

REQUEST FOR STATEMENTS OF QUALIFICATIONS

Engineering Design Services



Park City Municipal Corporation (PCMC)

P.O. Box 1480

Park City, Utah 84060

Issued January 24, 2024

Respondents and their agents are instructed not to contact PCMC employees, agents or contractors of PCMC, selection committee members, the Mayor's office or staff, members of the City Council, or attempt to externally manipulate or influence the procurement process in any way, other than through the instructions contained herein, from the date of release of this RSOQ. PCMC, in its sole discretion, may disqualify a Respondent for violation of this provision.

REQUEST FOR STATEMENTS OF QUALIFICATIONS (RSOQ)

PCMC is inviting qualified persons or firms (Respondents) to provide Statements of Qualifications (SOQs) for Engineering Design Services for an active transportation facility. PCMC intends to enter into a contract with the highest scoring Respondent to provide these services.

SOQs DUE: By 4:00 p.m. on Wednesday, February 7, 2024

Submit SOQs electronically via *Utah Public Procurement Place (U3P)*. The SOQs will be opened after the submission deadline.

In the event of difficulty submitting SOQs electronically, SOQs can be dropped off at the office of the City Recorder, located at 445 Marsac Avenue, Third Floor – Executive Department, Park City, UT 84060. SOQs submitted to the City Recorder should be delivered on a thumb drive. No paper copies should be submitted.

RSOQ AVAILABLE: The RSOQ will be available on January 24, 2024, on the Utah Public Procurement Place (U3P) and PCMC websites. Any modifications to the RSOQ or responses to questions submitted will be added as an addendum to the RSOQ posted on the U3P and PCMC websites. It is the responsibility of Respondents to regularly check for addenda.

QUESTIONS: All questions regarding the RSOQ must be submitted in writing on the U3P website by 5:00 p.m. on Wednesday, January 31, 2024. Please do not submit the same question multiple times.

PROJECT DESCRIPTION (brief): Provide final design services for an active transportation facility in Park City along Thaynes Drive including right-of-way acquisition, plans, specifications, and estimates required for construction.

PROJECT DEADLINE: October 31, 2024

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

CONTACT: *Gabriel Shields, P.E.*
gabriel.shields@parkcity.org

SOQs will remain valid for 90 days after submission. PCMC reserves the right to reject any or all SOQs received for any reason. Furthermore, PCMC reserves the right to change dates or deadlines related to this RSOQ. PCMC also reserves the right to waive any informality or technicality in SOQs received when in the best interest of PCMC.

1.0. INTRODUCTION

Park City Municipal Corporation (PCMC) intends to construct an active transportation facility ("Facility") along Thaynes Canyon Drive and Snow Creek Drive in Park City, Utah. PCMC has completed the concept design for the Facility and intends to contract with a design professional to prepare the final design documents. This section of the Facility will serve as the initial phase of construction. A second phase will follow to include the Facility along Three Kings Drive. The final design of the second phase is not included as part of this solicitation. Figure 1 below illustrates the project limits for this phase.

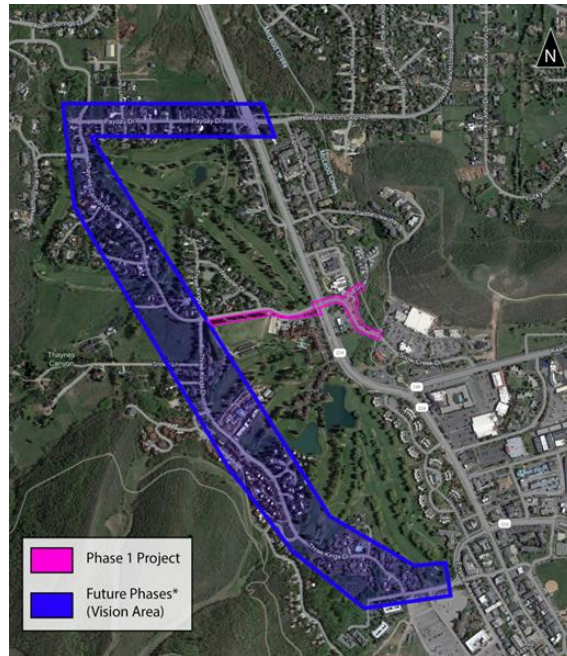


Figure 1 - Project Area Map

PCMC is seeking qualified design professionals to provide a complete design package including all materials required for bidding. This phase is intended for construction in the summer of 2024.

<u>MILESTONE</u>	<u>DATE</u>
<u>RSOQ Solicitation Period*</u>	
Issuance of RSOQ	January 24, 2024
Questions Accepted	January 24, 2024 – January 31, 2024, by 5:00 pm (local time)
Final Questions and Responses Published	February 2, 2024
Proposal Due Date	Wednesday, February 7, 2024 – By 4:00 pm (local time)
Selection Meeting & Notice of Selection	February 8, 2024
Contract Negotiations	February 9, 2024 – February 27, 2024
Tentative Notice to Proceed (NTP)	March 8, 2024

