

**Master Festival License and City Services Agreement  
Between  
Park City Municipal Corporation  
And  
The Kimball Art Center**

**Master Festival License and City Services Agreement**

## Agreement

In consideration of the recitals listed above, which are incorporated herein, and of the terms and mutual covenants set forth below, and for other good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, the parties agree as follows:

### **Master Festival License and City Services Agreement**

THIS MASTER FESTIVAL LICENSE AND CITY SERVICES AGREEMENT ("**Agreement**") is entered into as of JUNE 11<sup>TH</sup>, 2007, between PARK CITY MUNICIPAL CORPORATION, a political subdivision of the state of Utah ("**Park City**"), and THE KIMBALL ART CENTER, a Utah non-profit corporation ("**Kimball**"). Park City and Kimball are sometimes referred to herein individually as a "**Party**," and collectively as "**Parties**."

### Recitals

**A.** WHEREAS, Kimball has staged the Park City Arts Festival ("**Festival**") in Park City under the regulation and authority of annual Master Festival Licenses issued by Park City.

**B.** WHEREAS, Park City and the Kimball wish to enter into a long term contract maintaining Park City's Main Street as the venue for the Festival to maximize planning efficiencies, pool resources, and improve Festival management to ensure the continued success of the Festival with minimal adverse impacts and maximum cultural benefits to the residents of Park City.

**C.** WHEREAS, the Kimball desires to use certain facilities owned or controlled by Park City and to obtain certain services from Park City and others as appropriate in connection with the Festival, all under the terms hereinafter provided.

**D.** WHEREAS, Park City is authorized by Section 10-7-85 of the Utah Code Annotated to provide for and appropriate funds and services for the support of the arts for the purpose of enriching the lives of its residents. In recognition of the significant past and future artistic and economic contributions which the Kimball and the Festival make to the communities in Park City in particular and Summit County in general, Park City deems it to be in the best interests of the Park City community to enter into this Agreement.

**E.** WHEREAS, pursuant to Section 10-8-2(1)(a)(v) of the Utah Code Annotated and after public hearing, the City Council authorizes the provision of certain City services/facilities herein to the Kimball, a non-profit entity, regardless of the consideration Park City receives in return.

**F.** WHEREAS, pursuant to Sections 10-8-2 and 10-8-84 of the Utah Code Annotated, the City Council hereby finds that the provision of City funds, property and services is consistent with the Park City General Plan, particularly the Community Economic Element, and provides for the safety, health, prosperity, moral well-being, peace, order, comfort, or convenience of the inhabitants of the City.

**G.** WHEREAS, notwithstanding Recital E, Park City retained the firm Wikstrom Economic & Planning Consultants, Inc. to review the direct economic benefits of the Festival to Park City, and the Summary of Revenue Impacts to Park City and Summit County dated September 2003 is incorporated herein by reference. The City Council finds that the Kimball's annual direct economic impact to Park City equals or exceeds each annual fair market value of Park City's contribution herein. The City Council also finds that numerous additional indirect and intangible benefits of the Festival create additional overall positive economic, artistic and quality of life impacts on Park City, its residents and its visitors. The City Council therefore finds Park City receives a greater net value than the City's appropriations over the life of the contract.

**H.** WHEREAS, the Park City Chamber and Visitor's Bureau and the Historic Main Street Business Alliance worked together to provide benefits to support the Festival and the Relocation.

### **Agreement**

In consideration of the recitals listed above, which are incorporated herein, and of the terms and mutual covenants set forth below, and for other good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, the Parties agree as follows:

#### **A. PRINCIPLES AND RESPONSIBILITIES.**

##### **1. General Principles.**

**1.1 Mutual Cooperation and Flexibility.** Park City and Kimball mutually acknowledge and agree to proceed through all stages of planning and operations for the Use Areas outlined in this Agreement and each Festival in the spirit of mutual cooperation and flexibility, recognizing that circumstances may change between the date of execution of this Agreement and the commencement of the annual Festivals. Park City and Kimball agree that the purpose for cooperation and flexibility is the successful operation of the Festival. Both Parties understand that plans may change each year.

**1.2 Supplemental Plans.** This Agreement outlines the terms for the respective duties and obligations of Park City and Kimball with respect to the Use Areas and the other items covered by this Agreement. The parties agree that implementation of the specific terms outlined in this Agreement will require the development of supplemental

implementation and operational plans (referred to herein as the "Supplemental Plans") with respect to those functions of the Use Areas, that may change with each annual Festival. The Supplemental Plans and any modifications are incorporated herein and are a material part of this agreement. The Supplemental Plans for the 2007 Festival will be prepared in anticipation of the 2007 Festival. Supplemental Plans for the future Festivals will be substantively similar to follow Supplemental Plans for the 2007 Festival unless changes will promote the efficient and successful operation of the Festival. In the event the Parties fail to agree on changes to the 2007 Supplemental Plan, as amended pursuant to this Agreement, the Parties will act pursuant to the terms of the Supplemental Plan then in effect. Any substantive changes, as determined by City Staff, shall require an amendment to this agreement and City Council approval.

