

**PARK CITY COUNCIL MEETING
SUMMIT COUNTY, UTAH,
MARCH 28, 2013**

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, March 28, 2013.

Closed Session

3:30 p.m. Property and litigation

Work Session

4:00 p.m.	Council questions/comments	
4:10 p.m.	Council questions on Managers' Report	
4:20 p.m.	Library renovation update	P. 4 - 40
5:00 p.m.	Special event overhaul	P. 41 - 49
5:30 p.m.	Street dining leases	P. 50 - 66
5:50 p.m.	Break	

Regular Meeting

6:00 p.m.

I ROLL CALL

II COMMUNICATIONS AND DISCLOSURES FROM COUNCIL AND STAFF

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

IV MINUTES OF MEETING OF MARCH 7, 2013 P. 67 - 85

V RESIGNATIONS AND APPOINTMENTS

Consideration of the appointment of Diane Foster as City Manager

VI NEW BUSINESS

1. Consideration of authorizing the Mayor to appoint and enter into an agreement for the provision of services by Diane Foster to Park City Municipal Corporation as the City Manager, in the amount of \$128,083 annually, in a form approved by the City Attorney P. 86 - 93

2. Consideration of authorizing the City Manager to sign the Construction Agreement with Keller Construction, Inc. for construction of the Transit Residential Building in the amount of \$1,599,702 in a form to be approved by the City Attorney P. 94 - 97

VII ADJOURNMENT

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

internet service is available in the Marsac Building on Wednesdays and Thursdays from 4 p.m. to 9 p.m.

Posted: 03/25/13

See: www.parkcity.org



City Council Staff Report

Subject: City Manager Appointment
Author: Brooke Moss
Department: Human Resources Manager
Date: March 28, 2013
Type of Item: Administrative- Council Consent

Summary Recommendations:

Authorize the Mayor to appoint and enter into an agreement for the provision of services by Diane Foster to Park City Municipal Corporation as the City Manager, in the amount of One Hundred Twenty Eight Thousand, Eighty Three Dollars and Forty-Five Cents (\$128,083.45) annually.

Topic/Description:

Appointment of Diane Foster as City Manager of Park City Municipal Corporation.

Background:

Pursuant to Municipal Code § 2-4-1, the Mayor appoints the City Manager with the advice and consent of the City Council. The Mayor votes as a member of the six member Council "for or against the appointment or dismissal of a City Manager." Municipal Code § 2-2-3(B). The Mayor and City Council City conducted a national recruitment to fill the City Manager vacancy created by the resignation of Thomas Bakaly in fall 2012. The recruitment did not yield a successful candidate. The Mayor and City Council decided subsequently to conduct an internal recruitment as a next step in the process. Interviews with qualified candidates were held earlier this month. Interim City Manager Diane Foster was selected to fill the position of City Manager.

Analysis:

Diane Foster has been offered the appointment of City Manager to begin upon approval and signature of the attached contract. Below is a summary of the terms of the employment contract:

1. Position: Foster will provide services to Park City in the capacity of City Manager and shall report to the Mayor and City Council. The residency requirement that the City Manger reside within the Park City limits is waived.
2. Performance Evaluations/Goals Workshop: The City Manager shall be reviewed in writing annually, and verbally reviewed quarterly by the Mayor and City Council.
3. Compensation: Annual salary of \$128,083.45. Foster will be eligible for bonuses and salary adjustments within City policies. A car allowance of \$400 per month is also included. Foster shall not be eligible for housing allowance unless resides within City limits. Compensation package shall include reasonable professional dues, fees, travel, and subsistence expenses.
4. Leave: 15 days of vacation per year and one floating holiday.

5. Benefits: Worker's Compensation, Social Security, disability, family health and dental insurance, cafeteria plans, deferred compensation matching contributions, PC MARC access, life insurance and sick leave under the same terms as other regular full time employees of Park City.

6. Retirement: Deferred compensation and retirement benefits available to all full-time regular employees.

7. Term: Foster shall serve at the pleasure of the Mayor and City Council. Severance is provided for if the Mayor and Council dismiss the Manager without cause.

Department Review:

Human Resources Department, Legal Department

Alternatives:

A. Approve:

Approve contract language and proceed with appointment of Diane Foster as the City Manager of Park City Municipal Corporation.

B. Deny:

Reject the proposed contract. Council could choose to begin a second external recruitment for selection of another potential candidate for City Manager. HR would return with information on professional recruiters and timelines. This would adversely impact existing service levels and workload.

C. Modify:

Council could choose to modify the agreement or direct staff to reconsider the selection or terms, which would delay the appointment of the City Manager.

D. Continue the Item:

Council may feel there is not enough information to make a decision, which will delay the appointment.

E. Do Nothing:

Same effect as continuance.

Significant Impacts:

Approve the appointment of and employment agreement with Diane Foster as City Manager for Park City Municipal Corporation effective immediately.

