



City Council Staff Report

DATE: January 21, 2009 CONSENT CALENDAR

SUBJECT: APPROVAL OF CONTRACT SERVICES AGREEMENT FOR UN-ARMED SECURITY GUARD SERVICES AT THE TRAIN STATION

FROM: David H. Ready, City Manager

BY: Community & Economic Development Department

SUMMARY

This action is to approve a new contract services agreement with Maxwell Security Services ("Contractor") for un-armed security guard services for both train and bus service at the train station located on Garnet Station Road.

RECOMMENDATION:

1. Approve a contract for un-armed security guard services at the train station with Maxwell Security Services for a 3 year term commencing February 1, 2009 at \$34,800.00 per year, with two 1 year renewal options at the mutual consent of the city and contractor.
2. Authorize the City Manager to execute all necessary documents.

STAFF ANALYSIS:

On June 18, 2008 Council approved a 3 year lease agreement with Crucero to provide regional bus services at the train station that commenced on August 1st. At that time Council approved an amendment to the existing security contract with Maxwell Security Services to provide un-armed security service to accommodate the new regional bus service operated at the train station, in addition to the services already being provided for the Amtrak trains.

The Procurement & Contracting Division, in cooperation with Community & Economic Development, conducted Request for Proposals (RFP) 09-10 that was issued on December 12th, posted to the city's website, and Notices were sent to 28 potential

vendors. Five firms submitted proposals that were evaluated by a committee consisting of members from Community & Economic Development, Facilities Maintenance, and the Police Department. Proposals were received from the following five firms (listed alphabetically): Adams Security, Barry's Security, Coachella Valley Security, ISI Security, and Maxwell Security.

Proposals were evaluated on multiple criteria including their qualifications and experience, pre-employment procedures, training, supervision, communications, references and cost. While cost was not the sole determining criteria, the proposals ranged from a low of \$34,800.00 (Maxwell), to a high of \$101,959 (Barry's), per year. The evaluation committee ranked Maxwell Security Services, the incumbent, as the highest ranked firm based on their proposal and overall comparative value of their \$34,800.00 annual cost. Maxwell is proposing no increase in cost to the city from their current contract rate.

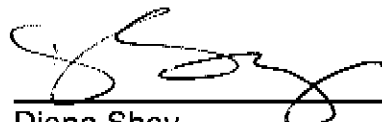
Maxwell Security Services, based in Palm Springs, CA has over 14 years of experience in providing security guard services for commercial, industrial, and municipal clients throughout Southern California, including World Mark in Palm Springs and the City of La Quinta.

FISCAL IMPACT:

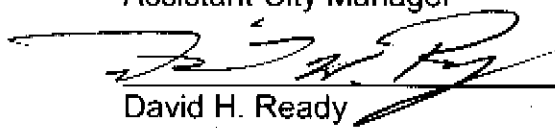
The \$1,300/month revenue from the lease agreement with Crucero previously approved by Council for regional bus services out of the train station will help offset some of the City's costs to provide security services. Funds are budgeted in 4471-43200, Railroad Station, Contractual Services.



Tom Wilson
Assistant City Manager



Diana Shay
Redevelopment Coordinator



David H. Ready
City Manager

Attachments:

1. Contract Services Agreement

CONTRACT SERVICES AGREEMENT FOR SECURITY SERVICES

THIS CONTRACT SERVICES AGREEMENT (herein "Agreement"), is made and entered into this _____ day of _____, 2009, by and between the CITY OF PALM SPRINGS, a municipal corporation, (herein "City") and Maxwell Security Services, Inc., (herein "Contractor"). (The term Contractor includes professionals performing in a consulting capacity.) The parties hereto agree as follows:

1.0 SERVICES OF CONTRACTOR

1.1 Scope of Services. In compliance with all terms and conditions of this Agreement, the Contractor shall provide those services specified in the "Scope of Services" attached hereto as Exhibit "A" and incorporated herein by this reference, which services may be referred to herein as the "services" or "work" hereunder. As a material inducement to the City entering into this Agreement, Contractor represents and warrants that Contractor is a provider of first class work and services and Contractor is experienced in performing the work and services contemplated herein and, in light of such status and experience, Contractor covenants that it shall follow the highest professional standards in performing the work and services required hereunder and that all materials will be of good quality, fit for the purpose intended. For purposes of this Agreement, the phrase "highest professional standards" shall mean those standards of practice recognized by one or more first-class firms performing similar work under similar circumstances.

1.2 Contractor's Proposal. The Scope of Service shall include the Contractor's proposal or bid which shall be incorporated herein by this reference as though fully set forth herein. In the event of any inconsistency between the terms of such proposal and this Agreement, the terms of this Agreement shall govern.