**1.3 Kimball General Responsibilities.** In addition to the responsibilities of Kimball set forth in the balance of this Agreement, Kimball is responsible for the timely submission of all annual plans related to the Festival, and producing and providing all official information related to the Festival.

**1.4 Park City General Responsibilities.** In addition to the responsibilities of Park City set forth in the balance of this Agreement, Park City is responsible for producing and providing to Kimball or its designee all official Park City information relevant to the Festival and the Use Areas, including internal staff communication, and promoting positive support for Park City's involvement in the Festival and the opportunities provided thereby. Park City shall determine its calendar of municipal activities as affected by the Festival, and emphasize realistic public expectations for Park City during the Use Periods. Park City will use its best efforts to prevent any other activity from interfering with the Festival and this agreement.

## **B. LEASE OF USE AREAS DURING USE PERIODS.**

**2. Term.** Kimball Art Center hereby agrees to hold the 2007 through 2011 Festivals on Main Street in Park City. Accordingly, this Agreement shall be effective from May 6/11, 2007 thru November 1, 2011. The Agreement shall automatically renew for an additional five year term unless either party provides the other with written notice of its intent not to renew by September 15, 2011.

**2.1 Dates of Festival.** The dates of the festival shall be the first Friday, Saturday and Sunday of August. Park City and Kimball acknowledge a common interest in extending the Festival to a third full day. The Parties agree to work together to meet with and work to address concerns from Main Street merchants to facilitate the discussion to extend the Festival to a third full day. All final plans to extend to the third day would be reviewed as a substantial change by the City Council as outlined in this agreement under Section 1.2.

**3. Grant of Lease.** Park City hereby grants to Kimball and its designees and assigns, and Kimball hereby accepts, the right and lease for the occupancy and use of the

Use Areas, including all facilities, buildings and spaces during the Use Periods and for the purposes further described on Exhibit "A", along with the use of the equipment, fixtures and furnishings, all available utilities services and related incidental rights in such Use Areas, all upon the terms, and subject to the conditions set forth in this Agreement. The relationship between Park City and Kimball with respect to the lease of the Use Areas is that of landlord and tenant, and may be further defined by the Lease Agreement. However, in the event the Lease Agreement is inconsistent with any term of this Agreement or any Exhibit to this Agreement, this Agreement shall control.

**4. Exclusive or Shared Use.** The Use Areas include areas where Kimball has Exclusive Use and areas where Kimball has Shared Use, as indicated on Exhibit "A".

**4.1 Access Prior to Use Periods.** Unless otherwise set forth herein, Park City and Kimball shall cooperate to arrange times that Kimball and its designees may have non-exclusive access to the Use Areas prior to the Use Periods for the purpose of inspections, planning, preparations, testing and design work, surveys, examinations, and other activities that are necessary for Use Area planning and preparatory functions and advance preparations for and (if necessary) advance construction of certain Temporary Improvements such as installation of cables, conduits, curb cuts, signage and substructure; provided that such access shall not materially interfere with ordinary and customary Park City operations and that such advance construction shall be consistent with the requirements outlined herein.

**4.2 Lawful Use.** During the applicable Use Periods, Kimball will not use, operate or maintain the Use Areas improperly, carelessly, in violation of any applicable law or in any manner contrary to that contemplated by this Agreement.

**4.3 Permitted Uses.** Kimball may (but shall not be obligated to) use the Use Areas and may authorize or license others to use the Use Areas at any time during the applicable Use Periods, for the purposes indicated on Exhibit "A"; for the moving in and out, and the construction, erection and staging of decorations, temporary facilities and installations and other Temporary Improvements, security equipment and systems, lighting, sound systems, television and other broadcast equipment, video display, fencing and other equipment; for the sale of food, beverages, novelties, souvenirs and other merchandise to persons attending the Festival and other visitors to the Use Areas; for advertising, marketing and promotion; and for any other purpose related to the Festival.

