

**PARK CITY COUNCIL MEETING
SUMMIT COUNTY, UTAH
MARCH 26, 2009**

PUBLIC NOTICE IS HEREBY GIVEN that the City Council of Park City, Utah will hold its regularly scheduled meeting at the Library and Education Center, Room 205, 1255 Park Avenue, Park City, Utah for the purposes and at the times as described below on Thursday, March 26, 2009.

Closed Session with lunch

1:00 p.m. Property and personnel

Work Session

4:45 p.m. Council questions/comments

5:00 p.m. Legislative update

5:10 p.m. Bonanza Drive overview:

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(a) Staff update

(b) Public input

(c) Discussion

5:50 p.m. Break

Regular Meeting

6:00 p.m.

I ROLL CALL

II COMMUNICATIONS AND DISCLOSURES FROM COUNCIL AND STAFF

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

**IV APPROVAL OF MINUTES FROM MEETINGS OF FEBRUARY 26, 2009,
MARCH 3, 2009 AND MARCH 12, 2009**

P. 12 - 38

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

1. Consideration of a Resolution declaring April 2009 as Fair Housing Month in Park City, Utah

P. 39

2. Consideration of a Resolution authorizing an amendment to a First Supplemental Indenture of Trust dated March 1, 2005 (the "First Supplemental Indenture"), supplementing a General Indenture of Trust, dated March 1, 2005, pursuant to which the City of Park City, Utah issued its Sales Tax Revenue Bonds, Series 2005A and Series 2005B; said amendment to be accomplished by the execution and delivery of an amending supplemental indenture herein authorized, supplementing and amending the

First Supplemental Indenture, and related documents in connection therewith; and related matters P. 40 - 60

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

1. Consideration of Ordinance approving the Racquet Club Subdivision, located at 1200 Little Kate Road, Park City, Utah P. 61 - 66

(a) Public hearing

(b) Action

2. Consideration of authorization to purchase 63 radios, accessories and an extended warranty from Motorola Inc., in a form approved by the City Attorney, in the amount of \$115,519 for Public Works Operations, Water, Building and Public Works Administration P. 67 - 89

3. Consideration of award of contract, in a form approved by the City Attorney, to R & O Construction in the amount of \$3,232,490 for the construction of the Snow Creek Cottages, 2060 Park Avenue, Park City, Utah P. 90 - 108

4. Consideration of award of a Special Service Contract, the a form approved by the City Attorney, in the amount of \$70,354 to Elliott Work Group for construction administration for the Snow Creek Cottages P. 109 - 124

VII OLD BUSINESS (*Continued items*)

Consideration of an Ordinance approving a plat amendment for the Main Street Mall, located at 333 Main Street, Park City, Utah P. 125 - 137

(a) Public hearing

(b) Action

VIII ADDITIONAL DISCUSSION – AGENDA ITEMS

IX ADJOURNMENT

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

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: 03/23/09

See: www.parkcity.org

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

March 2009

31 *Community Visioning - Community Kick-off*

April 2009

1 & 2 *Community Visioning - living room Sessions*

2 **Liza gone**

Quarterly update - work

LMC Code Amendments governing Steep Slope CUP – work

Consideration of a Resolution adopting an Identity Theft Prevention Program;
appointing an Oversight Committee; and authorizing the City Manager to approve
modifications to the Program as needed

Consideration of Letter of intent – PC Foundation website

Consideration of Award of contract for automated meter reading program

Consideration of award of Service Provider agreement with Alliance Engineering for the
Little Kate Sidewalk project

9 **Tom gone (Phyllis acting City Manager)**

Colors of success – public input

LMC Code Amendments governing Steep Slope Conditional Use Permits

Consideration of award of architectural design contract for the Ironhorse
expanded transit storage and maintenance facility

16 **No meeting**

17 *Quarterly manager's meeting (8 a.m. – 1 p.m.)*

23 PC Heights annexation

30

May 2009

7

14 **No meeting – Dana gone**

21

28

June 2009

4

11 **Liza gone**

18

25

Pending Items:

Ordinance amending Municipal Code Titles 1 and 2

Racquet Club Cost Recovery

Sergio ice cream franchise - PM

Amendment to fee resolution - GRAMA

Water supply and demand

Resolution amending (or replacing) Resolution No. 20-07, adopting Affordable Housing
Guidelines and Standards for Park City, Utah

Carrying capacity/market analysis survey

Wild land interface issues



City Council Staff Report

Subject: Design Discussion for
Bonanza Drive Reconstruction Project
Author: Matthew Cassel, P.E., City Engineer
Department: Engineering
Date: March 26, 2009
Type of Item: Project Update

Summary Recommendations:

This report is informational. The preliminary design for Bonanza Drive is nearly complete and will be reviewed with City Council to ensure the design is consistent with policy objectives.

Background:

In August 2007 H. W. Lochner was hired by Park City to develop a corridor and pedestrianization plan for Bonanza Drive. The purpose of the plan was to outline and prioritize short-term and long-term improvements for roadway, bicycle and pedestrian facilities along Bonanza Drive. The plan aimed to improve traffic flow, improve intersection operations throughout the corridor and provide bicycle/pedestrian access and safety. The plan provided short-term recommended improvements (2009 – 2016) and long-term recommended improvements (2016 – 2030). This project addresses the short-term recommendations.

On October 30 2008, H. W. Lochner was approved to start and complete the design of the recommended elements from the Plan. Bidding is anticipated to occur in early summer with construction to occur during the second half of the 2009 construction season and all of the 2010 construction season. Along with the design of the recommended facilities, the contract with H. W. Lochner includes providing environmental, survey and geotechnical services and most importantly preparing and implementing a Public Involvement process.

The design includes raised medians along Bonanza Drive, installation of conduits and wiring for a traffic signal at the Bonanza Drive/Iron Horse intersection, acceleration lanes at Prospector Avenue, “no left turn” restrictions, Bicycle lanes, northbound bus pull-out, trail connection including a pedestrian tunnel at the Iron Horse intersection, mid-block pedestrian crossing, consistent 6 foot wide sidewalks, speed limit feedback signs, right turn lane at Iron Horse and lengthened southbound left turn lane at Deer Valley Drive. As part of this work, the existing sewer line will be relocated due to the pedestrian tunnel and replaced to SR-248, the existing water line will be relocated due to the pedestrian tunnel and a new distribution water line will be installed.

The waterline is being designed by Bowen, Collins & Associates through their contract with the City’s Water Department and incorporated into the construction plans. The sewer is also being designed by Bowen, Collins and Associates in a separate contract

with Snyderville Basin Water Reclamation District (SBWRD) and incorporated in the construction plans.

Project Status:

The design kick-off meeting was held on December 17, 2008 and has progressed. On February 9, 2009, a key milestone meeting was held with UDOT to review the project and make adjustments to the design as needed. The design is approximately 30% complete and is close to being on schedule.

Analysis:

As part of this staff update, we have provided additional analysis on the previous studies, discussion about the proposed medians, traffic light at the Iron Horse/Bonanza intersection, Construction phasing and the ongoing public involvement process.

Previous study – A study of Bonanza Drive was completed by InterPlan Co. in late 2006/early 2007. This study evaluated the traffic capacity along the route in order to determine capacity improvements. H.W. Lochner used this study to develop the Bonanza Drive Corridor and Pedestrianization Plan completed in January 2008. InterPlan used a Level of Service (LOS) system to rate and evaluate the operation of Bonanza Drive and the corresponding intersections and drive accesses. The ranking is as follows:

- LOS A – Free flow operation,
- LOS B – Reasonable unimpeded operation,
- LOS C – Stable operation (point just prior to traffic delay),
- LOS D – Small increase in flow may cause substantial delay (congestion begins),
- LOS E – Operates with significant delays, and
- LOS F – Operates with extremely slow speeds and/or intersection failures

A LOS D is a reasonable threshold to plan for along Bonanza Drive. Attached to help understand Bonanza Drive's condition is the 2006 (Figure 1) and anticipated 2011 (Figure 2) LOS for Bonanza Drive as determined by InterPlan. According to the 2006 analysis, Prospector Avenue was in failure mode and the Iron Horse intersection was nearing failure. With the anticipated increase in traffic along the Bonanza Drive corridor, InterPlan's analysis indicated that by the year 2011 the Prospector intersection, entrance drive into the Park City Plaza, the Munchkin intersection and Iron Horse intersection would all be in failure and the intersection of Kearns Boulevard and Bonanza Drive will be nearing failure.

Failure of an intersection means the wait time to travel through and clear the intersection has become significant enough that drivers will explore alternate routes and alter their travel patterns away from the area. This could result in traffic being diverted onto other roads and away from the local businesses along the Bonanza Drive corridor. It is also likely that accidents and conflicts with pedestrians would increase, and that intersections and wait times would back-up even further.

Purpose of the medians – The initial design concept for Bonanza Drive included the installation of a raised median. Controlled left turns would be permitted only at the intersections of Prospector, Munchkin and Iron Horse. This concept also did not allow left turns into and out of Upper Iron Horse Loop and Park City Plaza. Raised medians provide several safety benefits. They physically separate opposing directions of travel and control left turns and other movements across the median translating into fewer conflicts, greater safety and more uniform arterial speeds. It is generally recognized that raised medians reduce delays and improve traffic operations. Additionally, pedestrian traffic is generally improved when a center median provides a refuge. Improved sidewalks and bike lanes will be added to Bonanza Drive as part of this project. The addition of these elements will increase the corridors use by non-motorized users. A fine balance needs to be found between the businesses needs, road uses and increased safety for pedestrians and bicyclists. The medians intent is to help with this balance by controlling the location of the left turns into the multitude of drives and side roads while providing more efficient use of the remaining available left turn locations.

During the public outreach, Staff learned that it will not be possible to unlock the closed gate located on the east site of Iron Horse loop. In addition, business owners located in Park City Plaza expressed concern that the inability to turn left into and out of their parking lot would be detrimental to their existing businesses. Staff and consultants have had numerous meetings on these issues in an attempt to arrive at a design solution that balances local resident and business concerns against travel safety and traffic flow. Staff recommends eliminating the median along Bonanza Drive in front of the Park Plaza shopping center and modifying the median adjacent to Upper Iron Horse Loop Road so residents can turn left into and out of this side road. Staff remains concerned that these modifications will reduce the effectiveness of the Prospector intersection as well as increase potential for vehicle and pedestrian accidents. Staff further recommends that turning activity, vehicle conflicts and traffic flow along Bonanza Drive be monitored once the road work is complete. Should there be evidence of increased problems without the raised median, Staff will return to Council with the data and possibly a request to install the median in the future.

Traffic light at the intersection of Iron Horse and Bonanza – As part of this project, signalization of the Iron Horse Drive and Bonanza intersection is being evaluated. H.W. Lochner has studied this intersection and found that it does warrant a signal but only during the P.M. peak hours of traffic. Even though the projects stakeholder committee and numerous local shop owners are requesting the signal light to be installed with this project, at this time we are planning to only install the conduit and wiring for a future signal light. Once Bonanza Drive is complete, we will evaluate the traffic movements through the intersection and then determine the appropriate time to install the signal light. If Council agrees, we will continue on this path.

Construction scheduling/phasing – It is anticipated to complete the construction over the next two construction seasons. Road construction from Deer Valley Drive to just south of Iron Horse Drive would be started this July and completed this season. Additionally,

the waterline would be completed this season with the section from Iron Horse Drive to across SR-248 to be installed and completed after Labor Day.

The second construction season would include the completion of improvements along Bonanza Drive from just south of Iron Horse Drive to SR-248. The pedestrian tunnel will be constructed during this second season of construction. Between the peak periods between Memorial Day and Labor Day, road construction will be broken down into small sections and one section will be completed before the next adjacent section can be started. Larger sections of construction will be worked on during the spring before Memorial Day and during the fall after Labor Day.

This construction phasing was developed to minimize major road and driveway closures along Bonanza Drive. The goal to phasing the construction was to perform large sections of the work during the slower months of April, May, September and October while minimizing road impacts during the summer months. Except for the intersection of Iron Horse Drive and Bonanza Drive, through traffic will to be maintained when possible during construction.

Public involvement/Business promotion - Public involvement for the project is broken down into two phases; design and construction. The design phase is currently under contract with Fehr and Peers as a sub-consultant to H.W. Lochner. The Public Involvement plan includes:

- Creation of a stakeholder committee. This committee will meet twice during the design phase of the project. The first stakeholder meeting was held on January 26. The next meeting is scheduled for March 25.
- Conduct one-on-one meetings with local shop/land owners. These meetings are held to provide concerned owners an opportunity to ask questions and provide suggestions in a more interactive level,
- Conduct two public meetings (open houses). The first open house was held on February 17. The second open house will be held when the design is approximately 90% complete, and
- Create a website on UDOT's web page providing information on the project.

When a construction engineering manager is selected for the construction phase of this project, a public involvement/business promotion plan will be developed. Numerous ideas have been suggested for the construction phase of the project including:

- Conduct a public meeting just before construction starts,
- Create a website that provides information such as project schedule, future anticipated closed sections of road, etc,
- Provide daily one-on-one updates for those businesses requesting the service, and
- Create a marketing plan which helps the general public understand that the area is still open for business.

Department Review:

This report has been reviewed by City Manager, Planning, Public Works, Sustainability, and Legal. All issues have been resolved.

Recommendation:

This report is informational. The preliminary design for Bonanza Drive is nearly complete and will be reviewed with City Council to ensure the design is consistent with policy objectives.

Exhibit A – 2006 PM Peak Level of Service Map, 2011 PM Peak Level of Service Map, Bonanza Drive Proposed Improvements Drawing



BONANZA DRIVE PROPOSED IMPROVEMENTS

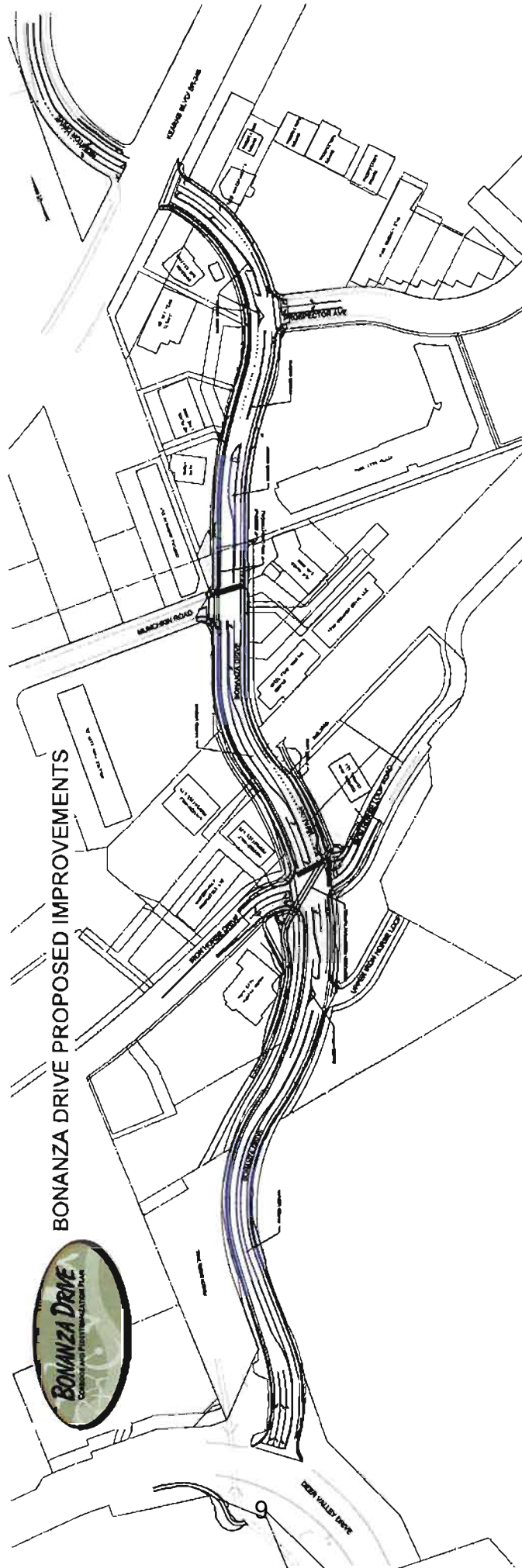


Figure 7: 2006 PM Peak Adjusted and Balanced with Level of Service and Travel Time

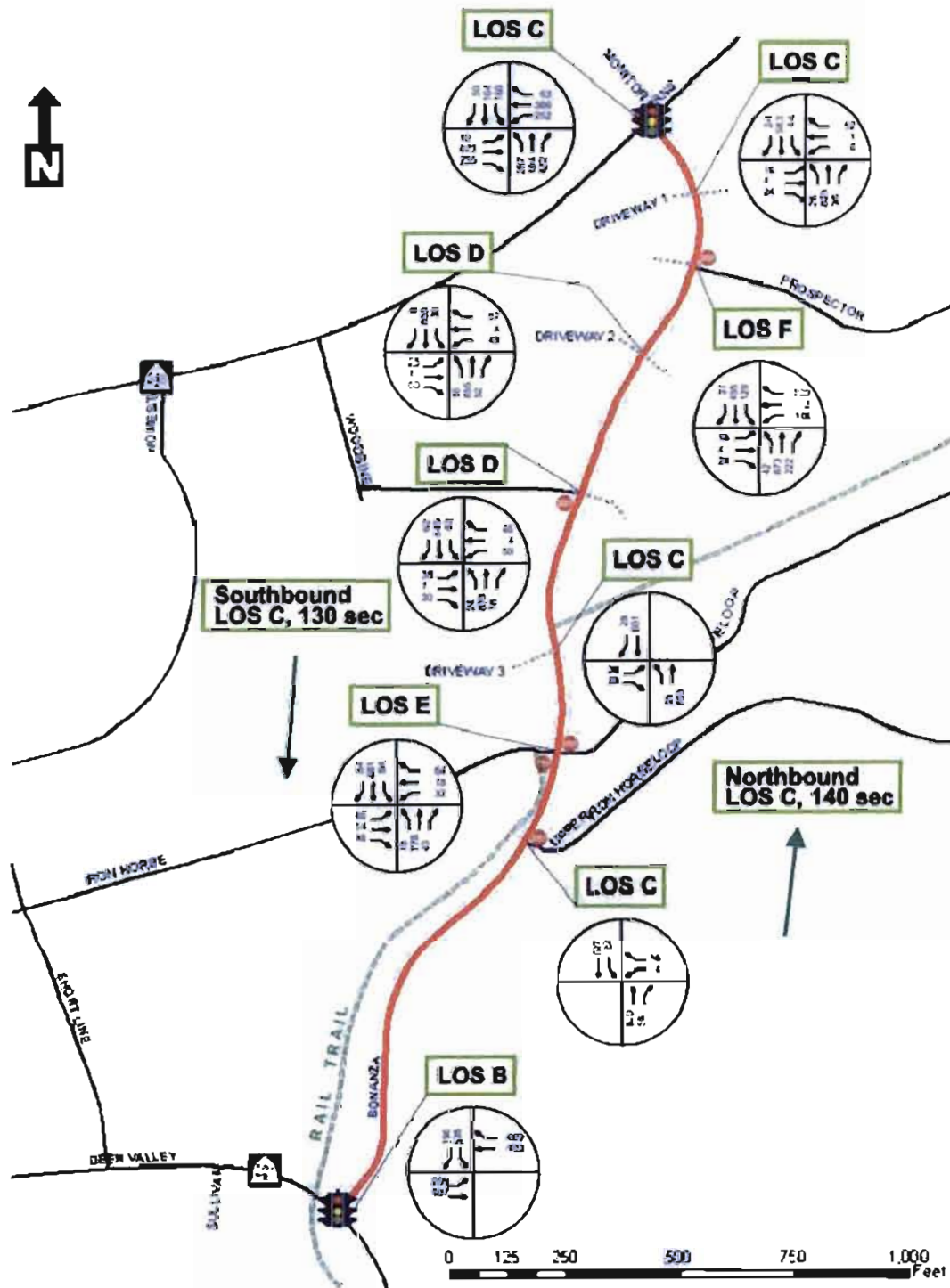
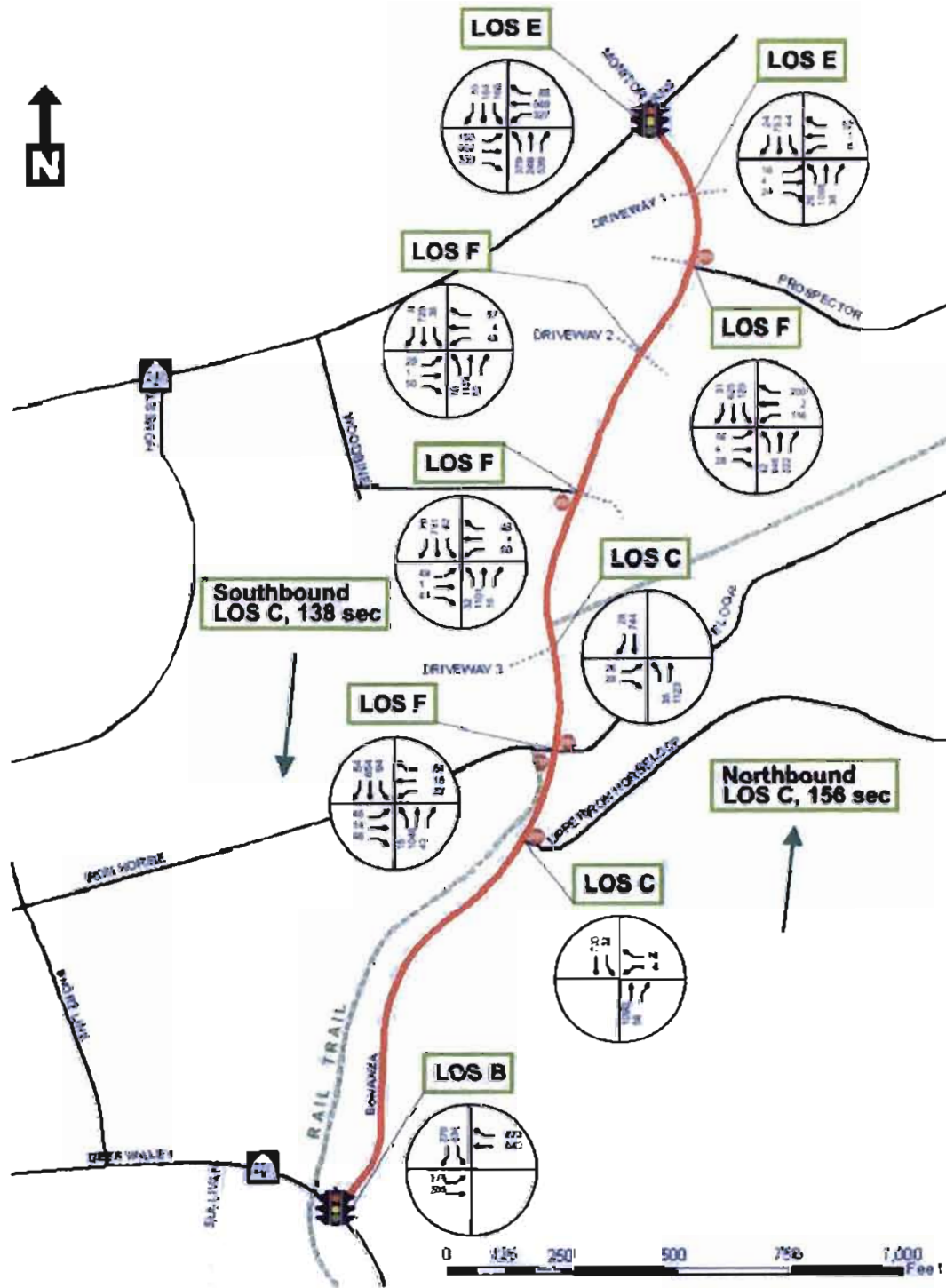


Figure 8: 2011 PM Peak Adjusted and Balanced with Level of Service and Travel Time



**PARK CITY COUNCIL WORK SESSION NOTES
SUMMIT COUNTY, UTAH
FEBRUARY 26, 2009**

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

Tom Bakaly, City Manager; Mark Harrington, City Attorney; Roger Evans, Building Inspector; Ken Fisher, Recreation Manager; Matt Twombly, Project Manager; Matt Cassel, City Engineer; Wade Carpenter, Chief of Police

Brent Tippetts, VCBO

1. Council questions/comments. Liza Simpson commented on the Planning Commission meeting. Jim Hier reported on a Ski Utah meeting where resorts indicated that they are down but not significantly. The Chamber/Bureau Board met on Tuesday and discussed the drastic decrease in conference business. Candace Erickson stated that she attended the Bonanza Drive open house and one of the biggest concerns expressed by tenants in the Park City Plaza was eliminating the left hand turn. The Board of Health met on personnel and budget and is looking at a deficit of \$187,000 per year. She relayed Recycle Utah's appreciation of additional space provided at the Public Works facility. Joe Kernan pointed out the dangerous condition of the run-away truck lane. He discussed the interagency meeting where growth projections of the School District and potential County projects were shared. The Mayor noted that the City will be participating in a competition with other western towns to eliminate the use of plastic bags and the local grocery stores have expressed support. He discussed the productivity of the carbon footprint committee.

