



City Council Staff Report

DATE: March 16, 2016

CONSENT CALENDAR

SUBJECT: APPROVAL OF AMENDMENT NO. 1 IN THE AMOUNT OF \$25,000 TO THE PROFESSIONAL SERVICES AGREEMENT (A6670) WITH LYNN MERRILL (NOW KNOWN AS, LYNN MERRILL AND ASSOCIATES, INC.) FOR CONTINUED NPDES PROGRAM SUPPORT THROUGH SEPTEMBER 30, 2016

FROM: David H. Ready, City Manager

BY: Public Works & Engineering Department

SUMMARY

Approval of this action will authorize the additional NPDES Program Support to the City for various stormwater programs until September 30, 2016.

RECOMMENDATION:

1. Approve Amendment No. 1 in the amount of \$25,000 to the Professional Services Agreement (A6670) with Lynn Merrill and Associates, Inc., for revised total contract amount of \$50,000 for on-going NPDES Program Support to the City; and
2. Authorize the City Manager to execute all necessary documents.

STAFF ANALYSIS:

The Clean Water Act (CWA) establishes the basic structure for regulating discharges of pollutants into the waters of the United States and regulating quality standards for surface waters. The CWA was based on laws enacted in 1948 and was then referred to as the Federal Water Pollution Control Act. The Act was significantly reorganized and expanded in 1972 and became known as the "Clean Water Act."

The CWA made it unlawful to discharge any pollutant from a point source into navigable waters, unless a permit was obtained. EPA's National Pollutant Discharge Elimination System (NPDES) permit program controls discharges. Point sources are discrete conveyances such as pipes or man-made ditches. Individual homes that are connected to a municipal system, use a septic system, or do not have a surface discharge do not

ITEM NO. 211

need an NPDES permit; however, industrial, municipal and other facilities must obtain permits if their discharges go directly to surface waters.

The "CWA" establishes requirements for the discharge of urban runoff from the Municipal Separate Storm Sewer System ("MS4") under the "NPDES" program. The Colorado River Basin Regional Water Quality Control Board ("RWQCB") issued Permit Order No. R7-2013-0011 ("MS4 Permit") to authorize the discharge of urban runoff from the collective Riverside County MS4s within the Coachella Valley Region on June 20, 2013. This permit regulates discharges from all MS4 facilities within the Whitewater River watershed in Riverside County unless administratively extended, the MS4 Permit will expire on June 19, 2018.

The MS4 Permit coverage includes the Riverside County Flood Control and Water Conservation District ("District"), Riverside County ("County"), the Coachella Valley Water District (CVWD) and the cities of Banning, Cathedral City, Coachella, Desert Hot Springs, Indian Wells, Indio, La Quinta, Palm Desert, Palm Springs and Rancho Mirage. The District is the Principal Permittee, while the other jurisdictions are considered "Co-Permittees." Although all Permittees work cooperatively to implement the area-wide MS4 program, as a Co-Permittee the City of Palm Springs is ultimately responsible for compliance with the MS4 Permit within the City.

As part of the MS4 Permit, the City is required to undertake various actions in order to comply with the requirements within the permit. These actions include attendance at the Desert Task Force Meeting, submission of an annual report through the Riverside County Flood Control and Water Conservation District to the Colorado River Basin Regional Water Quality Control Board, ("BOARD"), and conduct various inspections of construction activities, and commercial, industrial and restaurants in order to ensure compliance with the Permit, among other requirements. Prior to December 31, 2014, the Riverside County Department of Environmental Health (DEH) was responsible for performing the required commercial, industrial and restaurant inspections set forth within the permit under the Community Assistance Program (CAP). However, in September 2014, County DEH notified all the cities that they were discontinuing this support, effective December 31, 2014.

