

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

REQUEST FOR STATEMENTS OF QUALIFICATIONS FOR

**Redevelopment of a 5-Acre Site in the Bonanza Park
/Snow Creek Neighborhood**

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 RSOQ 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 STATEMENTS OF QUALIFICATION (“RSOQ”)

PCMC is inviting statements of qualifications from persons or firms (“Respondent”) to provide the City with their qualifications to redevelop an approximately 5-acre site (“Site”), less approximately one acre that may be dedicated for developing a local arts and cultural facility(s) designed and financed independently, in the Bonanza Park/Snow Creek Neighborhood. PCMC intends to create a shortlist of qualified Respondents to participate in a subsequent Request for Proposal (“RFP”) process.

STATEMENTS OF QUALIFICATION DUE: **Friday, July 26, 2024, at 5:00 p.m.** Submit Statements electronically through U3P or email Grant.Herdrich@parkcity.org. The Statements will be opened after the submission deadline.

RSOQ AVAILABLE: The RSOQ will be available on **Thursday, May 30, 2024**, on U3P and via the PCMC website. Any modifications to the RFP or responses to questions submitted will be added as an addendum to the RSOQ posted in both U3P and the PCMC website. It is the responsibility of Respondents to regularly check for addenda.

QUESTIONS: All questions regarding this RSOQ must be submitted in writing via U3P by **Friday, June 28, 2024, by 5:00 p.m.** **Please do not submit the same question multiple times.** All questions and answers will be treated as public; questions and responses will be posted to U3P no later than **Thursday, July 11, 2024, by 4:00 p.m.**

PROJECT LOCATION:	Bonanza Park Neighborhood, Park City, UT 84060 (Parcels: PSA-46-A-X; PSA-46-RE-B-X; PSA-46-RE-C-X; PSA-46-RE-D-X; SA-109-G-X-X; KBC-A-X; KBC-B-X; PCA-110-G-1-X; PCA-110-G-2-A-X; PCA-110-G-3-X)
PROJECT DESCRIPTION (brief):	Redevelopment of an approximately 5-acre site, less approximately 1 acre for developing a local arts and cultural facility(s) designed and financed independently, located in the Bonanza Park/Snow Creek Neighborhood off Kearns Boulevard between Bonanza Drive and Park Avenue.
PROJECT DEADLINE:	TBD
OWNER:	Park City Municipal Corporation P.O. Box 1480 Park City, UT 84060

CONTACT:

Grant Herdrich, JD
Procurement Manager
grant.herdrich@parkcity.org

Statements will remain valid for 90 days after submission. PCMC reserves the right to reject any or all statements 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 statements received when in the best interest of PCMC. PCMC reserves the right to hold interviews for any qualified Respondents who respond to the RSOQ.

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I. Introduction

Purpose of the RSOQ

PCMC is seeking the services of a qualified multi-disciplinary consultant team to partner with to redevelop an approximately 5-acre site, less any land allocated for other projects, in the Bonanza Park District. The 5-acre site is a part of the larger Bonanza Park and Snow Creek Neighborhoods outlined in the [Park City General Plan](#) and a future development should align with the community pillars from [Park City Vision 2020](#), and other adopted planning and transportation initiatives.

This RSOQ is intended to create a shortlist of qualified Respondents who will receive prioritized invitations to respond to a future RFP regarding their vision for the property's redevelopment. Experienced Respondents can be composed of consultants made up of traditional development firms, engineers, architects, landscape architects, community planners, and other relevant groups. **PCMC reserves the right to hold interviews for qualified Respondents who respond to the RSOQ.**

Project Vision

The Park City community desires creative solutions to plan, design, and construct a locally-focused, art-centric, mixed-use development with residential¹ and commercial elements, civic uses and spaces, community gathering areas, artist and maker spaces, and locally owned retail and dining establishments. Integration of connected public pathways and plazas, access to public transportation, and centralized parking are desired to maximize site design and community benefit. This request represents a generational opportunity at the center of one of the most dynamic and vibrant resort towns in the entire world.

