



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

REQUEST FOR PROPOSALS (NON-BID) FOR

CHILDCARE FUNDING ADMINISTRATOR

Respondents or their agents are instructed not to contact City employees, agents or contractors of the City, selection committee members, the Mayor’s office or staff, members of the City Council, or attempt to externally manipulate or influence the procurement process in any way, other than through the instructions contained herein, from the date of release of this RFP to the date of execution of the agreement resulting from this solicitation. City, in its sole discretion, may disqualify a Respondent for violation of this provision.

REQUEST FOR PROPOSALS (NON-BID)

PCMC is inviting proposals from qualified persons or firms (Respondent) to provide Childcare Funding Administration.

PROPOSALS DUE: By 5:00 p.m. on Wednesday, September 13, 2023.
Submit proposals electronically *via email to haley.swenson@parkcity.org*.
The proposals will be opened after the submission deadline.

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

RFP AVAILABLE: The RFP will be available on Wednesday, August 30, 2023, on the PCMC website (www.parkcity.org). Any modifications to the RFP or responses to questions submitted will be added as an addendum to the RFP posted on the PCMC Website (www.parkcity.org). It is the responsibility of Respondents to regularly check for addenda.

QUESTIONS: All questions regarding this RFP must be submitted in writing to **Haley Swenson (haley.swenson@parkcity.org) by 5:00 p.m. on Friday, September 8, 2023. Please do not submit the same question multiple times.**

PROJECT LOCATION: Park City, Utah

PROJECT DESCRIPTION: PCMC is looking to enhance affordable and available childcare options in the community. This RFP seeks a single organization to design the program and qualification process based on City Council criteria, promote the program, manage and administer the program and determine whether applicants are qualified for PCMC scholarship funding and Department of Workforce Services (DWS) Childcare Assistance, certify eligible participating childcare providers, and distribute PCMC funding to regulated and registered childcare providers caring for eligible children of parents/guardians who live and/or work in Park City.

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

I. Introduction.

In response to significant public feedback and concerns regarding the limited access to affordable childcare in Park City, which has been further exacerbated by an imminent reduction in Federal funding, the Park City Council took proactive measures. The City Council directed a one-time \$1,000,000 allocation to help alleviate access barriers as part of the FY24 Budget. Before funds are authorized for disbursement, a transparent program with an accountable allocation process and unambiguous eligibility criteria must be established. The program will sunset once the funding is exhausted.

II. Scope of Project.

The City seeks a proficient, bilingual administrator to design, implement, promote, and monitor a childcare provider scholarship program based on the City Council's criteria. Program criteria are found in Attachment 1: **Attachment 1: Childcare Needs-Based Scholarship Program Criteria.**

The main objectives for executing a successful program are:

- **Community Partner** – Act as a liaison between PCMC and the community by managing a childcare scholarship program that is funded by the City and consistent with City Council's established criteria.
- **Promote** –Promote the program bilingually (i.e., radio, newspaper, website, etc.) and encourage participation among eligible childcare providers and households. Provide strategic outreach to connect with the hardest-to-reach populations.
- **Certify** - Verify and confirm that all participating childcare providers are appropriately licensed with the State of Utah and PCMC.
- **Design a Process** – Design an inclusive application process, including an application form with clear and consistent requirements for document submittals. Ensure applications from childcare providers and guardians demonstrate compliance with the eligibility criteria, including income levels and priority based on the highest needs and participation in the DWS Childcare Assistance Program.
- **Evaluate Applications**- Provide a high level of customer service and support to applicants as they complete applications and submit documentation. Review applications, determine eligibility, and calculate scholarship amounts.
- **Department of Workforce Services (DWS) Childcare Assistance** – Support all qualifying applicants in applying for DWS Childcare Assistance.

- **Distribute Funding** – Distribute funds directly to childcare providers. Maintain appropriate records to ensure compliance. Comprehensive documentation will be provided to the City every two months and quarterly basis, or as requested.
- **Funding Reconciliation** – Ensure an adequate amount of ongoing funding is available from PCMC using detailed accounting reconciliation and ongoing projections. The administrator may adjust the AMI limits for eligibility based on trends.
- **Program Evaluation**- Ensure successful program administration and performance and identify how the success of the program will be evaluated.
- **Report to Council** –Report every two months to the Park City Finance Department (i.e., program statistics, funding status, successes, and areas to improve) and every four months to the City Council. Be reasonably available to provide additional information and report as requested. All program statistics will be published online to ensure public accountability.

