



Planning Department

Request for Proposals 2023 Annual Cindy Matsumoto Historic Preservation Award

Art for the 2023 Annual Cindy Matsumoto Historic Preservation Award

April 18, 2023

**REQUEST FOR PROPOSALS FOR ART FOR THE 2023 ANNUAL CINDY
MATSUMOTO HISTORIC PRESERVATION AWARD**

Park City Municipal Corporation (“PCMC”) is seeking proposals from artists to design and produce the following:

**Art to Commemorate the 2023 Annual Cindy Matsumoto Historic Preservation
Award**

If you are interested in submitting a proposal, a copy of the RFP can be obtained as of Tuesday April 18, 2023, from PCMC, 445 Marsac Avenue, Park City, Utah, OR via emailing Caitlyn Tubbs, Sr. Historic Preservation Planner, at caitlyn.tubbs@parkcity.org; OR by obtaining it electronically at www.parkcity.org. **Questions regarding this RFP must be emailed directly to caitlyn.tubbs@parkcity.org by 5:00 pm MST on Friday May 12, 2023.**

Proposals must be submitted by 5:00 p.m. MST, Friday, May 19, 2023, at PCMC, Attn: Planning Department c/o Caitlyn Tubbs, 445 Marsac Avenue, P.O. Box 1480, Park City, UT 84060.

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 contract award and reserves the right to accept or reject any or all proposals submitted pursuant to this RFP. PCMC will provide respondents written notice of any cancellation and/or modification. Furthermore, PCMC shall have the right to waive any informality or technicality in proposals received when in the best interest of the City.

In the absence of the project manager, proposals should be dropped off to the City Recorder, located at 445 Marsac Avenue, Third Floor – Executive Department, Park City, UT 84060.

**PARK CITY MUNICIPAL CORPORATION
PUBLIC ART**

Summary Sheet - Request for Proposals

1. **Project:** PCMC is seeking proposals from artists to design and produce art for the Historic Preservation Board's Annual Cindy Matsumoto Historic Preservation Award. All media, materials, and themes will be considered based, in part, upon the following criteria:

- a) The art will be installed and publically displayed in City Hall.
- b) The art piece(s) shall reflect this year's Cindy Matsumoto Historic Preservation Award recipient: **King Con Ore Bin**.



c) The project budget will not exceed **One Thousand Eight Hundred Dollars (\$1,800.00)** for a single art piece.

- Art pieces shall be approximately twenty-four inches (24") by eighteen inches (18") and no more than twenty-four inches (24") square.
- Should the piece be framed art, the piece must measure approximately twenty-four inches (24") by eighteen inches (18") and be no more than twenty-four inches (24") square, not including the frame. A frame

should be added to the piece and be no more than three inches (3") in width.

2. **Project Location:** City Hall, 445 Marsac Avenue, Park City, Utah.
3. **Requested Services:** Design and produce the annual Cindy Matsumoto Historic Preservation Award to hang in a public area of City Hall, Park City, Utah.
4. **Proposals Due: Friday, May 19, 2023, by 5:00 p.m. MST**
5. **Submittal Requirements.** Five (5) copies of artist portfolio (up to ten {10} images of previous artwork), artist resume, and supporting materials such as articles and letters of support, shall be emailed or delivered to the Park City Municipal Corporation Planning Department, Attn: Caitlyn Tubbs, 445 Marsac Avenue, P.O. Box 1480, Park City, UT 84060. Proposals will not be accepted after the 5:00 pm deadline on Friday, March 3, 2023. ***Proposal budgets must be included in the submittal.***
6. **Selection Committee Meeting** will be held in May-June 2023. Two (2) to three (3) finalists may be selected for interviews, which will be scheduled as necessary. Final selection is tentatively scheduled to be made by June 9, 2023.

I. Introduction and Project Description

Over the course of the last year, the Historic Preservation Board (“HPB”) has indicated as part of their Visioning goals the intent to continue the Preservation Awards program. The awards program is to be based on a Project utilizing the *Design Guidelines for Historic Districts and Historic Sites* and the focus of the award may change from year to year. The Board has agreed that the HPB Preservation Award should not compete with any of the Historical Society’s awards but complement the existing joint preservation efforts already taking place and highlight the *Design Guidelines for Historic Districts and Historic Sites* by which all development in the Historic Districts must comply.

