



City Council Staff Report

Date: January 6, 2010

CONSENT CALENDAR

Subject: RATIFICATION OF EMERGENCY REPAIRS TO VISTA CHINO

From: David H. Ready, City Manager

Initiated by: Public Works and Engineering Department

SUMMARY

In accordance with Chapter 7.04.040 of the Palm Springs Municipal Code, upon authorization by the City Manager of emergency work, the emergency work and expenditures must be confirmed by a four-fifths vote at the City Council's next meeting.

RECOMMENDATION:

- 1) Confirm the City Manager's declaration of a public emergency and threat to public health, welfare, and safety related to flooding on Vista Chino through the Whitewater River on December 13, 2009; and
- 2) Ratify the City Manager's authorization of a purchase order issued to Dateland Construction, Co., in the amount of \$178,351.00, for emergency repairs to Vista Chino through the Whitewater River; and
- 3) Approve Agreement No. _____ in the amount of \$178,351.00 with Dateland Construction Co., for the Emergency Storm Cleanup and Asphalt Repair & Replacement on Vista Chino through the Whitewater River Crossing; and
- 4) Authorize the City Manager to execute all necessary documents.

STAFF ANALYSIS:

Between 12:30 to 1:30 AM, Sunday, December 13, 2009, a large volume of stormwater runoff through the Whitewater River reached the Coachella Valley Water District (CVWD) spreading ponds and percolation basins located at Interstate 10 and Highway 111. CVWD estimated that at least 1,000 cubic feet per second (cfs) was flowing through the Whitewater River, and that flow exceeded the strength of the CVWD spreading ponds and percolation basins which are protected by earthen berms. The berms are designed to break away in higher storm flows to avoid damaging the

Item No. 2.H.

spreading ponds and percolation basins. However, when this occurs, the large volume of storm flow, including mud and debris, is released downstream.

By 4:00 A.M. on Sunday, December 13, the large flow of stormwater runoff, mud and debris had reached Indian Canyon Drive, Gene Autry Trail, and Vista Chino, requiring closures of all three roads. City street maintenance crews responded later that day and completed clean up on Gene Autry Trail, which was reopened to traffic late Sunday afternoon. Subsequently, street maintenance crews completed clean up on Indian Canyon Drive which was reopened to traffic Monday afternoon.

The mud and debris flow on Vista Chino was extensive, covering the street with over one foot of mud for most of the length of the crossing through the Whitewater River. The asphalt pavement on Vista Chino had been previously damaged by earlier storms, and the flooding from December 13 significantly deteriorated the cracked asphalt pavement. It was staff's determination that reopening Vista Chino to traffic without performing emergency repairs and asphalt re-paving would be unsafe, and coordinated with the City Manager's office on declaring a public emergency and obtaining a construction contractor to perform the necessary work, in accordance with Chapter 7.04.040 of the Palm Springs Municipal Code.

Public Works staff attempted to solicit bids for the repair work from the following local contractors:

- G&M Construction
- Matich Corporation
- Zoltan Paving
- Simon Contracting
- Granite Construction
- Dateland Construction

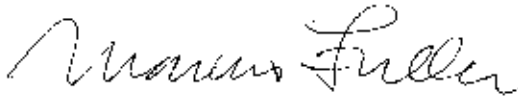
Most contractors were previously engaged with other work and could not respond in the timely manner required; however, staff was able to obtain bids for the work from Granite Construction and Dateland Construction. To ensure consistency between bids, staff requested costs to perform the following work: cleanup, install petromat and tack coat, construct 2" asphalt concrete pavement overlay, and install traffic striping. Dateland's original bid for the work was \$170,416 and Granite's bid was \$174,278. Based on these two bids, staff recommended that the City Manager authorize an emergency purchase order to Dateland Construction to immediately proceed with the repair work on Vista Chino.

