

## PARK CITY TREASURE HILL REIMBURSEMENT AGREEMENT

### LOWELL AVENUE RECONSTRUCTION PROJECT

This Reimbursement Agreement (the "Agreement") is made and entered into as of this 21<sup>ST</sup> day of April, 2017 (the "Effective Date"), by and between Park City Municipal Corporation, a Utah municipal corporation (the "City"), and MPE, Inc., a Utah corporation ("Treasure Hill"), the applicant under the Master Plan (referenced below) and currently the applicant under the pending CUP application with respect to the Treasure Property (referenced below).

Whereas, pursuant to that certain Master Plan Approval dated 10/16/86 (the "Master Plan"), regarding certain property (with respect to which Sweeney Land Company, a Utah limited liability company, and Park City II, a New York limited liability company, are co-owners), also known as the Creole Gulch and Town Lift Mid-Station, together with associated open space, in Park City, Utah (the "Treasure Property"), Treasure Hill may pay "incremental additional costs" for increased pavement and road base thickness in order to mitigate anticipated construction traffic for a portion of Lowell Avenue, as more particularly depicted and described in attached Exhibit "A" (the "Lowell Avenue"); and

Whereas, in accordance with the Master Plan, the City has decided to improve Lowell Avenue, as also more particularly depicted and described in attached Exhibit "A", and the parties previously agreed to include the TREASURE HILL construction pavement and road base upgrade for Lowell Avenue within the construction bid for, and in connection with, the City's capital improvement project; and

Whereas, pursuant to the construction bid opening on March 29, 2016, and the City Council's award of the construction bid on April 14, 2016, the City has elected to proceed with the improvement of the Lowell Avenue Project and, in that connection, TREASURE HILL has elected to proceed with the payment for the construction incremental costs, as so bid; and

Whereas, consistent with the foregoing, the City will cause the Lowell Avenue Reconstruction Project to be completed under a City public improvement construction contract known as the "Lowell Avenue Reconstruction Project Agreement," dated as of May 13, 2016 (the "Construction Agreement"), by and between the City and Granite Construction, a Utah corporation (the "Contractor") and, in accordance with and in satisfaction of TREASURE HILL's obligations under the Master Plan with respect to the "Lowell Avenue Reconstruction Project", Treasure Hill desires, and has agreed, to enter into this Agreement, and reimburse the City for the incremental construction upgrade costs to improve Lowell Avenue, all subject to and in accordance with the terms and conditions of this Agreement;

Now, therefore, to these ends, and in consideration of the terms and conditions of this Agreement, and the mutual benefits to be derived from this Agreement, as well as other good and valuable consideration, the receipt and sufficiency of such is hereby acknowledged, Treasure Hill and the City agree as follows:

1. The City will include the Treasure Hill construction costs for Lowell Avenue, as outlined in the Memo dated April 22, 2016 in attached Exhibit "B" (the "Treasure Contribution Memo") with

respect to the work to be performed by the Contractor under the Lowell Avenue Construction Agreement. The total payment due from Treasure Hill to the City pursuant to the Treasure Contribution Memo is ONE HUNDRED EIGHTY THREE THOUSAND TWENTY AND NO/100 DOLLARS (\$183,020.00). The Contractor shall be solely responsible for the cost of all standard payment and performance bonds associated with the road work contemplated by this Agreement, which shall be performed in accordance with the Construction Agreement, the Lowell Avenue Reconstruction Project Bid Documents, dated March 7, 2016 for Segments A4, A5 and A19 and the plans and specifications for the Lowell Avenue (copies of which [the "Plans and Specifications"] are attached as Exhibit "C" and, collectively are referred to herein as the "Governing Documents"). The City shall obtain the prior written consent of TREASURE HILL prior to executing any change order applicable to Segments A4, A5 and A19 specified in the Governing Documents.

2. Treasure Hill shall receive a credit against Roadway Facilities impact fees in an amount and calculation as currently adopted in the Municipal Code of Park City, Title 11, Chapter 13 at the time of payment of such fees at the time of building permit application, up to but not more than \$183,020.00 and in no event shall the credit exceed the total amount of the Roadway Facilities impact fees due to City.

3. Full payment of \$183,020.00 shall be made at the time of execution of this Agreement. The City shall account for and hold the payment in accordance with the City retention amount pursuant to the Contract Agreement. No change orders increasing the payment due herein shall be executed without the advanced written consent of Treasure Hill. Increases shall be due upon execution of the change order approving the increase. Any change order decreasing the amount herein shall cause the City to refund the difference to Treasure Hill within 30 days of change order approval by the City.

