



Park City Municipal Corporation (“the City”)

REQUEST FOR PROPOSALS (NON-BID)

Comprehensive General Plan Update

1/3/24 NOTICE:

THE DEADLINE HAS BEEN EXTENDED TO FRIDAY, FEBRUARY 2, 2024 (ORIGINALLY JANUARY 5, 2024).

THE QUESTION PERIOD HAS BEEN EXTENDED TO FRIDAY, JANUARY 26, 2024 (ORIGINALLY DECEMBER 21, 2023).

REQUEST FOR PROPOSALS (NON-BID)

The City is inviting proposals from qualified persons or firms (Respondent) to provide professional consultant services for a comprehensive update to the Park City General Plan.

PROPOSALS DUE: February 2, 2024, 5:00 PM Mountain Time. Submit proposals electronically through the Utah Public Procurement Place (“U3P”) website. 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, Utah 84060. Proposals submitted to the City Recorder should be delivered on a zip drive. No paper copies may be submitted.

RFP AVAILABLE: The RFP will be available on November 17, 2023, on the U3P website. Any modifications to the RFP or responses to questions submitted will be added as an addendum to the RFP posted on the U3P website. It is the responsibility of Respondents to regularly check for addenda.

QUESTIONS: All questions regarding this RFP must be submitted in writing to U3P by January 26, 2024, 5:00 PM Mountain Time. **Please do not submit the same question multiple times.**

PROJECT: Professional consultant services for a comprehensive update to the Park City General Plan.

PROJECT DEADLINE: March 2025

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

CONTACT: Rebecca Ward
rebecca.ward@parkcity.org

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

I. INTRODUCTION

Park City—once a gathering place for the Ute and Shoshone people of the Great Basin—drew prospectors in search of silver in 1868. Within 30 years, the area was a bustling mining community with a population of nearly 8,000, an active commercial district, and a multitude of residences. This history is reflected in the Main Street Historic District and Mining Boom Era Residences Thematic District listed on the National Register of Historic Places, and over 400 designated Landmark and Significant Historic Sites on Park City’s Historic Sites Inventory. However, as mining prospects declined, so did the town and by 1951, despite a remaining population of 1,150, Ghost Towns of the West included Park City.

By the mid-1960s, the community transitioned from mining to skiing with the assistance of a \$1.3 million federal loan to convert thousands of acres to ski slopes through the development of Treasure Mountain, now Park City Mountain Resort. Today, Park City—host of the 2002 Winter Olympics—is home to roughly 8,500 residents and two world-class ski resorts, Park City Mountain Resort and Deer Valley Resort, and draws year-round visitors from across the globe, hosts a wide range of annual events, and is a playground for outdoor enthusiasts.

As Park City transitioned over the years, the community’s goals and priorities have been outlined through long-range plans. Park City’s first [Comprehensive Plan](#) dates to 1985 with an overall goal “[t]o guide and redevelop in a manner which will enhance the town’s appeal as a place to live, work, and visit while preserving Park City’s unique community character.” The 1985 plan was updated with a 1997 [General Plan](#), and while supplements were added, it was not fully updated again until the [2014 General Plan](#).

The 2014 General Plan is organized in two volumes around four core community values: Small Town, Natural Setting, Sense of Community, and Historic Character. Volume I outlines sixteen goals, objectives, and strategies for implementation and Volume II provides supporting information, including an overview of neighborhoods, detailed strategies, best practices and trends. Since the adoption of the 2014 General Plan, much has changed, including a potential return of the Winter Olympics.

In 2016, the City Council set a goal to create 800 affordable units by 2026 and to be net-zero carbon, running on 100% renewable electricity for City operations by 2022, and for the community by 2030. Additionally, the community prioritized open space conservation.

In 2016, Park City voters approved a \$25 million bond for the purchase of Bonanza Flat, 1,534 acres along the City’s southern boundary, now protected through a conservation easement. In 2018, Park City voters approved a \$48 million bond to conserve nearly 125 acres including Treasure Hill west of Old Town and the Armstrong/Snow Ranch Pasture. In 2022, the City annexed nearly

1,200 acres in the Southeast Quinn's Junction area and zoned the property Recreation Open Space within the Sensitive Land Overlay.

While the City purchased, conserved, and annexed properties on the perimeter, both the Park City Mountain Resort and Deer Valley Resort applied to develop their base area parking lots, proposing to infill long-vested density. Additionally, redevelopment of Bonanza Park, a neighborhood in the geographic center of Park City, will transform this neighborhood in the coming years. In 2023, the City initiated a small area plan to envision and shape the future of this central neighborhood.

