherwise provided in paragraph E. of this Article, the value of lands, easements, and rights-of-way, including those required for *relocations*, the borrowing of material, and the disposal of dredged or excavated material, shall be the fair market value of the real property interests, plus certain incidental costs of acquiring those interests, as determined in accordance with the provisions of this paragraph.

1. Date of Valuation. The fair market value of lands, easements, or rights-of-way owned by the Non-Federal Sponsor on the effective date of this Agreement shall be the fair market value of such real property interests as of the date the Non-Federal Sponsor awards the first construction contract for the *Project*, or, if the Non-Federal Sponsor performs the construction using its own forces, the date that the Non-Federal Sponsor begins construction of the *Project*. The fair market value of lands, easements, or rights-of-way acquired by the Non-Federal Sponsor after the effective date of this Agreement shall be the fair market value of such real property interests at the time the interests are acquired.

2. General Valuation Procedure. Except as provided in paragraph C.3. or paragraph C.5. of this Article, the fair market value of lands, easements, or rights-of-way shall be determined in accordance with the provisions of this paragraph.

a. The Non-Federal Sponsor shall obtain, for each real property interest, an appraisal that is prepared by a qualified appraiser who is acceptable to the Non-Federal Sponsor and the Government. The Non-Federal Sponsor shall provide a copy of each appraisal to the Government. The appraisal must be prepared in accordance with the applicable rules of just compensation, as specified by the Government. The fair market value shall be the amount set forth in the Non-Federal Sponsor's appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the Non-Federal Sponsor's appraisal, the Non-Federal Sponsor may obtain a second appraisal, and the fair market value shall be the amount set forth in the Non-Federal Sponsor's second appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the Non-Federal Sponsor's second appraisal, the Non-Federal Sponsor chooses not to obtain a second appraisal, or the Non-Federal Sponsor does not provide the first appraisal as required in this paragraph, the Government shall obtain an appraisal, and the fair market value shall be the amount set forth in the Government's appraisal, if such appraisal is approved by the Non-Federal Sponsor. In the event the Non-Federal Sponsor does not approve the Government's appraisal, the Government, after consultation with the Non-Federal Sponsor, shall consider the Government's and the Non-Federal Sponsor's appraisals and determine an amount based thereon, which shall be deemed to be the fair market value.

b. Where the amount paid or proposed to be paid by the Non-Federal Sponsor for the real property interest exceeds the amount determined pursuant to paragraph C.2.a. of this Article, the Government, at the request of the Non-Federal Sponsor, shall consider all factors relevant to determining fair market value and, in its sole discretion, after consultation with the Non-Federal Sponsor, may approve in writing an amount greater than the amount determined pursuant to paragraph C.2.a. of this Article, but not to exceed the amount actually paid or proposed to be paid. If the Government approves such an amount, the fair market value shall be the lesser of the approved amount or the amount paid by the Non-Federal Sponsor, but no less than the amount determined pursuant to paragraph C.2.a. of this Article.

3. Eminent Domain Valuation Procedure. For lands, easements, or rights-of-way acquired by eminent domain proceedings instituted after the effective date of this Agreement, the Non-Federal Sponsor, prior to instituting such proceedings, shall submit to the Government notification in writing of its intent to institute such proceedings and an appraisal of the specific real property interests to be acquired in such proceedings. The Government shall have 60 calendar days after receipt of such a notice and appraisal within which to review the appraisal, if not previously approved by the Government in writing.

a. If the Government previously has approved the appraisal in writing, or if the Government provides written approval of, or takes no action on, the appraisal within such 60 day period, the Non-Federal Sponsor shall use the amount set forth in such appraisal as the estimate of just compensation for the purpose of instituting the eminent domain proceeding.

b. If the Government provides written disapproval of the appraisal, including the reasons for disapproval, within such 60 day period, the Government and the Non-Federal Sponsor shall consult in good faith to promptly resolve the issues or areas of disagreement that are identified in the Government's written disapproval. If, after such good faith consultation, the Government and the Non-Federal Sponsor agree as to an appropriate amount, then the Non-Federal Sponsor shall use that amount as the estimate of just compensation for the purpose of instituting the eminent domain proceeding. If, after such good faith consultation, the Government and the Non-Federal Sponsor cannot agree as to an appropriate amount, then the Non-Federal Sponsor may use the amount set forth in its appraisal as the estimate of just compensation for the purpose of instituting the eminent domain proceeding.

c. For lands, easements, or rights-of-way acquired by eminent domain proceedings instituted in accordance with paragraph C.3. of this Article, fair market value shall be either the amount of the court award for the real property interests taken, to the extent the Non-Federal Sponsor and the Government jointly determined such interests are required for construction, operation, and maintenance of the *Project*, or the amount of any stipulated settlement or portion thereof that the Government approves in writing.

4. Incidental Costs. For lands, easements, or rights-of-way acquired by the Non-Federal Sponsor within a five year period preceding the effective date of this Agreement, or at any time after the effective date of this Agreement, the value of the interest shall include the documented incidental costs of acquiring the interest, as determined by the Government, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. Such incidental costs shall include, but not necessarily be limited to, closing and title costs, appraisal costs, survey costs, attorney's fees, plat maps, mapping costs, actual amounts expended for payment of any relocation assistance benefits provided in accordance with Article III.C. of this Agreement, and other payments by the Non-Federal Sponsor for items that are generally recognized as compensable, and required to be paid, by applicable state law due to the acquisition of a real property interest in accordance with Article III of this Agreement. The value of the interests provided by the Non-Federal Sponsor in accordance with Article III.A. of this Agreement shall also include the documented costs of obtaining appraisals prepared for review by the Government pursuant to paragraph C.2.a. of this Article subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

5. Waiver of Appraisal. Except as required by paragraph C.3. of this Article, the Government may waive the requirement for an appraisal pursuant to this paragraph if it determines that an appraisal is unnecessary because the valuation is uncomplicated and that the estimated fair market value of the real property interest is $10,000 or less based upon a review of available data. In such event, the Government and the Non-Federal Sponsor must agree in writing to the value of such real property interest in an amount not in excess of $10,000.

D. After consultation with the Non-Federal Sponsor, the Government shall determine the value of *relocations* in accordance with the provisions of this paragraph.

1. For a *relocation* other than a *highway*, the value shall be only that portion of *relocation* costs that the Government determines is necessary to provide a functionally equivalent facility, reduced by depreciation, as applicable, and by the salvage value of any removed items.

2. For a *relocation* of a *highway*, the value shall be only that portion of *relocation* costs that would be necessary to accomplish the *relocation* in accordance with the design standard that the State of Utah would apply under similar conditions of geography and traffic load, reduced by the salvage value of any removed items.

3. *Relocation* costs shall include, but not necessarily be limited to, actual costs of performing the *relocation*; planning, engineering and design costs; supervision and administration costs; and documented incidental costs associated with performance of the *relocation*, as determined by the Government. *Relocation* costs shall not include any costs due to *betterments*, as determined by the Government, nor any additional cost of using new material when suitable used material is available. *Relocation* costs shall be subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

4. The value to be included in *total project costs* for *relocations* performed within the *Project* boundaries is subject to satisfactory compliance with applicable Federal labor laws covering non-Federal construction, including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq*.), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq*.) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)). Notwithstanding any other provision of this Agreement, inclusion of the value of *relocations* in *total project costs* may be denied, in whole or in part, as a result of the Non-Federal Sponsor's failure to comply with its obligations under these laws.

E. Where the Government, on behalf of the Non-Federal Sponsor pursuant to Article II.L. of this Agreement, acquires lands, easements, or rights-of-way or performs *relocations*, the value to be included in *total project costs* in accordance with this Agreement shall be the costs of such work performed or provided by the Government that are paid by the Non-Federal Sponsor in accordance with Article VI.D. of this

Agreement. In addition, the value to be included in *total project costs* in accordance with this Agreement shall include the documented costs incurred by the Non-Federal Sponsor in accordance with the terms and conditions agreed upon in writing pursuant to Article II.L. of this Agreement subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

F. The Government shall include in *total project costs* the reasonable costs incurred by the Non-Federal Sponsor pursuant to Article II.B. of this Agreement that are associated with obtaining permits necessary for construction, operation, and maintenance of the *Project* on publicly owned or controlled lands, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

ARTICLE V - PROJECT COORDINATION TEAM

A. To provide for consistent and effective communication, the Non-Federal Sponsor and the Government, not later than 30 calendar days after the effective date of this Agreement, shall appoint named senior representatives to a Project Coordination Team. Thereafter, the Project Coordination Team shall meet regularly until the end of the *period of design and construction*. The Government's Project Manager and a counterpart named by the Non-Federal Sponsor shall co-chair the Project Coordination Team.

B. The Government's Project Manager and the Non-Federal Sponsor's counterpart shall keep the Project Coordination Team informed of the progress of design and construction and of significant pending issues and actions, and shall seek the views of the Project Coordination Team on matters that the Project Coordination Team generally oversees.

