

Park City Municipal Corporation
REQUEST FOR PROPOSALS FOR
Graphic Design and Illustration for
Library Conservation Kits

NOTICE
REQUEST FOR PROPOSALS (NON-BID)
Graphic Design and Illustration for

Library Conservation Kits

PROPOSALS DUE: 4:00 p.m. Wednesday, July 25, 2018

PROJECT NAME: Graphic Design and Illustration for Library Conservation Kits

RFP AVAILABLE: Contact Celia Peterson via email to: celia.peterson@parkcity.org.

PROJECT LOCATION: Park City, Utah

PROJECT DESCRIPTION:

Park City Municipal Corporation (“PCMC”) is seeking an illustrator/graphic designer for comic strips and instructions that illustrate how to use energy saving devices and install energy conservation tools in their own homes. The design should be lighthearted and fun, and appeal to a wide variety of audiences aged twelve and up, including high school students, adults, Park City’s Latino community, and other diverse populations.

PROJECT DEADLINE: September 14, 2018

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

CONTACT: **Celia Peterson, Environmental Sustainability Project Manager; celia.peterson@parkcity.org**

All questions shall be submitted in writing no later than Monday, July 23, 2018 at 4:00 p.m. to Celia Peterson at the email address referenced above. All questions and responses will be posted on the RFP website on Tuesdays by 1:00 p.m.

Park City reserves the right to reject any or all proposals received for any reason. Furthermore, the City shall have the right to waive any informality or technicality in proposals received when in the best interest of the City.

I. Introduction

PCMC has North America’s most ambitious climate goals: to be net-zero carbon and running on 100% renewable electricity by 2032.

Energy and Social Equity are both Critical Priorities for PCMC. This means that if the municipal government does not adequately address these issues, our town’s

future is at stake. This project addresses both of these priorities by bringing energy efficiency resources to underserved populations in Park City.

PCMC's Environmental team recently conducted a community-wide carbon footprint, and found that thirty percent (30%) of the town's emissions are caused by homes. One way to reduce carbon emissions of homes is to increase energy efficiency and save energy. Home weatherization* not only saves energy and utility bill costs, but also increases the comfort and safety of homes.

For this project, Park City residents will be called upon to take action to improve the energy efficiency of their homes. The first step will involve checking out a kit from the library that includes a [thermal camera](#) to detect thermal leaks*, a [Kilowatt power strip](#) to detect phantom loads*, [freezer/refrigerator thermometers](#), and [toilet dye tablets](#) to detect toilet leaks. For these, comics will be created, as well as simple instructions and a worksheet for participants to record their findings.

In addition to the library detection kits, interested residents will be provided free conservation kits. These will include several items that can be easily installed at home to prevent wasting energy from thermal leaks and conserve water. For these, copy writing and graphic design is requested as part of the scope of work.

A complete list of items included in the conservation kits is as follows:

- [1 window shrink and seal insulation kit](#)
- [1 high density foam weather-stripping tape](#)
- [1 30' rope caulk](#)
- [Child safety caps](#)
- [1 LED night light](#)
- [Foam switch gaskets](#)
- [Foam outlet gaskets](#)
- [Refrigerator temperature card](#)
- [1 chrome 1.5 gpm showerhead](#)
- [1 gpm faucet aerator](#)
- [1 toilet tank bank](#)
- 2 LED light bulbs

An overview of the project [can be found here](#)
<http://www.parkcity.org/Home/ShowDocument?id=53789>, or contact
 celia.peterson@parkcity.org.

*Definitions:

Weatherization is the process of reducing the energy used to heat and/or cool a building. This is often done through sealing up leaks through which heat or cold

can escape the occupied areas of a room, for example around windows or door frames.

Thermal leak is the transfer of heat from indoors to outdoors, either through unsealed doors and windows, or through inadequate insulation.

Phantom load, otherwise known as vampire electricity, refers to the (wasted) electricity that devices draw when plugged into an outlet but not in use.

II. Scope of Project

PCMC is seeking proposals from illustrators or graphic designers to create comic strips and simple instructions that visually illustrate how to use the aforementioned items included in the library and conservation kits. Formatting and layout of additional instructions and energy saving tips will be required. In addition, one (1) flyer for marketing purposes is to be created.

The selected candidate will work with PCMC's Environmental team to create content with minimal use of text. The text in the comics and any written instructions will be created in English and translated to Spanish. The City will provide translations. Text is to be kept to a minimum in order to ease translation and ensure accessibility for people who cannot read. The preferable option will be to combine instructions of multiple items, with no more than twenty (20) comics to be produced overall.

