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

Marsac Building open house 4 p.m. – 6 p.m.

Regular Meeting
6:00 p.m.

I ROLL CALL

II COMMUNICATIONS AND DISCLOSURES FROM COUNCIL AND STAFF

1. Certificate of appreciation to Jack Thomas for his service on the Planning Commission

2. 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

3. Resolution celebrating the 2008-2009 Marsac Building Renovation, Park City, Utah P. 5 - 6

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

IV WORK SESSION NOTES AND MINUTES OF MEETING OF OCTOBER 15, 2009 P. 7 - 25

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")*

1. Consideration of a Resolution celebrating the 2008-2009 Marsac Building Renovation, Park City, Utah P. 5 - 6

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 P. 26 - 52

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 P. 53 - 59
(a) Public hearing
(b) Action

2. Consideration of an Ordinance amending Title 4, Licensing, Chapter 2, Business Licensing in general, of the Municipal Code of Park City, Utah P. 60 - 71

(a) Public hearing
(b) Action

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 P. 72 - 83
(a) Public hearing
(b) Action

4. Consideration of a lease with Wintzer Wolfe Properties for 1255 Ironhorse Drive, Park City, Utah P. 84 - 100
(a) Public hearing
(b) Action

VI ADDITIONAL DISCUSSION – AGENDA ITEMS

VII ADJOURNMENT

Immediately following the adjournment of the regular meeting:

Closed Session - Property, personnel and litigation

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.

Posted: 11/02/09
See: www.parkcity.org

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

November 2009

12 *General election canvass*
Quarterly goal update (work)
Seasonal housing – expanded transit center - KC
Ordinance – 515 Main Street – Talisker - FA
Ordinance – 1150 Deer Valley Drive, Snow Country (continue to 12/3) - FA
Ordinance – 1110 Empire Avenue - FA
North Silver Lake appeal continued hearing/action

19 Visioning debrief – work
Hot air balloon discussion – (30 min)
Special event prioritization – work
Sundance supplemental agreement (work)

26 **No meeting - Thanksgiving**

December 2009

3 VCBO presentation on the Racquet Club (30 min - work)
Lower Park Avenue RDA (work)
Senior housing (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 ___) – FA
Ordinance – 1150 Deer Valley Drive, Snow Country – FA
Resolution – anti-idling

10 Insurance Placement for 2010
Park Silly Market economic analysis findings (work)
US Postal Service – gang box plan
Open space maintenance

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

14

21 **No meeting – Sundance opening**

28

Pending Items:

Appeal of Planning Commission approval of design of 108 Park Avenue
Comstock sidewalk (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

RESOLUTION CELEBRATING THE
2008-2009 MARSAC BUILDING RENOVATION

WHEREAS, as early as 1875 private schools were established by mining communities and churches and in Park City, the Jefferson and Washington Schools were built to accommodate the burgeoning student population in the early 1900s; and

WHEREAS, in 1936 the Marsac School was conceived and built to consolidate the community's various schools and the 24,102 square foot structure was planned to house 317 pupils; and

WHEREAS, the Marsac School was designed by architects Carl W. Scott and George W. Welch, and is one of over 230 public works buildings constructed in Utah under various New Deal Programs during the depression years of the 1930s and 1940s, of which only 130 are preserved today; and

WHEREAS, the facility served the Park City School District until 1979, when deemed no longer viable for modern educational programs and limited because of the poor condition of its structural and mechanical systems; and

WHEREAS, the City purchased and renovated the building in 1983 to maintain a presence in the Historic District by consolidating and housing many of its departments and KPCW operating from the over-crowded City Hall Building and the War Veterans Memorial Building located on Main Street; and

WHEREAS, although the 1983 upgrade was adequate in serving a rapidly growing community with an integrated system of City government for over two decades, there were concerns about compliance with current Building Code standards and considering a seismic upgrade if municipal operations continued in the Marsac Building became a pressing issue; and

WHEREAS, in 2007 our elected officials began difficult deliberations on the future of the Marsac Building, weighing the public and economic benefits and shortfalls of maintaining its historic public use or selling the property and building a new city hall building; and

WHEREAS, Mayor Dana Williams and Council members Candace Erickson, Roger Harlan, Joe Kernan, Jim Hier, and Liza Simpson affirmed their decision to proceed with the $7 million renovation project of the Marsac Building, memorialized with a ground-breaking held on July 5, 2008; and

WHEREAS, the construction project was beautifully achieved well within its budget and before its anticipated completion date with a result true to its history and true to the charge of local government by looking to the future and incorporating efficient and environmentally sensitive sustainable elements;

NOW, THEREFORE, BE IT RESOLVED, that as Park City celebrates the official unveiling of the Marsac Building Renovation, the Mayor and City Council deem it appropriate to recognize the talents and dedication of City Manager Tom Bakaly, Project Manager Dave Gustafson, Chief Building Official Ron Ivie, FFKR Architects, Jacobsen Construction, and numerous staff and community members who all contributed to the success of preserving our National Historic Register Treasure, the Marsac Building, re-dedicated this 5th day of November, 2009.

PASSED AND ADOPTED this 5th 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

PARK CITY COUNCIL WORK SESSION NOTES
SUMMIT COUNTY, UT
OCTOBER 15, 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; Scott Robertson, IT Manager; and Kay Lynn Stafford, Project Manager

1. Council questions/comments. Roger Harlan thanked staff for completing Phase 1 of the Bonanza Drive improvements and opening the road. Liza Simpson indicated that she attended the Visioning wrap-up on Tuesday and advised that the presentation is on-line. Jim Hier reported on business of the Building Code Commission, pointing out that this was his last meeting. He emphasized the efficient practices of the board, the importance of building code legislation, and strongly encouraged that the City remains involved. Mr. Hier noted that he resigned, feeling the appointment should be commensurate with his City Council term, and would like to see someone from the County or the City represented on the board. Candace Erickson reported on the Friends of the Library luncheon. Mayor Williams discussed a visit from a delegation from an island in the South China Sea and commended the *Park Record* for its article written on the gathering.

He acknowledged the efforts of staff in resolving the parking issues on Norfolk Avenue and relayed that he has received complaints about Westgate's aggressive sales tactics. Mark Harrington explained that there is a streamline protocol with police and complaints must go directly to Dispatch first. If that is not done, it will limit the City's ability to cite violations. Mr. Harrington indicated, however, that he will follow up with Westgate management. The Mayor announced that former employee Dave Middleton passed away today.

2. City website presentation. Scott Robinson explained that his department was asked to overhaul the website by improving searching and navigation, allowing for more flexibility, and addressing other issues. The discovery process involved identifying needs and wants and a technology to carry the City through for the next four to five years. It was important to also identify and understand the audience the City is providing services to and how to be a good website neighbor by sharing and directing traffic. He explained that a committee was formed, representing all departments, who helped shape the site which is geared toward the citizen and well as the visitor. A good portion of the Chamber's traffic originates from the City and parkcity.org is a highly ranked listing from a Google search perspective. Mr. Robinson discussed the international hits our site receives and the statistics used to pinpoint relevant information. He discussed new features like maintaining themes, tones, and eliminating data that is outdated.

Project Manager Kay Lynn Stafford explained that the website committee felt it important to increase citizen and employee use of the website. Forty employees will be trained to manage their own department pages to ensure up-to-date and complete information. The three main navigation themes are *Getting Around, Employment,* and *Recreation* and a search feature that keeps the user on the City site. The site is ADA compliant, provides a document retrieval element and pop-up notices for emergencies. She showcased the site, navigated to various departments, noting that it is still being developed. Scott Robinson announced that the site will be fully operational the end of November. Ms. Stafford explained the email subscription feature for citizens wanting information or notifications for meetings, etc. Council members were pleased with the new capabilities of the website.

Prepared by Janet M. Scott, City Recorder

PARK CITY COUNCIL MEETING
SUMMIT COUNTY, UTAH
OCTOBER 15, 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 15, 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; Max Paap, Special Events Manager; Kent Cashel, Transportation Manager; Kathy Lundborg, Water Manager; Brooks Robinson, Planner; and Katie Cattan, Planner.

II COMMUNICATIONS AND DISCLOSURES FROM COUNCIL AND STAFF

High West Distillery – Brooks Robinson reported that an occupancy permit will likely be issued to the Distillery by October 23 and he spoke about the restaurant feature of the project.

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

City website – Mike Sweeney encouraged staff to manage data so that it can be retrieved easier by the public and to provide a computer at City Hall for public use on the internet.

IV WORK SESSION NOTES AND MINUTES OF MEETING OF OCTOBER 1, 2009

Roger Harlan, "I move approval of the work session notes and the minutes of the meeting of October 1, 2009". Candace Erickson seconded. Liza Simpson abstained as she was not in attendance. Motion carried.

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

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

1. Consideration of Master Festival License for the Mountain Town Stages Pub Crawl, including a partial closure of Main Street from 7 p.m. to 9 p.m. on Saturday, October 24, 2009 – Max Paap explained that this has been an informal event in the past, but this year the organizer wants to expand the event to the street for the benefit of businesses and visitors and expects 125 participants. The HMBA is aware of the

event and has not expressed concerns. The application is being reviewed as a master festival license due to the request for a temporary street closure, use of City property, and amplified music. The street closure will include the area from 5th Street to 9th Street from 9 p.m. to 10 p.m. Organizer Brian Richards explained that a band will be playing on the Prudential veranda, a band on the bridge overlooking the Town Lift Plaza area, and a musician on the back of a pick-up from 5th Street to the bridge.

The Mayor opened the public hearing; there was no input and the hearing was closed. Candace Erickson remarked that the event is only for one hour and Mr. Richards affirmed that it is only for an hour on the street but the evening portion in establishments is about five hours. Jim Hier, "I move we approve the Master Festival License for the Main Street Music Crawl on Saturday, October 24". Liza Simpson seconded. Motion unanimously carried.

2. Consideration of the First Amendment to Park City Municipal Corporation and Summit County Interlocal Transportation Agreement, in a form approved by the City Attorney – Kent Cashel explained that the document represents seven years of work with the County. Jointly providing transit service began in 2002 on an incremental cost basis where Summit County paid for fuel, drivers and maintenance of the vehicles. In 2005, a proportional operational cost share formula was implemented, but the cost of the capital facility was still unaddressed. With the expansion of the Ironhorse transit facility, the time seemed right to capture the capital cost. Attachment D in the agreement lays out a formula that continues with the cost-share philosophy, taking into account any interest costs incurred in financing the project, and including a component for capital renewal. The agreement includes insurance requirements which are more clearly reflected as well as some minor technical corrections. He stated that the joint transit advisory board and staff believe this amendment is an equitable and efficient way to deal with the cost of the facility and staff recommends approval. The next step is presenting the amendment to the County for ratification.

The Mayor invited public input; there was none. Candace Erickson, "I move we authorize the City Manager to execute an amended Interlocal Transportation Agreement, in a form approved by the City Attorney". Roger Harlan seconded. Motion unanimously carried.

3. Consideration of the First Amendment to the Mine Maintenance Agreement, in a form approved by the City Attorney, with Jordanelle Special Services District (JSSD) for a term of one year at a rate of $30,000/month – Kathy Lundborg pointed out the flexibility of the agreement, including a 30 day termination without cause provision and urged approval. The Mayor invited public input; there was none. Liza Simpson, "I move we authorize the City Manager to execute the First Amendment to the Mine Maintenance Agreement, in a form approved by the City Attorney, with JSSD for a term of one year at a rate of $30,000 per month". Roger Harlan seconded. Motion unanimously carried.

VI OLD BUSINESS *(Continued items)*

Consideration of an Appeal of the Planning Commission's July 8, 2009 approval of a conditional use permit application submitted by North Silver Lake Lodge LLC – appellants, adjacent owner associations represented by Clyde Snow, Attorneys at Law – Mayor Williams explained the format for the hearing and advised that it is not a public hearing and will poll members about taking public input. Next, members will be asked to disclose any conversations about this matter. Staff will then introduce the appeal, followed by the appellants' presentation, Council questions, and then the applicant's presentation. Staff will respond to any questions. He explained that the Council will deliberate and may take action tonight.

Candace Erickson stated that she will excuse herself from the discussion and voting because her husband spoke on behalf of the applicant at a Planning Commission meeting. Liza Simpson, "I move we expand the scope of this (appeal) to include public input". Roger Harlan seconded. Motion carried.

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

The Mayor invited disclosures. Jim Hier stated that Brad and Lisa Wilson, opposed to the project, are longtime friends of his, including business dealings. Since the appeal was filed he hiked with Lisa Wilson and although they crossed the Silver Lake property, there were no discussions with regard to elements of the appeal but rather on trees. In addition, he indicated that he has received multiple emails but did not read them. Liza Simpson disclosed that she received many emails and also hiked with Lisa Wilson to observe tree die-off in the Empire Pass area. Roger Harlan acknowledged that he read a couple of emails. Joe Kernan stated that he also received many emails, but didn't read them when he realized they were regarding the appeal. He also received a couple of phone calls, but didn't discuss anything of substance with regard to the appeal. The Mayor commented that he received emails and spoke to two Planning Commissioners to gain clarification on some issues.

Katie Cattan explained that under the Deer Valley Master Plan, the North Silver Lake parcel is permitted a density 54 units of residential and 14,552 square feet of commercial and support space. The project is regulated under the Deer Valley Master Plan as well as requirements in the RD Zone in the Land Management Code. The Deer Valley MPD outlined the height of 45 feet; with a pitched roof an exception of five additional feet can be granted. She explained that the application was submitted in May 2008 and was approved by the Planning Commission on July 8, 2009. Through a PowerPoint presentation, Ms. Cattan illustrated a diagram of the project with 15 periphery homes where the developer self-imposed a height restriction of 33 feet. The middle building is 50 feet; there are three central buildings in which there are 38 units and of the 16 periphery units, three are duplexes. There is 74% open space including an adjacent lot and the ski run.

She explained that the first point of the appeal is that the project does not comply with the LMC conditional use permit. Through the Planning Commission review, two major changes occurred in the site plan including increased tree protection and open space, decrease in the footprint, revised internal road system, full analysis of the prior approval, and in-depth analyses of compatibility and existing conditions.

The next piece of the appeal deals with the LMC finding that the project be compatible with the structures in use, scale and mass, and circulation. The use is residential single family with a small portion of support commercial, including a spa and a restaurant. With regard to scale, the 33 foot height requirement was self-imposed for the homes around the periphery and an evaluation was done of the average square footage of the homes in the area. Adjacent properties averaged 4,917 square feet and within the project, the average unit size is 4,227 square feet. The massing moves toward the center making it more compatible on the edge adjacent to the neighborhood. With regard to circulation, she pointed out the funicular serving the largest structure, Building #3.

Ms. Cattan stated that the next appeal point was that mass, size, and compatibility issues will impact the scenic corridors and explained that on two different occasions, the developer presented photos of representations of the viewpoints requested by the Planning Commission. She displayed and discussed the same.

The gross floor area of the entire project increased by 36,193 mainly due to common space and parking circulation improvements. The total building coverage and pavement decreased 18,216 square feet and the final open space calculation is 74%.

Katie Cattan explained that the next point dealt with the CUP criteria as well as scenic vistas, significant vegetation slope retention, and Commissioner Strachan's findings. The Planning Commission went through all of the CUP criteria and the two criteria members struggled with related to the compatibility finding with mass and scale. The minutes reflect the reality that the initial density determined is higher than the other areas in the MPD making the compatibility finding more difficult to make. She referred to a provision in the LMC that the Planning Director can determine the limits of disturbance and require mitigation for loss of significant vegetation. The Planning Director reviewed the plans and determined that the loss of any high quality trees will require the planting of two large specimen trees; second tier trees must be replaced with 1.5 large specimen trees, and the tree and plant protection plan must be followed. Review of the slope retention resulted in two retaining walls. She pointed out that the appeal materials also included Commissioner Strachan's findings.

Ms. Cattan relayed that the next appeal point related to construction phasing. She noted that the Building Department is involved in formulating a construction mitigation plan for projects but at this point, there is not enough information about what time of year the project will be built or the availability of complete building plans. These mitigation plan meetings are open to the public and review of a mitigation plan during the CUP process does not occur because of the reasons cited above.

Another point made in the appeal was that the MPD does not create any property rights that give the applicant a right of an unlimited size for dwelling units or residential condominium units in the project. She continued to explain that the project was required to go through a CUP review and has met the requirements of the MPD, including height as well as open space requirements. These steps do not lead to unlimited size but a determined size. A square footage number is not identified in the Deer Valley MPD but the project complies with the RD zone.

She continued to explain that the next appeal point relates to existing conditions, the reduction in density, vested density under the MPD, and compatibility with surrounding homes. Ms. Cattan illustrated a map and pointed out the density throughout the Deer Valley MPD. North Silver Lake Lot 2B is assigned 54 units; it is the third smallest lot but has the greatest amount of density. All of the projects within the MPD are regulated by the RD zone.

The next discussion point was that the applicant has vested rights under the MPD and she stated that the applicant does have vested rights under the Master Plan and is not subject to adjusting density reallocation. The development is subject to the LMC and the Deer Valley MPD. There was also concern expressed about lockouts, allowed in the Deer Valley MPD, but no lockouts are proposed for the North Silver Lake Project. The appellant suggested a condition of approval prohibiting lockouts, but since they are allowed under the MPD, the following condition is recommended, "*The approved plans do not include lockout units. Any modification of the floor plans to include lockout units will require approval by the Planning Commission*".

She advised that the third portion of the appeal deals with noticing. She explained that because many owners are second home owners, it is often difficult getting notice to all individuals. Staff complied with all requirements of the LMC regarding noticing for a CUP. All of the documents are public and have been made available to the public throughout this process.

Planner Katie Cattan stated that staff recommends that the City Council deny the appeal in whole. The CUP is approved with the findings of fact, conclusions of law, and amended conditions of approval. The Mayor invited the appellant to comment.

Eric Lee, attorney, explained that the appellants are a group of about 40 property owners in the area and a couple of home owner associations surrounding the project. This is an appeal of the 3:1 vote in favor of the CUP. Three Commissioners did not vote because one abstained, one was absent, and one recused himself. He stated that Commissioner Strachan not only voted to deny but took the step of drafting detailed, exhaustive findings and submitted those findings into the record. He felt that Commissioner Strachan's carefully considered reasoning highlights the reasons why the decision needs to be reversed. The overriding premise of Commissioner Strachan's position was really quite simple; it was his view that the Planning Commission is empowered by the LMC to insist on a mitigation of detrimental effects before approving a conditional use. It was Commissioner Strachan's conclusion that the Commission was not handcuffed in this case by the 35 year old MPD and focused on the portion of the LMC 15-1-10 which reads, "*If the reasonably anticipated detrimental effects of the proposed conditional use can not be substantially mitigated by the proposal or in a position of reasonable conditions, the conditional use may be denied*". It identified six areas where detrimental effects from this project have not been mitigated. Mr. Lee indicated that his focus is compatibility but it is worth reviewing the other areas of detrimental effects which Mr. Strachan identified. His findings identify visibility. Mr. Lee stated that this project sits on a knoll and will be very prominent from Main Street, SR224, and other vantage points. He continued to explain that Commissioner Strachan identified some overriding goals and two from the General Plan (1) new structures should blend in with the landscape and preserve the natural views of the mountains and meadows, and (2) new development should be focused in less visible areas. The goal of LMC 15-1-2 says *allow development in a manner which encourages the preservation of scenic vistas*. Mr. Lee believed the vista looking up Main Street should be preserved. Mr. Strachan found that the proposed development fails to blend in with the landscape, as required by the General Plan, and it should be located in a less visible area as required.

Mr. Lee relayed that the second area of concern was traffic but rather than detailing Mr. Strachan's findings, he indicated that the proposed development does not mitigate or address the impacts of traffic. The number of units proposed and the number of people potentially housed in the units will prompt additional traffic which was not addressed by the Planning Commission. He indicated that Mr. Strachan was very concerned about the lack of vegetation protection and particularly focused on the LMC section which reads, *property owners must protect significant vegetation during any development activity*. The development does not mitigate or substantially mitigate the reasonably anticipated detrimental effects of the development and Mr. Strachan's evidence among other points was the fact that of the 544 trees in this project site, 429 have to be removed. Mr. Strachan analyzed the definition of significant vegetation which is a LMC defined term, pointing out this development proposal doesn't address that definition in any way. Saving all significant vegetation is a mandate, not an option. Mr. Lee added that he addressed grading, building mass, bulk and orientation and pointed out that the proposed development has not mitigated the anticipated detrimental effects caused by the mass, the scale and orientation of the proposed development. The project consists of 54 units and 112 parking stalls, 16 detached homes with 26 garages, 38 condominium homes with 86 parking stalls and the entire project has a gross floor area in excess of 356,000 square feet. Mr. Strachan's conclusion was that the square footage of this project results in a substantial impact that has not been mitigated or substantially mitigated.

Mr. Lee pointed out Mr. Strachan's position on the north building. It is the largest building in the project and the most prominent building from the different view corridors.

Mr. Strachan noted that the mass, scale and orientation of the north building has not been mitigated or substantially mitigated. It is five stories and approximately 77,000 square feet. The project has evolved except for the north building and finally, Mr. Strachan concluded that the proposed development is incompatible with surrounding structures in mass and scale and it violates the LMC for that reason.

Eric Lee stated that compatibility is the main issue and the three Planning Commissioners voting in favor of the CUP decided that the project is not compatible with surrounding neighborhoods but it doesn't need to be because its incompatible nature is a vested right. He quoted Commissioner Wintzer as saying "*The compatibility issue will never be resolved*". Due to the approved density, this project could never be perceived as compatible with the surrounding properties. Because of the MPD approval, compatibility could not be achieved and it was not required. Mr. Lee stated that he feels that Commissioner Wintzer and the other two members were wrong on both counts. He stated that Commissioner Strachan noted that compatibility is an absolute requirement. Mr. Lee indicated that LMC 15-2-10(d)(2) says the City shall not issue a conditional use permit unless the Planning Commission concludes that the project will be compatible with the surrounding structures in use, scale and mass. This is mandatory language. Whatever vested rights are associated with this project, if they create incompatibility, this project can't be built. He noted the second problem with Commissioner Wintzer's view relates to what was approved by the MPD. Density is not mandated by the MPD and the word density is used quite loosely in a number of contexts. The word density is not found in the MPD. The LMC defines density in quantitative and qualitative ways. On the quantitative side, the definition refers to number of units which is 54 units. The other component of density is the qualitative side and the LMC points out that density is also a function of intensity of use and types of units. The MPD does not address these qualitative issues and the Planning Commission was required to do so when determining whether this project is compatible with the surrounding area but stopped its analysis with the quantitative component of density.