Infill redevelopment and growth within Summit County and Wasatch County—Utah's fastest growing county between 2010 and 2020—and the City's proximity to the Wasatch Front and Salt Lake International Airport (a 35-minute drive) presents challenges and opportunities requiring bold planning and action.

Embracing bold action was the community call from the latest visioning initiative [Vision 2020](#), which included engagement with over 1,700 residents and stakeholders. The comprehensive update to the 2014 General Plan is an opportunity for further community engagement to look ahead and shape the future of Park City through land use, housing, transportation, historic preservation, sustainability, and other elements identified and prioritized by the community.

II. SCOPE OF PROJECT

Park City seeks proposals from highly qualified planning professionals to lead a comprehensive update to the 2014 General Plan.

Phase I – Compile Data and Existing Conditions

- Compile relevant census data and create graphics
- Identify and map existing conditions in a format compatible with City software, including:
 - Steep slopes, hillsides, wetlands, stream channels, ridge line areas, and geologic hazards
 - Wildlife habitat and corridors
 - Open space
 - Public parks and recreation
 - Public trails and pathways
 - Public rights-of-way and private roads
 - Residential, commercial, institutional, and industrial build out
 - Undeveloped properties
 - Historic assets
 - Local food production
 - Businesses by sector

- Review land use, housing, sustainability, transportation, and transit plans:

[Land Management Code](#)

[2014 Park City General Plan](#)

[2016 Transportation and Demand Management Plan](#)

[Vision 2020](#)

[2021 Housing Needs Assessment](#)

[2021 Strategic Action Plan for Building Decarbonization in Park City and Summit County](#)

[2022 Park City Forward – A Transportation Blueprint](#)

[2023 Amended Five-Year Moderate Income Housing Plan](#)

[2023 Short-Range Transit Plan](#)

[S.R. 224 Bus Rapid Transit Plans](#)

Phase II – Identify and Establish Advisory Committees, Board and Commission Liaisons, Project Management Team, and Stakeholder Groups

- Establish and manage:
 - Advisory committees for residents and stakeholders
 - Advisory committees for each General Plan neighborhood
 - Historic Preservation Board, Planning Commission, and City Council liaisons
 - Forestry Advisory Board, Public Art Advisory Board, and Recreation Advisory Board liaisons
- Organize internal staff project management team, including Planning, Engineering, Transportation, Transit, Sustainability, Housing, Public Utilities, and Public Works

Phase III – Lead Community Visioning and Goals

- Develop a project logo and branding in conformance with Park City guidelines
- Establish and consistently update a General Plan website
- Outline a comprehensive community engagement strategy, including:
 - Neighborhood meetings and workshops
 - Community meetings and workshops
 - Surveys, events, activities, etc.
- Conduct visioning workshops to create a General Plan vision statement
- Conduct neighborhood meetings and identify neighborhood goals and objectives
- Conduct community meetings and identify community goals and objectives
- Conduct a comprehensive community survey

Phase IV – Develop General Plan Elements in conformance with Community Goals and the requirements of Utah Code [Section 10-9a-401](#) et seq.

- Land Use Element – designate long-term goals and future land use for housing of residents of various income levels, business, industry, agriculture, recreation, education, public buildings and grounds, open space, historic preservation, and sustainability; project population density and building intensity recommended for land use categories; reevaluate the City’s annexation expansion area
- Water Element – evaluate land use, effect on water demand, and water use and preservation
- Transportation and Traffic Circulation Element – provide location and extent of arterial and collector streets, public transit, active transportation facilities, and other modes of transportation; plan for residential and commercial development near major transit areas to improve connections between housing, employment, education, recreation, and commerce; correlate with population projections, employment projections, and proposed land use element; coordinate with regional transportation plans
- Moderate Income Housing Element – provide realistic opportunities to meet the need for additional affordable housing within the City during the next five years
- Develop implementation strategies and define action items, including recommended amendments to the Park City Land Management Code
- Conduct Historic Preservation Board, Planning Commission, and City Council work sessions
- Incorporate work session input and finalize the plan

Phase V – General Plan Adoption

- Conduct public hearings with the Planning Commission for recommendation of the General Plan to the City Council
- Conduct public hearings with the City Council for adoption of the General Plan

City staff will assist the consultant with the requested information and be active participants throughout the project.

III. CONTENT OF PROPOSAL

Proposals will be evaluated on the criteria listed below. Submissions shall be limited to no more than twenty pages and presented in the order below:

Letter of Introduction – provide a brief overview of your professional planning firm/team and how you propose to approach the comprehensive General Plan update and the project scope outlined in this RFP; include a statement of interest; identify the proposed project manager and primary

point of contact; provide a consulting firm/team phone number, e-mail address, and website address.

