



City Council Staff Report

Date: April 5, 2017

NEW BUSINESS

Subject: DOWNTOWN PARK CONCEPTUAL DESIGN

From: David H. Ready, City Manager

Initiated by: Engineering Services Department

SUMMARY

This action allows for the City Council to discuss the status of the Downtown Park, and development of preliminary design concepts and an associated public review process.

RECOMMENDATION:

1. Receive report from the City Council Ad-Hoc Subcommittee (Downtown Palm Springs Park) – Councilmembers Mills and Roberts; and
2. Waive all competitive requirements of Title 7 of the Palm Springs Municipal Code finding that Rios Clementi Hale Studios has demonstrated experience and expertise of providing the required landscape design services through prior experience partnering with the City on the initial development of conceptual designs for the Downtown Palm Springs Park, and through a competitive qualifications based selection process completed by the City of Santa Monica through its Request for Proposal (RFP No. SP2422) for the Airport Park Expansion Project; and
3. Approve Agreement No. _____ with Rios Clementi Hale Studios, in the amount of \$38,000 for professional landscape architectural design services for preparation of conceptual designs for the Downtown Park, City Project No. 15-07.

STAFF ANALYSIS:

On December 2, 2009, the City Council adopted Ordinance No. 1764, approving the Museum Market Plaza Specific Plan (the "Specific Plan"). The original land use and development pattern of the Specific Plan area consisted of Blocks A through H, K1 and K2, and new public streets comprising a total of 18.5 acres within downtown Palm Springs.

After the City's approval of the Specific Plan, as the City and the developer (Palm Springs Promenade, LLC, the "Developer") proceeded to coordinate on development of the Specific Plan, plans for the project area evolved and certain modifications to the

ITEM NO. 5.E.

layout of the individual blocks and land uses within the Specific Plan were proposed, including relocation of the Main Plaza to Museum Drive immediately adjacent to the Palm Springs Art Museum.

On September 17, 2014, the City Council approved the acquisition of the Downtown Park identified on Block E from the Developer as permanent public open space, to be owned and operated by the City as an active and vibrant park area.

Initial Planning

Initial planning for the Downtown Palm Springs Park¹ started in February 2015. Under the City Manager's authority, the City's on-call civil engineering firm, MSA Consulting, was authorized to proceed with conceptual design planning for a not-to-exceed budget of \$21,000. An initial meeting was held on February 9, 2015, with the City Council Subcommittee, City staff, and MSA Consulting, to identify the important elements forming the basis of the conceptual design, such as:

- A performance event stage;
- Public restroom facilities;
- A one-story building for downtown police sub-station, storage use, and potential observation deck;
- A permanent location for the Forever Marilyn statue;
- A permanent location for the Albert Frey designed "Aluminaire" House; and
- A flexible design to allow multi-function use as a public park, including events ranging from Village Fest type farmer's markets to large entertainment concerts.

A subsequent meeting was held March 5, 2015, with the City Council Subcommittee, City staff, and MSA Consulting, to review the first initial conceptual plan identifying a location for the Aluminaire House adjacent at the southwest corner of the Downtown Park adjacent to the Palm Springs Art Museum, (hereafter the "Museum"), and a location for the Forever Marilyn statue at the southeast corner of the Downtown Park adjacent to Belardo Road. Other concepts proposed generally include:

- Elimination of on-street parallel parking along the Main Street frontage in an effort to expand the size of the public space;
- Location of a main performance stage at the west end of the Downtown Park allowing for views to the stage with a perspective framed with Mt. San Jacinto as a background;

¹ Initially referred to as the "Event Center"

- Location of back-of-house facilities to support the main performance stage, buffered by a proposed sculpture garden and palm tree grotto on Museum Drive to block views of the back-of-house facilities from the Museum;
- Location of a second performance stage at the north end of the Downtown Park allowing for viewing of films and small performances;
- New public restroom facilities, concession space, and police substation within a new one-story building with roof-top observation deck for additional seating/standing capacity;
- Development of two circular outdoor spaces providing a total capacity of approximately 3,000 attendees with additional viewing platforms on the existing parking garage along the north side of the Downtown Park, and a potential observation deck above the new one-story building; and
- Three points of main access along the south, east, and north sides of the Downtown Park, with final design to incorporate landscaping, berming, or fencing to allow for securing access into the Event Center for ticketed performances.

MSA Consulting completed refinements to the initial planning for the Downtown Park, and a meeting was held March 20, 2015, with the City Council Subcommittee, as well as representatives of the Palm Springs Art Museum, City staff, and MSA Consulting. A final meeting was held June 2, 2015, with the City Council Subcommittee, representatives of the Museum, PS Resorts, City staff, and MSA Consulting to review the initial planning for the Downtown Park. Consultants recommended by the Museum (Mark Rios and Leo Marmol) were invited to attend and also participated at that time in the initial planning for the Downtown Park.

A copy of the City's initial conceptual plan for the Downtown Park is shown in Figure 1 on the next page. The initial conceptual plan was presented to the City Council for review at the June 17, 2015, meeting. At that time, the City Council deferred approval of the conceptual plan for the Downtown Park, created a new "Downtown Event Center Committee", consisting of representatives of the Architectural Advisory Committee, Parks & Recreation Commission, Planning Commission, a City Council Sub-Committee, and the Museum, (the "Committee"), and referred public review and refinement of the conceptual plan to the new Committee.

