



## City Council Staff Report

CONSENT CALENDAR

DATE: February 20, 2013

SUBJECT: SKATE PARK OPERATIONS AND MANAGEMENT FACILITY PROJECT UPDATE; APPROVAL OF AN ESTIMATED COMPREHENSIVE SKATE PARK PROJECT BUDGET AND ADOPTION OF A RESOLUTION AMENDING THE CITY FISCAL YEAR 2012/13 BUDGET; APPROVAL OF AMENDMENT NO. 1 TO THE CONSULTING SERVICES AGREEMENT NO. A6272 WITH INTERACTIVE DESIGN CORPORATION FOR THE FINAL DESIGN DRAWINGS FOR THE EXTERIOR AND INTERIOR OF THE NEW FACILITY

FROM: David H. Ready, Esq., Ph.D., City Manager

BY: Parks & Recreation Department

---

### SUMMARY

On October 19, 2011, the City Council approved a five-year agreement with Action Park Alliance, Inc., to operate and manage the Palm Springs Skate Park. Contracting with Action Park Alliance, Inc. provides for a comprehensive operating program for the Skate Park, along with experienced daily management which will address a number of operating and program issues which have significantly hampered the community's use and enjoyment of the facility.

With the execution of the contract with Action Park Alliance, Inc., the City committed to provide an Operations and Management Facility at the Skate Park. Staff secured a modular structure to serve as the new facility.

On October 17, 2012, the City Council approved the architectural Concept Design for the new Skate Park facility prepared by architect Reuel Young of the firm Interactive Design Corporation.

On December 19, 2012, the City Council awarded the contract for the site improvements to Simon Contracting which will begin work on March 4, 2013. Simon Contracting's work along with the installation of the modular building on the site by G & M Construction is projected to be complete by May 1, 2013, at which time the work on the exterior and interior of the modular can begin with a projected total project completion date of June 15, 2013.

ITEM NO. 2K

Staff requests approval of an estimated comprehensive Skate Park Operations and Management Facility Project budget and adoption of a Resolution amending the City's Fiscal Year 2012/13 budget, along with Amendment No. 1 to the Consulting Services Agreement No. A6272 with Interactive Design for the design drawings for the exterior and interior of the new Skate Park facility.

**RECOMMENDATION:**

- 1) Approve the estimated comprehensive budget for the new Skate Park Operations and Management Facility Project in the total amount of \$750,000.
- 2) Adopt Resolution No. \_\_\_\_\_, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM SPRINGS, CALIFORNIA, AMENDING THE BUDGET FOR FISCAL YEAR 2012/13 FOR THE SKATE PARK OPERATIONS AND MANAGEMENT FACILITY PROJECT.
- 3) Approve Amendment No. 1 to Agreement No. A6272 with Interactive Design Corporation in the amount of \$30,100 for a total cost of \$54,400 for the design of the Skate Park Operations and Management Facility.
- 4) Authorize the City Manager to execute all necessary documents.

**STAFF ANALYSIS:**

Since October 17, 2012, when the City Council approved the architectural Concept Design for the new Skate Park Operations and Management Facility, staff and project consultants have been able to prepare an estimated comprehensive Project Budget:

- Cost for Modular Building (Rael)	\$75,000
- Architectural Design Services (Interactive Design)	\$54,400
- Site Engineering Services (Engineering Resources)	\$52,000
- Site Construction (Simon Contracting)	\$140,000
- Modular Building Move and Installation (G & M Construction)	\$13,000
- Cost Estimate for Modular Exterior and Interior (Interactive Design estimate)	\$350,000

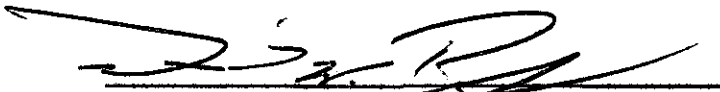
- Project Contingency (approximately 9%)	\$65,000
<b>TOTAL PROJECTED PROJECT COST</b>	<b>\$750,000</b>


The current Fiscal Year 2012/13 City budget has an initial project allocation from Quimby Funds of \$200,000. Staff requests that the Fiscal Year 2012/13 City budget be amended to provide \$550,000 estimated to be needed to complete the funding of the project.

In addition, staff requests that the City Council approve an amendment to the Consulting Services Agreement with Interactive Design Corporation to provide for the plans and specifications needed in order to bid for the construction of the exterior and interior improvements for the modular. The cost for these final services by Interactive Design is \$30,100. The detail and specification of the work is set forth in Attachment A. Upon approval, the total costs for architectural and design services by Interactive Design Corporation is \$54,400.

FISCAL IMPACT:

Funding for the Skate Park Operations and Management Facility is available through Quimby Fund which has a current unallocated fund balance of more than \$2 million.

  
\_\_\_\_\_  
David H. Ready, Esq., Ph.D., City Manager

  
\_\_\_\_\_  
Thomas J. Wilson, Asst. City Manager

  
\_\_\_\_\_  
James Thompson, City Clerk

Attachment: Proposal for Consultant's Services

**FIRST AMENDMENT TO CONTRACT SERVICES AGREEMENT  
For  
Skate Park Architectural Services**

**(Interactive Design Corporation and City of Palm Springs)**

THIS FIRST AMENDMENT TO CONTRACT SERVICES AGREEMENT ("**Amendment**") is made by and between INTERACTIVE DESIGN CORPORATION, a California corporation ("**Consultant**"), and CITY OF PALM SPRINGS, a charter city and a municipal corporation ("**City**"), as of February 20, 2013, and amends that certain Contract Services Agreement dated as of July 24, 2012, by and between Consultant and City ("**Agreement**"). All terms defined in the Agreement shall have the same meaning when used herein.

**RECITALS**

A. Consultant has agreed to provide to City and City has agreed to purchase from Consultant the Services which are the subject of the Agreement.