Proposed Scope of Work – outline an approach to successfully completing the General Plan update process outlined in Section II PROJECT SCOPE; outline strategic, technical, and innovative approaches to completing the project; describe project deliverables consistent with this RFP.

Key Personnel – include a current resume of each member of your firm/team assigned to this project and identify the tasks each member is proposed to complete; identify and introduce sub-consultants if proposed.

Completion of Similar Contracts – provide a list of at least three projects of similar scope and budget completed by the consulting firm/team; include the lead person and references for each project; outline past performance in terms of cost control, quality of work, and compliance with project schedules.

References – provide a minimum of three municipal client references, a summary of services offered, and a contact name and phone number for each reference.

Fee – outline the total project fee and hourly rates for each employee who may work on the project; describe how the consulting firm will coordinate and communicate with City staff regarding the management of the budget.

Legal Proceedings, if any – list all legal proceedings against your consulting firm, employees, or subcontractors of your firm, and a summary of the disposition of each such proceeding for the last five years (January 1, 2018, to the present).

Conflicts – disclose any potential conflicts of interest.

IV. EVALUATION CRITERIA

Proposals will be evaluated on the factors listed in Section III, CONTENT OF PROPOSAL, based on the criteria below:

CRITERIA	
Responsiveness to the Requirements of this RFP	5%
Understanding of Work to be Completed	10%

Qualifications and Experience of Key Personnel	20%
Demonstration of Successful Implementation of Similar Projects	30%
Efficient, Realistic, and Timely Proposed Schedule	15%
Technical and Innovative Approach to Developing Comprehensive General Plan Update	10%
Effective and Creative Public Engagement Plan and Schedule	10%
TOTAL	100%

A selection committee comprised of one Historic Preservation Board liaison, two Planning Commission liaisons, two City Council liaisons, and Planning, Housing, Sustainability, and Transportation staff will review submitted RFPs. Each member of the selection committee shall use the evaluation criteria and percentage weights to establish their own ranking of the Respondents. The committee shall then use these individual rankings to establish an aggregate ranking of all the acceptable proposals.

The selection committee will consider all documents, the presentation/interview if applicable, the response to the RFP, information gained while evaluating responses, and any other relevant information to make its determination. The committee will select the Respondent which, in the committee’s sole judgment, is best able to provide the comprehensive update to the General Plan.

NOTE: Price may not be the sole deciding factor.

The City reserves the right to reject any and all proposals for any reason. Proposals lacking required information will not be considered. The award of a contract may be subject to approval by City Council. The City Council is anticipated to vote on the contract award in February of 2024.

V. GOVERNMENT RECORDS ACCESS AND MANAGEMENT ACT

After execution of a contract, all proposals 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 claimed by the Respondent as “protected” pursuant to Utah Code § 63G-2-309, as amended. The burden of claiming an exemption from disclosure shall rest solely with each Respondent. Respondent shall submit any materials for which Respondent claims an exemption from disclosure marked as “Confidential” and accompanied by a statement from Respondent supporting the exemption claim. The City shall make reasonable efforts to notify Respondent of

any GRAMA requests for documents submitted under an exemption claim. Respondent waives any claims against the City related to disclosure of any materials pursuant to GRAMA. Please note the following:

- a. Respondent must not stamp all materials confidential. Only those materials for which a claim of confidentiality can be made under GRAMA, such as trade secrets, pricing, non-public financial information, etc., should be stamped.
- b. Respondent must submit a letter stating the reasons for the claim of confidentiality for every type of information that is stamped "Confidential." Generally, GRAMA only protects against the disclosure of trade secrets or commercial information that could reasonably be expected to result in unfair competitive injury. Failure to timely submit a written basis for a claim of "Confidential" may result in a waiver of an exemption from disclosure under GRAMA.
- c. For convenience, a Business Confidentiality Request Form ("BCR Form") is attached to this RFP as **Attachment 1**. Respondent must submit a completed BCR Form at the time of submission of any proposal.

VI. 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.

VII. SELECTION PROCESS

Proposals will be evaluated on the criteria listed in III. CONTENT OF PROPOSAL and IV. EVALUATION CRITERIA, above.

The selection process will proceed on the following anticipated schedule:

- a. By February 9, 2024 – A selection committee comprised of qualified persons, which may include City staff or representatives from other public and private stakeholders, will open, review, and evaluate all proposals.
- b. 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. Final selection of the top-ranked proposal and preparation of contract.
- d. It is anticipated that City Council will consider and vote on the contract awarded through this RFP in February of 2024.
- e. Contract execution.

