PARK CITY COUNCIL MEETING
SUMMIT COUNTY, UTAH
NOVEMBER 19, 2009

PUBLIC NOTICE IS HEREBY GIVEN that the City Council of Park City, Utah will hold its regularly scheduled meeting at the Marsac Municipal Building, City Council Chambers, 445 Marsac Avenue, Park City, Utah for the purposes and at the times as described below on Thursday, November 19, 2009.

Closed Session
3:30 p.m. Property and litigation

Work Session
4:00 p.m. Council questions/comments
4:10 p.m. Park Silly Market economic analysis findings P. 6 - 16
- Public input

5:00 p.m. Hot air balloon discussion P. 17 - 27
5:30 p.m. Sundance supplemental agreement P. 28 - 41
5:50 p.m. Break

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

II COMMUNICATIONS AND DISCLOSURES FROM COUNCIL AND STAFF

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

IV WORK SESSION NOTES AND MINUTES OF MEETING OF OCTOBER 29, 2009 AND MINUTES OF NOVEMBER 5, 2009 P. 41 - 62

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

1. Consideration of a service provider agreement with Millcreek Consulting and Development Inc., for the project and construction management of the Racquet Club Remodel Project in the amount of $85,570 in a form approved by the City Attorney P. 63 - 76

2. Consideration of an anti-idling Resolution for motorized vehicles in Park City, Utah and declaring Park City, Utah to be an Idle-Free City for motorized vehicles P. 77 - 84
(a) Public input
(b) Action

3. Consideration of approval of a Co-Tenancy Agreement with the Boyer Company regarding approximately 200 acres of property known as PC Heights in Summit County, Utah
(a) Public input P. 85 - 109
(b) Action

VII OLD BUSINESS *(Continued Items)*

Consideration of approval of Findings of Fact, Conclusions of Law and Order Remanding the North Silver Lake Conditional Use Permit to the Planning Commission

P. 110 - 113

VIII ADDITIONAL DISCUSSION – AGENDA ITEMS

IX ADJOURNMENT

PARK CITY HOUSING AUTHORITY
SUMMIT COUNTY, UTAH
NOVEMBER 19, 2009

PUBLIC NOTICE IS HEREBY GIVEN that the Housing Authority of Park City, Utah will hold its meeting at the Marsac Municipal Building, City Council Chambers, 445 Marsac Avenue, Park City, Utah immediately following the adjournment of the City Council meeting, as described below on Thursday, November 19, 2009.

I ROLL CALL

II PUBLIC INPUT *(Any matter of Housing Authority business not scheduled on agenda)*

III MINUTES OF MEETING OF OCTOBER 1, 2009 P. 114 - 115

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

Direction on the applicability of the employee housing obligation of Physician Holdings, LLC for their Medical Office Building proposed for the IHC campus P. 116 - 118

V ADJOURNMENT

A majority of members may meet socially after the meeting. If so, the location will be announced by the Mayor. City business will not be conducted. Pursuant to the Americans with Disabilities Act, individuals needing special accommodations during the meeting should notify the City Recorder at 435-615-5007 at least 24 hours prior to the meeting.

PARK CITY COUNCIL MEETING
SUMMIT COUNTY, UTAH
NOVEMBER 26, 2009

PUBLIC NOTICE IS HEREBY GIVEN that the City Council of Park City, Utah will **not** hold its regularly scheduled meeting on Thursday, November 26, 2009.

See: 11/16/09
www.parkcity.org

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

November 2009

26 **No meeting - Thanksgiving**

December 2009

3 VCBO presentation on the Racquet Club (30 min - work)
Comstock sidewalk (work)
Extraordinary funding requests review (work)
Resolution Declaring Park City as a "Concussion Aware Town" and proclaiming December 6 through December 12, 2009 as "The Grateful Head Project Week" in Park City, Utah
Ordinance – LMC amendment for MPD in HR-2 – KW/TE
Ordinance approving the Glory Hole Subdivision, located at 518 Deer Valley Drive, Park City, Utah (continue to January 7) – FA
Ordinance – 1150 Deer Valley Drive, Snow Country – FA
Quinn's WTP Building Construction Contract – TT
Appeal of the approval of a Steep Slope Conditional Use Permit for 108 Park Avenue granted by the Planning Commission on October 14, 2009 – appellant Carol Rixey

10 Visioning debrief (work)
US Postal Service – gang box plan (work)
Open space maintenance (work)
Lower Park Avenue RDA and housing (work)
Insurance Placement for 2010

17 Agency minutes
Senior survey needs assessments
Audit approval

24 **No meeting – Christmas Eve**

31 **No meeting – New Year's Eve**

January 2010

7 Swearing-in ceremony
Ordinance approving the Glory Hole Subdivision, located at 518 Deer Valley Drive, Park City, Utah – FA

14 (light meeting)

21 **No meeting – Sundance opening**

28

Pending Items:

Anti-discrimination ordinance
Special event prioritization – work
Performance measures (work)
Resolution amending (or replacing) Resolution No. 20-07, adopting Affordable Housing Guidelines and Standards for Park City, Utah
Carrying capacity/market analysis survey
Wild land interface issues

City Council
Staff Report

Author: Jonathan Weidenhamer
Subject: Park Silly Sunday Market Economic Impact Analysis - Study Findings
Date: November 19, 2009
Type of Item: Administrative- MFL Follow-Up

Summary Recommendation –
Discuss the findings of the Study. Staff recommends that the City Council provide direction to the Applicant and staff to begin negotiations for a longer-term City services contract with the event organizers.

Topic: Park Silly Market Economic Analysis (PSSM) Study Findings

Background:
During the Master Festival License (MFL) approval for the 2009 Silly Market, Council agreed that a comprehensive qualitative and quantitative measure of direct and indirect benefits of the Market should be conducted. Council agreed the study would take place throughout the 2009 Market, and would be the basis for consideration of a long-term City Services contract with PSSM, similar to how we have addressed Sundance and Arts Festival. A $35,000 contract was awarded on August 20, 2009 for the study to Economic & Planning Systems, Inc. (EPS) in conjunction with RRC Associates (RRC) based on their project approach and demonstration of experience on similar projects.

An independent 3rd party study is crucial to have an unbiased analysis of the impacts of the Market.

- Observed the Market in person
- Established and compiled background information (on-site qualitative survey, and follow up web survey)
- Establish working relationships with affected parties through meetings with the HMBA, PSSM, and City staff.
- Collected, evaluated, synthesized, sales data – including:
    - Identification if the Market is creating net new sale or redistributing existing sales;
    - Isolation of Sunday sales on Main street to sales in other geographic sectors in town;
    - Isolation of impact on Main Street businesses by type and proximity to the Market.

Upon review of the study findings, Council should consider a long-term agreement with the PSSM.

Analysis:

Results Summary

The following findings are paraphrased or excerpted from the Executive Summary of the Study (Exhibit A):

Conclusion (Excerpt)

The PSSM market clearly has both positive and negative impacts on Main Street businesses, some of which can be quantified and others which are more intangible. The quantifiable key findings from this study, derived primarily from the four separate surveys of PSSM visitors and Main Street businesses, are summarized in **Table 1** below followed by more detailed discussion of each survey.

Overall, the estimated impact of the PSSM on the annual sales of Main Street business varies from marginally positive to marginally negative depending upon the survey results analyzed. In other words, the total sales losses by Main Street "brick and mortar" businesses because of the PSSM (i.e., sales diverted to PSSM vendors) appears to be roughly off-set by the sales gains from customers who might not have otherwise visited the street. Of course, this generalized impact does not reduce the losses of individual businesses which in aggregate are estimated to be as high about $500,000 per year. However, the overall net impact represents a relatively small proportion of total economic activity on Main Street (either positive 0.29 percent or negative 0.26 percent of the total annual taxable sales of Main Street).

Table 1. Summary of Changes in Sunday Sales, by Survey

Survey Type	Survey Size	Respondents Selection Basis	Annual Sales Impact of PSSM on Main Street Businesses [1]			% Change in Annual Sales in Main Street Area
			Positive	Negative	Net Impact	
PSSM Consumers						
Intercept	351	Random	$124,000	($218,000)	($94,000)	-0.09%
Web-Follow-up	61	Self-selected	$676,000	($351,083)	$325,000	0.32%
Main Street Businesses						
Online Survey	81	Self-selected	$87,000	($136,000)	($49,000)	-0.05%
Detailed Daily Sales	19	Self-selected	$230,000	($497,000)	($266,000)	-0.26%

[1] All estimates are rounded to the nearest thousand.

On-line Quantitative results (23 HMBA members) – Average daily sales reported declines in Sunday sales from 2007/2009 during weeks of the PSSM compared to 2005/2006(pre PSSM) of approximately 10%. Additionally, businesses south of 5th Street reported higher declines in business (10 – 15%). EPS believes the accuracy and representative nature of the e-mailed survey results of actual sales may be affected by self-selection and the relatively small sample size (only 19 businesses provided data that was usable). EPS also specifically notes there are likely a variety of factors besides the PSSM that influence the numbers including market conditions, individual business management and changes in visitor spending.

<u>On-Line Qualitative Survey (81 HMBA members)</u> – This section of the study indicated mixed results. 38% reported no impact and 19 % reported positive impact for a total of 57% total of no or positive impact. 43% reported a negative impact, a larger portion than said it was positive. Another discrepancy was in the overall perception of the PSSM by HMBA - 73% supported the continuation of the Market, while only 27% were opposed to its continuation – "in other words, at least 16% of HMBA members reported the PSSM had a negative impact on their sales nevertheless supported its continuation."

<u>Intercept & Web survey</u> - The results of the intercept survey of PSSM attendees (351), and follow –up web survey (71), although painting different results, both suggest that actual sales at the PSSM represent a small proportion of total economic activity on Main Street (2% - 4% of annual taxable sales), with diversion/creation of only positive .8% or negative .2%).

<u>Qualitative Economic Impacts</u> – The survey results note in broad terms a series of indirect economic impacts on Main Street and the broader community including:

- <u>Market Exposure</u> – recognizes the PSSM as a draw to visitors who otherwise may not have come to Main Street
- <u>Economic Development</u> – recognizes the opportunity for new, local and start-up businesses, as well as the "multiplier" effect of that.
- <u>Social Networking and Community Development</u> – provides a venue for developing a "sense of community cohesion, social inclusion, and neighborliness"

<u>Staff Analysis</u>
The City Council should use the findings of the study for consideration of a long-term City Services contract for the PSSM. The contract would identify services provided, costs, fee waiver consideration and define operational parameters and duration for PSSM's ongoing presence and operation on Main Street. Providing direction to enter contract negotiations would be a starting point to begin the dialogue. Staff would work with the applicant to identify best possible terms, and return to Council by early January 2010.

During the 2009 PSSM MFL review and approval the event organizer made it clear that early review and consideration of the next summer's market was crucial to them. An early decision allows them to pursue sponsor opportunities and begin operational planning. To that end, a condition of the 2009 approval stated, “Organizers shall return to Council no later than November 19, 2009 to review the Economic Analysis Study”.

Council approved the 2009 PSSM MFL conditioned on PSSM working with HMBA and staff to conduct better operational planning. Through that process PSSM demonstrated a willingness to consider additional compromises (vendor mix, hours of operation, etc.) and a willingness to be a true community “partner”.

The 2009 Market had 2 unresolved issues through this joint planning process. First, the amount and type of on-site cooking vendors, and secondly and more significantly, the programming of upper Main Street. Funding is a limiting factor in programming. Staff recommends that PSSM and HMBA continue to jointly pursue funding sources. An operational recap of the 2009 Market is included as Exhibit B. Specific analysis has not been conducted to verify if the data reflect any impact of the increased efforts to cross market and/or get people south of Heber in 2009.

Gathering of the qualitative data was a critical portion of this economic analysis. Upon completion and formatting of the survey, HMBA membership was given two weeks to respond. The HMBA agreed to assist with gathering of data and diligently sent email reminders, went door to door, and Board members each visited individually with individual members in an effort to garnish responses. The majority of the Executive Board believes there are a number of reasons for such low response rates (23 members), including: a high number of new businesses without historical data, short time to compile, lack of members with detailed enough information, some businesses closed on Sunday and some not comfortable sharing confidential info.

The two week window to respond was eventually extended to 3 weeks, and staff further worked with HMBA to send written encouragement to members to respond. The PSSM feels that the low response rate is indicative that there is general apathy and that silence is indicative of support for the PSSM.

On the whole the HMBA Executive Board agrees to the concept of the Market. They conclude there are some negative and some positive impacts. The further away (south) from the Market, the greater the negative impact. They believe there should be ongoing efforts to minimize and mitigate for the negative impacts; areas that have been discussed at length in the past – but not addressed to the satisfaction of the Board to date.

If Council is supportive of beginning contract negotiations they may consider requiring PSSM to return annually for supplemental plan approval with an emphasis on mitigation of impacts, similar to Sundance.

Department Review: This report has been reviewed by representatives of Sustainability, Legal Departments and the City Manager’s Office.

Alternatives:

Review the Study findings and:

A. **Authorize City staff to begin negotiating terms for a long-term services contract (Staff recommendation)**
B. Direct staff not to begin contract negotiations.
C. Continue the Item and/or allow for additional discussion.
D. Other

Significant Impacts:
Typically, when negotiating contracts at minimum park City looks for 2x the direct taxable benefits beyond the value of any City services provided or fees waived. There are currently 3 long-term contracts; Sundance, Arts Fest, and Triple Crown. Those contracts will be reviewed carefully prior to beginning negotiations with the PSSM.

PSSM iterates it is essential to have an agreement as soon as possible because of the impact on their ability to sign sponsors and begin operational planning. PSSM's position is that a delay in a Council decision is prohibiting them from retaining sponsors contracts, vendors, and marketing for the 2009 Market.

Staff Recommendations:
Discuss the findings of the Study. Staff recommends that the City Council provide direction to the Applicant and staff to begin negotiations for a longer-term City services contract with the event organizers.

Exhibits:
Exhibit A – Executive Summary of Findings
Exhibit B – Operational Recap of 2009 Market

Submitted separately:

Exhibit 1 – Entire study – This is available as a separate attachment. Available as a stand alone exhibit online with the Council Packet; or hard copies are available upon request to Jonathan Weidenhamer at jweidenhamer@parkcity.org

Other – PSSM has submitted a variety of documents for Council's review. Due to the time involved in scanning and/or printing, the information is available for review at the City Recorder's Office and includes:

1. 2009 Recap - Sponsor Packet & 2009 Marketing & PR, Street Participation Report
2. CD - Weekly KUTV Interviews promoting Main Street and PSSM

Exhibit A
Executive Summary of Findings

Key Findings

The PSSM market clearly has both positive and negative impacts on Main Street businesses, some of which can be quantified and others which are more intangible. The quantifiable key findings from this study, derived primarily from the four separate surveys of PSSM visitors and Main Street businesses, are summarized in **Table 1** below followed by more detailed discussion of each survey.

Overall, the estimated impact of the PSSM on the annual sales of Main Street business varies from marginally positive to marginally negative depending upon the survey results analyzed. In other words, the total sales losses by Main Street "brick and mortar" businesses because of the PSSM (i.e., sales diverted to PSSM vendors) appears to be roughly off-set by the sales gains from customers who might not have otherwise visited the street. Of course, this generalized impact does not reduce the losses of individual businesses which in aggregate are estimated to be as high about $500,000 per year. However, the overall net impact represents a relatively small proportion of total economic activity on Main Street (either positive 0.29 percent or negative 0.26 percent of the total annual taxable sales of Main Street).

Table 1. Summary of Changes in Sunday Sales, by Survey

Survey Type	Survey Size	Respondents Selection Basis	Annual Sales Impact of PSSM on Main Street Businesses [1]			% Change in Annual Sales in Main Street Area
			Positive	Negative	Net Impact	
PSSM Consumers						
Intercept	351	Random	$124,000	($218,000)	($94,000)	-0.09%
Web-Follow-up	61	Self-selected	$676,000	($351,083)	$325,000	0.32%
Main Street Businesses						
Online Survey	81	Self-selected	$87,000	($136,000)	($49,000)	-0.05%
Detailed Daily Sales	19	Self-selected	$230,000	($497,000)	($266,000)	-0.26%

[1] All estimates are rounded to the nearest thousand.

Main Street Business Surveys

On-line Survey

Main Street businesses that participated in an on-line qualitative survey (81 respondents) reported mixed results for the PSSM's impact on sales. Overall, 57 percent reported that the PSSM had either no impact (38 percent) or a positive impact (19 percent) on their sales. However, 43 percent reported that the PSSM had a negative impact on their sales (a larger proportion than said it was positive).

If the above responses are assumed to be representative of all Main Street businesses by size, the aggregate sales impact of the PSSM Market is estimated at negative $49,000 in 2009. In other words, these results suggest that the net effect of the PSSM is to divert $49,000 in sales from Main Street businesses in 2009. This represents 0.05 percent of the total annual retail sales on Main St. in 2008. However, the accuracy and representative nature of these results may be affected by self-selection and the more subjective nature of the estimates (i.e., based on impressions rather than actual data).

The on-line business survey also indicated several apparent discrepancies in the overall perception of the PSSM by Main Street businesses. For example, a majority of businesses responding to the survey were supportive of the PSSM's continuation on Main Street. Specifically, 73 percent of respondents supported the continuation of the Market next year while 27 percent opposed its continuation. In other words, at least 16 percent of the Main St. businesses that reported that the PSSM had a negative impact on their sales nevertheless supported its continuation.

E-mailed Sales Data Survey

Main Street businesses that contributed to an e-mailed survey of sales data (23 respondents, 19 with enough data for analysis) reported declines in Sunday sales during the summer weeks of 2007/09 compared with 2005/06 (pre-PSSM market time frame). The specific reports are described the below:

- Average daily sales between 2005/06 and 2007/09 were relatively stable while average Sunday sales decreased by 10 percent. Assuming the decline in sales represent a portion of Main Street businesses, this decrease sums to negative $497,000. Other businesses reported an increase in sales which sums to a positive impact of $230,000. The net impact calculated based on these surveys is negative $266,000 or a decline of 0.26 percent of annual sales in the Main Street area.

- The impact on Main Street businesses is not well-distributed geographically. Individual businesses, particularly those located south of 5th Street, reported significant declines in summer sales in 2007 through 2009 compared with those in 2006 (the first year before the PSSM opening). In these locations, Sunday sales were reported as declining between 10 and 15 percent compared with 2006 Sunday sales.

Again, the accuracy and representative nature of the e-mailed survey results of actual sales may be affected by self-selection and the relatively small sample size. It is also important to note that both the e-mailed and on-line surveys measure changes in overall sales for specific days over the year. The calculations provided herein attribute the cause of these changes to one particular factor, the PSSM. In reality, a variety of factors might be at play, including the market conditions affecting certain product lines, managerial decisions of individual businesses, and changes in visitor spending behavior, to name a few.

Qualitative Economic Impacts

In addition to the quantitative analysis provided above, the PSSM also has a number of more indirect and / or qualitative economic impacts on Main Street and the broader community, including:

- **Market Exposure:** Even if the estimated annual PSSM attendance of 90,000 is overstated, it is clear that the Market attracts a significant number of visitors that might otherwise come to Main Street, let alone Park City (between 67 and 77 percent of the PSSM visitors surveyed identified the Market as the primary reason for being on Main Street on that day). Although this type of market exposure can be difficult to track and thus quantify, it is real and has a positive value.

- **Economic Development**: Although much of this Report treats the increased sales by PSSM venders as a negative impact (i.e. because they divert sales from Main Street businesses), in reality these sales represent a real benefit to the venders, many of whom represent small, start-up businesses, and /or residents of Park City and surrounding communities. In many cases, the revenue these venders earn ultimately circulates through the local economy in the form additional spending on inputs and consumer goods and services. Moreover, the PSSM can serve as "incubator space" for new businesses to display their products, test ideas, build a customer clientele, and cultivate professional relationships.

- **Social Networking and Community Building:** The PSSM includes free space in each of its markets for artists, community groups, and non-profits (estimated at 80 per season). These groups use their space at the Market to identify volunteers, solicit support, network with other groups, and to advertise events. In addition, the Market's status as a public destination space for locals may contribute to a sense of community cohesion, social inclusion, and "neighborliness."

Exhibit B

Operational summary of 2009 Park Silly Market

On October 26, there was an operational recap meeting for the 2009 Park Silly Sunday Market In attendance was Jewels Harrison, Kurt Simister, Rick Ryan, Max Paap, & Tommy Youngblood.In general there are no major operational concerns with the PSSM from city staff or managers of the PSSM.

In this 3rd year of the PSSM both groups have continued to improve on these issues.

Below is a summary the of operational aspects of producing the PSSM

- **Set-up**

  No negative operational issues

- **Takedown**

There have been ongoing efforts by PSSM to keep the street clear after the market. They have resolved minor issues with grease on the 9th street turn around from some of the food vendors. They have cleared the street with the time required and work closely with the police and transit to return the street to normal use.

- **Building Codes**

The Park City Building Department recognized the following issues to continue working on:

  - Notification of changes from the approved site plan including the addition of vendors
  - Maintaining Fire Lanes
  - Proper electrical distribution, removal of electrical cords crossing sidewalks
  - Maintain a free and open right of way and sidewalk

- **Public Safety**

The Park City Police Department has reported no significant issues.

incidents of theft of merchandise from vendors.
incidents related to alcohol
other related incidents

- **Parking**

The PSSM removes 38 parking spaces from the Main Street inventory. Merchants on Park Ave. from Heber to 9th street voiced concerns with market vendors taking up the paid parking spaces on Park Ave. PSSM has advised it's vendors that these spots are for the use of turnover customers and the city has maintained the enforcement of the time restrictions in this area.

- **Transit**

The Main Street Trolley does not operate on lower main during the PSSM. There have been no operational issues with this change

- **Street (public right of ways)**

PSSM needs to mark the street for ease of load-in and booth placement. They have worked with the streets department for a standard size and type of marking to fit their needs and that protects the look of Main Street. The Special Event and Streets Department are working to standardize this format to help other events that have similar needs. Operation of the PSSM blocks two building access; the Marriott Summit watch property and the lower Town lift building access. Both have alternate accesses and have expressed no negative issues.

- **Power Requirements**

As briefly stated in the building code summary; there are two major issues involving power distribution. They are the use of power from adjacent buildings, with or without permission, and the use of power cords that may cause trip hazards. The Building Department expresses concern that they may not have access to buildings someone is plugged into, in case a building circuit blows or the connections effects other equipment in the building because of the electrical load.The underlining need is for PSSM to create a comprehensive electrical plan using past experiences while looking toward future needs.

The group recommended the continuation of current efforts and the addition of the following:

- Discussion of new state codes requiring more refrigeration for food vendors and the location of the food court area
- Basic Building Codes on a one-sheet handout for vendors
- Increased vendor communication and coordination with PSSM

PSSM Fees charged by Park City Municipal Corporation

Attached is the FY2009 Invoice. There is also an estimate for the 2010 with the following adjustments:

- The building department averages 120 separate inspections per market totaling 1800 inspections over 15 weeks. On weekly bases, not including initial market application plan review, the department spent 8 hours on PSSM related issues including the on-site inspections. This increase of hours is included on the 2010 estimate

- The Park City Police Department dedicates 2 officers for 4 hours of standard patrol within the market boundaries per event totaling 120 hours over 16 weeks. The standard fee is $ 45 per hour; this increase has been included in the 2010 estimate.

- The Application for Special Use of Public Park Facilities form states $50.00 per space per day and a fee of $12 per space/per day for General use Historic District parking use. This has been reflected in the 2010 estimate.

Fee Estimate PSSM June-Sept. 2009	HIDE	HIDE	HIDE	ecial Events Departm PO Box 1480 Park City, UT 84060			
	COST	# OF ITEMS OR HOURS	# OF DAYS		Fees waived per Festival Fee Waiver Ordinance*	City Manager Waived Fees**	
Special Events and Facilities Department							
Application Fee - Reoccuring Event	50.00	1.00	1.00	50.00			
Streets Department							
Electronic Sign Rental	120.00	2.00	15.00	3,600.00	3,600.00		
Police Department							
Base Officer Time	35.00	16.00	15.00	8,400.00			
Parking Department							
Application Fee	20.00	1.00	1.00	20.00		10.00	
Main Street Parking Space	12.00	38.00	15.00	6,840.00		3,420.00	
Parks Department							
Street Banner Installation	360.00	3.00	1.00	1,080.00			
Building Department							
Building Inspection	65.00	4.00	15.00	3,900.00			
Miscellaneous							
Payments Received							
TOTALS			**Totals**	23,890.00			23,890.00
WAIVED AMOUNT				7,030.00	***3,600.00***	**3,430.00**	**-7,030.00**
				TOTAL DUE			16,860.00

* Enhanced Business License Fee automatically waives fees for : Main St.
** Per Section 4-8-9 of the Municipal Code, the City Manager can

City Council
Staff Report

Subject:	**Hot Air Balloon Launching/Landing**
Author:	**Marin Decker, Intern**
Department:	**Executive**
Date:	**November 19, 2009**
Type of Item:	**Informational**

Summary Recommendations:
Staff recommends that the City Council review additional City-owned locations for hot air balloon launching and landing, and direct Staff to temporarily allow take-offs and landings only at the Quinn's Recreation Complex. Staff also requests that Council direct staff whether to pursue the creation of a hot air balloon permitting process and/or regulating ordinance.

