

**PARK CITY COUNCIL MEETING
SUMMIT COUNTY, UTAH
MARCH 4, 2010**

PUBLIC NOTICE IS HEREBY GIVEN that the City Council of Park City, Utah will hold its regularly scheduled meeting at the Marsac Municipal Building, City Council Chambers, 445 Marsac Avenue, Park City, Utah for the purposes and at the times as described below on Thursday, March 4, 2010.

Planning Commission interviews

(See separate packet)

4:45 p.m. Review of interview questions
5:00 p.m. Amy Roberts
5:15 p.m. Mick Savage
5:30 p.m. Larry Kaze
5:45 p.m. Break

Regular Meeting

6:00 p.m.

I ROLL CALL

II COMMUNICATIONS AND DISCLOSURES FROM COUNCIL AND STAFF

1. Council comments, questions and/or disclosures
2. Legislative update

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

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

1. Consideration of a professional service agreement, in a form approved by the City Attorney, with Bowen, Collins and Associates for engineering services related to the design and construction management of the Judge Tunnel Pipeline in an amount of \$699,769

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2. Consideration of findings of fact, conclusions of law and order regarding the appeal of a Conditional Use Permit for 1440 Empire Avenue heard by the City Council on February 25, 2010

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VI ADJOURNMENT

Closed Session

Property, litigation, and personnel

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.

Wireless internet service available in Marsac Building on Wednesdays and Thursdays – 4 p.m. to 9 p.m.

Posted: 03/01/10

See www.parkcity.org

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

March 2010

- 11 **Liza gone**
Planning Commission interview (schedule before closed or not – Liza gone)
Legislative update
Budget update
Contract Modification No. 3 to UDOT Consultant Service Agreement with H.W. Lochner, Inc. for design services for the Bonanza Drive Reconstruction Project in an amount not to exceed \$32,988 in a form approved by the City Attorney.
UDOT Consultant Services Agreement with Stanley Consultants for Construction Engineering Services for Phase 2 of the Bonanza Drive Reconstruction Project in an amount not to exceed \$450,558 in a form approved by the City Attorney.
- 18 Ratification of PSSM City Services Agreement (work/action)
Resolution supporting Google's RFI for a community 1000 gigabit fiber network in Park City, Utah
Grant of open space – IMA - TD
Renewable Energy Feasibility Study for Park City (1 hour)
- 25 **No meeting**

April 2010

- 1 PC Heights update (45 min)
Sundance debrief
Transportation master plan contract - MC
Anti-discrimination ordinance (action)
- 8 **No meeting**
- 15 Quarterly goal update
22
- 29 **Alex gone**

May 2010

- 6 Presentation of budget – work
- 13 Budget - work
- 20 Budget - work
- 27 Budget – work

Pending Items:

Open space maintenance
U S Postal Service gang boxes in Old Town - MC
Quinn's WTP Building Construction Contract – TT
Special event prioritization – work
Performance measures (work)
Resolution amending (or replacing) Resolution No. 20-07, adopting Affordable Housing Guidelines and Standards for Park City, Utah
Carrying capacity/market analysis survey
Wild land interface issues

City Council Staff Report



Author: Kathy Lundborg
Subject: PROFESSIONAL SERVICE AGREEMENT FOR
THE JUDGE TUNNEL PIPELINE
Department: Public Works
Date: March 4, 2010
Type of Item: Administrative

Summary Recommendations:

Staff recommends Council authorize the City Manager to execute a Professional Service Agreement, in a form approved by the City Attorney, with Bowen, Collins and Associates for engineering services related to the design and construction management of the Judge Tunnel Pipeline in an amount of \$699,769.

Description:

Water Strategic Plan: Source Strategies & Policies

- Maximize efficient use of existing City water sources.

Water Quality:

- Protect existing water sources
- Ensure public health and safety is protected through quality water

Topic:

This contract with Bowen Collins and Associates (BCA) will provide necessary design and construction management work for a waterline from the Judge Tunnel to the proposed Quinn's Water Treatment Plant.

Background:

The raw waterline from Signal Hill to the Quinn's Water Treatment (QWTP) is currently under construction and will be completed by Spring of 2010. This water line will deliver up to 2,500 acre-feet of Rockport Reservoir water to the Quinn's Junction area. In the future, a portion of the raw water will continue into the City to be used at the golf course, school fields, and parks.

The QWTP will begin construction Summer 2010 and is scheduled to be operational by Summer 2011. The plant will treat water for consumption (finished potable water) and will also be able to filter Judge Tunnel water during high turbidity events. Turbidity events typically occur during mine maintenance activities, periods of high flow, or during mine disturbances. If necessary in the future, the capability will exist to blend Judge Tunnel water with Rockport Reservoir water at the QWTP.

This project includes the design of a new 10" to 20" water line approximately 25,000 feet in length. The water line will tie into the water line at Wyatt Earp Way and the rail trail

that is being designed by Horrock's Engineers between the QWTP and Wyatt Earp Way. The water line will be designed to convey Judge Tunnel water by gravity from near the tunnel portal to the QWTP for filtration or blending, on an as-needed basis.

The Contract also includes construction engineering management and observation, which is required for all construction projects. The construction manager (CM) verifies contractor compliance with construction documents. The CM coordinates all project paperwork between the contractor and the owner and engineer. The CM verifies contractor pay requests, prepares change orders, and prepares non-compliance notices among other tasks discussed in detail in the attached Scope of Work. For this project, the CM and observation work will be performed by the same individual which provides some cost savings.