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

VIII. The City Standard Agreement Required.

- a. The successful Respondent will be required to enter into the City'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 THE CITY'S STANDARD AGREEMENT MUST BE SUBMITTED NO LATER THAN THE PROPOSAL/SUBMITTAL DEADLINE. ANY REQUESTED CHANGES TO THE CITY'S STANDARD INSURANCE AND INDEMNIFICATION PROVISIONS MAY BE APPROVED IN THE SOLE DISCRETION OF THE CITY.**

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

IX. 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 the City 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. The City assumes no liability for any costs incurred by Respondents throughout the entire selection process.
- c. Equal Opportunity. The City 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 the City and will not be returned to the Respondent.
- e. Modification of RFP. The City 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. The City 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 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 City. 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. The City'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.

X. Exhibits.

Attachment 1 – Request for Protected Status

Attachment 2 – Draft Professional Services Agreement

ATTACHMENT 1

Request for Protected Status

REQUEST FOR PROTECTED STATUS

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

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

Name: _____

Address: _____

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

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

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

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

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

Signature of Claimant: _____

Date: _____

ATTACHMENT 2

Draft Professional Services Agreement

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (“**Agreement**”) is between **PARK CITY MUNICIPAL CORPORATION**, a Utah municipal corporation (“**PCMC**”), and [insert NAME OF SERVICE PROVIDER], a [insert state of incorporation or formation] [insert “corporation,” “limited liability company,” or other entity type] (the “**Service Provider**”).

PCMC and Service Provider want to enter into an agreement for the Service Provider to perform the services and tasks as specified below.

The parties therefore agree as follows:

ARTICLE 1 – SCOPE OF SERVICES.

- A. Scope of Services. Service Provider shall perform the services and tasks identified and designated as Service Provider responsibilities throughout this Agreement and as outlined in **Schedule A** attached to this Agreement (“**Scope of Services**”).
- B. Service Provider Representative. Service Provider designates [insert name of Service Provider representative] as the authorized representative vested with the authority to act on behalf of the Service Provider. Service Provider may change its designated representative by providing written notice to PCMC.
- C. PCMC Representative. PCMC designates [insert project manager name] or their designee as its representative who has the authority to act on behalf of PCMC.

ARTICLE 2 – TERM.

This Agreement will become effective as of the date the last party signed it as indicated by the date associated with that party’s signature. The term of this Agreement ends at midnight on [insert date in format MM/DD/YYYY] unless terminated sooner or extended as provided in this Agreement.

OPTIONAL: PCMC may at its sole option extend the term of this Agreement for [insert number] additional period(s) of [insert “year(s)” “month(s)” or other time period] each by notifying Service Provider in writing at least thirty days prior to the expiration of this Agreement.

ARTICLE 3 – COMPENSATION, INVOICING, AND PAYMENT.

- A. Compensation. For performance of the Scope of Services, PCMC shall pay a total fee in an amount not to exceed **#[insert numeric dollar amount]**. Any work performed beyond the defined Scope of Services requires a written request from PCMC. Compensation for such additional work shall adhere to the terms outlined in **Schedule**

B, if attached. In the absence of a **Schedule B**, any compensation for extra work shall be determined based on a mutually agreed-upon written agreement between both parties.

- B. Invoicing and Payment. Service Provider shall invoice PCMC on a monthly basis for services completed during that period. PCMC shall pay Service Provider within 30 days of receipt of each invoice. Requests for earlier payment will be considered if a discount is offered for the earlier payment. For services that remain unpaid for a period exceeding 60 days, interest will accumulate at a rate of six percent per annum.

ARTICLE 4 – SERVICE STANDARDS AND COMPLIANCE WITH LAWS.

- A. Service Standards. Service Provider shall be responsible for the quality of all services performed by its employees, agents, subcontractors, and all other persons (collectively, “**Subcontractors**”) performing any services under this Agreement. All services shall be executed with competence and in conformity with the standard of care, diligence, and skill typically exercised by professionals within the Service Provider’s field.
- B. Conformance to Laws. In providing services under this Agreement, Service Provider and its Subcontractors shall comply with all applicable federal, state, PCMC, and other local laws, regulations, and ordinances, including applicable licensure and permit requirements, regulations for certification, operation of facilities, and accreditation, employment laws, and any other standards or criteria described in this Agreement.
- C. E-Verify. Service Provider shall register and participate in E-Verify or an equivalent program for each employee employed within the state of Utah if this Agreement is entered into for the physical performance of services within Utah, unless exempted by Utah Code § 63G-12-302. Service Provider shall require that each of its Subcontractors, at every tier, certify under penalty of perjury that each Subcontractor has registered and is participating in E-Verify or an equivalent program, to the extent applicable.

