

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

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

Artistic Shade Structure at Creekside Bike Park



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 from qualified persons or firms (“Respondent”) to provide an Artistic Shade Structure at or Creekside Bike Park.

PROPOSALS DUE: By 5:00 p.m. on Monday, November 5, 2024

Submit proposals electronically via email to stephanie.valdez@parkcity.org. Electronic proposals must be submitted in one single PDF that does not exceed 10 pages in length. If proposal file exceeds 8MG, the submitter must provide the document meeting the same criteria via google doc, dropbox or a similar program.

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 August 14, 2024, on the *PCMC website*. Any modifications to the RFP or responses to questions submitted will be added as an addendum to the RFP posted on *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 via email to: stephanie.valdez@parkcity.org by 5:00 p.m. on Monday, October 21, 2024. Please do not submit the same question multiple times.

PRE-PROPOSAL MEETING: A pre-proposal meeting will be held at 3:00 pm on Wednesday, October 16, 2024, at 2392 Holiday Ranch Loop Road Park City, UT 84060. Attendance is *MANDATORY* for all Respondents. Requests for reasonable accommodation at the pre-proposal meeting shall be made no later than 48 hours in advance to the Project Contact above. Accommodation may include alternative formats, interpreters, and other auxiliary aids.

PROJECT LOCATION: 2392 Holiday Ranch Loop Road Park City, UT 84060.

PROJECT DESCRIPTION (brief): Artistic Shade Structure at the Creekside Bike Park

PROJECT DEADLINE (if applicable): June 30, 2025

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

CONTACT: Stephanie Valdez, Art Coordinator
stephanie.valdez@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.

Introduction.

The Creekside Bike Park, built in 2005 based on the community's interest, was initially established as a temporary pilot project. Following a successful trial period, it subsequently obtained a permanent use permit after a few years. In 2024 the Bike Park was renovated to include a new rider-friendly design and to be more sustainable with maintenance needs.

The City seeks a visionary artist or team to design and create an innovative shade structure/sculpture for our community bike jump park. This project aims to blend functionality with artistic expression, providing both a practical shelter and an inspiring visual centerpiece that enriches the park's aesthetic and ambiance.

Exhibit "A" attached hereto and incorporated herein, features images of the proposed location adjacent to the bike park where the sculpture will be installed, showcasing potential placement areas and the surrounding environment.

Scope of Project.

The shade structure/sculpture should serve the dual purpose of offering shade and creating a dynamic, visually captivating landmark adjacent to the park. The design should resonate with the energy and excitement of the bike jump park, incorporating elements that reflect movement, adventure, and the spirit of outdoor recreation.

Design Criteria:

- **Functionality:** The structure must provide adequate shade to park visitors.
- **Durability:** Constructed from high-quality, weather-resistant materials to ensure longevity and minimal maintenance.
- **Safety:** Designed with safety in mind, avoiding sharp edges or hazardous components, and adhering to local building codes and regulations.
- **Artistic Vision:** A unique and engaging design that captures the essence of the bike jump park, potentially incorporating themes of motion, nature, or community.
- **Dimensions:** The structure should cover no less than a 10'x12' footprint to provide sufficient shade while complementing the park's layout and functionality.
- **Sustainability:** Preference for environmentally friendly materials and sustainable construction practices.

I. Funding.

The total project maximum funds available are \$60,000.00.

II. Contents of Proposal and Evaluation Criteria.

The proposal must include:

- **Concept Proposal:** A detailed description of the proposed design, including sketches, renderings, and an explanation of the artistic inspiration and intended impact.
- **Budget Estimate:** A comprehensive budget outlining the costs for design, materials, construction, and installation.
- **Timeline:** A proposed project timeline from inception to completion, including key milestones.
- **Portfolio:** Examples of previous work that demonstrate the ability to create large-scale, outdoor sculptures or shade structures.

Proposals will be evaluated on the criteria listed below. Proposals are limited to 10 pages.

