



Park City Municipal Corporation

**REQUEST FOR STATEMENT OF QUALIFICATIONS
FOR GENERAL CONTRACTORS FOR
THE 9TH AND 10TH STREET STAIRS AND WATER IMPROVEMENT
PROJECT
PARK CITY, UTAH**

NOTICE
REQUEST FOR STATEMENT OF QUALIFICATIONS

The 9th and 10th Street Stairs and Water Improvement Project

SUBMISSION DEADLINE: Statement of Qualifications (SOQ) submittals must be received via email to Matthew Twombly, Senior Project Manager at mtwombly@parkcity.org by **4:00 p.m. Tuesday, January 10, 2022**. Proposals must be less than 7 Megs to be received by email. Do not submit proposals in U3P.

PROJECT NAME: The 9th and 10th Street Stairs and Water Improvement Project

REQUEST FOR STATEMENT OF QUALIFICATIONS (RSOQ) AVAILABLE: December 15, 2022.

PROJECT LOCATION: Park City, Utah

PROJECT DESCRIPTION (brief): Wood, concrete, and metal stairs, concrete sidewalk, concrete curb and gutter, ADA ramps, painted crosswalks, water infrastructure replacement, new water service and improvements in the 9th St. intersection of Park Avenue, and within 4 blocks of the unbuilt 9th and 10th St. rights of way.

PROJECT DEADLINE: October 15, 2023

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

CONTACT: *Matthew Twombly*
mtwombly@parkcity.org

**All questions shall be submitted in writing in the Utah
Procurement Place (U3P) by 4:00 p.m. on Thursday, January
5, 2023.**

Park City reserves the right to reject any or all proposals received for any reason. Furthermore, the City shall have the right to waive any informality or technicality in SOQs received when in the best interest of the City.

I. Introduction

Park City Municipal Corporation (PCMC) is soliciting SOQs from general contractors for the replacement and construction of water lines and the construction of stairs in the 9th and 10th Street undeveloped rights of way in Park City, Utah. This RSOQ is part of a multi-stage procurement process to determine which contractors are qualified to bid on a later-issued Invitation to Bidders procurement process.

II. Scope of the Project

The replacement and upgrades to the water utilities (including pipe, valves, service lines, meter vaults, etc.), ADA ramps, concrete sidewalk and crosswalks, and the construction of concrete, wood and metal stairways and handrails within the Park Avenue and 9th Street intersection, and in the undeveloped rights of way in 9th and 10th Streets, between Park Avenue and Lowell Avenue in Old Town Park City.

The work briefly entails the installation of ~375 LF of 8" PVC C-900 Pipe, one residential water service, gate valves, and other water connections and improvements in the undeveloped and developed streets and rights of way. The work also consists of the construction of ~360 LF of wood and metal stairways with a wood and metal handrail system, and concrete footings. There is also ~350 LF of concrete sidewalk, landings and stairs with metal handrails and other earthwork, grading, reseeding and cleanup.

The work shall be in accordance with the plans and specifications prepared by the engineers (Alliance Engineering), in conformance with the 2018 International Building Code (IBC), in conformance with the American Public Works Association (APWA) Standard Specifications and Plans, and the Park City 2021 Supplemental Standards and Specifications.

III. Funding

The funding for the project will be from the City's Capital Improvement Program (CIP) funds. The stairs, ramps and crosswalks will be funded from the Old Town Stairs CIP and the water improvements from the Water CIP. There are no federal funds or requirements for the funding of the project.

IV. Statement of Qualifications and Submission Requirements

The Statement of Qualifications should address the contractor's ability to provide the services required for the scope of work. The following submission requirements shall be the minimum mandatory requirements, the evaluation criteria and scoring threshold used to qualify bidders for the subsequent Invitation to Bidders on the project.

A. Experience and Work History (20%)

Provide a brief description of your firm's historical background, its focus, the scope and nature of its services.

B. Project Team and Subcontractors (30%)

PCMC is looking for a team of contractor and subcontractors who are qualified to perform both the stair construction and the water improvements construction under one construction contract for the entire project.

Submit a list of work to be self-performed and supervisory personnel proposed for the project. For each person listed on the chart, provide the percentage of time the person is expected to work on this project, and their most recent experience. Also provide a list of proposed first-tier subcontractors, and the portion of work they are expected to perform on the project. Material and equipment suppliers are not included as part of this RSOQ.

C. Relevant Experience (25%)

Provide detailed relevant experience of similar projects. List five (5) references for recent projects of similar scope and nature for water projects and building projects, which shall include the following: Completion date; name of client; contact person; current phone; brief description of service performed or project; original and final contract amount and any other pertinent information regarding experience.

Experience for water improvement projects and stair construction or similar building projects will be considered. Provide your experience for municipal, county, special district, state, or federal government projects. Experience and demonstrated success in construction in Park City for similar projects as well as existing relationships with municipal building authorities will be considered, particularly if completed within the past 5 years.

D. Safety (10%)

Indicate your current workers compensation experience modification rates for the previous three (3) years. Briefly describe your firm's safety philosophy and program.

E. Financial Stability (15%)

Provide a letter from your bonding company stating that you will be able to provide payment and performance bonds for a project budgeted at or above Two Million Dollars (\$2,000,000.00).

F. Submittals.

One (1) copy of the SOQ submittal, which shall be limited to no more than ten (10) pages, will be submitted via email to mtwombly@parkcity.org by the submittal deadline. SOQ's must be less than 7Megs to be received at this email address. Persons submitting SOQ's should verify delivery of their submission.