Topic/Description:
Hot Air Balloon Launching/Landing

Background:
Hot air balloon operators are currently allowed to launch and land in the city-owned North 40 parking lot (see map, Attachment A). When hot air balloon operators pay for their business licenses, they receive a map of the area and are asked to sign a waiver indemnifying the City if damage is caused (Attachment B). In August 2009, the City received a letter from the Park City Balloon Association, comprised of Miles Ivers of PC Balloon Adventures and Daren Wilde of Morning Star Balloons, requesting that the City designate additional locations for hot air balloon launching and landing. Specifically, they requested:

- Permission to launch and land in the parking lots at Quinn's Recreation Complex
- Access for pre-emergency landings: City Park, Racquet Club Parking Lot, McPolin Farm fields
- Landing privileges at any other city parking lots or fields that would be appropriate

The letter stated that the reason for the request was to ensure safety in a growing Park City community.

Various city departments were contacted about the request. Several departments had concerns about the specific locations requested, as well as approving additional balloon landing locations in general.

Analysis:

<u>A. Locations</u>

Quinn's Recreation Complex

The parking lots and dirt lot are possible landing areas, especially the dirt area behind the maintenance building known as phase #2. Currently, the space is being used as construction area for the new water line. Staff is uncertain exactly how long the project will be using the space. If the lot is available, it would only be a temporary solution, as use would be discontinued when the field space is developed. The sports field light poles may be a concern, due to the possibility of balloons damaging the light fixtures or possibly toppling a pole. Staff also has concerns with balloons landing in the field, especially the Sportex field due to possibility of tearing or damaging the Sportex field fabric. The Ice Rink parking lot should be excluded.

Helicopter flights in the area are an additional concern. Life Flight's head helicopter pilot Bill Butts had several concerns with balloons launching and landing so close to the hospital:

- Helicopters cannot fly too close to balloons because of the turbulence that they create
- Hot air balloons have the right-of-way in the air because they have less ability to maneuver. Meaning, a hot air balloon landing in the sports fields could potentially block the helipad to the hospital and delay Life Flight.

Mr. Butts said he might be okay with the idea of balloons in the area if he was given advanced notice that the balloons were going to be in the area.

Miles Ivers' response to the Life Flight conflict was that the balloons would only be in the area for 5 minutes on average, 15 minutes maximum, at 6, 7, or 8 a.m. His opinion was that the odds were fairly slim that the balloons would be in the area at the same time as the helicopters. The balloons fly over the hospital at a fairly high altitude.

Conclusion: It may be feasible for the City to allow balloon launching and landing at the Quinn's dirt lot for a short period, but it would not be a permanent solution, and the balloon companies would have to abide by certain restrictions.

City Park
The area is too tight, too close to residences, has too much activity, and too many people and vehicles. The field lighting would also be a concern as with Quinn's.
Not recommended for launching or landing.

Racquet Club
The area is too tight, too close to residences, people and vehicles.
Not recommend for launching or landing.

McPolin Farm
No access, as the gate is usually locked; staff is also extremely concerned with fire danger with the open field. Distracted drivers on Highway 224 could also be a concern due to the close proximity of the highway to the potential balloon landing site. *Staff recommends no use.*

Other Locations

Farm Parking lot north/east side of 224
Limited space, too much traffic on Highway 224 and limited sightlines. Distracted drivers on Highway 224 would also be a concern. Power poles may also be an issue.
Staff recommends no use.

Snow dump site(s)
Current site: Unavailable - site of the new water treatment plant.
New snow dump sites: May be an option, but only in summer months. Staff may store road millings, etc. in the summer, so areas would need to be located away from construction staging areas.

Park & Ride Lot
Risk management and environmental do not recommend use. Council may consider this as another temporary site; however, Federal grant restrictions likely prohibit commercial use.

Triangle parcel off of Hwy 40 and Talisker parcel
Both possible launching and landing locations, but future development would likely prevent permanent use. Council may consider this as another temporary site.

Conclusion
Several sites are available for temporary use, but none are permanent options for launching and landing.

B. Hot Air Balloon Launching and Landing Issues

Regulation Background
The FAA requires that balloons have a current Airworthiness Certificate and a Certificate of Aircraft Registration in the aircraft, and that pilots who fly passengers for hire have a commercial Balloon Pilots License. Balloons can generally fly in any non-controlled airspace, and land where it is legal to do so: if on private property, permission must be granted by the landowner. Cities may regulate where balloon landing is allowed within city limits. Incidents related to balloon flight should be reported to the FAA for investigation.

Unauthorized Landings in the City
When contacted regarding additional locations for balloon landing, the Police Department reported that balloonists have recently made several landings in unauthorized areas of the City, including residential areas. When these incidents occur, the balloon operators state that they are emergency landings that could not be avoided. Police doubt that all of these landings were emergency in nature. Balloon operators have been asked by police to call or radio dispatch when these emergencies occur, preferably prior to landing, but the operators have not done so. Thus far in 2009, six incidents have been reported to police, four in September (see Attachment C).

Capt. Rick Ryan reported that before the balloonists were restricted to launching and landing in the North 40 parking lot, police handled even more complaints from citizens about trespassing, noise and even damage to property when balloons came close to houses. Capt. Ryan said complaints in several aspects have dropped off considerably since launching and landing locations were more restricted, and from his past experience with the companies, he believes that additional landing areas will lead to an increase in complaints. If the City does grant more locations, he would recommend a deposit be collected to cover possible damage, and possibly the approval of an ordinance authorizing fines for unauthorized landings.

Noise

Noise has been an aspect of residential complaints regarding balloons, but not the primary issue. According to a trade publication, Balloon Life, hot air balloon burners generate a level of noise between that of a freight train (88 decibels) and a circular saw (107 decibels). The noise level for those on the ground of course depends on the distance from the balloon. The City noise ordinance considers noise recorded at 65 decibels or more at a distance of 25 feet from the source to be excessive if before the hours of 7 a.m. in residential areas and 6 a.m. in commercial areas (Park City Municipal Code 6-3-9).

Property Damage and Permitting

If one or more additional locations are approved, property damage is a staff concern. The City may want to collect a deposit from balloon operators to cover potential damage. The City could also create a formal permitting process, requiring hot air balloon operators to submit information about each of their balloons so that if landing problems arise, operators may be identified. Council could also impose fines for unauthorized landings or landing a non-permitted balloon. In 2008, Wasatch County considered an ordinance requiring that balloons have a permit to land in the County, and deeming landing without a permit a Class B misdemeanor (see Attachment D). The County did not adopt the ordinance, but Park City could consider something similar. *Recommend Staff return with permits.*

Conclusion

Hot air balloons are an asset to a resort community, and their safe operation in Park City should be encouraged. Given that, staff recommends that the City make what efforts it can to accommodate hot air balloon operators through an additional temporary landing zone at the Quinn's Recreation Complex.

Department Review:

The Executive, Legal, Public Works, Code Enforcement, and Police Departments have reviewed this report.

Alternatives:

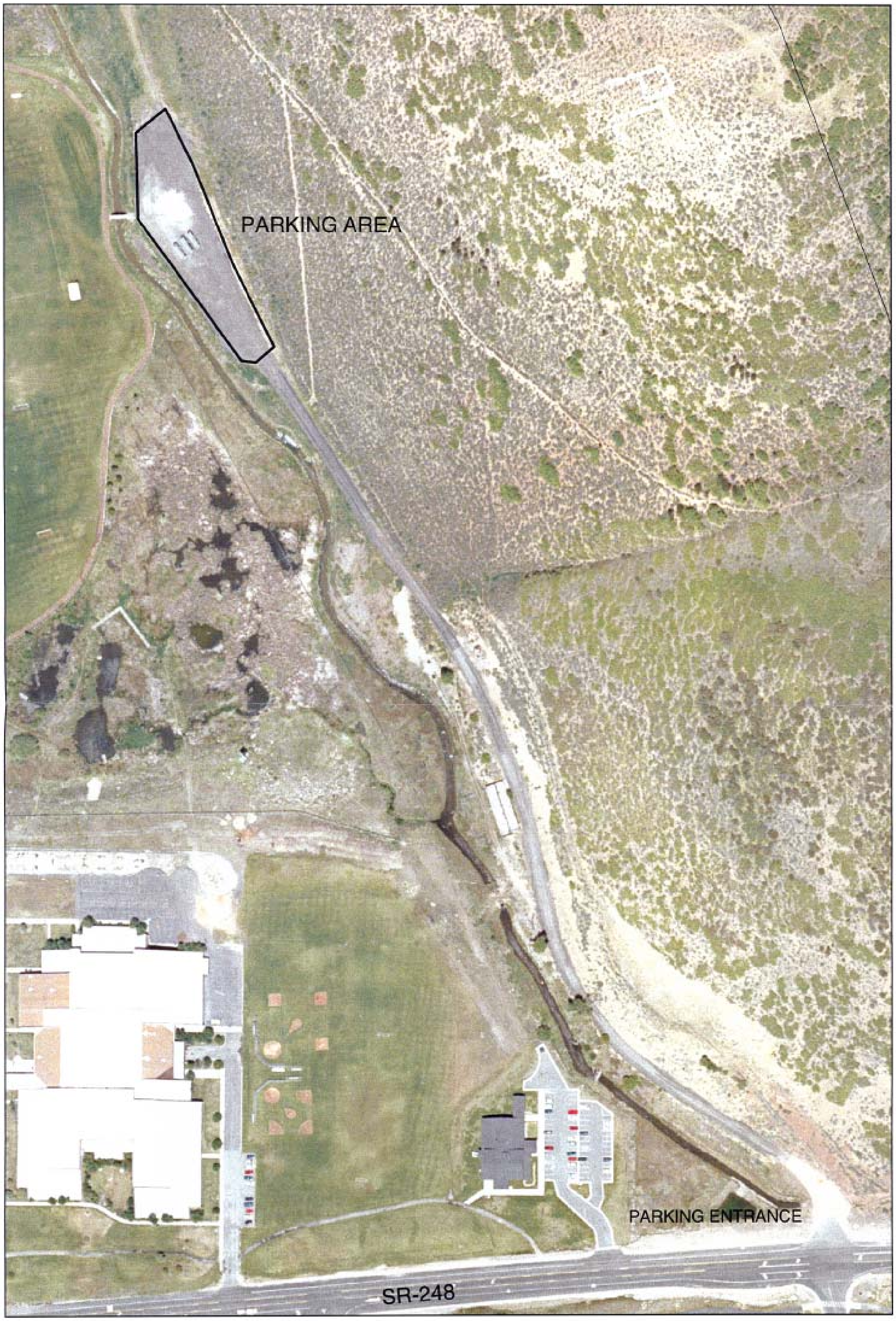
A. **Approve one or more additional temporary landing locations and direct staff regarding deposit or permit development (Recommended).**
B. **Deny the request for additional locations.**

C. **Continue the Item.**
D. **Do Nothing.**

Consequences of not taking the recommended action:
Hot air balloon operators will continue to land at current location, and some issues with private property landings may continue.

Recommendation:
Staff recommends that the City Council review additional City-owned locations for hot air balloon launching and landing, and direct Staff to temporarily allow take-offs and landings only at the Quinn's Recreation Complex. Staff also requests that Council direct staff whether to pursue the creation of a hot air balloon permitting process and/or regulating ordinance.

Attachment A



NORTH-40 BALLOON TAKE-OFF AREA

Attachment B

HOLD HARMLESS INDEMNIFICATION

The Balloonist shall indemnify and hold the City and its agents, employees, and officers, harmless from and shall process and defend at its own expense any and all claims, demands, suits, at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, brought against the City arising out of, in connection with, or incident to the use of the North 40 Parking Area, 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 the extent of the negligence of the Balloonist; and provided further, that nothing herein shall require the Balloonist to hold harmless or defend the City, its agents, employees, and/or officers for their intentional torts. This waiver has been mutually negotiated by the parties, and is expressly made effective only for the purposes of the Balloonist's use of the North 40 Parking Area. Nothing herein shall waive any defense or limitation of the Utah Government Immunity Act.

BALLOONIST

Signature: ________________________

Print Name: ________________________

Date: ________________________

Individual:

STATE OF UTAH :
:ss.
COUNTY OF SUMMIT :

On this ________ day of _____________, 2008, before me, the undersigned notary public, personally appeared ______________________________, personally known to me/proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged that he/she/they executed the same.

Notary Public: ________________________
My commission expires:

Corporation:

STATE OF UTAH :
:ss.
COUNTY OF SUMMIT :

On this ______ day of ___________, 2008, personally appeared before me ____________________________, whose identity is personally known to me (or proved to me on the basis of satisfactory evidence) and who by me duly sworn (or affirmed), did say that he/she is the __________________________ (title/office) of ______________________ and that this (document title) was signed by him/her in behalf of said Corporation by Authority of its Bylaws (or Resolution of the Board of Directors) and said __________________________ acknowledged to me that said Corporation executed the same.

Attachment C

Park City Police Department

BALLOON INCIDENTS 7-1-08 THRU 9-28-09

CASE #	DATE	INCIDENT	LOCATION	DESCRIPTION
08-13023	7/12/2008	Disorderly Conduct	43 Fox Glen Cir	Hot air balloon hit house. Scared dog, who ran away.
08-15087	8/11/2008	Citizen Assist	Gillmor Wy (Ice Rink)	Hot air balloon landed in parking lot. Asked not to do it again.
08-17237	9/13/2008	Code Enforcement	Gillmor Wy	Hot air balloon landed on roadway north of Ice Rink possible violation
09-02561	2/3/2009	Trespassing	Gilmor Wy (Ice Rink)	Hot air balloon landed on south parking lot of Ice Rink.
09-13934	7/30/2009	Trespassing	Gilmor Wy (Ice Rink)	2 Hot air ballown landed by Ice Rink. Pilots advised that they would be cited if it happened again
09-16593	9/9/2009	Trespassing	2172 Eveningstar Dr	Hot air balloon almost hit spa cover.
09-16661	9/10/2009	Citizen Assist	2463 Sunny Knoll Ct	Hot air balloon landed in street. Some of their lines got tangled in residence tree
09-16705	9/11/2009	Citizen Assist	2172 Eveningstar Dr	Hot air balloon landed in neighbors yard.
09-16806	9/12/2009	Citizen Assist	2576 Morning Sky Ct	Hot air balloon almost hit house and scimmed trees. Balloon Co has permission from city to land in the soccer field near residence.

Attachment D

ORDINANCE NO. 08-12

AN ORDINANCE ADOPTING AND ESTABLISHING WASATCH COUNTY CODE SECTIONS 11.07.01 AND 7.07.05 REGULATING HOT AIR BALLOONS IN WASATCH COUNTY.

RECITALS

WHEREAS, the Wasatch County Council desires to protect private property from the damage caused by the landing of hot-air balloons; and

WHEREAS, the Wasatch County Council finds that it is in the best interests of the citizens of Wasatch County to adopt the following sections of the Wasatch County Code;

NOW, THEREFORE, The County Legislative Body of Wasatch County hereby ordains as follows:

SECTION I: **Repealer.** If any provisions of the County Code heretofore adopted are inconsistent herewith they are hereby repealed.

SECTION II: **Enactment.**

<u>Section 11.07.01 of the Wasatch County Code is hereby ADOPTED as follows:</u>

Section 11.07.01. Permit to Land a Hot Air Balloon within Wasatch County.

(1) No person shall land a hot air balloon within Wasatch County without first obtaining a permit from the Wasatch County Clerk. A Permit issued by the Clerk shall be effective for one year from the date of issuance, unless it is revoked by the Clerk. The Clerk may revoke a permit upon the occurrence of any circumstance that would give the Clerk cause to deny the permit in the first instance.

(2) A person may obtain a permit to land a hot air balloon within Wasatch County Clerk by filing an accurate and complete application including the following:

(a) payment of a $25 fee;

(b) satisfactory evidence that the hot air balloon operator is a licensed pilot by the Federal Aviation Administration and a certification that the pilot of the aircraft will, at all times during flight, carry this license on his or her person;

(c) the name of the owner of the hot air balloon and, if the owner is a business, the nature of the business organization (e.g., corporation, partnership, sole proprietorship, etc.);

(d) the mailing address and phone number of the owner and, if the owner is a business, the name, mailing address, and phone number of the chief executive officer and the registered agent of the business;

(e) if the owner of the hot air balloon is a business, satisfactory evidence of a current business license issued by a municipality or county;

(f) a list of each hot air balloon for which landing privileges in Wasatch County are requested, including the aircraft identification number (the “N” number), and a photograph of the inflated hot air balloon; and

(g) a $1,000 bond or irrevocable letter of credit together with an authorization to the Wasatch County Clerk to unilaterally forfeit the bond or execute the letter of credit by certifying to the issuer of the bond or letter of credit that the following circumstances have occurred:

(i) an owner of property within Wasatch County presents to the Clerk a claim of property damage caused by one of the hot air balloons covered by the permit;

(ii) the Clerk has mailed, by regular first-class mail, written notice of the claim to the owner of the balloon (if an individual) or to the chief executive officer or registered agent of the owner (if a business); and

(iii) ten days have passed since the Clerk mailed the notice to the owner of the balloon.

(h) evidence of liability insurance for the operation of the hot air balloon, including a certification that the operator of the balloon will, at all times during flight, carry on his or her person proof of this insurance.

(3) Landing a hot air balloon within Wasatch County without the permit required by this section shall be punished as a class B misdemeanor.

Section 7.07.05 of the Wasatch County Code is hereby ADOPTED as follows:

Section 7.07.05. Landing a Hot Air Balloon on County Property or Private Property.

All persons landing a hot air balloon in Wasatch County shall abide by the following mandates:
(1) Landing a hot air balloon on County-owned or privately owned property is prohibited unless the balloon operator obtains express consent from the landowner, or the landowner's agent, prior to landing the balloon.
(2) Landing a hot air balloon on Wasatch County property or privately owned property without first obtaining the express consent of the landowner shall constitute Trespassing, which shall be an Infraction on the first offense, a class C misdemeanor on a second offense committed within a year of a previous conviction under this subsection, and a class B misdemeanor on a third offense committed within a year of two previous convictions under this subsection. In imposing a sentence for Trespassing under this subsection, the court may order the hot air balloon operator to pay restitution in an amount sufficient to repair all property damage proximately caused by the offense;
(3) In addition to Trespassing, and separate from any civil liability which may be imposed, the hot air balloon pilot may also have committed a violation of Criminal Mischief, as detailed in Utah Code section 76-6-106.

SECTION III: **Effective Date.** This Ordinance shall become effective immediately upon execution by the Chair of the County Council and the completion of public notice requirements imposed by state statute.

SECTION IV: **Severability.** If any section, subsection, sentence, clause, or phrase of this ordinance is declared invalid or unconstitutional by a court of competent jurisdiction, said portion shall be severed and such declaration shall not affect the validity of the remainder of this ordinance.

SECTION V: **Public Notice.** The Wasatch County Clerk, and ex officio Clerk of the Wasatch County Council, is hereby ordered, in accordance with the requirements of Section 17-53-208, Utah Code Annotated, 1953, as amended, to do as follows:

a. Enter at length this ordinance in the ordinance book;
b. Deposit a copy of this ordinance in the office of the County Clerk;
c. Publish a short summary of this ordinance, together with a statement that a complete copy of the ordinance is available at the County Clerk's office and with the name of the members voting for and against the ordinance, for at least one publication in a newspaper published in and having general circulation in the county; or post a complete copy of this ordinance in nine (9) public places within the County.

APPROVED and **PASSED** this ______ day of ___________________, 2008.

Attest: WASATCH COUNTY COUNCIL:

______________________________ ______________________________

Brent R. Titcomb
Wasatch County Clerk / Auditor

Steve Farrell, Chair
Wasatch County Council

	VOTE
Steve Farrell, Chairman	_____
Neil Anderton, Vice-Chair	_____
Kipp Bangerter	_____
Kendall Crittenden	_____
Val Draper	_____
Michael Kohler	_____
Jay Price	_____

City Council Staff Report

Subject: Sundance Film Festival- 2010 Supplemental Plans Update
Author: Max J. Paap and Jonathan Weidenhamer
Department: Sustainability
Date: November 19, 2009
Type of Item: Informational

Summary Recommendations:
Review the final updates to the Supplemental Plans for the 2010 Sundance Film Festival as originally presented and conditionally approved by City Council on October 29, 2009.

Description:

Topic:
2010 Sundance Film Festival Supplemental Plan.

Background:
On October 29, 2009 Staff presented the 2010 Supplemental Plan to Council. A public hearing was held. At that meeting City Council approved the Plan conditioned that Staff return to Council and address the following concerns (Exhibit A – 10/29 minutes):

1. Traffic, circulation, and access in and around Old Town, particularly on Park Avenue between 7th – 9th Street
2. China Bridge pricing plan
3. Parking mitigation of the areas in and around the Racquet Club
4. Sundance Customer Service Hotline

Since the October 29th meeting City Staff has diligently worked to address these concerns. In concert with HMBA, Park Avenue business owners (Between 9th and Heber Avenue), Racquet Club HOA, and the Sundance Institute, staff has laid out plans to effectively address the concerns raised at the last meeting.

Analysis:

1. Old Town Traffic, Circulation, Access, and Transit (7th – 9th Street on Park Ave.)
Since the October 29th meeting PCMC Staff met internally and with Sundance. Staff consequently presented to specifically concerned Park Avenue businesses modifications to the overall Old Town traffic. Coming out of those meetings there is a consensus to amend the previously recommended one-way movement along

Heber Avenue from a westbound movement to one that is eastbound. This new plan would allow limited traffic to have access proceed southbound on Park Avenue beyond 9th street and have the ability to make eastbound turns on 9th street, 7th street, or Heber. This plan is consistent with traffic mitigation plans that have been in place for the previous 5 years to keep Heber avenue a mostly 'bus only' traffic lane; but allows for commerce access to the businesses on Park Avenue between 7th – 9th. By working closely and careful management and educating the operators of these check points we can facilitate this access.

Identical to Main Street, the on-street parking along both sides of Park Avenue; between Heber Avenue and 9th Street will be replaced with 15 minute 'Drop and Load' zones to help facilitate deliveries, and shorter term visits to those retail businesses during the Festival. Staff finds this consistency will minimize confusion to Festival patrons, as well as locals, on recommended parking or access issues.

With the exception of minor concerns raised by the Transit Team, all parties agree this is a better plan than the plan discussed at the last meeting in that maintaining southbound access on Park Avenue is advantageous for customer access, ease for deliveries and an overall maintenance of broader Old Town traffic, circulation access and traffic issues. Exhibit B (Both narrative and map) will better demonstrate the movement and access points that have been contemplated to make this plan successful.

<u>2. China Bridge Pricing Structure and Management</u>
PCMC Staff has met internally and with HMBA Executive Board and recommends that that plan for China Bridge daily fee be modified. We propose a sliding scale that would begin at $20 per day beginning on Friday, and then be reduced to $10 per day starting on Wednesday for the duration of the festival. Historical trends of decreased parking demand in China bridge support this strategy (Exhibit C).

A series of alternatives to the pricing reduction described above were considered by staff and the HMBA (Exhibit C). These alternatives ranged from a yo-yo scale (lower rates midweek and raise for second weekend) to no fee at all after Tuesday. Staff does not support the yo-yo in that it could be difficult to manage and confusing. Furthermore we find there should be some paid parking element in place to support the traffic mitigation plans' purpose, which is to reduce traffic congestion and facilitate Transit use. Doing so sends a consistent message that if a festival patron chooses to attempt to search for parking in Old Town there will be some sort of charge, but there should be a sufficient inventory so as not to be "hunting" for parking inventory. The HMBA Executive Board is supportive of the new pricing alternative as recommended. The following is their formal position:

> On behalf of the executive committee of the HMBA, I would like to communicate our position regarding the Sundance parking and circulation plan for the district. We have met with staff and reviewed a draft report that offered several alternatives for the plan. We are in support of

option B, which is also staff's recommendation. This plan addresses concerns from some member businesses regarding the fee structure for China Bridge, especially during the later part of the festival, and allows for some flexibility in the plan based on parking demand and traffic volume.

We also appreciate staff's efforts in meeting with concerned member businesses in the Heber to 9th St. portion of Park Avenue, and are supportive of the results of this meeting, which addressed concerns regarding traffic flow, customer and delivery access, etc. While the members of the executive committee did not attend, we understand that the discussion resulted in a mutually agreed upon plan for managing these concerns for the upcoming festival.

Thanks for your efforts on these matters,

Jeff Ward
President HMBA

An additional issue that has been further discussed through these talks is the parking availability for Current CB Pass Holders. They are accommodated in the North Marsac Lot, Gateway Center, and the top level of the 'Old' China Bridge structure for the entire Festival. The top level of 'New' China Bridge will serve as a "relief valve" to accommodate current CB pass holders as well. In previous years there have been very limited cases where CB holders have not been accommodated during the Festival. The current parking plan for 2010 is (Exhibit C).

3. <u>Parking mitigation of the areas in and around the Racquet Club</u>
PCMC Staff has been working with Sundance and the HOA for the Racquet Club Condos. We've agreed to a 3 tiered approach. First, at the suggestion of the HOA, PCMC has agreed to place barricades, posted *'No Parking'* along both sides of South Racquet Club Drive all the way to the third cul-de-sac (Yonex Court). This same barricades plan would be mirrored along both sides of North Racquet Club Drive (to Spaulding Court). Large signs would be intermittently posted with language stating the area is '*Resident Parking Only- Tow Enforced' (Park City Towing 435-645-7775) -* Exhibit F. We've established clearer lines of communication between PCMC and the Racquet Club HOA, particularly to address towing situations. The HOA would be responsible for towing vehicles.