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.

A. Evaluation Criteria

Each member of the selection committee shall use the evaluation criteria and percentage weights 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 proposals. **Refer to the Public Art Advisory Board's Mission and Statement [here](#).** The evaluation criteria and basis for the award are attached as **Exhibit "B"** and incorporated herein.

General and Specialized Experience – (40%): (a) Respondent's ability, capacity, and skill to perform or provide the required services; (b) Respondent's demonstrated ability with respect to quality, availability, and adaptability of the supplies or contractual services; and (c) Respondent's organizational and financial history.

Past Performance and Experience of Proposed Personnel - (30%);

Plan of Operation/Performance - (30%): (a) quality of Respondent's operation/performance plan; and (b) Respondent's plan to contribute to City's defined goals of the project

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 an Artistic Shade Structure for the Creekside Bike Park.

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.

III. 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. 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.

IV. 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, 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.

V. Selection Process.

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

The selection process will proceed on the following anticipated schedule:

- a. Monday, November 11, 2024: 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.
- b. By Friday, November 15, 2024: 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.

- c. By Friday, November 22, 2024: Final selection of the top-ranked proposal and preparation of the contract.
- d. December 5, 2024: City Council approval.
- e. Friday, December 10, 2024: Contract execution.

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.

VI. PCMC Standard Agreement Required.

- a. The successful Respondent will be required to enter into PCMC’S standard Professional Services Agreement – Commissioned Artwork. A form of the standard agreement is attached to this RFP as **Exhibit “C”** and incorporated herein.
- b. **ANY REQUEST FOR CHANGES RELATED TO INDEMNIFICATION OR INSURANCE PROVISIONS CONTAINED IN PCMC’S STANDARD AGREEMENT MUST BE SUBMITTED NO LATER THAN THE PROPOSAL/SUBMITTAL DEADLINE. ANY REQUESTED CHANGES TO PCMC’S STANDARD INSURANCE AND INDEMNIFICATION PROVISIONS MAY BE APPROVED IN THE SOLE DISCRETION OF PCMC.**

A Respondent must be authorized to do business in Utah at the time of contract execution. If Respondent’s address is within the 84060 zip code, a valid PCMC business license is required.

VII. General Provisions.

- a. 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.

- b. 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.
- c. 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.
- d. 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.
- e. 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.
- f. 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.
- g. 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.

VIII. Exhibits

Attachment 1- Business Confidentiality Request Form

Exhibit "A"- Site Images and Map Overview

Exhibit "B"- Content of Proposal and Evaluation Criteria and Basis for Award

Exhibit "C" - Professional Services Agreement – Commissioned Artwork

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"

Site Images and Map Overview









Creekside Bike Park
Write a description for your map.

Legend
Creekside Bike Park
Creekside Park

Creekside Bike Park

Creekside Park

Google Earth
Satellite

70 ft



Exhibit "B"

**Request for Proposals
Artistic Shade Structure
at Creekside Bike Park**

**Section IV. Content of Proposal and
Evaluation Criteria and Basis for Award**

A. Initially, a review of each proposal will be conducted by Special Events, Engineering, and additional departments to ensure compliance with the terms conditions, and requirements of the RFP. Any proposals that fail to meet all the Minimum Qualifications listed in Section IV of the RFP may be deemed non-responsive. Each selection committee member shall use the evaluation criteria and percentage weights 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 proposals.

1. General and Specialized Experience – (40%)
 - a. Respondent's ability, capacity, and skill to perform or provide the required services, listed in Section IV of the RFP.
 - b. Respondent's demonstrated ability with respect to quality, availability, and adaptability of the supplies and contractual services.
 - c. Respondent's organizational and financial history.
2. Past Performance and Experience of Proposed Personnel - (30%)
 - a. Respondent's references and examples of past projects.
 - b. Respondent can achieve the timeline as noted in the RFP.
 - c. Respondent's Process and method to complete the project.
3. Plan of Operation/Performance - (30%)
 - a. Quality of Respondent's operation/performance plan.