H. Form of Contract.

The form of contract will be the sample Construction Agreement attached hereto as **Exhibit A** and incorporated herein.

I. Questions.

Any questions concerning this submission shall be submitted in writing to the Utah Procurement Place (U3P) by 4:00 p.m. on Thursday, January 5, 2023.

V. Submission and Selection Timeline

The following schedule includes the procurement timeline beginning with the RSOQ issuance, through the anticipated date of City Council award of the construction contract after the Invitation to Bidders stage of the multi-stage procurement process.

RSOQ available	December 15, 2022
Questions Must be Received via U3P	January 5, 2023, at 4:00 pm
SOQ Submission Deadline	By 4:00 pm on Tuesday, January 10, 2023
Committee review SOQ	January 11 - 12, 2023
Notification to Prequalified Firms	January 13, 2023
Step 2	
Invitation to Prequalified Bidders	January 16 - 25, 2023
Anticipated Bid Opening	January 25, 2023
Anticipated Date of Council Approval of Contract	February 16, 2023
Project Completion	October 15, 2023

- SOQ submittals must be received via email to Matthew Twombly, Senior Project Manager at mtwombly@parkcity.org by 4:00 p.m. January 10, 2023.
- SOQ's must be less than 7 Megs to be received by email.
- A selection committee comprised of City staff from Engineering and the Public Utilities Departments, and a representative from Alliance Engineering will review all submitted RSOQs.
- SOQs shall be good for a period of ninety (90) days.
- After formal bids are received by prequalified contractors it is anticipated that City Council will vote on the contract approval on February 16, 2023.

- Park City reserves the right to change any dates or deadlines.

VI. Qualification and Selection

- A. This Request For Statement Of Qualifications (RSOQ) has been advertised and is open to all licensed, qualified general contractors. A committee of staff from the Public Utilities and Engineering Departments and a representative from Alliance Engineering will review the SOQs to determine which contractors and their subcontractors meet the qualifications to be pre-qualified to bid on the project as step two of the multiple stage procurement process.
- B. Disqualification of contractors submitting SOQ's: The selection committee, upon investigation, may disqualify a contractor based upon the selection criteria of Section IV above.
- C. The nature and extent of requested changes to our standard contract (i.e., unwillingness to comply with our insurance/indemnity provision) counts against a bidder.
- D. In Step Two (2) of the multi-stage procurement process, the prequalified firms will then be asked to submit bids on the project as required by State Code and Park City Municipal Corporation's Procurement Policy. The contract award will be to the lowest responsive and responsible bidder; however, the award of the contract will be subject to the approval of the Park City Council.
- E. Bids from Pre-qualified Bidders are scheduled to be opened in January of 2023. The contractor will be required to comply with the milestone dates to be determined. Actual damages will occur to the owner if these dates are not met.
- F. Park City reserves the right to:
 - 1. Disqualify incomplete SOQs.
 - 2. Waive minor defects in the SOQs submitted.
 - 3. Request additional information from respondents.
 - 4. Change the nature or scope of the project without penalty.
 - 5. Negotiate terms with one or more of the prequalified firms.
 - 6. Reject any or all SOQs for any reason, without penalty.
 - 7. Take any steps deemed necessary to act in the City's best interest.

VII. Construction Phase

After the award and execution of the Construction Agreement the contractor will be required to submit a project schedule and construction mitigation plan for the project.

A. Project Schedule.

Time is of the essence for the construction of this project. This project must be constructed while maintaining public utility operations, vehicular and pedestrian traffic, and safety of the public. The project is located in a residential area and will need to be responsive to the terms of a Building permit, construction mitigation plan, and Work in the Right of Way permit, outlined in the next section.

B. Construction Mitigation Plan/Work in the Right of Way Permit.

After award of the construction contract by the City Council and prior to Building Permit issuance for the Stairs portion of the project, a detailed construction mitigation plan will be required that must respond to the following restrictions: Hours of operation shall be from 7:00 a.m. to 7:00 p.m. Monday through Saturday. This will include startup of heavy equipment, delivery of materials and other potentially high noise level activities. The lay down and staging areas will be limited to the undeveloped rights of way. Attempts to minimize disturbance adjacent to residential units must be observed. Onsite parking will be extremely limited. Emergency and complaint contact information will need to be posted on site.

C. A Work in the Right of Way permit will also be required for both the water system improvements and stair construction. Partial Road Closure permits will also be required for any work restricting vehicular or pedestrian traffic in the paved rights of ways.

D. Project Manager.

Matt Twombly, Senior Project Manager, Park City Municipal Corporation Engineering Department, will represent the owner of the project. Griffin Lloyd, and Isaac Kirshner will represent the Public Utilities Department.

VIII. Park City Municipal Standard Construction Agreement

The successful bidder will be required to enter into Park City's standard Construction Agreement, in its current form, with the City. A draft of the Agreement is attached to this RSOQ as **Exhibit A** and incorporated herein.

ANY INQUIRIES RELATED TO INDEMNIFICATION OR INSURANCE PROVISIONS CONTAINED IN PARK CITY MUNICIPAL CORPORATION'S STANDARD AGREEMENT MUST BE SUBMITTED TO PARK CITY MUNICIPAL CORPORATION NO LATER THAN THE SOQ/SUBMITTAL DEADLINE. PARK CITY MAY, IN ITS SOLE DISCRETION, CONSIDER SUCH INQUIRIES. ANY CHANGES TO PARK'S CITY'S STANDARD INSURANCE AND INDEMNIFICATION PROVISIONS SHALL BE APPROVED IN PARK CITY'S SOLE DISCRETION.