ARTICLE 5 – RECORDS AND INSPECTIONS.

- A. Records. Service Provider shall keep any records, documents, invoices, reports, data, information, and all other material regarding matters covered, directly or indirectly, by this Agreement for six years after expiration of this Agreement. This includes everything necessary to properly reflect all expenses related to this Agreement and records of accounting practices necessary to assure proper accounting of all expenses under this Agreement.
- B. Inspection of Records. Service Provider shall make all of the records referenced in this section available for inspection to PCMC, its authorized representatives, the State Auditor, and other government officials authorized to monitor this Agreement by law. Service Provider must permit PCMC or its authorized representative to audit and inspect any data or other information relating to this Agreement. PCMC reserves the right to

initiate an audit of the Service Provider's activities concerning this Agreement, at the expense of PCMC, utilizing an auditor selected by PCMC.

- C. Government Records Access and Management Act. PCMC is subject to the requirements of the Government Records Access and Management Act, Title 63G, Chapter 2 of the Utah Code ("**GRAMA**"). All materials submitted by Service Provider related to this Agreement are subject to disclosure unless the materials are exempt from disclosure under GRAMA. The burden of claiming an exemption from disclosure rests solely with Service Provider. Any materials for which Service Provider claims an exemption from disclosure based on business confidentiality as provided in Utah Code § 63G-2-309 (or successor provision) must be marked as "Confidential" and accompanied at the time of submission by a statement from Service Provider explaining the basis for the claim. Generally, GRAMA only protects against the disclosure of trade secrets or commercial information that could reasonably be expected to result in unfair competitive injury. PCMC will make reasonable efforts to notify Service Provider of any requests made for disclosure of documents submitted under a claim of confidentiality. Service Provider specifically waives any claims against PCMC related to disclosure of any materials pursuant to GRAMA.

ARTICLE 6 – RELATIONSHIP OF PARTIES.

- A. Independent Contractor. The parties intend that Service Provider is an independent contractor and not an employee of PCMC. Except as specifically provided in this Agreement, the parties intend that Service Provider has no authority to act on behalf of PCMC.
- B. Subcontractor Relationship. The Service Provider shall have full control and authority over performance and activities of its Subcontractors throughout the execution of this Agreement. It is the sole responsibility of Service Provider to ensure that its Subcontractors adhere to the terms and conditions outlined in this Agreement. Furthermore, Service Provider shall bear full responsibility for any actions or omissions of its Subcontractors.
- C. Treatment of Assets. Neither party will have an interest in the intellectual property owned or licensed by the other party, unless otherwise agreed by the parties in writing. PCMC will become the owner of all deliverables, work product, and other materials specifically created by the Service Provider and its Subcontractors under this Agreement.

ARTICLE 7 – INDEMNIFICATION.

- A. Definitions. In this Agreement, the following definitions apply:

(1) "**Indemnifiable Losses**" means the aggregate of Losses and Litigation Expenses.

- (2) **“Litigation Expense”** means any reasonable out-of-pocket expense incurred in defending a Proceeding or in any related investigation or negotiation, including court filing fees, court costs, arbitration fees, witness fees, and attorneys’ and other professionals’ fees and disbursements.
- (3) **“Loss”** means any amount awarded in, or paid in settlement of, any Proceeding, including any interest but excluding any Litigation Expenses.
- (4) **“Proceeding”** means any investigation, claim, judicial, administrative, or arbitration action or lawsuit, or other cause of action of every kind or character, brought by third parties against PCMC, its agents, employees, or officers, that arises out of this Agreement or the performance of this Agreement by Service Provider or its Subcontractors or subconsultants of any tier, or anyone acting under Service Provider’s direction or control, including after the expiration or termination of this Agreement.
- B. **Indemnification.** Service Provider shall indemnify PCMC and its agents, employees, and officers against all Indemnifiable Losses arising out of a Proceeding, except to the extent the Indemnifiable Losses were caused by the negligence or willful misconduct of PCMC.
- C. **Obligation to Defend.** Service Provider shall, at its sole cost and expense, defend PCMC and its agents, employees, and officers from and against all Proceedings, provided that Service Provider is not required to defend PCMC from any Proceeding arising from the sole negligence of PCMC or its agents, employees, or officers.
- D. **Tender.** Service Provider’s obligation to defend will arise upon PCMC’s tender of defense to Service Provider in writing. If PCMC fails to timely notify Service Provider of a Proceeding, Service Provider will be relieved of its indemnification obligations to the extent that Service Provider was prejudiced by that failure. Upon receipt of PCMC’s tender of defense, if Service Provider does not promptly notify PCMC of its acceptance of the defense and thereafter duly and diligently defend PCMC and its agents, employees, and officers, then Service Provider shall pay and be liable for the reasonable costs, expenses, and attorneys’ fees incurred in defending the Proceeding and enforcing this provision.
- E. **Legal Counsel.** To assume the defense, Service Provider must notify PCMC of their intent to do so. Promptly thereafter, Service Provider shall retain independent legal counsel that is reasonably acceptable to PCMC.
- F. **Settlement.** After Service Provider assumes the defense of a Proceeding, Service Provider may contest, pay, or settle the Proceeding without the consent of PCMC only if that settlement (1) does not entail any admission on the part of PCMC that it violated any law or infringed the rights of any person, (2) provides as the claimant’s sole relief