C. Until the end of the *period of design and construction*, the Project Coordination Team shall generally oversee the *Project*, including matters related to: design; completion of all necessary NEPA coordination; plans and specifications; scheduling; real property and *relocation* requirements; real property acquisition; contract awards and modifications; contract costs; the application of and compliance with 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq*.), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq*.) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)) for *relocations* and the construction portion of the *Project*; the investigations to identify the existence and extent of hazardous substances in accordance with Article XIV.A. of this Agreement; historic preservation activities in accordance with Article XVII of this Agreement; the Government's cost projections; final inspection of the entire *Project* or completed portions thereof as the case may be; preparation of the proposed OMRR&R Manual; anticipated requirements and needed capabilities for performance of operation, maintenance, repair, rehabilitation, and replacement of the *Project* including issuance of permits; and other matters related to the *Project*. This oversight of the *Project* shall be consistent with a project management plan developed by the Government and the Non-Federal Sponsor.

D. The Project Coordination Team may make recommendations to the Non-Federal Sponsor on matters related to the *Project* that the Project Coordination Team generally oversees, including suggestions to avoid potential sources of dispute. The Non-Federal Sponsor in good faith shall consider the recommendations of the Project Coordination Team. The Non-Federal Sponsor, having the legal authority and responsibility for design and construction of the *Project*, has the discretion to accept or reject, in whole or in part, the Project Coordination Team's recommendations except as otherwise required by the provisions of this Agreement, including compliance with applicable Federal, State, or local laws or regulations.

E. The Non-Federal Sponsor's costs of participation in the Project Coordination Team shall be included in *total project costs* and shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. The Government's costs of participation in the Project Coordination Team shall be included in *total project costs* and shared in accordance with the provisions of this Agreement.

ARTICLE VI - METHOD OF PAYMENT

A. The Non-Federal Sponsor shall provide the Government with such documents as are sufficient to enable the Government to maintain current records and provide to the Non-Federal Sponsor current projections of costs, financial obligations, contributions provided by the parties, the value included in *total project costs* of lands, easements, rights-of-way, *relocations*, and permit costs determined in accordance with Article IV of this Agreement, and the costs included in *total project costs* for the *pre-Agreement design work* determined in accordance with Article II.N. of this Agreement.

1. As of the effective date of this Agreement, *total project costs* are projected to be $800,000; the Government's share of *total project costs* is projected to be $600,000; the Non-Federal Sponsor's share of *total project costs* is projected to be $200,000; *total project costs* to be incurred by the Government are projected to be $42,000; *total project costs* to be incurred by the Non-Federal Sponsor are projected to be $758,000; total reimbursements in accordance with paragraph B.2. of this Article are projected to be $558,000; the value included in *total project costs* of lands, easements, rights-of-way, *relocations*, and permit costs determined in accordance with Article IV of this Agreement is projected to be $35,000; the costs included in *total project costs* for the *pre-Agreement design work* determined in accordance with Article II.N. of this Agreement are projected to be $62,000; the Government's share of financial obligations for data recovery activities pursuant to Article XVII.E. of this Agreement is projected to be $0.00; the Non-Federal Sponsor's share of financial obligations for data recovery activities pursuant to Article XVII.E. of this Agreement is projected to be $0.00; and the

Government's total financial obligations to be incurred for acquisition of lands, easements, or rights-of-way or performance of *relocations* for the *Project* on behalf of the Non-Federal Sponsor and the Non-Federal Sponsor's contribution of funds for such obligations required by Article II.L. of this Agreement are projected to be $0.00. These amounts are estimates subject to adjustment by the Government, after consultation with the Non-Federal Sponsor, and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.

2. By June 2006 and by each quarterly anniversary thereof until the conclusion of the *period of design and construction* and resolution of all relevant claims and appeals and eminent domain proceedings, the Government shall provide the Non-Federal Sponsor with a report setting forth all contributions provided to date and the current projections of the following: *total project costs*; the Government's share of *total project costs*; the Non-Federal Sponsor's share of *total project costs*; *total project costs* incurred by the Government; *total project costs* incurred by the Non-Federal Sponsor; total reimbursements paid to the Non-Federal Sponsor; the value included in *total project costs* of lands, easements, rights-of-way, *relocations*, and permit costs determined in accordance with Article IV of this Agreement; the costs included in *total project costs* for the *pre-Agreement design work* determined in accordance with Article II.N. of this Agreement; the Government's share of financial obligations for data recovery activities pursuant to Article XVII.E. of this Agreement; the Non-Federal Sponsor's share of financial obligations for data recovery activities pursuant to Article XVII.E. of this Agreement; and the Government's total financial obligations to be incurred for acquisition of lands, easements, or rights-of-way or performance of *relocations* for the *Project* on behalf of the Non-Federal Sponsor and the Non-Federal Sponsor's contribution of funds for such obligations required by Article II.L. of this Agreement.

B. The Government, subject to the availability of funds, shall reimburse the Non-Federal Sponsor, in accordance with the provisions of this paragraph, the amount required pursuant to Article II.D. of this Agreement.

1. Periodically, but not more frequently than once every 30 calendar days, the Non-Federal Sponsor shall provide the Government with a *sufficient invoice* for costs the Non-Federal Sponsor has incurred for the *Project*.

2. Upon receipt of such *sufficient invoice*, the Government shall review the costs identified therein and shall determine: (a) the amount to be included in *total project costs*, subject to the limitations in Article II.C. of this Agreement; (b) the total costs incurred by the parties to date (including the value of lands, easements, rights-of-way, and *relocations*, and the costs of permits determined in accordance with Article IV of this Agreement); (c) each party's share of *total project costs* and the costs of data recovery activities in accordance with Article XVII.E. of this Agreement incurred by the parties to date; (d) the costs incurred by each party to date; (e) the total amount of reimbursements the Government has made to date in accordance with this paragraph; (f) the balance of Federal funds available for the *Project*, as of the date of such review;

(g) the amount of reimbursement, if any, due to the Non-Federal Sponsor; and (h) the amount that actually will be paid to the Non-Federal Sponsor (hereinafter the “payment amount”) if the amount of reimbursement determined above cannot be fully paid due to an insufficiency of Federal funds or the limitations of the *Section 595 Program Limit for rural Utah* or the *Section 102 Limit*.

3. Within 30 calendar days after receipt of the *sufficient invoice* provided in accordance with paragraph B.1. of this Article (hereinafter the “payment period”), the Government shall: furnish the Non-Federal Sponsor written notice of the determinations made in accordance with paragraph B.2. of this Article; provide an explanation, if necessary, of why the payment amount is less than the amount of reimbursement determined due to the Non-Federal Sponsor; and make a payment to the Non-Federal Sponsor equal to the payment amount.

4. If the payment amount is not paid by the end of the payment period, the designated payment office shall credit to the Non-Federal Sponsor’s account an interest penalty on the payment amount, without request from the Non-Federal Sponsor. Unless prescribed by other Federal authority, the interest penalty shall be at the rate established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the first day after the end of the payment period.

a. The interest penalty shall accrue daily from the first day after the end of the payment period through the date on which the payment is made. Accruals shall be compounded at 30 calendar day intervals through the date on which the payment is made.

b. The interest penalty shall not accrue, nor be compounded, during suspension of all of the Government’s future performance or during suspension of only the Government’s future performance to provide reimbursement. Further no interest penalty shall accrue, nor be compounded, upon termination of this Agreement under Article XIII of this Agreement.

C. Upon conclusion of the *period of design and construction* and resolution of all relevant claims and appeals and eminent domain proceedings, the Government shall conduct a final accounting and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. If outstanding relevant claims and appeals or eminent domain proceedings prevent a final accounting from being conducted in a timely manner, the Government shall conduct an interim accounting and furnish the Non-Federal Sponsor with written notice of the results of such interim accounting. Once all outstanding relevant claims and appeals and eminent domain proceedings are resolved, the Government shall amend the interim accounting to complete the final accounting and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. The interim or final accounting, as applicable, shall determine *total project costs* and the costs of any data recovery activities. In addition, for each set of costs, the interim or final accounting, as applicable, shall determine each party’s required share thereof, and each party's total contributions thereto as of the date of such accounting.

1. Should the interim or final accounting, as applicable, show that the Government's total required shares of *total project costs* and the costs of any data recovery activities exceed the Government's total contributions provided thereto, the Government, no later than 90 calendar days after completion of the interim or final accounting, as applicable, shall make a payment to the Non-Federal Sponsor, subject to the availability of funds and as limited by the *Section 595 Program Limit for rural Utah* and the *Section 102 Limit*, in an amount equal to the difference.

2. Should the interim or final accounting, as applicable, show that the total contributions provided by the Government for *total project costs* and the costs of any data recovery activities exceed the Government's total required shares thereof, the Non-Federal Sponsor shall refund the excess amount to the Government within 90 calendar days of the date of completion of such accounting by delivering a check payable to "FAO, USAED, SACRAMENTO – L2" to the District Engineer or by providing an Electronic Funds Transfer in accordance with procedures established by the Government. In the event the Government is due a refund and funds are not available to refund the excess to the Government, the Non-Federal Sponsor shall seek such appropriations as are necessary to make the refund.