2. Legislative update. Tom Bakaly explained that HB241, priority of water rights, deals with water rights in times of scarcity as it relates to agriculture; the enactment date has been delayed a year. HB274 is an impact fee bill which would basically preclude the ability of cities to charge impact fees to state agencies for parks and open space. He explained elements of HB394 and SB211 dealing with the Uniform Building Code Commission. Roger Evans from the Building Department explained the current process for amending the UBC through the Commission which works well and the proposal to bring code amendments to the state legislature which is widely opposed. He also addressed HB394 regarding the change of the membership of the Commission. Jim Hier interjected that he has served on the board for six years and the local and state officials are some of the most dedicated people he has ever worked with and the system is working well. He strongly opposed both bills as did the rest of the Council. Mr. Bakaly stated that SB56 and SB215 deal with revisions to MIDA, which is a military installation development authority. This was initiated in the Ogden and Clearfield areas last year as a way for the state to take advantage of economic development with land

that is not being used. The proposed legislation would allow MIDA to consider projects on private land. He recommended taking no position at this point until more is known. The Mayor expressed his disappointment at the legislature's rejection of the Governor's climate change initiative. Tom Bakaly spoke about the state's budget shortfall and the proposal to pull Park City's approved \$10 million interest free water loan which will result in added interest payment costs for the water line project.

3. Racquet Club remodel – presentation by VCBO. Ken Fisher referred to his staff report and requested Council direction relating to the tennis building, restaurant options, and the four way stop. In July 2008 the Council approved \$8 million for Phase 1 plus \$460,000 to rebuild seven outdoor tennis courts. Another \$2 million was budgeted for a future phase of improvements. Of the \$10.460 million only \$7.6 million is currently available creating a shortfall of about \$2.8 million which was originally contemplated to be funded with General Fund surplus. In September 2008, the City Council approved a contract with VCBO Architecture for the remodel of the facility and asked that the design process begin from scratch and include some additional recreational amenities, i.e., walking/jogging track, rock climbing bouldering feature. Mr. Fisher explained that these elements were incorporated in the design. The original plan was to leave the existing gymnasium and tennis building which was upgraded in 1994 with a new higher weight bearing roof but still not meeting building code. He introduced Brent Tippetts of VCBO.

Mr. Tippetts felt that the plan was revisited and the new elements incorporated. Option 1 represents what was approved in July 2008 which included demolishing everything at the Racquet Club except the gym and the tennis building and replacing the structure to the west side of the building and to the south. Through a PowerPoint presentation, he detailed the floor plan. Option 1 replaced what is there now; there is no running track or climbing wall, but meets the original budget.

He reviewed Option 2 which is a proposal to wrap the building around the existing tennis facility, leaving the gymnasium and tennis structure in tact. The upper level has a walking track that goes all the way around the tennis building as well as a climbing wall but the integrity of the tennis building is a problem. This option exceeds the approved budget at the \$10 million mark and Brent Tippetts emphasized the need for costly structural upgrades.

He stated that staff is recommending Option 3 which leaves the existing gym in tact but takes away all other structures. The outdoor pools will not be changed and the addition was described in detail, including the new indoor tennis courts. The climbing wall and walking track are included and the plan will accommodate future expansions. Option 3 allows for more flexibility, sustainable operation, and will meet all building codes. Mr. Tippetts stated that this is budgeted at \$10.5 million. Mr. Hier felt that there is actually a \$4 million shortfall since the budget was initially \$6 to \$6.5 million. Ken Fisher explained that \$8 million was budgeted for Phase 1 and out of that, \$6.2 million was funded with actual money on hand and \$1.3 million was anticipated to be funded with General Fund surplus. Roger Harlan pointed out that construction costs may be less

than anticipated and Mr. Tippetts responded that construction costs were based on recreation facilities built in the recent past. There are many unknowns about the economy and when the project will be bid and Mr. Tippetts indicated that he did not feel comfortable projecting reduced construction costs. Liza Simpson believed this information would be helpful and Mr. Tippetts explained that unfortunately there are no good models to use.

Candace Erickson commented that even in consideration of the upgrades, the building is not ADA or building code compliant and she believed the project should be done right. The tennis building should be razed and the project should be built at a higher energy standard. Maintaining the old indoor tennis facility is ridiculous and other portions of the Racquet Club are unsafe; she encouraged moving forward with the design removing the tennis structure. As much as she likes having a restaurant in the building, she is unsure if it is affordable because of the square footage cost. The entrance of the building should tie into the location four way stop.

Jim Hier stated that it seems odd that the best design wraps around the tennis building and prohibits phased or modular approaches, especially given the funding shortfall. Brent Tippetts explained that the three schemes presented are not the only ones that have been studied. The issue involves including a track which has a large footprint and the site is tight. Mr. Hier asked if finding another site might be more appropriate since the entire building is being redesigned. Ms. Erickson pointed out that 53% indicated a preference to keep recreation at the same location. Jim Hier stated that he is not comfortable moving ahead with these costs. Roger Harlan indicated that he supports a plan with expanded programming including the track, fitness room, and tennis. Joe Kernan recalled that he supported the additional \$2 million because it represented additional programming for more users. He hoped that goal can still be accomplished within the former budget amounts perhaps through phasing and that the climbing wall and running track can be incorporated.

Liza Simpson stated that she agrees with many comments made by members and emphasized that phasing is vital in these challenging economic times but she is still committed to the project. Mayor Williams suggested focusing on what can be done with the \$7.6 million secured for the project and capping the first phase at this amount. Ken Fisher advised that the project will not be bid until February 2010 at the earliest. Mr. Hier believed the project should be phased and funded accordingly. Matt Twombly pointed out that every component of the Racquet Club is attached to the tennis facility so phasing is difficult. Mayor Williams referred to other important projects needing attention like the water pipe line project. Tom Bakaly suggested directing the architects to take a look at a phased and/or modular project. In the long run, it may be more expensive but would allow more time for staging and prioritizing. Liza Simpson expressed the importance of a quality project but the budgets for this year and next year are unknown. She preferred spending money in the long term and having the ability to prioritize projects based on actual numbers and be in a position a year from now to make commitments. Phasing the project offers a number of benefits. Roger Harlan felt

there should be clarity in the strategy for identifying specific improvements in the phasing plan.

Ken Fisher asked if members feel comfortable moving ahead with the first phase budgeted at \$7.6 million. Members agreed and Jim Hier directed that projections include all other elements like green building and public art costs. Tom Bakaly advised that this approach will increase soft costs, like architectural fees, and members indicated they wanted these types of costs included in the \$7.6 million. The Mayor invited public input.

Mike Collins, owner of Coaches Restaurant, felt the restaurant is a nice amenity at the Racquet Club and would like to be a part of the discussions on the remodel. He indicated wide ranging support for his business by Racquet Club patrons and the neighborhood.

The Mayor asked members about the restaurant element. Joe Kernan stated that he would like to see plans with and without a restaurant space. Jim Hier indicated that a restaurant should support the square footage rate and is not a primary use in the building. Liza Simpson stated that she would like a restaurant considered in a phase. Mr. Kernan felt the restaurant may be as important to some people as some of the other recreational amenities. Candace Erickson agreed that square footage costs need to be considered. Roger Harlan complimented Mr. Collins on his operation of Coaches Restaurant at the Racquet Club.

3. Hillside Avenue reconstruction project. Matt Cassel explained that the City Council gave direction on January 8, 2009 on the width of the road but later asked that the decision be revisited. There were several locations associated with the pedestrian access, one along Hillside Avenue, another between the two retaining walls by way of a stairway, and a third along the Grant Avenue right-of-way. An eight foot wide easement dedicated for pedestrian use was discovered which may be the more preferred option; however, it involves 250 feet of stairway which will add about \$400,000 to the project. Staff feels it is a good idea but recommends that the design and construction of the stairway be considered as a future project. He suggested that it be evaluated as a capital project request as part of the 2010 budget.

Matt Cassel stated that on January 8, Council decided on an 18 foot wide road section with curb and gutter and five feet of unpaved section included within that width for snow storage, etc. described as Alternative 1. This is the width the Fire District, Engineering Department and Public Works supports. Alternative 2 proposes a much narrower section at 15.5 feet and is favored by the Sustainability and Planning Departments. Alternative 3 takes the road section from Alternative 2 and lays it on top of the retaining wall section in Alternative 1. This design addresses concerns about future expansion so that if the road needs to be widened, the retaining wall is already in place.

Council unanimously answered yes to the policy questions outlined in the staff report as follows (1) Does Council believe that a real or perceived narrow road will deter use of

the road?; (2) Does Council believe that a narrower road will be safer because people will be more cautious?; (3) Does Council want to deter use of Hillside as another access to Main Street?. Candace Erickson understood that a fire truck is ten feet wide and most properties can be protected from other areas.

Wade Carpenter, Chief of Police and Assistant Fire Marshal, stated that the width of a fire truck is ten feet but six more feet is needed for unloading equipment through bay doors and not being able to turn around in the street is another concern. Jim Hier pointed out that Hillside Avenue is not an access to anywhere and not a logical choice for fire and emergency access. Chief Carpenter explained the loss of water pressure commensurate with the length of hoses and there was discussion about the location of the nearest hydrant.

The Mayor invited public input.

Ruth Gezelius, Prospect Street resident, stated that she was pleased to learn about public access on Grant Avenue but felt there should be a safer route like stairs with illumination. In response to a question from the Mayor, Matt Cassel described the two foot wide pathway associated with Alternative 2.

Marianne Cone, Prospect Avenue, asked if the road is two-way. If it is one-way, walking on Hillside Avenue is relatively safe. She supports Alternative 3 and reiterated her support of one-way.

David Chaplin, 86 Prospect Avenue, pointed out the high use of the road and felt it is safer if it is narrow and one-way. He is also pleased with the Grant Avenue right-of-way as this is a great opportunity to get pedestrians off of Hillside Avenue. He stated that he supports Option 2.

Matt Cassel discussed the flexibility with Alternative 3 with regard to future needs. The Mayor invited Mr. Marth to speak and described each alternative for his benefit.

Peter Marth, Hillside Avenue, feared that improvements to the road will attract more commercial traffic into Deer Valley. Hillside is now used for buses, lodging shuttles and service vehicles. He asked for preliminary traffic count studies. Matt Cassel stated that count studies have been conducted as a part of the design but not counts on types of vehicles. Mr. Marth suggested redirecting Main Street traffic down Swede Alley through signs and discouraging commercial traffic on Hillside Avenue. Install yield and stop stripes. It is his observation that it is not a problem for fire trucks to travel up and down Hillside Avenue

Jim Hier suggested installing signs denoting residential area only no commercial traffic. Matt Cassel explained that this was discussed with Mr. Marth at one of the open houses and the consultants have been directed to design signs to make it a local street and maybe place weight limits on the road. Jim Hier believed it will still be necessary to post

no commercial traffic. After discussion, the majority consensus of Council members was to proceed with Alternative 2.

Prepared by Janet M. Scott, City Recorder

**PARK CITY COUNCIL MEETING
SUMMIT COUNTY, UTAH
FEBRUARY 26, 2009**

I ROLL CALL

Mayor Dana Williams called the regular meeting of the City Council to order at approximately 6 p.m. at the Library and Education Center on Thursday, February 26, 2009. Members in attendance were Dana Williams, Candace Erickson, Roger Harlan, Jim Hier, Joe Kernan, and Liza Simpson. Staff present was Tom Bakaly, City Manager; Mark Harrington, City Attorney; Thomas Eddington, Planning Director; Matt Cassel, City Engineer; and Brooks Robinson, Planner.

II COMMUNICATIONS AND DISCLOSURES FROM COUNCIL AND STAFF

1. Consideration of and direction on the Planning Commission's recommendation to retain outside special counsel to review the vesting of the Sweeney Master Planned Development for Treasure Hill – City Attorney Mark Harrington explained that on February 11, 2009, the Planning Commission agreed with a citizen's suggestion that the City consider retaining special counsel to conduct a comparative analysis of the original underlying vesting of the Treasure Hill project as approved under the original master plan development and secondly perform a more general translation of the limitations of authority of the Planning Commission as it relates to the vesting and the current application. The Municipal Code allows the City Council on its own motion or upon the recommendation of the City Attorney to employ special counsel. He explained that special counsel will work with the City Attorney's Office but is accountable to the City Council. If authorized, the process is up to the City Council. The Council could appoint someone on its own, delegate the authority to the City Attorney if the contract is under \$20,000, or conduct an open selection process and make a selection. Mr. Harrington explained that attorneys Jodie Burnett and Mark Gaylord have been used in the past in situations of conflict, and the City Attorney's Office is comfortable with retaining special counsel especially in consideration of the level of public interest. He stated that these matters are very complicated and not easily understood by the public and it is very valuable to obtain an outside objective look at the facts. Mr. Harrington expected that this can be accomplished within the time frame of the existing applications, believed that the extensive documentation on hand will expedite the review, and didn't anticipate any delays to the applicant by moving forward.

Charlie Wintzer, Planning Commission, explained that it is difficult for the Commission to grasp the scope of entitlements and for the community at large to understand the process. Half of the comments the Commission receives are *just to deny the project* which is obviously not possible because of vested rights. He felt it is really important that the City brings public understanding of what those vested rights are so that citizens can focus on things that will make a difference rather than things that can't.

Mark Harrington clarified that the opinion would be a *public advisory opinion* which will be delivered openly in public session for the benefit of the residents as well as the Planning Commission. Liza Simpson felt it will be good for everyone to gain clarity on the project. The Mayor asked if she is in favor of basing the review on vesting and limitations of authority. Ms. Simpson stated that she supports exploring the first, vesting. Jim Hier felt that having a second set of eyes on the initial MPD and subsequent actions and determining the remaining density and configuration is a great idea. He assumes that the Planning Commission has unlimited authority to interpret the Code as it applies to the density under the application timing and does not want to risk diminishing the authority of the Commission. He stated that he is in favor of having the initial determination and verification of the appropriate density only. Ms. Simpson asked if the Commission is interested in a further look at height, mass, etc. and Mr. Wintzer believed members of the Planning Commission are interested in all of those elements. He explained that clarity on entitlements would allow the Planning Commission to appropriately focus on the project by knowing what is open for discussion. Mr. Hier again discussed the risk of having attorneys criticize the unlimited authority of the Planning Commission. Roger Harlan felt that an outside legal review is a good idea since there may have been things that the City has overlooked; the contract should be considered a resource. Joe Kernan agreed that outside counsel should focus on the original vesting versus the proposed plan to better understand what the applicant is entitled to and felt that the review with the Planning Commission should proceed with advice from staff. Better understanding the vesting issue will help in the processes. All members agreed and the Mayor emphasized that direction does not include a review of the limitations of authority. Jim Hier suggested that the City Attorney obtain proposals and make a recommendation to the Council on the selection.

2. Historic District issues – Planning Director Tom Eddington advised that the Planning Commission will hold a special meeting on March 4, 2009 to address the Steep Slope Ordinance. Other recommendations from the Commission include issues relevant to Historic District Guidelines, steep slope, height, etc. A new method of measuring height is being explored and staff has been working with John Stafsholt interested in the height issue.

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

1. Measuring height – John Stafsholt, 633 Woodside Avenue, stated that he has been watching houses in his neighborhood get bigger and bigger over time. Through a PowerPoint presentation, he detailed how structures are currently measured from final grade around the perimeter of the building. He described how a building ten feet higher is measured five feet lower by staff. Mr. Stafsholt emphasized the impacts to Old Town, especially with steep slope conditional use applications and the pending Treasure Hill Project with 75 foot buildings. He spoke about areas of a structure that are stepped in because the City doesn't measure them. Mr. Stafsholt felt that the Planning Commission could stop this practice now by giving staff clear direction on how to interpret the Land Management Code's provision on building height. In the future, the LMC needs to be amended to address building height but it could be stopped now with

clear interpretation by the Planning Commission. He believes the intent of the LMC is that the building height should be measured from the maximum ridge height to either the existing grade or final grade, whichever is lower, not to measure from final grade to the bottom of the eaves. The Planning Commission has the authority to make recommendations to the City Council and the ability to review appeals of the Planning Director's interpretation of the LMC.

2. Design of Bonanza Drive - Craig Weber, owner of Chibasco, expressed concern over the plan presented on the reconstruction of Bonanza Drive. The raised medians will not allow left hand turns into Park City Plaza. It may slightly improve the traffic flow on Bonanza but will hurt businesses and in a recession, this is the last thing they need. There are four restaurants there and part of the key to success is convenience and changing the flow of traffic will place a financial burden on businesses at the Plaza. Mr. Weber felt there needs to be other solutions than the raised medians and there is also concern about the timing of construction. This design will also impact delivery trucks and emergency response and the proposed bike lanes reduce the width of the street. He stated that he appreciates the efforts of staff and the engineers but the proposed plan does not work for existing businesses. Mr. Weber stated that there are only a few weeks during the year when Bonanza Drive is a nightmare but the rest of the year it is manageable. The traffic study was conducted during Christmas week in 2006 when numbers were high and he asked that Council hold a meeting on this.

Matt Cassel reported that the design has not been finalized and Jim Hier noted that he shares some of the same concerns. There was discussion about not being able to turn left into the condominiums. Mr. Cassel explained that the City will meet with UDOT on March 10 and another open house is planned but not yet scheduled. Tom Bakaly suggested that an update to Council be scheduled on March 12 or 26 and the design of the bus pull-off was discussed.

Laurie Alexander, manager of Fireside and Iron Horse Condominiums, did not feel that residents will want to drive on lower Iron Horse to access upper Iron Horse and no left hand turns off Bonanza will hurt their property values. She didn't feel there will be much more development on Bonanza anyway.

Mark Spencer, Spencers Smoke and Grill located at 1890 Bonanza Drive, stated that he understands the City is obligated to supply water to Deer Valley and to install improvements approved by the walkability study but he emotionally asked members how his business is going to make it through the construction. Liza Simpson stated that she personally operated a business through a road construction project and acknowledged that it was difficult. He stated that this is a Park City project and is discretionary. There was discussion on proactive measures and organizing with other tenants on marketing ideas. He stated that the road project will crush the small businesses there.

With no further comments, the public input session was closed.

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

Jim Hier, "I move we approve the work session notes and minutes of the meeting of February 12". Joe Kernan seconded. Motion unanimously carried.

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

1. Consideration of an Ordinance approving the 71 Daly Ave plat amendment, located at 71 Daly Avenue, Park City, Utah – Brooks Robinson explained that the Planning Commission has not yet rendered a recommendation. The Mayor opened the public hearing and with no comments, closed the hearing. Roger Harlan, "I move that we continue the item to a date uncertain". Candace Erickson seconded. Motion unanimously carried.

2. Resolution celebrating Park City's 125th Birthday – The Mayor explained that March 1 is the official date of incorporation and a community celebration is planned for June 13, 2009 on Main Street which coincidentally was known as Miners Union Day which was celebrated in Park City until 1922. Joe Kernan, "I move we approve the Resolution celebrating Park City's 125th Birthday". Roger Harlan seconded. Motion unanimously carried.

VI 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 p.m. Members in attendance were Mayor Dana Williams, Candace Erickson, Roger Harlan, Jim Hier, Joe Kernan, and Liza Simpson. Staff present was Tom Bakaly, City Manager; Diane Foster, Sustainability Manager; Tom Daley, Deputy City Attorney; Phyllis Robinson, Public Affairs Manager; and Mark Harrington, City Attorney. Joe Kernan "I move to close the meeting to discuss litigation and property". Roger Harlan seconded. Motion carried unanimously. The meeting opened at approximately 3:50 p.m. Roger Harlan, "I move to open the meeting". Jim Hier seconded. Motion unanimously carried.

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

Prepared by Janet M. Scott

Janet M. Scott, City Recorder

PARK CITY COUNCIL WORK SESSION NOTES
SUMMIT COUNTY, UTAH
MARCH 5, 2009

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

Tom Bakaly, City Manager; Mark Harrington, City Attorney; Tom Daley, Deputy City Attorney; Wade Carpenter, Chief of Police; Hugh Daniels, Emergency Program Manager, and Phyllis Robinson, Public Information Officer

1. Emergency Operations Training at Police Facility. Chief Wade Carpenter, Emergency Program Manager Hugh Daniels, and Public Information Officer Phyllis Robinson reviewed roles and responsibilities of elected officials in a disaster. They also previewed the Emergency Operations Center.

2. Council questions/comments. Joe Kernan suggested that Council consider conducting a cost benefit analysis in order to better understand how the uses in the Racquet Club facility related to the anticipated renovation expenses. Ken Fisher explained it would be difficult to assign a dollar cost of construction to every individual amenity, but they could assign a price tag to larger amenities. Candace Erickson questioned how they would apply the results of the study and whether they would eliminate features if the costs were higher per person due to lower use. Roger Harlan was interested in knowing how much such a study would cost, and how they would use the information. Liza Simpson felt it would be beneficial to know, but worried about the amount of work involved in getting into those numbers. Joe felt it was an important responsibility as understanding the costs of various amenities would help Council to make better decisions. Mayor Williams believed it was also Council's job to weigh the community demand based on survey results. Manager Bakaly suggested that Staff work on cost/benefit concepts based on Joe's proposal.

