



## CITY COUNCIL STAFF REPORT

DATE: April 3, 2013

CONSENT AGENDA

SUBJECT: STATE-MANDATED UPDATE TO THE LAND USE ELEMENT OF THE 2007 GENERAL PLAN – PROFESSIONAL SERVICES CONTRACT WITH TERRA NOVA PLANNING AND RESEARCH, INC. IN THE AMOUNT OF \$8,000

FROM: David H. Ready, City Manager

BY: Planning Department

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### SUMMARY

This action appropriates \$8,000 to execute a professional services contract between the City of Palm Springs and Terra Nova Planning and Research, Inc. to provide an update to the General Plan Land Use Element as mandated by State of California Senate Bill 244

### RECOMMENDATION:

Direct the City Manager to execute a contract between the City and Terra Nova Planning and Research Inc., to complete the update to the General Plan Land Use Element, pursuant to SB 244.

### BACKGROUND:

The "Sphere of Influence" (SOI) is the land area adjacent to a City's boundaries that are the areas likely to be serviced or annexed by the City in the future. The City does not have regulatory control over these areas, but does have authority and responsibility to designate its preference for land use planning in these county areas.

SB 244 requires that when the City's Housing Element is updated, the Land Use Element must be updated concurrently to identify infrastructure needs in the City's SOI and a method for funding any identified needs. The update to the land use element of the general plan is to include:

- The identification of each unincorporated island or fringe community within a city's sphere of influence. Identification includes a description of the community and a map designating its location.
- An analysis of water, wastewater, stormwater drainage, and structural fire

ITEM NO. 2E

protection needs or deficiencies.

- An analysis of benefit assessment districts or other financing alternatives that could make the extension of services to these communities financially feasible.

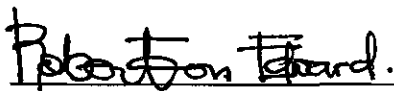
In Palm Springs case, the areas located to the south and east of the City are unpopulated and will not require analysis. However the SOI areas to the north and west of the current City limits will require analysis and discussions that will be incorporated into the update of the Land Use Element.

Pursuant to Section 7.04.030. of Municipal Code "a contract may be awarded without competition when it is determined that an unusual or unique situation exists, in that due to experience and expertise demonstrated in prior contracts with the City a particular contractor is uniquely qualified for a particular task, that makes the application of all requirements of competitive sealed bidding or competitive sealed proposals contrary to the public interest."

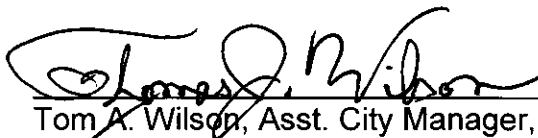
Under the authority of the City Manager, a contract for the Housing Element update was executed with locally based Terra Nova Planning & Research Inc. in an amount not to exceed \$25,000 on February 1, 2013 based upon their demonstrated special expertise. After execution of that agreement it was later determined by the Planning Department that the Land Use Element also needed to be updated, and that it would be beneficial to the City to have the same consultant, Terra Nova, provide these services under a separate agreement. Cumulatively the services with Terra Nova under the two agreements are \$33,000. Terra Nova has successfully provided professional planning and environmental services for a variety of projects and has consistently performed to the city's satisfaction and has demonstrated expertise knowledge of land issues in Palm Springs and throughout the Coachella Valley.

FISCAL IMPACT:

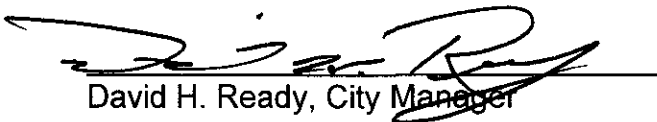
Funds are available in account 001-4151-43200 for this expenditure.



Edward O. Robertson, Principal Planner



Tom A. Wilson, Asst. City Manager,  
Dev't Svcs



David H. Ready, City Manager

Attachments:

1. Professional Services Contract Proposal from Terra Nova Planning & Research



## TERRA NOVA PLANNING & RESEARCH, INC.

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January 11, 2013

Mr. Ken Lyon  
City of Palm Springs  
3200 East Tahquitz Canyon Way  
Palm Springs, CA 92262

RE: SB 244: Land Use Element Amendment Proposal

Dear Ken:

Terra Nova is pleased to submit the following proposal to update the City's Land Use Element to bring it into compliance with the requirements of Senate Bill 244. This law requires amendment of the Land Use Element of the General Plan to identify "unincorporated fringe communities" in the City's Sphere of Influence, and determine existing infrastructure, infrastructure needs for those communities, and the methods of financing these needs. The Sphere of Influence areas located to the south and east of the City are unpopulated and will not require analysis. However, the areas of the Sphere located to the west and north of current City limits will need to be analyzed, and discussions incorporated into the Land Use Element.

