



CITY COUNCIL STAFF REPORT

DATE: June 4, 2014

CONSENT CALENDAR

SUBJECT: APPROVAL OF A PRIVATE UTILITY ENCROACHMENT LICENSE TO PALM SPRINGS LANDSCAPE COMPANY, FOR TWO - 2-INCH PRIVATE UNDERGROUND AIR SPARGE CONDUITS WITHIN THE PUBLIC RIGHT-OF-WAY OF SOUTH PALM CANYON DRIVE, IN SECTION 23, T4S, R4E; EL 14-01.

FROM: David H. Ready, City Manager

BY: Public Works and Engineering Department

SUMMARY

Approval of this item will authorize the issuance of a Private Utility Encroachment License to Palm Springs Landscape Company, a General Partnership, for operation and maintenance of private underground air sparge conduits located within public right-of-way of South Palm Canyon Drive.

RECOMMENDATION:

- 1) Approve Agreement No. _____, an Encroachment License between the City of Palm Springs and Palm Springs Landscape Company, a General Partnership, for operation and maintenance of TWO 2-inch private underground air sparge conduits located in South Palm Canyon between Sunny Dunes the Tahquitz Creek Channel, Section 23, Township 4 South, Range 4 East.
- 2) Authorize the City Manager to execute all necessary documents.

STAFF ANALYSIS:

Chapter 14.16 of the Palm Springs Municipal Code requires an encroachment permit to be issued for any improvements constructed in the public right-of-way. Additionally, whenever utility facilities or other improvements of a type of use determined by the Director of Public Works to require additional liability protection for the City, a formal agreement through an Encroachment License is required.

On January 9, 2014 the applicant, Palm Springs Landscape Company, owner of the property being leased to KFC Corporation, submitted an Encroachment License

ITEM NO. 2M

application for installation of two air sparge lines within South Palm Canyon Drive, between Sunny Dunes Road and the Tahquitz Creek Channel Bridge. This is in response to a clear and abatement order from the California Regional Water Quality Control Board, Colorado River Basin Region (Board). The Board has been monitoring the quality of the water table since 1997 Meaders Dry Cleaners, which was located at 725 South Palm Canyon Drive. This is the current location of the Kentucky Fried Chicken (KFC) franchise. The Board has approved a 3-month pilot test involving air sparge wells, and the extraction of soil vapors from two existing soil vapor extraction wells. Two 2-inch High Density Polyethylene (H.D.P.E.) air sparge lines with a tracer wire will run from existing water monitoring wells in the median island on the east side of South Palm Canyon Drive, across South Palm Canyon Drive, to the SVE system in the KFC parking lot. A portion of these lines will run through Riverside County Flood Control and Water Conservation District (RCFCD) property on the east side of South Palm Canyon Drive. Issuance of construction permit will be conditional pending approval by RCFCD for permission to place air sparge lines within the median island between South Riverside Place and South Palm Canyon Drive.

Air sparging involves the injection of contaminant-free air into the subsurface saturated zone, enabling a phase transfer of hydrocarbons from a dissolved state to a vapor phase. The air is then vented through the unsaturated zone. Air sparging is most often used together with soil vapor extraction (SVE). When air sparging (AS) is combined with SVE, the SVE system creates a negative pressure in the unsaturated zone through a series of extraction wells to control the vapor plume migration. This combined system is called AS/SVE.

The air sparge lines will be bored across South Palm Canyon Drive to avoid cutting the pavement and cutting through the median island that contains landscaping, lighting, and irrigations system. Once the pilot test is completed, all above ground equipment, including chain-link fence will be removed and the parking lot will be returned to its pre-test condition, all air sparge lines will be abandoned in place and filled with grout.

On March 27, 2014 the City of Palm Springs Planning Department approved a Minor Architectural Review application (Case 3.417MAA) for the installation and operation of the SVE system in the KFC parking lot. The treatment system will consist of an air compressor, an AQMD-permitted vapor extraction blower, and two activated carbon vessels for off-gas treatment. All above ground equipment will be staged on the existing KFC parking, and will be enclosed within a chain-link fence equipped with noise mitigation screen. For the purposes of this Encroachment License, the air-sparge lines used for this project will be within, and perpendicular to, City public right-of-way of South Palm Canyon Drive.

The type of facility to be installed within public right-of-way through this Encroachment License has no potential to cause harm to the general public, due to the inert vapors that will be contained within the conduits. The Encroachment License (see attachment EL 14-01) requires the applicant to obtain membership with Underground Service Alert (USA/Dig Alert) to ensure that the applicant is notified of all future planned excavations.

The license also requires indemnification and protection for the City against all liability; and, that the applicant procures and maintains, at its sole cost and expense, public liability and property damage insurance in the amount of \$1 million.