Funding Distribution to Childcare Providers:

- **Scholarships** – Payments directly credited to a child’s tuition with their childcare provider based upon the guardian’s household AMI and childcare expenses.
- **Infant & Toddler Scholarships** – Payments directly credited to a child’s tuition with their childcare provider to offset higher costs of infant and toddler care.
- **Department of Workforce Services Incentive** – Financial incentive to providers who accept Park City children using a DWS childcare subsidy.

The administration of this program requires thorough record keeping and documentation of requests, qualifications, and fund distribution.

III. Contents of Proposal and Evaluation Criteria.

A. Required content and minimum qualifications.

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

The proposal must include:

1. Experience & References: The Respondent shall list a minimum of three references and provide information about their experience in vetting income eligibility; designing, implementing, and administering programs; granting funding; and reporting expenditures to a governmental entity. Emphasis should center on the wealth of

experience in designing programs and projects, spanning from inception to fruition.

2. Description of Services, Community Experience, Licensing, and Relationship: The Respondent shall include details about their daily operational activities related to the management of grant funding, as well as their strategies for marketing new programs within the community.
3. Funding Distribution Proposal: The Respondent shall propose in detail the ideal manner and process for receiving funds from PCMC and for distributing funds directly to local childcare providers, including the estimated time to review and respond to applications received.
4. Accountability: Respondents shall include information about funding distribution processes and criteria, internal control procedures, and any other important administrative quality control features. Describe experience working with, retaining, and protecting personally identifiable information.
5. Design a Process – Design an inclusive application process, including an application form with clear and consistent requirements for document submittals. Ensure applications from childcare providers and guardians demonstrate compliance with the eligibility criteria, including income levels and priority based on the highest needs and participation in the DWS Childcare Assistance Program. The processes must include considerations for information protection in both physical and digital formats, data destruction, and employee access protocols. Also, a continuity plan for data and business recovery, and a written privacy and protection statement for applicants summarizing data management practices.
6. Timeline and Cost: Include a timeline to become operational considering the school year, promotion, funding distribution, and other requirements that may affect the timeline. Propose the cost for providing all of the requested services.
7. Program Outreach: Include information about program marketing, advertising, and strategic outreach.
8. Reporting: The report to the Park City Budget Department and Council will encompass comprehensive metrics intended to offer deeper insights into the success of the program.

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

B. Evaluation Criteria

Each member of the RFP selection committee will use the same evaluation criteria and percentage weights to rank Respondents. The committee will

use the individual rankings to establish an aggregate ranking of accepted proposals.

Experience, References, Quality of Services, Community Experience and Relationship – (30%): (a) Respondent's ability, capacity, and skill to perform or provide the required services; (b) Respondent's demonstrated quality, availability, and accountability of services; and (c) quality of Respondent's operation/performance plan.

Funding Distribution Program Proposal - (50%): (a) Respondent's funding distribution proposal; (b) Respondent's plan to contribute to the City's defined goals; (c) timeline for operating; and (d) cost for providing administrative services.

Marketing, Advertising - (20%): (a) Respondent's marketing, advertising, and strategic outreach plan.

The selection committee will consider all documents, a presentation/interview if applicable, the RFP response, information gained while evaluating responses, and any other relevant information to make its determination. The committee will select the Respondent which, in the committee's sole judgment, is most proficient in delivering high-quality administration services and designing a program for the allocation of childcare funding.

NOTE: Price may not be the sole deciding factor.

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

IV. Government Records Access and Management Act.

All submittals will be treated as public records in accordance with the requirements of the Government Records Access and Management Act, Title 63G, Chapter 2 of the Utah Code ("GRAMA") unless otherwise designated by the Respondent pursuant to Utah Code § 63G-2-309, as amended. The burden of claiming an exemption from disclosure will rest solely with each Respondent. Respondent will submit any materials for which Respondent claims a privilege from disclosure marked as "Confidential" and accompanied by a statement from Respondent supporting the exemption claim. PCMC will make reasonable efforts to notify Respondent of any GRAMA requests for documents submitted under an exemption claim. Respondent waives any claims against PCMC related to the disclosure of any materials pursuant to GRAMA. Please note the following:

- a. Respondent must not stamp all materials confidential. Only those materials for which a claim of confidentiality can be made under

GRAMA, such as trade secrets, pricing, non-public financial information, etc., should be stamped.