1.3 Compliance with Law. All services rendered hereunder shall be provided in accordance with all ordinances, resolutions, statutes, rules, and regulations of the City and any Federal, State or local governmental agency having jurisdiction in effect at the time service is rendered.

1.4 Licenses, Permits, Fees and Assessments. Contractor shall obtain at its sole cost and expense such licenses, permits and approvals as may be required by law for the performance of the services required by this Agreement. Contractor shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Contractor's performance of the services required by this Agreement, and shall indemnify, defend and hold harmless City against any such fees, assessments, taxes penalties or interest levied, assessed or imposed against City hereunder.

1.5 Familiarity with Work. By executing this Contract, Contractor warrants that Contractor (a) has thoroughly investigated and considered the scope of services to be performed, (b) has carefully considered how the services should be performed, and (c) fully understands the facilities, difficulties and restrictions attending performance of the services under this Agreement. If the services involve work upon any site, Contractor warrants that Contractor has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services hereunder. Should the Contractor discover any latent or unknown conditions, which will materially affect the performance of the services hereunder, Contractor shall immediately inform the City of such fact and shall not proceed except at Contractor's risk until written instructions are received from the Contract Officer.

1.6 Care of Work. The Contractor shall adopt reasonable methods during the life of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and/or other components thereof to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the work by City, except such losses or damages as may be caused by City's own negligence.

1.7 Further Responsibilities of Parties. Both parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Both parties agree to act in good faith to execute all instruments, prepare all documents and take all actions as may be reasonably necessary to carry out the purposes of this Agreement. Unless hereafter specified, neither party shall be responsible for the service of the other.

1.8 Additional Services. City shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to or deducting from said work. No such extra work may be undertaken unless a written order is first given by the Contract Officer to the Contractor, incorporating therein any adjustment in (i) the Contract Sum, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of the Contractor. Any increase in compensation of up to five percent (5%) of the Contract Sum or \$25,000; whichever is less, or in the time to perform of up to one hundred eighty (180) days may be approved by the Contract Officer. Any greater increases, taken either separately or cumulatively must be approved by the City Council. It is expressly understood by Contractor that the provisions of this Section shall not apply to services specifically set forth in the Scope of Services or reasonably contemplated therein. Contractor hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Services may be more costly or time consuming than Contractor anticipates and that Contractor shall not be entitled to additional compensation therefore.

1.9 Special Requirements. Additional terms and conditions of this Agreement, if any, which are made a part hereof are set forth in the "Special Requirements" attached hereto as Exhibit "B" and incorporated herein by this reference. In the event of a conflict between the provisions of Exhibit "B" and any other provisions of this Agreement, the provisions of Exhibit "B" shall govern.

2.0 COMPENSATION

2.1 Contract Sum. For the services rendered under this Agreement, Contractor shall be compensated in accordance with the amended Schedule of Compensation set forth in Exhibit "C," which is attached hereto and is incorporated herein by reference, after: (1) completion of the services to be conducted under this Agreement; (2) the City's acceptance that the scope of services described in Exhibit "A" was properly and satisfactorily performed, and (3) the City's receipt of an invoice thereon. Except as otherwise provided in this Agreement pursuant to paragraph 1.10 above, the total payments to be paid for the services to be provided under this Agreement (collectively, "Contract Sum") shall not exceed a total of \$34,800.00 per year. Any invoice of services rendered to the City is to contain a complete and accurate description of all work to be charged pursuant to the invoice."

2.2 Method of Payment. Unless some other method of payment is specified in the Schedule of Compensation, in any month in which Contractor wishes to receive payment, no later than the first (1st) working day of such month, Contractor shall submit to the City in the form approved by the City's Director of Finance, an invoice for services rendered prior to the

date of the invoice. Except as provided in Section 7.3, City shall pay Contractor for all expenses stated thereon which are approved by City pursuant to this Agreement no later than the last working day of the month.

3.0 PERFORMANCE SCHEDULE

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

3.2 Schedule of Performance. Contractor shall commence the services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all services within the time period(s) established in the "Schedule of Performance" attached hereto as Exhibit "D", if any, and incorporated herein by this reference. When requested by the Contractor, extensions to the time period(s) specified in the Schedule of Performance may be approved in writing by the Contract Officer but not exceeding one hundred eighty (180) days cumulatively.