The first public meeting of the Committee was held July 9, 2015. The Committee reviewed an initial design study report for the Downtown Park prepared by Rios-Clementi-Hale Studios on behalf of the Museum, (hereafter the "Museum's design team"), that identified stakeholder goals, precedent scale comparisons, examples of other public plazas and performance spaces, and a preliminary concept plan shown in Figure 2 on the next page. The Committee recommended that the City's design team continue a collaborative dialogue with the Museum's design team on design elements associated with the Downtown Park.

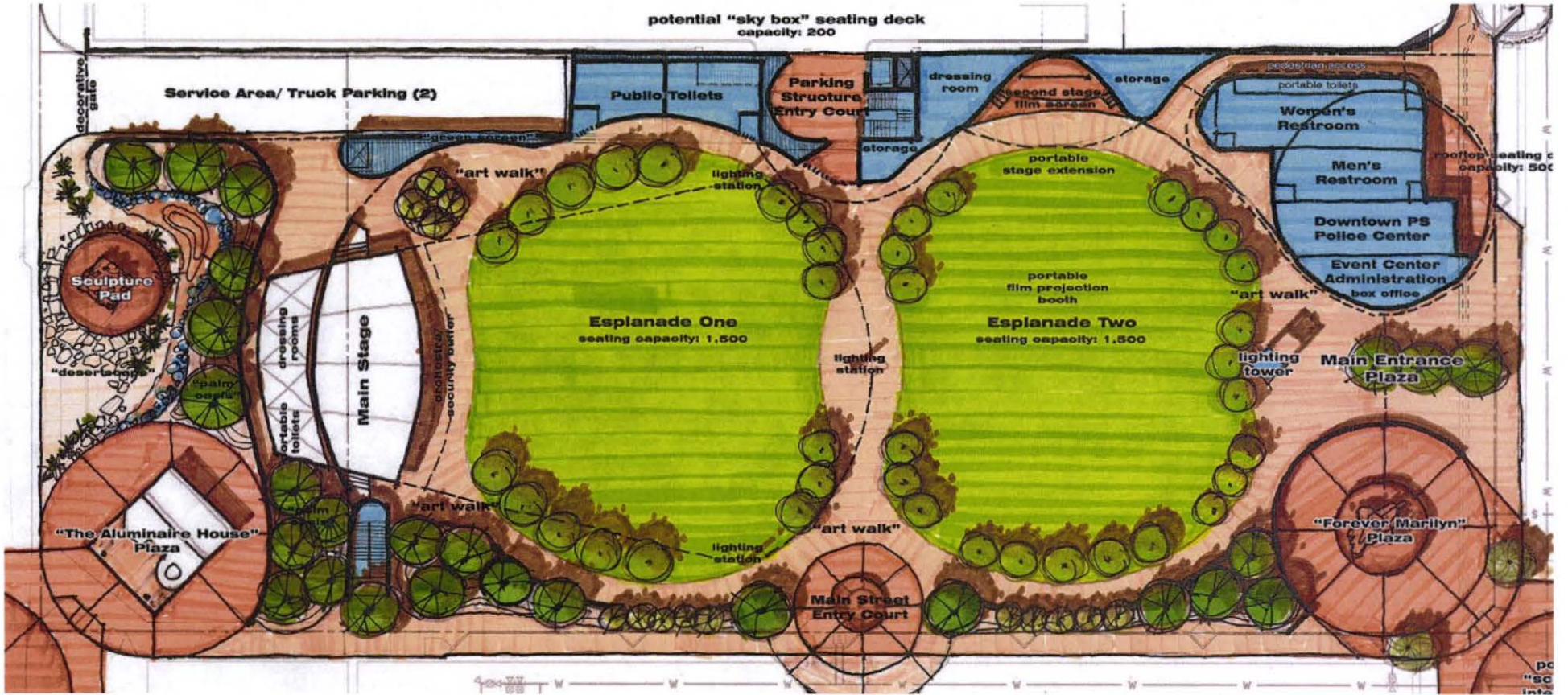


Figure 1

The second public meeting of the Committee was held July 16, 2015. The Committee discussed a potential budget of \$7.5 Million for the Downtown Park, options for pursuing outside funding or grant opportunities, and recommendation to create a park with a maximum capacity of 3,000 people with flexibility for events. At that time, the Committee requested a base conceptual plan with options and shading alternatives, and directed the City's design team and Museum's design team to initiate conceptual plans to present to the Committee at its next meeting.

The third public meeting of the Committee was held September 17, 2015. The Committee reviewed a revised design study for the Downtown Park prepared by the Museum's design team that identified "Park Goals", concept diagrams, site plans, proposed diagrams, examples of shade structures, and various site renderings. The site plan is shown in Figure 3 on the following pages, and identifies performance lawn spaces, an "Events Plaza" and a Sculpture Plaza with location for the Aluminaire House, and a location for the "Forever Marilyn" statue.

The fourth and final public meeting of the Committee was held November 5, 2015. The Committee reviewed the final conceptual plan collaborated by the City's design team and Museum's design team, as shown in Figure 4 on the following pages.