- b. Respondent must submit a letter stating the reasons for the claim of confidentiality for every type of information that is stamped “Confidential.” Generally, GRAMA only protects against the disclosure of trade secrets or commercial information that could reasonably be expected to result in unfair competitive injury. Failure to timely submit a written basis for a claim of “Confidential” may result in a waiver of an exemption from disclosure under GRAMA.
- c. For convenience, a Business Confidentiality Request Form (BCR Form) is attached to this RFP as **Attachment 2**. Respondent must submit a completed BCR Form at the time of submission of any proposal.

V. Ethics.

By submission of a proposal, Respondent represents and agrees to the following ethical standards:

REPRESENTATION REGARDING ETHICAL STANDARDS: Respondent represents that it has not: (1) provided an illegal gift or payoff to a city officer or employee or former city officer or employee, or his or her relative or business entity; (2) retained any person to solicit or secure this contract upon an agreement or understanding for a commission, percentage, or brokerage or contingent fee, other than bona fide employees of bona fide commercial selling agencies for the purpose of securing business; (3) knowingly breached any of the ethical standards set forth in the City's conflict of interest ordinance, Chapter 3.1 of the Park City Code; or (4) knowingly influenced, and hereby promises that it will not knowingly influence, a city officer or employee or former city officer or employee to breach any of the ethical standards set forth in the City's conflict of interest ordinance, Chapter 3.1 of the Park City Code.

VI. Selection Process.

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

The selection process will proceed on the following anticipated schedule:

- a. Monday, September 18, 2023 - A selection committee comprised of qualified persons, which may include City staff or representatives from other public and private stakeholders, will open, review, and evaluate all proposals.

- b. By Wednesday, September 20, 2023, - The selection committee may conduct interviews with the highest-ranked Respondents. If applicable, interview requirements will be provided to those Respondents selected for further consideration.
- c. By Monday, September 25, 2023 – Final selection of the top-ranked proposal and preparation of the Property Lease.
- d. It is anticipated that City Council will consider and vote on the contract awarded through this RFP on Thursday, October 5, 2023.

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

VII. PCMC Standard Agreement Required.

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

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

VIII. General Provisions.

- a. No Representations or Warranty. It is the responsibility of each Respondent to carefully examine this RFP and evaluate all of the instructions, circumstances and conditions which may affect any proposal. Failure to examine and review the RFP and other relevant documents or information will not relieve Respondent from complying fully with the requirements of this RFP. Respondent's use of the information contained in the RFP is at Respondent's own risk

and no representation or warranty is made by PCMC regarding the materials in the RFP.

- b. Cost of Developing Proposals. All costs related to the preparation of the proposals and any related activities are the sole responsibility of the Respondent. PCMC assumes no liability for any costs incurred by Respondents throughout the entire selection process.
- c. Equal Opportunity. PCMC will make every effort to ensure that all Respondents are treated fairly and equally throughout the advertisement, review, and selection process. The procedures established herein are designed to give all parties reasonable access to the same basic information.
- d. Proposal Ownership. All proposals, including attachments, supplementary materials, addenda, etc., will become the property of PCMC and will not be returned to the Respondent.
- e. Modification of RFP. PCMC reserves the right to cancel or modify the terms of this RFP and/or the project at any time and for any reason preceding the contract execution. PCMC will provide written notice to Respondents of any cancellation and/or modification.
- f. Financial Responsibility. No proposal will be accepted from, or contract awarded to, any person, firm or corporation that is in arrears to PCMC, upon debt or contract, or that is a defaulter, as surety or otherwise, upon any obligation to the PCMC, or that may be deemed irresponsible or unreliable by PCMC. Respondents may be required to submit satisfactory evidence demonstrating the necessary financial resources to perform and complete the work outlined in this RFP.
- g. Local Businesses. PCMC's policy is to make reasonable attempts to support local businesses by purchasing goods and services through local vendors and service providers, subject to Federal, State, and local procurement laws.