Park City Municipal Events Staff will monitor and maintain the placement of the barricades on a daily basis to ensure they are placed in an effective and efficient manner throughout the Festival. Should a snow event occur during the event PCMC shall maintain the placement after private snow removal operation has been completed.

Second, we've agreed to the physical staffing of the nearest entrance to the south of the Racquet Club Condos (Racquet Club Drive). The staffing will occur during the awards party (30 minutes before through 30 minutes after) and for the first 4 days of the festival from 4:00 pm to 10:00 pm. The HOA has agreed to manage and operate the staffing. Because the impacts are a result of use of a

City-owned facility the City will subsidize the cost at an amount not to exceed $600, which can be done within the existing budget. Contributing financially will allow for a seat at the table with the HOA to clarify goals and management of the operations. These costs are estimated at $600 (1 person at $20/hour for a total of 5 days, 6 hours/day).

Lastly, Sundance has continued to agree to educate their volunteers and the general public about appropriate locations to park (Exhibit E), and have also updated the following pages on their website with the Racquet Club "NO PARKING" language. This language will also be published in their Film Guide, when produced.

http://festival.sundance.org/2010/film_events/theatres/

RACQUET CLUB THEATRE
Park City Racquet Club
1200 Little Kate Rd.
608 seats
* There is NO PATRON PARKING at the Racquet Club Theatre or in the Racquet Club neighborhood. Parking in this area will result in immediate towing. Please find convenient parking at The Yard Park and Ride.

http://festival.sundance.org/2010/festival_info/shuttles_parking/

PLEASE NOTE THE FOLLOWING ABOUT THE RACQUET CLUB THEATRE:
There is NO PATRON PARKING at the Racquet Club Theatre or in the Racquet Club neighborhood. Parking in this area will result in immediate towing. Please find convenient parking at The Yard Park and Ride.

4. Sundance Institute Customer Service Line

The Sundance Institute has internally worked on improving the customer service outreach line. They've submitted an updated operational plan including an outreach program to "get the word out" (Exhibit E). The current line has a phone tree that offers options for the user to either speak with a Festival representative or leave a message to be returned. The major improvements to the 2010 line are:

1. The response time is being changed from a 24-hour response to a same-day response or by noon of the following day.
2. During the Festival, the phone tree options will specifically include an option to address operational concerns.
3. Sarah Pearce, Director of Festival Operations has personally committed to personally answering any complaints regarding operational issues.

Staff has reviewed detailed correspondence logs that the Institute keeps, and finds they are committed to prompt response to the existing customer service line, and that the modifications outlined above are sufficient to mitigate concerns that have been raised.

Department Review:
Internal staff of the Police, Transit Parking, Economic Development, City Attorney and City Manger have reviewed this report. Joint efforts with representatives of the Sundance Institute, Racquet Club HOA (PMA) and the HMBA and their comments are included in this report also.

Alternatives:

A. **Approve:**
Approve final details of the 2010 Sundance Supplemental Plan. **This is staff's recommendation.**

B. **Deny:**
Direct Staff to pursue additional operational amendments.

C. **Modify:**
Direct Staff to modify the updates of the Supplemental Plans to the 2010 Sundance Film Festival.

D. **Continue:**
Staff may return at a future date with additional information requested by Council.

Significant Impacts:
There will be minor financial and City staffing resources necessary at the Racquet Club. Staff is unclear if the reduction in fees at China Bridge will reduce the overall effectiveness of the downtown plan. We will monitor the outcomes closely, and be prepared to further modify the plan for the 2011 Festival if necessary.

Forgone revenue based on the rate switch to $10 in China Bridge on Wednesday would be $30,750 (average of three years data).

Recommendations:
Review the final updates to the Supplemental Plans for the 2010 Sundance Film Festival as originally presented and conditionally approved by City Council on October 29, 2009.

Attachments:

A. 10/29/09 draft meeting minutes in meeting packet for adoption
B. Lower Main Street Traffic & Bus Circulation Maps and Narrative
C. CB Parking Analysis & Alternative considered
D. 2010 Main Street Parking Map
E. Customer Service Hotline – Plan and supportive outreach narrative
F. Racquet Club barricade and sign Plan

EXHIBIT A

Refer to October 29, 2009 City Council Meeting Minutes included in meeting packet for adoption.

EXHIBIT B

Sundance 2010 – Upper Park Ave and Heber Traffic Plan

Special Events & PD recommend the east bound one-way plan for the following reasons:

- Consistent with the previous 6 years for traffic flow for this section of Park Ave. From Heber to 9th.
- Maintains the previous 6 years of restrictions for traffic traveling south on Park Ave
- Lessens need for making a u-turn for southbound traffic at Heber and Park
- Allows normal flow for deliveries, pick-up and drop-off
- Allows for easier operation when stations are not manned

Requirements for smooth operation of area

- Uniformed Control Officers (Hours TBD)
  - 9th & Park (when necessary)
  - 7th & Park
  - Heber & Main
  - Deer Valley Drive & 9th Street
- Traffic Signs (specific language TBD)
  - 9th & Park (southbound)
  - 7th & Park (southbound)
  - Heber & Main (westbound)
  - Heber & Park
  - Deer Valley Drive & Main
- Merchant Specific Signs (Language TBD)
- 15 min Load/Unload both sides of Park Ave from Heber to 9th
- No Parking on Both sides of Park Ave from 9th St to 10th St.
- Moving bus stop beneath town Bridge to below 9th Street at Park

The major objection to this plan is from the transit department. They will be faced with a left hand turn (across traffic) from DV Drive to 9th Street
They are very concerned with there busses stacking up in the middle of DV Drive. This situation is at its most challenging when DV Resort lets out for the day. There is an alternate plan to move busses temporarily if this situation happens which is to run them up Swede Alley then down Main.

Sundance 2010 – Old Town Base Map

Traffic Circulation & Sign Plan

This plan foresees:

- Main Street & Park Ave from Heber to 10th street as "No Street Parking / 15 min loading "
- One Way Traffic (East Bound) Heber from Park Ave to Main Street
- Restricted Traffic for Buses only From 9th to Heber Ave on Park Ave

SIGN –Buses & Local Traffic Only –	
SIGN – Main Street Parking (Arrow)	
SIGN – Local Traffic Only (Arrow)	
SIGN – Parking Use DV Drive (Arrow)	
SIGN – Parking (Arrow)- No Left Turn	

SIGN - Bus Traffic Only – Violators will be ticketed	
SIGN – ONE WAY- DO NOT ENTER	
Uniformed Traffic Control – as needed	

EXHIBIT C

Event Operations and Parking Services have continued to analyze the parking and circulation supplemental plan. 3 alternative described below have been considered. At this time there is consensus to support alternative B. The Sundance institute is sensitive to concerns raised by some members of the HMBA, and are supportive of amending the Plan to further minimize perceptions of impact of the event. The HMBA has yet to submit a formal position statement.

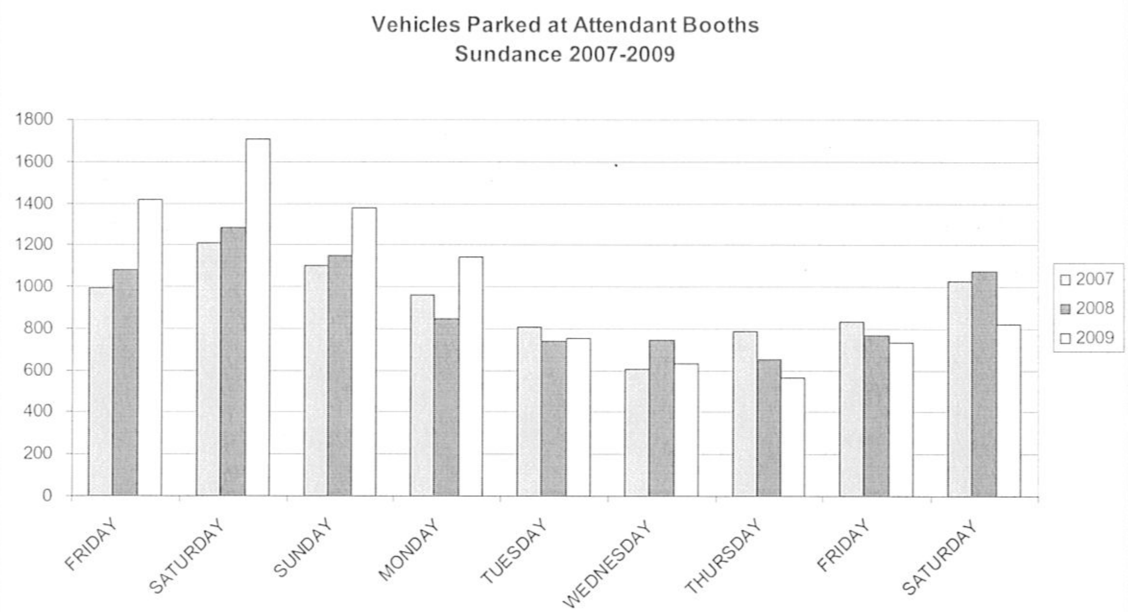
Alternatives:

A) Do nothing (keep existing $20 rate all week)
- Pros
  - ✓ Consistent message with past years
  - ✓ Facilitates Transit use
- Cons
  - ✓ Does not address concerns from some HMBA members

B) Reduce payment to $10 after Tuesday (**This option is Staff's recommendation**)
- Pros
  - ✓ Addresses concerns raised by some HMBA members
  - ✓ Allows cheaper access
  - ✓ Addresses concern of prohibitive business climate
- Cons
  - ✓ Employees will likely abuse
  - ✓ Transit service delivery impacts possible

C) Reduce payment to $10 after first weekend, but raise again for second weekend (Yo-Yo)
- Pros
  - ✓ Allows cheaper access during mid-week, but continues to manage circulation and demand during heavier demand times
- Cons
  - ✓ Inconsistent and confusing
  - ✓ Presents operational challenges

D) Eliminate payment completely after first weekend
- Pros
  - ✓ Allows no cost access after first busy weekend, but continues to manage circulation conflicts by requiring free parking access from Marsac, not Swede
- Cons
  - ✓ Onus put on HMBA and employees not to abuse
  - ✓ Significant impacts to transit service likely

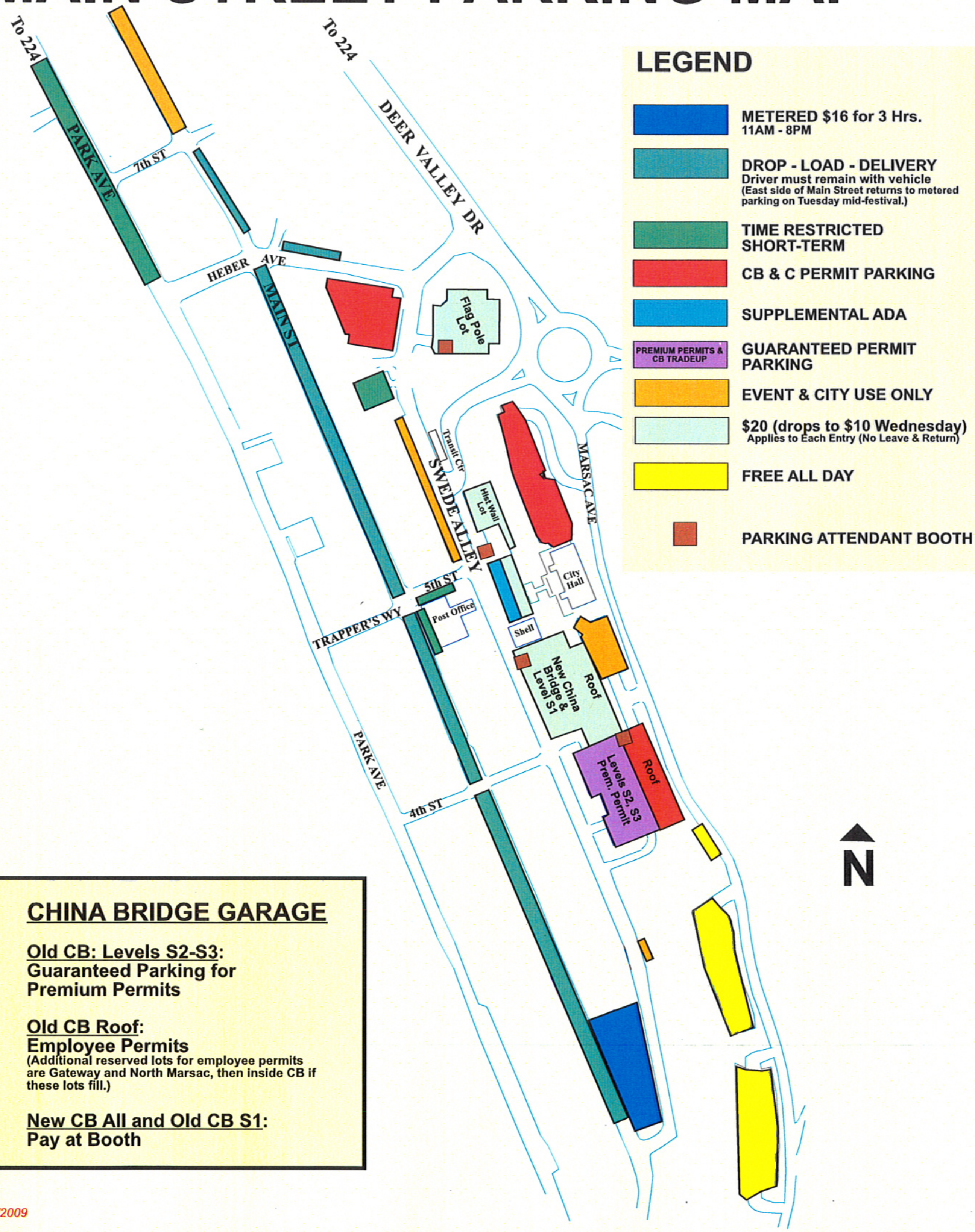


2009 notes: presidential inaguration second weekend possibly front-loaded demand to first weekend, rain & severe fog in Parley's second weekend (Thurs-Sat), Total vehicles parked increased about 10% over previous years.

SUNDANCE 2010

EXHIBIT D

MAIN STREET PARKING MAP



CHINA BRIDGE GARAGE

Old CB: Levels S2-S3:
Guaranteed Parking for Premium Permits

Old CB Roof:
Employee Permits
(Additional reserved lots for employee permits are Gateway and North Marsac, then inside CB if these lots fill.)

New CB All and Old CB S1:
Pay at Booth

Revised 11/19/2009

EXHIBIT E

SUNDANCE
INSTITUTE™

Sundance Institute has a year-round Customer Service Hotline number and e-mail address to field all questions, concerns and comments regarding the Sundance Film Festival and other Institute programs.

Number: 435.776.7878

E-mail: customerservice@sundance.org

Year-round
Hours of Operations: 10:00 AM - 4:00 PM, Monday - Friday. After 4:00 PM the caller is instructed to leave a voice message. A representative from the Institute will return the call or reply to an e-mail within 24 hrs.

During the Sundance Film Festival
Hours of Operation: 9:00 AM - 12midnight including weekends. After midnight the customer is instructed to leave a voice message. A customer service representative will respond to any phone or e-mail inquiry on the same day or by noon the following day for the after hours messages.

Our customer service representatives will be happy to answer any questions about the Sundance Film Festival and our other Institute programs. We'd also like to hear your feedback -- your experiences, impressions and suggestions. We are always happy to hear from you and value your comments regarding our programs and services.

How do we get the word out?

Through the media:
Park Record, KPCW

At our Venues:
Information Booths located at each of our venues and at all Box Offices

In the neighborhood:
Door to door flyer distribution to neighbors around the Racquet Club

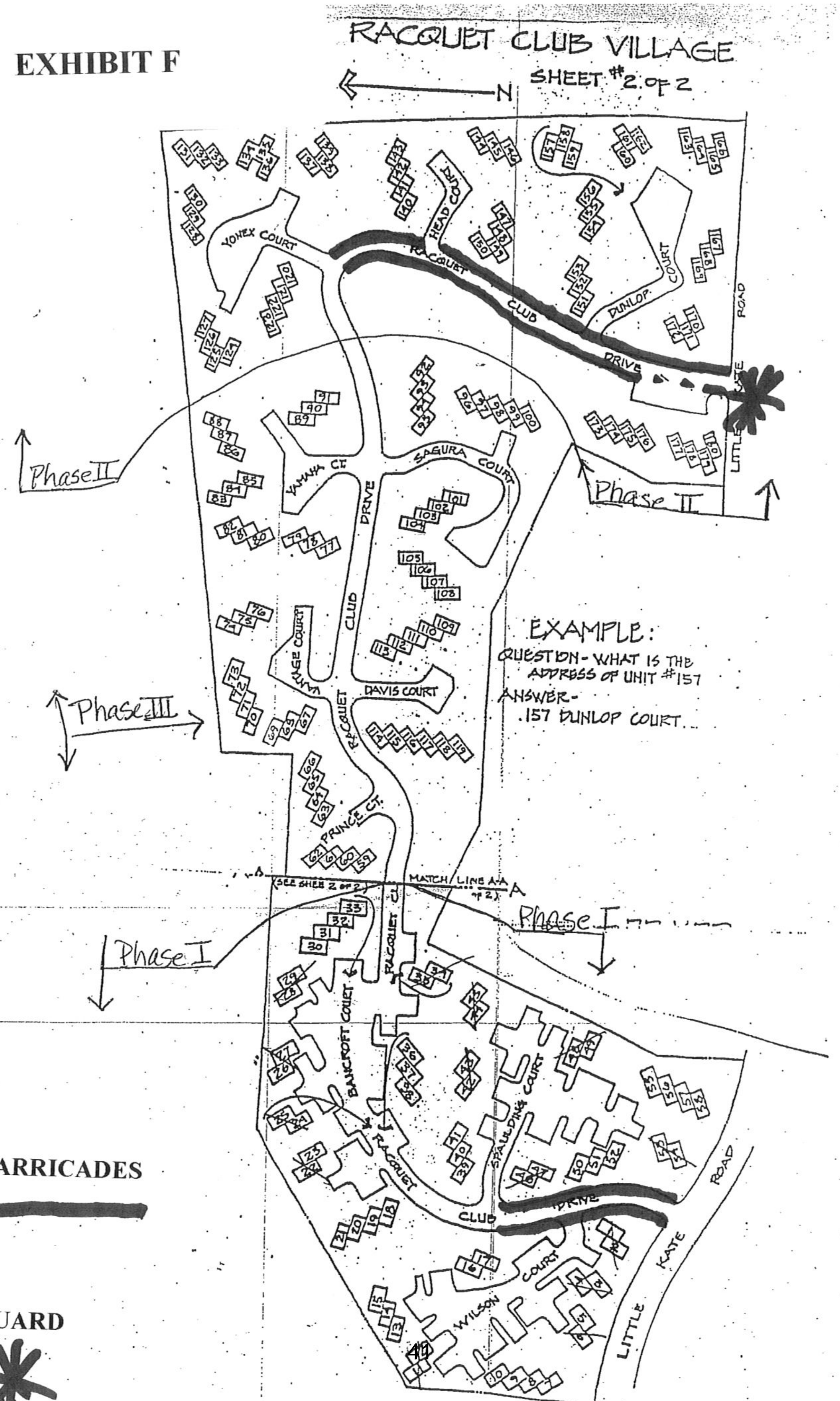
Through our publications:
Film Guide

Through our website:
Under "Contact Us"
and on many of our operational pages

Volunteer & Staff training:
All staff and volunteers are trained on this phone number and email and have a card in their credential pouch with the information on it at their finger tips.

*Any operational complaints are immediately directed to Sarah Pearce who will personally answer each issue during the festival.

EXHIBIT F



BARRICADES

GUARD

PARK CITY COUNCIL WORK SESSION NOTES
SUMMIT COUNTY, UT
OCTOBER 29, 2009

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

Tom Bakaly, City Manager; Mark Harrington, City Attorney; Tyler Poulson, Environmental Sustainability Coordinator, Diane Foster, Environment Sustainability Manager; Captain Rick Ryan; Ken Fisher, Recreation Manager; and Matt Twombly, Project Manager

Mary Jacquin and Sandra Nugent, Clean Air Park City; Jennifer Franklin, John Halsey and Rob Lea, Recreation Advisory Board

1. The Montage field trip. The Mayor, Council members, staff, and interested community members attended a field trip to The Montage project site in Empire Pass, Deer Valley.

2. Council questions/comments. Roger Harlan reported on a joint transit meeting where the County discussed constructing its own transit center. The Comstock open house was well attended by residents who voiced split opinions on the installation of the sidewalk. He also attended the official closing of the KPCW purchase and commented on the social with the state legislature which was productive. The City and County library boards meet jointly; there is strong interest in working together toward a regional library card. Jim Hier commented on attending a HMBA meeting last week, the candidate debate hosted by the Chamber, and the joint transit board meeting. The construction project for the transit facility is projected to begin in April, completed December 2011, and is estimated at $13 million which will be federally funded. The City's contribution will be the land value and a no-cost project to the taxpayer. The Chamber also held its economic summit yesterday and Mr. Hier shared some statistics from the industry.

Liza Simpson stated that she also attended the joint library meeting where there was support for integrated services and she thanked the Planning Department for hosting a neighborhood meeting on possible changes to the LMC to allow MPDs on the west side of Main Street and Park Avenue. She attended the Planning Commission meeting where Michelle Diederich and Jeff Lonn expressed concerns about how much commercial might be included in the Racquet Club project. She thanked Jon Weidenhamer for his long-term efforts toward the completion of the KPCW property transaction. She relayed a complaint about lack of parking enforcement on Park Avenue in Old Town. Mayor Williams responded that he received a parking ticket on Park Avenue during the week so there is some level of enforcement.

Candace Erickson discussed Health Board business, specifically H1R1 vaccination distribution plans and shortages and dealing with a budget cut of $22 million. She discussed Recycle Utah and Friends of the Farm business. She commented on the Chamber economic forecast which is slightly optimistic and the response to marketing seems to be improving. Joe Kernan reported on the interagency task force which focused on the legislative effort.

Dana Williams complimented staff on organizing the Comstock meeting. He relayed that he has received concerns about the stability of property management companies. He asked for support in exploring allowing solar panels on historic structures. He spoke about a wind power company willing to extend a 50% to 70% reduction on equipment if Park City agrees to be a test location and felt small scale turbines is a good topic for the Visioning Session.

2. No-idling policy. Tyler Poulson stated that this work session is a follow up to a discussion held on August 20 where Council expressed interest in addressing excessive vehicle idling and the resources needed for enforcement. Vehicle idling contributes to the ozone, particulate pollution and greenhouse gases and there are health implications, especially for children. The EPA recently found seven counties in Utah either wholly or partially in violation of particulate pollution. He explained that from a financial break-even point, Idle-free Utah specifies that typically 10-30 seconds idling time for balancing the minimal wear-and-tear on engines versus fuel saved from shutting off the vehicle. Another study shows that eliminating five minutes of idling per day would save anywhere from $30 to $60 annually on fuel alone and adding the value of wear and tear on the engine equates to $134. On a state-wide level, it is illegal to idle an unattended vehicle and the City prohibits parked delivery vehicles from idling on Main Street and Swede Alley. The City also has an internal policy which prohibits idling of fleet vehicles with some exceptions for public safety. The Canyons and Zermatt Resorts have anti-idling policies for employees and guests and there was recently a state-wide idle reduction awareness drive in September 2009.

Mr. Poulson compared what other communities are doing on idling and ordinances vary for time limits, fine amounts and vehicles covered. There are similarities with regard to exceptions dealing with emergency response and public safety vehicles and temperatures. Aspen has a long-standing ordinance on idling but there isn't active enforcement; residents can call a hotline to report violations. Aspen allows idling for safety reasons, loading and unloading large passenger vehicles and enforcement is sensitive toward visitors who are likely unaware of the ordinance. Burlington, Vermont is part of a much larger idle-free state campaign and is the only city in Vermont with an ordinance. Enforcement is done through a non-metered ticket offense program, sensitive to the situation and the duration has been changed from five minutes to three minutes, making enforcement more efficient. He noted that enforcement is probably the most common concern for communities who have implemented an ordinance both for citizens and the internal government.

He stated that the focus on enforcement seems to be largely tailored to each specific town and how aggressively it is pursued based on resources and priorities. Some communities avoid involving the police and use parking or environmental quality personnel to enforce the ordinance. Mountain Village, Colorado implemented a unique community assisted idling program allowing citizens to dole out warning tickets which are turned into the City. Diane Foster relayed that staff believes enforcement is a significant issue, is not recommending that the Council adopt an ordinance at this time, and if this is considered in the future, she asked if members want a law that is not planned to be enforced.

Mr. Poulson also pointed out potential additional costs for sign purchases. There are three alternatives in the staff report; one is to pursue a resolution declaring Park City an idle-free city. The resolution language was provided by the Park City Chapter of Utah Moms for Clean Air. Another option is pursuing an ordinance directing staff to proceed with further research and planning and the last option is the status quo approach supporting anti-idling on a community-wide basis as well as the existing policies within the City. He clarified that staff recommends adopting a resolution which doesn't include a tangible disincentive for excessive idling like an ordinance but at the same time, brings broader attention to the issues associated with vehicle idling. If Council supports proceeding with a resolution, Ms. Foster asked for direction on the tone of the document because as drafted, it appears more like an ordinance. The Mayor invited public input.