3.3 Force Majeure. The time period(s) specified in the Schedule of Performance for performance of the services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including the City, if the Contractor shall within ten (10) days of the commencement of such delay notify the Contract Officer in writing of the causes of the delay. The Contract Officer shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of the Contract Officer such delay is justified. The Contract Officer's determination shall be final and conclusive upon the parties to this Agreement. In no event shall Contractor be entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Contractor's sole remedy being extension of the Agreement pursuant to this Section.

3.4 Term. Unless earlier terminated in accordance with Section 7.8 of this Agreement, this Agreement shall continue in full force and effect until completion of the services but not exceeding one (1) year from the date hereof, except as otherwise provided in the Schedule of Performance (Exhibit "D").

4.0 COORDINATION OF WORK

4.1 Representative of Contractor. The following principals of Contractor are hereby designated as being the principals and representatives of Contractor authorized to act in its behalf with respect to the work specified herein and make all decisions in connection therewith:

Fritz Maxwell

It is expressly understood that the experience, knowledge, capability and reputation of the foregoing principals were a substantial inducement for City to enter into this Agreement. Therefore, the foregoing principals shall be responsible during the term of this Agreement for directing all activities of Contractor and devoting sufficient time to personally supervise the services hereunder. For purposes of this Agreement, the foregoing principals may not be replaced nor may their responsibilities be substantially reduced by Contractor without the express written approval of City.

4.2 Contract Officer. The Contract Officer shall be such person as may be designated by the City Manager of City. It shall be the Contractor's responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the services and the Contractor shall refer any decisions which must be made by City to the Contract Officer. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Contract Officer. The Contract Officer shall have authority to sign all documents on behalf of the City required hereunder to carry out the terms of this Agreement.

4.3 Prohibition Against Subcontracting or Assignment. The experience, knowledge, capability and reputation of Contractor, its principals and employees were a substantial inducement for the City to enter into this Agreement. Therefore, Contractor shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of the City. In addition, neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of City. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty five percent (25%) of the present ownership and/or control of Contractor, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release the Contractor or any surety of Contractor of any liability hereunder without the express consent of City.

The City's policy is to encourage the awarding of subcontracts to persons or entities with offices located within the jurisdictional boundaries of the City of Palm Springs and, if none are available, to persons or entities with offices located in the Coachella Valley ("Local Subcontractors"). Contractor hereby agrees to use good faith efforts to award subcontracts to Local Subcontractors, if Local Subcontractors are qualified to perform the work required. In requesting for the City to consent to a subcontract with a person or entity that is not a Local Subcontractor, the Contractor shall submit evidence to the City that such good faith efforts have been made or that no Local Subcontractors are qualified to perform the work. Said good faith efforts may be evidenced by placing advertisements inviting proposals or by sending requests for proposals to selected Local Subcontractors. The City may consider Contractor's efforts in determining whether it will consent to a particular subcontractor. Contractor shall keep evidence of such good faith efforts and copies of all contracts and subcontracts hereunder for the period specified in Section 6.2.

4.4 Independent Contractor. Neither the City nor any of its employees shall have any control over the manner, mode or means by which Contractor, its agents or employees, perform the services required herein, except as otherwise set forth herein. City shall have no voice in the selection, discharge, supervision or control of Contractor's employees, servants, representatives or agents, or in fixing their number, compensation or hours of service. Contractor shall perform all services required herein as an independent contractor 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. Contractor 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. City shall not in any way or for any purpose become or be deemed to be a partner of Contractor in its business or otherwise or a joint venturer or a member of any joint enterprise with Contractor.

5.0 INSURANCE, INDEMNIFICATION AND BONDS.

5.1 Types of Insurance. Contractor shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, the insurance described herein for the duration of this Agreement, including any extension thereof, or as otherwise specified herein, against claims which may arise from or in connection with the performance of the Work hereunder by Contractor, its agents, representatives, or employees. In the event the City Manager determines that the Work or Services to be performed under this Agreement creates an increased or decreased risk of loss to the City, the Contractor agrees that the minimum limits of the insurance policies may be changed accordingly upon receipt of written notice from the City Manager or his designee. Contractor shall immediately substitute any insurer whose A.M. Best rating drops below the levels specified herein. Except as otherwise authorized below for professional liability (errors and omissions) insurance, all insurance provided pursuant to this Agreement shall be on an occurrence basis. The minimum amount of insurance required hereunder shall be as follows:

- a) **Commercial General Liability Insurance.** Contractor shall obtain and maintain, in full force and effect throughout the term of this Agreement, a policy of commercial general liability insurance written on a per occurrence basis with a combined single limit of at least one million dollars (\$1,000,000.00) and two million dollars (\$2,000,000.00) general aggregate for bodily injury and property damage including coverage's for contractual liability, personal injury, independent contractors, broad form property damage, products and completed operations.
- b) **Workers' Compensation Insurance.** Contractor shall obtain and maintain, in full force and effect throughout the term of this Agreement, workers' compensation insurance in at least the minimum statutory amounts, and in compliance with all other statutory requirements, as required by the State of California. Contractor agrees to waive and obtain endorsements from its workers' compensation insurer waiving subrogation rights under its workers' compensation insurance policy against the City and to require each of its subcontractors, if any, to do likewise under their workers' compensation insurance policies. If Contractor has no employees, Contractor shall complete the City's Request for Waiver of Workers' Compensation Insurance Requirement form.
- c) **Business Automobile Insurance.** Contractor shall obtain and maintain, in full force and effect throughout the term of this Agreement, a policy of business automobile liability insurance written on a per occurrence basis with a single limit liability in the amount of one million dollars (\$1,000,000.00) bodily injury and property damage. The policy shall include coverage for owned, non-owned, leased, and hired cars.
- d) **Employer Liability Insurance.** Contractor shall obtain and maintain, in full force and effect throughout the term of this Agreement, a policy of employer liability insurance written on a per occurrence basis with a policy limit of at least one million dollars (\$1,000,000.00) for bodily injury or disease.

5.2 Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City Manager prior to commencing any work or services under this agreement. Contractor guarantees payment of all deductibles and self-insured retentions. City reserves the right to reject deductibles or self-insured retentions in excess of \$10,000, and the City Manager may require evidence of pending claims

and claims history as well as evidence of Contractor's ability to pay claims for all deductible amounts and self-insured retentions proposed in excess of \$10,000.

5.3 Other Insurance Requirements. The following provisions shall apply to the insurance policies required of Contractor pursuant to this Agreement:

- 5.3.1 For any claims related to this Agreement, Contractor's coverage shall be primary insurance as respects City and its officers, council members, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the City and its officers, council members, officials, employees, agents, and volunteers shall be in excess of Contractor's insurance and shall not contribute with it.
- 5.3.2 Any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to City and its officers, council members, officials, employees, agents, and volunteers.
- 5.3.3 All insurance coverage and limits provided by Contractor and available or applicable to this Agreement are intended to apply to each insured, including additional insured's, against whom a claim is made or suit is brought to the full extent of the policies. Nothing contained in this Agreement or any other agreement relating to the City or its operations shall limit the application of such insurance coverage.
- 5.3.4 None of the insurance coverage's required herein will be in compliance with these requirements if they include any limiting endorsement which substantially impairs the coverage's set forth herein (e.g., elimination of contractual liability or reduction of discovery period), unless the endorsement has first been submitted to the City Manager and approved in writing.
- 5.3.5 Contractor agrees to require its insurer to modify insurance endorsements to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, or that any party will "endeavor" (as opposed to being required) to comply with the requirements of the endorsements. Certificates of insurance will not be accepted in lieu of required endorsements, and submittal of certificates without required endorsements may delay commencement of the Project. It is Contractor's obligation to ensure timely compliance with all insurance submittal requirements as provided herein.
- 5.3.6 Contractor agrees to ensure that subcontractors, and any other parties involved with the Project who are brought onto or involved in the Project by Contractor, provide the same minimum insurance coverage required of Contractor. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Contractor agrees that upon request, all agreements with subcontractors and others engaged in the Project will be submitted to the City for review.
- 5.3.7 Contractor acknowledges and agrees that any actual or alleged failure on the part of the City to inform Contractor of non-compliance with any insurance requirement in no way imposes any additional obligations on the City nor does it waive any rights hereunder in this or any other regard.

- 5.3.8 Contractor shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Proof that such coverage has been ordered shall be submitted prior to expiration. Endorsements as required in this Agreement applicable to the renewing or new coverage shall be provided to City no later than ten (10) days prior to expiration of the lapsing coverage.
- 5.3.9 Requirements of specific insurance coverage features or limits contained in this section are not intended as limitations on coverage, limits, or other requirements nor as a waiver of any coverage normally provided by any given policy. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue, and is not intended by any party or insured to be limiting or all-inclusive.
- 5.3.10 The requirements in this section supersede all other sections and provisions of this Agreement to the extent that any other section or provision conflicts with or impairs the provisions of this section.
- 5.3.11 Contractor agrees to provide immediate notice to City of any claim or loss against Contractor arising out of the Work performed under this Agreement and for any other claim or loss which may reduce the insurance available to pay claims arising out of this Agreement. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City, or to reduce or dilute insurance available for payment of potential claims.
- 5.3.12 Contractor agrees that the provisions of this section shall not be construed as limiting in any way the extent to which the Contractor may be held responsible for the payment of damages resulting from the Contractor's activities or the activities of any person or person for which the Contractor is otherwise responsible.