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

Analysis:

The City's purchasing policies exempts professional service contracts from any requirement for competitive bidding. According to this policy consultants are chosen by selecting the firm whose experience, capabilities, and past performance best meet the needs of the project. The selection committee, comprised of Todd Touchard, Kyle McArthur, Jerry Gibbs (Public Works), Matt Cassel (Engineering), and Bryan Atwood (Snyderville Basin Reclamation District) used the following criteria as guidance in evaluating the RFP's:

- Firm's proposed team and their experience in design and construction of pipelines including hydraulic analysis and design, survey, and right-of-way analysis.
- Firm's experience in designing within contaminated soil districts and more specifically within Park City.
- Firm's experience with public involvement.
- Firm's experience with the identification and preservation of historical and significant structures.
- The strength of the firm's local (Utah) office(s).
- A work plan identifying the general project approach, QA/QC process and identification and resolution of critical issues.
- Hourly rate schedule of the proposed project team.
- Three recent references for pipeline projects performed by the proposed team members.
- Other factors deemed relevant by the selection committee.

Eleven consultants submitted Statements of Qualifications for the Request For Qualifications (RFQ) (see **Table 1**).

Table 1. Consultants and Hourly Fees

Consultant	Project Manager	Design Engineer	Drafting
Bowen & Collins	\$121.00	\$91.00	\$86.00
Brown & Caldwell	\$165.00	\$135.00	\$92.00
Epic Engineering	\$117.00	\$98.00	\$75.00
Gilson Engineering	\$110.00	\$95.00	\$60.00
HDR	\$234.00	\$198.00	\$137.00
Horrocks Engineers	\$133.00	\$93.00	\$64.00
Jackson Engineering	\$115.00	\$85.00	\$75.00
MWH	\$143.00	\$103.00	\$80.00
Stanley Consultants	\$105.00	\$72.00	\$96.00
Stantec	\$126.00	\$83.00	\$83.00
Water Works/Jack Johnson	\$125.00	\$125.00	\$90.00

Based on the selection criteria, the committee unanimously determined that Bowen Collins & Associates was the best choice for providing engineering services for this project.

Staff has provided the Scope of Work and negotiated the fee with Bowen Collins & Associates. This is included as Addendum A in the Professional Services Agreement and is an amount of \$699,769. Staff feels that the fee is usual and customary with projects of this type and scope (\$5 million construction cost).

Department Review:

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

Alternatives:

A. Approve the Request:

Staff recommends Council authorize the City Manager to execute a Professional Service Agreement, in a form approved by the City Attorney, with Bowen, Collins and Associates for engineering services related to the design of the Judge Tunnel Pipeline in an amount of \$699,769.

B. Deny the Request:

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

C. Continue the Item:

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

D. Do Nothing:

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

Significant Impacts:

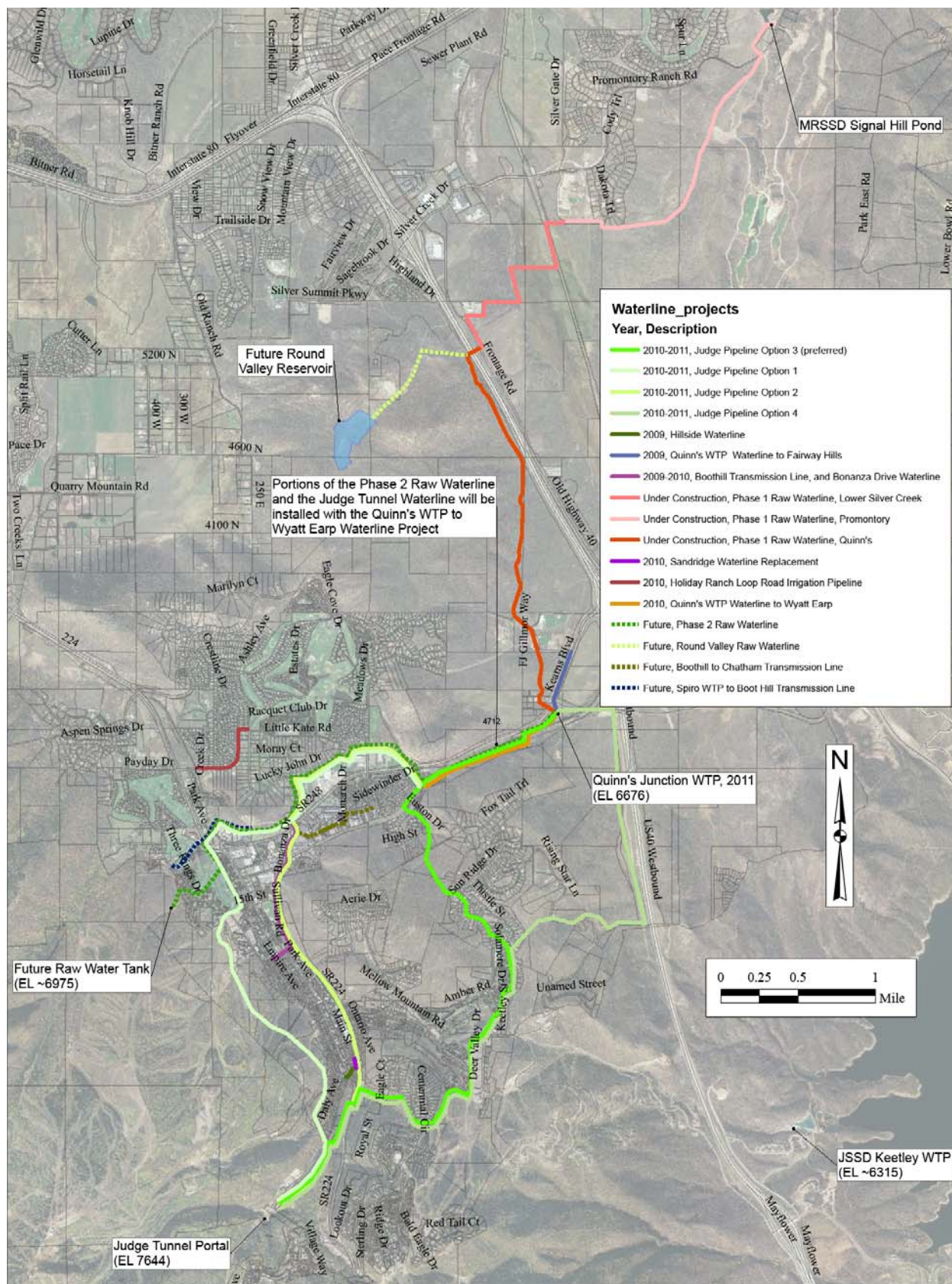
The engineering design will have no significant impacts. The design will be coordinated with the Public Works, Engineering and Walkability/Sustainability Departments to address potential construction impacts on streets and trails. The fee associated with this Contract is included in the project in the approved FY2010/2011 CIP budget.