**4.4 Rights to License.** Kimball shall, during any applicable Use Periods of Exclusive Use, have the express, sole and exclusive right: (a) to sell (or give away) or license the right to sell (or give away) any food, beverage, novelty, souvenir, advertising, promotion, merchandise or other goods and services to any Person in or on the Use Area; and (b) to control and distribute credentials, passes, tickets and other rights of access to the Use Area, consistent with Kimball's security plans for the Use Area. Notwithstanding any license, sublicense, or sublease of its rights hereunder, Kimball shall not be released from its obligations hereunder.

**4.5 Restoration.** Kimball shall return the Use Areas to Park City at the conclusion of their respective Use Periods in clean, orderly condition and in good repair and working order, taking into consideration reasonable wear and tear. Prior to the end of the Use Periods, Kimball shall, at its sole cost and expense, remove all Temporary Improvements and modifications located in or on the Use Areas, unless otherwise agreed. Park City may impose a reasonable security deposit for any Use Area upon Kimball or its licensee(s).

## **5. Permits and Licenses.**

**5.1 Permits and Licenses.** Park City shall deliver to Kimball all facilities owned by Park City in the Use Areas with the requisite permits and licenses in place as necessary for Kimball to operate such facilities for the Festival's uses. Kimball shall remain responsible for any building or other permits necessary for its temporary improvements.

**5.2 Master Festival License.** Upon execution of this Agreement, Park City shall issue to Kimball a Master Festival License that covers all activities of Kimball described in this Agreement that may require such a license. The Master Festival License shall include a Kimball corporate Park City business license. Annual Supplemental Plans will be necessary to obtain building permits, temporary beer and liquor licenses, sign plan approval and all other required permits, approvals, variances, etc. that may be encompassed by the Master Festival License for each Festival.

**5.3 Permits and Licenses Issued by Other Governmental Authorities.** Kimball shall have sole responsibility for obtaining and paying for any and all certificates, permits, licenses and approvals that are required to be obtained from governmental authorities other than Park City for the operations of the Use Areas that are unique to the Festival's use of the Use Areas during the Use Periods. Park City shall support and cooperate with Kimball in obtaining any necessary permits for the activities associated with the operations of the Use Areas during the Use Periods. To the extent that a Use Area is partly within Park City and partly within the boundaries of another jurisdiction (such as Wasatch or Summit Counties), Park City shall use best efforts to agree with such other jurisdictions that they shall delegate to Park City the sole authority to issue necessary permits for such Use Areas.

**5.4 Governmental Ordinances.** Park City shall support and cooperate with Kimball in obtaining exceptions or permits as necessary concerning any local, city, county or state ordinances, rules, laws and regulations to assist Kimball in hosting and staging the operations of the Festival and related activities in Park City.

## **C. PARK CITY FACILITIES AND SERVICES.**

### **6. City Services.**

**6.1 Basic City Services.** At no additional cost to Kimball Art Center, Park City will provide the following City Services for each day of the Festival:

- (a) The Kimball shall be entitled to a credit of 67 hours per day of the Festival for specific Festival police as determined by the Police Chief's use for traffic mitigation;
- (b) 73 hours per day of the Festival of enhanced transportation on Park City's existing routes;
- (c) Additional trash can placement along Main Street;
- (d) Pressure washing of the street and sidewalk post-event;
- (e) Installation of Street Banners on the City's light standards for the Festival;
- (f) Enhanced Main Street restroom cleaning; and
- (g) Two (2) electronic signs for the duration of the Festival.

Kimball may, in consultation with Park City, request adjustments in the priorities or timing or intensity of maintenance and other City Services to be provided by Park City to promote the efficiency and success of the Festival. If such adjustments require Park City to provide services which exceed the level or type of City Services in the aggregate that Park City is committed to provide without additional consideration, then such services shall be considered Additional City Services to be paid for by Kimball under Section 6.2.

**6.2 Additional City Services and Work Order Process.** Kimball may request services from Park City in addition to Basic City Services under this Agreement, either due to quantity, frequency or type of service requested (collectively, "Additional City Services"). If the request is approved by the City Manager (or Council if required) Kimball will be charged the actual cost of Additional City Services incurred by Park City without any charge for profit, employee benefits, nondestructive use of equipment, depreciation, overhead or wear and tear on any equipment.

## **7. City Representative.**

**7.1 Festival Representative.** Prior to and during the Use Periods, Park City shall designate at least one full-time employee to serve as its "City Representative" for the Festival, who shall be the operational liaison between Park City and Kimball and who shall be authorized by Park City to (a) ensure that the Use Areas are operated and maintained as set forth in this Agreement, (b) ensure that, at Kimball's request, access to and lock-down (if applicable) of the Use Areas is provided to Kimball upon commencement of the Use Periods, (c) serve as Park City's representative for the services of any Park City personnel provided pursuant to this Agreement, and (d) give or obtain any necessary consents, approvals or authorizations on behalf of Park City in relation to annual Supplemental Plans. The City Representative shall generally be the Special Event Coordinator for the City or designee as appointed by the City Manager, unless otherwise approved in advance by Kimball, which approval shall not be unreasonably withheld or delayed.