In order to ensure that the City continued to meet the requirements of the permit, the City retained the services of Lynn Merrill, Consulting to Municipal Governments to provide the NPDES support necessary to the City as per Agreement No. 6670 authorized by the City Manager and provided as **Attachment 1**. As required by the permit, the firm conducted approximately 188 inspections of businesses subject to the permit requirements by the end of June 30, 2015. The firm has provided additional technical and administrative support to the City by attending the Desert Task Force meeting and assisting the city in preparing the FY14-15 NPDES Annual Report.

Because of the specialized nature of these services, the City has released a Request for Proposal #03-16 to provide continual on-call technical consultant services to assist

with the NPDES Program within the City; proposals under this program are due Tuesday, March 29, 2016. However, the City continues to have a need to remain in compliance with the requirements of the permit during the evaluation and award process, as well as conduct required inspections between now and until selection of the on-call consultant. Therefore, staff is requesting that the existing PSA with Lynn Merrill, be extended as per Amendment No.1 to Agreement 6670 provided as **Attachment 2**, to continue to provide these services. In addition, staff is recommending that the existing PSA be amended to reflect the company's name change from "Lynn Merrill" to "Lynn Merrill and Associates, Inc." to reflect the change in business status from sole proprietor to corporation under the State of California.

ENVIRONMENTAL IMPACT:

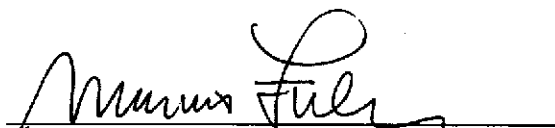
The requested City Council action is not a "Project" as defined by the California Environmental Quality Act (CEQA). Pursuant to Section 15378(a), a "Project" means the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. The requested action is to amend a consulting services contract to perform administrative and regulatory services to ensure compliance with the NPDES permit, and is exempt from CEQA pursuant to Section 15378(b), in that a "Project" does not include: (5) Organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment.

FISCAL IMPACT:

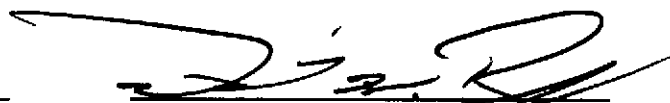
Sufficient funds are currently budgeted and available to approve Amendment No. 1 in the amount of \$25,000 to the Consulting Services Agreement with Lynn Merrill and Associates, Inc. from the following account from the CSA 152 Fund (124-4242-43200) that accounts for revenues and costs related to the implementation of the National Pollutant Discharge Elimination System, a program designed to reduce pollutants entering the various storm channels and washes throughout the community.

- Account No. 124-4242-43200; \$25,000

SUBMITTED:



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



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

Attachments:

1. Agreement A6670
2. Amendment No. 1

ATTACHMENT 1

**PROFESSIONAL SERVICES AGREEMENT
LYNN MERRILL
NATIONAL POLLUTANT DISCHARGE ELIMINATION
SYSTEM (NPDES) INSPECTION SERVICES FOR
COMMERCIAL, INDUSTRIAL & RESTAURANTS**

THIS AGREEMENT FOR CONSULTING SERVICES ("Agreement") is made and entered into on March 9, 2015, by and between the City of Palm Springs, a California charter city and municipal corporation ("City"), and LYNN MERRILL, a California corporation, ("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 engineering firm for National Pollutant Discharge Elimination System (NPDES) inspection services for commercial, industrial and restaurants in City of Palm Springs ("Project").

B. Consultant has submitted to City a proposal to provide inspection 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 inspection 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 \$25,000.

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 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 from the date this agreement is fully executed by the City until **June 30, 2016**, 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: James Lu, Project Manager/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.

Name:

Title:

Lynn Merrill

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 sub-section 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:

Lynn Merrill
35585 Barbara Lane
Yucaipa, California 92399
Attention: Lynn Merrill
Telephone: (951) 217-1201

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.

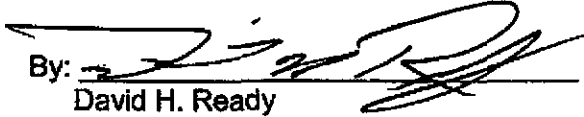
11.7 Recitals. The above-referenced Recitals are hereby incorporated into the Agreement as though fully set forth in this Agreement and each Party acknowledges and agrees that such Party is bound, for purposes of this Agreement, by the same.