All submittals shall be public records in accordance with government records regulations ("GRAMA") unless otherwise designated by the applicant pursuant to UCA § 63G-2-309, as amended.

IX. Information to be submitted

- To be considered, electronic copies of the SOQ must be received via email to Matthew Twombly, Senior Project Manager at mtwombly@parkcity.org by 4:00 p.m. January 10, 2023. SOQ's must be less than 7 Megs to be received by email.

X. Preparation of SOQs

- A. Failure to Read. Failure to Read the Request for SOQ and these instructions will be at the offeror's own risk.
- B. Cost of Developing SOQs. All costs related to the preparation of the SOQs and any related activities are the sole responsibility of the offeror. The City assumes no liability for any costs incurred by offerors throughout the entire selection process.

XI. Statement of Qualifications (SOQ) Information

- A. Equal Opportunity. The City will make every effort to ensure that all offerors are treated fairly and equally throughout the entire advertisement, review and selection process. The procedures established herein are designed to give all parties reasonable access to the same basic information.

- B. SOQ Ownership. All SOQs, including attachments, supplementary materials, addenda, etc., shall become the property of the City and will not be returned to the offeror.
- C. Rejection of SOQ. Park City Municipal Corporation reserves the right to cancel or modify the terms of this RSOQ and/or the project at any time and for any reason preceding contract award and reserves the right to accept or reject any or all SOQs submitted pursuant to this request for SOQs. Park City will provide respondents written notice of any cancellation and/or modification. Furthermore, the City shall have the right to waive any informality or technicality in SOQs received when in the best interest of the City.
- D. No SOQ shall be accepted from, or contract awarded to, any person, firm or corporation that is in arrears to the City, upon debt or contract, or that is a defaulter, as surety or otherwise, upon any obligation to the City, or that may be deemed irresponsible or unreliable by the City. Offerors may be required to submit satisfactory evidence that they have the necessary financial resources to perform and complete the work outlined in this RSOQ.
- E. Park City Municipal Corporation's policy is, subject to Federal, State and local procurement laws, to make reasonable attempts to support Park City businesses by purchasing goods and services through local vendors and service providers.
- F. If offeror utilizes third parties for completing the SOQ requirements, list what portion of the SOQ will be completed by third parties and the name, if known, of the third party.

Exhibits:

Exhibit A: Construction Agreement

EXHIBIT A

CONSTRUCTION AGREEMENT

THIS AGREEMENT is made and entered into as of this ____ day of _____, 2022, by and between **PARK CITY MUNICIPAL CORPORATION**, a Utah municipal corporation, P.O. Box 1480, Park City, UT 84060, (hereinafter “City”), and _____, a _____ (Insert state of incorporation) _____ (insert either “corporation” or “limited liability company”), whose post office address is _____, (hereinafter “Contractor”).

PURPOSE: For the project known as the (project name) (hereinafter “Project”), which consists of (brief description of work and address).

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties hereby agree as follows:

SECTION 1. SCOPE OF WORK. Contractor shall furnish all labor, materials and equipment to complete the Project, consisting of the work described in the Information for Bidders as the Basic Bid, and the following additive alternates: _____, as specifically set out in the contract specifications, which is made a part hereof by reference, herein called the “Project.”

The Project will be bound by the specifications referenced herein, according to the Advertisement for Bid, the Information for Bidders, the General Project Requirements and Specifications provided by City, the Bid of the Contractor, Bid Bond, Drawings, Notice of Award and Notice to Proceed, (collectively referred to as the “Contract Documents”), all of which are incorporated herein by reference and on file in the Department. To the extent that this Construction Agreement (hereinafter “Contract” or “Agreement”) conflicts in any way with a proposed form agreement which may have been submitted as part of the bid specifications, this Agreement shall control.

If any of the work performed by Contractor in any phase of the Project does not meet City standards as outlined in the bid documents and specifications, then Contractor shall immediately repair or correct the work at no additional cost to City.

A. SUBCONTRACTORS. No part of this Contract shall be subcontracted by the Contractor without prior written approval by City through the Project Manager/Engineer. The Contractor shall be fully responsible to the City for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by them as it is for the acts and omissions of persons directly employed by it.

If written approval is granted to subcontract a part of this Contract, the Contractor shall require each subcontractor that physically performs services within Utah to submit an affidavit to the

Contractor stating that the subcontractor has used E-Verify, or an equivalent program, to verify the employment status of each new employee.

The Contractor shall, within ten (10) days of submittal of request for final payment, include an affidavit showing satisfactory evidence that all claims of subcontractors, laborers and material men who supplied services or materials to the Project have been fully paid, discharged, or waived. The Contractor shall submit lien waivers for each pay release.

If the City reasonably believes that Contractor has failed to pay Subcontractors, materialmen, or laborers for work on the Project within a reasonable time of when payment is due, then City may, after having notified the Contractor, either pay unpaid bills or withhold from the release of Contractor's payment bond for this Project, a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged and a ten percent (10%) fee for administering such claims.

B. STANDARDS OF WORKMANSHIP. Contractor shall demonstrate workmanship equal to or better than current industry standards for this Project. Where Park City specifications exist, (for example, asphalt, concrete, irrigation, sprinkling system and landscaping), they shall provide the benchmark for determination of acceptability.

