PARK CITY COUNCIL SPECIAL MEETING
SUMMIT COUNTY, UTAH
DECEMBER 2, 2004

PUBLIC NOTICE IS HEREBY GIVEN that the City Council of Park City, Utah will hold its regularly scheduled meeting at the Marsac Municipal Building City Council Chambers, 445 Marsac Avenue, Park City, Utah for the purposes and at the **special** times as described below on Thursday, December 2, 2004.

5:00 p.m. Funeral
Mountain Life Church
7375 N Silver Creek Road

Regular Meeting – City Council Chambers
6:30 p.m.

I ROLL CALL

II COMMUNICATIONS FROM COUNCIL AND STAFF

Swearing-in of Police Officers Bob deBotelho and Jim McNeice

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

IV WORK SESSION NOTES AND MINUTES OF MEETINGS OF NOVEMBER 11 AND 18, 2004

V PUBLIC HEARING

Master Festival License for the Holidays on Main amplified music concert to be held December 18, 2004

VI CONSENT AGENDA

1. Master Festival License for the Holidays on Main amplified music concert to be held December 18, 2004

2. Authorize the City Manager to execute an addendum to the management contract for management of the Imperial Hotel, with ResortCom in a form approved by the City Attorney

VII NEW BUSINESS

1. Service provider contract with FFKR Architects, in a form approved by the City Attorney, for Phase 2 and Phase 3 Downtown Projcts design services in an amount not to exceed $548,417

2. Construction Manager/General Contractor Agreement with Jacobsen Construction Inc., in a form approved by the City Attorney, for preconstruction services in an amount not to exceed $9,500 and construction services to be negotiated and fixed for Downtown Projects

VIII ADJOURNMENT

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

Posted: 11/29/04
See: parkcity.org

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

December 2004

9	Refuse and collection programs - Jerry
	2005 Insurance Renewal – Cindy
	International Pedigree Stage Stop Sled Dog Race MFL – February 5
	Resolution – recycling market development zone - Sharon
	Acceptance of audit report
	Signal warrant study - Meadows Drive
	Salvage policy - Phyllis
16	Cultural tourism advisory committee update - work
	Olympic Welcome Plaza – work
	Housing update – Phyllis
	LMC Amendments- Olympic Legacy signs and projects
	Call-up of Union Square MPD
17	*Management retreat*
23	**No meeting**
30	**No meeting**

January 2005

6-7	***Council Visioning***
13	
20	**No meeting**
27	

February 2005

3
10
17
24

March 2005

3
10
17
24
31

Pending Items:

Bus service to SLC - work
Water Service District – Grant of easement from Iron Mountain Associates
Transit Center Land Match Resolution – Gary
Sign Code amendments – Ray
CDBG preliminary hearing – July

PARK CITY COUNCIL WORK SESSION NOTES
SUMMIT COUNTY, UTAH
NOVEMBER 11, 2004

Council questions/comments

Jim Hier attended the Snyderville Basin Planning Commission meeting where they reviewed proposed revisions to the planning code and code map. He felt it dovetailed nicely with Park City's overall plans.

Mr. Hier also reported that he and Marianne Cone attended the Planning Commission meeting where the Bransford at Union Square project was approved. He had copies of the report made for all Council members because it was a significant project and they needed to be cognizant of what was approved. Planner Brooks Robinson explained that the applicants must still submit an application for a plat amendment to consolidate the separate lots.

Candace Erickson had e-mailed updates to all Council members. She noted the next water conservation meeting would be held in March and requested input on additional objectives for the group to consider next year.

Joe Kernan reported the solid waste committee was discussing funding for future needs. He stated he would support discussing the Union Square project if Council was interested calling it up.

Marianne Cone reported that the Library Board was informed about the formation of Utah Library Advocacy Network, who will work with the legislature this year. She noted the Art Advisory Board was working on a request for proposal for art in bus shelters. She felt they were experts and advised staff to forward ideas for art projects to them rather than going ahead and doing them.

Mayor Williams reported that the Park City Education Foundation Week had been a success, aside from the ski day being delayed. The film sold out, and he had a wonderful experiencing reading to a large group of young children. He asked Ken Fisher to relay thanks to Shontai Domichel for her efforts in obtaining child care certification for the Racquet Club. He relayed comments from Chuck Ballard, a citizen involved in recent police interviews, who complimented Kim Leier and Chief Evans for the professionalism exhibited during the process. He stated he slept better at night knowing who was protecting him and who was running the City.

Mayor Williams also reported on his meeting regarding the town plaza with Mountain Town Stages and thanked Randy Barton for his input. He also thanked Marianne Cone for the information she distributed on assisting living and suggested a liaison relationship for her on that subject.

Quarterly goal update

Manager Tom Bakaly commented that assisted living had been added to the quarterly goals report and indicated they could discuss the liaison relationship if Council would like. He noted that new items had been proposed for Council's consideration.

Council members felt it would be appropriate to forecast new target dates for items that had been delayed, or missed their target dates. They reviewed the report, noting revised dates as well as the completion of some significant projects. They briefly discussed new items that had been added to the report.

Manager Bakaly indicated Staff would schedule a review of the Olympic Plaza at Snow Creek in December.

Candace Erickson felt the medians in the Park Meadows neighborhood were effective and asked whether signs should be installed at the pedestrian/bicycle crossings. Jerry Gibbs, Public Works Director, explained they had considered the installation of signs at pedestrian/bicycle crossings, but had not come to a conclusion because the presence of signs can create a false sense of safety.

Alison Butz explained that the Art Advisory Board had been allocated one-time funding in the amount of $200,000 to purchase public art, and they have been asked to develop ideas to create additional funding. One suggestion was to have 1% of capital project budgets (buildings only) be put towards incorporating public art.

Craig Sanchez explained that an Events Programming Group had been formed, consisting of City staff, Chamber Members, and representatives from the three resorts, to evaluate current events and consider new events for the City. The group will present their goals and objectives to Council in the future.

Manager Bakaly indicated that conservation easements for open space other than open space purchased with bonds would be discussed in the future.

Matt Twombly explained that RAP tax funds had been used for the Farm Parking lot, McLeod Creek Trail and Round Valley Trails. Single-track trails were being installed in Round Valley this fall and cross-country skiing trails would be installed in the spring.

Regarding historic preservation and alternative methods for the sale of city-owned properties, Mayor Williams suggested a review of models from other cities. Candace Erickson requested discussion at the January workshop, as well as a briefing about the Edge Cities Conference. She remarked that Doug Stephens had been an incredible resource for the Historical Society and has provided the group with information regarding upcoming renovation projects. Manager Bakaly advised Council the 801 Park Avenue developers had submitted an application for a demolition permit, despite continued discussions to develop an MPD to restore the building.
Mayor Williams asked that the proposed Citizen Award be "ongoing" and stated he would prepare award criteria for the Council.

Marianne Cone was added as a liaison for Affordable Housing. She expressed a desire for senior housing to be included with other affordable housing. Council felt discussion during their workshop was appropriate.

Joe Kernan declared an interest in being involved in the tax regulation discussions. He expressed appreciation for the listing of items that have been completed, or are planned, relating to traffic. He felt it showed that the City was responding to citizen requests.

Prepared by Sharon Bauman

PARK CITY COUNCIL MEETING
SUMMIT COUNTY, UTAH
NOVEMBER 11, 2004

I ROLL CALL

All Council members were present except Kay Calvert, who was excused.

II COMMUNICATIONS FROM COUNCIL AND STAFF

Mayor Dana Williams requested a moment of silence to honor those who were or are currently serving our Country.

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

Joe Tesch, Jim Tozer, and Tom Fey requested that the Council call up the Planning Commission approval of the Union Square Project. They felt it would take on the patina of adversarial review if affected citizens appealed it. They felt it was a policy decision that could change future development on historic Main Street.

Jim Tozer emphasized he would have been present regardless of his ownership of the Gateway Center, but because he had a long-term perspective on what makes Old Town Old Town.

Jim Hier suggested that Council put off a call-up until December 18 so all Council members have an opportunity review the report and ask questions of the Planning Commission with regard to Codes and policies. Council and Staff determined that it could be placed on the November 18, 2004 agenda for consideration

IV RESIGNATIONS AND APPOINTMENTS

<u>Appointment of Mayor Dana Williams and Pace Erickson, Public Works Operations Manager, to serve on the North Summit Mosquito Abatement District Board</u>

MOTION: <u>Marianne Cone moved to appoint Mayor Dana Williams and Pace Erickson, Public Works Operations Manager, to serve on the North Summit Mosquito Abatement District Board. Jim Hier seconded the motion, which was unanimously approved</u>.

V PUBLIC HEARINGS

1. <u>Ordinance approving a Record of Survey Plat for Building C of The Chateaux at Silver Lake Condominiums, located at 7815 Royal Street East, described as Lot 23 of the Amended Deer Valley Club Estates, Park City, Utah</u>

Planner Kirsten Whetstone reviewed staff report. She explained the request encompassed two issues: an amendment to the Chateaux at Silver Lake Amended Plat, the original plat; and, an amendment to the 2nd Supplemental Condominium Plat which was previously recorded to condominiumize Building C. The Planning Commission forwarded a positive recommendation to Council at their hearing on October 27, 2004. Staff recommended that Council hold a public hearing, consider public input, and consider approval of the plats subject to the Findings of Fact, Conclusions of Law, and Conditions of Approval.

Planner Whetstone explained that the plats were not related to the private residence club, which was approved administratively by the Planning Staff. She noted that Council had approved a Land Management Code amendment to add a definition for a private residence club subject to an administrative conditional use permit.

Planner Whetstone read into the record a letter from Steven W. Dougherty that addressed the administrative Conditional Use permit granted by the Planning Staff on November 4, 2004.

"Pat, Please read into the record of the November 11, 2004 City Council Meeting the following, and thank you for offering to do so. I'm sorry it is long, but I hope it is helpful to the Council and Mark. A.pdf of my May 27, 2004 letter to you referenced below is attached. Please print it out to deliver to the Council for inclusion in the record.

I, Steven W. Dougherty of the law firm of Anderson & Karrenberg, represent certain owners of condominium units in the Chateaux at Silver Lake, Building A. These unit owners purchased their units from the developer, Silver Lake Associates, under representations that the entire Chateaux project would be developed, sold and operated as a whole-ownership condominium development with all unit owners having rights in common areas in the entire project. These unit owners bought their units in Building A and other unit owners purchased units in Buildings A and B of the project with the understanding and expectations, based on the representations of Silver Lake Associates, that Building C, when built, would contain whole ownership units and common areas as in Buildings A & B with shared common areas, including a lobby and front desk area with a spa facility. Given the reputation in the market of fractional interests, and statements from local realtors that such would adversely impact the value of units in the project, my clients are concerned about the developers plan to mix whole and fractional units in the same project, indeed in the same buildings.

More recently, the developer has indicated that because of financial and marketing concerns, it intended to abandon its original representations and marketing strategy, and instead develop and market a shared, fractional or timeshare ownership type of unit in Building C, under the supposed upscale name of a Residence Club. Despite long-standing protestations from whole ownership unit owners, the developer, claiming voting control of the unit owners association, claimed it would do so regardless. Given the developer's indifference to those who bought units to date under expectations described above, my clients asked that I research the matter and requirements for governmental approvals so that at the appropriate time they could present their case to the appropriate governmental authority. I determined after research and discussions with

Planning Staff, Kirsten Whetstone, in May of this year that the developer had no pending application or plans for a timeshare use of Building C, and that no timeshare or fractional interest use in Building C would be permitted under current zoning ordinances without further City approval upon application and with notice and public hearing. I asked her who such notice would go to at the Chateaux and was advised it would go to the Owners Association. I advised her that the developer controlled the Owners Association and would most likely not pass on the notice to the actual owners. Because of the developer's conflict of interest in this respect, I requested of her that I receive special notice on behalf of my clients. Ms. Whetstone suggested I write the Planning Department making such request and that my request would be placed in the file to ensure I and my clients received notice of any applications with respect to Building C. I did so and present with this statement a copy of that letter.

My clients, who do not reside at the project, only recently happened to visit and noted construction on the site and contacted me. I called Mr. Putt today to discover that on November 4, a conditional use permit was granted for a Private Residence Club in Building C, but neither I nor apparently my clients received any notice of the application for such a permit. Notice to property owners within 300 feet was a condition of the issuance of that approval. My clients' units are clearly within 300 feet of Building C. It seems in that respect that my early request did not achieve its purpose. Today I also discovered tonight's Council meeting agenda with the developer's requested amendment to the Chateaux plat to accomplish the Residence Club conversion. Supposedly this plat amendment was approved by 2/3rds of the unit's owners in the project. I have been given a copy of minutes of resolutions of a March 2004 owners meeting, which I did not attend. I have not been able to reach my clients this afternoon to confirm the information in those meeting minutes. However, in the past the developer has taken the position that the as yet unbuilt units in Building C count toward voting percentages in the Owner's Association. Further, the minutes of that meeting do not make clear who actually voted. Accordingly, the Council and Staff should be aware that non-developer unit owners in the Chateaux who may constitute greater than 1/3rd of the existing units may not have approved the amendment now before the Council, nor the conditional use permit granted for conversion of Building C to timeshare units. And moreover, it is apparent from the proposed CC&R amendments that not only will the Building C units be so converted, but also any units in Buildings A & B now owned or subsequently acquired by the developer. Yet the developer has consistently refused to allow any unit owners in Buildings A & B to convert their units to timeshare, although it is doubtful that any unit owners would want to.

Because I have not been able to reach my clients late this afternoon after learning of these developments, I do not presently have authority to appeal the November 4 CUP approval, although I expect to make that determination in time to appeal. Based on prior discussions, I suspect my clients will want me to appeal on the basis that they were not given adequate notice and an opportunity to object, particularly in light of the failure to give notice in response to the specific request for it. I have no reason to believe that the notice failure was anything other than an honest mistake by Staff, but *my clients should still have the opportunity to be heard, and Staff should have the opportunity to hear their views on the subject, and not just the developer's.*

I thank Mr. Putt for volunteering to read this statement into the record. Because I office in Salt Lake City and only learned of this meeting late this afternoon, I cannot personally attend. However, I request that the Council table this matter without action pending a determination on an appeal, if there is one, of the conditional use permit approval, and to allow my clients to respond to the survey plat amendment request. This should not take an extended period of time. Thank you. Steven W. Dougherty"

City Attorney Mark Harrington stated that Condition 1 enabled the recordation of the CC&Rs, as modified to incorporate the ability to go to residency club, with the Record of Survey. He emphasized the CC&Rs were contractual matters between homeowners.

