

Park City Municipal Corporation (“PCMC” or “City”)

REQUEST FOR PROPOSALS (RFP) (NON-BID) FOR

GENERAL WATER AND STORMWATER FEE ANALYSIS SERVICES

Respondents or their agents are instructed not to contact City employees, agents or contractors of the City, 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 RFP to the date of execution of the agreement resulting from this solicitation. City, in its sole discretion, may disqualify a Respondent for violation of this provision.

REQUEST FOR PROPOSALS (NON-BID)

PCMC is inviting proposals (“Proposals”) from qualified persons or firms (“Respondents”) to provide a **Water and Stormwater Fee Analysis**.

PROPOSALS DUE: By **4:00 p.m. on Thursday, February 29, 2024**.

Submit Proposals electronically via **email to clint.mcaffee@parkcity.org**. The Proposals will be opened after the submission deadline.

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

RFP AVAILABLE: The RFP will be available on **February 14, 2024**, on the **Utah Public Procurement Place (U3P) and PCMC websites**. Any modifications to the RFP or responses to questions submitted will be added as an addendum to the RFP posted on **U3P and the PCMC website**. It is the responsibility of Respondents to regularly check for addenda.

QUESTIONS: All questions regarding this RFP must be submitted in writing to **Clint McAfee, Public Utilities Director, via email to: clint.mcaffee@parkcity.org by 5:00 p.m. on Friday, February 23, 2024**.

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

CONTACT: Clint McAfee, Public Utilities Director
clint.mcaffee@parkcity.org

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

1.0. Introduction

PCMC, located in Summit County, Utah, is soliciting Proposals from Respondents for the purpose of providing a Water and Stormwater Fee Analysis.

PCMC encourages consulting firms interested in providing services to PCMC to submit a Proposal in accordance with the following information.

1.1. PCMC

To assist with the preparation of a focused and responsive RFP, this section is intended to provide Respondents with a brief background on the relevant departments within PCMC.

PCMC provides culinary water to approximately 5,200 residential and business connections within Park City via a water treatment, supply, and distribution system. PCMC currently produces culinary water from multiple sources including treated surface water, wells, treated mine tunnel drainage, a spring (Thiriot Springs), and importation sources.

The City's Water Fund is an enterprise fund which is funded entirely by water service fees/rates (ratepayers), surplus water leases with other entities, and water impact fees, which are collected to offset the costs of new development. To maintain adequate funding for ongoing operations, responsible levels of capital investments, and future challenges, PCMC plans to revenue and expense budgets using a multi-year financial model.

All water delivered to non-municipal water accounts is subject to PCMC's adopted water service fees. There are a few exceptions where water is delivered by contract or agreement, such as snowmaking and agricultural deliveries. In addition, all new developments are subject to the City's adopted water impact fees, which developers (including the City) occasionally request be waived for projects that provide additional community benefit.

In 2023, considerable revisions to water service fees to, among other things, further incentivize water conservation, were adopted. Staff reports and public hearings are linked below and contain detailed information on the 2023 changes.

[April 7, 2022](#) (new business, p. 290)

[July 28, 2022](#) (discussion items, p. 11)

[February 16, 2023](#) (work session, p. 27)

[April 4, 2023](#) (old business, p. 319)

[May 11, 2023](#) (old business, p. 217)

Additional information about PCMC can be found on its website at: www.parkcity.org.

1.2. Procurement Schedule

The following procurement schedule has been established for the RFP solicitation period. If a change in the solicitation schedule becomes necessary, all recipients of the RFP will be notified.