D. The Non-Federal Sponsor shall provide the contribution of funds required by Article II.L. of this Agreement for acquisition of lands, easements, or rights-of-way or performance of *relocations* for the *Project* on behalf of the Non-Federal Sponsor in accordance with the provisions of this paragraph.

1. Not less than 60 calendar days prior to the scheduled date for the first financial obligation for acquisition of lands, easements, or rights-of-way or performance of *relocations* for the *Project* on behalf of the Non-Federal Sponsor, the Government shall notify the Non-Federal Sponsor in writing of such scheduled date and of the full amount of funds the Government determines to be required from the Non-Federal Sponsor to cover the costs of such work. No later than 30 calendar days prior to the Government incurring any financial obligation for acquisition of lands, easements, or rights-of-way or performance of *relocations* for the *Project* on behalf of the Non-Federal Sponsor, the Non-Federal Sponsor shall provide the Government with the full amount of the funds required to cover the costs of such work by delivering a check payable to "FAO, USAED, SACRAMENTO – L2" to the District Engineer, or verifying to the satisfaction of the Government that the Non-Federal Sponsor has deposited the required funds in an escrow or other account acceptable to the Government, with interest accruing to the Non-Federal Sponsor, or by presenting the Government with an irrevocable letter of credit acceptable to the Government for the required funds, or by providing an Electronic Funds Transfer of the required funds in accordance with procedures established by the Government.

2. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary to cover the Government's financial obligations for acquisition of lands, easements, or rights-of-way or performance of *relocations* for the *Project* on behalf of the Non-Federal Sponsor as they are incurred. If at any time the Government determines that the Non-Federal Sponsor must provide additional funds to pay for such work, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required and provide an explanation of why additional funds are required. Within 30 calendar days from receipt of such notice, the Non-Federal Sponsor shall provide the Government with the full amount of the additional required funds through any of the payment mechanisms specified in paragraph D.1. of this Article.

3. At the time the Government conducts the interim or final accounting, as applicable, the Government shall conduct an accounting of the Government's financial obligations incurred for acquisition of lands, easements, or rights-of-way or performance of *relocations* for the *Project* on behalf of the Non-Federal Sponsor and furnish the Non-Federal Sponsor with written notice of the results of such accounting. If outstanding relevant claims and appeals or eminent domain proceedings prevent a final accounting of such work from being conducted in a timely manner, the Government shall conduct an interim accounting of such work and furnish the Non-Federal Sponsor with written notice of the results of such interim accounting. Once all outstanding relevant claims and appeals and eminent domain proceedings are resolved, the Government shall amend the interim accounting to complete the final accounting and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. Such interim or final accounting, as applicable, shall determine the Government's total financial obligations for acquisition of lands, easements, or rights-of-way or performance of *relocations* for the *Project* on behalf of the Non-Federal Sponsor and the Non-Federal Sponsor's contribution of funds provided thereto as of the date of such accounting.

a. Should the interim or final accounting, as applicable, show that the total obligations for acquisition of lands, easements, or rights-of-way or performance of *relocations* for the *Project* on behalf of the Non-Federal Sponsor exceed the total contribution of funds provided by the Non-Federal Sponsor for such work, the Non-Federal Sponsor, no later than 90 calendar days after receipt of written notice from the Government, shall make a payment to the Government in an amount equal to the difference by delivering a check payable to "FAO, USAED, SACRAMENTO – L2" to the District Engineer or by providing an Electronic Funds Transfer in accordance with procedures established by the Government.

b. Should the interim or final accounting, as applicable, show that the total contribution of funds provided by the Non-Federal Sponsor for acquisition of lands, easements, or rights-of-way or performance of *relocations* for the *Project* on behalf of the Non-Federal Sponsor exceeds the total obligations for such work, the Government, subject to the availability of funds, shall refund the excess amount to the Non-Federal Sponsor within 90 calendar days of the date of completion of such accounting. In the event the Non-Federal Sponsor is due a refund and funds are not available to refund the excess amount to the Non-Federal Sponsor, the Government shall seek such appropriations as are necessary to make the refund.

ARTICLE VII - DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to both parties. Each party shall pay an equal share of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

ARTICLE VIII – OPERATION, MAINTENANCE, REPAIR, REHABILITATION, AND REPLACEMENT (OMRR&R)

A. Upon completion of construction and final inspection by the Government in accordance with Article II.A.6. of this Agreement, the Non-Federal Sponsor, pursuant to Article II.G. of this Agreement, shall operate, maintain, repair, rehabilitate, and replace the entire *Project*, or a completed portion thereof as the case may be, at no cost to the Government. The Non-Federal Sponsor shall conduct its operation, maintenance, repair, rehabilitation, and replacement responsibilities in a manner compatible with the *Project's* authorized purposes and in accordance with specific directions prescribed by the Government in the interim or final OMRR&R Manual and any subsequent amendments thereto.

B. The Non-Federal Sponsor hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, upon property that the Non-Federal Sponsor now or hereafter owns or controls for access to the *Project* for the purpose of inspection, if the Government determines an inspection to be necessary. If an inspection shows that the Non-Federal Sponsor for any reason is failing to perform its obligations under this Agreement, the Government shall send a written notice describing the non-performance to the Non-Federal Sponsor.

ARTICLE IX – HOLD AND SAVE

Subject to the provisions of Article XIX of this Agreement, the Non-Federal Sponsor shall hold and save the Government free from all damages arising from design, construction, operation, maintenance, repair, rehabilitation, and replacement of the *Project* and any *betterments*, except for damages due to the fault or negligence of the Government or its contractors.

ARTICLE X - MAINTENANCE OF RECORDS AND AUDIT

A. Not later than 60 calendar days after the effective date of this Agreement, the Government and the Non-Federal Sponsor shall develop procedures for keeping books, records, documents, or other evidence pertaining to costs and expenses incurred pursuant to this Agreement. These procedures shall incorporate, and apply as appropriate, the standards for financial management systems set forth in the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments at 32 C.F.R. Section 33.20. The Government and the Non-Federal Sponsor shall maintain such books, records, documents, or other evidence in accordance with these procedures and for a minimum of three years after completion of the accounting for which such books, records, documents, or other evidence were required. To the extent permitted under applicable Federal laws and regulations, the Government and the Non-Federal Sponsor shall each allow the other to inspect such books, records, documents, or other evidence.

B. In accordance with 32 C.F.R. Section 33.26, the Non-Federal Sponsor is responsible for complying with the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507), as implemented by Office of Management and Budget (OMB) Circular No. A-133 and Department of Defense Directive 7600.10. Upon request of the Non-Federal Sponsor and to the extent permitted under applicable Federal laws and regulations, the Government shall provide to the Non-Federal Sponsor and independent auditors any information necessary to enable an audit of the Non-Federal Sponsor's activities under this Agreement. The costs of any non-Federal audits performed in accordance with this paragraph shall be allocated in accordance with the provisions of OMB Circulars A-87 and A-133, and such costs as are allocated to the *Project* shall be included in *total project costs* and shared in accordance with the provisions of this Agreement.

C. In accordance with 31 U.S.C. 7503, the Government may conduct audits in addition to any audit that the Non-Federal Sponsor is required to conduct under the Single Audit Act Amendments of 1996. Any such Government audits shall be conducted in accordance with Government Auditing Standards and the cost principles in OMB Circular No. A-87 and other applicable cost principles and regulations. The costs of Government audits performed in accordance with this paragraph shall be included in *total project costs* and shared in accordance with the provisions of this Agreement.

ARTICLE XI - FEDERAL AND STATE LAWS

In the exercise of their respective rights and obligations under this Agreement, the Non-Federal Sponsor and the Government shall comply with all applicable Federal and State laws and regulations, including, but not limited to: Section 601 of the Civil Rights Act of 1964, Public Law 88-352 (42 U.S.C. 2000d) and Department of Defense Directive 5500.11 issued pursuant thereto; Army Regulation 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army"; and all applicable Federal labor standards requirements including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq*.), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq*.) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)).

ARTICLE XII - RELATIONSHIP OF PARTIES

A. In the exercise of their respective rights and obligations under this Agreement, the Government and the Non-Federal Sponsor each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other.

B. In the exercise of its rights and obligations under this Agreement, neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights the other party may have to seek relief or redress against that contractor either pursuant to any cause of action that the other party may have or for violation of any law.

ARTICLE XIII - TERMINATION OR SUSPENSION

A. If at any time the Non-Federal Sponsor fails to fulfill its obligations under this Agreement, the Assistant Secretary of the Army (Civil Works) shall terminate this Agreement or suspend the Government's future performance under this Agreement.

B. In the event all of the Government's future performance under this Agreement or only the Government's future performance to provide reimbursement is suspended pursuant to Article II.E.2. of this Agreement such suspension shall remain in effect until such time that the Government notifies the Non-Federal Sponsor in writing that sufficient Federal funds are available to meet the Federal share of *total project costs* and the Federal share of costs for data recovery activities in accordance with Article XVII.D. and Article XVII.E. of this Agreement the Government projects to be incurred through the then-current or upcoming *fiscal year*, or the Government or the Non-Federal Sponsor elects to terminate this Agreement.

