

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

I ROLL CALL

Mayor Dana Williams called the special meeting of the City Council to order at approximately 7 p.m. at the Marsac Municipal Building on Thursday, December 2, 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; Colin Hilton, Economic Development Director; and Jonathan Weidenhamer, Planner.

II COMMUNICATIONS FROM COUNCIL AND STAFF

1. Swearing-in of Police Officers Bob deBotelho and Jim McNeice – Lloyd Evans introduced Bob deBotelho and Jim McNeice and acknowledged their families in the audience. The Mayor administered the oath of office and congratulated the new officers.

2. Council comments - Kay Calvert stated that she received compliments about prompt snow removal during the last storm. She reported speeding dump trucks on Deer Valley Drive causing safety problems for traffic traveling the speed limit. Joe Kernan relayed that a Woodside resident asked about the status of a trash receptacle ordinance. The City Manager explained that Main Street is regulated, but not residential areas, but the ordinance can be expanded. Mark Harrington interjected that this issue was debated some time ago, but there is more information to share with Council in an upcoming work session. Jim Hier stated that he attended the Snyderville Basin Planning Commission meeting on the revised code. The Mayor discussed Council member Erickson's and Gary Hill's efforts on a state-wide energy policy. He reported that the City has been working with the EPA on ground water, surface water and soils issues over the past five years. As a result, there are three sites in Park City that will be removed from the CIRCLIS List and he felt that the success of the process was due to creating a stakeholders group and holding regular meetings. Marianne Cone reported that she attended the dedication of a sculpture at the Swaner Nature Preserve in memory of Brian Hess. She felt the Green Building Seminar was very worthwhile.

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

Sevens Rugby Tournament - Bill Reed, Event Manager, thanked staff, the City Council and the community for making the rugby tournament last summer a success. USA Rugby loved the event but changed field specifications, which City Park can not now meet. As a result, they pulled their application for 2005 but look forward to bidding again in 2006 with the Quinns Junction Recreation Complex on line.

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

Joe Kernan noted that he had one typographical correction to the work session notes of November 11. Kay Calvert disclosed that she will be abstaining for the meeting of November 11 since she was not in attendance. Joe Kernan, "I move we approve the minutes of November 11 and 18 (as corrected)." Jim Hier seconded. Motion carried.

Kay Calvert	Aye – 11/18 and abstention – 11/11
Marianne Cone	Aye
Candace Erickson	Aye
Jim Hier	Aye
Joe Kernan	Aye

V PUBLIC HEARING

Master Festival License for the Holidays on Main amplified music concert to be held December 18, 2004 – The City Manager stated that the HMBA withdrew its application.

VI CONSENT AGENDA

Jim Hier, "I move to approve Consent Agenda Item 2". Marianne Cone seconded. Motion carried unanimously.

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

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 Projects design services in an amount not to exceed \$548,417 – See staff report. Colin Hilton explained that in October, Council reviewed five key planning items. At that work session, there was Council consensus to remove the police component from the downtown projects and direction to proceed with discussions with the post office to widen the entry into the plaza and to reduce the size of the facility. Council reviewed event sizes, the concept of adding a

commercial space at the end of the parking structure, and realigning Swede Alley to better orient the plaza. He stated that the parking structure design provides 329 parking spaces for a net gain of 250. The ramps will connect floor to floor and there will be access between Swede Alley and Marsac Avenue. The staff and design team do not recommend maximizing parking by increasing the footprint of the structure but rather adding levels at increments of 60 spaces at a cost of \$15,000 per space or \$900,000 per level. Mr. Hilton emphasized that there are about \$1 million worth of geo-technical improvements required on the site; soils will need to be excavated and hauled away. The commercial space is approximately 2,000 square feet and is not included in the current budget for the parking structure. The circulation lanes will be increased but there still will still be columns. Jonathan Weidenhamer emphasized that the recommendation to minimize the footprint is based on avoiding incurring additional costs for soil mitigation. Mr. Hilton continued that for very little cost, the structure could be designed to accommodate additional levels at some time in the future.