5.4 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 VII, or better, unless such requirements are waived in writing by the City Manager or his designee due to unique circumstances.

5.5 Verification of Coverage. Contractor shall furnish City with both certificates of insurance and endorsements, including additional insured endorsements, affecting all of the coverage's 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 Contractor'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 Contractor's obligation to provide them.

5.6 Performance Bond. Concurrently with execution of this Agreement, Contractor shall deliver to City a performance bond in the sum of the amount of this Agreement, in the form provided by the City, which secures the faithful performance of this Agreement, unless such requirement is waived by the Contract Officer. The bond shall contain the original, notarized signature of an authorized officer of the surety and affixed thereto shall be a certified and current copy of his power of attorney. The bond shall be unconditional and remain in force during the entire term of the Agreement and shall be null and void only if the Contractor promptly and faithfully performs all terms and conditions of this Agreement.

5.7 Sufficiency of Insurer or Surety. Insurance or bonds required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated "A" or better in the most recent edition of Best 's Key Rating Guide or in the Federal Register, unless such requirements are waived by the City Manager or designee of the City Manager due to unique circumstances. In the event the City Manager determines that the work or services to be performed under this Agreement create an increased or decreased risk of loss to the City, the Contractor agrees that the minimum limits of the insurance policies and the performance bond required by this Section 5 may be changed accordingly upon receipt of written notice from the City Manager or designee; provided that the Contractor shall have the right to appeal a determination of increased coverage by the City Manager to the City Council of City within ten (10) days of receipt of notice from the City Manager.

6.0 REPORTS AND RECORDS

6.1 Reports. Contractor shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the services required by this Agreement as the Contract Officer shall require. Contractor hereby acknowledges that the City is greatly concerned about the cost of work and services to be performed pursuant to this Agreement. For this reason, Contractor agrees that if Contractor becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the work or services contemplated herein or, if Contractor is providing design services, the cost

of the project being designed, Contractor shall promptly notify the Contract Officer of said fact, circumstance, technique or event and the estimated increased or decreased cost related thereto and, if Contractor is providing design services, the estimated increased or decreased cost estimate for the project being designed.

6.2 Records. Contractor shall keep, and require subcontractors to keep, such books and records as shall be necessary to 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 times during normal business hours of City, including the right to inspect, copy, audit and make records and transcripts from such records. Such records shall be maintained for a period of three (3) years following completion of the services hereunder, and the City shall have access to such records in the event any audit is required.

6.3 Ownership of Documents. All drawings, specifications, reports, records, documents and other materials prepared by Contractor, its employees, subcontractors and agents in the performance of this Agreement shall be the property of City and shall be delivered to City upon request of the Contract Officer or upon the termination of this Agreement, and Contractor shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership of the documents and materials hereunder. Any use of such completed documents for other projects and/or use of uncompleted documents without specific written authorization by the Contractor will be at the City's sole risk and without liability to Contractor, and the City shall indemnify the Contractor for all damages resulting therefrom. Contractor may retain copies of such documents for its own use. Contractor shall have an unrestricted right to use the concepts embodied therein. All subcontractors shall provide for assignment to City of any documents or materials prepared by them, and in the event Contractor fails to secure such assignment, Contractor shall indemnify City for all damages resulting therefrom.

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

7.0 ENFORCEMENT OF AGREEMENT

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

7.2 Disputes. In the event of any dispute arising under this Agreement, the injured party shall notify the injuring party in writing of its contentions by submitting a claim therefore. The injured party shall continue performing its obligations hereunder so long as the injuring party commences to cure such default within ten (10) days of service of such notice and completes the cure of such default within forty-five (45) days after service of the notice, or such longer period as may be permitted by the injured party; provided that if the default is an immediate danger to the health, safety and general welfare, such immediate action may be necessary. Compliance with the provisions of this Section shall be a condition precedent to termination of this Agreement for cause and to any legal action, and such compliance shall not be a waiver of any party's right to take legal action in the event that the dispute is not cured,

provided that nothing herein shall limit City's or the Contractor's right to terminate this Agreement without cause pursuant to Section 7.8.

