



**PARK CITY COUNCIL MEETING
SUMMIT COUNTY, UTAH
February 17, 2022**

PUBLIC NOTICE IS HEREBY GIVEN that the City Council of Park City, Utah will hold its regular meeting at the Marsac Municipal Building, City Council Chambers, 445 Marsac Avenue, Park City, Utah 84060 for the purposes and at the times as described below on Thursday, February 17, 2022. To participate virtually, follow the public meeting information at www.parkcity.org.

CLOSED SESSION - 3:00 p.m.

To Discuss Property, Personnel, Litigation, and Advice of Counsel

WORK SESSION

4:00 p.m. - Review and Adjust City Council Liaison Assignments for 2022

[Council Liaisons Staff Report](#)

[Exhibit A: 2022 Council Liaison List 2.17.22](#)

4:25 p.m. - Review and Approve City Council Protocols

[Council Protocols Staff Report](#)

[Exhibit A: Council Protocols](#)

4:45 p.m. - Utah Open Public Meetings Act (OPMA) and Government Records Access and Management Act (GRAMA) Training

[OPMA Presentation](#)

5:15 p.m. - LGBTQ+ Taskforce Update

[LGBTQ+ Taskforce Staff Report](#)

5:45 p.m. - Break

REGULAR MEETING - 6:00 p.m.

I. ROLL CALL

II. PRESENTATIONS

1. 2022 Legislative Update by Representative Mike Kohler
2. Park City Mountain Resort Mid-Season Recap by Mike Goar, PCMR General Manager

III. APPOINTMENTS

1. Appointment of a Mayor Pro Tem and Alternate for Calendar Year 2022

2. Appointment of Michelle Downard and Paige Thomas-Galvin as Deputy City Recorders for Park City Municipal Corporation
[Deputy City Recorder Staff Report](#)

IV. COMMUNICATIONS AND DISCLOSURES FROM COUNCIL AND STAFF

Council Questions and Comments

V. PUBLIC INPUT (ANY MATTER OF CITY BUSINESS NOT SCHEDULED ON THE AGENDA)

VI. CONSIDERATION OF MINUTES

1. Consideration to Approve the City Council Meeting Minutes from January 27, 2022
[January 27, 2022 Minutes](#)

VII. CONSENT AGENDA

1. Request to Approve the FieldTurf USA Inc. State of Utah Cooperative Contract for the Quinn's Synthetic Turf Field Replacement Project in a Form Approved by the City Attorney in an Amount Not to Exceed \$715,000.00

[FieldTurf Staff Report](#)
[Exhibit A: FieldTurf Proposal](#)

2. Request to Authorize the City Manager to Sign the Professional Services Agreement with Avail Technologies, for the Continuation of Annual Warranty and Support Services, for an Annual Cost Not to Exceed \$124,000 for a Three-Year Term, in a Form Approved by the City Attorney

[Avail Technologies Staff Report](#)
[Exhibit A - Professional Service Agreement with Avail Technologies](#)

3. Request to Authorize the City Manager to Execute a Construction Agreement, in a Form Approved by the City Attorney, with Stratton and Bratt, for the Replacement of the PC MARC Leisure Pool Play Feature in an Amount Not to Exceed \$44,820

[PC MARC Leisure Pool Play Feature Replacement Staff Report](#)
[Exhibit A: Statton and Bratt Quote](#)
[Exhibit B: Play Space Designs](#)

VIII. NEW BUSINESS

1. Library Annual Report FY2021
(A) Public Input
[FY21 Library Annual Update](#)

2. Consideration to Approve the Utah Department of Alcohol Beverage Control (DABC) Request to Extend the Lease of City-Owned Space Located at 460 Swede Alley, Unit 100 for Two Additional Years for an Annual Rent of \$12,637.40
(A) Public Input (B) Action
[DABC Swede Alley Lease Staff Report](#)
[Exhibit A: DABC Lease - Addendum 5](#)
3. Consideration of MuSE PC Use
(A) Public Input
[MuSE PC Proposal Staff Report](#)
[Exhibit A: MuSE PC Proposal](#)

IX. ADJOURNMENT

A majority of City Council members may meet socially after the meeting. If so, the location will be announced by the Mayor. City business will not be conducted. Pursuant to the Americans with Disabilities Act, individuals needing special accommodations during the meeting should notify the City Recorder at 435-615-5007 at least 24 hours prior to the meeting. Public comments can be accepted virtually. To comment virtually, use eComment or raise your hand on Zoom. Written comments submitted before or during the meeting will be entered into the public record, but will not be read aloud. For more information on participating virtually and to listen live, please go to www.parkcity.org.

*Parking is available at no charge for Council meeting attendees who park in the China Bridge parking structure.

Council Agenda Item Report

Meeting Date: February 17, 2022

Submitted by: Michelle Kellogg

Submitting Department: Executive

Item Type: Work Session

Agenda Section: WORK SESSION

Subject:

4:00 p.m. - Review and Adjust City Council Liaison Assignments for 2022

Suggested Action:

Attachments:

[Council Liaisons Staff Report](#)

[Exhibit A: 2022 Council Liaison List 2.17.22](#)



City Council Staff Report

Subject: Council Liaison Assignments
Author: Michelle Downard
Department: Executive
Date: February 17, 2022
Type of Item: Work Session

Summary Recommendation

Review and approve City Council Liaison scope and assignments for 2022 on February 17, 2022.

Analysis

The Mayor and Councilmembers have recently held numerous liaison positions on PCMC boards and commissions, partner organizations, stakeholders, and in support of local non-profits. Liaisons gather important stakeholder input and help to keep fellow councilmembers and staff informed. Liaison assignments mostly include non-voting and observational roles, yet some are formal voting roles.

On [February 3, 2022](#), Council agreed to numerous liaison assignments and to revisit the discussion based upon the 2022 annual retreat, schedules, and time commitments. In response to Council's request, scheduling information has been added to the 2022 Liaison List.

Consider and finalize liaison assignments for 2022.

Exhibit

Exhibit A 2022 Council Liaison List

EXHIBIT A- 2022 Council Liaison List

ENTITY	Type	Primary or Co-Primary Liaison	Alternate	Staff	Schedule
PCMC BOARD					
BOARD OF ADJUSTMENT (BOA)	Observing	"At will" attendance		Gretchen Milliken	5:00 p.m. on the 3rd Tuesday of the month
Board of Appeals	Observing	"At will" attendance		Dave Thacker	Infrequent
Forestry Advisory Board	Observing	"At will" attendance		Mike McComb	10:00 a.m. on the 1st Thursday of the month
HISTORIC PRESERVATION BOARD	Observing	"At-will" attendance		Gretchen Milliken	5:00 p.m. on the first Wednesday of the month
LIBRARY BOARD	Non-voting	Tana Toly	Max Doilney	Adriane Juarez	12:00 p.m. on the 3rd Wednesday of the month
PLANNING COMMISSION	Observing	"At-will" attendance		Gretchen Milliken	5:30 p.m. on the 2nd and 4th Wednesday of the month
PUBLIC ART ADVISORY BOARD	Non-voting	Nann Worel	Becca Gerber	Jenny Diersen	5:00 p.m. on the 2nd Monday of the month
PCMC COMMITTEE					
CITIZENS OPEN SPACE ADVISORY COMMITTEE (COSAC) (attend qtrly)	Non-voting	Max Doilney	Ryan Dickey	Heinrich Deters	Dormant
FRIENDS OF THE FARM	Non-voting			Paige Galvin	5:00 on the 2nd Monday of the month
POLICE COMPLAINT REVIEW COMMITTEE (PCRC)	Non-voting	Jeremy Rubell	Nann Worel	Michelle Downard; Wade Carpenter	Infrequent; 1-2 meetings per year
SPECIAL SERVICES CONTRACT SUBCOMMITTEE	Voting	Becca Gerber	Tana Toly	Jed Briggs; Heinrich Deters; Margaret Plane	3-4 meetings each spring
RDA TAXING ENTITY COMMITTEE	Voting	Nann Worel		Matt Dias	Dormant
RECREATION ADVISORY BOARD (RAB)	Non-voting	Max Doilney	Ryan Dickey	Ken Fisher; Tate Shaw	6:00 p.m. on the 1st Tuesday of the month
LGBTQIA+ TASK FORCE	Non-voting	Jeremy Rubell		Lynn Ware Peek	5:00 p.m. on the 2nd Wednesday of the month
SPECIAL EVENTS	Non-voting	Ryan Dickey	Jeremy Rubell	Jenny Diersen	
HOUSING TASKFORCE	N/A	Becca Gerber		Jason Glidden	
AFFORDABILITY & SOCIAL EQUITY	N/A	Max Doilney		Adrianne Juarez; Ken Fisher; Leah Langan; Lynn Ware Peek	
TRANSPORTATION	N/A	Nann Worel		Sarah Pearce	
AUTHENTIC LOCAL CULTURE	N/A	(previously Tim Henney)		Jenny Diersen; Katrina Kmak; Tate Shaw	
ENVIRONMENTAL LEADERSHIP	N/A	(previously Steve Joyce)		Luke Cartin; Clint McAfee; Heinrich Deters	
JOINT PC/SUMMIT COUNTY ORGANIZATION					
JOINT CITY/COUNTY ECONOMIC TASK FORCE	Non-voting	Becca Gerber		Jonathan Weidenhamer	Dormant
SENIOR CENTER / AGING ALLIANCE	Non-voting	Nann Worel/Tana Toly		Jonathan Weidenhamer	Every Monday and Wednesday
SUMMIT COUNTY ORGANIZATION					
COUNCIL OF GOVERNMENTS (COG)	Voting	Nann Worel	Max Doilney	Matt Dias	Monthly
PARK CITY FIRE SERVICE DISTRICT ADMINISTRATIVE CONTROL BOARD	Voting – 4 year term	Jeremy Rubell	Ryan Dickey	Fire Marshal/Park City Fire District	1st Tuesday of the month
SNYDERVILLE BASIN WATER RECLAMATION DISTRICT	Voting – 4 year term	Ryan Dickey	Jeremy Rubell	Clint McAfee	5:00 on the 3rd or 4th Monday of the month
SUMMIT COUNTY BOARD OF HEALTH	Non-voting	Nann Worel	Staff	Matt Dias	4:00 on Monday once a month
SUMMIT MOSQUITO ABATEMENT DISTRICT	Voting	Staff- Troy Daley		Troy Daley	5:00 on the 2nd Tuesday of every month
PARTNER AGENCY					
COLORADO ASSOCIATION OF SKI TOWNS (CAST)	Voting	Becca Gerber/Max Doilney	Council	Matt Dias	
ENVIRONMENTAL PROTECTION AGENCY (EPA)	N/A	Nann Worel/Jeremy Rubell		Matt Dias	
FEDERAL DELEGATION	N/A	Nann Worel	Rotates depending on issue	Matt Dias	
CENTRAL WASATCH COMMISSION	Voting	Max Doilney	Nann Worel	Matt Dias	3:30 on the 1st Monday of the month
MOUNTAINLANDS ASSOCIATION OF GOVERNMENTS (MAG)	Voting	Nann Worel	Council	Matt Dias	
2030 OLYPMIC BID	N/A	Nann Worel	Max Doilney	Matt Dias	
PARK CITY SCHOOL DISTRICT (PCSD)	Non-voting	Becca Gerber	Max Doilney	Matt Dias; Jonathan Weidenhamer	Infrequently
ROCKY MOUNTAIN POWER/UTAH COMMUNITY OF RENEWABLE ENERGY AGENCY	Voting	Jeremy Rubell	Max Doilney	Luke Cartin	1st Monday of the month
UTAH LEAGUE OF CITIES AND TOWNS (ULCT); LEGISLATIVE POLICY COMMITTEE	Voting	Nann Worel	Max Doilney	Matt Dias	
PUBLIC UTILITIES	Non-voting	Max Doilney	Jeremy Rebell	Clint McAfee; Tom Daley	Quarterly

<u>ENTITY</u>	<u>Type</u>	<u>Primary or Co-Primary Liaison</u>	<u>Alternate</u>	<u>Staff</u>	<u>Schedule</u>
NON-PROFIT					
ARTS & CULTURE DISTRICT Liaison	Non-voting			Jenny Diersen	
BRIGHT FUTURES	Non-voting	Staff - Lynn Ware Peek		Lynn Ware Peek	Monthly
COMMUNITIES THAT CARE	Non-voting	Tana Toly			
EARLY CHILDHOOD ALLIANCE	Non-voting	Nann Worel			
HABITAT FOR HUMANITY	Non-voting	Becca Gerber			
HISTORIC PARK CITY Alliance (HPCA)	Non-voting	Nann Worel	Tana Toly	Jonathan Weidenhamer	8:30 a.m. on the 3rd Tuesday of the month
MENTAL WELLNESS ALLIANCE (Exec - NW)	Non-voting	Nann Worel	Tana Toly	Matt Dias	
MOUNTAIN MEDIATION	Non-voting			Mark Harrington	
MOUNTAINLANDS COMMUNITY HOUSING TRUST	Non-voting	Becca Gerber	Ryan Dickey	Jason Glidden	
NATIONAL ABILITY CENTER	Non-voting	Ryan Dickey			
PARK CITY AREA LODGING ASSOCIATION	Non-voting	Tana Toly	Becca Gerber	Jonathan Weidenhamer	1st Wednesday of the month
PARK CITY CHAMBER/BUREAU BOARD OF DIRECTORS	Non-voting	Tana Toly	Ryan Dickey	Matt Dias	Monthly
PARK CITY HISTORICAL SOCIETY	Non-voting	Tana Toly		Aiden Lillie	8:30 a.m. on the 2nd Thursday of every other month
PARK SILLY SUNDAY MARKET	Non-voting			Jenny Diersen	One Sunday each month (*additional meetings during contract discussions)
PC TOTS	Non-voting	Becca Gerber			
PC UNIDOS	Non-voting	Staff- Lynn Ware Peek	Nann Worel		12:00 p.m. on the 1st Thursday of the month
PEACE HOUSE	Non-voting			Rhoda Stauffer	Infrequent
PROSPECTOR SQUARE	Non-voting	Tana Toly	Ryan Dickey	Matt Dias; Jonathan Weidenhamer	Monthly
RECYCLE UTAH	Non-voting	Becca Gerber	Max Doilney	Luke Cartin	Monthly
MOUNTAIN TRAILS FOUNDATION	Non-voting	Tana Toly		Heinrich Deters	
SKI UTAH	Non-voting	Max Doilney	Becca Gerber	Matt Dias	
SUMMIT LANDS CONSERVANCY	Non-voting			Heinrich Deters	8:00 a.m. on the 3rd Tuesday of the month

Council Agenda Item Report

Meeting Date: February 17, 2022

Submitted by: Michelle Kellogg

Submitting Department: Executive

Item Type: Work Session

Agenda Section: WORK SESSION

Subject:

4:25 p.m. - Review and Approve City Council Protocols

Suggested Action:

Attachments:

[Council Protocols Staff Report](#)

[Exhibit A: Council Protocols](#)



City Council Staff Report

Subject: Council Protocols
Author: Michelle Downard
Department: Executive
Date: February 17, 2022
Type of Item: Work Session

Summary Recommendation

Review, discuss and consider approving updated City Council 2022 Protocols.

Analysis

The Open and Public Meetings Act (OPMA), [Utah Code § 52-4](#), regulates public bodies when conducting business and hosting public meetings. City Council Protocols have been used for well over a decade to supplement OPMA and help implement [Park City Code 2-4-5, Relationship of City Council to Administrative Service](#). The City Council Protocols also outline best practices for communication of requests, questions, liaison responsibilities, and responding to emails from the public.

Overall, the City Council Protocols are intended to provide clarity and establish consistent processes for navigating communications involving the Council, community, and staff. Each year, the City Council's Protocols are reviewed during the annual retreat. Most recently, this occurred on [June 17, 2021](#). Amendments included recognition of how the Council Protocols supplement OPMA and Park City Code and implementing an auto-reply to Council_Mail@parkcity.org. Council also discussed but did not adopt a protocol to establish a rotation schedule for reoccurring public engagement opportunities.

Department Review

The Legal and Executive Departments have reviewed this report.

Exhibit

A Park City Council Protocols



City Council Protocol – Operating Guidelines

The Open and Public Meetings Act (OPMA), [Utah Code § 52-4](#), regulates public bodies when conducting business and hosting public meetings. Council Protocols supplement OPMA and help implement [Park City Code 2-4-5, Relationship of City Council to Administrative Service](#). The protocols outline best practices for communication, provide clarity and establish consistent processes for navigating communications involving the Council, community, and staff.

Protocol 1: Council Requests for Simple Information

- a) City Council should direct requests to City Manager, Deputy City Manager, or Managers – with cc to City Manager.

Protocol 2: Council Requests for Research on Topic

- a) City Council should direct requests to City Manager, Deputy City Manager, or Managers – with cc to City Manager.
- b) If the project will require more than 2 hours of staff time, City Manager will determine whether the request requires City Council direction. If so, City Manager will seek informal or, if necessary, formal direction from the City Council.

Protocol 3: Resident Request of Council for Service

- a) Refer requests directly to City Manager, Deputy City Manager, or Managers – with cc to City Manager.
 - 1) If the service request is within the scope of the current service policy, the issue will be addressed as soon as possible.
 - 2) If the service request is for a new or significantly expanded service, the issue will be referred to the City Council for direction (consistent with Protocol 4, Council Request to Place an Item on the Agenda).
 - 3) If the Council Member wishes to be notified of the outcome, the Council Member will request notification at the time of the referral.
- b) If an email question is sent to the Mayor or designee and City Council, the Mayor or designee may respond to the individual.
- c) If the Mayor and City Council receive a staff-related issue, the Mayor will forward the email to the City Manager, with a cc to Human Resources.
- d) The Mayor and Council may agree to implement an auto-reply to Council_Mail@parkcity.org email acknowledging receipt of public input.
- e) If the Mayor and City Council receive an email that is public input on an issue, the Mayor or designated City Council member may also respond on behalf of the Mayor and Council, and send it to the appropriate staff person with a cc to the City Manager and to City Council.
- f) In addition to the Mayor or designee's email response, a City Council Member may also respond directly to the individual.

Protocol 4: Council Request to Place an Item on the Agenda

- a) A Council Member may request an item be placed on a future agenda during “Communications and Disclosures” or direct the request to the Mayor or City Manager directly. While Council may not discuss the merits of an issue not on the agenda, they may indicate support for a future discussion.
- b) Revisit the request at a later meeting for direction from the City Council.

Protocol 5: Council Questions on Agenda Item

- a) Make request directly to City Manager, Deputy City Manager, appropriate Manager, or the author of the staff report- with cc to City Manager.

Protocol 6: Communication to Council from Staff

- a) For material responses, communications should be sent to the Mayor and City Council as a group.
- b) If Staff is requesting a response in less than 24 hours, Staff must notify Council via phone call or text.
- c) If Staff sends packet additions fewer than 24 hours before a Council meeting, Staff must notify Council via text or phone call.
- d) Staff should include all Council Members, Mayor and City Manager in communications when related to a policy discussion.

Protocol 7: Staff Contact with Council

- a) Listen, but do not attempt to solve the problem.
- b) City Council and staff should refer employee issues to the appropriate supervisor, Human Resources Department or City Manager as needed.
 - 1) City Council and staff should inform City Manager of referral and basic situation.
 - 2) City Manager may be asked to explain the situation to the Council.

Protocol 8: Liaison Responsibilities

- a) City Council determines its liaison responsibilities.
- b) Keep fellow Council Members informed.
- c) When a liaison sees an agenda item for a board or commission where the liaison may be asked for an opinion or vote on a potentially controversial item the liaison will use best efforts to contact the other Council Members before the meeting to gather input.
- d) A liaison’s opinion or guidance may be misinterpreted by others. It is important that others understand a liaison is providing information, not a policy position or direction. Liaisons should act with utmost care to avoid misinterpretation.
- e) If a liaison appears to have made a policy decision, it should be discussed with the Mayor. If the situation involves the Mayor, the discussion should be with the Mayor pro-tem.
- f) In the case where a new liaison is needed or a liaison would like to exchange roles with another Council Member, Council will discuss and determine the new liaison assignment as a group.
- g) A liaison may speak on behalf of Council in the context of a board or commission meeting when a policy decision has already been made by the Council.

Protocol 9: Spokesperson for City

- a) Generally, the Mayor or a member of the City Council speak for the City (as opposed to expressing their opinion as an elected official) only when they have been asked by the Mayor, on behalf of the Council, to do so.

- b) For major events or issues, including emergency situations, the City Manager or designee is the City's Spokesperson unless or until the Council designates a Spokesperson.

Protocol 10: Alerts

- a) The Mayor and Council can expect alerts on significant issues by text or phone.

Protocol 11: Conflict Among Council

- a) Try to work it out among yourselves.
- b) If you see a conflict continuing, provide feedback on a one-on-one basis, and help each other.
- c) Mayor will serve as mediator. If Mayor is part of the conflict, other Council Members should strive to assist with conflict resolution.
- d) It is not the role of the City Manager or other staff to resolve conflict between elected officials.

Protocol 12: Closed Session

- a) Closed session is only for the purposes in [Utah Code](#), City Code, or common law.
- b) Council to stay on topics for which the meeting was closed.
- c) Strategy or discussion during a closed session are not formal decisions. Formal decisions must be voted on in a public meeting.

Protocol 13: Council Meetings

- a) If late to meeting, call ahead of time. If unable to attend, inform the City Manager.
- b) Mayor presides over council meetings; if the Mayor is absent, the Mayor pro-tem presides.
- c) Mayor and Council should notify the City Manager and City Attorney of disclosures and recusals prior to meetings when possible, and mention the disclosure during Comments.
- d) Council should request to speak and the Mayor will recognize the individual by name.
- e) When there is anticipated public input or a public hearing, the order during an agenda item should be:
 - 1) Staff presentation;
 - 2) Technical questions from City Council. Council should refrain from policy comments until after the public hearing or public input is received;
 - 3) Open public hearing or input, take public comments, close public hearing or input;
 - 4) Policy related questions and discussion from Council;
 - 5) Call for a motion and a second. Once made, the Mayor will call for discussion or comment on the motion specifically; and
 - 6) Formal vote or summary of direction from Council.

Protocol 14: City Manager Updates

- a) City Manager provide a bi-weekly written updates on organizational issues.
- b) The City Manager will provide Monthly Budget Reports to City Council.

Protocol 15: Council Budget & Travel

- a) City Manager distributes approved budget after City Council adopts.
- b) City Manager monitors and informs Council of available funds.
- c) Council will be informally polled if travel is unanticipated.

Protocol 16: E-Communication

- a) All communications among and to Council Members should be courteous and professional. Under state law, a record is public unless there is an exception making it non-public.
- b) Some communications may be labeled private, protected, privileged, or otherwise identified as non-public. These communications may not be shared outside of City government. Communications requesting or receiving legal advice are privileged and confidential and may not be shared outside of City government.

Council Agenda Item Report

Meeting Date: February 17, 2022

Submitted by: Michelle Kellogg

Submitting Department: Executive

Item Type: Staff Report

Agenda Section: WORK SESSION

Subject:

4:45 p.m. - Utah Open Public Meetings Act (OPMA) and Government Records Access and Management Act (GRAMA) Training

Suggested Action:

Attachments:

[OPMA Presentation](#)

An aerial photograph of a mountain town, likely Park City, Utah, covered in a thick layer of snow. The town's buildings, mostly multi-story structures with dark roofs, are densely packed in the valley. Snow-covered evergreen trees are scattered throughout the landscape. In the background, steep, snow-covered mountain slopes rise under a clear, pale blue sky. The overall scene is serene and wintry.

Annual Training

Open and Public Meetings Act

Utah Code §§ 52-4-101 to -305

Intent

OPMA's stated goal is to ensure public bodies deliberate and act openly.



OPMA

MEETINGS of a
PUBLIC BODY are open
to the public, unless an
EXCEPTION is available
under the Act that allows
the meeting to be
CLOSED.



Meetings

MEETING:

- Convening of
- At least a quorum
- To discuss, receive comments, or act on a matter over which the public body has jurisdiction or advisory power.



Meetings

INCLUDE:

- Retreats
- Workshops
- Field trips
- Electronic meetings



DO NOT INCLUDE:

- Chance meetings
- Social gatherings
- When no quorum is present



Public Body

PUBLIC BODY:

Any local administrative, advisory, executive, or legislative body which:

- Consists of two or more persons;
- Spends, distributes, or is supported by tax money;
- Authority to make decisions about the public's business (this includes advisory boards or groups).



Public Notice

Requirements of the Open and Public Meetings Act

Notice

MUST BE:

- **Posted** at the principal office or where the meeting will be held.
 - (Except for electronic meetings without an anchor location.)
- **Published** on the Utah Public Notice website.



Notice

Notice must be provided:

- **Annually** for regularly-scheduled meetings.
- **24 hours in advance** of each meeting.



(Special rules for emergency meetings.)



Meeting Records

Requirements of the Open and Public Meetings Act

Meeting Records

OPEN MEETINGS

- Recording
- Written minutes
 - Date, time, and place.
 - Members present and absent.
 - Substance of all matters proposed, discussed, or decided.
 - Record of each vote.
 - Name of anyone who provided testimony or comments and a summary of the comments.
 - Other information requested.
- Written minutes are the official record.





Closed Meetings

Closed Meetings

Meetings of a public body are open to the public, unless an **EXCEPTION** is available under the Act that allows the meeting to be **CLOSED**.



Closed Meetings

A meeting may be closed **only to discuss specified topics**, including:



- An individual's character, competence, or health.
- Pending or reasonably imminent litigation.
- Certain matters regarding the acquisition or sale of real property.
- Deployment of security personnel, devices, or systems.
- Criminal misconduct investigations.
- Advice of legal counsel.

— Closed Meeting Procedures —

- Open meeting with quorum present.
- 2/3 vote to approve closing the meeting.
- Publicly announce and record in the minutes the reasons for closing the meeting.

— Closed Meeting Procedures —

- May only discuss the specified matters that allowed the meeting to be closed.
- An ordinance, resolution, rule, regulation, contract, or appointment may not be approved during the closed portion of a meeting.



Closed Meeting Records

- Recording
 - Exception to recording requirement if discussing:
 - A person's character, competence, or health.
 - Deployment of security personnel, devices, or systems.
- Written minutes optional
- Protected Records under GRAMA.

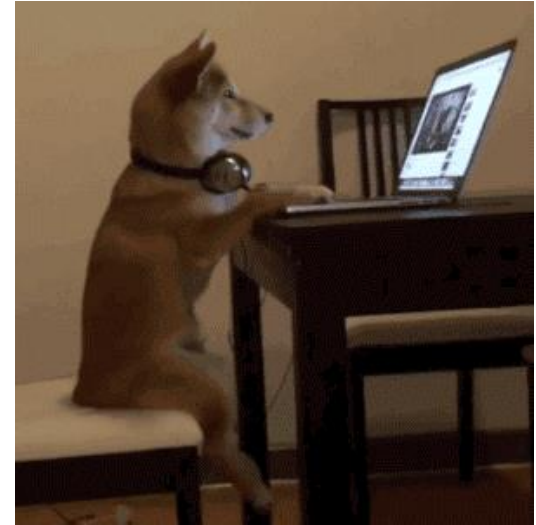


Electronic Meetings

New rules in 2021

Types Of Electronic Meetings

- Resolution or Rule governing use of electronic meetings.
- **Electronic Meetings WITH Anchor Location**
 - Provide anchor location for the public to join.
- **Electronic Meetings WITHOUT Anchor Location**
 - Chair must make determination.
 - Notice must detail the Chair's determination, facts supporting Chair's determination, and include information on how to connect.
 - Determination renewed every 30 days.





Public Comment or Participation

Public Comment or Participation

- Public must be allowed to come and watch public meetings, but there is no requirement to allow them to comment, unless the meeting is a public hearing.
- Public has a right to record meetings if they can do so without disrupting the meeting.
- Public comments about items not on agenda.
 - At discretion of the Chair, comments may be discussed during open meeting if not on agenda.
 - No FINAL ACTION if not on agenda.



Disruption of Meeting

- Acceptable to keep people on point.
- Disruptions at meetings do not have to be tolerated.
- May **remove** an individual from the meeting if:
 - **Willfully disrupts** and
 - The orderly conduct of the meeting is **seriously compromised**.





Consequences of Violating the Act

Consequences of Violating the Act

- Open Meetings - Any final action taken in a meeting that is in violation of certain open-meeting provisions of OPMA is voidable by a court.
- Closed Meetings - It is a class B misdemeanor to knowingly or intentionally violate the closed meeting provisions of OPMA





Questions?

PARK CITY

1884

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Council Agenda Item Report

Meeting Date: February 17, 2022

Submitted by: Michelle Kellogg

Submitting Department: Community & Public Affairs

Item Type: Staff Report

Agenda Section: WORK SESSION

Subject:

5:15 p.m. - LGBTQ+ Taskforce Update

Suggested Action:

Attachments:

[LGBTQ+ Taskforce Staff Report](#)

City Council Work Session

Subject: LGBTQ+ Taskforce Update
Author: Lynn Ware Peek, Special Projects
Department: Community Engagement
Date: February 17, 2022
Type of Item: Work Session

Summary

This report highlights the accomplishments and goals of the recently formed LGBTQ+ Taskforce. The LGBTQ+ Taskforce plans to make a presentation to City Council on its work over the past year and facilitate a discussion on future opportunities and initiatives.