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: 03/09/2015

By: 
David H. Ready
City Manager

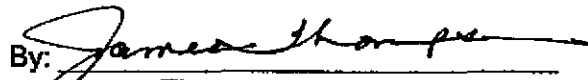
APPROVED BY CITY MANAGER

ntc \$25000.00 Atty

APPROVED AS TO FORM:

ATTEST

By: 
Douglas C. Holland,
City Attorney

By: 
James Thompson,
City Clerk

"CONSULTANT"
Lynn Merrill

Date: 1-29-2015

By: 
Name

owner / PRICER
Title

Date: _____

Name

Title

Not to Exceed \$ 25000.
Without The Express Written
Authorization Of The City
Manager

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Riverside

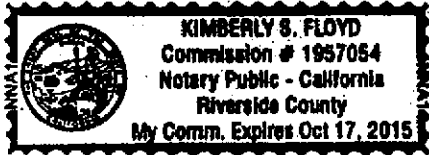
On 1-29-2015 before me, Kimberly S. Floyd
Date Here Insert Name and Title of the Officer

personally appeared Lynn Merrill
Name(s) of Signer(s)

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

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

WITNESS my hand and official seal.



Signature Kimberly S. Floyd
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____ Document Date: _____

Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

Corporate Officer -- Title(s): _____

Partner -- Limited General

Individual Attorney in Fact

Trustee Guardian or Conservator

Other: _____

Signer Is Representing: _____

Signer's Name: _____

Corporate Officer -- Title(s): _____

Partner -- Limited General

Individual Attorney in Fact

Trustee Guardian or Conservator

Other: _____

Signer Is Representing: _____

EXHIBIT "A"

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

Including,

Schedule of Fees

And

Schedule of Performance

EXHIBIT "A"
PROFESSIONAL SERVICES FOR
NPDES INSPECTION SERVICES FOR
COMMERCIAL, INDUSTRIAL & RESTAURANTS

SCOPE OF SERVICES

Project Description – The scope of work includes initial site inspection, data entry and follow-up inspection for any notices of correction that may be issued to each category of business as set forth in the below prices schedule:

Task 1 Site Inspections:

Fee Schedule	NPDES Priority	Price Per Inspection Per Facility
Industrial Facilities – Subject to Industrial General Permit	HIGH	\$225.00
Industrial Facilities – Subject to Industrial General Permit – Filing a Notice of Non-Applicability	MEDIUM	\$180.00
Industrial Facilities – All Others	LOW	\$90.00
Restaurants – Full Service	LOW	\$60.00
Restaurants – All Others	LOW	\$60.00
Commercial Facilities – Nurseries/Greenhouses, Landscape/Hardscape Installers, Mobile Cleaners	MEDIUM	\$75.00
Commercial Facilities – All Others	LOW	\$50.00
Post Construction Best Management Practices		\$150.00
Additional Per Hours Inspection For NOV's		\$150.00

Additional inspections which are the result of a business failing to comply with a Notice of Correction and require the issuance of a Notice of Violation (NOV) shall be billed at the team rate of \$150 per hour and based on actual hour of time including travel. The Additional per Hour Inspection for NOV's will only be charged when the City requests Consultant to provide administrative and investigative support to the City for issuance of an administrative citation, civil or criminal action against a non-compliant firm.

City shall provide Consultant with a current list of business licenses which will include the business name, address, and SIC/NAICS codes in an Excel format.

All inspections shall conform to the generally accepted Commercial, Industrial and Restaurant Inspection practices and procedures for NPDES programs. During inspections, we shall document appropriate data as necessary to maintain adequate records of inspections, including but not limited to dates of inspections, findings, corrective actions and other information as necessary.