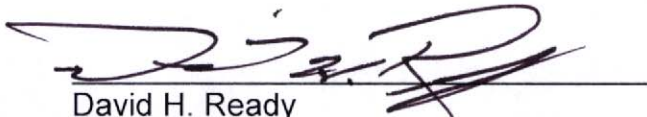
Staff recommends that the City Council approve the Private Utility Encroachment License with Palm Springs Landscape Company for encroachment of two 2-inch private air sparge lines within South Palm Canyon Drive public right-of-way, Section 23, Township 4 South, Range 4 East.

FISCAL IMPACT:

None



David J. Barakian
Director of Public Works/City Engineer
City of Palm Springs



David H. Ready
City Manager, City of Palm Springs

Attachments: USA/DIG ALERT Letter & Membership Agreement
Certificate of Liability Insurance
Private Utility Encroachment License (EL 14-01)

*

ASSOCIATE MEMBER AGREEMENT

THIS AGREEMENT, made and entered into this 10 day of DECEMBER, 2003, by and between the UNDERGROUND SERVICE ALERT OF SOUTHERN CALIFORNIA (Hereinafter referred to as "USA-SC") and PALM SPRINGS LANDSCAPE CO (Hereinafter referred to as "Associate Member").

WITNESSETH:

WHEREAS, USA-SC is a nonprofit mutual benefit corporation organized under the laws of the State of California which operates a regional notification center to facilitate notice to members with underground facilities of proposed excavation; and

WHEREAS, Associate Member desires to become a member of USA-SC and USA-SC desires to accept Associate Member as a member.

NOW, THEREFORE, the parties hereto agree as follows:

1. Associate Member has reviewed the USA-SC Articles of Incorporation, By-Laws and Operating Procedures and hereby accepts and agrees to be bound by the terms and conditions thereof.
2. Associate Member agrees to pay dues and assessments as established by the USA-SC Board of Directors from time to time.
3. This Agreement shall become effective on the day and year above first written and shall continue in effect until Associate Member's membership is terminated pursuant to Article II, Section 5 of the USA-SC By-Laws.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers as of the day and year above first written.

PALM SPRINGS LANDSCAPE CO
ASSOCIATE MEMBER

BY [Signature]

TITLE Treasurer

UNDERGROUND SERVICE ALERT OF
SOUTHERN CALIFORNIA

BY [Signature]

TITLE Treasurer

EA 14-01

ACORDTM

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
12/30/2013

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER		CONTACT NAME:	
NFP Property & Casualty Services Inc. 17782 E. 17th St., Suite #105 P.O. Box 1085 Tustin, CA 92780		PHONE (A/C, No, Ext): 714.505.5550	
		FAX (A/C, No): 714.505.5562	
		E-MAIL ADDRESS:	
		INSURER(S) AFFORDING COVERAGE	
		INSURER A : Essex thru wBrown	
		INSURER B :	
		INSURER C :	
		INSURER D :	
		INSURER E :	
		INSURER F :	
INSURED Palm Springs Landscape Company 11077 Canary Island Court Plantation, FL 33324-8202		NAIC #	

COVERAGES

CERTIFICATE NUMBER: 13-14

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

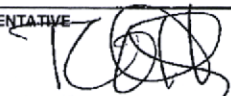
INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY	X	3DP7149	12/11/2013	12/11/2014	EACH OCCURRENCE \$ 1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY					DAMAGE TO RENTED PREMISES (Ea occurrence) \$
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR					MED EXP (Any one person) \$
	GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC					PERSONAL & ADV INJURY \$
						GENERAL AGGREGATE \$ 2,000,000
						PRODUCTS - COMP/OP AGG \$
	AUTOMOBILE LIABILITY					COMBINED SINGLE LIMIT (Ea accident) \$
	<input type="checkbox"/> ANY AUTO					BODILY INJURY (Per person) \$
	<input type="checkbox"/> ALL OWNED AUTOS	<input type="checkbox"/> SCHEDULED AUTOS				BODILY INJURY (Per accident) \$
	<input type="checkbox"/> HIRED AUTOS	<input type="checkbox"/> NON-OWNED AUTOS				PROPERTY DAMAGE (Per accident) \$
	UMBRELLA LIAB					EACH OCCURRENCE \$
	<input type="checkbox"/> EXCESS LIAB	<input type="checkbox"/> OCCUR				AGGREGATE \$
	<input type="checkbox"/> DED	<input type="checkbox"/> CLAIMS-MADE				\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY					WC STATUTORY LIMITS OTH-ER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	<input type="checkbox"/> Y <input checked="" type="checkbox"/> N	N/A			E.L. EACH ACCIDENT \$
						E.L. DISEASE - EA EMPLOYEE \$
						E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

The Certificate holder is hereby named additional insured.

CERTIFICATE HOLDER

CANCELLATION

The City of Palm Springs 3200 East Tahquitz Canyon Way Palm Springs, CA 92662	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE Tom Cotter 

FREE RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

CITY OF PALM SPRINGS
P.O. Box 2743
Palm Springs, California 92263-2743
Attn: City Clerk and Public Works and Engineering

Filing Fee Exempt Per Government Code 6103
EL 14-01

(For Recorder's Use Only)

PRIVATE UTILITY ENCROACHMENT LICENSE AGREEMENT

* THIS ENCROACHMENT LICENSE (the "License") is entered into this 16th day of ~~MAY~~ APRIL, 2014, by and between **Palm Springs Landscape Company** ("Licensee"), and the **CITY OF PALM SPRINGS**, a California charter city ("City").

