PARK CITY COUNCIL MEETING
SUMMIT COUNTY, UTAH
DECEMBER 13, 2007

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 approximate times as described below on Thursday, December 13, 2007.

Work Session
3:30 p.m. Council questions/comments
3:45 p.m. Event and paid parking at The Yard (Anderson Lumber)
(a) Public input
4:30 p.m. Discussion of proposed Historic District (HR-1) Land Management Code amendments and role of Historic Preservation Board
(a) Public input
5:50 p.m. Break

Regular meeting
6:00 p.m.
I ROLL CALL

II COMMUNICATIONS AND DISCLOSURES FROM COUNCIL AND STAFF

Administration of oath of office - Sergeant Jim Snyder and Sergeant Barry Robinson

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

IV WORK SESSION NOTES AND MINUTES OF MEETING OF NOVEMBER 29, 2007

V RESIGNATIONS AND APPOINTMENTS

Consideration of the appointment of Sara Werbalow to fill an unexpired term on the Historic Preservation Board to July 2009

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

1. Consideration of acceptance of the Fiscal Year 2007 Comprehensive Annual Financial Report (CAFR) and Independent Auditor's Report

2. Consideration of a Telecommunications Franchise Agreement with All West/Utah, Inc. to be executed by the City Manager, in a form approved by the City Attorney

3. Consideration of a Franchise Agreement Renewal with Comcast of Utah II, Inc. to be executed by the City Manager, in a form approved by the City Attorney

4. Consideration of a resolution of the City Council of Park City, Utah (the "Issuer") providing for the financing of the cost of acquisition, construction, equipping, furnishing and improvement of land and a new building for use as a training and office facility by the United States Ski and Snowboard Association; authorizing the issuance and sale by the Issuer of its Multi-Mode Variable Rate Revenue Bonds, Series 2007 (United States Ski and Snowboard Association) in an aggregate principal amount of $20,120,000; and related matters

5. Consideration of approval of the City's annual insurances placement: liability, workers compensation, property, boiler and machinery, and crime

VII NEW BUSINESS *(new items with presentations and/or anticipated detailed discussions)*

1. Consideration of an Ordinance approving a plat amendment for 154 McHenry Avenue, Park City, Utah
   (a) Public hearing
   (b) Motion to continue to January 24, 2008

2. Consideration of approving a Letter of Intent with Summit County for expanded Transit Facility at Iron Horse Drive

VIII ADDITIONAL DISCUSSION – AGENDA ITEMS

IX ADJOURNMENT

Posted: 12/10/07
See: parkcity.org

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

December 2007

20 Golf update
Ordinance – 650 Rossi Hill, Tahoma condo conversion - KC
27 **No meeting**

January 2008

3-4 Visioning session
10 Swearing-in – Honorable Judge Robert Hilder
Resolution setting regular meeting dates
Appointment of Mayor Pro Tem
Appointment of Liaison to HPB
Appointment of two City Council members to the Park City Walking and Biking Advisory Liaison Committee
Ordinance – 61 Thaynes Canyon Drive lot line adjustment - KW
14-15 Visioning Session
17 **No meeting – Sundance premiere**
24 Traffic calming update – work
Ordinance approving a plat amendment for 154 McHenry Avenue, Park City, Utah
31 **Joe gone**
Tour of Silver Star Affordable Housing units

February 2008

7
14
21
28

March 2008

7
14
21
28

Pending Items:

Resolution - Trails Master Plan
Business market analyses – Phases 1 and 2
Hidden Splendor Court Plat Amendment (continued to date uncertain) KW
JSSD Engineering Agreement (removed from 11/15)
Resolution 13-07 in its entirety (removed from 11/15)
Naming rights contract

City Council
Staff Report

Sustainability Team -
Implementation Dept.

Author:	**Jonathan Weidenhamer**
Subject:	**The Yard – MFL application**
	1251 Kearns Blvd.
Date:	**December 13, 2007**
Type of Item:	**Informational – Work Session Review**

Summary Recommendations:
Provide Staff with direction on the "Yard" Master Festival License (MFL) application. If Council is supportive of the event proceeding, Staff will return for consideration of the Master Festival License on January 10, 2007.

Background:
The applicant is requesting a multi-day hospitality event and operation of a paid park & ride lot daily from January 17, 2008 – January 27, 2008 at the old Anderson lumber yard. The event organizers submitted a Special Event application on November 12, 2007. Due to anticipated attendance of over 500 people, and amplified outdoor music, the applicants have agreed to resubmit through the MFL review process. The owner of the property is Mark J. Fischer. His representative is Mike Sweeney (New Ideas Company). Tony Berger of Relevent Events is in charge of programming the daily events.

<u>Event</u>
There are 2 event sites at the Yard venue (Exhibit A), the "Store" (past retail sales – approximately 7,000 sf) and the "Warehouse" (the old warehouse – approx. 12,000 sf.). The Store activity will include hospitality, gifting, marketing, and limited refreshments. The Warehouse will include live entertainment, press junkets, and private parties.

<u>Paid Park & Ride</u>
In addition to the hospitality event, the applicant has requested dual use of the site as a paid park & ride lot for approximately 400 spaces.

Analysis:
<u>Conflict with existing MFL</u>
The Yard application is regulated by Section 4-8-6 of Municipal Code as an MFL, which states that no more than one MFL or Special Event can be approved for the same date unless the Special Events Manager or City Council finds the event will not adversely impact one another or that concurrent scheduling of the event will not adversely impact public health, safety, and welfare. **At this time Staff believes the applicant will finalize adequate detailing in site/event/ operational plans to allow necessary findings to be made that there is no conflict.**

<u>Findings to waive 90 day submittal requirements</u>
Section 4-8-4 of the Code, requires MFL applications to be completed and submitted to the Special Event Department not less than ninety (90) days prior to the scheduled opening of any Master Festival. January 13, 2008 would be 60 days from the original November 12, 2007 application, and would meet requirements for the Special Event application as

originally submitted; However, the 90 day requirement for an MFL isn't met until February 12, 2008. The Special Events Department or City Council, may, upon a showing of good cause, reduce this requirement per Section 4-8-4(A) of the Code. **Staff is prepared to make the appropriate findings of good cause to reduce the submittal requirements.**

Project Details – Operations, site planning, and other impacts

Staff has conducted preliminary review of the information that has been provided to date in accordance with the MFL review criteria , and continues to address the following:

1. Event Operational Plan - The applicant continues to finalize event details. The current plan is attached as Exhibit B. The general event concept is to turn the venue over 3 times during the day (Daytime (10am – 6pm); Evening (8pm – 1am); and Late Night (1am – 4am). The Evening time will see the largest crowds, and the Late Night crowds are anticipated to be small and subdued. Staff will be meeting the Event Promoter on-site on Monday, December 10, 2007, and anticipates additional detail to become available at that time. A final plan will be submitted on Friday December 14.

2. Park & Ride - Operational & Site Plan – The applicant continues to finalize a site and operational plan. The onus has been placed on the applicant to present and have approved a plan to balance the parking demand created by the event, as well as additional supply for a park & ride lot. The applicant's preliminary plan stipulates that 400 plus parking spaces will be provided on-site (Exhibit C). During the first weekend, when Sundance is at its busiest, the Yard Plan is heavily loaded on paid parking supply and light on the event parking demand. The plan also describes a series of steps to mitigate noise and lighting impacts arising from the parking. This is a preliminary plan intended for illustrative purposes. Staff will be meeting with Diamond parking & the applicant on Tuesday, December 11, 2007, and anticipates final details and a formal plan by Friday December 14.

   The applicant has also agreed that if impacts are created that can not be addressed that he will cease the paid park & ride program. The Sundance Institute has provided written input that they are supportive of creating additional parking supply:

   > Sundance feels that having "the Yard" parking lot available for festival patrons is a benefit. Anytime we can get people out of their cars and onto our shuttle system in order to get to the venues, theatres or Main Street is a huge improvement for traffic in the city overall. If the city can be a little flexible on how many parking spaces are needed for the events, and allow more parking for festival patrons, it will reduce traffic congestion…. We also have to remember that we are not bringing more cars to Park City, the people who are coming already have tickets and we are not selling more tickets, so allowing them to park and get on our bus system without driving through town will help immensely. It's the same people -- they've just been parking elsewhere before; usually at places that negatively impact traffic congestion in town and commerce at Park City businesses. I think we should stress that those people seeing films at Eccles, Racquet Club and Prospector should park at "the yard" and they catch the bus in front of Anderson Lumber by the sign. We need to make sure there is a safe, well lit walkway to the shuttle stop.

3. <u>Transit</u> - The paid park & ride lot will create additional demand and impacts on the City/Sundance transit system. The City and Sundance agree that it will cost approximately $7,500 to provide service to meet this additional demand. The applicant has agreed to pay this cost.

4. <u>Noise</u> – Staff has required a formal Noise Mitigation plan to indicate how the application will remain consistent with the City's Noise Ordinance. Preliminary indications from the applicant indicate an understanding of the City's Noise Ordinance, and operational efforts to minimize potential impacts, including soundproofing and insulation. Additionally, the applicant has pro-actively met with the Homestake HOA to address any specific concerns they raise.

5. <u>Lighting, Signs, and other operational review</u> – The applicant is required to submit and have approved a final plan addressing: the type and amount of signs, Pedestrian circulation plan, snow removal plan, circulation and access, emergency access, internal vehicular circulation, ADA requirements, interior site plans, heating, exiting, and restroom detail plans, etc.

This event is proposed in an industrial neighborhood that is zoned General Commercial. Although a residential condominium project is adjacent, staff believes impacts of the event can be mitigated through the operational planning, and conditions of approval. The applicant's willingness to mitigate the transit impact has alleviated staff's largest concerns, as well as their willingness to forgo the paid parking, should logistical problems arise. Secondly the applicant's preemptive meeting with the Homestake HOA, in addition to his previous experience in monitoring amplified music and understanding of the City's noise ordinance begins Staff's second largest concern.

Department Review:
A detailed review has not been conducted by the entire staff review team. However, the departments that would be impacted directly have been included in the preliminary review, including: Transit, Parking, Special Events, Economic Development, Legal, and Planning. The noted exception is that the Police Department has yet to review this application.

Issues for Discussion:

- Recent Council policy has been to limit new events adjacent to residential neighborhoods to 10:00 pm ending times. Does Council wish to proceed with the review of this event and attempt to mitigate impacts after 10:00 as best as possible?

Recommendation:
Provide Staff with direction on the "Yard" Master Festival License (MFL) application. If Council is supportive of the event proceeding, Staff will return for consideration of the Master Festival License on January 10, 2007.

Exhibits
A - Site overhead Photo
B– Event Operational Plan
C– Parking Operational & Site Plan

Exhibit A
Overhead site photo

Exhibit B
Operational & Site Plan

December 10, 2007

Sent Via E-mail and Hand Delivered
Jonathan Weidenhamer, Special Projects & Economic Development
Park City Municipal Corporation
1354 Park Avenue
P.O. Box 1480
Park City, Utah 84060-1480

Re: The Yard MFL Plan of Operations

Dear Jon:

Below is a draft of the outline for the permit to address daily activities. Let me know your thoughts/comments so I can make any necessary changes prior to finalizing the Yard plan of operations.

Sincerely,

New Ideas Company

Michael E. Sweeney

Daytime Activity:
- Dates: January 18 thru January 22
- Hours: 10AM to 6PM
- Guest Count: 350 people throughout the day.
    - Estimate approximately 25 people per hour
    - Average length of stay between 30 – 90 minutes
- Anticipated Guest Transportation:
    - 50% of guests to come in larger groups via car service / limo and not require parking spots
    - 25% of guests via car
    - 25% of guest via public transportation

Evening Activity:
- Dates: January 17 thru January 22
- Hours: 8PM to 1AM (Event last typically only 3 hours)
- Guest Count: 200 – 800 people per evening (Dependent upon type of event. We expect it to change nightly)
    - Estimate 25% of guests upon event opening and the remainder in flows throughout the event
    - Average length of stay approx. 90 – 120 minutes
- Anticipated Guest Transportation:
    - 50% of guests via car service / limo and not require parking spots
    - 50% of guests via car
- Sound: No amplified music outside after 10PM

Late Night Activity:
- Dates: January 17 thru January 22

- Hours: 1AM – 4AM
- Guest Count: 150 - 200 people
    - Estimate 50% of guests upon event opening and the remainder in flows throughout the event
    - Average length of stay approx. 60 minutes
- Anticipated Guest Transportation:
    - 50% of guests via car service / limo and not require parking spots
    - 50% of guests via car
- Sound: Amplified music limited to designated sound proofed late night room

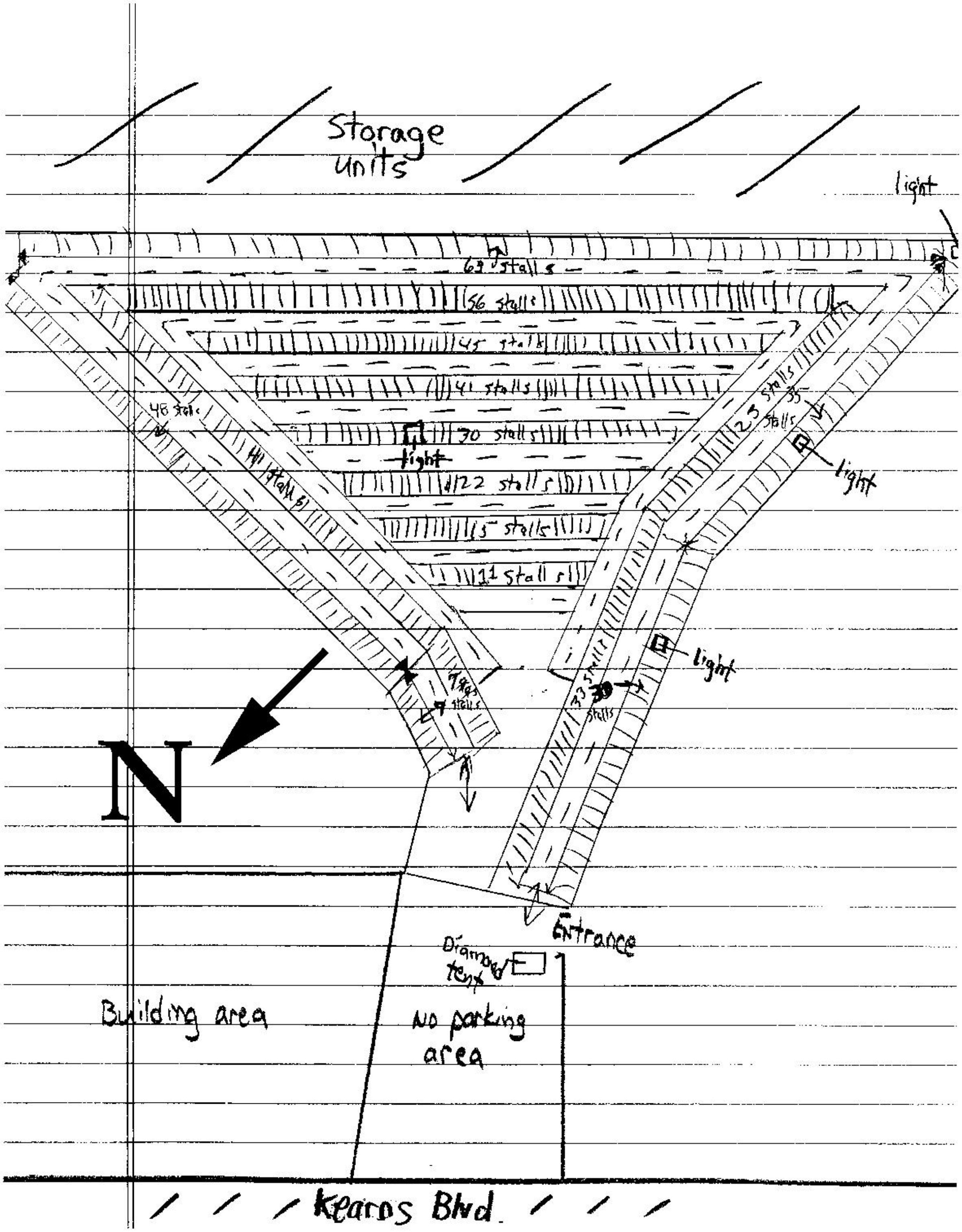
Exhibit C
Parking Operational & Site Plan

Parking Plan at the Yard

Diamond Parking Company ("Diamond") will be managing the Yard Parking Lot.

The included map (draft) shows the layout of the parking format. The parking layout can accommodate 400 plus cars. There are two outer rows for parking and driving. The circumference of the area will provide ease of access to the interior rows. The need to reserve parking stalls for event activities will be a simple task. The stalls will be coned-off to reflect how many spaces are needed per event activity from 10:00 AM through 2:00 AM the following day. Please note that Thursday January 17, 2008 and Friday January 18, 2008 are going to be light load event days which should allow for fine tuning event and public parking requirements. The far north fence will be the area reserved for event parking. The predetermined event reserved parking will be communicated and updated on a daily basis to ensure the required event parking availability. Two part tickets will be used to keep accurate car counts. The guests will pay as they enter, and not be given in and out parking privileges. Possibly a valet program will be implemented, which will make parking easier. The non event guests will be directed to the public transportation. Diamond attendants will manage the parking and security will monitor the perimeter of the parking lot.

The use of lighting in the evenings normally would constitute the use of generator operated light systems. We are trying to use the electrical power on-site to eliminate the need for generators. If using on-site electrical power, then quiet generators will be used. The lights will be directed north, and placed on the south side of the property. The lighting will not disturb the adjacent residents. Also, Diamond attendants will pass out a pamphlet to each car asking late night guests to please be considerate of the neighbors, as well as the manager of the event when it lets out will again remind the guests of the Yard to please be considerate of the neighbors.


Storage units
light
63 stalls
56 stalls
45 stalls
41 stalls
30 stalls
light
22 stalls
15 stalls
11 stalls
48 stalls
41 stalls
23 stalls
35 stalls
light
light
33 stalls
N
Entrance
Diamond tent
Building area
No parking area
Kearns Blvd.

City Council Staff Report

Subject: Historic District (HR-1) Land Management Code Amendments
Author: Patrick Putt
Department: Sustainability
Date: December 13, 2007
Type of Item: Legislative

Summary Recommendations:
Staff seeks specific direction whether or not Council wishes to revise the proposed HR-1 Land Management Code amendments to include mandatory Historic Preservation Board of all, or a portion of, design review applications in the Historic District. The current draft does not include such a provision. Staff does not recommend broadening the role of the Historic Preservation Board to include mandatory design review at this time.

Topic/Description:
Preliminary Council review and input on proposed HR-1 District Land Management Code amendments.

Background:

At the May 9, 2007 joint work session, Staff presented Council and the Planning Commission with an overview, analysis, and recommendations for enhancements to the City's Historic District/Historic Preservation initiatives. The recommendations included:

- ✓ Completion and adoption of the Historic Building Inventory
- ✓ Planning Commission training relating to the review and application of the Land Management Code Steep-Slope Conditional Use Permit
- ✓ Establishment of greater clarity in the Historic District Design Guidelines for design elements including garages, exterior materials, building scale, form and proportion, additions, and "panelization" of Historically Significant Buildings
- ✓ Establishment of Land Management Code limits/caps on the Maximum Building Footprint achievable for any lot or lot combination.
- ✓ Establishment of a process and standards/criteria relating to when and how it may be appropriate to move, lift, or turn a historic building.

At that time, Council directed Staff to proceed with the recommendations.

Since the May 9, 2007, Council/Planning Commission joint work session:

- ✓ Staff has conducted Planning Commission training on Steep-Slope Conditional Use Permit criteria and Plat Amendment standards *(training/checklist tools are attached to this staff report)*

- ✓ The Historic Preservation Board approved HPB Resolution 07-01 approving the Historic Building Inventory on October 1, 2007

- ✓ Contracted with Dina Blaes to develop revised Historic District Guidelines (A preliminary working document is scheduled to be presented to the Historic Preservation Board for discussion on December 17, 2007)

- ✓ Draft of proposed HR-1 District Land Management Code Amendments has been prepared for consideration, public input, and possible adoption. The Planning Commission held a work session on the proposed HR-1 amendments on December 12, 2007 *(Staff will apprise Council on the Planning Commission comments at the December 13, 2007 work session).*

Staff would appreciate a specific discussion of Council's policy goals for the Historic District to determine if the changes address those goals.

Analysis:

Attached to this staff report is a draft of the proposed HR-1 District Land Management Code amendments. The fundamental modifications to the document include:

- ✓ <u>A complete rewrite of the Purpose Statements to better emphasize</u>:

    * Maintaining historic building scale and building form

    * Plat amendments that result in building scale that respects historic building size

    * Plat amendments that create new streets/access which respect topography and neighborhood building patterns

    * Average two-story building masses

    * Minimizing visual impacts of garages and off parking

- ✓ Caps Maximum Building Footprint at two-lot equivalent

- ✓ Allows second dwelling on lot if a Historically Significant Structure is restored and limited in addition size to no more than additional 50% Floor Area

- ✓ Building Height measured to a maximum of a 22 ft. Average Wall Height
- ✓ Steep Slope Height Exception Eliminated
- ✓ Conditional Use Permit requirement for lifting or reorienting Historic Buildings
- ✓ Steep-Slope Conditional Use Permit criteria for additions to Historic Buildings
- ✓ Early posting requirements when applications are submitted
- ✓ Creation on a Pre-Application Volunteer Peer Review Committee
- ✓ Reduced overall number of words in the document.

Staff will present the proposed amendments at Thursday's work session and update the Council on the Planning Commission's December 12th feedback on the draft. Staff finds that the above-listed amendments directly target Council's May 9, 2007 policy direction. The amendments emphasize earlier public notification of pending Historic District design review projects, a voluntary peer review pre-application process, more quantifiable standards for building bulk, and clarified steep-slope conditional use permit criteria.

Staff is seeking Council input and direction on the document. This matter is will be scheduled for a public hearing and possible action by the Planning Commission on January 9, 2008.

During Council's recent Historic Preservation Board interviews, several HPB candidates expressed the opinion that the HPB should have the responsibility of reviewing all Historic District design review applications. This issue has been discussed by Council at three previous public hearings and joint work sessions with Planning Commission (February 8, 2007, April 5, 2007, May 9, 2007); however, there was not been majority Council support to the assign HPB design review authority.

Land Management Code Section 15-11-5 and 15-11-6: <u>Historic Preservation</u> establishes the roles for the Historic Preservation Board listed below. The statements in ***bold*** represent HPB actions in the last 1-2 years for each role.

- Preserve diverse and harmonious architectural styles and design preferences reflecting phases of the City's history and to encourage complimentary, contemporary design and construction through the creation of comprehensive Historic District Design Guidelines and to make recommendations to the City Council on policies and ordinances that may encourage Historic preservation; ***(The HPB is currently scheduled commence its formal review and recommendation process the draft Historic District Guidelines update at the December 17, 2007 meeting)***;

- Protect and enhance the City's Historic appeal to tourists and visitors ***(This is an on-going responsibility of the HPB as best demonstrated by its Historic District Grant program);***

- Identify as early as possible and resolve conflicts between the preservation of cultural resources and alternative land Uses; and promote the private and public Use of Buildings of Significance and Contributing Buildings, Structures, Sites/Areas or Objects; ***(These roles are best demonstrated by HPB's input on the Watts property redevelopment, Preservation of the Sandridge sheds, and the Historical Society Museum expansion)***;

- Provide input to City Council towards safeguarding the heritage of the City in protecting Buildings of Significance and Contributing Buildings, Structures, Sites/Areas or Objects; and review and take action on all Determination of Historic Significance Applications submitted to the City ***(The HPB reviews Determinations of Historical Significance requests and adopted the Historic Building Inventory on October 1, 2007)***;

- Communicate and promote the benefits of Historic preservation for education, prosperity, and general welfare of the people; to make recommendations to the City Council on the Development of, and to administer, all City-sponsored preservation incentive programs; and provide input to staff, Planning Commission, and City Council on matters concerning the overall Development of the City's Historic preservation program ***(The HPB reviews, evaluates and takes action on on-going requests for Historic District Grants. In the two years, the HPB has distributed over $90,000 in matching grants which directly promote the preservation of Historically Significant buildings for the benefit of the owners, community, and visitors)***; and

- Review all appeals on action taken by the Planning Department regarding compliance with the Historic District Design Guidelines. ***(This is an on-going responsibility of the HPB and most recently demonstrated by the review of appeals for projects at 64 Chambers Avenue, 420 Main Street, and 221 Main Street. Each of the aforementioned appeals was filed by the project applicants. In the past year, no design review appeals have been filed by adjacent property owners)***.

In addition to the HPB responsibilities defined above, the City Council may direct the Board to:

- Participate in the design review of any City-owned projects located within the designated Historic District ***(The HPB reviewed the Historical Society's Museum Expansion)***.

- Recommend to the City Council the purchase of interests in Property for purposes of preserving the City's cultural resources ***(Council has not recently requested such HPB input)***;

- Investigate and report to the City Council on the Use of Federal, State, local, or private funding sources and mechanisms available to promote the preservation of the City's cultural resources ***(The HPB has not been directed by Council to conduct this research)***;

- Recommend to the Planning Commission and the City Council zoning boundary changes for the district to preserve the historical integrity of the Area ***(As part of the HPB's pending Historic District Guidelines update, zoning boundary changes may be specifically considered)***;

- Provide advice and guidance on request of the Property Owner or occupant on the construction, restoration, alteration, decoration, landscaping, or maintenance of any cultural resource, and Property within the Historic District, or neighboring Property within a two (2) block radius of the Historic District ***(Other than by PCMC, no property owners in the Historic District have requested advice or guidance by the HPB on matters regarding construction, restoration, etc.)***

Staff seeks specific direction whether or not Council wishes to revise the proposed amendments to include mandatory Historic Preservation Board of all, or a portion of, design review applications in the Historic District. The current draft does not include such a provision. Staff does not recommend broadening the role of the Historic Preservation Board to include mandatory design review at this time. Staff suggests proceeding with the proposed amendments to see if Council's policy goals can be attained that way.

Recommendation:

Staff seeks specific direction whether or not Council wishes to revise the proposed HR-1 Land Management Code amendments to include mandatory Historic Preservation Board of all, or a portion of, design review applications in the Historic District. The current draft does not include such a provision. Staff does not recommend broadening the role of the Historic Preservation Board to include mandatory design review at this time.

TITLE 15 - LAND MANAGEMENT CODE (LMC)
CHAPTER 2.2 - HISTORIC RESIDENTIAL (HR-1) DISTRICT

Chapter adopted by Ordinance No. 00-15

15-2.2-1. PURPOSE.

The purpose of the Historic Residential HR-l District is to:

(A) define Development parameters that are consistent with the Preservation Element of the Park General Plan;

(B) promote new construction with building form, scale, and size that respects the City's Historically-Significant residential structures;

(C) encourage the combination of historically platted lots that facilitate building form, scale, and size that respects the City's Historically-Significant residential structures

(D) limit lot area and building pads so as to discourage new buildings and additions that are significantly larger in scale than those found traditionally in the neighborhood.

(E) preserve, protect and enhance the historic residential land Uses for the benefit of residents, pedestrians, and community visitors;

(F) encourage the preservation, restoration, and rehabilitation of Historically Significant Structures;

(G) ensure additions to Historically Significant Buildings are designed in a manner to preserve, protect, and enhance their perceived historic scale, form, and architectural character;

(H) mitigate the negative architectural and parking impacts of the automobile on building designs;

(I) encourage improvements to the public rights-of-way that enhance the pedestrian experience and improves the quality of public spaces;

(J) enable construction on platted, steep hillside terrain that minimizes alterations to the natural topography;

(K) achieve building forms on sloping terrain that achieve an average height of no more than two (2) stories when viewed from the public right-of-way, as well as from cross canyon perspectives;

(L) ensure that plat amendments which include street and driveway construction within platted, but unbuilt, rights of way do not result in significant cut/fill slopes, large retaining walls, or building pads that deviate from the neighborhood setback pattern;

(M) establish Development review criteria for new Development on steep Sites.

15-2.2-2. USES.

Uses in the HR-1 District are limited to the following:

(A) **ALLOWED USES**.

(1) Single Family Dwelling(s)
2) Lockout Unit
(3) Nightly Rental
(4) Home Occupation
(5) Child Care, In-Home Babysitting
(6) Child Care, Family
(7) Child Care, Family Group
(8) Accessory Building and Use
(9) Conservation Activity
(10) Agriculture
(11) Residential Parking Area or Structure with four (4) or fewer spaces

(B) **CONDITIONAL USES**.

(1) Duplex-Dwelling
(2) Guest House on Lots one (1) acre or greater
(3) Secondary Living Quarters
(4) Accessory Apartment
(5) Group Care Facility
(6) Child Care Center
(7) Public and Quasi-Public Institution, church and school
(8) Essential Municipal Public Utility Use, Facility, Service, and Structure
(9) Telecommunication Antenna
(10) Satellite Dish, greater than thirty-nine inches (39") diameter

(11) Bed and Breakfast Inn (in Historically Significant Buildings Only)
(12) Boarding House, hostel (in Historically Significant Buildings Only) Hotel, Minor, (fewer than sixteen (16) rooms)
(13) Residential Parking Area or Structure with five (5) or more spaces.
(14) Temporary Improvement
(15) Passenger Tramway Station and Ski Base Facility
(16) Ski Tow, Ski Lift, Ski Run, and Ski Bridge
(17) Recreation Facility, Private
(18) Fences greater than six feet (6') in height from Final Grade

(C) **PROHIBITED USES**. Any Use not listed above as an Allowed or Conditional Use is a prohibited Use.