C. INSPECTION AND TESTING. All materials and equipment used in the construction shall be subject to inspection by the Project Manager/Engineer. If laws, ordinances, rules or regulations of any public authority having jurisdiction require any work to specifically be inspected, tested, or approved by someone other than Project Manager/Engineer, the Contractor shall give the Project Manager/Engineer timely notice of readiness. Inspections, tests or approvals by the City or appropriate authorities will not relieve the Contractor from obligations to perform the work in accordance with the requirements of the Contract Documents and/or provisions. The Project Manager/Engineer and other designated persons will at all times have access to the work. All work shall ultimately be inspected for final acceptance by the Project Manager/Engineer within a reasonable time upon receipt of notice from the Contractor that work is complete and ready for final inspection.

During construction, the work will be inspected and observed by the Project Manager/Engineer or his designated representative. All work that is deficient or does not meet specifications shall be removed and replaced with proper material at Contractor's expense.

D. WARRANTY. Contractor warrants that all materials and supplies used in the construction of the Project shall be new, except as otherwise agreed to in writing by the City's Representative. All materials, equipment, parts and labor and any necessary corrections to the Project shall be guaranteed for a period of at least one (1) year following the date of substantial completion of the Project under the terms of the performance bond or as provided in the project specifications and construction documents, whichever is longer.

E. ADOPTED CODES. All work shall be completed at a minimum in accordance with all building, electric and energy codes adopted by Park City.

SECTION 2. PERFORMANCE AND PAYMENT BONDS. Contractor shall furnish to the City payment and performance bonds satisfactory to the City guaranteeing Contractor's payment and performance, in the amount, for each separately, of one hundred percent (100%) of the Contract amount.

SECTION 3. INSURANCE. Unless otherwise specified in the bid documents, the Contractor shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, their agents, representatives, employees, or subcontractors.

The Contractor shall provide Park City Municipal Corporation a Certificate of Insurance evidencing:

A. General Liability insurance written on an occurrence basis with limits no less than Two Million Dollars (\$2,000,000) combined single limit per occurrence and Three Million Dollars (\$3,000,000) aggregate for personal injury, bodily injury and property damage. Coverage shall include but not be limited to blanket contractual; products/completed operations; explosion, collapse and underground (XCU) if specifically requested; and employer's practices.

The Contractor shall increase the limits of such insurance to at least the amount of the Limitation of Judgments described in Section 63G-7-604 of the Governmental Immunity Act of Utah, as calculated by the state risk manager every two years and stated in Utah Admin. Code R37-4-3.

B. Automobile Liability insurance with a combined single limit of not less than Two Million Dollars (\$2,000,000) each accident for bodily injury, death of any person, 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 and Employers Liability coverage with Workers Compensation limits complying with statutory requirements, and Employer's Liability Insurance limits of at least One Million Dollars (\$1,000,000) each accident, One Million Dollars (\$1,000,000) for bodily injury by accident, and One Million Dollars (\$1,000,000) each employee for injury by disease.

The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of Park City Municipal Corporation for all work performed by the Contractor, its employees, agents and subcontractors.

D. Builder's Risk Insurance (Course of Construction) (at City's discretion)

Before starting the Work, Contractor shall obtain and maintain in force, at its own expense, Builder's Risk (Course of Construction) insurance utilizing an "All Risk" (Special Perils) coverage form, with limits equal to the completed value of the project and no coinsurance penalty provisions. Such coverage shall name Park City Municipal Corporation as an additional insured.

- E.** The general liability and auto liability insurance policies are to contain, or be endorsed to contain, the following provisions:

Park City Municipal Corporation, its officers, officials, employees, and volunteers are to be covered as additional insureds on the commercial general liability policy with respect to liability arising out of work or operations and completed operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations and automobiles owned, leased, hired, or borrowed by or on behalf of the Contractor.

- F.** Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions. The City reserves the right to request certified copies of any required policies.

- G.** The Contractor's insurance shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

- H.** For any claims related to this Construction Agreement, the Contractor's insurance coverage shall be primary insurance coverage with respect to Park City Municipal Corporation, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by Park City Municipal Corporation, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

SECTION 4. CONTRACT AMOUNT, ACCEPTANCE OF WHOLE, ADDITIONS. City shall pay Contractor a total sum not to exceed **(insert amount in words) (\$ numerically)** ("Contract Amount") for all work and materials expended to complete this Project, which shall include the cost of all bonds, insurance, and all charges, fees, permits (including water and sewer fees, unless waived), expenses or assessments of whatever kind or character that are or may be necessary to complete this Project, including any additive alternates listed within the scope of work described in Section 1.

SECTION 5. PERMITS AND FEES. As set out in Section 4 above, the Contract Amount includes the price of all normally applicable fees and permits. The City may, at its discretion, arrange for the waiver of certain fees, permits and expenses.

SECTION 6. TERMS OF PAYMENT. The City shall pay for services provided hereunder according to and in an aggregate amount not to exceed the Contract Amount or as detailed in an attached payment

schedule (if attached, will be **Attachment A**) and only upon Contractor's request on forms approved by and submitted to the Project Manager. The City shall make payment within thirty (30) days thereafter. Requests for a more rapid payment may be considered if a discount is offered for early payment. At no time shall the aggregate amount of money paid to the Contractor in proportion to the Contract Amount be greater than the proportion of the work performed at that point to the total Project work. No payment shall be made for any service rendered by the Contractor except for services set forth and identified in this Agreement. The City reserves the right to withhold payment in whole or part from the Contractor for non-compliance with the provisions of the Contract Documents.