C. In the event that the Government and the Non-Federal Sponsor determine to suspend future performance under this Agreement in accordance with Article XIV.C. of this Agreement, such suspension shall remain in effect until the Government and the Non-Federal Sponsor agree to proceed or to terminate this Agreement. In the event that the Government suspends future performance under this Agreement in accordance with Article XIV.C. of this Agreement due to failure to reach agreement with the Non-Federal Sponsor on whether to proceed or to terminate this Agreement, or the failure of the Non-Federal Sponsor to provide funds to pay for cleanup and response costs or to otherwise discharge the Non-Federal Sponsor's responsibilities under Article XIV.C. of this Agreement, such suspension shall remain in effect until: 1) the Government and Non-Federal Sponsor reach agreement on how to proceed or to terminate this Agreement; 2) the Non-Federal Sponsor provides funds necessary to pay for cleanup and response costs and otherwise discharges its responsibilities under Article XIV.C. of this Agreement; or 3) the Government terminates this Agreement in accordance with the provisions of Article XIV.C. of this Agreement.

D. If after completion of the design portion of the *Project* the parties mutually agree in writing not to proceed with construction of the *Project*, the parties shall conclude their activities relating to the *Project* and conduct an accounting in accordance with Article VI.C. of this Agreement.

E. In the event that this Agreement is terminated pursuant to this Article or Article II.E. or Article XIV.C. of this Agreement, both parties shall conclude their activities relating to the *Project* and conduct an accounting in accordance with Article VI.C. of this Agreement. The Government may reserve a percentage of total Federal funds made available for the *Project* as a contingency to pay costs of termination. Notwithstanding such termination, the Non-Federal Sponsor may continue with design and construction of the *Project*, at no cost to the Government.

F. Any termination of this Agreement or suspension of future performance under this Agreement in accordance with this Article or Article II.E. or Article XIV.C. of this Agreement shall not relieve the parties of liability for any obligation previously incurred. Any delinquent payment owed by the Non-Federal Sponsor shall be charged interest at a rate, to be determined by the Secretary of the Treasury, equal to 150 per centum of the average bond equivalent rate of the 13 week Treasury bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional 3 month period if the period of delinquency exceeds 3 months.

ARTICLE XIV - HAZARDOUS SUBSTANCES

A. After execution of this Agreement and coordination with the Government, the Non-Federal Sponsor shall perform, or ensure performance of, any investigations for hazardous substances that the Government or the Non-Federal Sponsor determines to be necessary to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter "CERCLA") (42 U.S.C. 9601-9675), that may exist in, on, or under lands, easements, and rights-of-way that either the Non-Federal Sponsor and the Government jointly determine pursuant to Article III of this Agreement, or that the Non-Federal Sponsor otherwise determines, to be required for construction, operation, and maintenance of the *Project*. However, for lands, easements, and rights-of-way that the Government determines to be subject to the navigation servitude, only the Government shall perform such investigations unless the District Engineer provides the Non-Federal

Sponsor with prior specific written direction, in which case the Non-Federal Sponsor shall perform such investigations in accordance with such written direction.

1. All actual costs incurred by the Non-Federal Sponsor for such investigations for hazardous substances in, on, or under any lands, easements, or rights-of-way that the Non-Federal Sponsor and the Government jointly determine to be required for construction, operation, and maintenance of the *Project*, pursuant to Article III of this Agreement, shall be included in *total project costs* and shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

2. All actual costs incurred by the Government for such investigations for hazardous substances shall be included in *total project costs* and shared in accordance with the provisions of this Agreement.

B. In the event it is discovered through any investigation for hazardous substances or other means that hazardous substances regulated under CERCLA exist in, on, or under any lands, easements, or rights-of-way that either the Non-Federal Sponsor and the Government jointly determine pursuant to Article III of this Agreement, or that the Non-Federal Sponsor otherwise determines, to be required for construction, operation, and maintenance of the *Project*, the Non-Federal Sponsor and the Government, in addition to providing any other notice required by applicable law, shall provide prompt written notice to each other, and the Non-Federal Sponsor shall not proceed with the acquisition of the real property interests until the parties agree that the Non-Federal Sponsor should proceed.

C. The Government and the Non-Federal Sponsor shall determine whether to initiate construction of the *Project*, or, if already in construction, whether to continue with construction of the *Project*, suspend future performance under this Agreement, or terminate this Agreement, in any case where hazardous substances regulated under CERCLA are found to exist in, on, or under any lands, easements, or rights-of-way that either the Non-Federal Sponsor and the Government jointly determine pursuant to Article III of this Agreement, or that the Non-Federal Sponsor otherwise determines, to be required for construction, operation, and maintenance of the *Project*. Should the Government and the Non-Federal Sponsor determine to initiate or continue with construction of the *Project* after considering any liability that may arise under CERCLA, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for the costs of cleanup and response, including the costs of any studies and investigations necessary to determine an appropriate response to the contamination. Such costs shall not be considered a part of *total project costs*. In the event the Non-Federal Sponsor does not reach agreement with the Government on whether to proceed or to terminate this Agreement under this paragraph, or fails to provide any funds necessary to pay for cleanup and response costs or to otherwise discharge the Non-Federal Sponsor's responsibilities under this paragraph upon direction by the Government, the Government, in its sole discretion, may either terminate this Agreement or suspend its future performance under this Agreement, including reimbursement pursuant to Article II.D. of this Agreement.

D. The Non-Federal Sponsor and the Government shall consult with each other in accordance with Article V of this Agreement in an effort to ensure that responsible parties bear any necessary cleanup and response costs as defined in CERCLA. Any decision made pursuant to paragraph C. of this Article shall not relieve any third party from any liability that may arise under CERCLA.

E. As between the Government and the Non-Federal Sponsor, the Non-Federal Sponsor shall be considered the operator of the *Project* for purposes of CERCLA liability. To the maximum extent practicable, the Non-Federal Sponsor shall operate, maintain, repair, rehabilitate, and replace the *Project* in a manner that will not cause liability to arise under CERCLA.

ARTICLE XV - NOTICES

A. Any notice, request, demand, or other communication required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally or sent by telegram or mailed by first-class, registered, or certified mail, as follows:

If to the Non-Federal Sponsor:
Mayor
Park City Municipal Corporation
10 North Main
Park City, UT 84720

If to the Government:
District Engineer
Sacramento District, Corps of Engineers
1325 J Street
Sacramento, CA 95814

B. A party may change the address to which such communications are to be directed by giving written notice to the other party in the manner provided in this Article.

C. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at the earlier of such time as it is actually received or seven calendar days after it is mailed.

ARTICLE XVI - CONFIDENTIALITY

To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

ARTICLE XVII - HISTORIC PRESERVATION

A. The Government shall ensure compliance with Section 106 of the National Historic Preservation Act (16 U.S.C. 470f; hereinafter “Section 106”) prior to initiation of construction by the Non-Federal Sponsor. At the Government’s request, the Non-Federal Sponsor shall prepare information, analyses, and recommendations as required by Section 106 and implementing regulations. Any costs incurred by the Non-Federal Sponsor relating to compliance with this paragraph shall be included in *total project costs* and shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. Any costs incurred by the Government relating to compliance with this paragraph shall be included in *total project costs* and shared in accordance with the provisions of this Agreement.

B. The Non-Federal Sponsor shall perform any identification, survey, evaluation, or mitigation (except for data recovery activities) of historic properties the Government determines necessary for the *Project*, in accordance with this paragraph.

1. The Non-Federal Sponsor shall ensure that its studies are conducted by qualified archaeologists, historians, architectural historians and historic architects, as appropriate, who meet, at minimum, the Secretary of the Interior's Professional Qualifications Standards. The Non-Federal Sponsor shall submit study plans and reports to the Government for review and approval and shall be responsible for resolving any deficiencies.

2. In the event the Government determines that mitigation (except for data recovery activities) should be undertaken due to possible adverse effects to significant archeological or historical properties, the Non-Federal Sponsor shall formulate a plan in consultation with the Government and any other parties involved in the development of a Memorandum of Agreement executed in accordance with Section 106.

3. The Non-Federal Sponsor shall be responsible for implementing mitigation (except for data recovery activities) prior to the initiation of any construction activities affecting historic properties.