Recent discussions have included the dedication of no more than one acre of the Site for the purpose of developing a local arts and cultural facility(s) designed and financed independently, leaving approximately 4 acres for this development. PCMC is willing to explore different types of partnerships and financial structures once a development partner is selected.

¹ Regarding residential development, Park City is seeking housing development that accommodates a "wide range of incomes" including affordable, attainable, market rate, and workforce housing options. Affordable housing units support residents making under 80 percent of the Area Median Income ("AMI") in Park City. Attainable housing units support residents making between 81 and 150 percent AMI in Park City. Market rate housing units have no AMI restrictions. Workforce housing specifically refers to the units restricted to housing people employed at jobs within Park City limits or school district boundaries regardless of income. Park City's current housing market has substantial overlap in these four categories; mostly with workforce housing that support affordable or attainable rent costs.

Surrounding Development & Context

The **Bonanza Park District** is the oldest commercial district in Park City outside of the historic Main Street area. It is centrally located at the intersection of two of Park City's primary thoroughfares. The area is the City's geographic center, and PCMC is interested in a project that supports and complements adjacent land uses to become a new *locals'* destination.

A successful development program should also reflect the spirit of the six goals identified in the *Bonanza Park Small Area Plan*:

- **Mixed-Use:** The Bonanza Park District of tomorrow will be a mixed-use neighborhood with livability in mind.
- **User-Friendly:** The Bonanza Park District will be a safe haven for pedestrians, cyclists, and transit riders.
- **Local:** The Bonanza Park District will continue to be a "locals' neighborhood" that serves Parkites through and through.
- **Inclusive:** Housing in the Bonanza Park District should strive to be attainable to Park City's workforce.
- **Green:** The Bonanza Park District will add community gathering spaces and new sustainable development.
- **Cultural:** The Bonanza Park District will weave arts and culture into the community fabric.

Current and Future Zoning and Overlays

Current Zoning and Overlays: The Site is currently zoned [General Commercial](#) (GC), a zoning district that focuses on commercial retail, dining, and hospitality, allowing for residential uses as a conditional use. Density is restricted via setback requirements and a building height limit of 35 feet for most structures, which is approximately three stories. Buildings that qualify for an [Affordable Master Plan Development](#) (AMPD) may have a total height of 45 feet, or approximately four stories.

Future Zoning: A future rezoning into a new Bonanza Park Mixed Use District (BPMX) is possible as a result of the Bonanza Park Small Area Plan that is nearing completion. If established, additional regulatory tools and performance zoning elements would help to ensure that future growth in the entire neighborhood reflects a more walkable, mixed-use, and human-scale environment.

Relevant Past Planning Efforts & Documents

There has been limited development activity in the neighborhood over the last decade. Multiple plans, however, have been developed to create a vision for the area. The links below provide information for how the neighborhood can transform under a future partnership.

- [Park City General Plan](#) (2014)

- [Park City Vision 2020](#) (2021)
- Arts and Culture Implementation Plan (2020)
- [Transportation Demand Management Plan](#) (2016)
- [Park City and Summit County Short Range Transit Development Plan](#) (2016)
- [State Road 224 Bus Rapid Transit Locally Preferred Alternative](#) (2018)
- [Park City Forward – a Transportation Blueprint: Transportation Master Plan](#) (2022)
- [Park City Short Range Transit Plan](#) (2022)
- Bicycle and Pedestrian Plan (in progress)
- [2023 Park City Affordable Housing Analysis](#)
- [2021 Housing Needs Assessment](#)

II. Term of Agreement

PCMC intends to create a shortlist of qualified Respondents who will be prioritized in the RFP release for the development of the Site. This RSOQ does not commit PCMC to enter into a contract or proceed with the procurement of this project. PCMC reserves the right to hold interviews for any qualified Respondents who respond to the RSOQ.