The target audience of these materials is Park City residents, with a special emphasis on engaging Latino residents. The target age group is middle school students and older.

The project is expected to be delivered by September 14, 2018.

III. Content of Proposal

Proposals will be evaluated on the criteria listed below. Proposals shall be limited to three (3) pages of written text, plus samples and portfolio.

Please include how you intend to approach this project, samples of your previous work, and budget. All proposals should be submitted electronically via email to celia.peterson@parkcity.org by 4:00 p.m. on Wednesday, July 25, 2018. Document delivery via Dropbox or Googledrive links is acceptable. The anticipated budget for the creative work for this project is Five Thousand Dollars (\$5,000.00).

Proposals will be evaluated on the following criteria:

- Background knowledge of environmental communications (20%)

- Quality of proposal (20%)
- Previous work examples (20%)
- Approach to project (20%)
- Price (20%)

Important dates:

July 23, 2018	All questions due in writing by 4:00 p.m.
July 25, 2018	Proposals due via email by 4:00 p.m.
July 26, 2018	Selection of proposal to be awarded contract

PCMC reserves the right to reject any and all proposals for any reason. Proposals lacking required information will not be considered. All submittals shall be public records in accordance with government records regulations (“GRAMA”) unless otherwise designated by the applicant pursuant to UCA §63G-2-309, as amended. The award of contract is subject to approval by City Council.

Price may not be the sole deciding factor.

IV. Selection Process

Proposals will be evaluated on the factors listed in Section III, Content of Proposal, above.

The selection process will proceed on the following schedule:

- A. Proposals will be received by PCMC by 4:00 p.m. on Wednesday, July 25, 2018, via email to celia.peterson@parkcity.org.
- B. A selection committee comprised of City staff will review all submitted RFPs, and will determine the contract award on July 26, 2018.

VI. Park City Municipal Standard Provider/Professional Services Agreement – Commissioned Art

A. The successful proposal will be required to enter into Park City’s Provider/Professional Services Agreement – Commissioned Art in its current form, with PCMC. A draft of the Agreement is attached to this RFP as Exhibit “A” and incorporated herein. If there is a conflict between the written and numerical amount of the proposal, the written amount shall supersede.

B. ANY INQUIRIES RELATED TO INDEMNIFICATION OR INSURANCE PROVISIONS CONTAINED IN PARK CITY MUNICIPAL CORPORATION’S STANDARD AGREEMENT MUST BE SUBMITTED TO

PARK CITY MUNICIPAL CORPORATION NO LATER THAN THE PROPOSAL/SUBMITTAL DEADLINE. PARK CITY MAY, IN ITS SOLE DISCRETION, CONSIDER SUCH INQUIRIES. ANY CHANGES TO PARK'S CITY'S STANDARD INSURANCE AND INDEMNIFICATION PROVISIONS SHALL BE APPROVED IN PARK CITY'S SOLE DISCRETION.

Any service provider who contracts with PCMC is required to have a valid Park City business license.

VII. Information to be submitted

To be considered, an electronic copy of the proposal must be received by celia.peterson@parkcity.org by 4:00 p.m. on Wednesday, July 25, 2018.

VIII. Preparation of Proposals

A. Failure to Read. Failure to Read the Request for Proposal and these instructions will be at the offeror's own risk.

B. Cost of Developing Proposals. All costs related to the preparation of the proposals and any related activities are the sole responsibility of the offeror. The City assumes no liability for any costs incurred by offerors throughout the entire selection process.

IX. Proposal Information

A. Equal Opportunity. The City will make every effort to ensure that all offerors are treated fairly and equally throughout the entire advertisement, review, and selection process. The procedures established herein are designed to give all parties reasonable access to the same basic information.

B. Proposal Ownership. All proposals, including attachments, supplementary materials, addenda, etc., shall become the property of PCMC and will not be returned to the offeror.

C. Rejection of Proposals. PCMC reserves the right to cancel or modify the terms of this RFP and/or the project at any time and for any reason preceding contract award and reserves the right to accept or reject any or all proposals submitted pursuant to this request for proposals. PCMC will provide respondents written notice of any cancellation and/or modification. Furthermore, PCMC shall have the right to waive any informality or technicality in proposals received when in the best interest of PCMC.

D. No proposal shall be accepted from, or contract awarded to, any person, firm or corporation that is in arrears to the PCMC, upon debt or contract, or that is a defaulter, as surety or otherwise, upon any obligation to the PCMC, or that may be deemed irresponsible or unreliable by PCMC. Offerors may be required to submit

satisfactory evidence that they have the necessary financial resources to perform and complete the work outlined in this RFP.