The City has also received approximately \$2M in STAG grants to be applied towards the construction of this project (pending the completion of the Environmental Assessment). If Council does not authorize the execution of the Agreement with Bowen, Collins and Associates, the project will be potentially delayed and may result in the forfeiture of the STAG grant funds.

Recommendation:

Staff recommends Council authorize the City Manager to execute a Professional Service Agreement, in a form approved by the City Attorney, with Bowen, Collins, and Associates for engineering services related to the design of the Judge Tunnel Pipeline in an amount of \$699,769.

Project PCWIP	Task	Contractor/ Consultant	Contract/ Agreement Authorized by Council?	Amount
Promontory	a. Design b. Construction Mgmt/Inspection c. Construction (2009/2010)	a. Stantec b. MRWSSD c. Counterpoint	Y Y Y	\$460,610 (plus \$338,260) Hourly rate (\$75/hr) \$1,439,950
Quinn's	a. Design b. Construction Mgmt/Inspection c. Construction (2009/2010)	c. Stantec d. BCA c. Allied Construction	Y Y Y	\$460,610 (plus \$338,260) \$89,792 \$2,183,495
Lower Silver Creek	a. Design b. Construction Mgmt/Inspection c. Construction (2010)	a. Stantec b. Stantec c. BD Bush	Y Y Y	\$460,610 (plus \$338,260) \$113,746 \$1,933,821
Phase 2, 3, 4	a. Preliminary Design Construction begins 2011	a. Stantec	Y	\$460,610 (plus \$338,260)
Quinn's WTP to Wyatt Earp Finished Waterline	a. Design b. Construction Mgmt/Inspection c. Construction (2010)	a. Horrocks b. Horrocks c. Not chosen	N N N	\$228,352 \$2,200,000 (estimate)
Judge Tunnel Waterline	a. Design b. Construction Mgmt/Inspection c. Construction (2010/2011)	a. BCA b. BCA c. Not chosen	N N N	\$444,321 \$255,448 \$5,000,000 (estimate)
HR Loop Rd Irrigation Waterline	a. Predesign, Design b. Construction Mgmt/Inspection c. Construction (2009/2010)	a. Jack Johnson, Alliance b. City Staff	NA	\$10,000 \$300,000 (estimate for water portion)
Water Treatment Plant	a. Design b. Construction Mgmt/Inspection c. Construction (2010/2011)	a. Carollo b. Not chosen	Y	\$1,244,000 \$15,000,000 (estimate)
Boothill Transmission Line Phase 2 and 3	a. Design b. Construction Mgmt/Inspection c. Construction (2009/2010)	a. BCA b. City Staff (ph2), Stanley (ph3) c. Granite Construction(2009)	Y Y Y	\$72,600 \$29,410 (phase 3) \$500,000 \$766,000 (2010 estimate)
Hillside Waterline (Completed)	a. Design b. Construction Mgmt/Inspection c. Construction (2009)	a. BCA b. Ward Engineering c. Granite Construction	Y Y Y	\$22,300 \$101,840
Fairway Hills Finished Waterline (Completed)	a. Design b. Construction Mgmt/Inspection c. Construction (2009)	a. BCA b. Alliance c. Counterpoint	Y Y Y	\$35,230 \$39,115 \$302,661



Project Location Map

PARK CITY MUNICIPAL CORPORATION SERVICE PROVIDER/PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into in duplicate this ____ day of _____, 2010, by and between PARK CITY MUNICIPAL CORPORATION, a Utah municipal corporation, ("City"), and Bowen, Collins and Associates, 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 **699,769 dollars.**

2. TERM.

The term of this Agreement shall commence on the date of execution on this Agreement and shall terminate on December 31, 2011 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 all claims, demands, suits, at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, including reasonable attorney's fees, brought against the City arising out of, in connection with, or incident to the execution of this Agreement and/or the Service Provider's negligent performance or failure to perform any aspect of this Agreement; provided, however, that if such claims are caused by or result from the concurrent negligence of the City, its agents, employees, and officers, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the Service Provider; and provided further, that nothing herein shall require the Service Provider to hold harmless or defend the City, its agents, employees and/or officers from any claims arising from the sole negligence of the City, its agents, employees, and/or officers. The Service Provider expressly agrees that the indemnification provided herein constitutes the Service Provider's limited waiver of immunity as an employer under Utah Code Section 34A-2-105; provided, however, this waiver shall apply only to the extent an employee of Service Provider claims or recovers compensation from the City for a loss or injury that Service Provider would be obligated to indemnify the City for under this Agreement. This limited waiver has been mutually negotiated by the parties, and is expressly made effective only for the purposes of this Agreement. The provisions of this section shall survive the expiration or termination of this Agreement.
- B. No liability shall attach to the City by reason of entering into this Agreement except as expressly provided herein.

