



City Council Staff Report

Date: October 7, 2009 CONSENT CALENDAR

Subject: AWARD OF CONTRACT FOR THE PORT LAWRENCE TEMPORARY PARKING LOT IMPROVEMENTS, (CITY PROJECT 09-06)

From: David H. Ready, City Manager

Initiated by: Public Works and Engineering Department

SUMMARY

The Port Lawrence residential and commercial project located at North Palm Canyon Drive and Alejo Road has been delayed from starting construction. In an effort to make use of the currently vacant site, it is proposed that the site be used as a temporary parking lot to provide additional parking for downtown business, and to install berming and desert landscaping around the perimeter of the site. Award of this contract will allow staff to proceed with this public project.

RECOMMENDATION:

- 1) Approve Agreement No. _____, a License Agreement with Palm Springs, LLC, a Delaware limited liability company; and
- 2) Approve Agreement No. _____ in the amount of \$ _____ with _____, for the Port Lawrence Temporary Parking Lot Improvements, (City Project 09-06); and
- 3) Authorize the City Manager to execute all necessary documents.

STAFF ANALYSIS:

On October 4, 2006, the City Council approved a 118-unit condominium development with 25,000 square feet of commercial space on 4.1 acres located on the south side of Alejo Road between N. Palm Canyon Dr. and N. Indian Canyon Dr. (Case No. 5.1091, PD-324, Case No. 3.2933, Vesting TTM 34190). The site previously consisted of various commercial properties, which were acquired by the developer for the Port Lawrence project and subsequently demolished. The site is now vacant.

ITEM NO. 2.I.

After the City's approval of the Port Lawrence project, the national economy suffered its most dramatic decline since the Great Depression. The recession has essentially frozen financing for residential and commercial projects. This fact has prevented the Port Lawrence project from proceeding with construction as approved.

City staff has discussed with the developer a variety of alternative uses for the currently vacant site while the national economy recovers. Since the site is prominently located at the entrance to the Downtown Business District, the site has significant value and it is staff's recommendation that the vacant site be adapted for an alternative use in the interim until such time when the economy might support financing of a large-scale residential or commercial project at this site.

It has been proposed that a temporary parking lot be constructed on the site, with access from Palm Canyon Dr., providing an additional 48 parking spaces. The Public Works and Engineering Department has prepared plans and specifications for construction of this temporary parking lot, which will include construction of an earthen berm 3 feet high meandering around the entire perimeter of the site along the three street frontages, with desert landscaping.

It is proposed that the temporary parking lot be constructed using 6 inches of crushed miscellaneous base, compacted and sealed, much as the overflow parking lot for Demuth Park was constructed near the YMCA on Mesquite Avenue. Parking spaces would be undesignated (striped) similar to the Demuth Park overflow parking and other unpaved parking areas. The Alternative Bid Schedule allows for constructing the temporary parking lot with 2½ inches of asphalt paving on compacted subgrade.

On October 2, 2009, the City Council approved the plans, specifications, and working details, and authorized bidding of this project. On September 9 and 16, 2009, the project was advertised for bids, and at 2:00 P.M. on October 6, 2009, the Procurement and Contracting Manager received construction bids from the following contractors:

- 1.
- 2.
- 3.
- 4.
- 5.

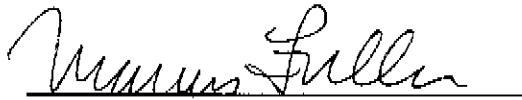
The Engineer's Estimate was \$150,000. The low bid was submitted by _____, a _____, and its principal officers are _____.

A License Agreement has been prepared by the City Attorney's office, which grants the City a license to enter upon and use the Port Lawrence property as proposed. Approval of the Agreement is necessary in order to construct this interim project.

FISCAL IMPACT:

Funding for this project has been established from unallocated general fund balance.

Submitted:



David J. Barakian
Director of Public Works/City Engineer



Thomas J. Wilson
Assistant City Manager



for David H. Ready
City Manager

Attachments:

1. Agreement
2. License Agreement (to be provided)

AGREEMENT

THIS AGREEMENT made this ____ day of _____, 200__, by and between the City of Palm Springs, a charter city, organized and existing in the County of Riverside, under and by virtue of the laws of the State of California, hereinafter designated as the City, and _____ hereinafter designated as the Contractor.