Mr. Lee relayed that another point unique to the project is that the rights created by the MPD are not static. The developer would have you believe that the compatibility issue was assessed back in the early 1980s when the MPD was approved and it can not be looked at again. This is not true as it is not in the LMC or MPD. Mr. Lee insisted that compatibility must be based on current surrounding properties. This project simply overwhelms the surrounding neighborhoods. He felt that some of the comparisons are misleading. The square footage of the homes in the surrounding neighborhoods includes garages and that is not what is contained in the project units. Multiplying the 54 units by the average unit size of 4,200 square feet results in 228,000 square feet but the project is 356,000 square feet and the remaining 130,000 square feet is in the garages and common space. If the 54 units are divided into the total square footage of 356,000 square feet, the result is an average unit size of 6,600 square feet not 4,200 square feet. It is misleading to focus on individual unit sizes because the surrounding neighborhoods do not have the mass, scale or density of this project. He stated that the

Planning Commission erred by not accounting for the overall project in its compatibility analysis.

Attorney Eric Lee continued that the developer speaks broadly about his vested legal right to the entitlements of the MPD. The truth is that the developer's rights under the MPD are much more specific. Specific rights under the MPD include 54 units and 45 foot building heights with the right to propose any unit size, but the developer has no right to a particular unit size. The Planning Commission had the right and the obligation to look at the unit size in a compatibility perspective. The developer has taken full advantage of the maximum unit number and the building height allowed shoehorning the 356,000 square foot project on 5.9 acres. The developer did not offer a single concession from the absolute limits allowed under the MPD. The Planning Commission did not separate the vested rights from those still within the purview of the Commission. Commissioner Strachan understood this and pointed out the six areas the application failed to satisfy while the other three Commissioners who voted in favor essentially decided that significant access to the CUP review process was taken out of their hands by the MPD. Mr. Lee felt this position is in error and asked that the decision be reversed.

Tom Bennett, legal counsel for the applicant, explained that he and planning professional Doug Clyde have worked with their client throughout the approval process. Doug Clyde stated that the design team includes noted professionals with substantial amount of experience in the Park City area doing work throughout Deer Valley. Through a PowerPoint presentation, he pointed out the location of the North Silver Lake Project which is surrounded on the left by the various Belle developments, adding that the Belmont development actually had more than 50% coverage and had to use a portion of Lot 2D. There are surrounding projects that have substantially greater presence. He pointed out Evergreen and the Stag Lodge.

Mr. Clyde continued to explain that the process began over a year before Planning Commission review, including multiple meetings with various neighbors and home owner associations and many meetings with staff. There was a lot of planning and outreach prior to developing the first plan which is totally compliant with the LMC and the Deer Valley Master Plan and is not dependent on any exceptions to any of the governing documents. The Planning Commission reviewed the plan and asked to see more preservation of trees and vegetation and to loosen up the site plan on the perimeter because the units were too close together. They also wanted more information about the trees on the project site. As a result, an arborist was hired who found 32 high quality trees on the project site and the applicant returned with a plan which addressed tree preservation. Mr. Clyde relayed that the Planning Commission felt the revised plan was a good start but members wanted to see more trees preserved and another arborist identified another tier of trees with health issues that could potentially be preserved. At that point a third plan was formulated which reduced the periphery units from 21 to 16 and dramatically reduced the road area inside the project, thereby decreasing the amount of impervious surface and providing substantially more open space. The setbacks of the perimeter homes increased to the property line and as the project became tighter, it substantially reduced the footprint and preserved about 114 trees. The tighter design resulted in a dramatic decrease in driveways and paved areas throughout the project. The project went from 21 to 16 perimeter units in an effort to preserve vegetation and the open space went from 68% to 74%. The outdoor recreational facility was moved to the north end of the project where it fronts onto open space; it was formerly placed adjacent to the Belles. He explained that the north building and the associated recreation building fronts onto open space and there are dramatic setbacks from the property line at 80 plus feet. The setback required by Code is 15 to 20 feet.

He emphasized that none of the buildings break height restrictions; the perimeter units are 33 feet and the allowed zone height is applied in the interior only. Mr. Clyde felt that the 33 foot height is complimentary to the zoning in adjacent neighborhoods.

Mr. Clyde stated that not only were trees preserved buffering the project, but the applicant also offered a very aggressive landscape plan which involves planting large specimen trees. The project is configured to provide as much useable and contiguous open space as possible which also preserves some trees. He felt that architecture is an important element when considering compatibility and the project's architects are very familiar with the Park City environment and appropriate materials like native sandstone. Every building in the project dramatically exceeds the requirements of the LMC and Deer Valley MPD with regard to architectural interest with façade and roof shifts. He displayed renderings of the project and the surrounding area. The Mayor asked if Building #3 is the structure visible from the Main Street corridor. Doug Clyde pointed out that some of this project and the Belles are visible but the topography for Building #3 is a full story lower than the buildings behind it. Mr. Bennett referred to a rendering of Building #3.

Mr. Clyde emphasized that a sensitive lands analysis was conducted without exception, resulting in a substantial reduction in road area, an increase in open space and greater separation between the parameter homes. The Belles is separated from this project with a 50 foot ski run, and with its 15 foot rear setback, places the North Silver Lake Project some 80 feet away from the Belles. A wildlife study and mitigation plan were performed which seemed unusual for an in-full project and the planning process for this project has been extraordinary.

Attorney Tom Bennett reiterated that the process has been extensive. The appellant describes the applicant's approach as aggressive but the fact of the matter is that there was an extensive *give and take* over a period of 14 months. With regard to the standard for approving a CUP, the Code says that a conditional use shall be approved if reasonable conditions are proposed or can be imposed to mitigate the reasonably anticipated detrimental effects of the proposed use in accordance with applicable standards. The Code has been amended in the past several years. Mr. Bennett recalled that the Planning Commission used to have a great deal of deference but that is no longer the case. He repeated that a conditional use shall be approved so long as reasonable conditions can be adopted that mitigate impacts. The second thing that is important to note is that this is an appeal and because this is an appeal, the LMC states that the appellant has the burden of proving that the Planning Commission *messed up*. In other words, that the Commissioners were wrong in determining that reasonable conditions were proposed and adopted. The issue of compatibility is a giant issue. He stated that the law is clear about analyzing the issue of compatibility and the analysis has to start with what the vested rights are for the project, emphasizing that there are vested rights with this project. Once the vested rights are established, compatibility must be addressed as well as the types of reasonable measures that should be adopted to mitigate any impact. The MPD established 54 units of residential use, a maximum building height of 45 feet plus an additional five for a pitched roof for a total of 50 feet, 14,250 square feet of commercial space, and there is a specific statement that there shall be no size limitation for units constructed on any parcel provided that following construction the parcel proposed to be developed contains a minimum of 60% open space and otherwise complies with the MPD in applicable zoning.

He pointed out that what the appellant suggests is that the fact that compatibility is an issue to be examined in connection with a CUP review, that it opens the door for the Planning Commission to exercise broad discretionary rights in determining the size of a project. Mr. Bennett continued to explain that part of the reason for that is that compatibility suggests a certain amount of subjectivity. It is difficult to define compatibility and so the mitigating factors employed by the applicant are addressed. Mr. Lee's comment that Commissioners admitted that the project can't be compatible is not the case. That is only the case if incompatibility is defined to mean something different. This project differs from surrounding properties in terms of allowable mass, scale and number of units but there are significant factors that have been included in the planning for this project that mitigate the differences between this project and its neighbors.

Mr. Bennett stated that first of all, this project spreads the density over the site instead of centering it all in the middle which was influenced by public input. Secondly, the surrounding perimeter units are comparable in size to the units neighboring them. The analysis that Mr. Lee suggested is wrong and Ms. Cattan's numbers were pulled from property tax records which includes improved square footage. The applicant exceeded the open space requirements, pushing it from 60% to 74%. Fourth, significant architectural design features and building materials were incorporated so that the design and materials are compatible, consistent and in harmony with neighboring properties. Fifth, a carefully designed re-vegetation and landscaping plan has been formulated, also intended for buffering.

Doug Clyde relayed that he has worked on many projects in the Deer Valley area and having 33 foot buildings next to 100 foot buildings is a common land use. None of those projects would ever have been found to be compatible using Mr. Lee's approach. There is a section of the LMC that says the way to mitigate projects which vary in mass and scale, is through careful architecture and site design. Mr. Bennett pointed out that this is important because it is in the same section and he believes that Section 15-1-10(b)(2) means there needs to be an overall finding of compatibility which the Planning

Commission reached. It is inaccurate to say that all of the Planning Commissioners felt this was incompatible but approved it anyway. There is a specific finding that the project is compatible in mass and scale.

Tom Bennett continued to state that because compatibility is potentially subjective there are two objective factors that can be utilized. One was mentioned by Katie Cattan in terms of comparing the square footage with neighboring structures and as pointed out, the square footage is about 700 square feet less on average. Additionally, there is some guidance provided from a prior approval. In 2001 a project was approved on this site and although the approval is no longer valid, it is important because there was a specific finding that the proposed units' planning and architectural detailing are compatible with the residential communities in the vicinity in mass, use, scale and circulation.

Doug Clyde displayed a rendering of the previous approval which included 50 foot buildings located against the setback line where the adjacent Belles are located. This plan is not nearly as sensitive as the current application proposed today. Also, the recreational facility was located directly adjacent to the Belles and would have had a maximum impact on those residential uses but has since been moved. He stated that this is a better project because of more open space, less coverage for roads and footprint, and a substantial portion of the project is designed at 33 feet or less.

Mr. Clyde emphasized that much of the mitigation is voluntary and one of the most important elements is sustainability. A sustainability consultant was hired to formulate a plan which was reviewed by the City. The sustainability plan is not green-washing but *doing the hard things*. The Planning Commission liked it and the developer voluntarily agreed to include the effort in the conditions of approval.

Mr. Bennett referred to the criticism that traffic was not addressed, but it was and a traffic study was produced. The conclusion of the traffic report was that there were no significant traffic impacts raised by the project.

Tom Bennett expressed that vegetation is an interesting issue, especially the statement, *no significant vegetation can be removed*. He quoted Section 15-2.13-10, "*The property owner must protect significant vegetation during any development activity… Development plans must show all significant vegetation within 20 feet of a proposed development. The property owner must demonstrate the health and viability of all large trees to a certified arborist. The Planning Director shall determine the limits of disturbance and may require mitigation for loss of significant vegetation consistent with the landscape criteria in another chapter of the LMC".* Mr. Bennett emphasized that the section does not say that you can not remove any significant vegetation; what it says is that you have to make efforts to preserve it, and you need to establish appropriate limits of disturbance to preserve as much of it as possible, and to the extent that there is a loss of significant vegetation, there must be adequate mitigation. That is what the applicant has proposed. Doug Clyde interjected that he has practiced under that language for many years, and as interpreted by Mr. Lee, nothing would have ever been built in Park City. The way that section of the Code is interpreted is that there is a strict requirement to protect the area outside of the limits of disturbance and that has always been the way it has been applied.

Tom Bennett responded to the comment on the visibility of the project from various vantage points in town and the argument that the LMC basically prohibits anything that can be seen. He read a statement purpose of the Code, *to allow development in a way that encourages the preservation of scenic vistas*. This is a stated purpose but not a specific provision of the Code that is applied to limit development. In this case, the Deer Valley MPD approved by Council provides that significant development can occur on this site as long as there is compliance with the Code. Whatever is built there must comply with the standards of the Deer Valley MPD and is going to be visible in some way from different vantage points in town. Mitigation is key and he spoke about the orientation of the spa building. He stated that he is offended by statements that the developer has *pushed the envelope to the limit* because that is not true. The developer voluntarily lowered heights and produced requested information and the process was interactive with the Planning Commission. Mr. Bennett emphasized that the standard for approving a conditional use is that it will be approved as long as reasonable mitigation is accomplished and the appellant has the burden of proving that the Planning Commission was wrong when it concluded that the impacts of this project have been effectively mitigated.

Doug Clyde expressed his concern with Mr. Lee's comment that the developer made no concessions. Mr. Clyde noted that he has never seen a project that has evolved into such an exceptional plan as a result of an interactive process with the Planning Commission.

Joe Kernan asked if the question at hand is whether reasonable measures were taken to minimize the impacts of the project. Mark Harrington explained that the first consideration is whether the Planning Commission erred with regard to code standards and the second element is the mitigation. The appellants are asserting that certain adverse impacts have not been mitigated and the focus should be on identifying specifically what the adverse impact is and if there is one, whether it has been mitigated. The Mayor invited Planner Cattan to respond to comments.

Katie Cattan referred to the significant vegetation discussion and pointed out that the Planning Director has the authority to formulate a plan to replace vegetation. With regard to density, unit size is not provided for but a maximum of 54 units is specified in the MPD. She continued to explain that square footage numbers were taken from Summit County tax records and Jim Hier stated that it is his experience that the County records do not include garages. The Mayor invited public comment.

Bob Wells, Deer Valley Resort, explained that some of his concerns have been addressed in the packet materials and in the presentation from Messrs. Clyde and Bennett. The site is part of the Deer Valley MPD, first issued in 1977 and vigilantly pursued for over 30 years. The MPD sets forth and controls the development density and parameters for the entire resort. If the questions brought up tonight were brought up ten years ago, Deer Valley Resort would be in a world of hurt because it relies on the land use plan. Deer Valley is a mixed use resort and not just a residential area. The land use plan embodied in the MPD includes a series of development communities. The Silver Lake areas include commercial, leading into relatively high density stacked condominiums, then into townhomes, and then single family. This is exactly what happens in North Silver Lake and it was intentional, not an accident. To take a plan that is incorporated into a MPD and modify it as proposed in the appeal is aborting the very MPD concept governing the project. The Mayor asked if the Belles represent the end of the single family component. Mr. Wells again explained that the center core leads into a lower density of townhomes which is the Belles which leads into estate single family which is Evergreen and Belleterre. The master plan for Silver Lake was processed and approved in 1987 or 1988 and basically set this scenario in place and was accomplished before anybody bought property in North Silver Lake. As each project was developed, buyers had the full opportunity of learning about the master plan, and what the MPD outlined for the development of the area. The land use plan, incorporating Lot 2B was intentional and not an accidental plan and Mr. Wells urged denial of the appeal.

Tom Boone, adjacent property owner, agreed with some of Mr. Wells' comments about the master plan designed with a high density core and leading out to lower density. Seven of the nine parcels have been developed and were originally intended to have 147 units but now have 95 units on 98 acres. He referred to the 54 units and 45 foot height limit for this project but never found a plan for common space which represents 20% of the project. He argued that the common space square footages add to the size of the homes bumping the average size to 5,700 square feet. He felt the project is too massive for the acreage and that the Planning Commission felt bound by the MPD. Although some things were mitigated, the project grew by 36,000 square feet but that information was not presented until the final meeting and he felt that the reduction in height was not a big concession. Unit sizes were smaller 20 years ago on average and the developer is asking for current market-sized units, plus there is a lot of common space. The project is based on a plan written 20 years ago. Mr. Boone stated that the Planning Commission needs to take another look at this because there are areas that have not been addressed during the process. He noted that he met with the developer two years ago, he relayed at that time that the project would overwhelm the community.

Rob Alday, full-time resident in Silver Lake, believed that the areas of consideration fit within the Deer Valley master plan in mass and scale and are reasonable. The project does fit within the Master Plan; the mass and scale seem to match that of the surrounding areas and the number and size of the units seem to be reasonable.

Dave Milme, licensed Utah architect, stated that he works primarily in SLC and Summit County. He noted that he reviewed the plans and the drawings and acknowledged that he is not familiar with the land use issues but from a visual design standpoint, the architects have done a wonderful job of capturing the character of the surrounding neighborhoods. This is exactly what he would expect to see for development in a resort area like Deer Valley. This is a good design and site plan.

Lisa Wilson, Deer Valley resident, displayed a map of the project to the audience referring to the 73.9% open space calculation and expressing that it is not believable. She indicated that she was not aware that the Council could not read emails on this subject because she has many friends who could not come tonight who emailed Council members. She read the definition of compatibility, "*The characteristics of different uses or designs that integrate with and relate to one another to maintain and/or enhance the context of the surrounding area or neighborhood. Elements affecting compatibility include, but are not limited to, height, scale, mass and bulk of building, pedestrian and vehicular circulation, parking, landscaping and architecture, topography, environmentally sensitive areas, and building patterns*". Ms. Wilson questioned whether the open space was calculated correctly as well as the height because of the placement of the balloons when the height was analyzed. She distributed photos of the area from 1983 and 1990 to point out the contour of the property and expressed concerns about how much common area will be converted to commercial uses in the future. Ms. Wilson discussed the high number of trees that will have to be removed and used Legos™ to visually illustrate the mass, scale and height of the project and to point out the shortfalls of this plan. Three parking spaces are required for each unit and the project sits on a knoll that can be seen from anywhere in Park City, especially American Flag. She discussed a previous plan pointing out that common area is not defined in the LMC and is a way for developers to achieve more square footage. She believed the 2001 CUP should not have been approved and began to comment on the timing of the application with the 9-11 and the Olympic Winter Games events. The Mayor urged Ms. Wilson to stay on topic and she summarized that she is opposed to huge massive development.

Pam Smith, American Flag second home owner, expressed that although improvements have been made to the project, this project will ruin their outstanding view from their Park City home.

Brad Wilson, adjacent property owner, relayed that the developer has a right to build 54 units at 45 feet on a defined lot size. In order to be compatible, the developer is claiming that the existing neighborhood has 4,900 square foot houses so the individual condo sizes should be something close to that which is illogical. When 4,900 square foot units are put together in Building #3, it turns out being a 73,000 square foot building with a 72 foot front façade, 200 feet wide. This is incompatible mass and scale which everyone seems to miss. He didn't find that mitigation efforts reduced mass but increased mass and square footage was just shuffled around differently. Every other developer in the area reduced the number of units and elected to increase the size of individual units. There are approximately 529 trees on the site, 429 will be cut down and it will be impossible to screen a 73 foot building with 20 to 30 foot trees. He referred to the Planning Commissioners' statements in the record about compatibility and felt the project should be sent back to the Planning Commission so that compatibility is achieved; 360,000 square feet on six acres is not compatible.

Eric White, appliance distributor, spoke about some of the projects his company is working on. He felt this is an excellent project.

Adam Strachan, Planning Commission, insisted that his findings are not an exhibit to the appellant's letter but part of the minutes. He stated that he is not appearing as a Planning Commissioner but as a citizen supporting upholding the appeal. Mark Harrington advised that he can not remove himself from a process he has already participated in. Mr. Strachan emphasized that this project throughout the process increased in size but the Commission did not receive the final figures until the last meeting. The LMC provides that a CUP approval is conditional, certain uses are not approvable and if detrimental effects can not be mitigated the project should be denied. He believed that Planning Commission members erred when they determined that the MPD tied their hands and did not apply the criteria. They should have reviewed the criteria and made findings. He admitted that the LMC does not require that every tree be replaced but this town protects the environment and this is what keeps Park City unique.

Michael O'Hara, resident, stated that in his 12 years of serving as a Planning Commissioner, he has never seen a Commissioner present a separate set of findings. He hoped that Council will support the Planning Commission and deny the appeal. The MPD has been upheld and the CUP is not discretionary because it is approved if mitigation is reasonable which has been achieved.

With no further comments, the Mayor closed the hearing (later opened) and asked for Council comments.

The Mayor clarified that density for other projects didn't necessarily decrease through the CUP process but that new owners of the projects lessened the density. Liza Simpson understood analyzing compatibility starts with the vested rights rather than with the built environment and the City Attorney agreed but rephrased the concept. He explained that compatibility looks at the proposal regardless of density. The fact that the project has a density number weighs into that in terms of a comparison to those features of compatibility. The density is qualified to meeting that test and doesn't give it more of a threshold standing. State law has changed since the last approval and a conditional use is considered essentially permitted if its adverse impacts can be mitigated. If adverse impacts are found and can not be addressed by a condition of approval, then the project should be denied and the approval overturned.

Roger Harlan suggested continuing a decision and taking some time to review all of the information and materials presented. Jim Hier commented on the massive size of Building #3 and believed this creates a compatibility problem from a visual standpoint. He referred to questions on the open space percentage and asked that the calculation be verified at least meeting the minimum 60% based on the total existing platted lots. Doug Clyde interjected that the calculation was done by an engineer and checked by him; he is confident that the calculations are correct. Katie Cattan indicated that she calculated the square footage of the buildings but will double-check the open space number. In response to a question from Liza Simpson about remanding the project to the Planning Commission, Mark Harrington advised that members need to specify, at a minimum, what issues Council wants them to consider. Ms. Simpson expressed concerns about the project meeting compatibility criteria especially when units are combined in buildings. She agreed with Commissioner Strachan's findings, especially with regard to the north building, and believes that the Planning Commission erred in not adopting findings for it. She is willing to continue the item but ready to remand it to the Planning Commission at this time for discussion and does not agree that the MPD ties the Commission's hands with regard to determining compatibility. Joe Kernan indicated that he would like to better understand the massing of the project and asked if the 2001approval is still valid and Mr. Harrington advised that it has expired. Mr. Kernan requested quantitative guidelines with regard to height and setbacks and ways to limit the visual mass.

Jim Hier requested a graphic depiction of the view of the project from Main Street in a bright color like pink and not earth tones. Mr. Bennett clarified that the project will be done in earth tones which is part of the reason it will not be seen. Mr. Hier felt it would be helpful to see the graphics done both ways. Doug Clyde informed members that it is a huge effort to model the rendering and the earth tones are consistent with the LMC. The building will be visible like Stag Lodge. Jim Hier withdrew his request but asked for more clarity on the view from the Main Street vantage point.

Discussion ensued on the planting of the 30 foot trees which are intended to ameliorate the view from the neighborhood. Mr. Clyde pointed out that most of the screening for Building #3 is provided by the trees across the ski run. Mr. Hier clarified that he would like a sharper image and requested the same from the American Flag viewpoint. He expressed that at this point he is unsure if the project should be remanded to the Planning Commission or whether Council should make a final determination. He suggested taking more time to consider tonight's public input as well as the materials submitted and recommended a continuance. Both legal counsel for the appellant and the applicant indicated their preference for a November date.

Mark Harrington advised the public that the Council must avoid ex parte communications on the appeal, including emails. All members should hear the same thing at the same time. He encouraged submitting additional information to the Planning Department so it can be included in the meeting packet. Do not contact the Council directly.

Mayor Williams acknowledged that massing is also one of his concerns. Doug Clyde noted that there are other similar buildings in Deer Valley built and allowed under the same Code and Mr. Hier argued that most of them are not adjacent to residential uses like North Silver Lake and most are not visible from the Old Town or SR224 vantage points.   Ms. Simpson expressed concerns about visibility, compatibility, building mass and orientation adding however, that the project is going in the right direction.