B. Consultant and City now mutually desire to amend the Agreement as set forth below.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Consultant and City mutually agree to amend the Agreement as follows:

**AGREEMENT**

1. Sentence 2 of Section 3.1 of the Agreement shall be replaced in its entirety and amended to read as follows:

The total amount of compensation for the Project Services shall not exceed Fifty-four thousand, four hundred dollars (\$54,400).

2. Attachment A, Proposal for Architectural Services, attached hereto and incorporated herein, is hereby appended to Attachment A of the Agreement.

3. Except as expressly provided herein, all other terms and conditions of the Agreement shall remain in full force and effect.

///

///

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, Consultant and City have executed this Amendment as of the date first written above.

**"Consultant"**

INTERACTIVE DESIGN CORPORATION, a California corporation

By: \_\_\_\_\_  
Reuel Young, AIA, President

**"City"**

CITY OF PALM SPRINGS, a charter city and a municipal corporation

BY:

\_\_\_\_\_  
David H. Ready, City Manager

ATTEST:

\_\_\_\_\_  
James Thompson, City Clerk

Approved as to form by:

WOODRUFF, SPRADLIN & SMART

\_\_\_\_\_  
DOUGLAS C. HOLLAND, City Attorney

PROPOSAL FOR CONSULTANTS' SERVICES  
PALM SPRINGS CITY SKATE PARK  
ENTRANCE AND MODULAR UPGRADE

JANUARY 22, 2013

This proposal represents the necessary consultants participation and coordination for the completion of the Design Services for the PALM SPRINGS CITY SKATE PARK ENTRANCE and MODULAR UPGRADE PROPOSAL dated 25JUN12 Proposal.

1. PROJECT DESCRIPTION – MODULAR/ENTRANCE

- a. Reconfigure southerly terminus of Pavilion Way, reconfigure hardscape and utilities from Pavilion Way to Skate Park, install existing modular building (40' x 60'), improve exterior treatment and building elevations to enhance the appearance of the building, improve interior of modular to meet requirements of Park operator, and re-landscape immediate surroundings.

2. PROJECT ADMINISTRATION & REVIEW

- a. City Representative and Project Manager: Vicki Oltean
- b. City Review Committee: Councilmember Mills, Thomas Wilson, Vicki Oltean
- c. Tenant Improvement Design Review: Vicki Oltean, Mark Lau
- d. Building Inspection: City of Palm Springs, Terry Tatum

3. INFORMATION, APPROVALS AND MATERIALS (from CLIENT)

- a. Contract Documents for off-site improvements, and any updates or changes to the contract to construct.
- b. Construction documents of existing modular.
- c. Off- and on-site existing utility conditions.
- d. Off- and on-site utility re-routing design.
- e. All point of connections to the modular will be designed on the West side of the modular. City is responsible to bring the utility lines to this location.
- f. Inspection and approval by Agency Having Authority of structural system of existing modulares, and of connection and anchorage of modulares to in-ground foundation and retaining systems. Approvals necessary prior to start of remodel.
- g. Park operator specifications for food service equipment, display cases and other proprietary furnishings.

#### 4. CONSULTANT TEAM

- a. ARCHITECT: Interactive Design Corporation
- b. CONSULTANTS:
  - i. STRUCTURAL: Tang Structural Engineering
  - ii. MECHANICAL/PLUMBING: EquitySpec Consulting Engineers, Inc.
  - iii. ELECTRICAL: Bentsen/HUI Engineering
  - iv. LANDSCAPE: Hermann @ Assoc.

#### 5. EXCLUSIONS

- a. Civil engineering; grading and wet utilities
- b. Dry utility relocation and/or design
- c. Retrofit or remediation of existing structure. If above mentioned inspections require retrofit or remedial work, the design and documents necessary for such work shall be an additional service.
- d. Design of surveillance and security system.
- e. Design of fire alarm system.
- f. Interior furnishings as required for Park operator.

#### 6. SCOPE OF SERVICES

##### a. CONSTRUCTION DOCUMENTS

- i. Structural – The existing structure will be inspected by the Agency Having Authority for compliance with appropriate Codes and all remedial work required to bring the existing structure into compliance is NOT included in this contract.
- ii. Structural - Services included in this contract are:
  - 1. Entry ramp
  - 2. Review attachments of new furred walls to existing structure
  - 3. Details to reduce or close existing openings and details for new openings within allowable limits in existing shear walls.
  - 4. Detail for skylight framing.
  - 5. Provide steel canopy engineering and details.
- iii. Mechanical/Plumbing –
  - 1. Design for re-configuring existing duct work and add new ductwork as necessary to accommodate two new ground-mount heart pumps.
  - 2. Calculate, design and specify new HVAC system, equipment, and controls.
  - 3. Design plumbing for water and waste to restrooms and food service equipment.
  - 4. Prepare T-24 calculations.

- iv. Electrical –
  - 1. Calculate new electrical demand, and design service entry and panel.
  - 2. Design lighting and power for the new entry and egress.
  - 3. Design lighting and power for retail and public areas.
  - 4. Design lighting and power to two restrooms within the existing ceiling/roof space.
  - 5. Re-circuit as required the power distribution and lighting systems to accommodate the change of use.
  - 6. Design power for HVAC system.
  - 7. Design power and data for Client-designed and provided video surveillance cameras and controls.
  - 8. Design exterior lighting for security, landscape areas and building.
  - 9. Design data and cable wiring and outlets.
  - 10. Provide power for computer station at sales/check counter in center of modular.
- v. Landscape –
  - 1. Landscape and irrigation plans.
  - 2. Exterior lighting (location and type only)

**b. BIDDING & CONSTRUCTION ADMINISTRATION**

- i. Provide support services as requested by Client for technical specifications and questions from the bidders during Bidding.
- ii. Participate in pre-bid and pre-construction meetings.
- iii. Review and process submittals and change orders.
- iv. Attend weekly on-site meetings.
- v. Respond to RFI's and provide clarification documents as needed.
- vi. Respond to Client representative requests for additional support.