At the final meeting, the Committee also reviewed the preliminary construction estimate for the Downtown Park, with costs identified for four separate areas:

Area "A" – City Park: \$6,300,090

Area "B" – Museum Event Plaza: \$607,986

Area "C" – Museum Sculpture Plaza: \$1,036,458

Area "D" – Museum Drive Intersection Improvements: \$346,962

On March 2, 2016, the City Council held the last of several public hearings to consider an Amendment of the Specific Plan, and Addendum No. 2 to the Final Environmental Impact Report ("FEIR") for the Specific Plan previously adopted by the City Council, (Case No. 5.1204 SP A-1). At that time, the City Council approved the Specific Plan Amendment and Addendum No. 2 to the FEIR. Included as part of the Specific Plan Amendment is the designation of Block "E" as a permanent public park.

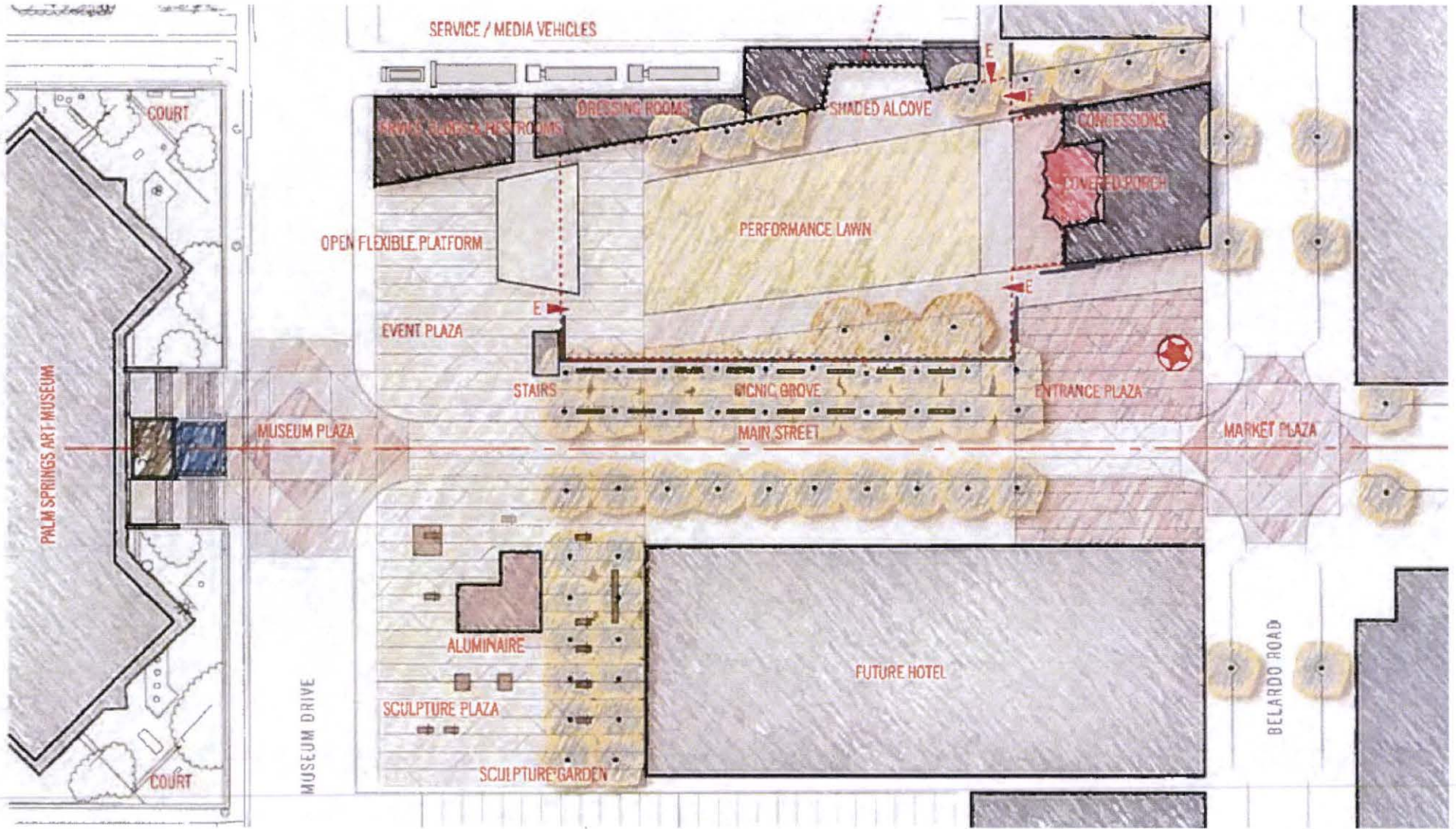


Figure 2



Figure 3

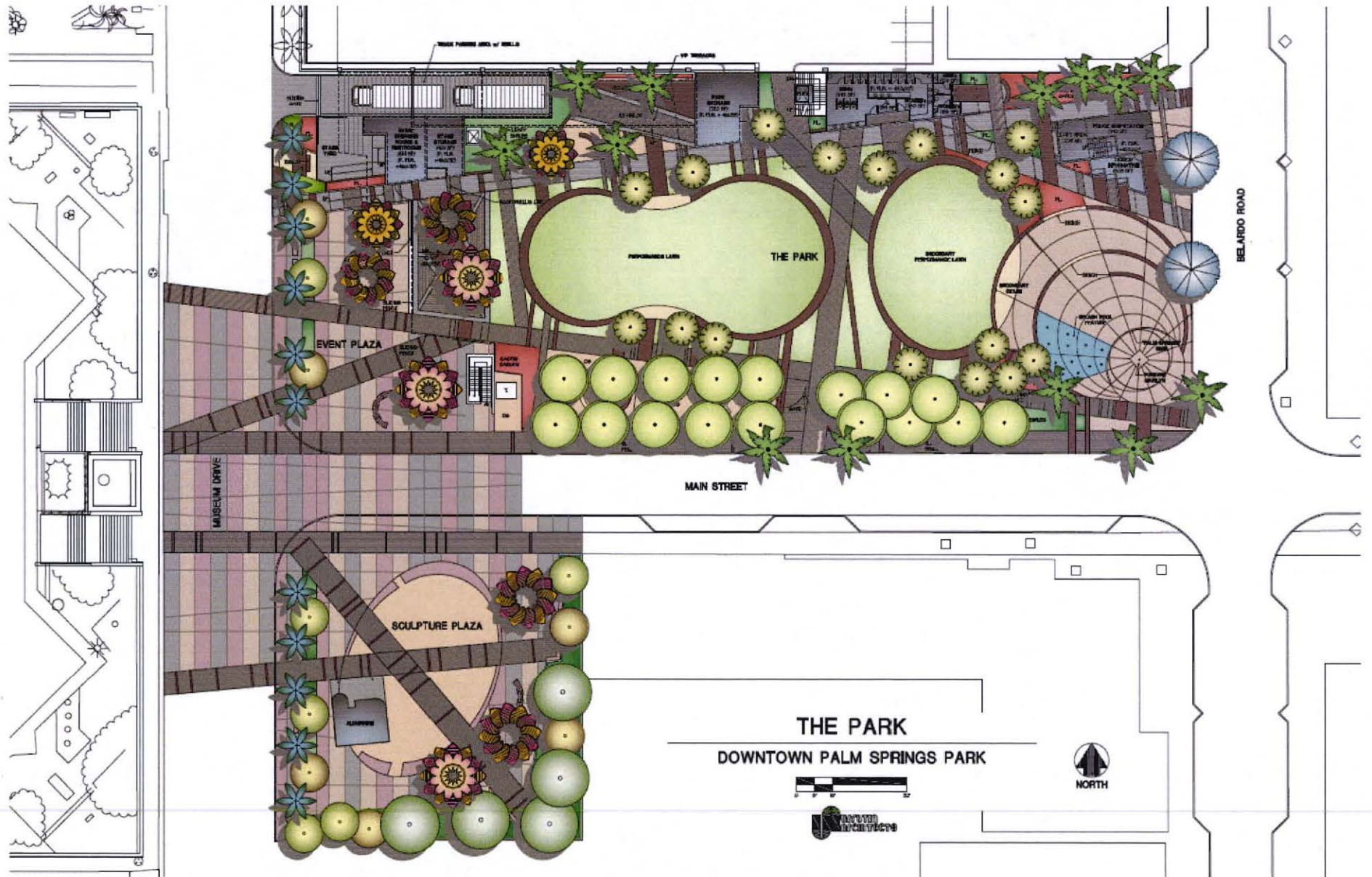


Figure 4

Most recently, on January 25, 2017, the City Council held a special Study Session to discuss the Downtown Palm Springs Park. At that time, the City Council reviewed the final conceptual design prepared as a collaborated effort by the City's design team and Museum's design team. The City Council reviewed the preliminary programming objectives of the Downtown Park, and agreed the programming should include:

- Permanent public restrooms
- Event stage areas (2) with infrastructure (power / water)
- Area assigned for the Forever Marilyn (or alternative sculpture)
- Area for Aluminaire House
- Police substation building (or alternative plan for security)
- Flexible, multi-functional space to accommodate a range of special events
- Permanent and temporary shading, cooling system
- Provisions for temporary fencing
- Inclusion of historical element honoring the Desert Inn