Liza Simpson, "I move we continue the North Silver Lake appeal to November 12 and reopen the public hearing (input)". Roger Harlan. Motion unanimously carried.

VII ADDITIONAL DISCUSSION – AGENDA ITEMS

VIII ADJOURNMENT

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

MEMORANDUM OF CLOSED SESSION

The City Council met in closed session at approximately 3:30 p.m. Members in attendance were Mayor Dana Williams, Candace Erickson, Roger Harlan, Jim Hier, Joe Kernan, and Liza Simpson. Staff present was Tom Bakaly, City Manager; and Mark Harrington, City Attorney. Roger Harlan, "I move to close the meeting to discuss property and litigation". Jim Hier seconded. Motion carried unanimously. The meeting opened at approximately 5:15 p.m. Roger Harlan "I move to open the meeting". Liza Simpson seconded. Motion unanimously carried.

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

Prepared by Janet M. Scott

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Janet M. Scott, City Recorder

City Council Staff Report

Subject: Contract Modification No. 2 to UDOT Consultant Services Agreement for Bonanza Drive Design
Author: Matthew Cassel, P.E., City Engineer
Department: Engineering
Date: November 5, 2009
Type of Item: Administrative

Summary Recommendations:

The Council should authorize the City Manager to execute Contract Modification No. 2 to UDOT Consultant Services Agreement with H. W. Lochner Inc. for engineering/environmental services related to the design of Bonanza Drive in the amount of $146,576.93.

Topic/Description:

A design contract with H.W. Lochner was approved by City Council on October 30, 2008 for the design of Bonanza Drive. This contract was not a Park City standard contract rather a Local Government Contract through UDOT. Because federal monies are involved, UDOT is required to oversee the design and construction of Bonanza Drive. Additionally, the design must meet the requirements and guidelines set by UDOT so H.W. Lochner was selected from UDOT's approved consultant service pool. This contract modification No. 2 with H. W. Lochner is to complete the design for Bonanza Drive.

Background:

In August 2007 H. W. Lochner was hired by Park City to develop a corridor and pedestrianization plan for Bonanza Drive. The purpose of the plan was to outline and prioritize short-term and long-term improvements for roadway, bicycle and pedestrian facilities along Bonanza Drive. The plan aimed to improve traffic flow, improve intersection operations throughout the corridor and provide bicycle/pedestrian access and safety. The plan provided short-term recommended improvements (2009 – 2016) and long-term recommended improvements (2016 – 2030). This project addresses the short-term recommendations.

In January 2008, H. W. Lochner completed the Bonanza Drive Corridor and Pedestrianization Plan. City Council reviewed and approved this concept plan during their January 24, 2008 meeting. The purpose was to outline improvements for roadway, bicycle and pedestrian facilities along Bonanza Drive. The original contract with H.W. Lochner provided for the design of the recommended roadway, bicycle and pedestrian facilities and included providing environmental, survey and geotechnical services and most importantly preparing and implementing a Public Involvement process.

Because this project is administered by UDOT, H.W. Lochner was selected directly from UDOT's Consultant Pool. This pool is operated similar to the State Contract where Park City is allowed to purchase items directly. The pool comprises of 27 different categories including environmental services, road design and structural design. The consultants in UDOT's pool are required to submit a Statement of Qualification (SOQ) every two years. These SOQs are then stringently evaluated by UDOT to determine which consultants are qualified to perform in each category. Because they qualified in all of the categories deemed necessary and important for the Bonanza Drive design, their successful work history in Park City and their earlier involvement with the Bonanza Drive Corridor and Pedestrianization Plan, H. W. Lochner, Inc. was determined to be the best choice for providing professional design services to the City on this project. The scope of services and fee were negotiated and City Council approved the contract on October 30, 2008.

The design now includes raised medians on Bonanza Drive only between Kearns Boulevard and Prospector Avenue, "no left turn" restrictions, Bicycle lanes, northbound bus pull-out, trail connection including a pedestrian tunnel at the Iron Horse intersection, mid-block pedestrian crossing, consistent 6 foot wide sidewalks, speed limit feedback signs, lengthened southbound left turn lane at Deer Valley Drive. As part of this work, the existing sewer line will be relocated due to the pedestrian tunnel and replaced to SR-248, the existing water line will be relocated due to the pedestrian tunnel and a new distribution water line will be installed.

The Council has approved funding for this project as follows:
Capital Project cp0097 (Bonanza Drive Reconstruction) contains $1,757,671 for the project and $1,050,000 has been allocated in the walkability bond. Additional monies in the amount of $1,072,616 have been encumbered through UDOT's STP Small Urban Funds Program. SBWRD will provide funding for the replacement of their sewer line and our Water Department will provide funding for the new distribution waterline and relocation of the existing water line.

Analysis:
This contract modification is the second of two modifications to H.W. Lochner's design contract for Bonanza Drive. Contract Modification No. 1 was processed through UDOT and Park City's system and was fully executed on July 29, 2009.

Contract Modification No 1 included the additional services listed below:

- Additional public involvement to address stakeholder issues through advertisement of the first phase of the project.
- Realign the north leg of the Monitor Dr./Kearns Blvd. intersection to accommodate a sidewalk on the west side of Monitor Drive which will act as a pedestrian refuge for cyclists traveling within the southbound turn lane of Monitor Dr
- Update survey data provided by the Park City Water Department to meet current SBWRD survey control requirements.

- Provide lighting along the sidewalk on Iron Horse Drive and the Munchkin Intersection.
- ATMS conduit design to accommodate future connection of the future Iron Horse traffic signal to the UDOT ATMS system.
- Design a plaza for the junction of Rail Trail, Poison Creek Trail, and Bonanza Drive.

The fee increase due to Contract Modification No. 1 was $32,683.50 (9.1% of original contract amount) for a total design fee of $392,285.43.

This Contract Modification No 2 includes the additional services listed below:

- Additional survey data was needed in the southwest quadrant of the Iron Horse intersection for design of additional trail improvements and landscaping not included in the original scope. The additional cost for this survey is $2,105.
- Right-of-way documentation was needed for one parcel in addition to the original scope of work. The additional cost for this right-of-way documentation is $1,381.
- Additional public involvement to address stakeholder issues through advertisement for construction of phase 2 of the project. The additional cost for this public involvement is $8,115.
- During negotiations with the property owner in the southwest quadrant of the Iron Horse intersection, Park City committed to realign the Poison Creek Trail and provide additional landscaping improvements. Current design of the trail, pedestrian underpass, retaining walls, stairs and storm drain will need to be updated per the new trail alignment. The additional cost for this design update is $68,745.
- The original scope of work was based on the assumption that MSE (type of block) retaining walls would be used for the project. Due to the close proximity and depth of the trail in relation to Poison Creek, a soldier pile or similar wall will be needed. The additional cost for this soldier pile structural design is $18,867.
- To avoid relocation of a power steel tower pole, the design team will need to design shoring to mitigate any potential loss of support due to installation of the trail underpass. The additional cost for this shoring design is $11,933.
- The original project schedule was lengthened to address concerns of property owners and local businesses that surfaced during public involvement in the design phase. To ensure all of the proposed improvements would be complete by the end of summer 2010, Park City wanted to construct the water line portion of the project along with as much of the roadway as possible in 2009. To accomplish this goal, the design team decided to phase the project by advertising part of the project in 2009 and the remainder in 2010. Additional work is necessary to create an additional advertisement package for the 2010 phase of the project. The additional cost to prepare a bid package and support the bidding process is $16,740.
- Park City directed Lochner to modify the roadway, signing, striping, and storm drain design to remove the raised medians on the project. The additional cost for this design change is $15,459.

- The Army Corps of Engineers required a nationwide 404 permit due to wetlands that will be impacted by the project. The additional cost to prepare and process a 404 permit is $3,232.

The fee increase due to Contract Modification No. 2 is $146,576.93 (40.8% of original contract amount) for a total design fee of $538,862.36. The anticipated budget on this project is $500,000 for design of Bonanza Drive and thus the design budget has been exceeded by $38,862.36. To help offset this budget overrun, it should be noted that phase 1 of the construction had an anticipated budgeted of $1,407,760 but is 99% complete and currently $130,000 under budget.

Department Review:
This report has been reviewed by City Manager, Budget, Public Works, Sustainability, and Legal. All issues have been resolved.

Alternatives:

A. Approve the Request:
This is the staff's recommendation.

B. Deny the Request:
This would make it impossible to complete the design and prepare a construction package for phase 2 of the construction on Bonanza Drive.

C. Continue the Item:
If the Council needs more information the item can be continued, but this could cause the final design to be delayed and thus cause the City to miss the anticipated schedule of construction.

D. Do Nothing:
This option would make it impossible to complete the design of phase 2 in a timely manner.

Significant Impacts:
The engineering design will have no significant impacts other than staff time and contract oversight, however the actual construction of Bonanza Drive will heavily impact the adjacent businesses. These impacts will be minimized through appropriate detour routing of traffic and implementation of an aggressive public involvement program to warn businesses and address their issues and concerns similar to the program implemented in phase 1 of construction. The funds for both the engineering contract and the 2009 construction have already been appropriated, and there are no budget impacts which the Council hasn't already considered in the FY2009 and FY 2010 budgets.

Consequences of not taking the recommended action:
Bonanza Drive is an important commuter link for the City but is seeing a significant increase in traffic congestion. Not commencing on completing the engineering design for phase 2 of the construction would delay completing the necessary improvements to the corridor.

Recommendation:
The Council should authorize the City Manager to execute Contract Modification No. 2 to UDOT Consultant Services Agreement with H. W. Lochner Inc. for engineering/environmental services related to the design of Bonanza Drive in the amount of $146,576.93.

Exhibit A – Contract Modification No. 2

State of Utah

GARY R. HERBERT
Governor

GREG BELL
Lieutenant Governor

DEPARTMENT OF TRANSPORTATION

JOHN R. NJORD, P.E.
Executive Director

CARLOS M. BRACERAS, P.E.
Deputy Director

October 19, 2009

Mr Brad Lucas
H W LOCHNER, INC.
1245 BRICKYARD RD. STE #400
SALT LAKE CITY, UT 84106

Dear Mr Lucas;

Re: PIN No.	**6285**
Project No.	**F-LC43(28)**
Location	**BONANZA DRIVE (BETWEEN SR-224 & SR 248)**
Contract No.	**09-8422 Mod. 2**

Enclosed are four copies of the Engineering Services Contract for the subject project. Please review the contract and if it is satisfactory, sign each title sheet where noted, obtain signatures from the Local Authorities, and return all four copies to my office for further processing. Please do not fill in the date at the top of the contract; however, please date each contract next to your signature.

UDOT Consultant Services
4501 South 2700 West
Box 148490
Salt Lake City, UT 84119

If you have any questions, please contact me at (801) 965-4419 or michaelbutler@utah.gov.

Sincerely,

Michael R. Butler
Consultant Services

Enclosures (4)

cc: File Copy, w/att.

Calvin Rampton Complex • 4501 South 2700 West • Salt Lake City, UT 84119-5998
telephone (801) 965-4000 • facsimile (801) 965-4338 • www.udot.utah.gov

CS FILE COPY

UDOT Consultant Services
Local Government Contract Modification

State of Utah
Utah Department of Transportation
Engineering Services
2007-2010 LG Pool
Cost Plus Fixed Fee

Effective Date ____________
Tracking No. ____________

Coop No.
Contract No. 09-8422
Mod No. 2

Consultant	H W Lochner, Inc.
Project No.:	F-LC43(28)
Location:	Bonanza Drive (Between SR-224 & SR 248)
Job/Proj. No.:	5263815D
PIN No.:	6285
Work Discipline:	Preconstruction Engineering

This Modification is to be attached and made part of Contract No. 09-8422 between Park City Municipal Corp referred to as the LOCAL AUTHORITY, and H W Lochner, Inc., referred to as CONSULTANT, and as approved by the Utah Department of Transportation, referred to as DEPARTMENT.

It has been determined that contract modifications are required to complete the work specified by this Contract. The CONSULTANT agrees to the modifications as specified below.

Contract Modifications

[X] Exhibit A - The "Services Provided by the CONSULTANT" contained in "Attachment C" to the Contract is changed.

[X] Exhibit B - The fixed fee amount, overhead rate, or hourly wages in "Attachment D, Fees" of the Contract is revised.

[X] Exhibit B - The maximum disbursement from "Attachment D, Fees" to the Contract is increased by $146,576.93 for a new total of $538,862.36.

[ ] Exhibit C - The termination date for the Contract remains November 22, 2010.

[ ] Other:

The parties hereto agree to abide by all provisions of the original Contract as well as the provisions of this and any previous contract modifications.

IN WITNESS WHEREOF, they sign and cause this Contract Modification to be executed.

CONSULTANT - H W Lochner, Inc.

By: Tyler Roberts 10/20/09
Title: Sr VP Date

UTAH DEPARTMENT OF TRANSPORTATION

By: Stan Burns 10/15/09
Title: Director of Engineering Services Date

LOCAL AUTHORITY – Park City Municipal Corp

By:
Title: Date

DEPARTMENT Comptroller's Office

By:
Title: Contract Administrator Date

Rev. 8/10/05

Contract No. 09-8422 Mod. No. 2

EXHIBIT A

Scope of Services

The Scope of Services is expanded to allow for additional work as requested by Ritchie Taylor, Region 2, in the memorandum dated September 22, 2009 on Page 3 of this Exhibit.

For further details, see Pages 2 through 15 of this Exhibit.

UDOT Consultant Services
Contract Approval Memo

Memo Printed on: September 22, 2009 12:31 PM

PM Approval Date: September 22, 2009 UDOT P[illegible]or

The Project Manager has reviewed and approved the contract/modification documents: Executive Summary, Work Plan, QC/QA Plan and Checklist, Staffing Plan, Work Schedule, and Cost Proposal

PROJECT INFORMATION

PIN	6285
Project No.:	F-LC43(2[illegible]
Job/Proj:	52836150
Project Location:	BONANZA DRIVE (BETWEEN SR-224 & SR 248

CONTRACT INFORMATION

CS Admin	Michael R. Butler	
Contract (	09-8422	Complete PE including CAT X for subject proje[illegible]
Mod No.:	2	Additional design and public involvement
Expiration Date:	November 22, 2010	
Contract/Mod Amou	$146,576.93	
Fee Type:	COST PLUS FIXED FEE	
Selection Meth	POOL - GE /	
Period:	2007-2010 G	
ase:	PRELIMINARY ENGINEERING	
Discipline:	PRECONSTRUCTION ENGINEERING	

CONTACTS

Consultant:	Local Government
H W LOCHNER	Park City Municipal Cor[illegible]
Brad Lucas	Matt Cassel
245 BRICKYARD RD. STE 600	445 MARSAC AVE
SAL AKE CITY, UT 8410	MARSAC MUNICIPAL B[illegible]
	PARK CITY, UT 84060
(801) 262-8700	(435) 615-5075
BLUCAS@HWLOCHNER.COM	MATT.CASSEL@PARK[illegible]

Exhibit
2 15

LOCHNER
H. W. LOCHNER, INC. 310 East 4500 South, Suite 600, Murray, UT 84107 (801) 262-8700
FAX (801) 262-8885

September 14, 2009

Mr. Matt Cassel, P.E.
Park City Engineer
1255 Iron Horse Drive
Park City, Utah 84060

RE: Bonanza Drive (Between SR-224 & SR-248)
Project Number: F-LC43(28)
Contract Modification 2
6285

Dear Mr. Cassel:

As we have discussed previously, the scope of work will need to be modified to provide additional roadway improvements and complete design of the project. I have attached the necessary contract documentation, which includes the following:

- Executive Summary
- Work Plan
- Staffing Plan
- Work Schedule
- Cost Proposal
- Subconsultant Information

The additional design services will require $146,576.93 to complete and will increase the total contract amount for project to $538,862.36. If you have any questions, please feel free to give me a call.

Sincerely,

Brad J Lucas

Brad Lucas, P.E.
Project Manager
H.W. Lochner, Inc.

Draft

EXECUTIVE SUMMARY

The Park City/UDOT/consultant design team for the Bonanza Drive Project has decided to modify the scope of work to include additional tasks that are necessary to provide additional improvements and complete design. The scope-of-work will include the following changes:

- Additional survey data is needed in the southwest quadrant of the Iron Horse intersection for design of additional trail improvements and landscaping not included in the original scope.
- Right-of-way documentation is needed for one parcel in addition to the original scope of work.
- Additional public involvement to address stakeholder issues through advertisement of the project.
- During negotiations with the property owner in the southwest quadrant of the Iron Horse intersection, Park City committed to realign the Poison Creek Trail and provide additional landscaping improvements. Current design of the trail, pedestrian underpass, retaining walls, stairs and storm drain will need to be updated per the new trail alignment.
- The original scope of work was based on the assumption that MSE retaining walls would be used for the project. Due to the close proximity and depth of the trail in relation to Poison Creek, a soldier pile or similar wall will be needed.
- To avoid relocation of a power steel tower pole, the design team will need to design shoring to mitigate any potential loss of support due to installation of the trail underpass.
- The original project schedule was lengthened to address concerns of property owners and local businesses that surfaced during public involvement in the design phase. To ensure all of the proposed improvements would be complete by the end of summer 2010, Park City wanted to construct the water line portion of the project along with as much of the roadway as possible in 2009. To accomplish this goal, the design team decided to phase the project by advertising part of the project in 2009 and the remainder in 2010. Additional work is necessary to create an additional advertisement package for the 2010 phase of the project.
- Park City has directed Lochner to modify the roadway, signing, striping, and storm drain design to remove the raised medians on the project.
- The Army Corps of Engineers will be requiring a nationwide 404 permit due to wetlands that will be impacted by the project.

PHASING

The 2009 phase of the project has been advertised and is under construction. Design of the 2010 phase of the project will be completed in December 2009 and constructed from spring through summer 2010.

UNKNOWNS

- Property acquisition schedule and negotiations.
- Potential Park City Government directives to modify design.
- Potential mitigation measures required in the 404 permit.

FEE TYPE

The contract for the design services to be provided by the H.W. Lochner Team will be based on cost plus fixed fee terms.

Draft

WORK PLAN

TASK 00D: PROJECT MANAGEMENT

Team Meetings
Lochner will conduct bi-weekly team meetings with Park City, UDOT, Bowen Collins and the design team to review project status, upcoming deliverables, project issues, and coordinate roadway design with waterline design. Generally, these meetings will be attended by Park City, UDOT, consultant project managers and appropriate technical staff working on active tasks. Lochner will prepare and distribute meeting summaries. Assume 6 meetings will be held by the project team at the Park City offices.

Management / Administration
Lochner will provide management and administrative functions throughout this phase including ePM updates, schedule updates, project filing, and coordination of work between Lochner, subconsultants, and UDOT design team members.

DELIVERABLES:
- 6 Team Meetings
- Meeting Materials and Summaries
- Monthly Progress Reports

Draft

TASK 02D: MAPPING AND TOPOGRAPHY
Additional survey data is needed in the southwest quadrant of the Iron Horse intersection for design of additional trail improvements and landscaping not included in the original scope. (See the attached estimate from ESI for more details.)

TASK 19D: DEVELOP RIGHT-OF-WAY PLANS
Right-of-way documentation is needed for one parcel in addition to the original scope of work (see attached ESI scope of work for more details).

38D: DESIGN PHASE PUBLIC INVOLVEMENT
Additional public involvement is needed to address ongoing project stakeholder concerns through final design and construction advertisement. This task will be lead by Fehr & Peers (see attached scope) with design support from Lochner.

TASK 49D: DEVELOP STRUCTURES SITUATION AND LAYOUT PLANS
The Lochner team will update the geometric layout of the proposed trail box culvert, associated retaining walls, and headwalls. Additional wall will be designed between the creek and the trail. The following tasks will be completed:
- Develop an alternatives memo to recommend a type of retaining wall between the creek and the trail south of the tunnel.
- Develop preliminary design and situation and layout sheet for a soldier pile or similar type wall between the trail and the creek. (See attached PDA Engineering scope.)
- Develop preliminary design of shoring for the steel tower power pole at the Iron Horse intersection. (See attached PDA Engineering scope.)
- Develop preliminary design and situation and layout for a wall between the trail and stairs accessing the Iron Horse intersection.

- Update the situation and layout design and plan of the box culvert and headwalls to include the updated trail alignment.
- Update the design and situation and layout sheet for the retaining wall along the west side of the trail south of the tunnel.
- Update the situation and layout sheet for the creek culvert headwalls to include the new trail alignment.

DELIVERABLES:

- Pedestrian Tunnel Situation and Layout
- Creek Culvert Headwall Situation and Layout
- Preliminary Retaining Situation and Layout Plans (3 walls)
- Wall Alternatives Analysis Memo

TASK 56D: REVIEW AND APPROVE STRUCTURES SITUATION AND LAYOUT PLANS

Lochner will assemble preliminary structure plans and submit them to the UDOT structures and Geotechnical Divisions for review. Lochner will collect comments, conduct a review meeting with UDOT, and prepare a meeting summary.

DELIVERABLES:

- Meeting Summary and comments

TASK 61D: PREPARE NATIONWIDE 404 PERMIT DOCUMENTATION

Lochner will coordinate with UDOT and the U.S. Army Corps of Engineers (USACOE) in preparing Nationwide 404 Permit documentation, to address impacts to wetlands affected by the project.

DELIVERABLES:

- Nationwide 404 Permit Documentation

TASK 76D: UTILITY COORDINATION

Lochner will continue coordination with utility owners through final design of the project, including coordination of shoring design for power tower pole, and future use power conduit.

TASK 07P: DEVELOP FINAL STRUCTURE PLANS (STRUCTURAL WALLS)

The Lochner team will finalize situation and layout sheets and develop final plans for two additional retaining walls south of the trail tunnel and shoring for a power pole. The following tasks will be completed:

- Resolve review comments of situation and layout sheets. Assume final plans for MSE walls will be completed by the supplier.
- Develop final design and plans for a soldier pile or similar type wall between the trail and the creek. (See attached PDA Engineering scope.)
- Develop final design and plans of shoring for the steel tower power pole at the Iron Horse intersection. (See attached PDA Engineering scope.)
- Develop final design and plans for the wall between the trail stairs accessing the Iron Horse intersection.

DELIVERABLES:

- Final Soldier Pile or Similar Plans
- Final Plans for Stair Retaining Wall
- Retaining Wall Quantities and Cost Estimate

TASK 10P: DEVELOP FINAL STRUCTURE PLANS (MINOR STRUCTURES)

The Lochner team will update final headwall plans. The following tasks will be completed:

- Resolve review comments of situation and layout sheets.
- Update final design and plans for box culvert and creek culvert headwalls.
- Assume final design of the box culvert will be completed by the precast box supplier.
- Develop structure quantities and cost estimate.

