



Council Agenda Report

To: Mayor Silverstein and the Honorable Members of the City Council

Prepared by: Kate Manisco, Recreation Manager

Reviewed by: Kristin Riesgo, Community Services Director

Approved by: Steve McClary, City Manager

Date prepared: August 7, 2023

Meeting date: August 28, 2023

Subject: Professional Services Agreement with California Skateparks

RECOMMENDED ACTION: Authorize the Mayor to execute a Professional Services Agreement with California Skateparks related to repairs of the Temporary Skate Park.

FISCAL IMPACT: No additional appropriation is required. Funding for this agreement is included in the Adopted Budget for FY 2023-24 in Account No. 100-4005-5100-00 (Skate Park Professional Services).

WORK PLAN: This item was included as item #7.k.2 in the Adopted Work Plan for FY 2022-23. Staff continue to work on ongoing projects and normal business while the FY 2023-24 Work Plan is finalized.

DISCUSSION: On August 21, 2019, Council approved using the Case property adjacent to Malibu Bluffs Park as the location for a Temporary Skate Park (TSP). On January 30, 2020, Council authorized the City Manager to execute a professional services agreement with American Ramp Company for design services for the TSP.

On March 17, 2020, the TSP Equipment Installation Project was advertised in the solicitation of bids. The project required constructing, furnishing, and installing skate park lumber framed equipment and structures, Skatelite pro riding surfaces, metal railings, platform and ramp framing, ramp panel assembly, transitions, decks, safety rails, metal work, footings, and foundations.

Staff reviewed the bid from California Skateparks and found it to be in order and conformance with the bid requirements. The construction contract was awarded to

California Skateparks on April 13, 2020. The work was completed on July 13, 2020, and a Notice of Completion was recorded through the Public Works Department.

Following the TSP opening, staff has performed daily facility inspections and completed various repairs to the Skatelite surfaces, banisters, and railings, added galvanized steel to the corners of the ledges and decks, and protective barriers to wood surfaces to increase the lifespan of the equipment. Due to the heavy use of the TSP and natural elements such as rain, salt, and moisture, some skate elements have reached a product lifespan, including the sub-surface in the skate bowl and surrounding areas.

Since California Skateparks built the TSP in 2020, staff recommends award of the agreement with the firm to complete repairs on the bowl skate element without competitive biddign requirements for the following reasons: (i) contract is for specialized services ((review, assessment and determination of the necessary reairs/maintenance at TSP); and (ii) use of the competitive bidding process would not be likely to result in a lower price to the city from a responsible bidder and would cause unnecessary expense or delay under the circumstances as California Skateparks is the entity with the most institutional knowledge of the TSP such that their previous work and familiarity make them uniquely qualified for this service. California Skateparks has inspected the site on various occasions to provide staff with repair recommendations. The firm has the original building specifications and will adjust the structure and installation methods to lengthen the product lifespan, such as adding weather-proofing solutions, which were not a part of the original design. Adding this element will help maintain the integrity of the skate bowl and support the elevated surface surrounding the area. Additional work on the proposed project includes removing the Skatelite surface and metal edging from the skate bowl and surrounding areas, installing new plywood subsurface with the moisture barrier, adding two drains to the bottom of the bowl, and reapplying the existing Skatelite surface.

If approved, the repairs will begin in late August 2023 and take one week to complete.

ATTACHMENTS: Professional Services Agreement with California Skateparks

AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement is made and entered into as of August 28, 2023, by and between the City of Malibu (hereinafter referred to as the "City"), and California Skateparks. (hereinafter referred to as the "Consultant").

The City and the Consultant agree as follows:

RECITALS

A. The City does not have the personnel able and/or available to perform the services required under this Agreement.

B. The City desires to contract out for maintenance repairs at the Malibu Bluffs Park, Temporary Skate Park. The work shall be performed in accordance with the Scope of Work (Exhibit A).

C. The Consultant warrants to the City that it has the qualifications, experience and facilities to perform properly and timely the services under this Agreement.