Respondent's plan to contribute to City's defined goals of the project.

B. INTERVIEW

The City reserves the right to conduct interviews with the highest-ranked Respondent(s). Interview requirements will be provided to those Respondent(s) selected for further consideration. Respondents are reminded that the selection committee shall look at the reasonableness of all aspects of the proposal and shall, in the selection committee's sole judgment, choose the Respondent with the best overall proposal.

Exhibit "C"
Professional Services Agreement – Commissioned Artwork

PROFESSIONAL SERVICES AGREEMENT – COMMISSIONED ARTWORK

This Professional Services Agreement – Commissioned Artwork (“**Agreement**”) is between PARK CITY MUNICIPAL CORPORATION, a Utah municipal corporation (“**PCMC**”), and [insert NAME OF SERVICE PROVIDER or INDIVIDUAL ARTIST], a [if applicable, 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 create a unique and original work of art, as further defined in **Schedule A** (the “**Work**”). PCMC wants to purchase all rights to the Work and Service Provider is agreeable to the purchase.

The parties therefore agree as follows:

ARTICLE 1 – SCOPE OF SERVICES.

- A. Scope of Services. Service Provider shall timely 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 Stephanie Valdez 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. Service Provider shall deliver the completed Work to PCMC by [insert date in format MM/DD/YYYY]. 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.

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 **\$60,000.00**.
- B. Additional work. 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.

- C. Invoicing and Payment. Payment for services provided hereunder shall be made as follows: 50% of the total fee shall be paid upon execution of this Agreement and the remaining 50% of the total fee upon delivery and final acceptance of the Work by PCMC.
- D. Bill of Sale. Upon receipt of payment, Service Provider shall deliver a **Bill of Sale** to PCMC for the Work in the form attached as Exhibit 1. Upon execution, the **Bill of Sale** shall be attached as Exhibit 1 to this Agreement.

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. 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 \$2,000,000 per occurrence and \$4,000,000 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. 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.
- D. 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.
- E. Insured Parties. Each policy and all renewals or replacements, except those policies for 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.
- F. 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.
- G. 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.

- H. 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.
- I. 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.
- J. No representation. In specifying minimum Service Providers 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 – TREATMENT OF ASSETS.

- A. Ownership. All rights and title to the Work, including without limitation, the original Work and any reproductions or derivative works, shall pass to PCMC upon the payment of compensation due under this Agreement. Service Provider hereby irrevocably assigns, conveys, and otherwise transfers to PCMC, and its respective successors and assigns, title to the Work and all proprietary rights thereto.
- B. Display. PCMC shall have the right to display the Work at a location and time as determined by PCMC in its sole discretion, or relocate or remove the Work from display for any reason.
- C. Duplication of Work.
 - (i) Service Provider hereby irrevocably assigns, conveys, and otherwise transfers to PCMC and its respective successors and assigns title to the Work and all proprietary rights thereto. Service Provider waives any and all claims that might arise from any application of the Visual Artist's Rights Amendments to the Copyright Law of the United

States, 15 U.S.C. § 106A (“VARA”). The rights provided herein are in lieu of any rights the Service Provider may have under VARA.

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

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

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

- F. Warranty. If, within one (1) year after acceptance of the Work by PCMC, the Work or any component or material thereof is found to be defective or to fail to conform to the Scope of Work, Service Provider shall correct it promptly after receipt of a written request from PCMC. This obligation shall survive acceptance of the Work under this Agreement and termination of this Agreement. Nothing contained in this paragraph shall be construed to establish a period of limitation with respect to any other obligation which Service Provider might have under this Agreement.

ARTICLE 10 – 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 11 – 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 12 – 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. If, at the time of termination, the Work has not been delivered, any rights in the Work shall revert to the Service Provider, and no further compensation shall be due to Service Provider.

- 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 13 – 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 14 – REPRESENTATIONS AND WARRANTIES.

