



## City Council Staff Report

Date: February 4, 2015 CONSENT CALENDAR

Subject: APPROVE A PURCHASE ORDER WITH PALM SPRINGS WELDING IN THE AMOUNT OF \$62,725 (PLUS APPLICABLE SALES TAX) FOR REPLACEMENT OF DAMAGED METAL SCULPTURES WITHIN THE GENE AUTRY TRAIL MEDIAN

From: David H. Ready, City Manager

Initiated by: Office of the City Manager

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### SUMMARY

This action would authorize staff to coordinate with Palm Springs Welding to fabricate replacement of eight metal "mountain" sculptures and one metal "sail" sculpture for a total amount not to exceed of \$62,725, plus applicable sales tax.

### RECOMMENDATION:

- 1) In accordance with Section 7.04.030 "Special expertise procurement," of the Palm Springs Municipal Code, determine that Palm Springs Welding is uniquely qualified and an approved sole source for fabrication of metal "mountain" and "sail" sculptures originally installed in the Gene Autry Trail medians in 2003; and
- 2) Approve a Purchase Order in the amount of \$62,725 (plus applicable sales tax) with Palm Springs Welding; and
- 3) Authorize the City Manager to execute all necessary documents.

### STAFF ANALYSIS:

In 2000, the Public Works and Engineering Department secured over \$570,000 in federal funding to install landscaping within the Gene Autry Trail medians (from Vista Chino to Mesquite Avenue) and in Ramon Road (from Vella Road to San Luis Rey Drive). Included as part of the median landscaping was the fabrication and installation of several metal "mountain" sculptures and metal "sail" sculptures at various locations within the medians. The median landscaping and sculpture installation was originally completed in 2003 at a total cost of over \$900,000.

Over the last 6 years, various accidents have occurred along Gene Autry Trail where vehicles have crossed over the landscaped medians, damaging several of the "mountain" sculptures, and one of the "sail" sculptures. Unfortunately, all of these accidents went unreported (was a "hit and run"), or the driver did not have automobile insurance, and the City has been unable to obtain funding from the responsible drivers to replace the damaged sculptures.

It is also important to note that the City's Public Art Fund did not participate in the design, fabrication or installation of these metal sculptures; the City utilized its Gas Tax Funds for the local match to the federal funding secured for the median landscaping and sculpture installation. Although staff considers these sculptures as public art and pursued filing an insurance claim for replacement of them, the City's insurance policies require payment of a minimum \$10,000 deductible per incident.

At the December 17, 2014, City Council meeting, Council Member Mills requested that staff pursue replacement of the damaged or missing sculptures in the Gene Autry Trail medians. On the basis that the City Council directs staff to have these sculptures replaced, staff has coordinated with Palm Springs Welding for the cost to have the damaged sculptures fabricated.

Palm Springs Welding was the original fabricator of the metal sculptures installed in the Gene Autry Trail medians in 2003. On this basis, staff recommends that the City Council determine Palm Springs Welding as uniquely qualified with special expertise to fabricate the replacement sculptures as originally designed. The City Council may authorize procurement to a sole source with special expertise in accordance with Section 7.04.030 "Special expertise procurement," of the Palm Springs Municipal Code, which states:

*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. Any special procurement under this section shall be made with such competition as is practicable under the circumstances.*

**FISCAL IMPACT:**

Currently, there are various metal "mountain" panels to replace: (1) large panel, (3) medium panels, and (4) small panels; and there is one sail sculpture to replace. Palm Springs Welding has provided the City with a proposal to fabricate and install eight of the metal "mountain" sculpture panels, and one of the metal "sail" sculptures, for a total cost not to exceed of \$62,725 (plus applicable sales tax).

As a matter of reference, each "mountain" sculpture includes five separate metal panels: two small, two medium, and one large. The current pricing from Palm Springs Welding is: \$6,200 for each small "mountain" panel; \$6,750 for each medium "mountain" panel; and \$7,750 for each large "mountain" panel. Therefore, the total current price of an entire "mountain" sculpture with all five of its panels is \$33,650.

The current price from Palm Springs Welding to refabricate the damaged metal "sail" sculpture is \$9,925.