4. Neither the payment provided by this Agreement nor any provision herein affects the City's authority to process the pending Treasure Hill Conditional Use Permit, Creole Gulch and Town Lift Mid-station Sites – Sweeney Properties Master Plan - PL-08-00370, in accordance with applicable codes, regulations and the Master Plan. Additionally, nothing herein addresses Treasure Hill's or future assignee/owners' obligation with respect to Empire Avenue. No notice of construction was provided to the City for the last capital improvement project, and therefore Master Plan Paragraph 8(a) continues to apply.

5. Payment herein is an optional payment made at the risk of Treasure Hill. If Treasure Hill construction does not occur within the life of the capital improvement, anticipated but not guaranteed to be twenty (20) years, Treasure Hill shall still have the option to contribute to the next reconstruction project or re-build after actual construction of the project pursuant to Master Plan Paragraph 8(a), provided, for clarity, neither Treasure Hill nor the owners of the Treasure Property shall be required to pay for further reconstruction projects or re-building (including repairs) due to (a) the failure of Contractor to perform as required by the Governing Documents or (b) otherwise following the development of the Treasure Property as contemplated by the Master Plan, except as they may indirectly be required to pay as Park City taxpayers on the same basis as other Park City taxpayers.

6. Subject to the terms of this Agreement, payments due or payable by Treasure Hill under this Agreement shall be sent to the address set forth below:

Park City Municipal Corp.  
Attn: Matt Cassel  
City Engineer  
P.O. Box 1480  
445 Marsac Avenue  
Park City, UT 84060-1480

Any notices under this Agreement shall be sent (a) to the City at the City Engineer address above for the City, with a copy to the Park City Attorney, and (b) to Treasure Hill at P.O. Box 2429, 445 King Road, Park City, Utah 84060, Attn: Pat Sweeney, with a copy to: Geoff Mangum, Parsons Behle & Latimer, 201 S. Main Street, Suite 1800, Salt Lake City, Utah 84111.


7. For purposes of this Agreement, the parties or any other person obligated under this Agreement shall be excused from performing any obligation set forth in this Agreement, financial inability excepted, so long as (but only so long as) the performance of such obligation is prevented or delayed by an act of nature, weather, avalanche, fire, earthquake, flood, explosion, act of the elements, war, invasion, insurrection, riot, malicious mischief, vandalism, larceny, inability to procure or general shortage of labor, equipment, facilities, materials or supplies in the open market, failure of transportation, strikes, lockouts, order of government or civil defense authorities or any other cause reasonably beyond the control of the parties or other person prevented or delayed ("force majeure").

8. This Agreement shall be binding on the successors and assigns of Treasure Hill and the City. The attached exhibits and the foregoing recitals are incorporated in, and made a part of this Agreement by this reference. This Agreement does not create any joint venture, partnership, undertaking or business arrangement between the parties hereto, nor any rights or benefits to third parties. This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and integrates all prior conversations, discussions or understandings of whatever kind or nature and may only be modified by a subsequent writing duly executed by the parties hereto. If any condition, covenant or other provision of this Agreement shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law. If this Agreement or any of the exhibits hereto are breached, the party at fault agrees to pay the attorney's fees and all costs of enforcement of the non-breaching party.

Dated as of the Effective Date.

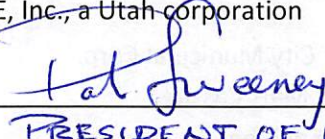
PARK CITY MUNICIPAL CORPORATION

MPE, Inc., a Utah corporation

  
Diane Foster, City Manager

Dated this 21<sup>st</sup> day of April, 2017

**MATTHEW DUTCHACH**

  
By: PRESIDENT OF MPE

Print Name: PAT SWEENEY

Its: PRESIDENT

Dated this 21 day of April, 2017

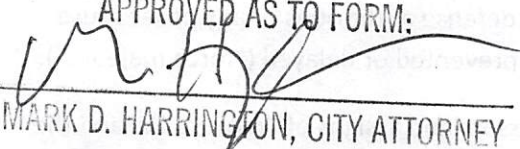
By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Its: \_\_\_\_\_

Dated this \_\_\_\_ day of April, 2017

APPROVED AS TO FORM:

  
MARK D. HARRINGTON, CITY ATTORNEY

**Exhibit "A"**  
**To**  
**Reimbursement Agreement**  
**(Depiction and Description of Lowell Avenue)**

**Exhibit "B"**  
**To**  
**Reimbursement Agreement**  
**(Treasure Contribution Memo)**

**EXHIBIT A- ON FILE WITH CITY ENGINEER**

**[DIGITAL FILE PROVIDED TO TREASURE HILL]**



## MEMORANDUM

To: Patrick Sweeney

From: Matthew Cassel, Engineering

Re: Francisco Astorga, Senior Planner  
Mark Harrington, City Attorney  
Anne Laurent, Community Development Director

Date: April 22, 2016

Re: Treasure Hill Participation in the Lowell Avenue Re-Construction Project

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As discussed in our meeting on March 16, 2016 concerning Treasure Hill participating in the upcoming Lowell Avenue Re-Construction project, bids have been received and the cost numbers provided below are from the low bid of Granite Construction.