The law requires that the amendments to the Land Use Element be completed concurrent with the update of the Housing Element. We have assumed that this amendment would therefore be processed concurrent with the Housing Element, and have not included additional or separate public hearings before the Planning Commission or City Council. Should these become necessary, we will notify you in writing of the additional time and costs.

To complete this work, we will:

- Develop additional text for the Land Use Element that identifies populated areas of the Sphere of Influence (using data developed and available from LAFCo).
- Identify water, sewer, storm drainage and fire facilities currently existing, and needs and deficiencies in these areas.
- Provide a discussion of the potential funding mechanisms that could make extension of services possible.
- The City will be responsible for providing us with the most current Word version of the Land Use Element. All changes will be completed in "Track Changes" for ease of review by staff, the Planning Commission and the City Council.
- Provide final electronic document for integration into balance of the General Plan.

The research for this project will be undertaken immediately upon initiation of the project. The text will be provided to City staff for review by June 1, 2013. Terra Nova will amend the text consistent with staff comments, and prepare materials for Planning Commission and City Council hearings. Because this amendment must be completed concurrent with Housing Element adoption, the Land Use Element amendment will be scheduled for hearing concurrently, with Planning Commission anticipated in October, 2013, and City Council in November, 2013.

It is assumed for purposes of this proposal that the item will be exempt from CEQA under the General Rule, and Section 15262.

The project budget is as follows:

Research and documentation of Sphere of Influence in Land Use Element.

(12 hrs @ \$155/Hr.)	\$ 1,860.00
(20 hrs @ \$135/Hr.)	\$ 2,700.00
(32 hrs @ \$95/Hr.)	\$ 3,040.00
<b>Total Task Budget</b>	<b>\$ 7,600.00</b>

### **Conclusion**

I believe that the scope and budget provided above accurately reflect the level of effort that will be required to complete the amendments to the Land Use Element.

I look forward to discussing this project with you further. If you have any questions or require additional information, please do not hesitate to contact me.

Sincerely,



Nicole Sauviat Criste  
Principal

## CONSULTING SERVICES AGREEMENT

*Terra Nova Planning & Research, Inc. for update of Land Use Element*

THIS AGREEMENT FOR CONSULTING SERVICES ("Agreement") is made and entered into on \_\_\_\_\_, 2013, by and between the City of Palm Springs, a California charter city and municipal corporation ("City"), and Terra Nova Planning & Research Inc., ("Consultant"). City and Consultant are individually referred to as "Party" and are collectively referred to as the "Parties".

### RECITALS

A. City requires the services of a professional planning and research consultant for the update of the City's land use element ("Project").

B. Consultant has submitted to City a proposal to provide updated land use element services to City under the terms of this Agreement.

C. Based on its experience, education, training, and reputation, Consultant is qualified and desires to provide the necessary services to City for the Project.

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

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

### AGREEMENT

#### 1. CONSULTANT SERVICES

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

1.2 Compliance with Law. Consultant services rendered under this Agreement shall comply with all applicable federal, state, and local laws, statutes and ordinances and all lawful orders, rules, and regulations.

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

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

**2. TIME FOR COMPLETION**

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

**3. COMPENSATION OF CONSULTANT**

**3.1 Compensation of Consultant.** Consultant shall be compensated and reimbursed for the services rendered under this Agreement in accordance with the schedule of fees set forth in Exhibit "A". The total amount of Compensation shall not exceed \$8,000.

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

**3.3 Changes.** In the event any change or changes in the Scope of Services/Work is requested by City, Parties shall execute a written amendment to this Agreement, specifying all proposed amendments, including, but not limited to, any additional fees. An amendment may be entered into:

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

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

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

**4. PERFORMANCE SCHEDULE**

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

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

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

**4.4 Term.** Unless earlier terminated in accordance with Section 4.5 of this Agreement, this Agreement shall continue in full force and effect for a period of one (1) year from date of contract execution, unless extended by mutual written agreement of the parties.

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

## **5. COORDINATION OF WORK**

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

**5.2 Contract Officer.** The Contract Officer shall be the City Manager or his/her designee ("Contract Officer"). Consultant shall be responsible for keeping the Contract Officer fully informed of the progress of the performance of the services. Consultant shall refer any decisions that must be made by City to the Contract Officer. Unless otherwise specified, any approval of City shall mean the approval of the Contract Officer.