Mary Jacquin, Utah Moms for Clean Air, stated that the organization's name is changing to Clean Air Park City.

Carolyn Frankenberg, resident, believed that adopting a resolution is a logical step and she urged proceeding.

Dick Hughes, resident, emphasized that large cities like New York City, St. Louis, and Atlanta have anti-idling ordinances. There is a lot of carelessness in town, particularly with trucks, and he is very supportive of addressing idling.

Ms. Jacquin explained that the agenda for the organization is to establish a partnership with the City on an anti-idling campaign for the greater community. The plan includes resorts and long-term goals associated with air quality monitoring.

Sandra Nugent, Clean Air Park City, stated that from the group's perspective a resolution will bring awareness to the community, memorialize the City's commitment to the environment, and educate individuals and groups about the benefits and the ease of not idling. She indicated that PC Foundation, Recycle Utah, Mountain Trails Foundation, Summit Land Conservancy support Clean Air Park City and 400 signatures have been obtained for an anti-idling initiative from Park City and Summit County residents. She relayed the organization's commitment to working with the City and other groups on issues.

Candace Erickson pointed out that the draft in the meeting packet is worded differently than the resolution circulated a couple of weeks ago and was pleased with the modifications. Jim Hier felt it appropriate to proceed with signs, wording them in a way that appears like an ordinance; signs may be more effective than having an ordinance on the books in changing people's behaviors. Roger Harlan supported a resolution. Ms. Nugent distributed the educational piece and information going to students. Ms. Erickson discussed the confusion created in passing legislation that is not enforced. Joe Kernan felt that a resolution is a good idea, especially after discussing the matter with staff, and believed the effort could transition into an ordinance citing exceptions. Liza Simpson agreed with moving toward an ordinance; she suggested exploring different levels of enforcement, signs and associated costs. Mayor Williams believed that providing for an environmental enforcement position may be likely in the future and the issue will be discussed at the Visioning Session in January. Diane Foster encouraged members to look at Exhibit D in the meeting packet and will proceed with signs. The Mayor expressed that signs are effective and a good approach in this instance.

3. Recreation Advisory Board Visioning. Ken Fisher explained that RAB met with Council a year ago and four subcommittees were formed including parks, Racquet Club, community outreach, and programming. The group is looking for feedback on its proposed work plan outlined in the staff report. He explained that the remaining budget is about $21,000 for City Park and $35,000 for neighborhood parks. Park impact fees totaling about $2.2 million are currently earmarked for Quinns for fields which may change during budget review.

Mr. Fisher stated that last October, Council directed RAB to explore covering the skate park and invited public input from proponents. Due to the size of the facility and snow load requirements, a simple pavilion roof would not work. A fabric structure was also considered at a cost of about $60 per square foot and because of the large expense, RAB is not recommending covering the skate park. He added that Council was not interested in adding lights last year but added that they do not have to be as intense as playing field lights and lighting could expand the hours of use of the skate park. Discussion ensued on the need to amend the CUP where public input from neighbors could be taken. In response to a question from Roger Harlan, Ken Fisher explained that lights will make a difference in the shoulder season when there is no snow. Members supported proceeding with the amendment and going through the process with the Planning Commission. Matt Twombly described the location of street lights on Sullivan Avenue. Joe Kernan hoped that the skate park doesn't become a nuisance for the neighborhood but felt lighting should be explored. It was decided to check into cost before applying for an amendment to the CUP. Mr. Fisher explained the interest in expanding the use of the skate park to allow bicycles and scooters which is becoming a trend. Jim Hier recalled that bikes were not allowed because of potential damage to the surface finish. The Mayor suggested talking with other facilities that have done this to determine if there are maintenance issues. Roger Harlan expressed surprise that this is something we would want to allow and asked for assurance that both uses are compatible and maintenance manageable. John Halsey suggested designating blocks of time for scooters and bikes and commented on the success of self-policing at the facility. Mayor Williams felt that the ratio of bikes and scooters is much lower and the jump park was designed for these uses. RAB will review lights and uses.

A master plan for the north and south ends of City Park is a project slated for this year, which will be coordinated with the reconstruction of Sullivan Road.

Ken Fisher stated that staff recently removed three *fake* signs that looked very official at the Library and Education Center campus citing an ordinance number that leash laws are strictly enforced. Designating off-leash areas, besides dog parks, is something done in other communities at certain times of the day, for instance or permanently. The City Manager has asked RAB to explore the Library field which is pretty well self-policed and perhaps some trails on an alternating day basis. Jim Hier noted that a recommendation on off-leash trails should come from some one very familiar with trail use and probably not the Council, but he supports exploring the idea. Liza Simpson commented on the *unofficial* Library and Education Center *dog park* which seems to work well, acknowledging that managing trails is a lot more complex. Joe Kernan supported the proposal. The North 40 parcel was identified as another potential area, but is currently heavily programmed. Candace Erickson felt it important the Library and Education Center campus be in good condition for children attending class there. The kids should have an opportunity to enjoy the field without dogs. She wasn't supportive of off-leash trails. The Mayor didn't feel that the North 40 is used by dog owners enough to spend time formulating a policy for it. RAB will explore the off-leash proposal for the Library and trails.

Ken Fisher spoke about improvements to the dog park. The user group raised a little over $8,000 intended for a shade structure. It is not recommended to spend additional City funds at this time. Liza Simpson felt it unlikely that the group will raise much more money and if it is determined that the shade structure design will benefit a lot with the financial assistance of a couple of thousand dollars from the City, it is a worthwhile investment. Candace Erickson agreed and felt improvements to the dog park can be made incrementally. Joe Kernan felt the City should continue to invest in the dog park. Other parks have been a priority. The Mayor encouraged looking at landscaping for shade rather than a structure. Matt Twombly added that irrigation would need to be added to the project scope. Gauging the use of the park was discussed.

Mr. Fisher reported that RAB suggests changing the name of the Racquet Club to Park City Recreation Center; all members concurred. Mr. Fisher updated members on the MPD process for the Racquet Club before the Planning Commission. The project will return to Council on December 3, 2009. He explained that staff continues to work on increased awareness for participation in programs by the under-served population and discussed a Halloween safety session scheduled in City Park tomorrow. Roger Harlan applauded the outreach program which is his highest recreation priority.

Prepared by Janet M. Scott, City Recorder

PARK CITY COUNCIL MEETING
SUMMIT COUNTY, UTAH
OCTOBER 29, 2009

I ROLL CALL

Mayor Dana Williams called the regular meeting of the City Council to order at approximately 6 p.m. at the Marsac Municipal Building on Thursday, October 29, 2009. Members in attendance were Dana Williams, Candace Erickson, Roger Harlan, Jim Hier, Joe Kernan, and Liza Simpson. Staff present was Tom Bakaly, City Manager; Mark Harrington, City Attorney; Jacquelyn Mauer, Planner; Kayla Sintz, Planner; Matt Cassell, City Engineer; Max Paap, Special Events Manager; Brian Anderson, Parking Manager; and Wade Carpenter, Chief of Police.

II COMMUNICATIONS AND DISCLOSURES FROM COUNCIL AND STAFF

None.

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

North Silver Lake Appeal – Deer Valley resident Lisa Wilson discussed her testimony a couple of weeks ago regarding her formula for determining density. She began addressing the removal of trees on open space property.

City Attorney Mark Harrington interrupted her, explaining that comments on the appeal are inappropriate tonight. The other party is not present to hear her comments and the Code prohibits the Council from hearing any testimony other than at scheduled appeal hearings. A continuation of the hearing is scheduled for November 12, 2009. He offered to meet with her about he process if the appeal process is still unclear to her. Jim Hier acknowledged that he misinformed Ms. Wilson and apologized for encouraging her to comment under Public Input. The City Attorney emphasized that the Council is hearing the matter as an appeal and acting as a judge and all parties should have the same opportunities. Ms. Wilson expressed her frustrations with the process, stating that she is not getting information from the Planning Department.

Mr. Harrington advised that the appeal process is structured to guarantee fairness to all sides and the dialog needs to include the other party with notice. Unfortunately, the rules create a degree of formality. The Council must make its decision openly with all parties which often creates more process. Ms. Wilson asked to see the associated section of the Code and complained that members have already made up their minds without seeing public input because that is not provided until the last minute. The Mayor took exception to the comment.

IV WORK SESSION NOTES AND MINUTES OF MEETING OF OCTOBER 8, 2009

Roger Harlan, "I move approval of the work session notes and the minutes of the meeting of October 8, 2009". Candace Erickson seconded and Joe Kernan disclosed that he will not be voting as he was not in attendance. Motion carried.

Candace Erickson	Aye
Roger Harlan	Aye
Jim Hier	Aye
Joe Kernan	Abstention
Liza Simpson	Aye

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

1. Consideration of an Ordinance amending the Land Management Code for Master Plan Developments in the HR-2 Zone – and

2. Consideration of an Ordinance approving the Glory Hole Subdivision, located at 518 Deer Valley Drive, Park City, Utah - The Mayor opened the public hearings on Items 1 and 2; there were no comments from the audience. He requested motions to continue. Joe Kernan, "I move to continue Item 1 to December 3, 2009 and Item 2 to January 7, 2010". Liza Simpson seconded. Motion unanimously carried.

3. Consideration of an Ordinance approving the 1440 Empire plat amendment, located at 1440 Empire Avenue, Park City, Utah – Planner Kayla Sintz introduced applicant Mark Fisher, architect Craig Elliott, and Attorney Eric Lee. The subject property is located in a RC-RD zoning district and the proposal is to plat a metes and bounds parcel into Lot A of the 1440 Empire Avenue Replat. The proposed lot will be 12,882.62 square feet more or less, and will accommodate future construction. She explained that a conditional use permit review for a multi-unit dwelling application has also been received and the project is proposed to be deed-restricted for affordable housing. A structure can not be constructed across a lot line. This application was heard before the Planning Commission on October 14, 2009 with the addition of Conditions of Approval Nos. 3 and 4 recommended by the City Engineer. The Planning Commission forwarded a positive recommendation and she referred to public input included in the meeting packet. The Mayor opened the public hearing.

Rick Margolis, 1422 Empire Avenue, stated that he is opposed to the plat amendment and the conditional use permit. He stated that he did not receive notice for meetings on this project and it was a fluke that he attended the Planning Commission meeting where he gave input, but he wasn't familiar with the General Plan or LMC at that time. He testified that he believed the project was too dense and Empire Avenue too crowded. There was no analysis of what else could be built there. The 13,000 square foot parcel with a 48 bed housing project only provides 12 parking spaces and no visitor or delivery parking. He thought that plat amendment and conditional use permits were heard together. The hearing was continued because of parking concerns and he left the meeting but found out later the plat was approved without public input. He reiterated that he never received notice and didn't have an opportunity to render meaningful public input. The General Plan encourages public input and the LMC addresses notice which he didn't receive. There is no public input in the staff report from the neighborhood and Mr. Margolis asked that the matter be remanded to the Planning Commission so it can hear the arguments against the project which is information the Commission did not have. He stated that the LMC provides that there must be findings for consolidation. This proposal adds 9,000 square feet to 4,000 square feet to create potential for much more density and one of the findings is to protect the general welfare of Park City and the concept must be in conformance with the General Plan. He spoke about potential traffic congestion, the lack of an analysis and non-conformance with the General Plan; the project should be denied or remanded. Resort base is described in the General Plan as skier based residential which this project is not. East of Empire Avenue provides for skier bed base while allowing for transition to residential and the General Plan map designates the area as low density. Mr. Margolis stated that just because affordable housing is an important goal, doesn't mean it should go anywhere. Lower Park Avenue encourages affordable housing but not the vicinity of the resort. None of this was brought before the Planning Commission and Mr. Margolis reiterated his comments again and again. He asked that Council deny the plat consolidation or at least remand it back to the Planning Commission to be heard together with the conditional use permit.

Bruce Beard, counsel for Mr. Magolis and David and Rosemary Olsen, stated that the recently adopted state law requires that if the City elects to give notice beyond the bare minimum required, then notice has to be given to all parcel owners. There is no question that notice was not given. The home owners association received notice but this does not comply with state law. In addition to the violations of the LMC regarding the combination, under state law a plat amendment can not be approved if it causes any harm to a person or the public. By definition, the plat amendment is required to allow a conditional use and the plat amendment will harm the neighborhood with regard to massing, views, lighting, parking, over-crowding and it violates the General Plan. He suggested sending it back to the Planning Commission.

David Olsen, 1430 Empire Avenue, stated that this proposal has potential adverse impacts on them. He spoke about massing, the lack of parking, and the lack of notice. He requested a full hearing before the Planning Commission.

Rosemary Olsen complained about the lack of notification of adjacent property owners. She urged sending this back to the Commission so the neighborhood has input.

With no further comments, the public hearing was closed. Attorney Eric Lee stated that the concerns raised by the public will be addressed in the conditional use review process because these are CUP issues and the process is still before the Planning Commission. If the CUP is approved, it can be appealed to the City Council. The applicant is not interested in a remand on the plat. The notice issue falls with the City.

Mark Harrington believed that legal notice was provided but there is an allegation of confusion at the hearing. Mailed notice is a courtesy and the Code specifies that any defect shall not be a reason for delay or lack of action by the body. It is appropriate for the Council to determine if there was confusion among the public which weighs into the decision to remand the project. He further suggested that the applications be heard concurrently. Mr. Elliott explained that it was their intention to construct this fall which is no longer realistic, and are now looking at the spring and timing is a concern. The intention was to clean up the metes and bounds remnant parcels. Mark Harrington discussed members making a decision tonight or remanding the application to the Planning Commission.

Candace Erickson stated her preference to remand it to the Planning Commission so that public input can be considered. Liza Simpson stated that she is not as concerned about the noticing but more about the confusion at the meeting and felt the Commission should hear the public input. Jim Hier didn't disagree but was not ready to dismiss the item and Joe Kernan noted that he would rather deal with a decision tonight if a remand will delay construction in the spring. Roger Harlan supported remanding this to the Planning Commission.

Jim Hier emphasized that the use is not included in the staff report because lot combinations are separate actions from the conditional use permit process which typically occurs later. The lot combination staff report does not provide use or density information and this information is important to consider. He agreed that the General Plan map designates this area as low density residential. A master plan of the lower Park Avenue area may suggest that the General Plan be revised for consistency. He didn't believe that affordable housing is specifically precluded by the General Plan and is allowed in all areas of the City but felt this project should be sent back to the Planning Commission.

Applicant Mark Fisher stated that John DeJoria owns the property who has graciously agreed to donate the land and pay for the building because he believes in affordable housing and wants to give 48 young adults some place to live. Mr. Fisher agreed to a remand but is surprised by the opposition because he thought this is a great project for the City. Affordable housing is a high priority and from this location, employees can walk to work. If this gets too *crazy*, Mr. Fisher expressed that he will lose faith in the system because this is something special and important to the town.

Craig Elliott voiced that he has never had a problem processing two applications at the same time. This is the way 1140 Empire has been processed; both applications were submitted simultaneously.

Candace Erickson felt that the location for affordable housing needs to be reviewed by the Planning Commission and the difficulties created in neighborhoods when parking is deficient. She prefers that the Planning Commission look at all aspects of the project and take public input. Liza Simpson expressed that her biggest concern is that people were not heard. Eric Lee felt it important to note that the remand is going back because of noticing, the Council is not necessarily directly the Commission to review CUP criteria in connection with this application. Jim Hier believed this is not a notice issue as much as a process issue, but it doesn't matter, "I move we remand it back to the Planning Commission because of a notice issue and that the Planning Commission be made aware of the density that could exist right now under the existing configuration versus the density that will be allowed under the revised plat combination and that the statement regarding the access of the parcel be checked for validity". Liza Simpson seconded. Motion carried unanimously.

4. Consideration of an Ordinance approving the Eagle Point Subdivision Phase 3 Lots 47 and 48 Amended Plat, located 7 Eagle Landing Ct., Park City, Utah – Jacquie Mauer explained that the proposed plat adjusts the lot lines between Lot 47 and 48; a portion of the existing Lot 47 would be conveyed to be included within Lot 48. On October 14, 2009, the Planning Commission forwarded an unanimous positive recommendation and no public input was received. The Mayor opened the public hearing; there were no comments. In response to a question from Jim Hier, Ms. Mauer indicated that the adjacent property owner is in agreement. Jim Hier, "I move we approve the plat amendment for the Eagle Point Subdivision Phase 3, Lots 47 and 48 as defined in the findings of fact, conclusions of law, and conditions of approval in the draft ordinance". Liza Simpson seconded. Motion unanimously carried.

5. Consideration of an Ordinance approving the 146 Daly Avenue Plat Amendment, located at 146 Daly Avenue, Park City, Utah – Kayla Sintz explained that the subject property is located in the HR-1 zoning district and a non-historic duplex sits across a number of lot lines. A Historic District design review was previously completed by the applicant for exterior work, and the building permit is contingent on approval of the plat amendment. The proposal combines Lot 22, portions of Lot 21 and Lot 23 in Block 74, Millsite Reservation, as well as half of vacated Anchor Avenue into one lot of record. The Planning Commission did not receive public input and forwarded a positive recommendation on October 14, 2009. The Mayor opened the public hearing; there were no comments from the audience. Liza Simpson, "I move that we approve the 146 Daly Avenue plat amendment according to the findings of fact, conclusions of law, and conditions of approval found in the staff report". Roger Harlan seconded. Motion unanimously carried.

6. Consideration of a Service Provider/Professional Services Agreement with Ward Engineering Group for engineering services related to the 2010 reconstruction of Sandridge Drive in the amount of $84,075 – Matt Cassel stated that Sandridge is slated for reconstruction on the OTIS schedule. Eight firms responded and were evaluated and Ward was ultimately selected. In response to a question from Joe Kernan, Mr. Cassel discussed evaluation criteria and more specifically, Alliance's role in current City projects. Joe Kernan, "I move we approve the service provide agreement with Ward Engineering in the amount of $84,075". Candace Erickson seconded. Motion unanimously carried.

7. Consideration of the 2010 Sundance Supplemental Agreement – Max Paap introduced Brian Anderson, Parking Services Manager and Sara Pearce, Sundance Institute. Council should specifically consider approval of a partial street closure of Heber Avenue between Park Avenue and Main Street from January 19 to February 1, 2010. In October 2005, the City and Sundance entered into a long-term agreement from 2007 to 2018 with an option to renew for an additional ten years. Sundance has agreed to annually review the dates of the Festival to reduce possible conflicts with the business community while maintaining its success. In 2008, Council asked that plans be rolled out earlier for the 2009 Festival and in keeping with that request, this is heard today.

He pointed out that the plans for the 2010 Festival have the following modifications, updated Main Street and Park Avenue parking, traffic mitigation and circulation plan, and closure and programming of the streets adjacent to the Kimball Art Center on the north travel lane of Heber Avenue. He noted that additionally the HMBA has requested an analysis of the use and pay structure of the China Bridge Parking Structure. Other changes include the relocation of the music café to 751 Main Street, official Sundance sponsor use of The Yard on Kearns Boulevard, use of the City's Recreation Building and Miners Hospital in City Park, and the prior approval of the 2010 supplemental plan for the Racquet Club venue.

With regard to the traffic and circulation plan, Mr. Paap explained that drop and load zones will again be created along both sides of Main Street between 9th Street and the Swede Alley intersection to the south of the Brew Pub lot. This plan will begin on Tuesday, January 19, two days before the Festival actually begins to help facilitate an easier and more efficient move-in on Main Street. City staff will monitor traffic flows and parking inventories and has the ability to return the east side of Main Street to a pay and display program during the second week of the Festival as traffic impacts wane. The closure and programming of the north travel lane of Heber Avenue is intended to create space for sponsor activities and temporary structures. Heber Avenue, the north travel lane, will become a venue for official Sundance sponsor venues this year and closed to parking and vehicular traffic. The purpose is to provide a central gathering festival location for Festival goers and the local community; no official Sundance credentials will be required for entrance. This proposal results from a success of staff efforts and a commitment from Sundance toward increasing long-term relationships with Main Street. This venue will create a one-way travel lane, buses only, along Heber Avenue west bound from Swede Alley to Park Avenue. The plan has been presented to the HMBA at its September Board of Director's meeting and was positively received. Staff will continue to work with Sundance to complete a more detailed operational plan as it continues to work with sponsors on final details. This plan replaces the tent that existed in the 2009 Festival which served as the music café, now located at 751 Main Street.

Mr. Paap explained that the China Bridge employee parking permits and an analysis of a slide pay structure throughout the structure is a request from Main Street. At a recent HMBA meeting, there was some talk among the membership about getting good use out of China Bridge. It was felt that times during the latter part of the Festival, it wasn't quite full. Brian Anderson emphasized that the plan is based on the goal of effective traffic mitigation management. He acknowledged a bigger parking demand up-front. Demand dropped off significantly the second weekend of the Festival last year because of the Presidential Inauguration, but the two prior years' numbers were quite close. Setting a fluctuating rate is difficult and confusing to patrons and it is staff's recommendation to keep the rate at $20; and again it is less about the revenue and more about traffic mitigation. Maintaining emergency response access to Main Street is also important. The north Marsac Building lot and the roof of the Old China Bridge Parking Structure will be available for employee parking. In response to a question from Liza Simpson, there is a guaranteed parking pass for sale at a premium rate at $350 and the CB permit can be used in the upper levels of the parking system.

The Mayor commented on the high number of vacant parking spaces the second week last year and Mr. Anderson pointed out that in prior years the second week has rebounded and again discussed the circumstances last year. Sara Pearce commented on the importance of consistent messaging. Liza Simpson stated that every year she sees the same thing and it is extremely bad public relations on behalf of the City to be charging people to park in a garage that is half empty. There should be some way to communicate that a different fee will be charged the first half of the Festival. During the week it could be free, and then returning to priced parking on Thursday, Friday, Saturday and Sunday. In response to a question from Ms. Erickson, Mr. Anderson indicated that people in recent years have not been turned away because the lot is full although parking in the evenings tend to peak.

Max Paap stated that he encouraged the HMBA to formulate recommendations on parking for this work session, but did not receive a response. Jim Hier commented on the $20 parking fee for patrons of establishments on Main Street which is difficult for businesses and he stated that he would like to explore fees further, like reduced fees beginning on Monday of the second week. Staff should contact the HMBA again. Discussion ensued on traffic mitigation and the problems with circulation and congestion in the past without incentives. With regard to policy questions, Tom Bakaly discussed the goal in maximizing the convenience of coming to Old Town without creating traffic problems. Candace Erickson suggested that Main Street employers coordinate efforts to cover the cost for shared guaranteed parking for employees. The Mayor invited public input.

Jesse Shetler, No Name Saloon and Butchers, asked questions about the parking program which Brian Anderson answered. It was pointed out that during the second week last year; CB holders were permitted to park in the $20 lot because of availability of spaces. Mr. Shelter commented that many of his long-term employees have Sundance figured out and make plans accordingly to get to and from work. If the plan is not about revenue, costs should be kept down. He felt that a crowded downtown is a good thing for businesses during these poor economic times.

Ms. Erickson felt it would be helpful to know what businesses are operating during Sundance and those renting to private parties. Roger Harlan expressed interest in assisting employers and employees. Sara Pearce added that the $20 lot is the most expensive parking in town and it is a public relations problem. Sundance is in its third day of national ticket sales and she was pleased to report that sales are up a little bit. If there are changes to parking, she offered to get the word out through her people.

Jen Butler, Sugar Buzz on Heber and Main, expressed concerns about access to her business since it will be a bus only zone. She suggested installing directional signs to Park Avenue businesses and allowing the display of sandwich sidewalk signs by the City. Max Paap noted that staff is working on signage for businesses and police officers will let people into their establishments.

John Troilo, Davanza's Pizza, explained that his concern is providing delivery personnel access to and from the restaurant for deliveries. Max Paap explained that the officers will be informed. Sara Pearce suggested holding an off-site meeting with businesses about the Heber/Park Avenue issues.

Mr. Paap explained that in past years The Yard has operated as a venue that housed activities that were not officially recognized by Sundance Institute as sponsors, however this year, the programming and activities are official sponsor activities. Sundance will continue to operate the inventory of parking adjacent to that facility as a park and ride which is an essential function to the success of the screenings at Temple Har Shalom. The conditions of approval for all activities will be consistent with the previous activities approved at The Yard, not just the Festival. As in past years, final operations will ensure a plan that will address impacts to the neighborhood and affected businesses as well as any transit concerns. There were no questions or comments from the Council or the audience on this or the use of City facilities at Miners Hospital and the Recreation Building.

He explained that the supplemental plan for the 2009 Festival was recapped on March 5, 2009 with very few negative comments due to the change in starting the final screening time at the Racquet Club at 8 p.m. Sundance has submitted a proposed operations schedule for 2010 that is similar to the 2009 plan. The 8 p.m. screening time ensures a greater likelihood of emptying the venue and parking lot by 10 p.m. It is required that Sundance continue to operate the customer service line for the 2010 Festival as it did for 2009.