D. The City desires to contract the Consultant to perform the services as described in Exhibit A of this Agreement.

NOW, THEREFORE, the City and the Consultant agree as follows:

1.0 SCOPE OF THE CONSULTANT'S SERVICES. The Consultant agrees to provide the services and perform the tasks set forth in the Scope of Work, attached to and made part of this Agreement. The Scope of Work may be amended from time to time by way of a written directive from the City.

2.0 TERM OF AGREEMENT. This Agreement will become effective August 28, 2023 and will remain in effect for a period of one-hundred twenty (120) days from said date unless terminated by either party as provided herein.

3.0 CITY AGENT. The City Manager, or his or her designee, for the purposes of this Agreement, is the agent for the City; whenever approval or authorization is required, Consultant understands that the City Manager, or his or her designee, has the authority to provide that approval or authorization.

4.0 COMPENSATION FOR SERVICES. The City shall pay the Consultant for its professional services rendered and costs incurred pursuant to this Agreement in accordance with the Scope of Work's fee and cost schedule. The cost of the services shall not exceed \$90,000. No additional compensation shall be paid for any other expenses incurred, unless first approved by the City Manager, or his or her designee.

4.1 The Consultant shall submit to the City, by no later than the 10th day of the conclusion of the project, its bill for services itemizing the fees and costs incurred during the project.

5.0 CONFLICT OF INTEREST. The Consultant represents that it presently has no interest and shall not acquire any interest, direct or indirect, in any real property located in the City which may be affected by the services to be performed by the Consultant under this Agreement. The Consultant further represents that in performance of this Agreement, no person having any such interest shall be employed by it.

5.1 The Consultant represents that no City employee or official has a material financial interest in the Consultant's business. During the term of this Agreement and/or as a result of being awarded this contract, the Consultant shall not offer, encourage or accept any financial interest in the Consultant's business by any City employee or official.

5.2 If a portion of the Consultant's services called for under this Agreement shall ultimately be paid for by reimbursement from and through an agreement with a developer of any land within the City or with a City franchisee, the Consultant warrants that it has not performed any work for such developer/franchisee within the last 12 months, and shall not negotiate, offer or accept any contract or request to perform services for that identified developer/franchisee during the term of this Agreement.

6.0 GENERAL TERMS AND CONDITIONS.

6.1 Termination. Either the City Manager or the Consultant may terminate this Agreement, without cause, by giving the other party ten (10) days written notice of such termination and the effective date thereof.

6.1.1 In the event of such termination, all finished or unfinished documents, reports, photographs, films, charts, data, studies, surveys, drawings, models, maps, or other documentation prepared by or in the possession of the Consultant under this Agreement shall be returned to the City. If the City terminates this Agreement without cause, the Consultant shall prepare and shall be entitled to receive compensation pursuant to a close-out bill for services rendered and fees incurred pursuant to this Agreement through the notice of termination. If the Consultant terminates this Agreement without cause, the Consultant shall be paid only for those services completed in a manner satisfactory to the City.

6.1.2 If the Consultant or the City fail to fulfill in a timely and proper manner its obligations under this Agreement, or if the Consultant or the City violate any of the covenants, agreements, or stipulations of this Agreement, the Consultant or the City shall have the right to terminate this Agreement by giving written notice to the other party of such termination and specifying the effective date of such termination. The Consultant shall be entitled to receive compensation in accordance with the terms of this Agreement for any work satisfactorily completed hereunder. Notwithstanding the foregoing, the Consultants shall not be relieved of liability for damage sustained by virtue of any breach of this Agreement and any payments due under this Agreement may be withheld to off-set anticipated damages.

6.2 Non-Assignability. The Consultant shall not assign or transfer any interest in this Agreement without the express prior written consent of the City.

6.3 Non-Discrimination. The Consultant shall not discriminate as to race, creed, gender, color, national origin or sexual orientation in the performance of its services and duties pursuant to this Agreement, and will comply with all applicable laws, ordinances and codes of the Federal, State, County and City governments.