*** PCMC reserves the right to change any dates, milestones, or deadlines.**

2.0 Scope

- Task 1 Supplemental Survey: this task may include but is not limited to supplemental ground survey to augment survey completed during the concept design phase; the concept design survey files will be provided to the Design Professional following NTP; this survey was completed to facilitate a quality concept design but may not be all inclusive for final design; Design Professional may be required to perform additional survey.
- Task 2 Right-of-Way Engineering: this task may include but is not limited to preparation of drawings and legal instruments required to acquire permanent and temporary construction easements for the project; it is assumed that at least one construction easement will be required; Design Professional may be required to prepare drawings, legal descriptions, perform appraisals, and assist in negotiations for any required right-of-way for the project.
- Task 3 Utility Coordination: this task may include but is not limited to coordinating with utilities in the project corridor as well as designing any relocations for utilities owned by PCMC.
- Task 4 Final Design: this task may include but is not limited to all civil design tasks required to advance the concept design to a construction-ready design including plans, specifications, and estimates; this task may include design of the Facility, required modifications to roadway elements, intersection treatments, sidewalk and pedestrian ramp adjustments, landscape and irrigation adjustments, traffic control, grading, and erosion control; this task may include environmental permitting and clearance; this task should result in the ability for the construction contractor to complete the construction with minimal field changes or change orders.
- Task 5 Advertising Package: this task may include but is not limited to the preparation of all documents required to advertise the project for construction including but not limited to a bid schedule, specifications, and drawings; during the advertising period, the Design Professional may be required to answer Requests For Information (RFIs) relating to the project from bidders; following the advertisement, the Design Professional may be required to review the bids for compliance.
- Task 6 Design Support During Construction: this task may include but is not limited to reviewing project submittal, answering RFIs, evaluating field design changes, and preparing formal design changes.

3.0 SOQ REQUIREMENTS AND CONTENTS

3.1 General

The SOQ should include the following key elements in accordance with the instructions and requirements set out in this RSOQ. PCMC is interested in responses that specifically illustrate qualifications, abilities, and experience of personnel to perform services identified in Section 2.0 of this RSOQ.

Respondents should be aware that the requested information and requirements stated in this RSOQ are minimum requirements. Respondents are responsible for reviewing Section 2.0 and describing qualifications to address the needs presented. Respondents are encouraged to make additions that they believe will further assist PCMC in evaluating their qualifications.

3.2 SOQ Format

The SOQ should be as concise as possible while adhering to the format and information requirements described below. SOQs should be prepared simply and economically, providing a straightforward, concise description of Respondent's capabilities to satisfy the requirements of the RSOQ. Emphasis should be on completeness and clarity of the content. Page limits identified do not include table of contents, dividers, etc.

Organize SOQ as Follows. SOQs not organized as outlined below, not containing the information specified, or not containing sufficient detail may receive a lower rating when evaluated.

PART 1 - Administrative Response (2 pages excluding)

- Section A. Letter of Introduction (1 page)
- Section B. Client References (1 page)

PART 2 - Technical Response (5 pages)

- Section A. Organization and Key Personnel (2 pages)
- Section B. Work History (1 page)
- Section C. Approach (2 pages)

PART 3 - Attachments

- Section A. Exceptions to Design Professional Services Agreement Requirements

3.3 SOQ Content

Respondents shall provide sufficient information in the SOQ to enable PCMC to understand and evaluate the Respondent's approach to providing the services described in this RSOQ. At a minimum, each SOQ shall respond to the following requirements which are listed below and further described in the following paragraphs:

PART 1 - Administrative Response

A. LETTER OF INTRODUCTION

One Page Limit.

Please provide a letter of introduction that briefly:

1. Introduces the business; describes the ownership; includes a complete address, phone number, and fax number (if applicable), and includes the name and email address(s) of contact person(s) for use during this RSOQ process.
2. Acknowledges receipt of RSOQ addenda, if any.
3. Identifies the Project Manager in your organization (provide address, telephone number, and email address) for future correspondence on projects.
4. Includes the signature of a person authorized to bind the offering organization to the terms of the SOQ.
5. Includes federal tax ID number and state of incorporation.
6. States that the SOQ includes all terms and conditions required by the RSOQ.
7. Contains a statement to the effect that the SOQ shall remain valid for 90 days.
8. Contains a statement certifying that there is no known conflict of interest.

The Respondent may use this section to introduce the SOQ submittal and/or to summarize the key provisions of the submittal.

B. CLIENT REFERENCES

One Page Limit

Provide at least three client references for similar projects. Include phone and email contact information.

PART 2 - Technical Response

A. ORGANIZATION & KEY PERSONNEL

Two Page Limit.

Provide the following information about the Respondent's key personnel available to participate in assigned tasks:

1. Organization
 - a. Indicate location of office performing services and Project Manager – If located outside of Utah, describe how the Project Manager will be available in person.
 - b. Provide an organizational chart to identify the Project Manager, Key Personnel, and all sub-consultant roles.

2. Key Personnel

Respondents are responsible for reviewing the information included in this RSOQ and proposing personnel to address the needs presented. For key personnel:

- a. Identify the personnel that will be available for key tasks.
- b. Provide brief biographies and highlight special qualifications, including:

- i. Total years of experience, including number of years with the current firm.
- ii. All current applicable registrations, accreditations and/or certificates.
- iii. The individual's qualifications, relevant work assignments, etc.
- iv. Realistic projection of availability including current assignments.

B. WORK HISTORY

One Page Limit

List projects of a similar nature completed in the last five years. Projects should include key staff, roles, project challenges, and solutions. Provide client references for each project including a current phone and email address.

C. APPROACH

Two Page Limit.