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

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

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

<u>Name:</u>	<u>Title:</u>
Nicole Sauviat Criste	Principal

## **6. INSURANCE**

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

## **7. INDEMNIFICATION.**

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



negligence or willful misconduct of the City, its elected officials, officers, employees, agents, and volunteers. Under no circumstances shall the insurance requirements and limits set forth in this Agreement be construed to limit Consultant's indemnification obligation or other liability under this Agreement. Consultant's indemnification obligation shall survive the expiration or earlier termination of this Agreement until all actions against the Indemnified Parties for such matters indemnified are fully and finally barred by the applicable statute of limitations or, if an action is timely filed, until such action is final. This provision is intended for the benefit of third party Indemnified Parties not otherwise a party to this Agreement.

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

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

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

## **8. RECORDS AND REPORTS**

**8.1 Reports.** Consultant shall periodically prepare and submit to the Contract Officer reports concerning the performance of the services required by this Agreement, or as the Contract Officer shall require.

**8.2 Records.** Consultant shall keep complete, accurate, and detailed accounts of all time, costs, expenses, and expenditures pertaining in any way to this Agreement. Consultant shall keep such books and records as shall be necessary to properly perform the services required by this Agreement and enable the Contract Officer to evaluate the performance of such services.

The Contract Officer shall have full and free access to such books and records at all reasonable times, including the right to inspect, copy, audit, and make records and transcripts from such records.

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

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

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

## **9. ENFORCEMENT OF AGREEMENT**

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

**9.2 Interpretation.** This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the Parties. The terms of this Agreement are contractual and the result of negotiation between the Parties. Accordingly, any rule of construction of contracts (including, without limitation, California Civil Code Section 1654) that ambiguities are to be construed against the drafting party, shall not be employed in the interpretation of this Agreement. The caption headings of the various sections and paragraphs of this Agreement are for convenience and identification purposes only and shall not be deemed to limit, expand, or define the contents of the respective sections or paragraphs.

**9.3 Waiver.** No delay or omission in the exercise of any right or remedy of a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. No consent or approval of City shall be deemed to waive or render unnecessary City's consent to or approval of any subsequent act of Consultant. Any waiver by either party of any default must

be in writing. No such waiver shall be a waiver of any other default concerning the same or any other provision of this Agreement.

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

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

## **10. CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION**

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

**10.2 Conflict of Interest.** No officer or employee of the City shall have any direct or indirect financial interest in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which effects their financial interest or the financial interest of any corporation, partnership, or association in which he/she is, directly or indirectly, interested in violation of any state statute or regulation. Consultant warrants that Consultant has not paid or given, and will not pay or give, any third party any money or other consideration in exchange for obtaining this Agreement.

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

## **11. MISCELLANEOUS PROVISIONS**

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

**To City:** City of Palm Springs  
Attention: City Manager/ City Clerk  
3200 E. Tahquitz Canyon Way  
Palm Springs, California 92262

**To Consultant:** Terra Nova Planning & Research, Inc.  
Attn: Nicole Sauviat Criste, Principal  
42635 Melanie Place, Suite 101  
Palm Desert, CA 92211

**11.2 Integrated Agreement.** This Agreement contains all of the agreements of the parties and supersedes all other written agreements.

**11.3 Amendment.** No amendments or other modifications of this Agreement shall be binding unless through written agreement by all Parties.

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

**11.5 Successors in Interest.** This Agreement shall be binding upon and inure to the benefit of the Parties' successors and assignees.

**11.6 Third Party Beneficiary.** Except as may be expressly provided for in this Agreement, nothing contained in this Agreement is intended to confer, nor shall this Agreement be construed as conferring, any rights, including, without limitation, any rights as a third-party beneficiary or otherwise, upon any entity or person not a party to this Agreement.

**11.7 Recitals.** The above-referenced Recitals are hereby incorporated into the Agreement as though fully set forth in this Agreement and each Party acknowledges and agrees that such Party is bound, for purposes of this Agreement, by the same.

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

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

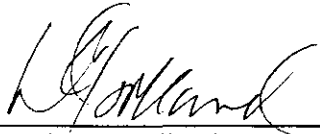
**“CITY”  
City of Palm Springs**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
David H. Ready  
City Manager

**APPROVED AS TO FORM:**

**ATTEST**

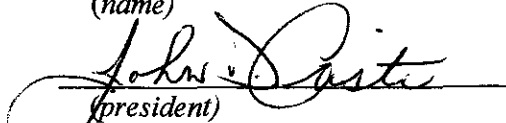
By:   
Douglas C. Holland,  
City Attorney

By: \_\_\_\_\_  
James Thompson,  
City Clerk

**“CONSULTANT”  
Terra Nova Planning & Research, Inc.**


Date: 2/13/13

By: JOHN D. CRISTE  
(name)

  
(president)

Date: 2/13/13

NICOLE SAVVIAT CRISTE  
(name)

  
(secretary)

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

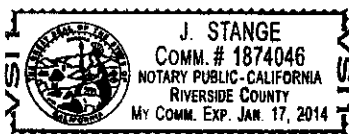
State of California

County of Riverside }

On February 13, 2013 before me, J. Stange, Notary Public  
Here Insert Name and Title of the Officer

personally appeared John D. Criste  
Name(s) of Signer(s)  
Nicole Savviate Criste

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.