IX. Exhibits

Attachment 1 - Business Confidentiality Request Form

Attachment 2 - Childcare Needs-Based Scholarship Program Criteria

Exhibit "A" – Sample Professional Services Agreement

Attachment 1

REQUEST FOR PROTECTED STATUS

(Business Confidentiality Claims under Utah’s Government Records Access and Management Act (“GRAMA”), Utah Code § 63G-2-309)

I request that the described portion of the record provided to Park City Municipal Corporation be considered confidential and given protected status as defined in GRAMA.

Name: _____

Address: _____

Description of the portion of the record provided to Park City Municipal Corporation that you believe qualifies for protected status under GRAMA (identify these portions with as much specificity as possible) (attach additional sheets if necessary): _____

The claim of business confidentiality is supported by (please check the box/boxes that apply):

- () The described portion of the record is a trade secret as defined in Utah Code § 13-24-2.
- () The described portion of the record is commercial or non-individual financial information the disclosure of which could reasonably be expected to result in unfair competitive injury to the provider of the information or would impair the ability of the governmental entity to obtain the necessary information in the future and the interest of the claimant in prohibiting access to the information is greater than the interest of the public in obtaining access.
- () The described portion of the record would cause commercial injury to, or confer a competitive advantage upon a potential or actual competitor of, a commercial project entity as defined in Utah Code § 11-13-103(4).

REQUIRED: Written statement of reasons supporting a business confidentiality claim as required by Utah Code § 63G-2-305 (1) –(2) (attach additional sheets if necessary):

NOTE: Claimant will be notified if the portion of the record claimed to be protected is classified as public or if the determination is made that the portion of the record should be disclosed because the interests favoring access outweigh the interests favoring restriction of access. Records claimed to be protected under this business confidentiality claim may not be disclosed until the period in which to bring the appeal expires or the end of the appeals process, including judicial appeal, **unless the claimant, after notice, has waived the claim by not appealing the classification within thirty (30) calendar days.** Utah Code § 63G-2-309(2).

Signature of Claimant: _____

Date: _____

Attachment 2: Childcare Needs-Based Scholarship Program Criteria

1. Childcare Needs-Based Tuition Scholarship
 - a. Park City resident children;
 - b. Funding shall be prioritized for households with income less than 100% AMI and scholarships of no more than 10% of the household income on childcare (total sum including multiple children) per month;
 - c. The administrator shall have discretion to provide scholarship funding to households with income less than 120% AMI with scholarships of no more than 12% of the household income on childcare (total sum including multiple children) per month based on the application trends and affective program utilization;
 - d. Eligible households (as identified by the Administrator) must apply for DWS Childcare Assistance funding. DWS funding shall be deducted from the PCMC scholarship amount; and
 - e. A regulated childcare provider located within Summit County.
2. Infant & Toddler Childcare (up to 36 months) Tuition Scholarship
 - a. Park City residents and/or Park City workforce children;
 - b. A household income of less than 150% AMI;
 - c. \$200 scholarship per child per month;
 - d. Eligible households (as identified by the Administrator) must apply for DWS Childcare Assistance funding. DWS funding shall be deducted from the PCMC scholarship amount; and
 - e. A regulated childcare provider located within Summit County.
3. Regulated Childcare Provider Incentive to Serve Children Enrolled in DWS Childcare Assistance
 - a. \$300 per month per child enrolled in DWS Childcare Assistance; and
 - b. A regulated childcare provider located within Summit County.

EXHIBIT "A"
PARK CITY MUNICIPAL CORPORATION
SERVICE PROVIDER/PROFESSIONAL SERVICES AGREEMENT

This Service Provider/Professional Services Agreement (the "Agreement") is made and entered into as of this ____ day of _____, 20__, by and between PARK CITY MUNICIPAL CORPORATION, a Utah municipal corporation, ("City"), and _____, a _____ (Insert state of incorporation) _____ (insert either "corporation" or "limited liability company"), ("Service Provider"), collectively, the City and the Service Provider are referred to as (the "Parties)."

WITNESSETH:

WHEREAS, the City desires to have certain services and tasks performed as set forth below requiring specialized skills and other supportive capabilities;

WHEREAS, sufficient City resources are not available to provide such services; and

WHEREAS, the Service Provider represents that the Service Provider is qualified and possesses sufficient skills and the necessary capabilities, including technical and professional expertise, where required, to perform the services and/or tasks set forth in this Agreement.