(D) **NUMBER OF SINGLE-FAMILY DWELLINGS ON A LOT**. A second Single-Family Dwelling is permitted on Lots which include an existing Historically-Significant Building subject to compliance with all following provisions. The combined areas for Structures must comply with the maximum Building Footprint for the Lot. The Historically-Significant Building must be restored in compliance with the Historic District Design Guidelines. Additions to the Historically Significant Building are limited to no more than 50% of the existing Historically Significant Building's Floor Area. No new garage is permitted on the Historically-Significant Building.

(Amended by Ord. Nos. 06-56; 07-25)

15-2.2-3 LOT AND SITE REQUIREMENTS.

No new lot shall be created unless it meets the following Minimum Lot and Site requirements:

(A) **LOT SIZE**. The minimum Lot Area is 1,875 square feet for a Single Family Dwelling and 3,750 square feet for a Duplex. The minimum width of a Lot is twenty five feet (25'), measured fifteen feet (15') back from the Front Lot Line. In the case of unusual Lot configurations, Lot width measurements shall be determined by the Planning Director.

(B) **BUILDING ENVELOPE (HR-1 DISTRICT)**. The Building Pad, Building Footprint and height restrictions define the maximum Building envelope within which all Development must occur, with exceptions as allowed by Section 15-2.2-3(C). The Building Pad is the Lot Area minus required Front, Rear, and Side Setbacks. The Building Footprint is the total area of the foundation of the Structure, or the furthest exterior wall of the Structure projected to Natural Grade with the following exceptions:

(1) The Building Footprint must be within the Building Pad. The Building Pad must be open and free of any other Structure except:

(a) Porches or decks and railings, with or without roofs;

(b) At patios (not including any required railing) no more than 30 inches above Final Grade;

(c) Upper level decks, with or without roofs;

(d) Bay Windows;

(e) Chimneys;

(f) Sidewalks, pathways, and steps;

(g) Screened hot tubs.

(2) Exceptions to the Building Pad Area are subject to Planning Director approval based on a determination that the proposed exceptions result in a design that:

(a) provides increased architectural interest consistent with the Historic District Design Guidelines;

(b) maintains the intent of this section to provide horizontal and vertical Building articulation.

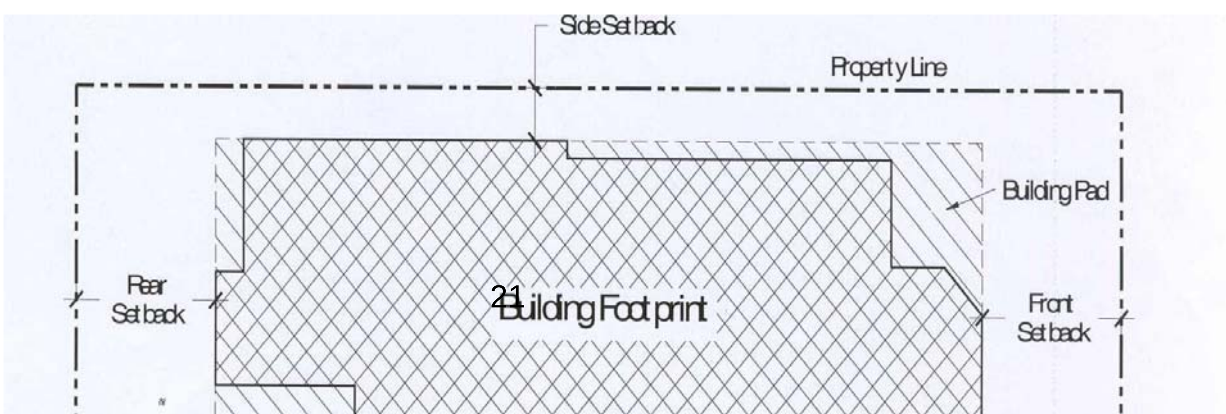
(C) **<u>BUILDING FOOTPRINT (HR-1 DISTRICT)</u>**.

The maximum Building Footprint of any Structure located on a Lot or combination of Lots shall be calculated according to the following formula for Building Footprint:

MAXIMUM FP = $(A/2) \times 0.9^{A/1875}$
Where FP= maximum Building Footprint and A= Lot Area.

Example: 3,750 sq. ft. lot: $(3{,}750/2) \times 0.9^{(3750/1875)} = 1{,}875 \times 0.81 =$ <u>1,519 sq. ft.</u>

The maximum Building Footprint on any Lot shall not exceed 1,550 square feet.



(1) **BUILDING FOOTPRINT EXCEPTIONS**.

(a) NORTHSTAR SUBDIVISION EXCEPTION. The Northstar Subdivision was platted in 1977 and includes lot sizes up to 16,000 square feet which are significantly larger than historic platted lots in the Park City and Snyders Addition Plats and not consistent with expressed purposes of this zoning district. Recognizing the existing large platted lots and large residential structures within the subdivision, it is in the interest of implementing the purposes of this zoning district by limiting the maximum Building Footprint of any Structure located within the Northstar Subdivision. The maximum Building Footprint for Northstar Subdivision lots which exceed 18,750 square feet in Lot Area shall be 4,500 square feet; with an exemption allowing 400 square feet per Dwelling Unit for garage floor area. A Conditional Use permit is required for all Structures with a proposed footprint of greater than 3,500 square feet.

(b) **HR-1 DETACHED GARAGE EXCEPTION**. The area of a one (1) story detached garage shall not count towards the Maximum Building Footprint. A detached garage may not include Habitable Area.

(E) **FRONT AND REAR SETBACKS**. Front and Rear Setbacks are as follows:

Lot Depth	Minimum Front/Rear Setback	Total of Setbacks
Up to 75 ft., inclusive	10 ft.	20 ft.
From 75 ft. to100 ft.	12 ft.	25 ft.
Over 100 ft.	15 ft.	30 ft.

(1) **FRONT SETBACK EXCEPTIONS**. The Front Setback area must be open and free of any Structure except:

(a) Fences or walls not more than four feet (4') above highest adjacent grade, or as permitted in Section 15-4-2, Fences and Walls. On Corner Lots, Fences more than three feet (3') above highest adjacent grade are prohibited within twenty-five feet (25') of the intersection, at back of curb.

(b) Uncovered steps leading to the Main Building; provided the steps are not more than four feet (4') above highest adjacent grade, not including any required handrail, and do not cause any danger or hazard to traffic by obstructing the view of the Street or intersection.

(c) Decks, porches, or Bay Windows (including eave overhang) not more than ten feet (10') wide, projecting not more than four feet (4') into the Front Yard. The eave of porch may extend an additional one foot (1') into the Front Yards for a total five foot (5') Front Yard exception.

(d) Roof overhangs, eaves or cornices projecting not more than two feet (2') into the Front Yard.

(e) Sidewalks and pathways.

(f) Driveways leading to a Garage or Parking Area. No portion of a Front Yard, except for patios, driveways, allowed Parking Areas and sidewalks, may be Hard-Surfaced or graveled.

(2) **REAR SETBACK EXCEPTIONS**. The Rear Setback must be open and free of any Structure except:

(a) Primary roof overhangs or eaves projecting not more than two feet (2') into the Rear Yard.

(b) Bay Windows not more than ten feet (10') wide, and projecting not more than two feet (2') into the Rear Yard. Bay Window eaves may extend up to an additional two feet (2') into the Rear Setback.

(c) Chimneys not more than five feet (5') wide projecting not more than two feet (2') into the Rear Yard.

(d) Window wells or light wells extending not more than four feet (4') into the Rear Yard.

(e) Window sills, belt courses, cornices, trim, or other ornamental features projecting not more than six inches (6") into the Rear Yard.

(f) A detached Accessory Building not more than eighteen feet (18') in height, located a minimum of five feet (5') behind the front facade of the Main Building, and maintaining a minimum Rear Yard Setback of one foot (1'). Such Structure must not cover over fifty percent (50%) of the Rear Yard.

(7) A Hard-Surfaced Parking Area subject to the same location requirements as a Detached Accessory Building.

(8) Screened mechanical equipment, hot tubs, or similar Structures.

(9) Fences or walls not over six feet (6') in height, or as permitted in Section 15-4-2, Fences and Walls.

(10) Patios, decks, pathways, steps, or similar Structures not more than thirty inches (30”) above Final Grade, located at least one foot (1') from the Rear Lot Line.

(11) Pathways or steps connecting to a City staircase or pathway.

(H) **SIDE YARD**.

(1) The minimum Side Setback is three feet (3'), but increases for Lots greater than thirty seven and one-half feet (37.5') in Width per the table below:

Lot Depth, </= ft.	Lot Width, ft. Up to:	Side Yards Min. Total, ft.	
75 ft.	25.0	3 ft.	6 ft.
75 ft.	37.5	3 ft.	6 ft.
75 ft.	50.0	5 ft.	10 ft.
75 ft.	62.5	5 ft.	14 ft.
75 ft.	75.0	5 ft.	18 ft.
75 ft.	87.5	10 ft.	24 ft.
75 ft.	100.0	10 ft.	24 ft.
75 ft.	Greater than 100.0	10 ft.	30 ft.

(2) On Corner Lots, any Yard which faces the Side Street must have a minimum Side Setback of five feet (5').

(I) **SIDE SETBACKS EXCEPTIONS**. The Side Setback area must be open and free of any Structure except:

(1) Bay Windows not more than ten feet (10') wide, and projecting not more than two feet (2') into the Side Yard.

(2) Chimneys not more than five feet (5') wide projecting not more than two feet (2') into the Side Yard.

(3) Window wells or light wells projecting not more than four feet (4') into the Side Yard.

(4) Roof overhangs or eaves projecting not more than two feet (2') into the Side Yard. A one foot (1') roof or eave overhang is permitted on Lots with a Side Yard of less than five feet (5').

(5) Window sills, belt courses, trim, cornices, or other ornamental features projecting not more than six inches (6") into the Side Yard.

(6) Patios, decks, pathways, steps, or similar Structures not more than thirty inches (30") in height above Final Grade.

(7) Fences, walls, or retaining walls not more than six feet (6') above the highest adjacent grade or as permitted in Section 15-4-2, Fences and Walls.

(8) Driveways leading to a garage or Parking Area.

(9) Detached Accessory Buildings not more than eighteen feet (18') in height, located a minimum of five feet (5') behind the Front facade of the Main Building, maintaining a minimum Side Yard Setback of three feet (3').

(10) Screened mechanical equipment, hot tubs, or similar Structures.

(J) **SNOW RELEASE**. Site plans and Building designs must resolve snow release issues to the satisfaction of the Chief Building Official.

(K) **CLEAR VIEW OF INTERSECTION**. No visual obstruction in excess of two feet (2') in height above road Grade shall be placed on any Corner Lot within the Site Distance Triangle. A reasonable number of trees may be allowed, if pruned high enough to permit automobile drivers an unobstructed view.

(Amended by Ord. No. 06-56)

15-2.2-4. EXISTING HISTORICALLY SIGNIFICANT STRUCTURES.

(A) Historically significant Structures that do not comply with Building

Setbacks, Off-Street parking, and driveway location standards are valid Complying Structures.

Unless otherwise permitted in this Section, no Historically Significant Structure may be relocated on a Lot or to another Lot unless such relocation is approved by the Planning Commission through the Conditional Use permit set forth in Section 15-1-10. In approving a Conditional Use permit for the proposed relocation, the Planning Commission must find that the proposal meets the standards of review and conclusions of law set forth in Section 15-1-10(D) and furthermore find that such relocation seeks to protect, preserve, or enhance the structural and/or Historic integrity of the original Building.

Historically Significant Structures with minor encroachments that extend across Property Lines onto adjacent Property by no more than 2 feet (2') may be relocated onto the primary Property to remedy the encroachment without the need of a Conditional Use permit approval subject to compliance with all requisite Building and fire codes.

No historically significant Structure may be modified in a manner that raises/lifts the Building more than two feet (2') above the Structure's existing main floor elevation unless approved by the Planning Commission through the Conditional Use permit review process set forth in Section 15-1-10. In approving a Conditional Use permit to raise/lift a Historic Structure more than two feet (2') above the structures existing main floor elevation, the Planning Commission must find that the proposal meets the standards of review and conclusions of law set forth in Section 15-1-10(D).

Additions to Historically Significant Structures are exempt from Off-Street parking requirements. Additions must comply with Building Setbacks, Building Footprint, driveway location standards and Building Height. All Conditional Uses shall comply with parking requirements of Chapter 15-3.

(B) **EXCEPTION**. In order to achieve new construction consistent with the Historic District Design Guidelines, the Planning Commission may grant an exception to the Building Setback and driveway location standards for additions to Historic Buildings:

(1) Upon approval of a Conditional Use permit,

(2) When the scale of the addition or driveway is Compatible with the Historic Structure,

(3) When the addition complies with all other provisions of this Chapter, and

(4) When the addition complies with the International Building and Fire Codes.

(Amended by Ord. Nos. 06-56; 07-25)

15-2.2-5. BUILDING HEIGHT.

No building shall have a Maximum Average Building Height greater than twenty-two feet. The Maximum Average Building Height shall be determined by calculating the total above-ground area of each façade divided by the total overall combined width of the building facades.

A÷W = Average Building Height
Total Above-Ground Wall Area (A) ÷ Total Width of all Building Facades (W)

~~(A) **BUILDING HEIGHT EXCEPTIONS**. The following height exceptions apply:~~

~~(1) Antennas, chimneys, flues, vents, or similar Structures, may extend up to five feet (5') above the highest point of the Building to comply with International Building Code (IBC) requirements.~~

~~(2) Water towers, mechanical equipment, and associated Screening, when enclosed or Screened, may extend up to five feet (5') above the height of the Building.~~

~~(3) To accommodate a roof form consistent with the Historic District Design Guidelines, the Planning Director may grant additional Building Height provided that no more than twenty percent (20%) of the roof ridge line exceeds the height requirement.~~

(Amended by Ord. No. 06-56)

15-2.2-6. DEVELOPMENT ON STEEP SLOPES.

For the purposes of this section a Steep Slope is defined as a slope having an average Grade steeper than thirty percent (30%) for a horizontal distance of twenty-five feet (25')
or more.

Development on Steep Slopes must be environmentally sensitive to hillside Areas, carefully planned to mitigate adverse effects on neighboring land and Improvements, and consistent with the Historic District Design Guidelines.

(A) **ALLOWED USE**. A residential structure, including garage, that is less than one thousand square feet (1000 sq. ft.) in total area is an allowed use on a Steep-Slope lot.

(B) **CONDITIONAL USE**. A Conditional Use permit is required for any Structure in excess of one thousand square feet (1,000 sq. ft.) if said Structure and/or Access is located upon any existing Slope of thirty percent (30%) or greater.

The Planning Department shall review all Conditional Use permit Applications and forward a recommendation to the Planning Commission. The Planning Commission shall review all Conditional Use permit Applications as Consent Calendar items, unless the Planning Commission removes the item from the Consent Agenda and sets the matter for a Public Hearing. Conditional Use permit Applications shall be subject to the following criteria:

(1) **VISUAL ANALYSIS**. The Applicant must provide the Planning Department with a visual analysis of the project:

(a) To determine potential impacts of the proposed Access, and Building mass and design; and

(b) To identify the potential for Screening, Slope stabilization, erosion mitigation, vegetation protection, and other design opportunities.

(2) **ACCESS**. Access points and driveways must be designed to minimize Grading of the natural topography and to reduce overall Building scale. Common driveways and Parking Areas, and side Access to garages are strongly encouraged.

(3) **RETAINING WALLS**. Retaining walls necessary to regain Natural Grade shall be stepped and terraced. Individual retaining wall steps in excess of six feet (6') are discouraged. The Planning Commission may permit individual retaining walls sections in excess of six feet (6') in height if a taller retaining wall results in a reduction in site disturbance and/or

increased vegetation protection, and is not highly visible from the public right-of-way.

(4) **BUILDING LOCATION**. Buildings, Access, and infrastructure must be located to minimize cut and fill that would alter the perceived natural topography of the Site. The Site design and Building Footprint must coordinate with adjacent properties to maximize opportunities for open Areas and preservation of natural vegetation, to minimize driveway and Parking Areas, and to provide variation of the Front Yard.

(5) **BUILDING FORM AND SCALE**. Where possible the building mass should be perceived as a series of individual smaller components that are Compatible with the District. Garages should be subordinate in design to the main Building.

(6) **ADDITIONS TO HISTORICALLY SIGNIFICANT BUILDINGS**. Steep Slope Conditional Use Permit Applications which include additions to Historically Significant Buildings must preserve, protect, and enhance the front and side Building facades, as well as the historic roof form. Additions to the rear façade of a Historically Significant Building is limited to fifty percent (50%) of the rear façade Area.

(7) **SETBACKS**. The Planning Department and/or the Planning Commission may require variations in the minimum setbacks to mitigate the adverse impacts on neighboring structures.

(8) **BUILDING HEIGHT (STEEP SLOPE)**. The Maximum Average Building Height in the HR-1 District is twenty-two feet (22'). The Planning Commission may require a reduction in the Building Height for portions of a proposed Structure to minimize its visual mass and/or to mitigate differences in scale between a proposed Structure and existing residential Structures.

(C) **<u>STEEP-SLOPE CONDITIONAL USE PERMIT EXCEPTION</u>**. In conjunction with a Subdivision or Plat Amendment, several Property Owners have undergone a review process comparable to that listed in the Conditional Use Section B above and the City does not seek to subject those Owners to additional Planning Commission review. Therefore, at the request of the Owner, the Planning Director may exempt an allowed residential Structure in excess of one thousand square feet (1,000 sq. ft.) from the Conditional Use process upon finding the following:

(1) The Lot resulted from a Subdivision or Plat Amendment after January 1, 1995;

(2) The conditions of approval or required Plat notes reflect a maximum house size or Building Footprint; and

(3) The conditions of approval or required Plat notes include a requirement for Planning, Engineering and Building Department review of Grading, excavation, erosion, or similar criteria as found in the foregoing Section B, prior to Building Permit issuance.

The findings shall be in writing, filed with the Owner and City Planning Department, and shall state that the maximum house size and all other applicable regulations continue to apply, the Owner is not vested for the maximum.

(Amended by Ord. No. 06-56)

15-2.2-7. PARKING REGULATIONS.

(A) Tandem Parking is allowed in the Historic District.

(B) Common driveways are allowed along shared Side Yard Property Lines to provide Access to Parking in the rear of the Main Building or below Grade if both Properties are deed restricted to allow for the perpetual Use of the shared drive.

(C) Common garages are allowed as a Conditional Use permit where it facilities:

(1) the Development of individual Buildings that more closely conform to the scale of Historic Structures in the District; and

(2) the reduction, mitigation or elimination of garage doors at the Street edge.

(D) A garage may occupy below-grade Side yard setbacks between participating Developments if the Structure maintains all Setbacks above Grade. Common garage Structures requiring a Conditional Use permit are subject to a Conditional Use review, Chapter 15-1-10.

(E) Driveways between Structures are allowed in order to eliminate garage doors facing the Street, to remove cars from on-Street parking, and to reduce paved Areas, provided the driveway leads to an approved garage or Parking Area.

(F) Turning radii are subject to review by the City Engineer as to function and design.

(Amended by Ord. No. 06-56)

15-2.2-8. ARCHITECTURAL REVIEW.

(A) **REVIEW**. Prior to the issuance of a Building Permit, including footing and foundation, for any Conditional or Allowed Use within this District, the Planning Department shall review the proposed plans for compliance with Historic District Design Guidelines.

(B) **VOLUNTEER PRE-APPLICATION PEER REVIEW**. An Applicant may elect to participate in a voluntary pre-Application peer review. The purpose of the voluntary pre-Application peer review is to encourage Applicants to approach project Development from an early and comprehensive perspective incorporating all potential issues and regulatory processes. The objective of the voluntary pre-Application peer review process is to foster a collaborative discussion on the project context and to provide preliminary peer and staff input regarding strategies to best achieve project code compliance, neighborhood architectural Compatibility, and construction impact mitigation.

The Volunteer Pre-Application Peer Review (VPR) Committee shall consist of three (3) professional architects and a representative from the Planning Department. The VPR Committee may request additional participation from the Building and Engineering Departments when necessary. The Planning Department representative shall keep a written report of all VPR Committee recommendations and forward said report to any future administrative review body.

(C) **NOTICE TO ADJACENT PROPERTY OWNERS**. The Planning Department shall post a property notice within five (5) calendar days of a completed Historic District Design Review Application that design review application for the property is pending City review and action. Written notice to Owners immediately adjacent to the Property, directly abutting the Property and across Public Streets and/or Rights-of-Way shall also be sent within five (5) calendar days of a completed Historic District Design Review Application.

When the Planning Department determines that proposed Development plans comply with the Historic District Design Guidelines, the Staff shall repost the Property and provide a second written notice to Owners immediately adjacent to the Property, directly abutting the Property and across Public Streets and/or Rights-of-Way. The notice shall state that the Planning Department staff has made a preliminary determination finding that the proposed plans comply with the Historic District Design Guidelines and provide information relating to the appeal procedures.
If upon expiration of the appeal period set forth below in Section D: Appeals, no comment or legitimate objections are received, the Historic District Design Review application shall be approved without further review.

(D) **APPEALS**. The posting and notice shall include the location and description of the proposed Development project and shall establish a ten (10) day period to appeal Staff's determination of compliance to the Historic Preservation Board. Appeals must be written and shall contain the name, address, and telephone number of the petitioner, his or her relationship to the project and the Design Guidelines or Code provisions violated by the Staff determination.

(Amended by Ord. No. 06-56)

15-2.2-9. CRITERIA FOR BED AND BREAKFAST INNS.

A Bed and Breakfast Inn is a Conditional Use. No Conditional Use permit may be issued unless the following criteria are met:

(A) The Use is in a Historic Structure, or an addition thereto.

(B) The Applicant will make every attempt to rehabilitate the Historic portion of the Structure.

(C) The Structure has at least two (2) rentable rooms. The maximum number of rooms will be determined by the Applicant's ability to mitigate neighborhood impacts.

(D) The size and configuration of the rooms are Compatible with the Historic character of the Building and neighborhood.

(E) The rooms are available for Nightly Rental only.

(F) An Owner/manager is living on-Site, or in Historic Structures there must be twenty-four (24) hour on-Site management and check-in.

(G) Food service is for the benefit of overnight guests only.

(H) No Kitchen is permitted within rental room(s).

(I) Parking on-Site is required at a rate of one (1) space per rentable room.

(J) The Use complies with Chapter 15-1 -10, Conditional Use review process.

(Amended by Ord. No. 07-25)

15-2.2-10. RELATED PROVISIONS.

- Fences and Walls. LMC Chapter 15-4-2.
- Accessory Apartment. LMC Chapter 15-4-7.
- Satellite Receiving Antenna. LMC Chapter 15-4-13.
- Telecommunication Facility. LMC Chapter 15-4-14.

- Parking. LMC Chapter 15-3.
- Landscaping. Title 14; LMC Chapter 15-3.3(D).
- Lighting. LMC Chapters 15-3-3(C), 15-5-5(I).
- Historic Preservation. LMC Chapter 15-11.
- Park City Sign Code. Title 12.
- Architectural Review. LMC Chapter 15-5.
- Snow Storage. LMC Chapter 15-3-3(E).
- Parking Ratio Requirements. LMC Chapter 15-3-6.

(Amended by Ord. No. 06-56)

Planning Commission Subdivision/Plat Amendment Discussion
July 25, 2007

"***Subdivisions and the Subdivision Process is a tool to manage growth and land conversion in way that is consistent with the General Plan***"

A Subdivision is defined as:

"Any land that is divided, resubdivided or proposed to be divided into two or more lots, parcels, sites, units, plots or other division of land for the purpose, whether immediate or future, for offer, sale, lease, or development…"

Why Regulate Subdivisions?

Establishes safe and efficient standards for providing infrastructure and services to residents and property owners.

Protects the City from financial burden of maintaining/correcting inadequate infrastructure.

Provides predictable process and review standards for developer/applicants.

Provides for development consistent with the General Plan.

The General Plan and the Historic District

Goals
The General Plan establishes goals designed to address foreseeable problems and express community aspirations. The key goals include:

Goal 1: Preserve the mountain resort and historic character of Park City (Page 5)

• Future development should complement the existing historic and resort qualities of our mountain community.

• New development, both commercial and residential, should be modest in scale and utilize historic and natural building materials. New structures should blend in with the landscape.

Goal 5: Maintain the unique identity and character of an historic community (Page 7)

• The community should focus on maintaining the integrity and health of the historic district. The downtown should maintain its historic character marked by pedestrian-friendly buildings of simple design, modest scale, modest height, and other similar features.

Historic Core Policies (Page 13)
The designated historic district, which is subject to special design and preservation regulations, best defines the historic core of the City. Citizens feel strongly that the core must continue to provide a range of services for residents, while also functioning as an attraction for tourists. The goal for the historic district is to maintain it as the center of the community, not just as a stage set for tourism. The following policies will help accomplish this goal:

• Keep City and other government offices and services in the downtown, to maintain the function of the historic core as a gathering place. Similarly, concentrate in the historic area certain commercial uses that attract and encourage interaction among local residents (e.g., bookstores, card shops, coffee shops, and post office).

• To maintain commercial viability, promote year-round demand by residents and workers for services, restaurants, entertainment, and similar uses in the core.

• Maintain the historic character of buildings.

• Support programs that make the downtown attractive to potential businesses.

• Promote the continuation and augmentation of a pedestrian-friendly environment in the downtown.

• Work to ensure the continued livability of residential areas around the historic commercial core.

Historic District (Page 56)
As both the commercial and residential portions of the historic district build out, issues with scale, snow shedding, parking, construction traffic and similar conflicts have become more common. Several changes to the Land Management Code and Design Guidelines have been made to address these conflicts, but moremodifications are necessary. The Land Management Code and Design Guidelines should be evaluated and modified to achieve the following objectives:

• Building height and mass of new structures should be compatible with the historic structures. Consider further limiting building heights and floor area ratios.

• The Historic Design Guidelines, design standards and zoning regulations must be reviewed and modified to deal better with issues including, but not limited to snow shedding on adjacent structures, heights, mass, and contextual compatibility.

• All new development should provide adequate on-site parking. A comprehensive parking plan for the historic district needs to be developed and implemented.

• The Growth Management policies of regulating construction activity are very important in the historic district. Specific construction management plans for every construction site shall be required. They shall address the limits of disturbance and construction staging, timing, parking, and traffic.

LMC Subdivision Purpose Statements:

The purpose of the Subdivision regulations is:

(A) To protect and provide for the public health, safety, and general welfare of Park City.

(B) To guide the future growth and Development of Park City, in accordance with the General Plan.

(C) To provide for adequate light, air, and privacy, to secure safety from fire, flood, landslides and other geologic hazards, mine subsidence, mine tunnels, shafts, adits and dump Areas, and other dangers, and to prevent overcrowding of the land and undue congestion of population.

(D) To protect the character and the social and economic stability of all parts of Park City and to encourage the orderly and beneficial Development of all parts of the municipality.

(E) To protect and conserve the value of land throughout the municipality and the value of Buildings and improvements upon the land, and to minimize the conflicts among the Uses of land and Buildings.

(F) To guide public and private policy and action in order to provide adequate and efficient transportation, water, sewerage, schools, parks, playgrounds, recreation, and other public requirements and facilities.

(G) To provide the most beneficial relationship between the Uses of land and Buildings and the circulation of traffic, throughout the municipality, having particular regard to the avoidance of congestion in the Streets and highways, and the pedestrian traffic movements appropriate to the various Uses of land and Buildings, and to provide for the proper location and width of Streets and Building lines.

(H) To establish reasonable standards of design and procedures for Subdivisions, Resubdivisions, and Lot Line Adjustments, in order to further the orderly layout and Use of land; and to insure proper legal descriptions and monumenting of subdivided land.

(I) To insure that public facilities are available and will have a sufficient capacity to serve the proposed Subdivision, Resubdivision, or Lot Line Adjustment.

(J) To prevent the pollution or degradation of air, streams, and ponds; to assure the adequacy of drainage facilities; to safeguard the water table; to minimize Site disturbance, removal of native vegetation, and soil erosion; and to encourage the wise Use and management of natural resources throughout the municipality in order to preserve the integrity, stability, and beauty of the community and the value of the land.

(K) To preserve the natural beauty and topography of Park City and to insure appropriate Development with regard to these natural features, and

(L) To provide for open spaces through the most efficient design and layout of the land, including the Use of flexible density or cluster-type zoning in providing for minimum width and Area of Lots, while preserving the density of land as established in the Land Management Code of Park City.

Fundamental Subdivision/Plat Amendment Requirements

- ✓ Do the proposed lots meet the minimum lot size of the zoning district?
- ✓ Do the proposed lots meet the minimum lot dimensions of the zoning district?
- ✓ Is there adequate (vehicular and emergency services) existing access to the proposed lots?
- ✓ Is there adequate utility service to the proposed lots?
- ✓ Are the roads, utilities, and Drainage designed to work with existing grades so that disturbance to existing vegetation is minimized?

Additional Subdivision/Plat Amendment Review Tools

LMC Section 15-7.3-1(D): RESTRICTIONS DUE TO CHARACTER OF THE LAND. Land which the Planning Commission finds to be unsuitable for

Subdivision or Development due to flooding, improper drainage, Steep Slopes, rock formations, mine hazards, potentially toxic wastes, adverse earth formations or topography, wetlands, geologic hazards, utility easements, or other features, including ridge lines, which will reasonably be harmful to the safety, health, and general welfare of the present or future inhabitants of the Subdivision and/or its surrounding Areas, shall not be subdivided or developed unless adequate methods are formulated by the Developer and approved by the Planning Commission, upon recommendation of a qualified engineer, to solve the problems created by the unsuitable land conditions. The burden of the proof shall lie with the Developer. Such land shall be set aside or reserved for uses as shall not involve such a danger.