The Agency and the Contractor, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1 -- THE WORK

The Contractor shall complete the Work as specified or indicated under the Bid Schedule(s) of the City's Contract Documents entitled:

PORT LAWRENCE TEMPORARY PARKING LOT IMPROVEMENTS CITY PROJECT NO. 09-06

The Work generally consists of a temporary parking lot on vacant land located on the south side of Alejo Road between Palm Canyon Dr. and Indian Canyon Dr., including all necessary earthwork and grading, construction of earthen berm with irrigation and landscaping, and all appurtenant work.

ARTICLE 2 -- COMMENCEMENT AND COMPLETION

The Work to be performed under this Contract shall commence on the date specified in the Notice to Proceed by the City, and the Work shall be fully completed within the time specified in the Notice to Proceed.

The City and the Contractor recognize that time is of the essence of this Agreement, and that the City will suffer financial loss if the Work is not completed within the time specified in Article 2, herein, plus any extensions thereof allowed in accordance with applicable provisions of the Standard Specifications, as modified herein. They also recognize the delays, expense, and difficulties involved in proving in a legal proceeding the actual loss suffered by the City if the Work is not completed on time. Accordingly, instead of requiring any such proof, the City and the Contractor agree that as liquidated damages or delay (but not as a penalty), the Contractor shall pay the City the sum of **\$1,125** for each calendar day that expires after the time specified in Article 2, herein. In executing the Agreement, the Contractor acknowledges it has reviewed the provisions of the Standard Specifications, as modified herein, related to liquidated damages, and has made itself aware of the actual loss incurred by the City due to the inability to complete the Work within the time specified in the Notice to Proceed.

ARTICLE 3 -- CONTRACT PRICE

The City shall pay the Contractor for the completion of the Work, in accordance with the Contract Documents, in current funds the Contract Price(s) named in the Contractor's Bid and Bid Schedule(s).

ARTICLE 4 -- THE CONTRACT DOCUMENTS

The Contract Documents consist of the Notice Inviting Bids, Instructions to Bidders, the accepted Bid and Bid Schedule(s), List of Subcontractors, Non-collusion Affidavit, Bidder's General Information, Bid Security or Bid Bond, this Agreement, Worker's Compensation Certificate, Performance Bond, Payment Bond, Standard Specifications, Special Provisions, the Drawings, Addenda numbers _____ to _____, inclusive, and all Change Orders and Work Change Directives which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto.

ARTICLE 5 -- PAYMENT PROCEDURES

The Contractor shall submit Applications for Payment in accordance with the Standard Specifications as amended by the Special Provisions. Applications for Payment will be processed by the Engineer or the City as provided in the Contract Documents.

ARTICLE 6 -- NOTICES

Whenever any provision of the Contract Documents requires the giving of a written Notice, it shall be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the Notice.

ARTICLE 7 -- MISCELLANEOUS

Terms used in this Agreement which are defined in the Standard Specifications and the Special Provisions will have the meanings indicated in said Standard Specifications and the Special Provisions. No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically, but without limitation, monies that may become due and monies that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

The City and the Contractor each binds itself, its partners, successors, assigns, and legal representatives, to the other party hereto, its partners, successors, assigns, and legal representatives, in respect of all covenants, agreements, and obligations contained in the Contract Documents.

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,
CALIFORNIA

APPROVED BY THE CITY COUNCIL:

By _____
City Clerk

Date _____

Agreement No. _____

APPROVED AS TO FORM:

By _____
City Attorney

Date _____

CONTENTS APPROVED:

By _____
City Engineer

Date _____

By _____
City Manager

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: _____ Check one: Individual Partnership Corporation
Address: _____

By: _____
Signature (notarized)

By: _____
Signature (notarized)

Name: _____
Title: _____

Name: _____
Title: _____

(This Agreement must be signed in the above space by one of the following: Chairman of the Board, President or any Vice President)

This Agreement must be signed in the above space by one of the following: Secretary, Chief Financial Officer or any Assistant Treasurer)

State of _____
County of _____ ss

State of _____
County of _____ ss

On _____
before me, _____
personally appeared _____

On _____
before me, _____
personally appeared _____

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

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

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WITNESS my hand and official seal.

WITNESS my hand and official seal.