Properties are selected for this award based on the following categories:

- Adaptive Re-Use
- Infill Development
- Excellence in Restoration
- Sustainable Preservation
- Embodiment of Historical Context
- Connectivity of Site
- Stewardship

Previous award recipients include:

- 2011: High West Distillery, oil painting by Sid Ostergaard
- 2012: Washington School House Hotel, oil painting by Jan Perkins
- 2013: 515 Main Street, painting by Bill Kranstover, and 929 Park Avenue, painting by Dori Pratt
- 2014: Garage at 101 Prospect, painting by Bill Kranstover
- 2015: 562 Main Street, painting by Cara Jean Means
- 2016: California Comstock, painting by Hilary Honadel
- 2017: Egyptian Theatre, mixed media painting by Marianne Cone
- 2018: Glenwood Cemetery oil painting by Anna Leigh Moore
- 2022: 1141 Park Avenue, painting by Morgan McCue

All of these art pieces are showcased on the main and second levels of City Hall.

On February 1, 2023, the HPB chose the King Con Ore Bin located within Park City, Utah, as the recipient of the 2023 Historic Preservation Award.

II. Selection Process

The selection committee will choose finalists for the 2023 Historic Preservation Award project described in Section I above. The selection committee includes up to three (3)

members of the HPB, the Public Art Advisory Board (“PAAB”) and Planning Department staff.

Finalists may be invited to interview with the Awards Committee in May-June 2023. The Awards Committee will then select one (1) artist to create one (1) art piece honoring the Historic Preservation Award recipient, the King Con Ore Bin.

III. Submittal Requirements

All artists and/or teams responding to the RFP must submit complete responses to the information requested in this section and note any exceptions to any information contained in the RFP. Applicants shall present information in a clear and concise manner following the format listed below:

1. **Portfolio.** (Twelve (12) page maximum, 8 1/2” x 11” maximum size). Up to ten (10) images of previous artwork.
2. **Current Artist Resume.** Information on the artist or team, highlighting experience, public art-commissions, or similar work.
3. **Supporting Materials.** These may include brochures, articles, and letters of support.
4. **Budget.** A proposed budget, not to exceed **One Thousand Eight Hundred Dollars (\$1,800.00)** per art piece shall be included in the proposal. If framed, the cost of framing should be included in the **One Thousand Eight Hundred Dollars (\$1,800.00)** budget.
5. Include proposed fee schedule which includes all costs associated with performance of the services specified, including but not limited to artist labor, materials costs, transportation, delivery, overhead, and anticipated fabrication and installation cost (if applicable). **The nature and extent of requested changes to our standard Service Provider Professional Service Agreement Commissioned Art – Minor - (attached hereto as Exhibit “A” and incorporated herein), i.e., unwillingness to comply with our insurance/indemnity provision, counts against a bidder. The proposal shall be good for sixty (60) days.**

Proposals lacking required information will not be considered.

IV. Submittal Instructions

Five (5) copies of responses to this RFP must be received by **5:00 p.m. MST on Friday, May 19, 2023**. Deliver, mail, or email proposals to:

Caitlyn Tubbs, Sr. Historic Preservation Planner
Park City Municipal Corporation—Planning Department
445 Marsac Avenue
P.O. Box 1480
Park City, UT 84060
caitlyn.tubbs@parkcity.org

In the absence of the project manager, proposals should be dropped off to the City Recorder, located at 445 Marsac Avenue, Third Floor – Executive Department, Park City, UT 84060.

Transmittal and receipt of electronic items is at the risk of the offerer. Faxed proposals will not be accepted.

All costs related to the preparation of the proposals and any related activities are the sole responsibility of the artist and/or team. The City assumes no liability for any costs incurred by offerers throughout the entire selection process.

If bidder utilizes third parties for completing RFP requirements, list what portion of the RFP will be completed by third parties and the name, if known, of the third party.

V. Criteria for Selection

The following listed criteria will be used in the evaluation of the proposals. The list is not in order of priority; some criteria will receive more weight than others. In addition, the Committee will also seek to choose artists with a range of backgrounds and experiences and working in a range of media and encourages new artists to submit proposals as well.

- 1. Functionality and durability of art piece.**
- 2. Clarity and completeness of proposal.** Visual support material and/or illustrations to show the proposal, portfolio, and/or past work should be included.
- 3. Creativity and uniqueness.**
- 4. Cost.** Price may not be the sole deciding factor.