Staff recommends that the City's Risk Management Fund (Fund 540) be used to replace these sculptures, given that the damage was due to an uncollected claim as a result of a vehicular accident. Sufficient funds to encumber for the Purchase Order in the amount of \$62,725 (plus applicable sales tax) is available in Risk Management Fund account number 540-5904-48685 (Claims Expense).

SUBMITTED

Prepared by:



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Marcus L. Fuller, MPA, P.E., P.L.S.  
Assistant City Manager/City Engineer

Approved by:

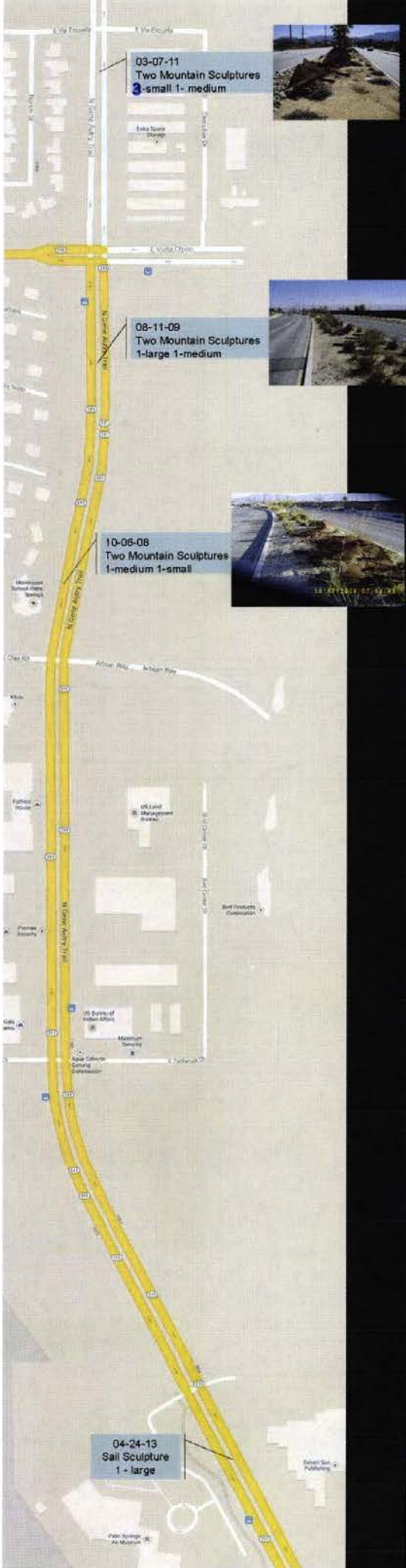


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David H. Ready, Esq., Ph.D  
City Manager

Attachments:

1. Map of Locations
2. Palm Springs Welding Quote





Palm Springs Welding, Inc.

1189 Valdivia Way Palm Springs, CA 92262

760-323-4449 Fax: 760-323-2802

CA CONTRACTOR'S LICENSE NO. 265516

TO:

City of Palm Springs  
Attn: Jennifer Henning  
P.O. Box 2743  
Palm Springs, CA 92263-2743

Email: [jennifer.henning@palmsprings-ca.gov](mailto:jennifer.henning@palmsprings-ca.gov)

PROPOSAL #: 128151		Page 1
PHONE: 760-778-8408	DATE: 1/28/15	
JOB NAME/LOCATION: Sculptures		
FAX #: 760-322-8325	CELL #:	

We hereby submit specifications and estimates for:

**NOTICE TO OWNER:**

By signing and returning this proposal, you agree: 1) to acknowledge receipt of this proposal along with the attached exhibits A, B and C; 2) to all of the provisions and conditions contained in exhibits A, B and C; and 3) to adopt the arbitration clause in paragraph 4 of exhibit A.