Notary Signature:

Notary Signature:

Notary Seal:

Notary Seal:

LICENSE AGREEMENT

Vesting Tentative Tract Map No. 34190

The "Rael" Project

This License Agreement (hereinafter referred to as "License") is made by and between the CITY OF PALM SPRINGS, a California Charter City (hereinafter referred to as "City"), and PALM SPRINGS, LLC, a Delaware limited liability company (hereinafter referred to as "Licensor")(hereinafter collectively referred to as "Parties").

RECITALS

A. Licensor is the owner of parcel of land generally located at the southeast corner of the intersection of North Indian Canyon Drive and East Alejo Road, City of Palm Springs, County of Riverside, California. The property is more specifically described on Exhibit "A" to this License (the "Property").

B. The Property is currently undeveloped subject to Vesting Tentative Tract Map No. 34190 ("VTTM") for condominium purposes and Licensor is currently operating a temporary mobile office structure on the Property which may remain in place.

C. City and Licensor desire to enter into this license agreement to preserve the interests of the parties, ensuring that each party assumes and performs their respective rights and obligations in the Property relative to the City's use of the Property.

AGREEMENT

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

Section 1. Grant of License. Licensor hereby grants to City a license to enter upon and use the Property for the limited purposes of ingress and egress, a public right-of-way for limited parking purposes not to exceed the amount of spaces designated on the Attached Site Plan marked Exhibit "B," sign posting, and the installation and maintenance of limited perimeter landscaping only, including but not limited to irrigation systems related thereto. There shall be no seating or improvements to the site for public gathering and none shall be permitted on the site without the express written approval of Licensor. The City will be responsible to indemnify Licensor against any complaints of dust or vagrants habituating the site. There shall be no access to the site from Indian Canyon Drive so as to strictly prevent the property becoming a by-pass route between Indian Canyon and Palm Canyon Roads.

Section 2. Term of License. This License shall remain in full force and effect until terminated by either of the Parties hereto as follows:

2.1 City shall have the right to terminate this License by providing thirty (30) days advance written notice to Licensor of such termination. City may terminate this License for convenience and without cause.

2.2 Licensor shall have the right to terminate this License at Licensor's sole and absolute discretion by providing thirty (30) days advance written notice to City or upon issuance of the initial Building Permit to Licensor related to the VTTM, whichever occurs first in time.

2.3 Upon termination of this License, the Property shall remain in an "as-is" condition with all improvements installed pursuant to this License in place. The removal of any improvements installed pursuant to this License and any and all costs related thereto shall be the sole responsibility of the City in the event such improvements are removed prior to termination of the License.

Section 3. Investigation and Condition of the Property. City acknowledges that it has access to the Property in an "as is" condition under this License, and that Licensor makes no representation or warranty concerning the physical, environmental, geotechnical, or other condition of the Property, and the suitability of the Property for the uses set forth in Section 1 hereinabove. City specifically acknowledges that no officer, employee, consultant, or agent of Licensor has made any representation or warranty of air, water rights, utilities, present and future zoning, soil, subsoil, existence of Hazardous Materials or similar substances, the purpose for which the Property is suited, or drainage. City further agrees that it shall be responsible for the condition of the Property it creates or causes while City is utilizing the Property.

All obligations of City under the terms of this License, including the installation and maintenance of any improvements on the Property, shall be at the sole cost and expense of the City.

Section 4. City's Obligations. In consideration of Licensor's agreement to allow entry into the Property, City agrees to maintain the Property in a good, clean, and safe condition and shall not use the Property in a manner that will unreasonably interfere with Licensor's rights in the Property.

Section 5. Release and Indemnification by City. City shall release, indemnify, defend, protect, and hold harmless Licensor and Licensor's officers, employees, consultants, and agents from and against any and all claims, demands, judgments, actions, damages, losses, penalties, liabilities, costs, and expenses (including, without limitation, attorney's fees and court costs) arising from or in connection with (i) the performance of any obligation by City under the terms of this License, (ii) City's use of the Property, or (iii) the conduct of City's business or any activity, work or things done, permitted or suffered by City in or about the Property, except to the extent caused by Licensor's sole negligence or willful misconduct. Notwithstanding any other provision of the License to the contrary, City shall not be liable for any damage, claim or injury for any reason whatsoever as relates to the temporary mobile office structure existing in and on the Property for Licensor's exclusive use.