5. PCMC's policy is, subject to Federal, State, and local procurement laws, to make reasonable attempts to support Park City businesses by purchasing goods and services through local vendors and service providers.

6. Applicant Experience.

A. Stimulate Excellence

Qualifications and quality of previous work.
Quality of submission.

B. Use Resources Wisely

Sustainability of previous projects.
Ability to work within the timeline.
Experience in working within timelines and budgets.
Feasibility and ease of installation.

VI. Timeline

The schedule is contingent upon the City's project schedule and may be changed at any time.

Submittal Deadline	May 19, 2023
Selection	Approximately June 9, 2023
Anticipated completion	September 1, 2023

PCMC reserves the right to change any dates or deadlines.

VII. Requests for Additional Information

All questions concerning the submittal or the project must be submitted via email inquiry to Caitlyn Tubbs, Sr. Historic Preservation Planner at caitlyn.tubbs@parkcity.org by 5:00 p.m. MST on Friday, May 12, 2023.

VIII. Risk of Loss

The selected artists and/or teams will bear the entire risk of loss or damage to the work during design, fabrication, packing, shipping, and installation. When the work is completely installed and formally accepted by PCMC, then PCMC assumes the risk of loss.

IX. Contract

The selected proposers will be required to enter into the City's standard Service Provider/Professional Services Agreement Commissioned Art Minor in a form to be

approved by the City Attorney's Office in substantially the form as shown in the sample agreement, attached hereto as **Exhibit "A."** Artists and/or teams are advised to read thoroughly the sample agreement, as the selected artists and/or teams will be required to comply with its requirements. **Please include a statement indicating that you (1) accept the Agreement as is; or (2) propose changes and specify.**

If artist and/or team takes exception to any term or condition set forth in this RFP and/or the sample agreement and any of its exhibits and attachments, said exceptions must be clearly identified in the response to this RFP. Exceptions or deviations to any of the terms and conditions must be submitted in a separate document accompanying proposal identified as "Exceptions." Such exceptions shall be considered in the evaluation and the award processes. The City shall be the sole determiner of the acceptability of any exception.

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 contract award and reserves the right to accept or reject any or all proposals submitted pursuant to this request for proposals. Park City will provide respondents written notice of any cancellation and/or modification. Furthermore, the City shall have the right to waive any informality or technicality in proposals received when in the best interest of the City. All submittals shall be public records in accordance with government records regulations ("GRAMA") unless otherwise designated by the applicant pursuant to UCA §63G-2-309, as amended.

ANY INQUIRIES RELATED TO INDEMNIFICATION OR INSURANCE PROVISIONS CONTAINED IN PCMC'S STANDARD AGREEMENT MUST BE SUBMITTED TO PCMC NO LATER THAN THE PROPOSAL/SUBMITTAL DEADLINE. PCMC MAY, IN ITS SOLE DISCRETION, CONSIDER SUCH INQUIRES. ANY CHANGES TO PCMC'S STANDARD INSURANCE AND INDEMNIFICATION PROVISION SHALL BE APPROVED AT PCMC'S SOLE DISCRETION.

EXHIBIT "A"
PARK CITY MUNICIPAL CORPORATION
SERVICE PROVIDER/PROFESSIONAL SERVICES AGREEMENT
COMMISSIONED ART - MINOR

This Service Provider/Professional Services Agreement – Commissioned Art – Minor (the "Agreement") is made and entered into in duplicate this _____ day of _____, 20____, by and between **PARK CITY MUNICIPAL CORPORATION**, a Utah municipal corporation, ("City"), and _____, an individual ("Service Provider").

WITNESSETH:

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

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 "Work" or the "Art"). 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 as follows: fifty percent (50%) of Contract Price upon execution of this Agreement and the remaining fifty percent (50%) upon delivery of the Art and final acceptance of the Project by the City.
- 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. The Service Provider reserves the right to suspend or terminate work and this Agreement if any unpaid account exceeds sixty (60) days.