**7. SCHEDULE**

- a. Submit documents for plan review no later than 45 days after contract approval.

**8. COMPENSATION**

- a. Under existing Contract dated 24JUL12, compensation of Twenty Four Thousand Three Hundred Dollars \$24,300 (not to exceed), funds remaining are for:

i. Construction Docs, for Architecture only	\$8,000
ii. Construction Administration, for Architecture only	<u>\$6,000</u>
Sub-total remaining for existing Contract	\$14,000



- b. Under Contract Amendment, Construction Documents and Bidding fixed fee of Twenty Five Thousand One Hundred Dollars (\$25,100) includes:
- |                                  |              |
|----------------------------------|--------------|
| i. Project Coordination          | \$5,800      |
| ii. As-built Plans               | 2,400        |
| iii. Structural Engineer         | 5,500        |
| iv. Mechanical/Plumbing Engineer | 4,350        |
| v. Electrical Engineer           | 3,000        |
| vi. Landscape Architect          | <u>4,050</u> |
| Sub-total for CD and Bid Phases  | \$25,100     |
- c. Under Contract Amendment Construction Observation hourly not to exceed Three Thousand Dollars (\$3,000) includes:
- |                    |         |
|--------------------|---------|
| i. All Consultants | \$3,000 |
|--------------------|---------|
- d. Reimbursable
- |   |                 |
|---|-----------------|
| i. Allowance of Two Thousand Dollars (\$2,000) to be billed at 1.10 times cost to Consultant. | <u>\$2,000</u>  |
| <b>Total compensation, under Contract Amendment not to exceed</b>                             | <b>\$30,100</b> |

Reuel Young, AIA,  
 President, Interactive Design Corporation

## CONSULTING SERVICES AGREEMENT

### Palm Springs Skate Park

THIS AGREEMENT FOR CONSULTING SERVICES ("Agreement") is made and entered into on July 24, 2012, by and between the City of Palm Springs, a California charter city and municipal corporation ("City"), and Interactive Design Corporation, a California corporation, ("Consultant"). City and Consultant are individually referred to as "Party" and are collectively referred to as the "Parties".

### RECITALS

A. City requires the services of a architectural firm to prepare plans for the upgrade of the City's existing Skate Park located at the City's Sunrise Park. ("Project Services").

B. Consultant has submitted to City a proposal to provide Project Services to City under the terms of this Agreement.

C. Based on its experience, education, training, and reputation, Consultant is qualified and desires to provide the necessary architectural services to City for the Project Services.

D. City desires to retain the services of Consultant for the Project Services.

In consideration of these promises and mutual agreements, City and Consultant agree as follows:

### AGREEMENT

#### 1. Consultant SERVICES

1.1 Scope of Services. In compliance with all terms and conditions of this Agreement, Consultant shall furnish necessary professional and technical services to accomplish those project elements outlined in the Proposal for Architectural Services, dated June 25, 2012, attached to this Agreement as "Attachment A" ("Project Services"). The work performed by Consultant under this Agreement will be performed with the degree of skill, care, and diligence normally employed by professionals performing the same or similar services at the time Consultant and its subcontractors' services are performed.

1.2 Compliance with Law. Consultant services rendered under this Agreement shall comply with all applicable federal, state, and local laws, statutes and ordinances and all lawful orders, rules, and regulations.

1.3 Licenses and Permits. Consultant shall obtain at its sole cost and expense such licenses, permits, and approvals as may be required by law for the performance of the services required by this Agreement.

1.4 **Familiarity with Work.** By executing this Agreement, Consultant warrants that it has carefully considered how the work should be performed and fully understands the facilities, difficulties, and restrictions attending performance of the work under this Agreement.

2. **TIME FOR COMPLETION**

The time for completion of the services to be performed by Consultant is an essential condition of this Agreement. Consultant shall prosecute regularly and diligently the work of this Agreement. Consultant shall not be accountable for delays in the progress of its work caused by any condition beyond its control and without the fault or negligence of Consultant. Delays shall not entitle Consultant to any additional compensation regardless of the party responsible for the delay.

3. **COMPENSATION OF Consultant**

3.1 **Compensation of Consultant.** Consultant shall be compensated and reimbursed for the services rendered under this Agreement in accordance with the schedule of fees set forth in Attachment "A". The total amount of compensation for the Project Services shall not exceed Twenty Four Thousand, Three Hundred Dollars \$24,300.00. Consultant acknowledges that it accepts the risk that the services identified in the Project Services may be more costly and/or time-consuming than Consultant anticipates, that Consultant shall not be entitled to additional compensation therefore, and that the provisions of Section 3.3 shall not be applicable to the services identified in the Project Services. The maximum amount of City's payment obligation under this section is the amount specified herein. If the City's maximum payment obligation is reached before the Project Services under this Agreement are completed, Consultant shall nevertheless complete the Project Services without liability on the City's part for further payment beyond the maximum amount provided in this Section 3.1.

3.2 **Method of Payment.** In any month in which Consultant wishes to receive payment, Consultant shall submit to City an invoice for services rendered prior to the date of the invoice, no later than the first working day of such month, in the form approved by City's Finance Director. City shall pay Consultant for all expenses stated in the invoice that are approved by City and consistent with this Agreement, within thirty (30) days of receipt of Consultant's invoice.

3.3 **Changes.** In the event any change or changes in the Project Services requested by City, Parties shall execute a written amendment to this Agreement, specifying all proposed amendments, including, but not limited to, any additional fees. An amendment may be entered into:

A. To provide for revisions or modifications to documents, work product, or work, when required by the enactment or revision of any subsequent law; or

B. To provide for additional services not included in this Agreement or not customarily furnished in accordance with generally accepted practice in Consultant's profession.