NOW, THEREFORE, in consideration of the terms, conditions, covenants, and performance contained herein, the Parties hereto agree as follows:

1. SCOPE OF SERVICES.

The Service Provider shall perform such services and accomplish such tasks, including the furnishing of all materials and equipment necessary for full performance thereof, as are identified and designated as Service Provider responsibilities throughout this Agreement and as set forth in the "Scope of Services" attached hereto as "**Exhibit A**" and incorporated herein (the "Project"). The total fee for the Project shall not exceed _____ Dollars (\$_____).

The City has designated _____, or his/her designee as City's Representative, who shall have authority to act on the City's behalf with respect to this Agreement consistent with the budget contract policy.

2. TERM.

No work shall occur prior to the issuance of a Notice to Proceed which cannot occur until execution of this Agreement, which execution date shall be commencement of the term and the term shall terminate on _____ or earlier, unless extended by mutual written agreement of the Parties.

3. COMPENSATION AND METHOD OF PAYMENT.

- A. Payments for services provided hereunder shall be made monthly following the performance of such services.
- B. No payment shall be made for any service rendered by the Service Provider except for services identified and set forth in this Agreement.
- C. For all "extra" work the City requires, the City shall pay the Service Provider for work performed under this Agreement according to the schedule attached hereto as "**Exhibit B,**" or if none is attached, as subsequently agreed to by both Parties in writing.
- D. The Service Provider shall submit to the City Manager or his designee on forms approved by the City Manager, an invoice for services rendered during the pay period. The City shall make payment to the Service Provider within thirty (30) days thereafter. Requests for more rapid payment will be considered if a discount is offered for early payment. Interest shall accrue at a rate of six percent (6%) per annum for services remaining unpaid for sixty (60) days or more.
- E. The Service Provider reserves the right to suspend or terminate work and this Agreement if any unpaid account exceeds sixty (60) days.
- F. Service Provider acknowledges that the continuation of this Agreement after the end of the City's fiscal year is specifically subject to the City Council's approval of the annual budget.

4. RECORDS AND INSPECTIONS.

- A. The Service Provider shall maintain books, records, documents, statements, reports, data, information, and other material with respect to matters covered, directly or indirectly, by this Agreement,

including (but not limited to) that which is necessary to sufficiently and properly reflect all direct and indirect costs related to the performance of this Agreement, and shall maintain such accounting procedures and practices as may be necessary to assure proper accounting of all funds paid pursuant to this Agreement.

- B. The Service Provider shall retain all such books, records, documents, statements, reports, data, information, and other material with respect to matters covered, directly or indirectly, by this Agreement for six (6) years after expiration of the Agreement.
- C. The Service Provider shall, at such times and in such form as the City may require, make available for examination by the City, its authorized representatives, the State Auditor, or other governmental officials authorized by law to monitor this Agreement, all such books, records, documents, statements, reports, data, information, and other material with respect to matters covered, directly or indirectly, by this Agreement. The Service Provider shall permit the City or its designated authorized representative to audit and inspect other data relating to all matters covered by this Agreement. The City may, at its discretion, conduct an audit at its expense, using its own or outside auditors, of the Service Provider's activities, which relate directly or indirectly to this Agreement.
- D. The City is subject to the requirements of the Government Records Access and Management Act, Chapter 2, Title 63G, Utah Code, 1953, as amended and Park City Municipal Code Title 5 ("GRAMA"). All materials submitted by Service Provider pursuant to this Agreement are subject to disclosure unless such materials are exempt from disclosure pursuant to GRAMA. The burden of claiming an exemption from disclosure rests solely with Service Provider. Any materials for which Service Provider claims a privilege from disclosure based on business confidentiality shall be submitted marked as "confidential - business confidentiality" and accompanied by a concise statement from Service Provider of reasons supporting its claim of business confidentiality. Generally, GRAMA only protects against the disclosure of trade secrets or commercial information that could reasonably be expected to result in unfair competitive injury. The City will make reasonable efforts to notify Service Provider of any requests made for disclosure of documents submitted under a claim of confidentiality. Service Provider specifically waives any claims against the City related to any disclosure of materials pursuant to GRAMA.