A. RETAINAGE. The City may, in its sole discretion (1) retain five percent (5%) of the value of all work done and materials or equipment supplied as part security for the fulfillment of the Agreement by the Contractor; or (2) retain the final payment of up to five percent (5%) of the total Project amount. As work nears completion and solely at the City's discretion, the City may reduce the retainage to an amount more in line with the work remaining. The City reserves the right to retain all amounts previously withheld or due, including any liquidated damages, until all services specified herein are complete. Any money withheld pursuant to this section shall be placed in an interest bearing account and the interest shall also be payable to the Contractor upon final payment.

Before final payment is made, the Contractor must submit evidence satisfactory to the City that all payrolls, material bills, subcontracts and all outstanding indebtedness in connection with the Project have been paid for.

The City may withhold a reasonable amount of the payment bond sufficient to cover any outstanding indebtedness or monies owed or claimed by any person who supplied work or materials to the Project plus ten percent (10%) of such indebtedness as the City's cost of administering such claims until Contractor supplies a release satisfactory to the City, signed by all persons who have supplied labor or materials to the Project or, at the City's option if no claim is made, until one hundred five (105) days after the date on which any person performed the last of the labor or supplied the last of the material for the Project and upon written request from the Contractor.

The Contractor shall supply to the Project Manager/Engineer within a reasonable time after his/her request a signed statement verifying all the suppliers, subcontractors, and other persons who have supplied labor or materials to the Project.

B. FINAL PAYMENT. Acceptance by the Contractor of the final payment from the City shall release the City of all claims, demands and liability of the Contractor, its officers, agents, employees and subcontractors, whether communicated or not by the Contractor, except with respect to those matters referred to in writing delivered to the Contractor and approved in a signed writing by the Project Manager.

SECTION 7. COMPLETION TIME. The work on this Project shall commence within ten (10) days of receipt of the Notice to Proceed and shall be completed by **October 15, 2023**. Work stoppage due to

inclement weather conditions and other factors must be approved in writing by the Project Manager. Inclement weather shall not otherwise constitute cause for delay. Unless otherwise agreed by the City by change order, no damages shall become due to Contractor for City caused delay. A change order for delay will generally be accepted for delay so excessive and unreasonable that it is beyond the scope of the Contract or delay attributed to direct, active or willful interference by the City. The change order must be based upon actual damages sustained by the Contractor which are directly attributed to the delay.

In the event that Contractor fails to complete all of the work required herein within the time limit set out above, then for each partial or complete day during which the work remains uncompleted thereafter, the Contractor agrees to pay the City **One Hundred Dollars (\$100.00)**, _____ (**Contractor Initials**) which the parties believe, due to the difficulty of actually assessing the damages the City will suffer in the event of such a delay, is a fair estimate of the loss the City will suffer. The parties agree that the daily liquidated damages provided for herein is reasonable and fair, and is not a penalty. **TIME IS OF THE ESSENCE IN THIS AGREEMENT.**

SECTION 8. ADDITIONAL WORK/CHANGE ORDERS. The City may enlarge or reduce the work to be performed by Contractor hereunder by written notification to Contractor, including changes to the plans and specifications. The City shall pay Contractor for any additional work so requested, and shall reduce the payment to the Contractor for any reduction in labor, materials, overhead and profit margin resulting from the reduction in the work. Except as the City shall so notify the Contractor in writing, it is understood and agreed by the parties hereto that no money will be paid to the Contractor for any new or additional labor or materials furnished unless a written modification is agreed to in a document signed by both parties.

The value of any work covered by a change order or of any claim for increase or decrease in the Contract price shall be determined by one (1) or more of the following methods in order of precedence listed below:

- A. An agreed lump sum; or in the event the parties cannot agree; then
- B. The unit rate for the work bid by the Contractor, if applicable, or in the event there was no such rate bid; then
- C. The actual cost for: (1) labor; (2) materials; (3) supplies; (4) equipment; (5) direct overhead (not to exceed 5% of the sum total of items 1-4, unless approved by the City); and (6) other services necessary and approved by the City to complete the work. In the event of a net increase in the Contract Amount for a change order as a whole, the City shall allow a payment to the Contractor of an additional ten percent (10%) of the actual cost of the work, not including direct overhead or bond costs, to cover the cost of general overhead and profit. The Contractor may also charge the City for actual cost of the net increase in bond costs as a result of the overall change to the Contract Amount. The City specifically reserves the right to request documentation, including, but not limited to, payroll stubs, bond bills, and invoices, to validate the Contractor's calculations.

SECTION 9. DISPUTES. Except as otherwise provided in this Agreement, any disputes concerning a question of fact arising under this Agreement which are not disposed of by agreement shall be decided by the City. The decision of the City shall be final and conclusive unless, within thirty (30) days from the date of receipt of such decision, the Contractor shall mail or otherwise furnish the City a written signed appeal addressed to the

Project Manager/Engineer. In connection with any appeal proceeding under this clause, the Contractor will be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Contractor will proceed diligently with the performance of the Contract and in accordance with the City's decision. The decision of the City shall be final and conclusive, but shall not be arbitrary or unreasonable. Although this Contract has been drafted by the City, the Contractor expressly agrees that any ambiguity herein shall be resolved in favor of the City.

