

# City of Calistoga Staff Report

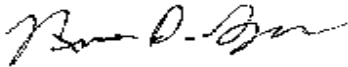
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**TO:** Honorable Mayor and City Council  
**FROM:** Michael Kirn, Public Works Director/City Engineer  
**DATE:** October 1, 2013  
**SUBJECT:** Consideration of a Resolution Approving an Agreement with Friends of Pioneer Park for Design and Construction of Pioneer Park Improvements and Authorizing the City Manager to Execute the Agreement

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## APPROVAL FOR FORWARDING



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Richard D. Spitler, City Manager

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2 **ISSUE:** Consideration of a Resolution approving an agreement with Friends of Pioneer  
3 Park for design and construction of Pioneer Park Improvements and authorizing the City  
4 Manager to execute the agreement.  
5

6 **RECOMMENDATION:** Adopt Resolution  
7

8 **BACKGROUND/DISCUSSION:** Over the past year, the Friends of Pioneer Park have been  
9 engaged with a project to replace the Gazebo in Pioneer Park. On March 19, 2013 Bob  
10 Fiddaman with the Friends of Pioneer Park made a presentation to the Council on the status of  
11 the Gazebo replacement project. At their June 21, 2013 meeting the Friends of Pioneer Park  
12 approved the schematic design for the Gazebo and the associated improvements to Pioneer  
13 Park. The committee also recommended that the schematics be presented to the City Council  
14 for their consideration and conceptual approval. As proposed, the Gazebo and associated  
15 Pioneer Park improvements will be privately funded, designed, and constructed.  
16

17 The conceptual Gazebo design and proposed park improvements were reviewed at the City  
18 Council meeting on August 6, 2013. At that time, the Council approved in concept the location  
19 of the Gazebo and other park improvements. The Council directed staff to begin the design  
20 review process in accordance with City policy and practice with the ultimate goal of scheduling  
21 the proposal before the Planning Commission for design review and approval and  
22 environmental review. In addition Council authorized Staff to prepare an Agreement which  
23 would authorize this private improvement to be constructed in a public park.  
24

25 Staff requests approval of the attached Agreement and authorization for the City Manager to  
26 execute said agreement.  
27

28 **FISCAL IMPACT:** City costs in the near-term are estimated to be minimal. Depending on  
29 the actual park improvements in relationship to existing park facilities (restrooms, utilities,  
30 fences) there may be some costs to the City but those would be identified as part of the final  
31 project design. If the City has maintenance responsibility for the Gazebo, the ongoing costs for  
32 maintenance and repair would be determined and reflected in future City budgets.  
33

34 **ATTACHMENTS:**

- 35 1. Resolution

Date: October 1, 2013

Subject: Consideration of a Resolution Approving an Agreement with Friends of Pioneer Park and Authorizing the City Manager to Execute the Agreement

Page 2 of 2

36        2. Agreement

**RESOLUTION NO. 2013- XXX**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CALISTOGA, COUNTY OF NAPA, STATE OF CALIFORNIA, APPROVING AN AGREEMENT WITH FRIENDS OF PIONEER PARK FOR DESIGN AND CONSTRUCTION OF PIONEER PARK IMPROVEMENTS**

**WHEREAS**, over the past several years, there has been considerable Council and community support for a privately funded and constructed Gazebo and improvements at Pioneer Park within the City of Calistoga; and

**WHEREAS**, on March 19, 2013 the Friends of Pioneer Park made a presentation to the City Council on the status of the Gazebo replacement and park improvements; and

**WHEREAS**, the Friends of Pioneer Park have prepared schematic plans for a Gazebo replacement and associated improvements at pioneer Park and as reflected in the minutes of their June 21, 2013 meeting, approved the Gazebo and Pioneer Park Improvements conceptual design schematics; and

**WHEREAS**, the City Council discussed and considered public input regarding the location and the conceptual design of the Gazebo replacement and park improvements during public meetings on March 19 and August 6, 2013; and

**WHEREAS**, the City Council approved the location and conceptual design of the Gazebo replacement and improvements in Pioneer Park and directed staff to draft an Agreement with Friends of Pioneer Park for private design and construction of a Gazebo and Park Improvements in a public park; and

**WHEREAS**, staff and Friends of Pioneer Park hereby request that the City Council of the City of Calistoga approve the attached Agreement with Friends of Pioneer Park for Design and Construction of Pioneer Park Improvements and authorize the City Manager to execute the agreement.