6.4 Insurance. The Consultant shall submit to the City certificates indicating compliance with the following minimum insurance requirements no less than one (1) day prior to beginning of performance under this Agreement:

(a) Workers Compensation Insurance as required by law. The Consultant shall require all subcontractors similarly to provide such compensation insurance for their respective employees.

(b) Comprehensive general and automobile liability insurance protecting the Consultant in amounts not less than \$1,000,000 for personal injury to any one person, \$1,000,000 for injuries arising out of one occurrence, and \$500,000 for property damages or a combined single limit of \$1,000,000. Each such policy of insurance shall:

- 1) Be issued by a financially responsible insurance company or companies admitted and authorized to do business in the State of California or which is approved in writing by City.
- 2) Name and list as additional insured the City, its officers and employees.
- 3) Specify its acts as primary insurance.
- 4) Contain a clause substantially in the following words: "It is hereby understood and agreed that this policy shall not be canceled nor materially changed except upon thirty (30) days prior written notice to the City of such cancellation or material change."
- 5) Cover the operations of the Consultant pursuant to the terms of this Agreement.

6.5 Indemnification. Consultant shall indemnify, defend with counsel approved by City, and hold harmless City, its officers, officials, employees and volunteers from and against all liability, loss, damage, expense, cost (including without limitation reasonable attorneys fees, expert fees and all other costs and fees of litigation) of every nature arising out of or in connection with Consultant's performance of work hereunder or its failure to comply with any of its obligations contained in this Agreement, regardless of City's passive negligence, but excepting such loss or damage which is caused by the sole active negligence or willful misconduct of the City. Should City in its sole discretion find Consultant's legal counsel

unacceptable, then Consultant shall reimburse the City its costs of defense, including without limitation reasonable attorneys fees, expert fees and all other costs and fees of litigation. The Consultant shall promptly pay any final judgment rendered against the City (and its officers, officials, employees and volunteers) covered by this indemnity obligation. It is expressly understood and agreed that the foregoing provisions are intended to be as broad and inclusive as is permitted by the law of the State of California and will survive termination of this Agreement.

6.6 Compliance with Applicable Law. The Consultant and the City shall comply with all applicable laws, ordinances and codes of the Federal, State, County and City governments, including, without limitation, Malibu Municipal Code Chapter 5.36 Minimum Wage.

6.7 Independent Contractor. This Agreement is by and between the City and the Consultant and is not intended, and shall not be construed, to create the relationship of agency, servant, employee, partnership, joint venture or association, as between the City and the Consultant.

6.7.1. The Consultant shall be an independent contractor, and shall have no power to incur any debt or obligation for or on behalf of the City. Neither the City nor any of its officers or employees shall have any control over the conduct of the Consultant, or any of the Consultant's employees, except as herein set forth, and the Consultant expressly warrants not to, at any time or in any manner, represent that it, or any of its agents, servants or employees are in any manner employees of the City, it being distinctly understood that the Consultant is and shall at all times remain to the City a wholly independent contractor and the Consultant's obligations to the City are solely such as are prescribed by this Agreement.

6.8 Copyright. No reports, maps or other documents produced in whole or in part under this Agreement shall be the subject of an application for copyright by or on behalf of the Consultant.

6.9 Legal Construction.

(a) This Agreement is made and entered into in the State of California and shall in all respects be interpreted, enforced and governed under the laws of the State of California.

(b) This Agreement shall be construed without regard to the identity of the persons who drafted its various provisions. Each and every provision of this Agreement shall be construed as though each of the parties participated equally in the drafting of same, and any rule of construction that a document is to be construed against the drafting party shall not be applicable to this Agreement.

(c) The article and section, captions and headings herein have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction.

(d) Whenever in this Agreement the context may so require, the

masculine gender shall be deemed to refer to and include the feminine and neuter, and the singular shall refer to and include the plural.

6.10 Counterparts. This Agreement may be executed in counterparts and as so executed shall constitute an agreement which shall be binding upon all parties hereto.