8. INSURANCE.

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

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

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

- B. Automobile Liability insurance with limits no less than two million dollars (\$2,000,000) combined single limit per accident for bodily injury and property damage.
- C. Professional Liability (Errors and Omissions) insurance written on claims made basis with limits no less than one million dollars (\$1,000,000) combined single limit per occurrence.
- D. Workers Compensation insurance limits written as follows:
Bodily Injury by Accident \$500,000 each accident;
Bodily Injury by Disease \$500,000 each employee, \$500,000 policy limit
- E. The City shall be named as an additional insured on the insurance policies, identified in paragraph 8A and 8 B above. The Certificate of insurance shall indicate that the City shall receive thirty (30) days advance notice of cancellation, except for a case of non-payment of premium, in which case advance notice of cancellation shall be ten (10) days. The City reserves the right to request certified copies of any required policies.
- F. The Service Provider's insurance identified in paragraph 8A above, 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

Eden Construction Contract No. _____

Project: Judge Tunnel Pipeline

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

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

PARK CITY MUNICIPAL CORPORATION

445 Marsac Avenue
Post Office Box 1480
Park City UT 84060-1480

Tom Bakaly, City Manager

Attest:

City Recorder's Office

Approved as to form:

City Attorney's Office

SERVICE PROVIDER

Address:

Tax ID#: _____

Signature

Printed name

Title

STATE OF UTAH)
) ss.
COUNTY OF SUMMIT)

On this ____ day of _____, 2010, 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

Eden Construction Contract No. _____

Project: Judge Tunnel Pipeline

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ADDENDUM “A”

Judge Tunnel Pipeline – Scope of Work

It is our understanding that the design will include approximately 25,000 feet of water pipeline running from near the Judge Tunnel Portal to the Rail Trail crossing at Wyatt Earp Drive along Alignment Option 3 (Alternative Alignment)—Chatham Crossing as shown in the “Judge Tunnel Water Line Alignment Evaluation” (Stantec, October 30, 2009). Approximately 1,100 feet of this alignment is along the Rail Trail and is within the Park City Soils Ordinance Zone. Park City has requested that BC&A design approximately 1,100 feet of 16-inch potable water line to parallel the Judge water pipeline along this portion of the alignment. This 16-inch water line will connect to the new finished water line from the Quinn’s WTP at Wyatt Earp. Park City has requested that BC&A design approximately 575 feet of 8-inch potable water line and service connections to replace an existing 6-inch water line along the Queen Esther Drive portion of the alignment. These additional water lines are included in the scope of this project. It is anticipated that the Judge water pipeline will connect to the existing overflow line near Empire Canyon Tank. It is anticipated that the Judge water pipeline from Wyatt Earp Drive to the Quinn’s WTP will be designed by Horrocks Engineers. BC&A will coordinate the connection location with Horrocks during the design process. According to the Stantec study, the Judge pipeline will consist of 10-inch, 12-inch, 14-inch and possibly 20-inch diameter pipe sections.

Phase 1 – Design Services

Task 1.1 Collect and Review Existing Information. BC&A will meet with personnel from Park City to collect existing information pertinent to the project including previous record drawings, studies, roadway information, waterline information and other information pertinent to the project. Field investigations will be completed to gather data pertinent to the project. This information will be reviewed and used in the design of the pipeline.

Task 1.2 Progress Meetings/Information Review. BC&A will meet with personnel from Park City for the following meetings during the design phase:

- Pre-design Kick-off Meeting (Water, Planning, Engineering, Sustainability Departments and others as requested by the City)
- Agency meetings critical to project including Mountain Trails Committee, State Parks Dept, and Deer Valley Resort (3 meetings)
- Plan Review-- 30% Preliminary Design, 60%, 90%, Pre 100% Submittal Review (4 meetings)
- Assist City and provide exhibits for two City Council Meetings (30% Preliminary Design, 100% Design)
- Design Open House: Assist City with scheduling and hosting one Public Open House Meeting to convey project impacts to the community. Provide exhibits, sign-in sheets and invitations as requested by City.
- General Project Meetings – BC&A anticipates 11 additional project coordination meetings with Park City personnel to be held on a bi-weekly or as needed basis during the design phase.

Task 1.3 Utility Investigations. Alliance Engineering will perform a field reconnaissance and review of utilities along the alignment of the pipeline. Alliance will also gather utility location

data from the various utility companies and locate any known utilities on the design drawings. If major utilities affect the final design of the pipeline, BC&A will assist Park City personnel in coordinating potholing of these utilities to verify their location.

Task 1.4 Field Survey and Mapping. Alliance Engineering will perform the right-of-way research, prepare easements for construction and permanent maintenance access, and provide land acquisition recommendations as well as the topography survey for the pipeline alignments. It is anticipated that approximately 25 to 30 easements will be prepared as required for this project. Potholing will be coordinated with city personnel as necessary to confirm conditions. Existing Park City aerial photography and the 2' contour aerial survey will be used as base mapping for the pipeline corridor. Alliance will purchase additional required 2' contour survey along the pipeline corridor and provide to Park City. Alliance will perform detailed trail and tree mapping along the bike trail on Prospect Ridge and any other undisturbed areas along the alignment. Survey will be in North American Datum 83 (NAD83) Projection, State Plane Utah North U.S. Survey Feet Coordinate System, with North American Vertical Datum 88 (NAVD88).