Provide a proposed scope of work by task in which the work will be accomplished on schedule and within budget. Identify critical risk items and mitigation strategies. The scope of work should generally include the tasks identified in this scope of work but may be expanded to account for risk mitigation or tasks which add value to the overall project. Include an approximate project schedule assuming NTP is given in early March. Identify key milestones including:

- 60% Plan-in-Hand Review (assumed first submittal)
- 100% Final Review
- Advertising
- Award
- Begin Construction
- Completion of Construction

PART 3 - Attachments

A. EXCEPTIONS TO DESIGN PROFESSIONAL SERVICES AGREEMENT REQUIREMENTS

1. PCMC is expecting to enter into a Design Professional Services Agreement with the selected Respondent to complete the project. A sample of the agreement is provided in **Attachment "1"** to the RSOQ. The Respondent selected to provide the services shall be required to enter into a written agreement in substantially the form shown in the attached sample agreement which shall be the basic form used to develop the final agreement.

2. **If Respondent takes exception to any term or condition set forth in this RSOQ and/or the sample agreements and any of its exhibits and attachments, said exceptions must be submitted as an attachment accompanying the SOQ and identified as “Exceptions.” Such exceptions shall be considered in the evaluation and the award processes. The “Exceptions” attachment will not count against the page limits.**

4.0 STATEMENT OF QUALIFICATIONS EVALUATION PROCESS AND CRITERIA

An Evaluation Committee, established by PCMC, will review the submitted SOQs and determine which Respondents are most qualified to provide the services listed in Section 2.0. This section describes the process and criteria by which the Evaluation Committee will evaluate the SOQs. The evaluation process steps and criteria are as follows:

A. Administrative and Completeness Screening (Mandatory Requirements)

Each SOQ will be screened for compliance with the Administrative Screening Criteria below. The Evaluation Committee will evaluate each SOQ to determine its responsiveness to these requirements. SOQs that fail or do not fully comply with any of the Administrative and Completeness Screening Criteria shall be disqualified and eliminated from further evaluation.

1. SOQ must be received by the exact time and date set and at the stated location for receipt of SOQs.
2. SOQ must include all properly executed Administrative Response items.
3. SOQ must not contain false or intentionally misleading statements or references that do not support an attribute or condition contended by the Respondent.
4. SOQ must not be intended to mislead PCMC in its evaluation of the SOQ and the attribute, condition, or capability of Respondent.
5. Respondents must not have a conflict of interest as stated in this RSOQ.

B. Grounds to Reject a SOQ

In addition to the Administrative Screening Criteria identified above, PCMC reserves the right to reject an SOQ if:

1. The SOQ is unsigned.
2. The SOQ is not prepared in the format described.
3. The Respondent has submitted multiple SOQs.
4. The SOQ does not literally comply or contains caveats that conflict with the SOQ and the variation or deviation is material, or it is otherwise non-responsive.

PCMC reserves the right to reject any and all SOQs for any reason.

C. Evaluation of Statements of Qualifications

The evaluation committee will be comprised of qualified persons, which may include PCMC staff or representatives from other public and private stakeholders. The evaluation committee will open, review, and evaluate all SOQs.

Evaluation Criteria

The technical evaluation will be based upon a determination by PCMC's evaluation committee members as to how well each SOQ meets PCMC's requirements as presented in this RSOQ.

1. SOQ Criteria Weighting

SOQs will be evaluated by the evaluation committee on the criteria and the corresponding weight factors listed below.

	<u>Maximum Points</u>
A. Client References	(20)
B. Exceptions to DPSA Requirements	(5)
C. Organization, Qualifications, and Work History	(60)
G. Summary	(15)
<u>Maximum Total Points</u>	<u>(100)</u>

2. Proposal Scoring Scale

The following Scoring Scale will be used by the Evaluation Committee to establish a score for each category listed in the Evaluation Criteria.

% OF POSSIBLE POINTS	INTERPRETATION	EXPLANATION FOR PERCENTAGE POINTS
0%	Not Responsive	Response does not include or fails to address the requirements being scored. The omission(s), flaw(s), or defect(s) are significant and unacceptable.
10-30%	Minimally Responsive	Response minimally addresses the requirements being scored. The omission(s), flaw(s), or defect(s) are significant and unacceptable.
40-60%	Inadequate	Response addresses the requirements being scored, but there are one or more omissions, flaws, or defects or the requirements are addressed in such a limited way that it results in a low degree of confidence in the proposed solution.
70%	Adequate	Response adequately addresses the requirements being scored. Any omission(s), flaw(s), or defect(s) are inconsequential and acceptable.
80%	Good	Response fully addresses the requirements being scored with a good degree of confidence in the Respondent's response or proposed solution. No identified omission(s), flaw(s), or defect(s). Any identified weaknesses are minimal, inconsequential, and acceptable.
90%	Excellent	Response fully addresses the requirements being scored with a high degree of confidence in the Firm's response or proposed solution. Respondent offers one or more enhancing features, methods or approaches exceeding basic expectations.
100%	Exceptional	All requirements are addressed with the highest degree of confidence in the Respondent's response or proposed solution. The response exceeds the requirements in providing multiple enhancing features, a creative approach, or an exceptional solution.

3. Notice of Selection

Subsequent to the SOQ evaluations, including reviewing any additional information and interviews with Respondents, if applicable, PCMC will notify the top-scoring Respondent.

4. Negotiations

Subsequent to the issuance of the Notice of Selection, PCMC will begin negotiations with the selected Respondent to establish final contract terms and fee tables.

The selected Respondent will be required to submit:

- a. A list of rates for key personnel listed in the SOQ.
- b. In the event that negotiations are not successful with a Respondent, PCMC may terminate the negotiation and continue negotiations and contracting with the next highest scoring Respondent.
- c. Upon successful negotiations with a selected Respondent, PCMC staff will present a recommendation to City Council or the City Manager, as applicable, to enter into an agreement with the selected Respondent.