4. Any costs of identification, survey, evaluation, and mitigation (except for data recovery activities) of historic properties incurred by the Non-Federal Sponsor pursuant to paragraph B. of this Article shall be included in *total project costs* and shared in accordance with the provisions of this Agreement, subject to an audit in

accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

C. The Non-Federal Sponsor shall include provisions in all of its construction contracts for the protection of cultural resources discovered during construction. These provisions shall include, at a minimum, the requirement to cease all work in the immediate area of a discovered cultural resource until the situation is properly evaluated, and the requirement to immediately provide verbal and written notice to the Non-Federal Sponsor and Government in the event of such discovery. Upon receipt of notice that cultural resources have been discovered, the Government, pursuant to its responsibilities under the National Historic Preservation Act, must authorize further action or study before construction may continue. If the Government concludes that such discovery warrants consultation under the National Historic Preservation Act, the Non-Federal Sponsor shall participate as a consulting party. In such a case, construction shall not continue until the Government sends written notification to the Non-Federal Sponsor. Where the Non-Federal Sponsor elects to perform the construction using its own forces, the same procedures shall be followed.

D. The Government, as it determines necessary for the *Project*, shall perform any data recovery activities associated with historic preservation. As specified in Section 7(a) of Public Law 86-523, as amended by Public Law 93-291 (16 U.S.C. 469c(a)), the costs of data recovery activities associated with historic preservation for this *Project* and all other projects in rural Utah implemented pursuant to the Section 595 Program shall be borne entirely by the Government up to the statutory limit of one percent of the total amount authorized to be appropriated to the Government for the Section 595 Program in rural Utah. None of the costs of data recovery activities shall be included in *total project costs*.

E. The Government shall not incur costs for data recovery activities that exceed the statutory one percent limit specified in paragraph D. of this Article unless and until the Assistant Secretary of the Army (Civil Works) has waived that limit, and the Secretary of the Interior has concurred in the waiver, in accordance with Section 208(3) of Public Law 96-515, as amended (16 U.S.C. Section 469c-2(3)). Any costs of data recovery activities that exceed the one percent limit shall not be included in *total project costs* but shall be shared between the Non-Federal Sponsor and the Government consistent with the cost sharing requirements of the Section 595 Program, as follows: 25 percent will be borne by the Non-Federal Sponsor and 75 percent will be borne by the Government.

ARTICLE XVIII - THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES

Nothing in this Agreement is intended, nor may be construed, to create any rights, confer any benefits, or relieve any liability, of any kind whatsoever in any third person not party to this Agreement.

ARTICLE XIX - OBLIGATIONS OF FUTURE APPROPRIATIONS

A. Nothing herein shall constitute, nor be deemed to constitute, an obligation of future appropriations by the City Council of the City of Park City Municipal Corporation.

B. The Non-Federal Sponsor intends to fulfill its obligations under this Agreement. The Non-Federal Sponsor shall include in its budget request or otherwise propose appropriations of funds in amounts sufficient to fulfill these obligations for that year and shall use all reasonable and lawful means to secure those appropriations. The Non-Federal Sponsor reasonably believes that funds in amounts sufficient to fulfill these obligations lawfully can and will be appropriated and made available for this purpose. In the event funds are not appropriated in amounts sufficient to fulfill these obligations, the Non-Federal Sponsor shall use its best efforts to satisfy any requirements for payments or contributions of funds under this Agreement from any other source of funds legally available for this purpose. Further, if the Non-Federal Sponsor is unable to fulfill these obligations, the Government may exercise any legal rights it has to protect the Government's interests related to this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the

DEPARTMENT OF THE ARMY	PARK CITY MUNICIPAL CORPORATION
BY: ______________________	BY: ____________________
Ronald N. Light U.S. Army, District Engineer	Dana Williams Park City Municipal Corporation Mayor
DATE: ____________________	DATE: ____________________

CERTIFICATE OF AUTHORITY

I, Mark D. Harrington, do hereby certify that I am the principal legal officer of the Park City Municipal Corporation, Utah, that the Park City Municipal Corporation, Utah is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the Park City Municipal Corporation, Utah in connection with the Prospect Avenue Water and Sewer Line Replacement Project, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Agreement and that the persons who have executed this Agreement on behalf of the Park City Municipal Corporation, Utah have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this ______________ day of _____________ ___.

Mark D. Harrington
Park City Municipal Corporation Attorney

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

____
Dana Williams
Park City Municipal Corporation Mayor

DATE: ______________________________

City Council
Staff Report

Author: Colin Hilton
Subject: Police Facility Design Contract with FFKR Architects
Date: April 13, 2006
Type of Item: Award of Contract

Summary Recommendation - Staff is requesting authorization to amend an existing service provider contract with FFKR Architects, in a form approved by the Legal Department, to include design development, construction document, and construction administration services for the new Police Facility project. The amended contract amount would add $297,000 for the Police Facility to the existing approved contract amount of $548,417 for a new total of $845,417 for all four City projects.

Description:
Topic: Police Facility Design Contract

Background:

FFKR Architects, through a detailed RFQ/RFP process in August 2004 was chosen to perform the design services for four City projects: Parking, Police, Marsac Renovation and Town Plaza.

On August 26, 2004 City Council approved a Phase 1 design contract (through schematic design) in the amount of $188,786 with FFKR Architects for the Parking Structure, Town Plaza, Police Facility, and Marsac Renovation projects.

City Council then approved on December 2, 2004 a Phase 2 & Phase 3 design services contract in the amount of $548,417 for the Parking Structure, Town Plaza, and Marsac Renovation. The Police facility was left out at that time given Council direction to explore other sites out of Downtown for the public safety building.

In 2005, Staff received direction to proceed through Schematic Design of the Police Facility at the Snowcreek site. With that completed, Staff received direction at a February 16, 2006 City Council meeting to proceed with the next steps of design, given input regarding the anticipated budget requirements and green building initiatives. FFKR Architects provided design fee costs (at the rate determined in the original award of contract) and Staff is now requesting adding the Phase 2 (design development, construction document) and Phase 3 (construction administration) services for the Police Facility through an amendment to the current FFKR contract.

Analysis:

The Phase 1 contract for schematic design services totaled $188,786 for all four noted city projects. The estimated cost for the next phases (Phase 2 and Phase 3 - to now include the fees associated with the Police facility design) is $845,417.

The new design fees for the Police Facility, by Phase, are summarized below:

Phase 1 – Programming, Planning, and Schematic Design	(Complete)
Phase 2 – DD & CD creation ……………………………………………..….	$222,750
Phase 3 – Contract Admin (during construction) …………………………..	$ 74,250
Reimbursables ………………………………………………………………	no change
Police Phase 2 & 3 Design Fees =	$297,000

This now modifies the existing contract for all four City Projects by this new breakdown:

Phase 1 – Programming, Planning, and Schematic Design	(Complete)
Phase 2 – DD & CD creation……………………………………………	$593,238
Phase 3 – Contract Admin (during construction)………………………	$235,304
Reimbursable………………………………………………………………	$ 16,875
Total Estimated Design Fees =	$845,417

This represents approximately 7.5% of the estimated costs of construction.

Department Review: This report was reviewed by representatives of the Planning, Public Works, Legal and City Manager's Office.

Alternatives:

- **I. Approve the Requests: (Staff recommendation)**
- **J. Modify the Requested Actions:**
- **K. Deny the Request:**
- **L. Continue the Item:**
- **M. Do Nothing:**

Staff Recommendations:
Staff is requesting authorization to amend an existing service provider contract with FFKR Architects, in a form approved by the Legal Department, to include design development, construction document, and construction administration services for the new Police Facility project. The amended contract amount would add $297,000 to the existing approved contract amount of $548,417 for a new total of $845,417.

Attachments: Attachment A – First Amendment to the Service Provider Contract – FFKR Architects

First Amendment to Professional Services Agreement

This First Amendment to Professional Services Agreement dated December 3, 2004, between Park City Municipal Corporation and FFKR Architects is made and entered into this _____ day of March, 2006.

The TERM shall be extended to terminate no later than December 31, 2008.

The following *italicized* items shall be added to the “Scope of Services” wording under Exhibit A:

I. Services & Deliverables - The Service Provider will perform Phase 2 Design Development and Construction Document Development plus Phase 3 Construction Period Contract Administration services for the City’s Downtown Projects and *Police Facility at Snowcreek*.

III. Summary of the Work of this Agreement

1. Attachment A of this agreement describes Phase II and III design development, construction document, bidding or negotiation, and construction administration phase services to be performed by the Service Provider. Unless modified, the scope of this agreement applies to the portions of the *City* Projects know*n* as the Marsac Renovation, the China Bridge Parking Structure Expansion, the *Police Facility* and the Plaza, as shown on the approved Phase I schematic design documents, and as further defined in written review comments, meeting notes, and other written directions provided by or agreed to by Park City Municipal Corporation.

IV. Breakdown of Fees

<u>Police Facility</u>
Phase 1 – Programming, Planning, and Schematic Design (Complete)
Phase 2 – DD & CD creation ………..… $222,750
Phase 3 – Contract Admin (during construction) ……….. $ 74,250
Reimbursables …………………………………………… <u>no change</u>
Police Phase 2 & 3 Design Fees = $297,000

<u>Breakdown for all four City Projects by this new breakdown:</u>
Phase 1 – Programming, Planning, and Schematic Design (Complete)
Phase 2 – DD & CD creation …………………………….… $593,238
Phase 3 – Contract Admin (during construction)………….. $235,304
Reimbursables ……………………………………………… <u>$ 16,875</u>
Total Estimated Design Fees = $845,417

The contract amount is a not to exceed amount that includes all services necessary to perform Phase 2 and Phase 3 services as described in this agreement. Should adjustments be necessary to the overall scope of services, tasks, and fees, the two Parties will address this through written correspondence.