Task 1.5 Hydraulic Modeling. A hydraulic and surge analysis will be performed using the City's water modeling software, H2OMap, and InfoWater Surge. BC&A will use the results of the modeling and surge analysis to design the waterline for size, pressure class and materials.

Task 1.6 Preliminary Design Report. Based on the results of Items 1 through 5 above, a report summarizing the design requirements and assumptions will be prepared to include a summary of the hydraulic analyses, cost estimates and recommendations for the pipeline alignments with 30% preliminary design drawings. The report findings will be presented to the City Council.

Task 1.7 Geotechnical Investigation. A detailed geotechnical investigation along the proposed alignment, including 30 to 35 test pits from 10 to 15 feet deep or until refusal; 20 to 25 borings to depths of 10 feet or until refusal; laboratory testing; engineering analysis; and a summary report will be performed by GSH Consultants. Test pits will be back filled with excavated native soil. Test pits in the PCMC soil ordinance zone will have a soil cap consisting of 6-inches of import material. Test borings in asphalt roadways will be filled with excavated material and capped with a cold patch asphalt and steel capping plate. The field and laboratory testing will be performed to determine the depth to groundwater and whether native material can be used for backfill. A geotechnical report for use during the design will be prepared. Geotechnical logs will be included in the Contract Documents for contractor reference during the bidding and construction phases.

Task 1.8 Permitting. BC&A will assist Park City personnel in obtaining the needed permits for the project as required. We will prepare permit applications, coordinate with the permitting agencies, and assist the City personnel in obtaining the final permits. We will also identify as part of the contract documents, the needed permits required by the contractor. Agencies that we expect will require permits are the Utah Division of Drinking Water, Park City, State Engineer for stream alteration permit. It is assumed that the environmental assessment and associated environmental permitting will be provided under a separate contract by Stantec to the City. Park City will provide copies of these documents to BC&A.

Task 1.9 Design Drawings. BC&A will prepare design drawings for the project. Existing Park City aerial photography combined with the 2' contour aerial survey and additional field verified topography will be used as base mapping for the pipeline corridor. Pipeline plan and profile drawings will be prepared at a scale of approximately 1-inch equals 40 feet horizontal (half size sheets). Other details and drawing will be prepared as required. An estimated sheet count is presented below:

Sheet	No.	Description
1-4	4	Title Sheet, Legends, Symbols, Notes
5	1	Overall Map with Keys
6	1	Overall Hydraulic Profile and Design Criteria
7-34	28	Pipeline Plan and Profile Sheets
35-38	4	Vault Plans and Sections
39-44	6	Civil Details (typical trench sections, surface restoration, buried valves, etc)
45-46	2	Structural Details (reinforcing, concrete joints, etc)
47-52	6	Mechanical Details (vault piping, valves, couplings, ventilation)
53-62	10	Electrical Details (one-line diagrams, power, panels, lighting)
63-66	4	Instrumentation Details (RTUs, P&IDs)

For the 30%, 60%, 90%, and 100% review meetings, 4 sets of review documents will be prepared.

Task 1.10 Contract Documents. BC&A will prepare final contract documents in Adobe PDF format and the pipeline alignment in City-designated GIS format with ½-size drawings for use in bidding, including legal documents, general conditions, technical specifications, and drawings for the project. Documents will be electronically distributed via an FTP site to City personnel.

Task 1.11 Construction Cost Estimate. BC&A will prepare a construction cost estimate for the project. Cost estimates will be prepared with the 30%, 60%, 90% and final design submittals and will be coordinated with Park City.

Phase 2 – Bidding Support

Task 2.1 Contractor Pre-qualification. BC&A will prepare and issue contractor pre-qualification documents from our office via an FTP site to screen potential contractors prior to the bidding process. BC&A will assist the City in evaluating the documents and recommending contractors for pre-qualification.

Task 2.2 Bid Period Services. BC&A will issue bid documents from our office via an FTP site and will manage the bidding process. We will coordinate answers to questions from prospective contractors during the bid period for the project. BC&A will prepare required addenda to the contract documents.

Task 2.3 Pre-Bid Meeting. BC&A will assist City personnel in preparing for the pre-bid meeting by preparing an agenda, conducting and documenting the meeting, and distribute notes of the meeting. The meeting will be with the contractors, Park City, and others as needed.

Task 2.4 Bid Opening. BC&A will attend the bid opening, open the bids and assist Park City personnel in evaluating the bids, checking references, contractor licenses, resumes and providing written recommended selection of a contractor. BC&A will prepare the final contract for construction.

Phase 3 –Construction Support

3.1 Preconstruction Conference – Coordinate and attend the pre-construction conference prior to the start of any field activities. Prepare minutes of the meeting and distribute to City, Contractor, all attendees and others as requested by City.

3.2 Preconstruction Open House - Assist City with scheduling and hosting one Public Open House Meeting to convey project impacts to the community. Provide exhibits, sign-in sheets and invitations as requested by City.

3.3 Construction Administration Procedures - Log-in and track the Contractor's requests for clarification/requests for information, shop drawings, samples, submittals, contract schedule adjustments, change order proposals, written proposals for substitutions, payment applications and permits. BC&A will review any requests for clarification/information, shop drawings, samples, or other submittals and shall coordinate such requests with the City. BC&A will maintain the following documents: correspondence files; contract addenda; copy of the contract documents and progress reports. BC&A will keep record of the names, addresses, and telephone numbers of the Contractor's and all subcontractor's emergency contact personnel. BC&A will maintain reports of job site conferences, meetings and discussions between City and Contractor.