5. INDEPENDENT CONTRACTOR RELATIONSHIP.

- A. The Parties intend that an independent Service Provider/City relationship will be created by this Agreement. No agent, employee, or representative of the Service Provider shall be deemed to be an employee, agent, or representative of the City for any purpose, and the employees of the Service Provider are not entitled to any of the benefits the City provides for its employees. The Service Provider will be solely and entirely responsible for its acts and for the acts of its agents, employees, subcontractors or representatives during the performance of this Agreement.
- B. In the performance of the services herein contemplated, the Service Provider is an independent contractor with the authority to control and direct the performance of the details of the work, however, the results of the work contemplated herein must meet the approval of the City and shall be subject to the City's general rights of inspection and review to secure the satisfactory completion thereof.

6. SERVICE PROVIDER EMPLOYEE/AGENTS.

The City may at its sole discretion require the Service Provider to remove an employee(s), agent(s), or representative(s) from employment on this Project. The Service Provider may, however, employ that (those) individuals(s) on other non-City related projects.

7. HOLD HARMLESS INDEMNIFICATION.

- A. The Service Provider 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 the Service Provider's negligent 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 Service Provider; and provided further, that nothing herein shall require the Service Provider 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 Service Provider expressly agrees that the indemnification provided herein constitutes the Service Provider's limited waiver of immunity as an employer under Utah Code Section 34A-2-105; provided, however, this waiver shall apply only to the extent an

employee of Service Provider claims or recovers compensation from the City for a loss or injury that Service Provider would be obligated to indemnify the City for under this Agreement. 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.

- B. No liability shall attach to the City by reason of entering into this Agreement except as expressly provided herein.

8. **INSURANCE.**

The Service Provider 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 Service Provider, their agents, representatives, employees, or subcontractors. The Service Provider shall provide a Certificate of Insurance evidencing:

- A. General Liability insurance written on an occurrence basis with limits no less than One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) aggregate for personal injury, bodily injury and property damage.

The Service Provider 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. Professional Liability (Errors and Omissions) insurance (if applicable) with annual limits no less than One Million Dollars (\$1,000,000) per occurrence. Service Provider agrees to continue to procure and maintain professional liability insurance coverage meeting these requirements for the applicable period of statutory limitation of claims (or statute of repose, if applicable) after the project completion or termination of this Agreement.

If written on a claims-made basis, the Service Provider warrants that the retroactive date applicable to coverage precedes the effective date of this agreement; and that continuous coverage will be maintained for an extended reporting period endorsement (tail coverage) will be purchased for a period of at least three (3) years beginning from the time that work under this agreement is complete.

- D. Workers Compensation insurance 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 Service Provider, its employees, agents, and subcontractors.

- E. Cyber Liability Insurance with limits not less than Five Million Dollars (\$5,000,000) per occurrence or claim, Five Million Dollars (\$5,000,000) aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Service Provider in this Agreement and shall include, but not be limited to, claims involving security breach, system failure, data recovery, business interruption, cyber extortion, social engineering, infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, and alteration of electronic information. The policy shall provide coverage for breach response costs, regulatory fines and penalties as well as credit monitoring expenses.

- F. Crime Insurance on a "loss sustained form" in the amount Two Hundred Fifty Thousand Dollars (\$250,000) including coverage for:

- Theft;
- Forgery or Alteration;
- Inside the Premises - Theft of Money and Securities;
- Inside the Premises- Robbery or Safe Burglary of Other Property;
- Outside the Premises;
- Computer Fraud; and
- Money Orders and Counterfeit Paper Currency.

The policy must allow for reporting of circumstances or incidents that might give rise to future claims. The policy must include an extended reporting period of no less than one (1) year with respect to events which occurred but were not reported during the term of the policy. Any warranties required by the Service Provider's insurer as a result of this Agreement must be disclosed and complied with. Said insurance shall extend coverage to include the principals (all directors, officers, agents and employees) of the Service Provider as a result of this Agreement. The policy shall include coverage for third party fidelity and name the City as a "Loss Payee" for all third-party coverage secured. This requirement applies to both primary and excess liability policies, as applicable. The policy shall not contain a condition requiring an arrest and conviction. The policy shall include coverage for computer crime/fraud.