The total fee for the contract shall increase by **Two Hundred Ninety Seven Thousand Dollars** (**$297,000**) for a total not to exceed **Eight Hundred Forty Five Thousand Four Hundred Seventeen Dollars ($845,417)**.

All other terms of the agreement dated December 3, 2004, are in full force and effect.

CITY COUNCIL
Staff Report

Subject: **Bernolfo Family Annexation**
ANNEXATION PETITION
Date: **April 13, 2006**
Type of Item: **Legislative**

RECOMMENDATION: Staff recommends that the City Council review the annexation petition and take action to accept the petition for annexation, while maintaining a noncommittal position with regard to the annexation itself.

DESCRIPTION

Project Name: Bernolfo Family Annexation Petition
Project Planner: Kirsten Whetstone
Applicant: Bernolfo Family Partnership
Location: Metes and Bounds Parcel located off of Snows Lane, west of Thaynes Canyon Subdivision and north of the Spiro Tunnel Annexation.

BACKGROUND

On November 4, 2005, the applicant filed a petition for annexation with the City Recorder for annexation of one (1) metes and bounds parcel currently within the jurisdiction of Summit County. The application was deemed incomplete until the entire contiguous property was included in the petition. Staff received the updated annexation plat and application information on March 23, 2006. The overall property is 6.545 acres in size. The property is located directly west of the Thaynes Canyon Subdivision and north of the Spiro Tunnel Annexation (Silver Star Condominiums).
The current Summit County zoning for the property is Mountain Remote *(1 unit per 20 acres).* There is currently one single family residence, a barn, spring house, pond, and irrigation pump on the property. The applicant is requesting Estate (E) zoning which allows 1 unit per 3 acres and would allow construction of one additional single family house. The applicant has also filed a two lot subdivision application, as part of the City's annexation submittal requirements. Copies of the proposed annexation plat and subdivision plat are attached to this report.

The applicant has submitted all necessary signatures and annexation petition materials and fees according to provisions of the City's Annexation Policy Plan and Utah State Code for the initial review of the petition. An annexation plat, prepared by a licensed surveyor, has been filed. The applicant also has provided necessary notification of the intent to file the petition to the required affected entities.

ANALYSIS

The annexation petition has been reviewed pursuant to the Utah Code Annotated (UCA) Section 10-2-402 and 10-2-403. The property is a contiguous area consisting of one metes and bounds parcel totally 6.545 acres. The property is contiguous to the Park

City Municipal boundary and is located within the Park City Annexation Expansion Area, as described by the adopted Annexation Policy Plan. The proposed annexation will not create an island or peninsula of unincorporated land. The annexation petition requirements set forth in UCA 10-2-403 have been met.

After determining that the annexation petition application is complete pursuant to the City's Annexation Policy Plan, staff scheduled this petition for City Council acceptance or rejection at its first regularly scheduled meeting, thereafter.

Municipal annexation is a legislative act governed procedurally by Utah state law. Once the annexation petition is filed with the City Recorder, the petition (not the annexation) is presented to the municipal legislative body for acceptance or rejection. Because annexation is a legislative act, the Council has broad discretion to accept or reject the petition.

The Council should use the General Plan to evaluate the petition. The Council decision can not be arbitrary, capricious, or illegal. Acceptance or denial of the petition is not straight forward in the case of this property. The Council can also consider whether the annexation allows a logical extension of City services.

The General Plan identifies this area "Park City Resort/West Hill" as having pods of developable area where the majority of development should occur within or immediately adjacent to existing City limits, at the base of the ski area. The Plan also identifies concerns regarding placement of development to avoid wetlands, critical wildlife areas, impacts of view sheds, as well as prevent development creep up the canyons and valleys along the west side. The General Plan encourages development of trails in this area, including securing connections to other trails in and around Park City. Additionally, the Plan states the following, "Allow additional residential and ski area development only if there is no net negative impact on existing City streets."

A portion of the Thaynes Canyon subdivision (8 single family houses on Kings Court) is immediately adjacent to the east of the subject property.

There may not be a compelling reason to annex and allow subdivision of this one 6.5 acre property into two lots, simply to create a development lot for one new house. This could be considered a piecemeal annexation of a small property, which the Annexation Policy Plan discourages. It may be preferable to consider annexation of the adjacent properties at the same time. However, these adjacent properties are under different ownership and it may not be timely or necessary, considering the scale of the immediate request, for the current petitioner to become involved in a discussion of the greater area.

In terms of a logical extension of services, most of the services provided to this property, with the exception of possibly water and police (sheriff) protection will not change. The existing road (Snow's Lane) and the proposed access and utility easement through the Spiro Tunnel Annexation are private and not maintained by the City.

Extension of water, sewer, power, etc. are proposed through the Spiro Tunnel Annexation property in the form of a private agreement and are not proposed to be developed in Snow's Lane. There may be a benefit to the Sheriff's Department and it may be logical for City Police to respond to calls at this property.

Staff believes there would be benefits to discussing implications of the annexation in greater detail and therefore recommends acceptance of the petition to allow these discussions to occur.

It is important to note that a decision to reject the petition ends the annexation process, while a decision to accept the petition allows the process to continue for further consideration via the certification and subsequent public hearing process and allows for a full review of the implications of the annexation to the City in terms of access, extension of city services and utilities, zoning, impacts on surrounding properties, potential trail connections, open space, etc.

Acceptance of the petition does not represent final action or approval of the annexation or proposed subdivision plat. As Snow's Lane is a private street there may be an access issue for a new lot, which has not been resolved at this time, although a private access and utility easement to the property was negotiated and recorded as part of the Silver Star (Spiro Tunnel MPD) plat. The existing house gains access via an existing easement agreement over Snow's Lane. This easement will need to be reviewed in greater detail. There are also potential water, utility, and trail connection issues which require additional study.

If the Council accepts the petition, then a 30-day certification review process will commence wherein Staff will determine whether the petition meets all requirements of Utah State Code Sections 10-2-403(2), (3), and (4). If staff determines that the petition meets these requirements, then the City Recorder will certify the petition and commence the public notification and hearing process. If staff determines that the petition fails to meet any of the statutory requirements, then the City Recorder will reject the petition and deliver written notification of rejection to the applicant and other parties required by state law. The applicant then will have the opportunity to modify the petition to correct the deficiencies for which it was rejected and re-file the petition with the City Recorder.

Alternatives: It is important to note that pursuant to Utah State Code Section 10-2-405(1)(a)(i)(B), if the Council does not take action on this annexation petition at its first regularly scheduled meeting that is at most 14 days after the date the petition (amended) was filed and determined complete, then the annexation petition shall be considered accepted for further consideration. Accordingly, taking no action and/or continuing this item are not options available to the Council; either action represents acceptance of the petition. Council alternatives include:

1. Accept the annexation petition for further consideration, thereby triggering the 30-day certification review process;
2. Reject the annexation petition, thereby ending the annexation process; or

3. Do nothing or continue the item. Pursuant to state law, the annexation petition is considered accepted for further consideration, thereby triggering the 30-day certification review process.

RECOMMENDATION
Staff recommends the Council accept the petition for annexation.

EXHIBITS
Exhibit A- Proposed Annexation Plat
Exhibit B- Proposed Subdivision Plat
Exhibit C- Utility map
Exhibit D- Vicinity Map
Exhibit E- Letter from Alliance Engineering