**SCOPE OF WORK:**

Fabrication and installation of sail and mountain sculptures as follows:

1. Eight (8) MOUNTAIN sculptures:
  - a. One (1) large: \$7,750.00 each
  - b. Three (3) medium: \$6,750.00 each
  - c. Four (4) small: \$6,200.00 each
2. One (1) SAIL sculpture: \$9,925.00

**STANDARD NOTES:**

Please sign and return one copy of this proposal and any additional paperwork (i.e. HOA approval letter, approved shop drawings, etc.) if and when you choose our company to provide your ornamental iron requirements. A deposit is required with written approval and should not exceed \$1,000 or ten percent (10%) of contract price. Work will not begin on your project until these requirements are met. This includes, but is not limited to, the ordering of materials required to fabricate your project.

If your project totals more than \$5,000.00, we will file a preliminary twenty day notice. This is to protect your interests, as well as ours. At the completion of the project, we will provide conditional releases at the time of billing. When the final payment is made, we will provide unconditional lien releases, relieving you of lien liability.

Many cities require permits and inspections when any work is performed on your residence. If you live in a gated community or a community which is governed by a homeowners association, you may be required to also obtain their approval prior to any new installation of ironwork at your residence. Unless otherwise contracted and agree, Palm Springs Welding, Inc. will not be responsible for obtaining permits or HOA approval for the work that we will do for you.

All material is guaranteed to be as specified. All work to be completed in a professional manner according to standard practices. Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements are contingent upon strikes, accidents or delays beyond our control. Owner is to carry fire, tornado and other necessary insurance. Our workers are fully covered by Worker's Compensation insurance.



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PHONE: 760-778-8408	DATE: 1/28/15
JOB NAME/LOCATION: Sculptures	
FAX #: 760-322-8325	CELL #:

Palm Springs Welding, Inc. stands behind the work performed by our employees. All materials and workmanship are guaranteed for the period of one year, including finish paint, from the date of completion of installation, typically the date of the invoice.

Shop drawings provided upon request and acceptance of proposal only unless architect has provided drawings whereas those specifications will be used. Job installation date will be four (4) to six (6) weeks from receipt of deposit and signed proposal and approved drawings, if provided. For jobs being powder coated, please allow an additional two (2) weeks for installation.

If there is any problem with your new ironwork after installation is complete, or if there is any dispute with the amount or type of work invoiced, please notify us IMMEDIATELY. Terms of sale are clearly stated on both the proposal and the invoice; we will not consider disputed charges after a period of thirty (30) days after the date of the invoice. As our company is not a bank or finance company, we will void any warranty on accounts more than sixty days past due.

**RIGHT TO CANCEL:**

You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right.

This proposal may be withdrawn by us if not accepted within thirty (30) days.

**We propose hereby to furnish material and labor - complete in accordance with the above specifications, for the sum of:**

**\$62,725.00**

James Francisco, VP of Operations

**ACCEPTANCE OF PROPOSAL**

The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Signature: \_\_\_\_\_

Date of Acceptance: \_\_\_\_\_

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**EXHIBIT A**

1. Contractor shall commence work on the project within one hundred twenty (120) calendar days after execution of this Contract and, unless delayed by one or more of the causes mentioned in Paragraph 3 of this Contract, complete construction of the project is not more than six (6) months. It is understood that the thirty (30) day time period for commencement of work specified above does not begin until after all plans have been approved by the applicable governmental agency and all permits issued by said governmental agencies. Additionally, it is understood that if the Owner procures construction financing for the project that the failure to have such construction financing in full force and effect pursuant to the requirements of the financing agency may delay the project. Substantial commencement is defined as when non-incidental physical work begins on the project. The failure by Contractor without lawful excuse to substantially commence work within twenty (20) days from the date which the work is to commence as set forth herein is a violation of the Contractor's State License Law.
2. Should Owner fail to pay to Contractor within five (5) days after it becomes due any amount payable by Owner to Contractor pursuant to this Contract, Contractor may by giving five (5) days' written notice thereof to Owner terminate his services under this Contract, stop work on the Contractor's Project, and/or use all lawful means, including without limitation actions by labor or contractors associations induced by Contractor, to prevent further work from being done on the Project until all past due payments have been received by Contractor and Owner has posted a bond satisfactory to Contractor for the payment of all amounts that will thereafter become due to Contractor under this Contract.
3. Either party, Contractor or Owner, shall be excused for any delays or defaults by that party in the performance of this Contract unavoidably caused by the act of the other, the act of any agent of the other, the act of any governmental authority, the act of any public enemy, acts of God, the elements, war, war defense conditions, litigation, strikes, walkouts, or other causes beyond that

party's control. Each party shall use reasonable diligence to avoid any such delay or default and to resume performance under this Contract as promptly as possible after any such delay or default. It is also acknowledged and understood that any changes in the plans and specifications made by either the Owner, Contractor, or any governmental agency will extend the time in which the Project will be completed pursuant to Paragraph 1 above.