World Class Multi-Seasonal Resort Destination (Economic Impact)	Preserving & Enhancing the Natural Environment (Environmental Impact)	An Inclusive Community of Diverse Economic & Cultural Opportunities (Social Equity Impact)	Responsive, Cutting-Edge & Effective Government
(+/-) (Select Desired Outcome)	(+/-) (Select Desired Outcome)	(+/-) (Select Desired Outcome)	+ Streamlined and flexible operating processes
(+/-) (Select Desired Outcome)	(+/-) (Select Desired Outcome)	(+/-) (Select Desired Outcome)	+ Engaged, capable workforce
(+/-) (Select Desired Outcome)	(+/-) (Select Desired Outcome)	(+/-) (Select Desired Outcome)	(+/-) (Select Desired Outcome)
(+/-) (Select Desired Outcome)	(+/-) (Select Desired Outcome)	(+/-) (Select Desired Outcome)	(+/-) (Select Desired Outcome)
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(Select from List)	(Select from List)	(Select from List)	(Select from List)

Funding Source:

This position is currently budgeted in Executive Department personnel budget.

Consequences of not taking the recommended action:

No appointment of City Manager, begin an external recruitment immediately.

Recommendation:

Authorize the Mayor to appoint and to enter into an agreement for the provision of services by Diane Foster to Park City Municipal Corporation as the City Manager, in the amount of One Hundred Twenty Eight Thousand, Eighty Three Dollars and Forty-Five Cents (\$128,083.45) annually.

Exhibits:

Exhibit A Employment Agreement

Employment Agreement

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EMPLOYMENT AGREEMENT

Park City Municipal Corporation
City Manager

Park City Municipal Corporation (“Park City” or “City”) and Diane Foster (“Foster”) desire to enter into an agreement for the provision of services by Foster to Park City. Because the arrangement between Foster and Park City will not be in conformance with the Personnel Policies and Procedures that govern Park City’s other employees, Park City and Foster desire to set for the specifics of their relationship in the form of this Employment Agreement.

In consideration of the mutual agreements and promises contained herein, the sufficiency of which is hereby acknowledged by both parties, Park City and Foster agree as follows:

1. Position

- a. **Scope of Duties.** Foster will provide services to Park City in the capacity of City Manager and Chief Administrator as defined in the Municipal Code of Park City (“MCPC”) §§ 2-4-1, 2-4-3 and 2-4-5, as amended. Foster (“City Manager”) will perform other legally permissible and proper duties and functions as the Mayor and City Council may from time to time assign, or as required by federal, state or local law or regulation. The City Manager shall report to and be supervised by the Mayor and City Council. The terms of the City Manager’s employment with Park City shall be governed by this Agreement. The City Manager is not subject to the terms of employment set forth in the Personnel Policies and Procedures Manual unless specifically provided herein. The City Manager shall comply with and perform the applicable duties and responsibilities as defined herein in conformance with MCPC Title 3, Code of Ethics, as amended (“Ethics Code”). The City Manager shall devote her full business time and best efforts to the City and shall not engage in outside employment except as approved by the Mayor, with the advice and consent of the Council.
- b. **Residency Requirement.** The residency requirement of MCPC § 2-4-1 is hereby waived.

2. Performance Evaluations/Goals Workshop

The City Manager shall be subject to written performance evaluations as may be held from time to time at the discretion of the Mayor and City Council, but in any event at least once a year commencing within 60 days of the start of the annual evaluation cycle applicable to other

Employment Agreement

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employees (currently November 1) . The City Manager shall prepare a written self-evaluation, which shall be delivered to the Mayor and City Council at least 14 days prior to the evaluation, unless otherwise specified by the Mayor. The self-evaluation shall incorporate the City's vision/goals, roles and responsibilities, and any applicable performance standards as adopted by the Mayor and City Council at their annual Visioning workshop. Upon completion of the evaluation, the Mayor and City Manager shall execute an evaluation summary that sets forth the specific direction and expectations for the next evaluation period. The City Manager shall meet with the Council at a Closed Session Council Meeting at least once quarterly to verbally discuss performance and seek feedback.

3. Compensation

A. Park City will compensate the City Manager at an annual salary of \$128,083.45; payable in accordance with City's regular and customary payroll practices.

B. The City Manager will also be eligible for bonuses and salary adjustments, based on performance as indicated by performance reviews in an amount to be determined by the Mayor and City Council. Such bonuses and salary adjustments shall not require a formal amendment of this employment agreement. All amounts payable to City Manager under this Agreement are subject to all applicable federal and state payroll withholding taxes.

C. The City Manager shall be paid a car allowance of \$400 per month during the term of this agreement.

D. The City Manager shall not be eligible for the housing allowance afforded city employees unless specifically approved by the Mayor and City Council, and until such time as she resides within the City limits.

E. Subject to annual budget approval by the City Council, such approval not to be unreasonably withheld, the City agrees to budget and pay for reasonable professional dues, fees, travel, and subsistence expenses to enable the City Manager to participate in national, regional, state and local associations, organizations and conferences, including but not limited to NLC, ICMA and ULCT, as well as associated short courses, institutes and seminars for professional growth and development.