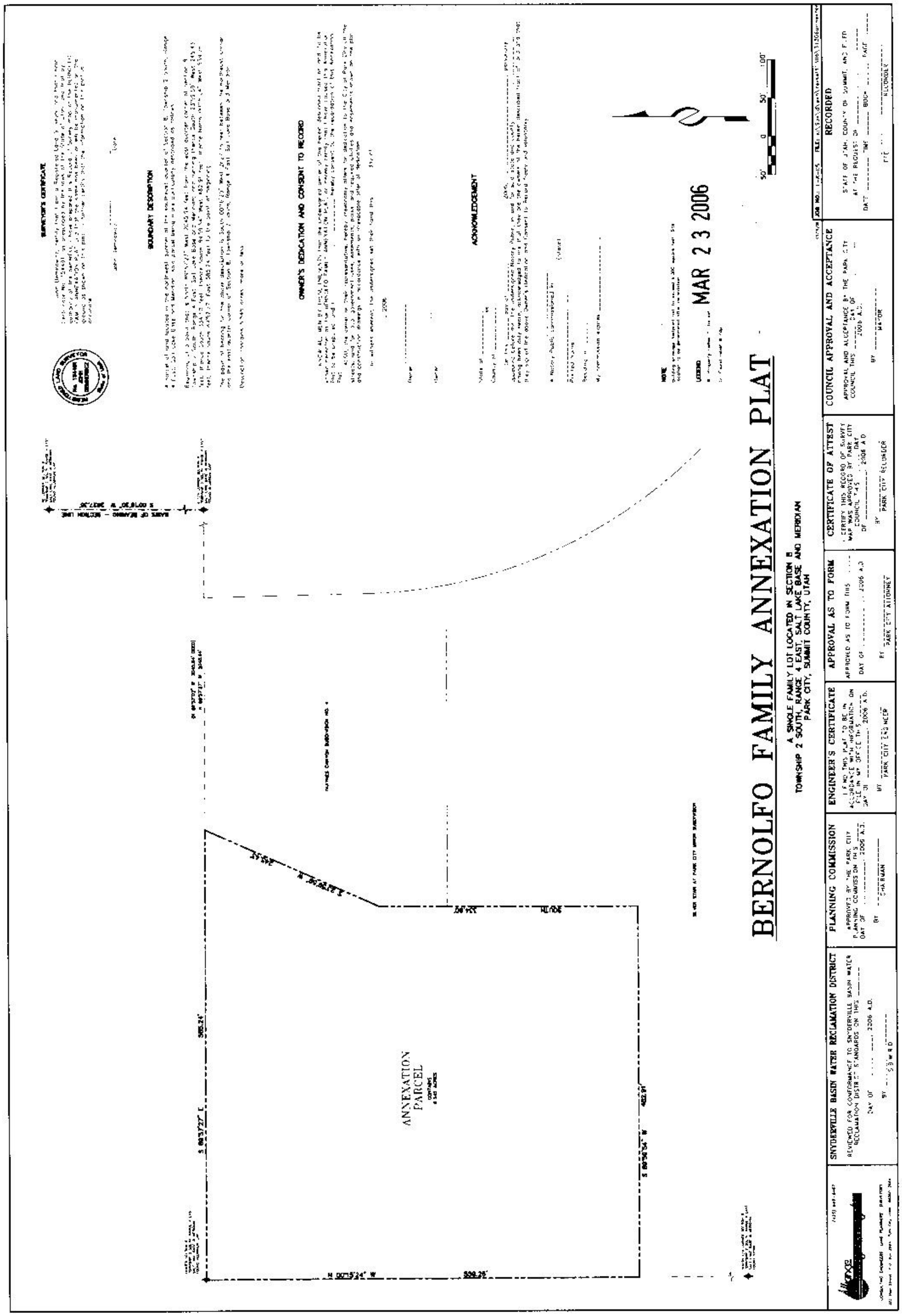

BERNOLFO FAMILY ANNEXATION PLAT
A SINGLE FAMILY LOT LOCATED IN SECTION 8
TOWNSHIP 2 SOUTH, RANGE 4 EAST, SALT LAKE BASE AND MERIDIAN
PARK CITY, SUMMIT COUNTY, UTAH
MAR 23 2006
ANNEXATION PARCEL
SURVEYOR'S CERTIFICATE
BOUNDARY DESCRIPTION
OWNER'S DEDICATION AND CONSENT TO RECORD
ACKNOWLEDGEMENT
SNYDERVILLE BASIN WATER RECLAMATION DISTRICT
PLANNING COMMISSION
ENGINEER'S CERTIFICATE
APPROVAL AS TO FORM
CERTIFICATE OF ATTEST
COUNCIL APPROVAL AND ACCEPTANCE
RECORDED

Exhibit B

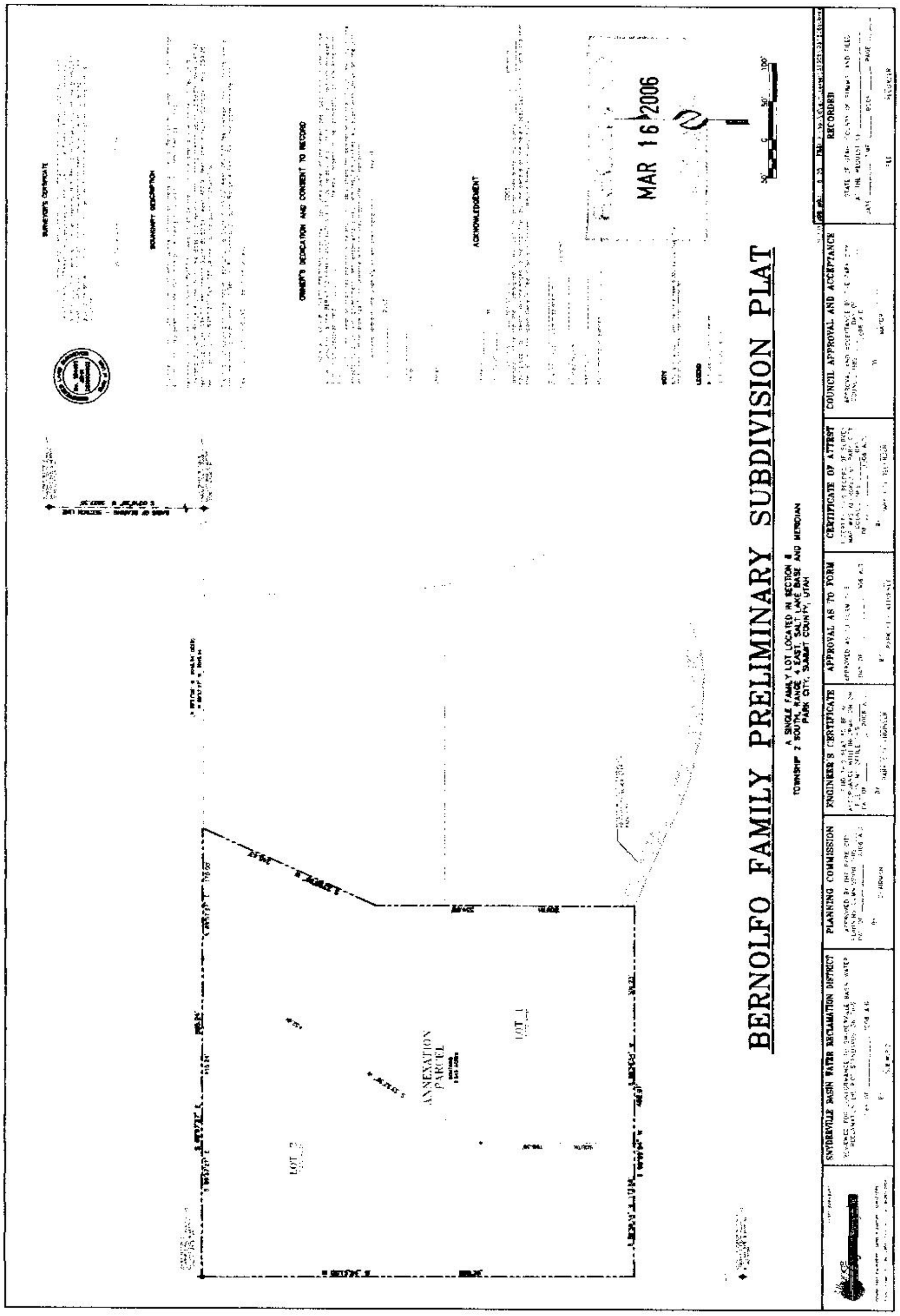
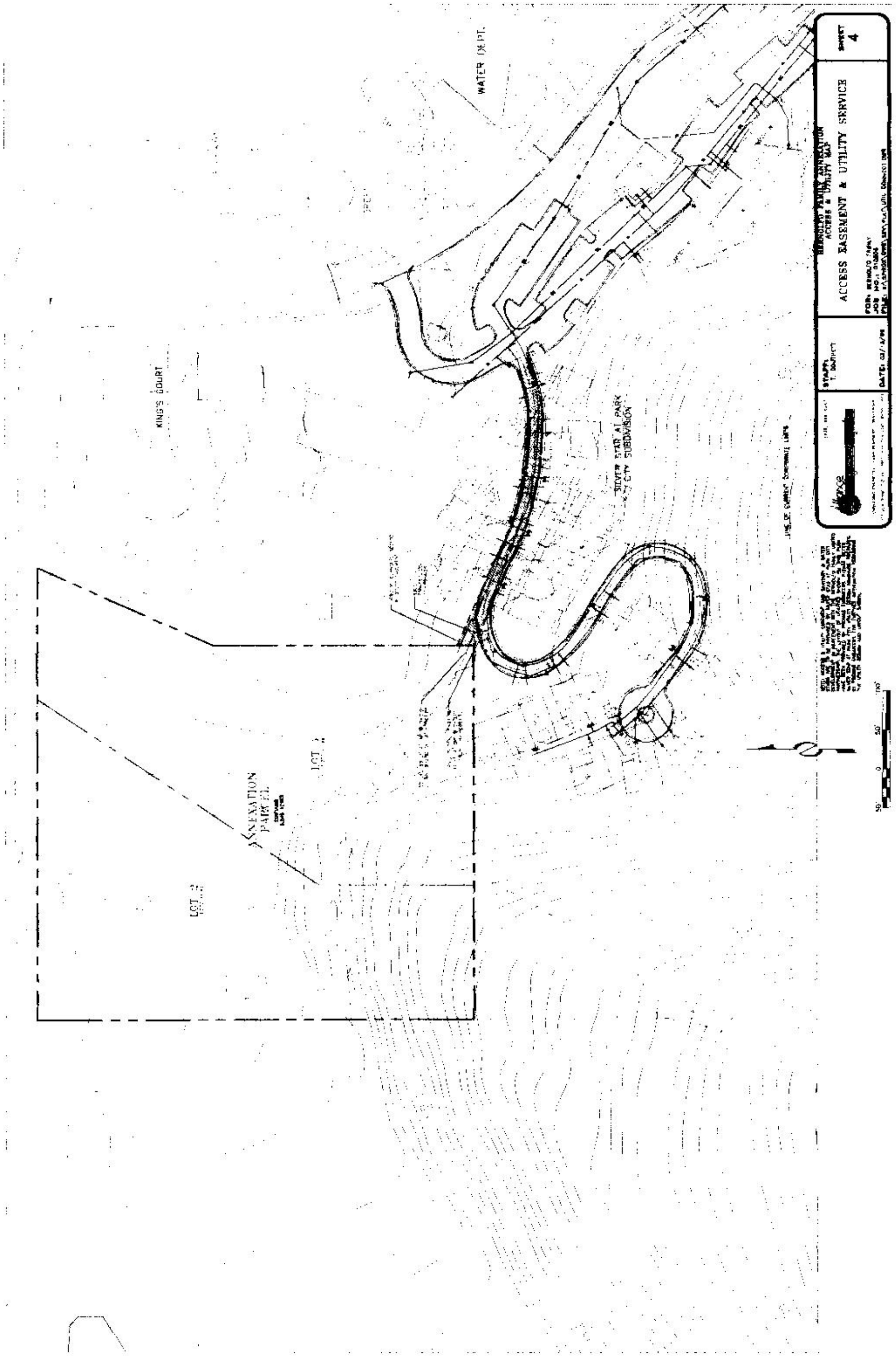