3.4 Change Order Preparation, Negotiation and Processing - Establish, implement and coordinate systems for processing contract change orders. Prepare independent cost estimates for contract change orders. Negotiate contract change orders with the Contractor. Coordinate negotiations with the City and preparation of all contract change order documents for execution by the Contractor and City. Prepare other related correspondence for City's review and approval of change orders as required.

3.5 Permits, Bonds and Insurance - Verify that the required permits, bonds and insurance, have been obtained. Monitor that the conditions of permits are adhered to by the Contractor. Such action by BC&A shall not relieve the Contractor of its responsibility to comply with the provisions of the Contract Documents.

3.6 Construction Schedule- Review the Contractor's construction schedule and updates and verify that the schedule is prepared in accordance with the requirements of the contract documents. Require the Contractor to prepare and submit a recovery schedule if progress falls

behind schedule. Maintain an approved schedule to track the Contractor's work efforts during construction and provide current schedule information to City.

3.7 Progress Meetings and Reporting- Conduct bi-weekly progress meetings attended by City, Contractor, utility companies, outside agencies, and other participants. Such meetings shall serve as a forum for the exchange of information concerning the Project and the review of construction progress. Prepare and distribute agenda and minutes of these meetings to City, Contractor, and other Project participants.

3.8 Progress Payments- Review the applications submitted by the Contractor and determine whether the amount requested reflects the actual progress of the Contractor's work. Make appropriate adjustments to each payment application, and prepare and forward to City a progress payment report. The report shall state the total contract price, payments to date, current payment requested, retainage, and actual amounts owed for the current period.

3.9 Quality Review- Monitor the quality of construction. Coordinate third-party inspections and any required special inspections and review these inspection reports (these will be paid for by the construction contractor or city). Review the work for compliance with the contract documents. BC&A will maintain daily reports/field logs detailing the progress of the work, manpower and equipment assigned to the Project, and schedule of activities. Reject work and transmit to City and Contractor a notice of nonconforming work when it does not conform to the requirements of the contract documents. Maintain a daily diary of events at the jobsite, including but not limited to the following: Contractor and subcontractor's personnel and equipment, observed delays and causes, weather conditions, daily activities and progress by stationing, data relative to claims for extras or deductions, material received on site, and test results.

3.10 Photographs & Video- Provide to City photographic documentation (both still and video) of Project sites prior-to construction. BC&A will maintain a photographic log of the construction activities.

3.11 Coordination with City Divisions and Other Agencies – Coordinate and communicate with the City's Representative to keep them informed of the Project status, field encounters, field meetings, and other pertinent information. Coordinate with the Contractor for the technical inspection, testing, and work required by outside agencies. This shall include utility companies. Coordinate trail closures and detours with Mountain Trails. It is anticipated that notice of these closures and detours will be given on the Mountain Trails website and on signs posted by the construction contractor.

3.12 Detailed Sketches- Provide detailed sketches clarifying construction conflicts and/or design changes as requested by City.

3.13 Dispute Resolution- Make recommendations and implement procedures for reducing the likelihood of disputes and claims. Assist City in gathering applicable data, reviewing Contractor's documents, substantiating disputes or claims, and resolving construction disputes. Make recommendations for Alternate Dispute Resolution methods, as required. Any work by BC&A that involves litigation activities will be paid for by the City separately from this contract.

3.14 Project Observation - For the 200 work day (40 work week) construction period, BC&A has assumed a full time inspector (40 hours per week) for a total of 1,600 hours during the construction period.

3.15 Project closeout- Complete and deliver all Project files and documents to City. All submittals, RFIs, O&M manuals, daily reports, photos, shall be submitted to the City in a digital format (CD or DVD).

3.16 Final Inspection and Punchlist- Conduct final inspection with City and other Project participants to prepare a list of construction deficiencies for resolution by Contractor. Make recommendations to City regarding Contractor's final progress payment request. Prepare final progress payment report for submission to City.

3.17 Record Drawings- Maintain one set of field contract documents with up-to-date information regarding all addenda, substitutions, clarifications and change orders. Review redlined drawings from contractor, which identify any changes in work for preparation of Record Drawings. Map with GPS (plus or minus 1 foot horizontal accuracy) the locations of waterlines, fittings, valves, manholes, utility crossings etc. Alliance Engineering will provide construction as-built survey. BC&A will prepare record drawings using information provided by Contractor and the as-built survey. These will be delivered in paper hard copy, electronic PDF format, City-designated GIS format, and AutoCAD format upon completion of the project. BC&A will incorporate the as built waterlines into Park City's H2OMap Water Model.

Exclusions

- Costs for potential additional geotech investigation that may be required in the event that directional drilling is required in the design.
- Costs for potholing utilities if required.

Timeline by Task

BC&A understands that the project Construction Contract must be awarded by September 16, 2010. Our proposed schedule is:

Design – March 1 – August 2, 2010
Contractor Pre-qualification – July 5 – July 19, 2010
DDW Approval – August 2 – September 7, 2010
Bidding – August 2 – August 20, 2010
Construction Contract Award – September 16, 2010
Construction (40 weeks active) – October 4, 2010 – October 3, 2011

Fee Summary by Task

Table 1 outlines our estimate of man-hours by task and by individual for each work item. The table also includes an estimate of direct expenses.