**3.4 Appropriations.** This Agreement is subject to, and contingent upon, funds being appropriated by the City Council of City for each fiscal year. If such appropriations are not made, this Agreement shall automatically terminate without penalty to City.

#### **4. PERFORMANCE SCHEDULE**

**4.1 Schedule of Performance; Term.** This Agreement shall commence on the effective date of this Agreement and services shall continue until the date specified for project completion in the Scope or Work (if any is specified), or the date the services are fully rendered, or until the date this Agreement is terminated, whichever occurs first. .

**4.2 Termination Prior to Expiration of Term.** City may terminate this Agreement at any time, with or without cause, upon fifteen (15) days written notice to Consultant. Where termination is due to the fault of Consultant and constitutes an immediate danger to health, safety, and general welfare, the period of notice shall be such shorter time as may be determined by the City. Upon receipt of the notice of termination, Consultant shall immediately cease all services except such as may be specifically approved by the Contract Officer. Consultant shall be entitled to compensation for all services rendered prior to receipt of the notice of termination and for any services authorized by the Contract Officer after such notice. Consultant may terminate this Agreement, with or without cause, upon thirty (15) days written notice to City.

#### **5. COORDINATION OF WORK**

**5.1 Representative of Consultant.** The following principal of Consultant is designated as being the principal and representative of Consultant authorized to act and make all decisions in its behalf with respect to the specified services and work: Reuel Young, President. It is expressly understood that the experience, knowledge, education, capability, and reputation of the foregoing principal is a substantial inducement for City to enter into this Agreement. Therefore, the foregoing principal shall be responsible during the term of this Agreement for directing all activities of Consultant and devoting sufficient time to personally supervise the services under this Agreement. The foregoing principal may not be changed by Consultant without prior written approval of the Contract Officer.

**5.2 Contract Officer.** The Contract Officer shall be the City Manager or his/her designee ("Contract Officer"). Consultant shall be responsible for keeping the Contract Officer fully informed of the progress of the performance of the services. Consultant shall refer any decisions that must be made by City to the Contract Officer. Unless otherwise specified, any approval of City shall mean the approval of the Contract Officer.

**5.3 Prohibition Against Subcontracting or Assignment.** The experience, knowledge, education, capability, and reputation of Consultant, its principals and employees, were a substantial inducement for City to enter into this Agreement. Therefore, Consultant shall not contract with any other individual or entity to perform any services required under this Agreement without the City's express written approval. In addition, neither this Agreement nor any interest may be assigned or transferred, voluntarily or by operation of law, without the prior written approval of City.

**5.4 Independent Contractor.** Neither City nor any of its employees shall have any control over the manner, mode, or means by which Consultant, its agents or employees, perform the services required, except as otherwise specified. Consultant shall perform all required services as an independent contractor of City and shall not be an employee of City and shall remain at all times as to City a wholly independent contractor with only such obligations as are consistent with that role; however, City shall have the right to review Consultant's work product, result, and advice. Consultant shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City.

## **6. INSURANCE**

Consultant shall procure and maintain, at its sole cost and expense, policies of insurance as set forth in the attached Attachment "B" to this Agreement.

## **7. INDEMNIFICATION.**

**7.1 Indemnification.** Consultant agrees to indemnify, defend, and hold harmless the City, its elected and appointed officials, employees, and agents from any and all claims, liabilities, expenses, or damages of any nature, including attorneys' fees and defense costs, for injury or death of any person, damage to property or interference with use of property, and for errors and omissions committed by Consultant arising out of or in connection with the work, operation or activities of Consultant, its agents, employees and subcontractors in carrying out its obligations under this Agreement. City agrees to indemnify, defend, and hold harmless the Consultant, its agents, employees, and subcontractors from any and all claims, liabilities, expenses, or damages of any nature, including attorneys' fees and defense costs, for injury or death of any person, damage to property or interference with use of property, and for errors and omissions committed by City arising out of or in connection with the work, operation or activities of City, its elected and appointed officials, employees, and agents in carrying out the City's obligations under this Agreement.

## **8. RECORDS AND REPORTS**

**8.1 Reports.** Consultant shall periodically prepare and submit to the Contract Officer reports concerning the performance of the services required by this Agreement, or as the Contract Officer shall require.

**8.2 Records.** Consultant shall keep complete, accurate, and detailed accounts of all time, costs, expenses, and expenditures pertaining in any way to this Agreement. Consultant shall keep such books and records as shall be necessary to properly perform the services required by this Agreement and enable the Contract Officer to evaluate the performance of such services. The Contract Officer shall have full and free access to such books and records at all reasonable times, including the right to inspect, copy, audit, and make records and transcripts from such records.

**8.3 Ownership of Documents.** All drawings, specifications, reports, records, documents, and other materials prepared by Consultant in the performance of this Agreement shall be the property of City upon payment in full of all monies due and payable under the terms of this agreement. Consultant shall deliver all above-referenced documents to City upon request

of the Contract Officer or upon the termination of this Agreement. Consultant shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights or ownership of the documents and materials. Consultant may retain copies of such documents for Consultant's own use. Consultant shall have an unrestricted right to use the concepts embodied in such documents. Notwithstanding the foregoing, City acknowledges that any and all information produced by Consultant under this agreement, including plans, specifications, data, reports, construction documents or electronic files ("documents"), are instruments of professional service. In the event City consents to, allows, authorizes or approves of changes to such documents, and these changes are not approved in writing by the Consultant, City recognizes that such changes and the results thereof are not the responsibility of the Consultant. Therefore, City agrees, to the fullest extent permitted by law, to indemnify, defend, and hold harmless the Consultant, its officers, directors, employees, and subconsultants against any claims, liabilities, expenses, or damages of any nature, including reasonable attorneys' fees and defense costs, arising from the unauthorized reuse or modification of the documents by City or any person or entity that acquires or obtains the documents from or through City. In the event that Consultant's services are terminated in accordance with this agreement, this provision shall also apply to documents delivered to City after such termination.