4. If any dispute arises between the parties concerning this contract or the performance thereof, the parties agree to dismiss the dispute to binding arbitration with the American Arbitration Association pursuant to its rules. The arbitration venue shall be in Palm Desert, California.

NOTICE: BY SIGNING THE PROPOSAL, YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. YOU ALSO GIVE UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE BUSINESS AND PROFESSIONS CODE OR OTHER APPLICABLE LAWS. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION TO NEUTRAL ARBITRATION".

5. Should any litigation be commenced between the parties to this Agreement concerning the Project, any provision of this Contract, or the rights and obligations of either in relation thereto, the party prevailing in the litigation shall be entitled, in addition to such other relief as may be granted, to a reasonable sum as and for that party's attorney's fees in the litigation.
6. Statutory Notices are attached as "Exhibit B" hereto.
7. Many cities require permits and inspections when any work is performed on your residence. If you live in a gated community or a community, which is governed by a Homeowner's Association, you may be required to also obtain their approval prior to any new installation of ironwork at your residence. Unless otherwise contracted

and agreed, Palm Springs Welding, Inc., will not be responsible for obtaining permits or prior Homeowner's Association approval for the work that we perform for you. We also are not responsible for any permit or approval fees. All material and workmanship are guaranteed for the period of one (1) year from the date of completion of installation, typically the date of the invoice, except for cover finish paint, hardware or any damage to the ironwork after installation is complete. There is no warranty for those items.

Contractors are required by law to be licensed and regulated by the Contractor's State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four (4) years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed with ten (10) years of the date of the alleged violation. Any questions concerning a contractor may be referred to the registrar, contractor's State License Board, P.O. Box 26000, Sacramento, CA 95826.

**EXHIBIT B**

**NOTICE TO OWNER**

"Under the California Mechanic's Lien Law, any contractor, subcontractor, laborer, supplier, or other person or entity who helps to improve your property, but is not paid for his or her work or supplies, has a right to place a lien on your home, land, or property where the work was performed and to sue you in court to obtain payment.

This means that after a court hearing, your home, land, and property could be sold by a court officer and the proceeds of the sale used to satisfy what you owe. This can happen even if you have paid your contractor in full if the contractor's subcontractors, laborers, or suppliers remain unpaid.

To preserve their rights to file a claim or lien against your property, certain claimants such as subcontractors or material suppliers are each required to provide you with a document called a "Preliminary Notice". Contractors and

## PLEASE KEEP WITH YOUR FILES

laborers who contract with owners directly do not have to provide such notice since you are aware of their existence as an owner. A preliminary notice is not a lien against your property. Its purpose is to notify you of persons or entities that may have a right to file a lien against your property if they are not paid. In order to perfect their lien rights, a contractor, subcontractor, supplier, or laborer must file a Mechanic's Lien with the county recorder, which then becomes a recorded lien against your property. Generally, the maximum time allowed for filing a Mechanic's Lien against your property is ninety (90) days after substantial completion of your project.

Other than residential homeowners of dwellings containing fewer than five units, private project owners must notify the original contractor and any lien claimant who has provided the owner with a preliminary 20-day lien notice in accordance with Section 3097 of the Civil Code that a notice of completion or notice of cessation has been recorded within 10 days of its recordation. Notice shall be by registered mail, certified mail, or first-class mail, evidenced by a certificate of mailing. Failure to notify will extend the deadlines to record a lien.