**7.2 Management Representative.** Park City shall also designate at least one Manager who shall be authorized to speak on behalf of the City Manager and City Council, and to act for the City Representative if the City Representative is not available. The City Management Representative shall be designated by the City Manager. The costs of providing the City Representative and the Management Representative to provide services under this Agreement shall be borne solely by Park City.

**7.3 Management Meetings.** The City Representatives and Kimball Manager shall meet no later than April 1 annually to review Festival operation, Supplemental Plans and terms of this Agreement. Any changes to this Agreement or Supplemental Plans shall be approved prior to September 1 annually, unless based upon the facts and circumstance, approval by September 1 is not practical and then the changes shall be approved as soon as possible.

**8. Use Area Technology Systems.** During the Use Periods, Park City shall make available at no additional charge to Kimball, for Kimball's non-exclusive use, all technology systems and service, used by Park City in connection with the Use Areas, including, without limitation, traffic control systems, telephone and communication lines, service and equipment, cabling, conduit, construction easements and rights of way, plywood backboards, data networks and data ports, and cable television connections, service and facilities, to the extent possible without disrupting or delaying other Park City functions and so long as such availability can not violate any franchise agreement with the provider. Kimball shall have the right to install additional technology equipment in the Use Areas to supplement the existing technology systems, and can not create conflicts or disruptions in the operation of existing Park City systems.

**9. Parking and Transportation.**

**9.1 Transportation Plans.** Park City, with coordination from Kimball, shall develop and implement plans for traffic control and parking around and through Park City. The City, at its sole discretion, shall set the rate and duration for the City's parking lots and garages surrounding Main Street. Future shuttle lot plans shall discuss use of the shuttle parking lot at Richardson's Flats once it is constructed. Park City shall modify and as necessary expand the public City Transit service to meet the increased public demand during the Festival consistent with the purposes of the Agreement and the needs of the public, including patrons of the Festival.

**9.2 Cooperation in Main Street and Heber Avenue Closing.** Park City and Kimball both agree to support and cooperate with one another if both parties agree to close Main Street and/or Heber Avenue for pedestrian use only during some portion or all of the Festival per the approval of City Council.

**9.3 Cooperation in Planning and Use of the Downtown Plaza.** Park City and Kimball both agree to support and cooperate with one another if both parties



agree to use all or a portion of the proposed Downtown Plaza, once constructed, during some portion or all of the Festival.

**D. KIMBALL SERVICES.**

**10. Kimball Annual Obligations.** As consideration for the City support herein, Kimball agrees to the following:

**10.1 Locals Event.** The Kimball shall manage the Free Friday Locals Event as a locals' event. If at such time the City and the Kimball mutually agree to extend the Festival to three full days, the Kimball shall coordinate and administer a benefit to locals either through reduced cost in tickets for a set amount of attendees or another agreed upon method. A local shall be defined as someone residing within the Park City School District.

**10.2 Marketing.** Kimball agrees to make every effort in coordinating marketing with the Park City Chamber of Commerce to maximize funds such as those provided by the Utah Office of Tourism.

**10.3 Cooperation with Chamber Bureau and Business Associations.** Kimball and Park City shall use best reasonable efforts to coordinate with the Park City Chamber Bureau, and other business associations as the City staff may from time to time suggest, to solicit business support and minimize adverse impacts on the community.

**E. FINANCIAL.**

**11. Service Contract.** Subject to annual budget appropriation, Park City hereby agrees to make the following annual contribution to Kimball towards the costs of the Festival for the term of this contract:

- (a) \$10,000 cash for Free Friday Locals Event.
- (b) \$5,000 cash for Enhanced Perimeter Security
- (c) \$8,000 value in kind contribution of Additional City Services

**11.1** Park City agrees that this Agreement and all Park City's obligations and contributions shall be included in the City Manager's Recommended Budget delivered to the Park City Council on the first scheduled meeting in May and must be approved by the Park City Council no later than June 30 of each year. If, for any reason, Park City cannot provide the minimum transportation services in Section 9.1 and Kimball incurs increased costs to provide such transportation services to its venues previously provided by Park City, then Park City shall increase the annual contribution to Kimball to cover such increased transportation costs. If Park City fails to budget this Agreement and its

obligations and contributions by the above dates, then this agreement may be terminated with 90 days' notice by Kimball without recourse or further claims by Park City.