Liza Simpson countered that the phone line did not operate well in 2009; it provided information for patrons but was not a hot line for complaints. Ms. Pearce indicated that they don't plan on doing anything different this year and want to maintain the customer service name for the number. With regard to internal security, Mr. Paap indicated that it was uncertain who provided the service in the past and Ms. Pearce stated that she could not find anything in their records on covering the cost. The Mayor spoke about Festival patrons parking on the streets. The City Manager interjected that there were concerns expressed with set-up and it is intended to accomplish this earlier in the day. The Mayor requested public input.

Michelle Diederick, 179 Racquet Club Drive, recalled that in prior years, security guards were posted on both ends of the condominiums which did help the parking situation. She understood that people were encouraged to park in the neighborhood last year. She never received a call back after leaving a message on the hot line. She felt more information should be printed on programs so people know there is no parking at the Racquet Club. Sara Pearce explained that parking is not available at any of the venues, except the Eccles Center, and this is printed on programs but the Racquet Club can be highlighted. Ms. Diederick suggested programming the films differently to ensure that the venue is cleared by 10 p.m.

Tom Bakaly explained that if the plan is approved tonight, there can be provision that the plan for parking at the Racquet Club return. The Mayor added that there should be more discussion on the rates charged for parking in China Bridge and enforcement on the internal parking at the Racquet Club condominiums. Jim Hier interjected that access to businesses on Park Avenue and Heber should also return.

Jeff Lonn, 179 Racquet Club, stated that there were no guards last year at the entrances to the condos to prevent anyone who is not a resident from entering. There were cars turning around by their residence. Liza Simpson pointed out that guests would also be prohibited from entering and asked if the HOA would take on the responsibility of monitoring traffic. Mr. Lonn expressed that guests not an issue for them and there will always be a few who get by. He is disappointed that the City does not hold Sundance to the noise ordinance in a residential area because the event is not compatible with the neighborhood, especially the closing party. The City should hold Sundance to the 10 p.m. dead line. In response to a question from Max Paap, Mr. Lonn felt that security guards are needed all day adding that normally, the residents do not park on the street.

Police Chief Wade Carpenter emphasized that the City can not enforce parking at the Racquet Club because it is private property. Brian Anderson suggested the City could help by installing signs or getting the HOA involved.

Liza Simpson stated that she would like more information on how Sundance will get the word out about the complaint line since it didn't work last year. Liza Simpson, "I move we approve the 2010 Sundance Supplemental Agreement with the exception of the *nit list* to be resolved". The City Manager clarified that the Supplemental Agreement will be approved with further updates regarding traffic control and parking at the Racquet Club, access to businesses on Park Avenue, the customer service line, and traffic control and price structure of downtown parking. Joe Kernan seconded. Candace Erickson added that in addition to access to businesses on Park Avenue, directional signs should be considered and the turn-around at the Racquet Club should be checked. Motion unanimously carried.

VI ADDITIONAL DISCUSSION – AGENDA ITEMS

None.

VII ADJOURNMENT

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

MEMORANDUM OF CLOSED SESSION

The City Council met in closed session at approximately 2 p.m. Members in attendance were Mayor Dana Williams, Candace Erickson, Roger Harlan, Jim Hier, Joe Kernan, and Liza Simpson. Staff present was Tom Bakaly, City Manager; Tom Daley, Deputy City Attorney; Jeff Schoenbacher, Environmental Specialist; Ron Ivie, Chief Building Official; Kathy Lundborg, Water Manager; Todd Touchard, Project Manager; and Mark Harrington, City Attorney. Liza Simpson, "I move to close the meeting to discuss property and litigation". Joe Kernan seconded. Motion carried unanimously. The meeting opened at approximately 4:30 p.m. Jim Hier, "I move to open the meeting". Candy Erickson seconded. Motion unanimously carried.

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

Prepared by Janet M. Scott

____

Janet M. Scott, City Recorder

PARK CITY COUNCIL MEETING
SUMMIT COUNTY, UTAH
NOVEMBER 5, 2009

I ROLL CALL

Mayor Dana Williams called the regular meeting of the City Council to order at approximately 6 p.m. at the Marsac Municipal Building on Thursday, November 5, 2009. Members in attendance were Dana Williams, Candace Erickson, Roger Harlan, Jim Hier, Joe Kernan, and Liza Simpson. Staff present was Tom Bakaly, City Manager; Mark Harrington, City Attorney; Ed Clouse, Senior Police Officer; Wade Carpenter; Chief of Police; Dave Gustafson, Project Manager; Max Paap, Special Events Manager; Bret Howser, Budget Manager; Shelley Hatch, Analyst; Katie Cattan, Planner; Tom Eddington, Planning Manager; and Matt Twombly, Project Manager.

II COMMUNICATIONS AND DISCLOSURES FROM COUNCIL AND STAFF

1. Assistant City Manager - Tom Bakaly reported that Michael Kovacs has accepted an offer for the position of Assistant City Manager and will be starting in early December.

2. Certificate of appreciation to Jack Thomas for his service on the Planning Commission – The Mayor presented the certificate to Mr. Thomas who commented that serving on the Planning Commission was an educational process and something he will take with him wherever he goes. He thanked the Council for the opportunity to participate and congratulated on the Mayor on his re-election.

3. Recognition of Senior Police Officer Ed Clouse as the School Resource Officer of the Year and the Park City Police Department as the School Resource Agency of the Year for the state of Utah – Utah Council for Crime Prevention – Mike Milne, Deputy Director of the Utah Council for Crime Prevention, explained that they are a non-profit organization operating about 15 different crime prevention programs. One of their functions is to act as trustee for four different law enforcement associations, one of those is the School Resource Officers Association of Utah. He stated that Officer Ed Clouse received the most nominations in any category and is deserving of the award. Officer Ed Clouse thanked City government, the Council and the Police Department for making the School Resource Officer position possible. Mr. Milne added that the Park City Police Department is also honored as a School Resource Officer Agency of the Year. Chief Wade Carpenter also thanked the Council members for their support.

4. Resolution celebrating the 2008-2009 Marsac Building Renovation, Park City, Utah – The Mayor hoped the audience had an opportunity to tour the building earlier and read the resolution into the record. He specifically recognized Dave Gustafson, Project Manager who then thanked FFKR and Jacobsen Construction for their outstanding contributions toward the success of the project.

5. Council questions and comments – Joe Kernan thanked Matt Cassel and Liza Simpson for their organizational efforts on the Employee Transfer and Discharge Appeal Board. He stated that he has noticed for many years that not all candidates follow the rules on the placement of campaign signs. He suggested that the City just accept that not all signs will be compliant or if not, the rules should be loosened. Candace Erickson indicated that she is willing to discuss this at the Visioning Session and personally felt that playing by the rules is part of the deal. Mr. Kernan believed that the campaign reporting statements are somewhat confusing for candidates and readers to understand and recommended creating a form to itemize type of contributions. The press often lumps in-kind with cash contributions which makes reporting misleading. Tom Bakaly noted that he will check with Cindy LoPiccolo and report back.

Jim Hier reported on a joint transportation meeting where hiring and maintaining bus drivers with the threat of H1R1 were topics of discussion. Liza Simpson thanked Max Paap for opening all of Main Street on Halloween; participation was over-whelming and it was a lot of fun. PCMR is hosting a benefit day for the Youth Winter Sports Alliance which runs from opening day to December 18.

Roger Harlan thanked Jan Scott for organizing the open house. He congratulated Mayor Williams and Council-elect Alex Butwinski and Cindy Matsumoto. Mr. Harlan relayed that he also attended the joint transportation meeting and added that Officer Ed Clouse was also appropriately honored at the Board of Education meeting. Consistent with his pledge to reduce his own carbon footprint, he commented on the ease of taking the bus to the meeting tonight.

Candace Erickson spoke about the scarecrows at the Farm which was a successful event and commented on the RAB meeting where the Racquet Club revised remodel plans were reviewed. She was pleased with the revisions which will be presented to Council shortly. The Historical Society reached its goal of raising $8.9 million today and she encouraged the public to tour the new museum. She personally thanked John Stafsholt for running for Council and continuing to attend meetings. The Mayor welcomed Cindy Matsumoto and Alex Butwinski to the Council and also thanked Mr. Stafsholt.

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

Marsac Building Remodel - Resident and Planning Commissioner Charlie Wintzer congratulated the City on the Marsac Remodel, a project we can all be proud of because it demonstrates that an existing building can be remodeled to fit a use while making it more efficient and still maintaining the character of Park City.

IV WORK SESSION NOTES AND MINUTES OF MEETING OF OCTOBER 15, 2009

Jim Hier, "I move approval of the work session notes and minutes of the meeting of October 15, 2009". Roger Harlan seconded. Motion unanimously carried.

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

In response to a question from Liza Simpson about the Bonanza Drive contract, Matt Cassell explained that he has been working with the School District on designing a separate bus stop for school buses. Liza Simpson, "I move we approve Consent Agenda Items No. 1 and 2". Joe Kernan seconded. Motion unanimously carried.

1. Consideration of a Resolution celebrating the 2008-2009 Marsac Building Renovation, Park City, Utah – See Communications from Council and Staff.

2. Consideration of Modification No. 2 to the UDOT Consultant Service Agreement with H.W. Lochner for engineering services related to the Bonanza Drive reconstruction project in the amount of $146,577 – Staff recommends approval.

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

1. Consideration of a Master Festival License for the Round Valley Dry Land Race to be held on November 7, 2009 – Max Paap explained that the Cache Valley Mushers submitted an application requesting a MFL for this first year event. He stressed that all dogs will be on leashes and activities are scheduled from 7 a.m. to 10 a.m. No trail closures will be required. The Mayor opened the public hearing; there were no comments. Liza Simpson, "I move we approve the Master Festival License for the Round Valley Dry Land Race as conditioned in the staff report". Joe Kernan seconded. Motion unanimously carried.

2. Consideration of an Ordinance amending Title 4, Licensing, Chapter 2, Business Licensing in general, of the Municipal Code of Park City, Utah – Bret Howser explained that the amendment provides for quarterly proration of business license and service enhancement fees, as requested by Council. Currently, there is no proration system applied to business license fees which run on a calendar year although an applicant applying for a license between October 1 and December 31 can pay 125% of the amount otherwise imposed for new licenses issued and the license is valid through December 31 of the year following the year of issuance. He described the steep late fee penalties. Staff looked at 12 other cities where it was found that Park City's penalties are comparable to other Utah communities but resort towns were somewhat lighter. Applying proration systems was mixed and some cities issue a rolling license where business licenses are renewed on their anniversary dates. Mr. Howser stated that staff recommends maintaining the current penalty structure with the ability for staff to waive penalties for businesses that have a record of on-time and full payment. Staff supports the quarterly proration system which seems more fair for businesses,

excluding the administrative fee. Some businesses have requested a rolling license but staff feels this would be an administrative burden in setting up the system.

Jim Hier suggested that staff explore the cost in modifying the system because renewing all licenses in January seems like a huge workload and distributing them throughout the year may be easier to process. Candace Erickson disagreed and supported the concept of keeping it simple and consistent by setting December 31 as the dead line for renewals. Shelley Hatch commented on the pros and cons of both approaches and Ms. Erickson clarified that she is flexible with regard to the Department's preference.

Joe Kernan expressed that he supports staff's recommendation to keep renewals annually and prorations quarterly. For the benefit of Liza Simpson, Ms. Hatch described the delinquent notice process and advised that the average annual license fee is $284. Ms. Simpson felt that the applicant should not be burdened with providing a payment history if the City already has a record and she recommended revised language. Roger Harlan encouraged staff to monitor the process after the amendments have been in effect to justify the subsidy of $11,000 with this program. Joe Kernan felt the waiver concept is a fair policy. The Mayor opened the public hearing.

Mike Sweeny, HMBA, requested that the item be continued so that staff can address the HMBA membership or Board and the group has an opportunity to review the amendments and report back to Council.

Jim Hier felt that timing of implementation is important. The amendment provides a reduction in fees and flexibility in relinquishing fines should there be good cause. He doesn't support waiting because the amendments benefit the license holder. He clarified that the suggestion on exploring rolling licenses be done over the next year. If the HMBA Board recommends additional amendments, those can be considered at another time. Discussion ensued on waiting two weeks and Shelley Hatch explained that there are potential issues with programming the Eden computer system.

Candace Erickson believed that this affects the HMBA because reduced business license fees affect its annual BID revenue. Bret Howser advised that the BID portion is not prorated, only the service enhancement fees. Ms. Erickson stated that she has a problem with that approach. The public hearing was closed, but discussion continued with Mike Sweeney about Board review where he argued that penalties are of concern. Jim Hier explained that the only impact on penalties is the ability to waive them for good cause; there is no change in the penalty structure. Mr. Sweeney indicated that he feels penalties should be stricter. Jim Hier continued to explain that there is no harm in what Council is doing tonight and if the HMBA has additional policy concerns they can be reviewed up at another time. It was clarified that amending the penalty structure is not part of this consideration but the issue continued to be debated.

Liza Simpson, "I move that we approve the Ordinance amending Title 4, Licensing, Chapter 2, Business Licensing in general, of the Municipal Code of Park City, Utah with the changes as adjusted to be a penalty waiver administrative policy". Jim Hier seconded. Motion carried. Council directed Mr. Howser to talk to the HMBA about the action.

Candace Erickson	Nay
Roger Harlan	Aye
Jim Hier	Aye
Joe Kernan	Aye
Liza Simpson	Aye

3. Consideration of an Ordinance approving amendments to the Land Management Code of Park City, Utah to address revisions to Sections 15-2.1-5, 15-2.2-5, and 15-2.3-5 clarifying attic space and Section 15-15, Definitions – Planner Katie Cattan explained that the Planning Commission requested review of several definitions in the LMC including the addition of across canyon views for CUP vantage points, suggestions for historic incentives for owners, and clarification of attic space and use within the maximum of three stories in the Historic District. She commented on the several iterations of defining *story* and ensuring its compliance before occupancy permits are issued. The definition of building footprint includes exceptions for accessory buildings without counting the square footage of the accessory buildings toward the footprint. Staff is currently working on the exception for green roofs which is not included in this ordinance. It was clarified for Ms. Simpson that a foundation can be installed for an accessory building, but not a basement or more square footage. Cross valley views as vantage points were discussed and Ms. Cattan explained that these are used for review of CUPs. Liza Simpson suggested adding language, *cross valley view directly opposite a project*. Tom Eddington added that the Planning Commission often specifies the vantage points needed for a particular application. Jim Hier stated that he doesn't object to it, but the broad description allows for a lot more analysis. He suggested not adding Ms. Simpson's wording tonight until the ordinance is tried. Ms. Cattan commented that the Planning Commission has asked for this definition on a consistent basis, specifically for review for steep slope CUPs in the Historic District. Mayor Williams opened the public hearing.

Mike Sweeney, property owner, asked why the attic space provision is only applied in the Historic District zones but not other zones in the City. Ms. Cattan explained that the maximum three story limit is only applied in the HR zones and Tom Eddington further clarified that stories only apply to the Historic District, other districts define height limitations. The public hearing was closed.

In response to a comment from Joe Kernan, Katie Cattan explained that the prohibition of adding storage space under accessory buildings is an effort to preserve them and to control the amount of habitable space. Ms. Erickson expressed her support of addressing and protecting accessory buildings because they add a lot to the Historic District inventory and supported the amendments. Jim Hier, "I move we approve the amendments to the Land Management Code as defined in the staff report". Joe Kernan seconded. Motion unanimously carried.

4. Consideration of a lease with Wintzer-Wolfe Properties for 1255 Ironhorse Drive, Park City, Utah – Mat Twombly explained that in preparation of the Racquet Club remodel project, recreation staff and activities will be displaced during the construction and staff is proposing to provide a level of service for fitness and recreation at the 1255 Ironhorse Drive location. There is enough space to provide for fitness equipment, child care, group classes and house the administrative offices. He stated that the City has already wired the building for IT services for temporary City offices during the Marsac Building remodel. Staff has negotiated with Wintzer-Wolfe Properties to hold the property for six months and based on direction from Council for the Racquet Club remodel project, lease the property for the duration of the project. The term is proposed to run from May 2010 to June 2011 and the rent is $7,000 for six months for the first lease and then $13,333 per month, if so directed. The Mayor opened the public hearing; there were no comments.

Jim Hier, "I move we authorize the City Manager to execute a lease with Wintzer-Wolfe Properties for 1255 Ironhorse Drive, in a form approved by the City Attorney in the amount of $7,000 per month for a total of $42,000 plus the security deposit of $13,333 and authorize the Exhibit A option along with that lease which then incorporates the lease period to June 2011". Joe Kernan seconded. Motion unanimously carried.

VI ADDITIONAL DISCUSSION – AGENDA ITEMS

With regard to the business license fees, Mr. Hier asked that the Lodging Association be contacted by the City regarding the administrative fee proration on all properties.

VII ADJOURNMENT

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

MEMORANDUM OF CLOSED SESSION

The City Council met in closed session at approximately 7:45 p.m. Members in attendance were Mayor Dana Williams, Candace Erickson, Roger Harlan, Jim Hier, Joe Kernan, and Liza Simpson. Staff present was Tom Bakaly, City Manager; Tom Daley, Deputy City Attorney; Kathy Lundborg, Water manager; Phyllis Robison, Public Affairs Manager; and Mark Harrington, City Attorney. Liza Simpson, "I move to close the meeting to discuss property and litigation". Jim Hier seconded. Motion carried unanimously. The meeting opened at approximately 4:30 p.m. Roger Harlan, "I move to open the meeting". Jim Hier seconded. Motion unanimously carried. The meeting for which these minutes were prepared was noticed by posting at least 24 hours in advance and by delivery to the news media two days prior to the meeting.

Prepared by Janet M. Scott

____

Janet M. Scott, City Recorder

City Council
Staff Report

PARK CITY 1884

Sustainability

Author: Matt Twombly and Jonathan Weidenhamer
Subject: Racquet Club Remodel Professional Service Provider contract award
Date: November 19, 2009
Type of Item: Administrative - Award of Contract

Summary Recommendation –
Authorize the City Manager to enter into a service provider agreement with Millcreek Consulting and Development Inc., for the project and construction management of the Racquet Club Remodel Project in the amount of $85,570 in a form approved by the City Attorney.

Topic: Racquet Club project management Professional Service Provider contract award

Background:
In September 2008, City Council approved a $547,000 contract with VCBO Architecture for architectural services for the remodel of the Racquet Club and reconstruction of the 7 outdoor tennis courts. In July 2008, City Council approved $8 million for Phase I renovation of the Racquet Club with another $2 million allocated for Phase II. This amount was based on the work done by VCBO in estimating the cost of the remodel.

As the initial design was developed, the plan was to leave the existing gymnasium and the tennis building. The tennis building was to remain under the premise that it could be upgraded at a minimal cost. The structural engineer subcontracted to VCBO investigated the condition of the tennis building in conjunction with the proposed improvements to the Racquet Club and after meetings with the Building Department on structural solutions estimated that the building would need $1.5 million in structural upgrades. Due to the required upgrades it became apparent that if the City is truly going to renovate the facility so that the tennis building will no longer be a maintenance issue and an inefficient energy user that it should be replaced.

At the May 7, 2009 meeting Council discussed the phasing plan and budget for the Racquet Club Remodel project. The Council direction from the meeting was to proceed with the Racquet Club Remodel project as one project (replace the tennis building), however after the bids are received in late winter/early spring, Council could determine a level of assurance, based on sales tax revenues, to proceed with the construction of the project or not.

In addition to the overall budget, phasing, and financing, staff also discussed several issues with Council including: Sustainable strategies, the master plan for future phases, art and other budgetary considerations to the project. Staff also discussed returning with a plan for relocation, programming and staffing during the construction.

Analysis:
Due to the overall complexity of the project, including the potential of budgetary constraints, the regulatory approval process, competition for City resources available to be dedicated to project management, and the challenging issues anticipated with the design and construction, staff believes hiring outside resources to help manage the project is the best and most cost efficient way to implement Council goals. Staff believes there will be cost-savings introduced by award of this contract beyond the cost to provide the services.

Staff advertised a request for proposals/qualification (RFP/RFQ) for the consulting services of a project/construction manager in the Park Record on October 17th and 21st, 2009. There were five consultants submitting proposals; Millcreek Consulting and Development, Jack Johnson Co, Target Enterprises, Construction Control Corporation, and Summit Construction Management Services. The scope of the proposals varied greatly between the consultants and from the outlined scope provided in the RFP/RFQ.

Millcreek Consulting was closest to the scope from the RFP and lowest overall cost for the project. Millcreek estimated 90 hours pre construction and 336 hours during construction for totals of $20,050 preconstruction and $65,520 during construction. One of firm's submitted a cost that stipulated a fixed fee of 2% of construction costs (approx. $200,000) while others submitted proposals between $218,000 and $328,000. The selection committee of Matt Twombly, Jonathan Weidenhamer, Dave Gustafson and Ken Fisher selected Millcreek Consulting based on their proposed scope, overall fee, and the quality of projects managed in the Park City area.

Millcreek Consulting has demonstrated experience successfully managing large and complex projects in Park City including: the USSA Center of Excellence - an institutional/recreation building taken though annexation, and challenging Master Planned Development and Conditional Use Process - this project was delivered on time and under budget; Sky Lodge; Tower Club at Empire Pass; and additionally Millcreek provides development consulting services to the Olympic Sports Park.

Millcreek has demonstrated an ability to choreograph the process between the architect and engineers and general contractor on behalf of the owner. This choreography, staff believes will accomplish a more efficient development process and realize cost-savings during design and construction. Specifically, Millcreek will drive the value engineering process with the architect, identify best products, materials and efficient operating systems realizing an overall cost saving to the project. Millcreek will review the change order process to scrutinize the adjustments to the design and costs, and assist in the simplification of architectural plans and documents to make them "more buildable." Millcreek brings 20 plus year experience managing projects regionally, familiarization with local construction companies and practices, bid process, and proven track record saving money for owners.

The proposed contract splits the scope into two phases of work: 1)Pre-construction and government approvals, and 2) Construction Management. Staff has separated the scope so that after completion of Phase I (bidding the project) the decision to proceed with Phase II can still be re-visited as directed by Council. For the pre-construction, Phase I it is anticipated that the consultant will: a) Engage and participate in the government public process, at Planning Commission, City Council, and other public forums; b) Coordinate and ensure the construction documents prepared by the architect are complete, accurate, and meet all City policies and building codes; c) Provide cost estimates and review of budgets; d) Propose cost savings; and e) Help City staff with the bidding of the project.

Phase II - Construction Management includes: Coordination and review with City staff, VCBO, Building and Engineering on the management of the construction and contractor in accordance with the proposed schedule including: submittals, subcontractor acceptability, weekly meetings, scheduling, RFI, ASI's, PR's, change order requests, payment requests, Green building practices, contract closeout, Owner contractors, Public utility contracts, construction mitigation plan, and neighborhood complaints.

The overall goal for staff and the consultant is to ensure the timely completion of a highly scrutinized public facility meeting the needs of the Recreation Department as outlined in the feasibility study, and based on Council, Commission and staff recommendations; within budget and in accordance with all codes and requirements of construction contracting for public agencies. The completed project shall also provide an aesthetically pleasing, sustainable and energy efficient facility consistent with the City's values and Council goals.

Department Review: This report has been reviewed by representatives of Sustainability, Legal Departments and the City Manager's Office and their comments have been integrated into this report.

Alternatives:

A. Approve the request, and authorize the City Manager to execute the service provider agreement as attached: (Staff recommendation)

B. Modify the request: Council could choose to modify the agreement, which would likely delay the schedule to bring the consultant on board for the project.

C. Deny the request: Council could choose to not use outside resources for the project at this time. The impacts to staff resources and council priorities are discussed in the significant impacts section below.

D. Continue the Item: Council may feel there is not enough information to make a decision, which may delay the use of the project resource and the proposed schedule for approvals, deliverables from the architect and bidding of the project.

E. Do Nothing: Same effect as continuance.

Significant Impacts:

The consultant fees were not anticipated in the project budget. Staff is proposing that the fees will be part of the soft costs for the project and come from the construction budget at this time. Staff is not requesting additional resources for this contract outside the existing project budget; and furthermore believes there will be cost-savings introduced by the hiring.

Currently the Recreation Manager and the Sustainability Project Manager are the only staff resources allocated to the management of the project. Although this is a highest-priority for each of them, their time commitment for this project is sometimes limited due to other job duties and responsibilities including, other capital projects, RAB and other Council priorities.

Should Council direct the City Manger to enter into this contract, staff resources will still be required for the project, although to a more moderate and balanced extent. If Council chooses not to use outside resources then staff recommends returning with further dialogue balancing workplan expectations and Council priorities to prevent significant impacts to other Council priorities especially to those undertaken by the Sustainability Economy Team such as: WALC implementation, trails, parks, Iron Horse Bus Barn, and the resort and Park/Bonanza redevelopment.

Staff anticipates that by utilizing the outside resource, staff can better utilize their resources for other Council priorities, the consulting fees will be saved in the construction costs, and a better end product realized. It is also possible for this consultant to be used to help with other high priority projects as needed. The scope of services and contract are broken into two phases of service; Preconstruction and Construction phase services, in case Council decides not to continue with the project after bidding.

Staff Recommendations:
Authorize The City Manager to enter into a service provider agreement with Millcreek Consulting and Development Inc., for the project and construction management of the Racquet Club Remodel Project in the amount of $85,570 in a form approved by the City Attorney.