**NOW, THEREFORE BE IT RESOLVED** that the City Council of the City of Calistoga hereby approves the attached Agreement with Friends of Pioneer Park for Design and Construction of a Pioneer Park Improvements and authorizes the City Manager to execute the agreement contingent upon approval of the City Attorney.

**PASSED, APPROVED, AND ADOPTED** by the City Council of the City of Calistoga at a regular meeting held this **1<sup>st</sup> day of October 2013**, by the following vote:

- AYES:**
- NOES:**
- ABSTAIN:**
- ABSENT:**

\_\_\_\_\_  
**CHRIS CANNING, Mayor**

**ATTEST:**

\_\_\_\_\_  
**KATHY FLAMSON, Deputy City Clerk**

**AGREEMENT FOR DESIGN AND CONSTRUCTION  
OF PIONEER PARK IMPROVEMENTS  
BETWEEN THE CITY OF CALISTOGA AND FRIENDS OF PIONEER PARK**

Authorizing Agreement No. \_\_\_\_\_

THIS AGREEMENT, entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2013 by and between City Of Calistoga, a California municipal corporation and general law city (City) and the Friends of Pioneer Park, a California non-profit corporation (FPP). This Agreement is made with respect to the following facts:

RECITALS

WHEREAS, the City of Calistoga is a general law city duly organized and existing under and by virtue of the laws of the State of California; and

WHEREAS, FPP is a non-Profit corporation duly organized under the laws of the State of California and has qualified as a non-profit organization for purposes of Internal Revenue Code § 501(c)(3); and

WHEREAS, there is public support within the local community for the construction of a new gazebo and other improvements to Pioneer Park such as, but not limited to, lighting, fencing, landscaping, pathway relocation, and other infrastructure, and

WHEREAS, in response to the public's interest in improving the park, FPP has agreed, at its own expense, to design, construct, install, and donate to the City a new gazebo and other park improvements ("Improvements") to be placed on public property; and

WHEREAS, the City owns, keeps and maintains a public park known as Pioneer Park in Calistoga, California upon which FPP desires to construct a gazebo and make other improvements in accordance with certain plans and specifications that will be subject to the City's normal permit and approval process and the Improvements are to be donated and transferred upon completion to the City. The Improvements shall encompass the gazebo, and all other improvements such as, but not limited to, lighting, fencing, landscaping, pathways, and other park infrastructure thereto as described or depicted in the approved plans and specifications; and

WHEREAS, on August 28, 2013 the Calistoga Planning Commission held a public hearing for consideration of Design Review for the project (DR 2013-08); and

WHEREAS on August 28, 2013 the Calistoga Planning Commission reviewed the proeject for compliance with the California Environmental Quality Act (CEQA) and found the project to be is exempt from the requirements of the CEQA pursuant to Sections 15302 and 15304 of the CEQA guidelines; and

WHEREAS, on August 28, 2013 the Calistoga Planning Commission adopted Resolution PC 2013-24 approving Design Review 2013-08 and commensurate findings and approved the proposed project, subject to Conditions; and.

41 WHEREAS, on October 1, 2013, the Calistoga City Council approved FPP's proposed  
42 project to be located at Calistoga's Pioneer Park as described more particularly in the Gazebo  
43 Plan and Master Landscape Plan approved by the City and attached to this Agreement as Exhibit  
44 "A".

45 WHEREAS, the parties to this Agreement wish to define their respective responsibilities for design,  
46 construction, and maintenance services at Pioneer Park.

47 AGREEMENT

48 NOW, THEREFORE, in consideration of the mutual promises and agreements herein contained and  
49 the Recitals set forth above and hereby incorporated into this Agreement, and for other good and valuable  
50 consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as  
51 follows:

52 1. THE PARTIES' RESPECTIVE OBLIGATIONS.

53 1.1 FPP's obligations consist of the following actions (each at FPP's sole expense):

54 1.1.1 Design the Improvements consistent with the current and applicable building and  
55 safety codes for facilities of this nature. File for and obtain a building permit and encroachment permit to  
56 authorize the construction activities. Comply with all applicable Municipal Code provisions and the  
57 Improvement's design reflected on the plans approved by the City for the building permit in constructing and  
58 installing the project.

59 1.1.2. Install all improvements in compliance with the approved plans and specifications  
60 upon which the City's building permit and encroachments permits are issued.

61 1.1.3. Maintain all necessary and appropriate insurance certificates by the designer of  
62 record during construction activities and during the one-year post construction warranty period.