E. PCMC's policy is, subject to Federal, State and local procurement laws, to make reasonable attempts to support Park City businesses by purchasing goods and services through local vendors and service providers.

F. If bidder utilizes third parties for completing RFP requirements, list what portion of the RFP will be completed by third parties and the name, if known, of the third party.

G. All proposals are valid for six (6) months after their submission date.

EXHIBIT "A"

**PARK CITY MUNICIPAL CORPORATION
PROVIDER/PROFESSIONAL SERVICES AGREEMENT
COMMISSIONED ART**

THIS AGREEMENT is made and entered into in duplicate this ____ day of _____, 20____, by and between PARK CITY MUNICIPAL CORPORATION, a Utah municipal corporation, ("City"), and _____, an individual ("Service Provider").

WITNESSETH:

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

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

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

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

1. SCOPE OF SERVICES.

The Service Provider shall perform such services and accomplish such tasks, including the furnishing of all materials and equipment necessary for full performance thereof, as are identified and designated as Service Provider responsibilities throughout this Agreement and as set forth in the "Scope of Services" attached hereto as "Exhibit A" and incorporated herein (the "Project", the "Work" or the "Art"). The total fee for the project shall not exceed _____ Dollars (\$_____).

The City has designated _____, or his/her designee as City's Representative, who shall have authority to act in the City's behalf with respect to this Agreement consistent with the budget contract policy.

2. TERM.

No work shall occur prior to the issuance of a Notice to Proceed which cannot occur until execution of this Agreement, which execution date shall

be commencement of the term and the term shall terminate on _____ or earlier, unless extended by mutual written agreement of the Parties.

3. COMPENSATION AND METHOD OF PAYMENT.

- A. Payments for services provided hereunder shall be made as follows: fifty percent (50%) of Contract Price upon execution of this Agreement and the remaining fifty percent (50%) upon delivery of the Art and final acceptance of the Project by the City.
- B. No payment shall be made for any service rendered by the Service Provider except for services identified and set forth in this Agreement.
- C. The Service Provider reserves the right to suspend or terminate work and this Agreement if any unpaid account exceeds sixty (60) days.

4. REPRESENTATIONS AND WARRANTIES:

Service Provider represents and warrants to the City that:

- A. Materials and Workmanship: The materials and equipment furnished under this Agreement will be of good quality and new unless otherwise required or permitted by Exhibit A attached hereto, the Project will be free from defects and faults in material and workmanship and the Project will conform to the requirements of Exhibit A;
- B. Copyright: Neither the Art nor its components or any other element of the Project infringe or violate any copyright or patent right held by any person;
- C. Title: Title to the Project, including the Art and all materials and components thereof, will pass to the City upon receipt of final payment by Service Provider free and clear of all liens, claims, security interests or encumbrances, hereinafter referred to as "liens," and no materials incorporated into the Project have been acquired subject to an agreement under which an interest therein or an encumbrance thereon has been retained by the seller; and
- D. No Finders Fees: All negotiations relative to this Agreement and the transactions contemplated by and under this Agreement have been carried on without the intervention of any person whose act or acts

would give rise to any valid claim against the City for a finder's fee, brokerage commission, or other like payment.

- E. Licensing: Service Provider and if applicable any subcontractors shall possess and maintain in good standing throughout the term of this Agreement all licensing/certification necessary to perform all services provided for in this Agreement, including but not limited to applicable contractors, architectural, and engineering licenses/certification.
- F. Original Creation: Service Provider represents and warrants that: (a) the work described in Exhibit A ("the Work") is the original creation of the Service Provider; (b) the Work is unique and an edition of one; and (c) no identical Work will be created by the Artist.

5. RECORDS

The City is subject to the requirements of the Government Records Access and Management Act, Chapter 2, Title 63G, Utah Code Annotated, 1953, as amended and Park City Municipal Code Title 5 ("GRAMA"). All materials submitted by Service Provider pursuant to this Agreement are subject to disclosure unless such materials are exempt from disclosure pursuant to GRAMA. The burden of claiming and exemption from disclosure rests solely with Service Provider. Any materials for which Service Provider claims a privilege from disclosure based on business confidentiality shall be submitted marked as "confidential - business confidentiality" and accompanied by a concise statement from Service Provider of reasons supporting its claim of business confidentiality. Generally, GRAMA only protects against the disclosure of trade secrets or commercial information that could reasonably be expected to result in unfair competitive injury. The City will make reasonable efforts to notify Service Provider of any requests made for disclosure of documents submitted under a claim of confidentiality. Service Provider specifically waives any claims against the City related to any disclosure of materials pursuant to GRAMA.