III. Contents of Statement and Evaluation Criteria.

RSOQs are intended to provide an understanding of how each Respondent could help the City achieve its vision for the Site and execute a successful project. Responses must demonstrate the Respondent’s qualifications, competence, and experience in other jurisdictions (examples) and provide the requested information in conformity with the requirements found in this RSOQ. Responses must include:

- a. Cover Sheet **1 page**
- b. Cover Letter **1 page**
Introductory cover letter identifying the firm, contact information for the proposed project managers, and the reason for interest in the development opportunity. The letter needs to be signed by a principal or authorized officer of the company who may make legally binding commitments.
- c. Table of Contents (optional) **1 page**
- d. Statement of Project Understanding and Qualifications **3 page maximum**
Please include a statement of the project understanding and summary of qualifications performing past development work and ability to meet the community’s goals based on the Respondent’s skills and experiences. A general description of the types of uses and character/ function of a potential development that the team would explore for the Site is required—no conceptual drawings, images, renderings, or project cost estimates should

be included in the response. This response should be qualitative and address the criteria outlined.

- e. **Lead Firm Description 1 page**
Description of firm, including information such as history, services offered/general experiences, number of employees, location of office(s), and any M/WBE qualifications.
- f. **Respondent Organization Chart and Roles 1 page**
Include an organizational chart showing the proposed Respondent structure, including the names of each key subconsultant (architect, engineer, legal, etc.), their role, and the key personnel that would be involved in the project.
- g. **Team Resumes 1 page maximum per person**
Provide resumes for the key project personnel listed under “Respondent Organization,” including the location of the primary office to which they are assigned, relevant projects they have worked on, and years of experience. Please identify and include the resume of the person who will be the day-to-day project manager for the proposed development project.
- h. **Relevant Project Experiences 12 page maximum**
Please include information on past projects from the past 15 years that are comparable to the proposed project in scope, program, scale or other key functions. Please highlight the past project’s location, square footage, general program, total development cost, the use of any public incentives, any sustainable certifications, and overall development timeline. Images of the completed or in-process relevant projects are welcome.
- i. **References 1 page**
Please include key references along with each individual’s name, company, title, phone number, email address and project that they were involved with.
- j. **Creative Ideas and Solutions 4 page maximum**
Please provide a description of creative ways your team has provided affordable, attainable, and/or workforce housing using tools, programs, or methods outside of traditional incentives such as LIHTC, Housing Choice Vouchers, etc., or any creative ideas related to achieving the stated project goals. Describe how those methods may be applicable to the Site.
- k. **Developer’s Financial Background 2 pages**
Please describe your experience with private and public/private project financing mechanisms. Provide a general list of private sources of financing used for recent projects describing the type of private source (private investor, REIT, banks, etc.), public sources of financing/incentives used for recent projects, and past bankruptcies or pending financial litigation involving any firm or principal.

Statements will be evaluated on the criteria listed below. Statements are limited to a maximum of **30 pages** excluding the use of section dividers. Font should be no smaller than 11 pt.

Each member of the selection committee shall use the evaluation criteria and points system below to establish their own ranking of the Respondents. The committee shall then use these individual rankings to establish an aggregate ranking of all the acceptable statements. Respondents must score greater than 70% of total points to be eligible for the approved Respondent list. **Table 1: Bonanza 5-Acre Site RSOQ Evaluation Criteria and Point System**