4. Leave

The City Manager will receive pay for City recognized holidays during the term of this Agreement. The City Manager will be eligible for the City's annual floating holiday. In recognition of the time outside normal business hours that will be required, the City Manager will be allowed to take compensatory time off during normal business hours as deemed

Employment Agreement

appropriate and reported by the City Manager. Unless otherwise approved by the Mayor, utilization of compensatory time off shall not exceed 10 days per year. The City Manager will have 15 days of vacation per year available during the term of this contract, subject to increases the same as received by regular full-time employees of similar seniority as provided in the Policy and Procedure Manual. Vacation use in excess of five consecutive workdays will require pre-approval by the Mayor, said approval not to be unreasonably withheld. Annual leave carry-over shall be subject to the rules applicable to regular full-time employees in the Policy and Procedure Manual.

5. **Benefits**

As an employee of Park City, the City Manager shall be entitled to Workers Compensation and Social Security, disability, family health and dental insurance, cafeteria plans, deferred compensation matching contributions, Racquet Club access, life insurance and sick leave under the same terms as other regular full-time employees of Park City in the Policy and Procedure Manual as such benefits and terms may be modified from time to time. While acting within the scope of employment as defined herein, the City Manager shall be covered by the liability insurance policies of Park City.

6. **Retirement**

The City Manager will be entitled to deferred compensation and retirement benefits available to all other full-time employees of the City as detailed in the Policy and Procedure Manual as such benefits may be modified from time to time.

7. **Term**

A. The City Manager shall serve at the pleasure of the Mayor and City Council. The Mayor, with the advice and consent of the Council, may terminate this Agreement and City Manager's employment with or without cause at any time. In the event the City Manager is asked for her resignation or terminated without cause, City agrees to pay City Manager a lump sum cash payment equal to six month's base salary as separation pay. City Manager shall receive additional separation pay under this paragraph, based upon length of service, and computed at the rate of one month base salary for every year of service beyond the effective date of this Agreement, up to a maximum of six additional months. Payment of any separation benefits to City Manager under this Paragraph 7 or otherwise shall be contingent on City Manager's execution of a separation agreement and release of all claims in a form acceptable to City. City Manager shall also be compensated for all earned vacation or other leave accrued pursuant to City policies as of the date of termination, calculated at the base rate of pay in effect upon termination. City shall have no liability to City Manager arising from such termination except as specifically set forth in this Agreement.

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If the City Manager is terminated for cause, the City shall have no obligation to pay separation or other pay to City Manager and shall be liable to City Manager only for payment of salary and benefits earned by City Manager through the last day of employment. "For cause" shall mean: (i) embezzlement, theft, larceny, material fraud, or other acts of dishonesty by City Manager; (ii) material violation by City Manager of any of her duties and responsibilities under this Agreement; (iii) conviction of or entrance of a plea of guilty or *nolo contendere* to any felony, or a misdemeanor, if such misdemeanor has or may have a material adverse effect on City Manager's ability to carry out her duties and responsibilities under this Agreement; (iv) conduct involving moral turpitude of City Manager affecting the performance of her duties and responsibilities under this Agreement; (v) conduct in violation of the City's policy against unlawful harassment or discrimination; (vi) violation of the Ethics Code; or (vii) violation of "Clear Agreement and High Performance Contract" with the City Council. At her request, the City Manager shall be entitled to an informal hearing before the Mayor, City Council, and City Attorney prior to such termination for cause. Determination of dismissal for cause shall be made in the sole discretion of the Mayor, with the advice and consent of the Council.

B. This Agreement may be terminated by the City Manager for any or no reason by providing the Mayor and Council two months written notice, unless the Mayor and Council agree to a shorter period.

C. In the event the Council at any time reduces the salary, compensation or other benefits of the City Manager in a greater amount than an applicable across the board reduction for all employees of City, or in the event the Council refuses to comply with any other provision benefiting the City Manager herein, then the City Manager may, at her option, be deemed terminated and eligible for separation payment as provided herein.

8. Severability

If any portion of this Agreement is found by a court of competent jurisdiction to be unenforceable, the remainder of the Agreement shall remain in full force and effect.

9. Merger

This Agreement constitutes the entire and only agreement between the parties and it cannot be altered except by written instrument, signed by the Mayor and City Manager.

Employment Agreement

DATED this 28th day of March, 2013.

PARK CITY MUNICIPAL CORPORATION

By: Dana Williams, Mayor

Attest:

Janet M. Scott, City Recorder

Approved As To Form:

Mark Harrington, City Attorney

City Manager

Diane Foster

STATE OF UTAH)
) ss.
COUNTY OF SUMMIT)

On this ____ day of January, 2013, before me, _____, the undersigned notary public, personally appeared Diane Foster, personally known to me/proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument, and acknowledged that he/she executed the same.

Notary Public