7.3 Retention of Funds. Contractor hereby authorizes City to deduct from any amount payable to Contractor (whether or not arising out of this Agreement) (i) any amounts the payment of which may be in dispute hereunder or which are necessary to compensate City for any losses, costs, liabilities, or damages suffered by City, and (ii) all amounts for which City may be liable to third parties, by reason of Contractor's acts or omissions in performing or failing to perform Contractor's obligation under this Agreement. In the event that any claim is made by a third party, the amount or validity of which is disputed by Contractor, or any indebtedness shall exist which shall appear to be the basis for a claim of lien, City may withhold from any payment due, without liability for interest because of such withholding, an amount sufficient to cover such claim. The failure of City to exercise such right to deduct or to withhold shall not, however, affect the obligations of the Contractor to insure, indemnify, and protect City as elsewhere provided herein.

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

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

7.6 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 declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement.

7.7 Liquidated Damages. Since the determination of actual damages for any delay in performance of this Agreement would be extremely difficult or impractical to determine in the event of a breach of this Agreement, the Contractor and its sureties shall be liable for and shall pay to the City the sum of NONE (\$ 0) as liquidated damages for each working day of delay in the performance of any service required hereunder, as specified in the Schedule of Performance (Exhibit "D"). The City may withhold from any monies payable on account of services performed by the Contractor any accrued liquidated damages.

7.8 Termination Prior to Expiration Of Term. This Section shall govern any termination of this Agreement except as specifically provided in the following Section for termination for cause. The City reserves the right to terminate this Agreement at any time, with or without cause, upon thirty (30) days' written notice to Contractor, except that where termination is due to the fault of the Contractor, the period of notice may be such shorter time as may be determined by the Contract Officer. In addition, the Contractor reserves the right to terminate this Agreement at any time upon, with or without cause, upon sixty (60) days' written notice to City, except that where termination is due to the fault of the City, the period of notice may be such shorter time as the Contractor may determine. Upon receipt of any notice of termination, Contractor shall immediately cease all services hereunder except such as may be

specifically approved by the Contract Officer. Except where the Contractor has initiated termination, the Contractor shall be entitled to compensation for all services rendered prior to the effective date of the notice of termination and for any services authorized by the Contract Officer thereafter in accordance with the Schedule of Compensation or such as may be approved by the Contract Officer, except as provided in Section 7.3. In the event the Contractor has initiated termination, the Contractor shall be entitled to compensation only for the reasonable value of the work product actually produced hereunder. In the event of termination without cause pursuant to this Section, the terminating party need not provide the non-terminating party with the opportunity to cure pursuant to Section 7.2.

7.9 Termination for Default of Contractor. If termination is due to the failure of the Contractor to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 7.2, take over the work and prosecute the same to completion by contract or otherwise, and the Contractor shall be liable to the extent that the total cost for completion of the services required hereunder exceeds the compensation herein stipulated (provided that the City shall use reasonable efforts to mitigate such damages), and City may withhold any payments to the Contractor for the purpose of set-off or partial payment of the amounts owed the City as previously stated.

7.10 Attorneys' Fees. If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees. Attorney's fees shall include attorney's fees on any appeal, and in addition a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

8.0 CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION

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

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

8.3 Covenant Against Discrimination. Contractor covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry in the performance of this Agreement. Contractor shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, marital status, national origin, or ancestry.

9.0 MISCELLANEOUS PROVISIONS

9.1 Notice. Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail, in the case of the City, to the City Manager and to the attention of the Contract Officer, CITY OF PALM SPRINGS, P.O. Box 2743, Palm Springs, California 92263, and in the case of the Contractor, to the person at the address designated on the execution page of this Agreement. Either party may change its address 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 as provided in this Section.

9.2 Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

9.3 Integration; Amendment. It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties, and none shall be used to interpret this Agreement. This Agreement may be amended at any time by the mutual consent of the parties by an instrument in writing.

9.4 Severability. In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by a 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 are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.

9.5 Corporate Authority. The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound.

IN WITNESS WHEREOF, the City and the Contractor have caused this Agreement to be executed the day and year first above written.

ATTEST:
CITY OF PALM SPRINGS, CA.

CONTENTS APPROVED:

By _____
City Clerk

By _____
City Manager

Date: _____

Date: _____

By _____
City Engineer

Date: _____

APPROVED AS TO FORM:

APPROVED BY CITY COUNCIL:

By _____
City Attorney

Date: _____ Agreement No. _____

Date: _____

Corporations require two notarized signatures. One signature must be from Chairman of Board, President, or any Vice President. The second signature must be from the Secretary, Assistant Secretary, Treasurer, Assistant Treasurer, or Chief Financial Officer.