**11.2** Kimball agrees to keep accurate books and records of expenditures related to its operation. The City or its independent auditor reserves the right to conduct its own audit of books and records at reasonable times and places during ordinary business hours. If the contributions have not been used as agreed herein, the City shall be entitled to a full or partial refund of the amount.

**12. Chamber.** The Agreement attached as Exhibit B is incorporated herein as additional consideration for the term of this Agreement. Failure of any promise or condition on such Agreements shall not result in any liability to the City. However, Kimball may terminate this Agreement without recourse or further claims by Park City if the agreement attached as Exhibit B is breached. Kimball shall give written notice to Park City of the breach and thirty (30) days to cure said breach, unless a longer period is agreed as reasonable by both parties.

**13. HMBA.** The Agreement attached as Exhibit C is incorporated herein as additional consideration for the term of this Agreement. Failure of any promise or condition on such Agreements shall not result in any liability to the City. However, Kimball may terminate this Agreement without recourse or further claims by Park City if the agreement attached as Exhibit C is breached. Kimball shall give written notice to Park City of the breach and thirty (30) days to cure said breach, unless a longer period is agreed as reasonable by both parties.

## **F. INSURANCE AND RISK MANAGEMENT.**

### **14. Indemnifications.**

**14.1 Kimball's Indemnity.** Kimball shall indemnify and hold the City and its agents, employees, and officers, harmless from and shall process and defend at its own expense any and all claims, demands, suits, at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, brought against the City arising out of, in connection with, or incident to the execution of this Agreement and/or use of the Use Areas; provided, however, that if such claims are caused by or result from the concurrent negligence of the City, its agents, employees, and officers, this indemnity provision shall be valid and enforceable only to the extent of the negligence of Kimball; and provided further, that nothing herein shall require Kimball to hold harmless or defend the City, its agents, employees and/or officers from any claims arising from the sole negligence of the City, its agents, employees, and/or officers. This limited waiver has been mutually negotiated by the parties, and is expressly made effective only for the purposes of this Agreement. The provisions of this section shall survive the expiration or termination of this Agreement.

**14.2 Waiver of Claims Against Park City.** Kimball and Park City shall not make any claim against each other or their officers, employees and agents with respect to any liability incurred by Kimball or Park City to any third person on account of bodily or personal injury or damage to or loss of property arising out of this Agreement or the Festival, except as provided in Section 13.1.

**15. Insurance.** Nothing herein shall waive any defense or limitation of the Utah Government Immunity Act.

**15.1 Insurance.** Kimball shall procure and maintain at its own expense throughout the Exclusive Use Periods the following insurance:

- (a) Workers' compensation insurance for Kimball employees, including statutorily required limits and other requirements of law.
- (b) All employee benefit programs and coverages required under ERISA, unemployment insurance and any other insurance required by state or federal laws.

**15.2 Kimball Liability Insurance.** Prior to commencement of any activity in Park City under this Agreement, Kimball shall procure and thereafter maintain during the entire period of such activity one or more policies of insurance providing all of the following coverages, whether by separate policies or by endorsement. The City's Risk Management/City Attorney's Office shall review and specify insurance requirements annually with the Supplemental Plans, however, minimum insurance shall be:

- (a) Commercial general liability policy, with combined single limits of Three Million dollars (\$3,000,000.00) per occurrence and in aggregate. ;
- (b) Liquor Liability Coverage Part on the commercial general liability policy. Kimball shall require any hired security company to provide a policy of liability insurance.
- (c) aircraft liability insurance, if Kimball leases or uses aircraft in connection with its activities under this Agreement.
- (d) Automobile Liability insurance with limits no less than five hundred thousand dollars (\$500,000) combined single limit per accident for bodily injury and property damage.

**15.3 Additional Requirements.** The insurance provided by Kimball pursuant to Section 14.2:

- (a) shall be written on an occurrence basis, and with respect to any coverage provided on a claims-made basis, shall be supplemented by a two (2) year tail policy for the limits applicable to the policy periods covered by such tail policy, which are approved by Park City, such approval not to be unreasonably withheld or delayed;

- (b) shall provide that Park City be named as additional insured with respect to liability arising out of or in connection with Kimball's activities under this Agreement, including those claims, set-offs, losses, damages, liabilities, fines and expenses that arise out of or in connection with the acts or omissions of Park City incident to Kimball's above-referenced activities, but not including the willful misconduct of Park City or its respective officers, employees or agents;
- (c) shall provide if reasonably possible that with respect to any covered claim arising under this Agreement, such insurance shall be primary coverage without reduction or right of set-off or contribution on account of any insurance provided by Park City for itself or for its officers or employees; and
- (d) shall provide if reasonably possible that such insurance shall not be altered or canceled without thirty (30) days' prior written notice to Park City.