Place Notary Seal Above

Signature J. Stange  
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: Consulting Services Agreement

Document Date: 2-13-13 Number of Pages: 17

Signer(s) Other Than Named Above: David H. Ready, Douglas C. Holland & James Thompson

**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”**

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

Including,

Schedule of Fees

And

Schedule of Performance



TERRA NOVA PLANNING & RESEARCH, INC.

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January 11, 2013

Mr. Ken Lyon  
City of Palm Springs  
3200 East Tahquitz Canyon Way  
Palm Springs, CA 92262

RE: SB 244: Land Use Element Amendment Proposal

Dear Ken:

Terra Nova is pleased to submit the following proposal to update the City's Land Use Element to bring it into compliance with the requirements of Senate Bill 244. This law requires amendment of the Land Use Element of the General Plan to identify "unincorporated fringe communities" in the City's Sphere of Influence, and determine existing infrastructure, infrastructure needs for those communities, and the methods of financing these needs. The Sphere of Influence areas located to the south and east of the City are unpopulated and will not require analysis. However, the areas of the Sphere located to the west and north of current City limits will need to be analyzed, and discussions incorporated into the Land Use Element.

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To complete this work, we will:

- Develop additional text for the Land Use Element that identifies populated areas of the Sphere of Influence (using data developed and available from LAFCo).
- Identify water, sewer, storm drainage and fire facilities currently existing, and needs and deficiencies in these areas.
- Provide a discussion of the potential funding mechanisms that could make extension of services possible.
- The City will be responsible for providing us with the most current Word version of the Land Use Element. All changes will be completed in "Track Changes" for ease of review by staff, the Planning Commission and the City Council.
- Provide final electronic document for integration into balance of the General Plan.

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42635 MELANIE PLACE, SUITE 101, PALM DESERT, CA 92211 (760) 341-4800



It is assumed for purposes of this proposal that the item will be exempt from CEQA under the General Rule, and Section 15262.

The project budget is as follows:

Research and documentation of Sphere of Influence in Land Use Element.

(12 hrs @ \$155/Hr.)	\$ 1,860.00
(20 hrs @ \$135/Hr.)	\$ 2,700.00
(32 hrs @ \$95/Hr.)	\$ 3,040.00
<b>Total Task Budget</b>	<b>\$ 7,600.00</b>

**Conclusion**

I believe that the scope and budget provided above accurately reflect the level of effort that will be required to complete the amendments to the Land Use Element.

I look forward to discussing this project with you further. If you have any questions or require additional information, please do not hesitate to contact me.

Sincerely,



Nicole Sauviat Criste  
Principal

## **EXHIBIT “B”**

### **INSURANCE PROVISIONS**

**Including**

**Verification of Coverage,**

**Sufficiency of Insurers,**

**Errors and Omissions Coverage,**

**Minimum Scope of Insurance,**

**Deductibles and Self-Insured Retentions, and**

**Severability of Interests (Separation of Insureds)**

## INSURANCE

1. **Procurement and Maintenance of Insurance.** Consultant shall procure and maintain public liability and property damage insurance against all claims for injuries against persons or damages to property resulting from Consultant's performance under this Agreement. Consultant shall procure and maintain all insurance at its sole cost and expense, in a form and content satisfactory to the City, and submit concurrently with its execution of this Agreement. Consultant shall also carry workers' compensation insurance in accordance with California workers' compensation laws. Such insurance shall be kept in full force and effect during the term of this Agreement, including any extensions. Such insurance shall not be cancelable without thirty (30) days advance written notice to City of any proposed cancellation. Certificates of insurance evidencing the foregoing and designating the City, its elected officials, officers, employees, agents, and volunteers as additional named insureds by original endorsement shall be delivered to and approved by City prior to commencement of services. The procuring of such insurance and the delivery of policies, certificates, and endorsements evidencing the same shall not be construed as a limitation of Consultant's obligation to indemnify City, its elected officials, officers, agents, employees, and volunteers.