Background

Park City Municipal and members of the community continue to convene and work collaboratively on advancing a number of social equity initiatives. One major initiative is the LGBTQ+ Taskforce, started in 2020 to examine and improve PCMC practices towards equity and inclusion. In doing so, we aim to become more inclusive, modern, and outward-facing with efforts to engage our LGBTQ+ community in the future of Park City and the entire Wasatch back.

The Taskforce was generated by both the LGBTQ+ community and Park City Municipal's mutual desire to formalize a network for education, awareness, support, advocacy, and events. The only formal network at the same time in the Wasatch Back was the GSA (Gay-Straight Alliance) at Park City High School and a Park City Pride Facebook page. Collectively, we felt community awareness and a desire for additional inclusivity and engagement were desired throughout the greater Park City area.

Updates and Accomplishments:

With financial support from PCMC, the LGBTQ+ Taskforce hired a facilitator to guide the Taskforce towards a purpose statement, formation of committees, and a strategic plan - communications, planning, events, and organizational structure. The following purpose statement was created as a result:

We exist to create, maintain, and enliven inclusivity for the LGBTQ+ community in order to help the Wasatch Back become a place where all people feel like they belong.

The following initiatives were recently accomplished or underway:

- Doubled PCMC's previous MEI score. The goal was to improve the Human Rights Campaign (HRC) [2021 Municipal Equality Index](#) (MEI) score, which is

compiled after an lengthy application process in which both municipal and community-wide practices are examined for LGBTQ+ community inclusion and awareness. This was a considerable undertaking and puts us at or near the top of all municipality's in the entire State of Utah.

- Held monthly meetings and recruited approximately 30 new members of our organization. The meetings achieve additional inclusivity and education. They also create support and awareness of the LGBTQ+ community in other nearby communities.
- Collaborated with Encircle, Equality Utah, Communities that Care, Mountain Mediation, Park City Community Foundation, Park City Pride Facebook group, the GSA at Park City High School, Wasatch County LGBTQ+ leadership, and the LGBTQ+ community.
- Raised the first Pride Flags in the state during Pride month (June).
- Held events with Park City Pride and Encircle (Youth LGBTQ Advocacy at Wasatch High School).
- Created the first LGBTQ+ parade float in the 4th of July parade.
- Created a model structure f that can be replicated in the formation of other groups around the state that operate under a social equity umbrella.
- Planning an event on February 26 during Gay Ski Week.

Questions for Council

How can we best keep the Council and community up to date, included, and involved with our ongoing efforts and accomplishments?

- We compile monthly reports regarding our work on Social Equity initiatives but worry administrative updates might appear self-promotional.
- Do you have a preferred method of reporting our progress?
 - Staff communications?
 - Work sessions?
 - Published reports?
- Should the LGBTQ+ Taskforce continue to operate under the City or should we attempt to propel its growth to encompass Summit County and the entire Wasatch Back?
- Specific requests:
 - The Taskforce recommends lighting the McPolin Barn during Pride month with rainbow colors.
 - The Taskforce recommends the consideration of forming an official PCMC Human Rights or multicultural Commission to further solidify our community's support for diverse groups in Park City. We have researched other Commissions, such as the following:
 - Boulder, Colorado – [Human Relations Commission](#)

- Bend, Oregon – [Human Rights and Equity Commission](#)
- Somerville, Massachusetts – [Multicultural Affairs Commission](#)
- Asheville, North Carolina – [Human Relations Commission](#)
- Salt Lake City, Utah – [Human Rights Commission](#)
- Are there any other policies, programs, or initiatives that you want us to consider or research to further social equity and support inclusion in Park City?

Exhibits

[Exhibit A – Staff Communication on MEI/Social Equity-12-9-22](#)

Council Agenda Item Report

Meeting Date: February 17, 2022

Submitted by: Michelle Kellogg

Submitting Department: Executive

Item Type: Staff Report

Agenda Section: PRESENTATIONS

Subject:

2022 Legislative Update by Representative Mike Kohler

Suggested Action:

Attachments:

Council Agenda Item Report

Meeting Date: February 17, 2022

Submitted by: Michelle Kellogg

Submitting Department: Executive

Item Type: Staff Report

Agenda Section: PRESENTATIONS

Subject:

Park City Mountain Resort Mid-Season Recap by Mike Goar, PCMR General Manager

Suggested Action:

Attachments:

Council Agenda Item Report

Meeting Date: February 17, 2022

Submitted by: Michelle Kellogg

Submitting Department: Executive

Item Type: Staff Report

Agenda Section: APPOINTMENTS

Subject:

Appointment of a Mayor Pro Tem and Alternate for Calendar Year 2022

Suggested Action:

Attachments:

Council Agenda Item Report

Meeting Date: February 17, 2022

Submitted by: Michelle Kellogg

Submitting Department: Executive

Item Type: Staff Report

Agenda Section: APPOINTMENTS

Subject:

Appointment of Michelle Downard and Paige Thomas-Galvin as Deputy City Recorders for Park City Municipal Corporation

Suggested Action:

Attachments:

[Deputy City Recorder Staff Report](#)



City Council Staff Report

Subject: Appointment of Deputy City Recorders
Author: Michelle Kellogg
Department: Executive Department
Date: February 17, 2022
Type of Item: Administrative

Summary Recommendation:

Staff recommends City Council support the City Manager in formally appointing Michelle Downard and Paige Thomas-Galvin as Deputy City Recorders of Park City Municipal Corporation.

Background:

[Park City's Municipal Code, Section 2-4-6](#), prescribes the approval process for the City Recorder position. In addition, Section 2-4-6 also allows the City Manager to appoint a deputy or deputies who serve under the supervision of the City Recorder and have authority to act in the absence of the City Recorder.

As a result of a recent turnover in the Executive Office, the City Manager wishes to appoint the following members of the Executive team, Michelle Downard and Paige Thomas-Galvin, as deputies to the City Recorder. Downard has been with the Executive Department for several years and is in a good position to successfully fulfill the duties and obligations of the City Recorder, if required. Thomas-Galvin has recently been hired and there is every confidence that she can fulfill this role as well.

Analysis:

Though code does not specifically require the Manager to come before Council to request support for this type of an appointment, previous city managers have taken this step to avoid confusion. By appointing Downard and Thomas-Galvin, the Executive Department will continue to ensure the effective and efficient operations of City Council and various other PCMC departments. It will also ensure that staff is prepared and equipped to handle intermittent and/or unexpected absences of the City Recorder.

Department Review:

Legal and Executive

Council Agenda Item Report

Meeting Date: February 17, 2022

Submitted by: Michelle Kellogg

Submitting Department: Executive

Item Type: Minutes

Agenda Section: CONSIDERATION OF MINUTES

Subject:

Consideration to Approve the City Council Meeting Minutes from January 27, 2022

Suggested Action:

Attachments:

[January 27, 2022 Minutes](#)



PARK CITY COUNCIL MEETING MINUTES - DRAFT
445 MARSAC AVENUE
PARK CITY, SUMMIT COUNTY, UTAH 84060

January 27, 2022

The Council of Park City, Summit County, Utah, met in open meeting on January 27, 2022, at 4:45 p.m.

SWEARING IN CEREMONY

Swearing In Ryan Council Member Dickey as Council Member of the Park City Council for a Term Expiring January 4, 2024:

Ryan Dickey was appointed by the Council at the last meeting to fill the remaining term left vacant when Mayor Worel was elected. He was sworn-in by Michelle Kellogg, City Recorder.

WORK SESSION

Discuss a Request for Proposal (RFP) for the Development of Indoor Pickleball Courts and Expanded Fitness at the PC MARC along with Master Planning Services for Outdoor Pickleball Courts and Other Amenities at the Park City Sports Complex:

Ken Fisher, Recreation Manager, presented this item and noted when recreation fell short on programs, the public would voice concern. The Council and staff currently heard that voice regarding a lack of pickleball courts. Fisher reviewed the history of recreation facilities in Park City and noted the recreation facility usage was on track to be at record levels this year.

Regarding aquatics, it was the intention with this RFP to evaluate the pool systems to ensure they met code. He hoped to construct indoor and outdoor pickleball courts, increase MARC space, and develop a master plan for the 16-acre parcel by the Ice Arena. When conceptual designs were completed, public outreach would be performed.

Council Member Gerber asked why the bubble install and removal cost varied so much. Fisher stated the crew came from Minnesota, which was costly, but the last two years he petitioned help from City staff, and the cost was \$74,000, which was very high.

Council Member Toly asked if Fisher wanted to construct a permanent structure over the outdoor pool. Fisher indicated some options he looked at included glass structures as well as structures where the roof opened. Council Member Toly asked what else

1 could be installed at the sports complex in addition to pickleball. Fisher commented
2 some thought was given to bike facilities, such as asphalt pump tracks, and he noted
3 the bike park at Trailside was beyond capacity. Council Member Toly asked if pool
4 access would be expanded as well. Fisher indicated the RFP would evaluate the
5 recreational needs. Council Member Toly asked for the current maximum occupancy of
6 the pool. Fisher indicated it was 275 people including the pool deck.

7
8 Council Member Dickey asked if Fisher considered looking at targets for acquisitions for
9 resources instead of building new green field and gave the example of the City
10 repurposing the building which was now the MARC. He asked to review the MARC
11 Master Planned Development (MPD) and asked if there was an MPD for the Quinn's
12 parcel, to which Fisher affirmed. Council Member Dickey asked to see that as well.

13
14 In response to Council Member Rubell's question, Fisher stated the study of the MARC
15 was to look at the facility use overall, including the addition of pickleball courts. Council
16 Member Rubell requested a wholistic approach to amenities needed and stated this was
17 a finite resource and he wanted it to be a comprehensive evaluation to be fair to all. He
18 asked what investment was being put into the RFP. Fisher stated he met with the
19 architect who designed the MARC to get an idea of what a possible bid would be, and
20 noted the work he was asking for included conceptual designs and feedback from the
21 public. That process would determine how much the project would cost. Council
22 Member Rubell stated the Gilmore parcel should be master planned very well for long
23 term solutions. He also asked to see a strong focus on the revenues from the different
24 activities and thought it was useful to see the growth of a sport compared to the revenue
25 it brought versus the taxpayer money that went into it. He noted the pickleball club
26 offered to partner with the City on some of the development of pickleball courts and he
27 requested an update on that status.

28
29 Council Member Gerber asked if there was space in the current footprint at the MARC
30 for additional pickleball courts. Fisher stated there was no extra space, but four courts
31 were added in the gym.

32
33 Council Member Doilney stated sometimes projects started as a simple idea, and then
34 the project would expand and the cost would get out of control. He knew there was a
35 deficiency in pickleball courts, but he didn't want to expand too much from there.

36
37 Council Member Toly asked what Phase 2 of the MARC MPD proposed and why it
38 didn't get done. Fisher stated it included squaring off the back of the MARC building,
39 which was what was being proposed now, as well as adding indoor aquatics and a
40 restaurant. It was not constructed because it never became a priority.

41
42 Council Member Rubell stated the RFP for pickleball needed to be balanced with other
43 priorities. The Council was in favor of moving forward with the RFP.

Discuss 2022 Legislative Policy Platform:

Matt Dias, City Manager, presented this item and explained the City used a legislative platform to guide efforts during the Legislative session. There were many meetings staff had with other entities and at the Capitol between Council meetings and this guideline gave staff to flexibility to represent the City while communicating with Council on issues as soon as possible. He noted some organizations didn't have guidelines and others had more restrictive guidelines than what was presented tonight.

Council Member Rubell asked if potential modifications could be made to prioritize building and maintaining community over tourism or commercial activity. Dias stated that would be determined by Council. Council Member Doilney thought the guidelines inherently included that because Council tried to maintain flexibility while maintaining control. In Utah, the way the message was delivered was critical. It might look a little different in the guidelines, but the City was always community focused. Mayor Worel noted adding the equity guidelines a few years ago really helped.

Council Member Toly related she used to go to the Legislative sessions with the Chamber and Utah Tourism Board and she indicated these other entities followed the guidelines strictly and she thought they did a good job with issues important to the community on a tourism basis. She noted the Historic Park City Alliance (HPCA) and Restaurant Association followed alcohol and the DABC closely, which were not related to all groups in town, but focused on groups that brought in a lot of revenue. Council Member Rubell clarified the guidelines would inform the City's lobbyists where the City would land regarding policy. It was good that it worked well in the past, but he asked if the guidelines should be amended further to show what the City's platform was.

Council Member Gerber stated the City treaded carefully at the Legislature and was always advocating for local control. Dias indicated when the equity item was added, staff worked with a Council member to refine the language and this could be brought back at next week's meeting. The Council favored Dias working with Council Member Rubell on amending some language in the Legislative Policy regarding authentic local community.

Dias distributed a handout of legislative bills the City was watching. He reviewed Mayor Worel and Council Member Doilney were attending the Legislative Policy meeting each Monday with Dias and there were many staff involved in other committee meetings on a regular basis during this session who would be advocating for the best interests of the City.

Discuss Winter Olympic Special Events Programming:

Jonathan Weidenhamer, Economic Development Manager, and Jenny Diersen, Special Events Manager, presented this item. Weidenhamer indicated it was important to remember the 2002 Olympics and the legacy it left in the City. The Beijing Olympics

1 was beginning next week and the City would have events associated with those games.
2 He reviewed Olympic anniversary events that took place one year, 10 years, and 16
3 years after the 2002 games.

4
5 Diersen explained private events would be held during the month of February at the
6 Kimball Terrace. There would be an Olympic Store operating all month as well. A big-
7 screen TV would be installed on Main Street that would show the games and Olympic
8 related content. On February 12th, the Utah Olympic Legacy Foundation would have a
9 community event at the Bob Wells Plaza, with athlete meet-and-greets and games. In
10 February and March, there would be winter sports classes. There would also be a
11 parade hosted by the Youth Sports Alliance. Weidenhamer reminded Council of the joint
12 meeting with the City Council, County Council, Utah Olympic Legacy Foundation
13 (UOLF) and the Salt Lake City/Utah Olympic Committee to talk about the possible 2030
14 or 2034 Olympic bid.

15
16 Mayor Worel asked when a final event schedule would be set and noted she wanted to
17 invite Representative Kohler and Senator Winterton. Diersen stated the schedule would
18 be set as soon as tomorrow. Weidenhamer noted security would be finalized as well.

19
20 Council Member Toly thought the event at the Bob Wells Plaza would be big and asked
21 if it would spill out into Swede Alley. Diersen stated she didn't think it would spill out and
22 she did not anticipate traffic impacts, but plans were being made to ensure smooth
23 traffic flow on that street. Council Member Gerber was excited to see the events and
24 reflected on the amazing atmosphere surrounding the 2002 Olympic games. Council
25 Member Dickey thought the planned activities were great and asked that estimates for
26 attendance at Bob Wells Plaza get triple checked.

27
28 Council Member Rubell requested in the future that staff note the impact in the
29 administrative approval, such as the number of lost parking spots. He asked if the noise
30 from the outdoor events on Main Street would be echoing in the residential areas.
31 Diersen stated the majority of events had minimal noise impacts. The event at Bob
32 Wells was in early afternoon and it would have a noise waiver. The YSA parade would
33 include a local concert and would also have a noise waiver, but it would end at 7:00
34 p.m. Council Member Rubell stated the City should be sensitive if the noise was going
35 on nightly for four or five weeks straight. He also asked if the City would be providing
36 services for these events, and what the associated fees were. Diersen stated she would
37 discuss services for the YSA parade at a future meeting, and noted staff had authority
38 to approve events with services under \$10,000. Council Member Rubell was excited the
39 focus would be on the events and not on the commercial aspect of the Olympics.

40
41 Council Member Doilney heard excitement for activation around the Olympic games. He
42 commented that for most his life, the community revolved around the Olympics. This

was an opportunity to show the residents the passion behind the games. He hoped there was energy for another Olympics in the future.

REGULAR MEETING

I) ROLL CALL

Attendee Name	Status
Mayor Nann Worel Council Member Ryan Dickey Council Member Max Doilney Council Member Becca Gerber Council Member Jeremy Rubell Council Member Tana Toly Matt Dias, City Manager Margaret Plane, City Attorney Michelle Kellogg, City Recorder	Present
None	Absent

II) COMMUNICATIONS AND DISCLOSURES FROM COUNCIL AND STAFF

Staff Communications Reports:

1. Bicycle and Pedestrian Plan Community Engagement and Timeline:

2. Incentives for Members of Public Bodies:

Council Questions and Comments:

Mayor Worel noted the staff communications reports in the packet materials.

Council Member Rubell indicated the Events staff did a great job over the Martin Luther King, Jr. (MLK) weekend and previous weekends for traffic mitigations. He also noted the many events focused on social equity and thanked staff for those. He reviewed it was cheaper to take Uber or rent a car to get from the airport to Park City and he wanted to discuss that further in a couple weeks as Transportation was discussed. He thought there was interesting information in the Bicycle and Pedestrian Plan survey and noted at least half of survey respondents would get out more if certain aspects were improved. He asked to discuss that further at a future meeting.

Council Member Gerber welcomed Council Member Dickey and noted she was anxious to get to work and have good conversations as a Council.

Council Member Dickey stated he was happy to be on the Council and work on the big issues facing the City. He was excited and humbled to be chosen from among the well qualified applicants.

Council Member Toly congratulated Council Member Dickey. She thanked all the applicants for putting their names in for consideration and encouraged them to apply to serve on the other City boards. She attended the Legislature for Local Officials Day and met the legislators representing Park City. She noted there were many youth councils there and noted there was not a youth council in Park City. Council Member Gerber indicated staff and educators tried to form a youth council many times, but it wasn't successful. She believed it needed to be student led, and students were involved in so many things. Council Member Toly thought it would be great to see students getting involved in local politics.

Council Member Doilney welcomed everyone to the Council, and indicated it was interesting to see the different perspectives already shown. He related there was frustration with the levels of service in the community, specifically from the City's resort partners. He attended the Colorado Association of Ski Towns (CAST) meeting virtually today, and he asked the other resort communities if they had frustration with the ski partners as well, to which they noted that there was frustration. He thought the partners needed to step up to the plate and there needed to be specifics outlined. He thanked the people who worked on the mountain for accommodating the number of skiers and related everyone needed to work together to be better.

Mayor Worel indicated February 9th and 10th was the Council Retreat and the Council was comfortable attending in person in the Santy Auditorium to accommodate social distancing.

III) PUBLIC INPUT (ANY MATTER OF CITY BUSINESS NOT SCHEDULED ON THE AGENDA)

Mayor Worel opened the meeting for any who wished to speak or submit comments on items not on the agenda.

Hannah Kearney, a three-time Olympian, stated the welcome home parade after her participation in the 2010 Olympics was great. She represented the Youth Sports Alliance and supported the parade planned after the Olympics this year.

Emily Fisher, Youth Sports Alliance Executive Director, stated she looked forward to presenting the full details of the upcoming parade to the Council in the near future. Staff had been very helpful as YSA planned the event and it was great to see Olympians and para-Olympians inspiring future generations.

Mayor Worel closed the public input portion of the meeting.

IV) CONSIDERATION OF MINUTES

Consideration to Approve the City Council Meeting Minutes from January 6, 7, and 11, 2022:

Council Member Gerber moved to approve the City Council meeting minutes from January 6, 7, and 11, 2022. Council Member Doilney seconded the motion.

RESULT: APPROVED

AYES: Council Members Dickey, Doilney, Gerber, Rubell, and Toly

V) NEW BUSINESS

1. Consideration to Approve Resolution 01-2022, a Resolution Adopting a Temporary Tent and Outdoor Structure Approval Process to Aid Business Operations During COVID-19:

Michelle Downard, Resident Advocate, Gretchen Milliken, Planning Director, and Dave Thacker, Building Official, were present for this item. Downard stated the purpose of this resolution was to facilitate making accommodations for private properties to erect tents for business operations during COVID-19. This was a temporary resolution and would expire in May.

Milliken stated businesses needed outdoor facilities for social distancing during the pandemic and this would speed up the approval process. Thacker stated there would be a fire inspection before approval was given. The tents would be required to meet fire standards. Staff tried to get approvals within 24 hours of the requests.

Council Member Doilney asked if there was feedback from the 27 tents that were put up last year. Thacker stated there was a lot of cooperation last year. There was great compliance as the tents were checked mid-year, and the businesses were grateful to have that option. Milliken indicated a clause was added for this resolution that the Planning Director and the Chief Building Official could terminate the approval for bad performance. Council Member Doilney was pleased this was such a success.

Council Member Toly asked if there were noise or other complaints from attendees or residents, to which Thacker stated he didn't receive any complaints. Council Member Toly asked if there was a time limit for people being in the tents. Thacker stated businesses had to work and comply with the DABC. Council Member Toly asked if the City waived all the fire permit fees. Thacker indicated this year the fees would not be waived and would fund the inspections being performed.

1 Downard explained the resolution waived the requirement for a Conditional Use Permit
2 (CUP), but the Fire Permit and associated fee would be required. Council Member
3 Rubell asked about recovering costs for reviewing the criteria and also asked how staff
4 determined when a permit was revoked. Thacker stated the permit allowed staff to know
5 where on the site the tent would be. If it was put up in the wrong location, for example,
6 staff would educate the business first, before pulling the permit. Council Member Rubell
7 asked if a 24-hour turn around commitment was necessary since there was not the
8 crisis as last year. He wanted to make allowance for staff's busy schedule. He asked if
9 the tents would increase a business' occupancy or just spread it out. Thacker reviewed
10 occupancy load depended on square footage, number of restrooms and exiting
11 locations and size. He didn't think the occupancy would increase by much. Council
12 Member Toly stated this could allow businesses to double their business.

13
14 Council Member Rubell asked if there were height restrictions for tents. Thacker stated
15 the size limitations would limit the height. There was no specific number, but if there
16 were concerns, he would work with Planning to ensure there were no code violations.
17 Council Member Rubell asked to add height compliance to other area zoning to the list
18 of review criteria.

19
20 Council Member Dickey clarified that businesses were allowed to have tents anyway, so
21 this was streamlining the process. He thought if there continued to be no issues, the
22 streamlining could be standardized. He also thought staff could determine if it needed to
23 go to Planning Commission or could just be approved administratively. Council Member
24 Rubell asked for clarity since he thought tents could only be up for a maximum of two
25 weeks under normal circumstances. Milliken confirmed tents should only be up for two
26 weeks and this was a temporary situation, or a CUP. Council Member Dickey felt the
27 CUP process would be an even higher administrative commitment and it should be
28 looked at further.

29
30 Mayor Worel asked how many tents were anticipated this year. Thacker noted seven
31 businesses had inquired so far. Council Member Toly asked if this included the glass
32 structures on some restaurants, to which Thacker affirmed. Milliken stated there were a
33 number of businesses that had gone through the process and applied for CUPs to
34 install the glass compartments, so she did not think there would be that many requests
35 for the temporary tent structures. Council Member Gerber thought the tents provided a
36 greater sense of security for patrons and the City shouldn't make it more complicated
37 than it needed to be. Council Member Rubell asked how many of the structures
38 expanded capacity versus shifted capacity.

39
40 Mayor Worel opened the meeting for public input. No comments were given. Mayor
41 Worel closed the public input portion of the meeting.
42

Council Member Rubell thought some businesses would spread the capacity out and some would increase the capacity. As the City looked for this to be a permanent feature, it was important to add checks and balances and stops to know why it was being done.

Council Member Doilney moved to approve Resolution 01-2022, a resolution adopting a temporary tent and outdoor structure approval process to aid business operations during COVID-19. Council Member Gerber seconded the motion.

Council Member Rubell proposed to amend the motion to include language on height restrictions, staff review time so staff wasn't on the hook for something the City didn't collect fees, and something that clarified the City's ability to deny the permit. Council Member Dickey clarified staff would have discretion to amend the height policy.

Council Member Doilney amended the motion to approve Resolution 01-2022, a resolution adopting a temporary tent and outdoor structure approval process to aid business operations during COVID-19 with an amendment to include language that staff had discretion to amend the height policy, additional language on staff review time so staff wasn't on the hook for something the City didn't collect fees on, and clarification on the City's ability to deny the permit. Council Member Toly seconded the amended motion.

RESULT: APPROVED

AYES: Council Members Dickey, Doilney, Gerber, Rubell, and Toly

2. Consideration to Approve Ordinance No. 2022-03, an Ordinance Approving the Founders Place Subdivision Located at 3267 West Deer Hollow Road, Parcel 00-0021-01977 in Park City, Wasatch County, Utah:

Rebecca Ward, Assistant Planning Director, presented this item with Bill Fiveash and Carter Lamb, who represented the project. Ward reviewed the property was located in Park City, Wasatch County, and was annexed into the City. She reviewed the subdivision would be constructed in three phases. She stated there would be some retaining walls on the steep slopes and many conditions of approval were set. Ward explained the subdivision had to be approved by Wasatch County and Park City. The parking spaces proposed exceeded the number required by the City because it was the minimum number required by Wasatch County. She also reviewed the affordable housing requirement approved by the Council at last week's meeting.

Ward explained in 1995 it was determined that Deer Hollow Road, which led to the development, would be disconnected. In 2017, the parties evaluated the road and agreed it could stay in place. The Planning Commission proposed the following condition: the use of Deer Hollow Road could be expanded if the Founders Place owners and the HOA didn't object.

1 Council Member Toly stated there were two entrances to the subdivision and she asked
2 if the construction vehicles would enter the subdivision through Mayflower or Queen
3 Esther, to which Fiveash stated all construction would go from the Wasatch County
4 side. Council Member Toly asked about delivery vehicles for the restaurant, to which
5 Fiveash stated it depended on the size of the vehicle. Council Member Toly stated
6 construction impacts would be good to have for any development going forward. She
7 asked if the open space would be public, to which Ward indicated only the trails were
8 public.

10 Council Member Rubell reviewed that the staff report discussed potential soil problems,
11 and asked how they would know if there were soil problems. Ward stated the study
12 reported no soil problems, but because the development was located in an area with
13 soil issues, that language was added in case there were any surprises. Council Member
14 Rubell didn't know how effective having 1.5 stalls for parking or having ride shares was.
15 He noted some properties in that area had shuttles to help with parking issues and
16 asked what was planned if the proposed parking solutions were not adequate. Fiveash
17 thought the Flagstaff Development Agreement was well thought out and transportation
18 from the area was well crafted. There was language for certain shuttle requirements
19 depending on the number of residents. This would be new to the Deer Crest area, but
20 he had faith in the system. For actual parking, he indicated there had never been a
21 parking problem. Council Member Rubell asked if the restaurant facilities were for onsite
22 guests only, to which Fiveash affirmed. Council Member Rubell asked what the benefit
23 was in having four-story wall heights. Fiveash stated Deer Crest needed access to the
24 ski run and there was a necessary bump out, which would require a higher facade.
25 Council Member Rubell asked if the original intent included public access to a ski
26 academy. Fiveash indicated the school concept was removed from Deer Crest and was
27 moved to the plan for Jordanelle.

29 Council Member Toly indicated a notice was mailed to property owners within 300 feet
30 of the property and asked if that was normal. Ward stated it was the requirement for the
31 permit, but the Deer Crest HOA sent out letters as well, so outreach was greater than
32 the minimum requirement. There was some public input as a result of the outreach.
33 Council Member Rubell asked if parking was assigned to the units. Fiveash stated the
34 parking was unassigned and it would only be limited to one spot per unit if parking
35 issues arose.

37 Council Member Dickey asked if there were plans to expand the Deer Hollow Road
38 access in the future. Ward stated this issue went before the Planning Commission in
39 2017 and they recommended the road stay private. There were Planning Commission
40 discussions on what the area would look like at some point in time, but they didn't want
41 to rule on anything at this time. Fiveash felt Deer Crest would never be interested in
42 opening that road, but he didn't have any objection to the proposed condition.

1 Mayor Worel opened the public hearing. No comments were given. Mayor Worel closed
2 the public hearing.

3
4 Council Member Rubell stated the affordable units were expensive at 80% AMI, and he
5 requested two assigned parking spots for those units. He also requested no satellite
6 parking that would have to be accessed through the Queen Esther side of the
7 development. Regarding Deer Hollow Road, he hoped Founders Place would be kept
8 out of the bargaining process. He also didn't think there was a compelling reason to put
9 a four-story retaining wall where people were recreating.

10
11 Council Member Toly agreed with assigning two parking spaces for affordable housing.
12 Council Member Gerber clarified that affordable housing was set at an average of 80%
13 AMI, but was not set at 80%. Fiveash stated Glidden made sure it was compliant.
14 Council Member Rubell asserted the rent was set at 80% AMI. Fiveash stated the units
15 would be operated by the HOA and the most likely scenario would be that employees
16 wouldn't pay rent, but the units would be part of the employee compensation. At some
17 point, the rent would be capped at 80% AMI, and the HOA would find someone to rent
18 them who qualified at that level.

19
20 Responding to Council Member Rubell's comment, Fiveash indicated the ski run was
21 mitigated with additional earth built up and landscaping. Council Member Gerber was
22 not in favor of changing the parking requirements since the City wanted to minimize
23 people driving and noted parking studies had been performed. She favored no overflow
24 parking on Royal Street. Council Member Rubell commented he was looking at the
25 future, since another development currently used a shuttle. Council Member Toly stated
26 the employees would live there year-round and they deserved two parking spots.
27 Fiveash stated the proposed required parking amendment would discourage developers
28 from constructing affordable housing and he didn't think it was good policy. He thought
29 people who bought the condos deserved the same parking options as the employees
30 who lived there. Council Member Doilney stated the discussion was based on the slim
31 chance that parking would be full in that subdivision and he didn't think parking would be
32 abused. He felt the height issue was not a problem either. He was more concerned with
33 building community and these issues did not concern him.