<u>MILESTONE</u>	<u>DATE</u>
<u>RFP Solicitation Period*</u>	
Issuance of RFP	Wednesday, February 14, 2024
Questions Accepted	Wednesday February 14, 2024Friday, February 23, 2024
	5:00 pm (local time)
Final Questions and Responses Published	Monday, February 26, 2024
Proposal Due Date	Thursday, February 29, 2024 – By 4:00 pm (local time)

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

2.0. Scope of Services

PCMC requires assistance to provide general water fee analysis and support including a revenue needs analysis and cost of service analysis and provide recommendations on modifications to budget and fees. The scope of the project includes:

- Water and Storm Water Fee Analysis
 - Revenue needs analysis for operations, capital, and other general financial requirements and goals
 - Cost of service analysis and recommendations for modifications to water and storm water fees
 - Other general financial and budget analysis
- Municipal Code Analysis
 - Municipal Code analysis related to fees and recommendations for modifications.

The scope of services set forth in this RFP represents an outline of the work that PCMC anticipates Respondent(s) may be requested to perform. Additional, related work may be requested with a fee adjustment in the future.

Below is a brief description of the services typical to each listed area of interest. The items contained within each category are not comprehensive and PCMC reserves the right to add related services as necessary.

3.0. Contents of Proposal and Evaluation Criteria.

Proposals will be evaluated on the criteria listed below.

If Respondent proposes to use a third party (subcontractor, subconsultant, etc.) for completing all or a portion of the scope of work requirements, state the name and identify the portion of the scope of work to be completed by a third party.

3.1. General

The Proposal should include the following key elements in accordance with the instructions and requirements set out in this RFP. PCMC is interested in responses that specifically illustrate qualifications, abilities, and experience of personnel to perform services in the areas of interest identified in Section 2 of this RFP.

Respondents should be aware that the requested information and requirements stated in this RFP are minimum requirements. Respondents are responsible for reviewing Section 2 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. Format

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

Organize Proposal as Follows. Proposals 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

- Section A. Letter of Introduction
- Section B. Client References
- Section C. Insurance and Professional Services Agreement Requirements

PART 2 - Technical Response

- Section A. Organization and Key Personnel
- Section B. Fee Proposal
- Section C. Summary

PART 3 - Attachments

Attachment 1 Resumes - Key Team Members

3.3. Contents of Proposal

PART 1 – Administrative Response

Respondents shall provide sufficient information in the Proposal to enable PCMC to understand and evaluate the Respondent's approach to providing the services described in this RFP. At a minimum, each Proposal shall respond to the following requirements:

A. LETTER OF INTRODUCTION

Two Page Limit.

Please provide a letter of introduction that briefly:

1. States Respondent's interest in providing services to PCMC.
2. Acknowledges receipt of RFP addenda, if any.
3. Identifies the name of the Respondent firm and provides the location of the office that will be primarily responsible for the work.
4. Identifies the Project Manager in your organization (provide address, telephone number, and email address) for future correspondence on projects.
5. Includes the signature of a person authorized to bind the offering organization to the terms of the Proposal.
6. Includes Federal tax ID number and state of incorporation.
7. States that the Proposal includes all terms and conditions required by the RFP.
8. Contains a statement certifying that there is no known conflict of interest.

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

B. CLIENT REFERENCES

Two Page Limit

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

C. INSURANCE AND PROFESSIONAL SERVICES AGREEMENT REQUIREMENTS

1. PCMC is expecting to enter into a Professional Services Agreement with the selected Respondent to complete the scope of services. A sample of the agreement is provided in **Exhibit "A"** to the RFP. Respondents selected to provide services shall be required to enter into a written agreement in

substantially the form as shown in the attached sample agreement which shall be the basic form used to develop the final agreement.