63 1.1.4. Retain the designer of record to provide prompt and complete construction  
64 administration services during the construction period.

65 1.1.5. Identify a General Contractor who shall be responsible for all aspects of the  
66 construction of the Improvements and who shall insure that all work is coordinated and completed pursuant to  
67 the approved plans and specifications upon which a City building permit is issued. The General Contractor  
68 shall sign for and obtain the building permit and shall be solely responsible for the execution of the construction  
69 project. The General Contractor shall maintain appropriate insurance policies as directed by the City during the  
70 course of the construction of the Improvements. The General Contractor shall insure that any and all sub-  
71 contractors have and maintain appropriate insurance policies during their involvement on the construction  
72 project. The General Contractor shall insure that any volunteer involved in performing any work on the site has  
73 signed and filed with the General Contractor a Volunteer Insurance Waiver form.

74 1.1.6. Provide a construction timeline outlining the construction steps to be taken  
75 and the timeframe for activities for review and approval by the City prior to the issuance of the  
76 building permit and the commencement of construction efforts at the site. FPP shall insure that  
77 work progresses consistent with the approved schedule. FPP shall meet with the City on a weekly  
78 basis, or more frequently as may be determined by City to be necessary, to review construction  
79 progress and to identify any issues in need of attention and action.

80 1.1.7. Provide a construction and materials warranty of one (1) year from the date  
81 of acceptance of the Improvements to insure that all elements of the Improvements are functional,  
82 thriving and in compliance with the approved plans and specifications.

83 1.1.8. Maintain and control the construction site during the course of the  
84 construction project and shall be solely liable for any damage to the construction site, the  
85 Improvements, adjacent Pioneer Park improvements including the parking lot and any construction  
86 materials storage or staging areas, or injury to members of the public arising from the construction  
87 activities. FPP shall insure that the construction site and any materials storage or staging areas are  
88 maintained in a neat, clean and organized fashion.

89 1.1.9. Submit fully detailed as-built drawings of the Improvements signed by the  
90 project Landscape Architect prior to the completion and use or acceptance of the Improvements.

91 1.1.10. Submit a maintenance manual providing maintenance schedules and  
92 specifications for the landscape materials, irrigation and lighting systems prior to the completion  
93 and acceptance of the Improvements.

94 1.2. The City's obligations consist of the following:

95 1.2.1. Grant the use of the identified portion of Pioneer Park reflected in Exhibit "A"  
96 as the location of the Improvements.

97 1.2.2. Perform any necessary inspections of construction activities pursuant to the  
98 approved building and encroachment permits.

99 2. TERM OF AGREEMENT.

100 2.1. Subject to the provisions of this Agreement regarding termination set forth below, the term of  
101 this Agreement shall begin upon its execution and shall terminate one year from execution.

102 2.2. Notwithstanding Section 2.1, either the City or FPP may terminate this Agreement with cause  
103 after complying with Section 10 and by giving written notice to the other party pursuant to Section 9. Termination  
104 based on cause will become effective immediately upon the giving of notice as provided in Section 9.

105 2.3. The City, with the agreement of FPP, is authorized to extend the term of this Agreement  
106 beyond the termination date, as needed, under the same terms and conditions set forth in this Agreement. Any  
107 such extension shall be in writing and will be an amendment to this Agreement.

108 2.5. Upon the City's acceptance of the completion of the Improvements, the Improvements shall  
109 become the property of the City. City shall assume facility liability upon acceptance of the Improvements. Upon  
110 the City's acceptance of the completion of the Improvements, City shall perform necessary maintenance and  
111 repair of the Improvements consistent with the standard level of care the City is able to apply to other public park  
112 improvements.

113 3. DESIGNATED REPRESENTATIVES.

114 3.1. The City's City Manager is the designated City Representative and is responsible for  
115 coordination with FPP Representative.

116 3.2. FPP's President is the designated FPP Representative and is responsible for coordination

117 with the City Representative.

118 4. INSURANCE.

119 4.1. FPP and/or its General Contractor and any and all subcontractors retained by FPP or FPP's  
120 General Contractor shall maintain all insurance policies and certificates required by City during the term of this  
121 Agreement:

122 5. INDEMNIFICATION.