SECTION 10. DEFAULT, REMEDY AND TERMINATION. The City may terminate this Agreement upon the occurrence of one or more of the following events:

- A. If Contractor or any subcontractor should substantially violate any of the provisions of this Agreement;
- B. If Contractor substantially fails to perform any part of this Agreement;
- C. If Contractor repeatedly fails or becomes unable to perform the services under this Agreement as required herein, or substantially fails to provide services under this Agreement for a period of seventy two (72) hours;
- D. If Contractor (1) shall become insolvent in a bankruptcy case; (2) shall be generally not paying its debts as they become due, or within a reasonable time thereafter; (3) shall suffer, voluntarily or involuntarily, the entry of an order by any court or governmental authority authorizing the appointment of or appointing of a custodian (as that term is defined in 11 U.S.C. §101(11)), receiver, trustee, or other officer with similar powers with respect to it or any portion of its property which remains undismissed for a period of ninety (90) days; (4) shall suffer, voluntarily or involuntarily, with or without judicial or governmental authorization, any such custodian, receiver, trustee, or other officer with similar powers to take possession of any part of its property which third party remains in possession for an excess of ninety (90) days; (5) shall suffer, voluntarily or involuntarily, the filing of a petition respecting an assignment for the benefit of creditors which is not dismissed for a period of ninety (90) days; (6) shall be dissolved; (7) shall become the subject of any proceeding, suit, or action at law or in equity under or relating to any bankruptcy, reorganization or arrangement of debt, insolvency, readjustment of debt, receivership, liquidation, or dissolution law or statute or amendments thereto to be commenced by or against it or against any of its property which remains undismissed for a period of ninety (90) days; (8) shall voluntarily suspend substantially all of its business operations; (9) shall be merged with, acquired by, or otherwise absorbed by any individual, corporation, or other business entity or organization of any kind except for any individual corporation or other business entity or organization which is controlled by, controlling, or under common control with the Contractor; or (10) shall take action for the purpose of any of the foregoing.

After serving ten (10) days written notice on the Contractor and its surety of its intention to terminate the services of Contractor, and if within ten (10) days after serving such notice, the violation is not corrected to City's reasonable satisfaction, the City then may take over the work and prosecute it to completion by contract or by any other method it may deem advisable at the expense of the Contractor. The Contractor and the bonding company shall be liable to the City for any reasonable cost occasioned by the City in excess of the amount agreed to for the service herein.

The Contractor shall be entitled to a hearing before a City hearing officer upon the issue of termination if it submits a written request therefore within seven (7) days of the service of the notice of the City's intent to terminate. The Contractor shall be entitled to be heard at such hearing on the issue of termination. The Contractor shall not bring an action against the City, its officers, agents or employees arising out of or relating to the termination of this Agreement before the decision is issued by the City's hearing officer(s).

Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver of any provision of this Agreement shall not be construed to be modification of the terms of this Agreement, unless stated to be such in writing, signed by the City's authorized representative.

The Contractor shall continue the performance of this Agreement to the extent not terminated under the provisions of this section.

The rights and remedies of the City provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

SECTION 11. HOLD HARMLESS INDEMNIFICATION. The Contractor clearly and unequivocally agrees to indemnify and to 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 the Contractor's performance or failure to perform any aspect of this Agreement; 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 the Contractor or others; and provided further, that nothing herein shall require the Contractor 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. The Contractor expressly agrees that the indemnification provided herein constitutes the contractor's waiver of immunity under Utah Code Section 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 the City by reason of entering into this Agreement except as expressly provided herein.

SECTION 12. CONTROLLING LAW AND ATTORNEY FEES AND COSTS. These general conditions shall be construed in accordance with and enforced under the laws of the State of Utah. Any action of law, suit in equity, or judicial proceeding for the enforcement of the Agreement, or any

provisions thereof, shall be instituted and maintained only in any of the courts of competent jurisdiction in Summit County, Utah. If any legal proceeding is brought for the enforcement of this Agreement, or because of a dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the prevailing party shall be entitled to recover from the other party, in addition to any other relief to which such party may be entitled, reasonable attorney's fees and other costs incurred in connection with that action or proceeding.

SECTION 13. ASSIGNMENT. The Contractor shall not assign nor transfer any interest in this Agreement without the prior written consent of the City, provided however, that claims for compensation due or to become due the Contractor from the City under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Written notice of any such assignment shall be promptly furnished to City.

SECTION 14. SAFETY AND TRAFFIC CONTROL. Contractor shall take all reasonable precautions to protect the safety of pedestrians, school children, motorists, and others who may use or come near to the Project site, including, but not limited to, compliance with the Manual of Uniform Traffic Control Devices.

SECTION 15. SAFETY AND PROTECTION OF THE WORK. Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Project work. Contractor shall provide reasonable protection to prevent damage, injury or loss to employees on the Project work and all other persons who may be affected thereby, materials and equipment, whether on or off the site, and other property at the work site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction. In addition, the Contractor shall give all notices and comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the safety of persons or property or their protection from damage, injury or loss.

The Contractor shall erect and maintain, as required by the existing conditions and progress of the work, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, setting safety regulations, and notifying owners and user of adjacent utilities.

The Contractor shall promptly remedy all damage or loss to any property referred to in this section caused in whole or in part by the Contractor, any subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable and for which the Contractor is responsible, except for acts or omissions by the City or anyone directly or indirectly employed by it, or by anyone for whose acts it may be liable, and not attributable to the fault or negligence of the Contractor. Contractor shall remove from the site all cuttings, debris, equipment and unused material.

SECTION 16. UNENFORCEABLE CONTRACT, WAIVERS. In the event that any provision of this Agreement shall be ruled invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any provision, term, or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same provision by the other party.

SECTION 17. ENTIRE AGREEMENT. This Agreement represents the entire integrated agreement between City and Contractor and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written modification signed by both parties.