Joe Kernan asked if this was part of a sequence of events that would not have occurred had these owners been present at previous hearings. Attorney Harrington could not speculate what comment may, or may not, have occurred as it related to this particular application.
Mayor Williams clarified that these owners expected to receive notice because they had submitted a written request to be noticed, at Staff's direction, and they were saying they did not receive notice. Attorney Harrington stated the written, courtesy notice had been provided to the owners' association, not to individual owners. However, there may be a good faith argument because they relied on an affirmative representation by the City to give them notice and that apparently may not have been done.

Candace Erickson clarified that the owners could take action regarding the private residence club against the homeowners association. She expressed concern that the CC&Rs being part of the approval condoned what had allegedly taken place.

Jim Hier emphasized the notification issue pertained to the Administrative Conditional Use Permit that allowed the residence club and the appeal process was to the Planning Commission.

The Mayor opened the public hearing.

Robert Dillon, counsel for Silver Lake Associates, stated he had received the letter just before the meeting. In 2002, a declaration amendment and supplemental plat created all units in Building C, the subject of the plat amendment under consideration tonight. That declaration referenced the private residence club. At the 2004 annual meeting, a resolution authorizing this plat amendment received a vote in excess of the 66 2/3% requirement. The owners represented by Mr. Dougherty have had over two years to air their objections and he felt it was an egregious attempt to end-run the public process. He asked Council to approve the requests before them and stated his clients had made a substantial investment and it would burden them enormously if the process were stopped.

The Mayor closed public hearing.

Council members and staff discussed the ramifications of approving the plats with the possibility of an appeal being submitted since the plat amendments may, or may not, be related to the conversion to a residence club.

Jim Hier noted there had not been any objections to this action at the Planning Commission level and he favored moving forward on the action. Mr. Kernan was willing to delay the item in order to send the message that the process works for everyone, even minority owners. Mr. Hier commented that homeowner association notification had proven to be the most effective way of noticing a project, in his experience.

Mr. Dillon noted that control of the association had passed from the developer to the owners several years ago and reiterated that the vote in favor had been overwhelming.

Council discussed the issue and determined they would retain the item on the Consent Agenda for discussion and possible action.

2. Ordinance approving the final plat for the Red Cloud Subdivision, Park City, Utah

Planner Brooks Robinson reviewed the Staff Report and reported that an objection/appeal of the Planning Commission action had been received, however, it was not ripe for appeal. He reported that the subdivision had been reviewed by Planning Commission and was found to be consistent with the MPD. It will create 30 single family lots at the top of the Northside Lift and will be accessed through a private road. Building pads are indicated in general locations, and plat notes govern development on the lots. Plat notes reference phasing and construction plans regarding vertical construction in Pod D and he stated they anticipate the completion of those amenities prior to 2006. Planner Robinson stated the Staff had provided Findings of Fact, Conclusions of Law and Conditions of Approval for review.

Joe Kernan disclosed that one of his businesses has a small contract with the applicant.

Jim Hier requested clarification of plat notes regarding Lots 20 & 21 in the Enchanted Forest area. Planner Brooks Robinson identified the locations of the public ski easements, conservation easements, setbacks and building pad areas on Lots 20 & 21.

Planner Robinson clarified for Marianne Cone that the emergency access road would not be plowed unless the Chief Fire Marshall or Chief of Police required that it be plowed for emergency access. He also explained there would be a detachable high-speed quad serving this area, rather than the pulse gondola, which was originally planned.

The Mayor opened the public hearing. There was no input and the Mayor closed the hearing.

3. Ordinance approving the Larkspur Townhomes 3, Units 6 – 9 Condominium Record of Survey Plat, Park City, Utah

Planner Brooks Robinson reviewed the Staff Report for the condominium conversion of two duplexes on Lot 6, Village at Empire Pass, Phase I. Staff provided Findings of Fact, Conclusions of Law, and Conditions of Approval for consideration.

The Mayor opened the public hearing. There no public input and the Mayor closed the hearing.

4. Ordinance approving the Larkspur Townhomes 2, Units 10 -15 Condominium Record of Survey Plat, Park City, Utah

Planner Brooks Robinson reviewed the Staff Report for two triplexes also located in Village at Empire Pass Phase I, Lots 3 & 4. Staff provided Findings of Fact, Conclusions of Law and Conditions of Approval for consideration.

The Mayor opened the public hearing. There was no public input and the hearing was closed.

VI CONSENT AGENDA

MOTION: Joe Kernan moved to APPROVE Consent Agenda Items 2, 3, 4 as presented. Candace Erickson seconded the motion which was unanimsouly approved.

MOTION: Jim Hier moved to APPROVE Consent Agenda Item 1 as presented. Candace Erickson seconded the motion. Marianne Cone, Jim Hier and Candace Erickson voted in favor of the motion. Joe Kernan opposed the motion. The motion passed with three in favor and one opposed.

1. Ordinance approving a Record of Survey Plat for Building C of The Chateaux at Silver Lake Condominiums, located at 7815 Royal Street East, described as Lot 23 of the Amended Deer Valley Club Estates, Park City, Utah

2. Ordinance approving the final plat for the Red Cloud Subdivision, Park City, Utah

3. Ordinance approving the Larkspur Townhomes 3, Units 6 – 9 Condominium Record of Survey Plat, Park City, Utah

4. Ordinance approving the Larkspur Townhomes 2, Units 10 -15 Condominium Record of Survey Plat, Park City, Utah

VII ADJOURNMENT

With no further business, the regular meeting of the City Council adjourned at 7:00 P.M.

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

Prepared by Sharon Bauman

PARK CITY WORK SESSION NOTES
SUMMIT COUNTY, UTAH
NOVEMBER 18, 2004

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

Tom Bakaly, City Manager; Mark Harrington, City Attorney; Colin Hilton, Economic Development Director; Matt Twombly, Parks Planner; Patrick Putt, Planning and Zoning Administrator; Doug Stephens, Preservation Consultant

Insa Reipen, Recycle Utah Director and Mark Richmond, Green Building Seminar speaker

1. Council questions/comments. Candace Erickson reminded the public that the Green Building Seminar will be held tomorrow and registration far exceeded expectations. Computer collection at Recycle Utah has been significant and the program is now year-round. She added that the pre-legislative season has begun and the list of issues is extensive. Marianne Cone referred to the nice article on Chief Lloyd Evans in the Salt Lake Tribune. She complimented staff and the design team on the downtown planning meeting and commented on the Navajo Rug Show and exhibit at the Kimball Art Center. Joe Kernan relayed that he attended a mediation session during the week and commented on the effectiveness of Mountain Mediators in the community. Mayor Williams agreed that the Navajo Rug Show has grown over its 15 year tenure. He attended the Wasatch Environmental Breakfast Forum where the focus was sustainability; this group meets quarterly and includes non-profits and major corporations. He also attended the energy commission meeting charged with formulating a state policy. The Council concurred on proclaiming next week People Health Center's week in conjunction with its fund-raiser.

2. Quinns Junction Recreation Complex. Economic Development Director Colin Hilton noted that construction is slated for April 2005 and an opening of the ice component scheduled for February 2006. Over the past three months, 30+ meetings have been held with the design team, user groups, stakeholders, other ice facility operators, Chamber members, tournament planners, Army Corps of Engineers, wildlife and light sky experts, traffic engineers, etc. He stated that he is pleased with the design team and the planning process and reviewed the components of the complex detailed in his staff report. The reasons for including ice at the complex are the benefits of sharing infrastructure, i.e., parking, lockers, concession, etc. Most of the services will be administered by staff, which is the most economical way to begin operations. Permanent seating totals 351 with the capability for standing patrons. There are three, possibly four outdoor fields plus two or three softball fields. The field next to the rink will be the primary field with synthetic turf, allowing longer use with permanent seating for 750 and the capability of accommodating up 1,500 people. There is a 3,000 square foot maintenance building. He expressed that the design team has done a good job of separating events from local user activities. The first phase of the budget includes the ice rink, three or four fields; the second phase includes additional ball diamonds and soccer fields in a future construction period. The overall site is planned with trail connections, accommodating trailhead parking and access to Round Valley as well as the Rail Trail. Spectators can also use the pedestrian ways adjacent to the fields as recreational amenities.

Matt Twombly stated that considering the size of the project area, the wetland impacts are very minimal, representing about 1/0th of an acre of disturbed wetlands. This is because existing roadways will be utilized, and locating site amenities and parking outside the area. The Army Corps of Engineers did not foresee any problems in issuing a permit. The wetlands will be enhanced with plantings and the trails will also act as a buffer between the wetlands and the active recreation areas. In response to a question from Jim Hier, Mr. Twombly described trail connections to Round Valley, Rail-Trail, and NAC. Jim Hier pointed out the lack of access to the NAC from Park Meadows and suggested that a hard surfaced trail be considered. Colin Hilton advised that the next phase of design would detail connections and staff has considered public transit options. The plan contemplates bus turn-arounds and anticipates future development of surrounding properties. The design team believes that the project is well within reach to be certified as a LEEDS building. He added that the Planning Commission looked at the plan which will return on December 8 for the next round of discussions.

Mr. Hilton described utilizing a construction manager/general contractor process. Over the last couple of months, there have been interdepartmental meetings on the management of the facility, including the Parks, Transit, Special Events and Facilities, Recreation, and Economic Development. The proposed O&M budget will be presented this spring during the budget review. The users are provided monthly opportunities to discuss design and operations, which is going well, and the skating community is very excited with the progress.

Staff is recommending approval of a contract with Elliott Mahoney Architects partnered with EDA Architects for design services. The first phase schematic is complete and this contract covers the next two phases at $442,000 to be broken down for design, construction document development, and project administration. Staff is also recommending Council approval of an amendment to the City's purchasing and contracting policy to allow for the construction manager/general contractor approach to project delivery. Mr. Hilton stated that he views this as very beneficial in this instance. The benefits of hiring a construction manager during the design phase, allows better input on materials, design, and economies and still maintains the spirit of an open competitive bid process. Upon approval, staff is recommending contracting with Hogan Construction to be the construction manager for the project.

Mr. Hilton discussed the selection process where there were nine responses from very qualified firms. Hogan has completed ice and fields projects in Utah and is highly recommended. The contract is $22,090 for pre-construction services and a firm contract would return in February.

3. City-owned buildings. Patrick Putt explained that Doug Stephens has been working on this overview for a couple of months. Mr. Stephens stated that the McPolin Farm buildings are in very good condition with minor maintenance issues. He recommended including the shed on the other side of the highway as part of the Farm property. He felt that the property should be used more frequently for community events. In response to a question from Jim Hier, Mr. Stephens clarified that it is not the intent to move the building on the other side of the road. The Park Avenue properties, including Miners Hospital and the Library are also in excellent condition. There is a suggestion to enhance the small sledding hill on the campus. The Burnis Watts property, National Garage, and Woodside house have structural problems and regular maintenance is recommended until the properties are sold. The Tallon house (aka Wisnewski) has been stabilized with abatement funds, and it is recommended to move the primary house and subdivide the property to sell a lot and maintain the remainder for a passive historic park. Marianne Cone suggested discussions with the buyer before the house is moved so there is flexibility on the floor plan. Mayor Williams expressed concern that part of the purchase is recommended to be sold because the intent was to use it as a neighborhood park. Candace Erickson explained that the Recreation Advisory Board discussed this but because of the slope and the location of other homes, it was felt that this is probably not the place for an active park. It is recommended to use some of the money for amenities in the proposed plaza. The Historical Society suggested using the house as a museum but there is no funding. Doug Stephens added that a move would get the house out of the floodplain and out of the way of a Hillside Avenue street project. Kay Calvert asked if there are architectural students willing to take on this renovation project, rather than throwing money at the house. Mr. Stephens explained that costs will be material and labor and there may be options to generate money and enhance the entire upper Main Street area. Joe Kernan supported this approach and Ms. Cone's suggestion.

Mr. Stephens continued that the old City Hall buildings, i.e., liquor store, Jans, ABC Reservations are in good condition, but again there are minor maintenance issues which should be regularly monitored. The City supports the expansion of the museum and the vitality it will bring to the downtown core. The Marsac School, China Bridge Parking Structure, and Sandridge garages have no immediate maintenance issues, but long-term engineering issues. There are three garages which are used by adjacent property owners, and staff recommends that ownership and maintenance be shifted to them through easements, guaranteeing preservation of the structures. With the completion of the downtown improvements, the garages will become a buffer and are important visually. Marianne Cone asked about the expected level of condition and Doug Stephens felt it is no different than other privately owned historic structures and owners would be eligible for RDA grants. For the benefit of the Mayor, Mark Harrington explained that there are options for easement language. Patrick Putt clarified for Marianne Cone that Sandridge is not a dedicated public right-of-way.

Mr. Stephens discussed replacing the floor in the Homer-Pace flume. There are no outstanding issues, however, these properties should be evaluated on a regular basis.

Ms. Cone suggested that repair projects be prioritized. Jim Hier believed that the maintenance, not renovation, of historic structures should be included in the City's maintenance program and Council members concurred. Candace Erickson encouraged staff to evaluate the items stored in the barn; a lot of it looks like junk accumulated over time. There was discussion about improving the Swede Alley house for employee housing. Ms. Erickson pointed out the importance of saving and storing historic features from structures for reuse for other historic projects. In response to a question from Joe Kernan, Mr. Stephens indicated that the basement at 222 Swede Alley is not habitable at the moment, but the upper level is rentable. A decision needs to be made with regard to selling or renting it. The City Manager added that prioritizing properties will be accomplished and presented as a part of the budget, unless something needs to be addressed before spring.

4. Green building seminar. Insa Reipen reported that Recycle Utah was expecting 25 attendees but 150 have now registered and she thanked the City for co-hosting the session. Mark Richmond, seminar presenter, thanked the City for its support and noted the interest expressed by many resort communities and large national cities. It's a program that ties in with sustainability and local government support is critical although success is contingent on partnerships in the building community.

5. Review of regular meeting. Doug Stephens described elements to Council member Cone about the 80 King Road plat amendment scheduled on the agenda.

Prepared by Janet M. Scott

PARK CITY COUNCIL MEETING
SUMMIT COUNTY, UTAH
NOVEMBER 18, 2004

I ROLL CALL

Mayor Dana Williams called the regular meeting of the City Council to order at approximately 6 p.m. at the Marsac Municipal Building on Thursday, November 18, 2004. Members in attendance were Dana Williams, Kay Calvert, Marianne Cone, Candace Erickson, Jim Hier, and Joe Kernan. Staff present was Tom Bakaly, City Manager; Mark Harrington, City Attorney; Ray Milliner, Planner; Alison Butz, Special Events and Facilities Manager; Colin Hilton, Economic Development Director; and Patrick Putt, Planning and Zoning Administrator.