5. Contract Authorization

The award of a Design Professional Services Agreement is subject to approval by the City Manager or City Council.

D. Procurement Through Other Processes

PCMC may also acquire additional services not specifically identified in the scope of services but deemed necessary.

5.0 GENERAL PROVISIONS

A. Government Records Access and Management Act.

All submittals will be treated as public records in accordance with the requirements of the Government Records Access and Management Act, Title 63G, Chapter 2 of the Utah Code (GRAMA) unless otherwise designated by the Respondent pursuant to Utah Code § 63G-2-309, as amended. The burden of claiming an exemption from disclosure shall rest solely with each Respondent. Respondent shall submit any materials for which Respondent claims a privilege from disclosure marked as “Confidential” and accompanied by a statement from Respondent supporting the exemption claim. PCMC shall make reasonable efforts to notify Respondent of any GRAMA requests for documents submitted under an exemption claim. Respondent waives any claims against PCMC related to disclosure of any materials pursuant to GRAMA. Please note the following:

1. Respondent must not stamp all materials confidential. Only those materials for which a claim of confidentiality can be made under GRAMA, such as trade secrets, pricing, non-public financial information, etc., should be stamped.

2. Respondent must submit a letter stating the reasons for the claim of confidentiality for every type of information that is stamped "Confidential." Generally, GRAMA only protects against the disclosure of trade secrets or commercial information that could reasonably be expected to result in unfair competitive injury. Failure to timely submit a written basis for a claim of "Confidential" may result in a waiver of an exemption from disclosure under GRAMA.
3. For convenience, a Business Confidentiality Request Form (BCR Form) is attached to this RSOQ as **Attachment 1**. Respondents must submit a completed BCR Form at the time of submission of any proposal.

B. Ethics.

By submission of a proposal, Respondent represents and agrees to the following ethical standards:

REPRESENTATION REGARDING ETHICAL STANDARDS: Respondent represents that it has not: (1) provided an illegal gift or payoff to a PCMC officer or employee or former PCMC officer or employee, or his or her relative or business entity; (2) retained any person to solicit or secure this contract upon an agreement or understanding for a commission, percentage, or brokerage or contingent fee, other than bona fide employees of bona fide commercial selling agencies for the purpose of securing business; (3) knowingly breached any of the ethical standards set forth in PCMC's conflict of interest ordinance, Title 3, Chapter 1 of the Park City Code; or (4) knowingly influenced, and hereby promises that it will not knowingly influence, a PCMC officer or employee or former PCMC officer or employee to breach any of the ethical standards set forth in PCMC's conflict of interest ordinance, Title 3, Chapter 1 of the Park City Code.

C. No Representations or Warranty.

It is the responsibility of each Respondent to carefully examine this RSOQ and evaluate all of the instructions, circumstances and conditions which may affect any proposal. Failure to examine and review the RSOQ and other relevant documents or information will not relieve Respondent from complying fully with the requirements of this RSOQ. Respondent's use of the information contained in the RSOQ is at Respondent's own risk and no representation or warranty is made by PCMC regarding the materials in the RSOQ.

D. Cost of Developing Proposals.

All costs related to the preparation of the proposals and any related activities are the sole responsibility of the Respondent. PCMC assumes no liability for any costs incurred by Respondents throughout the entire selection process.

E. Equal Opportunity.

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

F. SOQ Ownership.

All SOQs, including attachments, supplementary materials, addenda, etc., will become the property of PCMC and will not be returned to the Respondent.

G. Modification of RSOQ.

PCMC reserves the right to cancel or modify the terms of this RSOQ and/or the project at any time and for any reason preceding the contract execution. PCMC will provide written notice to Respondents of any cancellation and/or modification.

H. Financial Responsibility.

No SOQ will be accepted from, or contract awarded to, any person, firm or corporation that is in arrears to 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. Respondents may be required to submit satisfactory evidence demonstrating the necessary financial resources to perform and complete the work outlined in this RSOQ.

I. Local Businesses.

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

J. Attachments (if applicable)

Attachment 1: Business Confidential Form

Attachment 2: Park City Municipal Corporation Design Professional Services Agreement

Attachment 1
REQUEST FOR PROTECTED STATUS

(Business Confidentiality Claims under Utah's Government Records Access
and Management Act ("GRAMA"), Utah Code § 63G-2-309)

I request that the described portion of the record provided to Park City Municipal Corporation be considered confidential and given protected status as defined in GRAMA.

Name: _____

Address: _____

Description of the portion of the record provided to Park City Municipal Corporation that you believe qualifies for protected status under GRAMA (identify these portions with as much specificity as possible) (attach additional sheets if necessary): _____

The claim of business confidentiality is supported by (please check the box/boxes that apply):

- () The described portion of the record is a trade secret as defined in Utah Code § 13-24-2.
- () The described portion of the record is commercial or non-individual financial information the disclosure of which could reasonably be expected to result in unfair competitive injury to the provider of the information or would impair the ability of the governmental entity to obtain the necessary information in the future and the interest of the claimant in prohibiting access to the information is greater than the interest of the public in obtaining access.
- () The described portion of the record would cause commercial injury to, or confer a competitive advantage upon a potential or actual competitor of, a commercial project entity as defined in Utah Code § 11-13-103(4).