6. INDEPENDENT CONTRACTOR RELATIONSHIP.

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

acts and for the acts of its agents, employees, subcontractors or representatives during the performance of this Agreement.

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

7. SERVICE PROVIDER EMPLOYEE/AGENTS.

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

8. RISK OF LOSS.

The Service Provider shall be responsible for the care and protection of all work performed by the Service Provider until completion of the installed Work and acceptance by the City and shall repair or restore any damaged work; provided however, that the Service Provider shall not be responsible for any damage that occurs after acceptance by the City unless such damage is caused by an act or omission of the Service Provider.

9. HOLD HARMLESS INDEMNIFICATION.

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

Provider claims or recovers compensation from the City for a loss or injury that Service Provider would be obligated to indemnify the City for under this Agreement. This limited waiver has been mutually negotiated by the parties, and is expressly made effective only for the purposes of this Agreement. The provisions of this section shall survive the expiration or termination of this Agreement.

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

10. INSURANCE.

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

- A. Workers compensation insurance with limits as required by statutory law. Service Provider shall submit with the signed Provider Service Agreement a certificate of insurance evidencing this coverage to the City.
- B. Auto liability insurance with limits as required by statutory law.
- C. Should any of the above described policies be cancelled before the expiration date thereof, Service Provider shall deliver notice to the City within thirty (30) days of cancellation. The City reserves the right to request certified copies of any required policies.
- D. The Service Provider's insurance shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

11. TREATMENT OF ASSETS.

- A. Ownership: Service Provider hereby irrevocably assigns, conveys and otherwise transfers to City and its respective successors and assigns title to the project Work and all proprietary rights thereto.
- B. Duplication of Art:
 - (i) Service Provider hereby irrevocably assigns, conveys and otherwise transfers to City and its respective successors and assigns title to the project Work and all proprietary rights thereto. Service Provider retains all rights under the Federal

Copyright Act and all other rights in and to the Work except ownership and possession, and except as such rights are limited by this Agreement.

(ii) In view of the intention that the Art in its final dimension shall be unique, Service Provider shall not make any additional exact duplication or reproductions of the final Art, nor shall Service Provider grant permission to others to do so except with the written permission of the City; provided however, that the Service Provider may use depictions of the Art in personal promotional materials such as portfolios or resumes, and techniques and design elements from the project in creation of other Art in body of work.

(iii) Service Provider grants to the City and its assigns an irrevocable license to make two- and/or three-dimensional reproductions of the Art for commercial or noncommercial purposes, including but not limited to reproductions used in advertising, brochures, media publicity, fundraising, and catalogs or other similar publications, provided that these rights are exercised in a tasteful and professional manner. Wherever practicable, City shall make reasonable efforts to include Service Provider's name in any such advertisement, brochure, media publicity, catalog or other similar publication in which the Art appears and to notify the Service Provider of its efforts.

- C. Repair or Restoration: Where, in the opinion of the City or Service Provider, repairs and/or restoration of the Art are required for which Service Provider is not responsible pursuant to the terms of this Agreement, the City shall, when reasonably practicable, give Service Provider the opportunity to accomplish such repairs and/or restoration if a reasonable fee can be agreed upon between the City and Service Provider. Nothing herein shall obligate the City to make such repairs and/or restoration nor to contract with Service Provider to accomplish such repairs and/or restoration.
- D. Independent Sale: If in the future the City wishes to sell the Art separate and apart from any real property to which the Art may be integrated or affixed, the City will use reasonable efforts to provide the Service Provider an opportunity to purchase the Art from the City. However, no liability shall attach the City by virtue of this section.
- E. Notice: Service Provider agrees to keep the City notified in writing of changes in Service Provider's address, and failure to do so shall be

deemed a waiver of Service Provider's right of first refusal in Paragraph 10D above.