Mitigation Measures that the Planning Commission May Employ to Insure Compliance with the General Plan and Zoning Districts include:

15-7.3-3. GENERAL LOT DESIGN REQUIREMENTS.

- ✓ (B) **BUILDING SITES**. Building Sites or envelopes shall be designed which minimize disturbance of existing vegetation. In designating Building envelopes, consideration should be given to minimum separations between Structures.

- ✓ (C) **SQUARE FOOTAGE**. Maximum dwelling or unit square footage may be required. Limited Building Heights may also be required for visually sensitive Areas.

Possible Tools For Consideration

The Planning Commission may consider recommending that City Council amend the Subdivision Code to implement tools similar to those found in Resolution 8-98,

RESOLUTION ADOPTING A POLICY STATEMENT REGARDING THE VACATION OF PUBLIC RIGHT-OF-WAYS WITHIN PARK CITY, UTAH

SECTION 1. GOOD CAUSE. The City may generally find “good cause” when a proposal evaluated as a whole demonstrates a “net tangible benefit” to the immediate neighborhood and to the City as a whole. The City will evaluate a particular proposal against the following criteria to determine whether a “net tangible benefit” has been demonstrated by the petitioner:

(a) **No Increase in Density**. Existing density shall be determined by counting the lots/units that the petitioner could reasonably obtain a building permit for at the time the petition is filed. The existing density must have existing access and must not require a plat amendment in order to obtain a building permit. Street rights-of-way will generally not be vacated to facilitate greater density, floor area or area of disturbance. New applications which proposed the subdivision of rights-of-way shall be reviewed under Land Management Code ("LMC") Chapter 15, Subdivisions, and must result in a lower density than that permitted by the underlying zoning (Chapter 7), without the vacated right-of-way.

(b) **Neighborhood Compatibility**. The proposed shall be analyzed according to the following criteria: the application complies with all requirements of the LMC; the use will be compatible with surrounding structures in use, scale, mass and circulation; the use is consistent with the Park City General Plan, as amended; and the effects of any differences in use or scale have been mitigated through careful planning. The City shall review each of the following items when considering compatibility: (1) size and location of the site; (2) traffic impacts including capacity of the existing streets in the area; (3) utility capacity; (4) emergency vehicle access; (5) location and amount of off-street parking; (6) internal circulation; (7) fencing, screening, and landscaping to separate the use from adjoining uses; (8) building mass, bulk, and site plan; (9) usable open space; (10) signs and lighting; (11) physical design and compatibility with surrounding structures in mass, scale, style, design, and architectural detailing; (12) provision of snow storage, and mitigation of noise, vibration, odors, steam, or other mechanical factors that might affect people and property off site; (13) control of delivery and service vehicles, loading and unloading zones, and screening of trash pick-up areas; (14) expected ownership and management of the project as primary residences, condominiums, time interval ownership, nightly rental, or commercial tenancies; (15) proposed uses in an historic district must comply with the Historic District Architectural Guidelines provided in a supplement to the LMC; (16) all proposed uses in the zones outside an historic district must comply with the General Architectural Guidelines in LMC Chapter 9; and (17) the Sensitive Area Overlay Zone Regulations (which normally apply only to property within the Sensitive Area Overlay Zone) shall apply to all development proposals including a petition to vacate right-of-way, regardless of the underlying zoning/platting of the development.

Steep-Slope Conditional Use Permit Review Sheet and Checklist

(Note: Pat's Editorial Comments are in *Italics*)

1) Location of Development

Is the proposed building designed to reduce its visual and environmental impacts? *(Imagine reading the development parcel and the surrounding neighborhood in "braille". As you move across the neighborhood and site do you detect any significant aberrations in the building masses and the surface of the land around the structures? Any unusual lumps or depressions across the site when compared with what is around it? If there are significant changes, are they abrupt or softened/stepped in some manner so as to transition the differences?)*

☐Yes. If so, how?

☐No. If so, what are the issues?

In evaluating this criterion, consider the following:

Describe the characteristics of the property and the immediate neighborhood: *(Is this an infill site? Does it slope up/down from the street? How steep is the site? Is the reason for the steep-slope CUP simply because of portion of the lot meets the steep-slope definition? Is the lot access via a steep, narrow street, driveway across a platted, unbuilt street? etc.)*

Are there any specific attributes of the site that should be noted which may affect the placement of the development or the project design? *(This would include very steep slopes, areas of soil/geotechnical problems, significant vegetation, historic buildings, encroachments, etc.)*

Is the project being designed with above-described attributes and vantage points in mind and/or have they been mitigated?
☐Yes. If so, how: *(If there are unique, sensitive, important, challenging attributes about the site, what are they doing about them? i.e. the cluster of existing spruce are being preserved, the existing encroaching retaining wall is being relocated…)*

☐ No. If so, describe what issue or site attribute has not been satisfactorily addressed:

2) Visual Analysis

Identify the specific vantage points that the applicant is using in the project evaluation: *(Is the vantage point simply the front of the lot or are other perspectives provided as part of the application, such as any of the Land Management Code defined "Vantage Points" including the intersection of Main*

Street and Heber Avenue, Park City Ski Area Base, and thePark City Golf Course Clubhouse?)

What visual analysis information is the applicant providing? *(streetscape, model, computer-generated massing, photo overlay?)*

Does the visual analysis demonstrate that the project access, grading, and building mass are designed to incorporate the project into the site and the surrounding neighborhood in a compatible manner? *(Does building the project require mass excavation/benching-out or filling the property to construct a house that is designed for a flat lot? Are highly-visible, large retaining walls or cut/fill areas that are necessary to provide access, yard areas, and slope retention proposed? Is the lot being significantly and unreasonably manipulated or are there other design or construction techniques which will minimize the impact of the project on the site?)*

- Yes. If so, how?

- No. If so, why not? *(Can these be adequately mitigated by screening, revegetation, landscaping?)*

3) <u>Access</u>

Explain the extent to which the site is being graded. Does the proposed grade help to reduce the building scale? Does the grading help to blend the development into the topography of the area? *(What are heights of the cuts and/or fill areas? Are retaining walls proposed? How tall are they and what they made of? Where are they visible from? Are they similar to others found in the neighborhood?)*

Is the project access point and driveway being design in a manner that keeps cut/fill slopes and retaining walls to a minimum? *(Will the proposed access solution result in low-profile walls and/or limited cut/fill areas which can be revegetated or will the access design be on an episode of the History Channel's <u>Modern Marvels</u>?)*

- Yes. If so how? *(Describe the retaining wall heights. Are they a highly visible streetscape element? Have they been treated in a manner that incorporates in the existing topography and/or existing street-edge?)*

- No. If so, why not?

Does the driveway grade meet the maximum grade requirement of the Land Management Code (14%) and is it functional? *(Will a vehicle realistically be able to get in and out of the garage to the street without the help of a winch or slide-for-life safety net? Is there enough of a driveway platform in front of the garage so that roof rack or ski pod is not ripped off the vehicle?)*

- Yes.

† No. Explain:

4) Terracing

If retaining walls are proposed, are they stepped/terraced? *(Consider what is more important—a taller retaining wall to minimize the overall area of disturbance, or a series of stepped/lower walls to reduce the scale of the walls.)*

†Yes.

† No.

Will the retaining walls be a highly-visible feature of the site when viewed from the aforementioned vantage points? *(Are the walls integrated into the site and surrounding area so as to be similar in design, size, and material to other such walls in the neighborhood?)*

†Yes. Explain:

†No. Explain:

5) Building Location

Is the overall project (access, utilities, building, and associated yard areas) being designed to fit the site topography or is the site being significantly altered to fit the project? *(Is it necessary to nuke the site to building project or is there a better way design it to preserve any important attributes of the property and/or minimize the impacts on the neighborhood?)*

†Yes. How so:

†No. Explain:

Is the foundation being stepped to minimize cut/fill slopes and need for retaining walls? *(Prior to framing, could you play racquetball in the foundation area or an Arena Football game?)*

†Yes. Explain:

†No. Why not?

What percentage of the front yard area driveway and parking area*? (How much front yard area is truly "front yard", as in landscaped?)*

Is the building's design and placement coordinated with adjacent properties and does it minimize the visual impact of the garage and parking areas? *(Is the primary architectural feature of the front of the house a large, two car garage door? Is the street frontage a hard-scape parking area? If there is yard landscaping, will anything be left after a winter of snow storage?)*

†Yes. How so:

†No. Explain:

Is the building's design and placement on the site taking full advantage of adjacent open areas to maximize vegetation protection, yards areas, and/or access to public space? *(Are non-building areas coordinated with the adjacent properties so as to create larger contiguous spaces or does the proposed design result in fragmented and dead spaces? Are there opportunities to link yard areas to public spaces such as sidewalks, public stairs, pathways, etc?)*
†Yes. How so:

†No. Explain:

Are there reasons to increase the building's front yard setback? *(What is the pattern of the front yard setback along the street? Will the proposed building be perceived as "jutting out" to the street in comparison with other nearby structures?)*
†Yes. What are the reasons?

†No. Why not?

6) <u>Building Form and Scale</u>
The building footprint is designed to generally orient:
† With the lot's existing contours.
Is the building experienced as being "low in profile" when viewed from the aforementioned vantage points? *(Does the building mass appear to flow with the topography or does it appear to run down or up the lot?)*

†Yes. Explain:

†No. Explain:

† Against the lot's existing contours.
If the building footprint generally orients against the lot's existing contours, is it being designed to step with the grade and be broken into a series of smaller individual components? *(Is the building massed as several distinct stepped pieces with their own roof forms or is does the mass read as one homogenous bulk under one (a limited number of) roof elements. Sloping a roof is not stepping. It is the reason USSA does not ski jump off of staircases.)*

†Yes. If so, describe the vertical and horizontal steps in the building mass:

†No. Explain:

Is the garage subordinate in design to the main portion of the building? *(What percentage of the front facade width is the garage door? Can it be reduced or de-emphasized in anyway?)*

†Yes. Explain:

†No. Explain:

Should the garage be fully or partially detached from the main structure or eliminated from the design to decrease the bulk of the structure as viewed for the aforementioned vantage points? *(Garages in accessory or partially detached buildings are commonly associated with historic properties. Detached or partially detached garages also serve to break up the building mass. Can the site and building design accommodate this type of design solution?)*

Yes. Explain:

No. Explain:

7) Setbacks

What is the general range of building setbacks in the immediate project area (i.e. within 100 lineal feet of the project site, including both sides of the street)? *(Look for streetscape setback patterns that can be reinforced.)*

Should the project setbacks be increased/varied to minimize the creation of a "wall effect" along the street and/or rear lot line? *(Reinforcing setback patterns is good. A rigid setback street-edge can act to emphasize infill construction "fills the volume of the site." Minor variations in setbacks can help reduce this perception and add interest along the street.)*

Yes. Explain:

No. Why not?

8) Dwelling Volume

What is the general range of gross building sizes in the immediate project area (i.e. within 100 lineal feet of the project site, including both sides of the street)? *(Get a general, ball park idea of the build environment which this new structure will become a part. Is it with the range of house sizes in the neighborhood? If it is larger, is the building being designed to bury and/or break up the above-ground mass?)*

Should the proposed structure be limited/reduced beyond the size achievable pursuant to the underlying zoning in order to mitigate differences in scale with existing nearby structures as viewed from the aforementioned vantage points? *(First ask, "is the problem truly a matter of square footage or is it a matter of building design and massing? Is it both?)*

Yes. Explain:

No. Why not?

9) Building Height (Steep-Slope)

What is the general range of maximum building heights in the immediate project area (i.e. within 100 lineal feet of the project site, including both sides of the street)? *(Once again, get a general, ball park idea of the built environment which this new structure will become a part. Is the proposed building height within the range of building heights in the neighborhood? If it is larger, is the building mass designed to be proportional to itself and the buildings nearby?)*

Should all, or portions, of the proposed building height be reduced to mitigate differences in scale with existing nearby structures as viewed from the aforementioned vantage points? *(Again, first ask, "is the problem truly a matter of overall height or is it a matter of proportion or massing? Is it both?)*

Yes. Explain:

No. Why not?

10)<u>Height Exceptions (Steep-Slope)</u>
Is a Height Exception being requested? *(Simple)*
Yes.

No.

If yes:

Does the height exception result in a height in excess of forty feet (40')? *(Simple)*

Does the proposed building includes horizontal and vertical step backs to achieve increased Building articulation and compatibility with nearby buildings. *(It is important to explain the built environment around the new structure—how tall the buildings are; how, if at all, they are stepped, etc. It is also important to describe size of the size of the proposed building steps and their massing offsets, i.e. "The mass of the structure is stepped in three defined sections. The street front component is ____ft. in height when measured from the garage floor elevation and is ______ feet in depth. The ridge line of the second massing component drops ______feet below the ridge line of the first massing component and is _________ feet at its tallest point and _______feet in depth. The third massing component includes a ridgeline that is ______feet lower than the second/middle massing component. This element is _____in height overall and is _____feet in depth.)*
Yes.

No.

Should the Planning Commission refer the proposal to the Historic Preservation Board, prior to taking action, for a recommendation on the extent to which the proposed articulation and design are consistent with the Historic District Design Guidelines? *(This is an option.)*

Yes.

No.

Do the proposed building mass, articulation, and design mitigate the visual impacts and differences in scale with nearby residential structures as viewed from the aforementioned vantage points? *(See above discussion relating to building articulation and horizontal/vertical breaks.)*
Yes. How so?

No. How not?

Are all snow release issues resolved to the satisfaction of the Chief Building Official? *(Should be a straight-forward yes vs. no answer.)*
Yes.

No. Why not?

Are height reductions in other portions of the building and/or increased setbacks incorporated into the project design: *(Should be easy to quantify.)*
Yes. Describe them:

No. Why not?

Does the height exception create additional Building/Floor Area? *(Is the additional height to create a more-Historic District Guideline-compliant roof form and overall design or is it just to achieve "better space" or headroom?)*
Yes. Explain:

No.

Does the height exception enhance the building's compatibility with nearby buildings by adding architectural interest to the garage element, front facade, porch, or other features? *(It is important to understanding and able to explain what the built environment is around the new construction and how the proposed height exception helps the new construction to better relate to what is around it. What are the proposed features which will add the additional architectural interest?)*
Yes. Explain:

No. Why not?

Is the height exception compatible with good planning practices, good site design, and will it result in a superior plan? *(This is the summary section where it is described how the total list benefits architectural benefits offset the additional height. The purpose statements of the zoning district which encourage* *historically compatible infill are also appropriate to discuss here.)*

Yes. Explain

No. Why not?

PARK CITY COUNCIL WORK SESSION NOTES
SUMMIT COUNTY, UTAH
NOVEMBER 29, 2007

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

Tom Bakaly, City Manager; Mark Harrington, City Attorney; Max Paap, Special Events Manager; Alison Butz, Environmental Specialists; and Denise Carey, Analyst

Sara Pearce, Sundance Institute

1. Board interviews. Applicant Peter Knauer was interviewed for the Planning Commission vacancy. Ruth Meintsma, Sara Werbalow, and Laura Bayer were interviewed at the conclusion of work session for the Historic Preservation Board.

2. Council questions/comments. Roger Harlan reported on the Leadership Class gathering and Marianne Cone encouraged the public to attend sled hockey events at the rink. Jim Hier commented on the Leadership event, and meetings including the HMBA, Chamber/Bureau, and interagency group. He encouraged legislative updates from staff to include School District issues this year and relayed that the familiarization tours conducted this week by the City is a great training tool for frontline employees. Joe Kernan stated that Jeff Ward requested that the City install a cardboard compactor in Swede Alley and described two possible locations. Alison Butz explained that there is a compactor adjacent to the transit center and there has been some discussion among staff members about installing one at the Brewpub; staff will follow up. Jim Hier pointed out that the HMBA has a recycling committee and suggested that any ideas be coordinated with the committee. Joe Kernan asked that staff examine possible locations to recommend.

Council members agreed to hold its Visioning Session on January 3 and 4, 2008. Candace Erickson commented on the number of upcoming ULCT issues and discussed passing a proclamation to make it snow. She understood it worked in 1982 and staff will follow up on her suggestion. Marianne Cone recommended considering building a set of stairs between Ontario and McHenry and hoped it could be added to the list of walkability projects. Joe Kernan discussed the possibility of the Health Department testing products that may contain lead on behalf of the citizenry. Mayor Williams was pleased with the installation of the traffic signal at Meadows Drive. He felt it important to provide the ULCT with the final recommendations from the Governor's Climate Change Committee to determine the level of support from other cities. The Mayor reported that a high school delegation from Beijing will be visiting Park City the end of January.

3. Sundance Film Festival supplemental plan update. Max Paap explained that this work session is designed to work through outstanding issues; the 2008 plan is scheduled for formal consideration next week. The updated supplemental plan defines the management of Main Street and China Bridge parking and activities at the Racquet Club venue. The 2007 parking plan was successful and it is proposed to set up the parking plan for Main Street a day earlier which was agreeable with the HMBA. He detailed the China Bridge parking plan which is identical to 2007, but provides more leeway for hangtag users.

He stated that the City has received complaints from a household in Park Meadows, Michele Dieterich and Jeff Lonn, about noise and lights at the Racquet Club venue. In response to these issues, staff met with Sundance several times to arrive at solutions including relocating the entrance and tents in the parking lot and changes to the driveway layout. Through illustration of renderings, Mr. Paap displayed the plan for 2007 and the proposal for 2008. Sara Pearce acknowledged that Sundance has not actively managed this venue the past several years as well as it should have and added that this is the first year that she heard about the complaints. She stated that they spent hours at arriving at alternatives. Sundance will actively escort patrons into the tent and will not use generators for lights. The tent will be secured with water barrels and not through drilling into the parking surface. She explained that the event has shut down at 10 p.m. and the time has been moved back to 9 p.m., acknowledging that noise emanates from the parking lot. Patrons will be reminded on several occasions during a screening that they are in a residential area and to keep noise at a minimum and the buses will be moved as far west as possible. Set up will begin on January 13 and continue through January 16; screenings will be held January 17 through January 22. The awards ceremony set up will begin January 26 and about 1,200 patrons are expected at the party on Saturday. She emphasized that attendance numbers fluctuate throughout the evening and the party ends at midnight. Actively managing the crowd will make a huge difference. Max Paap discussed the outdoor lighting issues last year and Sara Pearce added that phone numbers will be available to the neighborhood to reach Sundance staff in the event of problems.

Candace Erickson stated that her concern remains that the last film is scheduled at 8:30 p.m. so people will be leaving at 10:30 p.m. and this is a residential area. She reminded everyone that the Racquet Club was considered a *test* several years ago. It is not continual noise that wakes people up, but random disturbances. The Mayor agreed with Council member Erickson because it will be a challenge to get patrons out of the building by 10:30 p.m. He suggested that the last screening be scheduled at 7:30 p.m. Ms. Pearce expressed her understanding of the issue but explained that the venue has to screen five films a day at the Racquet Club because of the of the nature of the competition. The tickets have already been sold, but the challenge is scheduling films every three hours and providing enough time for a question and answer session. Ms. Pearce encouraged Council to consider supporting the proposed modifications this year and allowing for the schedule to be reworked next year because the details have already been defined for 2008. She again emphasized the importance of addressing complaints. In response to a question from Joe Kernan, Ms. Pearce explained that people will be waiting in a tent and the loading zone will be changed. Max Paap spoke about the constraints of moving the buses farther west because of potential sight line problems at the stop sign. Marianne Cone suggested modifying the canopy to reduce noise. Denise Carey described the smoking area located in front of the Racquet Club building and away from residences.

Jeff Lonn, complainant, expressed that moving loading to the west may help somewhat but it will still be loud. He and his wife have been trying to mitigate the disturbance for years and their biggest concern is the start time of the movies resulting in people leaving at 11 p.m. The parking is a big problem and is not being addressed. They called the police a number of times about the volume of music. Activities should end earlier.

Michele Dieterich, complainant, stated that this has been a seven year battle. When the police are called, they are told that Sundance has permits for everything and we should be glad that they're here. She complained about the use of flood lights last year when they were told they would not be used and Sundance does not have a direct line to submit complaints and she was bounced around last year when trying to talk with someone. This is probably why the Council believes there haven't been complaints. The Racquet Club is not appropriate for the second largest theater for the Film Festival because it is located in a residential neighborhood. The party and movies should not go beyond 10 p.m. Maybe Sundance shouldn't grow any more and she described disturbances caused by generator noise and lighting. The times of the screenings should be earlier.

Joe Kernan felt that it will be helpful to have the venue better staffed to manage the crowd and placement of equipment is key. Tom Bakaly interjected that adoption of the 2008 supplemental plan is slated next week and suggested adding a condition regarding the timing for the screenings next year. Jim Hier believed the *stop* time should be identified because that is the issue, while Sundance should determine the time the screenings begin. Roger Harlan brought up acquiring an alternative site and suggested that the School District be contacted for possible auditorium space in the schools. He described a portable enclosed walkway which may help mitigate crowd noise to the buses.

Prepared by Janet M. Scott, City Recorder

PARK CITY COUNCIL MEETING
SUMMIT COUNTY, UTAH
NOVEMBER 29, 2007

I ROLL CALL

Mayor Dana Williams called the regular meeting of the City Council to order at approximately 6 p.m. at the Marsac Municipal Building on Thursday, November 29, 2007. Members in attendance were Dana Williams, Marianne Cone, Candace Erickson, Roger Harlan, Jim Hier, and Joe Kernan. Staff present was Tom Bakaly, City Manager; Mark Harrington, City Attorney; Brooks Robinson, Planner; Kirsten Whetstone, Planner; Alison Butz, Environmental Specialist; and Phyllis Robinson, Community and Public Affairs Director.

II COMMUNICATIONS AND DISCLOSURES FROM COUNCIL AND STAFF

Council disclosure – Joe Kernan stated that Talisker Corp., the Jaffa Group, and the Elliott Work Group are among his recycling customers.

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

1. Traffic signal at Meadows Drive – Resident Bill Gorton thanked Council for its support of the installation of the traffic signal on SR224.

2. Election Code amendments – Kathy Dopp, election reform enthusiast, referred to the materials she distributed last week regarding mandatory independent vote count audits. She spoke about garnering support from state legislators in sponsoring legislation. Other issues include providing voter access to polls, preprinted paper ballots in the event of a power failure for instance, election day voter registration, access to election records, and ballot privacy. She added language to the mandatory vote count audit proposal to require that the election procedures in Utah will always allow a voter to create a paper ballot record. Joe Kernan believed these are good ideas and that Ms. Dopp is a great resource, but felt it is important to carefully select which issues to champion and to balance Park City's interest with the state. He suggested that ULCT may be the right agency. In response to a question from Mayor Williams, Ms. Dopp indicated that she hasn't approached the Summit County Commission for some time. Jim Hier recommended holding a work session next week with recommendations from staff.

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

IV WORK SESSION NOTES AND MINUTES OF MEETING OF NOVEMBER 15, 2007

Roger Harlan, "I move approval of the work session notes and minutes of November 15, 2007". Marianne Cone seconded. Motion unanimously carried.

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

1. Consideration of an Ordinance approving a plat amendment at 416 Park Avenue, Park City, Utah – Brooks Robinson explained that Items 1, 2, and 8 were advertised with a Planning Commission and a City Council hearing date. These items have been continued by the Commission. The Mayor opened the public hearing and with no public input, requested a motion to continue to December 6, 2007. Roger Harlan, "I so move". Jim Hier seconded. Motion unanimously approved.

2. Consideration of an Ordinance approving amendments to the Land Management Code of Park City, Utah to reflect revisions to prevent repetition between the processes of the Building Department and Planning Department, to create a more cohesive and comprehensive code, to update referenced codes and organizations and to reflect the new SB183 of the Utah Code, and to address substantive amendments for Chapter 2.21 Sensitive Lands Ordinance Zoning District – The Mayor opened the public hearing and with no comments, closed the public hearing. He then requested a motion to continue to December 6, 2007. Candace Erickson, "I so move". Marianne Cone seconded. Motion unanimously carried.

3. Consideration of an Ordinance approving the Jupiter View Estates Subdivision, located at 1376 Mellow Mountain Drive, Section 8, Township 2 South, Range 4 East, Salt Lake Base and Meridian, Park City, Utah – Planner Kirsten Whetstone explained that the application is a request to subdivide the Tabor Parcel which is estate zoned and located in sensitive lands. The plat amendment will also include Lot 11 of Hearthstone in order to dedicate access and for utilities and trails. The parcel is 6.63 acres and two lots are proposed for two single family dwellings. The Planning Commission forwarded a positive recommendation on November 14, 2007 as conditioned in the ordinance. She described requirements of and compliance with the Sensitive Lands Ordinance regarding development of slope areas where nothing over 40% can be disturbed. She displayed a visual analysis of the project from a variety of vantage points throughout town. The view from the 11th Street Stairs at Lowell Avenue was discussed because it breaks a ridge line, but it was emphasized that it is not a vantage point in the LMC. Conditions relate to acceptance of a construction mitigation, landscaping for the retaining wall, revegetation and fire protection plans. Ms. Whetstone emphasized the trail connection provided as part of the project and discussed an analysis on remaining estate sized parcels in Park City conducted at the request of the Planning Commission. The Mayor opened the public hearing and with no public input, closed the hearing.

Jim Hier, "I move we adopt the Jupiter View Estates Subdivision based on the findings of fact, conclusions of law, and conditions of approval as stated in the draft ordinance". Candace Erickson seconded. Motion unanimously carried.

4. Consideration of an Ordinance approving the Christopher Homes at Empire Pass Condominiums, amended record of survey plat located at Lot 1 of the Silver Strike

Subdivision, Park City, Utah – Planner Brooks Robinson explained that Silver Strike (Pod A) was approved and the application requests the creation of four condominium units for Christopher Homes. The Planning Commission forwarded a positive recommendation on November 14. Jim Hier, "I move we approve the amended record of survey based on the findings of fact, conclusions of law, and conditions of approval as found in the draft ordinance for the Empire Pass Condominiums". Joe Kernan seconded. Motion unanimously carried.

5. Consideration to authorize the Mayor to execute a contract with Johnson Controls, in a form approved by the City Attorney, to perform an energy audit of City facilities in an amount not to exceed $49,783 – Alison Butz referred to the work session discussion last week on criteria for this contact, including return on investment, energy and carbon impact and the cost benefit; the leadership element will be applied as a note. The dollar value will be based on something similar to white tags. She asked for clarification from Council if return on investment is represented by years or percentage and Jim Hier didn't feel there is a difference since 15 years is the target. He asked if there will be a present value analysis to arrive at real annual costs and Matt Bruce from Johnson Controls explained that the matrix that will be generated. Joe Kernan, "I move we authorize the City Manager to execute a contract with Johnson Controls, in a form approved by the City Attorney". Marianne Cone seconded. Motion unanimously carried.

6. Consideration to authorize the City Manager to execute the Phase I – Design Contract for the Snow Creek Workforce Housing Development, in a form approved by the City Attorney, to Elliott Work Group, in the amount of $40,000 – Phyllis Robinson explained that the site was first considered for work force housing after the review of the 2006 Strategic Plan for City-owned parcels. This site is 7.834 acres and zoned residential density-medium which permits five units per acre and up to eight units per acre with a conditional use permit. In May 2007, the issue of wetlands on the site was identified as an issue and staff arranged to have an independent contractor delineate the wetlands before proceeding with a request for proposals. The wetlands analysis reveals that 1.5 acres of the site are considered jurisdictional wetlands by the Army Corps of Engineers. In consideration of the existing wetlands and required setbacks, staff identified a buildable site of about 1.8 acres on the 7.834 acre site.

The RFP described the project as an affordable owner/occupied, environmentally responsible neighborhood targeted toward the local work force. It should be a mix of unit sizes and prices anticipated with the preference for at-grade units versus a stacked condominium project. Ms. Robinson noted that units will be sold as primary residences with resale and owner/occupancy restrictions. Green building goals include exceeding the 2007 International Energy Code by at least 60%, achieving a minimum 50 year durability on building materials, and minimizing project waste through recycling.

She explained that four firms responded to the RFP and an internal committee reviewed the proposals and interviewed applicants. Selection criteria included the ability to perform the work, past performance of similar work, and evidence of the ability to begin work immediately. The fee structure is 15% of the overall proposal. Ms. Robinson stated that staff is recommending the Elliott Work Group based on several factors, including its experience in affordable housing, its local knowledge of the LMC, demonstrated sustainable design practices for residential projects, the credentials of firm members, and the submission of a competitive cost proposal. Bids ranged from $350,000 to a low of $40,000. Construction is targeted for May 1, 2008 and staff is confident that the selection of Elliott Work Group will alleviate potential time delays. Phase 1 includes the production of three alternative site designs and a three dimensional computer rendering for the selected concept. Staff will return with the options in early January for review by Council and a public process will occur with the review by the the Planning Commission as a master planned development. She emphasized that Council's award of the contract does not in any way provide any entitlements to the project.