With regard to meeting parking demand, Colin Hilton relayed that the OTIS Study identified a deficit of 324 to 412 spaces during December to March from 5 p.m. to 9 p.m. Staff feels strongly that there should be a balance between added supply and promoting more use of public transit to meet demands. Candace Erickson stated that the parking garage is massive and very expensive and she is opposed to increasing the footprint. She felt the proposed concept allows adding another level to the structure or explore other locations for parking in the future when there may be more funding. Kay Calvert stated that she supports a program promoting public transportation; if not, there will never be enough parking. Marianne Cone agreed. Mr. Hilton explained that there are aesthetic elements like planter boxes or architectural features that may be considered in the next design phase, if Council feels this is important. Joe Kernan felt that the stairs from Swede Alley to the Marsac Building are extremely unattractive. Discussion ensued about their historical significance and Colin Hilton indicated that others share the same opinion and there may be options. He added that landscaping is a good tool to use to break up the mass of both the Marsac Building and parking structure. Commencement of construction is scheduled the first week of April and completion by December 2005.

He explained that strength tests have been conducted on the Marsac Building and it appears that the rehabilitation will be less intrusive and more economical than expected. By illustration of a rendering, he identified the areas suggested for demolition, including replacement of the ramps with stairs and installing an elevator. With regard to seismic upgrades, the staff and engineers are not considering center core drilling or exterior bracing, but are recommending the installation of sheer walls intersecting all levels to the roof. He pointed out that the building community is required to comply with ADA and seismic standards and it is appropriate for the City to upgrade its buildings. The project will require a relocation of staff from at least January 2006 to October 2006. The temporary relocation is budgeted and one option is to use office trailers on the top of the

China Bridge Parking Structure and other City spaces. Construction costs have climbed from about 2.5% to 3% a year from 1999 to 2003 and this year costs have increased 8% to 10%. Because costs are anticipated to escalate every year, it is suggested to schedule the downtown projects so that the same construction team is mobilized from phase to phase. Additionally, it is contemplated to move the police out of Marsac before the project commences so the department only needs to move once. The options for a police facility will return to Council at a future work session. Colin Hilton stated that the three goals achieved at Marsac are a seismic improvement, ADA code compliance, and overhaul of the mechanical system. He feels that the current budget and schematic design can accomplish this. It was pointed out that the ramps need to be removed and replaced with stairs because of their steepness so that the building complies with all codes.

With regard to the downtown plaza, so far the consultants and staff have focused on the infrastructure and road alignment and planning and programming will be the last element. There will be an opportunity to involve the public and perhaps engage professional consulting at some level. Jonathan Weidenhamer added that a permanent commercial space for events and located at the rear of the renovated post office at its current location. Jim Hier requested that if a consultant is hired that presentations be tailored to Park City's uniqueness. In response to a question from Marianne Cone about the role of FFKR in the plaza design, Mr. Hilton explained that the firm is charged with the design of the realignment of the road and relocation of utilities under-ground.

He continued that he has had discussions with Park City Postmaster Sandy Trout and her regional boss who appear to be open to ideas. Mayor Williams suggested relocating the post office facility in the parking structure, which would dramatically open the plaza area and Mr. Hilton responded that there is room in the parking structure. Mr. Weidenhamer noted that the Main Street post office is not considered historic. Colin Hilton added that the post office's preference is to relocate to a new space, rather than renovating the building. They are willing to cooperate with the City and FFKR is experienced in designing post offices. The current building is about 4,500 square feet, and space needs are projected to require only 3,000 to 3,500 square feet, which could be accommodated at the parking structure if it can be two levels or if the footprint is broadened in the hillside. He emphasized the importance of doing the project right. Marianne Cone questioned if opening the plaza to Main Street is consistent with its historic streetscape. Colin Hilton acknowledged the validity of her comment which can be considered in community workshops where options can be explored. Defining the purpose of the space will drive the design. Joe Kernan favored moving the post office and opening the plaza. Candace Erickson pointed out that the SR224 post office is two levels. As currently drawn, Ms. Cone commented on the awkwardness of the circulation drawn around the renovated post office. See motion below under Item 2.