Liza Simpson reported that the CAMP (Commission Assistance and Mentoring Program) training for Historic Preservation Board members, Planning Staff and some Planning Commissioners was well done and everyone came away with new ideas. The training also stressed the importance of avoiding jargon that the audience is not familiar with. The Planning Commission received public input and held a lengthy discussion on Steep Slope Conditional Use Permit changes to the Land Management Code. At the Park City Area Lodging Association meeting they learned that under the Quick Start Program, ski areas have given away \$4.9 million in ski lift tickets in the last six years and they are exploring methods of broadening the program with coupon books, lodging incentives, etc. She reported that Accommodations Unlimited had closed, leaving people who paid for lodging arriving to find they have no rooms.

Candace Erickson reported that the Historical Society was only \$230,000 short of their fundraising goal. Interior pieces are running behind, but everything should be in place

for the 125th Celebration this year. Envision Utah and Coalition for Utah's Future have consolidated their operations and are currently reviewing their projects. They are being approached to expand their services to other states and need to determine whether they can accommodate those requests.

Roger Harlan mentioned that the School Board was pleased that the school tax equalization bill was defeated. The Board has identified plant remodeling to be accomplished during the summer months and will also be replacing two school buses. He thanked Dave Gustafson for a tour of the Marsac Building and was sure everyone would be pleased with the end product. He also commented on the weekly meals provided by the Christian Center to approximately 200 young ski resort workers.

Mayor Dana Williams noted that Mountain Town News was writing an article about Park City. The CAST (Colorado Association of Ski Towns) reusable bag challenge began March 1 and all local grocery stores are participating. He noted the Summit Land Conservancy has requested a review of mapping in Iron Mountain area. The Wasatch Canyons Advisory Committee will be considering long term transportation issues. He thanked Manager Tom Bakaly for his work at the legislature and noted that the City has a lot on its plate right now.

3. Legislative update. City Manager Tom Bakaly reported that HB 394 Uniform Building Code Commission Amendments, which would have changed entities allowed to appoint members to the Commission, was not going to pass this year. SB 211 Building Code Amendments which would allow the legislature to modify powers and duties of the Commission was still being debated and moving forward.

The City is following two bills related to Military Installation Development Authority Act (MIDA): SB 56 modifies provisions and definitions related to MIDA, and SB 216 modifies definitions of development projects and project area under MIDA. MIDA was formed to assist with redevelopment of land near Hill Air Force Base and SB 216 would allow this authority to consider private land, anywhere in the State, not currently owned by the military for construction of Military Recreation Facilities. The Utah League of Cities and Towns opposes this legislation and has been working on modifications. The City and County have been working with the Air Force for years on the placement of their hotel, and continue to hope they will locate their hotel in the preferred location.

Manager Bakaly reported the funds for the City's 0% Water Loan for \$10,000,000 had been diverted to help balance the State budget; however, Park City hoped to be included in Federal Stimulus funding since we were already approved for a loan. He noted Council was being asked to adopt a resolution supporting historical distribution of gas tax funding. Park City currently receives about \$250,000 per year in gas tax money which covers about 21% of what the City spends on roads.

He also discussed a new bill, SF 248 Resort City Sales Tax Definition Changes, which would allow Salt Lake City to charge a resort city sales tax. They experience a large influx of day visitors that impact the city; however, it was important not to undermine

original intent of resort cities sales tax which was formed to help mitigate impacts of overnight visitors.

4. Sister Library site visit. Library Manager Linda Tillson reported that it was a fantastic opportunity to visit the Bimal library in operation and to see how much Park City's help has done for them. She thanked Jim Powell for starting this relationship and for his continued support and funding. Ms. Tillson narrated her slide show which illustrated the beauty of Nepal. She described visits to the temples, schools and libraries.

5. 2009 Sundance Film Festival debrief. Special Events Coordinator Max Paap was joined by Sarah Pearce and Brooks Addicott from Sundance Institute. Mr. Paap requested that Council review the wrap-up report which includes the performance of the 2009 Supplemental Plan approved in late 2008, and re-affirm the continued cooperative effort between Sundance Institute and Park City Municipal Corporation. Staff will return in the fall to present plans for the 2010 Sundance Film Festival.

Sarah Pearce thanked the Mayor and Council, as well as Staff, for their continued support. Sundance was very pleased with the Festival and although they have not received results of the third party survey, their post festival surveys show attendance was up in 2009, second only to 2007. They saw a 20% increase in ticket availability for locals over the previous year. The number one reason given for not attending was travel and lodging costs; number two was ticket availability. She stressed the importance of finding a balance between what they are giving to locals and what they are providing to out-of-state visitors. She noted that ticket sales cover about one-half of festival expenses, but they felt it was important to offer tickets to community organizations and to students. This year's programs benefitted over 4,000 students at 43 schools. They also held two economic development events intended to capitalize on international business leaders who are in town for the festival and encourage doing business in Utah.

Brooks Addicott noted press coverage was very positive and generated in excess of 7,000 articles from 90 counties. She noted the publicity value was essentially \$8 million if one were to purchase that coverage.

Max Paap addressed modifications contained in the Supplemental Plan for the 2009 festival: updated Main Street and Park Avenue parking, traffic mitigation and circulation; closure and programming of Town Lift and Main Street between 7th and 9th Streets; film screenings at Temple Har Shalom and supporting shuttle stop; and the Racquet Club Venue/Use Area Operation. Both Sundance and the City held internal debriefs to discuss the festival and then met jointly to review issues pertaining to the supplemental plan. He addressed the Main Street parking and circulation plan which created more drop and load zones. They found it was successful not only for dropping commercial goods, but for shuttles. As festival activity slowed they were able to return the pay and display parking on the east side of Main.

Liza Simpson received complaints from businesses about the timing of the closure and hoped they could delay closures until closer to the start of the festival. Sarah Pearce noted they discussed doing more of a roll-out leading up to and at the end of the festival so that sections were closed at different times. Max explained they were initially concerned about placing the tent on Lower Main; however, they can be more proactive in the future after observing how it worked at 7th Street. Also, only about half as many businesses changed out for the 2009 Festival in comparison to previous years.

Ms. Pearce added that festival attendees reported feeling safer on Main because they could move freely and had visual access to the street. Concentrating the activity on Lower Main provided better exposure for sponsors and they observed less ambush marketing this year. She noted in the future they would want a different tent style that achieved more of their goals with regard to presentation quality, as well as having more time to improve the outside look and feel.

Mr. Paap reported that screenings at Temple Har Shalom, with parking at The Yard, provided an excellent venue for the festival and the transit component worked very well.

Regarding the Racquet Club Venue/Use Area Operation, Max explained that the Supplemental Plan required an 8:00 p.m. start time for the last screening and required Sundance to set up a customer service feedback line. They encountered a few issues, but those were addressed in a timely manner. A feedback line report prepared by Sundance was included in the Staff Report.

Ms. Pearce reported they received complaints about traffic impacts to the neighborhood from parking and staging. Because there was not as much time in between screenings, they found that taxis were waiting for people leaving the previous screening. They noticed that some residents were inviting friends and family to park in their driveways and in front of their houses. They spoke with the Homeowners Association president and discussed ways to identify invited guests, and to keep others out. Mr. Paap emphasized the difficulty of keeping festival parking out of residential areas.

Sarah Pearce believed higher lodging prices and five-night minimums during Sundance continued to discourage people from attending Sundance. Those who book in the summer are locked into the higher prices, even though some prices dropped toward the end of the festival. They hope to work with the lodging association to encourage more people to come to Sundance.

Roger Harlan asked whether offering double features at the Racquet Club would mitigate the length of time the venue was being used. Ms. Pearce explained that during the first half of the festival people were coming to do business and were buying individual tickets for specific screenings so people would still be coming and going.

Ms. Pearce felt traffic on Bonanza continued to be an issue, especially the first four days of the festival, which warranted increased mitigation. Sundance is also concerned about future losses of venues due to construction, namely the upcoming Main Street

Mall and Racquet Club renovation projects. Overall, they had a very successful festival and she thanked Council again for their partnership.

Candace Erickson commented on the high number of taxis in town during the event and encouraged an emphasis on public transit.

Ms. Erickson referred to the e-mail Council members had received from residents of the Racquet Club. Sarah Pearce asked if they could share that with Sundance. The Racquet Club residents reported being unable to find a published “hot line”; they called the customer service line and the person they spoke with did not request their names or any information regarding their complaint. Ms. Erickson noted she had reviewed the feedback from the Sundance customer service line and believed it should have been called a “complaint line”. Calling it a customer service line implied it was a number to call for tickets.

Mayor Williams commented that after the first week-end not many people were parking in China Bridge and asked if it were possible to lower prices to encourage more usage. Parking Manager Brian Andersen explained that raising and lowering rates during the festival presented challenges for the operator. He agreed there are times when there is excess space in the parking garage.

Jeff Lonn, Racquet Club Condos resident, thanked Council and Sundance for changing the last screening time to 8:00 p.m. It helped, but still did not get people out of the venue before 10:30 or 11:30 p.m. As neighbors, they endure 18 days of noise, from 7:00 a.m. to 10:00 p.m., from festival loading and teardown, constant busses, taxis, and honking horns. They asked Council and Sundance to develop a plan that cleared the parking lot by 10:00 p.m., which complies with the City’s noise ordinance.

Mr. Lonn commented on the feedback line report which indicated that Sundance did not receive many complaint calls and they were all from one Racquet Club neighbor. He was not surprised because no one else knew it was a complaint line. They did not receive satisfactory responses to their complaints when they did place calls. He reminded Council they had presented petitions signed by 40 residents asking that Sundance be out of the venue by 10:00 p.m.

**PARK CITY COUNCIL MEETING
SUMMIT COUNTY, UTAH
MARCH 5, 2009**

I ROLL CALL

Mayor Dana Williams called the regular meeting of the City Council to order at 6:00 p.m. in Room 205 of the Library and Education Center on Thursday, March 5, 2009.

Members in attendance were Dana Williams, Candace Erickson, Roger Harlan, Liza Simpson and Joe Kernan. Jim Hier was absent and excused. Staff present was Tom Bakaly, City Manager; Mark Harrington, City Attorney; Kirsten Whetstone, Senior Planner; and Francisco Astorga, Planner.

II COMMUNICATIONS AND DISCLOSURES FROM COUNCIL AND STAFF

Senior Planner Kirsten Whetstone clarified that the Land Management Code amendment being considered by Council was whether or not Steep Slope CUP applications would be discussed under Consent Agenda or New Business on meeting agendas. The Planning Commission had continued the hearing on the Steep Slope CUP process until March 25, 2009.

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

Bob McCallister addressed Council on the Bonanza Drive reconstruction. Because the road was generally wide enough to handle three lanes, he suggested one lane should be used for left turning vehicles and there should be no consideration of a median. Trucks over 4 tons should be prohibited from Bonanza and only waste management trucks and City busses should be permitted. Because there are few residential areas around Bonanza, he believed it should be a nighttime project, from 9PM to 6AM. Preventing daytime access to local businesses will have a detrimental effect. He spoke of the negative effect the Woodside Avenue construction had on his Woodside Avenue business.

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

1. Consideration of approval of a resolution encouraging the Utah State Legislature to utilize the current transportation funding distribution formula for any increase to the statewide gas tax so that the entire transportation network may benefit. - Liza Simpson, "I move approval of the resolution encouraging the Utah State Legislature to utilize the current transportation funding distribution formula for any increase to the statewide gas tax so that the entire transportation network may benefit". Roger Harlan seconded. Motion carried.

Candace Erickson	Aye
Roger Harlan	Aye
Jim Hier	Absent
Joe Kernan	Aye
Liza Simpson	Aye

2. Consideration of approval of the Malecki Settlement Agreement in the amount of \$200,000 regarding all claims associated with a January 29, 2008 pedestrian/bus accident. - City Attorney Mark Harrington noted Council had received details regarding this claim in deference to the family's request that details be kept private. Staff recommended that Council approve the settlement amount. Joe Kernan, "I move approval of the Malecki Settlement Agreement in the amount of \$200,000 regarding all claims associated with a January 29, 2008 pedestrian/bus accident". Roger Harlan seconded. Motion carried.

Candace Erickson	Aye
Roger Harlan	Aye
Jim Hier	Absent
Joe Kernan	Aye
Liza Simpson	Aye

3. Consideration of ratification of a contract with DLS Consulting Inc. for lobbying services in the amount of \$60,000, in a form approved by the City Attorney. City Manager recommended that Council ratify the expenditure for services related to State consulting services, particularly SB 216. Roger Harlan "I move approval of a contract with DLS Consulting Inc. for lobbying services in the amount of \$60,000 in a form approved by the City Attorney". Candace Erickson seconded. Motion unanimously carried.

Candace Erickson	Aye
Roger Harlan	Aye
Jim Hier	Absent
Joe Kernan	Aye
Liza Simpson	Aye

V OLD BUSINESS (Continued items)

1. Consideration of an Ordinance approving amendments to the Land Management Code of Park City, Utah to address revisions to General Provisions and Procedures regarding appeals and reconsideration process by the Planning Commission; review procedures by the Board of Adjustment; and review procedures for conditional use permits, administrative conditional use permits, and administrative permits. Chapter 2- Modifications to 15-2.5-10 Heber Avenue Subzone in the HRC district; ROS and CT district revisions regarding temporary uses and setback exceptions and anemometer and wind turbine towers; and revisions in various districts regarding outdoor dining, outdoor grills, outdoor events, temporary structures, and setback and building height exceptions. Chapter 3- Off-street Parking. Chapter 4- Supplemental Regulations regarding temporary structures, tents, and vendors. Chapter 6- Master Planned Developments regarding appeals of Planning Commission action. Chapter 10- Board of Adjustment procedures for appeals. Chapter 11- Historic Preservation Board regarding process and procedures. Chapter 12- Planning Commission regarding review of Steep Slope CUP and procedures. Chapter 15- Definitions regarding various terms.

Senior Planner Kirsten Whetstone and Planner Francisco Astorga explained that Council had initially reviewed the amendments in December and requested additional Planning Commission review on several items. Planning Commission has forwarded a positive recommendation to Council on the remanded items and Staff is presenting the entire packet of amendments, as well as some amendments regarding wind energy, to Council for consideration.

Ms. Whetstone reported the Planning Commission's direction on the remanded items. Language regarding Appeals of Planning Commission action on City Funded projects was amended to state that the Board of Adjustment, at the direction of the City Council, may hear appeals/call ups. Administrative approvals of fences and walls greater than 6 feet shall be listed under Conditional Uses rather than Allowed Uses.

Ms. Whetstone explained that Council was concerned about the potential conflict of locating nightly rentals in the vicinity of affordable housing and market rate homes and requested that the Planning Commission revisit the issue. Planning Commission returned a recommendation that Nightly Rental Uses not be allowed within the Community Transition Zone. In addition, Planning Commission forwarded a positive recommendation on Council's suggestions to add definitions for Special Events and Outdoor Events, revise purpose statements in the ROS and CT Zones, clarify references to the Sensitive Lands Overlay language in the CT Zone, remove references to Title 6 under Outdoor Events and Music, and corrections of typos and section reference numbering.

Kirsten Whetstone described additional Land Management Code amendments to address the City's sustainability goals related to wind energy. These will allow Anemometers and Anemometer Towers as Administrative Conditional Uses in the CT and ROS Zones and Small Wind Energy Systems as Conditional Uses in the CT and ROS Zones, subject to review criteria and regulations, building permits, and conditions for removal and decommissioning of abandoned systems.

Staff recommended that Council hold a public hearing and considering approving the Ordinance adopting the amendments as recommended by the Planning Commission, based on the findings of fact and conclusions of law found in the draft ordinance.

Mayor Dana Williams opened the public hearing.

Mike Sweeney referred to 15-4-16(A)(7) Temporary Structures, Tents, and Vendors found on page 15-4-34 which restricts the duration of temporary structures to a duration of fourteen days, five times per year unless approved by the Planning Commission consistent with Conditional Use Criteria. He understood this was included because some tents have been kept up longer than six months, but it has an effect on Park City Mountain Resort, Deer Valley, and his own deck. He has tents going up and down more than five times a year and he can't even construct the Sundance tent, run through the festival, and take it down in fourteen days. He stated they could all get the Conditional Use Permits, but would prefer not to have to pay the \$720 application fee if there were a

better way of using the code and enforcing it without this time limit. In response to a question from Mayor Williams, Mr. Sweeney explained his large tent was part of the Sundance Master Festival License. He was primarily concerned about the tents he used year around.

Mr. Sweeney questioned whether Chapter 15-4-20 Special Events and Overcrowding Permits affected special events at The Yard. City Attorney Mark Harrington explained the chapter dealt with non-code approved overcrowding and wouldn't apply unless he exceeded the occupancy approved under his Conditional Use Permit.

Regarding the duration of temporary structures, tents, and vendors, Attorney Harrington suggested adding "unless approved by City Council as part of a Master Festival License" to section (7). However, he did not recommend revising the other language because it deals with non-compliance issues at hotels and golf courses that impact the neighborhoods. As tent capabilities improve with technology, we need a vehicle to ensure that the City has the ability to measure impacts and mitigate for them. From an economic development perspective, they provide meeting space that doesn't exist in some of the older facilities in Park City. He stressed there was a balance between mitigating impacts while allowing additional meetings spaces to exist.

Jonathan Weidenhamer asked if there was a reason not to include special events in that section. He noted Mike Sweeney holds a series of special events on the deck and he felt it was implied, without this language, that the process exempted them. Mark Harrington explained that was an administrative permit without the same noticing implications of a Master Festival License. He believed that Mike Sweeney's events did not exceed fourteen days. Kirsten Whetstone explained Staff's intent was to allow events to run together if necessary, but each 14 day period would be count towards the total five times per year. That would prevent tents from remaining up indefinitely.

Candace Erickson requested feedback from Deer Valley and Park City Mountain Resort regarding the code changes because both resorts utilize tents and temporary structures for wedding events, etc. throughout the year. Jonathan Weidenhamer explained that was the exact issue that caught his attention. He does not want to limit their flexibility, but is sensitive to the bigger picture and associated impacts. He stated it was part of his work plan to analyze this issue to ensure a balance of impacts that we may not be accounting for.

With no further input, Mayor Williams closed the public hearing.

Mayor Williams discussed a law being considered that would develop a statewide website for publishing legal notices for public meetings. Many cities are supporting that as a cost savings measure. Council was supportive of utilizing the website, but also wanted to continue to publish legal notices in the newspaper.

Mayor Williams commented that charts and diagrams were not properly aligned, and there were a few scriveners' errors. Mark Harrington assured Council that the final product would be correctly formatted.

The Mayor noted there was new terminology in terms of administrative permits, or administrative conditional uses, and asked about the appeal process if someone disagreed with the administrative decisions. Planner Whetstone explained appeals of administrative permits were reviewed by the Planning Commission.

Mayor Williams commented on references to alternative energy and suggested that they be changed to "renewable" energy. He explained some alternative energy solutions were high carbon producers and high polluters even though they were alternative energy. He also suggested that 15-2.7-9(K) be changed to "A System shall be considered abandoned when it fails to operate for a period of 12 months" as opposed to 24 months or more.

In response to the Mayor's question about houses in the ROS district, Planner Whetstone explained that there are not typically structures in the ROS District, but the height and setback requirements apply to recreation uses, such as child care in City Park, natural gas facilities, and skiing facilities.

Roger Harlan saluted the compromise of allowing Council the discretion to decide they would direct appeals pertaining to City-owned projects to the Board of Adjustment.

Manager Bakaly explained Council could approve the amendments, with the understanding that Staff would return with further discussions at a later date. Liza Simpson "I move approval of the Land Management Code changes with the amendments made during the meeting, with the understanding there will be additional discussions regarding tents". Joe Kernan seconded. Motion unanimously carried.

Candace Erickson	Aye
Roger Harlan	Aye
Jim Hier	Absent
Joe Kernan	Aye
Liza Simpson	Aye

VI ADJOURNMENT

With no further business, at 7:00 p.m. the regular meeting of the City Council was adjourned.

MEMORANDUM OF CLOSED SESSION

The City Council met in closed session at approximately 2:00 p.m. Members in attendance were Mayor Dana Williams, Candace Erickson, Roger Harlan, Joe Kernan, and Liza Simpson. Jim Hier was absent and excused. Staff present were Tom Bakaly, City Manager; Mark Harrington, City Attorney, Ron Ivie, Chief Building Official; Jeffrey Schoenbacher, Environmental Specialist; Jonathan Weidenhamer, Economic Development Manager; Diane Foster, Environmental Affairs Manager. Liza Simpson "I

move to close the meeting to discuss Property and personnel". Candace Erickson seconded. Motion carried. The meeting opened at approximately 4:00 p.m. Liza Simpson, "I move to open the meeting". Roger Harlan seconded. Motion unanimously carried.

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

Prepared by Sharon Bauman

Sharon C. Bauman, Deputy City Recorder

**PARK CITY COUNCIL WORK SESSION NOTES
SUMMIT COUNTY, UTAH
MARCH 12, 2009**

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

Tom Bakaly, City Manager; Mark Harrington, City Attorney; Jon Weidenhamer, Economic Development Manager; Craig Sanchez, Golf Manager; and Clint Dayley, Parks and Golf Course Superintendant

1. Council questions/comments. Jim Hier discussed attending a Uniform Building Code Committee meeting where flood plain exemption amendments were recommended for historic houses so that properties no longer have to be listed on the National Historic Register to qualify. He pointed out that Tom Bakaly, the Mayor and Candace Erickson will be in DC next week at a historical time and he shared a pensive thought that when President Obama signs the stimulus package it will be at the same desk that President Clinton got his package stimulated. Joe Kernan relayed that he spoke to some Main Street restaurants about the prospect of bulb-outs accommodating outdoor dining. He also shared discussions he had with Steve Morgan who had some suggestions about insulating the Snow Creek Affordable Housing project with a state of the art material and will be bidding on the construction project. With regard to the Racquet Club, Joe Kernan stated that he is completely in favor of investing in recreational improvements and encouraged staff to provide Council with cost per user information. He disclosed that a citizen suggested that the running track be built on the perimeter of a portion of the building and not necessarily the entire structure. It would be a lot cheaper to install a track in an existing structure than to build a new structure around the whole facility. Mr. Kernan believed that the remodel should provide new programming to satisfy community needs because of the level of investment. The restaurant, climbing wall, and running track should all be included because they were identified by residents as priorities in the survey. Roger Harlan reported on Art Advisory Board, Mountainlands Community Housing and Library Board business and commented on the great training and the exceptional medical emergency response of a bus driver in assisting a passenger. Candace Erickson commended the grooming of the trails in Round Valley but pointed out the needed road work throughout town, specifically pot holes.