REQUIRED: Written statement of reasons supporting a business confidentiality claim as required by Utah Code § 63G-2-305 (1) –(2) (attach additional sheets if necessary):

NOTE: Claimant shall be notified if the portion of the record claimed to be protected is classified as public or if the determination is made that the portion of the record should be disclosed because the interests favoring access outweigh the interests favoring restriction of access. Records claimed to be protected under this business confidentiality claim may not be disclosed until the period in which to bring the appeal expires or the end of the appeals process, including judicial appeal, **unless the claimant, after notice, has waived the claim by not appealing the classification within thirty (30) calendar days.** Utah Code § 63G-2-309(2).

Signature of Claimant: _____

Date: _____

Attachment 2

DESIGN PROFESSIONAL SERVICES AGREEMENT

This Design Professional Services Agreement (“**Agreement**”) is between PARK CITY MUNICIPAL CORPORATION, a Utah municipal corporation (“**PCMC**”), and [insert NAME OF DESIGN PROFESSIONAL], a [insert state of incorporation or formation] [insert “corporation,” “limited liability company,” or other entity type] (the “**Design Professional**”).

PCMC and Design Professional want to enter into an agreement for the Design Professional to perform the services and tasks as specified below.

The parties therefore agree as follows:

ARTICLE 1 – SCOPE OF SERVICES.

- A. Scope of Services. Design Professional shall perform the services and tasks identified and designated as Design Professional responsibilities throughout this Agreement and as outlined in **Schedule A** attached to this Agreement (“**Scope of Services**”).
- B. Design Professional Representative. Design Professional designates [insert name of Design Professional representative] as the authorized representative vested with the authority to act on behalf of the Design Professional. Design Professional may change its designated representative by providing written notice to PCMC.
- C. PCMC Representative. PCMC designates [insert project manager name] or their designee as its representative who has the authority to act on behalf of PCMC.

ARTICLE 2 – TERM.

This Agreement will become effective as of the date the last party signed it as indicated by the date associated with that party’s signature. The term of this Agreement ends at midnight on [insert date in format MM/DD/YYYY] unless terminated sooner or extended as provided in this Agreement.

OPTIONAL: PCMC may at its sole option extend the term of this Agreement for [insert number] additional period(s) of [insert “year(s)” “month(s)” or other time period] each by notifying Design Professional in writing at least 30 days prior to the expiration of this Agreement.

ARTICLE 3 – COMPENSATION, INVOICING, AND PAYMENT.

- A. Compensation. For performance of the Scope of Services, PCMC shall pay a total fee in an amount not to exceed **\$[insert numeric dollar amount]**. Any work performed beyond the defined Scope of Services requires a written request from PCMC.

Compensation for such additional work shall adhere to the terms outlined in **Schedule B**, if attached. In the absence of a **Schedule B**, any compensation for extra work shall be determined based on a mutually agreed-upon written agreement between both parties.

- B. Invoicing and Payment. Design Professional shall invoice PCMC on a monthly basis for services completed during that period. PCMC shall pay Design Professional within 30 days of receipt of each invoice. Requests for earlier payment will be considered if a discount is offered for the earlier payment. For services that remain unpaid for a period exceeding 60 days, interest will accumulate at a rate of six percent per annum.

ARTICLE 4 – SERVICE STANDARDS AND COMPLIANCE WITH LAWS.

- A. Service Standards. Design Professional shall be responsible for the quality of all services performed by its employees, agents, subcontractors, and all other persons (collectively, “**Subcontractors**”) performing any services under this Agreement. All services shall be executed with competence and in conformity with the standard of care, diligence, and skill ordinarily exercised by other design professionals within the Design Professional’s field or with the same or similar professional license in the same or similar locality under the same or similar circumstances. Notwithstanding the above, if the nature of the Scope of Services requires specialized design expertise, then Design Professional shall perform the design services consistent with the specialized design expertise.
- B. Conformance to Laws. In providing services under this Agreement, Design Professional and its Subcontractors shall comply with all applicable federal, state, PCMC, and other local laws, regulations, and ordinances, including applicable licensure and permit requirements, regulations for certification, operation of facilities, and accreditation, employment laws, and any other standards or criteria described in this Agreement.
- C. E-Verify. Design Professional shall register and participate in E-Verify or an equivalent program for each employee employed within the state of Utah if this Agreement is entered into for the physical performance of services within Utah, unless exempted by Utah Code § 63G-12-302. Design Professional shall require that each of its Subcontractors, at every tier, certify under penalty of perjury that each Subcontractor has registered and is participating in E-Verify or an equivalent program, to the extent applicable.

ARTICLE 5 – RECORDS AND INSPECTIONS.

- A. Records. Design Professional shall keep any records, documents, invoices, reports, data, information, and all other material regarding matters covered, directly or indirectly, by this Agreement for six years after expiration of this Agreement. This includes everything necessary to properly reflect all expenses related to this Agreement and records of accounting practices necessary to assure proper accounting of all expenses under this Agreement.