	Total Points Available	Points Awarded
Project Understanding & Approach		
Demonstrates an understanding of the vision and goals set forth by the City	50	
Demonstrates an understanding of the City's desire for a mixed-use development with affordable, attainable, and workforce housing components (including use of LIHTC and/or other incentive tools)	50	
Demonstrates an understanding and/or history of environmental protection and sustainable practices, including the use of construction materials for projects that meet various sustainability metrics similar to Park City's Net Zero goals	30	
Demonstrates a history of incorporating public use amenities as a part of the overall project, including trails and public transportation access	20	
Demonstrates an ability come up with creative solutions to funding challenges, especially for affordable, attainable, and workforce housing and/or mixed-use developments	30	
Team Qualifications & Background		
Key team members have credentials relevant to their field of expertise	30	
Have worked in Utah or have team members who have worked in Utah	10	
Capabilities		
Demonstrates successful projects similar to the desired mid-scale, mixed-use, mixed-income project within the last 10 years	50	
Demonstrates sustainable and net zero principles in past projects and/or provides examples of principles and how they could be applied to this project	10	
Demonstrates ability to be creative in overall project design	30	
Demonstrates a successful history of working with municipalities to create projects funded by public-private partnerships	20	
Demonstrates financial capacity and ability to execute a project of similar nature	50	
Executed past projects to completion within a reasonable timeline and stayed within budget	50	

Includes a history of housing developments with affordability as a component utilizing other housing tools outside of LIHTC (e.g. vouchers)	50	
Shows a history of engaging local team members and subconsultants	20	
History of engagement with the general public and key stakeholders throughout development process	20	
Grand Total		

Submittals should be a maximum of **30 pages** excluding section dividers. Any additional pages will not be considered past the maximum allowance.

Should it be necessary, the selection committee shall notify those Respondents to be given further consideration and interviewed. The interview requirements and format will be provided to the finalists in advance.

If interviews are held, the selection committee will consider all documents, the presentation/interview if applicable, the response to the RSOQ, information gained while evaluating responses, and any other relevant information to make its determination. The committee will select the Respondent(s) which, in the committee's sole judgment, is best able to provide the required services described herein to be shortlisted for a future RFP process.

NOTE: Price information shall not be submitted; if a Respondent provides this information, it shall not be considered.

PCMC reserves the right to reject any and all statements for any reason. Statements lacking required information will not be considered.

IV. 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:

- 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 RSOQ as **Attachment 1**. Respondents must submit a completed BCR Form at the time of submission of any statement.

V. Ethics.

By submission of a statement, 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, Chapter 3.1 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, Chapter 3.1 of the Park City Code.

VI. Selection Process

Statements will be evaluated on the criteria listed in Section IV, Contents of Statement and Evaluation Criteria, above.

The selection process will proceed on the following anticipated schedule:

Table 2: Bonanza 5-Acre Site RSOQ Schedule	
RSOQ Release	Wednesday, May 30, 2024
Clarification Questions Due	Friday, June 14, 2024 at 5:00 pm (MT)

Clarification Questions Responses Released	Monday, June 24, 2024 at 2:00 pm (MT)
Submissions Due	Friday, July 26, 2024 at 5:00 pm (MT)
Evaluations Conducted by the Selection Committee	Monday, July 29 through Friday, August 2, 2024
Interviews Conducted (online) ¹	Week of August 12, 2024
Short-Listed Respondents Announced	Week of August 19, 2024

¹ PCMC and the selection committee may ask qualified Respondents to participate in an interview to discuss their qualifications in further detail. Interview requirements will be provided to those Respondents selected for further consideration.

VII. General Provisions

- a. 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 statement. 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.
- b. Cost of Developing Statements. All costs related to the preparation of the statements 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.
- c. 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.
- d. Statement Ownership. All statements, including attachments, supplementary materials, addenda, etc., will become the property of PCMC and will not be returned to the Respondent.
- e. 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.

- f. Financial Responsibility. No statement 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.

- g. 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.

VIII. Exhibits

- a. Attachment 1 – Business Confidentiality Request Form
- b. Attachment 2 - 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

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

Commented [LR1]: DRAFTING NOTE: WHEN DO YOU NEED? Professional liability insurance covers claims of actual or alleged negligence that arise from providing professional services, like giving incorrect advice, an omission or failing to deliver a service. Typically it is required for design and construction professionals, consultants, technology service providers, attorneys, finance and real estate services, marketing and public relations.

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.