**15.4 Park City Liability Insurance.** Park City may provide such insurance as it may elect to provide covering itself, its officers, employees and agents with respect to any occurrence on Park City Property. Kimball shall not be a named insured or otherwise be entitled to any benefit under such policies. Nothing herein shall waive any defense or limitation of the Utah Government Immunity Act.

## **G. MISCELLANEOUS.**

**16. License for Use of Kimball Marks.** Kimball will negotiate in good faith with Park City an agreement granting to Park City a license, without fee, on a case-by-case basis to use Kimball's emblem(s) and other trademarks for any non-commercial, governmental purpose, press release, and in internal Park City communications/reports. Such license shall be subject to Kimball's terms and conditions, including restrictions prohibiting any commercial use of such marks.

**17. License of Park City of Utah Logo, Name and Marks.** Park City hereby grants Kimball a non-exclusive license to use any Park City-related symbols, emblems, marks, logos, trademarks, service marks, or pictures, paintings or likeness of the City, including without limitation the use of the (i) the name "Park City", and any variations thereof, (ii) the names of any officials of Park City, and (iii) the name and likeness of any buildings or grounds owned by Park City, in every case solely for the purposes of (a) broadcasting the Festival, (b) providing map and wayfinding information, and (c) advertising or promoting the Festival.

**18. Photography and Broadcast Rights.** Kimball shall have the exclusive right to arrange, conduct or permit commercial and noncommercial photography, filming, videotaping, television and radio transmission, and similar activities in and above the Use Areas during the Use Periods. Kimball shall have the non-exclusive right to record, to broadcast, and to permit media coverage of Kimball's activities in Park City generally.

**19. Sponsorships.** Kimball shall have the exclusive right to sell sponsorships and supplierships of and other rights of affiliation with the Festival and events staged or conducted by Kimball in the Use Areas. Sponsors are required to obtain Park City Business Licenses and Conditional Use Permits when necessary to operate within the City limits.

**20. Representations and Warranties.**

**20.1 Representations and Warranties of Kimball.** Kimball hereby represents and warrants that (a) Kimball is a non-profit corporation duly organized, validly existing and in good standing under the laws of the State of Utah, (b) Kimball has all necessary power and authority to enter into this Agreement and to perform its obligations hereunder, (c) the execution of this Agreement by Kimball and the performance by Kimball of its obligations hereunder have been duly authorized by all necessary corporate action, (d) this Agreement has been duly executed and delivered by Kimball and is a valid and binding obligation of Kimball.

**20.2 Representations and Warranties of Park City.** Park City hereby represents and warrants to Kimball that (a) Park City validly exists, and is in good standing under the laws of the State of Utah, (b) Park City has all necessary power and authority to enter into this Agreement and to perform its obligations hereunder, (c) the execution of this Agreement by Park City and the performance by Park City of its obligations hereunder have been duly authorized by all necessary action, including all reviews and approvals required by the City Council of Park City.

**21. Unforeseen Circumstances.** Either party may terminate or suspend its obligations under this Agreement if such obligations are rendered impossible of performance by any of the following events to the extent such event is beyond the reasonable control of the party whose performance is prevented: Fire, flood, riot, earthquake, civil commotion, insurrection, Act of God, war or any law or supervening illegality. In any such event, such party shall not be liable to the other for delay or failure to perform its obligations.

**22. Dispute Resolution.** The parties agree that any dispute arising in connection with the interpretation of this Agreement or the formulation or implementation of any of the Supplemental Plans or the performance of any party under this Agreement or otherwise relating to this Agreement shall be treated in accordance with the procedures set forth in this Section, prior to the resort by any party to arbitration or litigation in connection with such dispute. The dispute must first be referred for resolution to Park City's City Representative and Kimball's Manager or other person designated by Kimball as exercising authority over the Use Areas. If such persons are unable to resolve the dispute, it shall then be referred for resolution to Park City's Manager Representative and Kimball's Managing Director. Either party may invoke such procedures by presenting to the other party a "Notice of Request for Resolution of Dispute" (a "Dispute Resolution Notice") identifying the issues in dispute sought to be addressed hereunder. A telephone