6.11 Final Payment Acceptance Constitutes Release. The acceptance by the Consultant of the final payment made under this Agreement shall operate as and be a release of the City from all claims and liabilities for compensation to the Consultant for anything done, furnished or relating to the Consultant's work or services. Acceptance of payment shall be any negotiation of the City's check or the failure to make a written extra compensation claim within ten (10) calendar days of the receipt of that check. However, approval or payment by the City shall not constitute, nor be deemed, a release of the responsibility and liability of the Consultant, its employees, sub-consultants and agents for the accuracy and competency of the information provided and/or work performed; nor shall such approval or payment be deemed to be an assumption of such responsibility or liability by the City for any defect or error in the work prepared by the Consultant, its employees, sub-consultants and agents.

6.12 Corrections. In addition to the above indemnification obligations, the Consultant shall correct, at its expense, all errors in the work which may be disclosed during the City's review of the Consultant's report or plans. Should the Consultant fail to make such correction in a reasonably timely manner, such correction shall be made by the City, and the cost thereof shall be charged to the Consultant.

6.13 Files. All files of the Consultant pertaining to the City shall be and remain the property of the City. The Consultant will control the physical location of such files during the term of this Agreement and shall be entitled to retain copies of such files upon termination of this Agreement.

6.14 Waiver; Remedies Cumulative. Failure by a party to insist upon the performance of any of the provisions of this Agreement by the other party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such party's right to demand compliance by such other party in the future. No waiver by a party of a default or breach of the other party shall be effective or binding upon such party unless made in writing by such party, and no such waiver shall be implied from any omissions by a party to take any action with respect to such default or breach. No express written waiver of a specified default or breach shall affect any other default or breach, or cover any other period of time, other than any default or breach and/or period of time specified. All of the remedies permitted or available to a party under this Agreement, or at law or in equity, shall be cumulative and alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right of remedy.

6.15 Mitigation of Damages. In all such situations arising out of this Agreement, the parties shall attempt to avoid and minimize the damages resulting from the conduct of the other party.

6.16 Partial Invalidity. If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

6.17 Attorneys' Fees. The parties hereto acknowledge and agree that each will bear his or its own costs, expenses and attorneys' fees arising out of and/or connected with the negotiation, drafting and execution of the Agreement, and all matters arising out of or connected therewith except that, in the event any action is brought by any party hereto to enforce this Agreement, the prevailing party in such action shall be entitled to reasonable attorneys' fees and costs in addition to all other relief to which that party or those parties may be entitled.

6.18 Entire Agreement. This Agreement constitutes the whole agreement between the City and the Consultant, and neither party has made any representations to the other except as expressly contained herein. Neither party, in executing or performing this Agreement, is relying upon any statement or information not contained in this Agreement. Any changes or modifications to this Agreement must be made in writing appropriately executed by both the City and the Consultant.

6.19 Notices. Any notice required to be given hereunder shall be deemed to have been given by depositing said notice in the United States mail, postage prepaid, and addressed as follows:

TO CITY:	Steve McClary City Manager City of Malibu 23825 Stuart Ranch Road Malibu, CA 90265-4861 TEL (310) 456-2489 x 226 FAX (310) 456-2760	TO CONSULTANT:	Joseph Ciaglia, Jr. President, CEO California Skateparks 273 N. Benson Avenue Upland, CA 91786 (800) 227-5283
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6.20 Warranty of Authorized Signatories. Each of the signatories hereto warrants and represents that he or she is competent and authorized to enter into this Agreement on behalf of the party for whom he or she purports to sign.

7.0 GENERAL TERMS AND CONDITIONS. (City and Consultant initials required at EITHER 7.1 or 7.2)

7.1 Disclosure Required. By their respective initials next to this paragraph, City and Consultant hereby acknowledge that Consultant is a "consultant" for the purposes of the California Political Reform Act because Consultant's duties would require him or her to make one or more of the governmental decisions set forth in Fair Political Practices Commission Regulation 18700.3(a) or otherwise serves in a staff capacity for which disclosure would otherwise be required were Consultant employed by the City. Consultant hereby acknowledges his or her assuming-office, annual, and leaving-office financial reporting obligations under the California Political Reform Act and the City's Conflict of Interest Code and agrees to comply with those obligations at his or her expense. Prior to consultant commencing services hereunder,


the City's Manager shall prepare and deliver to consultant a memorandum detailing the extent of Consultant's disclosure obligations in accordance with the City's Conflict of Interest Code.