Candace Erickson stated that she has received feedback from Snow Creek residents who ask that the project be compatible with the area. Marianne Cone agreed. Joe Kernan felt that this is a great opportunity to build an attractive project which appeals to the community. Marianne Cone suggested taking advantage of the southern exposure of the location and using solar and Craig Elliott assured her that they will be looking at solar energy. Joe Heir noted that there are no cost caps indicated in the staff report, and Phyllis Robinson explained that a number is not included in the proposal because the number of units is unknown but the project will meet the affordable housing resolution. She estimated this to translate to a $175,000 to $200,000 priced product. Jim Hier stated that there should be a cost target identified because it is critical to affordable housing and Mr. Elliott assured him it would be covered. Roger Harlan, "<u>I move to authorize the City Manager to execute the Phase I – Design Contract for the Snow Creek Workforce Housing Development, in a form approved by the City Attorney, to Elliott Work Group, in the amount of $40,000</u>". Marianne Cone seconded. <u>Motion unanimously carried</u>

7. <u>Consideration of an Ordinance approving the Subdivision No. 1 Millsite Reservation Plat Amendment located at 200 Ridge Avenue, Park City, Utah</u> – Planner Brooks Robinson explained that the plat amendment contemplates combining all or portions of 22 lots plus the vacated area of Anchor Avenue into three lots of record and plat notes are recommended limiting a footprint on Lot 1 to 2,200 square feet and limiting the floor area to 143% of the footprint. There can be no request for a height except as a part of the steep slope conditional use approval process. Garages will be accessed off Ridge Avenue and a number of conditions mirror those for 255 Ridge Avenue. In response to a question from Mayor Williams regarding the remnant piece, Mr. Robinson explained that it is not part of this subdivision, and is owned by the seller who has no development plans. The Mayor opened the public hearing.

Steve Deckert, Daly Avenue resident, stated that the backyard driveway is his major concern and the conditions still provide the opportunity at the steep slope conditional use permit process to reconsider this location, acknowledging the Ridge Avenue access note. He feared that a retaining wall would be required in order to accommodate the 25 foot wide utility easement and drainage on the plat. Mr. Deckert also hoped the old cottonwood trees could be preserved to some extent.

With no further comments, the public hearing was closed. There was discussion on whether the garages would be attached to the residences or built as separate structures and limiting the height of the garage. Mr. Robinson explained that there was no limit on garage height because the topography is different than 255 Ridge Avenue and this condition is really not applicable. In response to a comment from Jim Hier about conditioning access to the residences, Mr. Robinson explained that the Planning Commission did not want too much design criteria created as plat notes and decided to have these details memorialized in the steep slope CUP deliberations or other decisions by the Planning Commission. Marianne Cone asked if the project can be engineered without the retaining wall structure. The applicant indicated that it would be *ridiculous* to design a 15 foot wall for storm drainage; there is a sewer easement on the east side of the property. It was never his intention to a build a retaining wall for drainage purposes and the whole idea of rear access originated from the planning staff because of a provision the LMC discouraging front garages on the street.

Brooks Robinson suggested amending Condition No. 14 to clarify the retaining wall element. It could be amended to read that *the public utility easement shall not have a retaining wall and shall not be used as driveway access to the lots unless for Lot 1 only as specifically approved by the Planning Commission during steep slope review.* Joe Kernan, "<u>I move we approve the Ordinance, approving the Subdivision No. 1 Millsite Reservation Plat Amendment located at 200 Ridge Avenue with the amendment Brooks (Robinson) just made to Condition No. 14</u>". Jim Hier seconded. <u>Motion approved</u>.

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

8. <u>Consideration of an Ordinance approving the Empire Park Subdivision, located at 1215 Norfolk Avenue, Park City, Utah</u> – The Mayor opened the public hearing and with no comments from the audience, closed the hearing. He asked for a motion to continue to a date uncertain. Marianne Cone, "<u>I so move</u>". Joe Kernan seconded. <u>Motion unanimously carried</u>.

VI ADDITIONAL DISCUSSION – AGENDA ITEMS

VII ADJOURNMENT

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

MEMORANDUM OF CLOSED SESSION

The City Council met in closed session at approximately 1 p.m. Members in attendance were Mayor Dana Williams, Marianne Cone, Candace Erickson, Roger Harlan, Jim Hier, and Joe Kernan. Staff present was Tom Bakaly, City Manager; and Mark Harrington, City Attorney; Myles Rademan, Public Affairs Coordinator; Alison Butz, Enviornmental Specialist; Brooks Robinson, Planner; Matt Twombly, Project Manager; Jon Weidenhamer, Project Manager; Jerry Gibgs, Public Works Director; and Kathy Lundborg, Water Manager. Jim Hier, "I move to close the meeting to discuss property, litigation and personnel". Marianne Cone seconded. Motion carried unanimously. The meeting opened at approximately 4 p.m. Roger Harlan, "I move to open the meeting". Marianne Cone 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

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Janet M. Scott, City Recorder

City Council
Staff Report

FINANCE DEPARTMENT

Subject: FY 2007 Audit Report
Author: Lori W. Collett, Finance Manager
Date: December 13, 2007
Type of Item: Administrative

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

Description:

Topic: Audit report for the Fiscal Year Ended June 30, 2007.

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

The CAFR includes all funds of the City of Park City (City) and is presented in four sections:

- Introductory;
- Financial;
- Statistical; and
- Single Audit, Internal Control and Compliance Reports.

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

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

Fund information is also presented for major funds individually and nonmajor funds combined in a single column in the basic financial statement (Pages 29 through 41). Because the focus is so different between fund statements and government-wide statements, a reconciliation between the two types of statements is necessary to understand how the numbers differ. Such reconciliations are provided on pages 30 and 32. Comparisons of “budget-to-actual” results for the General Fund are presented on Page 33.

Staff suggests attention be focused on the MD&A (Pages 4 through 20) and the notes to the basic financial statements (Pages 43 through 68). The notes to the basic financial statements in the Financial Section provide required detailed disclosures and a description of the financial statements.

The Statement of Net Assets (Page 23-24) may serve as a useful indicator of a government’s financial position. The City had positive net assets of $212.2 million at fiscal year end. The largest portion of the net assets, $123.6 million, represents the investment in capital assets. Restricted net assets of $19.4 million are resources that are subject to external restrictions on how they may be used. The remaining $69.2 million in net assets are unrestricted and may be used to meet the City’s ongoing obligations. Again, this is an overall financial position indicator and is not the amount of current resources available for budgetary purposes.

Looking at results on a fund basis (Page 29), the City’s governmental funds reported combined ending fund balance of $67.5 million, an increase of $4.3 million compared to the beginning of year fund balance amount. A transfer of $5.6 million was made from the General Fund to the capital improvements fund to be spent on capital projects in accordance with the City’s budget.

Utah State code establishes a 5.0 percent minimum ($1,208,867) and an 18.0 percent maximum ($4,351,922) limit to the amount that may be accumulated as the fund balance in the General Fund. As of June 30, 2007 the unreserved, undesignated fund balance of the General Fund was $4,614,015 and was $262,093 above the 18.0 percent limit. The General Fund balance exceeded the 18.0 percent limit due to an understated projection of sales and resort taxes received for May and June 2007. An increase of 7.0 percent over the same period last year was reflected in the budget compared to an actual increase of 20.0 percent. The unreserved, undesignated fund balance increased by $1,493,358 in 2007 as compared to a decrease of $96,122 in fiscal year 2006.

General Obligation Bonds - Audit of Bond Expenditures

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

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

As a part of the City's single audit, tests were made to determine the adequacy of the internal control structure, including that portion of the structure related to Federal financial assistance programs, as well as to determine that the City complied with all applicable laws and regulations. The results of the City's single audit for fiscal year 2006-07 indicated no instances of material weaknesses in the internal control structure or violation of applicable laws and regulations.

Comments from the City's Audit Firm of Wisan, Smith, Racker & Prescott LLP
The auditors identified no major improvement areas or areas involving material weakness in the operations or internal control structure of the City.

The auditors identified one State Compliance issue. The finding was that the City's General Fund Balance on June 30, 2007, exceeded the legal 18% limit by $262,093 and therefore did not comply with the requirements of Utah Code 10-6-116(2). City management agrees with the finding and in the future will ensure that the general fund balance does not exceed the maximum legal level.

City Council Staff Report

Subject:	**Franchise Agreement with All West/Utah, Inc. Franchise Agreement Renewal with Comcast of Utah II, Inc.**
Author:	**Eric DeHaan**
Department:	**Executive**
Date:	**December 13, 2007**
Type of Item:	**Administrative**

Summary Recommendations:
The Council should authorize the Mayor to sign the Telecommunications Franchise Agreement with All West/Utah, Inc., and the Franchise Agreement with Comcast of Utah II, Inc.

Topic/Description:
Federal and State laws allow franchise agreements between local jurisdictions and cable/telecommunications providers. These agreements benefit the service provider in planning and constructing their infrastructure and allowing them reasonable use of the public streets and easements for their facilities. The citizens are benefited with enhanced telecommunications services including an array of digital and analog TV, telephone, and broadband services. Franchise fees accrue to the municipality and these fees are an important segment of the City's budgeted revenues.

Background:
In the case of All West/Utah, Park City was approached in 2005 with a request from All West to allow them to provide service in Park City. All West provides telecommunication services City-wide but especially in the Empire Pass area. This is the first time the Council has seen the All West agreement. In the case of Comcast, the Council may recall that in 1994 we approved a franchise agreement with TCI Cablevision of Utah, a predecessor to Comcast. That agreement had a 13-year expiration. The renewed agreement with Comcast of Utah II is in front of Council now, because the old one has reached its expiration date.

Analysis:
All West has installed an extensive backbone of cable in the Empire Pass area and elsewhere. All West uses some of the historic mine tunnels under the mountains for their routes, and there is cooperation between All West and the Jordanelle Special Service District in regards to tunnel maintenance for the cables, while "mining" water for JSSD. Comcast has an extensive network of telecommunications cables and facilities, including the familiar green splice boxes that can be seen along roadsides throughout Park City. Both organizations have been cooperative with the City in the negotiation of these agreements and in the construction of their facilities, and both companies participate in the Blue Stakes Utility Locating program so that City projects involving underground utilities can be built efficiently. The agreements provide for the relocation

of the franchised facilities when necessary, which also contributes to the public good. Further, by allowing multiple telecommunications options, including Qwest (which also has a franchise agreement with the City) competition in the telecommunications market is encouraged. The franchise fee amount has changed to 5%, which will mirror the Federally-established cap.

Department Review:
The agreements and this report have been reviewed by Legal, Engineering, and Executive. All concerns have been addressed.

Alternatives:

A. **Approve the Request:**
Approving the agreements will keep telecommunications happening in Park City.

B. **Deny the Request:**
Denying the request would cause confusion among telecommunications providers.

C. **Continue the Item:**
If the Council needs more information, the agreements can be continued.

D. **Do Nothing:**
Doing nothing would cause confusion among telecommunications providers.

Significant Impacts:
Franchise agreements generate considerable revenue to the general fund of Park City. The City's 2007 budget document (Volume I, page 19) showed actual franchise revenues in 2006 to be $2,715,184. Continuing with franchised utilities is in the best financial interest of the City. There are certain costs to the City arising from franchised utilities, primarily inspections by the City Engineer's office, but those obligations are regarded as minor compared to the volume of ongoing City business.

Consequences of not taking the recommended action:
If the City doesn't approve the agreements we are not certain what the ultimate disposal of miles of existing telecommunications cables in Park City would be, but it is likely there would be several mandatory meetings. Given the lack of complaints received by the City recently regarding telecommunications providers, it is assumed that the public is reasonably satisfied with the levels of service provided, so reducing that service would not be in the best interest of City residents and visitors.

Recommendation:
The Council should authorize the Mayor to sign both the Telecommunications Franchise Agreement with All West/Utah, Inc., and the Franchise Agreement with Comcast of Utah II, Inc.

CABLE TELEVISION FRANCHISE AGREEMENT
BETWEEN PARKCITY MUNICIPAL CORPORATION
AND
ALL WEST/UTAH, INC.

This Franchise Agreement ("Franchise") is between Park City Municipal Corporation, hereinafter referred to as "the Franchising Authority" and All West/ Utah, Inc., hereinafter referred to as "the Grantee." The Franchising Authority and the Grantee are referred to together as "the Parties."

The Franchising Authority hereby acknowledges that the Grantee has the financial, legal, and technical ability to provide services, facilities, and equipment necessary to meet the cable-related needs of the community, and having afforded the public adequate notice and opportunity for comment, desires to enter into this Franchise with the Grantee for the construction and operation of a Cable System on the terms set forth herein.

SECTION 1

Definition of Terms

1.1 Terms. For the purpose of this Franchise, the following terms, phrases, words, and abbreviations shall have the meanings ascribed to them below. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number:

A. "Affiliate" when used in relation to any person, means another person who owns or controls, is owned or controlled by, or is under common ownership or control with, such person.

B. "Basic Cable" is the lowest priced tier of Cable Service that includes the retransmission of local broadcast television signals.

C. "Cable Act" means Title VI of the Communications Act of 1934, as amended.

D. "Cable Services" means (1) the one-way transmission to Subscribers of (a) video programming, or (b) other programming service, and (2) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

E. "Cable System" means the Grantee's facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within the Service Area.

F. "FCC" means Federal Communications Commission or successor governmental entity thereto.

G. "Franchising Authority" means Park City Municipal Corporation, or the lawful successor, transferee, or assignee thereof.

H. “Grantee” means All West/Utah, Inc., or the lawful successor, transferee, or assignee thereof.

I. “Gross Revenue” means all revenues of Grantee, as determined according to generally accepted accounting principles consistently applied, derived directly or indirectly by the Grantee, arising from or attributable to operation of the Cable System in the Service Area, including:

> 1. Revenue from all charges for services provided to Subscribers of entertainment and nonentertainment services (such as leased access fees and home shopping revenue);
>
> 2. Revenue from all charges for the insertion by Grantee of commercial advertisements upon the Cable System in the Service Area;
>
> 3. Revenue from all charges for the installation, connection and reinstatement of equipment necessary for the utilization of the Cable System and the provision of Subscriber and other services in the Service Area; and
>
> 4. Grantee's pro rata portion of any revenues on a subscriber base basis derived from any other person or source arising from or attributable to Grantee's operation of the Cable System in the Service Area, to which the Franchising Authority is authorized to apply a franchise fee under federal, state or local law as it may exist from time to time during the term of the franchise.

Gross Revenues do not include any fees or taxes which are imposed directly or indirectly on any Subscriber by any governmental unit or agency, and which are collected by the Grantee on behalf of a governmental unit or agency. Gross Revenues do not include franchise fees, or revenues which cannot be collected by the Grantee and are identified as bad debt; provided, that if revenue previously representing bad debt is collected, this revenue shall be included in Gross Revenues for the collection period.

J. "Person" means an individual, partnership, association, joint stock company, trust, corporation, or governmental entity but not the Franchising Authority.

K. "Public Way" shall mean the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle, or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the Franchising Authority in the Service Area which shall entitle the Franchising Authority and the Grantee to the use thereof for the purpose of installing, operating, repairing, and maintaining the Cable System. Public Way shall also mean any easement now or hereafter held by the Franchising Authority within the Service Area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning entitle the Franchising Authority and the Grantee to the use thereof for the purposes of installing and operating the Grantee's Cable System over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to the Cable System. Public Way shall not include bike paths or trails not dedicated for utility services or compatible uses.

L. "Service Area" means the present boundaries of the Franchising Authority, and shall include any additions thereto by annexation or other legal means, subject to the exceptions in subsection 3.9.

M. "Standard Installation" is defined as up to one hundred twenty-five (125) feet from the nearest fiber access point to the Subscriber's optical network termination.

N. "Subscriber" means a Person or user of the Cable System who lawfully receives Cable Service on the Cable System with the Grantee's express permission.

SECTION 2

Grant of Franchise

2.1 Grant. The Franchising Authority hereby grants to the Grantee a nonexclusive Franchise which authorizes the Grantee to construct and operate a Cable System in, along, among, upon, across, above, over, under, or in any manner connected with Public Ways within the Service Area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any Public Way such facilities and equipment as may be necessary or appurtenant to the Cable System.

2.2 Ordinance. The Franchising Authority has adopted the Franchised Utilities and Cable Television Operators Ordinance ("the Ordinance") which is attached to this Franchise as Exhibit "A" and incorporated herein by reference. The Grantee acknowledges that it has had an opportunity to read and become familiar with the Ordinance. The Parties agree that the provisions and requirements of the Ordinance are material terms of this Franchise, and that each party hereby agrees to be contractually bound to comply with the terms of the Ordinance. The definitions in the Ordinance shall apply herein unless a different meaning is indicated. Nothing in this Section shall be deemed to require the Grantee to comply with any provision of the Ordinance which is deemed to be unlawful or beyond the Franchising Authority's authority. The Franchising Authority reserves the right to amend the Ordinance at any time. The Franchising Authority will make best efforts to notify Grantee of any changes in the Ordinance. The Franchising Authority shall give the Grantee notice and an opportunity to be heard concerning any proposed amendments. The Grantee agrees to comply with any such amendments that are adopted by the Franchising Authority.

2.3 Competitive Equity. In the event the Franchising Authority enters into or renews a franchise, permit, license, authorization, or other agreement of any kind with any other person or entity other than the Grantee to enter into the Franchising Authority's streets and Public Ways for the purpose of constructing or operating a cable system or providing Cable Services to any part of the Service Area, the material provisions thereof shall be comparable to those contained herein, in order that one operator not be granted an unfair competitive advantage over another, and to provide all parties equal protection under the law. The Franchising Authority shall not authorize or permit a cable system to operate within the Service Area on terms or conditions more favorable or less burdensome to such operator than those applied to the Grantee pursuant to this Franchise. If the Franchising Authority authorizes or permits another system to operate within the Service Area, it shall do so on condition that such system indemnify and hold harmless the Grantee for and against all costs and expenses incurred in strengthening poles, replacing poles, rearranging attachments, placing underground facilities, and all other costs including those of the Grantee, the Franchising Authority, and utilities, incident to inspections, make ready, and construction of an additional system in the Service Area; and the Grantee shall be designated a third party beneficiary of such conditions as are incorporated into the authorization(s) granted to another system. In the event that the Franchising Authority grants additional franchise(s) to provide Cable Service to the residents of the Franchising Authority that puts the Grantee at a competitive disadvantage, the Grantee shall have the right to request franchise amendments that relieve the Grantee of contractual burdens that create a competitive disadvantage to the Grantee. In requesting such amendments, the Grantee shall file a petition seeking to amend the Franchise. Such petitions shall (1) identify the basis for the Grantee's belief that certain provisions of the Franchise place Grantee at a competitive disadvantage and (2) identify the contractual burdens to be amended or repealed in order to eliminate the competitive disadvantage. If the additional franchise(s) puts Grantee at a competitive disadvantage, the Franchising Authority shall not unreasonably withhold consent to the Grantee's petition.

2.4 **Term**. The Franchise granted hereunder shall be for an initial term of thirteen (13) years commencing on the Effective Date of the Franchise as set forth in subsection 8.9, unless otherwise lawfully terminated in accordance with the terms of this Franchise.

SECTION 3

Standards of Service

3.1 **Conditions of Occupancy**. The Cable System installed by the Grantee pursuant to the terms hereof shall be located so as to cause a minimum of interference with the proper use of Public Ways and with the rights and reasonable convenience of property owners who own property that adjoins any of such Public Ways.

3.2 **Restoration of Public Ways**. If during the course of the Grantee's construction, operation, or maintenance of the Cable System there occurs a disturbance of any Public Way by the Grantee, Grantee shall replace and restore such Public Way at Grantee's expense to a condition reasonably comparable to the condition of the Public Way existing immediately prior to such disturbance and in a manner reasonably approved by the Director of Public Works.

3.3 **Relocation for the Franchising Authority**. Upon its receipt of reasonable advance written notice, to be not less than five (5) business days in the event of a temporary relocation and no less than ten (10) business days for a permanent relocation, the Grantee shall, at its own expense except as provided by law or entitlement, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Public Way, any property of the Grantee when lawfully required by the Franchising Authority by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, power lines or other municipal utility infrastructure, or any other type of public structures or improvements which are not used to compete with the Grantee's services.

3.4 **Relocation for a Third Party**. The Grantee shall, on the request of any Person holding a lawful permit issued by the Franchising Authority, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Public Way as necessary any property of the Grantee, provided: (A) the expense of such is paid by said Person benefiting from the relocation, including, if required by the Grantee, making such payment in advance; and (B) the Grantee is given reasonable advance written notice to prepare for such changes. For purposes of this subsection, "reasonable advance written notice" shall be no less than ten (10) business days in the event of a temporary relocation, and no less than one hundred twenty (120) days for a permanent relocation.

3.5 **Trimming of Trees and Shrubbery**. After obtaining the prior written consent of the Franchising Authority's Community Forester, the Grantee shall have the authority to trim trees or other natural growth overhanging any of its Cable System within Public Ways in the Service Area so as to prevent branches from coming in contact with the Grantee's wires, cables, or other equipment. The Grantee shall reasonably compensate the Franchising Authority for any damage caused by such trimming, or shall, in its sole discretion and at its own cost and expense, reasonably replace all trees or shrubs damaged as a result of any construction of the system undertaken by the Grantee. Such replacement shall satisfy any and all obligations the Grantee may have to the Franchising Authority pursuant to the terms of this Section. Nothing herein shall give the Grantee the right to trim trees not within Public Ways without the permission of the Landowner or without the permission of the Franchising Authority upon showing of public need.

3.6 **Safety Requirements**. Construction, operation, and maintenance of the Cable System shall be performed in an orderly and workmanlike manner. All such work shall be performed in accordance with generally applicable federal, state, and local regulations and the National Electric Safety Code. The Cable System shall not endanger or unreasonably interfere with the safety of Persons or property in the Service Area.

3.7 **Aerial and Underground Construction**. Prior to construction, in each case, all applicable permits shall be applied for and granted and all fees shall be paid. All other codes and ordinances of the Franchising Authority that pertain to such construction shall be complied with.

A. In those areas of the Service Area where all of the transmission or distribution facilities of the respective pubic utilities providing telephone communications and electronic services are underground, the Grantee likewise shall construct, operate, and maintain all of its transmission and distribution facilities underground. In those areas of the Service Area where the transmission or distribution facilities of the respective public utilities providing telephone communications, and electric services are both aerial and underground, the Grantee shall consult with the City Engineer to determine whether the construction will be aerial or underground, and wherever possible depending on the season and the location construct, operate and maintain all of its transmission and distribution facilities, or any part thereof, underground. If the reason for not putting the facilities underground is seasonal, subject to Franchising Authority waiver as weather and other conditions may require the Grantee shall make reasonable efforts to move such facilities underground as weather permits, but no later than June 30 of the next summer.

B. For the purposes of this Franchise, with the exception of service drops, facilities to be placed "underground" shall be at least eighteen (18) inches below the surface grade.

C. Nothing contained in this Section shall require the Grantee to construct, operate, and maintain underground any ground-mounted appurtenances such as subscriber taps, line extenders, system passive devices (splitters, directional couplers), amplifiers, power supplies, pedestals, or other related equipment.

D. Notwithstanding anything to the contrary contained in this Section, in the event that all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are placed underground after the Effective Date of this Franchise, the Grantee shall only be required to construct, operate, and maintain all of its transmission and distribution facilities underground if it is given reasonable notice and access to the public utilities' facilities at the time that such are placed underground.

E. Grantee shall have no more than seven (7) working days, excluding weekends, to bury a customer drop if it should have to be placed temporarily above ground for any reason, Should the Franchising Authority feel that the Grantee is not in compliance with this Subsection, 3.7(E), after giving the Grantee five (5) days written notice to bury the drop(s) or explain the reason for noncompliance, the Franchising Authority may impose a fine not to exceed seventy-five dollars ($75.00) per day for the first five (5) days and one hundred fifty dollars ($150.00) each day thereafter, until such time that the Grantee has buried the drop(s). The Franchising Authority recognizes that there are seasonal limitations to the Grantee's ability to comply with this Section during the winter months, therefore:

1. This requirement is waived during any period in which the Grantee is unable to comply due to frozen ground or other weather conditions.

2. The Grantee shall provide the City, no later than March 31 of each year, with a count of the number of drops which were temporarily laid above ground from the preceding winter and which are still unburied, along with a schedule to bury such drops no later than June 30 of that year.

3.8 Required Extensions of the Cable System.

A. Whenever the Grantee shall receive a request for Cable Service from at least eleven (11) residences within 1320 cable-bearing strand feet (one-quarter cable mile) of its trunk or distribution cable, it shall extend its Cable System to such Subscribers at no cost to said Subscribers for Cable System extension, other than the usual connection fees for all Subscribers; provided that such extension is technically feasible, and if it will not adversely affect the operation, financial condition, or market development of the Cable System, or as provided for under Section 3.9 of this Franchise.

B. In case of new construction or property development where utilities are to be placed underground, the Franchising Authority shall require the developer or property owner to give the Grantee reasonable notice of not less than thirty (30) days prior to such construction or development, of the particular date on which open trenching will be available for the Grantee's installation of conduit, pedestals and/or vaults, and the laterals to be provided at the Grantee's expense. The Grantee shall also provide specifications as needed for trenching. The developer or property owner may close the requisite trenches when (i) the Grantee has placed the conduit, and other equipment required to provide Cable Service, (ii) seven (7) days after the property owner or developer has given a second written notice that the requisite trench has been opened, or (iii) the Grantee has waived its right in writing to place its facilities under this provision, whichever comes sooner. Cost of trenching and easements required to bring service to the development shall be borne by the developer or property owner. Where trenching is provided by the developer or property owner, the extension standards in Section 3.8A will be reduced to nine (9) residences requesting service within one-quarter mile.

C. Within thirty (30) days of a request by the Franchising Authority, the Grantee shall provide to the Franchising Authority a list or map of areas within the Service Area which are tentatively scheduled for construction/extension of the Cable System for the following calendar year.

3.9 Subscriber Charges for Extensions of Service. No Subscriber shall be refused service arbitrarily. However, for unusual circumstances, such as Subscriber's request to locate his cable drop underground, existence of more than one hundred twenty-five (125) feet of distance from distribution cable to connection of service to Subscribers, or a density of less than eleven (11) residences per 1320 cable-bearing strand feet of trunk or distribution cable, service may be made available on the basis of a capital contribution in aid of construction, including cost of material, labor, and easements. For the purpose of determining the amount of capital contribution in aid of construction to be borne by the Grantee and Subscribers in the area in which service may be expanded, the Grantee will contribute an amount equal to the construction and other costs per mile, multiplied by a fraction whose numerator equals the actual number of residences per 1320 cable-bearing strand feet of its trunks or distribution cable, and whose denominator equals eleven (11) residences. Subscribers who request service hereunder will bear the remainder of the construction and other costs on a pro rata basis. The Grantee may require that the payment of the capital contribution in aid of construction borne by such potential Subscribers be paid in advance.

3.10 Technical Standards. The Grantee is responsible for insuring that the Cable System is designed, installed and operated in a manner that fully complies with FCC rules in Subpart K of Part 76 of Chapter I of Title 47 of the Code of Federal Regulations as revised or amended from time to time. As provided in these rules, the Franchising Authority shall have, upon request, the right to obtain a copy of tests and records required in accordance with appropriate rules but has no authority, pursuant to federal law, to enforce compliance with such standards.

3.11 Service to Public Buildings.

A. The Grantee shall, upon request, provide without charge, one outlet of Basic and Expanded Basic Service to those Franchising Authority offices, fire station(s), police stations(s), public school building(s) and other Franchising Authority buildings that are passed by its Cable System. The outlets of Basic and Expanded Basic Service shall not be used to distribute or sell services in or throughout such buildings, nor shall such outlets be located in areas open to the public. Users of such outlets shall hold the Grantee harmless from any and all liability or claims arising out of their use of such outlets, including but not limited to, those arising from copyright liability. The Grantee shall not be required to provide an outlet to such buildings where the drop line from the feeder cable to said building or premises exceeds one hundred twenty-five (125) cable feet unless the appropriate governmental entity agrees to pay the incremental cost of such drop line in excess of one hundred twenty-five (125) cable feet. If additional outlets of Basic and Expanded Basic Service are provided to such buildings, the building owner shall pay the usual installation fees associated therewith, including, but not limited to, labor and materials.

B. Should the Grantee become a provider of, and should the Franchising Authority elect to purchase, data or other telecommunication services other than traditional Cable Services from the Grantee, the Franchising Authority shall pay an amount based on the lowest competitor's price in the Service Area for like services.

1. All applications of the system by the Franchising Authority under this Section are intended solely for their use, and are not for resale or commercial use.

2. Should the Grantee become a provider of such services to the Franchising Authority, the Grantee's liability for any malfunction or failure of transmission under this Section shall be limited to repair of the malfunctioning facility and restoration of transmission capability. Grantee shall have no liability for special or consequential damages of lost data or economic loss resulting from the Franchising Authority's inability to transmit signals over said facilities except to the extent the loss or damages are the consequence of Grantee's willful misconduct.

3.12 Emergency Use.

A. In accordance with and at the time required by the provisions of FCC Regulations Part 11, Subpart D, Section 11.51, and as other provisions which may from time to time be amended, the Grantee shall install, if it has not already done so, and maintain an Emergency Alert System (EAS) for use in transmitting Emergency Act Notifications (EAN) and Emergency Act Terminations (EAT) in local and statewide situations as may be designated to be an emergency by the Local Primary (LP), the State Primary (SP) and/or the State Emergency Operations Center (SEOC), as those authorities are identified and defined within FCC Regulations, Section 11.18.

B. In the case of any emergency or disaster, the Grantee shall, upon the request of the Franchising Authority, make available its facilities for the Franchising Authority to provide emergency information and instructions during emergency or disaster period. The Franchising Authority shall permit only authorized persons to operate the EAS equipment and take reasonable precautions to prevent any use of the Grantee's Cable System in any manner that results in inappropriate use, or any loss or damage to the Cable System. Except to the extent expressly prohibited by law, the Franchising Authority agrees to hold the Grantee, its employees, officers and assigns harmless from any claims arising out of the emergency use of its facilities by the Franchising Authority, including, but not limited to, reasonable attorneys' fees and costs.