Section 6. Insurance. Prior to the commencement of use of the Property, City will provide Licensor with proof of insurance, at City's sole cost and expense, to remain in full force and effect during the entire term of this License. The following policies of insurance shall be maintained:

6.1 Commercial General Liability. Commercial General Liability Insurance written on a per-occurrence and not a claims-made basis in an amount not less than One Million Dollars (\$1,000,000) combined single limit. In satisfaction of the City's obligations under this Section 6, City may at City's option self-insure all or a portion of the liability amount provided herein.

6.2 General Provisions. All of the foregoing policies of insurance shall name the Licensor as an additional insured and shall be primary insurance and any insurance maintained by Licensor shall be excess and non-contributing. Each of such policies of insurance shall name Licensor and its affiliated entities, and their respective officers, directors, agents, and employees. All policies of insurance required to be obtained by City hereunder shall be issued by insurance companies authorized to do business in California and must be rated no less than B+:1/11 or better in Best's Insurance Guide. Prior to engaging in any operations hereunder, City shall deliver to Licensor certificate of insurance evidencing the coverage specified above. Such policies shall not be cancelled or materially altered to the detriment of City or Licensor without the insurer providing Licensor with 30 days' written notice except that the insurer is only obligated to provide Licensor 10 days' written notice in the event City fails to pay any premium.

Section 7. License Not Assignable. This License shall become effective on the effective date and is personal to the City and is not assignable.

Section 8. Waste, Damage, or Destruction; Surrender of Property. The City shall not allow any waste, damage, or destruction to occur on the Property.

Section 9. Government Approvals; Compliance with Laws. City, at its sole cost and expense, shall obtain all permits and approvals required with respect to the use and related activities as set forth in this License.

Section 10. Governing Law. This License shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of California.

Section 11. Attorney's Fees. If either party to this License is required to initiate or defend or made a party to any action or proceeding in any way connected with this License, 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.

Section 12. Severability. If any paragraph, section, sentence, clause or phrase contained in this License shall become illegal, null or void, against public policy, or otherwise unenforceable, for any reason, or held by any court of competent jurisdiction to be illegal, null or void, against public policy, or otherwise unenforceable, the remaining paragraphs, sections, sentences, clauses or phrases contained in the License shall not be affected thereby.

Section 13. Waiver. The waiver of any breach of any provision hereunder by City or Licensor shall not be deemed to be a waiver of any preceding or subsequent breach hereunder. No failure or delay of any Party in the exercise of any right given hereunder shall constitute a waiver thereof nor shall any partial exercise of any right preclude further exercise thereof.

Section 14. Counterparts. This License may be signed in any number of counterparts, each of which will be deemed to be an original, but all of which together will constitute one instrument.

Section 15. Notice. Any notice required or permitted to be given hereunder shall be in writing and signed by the Party, officer or agent of the Party to whom it is to be sent, and shall be either: (a) personally delivered to the Party to whom it is to be sent, or (b) sent via overnight courier services, or (c) sent via certified or registered mail, return receipt requested, postage prepaid to the respective addresses, or such other addresses as the Parties may specify in writing:

To City: City of Palm Springs
3200 East Tahquitz Canyon Way
Palm Springs, California 92262
Attn: City Clerk

To Licensor: Palm Springs, LLC
2415 Campus Drive, Suite 140
Irvine, California 92612
Attn: Lawrence Rael

Section 16. Effective Date. The effective date of this License shall be October 7, 2009.

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, the Parties hereto have executed this License as of the Effective Date.

CITY OF PALM SPRINGS

PALM SPRINGS, LLC

By: _____
David H. Ready, Esq., PhD.
City Manager

By: _____
Lawrence Racl

By: _____

ATTEST:

James Thompson, City Clerk

APPROVED AS TO FORM:

Douglas Holland, City Attorney

EXHIBIT "A"

Legal Description

Lots 1, 2, 3, 4 and the Northerly 25 feet of the westerly 145.5 feet of Lot 5, Block 24, Map of Palm Springs, in the County of Riverside, State of California, as shown by map on file in Book 9, Page 432, of Maps, records of San Diego County*, California.

APNs: 513-081-002, 003, 004, 005, 006, and 023

*Legal Description from VTTM needs to be verified.

EXHIBIT "B":

See Attached Site Plan