City street maintenance crews continued with clean up efforts on Tuesday, December 15, and Dateland Construction began the repair work on Wednesday, December 16. All of the repair work was completed by Friday, December 18, at which point Vista Chino was reopened to traffic. During construction, staff requested additional paving repairs to eliminate a low spot on Vista Chino that historically held water and required a lane closure even during very minor storm flows. The cost of this additional paving was \$7,935 resulting in a total cost of \$178,351 for the emergency repair work.



FISCAL IMPACT:

Given that the flooding within the Whitewater River was a result of a failure of the earthen berms surrounding the Coachella Valley Water District's (CVWD) spreading ponds and percolation basins located at Interstate 10 and Highway 111, the City intends to subrogate the issue with CVWD. The City Attorney can provide legal opinion regarding subrogation; however, in the event subrogation is not possible, sufficient funding is available in local Gas Tax account 133-4298-50221.

SUBMITTED:



Marcus L. Fuller
Assistant Director of Public Works


for David J. Barakian
Director of Public Works/City Engineer
David H. Ready, City Manager

Attachments:

1. Agreement

CONTRACT SERVICES AGREEMENT
Emergency Storm Cleanup and Asphalt Repair & Replacement on
Vista Chino through the Whitewater River Crossing

THIS AGREEMENT FOR CONTRACT SERVICES (the "Agreement") is made and entered into this _____ day of _____, 20____ by and between the City of Palm Springs, a California charter city and municipal corporation ("City"), and **Dateland Construction Company**, a California Corporation. ("Contractor").

RECITALS

- A. City requires the services of a licensed construction Contractor for Emergency Storm Cleanup and Asphalt Repair & Replacement of Vista Chino through the Whitewater River Crossing ("Project").
- B. Contractor has submitted to City a proposal to provide Cleanup, Crackfill, Petromat Overlay, Asphalt, Striping and Mobilization to City pursuant to the terms of this Agreement.
- C. Based on its experienced Contractor is qualified to provide the necessary services to City for the Project and desires to provide such services.
- D. City desires to retain the services of Contractor for the Project.

NOW, THEREFORE, in consideration of the promises and mutual agreements contained herein, City agrees to retain and does hereby retain Contractor and Contractor agrees to provide services to the City as follows:

AGREEMENT

1. CONTRACTOR SERVICES

1.1 Scope of Services. In compliance with all terms and conditions of this Agreement, Contractor shall provide Cleanup, Crackfill, Petromat Overlay, Asphalt, Striping and Mobilization services for Vista Chino through the Whitewater River Crossing, to City as described in the Scope of Services/Work attached to this Agreement as Exhibit "A" and incorporated herein by reference (the "services" or "work"), which includes the agreed upon schedule of performance and the schedule of fees. Contractor warrants that all services and work shall be performed in a competent, professional, and satisfactory manner in accordance with all standards prevalent in the industry. In the event of any inconsistency between the terms contained in the Scope of Services/Work and the terms set forth in the main body of this Agreement, the terms set forth in the main body of this Agreement shall govern.

1.2 Compliance with Law. All services rendered under this Agreement shall be provided by Contractor in accordance with all applicable federal, state, and local laws, statutes and ordinances and all lawful orders, rules, and regulations promulgated thereunder.

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

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

2. TIME FOR COMPLETION.

The time for completion of the services to be performed by Contractor is an essential condition of this Agreement. Contractor shall prosecute regularly and diligently the work of this Agreement according to the agreed upon schedule of performance set forth in Exhibit "A." Contractor shall not be accountable for delays in the progress of its work caused by any condition beyond its control and without the fault or negligence of Contractor. Delays shall not entitle Contractor to any additional compensation regardless of the party responsible for the delay.

3. COMPENSATION OF CONTRACTOR

3.1 Compensation of Contractor. For the services rendered pursuant to this Agreement, Contractor shall be compensated and reimbursed, in accordance with the schedule of fees set forth in Exhibit "A," which total amount shall not exceed \$178,351.