monetary damages that are paid in full by Service Provider, and (3) requires that the claimant release PCMC and its agents, employees, and officers from all liability alleged in the Proceeding.

- G. Waiver. Service Provider expressly agrees that the indemnification provision herein constitutes the Service Provider's waiver of immunity under Utah Code § 34A-2-105 for the purposes of this Agreement. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement. No liability shall attach to PCMC by reason of entering into this Agreement except as expressly provided herein.
- H. No Limitation. The indemnification obligations of this Agreement shall not be reduced by a limitation on the amount or type of damages, compensation, or benefits payable by or for the Service Provider or Subcontractor under workers' compensation acts, disability benefits acts, or other employee benefit acts.
- I. Interpretation. The parties intend that the indemnity and defense provisions in this Article shall be interpreted so as to be enforceable to the fullest extent permitted by law, but nothing herein shall be interpreted to violate public policy.
- J. Environmental Indemnity. Service Provider shall indemnify PCMC, its agents, employees, and officers for any Indemnifiable Losses from a Proceeding arising out of Service Provider's violation of federal, state, or local environmental laws or regulations, and shall include but not be limited to all cleanup and remedial costs, diminution in value of property, and any fines or fees imposed as a result.

ARTICLE 8 – INSURANCE.

At its own cost and expense, Service Provider shall maintain the following mandatory insurance coverage to protect against claims for injuries to persons or property damage that may arise from or relate to the performance of this Agreement by Service Provider, its agents, representatives, employees, or Subcontractors for the entire duration of this Agreement or for such longer period of time as set forth below. Prior to commencing any work, Service Provider shall furnish a certificate of insurance as evidence of the requisite coverage. The certificate of insurance must include endorsements for additional insured, waiver of subrogation, primary and non-contributory status, and completed operations.

- A. Commercial General Liability Insurance. Service Provider shall maintain commercial general liability insurance on a primary and non-contributory basis in comparison to all other insurance, including PCMC's own policies of insurance, for all claims against PCMC. The policy must be written on an occurrence basis with limits not less than \$1,000,000 per occurrence and \$3,000,000 aggregate for personal injury and property damage. Upon request of PCMC, Service Provider must increase the policy limits to at least the amount of the limitation of judgments described in Utah Code § 63G-7-604,

the Governmental Immunity Act of Utah (or successor provision), as calculated by the state risk manager every two years and stated in Utah Admin. Code R37-4-3 (or successor provision).

- B. Automobile Liability Coverage. Service Provider shall maintain automobile liability insurance with a combined single limit of not less than \$2,000,000 per accident for bodily injury and property damage arising out of the ownership, maintenance, and use of owned, hired, and non-owned motor vehicles. This policy must not contain any exclusion or limitation with respect to loading or unloading of a covered vehicle.
- C. Professional Liability Insurance. [Delete if NOT applicable] Service Provider shall maintain professional liability insurance with annual limits not less than \$1,000,000 per occurrence. If written on a claims-made basis, Service Provider shall maintain professional liability insurance coverage meeting these requirements for the applicable period of statutory limitation of claims (or statute of repose, if applicable) after completion of the Scope of Services or termination of this Agreement.
- D. Workers' Compensation Insurance and Employer's Liability. Service Provider shall maintain workers' compensation insurance with limits not less than the amount required by statute, and employer's liability insurance limits of at least \$1,000,000 each accident, \$1,000,000 for bodily injury by accident, and \$1,000,000 each employee for injury by disease. The workers' compensation policy must be endorsed with a waiver of subrogation in favor of "Park City Municipal Corporation" for all work performed by the Service Provider, its employees, agents, and Subcontractors.
- E. Umbrella/Excess Coverage. The insurance limits required by this Section may be met by either providing a primary policy or in combination with umbrella / excess liability policy(ies). To the extent that umbrella/excess coverage is used to satisfy the limits of coverage required hereunder, the terms of such coverage must be following form to, or otherwise at least as broad as, the primary underlying coverage, including amending the "other insurance" provisions as required so as to provide additional insured coverage on a primary and non-contributory basis, and subject to vertical exhaustion before any other primary, umbrella/excess, or any other insurance obtained by the additional insureds will be triggered.
- F. Insured Parties. Each policy and all renewals or replacements, except those policies for Professional Liability, and Workers Compensation and Employer's Liability, must name PCMC (and its officers, agents, and employees) as additional insureds on a primary and non-contributory basis with respect to liability arising out of work, operations, and completed operations performed by or on behalf of Service Provider.
- G. Waiver of Subrogation. Service Provider waives all rights against PCMC and any other additional insureds for recovery of any loss or damages to the extent these damages are covered by any of the insurance policies required under this Agreement. Service