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 – See staff report. Colin Hilton continued to explain that this method was approved for the Quinns Recreation Complex, involving the construction manager in the design and development stages of the parking structure and the Marsac Building. He stated that Jacobsen Construction is the recommended firm for the downtown projects. The fee for pre-construction services is \$9,500 for all of the pre-construction work until the construction period commences in April. This is significantly less than the fee for the recreation complex. Jacobsen was also the lowest bidder and most qualified. He pointed out the manager's expertise in conducting outreach programs and community workshops and Ms. Calvert commented on Jacobsen's great reputation throughout the state. The Mayor invited public input.

Mike Sweeney referred to the letter from the HMBA distributed to Council on maximizing parking. He acknowledged staff's detailed work and felt the project will be quality and he also supports hiring Jacobsen. However, he stated that he would like to see more parking which could fit in the hillside.

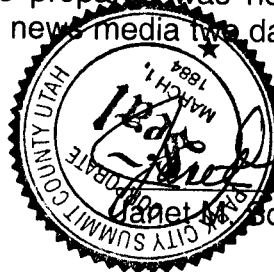
Kay Calvert, "I move to approve the service provider contract with FFKR Architects, in a form approved by the City Attorney, for Phase 2 and Phase 3 Downtown Projects design services in an amount not to exceed \$548,417". Jim Hier seconded. Motion unanimously carried,

Kay Calvert, "I move to approve the 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". Candace Erickson seconded. Motion carried unanimously,

VIII ADJOURNMENT

With no further business, the regular meeting of the City Council was adjourned. The meeting for which these minutes were prepared was noticed by posting at least 24 hours in advance and by delivery to the news media two days prior to the meeting.

Prepared by Janet M. Scott



Janet M. Scott, City Recorder

City Council Staff Report



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

Special Events and
Facilities Department

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" atmosphere and their holiday shopping. Activities include Christmas Storytelling, ice sculpture demonstrations, carolers, Santa visits/photos, roaming musicians, retail discounts, restaurant 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 Holidays 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



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

Economic Development &
Capital Projects

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.

Overview of Planning Activities since October:

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 shear 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 firms 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 and 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.

Discussion Topics for the Council Meeting

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.

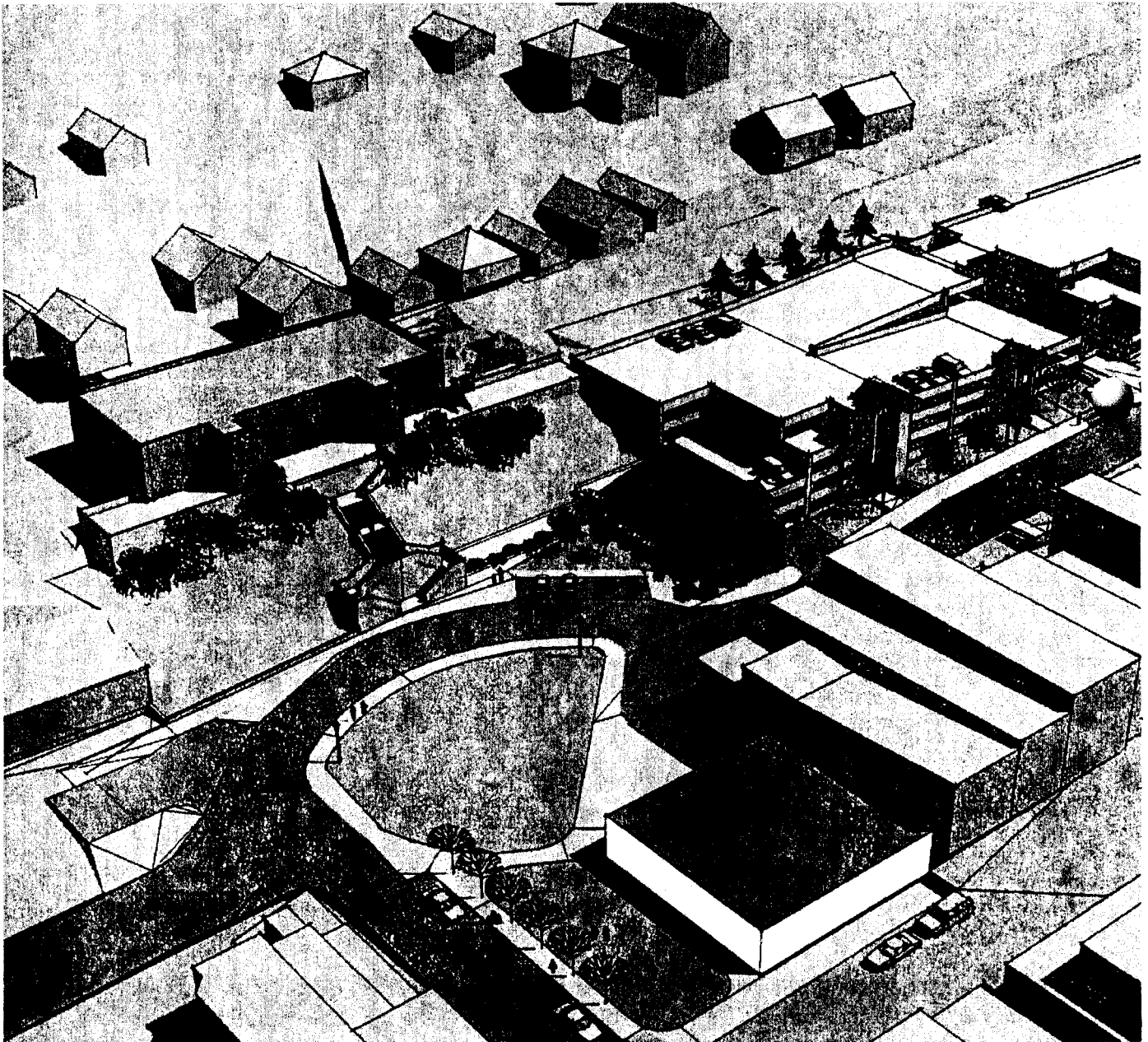
Attachments:

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. SCOPE OF SERVICES.

The Service Provider shall perform such services and accomplish such tasks, including the furnishing of all materials and equipment necessary for full performance thereof, as are identified and designated as Service Provider responsibilities throughout this Agreement and as set forth in the Scope of Services attached hereto as "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. TERM.

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. COMPENSATION AND METHOD OF PAYMENT.

- A. Payments for services provided hereunder shall be made monthly following the performance of such services.
- B. No payment shall be made for any service rendered by the Service Provider except for services identified and set forth in this Agreement (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. REPORTS AND INSPECTIONS.

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

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

5. INDEPENDENT CONTRACTOR RELATIONSHIP.

- A. The parties intend that an independent Service Provider/City relationship will be created by this Agreement. No agent, employee, or representative of the Service Provider shall be deemed to be an employee, agent, or representative of the City for any purpose, and the employees of the Service Provider are not entitled to any of the benefits the City provides for its employees. The Service Provider will be solely and entirely responsible for its acts and for the acts of its agents, employees, subcontractors or representatives during the performance of this Agreement.
- B. In the performance of the services herein contemplated the Service Provider is an independent contractor with the authority to control and direct the performance of the details of the work, however, the results of the work contemplated herein must meet the approval of the City and shall be subject to the City's general rights of inspection and review to secure the satisfactory completion thereof.

6. SERVICE PROVIDER EMPLOYEE/AGENTS.

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

7. HOLD HARMLESS INDEMNIFICATION.

- A. The Service Provider shall indemnify and hold the City and its agents, employees, and officers, harmless from and shall process and defend at its own expense any and all claims, demands, suits, at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, brought against the City arising out of 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. MAINTENANCE AND INSPECTION OF RECORDS.

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

15. POLITICAL ACTIVITY PROHIBITED.

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

16. PROHIBITED INTEREST.

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

17. MODIFICATIONS TO TASKS AND MISCELLANEOUS PROVISIONS.

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

18. TERMINATION.

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

19. NOTICE.

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

20. ATTORNEYS FEES AND COSTS.

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

21. JURISDICTION AND VENUE.

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

maintained only in any of the courts of competent jurisdiction in Summit County, Utah.

22. SEVERABILITY.

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

23. ENTIRE AGREEMENT.

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

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

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				\$
16,875				
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.

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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* TM.

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 _____.