II COMMUNICATIONS FROM COUNCIL AND STAFF

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

1. Union Square Project (aka Bransford):

Mike Sweeney, HMBA, stated that he felt that the Bransford will be a boom to Main Street, specifically by providing bed base. The Planning Commission spent a lot of time analyzing the project and he would like to see the project proceed.

Architect Craig Elliott relayed that he was pleased with the process. The Planning Commission conducted a deliberate process and he appreciated their feedback. He believed the process improved the project for the City and the developer and is pleased with the resulting approval.

Jana Potter applauded the Planning Commission's efforts in providing an appropriate compromised development for Union Square. The developer has kept everyone informed and formally noticed individuals. However, at the 11th hour, concerns about the height were expressed. She felt the height is not a big issue because of the preservation of the space around the historic buildings and the proposed development is sensitive to the historic character of Easy Street and the pedestrian way. She relayed that the Poison Creek Building had the potential of obstructing her views at the Silver Queen Hotel, but she didn't object and makes it a practice to disclose potential development to her clients. She understood that the owners of Poison Creek were okay with the project but then realized that the height would result in a larger setback from their property. The time and money expended by the developer to preserve the Easy Street Building has been significant at $10 million and this should be taken into consideration. She displayed a photo of Heber Avenue and discussed the elevation changes which minimize the height impact. She encouraged Council to recognize the integrity of the project, which is a huge asset to Main Street. It's not the City's problem to settle disputes for tenants and landlords. We are fortunate to have these developers.

Jim Powell, resident, believes that the City has screwed up many times and ruined its historic background because of poor decisions. The Historic District Commission destroyed a good part of historic Park City. He felt if Union Square is not approved, it will be a downhill slide from here and building heights should not be uniform.

2. Call-up of Union Square Project – This discussion occurred after the approval of the minutes, but appears here for ease of reference. Jim Hier stated that he has attended most of the Planning Commission meetings on this project and is still concerned about the height, more specifically the supporting criteria for density and open space. He believed it appropriate that the City Council call up the project to ratify the Planning Commission's decision and/or strengthen the criteria used to determine height enhancements. He asked for an analysis of the square footage allowed under the zone, taking into consideration the historic buildings and identification of the open space by function. The minutes of the Planning Commission meeting of November 10, 2004 would also be helpful for Council to review as soon as possible. Jim Hier, "I move that we call up this project for review (limited to the height element based on density and open space and not the design element)". Kay Calvert seconded. Motion unanimously carried.

3. Complaint – building permit process – Peter Barnes, designer, stated that he is angry. Trying to obtain a building permit involved missing documents, miscalculated fees, and confusion with a new process without the input of the building and design community and/or general public. The City Manager explained that the complaint relates to the calculation of height and associated information. Peter Barnes relayed that the Building Department is now tasked with the responsibility of determining height compliance, which is too late in the review process. He questions this new review process and would like to see a logical conclusion.

V WORK SESSION NOTES AND MINUTES OF MEETING OF NOVEMBER 4, 2004

Candace Erickson, "I move to approve the work session notes and minutes of the meeting of November 4". Marianne Cone seconded. Motion unanimously carried.

V PUBLIC HEARINGS

1. Ordinance combining portions of Lots 12 through 18 of Block 72, Millsite Reservation to the Park City Survey into three lots of record, located at 240 Swede Alley, Park City, Utah – Planner Ray Milliner explained that the owner has an historic home on one of the lots, which will be created as well as two other building lots. The Planning Commission forwarded a positive recommendation according to the findings, conclusions and conditions outlined in the ordinance. With no public input, the Mayor closed the public hearing.

2. Ordinance approving an amendment to combine all of Lots 16 and 17 of Block 77 of Millsite Reservation to the Park City Survey into one lot of record, located at 80 King Road, Park City, Utah – Planner Ray Milliner stated that approval of the plat amendment will accommodate an addition to an existing structure. He clarified that Councilmember Cone asked about the status of concerns outlined in a letter from a neighbor. Mr. Milliner explained that most issues will be addressed during the steep slope analysis conducted by the Planning Commission and some have already been mitigated with the plat amendment. He added that staff feels confident that all issues will be addressed before construction and staff is recommending approval of the plat. The Mayor opened the public hearing. Hearing no comments, the public hearing was closed.

3. Master Festival License and service agreement with Triple Crown Sports – Alison Butz explained that the term of the license agreement is from 2005 to 2008, covering four girls fastball events. The license agreement provides an opportunity for the event to grow from two to three weeks in 2006. The staff report contains an analysis of the economic benefits generated from Triple Crown and the financial components of services provided by the City. Staff is working with the School District in procuring additional fields. Discussion ensued about the increased costs in providing services for three week events. It is anticipated that the completion of the Quinns Junction Recreation Complex will attract more teams. In response to a question from Candace Erickson, Ms. Butz explained that field lights need to be turned off by 11 p.m. The Mayor opened the hearing and with no input, closed the public hearing.

VI CONSENT AGENDA

Kay Calvert, "I move to approve Consent Agenda Items 1 through 4". Marianne Cone seconded. Motion unanimously carried.

1. Ordinance combining portions of Lots 12 through 18 of Block 72, Millsite Reservation to the Park City Survey into three lots of record, located at 240 Swede Alley, Park City, Utah – See staff report and public hearing.

2. Ordinance approving an amendment to combine all of Lots 16 and 17 of Block 77 of Millsite Reservation to the Park City Survey into one lot of record, located at 80 King Road, Park City, Utah – See staff report and public hearing.

3. Master Festival License and service agreement with Triple Crown Sports – See staff report and public hearing.

4. Authorization to enter into a professional services agreement with Hansen Allen and Luce Inc. in the amount of $39,745 for a water supply and demand study, in a form approved by the Legal Department – See staff report.

VII NEW BUSINESS

1. Professional provider contract with Elliot Mahoney Architecture LLC, in a form approved by the Legal Department, for design services for Phase 2 and Phase 3 of the Quinns Junction Recreation Complex, in an amount not to exceed $442,000 – See staff report and work session notes. Candace Erickson, "I move that we approve a contract with Elliot Mahoney Architecture in a form approved by the Legal Department for Phase 2 and Phase 3 of the Quinns Junction Recreation Complex not to exceed $442,000". Jim Hier seconded. Motion unanimously carried.

2. Amendment to the City's Contracting and Purchasing Budget Policy to accommodate the "Construction Manager/General Contractor" form of project delivery – See staff report and work session notes. Kay Calvert, "I move to amend the City's Contracting and Purchasing Budget Policy to accommodate the "Construction Manager/General Contractor" form of project delivery". Candace Erickson seconded. Motion unanimously carried.

3. Construction Manager/General Contractor Agreement with Hogan & Associates Construction Inc., in a form approved by the Legal Department for preconstruction services in an amount not to exceed $22,080, and construction services at a guaranteed maximum price to be negotiated and fixed at a later date for the Quinns Junction Recreation Complex – See staff report and work session notes. Joe Kernan, "I move we approve the Construction Manager/General Contractor Agreement with Hogan & Associates". Jim Hier seconded. Motion unanimously carried.

4. Acceptance of annexation petition in Quinns Junction – The Burbs LLC – Patrick Putt explained that on November 3, 2004, The Burbs LLC and IHC submitted an annexation petition for 157 acres of land located at the northwest corner of the US40 and SR248 interchange. Staff determined the application to be complete and consistent with City and State codes. Acceptance of the petition does not formally annex the property or approve any associated development, but simply begins the notification process. All requisite materials have been reviewed by the City and staff recommends acceptance of the petition. Marianne Cone, "I move to accept the annexation petition for Quinns Junction from The Burbs LLC/IHC". Joe Kernan seconded. Motion unanimously carried.

VIII ADJOURNMENT

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

MEMORANDUM OF CLOSED SESSION

The City Council met in closed session at approximately 3:30 p.m. Members in attendance were Mayor Dana Williams, Kay Calvert, Marianne Cone, Candace Erickson, Jim Hier, and Joe Kernan. Staff present was Tom Bakaly, City Manager and Mark Harrington, City Attorney. Candace Erickson, "I move to close the meeting to discuss property, personnel and litigation". Jim Hier seconded. Motion carried unanimously.

The meeting opened at approximately 4 p.m.

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

Prepared by Janet M. Scott

City Council
Staff Report

Special Events and Facilities Department

Author: **Alison Butz**
Subject: **Holidays on Main – Amplified Music Concert**
Date: **December 2, 2004**
Type of Item: **Administrative – Master Festival License**

Summary Recommendations:
Review the Master Festival License application, conduct a public hearing, and consider approving the license for the Holidays on Main Master Festival License, December 18, 2004.

Description:

Topic:
Review the Master Festival License Application, submitted by the Historic Main Street Business Alliance, for Holidays on Main on December 18, 2004.

Background:
Holidays on Main is a multi-phase event that hosts various activities on Main Street to encourage Wasatch front visitors and locals to come celebrate in an "old fashion holiday" atomsphere and their holiday shopping. Acitivities include Christmas Storytelling, ice sculpture demostrations, carolers, Santa visits/photos, roaming musicians, retail discounts, restaruant specials, lodging and skiing deals, hot-chocolate, roasted chestnuts, and will also include a local band on December 18th.

The Historic Main Street Business Alliance has been granted a Special Events License to hold Holidays on Main on November 27, December 4, December 11 and December 18, 2004. Through the application process the applicant amended the application to include an amplified performance on the Town Lift on December 18th. Since the location of the performance is adjacent to a residential neighborhood, the application requires further review and approval from City Council.

Analysis:
The December 18th Holdiays on Main activities will run from 1:00pm until 6:00pm. The amplified performance on the Town Lift has been requested from 2:00pm to 6:00pm. All other activities associated with the Holidays on Main have been permitted through an administratively approved Special Event License.

Band Performance

The band will perform between 2:00pm until 6:00pm. The location of the stage will be oriented so as to not project the sound towards Park Avenue and the Old Town residential area. The band will perform under a tent, and a Building Permit has been permitted. The addition of the band to the event will not require additional parking or City Services.

Department Review:

All applicable departments have reviewed the Holidays on Main event and comments have been incorporated into the report.

Recommendation:

Review the Master Festival License application, conduct a public hearing, and consider approving the license for the Holidays on Main Master Festival License, December 18, 2004 based on the following:

1. Holidays on Main include indoor activities at various businesses as well as outdoor activities that include caroling, ice sculptures and warming caldrons from 1:00pm to 6:00pm. An amplified performance will occur on the Town Lift Plaza between 2:00pm until 6:00pm. The event will be held on December 18, 2004.
2. The activities scheduled are to attract shoppers to Main Street during the holiday season. Main Street has adequate parking to accommodate the anticipated attendance. The conduct of Holidays on Main will not substantially interrupt or prevent the safe and orderly movement of public transportation or other vehicular and pedestrian traffic in the area.
3. The MSBA will be providing volunteers to man and run the event. No police or other public employees will not be used at the event and there will not be a diversion of so great a number of police, fire or other essential public employees from their normal duties as to prevent reasonable police, fire, or other public services protection to the remainder of the City.
4. The crowd associated with Holidays on Main will be using the sidewalks and parking in the Main Street parking areas. The concentration of persons, vehicles, or animals will not unduly interfere with the movement of police, fire, ambulance, and other emergency vehicles on the streets or with the provision of other public health or safety concerns.
5. No other Master Festival or Special Event licenses have been issued for December 18, 2004.
6. The organizer is providing adequate insurance for the event.
7. Due to the nature of Holidays on Main, the event will not create an imminent possibility of violent disorderly conduct likely to endanger public safety or cause significant property damage.
8. The applicant has been working with City Staff and applicable departments to address all event concerns. The Applicant demonstrates an ability and willingness to conduct the event pursuant to the terms and conditions of this Chapter. The Applicant has not failed to conduct a previously authorized event in accordance with the law or the terms of a license.

Conclusions of Law:

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

Conditions of Approval:

1. All caldrons must be manned during the event. The propane must be removed from the caldrons if they stay in place between events.
2. A-Frame signs associated with the event must allow for 42” of room on the sidewalk for pedestrians. The signs may only be out during the time of the event.
3. All plans for tents, stages and other temporary structures shall be submitted to the Building Department for review and permitting.
4. The Applicant will work with Staff in order to ensure that any safety, health, or sanitation equipment, and services or facilities reasonably necessary to ensure that the event will be conducted with due regard for safety are provided and paid for by the Applicant.
5. The Applicant shall provide to the Special Events Manager proof of liability insurance as may be required by the Special Events Manager or the City Attorney's Office, and shall further name Park City Municipal Corporation as an additional insured if necessary.

City Council
Staff Report

Author: Alison Butz
Subject: Imperial Hotel
Date: December 2, 2004
Type of Item: Administrative –
Approve the Management Contract

Special Events and
Facilities Department

Summary Recommendations:
Authorize the City Manager to execute an addendum to the management contract for management of the Imperial Hotel, with ResortCom in a form approved by the City Attorney.

Description:

Topic:
Requests for Proposals (RFP) for the Management of the Imperial Hotel.

Background:
After purchasing the Imperial Hotel in December 2003, the City entered into a contract with ResortCom International. ResortCom took over the day-to-day operation of the hotel. The agreement with ResortCom was a month-to-month agreement scheduled to terminate on April 17, 2005 unless extended by mutual agreement of the parties. At that time, Staff extended the contract to allow for time to contact the Air Force and find out the status of the City's proposal to swap the Imperial Hotel with land they own on Hwy 248.

Staff recently contacted the Air Force and received an indication that they will be close to their final decision within 30 to 60 days. Given that the Imperial is headed into the peak season, Council requested Staff investigate the monthly payment from ResortCom to the City in return for a continuous contract through April 17, 2005.

Analysis:
The current proposal with ResortCom has the City receiving a payment of a $2,000 monthly management fee for their services. The new amendment increases the monthly payment to the City to $3,000 in the months of December and April and $4,000 in January, February and March. In return, ResortCom would receive a continuous contract through April 17, 2005.

Significant Impacts
The extension of the management contract for the Imperial Hotel would keep the structure and business in good condition thereby ensuring the City's investment in the property.