**8.4 Release of Documents.** All drawings, specifications, reports, records, documents, and other materials prepared by Consultant in the performance of services under this Agreement shall not be released publicly without the prior written approval of the Contract Officer.

**8.5 Cost Records.** Consultant shall maintain all books, documents, papers, employee time sheets, accounting records, and other evidence pertaining to costs incurred while performing under this Agreement. Consultant shall make such materials available at its offices at all reasonable times during the term of this Agreement and for three (3) years from the date of final payment for inspection by City and copies shall be promptly furnished to City upon request.

## **9. ENFORCEMENT OF AGREEMENT**

**9.1 California Law.** This Agreement shall be construed and interpreted both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim, or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Riverside, State of California, or any other appropriate court in such county, and Consultant covenants and agrees to submit to the personal jurisdiction of such court in the event of such action.

**9.2 Interpretation.** This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the Parties. The terms of this Agreement are contractual and the result of negotiation between the Parties. Accordingly, any rule of construction of contracts (including, without limitation, California Civil Code Section 1654) that ambiguities are to be construed against the drafting party, shall not be employed in the interpretation of this Agreement. The caption headings of the various sections and paragraphs of this Agreement are for convenience and identification purposes only and shall not be deemed to limit, expand, or define the contents of the respective sections or paragraphs.

**9.3 Waiver.** No delay or omission in the exercise of any right or remedy of a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. No consent or approval of City shall be deemed to waive or render unnecessary City's consent to or approval of any subsequent act of Consultant. Any waiver by either party of any default must be in writing. No such waiver shall be a waiver of any other default concerning the same or any other provision of this Agreement.

**9.4 Rights and Remedies are Cumulative.** Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative. The exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

**9.5 Legal Action.** In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct, or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain injunctive relief, a declaratory judgment, or any other remedy consistent with the purposes of this Agreement.

## **10. CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION**

**10.1 Non-Liability of City Officers and Employees.** No officer or employee of City shall be personally liable to the Consultant, or any successor-in-interest, in the event of any default or breach by City or for any amount which may become due to the Consultant or its successor, or for breach of any obligation of the terms of this Agreement.

**10.2 Conflict of Interest.** No officer or employee of the City shall have any direct or indirect financial interest in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which effects their financial interest or the financial interest of any corporation, partnership, or association in which he/she is, directly or indirectly, interested in violation of any state statute or regulation. Consultant warrants that Consultant has not paid or given, and will not pay or give, any third party any money or other consideration in exchange for obtaining this Agreement.

**10.3 Covenant Against Discrimination.** Consultant covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination or segregation in the performance of or in connection with this Agreement regarding any person or group of persons on account of race, color, creed, religion, sex, marital status, disability, sexual orientation, national origin, or ancestry.

## **11. MISCELLANEOUS PROVISIONS**

**11.1 Notice.** Any notice, demand, request, consent, approval, or communication that either party desires, or is required to give to the other party or any other person shall be in writing and either served personally or sent by pre-paid, first-class mail to the address set forth below. Notice shall be deemed communicated seventy-two (72) hours from the time of mailing if mailed as provided in this Section. Either party may change its address by notifying the other party of the change of address in writing.

**To City:**

City of Palm Springs  
Attention: City Manager/ City Clerk  
3200 E. Tahquitz Canyon Way  
Palm Springs, California 92262

**To Consultant:**

Reuel Young, AIA  
President, Interactive Design Corporation  
199 South Civic Drive, Suite 10  
Palm Springs, California 92262

**11.2 Integrated Agreement.** This Agreement contains all of the agreements of the parties and supersedes all other written agreements.

**11.3 Amendment.** No amendments or other modifications of this Agreement shall be binding unless through written agreement by all Parties.

**11.4 Severability.** Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law. In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement, which shall be interpreted to carry out the intent of the parties.

**11.5 Successors in Interest.** This Agreement shall be binding upon and inure to the benefit of the Parties' successors and assignees.

**11.6 Third Party Beneficiary.** Except as may be expressly provided for in this Agreement, nothing contained in this Agreement is intended to confer, nor shall this Agreement be construed as conferring, any rights, including, without limitation, any rights as a third-party beneficiary or otherwise, upon any entity or person not a party to this Agreement.

**11.7 Recitals.** The above-referenced Recitals are hereby incorporated into the Agreement as though fully set forth in this Agreement and each Party acknowledges and agrees that such Party is bound, for purposes of this Agreement, by the same.

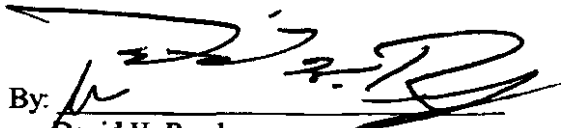
**11.8 Authority.** The persons executing this Agreement on behalf of the Parties warrant that they are duly authorized to execute this Agreement on behalf of Parties and that by so executing this Agreement the Parties are formally bound to the provisions of this Agreement.




IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates stated below.