The City Council directed staff to coordinate with Mark Rios, of Rios Clementi Hale Studios, on developing a revised conceptual design for the Downtown Park.

Based on Council's direction, staff has coordinated with Mark Rios and obtained a proposal for development of conceptual designs for the Downtown Park, including community outreach efforts. Mark Rios proposes to develop three initial conceptual designs based on the Council's stated programming goals identified above, and suggests two community outreach meetings and presentations on the conceptual designs and programming, with a final presentation to City Council. A professional services agreement with Mark Rios is included as **Attachment 1**.

On March 20, 2017, the City Council Ad-Hoc Subcommittee met with Mark Rios and staff, and discussed the programming identified for the Downtown Park, as well as the process for community participation and public review.

ENVIRONMENTAL IMPACT:

Pursuant to Section 15063 of the California Environmental Quality Act (CEQA) Guidelines, a Notice of Preparation (NOP) of a Draft Environmental Impact Report (DEIR) was prepared and circulated for this project. The DEIR was released for review on October 22, 2008. Notices of the reports were sent to all applicable agencies and published in accordance with CEQA. Comments were received by the City and responses to comments were provided in the Final Environmental Impact Report (FEIR). The FEIR determined that the project would result in post-mitigation significant effects on aesthetics/visual resources, regional air quality, and cultural resources. However, the City Council concluded that the benefits of the Specific Plan implementation would outweigh the potential adverse effects. Findings and a Statement of Overriding Considerations were adopted as part of the EIR certification and Specific Plan approval.