RECITALS:

A. Licensee has been contracted by the Owner of that certain real property located in the City of Palm Springs, County of Riverside, State of California commonly known as **725 S. Palm Canyon Drive, Palm Springs, CA 92262 (APN 508-171-011)**, more particularly described as Parcel A on **Exhibit "A"** attached hereto and incorporated herein by reference ("Licensee Property").

B. City is the owner of certain fee and/or easement interests in that certain real property located in the City of Palm Springs, County of Riverside, State of California adjacent to the Applicant Property and more particularly described and shown on **Exhibit "B"** ("City Property").

C. Licensee desires to construct and maintain **TWO 2-inch (I.D.) High Density Polyethylene (H.D.P.E.) conduits, each conduit being approximately 260 L.F in length, with tracer wire** hereinafter referred to as the "Encroachment", which will encroach on the City property in the location described and shown on **Exhibit "C-1", "C-2" and "C-3"**, attached hereto and incorporated herein by reference (the "Encroachment Area").

D. City has agreed to grant to Licensee an encroachment permit ("Permit") for the Encroachment in accordance with Chapter 14.16 of the City of Palm Springs Municipal Code on the condition that Licensee executes this License.

NOW THEREFORE, the parties hereto agree as follows:

1.0 License. The City hereby grants a License to Licensee to construct the Encroachment within the Encroachment Area upon all of the terms and conditions of the Permit and this License.

2.0 Commencement of Construction. Licensee shall commence the construction of the Encroachment within a reasonable amount of time, in no event to exceed ninety (90) days following the execution date of this License. Before beginning any physical work on the Encroachment, Licensee shall notify City that construction of Encroachment will be commenced, at least twenty-four (24) hours prior to commencement of such work. Licensee shall also notify the City upon completion of the Encroachment.

3.0 Construction of Encroachment. Any structure placed pursuant to this License shall be constructed in a careful and workmanlike manner and in accordance with plans and specifications to be submitted to and approved by the City of Palm Springs Department of Public Works and Engineering Department of Building and Safety, before Licensee commences construction of Encroachment within the Encroachment Area, or commences construction of any work on Licensee Property. All work must conform to current City of Palm Springs standard details and as directed by the City Inspector to the satisfaction of the City Engineer. Any contaminated water used for drilling, boring, or excavating must be captured and disposed of properly. No construction water will be discharged onto City streets or into the City storm water system as per City of Palm Springs Municipal Code 8.70.010.

4.0 Maintenance by Licensee. Licensee shall have the right and obligation to maintain, repair and replace, at its own cost and expense, the Encroachment so as to keep the Encroachment Area in a neat, clean, first class condition and in good order and repair, free of trash and debris at all times. As the Encroachment Area consists of public street rights-of-way, the Licensee shall ensure that any excavations, trenches, and backfill and repaving of trenches excavated by Licensee for the Encroachment are maintained as required by the City, in accordance with applicable City standards or as directed by the City Engineer. Licensee hereby agrees to perform such additional repairs and/or maintenance work in the Encroachment Area within fifteen (15) days notice from City. Licensee shall have access across the City Property at all times while the License is in effect solely for the purposes as noted in Section 3. In the event that Licensee does not maintain the Encroachment as required herein, the City will have the option to either (i) terminate the License as more particularly provided in Section 7 or, (ii) after giving Licensee reasonable notice, to make such repairs or perform such maintenance as is required. If City performs the required repairs and/or maintenance, City shall submit an invoice to Licensee for payment of the repairs and/or maintenance work performed by City, including administrative fees, and Licensee shall pay such invoice received within thirty (30) days for such work performed. Failure to pay any invoice submitted to Licensee by City within thirty (30) days notice from City shall automatically terminate the License herein granted.

4.1 Construction by Others within Encroachment Area. Licensee hereby acknowledges that the License herein granted by City is non-exclusive, and that City may grant subsequent encroachments within the Encroachment Area to other parties, including public utility companies, other governmental agencies, and private parties. Licensee hereby agrees to join and maintain membership with Underground Service Alert of Southern California (Dig Alert) for the entire term of this License, or until the Encroachment is removed, whichever occurs first. Licensee shall be required, pursuant to this provision of the License granted by City, to monitor notifications from USA/Dig Alert (1-800-227-2600) of excavations or other work within the Encroachment Area by public agencies or private parties that may directly affect Licensee's Encroachment. It shall be the Licensee's sole responsibility to adequately mark, identify, and locate its Encroachment within the Encroachment Area for any and all public agencies or private parties who have duly notified USA/Dig Alert of excavations or other work within the Encroachment Area. Failure of Licensee to timely and/or correctly mark, identify, and locate its Encroachment within the Encroachment Area shall be the liability of the Licensee. Licensee shall indemnify, hold harmless, and release City from all damages of any kind, due to damages incurred to its Encroachment within the Encroachment Area, including complete loss of the use and/or value of the Encroachment due to excavations or other work within the Encroachment Area by public utility companies, other governmental agencies, and private parties, including the City, who have duly notified USA/Dig Alert of their intention to excavate or perform other work within the Encroachment Area. Licensee acknowledges that this provision of the License granted by City releases City of any financial or other obligations to maintain the Encroachment within the Encroachment Area, and that Licensee shall be solely responsible for ensuring that its Encroachment is adequately protected for the entire term of this License.