34
35 Council Member Doilney moved to approve Ordinance No. 2022-03, an ordinance
36 approving the Founders Place Subdivision located at 3267 West Deer Hollow Road,
37 Parcel 00-0021-01977 in Park City, Wasatch County, Utah with the recommended
38 Condition of Approval proposed by the Planning Commission regarding Deer Hollow
39 Road. Council Member Gerber seconded the motion.

40
41 Council Member Toly asked if owners could keep their car parked in the lot year-round.
42 Fiveash noted the HOA would not allow an owner to keep a car in the lot if the owner
43 rented out the unit.

Council Member Rubell stated the affordable housing obligation was only six units and he didn't think assigning two parking spots would adversely affect the property. Council Member Gerber stated these were small units, and she didn't think parking would be an issue. Council Member Dickey indicated there was nowhere else for the owners to park. The development would offer one parking spot to affordable and the tenant would consider that when taking the unit. On the wall height issue, he deferred to the Planning Commission. He supported the no satellite parking. Regarding the Deer Hollow Road issue, he didn't think Deer Crest would make that road public, but he could amend the condition to tighten it up a bit. He suggested the wording to reflect Founders Place owners individually or collectively taking action and he thought Legal could look at that.

Council Member Toly asked if the restaurant employees could park onsite, to which Fiveash affirmed and asserted the restaurant would be small and could be run by two employees. Council Member Toly asked if nightly rentals would be managed by independent property managers, and if so, would they be parking onsite to clean the units. Fiveash stated there was a CCR requirement that owners could only rent their units through an approved property manager. Ward stated the parking study took employee demand for the site into consideration. Fiveash stated he wasn't opposed to employees having two cars, but he didn't want to assign parking.

Council Member Gerber requested to add another amendment of not allowing satellite parking. Margaret Plane reviewed there was a motion to approve with the proposed condition of approval recommended by staff and there was a suggested amendment to tighten up language on the proposed condition. She asked if Founders Place owners referred to the developer until it was transferred to the HOA, to which Ward affirmed. It was indicated that it referred to the HOA as long as it retained any units, and it would have no veto ability. Fiveash stated it would cover the individual unit owners and the HOA.

Council Member Dickey asked to amend the motion that referred to the developer and to take out owners as individuals or to have the City Attorney provide language and include "in a form approved by the City Attorney" in the motion.

Council Member Doilney moved to approve Ordinance No. 2022-03, an ordinance approving the Founders Place Subdivision located at 3267 West Deer Hollow Road, Parcel 00-0021-01977 in Park City, Wasatch County, Utah with the recommended Condition of Approval proposed by the Planning Commission regarding Deer Hollow Road. Council Member Gerber seconded the motion.

RESULT: FAILED

AYES: Council Members Doilney and Gerber

NAY: Council Members Dickey, Rubell, and Toly

Council Member Gerber moved to approve Ordinance No. 2022-03, an ordinance approving the Founders Place Subdivision located at 3267 West Deer Hollow Road, Parcel 00-0021-01977 in Park City, Wasatch County, Utah with the amended condition of approval regarding Deer Hollow Road, including language that referred to the developer and to take out owners as individuals in a form approved by the City Attorney, and a condition of approval prohibiting satellite parking. Council Member Doilney seconded the motion.

RESULT: APPROVED

AYES: Council Members Dickey, Doilney, Gerber, and Toly

NAY: Council Member Rubell

3. Consideration to Approve Ordinance No. 2022-04, An Ordinance Approving the Founders Place Phase I Condominium Plat Located at 3267 West Deer Hollow Road, Parcel 00-0021-01977 in Park City, Wasatch County, Utah:

Rebecca Ward, Assistant Planning Director, stated this subdivision would affect Phase One/Lot One of the Subdivision Plat and would consist of 32 market rate units and four affordable units

Mayor Worel opened the public hearing. No comments were given. Mayor Worel closed the public hearing.

Council Member Dickey referred to Plat Note 12 and noted employee units were included from the total residential area. He asked if the note should say excluded from the total residential area, to which Fiveash affirmed. Ward stated after Council approved the plat, it would be amended in the review process. Council Member Rubell asked if the condo plat depended on the subdivision plat, to which Plane affirmed.

Council Member Gerber moved to approve Ordinance No. 2022-04, an ordinance approving the Founders Place Phase I Condominium Plat located at 3267 West Deer Hollow Road, Parcel 00-0021-01977 in Park City, Wasatch County, Utah. Council Member Doilney seconded the motion.

RESULT: APPROVED

AYES: Council Members Dickey, Doilney, Gerber, and Toly

NAY: Council Member Rubell

4. Consideration to Approve the Professional Service Contract Not to Exceed \$174,000 with Specific Performance, Inc. in a Form Approved by the City Attorney's Office, for Assistance with the Homestake Lot Development and Furthering the Community's Affordable Housing Goals:

Jason Glidden, Affordable Housing Manager, presented this item and reviewed the history of the Homestake Lot. He stated the City's affordable housing goal was to have

1 800 affordable units by 2026. The City entered into a public/private partnership on this
2 property for affordable housing. Staff looked for a firm with experience in negotiations to
3 help with the development of the project. Glidden stated Peter Tomai, Specific
4 Performance Inc. (SPI), had extensive experience and his was the only response to the
5 RFP. Tomai stated this development had been discussed for a long time. The location
6 was ideal for affordable housing; being close to transit, work, and trails.

7
8 Council Member Gerber asked Tomai about his experience working on affordable
9 housing projects. Tomai responded there was a lot of intricacy with affordable projects
10 including federal funding. With the affordable projects he worked on across the country,
11 he dealt with the issues that arose with redevelopment and creating affordable housing.
12 His staff also had a lot of experience working on affordable projects in the western U.S.

13
14 Council Member Rubell asked to see the qualifications of all involved. He also stressed
15 the need to do this project quickly. He knew the development was looking to apply for
16 federal grants and asked if the federal money would prohibit the City from including
17 waterfall provisions on the development. Glidden affirmed the developer was applying
18 for grants and explained the timeline for the planning so they could apply for the federal
19 funds. There were restrictions on the AMI levels as a result of federal funds. Council
20 Member Rubell stated he would like to reserve the units for Park City residents and then
21 Summit County residents after that. Glidden stated there would be flexibility on those
22 requirements, and the federal money was based on AMI levels for the most part.

23
24 Council Member Rubell thought this RFP would require SPI to monitor the project. He
25 read the City had a \$50,000 exposure and asked what made that number so high.
26 Glidden stated staff worked on a number of projects right now so having this company
27 help on the Homestake project would free up staff time to work on other projects. Tomai
28 stated the exposure to the MOU was \$50,000, which would be a reimbursement feature
29 for due diligence work to advancing the project. The City would only reimburse the
30 developer if it didn't agree with the developer and cancelled the project. He thought it
31 was important to have a lease/partnership agreement for the development, and a
32 development agreement with the developer to deliver a product the City wanted - one
33 that would serve the City for a long time with its affordable housing needs. The scope of
34 this contract was to get those agreements in place and not leave a gap in the
35 agreements.

36
37 Council Member Toly stated there needed to be an overall plan for that area. She
38 wanted to know where the people who parked in that location now would be parking
39 once the development was completed. She wanted the consultant to look at the whole
40 area and not just this one section. She also didn't think people should live next to a
41 power grid, and thought it wasn't good for people's health. She knew affordable housing
42 was needed and it was needed fast, but she didn't think this was the right area.

1 Council Member Dickey asked if federal funding limited the use of waterfall provisions.
2 He thought a decision needed to be made on the funding, if that was a priority for the
3 City. He also heard from the public the process should be more transparent with the
4 bids, but he thought that would cause problems with future bids, and suggested staff
5 could be more transparent with the winning bid. He noted there were high power
6 transmission lines around many residential areas and used the Solamere Subdivision
7 as an example. He acknowledged it was a real consideration.

8
9 Mayor Worel opened the meeting for public input. No comments were given. Mayor
10 Worel closed the public input portion of the meeting.

11
12 Council Member Gerber explained the history of the Homestake Lot prior to the City
13 purchasing it. She also thought the need for affordable housing was great and that was
14 a good area, in spite of concerns about the power grid. Many wanted an overall plan,
15 but the City needed to start somewhere. She wanted SPI to work with local affordable
16 housing groups to look at the waterfall provisions that could be in play, best practices
17 that worked for this area, and take in the needs of the workforce community with this
18 development. Glidden stated the subcontractor would be focused on the affordability of
19 the project. In addition, the City had contracts with the Kimball Arts Center for 40
20 parking spots and with Big D Construction to park 150 construction vehicles in order to
21 keep them away from Empire Avenue. Generally, the parking at Homestake was about
22 20 cars. Council Member Toly indicated it was an overflow lot for the restaurants.

23
24 Tomaii stated he would be coordinating with local entities on the Utah Private Activity
25 Bonds underwritten by the State, as well as design features to make it attractive for the
26 residents. There would be studies about the electric and magnetic fields (EMF) and if
27 there were conditions that were out of range or a risk, appropriate shielding would be
28 installed or the project would not go forward. With regard to the overall planning,
29 everyone was focused on the global plan from Park Avenue to Bonanza to Prospector
30 Square. In looking at this particular parcel, it was an island surrounded by immovable
31 properties and it wasn't critical to connecting other pieces of the plan.

32
33 Council Member Doilney reviewed that Council talked about public/private partnerships
34 and how they helped the City reach its goals. This contract was exactly that, and SPI
35 would help staff reach the City goals. He suggested if there was doubt now, this should
36 be discussed at the retreat.

37
38 Council Member Toly didn't think this contract should be approved now in case Council
39 decided to go a different direction at the retreat. Council Member Rubell asked why the
40 City was paying now to get to the next step. He thought the developer was coming back
41 with proposed numbers and drawings and that was their job. If Council saw and
42 approved those results, then it would be time to seek help. Glidden stated conceptual
43 drawings would be shown to Council in the next few weeks, so Tomai was needed now.

Council Member Rubell proposed a modified motion to delay this contract until Council knew what plan the developer was proposing. Council Member Toly agreed and stated she needed more information before hiring this firm. Council Member Gerber stated staff could do the Homestake work themselves, but they couldn't do anything else but this project. Hiring SPI would help staff with their work on this project. Dias stated this project had been discussed for a long time. He reviewed that Council made a land use decision to work with these entities on the Homestake project and to go fast. He noted the City didn't have the expertise in-house, and it had good success looking to the private sector for help. If this Council decided it did not have the same priority, the City did not have to enter into this contract, but there could be repercussions because this firm would move on to another project.

Council Member Rubell stated things would be clearer in two or three weeks since there were drawings that would be presented and the upcoming retreat. He suggested authorizing one month of services and by that time, Council would be better informed and could make a decision to proceed or not. Dias stated if Council determined in the next few weeks they didn't want to go forward, the City would not have to pay the full amount. Tomaii confirmed the contract was for services rendered, and it could terminate the contract at any time.

Council Member Doilney moved to approve the professional service contract not to exceed \$174,000 with Specific Performance, Inc. in a form approved by the City Attorney's Office, for assistance with the Homestake Lot Development and furthering the community's affordable housing goals. Council Member Dickey seconded the motion.

RESULT: APPROVED

AYES: Council Members Dickey, Doilney, and Gerber

NAY: Council Members Rubell and Toly

VI) ADJOURNMENT

With no further business, the meeting was adjourned.

Michelle Kellogg, City Recorder

Council Agenda Item Report

Meeting Date: February 17, 2022

Submitted by: Michelle Kellogg

Submitting Department: Sustainability

Item Type: Staff Report

Agenda Section: CONSENT AGENDA

Subject:

Request to Approve the FieldTurf USA Inc. State of Utah Cooperative Contract for the Quinn's Synthetic Turf Field Replacement Project in a Form Approved by the City Attorney in an Amount Not to Exceed \$715,000.00

Suggested Action:

Attachments:

[FieldTurf Staff Report](#)

[Exhibit A: FieldTurf Proposal](#)

City Council Staff Report



Subject: Synthetic Turf Field Replacement at the Quinn's Fields
Author: Matthew A. Twombly, Ken Fisher, Jarren Chamberlain
Department: Sustainability, Recreation and Public Works
Date: February 17, 2022
Type of Item: Administrative – Award of Contract

Recommendation

Consider approval of a FieldTurf USA Inc. State of Utah Cooperative Contract to replace the synthetic turf field at the Quinn's Recreation Complex, not to exceed \$715,000.

Background

The multi-purpose (rectangular sports with a softball outfield overlay) synthetic turf field at the Park City Sports Complex at Quinn's Junction (Quinn's Fields) was installed in the autumn of 2005. The synthetic turf field was intended to be used to extend the use into the shoulder seasons, use during bad weather or extreme conditions, or for the down time of the natural turf due to maintenance, repair, or other issues. The synthetic turf has a lifespan of approximately seven to ten (7-10) years. Although Park City winters reduce the amount of year-round play on the fields, the City does remove snow for field sports during the winter, adding to the wear and tear.

Since the Park City Sports Complex opened, the artificial turf field has been key to the success of city operations related to youth sports and local play. In addition to recreational and high school sports, there are approximately 12 stakeholder groups representing over 75 youth sports teams in Park City. The artificial turf field is the only field available as backup when weather and sunset create scheduling issues.

The artificial turf field has been actively used for significantly longer than recommended before replacement, which impacts the quality of the field and local play. Safety of the playing surface is already becoming an issue and organizations and rentals prefer the use of other fields over the artificial turf for that reason. However, there are instances where this field is the only option, forcing teams and players onto a surface that is currently in need of replacement.

Analysis

Staff inquired to area facilities where synthetic turf fields have been installed and FieldTurf was the manufacturer most often installed. FieldTurf also has a regional office in Salt Lake City. Staff contacted representatives from other facilities, including Park City School District, Basin Recreation, and the University of Utah who have FieldTurf synthetic fields. Each gave excellent reviews of the FieldTurf product. FieldTurf has also installed synthetic turf fields at Utah Valley University, Wasatch High School, Salt Lake Community College, Utah State, Alpine School District, and several other fields in the Mountain West.

Fortunately, FieldTurf is already an approved vendor with a State of Utah Cooperative Contract. There is one other State approved synthetic turf vendor, however they do not have a regional office in the mountain west and did not provide any references to installations in the region.

The State of Utah Cooperative Contract program was established to help provide efficiency and best value to the Utah procurement process. Having vendors certify through the contracts program under the State Division of Purchasing leverages the total buying power of the eligible users statewide providing the best pricing and terms for products and services. Selecting a vendor from the Cooperative Contracts program allows eligible users (political subdivisions (PCMC)) to make a purchase and maintain the City's standard procurement process.

Usually, a project of this scale would be required to go through the formal bidding process and award the lowest bidder. The Park City Contracting and Purchasing Policy exempts certain contracts for goods and services from formal bidding. Purchases from companies approved to participate in Utah State Division of Purchasing and General Services agreements and contracts are not subject to competitive bidding requirements. In addition, the FieldTurf state contract fulfills the indemnity and insurance provisions required by PCMC's standard contract language.

In July of 2021, staff met with FieldTurf and, in addition to replacing the multi-purpose field, also proposed replacing the existing clay softball infield with synthetic turf. Replacing the clay infield will reduce maintenance and allow for play during inclement weather. FieldTurf proposed a not to exceed estimate of \$715,000 (Exhibit A). Based on this estimate recreation staff applied for a Recreation, Arts & Parks Grant (RAP Tax) for the field replacement. The grant request for \$715,000 was approved by the Summit County Council on November 29, 2021 and the funds have been received by PCMC.

The FieldTurf proposal/agreement comes with an eight (8) year Third Party Pre-Paid warranty. In addition, there is a maintenance agreement for eight years, with one visit per year, where FieldTurf will deep groom the field, check seams, check high wear areas, and help get the field ready for spring/summer season. The "high traffic" areas, 1st, 2nd, 3rd bases, pitcher's mound and batter's box, also come with a one year warranty. Money is budgeted in the FieldTurf proposal for up to three replacements over eight years for the batter's box and pitcher's mound, which are the areas not included under the eight year warranty.

Staff recommends a \$715,000 State Cooperative Contract with FieldTurf. We anticipate replacement to take place immediately after school ends in June, 2022. Installation should take approximately three weeks.

Funding

The city received a \$715,000 RAP Tax Grant to fund the replacement of the artificial turf field at the Park City Sports Complex.

Attachments

Exhibit A – FieldTurf USA Inc. proposal



THE ULTIMATE
SURFACE EXPERIENCE

To: Ken Fisher
Park City, UT

March 1st, 2022

Re: BUDGET PROPOSAL FOR THE SYNTHETIC GRASS FIELD AT QUINNS SPORTS PARK – PARK CITY

1-Fieldturf offers to supply and install the following artificial in-filled grass surface at Quinn's Sports Park. Numbers are made in accordance with the estimates that are estimates and may exceed or decrease in price. This offer includes the supply and installation of the artificial in-filled grass surface for approximately 140,000 square foot field where **Soccer and other sports** can be played & the additional base work for existing "dirt" area. FieldTurf is a registered General Contractor in the State of Utah and is on the Utah State Contract!

This Utah State Contract Price includes:

1. Mobilization & Management
2. Performance Bond
3. Consultation with Existing Engineer to help with design for replacement of existing dirt area.
4. Supply and Installation of 4oz geo-tech fabric.
5. Installation of curb and 2" x 4" nailer around perimeter of new turf area.
6. Allowance for Installation of perimeter drain and tie into existing perimeter.
7. Connection of perimeter drain in new area to existing perimeter drain in existing synthetic turf.
8. Installation and Laser grade 4" layer of base stone**
9. Installation of 2" of finish rock and laser grade**
10. Laser grade 2" layer of finish stone & re-grade existing base.
11. 1 Year warranty on base work
12. Approximately 140,000 Square feet of FieldTurf product.
13. Installation of the artificial in-filled grass surface System
14. Colors to be determined from standard stock colors.
15. FieldTurf Maintenance Equipment – Groomright & Sweepright
16. FieldTurf Maintenance agreement for 8 years. One visit per year for eight years.
17. An 8 Year Third Party Pre-Paid warranty on synthetic turf.

GRAND TOTAL: \$715,000.00

The Price does not include:

1. Any applicable taxes. A valid Tax Exempt Certificate must be received prior to contract signing.
2. Any work outside of proposed field area unless noted above
3. Any removal of existing buildings or light poles,
4. Custom Colors
5. Soil stabilization
6. Soils testing
7. Allowances/contingencies
8. Supply or installation of suitable access to the project area for required material and equipment.
9. Site security
10. Relocation, Supply or Installation of scoreboards
11. Supply or installation of any athletic equipment not listed above or below.
12. Relocation, removal of existing utilities not limited to electrical conduits, power poles, water, sewer, gas, cable, telephone, storm drainage, irrigation heads, lines, valve boxes or wiring of same.
13. Relocating of electrical conduits, removal and reinstallation of wiring inside the field area to, scoreboards, power outlets unless noted above.
14. Clearing of brush, removal of concrete not related to the field construction
15. Landscaping, planting of trees, bushes, shrubs or irrigation to these items.
16. Installation of concrete sidewalks, walkways, bleachers, curbs not listed above
17. Installation of concrete paving flatwork or asphalt paving not related to the field construction

Rocky Mountain FieldTurf

Utah Tel.: (801) 448-5656 Colorado Tel: (303) 775-6773 Website: <http://www.fieldturf.com>



THE ULTIMATE
SURFACE EXPERIENCE

18. Installation of any electrical, mechanical or plumbing associated with the field construction area note listed above.
19. Installation of irrigation system, backflow devices and testing of such.
20. Supply or installation of any booster pumps, water meters, water meter boxes for the irrigation system.
21. Capping off or locating existing irrigation main lines or removal of irrigation heads.
22. Scoreboards, audio and video or wiring of same.
23. Permits and fees
24. Silt fencing
25. Tree removal, installation or protection
26. Construction sign

The Price is valid for a period of 30 days. The price is subject to an increase without notice in the event that there is an increase in raw materials, freight, or direct expenses in manufacturing or installing the grass surface.

Thank you again for your interest in FieldTurf USA, Inc. We are anxious to move on to the subcontracting phase and are available to answer any questions or address any concerns you may have. We look forward to working with you and welcoming you into our FieldTurf family of superior artificial performing turf systems.

Rocky Mountain FieldTurf

Utah Tel.: (801) 448-5656 Colorado Tel: (303) 775-6773 Website: <http://www.fieldturf.com>

Council Agenda Item Report

Meeting Date: February 17, 2022

Submitted by: Michelle Kellogg

Submitting Department: Transit

Item Type: Work Session

Agenda Section: CONSENT AGENDA

Subject:

Request to Authorize the City Manager to Sign the Professional Services Agreement with Avail Technologies, for the Continuation of Annual Warranty and Support Services, for an Annual Cost Not to Exceed \$124,000 for a Three-Year Term, in a Form Approved by the City Attorney

Suggested Action:

Attachments:

[Avail Technologies Staff Report](#)

[Exhibit A - Professional Service Agreement with Avail Technologies](#)



City Council Staff Report

Subject: Professional Services Contract for continuation of Annual support for Transit Dispatching Software and Hardware
Author: Franklin Williams and Kim Fjeldsted
Department: Transportation / Transit
Date: 02-17-2022
Type of Item: Administrative

Recommendation

Authorize the City Manager to sign the Service Provider/Professional Services Agreement with Avail Technologies, for professional services related to the continuation of annual warranty and support services, for an annual cost not to exceed \$124,000. The contract is a three-year term, in a form to be approved by the City Attorney. This is budgeted in FY2022 as a continuation of services from FY2021.

Background and Analysis

Park City Transit acquired Dispatching software via an RFP in 2011. Avail Technologies was awarded the contract and Park City Transit has maintained an annual support contract every year since. This contract is a continuation of that agreement and service.

Avail provides Park City Transit a “CAD/AVL” system, which stands for Computer Aided Dispatching/Automated Vehicle Location. This system facilitates dispatching operations for transit systems, provides information for users such as bus schedules, routes, and real time bus location. Considerable financial investment has been made in both hardware and software in the current system. This support contract assures the appropriate maintenance and functionality of equipment including:

- Access to 24/7 support services
- Increased system monitoring by Avail
- Warranty/RMA service for hardware for the life of the contract
- Software upgrades
- Continued integration of our Optibus scheduling software.

Funding

The project cost is funded via the budgeted Transit Contract Services account for the term of the contract. The payments are quarterly for a three-year term.

Department Review

This report has been reviewed by Transit, Legal, Budget, and the City Manager

Attachments

Exhibit A – Professional Services Agreement with Avail Technologies

PARK CITY MUNICIPAL CORPORATION SERVICE PROVIDER/PROFESSIONAL SERVICES AGREEMENT - CYBER

This Service Provider/Professional Services Agreement - Cyber (the "Agreement") is made and entered into as of this _____ day of _____, 2022, by and between **PARK CITY MUNICIPAL CORPORATION**, a Utah municipal corporation, ("City" or "Park City Transit"), and **AVAIL TECHNOLOGIES, INC.**, a Pennsylvania corporation, ("Service Provider"), collectively, the City and the Service Provider are referred to as (the "Parties)."

WITNESSETH:

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

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

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

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

1. SCOPE OF SERVICES.

The Service Provider shall perform such services and accomplish such tasks, including the furnishing of all materials and equipment necessary for full performance thereof, as are identified and designated as Service Provider responsibilities throughout this Agreement and as identified and set forth in the attached "**Exhibit A**" through "**Exhibit C**" and incorporated herein (the "Project").

In the event of any inconsistencies between the text of this Agreement and the contents of **Exhibit "A" - Support, Warranty & Licensing Agreement; Exhibit "B" – Technology Support, Infrastructure & Security; and/or Exhibit "C" – Payment Structure for 'Extra Work'**" herein, the terms of this Agreement shall control.

Any agreements or representations made by either party in connection with Service Provider's January 5, 2022, offer letter to the City are superseded by this Agreement.

Annual fees are listed in **Exhibit "A"**, Section 4 "Pricing & Payment Terms." The total fee for the project shall not exceed **THREE HUNDRED SIXTY THOUSAND SIXTY-EIGHT DOLLARS AND TWENTY EIGHT CENTS (\$360,068.028).**

Service Provider shall abide by the requirements in **Exhibit “B”** “Technology Support, Infrastructure & Security” which is attached hereto and incorporated herein.

The City has designated Franklin Williams, or his designee as City’s Representative, who shall have authority to act on the City’s behalf with respect to this Agreement consistent with the budget contract policy.

2. TERM.

The execution date shall be the commencement of the term and the term shall terminate on December 31, 2024, or earlier, unless extended by mutual written agreement of the Parties.

3. COMPENSATION AND METHOD OF PAYMENT.

A. Payments for services provided hereunder shall be made as set forth in Section 2 of **Exhibit “A.”**

B. No payment shall be made for any service rendered by the Service Provider except for services identified and set forth in this Agreement.

C. For all “extra” work the City requires, the City shall pay the Service Provider for work performed under this Agreement according to the schedule attached hereto as **Exhibit “C,”** or if none is attached, as subsequently agreed to by both Parties in writing.

D. The Service Provider shall submit to the City Manager or her designee on forms approved by the City Manager, an invoice for services rendered during the pay period. The City shall make payment to the Service Provider within thirty (30) days thereafter. Requests for more rapid payment will be considered if a discount is offered for early payment. Interest shall accrue at a rate of six percent (6%) per annum for services remaining unpaid for sixty (60) days or more.

E. The Service Provider reserves the right to suspend or terminate work and this Agreement if any unpaid account exceeds sixty (60) days.

F. Service Provider acknowledges that the continuation of this Agreement after the end of the City’s fiscal year is specifically subject to the City Council’s approval of the annual budget.

4. RECORDS AND INSPECTIONS.

A. The Service Provider shall maintain books, records, documents, statements, reports, data, information, and other material with respect to matters covered, directly or indirectly, by this Agreement, including (but not limited to) that which is necessary to sufficiently and properly

reflect all direct and indirect costs related to the performance of this Agreement, and shall maintain such accounting procedures and practices as may be necessary to assure proper accounting of all funds paid pursuant to this Agreement.

B. The Service Provider shall retain all such books, records, documents, statements, reports, data, information, and other material with respect to matters covered, directly or indirectly, by this Agreement for six (6) years after expiration of the Agreement.

C. The Service Provider shall, at such times and in such form as the City may require, make available for examination by the City, its authorized representatives, the State Auditor, or other governmental officials authorized by law to monitor this Agreement all such books, records, documents, statements, reports, data, information, and other material with respect to matters covered, directly or indirectly, by this Agreement. The Service Provider shall permit the City or its designated authorized representative to audit and inspect other data relating to all matters covered by this Agreement. The City may, at its discretion, conduct an audit at its expense, using its own or outside auditors, of the Service Provider's activities, which relate directly or indirectly to this Agreement.

D. The City is subject to the requirements of the Government Records Access and Management Act, Chapter 2, Title 63G, Utah Code, 1953, as amended and Park City Municipal Code Title 5 ("GRAMA"). All materials submitted by Service Provider pursuant to this Agreement are subject to disclosure unless such materials are exempt from disclosure pursuant to GRAMA. The burden of claiming an exemption from disclosure rests solely with Service Provider. Any materials for which Service Provider claims a privilege from disclosure based on business confidentiality shall be submitted marked as "confidential - business confidentiality" and accompanied by a concise statement from Service Provider of reasons supporting its claim of business confidentiality. Generally, GRAMA only protects against the disclosure of trade secrets or commercial information that could reasonably be expected to result in unfair competitive injury. The City will make reasonable efforts to notify Service Provider of any requests made for disclosure of documents submitted under a claim of confidentiality. Service Provider specifically waives any claims against the City related to any disclosure of materials pursuant to GRAMA.

Under Utah Code Ann. §§ 13-24-2 (4) "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (a) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy, Service Provider claims that all pricing or service methods represented as "trade secret" as part of this offer is not readily ascertainable to the public and release could cause potential economic damage should it be released publicly.

5. INDEPENDENT CONTRACTOR RELATIONSHIP.

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

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

6. SERVICE PROVIDER EMPLOYEE/AGENTS.

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

7. HOLD HARMLESS INDEMNIFICATION.

A. The Service Provider shall indemnify and hold the City and its agents, employees, and officers, harmless from and shall process and defend at its own expense any and all claims, demands, suits, at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, brought against the City arising out of, in connection with, or incident to the execution of this Agreement and/or the Service Provider's negligent performance or failure to perform any aspect of this Agreement; provided, however, that if such claims are caused by or result from the concurrent negligence of the City, its agents, employees, and officers, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the Service Provider; and provided further, that nothing herein shall require the Service Provider to hold harmless or defend the City, its agents, employees and/or officers from any claims arising from the sole negligence of the City, its agents, employees, and/or officers. The Service Provider expressly agrees that the indemnification provided herein constitutes the Service Provider's limited waiver of immunity as an employer under Utah Code Section 34A-2-105; provided, however, this waiver shall apply only to the extent an employee of Service Provider claims or recovers compensation from the City for a loss or injury that Service Provider would be obligated to indemnify the City for under this Agreement. This limited waiver has been mutually negotiated by the Parties, and is expressly made effective only for the purposes of this

Agreement. The provisions of this section shall survive the expiration or termination of this Agreement.