In 2012, the City prepared Addendum #1 to the FEIR for the Specific Plan. Addendum #1 was prepared to evaluate the revised Downtown Revitalization Plan ("Downtown Palm Springs"), as well as the approval of a parcel map to realign property boundaries, the dedication of public streets and abandonment of certain rights-of-way, and acceptance of public easements. Addendum #1 evaluated the potential visual and aesthetic impacts that could result from the proposed changes and found that the overall effects would be no more significant than those associated with the implementation of the adopted Specific Plan. No other environmental impacts were expected to result that were not analyzed and mitigated in the previously certified FEIR, Statement of Overriding Considerations, and Mitigation Monitoring and Reporting Program. Addendum #1 was adopted by City Council on October 17, 2012.

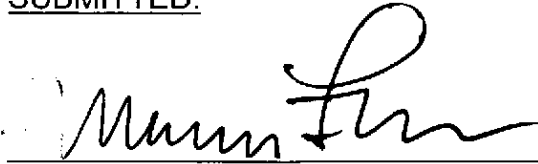
In 2015, the City prepared Addendum #2 to the FEIR to evaluate the potential environmental impacts of the changes to the Specific Plan identified in the Amendment, which included various revisions and updates to the Specific Plan, the development of Block E as the Downtown Palm Springs Park, and a Major Architectural Review for the development of a hotel use of up to 75 feet located on Block B-1 (Case No. 3.3908 MAJ). The environmental analysis concluded that the potential environmental impacts associated with the revised Specific Plan identified in the Amendment were substantially consistent with the impacts previously analyzed in the certified FEIR and in Addendum #1 approved in 2012. No changes were proposed that would require major revisions to the previously certified FEIR, and it was determined that the revised Specific Plan identified in the Amendment will ultimately reduce the overall intensity and density previously allowed within the originally adopted Specific Plan. It was also determined that the potential environmental impacts associated with the revised Specific Plan identified in the Amendment will result in the same or reduced environmental impacts when compared to those analyzed in either the previously certified FEIR or Addendum #1 approved in 2012. The City determined that none of the components of the revised Specific Plan identified in the Amendment will result in a significant effect not previously identified in the certified FEIR or Addendum #1 approved in 2012. The Findings and Statement of Overriding Considerations adopted by the City in 2009 are consistent with the environmental analysis provided in Addendum #2.

On March 2, 2016, the City Council adopted Resolution No. 23977 confirming, ratifying, and adopting the findings and conclusions of Addendum #2 to the FEIR.

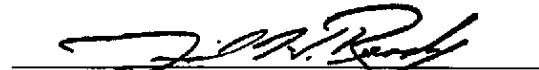
FISCAL IMPACT:

As part of its adoption of the 2016-2017 Fiscal Year budget, the City Council appropriated \$2.4 million from its "Quimby" public park fees and a \$3 million advance from future Measure J Capital Funds (repaid at \$1 million annually to the General Fund over the next three years), for a total budget of \$5.4 million for the Downtown Park.

SUBMITTED:



Marcus L. Fuller, MPA, PE, PLS
Assistant City Manager/City Engineer



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

Attachments:

1. Professional Services Agreement

ATTACHMENT 1

CONSULTING SERVICES AGREEMENT
Rios Clementi Hale Studios
Downtown Palm Springs Park
Landscape Architectural Concept Design Services

THIS AGREEMENT FOR CONSULTING SERVICES ("Agreement") is made and entered into on _____, 201__, by and between the City of Palm Springs, a California charter city and municipal corporation ("City"), and Rios Clementi Hale Studios, ("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 landscape architect, for preparation of landscape architectural conceptual design of the Downtown Palm Springs Park, ("Project").

B. Consultant has submitted to City a proposal to provide landscape architectural design services for preparation of conceptual design of the Downtown Palm Springs Park, 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 services to City for the Project.

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

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

AGREEMENT

1. CONSULTANT SERVICES

1.1 Scope of Services. In compliance with all terms and conditions of this Agreement, Consultant shall provide landscape architectural design services to City as described in the Scope of Services/Work attached to this Agreement as Exhibit "A" and incorporated by reference (the "services" or "work"). Exhibit "A" includes the agreed upon schedule of performance and the schedule of fees. Consultant warrants that all services and work shall be performed in a competent, professional, and satisfactory manner consistent with prevailing industry standards. In the event of any inconsistency between the terms contained in the Scope of Services/Work and the terms set forth in this Agreement, the terms set forth in this Agreement shall govern.

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 according to the agreed upon schedule of performance set forth in Exhibit "A." 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 Exhibit "A". The total amount of Compensation shall not exceed **Thirty-Eight Thousand Dollars (\$38,000)**.

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. Payments shall be based on the hourly rates set forth in Exhibit "A" for authorized services performed. 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 Scope of Services/Work is 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 Time of Essence. Time is of the essence in the performance of this Agreement.

4.2 Schedule of Performance. All services rendered under this Agreement shall be performed under the agreed upon schedule of performance set forth in Exhibit "A." Any time period extension must be approved in writing by the Contract Officer.