2. Signature on a Respondent's Proposal acknowledges that the Respondent is willing to enter into the agreement if awarded a contract for a project. Respondents are advised to read thoroughly the sample agreement as the selected Respondent will be required to comply with its requirements.
3. **If Respondent takes exception to any term or condition set forth in this RFP and/or the sample agreements and any of its exhibits and attachments, said exceptions must be clearly identified in the Proposal.**

ANY INQUIRIES RELATED TO INDEMNIFICATION OR INSURANCE PROVISIONS CONTAINED IN PCMC'S STANDARD AGREEMENT MUST BE SUBMITTED TO PCMC NO LATER THAN THE RFP SUBMITTAL DEADLINE. PCMC MAY, IN ITS SOLE DISCRETION, CONSIDER SUCH INQUIRES. ANY CHANGES TO PCMC'S STANDARD INSURANCE AND INDEMNIFICATION PROVISION SHALL BE APPROVED AT PCMC'S SOLE DISCRETION.

PART 2 – Technical Response

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

A. ORGANIZATION & KEY PERSONNEL

Three Page Limit.

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

1. Organization
 - a. Indicate location of project office and Project Manager – Describe proximity of Service Provider's project office and Project Manager.

2. Key Personnel

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

- a. Identify the personnel that will be available for key tasks.
- b. Provide a brief biography 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.

Resumes pages provided in an appendix do not count against the allowable page limit.

If Respondent 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.

B. FEE PROPOSAL

One Page Limit

Fee proposal for work provided in the scope of services. Proposals should include, at minimum:

1. An overall fee for the scope of services.
2. An hourly rate sheet for personnel proposed to provide the services.
3. A detailed estimate of all costs to accomplish the scope of services.
4. Project timeline.

C. SUMMARY

Two Page Limit.

Summarize your submittal and add any other comments that you feel would make your firm (team) uniquely qualified to participate in this project. In other words, why should we hire your firm (team)?

1. Special Resources. A description of special resources or capabilities your organization could employ on the work that would enhance the value your organization would bring to PCMC.
2. Other Supporting Material. Information considered by the Respondent to be pertinent, and which has not been specifically solicited in any of the aforementioned sections, may be provided to support the Proposal. Respondents are cautioned, however, that this does not constitute an invitation to submit large amounts of extraneous material; supporting material should be relevant and brief. Respondents are encouraged to add to their Proposal any key elements that they believe will enhance PCMC's understanding of Respondent's experience and expertise. Keep in mind that PCMC prefers to receive clear, concise, and complete information devoid of excess promotional material.

3.4. Selection Process

The selection process will proceed on the following anticipated schedule:

1. A selection committee comprised of qualified persons, which may include City staff or representatives from other public and private stakeholders, will open,

review and evaluate all Proposals.

2. The selection committee may conduct interviews with the highest ranked Respondents. If applicable, interview requirements will be provided to those Respondents selected for further consideration.
3. Final selection of the top-ranked Proposal and preparation of contract.
4. Contract execution (may require City Council approval).

Following completion of the evaluation and establishment of the ranking, negotiations for contract purposes may be initiated with the top ranked Respondent. In the event that an agreement is not reached, PCMC may enter into negotiations with the next highest-ranked Respondent.

3.5. Evaluation Criteria

Proposals will be scored using the following criteria:

- (a) Qualifications of the individuals identified (30%)
- (b) Relevant experience with similar projects, including responses from references (30%)
- (c) Fee structure (40%).

The selection committee will consider all documents, the presentation/interview if applicable, the response to the RFP, information gained while evaluating responses, and any other relevant information to make its determination. The committee will select the Respondent which, in the committee's sole judgment, is best able to provide the Water and Stormwater System Fee Services.

NOTE: Price may not be the sole deciding factor.

PCMC reserves the right to reject any and all proposals for any reason. Proposals lacking required information will not be considered. The award of a contract may be subject to approval by City Council.