B. No liability shall attach to the City by reason of entering into this Agreement except as expressly provided herein.

8. INSURANCE.

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

A. General Liability insurance written on an occurrence basis with limits no less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate for personal injury, bodily injury and property damage.

The Service Provider shall increase the limits of such insurance to at least the amount of the Limitation of Judgments described in Section 63G-7-604 of the Governmental Immunity Act of Utah, as calculated by the state risk manager every two years and stated in Utah Admin. Code R37-4-3.

B. Automobile Liability insurance with a combined single limit of not less than One Million Dollars (\$1,000,000) each accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance, and use of owned, hired, and non-owned motor vehicles. This policy must not contain any exclusion or limitation with respect to loading or unloading of a covered vehicle.

C. Professional Liability (Errors and Omissions) insurance (if applicable) with annual limits no less than One Million Dollars (\$1,000,000) per occurrence. Service Provider agrees to continue to procure and maintain professional liability insurance coverage meeting these requirements for the applicable period of statutory limitation of claims (or statute of repose, if applicable) after the project completion or termination of this Agreement.

If written on a claims-made basis, the Service Provider warrants that the retroactive date applicable to coverage precedes the effective date of this agreement; and that continuous coverage will be maintained for an extended reporting period endorsement (tail coverage) will be purchased for a period of at least three (3) years beginning from the time that work under this agreement is complete.

D. Workers Compensation insurance and Employers Liability coverage with Workers Compensation limits complying with statutory requirements, and Employer's Liability Insurance limits of at least One Million Dollars (\$1,000,000) each accident, One Million Dollars (\$1,000,000) for bodily injury by accident, and One Million Dollars (\$1,000,000) each employee for injury by disease.

The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of Park City Municipal Corporation for all work performed by the Service Provider, its employees, agents and subcontractors.

E. Data Breach and Privacy/Cyber Liability Insurance including coverage for failure to protect confidential information and failure of the security of the Service Provider's computer systems or the City's systems due to the actions of the Service Provider which results in unauthorized access to the City's data. The limit applicable to this policy shall be no less than Two Million Dollars (\$2,000,000) per occurrence, and must apply to incidents related to the Cyber Theft of the City's property, including but not limited to money and securities.

F. Park City Municipal Corporation, its officers, officials, employees, and volunteers are to be covered as additional insureds on general liability and auto liability insurance policies, with respect to work performed by or on behalf of the Service Provider including materials, parts, or equipment furnished in connection with such work or operations and automobiles owned, leased, hired, or borrowed by or on behalf of the Service Provider and a copy of the endorsement naming the City as an additional insured shall be attached to the Certificate of Insurance.

Should any of the above-described policies be cancelled before the expiration date thereof, Service Provider shall deliver notice to the City within thirty (30) days of cancellation. The City reserves the right to request certified copies of any required policies.

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

H. For any claims related to this Service Provider/Professional Services Agreement, the Service Provider's insurance coverage shall be primary insurance coverage with respect to Park City Municipal Corporation, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by Park City Municipal Corporation, its officers, officials, employees, or volunteers shall be excess of the Service Provider's insurance and shall not contribute with it.

9. TREATMENT OF ASSETS.

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

10. COMPLIANCE WITH LAWS AND WARRANTIES.

A. The Service Provider, in the performance of this Agreement, shall comply with all applicable federal, state, and local laws and ordinances, including regulations for licensing, certification and operation of facilities, programs and accreditation, and licensing of individuals, and any other standards or criteria as described in this Agreement to assure quality of services.

B. Unless otherwise exempt, the Service Provider is required to have a valid Park City business license.

C. The Service Provider specifically agrees to pay any applicable fees or charges which may be due on account of this Agreement.

D. If this Agreement is entered into for the physical performance of services within Utah, the Service Provider shall register and participate in E-Verify, or an equivalent program. The Service Provider agrees to verify employment eligibility through E-Verify, or an equivalent program, for each new employee that is employed within Utah, unless exempted by Utah Code § 63G-12-302.

E. Service Provider shall be solely responsible to the City for the quality of all services performed by its employees or sub-contractors under this Agreement. Service Provider hereby warrants that the services performed by its employees or sub-contractors will be performed substantially in conformance with the standard of care observed by similarly situated companies providing services under similar conditions.

11. NONDISCRIMINATION.

Any Service Provider that enters into an agreement for goods or services with Park City Municipal Corporation or any of its boards, agencies, or departments shall:

Implement an employment nondiscrimination policy prohibiting discrimination in hiring, discharging, promoting or demoting, matters of compensation, or any other employment-related decision or benefit against a person otherwise qualified, because of actual or perceived race; color; sex; pregnancy, childbirth, or pregnancy-related conditions; age, if the individual is

40 years of age or older; religion; national origin; disability; sexual orientation; gender identity; genetic information; or military status.

In the performance of this Agreement, Service Provider shall not discriminate on account of actual or perceived race; color; sex; pregnancy, childbirth, or pregnancy-related conditions; age, if the individual is 40 years of age or older; religion; national origin; disability; sexual orientation; gender identity; genetic information; or military status.

Incorporate the foregoing provisions in all subcontracts or assignments hereunder and take such actions as may be required to ensure full compliance with the provisions of this policy.

12. ASSIGNMENTS/SUBCONTRACTING.

A. The Service Provider shall not assign its performance under this Agreement or any portion of this Agreement without the written consent of the City, and it is further agreed that said consent must be sought in writing by the Service Provider not less than thirty (30) days prior to the date of any proposed assignment. The City reserves the right to reject without cause any such assignment. Any assignment made without the prior express written consent of the City, as required by this paragraph, shall be deemed null and void.

B. Any work or services assigned hereunder shall be subject to each provision of this Agreement and proper bidding procedures where applicable as set forth in local, state or federal statutes, ordinance and guidelines.

C. Any technical/professional service subcontract not listed in this Agreement, must have express advance approval by the City.

D. Each subcontractor that physically performs services within Utah shall submit an affidavit to the Service Provider stating that the subcontractor has used E-Verify, or an equivalent program, to verify the employment status of each new employee, unless exempted by Utah Code § 63G-12-302.

13. CHANGES.

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

14. PROHIBITED INTEREST, NO THIRD PARTY RIGHTS AND NO GRATUITY TO CITY EMPLOYEES.

- A. No member, officer, or employee of the City shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.
- B. Nothing herein is intended to confer rights of any kind in any third party.
- C. No City employee who has procurement decision making authority and is engaged in the procurement process, or the process of administering a contract may knowingly receive anything of value including but not limited to gifts, meals, lodging or travel from anyone that is seeking or has a contract with the City.

15. MODIFICATIONS TO TASKS AND MISCELLANEOUS PROVISIONS.

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

16. TERMINATION.

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

17. NOTICE.

Notice provided for in this Agreement shall be sent by certified mail to the addresses designated for the Parties below. Notice is effective upon the date it was sent, except that a notice of termination pursuant to Paragraph 16 is effective upon receipt. All reference to “days” in this Agreement shall mean calendar days.

18. ATTORNEYS FEES AND COSTS.

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

19. JURISDICTION AND VENUE.

A. This Agreement has been and shall be construed as having been made and delivered within the State of Utah, and it is agreed by each party hereto that this Agreement shall be governed by the laws of the State of Utah, both as to interpretation and performance.

B. Any action of law, suit in equity, or judicial proceeding for the enforcement of this Agreement, or any provisions thereof, shall be instituted and maintained only in any of the courts of competent jurisdiction in Summit County, Utah.

20. SEVERABILITY AND NON-WAIVER.

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

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

C. It is agreed by the Parties that the forgiveness of the non-performance of any provision of this Agreement does not constitute a subsequent waiver of the provisions of this Agreement. No waiver shall be effective unless it is in writing and signed by an authorized representative of the waiving party.

21. ENTIRE AGREEMENT.

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

22. COUNTERPARTS.

This Agreement may be executed in counterparts, each of which will be deemed an original and all of which together will constitute one and the same instrument.

23. ELECTRONIC SIGNATURES.

Each party agrees that the signatures of the parties included in this Agreement, whether affixed on an original document manually and later electronically transmitted or whether affixed by an electronic signature through an electronic signature system such as DocuSign, are intended to authenticate this writing and to create a legal and enforceable agreement between the parties hereto.

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

PARK CITY MUNICIPAL CORPORATION, a Utah municipal corporation
445 Marsac Avenue
Post Office Box 1480
Park City, UT 84060-1480

Matt Dias, City Manager

Attest:

City Recorder's Office

Approved as to form:

City Attorney's Office

AVAIL TECHNOLOGIES, INC.,

State College Centre, PA 16803

a Pennsylvania corporation
1960 Old Gatesburg Rd., Ste. 200

Tax ID#: 25-1831158

PC Business License#: BL B-017033

Signature

Kerry Couch
Chief Financial Officer

**THE CITY REQUIRES THE SERVICE PROVIDER TO COMPLETE EITHER THE
NOTARY BLOCK OR THE UNSWORN DECLARATION, WHICH ARE BELOW.**

Provider Professional Services Agreement

STATE OF _____)
) ss.
COUNTY OF _____)

On this ____ day of _____, 2022, 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 **AVAIL TECHNOLOGIES, INC.**, a Pennsylvania 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 **AVAIL TECHNOLOGIES, INC.**, a Pennsylvania corporation.

Notary Public

I declare under criminal penalty under the law of Utah that the foregoing is true and correct.
Signed on the ____ day of _____, 2022, at _____
(insert State and County here).

Printed name _____

Signature: _____

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EXHIBIT “A”



1 SUPPORT, WARRANTY, & LICENSE AGREEMENT

THIS SUPPORT WARRANTY & LICENSE AGREEMENT “(AGREEMENT)” is made and entered into effective as of **March 1, 2022** (the “Effective Date”), by and between Avail Technologies, Inc., a Pennsylvania corporation located at 1960 Old Gatesburg Road, Suite 200, State College, PA 16803, hereinafter called “AVAIL”, and Park City Municipal Corp., located at 1053 Iron Horse Drive, P.O. Box 1480 Park City, UT 84060-1480, hereinafter “CITY”, collectively referred to as the “PARTIES.”

WHEREAS, Avail is the owner of the Software (as defined below) which is licensed to CITY under and pursuant to the terms of this Agreement and all referenced Exhibits; and

WHEREAS, CITY, desires to obtain a license to use the Software solely in its business operations on the terms and conditions set forth in this Agreement; and

WHEREAS, AVAIL has licensed to the CITY certain systems as specified in **Section 2** of this document and CITY wishes to have AVAIL perform maintenance services on the software and associated hardware of the licensed systems pursuant to the terms and conditions of the Agreement.

NOW, THEREFORE, the CITY and AVAIL, in consideration of the mutual covenants, promises, and representations contained herein, the sufficiency of which is hereby acknowledged, the PARTIES hereto agree as follows:

1.1 DESCRIPTION AND TERM

1.1.1 SYSTEMS COVERED

The materials covered in this Agreement are the Hardware and Software required for deployment of AVAIL’s Enterprise Transit Management Software (ETMS), as set forth in **Section 2.5**.

1.1.2 SITES

1053 Iron Horse Drive, P.O. Box 1480 Park City, UT 84060-1480

1.1.3 TERM

This Agreement shall commence on the Effective Date and will remain in force until the completion of the Term, unless earlier terminated as set forth in **Section 1.10**. The Term will automatically renew for successive periods of twelve (12) months (each, a “Renewal Term”, and the Term and Renewal Term are collectively, the “Term”). Any renewal of term shall be agreed to in writing by the PARTIES at least sixty (60) days prior to the expiration of the current term.



1.2 DEFINITIONS

1.2.1 DOCUMENTATION

"Documentation" shall mean the documentation to which the Software must conform as set forth in the original Project Contract;

1.2.2 ERROR

"Error" shall mean a material and reproducible failure of the Software to function in conformity with the Documentation.

1.2.3 ADDITIONAL SERVICES

"Additional Services" shall mean any service that is not covered by this agreement.

1.2.4 HOSTED SUPPORT

"Hosted Support" (as elected under services in **Section 2.6.1**) shall mean AVAIL will house, implement, maintain and backup the customer fixed-end system on AVAIL owned (or leased) equipment for the duration of the term.

1.2.5 ANNIVERSARY

"Anniversary" shall mean the beginning date of the term and the annual occurrence of that date for the duration of the term.

1.2.6 PROJECT CONTRACT

"Contract" shall mean the original Intelligent Transportation System Project Contract entered into between Avail and CITY

1.2.7 BUG FIXES

"Bug Fixes" shall mean any corrections or upgrades to the Software as development occurs over time.

1.2.8 PURCHASED FEATURE ENHANCEMENTS

"Purchased Feature Enhancements" shall mean any software features developed beyond the documentation for the original Project Contract when and where this system was purchased by CITY.

1.2.9 NEW FEATURE PURCHASES

"New Feature Purchases" are features above and beyond the scope of the original Project Contract that existed and were not purchased at that time OR new features developed after the completion of the original Project Contract.



1.3 CITY SUPPORT PLANS

CITY has elected the level of support set forth in **Section 2.6.1**

1.4 SOFTWARE MAINTENANCE

AVAIL shall notify and make available to the CITY all Purchased Feature Enhancement and Bug Fixes to the software for the current software license. The nature and extent of the elements to be included or covered in any Enhancement, or Bug Fix shall be determined solely by AVAIL.

Purchased Feature Enhancements and Bug Fixes will be made available to the CITY at no additional charge other than the costs for additional hardware, configuration, integration, testing, travel and lodging and per diem, provided they are current in their payment of the fees set forth in **Section 1.18**.

In the event the CITY has elected not to pay the Maintenance and Support Fees, they may obtain updates of a Purchased Feature Enhancements and Bug Fixes by paying the aggregate annual Maintenance and Support Fees which would otherwise have been due from the date of discontinued Maintenance and Support Services to the date such Purchased Feature Enhancement or Bug Fixes becomes generally available.

As soon as practical, AVAIL will provide the CITY with information relating to any Software New Features during the term of this Agreement. New Feature Purchase shall be negotiated and agreed to in writing, between the PARTIES, prior to any work beginning on the requested task. All reasonable efforts shall be made by the CITY to provide AVAIL access to the individual Software server through the VPN process. Any New Feature Purchases, Purchased Feature Enhancement and Bug Fixes provided shall be governed by all of the terms and provisions of this Agreement.

Upon notification, the CITY shall have six (6) months from receipt of such notice to authorize AVAIL to deliver the product, provided they are current in their payment for Support, Warranty and License Fees. All New Feature Purchases, Purchased Feature Enhancements, or Bug Fixes provided, shall be considered Software for purposes of this Agreement.

AVAIL agrees to provide to the CITY the elected level of support as defined in **Section 2.6.1** for the Software and any subsequent upgrades during the full term of this Agreement (including all renewals) through the Term or any subsequent extension of Maintenance and Support Services; provided that the CITY has paid the applicable Support, Warranty, and License Fees hereunder as and when they become due. AVAIL agrees that its failure to continue to provide such support shall constitute a material breach of this Agreement.

AVAIL agrees to provide to the CITY the Level of Support as stated in **Section 2.6.1** for the Software and any subsequent upgrades during the full term of this Agreement (including all renewals) through the end of this AGREEMENT or any subsequent extension; provided that the CITY has paid the applicable Support Fees hereunder as and when they become due. AVAIL agrees that its failure to continue to provide such support shall constitute a material breach of this Agreement.



1.5 TRAVEL EXPENSES

CITY will reimburse the AVAIL for any reasonable out-of-pocket expenses deemed appropriate and as approved in writing by CITY's staff assigned to this project, including airfare, travel to and from CITY's site, lodging, meals and shipping, as may be necessary in connection with the duties performed under this Agreement by AVAIL. Appropriate expenses shall be limited to those incurred on site visits associated with the performance of this Agreement which shall receive prior written approval from CITY. AVAIL shall submit requests for reimbursement to CITY. Such requests shall be accompanied by documentation substantiating the expense. Invoices for these expenses shall be presented to CITY by AVAIL within fifteen (15) days of the end of the month. CITY will pay these charges within thirty (30) days of the date of the invoice.

1.6 MAINTENANCE AND SUPPORT

- A. AVAIL represents to CITY that all services provided hereunder will be performed in a workmanlike manner.
- B. This Agreement includes the Software and Hardware listed below for the entire Term. If during the duration of this Agreement, any software or hardware were to become obsolete, AVAIL agrees to work with CITY to provide a replacement device and to ensure its downward compatibility with the rest of the deployed system.

1.7 LIMITS OF MAINTENANCE & SUPPORT PLAN

The maintenance and support set forth in this agreement is a limited maintenance and support plan. The hardware and software included under the initial installation, new feature purchases, purchased feature enhancements or bug fixes, are subject to the representations, warranties, indemnifications, limitations and disclaimers set forth in the Agreement.

1.8 LICENSE TO USE SOFTWARE

1.8.1 DESCRIPTION

In consideration of the licenses set forth in the Agreement, and subject to termination as provided **Section 2.6.2**, Avail grants to Property a nonexclusive, nontransferable site license for authorized Property employees (users) and vehicles (as provided in **Section 1.8.2** below) to use the Avail Enterprise Transit Management Software (ETMS).

THE SOFTWARE IS COPYRIGHTED AND LICENSED (NOT SOLD). AVAIL DOES NOT SELL OR TRANSFER TITLE TO, OR ANY OWNERSHIP INTEREST IN, THE SOFTWARE OR DOCUMENTATION TO CITY. CITY'S LICENSE OF THE SOFTWARE WILL NOT COMMENCE UNTIL CITY HAS EXECUTED THIS AGREEMENT AND AN AUTHORIZED REPRESENTATIVE OF AVAIL HAS RECEIVED, APPROVED AND EXECUTED A COPY OF IT AS EXECUTED BY CITY.

1.8.2 SCOPE OF PERMITTED USE

Pursuant to **Section 2.5.1** – CITY agrees that it may allow its designated employees or computers (Users) access to the software and may manage all authorized vehicles in the Software.



1.8.3 SCOPE OF LICENSE RIGHTS; RESTRICTIONS

- A. The license granted to CITY under this Agreement entitles CITY to use, and CITY agrees to use, the Software and Documentation solely as set forth in this **Section 1.8.3(A)(I)** through **Section 1.8.3(A) (IV)**:
- I Store, install and access the Software, in machine readable form, through an internal network using those computers and software specified in the Agreement, or access the Software via the Internet, but in either case only for use by the CITY site's authorized and designated users and only for the purpose of serving the internal needs of the business of CITY;
 - II In support of CITY's authorized use of the Software, store the Software's machine-readable instructions or data in, transmit it through, and display it on machines associated with the computer(s) specified in this Agreement;
 - III Make two (2) copies of the Software in machine-readable, object code form, for nonproductive backup purposes only, provided that and,
 - IV Use the Documentation solely to assist CITY in its authorized use of the Software.
- B. The license granted to CITY under this Agreement does not grant to CITY the right to;
- I Copy (except as expressly permitted in **Section 1.8.3(A)(III)** above), change, disassemble, decompile, reverse engineer, sublicense, assign, timeshare, sell, give away, loan, rent, lease, transfer (electronically or otherwise), display, disclose, or provide any third party with access to or use of, the Software; directly or indirectly create or attempt to create software that emulates the Software; prepare derivative works of the Software: or separate the components of the Software;
 - II Copy or provide any third party with access to or use of any of the Documentation without the prior written consent of Avail;
 - III Transfer any of CITY's rights or obligations under this Agreement without the express, advance, written consent of an officer of Avail, and then only if:
 - i. CITY keeps no copies of the Software or Documentation;
 - ii. CITY transfers CITY's entire rights and obligations under this Agreement in or to the Software and Documentation; and,
 - iii. The transferee agrees in writing to the terms and conditions of this Agreement, after which time CITY will no longer have the right to use the Software. Any attempted transfer or assignment of any of CITY's rights or obligations under this Agreement shall be null and void unless it is in full compliance with this **Section 1.8.3(B)(III)**;
 - IV Remove any proprietary or copyright legend from any material contained in or on the Software or the Documentation.

- V Publish or disclose to any third party any reports or the results of any benchmark tests run on the Software or its components; or,
- VI Use any trademarks or service marks of Avail.

1.8.4 LIMITED WARRANTY AND LIMITATION OF WARRANTIES

- A. Subject to the conditions and limitations set forth herein, Avail warrants for a period set forth in **Section 1.1.3** immediately following the System Acceptance of the Software (the "Term") that the Software will substantially conform in all material respects to the documentation set forth in the Project Contract. Subject to the provisions and limitations set forth herein, Avail will correct any such nonconforming Software if CITY has notified Avail of such nonconformity in writing within the Term. Avail shall not be obligated to correct, cure or otherwise remedy any such nonconformity in the Software if CITY has not reported to Avail the existence and nature of such nonconformity within the Term, and such nonconformity cannot be verified.
- B. The limited warranty set forth in **Section 1.8.3(A)** above does not apply to any Software that has been repaired or modified by persons other than Avail or its authorized agents, or that has been installed by CITY or any of its independent contractors other than Avail. The foregoing warranty is conditioned upon the proper use of the Software in accordance with the terms and conditions of this Agreement and with Avail's User Manual and any other written instructions provided by Avail to CITY, and in an operating environment in compliance with the documentation and requirements as set forth in this Agreement. Avail makes no warranty that the operation of the Software will be uninterrupted or error free, or that all Software defects will be corrected.
- C. Avail makes no warranty that the Software will operate with all applications, utilities, or other memory resident programs.
- D. Avail shall not be responsible for any obsolescence of the Software for any reason. Furthermore, Avail assumes no responsibility for the use of superseded, outdated or uncorrected versions of the Software.

1.8.5 PROPRIETARY PROTECTION AND RESTRICTIONS

- A. CITY acknowledges and agrees that the Software and Documentation is the sole property of Avail and contains copyrighted, confidential and trade secret information, and that as between Avail and CITY, Avail shall have the sole and exclusive ownership of all right, title and interest in and to the Software and Documentation, (including ownership of all trade secrets, confidential information and copyrights pertaining thereto), subject only to the rights and privileges expressly granted to CITY herein by Avail. CITY must and will keep the Software and Documentation free and clear of all claims, liens and encumbrances of any nature whatsoever. CITY will keep the Software and Documentation in confidence and will take all reasonable measures necessary to protect and maintain the confidential and proprietary character of the Software and Documentation. Furthermore, CITY will indemnify and hold Avail harmless from and



against all losses and damages resulting from any unauthorized or improper disclosure, dissemination or use of the Software as a result, in whole or in part, of CITY's action or inaction.

- B. CITY hereby authorizes Avail to enter CITY's premises in order to inspect the Software in any reasonable manner during regular business hours to verify Property's compliance with the terms of this Agreement. CITY will cooperate fully with Avail and promptly provide Avail and its agents with full access to its facilities, and will engage in no acts or omissions to hinder or delay Avail's access to Property's premises and computers or the inspection thereof.
- C. CITY acknowledges that, in the event of CITY's breach of any of the provisions of this Agreement, Avail will not have an adequate remedy in money or damages. Avail shall therefore be entitled to obtain an injunction against such breach from any court of competent jurisdiction immediately upon request. Avail's right to obtain injunctive relief shall not limit its right to seek further remedies.

1.9 LIMITATION OF LIABILITY

- A. Except with respect to the obligations of Avail, in no event shall Avail's liability for any reason and upon any cause of action under the software license agreement exceed the maintenance and support fees paid by PROPERTY to Avail;
- B. Aside from the provisions listed in the Agreement Avail shall not be liable for any loss of profits, any incidental, special, exemplary or consequential damages; or any claims or demands brought against property or any third party.
- C. The PARTIES shall not rely upon and shall not grant any means of remedy arising from any statement, representation, maintenance and support or understanding of any person other than as expressly set out in this agreement.
- D. EXCEPT FOR ANY LIABILITY ARISING UNDER SECTION 1.8.5, THE CUMULATIVE LIABILITY OF AVAIL TO CITY FOR ALL CLAIMS RELATING TO THE SOFTWARE AND THIS AGREEMENT, INCLUDING ANY CAUSE OF ACTION SOUNDING IN CONTRACT, TORT OR STRICT LIABILITY, SHALL NOT EXCEED THE TOTAL AMOUNT OF ALL LICENSE FEES PAID TO AVAIL HEREUNDER. THIS LIMITATION OF LIABILITY IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE. AVAIL SHALL HAVE NO LIABILITY FOR LOSS OF DATA OR DOCUMENTATION, IT BEING UNDERSTOOD THAT CITY IS RESPONSIBLE FOR REASONABLE BACKUP PRECAUTIONS.
- E. IN NO EVENT SHALL AVAIL BE LIABLE FOR ANY LOSS OF PROFITS; ANY INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES; OR ANY CLAIMS OR DEMANDS BROUGHT AGAINST CITY OR ANY THIRD PARTY, EVEN IF AVAIL HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH CLAIMS OR DEMANDS. THIS LIMITATION UPON DAMAGES AND CLAIMS IS INTENDED TO APPLY WITHOUT REGARD TO



WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR
HAVE PROVEN INEFFECTIVE.

- F. Avail and CITY do not rely on and shall have no remedy arising from any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement.

1.10 TERMINATION

- A. Notwithstanding the foregoing, all provisions here of relating to confidentiality, proprietary rights, nondisclosure, indemnity and limitations of liability shall survive the termination of this agreement. In the event of termination under this paragraph, CITY will not be entitled to any refund of any portion of the fees paid to Avail under this agreement, unless Avail:
- I. Materially breaches this agreement and fails to cure such breach within thirty (30) days after notice from CITY;
 - II. Delivers a notice that the software has been declared obsolete or withdrawn from sale;
 - III. Otherwise discontinues providing standard level of support for the myAvail software suite:
 - a. Avail shall refund to CITY an amount equal to the aggregate support charges paid by CITY for the time during which the standard level of support services was not provided to CITY.

1.11 INDEMNITY

If a third-party claims that the Software or Documentation infringes any patent, copyright, trade secret, or any similar intellectual property right, Avail will defend CITY against such claim at Avail's expense and will pay all damages that a court finally awards, provided that CITY promptly notifies Avail in writing of the claim, cooperates fully with Avail in the defense of any such claims, and allows Avail to control the defense thereof and/or any related settlement negotiations. If such a claim is made or appears possible, Avail will, at its option and expense, either: (i) procure for CITY the right to continue using the Software and/or Documentation; (ii) replace or modify the Software or Documentation so that it becomes non-infringing; or, (iii) if it is not possible or in Avail's sole discretion is not economically feasible for Avail to so procure such right or so replace or modify the Software, require the return of the Software and upon such return repay to CITY the unused portion of the applicable license fee amortized over a 3 year period from the Effective Date and any annual technical support fees paid by CITY for the remainder of the then current Term for such technical support services. However, Avail shall have no obligation for any claim based on CITY's modification of the Software or Documentation or its combination, operation or use with any product, data or apparatus not specified or provided by Avail. THIS



PARAGRAPH STATES AVAIL'S ENTIRE OBLIGATION TO CITY WITH RESPECT TO ANY CLAIM OF INFRINGEMENT.

1.12 EXPORT AND GOVERNMENT USE RESTRICTIONS

CITY agrees that it will not export or re-export the Software, any part thereof, (the foregoing is referred to as the "Restricted Components"), to any country, person or entity subject to United States export restrictions. Furthermore, CITY agrees to comply with all of the export and re-export restrictions and regulations imposed by the governments of the United States and/or any country to which the Software is shipped. Use, duplication or disclosure by the government is subject to restrictions as set forth in DFARS 252.227-7013 or the Commercial Computer Software - Restricted Rights at 48 CFR 52.227-19. The terms of this Section shall survive the termination or expiration of this Agreement.

1.13 INCORPORATION OF OTHER SOFTWARE

The Software may incorporate material or components which are owned by third parties and which are used by agreement between Avail and such third parties. CITY acknowledges and agrees that any third-party owner of such materials or components is a direct and intended third party beneficiary of this Agreement who may enforce this Agreement directly against CITY.

1.14 ASSIGNMENT

This Agreement shall be binding upon and shall inure to the benefit of and be enforceable by the PARTIES and their respective successors and permitted assigns. Except as otherwise provided herein, this Agreement may not be assigned by CITY without the prior written consent of Avail and upon payment of an assignment fee.

1.15 SEVERABILITY

Should any one or more of the provisions of this Agreement be determined to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be adversely affected or impaired thereby. The Party shall endeavor to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as practicable to that of the unenforceable provisions.

1.16 NO THIRD-PARTY RIGHTS

Except as otherwise expressly provided herein, the representations, warranties, covenants and agreements contained in this Agreement are for the sole benefit of the PARTIES and their respective successors and permitted assigns, and they shall not be construed as conferring any rights on any other persons.