BERNOLFO FAMILY PRELIMINARY SUBDIVISION PLAT
A SINGLE FAMILY LOT LOCATED IN SECTION 4
TOWNSHIP 2 SOUTH, RANGE 4 EAST, SALT LAKE BASE AND MERIDIAN
PARK CITY, SUMMIT COUNTY, UTAH
MAR 16 2006
ANNEXATION PARCEL
LOT 1
LOT 2
SURVEYOR'S CERTIFICATE
BOUNDARY DESCRIPTION
OWNER'S DEDICATION AND CONSENT TO RECORD
ACKNOWLEDGEMENT
SNYDERVILLE BASIN WATER RECLAMATION DISTRICT
PLANNING COMMISSION
ENGINEER'S CERTIFICATE
APPROVAL AS TO FORM
CERTIFICATE OF ATTEST
COUNCIL APPROVAL AND ACCEPTANCE
RECORDED

Exhibit C



ACCESS EASEMENT & UTILITY SERVICE
SHEET 4
WATER DEPT.
KING'S COURT
SILVER STAR AT PARK CITY SUBDIVISION
ANNEXATION PARCEL
LOT 1
LOT 2

Exhibit D

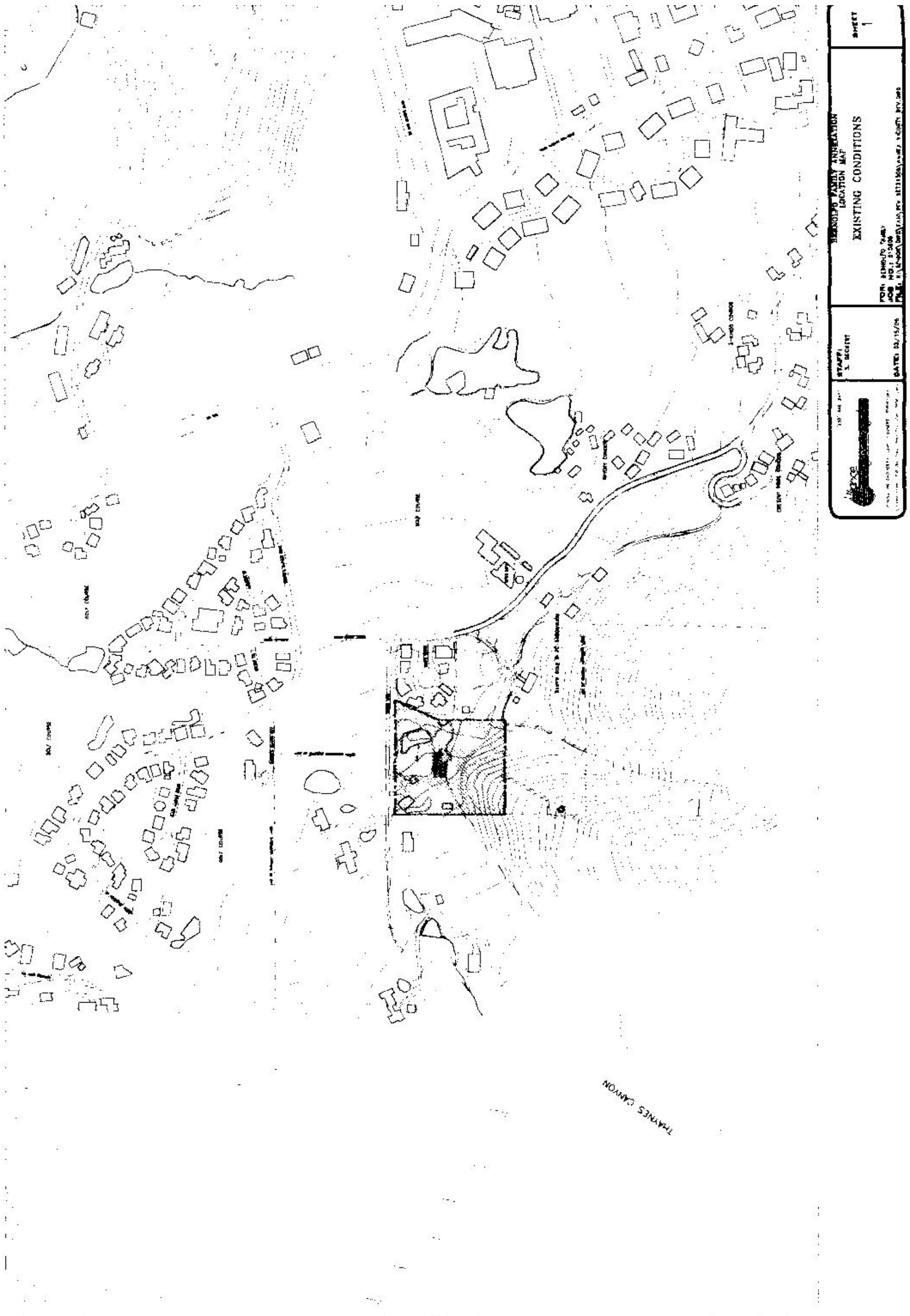


Exhibit E

Alliance
Engineering Inc.

March 15, 2006

Ms. Kirsten Whetstone
Senior Planner
Community Development Department
Park City Municipal Corporation
P.O. Box 1480
Park City, Utah 84060-1480

RE: ROTHWELL FAMILY ANNEXATION PETITION – REVISED - SNOWS LANE
(Previously 'Bernolfo Family' Annexation Petition)

Dear Kirsten:

Please find enclosed herewith revised materials to our initial application for the Rothwell family property, owned by a Family Limited Partnership, located on Snows Lane in Summit County and adjacent to the Silver Star at Park City Subdivision and the Thayne's Canyon Subdivision No. 4.

This current request includes all of the Rothwell family property (6.545 acres) to be annexed into the city limits. The intent is to subdivide the property into two equal meets and bounds parcels. There is an existing family house on the proposed westerly parcel which is accessed via Snows Lane. Hank Rothwell has recently met with Mr. Mel Armstrong about annexing all of the subject property to Park City. Mr. Armstrong indicated he would not object to the annexation and would allow access to the existing house for the present and into the future. The access to the existing house is a prescriptive right created by decades of use.

It is also the objective of this proposed subdivision and annexation to create the opportunity to develop a single family home on the proposed easterly parcel at some point in the future under the Estate Zone for the other sibling in the family partnership. It is their intention to give both siblings the ability to live on the property in their respective houses once the approval has been granted. The property has historic and legal access through the old UPCMC Spiro property now known as Silver Star. The developers of the Silver Star subdivision have agreed to and are presently improving and platting the utility services and access way necessary to serve this home site. This access was formalized on the Silver Star Plat.

323 Main Street **P.O. Box 2664** **Park City, Utah 84060** **435-649-9467** **FAX 435-649-9475**

Please call if you have questions or need further clarification on this annexation application.

Yours Truly,

ALLIANCE ENGINEERING, INC.

Tracey M. Douthett
Planner/Landscape Architect

td:TD x:\ae\docs\misc\bernolfoannexation2.doc