ALTERNATIVES

A. Conduct a public hearing and approve the addendum to the management contract between Park City Municipal and ResortCom International to manager the Imperial Hotel.
B. Deny the approval of the management contract and close the Imperial Hotel.
C. The City Council may continue the action for more information and discussion.

RECOMMENDATION:
Direct Staff to approve an addendum to the management contract for management of the Imperial Hotel, with ResortCom, in a form approved by the City Attorney.

Exhibits
Exhibit A – Third Addendum to the Management Contract

THIRD ADDENDUM TO PARK CITY MUNICIPAL CORPORATION SERVICE PROVIDER/PROFESSIONAL SERVICES AGREEMENT

THIS THIRD ADDENDUM is made and entered into in duplicate this 2nd day of December 2004, by and between PARK CITY MUNICIPAL CORPORATION, a Utah municipal corporation and political subdivision of the State of Utah ("City"), and ResortCom International, a California limited liability company ("Service Provider") to amend the Service Provider/Professional Services Agreement signed and executed by the Parties on December 18, 2003, as amended via addendum dated June 10, 2004 and amended via addendum dated July 30, 2004.

WITNESSETH:

WHEREAS, the parties entered into a Professional Services Agreement on December 18, 2003 (hereinafter "Original Agreement"); and

WHEREAS, both parties to the Original Agreement require additional time to complete performance of their obligations thereunder; and

WHEREAS, the parties desire to amend the Original Agreement to provide sufficient time for such performance.

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

1. **EXTENSION OF TERM**. The term of the Original Agreement shall be extended to a termination date of April 17, 2005 or upon such later date as performance by both parties of all obligations pursuant the Original Agreement is completed.

2. **FEE.** The "Monthly Fee, Commission, and Additional Work" section of the Original Agreement (located at Exhibit A, Paragraph 4) is hereby superseded and replaced as follows:

A. Monthly Fee: Service Provider will pay to the City a monthly fee of Three Thousand Dollars ($3,000.00) for December 2004 and April 2005 and Four Thousand Dollars ($4,000.00) for January, February and March 2005 for ResortCom to supervise and manage The Imperial Hotel, due and payable on the first day of each month. Fees for any partial month shall be paid on a pro rata basis.

B. Commission: All net profits earned by the Imperial Hotel for the effective term of this Agreement, as amended herein, shall be retained by Service Provider.

C. Operating Expenses: Service Provider shall be solely responsible for all operating expenses for the Imperial Hotel for the effective term of the Agreement, as amended herein.

D. Additional Work: Any additional work or services required which lie outside of the scope of this Agreement will be performed by Service Provider only upon written request of the City. Such additional work will be billed to City at an hourly rate of $90.00 per hour

3. TERMINATION.

A. The Service Provider may terminate this Agreement, in whole or in part, at any time, by at least thirty (30) days written notice to the City. 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.

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

5. ENTIRE AGREEMENT. This Second Addendum is a written instrument pursuant to Paragraphs 2 and 23 of the Original Agreement between the parties and cannot be altered or amended except by written instrument, signed by both parties.

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

City Council
Staff Report

PARK CITY 1884

Economic Development & Capital Projects

Author: **Colin Hilton**
Subject: **Downtown Projects**
Schematic Design Update & Request for Award of Design and Construction Contracts
Date: **12-2-04**
Type of Item: **Administrative**

Summary Recommendation - Staff is requesting authorization:

#1: To enter into a service provider contract with FFKR Architects, in a form approved by the Legal Department, for Phase 2 & Phase 3 Downtown Projects design services in the amount of $548,417.

#2: To enter into a Construction Manager / General Contractor Agreement with Jacobsen Construction, Inc., in a form approved by the Legal Department, for Preconstruction services (in the amount of $9,500) and Construction Services (Guaranteed Maximum Price or "GMP" to be negotiated and fixed at a later date) for the Downtown Projects.

Description:

Topic: Planning Update & Request for Award of Contracts

Background:

Staff came to City Council to approve the Phase 1 design contract (through schematic design) with FFKR Architects on August 26, 2004. Since that time, we have held numerous project team meetings, "stakeholder" sessions, and public input meetings.

Staff also met during work session on October 14, 2004 to request direction on a number of major planning components. Summarized below was Council's direction to staff:

1. Police Headquarters – Gave direction to remove this component from the Downtown project site.

2. Town Plaza Post Office Impacts – Gave direction to proceed with efforts to coordinate a wider Plaza entry from Main Street by furthering discussions with the

US Postal Service about ways to scale back the size of the current downtown post office.

3. Town Plaza Event Sizes – Gave direction to continue a design of the Plaza to allow for a full spectrum of activity and event sizes, ranging from 0 – 5,000 people.

4. Town Plaza Support Commercial – Gave direction to create a permanent, leasable commercial space at the end of the new addition to the parking structure (up to 3,000 square feet – with the majority of Council favoring a use by the DABC). Also provided direction to create a permanent concessions space by the Post Office for use by vendors during Town Plaza operations.

5. Swede Alley Realignment – Gave direction to do a realignment of Swede Alley that allows the plaza to be adjacent to Main Street and the Post Office, while still ensuring proper delivery access on a newly created section of Swede Alley.

We are returning to City Council to do an overview of the first phase of design, and to seek authorization to proceed into subsequent phases.

<u>Overview of Planning Activities since October:</u>

1. Further engaged the design team to prepare concepts through a Schematic Design. Key components of the identified schematic design for Phase 1 includes:
    a. Parking Structure addition
        i. Obtained the goal of increasing “accessibility” by designing ramps that connect floor to floor of both the new addition and the existing China Bridge. This allows better accessibility to the Sandridge overflow lots.
        ii. Access to the structure is designed to enter from either Swede Alley or Marsac Avenue, with an ability to flow all the way through.
        iii. Current baseline design constructs 329 new spaces, to obtain the 250 space net gain goal. This is what the budget currently allows for.
        iv. If there was a decision to add parking capacity beyond the net gain goal of 250, Staff feels that the only way to achieve this would be to do so through added height of the structure. Cost and design impacts would be minimized through adding an additional level verses increasing the building’s footprint.
        v. To add additional parking capacity, the incremental cost would be $900,000 per increment of 60 spaces (adding one level in height). There are also long term options to possibly add a level to the existing China Bridge structure and expand to the South (estimates gaining an additional 130-140 spaces). Staff currently is only focused on what we can afford within the

current budget … that is with the baseline and a net gain of 250. We will however, with minimal cost impacts, engineer the structure to allow for an additional level.

vi. For best economical value, have designed the structure utilizing a post tension concrete slab method, which is similar to that of the existing China Bridge structure. One modification is that we will increase the circulation lane widths by three feet (to standard) that will allow an easier ability to circulate through the structure and to park between the columns. Other construction methods that would eliminate the columns are beyond our budget allocation.

b. Marsac Renovation

i. Preliminary test results on the strength of the existing building materials have shown a better than expected existing strength. This allows for a seismic renovation process that is estimated to be more economical and less intrusive for this particular type of structure. The chosen construction method will add interior sheer walls as opposed to either Shotcrete or center core drilling methods. This preferred method will provide for the level of seismic improvement targeted at the best value possible.

ii. ADA improvements – the proposed design would eliminate the existing ramps, add stairs and an elevator. Addition improvements will be made to the bathrooms and other interior rooms to meet the current ADA requirements.

iii. Mechanical System – the proposed design replaces the current system to allow for a modern and energy efficient HVAC system.

iv. The focus of the renovation design hit the primary three goals: 1. Seismic Improvement, 2. ADA Accessibility Improvements, and 3. Mechanical System overhaul.

v. Building use / Departmental layouts – the current design assumes the Police department moving out and the other functions remaining in their current configuration.

vi. The current proposed schematic design requires a temporary displacement of building tenants … as early as January 2006 through the Fall of 2006.

c. Town Plaza

i. Following the public meetings held in the Fall, Staff has had the design team focus on the main infrastructure and general site orientation components of the town plaza site.

ii. The current design does the following:

1. Re-aligns Swede Alley
2. Buries the overhead utility lines. Provides event power “hook-up’s” in multiple locations.

3. Suggests further discussions with the Post Office to maximize the Town Plaza entry from Main Street. The current proposed design would shrink the building size by taking building sections off the north and east sides. A new interior layout of the post boxes, work areas, and service desk would meet the space requirements outlined by the USPS. Added public restrooms and a permanent concession space would be created within the east side of the existing building.
4. Changes the temporary Post Office parking spaces from angled to parallel spaces along 5th Street.
5. Adds curb, gutter, sidewalks, lighting systems, and minimal landscaping elements. This includes pedestrian considerations linking the proposed Museum expansion.

iii. The "Plaza Detail" (as defined as what goes in the town plaza) is currently viewed by staff as components that will require much more community input and discussion through the first four to eight months of 2005.

In order to accomplish this, Staff has contacted the non-profit organization, The "Project for Public Spaces" (found at pps.org) to investigate options in planning the logistics of several community sessions to be held in that targeted time frame. Several Staff and Council members heard of the PPS process and community efforts they have been engaged in at the recent National Edge City Conference in Chicago.

They have been creating "places," building communities, markets, transportation and civic design elements using common sense for parks & plazas for over 29 years - 1000 communities - 46 states - 15 countries doing training & education, publications, and planning & visioning sessions.

Their mission is to see central gathering spaces work, rather than turn into idle wasted space. They are interested and excited to assist Park City and Staff feels they would be a terrific partner to add to our planning team.

d. Police Facility

i. We have investigated out of downtown locations and have focused attention on the Snowcreek site. We are currently looking at several options and possible partnering scenarios to maximize use of that site.

ii. We are targeting a Council discussion in mid December.

A site plan is included as Attachment "A" reflecting the preferred design advanced through the schematic design process.

2. Conducted internal meetings to discuss and add to the City's options of project delivery methods. Staff recently amended the current Contracting and Purchasing Policy language to include provisions for a Construction Manager / General Contractor Agreement method. We will be targeting use of this delivery method for this project.

3. Administered a selection process for bringing on-board a "Construction Manager / General Contractor" or CMGC. The selection process is outlined in the Analysis section below.

4. Conducted and participated in "PC Events" organizational meetings to begin discussions on Town Plaza programming ideas. This group consists of City, Chamber, Lodging, Restaurant, HMBA, and Resort personnel. Future planned meetings are looking to further define the programming strategy. Furthermore, City Staff will be meeting in early 2005 to begin efforts to define the operating and maintenance impacts of building the Plaza and additional parking structure.

5. Will be implementing a series of regularly scheduled meetings with stakeholders of the Downtown Projects. Given the high interest of this project and our desire to see an excellent "process," Staff will be setting up a series of regularly scheduled meeting times.

Analysis:

Design Services Contract:

Given the positive momentum of the planning process, Staff advises moving into a Phase 2 and Phase 3 services provider agreement with FFKR Architects.

Staff administered a rigorous selection process back in July and August, electing to phase in the service provider contracts. The RFQ-RFP process allows the City to engage FFKR Architects for the full scope of the services to design the Downtown Projects (Parking, Plaza, Marsac and Police facility). Details of the selection process can be reviewed in the August 26, 2004 Staff report. The Phase 1 contract for schematic design services totaled $188,786. The estimated cost for the next phases (Phase 2 and Phase 3 - not to include the fees associated with the Police facility design) is $548,417.

The design fees, by Phase, are summarized below:

Phase 1 – Programming, Planning, and Schematic Design (Complete) … $188,786
Phase 2 – DD & CD creation ……………………………………………..…$381,738

Phase 3 – Contract Admin (during construction)………………………………. $166,679
Total Estimated Design Fees = $737,203

This represents approximately 7.8% of the estimated $9.4 million in construction costs of the Downtown Projects. Enclosed as Attachment "B" is the proposed contract and the Scope of Services involved with Phase 2 and Phase 3 work.

CMGC Contract:

A selection committee comprised of seven people (Charlie Wintzer, Rex Dabling, Grant Thomas, Ron Ivie/Roger Evans, Jonathan Weidenhamer, and Colin Hilton) met to review proposals and interview short-listed forms for the designation of the Construction Manager / General Contractor for the Downtown Projects. Our rigorous process selected Jacobsen Construction, Inc. as the most qualified firm to oversee the construction of this project.

The following summarizes the process to choose the Downtown Projects CMGC:

1. A 14-page RFQ-RFP was made available starting September 15, 2004 and was advertised in two successive printings of both the Salt Lake Tribune and the Park Record. The RFQ-RFP Advertisement Dates were between September 11 – September 15, 2004.

2. Downloadable copies were available at the City's website starting on September 15th. Additionally, instructions for faxed copies, emailed copies, or hard copies for pick-up were outlined in the notice.

3. A non-mandatory pre-submittal meeting was held on Thursday, September 23, 2004, 10:00 am, at City Hall, Council Chambers, 445 Marsac Avenue, Park City, UT 84060. This allowed prospective firms to better understand the proposed project and requested services.

4. Nine (9) Proposals were submitted by our due date of Tuesday, October 5, 2004, 3:00 pm. They included the following firms: Layton, Sahara, Okland, Wadman, Big-D, Cal Wadsworth, Gramoll, Hogan, and Jacobsen.

5. Copies of the proposals, evaluation sheets, and instructions were circulated to the Selection Committee for review prior to our first meeting. The first selection committee meeting took place on Friday, October 8, 2004, 9:00 am at City Hall.

The selection committee discussed the proposals and provided their top three picks based on their individual interpretation of the selection criteria outlined in the RFQ-RFP and instructions provided in how to complete the evaluation sheet.

The selection committee short-listed the top four (4) ranked firms; Okland, Big-D, Hogan, and Jacobsen based on the committee's collective votes tallies.

6. Notice was sent to all firms on Friday afternoon, October 8th. The faxed letter stated whether a firm was short-listed and moved into the second phase of selection or whether the firm had been eliminated from the selection process.
7. By Wednesday, October 20, 2004 - 2:00pm, three of the four short listed firms (Okland, Hogan, and Jacobsen) had submitted a requested Preconstruction Services and Construction Services Fee Proposal Work Plan to City Hall. Big-D notified the City that they were pulling out of the selection process due to too much workload. Copies of the three remaining firms work plans were distributed to selection committee members the following day.
8. Short-listed firms came into City Hall for oral interviews on Friday, October 22, 2004. Interviews were held as follows: 1:00pm-Hogan, 2:00pm Jacobsen, 3:00pm Okland.
9. Discussion and evaluation following the interviews produced two clear "leading candidates" for the desired selection. They were Jacobsen and Okland. Each had excellent presentations and qualifications to do the job well. The selection committee reviewed pricing and fee proposal data as an additional selection criteria category.
10. Further discussion amongst the selection committee honed in on dissecting the last selection criteria outlined in the RFQ-RFP, that being the Preconstruction & Construction Services Work Plan. The distinguishing factors within that criteria of the Preconstruction & Construction Services Work Plan included:
    a. Pricing & Proposed fees
    b. Proposed Staff Quality
    c. Proposed Staff Experience

    After careful review and discussion, the selection committee overwhelmingly chose Jacobsen Construction as the choice to be the City's CMGC for the Downtown Projects. Also note that Jacobsen submitted the lowest proposed fee.