DELIVERABLES:

- Final Box Culvert Headwall Drawings
- Final Creek Culvert Headwall Drawings
- Structure Quantities and Cost Estimate

TASK 15P: FINALIZE HYDRAULIC PLANS

Additional storm drain design is necessary for removal of the raised medians on the project and incorporation of updated trail alignment.

DELIVERABLES:

- Final Storm Drain Plans
- Final Storm Drain Quantities

TASK 20P: FINALIZE ROADWAY PLANS

Additional roadway and trail design is necessary for removal of the raised medians on the project and incorporation of updated trail alignment.

DELIVERABLES:

- Final Roadway Plans
- Final Signing and Striping Plans
- Final Trail Plans
- Final Roadway, Signing and Striping Quantities
- Final Engineers Estimate

TASK 25P: FINALIZE LANDSCAPING PLANS

Final landscaping design and plans will be updated by Landmark Design (see attached scope of work for more details).

DELIVERABLES:

- Final Landscaping Plans
- Landscaping Quantities and Cost Estimate

TASK 80P: MAKE PS&E REVISIONS/ADDITIONS

Lochner will resolve meeting comments and incorporate changes into the final design package. Documentation of the Quality Control/Quality Assurance Plan (followed throughout the design process) will be completed and assembled and stored with the project files.

TASK 85P: PREPARE ADVERTISING PLAN SET

Lochner will assemble the final design package for advertisement.

- Complete the advertising checklist.
- Complete the Red Flag Worksheet for unit bid prices.
- Prepare the electronic bid package, including PDF format of bid documents and IPLOT archive files of plan sheets.

DELIVERABLES:

- Electronic Bid Package
- Advertising Checklist
- Red Flag Worksheet

TASK 90P: ADVERTISE PROJECT

Lochner will respond to questions from contractors (as requested by UDOT) and the UDOT construction division to provide technical support and project history information during the advertisement period and construction.

Draft

CLIENT: Park City/UDOT
Project Number: F-LC43(28)
Project Name: Bonanza Drive

Consultant PM: Brad Lucas
Client PM: Matt Cassel (Park City)
Ritchie Taylor (UDOT)
Consultant: H. W. Lochner, Inc.

STAFFING PLAN - Mod2

Revised 9/20/06
DM# 19829

Name	Firm Name (Prime and Subs need to complete a detailed Staffing Plan)	Title (Within firm and/or proposed on project)	Certification Category/ Level	Utah License/ Certification No.	Other State License/ Certification No.	Education Level	Hours (Estimated number of project hours)	Rate of Pay (Current actual rate of pay)	Rate on Cost Proposal (Note any pay variances in a footnote)
Tyler Robirds	H. W. Lochner, Inc.	Principal-in-Charge	Professional Engineer (PE)	177080	WA PE: 34220 WY PE: 9587	B.S.			
Scott Lucas	H. W. Lochner, Inc.	Project Manager	Professional Engineer (PE)	179901	N/A	B.S.			
H.G. Kunzler	H. W. Lochner, Inc.	Project Manager	Professional Engineer (PE)	186433	ID PE: 9903	B.S.			
Brad Lucas	H. W. Lochner, Inc.	Project Manager	Professional Engineer (PE)	318782	N/A	B.S.	193	$ 47.36	$ 47.36
Jason Phillips	H. W. Lochner, Inc.	Project Manager	Professional Engineer (PE)	265655	ID PE: 12573	B.S.			
Gene Cline	H. W. Lochner, Inc.	Project Engineer	Professional Engineer (PE)	368475	WY PE: 10715	B.S.			
Barbara Bunting	H. W. Lochner, Inc.	Sr. Accountant	CAPM	N/A	N/A	B.A.	3	$ 44.23	$ 44.23
Andrea Clayton	H. W. Lochner, Inc.	Environmental Engineer	Professional Engineer (PE)	191039	N/A	B.S.			
John Gaster	H. W. Lochner, Inc.	Project Engineer	Professional Engineer (PE)	343725	N/A	B.S.			
Amber Cypers	H. W. Lochner, Inc.	Project Engineer	Professional Engineer (PE)	4775384	N/A	B.S.			
Catherine Curtis	H. W. Lochner, Inc.	Public Involvement Writer / Graphics	Mass Communications	N/A	N/A	B.S.			
Brian Nabors	H. W. Lochner, Inc.	CADD Tech	N/A	N/A	N/A	B.S.	250	$ 32.21	$ 32.21
Crystal Garstang	H. W. Lochner, Inc.	Design Engineer	Professional Engineer (PE)	6571842	N/A	B.S.			
Carlye Sommers	H. W. Lochner, Inc.	Project Acct. / Engineering Asst.	Notary	558514	N/A	Student			
Gale Padgett	H. W. Lochner, Inc.	Right-of-Way Coordinator	Right-of-Way / Notary	453989379	N/A	N/A			
Maxine Peltier	H. W. Lochner, Inc.	Admin Assistant	N/A	N/A	N/A	N/A			
Esther May	H. W. Lochner, Inc.	Accountant	N/A	N/A	N/A	B.S.			
Elizabeth Droge	H. W. Lochner, Inc.	Design Engineer	Professional Engineer (PE)	5249201	N/A	B.S.			
Todd Perkins	H. W. Lochner, Inc.	Project Manager / Project Engineer	Professional Engineer (PE)	264962	N/A	B.S.			
Layne Schaugaard	H. W. Lochner, Inc.	Right-of-Way Lead	General Appraiser	5478502-CG00	N/A	N/A			
Brian Bonell	H. W. Lochner, Inc.	Design Engineer	Engineer-in-Training	N/A	N/A	B.S.			
Randi Shover	H. W. Lochner, Inc.	Public Involvement	N/A	N/A	N/A	B.S.			
Rhett Blake	H. W. Lochner, Inc.	Project Engineer	Professional Engineer (PE)	368436	ID PE: 11132 NV PE: 16765	B.S.			
Nicole Williams	H. W. Lochner, Inc.	Entry Level Engineer	N/A	N/A	N/A	B.S.			
Chris Price	H. W. Lochner, Inc.	Drainage Engineer	Engineer-in-Training	N/A	N/A	B.S.	60	$ 22.40	$ 22.40
Ben Shewell	H. W. Lochner, Inc.	Engineering Intern	N/A	N/A	N/A	Student			
Dan Noziska	H. W. Lochner, Inc.	QA/Const. Review	Professional Engineer (PE)	153642	N/A	B.S. / M.S. / MBA	4	$ 37.60	$ 37.60
Deloy Dye	H. W. Lochner, Inc.	Resident Engineer	Professional Engineer (PE)	187812	N/A	Associates (Civil Eng.)			
Rachel Geerdes	H. W. Lochner, Inc.	Bookkeeper	N/A	N/A	N/A	N/A	6	$ 27.50	$ 27.50
Vickie Rhea	H. W. Lochner, Inc.	CADD Tech	N/A	N/A	N/A	Associates			
Jeff Sims	H. W. Lochner, Inc.	Sr. Drainage Engineer	Professional Engineer (PE)	183362	MT PE: 16098 ID PE: 11016 AZ PE: 36587 OR PE: 78758	B.S. / M.S.			
Mason Bouck	H. W. Lochner, Inc.	Design Engineer	N/A	N/A	N/A	B.S.			
Natalie Mock	H. W. Lochner, Inc.	Project Engineer	Professional Engineer (PE)	353804	N/A	B.S			
Jessica Green	H. W. Lochner, Inc.	Public Involvement Coordinator	N/A	N/A	N/A	B.A.			
Robert Holfelz	H. W. Lochner, Inc.	Engineering Intern	Engineer-in-Training	N/A	N/A	Student			
Saffron Capson	H. W. Lochner, Inc.	Planner	N/A	N/A	N/A	B.S.			

STAFFING PLAN - Mod2

Revised
9/20/06
[DM# 19829

Name	Firm Name (Prime and Subs need to complete a detailed Staffing Plan)	Title (Within firm and/or proposed on project)	Certification Category/ Level	Utah License/ Certification No.	Other State License/ Certification No.	Education Level	Hours (Estimated number of project hours	Rate of Pay (Current actual rate of pay)	Rate on Cost Proposal (Note any pay variances in a footnote)
Chris Smith	H. W. Lochner, Inc.	Entry Level Engineer	Engineer-in-Training	N/A	N/A	B.S.			
Trisina Dickerson	H. W. Lochner, Inc.	Technical Writer	N/A	N/A	N/A	B.A.			
Laynee Jones	H. W. Lochner, Inc.	Project Manager / Environmental Engineer	Professional Engineer (PE)	359077-2202	N/A	B.S.			
John Matern	H. W. Lochner, Inc.	Entry Level Engineer	Engineer-in-Training	N/A	N/A	B.S.			
Vaughn Nelson	H. W. Lochner, Inc.	Project Engineer	Engineer-in-Training	N/A	N/A	B.S.	262	$ 27.88	$ 27.88
Melissa Powell	H. W. Lochner, Inc.	Entry Level Engineer	Engineer-in-Training	N/A	N/A	B.S.			
Michael Lee	H. W. Lochner, Inc.	Entry Level Engineer	Engineer-in-Training	N/A	N/A	B.S.			
Brian Shewell	H. W. Lochner, Inc.	Sr. Drainage Engineer	Professional Engineer (PE)	354263	N/A	B.S.	63	$ 40.14	$ 40.14
Brian Kolbe	H. W. Lochner, Inc.	Entry Level Engineer	Engineer-in-Training	N/A	N/A	B.S.			
Amy Calara	H. W. Lochner, Inc.	Public Involvement Assistant	N/A	N/A	N/A	N/A			
Rachelle Blake	H. W. Lochner, Inc.	Drafting Intern	N/A	N/A	N/A	Student			
Joseph Lund	H. W. Lochner, Inc.	GIS Analyst	N/A	N/A	N/A	B.A.			
Michael Franz	H. W. Lochner, Inc.	Planning Intern	N/A	N/A	N/A	B.A.			
Martin Buchert	H. W. Lochner, Inc.	GIS Specialist	N/A	N/A	N/A	B.S.			
Matthew Seng	H. W. Lochner, Inc.	Project Engineer	N/A	N/A	N/A	B.S.			
James Mulandi	H. W. Lochner, Inc.	Traffic Engineer	N/A	N/A	N/A	B.S.	16	$ 27.88	$ 27.88
Rhonda Jensen	H. W. Lochner, Inc.	Receptionist	N/A	N/A	N/A	B.S.			
Trevor Graff	H. W. Lochner, Inc.	Design Engineer	N/A	N/A	N/A	B.S.			
Mallory Bateman	H. W. Lochner, Inc.	Planning Intern	N/A	N/A	N/A	B.A.			
Jason Green	H. W. Lochner, Inc.	Planner	N/A	N/A	N/A	B.S.			
Julie Clark	H. W. Lochner, Inc.	Project Administrator	N/A	N/A	N/A	N/A			
Farrell Bouck	H. W. Lochner, Inc.	CADD Tech	N/A	N/A	N/A	N/A			
Eric Fenton	H. W. Lochner, Inc.	Graphic Designer	N/A	N/A	N/A	N/A			
Loretta Markham	H. W. Lochner, Inc.	Environmental Project Manager	N/A	N/A	N/A	N/A			
Tyler Phillips	H. W. Lochner, Inc.	Intern	N/A	N/A	N/A	N/A			
Michael Thompson	H. W. Lochner, Inc.	Developer	N/A	N/A	N/A	N/A			
Brian Byrne	H. W. Lochner, Inc.	Senior Structural Engineer	Professional Engineer	6087631-2202	CT - 18043 NY -082301	B.S.	158	$ 48.56	$ 48.56
Karen Harley	H. W. Lochner, Inc.	Structural Engineer	Engineer in Training	N/A	N/A	B.S.	64	$ 40.05	$ 40.05
Blair Tomten	H. W. Lochner, Inc.	Entry Level Engineer	N/A	N/A	N/A	B.S.	44	$ 25.96	$ 25.96
Tunde Lillian	H. W. Lochner, Inc.	Contract Administrator	N/A	N/A	N/A	B.S.			
Jennifer McArdle	H. W. Lochner, Inc.	Project Admin.	N/A	N/A	N/A	N/A	23	$ 18.00	$ 18.00

Total Hours 1146

This form is available on the UDOT Website udot.utah.gov under "Inside UDOT > Internal Groups and Divisions > Project Development > Consultant Services > Forms" or udot.utah.gov/index.php?m=c&tid=287.

If a Consultant has a change in key personnel during a project, they are required to submit the proposed change in writing within 10 working days to the UDOT Project Manager (and Local Government, if applicable) for approval. If the Project Manager (PM) approves, the PM will forward the change and their approval to UDOT Consultant Services and the Comptroller's Office within 10 working days If the PM does not approve, they may request a revision of the proposal, score the Consultant lower on the Consultant Project Evaluation, or terminate the contract.

Please explain in a footnote on this form any variances between "Current Actual Rate of Pay" and "Rate on Cost Proposal". Example: "ABC Corporation implements raises in March, the 'Rate on Cost Proposal' is a prorated rate over the life of the contract." NOTE: In a Cost Plus Fixed Fee contract, consultants must bill at actual rates.

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 5/7/2009

PRODUCER	
Fax: 847-517-9033 Willis of Illinois, Inc. 425 N Martingale Rd. Ste 1100 Schaumburg IL 60173	**THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.**

INSURED
H.W. Lochner, Inc.
310 East 4500 South
Suite 600
Salt Lake City UT 84107

INSURERS AFFORDING COVERAGE	NAIC #
INSURER A: Lexington Insurance Company	19437
INSURER B:	
INSURER C:	
INSURER D:	
INSURER E:	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
		GENERAL LIABILITY COMMERCIAL GENERAL LIABILITY CLAIMS MADE / OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: POLICY / PRO-JECT / LOC				EACH OCCURRENCE	$
						DAMAGE TO RENTED PREMISES (Ea occurence)	$
						MED EXP (Any one person)	$
						PERSONAL & ADV INJURY	$
						GENERAL AGGREGATE	$
						PRODUCTS - COMP/OP AGG	$
		AUTOMOBILE LIABILITY ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS HIRED AUTOS NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident)	$
						BODILY INJURY (Per person)	$
						BODILY INJURY (Per accident)	$
						PROPERTY DAMAGE (Per accident)	$
		GARAGE LIABILITY ANY AUTO				AUTO ONLY - EA ACCIDENT	$
						OTHER THAN AUTO ONLY: EA ACC	$
						AGG	$
		EXCESS/UMBRELLA LIABILITY OCCUR / CLAIMS MADE DEDUCTIBLE RETENTION $				EACH OCCURRENCE	$
						AGGREGATE	$
							$
							$
							$
		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below				WC STATU-TORY LIMITS / OTH-ER	
						E.L. EACH ACCIDENT	$
						E.L. DISEASE - EA EMPLOYEE	$
						E.L. DISEASE - POLICY LIMIT	$
A		OTHER Professional Liability	084196621	5/1/2009	5/1/2010	$1,000,000 $2,000,000	Per Claim Aggregate

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS
*Except for Non-Payment, 10 Days.
Engineering and Planning Services

CERTIFICATE HOLDER

UDOT Consultant Services
4501 South 2700 West
Box 148490
Salt Lake City UT 84119

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30* DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

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Exhibit A
11 of 15

IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

Client#: 39357 HWLOC

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 05/01/09

PRODUCER
Construction - Remegi Team
Mesirow Insurance Service
321 N. Clark Street
Chicago, IL 60654

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURED
H. W. Lochner, Inc.
20 N. Wacker Drive
Chicago, IL 60606

INSURERS AFFORDING COVERAGE	NAIC #
INSURER A: Travelers Indemnity Co. of America	25666
INSURER B: St. Paul Fire & Marine Insurance Co.	24767
INSURER C: Commerce & Industry	
INSURER D: Charter Oak Fire Insurance Company	
INSURER E:	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A	X	GENERAL LIABILITY X COMMERCIAL GENERAL LIABILITY CLAIMS MADE X OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: POLICY X PRO-JECT LOC	P6608451B877TIA09	05/01/09	05/01/10	EACH OCCURRENCE	$1,000,000
						DAMAGE TO RENTED PREMISES (Ea occurence)	$1,000,000
						MED EXP (Any one person)	$5,000
						PERSONAL & ADV INJURY	$1,000,000
						GENERAL AGGREGATE	$2,000,000
						PRODUCTS - COMP/OP AGG	$2,000,000
D		AUTOMOBILE LIABILITY X ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS X HIRED AUTOS X NON-OWNED AUTOS	P8108451B877COF09	05/01/09	05/01/10	COMBINED SINGLE LIMIT (Ea accident)	$1,000,000
						BODILY INJURY (Per person)	$
						BODILY INJURY (Per accident)	$
						PROPERTY DAMAGE (Per accident)	$
		GARAGE LIABILITY ANY AUTO				AUTO ONLY - EA ACCIDENT	$
						OTHER THAN AUTO ONLY: EA ACC	$
						AGG	$
B		EXCESS/UMBRELLA LIABILITY X OCCUR CLAIMS MADE DEDUCTIBLE X RETENTION $ 10,000	QK01202053	05/01/09	05/01/10	EACH OCCURRENCE	$5,000,000
						AGGREGATE	$5,000,000
							$
							$
							$
C		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below	WC5323324	05/01/09	05/01/10	X WC STATU-TORY LIMITS OTH-ER	
						E.L. EACH ACCIDENT	$1,000,000
						E.L. DISEASE - EA EMPLOYEE	$1,000,000
						E.L. DISEASE - POLICY LIMIT	$1,000,000
A		OTHER Valuable Papers	P6608451B877TIA09	05/01/09	05/01/10	$700,000 Main Loc. $150,000 Utah $2,395,000 All locs.	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS
Engineering and Planning Services.

RECEIVED 5/7/09

(See Attached Descriptions)

CERTIFICATE HOLDER
UDOT Consultant Services
4501 S. 2700 W. Box 148490
Salt Lake City, UT 84114-8490

CANCELLATION
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AUTHORIZED REPRESENTATIVE
[signature]

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DISCLAIMER

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DESCRIPTIONS (Continued from Page 1)

The following are included as Additional Insureds on the General Liability and Automobile Policies per written contract: UDOT, the State of Utah and the Local Government Agency.

The General Liability Policy is on a Primary and Non-Contributory Basis per written contract.

Contract No. 09-8422 Mod. No. 2

EXHIBIT B

Fees

The maximum disbursement is increased from $392,285.43 by $146,576.93 for a new total of $538,862.36 as negotiated and approved by Ritchie Taylor, Region 2, in the memorandum dated September 22, 2009 on Page 3 of Exhibit A. The fixed fee amount is increased by $13,325.94 for a new total of $39,600.09. The overhead rate in this modification is the same as the base contract's overhead rate. The base contract was written with a FIXED overhead rate.
For further details, see Pages 2 through 3 of this Exhibit.

Contract/Modification	Amount	NTP Date	Notes
Base Contract	$359,601.93	12/4/2008	Complete PE including CAT X for subject project
Modification No. 1	$32,683.50	7/29/2009	Public Involvement and Realignment Design
Modification No. 2	$146,576.93	Pending	Additional Realignment Design
Total	$538,862.36		

CLIENT:	**Park City/UDOT**	**Consultant PM:**	**Brad Lucas**
Project Number:	**F-LC43(28)**	**Client PM:**	**Matt Cassel (Park City)**
Project Name:	**Bonanza Drive**		**Ritchie Taylor (UDOT)**
		Consultant:	**H. W. Lochner, Inc.**

COST PROPOSAL SUMMARY - CONTRACT MODIFICATION 2

Name	Position	Hours	Actual Rate	Adjusted Rate *	Total
Brad Lucas	Project Manager	193	$ 47.36	$ 47.36	$ 9,140.48
Barbara Bunting	Sr. Accountant	3	$ 44.23	$ 44.23	$ 132.69
Brian Nabors	CADD Tech	250	$ 32.21	$ 32.21	$ 8,052.50
Chris Price	Drainage Engineer	60	$ 22.40	$ 22.40	$ 1,344.00
Dan Noziska	QA/Const. Review	4	$ 37.60	$ 37.60	$ 150.40
Rachel Geerdes	Bookkeeper	6	$ 27.50	$ 27.50	$ 165.00
Vaughn Nelson	Project Engineer	262	$ 27.88	$ 27.88	$ 7,304.56
Brian Shewell	Sr. Drainage Engineer	63	$ 40.14	$ 40.14	$ 2,528.82
James Mulandi	Traffic Engineer	16	$ 27.88	$ 27.88	$ 446.08
Brian Byrne	Senior Structural Engineer	158	$ 48.56	$ 48.56	$ 7,672.48
Karen Harley	Structural Engineer	64	$ 40.05	$ 40.05	$ 2,563.20
Blair Tomten	Entry Level Engineer	44	$ 25.96	$ 25.96	$ 1,142.24
Jennifer McArdle	Project Admin.	23	$ 18.00	$ 18.00	$ 414.00
				$ -	$ -

*Rate adjustment

Subtotal	1146		$ 41,056.45
Overhead		170.48%	69,993.04
Direct Labor plus Overhead			$ 111,049.49
Fee		12.00%	13,325.94
Total Labor Cost			$ 124,375.43

REIMBURSABLE EXPENSES		
Miscellaneous	Postage, Freight, Supplies	$ -
Travel	Mileage, Auto, Airfare, Meals, Lodging	330.00
Mapping/Photos/Survey	Maps, Film, Photography, Processing	-
Printing/Xerox	Copies, Printing, Plots	412.50
Telephone	Telephone, Fax	150.00
Computer	Technology Charge, Software	-
Total Reimbursable Expenses		$ 892.50

SUBCONTRACTORS	
Landmark	3,908.19
ESI	3,485.78
Fehr & Peers	8,115.03
PDA Engineering	5,800.00
Total Subcontractors	$ 21,309.00
TOTAL	**$ 146,576.93**

Original Contract	$ 359,601.93
Contract Modification #1	$ 32,683.50
Contract Modification #2	$ 146,576.93
TOTAL CONTRACT AMOUNT	**$ 538,862.36**

Draft

CLIENT:	**Park City/UDOT**	**Consultant PM:**	**Brad Lucas**
Project Number:	**F-LC43(28)**	**Client PM:**	**Matt Cassel (Park City)**
Project Name:	**Bonanza Drive**	**Consultant:**	**H. W. Lochner, Inc.**

Reimbursable Expenses - Mod 2

		Unit Cost	Unit	Quantity	Total	
MISCELLANEOUS	***509100***					
Supplies			LS		$ -	
Courier		12.50	each		-	
Airborne overnight express		16.65	each		-	
Postage		0.42	each		-	
Public Involvement					-	
Postage		0.42	each		-	
Boards		25.00	each		-	
Misc. (refreshments)		50.00	each		-	
Advertisements in Newspaper- Display		500.00	each		-	
Meeting Rooms		100.00	each		-	
Stenographer (Court Reporter)		500.00	each		-	
Business Packets		10.00	each		-	
Hotline		40.00	month		-	
Website		40.00	month		-	
Postcards (including postage)		0.81	each		-	
Newsletters (including postage)		1.25	each		-	
Contact Cards		0.10	each		-	
Subtotal						**$0.00**
TRAVEL	***509200***				-	
Mileage (rate effective Jan 1, 2009)		0.550	Miles	600	330.00	
Car Rental			Day		-	
Airfare			Trip		-	
Hotel			day		-	
Meals			day		-	
Subtotal						**$330.00**
MAPPING, PHOTOS AND SUPPLIES						
Maps			each		-	
Photos and Photography supplies			each		-	
Subtotal						**$0.00**
REPRODUCTION	**509500**					
8.5x11 B\W Copies		0.05	each	1,000	50.00	
8.5x11 Color Copies		0.50	each	200	100.00	
11x17 B\W Copies		0.10	each	1,000	100.00	
11x17Color Copies		1.00	each	100	100.00	
EA COPIES			each		-	
Plots						
Plots		1.25	linear/ft.	50	62.50	
Subtotal						**$412.50**
COMMUNICATION	**509600**					
Phone		50.00	mo.	3	150.00	
Subtotal						**$150.00**
COMPUTERS	**509700**					
Technology Charge			Hour		-	
Software			each		-	
Subtotal						**$0.00**
Total Reimbursable Expenses						**$892.50**

Draft

Contract No. 09-8422 Mod. No. 2

EXHIBIT C

Contract Date

The contract completion date for the project remains November 22, 2010 The CONSULTANT is required to finish all work by the contract completion date. If additional time is required to complete this project, the CONSULTANT will be required to use the “Contract Time Extension Modification Form” located on the DEPARTMENT website.