Licensee further acknowledges its Encroachment consists of a privately owned, underground, power and communication conduits, and its responsibility to ensure the Encroachment is identified and appropriately marked within the Encroachment Area to ensure future work within the Encroachment area does not result in injury or loss of life. Licensee hereby indemnifies the City from any and all liability, in accordance with Section 6 of this License, for any injuries or loss of life resulting from Licensee's failure to comply with the requirements of maintaining the Encroachment and ensuring its identification within the Encroachment Area through membership in USA/Dig Alert.

4.3 Relocation of Encroachment within City Right-of-Way. In the event of a conflict with an underground utility proposed by any public agency or private party whose proposed utility is approved for installation by City within the Encroachment Area, Licensee hereby agrees to relocate the Encroachment, at Licensee's sole expense, as necessary to remove any such conflict with an underground utility proposed by any public agency or private party. Licensee shall prepare relocation plans for the Encroachment and submit to the City Engineer, as well as the affected public agency or private party, for review and comment within thirty (30) days notice from City of the underground utility conflict. Licensee shall relocate the Encroachment, as directed by the City, pursuant to Sections 2, 3, and 5 of this License, except, however, that

relocation of the Encroachment, as approved by City, shall commence no later than thirty (30) days approval of relocation plans for the Encroachment by City.

5.0 Installation and Maintenance of Safety Precautions. Licensee shall, in connection with the construction and maintenance of the Encroachment, provide, install, and maintain such lights, barriers, warning signs or other safety precautions as are reasonably necessary to protect anyone utilizing the City Property for whatever reason. In the event that the City determines that suitable safety precautions are not being provided by Licensee, the City may, after two (2) days notice from City to Licensee, provide, install and maintain such safety precautions. If the City provides the safety precautions pursuant to this Section 5, City shall submit an invoice to Licensee for payment of the safety precautions installed by City, including administrative fees, and Licensee shall pay such invoice received within thirty (30) days for such work performed. Failure to pay any invoice submitted to Licensee by City within thirty (30) days shall automatically terminate the License herein granted.

6.0 Indemnity. Licensee hereby agrees to indemnify and defend the City, its officers, agents and employees against and to hold and save each of them harmless from, any and all actions, suits, claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities (collectively "claims or liabilities") that may be asserted or claimed by any person, firm or entity arising out of or in connection with the location, construction, maintenance, relocation or removal of the Encroachment, but excluding such claims or liabilities arising from the sole negligence or willful misconduct of the City, its officers, agents or employees, who are directly responsible to City, and in connection therewith:

(a) Licensee will defend any action or actions filed in connection with any of said claims or liabilities and will pay all costs and expenses, including legal costs and attorneys' fees incurred in connection therewith;

(b) Licensee will promptly pay any judgment rendered against the City, its officers, agents or employees for any such claims or liabilities and Licensee agrees to save and hold the City, its officers, agents and employees harmless there from;

(c) In the event the City, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against Licensee for such damages or other claims arising out of the location, construction, maintenance, relocation or removal of the Encroachment, Licensee agrees to pay the City, its officers, agents or employees, any and all costs and expenses incurred by the City, its officers, agents or employees in such action or proceeding, including, but not limited to, legal costs and attorneys fees.

7.0 Covenants Running With the Land. The covenants and restrictions by Licensee set forth in this License: (a) are made for the direct benefit of the City Property; (b) will constitute covenants running with the land and equitable servitudes; (c) will bind Licensee

and every person having any fee, leasehold or other interest in any portion of the Licensee Property at any time or from time to time; and (d) will inure to the benefit of the City and every person having any fee, leasehold or other interest in the City Property at any time or from time to time.

8.0 Insurance. Licensee shall procure and maintain, at its sole cost and expense, and submit concurrently with its execution of this License, in a form and content satisfactory to City, public liability and property damage insurance against all claims for injuries against persons or damages to property resulting from Licensee's use of the Encroachment within the Encroachment Area under this License. Insurance shall be kept in full force and effect during the term of this License, and shall not be cancelable without thirty (30) days 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 insured by original endorsement shall be delivered to and approved by City prior to City's approval of this License. The procuring of such insurance and the delivery of policies, certificates, and endorsements evidencing the same shall not be construed as a limitation of Licensee's obligation to indemnify City, its elected officials, officers, agents, employees, and volunteers.