Jon Weidenhamer reported that the Wildlife Protection Society approached the City with a request to use the variable message board to alert drivers of wildlife migration crossings. However, moving the message boards come at a cost and they are typically used for special events and public safety messages. Also, there is concern about the number of signs on the entry corridor which is shared by UDOT and Summit County. As an option, he suggested installing flashing lights, denoting migration times, on the two existing wildlife signs but it may cost \$4,000 to have them hard-wired or up to

\$7,000 for solar power. Mr. Weidenhamer discussed providing an update to members through a manager's report.

Mayor Williams stated that he attended a sustainability conference with other Utah communities and felt that Park City is farther along than any of the presenters. He was pleased to report that there will be funding opportunities for sustainable projects through the stimulus package allocated toward energy. He asked for an opinion from staff on the legality of the City enacting more stringent ordinances than the Uniform Building Code. He thanked the City Manager and other staff members for their efforts at the state legislature. He reported on the COG meeting held last night where there was discussion about integrating the new County Council in the group. He spoke about COG's support of the SR248 and Landmark projects and expressed that meeting quarterly is productive.

2. Legislative update. Tom Bakaly explained HB212 which provides for enhanced public safety retirement which will come at a cost to the City. HB394, opposed by the City, did not pass but SB56, Military Installation Development Authority (MIDA) passed. This bill expands its ability of the military to develop in other areas other than Utah County, including Summit County. He relayed that SB211, Building Code amendments, is currently being debated which is opposed by the Council. SB216, revisions to MIDA provides that a project area may include specified private land. Mr. Bakaly reported that the state may be reinstating some of its loan commitments, including the City's approval for a \$10 million zero interest loan on the water pipe line project. The gas tax and expanding the resort cities sales tax legislation to qualify Salt Lake City and St. George were discussed. He indicated that he will return in two weeks with a final legislative wrap-up

3. Golf Course update. Craig Sanchez stated that staff is recommending that golf fees remain the same this season. He was pleased to report that the course is above on revenues and below on expenditures; the numbers in July and August were very strong. He explained that with the inclusion of residents within the School District boundaries, the number of non-resident rounds decreased but the course experienced a good climb with tournament play and lodging bookings, creating a good source of revenue. He relayed that Park City's rates are on the higher side compared to other golf courses in the region but Utah's prices are generally lower nationally. Mr. Sanchez commented that resort clubs in Florida, California and Arizona are experiencing a significant reduction in rounds from 8% to 17% at the beginning of this season.

Clint Dayley reported that last season, staff completed sod on a number of greens, built a new tee box on #18, installed sandstone directional signs, upgraded the restroom facilities, and installed sandstone benches. The latter two projects were funded with RAP Tax grants. Upgrading the primary pump station is slated this fall. In response to questions from Joe Kernan, Mr. Sanchez indicated that the Golf Course does not receive a subsidy from the General Fund and added that expenses like utilities are not included in the budget because the City is still in negotiations to purchase the space and money is set aside for the acquisition. However, things like association fees

represent long term costs. Candace Erickson remarked on the number of great reviews she receives from her co-workers and others about playing Park City.

Prepared by Janet M. Scott, City Recorder

**PARK CITY COUNCIL MEETING
SUMMIT COUNTY, UTAH
MARCH 12, 2009**

I ROLL CALL

Mayor Dana Williams called the regular meeting of the City Council to order at approximately 6 p.m. at the Library and Education Center on Thursday, March 12, 2009. Members in attendance were Dana Williams, Candace Erickson, Roger Harlan, Jim Hier, Joe Kernan, and Liza Simpson. Staff present was Tom Bakaly, City Manager; Mark Harrington, City Attorney; Katie Cattan, Planner; Heinrich Deters, Project Manager; and Cindy LoPiccolo, Senior City Recorder.

II COMMUNICATIONS AND DISCLOSURES FROM COUNCIL AND STAFF

None.

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

None.

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

1. Consideration of appointment of Special Counsel to review the vesting of the Sweeney Master Plan Development for Treasure Hill – City Attorney Mark Harrington explained that on February 26, 2009, the Council directed staff to solicit proposals from qualified law firms and three submissions were received. He recommended appointing Jody Burnett based on his overall expertise in land use, his low bid and lack of conflicts. He is available to begin work immediately and will probably be able to render an opinion by April. The Mayor invited public input; there was none. Jim Hier asked if there is a cap on the fee and Mr. Harrington anticipated the fee will be under \$10,000. Roger Harlan, “I move that we approve Mr. Burnett to assist us in the review of the Sweeney Master Plan Development for Treasure Hill”. Jim Hier seconded. Motion unanimously carried.

2. Consideration of approval of 333 Main Street Plat Amendment – The Mayor opened the public hearing; there was no input from the audience. Jim Hier, “I move to continue to March 26, 2009”. Joe Kernan seconded. Motion unanimously carried.

3. Consideration of approval of an Ordinance approving the 108 Park Avenue Plat of Lots 20 and 21 of Block 13, Park City, Utah – Planner Katie Cattan explained that the Planning Commission approved this application on February 25, 2009 and the plat amendment corrects surveying discrepancies performed in 1996. Neighboring property issues were also resolved and staff recommends approval based on the draft ordinance. The Mayor opened the public hearing; there were no comments. Candace

Erickson, "I move we approve the 108 Park Avenue Replat according to the findings of fact, conclusions of law, and conditions of approval outlined in the staff report". Roger Harlan seconded. Motion unanimously carried.

4. Consideration of award of contract to Fehr and Peers Transportation Consultants for Neighborhood Traffic Calming Recommendations in the amount of \$1,330 – Heinrich Deters explained that this is one of several contracts coming to Council as part of the walkability plan approved last year. He added that Fehr and Peers has requested an additional \$1,500 for pedestrian count work in the area. The Mayor remarked on the wide range in bid amounts submitted. Mr. Deters clarified the selection process and the study area. Roger Harlan announced that he will not be voting in favor of the contract in consideration of the severity of current economic conditions and was uncertain if this contract is the wisest expenditure of \$33,000. Mr. Deters explained that the contract will be paid from walkability bond funds and having a traffic engineer evaluate projects will save the City money in the long run. Mr. Harlan insisted that the residents will be paying off the bond as part of their property taxes and Mr. Deters stated that the assessment will be \$15 per \$300,000 valuation. Jim Hier emphasized that the City will end up spending hundreds of thousand of dollars in capital improvements as a result of the walkability study and traffic calming projects and would much rather spend \$30,000 to make sure that the expenditure of hundreds of thousand of dollars is spent correctly. The Mayor invited public input; there were no comments from the audience. Liza Simpson, "I move we award the contract to Fehr and Peers Transportation Consultants for neighborhood traffic calming recommendations in the amount of \$31,330". Joe Kernan seconded. Motion carried.

Candace Erickson	Nay
Roger Harlan	Nay
Jim Hier	Aye
Joe Kernan	Aye
Liza Simpson	Aye

Candace Erickson explained that she is opposed because of the selection of Fehr and Peers as the contractor.

5. Consideration of approval of an Ordinance Amending Municipal Code Title 3, Chapter 3, Campaign Disclosure Ordinance – Cindy LoPiccolo explained that state legislation is reviewed annually and legislative actions affecting municipal campaign disclosure are incorporated into the City's ethic ordinance. Proposed changes include the requirement to post campaign statements on the City's website and adding a reporting requirement, which was removed at an earlier time to be consistent with state code. Because of requests from the public, this reporting requirement is being proposed to be included again to the process. In response to a question from Joe Kernan about the timing of posting disclosures, Ms. LoPiccolo explained that she makes all disclosures available to the public at the deadline for submission. There was discussion about making reporting durations consistent in two sections of the ordinance and Ms. LoPiccolo pointed out that the language is verbatim from state code which was

supported by the City Attorney. The Mayor opened the public hearing. There were no comments from the audience. Roger Harlan, "I move approval of an amendment amending the Municipal Code Title 3, Chapter 3, Campaign Disclosure Ordinance". Liza Simpson seconded. Motion unanimously carried.

V 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, Candace Erickson, Roger Harlan, Jim Hier, Joe Kernan, and Liza Simpson. Staff present was Tom Bakaly, City Manager; Tom Daley, Deputy City Attorney; Craig Sanchez, Golf Manager; Pace Erickson, Operations Manager; Clint Dayley, Parks and Golf Course Superintendant, and Mark Harrington, City Attorney. Joe Kernan, "I move to close the meeting to discuss property and litigation". Roger Harlan seconded. Motion carried unanimously. The meeting opened at approximately 4:40 p.m. Candace Erickson, "I move to open the meeting". Liza Simpson seconded. Motion unanimously carried.

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

Prepared by Janet M. Scott

Janet M. Scott, City Recorder

**RESOLUTION DECLARING APRIL 2009
AS FAIR HOUSING MONTH IN PARK CITY, UTAH**

WHEREAS, Title VIII of the Civil Rights Act, which guarantees fair housing for all residents of the United States, was signed into law in April 1968; and

WHEREAS, April 2009 marks the 41st anniversary of the Fair Housing Act and the Month of April is nationally recognized as Fair Housing Month and a time to reflect on and reaffirm our national commitment to the ideal that fair housing opportunity is available to everyone in the United States without regard to race, color, religion, national origin, sex, familial status and disability; and

WHEREAS, the City of Park City has committed to fully protecting and enforcing the rights of all residents of Park City to be free of unlawful discrimination and to be free to purchase, rent, finance and insure their homes without regard to their race, color, religion, sex, national origin, familial status, disability, source of income, or life style preference; and

WHEREAS, Park City, the Utah Labor Commission Antidiscrimination and Labor Division, The United States Department of Housing and Urban Development, the State of Utah Department of Community and Culture, Division of Housing and Community Development, the Utah Association of REALTORS®, the Park City Board of REALTORS®, the Utah Apartment Association and the Utah Housing Coalition and many other individuals and organizations are jointly committed to all efforts to highlight and celebrate this 41st Anniversary of the Fair Housing Act and are fully committed to all efforts that address discrimination in our communities, support all programs that will educate the public concerning their rights to equal housing opportunity and to actively plan and participate in partnership efforts with other organizations to assure every person their right to live free of the debilitating affects of housing discrimination and to enjoy fair housing rights;

NOW, THEREFORE BE IT RESOLVED, that the Mayor and City Council of Park City hereby declare April 2009 as a month to celebrate and honor all efforts which guarantee our right to live free of discriminatory housing practices and proclaim this month as:

PASSED AND ADOPTED this 26th day of March, 2009.

PARK CITY MUNICIPAL CORPORATION

Mayor Dana Williams

Attest:

Janet M. Scott, City Recorder

Approved as to form:

Mark D. Harrington, City Attorney



City Council Staff Report

Subject: 2005 Sales Tax Bond Project Amendment
Author: Bret Howser
Department: Budget, Debt, & Grants
Date: March 23, 2009
Type of Item: Legislative

Summary Recommendations:

Staff recommends that Council approve the attached resolution authorizing an amendment to a First Supplemental Indenture of Trust of the City's Sales Tax Revenue Bonds, Series 2005(a) and Series 2005(b). The amendment would update the project description to include road improvements, enabling existing bond funds to be spent on upcoming OTIS projects.

Topic/Description:

Sales Tax Bond Project Description Update

Background:

The City issued Sales Tax Revenue bonds in 2005 for the purpose of constructing the public safety facility, the ice and fields complex, the China Bridge parking structure, park improvements, Prospect Ave improvements, and the Town Plaza. Due to the contraction of scope of the Town Plaza project, surplus bond proceeds are expected to remain. Staff is likely to propose that these funds be re-allocated to OTIS projects as part of the FY 2009 Adjusted Budget.

Analysis:

While previous OTIS projects were funded with surplus operating revenues. The current economy, as well as the prior allocation of expected surplus to other projects, would necessitate the issuance of additional Sales Tax Bonds in order to fund these street reconstruction projects. However, if the City were able to re-allocate existing bond proceeds, the amount of future bonds to be issued would be reduced, thus reducing the impact on the City's debt burden and annual debt service costs.

The attached resolution amends the project description to allow 2005 bond proceeds to be spent on OTIS projects. The following language would be appended to the existing project description:

...infrastructure improvements to the Issuer's "Old Town", including but not limited to, street reconstruction, parking supply augmentation, pedestrian-friendly enhancements, utility replacement/improvements and the incorporation of public art into such improvements.

A statement from bond counsel is also attached putting forth the opinion that the amendment would not adversely affect the tax exempt status nor the validity of the bonds.

This resolution gives Council added flexibility in deciding how any remaining proceeds may be spent. Passage of this resolution is not equivalent to allocating the funds OTIS projects. Council will still have the opportunity to specifically direct on allocation of these funds during the budget process.

Department Review:

Budget, Debt & Grants; City Manager; Legal

Alternatives:

A. Approve:

Staff recommends approving the attached resolution related to the 2005 Sales Tax bond description.

B. Deny:

So doing may impact the old town street reconstruction plans and scheduling. Council would have to revisit funding decisions during the capital budgeting process.

C. Modify:

D. Continue the Item:

This may impact the construction schedule as currently laid out by staff.

E. Do Nothing:

This would have a similar impact as B.

Significant Impacts:

The attached resolution amends the project description to allow 2005 bond proceeds to be spent on OTIS projects. This resolution gives Council added flexibility in deciding how any remaining proceeds may be spent.

Consequences of not taking the recommended action:

Council would not have the ability to spend existing bond proceeds on future projects which are slated for bonding. This could result in higher debt service costs in the future.

Recommendation:

Staff recommends that Council approve the attached resolution authorizing an amendment to a First Supplemental Indenture of Trust of the City's Sales Tax Revenue Bonds, Series 2005(a) and Series 2005(b).

Attachments:

A – Resolution Amending Sales Tax Bond Indenture

B – Amending Supplemental Indenture of Trust

C – Opinion of Bond Counsel

AMENDING SUPPLEMENTAL INDENTURE OF TRUST

Dated as of _____ 1, 2009

between

PARK CITY, UTAH
as Issuer,

and

ZIONS FIRST NATIONAL BANK,
as Trustee

and supplementing
General Indenture of Trust
Dated as of March 1, 2005

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AMENDING SUPPLEMENTAL INDENTURE OF TRUST

This Amending Supplemental Indenture of Trust, dated as of _____ 1, 2009, by and between Park City, Utah, a political subdivision and body politic duly organized and existing under the Constitution and laws of the State of Utah (the “Issuer”) and Zions First National Bank, authorized by law to accept and execute trusts and having its principal office in Park City, Utah, as trustee (the “Trustee”);

W I T N E S S E T H:

WHEREAS, the Issuer has entered into a General Indenture of Trust, dated as of March 1, 2005 (the “General Indenture”), as amended and supplemented by a First Supplemental Indenture of Trust, dated as of March 1, 2005 (the “First Supplemental Indenture of Trust,” and together with the General Indenture the “Indenture”) each by and between the Issuer and the Trustee in connection with the issuance of the Issuer’s Sales Tax Revenue Bonds, Series 2005A and Series 2005B; and

WHEREAS, the Issuer desires to amend the definition of “2005 Project” set forth in Section 1.2 and Exhibit A of the First Supplemental Indenture; and

WHEREAS, Section 9.1(j) of the General Indenture allows for the modification or amendment of the designation of facilities constituting a Project if the Issuer delivers to the Trustee (i) a Supplemental Indenture designating the facilities to comprise the Project and (ii) an opinion of Bond Counsel to the effect that such amendment, in and of itself, will not adversely affect the tax-exempt status (if applicable) or validity of the Bonds and certifying that such amendment will not adversely affect the Issuer’s ability to comply with the provisions of the Indenture; and

WHEREAS, this Supplemental Indenture provides an amended designation of the facilities comprising the 2005 Project; and

WHEREAS, Bond Counsel has provided the opinion required by Section 9.1(j) of the General Indenture and said opinion is attached hereto as Exhibit B; and

WHEREAS, the execution and delivery of this Amending Supplemental Indenture has in all respects been duly authorized and all things necessary to make this Amending Supplemental Indenture a valid and binding agreement have been done;

NOW, THEREFORE, for good and valuable consideration, the Issuer and the Trustee agree as follows:

ARTICLE I

SUPPLEMENTAL INDENTURE; DEFINITIONS

Section 1.1 Supplemental Indenture. This Amending Supplemental Indenture is supplemental to, and is executed in accordance with and pursuant to Articles II and IX of the General Indenture.

Section 1.2 Definitions. All terms which are defined in the General Indenture and First Supplemental Indenture, shall have the meanings, respectively, herein (including the use thereof in the recitals and the granting clauses thereof) unless expressly given a different meaning or unless the context clearly otherwise requires. All terms used herein which are defined in the recitals hereto shall have the meanings therein given to the same unless the context requires otherwise, except that the following term is amended and shall have the meaning specified below:

“2005 Project” means [the acquisition, construction, improvement and equipping of all or a portion of (i) a certain public safety building, recreation complex, parking structure expansion and improvements, park improvements, road improvements and other Issuer-owned capital improvements and (ii) infrastructure improvements to the Issuer’s “Old Town”, including but not limited to street reconstruction, parking supply augmentation, pedestrian-friendly enhancements, utility replacement/improvements and the incorporation of public art into such improvements, all as more fully described in Exhibit A hereto.]

ARTICLE II

CONFIRMATION OF GENERAL INDENTURE

As supplemented by this Amending Supplemental Indenture, and except as provided herein, the Indenture is in all respects ratified and confirmed, and the Indenture, and this Amending Supplemental Indenture shall be read, taken and construed as one and the same instrument so that all of the rights, remedies, terms, conditions, covenants and agreements of the Indenture shall apply and remain in full force and effect with respect to this Amending Supplemental Indenture, and to any revenues, receipts and moneys to be derived therefrom.

IN WITNESS WHEREOF, the Issuer and the Trustee have caused this Amending Supplemental Indenture of Trust to be executed as of the date first above written.

PARK CITY, UTAH

(SEAL)

By: _____
Mayor

COUNTERSIGN:

City Recorder

ZIONS FIRST NATIONAL BANK,
as Trustee

By: _____

Title: _____

EXHIBIT A

DESCRIPTION OF 2005 PROJECT

The Series 2005 Project consists of all or a portion of the following:

- (i) the reconstruction of certain portions of Prospect Avenue and the construction and equipping of related pedestrian and utility improvements;
- (ii) expansion and improvement of the parking structure located in Swede Alley, including increasing the number of parking stalls, creating a ramp system and related pedestrian, mechanical and land improvements;
- (iii) the design, construction and equipping of a City Plaza to be used as an outdoor community gathering place and related road and pedestrian improvements and utility improvements and undergrounding;
- (iv) improvement of land and facilities to create recreational fields for public use including soccer, lacrosse, rugby and softball fields and an indoor ice sheet¹;
- (v) the construction, equipping and furnishing of a new public safety facility to house the City's police force and other administrative offices; and
- (vi) infrastructure improvements to the Issuer's "Old Town", including but not limited to, street reconstruction, parking supply augmentation, pedestrian-friendly enhancements, utility replacement/improvements and the incorporation of public art into such improvements.

¹ The majority of the costs associated with the design and construction of the ice sheet will be paid from certain of the City's General Obligation Bonds and a \$2,000,000 General Obligation Bond issued by the Snyderville Basin Recreation District.

EXHIBIT B

OPINION OF BOND COUNSEL

Park City, Utah

_____, 2009

The City Council (the “Council”) of Park City, Utah (the “Issuer”), met in regular public session at the regular meeting place of the Council in Park City, Utah, on _____, 2009, at the hour of 6:00 p.m., with the following members of the Council being present:

Dana Williams	Mayor
Candace Erickson	Councilmember
Roger Harlan	Councilmember
Jim Hier	Councilmember
Joe Kernan	Councilmember
Liza Simpson	Councilmember

Also present:

Thomas Bakaly	City Manager
Janet M. Scott	City Recorder
Mark D. Harrington	City Attorney

Absent:

After the meeting had been duly called to order and after other matters not pertinent to this resolution had been discussed, the City Recorder presented to the Council a Certificate of Compliance with Open Meeting Law with respect to this _____, 2009, meeting, a copy of which is attached hereto as Exhibit A.

The following resolution was then introduced in writing, was fully discussed, and pursuant to motion duly made by Councilmember _____ and seconded by Councilmember _____, adopted by the following vote:

YEA:

NAY:

The resolution was then signed by the Mayor and recorded by the City Recorder in the official records of Park City, Utah. The resolution is as follows:

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING AN AMENDMENT TO A FIRST SUPPLEMENTAL INDENTURE OF TRUST DATED MARCH 1, 2005 (THE "FIRST SUPPLEMENTAL INDENTURE"), SUPPLEMENTING A GENERAL INDENTURE OF TRUST, DATED MARCH 1, 2005, PURSUANT TO WHICH THE CITY OF PARK CITY, UTAH ISSUED ITS SALES TAX REVENUE BONDS, SERIES 2005A AND SERIES 2005B; SAID AMENDMENT TO BE ACCOMPLISHED BY THE EXECUTION AND DELIVERY OF AN AMENDING SUPPLEMENTAL INDENTURE HEREIN AUTHORIZED, SUPPLEMENTING AND AMENDING THE FIRST SUPPLEMENTAL INDENTURE, AND RELATED DOCUMENTS IN CONNECTION THEREWITH; AND RELATED MATTERS.

WHEREAS, pursuant to the provisions of the Local Government Bonding Act, Title 11, Chapter 14, Utah Code Annotated 1953, as amended (the "Act"), the City Council (the "Council") of Park City, Utah (the "Issuer") has authority to issue bonds secured by sales and use tax revenues for the purposes set forth in the Act; and

WHEREAS, the Issuer has previously issued its Sales Tax Revenue Bonds, Series 2005A and Series 2005B (collectively, the "Bonds") pursuant to a General Indenture of Trust dated March 1, 2005 (the "General Indenture"), as amended and supplemented by a First Supplemental Indenture of Trust, dated March 1, 2005 (the "First Supplemental Indenture," and together with the General Indenture, the "Indenture"), each by and between the Issuer and Zions First National Bank (the "Trustee"); and

WHEREAS, the Council does hereby find and determine it to be advisable and in the best interests of the Issuer and the residents thereof to amend the First Supplemental Indenture to modify the definition of "2005 Project" therein (the "Amendment"); and

WHEREAS, in order to accomplish the Amendment and as required by the General Indenture, the Issuer desires to enter into an Amending Supplemental Indenture (the "Amending Supplemental Indenture") with the Trustee, in substantially the form attached hereto as Exhibit B; and

WHEREAS, in compliance with Section 9.1(j) of the General Indenture, the Issuer has obtained the opinion of Bond Counsel to the effect that the Amendment, in and of itself, will not adversely affect the tax-exempt status or validity of the Bonds and certifying that the Amendment will not adversely affect the Issuer's ability to comply with the provisions of the Indenture, which opinion will be attached to the Amending Supplemental Indenture as Exhibit A;

NOW, THEREFORE, it is hereby resolved by the City Council of Park City, Utah, as follows:

Section 1. Terms defined in the foregoing recitals hereto shall have the same meaning when used in this Resolution.