The Agreement is enclosed as Attachment "C." The amount of preconstruction services for $9,500 will cover costs associated with:

1. Cost Estimating anf cost model development
2. Schedule development
3. Value comparisons
4. Life cycle cost analysis
5. Constructability analysis
6. Value engineering

7. Drawing specification review
8. Procurement planning
9. Bid process management

The CMGC, Jacobsen Construction, will also be required to negotiate with the City a final Guaranteed Maximum Price or "GMP." This will happen towards the end of construction document preparation. The GMP will lock-in the CMGC to a guaranteed cost of constructing the project. Staff will be returning to City Council with an Amendment #1 to the enclosed Agreement to discuss and ratify the GMP through the execution of the Amendment.

Estimates at this point would put the CMGC's fees at approximately $272,600 (based on a proposed fee of 2.9% of an estimated $9.4 million in costs of construction (estimate does not include Police construction possibility). Jacobsen Construction will also be reimbursed as a cost of the work, General Conditions and Reimbursables, as defined in the contract.

<u>Discussion Topics for the Council Meeting</u>

1. Schematic Design Comments, Confirmations, and any Major Goal Modifications
2. Next Steps in the Design Process
3. CMGC Selection
4. Construction Cost Increases and Schedule Implications
    a. 1998-2003 ….. 2.5-3% increases
    b. 2003-present … 8-10% increases
    c. Suggested Schedule
5. Other

Department Review: This report was reviewed by representatives of the Planning, Public Works, and City Manager's Office.

Alternatives:

- **A. Approve the Requests: (Staff recommendation)**
- **B. Modify the Requested Actions:**
- **C. Deny the Request:**
- **D. Continue the Item:**
- **E. Do Nothing:**

Staff Recommendations:

#1: To enter into a service provider contract with FFKR Architects, in a form approved by the Legal Department, for Phase 2 & Phase 3 Downtown Projects design services in the amount of $548,417.

#2: To enter into a Construction Manager / General Contractor Agreement with Jacobsen Construction, Inc., in a form approved by the Legal Department, for

Preconstruction services (in the amount of $9,500) and Construction Services (Guaranteed Maximum Price or "GMP" to be negotiated and fixed at a later date) for the Downtown Projects.

Attachments:
Attachment A – Schematic Design Site Plan
Attachment B - Service Provider Contract – FFKR Architects
Attachment C – Construction Manager / General Contractor Agreement – Jacobsen Construction
Attach

Attachment B

PARK CITY MUNICIPAL CORPORATION SERVICE PROVIDER/PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into in duplicate this ____ day of December, 2004, by and between PARK CITY MUNICIPAL CORPORATION, a Utah municipal corporation, (“City“), and FFKR ARCHITECTS, a Utah corporation (“Service Provider”).

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

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

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

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

1. <u>SCOPE OF SERVICES</u>.

The Service Provider shall perform such services and accomplish such tasks, including the furnishing of all materials and equipment necessary for full performance thereof, as are identified and designated as Service Provider responsibilities throughout this Agreement and as set forth in the Scope of Services attached hereto as ”Exhibit A” and incorporated herein (the “Project”). The “Scope of Services” attached in Exhibit A is a plan of how the Service Provider intends to deliver the “Scope of Services” required for Phase I planning of the Downtown Projects. It represents the Service Provider’s Basic Services; however variances to the hours, personnel, or resources required shall not be considered a basis for compensation for additional services unless they are a result of the following:

1. Change in instructions or approvals given by the City that necessitate significant revisions to previously prepared design documents:
2. Enactment of revisions of codes, laws or regulations which necessitate changes to previously approved design documents;
3. Decisions of the City not rendered in a timely manner; and

4. Significant change in the project including size, quality, complexity, City schedule, or budget.

The total fee for the services per this Agreement shall not exceed five hundred forty eight thousand four hundred and seventeen dollars ($548,417).

2. <u>TERM</u>.

The term of this Agreement shall commence on the date of execution on this Agreement and shall terminate on December 31, 2006 or earlier, unless extended by mutual written agreement of the Parties.

3. <u>COMPENSATION AND METHOD OF PAYMENT</u>.

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

B. No payment shall be made for any service rendered by the Service Provider except for services identified and set forth in this Agreement (including "extra" work required by the City).

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 B," or if none is attached, as subsequently agreed to by both parties in writing.

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

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

4. <u>REPORTS AND INSPECTIONS</u>.

A. The Service Provider, at such times and in such forms as the City may require, shall furnish the City such statements, records, reports, data, and information as the City may request pertaining to matters covered by this Agreement.

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

5. INDEPENDENT CONTRACTOR RELATIONSHIP.

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

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

6. SERVICE PROVIDER EMPLOYEE/AGENTS.

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

7. HOLD HARMLESS INDEMNIFICATION.

A. The Service Provider shall indemnify and hold the City and its agents, employees, and officers, harmless from and shall process and defend at its own expense any and all claims, demands, suits, at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, brought against the City arising out of the negligent acts, errors or omissions or intentionally wrongful conduct of the Service Provider or its agents, employees or officers in the performance of the services and / or tasks 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) combined single limit per occurrence and two million dollars ($2,000,000) aggregate for personal injury, bodily injury and property damage.

B. Automobile Liability insurance with limits no less than five hundred thousand dollars ($500,000) combined single limit per accident for bodily injury and property damage.

C. Professional Liability (Errors and Omissions) insurance written on an occurrence basis with limits no less than one half million dollars ($500,000) combined single limit per occurrence.

D. Workers Compensation insurance written on an occurrence basis with limits no less than one half million dollars ($500,000) combined single limit per occurrence.

E. The City shall be named as an additional insured on the insurance policies except that required by 8.C, as respect to work performed by or on behalf of the Service Provider and a copy of the endorsement naming the City as an additional insured shall be attached to the Certificate of Insurance. The Certificate of insurance shall include provisions that the City shall receive thirty (30) days advance notice of cancellation. The City reserves the right to request certified copies of any required policies.

F. The Service Provider's insurance, except that required by paragraph 8.C, shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

9. TREATMENT OF ASSETS.

Title to all property furnished by the City shall remain in the name of the City and the City shall become the owner of the work product and other documents, if any, prepared by the Service Provider pursuant to this Agreement (contingent on City's performance hereunder). The City shall indemnify the Service Provider against claims arising out of use of the drawings and specifications on a different project or modifications or changes to the drawings and specifications made without consultation or approval of the Service Provider.

10. COMPLIANCE WITH LAWS.

A. The Service Provider, in the performance of this Agreement, shall comply with all applicable federal, state, and local laws and ordinances, including regulations for licensing, certification and operation of facilities, programs and accreditation, and licensing of individuals , applicable to the performance of the services and tasks of this Agreement, and other standards or criteria as described in this Agreement, all as interpreted and enforced by the governmental authorities with jurisdiction of the City's Downtown Area Projects.

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

11. NONDISCRIMINATION.

A. The City is an equal opportunity employer.

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

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

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

12. ASSIGNMENTS/SUBCONTRACTING.

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

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

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

13. CHANGES.

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

14. <u>MAINTENANCE AND INSPECTION OF RECORDS</u>.

A. The Service Provider shall maintain books, records and documents, which sufficiently and properly reflect all direct and indirect costs related to the performance of this Agreement and shall maintain such accounting procedures and practices as may be necessary to assure proper accounting of all funds paid pursuant to this Agreement. These records shall be subject at all reasonable times to inspection, review, or audit by the City, its authorized representative, the State Auditor, or other governmental officials authorized by law to monitor this Agreement.

B. The Service Provider shall retain all books, records, documents and other material relevant to this Agreement for six (6) years after its expiration. The Service Provider agrees that the City or its designee shall have full access and right to examine any of said materials at all reasonable times during said period.

15. <u>POLITICAL ACTIVITY PROHIBITED</u>.

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

16. <u>PROHIBITED INTEREST</u>.

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

17. <u>MODIFICATIONS TO TASKS AND MISCELLANEOUS PROVISIONS</u>.

A. All work proposed by the Service Provider is based on current government ordinances and fees in effect as of the date of this Agreement.

B. Any changes to current government ordinances and fees which affect the scope or cost of the services proposed may be billed as an “extra” pursuant to Paragraph 3(C), or deleted from the scope, at the option of the City.

C. The City shall make provision for access to the property and/or project and adjacent properties, if necessary for performing the services herein.

18. TERMINATION.

A. Either party may terminate this Agreement, in whole or in part, at any time, by at least thirty (30) days written notice to the other party. The Service Provider shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Service Provider shall promptly submit a termination claim to the City. If the Service Provider has any property in its possession belonging to the City, the Service Provider will account for the same, and dispose of it in a manner directed by the City.

B. If the Service Provider fails to perform in the manner called for in this Agreement, or if the Service Provider fails to comply with any other provisions of the Agreement and fails to correct such noncompliance within three (3) days written notice thereof, the City may immediately terminate this Agreement for cause. Termination shall be effected by serving a notice of termination on the Service Provider setting forth the manner in which the Service Provider is in default. The Service Provider will only be paid for services performed in accordance with the manner of performance set forth in this Agreement.

19. NOTICE.

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

20. ATTORNEYS FEES AND COSTS.

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

21. JURISDICTION AND VENUE.

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

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

22. SEVERABILITY.

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

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

23. ENTIRE AGREEMENT.

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

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

Exhibit "A" – Scope of Services

I. Services & Deliverables - The Service Provider will perform Phase 2 Design Development and Construction Document Development plus Phase 3 Construction Period Contract Administration services for the City's Downtown Projects. Services and deliverables will include:

1) Design Development, Construction Documents, and Contract Administration Service
2) A computer generated rendering at the end of Design Development and an update at the end of Construction Documents.
3) Contracting and management of all engineering disciplines and subconsultants.

II. Identified Procedures to Complete Service

1) Sub-Consultants & City Consultants
    a. The following are sub-consultants to the Service Provider:
        i. Civil Engineering: Stantec
        ii. Structural Engineering: Reaveley
        iii. Landscape: ASWN
        iv. Mechanical: Van Boreum & Frank
        v. Electrical: BNA

    It is understood that the above listed Sub-consultants have been selected by the Service Provider and have been approved by the City. Any substitutions of these identified Sub-consultants must be approved in writing by the City

    b. City Consultants
        i. Traffic Engineering: Fehr & Peers
    c. The Service Provider will be responsible for reviewing and coordinating the work of its consultants as well as coordinating the Service Provider's work with the City's identified consultants. However, the Service Provider shall have no responsibility or liability with respect to the quality of the City Consultant's work.
    d. All contracts between the Service Provider and its Sub-consultants shall incorporate the terms of this agreement.
2) Meetings
    a. The Service Provider shall attend public hearings and meetings as is appropriate with the scope outlined in the below "Detailed listing of tasks."
3) Update Planning Guidelines
    a. The Service Provider shall update guidelines for all permanent design features.
    b. The Service Provider shall update as a deliverable to the City a matrix organized by major program elements showing spaces, use functions, and parameters of major program elements.
4) Inventory
    a. Based on as-built records provided by the City and upon personal on-site observations, the Service Provider shall update an inventory of existing facilities, noting the existing opportunities and limitations on site relative to the program criteria.
5) List of Required Permits and Approvals
    a. The Service Provider shall, with the assistance of the City, update a list of required approvals and permits and a schedule for submittal and projected approvals. Submittal recipients shall be identified.
    b. The Service Provider shall update as a deliverable to the City a List of Required Approvals and Permits and Schedule in tabular form. The Service Provider shall not be required to warrant that the list is inclusive of all governmental agencies that may have an interest in the project.
6) List of Potential Issues, Impacts on the Project, and Potential Mitigation
    a. The Service Provider shall, with the assistance of the City, update a list of issues that may arise which may impact the Project, such as environmental, geotechnical, constructability, landscape demolition and

restoration, and soil export. Identify impacts of such issues and potential mitigation methods. As stated in the City Request for Qualifications / Proposals, the City shall be responsible for providing environmental reports relevant to this project. The site is known to contain soils contaminated with mining byproducts. The City has recent experience on construction projects near this site with similar soils. The City shall be responsible for ascertaining mitigation and other requirements of authorities having jurisdiction, and for obtaining approval from such agencies regarding these soils, and for filling the required applications and reports. The Service Provider's opinions regarding the Potential Issues, Impacts on the Project, and Potential Mitigation related to the soils shall be based on the soils information, and acceptable mitigation methods furnished by the City. The Service Provider shall be allowed to rely on the soils information furnished by the City in preparation of the required Design Development Documents. The City shall indemnify and hold harmless the Service Provider for the Service Provider's use of soils and environmental reports and information provided by the City.

   b. The Service Provider shall update as a deliverable to the City a List of Potential Issues and Mitigation Methods as described in Item 6. The Service Provider shall not be required to warrant that the list is inclusive of all potential issues which may impact the project.

7) Recommendations, Conclusions, Summaries
   a. The Service Provider shall provide as a deliverable to the City an Executive Brief summarizing recommendations and conclusions.
8) Design Development Requirements
9) Construction Document Development
10) Construction period Contract Administration Requirements
11) Communications
   a. Communications by and with the Service Providers Sub-consultants shall be through the Service Provider.
   b. The City representative will be Colin Hilton, who will act on the City's behalf. This representative will be empowered to issue instructions to the Service Provider; to approve the work performed, to authorize additional services, and to suspend or terminate the Service Provider's services. This representative or his/her designee shall attend the regularly scheduled meetings.
   c. The Service Provider's representative will be Rick Frerichs, who will act on the Service Provider's behalf.
12) Dispute Resolution
   a. Mediation

      a.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by arbitration.

a.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

a.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

b. Arbitration

b.1 Any claim, dispute or other matter in question arising out of or related to this Agreement may, upon agreement of both parties, be subject to arbitration. Prior to arbitration, the parties shall endeavor to resolve disputes by mediation in accordance with Paragraph 11.a.

b.2 Claims, disputes and other matters in question between the parties that are not resolved by mediation and which may be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the construction Industry Arbitration Rules of the American Arbitration Association currently in effect. The demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association.

b.3 A demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

b.4 No arbitration arising out of or relating to this agreement shall include, by consolidation or joinder or in any other manner, an additional person or entity not a party to this Agreement, except by written consent containing a specific reference to this agreement and signed by the Owner, Architect, and any other person or entity sought to be joined. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

b.5 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law or any court having jurisdiction thereof.

b.6 Prior to submissions of any dispute to arbitration or litigation, the parties hereto agree to first initiate good faith negotiations to amicably solve such dispute. Only following reasonable efforts of the parties to negotiate in good faith to resolve such disputes shall the parties be entitled to submission of matters to arbitration, as provided in this Article 11, or to litigation.

b.7 In the event that arbitration is commenced or a legal action is brought by either party against the other arising out of this Agreement, the prevailing party shall be reimbursed by the other for the prevailing party's reasonable attorney's fees and reasonable costs to defense, in addition to whatever other judgments, if any, may be due.

c. Claims for Consequential Damages
The Architect and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Section 18 of the Agreement.