- G. Fidelity/Crime insurance coverage for loss arising out of or in connection with any fraudulent or dishonest acts committed by the employees, contractors, or subcontractors of Service Provider, acting alone or in collusion with others, including the property and funds of the City in their care, custody or control, in a minimum amount of Two Hundred Fifty Thousand Dollars (\$250,000). This policy shall be endorsed to name the City as a loss payee.
- H. Park City Municipal Corporation, its officers, officials, employees, and volunteers are to be covered as additional insureds on general liability and auto liability insurance policies, with respect to work performed by or on behalf of the Service Provider 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 Service Provider and a copy of the endorsement naming the City as an additional insured shall be attached to the Certificate of Insurance.
- I. Should any of the above-described policies be cancelled before the expiration date thereof, Service Provider shall deliver notice to the City within thirty (30) days of cancellation. The City reserves the right to request certified copies of any required policies.
- J. The Service Provider'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.
- K. For any claims related to this Agreement, the Service Provider'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 Service Provider's insurance and shall not contribute with it.

Notwithstanding anything to the contrary, if Service Provider has procured any insurance coverage or limits (either primary or on an excess basis) that exceed the minimum acceptable coverage or limits set forth in this Agreement, the broadest coverage and highest limits actually afforded under the applicable policy(ies) of insurance are the coverage and limits required by this Agreement and such coverage and limits must be provided in full to the additional insureds and indemnified parties under this Agreement. The parties expressly intend that the provisions in this Agreement will be construed as broadly as permitted to be construed by applicable Laws to afford the maximum insurance coverage available under Provider's insurance policies.

9. TREATMENT OF ASSETS.

Title to all property furnished by the City shall remain in the name of the City and the City shall become the owner of the work product and other documents, if any, prepared by the Service Provider pursuant to this Agreement (contingent on City's performance hereunder).

10. COMPLIANCE WITH LAWS AND WARRANTIES.

- A. The Service Provider, in the performance of this Agreement, shall comply with all applicable federal, state, and local laws and ordinances, including regulations for licensing, certification and operation of facilities, programs and accreditation, and licensing of individuals, and any other standards or criteria as described in this Agreement to assure quality of services.
- B. Unless otherwise exempt, the Service Provider is required to have a valid Park City business license.
- C. The Service Provider specifically agrees to pay any applicable fees or charges which may be due on account of this Agreement.
- D. If this Agreement is entered into for the physical performance of services within Utah, the Service Provider shall register and participate in E-Verify or an equivalent program. The Service Provider 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.

- E. Service Provider shall be solely responsible to the City for the quality of all services performed by its employees or sub-contractors under this Agreement. Service Provider hereby warrants that the services performed by its employees or sub-contractors will be performed substantially in conformance with the standard of care observed by similarly situated companies providing services under similar conditions.

11. NONDISCRIMINATION.

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

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.

In the performance of this Agreement, Service Provider 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. 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.

12. ASSIGNMENTS/SUBCONTRACTING.

- A. The Service Provider shall not assign its performance under this Agreement or any portion of this Agreement without the written consent of the City, and it is further agreed that said consent must be sought in writing by the Service Provider not less than thirty (30) days prior to the date of any proposed assignment. The City reserves the right to reject without cause any such assignment. Any assignment made without the prior express written consent of the City, as required by this paragraph, shall be deemed null and void.
- B. Any work or services assigned hereunder shall be subject to each provision of this Agreement and proper bidding procedures where applicable as set forth in local, state or federal statutes, ordinance and guidelines.

- C. Any technical/professional service subcontract not listed in this Agreement, must have express advance approval by the City.
- D. Each subcontractor that physically performs services within Utah shall submit an affidavit to the Service Provider stating that the subcontractor has used E-Verify, or an equivalent program to verify the employment status of each new employee, unless exempted by Utah Code § 63G-12-302.

13. CHANGES.

Either party may request changes to the scope of services and performance to be provided hereunder, however, no change or addition to this Agreement shall be valid or binding upon either party unless such change or addition be in writing and signed by both Parties. Such amendments shall be attached to and made part of this Agreement.

14. PROHIBITED INTEREST, NO THIRD-PARTY RIGHTS AND NO GRATUITY TO CITY EMPLOYEES.

- A. No member, officer, or employee of the City shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.
- B. Nothing herein is intended to confer rights of any kind in any third party.
- C. No City employee who has procurement decision making authority and is engaged in the procurement process, or the process of administering a contract, may knowingly receive anything of value including but not limited to gifts, meals, lodging or travel from anyone that is seeking or has a contract with the City.