- B. Inspection of Records. Design Professional shall make all of the records referenced in this section available for inspection to PCMC, its authorized representatives, the State Auditor, and other government officials authorized to monitor this Agreement by law. Design Professional must permit PCMC or its authorized representative to audit and inspect any data or other information relating to this Agreement. PCMC reserves the right to initiate an audit of the Design Professional's activities concerning this Agreement, at the expense of PCMC, utilizing an auditor selected by PCMC.
- C. Government Records Access and Management Act. PCMC is subject to the requirements of the Government Records Access and Management Act, Title 63G, Chapter 2 of the Utah Code (“GRAMA”). All materials submitted by Design Professional related to this Agreement are subject to disclosure unless the materials are exempt from disclosure under GRAMA. The burden of claiming an exemption from disclosure rests solely with Design Professional. Any materials for which Design Professional claims an exemption from disclosure based on business confidentiality as provided in Utah Code § 63G-2-309 (or successor provision) must be marked as “Confidential” and accompanied at the time of submission by a statement from Design Professional explaining the basis for the claim. Generally, GRAMA only protects against the disclosure of trade secrets or commercial information that could reasonably be expected to result in unfair competitive injury. PCMC will make reasonable efforts to notify Design Professional of any requests made for disclosure of documents submitted under a claim of confidentiality. Design Professional specifically waives any claims against PCMC related to disclosure of any materials pursuant to GRAMA.

ARTICLE 6 – RELATIONSHIP OF PARTIES.

- A. Independent Contractor. The parties intend that Design Professional is an independent contractor and not an employee of PCMC. Except as specifically provided in this Agreement, the parties intend that Design Professional has no authority to act on behalf of PCMC.
- B. Subcontractor Relationship. The Design Professional shall have full control and authority over performance and activities of its Subcontractors throughout the execution of this Agreement. It is the sole responsibility of Design Professional to ensure that its Subcontractors adhere to the terms and conditions outlined in this Agreement. Furthermore, Design Professional shall bear full responsibility for any actions or omissions of its Subcontractors.
- C. Treatment of Assets. Neither party will have an interest in the intellectual property owned or licensed by the other party, unless otherwise agreed by the parties in writing. PCMC will become the owner of all deliverables, work product, and other materials specifically created by the Design Professional and its Subcontractors under this Agreement.

ARTICLE 7 – INDEMNIFICATION.

A. Definitions. In this Agreement, the following definitions apply:

- (1) **“Indemnifiable Losses”** means the aggregate of Losses and Litigation Expenses.
- (2) **“Litigation Expense”** means any reasonable out-of-pocket expense incurred in defending a Proceeding or in any related investigation or negotiation, including court filing fees, court costs, arbitration fees, witness fees, and attorneys’ and other professionals’ fees and disbursements.
- (3) **“Loss”** means any amount awarded in, or paid in settlement of, any Proceeding, including any interest but excluding any Litigation Expenses.
- (4) **“Proceeding”** means any investigation, claim, judicial, administrative, or arbitration action or lawsuit, or other cause of action of every kind or character, brought by third parties against PCMC, its agents, employees, or officers, that arises out of this Agreement or the performance of this Agreement by Design Professional or its Subcontractors or subconsultants of any tier, or anyone acting under Design Professional’s direction or control, including after the expiration or termination of this Agreement.

B. Indemnification. Design Professional shall indemnify PCMC and its agents, employees, and officers against all Losses arising out of a Proceeding, to the extent caused by or resulting from the Design Professional’s breach of contract, negligence, recklessness, or intentional misconduct, or the negligence of Design Professional’s Subcontractor. If such Losses are caused by or result from the concurrent negligence of the PCMC or its agents, employees, and officers, this indemnity provision shall be valid and enforceable to the extent of the Design Professional’s breach of contract, negligence, recklessness, or intentional misconduct; or negligence of Design Professional’s Subcontractor.

C. Reimbursement of Litigation Expenses. Design Professional shall reimburse PCMC for all Litigation Expenses to the extent they were incurred due to Design Professional’s breach of contract, negligence, recklessness, or intentional misconduct; or the negligence of Design Professional’s Subcontractor.

D. Waiver. Design Professional expressly agrees that the indemnification provision herein constitutes the Design Professional’s waiver of immunity under Utah Code § 34A-2-105 for the purposes of this Agreement. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement. No liability shall attach to PCMC by reason of entering into this Agreement except as expressly provided herein.

- E. No Limitation. The indemnification obligations of this Agreement shall not be reduced by a limitation on the amount or type of damages, compensation, or benefits payable by or for the Design Professional or Subcontractor under workers' compensation acts, disability benefits acts, or other employee benefit acts.
- F. Interpretation. The parties intend that the indemnity and defense provisions in this Article shall be interpreted so as to be enforceable to the fullest extent permitted by law, but nothing herein shall be interpreted to violate public policy.
- G. Environmental Indemnity. Design Professional shall indemnify PCMC, its agents, employees, and officers for any Indemnifiable Losses from a Proceeding arising out of Design Professional's willful, reckless or negligent violation of federal, state, or local environmental laws or regulations, and shall include but not be limited to all cleanup and remedial costs, diminution in value of property, and any fines or fees imposed as a result.

ARTICLE 8 – INSURANCE.

At its own cost and expense, Design Professional shall maintain the following mandatory insurance coverage to protect against claims for injuries to persons or property damage that may arise from or relate to the performance of this Agreement by Design Professional, its agents, representatives, employees, or Subcontractors for the entire duration of this Agreement or for such longer period of time as set forth below. Prior to commencing any work, Design Professional shall furnish a certificate of insurance as evidence of the requisite coverage. The certificate of insurance must include endorsements for additional insured, waiver of subrogation, primary and non-contributory status, and completed operations.