III. Detailed listing of tasks to be performed, design team members involved, and dates targeted for completion:

(A detailed listing of tasks will be inserted here once the City and FFKR Architects finalize this. Copies of the draft version are available at Colin Hilton's office)

IV. Breakdown of Fees

1. Design Development & Contract Document Preparation…………………$370,488
2. Construction Administration ……………..……..……………………….$161,054
3. Reimbursables ………………………………………………………… <u>$ 16,875</u>
4. Total Fees not to exceed ……………………………………………….... $548,417

The outlined tasks, hours, personnel, and fee structure gives the City and Service Provider a necessary outline of tasks and activities involved in Phase 2 Design Development and Construction Document preparation and Phase 3 Construction period contract administration services.

The contract amount is a not to exceed amount that includes all services necessary to perform Phase 2 and Phase 3 services. Omission of a task, personnel hours, or reimbursables from the “Detailed Checklist of Tasks ….” shall not be a basis for additional compensation.

Should adjustments be necessary to the overall scope of services, tasks, and fees, the two Parties will address this through written correspondence.

Exhibit “B” – Hourly Rates for added Work

Hourly rates for FFKR and FFKR’s Consultants shall be as indicated in the “Detailed listing of tasks to be performed“ included in Exhibit “A”.

Attachment C

THIS AGREEMENT IS BASED ON
Standard Form of Agreement Between
Owner and Construction Manager
where the Construction Manager is also
THE CONSTRUCTOR
1991 EDITION

AGREEMENT

made as of the ________ day of _____________________, 2004
(In words indicate day, month, and year)

BETWEEN the Owner:

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

and the Construction Manager:
Jacobsen Construction Company, Inc.
3131 West 2210 South
Salt Lake City, Utah 84119

The Project is:
Park City's Downtown Projects
445 Marsac Avenue
Park City, UT 84060

The Architect is:
FFKR Architects
Bogue Building
Salt Lake City, UT 84xxx

The Owner and Construction Manager agree as set forth below.

TABLE OF CONTENTS

ATTACHMENTS:

Amendment No. 1 to Agreement between Owner and Construction Manager
Exhibit A: Schedule Prepared by Construction Manager

ARTICLE 1
GENERAL PROVISIONS

1.1 RELATIONSHIP OF PARTIES

The Construction Manager accepts the relationship of trust and confidence established with the Owner by this Agreement, and covenants with the Owner to furnish the Construction Manager's reasonable skill and judgment and to cooperate with the Architect in furthering the interests of the Owner. The Construction Manager shall furnish construction administration and management services and use the Construction Manager's best efforts to perform the Project in an expeditious and economical manner consistent with the interests of the Owner. The Owner shall endeavor to promote harmony and cooperation among the Owner, Architect, Construction Manager, and other persons or entities employed by the Owner for the Project.

1.2 GENERAL CONDITIONS

The General Conditions of the Contract shall be the 1987 Edition of AIA Document A201, General Conditions of the Contract for Construction, as amended, which is incorporated herein by reference (hereinafter it is referred to as "AIA Document A201, as amended"). The term "Contractor," as used in the original AIA Document A201, has been changed to "Construction Manager."

ARTICLE 2
CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager shall perform the services described in this Article.

2.1 PRECONSTRUCTION

2.1.1 PRELIMINARY EVALUATION

The Construction Manager shall provide a preliminary evaluation of the Owner's program and Project budget requirements, each in terms of the other.

2.1.2 CONSULTATION

The Construction Manager, with the Architect, shall jointly schedule and attend regular meetings with the Owner and Architect. The Construction Manager shall consult with the Owner and the Architect regarding site use and improvements and the selection of Materials, building systems, and equipment. The Construction Manager shall provide recommendations on construction feasibility; actions designed to minimize adverse effects of labor or Material shortages; time requirements for procurement, installation, and construction completion; and factors related to construction cost, including estimates of alternative designs or Materials, preliminary budgets, and possible economics.

2.1.3 PRELIMINARY PROJECT SCHEDULE

When Project requirements described in Subparagraph 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a preliminary Project schedule for the Architect's review and the Owner's approval. The Construction Manager shall obtain the Architect's approval of the portion of the preliminary Project schedule relating to the performance of the Architect's services. The Construction Manager shall coordinate and integrate the preliminary Project schedule with the Services and activities of the Owner, Architect, and Construction Manager. As design proceeds, the preliminary Project schedule shall be updated to indicate proposed activity sequences and durations, milestone dates for receipt and approval of pertinent information, submittal of a Guaranteed Maximum Price proposal, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long lead time procurement, and Owner's occupancy requirements showing portions of the Project having occupancy priority. If preliminary Project schedule updates indicate that previously approved schedules may not be met, the Construction Manager shall make appropriate recommendations to the Owner and Architect.

2.1.4 PHASED CONSTRUCTION

The Construction Manager shall make recommendations to the Owner and the Architect regarding the phased issuance of Drawings and Specifications to facilitate phased construction of the Work, if such phased construction is appropriate for the Project, taking into consideration such factors as economics, time of performance, availability of labor and materials, and provisions for temporary facilities.

2.1.5 PRELIMINARY COST ESTIMATES

2.1.5.1 When Design Development Documents have been prepared by the Architect and approved by the Owner, the Construction Manager shall prepare a detailed estimate with supporting data for review by the Architect and approval by the Owner. During the preparation of the Construction Documents, the Construction Manager shall update and refine this estimate at appropriate intervals agreed to by the Owner, Architect, and Construction Manager.

2.1.5.2 If any estimate submitted to the Owner exceeds previously approved estimates or the Owner's budget, the Construction Manager shall make appropriate recommendations to the Owner and the Architect.

2.1.6 SUBCONTRACTORS AND SUPPLIERS

In procuring subcontractor and supplier contracts, Construction Manager shall utilize competitive bidding practices in accordance with Utah Code Annotated §§ 11-39-101 to -107 and the Park City Contracting and Purchasing Policy. Prior to procuring subcontracts and supplier contracts, the Construction Manager shall develop a procurement plan, for review and approval by the Owner, outlining how the Construction Manager will conduct the competitive bidding process.

2.1.7 LONG LEAD TIME ITEMS

The Construction Manager shall recommend to the Owner and the Architect a schedule for procurement of long lead time items, which shall constitute part of the Work as required to meet the Project schedule. Procurement of long lead time items shall be subject to competitive bidding practices as described at Subparagraph 2.1.6 herein. If such long lead time items are procured by the Owner, they shall be procured on terms and conditions acceptable to the Construction Manager. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, all contracts for such items shall be assigned by the Owner to the Construction Manager, who shall accept responsibility for such items as if procured by the Construction Manager. The Construction Manager shall expedite the delivery of long lead time items.

2.1.8 EXTENT OF RESPONSIBILITY

The Construction Manager does not warrant or guarantee estimates and schedules, except as may be included as part of the Guaranteed Maximum Price. The recommendations and advice of the Construction Manager concerning design alternatives shall be subject to the review and approval of the Owner and the Owner's professional consultants. It is not the Construction Manager's responsibility to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, building codes, rules, and regulations. However, if the Construction Manager recognizes that portions of the Drawings and Specifications are at variance therewith, the Construction Manager shall promptly notify the Architect and the Owner in writing.

2.1.9 EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION

The Construction Manager shall comply with applicable laws, regulations, and special requirements of the Contract Documents regarding equal employment opportunity and affirmative action programs.

2.2 GUARANTEED MAXIMUM PRICE PROPOSAL AND CONTRACT TIME

2.2.1 When the Drawings and Specifications are sufficiently complete, the Construction Manager shall propose a Guaranteed Maximum Price, which shall be the sum of the estimated Cost of the Work and the Construction Manager's Fee.

2.2.2 As the Drawings and Specifications may not be finished at the time the Guaranteed Maximum Price proposal is prepared, the Construction Manager shall provide in the Guaranteed Maximum Price for further development of the Drawings and Specifications by the Architect that is consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds, and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order.

2.2.3 The estimated Cost of the Work shall include the Construction Manager's contingency, a sum established by the Construction Manager for the Construction Manager's exclusive use to cover costs arising under Subparagraph 2.2.2, and other costs that are properly reimbursable as Cost of the Work, but not the basis for a Change Order.

2.2.4 BASIS OF GUARANTEED MAXIMUM PRICE

The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include:

2.2.4.1 A list of the Drawings and Specifications, including all addenda thereto, and the Conditions of the Contract that were used in preparation of the Guaranteed Maximum Price proposal.

2.2.4.2 A list of allowances and a statement of their basis.

2.2.4.3 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal to supplement the information contained in the Drawings and Specifications.

2.2.4.4 The proposed Guaranteed Maximum Price, including a statement of the estimated cost organized by trade categories, allowances, contingencies, and other items and the fee that comprise the Guaranteed Maximum Price.

2.2.4.5 An acknowledgment that the proposed Guaranteed Maximum Price is based on a Substantial Completion Date of the Parking Structure and Swede Alley realignment by December 15, 2005 and a Final Completion Date of January 15, 2006.

2.2.5 The Construction Manager shall meet with the Owner and the Architect to review the Guaranteed Maximum Price proposal and the written statement of its basis. In the event that the Owner or the Architect discovers any inconsistencies or inaccuracies in the information presented, it shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

2.2.6 Unless the Owner accepts the Guaranteed Maximum Price proposal in writing on or before the date specified in the proposal for such acceptance and so notifies the Construction Manager, the Guaranteed Maximum Price proposal shall not be effective without written acceptance by the Construction Manager.

2.2.7 Prior to the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal and issuance of a Notice to Proceed, the Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work, except as the Owner may specifically authorize in writing.

2.2.8 Upon acceptance by the Owner of the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price and its basis shall be set forth in Amendment No. 1 of this Agreement. The Guaranteed Maximum Price shall be subject to additions and deductions by a change in the Work as provided in the Contract Documents, and the date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

2.2.9 The Owner shall authorize and cause the Architect to revise the Drawings and Specifications to the extent necessary to reflect the agreed upon assumptions and clarifications contained in Amendment No. 1 of this Agreement. Such revised Drawings and Specifications shall be furnished to the Construction Manager in accordance with schedules agreed to by the Owner, Architect, and Construction Manager. The Construction Manager shall promptly notify the Architect and the Owner if such revised Drawings and Specifications are inconsistent with the agreed upon assumptions and clarifications.

2.2.10 The Guaranteed Maximum Price shall include in the Cost of the Work only those taxes that are enacted at the time the Guaranteed Maximum Price is established.

2.3 CONSTRUCTION PHASE

2.3.1 GENERAL

2.3.1.1 The Construction Phase shall commence on the earlier of (1) the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal and issuance of a Notice to Proceed, or (2) the Owner's first authorization to the Construction Manager to (a) award a subcontract, or (b) issue a purchase order for materials or equipment required for the Work.

2.3.2 ADMINISTRATION

2.3.2.1 The Work shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. In accordance with Utah Code Annotated §§ 11-39-101 to -107 and the Park City Contracting and Purchasing Policy, the Construction Manager shall obtain bids , and, after analyzing such bids, shall deliver such bids to the Owner and the Architect. The Construction Manager may offer a competitive bid for any portion of the Work in the same manner and form as any other Subcontractor or supplier.

2.3.2.2 If the Guaranteed Maximum Price has been established, and a specific bidder among those whose bids are delivered by the Construction Manager to the Owner and Architect (1) is recommended to the Owner by the Construction Manager, (2) is qualified to perform that portion of the Work, and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, the Construction Manager may require that a change in the Work be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

2.3.2.3 Subcontracts and agreements with suppliers furnishing materials or equipment fabricated to a special design shall conform to the payment provisions of Subparagraphs 6.1.8 and 6.1.9, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner.

2.3.2.4 The Construction Manager shall schedule and conduct meetings at which the Owner, Architect, Construction Manager, and appropriate Subcontractors can discuss the status of the Work. The Construction Manager shall prepare and promptly distribute meeting minutes.

2.3.2.5 The Construction Manager shall prepare a schedule in accordance with Paragraph 3.10 of AIA Document A201, as amended, including the Owner's occupancy requirements.

2.3.2.6 The Construction Manager shall provide monthly written reports to the Owner and the Architect on the progress of the entire Work. The Construction Manager shall maintain a daily log containing a record of weather, Subcontractors working on the site, the number of workers, Work accomplished, problems encountered, and other similar relevant data as the Owner may reasonably require. The Construction Manager shall submit copies of the daily log to Owner on a weekly basis and the log shall be available to the Architect.

2.3.2.7 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect at regular intervals.

2.4 PROFESSIONAL SERVICES

The Construction Manager shall not be required to provide professional services that constitute the practice of architecture or engineering, unless such services are specifically required by the Contract Documents for a portion of the Work, or unless the Construction Manager has specifically agreed in writing to provide such services. In such event, the Construction Manager shall cause such services to be performed by appropriately licensed professionals.

2.5 UNSAFE MATERIALS

In addition to the provisions of Paragraph 10.1 of AIA Document A201, as amended, if reasonable precautions shall be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance encountered but not created on the site by the Construction Manager, the Construction Manager, upon recognizing the condition, shall immediately stop Work in the affected area and report the condition to the Owner and the Architect in writing. The Owner, Construction Manager, and Architect shall then proceed in the same manner described in Subparagraph 10.1.2 of AIA Document A201, as amended. The Owner shall be responsible for obtaining the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Construction Manager and, in the event such material or substance is found to be present, to verify that it has been rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Construction Manager and the Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance, or who are to perform the task of removal or safe containment of such material or substance. The Construction Manager and the Architect shall promptly reply to the Owner, in writing, stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Construction Manager or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Construction Manager and the Architect have no reasonable objection.