City Initials _____

Consultant Initials _____

7.2 Disclosure not Required. By their initials next to this paragraph, City and Consultant hereby acknowledge that Consultant is not a "consultant" for the purpose of the California Political Reform Act because Consultant's duties and responsibilities are not within the scope of the definition of consultant in Fair Political Practice Commission Regulation 18700.3(a) and is otherwise not serving in staff capacity in accordance with the City's Conflict of Interest Code.

City Initials _____

Consultant Initials 

8.0 PREVAILING WAGES:

8.1. Pursuant to Labor Code Section 1720 and 1771, and as specified in Title 8, California Code of Regulations, Section 16000 et seq., CONTRACTOR must pay its workers prevailing wages. It is CONTRACTOR's responsibility to interpret and implement any prevailing wage requirements and CONTRACTOR agrees to pay any penalty or civil damages resulting from a violation of the prevailing wage laws.

8.2. In accordance with Labor Code Section 1773.2, copies of the prevailing rate of per diem wages are available upon request from CITY's Engineering Division or the website for State of California Prevailing wage determination at <http://www.dir.ca.gov/DLSR/PWD>. CONTRACTOR must post a copy of the prevailing rate of per diem wages at the job site.

8.3. CITY directs CONTRACTOR's attention to Labor Code Sections 1777.5, 1777.6 and 3098 concerning the employment of apprentices by CONTRACTOR or any subcontractor.

8.4. Labor Code Section 1777.5 requires CONTRACTOR or subcontractor employing tradesmen in any apprenticeship occupation to apply to the joint apprenticeship committee nearest the site of the public works project and which administers the apprenticeship program in that trade for a certificate of approval. The certificate must also fix the ratio of apprentices to journeymen that will be used in the performance of the contract. The ratio of apprentices to journeymen in such cases will not be less than one to five except:

- (a) When employment in the area of coverage by the joint apprenticeship committee has exceeded an average of 15 percent in the 90 days before the request for certificate, or
- (b) When the number of apprentices in training in the area exceeds a ratio of one to five, or

- (c) When the trade can show that it is replacing at least 1/30 of its membership through apprenticeship training on an annual basis state-wide or locally, or
- (d) When CONTRACTOR provides evidence that CONTRACTOR employs registered apprentices on all of his contracts on an annual average of not less than one apprentice to eight journeymen.
- (e) CONTRACTOR is required to make contributions to funds established for the administration of apprenticeship programs if CONTRACTOR employs registered apprentices or journeymen in any apprentice able trade on such contracts and if other contractors on the public works site are making such contributions.
- (f) CONTRACTOR and any subcontractor must comply with Labor Code Sections 1777.5 and 1777.6 in the employment of apprentices.
- (g) Information relative to apprenticeship standards, wage schedules and other requirements may be obtained from the Director of Industrial Relations, ex-officio the Administrator of Apprenticeship, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices.

8.5. CONTRACTOR and its subcontractors must keep an accurate certified payroll records showing the name, occupation, and the actual per diem wages paid to each worker employed in connection with this Agreement. The record will be kept open at all reasonable hours to the inspection of the body awarding the contract and to the Division of Labor Law Enforcement. If requested by CITY, CONTRACTOR must provide copies of the records at its cost.

This Agreement is executed on this _____, at Malibu, California, and effective as of August 28, 2023.