Service Provider represents and warrants to PCMC that:

- A. Materials and Workmanship. The materials and equipment furnished under this Agreement will be of good quality and new unless otherwise required or permitted by **Schedule A** attached hereto, the project will be free from defects and faults in material and workmanship and the project will conform to the requirements of **Schedule A**.
- B. Intellectual Property. Neither the Work, its components, or any other element of the Work infringe or violate any copyright or other intellectual property right.
- C. Title. Title to the Work, including all incorporated materials and components, will pass to PCMC upon receipt of final payment by Service Provider free and clear of all liens, claims, security interests or encumbrances.
- D. No Finders Fees. All negotiations relative to this Agreement and the transactions contemplated by and under this Agreement have been carried on without the intervention of any person whose act or acts would give rise to any valid claim against PCMC for a finder's fee, brokerage commission, or other like payment.
- E. Licensing. Service Provider and if applicable any subcontractors shall possess and maintain in good standing throughout the term of this Agreement all licensing/certification necessary to perform all services provided for in this Agreement, including but not limited to applicable contractors, architectural, and engineering licenses/certification.
- F. Original Creation. Service Provider represents and warrants that: (a) the Work is the original creation of the Service Provider; (b) the Work is unique and an edition of one; and (c) no identical, substantially similar, or derivative Work will be created by the Service Provider, except as permitted by this Agreement.

ARTICLE 15 – RISK OF LOSS.

The Service Provider shall bear all risk of loss or damage to the Work prior to PCMC's acceptance of the Work. The risk of loss or damage to the Work shall pass to PCMC upon PCMC's acceptance of Work. If prior to PCMC's acceptance of the Work any part thereof is lost, damaged, or destroyed, and such loss, damage, or destruction is not caused by PCMC or PCMC's agent, the Service Provider shall be responsible to reconstruct or remake such Work without any additional compensation from PCMC.

ARTICLE 16 - RIGHT TO INSPECT WORK IN PROGRESS.

- A. Service Provider shall provide PCMC access to the Work during performance of the Scope of Services wherever located. If PCMC considers it necessary or advisable for the implementation of the intent of this Agreement, PCMC will have authority to inspect the Work and to require special inspection or testing of the Work or its components to ascertain whether it is in accordance with the Scope of Services attached as **Schedule A**. If such inspection reveals a failure of the Service Provider to comply with the requirements set forth in the Scope of Services, Service Provider shall bear all costs of the correction of the defective Work.
- B. Service Provider agrees to accommodate reasonable requests by PCMC for access to the Work during performance of the Scope of Services for the purpose of promoting the Work, provided that such access does not interfere with the progress and timing of Service Provider's Work.

ARTICLE 17 – 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

TO BE INSERTED BY SERVICE PROVIDER

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.

EXHIBIT 1 – BILL OF SALE

BILL OF SALE

THIS BILL OF SALE is made as of the ____ day of _____, 20__, by [insert NAME OF SERVICE PROVIDER or INDIVIDUAL ARTIST], a [if applicable, insert state of incorporation or formation] [insert “corporation,” “limited liability company,” or other entity type] with a principal address of [insert address] (“Seller”), in favor of PARK CITY MUNICIPAL CORPORATION, a Utah municipal corporation, (“Purchaser”). The words “Seller” and “Purchaser” shall include their respective successors and assigns where the context requires or permits.

Seller, for and in consideration of the sum of \$[insert numeric dollar amount] paid upon delivery of this Bill of Sale, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby sells, assigns, transfers, and delivers to Purchaser all of Seller’s right, title, and interest in and to the Work as set forth in the Professional Services Agreement – Commissioned Artwork, dated _____ between Seller and Purchaser (“Agreement”).

This Bill of Sale is issued in conjunction with and shall be attached as Exhibit 1 to the Agreement.

EXECUTED as of the day and year first above written.

SELLER

BY: _____
[insert name and title of signer if applicable]