- A. Commercial General Liability Insurance. Design Professional shall maintain commercial general liability insurance on a primary and non-contributory basis in comparison to all other insurance, including PCMC's own policies of insurance, for all claims against PCMC. The policy must be written on an occurrence basis with limits not less than \$1,000,000 per occurrence and \$3,000,000 aggregate for personal injury and property damage. Upon request of PCMC, Design Professional must increase the policy limits to at least the amount of the limitation of judgments described in Utah Code § 63G-7-604, the Governmental Immunity Act of Utah (or successor provision), as calculated by the state risk manager every two years and stated in Utah Admin. Code R37-4-3 (or successor provision).
- B. Automobile Liability Coverage. Design Professional shall maintain automobile liability insurance with a combined single limit of not less than \$2,000,000 per accident for bodily injury and property damage arising out of the ownership, maintenance, and use of owned, hired, and non-owned motor vehicles. This policy must not contain any exclusion or limitation with respect to loading or unloading of a covered vehicle.

- C. Professional Liability Insurance. Design Professional shall maintain professional liability insurance with annual limits not less than \$1,000,000 per occurrence. If written on a claims-made basis, Design Professional shall maintain professional liability insurance coverage meeting these requirements for the applicable period of statutory limitation of claims (or statute of repose, if applicable) after completion of the Scope of Services or termination of this Agreement.
- D. Workers' Compensation Insurance and Employer's Liability. Design Professional shall maintain workers' compensation insurance with limits not less than the amount required by statute, and employer's liability insurance limits of at least \$1,000,000 each accident, \$1,000,000 for bodily injury by accident, and \$1,000,000 each employee for injury by disease. The workers' compensation policy must be endorsed with a waiver of subrogation in favor of "Park City Municipal Corporation" for all work performed by the Design Professional, its employees, agents, and Subcontractors.
- E. Umbrella/Excess Coverage. The insurance limits required by this section may be met by either providing a primary policy or in combination with umbrella / excess liability policy(ies). To the extent that umbrella/excess coverage is used to satisfy the limits of coverage required hereunder, the terms of such coverage must be following form to, or otherwise at least as broad as, the primary underlying coverage, including amending the "other insurance" provisions as required so as to provide additional insured coverage on a primary and non-contributory basis, and subject to vertical exhaustion before any other primary, umbrella/excess, or any other insurance obtained by the additional insureds will be triggered.
- F. Insured Parties. Each policy and all renewals or replacements, except those policies for Professional Liability, and Workers Compensation and Employer's Liability, must name PCMC (and its officers, agents, and employees) as additional insureds on a primary and non-contributory basis with respect to liability arising out of work, operations, and completed operations performed by or on behalf of Design Professional.
- G. Waiver of Subrogation. Design Professional waives all rights against PCMC and any other additional insureds for recovery of any loss or damages to the extent these damages are covered by any of the insurance policies required under this Agreement. Design Professional shall cause each policy to be endorsed with a waiver of subrogation in favor of PCMC for all work performed by Design Professional, its employees, agents, and Subcontractors.
- H. Quality of Insurance Companies. All required insurance policies must be issued by insurance companies qualified to do business in the state of Utah and listed on the United States Treasury Department's current Department of Treasury Fiscal Services List 570, or having a general policyholders rating of not less than "A-" in the most current available A.M. Best Co., Inc.'s, Best Insurance Report, or equivalent.

- I. Cancellation. Should any of Design Professional's required insurance policies under this Agreement be cancelled before the termination or completion of this Agreement, Design Professional must deliver notice to PCMC within 30 days of cancellation. PCMC may request and Design Professional must provide within 10 days certified copies of any required policies during the term of this Agreement.
- J. Additional Coverage. Notwithstanding anything to the contrary, if Design Professional has procured any insurance coverage or limits (either primary or on an excess basis) that exceed the minimum acceptable coverage or limits set forth in this Agreement, the broadest coverage and highest limits actually afforded under the applicable policy(ies) of insurance are the coverage and limits required by this Agreement and such coverage and limits must be provided in full to the additional insureds and indemnified parties under this Agreement. The parties expressly intend that the provisions in this Agreement will be construed as broadly as permitted to be construed by applicable law to afford the maximum insurance coverage available under Design Professional's insurance policies.
- K. No representation. In specifying minimum Design Professionals insurance requirements, PCMC does not represent that such insurance is adequate to protect Design Professional from loss, damage or liability arising from its work. Design Professional is solely responsible to inform itself of types or amounts of insurance it may need beyond these requirements to protect itself.

ARTICLE 9 – NONDISCRIMINATION.

- A. Nondiscrimination. Design Professional shall not discriminate against any employee or applicant for employment because of race; ethnicity; color; pregnancy, childbirth, or pregnancy-related conditions; age, if the individual is 40 years of age or older; religion; national origin; disability; sexual orientation; gender identity; or military status.
 - (1) Policy. Design Professional shall implement an employment nondiscrimination policy, if Design Professional does not already have such a policy, to effectuate the prohibition in this section; and
 - (2) Subcontractor Flow-Through. Design Professional shall incorporate the foregoing non-discrimination provisions in all subcontracts or assignments under this Agreement and take action as required to ensure full compliance with the provisions of this non-discrimination policy.

ARTICLE 10 – ASSIGNMENT/SUBCONTRACTING.

- A. Assignment. Design Professional shall not assign any portion of its performance under this Agreement without PCMC's written consent. Consent must be sought in writing by

the Design Professional not less than 30 days before the date of any proposed assignment. PCMC reserves the right to reject assignment without cause. Any purported transfer in violation of this section will be void.

- B. Subcontracting. Design Professional shall obtain advance written consent from PCMC for any Subcontractor not identified in the Scope of Services.

ARTICLE 11 – TERMINATION.