CITY OF MALIBU:

BRUCE SILVERSTEIN, Mayor

ATTEST:

KELSEY PETTIJOHN, City Clerk
(seal)

CONSULTANT:

DocuSigned by:


D05A9C55E9EC4CE
By: JOSEPH CIAGLIA, JR.,
California Skateparks President/CEO

APPROVED AS TO FORM:

THIS DOCUMENT HAS BEEN REVIEWED
BY THE CITY ATTORNEY'S OFFICE

TREVOR RUSIN, Interim City Attorney

Exhibit A
Scope of Work
California Skateparks
Maintenance Repairs at the Malibu Bluffs Park, Temporary Skate Park

The Contractor will be responsible for maintenance repairs at the Malibu Bluffs Park Temporary Skate Park located at 24250 Pacific Coast Highway, Malibu, California 90265 (referred to as "Premises").

1. The Contractor will complete repairs to the bowl, surrounding area, and street skate features (Attachment 1) located on the Premises including:
 - Remove all Skatelite and metal edging
 - Add one new layer of 3/4" PT plywood in flat areas
 - Add two new layers of 3/8" PT plywood in transition areas over the top of existing plywood (excluding ledges, grind boxes, and hubbas)
 - If the existing plywood has been compromised, Contractor will remove the plywood and replace the area with new plywood
 - Add a layer of builders wrap, moisture barrier on all new plywood areas
 - Reapply existing Skatelite and replace broken sheets with new Skatelite sheets (not to exceed fifty new sheets)
 - Reapply all metal edging including cutting and rewelding
 - Add two new drains to bottom of bowl
 - Touch up paint matching existing color palette
2. The Contractor will complete repairs using best management practices
3. The Contractor will follow Skatelite best management practices during installation available in the videos at <https://www.skatelite.com/resources>.
4. The Contractor will provide a detailed repair schedule to Kate Manisco, Recreation Manager. Maintenance repairs may be scheduled from Monday through Friday, 8:00 AM to 6:00 PM.
5. The City will close the Premises to the public while the Contractor is completing the repairs. The Contractor shall notify Kate Manisco, Recreation Manager, of any issues related to public use.
6. The Contractor will contact City employees at the Malibu Bluffs Park office before vacating the Premises including breaks, lunch, and end of day. The Contractor will not leave the Premises open for unauthorized public access.
7. The Contractor will remove all tools, equipment, and debris from the Premises at the end of each working day.

8. The Contractor will perform a final walk-through inspection with the Community Services Department Director or her designee within 48 hours of the completed project.
9. The Contractor agrees to abide by all terms and conditions of the Agreement, including city, state, and federal laws while performing the scope of work under the Agreement.
10. The Contractor will notify the City of Malibu Community Services Department of any issues or delay related to the work performed under this Agreement.

Malibu Bluffs Park Temporary Skate Park

24250 Pacific Coast Hwy, Malibu





Proposal

DATE: February 9, 2023

TO: City of Malibu
Attn: Kate Gallo, Recreation Manager
23825 Stuart Ranch Road, Malibu, CA 90265

RE: **Malibu Temporary Skatepark Repairs**

California Skateparks (CSP) will supply materials, labor (prevailing wages), general liability insurance, workman's compensation, licensing, and skatepark construction experience to provide the above referenced services. CSP will perform the scope of work outlined below for the temporary skatepark as follows:

DESCRIPTION OF SERVICES- applicable to both Phase 1 and Phase 2

- Remove all Skatelite and metal edging
- Add 1 new layer of 3/4" PT plywood in flat areas and 2 new layers of 3/8" PT plywood in transition areas - over the top of existing plywood (does not include any ledges, grind boxes or hubbas – as these items do not need a new layer)
- Add a layer of builders wrap, moisture barrier on all new plywood areas
- Re apply all existing skatelite – and replace any broken sheets with new skatelite sheets (up to 50 new sheets budgeted)
- Reapply all metal – cut and reweld as needed
- Add 2 drains to bottom of bowl for drainage
- Touch up paint where needed

Phase 1

Bowl area and attached street skate features

PROJECT FEES

Fees for the services detailed above shall be compensated as follows:

Proposed total \$85,500

Approved by Client:

By: _____

Date: _____