### TO ENSURE EXTRA PROTECTION FOR YOURSELF AND YOUR PROPERTY, YOU MAY WISH TO TAKE ONE OR MORE OF THE FOLLOWING STEPS:

(1) Require that your contractor supply you with a payment and performance bond (not a license bond), which provides that the bonding company will either complete the project or pay damages up to the amount of the bond. This payment and performance bond as well as a copy of the construction contract should be filed with the county recorder for your further protection. The payment and performance bond will usually cost from 1 to 5 percent of the contract amount depending on the contractor's bonding ability. If a contractor cannot obtain such bonding, it may indicate his or her financial incapacity.

(2) Require that payments be made directly to subcontractors and material suppliers through a joint control. Funding services may be available, for a fee, in your area, which will establish voucher or other means of payment to your contractor. These services may also provide you with lien waivers and other forms of protection. Any joint control agreement should include the addendum approved by the registrar.

(3) Issue joint checks for payment, made out to both your contractor and subcontractors or material suppliers involved in the project. The joint checks should be made payable to the persons or entities which send preliminary notices to you. Those persons or entities have indicated that they may have lien rights on your property, therefore, you need to protect yourself. This will help to ensure that all persons due payment are actually paid.

(4) Upon making payment on any completed phase of the project, and before making any further payments, require your contractor to provide you with unconditional "Waiver and Release" forms signed by each material supplier, subcontractor, and laborer involved in that portion of the work for which payment was made. The statutory lien releases are set forth in exact language in Section 3262 of the Civil Code. Most stationery stores will sell the "Waiver and Release" forms if your contractor does not have them. The material suppliers, subcontractors, and laborers that you obtain releases from are those persons or entities who have filed preliminary notices with you. If you are not certain of the material suppliers, subcontractors, and laborers working on your project, you may obtain a list from your contractor. On projects involving improvements to a single-family residence or a duplex owned by individuals, the persons signing these releases lose the right to file a Mechanic's Lien claim against your property. In other types of construction, this protection may still be important, but may not be as complete.

To protect yourself under this option, you must be certain that all material suppliers, subcontractors, and laborers have signed the "Waiver and Release" form. If a Mechanic's Lien has been filed against your property, it can only be voluntarily released by a recorded "Release of Mechanic's Lien signed by the person or entity that filed the Mechanic's Lien against your property unless the lawsuit to enforce the lien was not timely filed. You should not make any final payments until any and all such liens are removed. You should consult an attorney if a lien is filed against your property".

### EXHIBIT C

"STATE LAW REQUIRES ANYONE WHO CONTRACTS TO PERFORM CONSTRUCTION WORK TO BE LICENSED BY THE CONTRACTOR'S STATE LICENSE BOARD IN THE LICENSE CATEGORY IN WHICH THE CONTRACTOR IS GOING TO BE WORKING - IF THE TOTAL PRICE OF THE JOB IS \$300.00

OR MORE (INCLUDING LABOR AND MATERIALS).

LICENSED CONTRACTORS ARE REGULATED BY LAWS DESIGNED TO PROTECT THE PUBLIC. IF YOU CONTRACT WITH SOMEONE WHO DOES NOT HAVE A LICENSE, THE CONTRACTOR'S STATE LICENSE BOARD MAY BE UNABLE TO ASSIST YOU WITH A COMPLAINT. YOUR ONLY REMEDY AGAINST AN UNLICENSED CONTRACTOR MAY BE IN CIVIL COURT, AND YOU MAY BE LIABLE FOR DAMAGES ARISING OUT OF ANY INJURIES TO THE CONTRACTOR OR HIS OR HER EMPLOYEES.

YOU MAY CONTACT THE CONTRACTOR'S STATE LICENSE BOARD TO FIND OUT IF THIS CONTRACTOR HAS A VALID LICENSE. THE BOARD HAS COMPLETE INFORMATION ON THE HISTORY OF LICENSED CONTRACTORS, INCLUDING ANY POSSIBLE SUSPENSIONS, REVOCATIONS, JUDGMENTS, AND CITATIONS. THE BOARD HAS OFFICES THROUGHOUT CALIFORNIA. PLEASE CHECK THE GOVERNMENT PAGES OF THE WHITE PAGES FOR THE OFFICE NEAREST YOU OR CALL 1-800-321-CSLB (2752) FOR MORE INFORMATION".