Bonanza Drive Phase II Design
UDOT Project Number: F-LC43(28)

ID	Task Name	Duration	Start	Finish
1	00D Project Management/Team Meetings	90 days	Mon 9/14/09	Fri 1/15/10
2	02D Develop Mapping and Topography	20 days	Mon 9/14/09	Fri 10/9/09
3	19D Develop Right-of-Way Plans	15 days	Mon 9/14/09	Fri 10/2/09
4	38D Design Public Involvment	60 days	Mon 9/14/09	Fri 12/4/09
5	49D Develop Structures Situation & Layout	20 days	Mon 9/14/09	Fri 10/9/09
6	56D Review Structures Situation & Layout	5 days	Mon 10/12/09	Fri 10/16/09
7	76D Utility Coordination	40 days	Mon 9/14/09	Fri 11/6/09
8	07P Develop Final Structure Plans (Walls)	20 days	Mon 10/19/09	Fri 11/13/09
9	10P Develop Final (Minor) Structure Plans	20 days	Mon 10/19/09	Fri 11/13/09
10	15P Finalize Hydaulic Plans	30 days	Mon 9/14/09	Fri 10/23/09
11	20P Finalize Roadway Plans	30 days	Mon 9/14/09	Fri 10/23/09
12	25P Finalize Landscaping Plans	30 days	Mon 9/14/09	Fri 10/23/09
13	33P Review Final Structure Plans	10 days	Mon 11/16/09	Fri 11/27/09
14	37P Prepare Utility/Signal Agreements	20 days	Mon 11/9/09	Fri 12/4/09
15	40P Conduct Final Right-of-Way Review	10 days	Mon 10/5/09	Fri 10/16/09
16	45P Right-of-Way Conformity Review	10 days	Mon 10/19/09	Fri 10/30/09
17	60P Aquire Right-of-Way	36 days	Mon 11/2/09	Mon 12/21/09
18	70P/75P PS&E Review Meeting & Prep	10 days	Mon 10/26/09	Fri 11/6/09
19	80P Make PS&E Revisions/Additions	15 days	Mon 11/9/09	Fri 11/27/09
20	85P Prepare Advertising Plan Set	10 days	Mon 11/30/09	Fri 12/11/09
21	90P Advertise Project	20 days	Tue 12/22/09	Mon 1/18/10

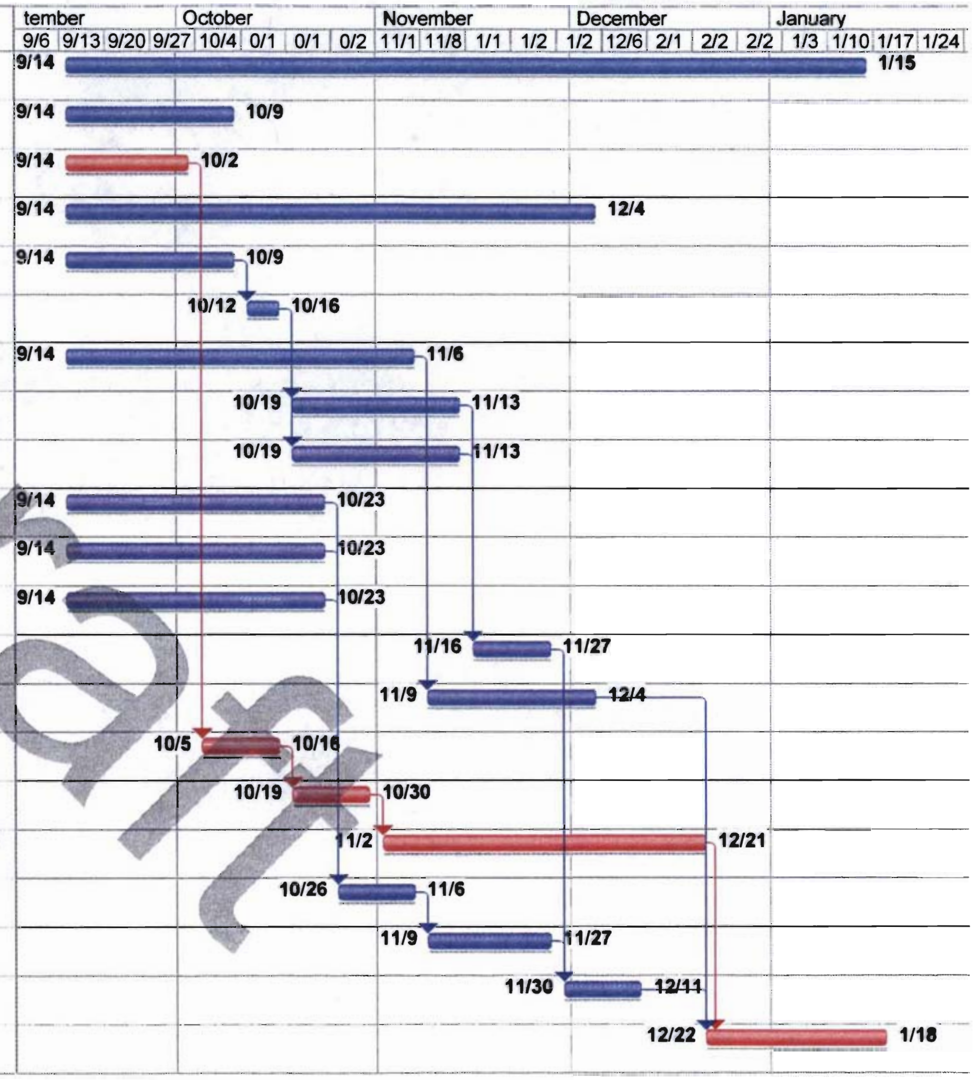


Exhibit C
2 of 2

Exhibit C
of

City Council Staff Report

Subject: Round Valley Dry Land Race
Author: Tommy Youngblood
Department: Sustainability
Date: November 5, 2009
Type of Item: Application - Master Festival License

Summary Recommendations:
Review the Master Festival License application, conduct a public hearing, and approve the license for the Round Valley Dry Land Race, as conditioned, on November 7, 2009 to be held at the Round Valley Trail System adjacent to the Quinn's Sports Complex.

Description:

Topic:
Review the Master Festival License Application, submitted by Cache Valley Mushers for the Round Valley Dry Land Race on Saturday, November 7, 2009.

Background:
CACHE VALLEY MUSHERS submitted an application requesting a Master Festival License to hold their Round Valley Dry Land Race. This is the first year of this event. The organizer expects 20 participants Saturday, November 7, 2009. The applicant has met with Special Events staff to go over any logistical challenges or other issues.

Round Valley Dry Land Race is consistent with the City Council's Goal #4 which is to continue to promote Park City as multi-seasonal resort by maintaining its status as a World Class Resort which hosts such events as this and to increase the number of events.

Analysis:
Round Valley Dry Land Race
The event organizers have requested to hold their event on Saturday, November 7, 2009. Participants will do the following activities (all dogs will be on leashes);

- **Bikejoring**, which is a dog mushing activity related to skijoring, it is a recreation or sport where a harnessed dog or team of dogs attached to a towline, pull and run ahead of a cyclist. Bikejoring is a non snow season (dryland) activity.
- Canicross – One dog with a runner
- Scooter – 1-2 dogs with a non motorized off-road scooter
- Cart – 3-4 dogs with a dog cart

The race will begin at 7:00 am and all activity will be complete at 10:00 am. No trail closures will be required for this event. Races will be able to politely move past any regular trail user. The Snyderville Basin Recreation District has been notified and approved of the event.
The applicant is aware of past concerns concerning the care and safety of the animals at this type of event and will have a veterinarian on-site.

Parking
Participants and Event Staff will use one parking lot at the Quinn's Sport Complex. The events participants, spectators and staff will not use the Main parking lot adjacent to the Ice Arena.

At the time of this report there is an ongoing construction project within the proposed area, however there will be no construction activity on the day of the race and the sites adjacent to the course will be cordoned off for safety. There will be temporary signs marking the race course. This event will be publicized with the Park City Chamber/Bureau, Local newspaper outlets, Event Flyers, and Club E-mails

This application is being reviewed as a Master Festival License due to the request for use of City property.

Department Review:
All applicable departments have reviewed the application for the Round Valley Dry Land Race and their comments have been incorporated into the report.

Alternatives:
Approve the Request:
Approve the Master Festival License allowing the Round Valley Dry Land Race as described.
Deny the Request:
Deny the Master Festival License, preventing the addition of the Round Valley Dry Land Race to Park City's schedule of events.
Continue the Item:
The City Council may continue the discussion in order to receive additional information.

Significant Impacts:
Non-exclusive use of Round Valley Trials
Use of one parking lot at Quinn's for event parking and staging.

Consequences of not taking the recommended action:
The Round Valley Dry Land Race would not take place

RECOMMENDATION:
Staff recommends the City Council conduct a public hearing and approves a Master Festival for the Round Valley Dry Land Race on Saturday, November 7, 2009 based on the following Findings of Fact, Conclusions of Law and Conditions of Approval.

Findings of Fact:

1. The Round Valley Dry Land Race will be held on Saturday, November 7, 2009. The event will last from 7:00am to 10:00am and will occur on The Round Valley Trails and in one parking lot at Quinn's Sport Complex.
2. Parking for the participants can be handled at one of the three parking lots adjacent to the softball complex at Quinn's Sport Complex. The conduct of the Round Valley Dry Land Race will not substantially interrupt or prevent the safe and orderly movement of public transportation or other vehicular and pedestrian traffic in the area of its venue other than noted.
3. The events associated with the Round Valley Dry Land Race will not require the diversion of so great a number of police, fire, or other essential public employees from their normal duties as to prevent reasonable police, fire, or other public services protection to the remainder of the City.
4. The event will be held in Round Valley. The concentration of persons, vehicles, or animals will not unduly interfere with the movement of police, fire, ambulance, and other emergency vehicles on the streets or with the provision of other public health or safety services.
5. There are no other Master Festival or Special Event licenses that have been granted for Saturday, November 7, 2009.
6. The size of the crowd and nature of the event will not create an imminent possibility of violent disorderly conduct likely to endanger public safety or cause significant property damage.
7. PCMC Trails Coordinator reserves the right to cancel any trails related event at any time, if it is determined that trail conditions are unfavorable due to weather or safety concerns.
8. The applicant has been working with City Staff and applicable departments to address all event concerns. The Applicant demonstrates an ability and willingness to conduct the event pursuant to the terms and conditions of this Chapter and has not failed to conduct a previously authorized event in accordance with the law or the terms of a license, or both.

Conclusions of Law:

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

Conditions of Approval:

1. The applicant, at its' cost, shall incorporate such measures as directed by Staff in order to ensure that any safety, health, or sanitation equipment, and services or facilities reasonably necessary to ensure that the event will be conducted with due regard for safety are provided and paid for by the applicant.
2. Applicants shall provide proof of liability insurance in the amount of two million dollars ($2,000,000) or more as may be required by the Special Events Manager or the City Attorney's Office, and shall further name Park City Municipal Corporation as additional insured. All Applicants shall further indemnify the City from liability occurring at the event except for any claim arising out of the sole negligence or intentional torts of the City or its employees.
3. All changes to the approved plan shall be submitted for review and permitting by

November 5th, 2009

Attachments

Exhibit A – Application Part 1

Submit by Email | Print Form

PARK CITY 1884

Special Events
435.615.5150
specialevents@parkcity.org

PARK CITY MUNICIPAL CORPORATION
SPECIAL EVENT AND MASTER FESTIVAL LICENSE
EVENT APPLICATION - PART I

PART I of the Special Event and Master Festival License (MFL) must be completed and submitted electronically to the Special Events Department no less than 90 days prior to a MFL or no less than 60 days prior to a Special Event. The application will be reviewed by the Special Events Department. *Granting of the permit is not guaranteed.*

APPLICATION FEES – DUE AT TIME APPLICANT SUBMITS PART I

All new applications require a $100 application processing fee.
All applications for returning events require a $50 application processing fee.
The Application Fee is NON-REFUNDABLE.

ADDITIONAL FEES

Additional fees for other services, including Health Department, Fire Department, and City Services will be estimated and provided to the applicant. Applicant will receive a final invoice approximately two weeks after the event concludes.

APPLICANT AND SPONSORING ORGANIZATION INFORMATION		
NAME	MAREN GIBSON, UTAH PAW POWER	
STREET ADDRESS	402 EAST 4300 NORTH	
CITY, STATE, ZIP CODE	PROVO, UT 84604	
DAY PHONE	801-318-0155	
FAX PHONE	801-691-0694 @ UTAHPAWPOWER.COM	
E-MAIL ADDRESS	MAREN@UTAHPAWPOWER.COM	
SPONSORING ORGANIZATION	CACHE VALLEY MUSHERS	
Contact Person "ON SITE" Day of Event	Name: MAREN GIBSON	Cell Number: 801-318-0155

EVENT INFORMATION

Type of Event (Check all that apply):

Master Festival Criteria: A PUBLIC EVENT (If one box is checked, the event is automatically a MFL)	☐ Attraction of crowds over 500	☐ Street Closure	☐ Use of City park, building or property	☐ Use of off-site parking facility	☐ Use of amplified music
Special Event Criteria: PRIVATE OR PUBLIC EVENT	☐ Causes significant public impacts via disturbance, crowd, traffic/parking	☐ Disruption of the normal routine of the community or affected neighborhood	☐ Necessitates temporary business or liquor licensing	☐ Events signs, visible from public property	☐ Temporary structures

☐ Run/Walk	☐ Parade	☒ Trail Event
☐ Road Bike Event	☐ Park Festival	☐ OTHER (please specify):
☐ Street Fair	☐ Concert	

EVENT TITLE:	ROUND VALLEY DRY LAND RACE	
FIRST TIME OR ANNUAL EVENT (IF ANNUAL, HOW MANY YEARS?)	1ST TIME	
EVENT DATE (S)	11/7/09 (~~OR ANY SAT LATE OCT EARLY NOV.~~)	
EVENT HOURS	START: 7 AM	END: 10 AM
SET-UP	DATE: 11/7/09	TIME: 6 AM
BREAK DOWN	DATE: 11/7/09	TIME: 10 AM

Received Time Sep. 9. 2009 2:03PM No. 4123

ATTENDANCE	PARTICIPANTS: 80	SPECTATORS: 80	TOTAL: ≈ 90
LOCATION	QUINNS LOOP, ROUND VALLEY TRAIL SYSTEM		

OVERALL EVENT DESCRIPTION (Briefly explain event and activities):

3-4 CATEGORIES, CANICROSS, BIKEJORING, SCOOTER, CART. RACERS START @ 1 MIN INTERVALS. SAFETY EQUIPMENT + APPROVED GEAR REQUIRED.

MARKETING YOUR EVENT (Your Marketing Plan is criteria for approval of your event)		
Contact the Park City Chamber/Bureau to help market y our event	435.649.6100	www.parkcityinfo.com

PLEASE DESCRIBE MARKETING AND PROMOTIONAL EFFORTS FOR YOUR EVENT:

EVENT FLYERS, EMAIL

RULES AND REGULATIONS

- A non-refundable application fee is required at the time the application is submitted to Park City Municipal Corporation. For new events the application fee is $100, for returning events the application fee is $50.00.
- Part I of the application must be submitted a minimum of 90 days prior to a Master Festival License (MFL) and 60 days prior to a Special Event. Part II of the application for both a MFL and a Special Event must be submitted 45 days prior to the requested event date.
- A site plan of your event is required with your application identifying street closures, signs, supply trucks, barricades, tents, activity location, portable toilets, bleachers, other temporary structures, water stations, headquarters, solid waste containers, entrance/exits, walkways and any other details that would assist the Special Event Staff with understanding the setup of your event.
- For runs, walks and parades a site plan outlining your route must be submitted along with your Special Event Permit application. If your event will generate additional traffic, or interrupt existing traffic on any city street, a traffic control plan outlining necessary street closures is required before a Special Event Permit will be issued.
- Permit Applications may require review by the City Council for approval or denial. Need for review is based on size, location, scope and impact of event.
- An applicant must schedule a meeting with Special Event Staff 30 working days prior to event.
- A certificate of insurance must be filed with Special Event Services ten (10) working days before the event in the amount of $2,000,000. The City of Park City requires all certificates of insurance to be submitted on a standard ACORD form, or on the insurance company's letterhead. Park City Municipal Corporation must be listed as additionally insured. If you do not have insurance, the City of Park City is able to provide you insurance, at a cost, through the TULIP Program. Please visit our website at; www.parkcity.org/Special Events & Facilities/applications/index.html.
- All debris and trash must be removed from an event site immediately after the event. Failure to do so may require more City Services. All expenses will be the responsibility of the event applicant. It is highly recommended that the applicant provide recyclable receptacles at the event. Please contact a local recycle company (information provided in Application Part II). Thank you.
- Depending on the duration of your event and the availability of public restrooms, you may need to rent portable chemical toilets to accommodate participants. Park City Municipal Corporation City Code requires one (1) chemical toilet for every 65 people. The figure is based upon the maximum number at your event during peak time. The total number of toilets will be determined on a case-by-case basis.
- You must receive approval for your event before you promote market or advertise your event. Conditional

approval will be made after the event organizer submits the application and it is initially screened. Acceptance of your Special Event Application by the City is not a guarantee of the date, location or an automatic approval of your event.

- Only readily removable barricades may be used for street closures and a 20-ft lane of clearance is required for emergency vehicle access at all times. You may be required to provide advisory signs if your event impacts a major use roadway. Advisory signs are intended to provide advanced notice to the regular users of a roadway of the scheduled closure.
- In some cases, the hiring of officers from the Park City Police Department, a professional security company, or a combination of both may be required in order to obtain a Special Event Permit. The Park City Police Department determines the need, number, and type of security personnel based on expected attendance, location of the event, the presence of alcohol, history of the event, nature of the event, street closures, and the amount of advertising used for an event.
- The Fire Department must review and approve the following: your plans for first aid and/or emergency medical services; your route for emergency vehicle access;
- The Building Department must review parade floats; use of an open flame; use of fireworks or pyrotechnics; handling of vehicle fuel; cooking facilities; the location of power sources; the availability and location of on-site fire suppression equipment; the occupancy and spacing of tables or enclosures; and the use of tents, canopies or any fabric shelters. The Building Department will require an inspection before and/or during the event.
- All temporary structures, i.e. tents, stages, platforms, etc. must be engineered and stamped by a State of Utah Licensed Engineer.
- The applicant(s) shall assume and reimburse the City for any and all costs and expenses determined by City to be unusual or extraordinary, and related to the event for which the permit is sought, including but not limited to:

A. The cost of providing, erecting, and moving barricades and/or signs;
B. The cost of providing and moving garbage or waste receptacles;
C. The cost of city personnel who are required by the city to work overtime hours

- The City may require, as a condition to issuance of a permit, that a sum be deposited with the city to meet such costs. The required deposit shall not exceed one thousand dollars ($1,000.00).

AGREEMENT AND SIGNATURE	
I the undersigned representative have read the rules and regulations with reference to this application and am duly authorized by the organization to submit this application on its behalf. The information contained herein is complete and accurate.	
Name (printed)	ERICA MARY PARTRIDGE GIBSON
Signature ~~(if electronic signature is available)~~	Date: 9/4/09

REMITTAL INFORMATION	
Park City Municipal Corporation (PCMC) ATTN: Special Events PO Box 1480 Park City, Utah 84060 435.615.5150	*If you would like to pay by credit card or make your payment in person please contact Tommy Youngblood at 435.615.5187.*

OFFICE USE ONLY	
PERMIT APPLICATION #:	ASSIGNED TO:
NOTES:	

Received Time Sep. 9. 2009 2:03PM No. 4123

City Council Staff Report

Subject: Business Licenses – Proration & Penalties
Author: Bret Howser, Budget Officer
Department: Budget, Debt & Grants
Date: November 5, 2009
Type of Item: Legislative

Summary Recommendations:

Staff recommends that Council review and adopt the attached ordinance amending the Title 4 Chapter 2 of the Municipal Code, Business Licensing, to allow quarterly proration of business license service enhancement fees. Staff recommends addressing issues with business license late-payment penalties through an administrative waiver policy rather than through a code adjustment.

Topic/Description:

Business Licenses – Proration of fees and late-payment penalty fees

Background:

There has been an influx of community input regarding the structure of business licensing, especially in regard to the lack of prorating fees for licenses purchased mid-year and the steep nature of penalties associated with late or non-payment. In the spring, after citizen input during the budget hearings, Council directed staff to look into the matter and return before business license renewals in the fall.

Currently, the Park City Municipal Code (§4-2-13) allows for an "applicant applying for a license between October 1 and December 31st … [to] pay one hundred and twenty-five percent (125%) of the amount otherwise imposed for new licenses issued and the license shall be valid through December 31 of the year following the year of issuance." This is the only form of proration of fees allowed by the code.