3.13 Availability of Public Funds. If public funds are available to any person using the Public Way for the purpose of defraying the cost of any of the foregoing, the Franchising Authority shall notify the Grantee of the availability and the Franchising Authority may make application for such funds on behalf of the Grantee.

3.14 Customer Service Standards.

A. Cable System office hours and telephone availability.

1. The Grantee will maintain a local, toll-free or collect call telephone access line which will be available to Subscribers twenty-four (24) hours a day, seven (7) days a week.

a. Trained representatives of the Grantee will be available to respond to Subscriber telephone inquiries during Normal Business Hours, as defined herein.

b. After Normal Business Hours, an access line will be available to be answered by a service or an automated response system, including a phone answering system. Inquiries received after Normal Business Hours must be responded to by a trained representative of the Grantee on the next business day.

2. Under Normal Operating Conditions, telephone answer time by a customer representative, including wait time, will not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time will not exceed thirty (30) seconds. These standards will be met no less than ninety percent (90%) of the time under Normal Operating Conditions, as measured by the Grantee on a quarterly basis.

3. The Grantee shall not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards set forth above unless an historical record of complaints during the previous two (2) years indicates a clear failure to comply with the standards.

4. Under Normal Operating Conditions, the Subscriber will receive a busy signal less than three percent (3%) of the time.

5. Customer service center and bill payment locations will be open at least during Normal Business Hours and will be conveniently located.

B. Installations, outages and service calls. Under Normal Operating Conditions, each of the following five (5) standards will be met no less than ninety-five percent (95%) of the time, as measured by the Grantee on a quarterly basis:

1. Standard installations will be performed within seven (7) business days after an order has been placed and the customer is ready to take service. Standard installations are those that are located up to one hundred twenty-five (125) feet from the existing distribution system.

2. Excluding conditions beyond its control, the Grantee will begin working on Service Interruptions promptly and in no event later than twenty-four (24) hours after the interruption becomes known. The Grantee will begin actions to correct other service problems the next business day after notification of the service problem.

3. The Grantee will provide “appointment window” alternatives for installations, service calls and other installation activities, which will be either a specific time, or at maximum, a four (4) hour time block during Normal Business Hours.

4. The Grantee shall not cancel an appointment with a Subscriber after the close of business on the business day prior to the scheduled appointment.

5. If a representative of the Grantee is running late for an appointment with a Subscriber and will not be able to keep the appointment as scheduled, the Grantee will contact the subscriber as soon as possible but no later than thirty (30) minutes before the "appointment window" begins. The appointment will be rescheduled, as necessary, at a time which is convenient for the Subscriber.

C. <u>Communications between the Grantee and Subscribers</u>.

1. Notifications to Subscribers:

   a. The Grantee shall provide written information on each of the following areas at the time of installation of service, and at any time upon request:

      i. Products and services offered;

      ii. Prices and options for services and conditions of subscription to programming and other services;

      iii. Installation and service maintenance policies;

      iv. Instructions on how to use the service;

      v. Channel positions of programming carried on the Cable System; and

      vi. Billing and complaint procedures, including the address and telephone number of the local Franchising Authority's cable office.

   b. Subscribers will be notified of any changes in rates, programming services or channel positions as soon as possible through announcements on the Cable System and in writing. Notice will be given to Subscribers a minimum of thirty (30) days in advance if the change is within the control of the Grantee. In addition, the Grantee shall notify Subscribers thirty (30) days in advance of any significant changes in the other information required by the preceding paragraph.

2. Billing:

   a. Bills will be clear, concise and understandable. Bills will be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly describe all activity during the billing period, including optional charges, rebates and credits.

   b. In case of a billing dispute, the Grantee will respond to a written complaint from a Subscriber within thirty (30) days from receipt of the complaint.

3. Refund checks will be issued promptly, but no later than either (a) the Subscriber's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or (b) the return of the equipment supplied by the Grantee if service is terminated.

4. Credits for service will be issued no later than the Subscriber's next billing cycle following the determination that a credit is warranted.

D. The Franchising Authority reserves its right to establish lawful standards beyond those established by this Franchise including:

1. Customer service requirements;

2. Construction schedules and other construction related requirements;

3. Consumer protection laws.

E. Definitions: For purposes of this Section, the following definitions shall apply:

1. "Normal Business Hours" means those hours during which most similar businesses in the community are open to serve Subscribers. In all cases, "Normal Business Hours" shall include some evening hours at least one (1) night per week and/or some weekend hours. The Grantee will notify its Subscribers and the Franchising Authority of its Normal Business Hours.

2. "Normal Operating Conditions" means those service conditions which are within the control of the Grantee. Those conditions which are not within the control of the Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinary and within the control of the Grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the Cable System.

3. "Service Interruption" means the loss of picture or sound on one or more channels.

3.15 System Capability.

A. The Grantee will provide a Cable System that is capable of providing a minimum of sixty (60) channels.

B. The Cable System will be designed to the most current specifications which the Grantee has deployed in systems of similar size and characteristics provided that the Grantee shall not be required to provide technology or service which is deemed to be experimental by industry standards. At minimum, the Cable System will provide:

1. Fiber Optic Backbone Transportation

2. Widely deployed fiber-optic conductors

3. Fully activated return capability

C. Subject to the other terms and conditions of this Franchise and state and federal law, the Grantee may incorporate technological developments into the system at any time. In addition, after the fifth anniversary of the Effective Date of this Franchise and then again after the tenth anniversary of the Effective Date of this Franchise, the Franchising Authority and Grantee shall discuss technological developments and their incorporation into the Cable System in the Service Area. Nothing contained herein shall require the Grantee to incorporate such additions if such additions are not economically or technically feasible or if incorporation of such additions will adversely affect the operation, financial condition, or market development of the Cable System. The Grantee shall not unreasonably withhold incorporating such additions into the Cable System.

3.16 Educational and Government Access Channels. Upon request by the Franchising Authority, the Grantee shall make available one (1) channel to be used for educational and governmental cablecast programming. When first run programming on the access channel occupies fifty percent (50%) of the hours between 11 A.M. and 11 P.M., for any twelve (12) consecutive weeks, the Franchising Authority may request the use of an additional channel for the same purpose. The additional channel must retain first run programming twenty-five percent (25%) of the hours between 11 A.M. and 11 P.M. for twelve (12) consecutive weeks. If this level of programming is not maintained, the channel will return to the Grantee for its use. If programming time is not used by the Franchising Authority and is available for sharing, the channel may be shared with other municipalities receiving programming from the common head end receive site location. The Grantee reserves the right to program the designated educational and governmental channel during the hours not used by the Franchising Authority or other governmental entities. The Franchising Authority shall agree to indemnify, save and hold harmless the Grantee from and against any liability resulting from the use of the aforementioned educational and governmental channel by the Franchising Authority, except for liability resulting from program time shared with other municipalities and the liability arises solely from the actions or omissions of the other municipalities.

3.17 Support of Access. Grantee shall provide, for specific use toward educational and government access requirements of the Franchising Authority, a "Capital Contribution" paid annually during the term of the Franchise. The amount of the Capital Contribution payable by the

Grantee to the Franchising Authority shall not exceed one dollar and twenty cents ($1.20) per year per equivalent billing unit. The Capital Contribution will not be collected unless programming is running on the educational and government access channel(s) described in Section 3.16. For purposes of this Section, Subscribers to bulk rate service shall be calculated by dividing the annual bulk rate charge by the annual subscription rate for individual households corresponding to the level of service received by the bulk rate customer. The Franchising Authority agrees that all amounts paid by the Grantee as the Capital Contribution may be added to the price of Cable Services, prorated monthly, and collected from the Grantee's customers' bills as "external costs," as such term is used in 47 C.F.R. 76.922(f) on the date of this Franchise. In addition, all amounts paid as the Capital Contribution may be separately stated as permitted in 47 C.F.R. 76.985(a)(2). The Capital Contribution will be payable by Grantee to the Franchising Authority after (a) the approval of the Franchising Authority, if required, to the inclusion of the Capital Contribution on customers' bills including any required approval pursuant to 47 C.F.R. 76.933; (b) notice to Grantee's customers of the inclusion; and (c) the collection of the Capital Contribution by the Grantee from its customers. Each payment will be due to the Franchising Authority from the Grantee forty-five (45) days after the end of each calendar year.

3.18 Use of the Grantee's Equipment by the Franchising Authority. Subject to any applicable state or federal regulations or tariffs, the Franchising Authority shall have the right to make additional use, for any public purpose, of any poles or conduits controlled or maintained exclusively by or for the Grantee in any Public Way; provided that: (a) such use by the Franchising Authority does not interfere with a current or future use by the Grantee; (b) the Franchising Authority holds the Grantee harmless against and from all claims, demands, costs, or liabilities of every kind and nature whatsoever arising out of such use of said poles or conduits, including, but not limited to reasonable attorneys' fees and costs; and (c) at the Grantee's sole discretion, the Franchising Authority may be required either to pay a reasonable rental fee or otherwise reasonably compensate the Grantee for the use of such poles, conduits, or equipment; provided, however, that the Grantee agrees that such compensation or charge shall not exceed those paid by it to public utilities pursuant to the applicable pole attachment agreement, or other authorization, relating to the Service Area.

SECTION 4

Regulation by the Franchising Authority

4.1 Franchise Fee.

A. The Grantee shall pay to the Franchising Authority a franchise fee of five percent (5%) of annual Gross Revenue, as defined in subsection 1.1 of this Franchise Agreement. In accordance with the Cable Act, the twelve (12) month period applicable under the Franchise for the computation of the franchise fee shall be a calendar year. The franchise fee is payable in monthly installments which shall be due on or before the 45th day after the end of the month following the billing cycle of the Grantee. A service charge of one and a half percent (1.5%) per month of the total amount due shall be imposed on late payments. Each payment shall be accompanied by a brief report prepared by a representative of the Grantee showing the basis for the computation. Revenue will be reported by service category.

B.	Limitation on Franchise Fee Actions. The period of limitation for recovery of any franchise fee payable hereunder or for any overpayment shall be three (3) years from the date on which payment by the Grantee is due, or from the date payment is made in the case of an overpayment.

C.	In the event that the Franchising Authority changes the franchise fee percentage, the Franchising Authority shall provide the Grantee not less than sixty (60) day advance written notice of any such change.

**4.2	<u>Rates and Charges</u>**.

A.	The Franchising Authority may adopt the requisite ordinances to regulate rates for the provision of Basic Cable TV Service and equipment as defined, provided and permitted by the 1984 Communications Act, as amended by the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Act"), or any successive legislation, together with implementing regulations promulgated by the FCC.

B.	The Grantee shall file with the Franchising Authority on December 31 of each year a full schedule of all Subscriber user rates and all other charges including, but not limited to, pay TV, lease channel and discrete services, made in connection with the Cable System.

1.	All rates shall be published on file with the Franchising Authority.

2.	The Grantee shall not discriminate in the assessment, levy, charge, imposition or collection of rates on the basis of age, race, creed, color, gender, religion, national origin, sexual orientation or marital status.

C.	Nothing in this Franchise shall be construed to prohibit the reduction or waiving of charges in conjunction with promotional campaigns for the purpose of attracting Subscribers or users.

D.	The Grantee shall notify the Franchising Authority of any changes in rates or services within the Service Area no later than thirty (30) days prior to the implementation of such change(s).

**4.3	<u>Renewal of Franchise</u>**.

A.	The Franchising Authority and the Grantee agree that any proceedings undertaken by the Franchising Authority that relate to the renewal of the Grantee's Franchise shall be governed by and comply with the provisions of Section 546 of the Cable Act, as amended, unless the procedures and substantive protections set forth therein shall be deemed to be preempted and superseded by the provisions of any subsequent provision of federal or state law.

B.	In addition to the procedures set forth in said Section 546(a), the Franchising Authority agrees to notify the Grantee of all of its assessments regarding the identity of future cable-related community needs and interests, as well as the past performance of the Grantee under the then current Franchise term. The Franchising Authority further agrees that such assessments shall be provided to the Grantee promptly so that the Grantee has adequate time to submit a proposal under Section 546(b) of the Cable Act and complete renewal of the Franchise prior to expiration of its term.

C. Notwithstanding anything to the contrary set forth in this Section, the Grantee and the Franchising Authority agree that at any time during the term of the then current Franchise, while affording the public appropriate notice and opportunity to comment, the Franchising Authority and the Grantee may agree to undertake and finalize informal negotiations regarding renewal of the then current Franchise and the Franchising Authority may grant a renewal thereof.

D. The Grantee and the Franchising Authority consider the terms set forth in this Section to be consistent with the express provisions of Section 546 of the Cable Act.

4.4 Conditions of Sale. If a renewal or extension of the Grantee's Franchise is denied or the Grantee’s Franchise is lawfully terminated pursuant to Section 7 of this Franchise, and the Franchising Authority either lawfully acquires ownership of the Cable System or by its actions lawfully effects a transfer of ownership of the Cable System to another party, any such acquisition or transfer shall be at the price determined pursuant to the provisions set forth in Section 547 of the Cable Act.

The Grantee and the Franchising Authority agree that in the case of a final determination of a lawful revocation of the Franchise, the Grantee shall be given a reasonable opportunity to effectuate a transfer of its Cable System to a qualified third party. Furthermore, the Grantee shall be authorized to continue to operate pursuant to the terms of its prior Franchise during such a period of time; however, under no event shall such authorization exceed a period of time greater than twelve (12) months from the effective date of such revocation. If, at the end of that time, the Grantee is unsuccessful in procuring a qualified transferee or assignee of its Cable System which is reasonably acceptable to the Franchising Authority, the Grantee and the Franchising Authority may avail themselves of any rights they may have pursuant to federal or state law. It is further agreed that the Grantee's continued operation of the Cable System during the twelve (12) month period shall not be deemed to be a waiver, nor an extinguishment of, any rights of either the Franchising Authority or the Grantee.

4.5 Transfer of Franchise. The Grantee's right, title, or interest in the Franchise shall not be sold, transferred, assigned, or otherwise encumbered, other than to an entity controlling, controlled by, or under common control with the Grantee, without the prior consent of the Franchising Authority, such consent not to be unreasonably withheld. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or Cable System in order to secure indebtedness. Within thirty (30) days of receiving a request for transfer, the Franchising Authority shall notify the Grantee in writing of any additional information it reasonably requires to determine the legal, financial and technical qualifications of the transferee. If the Franchising Authority has not taken action on the Grantee's request for transfer within one hundred twenty (120) days after receiving such request, consent by the Franchising Authority shall be deemed given.

SECTION 5

5.1 Testing for Compliance. The Franchising Authority may perform technical tests of the Cable System during reasonable times and in a manner that does not unreasonably interfere with the normal business operations of the Grantee or the Cable System in order to determine whether or not the Grantee is in compliance with the terms hereof and applicable state or federal laws. Except in emergency circumstances, such tests may be undertaken only after giving the Grantee reasonable notice thereof, not to be less than five (5) business days, and providing a representative of the Grantee an opportunity to be present during such tests. In the event that such testing demonstrates that the Grantee has substantially complied with such material provisions hereof, the cost of such testing shall be borne by the Franchising Authority. The Franchising Authority agrees that such testing shall be undertaken no more than once a year without reasonable cause, including but not limited to customer complaints. The results thereof shall be made available to the Grantee.

5.2 **<u>Books and Records</u>**. The Grantee agrees that the Franchising Authority, upon thirty (30) days written notice to the Grantee, may review such of its books and records at the Grantee's business office, during Normal Business Hours and on a nondisruptive basis, as is reasonably necessary to ensure compliance with the terms of this Franchise. Such records shall include, but shall not be limited to, any public records required to be kept by the Grantee pursuant to the rules and regulations of the FCC. Such notice shall specifically reference the Section of the Franchise which is under review, so that the Grantee may organize the necessary books and records for easy access by the Franchising Authority. The Grantee shall not be required to maintain any books and records for Franchise compliance purposes longer than three (3) years from the date of the book or record. Notwithstanding anything to the contrary set forth herein, the Grantee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature, nor disclose books and records of any affiliate which is not providing Cable Service in the Service Area. The Franchising Authority agrees to treat any information disclosed by the Grantee as confidential and only to disclose it to employees, representatives, and agents thereof that have a need to know, or in order to enforce the provisions hereof. The Grantee shall not be required to provide Subscriber information in violation of Section 551 of the Cable Act.

On an annual basis, upon thirty (30) days prior written notice, the Franchising Authority, including the City's Auditor or his/her authorized representative, shall have the right to conduct an independent audit of Grantee's records reasonably related to the administration and enforcement of this Franchise, in accordance with Generally Accepted Accounting Principles ("GAAP"). If the audit shows that franchise fee payments have been underpaid by five percent (5%) or more, Grantee shall pay the total cost of the audit. Such cost shall not exceed five thousand dollars ($5000) for each year of the audit period without Grantee's prior written consent. The Franchising Authority's right to audit and the Grantee's obligation to retain records related to a franchise fee audit shall expire three (3) years after each franchise fee payment has been made to the Franchising Authority.

<u>SECTION 6</u>

<u>Insurance and Indemnification</u>

6.1 **<u>Insurance Requirements</u>**. The Grantee shall maintain in full force and effect, at its own cost and expense, during the term of the Franchise, Comprehensive Commercial General Liability Insurance in the amount of Two Million Dollars ($2,000,000) combined single limit per occurrence and Three Million Dollars ($3,000,000) aggregate for bodily injury and property damage. The Grantee shall provide a Certificate of Insurance designating the Franchising Authority as an additional insured to the Franchising Authority. Additionally, the Grantee shall maintain in full force and effect, Automobile Liability insurance with limits of no less than $500,000 combined single limit per accident for bodily injury and property damage. Such insurance shall be noncancellable except upon thirty (30) days prior written notice to the Franchising Authority. The Grantee 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.

6.2 **Indemnification**. The Grantee agrees to indemnify, save and hold harmless, and defend the Franchising Authority, its officers, boards and employees, from and against any and all claims, demands, liens, and all liability for damages of whatsoever kind, including but not limited to any liability or claims resulting from property damage or bodily injury (including accidental death), which arise out of the Grantee's acts or omissions pursuant to or related to this Franchise, and to pay any and all costs, including reasonable attorney’s fees, incurred by the Franchising Authority in defense of such claims, provided that the Franchising Authority shall give the Grantee written notice of its obligation to indemnify the Franchising Authority within ten (10) days of receipt of a claim or action pursuant to this subsection. Notwithstanding the foregoing, the Grantee shall not indemnify the Franchising Authority for any damages, liability or claims resulting from the willful misconduct or negligence of the Franchising Authority.

6.3 **Use of Other Cable Systems.** The Grantee agrees to indemnify, save and hold harmless any other franchisee for and against all costs and expenses any other franchisee incurs in strengthening poles, replacing poles, rearranging attachments, placing underground facilities, and all other costs arising out of inspections, make ready, and construction of Grantee’s Cable System in the Service Area.

SECTION 7

Enforcement and Termination of Franchise

7.1 **Grounds for Termination**. The Franchising Authority may terminate or revoke this Franchise and all rights and privileges herein provided for any of the following reasons:

A. The Grantee fails to make timely payments of the Franchise Fee as required under section 2 of this Agreement and does not correct such failure within sixty (60) calendar days after written notice by the Franchising Authority of such failure; or

B. The Grantee, by act or omission, materially violates a material duty herein set forth in any particular within the Grantee’s control, and with respect to which redress is not otherwise herein provided. In such event, the Franchising Authority, acting by or through its City Council, may determine, after hearing, that such failure is of a material nature, and thereupon, after written notice giving the Grantee notice of such determination, the Grantee, within sixty (60) calendar days of such notice, shall commence efforts to remedy the conditions identified in the notice and shall have ninety (90) calendar days from the date it receives notice to remedy the conditions. After the expiration of such 90-day period and failure to correct such conditions, the Franchising Authority may declare the franchise forfeited and this Franchise terminated, and thereupon, the Grantee shall have no further rights or authority hereunder; provided, however, that any such declaration of forfeiture and termination shall be subject to judicial review as provided by law, and provided further, that in the event such failure is of such nature that it cannot be reasonably corrected within the 90-day time period provided above, the Franchising Authority shall provide additional time for the reasonable correction of such alleged failure if the reason for the noncompliance was not the intentional or negligent act or omission of the Grantee.

7.2 **__Remedies at Law__**. In the event the Grantee or the Franchising Authority fails to fulfill any of their respective obligations under this Franchise, the Franchising Authority or the Grantee, whichever the case may be, shall have a breach of contract claim and remedy against the other, in addition to any other remedy provided herein or by law; provided, however, that no remedy that would have the effect of amending the specific provisions of this Franchise shall become effective without such action that would be necessary to formally amend the Franchise.

7.3 **__Third Party Beneficiaries__**. The benefits and protection provided by this Franchise shall inure soley to the benefit of the Franchising Authority and the Grantee. This Franchise shall not be deemed to create any right in any person who is not a party and shall not be construed in any respect to be a contract in whole or in part for the benefit of any third party (other than the permitted successors and assigns of the Parties hereto).

7.6 **__Uncontrollable Events__**. The Grantee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by strikes, acts of God, power outages, or other events reasonably beyond its ability to control including any delays caused by the Franchising Authority.

7.7 **__Bonds and Surety__**

A. Except as expressly provided herein, the Grantee shall not be required to obtain or maintain bonds or other surety as a condition of being awarded the Franchise or continuing its existence. The Grantee and the Franchising Authority recognize that the costs associated with bonds and other surety may be ultimately borne by the Subscribers in the form of increased rates for Cable Services. Initially, no bond or other surety will be required. In the event that one is required in the future, the Franchising Authority agrees to give the Grantee at least sixty (60) days prior written notice thereof stating the exact reason for the requirement.

B. Notwithstanding the above provisions, the Grantee shall be responsible for standard performance bonds and insurance required for encroachment permits for work done within Public Ways.

7.8 **__Termination by Grantee.__** Notwithstanding any other provision of this Franchise to the contrary, Grantee may terminate this Franchise with or without cause six months after giving the Franchising Authority and Grantee's customers notice of Grantee's intent to terminate.

SECTION 8

Miscellaneous Provisions

8.1 **Actions of Parties**. In any action by the Franchising Authority or the Grantee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

8.2 **Entire Agreement.** This Franchise constitutes the entire agreement between the Grantee and the Franchising Authority on the subject of Cable Service. Amendments to this Franchise for any purpose, including but not limited to any changes in state or federal law, shall be mutually agreed to in writing by the Parties.

8.3 **Notice**. Unless expressly otherwise agreed between the Parties, every notice or response required by this Franchise to be served upon the Franchising Authority or the Grantee shall be in writing, and shall be deemed to have been duly given to the required party when placed in a properly sealed and correctly addressed envelope: a) upon receipt when hand delivered with receipt/acknowledgment, or b) upon receipt when sent certified or registered mail.

The notices or responses to the Franchising Authority shall be addressed as follows:

City Attorney's Office
Park City Municipal Corporation
Post Office Box 1480
445 Marsac Ave.
Park City Utah 84060

The notices or responses to the Grantee shall be addressed as follows:

All West/Utah
General Manager
50 West 100 North
Post Office Box 588
Kamas, Utah 84036

with a copy to:

Stephen F. Mecham
Callister, Nebeker & McCullough
10 East South Temple Street, Suite 900
Salt Lake City, Utah 84133

The Franchising Authority and the Grantee may designate such other address or addresses from time to time by giving notice to the other in the manner provided for in this subsection.

8.4 **Descriptive Headings**. The captions to Sections and subsections contained herein are intended solely to facilitate the reading thereof. Such captions shall not affect the meaning or interpretation of the text herein.

8.5 **<u>Severability</u>**. If any Section, subsection, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other Section, subsection, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise.

8.6 **<u>Applicable Law</u>.** The terms and conditions contained herein shall be interpreted according to the laws of the State of Utah, except where expressly preempted by federal law.

8.7 **<u>Venue</u>**. Any action initiated before a court of law shall be in a court of proper jurisdiction in Summit County, Utah, if possible, or the Federal District Court of Utah.

8.9 **<u>Effective Date</u>**. The Effective Date of this Franchise is the 1st day of December, 2007 pursuant to the provisions of applicable law. This Franchise shall expire on the 30th day of November, 2020 unless extended by the mutual agreement of the Parties.

Considered and approved this ___ day of ___________ 2007.

PARK CITY MUNICIPAL CORPORATION
445 Marsac Ave.
P.O. Box 1480
Park City, UT 84060-1480

____
Dana Williams, Mayor

Attest:

____
Jan Scott, City Recorder

Approved as to Form:

____
Polly Samuels McLean
Assistant City Attorney

Accepted this ____ day of __________________, 2007, subject to applicable federal, state and local law.

All West/Utah Inc.

____
Tony DiStefano, President of Operations

STATE OF UTAH)
) ss.
COUNTY OF SUMMIT)

On this ____ day of ________________, 2007, personally appeared before me Tony DiStefano, whose identity is personally known to me/or proved to me on the basis of satisfactory evidence and who by me duly sworn, did say that he is the President of Operations of All West/Utah Inc. and by Authority of its Bylaws he signed the Agreement voluntarily for its stated purpose as President of Operations for All West/Utah, a Utah corporation.

____
Notary Public

CABLE TELEVISION FRANCHISE AGREEMENT
BETWEEN PARKCITY MUNICIPAL CORPORATION
AND
COMCAST OF UTAH II, INC.

This Franchise Agreement ("Franchise") is between Park City Municipal Corporation, hereinafter referred to as "the Franchising Authority" and Comcast of Utah II, Inc., hereinafter referred to as "the Grantee." The Franchising Authority and the Grantee are referred to together as "the Parties."

The Franchising Authority hereby acknowledges that the Grantee has the financial, legal, and technical ability to provide services, facilities, and equipment necessary to meet the cable-related needs of the community, and having afforded the public adequate notice and opportunity for comment, desires to enter into this Franchise with the Grantee for the construction and operation of a Cable System on the terms set forth herein.

SECTION 1

Definition of Terms

1.1 Terms. For the purpose of this Franchise, the following terms, phrases, words, and abbreviations shall have the meanings ascribed to them below. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number:

A. "Affiliate" when used in relation to any person, means another person who owns or controls, is owned or controlled by, or is under common ownership or control with, such person.

B. "Basic Cable" is the lowest priced tier of Cable Service that includes the retransmission of local broadcast television signals.

C. "Cable Act" means Title VI of the Communications Act of 1934, as amended.

D. "Cable Services" means (1) the one-way transmission to Subscribers of (a) video programming, or (b) other programming service, and (2) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

E. "Cable System" means the Grantee's facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within the Service Area.

F. "FCC" means Federal Communications Commission or successor governmental entity thereto.

G. "Franchising Authority" means Park City Municipal Corporation, or the lawful successor, transferee, or assignee thereof.

H. “Grantee” means Comcast of Utah II, Inc., or the lawful successor, transferee, or assignee thereof.

I. “Gross Revenue” means all revenues of Grantee, as determined according to generally accepted accounting principles consistently applied, derived directly or indirectly by the Grantee, arising from or attributable to operation of the Cable System in the Service Area, including:

1. Revenue from all charges for services provided to Subscribers of entertainment and nonentertainment services (such as leased access fees and home shopping revenue);

2. Revenue from all charges for the insertion by Grantee of commercial advertisements upon the Cable System in the Service Area;

3. Revenue from all charges for the installation, connection and reinstatement of equipment necessary for the utilization of the Cable System and the provision of Subscriber and other services in the Service Area; and

4. Grantee's pro rata portion of any revenues on a subscriber base basis derived from any other person or source arising from or attributable to Grantee's operation of the Cable System in the Service Area, to which the Franchising Authority is authorized to apply a franchise fee under federal, state or local law as it may exist from time to time during the term of the franchise.

Gross Revenues do not include any fees or taxes which are imposed directly or indirectly on any Subscriber by any governmental unit or agency, and which are collected by the Grantee on behalf of a governmental unit or agency. Gross Revenues do not include franchise fees, or revenues which cannot be collected by the Grantee and are identified as bad debt; provided, that if revenue previously representing bad debt is collected, this revenue shall be included in Gross Revenues for the collection period.

J. "Person" means an individual, partnership, association, joint stock company, trust, corporation, or governmental entity but not the Franchising Authority.

K. "Public Way" shall mean the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle, or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the Franchising Authority in the Service Area which shall entitle the Franchising Authority and the Grantee to the use thereof for the purpose of installing, operating, repairing, and maintaining the Cable System. Public Way shall also mean any easement now or hereafter held by the Franchising Authority within the Service Area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning entitle the Franchising Authority and the Grantee to the use thereof for the purposes of installing and operating the Grantee's Cable System over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to the Cable System. Public Way shall not include bike paths or trails not dedicated for utility services or compatible uses.

L. "Service Area" means the present boundaries of the Franchising Authority, and shall include any additions thereto by annexation or other legal means, subject to the exceptions in subsection 3.9.

M. "Standard Installation" is defined as up to one hundred twenty-five (125) feet from the nearest fiber access point to the Subscriber's optical network termination.

N. "Subscriber" means a Person or user of the Cable System who lawfully receives Cable Service on the Cable System with the Grantee's express permission.

SECTION 2

Grant of Franchise

2.1 Grant. The Franchising Authority hereby grants to the Grantee a nonexclusive Franchise which authorizes the Grantee to construct and operate a Cable System in, along, among, upon, across, above, over, under, or in any manner connected with Public Ways within the Service Area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any Public Way such facilities and equipment as may be necessary or appurtenant to the Cable System.