conference of such officers shall be held within three (3) days, or if an emergency meeting is requested, within eight (8) hours, after delivery of the Dispute Resolution Notice. In the event that such officers are unable to resolve the dispute, then upon delivery of a further Dispute Resolution Notice, either party may require that the matter be referred for resolution to the City Manager of Park City and the Managing Director of the Festival. A telephone conference of the City Manager of Park City and the Managing Director shall be held within (2) two days, or if an emergency meeting is requested, within eight (8) hours, after delivery of the further Dispute Resolution Notice. If the City Manager of Park City and the Managing Director are unable to resolve the dispute, then the parties shall engage in nonbinding mediation with a mutually acceptable mediator to resolve the issue within three (3) days of the delivery of a further Dispute Resolution Notice. The costs of such mediation shall be shared equally by both parties. In the event that the parties are unable to agree on a mediator, then each party shall select one (1) mediator and the two mediators shall select a third mediator. Each party shall bear the cost of the mediator chosen by that party and the parties shall share the costs of the third mediator. If the dispute involves the formulation or implementation of any of the Supplemental Plans contemplated under this Agreement, the parties agree that the persons outlined above who are authorized to attempt to resolve disputes shall consider the minimum requirements for each of the Supplemental Plans outlined in this Agreement along with reasonable supplementation of such minimum requirements in order to meet the purposes outlined in this Agreement.

**23. Specific Performance.** Each of the parties hereto expressly acknowledges that it may suffer irreparable injury and damage if the other party breaches its covenants or fails to comply with the provisions set forth in this Agreement for which money damages will not provide an adequate remedy. Therefore, the parties each agree that if a party breaches any provision set forth herein, the other party shall be entitled, in addition to such other remedies and damages as may be available to it, to an injunction requiring specific performance of such provision or restraining the other party from acting in violation of such provision, as the case may be, to the fullest extent permitted by law. Notwithstanding anything to the contrary herein, during the Use Periods, either party can seek specific performance of the provisions of this Agreement without first seeking mediation.

**24. Other Miscellaneous Terms.**

**24.1 Governing Law.** This Agreement shall be construed in accordance with, and governed by the substantive laws of, the State of Utah, without reference to principles governing choice or conflicts of laws.

**24.2 Severability.** If any provisions or portions thereof of this Agreement shall to any extent be held to be invalid or unenforceable, the remainder of this Agreement or the application of such provisions or portions thereof shall not be affected thereby and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by the law, so long as the intent of the parties can be maintained.

**24.3 Assignment and Delegation.** Neither party may assign nor in any manner transfer the benefits of this Agreement or delegate its obligations under this Agreement without the prior written consent of the other party. Subject to the foregoing limitation, this Agreement shall be binding upon and inure to the benefit of the parties and their respective legal representatives, successors, agents, heirs and assigns.

**24.4 Waiver.** No action taken by either party shall be deemed to constitute a waiver of compliance by such party with any representation, warranty or covenant contained in this Agreement. Any waiver by either party of a breach of any provision of this Agreement will not operate or be construed as a waiver by such party of any subsequent breach.

**24.5 Headings.** The article and section headings herein are for convenience and reference only, and in no way define or limit the scope and content of this Agreement or in any way affect its provisions.

**24.6 Consent.** Unless otherwise specifically noted herein, the consent of any party to any action may be made in such party's sole discretion. All consents or approvals hereunder shall be given without delay by either party.

**24.7 Entire Agreement.** This Agreement, together with any attached Exhibits, constitutes the entire agreement between the parties hereto with respect to the subject matter contained herein, and there are no covenants, terms or conditions, express or implied, other than set forth or referred to herein. This Agreement supersedes all prior agreements between the parties relating to all or part of the subject matter herein.

**24.8 No Third Party Beneficiaries.** This Agreement is intended for the sole benefit of Park City and Kimball and there are no third party beneficiaries to this Agreement.

**24.9 Notice.** Unless otherwise specified herein, all Notices, requests, consents and demands required to be in writing, including any Dispute Resolution Notice (collectively referred to herein as a "Notice" or "Notices") shall be given to or made upon the parties at their respective addresses set forth below, or at such other address as a party may designate in writing delivered to the other parties. Unless otherwise agreed in this Agreement, all Notices, requests, consents and demands shall be given or made by personal delivery, by confirmed air courier, by facsimile transmission ("fax") (with a copy sent the same day by first-class mail), by electronic mail ("e-mail") (with a copy sent the same day by first-class mail) or by certified first-class mail, return receipt requested, postage prepaid, to the party or parties addressed as aforesaid. If sent by confirmed air courier, such Notice shall be deemed to be given upon the earlier to occur of the date upon which it is actually received by the addressee or the business day upon which delivery is made at such address as confirmed by the air courier (or if the date of such confirmed delivery is not a business day, the next succeeding business day). If mailed, such Notice

shall be deemed to be given upon the earlier to occur of the date upon which it is actually received by the addressee or the second business day following the date upon which it is deposited in a first-class postage-prepaid envelope in the United States mail addressed as aforesaid. If given by fax, such Notice shall be deemed to be given upon the date it is actually received by the addressee.