1.17 CONFIDENTIALITY

- A. "Confidential Information" is hereby designated as "trade secrets" and is defined as the following:



- I. Any information or data in the form of specifications, technical information or otherwise furnished to CITY under this Agreement;
 - II. The business or technical information of AVAIL, including but not limited to any information relating to AVAIL's product plans, designs, costs, finances, marketing plans, business opportunities, personnel, research, development or know-how; and
 - III. Any other information reasonably and appropriately designated in writing by AVAIL as "trade secret" which, under the circumstances taken as a whole, would reasonably be deemed to be confidential under applicable law.
- B. Confidential information shall not include information that
- I. Is in or enters the public domain without CITY's breach of the Agreement;
 - II. CITY receives from a third party without restriction on disclosure and without breach of a nondisclosure obligation; or
 - III. CITY develops independently, which it can prove with clear and convincing written evidence.
- C. CITY agrees, to take all measures reasonably required to maintain the confidentiality of all confidential information in its possession or control, which will in no event be less than the measures the CITY uses to maintain the confidentiality of its own information of equal importance. CITY further agrees to only use Confidential Information disclosed in connection with this Agreement solely to exercise its rights and perform its obligations under the Agreement.
- D. CITY agrees to inform its employees of their confidentiality obligations regarding the Licensed Program and any other Confidential Information of AVAIL. CITY further agrees to ensure that contract employees (including temporary employees) of CITY agree to confidentiality obligations similar to those of this Agreement.
- E. In the event of a third-party challenge to the Confidential Information, AVAIL shall provide the CITY with any evidence deemed necessary to successfully defend the legal challenge and establish that the Confidential Information meets the criteria.

1.18 PRICING & PAYMENT TERMS (**CONFIDENTIAL & PROPRIETARY**)

CITY will be invoiced one month prior to the start of the next anniversary date. All future invoices for the elected support period will be due net 30. Payment for the first year is due immediately upon invoice.

Period of Support	Annual Price w/ Year-to- Year Contract	Annual Price w/ Three-Year Contract	Single Purchase of Three-Year Contract	Annual Price w/ Five-Year Contract	Single Purchase of Five-Year Contract
March 1, 2022 - February 28, 2023	\$ 118,870.43	\$ 116,493.02	\$ 115,304.32	\$ 114,115.61	\$ 112,926.91
March 1, 2023 - February 29, 2024	\$ 122,436.54	\$ 119,987.81	\$ 118,763.45	\$ 117,539.08	\$ 116,314.72
March 1, 2024 - February 28, 2025	\$ 126,109.64	\$ 123,587.45	\$ 122,326.35	\$ 121,065.25	\$ 119,804.16
March 1, 2025 - February 28, 2026	\$ 129,892.93			\$ 124,697.21	\$ 123,398.28
March 1, 2026 - February 28, 2027	\$ 133,789.72			\$ 128,438.13	\$ 127,100.23
Total Price	\$ 631,099.26	\$ 360,068.28	\$ 356,394.11	\$ 605,855.29	\$ 599,544.29
Savings Compared to Annual Contract	\$ -	\$ 7,348.33	\$ 11,022.50	\$ 25,243.97	\$ 31,554.96
Discount	0%	2%	3%	4%	5%
Election (check one)					

2 SCOPE OF WORK

2.1 AVAIL RESPONSIBILITIES

During the term of this Agreement, AVAIL shall provide the following support measures ("Support Services")

2.1.1 STANDARD LEVEL OF SUPPORT

The Standard Level of Support of which there are two problem resolution standards (See Section 2.6.1):

2.1.1.1 GENERAL PROVISION:

- Telephone hot line access for problem and error reporting and response of diagnostic services;
- Ability to initiate support requests via e-mail to support@Availtec.com; and
- Ability to initiate support requests via Avail Customer Support Portal by visiting <https://www.availtecportal.com>.
- AVAIL shall staff their Call Center during regular business hours see Section 2.6.1. In case of a support call, AVAIL will want to collect the pertinent information as soon as practical. In the event that AVAIL cannot answer the initial call, a voicemail service shall be operative as a backup system;

2.1.1.2 ROUTINE CARE

- AVAIL shall respond to the call as stated in Section 2.6.1;
- The problem will be entered into the AVAIL tracking system, entering the Caller's Name, Property Location and Contact Phone Number;
- AVAIL shall keep CITY advised of a plan for resolution of the error as soon as practical; and

- D. If the error occurs after AVAIL business hours, the Caller shall still leave a voice message with the same information as listed above.

2.1.1.3 URGENT CARE

- A. AVAIL will respond to a call as stated in **Section 2.6.2**;
- B. Upon receipt of the call, the Support Team will immediately begin to assess the error and begin the process of resolving the problem. Resolution shall be conveyed to CITY as soon as practical;
- C. The error will be entered into the AVAIL tracking system; and
- D. On-site response for requests for remedial support and diagnostic repair services in response to a problem submitted to Avail shall be pursuant to **Section 2.6.2** of this Agreement.

2.1.1.4 SYSTEM SELF-DIAGNOSTICS AND SELF-HEALING CAPABILITIES

- A. Through the use of the sophisticated Software monitoring system, the system will notify the operations staff of potential system degradation and alerts the on-call staff via message 24 hours / 7 days a week.
- B. Through these same techniques, the system has the capability to self-heal processes that have stalled or failed.

2.2 CITY RESPONSIBILITIES

CITY shall give AVAIL, their full cooperation to facilitate proper and prompt performance of the Support Services and any Additional Services that the PARTIES agree. CITY shall provide:

- A. A key technical contact that shall be familiar with the System and/or Software to provide adequate information and feedback in order to facilitate problem reporting and resolution;
- B. The key technical contact will be aware of the terms and conditions under which AVAIL Systems provides after hours support:
 - I. Promptly notify AVAIL of any error in the System;
 - II. Provide sufficient information for AVAIL to effectively diagnose errors including a detailed description of the issue in text format, an explanation of what the user was doing when the issue occurred, any error messages that the system returned, screen shot images of the error, the current status of the system, a determination if the system is functional, and a state retrieval, if requested;
 - III. Permit AVAIL to take such reasonable steps as AVAIL shall consider necessary to remedy any errors;
 - IV. Allow AVAIL prompt and reasonable access to:



- a. The Software and Intelligent Transit System (ITS) Server through a Virtual Private Network (VPN) in case of primary server hardware failure and access to other 3rd party systems such as the communications network provider.
 - b. CITY's physical sites, at the locations specified in **Section 1.1.2.**
- V. Provide a reasonably safe and secure work environment at the site(s) for AVAIL's authorized personnel performing Support Services and Additional Services on-site.
- VI. CITY shall not permit any person other than authorized AVAIL personnel to make corrections or in any way modify the Software. Any work, repair, replacement, remedial support, emergency support, or correction necessary will be in violation of this provision shall be considered Additional Services.

2.3 MAINTENANCE AND SUPPORT SERVICES

- A. The CITY shall pay the Support, Warranty, and License Fees set forth, and the CITY will receive technical support for the Term;
- B. Provided the CITY has paid the applicable Support, Warranty, and License Fees, AVAIL shall support the Hardware and Software as set forth in this AGREEMENT;
- C. Corrections - For a period of Twelve (12) months following the release of a Purchased Feature Enhancement upgrade, AVAIL will use reasonable efforts to support any previous Release of that Software program. AVAIL shall advise the CITY as soon as practical, of the intention to discontinue support services of any version of AVAIL software currently in use by the CITY. AVAIL shall also maintain this requirement for the subcontractors they use for this Project;
- D. AVAIL shall have no obligation to correct problems which are traced to any CITY errors, modifications, enhancements, software or hardware.
- E. In the event that AVAIL provides any Additional Services requested by CITY, AVAIL shall invoice for such Additional Services based upon its then-current time and material rates. CITY shall pay all charges for such Additional Services within thirty (30) days from the date of invoice. Charges for Additional Services may include fees for labor, materials, hardware components, shipping, software, documentation, and/or other products or services and associated expenses, including reasonable travel expenses incurred by AVAIL when providing Additional Services at CITY's request.
- F. Additional Support, Warranty, and License, which shall follow the completion of this AGREEMENT pursuant to **Section 1.1.3**, may be extended for an agreed upon timeframe by the PARTIES. The cost will be at AVAIL's then-current standard Support, Warranty, and License Fees for as long as AVAIL offers such support. The intent is to make payment of the applicable fees in advance of each anniversary. If CITY purchases Support, Warranty, and License for any copy of the Software, it must purchase Support, Warranty and License for all licenses of such Software unless CITY has discontinued the use of certain licenses within the Avail Suite of purchased and installed modules.



2.4 SYSTEM SUPPORT

AVAIL will provide remote and, if necessary, on-site system support as per **Section 2.4.2(B)**, for the Term specified in this Agreement, for all software initially provided by AVAIL for sustaining the accepted system configuration.

2.4.1 PHONE AND REMOTE DIAGNOSTIC SYSTEM SUPPORT

AVAIL will provide consultation to CITY's Key Technical Contact to:

- A. Facilitate remote troubleshooting and solution implementation;
 - B. Acquire and review data logs for problem identification via remote access line;
- C. Provide problem analysis and possible resolution;
 - D. CITY must maintain remote access capability for AVAIL to diagnose reported software and systems problems. Remote access will be via a VPN connection;
- E. AVAIL can, at CITY's request, assist in arranging for service and support of non-warranted components (i.e. LAN interface to the Communications system and Installation / Removal services). AVAIL will not be responsible for the service call or system repair costs. Such costs will be billed to CITY.

2.4.2 EXCEPTIONS

- A. If it is determined by AVAIL that a hardware or software problem was not due to an AVAIL installed component, CITY will be responsible for all engineering and technical support, time and material costs. All labor will be charged at AVAIL's prevailing rates;
- B. On-site support is not included in the Agreement but is available on a time and material basis. However, AVAIL will provide remote support to CITY without additional charge

2.5 MAINTENANCE AND SUPPORT COMPONENTS

Notes on changes from previous contract:

- Removal of all UDI Para Transit & Fixed Route fees
- Removal of Datapoint Licensing & Support ongoing renewal option
- Addition of annual fees for cloud-hosting in Microsoft Azure Hosting
- Does not include Fleetwatch Sign warranty

2.5.1 SOFTWARE LICENSES

Item – Description	Qty
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Planning & Scheduling • Build & Deploy • Geographic Tools • GTFS • Public Messages • Scheduling • Transit Planning • Business Intelligence • NTD Reporting	Site
Operations • Communications • Decision Support • Detours • Dispatch • Pullout Management • Special Events • Yard Management • Vehicle Systems (VHM) • Business Intelligence • NTD Reporting	Site
myAvail RTPI solution – Web, Mobile Web, SMS, iPhone App, Android App, Alerts, Subscription, Public Service Announcements, site license, internet application	Site
DataPoint	Site
Pre-Trip	Site

2.5.2 HOSTING SOFTWARE SERVICES & LICENSING

Item – Description	Qty
Hosting Services – Azure cloud-hosting for central system software	Site
Hosting Services – Azure cloud-hosting for VoIP	0

Changes in the fleet composition (quantity of connected devices across fleet, supervisors and other users) of CITY will be assessed as devices/users are added/removed. Connected devices will be evaluated semi-annually as the fleet is expanded by CITY and additional fees may be assessed by Avail.

2.5.3 HARDWARE

2.5.3.1 COVERED EQUIPMENT

Item – Description	Qty
Vehicle Logic Unit –IEB/IVU	45
MDT – Vector 9000, mSlate, 10" display	45

30



RCU/CCM	41
PA Amplifier	42
Sunrise Next Stop Sign	42
InfoDev APC System	45
Wayside Signage (Fleetwatch, FourWinds, Avail)	15
Cradlepoint Units	10
Smart Card Readers	0
Bus-in-a-Box (BIB)	0
Maintenance Test Station (MTS)	0

2.5.3.2 COMPUTER EQUIPMENT – N/A

2.5.3.3 COMMUNICATIONS

Item – Description	Qty
AVL Cellular Data	0
Signage Cellular Data	0
Public Wi-Fi Cellular Data	0

Changes in the fleet composition and cellular data needs of CITY will be assessed as vehicles are added/removed. Data usage will be evaluated semi-annually as the fleet and data usage is expanded by CITY and additional data fees may be assessed by Avail to cover usage.

2.5.4 THIRD-PARTY

2.5.4.1 THIRD-PARTY SOFTWARE

Item – Description	Qty
Adept	Site
Unified Dispatch – Fixed Route (removed- not covered)	0
Unified Dispatch – Para Transit (removed – not covered)	0

2.5.4.2 THIRD-PARTY HARDWARE – N/A

Products deemed defective will be repaired at no additional cost for parts, material and labor. Products will be replaced, instead of repaired, at AVAIL discretion.

2.5.5 SYSTEM MAINTENANCE

- A. CITY is responsible for equipment replacement as required for all installed equipment including:
 - I. In-vehicle equipment;



- II. Wireless modem;
- III. Wireless LAN;
- IV. Wayside Sign Component modules
- B. System Maintenance includes removal of equipment, replacement with a spare, initial triage diagnostics and shipping to a designated repair point. Any item returned to AVAIL must follow AVAIL's RMA procedures;
 - I. CITY is responsible for shipping cost to AVAIL or designated repair point. AVAIL will return ship at AVAIL's expense.

2.5.5.1 EXCEPTIONS:

- A. Non-technical hardware items such as batteries, racks, cables, connectors, mounts, handsets, speakers, antennas, sign audio buttons, KVM switches, network switches, memory storage media, panels and punch blocks are wear items and are not covered beyond the Vehicle Installation Support;
- B. AVAIL is not responsible for:
 - I. Hardware and Software that are not used and serviced according to the training and instructions provided by AVAIL;
 - II. Products that have been altered, repaired or modified without prior consent from AVAIL;
 - a. Products damaged by any third-party equipment or intervention, force of nature or other conditions not In AVAIL's control;
 - b. Products damaged due to negligence or abuse.
 - c. Cost, loss or damages resulting from the use of AVAIL supplied products, including but not limited to, loss of time, inconvenience and loss of production;
 - d. Shipping and shipping related costs of products mailed to AVAIL;
 - e. Costs associated with parts, materials and labor provided by CITY's Maintenance personnel.
- C. AVAIL may evaluate items not covered under Maintenance and Support and an assessment will be provided to CITY. If CITY agrees with the assessment, they will be charged for the labor to complete the evaluation, shipping and shipping related costs, parts and materials used and repair labor. If CITY elects not to repair the item, only the labor required for the assessment will be charged. All labor is charged at AVAIL's prevailing rates for the required skill level.

2.5.5.2 TIME AND MATERIAL CHARGES FOR NON-SUPPORTED HARDWARE REPAIRS OR SUPPORT

- A. To maintain system support coverage, all systems hardware must be returned to AVAIL for repair or approved for repair by AVAIL at a specified repair facility;

- B. Any returned unit may be repaired or replaced at the sole discretion of AVAIL;
- C. AVAIL will charge a minimum of one (1) hour for each issue or return with subsequent increments billed at one-quarter (1/4) hour intervals at AVAIL's prevailing rate charges (Please refer to **Section 2.6.1**);
- D. Charges for non-supported repair / replacement or support will include the prevailing Preferred Customer rates (subjected to periodic updates).
- E. Travel and associated travel labor costs for on-site work (if required) are not included and will be invoiced to CITY at travel costs shall be pursuant to **Section 1.5** of this Agreement. An estimate of on-site costs will be provided prior to any travel expenses being incurred.

2.5.5.3 *INSTALLATION*

Vehicle Installations 90 – Days

2.5.5.4 *SYSTEM MAINTENANCE LOGGING*

All system maintenance or repair information, whether Hardware or Software, is collected and recorded via CRM Case Logs entry, RMA Tracking for Hardware and configuration management tools for Software.

2.6 AVAILABLE CUSTOMER SUPPORT PLANS

2.6.1 MAINTENANCE AND SUPPORT PLAN

Plan	Description
Standard Business and Extended Hours ☒	• Routine Care and Urgent Care are provided during standard business hours. • If needed for a non-covered item, Time and Material charge mechanism must be in place <u>before</u> work will commence • Urgent Care response 24/7 access to the Avail Support Team which includes Standard Business Hours Support and all NON-business hours of coverage to support Urgent Care needs. • A customer support line to contact the on-duty support engineer at Avail. • The continuation of Urgent Care resolution after Standard Business Hours.



Hosted System ☒	- Includes all features of Standard Business Hour Support and Extended Hours Support - Avail operates and maintains the fixed end computer system in our dedicated data center operation - Avail connects to your high-speed communications interface provider - Avail maintains system backup services and operational system redundancy - Includes system hardware maintenance and software release maintenance and upgrades - Avail provides the staff for operation and maintenance of the computer system at the hosted location
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2.6.2 PROBLEM RESOLUTION STANDARDS

PRIORITY	DEFINITION
Low	A nuisance issue which is not causing a significant impact on system performance or interfering with the work of the customer.
Medium	A support ticket that does not have a significant impact on system performance or interfering with the work of the customer.
High	A support ticket that has a significant impact on the system performance and/or which has a significant impact on the customer and/or is public facing.
Critical	System outage

Priority Level	Normal Business Hours		Outside Business Hours	
	Response Time	Resolution Time	Response Time	Resolution Time
Critical	15 minutes	2 hours	1 hour	4 hours
High	2 hours	1 business day	4 hours	1 business day
Medium	1 business day	5 business days	1 business day	5 business days
Low	1 business day	10 business days	1 business day	10 business days

****These resolution standards do not include RMA's or product enhancement requests**



2.7 REPORTING PROCESS

- C. Critical or Urgent issues such as an outage should be reported via phone to 814-234-3394 x1050
 - I. Outside normal business hours (7 am to 8 pm Eastern Time)
 - a. 814-234-3394 x1050, then press 1
- D. RMA Requests, Low/Medium priority issues can be submitted via customer portal, email or phone.
 - I. Portal - <https://www.availtecportal.com>
 - II. Email – support@availtec.com
 - III. Phone – 814-234-3394 x1050
- E. If no answer at the Call Center, be sure to leave caller name, property name and contact phone number, description of problem;

2.8 STANDARD BUSINESS HOURS

- A. Monday through Friday;
- B. 7:30 AM to 7:30 PM EST;
- C. The following national holidays are excluded.

January 1 st	Presidents Day
Memorial Day	July 4 th
Labor Day	Thanksgiving Day
Friday Immediately after Thanksgiving	Christmas Eve -Dec. 24 th
Christmas Day – Dec. 25 th	

NOTE: If the Holiday falls on a **Saturday**, AVAIL is closed on the **preceding Friday**.

NOTE: If a Holiday falls on a **Sunday**, AVAIL is closed on the **following Monday**

2.9 WORKFLOW

Upon receipt of an issue, AVAIL support staff will begin documentation of the issue. The documentation shall record all pertinent information that has been received either by telephone or email. Following completion of the gathering of information regarding the problem, AVAIL support staff will categorize the issue and communicate the target action back to CITY contact.

Once a problem has been identified, AVAIL support staff will work with AVAIL or third-party engineering staff to determine an appropriate solution timeframe. Once the solution has been tested and proven viable, AVAIL support staff will contact CITY to make arrangements for implementation. In the event the solution cannot be tested and implemented within the



timeframe that was initially communicated to CITY, AVAIL support staff will attempt to implement a workaround for CITY while pursuing resolution. In all cases, AVAIL will attempt to minimize the amount of time necessary to resolve the issue.

If AVAIL personnel cannot recreate the problem in the lab configuration, additional information may be required from CITY. This may include but is not limited to screen shots in .bmp or .jpg format and/or retrieval of files from the affected software.

AVAIL will endeavor to resolve any system problems remotely through use of a Virtual Private Network (VPN). If both parties deem it necessary to travel to CITY premises to resolve the problem, the on-site engineering /technical support services are included in this Agreement. The cost for the travel and living expenses shall be agreed upon in advance between the PARTIES. The engineering / technical support services rendered will be billed to CITY if it is determined while on site that the problem resolution was not due to AVAIL's inability to re-create and resolve the problem remotely.

2.9.1 AGREEMENT SERVICES

2.9.1.1 TRADITIONAL & WARRANTY & SUPPORT PLAN

To Ensure System Reliability

A. *Includes standard phone, email, and remote debugging support*

2.9.1.2 SOFTWARE UPGRADES

To keep your software current with the latest features

A. *Includes software updates to latest release*

B. *Includes training on new features and reports*

2.9.1.3 FOLLOW-UP ADOPTION SUPPORT TRAINING (FAST)

And finally, our exclusive **Follow-on Adoption Support Training (FAST)** to ensure your software is being adopted for maximum return on your technology investment

A. *Includes invitation to our Quarterly Webinars*

B. *Includes annual onsite assessments*

C. *Includes invitation to Annual FAST user conference*

2.10 ENTIRE AGREEMENT

This Agreement constitutes the entire agreement among the PARTIES relating to the subject matter hereof, and supersedes all prior and contemporaneous negotiations, writings, agreements, warranties, guarantees, whether written or oral, express or implied, relating to the subject matter of this Agreement. The PARTIES may, by mutual written agreement and in no other manner, modify or amend the terms of this Agreement. The failure or delay of any Party at



any time or times to require the performance of any provision of this Agreement shall in no manner affect its right to enforce that provision. No single or partial waiver by any Party of any condition of this Agreement, or the breach of any term, agreement or covenant of, or the inaccuracy of any representation or warranty in, this Agreement, whether by conduct or otherwise, in any one or more instances, shall be construed or deemed to be a further or continuing waiver of any such condition, breach or inaccuracy or a waiver of any other condition, breach or inaccuracy.

IN WITNESS **WHEREOF**, the PARTIES have executed this Agreement effective as of the date first above written.

AVAIL:
AVAIL Technologies, Inc.

CITY:
Park City Municipal Corp.



Signature: _____

Signature: _____

Name: Kerry Couch

Name: _____

Title: Chief Financial Officer

Title: _____

Date: February 10, 2022

Date: _____



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EXHIBIT “B”
Technology Support, Infrastructure & Security

1. Definitions

“City Data” / “information” is any data provided, shared, created or managed by the City.

“Service Provider” Is the contract holder that manages employees, contractors or affiliates having access to Park City Municipal Corporation infrastructure or data for specific defined purpose.

“Process, Processed, or Processing” means any operation or set of operations performed upon City Data, whether or not by automatic means, such as creating, collecting, procuring, obtaining, accessing, recording, organizing, storing, adapting, altering, retrieving, consulting, using, disclosing or destroying the data.

“Data Masking” The process of modifying records to conceal City Data, especially when such records are copied from a production environment to a non-production environment.

“The Information Technology Department” is responsible for the administration of this policy. If you have any questions regarding this policy, please contact the Information Technology Department 435-615-5123, 5123@parkcity.org.

“Service Provider’s Third Party Security Auditor” is defined as a third party organization which provides security audits of Service Provider’s Information Processing Systems.

“Provider” is defined as any company supplying a service for Service Provider’s Information Processing System (such as a Data Center, Managed Service, or Data Circuit).

“Security Breach” is defined as an unauthorized access to Service Provider’s software or Data Center facilities, Information Processing Systems or networks used to service, store, or access City Data.

“Sensitive Information” is defined as any Personally Identifiable Information or any information not publicly available (i.e. – clients, passwords, financial information, employee information, schedules, technology infrastructure, closed reports, draft notes, etc.).

“Written Request of the City” is defined as a request received by Service Provider by a City on official letter head signed by an officer of the City.

2. Information Classification

Classification is used to promote proper controls for safeguarding the confidentiality of information. Regardless of classification the integrity and accuracy of all classifications of

information must be protected. The classification assigned and the related controls applied are dependent on the sensitivity of the information. Information must be classified according to the most sensitive detail it includes. Information recorded in several formats (e.g., source document, electronic record, report) must have the same classification regardless of format. The following levels are to be used when classifying information:

3. Internal Information

Internal Information is intended for unrestricted use within PCMC, and in some cases within affiliated organizations such as Service Provider business partners for non-sales purposes. This type of information is already widely-distributed within PCMC, or it could be so distributed within the organization without advance permission from the information owner. Examples of Internal Information may include: personnel directories, internal policies and procedures, most internal electronic mail messages.

Any information not explicitly classified as Sensitive Information, PII or Public will, by default, be classified as Internal Information.

Unauthorized disclosure of this information is not permitted.

4. Public Information

Public Information has been specifically approved for public release by a designated authority within each entity of Service Provider. Examples of Public Information may include material posted to approved public internet web pages.

This information may be disclosed outside of Service Provider.

5. Security Policy

Formal Security Policy. Consistent with the requirement of this Document, Service Provider will create and provide to City an information security policy that is approved by Service Provider's management, published and communicated and agreed to be adhered to by all Service Provider's employees, contractors and affiliates.

Security Policy Review. Service Provider will review the information security policy at planned intervals or if significant changes occur to ensure its continuing suitability, adequacy, and effectiveness and may revise such policy, from time to time. Changes resulting in a lower standard of security or service must be agreed to by PCMC prior to adoption.

6. Asset Management.

Acceptable Use. Service Provider will implement policies and procedures for the acceptable use of information and assets which is no less restrictive than industry best practice for the classification of such Information and consistent with the requirements of this Document.

Equipment Use While on City Premises. While on City's premises, Service Provider will not

connect hardware (physically or via a wireless connection) to City internal systems or networks unless necessary for Service Provider to perform Processing under this Document. This hardware is subject to be inspected and, or, scanned by PCMC IT Department directly or by automated means before use.

Personally-owned Equipment: Sensitive Information, with the exception of Business Contact Information, may not be stored on any employee owned equipment.

7. Human Resources Security

Removal of Access Rights. The access rights of all Service Provider employees to Service Provider Information Processing Systems or media containing Sensitive Information will be removed immediately upon termination of their employment, contract or agreement, or adjusted upon change.

8. Physical and Environmental Security.

Secure Areas. Service Provider will secure all areas, including loading docks, holding areas, telecommunications areas, cabling areas and off-site areas that contain Information Processing Systems or media containing information by the use of appropriate security controls in order to ensure that only authorized personnel are allowed access and to prevent damage and interference. The following controls will be implemented:

Visitors to secure areas will be supervised.

9. Geographic Data Centers

Service Provider's data centers are geographically distributed and employ a variety of physical security measures. The technology and security mechanisms used in these facilities may vary depending on local conditions such as building location and regional risks. The standard physical security controls implemented at each Service Provider data center include the following: custom designed electronic card access control systems, alarm systems, interior and exterior cameras, and security guards. Access to areas where systems, or system components, are installed or stored are segregated from general office and public areas such as lobbies. The areas are centrally monitored for suspicious activity, and the facilities are routinely patrolled by security guards.

10. Environmental Security

Service Provider will protect equipment from power failures and other disruptions caused by failures in supporting utilities. To minimize service interruption due to hardware failure, natural disaster, or other catastrophe, Service Provider implements a disaster recovery program at all of its data centers. This program includes multiple components to minimize the risk of any single point of failure.

11. Role Based Access

Service Provider restricts access to its data centers based on role, not position. As a result,

most senior executives at Service Provider do not have access to Service Provider data centers

12. Communications and Operations Management.

Protections Against Malicious Code. Service Provider will implement detection, prevention, and recovery controls to protect against malicious software, which is no less than current industry best practice and perform appropriate employee training on the prevention and detection of malicious software.

Back-ups. Service Provider will perform appropriate back-ups of Service Provider Information Processing Systems and media containing City Data every business day with end-of-month copy stored for 1-year in order ensuring services and service levels described in this Document. Service Provider maintains a plan for responding to a system emergency or other occurrence (for example, fire, vandalism, system failure and natural disaster) that damages systems that contain Sensitive Information and Internal Information.

Media Handling. Service Provider will protect against unauthorized access or misuse of City Data contained on media.

Media and Information Disposal. Service Provider will securely and safely dispose of media containing Sensitive Information:

Maintaining a secured disposal log that provides an audit trail of disposal activities.

13. Exchange of Information

To protect confidentiality and integrity of Sensitive Information in transit, Service Provider will:

Perform an inventory, analysis, and risk assessment of all data exchange channels (including, but not limited to , SFTP, HTTP, HTTPS, SMTP, modem and fax) to identify and mitigate risks to Sensitive Information from these channels.

Monitor and inspect all data exchange channels to detect unauthorized information releases.

Ensure that appropriate security controls using approved data exchange channels are employed when exchanging Sensitive Information.

14. Monitoring

To protect against unauthorized access or misuse of Sensitive Information residing on Service Provider Information Processing Systems, Service Provider will:

Employ current industry best practice security controls and tools to monitor Information Processing Systems and log user activities, exceptions, unauthorized information

processing activities, suspicious activities and information security events. Logging facilities and log information will be protected against tampering and unauthorized access. Logs will be kept for at least 180 days.

Perform frequent reviews of logs and take necessary actions to protect against unauthorized access and implement policy and infrastructure as needed.

At Written Request of the City, make logs available to City to assist in investigations.

Ensure that the time clocks of all relevant Information Processing Systems are synchronized using a national or international time source.

Ensure common configuration and patch management information is maintained.

Based on the periodic assessment, measures will be implemented that reduce the impact of the threats by reducing the amount and scope of the vulnerabilities.

15. Access Control

User Access Management. To protect against unauthorized access or misuse of Sensitive Information a formal user registration and de-registration procedure for granting and revoking access and access rights to all Service Provider Information Processing Systems.

Employ a formal password management process using authentication and authorization controls that are designed to protect against unauthorized access.

Perform recurring reviews of Service Provider employees' access and access rights to ensure that they are appropriate for the users' role.

16. User Responsibilities

To protect against unauthorized access or misuse of Sensitive Information residing on Service Provider Information Processing Systems, Service Provider will:

Ensure that Service Provider Information Processing Systems users follow current security practices in the selection and use of sufficiently strong passwords.

Ensure that unattended equipment has appropriate protection to prohibit access and use by unauthorized individuals.

Ensure that Sensitive Information contained at employee workstations, including but not limited to paper and media display screens, is protected from unauthorized access and/or utilizes Data Masking.