- A. Convenience. Either party may terminate this Agreement for any reason or no reason by giving the other party at least 30 days' prior written notice. This Agreement will terminate at midnight at the end of the 30th day after that notice is effective. Design Professional must be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination, according to the provisions of this Agreement.
- B. For Cause. If Design Professional fails to comply with any provision of this Agreement and fails to correct noncompliance within three days of having received written notice, PCMC may immediately terminate this Agreement for cause by providing a notice of termination to Design Professional.

ARTICLE 12 – NOTICES.

- A. Notice Addressee. For a notice or other communication to a party under this Agreement to be valid, it must be addressed using the information specified below for that party or any other information specified by that party in a notice delivered in accordance with this section.

To PCMC: Park City Municipal Corporation
P.O. Box 1480
Park City, UT 84060-1480
Attn: City Attorney's Office
PCMC_Notices@parkcity.org

With a copy to:

- PCMC's Representative pursuant to Article 1.C.
- PCMC's City Recorder at michelle.kellogg@parkcity.org.

To Design Professional: [Name]
[Address Line 1]
[Address Line 2]
[Email address]

- B. Delivery. A notice or other communication under this Agreement will be effective if it is in writing and received by the party to which it is addressed. It will be deemed to have been received as follows: (1) upon receipt as stated in the tracking system of a delivery organization that allows users to track deliveries; (2) when the intended recipient signs for the delivery; (3) when delivered by email to the intended recipient with a read receipt, an acknowledgement of receipt, or an automatic reply.
- C. Refusal or Inability to Deliver. If the intended recipient rejects or otherwise refuses to accept delivery, or if it cannot be delivered because of a change of address for which no notice was given, then delivery is effective upon that rejection, refusal, or inability to deliver.
- D. Time of Delivery. If a notice or other communication addressed to a party is received after 5:00 p.m. on a business day at the location specified in the address for that party, or on a day that is not a business day, then the notice will be deemed received at 9:00 a.m. on the next business day.

ARTICLE 13 – MISCELLANEOUS PROVISIONS.

- A. Entire Agreement. This Agreement constitutes the entire understanding between the parties regarding the subject matter of this Agreement.
- B. Modification and Waiver. To be effective, any modification to this Agreement or to the Scope of Services must be in writing and signed by both parties. No waiver under this Agreement will be effective unless it is in writing and signed by the party granting the waiver (in the case of PCMC, by an individual authorized by PCMC to sign the waiver). A waiver granted on one occasion will not operate as a waiver on other occasions.
- C. Timely Performance. Design Professional shall complete the Scope of Services by any applicable deadline stated in this Agreement. Design Professional is liable for all reasonable damages to PCMC incurred as a result of Design Professional's failure to timely perform the Scope of Services required under this Agreement.
- D. Governing Law, Jurisdiction, Venue. Utah law governs all adversarial proceedings arising out of this Agreement or the subject matter of this Agreement. As the exclusive means of bringing adversarial proceedings to resolve any dispute arising out of this Agreement or the subject matter of this Agreement, a party may bring such a proceeding in courts of competent jurisdiction in Summit County, Utah.
- E. Severability. The parties acknowledge that if a dispute between the parties arises out of this Agreement or the subject matter of this Agreement, it would be consistent with the wishes of the parties for a court to interpret this Agreement as follows: (1) with respect to any provision that it holds to be unenforceable, by modifying that provision to the minimum extent necessary to make it enforceable or, if that modification is not

permitted by law, by disregarding that provision; (2) if an unenforceable provision is modified or disregarded in accordance with this section, by holding that the rest of the Agreement will remain in effect as written; (3) by holding that any unenforceable provision will remain as written in any circumstances other than those in which the provision is held to be unenforceable; and (4) if modifying or disregarding the unenforceable provision would result in failure of an essential purpose of this Agreement, by holding the entire Agreement unenforceable.

- F. No Non-Party Rights. Nothing in this Agreement is intended to grant rights of any kind to any non-party or create third-party beneficiary rights of any kind.
- G. Force Majeure. For purposes of this Agreement, a Force Majeure Event means any event or circumstance, regardless of whether it was foreseeable, that was not caused by that party and that prevents a party from complying with any of its obligations under this Agreement, but a Force Majeure Event will not include any strike or labor unrest, an increase in prices, a change in general economic conditions, or a change of law. A party that is prevented by the occurrence of a Force Majeure Event from performing any one or more obligations under this Agreement will not be liable for any failure or delay in performing those obligations, on condition that the non-performing party uses reasonable efforts to perform. The non-performing party shall promptly notify the other party of the occurrence of a Force Majeure Event and its effect on performance. Thereafter, the nonperforming party shall update the other party as reasonably necessary regarding its performance. The nonperforming party shall use reasonable efforts to limit damages to the other party and to complete its full performance under this Agreement.

Each party is signing this Agreement on the date stated opposite that party's signature.

PARK CITY MUNICIPAL CORPORATION, a Utah
municipal corporation

Date: _____

By: _____

Matt Dias
City Manager

Attest:

City Recorder's Office

Approved as to form:

City Attorney's Office

[insert NAME OF DESIGN PROFESSIONAL]

Tax ID #: _____

PC Business License #: BL _____

Date: _____

By: _____

[insert name of individual signing]

[insert title of individual signing]

An authorized signer

SCHEDULE A – SCOPE OF SERVICES

SCHEDULE B – FEE SCHEDULE FOR EXTRA WORK

Note: Any work in addition to or outside the Scope of Services in Schedule A shall be approved in advance in writing by PCMC and shall not exceed the contract price reflected in Article 3 of the Agreement.