3.2 Method of Payment. In any month in which Contractor wishes to receive payment, Contractor shall no later than the first working day of such month, submit to City in the form approved by City's finance director, an invoice for services rendered prior to the date of the invoice. Payments shall be based on the hourly rates as set forth in Exhibit "A" for authorized services performed. City shall pay Contractor for all expenses stated thereon, which are approved by City consistent with this Agreement, within thirty (30) days of receipt of Contractor's invoice.

3.3 Changes. In the event any change or changes in the Scope of Services/Work is requested by City, the parties hereto shall execute a written amendment to this Agreement, setting forth with particularity all terms of such amendment, including, but not limited to, any additional fees. An amendment may be entered into:

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

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

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

4. PERFORMANCE SCHEDULE

4.1 Time of Essence. Time is of the essence in the performance of this Agreement.

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

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

4.4 **Term.** Unless earlier terminated in accordance with Section 9.5 of this Agreement, this Agreement shall continue in full force and effect for a period of **Four (4) Days, commencing on December 15, 2009, and ending December 18, 2009,** unless extended by mutual written agreement of the parties.

5. **COORDINATION OF WORK**

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

5.2 **Contract Officer.** The Contract Officer shall be the City Manager, or his/her designee, **Marcus Fuller, Assistant Director of Public Works/Assistant City Engineer.** It shall be the Contractor's responsibility to keep the Contract Officer, or his/her designee, fully informed of the progress of the performance of the services and Contractor shall refer any decisions that must be made by City to the Contract Officer. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Contract Officer.

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

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

6. **INSURANCE**

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

7. **INDEMNIFICATION**

To the fullest extent permitted by law, Contractor shall defend (at Contractor's sole cost and expense), indemnify, protect, and hold harmless City, its elected officials, officers, employees, agents, and volunteers (collectively the "Indemnified Parties"), from and against any and all liabilities, actions, suits, claims, demands, losses, costs, judgments, arbitration awards, settlements, damages, demands, orders, penalties, and expenses including legal costs and attorney fees (collectively "Claims"), including but not limited to Claims arising from injuries to or death of persons (Contractor's employees included), for damage to property, including property owned by City, from any violation of any federal, state, or local law or ordinance, and from errors and omissions committed by Contractor, its officers, employees, representatives, and agents, which Claims arise out of or are related to Contractor's performance under this Agreement, but excluding such Claims arising from the negligence or willful misconduct of the City, its elected officials, officers, employees, agents, and volunteers.

Under no circumstances shall the insurance requirements and limits set forth in this Agreement be construed to limit Contractor's indemnification obligation or other liability hereunder.

8. RECORDS AND REPORTS

8.1 Reports. Contractor shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the services required by this Agreement as the Contract Officer shall require.

8.2 Records. Contractor shall keep such books and records as shall be necessary to properly perform the services required by this Agreement and enable the Contract Officer to evaluate the performance of such services. The Contract Officer shall have full and free access to such books and records at all reasonable times, including the right to inspect, copy, audit, and make records and transcripts from such records.

8.3 Ownership of Documents. All drawings, specifications, reports, records, documents, and other materials prepared by Contractor in the performance of this Agreement shall be the property of City and shall be delivered to City upon request of the Contract Officer or upon the termination of this Agreement, and Contractor shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights or ownership of the documents and materials hereunder. Contractor may retain copies of such documents for its own use. Contractor shall have an unrestricted right to use the concepts embodied therein.