Judge Tunnel Pipeline Scope of Work

TABLE 1 - COST PROPOSAL Park City Municipal Corporation Judge Tunnel Pipeline																	
HOURLY LABOR BREAKDOWN		OFFICE	ENG TECHS			ENGINEERS								TOTAL	SUBCONTRACTORS		TOTAL
TASK	TASK DESCRIPTION	EDITOR	TECH 3	TECH 5	INSP	ENG 1	ENG 2	ELEC	STRUC	PM/PE	LSA	QA/QC	HOURS	Alliance	GSH	COST	
		Hansen	Abel	Garcia	Williams	Nelson	Oldham	Stewart	Roblez	Campbell	Tsandes	Collins		Engineering	Geotech		
	Design Service																
1-1	Collect and Review Existing Information	4				60	32			16		4	116			\$10,180	
1-2	Progress Meetings/Information Review	4				20	60			80	8	12	184			\$18,600	
1-3	Utility Investigation	4	40	40		24	12			8		4	132	\$41,250		\$52,930	
1-4	Field Survey and Mapping	4				24	12			8		4	52	\$62,300		\$66,980	
1-5	Hydraulic Modeling	4				20	16			4		4	48			\$4,240	
1-6	Preliminary Design Report	8				100	40			12		4	164			\$13,840	
1-7	Geotechnical Investigation	4					24			8		4	40		\$62,400	\$66,180	
1-8	Permitting	4					12			8	8	4	36			\$3,480	
1-9	Design Drawings	4	560	400		200	160	40	24	60	32	24	1504			\$132,340	
1-10	Contract Documents	24			16	200	120	80	24	60	32	12	568			\$50,840	
1-11	Construction Cost Estimate	2				16	16	4	2	8		4	52			\$4,860	
	Subtotal for Design Services	66	600	440	16	664	504	124	50	272	80	80	2896	\$103,550	\$62,400	\$424,470	
	Bidding Support																
2-1	Contractor Pre-qualification	2					8			4			14			\$1,260	
2-2	Bid Period Services	4					8			4			16			\$1,380	
2-3	Pre-Bid Meeting						4			4			8			\$800	
2-4	Bid Opening						8			8			16			\$1,600	
	Construction Support																
3-1	Preconstruction Conference				4					4			8			\$820	
3-2	Preconstruction Open House	8	12		4		8			8	8		48			\$4,120	
3-3	Construction Administration Procedures				12		12	8		8			40			\$3,780	
3-4	Change Order Preparation, Negotiation and Processing				4		12			8			24			\$2,300	
3-5	Permits, Bonds and Insurance				2		4			2			8			\$750	
3-6	Construction Schedule				8		8			2			18			\$1,630	
3-7	Progress Meetings and Reporting (20 meetings)				30		30			30			90			\$8,700	
3-8	Progress Payments				4		8			4			16			\$1,500	
3-9	Quality Review						8			4			12			\$1,140	
3-10	Photographs and Video				12								12			\$1,080	
3-11	Coordination with City Divisions and Other Agencies						32			24			56			\$5,480	
3-12	Detailed Sketches				8		8	2		4			22			\$2,050	
3-13	Dispute Resolution				4		4			4			12			\$1,160	
3-14	Project Observation				1600								1600			\$144,000	
3-15	Project Closeout	8			2		4			4			18			\$1,460	
3-16	Final Inspection and Punchlist				2		8	4		4	4		22			\$2,060	
3-17	Record Drawings	4	40		8		8	4		4	2		70	\$21,825		\$27,685	
	Subtotal for Bidding & Construction Support	26	52	0	1704	0	182	18	0	134	14	0	2130	\$21,825	\$0	\$214,755	
	TOTAL HOURS	92	652	440	1720	664	686	142	50	406	94	80	5026				
	2010 BILLING RATE	\$60.00	\$80.00	\$95.00	\$90.00	\$80.00	\$85.00	\$95.00	\$110.00	\$115.00	\$90.00	\$145.00					
	TOTAL LABOR COST BY LABOR CATEGORY	\$5,520	\$52,160	\$41,800	\$154,800	\$53,120	\$58,310	\$13,490	\$5,500	\$46,690	\$8,460	\$11,600		\$125,375	\$62,400	\$639,225	
	EXPENSES																
		Total															
	PRINTING & REPRO (Design)	\$600												Total Design Cost with Expenses		\$444,321	
	PRINTING & REPRO (Bid & Const)	\$300															
	COMPUTER/COMMUNICATION (Design)	\$17,376												Total Bid and Const. Support Cost w/Expenses		\$244,710	
	COMPUTER/COMMUNICATION (Bid & Const)	\$12,780												2011 Labor Escalation Cost		\$10,738	
	FLEET VEHICLE (\$0.75/mile) (Design)	\$1,875															
	FLEET VEHICLE (\$0.75/mile) (Bid & Const)	\$16,875												Total Labor Cost w/subs		\$649,963	
														Total Expenses		\$49,806	
	TOTAL EXPENSES	\$49,806															
														Total Project		\$699,765	

City Council Staff Report



PLANNING DEPARTMENT

Subject: 1440 Empire Avenue
Application: PL-10-00907
Author: Kayla Sintz
Date: March 4, 2010
Type of Item: Quasi-Judicial - Appeal of CUP Application

Summary Recommendation

Staff requests that the City Council review the proposed Findings, Conclusions of Law and Order regarding the Council's determination to partially grant the appeal of the Conditional Use Permit (CUP) and remand the matter back to the Planning Commission.