4. REPRESENTATIONS AND WARRANTIES.

Service Provider represents and warrants to the City that:

- A. Materials and Workmanship: The materials and equipment furnished under this Agreement will be of good quality and new unless otherwise required or permitted by **Exhibit "A"** attached hereto, the Project will be free from defects and faults in material and workmanship and the Project will conform to the requirements of **Exhibit "A;"**
- B. Copyright: Neither the Art nor its components or any other element of the Project infringe or violate any copyright or patent right held by any person;
- C. Title: Title to the Project, including the Art and all materials and components thereof, will pass to the City upon receipt of final payment by Service Provider free and clear of all liens, claims, security interests or encumbrances, hereinafter referred to as "liens," and no materials incorporated into the Project have been acquired subject to an agreement under which an interest therein or an encumbrance thereon has been retained by the seller; and
- D. No Finders Fees: All negotiations relative to this Agreement and the transactions contemplated by and under this Agreement have been carried on without the intervention of any person whose act or acts would give rise to any valid claim against the City for a finder's fee, brokerage commission, or other like payment.

- E. Licensing: Service Provider and if applicable any subcontractors shall possess and maintain in good standing throughout the term of this Agreement all licensing/certification necessary to perform all services provided for in this Agreement, including but not limited to applicable contractors, architectural, and engineering licenses/certification.
- F. Original Creation: Service Provider represents and warrants that: (a) the work described in Exhibit "A" (the "Work") is the original creation of the Service Provider; (b) the Work is unique and an edition of one; and (c) no identical Work will be created by the Artist.

5. RECORDS.

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.

6. 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.

7. 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.

8. RISK OF LOSS.

The Service Provider shall be responsible for the care and protection of all work performed by the Service Provider until completion of the installed Work and acceptance by the City and shall repair or restore any damaged work; provided however, that the Service Provider shall not be responsible for any damage that occurs after acceptance by the City unless such damage is caused by an act or omission of the Service Provider.

9. 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.

10. 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 as follows:

- A. 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.

Service Provider shall submit with the signed Agreement a certificate of insurance evidencing this coverage to the City.

- B. Auto liability insurance with limits as required by statutory law.
- C. 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.
- D. 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.

- E. For any claims related to this Service Provider/Professional Services 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.

11. TREATMENT OF ASSETS.

- A. Ownership: Service Provider hereby irrevocably assigns, conveys, and otherwise transfers to City and its respective successors and assigns title to the Work and all proprietary rights thereto.

- B. Duplication of Art:

- (i) Service Provider hereby irrevocably assigns, conveys, and otherwise transfers to City and its respective successors and assigns title to the project Work and all proprietary rights thereto. Service Provider retains all rights under the Federal Copyright Act and all other rights in and to the Work except ownership and possession, and except as such rights are limited by this Agreement.

- (ii) In view of the intention that the Art in its final dimension shall be unique, Service Provider shall not make any additional exact duplication or reproductions of the final Art, nor shall Service Provider grant permission to others to do so except with the written permission of the City; provided however, that the Service Provider may use depictions of the Art in personal promotional materials such as portfolios or resumes, and techniques and design elements from the project in creation of other Art in body of work.

- (iii) Service Provider grants to the City and its assigns an irrevocable license to make two- and/or three-dimensional reproductions of the Art for commercial or noncommercial purposes, including but not limited to reproductions used in advertising, brochures, media publicity, fundraising, and catalogs or other similar publications, provided that these rights are exercised in a tasteful and professional manner. Wherever practicable, City shall make reasonable efforts to include Service Provider's name in any such advertisement, brochure, media publicity, catalog or other

similar publication in which the Art appears and to notify the Service Provider of its efforts.

- C. Repair or Restoration: Where, in the opinion of the City or Service Provider, repairs and/or restoration of the Art are required for which Service Provider is not responsible pursuant to the terms of this Agreement, the City shall, when reasonably practicable, give Service Provider the opportunity to accomplish such repairs and/or restoration if a reasonable fee can be agreed upon between the City and Service Provider. Nothing herein shall obligate the City to make such repairs and/or restoration nor to contract with Service Provider to accomplish such repairs and/or restoration.
- D. Independent Sale: If in the future the City wishes to sell the Art separate and apart from any real property to which the Art may be integrated or affixed, the City will use reasonable efforts to provide the Service Provider an opportunity to purchase the Art from the City. However, no liability shall attach the City by virtue of this section.
- E. Notice: Service Provider agrees to keep the City notified in writing of changes in Service Provider's address, and failure to do so shall be deemed a waiver of Service Provider's right of first refusal in Paragraph 11(D) above.
- F. Warranty: If, within one (1) year after the date of the completion of installation of the Project and acceptance by the City, the Project or any component or material thereof is found to be defective or to not be in accordance with the Design Plans and Construction Documents attached at **Exhibit "A,"** Service Provider shall correct it promptly after receipt of a written notice from the City to do so unless the City has previously given Service Provider a written acceptance of such condition. This obligation shall survive acceptance of the Project under this Agreement and termination of this Agreement. Nothing contained in this Paragraph shall be construed to establish a period of limitation with respect to any other obligation which Service Provider might have under this Agreement, including Paragraph 2 and Paragraph 4 herein. The establishment of the time period of one (1) year after completion of installation and acceptance by the City relates only to the specific obligation of Service Provider to correct the Project, and has no relationship to the time within which Service Provider's obligations to comply with the Design Plans and Construction Documents may be sought to be enforced, nor the time within which proceedings may be commenced to establish Service Provider's liability with respect to an obligation other than to specifically correct the Project.