Consultant can either use any existing inspection forms which the City currently uses to conduct these inspections or shall provide a City specific template for preparation of an appropriate inspection form which the City may use to prepare and print inspection forms for Consultant's use. Consultant shall also either enter this data into the City's Web-based database, if appropriate, or shall develop an Excel based Inspection database for use in tracking and managing these inspections. If the City has an existing

data system, the City shall provide appropriate log-in codes and any user manuals necessary to accomplish this data entry.

All hard copies of the inspection forms will be provided to the City as appropriate; if desired, Consultant can provide filing support into the City's existing filing system as part of the services on a once per month basis at no additional cost. Consultant will provide a CD of all photographs of non-compliance on a once a month basis in order to reduce the amount of disks produced. As an alternative, Consultant shall email photographs of non-compliance to the NPDES Coordinator at the end of each day, with appropriate identification of the location or establish a cloud-based data transfer point.

Consultant will coordinate any non-compliance enforcement including illicit discharge discoveries with the City's Code Enforcement staff. In the event that any Illicit Connection/Illicit Discharges are discovered, we will contact the NPDES Coordinator immediately upon discovery and if necessary, contact any first responders as appropriate, depending on the severity.

Consultant can also provide any additional technical support to your city at the Senior Consultant Rate of \$95.00 per hour. City is to provide Consultant with appropriate city-issued badges and/or business cards; in order to validate Consultants entrance onto businesses sites.

Task 2: NPDES Inspection Fee Program – Consultant will provide assistance to City in the development of a NPDES Inspection Fee program. Consultant will prepare the appropriate Fee Study, based on City's current fully burdened labor rates or other schedules as appropriate, as well as the preparation of the staff reports, studies and ordinances and resolutions necessary to establish such a program. This includes attendance and presentation at up to three City Council meetings necessary to enact the NPDES Fee Study. Development of NPDES Inspection Fee services Not-to-Exceed \$2,850.00.

The following table lists the proposed tasks, time and costs for preparing the NPDES Inspection Fee:

TASK	Hours	COST at \$95.00 Per Hour
Initial Meeting with Staff	3	\$285.00
Analysis of Current Ordinance and Program and determine language	4	\$380.00
Development of Fee Recommendations	6	\$570.00
Preparation of Fee Ordinance and Rate Resolutions	4	\$380.00
Meeting with City Staff to review and Revise	3	\$285.00
Preparation of Staff Report	2	\$190.00
Revisions as necessary	2	\$190.00
Presentation of NPDES Inspection Fee at Council Meeting – Set Public Hearing	3	\$285.00
Presentation of NPDES inspection Fee at Council Meeting – Conduct Public Hearing	3	\$285.00
TOTAL	30	\$2,850.00

SCHEDULE OF COMPENSATION

Tasks listed below are identical to tasks identified in Exhibit A of this Agreement. Payments to Consultant shall be made no more frequently than monthly, and shall be based on lump sum costs per task item of work as indicated herein. Lump sum payments shall be made to Contractor based upon completion of tasks, or pro-rata portions thereof noted below, to a maximum of 75% of the lump sum task item fee until completion of such task item as determined by the Contract Officer. Each request for payment shall contain Consultant's statement of the work or tasks completed or portion performed, with supporting documentation. The determination of payment due shall be made based upon the reasonable judgment of the Contract Officer.

	<u>Task Total</u> <u>Lump Sum</u>
Task 1.0, Initial Site Inspection, Data Entry and Follow-up Inspections	\$22,150.00
<u>Task 2.0, NPDES Inspection Fee Program</u>	<u>\$ 2,850.00</u>
Total (NOT TO EXCEED)	\$25,000.00

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:

 X 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.