Section 2. The Amending Supplemental Indenture, in substantially the form presented to this meeting and attached hereto as Exhibit B, is in all respects approved, authorized and confirmed, and the Mayor is authorized to execute and deliver the Amending Supplemental Indenture in the form and with substantially the same content as attached hereto for and on behalf of the Issuer.

Section 3. The City Recorder is hereby authorized to attest to all signatures and acts of any proper official of the Issuer, and, as necessary, to place the seal of the Issuer on the Amending Supplemental Indenture. The Mayor and other proper officials of the Issuer and each of them, are hereby authorized to execute and deliver for and on behalf of the Issuer any and all additional certificates, documents and other papers and to perform all other acts that they may deem necessary or appropriate in order to implement and carry out the matters herein authorized.

Section 4. All resolutions or parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed and this Resolution shall be in full force and effect immediately upon its approval and adoption.

APPROVED AND ADOPTED this _____, 2009.

(SEAL)

Mayor

ATTEST:

City Recorder

(Other business not pertinent to the foregoing appears in the minutes of the meeting.)

Upon the conclusion of all business on the Agenda, the meeting was adjourned.

(SEAL)

Mayor

ATTEST:

City Recorder

PARK CITY UTAH)
 : ss.
COUNTY OF SUMMIT)

I, Janet M. Scott, the duly appointed and qualified City Recorder of Park City, Utah, (the "City") do hereby certify according to the records of said City Council in my official possession that the foregoing constitutes a true and correct excerpt of the minutes of the meeting of the City Council held on _____, 2009, including a resolution (the "Resolution") adopted at said meeting and that said minutes and Resolution are officially of record in my possession.

I further certify that the Resolution, with all exhibits attached, was deposited in my office on _____, 2009.

IN WITNESS WHEREOF, I have hereunto subscribed my signature and impressed hereon the official seal of said City, this _____, 2009.

City Recorder

(SEAL)

EXHIBIT A

CERTIFICATE OF COMPLIANCE WITH
OPEN MEETING LAW

I, Janet M. Scott, the undersigned City Recorder of Park City, Utah (the "City") do hereby certify, according to the records of the City in my official possession, and upon my own knowledge and belief, that in accordance with the requirements of Section 52-4-202, Utah Code Annotated, 1953, as amended, I gave not less than twenty-four (24) hours public notice of the agenda, date, time and place of the _____, 2009 public meeting held by the City Council as follows:

(a) By causing a Notice, in the form attached hereto as Schedule 1, to be posted at the principal offices of the City on _____, 2009, at least twenty-four (24) hours prior to the convening of the meeting, said Notice having continuously remained so posted and available for public inspection until the completion of the meeting; and

(b) By causing a copy of such Notice, in the form attached hereto as Schedule 1, to be delivered to the Park Record on _____, 2009, at least twenty-four (24) hours prior to the convening of the meeting.

(c) by causing a copy of such Notice to be published on the Utah Public Notice Website (<http://pmn.utah.gov>) at least twenty-four (24) hours prior to the convening of the meeting.

In addition, the Notice of 2009 Annual Meeting Schedule for the City Council (attached hereto as Schedule 2) was given specifying the date, time and place of the regular meetings of the City Council of the City to be held during the year, (i) by causing said Notice to be posted on _____, 2009, at the principal office of the City Council; (ii) by causing a copy of said Notice to be provided to at least one newspaper of general circulation within the geographic jurisdiction of the City on _____, 2009; and (iii) by being published on the Utah Public Notice Website (<http://pmn.utah.gov>) during the current calendar year.

IN WITNESS WHEREOF, I have hereunto subscribed my official signature this _____, 2009.

City Recorder

(SEAL)

SCHEDULE 1

NOTICE OF MEETING

SCHEDULE 2

ANNUAL MEETING SCHEDULE

EXHIBIT B

FORM OF AMENDING SUPPLEMENTAL INDENTURE

(See Transcript Document No. _____)

_____, 2009

Park City, Utah
445 Marsac Avenue
Park City, Utah 84060

Zions First National Bank
Corporate Trust Department
One South Main Street, 12th Floor
Salt Lake City, Utah 84133-1109

We have acted as bond counsel to Park City, Utah (the “Issuer”) in connection with the issuance by the Issuer of its \$15,50,000 Sales Tax Revenue Bonds, Series 2005A (the “Series 2005A Bonds”) and its \$4,500,000 Sales Tax Revenue and Refunding Bonds, Series 2005B (the “Series 2005B Bonds” and together with the Series 2005A Bonds, the “Series 2005 Bonds”). The Series 2005 Bonds were issued pursuant to (i) a General Indenture of Trust dated as of March 1, 2005 (the “General Indenture”) and a First Supplemental Indenture of Trust dated as of March 1, 2005 (the “First Supplemental Indenture” and collectively with the General Indenture, the “Indenture”), each by and between the Issuer and Zions First National Bank, as trustee (the “Trustee”) and (ii) the Utah Local Government Bonding Act, Title 11, Chapter 14, Utah Code Annotated 1953, as amended, the Utah Refunding Bond Act, Title 11, Chapter 27, Utah Code, and other applicable provisions of law.

The Issuer now desires to amend and modify the definition of “2005 Project” (the “Amendment”) set forth in the First Supplemental Indenture pursuant to an Amending Supplement Indenture of Trust dated _____, 2009, between the Issuer and the Trustee (the “Amending Supplemental Indenture”).

In such connection, we have reviewed the Indenture, the Amending Supplemental Indenture, and such other documents, opinions and matters to the extent we deemed necessary to render the opinions set forth herein.

We have assumed the genuineness of all documents and signatures presented to us (whether as originals or as copies) and the due and legal execution and delivery thereof by any parties other than the Issuer. We have not undertaken to verify independently any

events which have occurred since the issuance of the Series 2005 Bonds, including, without limitation, the use of the proceeds thereof. Furthermore, we have assumed compliance with all covenants and agreements made at the time of issuance of the Series 2005 Bonds, including, without limitation, covenants and agreements, compliance with which is necessary to assure that actions, omissions or events will not cause interest on the Series 2005 Bonds to be included in gross income for federal income tax purposes. Accordingly, we express no opinion as to whether interest on the Series 2005 Bonds is presently excludable from gross income for federal income tax purposes as of the date of this opinion and this opinion does not constitute an affirmation of the bond counsel opinion delivered with respect to the Series 2005 Bonds.

Based upon and subject to the foregoing and in reliance thereon, as of the date hereof, it is our opinion that the Amendment to the Indenture as contemplated by the Amending Supplemental Indenture and the modification of “2005 Project” originally defined in the First Supplemental Indenture as contemplated by the Amending Supplemental Indenture, (i) will not, in and of itself, adversely affect the tax-exempt status of the interest on the Series 2005 Bonds; (ii) will not adversely affect the validity of the Series 2005 Bonds; and (iii) will not affect the Issuer’s ability to comply with the provisions of the Indenture.

This letter is delivered to you solely for your benefit and may not be relied upon by any other persons. This letter is not to be used, circulated, quoted or otherwise referred to or relied upon for any other purpose or by any other person. This letter is not intended to, and may not, be relied upon by any party to whom it is not addressed.

Respectfully submitted,

City Council Staff Report



Subject: Racquet Club Subdivision
Author: Kayla S. Sintz, AIA
Date: March 26, 2009
Type of Item: Administrative – Subdivision

Summary Recommendations

Staff recommends the City Council hold a public hearing for the Racquet Club Subdivision located at 1200 Little Kate Road, and consider approving the subdivision plat based on the Findings of Fact, Conclusions of Law and Conditions of Approval as found in the attached ordinance.

Topic

Applicant: Park City Municipal Corporation
Location: 1200 Little Kate Road
Zoning: Residential Development (RD)
Adjacent Land Uses: Recreation Open Space (ROS) and Single Family (SF)

Background

On January 7, 2009, the City received a complete application to create a legal lot of record from a 7.50 acre metes and bounds parcel. The subdivision application will create one lot which currently contains the Park City Racquet Club, an active Conditional Use permit (CUP) granted by the City in February, 1977 with modifications in 1979. Adjacent Racquet Club Village No. 1, 2 and 3 were recorded as PUD's in 1977 and 1978.

This item was heard by the Planning Commission on February 25, 2009 without any modifications.

Analysis

The proposed subdivision creates a single lot of record of seven and one half (7.50) acre parcel.

The zoning for the subdivision is Residential Development (RD) and is subject to the following criteria:

RD Zone	Permitted	Existing
Height	28' (+5' for pitched roof)	40' (highest ridge at tennis facility) non-complying, approved in 1977 CUP

RD Zone	Permitted	Existing
Lot Size	No minimum size	7.50 acres
Front setback	20', 25' to front facing garage	Complies
Rear setback	15' from Lot boundary	Complies
Side setbacks	12' from Lot boundary	Complies
Parking	As determined per use	Complies per CUP

Staff finds good cause for this subdivision as it creates a legal lot of record from a metes and bounds parcel.

Department Review

This project has gone through an interdepartmental review. No further issues were brought up at that time.

Notice

The property was posted and notice was mailed to property owners within 300 feet. Legal notice was also put in the Park Record.

Public Input

Staff has received 3 inquiries from adjacent property owners regarding this application. Discussions took place with these owners regarding the requirement for a legal lot of record versus a metes and bounds parcel.

Process

The approval of this subdivision application by the City Council constitutes Final Action that may be appealed following the procedures found in LMC 1-18. The Racquet Club is currently being studied for expansion. Possible expansion may require a Conditional Use permit which would be subject to review by the Planning Commission at a later date.

Alternatives

- The City Council may approve the Racquet Club subdivision as conditioned or amended, or
- The City Council may deny the Racquet Club subdivision and direct staff to make Findings for this decision, or
- The City Council may continue the discussion on the Racquet Club subdivision.

Significant Impacts

There are no significant fiscal or environmental impacts from this application.

Consequences of not taking the Suggested Recommendation

The property would remain a metes and bounds parcel not allowing further expansion of the Racquet Club to take place.

Recommendation

Staff recommends the City Council hold a public hearing for the Racquet Club subdivision and consider approving the attached ordinance according to the Findings of Fact, Conclusions of Law and Conditions of Approval.

Exhibits

Exhibit A – Ordinance with plat

Ordinance No. 09-

**AN ORDINANCE APPROVING THE RACQUET CLUB SUBDIVISION LOCATED AT
1200 LITTLE KATE ROAD, PARK CITY, UTAH.**

WHEREAS, the owners of the property known as Racquet Club subdivision, have petitioned the City Council for approval of the Racquet Club subdivision; and

WHEREAS, the property was properly noticed and posted according to the requirements of the Land Management Code; and

WHEREAS, proper legal notice was sent to all affected property owners; and

WHEREAS, the Planning Commission held a public hearing on February 25, 2009, to receive input on the Racquet Club subdivision; and

WHEREAS, the Planning Commission, on February 25, 2009, forwarded a positive recommendation to the City Council; and

WHEREAS, on March 26, 2009, the City Council held a public hearing on the Racquet Club subdivision; and

WHEREAS, it is in the best interest of Park City, Utah to approve the Racquet Club subdivision.

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

SECTION 1. APPROVAL. The above recitals are hereby incorporated as findings of fact. The Racquet Club subdivision, as shown in Exhibit A, is approved subject to the following Findings of Facts, Conclusions of Law, and Conditions of Approval:

Findings of Fact:

1. The property is located at 1200 Little Kate Road.
2. The property is located in the Residential Development (RD) zoning district.
3. A legal lot of record was never created and the seven and one half (7.50) acres remained a metes and bounds parcel.

Conclusions of Law:

1. There is good cause for this subdivision.
2. The subdivision is consistent with the Park City Land Management Code and applicable State law regarding subdivision plats.
3. Neither the public nor any person will be materially injured by the proposed subdivision.
4. Approval of the subdivision, subject to the conditions stated below, does not

adversely affect the health, safety and welfare of the citizens of Park City.

Conditions of Approval:

1. The City Attorney and City Engineer will review and approve the final form and content of the subdivision for compliance with State law, the Land Management Code, and the conditions of approval, prior to recordation of the plat.
2. The applicant will record the subdivision at the County within one year from the date of City Council approval. If recordation has not occurred within one year's time, this approval for the plat will be void.
3. Modified 13-D sprinklers will be required for new or modified structures.

SECTION 2. EFFECTIVE DATE. This Ordinance shall take effect upon publication.

PASSED AND ADOPTED this 26th day of March, 2009.

Exhibits

Exhibit A – Record of Survey plat

PARK CITY RACQUET CLUB SUBDIVISION
PRELIMINARY PLAT
LOCATED IN SECTION 4, TOWNSHIP 2 SOUTH, RANGE 4 EAST,
SALT LAKE BASE AND MERIDIAN, SUMMIT COUNTY, UTAH

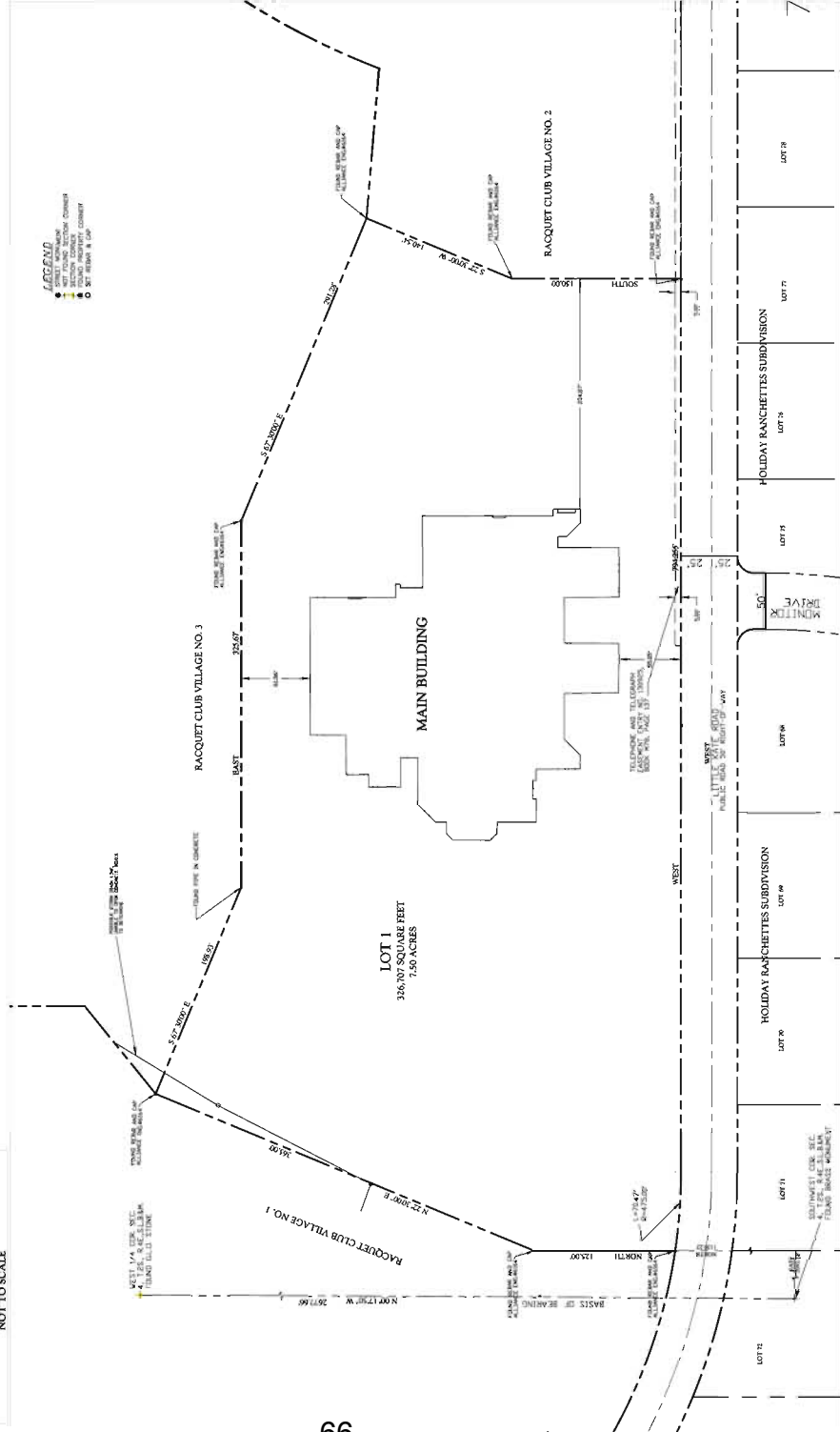
38 JACK JOHNSON COMPANY, THAT A SURVEY HAS BEEN MADE OF THE LAND HEREON ON THIS PLAT AND DISCLOSED HEREON. I FURTHER CERTIFY THAT THIS PLAT IS A CORRECT REPRESENTATION OF THE LAND SURVEYED AND HAS BEEN PREPARED IN CONFORMITY WITH THE MINIMUM STANDARDS AND REQUIREMENTS OF THE LAW.

[illegible]

JAMES CHRISTENSEN, DO HEREBY CERTIFY THAT I AM A REGISTERED LAND SURVEYOR AND THAT I HOLD CERTIFICATE NO. 50417 AS PRESCRIBED UNDER THE LAWS OF THE STATE OF UTAH. FURTHER CERTIFY, ON BEHALF OF JACK JOHNSON COMPANY, THAT A SURVEY HAS BEEN MADE OF THE LAND SHOWN ON THIS PLAN AND DESCRIBED HEREIN. I FURTHER CERTIFY THAT THIS PLAN IS A CORRECT REPRESENTATION OF THE LAND SURVEYED AND HAS BEEN PREPARED IN CONJUNCTION WITH THE MINERAL, OIL AND GAS AND RECORDS OF THE LAND.

LEGEND

- STREET MONUMENT
- NOT YOUNG SECTION CORNER
- NOT YOUNG SECTION CORNER
- SECTION CORNER
- YOUNG PROPERTY CORNER
- CITY RECORD & CASE



IS THE OWNER OF THE HERBON DESCRIBED
KNOWN ALL MEN BY THESE PRESENTS THAT
TRACT OF LAND BEING CALLED THE SAME TO BE SURVEYED IN TO LOTS AND HEREDITS
HEREAFTER TO BE KNOWN AS "PARK HERBON" OFFER TO DEED TO THE CITY OF PARK
CITY ALL EASEMENTS SHOWN ON THIS PLAT IN ACCORDANCE WITH AN IRREVOCABLE OFFER OF
DEDICATION.

87/

[illegible]

THE FORTHCOMING INSTRUMENT WANTS AGRICULTURE-LEDGED REPORTING BY

MIT COMMUNICATIONS DIVISION



Designing World Destinations
In-Person - 1777 Sun Peak Drive • Park City, Utah 84302
Telephone - 435.846.3000 • Fax/telex - 435.648.1621

IDENTITY THIS RECORD ON SLAVY MAIL WAS AFFIRMED BY

PRESENTED TO YOU BY THE PARK CITY COUNCIL

THE UNIVERSITY OF CHICAGO

ADMITTED AND ACCEPTED BY THE PAPER CITY

APPROVED AS TO FORM ON: 11/1/00

ENTERED NO. _____ BOOK _____ PAGE _____
STATE OF _____ COUNTY OF _____
DATE _____ TIME _____



City Council Staff Report

Subject: 800 MHz Radio Purchase
Author: Jerry Gibbs
Department: Public Works
Date: March 26, 2009
Type of Item: Administrative

Summary Recommendations:

Authorize the City Manager to issue a purchase order to Motorola Inc in the amount of \$115,518.55 for the purchase of 59 portable radios, 3 mobile radios and 1 base station including chargers, batteries, holsters, 24 month extended warranty, chest packs and multi-unit chargers for Public Works Operations, Water, Building and Public Works Administration.

Topic/Description:

Purchase of 63- 800 MHz radios

Background:

One of the milestones for emergency management is to convert from the 150 MHz radios in Public Works to 800 MHZ in compliance with Utah Communications Agency Network (UCAN) and the statewide radio communication system. Moving Public Works, including Transit to the public safety radio frequencies of 800MHz helps Park City meet its compliance requirements under the National Incident Management System (NIMS) and National Response Plan (NRP). This move will now allow all Park City agencies to communicate without "patches or relays" in addition to being able to communicate with other agencies in Summit and Wasatch Counties. In the event of a major incident, it would also allow other agencies from the state to communicate with us, as well as the ability for us to do the same if we were asked to help out in other areas of the state.

Communications continues to be the number one "Achilles Heel" in response to emergencies. The National Emergency Communications Plan (NECP) calls for interoperability, sustainability and redundancy in local, state and federal agencies. The Summit County Emergency Response Gap Analysis identified communications as one of the top issues to be addressed locally and regionally.

There are two companies approved by UCAN for 800 MHz radios, Motorola and EF Johnson. Both have supplier/rep in the State of Utah and both are covered under the State of Utah Purchasing Contract. Our Park City Police currently operate with Motorola due to the timing with the Olympics. Motorola and EF Johnson are distributed by more than one vendor in Utah. Only one Communication Company representative is assigned Summit County from each vendor; however they are not mutually exclusive assignments. JComm and McIntosh Communications are the representatives for the Summit County area respectively for both suppliers.

The public safety community nationwide has initiated the switch from the 150 MHz band to the 800 MHz band. The original 800 MHz band was close to the cellular phone band. Both bands were causing interference with each other. A "Re-banding" of the 800 MHz public safety band was approved and radios had to be reprogrammed. Some radios were unable to be reprogrammed and had to be replaced. In the past few years, EF Johnson has shown a higher reliability and compatibility with 800 MHz communication system. However, Motorola remains the preferred choice to UCAN and most public safety departments.

Park City Public Works began seeking bids on the purchase and installation of sixty three (63) 800 MHz radios compatible with the UCAN. Our purchasing policy requires a competitive bid process on State Contract pricing if the agreement amount is anticipated to be \$100,000 or greater. This contract was anticipated to be more than \$100,000.

This proposal is to supply radios for the Building Department and Public Works with the exception of Transit. Transit will pursue their own bid due to Federal funding and different advertising and equipment procurements requirements.

Analysis:

Public notices were printed in the Park Record according to the City's purchasing policies and a request for proposals/bids was sent to interested vendors. Bids were received on March 11, 2009 at 3:00 PM and publicly read out loud at 3:15 PM. Park City reserved the right to waive any irregularities and base the bid on the entire submittal and not just on price alone. An example is a supplier that could provide only the radios but no support, would not receive a favorable recommendation regardless of their pricing.

Two bids were received. A summary of the bids are as follows.