2. **Minimum Scope of Insurance.** The minimum amount of insurance required under this Agreement shall be as follows:

1. Comprehensive general liability and personal injury with limits of at least one million dollars (\$1,000,000.00) combined single limit coverage per occurrence and two million dollars (\$2,000,000) general aggregate;

2. Automobile liability insurance with limits of at least one million dollars (\$1,000,000.00) per occurrence;

3. Professional liability (errors and omissions) insurance with limits of at least one million dollars (\$1,000,000.00) per occurrence and two million dollars (\$2,000,000) annual aggregate is:

\_\_\_\_\_ required

\_\_\_\_\_ is not required;

4. Workers' Compensation insurance in the statutory amount as required by the State of California and Employer's Liability Insurance with limits of at least one million dollars \$1 million per occurrence. If Consultant has no employees, Consultant shall complete the City's Request for Waiver of Workers' Compensation Insurance Requirement form.

3. **Primary Insurance.** For any claims related to this Agreement, Consultant's insurance coverage shall be primary with respect to the City and its respective elected officials, officers, employees, agents, and volunteers. Any insurance or self-insurance maintained by City and its respective elected officials, officers, employees, agents, and volunteers shall be in excess of Consultant's insurance and shall not contribute with it. For Workers' Compensation and Employer's Liability Insurance only, the insurer shall waive all rights of subrogation and

contribution it may have against City, its elected officials, officers, employees, agents, and volunteers.

4. **Errors and Omissions Coverage.** If Errors & Omissions Insurance is required, and if Consultant provides claims made professional liability insurance, Consultant shall also agree in writing either (1) to purchase tail insurance in the amount required by this Agreement to cover claims made within three years of the completion of Consultant's services under this Agreement, or (2) to maintain professional liability insurance coverage with the same carrier in the amount required by this Agreement for at least three years after completion of Consultant's services under this Agreement. Consultant shall also be required to provide evidence to City of the purchase of the required tail insurance or continuation of the professional liability policy.

5. **Sufficiency of Insurers.** Insurance required in this Agreement shall be provided by authorized insurers in good standing with the State of California. Coverage shall be provided by insurers admitted in the State of California with an A.M. Best's Key Rating of B++, Class VII, or better, unless otherwise acceptable to the City.

6. **Verification of Coverage.** Consultant shall furnish City with both certificates of insurance and endorsements, including additional insured endorsements, effecting all of the coverages required by this Agreement. The certificates and endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All proof of insurance is to be received and approved by the City before work commences. City reserves the right to require Consultant's insurers to provide complete, certified copies of all required insurance policies at any time. Additional insured endorsements are not required for Errors and Omissions and Workers' Compensation policies.

Verification of Insurance coverage may be provided by: (1) an approved General and/or Auto Liability Endorsement Form for the City of Palm Springs or (2) an acceptable Certificate of Liability Insurance Coverage with an approved Additional Insured Endorsement with the following endorsements stated on the certificate:

1. *"The City of Palm Springs, its officials, employees, and agents are named as an additional insured..." ("as respects City of Palm Springs Contract No. \_\_\_" or "for any and all work performed with the City" may be included in this statement).*

2. *"This insurance is primary and non-contributory over any insurance or self-insurance the City may have..." ("as respects City of Palm Springs Contract No. \_\_\_" or "for any and all work performed with the City" may be included in this statement).*

3. *"Should any of the above described policies be canceled before the expiration date thereof, the issuing company will mail 30 days written notice to the Certificate Holder named." Language such as, "endeavor to" mail and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representative" is not acceptable and must be crossed out.*

4. Both the Workers' Compensation and Employers' Liability policies shall contain the insurer's waiver of subrogation in favor of City, its elected officials, officers, employees, agents, and volunteers.

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

All certificates of insurance and endorsements are to be received and approved by the City before work commences. All certificates of insurance must be authorized by a person with authority to bind coverage, whether that is the authorized agent/broker or insurance underwriter. Failure to obtain the required documents prior to the commencement of work shall not waive the Consultant's obligation to provide them.

7. **Deductibles and Self-Insured Retentions.** Any deductibles or self-insured retentions must be declared to and approved by the City prior to commencing any work or services under this Agreement. At the option of the City, either (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions with respect to the City, its elected officials, officers, employees, agents, and volunteers; or (2) Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses. Certificates of Insurance must include evidence of the amount of any deductible or self-insured retention under the policy. Consultant guarantees payment of all deductibles and self-insured retentions.

8. **Severability of Interests (Separation of Insureds).** This insurance applies separately to each insured against whom claim is made or suit is brought except with respect to the limits of the insurer's liability.