Provider shall cause each policy to be endorsed with a waiver of subrogation in favor of PCMC for all work performed by Service Provider, its employees, agents, and Subcontractors.

- H. Quality of Insurance Companies. All required insurance policies must be issued by insurance companies qualified to do business in the state of Utah and listed on the United States Treasury Department's current Department of Treasury Fiscal Services List 570, or having a general policyholders rating of not less than "A-" in the most current available A.M. Best Co., Inc.'s, Best Insurance Report, or equivalent.
- I. Cancellation. Should any of Service Provider's required insurance policies under this Agreement be cancelled before the termination or completion of this Agreement, Service Provider must deliver notice to PCMC within 30 days of cancellation. PCMC may request and Service Provider must provide within 10 days certified copies of any required policies during the term of this Agreement.
- J. Additional Coverage. Notwithstanding anything to the contrary, if Service Provider has procured any insurance coverage or limits (either primary or on an excess basis) that exceed the minimum acceptable coverage or limits set forth in this Agreement, the broadest coverage and highest limits actually afforded under the applicable policy(ies) of insurance are the coverage and limits required by this Agreement and such coverage and limits must be provided in full to the additional insureds and indemnified parties under this Agreement. The parties expressly intend that the provisions in this Agreement will be construed as broadly as permitted to be construed by applicable law to afford the maximum insurance coverage available under Service Provider's insurance policies.
- K. No representation. In specifying minimum Service Providers insurance requirements, PCMC does not represent that such insurance is adequate to protect Service Provider from loss, damage or liability arising from its work. Service Provider is solely responsible to inform itself of types or amounts of insurance it may need beyond these requirements to protect itself.

ARTICLE 9 – NONDISCRIMINATION.

- A. Nondiscrimination. Service Provider shall not discriminate against any employee or applicant for employment because of race; ethnicity; color; pregnancy, childbirth, or pregnancy-related conditions; age, if the individual is 40 years of age or older; religion; national origin; disability; sexual orientation; gender identity; or military status.
 - (1) Policy. Service Provider shall implement an employment nondiscrimination policy, if Service Provider does not already have such a policy, to effectuate the prohibition in this section; and

- (2) Subcontractor Flow-Through. Service Provider shall incorporate the foregoing non-discrimination provisions in all subcontracts or assignments under this Agreement and take action as required to ensure full compliance with the provisions of this non-discrimination policy.

ARTICLE 10 – ASSIGNMENT/SUBCONTRACTING.

- A. Assignment. Service Provider shall not assign any portion of its performance under this Agreement without PCMC’s written consent. Consent must be sought in writing by the Service Provider not less than 30 days before the date of any proposed assignment. PCMC reserves the right to reject assignment without cause. Any purported transfer in violation of this section will be void.
- B. Subcontracting. Service Provider shall obtain advance written consent from PCMC for any Subcontractor not identified in the Scope of Services.

ARTICLE 11 – TERMINATION.

- A. Convenience. Either party may terminate this Agreement for any reason or no reason by giving the other party at least 30 days’ prior written notice. This Agreement will terminate at midnight at the end of the 30th day after that notice is effective. Service Provider must be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination, according to the provisions of this Agreement.
- B. For Cause. If Service Provider fails to comply with any provision of this Agreement and fails to correct noncompliance within three days of having received written notice, PCMC may immediately terminate this Agreement for cause by providing a notice of termination to Service Provider.

ARTICLE 12 – NOTICES.

- A. Notice Addresses. For a notice or other communication to a party under this Agreement to be valid, it must be addressed using the information specified below for that party or any other information specified by that party in a notice delivered in accordance with this section.

To PCMC: Park City Municipal Corporation
P.O. Box 1480
Park City, UT 84060-1480
Attn: City Attorney's Office
PCMC_Notices@parkcity.org

With a copy to:

- PCMC's Representative pursuant to Article 1.C.
- PCMC's City Recorder at
michelle.kellogg@parkcity.org.