4.3 Force Majeure. The time for performance of services to be rendered under this Agreement may be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of Consultant, if Consultant notifies the Contract Officer within ten (10) days of the commencement of such condition. Unforeseeable causes include, but are not limited to, acts of God or of a public enemy, acts of the government, fires, earthquakes, floods, epidemic, quarantine restrictions, riots, strikes, freight embargoes, and unusually severe weather. After Consultant notification, the Contract Officer shall investigate the facts and the extent of any necessary delay, and extend the time for performing the services for the period of the enforced delay when and if, in the Contract Officer's judgment, such delay is justified. The Contract Officer's determination shall be final and conclusive upon the parties to this Agreement.

4.4 Term. Unless earlier terminated in accordance with Section 4.5 of this Agreement, this Agreement shall continue in full force and effect for a period of one year, commencing on February 14, 2017, and ending on February 14, 2018, unless extended by mutual written agreement of the parties.

4.5 Termination Prior to Expiration of Term. City may terminate this Agreement at any time, with or without cause, upon thirty (30) 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 (30) 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: Mark Rios, Partner. 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.

5.5 Personnel. Consultant agrees to assign the following individuals to perform the services in this Agreement. Consultant shall not alter the assignment of the following personnel without the prior written approval of the Contract Officer. Acting through the City Manager, the City shall have the unrestricted right to order the removal of any personnel assigned by Consultant by providing written notice to Consultant.

Name:

Title:

Mark Rios

Partner

6. INSURANCE

Consultant shall procure and maintain, at its sole cost and expense, policies of insurance as set forth in the attached Exhibit "B", incorporated herein by reference.

7. INDEMNIFICATION.

7.1 Indemnification. To the fullest extent permitted by law, Consultant shall defend (at Consultant's sole cost and expense), indemnify, protect, and hold harmless City, its elected officials, officers, employees, agents, and volunteers (collectively the "Indemnified Parties"), from and against any and all liabilities, actions, suits, claims, demands, losses, costs, judgments, arbitration awards, settlements, damages, demands, orders, penalties, and expenses including legal costs and attorney fees (collectively "Claims"), including but not limited to Claims arising from injuries to or death of persons (Consultant's employees included), for damage to property, including property owned by City, from any violation of any federal, state, or local law or ordinance, and from errors and omissions committed by Consultant, its officers, employees, representatives, and agents, that arise out of or relate to Consultant's performance under this Agreement. This indemnification clause excludes Claims arising from the sole negligence or willful misconduct of the City, its elected officials, officers, employees, agents, and volunteers. Under no circumstances shall the insurance requirements and limits set forth in this Agreement be construed to limit Consultant's indemnification obligation or other liability under this Agreement. Consultant's indemnification obligation shall survive the expiration or earlier termination of this Agreement until all actions against the Indemnified Parties for such matters indemnified are fully and finally barred by the applicable statute of limitations or, if an action is timely filed, until such action is final. This provision is intended for the benefit of third party Indemnified Parties not otherwise a party to this Agreement.

7.2 Design Professional Services Indemnification and Reimbursement: If the Agreement is determined to be a "design professional services agreement" and Consultant is a "design professional" under California Civil Code Section 2782.8, then:

A. To the fullest extent permitted by law, Consultant shall indemnify, defend (at Consultant's sole cost and expense), protect and hold harmless City and its elected officials, officers, employees, agents and volunteers and all other public agencies whose approval of the project is required, (individually "Indemnified Party"; collectively "Indemnified Parties") against any and all liabilities, claims, judgments, arbitration awards, settlements, costs, demands, orders and penalties (collectively "Claims"), including but not limited to Claims arising from injuries or death of persons (Consultant's employees included) and damage to property, which Claims arise out of, pertain to, or are related to the negligence, recklessness or willful misconduct of Consultant, its agents, employees, or subcontractors, or arise from Consultant's negligent, reckless or willful performance of or failure to perform any term, provision, covenant or condition of this Agreement ("Indemnified Claims"), but Consultant's liability for Indemnified Claims shall be reduced to the extent such Claims arise from the negligence, recklessness or willful misconduct of the City and its elected officials, officers, employees, agents and volunteers.

B. The Consultant shall require all non-design-professional sub-contractors, used or sub-contracted by Consultant to perform the Services or Work required under this Agreement, to execute an Indemnification Agreement adopting the

indemnity provisions in sub-section 7.1 in favor of the Indemnified Parties. In addition, Consultant shall require all non-design-professional sub-contractors, used or sub-contracted by Consultant to perform the Services or Work required under this Agreement, to obtain insurance that is consistent with the Insurance provisions as set forth in this Agreement, as well as any other insurance that may be required by Contract Officer.

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. 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.

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. Contractor acknowledges that no officer or employee of the City has or shall have any direct or indirect financial interest in this

Agreement nor shall Contractor enter into any agreement of any kind with any such officer or employee during the term of this Agreement and for one year thereafter.