**"City"**  
**City of Palm Springs**


Date: 10-2-17

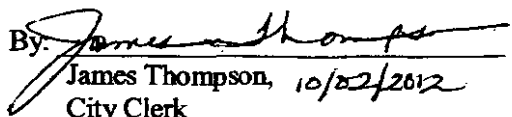
By:   
David H. Ready  
City Manager

APPROVED BY CITY MANAGER  


**APPROVED AS TO FORM:**

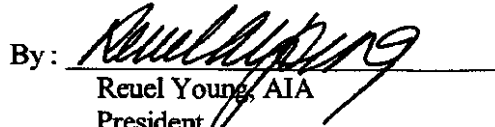
**ATTEST**

By:   
Douglas C. Holland,  
City Attorney

By:   
James Thompson, 10/02/2012  
City Clerk

**"Consultant"**  
**Interactive Design Corporation**

Date: 05 SEPT 2017

By:   
Reuel Young, AIA  
President

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California

County of Riverside

On September 5, 2012 before me, B O'Connell Notary Public

personally appeared David Yang

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature B O'Connell  
Signature of Notary Public



Place Notary Seal Above

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_

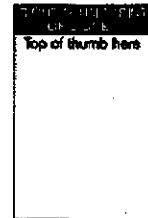
- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



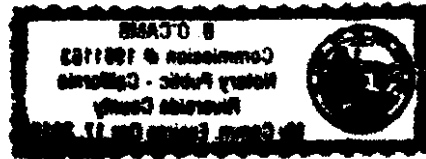
Signer Is Representing: \_\_\_\_\_

©2007 National Notary Association • 9350 De Soto Ave., P.O. Box 2402 • Chatsworth, CA 91313-0402 • www.NationalNotary.org Item #2507 Reorder: Call Toll-Free 1-800-876-6627

# ATTACHMENT "A"

## PROPOSAL FOR ARCHITECTURAL SERVICES

### PALM SPRINGS SKATE PARK



PROPOSAL FOR ARCHITECTURAL SERVICES

PALM SPRINGS CITY SKATE PARK

ENTRANCE AND MODULAR UPGRADE

JUNE 25, 2012

SECTION 1: PROJECT PARAMETERS

1. PROJECT DESCRIPTION

- a. The City of Palm Springs plans to upgrade the existing Skate Park by undertaking the following:
  - i. Reconfigure the entry to the existing Skate Park at the southern terminus of Pavilion Way to provide a controlled entry sequence, a retail "pro shop" and administrative offices for the contract operator of the Park.
  - ii. Install existing modular building (40' x 60') on site per Engineering Resources drawings (generally facing due north and adjacent to the existing Park and requiring re design of cul-de-sac.)
  - iii. Improve exterior treatment and elevations to enhance the appearance of the building.
  - iv. Improve the interior of the modular building to accommodate functions defined by contract operator for successful operation of the building, the Park and special events.
  - v. Upgrade the existing modular building to meet Code requirements as defined by the City of Palm Springs, ADA and other relevant authorities.
  - vi. Increase security throughout the Park by installing video surveillance cameras providing full coverage of Park.
  - vii. Provide temporary bleachers for special events.
  - viii. Provide shade for the Park and bleachers if feasible.

2. EXISTING CONDITIONS

- a. Coding Inspection of existing modular: State HCD; Alicia Villa (951) 782-4420
- b. The existing modular does not have evidence of registration or title; the plaques do not have model or serial numbers. Therefore at present no documents existing regarding the modular – how it was built, under what Code it was permitted.

### 3. PROJECT ADMINISTRATION & REVIEW

- a. Client Representative and Project Manager: Vicki Oltean
- b. Schematic Design Review: Thomas Wilson, Councilmember Mills, Vicki Oltean
- c. Plan check and inspection
  - i. Site Plan: City of Palm Springs
  - ii. Foundation and anchorage: City of Palm Springs
  - iii. Exterior treatments/elevations: City of Palm Springs
  - iv. Interior alterations and envelope: State HCD; Larry Hemming  
(951) 782-4420
- d. Existing modular Coding Inspection: State HCD; Alicia Villa, (951) 782-4420
- e. Update of existing modular to meet current Codes (if required): HCD, Larry Hemming

## SECTION 2: CLIENT'S RESPONSIBILITIES

### 1. SCOPE OF WORK BY CITY STAFF

- a. Fire Code and Security requirements: Bob Rose
- b. Planning review as Architectural Minor Modification: Craig Ewing
- c. Engineering and drainage: Mike Lytar
- d. Exiting and accessibility requirements: Terry Tatum
- e. Foundation and anchorage design: Mike Lytar

### 2. INFORMATION TO BE PROVIDED BY CITY

- a. Documentation related to existing Skate Park (Note: Precise Grading Plan for Palm Springs Swim Center and Skate Park by Dudek & Assoc. are not consistent with Skate Park as constructed. No Record Documents in City Files.)
- b. Property boundaries (Street Improvement Plans for Cerritos Road provided)
- c. Documentation related to existing modular (Note: no documentation available; request HCD Coding inspection: Alicia Villa)
- d. Proposed reconfiguration of cul-de-sac by Engineering Resources of Southern California, Inc. (Note: Used as basis for discussion with M. Lytar following comments by Councilmember Mills.)
- e. Record Documents related to Skate Park lighting standards, power availability, and structure of standards.

## SECTION 3: SCOPE OF SERVICES BY CONSULTANT

### 1. PRE-DESIGN

- a. Meet with proposed Operator of Skate Park regarding internal layout of modular, site access and other operational issues.
- b. Review Code compliance issues with City of Palm Springs and State of California Housing and Community Development Department (HCD).
- c. Review existing conditions and site documentation by ER of SC.
- d. Review existing modular building documents and in-situ conditions

- e. Review Code requirements with city staff including Planning, Building and Engineering.

2. SCHEMATIC DESIGN

- a. Prepare Schematic Site Plan for placement of modular indicating ADA accessibility, fire exiting, landscape and hardscape treatment.
- b. Prepare floor plan layout of modular for placement of display counters, new restroom accessible from Park, retail space, new doors, lighting and power/data.
- c. Prepare Schematic Elevations of modular.
- d. Prepare Schematic Site Plan locating temporary bleachers and shade for Park and bleachers.