Exhibits:
Exhibit A - Professional Services Provider Agreement

Exhibit A

PARK CITY MUNICIPAL CORPORATION SERVICE PROVIDER/PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into in duplicate this ____ day of _____________, 2009, by and between PARK CITY MUNICIPAL CORPORATION, a Utah municipal corporation, ("City"), and Millcreek Consulting and Development, Inc., a Utah corporation ("Service Provider").

WITNESSETH:

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

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

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

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

1. SCOPE OF SERVICES.

The Service Provider shall perform such services and accomplish such tasks, including the furnishing of all materials and equipment necessary for full performance thereof, as are identified and designated as Service Provider responsibilities throughout this Agreement and as set forth in the "Scope of Services" attached hereto as "Addendum A" and the Request for Proposals and incorporated herein (the "Project"). The total fee for the Pre-Construction Phase of the Project shall not exceed **$20,050** Dollars, and the total fee for the Construction Phase of the Project shall not exceed **$65,520** Dollars for a total of **$85,570** Dollars.

2. TERM.

The Pre-construction Phase Services term of this Agreement shall commence on the date of execution on this Agreement and shall terminate on July 1, 2010 or earlier, unless extended by mutual written agreement of the Parties. The Construction Phase Services term of this Agreement shall commence upon determination of the City Council to proceed with the project, no later than April 15, 2010, and shall terminate on December 31, 2011 or earlier, unless extended by mutual written agreement of the Parties.

3. COMPENSATION AND METHOD OF PAYMENT.

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

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

C. For all "extra" work the City requires, the City shall pay the Service Provider for work performed under this Agreement according to the schedule attached hereto as "Addendum B," or if none is attached, as subsequently agreed to by both parties in writing.

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

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

4. REPORTS AND INSPECTIONS.

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

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

5. INDEPENDENT CONTRACTOR RELATIONSHIP.

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

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

6. SERVICE PROVIDER EMPLOYEE/AGENTS.

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

7. HOLD HARMLESS INDEMNIFICATION.

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

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

8. INSURANCE.

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

A. Professional Liability (Errors and Omissions) insurance written on claims made basis with limits no less than one million dollars ($1,000,000) combined single limit per occurrence.

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

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

C. Workers Compensation insurance limits written as follows:
Bodily Injury by Accident $500,000 each accident;
Bodily Injury by Disease $500,000 each employee, $500,000 policy limit

D. The City shall be named as an additional insured on the insurance policies, 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 warrant 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.

9. <u>TREATMENT OF ASSETS</u>.

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

10. <u>COMPLIANCE WITH LAWS</u>.

A. The Service Provider, in the performance of this Agreement, shall comply with all applicable federal, state, and local laws and ordinances, including regulations for licensing, certification and operation of facilities, programs and accreditation, and licensing of individuals, and any other standards or criteria as described in this Agreement to assure quality of services. Unless otherwise exempt, the Service Provider is required to have a valid Park City Business License.

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

11. <u>NONDISCRIMINATION</u>.

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. <u>ASSIGNMENTS/SUBCONTRACTING</u>.

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. <u>CHANGES</u>.

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

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

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

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

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

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

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

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

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

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

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

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

18. TERMINATION.

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

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

19. NOTICE.

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

20. ATTORNEYS FEES AND COSTS.

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

21. JURISDICTION AND VENUE.

A. This Agreement has been and shall be construed as having been made and delivered within 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.

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

____
Tom Bakaly, City Manager

Attest:

____
Jan Scott, City Recorder

Approved as to form:

____
City Attorney's Office

Millcreek Consulting and Development, Inc.,
3017 E. Kempner Rd.
Salt Lake City, UT 84109

Tax ID#: 4917987-0142

____
Signature
_Stephen M. Brown_____________________
Printed name
____
President

STATE OF UTAH)
) ss.
COUNTY OF __________)

On this ____ day of ________________, 2009, personally appeared before me Stephen M. Brown, whose identity is personally known to me/or proved to me on the basis of satisfactory evidence and who by me duly sworn/affirmed, did say that he is the President of Millcreek Consulting and Development, Inc., by Authority of its Bylaws/Resolution of the Board of Directors, and acknowledged that he signed it voluntarily for its stated purpose as President of Millcreek Consulting and Development, Inc., a Utah corporation.

____
Notary Public

ADDENDUM A

Scope and Fee Proposal:

In accordance with the request to provide an hourly rate and a total price (not to exceed) for the Pre-Construction phase and the Construction Management portion of the project, I have attempted to estimate the number of hours that may be required for each phase. Please understand that this is my best guess as many of the meetings may vary in length depending on the particular issues at hand especially the weekly construction meetings.

Pre-Construction Phase:
Planning and governmental approvals:
Estimate 20 hours @ $195 per hour = $3,900
Creation of CD's
Estimate 40 hours @ $195 per hour = $7,800
Balance Programming & Service with Budget & Cost Savings:
Estimate 20 hours @ $195 per hour = $3,900
Bidding:
Estimate 10 hours @ $195 per hour = $1,950
General Conditions estimate $2,500

Sub total $20,050

Construction Management:
Estimate 336 hours @ $195 per hour = $ 65,520.

Total fee: $85,570.

Additional work performed outside or in addition to the scope of services as agreed by both parties will be billed at the hourly rate of $195/hr.

Again, thank you for the opportunity to submit this proposal. I look forward to answering any of your questions and providing any additional information you might request.

Cordially,

Stephen M. Brown
President
Millcreek Consulting

City Council
Staff Report

Subject:	**Anti-Idling Resolution**
Author:	**Tyler Poulson and Diane Foster**
Department:	**Sustainability**
Date:	**November 19, 2009**
Type of Item:	**Administrative**

Summary Recommendation:
Staff recommends that City Council review the attached vehicle idling resolution (see Exhibit A) and adopt the resolution declaring Park City an "Idle-Free City".

Background:
On October 29th, Staff presented City Council with research on excessive vehicle idling and options the City has, beyond what is currently being done, to address this issue (see Exhibit B). City Council was in favor of adopting an anti-idling resolution and declaring Park City an "Idle-Free City". A local organization by the name of Clean Air Park City, a chapter of Utah Moms for Clean Air, along with many community members, appeared at the meeting to demonstrate their commitment for the resolution.

In addition to adoption of a resolution, City Council directed staff to research enforcement options, and the associated resource requirements, for a potential idling ordinance. Staff intends to present additional research on this topic as well as an update on outcomes from the resolution at Council's visioning session in January, 2010.

Department Review:
The Sustainability and Legal departments have reviewed this Staff Report and their commentary has been included.

Significant Impacts:
Park City Municipal will partner with organizations, such as Clean Air Park City, to promote education and awareness on the negative health and environmental impacts of vehicle idling. The City will purchase and display signage in potential high-volume idling areas indicating our commitment to being an "Idle-Free City". Park City Municipal will also consider other, cost-effective, opportunities to reduce unnecessary vehicle idling and its associated emissions.

Exhibits (Included):
Exhibit A – Resolution No. __-09 demonstrating the City's Commitment to Anti-Idling Efforts and Declaring Park City an "Idle-Free City"

Exhibit B – October 29, 2009 Staff Report on Anti-idling Policy

Exhibit A - Draft of Park City Anti-Idling Resolution

Resolution No. __-09

ANTI-IDLING RESOLUTION FOR MOTORIZED VEHICLES IN PARK CITY, UTAH AND DECLARING PARK CITY, UTAH TO BE AN <u>IDLE-FREE CITY</u>

WHEREAS, emissions from vehicle idling contribute significantly to air pollution, climate change and increased rates of cancer and heart and lung diseases which adversely affect the health, natural environment and economic well being of residents, guests and visitors of Park City; and

WHEREAS, petroleum-based fuels are nonrenewable and should be used wisely and not wasted; and

WHEREAS, idling a typical vehicle for longer than ten seconds consumes more fuel than restarting that vehicle, resulting in excessive emissions and wasted fuel; and

WHEREAS, Park City Municipal Code, 9-8-3, already provides that no delivery vehicle parked on Main Street or Swede Alley shall be parked with its engine left idling; and

WHEREAS, Park City Municipal Corporation presently has a Fuel Conservation and Anti-Idling Policy in place, encouraging efficient use of City vehicles to reduce operating costs and emissions; and

WHEREAS, reducing needless vehicle idling is in keeping with Park City's promotion as an eco-tourism destination and its affiliation with ICLEI (Local Governments for Sustainability); and

WHEREAS, the City Council desires to ensure that idling does not occur in idle-frequent locations such as school grounds, parking lots/garages, ski resort premises and business centers; and

WHEREAS, Clean Air Park City will, on its own and in partnership with Park City Municipal and other like-minded organizations, continue to educate residents, visitors, and guests of the dangers to the environment and health of citizens caused by the unnecessary idling of motor vehicles; and

WHEREAS, the City Council desires to take a proactive position on air pollution to protect the livability and viability of Park City and its residents, visitors and guests; and

WHEREAS, it is in the public interest that Park City residents, guests and visitors reduce vehicle emissions to protect the health, economy and natural environment of Park City and the surrounding area;

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

1. NO IDLING GUIDELINES. Park City encourages residents, guests, visitors, town employees and other individuals within City limits to not exceed a one minute idling time in their gasoline or diesel-powered motor vehicles. Exceptions to these idling guidelines include the following:

A. The vehicle is forced to remain motionless on a public road because of traffic conditions.

B. The vehicle is an emergency vehicle used in an emergency situation.

C. Vehicle idling is necessary for auxiliary power for law enforcement equipment, refrigeration units, loading/unloading lifts, well drilling, and/or farming.

D. Vehicle idling is necessary for repair or inspection of the vehicle.

E. The health or safety of a driver or passenger requires the vehicle to idle, including instances where the temperature is below 32 degrees F or above 90 degrees F.

This Resolution is not enforceable by citation or fine. Compliance shall be strictly voluntary.

2. DECLARATION. The City Council hereby proclaims Park City to be an **Idle-Free City**.

3. NO IDLING/IDLE-FREE CITY SIGNS. Park City Municipal will partner with Clean Air Park City and others in the community to install "No Idling" signs and signs designating Park City as an "Idle-Free City" at appropriate places.

4. EFFECTIVE DATE. This Resolution shall take effect upon adoption by the City Council.

PASSED AND ADOPTED this 19th day of November, 2009.

PARK CITY MUNICIPAL CORPORATION

____
Mayor Dana Williams

Attest:

____
Janet M. Scott, City Recorder

Approved as to form:

____
Mark D. Harrington, City Attorney

City Council Staff Report

Subject: Anti-Idling Policy
Author: Tyler Poulson, Diane Foster, and Rick Ryan
Department: Sustainability and Public Safety
Date: October 29, 2009
Type of Item: Informational

Summary Recommendations:
Staff recommends that City Council review this report and consider the implications of an anti-idling resolution and provide direction on the alternatives discussed in this Staff Report. Staff recommends that Council provide direction regarding adoption of a resolution.

Topic/Description:
Based on direction from City Council in the August 20th Work Session, staff has been researching anti-idling resolutions and ordinances in other communities and assessing the impact these would have on our community and the resource requirements this would entail. Additionally, the Park City Chapter of Utah Moms for Clean Air has approached certain City Council members and the Mayor with the request for an anti-idling resolution for the City.

Background:
Vehicle idling has numerous negative consequences including impacts on the environment, public health, and the inefficient use of fuel. Emissions during idling contribute to the formation of ozone and particulate matter that are major sources of pollution in Utah. Idle Free Utah (http://www.idlefree.utah.gov) states that health issues, ranging from asthma and bronchitis to cancer, have been found linked to vehicle emissions. Additionally, there is a direct financial benefit from fuel costs savings for individuals and organizations who limit their vehicle idling time. Many studies indicate a financial “break-even point” of 10-30 seconds idling time for balancing the minimal wear-and-tear on engines versus fuel saved from shutting off the vehicle.

Park City currently has an anti-idling ordinance which prohibits the idling of delivery vehicles on Main Street and Swede Alley (see Exhibit A). The City also has an internal policy which prohibits the idling of City fleet vehicles, with some exceptions for Public Safety vehicles (see Exhibit B). State of Utah law prohibits the idling of an unattended vehicle (see Exhibit C).

Also – in January, during the bi-annual Environmental Strategic Plan update, Council considered a proposal for comprehensive air quality monitoring. While Council was concerned with keeping an eye on our air quality, Council thought the cost of the program was too great, given our economic situation. Staff was directed to not implement the program at this time, but expressed a willingness to relook at the issue when the economy turned around.
As such, staff did not add "Pursue a Comprehensive Air Quality Monitoring Program" to the Environmental Strategic Plan.

Analysis:
A large number of states, counties, and cities in the U.S. currently have some form of anti-idling policy and many others are in the process of considering action on anti-idling. The existing policies range from informal support and resolutions to enforceable ordinances. As Table 1 illustrates, there is a great deal of variability in the details and scope of ordinances which have been adopted:

Table 1. Examples of Anti-Idling Ordinances

City, County, or State	Idling Time Limit	Fine Amount	Vehicles Covered
State of Connecticut[1]	3 Minutes	$100 - $500	All Vehicles
State of Massachusetts[2]	5 Minutes	$100 - $25,000	All Vehicles
Ketchum, ID[3]	3 Minutes	$100 - $300	All Vehicles
Aspen, CO[4]	5 Minutes	$50 - $1,000	All Vehicles
Minneapolis, MN[5]	3 Minutes	$200	All Vehicles
Burlington, VT[6]	3 Minutes (*recently updated from 5 min*)	$10	All Vehicles
State of Delaware[7]	3 Minutes	$50 - $1,500	Vehicles > 8,500 lbs
State of Illinois[8]	10 Minutes	$50 - $150	Diesel Vehicles > 8,000 lbs
Atlanta, GA[9]	15 Minutes	$500	Trucks & Buses
Maricopa County, AZ[10]	5 Minutes	$100 - $300	Diesel Vehicles > 14,000 lbs

[1] http://www.ct.gov/DEP/cwp/view.asp?a=2684&q=322086
[2] http://www.ci.somerville.ma.us/CoS_Content/documents/Anti-Idling%20Law%20With%20Penalties.pdf
[3] http://www.mtexpress.com/index2.php?ID=2005128170
[4] http://old.aspenpitkin.com/apps/news/news_item_detail.cfm?NewsItemID=1028
[5] http://www.ci.minneapolis.mn.us/airquality/AntiIdling_home.asp
[6] http://energy.enfield.nh.us/index.php?option=com_content&view=article&id=62&Itemid=64
[7] http://www.awm.delaware.gov/Info/Pages/TruckAntiIdling.aspx
[8] http://www.illinoisgreenfleets.org/idling/hb-4782-fact-sheet.pdf
[9] http://www.epa.gov/smartway/documents/420b06004.pdf
[10] http://www.maricopa.gov/aq/divisions/planning_analysis/rules/docs/P21-0206.pdf

Exceptions
Exceptions are frequently included in anti-idling ordinances to allow vehicle idling under certain circumstances. Common exceptions include allowing idling during weather extremes (e.g. below 32 F or above 90 F), for vehicle maintenance/repair, and for situations where personal health and/or safety is dependent on idling. Additionally, some communities allow a one-year adjustment and education period before issuing citations for their newly passed ordinance and only issue warnings to tourists and

visitors who are first-time offenders. If, in the future, Council was to consider an anti-idling ordinance, much consideration should be given to enforcement as it relates to our tourist population and associated transportation, such as tour buses.

Enforcement
A commonly mentioned challenge, and resource requirement, for communities with an anti-idling ordinance is enforcement of this law. For the majority of communities with which staff spoke, anti-idling is a very low priority for enforcement (with some communities admitting that they don't deploy any resources for enforcement) – and some communities relying on enforcement from non-police staff, such as Parking Enforcement or periodic deployment of Health Department staff. Many communities have provided hotlines for residents to report anti-idling (a Notice of Violation is then mailed).

Part of the resource requirement for enforcement depends on the idling time limit set in the ordinance; some communities have adopted limits as low as three minutes to cut down on this inefficiency (so enforcement officials don't have to wait 5 minutes to write a citation). Furthermore, communities with anti-idling ordinances contacted by staff commented that enforcement needs are, to a great extent, up to city government and how aggressively they want to pursue compliance with the ordinance. To date, there have been a small number of citations handed out in the communities contacted.

Enforcement Challenges
While Park City's Public Safety department is conceptually supportive of anti-idling regulation, there is concern about the resource requirements needed to enforce an anti-idling ordinance. Based on Public Safety's prior experience with items such as neighborhood speeding, there would be an associated increase in complaints and administrative work as residents reported violations of this type of ordinance. Public Safety felt that there is potential for a systematic approach to addressing and enforcing excessive idling which could reduce some of these resource needs and inefficiencies; however, given Council's current priorities for Public Safety Officers, enforcement would likely be better handled outside of the Public Safety Team.

For example, involving Parking Services in enforcement could increase the monitoring of idling zones and relieve the Police Department of the sole responsibility of enforcement. Additionally, an automated reporting hotline, similar to the current "Tip-A-Cop" hotline, could allow reporting of violations and enable the tracking and mailing of a Notice of Violation. A common practice in communities with existing anti-idling ordinances is to encourage enforcement officials to be sensitive to certain situations and use discretion when issuing a citation (e.g., don't ticket an elderly individual with asthma who is trying to maintain a certain temperature in their vehicle).

Even with best efforts to minimize enforcement resources needed for an anti-idling ordinance, some level of resource requirement should be expected. These enforcement requirements and the determining of enforcement personnel could be tailored to the current and future priorities of the City and its availability of resources.

Department Review:
The Sustainability, Public Safety, and Legal departments have reviewed this Staff Report and their commentary has been included.

Alternatives for City Council to consider:

A. **Pursue an Anti-Idling Resolution for Park City (Recommended)**
Council could review the resolution drafted by Utah Moms for Clean Air (see Exhibit D) and provide staff with direction on possible modifications, as needed, to create a formal resolution for the City. Council may be interested in staff making modifications to section 1 of the resolution that currently reads somewhat like an ordinance.

B. **Pursue an Anti-idling Ordinance for Park City**
Sustainability and Public Safety will return to Council with 1-2 draft ordinances for consideration. City Council would need to provide preliminary direction on whether the ordinance should cover all vehicles within City limits or just certain types of vehicles (e.g. trucks, buses, and other heavy vehicles) and some direction on what exceptions should be included in the ordinance language.

C. **Maintain Status Quo Approach to Anti-Idling**
Park City Municipal staff will continue to provide support to Utah Moms for Clean Air (attend meetings, etc.) and other community groups who promote awareness of the benefits of anti-idling. This support will include encouragement of a grass-roots push for broader education and support of an idle-free community in addition to providing related information on the Park City Green website.

Staff recommends pursuing option A and creating an anti-idling resolution at this point. A resolution will bring broader attention to the issues associated with unnecessary vehicle idling and be a formal expansion on the existing vehicle idling laws and policies in Park City. While likely not effective as an ordinance in curtailing idling issues, a resolution would a more gradual approach with the potential for creating greater public support of formal disincentives (e.g., citations) to idling. Staff also recommends follow-up on any progress of the resolution, and potential for other alternatives, at a future City Council meeting.

Significant Impacts:
If a resolution is adopted, staff time will be required to review and modify the resolution presented by Utah Moms for Clean Air. The commitment to a resolution could include signage and ongoing staff time, depending on how the resolution is drafted and what the City commits to.

If an ordinance is adopted, staff time will be required to draft, implement, and enforce this new law. Drafting the ordinance is anticipated to be relatively straightforward;

however, implementation may require resources such as signage, training, and participation from local non-profits and community groups who support anti-idling. Enforcing an ordinance would require resources from varying departments – and, depending on the type of enforcement desired by Council, staff time could be significant. If Council wanted strict enforcement by Public Safety, staff could return to Council at a later date to discuss resource implications.

Consequences of not taking the recommended action:
Park City Municipal will continue on the status quo path with existing ordinances and internal rules. Park City will also retain limited formal support of community-wide action on excessive vehicle idling. The environmental quality and health issues associated with vehicle idling will continue at, or near, their current impact.

Note that seven counties, either full or partial, in Utah were recently named on the EPA's Nonattainment List for particulate pollution. No portion of Summit County was cited on EPA's list, but prohibiting excessive vehicle idling is one step that local government can take to proactively address potential infringements before issues arise.

Recommendation:
Staff recommends that City Council review this report and consider the implications of an anti-idling resolution and provide direction on the alternatives discussed in this Staff Report. Staff recommends that Council provide direction regarding adoption of a resolution.

Exhibits (Included):
Exhibit A – Ordinance Prohibiting the Excessive Idling of Delivery Vehicles on Main Street and Swede Alley

Exhibit B - Park City Municipal Corporation Fuel Conservation and Anti-Idle Policy

Exhibit C – Utah State Law Prohibiting the Idling of an Unattended Vehicle

Exhibit D – Draft of Potential Anti-Idling Resolution for Park City, Prepared by Utah Moms for Clean Air

City Council Staff Report

Subject: Park City Heights Property Acquisition
Author: Phyllis McDonough Robinson
Department: Sustainability
Date: November 19, 2009
Type of Item: Property: Co-Tenancy Agreement

Summary Recommendations: Staff recommends that the City Council take public input, and approve the attached Co-Tenancy Agreement, in a form approved by the City Attorney.

Topic/Description:
Joint Public/Private Development Partnership: Employee/Affordable Housing

Background:
In June, 2009, the City Council authorized staff to explore and further negotiate City development partnership in the project as a whole (limited to city affordable housing development) in a reconfigured MPD, including some minor modifications to density apportionment provided overall density remains within the CT zone limits (See the November 12, 2009 Staff Report). On November 12, 2009, the City Council approved a land purchase agreement to acquire a 50% interest in approximately 200 acres in the proposed development know as Park City Heights. A condition of the Purchase and Sale Agreement requires the parties to enter into a Co-Tenancy Agreement prior to closing, which is currently scheduled for Friday, November 20th.

Analysis:

Due to the tight closing deadlines mandated by Boyer during the property negotiations, staff and Council liaisons successfully got Boyer to agree to an additional meeting to consider the Co-Tenancy Agreement so that the Council and public could have additional time to review the proposal. The agreement creates a 2 year window for additional public process, planning and negotiation regarding the ultimate form the partnership will take. If an agreement on the Development Plan is not reached within 2 years, Boyer may exercise a “Put Option” and the City will buy the remaining 50% interest at a set price ($5.5 million dollars plus 5% per annum interest).

As stated in the last report, City participation would not be limited to affordable housing but the City would have greater ability to reduce the market unit density and incorporate affordable housing (including affordable density from the Talisker and IHC parcels as previously approved in the 1999 Flagstaff Development Agreement (as amended 2007) and the 2006 IHC Annexation Agreement) in a more integrated MPD. The current draft site plan of the pending Annexation and MPD serve as a baseline for the joint Development Plan, but the parties may jointly propose alterations to the plan. That plan is still subject to regulatory approval via Annexation and MPD approval by the Planning

Commission, including all the requirements of the last draft Annexation Agreement such as green building, phasing, etc.

The agreement also prohibits partitioning of the property without the consent of the other.

As a result of public and Council comments, the following changes were made to the draft as it appeared in last week's packet:

1. Additional due diligence language was added requiring Boyer to provide financial background regarding their ability to perform. In accordance with state law/GRAMA, part or all of such information is confidential;
2. Language was added clarifying nothing in the Agreement limits the public interest or regulatory power of the City;
3. The Put Option expiration was clarified to occur upon recordation of a mutually acceptable final plat, with the ability to allow initial phase platting (most likely for IHC or City affordable) without triggering the Put Option expiration.
4. Clarified the City may transfer title to any of its other entities (RDA, Housing Authority, etc.).

Council liaisons and the City Manager have preliminarily discussed several owner project management strategies by the City during the two year period. The City Manager will return to Council with an update on strategies to fulfill this responsibility.

Council should review the draft Co-Tenancy Agreement and provide direction. If there are substantive issues that Council would like to further discuss with Boyer, the City would need to propose an extension to the closing date via an addendum to the Purchase and Sale Agreement.

Department Review:
The City Attorney and City Manager reviewed this report.

Alternatives:

A. Approve the Request: Council may approve the proposed Co-Tenancy Agreement. ***This is Staff's recommendation.***

B. Modify the Request: Council may modify the Agreement.

C. Continue the Item: Council may continue the item and direct staff to return with additional information or options. The City would need to propose an extension to the closing date via an addendum to the Purchase and Sale Agreement.

Significant Impacts:
The agreement enables the parties during a two year period to define the parameters of their partnership. If an agreement on the Development Plan is not reached within 2 years, Boyer may exercise a "Put Option" and the City will buy the remaining 50% interest at a set price ($5.5 million dollars plus 5% per annum interest). Staff has identified a preliminary plan to identify funding sources for the additional property

acquisition if necessary. Further discussion will occur during the budget review if needed.

Recommendation:
Staff recommends that the City Council take public input, approve the proposed Co-Tenancy Agreement.

Attachments:
Draft Co-Tenancy Agreement

CO-TENANCY AGREEMENT

Effective Date: ~~_______________,~~November 20, 2009

Parties: **BOYER–PLUMB PARK CITY, L.C.**, a Utah limited liability company ("Boyer")

PARK CITY MUNICIPAL CORPORATION, a municipal corporation of the State of Utah (the "City")

Subject Property: The "Property" (as defined below) is located in Summit County, Utah.