ARTICLE 3
OWNER'S RESPONSIBILITIES

3.1 INFORMATION AND SERVICES

3.1.1 The Owner shall provide full information in a timely manner regarding the requirements of the Project, including a program that sets forth the Owner's objectives, constraints, and criteria, including space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements.

3.1.2 The Owner, upon written request from the Construction Manager, shall furnish evidence of Project financing prior to the start of the Construction Phase and from time to time thereafter as the Construction Manager may request. Furnishing of such evidence shall be a condition precedent to commencement or continuation of the Work.

3.1.3 The owner shall establish and update an overall budget for the Project, based on consultation with the Construction Manager and Architect, which shall include costs that are the responsibility of the Owner.

3.1.4 STRUCTURAL AND ENVIRONMENTAL TESTS, SURVEYS, AND REPORTS

The Owner shall furnish the following with reasonable promptness and at the Owner's expense, and the Construction Manager shall be entitled to rely upon the accuracy of any such information, reports, surveys, drawings, and tests described in Subparagraphs 3.1.4.1 through 3.1.4.4 of this Agreement, except to the extent that the Construction Manager knows of any inaccuracy.

3.1.4.1 Reports, surveys, drawings, and tests concerning the conditions of the site which are required by law.

3.1.4.2 Surveys describing physical characteristics, legal limitations, and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements, and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries, and contours of the site; locations, dimensions, and necessary data pertaining to existing buildings, other improvements, and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All information on the survey shall be referenced to a project benchmark.

3.1.4.3 The services of geotechnical engineers, when such services are requested by the Construction Manager. Such services may include, but are not limited to, test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate professional recommendations.

3.1.4.4 Structural, mechanical, chemical, air, and water pollution tests; tests for hazardous materials; and other laboratory and environmental tests, inspections, and reports that are required by law.

3.1.4.5 The services of other consultants, when such services are reasonably required by the scope of the Project and requested by the Construction Manager.

3.2 OWNER'S DESIGNATED REPRESENTATIVE

Except as otherwise provided herein, Owner shall designate, in writing, a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. The representative shall have the authority to make decisions in behalf of the Owner concerning estimates and schedules, construction budgets, and changes in the Work, and shall render such decisions promptly and furnish information expeditiously so as to avoid unreasonable delay in the services or Work of the Construction Manager. The Owner may change the representative at any time by designating such change in writing.

The Parties hereby acknowledge and agree that pursuant to Park City Contracting and Purchasing Policies, accumulated Change Orders which would overall increase the Guaranteed Maximum Price by more than ten percent (10%) cannot be approved by Owner's designated representative and require express approval by the City Council of Park City. Time necessary to obtain such approval[s] from the City Council shall not be considered unreasonable delay in the services or Work of the Construction Manager.

3.3 ARCHITECT

The Owner has retained an Architect to provide the Basic Services, including normal structural, mechanical, and electrical engineering services, described in the in the Services Provider Agreement between Park City and FFKR Architects. The Owner shall authorize and cause the Architect to provide those Additional Services described in the Architect Agreement requested by the Construction Manager that must necessarily be provided by the Architect for the Work. Such services shall be provided in accordance with time schedules agreed to by the Owner, Architect, and Construction Manager. Upon request of the Construction Manager, the Owner shall furnish to the Construction Manager a copy of the Owner's Agreement with the Architect, from which compensation provisions may be deleted. The Architect will provide design documents to the Construction Manager at the various phases of design to include an electronic version in PDF format and 6 sets of drawings and specifications in hard copy.

3.4 LEGAL REQUIREMENTS

The Owner shall determine, and advise the Architect and the Construction Manager of, any special legal requirements relating specifically to the Project that differ from those generally applicable to construction in the jurisdiction of the Project. The Owner shall furnish such legal services as are necessary to provide the information and services required under Paragraph 3.1 of this Agreement.

ARTICLE 4
COMPENSATION FOR CONSTRUCTION SERVICES

The Owner shall compensate the Construction Manager for Construction Phase services as follows:

4.1 COMPENSATION

4.1.1 For the Construction Manager's performance of the Work as described in Paragraph 2.3 of this Agreement, the Owner shall pay the Construction Manager, in current funds, the Contract Sum consisting of the Cost of the Work as defined in Article 5 of this Agreement and the Construction Manager's Fee determined as follows:

Preconstruction Services Fee:	$ 9,500
Construction Fee:	$ 2.9% of the GMP plus the Costs of General Reimbursables and General Conditions.

In the event that the actual Cost of the Work is less than the Guaranteed Maximum Price, as adjusted for changes per Paragraph 4.3 of this Agreement, the Construction Manager shall receive an incentive fee equal to twenty percent (20%) of such savings; however, in no event shall the incentive fee exceed $20,000.

4.2 GUARANTEED MAXIMUM PRICE

4.2.1 The sum of the Cost of the Work and the Construction Manager's Fee is guaranteed by the Construction Manager not to exceed the amount provided in Amendment No. 1 of this Agreement, subject to additions and deductions by approved changes in the Work as provided in the Contract Documents. Such maximum sum, as adjusted by approved changes in the Work, is referred to in the Contract Documents as the "Guaranteed Maximum Price." Costs that would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

4.3 CHANGES IN THE WORK

4.3.1 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of Amendment No. 1 of this Agreement may be determined by any of the methods listed in Subparagraph 7.3.3 of AIA Document A201, as amended.

4.3.2 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee," as used in Subparagraph 7.3.3.3 of AIA Document A201, as amended, and the terms "costs" and "a reasonable allowance for overhead and profit." as used in Subparagraph 7.3.6 of AIA Document A201, as amended, shall have the meanings assigned to them in that document, and shall not be modified by this Article 4. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be circulated in accordance with the terms of those subcontracts.

4.3.3 In calculating adjustments to the Contract, the terms “cost” and “costs,” as used in the above-referenced provisions of AIA Document A201, as amended, shall mean the Cost of the Work as defined in Article 5 of this Agreement, and the term “a reasonable allowance for overhead and profit” shall mean the Construction Manager’s Fee as defined in Subparagraph 4.1.1 of this Agreement.

ARTICLE 5
COST OF THE WORK FOR CONSTRUCTION PHASE

5.1 COSTS TO BE REIMBURSED

5.1.1 The term “Cost of the Work” shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than those customarily paid at the place of the Project, except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in this Article 5.

5.1.2 LABOR COSTS

5.1.2.1 Wages or salaries of the Construction Manager’s supervisory and administrative personnel when stationed at the site with the Owner’s agreement. The reimbursable staff and salary structure shall be in accordance with Construction Manager’s General Conditions estimate to be included as part of Amendment No. 1 of this Agreement.

5.1.2.2 Wages and salaries of the Construction Manager’s supervisory or administrative personnel engaged at factories, workshops, or on the road in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work and approved in advance in writing by Owner.

5.1.2.3 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments, and benefits required by law or collective bargaining agreements, and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations, and pensions, provided that such costs are based on wages and salaries included in the Cost of the Work under Subparagraphs 5.1.2.1 through 5.1.2.3.

5.1.3 SUBCONTRACT COSTS

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts.

5.1.4 COSTS OF MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION

5.1.4.1 Costs, including transportation, of materials and equipment incorporated or to be incorporated in the completed construction.

5.1.4.2 Costs of materials described in the preceding Subparagraph 5.1.4.1 in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage. Unused excess materials, if any, shall be handed over to the Owner at the completion of the Work, or, at the Owner's option, shall be sold by the Construction Manager. Amounts realized, if any, from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

5.1.5 COSTS OF OTHER MATERIALS AND EQUIPMENT, TEMPORARY FACILITIES, AND RELATED ITEMS

5.1.5.1 Costs, including transportation, installation, maintenance, dismantling, and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Construction Manager at the site and fully consumed in the performance of the Work; and cost, less salvage value, on such items if not fully consumed, whether sold to others or retained by the Construction Manager. Cost for items previously used by the Construction Manager shall mean fair market value.

5.1.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Construction Manager at the site, whether rented from the Construction Manager or others, and costs of transportation, installation, minor repairs and replacements, dismantling, and removal thereof. Rates and quantities of equipment rented shall be subject to the Owner's prior approval. In no event shall the rental value of Construction Manager's owned equipment be more than seventy five percent (75%)of the rates established in the current edition of *Rental Rate Blue Book* ™.

5.1.5.3 Costs of removal of debris from the site.

5.1.5.4 Reproduction costs; costs of telegrams, facsimile transmissions, and long-distance telephone calls; postage and express delivery charges; telephone service at the site; and reasonable petty cash expenses of the site office.

5.1.5.5 That portion of the reasonable travel and subsistence expenses of the Construction Manager's personnel incurred while traveling in discharge of duties connected with the Work.

5.1.6 MISCELLANEOUS COSTS

5.1.6.1 That portion directly attributable to this Contact of premiums for insurance and bonds. Insurance shall be billed at a fixed rate to be included as part of Amendment No. 1 of this Agreement.

5.1.6.2 Sales, use, or similar taxes imposed by a governmental authority, which are related to the Work and for which the Construction Manager is liable.

5.1.6.3 Fees and assessments for the building permit and other permits, licenses, and inspections for which the Construction Manager is required by the Contract Documents to pay.

5.1.6.4 Fees of testing laboratories for tests required by the Contract Documents, except those related to nonconforming Work other than that for which payment is permitted by Subparagraph 5.1.8.2 of this Agreement.

5.1.6.5 Royalties and license fees paid for the use of a particular design, process, or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent or other intellectual property rights arising from such requirement by the Contract Documents; payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent; provided, however, that such costs of legal defenses, judgments, and settlements shall not be included in the calculation of the Construction Manager's Fee or the Guaranteed Maximum Price, and provided that such royalties, fees, and costs are not excluded by the last sentence of Subparagraph 3.17.1 of AIA Document A201, as amended, or other provisions of the Contract Documents.

5.1.6.6 Data processing costs at the project site related to the Work .

5.1.6.7 Expenses incurred in accordance with the Construction Manager's standard personnel policy for relocation and temporary living allowances of personnel required for the Work, in case it is necessary to relocate such personnel from distant locations.

5.1.7 OTHER COSTS

Other costs incurred in the performance of the Work, if and to the extent approved in advance, in writing, by the Owner.

5.1.8 EMERGENCIES AND REPAIRS TO DAMAGED OR NONCONFORMING WORK

The Cost of the Work shall also include costs described in Subparagraph 5.1.1 of this Agreement that are incurred by the Construction Manager:

5.1.8.1 In taking action to prevent threatened damage, injury, or loss in case of an emergency affecting the safety of persons and property, as provided in Paragraph 10.3 of AIA Document A201, as amended.

5.1.8.2 In repairing or correcting damaged or nonconforming Work executed by the Construction Manager or the Construction Manager's Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence or failure to fulfill a specific responsibility to the Owner set forth in this Agreement of the Construction Manager or the Construction Manager's foremen, engineers, or superintendents or other supervisory, administrative, or managerial personnel of the Construction Manager, or the failure of the Construction Manager's personnel to supervise adequately the Work of the Subcontractors or suppliers, and only to the extent that the cost of repair or correction is not recoverable by the Construction Manager from insurance, Subcontractors, or suppliers.

5.1.9 The costs described in Subparagraphs 5.1.1 through 5.1.8 of this Agreement shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201, as amended, or other Conditions of the Contract that may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Paragraph 5.2 of this Agreement.

5.2 COSTS NOT TO BE REIMBURSED

5.2.1 The Cost of the Work shall not include:

5.2.1.1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Subparagraphs 5.1.2.2 of this Agreement.

5.2.1.2 Expenses of the Construction Manager's principal office and offices other than the site office, except as specifically provided in Paragraph 5.1 of this Agreement.

5.2.1.3 Overhead and general expenses, except as may be expressly included in Paragraph 5.1 of this Agreement.

5.2.1.4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work.

5.2.1.5 Rental costs of machinery and equipment, except as specifically provided in Subparagraph 5.1.5.2 of this Agreement.

5.2.1.6 Except as provided in Subparagraph 5.1.8.2 of this Agreement, costs due to the negligence of the Construction Manager or to the failure of the Construction Manager to fulfill a specific responsibility to the Owner set forth in this Agreement.

5.2.1.7 Except as provided in Subparagraph 5.1.7. of this Agreement, any cost not specifically and expressly described in Paragraph 5.1 of this Agreement.

5.2.1.8 Costs which would cause the Guaranteed Maximum Price to be exceeded.

5.3 DISCOUNTS, REBATES, AND REFUNDS

5.3.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner, if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment therefor from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be secured.

5.3.2 Amounts which accrue to the Owner in accordance with the provisions of Subparagraph 5.3.1 of this Agreement shall be credited to the Owner as a deduction from the Cost of the Work.

5.4 ACCOUNTING RECORDS

5.4.1 The Construction Manager shall keep full and detailed accounts, and shall exercise such controls as may be necessary for proper financial management under this Contract. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's accountants shall be afforded access to the Construction Manager's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda, and other data relating to this Project during normal business hours and upon providing reasonable notice, and the Construction Manager shall preserve these for a period of three (3) years after final payment, or for such longer period as may be required by law.

ARTICLE 6
CONSTRUCTION PHASE

6.1 PROGRESS PAYMENTS

6.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager, and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Construction Manager as provided below and elsewhere in the Contract Documents.

6.1.2 The period covered by each Application for Payment shall be one (1) calendar month ending on the last day of the month.

6.1.3 Provided an Application for Payment is received by the Architect not later than the fifth day of a month, the Owner shall make payment to the Construction Manager not later than the fifth day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than thirty (30) days after the Architect receives the Application for Payment.

6.1.4 Unless waived in writing by the Owner, with each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed (1) progress payments already received by the Construction Manager, (2) less that portion of those payments attributable to the Construction Manager's Fee, (3) plus payrolls for the period covered by the present Application for Payment.

6.1.5 Each Application for Payment shall be based upon the most recent schedule of values submitted by the Construction Manager and approved by the Owner in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single, separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect or Owner, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

6.1.6 Applications for Payment shall show the percentage completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage completion shall be the lesser of (1) the percentage of that portion of the Work that has actually been completed, or (2) the percentage obtained by dividing (a) the expense which has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

6.1.7 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

6.1.7.1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work, as determined by multiplying the percentage completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute may be included as provided in Subparagraph 7.3.7 of AIA Document A201, as amended, even though the Guaranteed Maximum Price has not yet been adjusted by Change Order.