SECTION 18. COMMENCEMENT OF WORK. Contractor will commence work as required by the specifications within ten (10) calendar days after receiving the Notice To Proceed.

SECTION 19. UTILITIES. The right is reserved to the owners of public utilities and franchises to enter upon the street or work site for the purpose of making repairs or changes of their property that may become necessary by the work. The City shall also have the privilege of entering upon the street or work site for the purpose of repairing culverts, storm drains, water system repairs or adjustments, and any and all other necessary City work.

The Contractor takes the whole risk, responsibility and expense with respect to the location of utilities, and in working with utility owners about locating, moving, repairing, and modifying utilities. All utility locations shown on the plans and specifications are approximate and are marked on the plans, if at all, only for convenience. The City makes no representation about the location of any such utilities, and Contractor is encouraged to contact utility companies and owners about the location of all utilities that may be impacted by or impact the Project work.

SECTION 20. HOURS AND DAYS OF WORK. All work performed by the Contractor, its subcontractors, materialmen, agents and employees shall be performed during work hours of 7:00 a.m. to 9:00 p.m. Monday through Saturday unless otherwise specified in a Conditional Use Permit or Construction Mitigation Plan. In individual Construction Mitigation Plans, the Building Official may further reduce the hours or days of work for special events or as other circumstances may reasonably warrant. When work is prohibited, no exterior construction, excavation or delivery of supplies and concrete are allowed. Interior work, however, may be allowed Monday through Sunday, with no limitation on hours for the following types of construction:

- A. Interior work on individual single-family home construction or addition projects not involving materials or supply deliveries.
- B. Construction of decks, patios, landscape walls less than four feet (4') in height, and fences on individual single-family lots.
- C. Non-mechanized exterior painting on individual single-family residences.
- D. Non-mechanized landscaping on individual single-family residences.
- E. Survey work not involving grading or use of power equipment to cut vegetation.

Extended Hours Special Permit. The Building Official may authorize extended hours for construction operations or procedures which, by their nature, require continuous operation, or

modify or waive the hours of work on projects in generally isolated areas where the extended hours do not impact upon adjoining property occupants. In such cases, the Building Official shall issue a special permit identifying the extended hours. Contractor shall display the special permit on site.

Special Event Regulations. The Building Official and/or Police Chief may, at their discretion, restrict construction activity, including governmental or special improvement agencies, in order to assure the public safety during special events within the City. Special events shall include, but not be limited to, the Art Festival, Film Festival, ski events, and holiday events.

SECTION 21. CONSTRUCTION PLANS. Contractor shall submit a Construction Mitigation Plan to be approved by the City Engineer or his/her designee, for all building permits. The Community Development Department may waive this requirement for minor remodels, additions and interior construction where the impact on adjacent property is minimal. This plan shall be written and shall address, to the satisfaction of the City Engineer or his/her designee:

A. Hours and Days of Operation. The Construction Mitigation Plan shall specify the daily construction start and finish times. Construction activity occurring outside of the times specified in Section 11-14-6 of the Park City Municipal Code may only be allowed by special permit issued by the Building Official or the City Engineer.

B. Parking. The Construction Mitigation Plan shall include a parking plan. Construction vehicle parking may be restricted at construction sites so as to not block reasonable public and safety vehicle access along streets and sidewalks. Construction parking in paid or permit only parking areas require the Public Works Department to review and approve a parking plan. The plan shall also include anticipated temporary parking, e.g., delivery vehicles, and large equipment parking.

C. Deliveries. The Construction Mitigation Plan shall identify proposed delivery locations and routes. Deliveries of construction materials and supplies including concrete may be regulated as to time and routing if such deliveries will cause unreasonable noise, parking, or access issues. In order to reduce the number of delivery trips to construction sites, the stockpiling of materials on or near the site may be required. In the case of multiple construction sites in close proximity, a common materials storage and staging site may be required.

D. Construction Phasing. Due to the narrow streets, small lot configuration, topography, traffic circulation, weather, construction parking and material staging problems, projects in the Historic District and other areas of the City may be required to be phased if more than one project is under construction in close enough proximity to create public safety or nuisance problems. In cases where phasing is deemed necessary by the City Engineer or his/her designee, the first project to receive a building permit shall have priority, however, the Building Official shall have the authority to phase projects as necessary to assure efficient, timely and safe construction.

E. Trash Management and Recycling. Construction sites shall provide adequate storage and a program for trash removal.

F. Control of Dust and Mud on Streets. A program for the control of dust or other airborne debris shall be required. Provision must be made to eliminate the tracking of mud on streets and a program shall be required to remove any such mud daily.

G. Noise. Construction activity shall not exceed the noise standards as specified in Section 6-3-9 of the Park City Municipal Code.

H. Grading and Excavation. Because of the truck hauling involved in grading and excavation, restrictions on trucking routes as well as the hours of operation may be necessary to mitigate the adverse impacts from such operations. Destination and total cubic yards of excavated material shall be noted.

I. Construction Sign Requirements. A sign indicating the name of the party responsible for the Project shall be posted in a location where such sign is readable from the street or driveway to the construction site. The sign shall not exceed twelve (12) square feet in size, six (6') feet in height and shall not exceed a letter type of four inches (4"). Information on the sign shall include, at a minimum:

1. Name, address and phone number of Contractor;
2. Name, address, and phone number of person responsible for the project; and
3. Phone number of party to call in case of emergency.

No additional fee is required for this sign.

