

**TOWN OF
APPLE VALLEY, CALIFORNIA**

AGENDA MATTER

Subject Item:

A PROFESSIONAL SERVICES CONTRACT FOR THE PREPARATION OF THE BMX BIKE PARK DESIGN DOCUMENTS AND COST COMPARISON STUDY

SUMMARY STATEMENT

In an effort to provide further information regarding the Town's financial situation, prior to the award of a contract, it was the consensus of the Town Council, at their February 23, 2010 meeting to continue this item until after the Town's mid-year budget review. Subsequently, on March 9, 2010, the Town Council held its Mid-Year budget review and as requested, staff is bringing the item forward to Council as requested.

The initial staff report is as follows:

At the September 22, 2009 Town Council Meeting, a PowerPoint presentation was given to Council updating them on the progress of the BMX Bike Park project. After the presentation and discussion, it was the consensus of the Council that staff put out an RFP to get a project design and formal cost estimate on the project.

Continued on Page 2

Attachment:

Professional Services Agreement

Recommended Action:

1. Award the professional services contract in the not to exceed amount of \$24,980.00 to Action Sport Development, LLC., for professional services for the preparation of construction documents and cost comparisons for the BMX Bike Park Project subject to "Approval as to Form" by the Town Attorney and "Approval as to Content" by the Town Manager; and
2. These expenditures are currently unbudgeted and staff requests an additional appropriation be made to Account Code 2510-6820-8940; or
3. Provide further direction.

Proposed by: Ralph Wright, Parks and Recreation Manager

Item Number: _____

T. M. Approval: _____

Budgeted Item Yes No N/A

Statement – Continued
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Staff put out an RFQ/RFP requesting interested firms to submit a proposal on construction design, a cost estimate for the project as presented and some comparison costs for a concrete option. The submittal deadline for these proposals was January 21, 2010. After reviewing the submittals, it was the consensus of the ad hoc BMX Bike Park committee to come to Council and recommend the award of contract to Action Sport Development, LLC., in the not to exceed amount of \$24,980.00. Once awarded, it is anticipated the documents and cost comparisons can be delivered to the Town within thirty days.

These funds are currently unbudgeted. The Town is in the process of applying for the Statewide Park Development and Community Revitalization Program of 2008 – Prop 84 Grant. In the event that the Town is awarded the Prop 84 grant, expended funds for design, up to a maximum of 25% of the total award, could be reimbursed out of the grant award.

**TOWN OF APPLE VALLEY
PROFESSIONAL SERVICES AGREEMENT**

PARTIES AND DATE.

This Agreement is made and entered into this 13th day of April, 2010 by and between the Town of Apple Valley, a municipal corporation organized under the laws of the State of California with its principal place of business at 14955 Dale Evans Parkway, Apple Valley, California 92307 (“Town”) and Action Sport Development, LLC a with its principal place of business at 6965 El Camino Real, 105-609 Carlsbad, CA 92009 (“Consultant”). Town and Consultant are sometimes individually referred to as “Party” and collectively as “Parties.”

2. RECITALS.

2.1 Consultant.

Consultant desires to perform and assume responsibility for the provision of certain professional services required by the Town on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing design and cost analysis services to public clients, is licensed in the State of California, and is familiar with the plans of Town

2.2 Project.

Town desires to engage Consultant to render such services for the BMX Bike Park and Skate Park improvement project (“Project”) as set forth in this Agreement.

3. TERMS.

3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Consultant promises and agrees to furnish to the Town all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional landscape architect consulting services necessary for the Project (“Services”). The Services are more particularly described in Exhibit “A” attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules, and regulations.

3.1.2 Term. The term of this Agreement shall be from April 13, 2010 until the project is officially accepted or abandoned by the Town, unless earlier terminated as provided herein. The planned schedule is more particularly described in Exhibit “B”. Consultant shall complete the Services within the term of this Agreement, and shall meet any other established

schedules and deadlines. The Parties may, by mutual, written consent, extend the term of this Agreement if necessary to complete the Services.

3.2 Responsibilities of Consultant.

3.2.1 Control and Payment of Subordinates; Independent Contractor. The Services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. Town retains Consultant on an independent contractor basis and not as an employee. Consultant retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall also not be employees of Town and shall at all times be under Consultant's exclusive direction and control. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.2.2 Schedule of Services. Consultant shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the Schedule of Services set forth in Exhibit "B" attached hereto and incorporated herein by reference. Consultant represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Consultant's conformance with the Schedule, Town shall respond to Consultant's submittals in a timely manner. Upon request of Town, Consultant shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

3.2.3 Conformance to Applicable Requirements. All work prepared by Consultant shall be subject to the approval of Town.

3.2.4 Substitution of Key Personnel. Consultant has represented to Town that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of Town. In the event that Town and Consultant cannot agree as to the substitution of key personnel, Town shall be entitled to terminate this Agreement for cause. As discussed below, any personnel who fail or refuse to perform the Services in a manner acceptable to the Town, or who are determined by the Town to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property, shall be promptly removed from the Project by the Consultant at the request of the Town. The key personnel for performance of this Agreement are as follows: Mike McIntyre, President, RLA for consultant and Ralph Wright, Parks and Recreation Manager, Town of Apple Valley.

3.2.5 Town's Representative. The Town hereby designates the Parks and Recreation Manager, or his or her designee, to act as its representative for the performance of this Agreement ("Town's Representative"). Town's Representative shall have the power to act

on behalf of the Town for all purposes under this Contract. Consultant shall not accept direction or orders from any person other than the Town's Representative or his or her designee.

3.2.6 Consultant's Representative. Consultant hereby designates Mike McIntyre, or his or her designee, to act as its representative for the performance of this Agreement ("Consultant's Representative"). Consultant's Representative shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences, and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

3.2.7 Coordination of Services. Consultant agrees to work closely with Town staff in the performance of Services and shall be available to Town's staff, consultants and other staff at all reasonable times.

3.2.8 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all employees and subconsultants shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees and subconsultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, including a Town Business License, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Consultant shall perform, at its own cost and expense and without reimbursement from the Town, any services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein. Any employee of the Consultant or its sub-consultants who is determined by the Town to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the Town, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

3.2.9 Laws and Regulations. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with Services. If the Consultant performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the Town, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold Town, its officials, directors, officers, employees, and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.2.9.1 Labor Certification. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.2.9.2 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subconsultant, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

3.2.10 Insurance.

3.2.10.1 Time for Compliance. Consultant shall not commence Work under this Agreement until it has provided evidence satisfactory to the Town that it has secured all insurance required under this section. In addition, Consultant shall not allow any subconsultant to commence work on any subcontract until it has provided evidence satisfactory to the Town that the subconsultant has secured all insurance required under this section. Failure to provide and maintain all required insurance shall be grounds for the Town to terminate this Agreement for cause.

3.2.10.2 Minimum Requirements. Consultant shall, at its expense, procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the Consultant, its agents, representatives, employees or subconsultants. Consultant shall also require all of its subconsultants to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:

(A) Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) *General Liability*: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001); (2) *Automobile Liability*: Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto); and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

(B) Minimum Limits of Insurance. Consultant shall maintain limits no less than: (1) *General Liability*: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used including, but not limited to, form CG 2503, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (2) *Automobile Liability*: \$1,000,000 per accident for bodily injury and property damage; and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of \$1,000,000 per accident for bodily injury or disease.

3.2.10.3 Professional Liability. Consultant shall procure and maintain, and require its sub-consultants to procure and maintain, for a period of five (5) years following completion of the Project, errors and omissions liability insurance appropriate to their profession. Such insurance shall be in an amount not less than \$1,000,000 per claim, and shall be endorsed to include contractual liability.

3.2.10.4 Insurance Endorsements. The insurance policies shall contain the following provisions, or Consultant shall provide endorsements on forms supplied or approved by the Town to add the following provisions to the insurance policies:

(A) General Liability. The general liability policy shall be endorsed to state that: (1) the Town, its directors, officials, officers, employees, agents, and volunteers shall be covered as additional insured with respect to the Work or operations performed by or on behalf of the Consultant, including materials, parts or equipment furnished in connection with such work; and (2) the insurance coverage shall be primary insurance as respects the Town, its directors, officials, officers, employees, agents, and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the Town, its directors, officials, officers, employees, agents, and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way.

(B) Automobile Liability. The automobile liability policy shall be endorsed to state that: (1) the Town, its directors, officials, officers, employees, agents, and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Consultant or for which the Consultant is responsible; and (2) the insurance coverage shall be primary insurance as respects the Town, its directors, officials, officers, employees, agents, and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the Town, its directors, officials, officers, employees, agents, and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way.

(C) Workers' Compensation and Employer's Liability Coverage. The insurer shall agree to waive all rights of subrogation against the Town, its directors, officials, officers, employees, agents, and volunteers for losses paid under the terms of the insurance policy which arise from work performed by the Consultant.

(D) All Coverages. Each insurance policy required by this Agreement shall be endorsed to state that: (A) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the Town; and (B) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the Town, its directors, officials, officers, employees, agents, and volunteers.

3.2.10.5 Separation of Insureds; No Special Limitations. All insurance required by this Section shall contain standard separation of insureds provisions. In

addition, such insurance shall not contain any special limitations on the scope of protection afforded to the Town, its directors, officials, officers, employees, agents, and volunteers.

3.2.10.6 Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by the Town. Consultant shall guarantee that, at the option of the Town, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Town, its directors, officials, officers, employees, agents, and volunteers; or (2) the Consultant shall procure a bond guaranteeing payment of losses and related investigation costs, claims, and administrative and defense expenses.

3.2.10.7 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating no less than A:VIII, licensed to do business in California, and satisfactory to the Town.

3.2.10.8 Verification of Coverage. Consultant shall furnish Town with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to the Town. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by the Town if requested. All certificates and endorsements must be received and approved by the Town before work commences. The Town reserves the right to require complete, certified copies of all required insurance policies, at any time.

3.2.10.9 Reporting of Claims. Consultant shall report to the Town, in addition to Consultant's insurer, any and all insurance claims submitted by Consultant in connection with the Services under this Agreement.

3.2.11 Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and life saving equipment and procedures; (B) instructions in accident prevention for all employees and subconsultants, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

3.2.12 Accounting Records. Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of Town during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work,

data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

3.3 Fees and Payments.

3.3.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "C" attached hereto and incorporated herein by reference. The total compensation shall not exceed Twenty-four Thousand, nine hundred and eighty dollars, (24,980.00) without written approval of Town's Parks and Recreation Manager. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.3.2 Payment of Compensation. Consultant shall submit to Town a monthly itemized statement which indicates work completed and hours of Services rendered by Consultant. The statement shall describe the amount of Services and supplies provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. Town shall, within 45 days of receiving such statement, review the statement and pay all approved charges thereon.

3.3.3 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by Town.

3.3.4 Extra Work. At any time during the term of this Agreement, Town may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by Town to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from Town's Representative.

3.3.5 Prevailing Wages. Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 1600, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and since the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. Town shall provide Consultant with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant's principal place of business and at the project site. Consultant shall defend, indemnify and hold the Town, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

3.4 Termination of Agreement.

3.4.1 Grounds for Termination. Town may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those Services which have been adequately rendered to Town, and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause.

3.4.2 Effect of Termination. If this Agreement is terminated as provided herein, Town may require Consultant to provide all finished or unfinished Documents and Data and other information of any kind prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such document and other information within fifteen (15) days of the request.

3.4.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, Town may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.5 Ownership of Materials and Confidentiality.

3.5.1 Documents & Data; Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for Town to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement (“Documents & Data”). All Documents & Data shall be and remain the property of Town, and shall not be used in whole or in substantial part by Consultant on other projects without the Town's express written permission. Within thirty (30) days following the completion, suspension, abandonment or termination of this Agreement, Consultant shall provide to Town reproducible copies of all Documents & Data, in a form and amount required by Town. Town reserves the right to select the method of document reproduction and to establish where the reproduction will be accomplished. The reproduction expense shall be borne by Town at the actual cost of duplication. In the event of a dispute regarding the amount of compensation to which the Consultant is entitled under the termination provisions of this Agreement, Consultant shall provide all Documents & Data to Town upon payment of the undisputed amount. Consultant shall have no right to retain or fail to provide to Town any such documents pending resolution of the dispute. In addition, Consultant shall retain copies of all Documents & Data on file for a minimum of fifteen (15) years following completion of the Project, and shall make copies available to Town upon the payment of actual reasonable duplication costs. Before destroying the Documents & Data following this retention period, Consultant shall make a reasonable effort to notify Town and provide Town with the opportunity to obtain the documents.

3.5.2 Subconsultants. Consultant shall require all subconsultants to agree in writing that Town is granted a non-exclusive and perpetual license for any Documents & Data the subconsultant prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Consultant or its subconsultants, or those provided to Consultant by the Town.

3.5.3 Right to Use. Town shall not be limited in any way in its use or reuse of the Documents and Data or any part of them at any time for purposes of this Project or another project, provided that any such use not within the purposes intended by this Agreement or on a project other than this Project without employing the services of Consultant shall be at Town's sole risk. If Town uses or reuses the Documents & Data on any project other than this Project, it shall remove the Consultant's seal from the Documents & Data and indemnify and hold harmless Consultant and its officers, directors, agents and employees from claims arising out of the negligent use or re-use of the Documents & Data on such other project. Consultant shall be responsible and liable for its Documents & Data, pursuant to the terms of this Agreement, only with respect to the condition of the Documents & Data at the time they are provided to the Town upon completion, suspension, abandonment or termination. Consultant shall not be responsible or liable for any revisions to the Documents & Data made by any party other than Consultant, a party for whom the Consultant is legally responsible or liable, or anyone approved by the Consultant.

3.5.4 Indemnification. Consultant shall defend, indemnify and hold the Town, its directors, officials, officers, employees, volunteers and agents free and harmless, pursuant to the indemnification provisions of this Agreement, for any alleged infringement of any patent, copyright, trade secret, trade name, trademark, or any other proprietary right of any person or entity in consequence of the use on the Project by Town of the Documents & Data, including any method, process, product, or concept specified or depicted.

3.5.5 Confidentiality. All Documents & Data, either created by or provided to Consultant in connection with the performance of this Agreement, shall be held confidential by Consultant. All Documents & Data shall not, without the prior written consent of Town, be used or reproduced by Consultant for any purposes other than the performance of the Services. Consultant shall not disclose, cause or facilitate the disclosure of the Documents & Data to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant that is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use Town's name or insignia, photographs of the Project, or any publiTown pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of Town.

3.6 General Provisions.

3.6.1 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective Parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

Consultant:

Action Sport Development, LLC
Mike McIntyre, President
6965 El Camino Real, 105-609
Carlsbad, CA 92009

Town:

Town of Apple Valley
Attn: Ralph Wright, Parks and Recreation Manager
14955 Dale Evans Parkway
Apple Valley, California 92307

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.6.2 Indemnification.

3.6.2.1 Scope of Indemnity. To the fullest extent permitted by law, Consultant shall defend, indemnify and hold the Town, its directors, officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's Services, the Project or this Agreement, including without limitation the payment of all consequential damages, expert witness fees and attorneys fees and other related costs and expenses. Notwithstanding the foregoing, to the extent Consultant's Services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant.

3.6.2.2 Additional Indemnity Obligations. Consultant shall defend, with Counsel of Town's choosing and at Consultant's own cost, expense and risk, any and all claims, suits, actions or other proceedings of every kind covered by Section 3.6.2.1 that may be brought or instituted against Town or its directors, officials, officers, employees, volunteers and agents. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against Town or its directors, officials, officers, employees, volunteers and agents as part of any such claim, suit, action or other proceeding. Consultant shall also reimburse Town for the cost of any settlement paid by Town or its directors, officials, officers, employees, agents or volunteers as part of any such claim, suit, action or other proceeding. Such reimbursement shall include payment for Town's attorney's fees and costs, including expert witness fees. Consultant shall reimburse Town and its directors, officials, officers, employees, agents, and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in

enforcing the indemnity herein provided. Consultant's obligation to indemnify shall survive expiration or termination of this Agreement, and shall not be restricted to insurance proceeds, if any, received by the Town, its directors, officials officers, employees, agents, or volunteers.

3.6.3 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in San Bernardino County.

3.6.4 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.6.5 Town's Right to Employ Other Consultants. Town reserves right to employ other consultants in connection with this Project.

3.6.6 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the Parties.

3.6.7 Assignment or Transfer. Consultant shall not assign, hypothecate or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the Town. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

3.6.8 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Consultant include all personnel, employees, agents, and subconsultants of Consultant, except as otherwise specified in this Agreement. All references to Town include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content or intent of this Agreement.

3.6.9 Amendment; Modification. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.6.10 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel or otherwise.

3.6.11 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.6.12 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.6.13 Prohibited Interests. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. Consultant further agrees to file, or shall cause its employees or subconsultants to file, a Statement of Economic Interest with the Town's Filing Officer as required under state law in the performance of the Services. For breach or violation of this warranty, Town shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of Town, during the term of his or her service with Town, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.6.14 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.6.15 Attorney's Fees. If either Party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees and all other costs of such action.

3.6.16 Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.6.17 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

3.6.18 Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both parties.

[SIGNATURES ON NEXT PAGE]

**SIGNATURE PAGE
TO
TOWN OF APPLE VALLEY
PROFESSIONAL SERVICES AGREEMENT**

TOWN OF APPLE VALLEY

Action Sport Development, LLC

By: _____
Ralph Wright
Parks and Recreation Manager

By: _____
Mike McIntyre
President

ATTEST:

Ms. La Vonda M. Pearson, Town Clerk

APPROVED AS TO CONTENT:

Frank Robinson, Town Manager

APPROVED AS TO FORM:

BEST BEST & KRIEGER LLP

John Brown, Town Attorney

EXHIBIT "A"
SCOPE OF SERVICES

TASK 1.0 – Kick Off Meeting & Concept Refinement Alternatives

- 1.1 Project Kick-off Meeting-(CONSULTANT TEAM/TOWN) Site Visit & P.M. Meeting**
ASD will conduct a project kick-off meeting at James Woody Park with a follow up meeting in Town offices addressing all project goals, opportunities, constraints, value engineering concepts and project scheduling/ communication systems.
- 1.2 Develop Project Schedule -(ASD/CONSULT. TEAM/ TOWN)**
ASD will provide their expertise in planning and scheduling in Microsoft Project to provide a schedule that can be updated as necessary and track project progress as well. We have included a functional Project Schedule that can easily be modified during Task 1.1 meetings.
- 1.3 Review Relevant Background Materials-(ASD/CONSULT. TEAM/ TOWN)**
ASD/ Consultant Team will review relevant background materials (BMX Park Conceptual Design Plan, as-built plans of the project area underground infrastructure) and examine site in order to understand site constraints and conceptual design goals for successful implementation of project expected.
- 1.4 Design Refinement and Suggestive Alternatives (3) Alternative Plans & Prelim. Pricing**
ASD will develop (3) Conceptual Master Plans for review by the Town and approval prior to starting construction documents so all aspects and pricing has been explored prior to executing Construction Documents. ASD will perform the following:
- DESIGN CONCEPT #1-(ASD)**
-Provide Mater Plan incorporating concrete pad location for 10,500 sq. ft. BMX Bike Park with suggestive above ground modular equipment for all skill levels.
-Addition concept for 2,100 sq. ft. concrete pad to existing skate park for Modular Equipment addition.
-Pre-Cast Restroom type, style and placement west of new BMX Bike Park.
-Lighting layout concept.
-Fencing layout.
-Show Lighting and Power locations for park.
-Preliminary Cost Estimate.
- DESIGN CONCEPT #2-(ASD)**
-Provide Mater Plan incorporating 10,500 sq. ft. BMX Bike Park with custom concrete for all skill levels.
-Skate Park addition concept for 2,100 sq. ft. custom concrete.
-Pre-Cast Restroom type, style and placement west of new BMX Bike Park.
-Lighting layout concept.
-Fencing layout.
-Show Lighting and Power locations for park.
-Preliminary Cost Estimate.

DESIGN CONCEPT #3-(ASD)

- Provide Mater Plan incorporating 10,500 sq. ft. (Hybrid) BMX Bike Park with custom concrete & Modular Equipment for all skill levels.
- Skate Park addition concept for 2,100 sq. ft. (Hybrid) custom concrete & Modular Equipment.
- Pre-Cast Restroom type, style and placement west of new BMX Bike Park.
- Lighting layout concept.
- Fencing layout.
- Show Lighting and Power locations for park.
- Preliminary Cost Estimate.

All concepts will be presented on 24"x36" rendered plans for review and available in digital format.

TASK 2.0 Construction Drawings, Specifications and Cost Estimates (ASD/ CONSULT TEAM)

2.1 ASD/ will verify as-built site conditions relating to existing underground utilities and Existing drainage infrastructure

Prior to project start the team will configure the best options for drainage, electrical, pre-cast building options and construction, budget, etc. and report to Town any concerns and opportunities.

2.2 Consult with Town Building Division regarding plans submittal requirements and code compliance to ensure swift passage through formal plan check process.

2.3 Integrate Securities into Skate Park and Site Plan

ASD will provide best options for fencing, buffers and visual site lines for security purposes.

2.4 Draw Site Grading, Drainage, Electrical, layout and preliminary plans.

2.5 Draw Site Grading and Drainage Plans with all necessary licenses and certifications

List Materials and Furnishings to be used for the project and identify all items by manufacturer, model, part and approximate cost. Provide cut sheet manual of all products and color ways.

2.6 Draw construction plans and prepare technical specifications for skate park features, site furnishings, and landscaping and irrigation. Site access and furnishings shall be ADA/ Title 24 compliant. Construction plans shall include:

- Sufficient detail for all elements of the skate park expansion.
- Fencing detail and layout
- Concrete pad/ element design layout and associated elevations.
- Restroom type, location and specifications.
- Lighting System, layout, photo metrics and power source.
- Geo-technical report for light footings and future restroom location slab.

2.7 Prepare a preliminary cost estimate to construct all elements included in the design – note that construction wage rates will meet Federal and State prevailing wage standards; costs will be estimated on the higher prevailing wage rate.

CITY REVIEW MEETING AND 2.0 DELIVERABLES

TASK 3.0-Prepare Percentage and Final Plans and Final Engineers Estimate

3.1 Submit plans * to City for review, and obtain input at the following benchmarks:

- a. 60% plan and specifications with preliminary cost estimate
- b. 90% plan and specifications with revised preliminary cost estimate
- c. 100% plan and specifications with final cost estimate
 - The construction documents shall include all items necessary to construct the entire project.
 - The construction documents shall include but not be limited to: layout plans, grading and drainage plans, engineering and materials specifications.

*Plans shall be submitted in 24" x 36" format and shall include at a minimum:

1. Axon Plan
2. Materials Reference Plan
3. Layout Plan
4. Grading and Drainage Plan
5. Sections/Profiles Plan
6. Landscape and Irrigation Plans
7. Site Furnishings Plans and Details
8. Construction Details
9. Quantities

3.2 Prepare biddable final plans and refine and revise as necessary specifications, and provide any necessary

Note: Technical Specifications shall be in Construction Specification Institute format for all BMX park construction documents.

-Estimates will be in CSI format.

-Plans will be on 24"x36" sheets and stamped by necessary disciplines.

3.3 Prepare final estimate to construct all elements included in the design.

3.4 Meet with Town of Apple Valley staff to present final plans package.

TASK 4.0-Close-Out Project with Review and Acceptance by Town of Apple Valley

4.1 Respond to completion punch-list and Quality Assurance issues as appropriate to provide satisfactory resolution.

4.2 Provide Necessary documentation for project acceptance by Town of Apple Valley.

END OF PROPOSED SCOPE

EXHIBIT "B"
SCHEDULE OF SERVICES

Town of Apple Valley, CA- BMX Bike Park-Proposed Master Schedule				
ID	DESIGN PROCESS OUTLINE	DURATION	START	FINISH
1	1.0 KICK-OFF MEETING & CONCEPT REFINEMENT ALTERNATIVES	7 days	Mon 5/3/10	Tue 5/11/10
2	1.1 Kick off Meeting with City Staff & Consultant Team	1 day	Mon 5/3/10	Mon 5/3/10
3	1.2 Develop Complete Project Schedule with Town & Consultant Team	1 day	Tue 5/4/10	Tue 5/4/10
4	1.3 Review Relevant Background Material	2 days	Wed 5/5/10	Thu 5/6/10
5	1.4 Design Refinement & Suggestive Alternatives 1-3	3 days	Fri 5/7/10	Tue 5/11/10
6	Milestone-1.0 Complete	0 days	Tue 5/11/10	Tue 5/11/10
7	2.0 CONSTRUCTION DRAWINGS, SPECIFICATIONS & ESTIMATES	8 days	Tue 5/4/10	Thu 5/13/10
8	2.1 Verify As-Built Site Conditions (Underground & Utilities)	1 day	Tue 5/4/10	Tue 5/4/10
9	2.2 Consult with Town Building Division-Submittal Requirements	1 day	Wed 5/5/10	Wed 5/5/10
10	2.3 Site Security-Fencing, Access & Views	1 day	Thu 5/6/10	Thu 5/6/10
11	2.4 Site Grading, Drainage, Electrical, Layout & Preliminary Plans	1 day	Fri 5/7/10	Fri 5/7/10
12	2.5 Site Finishings, Material & Manufacturer Cut Sheets	1 day	Mon 5/10/10	Mon 5/10/10
13	2.6 Construction Plans & Technical Specs	2 days	Tue 5/11/10	Wed 5/12/10
14	2.7 Prepare Preliminary Cost Estimate	1 day	Thu 5/13/10	Thu 5/13/10
15	Milestone-2.0 Complete	0 days	Thu 5/13/10	Thu 5/13/10
16	3.0 FINAL PLANS AND FINAL ESTIMATE (60%, 90%, 100%)	13 days	Fri 5/14/10	Tue 6/1/10
17	3.1 Meeting with Town- CD outline approval	1 day	Fri 5/14/10	Fri 5/14/10
18	- BMX Park, Skate Park Expansion & Site Materials	2 days	Mon 5/17/10	Tue 5/18/10
19	- Prepare Base Information	2 days	Mon 5/17/10	Tue 5/18/10
20	- BMX Park, Skate Park, Restroom & Lighting Site Plan	2 days	Wed 5/19/10	Thu 5/20/10
21	- BMX Park, Skate Park, Restroom & Lighting Site Materials Reference Plan	2 days	Wed 5/19/10	Thu 5/20/10
22	- BMX Park, Skate Park, Restroom & Lighting Layout Plan	2 days	Wed 5/19/10	Thu 5/20/10
23	- BMX Park, Skate Park, Restroom & Lighting Axon Plan	2 days	Wed 5/19/10	Thu 5/20/10
24	- BMX Park, Skate Park, Restroom & Lighting, Grading & Drainage Plan	2 days	Wed 5/19/10	Thu 5/20/10
25	- Sections/Profiles Plan	2 days	Fri 5/21/10	Mon 5/24/10
26	- 60% Construction Details/ Specifications/ Estimate	2 days	Fri 5/21/10	Mon 5/24/10
27	- 90% Construction Documents/ Specifications/ Estimate	2 days	Fri 5/21/10	Mon 5/24/10
28	3.2 100% Construction Documents/ Specifications-Bid Set	2 days	Tue 5/25/10	Wed 5/26/10
29	3.3 Prepare Biddable Set of CD's and Specifications	2 days	Thu 5/27/10	Fri 5/28/10
30	3.4 Meet with City Staff to Present Final Plans Package	2 days	Tue 6/1/10	Wed 6/2/10
31	Milestone-3.0 Complete	0 days	Tue 6/1/10	Tue 6/1/10
32	4.0 - CLOSE OUT PROJECT AND REVIEW AND ACCEPTANCE BY CITY	2 days	Wed 6/2/10	Thu 6/3/10
33	4.1 Respond to Completion Punch List	1 day	Wed 6/2/10	Wed 6/2/10
34	4.2 Provide necessary documentation for project acceptance by Town	1 day	Thu 6/3/10	Thu 6/3/10
35	Milestone- 4.0 Complete	0 days	Thu 6/3/10	Thu 6/3/10
Project: Town of Apple Valley, CA-BMX Bike Park Date: 01-20-2010				
ACTION Sport Development, LLC. 2010				

EXHIBIT "C"
COMPENSATION

TASK – SCOPE OF SERVICES – DESIGN PHASE		FEE AMOUNT
1.0	KICK OFF MEETING AND PROJECT MANAGEMENT COORDINATION	\$4,200.00
2.0	CONSTRUCTION DRAWINGS, SPECIFICATIONS, ESTIMATES	\$5,550.00
3.0	PERCENTAGE AND FINAL PLANS AND FINAL ESTIMATE	\$6,750.00
4.0	CLOSE OUT OF PROJECT WITH REVIEW AND ACCEPTANCE BY TOWN	\$ 650.00
TOTAL ASD DESIGN FEE		\$17, 150.00
TASK – SCOPE OF SERVICES – SUB CONSULTANTS		FEE AMOUNT
	ELECTRICAL ENGINEERING – DREAM ENGINEERING	\$4,250.00
	GEO-TECHNICAL ENGINEERING – ALTEC ENGINEERING GROUP	\$2,000.00
TOTAL DESIGN FEE – SUB CONSULTANTS		\$6,250.00
REIMBURSABLE EXPENSES – DESIGN SERVICES		\$1,580.00
TOTAL PROJECT COST NOT TO EXCEED		\$24,980.00