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

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

9. ENFORCEMENT OF AGREEMENT

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

9.2 Waiver. No delay or omission in the exercise of any right or remedy of a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. No consent or approval of City shall be deemed to waive or render unnecessary City's consent to or approval of any subsequent act of Contractor. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

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

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

9.5 **Termination Prior to Expiration of Term.** City reserves the right to terminate this Agreement at any time, with or without cause, upon thirty (30) days written notice to Contractor, except that where termination is due to the fault of Contractor and constitutes an immediate danger to health, safety, and general welfare, the period of notice shall be such shorter time as may be determined by the City. Upon receipt of the notice of termination, Contractor shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. Contractor shall be entitled to compensation for all services rendered prior to receipt of the notice of termination and for any services authorized by the Contract Officer thereafter. Contractor may terminate this Agreement, with or without cause, upon thirty (30) days written notice to City.

10. **CITY OFFICERS AND EMPLOYEES; NON-DISCRIMINATION**

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

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

11. **MISCELLANEOUS PROVISIONS**

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

To City:

City of Palm Springs
Attention: Marcus Fuller
Assistant Director of Public Works/Assistant City Engineer
3200 E. Tahquitz Canyon Way
Palm Springs, California 92262

To Contractor:

Dateland Construction Company, Incorporated
Attention: Evan Garber, Project Manager, Estimator
83-801 Avenue 45
Indio, CA. 92201

11.2 **Integrated Agreement.** This Agreement contains all of the agreements of the parties and cannot be amended or modified except by written agreement.

11.3 **Amendment.** This Agreement may be amended at any time by the mutual consent of the parties by an instrument in writing.

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

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

[SIGNATURE PAGE SEPARATELY ATTACHED]

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

"CITY"
City of Palm Springs

Date: _____

By: _____
David H. Ready
City Manager

APPROVED AS TO FORM:

ATTEST

By: _____
Douglas C. Holland,
City Attorney

By: _____
James Thompson,
City Clerk

"CONTRACTOR"
Dateland Construction Company, Incorporated

Date: _____

By: _____
James Richert

President

Date: _____

Judi Thompson

Secretary

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of _____

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

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

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

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

WITNESS my hand and official seal.

Please Attach Seal Above

Signature _____
Signature of Notary Public

OPTIONAL

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

Description of Attached Document

Title or Type of Document: _____

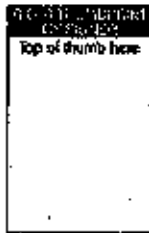
Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

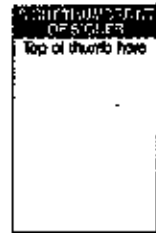
- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer is Representing: _____

Signer's Name: _____

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



Signer is Representing: _____

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EXHIBIT "A"

**CONTRACTOR'S
SCOPE OF SERVICES/WORK**

Including,

Schedule of Fees

And

Schedule of Performance

EXHIBIT "A"
SCOPE OF SERVICES
COMPENSATION SCHEDULE

Contractor to provide cleanup, crack-fill, Petromat overlay, asphalt, striping and RPMs. All work and total cost to be in accordance with Proposal and "Additional Work Email" received from Contractor.

<u>Description</u>	<u>Quantity/ Measurement</u>	<u>Unit Cost</u>	<u>Extended Cost</u>
Clean up the edges of road & provide in-street preparation for paving.	1 LS	\$ 7,400	\$ 7,400
Place Petromat Overlay and tack prior to capping pavement	124,800 SF	\$.26	\$ 32,448
Cap pavement with 2" asphalt	124,800 SF	\$.86	\$ 107,328
Replace in-kind all striping & RPM's	1 LS	\$ 15,500	\$ 15,500
Mobilization	1 LS	\$ 1,500	\$ 1,500
Fill low spot with 8" asphalt	1 LS	\$ 7,935	\$ 7,935
TOTAL COST			\$ 178,351

EXHIBIT "B"

INSURANCE PROVISIONS

Including

Verification of Coverage,

Sufficiency of Insurers,

Errors and Omissions Coverage,

Minimum Scope of Insurance,

Deductibles and Self-Insured Retentions, and

Severability of Interests (Separation of Insureds)

EXHIBIT "B"
INSURANCE AMOUNTS

Prior to commencing any Work, all contractors, vendors and service providers shall procure and maintain, at their own cost and expense for the duration of their contract with the City, appropriate insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work or services. The types of insurance required and the coverage amounts are specified below:

A. Minimum Scope of Insurance Required

1. **General Liability Insurance** is required whenever the City is at risk of third-party claims which may arise out of work or presence of a contractor, vendor and service provider on City premises. At a minimum this policy shall:

- be written on a per occurrence basis; and
- include products and completed operations liability, independent contractors liability, broad form contractual liability, and cross liability protection.