SECTION 22. TOILET FACILITIES AND CONTAINERIZED TRASH SERVICE REQUIRED.

A. The Contractor shall obtain and maintain on the site a container of suitable size and design to hold and confine trash, scraps, and other construction related refuse created or accumulated on the site. All such construction refuse shall be maintained in a closed container at all times, until transferred to the landfill. Containers may be placed in setback areas, provided that the placement of the container does not obstruct the view of motorists on adjoining streets and thereby create traffic hazards. Contractor shall not permit accumulated debris, litter, or trash on the construction site to blow or scatter onto adjoining properties, including the public street, or to accumulate on the site outside of the container, or in transit to the landfill or dump. The owner or Contractor shall service the container as frequently as needed to prevent trash from overflowing.

B. The Project site shall have permanent toilets, or an approved temporary toilet facility positioned in a location approved by the Building Department, at the rate of one toilet per fifteen on-site employees (1-15 employees = one toilet, 16-30 employees= two toilets and so on).

SECTION 23. OBEY LAWS.

- A. The Contractor shall obey all laws, ordinances and regulations of the United States, the State of Utah, and Park City in performing this Agreement.
- B. The Contractor shall register and participate in E-Verify, or an equivalent program. The Contractor agrees to verify employment eligibility through E-Verify, or an equivalent program, for each new employee that is employed within Utah, unless exempted by Utah Code § 63G-12-302.

SECTION 24. NONDISCRIMINATION.

Any Contractor that enters into an agreement for goods or services with Park City Municipal Corporation or any of its boards, agencies, or departments shall:

- A. Implement an employment nondiscrimination policy prohibiting discrimination in hiring, discharging, promoting or demoting, matters of compensation, or any other employment-related decision or benefit against a person otherwise qualified, because of actual or perceived race; color; sex; 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; genetic information; or military status.
- B. In the performance of this Agreement, Contractor shall not discriminate on account of actual or perceived race; color; sex; 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; genetic information; or military status.
- C. Incorporate the foregoing provisions in all subcontracts or assignments hereunder and take such actions as may be required to ensure full compliance with the provisions of this policy.

SECTION 25. THIRD PARTY RIGHTS. Nothing herein is intended to confer rights of any kind in any third party. No member, officer, or employee of the City shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

SECTION 26. PROJECT MANAGER/ENGINEER. The Project Manager/Engineer for this Project is Matthew A. Twombly, or such other person designated by the City Engineer or Public Works Director to the Contractor orally or in writing.

SECTION 27. PARTIES' REPRESENTATIVES. For purposes of notice required or desired by the parties or communication involving the services under this Agreement, such notice or communication shall be deemed to have been given when personally delivered or mailed certified mail, postage pre-paid, or sent by facsimile transmission, to the parties at the following addresses:

Contractor: _____, or such other person designated in writing by the Contractor's chief administrative officer, at the Contractor's address set out first above.

Park City: Project Manager/Engineer, at the address set out first above for the City, or when given to such other person as either of the above representatives shall designate in writing. The designation of any address may be changed by notice given in the same manner as provided in this section.

SECTION 28. SEVERABILITY. Should any part of this Agreement for any reason be declared invalid, such decision shall not affect the validity of any remaining provisions, which remaining provisions shall remain in force and effect as if this Agreement had been executed with the invalid portion thereof eliminated, and it is hereby declared the intention of the parties that they would have executed the remaining portion of this Agreement without including any such part, parts, or portions which may, for any reason, be hereafter declared invalid. If any provision of this Agreement is held invalid or unenforceable with respect to particular circumstances, such provision shall nevertheless remain in full force and effect in all other circumstances.

SECTION 29. COUNTERPARTS. This Agreement may be executed in counterparts, each of which will be deemed an original and all of which together will constitute one and the same instrument.

SECTION 30. ELECTRONIC SIGNATURES. Each party agrees that the signatures of the parties included in this Agreement, whether affixed on an original document manually and later electronically transmitted or whether affixed by an electronic signature through an electronic signature system such as DocuSign, are intended to authenticate this writing and to create a legal and enforceable agreement between the parties hereto.

IN WITNESS WHEREOF, the parties have entered into this Agreement on the day and year set out at the top of this Agreement.

PARK CITY MUNICIPAL CORPORATION, a Utah
municipal corporation

Matt Dias, City Manager

ATTEST:

City Recorder's Office

APPROVED AS TO FORM:

City Attorney's Office

INSERT CONTRACTOR NAME

Address:

Address:

City, State, Zip:

Utah Contractor License No.

Tax ID#: _____

Signature

Printed name

Title

THE CITY REQUIRES THE CONTRACTOR TO COMPLETE EITHER THE NOTARY BLOCK OR THE UNSWORN DECLARATION, WHICH ARE BELOW.

STATE OF UTAH)
) ss.

COUNTY OF _____)

On this ____ day of _____, 2022, personally appeared before me _____, whose identity is personally known to me/or proved to me on the basis of satisfactory evidence and who by me duly sworn/affirmed, did say that he/she is the _____ (*title or office*) of _____, a _____ corporation (or limited liability company), by authority of its Bylaws/Resolution of the Board of Directors (if as to a corporation) or Operating Agreement/Member Resolution (if as to a limited liability company), and acknowledged that he/she signed it voluntarily for its stated purpose as _____ (title) for _____, a _____ corporation (or limited liability company).

Notary Public

I declare under criminal penalty under the law of Utah that the foregoing is true and correct. Signed on the ___ day of _____, 2022, at _____ (insert State and County here).

Printed name _____

Signature: _____