Contractor warrants that Contractor 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, gender identity, gender expression, national origin, physical or mental disability, medical condition, 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: Mark Rios
Rios Clementi Hale Studios
639 N. Larchmont Blvd., Suite 100
Los Angeles, CA 90004

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: _____

By: _____
David H. Ready, PhD
City Manager

APPROVED AS TO FORM:

ATTEST

By: _____
Douglas C. Holland,
City Attorney

By: _____
Kathleen D. Hart, MMC
Interim City Clerk

"CONSULTANT"
Rios Clementi Hale Studios

Date: _____

By : _____
(name)

(president)

Date: _____

(name)

(secretary)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____ before me, _____
Date Here Insert Name and Title of the Officer

personally appeared _____
Name(s) of Signer(s)

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 _____
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended 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: _____
 Corporate Officer -- Title(s): _____
 Partner -- Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer is Representing: _____

Signer's Name: _____
 Corporate Officer -- Title(s): _____
 Partner -- Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer is Representing: _____

EXHIBIT “A”

**CONSULTANT’S
SCOPE OF SERVICES/WORK**

Including,

Schedule of Fees

And

Schedule of Performance

MARK REOS
 RIOS CLEMENTI HAILE STUDIOS
 BRUNO CLEMENTI
 ROBERT WOLF
 MARY POTTER
 CHRISTOPHER BLACK
 CHRISTOPHER SCHAE
 EMILY HERRICK
 MATT EBERLE
 MATT CROSBY
 STEVEN BARBA
 STEPHAN BISSARD
 TARA JACOBSON
 TERRY S. HODG
 MARIANNE SANDOZ
 JESSICA BARNETT
 NAZMIA ALI
 JANE TULLOCH
 LISA WOLF
 LARRY KYLE
 ANDREW GIBSON
 JOHN VALLEJO
 BILLY CROSBY
 JESSICA WELLS
 KAREN TIGHE
 JENNIFER PETERSON
 MIKE TAMM
 BOBBI WINDGUST
 TIM WARD
 JUDITH HARRIS
 ELINA STAD
 SYLVIA SHAW
 WALTER
 DEBBIE LYKAMA
 BRENT JACOBSEN
 BEN STODOL
 ANDY KANTZ
 ADAM PETERSON
 ANDREW LEE
 KIRSTEN SCHULTZ
 ALAN PETERSON
 GAYNOR NICHOLS
 JESSICA PERE
 JUSTIN KIM
 ALAN PETERSON
 JESSICA SCHULTZ
 SARA ELLEN
 JOHN ROSENTHAL
 BEN TAYLOR KIM
 HANNAH BUCK
 ANNE CLARK
 KATHLEEN KIM
 CHRISTOPHER STANLEY
 BEN TONG
 JAMES LEEVLY
 TEDD RUFFA
 BROTTAN MULLER
 THERESA ZUNIGA FORBES
 EMILY TUCKER
 NINA CHA
 NINA WILSON
 NARON MONTE
 ALBERTO GALERIE
 KATE BRYAN
 SYLVIA SHAW
 JUSTIN CROSBY
 HELEN WEAVER
 AMY BRIDGES
 JASON BRUNDA
 SARINA CHANG
 ANJICA WANG
 DANIELLA GATSON
 JESSAMINE DAVIS
 KATHY BRIDGES
 JEFFREY DURN
 TODD BRANSON
 DANIEL PEEI
 BENNY HOTT
 RYAN CARLINGTON
 GRANT GATTA
 DEVIN MCKAYAK
 SEYMOUR TRANG
 LAYTON PETERSON
 ELARISA CALHO
 EDWIN THOMPSON
 MIKE BREGG
 CHRISTOPHER FENTON
 TULLIAN MANNING
 NICOLE PATZ
 MARCO MULLER
 DELTA MARRAS
 MARIANNE SANDOZ
 NICHOLE BRUNDA
 SANTA JUSARI
 EDY SEPURA
 JIAN LAI
 BRITANNY PROCHER
 ANJICA CHA
 BEN WELLS
 SANDY LEM
 ALBA MARR
 M. S. DALLAN
 TINA BRUNDA
 DANIEL CROSBY
 ANDREW LEE
 JOHN WARD
 ERIC LAYTON
 JON TANK LEM
 NICK PARADISOS
 BRENT LUCKY
 JUSTIN MERRAN
 DANNY TRAVIS
 NERO BRUNDA
 MARY STEPHENSON

February 14, 2017

David Ready, Esq., Ph.D., City Manager/City Engineer
 Marcus Fuller, MPA, PE, PLS, Assistant City Manager/City Engineer
 City of Palm Springs
 Palm Springs City Hall
 3200 E. Tahquitz Canyon Way
 Palm Springs, CA 92262

Sent via email: david.ready@palmsprings-ca.gov
 marcus.fuller@palmsprings-ca.gov

PROPOSAL
LANDSCAPE ARCHITECTURE CONCEPT DESIGN SERVICES
PALM SPRINGS CITY PARK

Dear David and Marcus,

We are pleased to provide you with this proposal for professional landscape architecture concept design and community outreach services for the Palm Springs City Park. This proposal will define the agreement between the City of Palm Springs (Owner) and Rios Clementi Hale Studios (RCHS).