	Description	Units	JComm		Motorola	
			Unit Cost	Total	Unit Cost	Total
1	255 Channel Portable Radio	59	\$1,745.00	\$102,955.00	\$1,842.50	\$108,707.50
2	Spare Batteries NiMH	35	\$59.00	\$2,065.00	\$70.13	\$2,454.55
3	Nylon Case with Belt Clip Carrier	59	\$39.00	\$2,301.00	\$25.00	\$1,475.00
4	Portable Radio Speaker Microphone	5	\$84.50	\$422.50	\$71.00	\$355.00
5	Multi Unit Charger (6)	6	\$455.00	\$2,730.00	\$591.00	\$3,546.00
6	Desk Charger	35	\$52.00	\$1,820.00	\$75.00	\$2,625.00
7	Chest Pack	6	\$42.30	\$253.80	\$35.00	\$210.00
8	Labor for Prep and Programming of Portable Radios	LS	\$8.00	\$504.00	LS	\$704.00
9	Dash Mount Mobile Radio	3	\$2,201.00	\$6,603.00	\$2,234.00	\$6,702.00
10	Labor and Materials to Install Dash Mount Radios and Programming	LS	\$255.00	\$765.00	\$140.00	\$420.00

11	Base Station w/ three (3) Remotes,	1	\$3,979.00	\$3,979.00	\$4,117.00	\$4,117.00
12	Remote Handsets	3	\$785.00	\$2,355.00	\$657.00	\$1,971.00
13	800 MHz Base Antenna	1	\$119.00	\$119.00	\$562.00	\$562.00
14	Labor and Material for Installation, Prep and Programming of Base Station, Tone Remote Handsets and Antenna	LS		\$1,395.00		\$1,960.00
	TOTAL			\$128,267.30		\$135,809.05
	Adds or Deletes					
15	Alternate date for completion, delivery and installation of all radios	NA		60 DAYS		APRIL 15TH
16	Extended Warranty additional 12 Months/ Radio	LS				
17	Extended Warranty additional 24 Months/Radio	LS	\$86.88	\$5,386.50	\$84.00	\$5,208.00
18	Extended Warranty Additional 36 Months/Radio	LS				
19	Alternate- 96 channels/talk groups Deduct per portable unit.	59	0	0	-\$455.50	-\$26,874.50
20	M 2 D rated additive per unit	15	\$95	\$1425	\$112.50	\$1,687.50
Add	Digital Interface Channel Control at Headset					-\$311.50
	Total			\$135,078.80		\$115,518.55

A task force made up of representatives from Public Works, Police and Information Technology reviewed the bids and developed recommendations for the preferred bid. Bids were reviewed on equipment cost, references, equipment performance and the communications company's performance in providing services to other governmental agencies. The committee followed UCAN's recommendation for a 96 channel radio. In addition, the committee recommended a two year extended warranty, the M2D rating (submersible for 30 minutes and still usable) for water department radios and award the purchase to Motorola Inc. Motorola will contract with McIntosh Communications for installation and service.

The radio purchase is in the 2009 approved budget and can be found in account CP0220. The current balance of that account is \$300,000.

Department Review:

The bids and staff report were reviewed by Public Works, Police, Emergency Management, Information Technology and Legal.

Alternatives:**A. Approve:**

Authorize the City Manager to approve a purchase order to Motorola in the amount of \$115,518.55 for the purchase of 96 channel 800 MHz radios.

B. Deny:

Deny purchase order to Motorola and consider awarding the PO to JComm in the amount of \$135,078.80

C. Modify:

Re-bid to a lower channel radio.

D. Continue the Item:**E. Do Nothing:****Significant Impacts:**

Motorola has the vast majority of 800 MHz radios in service in Utah. All of law enforcement and fire service in the area use Motorola. The Reclamation District and Health Department also uses Motorola.

Consequences of not taking the recommended action:

A re-bid will require at least 30 days to complete. The only reason to re-bid is to reduce the number of channels available to 48 or lower. Staff is recommending following UCAN's recommendations on the preferred number of channels per radio. Radios need to have some consistency between departments to improve usability. Staff has been pleased with the service from JComm and the new EOC and Emergency Management is outfitted with EF Johnson. Both radios are approved by UCAN.

Recommendation:

Authorize the City Manager to issue a Purchase Order to Motorola, Inc in the amount of \$115,518.55 for the purchase of 59 portable radios, 3 mobile radios and 1 base station including chargers, batteries, holsters, 24 month extended warranty, chest packs and multi-unit chargers.



City Council Staff Report

Subject: Snow Creek Cottages Construction Contract
Author: Dave Gustafson
Department: Sustainability
Date: March 26, 2009
Type of Item: Administrative

Summary Recommendation: Staff requests authorization to proceed with the construction of the Snow Creek Cottages project. Staff recommends that the City Council award the construction contract to R & O Construction in the amount of \$3,232,490 and authorize the City Manager to execute the contract in a form approved by the City Attorney.

Topic: Construction Contract Award

Background:

The Snow Creek Housing Project is a 13-unit affordable, owner-occupied, environmentally responsible neighborhood targeted to the local workforce. The units will be sold as primary residences with resale restrictions and owner-occupancy requirements. In 2005 Park City's Strategic Plan for City-Owned Properties affirmed the use of this site for affordable housing citing the RDM zoning, parcel proximity to transit and other amenities. At the 2007 Council Visioning session, Council directed staff to move forward with the active development of workforce housing on the Snow Creek parcel. In September 2007 an RFP for architectural and engineering services was announced with the goals promoting financially feasible, technologically sound strategies to conserve energy and to surpass current norms for water conservation and waste management and recycling.

In November 2007 Council awarded a design contract to Elliott Work Group. The MPD was approved by the Planning Commission on July 23, 2008. The City Council considered an appeal of the project on August 7 and August 21, 2008. The Council upheld the Master Planned Development on August 21, 2008. Construction funding is budgeted through existing Housing CIP and property tax increment. Construction funding will be repaid through the sale of units and existing CIP funds dedicated to this project.

ANALYSIS

On January 23, 2009 Park City Municipal published an Invitation to Bid. The legal notice was published in the Salt Lake Tribune on February 2nd and 3rd, 2009 and Park Record on January 31st and February 4th, 2009. Two pre-bid meetings were held on February 9 and February 17. Attendance at one of the two pre-bid meetings was mandatory. Bids were received on and opened publicly on February 23, 2009.

The City received 11 bids for this project. R & O Construction Company was the lowest responsible bidder with a base bid of \$3,162,914 and a total bid, including alternates for the handicapped accessible units of \$3,232,490. R&O Construction Company is an Ogden-based firm with extensive experience in residential, commercial and industrial construction. R & O's average completed project size in 2009 was \$4.1 million. R&O is ready to proceed upon contract award. Final project completion is scheduled for January 2010.

The table below summarizes the bids received for this project.

Firm	Bid	Alt A	Alt B	TOTAL
R & O	3,162,914	34,788	34,788	3,232,490
Onyx Construction	3,175,000	35,800	30,100	3,240,900
Kier Construction	3,257,955	44,720	44,345	3,347,020
Wadman Corp	3,395,000	55,000	45,000	3,495,000
New Star	3,434,132	35,767	33,814	3,503,713
Big D Construction	3,771,000	38,353	38,353	3,847,706
Culp Construction	3,799,000	37,200	36,200	3,872,400
Wheeler	3,980,000	35,900	35,500	4,015,400
Jay Lynn Roberts & Sons Inc	4,280,000	24,874	24,962	4,329,836
Evergreen Construction	4,288,000	52,000	52,000	4,392,000
Gold Medallion	4,996,550	108,550	108,550	5,213,650

Department Review: This report was reviewed by Sustainability, Legal and the City Manager.

Alternatives:

A. Approve the Request. Staff recommends that City Council approve the award of the construction contract to R & O Construction Company in the amount of \$3,232,490 and authorize the City Manager to execute the contract in a form approved by the City Attorney.

B. Deny the Request: Council may direct staff to delay or discontinue work on the Snow Creek project. This would result in the project being removed from the staff's work program.

C. Continue the Item: Council could direct staff to return with additional information on the recommended contractor or scope of work. This would delay the start of the design for the project and have an adverse impact upon the overall project schedule.

D. Do Nothing: This would have the same effect as denying the request.

Significant Impacts

The most significant impact of not moving forward with Phase III is the delay in project construction and potential cost increases to the project. The construction bids are valid for a period of 60 days ending April 23, 2009. If an award of contract is not received prior to that date, the project must be rebid and it is highly possible that the proposals would be higher.

Recommendation: Staff requests authorization to proceed with the construction of the Snow Creek Cottages project. Staff recommends that the City Council award the construction contract to R & O Construction in the amount of \$3,232,490 and authorize the City Manager to execute the contract in a form approved by the City Attorney.

Attachments:

Attachment A: Construction Award Contract

EDEN CONTRACT NO. _____

CONSTRUCTION AGREEMENT

THIS AGREEMENT is made and entered into as of this ____ day of _____, 2009, by and between PARK CITY MUNICIPAL CORPORATION, P O Box 1480, Park City UT 84060, a municipal corporation of the state of Utah (hereinafter "City"), and R & O Construction Company located at 933 Wall Avenue Ogden, UT 84404 which is a (check one) ☒ corporation ☐ partnership ☐ sole proprietorship ☐ limited liability company (hereinafter "Contractor").

PURPOSE: For the project known as the Snow Creek Cottages (hereinafter "Project"), which consists of site improvement infrastructure and 13 single family, detached homes.

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

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

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

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

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

EDEN CONTRACT NO. _____

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

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

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

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

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

D. WARRANTY. Contractor warrants that all materials and supplies used in the construction of the Project shall be new, except as otherwise agreed to in writing by the City's Representative. All materials, equipment, parts and labor and any necessary corrections to the Project shall be guaranteed for a period of at least one (1) year following the date of substantial completion of the Project under the terms of

the performance bond or as provided in the project specifications and construction documents, whichever is longer.

SECTION 2. PERFORMANCE AND PAYMENT BONDS. Contractor shall furnish to the City payment and performance bonds satisfactory to the City guaranteeing Contractor's payment and performance, in the amount, for each separately, of one hundred percent (100%) of the Contract Amount.

SECTION 3. INSURANCE. Unless otherwise specified in the bid documents, the Contractor shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, their agents, representatives, employees, or subcontractors.

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

A. Commercial General Liability insurance written on an occurrence basis with limits no less than two million dollars (\$2,000,000) combined single limit per occurrence and four million dollars (\$4,000,000) aggregate for personal injury, bodily injury and property damage. Coverage shall include but not be limited to: blanket contractual; products/completed operations; broad form property damage; explosion, collapse and underground (XCU) if specifically requested; and employer's practices.

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

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

C. Workers Compensation insurance limits written as follows:
Bodily Injury by Accident \$500,000 each accident;
Bodily Injury by Disease \$500,000 each employee, \$500,000 policy limit

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

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

SECTION 4. CONTRACT AMOUNT, ACCEPTANCE OF WHOLE, ADDITIONS. City shall pay Contractor the total sum of Three Million, Two Hundred Thirty Two Thousand, Four Hundred Ninety dollars (\$3,232,490.00) ("Contract Amount") for all work and materials expended to complete this Project, which shall include the cost of all bonds, insurance, and all charges, fees, permits (including water and sewer fees, unless waived), expenses or assessments of whatever kind or character that are or may be necessary to complete this Project, including any additive alternates listed within the Scope of Work described in Section 1.

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

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

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

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

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

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

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

SECTION 7. COMPLETION TIME. The work on this Project shall commence within ten days of receipt of the Notice to Proceed and shall be completed by January 29th, 2010. Work stoppage due to inclement weather conditions and other factors must be approved in writing by the Project Manager. Inclement weather shall not otherwise constitute cause for delay. Unless otherwise agreed by the City by Change Order, no damages shall become due to Contractor for City caused delay. A Change Order for delay will generally be accepted for delay so excessive and unreasonable that it is beyond the scope of the Contract or delay attributed to direct, active or willful interference by the City. The Change Order must be based upon actual damages sustained by the Contractor which are directly attributed to the delay.

In the event that Contractor fails to complete all of the work required herein within the time limit set out above, then for each partial or complete day during which the work remains uncompleted thereafter, the Contractor agrees to pay the City Thirteen Hundred Dollars (\$1300.00 per day after January 29th, 2010) which the parties believe, due to the difficulty of actually assessing the damages the City will suffer in the event of such a delay, is a fair estimate of the loss the City will suffer. The parties agree that the daily liquidated damages provided for herein is reasonable and fair, and is not a penalty. **TIME IS OF THE ESSENCE IN THIS AGREEMENT.**

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SECTION 8. ADDITIONAL WORK/CHANGE ORDERS. The City may enlarge or reduce the work to be performed by Contractor hereunder by written notification to Contractor, including changes to the plans and specifications. The City shall pay Contractor for any additional work so requested, and shall reduce the payment to the Contractor for any reduction in labor, materials, overhead and profit margin resulting from the reduction in the work. Except as the City shall so notify the Contractor in writing, it is understood and agreed by the parties hereto that no money will be paid to the Contractor for any new or additional labor or materials furnished unless a written modification is agreed to in a document signed by both parties.

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

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

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

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unreasonable. Although this Contract has been drafted by the City, the Contractor expressly agrees that any ambiguity herein shall be resolved in favor of the City.

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

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

After serving ten (10) days written notice on the Contractor and its surety of its intention to terminate the services of Contractor, and if within ten (10) days after serving such notice, the violation is not corrected to City's reasonable satisfaction, the City then may take over

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the work and prosecute it to completion by contract or by any other method it may deem advisable at the expense of the Contractor. The Contractor and the bonding company shall be liable to the City for any reasonable cost occasioned by the City in excess of the amount agreed for the service herein.

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

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

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

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

SECTION 11. HOLD HARMLESS INDEMNIFICATION. The Contractor clearly and unequivocally agrees to indemnify and to hold the City and its agents, employees, and officers, harmless from and shall process and to defend at its own expense any and all claims, demands, suits, at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, brought against the City arising out of, in connection with, or incident to the execution of this Agreement and/or the Contractor's performance or failure to perform any aspect of this Agreement; provided, however, that if such claims are caused by or result from the concurrent negligence of the City, its agents, employees, and officers, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the Contractor or others; and provided further, that nothing herein shall require the Contractor to hold harmless or defend the City, its agents, employees and/or officers from any claims arising from the sole negligence of the City, its agents, employees, and/or officers. The Contractor expressly agrees that the indemnification provided herein constitutes the contractor's waiver of immunity under Utah Code Section 34A-2-105 for the purposes of this Agreement. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement. No liability shall attach to the City by reason of entering into this Agreement except as expressly provided herein.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- A. **Hours and Days of Operation.** The Construction Mitigation Plan shall specify the daily construction start and finish times. Construction activity occurring outside of the times specified in Section 11-14-6 of the Park City Municipal Code may only be allowed by Special Permit issued by the Building Official or the City Engineer.
- B. **Parking.** The Construction Mitigation Plan shall include a parking plan. Construction vehicle parking may be restricted at construction sites so as to not

block reasonable public and safety vehicle access along streets and sidewalks. Construction parking in paid or permit only parking areas require the Public Works Department review and approve a parking plan. The plan shall also include anticipated temporary parking, e.g. delivery vehicles, large equipment parking.

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

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

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

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

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

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

I. Construction Sign Requirements. A sign, indicating the name of the party responsible for the Project shall be posted in a location where such sign is readable

from the street or driveway to the construction site. The sign shall not exceed 12 square feet in size, six feet in height and shall not exceed a letter type of 4". Information on the sign shall include, at a minimum:

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

No additional fee is required for this sign.

SECTION 22. TOILET FACILITIES AND CONTAINERIZED TRASH SERVICE REQUIRED.

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

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

SECTION 23. OBEY LAWS. Contractor shall obey all laws, ordinances and regulations of the United States, the State of Utah, and Park City in performing this Agreement.

SECTION 24. NONDISCRIMINATION.

A. The City is an equal opportunity employer.

B. In the performance of this Agreement, the Contractor will not discriminate against any employee or applicant for employment on the grounds of race, creed, color, national origin, sex, marital status, age or the presence of any sensory, mental or physical handicap; provided that the prohibition against discrimination in

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

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

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

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

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

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

Contractor: R & O Construction Company or such other person designated in writing by the Contractor's chief administrative officer, at the Contractor's address set out first above;
Park City: Project Manager/Engineer, at the address set out first above for the City, or when given to such other person as either of the above representatives shall designate in writing. The designation of any address may be changed by notice given in the same manner as provided in this paragraph.

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

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

PARK CITY MUNICIPAL CORPORATION

Dana Williams, Mayor

ATTEST:

City Recorder's Office

APPROVED AS TO FORM:

City Attorney's Office

CONTRACTOR
R & O Construction Company
933 Wall Avenue
Ogden, UT 84404

Signator/Title

Utah Contract License No.

Corporate Acknowledgment

STATE OF UTAH)
) ss.
COUNTY OF SUMMIT)

On this ____ day of _____, 2009, personally appeared before me _____, whose identity is personally known to me/or proved to me on the basis of satisfactory evidence and who by me duly sworn/affirmed), did say that he/she is the _____ of _____ by Authority of its Bylaws/Resolution of the Board of Directors, and acknowledged to me that said Corporation executed the same.

Notary Public



City Council Staff Report

Subject: Snow Creek Cottages Construction Contract
Author: Dave Gustafson
Department: Sustainability
Date: March 26, 2009
Type of Item: Administrative

Summary Recommendation: Staff requests authorization to proceed with the construction of the Snow Creek Cottages project. Staff recommends that the City Council award the construction contract to R & O Construction in the amount of \$3,232,490 and authorize the City Manager to execute the contract in a form approved by the City Attorney.

Topic: Construction Contract Award

Background:

The Snow Creek Housing Project is a 13-unit affordable, owner-occupied, environmentally responsible neighborhood targeted to the local workforce. The units will be sold as primary residences with resale restrictions and owner-occupancy requirements. In 2005 Park City's Strategic Plan for City-Owned Properties affirmed the use of this site for affordable housing citing the RDM zoning, parcel proximity to transit and other amenities. At the 2007 Council Visioning session, Council directed staff to move forward with the active development of workforce housing on the Snow Creek parcel. In September 2007 an RFP for architectural and engineering services was announced with the goals promoting financially feasible, technologically sound strategies to conserve energy and to surpass current norms for water conservation and waste management and recycling.

In November 2007 Council awarded a design contract to Elliott Work Group. The MPD was approved by the Planning Commission on July 23, 2008. The City Council considered an appeal of the project on August 7 and August 21, 2008. The Council upheld the Master Planned Development on August 21, 2008. Construction funding is budgeted through existing Housing CIP and property tax increment. Construction funding will be repaid through the sale of units and existing CIP funds dedicated to this project.

ANALYSIS

On January 23, 2009 Park City Municipal published an Invitation to Bid. The legal notice was published in the Salt Lake Tribune on February 2nd and 3rd, 2009 and Park Record on January 31st and February 4th, 2009. Two pre-bid meetings were held on February 9 and February 17. Attendance at one of the two pre-bid meetings was mandatory. Bids were received on and opened publicly on February 23, 2009.

The City received 11 bids for this project. R & O Construction Company was the lowest responsible bidder with a base bid of \$3,162,914 and a total bid, including alternates for the handicapped accessible units of \$3,232,490. R&O Construction Company is an Ogden-based firm with extensive experience in residential, commercial and industrial construction. R & O's average completed project size in 2009 was \$4.1 million. R&O is ready to proceed upon contract award. Final project completion is scheduled for January 2010.

The table below summarizes the bids received for this project.

Firm	Bid	Alt A	Alt B	TOTAL
R & O	3,162,914	34,788	34,788	3,232,490
Onyx Construction	3,175,000	35,800	30,100	3,240,900
Kier Construction	3,257,955	44,720	44,345	3,347,020
Wadman Corp	3,395,000	55,000	45,000	3,495,000
New Star	3,434,132	35,767	33,814	3,503,713
Big D Construction	3,771,000	38,353	38,353	3,847,706
Culp Construction	3,799,000	37,200	36,200	3,872,400
Wheeler	3,980,000	35,900	35,500	4,015,400
Jay Lynn Roberts & Sons Inc	4,280,000	24,874	24,962	4,329,836
Evergreen Construction	4,288,000	52,000	52,000	4,392,000
Gold Medallion	4,996,550	108,550	108,550	5,213,650

Department Review: This report was reviewed by Sustainability, Legal and the City Manager.

Alternatives:

A. Approve the Request. Staff recommends that City Council approve the award of the construction contract to R & O Construction Company in the amount of \$3,232,490 and authorize the City Manager to execute the contract in a form approved by the City Attorney.

B. Deny the Request: Council may direct staff to delay or discontinue work on the Snow Creek project. This would result in the project being removed from the staff's work program.

C. Continue the Item: Council could direct staff to return with additional information on the recommended contractor or scope of work. This would delay the start of the design for the project and have an adverse impact upon the overall project schedule.

D. Do Nothing: This would have the same effect as denying the request.

Significant Impacts

The most significant impact of not moving forward with Phase III is the delay in project construction and potential cost increases to the project. The construction bids are valid for a period of 60 days ending April 23, 2009. If an award of contract is not received prior to that date, the project must be rebid and it is highly possible that the proposals would be higher.

Recommendation: Staff requests authorization to proceed with the construction of the Snow Creek Cottages project. Staff recommends that the City Council award the construction contract to R & O Construction in the amount of \$3,232,490 and authorize the City Manager to execute the contract in a form approved by the City Attorney.

Attachments:

Attachment A: Construction Award Contract

EDEN CONTRACT NO. _____

CONSTRUCTION AGREEMENT

THIS AGREEMENT is made and entered into as of this ____ day of _____, 2009, by and between PARK CITY MUNICIPAL CORPORATION, P O Box 1480, Park City UT 84060, a municipal corporation of the state of Utah (hereinafter "City"), and R & O Construction Company located at 933 Wall Avenue Ogden, UT 84404 which is a (check one) x corporation ____ partnership ____ sole proprietorship ____ limited liability company (hereinafter "Contractor").

PURPOSE: For the project known as the Snow Creek Cottages (hereinafter "Project"), which consists of site improvement infrastructure and 13 single family, detached homes.

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

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

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

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

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

EDEN CONTRACT NO. _____

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

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

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

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

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

D. WARRANTY. Contractor warrants that all materials and supplies used in the construction of the Project shall be new, except as otherwise agreed to in writing by the City's Representative. All materials, equipment, parts and labor and any necessary corrections to the Project shall be guaranteed for a period of at least one (1) year following the date of substantial completion of the Project under the terms of

the performance bond or as provided in the project specifications and construction documents, whichever is longer.

SECTION 2. PERFORMANCE AND PAYMENT BONDS. Contractor shall furnish to the City payment and performance bonds satisfactory to the City guaranteeing Contractor's payment and performance, in the amount, for each separately, of one hundred percent (100%) of the Contract Amount.

SECTION 3. INSURANCE. Unless otherwise specified in the bid documents, the Contractor shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, their agents, representatives, employees, or subcontractors.

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

A. Commercial General Liability insurance written on an occurrence basis with limits no less than two million dollars (\$2,000,000) combined single limit per occurrence and four million dollars (\$4,000,000) aggregate for personal injury, bodily injury and property damage. Coverage shall include but not be limited to: blanket contractual; products/completed operations; broad form property damage; explosion, collapse and underground (XCU) if specifically requested; and employer's practices.