To Service Provider: [Name]
[Address Line 1]
[Address Line 2]
[Email address]

- B. Delivery. A notice or other communication under this Agreement will be effective if it is in writing and received by the party to which it is addressed. It will be deemed to have been received as follows: (1) upon receipt as stated in the tracking system of a delivery organization that allows users to track deliveries; (2) when the intended recipient signs for the delivery; (3) when delivered by email to the intended recipient with a read receipt, an acknowledgement of receipt, or an automatic reply.
- C. Refusal or Inability to Deliver. If the intended recipient rejects or otherwise refuses to accept delivery, or if it cannot be delivered because of a change of address for which no notice was given, then delivery is effective upon that rejection, refusal, or inability to deliver.
- D. Time of Delivery. If a notice or other communication addressed to a party is received after 5:00 p.m. on a business day at the location specified in the address for that party, or on a day that is not a business day, then the notice will be deemed received at 9:00 a.m. on the next business day.

ARTICLE 13 – MISCELLANEOUS PROVISIONS.

- A. Entire Agreement. This Agreement constitutes the entire understanding between the parties regarding the subject matter of this Agreement.
- B. Modification and Waiver. To be effective, any modification to this Agreement or to the Scope of Services must be in writing and signed by both parties. No waiver under this Agreement will be effective unless it is in writing and signed by the party granting the waiver (in the case of PCMC, by an individual authorized by PCMC to sign the waiver). A waiver granted on one occasion will not operate as a waiver on other occasions.

- C. Timely Performance. Service Provider shall complete the Scope of Services by any applicable deadline stated in this Agreement. Service Provider is liable for all reasonable damages to PCMC incurred as a result of Service Provider's failure to timely perform the Scope of Services required under this Agreement.
- D. Governing Law, Jurisdiction, Venue. Utah law governs all adversarial proceedings arising out of this Agreement or the subject matter of this Agreement. As the exclusive means of bringing adversarial proceedings to resolve any dispute arising out of this Agreement or the subject matter of this Agreement, a party may bring such a proceeding in courts of competent jurisdiction in Summit County, Utah.
- E. Severability. The parties acknowledge that if a dispute between the parties arises out of this Agreement or the subject matter of this Agreement, it would be consistent with the wishes of the parties for a court to interpret this Agreement as follows: (1) with respect to any provision that it holds to be unenforceable, by modifying that provision to the minimum extent necessary to make it enforceable or, if that modification is not permitted by law, by disregarding that provision; (2) if an unenforceable provision is modified or disregarded in accordance with this section, by holding that the rest of the Agreement will remain in effect as written; (3) by holding that any unenforceable provision will remain as written in any circumstances other than those in which the provision is held to be unenforceable; and (4) if modifying or disregarding the unenforceable provision would result in failure of an essential purpose of this Agreement, by holding the entire Agreement unenforceable.
- F. No Non-Party Rights. Nothing in this Agreement is intended to grant rights of any kind to any non-party or create third-party beneficiary rights of any kind.
- G. Force Majeure. For purposes of this Agreement, a Force Majeure Event means any event or circumstance, regardless of whether it was foreseeable, that was not caused by that party and that prevents a party from complying with any of its obligations under this Agreement, but a Force Majeure Event will not include any strike or labor unrest, an increase in prices, a change in general economic conditions, or a change of law. A party that is prevented by the occurrence of a Force Majeure Event from performing any one or more obligations under this Agreement will not be liable for any failure or delay in performing those obligations, on condition that the non-performing party uses reasonable efforts to perform. The non-performing party shall promptly notify the other party of the occurrence of a Force Majeure Event and its effect on performance. Thereafter, the nonperforming party shall update the other party as reasonably necessary regarding its performance. The nonperforming party shall use reasonable efforts to limit damages to the other party and to complete its full performance under this Agreement.

Each party is signing this Agreement on the date stated opposite that party's signature.

PARK CITY MUNICIPAL CORPORATION, a Utah
municipal corporation

Date: _____

By: _____

Matt Dias
City Manager

Attest:

City Recorder's Office

Approved as to form:

City Attorney's Office

[insert NAME OF SERVICE PROVIDER]

Tax ID #: _____

PC Business License #: BL _____

Date: _____

By: _____

[insert name of individual signing]

[insert title of individual signing]

An authorized signer

SCHEDULE A – SCOPE OF SERVICES

SCHEDULE B – FEE SCHEDULE FOR EXTRA WORK

Note: Any work in addition to or outside the Scope of Services in Schedule A shall be approved in advance in writing by PCMC and shall not exceed the contract price reflected in Article 3 of the Agreement.