CONTRACTOR NAME:

Fritz Maxwell

Check one Individual Partnership Corporation

4775 PALM CANYON

Address

PALM SPRINGS CA. 92262

By Fritz Maxwell
Signature (Notarized)

By _____
Signature (Notarized)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Riverside }

On January 5, 2009 before me, Cynthia A. Berardi, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Fritz Delbert Maxwell
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 C. A. B.
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

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

Description of Attached Document

Title or Type of Document: Contract Services Agreement for Security Services

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

Individual

Corporate Officer — Title(s): _____

Partner — Limited General

Attorney in Fact

Trustee

Guardian or Conservator

Other: _____

Signer is Representing: _____



Signer's Name: _____

Individual

Corporate Officer — Title(s): _____

Partner — Limited General

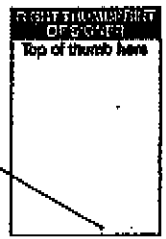
Attorney in Fact

Trustee

Guardian or Conservator

Other: _____

Signer is Representing: _____



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EXHIBIT "A"

SCOPE OF SERVICES

Security ("Contractor") shall provide an unarmed uniformed security officer, the vehicle, communications equipment for the officer, and all necessary supervision needed to patrol/monitor/report activities in the Palm Springs Train Station ("Facility") located at 6001 Palm Springs Station Road according to the post orders.

Security coverage will be provided on Wednesday, Friday, and Sunday based on the scheduled arrival time of the train per Amtrak Dispatch. Security coverage begins one hour prior to the train's scheduled arrival and ends 15 minutes after its departure from the Facility.

The Security Officer will patrol the Facility both in the vehicle and on foot to inspect all parts of the facilities for the purpose of detecting and preventing individuals or groups from committing acts that are illegal or injurious to others or to the property. In addition, the Security Officer will be responsible for unlocking and locking the restrooms, checking on the well-being of passengers and assisting any passenger requiring assistance.

The Security Officer will maintain a daily logbook, recording all instances that may be of interest to supervisors or the City's Contract Officer. The Security Officer will also report safety hazards, malfunctioning equipment and other such matters in the daily logbook. A copy of the daily logbook shall be sent to at the end of each shift to the City's Contract Officer or his designee.

The Security Officer shall complete a "Incidence Report" to be provided to the Contract Officer or his designee at the completion of the shift for any contact initiated by the Security Officer against unauthorized parties or involving customers who may be reporting violations or suspicious activities or who's conduct on City property may voluntarily or involuntarily warrant response from the Security Officer. The Incidence Report shall also be completed even when reported activity involves response by the Palm Springs Police Department to further document the circumstances and confirm that a Police Report is in the process of being made.

"Contractor shall provide ongoing security to monitor and report on activities related to Crucero bus services at the train station. The daily bus schedule is as follows, unless otherwise specified schedules are 7 days per week:

9:50AM	West Bound
11:00AM	East Bound
3:00PM	West Bound
3:30PM	East Bound
5:45PM	West Bound
8:45PM	West Bound
9:00PM	East Bound
1:55AM	East Bound

Contractor shall be on site at the train station during each scheduled and actual bus arrival/departure and ensure that bathrooms are unlocked and relocked. Contractor shall provide an unarmed uniformed security officer, the vehicle, communications equipment for the officer and all necessary supervision needed to patrol/monitor/report activities.

Security coverage will be provided for each scheduled and actual bus arrival and departure at the Facility as provided. Contractor understands that the term "actual bus arrival" does not mean the same as "scheduled bus arrival" and that scheduled bus arrivals and departures

frequently deviate from actual bus arrivals and departures. It is the Contractor's responsibility to contact Crucero Dispatch to ascertain the dates and times of actual bus arrival. The Security Officer will maintain a daily logbook, recording scheduled and actual arrival and departure dates and times, and all instances that may be of interest to supervisor's or the City's Contract Officer. The Security Officer shall complete an "Incidence Report" to be provided to the Contract Officer or his designee that includes all bus service incidences in the same manner as the train service under the existing agreement.

EXHIBIT "B"

SPECIAL REQUIREMENTS

Section 5.3 The requirements of Section 5.3 for a Performance Bond are hereby waived.

Section 7.7 The requirements of Section 7.7 for Liquidated Damages are hereby waived.

EXHIBIT "C"
SCHEDULE OF COMPENSATION

CITY OF PALM SPRINGS, CALIFORNIA
PROPOSAL SHEET
FOR
REQUEST FOR PROPOSAL, NO. 09-10

Proposer shall fully complete this Proposal Sheet and return it with their submittal. All proposal costs shall include respective itemized costs associated with all labor, equipment, materials, transportation, overhead, travel, profit, insurance, sales and other taxes, licenses, incidentals and all related costs necessary to provide Security Services for the City of Palm Springs Train Station. At any time, the City may require that these costs be itemized.