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

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

C. Workers Compensation insurance limits written as follows:
Bodily Injury by Accident \$500,000 each accident;
Bodily Injury by Disease \$500,000 each employee, \$500,000 policy limit

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

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

SECTION 4. CONTRACT AMOUNT, ACCEPTANCE OF WHOLE, ADDITIONS. City shall pay Contractor the total sum of Three Million, Two Hundred Thirty Two Thousand, Four Hundred Ninety dollars (\$3,232,490.00) ("Contract Amount") for all work and materials expended to complete this Project, which shall include the cost of all bonds, insurance, and all charges, fees, permits (including water and sewer fees, unless waived), expenses or assessments of whatever kind or character that are or may be necessary to complete this Project, including any additive alternates listed within the Scope of Work described in Section 1.

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

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

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

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

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

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

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

SECTION 7. COMPLETION TIME. The work on this Project shall commence within ten days of receipt of the Notice to Proceed and shall be completed by January 29th, 2010. Work stoppage due to inclement weather conditions and other factors must be approved in writing by the Project Manager. Inclement weather shall not otherwise constitute cause for delay. Unless otherwise agreed by the City by Change Order, no damages shall become due to Contractor for City caused delay. A Change Order for delay will generally be accepted for delay so excessive and unreasonable that it is beyond the scope of the Contract or delay attributed to direct, active or willful interference by the City. The Change Order must be based upon actual damages sustained by the Contractor which are directly attributed to the delay.

In the event that Contractor fails to complete all of the work required herein within the time limit set out above, then for each partial or complete day during which the work remains uncompleted thereafter, the Contractor agrees to pay the City Thirteen Hundred Dollars (\$1300.00 per day after January 29th, 2010) which the parties believe, due to the difficulty of actually assessing the damages the City will suffer in the event of such a delay, is a fair estimate of the loss the City will suffer. The parties agree that the daily liquidated damages provided for herein is reasonable and fair, and is not a penalty. **TIME IS OF THE ESSENCE IN THIS AGREEMENT.**

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SECTION 8. ADDITIONAL WORK/CHANGE ORDERS. The City may enlarge or reduce the work to be performed by Contractor hereunder by written notification to Contractor, including changes to the plans and specifications. The City shall pay Contractor for any additional work so requested, and shall reduce the payment to the Contractor for any reduction in labor, materials, overhead and profit margin resulting from the reduction in the work. Except as the City shall so notify the Contractor in writing, it is understood and agreed by the parties hereto that no money will be paid to the Contractor for any new or additional labor or materials furnished unless a written modification is agreed to in a document signed by both parties.

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

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

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

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unreasonable. Although this Contract has been drafted by the City, the Contractor expressly agrees that any ambiguity herein shall be resolved in favor of the City.

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

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

After serving ten (10) days written notice on the Contractor and its surety of its intention to terminate the services of Contractor, and if within ten (10) days after serving such notice, the violation is not corrected to City's reasonable satisfaction, the City then may take over

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the work and prosecute it to completion by contract or by any other method it may deem advisable at the expense of the Contractor. The Contractor and the bonding company shall be liable to the City for any reasonable cost occasioned by the City in excess of the amount agreed for the service herein.

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

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

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

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

SECTION 11. HOLD HARMLESS INDEMNIFICATION. The Contractor clearly and unequivocally agrees to indemnify and to hold the City and its agents, employees, and officers, harmless from and shall process and to defend at its own expense any and all claims, demands, suits, at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, brought against the City arising out of, in connection with, or incident to the execution of this Agreement and/or the Contractor's performance or failure to perform any aspect of this Agreement; provided, however, that if such claims are caused by or result from the concurrent negligence of the City, its agents, employees, and officers, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the Contractor or others; and provided further, that nothing herein shall require the Contractor to hold harmless or defend the City, its agents, employees and/or officers from any claims arising from the sole negligence of the City, its agents, employees, and/or officers. The Contractor expressly agrees that the indemnification provided herein constitutes the contractor's waiver of immunity under Utah Code Section 34A-2-105 for the purposes of this Agreement. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement. No liability shall attach to the City by reason of entering into this Agreement except as expressly provided herein.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- A. **Hours and Days of Operation.** The Construction Mitigation Plan shall specify the daily construction start and finish times. Construction activity occurring outside of the times specified in Section 11-14-6 of the Park City Municipal Code may only be allowed by Special Permit issued by the Building Official or the City Engineer.
- B. **Parking.** The Construction Mitigation Plan shall include a parking plan. Construction vehicle parking may be restricted at construction sites so as to not

block reasonable public and safety vehicle access along streets and sidewalks. Construction parking in paid or permit only parking areas require the Public Works Department review and approve a parking plan. The plan shall also include anticipated temporary parking, e.g. delivery vehicles, large equipment parking.

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

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

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

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

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

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

I. Construction Sign Requirements. A sign, indicating the name of the party responsible for the Project shall be posted in a location where such sign is readable

from the street or driveway to the construction site. The sign shall not exceed 12 square feet in size, six feet in height and shall not exceed a letter type of 4". Information on the sign shall include, at a minimum:

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

No additional fee is required for this sign.

SECTION 22. TOILET FACILITIES AND CONTAINERIZED TRASH SERVICE REQUIRED.

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

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

SECTION 23. OBEY LAWS. Contractor shall obey all laws, ordinances and regulations of the United States, the State of Utah, and Park City in performing this Agreement.

SECTION 24. NONDISCRIMINATION.

A. The City is an equal opportunity employer.

B. In the performance of this Agreement, the Contractor will not discriminate against any employee or applicant for employment on the grounds of race, creed, color, national origin, sex, marital status, age or the presence of any sensory, mental or physical handicap; provided that the prohibition against discrimination in

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

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

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

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

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

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

Contractor: R & O Construction Company or such other person designated in writing by the Contractor's chief administrative officer, at the Contractor's address set out first above;
Park City: Project Manager/Engineer, at the address set out first above for the City, or when given to such other person as either of the above representatives shall designate in writing. The designation of any address may be changed by notice given in the same manner as provided in this paragraph.

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

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

PARK CITY MUNICIPAL CORPORATION

Dana Williams, Mayor

ATTEST:

City Recorder's Office

APPROVED AS TO FORM:

City Attorney's Office

CONTRACTOR
R & O Construction Company
933 Wall Avenue
Ogden, UT 84404

Signator/Title

Utah Contract License No.

Corporate Acknowledgment

STATE OF UTAH)
) ss.
COUNTY OF SUMMIT)

On this ____ day of _____, 2009, personally appeared before me _____, whose identity is personally known to me/or proved to me on the basis of satisfactory evidence and who by me duly sworn/affirmed), did say that he/she is the _____ of _____ by Authority of its Bylaws/Resolution of the Board of Directors, and acknowledged to me that said Corporation executed the same.

Notary Public



City Council Staff Report

Subject: Snow Creek Cottages
Construction Contract Administration
Author: Phyllis McDonough Robinson
Department: Sustainability Team
Date: March 26, 2009
Type of Item: Administrative

Summary Recommendation:

Staff recommends that City Council authorize the City Manager to proceed with Phase III of the Snow Creek Cottages Housing Project and execute a Service Provider/Professional Services Agreement in a form approved by the City Attorney to Elliott Work Group in the amount not to exceed \$70,354. This amount represents \$32,325 for Construction Administration Services and a partial reimbursement in the amount of \$38,029 for additional architectural and engineering costs incurred during the design development and construction document phase.

Description:

Topic: Contract Award

Background:

In October 2007, Staff issued a Request for Proposals for Architectural and Engineering Services for the Snow Creek Housing Development. The development is a 13-unit affordable, owner-occupied, environmentally responsible neighborhood targeted to the local workforce. The units will be primary residences with resale restrictions and owner-occupancy requirements. The City is promoting financially feasible, technologically sound strategies to conserve energy and surpass current norms for water conservation, waste management and recycling throughout this project.

On November 29, 2007 Council awarded the contract for Architectural and Engineering Services to Elliott Work Group. The City Manager executed a Service Provider Contract for Phase I of the project (site alternatives, preferred site design and density recommendations) in December 2007. Phase II – Design Development, Entitlements and Construction Document Development was awarded in May 2008.

Analysis

Staff is requesting Council authorization to proceed with Phase 3 of the Contract Award. Phase III is for Construction Contract Administration and includes:

- a. Construction Contract Bidding Services and Bid Documents
- b. Performance of Construction Contract Administration during construction
- c. Record drawings and project manual, including technical specifications
- d. Performance of Construction Contract Administration for project close out.

The execution of the contract for Phase 3 is contingent upon the successful award of the construction contract. The fee for this service is \$32,325, or one percent of the construction contract.

In addition, Staff is requesting a partial reimbursement for Elliott Work Group in the amount of \$38,029 for additional costs incurred by EWG for architectural and structural engineering costs associated with the prior of the project's Master Planned Development, as well as subsequent requests to incorporate two-bedroom units into the project design. The total cost incurred by the firm was \$51,820. Staff has received detailed documentation for this additional expense.

Department Review: This report was reviewed by Sustainability, Legal and the City Manager.

Alternatives:

A. Approve the Request: Staff recommends that City Council authorize the City Manager to proceed with Phase III of the Snow Creek Cottages Project and execute a Special Service Contract in a form approved by the City Attorney's Office to Elliott Work Group in the amount not to exceed \$70,354 as outlined above.

B. Deny the Request: Council may direct staff to delay or discontinue work on the Snow Creek project. This would result in the project being removed from the staff's work program.

C. Continue the Item: Council could direct staff to return with additional information on the recommended phasing plan or other submission. This would delay the start of the design for the project and have an adverse impact upon the overall project schedule.

D. Do Nothing: This would have the same effect as denying the request.

Significant Impacts

Funds for this contract are a budgeted part of the Snow Creek Cottages project. Construction funding is budgeted through existing Housing CIP and property tax increment. Construction funding will be repaid through the sale of units and existing CIP funds dedicated to this project. The most significant impact of not moving forward with Phase III is the delay in project construction and the potential loss of affordable home ownership options in the City.

Recommendation: Staff recommends that City Council authorize the City Manager to proceed with Phase III of the Snow Creek Cottages Housing Project and execute a Service Provider/Professional Services Agreement in a form approved by the City Attorney to Elliott Work Group in the amount not to exceed \$70,354. This amount represents \$32,325 for Construction Administration Services and a partial

reimbursement in the amount of \$38,029 for additional architectural and engineering costs incurred during the design development and construction document phase.

Attachments:

A. Service Provider/Professional Services Agreement

**PARK CITY MUNICIPAL CORPORATION SERVICE PROVIDER/
PROFESSIONAL SERVICES AGREEMENT**

THIS AGREEMENT is made and entered into in duplicate this ____ day of _____, 2009, by and between PARK CITY MUNICIPAL CORPORATION, a Utah municipal corporation, ("City"), and Elliott Work Group, a Utah corporation ("Service Provider").

WITNESSETH:

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

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

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

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

1. SCOPE OF SERVICES.

The Service Provider shall perform such services and accomplish such tasks, including the furnishing of all materials and equipment necessary for full performance thereof, as are identified and designated as Service Provider responsibilities throughout this Agreement and as set forth in the "Scope of Services" attached hereto as "Addendum A" and incorporated herein (the "Project"). The total fee for the Project shall not exceed **Seventy Thousand Three Hundred Fifty Four Dollars (\$70,354.00)**

2. TERM.

The term of this Agreement shall commence on the date of execution on this Agreement and shall terminate on February 28, 2010 or earlier, unless extended by mutual written agreement of the Parties.

3. COMPENSATION AND METHOD OF PAYMENT.

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

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

4. REPORTS AND INSPECTIONS.

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

5. INDEPENDENT CONTRACTOR RELATIONSHIP.

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

subcontractors or representatives during the performance of this Agreement.

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

6. SERVICE PROVIDER EMPLOYEE/AGENTS.

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

7. HOLD HARMLESS INDEMNIFICATION.

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

8. INSURANCE.

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

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

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

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

9. TREATMENT OF ASSETS.

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

10. COMPLIANCE WITH LAWS.

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

11. NONDISCRIMINATION.

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

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

12. ASSIGNMENTS/SUBCONTRACTING.

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

13. CHANGES.

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

14. MAINTENANCE AND INSPECTION OF RECORDS.

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

access and right to examine any of said materials at all reasonable times during said period.

15. POLITICAL ACTIVITY PROHIBITED.

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

16. PROHIBITED INTEREST.

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

17. MODIFICATIONS TO TASKS AND MISCELLANEOUS PROVISIONS.

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

18. TERMINATION.

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

will only be paid for services performed in accordance with the manner of performance set forth in this Agreement.

19. NOTICE.

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

20. ATTORNEYS FEES AND COSTS.

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

21. JURISDICTION AND VENUE.

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

22. SEVERABILITY.

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

23. ENTIRE AGREEMENT.

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

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

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

Thomas B. Bakaly, City Manager

Attest:

City Recorder's Office

Approved as to form:

City Attorney's Office

SERVICE PROVIDER

Address:

Tax ID#: _____

Signature

Printed name

Title

STATE OF UTAH)
) ss.
COUNTY OF SUMMIT)

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

Notary Public

ADDENDUM "A"

SCOPE OF SERVICES

- I. Services & Deliverables** - The Service Provider will perform Phase 3: Construction Contract Administration:
- a. Construction Contract Bidding Services and Bid Documents
 - b. Performance of Construction Contract Administration during construction
 - c. Record drawings and project manual, including technical specifications
 - d. Performance of Construction Contract Administration for project close out.

All work for Phase 3 shall be completed by February 28, 2010.

II. Communications

- a. Communications by and with the Service Providers Sub-consultants shall be through the Service Provider.
- b. The City representative will be Dave Gustafson, who will act on the City's behalf. This representative will be empowered to issue instructions to the Service Provider; to approve the work performed, to authorize additional services, and to suspend or terminate the Service Provider's services. This representative or his/her designee shall attend the regularly scheduled meetings.
- c. The Service Provider's representative will be Craig Elliott, who will act on the Service Provider's behalf.

**ADDENDUM B
HOURLY RATES
Snow Creek Affordable Housing
Park City, Utah**

Architectural Staff

Principal	\$175
Planning Director	\$175
Managing Architect	\$140
Managing Architect	\$125
Project Architect	\$140
Project Architect	\$125
Design Architect	\$140
Design Architect	\$125
Architectural Support	\$ 90
Clerical	\$ 65

March 10, 2009

Phyllis Robinson
Community and Public Affairs
Park City Municipal Corporation
Park City, Utah

re: Snow Creek Cottages Affordable Housing

Phyllis:

During the design phase of the project and while we were completing Design Development and beginning Construction Documents for the above referenced project an appeal was filed against the approval of the project by Planning Commission. The culmination of this appeal was that the project was upheld, but City Council was willing to consider alternatives. We redesigned the project at a point where we were already in the documentation of the previous designs.

Attached is documentation of the architectural services of this impact to our project. Additional invoices have also been received from the structural engineer for work completed that was ultimately un useable. We have been conservative in our estimate as we have only included the fees for the redesign of the project. Below is spreadsheet of the costs:

Snow Creek Design Revisions

Architectural

<i>Employees</i>	<i>Hours</i>	<i>Rates</i>	<i>Total</i>
Carla Lehigh	3	90	\$270
Craig Elliott	71	175	\$12,425
Johanna Troll	85	90	\$7,650
Juliana Klein	67	125	\$8,375
Roger Durst	138	125	\$17,250
Total Architectural			\$45,970

Structural

BHB Engineering	\$5,850
Total Structural	\$5,850

Total Additional Services \$51,820

Architectural Fee Reduction 30% \$13,791

Total Fee - Additional Services \$38,029

We respectfully request consideration for payment of additional services provided for the redesign of the project. Please review and comment.

Sincerely,


Craig Elliott, AIA



ELLIOTT WORKGROUP
architecture

449 MAIN STREET, P.O. BOX 3419
PARK CITY, UTAH 84060

801-415-1839 fax 801-603-4900
WWW.ELLIOTTWORKGROUP.COM

City Council Staff Report



Subject: 333 Main Street Plat Amendment
Author: Kirsten A. Whetstone, AICP
Date: March 26, 2009
Type of Item: Administrative - Plat amendment

**PLANNING
DEPARTMENT**

Recommendation

Staff recommends the City Council review the proposed plat amendment, conduct a public hearing and consider approving the plat amendment for 333 Main Street based on the findings of fact, conclusions of law and conditions of approval in the draft ordinance.

Topic

Applicant: Park City 333 Main Development, LLC
Location: 333 Main Street (Main Street Mall)
Zoning: Historic Commercial Business (HCB) and Historic Residential 2 (HR-2)
Adjacent Land Uses: Commercial retail, restaurants, bars, offices, and residential on upper levels and on Park Avenue

Background

On December 19, 2008, the Applicant submitted a complete application for a plat amendment to create one lot of record for the Main Street Mall building, located at 333 Main Street (Exhibit A). The property is located between Main Street and Park Avenue and consists of Lots 7-15 and 18-26, Block 11 Amended Park City Survey. Also included with the plat amendment are 5 easements identified on the plat for existing emergency and pedestrian access, utility, and parking easements as described in the title report and land title of survey for 333 Main Street (Exhibit B).

The purpose of the plat amendment is to remove interior lot lines and to memorialize the various easements for the existing Main Street Mall building. The building was constructed over existing platted lot lines. The lots fronting Main Street are zoned Historic Commercial Business (HCB) and the lots fronting Park Avenue are zoned Historic Residential 2 (HR-2). The applicants are considering converting existing office uses to residential uses and making changes to the interior configuration of tenant spaces, consistent with the December 21, 2007 Historic District Design Review approval. All proposed uses are Allowed Uses in the HCB zone and no further Conditional Use Permit review is required. Individual sale of any residential or commercial space requires a condominium plat. No application for condominium plat has been submitted to date.

On December 6, 2008, the applicant submitted an application requesting revisions to the previously approved Historic District Design Review. Staff reviewed the Design Review application and has made a final determination that the proposed revisions comply with

the Historic District Design Guidelines. Staff will present the design revisions to the Planning Commission at a work session on April 8 as an informational item.

On February 25, 2009, the Planning Commission reviewed the plat amendment and conducted a public hearing. There was public input and discussion regarding potential impacts on Main Street businesses and Park Avenue residents and concurrence that the proposed conditions of approval provide for consideration of an expanded Construction Mitigation Plan to be submitted for review prior to issuance of any permits. The Commission voted unanimously to forward to City Council a positive recommendation as conditioned.

Analysis

The purpose of this application is to combine Lots 7-15 and 18-26, Block 11, of the Amended Park City Survey into one lot of record by removing interior lot lines. The amended plat also memorializes existing emergency and pedestrian access, utility, and parking easements as described in the title report for 333 Main Street (Exhibit B). The lots fronting Main Street are zoned Historic Commercial Business (HCB) and the lots fronting Park Avenue are zoned Historic Residential 2 (HR-2). The existing building is a legal, non-conforming structure as it is located across the zone line between the HCB and HR-2 zoning districts and also does not comply with setbacks in the HR-2 zone. The zoning will remain as is. Existing non-conforming circumstances are outlined below. The following are the lot and site requirements of LMC Section 15-2-6 (HCB) and 15-2-3 (HR-2).

	CODE REQUIREMENT	EXISTING
SETBACKS		
FRONT	0' in HCB and 10' in HR-2	Varies, 4' to 23' in HCB <u>Complies</u> and 15' in HR-2- <u>Complies.</u>
SIDES	0' in HCB and depends on Lot width in HR-2 (100' width requires 10' minimum and 30' total side setbacks)	0' in HCB- <u>Complies</u> 0' - 3' in HR-2- <u>Non-complying.</u>
REAR	0' in HCB and 10' in HR-2 for single family	0' in HCB- <u>Complies.</u> 0' in HCB- <u>Non-complying.</u>
HEIGHT	30' at property line on Main following a 45 degree angle to a maximum height of 45' in HCB. 27' in HR2	Constructed in compliance with the maximum height requirements and allowed volumetric- <u>Complies.</u>
MINIMUM LOT SIZE	1,250 sf in HCB 1,875 sf in HR-2 for SF and 3,750 sf for duplex	33,709 sf* - <u>Complies.</u>

MINIMUM LOT WIDTH	25'	224.73'* <u>-Complies.</u>
FLOOR AREA RATIO	4.0 (134,836 sf)	89,942 sf (gross floor area) 70,738 commercial/retail <u>Complies.</u>
PARKING	56 spaces per 1986 Parking Agreement and Special Improvement District	56 Spaces per existing parking agreement plus 10 private spaces <u>Complies</u>

*Actual surveyed square footage and lot width, based on the actual survey and monumentation.

The building was constructed over the existing platted lot lines and crosses the zone line between the HCB and HR-2 zoning districts. There is good cause for the application as the building will be located on one lot of record and building code issues regarding construction across property lines will be eliminated. With removal of the interior lot lines the building will be brought into compliance with the Site and Lot requirements of Section 15-2.6-3 of the Land Management Code and the Building Code, with the exception of the side yard setbacks on the HR-2 district that are non-complying.

Due to the importance of commerce and high level of activity on Main Street and frontage on Park Avenue, a residential street, staff recommends a condition of approval that a Construction Mitigation Plan (CMP) be submitted to the City for review and approval prior to issuance of any building permits for associated with this Lot.

Staff recommends that the CMP, in addition to the standard mitigation measures, address construction staging areas and access, a detailed construction phasing plan, road and sidewalk closures, timing of utility interruptions, timing of construction during times of high activity (Arts Festival, 4th of July, Miners Day, Sundance Film Festival, President's Day weekend, and other similar dates and events), construction deliveries (time, place, type), worker parking or transportation alternatives, environmental issues regarding soil and erosion, disposal of removed materials, schedule of meetings with neighborhood and affected owners to keep them informed about the progress of construction, relocation plan or plan to work around existing businesses, and other items that address mitigation of the impacts of any future construction on the activities, commerce, viability and livability of surrounding commercial and residential neighborhoods.

Staff recommends a condition of approval that prior to issuance of any building permits a detailed parking analysis shall be presented, identifying compliance with parking requirements of the 1986 Parking Agreement and LMC. This shall apply to any reconfiguration of tenant space, sizes, and uses. The parking analysis shall identify and discuss all existing parking agreements associated with the property.

The applicant submitted a parking analysis (See Exhibit C) for the current interior configuration and uses and for currently proposed uses. Parking calculations submitted with the current design review application, take into consideration change of use from commercial/offices to residential and utilize a ratio of 3.5 spaces per 1,000 sf for the commercial/office space conversion consistent with retail complexes of multi-tenant retail spaces and 2 spaces per residential unit of between 1,000 and 2,500 sf floor area. The parking calculations for the proposed uses indicate compliance with the 1986 Parking

Agreement and LMC.

In addition to parking required for the existing building, the property is encumbered with a lease agreement to provide a garage for the property at 364 Park Avenue. This lease agreement is identified on the plat because of the 99-year duration. This parking is currently provided within a garage in the Main Street Mall building with access to Park Avenue. The lease agreement addresses relocation of this garage in the event of construction/remodel of the building.