ATTACHMENT 2

**AMENDMENT NO. 1
TO AGREEMENT NO. A6670
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)
INSPECTION SERVICES FOR COMMERCIAL, INDUSTRIAL & RESTAURANTS**

THIS FIRST AMENDMENT TO Agreement No. 6670 for consulting services, (herein "Amendment") made and entered into on the ___ day of _____, 2016, by and between CITY OF PALM SPRINGS, a California charter City and municipal corporation, (herein "City"), and LYNN MERRILL AND ASSOCIATES, INC., a California corporation (herein "Consultant"), is hereby amended as follows:

RECITALS

WHEREAS, City and Consultant entered into that Agreement No. A6670 for NPDES inspection services for commercial, industrial and restaurants in the City of Palm Springs ("Agreement"), as dully amended from time to time; and

WHEREAS, Consultant requests to change name of the firm "LYNN MERRILL", a sole proprietor, to "LYNN MERRILL AND ASSOCIATES, INC.," a California corporation; and

WHEREAS, the parties wish to amend the Agreement to extend the contract, add additional services associated with NPDES requirements to Exhibit "A" incorporated herein, whereby Consultant shall provide professional consultant services to include inspection and monitoring, of the City's businesses in compliance with the NPDES program and perform the necessary documentation which includes compilation of data, evaluation and recommendation of updates to the City's ordinances, and provide the support necessary to City staff as necessary in meetings and generating reports to the Colorado River Water Quality Control Board.

Section 1. Scope of Services, Exhibit "A", is hereby amended by adding those services identified as follows:

- TASK 3 – NPDES Representation to the Whitewater Region NPDES Desert Task Force until September 30, 2016.
- TASK 4 – Review and recommend updates to the city's Storm Water Ordinance, as indicated to the Colorado River Water Quality Control Board in the City's Annual Report. Effort shall include preparation of staff reports, and presentations to the City Council as needed.
- TASK 5 – Provide NPDES Administrative Support to City Staff, including responses to Riverside County Flood Control and Water Conservation District requests for review and comment on various documents or technical reports, and other efforts as needed.
- TASK 6 – Conduct FY15-16 Commercial, Industrial and Restaurant Inspection Program, to ensure compliance with the NPDES Permit.

Section 2. Section 3.1, Compensation of Consultant, is hereby revised to reflect the total amended contract amount as herein specified by this Amendment. The Schedule of Fees, Exhibit "A", is hereby amended and increased by \$25,000 to add the scope of work and is hereby revised as follows:

- TASK 3 – Not to exceed \$1,800 including reimbursement of mileage at the standard IRS 2016 rate of \$0.54 per mile.
- TASK 4 – Not to exceed \$4,000 including reimbursement of mileage at the standard IRS 2016 rate of \$0.54 per mile.
- TASK 5 – Not to exceed \$5,700 including reimbursement of mileage at the standard IRS 2016 rate of \$0.54 per mile
- TASK 6 – Not to exceed \$13,500 at the rates set forth in the Agreement.

Total maximum contract amount: \$50,000

Section 3. Time for Completion, Consultant shall provide the services provided herein by this Amendment as directed by City. Section 4.4 "Term" is hereby revised to reflect a new term extending through September 30, 2016, unless otherwise extended by mutual written agreement of the parties, and subject to termination pursuant to Section 4.5 of the Agreement.

Section 4. Full force and effect: Except as otherwise previously modified herein, all other provisions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed and entered into this Amendment as of the date first written above.

CITY OF PALM SPRINGS,
a California charter city and municipal
corporation

ATTEST:

By: _____
James Thompson
City Clerk

By: _____
David Ready
City Manager

APPROVED AS TO FORM:

By: _____
Douglas Holland
City Attorney

LYNN MERRILL AND ASSOCIATES, INC.,
a California corporation

By: _____

Printed Name/Title

EXHIBIT "A"

EXHIBIT "A"
PROFESSIONAL SERVICES FOR
NPDES INSPECTION SERVICES FOR
COMMERCIAL, INDUSTRIAL & RESTAURANTS

SCOPE OF SERVICES

Project Description – The scope of work includes initial site inspection, data entry and follow-up inspection for any notices of correction that may be issued to each category of business as set forth in the below prices schedule:

Task 1 Site Inspections:

Fee Schedule	NPDES Priority	Price Per Inspection Per Facility
Industrial Facilities – Subject to Industrial General Permit	HIGH	\$225.00
Industrial Facilities – Subject to Industrial General Permit – Filing a Notice of Non-Applicability	MEDIUM	\$180.00
Industrial Facilities – All Others	LOW	\$90.00
Restaurants – Full Service	LOW	\$60.00
Restaurants – All Others	LOW	\$60.00
Commercial Facilities – Nurseries/Greenhouses, Landscape/Hardscape Installers, Mobile Cleaners	MEDIUM	\$75.00
Commercial Facilities – All Others	LOW	\$50.00
Post Construction Best Management Practices		\$150.00
Additional Per Hours Inspection For NOV's		\$150.00

Additional inspections which are the result of a business failing to comply with a Notice of Correction and require the issuance of a Notice of Violation (NOV) shall be billed at the team rate of \$150 per hour and based on actual hour of time including travel. The Additional per Hour Inspection for NOV's will only be charged when the City requests Consultant to provide administrative and investigative support to the City for issuance of an administrative citation, civil or criminal action against a non-compliant firm.

City shall provide Consultant with a current list of business licenses which will include the business name, address, and SIC/NAICS codes in an Excel format.

All inspections shall conform to the generally accepted Commercial, Industrial and Restaurant Inspection practices and procedures for NPDES programs. During inspections, we shall document appropriate data as necessary to maintain adequate records of inspections, including but not limited to dates of inspections, findings, corrective actions and other information as necessary.

Consultant can either use any existing inspection forms which the City currently uses to conduct these inspections or shall provide a City specific template for preparation of an appropriate inspection form which the City may use to prepare and print inspection forms for Consultant's use. Consultant shall also either enter this data into the City's Web-based database, if appropriate, or shall develop an Excel based inspection database for use in tracking and managing these inspections. If the City has an existing data system, the City shall provide appropriate log-in codes and any user manuals necessary to accomplish this data entry.

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Consultant will coordinate any non-compliance enforcement including illicit discharge discoveries with the City's Code Enforcement staff. In the event that any Illicit Connection/Illicit Discharges are discovered, we will contact the NPDES Coordinator immediately upon discovery and if necessary, contact any first responders as appropriate, depending on the severity.

Consultant can also provide any additional technical support to your city at the Senior Consultant Rate of \$95.00 per hour. City is to provide Consultant with appropriate city-issued badges and/or business cards; in order to validate Consultants entrance onto businesses sites.

Task 2: NPDES Inspection Fee Program – Consultant will provide assistance to City in the development of a NPDES Inspection Fee program. Consultant will prepare the appropriate Fee Study, based on City’s current fully burdened labor rates or other schedules as appropriate, as well as the preparation of the staff reports, studies and ordinances and resolutions necessary to establish such a program. This includes attendance and presentation at up to three City Council meetings necessary to enact the NPDES Fee Study. Development of NPDES Inspection Fee services Not-to-Exceed \$2,850.00.

The following table lists the proposed tasks, time and costs for preparing the NPDES Inspection Fee:

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Preparation of Staff Report	2	\$190.00
Revisions as necessary	2	\$190.00
Presentation of NPDES Inspection Fee at Council Meeting – Set Public Hearing	3	\$285.00
Presentation of NPDES Inspection Fee at Council Meeting – Conduct Public Hearing	3	\$285.00
TOTAL	30	\$2,850.00

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<u>Task</u>	<u>Task Total Lump Sum</u>
Task 1.0, Initial Site Inspection, Data Entry and Follow-up Inspections	\$22,150
Task 2.0, NPDES Inspection Fee Program	\$ 2,850
Task 3.0, NPDES Representation to the Whitewater Region NPDES Desert Task Force	\$ 1,800
Task 4.0, Review and recommend updates to the city’s Storm Water Ordinance	\$ 4,000
Task 5.0, Provide NPDES Administrative Support to City Staff	\$ 5,700
Task 6.0, Conduct FY 15-16 Commercial, Industrial and Restaurant Inspection Program	\$13,500
Total (NOT TO EXCEED)	\$50,000