2. **Automobile Liability Insurance** is required only when vehicles are used by a contractor, vendor or service provider in their scope of work or when they are driven off-road on City property. Compliance with California law requiring auto liability insurance is mandatory and cannot be waived. At a minimum this policy shall:

- be written on a per occurrence basis; and
- include coverage for Bodily Injury and Property Damage, Owned, Non-owned and Hired Vehicles; and
- include coverage for owned, non-owned, leased and hired vehicles.

If an automobile is not used in connection with the services provided by the contractor, vendor or service provider, a written request to waive this requirement should be made to the City's Risk Manager.

3. **Workers' Compensation and Employer's Liability Insurances** is required for any contractor, vendor or service provider that has any employees at any time during the period of this contract. Contractors with no employees must complete a Request for Waiver of Workers' Compensation Insurance Requirement form available from the City's Risk Manager. At a minimum, this policy shall:

- provide statutory requirements of the State of California; and
- include \$1,000,000 Employer's Liability.

B. Minimum Limits of Insurance Coverage Required

\$1 Million per Occurrence/\$2 Million Aggregate

Umbrella excess liability may be used to reach the limits stated above.

C. General Standards for Insurance Policies

All insurance policies shall meet the following standards:

1. Insurance carrier is to be placed with duly licensed or approved non-admitted insurers in the state of California.
2. Insurers must have a Best's rating of B+, Class VII, or higher (this rating includes those insurers with a minimum policyholder's surplus of \$50 Million to \$100 Million). Exceptions to the Best's rating may be considered when an insurance carrier meets all other standards and can satisfy surplus amounts equivalent to a B+, Class VII rating.
3. Certificate must include evidence of the amount of any deductible or self-insured retention under the policy.

D. Verification of Insurance Coverage

All individuals, contractors, agencies, and organizations conducting business for the City shall provide proof of insurance by submitting one of the following: (1) an approved General and/or Auto Liability Endorsement Form for the City of Palm Springs or (2) an acceptable Certificate of Liability Insurance Coverage with an approved Additional Insured Endorsement with the following endorsements stated on the certificate:

1. *"The City of Palm Springs, its officials, employees and agents are named as an additional insured" ("as it relates to a specific contract" or "for any and all work performed with the City" may be included in this statement).*
2. *"This insurance is primary and non-contributory over any insurance or self-insurance the City may have" ("as it relates to a specific contract" or "for any and all work performed with the City" may be included in this statement). See Example A below.*

As an alternative to the non-contributory endorsement, the City will accept a waiver of subrogation endorsement on the General Liability policy. At a minimum, this endorsement shall include the following language:

"This insurance company agrees to waive all rights of subrogation against the City of Palm Springs, its officers, officials and employees for losses paid under the terms of this policy which arise from the work performed by the named insured for the City."

3. *"The insurance afforded by this policy shall not be cancelled except after thirty days prior written notice by certified mail return receipt requested has been given to the City." Language such as, "endeavor to" mail and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representative" is not acceptable and must be crossed out. See Example B below.*

The Workers' Compensation and Employer's Liability policies shall contain waiver of subrogation clause in favor of City, its elected officials, officers, employees, agents and volunteers. See **Example C below.**

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

All certificates and endorsements are to be received and approved by the City before work commences. All certificates of insurance must be authorized by a person with authority to bind coverage, whether that is the authorized agent/broker or insurance underwriter. Failure to obtain

the required documents prior to the commencement of works shall not waive the contractor's obligation to provide them.