Also Park City Municipal Code (§4-2-23) sets late-payment penalty fees at 25% of the license fee after January 15, 50% of the fee after February 15, and 100% of the fee after March 1. The Code only explicitly allows for administrative waiver of penalty fees in the event that the business is of a "seasonal nature." The code does allow for Council to grant exemption of all fees (business license fees and/or penalty fees) for "any person who obtains an exemption from the City Council by petitioning the Council for a waiver of the fees." (§4-2-21)

Currently and historically, the Finance Department has complied strictly to the City Code. Proration is only given after October 1 and only with the purchase of the following year's license as well. Penalties are strictly enforced, with waivers only granted in the case of a seasonal business or staff error. Penalties are never reduced or waived at the discretion of City staff.

For purposes of this discussion, it is important to recall that the total business license fee is made up of four component fees. The first is an administrative fee which is levied to recover costs associated with administering the business license program. The second is a Transit Service Enhancement Fee, which is levied to support transit service. The third is a Festival Facilitation Service Enhancement Fee, which is levied to support special events and festivals. The last is an enhanced enforcement fee, which is only levied on for-hire vehicles and escort services, and is intended to recover costs associated with additional code and law enforcement due to the nature of these business types. Generally, the two service enhancement fees make up the bulk of a total annual business license fee.

Analysis:
Staff took the following measures before constructing and analyzing alternatives for the two issues at hand (proration and penalties). First, staff reviewed the Municipal Code to make sure current practices were in compliance with existing policy. Then, staff reviewed State Statute to determine what limitations or requirement the state Legislature has put in place for these issues. Next, staff combed existing business license studies for existing research and analysis on the topics. Finally, staff constructed a sampling of practices of comparable cities.

A review of the Municipal Code and current City practices are given in the Background Section of this report. A review of State Statute showed virtual silence from the State on the matters. Prior business license fee studies conducted by the City do not mention penalties, but do discuss a rationale for proportionality of benefit which will play into the analysis of proration. Staff has relied heavily on a survey of other cities for the recommended practices given in this report.

<u>Proration of Fees</u>
The chief complaint surrounding the current non-prorated business license fees concerns fairness. Is it fair to charge a business license fee for a full year to a business which only sets up shop beginning in May?

To answer this question, we must consider the purpose behind the fees. In the case of the administrative fee, the purpose of the fee is to recover costs associated with administration of the program. It has been determined that a new business costs the City at least $95 in administrative time and materials. This includes processing application, data entry, printing, notifications, building inspection, etc. Clearly these activities will occur, and related costs will accrue, regardless of whether the business applies for a license in January, June, or December. Therefore, it *is* fair to charge a non-prorated administrative fee to a new business applying mid-year. A similar argument could be made for enhanced enforcement fees.

However, enhanced service fees are somewhat more complicated. One might say that enhanced service fees are collected to recover the costs of the transit system and festivals, and then the logic above would also apply. However, the City's existing business license fee studies state that the fee charged is "proportionately and reasonably related to estimated benefit" received by the business. This, coupled with the fact that only 22% (1998 figure – likely less now) of the transit system cost is recovered by the service enhancement fee, should change the approach to the question of fairness. The *benefit* a business receives is the focal point of the service enhancement fee, not the cost to the City. Clearly a business which operates beginning in June does not receive the same cumulative benefit from the City's transit system of a similar business which operates the full year.

For these reasons, staff recommends that some proration structure be implemented for the transit service enhancement fee and the festival facilitation service enhancement fee portions of the business license fee. This leads to the next question: How should they be prorated.

Staff surveyed 12 jurisdictions from Salt Lake Valley, Summit/Wasatch Counties, and Colorado Association of Ski Towns (CAST). Brief descriptions of the proration practices of these entities are summarized in the figure below.

City/County	Business License Fee Proration Practice
Salt Lake City	License runs from month they buy it for a year
Sandy	Prorate by Quarter
West Valley	License runs from month they buy it for a year
Coalville	No proration (could change soon)
Kamas	No Proration
Heber	Not in ordinance, but they prorate for 2nd half of year for smaller businesses, after 1st Qtr for larger businesses
Summit Co	No proration
Vail	Prorate on quarterly basis - but $100 minimum - retail stores pay by sq. ft. $325 and up
Breckenridge	License runs from month they buy it for a year
Telluride	No proration; After Oct 1 50%
Jackson	Prorate by Quarter
Aspen	No proration

The approaches of this comparative list can be summarized as follows:

1) Five of the cities surveyed have no proration or no-more proration than Park City currently does.
2) Three prorate quarterly.
3) Three issue licenses for a year from the date of purchase rather than on a calendar year basis, negating any reason for proration.

The first approach (no proration) represents no change from current practices, and does not solve fairness issues. The second approach (quarterly proration) is recommended by staff and discussed below.

The third approach would create an administrative burden related to altering system setup and practices. It could also result in loss of economies of scale as renewal notices would be generated sporadically throughout the year rather than all at the same time. The approach could be expected to result in a similar revenue decline as quarterly proration, but that decline would be realized over several years as businesses turn-over, rather than all in the first year.

Staff recommends that the City take the quarterly proration approach. Businesses would pay 100% of the service enhancement fees if they apply for a business license in the 1st Quarter, 75% in the 2nd Quarter, 50% in the 3rd Quarter, and 25% in the 4th Quarter. This would provide relative fairness while avoiding a significant administrative burden.

The major drawback of this approach is forgone revenues. Staff estimates that revenue could decline by $11,000 annually due to quarterly proration. The majority of these funds are received into the transit fund to support the transit system. However, staff believes this impact is largely negligible as business license revenue is a secondary revenue source for the transit system in the first place, and this decline represents only 1% of that revenue source. The benefit of equitable treatment of businesses outweighs the cost, in the view of staff.

It should also be noted that a prorated business license is distinct from a temporary business license. A temporary business license would be valid for some finite period during the year (such as January 15 - February 1), and is prohibited by Municipal Code (§4-2-3). In contrast, a prorated business license is always valid from the date of purchase through the end of the calendar year, regardless of when the business may discontinue activity. The prorated license anticipates ongoing annual licensure. This would not change the City's practice with businesses that come to town for the Sundance Film Festival. These businesses would still purchase a full-year business license, and, since they're purchasing the license in the first quarter, would pay 100% of the fees.

<u>Penalties</u>
Section 4-2-1 of the Municipal Code declares it unlawful to operate without a business license in Park City. Section 4-2-2 lays out the penalty for doing so, which is a doubling of the license fees. Section 4-2-23 prescribes procedures for renewals, including penalties for late payment (which graduates as described in the background section, but ultimately results in a doubling of the fee). It would seem that the penalty of doubling the fees for operating without a business license is intentionally harsh in order to strongly encourage compliance with Code. It would stand to reason, then, that penalties for late payment of renewals should be comparably harsh since failure to pay the license renewal is, in fact, operating without a business license.

In fact, other cities in Utah have similarly steep penalty structures, which also seem to be designed with the primary purpose of discouraging operating a business without a current license. The ski towns surveyed, on the other hand, generally had more lax penalties. In these cities, staff noted that delinquent accounts were frequent, but it was easier to collect on late accounts. Summaries of each comparison city's penalty structure are given in the table below:

City/County	Business License Penalty
Salt Lake City	25% after due date 100% after 60 days
Sandy	30 days - 25% 45 days - 75%
West Valley	30 days - 50% 60 days - 75% 90 days - 100%
Coalville	March 1 - 100%
Kamas	$25 first month $25 second month ($50 is typically 100% of fee)
Heber	Jan 1 - 25% Apr 1 - 50%
Summit Co	25% @ Jan 15 +25% each 15 days
Vail	10% after 30 day grace period
Breckenridge	1% late fee after 3 months
Telluride	5% per month up to 25%
Jackson	After 1 month $25 per month
Aspen	(no response given)

Staff recommends that the City continue with the current structure of business license fee penalties. This is consistent with other Utah entities and should effectively limit the number of businesses which choose to operate without a license.

However, one major drawback to the current City practice its inability to distinguish between businesses which would willfully withhold payment and operate without a license (for which the penalty is intended) and those which mistakenly fail to make a renewal payment (for which the penalty would not have served well as an incentive to pay). In some cases, businesses which have a significant history of on-time, in-full payment and a good relationship with the City made an honest mistake in failing to pay the fee, and they are penalized harshly for it, as if they willfully withheld the fee.

In order to provide a solution for this issue, staff has put in place an administrative policy which allows a one-time administrative waiver of penalty fees, upon written appeal, for businesses which have a demonstrated history of on-time, in-full payment and for which it can be reasonably determined that payment was not willfully withheld. The policy also provides an adjudication outlet for further disputes, similar to parking fees, water fees, etc. In this fashion, the City could maintain the benefits of steep, punitive fees to encourage code compliance, but would have flexibility for cases where the punitive fees seem unreasonable. A copy of the administrative policy is attached.

Additional Ordinance Change

In early 2009, Council enacted Ordinance 09-01, which clarified that a single $46 administrative fee would be charged to each lodging company rather than a $46 fee for each nightly rental unit for the 2009 year only. Since then, the administrative fee issues for nightly rental units have been rectified, and this language is no longer necessary in the Code. Staff recommends that it be removed. There is no impact to this change other than tidying up the Code. The change can be seen in the attached ordinance.

Department Review:

The City Manager, Legal Department, the Transit Department and Finance Department reviewed this report.

Alternatives:

A. Approve:
The recommended action would allow for quarterly proration of non-administrative business license fees, improving the perceived fairness of the fees for new business which purchase a license mid-year.

B. Deny:
Current practices would perpetuate

C. Modify:
Council could direct choose to implement another alternative, including any combination of the practices examined in the Analysis Section.

D. Continue the Item:
Current practices would perpetuate until Council takes action

E. Do Nothing:
Current practices would perpetuate

Significant Impacts:

The recommended action would allow for quarterly proration of non-administrative business license fees, improving the perceived fairness of the fees for new business which purchase a license mid-year. The action would result in an estimated $11,000 annual decline in business license revenues, the majority of which are used for transit service.

Consequences of not taking the recommended action:

If no action is taken at this time, current practices limiting proration to the last quarter of the calendar year would continue. New business owners would continue to pay for a full license which they would only use for a partial year, which some consider to be an unfair practice.

Recommendation:

Staff recommends that Council review and adopt the attached ordinance amending the Title 4 Chapter 2 of the Municipal Code, Business Licensing, to allow quarterly proration of business license service enhancement fees. Staff recommends addressing issues with business license late payment penalties through an administrative waiver policy rather than through a code adjustment.

Attachments:
A – Business License Fee Proration Ordinance
B – Business License Penalties Administrative Policy

Ordinance No. 09-

AN ORDINANCE AMENDING TITLE 4, LICENSING, CHAPTER 2, BUSINESS LICENSING IN GENERAL, OF THE MUNICIPAL CODE OF PARK CITY

WHEREAS, Park City has an interest in promoting public health, safety, and welfare, and

WHEREAS, Park City wishes to protect the right of businesses to operate in Park City, and

WHEREAS, proper inspection and licensing of businesses promotes the public health, safety, and welfare as well as better business practices, and

WHEREAS, City Council has determined that amending the Municipal Code is necessary to ensure proper inspection and licensing, and

WHEREAS, Utah Code Annotated ("U.C.A.") Section 10-1-203 gives the City power to collect a license fee on businesses within the city limits and may regulate the businesses by ordinance, and

WHERAS, it is the intent of City Council to provide for fair and equitable collection of business license fees,

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PARK CITY, UTAH THAT:

Section I. Amendment. Title 4, Licensing, Chapter 2, Business Licensing in General, of the Municipal Code of Park City is hereby amended as follows:

4- 2-13. License Period.

Renewed license certificates shall be valid through December 31, of the year of renewal unless revoked pursuant to this Title. New license certificates issued between January 1 and September 30 shall be valid through December 31 of the year of issuance unless revoked. New license certificates issued between October 1 and December 31 may be valid through December 31 of the year following the year of issuance, unless revoked. An applicant applying for a license between October 1 and December 31st may, at the option of the applicant pay one hundred and twenty-five percent (125%) of the amount otherwise imposed for new licenses issued and the license shall be valid through December 31 of the year following the year of issuance, unless revoked, However, an applicant may elect to pay the prorated fee of ~~one hundred (100%)~~

pursuant to this Title on new applications between October 1 and December 31 if the applicant does not intend to do business in Park City the following year.

4- 2-17. REGULATORY AND SERVICE ENHANCEMENT FEES IMPOSED.

There is hereby imposed and levied an annual business license fee on the types of businesses and in the amounts described below in the Business License Fee Schedule:

PARK CITY BUSINESS LICENSE FEE SCHEDULE

	Transit Service Enhancement Fee		Festival Facilitation Service Enhancement Fee		Enhanced Enforcement Fee		Administrative Fee		
	Rate	Unit of Measure	Rate	Unit of Measure	Rate	Unit of Measure	Rate Business Renewals	Rate New Bus./ Inspections	Unit of Measure
Ski Resort	$0.263	Skier Day	$0.013	Skier Day	-	-	$22.00	$95.00	License
Lodging	$19.250	Per Bedroom	$9.488	Per Bedroom	-	-	$17.00	$87.00	License
Restaurant	$0.231	Per Sq. Ft.	$0.103	Per Sq. Ft.	-	-	$22.00	$95.00	License
Outdoor Dining	$0.063	Per Sq. Ft.	$0.029	Per Sq. Ft.	-	-	$22.00	$95.00	License
Retail	$0.231	Per Sq. Ft.	$0.103	Per Sq. Ft.	-	-	$22.00	$95.00	License
Large Retail (> 12,000 sq. ft.)	$0.161	Per Sq. Ft.	$0.072	Per Sq. Ft.	-	-	$22.00	$95.00	License
Office, Service, Other	$0.206	Per Sq. Ft.	$0.013	Per Sq. Ft.	-	-	$22.00	$95.00	License
Warehouse	$0.059	Per Sq. Ft.	$0.002	Per Sq. Ft.	-	-	$22.00	$95.00	License
Resort and Amusement	$1.035	Per User	$0.048	Per User	-	-	$22.00	$95.00	License
For-Hire Vehicles	$37.500	Per Vehicle	$1.751	Per Vehicle	$45.58	Per Vehicle	$71.83	$71.83	License
Other Commercial Vehicles and Trailers	$7.500	Per Vehicle	$0.292	Per Vehicle	-	-	$22.00	$95.00	License
Employee Based	$3.750	Per Employee	$0.146	Per Employee	-	-	$22.00	$95.00	License
Commercial Vending, Game and Laundry Machines	$18.750	Per Machine	$0.730	Per Machine	-	-	$22.00	$95.00	License
Escort Services	$3.750	Per Employee	$0.150	Per Employee	$46.19	Per Employee	$22.00	$95.00	License

Transit Service Enhancement Fees and Festival Facilitation Service Enhancement Fees shall be subject to proration for businesses applying for a new business license after March 31. Proration will be according to the following schedule:

After March 31 – 75% of the Transit and Festival Facilitation Service Enhancement Fee, 100% of the Administrative and Enhanced Enforcement Fee

After June 30 – 50% of the Transit and Festival Facilitation Service Enhancement Fee, 100% of the Administrative and Enhanced Enforcement Fee

After September 30 – 25% of the Transit and Festival Facilitation Service Enhancement Fee, 100% of the Administrative and Enhanced Enforcement Fee

4- 2-23. FEE AND TAX PAYMENTS, RENEWALS AND PENALTY.

The annual business license fee provided in this Title shall be due and payable to the City on or before the first day of January of each year for renewals of licenses for businesses, which were licensed the previous year. Business licenses for previously unlicensed businesses shall be issued for the unexpired portion of the calendar year in which issued unless issued between October 1 and December 31, in which case the license shall be valid until December 31 of the year following the issuance of the license, upon payment of 125% of the annual license fee, as set forth in Section 4-2-13 above.

If the renewal license fee is not paid on or before January 15 of the year in which the renewal license is due, there shall be a business license enforcement fee imposed of twenty-five percent (25%) of the license fee imposed by this Chapter or twenty-five dollars ($25.00) whichever is greater.

If the renewal license fee is not paid in full on or before February 15th of the year in which the renewal fee is due, the business license enforcement fee shall be increased to fifty percent (50%) of the license fee imposed by this Chapter or twenty-five dollars ($25) whichever is greater. If the renewal license fee is not paid on or before March 1st of the year in which the renewal fee is due, the business license enforcement fee shall be increased to one-hundred percent (100%) of the license fee imposed by this Chapter.

Upon a proper showing that the business is of such a seasonal nature that business has not been conducted to date, the Director or his or her designee may waive the business license enforcement fee of said renewals.

Upon a showing of hardship acceptable to the Director or his or her designee, the licensed business may be allowed to pay the business license fees due over a period of time not to exceed three (3) months from the due date, with interest on the unpaid balance at the rate of eighteen percent (18%) per annum.

Any previously licensed business cited for engaging in business in violation of this Title shall have five (5) days from the date of citation to come into compliance with this Title. Failure of the licensee to reach compliance within five (5) days of the date of citation will subject the business to closure and the licensee to all applicable civil and criminal penalties.
If a licensed business enlarges its place of business or increases its capacity for conducting business, i.e., adding square footage, increasing number of vending machines, number of employees, bid limits, or increasing hourly user capacity, an additional license fee shall be due and payable to the City and shall be prorated on the basis of one-twelfth (1/12th) of the total annual fee on the enlargement or increase for each month remaining in the unexpired portion of the calendar year, including the month in which such increase is accomplished. The additional license fee for adding square footage shall be due and payable on the date the City issues the occupancy permit.

~~For the 2009 billing period, due 1/1/09, each local representative will be charged one $46 administrative fee for a lodging license. If multiple $46 administrative fees have been paid by a local representative prior to 1/8/09, a refund will be~~

~~issued for the amount of the administrative fee greater than $46. This Section shall supercede Section 4-2-6 Refund of Fee limited to refunds allowable by this Section. All other license fees are required to be paid in full according to the requirements of this Section for issuance of a business license.~~

<u>Section II</u>. Effective Date. This Ordinance shall become effective upon publication.

PASSED AND ADOPTED this 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

Business License Penalty Waiver
Administrative Policy

Purpose: Park City Municipal Corporation intends to provide due process and equitable treatment to all businesses subject to punitive penalties for late payment of business license renewal fees.

Policy:

City staff shall review upon written appeal any and all contested penalty fees for late payment of business license renewals. The Finance Director or designee may allow a one-time waiver of penalties in full or in part upon determination that non-payment was not the result of a willful disregard of prior notice. To qualify for a penalty waiver, a business must have a demonstrated history of on-time, in-full license renewal payments. Businesses which have previously received such a waiver will not qualify for a second waiver in subsequent billing periods. An administrative fee of twenty-five dollars ($25) will be assessed to businesses granted a penalty waiver to recover administrative costs associated with the review process.

If penalties are determined by the Director or designee to have been assessed as a direct result of staff or system error, the penalties shall be waived in full. Waiver of penalties under these circumstances will not disqualify a business for future waivers and will not result in a twenty-five dollar ($25) administrative fee.

Any business seeking a waiver of penalty fees must submit an appeal in writing to the Finance Department. The written appeal must:

1) Identify the business and a chief contact for the business,

2) Describe the circumstances leading to non-payment, and

3) Submit proof of positive account history.

The Finance Department will review and respond to the appeal in writing within thirty (30) days.

Further appeals of business license penalties will be handled through a third party adjudicator.

Approved this 21st day of October, 2009

City Manager

Approved as to form:

City Attorney

City Council
Staff Report

Subject: **Land Management Code (LMC) Amendments**
Author: **Katie Cattan**
Date: **October 29, 2009**
Type of Item: **Legislative- LMC Amendments – Chapters 2.1, 2.2, 2.3 and 15**

PARK CITY 1884 PLANNING DEPARTMENT

Summary Recommendations
Staff recommends that the City Council discuss the proposed amendments to the Land Management Code (LMC) for Chapters 2.1, 2.2, 2.3, and 15 as described in this report, open a public hearing, and consider adopting the ordinance as presented in Exhibit A.

Topic
Project Name: LMC Amendments for Chapters 2.1, 2.2, 2.1, and 15
Applicant: Planning Department
Proposal: Revisions to the Land Management Code

Background
Since the April 2009 revisions to the LMC, the Planning Commission has requested that Staff review several of the definitions within the Land Management Code to address several concerns. The requests have included the addition of across canyon views for Conditions Use Permits vantage points, suggestions for historic incentives for owners and clarification of attic space and utilization within the Historic Zoning within the maximum of three stories.

The Planning Commission reviewed the proposed changes during the August 12, 2009 work session meeting. The Planning Commission asked staff to come back at a later date with more information on green roofs and lighting.

During the September 9, 2009 Planning Commission meeting the Commission again reviewed the changes to vantage points, historic accessory building, and attic space. The Commission forwarded a positive recommendation to the City Council on the addition of the across canyon view to the vantage point list. The Commission requested additional analysis on the historic accessory building incentive and the definition of attic. Specifically, Commission asked staff to make sure that the proposed definitions were evenly balanced with the International Building Code.

On October 14, 2009 the Planning Commission again reviewed the changes during work session. The Planning Commission questions reflecting the International Building Code were answered and no discrepancies between the LMC and the IBC were identified. The Planning Commission forwarded a unanimous positive recommendation to the City Council.

Analysis

Vantage Point

The Planning Commission has requested that applicants provide an across valley view for applications under review. The current definition of Vantage Point includes 10 specific vantage points to assist in analyzing the visual impact of development on hillsides and steep slopes. The proposed ordinance adds an 11th vantage point

11. Across valley view.

Story

Within the HR-1, HR2, and HRL zones, structures are limited to a maximum of three stories within the 27 feet height limit. During a recent review of a steep slope application, the applicant utilized the uninhabitable space under the roof for storage and mechanical area with the support from the Planning Commission. The Planning Commission requested that staff clarify how the uninhabitable space within the roof does not count as a story.

LMC Definition of Story

> Story: The vertical measurement between floors taken from finish floor to finish floor. The first story is the lowest level of a structure. It includes livable and non-livable space. For the top most story, the vertical measurement taken from the top finish floor to the top of the wall plate for the roof structure.

Staff would recommend that the current definition of story remain as it is. On the September 9, 2009 Planning Commission meeting, Staff recommended adding the following statement after the maximum limitation of three stories within the HR1, HR2, and HRL zoning districts: "Attics, which are uninhabitable space as defined in the International Building Code, do not count as a story."

In reviewing this language, Staff is changing the recommendation to the following statement after the maximum limitation of three stories within the HR1, HR2, and HRL zoning districts: "Attics that are not Habitable Space do not count as a Story."