15. MODIFICATIONS TO TASKS AND MISCELLANEOUS PROVISIONS.

- A. All work proposed by the Service Provider is based on current government ordinances and fees in effect as of the date of this Agreement.
- B. Any changes to current government ordinances and fees which affect the scope or cost of the services proposed may be billed as an “extra” pursuant to Paragraph 3(C), or deleted from the scope, at the option of the City.
- C. The City shall make provision for access to the property and/or project and adjacent properties, if necessary, for performing the services herein.

16. TERMINATION.

- A. Either party may terminate this Agreement, in whole or in part, at any time, by at least thirty (30) days' written notice to the other party. The Service Provider shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Service Provider shall promptly submit a termination claim to the City. If the Service Provider has any property in its possession belonging to the City, the Service Provider will account for the same, and dispose of it in a manner directed by the City.
- B. If the Service Provider fails to perform in the manner called for in this Agreement, or if the Service Provider fails to comply with any other provisions of the Agreement and fails to correct such noncompliance within three (3) days' written notice thereof, the City may immediately terminate this Agreement for cause. Termination shall be affected by serving a notice of termination on the Service Provider setting forth the manner in which the Service Provider is in default. The Service Provider will only be paid for services performed in accordance with the manner of performance set forth in this Agreement.

17. NOTICE.

Notice provided for in this Agreement shall be sent by certified mail to the addresses designated for the Parties below. Notice is effective upon the date it was sent, except that a notice of termination pursuant to Paragraph 16 is effective upon receipt. All reference to "days" in this Agreement shall mean calendar days.

18. ATTORNEYS FEES AND COSTS. 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.

19. JURISDICTION AND VENUE.

- A. This Agreement has been and shall be construed as having been made and delivered within the State of Utah and it is agreed by each party hereto that this Agreement shall be governed by the laws of the State of Utah, both as to interpretation and performance.
- B. Any action of law, suit in equity, or judicial proceeding for the enforcement of this Agreement, or any provisions thereof, shall be

instituted and maintained only in any of the courts of competent jurisdiction in Summit County, Utah.

20. SEVERABILITY AND NON-WAIVER.

- A. If, for any reason, any part, term, or provision of this Agreement is held by a court of the United States to be illegal, void or unenforceable, the validity of the remaining provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.
- B. If it should appear that any provision hereof is in conflict with any statutory provision of the State of Utah, said provision which may conflict therewith shall be deemed inoperative and null and void insofar as it may be in conflict therewith, and shall be deemed modified to conform in such statutory provisions.
- C. It is agreed by the Parties that the forgiveness of the non-performance of any provision of this Agreement does not constitute a subsequent waiver of the provisions of this Agreement. No waiver shall be effective unless it is in writing and signed by an authorized representative of the waiving party.

21. ENTIRE AGREEMENT.

The Parties agree that this Agreement is the complete expression of the terms hereto and any oral representations or understandings not incorporated herein are excluded. Further, any modification of this Agreement shall be in writing and signed by both Parties. Failure to comply with any of the provisions stated herein shall constitute material breach of contract and cause for termination. Both Parties recognize time is of the essence in the performance of the provisions of this Agreement.

22. 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.

23. 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 hereto have caused this Agreement to be executed the day and year first hereinabove written.

PARK CITY MUNICIPAL CORPORATION, a Utah municipal corporation

445 Marsac Avenue
Post Office Box 1480
Park City, UT 84060-1480

Matt Dias, City Manager

Attest:

City Recorder's Office

Approved as to form:

City Attorney's Office

SERVICE PROVIDER NAME

Address:

Address:

City, State, Zip:

Tax ID#:

PC Business License# BL

Signature

Printed name

Title

**THE CITY REQUIRES THE SERVICE PROVIDER TO COMPLETE EITHER
THE NOTARY BLOCK OR THE UNSWORN DECLARATION, WHICH ARE
BELOW**

STATE OF UTAH)
) ss.
COUNTY OF SUMMIT)

On this ____ day of _____, 20__, 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 _____, 20__ at _____ (insert State and County here).

Printed name _____

Signature: _____

EXHIBIT “A”

SCOPE OF SERVICES

EXHIBIT “B”

PAYMENT SCHEDULE FOR “EXTRA” WORK