3. PRESENTATION MATERIALS (for review by Councilmember Mills, T Wilson, C Ewing & V Oltean)

- a. Site Plan including landscape treatment, hardscape, exterior lighting and exiting.
- b. Exterior Elevations of Modular
- c. Bleacher locations and shade structure

4. CONSTRUCTION DOCUMENTS

- a. Interior changes to walls, lighting, HVAC, data, flooring and finishes. (Electrical, data and HVAC to be diagrammatic only.)
- b. Envelope changes to windows, new doors, weather barrier, exterior sheathing, roof and drainage.
- c. Exterior lighting on modular (location and type only.)
- d. Exterior design of modular – finishes, materials, colors and backing
- e. Site Plan
  - i. Landscape and irrigation (diagrammatic)
  - ii. Exterior lighting (location and type only)
  - iii. Reconfiguration of existing access gates and controls

5. BIDDING & CONSTRUCTION ADMINISTRATION

- a. Provide support services as requested by Client

6. DESIGN TEAM

- a. ARCHITECT: Interactive Design Corporation
- b. CONSULTANTS: (not in contract)
  - i. STRUCTURAL: Tang Structural
  - ii. MECHANICAL/PLUMBING: EquitySpec Consulting
  - iii. ELECTRICAL: MRC Engineering
  - iv. LANDSCAPE: BluePalm

SECTION 4: SCHEDULE

1. TIME – SCHEMATIC DESIGN

- a. Site Plan for placement of Modular: 26JUN

- b. Interior Floor Plan of Modular: 26JUN
- c. Elevation Studies 17JUL
- d. Presentation Materials 31JUL

2. TIME – CONSTRUCTION DOCUMENTS

- a. Plan Check submittal 06SPT

SECTION 5: COMPENSATION

1. COMPENSATION shall be billed hourly, not to exceed Twenty Four Thousand Three Hundred Dollars (\$24,300)

a. COMPENSATION/MODULAR – Through Design Approval (estimated)

i. Pre-Design	\$1,200
ii. Schematic Design	\$4,500
iii. Presentation	\$2,600
iv. <u>Meetings</u>	<u>\$1,500</u>
	\$9,800

b. COMPENSATION/MODULAR – Construction Documents and Bidding (estimated)

i. Architecture	\$8,500
ii. Structural Engineer	NIC
iii. Mechanical/Plumbing Engineer	NIC
iv. Electrical Engineer	NIC
v. <u>Landscape Architect</u>	<u>NIC</u>
	\$8,500

c. COMPENSATION – Construction Phase (estimated)

i. <u>As requested by Client</u>	<u>\$6,000</u>
Total compensation, not to exceed	\$24,300

2. COMPENSATION/BLEACHERS & SHADE – Shade and Bleacher

- a. Scope of Work not known at this time.

SECTION 6: EXCLUSIONS

- 1. CIVIL ENGINEERING – grading, drainage, paving, utilities, site ADA accessibility and parking
- 2. STRUCTURAL ENGINEERING – site walls and foundation for modular
- 3. SECURITY AND FIRE ALARM

4. MODULAR DISASSEMBLY, TRANSPORT AND REASSEMBLY IN-SITU

5. EXISTING CONDITIONS & CODE UPDATE - DOCUMENTATION

- a. Documentation relating to the existing modular is not known at this time. After City contracts with HCD for Coding Inspection, documentation may be necessary. Such Documentation may include preparation of "As-Built Drawings" or preparation of forensic calculations.
- b. HCD has not determined whether re-location of the existing structure will be considered an Alteration or whether modification to the interior will constitute an Alteration. HCD may require modifications to the existing structure and systems to meet current (2010 CBC) Code Standards.

*Reuel Young 28 JUN 2012*

Reuel Young, AIA,  
President, Interactive Design Corporation  
C#10974  
199 South Civic Drive  
Suite 10  
Palm Springs, CA 92262  
760.323.4990  
reuel@interactivedesigncorp.com



# **ATTACHMENT “B”**

## **INSURANCE PROVISIONS**

**Including**

**Verification of Coverage,**

**Sufficiency of Insurers,**

**Errors and Omissions Coverage,**

**Minimum Scope of Insurance,**

**Deductibles and Self-Insured Retentions, and**

**Severability of Interests (Separation of Insureds)**

**INSURANCE**

1. **Procurement and Maintenance of Insurance.** Consultant shall procure and maintain public liability and property damage insurance against all claims for injuries against persons or damages to property resulting from Consultant's performance under this Agreement. Consultant shall procure and maintain all insurance at its sole cost and expense, in a form and content satisfactory to the City, and submit concurrently with its execution of this Agreement. Consultant shall also carry workers' compensation insurance in accordance with California workers' compensation laws. Such insurance shall be kept in full force and effect during the term of this Agreement, including any extensions. Such insurance shall not be cancelable without thirty (30) days advance written notice to City of any proposed cancellation. Certificates of insurance evidencing the foregoing and designating the City, its elected officials, officers, employees, agents, and volunteers as additional named insureds by original endorsement shall be delivered to and approved by City prior to commencement of services. The procuring of such insurance and the delivery of policies, certificates, and endorsements evidencing the same shall not be construed as a limitation of Consultant's obligation to indemnify City, its elected officials, officers, agents, employees, and volunteers.

2. **Minimum Scope of Insurance.** The minimum amount of insurance required under this Agreement shall be as follows:

1. Comprehensive general liability and personal injury with limits of at least one million dollars (\$1,000,000.00) combined single limit coverage per occurrence and two million dollars (\$2,000,000) general aggregate;

2. Automobile liability insurance with limits of at least one million dollars (\$1,000,000.00) per occurrence;

3. Professional liability (errors and omissions) insurance with limits of at least one million dollars (\$1,000,000.00) per occurrence and two million dollars (\$2,000,000) annual aggregate is:

  X   required

           is not required;

4. Workers' Compensation insurance in the statutory amount as required by the State of California and Employer's Liability Insurance with limits of at least one million dollars \$1 million per occurrence. If Consultant has no employees, Consultant shall complete the City's Request for Waiver of Workers' Compensation Insurance Requirement form.