Proposed new definition of Attic

> Attic: The space between the ceiling joists and roof rafters.

Existing definition of Habitable Space

> Habitable Space: Space in a structure for living, sleeping, eating, or cooking. Bathrooms, toilet compartments, closets, halls, storage, or utility space, and similar areas are not considered habitable space"

Building Footprint

The Planning Commission requested that staff return with recommendations for incentives for Historic Preservation. Within the Historic Sites Inventory there are numerous accessory buildings. Each lot within the residential H-zones is allowed a maximum Building Footprint. The historic accessory buildings count towards the maximum building footprint. Staff has explored an incentive to protect historic accessory buildings by excluding the historic accessory buildings from the building footprint calculation.

LMC Definition of Footprint

> Footprint: The total area of the foundation of the structure, or the furthest exterior wall of the structure projected to Natural Grade, not including stairs, patios, and decks.

Proposed Definition of Footprint

> Footprint: The total area of the foundation of the structure, or the furthest exterior wall of the structure projected to Natural Grade, not including exterior stairs, patios, decks, and Accessory Buildings listed on the Park City Historic Structures Inventory that are not expanded, enlarged or incorporated into the Main Building.

The current definition of Accessory Buildings would remain as it is.

> Accessory Building: A building on the same lot as the principal building and that is:
>
> > (A) clearly incidental to, and customarily found in connection with such principal Building, such as detached garages, barns, and other similar Structures that require a Building Permit;
> > (B) operated and maintained for the benefit of the principal Use;
> > (C) not a dwelling unit; and
> > (D) also includes structures that do not require a Building Permit, such as sheds, outbuildings, or similar Ancillary Structures. See Ancillary Structures.

The change in the definition to Footprint would allow property owners to maintain and preserve the historic accessory buildings on their property without counting the square footage of the accessory buildings towards the footprint. The building would remain accessory and could not be attached to the Main Building as happened with 9 Hillside (which counted as footprint). The definition of accessory building is clear that it is not a dwelling unit. If the historic accessory building contains a dwelling unit it would count towards the footprint calculation.

Process

Amendments to the Land Management Code require Planning Commission recommendation and City Council adoption. City Council action may be appealed to a court of competent jurisdiction per LMC Section 15-1-18.

Recommendation

Staff recommends the City Council review the proposed amendments to the Land Management Code sections 2.1, 2.2, 2.3, and 15, open a public hearing, and consider adopting the ordinance as presented in Exhibit A.

Exhibits

Exhibit A – Draft Ordinance for Land Management Code Sections 2.1, 2.2, 2.3, and 15

Exhibit A: Draft Ordinance

AN ORDINANCE APPROVING AMENDMENTS TO THE LAND MANAGEMENT CODE OF PARK CITY, UTAH, INCLUDING AMENDING SECTIONS 15-2.1-5, 15-2.2-5, 15-2.3-5 CLARIFYING ATTIC SPACE AND SECTION 15-15 DEFINITIONS

WHEREAS, the Land Management Code is designed and enacted to implement the objectives of the Park City General Plan; to protect the general health, safety, and welfare of Park City's citizen's and property owners; to maintain the quality of life and experience for its residents and visitors; and to preserve the community's unique character and values;

WHEREAS, the City reviews the General Plan and Land Management Code on an annual basis and identifies necessary amendments to the Land Management Code to address administrative and substantive revisions;

WHEREAS, Chapter 2.1, 2.2, and 2.3 identify that structures are allowed to have three stories and the City desires to amend the allowance to exclude uninhabitable attic space consistent with the International Building Code;

WHEREAS, Chapter 15- Definitions provide clarity of meaning for words used in the Land Management Code and amendments to existing definitions are necessary to clarify terms that appear within sections of the Land Management Code. The City desires to clarify terms by amending the definitions within the code;

WHEREAS, these amendments are changes identified during the 2009 annual review of the Land Management Code;

WHEREAS, the Planning Commission duly noticed and conducted a public hearing at its regularly scheduled meeting on August 26, 2009, September 9, 2009, and October 14, 2009, and forwarded a positive recommendation to City Council;

WHEREAS, the City Council duly noticed and conducted a public hearing at its regularly scheduled meeting on November 5, 2009; and

WHEREAS it is in the best interest of the residents of Park City, Utah to amend the Land Management Code to be consistent with the Utah State Code and the Park City General Plan, and to be consistent with the values and identified goals of the Park City community to protect health and safety, maintain the quality of life for its residents, and to preserve the community's unique character.

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

<u>SECTION 1. AMENDMENT TO CHAPTER 2.1 OF THE LAND MANAGEMENT CODE</u>. Chapter 2.1 is hereby amended as attached hereto as Attachment 1. Any conflicts or cross-references from other provisions of the LMC to Chapter 2.1 shall be resolved by the Planning Director.

SECTION 2. AMENDMENTS TO CHAPTER 2.2 OF THE LAND MANAGEMENT CODE. Chapter 2.2 is hereby amended as attached hereto as Attachment 2. Any conflicts or cross-references from other provisions of the LMC to Chapter 2.2 shall be resolved by the Planning Director.

SECTION 3. AMENDMENTS TO CHAPTER 2.3 OF THE LAND MANAGEMENT CODE. Chapter 2.3 is hereby amended as attached hereto as Attachment 3. Any conflicts or cross-references from other provisions of the LMC to Chapter 2.2 shall be resolved by the Planning Director.

SECTION 4. AMENDMENTS TO CHAPTER 15-15 OF THE LAND MANAGEMENT CODE. Chapter 15-15 is hereby amended as attached hereto as Attachment 4. Any conflicts or cross-references from other provisions of the LMC to Chapter 15 shall be resolved by the Planning Director.

SECTION 5. EFFECTIVE DATE. This Ordinance shall be effective upon publication.

PASSED AND ADOPTED this 5th day of November, 2009

PARK CITY MUNICIPAL CORPORATION

____

Dana Williams, Mayor

Attest:

____

Janet M. Scott, City Recorder

Approved as to form:

____

Mark Harrington, City Attorney

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

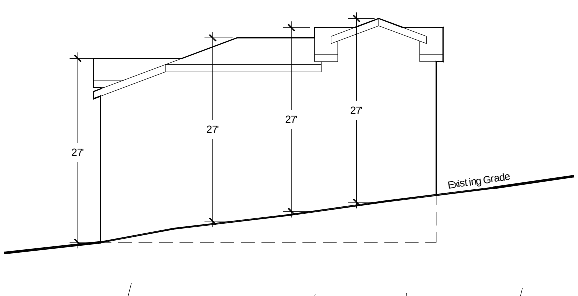
15-2.1-5. BUILDING HEIGHT.

No Structure shall be erected to a height greater than twenty-seven feet (27') from Existing Grade. This is the Zone Height. Final Grade must be within four vertical feet (4') of Existing Grade around the periphery of the Structure, except for the placement of approved window wells, emergency egress, and a garage entrance. The following height requirement must be met:

(A) A Structure may have a maximum of three (3) stories. A basement counts as a Story within this zone. Attics that are not Habitable Space do not count as a story.

(B) A ten foot (10') minimum horizontal step in the downhill façade is required for a third (3rd) Story of a Structure unless the First Story is located completely under the finish grade on all sides of the Structure. On a Structure in which the First Story is located completely under finish grade, a side or rear entrance into a garage which is not visible from the front façade or Street Right-of-Way is allowed.

(C) **ROOF PITCH**. Roof pitch must be between seven:twelve (7:12) and twelve:twelve (12:12). A Green Roof or a roof which is not part of the primary roof design may be below the required 7:12 pitch.



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

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

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

(3) **ELEVATOR ACCESS**. The Planning Director may allow additional height to allow for an elevator compliant with American Disability Act (ADA) standards. The Applicant must verify the following:

(a) The proposed height exception is only for the Area

Setback of three feet (3').

(11) Screened mechanical equipment, hot tubs, or similar Structures located a minimum of five feet (5') from the Side Lot Line.

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

(K) **CLEAR VIEW OF INTERSECTION**. No visual obstruction in excess of two feet (2') in height above road Grade shall be placed on any Corner Lot within the Site Distance Triangle. A reasonable number of trees may be allowed, if pruned high enough to permit automobile drivers an unobstructed view. This provision must not require changes in the Natural Grade on the Site.

(Amended by Ord. Nos. 06-56; 09-10)

15-2.2-4. EXISTING HISTORIC STRUCTURES.

Historic Structures that do not comply with Building Setbacks, Off-Street parking, and driveway location standards are valid Complying Structures. Additions to Historic Structures are exempt from Off-Street parking requirements provided the addition does not create a Lockout Unit or an Accessory Apartment. Additions must comply with Building Setbacks, Building Footprint, driveway location standards and Building Height. All Conditional Uses shall comply with parking requirements of Chapter 15-3.

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

(1) Upon approval of a Conditional Use permit,

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

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

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

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

15-2.2-5. BUILDING HEIGHT.

No Structure shall be erected to a height greater than twenty-seven feet (27') from Existing Grade. This is the Zone Height. Final Grade must be within four vertical feet (4’) of Existing Grade around the periphery of the Structure, except for the placement of approved window wells, emergency egress, and a garage entrance. The following height requirements must be met:

(A) A structure may have a maximum of three (3) stories. A basement counts as a First Story within this zone. Attics that are not Habitable Space do not count as a story.

(B) A ten foot (10’) minimum horizontal step in the downhill façade is required for a third (3^{rd}) Story of a Structure unless the

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

(11) Screened mechanical equipment, hot tubs, or similar Structures located a minimum of five feet (5') from the Side Lot Line.

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

(K) **CLEAR VIEW OF INTERSECTION**. No visual obstruction in excess of two feet (2') in height above Road Grade shall be placed on any Corner Lot within the Site Distance Triangle. A reasonable number of trees may be allowed, if pruned high enough to permit automobile drivers an unobstructed view. This provision must not require changes in the Natural Grade on the Site.

(Amended by Ord. Nos. 06-56; 09-10)

15-2.3-5. EXISTING HISTORIC STRUCTURES.

Historic Structures that do not comply with Building Setbacks, Off-Street parking, and driveway location standards are valid Non-Complying Structures. Additions to Historic Structures are exempt from Off-Street parking requirements provided the addition does not create a Lockout Unit or an Accessory Apartment. Additions must comply with Building Setbacks, Building Footprint, driveway location standards and Building Height.

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

(1) Upon approval of a Conditional Use permit,

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

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

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

15-2.3-6 BUILDING HEIGHT.

No Structure shall be erected to a height greater than twenty-seven feet (27') from Existing Grade. This is the Zone Height. Final Grade must be within four vertical feet (4’) from Existing Grade around the periphery of the Structure, except for the placement of approved window wells, emergency egress, and a garage entrance. The following height requirements must be met:

(A) A Structure may have a maximum of three (3) stories. A basement counts as a First Story within this zone. Attics that are not Habitable Space do not count as a story.

(B) A ten foot (10’) minimum horizontal step in the downhill façade is required for a support Structure including but not limited to a wooden pole, steel pole, lattice tower, utility pole, lift tower, light standard, flag pole, or other vertical support.

(D) **Antenna, Roof Mounted**. An Antenna or series of individual Antennas mounted on a roof of a Building.

(E) **Antenna, Temporary**. An Antenna used for a time period of less than thirty (30) days.

(F) **Antenna, Wall Mounted**. An Antenna or series of individual Antennas mounted fully against the exterior face of a Building including on the face of a chimney or penthouse. A wall or face of a Building is defined as the entire Area of all exposed vertical surfaces of a Building that are above ground and facing approximately the same direction.

1.15. **APARTMENT**. A Dwelling Unit within a Multi-Unit Dwelling Building with exclusive living, cooking, sleeping and bathroom Areas.

1.16. **APPLICANT**. The Owner of the Property that is the subject of the Application, or the Owner's Agent.

1.17. **APPLICATION**. A written request, completed in a manner prescribed in this Code, for review, approval, or issuance of a Development permit, including but not limited to Conditional Use permits, Building Permits, variances, annexation and re-zoning requests, Subdivision and record of survey plats, plat amendments, Code amendments, design review, and Administrative Permits.

(A) **Application, Complete**. A submission that includes all information requested on the appropriate form, and payment of all applicable fees.

1.18. **ARCHITECTURAL DETAIL**. Physical Properties, features or components of a Building or Structure which embody distinctive characteristics of a type, period, or method of construction and refers to the way in which the Property was conceived, designed, or fabricated by a people or culture. Within a Historic District, these physical features or traits commonly recur in individual Buildings. The characteristics can be expressed in terms of form, proportion, Structure, plan, architectural style, or materials such as siding, doors, windows, or trim.

1.19. **AREA OR SITE**. A specific geographic division of Park City where the location maintains Historical, cultural or archeological value regardless of the value of any existing Structure.

XXXX. ATTIC. The space between the ceiling joists and roof rafters

1.20. **BAKERY**. A Business that bakes food products and sells such products primarily for off-premises consumption. May include a Café or Restaurant.

1.21. **BALCONY**. A platform that projects from the wall of a Building and is enclosed by a railing, parapet, or balustrade. See following illustration:

and public parks, cemeteries, railroad Rights-of-Way, shore lines of water ways, or City boundary lines, as shown on an official plat.

1.30. **BOARDING HOUSE**. A Business, within a dwelling with two (2) or more Bedrooms where, for direct or indirect compensation, on a monthly basis, the Owner provides lodging and/or common Kitchen facilities or meals for boarders not related to the head of the household. Boarding Houses do not include the Use of Nightly Rental.

1.31. **BUILDING**. Any Structure, or any part thereof, built or used for the support, shelter, or enclosure of any Use or occupancy by Persons, animals, or chattel.

(A) **Building, Attached**. A Building connected on one (1) or more sides to an adjacent Building by a common Party Wall with a separate exterior entrance for each Building.

(B) **Building, Detached**. Any Building separated from another Building on the same Lot or Parcel.

(C) **Building, Main**. The principal Building, or one of the principal Buildings on a Lot, that is used primarily for the principal Use.

(D) **Building, Public**. A Building constructed by or intended for Use by the general public such as a library, museum, or Building of any political subdivision of the state of Utah or the United States.

1.32. **BUILDING ENVELOPE**. The Building Pad, Building Footprint, and Height restrictions that defines the maximum Building Envelope in which all Development must occur.

1.33. **BUILDING FOOTPRINT**. The total Area of the foundation of the Structure, or the furthest exterior wall of the Structure projected to Natural Grade, not including exterior stairs, patios, decks, and Accessory Buildings listed on the Park City Historic Structures Inventory that are not expanded, enlarged or incorporated into the Main Building.

1.34. **BUILDING PAD**. The exclusive Area, as defined by the Yards, in which the entire Building Footprint may be located. See the following example; also see Limits of Disturbance.

either Natural or Landscaped Open Space.

1.270. **TRANSPORTATION SERVICES**. A Business involving transit operations, taxis, shuttle services, rental cars, or similar transit-related services.

1.271. **UDOT**. Utah State Department of Transportation, an agency that maintains and regulates State Highways.

1.272. **UNIFORMITY RATIO**. The ratio between the average and minimum light distribution or luminance across a given Area.

1.273. **UNIT EQUIVALENT**. The Density factor applied to different sizes and configurations of Dwelling Units and commercial spaces.

1.274. **USE**. The purpose or purposes for which land or Structures are occupied, maintained, arranged, designed, or intended.

(A) **Use, Intensity of**. The maximum number of residential units, or commercial, or industrial space within a specified land Area designated for that purpose.

1.275. **VANTAGE POINTS**. A height of five feet (5') above a set reference marker in the following designated Vantage Points within Park City that function to assist in analyzing the visual impact of Development on hillsides and Steep Slopes:

1. Osguthorpe Barn;
2. Treasure Mountain Middle School;
3. Intersection of Main Street and Heber Avenue;
4. Park City Ski Area Base;
5. Snow Park Lodge;
6. Park City Golf Course Clubhouse;
7. Park Meadows Golf Course Clubhouse;
8. State Road 248 at the turn-out one quarter mile west from U.S. Highway 40; and
9. State Road 224, one-half mile south of the intersection with Kilby Road.
10. Intersection of Thaynes Canyon Drive and State Road 224.
11. Across valley view

1.276. **VEHICLE CONTROL GATE**. Any gate, barrier, or other mechanism to limit vehicular Access on or across a Street.

1.277. **WETLAND, SIGNIFICANT**. All wetlands that occupy a surface Area greater than one-tenth (1/10) acre or are associated with permanent surface water or that are adjacent to, or contiguous with, a Stream Corridor.

1.278. **WILDFIRE/WILDLAND INTERFACE ZONE**. All Areas within the Sensitive Areas Overlay Zone are within the Wildfire/Wildlife Interface Zone unless the City Fire Marshal determines otherwise based upon the amount of vegetative cover, including coniferous or deciduous trees, gamble oak or high shrub, and mixed forest, and steepness.

1.279. **WIND ENERGY SYSTEM, SMALL**. All equipment, machinery, and Structures utilized in connection with the conversion of wind to electricity. This includes, but is not limited to, storage, electrical collection and supply equipment, transformers, service and Access roads, and one (1) or more wind turbines, which has a

City Council
Staff Report

Author:	**Matt Twombly, Ken Fisher, Dave Gustafson**
Subject:	**Racquet Club Remodel Temporary Relocation of Facilities**
Date:	**November 5, 2009**
Type of Item:	**Lease of Property**

Summary Recommendations:
Conduct a public hearing and authorize the City Manager to execute a Lease with Wintzer-Wolfe Properties for 1255 Ironhorse Drive in a form approved by the City Attorney.

Topic:
Racquet Club Remodel – Lease for Temporary Recreation Facilities

Background:
The renovation of the Racquet Club is scheduled to begin in April 2010. The renovation will mean that many of the current services that are provided will need to be relocated to another location if Council would like to maintain service levels and revenue projections. RAB has supported staff's recommendation to provide a consistent and reasonable level of service. It is estimated that it will take up to 18 months to complete the project. The services that will be displaced are group fitness classes, fitness center, cardio loft, childcare, front desk, pro shop, administrative offices for recreation, tennis and the Racquet Club.

In staff's opinion the space that was used for Planning, Building, Engineering and Finance on Ironhorse Drive would be an ideal location. It is the former location of a fitness business. It is large enough that all the fitness and cardio equipment that the City currently owns could be used; group fitness classes could be held and child care could continue in this location as well as house the administrative office for recreation and the Racquet Club. The building is wired to provide for City operations. The space also has small locker rooms that patrons could use to change and take showers.

C. Analysis
The monthly rent from November 2009 through April 2010 would be $7,000 per month to secure the property. After this period and effective May 2010 and continuing through the completion of the remodel in 14 months, the rent will increase to $13,333 per month which is inclusive of the NNN (pro-rata share of real property taxes, insurance and operating expenses) charges. The $13,333 is the same rate paid by the City during the Marsac remodel. There may be some minor costs for remodel, but code, electrical and fiber optic upgrades were made in the building for the Marsac remodel.

Council may decide not to proceed with the Racquet Club Remodel project in April of 2010 and/or opt out of renting the Iron Horse property at a loss of $42,000. The total cost for rental of the Iron Horse property would be $228,662 for the 6 month security and 14 months for construction. If the construction takes 18 months as estimated the property may be leased on a month to month basis.

Prior to the Marsac Remodel there was discussion of Sundance subleasing the Iron Horse property at that time, and similarly, Sundance is not interested in subleasing the Iron Horse property at this time. Subleases are only allowed under mutual written agreement between the landlord and tenant.

Significant Impacts

During the budget discussions staff estimated the soft costs to be roughly $825,000. Relocation of the cardio and fitness functions were not anticipated in the project costs, but similar to the Marsac Remodel it is assumed that the lease will come from the project budget and be offset as much as possible through the Racquet Club operation budget.

Due to the renovation some part time staff will have to be reduced. It is important to keep as many staff employed as is realistic. If the Racquet Club is able to relocate to Ironhorse the biggest areas impacted would be pro shop and fitness center staff. In FY09 the City spent $34,539 on fitness center staff. At the Ironhorse location these positions would not be needed as the fitness area will be in close proximity to the front desk.

The other area that would not be needed would be the pro shop. At this time it is anticipated that we would liquidate the inventory and not have a pro shop during the renovation. In FY 09 the pro shop had expenses of $86,074 ($28,904 in staff & $57,170 in inventory). The revenue generate was $82,752.

The Tennis Department will experience decreased expenses but there will likely be a corresponding decrease in revenue. There will also need to be temporary offices located on site at the Racquet Club for tennis, aquatics and check in for court reservations and payment.

The Racquet Club currently spends $117,246 (Rocky Mountain Power $67,642 & Questar $49,604) on utilities per year. During the renovation this number will be greatly decreased depending on the operation of the pools and gymnasium. The utility costs of approximately $1000/month during the rental of Iron Horse were paid by Building Maintenance.

Department Review:

City Manager, Sustainability, Recreation

Alternatives:

Approve the Request:

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 Seven Thousand Dollars per month ($7,000) for a total of Forty Two Thousand Dollars ($42,000) plus a security deposit of Thirteen Thousand Three Hundred and Thirty Three Dollars ($13,333).

Deny the Request:
Council may wish to not rent or secure the property for the period of November 1, 2009 to April 30, 2010. The property may not be available for the construction period of May 2010 through June, 2010.

Continuance:
Delaying a decision could jeopardize the rental of the property.

Do Nothing:
Same effect as delaying the project.

Recommendation:
Conduct a public hearing and authorize the City Manager to execute a Lease with Wintzer-Wolfe Properties for 1255 Ironhorse Drive in a form approved by the City Attorney.

Exhibits
Exhibit A – Draft Lease(s)

RETAIL LEASE ADJUSTMENT SHEET

IRONHORSE PARK COMMERCIAL SPACE

FOR PERIOD FROM: November 1, 2009 TO: April 30, 2010

Space: 1255 (Downstairs) Ironhorse Drive

Tenant:

Business Name: Park City Municipal Corporation

Use of Space: Park City Racquet Club Lease Term: 6 months

Expiration Date: April 30, 2010

Rent Commencement Date: November 1, 2009

Square Footage: 8000 sq. ft.

Base Rent: November 1, 2009 to April 30, 2010.... $7,000.00 per month, $42,000.00 total for six months. No additional rent will be charged during this time.

Additional Rent: No additional rent will be charged for option.

Security Deposit: $ 13,333

Number of parking places: 40

Emergency Contacts for Tenant:

Tenant: Park City Municipal Corp.
Ph Number: 435-615-5203 / Dave Gustafson
Mailing Address: P.O. Box 1480, Park City, UT 84060
Alarm Company:
Other:

This summary is for convenience only, and does not waive any obligations under the lease.