RECITALS

WHEREAS, Boyer and the City each own an undivided fifty percent (50%) interest, as tenants in common, in and to the Property;

WHEREAS, the City acquired its undivided fifty percent (50%) interest pursuant to a certain Purchase and Sale Agreement dated ~~_________,~~November 13, 2009 by Boyer, as seller and the City, as buyer (the "Purchase Agreement"); and

WHEREAS, Boyer and the City desire to enter into this Agreement to establish the terms pursuant to which the Property shall be jointly owned while the parties negotiate the terms of the Development Agreement (as defined below).

AGREEMENT

NOW, THEREFORE, in consideration of the premises and the covenants of Boyer and the City set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Boyer and the City each hereby agree and covenant as follows:

1. Definitions. As used in this Agreement, the following terms shall have the meanings set forth.

(a) "Agreement" means this Co-Tenancy Agreement.

(b) "Boyer's Undivided Interest" means the fifty percent (50%) undivided interest in the Property owned by Boyer as a tenant-in-common with the City.

(c) "City's Undivided Interest" means the fifty percent (50%) undivided interest in the Property owned by the City as a tenant-in-common with Boyer.

(d) "Code" means the Internal Revenue Code of 1986, as amended.

(e) "Deemed Loan" is defined in Section 15.

(f) "Development Plan and Agreement" means a plan for development of the Property pursuant to which the Owners agree on how they will jointly develop the Property. It is contemplated by the Owners that such Development Plan and Agreement will be based on the terms generally set forth in Exhibit A attached hereto and incorporated by this reference. The Development Plan and Agreement will likely include, without limitation, the following:

(i) an agreement regarding the types and locations of different types of improvements on the Property, including~~, without limitation, affordable housing units/homes and not less than~~ up to two hundred (200) "market rate" units, and additionally, approximately 60 affordable housing units (90-100 affordable unit equivalents);

(ii) an agreement that would generally provide that the City will develop affordable housing units/homes and Boyer will develop the market rate lots/units/homes;

(iii) a schedule and budget for the development of the Property, including all infrastructure to be constructed on the Property;

(iv) an allocation of the various tasks to be performed by each of the Owners in connection with the development of the Property; and

(v) if the Property is developed jointly, an agreement as to how any and all operating costs, capital expenses and profits will be financed and/or allocated between the Owners (it being understood that Boyer may receive more of the profits based on its experience in developing similar projects).

(g) "Lending Owner" is defined in Section 15.

(h) "Non-Funding Owner" is defined in Section 15.

(i) "Owner" means either Boyer or the City.

(j) "Owners" means Boyer and the City.

(k) "Property" means the tract of real property described on Exhibit B attached to this Agreement.

(l) "Purchase Price" means an amount equal to Five Million Five Hundred Thousand Dollars ($5,500,000) plus interest accruing at an interest rate of five percent (5%) per annum from the Effective Date.

(m) "Title Company" means Landmark Title Company, whose address is 675 East 2100 South, Suite 200, Salt Lake City, Utah 84106, Attention: Jeffrey J. Jensen.

(n) "Undivided Interest" refers to the Boyer's Undivided Interest or the City's Undivided.

(o) "Undivided Interests" refers to the Boyer's Undivided Interest and the City's Undivided.

2. Absence of Partnership, Joint Venture or Agency Relationship. This Agreement creates a contractual relationship between the Owners as tenants in common in respect of the Property. This Agreement does not, nor shall it be interpreted as creating, a partnership, joint venture or similar relationship between the Owners, nor shall any Owner be deemed to be or constitute the agent of the other Owner. No Owner shall have any authority to act for, or to assume any obligations or responsibility on behalf of, the other Owner.

3. Development of Property. From and after the Effective Date, the Owners shall negotiate in good faith in an attempt to finalize a Development Plan and Agreement on or prior to December 1, 2011. Prior to March 1, 2010, Boyer shall provide to or for the benefit of the City such financial information as requested by the City to allow reasonable due diligence regarding Boyer's ability to perform under the Development Plan and Agreement, as anticipated herein. The City acknowledges that such financial information is confidential and proprietary, and shall be kept confidential by the City and not disclosed to third persons. Without limiting the foregoing, Boyer shall be obligated to provide the information only in a manner that allows it to be treated as a protected record under the Government Records Access and Management Act ("GRAMA"), Utah Code Annotated 63G-2-101 *et. seq* and as specifically identified in Utah Code Annotated Section 63G-2-305. As part of the Development Plan and Agreement, the Owners shall determine whether: (a) to transfer all of the Undivided Interests to a Utah limited liability company to be formed by the Owners, in which case, the Development Plan and Agreement shall include the organizational documents for such new entity setting forth each Owner's relative rights in such new entity; or (b) to continue to own the Property as tenants in common, in which case the Development Plan and Agreement will likely include an amendment to this Agreement to set forth additional terms relating to the development of the Property; or (c) divide the Property so that the City and Boyer each hold distinct parcels of the Proper in fee. All negotiations by Boyer shall be conducted solely by agents or managers of The Boyer Company, L.C., and the City shall not be required to deal with any other person or entity. Owners acknowledge that the City's ownership is subject to UCA § 10-8-2; provided, the City represents and warrants that it has complied in all respects with Utah Code Annotated Section 10-8-2(5) in approving the acquisitions of the Property contemplated by this Agreement. Nothing herein or in the Development Plan and Agreement shall limit the City's authority to determine whether an appropriate corporate purpose is in the public interest, or the City's police power and regulatory authority upon annexation.

4. Put Option.

(a) If the Owners are unable to agree upon the terms of the Development Plan and Agreement by December 1, 2011, then at any time thereafter Boyer may, at its sole option and discretion, deliver to the City Boyer's final proposal with respect to the terms of the Development Plan and Agreement (the "Final Proposal"). The City shall have ten (10) days to agree in writing to such Final Proposal. If the City does not timely agree in writing to the terms of the Final Proposal within such 10-day period, Boyer may, at its sole discretion, require the City to purchase Boyer's Undivided Interest (the "Put Option") for the Purchase Price and otherwise upon the terms and conditions set forth in Section 4(b) of this Agreement and the Purchase Agreement.

(b) If Boyer exercises the Put Option, the closing (the "Closing") of the sale of the Boyer's Undivided Interest by Boyer to the City shall occur on or before the date that is thirty (30) days after Boyer delivers the Final Proposal to the City (the "Closing Date"). The Closing shall occur in the office of the Title Company in person or pursuant to escrow instructions. At the Closing, (a) Boyer shall deliver or caused to be delivered a special warranty deed in the form attached hereto as Exhibit C, executed and acknowledged by Boyer, conveying the Boyer's Undivided Interest to the City, and (b) the City shall deliver or caused to be delivered the Purchase Price and any other amounts required from the City in accordance with the terms of this Agreement. All ad valorem taxes, assessments and other state, county, school, municipal and municipal utility district fees, taxes, charges and assessments (special or otherwise), if any, with respect to Boyer's Undivided Interest for the calendar year during which the Closing occurs shall be prorated as of the Closing Date. Escrow fees shall be divided equally between the Owners and all other Closing expenses shall be allocated between the Owners in a manner that is customary for property in Summit County, Utah.

(c) The Put Option shall terminate on the date a mutually acceptable final plat ~~is recorded for the two hundred (200)~~for the Property (which shall in all events include at least some of the "market ~~Rate" units~~rate" housing units or lots) is recorded in accordance with a Development Plan and Agreement as described in Section ~~4(a)~~1(f). The Parties may agree to record an earlier phased partial plat for the City or IHC affordable housing without terminating the Put Option.

5. Tax Status. The Owners are not partners and shall not be deemed to have created a partnership taxable under Subchapter K of the Code or under the income tax laws of the State of Utah. This Agreement shall be construed to avoid taxation of the Owners as partners under the Code or the income tax laws of the State of Utah.

6. Default. In the event of default by any Owner of material obligations set forth in this Agreement, the non-defaulting Owner shall have and exercise such rights and remedies as may be provided expressly in this Agreement and by law except the right of partition.

7. Term. The term of this Agreement shall commence as of the Effective Date first written above and shall continue indefinitely until modified, amended or revoked by Approval of the Owners or until the Closing.

8. Prohibited Transfers. Except as provided in Section 4 or Section 9, no Owner may voluntarily or involuntarily sell, transfer, assign, grant or otherwise transfer or mortgage, hypothecate, or otherwise encumber or permit or suffer any encumbrance of all or any part of, or grant an easement, license or other property interests in, its Undivided Interest in the

Property or its rights under this Agreement unless such transaction expressly approved in writing by the other Owner, which consent and approval may be withheld at the absolute discretion of the other Owner. Any voluntary or involuntary attempt by an Owner or by a third party to so sell, transfer, assign, grant or encumber any such interest without the approval of the other Owner shall be void and shall constitute a material breach of this Agreement.

9. Permitted Transfers. Notwithstanding the provisions of Section 8 of this Agreement, any Owner may, without the consent of the other Owner, transfer all of its Undivided Interest in the Property or its rights under this Agreement to any entity all of equity in which and the control of which is vested in such Owner. Also, City may, upon written notice to Seller, assign its rights hereunder or title to all or any portion of its undivided interest to one of its other political subdivisions (Housing Authority, Redevelopment Authority or Municipal Building Authority).

10. Notices. Any notice provided or permitted to be given under this Agreement must be in writing and may be served (i) by depositing the same in the United States mail, addressed to the Owner to be notified, postage prepaid, and registered or certified with return receipt requested; or (ii) by delivering the same in person to such Owner. Notice given in accordance with (i) above shall be effective when mailed. Notice given in accordance with (ii) above shall be effective upon receipt at the address of the addressee or upon refusal to accept delivery (such refusal being evidenced by the U.S. Postal Services's return receipt or similar advice from the courier company used to make delivery). For purposes of notice, the addresses of the Owners shall be as follows:

Boyer: Boyer-Plumb Park City, L.C.
c/o The Boyer Company, L.C.

90 South 400 West, Suite 200
Salt Lake City, Utah 84101
Attn: Patrick Moffat

With a copy to:

Parr Brown Gee & Loveless

185 South State Street, Suite 800
Salt Lake City, Utah 84111
Attn: David E. Gee

City: Park City Municipal Corporation

445 Marsac Avenue
P.O. Box 1480
Park City, UT 84060-1480
Attn: Tom Bakaly, City Manager

Telephone: 435-615-5180
Facsimile: 435-615-4901

With a copy to:

City Attorney
450 Marsac Avenue
P.O. Box 1480
Park City, UT 84060
Attn: Mark Harrington

Either Owner may change its address by notice to the other Owner.

11. Covenants Run With Land. This Agreement and all of the rights, obligations, covenants, provisions, and requirements of this Agreement (including, without limitation, the Put Option) are intended to be and shall constitute covenants running with the land and shall be binding upon and shall inure to the benefit of each Owner, any other Owner who acquires or comes to have any interest in either of the Undivided Interests, and their respective grantees, transferees, lessees, heirs, devisees, personal representatives, successors, and assigns. By acquiring, in any way coming to have an interest in, or occupying an interest in or to either of the Undivided Interests, the Owner so acquiring, coming to have such interest, or occupying, consents to, and agrees to be bound by, each and every provision of this Agreement (including, without limitation, the Put Option). The provisions of this Section shall not be deemed to modify any prohibitions against or limitations upon assignment or transfer set forth elsewhere in this Agreement.

12. Governing Laws. This Agreement and the obligations of the Owners hereunder shall be interpreted, construed and enforced in accordance with the laws of the State of Utah, without reference to its choice of law rules.

13. Entire Agreement. This Agreement and the exhibits to this Agreement contain the entire agreement between the Owners relative to the Property. No variation, modification, or change in or to this Agreement shall be binding upon any Owner unless set forth in a document duly executed by or on behalf of such Owner.

14. Waiver. No consent or waiver, express or implied, by any Owner to or of any breach or default by the other Owner in the performance by the other of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other Owner of the same or any other obligations of such Owner under this Agreement. Failure on the part of an Owner to complain of any act or failure to act or to declare the other Owner in default, irrespective of how long such failure continues, shall not constitute a waiver of such Owner of its rights under this Agreement.

15. Costs and Expenses. Unless otherwise set forth in the Development Documents, the Owners shall bear the costs and expenses incurred from time to time as a result of the ownership, improvement, maintenance, repair, leasing, management and operation of the Property, including, without limitation, debt service under any loan owed by all of the Owners

with respect to the Property, ad valorem taxes, special assessments, if any, insurance premiums and utilities (collectively, the "Property Expenses"), all in proportion to their respective Undivided Interests. If any Owner (the "Non-Funding Owner") fails or refuses to pay its share of the Property Expenses when due and payable, then the other Owner (the "Lending Owner"), shall have the rights, but not the obligation, to pay such amount owed by the Non-Funding Owner and such payment shall be deemed to be a loan (a "Deemed Loan") by Lending Owner to the Non-Funding Owner in the amount by which the funds actually paid by such Lending Owner exceeds its share of the Property Expenses. Each such Deemed Loan (a) shall bear interest at a rate equal to [twelve percent (12%) per annum], (b) shall mature on the thirtieth (30th) day following the date on which such Deemed Loan is made, and (c) shall be secured by a lien and security interest encumbering the Non-Funding Owner's Undivided Interest.

16. Miscellaneous.

(a) In the event of any judicial or administrative action between the Owners with respect to this Agreement, the prevailing Owner shall be entitled to recover all costs and expenses incurred in connection with any such action, including reasonable attorneys' fees and court costs. In the event an Owner, without fault, is made a party to any judicial or administrative action or proceeding by reason of the conduct of the other Owner, the other Owner shall indemnify and hold the first Owner harmless from and against all loss, cost, liability and expense, including reasonable attorneys' fees, incurred in such action.

(b) The invalidity of any portion of this Agreement shall not affect the validity of the remainder of this Agreement.

(c) Section titles or captions contained in this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope or substance of this Agreement or the intent of any provisions of this Agreement.

(d) Unless the context otherwise clearly requires, words of any gender used in this Agreement shall be deemed to include the other gender and words of a singular number shall be deemed to include the plural and vice versa.

(e) Subject to the limitations on assignment and transfer set forth in Section 8, each provision of this Agreement shall inure to the benefit of and be binding upon the Owners hereto and their respective successors in interest and assigns.

(f) All exhibits attached to this Agreement are deemed incorporated in this Agreement by this reference as though set forth in full.

(g) References to "Sections" by number are to Sections of this Agreement unless reference is expressly made to another agreement or document.

(h) Each individual executing this Agreement warrants and represents that he has the power and authority to enter into this agreement in the names, titles and capacities herein stated and on behalf of any entities, persons, estates or firms represented or purported to be represented by such persons..

(i) This Agreement may be executed separately or independently in any number of counterparts, each and all of which shall be deemed to have been executed simultaneously and for all purposes to be one Agreement.

(j) This Agreement shall not be recorded. The Owners shall execute and acknowledge a Notice of this Agreement in the form attached hereto as Exhibit D and record the same in the records of Summit County, Utah.

[Remainder of page intentionally left blank;
Signature page follows]

IN WITNESS WHEREOF, the Owners hereto have executed this Agreement to be effective as of the date first set forth above.

"**BOYER**"

BOYER-PLUMB PARK CITY, L.C., a Utah limited liability company, by its ~~managers~~Managers:

THE BOYER COMPANY, L.C., a Utah limited liability company

By:__________________________________
Name:_______________________________
Its: Manager

PLUMB HOLDINGS, L.L.C., a Utah limited liability company

By:__________________________________
Name:_______________________________
Its:__________________________________

"**CITY**"

PARK CITY MUNICIPAL CORPORATION, a municipal corporation

By:____
Name:_____________________________________
Its:____

EXHIBIT A
TO
CO-TENANCY AGREEMENT

Master Plan Approval; Phasing. The allowable residential density of the MPD project area is 200 units pursuant to the CT zone, and the Parties agree the Conceptual Master Plan, (dated June 2009) as attached as Attachment 1, preliminarily complies with the CT zone. This maximum density does not include the approved AUEs as specified below. This Agreement does not represent approval or vesting of any previously submitted MPD or any subsequent MPD proposal. Rather, any MPD and the land use development of the Property shall be governed by the CT-zone and shall be finalized (and, as necessary, amended) as soon as reasonably practicable following completion of the Annexation process pursuant to Utah Code Annotated § 10-2-425(5) (a “Final MPD”). Moreover, any substantive amendments to any MPD or this Agreement shall be processed in accordance with the Park City Land Management Code in effect at the time. Further, as part of any Final MPD and subdivision approval process, the phasing of the development of the Property shall be determined, to ensure the adequacy of public facilities that may be required to support any such development.

AUEs. Affordable/employee housing shall be provided in a manner consistent with the conditions of the Final MPD, with the understanding and agreement of the parties that:

a. The base Employee/Affordable Housing requirement for the Boyer Plumb development associated with the Park City Heights Annexation and a Final MPD will be determined as defined in the City’s Land Management Code and in a manner consistent with Affordable Housing Resolution 17-99. This requirement shall be satisfied by the construction of said AUEs within the Property. These AUEs do not count towards the 200 unit maximum residential density above.

~~[See attached summary of terms for proposed development]~~

b. The requirement for 44.78 Affordable Unit Equivalents (AUE’s) associated with the IHC Hospital, as described in the Intermountain Healthcare/USSA/Burbidge Annexation Agreement, will be transferred to and satisfied by the construction of said AUEs within the Property. These AUEs, currently configured in 17.91 Unit Equivalents, do not count towards the 200 unit maximum residential density above.

c. The Employee/Affordable Housing Phasing Plan of the Flagstaff Mountain Development Agreement further identifies the 20-acre Quinn’s Junction parcel that is part of this Annexation Agreement as a potential location for other affordable housing requirements outlined in the Flagstaff Development Agreement. The City has accepted donation of the parcel towards satisfaction of some othe the affordable housing requirements, but the City still intends to construct some AEUs on the parcel and/or use the density within the MPD on the Property These AUEs do not count towards the 200 unit maximum residential density above. Any additional market or attainable housing (beyond the AUEs and beyond the exceptions described above) must count towards the City’s portion of the maximum residential density above, unless additional density is approved as part of any revised MPD that complies with LMC 15-2.23-1(A)(B)(J) and (K).

Attachment 1(see pdf Map attached)

EXHIBIT B
TO
CO-TENANCY AGREEMENT

Legal Description of Property

PARCEL 1:
The Southeast Quarter of the Southwest Quarter, the Southwest Quarter of the Southeast Quarter except the East 334.00 feet thereof of Section 2, Township 2 South, Range 4 East, Salt Lake Base and Meridian. Also a parcel of land beginning at the West Quarter Corner of Section 11, Township 2 South, Range 4 East, Salt Lake Base and Meridian; thence North along the Section line 2640.00 feet, more or less, to the Northwest corner of said Section 11; thence East along the Section line 3626.00 feet, more or less, to a point on said Section line 334.00 feet West of the Northwest corner of the Northeast Quarter of the Northeast Quarter of said Section 11; thence South 42°25’ West 3418.29 feet, more or less, to a point on the East line of Southwest Quarter of the Northwest Quarter and 116.70 feet North of the Northwest corner of Lot 8; thence South 116.70 feet, more or less, to the South line of the Southwest Quarter of the Northwest Quarter; thence West along the Quarter Section line 1320.00 feet, more or less, to a point of beginning.
Less that property taken by the United States of America by Declaration of Taking, recorded March 1, 1990, as Entry No. 327133, in Book 571, Page 595, of Official Records of Summit County, Utah.
Less and Excepting: Beginning at the Northwest corner of Section 11, Township 2 South, Range 4 East, Salt Lake Base and Meridian; and running thence along the North line of Section 11, South 88°47’03” East 1240.30 feet; thence along the Easterly end line of Clegg No. 2 Mining Claim (Mineral Survey 6792) South 39°40’23” East 215.18 feet; thence along the Easterly end line of Clegg No. 3 Mining Claim South 38°46’13” East 606.70 feet; thence along the Southerly side line of Clegg No. 3 Mining Claim South 75°52’07” West 1501.92 feet; thence along the Southerly side line of Woodrow No. 6 Mining Claim South 63°17’52” West 358.92 feet; thence North 00°57’07” East 1193.09 feet to the point of beginning.
PARCEL 2:
Beginning South along the Quarter Section line 1834.13 feet from the North Quarter corner of Section 2, Township 2 South, Range 4 East, Salt Lake Base and Meridian; thence South along the Section line 805.87 feet, more or less, to the East-West Quarter Section line of said Section 2; thence West along the said Quarter Section line 1450.00 feet; more or less, to the Easterly line of Highway Alt 40; thence Northeasterly along the highway 880.00 feet, more or less; thence

East 1100.00 feet, more or less to the point of beginning.

Less that property taken by the United States of America by Declaration of Taking, recorded March 1, 1990, as Entry No. 327133, in Book 571, Page 595, of Official Records of Summit County, Utah.

Less that portion conveyed to the Utah Department of Transportation by Warranty Deed, recorded March 4, 1999, as Entry No. 532113, in Book 1235, Page 761, and more particularly described as follows: Beginning at the Southwest corner of said entire tract, which point is approximately 804.672 meters (2640.00 feet) South 0°27’25” West along the Quarter Section line to the center Quarter corner of said Section 2 and approximately 440.029 meters (1443.66 feet) North 89°49’09” West along the Quarter Section line from the North Quarter corner of said Section 2, which point is on the Easterly right of way line of said existing highway State Route 248; and running thence North 22°01’00” East 65.512 meters (214.93 feet) along said Easterly right of way line and the Westerly boundary line of said entire tract to a point 19.405 meters (63.66 feet) perpendicularly distant Easterly from the control line of said project; thence North 26°18’21” East 122.266 meters (401.14 feet) along said Easterly right of way line and said West boundary line to a point 27.659 meters (90.74 feet) perpendicularly distant Easterly from said control line; thence South 22°01’00” West 183.771 meters (602.92 feet) to the Southerly boundary line of said entire tract at a point 29.001 meters (95.15 feet) perpendicularly distant Easterly from said control line; thence North 89°49’09” West 9.851 meters (32.32 feet) along said South boundary line to the point of beginning as shown on the official map of said project on file in the office of the Utah Department of Transportation.

EXHIBIT C

TO

CO-TENANCY AGREEMENT

Form of Special Warranty Deed

WHEN RECORDED MAIL THIS
DEED TO:

____
____
____

(Above Space for Recorder's Use Only)

SPECIAL WARRANTY DEED

BOYER-PLUMB PARK CITY, L.C., a Utah limited liability company ("Grantor"), does hereby CONVEY AND WARRANT against all claiming by, through or under Grantor, unto PARK CITY MUNICIPAL CORPORATION, a municipal corporation of the State of Utah ("Grantee"), whose current address is _________________________, an undivided fifty (50%) percent interest, in the following described premises (the "Property") in Summit County, State of Utah, to-wit:

[See Exhibit "A" attached hereto and by this reference made a part hereof.]

Subject to all matters of record and matters that would be disclosed by a physical inspection or survey of the Property.

WITNESS, the hand of said Grantor, this ______ day of ___________, 2009.

BOYER-PLUMB PARK CITY, L.C., a Utah limited liability company, by its ~~managers~~Managers:

THE BOYER COMPANY, L.C., a Utah limited liability company

By:__________________________________
Name:________________________________
Its: Manager

PLUMB HOLDINGS, L.L.C., a Utah limited liability company

By:__________________________________
Name:_______________________________
Its:__________________________________

State of Utah)
) ss.
County of Salt Lake)

The foregoing instrument was acknowledged before me this ____ day of __________, 200_, by ____________________________________, a Manager of The Boyer Company, L.C., a Manager of Boyer-Plumb Park City, L.C.

____
Notary Public

Residing at:___________________________

My Commission Expires:

State of Utah)
) ss.
County of Salt Lake)

The foregoing instrument was acknowledged before me this ____ day of __________, 200_, by ____________________________________, a ________________ of Plumb Holdings, L.L.C., a Manager of Boyer-Plumb Park City, L.C.

____
Notary Public

Residing at:___________________________

My Commission Expires:

EXHIBIT D
TO
CO-TENANCY AGREEMENT

Form of Notice of Co-Tenancy Agreement

PREPARED BY AND WHEN
RECORDED RETURN TO:

David E. Gee, Esq.
Parr Brown Gee & Loveless
185 South State Street, Suite 800
Salt Lake City, Utah 84111

NOTICE OF CO-TENANCY AGREEMENT

THIS NOTICE OF CO-TENANCY AGREEMENT (this "Notice") is entered into as of the _____ day of ____________, 2009, between Boyer-Plum Park City, L.C., a Utah limited liability company ("Boyer") and Park City Municipal Corporation, a municipal corporation of the State of Utah (the "City").

RECITALS

A. Boyer and the City (collectively, the "Owners") are the fee simple title owners, as tenants in common, of real property located in Summit County, Utah, which is more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the "Property").

B. The Owners entered into a Co-Tenancy Agreement dated as of the same date as this Notice (the "Co-Tenancy Agreement"), with respect to the Property.

C. The Owners desire to set forth in this Notice certain terms and provisions of the Co-Tenancy Agreement (or summaries thereof), for notice and recording purposes.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the Owners agree as follows:

1. Recitals Incorporated; Defined Terms. The Recitals set forth above are incorporated in this Notice by this reference. Capitalized terms that are used but not defined in this Notice shall have the respective meanings given to such terms in the Co-Tenancy Agreement.