8.1 Minimum Scope of Insurance. The minimum amount of insurance required hereunder shall be as follows:

Comprehensive general liability and personal injury with limits of at least One Million Dollars (\$1,000,000) combined single limit coverage per occurrence.

For any claims related to this License, Licensee's insurance coverage shall be primary insurance as respects 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 Licensee's insurance and shall not contribute with it.

8.2 Sufficiency of Insurers. Insurance required herein 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 VIII, or better, unless otherwise acceptable to the City.

8.3 Verification of Coverage. Licensee shall furnish City with both certificates of insurance and endorsements, including additional insured endorsements, affecting all of the coverages required by this License. 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 approval of this License. City reserves the right to require Licensee's insurers to provide complete, certified copies of all required insurance policies at any time.

Verification of Insurance Coverage may be provided by: (1) an approved General 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 Encroachment License No. 10-02" 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 Encroachment License No. 07-03" may be included in this statement).
3. "Should any of the above described policies be cancelled 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. **See example 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 this License is approved.

Cancellation Example:

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.
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<i>*The broker/agent can include a qualifier stating "10 days notice for nonpayment of premium."</i>
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8.4 Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its elected officials, officers, employees, agents, and volunteers; or, Licensee shall procure a bond guaranteeing payment of losses and related investigations, claim

administration, and defense expenses.

8.5 Severability of Interests (Separation of Insured). 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.

8.6 Insurance Increase. Not more frequently than one (1) time every three (3) years, if, in the opinion of the City, the amount of public liability and property damage insurance coverage at that time is not adequate, the City may require modifications to the required insurance coverage in this Section 8. City shall notify Licensee, and Licensee hereby agrees to provide City with certificates and endorsements evidencing City's required increased insurance coverage amounts within thirty (30) notice from City. Failure of Licensee to provide City with certificates and endorsements evidencing City's required increased insurance coverage amounts within thirty (30) days shall automatically terminate the License herein granted.

9.0 Termination. The License is terminable with or without cause by City at any time. Licensee shall remove the Encroachment as stated in Section 9.1 and restore the Encroachment Area on the City Property to its former condition, at Licensee's sole cost and expense, within thirty (30) days notice from City. In the event Licensee fails to remove the Encroachment and restore the Encroachment Area on the City Property within thirty (30) days notice from City, City shall have the right to do so without notice to Licensee. Licensee shall immediately reimburse the City for all expenses incurred by City in the removal of the Encroachment and restoration of the Encroachment Area on the City Property. Said amounts shall accrue interest from the date the expenses were incurred by City at the maximum non-usurious interest rate permitted by law.

9.1 Removal of Encroachment by Licensee. Upon conclusion of pilot testing activities, or as directed by the City as in Section 9.0, all above-ground equipment (including piping manifold) will be dismantled and removed from within City Right-of-Way. Encroachment conduit will be cut below grade at both ends – (at the AS/SVE wells in the median between S. Palm Canyon Drive and N. Riverside Drive and the parking lot to the west and at the manifold in the parking lot). The conveyance piping will then be abandoned in place by pressure grouting (filling with grout) and the disturbed areas will be backfilled or paved to match existing surface (asphalt in the roadway and dirt in the median). Once the removal has been completed to the satisfaction of the City Engineer, via written or electronic correspondence to the Licensee, this Encroachment License will be voided.

10.0 Notices. Any notice, demand, request, document, consent, approval, or communication either party desires or is required to be given under the provisions of this License shall be in writing and either served personally or sent prepaid, first-class mail to the following address:

To City: City of Palm Springs
PO Box 2743
Palm Springs, CA 92263-2743
Attn: Public Works and Engineering Department

With Copy to: City Attorney, City of Palm Springs
PO Box 2743
Palm Springs, CA 92263-2743
Attn: Douglas Holland

Licensee: Palm Springs Landscape Company
11077 Canary Island Court
Plantation, Florida 33324-8202
Attn: Steven Wade

Either party may change its address from time to time by notifying the other party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed pursuant to this Section 10.

11.0 Attorneys Fees. In any action between the parties hereto seeking enforcement of this License, or in connection with the License or the Permit, the prevailing party in such action shall be entitled to have and to recover from the other party its reasonable attorneys' fees and other reasonable expenses in connection with such action or proceeding in addition to its recoverable court costs.

12.0 Successors and Assigns. All rights and obligations created by this License shall be appurtenant to and shall run with the Licensee Property and the City Property and each part thereof and interest thereon, and shall be binding upon the owners of the Licensee Property and its respective successors and assigns acquiring any right, title and interest in the Licensee Property.

13.0 Amendment or Modification. This License may not be modified or amended except by written agreement executed by the then-owner of the Licensee Property and the City Property and recorded in the Office of the County Recorder, County of Riverside, California.

14.0 Governing Law. This License shall be governed by and construed in accordance with the laws of the State of California.

15.0 Severability. The invalidity or unenforceability of any provision of this License with respect to a particular party or set of circumstances shall not in any way affect the validity

and enforceability of any other provision hereof or the same provision when applied to another party or to a different set of circumstances.