The basis for the costs is as follows:

- If Treasure Hill did not participate in the project, the City would install a road section of 4 inches of asphaltic concrete on top of 8 inches of untreated base course,
- With Treasure Hill participating, the road section will consist of 6 inches of asphaltic concrete on top of 18 inches of untreated base course,
- The road excavation required is 12 inches deep (4" asphalt + 8" untreated base) without Treasure Hill participating and 24 inches deep (6" asphalt + 18" untreated base) with Treasure Hill participating,
- For reference purpose, the line item for asphaltic concrete in Granite's bid is A5,
- For reference purpose, the line item for untreated base course in Granite's bid is A4,
- For reference purpose, the line item for road excavation in Granite's bid is A19, and
- The bid provided by Granite Construction includes the 6 inches of asphaltic concrete on top of 18 inches of untreated base course.

The breakdown of the incremental costs is as follows:

- A ratio for each line item was used to determine Treasure Hill's participation cost for each line item,



- Asphaltic concrete (A5) – Treasure Hill’s responsibility, 2’/6” = 33.33%,
- Untreated base course (A4) – Treasure Hill’s responsibility, 10’/18” = 55.55%,
- Road excavation (A19) – Treasure Hill’s responsibility, 12’/24” = 50.0%
- Based on the ratio and the submitted bid, Treasure Hill’s total cost responsibility is:
  - Asphaltic concrete (A5), \$171,360 X 33.33% = \$57,120
  - Untreated base course (A4), \$159,120 X 55.55% = \$88,400
  - Road excavation (A19), \$75,000 X 50.0% = \$37,500

**Total Treasure Hill Responsibility = \$183,020**

These costs are provided pursuant to Paragraph 8(a) of the Master Plan approval (below). Park City will need “notice that the construction is pending” and need to know by no later than May 18 as to whether Treasure Hill will participate in the project. Please address your response to me with a copy to the Public Works Director and City Attorney at the same address as this letterhead. Granite Construction’s bid can be made available to you to help with your analysis.

8 a) Empire Avenue and Lowell Avenue will be the main access routes to the Creole Gulch site. As such, during construction these roads will need to carry heavy traffic, probably in the vicinity of up to 300 heavy trucks per day. At the present time and until the Creole Gulch site develops, Empire and Lowell south of Manor Way are and will be low-volume residential streets, with a pavement quality, width, and thickness that won't support that type of truck traffic. The City will continue to maintain the streets as low-volume residential streets, including pavement overlays and/or reconstruction. None of that work will be designed for the heavy truck traffic, but in order to save money for the developer of the Creole Gulch site, he or she is encouraged to keep the City Public Works Director notified as to the timetable of construction at Creole Gulch. If the City is notified that the construction is pending such that an improved pavement section can be incorporated into normal City maintenance projects, then it is anticipated that the incremental additional cost of the additional pavement thickness (which is likely to be in the vicinity of 3 additional inches of asphalt over the entire 4,6000 linear feet [25-foot asphalt width] of Lowell/Empire south of Manor Way, or approximately \$80,000 additional cost in 1986 dollars) could be paid by the developer with said amount deducted from future impact fees paid to the City as long as it did not exceed the total future impact fees. However, if the increased pavement section is not coordinated with the City by the developer such that the pavement of Lowell and Empire south of Manor Way remains inadequate at the time the Creole Gulch site is developed, then the developer shall essentially reconstruct the entire 4,600-foot length of Lowell and Empire south of Manor Way at his or her cost, which with excavation and reconstruction of an anticipated 6-inch asphalt thickness on top of 10 inches of roadbase, plus all other normal construction items and costs, would be in the approximate cost range of \$300,000 to \$400,000 in 1986 dollars. Further, because that reconstruction would be

inconvenient to residents and the City, and because delays, impacts, and potential safety hazards would be created over and above normal City maintenance of existing streets, that action by the developer would be a new impact on City residents and the cost therefore would not be deductible from any developer impact fees.

If you decide to coordinate payment for the construction incremental upgrade at this time, the City Attorney will forward a contribution agreement to your attorney. The Agreement will address the manner of the deduction of Roadway Facilities impact fees in an amount and calculation as currently adopted in the Municipal Code of Park City, Title 11, Chapter 13.

**Exhibit "C"**  
**To**  
**Reimbursement Agreement**

**(Copies of Lowell Avenue Project Bid Plans and Specifications)**

**EXHIBIT C- ON FILE WITH CITY ENGINEER**

**[DIGITAL FILE PROVIDED TO TREASURE HILL]**