2.2 Ordinance. The Franchising Authority has adopted the Franchised Utilities and Cable Television Operators Ordinance ("the Ordinance") which is attached to this Franchise as Exhibit "A" and incorporated herein by reference. The Grantee acknowledges that it has had an opportunity to read and become familiar with the Ordinance. The Parties agree that the provisions and requirements of the Ordinance are material terms of this Franchise, and that each party hereby agrees to be contractually bound to comply with the terms of the Ordinance. The definitions in the Ordinance shall apply herein unless a different meaning is indicated. Nothing in this Section shall be deemed to require the Grantee to comply with any provision of the Ordinance which is deemed to be unlawful or beyond the Franchising Authority's authority. The Franchising Authority reserves the right to amend the Ordinance at any time. The Franchising Authority will make best efforts to notify Grantee of any changes in the Ordinance. The Franchising Authority shall give the Grantee notice and an opportunity to be heard concerning any proposed amendments. The Grantee agrees to comply with any such amendments that are adopted by the Franchising Authority.

2.3 Competitive Equity. In the event the Franchising Authority enters into or renews a franchise, permit, license, authorization, or other agreement of any kind with any other person or entity other than the Grantee to enter into the Franchising Authority's streets and Public Ways for the purpose of constructing or operating a cable system or providing Cable Services to any part of the Service Area, the material provisions thereof shall be comparable to those contained herein, in order that one operator not be granted an unfair competitive advantage over another, and to provide all parties equal protection under the law. The Franchising Authority shall not authorize or permit a cable system to operate within the Service Area on terms or conditions more favorable or less burdensome to such operator than those applied to the Grantee pursuant to this Franchise. If the Franchising Authority authorizes or permits another system to operate within the Service Area, it shall do so on condition that such system indemnify and hold harmless the Grantee for and against all costs and expenses incurred in strengthening poles, replacing poles, rearranging attachments, placing underground facilities, and all other costs including those of the Grantee, the Franchising Authority, and utilities, incident to inspections, make ready, and construction of an additional system in the Service Area; and the Grantee shall be designated a third party beneficiary of such conditions as are incorporated into the authorization(s) granted to another system. In the event that the Franchising Authority grants additional franchise(s) to provide Cable Service to the residents of the Franchising Authority that puts the Grantee at a competitive disadvantage, the Grantee shall have the right to request franchise amendments that relieve the Grantee of contractual burdens that create a competitive disadvantage to the Grantee. In requesting such amendments, the Grantee shall file a petition seeking to amend the Franchise. Such petitions shall (1) identify the basis for the Grantee's belief that certain provisions of the Franchise place Grantee at a competitive disadvantage and (2) identify the contractual burdens to be amended or repealed in order to eliminate the competitive disadvantage. If the additional franchise(s) puts Grantee at a competitive disadvantage, the Franchising Authority shall not unreasonably withhold consent to the Grantee's petition.

2.4 **Term**. The Franchise granted hereunder shall be for an initial term of thirteen (13) years commencing on the Effective Date of the Franchise as set forth in subsection 8.9, unless otherwise lawfully terminated in accordance with the terms of this Franchise.

SECTION 3

Standards of Service

3.1 **Conditions of Occupancy**. The Cable System installed by the Grantee pursuant to the terms hereof shall be located so as to cause a minimum of interference with the proper use of Public Ways and with the rights and reasonable convenience of property owners who own property that adjoins any of such Public Ways.

3.2 **Restoration of Public Ways**. If during the course of the Grantee's construction, operation, or maintenance of the Cable System there occurs a disturbance of any Public Way by the Grantee, Grantee shall replace and restore such Public Way at Grantee's expense to a condition reasonably comparable to the condition of the Public Way existing immediately prior to such disturbance and in a manner reasonably approved by the Director of Public Works.

3.3 **Relocation for the Franchising Authority**. Upon its receipt of reasonable advance written notice, to be not less than five (5) business days in the event of a temporary relocation and no less than ten (10) business days for a permanent relocation, the Grantee shall, at its own expense except as provided by law or entitlement, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Public Way, any property of the Grantee when lawfully required by the Franchising Authority by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, power lines or other municipal utility infrastructure, or any other type of public structures or improvements which are not used to compete with the Grantee's services.

3.4 **Relocation for a Third Party**. The Grantee shall, on the request of any Person holding a lawful permit issued by the Franchising Authority, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Public Way as necessary any property of the Grantee, provided: (A) the expense of such is paid by said Person benefiting from the relocation, including, if required by the Grantee, making such payment in advance; and (B) the Grantee is given reasonable advance written notice to prepare for such changes. For purposes of this subsection, "reasonable advance written notice" shall be no less than ten (10) business days in the event of a temporary relocation, and no less than one hundred twenty (120) days for a permanent relocation.

3.5 <u>Trimming of Trees and Shrubbery</u>. After obtaining the prior written consent of the Franchising Authority's Community Forester, the Grantee shall have the authority to trim trees or other natural growth overhanging any of its Cable System within Public Ways in the Service Area so as to prevent branches from coming in contact with the Grantee's wires, cables, or other equipment. The Grantee shall reasonably compensate the Franchising Authority for any damage caused by such trimming, or shall, in its sole discretion and at its own cost and expense, reasonably replace all trees or shrubs damaged as a result of any construction of the system undertaken by the Grantee. Such replacement shall satisfy any and all obligations the Grantee may have to the Franchising Authority pursuant to the terms of this Section. Nothing herein shall give the Grantee the right to trim trees not within Public Ways without the permission of the Landowner or without the permission of the Franchising Authority upon showing of public need.

3.6 <u>Safety Requirements</u>. Construction, operation, and maintenance of the Cable System shall be performed in an orderly and workmanlike manner. All such work shall be performed in accordance with generally applicable federal, state, and local regulations and the National Electric Safety Code. The Cable System shall not endanger or unreasonably interfere with the safety of Persons or property in the Service Area.

3.7 <u>Aerial and Underground Construction</u>. Prior to construction, in each case, all applicable permits shall be applied for and granted and all fees shall be paid. All other codes and ordinances of the Franchising Authority that pertain to such construction shall be complied with.

A. In those areas of the Service Area where all of the transmission or distribution facilities of the respective pubic utilities providing telephone communications and electronic services are underground, the Grantee likewise shall construct, operate, and maintain all of its transmission and distribution facilities underground. In those areas of the Service Area where the transmission or distribution facilities of the respective public utilities providing telephone communications, and electric services are both aerial and underground, the Grantee shall consult with the City Engineer to determine whether the construction will be aerial or underground, and wherever possible depending on the season and the location construct, operate and maintain all of its transmission and distribution facilities, or any part thereof, underground. If the reason for not putting the facilities underground is seasonal, subject to Franchising Authority waiver as weather and other conditions may require the Grantee shall make reasonable efforts to move such facilities underground as weather permits, but no later than June 30 of the next summer.

B. For the purposes of this Franchise, with the exception of service drops, facilities to be placed "underground" shall be at least eighteen (18) inches below the surface grade.

C. Nothing contained in this Section shall require the Grantee to construct, operate, and maintain underground any ground-mounted appurtenances such as subscriber taps, line extenders, system passive devices (splitters, directional couplers), amplifiers, power supplies, pedestals, or other related equipment.

D. Notwithstanding anything to the contrary contained in this Section, in the event that all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are placed underground after the Effective Date of this Franchise, the Grantee shall only be required to construct, operate, and maintain all of its transmission and distribution facilities underground if it is given reasonable notice and access to the public utilities' facilities at the time that such are placed underground.

E. Grantee shall have no more than seven (7) working days, excluding weekends, to bury a customer drop if it should have to be placed temporarily above ground for any reason, Should the Franchising Authority feel that the Grantee is not in compliance with this Subsection, 3.7(E), after giving the Grantee five (5) days written notice to bury the drop(s) or explain the reason for noncompliance, the Franchising Authority may impose a fine not to exceed seventy-five dollars ($75.00) per day for the first five (5) days and one hundred fifty dollars ($150.00) each day thereafter, until such time that the Grantee has buried the drop(s). The Franchising Authority recognizes that there are seasonal limitations to the Grantee's ability to comply with this Section during the winter months, therefore:

1. This requirement is waived during any period in which the Grantee is unable to comply due to frozen ground or other weather conditions.

2. The Grantee shall provide the City, no later than March 31 of each year, with a count of the number of drops which were temporarily laid above ground from the preceding winter and which are still unburied, along with a schedule to bury such drops no later than June 30 of that year.

3.8 Required Extensions of the Cable System.

A. Whenever the Grantee shall receive a request for Cable Service from at least eleven (11) residences within 1320 cable-bearing strand feet (one-quarter cable mile) of its trunk or distribution cable, it shall extend its Cable System to such Subscribers at no cost to said Subscribers for Cable System extension, other than the usual connection fees for all Subscribers; provided that such extension is technically feasible, and if it will not adversely affect the operation, financial condition, or market development of the Cable System, or as provided for under Section 3.9 of this Franchise.

B. In case of new construction or property development where utilities are to be placed underground, the Franchising Authority shall require the developer or property owner to give the Grantee reasonable notice of not less than thirty (30) days prior to such construction or development, of the particular date on which open trenching will be available for the Grantee's installation of conduit, pedestals and/or vaults, and the laterals to be provided at the Grantee's expense. The Grantee shall also provide specifications as needed for trenching. The developer or property owner may close the requisite trenches when (i) the Grantee has placed the conduit, and other equipment required to provide Cable Service, (ii) seven (7) days after the property owner or developer has given a second written notice that the requisite trench has been opened, or (iii) the Grantee has waived its right in writing to place its facilities under this provision, whichever comes sooner. Cost of trenching and easements required to bring service to the development shall be borne by the developer or property owner. Where trenching is provided by the developer or property owner, the extension standards in Section 3.8A will be reduced to nine (9) residences requesting service within one-quarter mile.

C. Within thirty (30) days of a request by the Franchising Authority, the Grantee shall provide to the Franchising Authority a list or map of areas within the Service Area which are tentatively scheduled for construction/extension of the Cable System for the following calendar year.

3.9 Subscriber Charges for Extensions of Service. No Subscriber shall be refused service arbitrarily. However, for unusual circumstances, such as Subscriber's request to locate his cable drop underground, existence of more than one hundred twenty-five (125) feet of distance from distribution cable to connection of service to Subscribers, or a density of less than eleven (11) residences per 1320 cable-bearing strand feet of trunk or distribution cable, service may be made available on the basis of a capital contribution in aid of construction, including cost of material, labor, and easements. For the purpose of determining the amount of capital contribution in aid of construction to be borne by the Grantee and Subscribers in the area in which service may be expanded, the Grantee will contribute an amount equal to the construction and other costs per mile, multiplied by a fraction whose numerator equals the actual number of residences per 1320 cable-bearing strand feet of its trunks or distribution cable, and whose denominator equals eleven (11) residences. Subscribers who request service hereunder will bear the remainder of the construction and other costs on a pro rata basis. The Grantee may require that the payment of the capital contribution in aid of construction borne by such potential Subscribers be paid in advance.

3.10 Technical Standards. The Grantee is responsible for insuring that the Cable System is designed, installed and operated in a manner that fully complies with FCC rules in Subpart K of Part 76 of Chapter I of Title 47 of the Code of Federal Regulations as revised or amended from time to time. As provided in these rules, the Franchising Authority shall have, upon request, the right to obtain a copy of tests and records required in accordance with appropriate rules but has no authority, pursuant to federal law, to enforce compliance with such standards.

3.11 Service to Public Buildings.

A. The Grantee shall, upon request, provide without charge, one outlet of Basic and Expanded Basic Service to those Franchising Authority offices, fire station(s), police stations(s), public school building(s) and other Franchising Authority buildings that are passed by its Cable System. The outlets of Basic and Expanded Basic Service shall not be used to distribute or sell services in or throughout such buildings, nor shall such outlets be located in areas open to the public. Users of such outlets shall hold the Grantee harmless from any and all liability or claims arising out of their use of such outlets, including but not limited to, those arising from copyright liability. The Grantee shall not be required to provide an outlet to such buildings where the drop line from the feeder cable to said building or premises exceeds one hundred twenty-five (125) cable feet unless the appropriate governmental entity agrees to pay the incremental cost of such drop line in excess of one hundred twenty-five (125) cable feet. If additional outlets of Basic and Expanded Basic Service are provided to such buildings, the building owner shall pay the usual installation fees associated therewith, including, but not limited to, labor and materials.

B. Should the Grantee become a provider of, and should the Franchising Authority elect to purchase, data or other telecommunication services other than traditional Cable Services from the Grantee, the Franchising Authority shall pay an amount based on the lowest competitor's price in the Service Area for like services.

1. All applications of the system by the Franchising Authority under this Section are intended solely for their use, and are not for resale or commercial use.

2. Should the Grantee become a provider of such services to the Franchising Authority, the Grantee's liability for any malfunction or failure of transmission under this Section shall be limited to repair of the malfunctioning facility and restoration of transmission capability. Grantee shall have no liability for special or consequential damages of lost data or economic loss resulting from the Franchising Authority's inability to transmit signals over said facilities except to the extent the loss or damages are the consequence of Grantee's willful misconduct.

3.12 <u>Emergency Use</u>.

A. In accordance with and at the time required by the provisions of FCC Regulations Part 11, Subpart D, Section 11.51, and as other provisions which may from time to time be amended, the Grantee shall install, if it has not already done so, and maintain an Emergency Alert System (EAS) for use in transmitting Emergency Act Notifications (EAN) and Emergency Act Terminations (EAT) in local and statewide situations as may be designated to be an emergency by the Local Primary (LP), the State Primary (SP) and/or the State Emergency Operations Center (SEOC), as those authorities are identified and defined within FCC Regulations, Section 11.18.

B. In the case of any emergency or disaster, the Grantee shall, upon the request of the Franchising Authority, make available its facilities for the Franchising Authority to provide emergency information and instructions during emergency or disaster period. The Franchising Authority shall permit only authorized persons to operate the EAS equipment and take reasonable precautions to prevent any use of the Grantee's Cable System in any manner that results in inappropriate use, or any loss or damage to the Cable System. Except to the extent expressly prohibited by law, the Franchising Authority agrees to hold the Grantee, its employees, officers and assigns harmless from any claims arising out of the emergency use of its facilities by the Franchising Authority, including, but not limited to, reasonable attorneys' fees and costs.

3.13 <u>Availability of Public Funds</u>. If public funds are available to any person using the Public Way for the purpose of defraying the cost of any of the foregoing, the Franchising Authority shall notify the Grantee of the availability and the Franchising Authority may make application for such funds on behalf of the Grantee.

3.14 <u>Customer Service Standards</u>.

A. <u>Cable System office hours and telephone availability</u>.

1. The Grantee will maintain a local, toll-free or collect call telephone access line which will be available to Subscribers twenty-four (24) hours a day, seven (7) days a week.

a. Trained representatives of the Grantee will be available to respond to Subscriber telephone inquiries during Normal Business Hours, as defined herein.

b. After Normal Business Hours, an access line will be available to be answered by a service or an automated response system, including a phone answering system. Inquiries received after Normal Business Hours must be responded to by a trained representative of the Grantee on the next business day.

2. Under Normal Operating Conditions, telephone answer time by a customer representative, including wait time, will not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time will not exceed thirty (30) seconds. These standards will be met no less than ninety percent (90%) of the time under Normal Operating Conditions, as measured by the Grantee on a quarterly basis.

3. The Grantee shall not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards set forth above unless an historical record of complaints during the previous two (2) years indicates a clear failure to comply with the standards.

4. Under Normal Operating Conditions, the Subscriber will receive a busy signal less than three percent (3%) of the time.

5. Customer service center and bill payment locations will be open at least during Normal Business Hours and will be conveniently located.

B. <u>Installations, outages and service calls</u>. Under Normal Operating Conditions, each of the following five (5) standards will be met no less than ninety-five percent (95%) of the time, as measured by the Grantee on a quarterly basis:

1. Standard installations will be performed within seven (7) business days after an order has been placed and the customer is ready to take service. Standard installations are those that are located up to one hundred twenty-five (125) feet from the existing distribution system.

2. Excluding conditions beyond its control, the Grantee will begin working on Service Interruptions promptly and in no event later than twenty-four (24) hours after the interruption becomes known. The Grantee will begin actions to correct other service problems the next business day after notification of the service problem.

3. The Grantee will provide "appointment window" alternatives for installations, service calls and other installation activities, which will be either a specific time, or at maximum, a four (4) hour time block during Normal Business Hours.

4. The Grantee shall not cancel an appointment with a Subscriber after the close of business on the business day prior to the scheduled appointment.

5. If a representative of the Grantee is running late for an appointment with a Subscriber and will not be able to keep the appointment as scheduled, the Grantee will contact the subscriber as soon as possible but no later than thirty (30) minutes before the “appointment window” begins. The appointment will be rescheduled, as necessary, at a time which is convenient for the Subscriber.

C. <u>Communications between the Grantee and Subscribers</u>.

1. Notifications to Subscribers:

   a. The Grantee shall provide written information on each of the following areas at the time of installation of service, and at any time upon request:

      i. Products and services offered;

      ii. Prices and options for services and conditions of subscription to programming and other services;

      iii. Installation and service maintenance policies;

      iv. Instructions on how to use the service;

      v. Channel positions of programming carried on the Cable System; and

      vi. Billing and complaint procedures, including the address and telephone number of the local Franchising Authority’s cable office.

   b. Subscribers will be notified of any changes in rates, programming services or channel positions as soon as possible through announcements on the Cable System and in writing. Notice will be given to Subscribers a minimum of thirty (30) days in advance if the change is within the control of the Grantee. In addition, the Grantee shall notify Subscribers thirty (30) days in advance of any significant changes in the other information required by the preceding paragraph.

2. Billing:

   a. Bills will be clear, concise and understandable. Bills will be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly describe all activity during the billing period, including optional charges, rebates and credits.

   b. In case of a billing dispute, the Grantee will respond to a written complaint from a Subscriber within thirty (30) days from receipt of the complaint.

3. Refund checks will be issued promptly, but no later than either (a) the Subscriber's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or (b) the return of the equipment supplied by the Grantee if service is terminated.

4. Credits for service will be issued no later than the Subscriber's next billing cycle following the determination that a credit is warranted.

D. The Franchising Authority reserves its right to establish lawful standards beyond those established by this Franchise including:

1. Customer service requirements;

2. Construction schedules and other construction related requirements;

3. Consumer protection laws.

E. Definitions: For purposes of this Section, the following definitions shall apply:

1. "Normal Business Hours" means those hours during which most similar businesses in the community are open to serve Subscribers. In all cases, "Normal Business Hours" shall include some evening hours at least one (1) night per week and/or some weekend hours. The Grantee will notify its Subscribers and the Franchising Authority of its Normal Business Hours.

2. "Normal Operating Conditions" means those service conditions which are within the control of the Grantee. Those conditions which are not within the control of the Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinary and within the control of the Grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the Cable System.

3. "Service Interruption" means the loss of picture or sound on one or more channels.

3.15 System Capability.

A. The Grantee will provide a Cable System that is capable of providing a minimum of sixty (60) channels.

B. The Cable System will be designed to the most current specifications which the Grantee has deployed in systems of similar size and characteristics provided that the Grantee shall not be required to provide technology or service which is deemed to be experimental by industry standards. At minimum, the Cable System will provide:

1. Fiber Optic Backbone Transportation

2. Widely deployed fiber-optic conductors

3. Fully activated return capability

C. Subject to the other terms and conditions of this Franchise and state and federal law, the Grantee may incorporate technological developments into the system at any time. In addition, after the fifth anniversary of the Effective Date of this Franchise and then again after the tenth anniversary of the Effective Date of this Franchise, the Franchising Authority and Grantee shall discuss technological developments and their incorporation into the Cable System in the Service Area. Nothing contained herein shall require the Grantee to incorporate such additions if such additions are not economically or technically feasible or if incorporation of such additions will adversely affect the operation, financial condition, or market development of the Cable System. The Grantee shall not unreasonably withhold incorporating such additions into the Cable System.

3.16 Educational and Government Access Channels. Upon request by the Franchising Authority, the Grantee shall make available one (1) channel to be used for educational and governmental cablecast programming. When first run programming on the access channel occupies fifty percent (50%) of the hours between 11 A.M. and 11 P.M., for any twelve (12) consecutive weeks, the Franchising Authority may request the use of an additional channel for the same purpose. The additional channel must retain first run programming twenty-five percent (25%) of the hours between 11 A.M. and 11 P.M. for twelve (12) consecutive weeks. If this level of programming is not maintained, the channel will return to the Grantee for its use. If programming time is not used by the Franchising Authority and is available for sharing, the channel may be shared with other municipalities receiving programming from the common head end receive site location. The Grantee reserves the right to program the designated educational and governmental channel during the hours not used by the Franchising Authority or other governmental entities. The Franchising Authority shall agree to indemnify, save and hold harmless the Grantee from and against any liability resulting from the use of the aforementioned educational and governmental channel by the Franchising Authority, except for liability resulting from program time shared with other municipalities and the liability arises solely from the actions or omissions of the other municipalities.

3.17 Support of Access. Grantee shall provide, for specific use toward educational and government access requirements of the Franchising Authority, a "Capital Contribution" paid annually during the term of the Franchise. The amount of the Capital Contribution payable by the

Grantee to the Franchising Authority shall not exceed one dollar and twenty cents ($1.20) per year per equivalent billing unit. The Capital Contribution will not be collected unless programming is running on the educational and government access channel(s) described in Section 3.16. For purposes of this Section, Subscribers to bulk rate service shall be calculated by dividing the annual bulk rate charge by the annual subscription rate for individual households corresponding to the level of service received by the bulk rate customer. The Franchising Authority agrees that all amounts paid by the Grantee as the Capital Contribution may be added to the price of Cable Services, prorated monthly, and collected from the Grantee's customers' bills as "external costs," as such term is used in 47 C.F.R. 76.922(f) on the date of this Franchise. In addition, all amounts paid as the Capital Contribution may be separately stated as permitted in 47 C.F.R. 76.985(a)(2). The Capital Contribution will be payable by Grantee to the Franchising Authority after (a) the approval of the Franchising Authority, if required, to the inclusion of the Capital Contribution on customers' bills including any required approval pursuant to 47 C.F.R. 76.933; (b) notice to Grantee's customers of the inclusion; and (c) the collection of the Capital Contribution by the Grantee from its customers. Each payment will be due to the Franchising Authority from the Grantee forty-five (45) days after the end of each calendar year.

3.18 Use of the Grantee's Equipment by the Franchising Authority. Subject to any applicable state or federal regulations or tariffs, the Franchising Authority shall have the right to make additional use, for any public purpose, of any poles or conduits controlled or maintained exclusively by or for the Grantee in any Public Way; provided that: (a) such use by the Franchising Authority does not interfere with a current or future use by the Grantee; (b) the Franchising Authority holds the Grantee harmless against and from all claims, demands, costs, or liabilities of every kind and nature whatsoever arising out of such use of said poles or conduits, including, but not limited to reasonable attorneys' fees and costs; and (c) at the Grantee's sole discretion, the Franchising Authority may be required either to pay a reasonable rental fee or otherwise reasonably compensate the Grantee for the use of such poles, conduits, or equipment; provided, however, that the Grantee agrees that such compensation or charge shall not exceed those paid by it to public utilities pursuant to the applicable pole attachment agreement, or other authorization, relating to the Service Area.

SECTION 4

Regulation by the Franchising Authority

4.1 Franchise Fee.

A. The Grantee shall pay to the Franchising Authority a franchise fee of five percent (5%) of annual Gross Revenue, as defined in subsection 1.1 of this Franchise Agreement. In accordance with the Cable Act, the twelve (12) month period applicable under the Franchise for the computation of the franchise fee shall be a calendar year. The franchise fee is payable in monthly installments which shall be due on or before the 45th day after the end of the month following the billing cycle of the Grantee. A service charge of one and a half percent (1.5%) per month of the total amount due shall be imposed on late payments. Each payment shall be accompanied by a brief report prepared by a representative of the Grantee showing the basis for the computation. Revenue will be reported by service category.

B. Limitation on Franchise Fee Actions. The period of limitation for recovery of any franchise fee payable hereunder or for any overpayment shall be three (3) years from the date on which payment by the Grantee is due, or from the date payment is made in the case of an overpayment.

C. In the event that the Franchising Authority changes the franchise fee percentage, the Franchising Authority shall provide the Grantee not less than sixty (60) day advance written notice of any such change.

4.2 Rates and Charges.

A. The Franchising Authority may adopt the requisite ordinances to regulate rates for the provision of Basic Cable TV Service and equipment as defined, provided and permitted by the 1984 Communications Act, as amended by the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Act"), or any successive legislation, together with implementing regulations promulgated by the FCC.

B. The Grantee shall file with the Franchising Authority on December 31 of each year a full schedule of all Subscriber user rates and all other charges including, but not limited to, pay TV, lease channel and discrete services, made in connection with the Cable System.

1. All rates shall be published on file with the Franchising Authority.

2. The Grantee shall not discriminate in the assessment, levy, charge, imposition or collection of rates on the basis of age, race, creed, color, gender, religion, national origin, sexual orientation or marital status.

C. Nothing in this Franchise shall be construed to prohibit the reduction or waiving of charges in conjunction with promotional campaigns for the purpose of attracting Subscribers or users.

D. The Grantee shall notify the Franchising Authority of any changes in rates or services within the Service Area no later than thirty (30) days prior to the implementation of such change(s).

4.3 Renewal of Franchise.

A. The Franchising Authority and the Grantee agree that any proceedings undertaken by the Franchising Authority that relate to the renewal of the Grantee's Franchise shall be governed by and comply with the provisions of Section 546 of the Cable Act, as amended, unless the procedures and substantive protections set forth therein shall be deemed to be preempted and superseded by the provisions of any subsequent provision of federal or state law.

B. In addition to the procedures set forth in said Section 546(a), the Franchising Authority agrees to notify the Grantee of all of its assessments regarding the identity of future cable-related community needs and interests, as well as the past performance of the Grantee under the then current Franchise term. The Franchising Authority further agrees that such assessments shall be provided to the Grantee promptly so that the Grantee has adequate time to submit a proposal under Section 546(b) of the Cable Act and complete renewal of the Franchise prior to expiration of its term.

C. Notwithstanding anything to the contrary set forth in this Section, the Grantee and the Franchising Authority agree that at any time during the term of the then current Franchise, while affording the public appropriate notice and opportunity to comment, the Franchising Authority and the Grantee may agree to undertake and finalize informal negotiations regarding renewal of the then current Franchise and the Franchising Authority may grant a renewal thereof.

D. The Grantee and the Franchising Authority consider the terms set forth in this Section to be consistent with the express provisions of Section 546 of the Cable Act.

4.4 <u>Conditions of Sale</u>. If a renewal or extension of the Grantee's Franchise is denied or the Grantee’s Franchise is lawfully terminated pursuant to Section 7 of this Franchise, and the Franchising Authority either lawfully acquires ownership of the Cable System or by its actions lawfully effects a transfer of ownership of the Cable System to another party, any such acquisition or transfer shall be at the price determined pursuant to the provisions set forth in Section 547 of the Cable Act.

The Grantee and the Franchising Authority agree that in the case of a final determination of a lawful revocation of the Franchise, the Grantee shall be given a reasonable opportunity to effectuate a transfer of its Cable System to a qualified third party. Furthermore, the Grantee shall be authorized to continue to operate pursuant to the terms of its prior Franchise during such a period of time; however, under no event shall such authorization exceed a period of time greater than twelve (12) months from the effective date of such revocation. If, at the end of that time, the Grantee is unsuccessful in procuring a qualified transferee or assignee of its Cable System which is reasonably acceptable to the Franchising Authority, the Grantee and the Franchising Authority may avail themselves of any rights they may have pursuant to federal or state law. It is further agreed that the Grantee's continued operation of the Cable System during the twelve (12) month period shall not be deemed to be a waiver, nor an extinguishment of, any rights of either the Franchising Authority or the Grantee.

4.5 <u>Transfer of Franchise</u>. The Grantee's right, title, or interest in the Franchise shall not be sold, transferred, assigned, or otherwise encumbered, other than to an entity controlling, controlled by, or under common control with the Grantee, without the prior consent of the Franchising Authority, such consent not to be unreasonably withheld. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or Cable System in order to secure indebtedness. Within thirty (30) days of receiving a request for transfer, the Franchising Authority shall notify the Grantee in writing of any additional information it reasonably requires to determine the legal, financial and technical qualifications of the transferee. If the Franchising Authority has not taken action on the Grantee's request for transfer within one hundred twenty (120) days after receiving such request, consent by the Franchising Authority shall be deemed given.

<u>SECTION 5</u>

5.1 <u>Testing for Compliance</u>. The Franchising Authority may perform technical tests of the Cable System during reasonable times and in a manner that does not unreasonably interfere with the normal business operations of the Grantee or the Cable System in order to determine whether or not the Grantee is in compliance with the terms hereof and applicable state or federal laws. Except in emergency circumstances, such tests may be undertaken only after giving the Grantee reasonable notice thereof, not to be less than five (5) business days, and providing a representative of the Grantee an opportunity to be present during such tests. In the event that such testing demonstrates that the Grantee has substantially complied with such material provisions hereof, the cost of such testing shall be borne by the Franchising Authority. The Franchising Authority agrees that such testing shall be undertaken no more than once a year without reasonable cause, including but not limited to customer complaints. The results thereof shall be made available to the Grantee.