Additionally, Proposer shall include with their proposal, an itemized "Fee Schedule," in conjunction with this Proposal Sheet.

TOTAL NOT-TO-EXCEED FEE to provide Train Station Un-Armed Security Services for the City of Palm Springs as required by Request for Proposal number 09-10:

\$ 2905⁰⁰ (Per Month)

Twenty Nine Hundred Per Month
TOTAL NOT-TO-EXCEED FEE in words

Don Everett
Proposer's Signature

Don Everett
Printed Name

Operations Manager
Title

Maxwell Security Services
Company Name

01/03/2009
Date

Each proposal should be identified on the outside of the packet as "Un-Armed Security Services for the City of Palm Springs Train Station."

EXHIBIT "D"
SCHEDULE OF PERFORMANCE

Term:

The term of this contract is for three (3) years commencing February 1, 2009. The City reserves the right to extend this contract for two additional 1-year periods, subject to acceptable performance by the Proposer. At the end of any contract term, the City reserves the right to extend this contract for a period of up to sixty (60) days for the purpose of getting a new contract in place. The Contract will commence on the date of the Notice to Proceed. The City reserves the right to terminate this agreement by providing a written "Notice of Termination" to Contractor at least thirty (30) days prior to the date of termination specified in said Notice.

Schedule of Performance: (TRAIN)

Security coverage will be typically provided on Wednesday, Friday, and Sunday of each week based on the train schedule as provided by Amtrak. It is the contractor's responsibility to contact Amtrak Dispatch to ascertain the actual arrival of the train. For the purposes of this contract, security coverage begins one hour prior to the train's scheduled arrival and ends 15 minutes after its departure from the Facility. Contractor shall provide patrol services in conjunction with Amtrak's arrival schedule at the station.

Schedule of Performance: (BUS)

Services at the Palm Springs Train Station shall be provided seven days per week unless otherwise noted as follows:

9:50AM	West Bound
11:00AM	East Bound
3:00PM	West Bound
3:30PM	East Bound
5:45PM	West Bound
8:45PM	West Bound
9:00PM	East Bound
1:55AM	East Bound

Full Force and Effect. This modifying Amendment is supplemental to the Agreement and is by reference made part of said Agreement. All of the terms, conditions, and provisions, thereof, unless specifically modified herein, shall continue in full force and effect. In the event of any conflict or inconsistency between the provisions of this Amendment and any provisions of the Agreement, the provisions of this Amendment shall in all respects govern and control.

Corporate Authority. The persons executing this Amendment on behalf of the Parties hereto warrant that (1) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Amendment on behalf of said party, (iii) by so executing this Amendment, such party is formally bound to the provisions of this Amendment, and (iv) the entering into this Amendment does not violate any provision of any other agreement to which said party is bound.

01/05/09

	01/05/09	01/06/09	01/07/09	01/08/09	01/09/09	01/10/09	01/11/09
07:45-16:15	MON	TUE	WED	THU	FRI	SAT	SUN
Everett, D	Field	W/C	W/C	W/C	Field	OFF	OFF
Armstrong,H	W/C	Patrol	Patrol	Patrol	W/C	OFF	OFF
Wiswell, M	Patrol					Patrol	Patrol
Hayner,M						Patrol	
Joersz J							Patrol
15:45-00:15	MON	TUE	WED	THU	FRI	SAT	SUN
Sanchez, W	OFF	OFF	Patrol	Patrol	Patrol	Patrol	Patrol
Pina, J	Patrol	Patrol	Patrol	Patrol	OFF	OFF	OFF
Bunker, D	W/C	W/C	W/C	OFF	OFF	W/C	W/C
Magana, E	Patrol	OFF	OFF	Patrol	Patrol	Patrol	Patrol
Wiswell, M		Patrol			Patrol		
Magana, E	13:45/22:15						Therm
23:45-08:15	MON	TUE	WED	THU	FRI	SAT	SUN
Villegas, A	W/C	W/C	W/C	W/C	W/C		
Lucia, D	Patrol	Patrol			Patrol	Patrol	Patrol
Becerra, J			Patrol	Patrol	Patrol	Patrol	Patrol
Clerc, M	Patrol	Patrol	Patrol			Patrol	Patrol
Vang, K				Patrol			
12:00p-22:00p	Old Las Palmas						
	MON	TUE	WED	THU	FRI	SAT	SUN
Yan, S				Patrol	Patrol	Patrol	Patrol
Hayner, M	Patrol	Patrol	Patrol				
22:00p 08:00 a.m.							
Otto, T	Patrol	Patrol	Patrol	Patrol			
Foster, T					Patrol	Patrol	Patrol