3. **Primary Insurance.** For any claims related to this Agreement, Consultant's insurance coverage shall be primary with respect to the City and its respective elected officials, officers, employees, agents, and volunteers. Any insurance or self-insurance maintained by City and its respective elected officials, officers, employees, agents, and volunteers shall be in excess of Consultant's insurance and shall not contribute with it. For Workers' Compensation and Employer's Liability Insurance only, the insurer shall waive all rights of subrogation and

contribution it may have against City, its elected officials, officers, employees, agents, and volunteers.

4. **Errors and Omissions Coverage.** If Errors & Omissions Insurance is required, and if Consultant provides claims made professional liability insurance, Consultant shall also agree in writing either (1) to purchase tail insurance in the amount required by this Agreement to cover claims made within three years of the completion of Consultant's services under this Agreement, or (2) to maintain professional liability insurance coverage with the same carrier in the amount required by this Agreement for at least three years after completion of Consultant's services under this Agreement. Consultant shall also be required to provide evidence to City of the purchase of the required tail insurance or continuation of the professional liability policy.

5. **Sufficiency of Insurers.** Insurance required in this Agreement shall be provided by authorized insurers in good standing with the State of California. Coverage shall be provided by insurers admitted in the State of California with an A.M. Best's Key Rating of B++, Class VII, or better, unless otherwise acceptable to the City.

6. **Verification of Coverage.** Consultant shall furnish City with both certificates of insurance and endorsements, including additional insured endorsements, effecting all of the coverages required by this Agreement. The certificates and endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All proof of insurance is to be received and approved by the City before work commences. City reserves the right to require Consultant's insurers to provide complete, certified copies of all required insurance policies at any time. Additional insured endorsements are not required for Errors and Omissions and Workers' Compensation policies.

Verification of Insurance coverage may be provided by: (1) an approved General and/or Auto Liability Endorsement Form for the City of Palm Springs or (2) an acceptable Certificate of Liability Insurance Coverage with an approved Additional Insured Endorsement with the following endorsements stated on the certificate:

1. *"The City of Palm Springs, its officials, employees, and agents are named as an additional insured..." ("as respects City of Palm Springs Contract No. \_\_\_" or "for any and all work performed with the City" may be included in this statement).*

2. *"This insurance is primary and non-contributory over any insurance or self-insurance the City may have..." ("as respects City of Palm Springs Contract No. \_\_\_" or "for any and all work performed with the City" may be included in this statement).*

3. *"Should any of the above described policies be canceled before the expiration date thereof, the issuing company will mail 30 days written notice to the Certificate Holder named." Language such as, "endeavor to" mail and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representative" is not acceptable and must be crossed out.*

4. Both the Workers' Compensation and Employers' Liability policies shall contain the insurer's waiver of subrogation in favor of City, its elected officials, officers, employees, agents, and volunteers.

In addition to the endorsements listed above, the City of Palm Springs shall be named the certificate holder on the policies.

All certificates of insurance and endorsements are to be received and approved by the City before work commences. All certificates of insurance must be authorized by a person with authority to bind coverage, whether that is the authorized agent/broker or insurance underwriter. Failure to obtain the required documents prior to the commencement of work shall not waive the Consultant's obligation to provide them.

7. **Deductibles and Self-Insured Retentions.** Any deductibles or self-insured retentions must be declared to and approved by the City prior to commencing any work or services under this Agreement. At the option of the City, either (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions with respect to the City, its elected officials, officers, employees, agents, and volunteers; or (2) Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses. Certificates of Insurance must include evidence of the amount of any deductible or self-insured retention under the policy. Consultant guarantees payment of all deductibles and self-insured retentions.

8. **Severability of Interests (Separation of Insureds).** This insurance applies separately to each insured against whom claim is made or suit is brought except with respect to the limits of the insurer's liability.

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
PALM SPRINGS, CALIFORNIA, AMENDING THE BUDGET  
FOR FISCAL YEAR 2012-13 FOR SKATE PARK  
OPERATIONS AND MANAGEMENT FACILITY PROJECT.

WHEREAS, Resolution No. 23146 approving the Budget for the Fiscal Year 2012-2013 was adopted on June 6, 2012; and

WHEREAS the City Manager has recommended, and the City Council desires to approve, certain amendments to said budget.

NOW THEREFORE THE CITY COUNCIL DETERMINES, RESOLVES AND APPROVES AS FOLLOWS: that the Director of Finance is authorized to record inter-fund cash transfers as required in accordance with this Resolution, and Resolution No. 23146, adopting the Budget for Fiscal Year 2012-13 is hereby amended as follows:

SECTION 1. ADDITIONS

Fund	Activity	Account	Amount
Quimby Fund			\$550,000

Purpose: Establish funding pursuant to the estimated comprehensive Project Budget for the completion of Skate Park improvements.

SECTION 2.

Fund	Activity	Account	Amount
Quimby Fund		Fund Balance	\$550,000

ADOPTED THIS DAY OF \_\_\_\_\_, 2013.

\_\_\_\_\_  
David H. Ready, City Manager

ATTEST:

\_\_\_\_\_  
James Thompson, City Clerk

CERTIFICATION

STATE OF CALIFORNIA )  
COUNTY OF RIVERSIDE ) ss.  
CITY OF PALM SPRINGS )

I, JAMES THOMPSON, City Clerk of the City of Palm Springs, hereby certify that Resolution No. \_\_\_\_\_ is a full, true and correct copy, and was duly adopted at a regular meeting of the City Council of the City of Palm Springs on \_\_\_\_\_, by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

---

James Thompson, City Clerk  
City of Palm Springs, California