16.0 Recordation. This License shall be recorded in the Office of the County Recorder, Riverside County, California, and it shall serve as notice to all parties succeeding to the interest of Licensee or City that their use of the Licensee Property and the City Property shall be benefited and/or restricted in the manner herein described.

17.0 Counterparts. This License may be executed in any number of counter parts, each of which shall constitute an original.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

"LICENSEE"

Palm Springs Landscape Company

By: 

Print Name: STEVEN WADE

ITS: TRUSTEE
LICENSEE TITLE

(Licensee shall have signature notarized)

ATTEST:

CITY OF PALM SPRINGS,
a California charter city

By: _____
James Thompson, City Clerk

By: _____
David H. Ready, City Manager

APPROVED AS TO FORM:

APPROVED BY CITY COUNCIL:

Douglas Holland, City Attorney

Date: _____

Agreement No.: _____

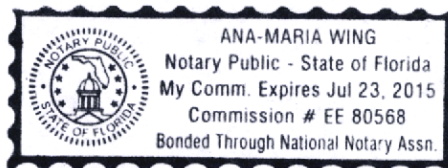
STATE OF Florida }
COUNTY OF Broward } SS

On 16 April 2014, before me, Ana-Maria Wing, Notary Public,
DATE
personally appeared Steven Wade, 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 signatures(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. (Seal)

WITNESS my hand and official seal.


Signature of Notary



STATE OF _____ }
COUNTY OF _____ } SS

On _____, before me, _____, Notary Public,
DATE
personally appeared _____, 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 signatures(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. (Seal)

WITNESS my hand and official seal.

Signature of Notary

EXHIBIT "A"

DESCRIPTION OF LICENSEE PROPERTY

That portion of Lot 13 in Section 23, Township 4 South, Range 4 East, San Bernardino Meridian, in the City of Palm Springs, County of Riverside, State of California, as per Map of Palm Valley Colony Lands, recorded in Book 14, Page 652 of Maps, in the Office of the County Recorder of San Diego County, California, described as follows:

Commencing at the Northwest corner of Lot 13 as shown on that certain map entitled "Palm Valley Colony Lands" filed in Book 14, Page 652, San Diego, County Official Records;
Thence $S0^{\circ}20'36''W$ along the West line of said Lot 13, 44.00 feet to the True Point of Beginning;

Thence $S0^{\circ}20'36''W$ continuing along the West line of Said Lot 13, 119.38 feet to a point on the Northerly line of that portion described in Deed to the Riverside County Flood Control and Water Conservation District filed in Book 1043, Page 517, Riverside County Official Records;
Thence $S70^{\circ}43'54''E$ along said Northerly line, 284.30 feet to a point on the Westerly line of that portion conveyed by deed to the City of Palm Springs filed in Instrument 9205, Riverside County Official Records said point being also on the Westerly line of South Palm Canyon Drive;

Thence $N01^{\circ}10'00''W$ along said Westerly line, 65.29 feet to the beginning of a tangent curve to the left have a Radius of 1372.47 feet;

Thence along said curve an arc distance of 128.31 feet through a central angle of $5^{\circ}21'24''$ to the beginning of a tangent curve to the left have a Radius of 20.00 feet;

Thence along said curve an arc distance of 29.26 feet through a central angle of $83^{\circ}48'36''$ to a point on the Southerly line of Sunny Dunes Road;

Thence $S89^{\circ}40'00''W$ along said Southerly line, 227.68 feet to the True Point of Beginning.

EXHIBIT "B"

DEPICTION OF CITY PROPERTY AND ENCROACHMENT

A portion of South Palm Canyon Drive, formerly State Highway 111 adopted by the California Highway Commission on September 7, 1933, within Section 26, Township 4 South, Range 4 East, in a portion of Lot 13, Palm Valley Colony Lands map and recorded in Map Book 14, Page 652, San Diego Records, San Diego, California.