5.2 **Books and Records**. The Grantee agrees that the Franchising Authority, upon thirty (30) days written notice to the Grantee, may review such of its books and records at the Grantee's business office, during Normal Business Hours and on a nondisruptive basis, as is reasonably necessary to ensure compliance with the terms of this Franchise. Such records shall include, but shall not be limited to, any public records required to be kept by the Grantee pursuant to the rules and regulations of the FCC. Such notice shall specifically reference the Section of the Franchise which is under review, so that the Grantee may organize the necessary books and records for easy access by the Franchising Authority. The Grantee shall not be required to maintain any books and records for Franchise compliance purposes longer than three (3) years from the date of the book or record. Notwithstanding anything to the contrary set forth herein, the Grantee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature, nor disclose books and records of any affiliate which is not providing Cable Service in the Service Area. The Franchising Authority agrees to treat any information disclosed by the Grantee as confidential and only to disclose it to employees, representatives, and agents thereof that have a need to know, or in order to enforce the provisions hereof. The Grantee shall not be required to provide Subscriber information in violation of Section 551 of the Cable Act.

On an annual basis, upon thirty (30) days prior written notice, the Franchising Authority, including the City's Auditor or his/her authorized representative, shall have the right to conduct an independent audit of Grantee's records reasonably related to the administration and enforcement of this Franchise, in accordance with Generally Accepted Accounting Principles ("GAAP"). If the audit shows that franchise fee payments have been underpaid by five percent (5%) or more, Grantee shall pay the total cost of the audit. Such cost shall not exceed five thousand dollars ($5000) for each year of the audit period without Grantee's prior written consent. The Franchising Authority's right to audit and the Grantee's obligation to retain records related to a franchise fee audit shall expire three (3) years after each franchise fee payment has been made to the Franchising Authority.

SECTION 6

Insurance and Indemnification

6.1 **Insurance Requirements**. The Grantee shall maintain in full force and effect, at its own cost and expense, during the term of the Franchise, Comprehensive Commercial General Liability Insurance in the amount of Two Million Dollars ($2,000,000) combined single limit per occurrence and Three Million Dollars ($3,000,000) aggregate for bodily injury and property damage. The Grantee shall provide a Certificate of Insurance designating the Franchising Authority as an additional insured to the Franchising Authority. Additionally, the Grantee shall maintain in full force and effect, Automobile Liability insurance with limits of no less than $500,000 combined single limit per accident for bodily injury and property damage. Such insurance shall be noncancellable except upon thirty (30) days prior written notice to the Franchising Authority. The Grantee 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.

6.2 **Indemnification**. The Grantee agrees to indemnify, save and hold harmless, and defend the Franchising Authority, its officers, boards and employees, from and against any and all claims, demands, liens, and all liability for damages of whatsoever kind, including but not limited to any liability or claims resulting from property damage or bodily injury (including accidental death), which arise out of the Grantee's acts or omissions pursuant to or related to this Franchise, and to pay any and all costs, including reasonable attorney’s fees, incurred by the Franchising Authority in defense of such claims, provided that the Franchising Authority shall give the Grantee written notice of its obligation to indemnify the Franchising Authority within ten (10) days of receipt of a claim or action pursuant to this subsection. Notwithstanding the foregoing, the Grantee shall not indemnify the Franchising Authority for any damages, liability or claims resulting from the willful misconduct or negligence of the Franchising Authority.

6.3 **Use of Other Cable Systems.** The Grantee agrees to indemnify, save and hold harmless any other franchisee for and against all costs and expenses any other franchisee incurs in strengthening poles, replacing poles, rearranging attachments, placing underground facilities, and all other costs arising out of inspections, make ready, and construction of Grantee’s Cable System in the Service Area.

SECTION 7

Enforcement and Termination of Franchise

7.1 **Grounds for Termination**. The Franchising Authority may terminate or revoke this Franchise and all rights and privileges herein provided for any of the following reasons:

A. The Grantee fails to make timely payments of the Franchise Fee as required under section 2 of this Agreement and does not correct such failure within sixty (60) calendar days after written notice by the Franchising Authority of such failure; or

B. The Grantee, by act or omission, materially violates a material duty herein set forth in any particular within the Grantee’s control, and with respect to which redress is not otherwise herein provided. In such event, the Franchising Authority, acting by or through its City Council, may determine, after hearing, that such failure is of a material nature, and thereupon, after written notice giving the Grantee notice of such determination, the Grantee, within sixty (60) calendar days of such notice, shall commence efforts to remedy the conditions identified in the notice and shall have ninety (90) calendar days from the date it receives notice to remedy the conditions. After the expiration of such 90-day period and failure to correct such conditions, the Franchising Authority may declare the franchise forfeited and this Franchise terminated, and thereupon, the Grantee shall have no further rights or authority hereunder; provided, however, that any such declaration of forfeiture and termination shall be subject to judicial review as provided by law, and provided further, that in the event such failure is of such nature that it cannot be reasonably corrected within the 90-day time period provided above, the Franchising Authority shall provide additional time for the reasonable

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correction of such alleged failure if the reason for the noncompliance was not the intentional or negligent act or omission of the Grantee.

7.2 **Remedies at Law**. In the event the Grantee or the Franchising Authority fails to fulfill any of their respective obligations under this Franchise, the Franchising Authority or the Grantee, whichever the case may be, shall have a breach of contract claim and remedy against the other, in addition to any other remedy provided herein or by law; provided, however, that no remedy that would have the effect of amending the specific provisions of this Franchise shall become effective without such action that would be necessary to formally amend the Franchise.

7.3 **Third Party Beneficiaries**. The benefits and protection provided by this Franchise shall inure soley to the benefit of the Franchising Authority and the Grantee. This Franchise shall not be deemed to create any right in any person who is not a party and shall not be construed in any respect to be a contract in whole or in part for the benefit of any third party (other than the permitted successors and assigns of the Parties hereto).

7.6 **Uncontrollable Events**. The Grantee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by strikes, acts of God, power outages, or other events reasonably beyond its ability to control including any delays caused by the Franchising Authority.

7.7 **Bonds and Surety**

A. Except as expressly provided herein, the Grantee shall not be required to obtain or maintain bonds or other surety as a condition of being awarded the Franchise or continuing its existence. The Grantee and the Franchising Authority recognize that the costs associated with bonds and other surety may be ultimately borne by the Subscribers in the form of increased rates for Cable Services. Initially, no bond or other surety will be required. In the event that one is required in the future, the Franchising Authority agrees to give the Grantee at least sixty (60) days prior written notice thereof stating the exact reason for the requirement.

B. Notwithstanding the above provisions, the Grantee shall be responsible for standard performance bonds and insurance required for encroachment permits for work done within Public Ways.

7.8 **Termination by Grantee.** Notwithstanding any other provision of this Franchise to the contrary, Grantee may terminate this Franchise with or without cause six months after giving the Franchising Authority and Grantee's customers notice of Grantee's intent to terminate.

SECTION 8

Miscellaneous Provisions

8.1 **Actions of Parties**. In any action by the Franchising Authority or the Grantee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

8.2 **Entire Agreement.** This Franchise constitutes the entire agreement between the Grantee and the Franchising Authority on the subject of Cable Service. Amendments to this Franchise for any purpose, including but not limited to any changes in state or federal law, shall be mutually agreed to in writing by the Parties.

8.3 **Notice**. Unless expressly otherwise agreed between the Parties, every notice or response required by this Franchise to be served upon the Franchising Authority or the Grantee shall be in writing, and shall be deemed to have been duly given to the required party when placed in a properly sealed and correctly addressed envelope: a) upon receipt when hand delivered with receipt/acknowledgment, or b) upon receipt when sent certified or registered mail.

The notices or responses to the Franchising Authority shall be addressed as follows:

City Attorney's Office
Park City Municipal Corporation
Post Office Box 1480
445 Marsac Ave.
Park City Utah 84060

The notices or responses to the Grantee shall be addressed as follows:

Comcast of Utah II, Inc.
9602 South 300 West
Sandy UT 84070

with a copy to:

Comcast Corporation
Attn: Legal Department
1500 Market Street
Philadelphia PA 19102

The Franchising Authority and the Grantee may designate such other address or addresses from time to time by giving notice to the other in the manner provided for in this subsection.

8.4 **Descriptive Headings**. The captions to Sections and subsections contained herein are intended solely to facilitate the reading thereof. Such captions shall not affect the meaning or interpretation of the text herein.

8.5 **Severability**. If any Section, subsection, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other Section, subsection, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise.

8.6 **Applicable Law.** The terms and conditions contained herein shall be interpreted according to the laws of the State of Utah, except where expressly preempted by federal law.

8.7 **Venue**. Any action initiated before a court of law shall be in a court of proper jurisdiction in Summit County, Utah, if possible, or the Federal District Court of Utah.

8.9 **Effective Date**. The Effective Date of this Franchise is the 1st day of December, 2007 pursuant to the provisions of applicable law. This Franchise shall expire on the 30th day of November, 2020 unless extended by the mutual agreement of the Parties.

Considered and approved this ___ day of ___________ 2007.

PARK CITY MUNICIPAL CORPORATION
445 Marsac Ave.
P.O. Box 1480
Park City, UT 84060-1480

Dana Williams, Mayor

Attest:

Jan Scott, City Recorder

Approved as to Form:

Polly Samuels McLean
Assistant City Attorney

Accepted this ____ day of __________________, 2007, subject to applicable federal, state and local law.

Comcast of Utah II, Inc.

____

Scott Tenney
Area Vice President

STATE OF UTAH)
) ss.
COUNTY OF SUMMIT)

On this ____ day of ________________, 2007, 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

City Council
Staff Report

Subject: **USSA Center of Excellence – Conduit Financing**
Author: **Bret Howser**
Department: **Budget, Debt, & Grants**
Date: **September 13, 2007**
Type of Item: **Legislative**

Summary Recommendation:
Staff recommends approving the attached resolution which approves the issuance of $20,120,000 million of conduit debt for the construction of the U.S. Ski and Snowboard Association (USSA) Center of Excellence.

Topic Description:
Final Bond Resolution for the conduit financing debt issuance related to the USSA Center of Excellence project.

Background:
On July 12, 2007, Council approved a parameters resolution in which it authorized the proposed issuance of conduit bonds for the non-profit USSA's Center of Excellence athletic training facility to be located in the northwest quadrant of the intersection of U.S. Highway 40 and State Highway 248 (more commonly known as Quinn's Junction) in Park City. The issuance was approved to be in an amount not to exceed $22.5 million. The proceeds from the bond were to be used for expenses related to the Center of Excellence project, which may include approximately 5 acres of land, and a building, of approximately 84,965 square feet and related equipment, improvements and furnishings. On August 2, 2007, a public hearing was held to solicit public input on the bond issuance and the project in question in accordance with the Utah Industrial Facilities and Development Act, Title 11, Chapter 17, Utah Code Annotated 1953, as amended.

Analysis:
The attached final Bond Resolution gives the final details of the bond, including terms, rates, amounts, etc. The amount to be bonded is $20,120,000. Proceeds will be used only for construction of the USSA Center of Excellence.

As previously discussed with Council, the City bears no burden of cost related to this issuance or liability for repayment of bonds. The City acts only as a conduit through which a non-profit entity (in this case, USSA) is able to issue tax exempt bonds for qualified uses.

Council has been favorable to this project as well as the proposed financing method. Staff received direction from Council to proceed with conduit financing, and this is the final step for the City in the process of issuing the bonds.

Department Review:
Budget, Finance, Legal, City Manager

Alternatives:

A. Approve the request: Staff recommends approving the attached resolution which approves the issuance of $20,120,000 million of conduit debt for the construction of the USSA Center of Excellence.

B. Continue the item. Council could continue the item. This would delay the construction plans for the project.

C. Deny the request: Without approval of the attached resolution, USSA would not be able to move forward with the project as planned.

Significant Impacts:
Conduit financing would allow USSA to construct the athletic training facility at Quinn’s Junction with tax-exempt bonds. If the final bond resolution is delayed, the timetable for issuing the bonds and beginning construction would be delayed as well.

Recommendation: Staff recommends approving the attached resolution which approves the issuance of $20,120,000 million of conduit debt for the construction of the USSA Center of Excellence.

Attachments
A – Final Bond Resolution

RESOLUTION NO. ____________

A RESOLUTION OF THE CITY COUNCIL OF PARK CITY, UTAH (THE "ISSUER") PROVIDING FOR THE FINANCING AND OF THE COST OF ACQUISITION, CONSTRUCTION, EQUIPPING, FURNISHING AND IMPROVEMENT OF LAND AND A NEW BUILDING FOR USE AS A TRAINING AND OFFICE FACILITY BY UNITED STATES SKI AND SNOWBOARD ASSOCIATION; AUTHORIZING THE ISSUANCE AND SALE BY THE ISSUER OF ITS MULTI-MODE VARIABLE RATE REVENUE BONDS, SERIES 2007 (UNITED STATES SKI AND SNOWBOARD ASSOCIATION) IN AN AGGREGATE PRINCIPAL AMOUNT OF $20,120,000, PAYABLE SOLELY FROM REVENUES ARISING FROM THE PLEDGE OF A LOAN AGREEMENT BETWEEN THE ISSUER AND CENTER OF EXCELLENCE PROPERTIES, LLC; AUTHORIZING THE EXECUTION AND DELIVERY BY THE ISSUER OF A TRUST INDENTURE, A BOND PURCHASE AGREEMENT, A LOAN AGREEMENT AND OTHER DOCUMENTS REQUIRED IN CONNECTION THEREWITH; APPROVING THE USE OF AN OFFICIAL STATEMENT; AWARDING AND CONFIRMING THE SALE OF SAID BONDS; AND RELATED MATTERS.

WHEREAS, pursuant to the Utah Industrial Facilities and Development Act, Title 11, Chapter 17, Utah Code Annotated 1953, as amended (the "Act"), Park City, Utah (the "Issuer") is authorized to issue its revenue bonds to finance the costs of any "project" as defined in the Act to the end that the Issuer may be able to promote the general welfare and encourage the increase of industry and commerce within the State of Utah; and

WHEREAS, the Act provides that a municipality or county may issue revenue bonds for the purpose of using substantially all of the proceeds thereof to pay or to reimburse a business for the costs of the acquisition and construction of the facilities of a project and that title to or in such facilities may at all times remain in the company and in such case the bonds of the municipality or county shall be secured by a pledge of one or more notes, debentures, bonds or other secured or unsecured debt obligations of the company; and

WHEREAS, Center of Excellence Properties, LLC a Utah limited liability company (the "Borrower"), has or will enter into contracts for the acquisition, construction, furnishing, equipping and improvement of land and a new building for use as a training and office facility by United States Ski Association, a non-profit corporation organized under the laws of the State of Utah doing business as the United States Ski and Snowboard Association (the "Lessee"), to be located in Park City, Utah (the "Project"); and

WHEREAS, the Project will be of the character and will accomplish the purposes provided by the Act, and the Issuer is willing to issue its revenue bonds to finance the Project upon terms which will be sufficient to pay the costs of the Project as evidenced by such bonds, all as set forth in the details and provisions of the Loan Agreement (the "Loan Agreement") between the Issuer and the Borrower; and

WHEREAS, pursuant to the provisions of the Act, the Issuer proposes to enter into (i) the Loan Agreement by and between the Issuer and the Borrower in connection with the financing of the Project, and (ii) a Trust Indenture (the "Indenture") with U.S. Bank National Association, as trustee (the "Trustee") pursuant to which the Issuer will issue its Multi-Mode Variable Rate Revenue Bonds, Series 2007 (United States Ski and Snowboard Association) in an aggregate principal amount of $20,120,000 (the "Bonds"); and

WHEREAS, the City Council of the Issuer (the "Council") deems it necessary and advisable to authorize the issuance and confirm the sale of the Bonds and to authorize the execution and delivery of the Loan Agreement in substantially the form attached hereto as Exhibit D, the Indenture in substantially the form attached hereto as Exhibit C, a Bond Purchase Agreement among the Issuer, the Borrower and Wells Fargo Brokerage Services, LLC, as Underwriter (the "Bond Purchase Agreement") in substantially the form attached hereto as **Error! Reference source not found.** which provides for the sale of the Bonds, a Remarketing Agreement among the Issuer, the Borrower and Wells Fargo Brokerage Services, LLC, as Remarketing Agent (the "Remarketing Agreement") in substantially the form attached hereto as **Error! Reference source not found.**, which provides for the remarketing of the Bonds, and other related documents required for the sale of the Bonds and to approve the use of an Official Statement (the "Official Statement") in substantially the form attached hereto as **Error! Reference source not found.** relating to the Bonds; and

WHEREAS, pursuant to the provisions of the Loan Agreement, the Borrower will promise to pay amounts sufficient to pay, when due, the principal of, premium, if any, and interest on the Bonds, all in accordance with the requirements of the Act; and

WHEREAS, the Borrower will cause to be delivered to the Trustee a letter of credit of Wells Fargo Bank, N.A. to secure payment of the principal and purchase price of and interest on the Bonds; and

WHEREAS, after the Issuer published a Notice of Bonds to be Issued and of Public Hearing, a public hearing was held on August 2, 2007, during which any interested party had an opportunity to comment upon the proposed issuance of the Bonds or any other matter relating to the Project; and

WHEREAS, the Act and the documents to be signed by the Issuer provide that the Bonds shall not constitute nor give rise to a general obligation or liability of the Issuer or be a charge against its general credit or taxing powers and that the Bonds will be payable from and secured only by the revenues arising from the pledge and assignment under the Indenture of the Loan Agreement to the Trustee.

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

All terms defined in the recitals hereto shall have the same meaning when used herein.

The Issuer is authorized to finance the costs of the Project with the proceeds of the Bonds, all pursuant to the provisions of the Act. All action heretofore taken by the officers of the Issuer directed toward the issuance of the Bonds is hereby ratified, approved and confirmed.

The Issuer is authorized and directed to issue the Bonds as fully registered bonds, in the aggregate principal amount of $20,120,000. The Bonds shall initially bear interest at a variable rate of not to exceed 10% (except as such maximum may be increased under the Indenture), shall be payable on the dates, shall be subject to redemption prior to maturity, and shall mature on or before April 1, 2027 all as set forth in the Indenture.

The form, terms and provisions of the Bonds and the provisions for the signatures, authentication, payment, registration, transfer, exchange, redemption, tender and number shall be as set forth in the Indenture. The Mayor and City Recorder are hereby authorized and directed to execute and seal the Bonds and to deliver said Bonds to the Trustee for authentication. The signatures of the Mayor and the City Recorder may be by facsimile or manual execution.

The form of Bond is set out in the Indenture, copies of which were before the Council at this meeting, which form is incorporated herein by reference and made a part hereof.

The Bonds are to be issued in accordance with and pursuant to the Loan Agreement and the Indenture. The Loan Agreement provides for the issuance of the Bonds solely for the purpose of financing certain costs of the Project and for paying expenses incidental thereto. The Indenture specifically provides that the Bonds and the Indenture shall not constitute nor give rise to a general obligation or liability of the Issuer or a charge against its general credit or taxing powers. Recourse on the Bonds executed and delivered by the Issuer pursuant to the Indenture may be had only against the security for the Bonds as provided therein and in the Loan Agreement and the Indenture.

The Loan Agreement provides that the Borrower will cause the Project to be acquired, constructed, furnished, equipped and improved, with the Borrower to have the right to requisition from the Trustee the proceeds of the Bonds from time to time, all in accordance with the provisions of the Loan Agreement and the Indenture and, that if the proceeds of the Bonds are not sufficient to defray all costs and expenses of acquiring, constructing and improving the Project and all expenses incidental thereto, the Borrower will pay all such excess costs and expenses and will acquire, construct and improve the Project without additional cost to the Issuer.

The Project will consist of facilities for a training and office facility for use by the Lessee as contemplated in the Act. The Borrower is wholly-owned by USSA Investment Fund a Utah non-profit corporation which is a related party of the Lessee. The Project will be owned by the Borrower and used by the Lessee.

The Loan Agreement and the Indenture, in substantially the forms presented to the Council of the Issuer at this meeting, with such changes as are authorized by

Section 9 hereof, are hereby approved in all respects, and the Mayor (including any acting Mayor) and City Recorder are hereby authorized to execute each of the same on behalf of the Issuer and to affix the seal of the Issuer thereto and the acts of the Mayor and City Recorder in so doing are and shall be the act and deed of the Issuer. The Mayor, City Recorder and all other proper officers and employees of the Issuer are hereby authorized and directed to take all steps on behalf of the Issuer to perform and discharge the obligations of the Issuer under each of said instruments.

The sale of the Bonds to the Underwriter and remarketing of the Bonds by the Remarketing Agent in accordance with the Bond Purchase Agreement and the Remarketing Agreement, respectively, and as contemplated by the Official Statement, is hereby authorized, approved and confirmed. The Mayor is hereby authorized to execute and deliver the Bond Purchase Agreement and the Remarketing Agreement and the City Recorder to affix the seal of the Issuer and to attest such execution and seal, all for and on behalf of the Issuer. The Issuer hereby authorizes the use and distribution of the Official Statement in connection with the sale of the Bonds.

The Mayor is hereby authorized to make, either prior or subsequent to the execution thereof, any alterations, changes or additions in the Indenture, the Loan Agreement, the Bond Purchase Agreement, the Remarketing Agreement and the Bonds herein authorized which may be necessary to correct any errors or omissions therein, to remove ambiguities therefrom, to conform the same to other provisions of said instruments, to the agreement of the Borrower, the Lessee, the Underwriter and the Remarketing Agent, to the provisions of this resolution, or any other resolution adopted by the Issuer, or the provisions of the laws of the State of Utah or the United States as long as the rights of the Issuer are not materially adversely affected thereby.

Pursuant to Section 11-17-13, Utah Code Annotated 1953, as amended, the Issuer includes herein the pledge and undertaking of the State of Utah that the State of Utah will not alter, impair or limit the rights vested hereunder or in the Bonds, the Loan Agreement, the Indenture or any of the documents contemplated hereby until the Bonds, together with all interest thereon, have been fully paid and discharged and all obligations of the Issuer thereunder and under the Loan Agreement and the Indenture are fully performed.

In accordance with the provisions of the Act and the Parameters Resolution, the Issuer has caused a "Notice of Bonds to be Issued and of Public Hearing" to be published not less than fourteen (14) days prior to the public hearing, in the Park Record, a newspaper having general circulation in the Issuer, and has caused a copy of the Parameters Resolution (and all exhibits thereto) to be kept on file in the office of the City Recorder for public examination during regular business hours at least thirty (30) days from and after the date of publication thereof.

In accordance with provisions of the Act, the Issuer called a public hearing to receive input from the public with respect to the issuance of the Series 2007 Bonds, which public hearing was held on August 2, 2007.

It is hereby declared that all parts of this resolution are severable and that if any section, paragraph, clause or provision of this resolution shall, for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of any such section, paragraph, clause or provision shall not affect the remaining provisions of this resolution.

The Mayor, City Recorder and other officers of the Issuer are hereby authorized to execute all documents and take such action as they may deem necessary or advisable in order to carry out and perform the purpose of this resolution and the execution or taking of such action shall be conclusive evidence of such necessity or advisability. All action heretofore taken by the Issuer, its officers and employees, with respect to the issuance and sale of the Bonds is hereby ratified and confirmed. Any action authorized by this Resolution to be taken by the Mayor may be taken by any duly authorized acting Mayor in the absence of the Mayor.

All resolutions, orders and regulations or parts thereof heretofore adopted or passed which are in conflict herewith are, to the extent of such conflict, hereby repealed. This repealer shall not be construed so as to revive any resolution, order, regulation or part thereof heretofore repealed.

This Resolution shall take effect immediately upon its approval and adoption.

PASSED AND APPROVED BY THE CITY COUNCIL OF PARK CITY, UTAH THIS 13TH DAY OF DECEMBER, 2007.

____
Mayor

(S E A L)

ATTEST:

____
City Recorder

City Council
Staff Report

Subject: 2008 Annual Insurance Placement
Author: Cindy LoPiccolo
Department: Legal Department
Date: December 13, 2007
Type of Item: Administrative

Summary Recommendations:
Authorize the following Insurance premium payments for public entity liability, workers compensation, property, and crime insurance covering a one-year period from January 1, 2008 through January 1, 2009:

1. $ 109,869.00 to States Self-Insurers Risk Retention Group, Inc. ("States") for public entity broad form liability insurance;
2. $ 175,153.02 to Workers Compensation Fund ("WCF") for workers compensation insurance;
3. $ 56,044.00 to Lloyds of London for property insurance;
4. $ 6,522.00 to Zurich American for boiler/machinery insurance;
5. An amount not to exceed $ 4,000.00 annual installment to Travelers for Public Officials Employee Dishonesty (Crime);
6. Self insure physical damage collision coverage for Transit buses.

Topic:
2008 City Insurance Placement.

Background:
Park City exposures are unique in comparison to other small to medium sized Utah cities due to its world-class mountain resort environment and extensive public services. City staff continues to promote and implement safety procedures and prevention methodologies, and provide regular training, so that risks are mitigated, the City's assets, facilities, people and property are protected, and employees, local residents and visitors are provided a safe and enjoyable place to work and play. Public Works has been especially effective in making improvements and providing appropriate and consistent staff safety training. This year, Legal Department/Risk Management staff performed an overall review and update of the City's insurance requirements and waiver forms. The City Attorney also serves on the emergency planning committee.

Analysis:

A. Public Entity Broad Form Liability. Quotes have been received for public entity liability coverage from States and Utah Local Government Trust ("ULGT"). Upon review and evaluation, staff recommends insurance renewal with States Self-Insurance Risk Retention Group for $5 million occurrence / aggregate policy, $250,000 SIR, premium $109,869. The renewal proposal is basically flat in comparison with the expiring year, although would have been less without the City's implementation of 15-passenger seat van program, and slight change in the gross expenditures evidenced in the 2007 fiscal year audit. Marsh USA Risk and Retention, the City's broker, checked pricing indications from liability carriers to see if they can compete with States for liability coverage, however, advised although the market has softened other traditional carriers are still not competitive enough with the States program and Marsh supports the recommendation.

Staff recommends continuation of liability insurance coverage with States as the City has been a member-owner of States for the past 4 years and has greatly benefited from the organization's public entity affiliation, and expertise of its risk management administrative affiliate Berkley Risk Administrators Co. who provides comprehensive, consultative loss control reviews and services, proactive resource and information clearinghouse, on-site review and safety recommendations, public entity risk management education and training, and provision and mechanism for comprehensive membership networking, communication and information sharing. Park City works closely with the Utah States Group which consists of a number of other Utah local government entities, in addition to the availability of the national public entity membership. Utah members include the cities and counties of St. George, Provo, Bountiful, Davis County, Tooele County, Murray, and South Salt Lake and this local network works closely to address current risk management issues and risks facing public entities of all sizes. In 2007, States observes its 20th year of serving the excess liability coverage needs of its public entity members.

B. Property; Boiler and Machinery. Marsh obtained renewal quotes for the City's property and boiler and machinery coverage from Lloyds of London and Zurich American and staff recommends approval of these policies. This year Marsh arranged a review of property valuations to be conducted by Marshall & Swift which established a close estimate of property replacement valuations for city-owned buildings. The City's property statement of insurable values was updated to reflect the update in replacement valuations, and to include the new police facility, 1333 and 1335 Park Avenue (fire station and fire station house), and water district infrastructure. Builder's risk coverage is included in the 2008 property insurance policy and will be sufficient to cover 528 Main Street (museum expansion), 540 Swede Alley construction, and remodel of 445 Marsac Avenue. A policy covering the City's lease term of 1255 Iron Horse was purchased independently.

The Lloyds of London Property Insurance renewal quote for 2008 is $ 56,044.00. Lloyds of London is a conglomerate of A+ carriers that developed a property program tailored to public entities. The property insurance policy for 2008 includes policy limit total for each occurrence of $61,792,104. The sublimit of insurance for earthquake and flood is also at policy limit, which is excellent coverage. Transit buses are covered under the liability policy and property policy while sitting on City property i.e. the bus barn, however, the property insurer (Lloyds of London) does not offer physical damage collision coverage for transit buses, and for this reason the City will continue to self insure physical damage (collision) until such a time the brokers are able to bring in a quote; the City's brokers are currently conducting a comprehensive search for insurers and staff will bring this back for consideration if at all possible.

Zurich American Boiler and Machinery Insurance renewal quote for 2008 is $6,552.00. This insurance covers city equipment such as water system equipment (pumps, motors), air conditioning and heating equipment, electrical wiring, breakers, transformers, switches, telephone switchboard, compressors, and generators.

C. Public Officials Employee Dishonesty (Crime). Marsh obtained a renewal quote for the City's public officials employee dishonesty (crime) coverage from Travelers for a three year term equal to the expiring term and staff recommends approval as outlined.

D. Workers Compensation. This year, Human Resources, Budget and Payroll staff performed a review and update of all personnel classifications pertaining to workers compensation for accuracy. Personnel are classified into three classifications for workers compensation purposes – clerical, street maintenance, and municipal employees. Each classification has a corresponding workers compensation fee and the total number of personnel in each classification and annual payroll estimates are used by workers compensation insurers to establish an appropriate premium and coverage. The increase in premium quote was the result of number of employees, classifications and increase in projected payroll for 2008.

A workers compensation quote has been received from WCF (Workers Compensation Fund). WCF provided the City with workers compensation insurance from 2000 through 2004, and 2007. WCF reports the workers compensation market has stabilized, Park City has had a favorable claim year, and confirms that Park City remains in their Preferred Rating tier.

Staff recommends approval of workers compensation insurance for 2008 with WCF for the following reasons:

1. WCF reports to NCII (National Council of Compensation Insurance) for receipt of national Experience Modification Factor for their policyholders.

2. WCF also offers a dividend program to its policyholders from which Park City has benefited annually. In December, WCF will be returning 9.5% of premiums back to our policyholders (owners) in a supplemental dividend and Park City's share will be $6,498. WCF advised an additional dividend is projected for August, 2008 in an amount approximately double the December dividend.