SCOPE OF WORK

RCHS will provide conceptual landscape architecture services for the new city park. Areas to be considered include:

1. Family use areas/passive park areas
2. Flexible, active areas for potential events
3. Recreation area(s), seating
4. Dog friendly area
5. Gathering areas
6. New trees and plantings
7. ADA connection from sidewalks and paseo into and through the park
8. Art/artful space/ installations
9. Walkways/service pathways
10. Open shade structures as part of garden destinations
11. Overall urban connections between Palm Canyon and the Palm Springs Museum

SCOPE OF SERVICES

CONCEPT DESIGN PHASE (Approximately 6-8 weeks)

1. Overall site master plan/site program/site analysis
2. Overall conceptual landscape master plan options
3. Exterior renderings and sketches

4. Related case studies: size and programs
5. Review prior design options by prior teams
6. Materials palette
7. Concept precedent image boards
8. 3-D digital model
9. Conceptual landscape image board
10. Overall conceptual landscape and hardscape materials palette
11. Three (3) conceptual design options
12. Overall site circulation plan
13. Concept narrative and concept connection to place
14. Overall RCHS project administration
15. Three (3) park committee design review sessions
16. One (1) final concept plan with illustrative images

FEE: \$24,000

COMMUNITY OUTREACH PHASE – Concurrent with Concept Design

1. Review all project documents and programming goals with community forum and stakeholders
2. Program and concept analysis presentation for community workshop
3. Develop three (3) initial conceptual design and program options and accompanying drawing and presentation materials for community meeting
4. Two (2) Public Community outreach and community meetings/presentations on Park Concept and programming
5. One (1) City Council presentation for programming phase approval

FEE: \$14,000

Assistance for future design phases including schematic design, design development, construction documents, permitting, bidding, and construction administration will be under a separate contract.

C O N D I T I O N S

1. This agreement is based on the AIA Document B101, Standard Form of Agreement between Owner and Architect, 2007 Edition. All terms and conditions of Document B101 are incorporated into this agreement as though fully set forth.
2. This proposal is valid for thirty (30) days only.
3. Owner shall provide all necessary information and documents in the form of survey, reports and drawings required for the landscape architectural services to proceed.
4. All other professional fees for irrigation, fountain, pool, spa, mechanical, electrical, civil, survey, structural and mechanical engineering, and waterproofing design services are not part of Rios Clementi Hale Studios' scope of work.

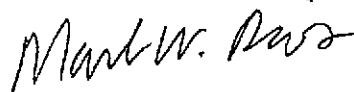
5. Coordination and submittal to governmental agencies over and above that included in this scope of work will not be completed without additional compensation, such as building code modifications or zoning administrator appeals.
6. Billing shall be on a monthly basis, as work is completed. Fees are due and payable upon presentation of invoice. Invoices for projects will be emailed as a PDF file to the Owner's billing or accounts receivable manager, or to the Owner's representative. Original copies are available upon request.
7. Professional fees for hourly services will be billed at current hourly rates. As of February 1, 2016, Partner time is billed at \$275.00 per hour, Principal time is billed at \$220.00 per hour, Senior Associate/Senior Designer time is billed at \$195.00 per hour, Associate/Project Manager time is billed at \$165.00 per hour, Designer time is billed between \$125.00-\$140.00 per hour, Senior Administrative time at \$110.00 per hour, Draftsman time is billed at \$95.00 per hour and Administrative time at \$85.00 per hour. Hourly rates are subject to change and client will be notified 30 days in advance of any change.
8. Additional services when requested by Owner or Architect will be invoiced monthly at our current hourly rates.
9. Reimbursables shall be billed at 1.1 times direct cost. Such expenditures may include but are not limited to the following: messenger and delivery charges; mileage; reproduction and blueprinting expenses; plotting, photography; graphic resources; fax and long distance telephone expenses; and travel expenses, including transportation, parking fees, lodging and meals (travel expenses will be billed against allowance). Vehicle mileage will be billed at the current IRS mileage rate for specific job related trips (i.e. product and material research and selection, and long distance job meetings). Mileage for meetings within Los Angeles is included within the total contract fees.
10. If the Owner finds it necessary to abandon the project, Rios Clementi Hale Studios shall be compensated for all work completed under the Scope of Services according to the schedule of payments designated under the Fee Schedule.
11. The Owner and Architect agree to limit Rios Clementi Hale Studios' liability to the Owner, Architect, and to all construction contractors and sub-contractors due to the non willful acts, errors, or omissions of the Landscape Architect, such that the total aggregate liability of the Landscape Architect to all those named shall not exceed these fees.
12. All documents furnished by Rios Clementi Hale Studios under this proposal are instruments of Landscape Architect's services. They are not intended or represented to be suitable for reuse by Owner or others on extensions of the project or on any other project. Any reuse without specific written verification and adaptation by Rios Clementi Hale Studios for the specific purposes intended will be at the user's sole risk and without liability or legal exposure to Rios Clementi Hale Studios.

13. Rios Clementi Hale Studios retains ownership of any developed graphic patterns / products / furniture, and reserves all rights to their reuse.
14. All questions in dispute under this agreement shall be submitted to arbitration at the choice of either party in accordance with the rules of the American Arbitration Association and judgment upon any award rendered may be entered in any court having jurisdiction.

Please call if you have any questions regarding this proposal. To authorize us to proceed, return a signed copy to this office. I look forward to working with you on this project.

Sincerely,
RIOS CLEMENTI HALE STUDIOS

Date: _____



Mark W. Rios, FAIA, FASLA
Partner

Accepted By: _____

EXHIBIT “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.