17. Network Access Control

Access to internal, external and public network services that allow access to Service Provider Information Processing Systems shall be controlled. Service Provider will:

Ensure that current industry best practice standard authentication mechanisms for network users and equipment are in place and updated as necessary.

Ensure electronic perimeter controls are in place to protect Service Provider Information Processing Systems from unauthorized access.

Ensure sufficient authentication methods are used to control access by remote users.

Ensure physical and logical access to diagnostic and configuration ports is controlled.

18. Operating System Access Control

To protect against unauthorized access or misuse of Sensitive Information residing on Service Provider Information Processing Systems, Service Provider will:

Ensure that access to operating systems is controlled by a secure log-on procedure and limited to role based necessity.

Ensure that Service Provider Information Processing System users have a unique identifier (user ID). This account is used to identify each person's activity on Service Provider's Information Processing Systems network, including any access to employee or City data.

Ensure that the use of utility programs that are capable of overriding system and application controls are highly restricted and tightly controlled, with access limited to those employees whose specific job function requires such access.

Ensure that inactive sessions are automatically terminated when technically possible after a defined period of inactivity.

Employ idle time-based restrictions on connection times when technically possible to provide additional security for high risk applications.

Ensure that current industry best practice standard authentication mechanisms for wireless network users and equipment are in place and updated as necessary.

Ensure authentication methods are used to control access by remote users, with unique User Identifiers.

19. Information Systems Acquisition, Development and Maintenance

Security of System Files. To protect City Information Processing Systems and system files

containing information, Service Provider will ensure that access to source code is restricted to authorized users whose specific job function necessitates such access.

Security in Development and Support Processes. To protect City information Processing Systems and system files containing Sensitive Information, Service Provider will:

Employ industry best practice security controls to minimize information dissemination.

Employ oversight quality controls and security management of outsourced software development.

Employ regular code reviews covering security vulnerabilities, including but not limited to buffer overflow, SQL injection, input validation, and commonly used vector attacks.

20. Information Security Incident Management

Reporting Information Security Events and Weaknesses. To protect City Information Processing Systems and system files containing information, Service Provider will:

Implement a process to ensure that Information Security Events and Security Breaches are reported through appropriate management channels as quickly as possible.

Train all employees, contractors, users of information systems and services regarding the report of any observed or suspected Information Security Events and Security Breaches.

Notify City by email or phone as soon as possible of all Information Security Events and Security Breaches. Following any such event or breach, Service Provider will promptly notify City whether or not Sensitive Information was compromised or released to unauthorized parties, the data affected and/or the details of the event or breach.

21. Business Continuity Management

Business Continuity Management Program. To ensure services and service levels described in this Document, Service Provider will:

Develop and maintain a process for business continuity throughout the organization that addresses the information security requirements needed for Service Provider's and its Providers' business continuity so that the provision of products and/or services provided is uninterrupted.

Maintain efforts to identify events that may cause interruptions to business processes, along with the probability and impact of such interruptions and the consequences for information security.

Develop and implement plans to maintain or restore operations and ensure availability of information at the required level and in the required time scales following interruption to, or

failure of, critical business processes and provide City a copy of the same upon Written Request of the City.

Disaster Recovery. Service Provider has appropriate and reasonable disaster recovery measures in place designed to prevent any interruptions in Service to the City. Service Provider has established disaster contingency plans governing processes following a breach incident, which in particular address the following issues: (i) safety of personnel and third parties, (ii) losses of communications capability (e.g., voice, fax, data), (iii) loss of computer processing capabilities, and (iv) loss of access to physical office facilities.

22. Security Assessments

Initial and Recurring Security Assessments. Service Provider's Third-Party Security Auditor shall perform weekly static scans, monthly dynamic scans, and annual penetration testing. The results of these audits are available to Service Provider and the City with execution a Confidentiality Agreement with Service Provider.

EXHIBIT “C”

PAYMENT SCHEDULE FOR “EXTRA” WORK

Any “extra” work shall be approved in advance in writing by the City.

Council Agenda Item Report

Meeting Date: February 17, 2022

Submitted by: Michelle Kellogg

Submitting Department: Recreation

Item Type: Staff Report

Agenda Section: CONSENT AGENDA

Subject:

Request to Authorize the City Manager to Execute a Construction Agreement, in a Form Approved by the City Attorney, with Stratton and Bratt, for the Replacement of the PC MARC Leisure Pool Play Feature in an Amount Not to Exceed \$44,820

Suggested Action:

Attachments:

[PC MARC Leisure Pool Play Feature Replacement Staff Report](#)

[Exhibit A: Statton and Bratt Quote](#)

[Exhibit B: Play Space Designs](#)

City Council Staff Report



Subject: Leisure Pool Play Feature Replacement
Author: Tate Shaw, Heather Todd
Department: Recreation
Date: February 17, 2022
Type of Item: Administrative – Award of Contract

Recommendation

Authorize the City Manager to execute a Construction Agreement, in a form approved by the City Attorney, with Stratton and Bratt, for the replacement of the PC MARC Leisure Pool Play Feature not to exceed \$44,820.

Background

The PC MARC is home to the only public outdoor leisure pool in Park City. Built in 2003, the leisure pool opened with an ARC interactive play feature, lazy river, and slide. This pool is an amenity for the community providing open swim, group, and private swim lessons and summer camp activities. Over the last four years, the ARC play feature has become non-functional and equipment beyond repair. Control handwheels are no longer available by the manufacturer, and for several years we extended the life of the feature by replacing the wheels with custom products.

Unfortunately, the water feature is now limited to either being turned off or on at full water flow with no working features. Due to this lack of water flow control, lifeguards often turn the feature off as it inefficiently sprays water onto the deck during windy conditions. The feature also makes lifeguard scanning more difficult and unwelcoming for toddlers and parents, for which the shallow end of the pool primarily serves.

Analysis

- October 2020- We sought grant funding for replacement and unfortunately, were not successful.
- February- July 2021- Based upon research, we projected and received \$53,000 in the Aquatics CIP account. New market estimates suggest the actual expense is \$65,000- 70,000.
- July- August 2021- After the budget approval, we engaged the youth swim team, swim lesson participants, and parents to gauge interest in new features. We determined that four smaller features spread throughout the pool would provide a more enjoyable experience instead of one large feature.
- October 2021- January 2022- Through the procurement process, we engaged several potential equipment vendors and aquatic companies for design and installation. Equipment was selected through Play Space Designs (\$22,548.00) with the construction and installation by Stratton and Bratt (\$44,820.00).
- Both companies have valuable reputations and have worked closely on other municipal pools throughout the state. In addition, the new features will have a

variable frequency drive that will allow for better control of sustainable water usage and power on the aging aquatic mechanical system. The total project cost is \$67,368.00

- January 2022- In Council work session, we discussed the potential to get an RFP issued for future recreation facilities, which included a pool analysis regarding aging infrastructure. The analysis will target mechanical deficiencies and other play features for the leisure pool, lap pool, and spa. Based on the current need, previous assessment, patron feedback, and approved budget, staff feels it is best to move forward with this play feature replacement at this time that will last several years while an aquatics upgrade is being considered.

Staff recommends awarding a construction contract to Stratton and Bratt. We anticipate replacement will take three to four weeks this spring, and will be completed in time for Memorial Day and summer use!

Funding

Total project cost - \$67,368.00 funded out of Pool Play Feature CIP and Aquatics CIP budgets

Attachments

Exhibit A – Stratton and Bratt

Exhibit B- Play Space Design

Exhibit A- Stratton and Bratt



AQUATICS QUOTE

CUSTOMER

Company **Park City**
 Address 1200 Little Kate Road
 City, State, ZIP Park City, Utah 84060
 Attention **Heather Todd**
 Email heather.todd@parkcity.org
 Phone 801-386-6244

CONTRACTOR INFORMATION

Company Stratton and Bratt
 Address 754 West 700 South
 City, State, ZIP Pleasant Grove, UT 84062
 Phone (801) 785-8011
 Website www.strattonandbratt.com

PROJECT INFORMATION

Project Name **Park City MARC Pool Toy Replacement and Plaster repair**
 Address SAME
 City, State, ZIP Park City, Utah
 Plan Set Dated
 Addenda None
 Prepared By Kory Parker
 Phone (385) 209-8298
 Email kory@strattonandbratt.com
 Today's Date Jan. 24, 2022

SCOPE OF WORK

No.	Description	Qty	Unit	Total
1	Variable Frequency Drive VFD (Outdoor Use NEMA 12 ACU-Drive (AD200-4603-N12 20 HP 3 PH 460 V)	1	\$8,986.00	\$8,986.00
2	Saw cutting (95 LF) and cement demolition and new concrete installation. Includes rebar, electrical bonding to existing rebar bonding and new toys. Removal of old fountain structure.	1	\$12,879.00	\$12,879.00
3	Concrete footings, HDPE piping (better than PVC for this installation), installing of 4 toys (Play Space's design and product) (changed to 4 toys, 1-24-22)	1	\$6,200.00	\$6,200.00
1	Start up, fine tuning and training	1	\$1,500.00	\$1,500.00
1	Plaster repair only to plaster that was removed or damaged during the construction process.	500	\$21.00	\$10,500.00
1	Payment and Performance Bond fees	1	\$1,305.00	\$1,305.00
1	Mobilization, tarps, job set up, clean up, etc.	1	\$3,450.00	\$3,450.00
TOTAL:				\$44,820.00
NOTES:				
1	We have not allowed for any engineering because we felt it would not be necessary as long as we installed items per manufacture's specifications and could show via testing to the Owner that indeed the toys were electrically bonded. If the Owner wants and engineer to get involved, we estimate that it would be about \$5,000 additional. Let us know and we will get a firm price from an engineering firm.			

2	It is our understanding that Park City will purchase the toys directly from Playspace; consequently, we have not allowed for this cost. We have allowed to unload and install the toys. Design by Playspace Designs.
Quality service since 1966!	

Exhibit B- Play Space Designs



Waterplay Interactive

Page 1 of 3



Council Agenda Item Report

Meeting Date: February 17, 2022

Submitted by: Michelle Kellogg

Submitting Department: Library

Item Type: Staff Report

Agenda Section: NEW BUSINESS

Subject:

Library Annual Report FY2021

(A) Public Input

Suggested Action:

Attachments:

[FY21 Library Annual Update](#)



City Council Manager's Report

Subject: Library Annual Report, FY21
Author: Adriane Herrick Juarez
Department: Library
Date: February 17, 2022

The Park City Library Director and the Park City Library Board would like to thank Mayor Worel and City Council for the opportunity to present the Library's FY21 Annual Report.

The Library Board of Directors

The Current Board can be found at: <http://parkcitylibrary.org/about/library-board/library-board-members/>

The Park City Library Board of Directors, representing the citizens of Park City, and working in partnership with the Library Executive Director, evaluates library services and community needs, establishes library policies, and helps set goals to be implemented by the director and staff. Board members inform others about library services, needs, and accomplishments to foster a positive public image and build community support.

The Park City Library Board of Directors consists of five to nine voting members appointed by the Park City Council. The Library Executive Director attends Board meetings but is not a voting member. Board members are appointed for three-year terms and may be re-appointed once. Individual Board members contribute personal volunteer time.

Annual Report

Library usage during Fiscal Year 2021 included response to the pandemic with curbside service, remote programs, and electronic resources. The Library has 320,866 items in its collections, which includes both print and digital items. Staff conducted 198 library programs for children, youth, teens, and adults bringing in 10,477 participants. These were delivered with safety in mind, utilizing both virtual participation and outside programming when the weather permitted.

- 41,208 people visited the library
- 92,358 items were checked out
- 3,159 public computer sessions were used
- 12,827 Wi-Fi sessions were used

As expected, given the pandemic, these numbers are down from past years as the staff delivered curbside and remote services. However, in the current year, the Library is beginning to see visits, checkouts, computer usage, and wi-fi sessions moving back toward typical in-person usage.

Highlights:

- **ONE BOOK ONE COMMUNITY** Pam Houston's *Deep Creek: Finding Hope in High County* was our community's read for One Book One Community. In September, the author spoke virtually to our engaged locals.
- **ACTION BOOK CLUB** The Library invited participants to read books on timely topics & take part in meaningful service projects to benefit the community. During COVID-19, this book club allowed Parkites to read together, with their household or by themselves, then do something good for those around them.
- **CARES ACT IMPROVED WI-FI** The Library received funds from the Utah State Library to improve Wi-Fi coverage beyond the walls of the Library during COVID-19 providing essential electronic access in a safer outdoor setting.
- **AMERICA'S STAR LIBRARY AWARD** Library Journal designated the Park City Library as one of America's Star Libraries for 2020. This award was received by one public library in the state of Utah for the year.
- **SPANISH SERVICES LIBRARIAN** Daniel Thurston was hired as the Library's first Spanish Services Librarian. This position has a seat on the library's management team to develop high-level collections and services for our Spanish-speaking and Latinx communities.
- **NEW WEBSITE LAUNCHED** The Library's website underwent a redesign with user experience at the forefront. The website includes a dynamic calendar feature, virtual book displays, and an informative blog.
- **EXEMPLARY SERVICE DURING COVID-19** The Library utilized safety precautions to reopen to the public after providing curbside service and a myriad of innovative programs during the pandemic, then received an Exemplary Service Award from the Utah State Library as one of only 5 recognized for this high-level of service.
- **TEEN INVOLVEMENT** The Friends of the Library supported a teen internship program that taught teens about the profession of librarianship while engaging them in hands-on projects.

Thank you to everyone who supported the Library in an unprecedented year marked by staff adapting to the pandemic with innovative programs and services. The Library was honored to receive both the Library Journal Star Library Award and the Utah State Library's Exemplary Service During COVID-19 Award. We appreciate the support and continued use by the community in new ways. Thank you to City Council, the Library Board, and the Friends of the Library who support staff, the Library, and the community!

The Library's Annual Report can be found in full at:

<https://parkcitylibrary.org/wp-content/uploads/2022/01/Annual-Report-FY-2021-compressed.pdf>

In addition, Library spent the last year developing a new strategic plan in cooperation with the Library Board that focuses on four pillars that include User Experience, Inclusivity, Community Relationships, and Lifelong Learning. The Library's Strategic Plan can be found in full at:

<https://parkcitylibrary.org/principles/>

Looking Forward

In light of recent successes and in support of the current strategic plan, the Library is looking toward supporting our program at a high level as well as expanding it. Historically, oversight and contracting with building tenants has been managed by the Economic Development Department. The Library is looking to take over responsibility for the entire Library building and its tenants with a mind to create a cohesive unit for tenant relations with on-site communications, accountability, and focused attention that is not diffused among different municipal departments.

The Library will ask for slight increase in personnel in the next budget cycle to support this function as well as to support the expanded programming of the Library overall.

Successful Library Reaccreditation

In FY2021, the Utah State Library Division continued Park City Library's accreditation with *Quality Library Status*, indicating that our library provides a level of service to the community that exceeds the standards developed by Utah public librarians and adopted by the State Library Board. As a Quality Library, our organization is proven as an active, involved, and vital part of the community providing essential resources. Quality Status qualifies the Park City Library to mentor other libraries. State accreditation makes the Library eligible to receive funds from the *Community Library Enhancement Fund* (CLEF).

Council Agenda Item Report

Meeting Date: February 17, 2022

Submitted by: Michelle Kellogg

Submitting Department: Sustainability

Item Type: Staff Report

Agenda Section: NEW BUSINESS

Subject:

Consideration to Approve the Utah Department of Alcohol Beverage Control (DABC) Request to Extend the Lease of City-Owned Space Located at 460 Swede Alley, Unit 100 for Two Additional Years for an Annual Rent of \$12,637.40
(A) Public Input (B) Action

Suggested Action:

Attachments:

[DABC Swede Alley Lease Staff Report](#)

[Exhibit A: DABC Lease - Addendum 5](#)

City Council Staff Report



Author: Jonathan Weidenhamer
Subject: DABC Lease Extension
Date: February 17, 2022
Type of Item: Administrative

Summary Recommendations:

The Utah Department of Alcohol Beverage Control (DABC) has exercised their option to extend the lease of City-owned space located at 460 Swede Alley, Unit 100 for two additional years. Per allowances in the lease, the City Council should review and consider approving an increase in the annual rent.

Background

The lease is with the Utah Division of Facilities Construction and Management (DFCM), in their form, and the increased rent would be acknowledged by a 6th addendum.

The DABC started leasing space in the basement of the Park City Museum in 1987. On June 8, 2008, to accommodate the Museum renovation, City Council approved a 5-year lease (Addendum 3) with the DABC to relocate the liquor store to its current location under the KPCW radio station. The space is 1,790 square feet and City Council agreed to a rent rate of \$5.80/sf, which is considerably under market. This was done to continue to provide an amenity and service for both residents and guests. At the time, the DABC was contemplating not making the move unless the rent was significantly reduced.

Addendum 4 extended the lease term from June 2013 through June 2020 at the same rent. Addendum 5, in place since July 2020, increased rent to \$6.40/sf (an increase of 10.35% over the previous lease).

DABC recently exercised their option within the 5th Addendum to extend the current lease for an additional two years, commencing July 1, 2022 (Section 2.1, Exhibit A). Section 2.1 of the lease also gives the City the ability to renegotiate the rent if they exercise their option. Staff recommends, and the DABC agreed, to another 10.35% increase in rent to \$7.06/sf, or \$12,637.40 annually.

Analysis

The DABC Swede Alley store (#36) provides a valuable and convenient amenity for residents and visitors. Their 2021 sales were \$1.86MM, and with the City's local tax rate of 2.25% the City received approximately \$42,000 in tax revenues:

DABC Annual Sales/ Store					
Store	2017	2018	2019	2020	2021
Kimball Jct.	\$13,550,348	\$14,514,695	15,151,862	\$14,852,597	\$15,069,884
PC Club Store	\$14,908,638	\$15,510,647	\$16,272,357	\$14,116,769	\$13,774,409
Snow Creek	\$15,398,690	\$16,223,301	\$17,059,451	\$18,440,014	\$20,615,739
Swede Alley	\$2,117,079	\$2,229,889	\$2,290,198	\$2,101,375	\$1,859,313

While the DABC's [2021 Fiscal Report](#) highlights impressive performance metrics for the Store #36 (p.68), their operations are not without challenges. They have unique issues stemming from their small, downtown location, including delivery logistics and employee retention. Over the years, especially during the initial stages of COVID, they worked closely with HPCA and City staff on reducing hours to accommodate acute labor challenges.

The DABC's lease extension option gives them the right to extend through June 2024, and with no other future addendums, the lease can also continue on a month-to-month basis until terminated by either party. The proposed rental rate of \$7.06/sf (\$12,637 annually), was approved by the DFCM.

Should City Council like to consider additional background, or seek additional discussion on the lease rate, staff is happy to return at a subsequent work session.

Exhibits:

Exhibit A – DABC Leases over time (5th Addendum to Original Lease)

STATE OF UTAH
DEPARTMENT OF ADMINISTRATIVE SERVICES
DIVISION OF FACILITIES CONSTRUCTION AND MANAGEMENT
**AMENDMENT NO. 5 TO
CONTRACT NO. 88-2073**

TO BE ATTACHED TO AND MADE A PART OF the above numbered contract by and between PARK CITY MUNICIPAL BUILDING AUTHORITY, hereinafter referred to as “LESSOR,” and the STATE OF UTAH, DIVISION OF FACILITIES CONSTRUCTION AND MANAGEMENT, hereinafter referred to as “LESSEE,” for the use of the Department of Alcoholic Beverage Control.

W I T N E S S E T H

THAT WHEREAS, LESSOR and LESSEE have heretofore entered into that certain lease agreement (Contract No. 88-2073) for 1,790 square feet of retail space in the facility located at 460 Swede Alley, Unit 100, Park City, Utah, hereinafter referred to as the “Premises”, which lease agreement commenced November 1, 1987, and was amended by Amendment Nos. 1, 2, 3, and 4, collectively, the “Lease Agreement”,

WHEREAS, Amendment No. 4 expired June 30, 2018 and has continued on a month-to-month basis;

WHEREAS, LESSOR and LESSEE mutually desire to renew the subject Lease Agreement for an additional two (2) year renewal or extended term.

NOW THEREFORE, for and in consideration of the mutual covenants, conditions, and agreements herein contained, and other good and valuable considerations, it is covenanted and agreed between the parties that the aforesaid Lease Agreement be modified and amended as follows:

PARAGRAPH 1. RENEWAL OR EXTENDED TERM

1.1 This Lease Agreement is hereby renewed and extended for an additional term of two (2) years, which term shall commence on July 1, 2020 and shall expire June 30, 2022, and shall continue thereafter on a month-to-month rental basis, if option to renew is not exercised by LESSEE as provided for in Paragraph 2 of this Amendment No. 5, until terminated by either party by giving thirty (30) days’ advance written notice to the other party.

PARAGRAPH 2. OPTION TO RENEW

2.1 LESSOR covenants with LESSEE that LESSOR shall, at LESSEE’S option, grant and lease to LESSEE at the expiration of the lease term the Premises pursuant to the provisions of this Lease Agreement for an additional term of two (2) years thereafter, with a like covenant for future renewals of the Lease Agreement as is contained in this

Amendment No. 5, and on the same terms and conditions, except as to the annual rent, which rent shall be determined by negotiation between the parties. This option shall automatically renew unless LESSEE notifies LESSOR in writing at least thirty (30) days prior to the expiration of this renewal term if said option is to NOT be exercised.

2.2 Should LESSEE choose not to terminate the Lease Agreement by providing written notice, the parties shall have thirty (30) days after June 30, 2022, to agree on the base rent during the extended or renewal term. If the parties agree on the base rent for the extended or renewal term during that period, they shall immediately execute an amendment to this Lease Agreement stating the base rentals.

2.3 If the parties are unable to agree on the base rent for the additional extended or renewal term within the specified period, the base terms of the Lease Agreement shall continue. Neither party to this Lease Agreement shall have the right to have a court or other third party set the base rent.

PARAGRAPH 3. CONSIDERATION

3.1 For the renewal or extended period beginning July 1, 2020, and ending June 30, 2022, the sum of the annual base rent shall be payable by LESSEE to LESSOR for the 1,790 square feet, more or less, of retail space according to a rental rate of Six Dollars and Forty Cents (\$6.40) per square foot per year, for an annual rental of Eleven Thousand Four Hundred Fifty Six Dollars (\$11,456.00). LESSEE shall pay such annual base rent in one (1) annual payment within fifteen (15) days of the first day of July each year during the term hereof.

PARAGRAPH 4. REPRESENTATION

4.1 LESSOR, Park City Building Authority, shall now be amended to read PARK CITY MUNICIPAL CORPORATION, a Utah municipal corporation.

4.2 LESSOR acknowledges and confirms that Park City Municipal Corporation is the lawful representative of the Leased Premises and it has the right to lease the same herein provided, and guarantee quiet and peaceable enjoyment of the Leased Premises to LESSEE.

4.3 LESSEE represents that it has examined the Leased Premises and has not relied upon any statements, representations or agreements whatsoever as to the condition of the Leased Premises, and LESSEE accepts the same with the understanding of the building meets all code requirements.

4.4 All other covenants, terms and conditions of the subject Lease Agreement not modified by this Amendment No. 5 will remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto sign and cause this Amendment No. 5 to be executed.

LESSEE: STATE
OF UTAH

LESSOR:
PARK CITY MUNICIPAL
CORPORATION, a Utah municipal
corporation

Signature: Lee Fairbourn
Lee Fairbourn (Jul 29, 2020 14:00 MDT)
Email: lfairbourn@utah.gov
Title: Real Estate Manager

Lee Fairbourn Date
Real Estate Manager
Division of Facilities Construction
and Management

Signature: Andy B.
Email: andy@parkcity.org
Title: Mayor Park City

Andy Beerman Date
Mayor

Signature: Salvador D. Petilos
Salvador D. Petilos (Jul 14, 2020 06:34 MDT)
Email: spetilos@utah.gov
Title: Director

Sal D. Petilos Date
Director
Department of Alcoholic Beverage Control

Signature: Michelle Kellogg
Michelle Kellogg (Jul 20, 2020 09:14 MDT)
Email: michelle.kellogg@parkcity.org
Title: City Recorder

Michelle Kellogg Date
City Recorder

Signature: M. H.
Mark Harrington (Jul 20, 2020 09:41 MDT)
Email: mark@parkcity.org
Title: City Attorney

Mark D. Harrington Date
City Attorney

APPROVED:

Signature: RECEIVED AND PROCESSED
BY DIVISION OF FINANCE
Email: fi_contracts@utah.gov
Title: CONTRACT/GRANT ANALYST

Utah Division of Finance

LEASE AGREEMENT BETWEEN
PARK CITY MUNICIPAL BUILDING AUTHORITY AND THE STATE OF UTAH
DEPARTMENT OF ADMINISTRATIVE SERVICES
DIVISION OF FACILITIES CONSTRUCTION AND MANAGEMENT

THIS LEASE AGREEMENT is made and entered into between PARK CITY MUNICIPAL BUILDING AUTHORITY (hereinafter called "Lessor"), and the State of Utah, Division of Facilities Construction and Management, for and in behalf of the DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL (hereinafter called "Lessee").

WHEREIN IT IS MUTUALLY AGREED AS FOLLOWS:

SECTION 1. LEASED PREMISES. Lessor hereby leases and rents unto Lessee, and Lessee hereby takes as tenant under Lessor, that certain real property comprising of one thousand three hundred and eighty (1,380) square feet of retail selling space with access to two hundred (200) parking stalls, with a street address of 528 Main Street, Park City, Utah. The leased premises shall be used by Lessee for the operation of a Utah State Package Liquor Store. (Appendix A - Floor Plan is attached hereto and made a part of this Agreement.)

SECTION 2. TERM OF LEASE. The term of this Lease shall be seven (7) years which term shall commence on November 1, 1987 and expire on October 31, 1994 and shall continue thereafter on a month-to-month rental basis, if option to renew is not exercised by Lessee pursuant to Section 3 of this Lease, until terminated by either party by giving sixty (60) days advance written notice to the other party, or until terminated pursuant to Paragraph 17 hereof.

SECTION 3. OPTION TO RENEW. Lessor covenants with Lessee that Lessor shall, at Lessee's option, again grant and lease to Lessee at the expiration of the lease term, the premises pursuant to the provisions of this Lease for and during the term of seven (7) years thereafter, with a like covenant for future renewals of the Lease as is contained in the Lease, and on the same terms and conditions, except as to the fixed rental reserved, which rental shall be determined by negotiation between the parties.

SECTION 4. CONSIDERATION. In consideration of granting this Lease Agreement, the sum of the annual rentals payable by Lessee to Lessor shall be twelve dollars (\$12.00). Lessee shall pay Lessor said amount on the first day of November each and every year during the term of the Lease. All rental payments shall be made payable and delivered to Lessor at the following address:

Park City Municipal Building Authority
445 Marsac Avenue
P. O. Box 1480
Park City, Utah 84060

SECTION 5. REPRESENTATION.

(a) Lessor represents that they are the lawful owners or lawful representatives of the owners of the Leased Premises and that they have the right to Lease the same as herein provided and guarantee quiet and peaceable enjoyment of the Leased Premises to Lessee.

(b) Lessee represents that it has examined the Leased Premises and has not relied upon any statements, representations or agreements whatsoever as to the condition of the Leased Premises, and Lessee accepts the same with the understanding the building meets all code requirements.

SECTION 6. INDEMNIFICATION. Each party shall indemnify and save harmless the other party, its officers, agents and employees, from and against all claims, lawsuits, damage, injury or liability claims however caused by said party, its agents or employees.

SECTION 7. SERVICES PROVIDED BY LESSEE. Lessee agrees to pay for the following utilities furnished to the Leased Premises during the term hereof to-wit: electricity, heat, water, sewer, air conditioning, janitorial, and snow removal.

SECTION 8. FIRE INSURANCE. Lessor agrees to keep the Leased Premises fully insured to protect the same from loss or damage by fire, extended coverage, vandalism, and malicious mischief at all times during the term of this lease agreement. All costs of such insurance shall be borne by the Lessor. Lessee shall be responsible for damages to all personal property it may locate in the Leased Premises except damage thereto caused by Lessor's negligence.

SECTION 9. REPAIR AND MAINTENANCE.

(a) All repairs and maintenance of the Leased Premises shall be made at the sole cost and expense of Lessor. Lessor shall be responsible for

- (1) all roof and structural repairs, wind damage, and glass breakage;
- (2) providing full service repair and maintenance of heating and air conditioning equipment;
- (3) all plumbing repairs or maintenance;
- (4) providing ground and parking lot maintenance.

Lessor agrees to make timely repairs and have adequate maintenance procedures.

(b) In the event of failure by Lessor to provide any services under this Agreement and said failure goes uncorrected for fifteen (15) days after written notice to Lessor, the Lessee shall have the right to secure said services and to deduct the cost thereof from the rental payments.

(c) Lessee agrees not to commit or permit waste of or on the Leased Premises, and agrees to be responsible for all repairs necessitated by acts of waste committed by Lessee, its employees, agents and invitees.

SECTION 10. DAMAGE OR DESTRUCTION OF LEASED PREMISES.

In the event the Leased Premises shall be damaged or destroyed by fire or by any other means and are thereby made partially or totally untenable at any time during the term of this Lease Agreement, Lessee shall have the option to:

(a) terminate this Lease as of the date of such damage or destruction, or

(b) continue this Lease Agreement in force and effect for the remainder of the Lease term if the Leased Premises are only partially destroyed or damaged and are repaired within ninety (90) days from the date of such destruction or damage. It is mutually agreed that all rentals shall abate until such time as the repairs to the Leased Premises are completed.