E. Acceptable Alternatives to Insurance Industry Certificates of Insurance

The City will accept either a CG 20 10 10 01 or a CG 20 33 10 01 (or some form specific to a particular insurance company that has similar wording) as long as the form is accompanied by a CG 20 37 10 01. In addition, the City will accept the following:

- A copy of the full insurance policy which contains a thirty (30) days' cancellation notice provision (ten (10) days for non-payment of premium) and additional insured and/or loss-payee status, when appropriate, for the City.
- Binders and Cover Notes are also acceptable as interim evidence for up to 90 days from date of approval

F. Endorsement Language for Insurance Certificates

Example A:

THE INSURANCE SHALL BE PRIMARY WITH RESPECT TO THE INSURED SHOWN IN THE SCHEDULE ABOVE, OR IF EXCESS, SHALL STAND IN AN UNBROKEN CHAIN OF COVERAGE EXCESS OF THE NAMED INSURED'S SCHEDULED UNDERLYING PRIMARY COVERAGE. IN EITHER EVENT, ANY OTHER INSURANCE MAINTAINED BY THE INSURED SCHEDULED ABOVE SHALL BE IN EXCESS OF THIS INSURANCE AND SHALL NOT BE CALLED UPON TO CONTRIBUTE WITH IT.

Example B:

SHOULD ANY OF THE ABOVE-REFERENCED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS* WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED HEREIN BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

**The broker/agent can include a qualifier stating "10 days notice for nonpayment of premium."*

Example C:

IT IS UNDERSTOOD AND AGREED THAT THE COMPANY WAIVES THE RIGHT OF SUBROGATION AGAINST THE ABOVE ADDITIONAL INSURED(S), BUT ONLY WITH RESPECT TO THE JOB OR PREMISES DESCRIBED IN THE CERTIFICATE ATTACHED HERETO.

G. Alternative Programs/Self-Insurance

Under certain circumstances, the City may accept risk financing mechanisms such as Risk Retention Groups, Risk Purchasing Groups, off-shore carriers, captive insurance programs and self-insurance programs as verification of insurance coverage. These programs are subject to separate approval

once the City has reviewed the relevant audited financial statements and made a determination that the program provides sufficient coverage to meet the City's requirements.

The City has recently joined SPARTA (Service Providers & Artisans Trade Activities Program) to accommodate smaller contractors and service providers who have difficulty in meeting the City's insurance requirements. The SPARTA Program offers a general liability program that provides the \$1 million limit and, upon request, will also provide auto insurance with the \$1 million limit (only in conjunction with the purchase of general liability insurance). SPARTA is only available during the time your company is under contract with the City.

Insurance is provided on a per project basis and is overseen by the Municipality Insurance Services, Inc. Essex Insurance Company provides coverage and is an A++ rated company. There is a 24-hour response time and coverage is immediate.

A quote may be obtained by calling 1-800-420-0555 or online at www.2sparta.com.

Type of work covered:

- A. Personal services contracts;
- B. General contractors and their subcontractors (certain specialty trades excluded);
- C. Contractors; and
- D. Providers of goods.

H. Waiver of Modification of the Insurance Requirements

Any waiver or modification of the insurance requirements can only be made by the City's Risk Manager or designee at City's discretion. If you do not believe that the insurance requirements apply to you (e.g., you do not have employees and therefore are not subject to the State workers' compensation insurance requirements; you do not drive an automobile in connection with the services you provide to the City; professional liability or errors and omissions liability insurance is not available for the type of services you are performing, etc.), please submit a written request for waiver or modification of the insurance requirements and the reasons underlying your request to the Risk Manager. All requests for waiver or modification will be reviewed and a final determination rendered by the Risk Manager.

- END OF SECTION -