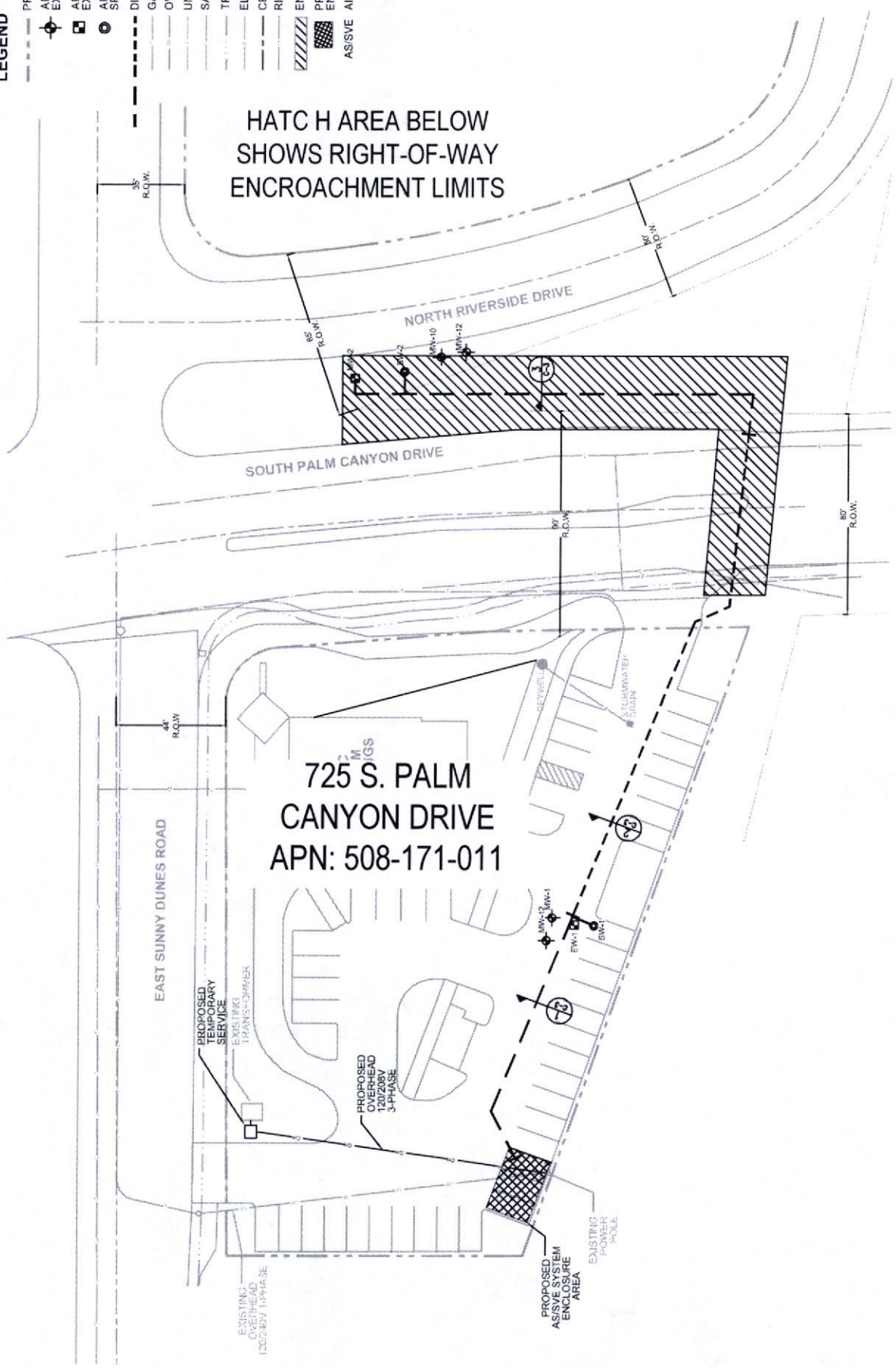


EXHIBIT "C-1" EL 14-01

LEGEND

- PROPERTY BOUNDARY
- ⊕ APPROXIMATE LOCATION OF EXISTING MONITORING WELL
- ⊞ APPROXIMATE LOCATION OF EXTRACTION WELL
- ⊙ APPROXIMATE LOCATION OF SPARGE WELL
- - - DIRECTIONAL BORING INSTALLATION
- GAS LINE
- OVERHEAD UTILITY LINE
- UNDERGROUND TELEPHONE LINE
- SANITATION DISTRICT LINE
- TRAFFIC SIGNAL CONDUIT
- ELECTRICAL LINE
- CENTERLINE OF STREET
- RIGHT OF WAY
- /// ENCROACHMENT AREA
- ▨ PROPOSED AS/SVE SYSTEM ENCLOSURE AREA
- AS/SVE AIR SPARGE/SOIL VAPOR EXTRACTION

HATC H AREA BELOW
SHOWS RIGHT-OF-WAY
ENCROACHMENT LIMITS



NOTE:

1. TRACER WIRE SHALL BE #14 AWG COPPER AND HAVE YELLOW (GAS) 30 MIL. POLYETHYLENE INSULATION OR APPROVED EQUAL. TRACER WIRE SHALL BE PLACED EXACTLY ABOVE THE CENTER MOST PIPE IN THE TRENCH AND SECURED EVERY 5' OF PIPE LENGTH WITH TAPE TO PREVENT DISPLACEMENT DURING BACKFILL. TRACER WIRE SHALL HAVE ONLY ONE TRACER LINE PER TRENCH, AND SHALL BE CONNECTED WITH CONDUCTIVE SLODS (OR EQUIVALENT) AT TRENCH JUNCTIONS. TRACER WIRE SHALL BE DAY-LIGHTED AT BOTH THE HEAD AND AT THE TERMINATION SHED VALET TO FACILITATE ENERGIZING BY UTILITY LOCATORS.