4.0. General Provisions.

4.1. Government Records Access and Management Act.

PCMC will maintain a nonpublic process for the duration of this solicitation in accordance with Government Records Access and Management Act, Title 63G, Chapter 2 of the Utah Code ("GRAMA"). Pursuant to Utah Code § 63G-2-305(6), all records related to this RFP, including but not limited to proposals, evaluation, and selection procedures, and any records created during the evaluation and selection process will remain nonpublic records until a contract is awarded and signed. After execution of a

contract, all submittals will be treated as public records in accordance with the requirements of GRAMA unless otherwise claimed by the Respondent as exempt from disclosure pursuant to Utah Code § 63G-2-309, as amended. The burden of claiming an exemption shall rest solely with each Respondent. Respondent shall submit any materials for which Respondent claims an exemption 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:

- a. 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
- b. 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.
- c. For convenience, a Business Confidentiality Request Form (“BCR Form”) is attached to this RFP as ***Attachment 1***. Respondent must submit a completed BCR Form at the time of submission of any proposal if they wish to claim business confidentiality.

4.2. 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 city officer or employee or former city 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 the City'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 city officer or employee or former city officer or employee to breach any of the ethical standards set forth in the City's conflict of interest ordinance, Title 3, Chapter 1 of the Park City Code.

4.3. No Representations or Warranty

It is the responsibility of each Respondent to carefully examine this RFP and evaluate all of the instructions, circumstances and conditions which may affect any proposal. Failure to examine and review the RFP and other relevant documents or information will not relieve Respondent from complying fully with the requirements of this RFP.

Respondent's use of the information contained in the RFP is at Respondent's own risk and no representation or warranty is made by PCMC regarding the materials in the RFP.

4.4. 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.

4.5. Equal Opportunity

PCMC is committed to ensuring equitable and uniform treatment of all Respondents throughout the advertisement, review, and selection process. The procedures established herein are designed to give all parties reasonable access to the same fundamental information.

4.6. Proposal Ownership

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

4.7. Modification of RFP

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 the contract execution. PCMC will provide written notice to Respondents of any cancellation and/or modification.

4.8. Financial Responsibility

No proposal 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 RFP.

4.9. Local Businesses

PCMC's policy is to make reasonable attempts to promote local businesses by procuring goods and services from local vendors and service providers, in compliance with Federal, State, and local procurement laws.

5.0. Exhibit

Attachment 1 - Business Confidentiality Request Form

Exhibit A – 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: _____

EXHIBIT "A"
PROVIDER SERVICES AGREEMENT

PROFESSIONAL SERVICES AGREEMENT

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

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

The parties therefore agree as follows:

ARTICLE 1 – SCOPE OF SERVICES.

- A. Scope of Services. Service Provider shall perform the services and tasks identified and designated as Service Provider responsibilities throughout this Agreement and as outlined in **Schedule A** attached to this Agreement (“**Scope of Services**”).
- B. Service Provider Representative. Service Provider designates [insert name of Service Provider representative] as the authorized representative vested with the authority to act on behalf of the Service Provider. Service Provider 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 Service Provider in writing at least thirty 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. Service Provider shall invoice PCMC on a monthly basis for services completed during that period. PCMC shall pay Service Provider 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. Service Provider 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 typically exercised by professionals within the Service Provider’s field.
- B. Conformance to Laws. In providing services under this Agreement, Service Provider 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. Service Provider 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. Service Provider 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. Service Provider 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. Service Provider 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. Service Provider 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 Service Provider'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 Service Provider 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 Service Provider. Any materials for which Service Provider 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 Service Provider 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 Service Provider of any requests made for disclosure of documents submitted under a claim of confidentiality. Service Provider 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 Service Provider is an independent contractor and not an employee of PCMC. Except as specifically provided in this Agreement, the parties intend that Service Provider has no authority to act on behalf of PCMC.
- B. Subcontractor Relationship. The Service Provider 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 Service Provider to ensure that its Subcontractors adhere to the terms and conditions outlined in this Agreement. Furthermore, Service Provider 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 Service Provider 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 Service Provider or its Subcontractors or subconsultants of any tier, or anyone acting under Service Provider’s direction or control, including after the expiration or termination of this Agreement.
- B. **Indemnification.** Service Provider shall indemnify PCMC and its agents, employees, and officers against all Indemnifiable Losses arising out of a Proceeding, except to the extent the Indemnifiable Losses were caused by the negligence or willful misconduct of PCMC.
- C. **Obligation to Defend.** Service Provider shall, at its sole cost and expense, defend PCMC and its agents, employees, and officers from and against all Proceedings, provided that Service Provider is not required to defend PCMC from any Proceeding arising from the sole negligence of PCMC or its agents, employees, or officers.
- D. **Tender.** Service Provider’s obligation to defend will arise upon PCMC’s tender of defense to Service Provider in writing. If PCMC fails to timely notify Service Provider of a Proceeding, Service Provider will be relieved of its indemnification obligations to the extent that Service Provider was prejudiced by that failure. Upon receipt of PCMC’s tender of defense, if Service Provider does not promptly notify PCMC of its acceptance of the defense and thereafter duly and diligently defend PCMC and its agents, employees, and officers, then Service Provider shall pay and be liable for the reasonable costs, expenses, and attorneys’ fees incurred in defending the Proceeding and enforcing this provision.
- E. **Legal Counsel.** To assume the defense, Service Provider must notify PCMC of their intent to do so. Promptly thereafter, Service Provider shall retain independent legal counsel that is reasonably acceptable to PCMC.
- F. **Settlement.** After Service Provider assumes the defense of a Proceeding, Service Provider may contest, pay, or settle the Proceeding without the consent of PCMC only if that settlement (1) does not entail any admission on the part of PCMC that it violated any law or infringed the rights of any person, (2) provides as the claimant’s sole relief