SECTION 11. LESSEE'S PERSONAL PROPERTY AND FIXTURES.

All personal property and fixtures placed in or upon the Leased Premises by Lessee shall not become part of the Leased Premises and Lessee shall be privileged to remove the same at the termination or expiration of the Lease Agreement.

SECTION 12. TERMINATION AND SURRENDER OF LEASED PREMISES. Lessee agrees to quit and surrender peaceable possession of the Leased Premises to Lessor when this Lease Agreement is terminated. Lessee agrees to leave the Leased Premises in as good a state of repair and sanitary condition as when received, reasonable wear and tear and damage by the elements or by fire excepted.

SECTION 13. JUDICIAL INTERVENTION. In the event a court of competent jurisdiction, for any reason and at any time during the term of this Lease Agreement, shall prohibit Lessee from using the Leased Premises for the purpose for which it was leased, by temporary injunction or abolishment of program, Lessee shall have the option to:

(a) terminate this Lease Agreement without any further liability, cost and expense to Lessee or

(b) to continue this Lease Agreement in force and effect for the full term.

SECTION 14. LESSEE'S CONTROL. It is understood and agreed that the Lessor has no control or interest in any manner of the activities contemplated by the Lessee pursuant to the provisions of this Lease and Lessor shall not be involved therein in any manner, other than the right to receive the rentals herein reserved and the right to the return of the Leased Premises as herein provided. Lessee has the right to sublet any part of or all of Leased Premises, but shall not so sublet or assign this Lease Agreement without the written consent of Lessor.

SECTION 15. COST AND ATTORNEY'S FEES. In case of default in carrying out the terms and conditions of this Lease, the party in default agrees to pay a reasonable attorney's fee and all costs of the other party in enforcing this Lease. If a breach of contract is alleged by either party against the other party, fifteen (15) days prior written notice of default shall be given to the other party before any legal action is taken.

SECTION 16. MANNER OF GIVING NOTICE. Any and all notices required by the Lease Agreement shall be in writing and delivered personally to the party to whom notice is to be given, or mailed by certified mail, postage prepaid, and addressed as follows:

If to Lessor:

Park City Municipal
Building Authority
Chairman Hal W. Taylor
445 Marsac Avenue
P. O. Box 1480
Park City, Utah 84060

If to Lessee:

State of Utah
Department of Alcoholic
Beverage Control
1625 South 900 West
P. O. Box 30408
Salt Lake City, Utah 84130-0408

With a copy to:

Division of Facilities
Construction and Management
4110 State Office Building
Salt Lake City, Utah 84114

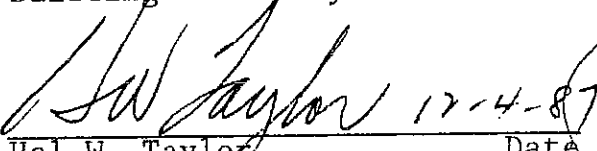
SECTION 17. OPTION TO TERMINATE LEASE. Lessee and Lessor both acknowledge that Lessee cannot contract for payment of funds not yet appropriated by the Utah State Legislature and that the space requirements of this Lease may be altered by a federal act or an act of the Utah State Legislature occurring before the expiration of this Lease. Lessee, therefore, reserves the right for the above reasons to terminate the contract by giving sixty (60) days notice in the manner heretofore stated in this Lease Agreement. This Lease may be cancelled at the end of each lease year by either party by giving sixty (60) days advance written notice to the other party.

SECTION 18. LESSOR'S COMPLIANCE TO STATE CODES AND REQUIREMENTS. Lessor shall engage a Certified Industrial

Hygienist to confirm that no asbestos exists in the building. If the Lease space does not comply with the state codes, including handicap code; the Lessor will be notified in writing of the corrections needed. The Lessor shall have six (6) months to begin work to comply with the written notice and one year to complete the work. If the Lessor fails to comply with the written notice the Lessee has the right to withhold lease monies until the space complies with the state codes.

IN WITNESS WHEREOF, the parties hereto sign and cause this Lease to be executed.

LESSOR
Park City Municipal
Building Authority


Hal W. Taylor 12-4-87
Chairman Date

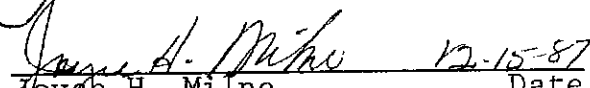
LESSEE
State of Utah


Dennis R. Kellen 12-14-87
Manager of Operations Date
Department of Alcoholic
Beverage Control

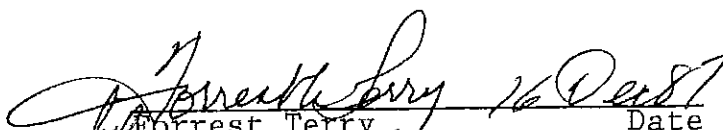
APPROVED AS TO FORM:

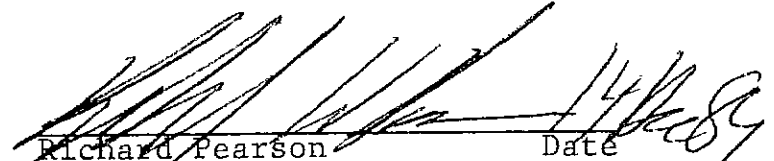

James W. Carter
Park City Attorney Date


John P. Soltis 12-16-87
Assistant Attorney General Date
State of Utah


Joyce H. Milne 12-15-87
Division of Facilities Date
Construction and Management

APPROVED AS TO THE AVAILABILITY OF FUNDS:


Forrest Terry 16 Dec 87
Utah Division of Finance Date


Richard Pearson 14 Dec 87
Management Services Coord. Date
Department of Alcoholic
Beverage Control

STATE OF UTAH
DEPARTMENT OF ADMINISTRATIVE SERVICES
DIVISION OF FACILITIES CONSTRUCTION AND MANAGEMENT

**CONTRACT NO. 88-2073
AMENDMENT NO. 1**

TO BE ATTACHED TO AND MADE A PART OF the above numbered contract by and between PARK CITY MUNICIPAL BUILDING AUTHORITY, hereinafter called "LESSOR", and the STATE OF UTAH, DIVISION OF FACILITIES CONSTRUCTION AND MANAGEMENT, for and in behalf of the Department of Alcoholic Beverage Control, hereinafter called "LESSEE".

W I T N E S S E T H

THAT WHEREAS, LESSOR and LESSEE have heretofore entered into that certain Lease Agreement (Contract No. 88-2073) for 1,380 square feet of retail store space in the facility located at 528 Main Street in Park City, Utah, which Lease Agreement commenced November 1, 1987, and is currently continuing on a month-to-month basis; and

WHEREAS, LESSEE and LESSOR mutually desire to renew the subject Lease Agreement for an additional six and one-half (6.5) years extended or renewal term; and

NOW THEREFORE, for and in consideration of the mutual covenants, conditions, and agreements herein contained, and other good and valuable considerations, it is covenanted and agreed between the parties that the aforesaid Lease Agreement be modified and amended as follows:

PARAGRAPH 1. RENEWAL OR EXTENDED TERM

LESSEE and LESSOR hereby renew and extend this Lease Agreement for an additional term of six and one-half (6.5) years which term shall commence July 1, 1996, and shall expire December 31, 2002, and shall continue thereafter on a month-to-month rental basis, if option to renew is not exercised by LESSEE as provided for in Paragraph 2 of this Lease Amendment No. 1, until terminated by either party by giving thirty (30) days advance written notice to the other party.

PARAGRAPH 2. OPTION TO RENEW

a. LESSOR covenants with LESSEE that LESSOR shall, at LESSEE'S option, again grant and lease to LESSEE at the expiration of the lease term, the premises pursuant to the provisions of this Lease for and during the term of seven (7) years thereafter, with a like covenant for future renewals of the lease as is contained in this Amendment No. 1, and on the same terms and conditions, except as to the annual rentals, which rentals shall be determined by negotiation between the parties. LESSEE shall notify LESSOR in writing at least thirty (30) days prior to the expiration of this renewal term if said option is to be exercised.

b. To exercise an option hereunder, LESSEE must give LESSOR written notice of its desire to extend the Lease Agreement an additional term at least thirty (30) days prior to the end of the then lease term. Failure to timely exercise an option shall revoke and terminate any right to exercise options for successive periods.

c. The parties shall have thirty (30) days after LESSOR receives the option notice in which to agree on the base rentals during the extended or renewal term. If the parties agree on the base rentals for the extended or renewal term during that period, they shall immediately execute an amendment to this Lease stating the base rentals.

d. If the parties are unable to agree on the base rentals for the extended or renewal term within the specified period, the option notice shall be of no effect and this Lease shall expire at the end of the then term. Neither party to this Lease shall have the right to have a court or other third party set the base rentals.

PARAGRAPH 3. CONSIDERATION

a. For the period beginning July 1, 1996, and ending June 30, 1997, the sum of the annual base rentals payable by LESSEE to LESSOR for the 1,380 square feet of retail store space shall be based on a rental rate of \$2.90 per square foot per year. LESSEE shall pay such annual base rentals in the amount of Four Thousand Dollars (\$4,000.00) in one annual payment on the first day of July during this renewal or extended period.

b. For the period beginning July 1, 1997, and ending June 30, 2002, the sum of the annual base rentals payable by LESSEE to LESSOR for the 1,380 square feet of retail store space shall be based on a rental rate of \$5.80 per square foot per year. LESSEE shall pay such annual base rentals in the amount of Eight Thousand Dollars (\$8,000.00) in one annual payment on the first day of every July during this renewal or extended period.

Alcoholic Beverage Control/Park City

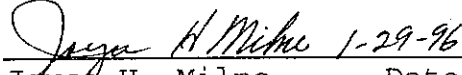
c. For the period beginning July 1, 2002, and ending December 31, 2002, the sum of the annual base rentals payable by LESSEE to LESSOR for the 1,380 square feet of retail store space shall be based on a rental rate of \$5.80 per square foot per year. LESSEE shall pay such annual base rentals in the amount of Four Thousand Dollars (\$4,000.00) in one annual payment on the first day of July during this renewal or extended period.

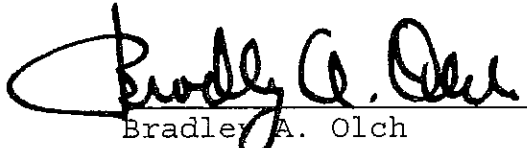
All other covenants, terms, and conditions of the subject Lease Agreement are not modified by this Lease Amendment No. 1 and are to remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto sign and cause this Lease Amendment No. 1 to be executed.

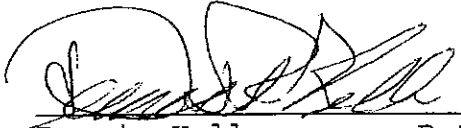
LESSEE
State of Utah

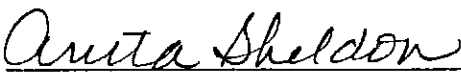
LESSOR
Park City Municipal
Building Authority


Joyce H. Milne Date
Division of Facilities
Construction and Management

 1-24-96
Bradley A. Olch Date

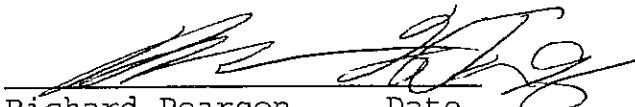
ATTEST:

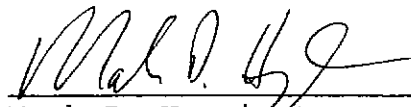
 1-17-96
Dennis Kellen Date
Operations Manager
Alcoholic Beverage Control

 1/24/96
Anita Sheldon Date
City Recorder

Approved:

Approved as to Form:


Richard Pearson Date
Administrative Services Manager
Alcoholic Beverage Control

 1/22/96
Mark D. Harrington Date
Assistant City Attorney

 **CONTRACT RECEIVED &
PROCESSED BY
DIVISION OF FINANCE**

Utah Division of Finance

STATE OF UTAH
DEPARTMENT OF ADMINISTRATIVE SERVICES
DIVISION OF FACILITIES CONSTRUCTION AND MANAGEMENT

CONTRACT NO. 88-2073

AMENDMENT NO. 2

TO BE ATTACHED TO AND MADE A PART OF the above numbered contract by and between PARK CITY MUNICIPAL BUILDING AUTHORITY, hereinafter called "LESSOR," and the STATE OF UTAH, DIVISION OF FACILITIES CONSTRUCTION AND MANAGEMENT, for and in behalf of the Department of Alcoholic Beverage Control, hereinafter called "LESSEE."

W I T N E S S E T H

THAT WHEREAS, LESSOR and LESSEE have hereto entered into that certain Lease Agreement (Contract No. 88-2073) for 1,380 square feet of retail store space located at 528 Main Street in Park City, Utah, which Lease Agreement commenced 1987, and was partially amended by Amendment No. 1, which Amendment No. 1 currently expires December 31, 2002; and

WHEREAS, LESSEE and LESSOR are mutually desirous to renew the subject Lease Agreement for an additional ~~Five (5)~~ years renewal or extended term; and

~~THREE (3)~~ *THREE (3)*

NOW THEREFORE, for and in consideration of the mutual covenants, conditions, and agreements herein contained, and other good and valuable considerations, it is covenanted and agreed between the parties that the aforesaid Lease Agreement be modified and amended as follows:

PARAGRAPH 1. RENEWAL OR EXTENDED TERM

1.1 This Lease Agreement is hereby renewed and extended for an additional term of ~~Five (5)~~ years which term shall commence January 1, 2003, and shall expire December 31, 2007, and shall continue thereafter on a month-to-month rental basis. If the option to renew is not exercised by LESSEE as provided for in Paragraph 2 of this Lease Amendment No. 2, the Lease will continue until terminated by either party by giving thirty (30) days advance written notice to the other party.

PARAGRAPH 2. OPTION TO RENEW

2.1 LESSOR covenants with LESSEE that LESSOR shall, at LESSEE'S option, again grant and lease to LESSEE at the expiration of the lease term, the Premises pursuant to the provisions of this Lease for and during the term of three (3) years thereafter, with a like covenant for future renewals of the Lease as is contained in this Amendment No. 2, and on the same terms and conditions, except as to the annual rentals, which rentals shall be determined by negotiation between the parties. LESSEE shall notify LESSOR in writing at least thirty (30) days prior to the expiration of this renewal term if said option is to be exercised.

2.2 To exercise an option hereunder, LESSEE must give LESSOR written notice of its desire to extend the Lease Agreement an additional term at least thirty (30) days prior to the end of the then lease term. Failure to timely exercise an option shall revoke and terminate any right to exercise options for successive periods.

2.3 The parties shall have thirty (30) days after LESSOR receives the option notice in which to agree on the base rentals during the extended or renewal term. If the parties agree on the base rentals for the extended or renewal term during that period, they shall immediately execute an amendment to this Lease stating the base rentals.

2.4 If the parties are unable to agree on the base rentals for the extended or renewal term within the specified period, the option notice shall be of no effect and the Lease shall expire at the end of the then term. Neither party to this Lease shall have the right to have a court or other third party set the base rentals.

PARAGRAPH 3. CONSIDERATION

3.1 For the renewal or extended period beginning January 1, 2003, and ending June 30, 2003, the sum of the annual base rentals payable by LESSEE to LESSOR for the 1,380 square feet of office space shall be based on a rental rate of \$5.80 per square foot per year. LESSEE shall pay such annual base rentals in the amount of Four Thousand Dollars (\$4,000.00) in one payment on the first day of January, 2003.

~~3.2~~ ²⁰⁰⁵ For the renewal or extended period beginning July 1, 2003, and ending June 30, ~~2007~~, the sum of the annual base rentals payable by LESSEE to LESSOR for the 1,380 square feet of office space shall be based on a rental rate of \$5.80 per square foot per year. LESSEE shall pay such annual base rentals in the amount of Eight Thousand Dollars (\$8,000.00) in one annual payment on the first day of July each year during the term hereof.

~~3.3~~ ²⁰⁰⁵ For the renewal or extended period beginning July 1, ~~2007~~, and ending December 31, ~~2007~~, the sum of the annual base rentals payable by LESSEE to LESSOR for the 1,380 square feet of office space shall be based on a rental rate of \$5.80 per square foot per year. LESSEE shall pay such annual base rentals in the amount of Four Thousand Dollars (\$4,000.00) in one annual payment on the first day of July each year during the term hereof.

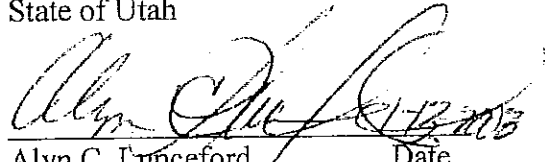
PARAGRAPH 4. SUBSTITUTE LOCATION

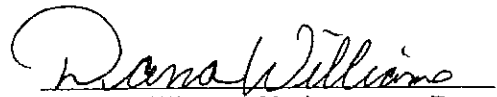
During the term of this Amendment the LESSOR may offer a substitute facility to the LESSEE. If LESSEE and LESSOR agree that the substitute facility is of equal or greater value, then the LESSEE and LESSOR must agree to amend and modify this Lease to accommodate the terms and location of the substitute facility.

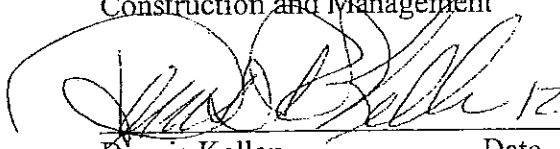
IN WITNESS WHEREOF, the parties hereto sign and cause this Lease Amendment No. 2 to be executed.

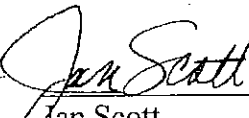
LESSEE
State of Utah

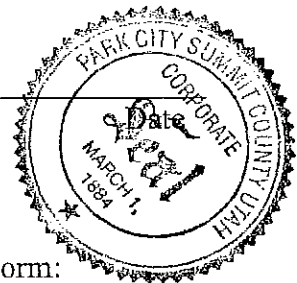
LESSOR
Park City


Alyn C. Lunceford Date
Real Estate and Debt Manager
Division of Facilities
Construction and Management


Dana Williams, Chairman Date
Municipal Building Authority

 12-12-02
Dennis Kellen Date
Operations Manager
Alcoholic Beverage Control

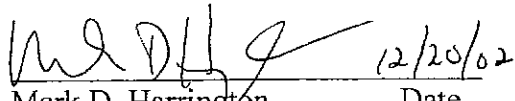

Jan Scott
City Recorder



APPROVED:

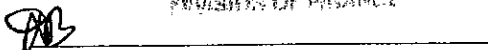
APPROVED as to Form:


Richard Pearson Date
Administrative Services Manager
Alcoholic Beverage Control

 12/20/02
Mark D. Harrington Date
City Attorney

 12/12/02
Budget Officer Date
Alcoholic Beverage Control

CONTRACT RECEIVED AND
PROCESSED BY
DIVISION OF FINANCE


Utah Division of Finance

STATE OF UTAH
DEPARTMENT OF ADMINISTRATIVE SERVICES
DIVISION OF FACILITIES CONSTRUCTION AND MANAGEMENT

**CONTRACT NO. 88-2073
AMENDMENT NO. 3**

TO BE ATTACHED TO AND MADE A PART OF the above numbered contract by and between PARK CITY MUNICIPAL BUILDING AUTHORITY, hereinafter referred to as "LESSOR," and the STATE OF UTAH, DIVISION OF FACILITIES CONSTRUCTION AND MANAGEMENT, hereinafter referred to as "LESSEE," for the use of the Department of Alcoholic Beverage Control.

W I T N E S S E T H

THAT WHEREAS, LESSOR and LESSEE have heretofore entered into that certain Lease Agreement (Contract No. 88-2073) for 1,380 square feet of retail space in the facility located at 528 Main Street, Park City, Utah, which Lease Agreement commenced November 1, 1987, and was partially amended by Amendments No. 1 and 2, which Amendment No. 2 expired December 31, 2005 and continued thereafter on a month-to-month basis; and

WHEREAS, LESSEE had vacated the Leased Premises at 528 Main Street, Park City, Utah, causing this lease to be closed and inactive until execution of this Amendment No. 3; and

WHEREAS, LESSOR has constructed a new building at 460 Swede Alley, Park City, Utah, and has offered space on the ground floor of said building as leased retail space to LESSEE; and

WHEREAS, LESSOR and LESSEE are mutually desirous to renew the subject Lease Agreement for an additional five (5) years renewal or extended term.

NOW THEREFORE, for and in consideration of the mutual covenants, conditions, and agreements herein contained, and other good and valuable considerations, it is covenanted and agreed between the parties that the aforesaid Lease Agreement be modified and amended as follows:

PARAGRAPH 1. LEASED PREMISES

1.1 Effective on the date of beneficial occupancy of the new Leased Premises and LESSEE'S acceptance of the new Leased Premises as built out by LESSOR, estimated to be June 17, 2008, the location of the Leased Premises shall be changed from its previous location at 528 Main Street, Park City, Utah, to 1,790 square feet, more or less, of retail

space in a new building at 460 Swede Alley, Unit #100, Park City, Utah, as shown on Exhibit A which is attached hereto and made a part hereof. LESSEE agrees not to sublet any part of or all of the Leased Premises.

PARAGRAPH 2. RENEWAL OR EXTENDED TERM

2.1 This Lease Agreement is hereby renewed and extended for an additional term of five (5) years which term shall commence on June 1, 2008 and shall expire May 30, 2013, and shall continue thereafter on a month-to-month rental basis, if option to renew is not exercised by LESSEE as provided for in Paragraph 3 of this Lease Amendment No. 3, until terminated by either party by giving thirty (30) days advance written notice to the other party.

PARAGRAPH 3. OPTION TO RENEW

3.1 LESSOR covenants with LESSEE that LESSOR shall, at LESSEE'S option, again grant and lease to LESSEE at the expiration of the lease term, the Premises pursuant to the provisions of this Lease for and during the term of FIVE (5) years thereafter, with a like covenant for future renewals of the Lease as is contained in this Amendment No. 3, and on the same terms and conditions, except as to the annual rentals, which rentals shall be determined by negotiation between the parties. LESSEE shall notify LESSOR in writing at least thirty (30) days prior to the expiration of this renewal term if said option is to be exercised.

3.2 To exercise an option hereunder, LESSEE must give LESSOR written notice of its desire to extend the Lease Agreement an additional term at least thirty (30) days prior to the end of the then lease term. Failure to timely exercise an option shall revoke and terminate any right to exercise options for successive periods.

3.3 The parties shall have thirty (30) days after LESSOR receives the option notice in which to agree on the base rentals during the extended or renewal term. If the parties agree on the base rentals for the extended or renewal term during that period, they shall immediately execute an amendment to this Lease stating the base rentals.

3.4 If the parties are unable to agree on the base rentals for the extended or renewal term within the specified period, the option notice shall be of no effect and the Lease shall expire at the end of the then term. Neither party to this Lease shall have the right to have a court or other third party set the base rentals.

PARAGRAPH 4. CONSIDERATION

4.1 For the renewal or extended period beginning on the date of beneficial occupancy of the new Leased Premises and LESSEE'S acceptance of the new Leased Premises, estimated to be June 17, 2008, and ending May 30, 2013, the sum of the annual base rentals shall be payable by LESSEE to LESSOR for the 1,790 square feet, more or less, of retail space according to a rental rate of \$5.80 per square foot per year, for an

annual rental of \$10,382.00. Lessee shall pay a pro-rated rate from the date of beneficial occupancy through June 30, 2008. For the remaining years, Lessee shall pay such annual base rentals in one annual payment within fifteen days of the first day of July each year during the term hereof.

All other covenants, terms and conditions of the subject Lease Agreement not modified by this Lease Amendment No. 3 will remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto sign and cause this Lease Amendment No. 3 to be executed.

LESSEE
State of Utah

LESSOR
PARK CITY MUNICIPAL
BUILDING AUTHORITY

Kent Beers 8/10/08
Kent Beers Date
Assistant Director
Division of Facilities Construction
and Management

Dana Williams 8/24/08
Dana Williams Date
Chairman

Dennis Kellen 8-14-08
Dennis Kellen Date
Director
Department of Alcoholic Beverage Control

Jan Scott 8/26/08
Jan Scott Date
City Recorder

Leonard Langford 8/14/08
Leonard Langford Date
Budget Officer
Department of Alcoholic Beverage Control

APPROVED as to Form:

Mark D. Harrington 8/25/08
Mark D. Harrington Date
City Attorney

APPROVED:

CONTINUED
PROCESSED BY
DIVISION OF FINANCE DEC 10 2008

Utah Division of Finance

Km 4/24/06

EXHIBIT A

LEASED PREMISES

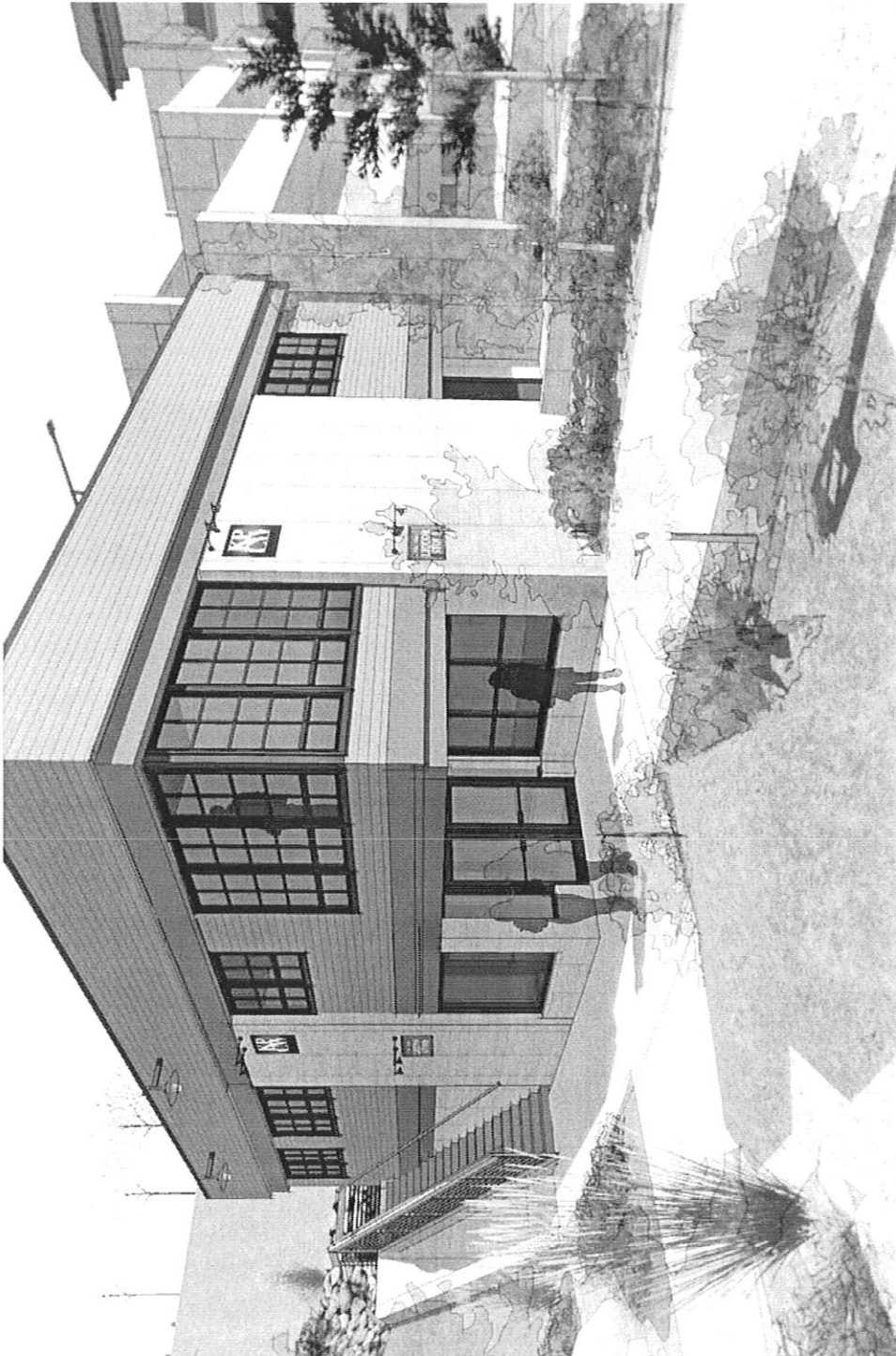
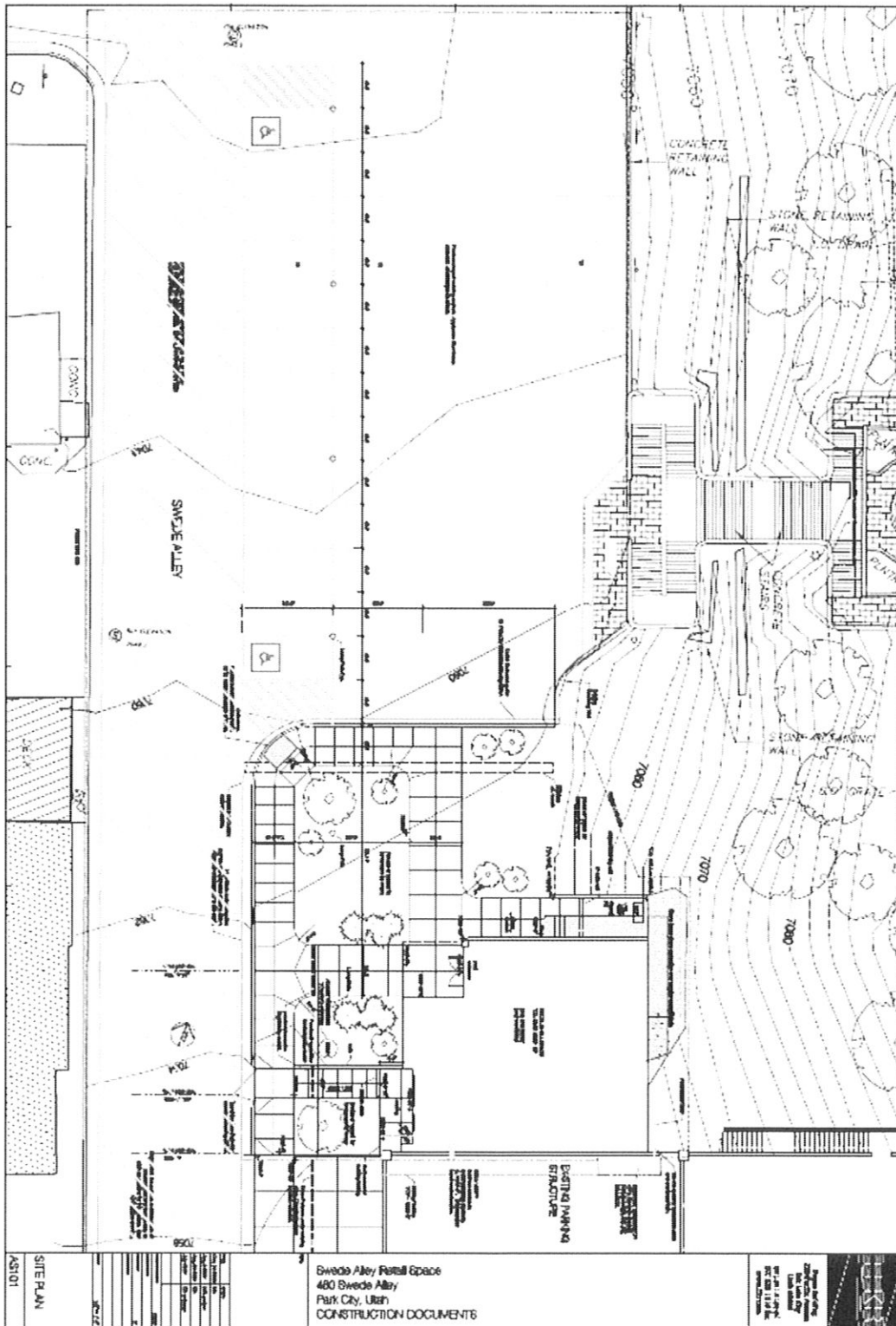
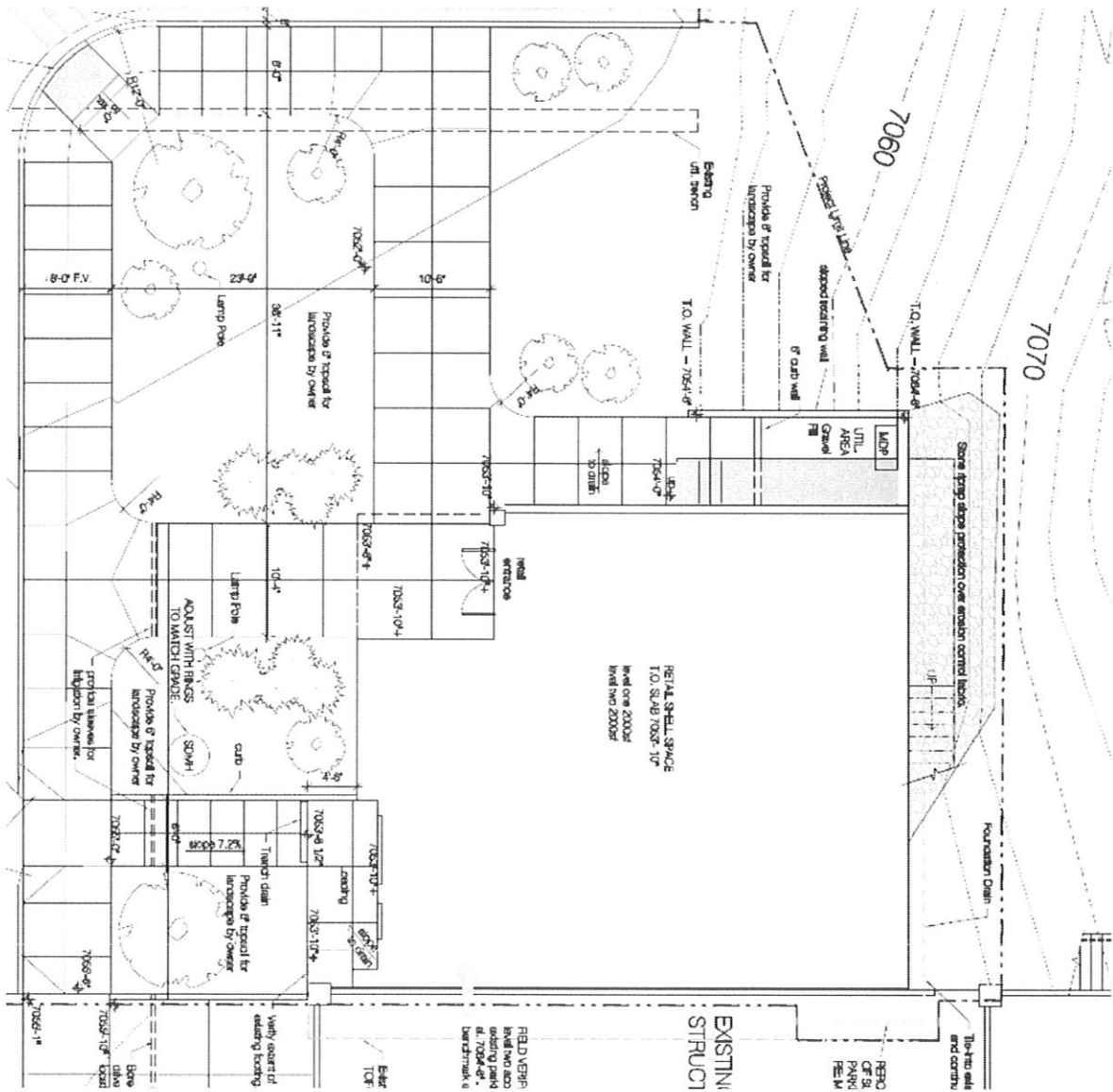


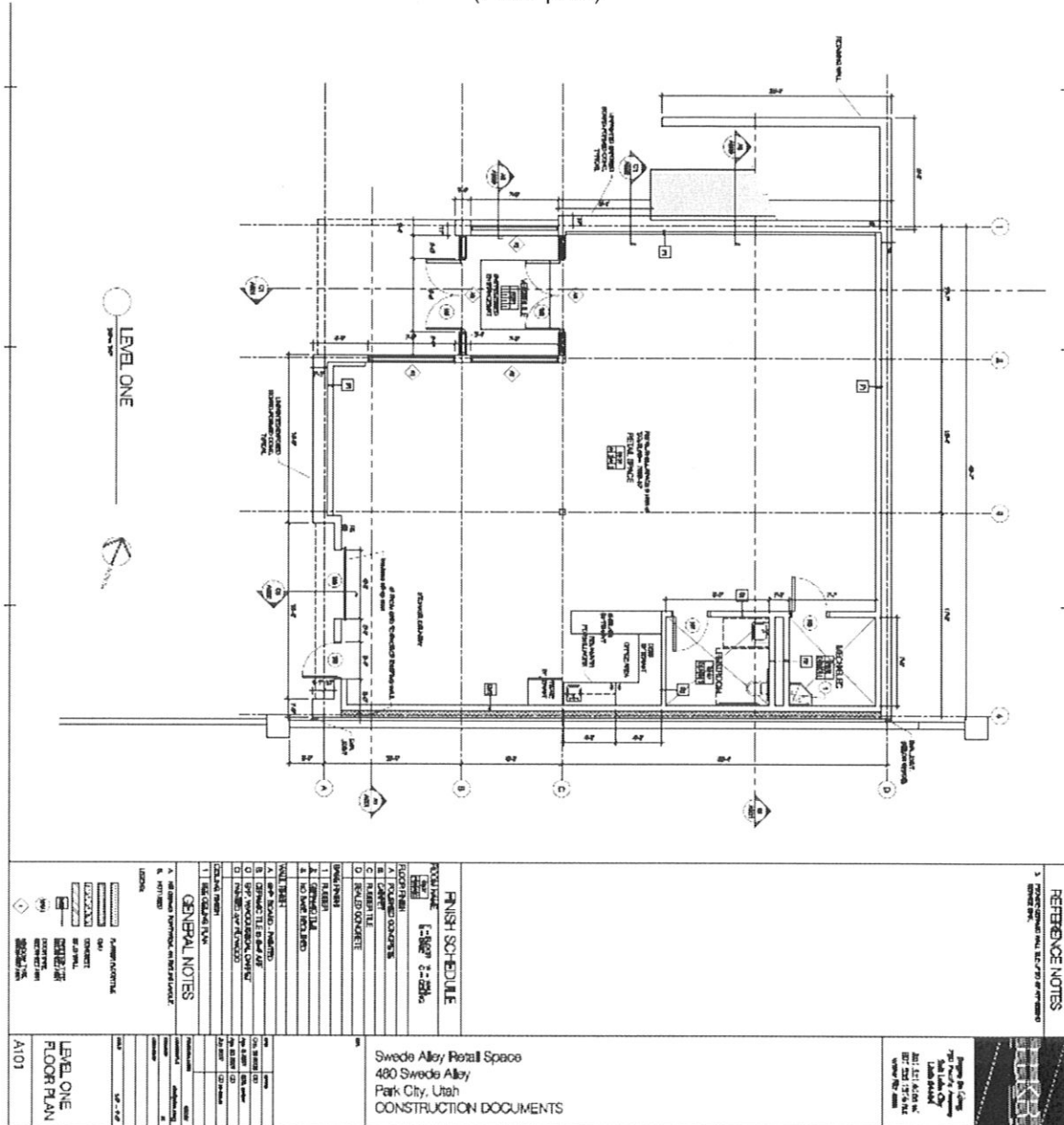
Exhibit "A"
Property Description



Site Plan



(Floor plan)



STATE OF UTAH
DEPARTMENT OF ADMINISTRATIVE SERVICES
DIVISION OF FACILITIES CONSTRUCTION AND MANAGEMENT

**CONTRACT NO. 88-2073
AMENDMENT NO. 4**

TO BE ATTACHED TO AND MADE A PART OF the above numbered contract by and between PARK CITY MUNICIPAL BUILDING AUTHORITY, hereinafter referred to as "LESSOR," and the STATE OF UTAH, DIVISION OF FACILITIES CONSTRUCTION AND MANAGEMENT, hereinafter referred to as "LESSEE," for the use of the Department of Alcoholic Beverage Control.

W I T N E S S E T H

THAT WHEREAS, LESSOR and LESSEE have heretofore entered into that certain Lease Agreement (Contract No. 88-2073) for 1,790 square feet of retail space in the facility located at 460 Swede Alley, Unit 100, Park City, Utah, which Lease Agreement commenced November 1, 1987, and was partially amended by Amendments No. 1, 2 and 3, which Amendment No. 3 expires May 30, 2013; and

WHEREAS, LESSOR and LESSEE are mutually desirous to renew the subject Lease Agreement for an additional sixty-one (61) months renewal or extended term.

NOW THEREFORE, for and in consideration of the mutual covenants, conditions, and agreements herein contained, and other good and valuable considerations, it is covenanted and agreed between the parties that the aforesaid Lease Agreement be modified and amended as follows:

PARAGRAPH 1. RENEWAL OR EXTENDED TERM

1.1 This Lease Agreement is hereby renewed and extended for an additional term of sixty-one (61) months which term shall commence on June 1, 2013 and shall expire June 30, 2018, and shall continue thereafter on a month-to-month rental basis, if option to renew is not exercised by LESSEE as provided for in Paragraph 2 of this Lease Amendment No. 4, until terminated by either party by giving thirty (30) days advance written notice to the other party.

PARAGRAPH 2. OPTION TO RENEW

2.1 LESSOR covenants with LESSEE that LESSOR shall, at LESSEE'S option, again grant and lease to LESSEE at the expiration of the lease term, the Premises pursuant to the provisions of this Lease for and during the term of FIVE (5) years thereafter, with a like covenant for future renewals of the Lease as is contained in this Amendment No. 4, and on the same terms and conditions, except as to the annual rentals, which rentals shall be determined by negotiation between the parties. LESSEE shall notify LESSOR in writing at least thirty (30) days prior to the expiration of this renewal term if said option is to be exercised.

2.2 To exercise an option hereunder, LESSEE must give LESSOR written notice of its desire to extend the Lease Agreement an additional term at least thirty (30) days prior to the end of the then lease term. Failure to timely exercise an option shall revoke and terminate any right to exercise options for successive periods.

2.3 The parties shall have thirty (30) days after LESSOR receives the option notice in which to agree on the base rentals during the extended or renewal term. If the parties agree on the base rentals for the extended or renewal term during that period, they shall immediately execute an amendment to this Lease stating the base rentals.

2.4 If the parties are unable to agree on the base rentals for the extended or renewal term within the specified period, the option notice shall be of no effect and the Lease shall expire at the end of the then term. Neither party to this Lease shall have the right to have a court or other third party set the base rentals.

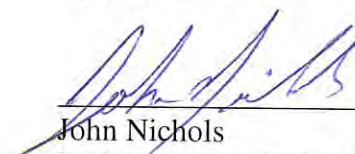
PARAGRAPH 3. CONSIDERATION

3.1 For the renewal or extended period beginning June 1, 2013, and ending June 30, 2018, the sum of the annual base rentals shall be payable by LESSEE to LESSOR for the 1,790 square feet, more or less, of retail space according to a rental rate of \$5.80 per square foot per year, for an annual rental of \$10,382.00. LESSEE shall pay such annual base rentals in one annual payment within fifteen days of the first day of July each year during the term hereof.

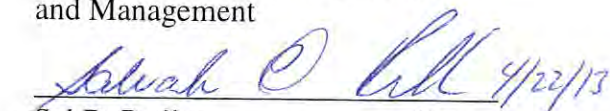
All other covenants, terms and conditions of the subject Lease Agreement not modified by this Lease Amendment No. 4 will remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto sign and cause this Lease Amendment No. 4 to be executed.

LESSEE
State of Utah

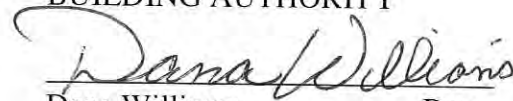
 7/15/13

John Nichols Date
Real Estate and Debt Manager
Division of Facilities Construction
and Management

 4/22/13

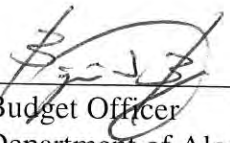
Sal D. Petilos Date
Director
Department of Alcoholic Beverage Control

LESSOR
PARK CITY MUNICIPAL
BUILDING AUTHORITY

_____
Dana Williams Date
Chairman

 7/27/13

Jan Scott Date
City Recorder



Budget Officer Date
Department of Alcoholic Beverage Control

APPROVED as to Form:



Mark D. Harrington Date
City Attorney

APPROVED:

CONTRACT RECEIVED AND
PROCESSED BY JUL 16 2013
DIVISION OF FINANCE

Utah Division of Finance 1803 7/15/13

Council Agenda Item Report

Meeting Date: February 17, 2022

Submitted by: Michelle Kellogg

Submitting Department: Sustainability

Item Type: Staff Report

Agenda Section: NEW BUSINESS

Subject:

Consideration of MuSE PC Use

(A) Public Input

Suggested Action:

Attachments:

[MuSE PC Proposal Staff Report](#)

[Exhibit A: MuSE PC Proposal](#)

City Council Staff Report

Subject: MuSE PC Proposal to Lease 1635 Bonanza Drive (Maverik building)
Author: Jenny Diersen
Department: Economic Development
Date: February 17, 2022
Type of Item: Work Session

Summary Recommendation

Consider a request to lease the City facility at 1635 Bonanza Drive (Maverick Building) to MuSE PC at no cost in exchange for providing free public music programming up to three nights a week.

Background

In 2018, the City purchased the Arts and Culture District Property (District), including the grounds and facilities on site. Except for the Maverick building, the facilities were demolished as a precursor to moving forward with the District's construction and development. Subsequently, the District was put on hold. There are no tenants on-site, and the Maverick building is winterized.

The City has a long history of allowing City property for various types of community uses. For example, the [Park City Library](#), [Miners Hospital](#), [PC MARC](#), McPolin Farm, and [Ice Arena](#) accommodate a mixture of short, medium, and long-term facility rentals, leases, and other use agreements. Aside from short-term rentals and independent of PCMC issuing an RFP for Council-identified uses or services at a city property (example - coffee shop at the PC Library), a handful of inquiries are received each year from local organizations and community groups and considered individually.

Since 2018, PCMC has used the District property for a variety of purposes - PC Fire District demonstration, COVID-19 testing (Nomi), Sundance, Rocky Mountain Power, and Bonanza Art Park (approved under Special Event Permits). The City has not issued an RFP for interim uses of the District or the Maverick building.

Utah law requires proposed use of City property at below market value to notice a public hearing, and conduct a study ([Utah State Code 10-8-2](#)). To justify the subsidy, the City must make findings that the proposed use "provides for the safety, health, prosperity, moral well-being, peace, order, comfort, or convenience of the inhabitants of the municipality." If the entity is a nonprofit entity, a full study is not required but notice, public hearing, and Council approval are required.

In other words, if Council wants to consider the MuSE PC proposal with their terms as outlined, a full study, public notice, and hearing is required.

This is the second time MuSE PC requested use of the District, and a summary of previous efforts is listed below:

- On [May 2, 2019](#) / [minutes](#) (p. 7), Council reviewed a MuSE PC proposal for use of 1685 Bonanza Drive (Old Switchback Sports Property). Council directed staff to facilitate the proposal.
- On [August 1, 2019](#) (p.79) / [minutes](#) (p.4), Council held a public hearing to further consider approval for use of City Space. Council continued the discussion and asked for additional community outreach to ensure tenants were properly noticed, concerns of noise and lack of consistent communication with other nonprofit inquiries were addressed.
- On [August 15, 2019](#) (p.235) / [minutes](#) (p. 9), a public hearing was held and Council approved the use of the facility for MuSE PC. The approval included the required study per Utah State Code 10-8-2 and necessary findings.
- MuSE PC completed the [Music Space Use Agreement](#), and MuSE PC enjoyed the use of the space. The Agreement expired on March 30, 2020 and was not renewed due to the pandemic.

Current MuSE PC Proposal

In January 2022, MuSE PC submitted a new proposal to use the Maverick building and the terms are the same (unless otherwise noted) that Council approved in 2019 for the Switchback Sports location (Exhibit A). The proposal includes:

- No rent or use fee;
- Provide free, public programming up to one night per week (in 2019, MuSE PC requested three nights per week);
- Operate within 65-decibels in the noise ordinance; and
- Not provide standard City insurance requirements. Instead, MuSE PC will post codes of conduct and agree to the City's Hold Harmless Agreement.

Analysis

Currently, the Maverick building is used as storage and has not been used or maintained for 18 months to save operating and maintenance costs. While the facility is in fair condition, the City would incur costs to heat the building, utilities, snow removal, restroom supplies, and cleaning. Staff estimates this the MuSE PC activation will cost around \$10,000/year. The tenant would be responsible for their own trash/recycling removal. City funding source for costs has not been identified yet, including an estimated three hours per week of labor costs.

MuSE PC was encouraged to consider other City facilities, including Miners Hospital and the Library. Both facilities are available at various times of the year at normal fee schedule rates, are currently maintained, and do not require additional costs to operate. MuSE PC prefers the Maverick building because it allows a consistent, year-round meeting space without any conflicts.

Council should review and consider MuSE PC's proposal. Our preliminary analysis includes:

- MuSE PC was a good tenant and upheld the terms of their Music Space Use Agreement;
- MuSE PC will provide ancillary intangible benefits to the community in terms of providing a gathering space for local musicians;

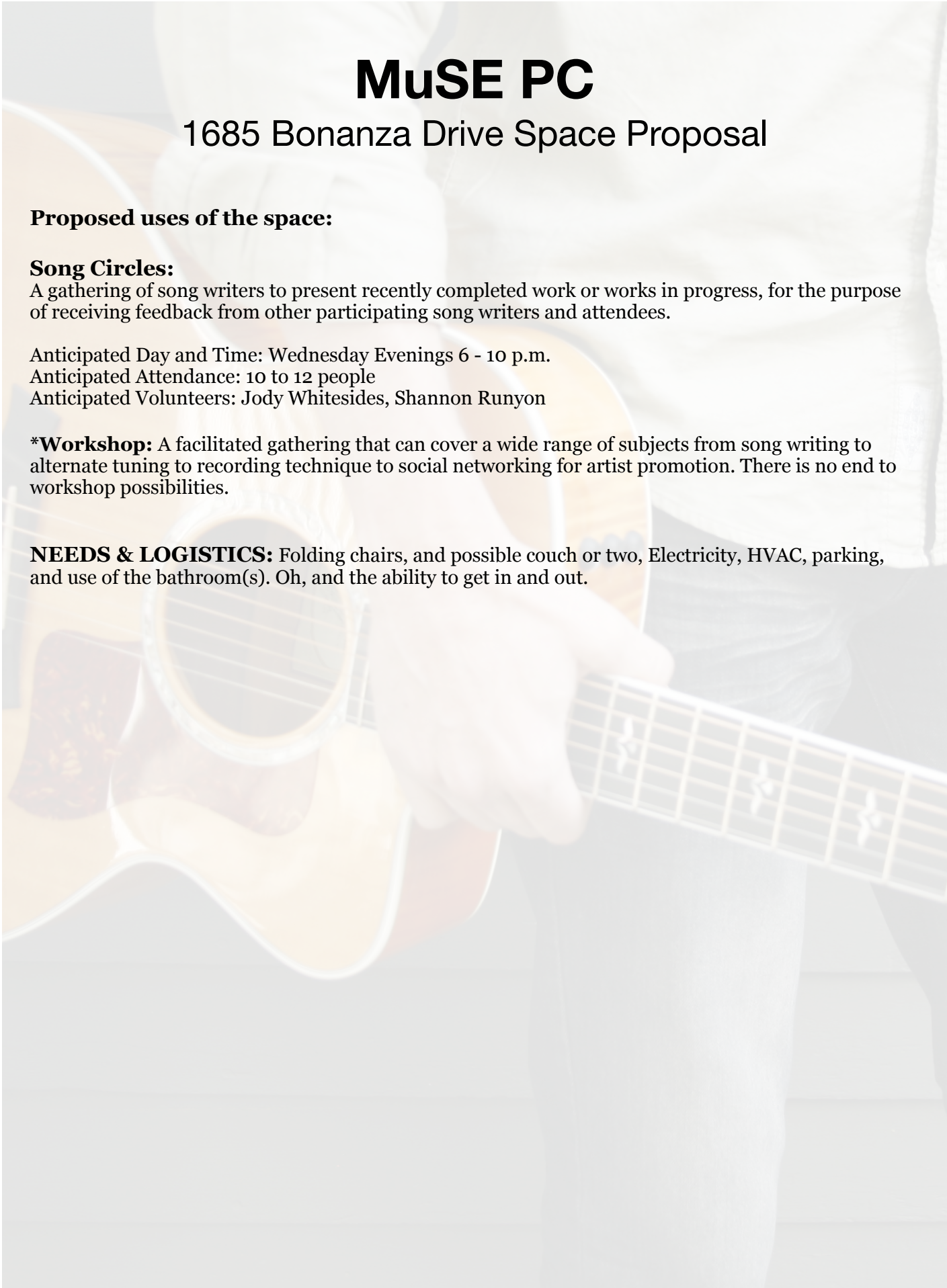
- The consideration of the use of this facility may create precedence for future use and proposals from other organizations;
- There are other City Facilities available for consideration, with little to no additional cost to operate; and
- The ability to justify the free, uninsured use may be challenging to justify in a public benefits study under 10-8-2. The requirements include:
 - Determining value received by the public (tangible and intangible) exceeds the fair market value of leasing the space;
 - The municipality's purpose for the appropriation to enhance the safety, health, prosperity, moral well-being, peace, order, and comfort or convenience of the inhabitants of the municipality; and
 - Whether the appropriation is necessary and appropriate to accomplish reasonable goals and objectives of the municipality in economic development, job creation, affordable housing, elimination of a development impediment, job preservation, the preservation of historic structures and property, and any other public purpose.

Options for Council to Consider:

1. Does Council want to allow facility leases at 1635 Bonanza? If yes, there are two options to consider:
 - a. Continue to consider requests individually, and direct staff to pursue the request for MuSE PC at 1635 Bonanza. As required by state code 10-8-2, we would need to conduct a fair market value study, provide findings of value (both tangible and intangible), provide public notice and hearing for approval at a subsequent public meeting.
 - b. Direct staff to consider an RFP process for Council-identified uses or services at 1635 Bonanza. Subsequent discussions would be required.
2. If Council declines further consideration of use of 1635 Bonanza facility. Council could:
 - a. Direct staff to consider other City Facilities for MuSE PC Proposal.
 - b. Decline further consideration of City facilities for MuSE PC proposal.

Exhibits

Exhibit A: PC Muse Use Proposal

A background image of a person playing an acoustic guitar, with their hands and the guitar body visible. The image is faded and serves as a backdrop for the text.

MuSE PC

1685 Bonanza Drive Space Proposal

Proposed uses of the space:

Song Circles:

A gathering of song writers to present recently completed work or works in progress, for the purpose of receiving feedback from other participating song writers and attendees.

Anticipated Day and Time: Wednesday Evenings 6 - 10 p.m.

Anticipated Attendance: 10 to 12 people

Anticipated Volunteers: Jody Whitesides, Shannon Runyon

***Workshop:** A facilitated gathering that can cover a wide range of subjects from song writing to alternate tuning to recording technique to social networking for artist promotion. There is no end to workshop possibilities.

NEEDS & LOGISTICS: Folding chairs, and possible couch or two, Electricity, HVAC, parking, and use of the bathroom(s). Oh, and the ability to get in and out.

MuSE PC

Code of Conduct

Any organization is judged, in the eyes of others, by the actions of individuals. Your actions reflect on MuSE PC. ALWAYS conduct yourself in such ways that bring only CREDIT to yourself and to MuSE PC. ALWAYS conduct yourself with pride. We expect all participants to know and follow the Code. Failure to do so will result in us asking you to leave. The purpose of the venue is to facilitate, appreciate and listen to artists and their creative process. Please be quiet during any and all performances and refrain from the use of electronic devices during any and all performances except in cases of recording or videoing. Recording of any kind requires the permission of the artist and the venue. The venue is open to all ages however those under the age of 15 must be accompanied by a parent or adult guardian. Parking is limited. We encourage the use of Park City Transportation when possible.

No Retaliation: MuSE PC prohibits retaliation against any other member here.

Integrity: Our reputation as an organization to foster musical talent is a our most valuable asset, and it is up to all of us to make sure we continually earn that.

Usefulness: Our features and gatherings should make MuSE PC more useful for all our participants. We have many different participants from professionals to beginners, to audience members. The guiding principle "Is what we're offering useful to others?"

Freedom of Expression: MuSE PC is committed to advancing the freedom of expression for our participants.

Responsiveness: Part of being useful and honest is being responsive. We should take pride in responding to communications from others, whether questions, problems, or compliments.

Support Each Other: MuSE PC is committed to a supportive creative environment where participants have the opportunity to reach their fullest potential. Participants are expected to do their utmost to create a culture that is free of harassment, intimidation and bias.

Harassment, Discrimination, and Bullying: MuSE PC prohibits discrimination, harassment, and bullying in any form - verbal, physical, or visual. If you believe you are being bullied or harassed by anyone participating please report the incident to Bill, Jody or the volunteer leading the program.

Drugs and Alcohol: MuSE PC's position on substance abuse is simple - it is incompatible with the heart and safety of our participants, and we don't permit it. Consumption of alcohol is banned on the premises, never drink in a way that leads to impaired performance or inappropriate behavior, endangers others or violates the law. Illegal drugs on the premises are strictly prohibited.

Song Circle Conduct - Self-discipline is critical to the success of the song circle. Participants are expected to follow these guidelines:

- Be on time
- Come prepared with lyric sheets for others
- Express the type of feedback desired
- Cell phones and other devices on silent/vibrate mode
- Event participants and volunteers are responsible for set up, take down and clean up of all events.

Open Mic Conduct - Self-discipline is critical to the success of the open mic. Participants are expected to follow these guidelines:

- Be on time
- Have instrument(s) tuned and ready to go
- Respect your allotted time
- Bands cannot sign up multiple members as individuals to have multiple slots
- Volume levels of any performance may not exceed 110db.
- Event participants and volunteers are responsible for set up, take down and clean up of all events.

List of things we cannot allow:

- **No Smoking or Vaping**
- **No Alcohol on premises**
- **Do not disparage others on social media or websites**