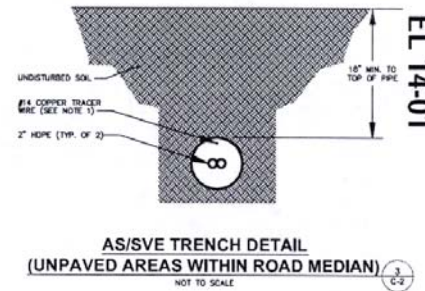
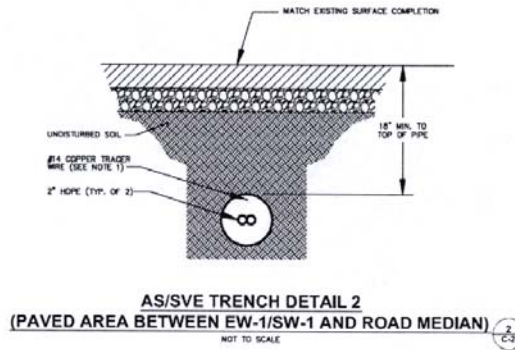
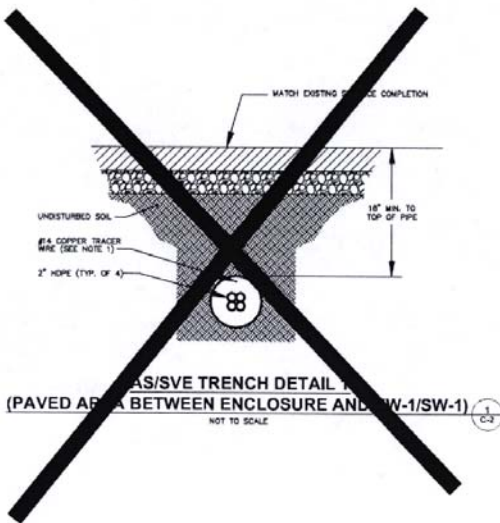
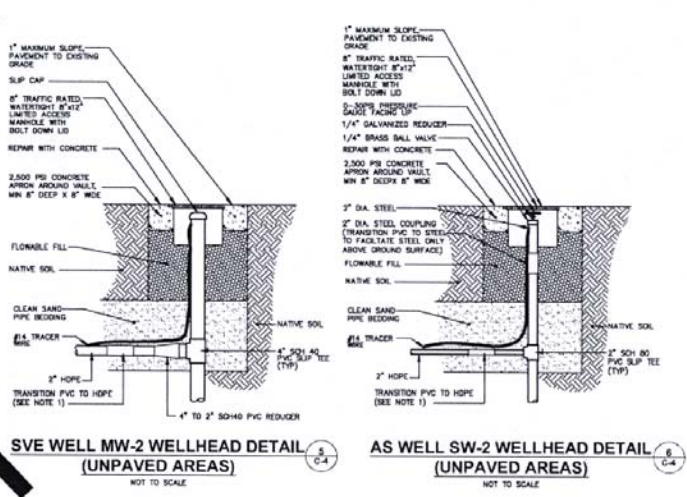
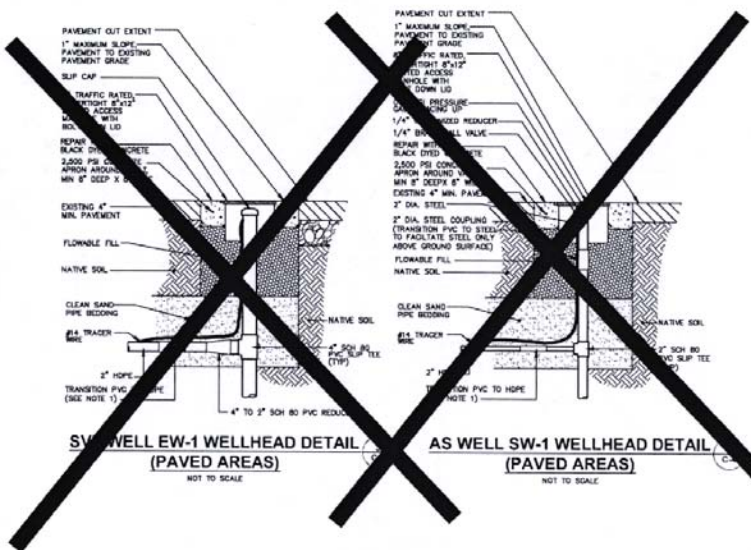
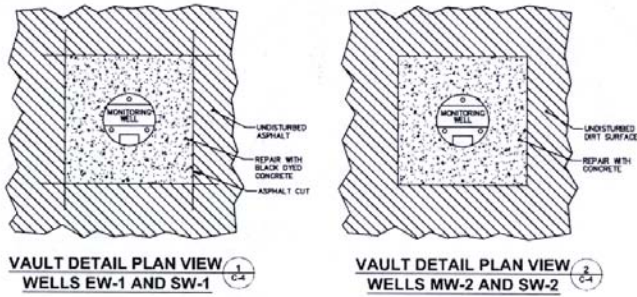


EXHIBIT "C-2"
EL 14-01



NOTE:
1. HIGH COUNTRY FUSION COMPANY HOPE TO PVC TRANSITION FITTING OR EQUIVALENT.