monetary damages that are paid in full by Service Provider, and (3) requires that the claimant release PCMC and its agents, employees, and officers from all liability alleged in the Proceeding.

- G. Waiver. Service Provider expressly agrees that the indemnification provision herein constitutes the Service Provider'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.
- H. 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 Service Provider or Subcontractor under workers' compensation acts, disability benefits acts, or other employee benefit acts.
- I. 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.
- J. Environmental Indemnity. Service Provider shall indemnify PCMC, its agents, employees, and officers for any Indemnifiable Losses from a Proceeding arising out of Service Provider's 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, Service Provider 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 Service Provider, 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, Service Provider 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. Service Provider 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, Service Provider 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. Service Provider 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. [Delete if NOT applicable] Service Provider shall maintain professional liability insurance with annual limits not less than \$1,000,000 per occurrence. If written on a claims-made basis, Service Provider 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. Service Provider 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 Service Provider, 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 Service Provider.
- G. Waiver of Subrogation. Service Provider 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. Service

Provider shall cause each policy to be endorsed with a waiver of subrogation in favor of PCMC for all work performed by Service Provider, 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 Service Provider's required insurance policies under this Agreement be cancelled before the termination or completion of this Agreement, Service Provider must deliver notice to PCMC within 30 days of cancellation. PCMC may request and Service Provider 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 Service Provider 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 Service Provider's insurance policies.
- K. No representation. In specifying minimum Service Provider's insurance requirements, PCMC does not represent that such insurance is adequate to protect Service Provider from loss, damage or liability arising from its work. Service Provider 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. Service Provider 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. Service Provider shall implement an employment nondiscrimination policy, if Service Provider does not already have such a policy, to effectuate the prohibition in this section; and

- (2) Subcontractor Flow-Through. Service Provider 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. Service Provider shall not assign any portion of its performance under this Agreement without PCMC's written consent. Consent must be sought in writing by the Service Provider 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. Service Provider 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. Service Provider 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 Service Provider 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 Service Provider.

ARTICLE 12 – NOTICES.

- A. Notice Addresses. 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 Service Provider: [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. Service Provider shall complete the Scope of Services by any applicable deadline stated in this Agreement. Service Provider is liable for all reasonable damages to PCMC incurred as a result of Service Provider'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 SERVICE PROVIDER]

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.