6.1.7.2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing.

6.1.7.3 Add the Construction Manager's Fee. The Construction Manager's Fee shall be an amount that bears the same ratio to that fixed sum Fee as the Cost of the Work in the two preceding subparagraphs bears to the GMP.

6.1.7.4 Subtract the aggregate of previous payments made by the Owner.

6.1.7.5 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Subparagraph 6.1.4 of this Agreement to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owners accountants in such documentation.

6.1.7.6 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Paragraph 9.5 of AIA Document A201, as amended.

6.1.8 Except with the Owner's prior approval, payments to Subcontractors shall be subject to retention of not less than five percent (5%). The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments, retention, and retention reduction or early release for subcontracts.

6.1.9 Except with the Owner's prior approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment that have not been delivered and stored at the site.

6.1.10 In taking action on the Construction Manager's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager, and shall not be deemed to represent that the Architect has made a detailed examination, audit, or arithmetic verification of the documentation submitted in accordance with Subparagraph 6.1.4 of this Agreement or other supporting data; that the Architect has made exhaustive or continuous on-site inspections; or that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, shall be performed by the Owner's accountants acting in the sole interest of the Owner.

6.1.11 No retention shall be held on the Construction Manager's General Conditions costs or the Construction Manager's Fee.

6.2 FINAL PAYMENT

6.2.1 Final payment shall be made by the Owner to the Construction Manager when (1) the Contract has been fully performed by the Construction Manager, except for the Construction Manager's responsibility to correct nonconforming Work as provided in Subparagraph 12.2.2 of AIA Document A201, as amended, and to satisfy other requirements, if any, which necessarily survive final payment; (2) a final Application for Payment and a final accounting for the Cost of the Work have been submitted by the Construction Manager and reviewed by the Owner's accountants; and (3) a final Certificate for Payment has then been issued by the Architect. Such final payment shall be made by the Owner not more than thirty (30) days after the issuance of the Architect's final Certificate for Payment.

6.2.2 The amount of the final payment shall be calculated as follows:

6.2.2.1 Take the sum of the Cost of the Work substantiated by the Construction Manager's final accounting and the Construction Manager's Fee, but not more than the Guaranteed Maximum Price.

6.2.2.2 Subtract amounts, if any, for which the Architect withholds, in whole or in part, a final Certificate for Payment as provided in Subparagraph 9.5.1 of AIA Document A201, as amended, or other provisions of the Contract Documents.

6.2.2.3 Subtract the aggregate of previous payments made by the Owner.

If the aggregate of previous payments made by the Owner exceeds the amount due the Construction Manager, the Construction Manager shall reimburse the difference to the Owner.

6.2.3 The Owner's accountant shall review and report in writing on the Construction Manager's final accounting within thirty (30) days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's accountants report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Subparagraph 6.2.1 of this Agreement have been met, the Architect shall, within seven (7) days after receipt of the written report of the Owner's accountants, either issue to the Owner a final Certificate for Payment, with a copy to the Construction Manager, or notify the Construction Manager and the Owner in writing of the Architect's reasons for withholding a certificate as provided in Subparagraph 9.5.1 of AIA Document A201, as amended. The time periods stated in this Paragraph 6.2 supersede those stated in Subparagraph 9.4.1 of AIA Document A201, as amended.

6.2.4 If the Owner's accountants report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to proceed in accordance with Article 8 of this Agreement, without a further decision of the Architect. Unless agreed to otherwise, a demand for mediation or arbitration of the disputed amount shall be made by the Construction Manager within sixty (60) days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to make such demand within the sixty (60)-day period shall result in the substantiated amount's, as reported by the Owner's accountants, becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

6.2.5 If subsequent to final payment and, at the Owner's request, the Construction Manager incurs costs described in Paragraph 5.1 and not excluded by Paragraph 5.2 of this Agreement (1) to correct nonconforming Work, or (2) arising from the resolution of disputes, the Owner shall reimburse the Construction Manager such costs and the

Construction Manager's Fee, if any, related thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Construction Manager has participated in savings, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

ARTICLE 7
INSURANCE AND BONDS

7.1 INSURANCE REQUIRED OF THE CONSTRUCTION MANAGER

The Construction Manager shall purchase and maintain insurance as set forth in Article 11 of AIA Document A201, as amended, and as set forth below.

7.1.1 The Construction Manager shall maintain, and shall require all subcontractors and other entities or persons who perform work on the project to maintain, Workers' Compensation and Employers' Liability insurance meeting statutory limits mandated by Utah State law and federal law.

7.1.2 Commercial General Liability, including coverage for Premises-Operations, Independent Contractors' Protective, Products Completed Operations, Contractual Liability, Personal Injury, and Broad Form Property Damage (including coverage for Explosion, Collapse, and Underground hazards), shall be purchased and maintained as follows:

$ 1,000,000	Each Occurrence
$ 2,000,000	General Aggregate
$ 1,000,000	Personal and Advertising Injury
$ 1,000,000	Products - Completed Operations Aggregate

7.1.2.1 The limits required in Subparagraph 7.1.2 (the "Policy") shall name Park City Municipal Corporation as additional insured. If, during any phase of the Project, the minimum General Aggregate of the Policy available to cover claims relative to the Project arising under this Agreement is decreased or is in any way compromised such that coverage for the Project, under the Policy is in any manner adversely affected, the following shall occur: (1) the Owner shall be notified within ten (10) days following the occurrence of the event or the receipt of the claim, whichever occurs first; (2) the Construction Manager shall provide alternate coverage, of a scope and nature consistent with the terms of this Agreement, subject to the approval of the Owner, within ten (10) days following the occurrence of the event or the receipt of the claim; and (3) should the Construction Manager fail to provide such alternate coverage within the prescribed time period, the Owner shall be entitled to procure alternate coverage and deduct the cost for such from any monies or payment then due, or in the future due, to the Construction Manager from the Owner.

7.1.2.2 Products and Completed Operations insurance shall be maintained for a minimum period of at least one (1) year either after ninety (90) days following Final Completion, or final payment, whichever is earlier.

7.1.2.3 The Contractual Liability insurance shall include coverage sufficient to meet the obligations under Paragraph 3.18 of AIA Document A201, as amended.

7.1.3 Automobile Liability (owned, non-owned and hired vehicles) for bodily injury and property damage shall be maintained with a minimum limit of liability per occurrence of $1 million.

7.1.4 During the Construction Phase of the Project, the Owner shall purchase and maintain property insurance, including waivers of subrogation, as set forth in Paragraph 11.2 of AIA Document A201, as amended.

7.2 PERFORMANCE BOND AND PAYMENT BONDS

7.2.1 The Construction Manager shall provide performance and payment bonds equal to one hundred percent (100%) of the contract amounts. The bonds shall be in a form acceptable to the Owner. The bonds shall name the Owner as a third party obligee and shall be enforceable by the Owner, even if the Construction Manager's services are terminated pursuant to the provisions of this Contract.

7.2.2 The Construction Manager shall deliver the required bonds to the Owner at least three (3) days before the commencement of any Work at the Project site.

ARTICLE 8
MISCELLANEOUS PROVISIONS

8.1 OTHER PROVISIONS

8.1.1 DEFINITIONS

Unless otherwise noted, the terms used in this Agreement shall have the same meaning as those in the 1987 Edition of AIA Document A201, as amended, General Conditions of the Contract for Construction.

8.1.2 EXTENT OF CONTRACT

This Contract, which includes this Agreement and the other documents incorporated herein by reference, represents the entire and integrated agreement between the Owner and Construction Manager, and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Construction

Manager. If anything in any document incorporated into this Agreement is inconsistent with this Agreement, this Agreement shall govern.

8.1.3 OWNERSHIP AND USE OF DOCUMENTS

The Drawings, Specifications, and other documents prepared by the Architect, and copies thereof furnished to the Construction Manager, are for use solely with respect to this Project. They are not to be used by the Construction Manager, Subcontractors, Sub-subcontractors, or suppliers on other projects or for additions to this Project outside the scope of the Work, without the specific written consent of the Owner and the Architect. The Construction Manager, Subcontractors, Sub-subcontractors, and suppliers are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications, and other documents prepared by the Architect appropriate to, and for use in, the execution of their Work under the Contract Documents.

8.1.4 GOVERNING LAW

The Contract shall be governed by the laws of the State of Utah.

8.1.5 ASSIGNMENT

The Owner and Construction Manager respectively bind themselves, their partners, successors, assigns, and legal representatives to the other party hereto and to partners, successors, assigns, and legal representatives of such other party in respect to covenants, agreements, and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract as a whole, or any portion of the Contract, without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

8.2 MANDATORY ARBITRATION

8.2.1 If a controversy or claim should arise, Construction Manager's and Subcontractor's authorized representatives shall meet at least once to attempt to resolve the matter. Either authorized representative may request the other to meet within fourteen (14) days, at a mutually agreed upon time and place.

8.2.2 If the matter has not been resolved within twenty one (21) days of their first meeting, the authorized representatives shall refer the matter to senior executives, who shall have authority to settle the dispute ("Senior Executives"). Thereupon, the authorized representatives shall promptly prepare and exchange memoranda stating the issues in dispute and their positions, summarizing the negotiations which have taken place and attaching relevant documents. The Senior Executives will meet for negotiations within fourteen (14) days of the end of the twenty one (21) day period referred to above, at a mutually agreed time and place.

8.2.3 If the matter has not been resolved within thirty (30) days of the meeting of the Senior Executives, any controversies arising out of the terms of this Agreement or its interpretation, including any subcontractor dispute, shall be settled in Utah in accordance with the rules of the American Arbitration Association, and the judgment upon award may be entered in any court having jurisdiction thereof.

8.2.4 All deadlines specified in this Article 9 may be extended by mutual agreement.

8.2.5 Subcontractor shall carry on its work and maintain its progress during any arbitration or legal proceedings.

ARTICLE 9
TERMINATION OR SUSPENSION

9.1 TERMINATION PRIOR TO ESTABLISHING GUARANTEED MAXIMUM PRICE

9.1.1 Prior to execution by both parties of Amendment No. 1 of this Agreement establishing the Guaranteed Maximum Price, the Owner may terminate this Contract at any time without cause, and the Construction Manager may terminate this Contract for any of the reasons described in Subparagraph 14.1.1 of AIA Document A201, as amended.

9.1.2 If the Owner or Construction Manager terminates this Contract pursuant to this Paragraph 9.1, the Construction Manager shall be paid an amount calculated as follows:

9.1.2.1 Take the Cost of the Work incurred by the Construction Manager.

9.1.2.2 Add the Construction Manager’s Fee computed upon the Cost of the Work to the date of termination at the rate of percent (%).

9.1.2.3 Subtract the aggregate of previous payments made by the Owner on account of the Construction Phase.

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental, at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Subparagraph 9.1.2.1 of this Agreement. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager, as a condition of receiving the payment referred to in this Article 9, shall execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

Subcontracts, purchase orders, and rental agreements entered into by the Construction Manager with the Owner's written approval prior to the execution of Amendment No. 1 of this Agreement shall contain provisions permitting assignment to the Owner as described above. If the Owner accepts such assignment, the Owner shall reimburse or indemnify the Construction Manager with respect to all costs arising under the subcontract, purchase order, or rental agreement, except those which would not have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner elects not to accept the assignment of any subcontract, purchase order, or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager shall terminate such subcontract, purchase order, or rental agreement, and the Owner shall pay the Construction Manager the costs necessarily incurred by the Construction Manager by reason of such termination.

9.2 TERMINATION SUBSEQUENT TO ESTABLISHING GUARANTEED MAXIMUM PRICE

Subsequent to execution by both parties of Amendment No. 1 of this Agreement, the Contract may be terminated as provided in Article 14 of AIA Document A201, as amended.

9.2.1 In the event of such termination by the Owner, the amount payable to the Construction Manager pursuant to Subparagraph 14.1.2 of AIA Document A201, as amended, shall not exceed the amount the Construction Manager would have been entitled to receive pursuant to Subparagraph 9.1.2 of this Agreement.

9.2.2 In the event of such termination by the Construction Manager, the amount to be paid to the Construction Manager under Subparagraph 14.1.2 of AIA Document A201, as amended, shall not exceed the amount the Construction Manager would be entitled to receive under Subparagraph 9.1.2 above.

9.3 SUSPENSION

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201, as amended. In such case, the Guaranteed Maximum Price, if established, shall be increased as provided in Subparagraph 14.3.2 of AIA Document A201, as amended, except that the term "cost of performance of the Contract" in that subparagraph shall be understood to mean the Cost of the Work, and the term "profit" shall be understood to mean the Construction Manager's Fee as described in Subparagraphs 4.1.1 and 4.3.4 of this Agreement.

ARTICLE 10
OTHER CONDITIONS AND SERVICES

10.1 The Construction Manager shall competitively bid each portion of the Work from the approved list of subcontractors and suppliers as described in Subparagraph 2.1.6 of this Agreement. The Construction Manager shall review each bid, and, for any item in excess of $50,000, shall obtain the Owner's written approval before making an award for that item of Work. The Construction Manager shall enter into agreements with each successful subcontractor and supplier, using its standard subcontract and purchase order forms.

10.2 In accordance with Paragraph 3.2 of this Agreement, the Owner hereby designates Colin Hilton as its Representative.

THIS AGREEMENT entered into as of the day and year first written above.

AMENDMENT NO. 1
TO STANDARD FORM OF AGREEMENT
BETWEEN OWNER AND CONSTRUCTION MANAGER

Pursuant to Paragraph 2.2 of the Standard Form of Agreement between Owner (Park City Municipal Corporation) and Construction Manager (__________________), dated , 2004, for construction of the new______________________________. (*the Project)*, the Owner and the Construction Manager establish a Guaranteed Maximum Price and Contract Time for the Work as set forth below:

ARTICLE I
GUARANTEED MAXIMUM PRICE

The Construction Manager's Guaranteed Maximum Price for the Work, including the estimated Cost of the Work as defined in Article 5 of the Agreement and the Construction Manager's Fee as defined in Article 4 of the Agreement, is Dollars ($_______________).

Included in the Guaranteed Maximum Price is the Construction Manager's fee of $
.

This Price is for the performance of the Work in accordance with the "Guaranteed Maximum Price Proposal" dated ________________________________, 2004, from ________________, and incorporated herein by this reference (the "GMP").

ARTICLE II
CONTRACT TIME

The Construction Manager acknowledges that the Substantial Completion Date is , and the Final Completion Date .