3. Human Resources reports WCF's administration of workers compensation program is thorough, paperwork is easy to use, administrators are friendly, helpful, react quickly to the City's employees, and keep in constant communication with HR throughout each injury process; their level of service is excellent.

Other Possible General Liability, Property, and Workers Compensation Proposals:

In the event Marsh obtains a second property insurance quote from Affliated, staff will submit those to Council under separate cover prior to the December 13th Council meeting.

ULGT has expressed interest and proposals may be received from Utah Local Government Trust (ULGT) for General Liability, Property and Workers Compensation 2008 coverage. In the event staff receives ULGT quote(s), it/they will be submitted to Council under separate cover prior to the Council meeting on December 13th.

Founded in 1974, the Utah Local Governments Trust is licensed in Utah as a public agency insurance mutual. As a non-profit insurance cooperative, owned and operated by its members, ULGT began offering workers compensation insurance January 1, 2004. Trust policies are designed specifically for Utah government agencies, including cities, towns, counties, special service districts, and school districts. Although ULGT may submit a competitive liability insurance quote, and has good claims administration staff, it is staff's opinion there continues to be greater benefit to the City by remaining with the States program at this time for reasons outlined above. It is also staff's opinion that greater benefit remains with renewal with WCF for workers compensation insurance for the following reasons: ULGT does not offer a dividend program, and does not report to NCII (National Council of Compensation Insurance), for cost savings reasons, although they do assign an in-house experience modification number specifically for ULGT policyholders. Unfortunately the experience modification factor assigned by ULGT would not be allowed to transfer into the NCII program and the City would be initiated with a high reinstatement number upon re-entry. In the past, Human Resources staff experienced a brief period of inadequate response and employee assistance from ULGT workers compensation claims administration, however, ULGT immediately responded to the City's concerns, made necessary improvements.

Department Review:
Staff and Marsh representatives reviewed the City's exposures and options to insure the City in a responsible and appropriate manner. The Legal Department consulted with City departments to obtain the most current comprehensive City data (financial statement, payroll, fleet, transit, water, recreation, and safety programs), and worked with Human Resources to review workers compensation insurance administrative requirements and performance.

Alternatives:
A. Approve the insurance recommendations as presented.
B. Deny the recommendations and approve an alternative insurance quote presented.
C. Continue the item and provide direction to staff. This alternative is not recommended.

Consequences of not taking the recommended action:
There would be a lapse in insurance coverage.

Recommendation:
Authorize the following Insurance premium payments for public entity liability, workers compensation, property, and crime insurance covering a one-year period from January 1, 2008 through January 1, 2009:

1. $ 109,869.00 to States Self-Insurers Risk Retention Group, Inc. ("States") for public entity broad form liability insurance;
2. $ 175,153.02 to Workers Compensation Fund ("WCF") for workers compensation insurance;
3. $ 56,044.00 to Lloyds of London for property insurance;
4. $ 6,522.00 to Zurich American for boiler/machinery insurance;
5. An amount not to exceed $ 4,000.00 annual installment to Travelers for Public Officials Employee Dishonesty (Crime);
6. Self insure physical damage collision coverage for Transit buses.

States

INSURANCE PROPOSAL

To: Park City Municipal Corporation 445 Marsac Ave/ PO Box 1480 Park City UT 84060-1480 **Attn:** Cindy LoPicolo	**From:** Martin Ericson States Self-Insurers Risk Ret. Grp. 222 S Ninth St Suite 1300 Minneapolis, MN 55402-3332
Proposal For: Park City Municipal Corporation	**Proposal Expires On:** 1/1/2008

X Public Entity Broad Form Liability (including General Liability, Employment Practices Liability, Automobile Liability and Law Enforcement Liability and Public Officials Error & Omission Liability) in accordance with the terms, conditions and exclusions of the policy form.

ONE YEAR PROPOSAL

OPTION 1

Company Limits	Self-Insured Retention Limit	Premium		TOTAL
$5,000,000 /Occ	$250,000 /Occ	$109,869	$0	$109,869
$5,000,000 /Agg				

SPECIAL TERMS AND CONDITIONS

Occurrence Policy Form

- ⇨ The quoted premium is net of commission.
- ⇨ All premiums are due at the inception date of the policy.
- ⇨ Premiums will be annually rerated to reflect experience and exposure.
- ⇨ Terrorism Exclusion Endorsement* - copy attached.

  *TRIA is set to expire on 12/31/2008. Therefore a terrorism exclusion will apply. Should Congress elect to extend or renew TRIA we will address how terrorism coverage is made available at that time.
- ⇨ A coverage exclusion for Mold.
- ⇨ Lead Exclusion
- ⇨ Asbestos Exclusion Amendatory Endorsement
- ⇨ Policy Condition providing for Government Tort Cap & Immunity protection.
- ⇨ Coverage exclusion for nursing homes
- ⇨ Defense Costs Outside the Limit Endorsement

***Please see attached for any additional terms and conditions.**

Martin A. Ericson	12/10/2007
Signed	**Date**

WCF

INSURANCE PROPOSAL

Insurer: Workers Compensation Fund
392 East 6400 South
Salt Lake City, UT 84107

Proposal No: 1638608

Proposal Prepared: 11/26/2007

1. The Insured: PARK CITY MUNICIPAL CORP

Mailing Address: Attn: CINDY LOPICCOLO
PO BOX 1480
PARK CITY UT 84060-1480

Legal Status: Corporation Governmental Entity

Principals:	Covered on Policy
TOM BAKALY	YES
DANE WILLIAMS	YES

Premium for this policy will be determined by our Manuals of Rules, Classifications, Rates and Rating Plans. All information below is subject to verification and change by audit.

Class Codes	**Description**	**Estimated Annual Payroll**	**Rate Per $100 Payroll**	**Premium**
5509	STREET OR ROAD MAINTENANCE CONSTRUCTION	1,059,215	1.31	$13,875.72
8810	CLERICAL OFFICE EMPLOYEES	3,095,503	0.17	$5,262.36
9060	CLUB COUNTRY GOLF FISHING OR YACHT & CLERICAL		1.46	$.00
9417	MUNICIPAL EMPLOYEES	13,291,867	1.81	$240,582.79
	MANUAL PREMIUM			$259,720.87
	EMPLOYERS LIABILITY	100/500/100	0.00%	.00
	EXPERIENCE MODIFICATION		0.86	-36,360.92
	SCHEDULE RATING		0.85	-33,503.99
	PREMIUM SIZE DISCOUNT		11.42%	-21,681.56
	TERRORISM RISK INSURANCE ACT OF 2002	17,446,585	0.03	5,233.97
	DOMESTIC TERRORISM EARTH QUAKES & CATASTROPHIC	17,446,585	0.01	1,744.65
	ESTIMATED ANNUAL PREMIUM			$175,153.02

It is further agreed that the estimated policy premium and all unpaid installments will be adjusted to reflect the final Experience Modification Factor determined by the National Council of Compensation Insurance upon receipt of that Experience Modification Factor.

oi: BJSHORT

PARK CITY MUNICIPAL CORPORATION

Property Summary

Policy Year 1/1/2008 - 1/1/2009

Coverage Description	Lloyds of London Expiring Program 2007-2008	Lloyds of London Renewal Program 2008-2009	% Change
Property Covered	Real and Personal Property of Every Kind and Description, now or heareafter existing in any form, including Business Interruption as more fully defined in the policy wording.	Real and Personal Property of Every Kind and Description, now or heareafter existing in any form, including Business Interruption as more fully defined in the policy wording.	
Perils Covered	All Risks of Direct Physical Loss or Damage Including Flood and Earthquake, but Excluding Boiler Explosion and Machinery Breakdown as defined in the policy wording.	All Risks of Direct Physical Loss or Damage Including Flood and Earthquake, but Excluding Boiler Explosion and Machinery Breakdown as defined in the policy wording.	
Coverage Territory	United States of America, the District of Columbia and Canada as defined in the Territorial Limits within the policy wording.	United States of America, the District of Columbia and Canada as defined in the Territorial Limits within the policy wording.	
Policy Limit - Each Occurrence	**$52,353,315**	**$61,792,140**	18%
Sublimits of Insurance: ***These limits are part of and not in addition to the total limit - applicable per occurrence and in the annual aggregate in respect of Flood and Earthquake separately.***			
Earthquake (Excluding California Zones A & B)	Policy Limit	Policy Limit	
Flood - All Locations except for the following;	Policy Limit	Policy Limit	
Flood Zones A	$2,500,000	$2,500,000	
Flood Zones V	Excluded	Excluded	
Service Interruption	$250,000	$250,000	
Business Interruption/Gross Earnings	$5,000,000	$5,000,000	
Extra Expense at Any One Location	$1,000,000	$1,000,000	
Course of Construction	10% Total Limit ($5,235,331)	**$10,000,000**	
Newly Acquired Property - up to Ninety (90) Days	$10,000,000	$10,000,000	
Ordinance or Law Coverage	$10,000,000	$10,000,000	
Revenue Interruption	$10,000,000	$10,000,000	
Demolition of Damaged Insured Property	$5,000,000	$5,000,000	
Errors & Omissions	$5,000,000	$5,000,000	
Loss of Rents	$5,000,000	$5,000,000	

PARK CITY MUNICIPAL CORPORATION

Property Summary

Policy Year 1/1/2008 - 1/1/2009

Coverage Description	Lloyds of London Expiring Program 2007-2008	Lloyds of London Renewal Program 2008-2009	% Change
Sublimits of Insurance continued:			
NMA2415 Clause V. Limited Seepage and/or Pollution	$5,000,000	$5,000,000	
Expediting Expense	$1,000,000	$1,000,000	
Accounts Receivable	$1,000,000	$1,000,000	
Valuable Papers & Records	$1,000,000	$1,000,000	
Electronic Data Processing Media and Data	$1,000,000	$1,000,000	
Debris Removal	$1,000,000	$1,000,000	
Leasehold Interest	$1,000,000	$1,000,000	
Pollution Clean-Up in Respect of Land, Water and Air	$250,000	$250,000	
Trees, Shrubs, Plants and Lawns	$100,000	$100,000	
Rented Mobile/Contractors Equipment	$100,000	$100,000	
Unreported Vehicles	$100,000	$100,000	
Decontamination	$100,000	$100,000	
Property on Exhibition	$100,000	$100,000	
Loss Adjustment Expenses	$100,000	$100,000	
Property of Others - Insured's Premises or in Vehicles Owned/Operated	$50,000 subject to $10,000 per person	$50,000 subject to $10,000 per person	
Fire Department Service Charge	$50,000	$50,000	
Fire Protective Devices	$50,000	$50,000	
Foam Solution or Other Fire Extinguishing Materials	$50,000	$50,000	
Loss to Police Horses	$50,000	$50,000	
Land Improvements	$50,000	$50,000	
Loss to Police Dogs	$20,000	$20,000	
Arson and Crime Reward	$10,000	$10,000	
Loss to Animals, Except in Respect of Police Dogs/Police Horses	$5,000	$5,000	
Loss to Automobiles Resulting from Physical Damage, Including Collision and Upset at Locations on File, But Excluding Road Risk	Included	Included	
Consenquential Loss	Included	Included	
Transit Coverage	Included	Included	
Civil or Military Authority	30 Days	30 Days	
Ingress/Egress	30 Days	30 Days	
Valuation Basis			
Property Damage	Replacement Cost	Replacement Cost	
Business Interruption	Actual Loss Sustained	Actual Loss Sustained	

PARK CITY MUNICIPAL CORPORATION

Property Summary

Policy Year 1/1/2008 - 1/1/2009

Coverage Description	Lloyds of London Expiring Program 2007-2008	Lloyds of London Renewal Program 2008-2009	% Change
Deductibles			
Flood	$50,000	$50,000	
Earthquake	$100,000	$100,000	
All Other Perils	$10,000	$10,000	
Conditions			
Notice of Cancellation, except 10 Days for Non-Payment	90 Days	90 Days	
Preservation of Property Clause	Yes	Yes	
War and Terrorism Risk Exclusion	Yes	Yes	
Biological or Chemical Materials Exclusion	Yes	Yes	
Micro-organism Exclusion	Yes	Yes	
WEH Asbestos Exclusion	Yes	Yes	
Electronic Date Recognition Exclusion	Yes	Yes	
Boiler Explosion and Machinery Breakdown Exclusion	Yes	Yes	
Radioactive Contamination Exclusion	Yes	Yes	
Subjectivities	N/A	None	
Property Rate	0.0875%	0.0787%	-10%
Annual Premium	**$45,809**	**$48,630**	
Lloyds Global Marketing Fee	**$5,000**	**$5,000**	
Surplus Lines Taxes & Fees(Lloyds Policy Only)	**$2,286**	**$2,413**	
Total Annual Property Premiums & Fees	**$53,096**	**$56,044**	6%

PARK CITY MUNICIPAL CORPORATION

Boiler & Machinery Summary

Policy Year 1/1/2008 - 1/1/2009

Coverage Description	Zurich Expiring Program 2007-2008	Zurich Renewal Program 2008-2009	% Change
Coverages and Limits			
Property Damage Limit	$10,000,000	**$61,792,140**	
Business Income and Extra Expense	$2,000,000	$2,000,000	
Utility Interruption	$1,000,000	$1,000,000	
Newly Acquired Premises	$1,000,000	$1,000,000	
Expediting Expense	$250,000	$250,000	
Spoilage Damage	$250,000	$250,000	
Ordinance or Law	$250,000	$250,000	
Errors and Omissions	$250,000	$250,000	
Brands and Labels	$250,000	$250,000	
Data and Media (Business Income/Extra Expense)	Included	Included	
Coverage Limitations			
Ammonia Contamination	$250,000	$250,000	
Consequential Loss	$250,000	$250,000	
Data and Media (Property Damage)	$250,000	$250,000	
Water Damage	$250,000	$250,000	
Hazardous Substance	$100,000	$100,000	
Fungus, Wet Rot, Dry Rot & Bacteria	N/A	$100,000	
Diagnostic Equipment	Included		
Extended Period of Restoration	30 Days	30 Days	
Valuation Basis			
Property and Spoilage	Replacement Cost	Replacement Cost	
Business Income	Actual Loss Sustained	Actual Loss Sustained	
Deductibles			
Property Damage	$5,000	$5,000	
Business Income, Extra Expense and Utility Interruption	24 Hour Waiting Period	24 Hour Waiting Period	
Conditions			
Notice of Cancellation, except 10 Days for Non-Payment	60 Days	60 Days	
Earth Movement Exclusion	Yes	Yes	
Water Exclusion, except as noted above	Yes	Yes	
Nuclear Hazard Exclusion	Yes	Yes	
War or Military Action Exclusion	Yes	Yes	
Subjectivities	N/A	None	
Annual Premium	**$5,758**	**$6,552**	14%

PARK CITY MUNICIPAL CORPORATION

Crime Summary

Policy Year 1/1/2008 - 1/1/2009

Coverage Description	1/1/04-1/1/05 Travelers	1/1/05-1/1/06 Travelers	% Change
Public Officials Employee Dishonesty - Form O			
(Limit applies per Loss)	$525,000	$525,000	
Money & Securities Inside the Premises	$25,000	$25,000	
Money & Securities Outside the Premises	$25,000	$25,000	
Forgery Alterations	$500,000	$500,000	
Computer Fraud	$500,000	$500,000	
Add Faithful Performance of Duty	Yes	Yes	
Scheduled Treasurer	Separate policy	Separate policy	
Joint Loss Payable Endorsement	Yes	Yes	
State of Utah acting through the Division of Water			
Deductible	$5,000	$5,000	
Number of Employees	400		
Number of Locations	5		
Subjectivities	None		
Annual Premium	**$3,589**	**TBD**	**#######**

City Council Staff Report

Subject: **Continuance of plat amendment 154 McHenry**
Author: **Jan Scott**
Department: **Executive**
Date: **December 13, 2007**
Type of Item: **Legislative**

Summary Recommendations: Because this application has not completed the Planning Commission process, staff is recommending a motion to continue to January 20, 2008. The hearing date was advertised, so it is recommended to open the public hearing prior to making a motion to continue.

City Council Staff Report

Subject:	**Transit Facility Letter of Intent w/ Summit County**
Author:	**Kent Cashel**
Department:	**Public Works**
Date:	**December 13th, 2007**
Type of Item:	**Administrative**

Summary Recommendations:
Authorize the City Manager to execute a Letter of Intent, in a form approved by the City Attorney, to cooperate with Summit County on developing a plan to finance, design and construct an expanded bus storage and maintenance facility to be constructed at 1053 Ironhorse Drive.

Background:
In 2002 Park City began operating transit service for Summit County. Expansion of both County and City service has required the addition of vehicles to the City's bus fleet which now includes 25 -35' buses, 4 -20' cutaway vans and the Main Street trolley. These vehicles are housed and maintained at the Public Works facility on Ironhorse Dr. All available storage bays are now occupied and some equipment is currently stored outside.

Any future expansion of transit service (e.g., Quinn's Junction or the new Park and Ride at Richardson's flat) will require the construction of additional storage and maintenance space before that service can be implemented.

Staff has been working on addressing transit's space needs since January 2006. The timeline below indicates work completed to date.

January 2006 **Facility Needs Analysis**

Staff worked with LSC Transportation Consultants, Inc to conduct a facility needs analysis. This analysis forecasts that over the next 20 years the number of buses in Park City Transit's fleet will grow to 64 (55 buses, 1 trolley and 8 vans). A facility to house and maintain these vehicles would require a parcel of approximately 8 acres.

March 2006 **Joint PW Facility Team Meets**

Initial discussions with Summit County regarding the need for a new transit maintenance and storage facility identified additional City and County needs for expanded Public Works operations facilities.

A site selection team of City and County staff and elected officials began meeting to discuss a strategy for acquiring land for joint uses as follows:

Transit	8 acres
City PW facility	5 acres
County PW facility	3 acres
Solid Waste Transfer Facility.	5 acres
Recycle Utah	2 acres
	23 Acres Total

April 2006 **Available Parcel Analysis**

City and County staff conducted an inventory of parcels that met facility requirements and whose zoning would allow for construction of City and County Public Works facilities. The few parcels that were identified are located on the west and east side of the US-40 corridor from I-80 south to the Summit-Wasatch County line.

May 2006 **Property Negotiations Begin**

The site selection team selects the most promising sites and begins discussions with property owners

February 2007 **Property Negotiations Cease.**

After a series of property appraisals, negotiations, and acquisition strategies fail to secure a suitable property negotiations are ceased. The negotiations failed due to a wide range of circumstances including price, zoning issues, unwilling sellers and pre-existing development agreements.

March 2007 **Staff presents additional site alternatives to Council**
Several additional potential sites explored including the possibility of a facility at Richardson's Flat.

April 2007 **Council directs Staff to not pursue facility at Richardson's Flat**

June 2007	**Staff presents 2 priority strategy to Council** Council authorized Staff to pursue 2 priority strategy: 1. Parcel east of US 40 (identity withheld) 2. Study feasibility of expansion at Ironhorse facility.
July 2007	**Architect begins Ironhorse site feasibility study.** Staff conducted a procurement process, selected FFKR Architects and Council approves contract with the firm to complete a feasibility study.
October 2007	**Feasibility Study completed no progress on other properties.** Feasibility study indicates that Ironhorse facility could be expanded to meet transits twenty (20) year needs. No progress on securing alternative properties. No additional suitable sites identified.
November 2007	**Letter Of Intent drafted** Staff reviews feasibility study with site selection team, selection team identifies Ironhorse facility expansion as the most cost effective solution to meet transit's 20 year space needs. City staff drafts a Letter of Intent (LOI) to formally set forth, in a non-binding agreement, both parties intent to move forward with environmental study, design and ultimately construction of expanded transit at the Ironhorse facility.

Analysis:

<u>Ironhorse facility feasibility Study</u>

The City contracted with FFKR Architects to determine if space, geotechnical, utility and environmental conditions would support the required transit storage expansion. The scope of work for this study included the following:

- Geotechnical evaluation of site to determine suitability for project construction.
- Estimation of volume of soils which will need to be removed from site.
- Concept level drawings of parking garage and expanded storage and maintenance facilities. These drawing should indicate any required shoring required to maintain footings and foundations of existing structures.
- Evaluation of any contaminant levels present in soils at site.
- Utility relocation plan.
- Concept level construction approach\plan that will facilitate ongoing operation of facility during excavation.

- Engineer’s cost estimate for excavation, parking structure and expanded storage and maintenance facilities.
- Concept level construction plan that will enable Public Works operations to continue at the site during excavation and construction.

The study explored four alternatives as outlined in table below:

Scheme	Description	Estimated Cost
1	172 space under ground parking structure (including 34,000 sq’ new bus storage space)	$13.6 million
2	153 space above ground parking structure (including 34,000 sq’ new bus storage space)	$ 9.7 million
3	204 space underground parking structure (including 34,000 sq’ new bus storage space)	$16.3 million
4	108 space above ground parking structure (including 34,000 sq’ new bus storage space)	$ 8.3 million

The study determined that any of the four schemes investigated were feasible. Staff and the selection committee felt that Scheme 4 was the most cost effective approach to meet Transit’s 20 year space needs. It is important to note that the study did not anticipate moving any employee parking off-site (e.g., Richardson’s Flat Park & Ride) Staff will explore that option prior to moving into design phase of Project. Off site parking could significantly reduce project costs associated with structured parking.

<u>Federal Funding Available</u>
$80,000 in Federal Transit Administration funds are in approved grant that will provide funding to complete required environmental work. Once we have completed the required environmental work and the FTA has issued project approval the City\County has secured $1.2 million in current federal appropriations. This amount is adequate to complete facility design and begin construction on the first phase of the project. It is likely additional federal funds will be secured prior to completing design.

<u>Letter of Intent</u>
The attached Letter of Intent provides a <u>non-binding</u> agreement that provides a formal statement of the parties’ intent to work cooperatively to:

- Complete required environmental studies to secure federal financing.
- Complete facility design.
- Secure project financing.
- Resolve property ownership and control questions.

- Resolve capital and operational cost sharing questions.
- Construct facility.

This letter of intent, once executed by both parties, will communicate to the Federal Transit Administration that the parties are serious about moving ahead with the project. Additionally, Staff has found letters of intent very helpful in managing other cooperative efforts in the past.

Staff requests Council authorization to execute the attached letter of intent. Summit County staff will seek similar authorization from its Commission on December 11, 2007. Once both parties have executed Staff will immediately begin working with the Federal Transit Administration based upon the schedule in the table below.

Tentative Project Timeline

Month	Year	Action Item
December	2007	County and City execute Letter Of Intent
January	2008	Formally present project to Federal Transit Administration Region VIII office.
February	2008	1) Procure consultant for project environmental impact study. 2) Joint Transit Advisory Board (JTAB) begins discussions regarding (facility ownership, control and cost sharing)
May	2008	JTAB presents recommendations to County Commission\City Council re: facility ownership, control, financing strategy and cost sharing.
June	2008	Complete environmental work and submit to FTA for review.
September	2008	Secure FTA project approval – provides authority to begin accruing project expense for reimbursement.
October	2008	Submit grant to FTA for facility expansion project.
November	2008	1.) FTA grant approval process complete 2.) Procure architectural services for facility design.
March	2009	Complete architectural design.
April	2009	Determine bid and build schedule. May include phasing strategy to match federal funds flow.

It is important to note that approval of the LOI does not obligate Council to complete this project at this time. Staff will be returning numerous times with grant contracts, environmental contracts, design contracts and construction contracts. Each of these decision points will provide Council with the opportunity to approve or deny continuation of this expansion project.

Department Review:
This report has been reviewed by The City Manager’s Office, The City Attorney’s Office, Budget, Debt and Grants and Public Works. Comments from these departments have been incorporated into this report.

Alternatives:

A. **Approve the Request:** Council could authorize the City Manager to execute the attached Letter of Intent to cooperate with Summit County on an expanded bus storage and maintenance facility to be constructed at 1053 Ironhorse Drive. This is Staff’s recommendation.

B. **Amend the Request:**
Council could modify the language of the attached Letter of Intent and authorize the City Manager to execute the modified Letter of Intent to cooperate with Summit County on an expanded bus storage and maintenance facility to be constructed at 1053 Ironhorse Drive.

C. **Deny the Request:**
Council could deny Staff’s request to authorize the City Manager to execute a Letter of Intent to cooperate with Summit County on an expanded bus storage and maintenance facility to be constructed at 1053 Ironhorse Drive.

D. **Continue the Item:**
Council could choose to continue the item.

E. **Do Nothing:**
Council could do nothing

Significant Impacts
It is important to note that the Ironhorse site is not sufficient to accommodate all of Public Works space needs for the future. Staff will continue to work to identify options to address these space needs. The LOI anticipates an ongoing cooperative search with Summit County to identify and secure additional parcels for future expansion needs.

Recommendation:
Authorize the City Manager to execute a Letter of Intent, in a form approved by the City Attorney, to cooperate with Summit County on developing a plan to finance, design and construct an expanded bus storage and maintenance facility to be constructed at 1053 Ironhorse Drive.

Summit County and Park City Municipal Corporation
Expanded Transit Facility Letter Of Intent

This Letter of Intent is made and entered into this ____ day of _____ 2007, by and between Summit County and Park City Municipal Corporation (PCMC) (jointly referred to herein as the “Parties”).

Purpose: The purpose of this Letter Of Intent (hereinafter referred to as the “LOI”) is to clarify the understanding of Summit County and PCMC regarding cooperation on the study, design and construction of an expanded transit storage and maintenance facility located at 1053 Ironhorse Drive (hereinafter referred to as the Ironhorse Facility). Summit County and PCMC agree to use best efforts to adhere to the concepts, ideas and tasks identified in this LOI. These concepts, ideas and tasks are not binding on the parties.

Whereas, the Parties have cooperatively and collaboratively operated a regional transit system since the year 2002; and

Whereas, the Parties recognize the need for continued cooperation and collaboration on the expansion of a regional transit system; and

Whereas, the Parties have cooperatively and in partnership conducted a transit space needs analysis and acknowledge that the current transit storage and maintenance facility does not have additional storage and maintenance space that is required to expand regional transit services; and

Whereas, it is the intention of both Parties to communicate, interact, and cooperate in good faith to address the storage and maintenance space needs; and

Therefore, the Parties intend to work cooperatively, and in good faith, on the following:

1. The Parties agree that an exhaustive site analysis and search effort has been conducted and that this search effort has identified the following:

    a. The Parties’ need for additional transit operations and maintenance space over the next 20 years has been analyzed and quantified in the study “Park City Transit Operations Facility Programming and Conceptual Site Plan” prepared by LSC Transportation Consultants, Inc. on January 24th, 2006.

    b. The expansion of the current transit maintenance operations and maintenance facility located at the Ironhorse Facility is the alternative that will best meet the Parties’ regional transit needs.

c. The Parties conducted an engineering feasibility study for the expansion of the Ironhorse Facility ("Ironhorse Parking Garage Feasibility Study" prepared by FFKR Architects on October 19, 2007). This study indicated that an above ground parking facility and an expanded bus storage garage (identified in the study, and hereinafter referred to, as "Scheme 4") is feasible and will provide for the Parties' 20 year forecasted need for additional transit storage and maintenance space in a cost effective manner. The Parties agree that Scheme 4 is their preferred alternative for addressing their transit storage and maintenance space needs.

2. The Parties agree to cooperatively begin required Environmental Analysis work for Scheme 4. The Parties agree to utilize Federal Transit Administration (FTA) 5311 financial assistance to finance this environmental work. The Parties will equally share (50%/50%) in any required local funding for these studies (local match). This local match should not exceed $10,000 for each party.

3. The Parties agree to work cooperatively and in good faith to pursue and utilize FTA 5309 Bus and Bus Facility financial assistance(FY2007 awards and later) to complete architecture design and construct Scheme 4. These financing activities will be carried out using the procedures as agreed by the Parties in The Interlocal Transportation Agreement dated February 1st, 2006.

4. The Parties agree that joint design and construction of Scheme 4 will require additional agreements including the following:
    a. Design and construction cost sharing
    b. Facility operations and maintenance cost sharing
    c. Facility ownership and control

   The Parties agree to work cooperatively to draft and execute such agreements in compliance with the Utah Interlocal Cooperation Act.

5. The Parties agree to utilize and authorize the Joint Transportation Advisory Board ("JTAB") established in section 1.3 of the "Interlocal Transportation Agreement" dated 1st day of February 2006 to carry out the following activities related to Scheme 4:
    a. Serve as project steering committee
    b. Make recommendations to the Parties regarding:
        i. Design
        ii. Construction
        iii. Financing
        iv. Required Agreements

6. The Parties agree that the Park City Deputy Works Director will serve as project manager under the direction of the steering committee identified in Section 5 above.

7. The Parties recognize the need for Public Works space in addition to that immediately needed for transit. These needs include but are not limited to space for: salt and other public works material and equipment storage and maintenance, solid waste operations, recycling operations and future transit needs. The parties will continue to work cooperatively to identify these needs, to identify potential locations to meet these needs and to negotiate and finance purchase of these properties.

8. Either party will give advanced notice to the other if a different course of action or decision contrary to the terms herein is contemplated.

IN WITNESS WHEREOF, the parties have duly executed this LOI the day and year written above.

SUMMIT COUNTY

____
Summit County Commissioner

Attest:

____
Summit County Clerk

Approved as to form:

____
Summit County Attorney

PARK CITY MUNICIPAL CORPORATION

____
Dana Williams, Mayor

Attest:

____
Janet M. Scott, City Recorder

Approved as to form:

____
Mark Harrington, City Attorney