**If to Park City:**

City Manager  
Park City Municipal Corporation  
P.O. Box 1480  
445 Marsac Avenue  
Park City, Utah 84060-1480  
Tel 435-615-5025  
Fax 435-615-4901

**With copies to:**

City Attorney  
Park City Municipal Corporation  
P.O. Box 1480  
445 Marsac Avenue  
Park City, Utah 84060-1480

**If to Kimball:**

Pam Crowe-Weisberg  
Kimball Art Center  
638 Park Avenue  
Park City, UT 84060

**24.10 Reserved Police Power.** The City expressly reserves, and Kimball expressly recognizes, the City's right and duty to adopt, from time to time, in addition to provisions herein contained, such ordinances and rules and regulations as the City may deem necessary in the exercise of its police power for the protection of the health, safety and welfare of its citizens and their properties.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written above.

PARK CITY MUNICIPAL CORPORATION

KIMBALL ART CENTER

  
\_\_\_\_\_  
Tom Bakaly, City Manager


  
\_\_\_\_\_  
Pam Crowe-Weisberg, Executive Director





EXHIBIT "A" TO  
MASTER FESTIVAL LICENSE AND CITY SERVICES AGREEMENT

**USE AREAS**

Use Area	Address	Use Period *	Intended Use	Type of Use	Basic City Services	Access Control	Traffic Control
Miners Hospital – First Floor and all associated furnishings, fixtures and equipment and parking spaces in the adjacent parking lot	1354 Park Avenue	7/23/2007 – 8/4/2007	Parking Pass Distribution	Parking – Nonexclusive; All Other - Exclusive	Park City shall provide Cleaning and Waste Removal	Kimball	None
Main Street (9 <sup>th</sup> Street to King Road)	Main Street	8/3/2007 – 8/5/2007	Festival Venue	Pedestrian and Vendor	Enhanced restroom cleaning and placement of additional trash cans	Kimball	Kimball and Park City
Heber Avenue	Heber Avenue	8/2/07 – 8/5/07	Staging of display cars and Festival Venue	Pedestrian and Vendor	None	Kimball	Kimball and Park City
Brew Pub Parking Lot	Swede Alley	8/1/07 - 8/5/07	Festival Venue	Operations and Venue	None	Kimball	Kimball
Flag Pole Parking Lot	Swede Alley	8/2/07 - 8/5/07	Festival Venue	Parking	None	Kimball	Kimball
China Bridge Parking Structure	Swede Alley	8/3/07 - 8/5/07	Artist parking	Parking	None	Kimball & PCMC	Kimball & PCMC
Historic Wall Parking Lot	Swede Alley	7/31/07 - 8/6/07	Festival Operations	Operations	None	Kimball	Kimball

EXHIBIT "B" TO  
MASTER FESTIVAL LICENSE AND CITY SERVICES AGREEMENT

**Chamber Agreement**

The Park City Chamber of Commerce/Convention and Visitors Bureau Board of Directors hereby agrees to provide to the Kimball the following as adopted by formal motion on ???, so long as the MASTER FESTIVAL LICENSE AND CITY SERVICES AGREEMENT is in effect:

1. Allocation of Chamber grant money earmarked for a free local event/program
2. Allocation of Chamber grant money towards marketing of the festival for both in-state and out-of-state marketing
3. The Kimball will coordinate with the Chamber prior to submission of matching grant applications for marketing the festival to overnight destination visitors."
4. The Kimball will coordinate with the Chamber on maximizing the use of matching fund grants to complement or supplement the Chamber's existing summer marketing campaigns targeting overnight destination visitors

Signed: \_\_\_\_\_

By: \_\_\_\_\_

CHAMBER SET TO APPROVE 6/26/07  
TO BE ADDED @ THIS TIME

EXHIBIT "C" TO  
MASTER FESTIVAL LICENSE AND CITY SERVICES AGREEMENT

**HMBA Agreement**

The HMBA agrees to underwrite the sale of \$3,000 of Arts Festival raffle tickets for the 2007 Arts Festival with the understanding that the Friday's opening will remain free to "the locals" and that some reasonable amount of parking remains open for visitors during the day on Friday on Swede Alley and in China Bridge.

Signed: \_\_\_\_\_

*K Davis*

By: \_\_\_\_\_

*Ken Davis Pres HMBA*