- F. Warranty: If, within one year after the date of the completion of installation of the Project and acceptance by the City, the Project or any component or material thereof is found to be defective or to not be in accordance with the Design Plans and Construction Documents attached at Exhibit A, Service Provider shall correct it promptly after receipt of a written notice from the City to do so unless the City has previously given Service Provider a written acceptance of such condition. This obligation shall survive acceptance of the Project under this Agreement and termination of this Agreement. Nothing contained in this Paragraph shall be construed to establish a period of limitation with respect to any other obligation which Service Provider might have under this Agreement, including Paragraph 4 herein. The establishment of the time period of one year after completion of installation and acceptance by the City relates only to the specific obligation of Service Provider to correct the Project, and has no relationship to the time within which Service Provider's obligations to comply with the Design Plans and Construction Documents may be sought to be enforced, nor the time within which proceedings may be commenced to establish Service Provider's liability with respect to an obligation other than to specifically correct the Project.

12. COMPLIANCE WITH LAWS AND WARRANTIES.

- A. The Service Provider, in the performance of this Agreement, shall comply with all applicable federal, state, and local laws and ordinances, including regulations for licensing, certification and operation of facilities, programs and accreditation, and licensing of individuals, and any other standards or criteria as described in this Agreement to assure quality of services.
- B. Unless otherwise exempt, the Service Provider is required to have a valid Park City Business License.
- C. The Service Provider specifically agrees to pay any applicable fees or charges which may be due on account of this Agreement.
- D. If this Agreement is entered into for the physical performance of services within Utah the Service Provider shall register and participate in E-Verify, or equivalent program. The Service Provider agrees to verify employment eligibility through E-Verify, or equivalent program, for each new employee that is employed within Utah, unless exempted by Utah Code Ann. § 63G12-302.

E. Service Provider shall be solely responsible to the City for the quality of all services performed by its employees or sub-contractors under this Agreement. Service Provider hereby warrants that the services performed by its employees or sub-contractors will be performed substantially in conformance with the standard of care observed by similarly situated companies providing services under similar conditions.

13. NONDISCRIMINATION.

- A. The City is an equal opportunity employer.
- B. In the performance of this Agreement, Service Provider will not discriminate against any qualified person in matters of compensation and other terms, privileges, and conditions of employment because of: race, color, religion, sex (including pregnancy, childbirth, pregnancy-related conditions, breastfeeding, or medical conditions related to breastfeeding), national origin, age (40 or older), disability, genetic information, sexual orientation, gender identity, or protected expressions. Service Provider shall take such action with respect to this Agreement as may be required to ensure full compliance with local, State and federal laws prohibiting discrimination in employment.
- C. Service Provider will not discriminate against any recipient of any services or benefits provided for in this Agreement on the grounds of race, color, religion, sex (including pregnancy, childbirth, pregnancy-related conditions, breastfeeding, or medical conditions related to breastfeeding), national origin, age (40 or older), disability, genetic information, sexual orientation, gender identity, or protected expressions.
- D. If any assignment or subcontracting has been authorized by the City, said assignment or subcontract shall include appropriate safeguards against discrimination. The Service Provider shall take such action as may be required to ensure full compliance with the provisions in the immediately preceding paragraphs herein.

14. ASSIGNMENTS/SUBCONTRACTING.

- A. The Service Provider shall not assign its performance under this Agreement or any portion of this Agreement without the written consent of the City, and it is further agreed that said consent must be sought in writing by the Service Provider not less than thirty (30) days prior to the date of any proposed assignment. The City

reserves the right to reject without cause any such assignment. Any assignment made without the prior express consent of the City, as required by this part, shall be deemed null and void.

- B. Any work or services assigned hereunder shall be subject to each provision of this Agreement and property bidding procedures where applicable as set forth in local, state or federal statutes, ordinance and guidelines.
- C. Any technical/professional service subcontract not listed in this Agreement, must have express advance approval by the City.
- D. Each subcontractor that physically performs services within Utah shall submit an affidavit to the Service Provider stating that the subcontractor has used E-Verify, or equivalent program, to verify the employment status of each new employee, unless exempted by Utah Code Ann. § 63G-12-302.

15. CHANGES.

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

16. RIGHT TO INSPECT WORK IN PROGRESS.

- A. Service Provider shall provide the City access to the Project in preparation and progress wherever located. Whenever the City considers it necessary or advisable for the implementation of the intent of this Agreement, the City will have authority to inspect the Project and to require special inspection or testing of the Project or its components to ascertain whether it is in accordance with the Scope of Services attached as Exhibit "A", or following the design phase, the Design Plans, and Construction Documents. If such inspection or special inspection or testing reveals a failure of the Project or the components thereof to comply with the requirements of the Design Plans and Construction Documents, Service Provider shall bear all costs of the correction of the defective work, including compensation for the City's additional services made necessary by such failures; otherwise, the City shall bear the costs of such inspection and testing. Service Provider shall not be relieved from the obligation to fabricate and produce the Project and to install the Project in accordance with the Design Plans and Construction Documents by reason of the City's failure to reject the Project or

any component thereof or by any inspections, tests or approvals performed by the City.