123 5.1. FPP and its General Contractor agree to hold harmless and indemnify, and, at the City's  
124 request, defend the City, its officers, officials, employees, agents, representatives, and volunteers from and  
125 against any and all claims, demands, actions, damages, expenses, suits, accidents, injuries, liability, or  
126 proceedings of any character whatever (including without limitation, attorney's fees), brought for or on account of,  
127 or resulting from or arising out of or in connection with, any act, error or omission, negligence, wrongful conduct,  
128 or other action by FPP or any of FPP's officers, agents, employees, representatives, or subcontractors in  
129 connection with or in the performance of this Agreement.

130 5.2. The City agrees to hold harmless and indemnify, and, at FPP's request, defend FPP, its  
131 officers, officials, employees, agents, representatives, and volunteers from and against any and all claims,  
132 demands, actions, damages, expenses, suits, accidents, injuries, liability, or proceedings of any character  
133 whatever (including without limitation, attorney's fees), brought for or on account of, or resulting from or arising out  
134 of or in connection with, any negligence or wrongful conduct by the City or any of the City's officers, agents,  
135 employees, representatives, or subcontractors in connection with or in the performance of this Agreement.

136 6. ASSIGNMENT. FPP may not assign this Agreement or any part of this Agreement to any other  
137 individual or entity without the prior written consent of the City Manager or his/her designee.

138 7. MODIFICATION OF AGREEMENT. This Agreement may be modified or amended only upon  
139 mutual written consent of the City and FPP.

140 8. USE OF TERM "City". Reference to the "City" in this Agreement includes the City Manager or any  
141 authorized representative acting on behalf of City.

142 9. NOTICES. All notices given or required to be given pursuant to this Agreement shall be in writing and  
143 may be given by personal delivery or by mail. Notice sent by mail must be addressed as follows:

144 To City:  
145 City Of Calistoga  
146 City Manager  
147 1232 Washington St.  
148 Calistoga, CA 94515

149 To the Post:  
150 President  
151 Friends of Pioneer Park  
152 1300 Cedar Street  
153 Calistoga, CA 94515  
154

155

156 and, when addressed in accordance with this paragraph, will be deemed given two days after deposit in the

157 United States mail, postage prepaid. In all other instances, notices will be deemed given at the time of actual  
158 delivery. Changes may be made in the names or addresses of persons to whom notices are to be given by  
159 giving notice in the manner prescribed in this paragraph.

160 10. NOTICE OF DEFAULT AND OPPORTUNITY TO CURE. Neither party will be deemed to be  
161 in breach of this Agreement based on a default that is capable of being cured until it has received written notice of  
162 the default from the other party. The party charged with a default will have 15 days from the date of receiving such  
163 notice in which to cure the default or otherwise respond. If the circumstances leading to the notice of default  
164 have not been cured or explained to the satisfaction of the other party within 15 days from the date on which the  
165 party received notice, the non-defaulting party may terminate this Agreement pursuant to Section 2.

166 11. WAIVER. A waiver by the City or FPP of any default of any term, covenant, or condition contained in  
167 this Agreement shall not be deemed to be a waiver of any subsequent default of the same or any other term,  
168 covenant, or condition contained in this Agreement whether of the same or different character.

169 12. REMOVAL OF THE IMPROVEMENTS. The City may demolish and remove the Improvements  
170 at its own expense, upon expiration of this Agreement, default by FPP, determination by the City that the  
171 Improvements are in a state of advanced disrepair, or if the City Council determines that the property on which  
172 the Improvements are located is needed for other municipal purposes.

173 13. GOVERNING LAW. The terms of this Agreement will be interpreted according to the laws of the  
174 State of California. Should litigation occur, venue will be in the Superior Court of Napa County.

175 14. INTEGRATED AGREEMENT. This Agreement represents the entire Agreement between the City and  
176 FPP with respect to the subject matter hereof and supersedes all preliminary negotiations and agreements. No  
177 verbal agreement or implied covenant shall be held to vary the provisions of this Agreement. This Agreement is  
178 binding and inures to the benefit of the parties to this Agreement and any subsequent successors and assigns.

179 IN WITNESS WHEREOF, the City and the Post have executed this Agreement as of the date first  
180 above written.

181 CITY OF CALISTOGA

FRIENDS OF PIONEER PARK

182  
183 By: \_\_\_\_\_  
184 Richard D. Spitzer  
185 City Manager  
186

By: \_\_\_\_\_  
Robert Fiddamon  
President

187  
188 ATTEST:

APPROVED AS TO FORM:

189  
190  
191 By: \_\_\_\_\_  
192 Kathy Flamson  
193 Deputy City Clerk  
194

By: \_\_\_\_\_  
Michelle Marchetta Kenyon  
City Attorney