Topic

Appellant(s): David & Rosemary Olsen, Rick Margolis, Bill and Dianne Newland
Location: 1440 Empire Avenue
Zoning: Recreation Commercial (RC)
Adjacent Land Use: Ski resort area and residential (single family and multi-unit)
Reason for review: Appeals of Planning Commission are reviewed by City Council

Background

On December 21, 2009, the appellant submitted an appeal for the Conditional Use Permit (CUP) approval of 1440 Empire Avenue. The Planning Commission approved the CUP on December 9, 2009. The City Council held a hearing on February 25, 2010 and voted to expand the scope of the appeal to allow public input.

After hearing from staff, the appellants, the applicant, and the public, the Council voted 4-1 to remand the application back to the Planning Commission for the limited re-consideration of height, scale, mass and bulk of the rear façade.

Alternatives

- The City Council may adopt the Findings as proposed; or
- The City Council may make changes to the proposed Findings so long as the changes reflect the Council's determination at the hearing and are based upon evidence on the record.

Recommendation

Staff recommends the City Council review the proposed findings, conclusions, and order as proposed below to make sure they reflect the basis of the Council's determination:

Findings of Fact

1. The subject property is at 1440 Empire Avenue, Park City, Utah.
2. The subject property is Parcel 1, Parcel 2 and Parcel 3 proposed to be combined into Lot A – 1440 Empire Avenue Replat as part of Plat Amendment application also under review.
3. The subject property is 12,882.62 square feet or 0.295 acres.
4. The property is located in the Recreation Commercial (RC) District.
5. A Multi-Unit Dwelling is permitted under a Conditional Use Permit within the RC zone.
6. The Multi-Unit Dwelling contains eight (8) two-bedroom units and two (2) four-bedroom units.
7. The Multi-Unit Dwelling is required to have twelve (12) parking spaces.
8. A Parking Area of five (5) or more parking spaces is a Conditional Use in the Recreation Commercial (RC) District.
9. The Findings in the Analysis section of the February 25, 2010 staff report and the prior report dated October 14, 2009, are incorporated herein.
10. The City Council agrees with the dissenting Planning Commissioners regarding non-compliance with LMC Section 15-1-10(E)(8), particularly Commissioner's Hontz findings regarding adverse impacts on the historic structure at 803 Park Avenue as incorporated on Page 90 of the February 25, 2010 staff report.
11. By utilizing maximum zone height and the 5 foot exception for roof pitches of 4:12 or greater, the design fails to transition to historic property to the east. Despite a rear setback fluctuation of approximately 10 feet as the proposed structure moves north, the design creates a wall effect as viewed from the east. Both the applicant's and the appellants' supplemental visual analysis distributed at the hearing confirm that this design has unmitigated impacts on the historic property to the east, including visual impacts, loss of light and building orientation.

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Conclusions of Law

1. The application satisfies all Conditional Use Permit review criteria for a Multi-Unit Dwelling and a Parking Area as established by the LMC's Conditional Use Review process [Section 15-1-10 (E) (1-15)], except for subsection (8).
2. The Use is consistent with the Park City General Plan, as amended; and
3. The effects of any differences in Use or scale have been mitigated through careful planning, except for adverse impacts on the adjacent historic property resulting from the rear facade.
4. The Planning Commission erred by issuing the CUP without further consideration of the design as such relates to the transition to and unmitigated impacts on the existing historic structure to the east.

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Conditions of Approval- the following conditions remain intact unless modified or added to by the Planning Commission upon remand:

1. All Standard Project Conditions shall apply.
2. City approval of a construction mitigation plan is a condition precedent to the issuance of any building permits. Measures to protect existing vegetation shall be included in the Construction Mitigation Plan (CMP).
3. City Engineer review and approval of all appropriate grading, utility installation, public improvements and drainage plans for compliance with City standards, to include driveway and Parking Area layout is a condition precedent to building permit issuance. A shoring plan is required prior to excavation.
4. A landscape plan is required with the building permit. Changes to an approved plan must be reviewed and approved prior to landscape installation.
5. This approval will expire on February 25, 2011 if a complete building permit submittal has not been received.
6. This Conditional Use Permit is only effective upon approval of the concurrent subdivision. Recordation of Plat is required prior to building permit issuance.
7. Modified 13-D fire sprinkler system will be required.
8. Any modification of approved unit layout as shown on drawings date stamped October 21, 2009 and November 3, 2009, which changes bedroom configuration or unit size will require amendment to Conditional Use Permit.
9. A tenant/owner parking management plan will be required prior to building permit issuance that limits the occupant's vehicles per unit to those required in the LMC. Said plan must include an annual report to the City, a responsible party for enforcement and must be approved by the Planning Director and City Engineer. The Plan may also include assigning spaces to specific units.
10. If the Multi-Unit Dwelling is used to fulfill a future affordable housing obligation, then the project must meet the deed restriction and requirements of the Affordable Housing Resolution in effect at the time of the obligation.
11. Snow shedding issues must be met to the satisfaction of the Chief Building Official, per section 100 of the International Building Code, prior to building permit issuance.
12. Outside storage will be prohibited. This includes storage within the covered parking spaces under the building.

Order:

The appeal is granted in part and denied in part. The CUP is remanded to the Planning Commission for further consideration of only the following matters:

1. **The height, scale, mass and bulk of rear of the building shall be further modified and considered under the standard in LMC 15-1-10(E)(8);**
2. **Further design changes with consideration for ensuring that the proposed development transitions to and complements the existing historic structure to the east shall be reviewed and/or further conditioned.**

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Adopted March 4, 2010

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Dana Williams, Mayor