2. Co-Tenancy Agreement. As set forth above, the Owners have entered into the Co-Tenancy Agreement, which affects the Property and by its terms constitutes a covenant running with the land, benefiting and binding every person having any fee, leasehold, mortgage lien or other interest in any portion of the Property, as well as any owner of the Property whose title is acquired by foreclosure, deed in lieu of foreclosure or other means. This Notice only briefly summarizes some of the provisions of the Co-Tenancy Agreement, and reference should be made to the Co-Tenancy Agreement for the full text of all of the provisions of the Co-Tenancy Agreement, which are incorporated in this Notice by this reference. In the event of any conflict between the provisions of this Notice and the provisions of the Co-Tenancy Agreement, the provisions of the Co-Tenancy Agreement shall control. This Notice is solely for recording purposes and shall not be construed to, alter, modify, limit, amend or supplement the Co-Tenancy Agreement in any respect. The recordation of this Notice is in lieu of, and shall have the effect of, recording the Co-Tenancy Agreement.

3. Put Options. Pursuant to and conditioned upon all of the provisions of the Co-Tenancy Agreement, Boyer may, at its sole discretion, require the City to purchase Boyer's Undivided Interest in the Property upon terms set forth in the Co-Tenancy Agreement.

4. Prohibited Transfers; Waiver of Right of Partition. Title to the Property shall be maintained by the Owners as tenants-in-common. The sale, transfer, grant, assignment, pledge, encumbrance or other conveyance of any Undivided Interest or any part thereof shall be made in compliance with the terms of the Co-Tenancy Agreement. No Owner shall have the right to have the Property partitioned.

5. General Provisions. This Notice shall inure to the benefit of, and be binding on, the Owners and their respective successors and assigns. This Notice shall be governed by, and construed and interpreted in accordance with, the laws (excluding the choice of laws rules) of the state of Utah. This Notice may be executed in any number of duplicate originals or counterparts, each of which when so executed shall constitute in the aggregate but one and the same document. Each individual executing this Notice represents and warrants that such individual has been duly authorized to execute and deliver this Notice in the capacity and for the entity set forth where such individual signs.

THE OWNERS have executed this Notice to be effective as of the date first set forth above.

"**BOYER**"

BOYER-PLUMB PARK CITY, L.C., a Utah limited liability company, by its ~~managers~~Managers:

THE BOYER COMPANY, L.C., a Utah limited liability company

By:__________________________________
Name:_______________________________
Its: Manager

PLUMB HOLDINGS, L.L.C., a Utah limited liability company

By:__________________________________
Name:_______________________________
Its:__________________________________

"**CITY**"

PARK CITY MUNICIPAL CORPORATION, a municipal corporation

By:____
Name:_____________________________________
Its:____

State of Utah)
) ss.
County of Salt Lake)

The foregoing instrument was acknowledged before me this ____ day of __________, 2009, by ____________________________________, a Manager of The Boyer Company, L.C., a Manager of Boyer-Plumb Park City, L.C.

____
Notary Public

Residing at:____________________________

My Commission Expires:

State of Utah)
) ss.
County of Salt Lake)

The foregoing instrument was acknowledged before me this ____ day of __________, 2009, by ____________________________________, a ________________ of Plumb Holdings, L.L.C., a Manager of Boyer-Plumb Park City, L.C.

____
Notary Public

Residing at:____________________________

My Commission Expires:

State of Utah)
) ss.
County of Summit)

The foregoing instrument was acknowledged before me this ____ day of __________, 2009, by ____________________________________, the __________________ of Park City Municipal Corporation, a municipal corporation of the State of Utah.

____
Notary Public

Residing at:____________________________

My Commission Expires:

EXHIBIT A

to

NOTICE OF CO-TENANCY AGREEMENT

Legal Description of the Property

PARCEL 1:
The Southeast Quarter of the Southwest Quarter, the Southwest Quarter of the Southeast Quarter except the East 334.00
feet thereof of Section 2, Township 2 South, Range 4 East, Salt Lake Base and Meridian. Also a parcel of land beginning
at the West Quarter Corner of Section 11, Township 2 South, Range 4 East, Salt Lake Base and Meridian; thence North
along the Section line 2640.00 feet, more or less, to the Northwest corner of said Section 11; thence East along the
Section line 3626.00 feet, more or less, to a point on said Section line 334.00 feet West of the Northwest corner of the
Northeast Quarter of the Northeast Quarter of said Section 11; thence South 42°25’ West 3418.29 feet, more or less, to a
point on the East line of Southwest Quarter of the Northwest Quarter and 116.70 feet North of the Northwest corner of
Lot 8; thence South 116.70 feet, more or less, to the South line of the Southwest Quarter of the Northwest Quarter; thence
West along the Quarter Section line 1320.00 feet, more or less, to a point of beginning.
Less that property taken by the United States of America by Declaration of Taking, recorded March 1, 1990, as Entry No.
327133, in Book 571, Page 595, of Official Records of Summit County, Utah.
Less and Excepting: Beginning at the Northwest corner of Section 11, Township 2 South, Range 4 East, Salt Lake Base
and Meridian; and running thence along the North line of Section 11, South 88°47’03” East 1240.30 feet; thence along
the Easterly end line of Clegg No. 2 Mining Claim (Mineral Survey 6792) South 39°40’23” East 215.18 feet; thence
along the Easterly end line of Clegg No. 3 Mining Claim South 38°46’13” East 606.70 feet; thence along the Southerly
side line of Clegg No. 3 Mining Claim South 75°52’07” West 1501.92 feet; thence along the Southerly side line of
Woodrow No. 6 Mining Claim South 63°17’52” West 358.92 feet; thence North 00°57’07” East 1193.09 feet to the point
of beginning.
PARCEL 2:
Beginning South along the Quarter Section line 1834.13 feet from the North Quarter corner of Section 2, Township 2
South, Range 4 East, Salt Lake Base and Meridian; thence South along the Section line 805.87 feet, more or less, to the
East-West Quarter Section line of said Section 2; thence West along the said Quarter Section line 1450.00 feet; more or

less, to the Easterly line of Highway Alt 40; thence Northeasterly along the highway 880.00 feet, more or less; thence
East 1100.00 feet, more or less to the point of beginning.
Less that property taken by the United States of America by Declaration of Taking, recorded March 1, 1990, as Entry No.
327133, in Book 571, Page 595, of Official Records of Summit County, Utah.
Less that portion conveyed to the Utah Department of Transportation by Warranty Deed, recorded March 4, 1999, as
Entry No. 532113, in Book 1235, Page 761, and more particularly described as follows: Beginning at the Southwest
corner of said entire tract, which point is approximately 804.672 meters (2640.00 feet) South 0°27’25” West along the
Quarter Section line to the center Quarter corner of said Section 2 and approximately 440.029 meters (1443.66 feet)
North 89°49’09” West along the Quarter Section line from the North Quarter corner of said Section 2, which point is on
the Easterly right of way line of said existing highway State Route 248; and running thence North 22°01’00” East 65.512
meters (214.93 feet) along said Easterly right of way line and the Westerly boundary line of said entire tract to a point
19.405 meters (63.66 feet) perpendicularly distant Easterly from the control line of said project; thence North 26°18’21”
East 122.266 meters (401.14 feet) along said Easterly right of way line and said West boundary line to a point 27.659
meters (90.74 feet) perpendicularly distant Easterly from said control line; thence South 22°01’00” West 183.771 meters
(602.92 feet) to the Southerly boundary line of said entire tract at a point 29.001 meters (95.15 feet) perpendicularly
distant Easterly from said control line; thence North 89°49’09” West 9.851 meters (32.32 feet) along said South boundary
line to the point of beginning as shown on the official map of said project on file in the office of the Utah Department of
Transportation.

City Council Staff Report

PLANNING DEPARTMENT

Subject: North Silver Lake Cottages
Author: Katie Cattan
Date: November 19, 2009
Type of Item: Quasi-Judicial - Appeal of CUP Application

Summary Recommendation

Staff requests that the City Council review the draft findings of fact, conclusions of law and order remanding the Conditional Use Permit (CUP) for North Silver Lake Lot 2B to the Planning Commission.

Topic

Appellant:	Robert Dillon and Eric Lee, Attorneys representing adjacent property owners
Location:	Lot 2B Subdivision of Lot 2, North Silver Lake
Zoning:	Residential Development (RD)
Adjacent Land Use:	Ski resort area and residential
Reason for review:	Written findings must be adopted within 15 days

Background

On July 17, 2009, the appellant submitted a complete appeal for the Conditional Use Permit (CUP) approval of the North Silver Lake Subdivision Lot 2B. The Planning Commission approved the CUP on July 8, 2009 according to the findings of fact, conclusions of law, and amended conditions of approval. The Land Management Code (LMC) section 15-1-18 requires that final action by the Planning Commission on CUPs be appealed to the City Council within ten calendar days of the final action. The appellant submitted the appeal on July 17, 2009, within ten calendar days of final action. The CUP application was reviewed by the Planning Commission on five different occasions (August 13, 2008, October 22, 2008, February 25, 2009, May 27, 2009, and July 8, 2009). On July 8, 2009, the Planning Commission approved the CUP.

The City Council reviewed the appeal on October 15, 2009. During this meeting the City Council asked staff and the applicant for more information and continued the appeal to November 12, 2009. The City Council requested staff to review the open space calculation for accuracy. The Council also requested that the applicant return with a clearer visual analysis. On November 12, the Council voted unanimously to remand the CUP to the Planning Commission for additional consideration of three areas and directed staff to prepare Findings, Conclusions and an Order consistent with Councilmember comments and the motion. The Council should review the draft findings to make sure they reflect the Council's decision and modify as necessary.

Findings of Fact, Conclusions of Law and Order re: North Silver Lake CUP

On November 12, 2009, having been duly advised, the City Council hereby modifies the Planning Commission Findings of Fact and adopts the new Conclusions of Law and Order as follows:

<u>Findings of Fact</u>

1. The subject property is at 7101 North Silver Lake Drive. This property is also known as Lot 2B of the North Silver Lake Subdivision.
2. The proposed development is located within the Deer Valley Master Plan Development.
3. Within the Deer Valley Master Plan, the North Silver Lake Subdivision Lot 2B is permitted a density of 54 residential units and 14,552 square feet of commercial and support space.
4. The applicant has applied for a conditional use permit for the development of 54 units located on Lot 2B of the North Silver Lake Subdivision. The applicant has included 5102 square feet of support commercial space within this application. The project consists of 16 detached condominium homes and four condominium buildings containing 38 condominium units. The remaining commercial units are not transferable.
5. The North Silver Lake Subdivision Lot 2B is 5.96 acres in area.
6. The Deer Valley Master Plan requires that all developments are subject to the conditions and requirements of the Park City Design Guidelines, the Deer Valley Design Guidelines, and the conditional use review of LMC chapter 15-1-10.
7. The Deer Valley MPD determines densities on parcels as an apartment unit containing one bedroom or more shall constitute a dwelling unit and a hotel room or lodge room shall constitute one-half a dwelling unit. The Deer Valley MPD does not limit the size of units constructed provided that following construction the parcel proposed to be developed contains a minimum of 60% open space and otherwise complies with MPD and all applicable zoning regulations.
8. Within the Deer Valley MPD development parcels exhibit there is a note for the NSL Subdivision Lot 2D Open Space stating “This parcel has been platted as open space, with the open space applying to the open space requirement of Lot 2B.” Lot 2D is 4.03 acres in size.
9. Within the original North Silver Lake Subdivision, the Bellemont subdivision was allowed to also utilize Lot 2B towards the 60% open space requirement. The Bellemont Subdivision utilized ¼ acre of the Lot 2B parcel to comply with the open space requirement.
10. The current application site plan <u>contains 72.9%</u> of open space on the site including the remainder 3.78 acres of open space on Lot 2D.
11. The property is located in the Residential Development zoning district (RD) and complies with the Residential Development ordinance.
12. The property is within the Sensitive Lands Overlay Zone and complies with the Sensitive Lands Ordinance, with the exception of Building 3 as stated below.

13. The height limit for Lot 2B was established at 45 feet within the Deer Valley Master Plan. The development complies with the established height limit, with the exception of five feet for a pitched roof.
14. The onsite parking requirements for the four stacked flat condominiums have decreased 25% in compliance with section 15-3-7 of the Land Management Code. The Planning Commission supports a 25% reduction in the parking for the stacked flats within the development.
15. The Planning Commission held public hearings on August 13, 2008, October 22, 2008, February 25, 2009, May 27, 2009, and July 8, 2009.
16. The Planning Commission approved the CUP on July 8, 2009.
17. An appeal of the CUP approval was received July 17, 2009 within ten days per LMC 15-1-18.
18. The City Council reviewed the appeal of North Silver Lake lot 2B on October 15, 2009 and on November 12, 2009.
19. During the Council appeal, argument was heard by counsel for both Appellants and the Applicant, and the public hearing was re-opened.
20. During the Council appeal, Planning Commissioners Strachan, Peek and Windsor provided testimony regarding the Planning Commission consideration of the application.
21. No violations of specific zone standards (setbacks, etc.) were alleged, although questions regarding open space calculations were made.
22. The Council finds the staff calculations as modified in the November 12, 2009 staff report are correct, specifically the Landscaped Open Space calculations including ski runs as noted.
23. In determining Compatibility, the Deer Valley MPD does create a baseline for the area plan but specific neighborhood impacts must still be mitigated with as built conditions.
24. The height of Building 3 is incompatible because the maximum MPD height (45’) used at a site location that steps down the hill magnifies the scale of the resulting façade (nearly 70’) as compared to adjacent uses (33’) and designated view points.
25. The impacts of the incompatible height, scale, bulk and massing of Building 3 have not been mitigated because of its site location on the most exposed area, maximized height due to stepping downhill and 120’ long façade that is disproportionate in scale to the neighborhood. The proposed vegetation will not screen the façade to the same degree as the other structures within or near the project based upon the View Analysis provided.
26. Comparison of internal unit size is not an objective evaluation of Compatibility with adjacent uses or the neighborhood as such bears little relation to external scale and massing.
27. Improvements to the site plan from the 2001 approval and therefore its relevance as having mitigated impacts are discounted by testimony regarding square footage misrepresentations and alleged changes made at the staff level subsequent to Planning Commission approval.
28. Construction phasing and bonding is necessary to mitigate visual and construction impacts that would result if the external ring of units were

allowed to be completed without the central structures and parking due to disproportionate site exposure of the interior of the site.

29. Wild Land Interface regulations will likely further limit proposed mitigation by requiring the elimination of vegetation proposed to screen various portions of the project.

Conclusions of Law

1. With the exception of items 1-3 in the Order below, the Planning Commission's approval on July 8, 2009 was consistent with the Deer Valley Master Planned Development, the Park City Land Management Code, particularly section 15-1-10, Conditional Use Permits, and the General Plan.
2. The Planning Commission erred in applying LMC § 15-1-10(D)(2 and 4) and LMC § 15-1-10(E)(7, 8, and 11) by failing to mitigate the height, scale, mass and bulk of Building 3 to ensure compatibility and maintain or enhance the context of the neighborhood, failing to consider a specific landscape plan in relation to restrictions of Wild Land Interface to better separate the Use from adjoining sites, and failing to mitigate visual and construction impacts by requiring a specific construction phasing plan.
3. Neither Appellants nor the public provided evidence demonstrating that the Planning Commission erred on matters relating to open space calculation, the Commission's standard of review as it related to vesting under the Deer Valley Master Plan and LMC, or the overall site plan's Compatibility.

Order:

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

1. The height, scale, mass and bulk of Building 3 shall be further reduced to meet the Compatibility standard;
2. Further specificity regarding a final landscape plan and bond with consideration for Wild Land Interface regulations shall be reviewed and/or further conditioned; and
3. Construction phasing and additional bonding beyond public improvement guarantee shall be required.

Adopted November 19, 2009

____

Dana Williams, Mayor

PARK CITY HOUSING AUTHORITY
SUMMIT COUNTY, UTAH
OCTOBER 1, 2009

I ROLL CALL

Chairman Dana Williams called the regular meeting of the Housing Authority to order at approximately 6:30 p.m. at the Marsac Municipal Building on Thursday, October 1, 2009. Members in attendance were Dana Williams, Candace Erickson, Roger Harlan, Jim Hier, Joe Kernan, and Liza Simpson. Staff present was Tom Bakaly, Executive Director, Phyllis Robinson, Public Affairs Manager; and Mark Harrington, City Attorney.

II PUBLIC INPUT *(Any matter of Housing Authority business not scheduled on agenda)*

None.

III MINUTES OF MEETING OF JULY 9, 2009

Roger Harlan, "I move approval". Joe Kernan seconded. Motion carried.

Candace Erickson	Aye
Roger Harlan	Aye
Jim Hier	Aye
Joe Kernan	Aye
Liza Simpson	Absent

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

Consideration of an Amended Affordable Housing Agreement with Park City and United Park City Mines Company/Talisker and providing for the City acquisition of approximately 40 acres at Quinns Junction within the PC Heights Annexation application – Joe Kernan disclosed that Talisker is among his recycling customers. Phyllis Robinson, Public Affairs Manager, stated that Talisker has an outstanding off-mountain affordable-employee housing obligation of 86.175 AUEs and has requested to fulfill this obligation in the following manner: (1) construction of ten units at 100 Marsac Avenue representing 15 to 16 AUEs; (2) acquisition of additional existing units at Black Rock development in Wasatch County representing 27 units; and (3) transfer of approximately 40 acres located at Quinns Junction in exchange for a credit of 54 AUEs. The City will retain the right to construct affordable housing on this property within the PC Heights annexation. The developer proposes to donate 40 acres within the annexation which will assist the City in pursuing a mix of housing styles and prices that are integrated within the proposed MPD, and also increase the project's open space. She indicated that the proposed agreement also resolves all remaining construction issues with Talisker regarding the paving of the Park and Ride, a trail connection, and Richardson Flats Road.

The Chairman referred to a letter received from Jamie Thomas expressing concerns about the 100 Marsac element, and Mark Harrington clarified that 100 Marsac does not affect any pending administrative appeals or future litigation. Nothing in this agreement will prejudice boards of the City. Management of and monitoring the affordable housing was discussed. The Chairman invited public input.

Greg Erickson, Quinns Junction property owner, urged the Board to reserve its options and not be hasty in approving this plan. There is a *wild card* that has not been taken into consideration. He advised that today the MIDA legislation takes effect and the southwest corner of Quinns Junction is a preferred MIDA option for the Air Force hotel. He relayed that since the spring he has had productive discussions with the City about options. Quinns needs to be properly master planned which will be difficult if a single area is encumbered with conservation easements and affordable housing. If the southwest corner is chosen by MIDA for the Air Force hotel, there may not be an opportunity to spread out the density in the development because there has to be additional commercial to support it. Mr. Erickson suggested waiting another couple of months to consider this because Quinns is *on top of the list* and he reiterated the importance of preserving options.

Mark Harrington stated that the City can not master-plan property that it doesn't own or control and must react to the applicant's proposal. The proposal is driven by deadlines Talisker must meet in providing affordable housing, which is fast approaching and has huge consequences.

Greg Erickson stated that he understands the issue, and suggested that the only action that would need to be put on hold is the transfer of the property to conservation easements. There is precedence for master-planning over the past 20 years and in 2003 the City partnered with the County and spent $50,000 on the study which was a prudent step. The Quinns Junction parcel is not within the jurisdiction of the City but the City is making an effort to persuade the Air Force not to go there and there is a vested interest. He pointed out that the Council previously denied the annexation of the southwest corner of Quinns Junction and recommended that the 40 acres be taken off the table. If Quinns is chosen by the Air Force, he suggested working together to find a solution and spoke about keeping options open because Quinns is *on top of the list*. If the option is eliminated, the argument about spreading density could become uncomfortable and he again encouraged waiting another couple of months.

Candace Erickson, "<u>I move we approve the attached affordable housing agreement and the proposed amendment to the Flagstaff Mountain Resort employee affordable housing plan, each in a form approved by the City Attorney</u>". Joe Kernan seconded. <u>Motion carried</u>.

Candace Erickson	Aye
Roger Harlan	Aye
Jim Hier	Aye
Joe Kernan	Aye
Liza Simpson	Absent

With no further business, the meeting of the Housing Authority 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

Housing Authority
Staff Report

Author: **Phyllis Robinson**
Subject: **Physician Holdings LLC**
Employee Housing Requirement
Date: **November 19, 2009**
Type of Item: **Administrative: Direction - Housing Authority**

Sustainability

SUMMARY RECOMMENDATION

Staff requests Council discussion and direction on the applicability of the employee housing obligation of Physician Holdings, LLC for the uses proposed in its Medical Office Building proposed for the IHC campus. Staff recommendations for each proposed tenant/use are included in the Analysis Section.

DESCRIPTION: Assessment of proposed affordable housing plan with respect to potential employee generation.

BACKGROUND

The Physician's Holding, LLC is proposing 24,730 square feet of support medical offices at the Quinns'/IHC campus. The Employee/Affordable Housing requirements were stated in Section 11 of the within the IHC/USSA/Burbidge Annexation Agreement. The Employee/Housing Resolution obligation is based on Housing Resolution 17-99 which requires mitigation for 20 percent of the employees generated plus an additional 10 percent for the CT zone density of up to 3 units per acre. The Physician Holdings Medical Office Building has a base employee/affordable housing requirement of 6.62 affordable unit equivalents. One unit equivalent is 800 square feet. The Applicant has asked for a review of the employee/affordable housing obligation based upon the intended use(s) of the space.

ANALYSIS

The employee/affordable housing requirement is based upon an employee generation standard. Section 5 of Housing Resolution 17-99 which governs this project permits an applicant to submit for an independent calculation of unit equivalents.
An applicant may submit an application for an independent calculation requesting modifications to the following:

1) Unit Standards;
2) Limitation Standards
3) Unit Equivalents; and,
4) In Lieu Guidelines and cost reductions

The Applicant has represented that the majority of the medical office space will be filled by existing practices and will not bring on additional staff and are requesting a waiver of this obligation.

Use	Size	Employee Status	Potential Number of Affordable Unit Equivalents (AUEs)
Park City Clinic	7,800 s.f.	No new staff is anticipated. The Park City Clinic will be relocation a portion of their staff from the Bonanza Drive location to the Medical Office Building.	2.09 AUEs
ENT Practice	3,015 s.f.	No new staff is anticipated. The ENT Practice will relocate from their current space in the Jack Johnson Building to the Medical Office Building.	.81 AUEs
Fellowship Hall	4,500 s.f.	The Fellowship Hall is community meeting space for 12-Step groups. It is a 501(c) (3) organization and consistent with our treatment of USSA and Peoples Health Center any housing obligation could be deferred until such time as the nonprofit use ceases.	1.20 AUEs
Pharmacy	1,615 s.f.	This is a new use and will generate additional employees	.43 AUE
IHC Master Lease – Specialty Practices	7,800 s.f.	This use anticipates that specialists will occupy these offices on a part-time basis bringing their own staff from the main office.	2.09 AUE

Staff is seeking Council direction and discussion on the Applicants revised proposal with specific focus on the issues below.

1. ***Is Council willing to consider a waiver or deferral of the housing obligation associated with the Park City Clinic and the ENT practice given the representation by the Applicant that no new employees are anticipated?*** Since it is possible that over time either practice could expand resulting in additional employees, or that a tenant with a larger employee base could take over the lease hold, staff recommends a deferral rather than a waiver of the obligation. Employee growth in excess of 5 percent of the current employees would trigger the fulfillment of the housing obligation. This would apply to current and/or new office tenants. This is consistent with the application of the housing requirement for USSA when it relocated its staff to the campus.

2. ***Is Council willing to consider a waiver or deferral of the housing obligation for the space to be used for the Fellowship Hall?*** The Fellowship Hall is a nonprofit organization providing community services. Consistent with the

treatment of USSA and the Peoples Health Clinic, the employee housing obligation would be deferred so long as that space remains in community use.

3. ***Is Council willing to consider a waiver or deferral of the housing obligation for the space master-leased by IHC?*** The IHC Master Lease is for specialty practices that would not be full-time in Park City. Typically these practices operate in more than one location and do not hire local administrative staff. To that end Staff recommends that any employee growth in excess of 5 percent of the current employees would trigger the fulfillment of the housing obligation. This would apply to current and/or new office tenants.

4. ***Is Council willing to consider a waiver or deferral of the housing obligation for the pharmacy use?*** The pharmacy is a new use and Staff finds no justification for a deferral of the employee housing obligation. Should Council approve the deferral of the housing obligations in items 1, 2 and 3, Staff recommends a payment in lieu equivalent of the .43 AUE requirement, or $69,038 and direct staff to utilize the funds at the PC Heights property.

SIGNIFICANT IMPACTS

Staff time would be required to monitor existing employee levels and tenants. This could be accomplished within our annual verification process.

DEPARTMENT REVIEW

Planning, Legal and the City Manager reviewed this report.

ALTERNATIVES

A. Approve the Request: The Housing Authority could approve a deferral of the employee housing obligation as outlined in this staff report.

B. Modify the Request: The Housing Authority could modify the request and reduce the housing requirement rather than grant a deferral or waiver.

C. Continue the Item: The Housing Authority could continue the item and direct Staff to return with additional information. ‘

D. Deny the Request: The Housing Authority could deny the request and direct the Applicant to comply with the terms of the Annexation Agreement.

RECOMMENDATION

Staff requests Council discussion and direction on the applicability of the employee housing obligation of Physician Holdings, LLC for their Medical Office Building proposed for the IHC campus. Staff recommendations for each proposed tenant/use are included in the Analysis Section.