12. 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.

13. 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:

- A. Implement an employment nondiscrimination policy prohibiting discrimination in hiring, discharging, promoting or demoting, matters of compensation, or any other employment- related decision or benefit against a person otherwise qualified, because of actual or perceived race; color; sex; pregnancy, childbirth, or pregnancy- related conditions; age, if the individual is 40 years of age or older; religion; national origin; disability; sexual orientation; gender identity; genetic information; or

military status.

- B. In the performance of this Agreement, 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.
- C. Incorporate the foregoing provisions in all subcontracts or assignments hereunder and take such actions as may be required to ensure full compliance with the provisions of this policy.

14. 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.

15. 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.

16. RIGHT TO INSPECT WORK IN PROGRESS.

- A. Service Provider shall provide the City access to the Project in preparation and progress wherever located. Whenever the City considers it necessary or advisable for the implementation of the intent of this Agreement, the City will have authority to inspect the Project and to require special inspection or testing of the Project or its components to ascertain whether it is in accordance with the Scope of Services attached as Exhibit "A", or following the design phase, the Design Plans, and Construction Documents. If such inspection or special inspection or testing reveals a failure of the Project or the components thereof to comply with the requirements of the Design Plans and Construction Documents, Service Provider shall bear all costs of the correction of the defective work, including compensation for the City's additional services made necessary by such failures; otherwise, the City shall bear the costs of such inspection and testing. Service Provider shall not be relieved from the obligation to fabricate and produce the Project and to install the Project in accordance with the Design Plans and Construction Documents by reason of the City's failure to reject the Project or any component thereof or by any inspections, tests or approvals performed by the City.

- B. In the event the City does not find the Project, as it progresses, in compliance with the Design Plans and Construction Documents, the City will work to cure discrepancies with the Service Provider within the parameters and scope of the project. Any additional costs to the project due to discrepancies will be the responsibility of the Service Provider. The Service Provider must mend the dispute within a timeline of no more than five (5) business days or request in written form for an extension. Payment will be made to Service Provider for the Project completed to date of termination. The state of the completion of the Project and the amount which may be due hereunder shall be determined solely by the City. If such termination is due to a substantial variance from the Design Plans and Construction Documents set forth in Exhibit "A", this Agreement, and/or the International Building Code, 2003 edition, the City shall have the option of paying nothing hereunder and of requiring repayment by Service Provider of any sums previously paid by the City. Upon such termination, Service Provider shall retain all rights to the concept, design, and the Art itself, including the right to complete, exhibit, and sell the Art. However, upon such termination, the City shall have the right to require the Work itself be removed from the property of the City.

- C. Service Provider agrees to accommodate reasonable requests by City for access to the Project in preparation and progress for the purpose of promoting the Art so long as such access does not interfere with the progress and timing of Service Provider's work.

17. 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.

18. 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, 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.

19. 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 effected 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.

20. 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 19 is effective upon receipt. All reference to "days" in this Agreement shall mean calendar days.

21. 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 that action or proceeding.

22. 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.

23. 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.

24. 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.

- 25. 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.

- 26. 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

(INSERT SERVICE PROVIDER), an individual

Address: _____

Tax ID#: _____

PC Business License #: _____

Printed Name

Signature

Title

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

STATE OF _____)

COUNTY OF _____)

On this ____ day of _____, 20____, _____
(name of document signer) personally appeared before me , whose identity is
personally known to me or proven on the basis of satisfactory evidence, and who by me
duly sworn/affirmed, that he/she acknowledged to me that he/she executed the
_____ (name of document being signed).

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