Staff finds that the plat, as conditioned, to combine the 18 platted lots into one lot of record, will not cause undo harm to adjacent property owners because the proposed plat meets the requirements of the Land Management Code for the HCB zoned portions and all future development will be reviewed for compliance with requisite Building and Land Management Code requirements in effect at the time of application for building permits. The plat also memorializes required access, parking, and utility easements and resolves building code issues of buildings constructed over property lines.

Department Review

This project has gone through an interdepartmental review. Issues discussed include reviewing the title report for information on all easements and agreements that encumber the property, parking, construction mitigation, and non-conforming aspects of the building. Staff toured the site to understand the various emergency and pedestrian tunnels and parking easements and how the building interfaces with the Park Avenue neighborhood. Mitigating construction impacts will be an important part of the building permitting and construction process for the proposed remodel.

Process

Plat amendments require a public hearing and recommendation by the Planning Commission with final action by the City Council. City Council's decision on a plat amendment may be appealed to a court of competent jurisdiction per LMC Section 15-1-18. Prior to building permit issuance for construction in the HCB and HR2 Districts plans must be submitted to and reviewed by the Planning Department for compliance with the Historic District Design Guidelines. Uses proposed with the design review application (commercial retail/office/and multi-dwelling residential) do not require Conditional Use Permit approval. A condominium record of survey plat is required prior to individual sale of any commercial tenant space or residential unit.

Public Notice

The property was posted and notice was mailed to property owners within 300 feet. Legal notice was also put in the Park Record.

Alternatives

- City Council may approved the plat amendment for 333 Main Street as conditioned or amended, or
- City Council may deny the plat amendment for 333 Main Street and direct staff to make findings for this decision, or
- City Council may continue discussion and action on the plat amendment for 333 Main Street to a future date to allow additional time for staff and/or the applicant to provide

additional information.

Notice

The property was posted and notice was mailed to property owners within 300 feet. Legal notice was also published in the Park Record.

Significant Impacts

The most significant fiscal impact of plat approval is that the internal lot lines will be eliminated creating a lot of record allowing the owner to consider remodel and construction of improvements to the front facades, subject to Historic Design Review and building permits. Construction impacts will be significant to vehicular, pedestrian, and commercial activity on Main Street and could impact residential uses on Park Avenue. Impacts will need to be considered and mitigated according to an approved Construction Mitigation Plan.

Consequences of not taking the Recommended Action

The property will remain, as platted and the existing building would be an existing non-conforming building because it was built over existing lot lines. No significant exterior renovation will be permitted.

Recommendation

Staff recommends City Council review the proposed plat amendment, conduct a public hearing and consider approving the plat amendment for 333 Main Street based on the findings of fact, conclusions of law, and conditions of approval as outlined in the draft ordinance.

Exhibits

Ordinance

Exhibit A- Proposed plat amendment

Exhibit B- Existing conditions survey

Exhibit C- Applicant's parking analysis for proposed remodel

Ordinance No. 09-

**AN ORDINANCE APPROVING A PLAT AMENDMENT FOR THE MAIN STREET MALL
LOCATED, AT 333 MAIN STREET, PARK CITY, UTAH.**

WHEREAS, the owners of the property known as the Main Street Mall, located at 333 Main Street, petitioned the City Council for approval of a plat amendment to create one lot of record by combining Lots 7-15 and 18-26, Block 11, Amended Park City Survey; and

WHEREAS, the property was properly noticed and posted according to the requirements of the Land Management Code; and

WHEREAS, proper notice was sent to affected property owners; and

WHEREAS, the Planning Commission held a public hearing on February 25, 2009, to receive input on the plat amendment and forwarded a recommendation to the City Council;

WHEREAS, on March 26, 2009, the City Council held a public hearing on the plat amendment; and

WHEREAS, it is in the best interest of Park City, Utah to approve a plat amendment to create a lot of record for the existing Main Street Mall to remove internal property lines and to memorialize existing emergency and pedestrian access, parking, and utility easements associated with the property.

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

SECTION 1. APPROVAL. The above recitals are hereby incorporated as findings of fact. The 333 Main Street plat amendment as shown in Exhibit A is approved subject to the following Findings of Facts, Conclusions of Law, and Conditions of Approval:

Findings of Fact

1. The property is located between Main Street and Park Avenue and consists of Lots 7-15 and 18-26, Block 11 Amended Park City Survey. Also included in the plat amendment are 5 easements on the plat for existing emergency and pedestrian access, utilities, storm drainage, and parking as described in the title report and title survey for 333 Main Street.
2. The existing building, known as the Main Street Mall, was constructed in 1984 across property lines and zone lines and is an existing legal non-conforming building.
3. The plat amendment creates one lot of record for the existing building.
4. The Main Street fronting lots are located in the Historic Commercial Business District (HCB) and the Park Avenue fronting lots are located in the Historic Residential Two (HR-2) zoning district.
5. The lot configuration meets minimum standards of the HCB and HR-2 Districts.
6. Main Street is important to the economic well being of the Historic Commercial business district and is the location of many activities important to the vitality and character of Park City. It is important to carefully consider impacts of construction on

the vitality and character of Main Street and the residential nature of Park Avenue.

7. The property is encumbered with a recorded 99 year lease agreement to provide parking for the property at 364 Park Avenue. This lease agreement is identified on the plat because of the duration of the lease. The parking is currently provided within a garage in the Main Street Mall building with access to Park Avenue.

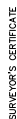
Conclusions of Law

1. There is good cause for this plat amendment.
2. The plat amendment is consistent with the Park City Land Management Code, the General Plan and applicable State law regarding plat amendments.
3. Neither the public nor any person will be materially injured by the proposed plat amendment.
4. Approval of the plat amendment, subject to the conditions stated below, does not adversely affect the health, safety and welfare of the citizens of Park City.

Conditions of Approval

1. The City Attorney and City Engineer will review and approve the final form and content of the plat amendment plat for compliance with State law, the Land Management Code, and the conditions of approval prior to recordation of the plat.
2. The applicant will provide the City with a signed mylar plat for recordation at the County, within one year from the date of City Council approval.
3. The plat shall be recorded prior to issuance of any building permits associated with the remodel and Historic Design Review application for 333 Main Street, the Main Street Mall. Approval of an Historic Design Review is required as a condition precedent to building permit issuance.
4. As a condition precedent to issuance of any building permits a detailed parking analysis shall be submitted for City review, identifying compliance with parking requirements of the 1986 Parking Agreement and the LMC. A revised parking analysis shall be submitted with any reconfiguration of tenant spaces, sizes, or uses. The parking analysis shall identify and discuss all existing parking agreements associated with the property.
5. A Construction Mitigation Plan (CMP) shall be submitted to the City for review and approval prior to issuance of any building permits for remodel or construction on or within the building. The CMP, in addition to the standard mitigation measures, shall address construction staging areas and access, a detailed construction phasing plan, road and sidewalk closures, timing of utility interruptions, timing of construction during times of high activity (Arts Festival, 4th of July, Miners Day, Sundance Film Festival, President's Day weekend, and other similar high activity dates and events), construction deliveries (time, place, type), worker parking and transportation alternatives, environmental issues regarding soil removal and erosion, disposal/recycling of removed materials, a schedule of meetings with the neighborhood and affected owners to keep them informed of construction progress, a relocation plan or plan to work around existing businesses, and other items that address mitigation of construction impacts on the activities, commerce, viability and livability of the surrounding commercial and residential neighborhoods.
6. Fire sprinkler systems, in accordance with the International Building Code in effect at the time of building permit application, are required prior to issuance of certificates of occupancy for the building.
7. A condominium record of survey plat is required prior to individual sale of any

- commercial tenant space or residential unit on this Lot.
8. As a condition precedent to issuance of a certificate of occupancy associated with any building permit, all exterior mechanical equipment and vents shall be painted to match the adjacent building materials and mechanical equipment shall be enclosed and /or adequately screened from public view. Sound baffles shall be installed to attenuate noise and all mechanical equipment shall comply with the City's noise ordinance requirements.
 9. As a condition precedent to plat recordation, all signs shall comply with the City's Sign Ordinance, including any signs on Park Avenue.
 10. City Engineer review and approval of all appropriate grading, utility installation, public improvements, erosion control, and drainage plans for compliance with City standards is a condition precedent to building permit issuance, this includes any plans to place utilities underground. All required permits or approvals from these utility providers shall be provided to the City Engineer prior to commencing any utility work.
 11. As a condition precedent to issuance of any building permits a landscape plan shall be submitted for City approval. The Park Avenue landscaping and frontage shall be included on the landscape plans and shall mitigate impacts of the rear building elevation.



I, John Demkowicz, certify that I am a Registered Land Surveyor and that I hold Certificate No. 154491, as prescribed by the laws of the State of Utah, and that by authority of the owner, I have prepared this Record of Survey map of the 333 MAIN STREET SUBDIVISION and that the same has been or will be monumented on the ground shown on this plat. I further certify that the information on this plat is accurate.

John Demkowicz

PROPERTY DESCRIPTION

PARCEL 1
ALL OF LOTS 7, 8, 9, 10, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 23, 24, 25, and 26, BLOCK 11, OF THE AMENDED PLAT OF THE PARK CITY SURVEY, according to the official plat thereof of record in the office of the Summit County Recorder.

EASEMENT DESCRIPTIONS

- [illegible]

OWNER'S DEDICATION AND CONSENT TO RECORD

KNOW ALL MEN BY THESE PRESENTS that _____, Manager, Park City, Utah, 84060, and _____, Clerk, Park City, Utah, 84060, do hereby certify that the herein described tract of land is known hereafter as 333 MAIN STREET SUBDIVISION, does hereby certify that he has caused this plat to be prepared, and does hereby consent to the recordation of this Plat.

ALSO, the owner or his representative, hereby irrevocably offers for dedication to the city of Park City all the streets, land for local government uses, easements, parks, and other improvements shown on the plat in accordance with an irrevocable offer of application.

In witness whereof, the undersigned set his hand this _____ day of _____, 2000.

ACKNOWLEDGMENT

333 Street address on Main Street

State of

County of _____ ss:

On this day of

On this _____ day of _____, 2009, _____ personally appeared before me, the undersigned Notary Public, in and for said state and county. Having been duly sworn, _____ acknowledged to me that he is the manager of Park City 333 Main Development, LLC the owner of the herein described tract of land, and that he signed the above Owner's Dedication and Consent to Record freely and voluntarily on behalf of said LLC.

A Notary Public commissioned in Utah

Printed Name _____

Revised: 10/1/2009

TOWNSHIP 2 SOUTH, RANGE 4 EAST, SALT LAKE BASE AND MERIDIAN
PARK CITY SUMMIT COUNTY UTAH

A PARCEL COMBINATION PLAT
A COMBINATION OF LOTS 7-15 & 18-26 IN BLOCK 11, PARK CITY SURVEY
3333 MAIN STREET PLAT AMENDMENT

(416) 440-0407



CONSULTING ENGINEERS LAND PLANNERS SURVEYORS
23 Main Street P.O. Box 2664 Park City, Utah 84060-2664

SNYDERVILLE BASIN WATER RECLAMATION DISTRICT
 REVIEWED FOR CONFORMANCE TO SNYDERVILLE BASIN WATER
 RECLAMATION DISTRICT STANDARDS ON THIS _____
 DAY OF _____, 2009 A.D.

BY _____

BY _____

APPROVED BY THE PARK CITY
PLANNING COMMISSION THIS _____
DAY OF _____, 2009 A.D.

BY _____ CHAIRMAN

ENGINEER'S CERTIFICATE

I FIND THIS PLAT TO BE IN
ACCORDANCE WITH INFORMATION ON
FILE IN MY OFFICE THIS _____
DAY OF _____, 2009 A.D.

BY _____
PARV CITY ENGINEER

APPROVAL AS TO FORM _____
 ISSUED AS TO FORM THIS _____
 F _____, 2009 A.D.

CERTIFICATE OF ATTEST
I CERTIFY THIS RECORD OF SURVEY
MAP WAS APPROVED BY PARK CITY
COUNCIL THIS _____ DAY
OF _____, 2009 A.D.

BABY CITY RECORDER

COUNCIL APPROVAL AND ACCEPTANCE

APPROVAL AND ACCEPTANCE BY THE PARK CITY
COUNCIL THIS _____ DAY OF _____
2009 A.D.

BT

MAYOR

RECORDED

STATE OF UTAH, COUNTY OF SUI

AT THE REQUEST OF

DATE TIME BOOK

THE

AMERICAN

WOMAN

JOB NO.: 6-11-08 FILE: X:\ParkCitySurvey\dwg\ary\plot2008\061108.dwg



133

EXHIBIT A

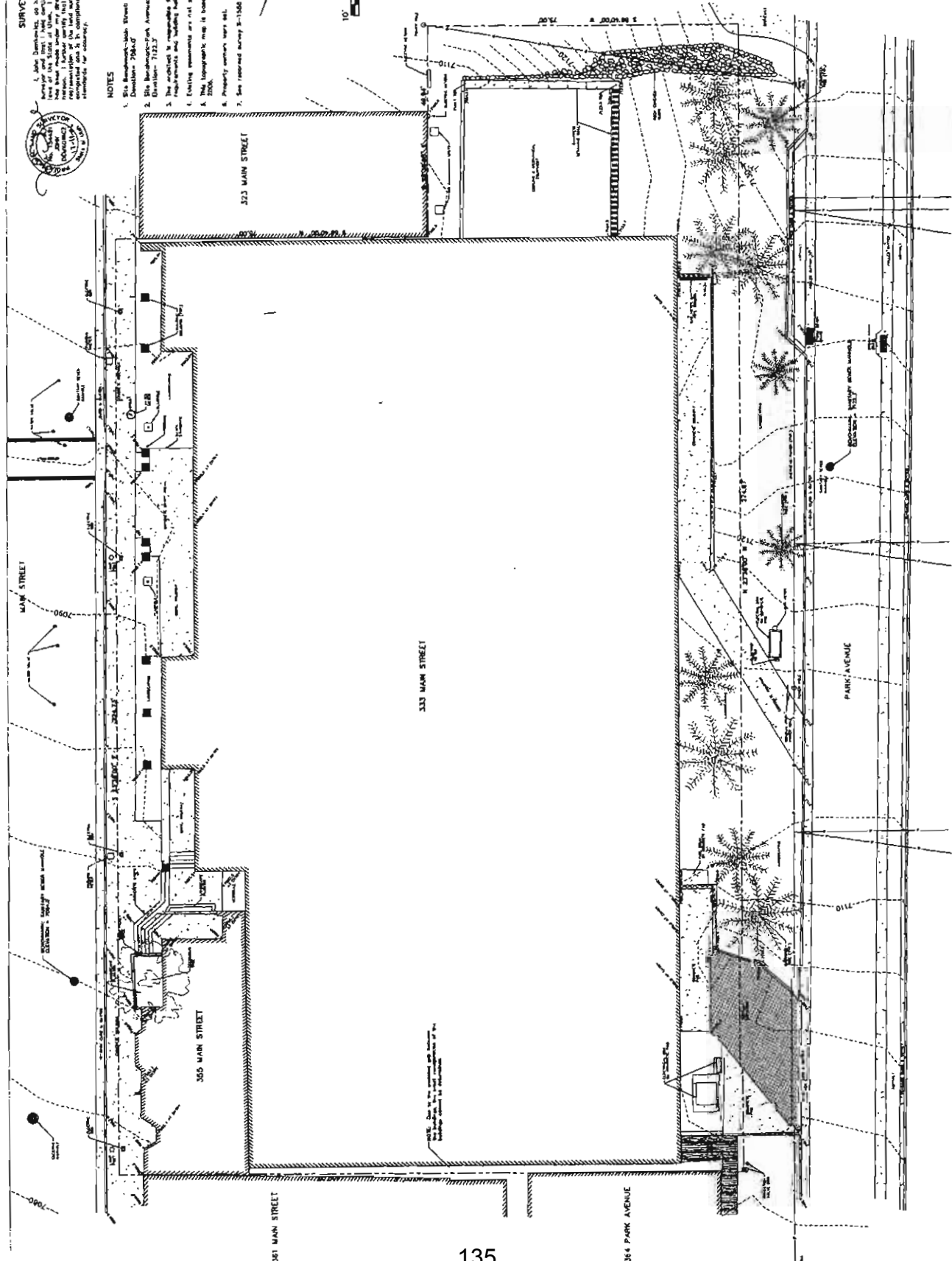
SURVEYOR'S CERTIFICATE

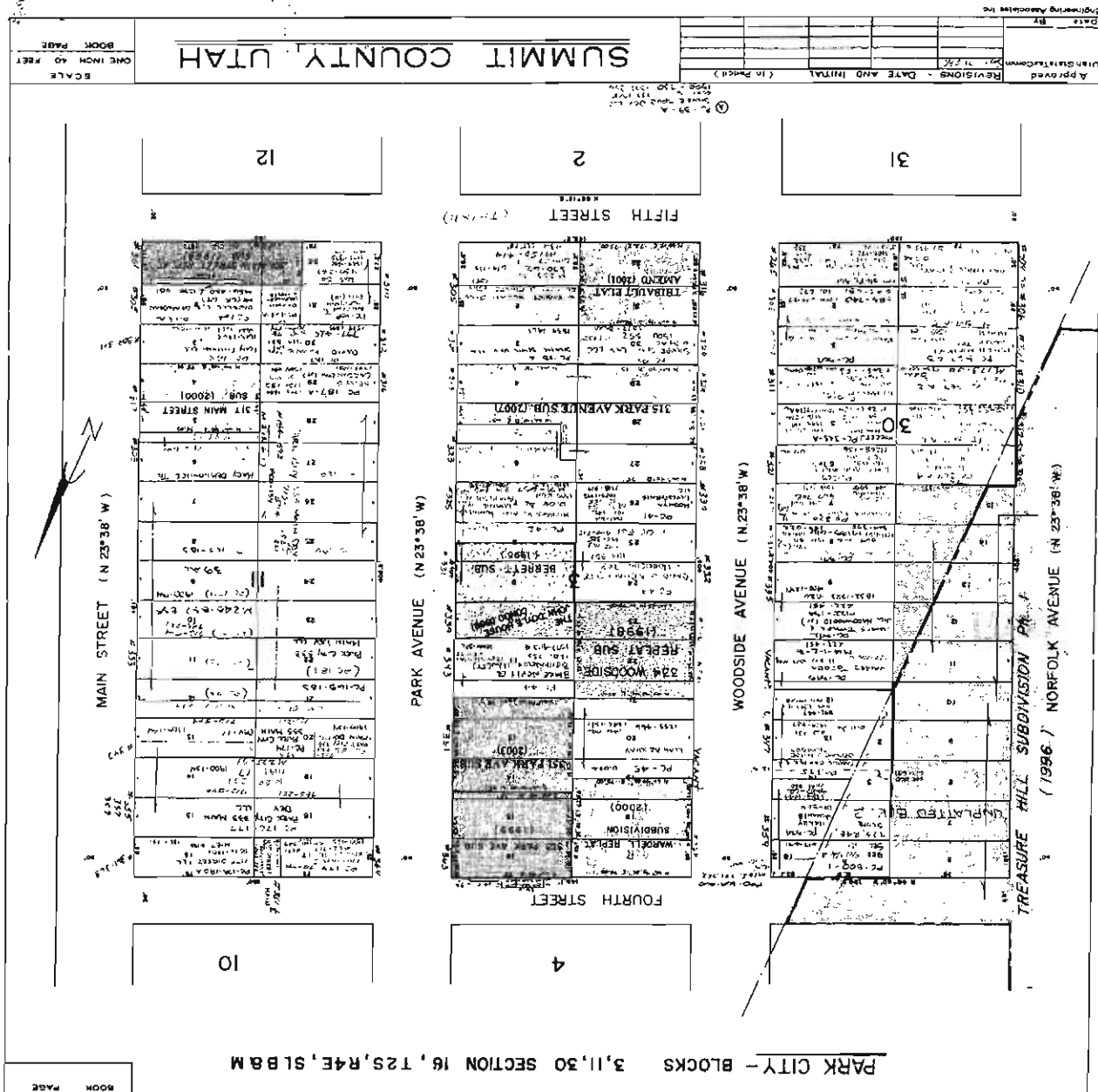
I, John D. Smith, do hereby certify that I am a registered land surveyor in the State of New York, and that I have personally and exclusively surveyed the above described premises, and that the same have been made under my direction at the time and place and according to the requirements of the laws of this State, and that the same are correctly represented on this map, and that the same have been made in accordance with generally accepted surveying standards for accuracy.



NOTES

1. The boundary line shown. Surveying level measured at 100.00 feet.
2. The boundary line shown. Surveying level measured at 100.00 feet.
3. The boundary line shown. Surveying level measured at 100.00 feet.
4. The boundary line shown. Surveying level measured at 100.00 feet.
5. The boundary line shown. Surveying level measured at 100.00 feet.
6. The boundary line shown. Surveying level measured at 100.00 feet.
7. See reserved survey 8-11558 in the Surveyor's Office.





Parking Narrative

The 333 Main building, at time of its original approval, had a Master Parking Agreement dated February 28, 1986 between its owners, Silver Mill and Park City Municipal. It was an agreement to participate in the construction of the original China Bridge parking structure. The agreement included a total of 56 non-dedicated parking stalls in the structure. The 333 Main building has an additional 10 private parking spaces (constructed several years later) available located in-between the parking structure and Main Street. These 10 spaces are immediately adjacent to the south tunnel under Main Street.

Staff and applicant developed a parking calculation based on the "changes in use and floor area" of the proposed design. Where commercial floor area has been reduced, parking spaces have been credited and where new residential floor area has been provided parking spaces have been required. In other words, the commercial area of the building has been reduced and residential area added. The commercial area has a more intensive use for parking than residential and the overall change is a reduction in parking requirements. The table below is used to provide the data for this approach to parking calculation.

Parking Calculations

Total Required/ Available per 1986 Master Parking Agreement 56

Floor Area Basis in Square Feet

Existing	Proposed	Change
89,942	95,841	5,899

Commercial Area per Floor in Square Feet

Floor	Existing	Proposed	Change		Parking Required
0	21,575	21,234	-341	x 3.5	-1.19
1	20,206	22,971	2,765	x 3.5	9.68
2	18,926	18,773	-153	x 3.5	-0.54
3	10,031	0	-10,031	x 3.5	-35.11
4	0	0	0	x 3.5	0.00
Total	70,738	62,978	-7,760		-27.16
Total Required 56 minus 28 =					28.00

Residential Area per Floor, Square Feet and Unit Count

Floor	Unit Count	Parking Required
2	(2) units 1,000 to 2,500 sf	4
3	(7) units 1,000 to 2,500 sf	14
4	(2) units 1,000 to 2,500 sf	4
Total Required		22

Total Required Spaces (Commercial)	28
Total Required Spaces (Residential)	+
Total Required Spaces	50
Total Available Spaces	56
Total Remaining	56 - 50 = 6 Remaining

Private Parking NOT related to Master Parking Agreement 10