Tenant: Park City Municipal Corporation

Space: 1255 (Downstairs) Ironhorse Drive

Expiration Date: April 30, 2010

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LEASE

THIS LEASE AGREEMENT IS MADE by and between Wintzer-Wolfe Properties, Ltd., a Utah limited partnership, referred to below as "Landlord" and **Park City Municipal Corporation** referred to below as "Tenant". For good and valuable consideration and the mutual observances of the terms and covenants below, the parties agree as follows:

1. Property. The Property affected by this agreement is located in Park City, Summit County, Utah, and is described as follows:

> The building known as **1255 (Downstairs) Ironhorse Drive**, Park City, Utah, which contains approximately **8000** square feet, together with the right to use appurtenant parking areas, driveways and common areas associated with that space, all of which is referred to below as the Property.

2. Term. This lease shall be in effect for a term of **6 months** commencing on **November 1, 2009**, and ending **April 30,2010**. Tenant may take possession for purposes of completing Tenant Improvements immediately upon execution of this Lease, payment of initial deposits, and providing evidence of insurance.

3. Rent. Tenant agrees to pay rent for the property. The rent will be comprised of a Base Rent. Rent will be computed and paid as follows:

(a) Tenant will pay Base Rent in the amount of **$42,000.00** from **November 1, 2009 to April 30, 2010** during the term of the Lease. **This is payable in monthly installments of $7,000.00** per month beginning **November 1, 2009 to April 30, 2010**.

4. Late Payment Penalty. If Base Rent or the bill for Additional Rent is not paid by the tenth day of the month in which it is due, a late payment fee of **$200** will be assessed. In addition, interest will accrue at the rate of 1.5% monthly (18% per annum) on the unpaid balance owing, beginning on the tenth day of the month in which the installment is due, and continuing until fully paid. Subsequent payments will be applied first to interest and then to those items defined as Additional Rent, and last to the Base Rent.

5. Security Deposit. Tenant will pay Security Deposit of **$13,333.00** which will equal one month's rent due on the

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5. Security Deposit. Tenant will pay Security Deposit of **$13,333.00** which will equal one month's rent due on the execution of this Lease. Landlord shall have the right to deduct any future Rent or Additional Rent from the Security Deposit upon Tenant's Default. Tenant agrees to maintain the Security Deposit throughout the term of the Lease, and in the event that Landlord expends any of the Security Deposit to cure a default in payments by Tenant, or to repair damages caused by Tenant, Tenant will be notified in writing. Tenant will have 5 business days to restore the Deposit to its original balance, and if Tenant fails to do so, Tenant will be in Default under the Lease, and Landlord shall be able to exercise all remedies available at law or in equity to collect the amount owed or terminate the Lease. At the end of the Lease term, if Tenant is not in Default and has surrendered the Property, Landlord will refund the Security Deposit to Tenant, less the costs of any repairs to the Property which should have been made by Tenant. The Security Deposit will not earn interest. Landlord may commingle the Security Deposit with other funds. Tenant may not opt to use security deposit in lieu of rent payment.

6. Advancement of Funds by Landlord. If any item of Additional Rent is not paid when due, Landlord shall have the right, but not the obligation, to pay the Additional Rent directly, and charge the amount paid to Tenant's account. Any such advancement of costs by Landlord shall accrue interest at the rate of 1.5% (18% per annum) from the date of payment until fully reimbursed by Tenant. Landlord will make a reasonable effort to notify Tenant of the Default, and allow Tenant a reasonable opportunity to cure the non-payment, but in no event will Landlord be required to allow the Property to go un-insured, taxes or other assessments to go delinquent, or otherwise place the Property in jeopardy while attempting to obtain payment through Tenant. The amount of any Advanced Funds will be treated as Additional Rent due from Tenant. Subsequent payments will be applied first to interest and then to those items defined as Additional Rent, and last to the Basic Rent.

7. Utilities. All utilities are extended to the Property in sufficient capacity to meet Tenant's reasonable needs. Tenant is solely responsible for its utility service costs for gas, electric and telephone service. To the extent possible, utilities to the various spaces within the building will be separately metered, and Tenant will be responsible for any security deposits with the utility companies, and the costs of physical connection and installation of fixtures and appliances within its portion of the Building. Tenant will not terminate gas or electric service without giving Landlord

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two weeks' written notice, so that heat may be maintained in the buildings to prevent damage from freezing. Tenant will be responsible for any damages resulting to the building from the discontinuance of utility services during the Lease. Where it is impractical to provide separate meters or services, such as water and sewer services, Landlord will obtain service, and bill the proportionate costs of those services to Tenant as Additional Rent.

8. Operating Expenses. In addition to all of the foregoing, Tenant is solely responsible for janitorial service, re-lamping of light fixtures, hand snow removal, and all other services, supplies, and labor associated with the use and occupancy of the Property.

9. Insurance. (a) Landlord will obtain fire and property insurance on the Property for Landlord's benefit. The cost of this insurance will be apportioned among the various tenants as Additional Rent. Fire insurance shall be maintained at a level approved on an annual basis by Landlord, which shall be sufficient to provide full coverage without any co-insurance or participation by Landlord in the costs of replacement or repair of the building. Landlord's fire insurance will not cover any of Tenant's contents or Tenant Improvements. Tenant waives subrogation claims against Landlord for damage to Tenant's personal property, inventory, or loss of income in the event of a casualty loss to the Property. If required by Landlord's mortgage holder, Tenant will also pay for a proportionate share of Landlord's cost of providing flood insurance. Tenant agrees that it shall not keep, use, sell or offer for sale in or upon the Premises any article or material which may be prohibited by the standard form fire insurance policy.

(b) Landlord will obtain general liability insurance for those claims arising in the common areas of the Ironhorse Park project. The cost of this insurance will be apportioned among the various tenants as Additional Rent. Landlord's insurance will not cover claims arising within Tenant's Leased space or arising from Tenant's negligent or deliberate acts.

(c) Tenant is solely responsible for all insurance on Tenant's business operations, contents, Tenant Improvements, personal property, and general liability. Tenant will provide commercial general liability insurance in the face amount of at least $500,000 per occurrence and $1 million aggregate, which shall be reviewed annually and adjusted as appropriate and customary for similar types of businesses in similar areas. Landlord and Landlord's mortgage holder will be named as an additional insured on all policies, and shall have the right to review and approve policies before they are placed.

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All insurance policies shall have a 30 day cancellation or non-renewal notice provision giving advance notice to Landlord and Landlord's mortgage holder of the termination of coverage. If Tenant fails to obtain insurance, Landlord may purchase such insurance as it feels appropriate to protect its interest, and charge Tenant for the full cost of that insurance as Advanced Funds. Any insurance obtained by Landlord may reduce the scope of coverage to include only losses to the Landlord, and exclude any coverage of Tenant's personal property or liability. Tenant assigns its insurance proceeds to Landlord, but only to the extent necessary to restore any Tenant Improvements which would have become the property of Landlord at the end of the Lease (and which were not covered by Landlord's fire insurance). Landlord has no rights to insurance proceeds applicable to Tenant's personal property, contents, or business interruption coverage.

10. Use of Property. Unless otherwise agreed to in writing by Landlord, Tenant agrees that its use and occupancy of the property will be limited as follows: **Park City Racquet Club.**

(a) Tenant will make no structural alterations or material alterations, including construction or removal of partition walls, penetration of exterior walls or roofs without the prior written consent of Landlord.

(b) Tenant may make no exterior modifications to the Building without the written consent of Landlord, specifically including, but not limited to, the placement of signs on the exterior of the Building.

(c) Tenant will comply with all applicable building and fire codes, zoning and health codes, and all federal, state, and local laws and regulations concerning the use, storage and disposal of materials which may be classified as hazardous or toxic. Tenant will indemnify Landlord for any clean-up action or enforcement action brought under any environmental laws concerning or resulting from Tenant's use, storage, or disposal of any hazardous or toxic material on the property. This indemnity is specifically intended to survive the termination or expiration of the Lease.

(d) Tenant shall not conduct any business from the property that is deemed extra-hazardous, or will result in an increase in fire insurance premiums on the Property, on inability to obtain fire insurance at standard rates.

(e) Tenant agrees that it, and Tenant's employees, customers, or others will not leave any vehicle or other

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property or equipment parked outside of the building overnight. Parking areas will not be used for long- or short-term storage of vehicles, boats, campers, or other equipment. No vehicles will be repaired in the parking areas. Tenant agrees to pay any expenses incurred by Landlord in removing any such vehicles or property.

(f) Except as specifically provided below, all additions or improvements shall become the property of Landlord at the termination of the Lease, provided that trade fixtures and equipment installed by Tenant which can be removed without damage to the building may be removed at the expiration of the Lease. All removal must be completed prior to the last day of the Lease term. For the purposes of this lease, lights and light fixtures are not considered trade fixtures and any installation of lights or light fixtures shall be considered permanent fixtures and, upon installation, will become the property of the Landlord.

(g) The provisions and limitations of the Covenants, Conditions and Restrictions of the Ironhorse Park Commercial Subdivision are incorporated into this Lease, and Tenant agrees to occupy the Property in a manner that is in full compliance with those Covenants, Conditions, and Restrictions. Exterior signs must comply with the general signage plan approved by Landlord, Park City, and the Owners Association. The costs of exterior signs are borne entirely by Tenant.

(h) Upon the expiration of the Lease, Tenant will surrender the property to Landlord in substantially the same condition as existed on the date Tenant commenced doing business from the Property, normal wear and tear, removal of approved trade fixtures and equipment, and insured casualty losses accepted. Tenant shall commit no waste on the property. Tenant shall not use a painting technique commonly known as "faux painting" on any part of the property without first obtaining prior, written consent from the Landlord. If consent is obtained, it is understood that upon the expiration of the Lease, Tenant is responsible for removing the "faux painting" from the wall surfaces and returning them to the original surface.

(i) Tenant will use the Property to conduct the following business, and any substantial change in the nature or character of the business will require prior consent of Landlord: **Park City Racquet Club.**

(j) Tenant has the right to occupy **40** parking spaces adjacent to the building. These are not reserved or specifically designated for Tenant's use, and will be used in

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common with the tenants and customers of other businesses in the building. No change in the nature of Tenant's business will be permitted which creates a demand for more than the allotted number of parking spaces under the Park City Land Management Code.

11. Hazardous Materials. (a) Tenant will not store, use, or dispose of Hazardous Materials or Toxic Wastes on the Property, (except in such limited quantities as are reasonable and customary in the routine operation of Tenant's business). For purposes of this Lease, "Hazardous Materials" means such materials, waste, contaminants or other substances designated or defined as toxic, dangerous to health, or otherwise hazardous in any applicable statute, ordinance, regulation or administrative rule adopted by any governmental authority with jurisdiction over the premises. It shall be Tenant's sole responsibility to remain informed about, and to comply with, all such statutes, ordinances, regulations and rules. Violation of any such statutes, ordinances, regulations or rules by Tenant shall constitute a breach of this Lease. Tenant shall not cause or permit any Hazardous Materials to be brought, kept or used upon the premises without the prior written consent of the Landlord, which may be withheld in its sole discretion.

(b) Tenant will comply with applicable federal, state, and local laws and regulations concerning the storage, use, and disposal of Hazardous Materials.

(c) Tenant will indemnify Landlord against any and all liability under the foregoing statutes or later enactments, against claims for personal injury, property damage, and clean-up actions or enforcement actions under the environmental laws of Utah or the United States. This indemnity will survive the termination of the Lease, and will apply even if Landlord has knowledge of and consented to the use, storage, or disposal of the Hazardous Materials.

(d) Any specialized pollution control equipment, sewage pretreatment or chemical recovery systems, specialized ventilation equipment required for Tenant to comply with environmental laws and regulations will be installed at Tenant's sole expense.

12. Maintenance of Structure. Tenant is solely responsible for the maintenance of the interior of its portion of the Building, including all thresholds, plumbing, heating, and other mechanical systems. Landlord is solely responsible for the maintenance of the exterior of the Building, including the roof and exterior walls, and the structural maintenance and integrity of the Building, including interior load-bearing

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walls and columns, unless such damage was caused by the acts or negligence of Tenant. With the exception of glass breakage resulting from Tenant's actions or negligence and acts of outside vandalism, Landlord is responsible for repair of exterior window glass. Landlord is responsible for mechanical systems that serve more than one Tenant.

13. Assignment. This Lease is not assignable in whole or in part without the advance written consent of Landlord. Landlord agrees that it will not unreasonably withhold consent to assignment of the Lease, provided that the proposed Assignee is credit worthy, and enters into guarantee and security agreements in form and substance similar to those entered into by Tenant and its principals in conjunction with this Lease, and the proposed tenancy complies with applicable zoning and the conditions of this Lease. The sale of Tenant's business, or sale of a controlling interest in that business, is deemed an assignment for purposes of this Lease. Tenant will notify Landlord of any proposed assignment or sale of Tenant's business in advance. Tenant shall have no right to sub-let the Property in whole or in part.

14. Sale of Property. This Lease shall be binding on the successors and assigns of Landlord in the event of a sale or transfer of the title to the underlying Property. No sale or transfer of title shall disturb Tenant's possession or quiet enjoyment of the Property.

15. Abatement or Termination Following Casualty Loss. In the event of a fire or other casualty loss which makes the property uninhabitable for a period of more than 60 days, Landlord shall have the option of terminating the Lease, or abating the rent during the actual period of repairs and extending the Lease term by an equal period. If the nature of the damage is such that the property cannot reasonably be fully restored to its condition prior to the loss within 120 days, Tenant may terminate the Lease by written notice to Landlord. All insurance proceeds are payable to Landlord in the event of a termination by Tenant, except for proceeds applicable to Tenant's fixtures, equipment, or other personal property. Early termination by Tenant under this provision will not relieve Tenant from any obligations arising prior to the date of termination, specifically including any past due Rent or Additional Rent, or violations of the environmental and hazardous waste provisions, which are all intended to survive until those obligations are fully satisfied. Early termination shall not relieve Tenant from any claims from Landlord or subrogation claims from Landlord's insurance carrier related to damage to the property caused by Tenants actions or negligence. Landlord is not liable to Tenant for lost profits, rent on temporary locations, or other costs

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incurred by Tenant as a result of the loss.

16. Remedies. (a) In the event of a monetary breach of this Lease, including non-payment of Rent or any item of Additional Rent, Landlord shall have all remedies available at law including the right to enter and re-take possession of the Property, or to re-let the Property on Tenant's account and hold Tenant liable for the balance of the Lease term, or an action against Tenant for the amounts owed. In the case of financial defaults, Landlord will give Tenant a written notice of the default, stating the nature of the breach and amount owed. Tenant shall have 5 days from the date of notice to pay all sums owing, and if not cured within 5 days, Landlord may exercise its legal and equitable remedies.

(b) In the event of breaches or defaults other than the payment of Rent, Landlord shall give Tenant 30 days written notice of the default, and if the condition complained of is not cured within 30 days (or when the conditions giving rise to the breach are such that the default cannot be reasonably cured within 30 days, Tenant has admitted the default and undertaken the work necessary to effect a cure within the 30 day notice period), Landlord shall have the right to exercise all available legal and equitable remedies against Tenant to enforce the terms of this Lease or re-possess the Property. Notwithstanding the time limits contained in this provision, Tenant agrees to take such actions as reasonable and necessary in the case of an emergency to secure the Property and prevent further damage until a permanent repair can be made.

(c) The obligations of Tenant under this Lease shall survive termination of Tenant's possession until fully paid. In addition to amounts due under this Lease, Tenant shall be liable for Landlord's reasonable attorney's fees and costs incurred in the enforcement of this Lease and collection of amounts owed.

17. Recording. Landlord and Tenant may record a Notice of Lease outlining the basic terms of this agreement, and record it in the office of the Summit County Recorder. The Notice shall request that notice of any foreclosure under Landlord's mortgage on the Property, or Tenant's leasehold mortgage, be sent to both parties to the Lease.

18. Non-Subordination. Landlord will not subordinate this Lease to any security agreements or leasehold mortgages entered into by Tenant for the purpose of financing Tenant Improvements to the Property. Any such security arrangements are fully subject to Tenant's faithful performance of this Lease. Landlord consents to Tenant placing Leasehold Mortgages on the Leasehold Estate for the purposes of

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financing Tenant Improvements, provided that any such Leasehold Mortgages acknowledge that they are subordinate to this Lease, and subject to all of its terms and conditions. Landlord will provide notice of default to any Leasehold Mortgagee who requests notice. Landlord will also provide statements of account to Leasehold Mortgagees showing Tenant's status under the Lease.

19. Tenant Improvements. (a) The Property is leased "as is." Tenant has inspected the property and finds it acceptable for Tenant's intended use, and all remodeling work necessary for Tenant's intended use will be performed at Tenant's expense. At the expiration of the Lease, Tenant may remove any trade fixtures that are of a type or nature that might reasonably be removed without significant damage to the Building. All lights, light fixtures, heating and air conditioning, plumbing, partitions, doors, and floor coverings are deemed to be fixtures, and will remain with the Building as property of Landlord upon the expiration of the Lease.

(b) All Tenant Improvements will be installed by properly licensed contractors, pursuant to permits issued by Park City at Tenant's expense. Tenant shall not permit any liens to attach to the property. If the aggregate cost of Tenant Improvements would reasonably be expected to exceed **$5,000.00**, Landlord may require a labor and material payment bond from Tenant or Tenant's contractor prior to commencement of work. Landlord will be permitted to review all plans and specifications for Tenant Improvements, and no work will begin without Landlord's consent. Tenant's contractor will provide Landlord with Certificates of Insurance showing the contractor to have general liability and workman's compensation insurance in amounts reasonably approved by Landlord and customary in the industry. Insurance on building materials, equipment, or fixtures stored on site, but not yet affixed to the building is the obligation of Tenant and/or the contractor, and Landlord shall have no liability for loss or damage.

(c) Tenant will not permit mechanics' liens related to Tenant's construction of Tenant Improvements attach to the property. In the event liens are filed, Landlord may give Tenant written notice to either remove the lien, or, in the alternative, to post an amount equal to twice the amount of the lien claim in escrow pending the resolution of the dispute with the lien claimant. If Tenant fails to do obtain the lien release or bond over it within 5 days, Tenant is in monetary default on the Lease, and Landlord shall have all remedies Available under the Lease, including termination of the Lease. Termination will not, however, absolve Tenant of the obligations to remove the lien or indemnify Landlord against

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the lien.

20. Landlord's Right to Inspect. Landlord shall have the right to inspect the Property and reasonable times to insure compliance with the Lease. Inspection during Tenant's normal business hours is permitted.

21. No Right to Renew. Tenant has no right to renew or extend the Lease, and at the end of the Lease term, Tenant will vacate the Property. If Tenant holds over, Tenant is a tenant at will.

22. No Waiver. Failure on the part of Landlord to complain of any action or non-action on the part of Tenant, no matter how long the same may continue, shall never be deemed to be a waiver by Landlord of any of its rights hereunder. Further, it is covenanted and agreed that no waiver at any time of any of the provisions hereof by Landlord shall be construed as a waiver at any subsequent time of the same provisions. The consent or approval by Landlord to or of any action by Tenant requiring Landlord's consent or approval shall not be deemed to waive or render unnecessary Landlord's consent or approval to or of any subsequent similar acts by Tenant.

23. Condemnation. In the event that a portion of the Property is taken by a governmental entity for public purposes, the entire award shall be paid to Landlord, and there shall be no reduction in Rent, unless the portion of the Property taken materially damages Tenant's intended use of the Property. If the taking is such that it materially impairs Tenant's business, such as a loss of Building area, or a significant loss of parking, the award will be apportioned as the parties may agree at the time. In the event of a total taking, or a partial taking of such magnitude that the operation of Tenant's business with the remaining Property becomes commercially unreasonable, the award will be apportioned. Tenant shall have the right to appear on its own behalf in any condemnation suit to defend the value of the leasehold interest. If the parties are not able to agree on an apportionment of any award (and apportionment is not made in the condemnation proceeding) the apportionment will be submitted to binding arbitration under the rules of the American Arbitration Association, with each party to bear its own costs.

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24. Notices. Notices that may be required from time to time under this Lease may be sent or delivered to the following addresses:

To Landlord:
Wintzer-Wolfe Properties, Ltd.
1040 Ironhorse Drive
P.O. Box 4199
Park City, Utah 84060

To Tenant:
Park City Municipal Corporation
P.O. Box 1480
Park City, UT 84060

Or delivered in person to the Property at **1255 (Downstairs) Ironhorse Drive**, Park City, Utah.

Notices are effective upon personal delivery, or three days after mailing, registered mail, return receipt requested, whether actually picked up or not. Either party may change its address or request additional notices be sent to others by written notice.

25. Covenant of Quiet Enjoyment. For so long as Tenant is faithfully performing its obligations under this Lease, Landlord promises to provide Tenant with quiet enjoyment of the Property. Landlord shall pay all mortgages placed on the Property by Landlord. Tenant shall have the right to pay rent to any mortgage holder if necessary to avoid foreclosure of Landlord's interest, and to deduct such payments from the Rent and Additional Rent due under this Lease.

26. Lease Subordinate to Landlord's Mortgage. In order to construct the Building on the Property, Landlord has, or will, place a deed of trust or mortgage on the Property to secure construction and long-term financing. Regardless of the order of recording of documents, Tenant agrees that this Lease shall be subordinate to, and subject to, Landlord's construction and first mortgage (or deed or trust) long-term financing of the construction of the Building. This Lease is not subordinate to any other financing Landlord may place on the Property for purposes other than the construction and long-term financing of the Building constructed for Tenant's benefit.

27. Commissions. Tenant has not used a broker or agent, and will indemnify Landlord against any claims from brokers or agents claiming to represent Tenant in this transaction.

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28. Invalidity of Particular Provision. If any term or provision of this Lease, or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

29. Governing Law. This Lease shall be governed exclusively by the provisions hereof and by the laws of the State of Utah.

30. Construction of Lease. The paragraph headings throughout this Lease are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Lease. If used, words of any gender used in the Lease shall be held to include any other gender, and words of singular number shall be held to include the plural when the context requires.

Dated this _____day of __________, 2009.

LANDLORD:
Wintzer-Wolfe Properties, Ltd.,
a Utah Limited Partnership,

By:____________________________
Mary C. Wintzer, its
General Partner

TENANT: Park City Municipal Corp.

By:____________________________
Tom B. Bakaly , City Manager

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RENT & SECURITY DEPOSIT ADDENDUM

FIRST MONTH'S PAYMENT WITH SIGNED LEASE

SECURITY DEPOSIT:

Upon signing lease new security deposit will be paid in the amount of: $13,333.00

RENT:

Base Rent from **November 1, 2009** to **April 30, 2010**	$7,000.00
Total Sum:	$42,000.00

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