- B. In the event the City does not find the Project, as it progresses, in compliance with the Design Plans and Construction Documents, the City will work to cure discrepancies with the Service Provider within the parameters and scope of the project. Any additional costs to the project due to discrepancies will be the responsibility of the Service Provider. The Service Provider must mend the dispute within a timeline of no more than five (5) business days or request in written form for an extension. Payment will be made to Service Provider for the Project completed to date of termination. The state of the completion of the Project and the amount which may be due hereunder shall be determined solely by the City. If such termination is due to a substantial variance from the Design Plans and Construction Documents set forth in Exhibit "A", this Agreement, and/or the International Building Code, 2003 edition, the City shall have the option of paying nothing hereunder and of requiring repayment by Service Provider of any sums previously paid by the City. Upon such termination, Service Provider shall retain all rights to the concept, design, and the Art itself, including the right to complete, exhibit, and sell the Art. However, upon such termination, the City shall have the right to require the Work itself be removed from the property of the City.
- C. Service Provider agrees to accommodate reasonable requests by City for access to the Project in preparation and progress for the purpose of promoting the Art so long as such access does not interfere with the progress and timing of Service Provider's work.
- 17. PROHIBITED INTEREST, NO THIRD PARTY RIGHTS AND NO GRATUITY TO CITY EMPLOYEES.**
- A. No member, officer, or employee of the City shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.
- B. Nothing herein is intended to confer rights of any kind in any third party.
- C. No City employee who has procurement decision making authority and is engaged in the procurement process, or the process of administering a contract may knowingly receive anything of value including but not limited to gifts, meals, lodging or travel from anyone that is seeking or has a contract with the City.

18. MODIFICATIONS TO TASKS AND MISCELLANEOUS PROVISIONS.

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

19. TERMINATION.

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

20. NOTICE.

Notice provided for in this Agreement shall be sent by certified mail to the addresses designated for the parties on the last page of this Agreement. Notice is effective upon the date it was sent, except that a notice of termination pursuant to paragraph 18 is effective upon receipt. All reference to “days” in this Agreement shall mean calendar days.

21. ATTORNEYS FEES AND COSTS.

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

22. JURISDICTION AND VENUE.

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

23. SEVERABILITY AND NON-WAIVER..

- A. If, for any reason, any part, term, or provision of this Agreement is held by a court of the United States to be illegal, void or unenforceable, the validity of the remaining provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.
- B. If it should appear that any provision hereof is in conflict with any statutory provision of the State of Utah, said provision, which may conflict therewith, shall be deemed inoperative and null and void insofar as it may be in conflict therewith, and shall be deemed modified to conform in such statutory provisions.
- C. It is agreed by the Parties that the forgiveness of the non-performance of any provision of this Agreement does not constitute a subsequent waiver of the provisions of this Agreement. No waiver shall be effective unless it is in writing and signed by an authorized representative of the waiving party.

24. ENTIRE AGREEMENT.

The parties agree that this Agreement is the complete expression of the terms hereto and any oral representations or understandings not

incorporated herein are excluded. Further, any modification of this Agreement shall be in writing and signed by both parties. Failure to comply with any of the provisions stated herein shall constitute material breach of contract and cause for termination. Both parties recognize time is of the essence in the performance of the provisions of this Agreement.

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

PARK CITY MUNICIPAL CORPORATION,

a Utah municipal corporation
445 Marsac Avenue
Post Office Box 1480
Park City, UT 84060-1480

Diane Foster, City Manager

Attest:

City Recorder's Office

Approved as to form:

City Attorney's Office

SERVICE PROVIDER:

Name:

Address:

City/State/Zip:

Tax ID#: _____

PC Business License #: _____

Printed Name

Signature

Title

STATE OF UTAH)
) ss.
COUNTY OF SUMMIT)

On this ____ day of _____, 20____, personally appeared before me _____, whose identity is personally known to me/or proved to me on the basis of satisfactory evidence and who by me duly sworn/affirmed, did say that he/she is the _____ (title or office) of _____ Corporation by Authority of its Bylaws/Resolution of the Board of Directors, and acknowledged that he/she signed it voluntarily for its stated purpose as _____ (title) for _____, a _____ corporation.

Notary Public

EXHIBIT A
SCOPE OF SERVICES: