



City Council Staff Report

Date: July 21, 2010

NEW BUSINESS

Subject: APPROVAL OF A PROFESSIONAL SERVICES AGREEMENT WITH CHEVRON ENERGY SOLUTIONS COMPANY, A DIVISION OF CHEVRON U.S.A., INC., FOR THE CITYWIDE ENERGY MANAGEMENT PROJECT, CITY PROJECT NO. 09-05

From: David H. Ready, City Manager

Initiated by: Public Works and Engineering Department

SUMMARY

On June 17, 2009, the City Council approved the release of a Request for Statements of Qualifications (SOQ #11-09), for Energy Management Services. In keeping with the City Council's endeavor to implement sustainability measures throughout the City, the City's SOQ solicited qualifications from firms that specialize in analyzing the energy efficiency of buildings and equipment, and to determine a range of solutions to implement that result in energy cost savings which may be used to offset the capital expense of implementing those energy efficiency measures.

Following a competitive, technical two-part qualification process, Chevron Energy Solutions ("CES"), a subsidiary of Chevron USA, Inc., was selected as the most qualified Energy Services Company ("ESCO") for this project.

RECOMMENDATION:

1. Approve Agreement No. _____ with Chevron Energy Solutions, a division of Chevron USA, Inc., for energy management services for the Citywide Energy Management Project (City Project 09-05); and
2. Provide direction on the use of energy savings (maximization of general fund savings versus maximization of energy efficiency measures paid for with energy efficiency savings); and
3. Provide direction on the use of solar photo-voltaic power at the Airport and City Hall parking lots as one available option to generate additional power to meet demand.

ITEM NO. 5.B.

STAFF ANALYSIS:

Background

The City of Palm Springs owns, operates, and maintains a variety of facilities throughout the City, ranging from fire stations, libraries, a Convention Center, a police station, an airport, recreation facilities, as well as two co-generation power plants. The cost to operate and maintain all of these various facilities is a substantial burden to the City's General Fund.

The 2010/2011 fiscal year budget set aside significant General Fund revenue for operation and maintenance of the City's various facilities. Departments budget a "Facilities Maintenance Service" fee, which is used to offset operation and maintenance expenses for the City. In the 2010/2011 fiscal year, the City budgeted approximately \$3,500,000 for Facilities Maintenance Service fees to offset its operation and maintenance expenses for the year, which covers building maintenance and repairs, co-generation plant special parts and repairs, and utilities (water, gas and electricity).

The 2010/2011 fiscal year budgeted \$480,000 for electricity, and \$1,470,000 for natural gas for the City's two co-generation plants. Of the \$1,470,000 budgeted for natural gas, \$1,015,000 is budgeted for the Municipal co-generation plant, and \$455,000 is budgeted for the Sunrise co-generation plant.

To address the City's high energy costs, staff previously prepared a Request for Statements of Qualifications (SOQ) which states the following purpose:

The City of Palm Springs is requesting statements of qualifications (SOQ's) from qualified energy services companies ("ESCOs") to provide the city with Energy Management Services to provide a Comprehensive Energy Audit (CEA) to develop a set of programs that will be combined as a performance-based single energy project with the intended purpose to save energy, reduce greenhouse gas emissions and cut the City's energy and maintenance and capital equipment expenditures throughout all of the City's facilities, including two co-generation plants.

The selected ESCO will perform an audit of all of the City's facilities to ensure appropriate HVAC (heating, ventilation and air conditioning) measures are identified (such as upgrading thermostats, installing programmable lighting sensors, etc.), with more important attention given to the co-generation plants to identify cost-effective solutions to improving their performance while decreasing their operating and maintenance costs. Although the purpose of the SOQ was to find the most qualified firm to provide energy management services City-wide, the focus of the ESCO's attention will be given to evaluating the City's co-generation plants, to make them more energy efficient, given they satisfy a majority of the City's energy demands.

Consultant Selection Process

On June 17, 2009, the City Council approved of the release of the SOQ, and authorized the City Manager to appoint an Evaluation Committee to review and recommend the most qualified ESCO responding to the City's solicitation. The Evaluation Committee appointed by the City Manager consisted of:

Jan Anderson, Facilities Maintenance Manager
David Barakian, Director of Public Works/City Engineer
Marcus Fuller, Asst. Dir. of Public Works/Asst. City Engineer
Wil Kleindienst, Architectural Advisory Committee Member
Michele Mician, Manager of Sustainability
Mark Nichols, Sustainability Commissioner
Doug Wylie, Sustainability Commissioner

Although the SOQ was advertised locally in *The Desert Sun*, staff researched listings of ESCOs registered in the state, as well as national registrations, and made efforts to outreach to all recognized ESCOs that could be found. Due to the highly technical nature of this project, with its focus on co-generation technology, staff did not expect or anticipate that small local vendors would respond to the SOQ. However, a local preference criterion was included in the SOQ to give a primary firm an advantage for including local firms as part of their team.

The firms initially responding to the City's SOQ were:

- Ameresco; Upland, CA
- Chevron Energy Solutions; Pasadena, CA
- FPT Group; San Diego, CA
- JCI – Building Efficiency; Milwaukee, WI
- SIEMENS Building Technologies; Cypress, CA
- Veolia Energy; Diamond Bar, CA

The Evaluation Committee reviewed the documents submitted by the 6 firms, and independently evaluated the firms based on the criteria included in the SOQ. The Evaluation Committee met and discussed the qualifications of the firms, and ultimately determined that 5 of the 6 firms warranted further evaluation (FPT Group was disqualified pursuant to the criteria established in the SOQ).

As the solicitation requests services that are highly technical in nature, staff prepared a second step to the evaluation process, where firms were required to respond to a technical exercise to provide the City with an example of the nature, quality and extent of their technical services. Firms were required to prepare a technical memorandum discussing opportunities to address the energy challenges represented by the City's two co-generation plants, as well as water supply demands at Sunrise Park. Instructions

and parameters of the second phase of the solicitation process were provided to the firms.

Four of the five firms that passed the initial evaluation process agreed to proceed to the second step of the evaluation process (Veolia Energy elected not to continue with the solicitation process). The final four firms participating were:

- Ameresco; Upland, CA
- Chevron Energy Solutions; Pasadena, CA
- JCI – Building Efficiency; Milwaukee, WI
- SIEMENS Building Technologies; Cypress, CA

The required technical memoranda were submitted to the City by the March 29, 2010, deadline, and on April 29, 2010, final interviews were conducted with each of the four firms. The Evaluation Committee, after reviewing the technical memoranda and conducting the formal interviews, by a near-unanimous decision, selected Chevron Energy Solutions as the most highly qualified firm for this project.

Why Chevron?

One of the first issues the Evaluation Committee addressed in selecting Chevron Energy Solutions ("CES") is the potentially negative association of Chevron USA (its parent company) with the environment, and how or why CES may be the best firm to address energy efficiency issues for Palm Springs in its efforts to become more sustainable and energy independent. On this issue, CES was best prepared, and offers the following facts for the City's consideration:

- Largest California – based ESCO
- Chevron owns, operates and maintains over 3,100 MW of co-generation plants
- Largest solar provider in California's public sector (over 30 MW installed)
- Fortune 3 company with over 130 years in California backing performance guarantees
- 98.7% success rate in achieving energy management project savings in a current portfolio of \$430 million in performance guarantees
- Successful placement of over \$1.250 billion in combined project financing for customer performance contracts
- Provides unbiased recommendations – vendor neutral
- Has corporate commitment to Palm Springs' Path to Sustainability

First and foremost, Chevron is an energy company. As a company that uses California's natural resources to produce energy, Chevron bears a special responsibility for California's environment. Their corporate environmental vision and the City's environmental vision are aligned.

Chevron is committed to energy efficiency and conservation, actions that Chevron makes every day. To raise public awareness of the impact even small steps can contribute, Chevron launched the "I will" campaign; a public outreach campaign to highlight awareness for energy efficiency. For more information, visit their website: www.willyoujoinus.com

CES partners with businesses and institutions to help lower their overall energy costs in ways that improve their financial performance. Through energy efficiency, energy management and power system solutions, CES helps customers use less energy, pay less for energy, and ensure reliable, high-quality power for critical operations.

CES also provides the energy efficiency best practices and technical expertise to its parent company, Chevron, at facilities around the world. Because energy costs are Chevron's third largest expense, CES is focused on saving energy, saving the environment and saving money, all from an owner's perspective. On an annual basis, CES saves Chevron nearly \$100 Million by implementing energy efficient operations at Chevron's facilities.

The Evaluation Committee was impressed with CES's commitment to energy efficiency, its extensive experience in the public sector on performance based and financially guaranteed energy management projects, and by a near-unanimous decision, the Committee determined CES to be the most qualified firm to provide the City with the required services.

Palm Springs' Journey into Power Generation A History of the Co-Generation Plants

In May 1985, the City of Palm Springs began to supply its energy needs through the use of two co-generation plants. The larger of the two plants (the "Municipal" co-generation plant) generates electricity, heating and air conditioning for the City's Municipal Complex: a group of government buildings consisting of the City Hall, Police Station, Fire Station No. 2, Airport and Riverside County administration buildings. The smaller of the two plants (the "Sunrise" co-generation plant) generates electricity, heating and air conditioning for the Sunrise Plaza, the City's recreational center consisting of the library, entertainment pavilion, administrative offices and community swimming pool.

Spiraling utility costs forced the City to examine alternative energy sources. Although the City instituted strict energy conservation measures in 1980, the City was paying \$1.3 Million in energy costs in 1984, double what was paid in 1978. At the time, many alternative sources of energy were studied: methane recovery, hydro power, geothermal energy, wind resources, solar energy, and co-generation. Of all of these alternative sources of energy studied, the co-generation process was determined to be the best process for the City.

Co-generation is the sequential production of two energy forms, usually steam and electricity, from a single fuel source. In our case, natural gas is used as fuel to run reciprocating engines that turn generators to create electricity. Waste heat (heat created by a running engine) that would normally escape into the air, is recovered from the engines and passed through an absorption chiller to provide cold water for air conditioning. Alternatively, in the winter, waste heat is used to heat water for space heating and hot water needs. Co-generation proved to be the most appropriate alternative energy solution for Palm Springs due to the City's tremendous cooling requirements in the summer.

Facility Facts, Municipal Co-Generation Plant:

- Two 650 kW engine/generator sets
- 360 tons of absorption chilling capacity
- 400,000 gallon thermal energy storage (TES) tank
- 3 miles of underground electrical and thermal distribution lines

Facility Facts, Sunrise Co-Generation Plant:

- One 650 kW engine/generator set
- 130 tons of absorption chilling capacity
- 137,000 gallon thermal energy storage (TES) tank
- 1 mile of underground electrical and thermal distribution lines

The two co-generation plants initially cost \$6,292,691 (including planning, engineering, legal fees, etc.). This cost was financed through the City's sale of Certificates of Participation from the City's Public Facilities Corporation, in the amount of \$11,820,000 on April 1, 1984. This bond sale also included \$2.5 Million for construction of the new police station.¹

At the time the co-generation plants were constructed, they were intended to accommodate 100% of the City's energy needs at the Municipal complex and Sunrise recreation area. (All other City facilities not connected to the co-generation plants remain dependent on SCE for electricity). The City expected to use only 50%-55% of the electricity generated by the co-generation plants, with excess sold to SCE, anticipating that the co-generation plants would generate \$16 Million in excess electricity sales to SCE over 20 years following construction.

For the Sunrise co-generation plant, the City realizes the sale of excess electricity generated year-round. The electrical load on the Sunrise co-generation plant is slightly

¹ The original bonds were scheduled to mature in 2006, but in 1996 the outstanding debt on these bonds was consolidated with other debt being carried on several facilities, extending the maturity date for the bonds to 2026.

less than half its capacity (300 kWh² of the 650 kWh generated). From July 1, 2007, to June 30, 2008, the City realized \$137,243.14 in electricity sales to SCE from the Sunrise co-generation plant.

For the Municipal co-generation plant, the story is somewhat different. Following the City's expansion of the Airport, the total energy demand on the Municipal co-generation plant significantly increased; (expansion of the Airport was not considered in the original design of the Municipal co-generation plant). The energy demand has increased so much so, that, in the summer months the co-generation plant is unable to generate electricity to meet our energy demands. Whereas the two 650 kW engine/generator sets are capable of generating 1,300 kW of electricity, in the summer the total electrical load is 300 to 400 kW more than the 1,300 kW that can be produced.

This fact requires the City to purchase additional electricity from SCE. The 2010/2011 fiscal year budget allocates over \$1,200,000 for electricity from SCE. Of this total, \$400,000 is budgeted for additional electricity for the Municipal co-generation plant (due to the inability of the plant to meet the electrical load demand imposed by the Airport); \$80,000 is budgeted for electricity for the Sunrise co-generation plant (to allow the plant to go off-line for annual maintenance); \$220,000 is budgeted for electricity for traffic signals and street lighting; and the balance is budgeted for electricity at various facilities throughout the City.

Why not abandon the co-gen plants?

The City's investment in the co-generation technology is significant, and staff does not recommend that the City consider abandoning the co-generation plants (particularly considering the fact that the City continues to carry outstanding debt on its initial construction). Furthermore, to abandon the City's generation of power would require significant investment (in excess of several million dollars) to install SCE owned infrastructure to connect all of the municipal facilities to the SCE grid, as SCE would not likely consider the City's electrical distribution grid equal to theirs.

The co-generation plants have tremendous value to the City, and although the Municipal Co-Generation Plant can not currently meet the City's total energy demand (particularly due to the Airport), measures can be taken to improve the efficiency of the plant, to increase its power output, and to eliminate the need to purchase excess electrical power from SCE.

How to address the Municipal Co-Generation Plant's inability to meet the City's total energy demand was one of the specific issues CES was required to address as part of

² The unit "kWh" refers to the amount of power, expressed in terms of 1,000 watts (i.e. kilowatts), generated in one hour. Therefore, a 650 kWh engine can generate 650,000 watts of power in one hour.

the second phase of the solicitation process. In CES's technical memorandum, CES estimated that \$430,000 may be saved annually through a combination of energy efficiency and conservation measures (new lighting controls, energy efficient lights, new efficient HVAC equipment, energy management system, etc.), and making improvements to the co-generation plant. Specifically, CES's initial recommendations are to replace the existing 650 kWh engines with "lean-burn" engines, or lean combustion reciprocating engines that meet much more strict air quality control requirements. CES estimates that lean-burn engines will produce 25% more power than the existing 650 kWh engines with the same amount of fuel consumption.

Another component to CES's initial strategy to address the City's challenges at the Municipal Co-Generation Plant is to increase the size of the existing Thermal Energy Storage (TES)³. Generally, the 400 kW of excess power demand from the Airport is due to the large air conditioning load at the Airport during the summer. By doubling the size of the TES, an additional 700 tons of cooling for four hours a day would help satisfy the shortfall in cooling at the Airport while eliminate the peak load shortfall of 400 kW.

Staff expects CES will be able to assemble a successful energy management project that, with certain mechanical changes to the Municipal Co-Generation Plant, will enable the City to once again meet the energy demand placed upon it by the municipal facilities that rely on it for energy.

Solar Power

One available component of a successful energy management project is photovoltaic power self-generation. It has already been demonstrated that the Municipal Co-Generation Plant's engines do not produce sufficient power to meet peak demand; however, installing new engines to meet the peak demand may not be the most cost effective, or sustainable option. There are opportunities in and around the City Hall and Airport (particularly the parking lots) where solar shade systems and solar roof-mounted systems could be considered as a means to supplement power generated by new engines in the Municipal Co-Generation Plant. CES's initial recommendation indicated in their technical memorandum included self-generation of 750 kW of solar power. CES estimates that, with 750 kW of solar power combined with new lean-burn engines at the Municipal Co-Generation Plant, the City can reduce its natural gas consumption by 45% (a savings of approximately \$450,000), and also eliminate the need to purchase excess electricity from SCE (estimated at \$400,000 this fiscal year).

A critical decision for City Council to consider is the installation of solar power facilities in and around City Hall and the Airport. The best opportunity for solar power facilities is

³ A Thermal Energy Storage (TES) system is a giant underground cold water storage tank; when buildings need cold water for air conditioning, it is taken from the storage tank and circulated through the buildings for cooling, then returned to the storage tank where it is continuously chilled by the absorption chillers within the co-generation plant.

installation on raised steel shade systems (i.e. shade structures) within the City Hall and Airport parking lots. This system provides "free" shade to parked cars, and could provide additional revenue for the Airport for increased fees for covered parking. However, given the historic designation of the City Hall and Airport, further consideration of installing solar power facilities at parking lots around these facilities will only be pursued if the City Council provides staff with general direction on limitations where these structures should or should not be placed.

CES has prepared visual simulations of solar panels with covered parking shade structures that may be installed in and around the City Hall and Airport, seen below:

Photo Simulation 1 (Airport Short-Term Parking Lot)

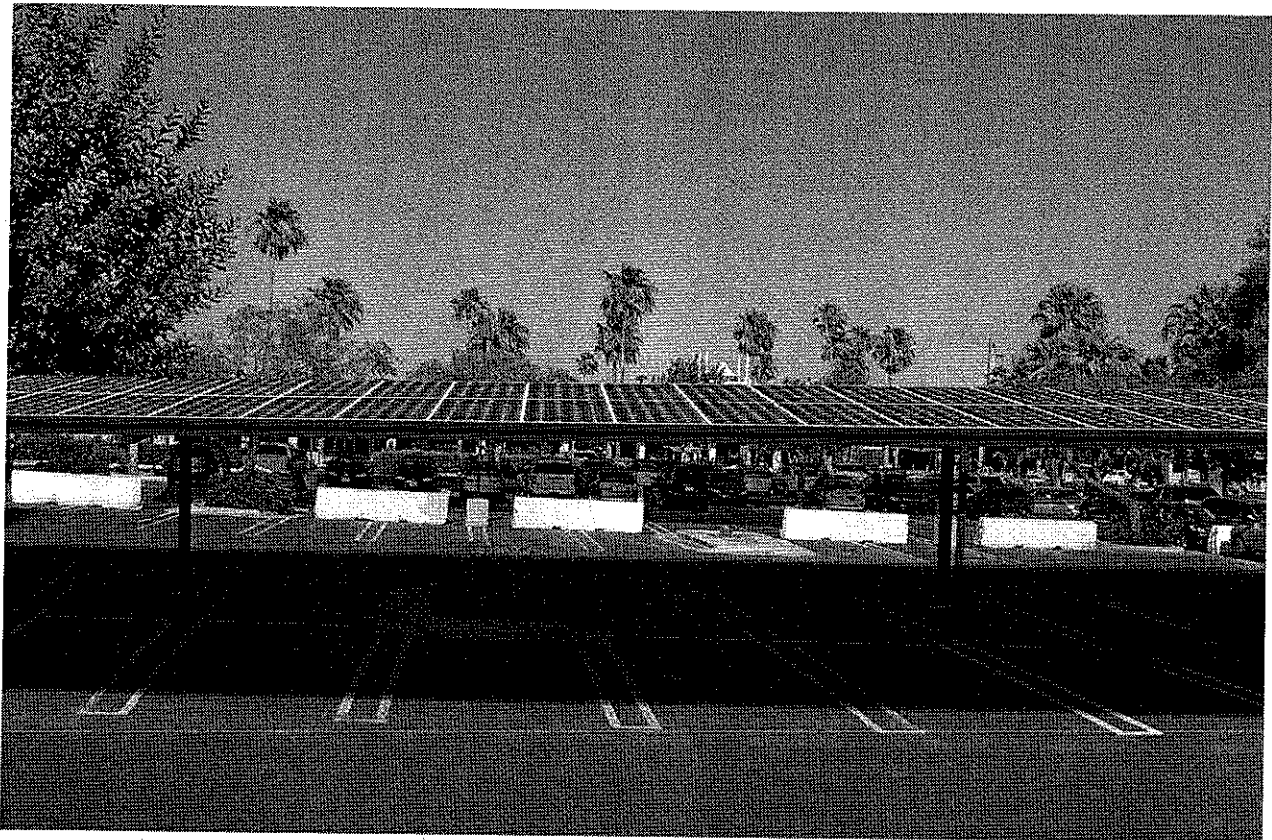
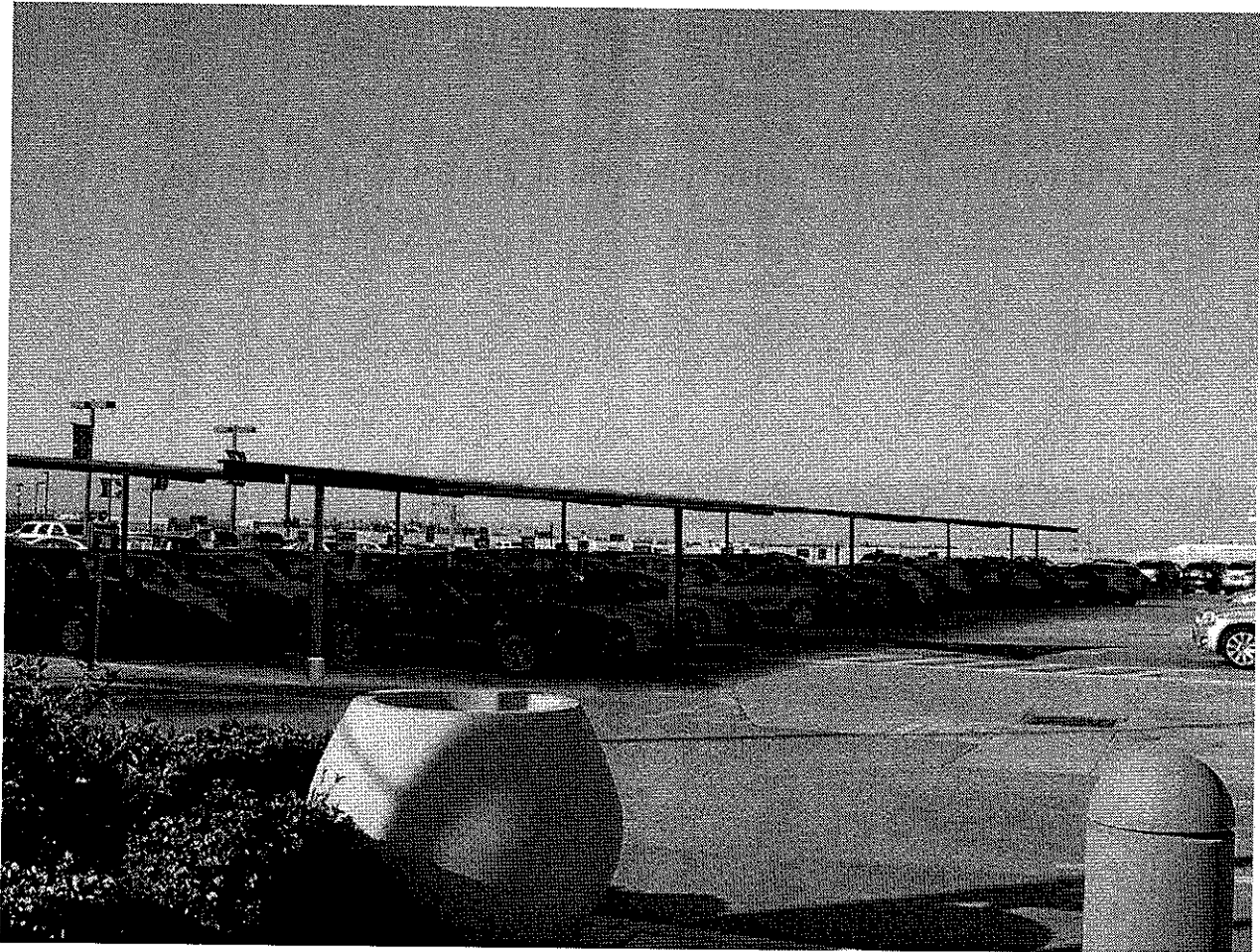


Photo Simulation 2 (Airport Rental Car Parking Lot)



It is also recommended that CES include analysis of solar power generating facilities at the City's wastewater treatment plant. The 2010/2011 fiscal year budget for the Wastewater Fund budgeted \$210,000 for electricity to operate pumps and equipment at the treatment plant. Installation of solar panels in available open space within the wastewater treatment plant may prove to be more cost-effective at generating electrical power than the using methane (bio-gas) naturally produced as a bi-product of the wastewater treatment process.

Ultimately, the final recommendation to include or exclude solar power from the menu of options to include in the energy management project will be based on the overall cost-effectiveness of the entire project.

How will the City pay for this?

The state of California enacted special legislation in Government Code 4217.10 – 4217.18 in 1984, as a result of an energy crisis, as a way to assist local agencies in

expediting and financing energy conservation measures. This statutory procedure eliminates the necessity to separately contract for the design and construction phases of a project, as well as eliminates the public bidding process.

This project will use this legislation to the City's fullest advantage. The legislation encourages public agencies to develop energy conservation, cogeneration and alternative energy supply sources at public facilities in order to implement the policy of the State of California as set forth in Public Resources Code 25008, which states its intent:

"...to promote all feasible means of energy and water conservation and all feasible uses of alternative energy and water supply sources."

The legislation further states:

"The provisions of this chapter shall be construed to provide the greatest possible flexibility to public agencies in structuring agreements entered into hereunder so that economic benefits may be maximized and financing and other costs associated with the design and construction of alternative energy projects may be minimized. To this end, public agencies and the entities with whom they contract under this chapter should have great latitude in characterizing components of energy conservation facilities as personal or real property and in granting security interests in leasehold interests and components of the alternative energy facilities to project lenders."

What this legislation does is allows the City to sole-source an energy conservation project to an individual firm, provided the energy conservation project has the following results:

- (1) The anticipated cost to the public agency for thermal or electrical energy or conservation services provided by the energy conservation facility under the contract will be less than the anticipated marginal cost to the public agency of thermal, electrical, or other energy that would have been consumed by the public agency in the absence of those purchases; and
- (2) The difference, if any, between the fair rental value for the real property subject to the facility ground lease and the agreed rent, is anticipated to be offset by below-market energy purchases or other benefits provided under the energy service contract.

Many local agencies have used this legislation to implement energy conservation measures at their facilities that otherwise would not be implemented due to fiscal constraints. With the implementation of energy efficiencies, various local agencies have seen reductions in their energy use and costs, and have been able to replace old equipment that has had high operational and maintenance costs. The up front capital costs normally necessary for construction and implementation of energy conservation

projects is financed and offset by the corresponding energy efficiency and conservation savings that result from the project.

Therefore, there will be no out-of-pocket expense for the City to pursue design and construction of the energy management project, which will be financially guaranteed by CES through a performance based contract based on the final energy management project selected by the City that results in energy efficiency savings City wide.

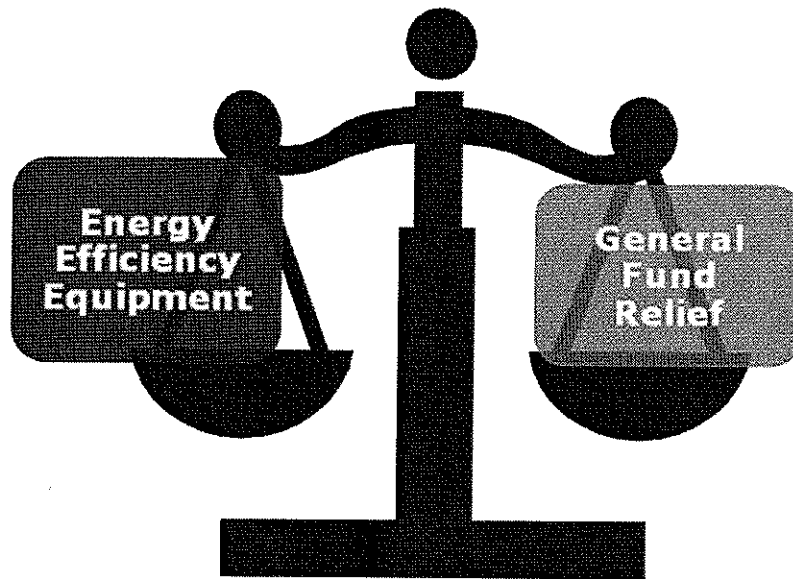
General Fund Savings vs. Energy Efficiency Measures

A critical issue to consider is what the City Council's expectation is for the results or outcome of an energy management project ultimately developed by CES in consultation with staff. Given the City's current economic crisis and on-going budget deficits, staff understands the need to find General Fund savings wherever possible. Thus, this energy management project is vital to ensuring the City is spending its money wisely. Currently, given the inability of the City's Municipal Co-Generation Plant to meet peak power demand, and the outdated HVAC and lighting equipment throughout facilities City-wide, the City is spending money to produce power while spending even more money to buy power. Measures can be implemented to eliminate this practice and to make the City much more efficient in its use of resources, its generation of power, and reduce its overall dependence on electricity and natural gas.

Because the energy management project is self-funded by the energy efficiency and conservation measures implemented, the overall scope and cost of the project is dictated on exactly how much savings is estimated and how those savings are used.

In simpler terms, the City can choose to use all of its energy savings to pay for construction of energy efficiency and conservation measures City-wide, where the City ultimately pays nothing for the benefit of reducing its overall energy use and being much more efficient and sustainable in its practices than it is today. Or, the City can choose to use only as much of its energy savings to implement those energy efficiency and conservation measures determined to be most cost-effective (such as improving the efficiency of the Municipal Co-Generation Plant), while reserving the remaining savings to be used at the City's discretion as pure General Fund realized savings.

The following graphic demonstrates the choice to be made:



CES will be tasked with developing a cost-effective, self-funded energy management project, where all of the costs for design and construction are financed through annual energy savings realized by those measures. The question is: does the City Council want the most energy efficiency measures implemented resulting in less realized General Fund savings for discretionary use, or a project limited to only those energy efficiency measures deemed critical resulting in more realized General Fund savings for discretionary use?

For the most part, there will be certain mechanical and equipment costs which will be necessary (new HVAC equipment, lighting systems, energy management systems, etc.). The most expensive component of the energy management project will likely be related to the new engines for the co-generation plants, and expansion of the Thermal Energy Storage (TES) systems which will provide the greatest energy efficiencies available to the City. The question on this matter, of "it would be nice to have" vs. "we must have" is particularly related to installation of solar power facilities in and around the City Hall and Airport parking lots. Installing solar power on flat-roofs is common, but can lead to complications especially given older roofs prone to leaking, or roof tops that have miscellaneous equipment that can not be removed or relocated without great expense. The easiest method to install solar power facilities in our case would be by constructing shade structures in parking lots, and it is the cost of the shade structures (and related parking lot improvements) that add to the overall cost of the solar power generation system which ultimately must be paid for by the energy savings resulting from the system. It is the capital costs of the shade structures and parking lot improvements related to the solar power generating facilities that would ultimately reduce the overall General Fund savings that might otherwise be available in the absence of any solar power facilities.

CES can provide a range of opportunities, with a variety of solar power generating sizes, in the menu of items to include in the final energy management project. If the City Council ultimately determines that solar power should be a critical element of the overall energy management project, it will be important to choose a system of appropriate size where it is cost effective to construct the system and it generates sufficient power, as opposed to merely constructing a very small system as a token effort to include solar power in the project at a high cost with relatively little solar power generated from it.

What happens from here?

This project will consist of two phases. The first phase of the project begins with the City Council's approval of the agreement with CES. CES will begin to perform full audits of all City facilities to determine power use and demand, facility use, inventory existing HVAC and lighting equipment, and evaluate measures to implement that will reduce energy costs and improve energy efficiency. CES will work collaboratively with City staff to identify appropriate measures to include or exclude, and will identify the most cost-effective measures to implement that result in the shortest pay-back for the City. The result of the first phase will be a proposal for a "Design-Build" project, where CES, acting as the general contractor, assembles a construction project for a fixed-fee on a performance based contract, funded solely from energy savings resulting from the project.

The second phase of this project will begin with the City Council's review and approval of a performance based contract, which if approved, would implement and construct all of the energy efficiency measures recommended by CES in consultation with the City.

What does this cost?

There is no fee associated with the proposed agreement with CES, with the expectation that CES will identify an energy management project that is cost-effective, reflects the scope of work requested by the City, results in significant energy savings which in turn pay for the performance based contract to implement and install the energy efficiency measures. However, in the event CES identifies an energy management project that can be self-funded through energy savings, and the City Council determines not to proceed with the project, the City would be liable for the fixed design fee of \$250,000.

A performance based contract is an agreement between CES and the City, under which CES develops and implements facility improvements at no up-front cost to the City. CES assures the City a minimum level of energy savings from energy efficiency measures and helps the City secure financing based on that assurance. Over the contract period the savings from reduced utility bills are used to pay back the capital investment in the equipment, installation, and related financing fees. No City funding is required up front – all project performance and savings risks are shifted to CES, with excess savings to be used at the City's discretion. CES's financial guarantees assures

the City that if energy savings to finance the project are not realized, CES will pay the City the difference, and will take steps to modify or otherwise improve the project (at their cost) to realize the savings they had estimated would be achieved.

Is this the right time to do this?

CES is a highly qualified ESCO providing energy management services to public agencies throughout California, with special expertise on co-generation technology. CES's initial investigation based on the technical exercise performed during the evaluation process revealed that the City's energy management project might be one of the most energy efficient projects CES has developed.

CES's preliminary assessment is that the City's project may result in up to a **38% reduction in overall energy use**, equivalent to the following significant environmental benefits:

CO₂ Reduction = 6,193 metric tons
Cars Offset Annually = 1,184
Homes Powered Annually = 752
Acres of Trees Saved = 1,321

Every day the City does not implement energy efficiency measures is a day that the City spends excess funds for energy resources that are not required. It is staff's recommendation that the City Council approve the agreement with CES to allow staff to coordinate on the development of the most cost-effective energy management project that can realize the goal of up to a 38% reduction in overall energy use, and ultimately help the City realize the environmental benefits and General Fund savings that would result.

FISCAL IMPACT:

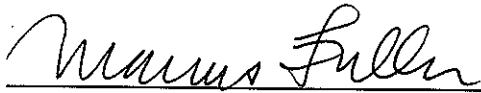
There is a project development fee of \$250,000 for this project. However, CES assumes the risk of developing a cost-effective energy management project that is self-funded by the energy savings resulting from its implementation. If CES cannot develop a paid-for project, no matter how much effort undertaken by CES, there is no cost to the City and the project development fee is waived. However, if CES develops a paid-for project for the City, the project development fee is included as part of the overall cost of the energy management project implemented through the performance based contract paid for by the energy savings. In the event CES develops a paid-for project and the City determines not to implement the project, the City would be liable to pay CES its project development fee at that time.

Given the results of CES's preliminary assessment, it is anticipated that an energy management project resulting in significant energy savings will be developed, and as such, the project development fee of \$250,000 will be absorbed as part of the energy

management project's overall cost paid for by those savings. Therefore, on the basis that the City Council will remain committed to the policies set forth in the *Palm Springs Path to Sustainability*, and will support implementation of a performance based contract to construct the energy management project, there will be no "up front" cost to the City for the services provided by CES, as they will be offset by energy savings.

SUBMITTED:

Prepared by:



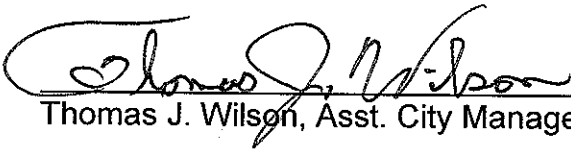
Marcus L. Fuller
Assistant Director of Public Works

Recommended by:

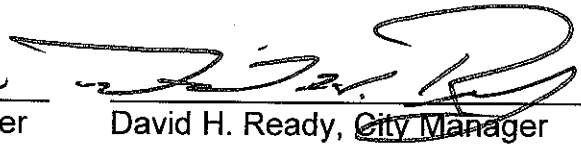


David J. Barakian
Director of Public Works/City Engineer

Approved by:



Thomas J. Wilson, Asst. City Manager



David H. Ready, City Manager

Attachments:

1. Agreement

**PROFESSIONAL SERVICES AGREEMENT
CITYWIDE ENERGY MANAGEMENT SERVICES
CITY PROJECT NO. 09-05**

THIS PROFESSIONAL SERVICES AGREEMENT (hereinafter "Agreement") is made and entered into, to be effective this _____ day of _____, 20___, by and between the CITY OF PALM SPRINGS, a California charter city and municipal corporation, (hereinafter referred to as "City") and Chevron Energy Solutions Company, a division of Chevron U.S.A. Inc. (hereinafter referred to as "Consultant"). City and Consultant are sometimes hereinafter individually referred to as "Party" and are hereinafter collectively referred to as the "Parties."

RECITALS

A. City has determined that there is a need for professional services from a qualified Energy Services Company ("ESCO") to provide the city with Energy Management Services to provide a Comprehensive Energy Audit (CEA) to develop a set of programs that will be combined as a performance based single energy conservation project with the intended purpose to save energy, reduce greenhouse gas emissions and cut the City's energy and maintenance and capital equipment expenditures throughout all of the City's facilities, including two co-generation plants, Citywide Energy Management Services, City Project No. 09-05 (the "Project").

B. Consultant has submitted to City a proposal to provide professional services to City for the Project pursuant to the terms of this Agreement.

C. Consultant is qualified by virtue of its experience, training, education, reputation, and expertise to provide these services and has agreed to provide such services as provided herein.

D. City desires to retain Consultant to provide such professional services.

NOW, THEREFORE, in consideration of the promises and mutual obligations, covenants, and conditions contained herein, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. SERVICES OF CONSULTANT

1.1 Scope of Services. In compliance with all terms and conditions of this Agreement, Consultant agrees to perform the professional services set forth in the Scope of Services described in Exhibit "A," which is attached hereto and is incorporated herein by reference (hereinafter referred to as the "Services" or "Work"). As a material inducement to the City entering into this Agreement, Consultant represents and warrants that Consultant is a provider of first class work and professional services and that Consultant is experienced in performing the Work and Services contemplated herein and, in light of such status and experience, Consultant covenants that it shall follow the highest professional standards in performing the Work and Services required hereunder. For purposes of this Agreement, the phrase "highest professional standards" shall mean those standards of practice recognized as

high quality among well-qualified and experienced professionals performing similar work under similar circumstances.

1.2 Contract Documents. The Agreement between the Parties shall consist of the following: (1) this Agreement; (2) the Scope of Services; and, (3) the Fee Estimate, which shall all be referred to collectively hereinafter as the "Contract Documents." All provisions of the Scope of Services shall be binding on the Parties. Should any conflict or inconsistency exist in the Contract Documents, the conflict or inconsistency shall be resolved by applying the provisions in the highest priority document, which shall be determined in the following order of priority: (1st) the provisions of the Scope of Services (Exhibit "A"); and, (2nd) the terms of this Agreement.

1.3 Compliance with Law. Consultant warrants that all Services rendered hereunder shall be performed in accordance with all applicable federal, state, and local laws, statutes, and ordinances and all lawful orders, rules, and regulations promulgated thereunder.

1.4 Licenses, Permits, Fees, and Assessments. Consultant represents and warrants to City that it has obtained all licenses, permits, qualifications, and approvals of whatever nature that are legally required to practice its profession and perform the Work and Services required by this Agreement. Consultant represents and warrants to City that Consultant shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement, any license, permit, qualification, or approval that is legally required for Consultant to perform the Work and Services under this Agreement. Consultant 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 Consultant's performance of the Work and 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 Agreement, Consultant warrants that Consultant (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, Consultant warrants that Consultant has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of any Services hereunder. Should the Consultant discover any latent or unknown conditions that will materially affect the performance of the Services hereunder, Consultant shall immediately inform the City of such fact and shall not proceed except at Consultant's risk until written instructions are received from the City.

1.6 Care of Work. Consultant shall adopt reasonable methods during the term 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 the 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.

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 such Work. No such extra work may be undertaken unless a written order is first given by the City to the Consultant, incorporating therein any adjustment in (i) the Maximum Contract Amount, as defined below, and/or (ii) the time to perform this Agreement, which adjustments are subject to the written approval of the Consultant. Any increase in compensation of up to twenty-five percent (25%) of the Maximum Contract Amount or \$25,000, whichever is less, or in the time to perform of up to thirty (30) days, may be approved by the City Manager, or his designee, as may be needed to perform any extra work. Any greater increases, occurring either separately or cumulatively, must be approved by the Palm Springs City Council. It is expressly understood by Consultant that the provisions of this section shall not apply to the services specifically set forth in the Scope of Services or reasonably contemplated therein, regardless of whether the time or materials required to complete any work or service identified in the Scope of Services exceeds any time or material amounts or estimates provided therein.

2. COMPENSATION

2.1 Maximum Contract Amount. For the Services rendered pursuant to this Agreement, Consultant shall be compensated by City in accordance with the Fee Estimate, which is attached hereto as Exhibit "B" and is incorporated herein by reference, but not exceeding the maximum contract amount of **TWO HUNDRED FIFTY THOUSAND DOLLARS, (\$250,000)** (hereinafter referred to as the "Maximum Contract Amount"), except as may be provided pursuant to Section 1.8 above. The Maximum Contract Amount shall include the attendance of Consultant at all Project meetings reasonably deemed necessary by the City. Consultant shall not be entitled to any increase in the Maximum Contract Amount for attending these meetings. Consultant hereby acknowledges that it accepts the risk that the services identified in the Scope of Services may be more costly and/or time-consuming than Consultant anticipates, that Consultant shall not be entitled to additional compensation therefore, and that the provisions of Section 1.8 shall not be applicable to the services identified in the Scope of Services. The maximum amount of city's payment obligation under this section is the amount specified herein. If the City's maximum payment obligation is reached before the Consultant's Services under this Agreement are completed, consultant shall nevertheless complete the Work without liability on the City's part for further payment beyond the Maximum Contract Amount.

2.2. Method of Payment. Unless some other method of payment is specified in the Fee Estimate (Exhibit "B"), in any month in which Consultant wishes to receive payment, no later than the tenth (10) working day of such month, Consultant shall submit to the City, in a form approved by the City's Finance Director, an invoice for services rendered prior to the date of the invoice. Such requests shall be based upon the amount and value of the services performed by Consultant and accompanied by such reporting data including an itemized breakdown of all costs incurred and tasks performed during the period covered by the invoice, as may be required by the City. City shall use reasonable efforts to make payments to Consultant within forty-five (45) days after receipt of the invoice or as soon thereafter as is reasonably practical. There shall be a maximum of one payment per month.

2.3 Changes in Scope. In the event any change or changes in the Scope of Services is requested by the City, the Parties shall execute a written amendment to this Agreement, setting forth with particularity all terms of such amendment, including, but not limited to, any additional professional fees. An amendment may be entered into:

(a) to provide for revisions or modifications to documents or other work product or work when documents or other work product or work is required by the enactment or revision of law subsequent to the preparation of any documents, other work product, or work; and/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.

2.4 Appropriations. This Agreement is subject to and contingent upon funds being appropriated therefore by the Palm Springs City Council for each fiscal year covered by the Agreement. If such appropriations are not made, this Agreement shall automatically terminate without penalty to the City.

3. SCHEDULE OF PERFORMANCE

3.1 Time of Essence. Time is of the essence in the performance of this Agreement. 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 (Section 3.2 below).

3.2 Schedule of Performance. Consultant shall commence the Services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all Services within five months, provided City has delivered to Consultant the information/documents as required in Exhibit A. When requested by Consultant, extensions to this time period may be approved in writing by the Contract Officer, however, the City shall not be obligated to grant such an extension.

3.3 Force Majeure. The time period specified 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 Consultant (financial inability excepted), including, but not limited to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, and/or acts of any governmental agency, including the City, if Consultant, within ten (10) days of the commencement of such delay, notifies the City Manager in writing of the causes of the delay. The City Manager 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 City Manager such delay is justified. The City Manager's determination shall be final and conclusive upon the Parties to this Agreement. In no event shall Consultant be entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Consultant's sole remedy being extension of the Agreement pursuant to this section.

3.4 Term. Unless earlier terminated as provided elsewhere in this Agreement, this Agreement shall commence upon the effective date of this Agreement and continue in full force and effect until completion of the Services but not exceeding two (2) years from the date hereof, unless extended by mutual written agreement of the Parties.

4. COORDINATION OF WORK

4.1 Representative of Consultant. The following principal of Consultant is hereby designated as being the principal and representative of Consultant authorized to act in its behalf with respect to the Services to be performed under this Agreement and make all decisions in connection therewith: **Sarah Smith**. It is expressly understood that the experience, knowledge, education, capability, expertise, 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 performed hereunder. The foregoing principal may not be changed by Consultant without prior written approval of the Contract Officer.

4.2 Contract Officer. The Contract Officer shall be such person as may be designated by the City Manager of City, and is subject to change by the City Manager. It shall be the Consultant's responsibility to ensure that the Contract Officer is kept fully informed of the progress of the performance of the Services, and the Consultant 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 Assignments. The experience, knowledge, capability, expertise, and reputation of Consultant, its principals and employees, were a substantial inducement for City to enter into this Agreement. Therefore, Consultant shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, voluntarily or by operation of law, without the prior written consent of City. Consultant shall not contract with any other entity to perform the Services required under this Agreement without the prior written consent of City, provided that City approves Consultant subcontracting with Rodney R. Hite. If Consultant is permitted to subcontract any part of this Agreement by City, Consultant shall be responsible to City for the acts and omissions of its subcontractor(s) in the same manner as it is for persons directly employed. Nothing contained in this Agreement shall create any contractual relationships between any subcontractor and City. All persons engaged in the Work will be considered employees of Consultant. City will deal directly with and will make all payments to Consultant. 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 consent 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 Consultant, 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 Consultant or any surety of Consultant from any liability hereunder without the express written consent of City. Consultant shall not substitute any subcontractor without prior written consent of the City.

4.4 Independent Contractor.

A. The legal relationship between the Parties is that of an independent contractor, and nothing herein shall be deemed to make Consultant a City employee. During the performance of this Agreement, Consultant and its officers, employees, and agents shall

act in an independent capacity and shall not act as City officers or employees. The personnel performing the Services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Neither City nor any of its officers, employees, or agents shall have control over the conduct of Consultant or any of its officers, employees, or agents, except as set forth in this Agreement. Consultant, its officers, employees, or agents shall not maintain an office or any other type of fixed business location at City's offices. City shall have no voice in the selection, discharge, supervision, or control of Consultant's employees, servants, representatives, or agents, or in fixing their number, compensation, or hours of service. Consultant shall pay all wages, salaries, and other amounts due its employees in connection with this Agreement and shall be responsible for all reports and obligations respecting them, including but not limited to social security income tax withholding, unemployment compensation, workers' compensation, and other similar matters. City shall not in any way or for any purpose be deemed to be a partner of Consultant in its business or otherwise a joint venturer or a member of any joint enterprise with Consultant.

B. Consultant shall not incur or have the power to incur any debt, obligation, or liability against City, or bind City in any manner.

C. No City benefits shall be available to Consultant, its officers, employees, or agents in connection with any performance under this Agreement. Except for professional fees paid to Consultant as provided for in this Agreement, City shall not pay salaries, wages, or other compensation to Consultant for the performance of Services under this Agreement. City shall not be liable for compensation or indemnification to Consultant, its officers, employees, or agents, for injury or sickness arising out of performing Services hereunder. If for any reason any court or governmental agency determines that the City has financial obligations, other than pursuant to Section 2 and Subsection 1.8 herein, of any nature relating to salary, taxes, or benefits of Consultant's officers, employees, servants, representatives, subcontractors, or agents, Consultant shall indemnify City for all such financial obligations.

5. INSURANCE

5.1 **Types of Insurance.** Consultant 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 Consultant, 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 Consultant 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. Consultant 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. **Errors and Omissions Insurance.** Consultant shall obtain and maintain in full force and effect throughout the term of this Agreement, standard industry form professional liability (errors and omissions) insurance coverage in an amount of not less than one million dollars (\$1,000,000.00) per occurrence and two-million dollars (\$2,000,000.00) annual aggregate, in accordance with the provisions of this section.

(1) Consultant shall either: (a) certify in writing to the City that Consultant is unaware of any professional liability claims made against Consultant and is unaware of any facts which may lead to such a claim against Consultant; or (b) if Consultant does not provide the certification pursuant to (a), Consultant shall procure from the professional liability insurer an endorsement providing that the required limits of the policy shall apply separately to claims arising from errors and omissions in the rendition of services pursuant to this Agreement.

(2) If the policy of insurance is written on a "claims made" basis, the policy shall be continued in full force and effect at all times during the term of this Agreement, and for a period of three (3) years from the date of the completion of the Services provided hereunder. In the event of termination of the policy during this period, Consultant shall obtain continuing insurance coverage for the prior acts or omissions of Consultant during the course of performing Services under the terms of this Agreement. The coverage shall be evidenced by either a new policy evidencing no gap in coverage, or by obtaining separate extended "tail" coverage with the present or new carrier or other insurance arrangements providing for complete coverage, either of which shall be subject to the written approval by the City Manager.

(3) In the event the policy of insurance is written on an "occurrence" basis, the policy shall be continued in full force and effect during the term of this Agreement, or until completion of the Services provided for in this Agreement, whichever is later. In the event of termination of the policy during this period, new coverage shall immediately be obtained to ensure coverage during the entire course of performing the Services under the terms of this Agreement.

B. Workers' Compensation Insurance. Consultant 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. Consultant 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 Consultant has no employees, Consultant shall complete the City's Request for Waiver of Workers' Compensation Insurance Requirement form.

C. Commercial General Liability Insurance. Consultant 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 coverages for contractual liability, personal injury, independent contractors, broad form property damage, products and completed operations.

D. Business Automobile Insurance. Consultant 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.

E. Employer Liability Insurance. Consultant 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. Consultant 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 Consultant'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 Consultant pursuant to this Agreement:

- 5.3.1 For any claims related to this Agreement, Consultant'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 Consultant'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 Consultant and available or applicable to this Agreement are intended to apply to each insured, including additional insureds, 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 coverages required herein will be in compliance with these requirements if they include any limiting endorsement which substantially impairs the coverages 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 Consultant 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 Consultant's obligation to ensure timely compliance with all insurance submittal requirements as provided herein.
- 5.3.6 Consultant agrees to ensure that subcontractors, and any other parties involved

with the Project who are brought onto or involved in the Project by Consultant, provide the same minimum insurance coverage required of Consultant. Consultant 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. Consultant 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 Consultant acknowledges and agrees that any actual or alleged failure on the part of the City to inform Consultant 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 Consultant 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 Consultant agrees to provide immediate notice to City of any claim or loss against Consultant 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 Consultant agrees that the provisions of this section shall not be construed as limiting in any way the extent to which the Consultant may be held responsible for the payment of damages resulting from the Consultant's activities or the activities of any person or person for which the Consultant 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. Consultant shall furnish City with both certificates of insurance and endorsements, including additional insured endorsements, affecting 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.

5.6 Self Insurance. In lieu of any insurances required in this Section 5, Consultant may self insure hereunder and use a Self Administered Claims Program for this purpose. Consultant will notify the City in writing 30 days prior to cancellation of the Self Administered Claims Program.

6. INDEMNIFICATION

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 officers, council members, officials, 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, its officers, council members, officials, employees, or agents.

Consultant shall reimburse the Indemnified Parties for any reasonable expenditures, including reasonable attorneys' fees, expert fees, litigation costs, and expenses that each Indemnified Party may incur by reason of Indemnified Claims. Upon request by an Indemnified Party, Consultant shall defend with legal counsel reasonably acceptable to the Indemnified Party all Claims against the Indemnified Party that may arise out of, pertain to, or relate to Indemnified Claims, whether or not Consultant is named as a party to the Claim proceeding. The determination whether a Claim "may arise out of, pertain to, or relate to Indemnified Claims" shall be based on the allegations made in the Claim and the facts known or subsequently discovered by the Parties. In the event a final judgment, arbitration award, order, settlement, or other final resolution expressly determines that Claims did not arise out of, pertain to, nor relate to the negligence, recklessness, or willful misconduct of Consultant to any extent, then City shall reimburse Consultant for the reasonable costs of defending the Indemnified Parties against such Claims, except City shall not reimburse Consultant for attorneys' fees, expert fees, litigation costs, and expenses that were incurred defending Consultant or any parties other than Indemnified Parties against such Claims.

Consultant's indemnification obligation hereunder shall survive the expiration or earlier termination of this Agreement until all actions against the Indemnified Parties for such matters indemnified hereunder 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. REPORTS AND RECORDS

7.1 Accounting 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 to 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.

7.2 Reports. Subject to the Scope of Work set forth in Exhibit A, Consultant 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. Consultant hereby acknowledges that the City is greatly concerned about the cost of the Work and Services to be performed pursuant to this Agreement. For this reason, Consultant agrees

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

7.3 Ownership of Documents. All drawings, specifications, reports, records, documents, memoranda, correspondence, computations, and other materials prepared by Consultant, its employees, subcontractors, and agents in the performance of this Agreement shall be the property of City and shall be promptly delivered to City upon request of the Contract Officer or upon the termination of this Agreement, and Consultant 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 incomplete documents without specific written authorization by the Consultant will be at the City's sole risk and without liability to Consultant, and the City shall indemnify the Consultant for all damages resulting therefrom. Consultant may retain copies of such documents for its own use. Consultant shall have an unrestricted right to use the concepts embodied therein. Consultant shall ensure that all its subcontractors shall provide for assignment to City of any documents or materials prepared by them, and in the event Consultant fails to secure such assignment, Consultant shall indemnify City for all damages resulting therefrom.

7.4 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. All information gained by Consultant in the performance of this Agreement shall be considered confidential and shall not be released by Consultant without City's prior written authorization.

7.5 Audit and Inspection of Records. After receipt of reasonable notice and during the regular business hours of City, Consultant shall provide City, or other agents of City, such access to Consultant's books, records, payroll documents, and facilities as City deems necessary to examine, copy, audit, and inspect all accounting books, records, work data, documents, and activities directly related to Consultant's performance under this Agreement. Consultant shall maintain such books, records, data, and documents in accordance with generally accepted accounting principles and shall clearly identify and make such items readily accessible to such parties during the term of this Agreement and for a period of three (3) years from the date of final payment by City hereunder.

8. ENFORCEMENT OF AGREEMENT

8.1 California Law and Venue. This Agreement shall be construed and interpreted both as to validity and as 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.

8.2 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.

8.3 Termination. City may terminate this Agreement for its convenience at any time, without cause, in whole or in part, upon giving Consultant thirty (30) days written notice. Upon such notice, City shall pay Consultant for Services performed through the date of termination. Upon receipt of such notice, Consultant shall immediately cease all work under this Agreement, unless the notice provides otherwise. Thereafter, Consultant shall have no further claims against the City under this Agreement. Upon termination of the Agreement pursuant to this section, Consultant shall submit to the City an invoice for work and services performed prior to the date of termination. In addition, the Consultant reserves the right to terminate this Agreement at any time, with or without cause, upon sixty (60) days written notice to the City, except that where termination is due to material default by the City, the period of notice may be such shorter time as the Consultant may determine.

8.4 Default of Consultant.

A. Consultant's failure to comply with any provision of this Agreement shall constitute a default.

B. If the City Manager, or his designee, determines that Consultant is in default in the performance of any of the terms or conditions of this Agreement, he/she shall notify Consultant in writing of such default. Consultant shall have ten (10) days, or such longer period as City may designate, to cure the default by rendering satisfactory performance. In the event Consultant fails to cure its default within such period of time, City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice of any remedy to which City may be entitled at law, in equity, or under this Agreement. Consultant shall be liable for any and all reasonable costs incurred by City as a result of such default. Compliance with the provisions of this section shall not constitute a waiver of any City right to take legal action in the event that the dispute is not cured, provided that nothing herein shall limit City's right to terminate this Agreement without cause pursuant to Section 8.3.

C. If termination is due to the failure of the Consultant to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 8.4.B, take over the work and prosecute the same to completion by contract or otherwise, and the Consultant shall be liable to the extent that the total cost for completion of the Services required hereunder exceeds the Maximum Contract Amount (provided that the City shall use reasonable efforts to mitigate such damages), and City may withhold any payments to the Consultant for the purpose of set-off or partial payment of the amounts owed the City as previously stated. The withholding or failure to withhold payments to Consultant shall not limit Consultant's liability for completion of the Services as provided herein.

8.5 Waiver. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the Party against whom enforcement of a waiver is sought. Any waiver by the Parties of any default or breach of any covenant, condition, or term contained in this Agreement, shall not be construed to be a waiver of any subsequent or other default or breach, nor shall failure by the Parties to require exact, full, and complete compliance with any of the covenants, conditions, or terms contained in this Agreement be construed as changing the terms of this Agreement in any manner or preventing the Parties from enforcing the full provisions hereof.

8.6 Rights and Remedies 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.

8.7 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.

8.8 Attorney Fees. In the event any dispute between the Parties with respect to this Agreement results in litigation or any non-judicial proceeding, the prevailing Party shall be entitled, in addition to such other relief as may be granted, to recover from the non-prevailing Party all reasonable costs and expenses, including but not limited to reasonable attorney fees, expert consultant fees, court costs and all fees, costs, and expenses incurred in any appeal or in collection of any judgment entered in such proceeding. To the extent authorized by law, in the event of a dismissal by the plaintiff or petitioner of the litigation or non-judicial proceeding within thirty (30) days of the date set for trial or hearing, the other Party shall be deemed to be the prevailing Party in such litigation or proceeding.

9. CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION

9.1 Non-liability of City Officers and Employees. No officer or employee of the City shall be personally liable to the Consultant, 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 Consultant or to its successor, or for breach of any obligation of the terms of this Agreement.

9.2 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/she is, directly or indirectly, interested in violation of any state statute or regulation. Consultant warrants that is 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.

9.3 Covenant Against Discrimination. In connection with its performance under this Agreement, Consultant shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, marital status, ancestry, or national origin. Consultant shall ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, age, marital status,

ancestry, or national origin. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

10. MISCELLANEOUS PROVISIONS

10.1 Patent and Copyright Infringement.

A. To the fullest extent permissible under law, and in lieu of any other warranty by City or Consultant against patent or copyright infringement, statutory or otherwise, it is agreed that Consultant shall defend at its expense any claim or suit against City on account of any allegation that any item furnished under this Agreement, or the normal use or sale thereof arising out of the performance of this Agreement, infringes upon any presently existing U.S. letters patent or copyright and Consultant shall pay all costs and damages finally awarded in any such suit or claim, provided that Consultant is promptly notified in writing of the suit or claim and given authority, information and assistance at Consultant's expense for the defense of same, and provided such suit or claim arises out of, pertains to, or is related to the negligence, recklessness or willful misconduct of Consultant. However, Consultant will not indemnify City if the suit or claim results from: (1) City's alteration of a deliverable, such that City's alteration of such deliverable created the infringement upon any presently existing U.S. letters patent or copyright; or (2) the use of a deliverable in combination with other material not provided by Consultant when it is such use in combination which infringes upon an existing U.S. letters patent or copyright.

B. Consultant shall have sole control of the defense of any such claim or suit and all negotiations for settlement thereof, Consultant shall not be obligated to indemnify City under any settlement made without Consultant's consent or in the event City fails to cooperate in the defense of any suit or claim, provided, however, that such defense shall be at Consultant's expense. If the use or sale of such item is enjoined as a result of the suit or claim, Consultant, at no expense to City, shall obtain for City the right to use and sell the item, or shall substitute an equivalent item acceptable to City and extend this patent and copyright indemnity thereto.

10.2 Notices. All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered, sent by pre-paid First Class U.S. Mail, registered or certified mail, postage prepaid, return receipt requested, or delivered or sent by facsimile with attached evidence of completed transmission, and shall be deemed received upon the earlier of (i) the date of delivery to the address of the person to receive such notice if delivered personally or by messenger or overnight courier; (ii) five (5) business days after the date of posting by the United States Post Office if by mail; or (iii) when sent if given by facsimile. Any notice, request, demand, direction, or other communication sent by facsimile must be confirmed within forty-eight (48) hours by letter mailed or delivered. Other forms of electronic transmission such as e-mails, text messages, instant messages are not acceptable manners of notice required hereunder. Notices or other communications shall be addressed as follows:

To City:

City of Palm Springs
Attention: City Manager & City Clerk
3200 E. Tahquitz Canyon Way

Palm Springs, California 92262
Telephone: (760) 323-8204
Facsimile: (760) 323-8332

To Consultant:

Chevron Energy Solutions Company
Attention: Ron LaCombe
150 E. Colorado Blvd., Suite 360
Pasadena, CA 91105
Telephone: (626) 304-4700
Facsimile: (626)304-4701

With a Copy To:

Chevron Energy Solutions Company
Attention: Contracts Administrator
12980 Foster, 4th Floor
Overland Park, KS 66213-2649
Telephone: (913) 748-8800
Facsimile: (913) 748-8734

10.3 Entire Agreement. This Agreement constitutes the entire agreement between the Parties and supersedes all prior negotiations, arrangements, agreements, representations, and understandings, if any, made by or among the Parties with respect to the subject matter hereof. No amendments or other modifications of this Agreement shall be binding unless executed in writing by both Parties hereto, or their respective successors, assigns, or grantees.

10.4 Severability. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be determined to be invalid by a final judgment or decree of a court of competent jurisdiction, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of that provision, or the remaining provisions of this Agreement 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.

10.5 Successors in Interest. This Agreement shall be binding upon and inure to the benefit of the Parties' successors and assignees.

10.6 Third Party Beneficiary. Except as may be expressly provided for herein, 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 hereto.

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

10.8. Corporate Authority. Each of the undersigned represents and warrants that (i) the Party for which he or she is executing this Agreement is duly authorized and existing, (ii) he or she is duly authorized to execute and deliver this Agreement on behalf of the Party for which he or she is signing, (iii) by so executing this Agreement, the Party for which he or she is

signing 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 the Party for which he or she is signing is bound.

[SIGNATURES ON THE NEXT PAGE]

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:

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:

CHEVRON ENERGY SOLUTIONS COMPANY, A DIVISION OF CHEVRON U.S.A. INC.

Check one Individual Partnership Corporation

By _____
Signature (Notarized)

By _____
Signature (Notarized)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of _____



On _____ before me, _____
Date Here Insert Name and Title of the Officer

personally appeared _____
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.

Place Notary Seal Above

Signature _____
Signature of Notary Public

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: _____

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: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer Is Representing: _____

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer Is Representing: _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of _____



On _____ before me, _____
Date Here Insert Name and Title of the Officer

personally appeared _____
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.

Place Notary Seal Above

Signature _____
Signature of Notary Public

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: _____

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: _____

EXHIBIT "A"

CONSULTANT'S SCOPE OF SERVICES/WORK

I. Scope of Work.

The energy audit shall be performed as described below:

- A. The City shall provide and the Consultant shall review in detail documentation, as available, including, but not limited to:
1. Utility company invoices up to five years, with a minimum of three years, beginning with the last available month. Including gas contracts and invoices for the cogeneration systems.
 2. Utility company demand interval recordings of 15/30 minute electrical demand for characteristic months of the year, where available.
 3. Record drawings (AutoCAD or hardcopy):
 - a. mechanical
 - b. plumbing
 - c. electrical
 - d. building automation and temperature controls
 - e. structural
 - f. architectural
 - g. modifications and remodels
 4. Original construction submittals and factory data (specifications, pump curves, etc.), where available.
 5. Test and balance reports for water and air systems, where available.
 6. A list of key contacts at each site, including City personnel knowledgeable of the HVAC, lighting and controls systems.
 7. AutoCAD or hardcopy (8 ½" x 11" or 11" x 17") floor plans of all buildings.
 8. Energy management system and HVAC equipment operating schedules, point lists and sequences of operation.
- B. Perform an inspection survey to:
1. Identify the occupancy and use schedules. Interview the facility manager, chief engineer, or others as needed.
 2. Identify "process" energy use, such as production equipment, computer rooms, printing plants, parking garages, etc.
 3. Obtain the hours of operation for building systems and equipment.

4. Inspect all major energy using equipment.
 5. Identify and characterize comfort or system-function problems which may impact the performance of the retrofit work.
- C. Prepare a post-inspection status report, consisting of:
1. A list of energy retrofit opportunities (also known as energy conservation measures or ECMs) which appear in the judgment of the investigator to be likely to be cost effective and, therefore, warrant detailed analysis.
 2. Recommendation for terminating or continuing the Energy Audit. Termination should be recommended if it appears unlikely that a project meeting the agreed cost avoidance commitment in Exhibit B, Part C will result from the effort.
- D. Survey all major energy-using equipment. Record the following:
1. Equipment name-plate data
 2. Identification name/number and/or description
 3. Equipment location
- E. HVAC and Building Electrical Demand:
1. Analyze electrical usage for each building contained in the project, where existing historical submeter data is available.
- F. Calculate energy savings for all viable energy conservation measures. The best method for calculating savings shall be determined by Consultant, and may include using modeling software such as EQuest or Trace 700, or may involve spreadsheet analysis or other accepted, standard engineering procedures.
- G. Calculate energy use for each ECM.
1. For each ECM, calculate annual energy savings
 2. Calculations shall generally employ computer simulation or spreadsheet analysis.
 3. Calculations shall follow the methodology of ASHRAE or other nationally recognized authority and shall be based on sound engineering principle(s).
 4. Operational and maintenance savings, if any, shall be identified as a separate line item.
- H. Prepare a proposed "Project Cost" and a list of "Services to be Provided," in anticipation of Contractor and City entering into an Energy Services Agreement to design and install the projects proposed in the Energy Audit.

Project Cost is the total amount the City will pay for the Project. The Project Cost will compensate Consultant for its services and profits in the services desired by the City, which may include, but are not limited to: engineering, design, construction management, procuring, installing, training, financing, and preparation of the Energy Audit.

The list of Services to be Provided shall include a list of the services proposed by Consultant to be provided to City to implement the entire Project.

I. Meet with City to:

1. Review the retrofit options proposed in the Energy Audit, and assemble a package of options which is compatible with the City's investment and infrastructure improvement goals; and
2. Review the proposed Project cost and list of Services to be Provided to determine which further services City may want Consultant to provide.

J. Provide to City a draft CEA which shall include:

1. Report:
 - a. Introduction and summary
 - b. A table summarizing the recommended ECMs and the first year cost avoidance
 - c. Description of energy conservation measures
 - d. Conclusions and recommendations, including economic analysis of recommended project
 - e. Summary per meter of utility history, energy use baseline, and applicable utility rates

K. Meet with the City to present and discuss the draft CEA.

L. In accordance with the wishes of City, revise the CEA.

M. Submit the final CEA to City.

II. Technologies to Be Considered:

- A. At a minimum, the technologies listed below, shall be considered during the performance of preliminary feasibility assessments and detailed feasibility investigations.

Building Level:

1. Building automation
2. HVAC equipment retrofit/replacement
3. Lighting fixture retrofit

4. Lighting controls
5. Street lighting
6. Water conservation

Central Plant Level:

1. Power Generation Systems
2. Chilled Water Systems
3. HHW Systems

Additional Options to Consider:

1. Solar Power
2. Operating and Maintaining Central Plant / Cogeneration Systems.
3. Feasibility of Extending Power to the Senior Center and Boys & Girls Club
4. Feasibility of Energy Measures for Additional City Buildings not included in this scope of work

III. City Facilities Included in Scope of Work:

For a complete listing, see attached list.

In addition, analysis of water use and irrigation technologies will be considered for the City's various parks, to identify ECMs to be implemented as part of the CEA.

EXHIBIT A - LIST OF CITY FACILITIES TO BE INCLUDED IN ENERGY AUDIT

Site	Building	address	Year	Size
city hall	admin. Offices/council chambers/annex	3200 Tahquitz canyon way	1956	17,847
city hall	ec admin offices	3200 Tahquitz canyon way	1965	14,116
City hall	canopies/covered walkways	3200 Tahquitz canyon way	1965	3,647
police station	admin. Offices/dispatch center/housing cells	200 s. civic drive	1985	44,946
library center	library	300 s sunrise way	1975	33,920
plaza theater	theater	128 s. palm canyon	1938	15,100
city hall annex	admin offices	3200 Tahquitz canyon way	1983	12,573
city hall annex	canopies/covered walkways	3200 Tahquitz canyon way	1983	3,666
police station training site	training center classrooms	200 S. civic Drive	1977	4,200
police station training site	indoor firing range/firing range addition	200 s. civic drive	1977	3,453
police station training site	Library office/conference room	200 s. civic drive	1977	1,081
police station training site	carport canopy	200 s. civic drive	1977	940
airport fire station #2	admin. Offices/fire station #2	300 N. El Cielo road	1975	18,109
airport fire station #2	hose drying canopy	300 N. El Cielo road	1977	1,200
airport fire station #2	boiler room	300 N. El Cielo road	1975	300
fire station #1	fire station #1	277 n. indian canyon drive	1957	5,364
fire station #3	fire station #3	590 e. raquet club road	1964	5,807
fire station #4	fire station #4	1300 la verme way	1971	4,608
fire station #5	fire station #5	5800 bolero road	1981	3,764
city yard	shop repair bldg	425 s. civic drive	1961	22,671
city yard	admin offices/shops	425 s. civic drive	1985	19,627
city yard	welding shop	425 s. civic drive	1985	700
city yard	gas pump canopy/cover	425 s. civic drive	1985	850
taxi holding building	office/break room	310 s. el cielo	2000	1,990
downtown parking structure	parking garage	275 s. indian canyon	2002	124,251
train station	restroom/storage	63950 palm springs station roæ	1998	1,483
co-generator, muni	generation station	201 north el cielo road	1984	1,914
co-generator, sunrise	generator building	402 south cerritos drive	1984	1,702
wastewater treat plant	administration building (10.9 mgd plant)	4375 mequite avenue	1960	2,412
wastewater treat plant	maintenance / shop building	4375 mequite avenue	1960	3,055
palm springs international airport	airport terminal - zones a, b, c, & d	3400 east tahquitz canyon	1966	104,846
palm springs international airport	sonny bono concourse - zones g & f (gates 4-11)	3400 east tahquitz canyon	1999	78,722
palm springs international airport	east "t" hanger	3400 east tahquitz canyon	1968	10,114
palm springs international airport	west "t" hanger	3400 east tahquitz canyon	1968	10,114
palm springs international airport	temporary holdroom #1 (gate #3)	3400 east tahquitz canyon	1999	3,471
palm springs international airport	temporary holdroom #2 (gate #2)	3400 east tahquitz canyon	1999	3,471

palm springs international airport	terminal walkways #1 (concourse area)	3400 east tahquitz canyon	1999	10,649
palm springs international airport	vehicle inspection plaza	3400 east tahquitz canyon	2003	2,000
palm springs international airport	vehicle inspection plaza shelter	3400 east tahquitz canyon	1999	9,000
palm springs international airport	covered walkway	3400 east tahquitz canyon	1968	7,348
palm springs international airport	restroom building - (old commuter holdroom)	3400 east tahquitz canyon	1968	480
palm springs international airport	portable office building #1 (north)	3400 east tahquitz canyon	1990	480
palm springs international airport	portable office building #2 (south)	3400 east tahquitz canyon	1990	480
palm springs international airport	portable office building #3 (vsa office)	3400 east tahquitz canyon	2003	960
palm springs international airport	covered baggage and maint shelter	3400 east tahquitz canyon	2003	2,176
welwood murray library	library	100 south palm canyon drive	1941	5,058
tahquitz creek golf course	golf clubhouse/golf cart storage building	1885 golf club drive	1962	12,990
tahquitz creek golf course	golf maintenance building	1885 golf club drive	1958	3,334
tahquitz creek golf course	restroom building #1 - legends course	1885 golf club drive	1994	279
tahquitz creek golf course	restroom building #2 - west side (modular)	1885 golf club drive	1994	52
tahquitz creek golf course	concession/restroom building - legends course	1885 golf club drive	1994	1,068
tahquitz creek golf course	pumphouse #1	1885 golf club drive	1994	620
tahquitz creek golf course	pumphouse #2	1885 golf club drive	1994	603
tahquitz creek golf course	restroom building #4 - east side	1885 golf club drive	1960	304
tahquitz creek golf course	small equipment shelter #1 (maint yard)	1885 golf club drive	1994	1,670
tahquitz creek golf course	large equipment shelter #2 (maint yard)	1885 golf club drive	1994	2,900
tahquitz creek golf course	portable office (supt of golf course)	1885 golf club drive	1980	720
tahquitz creek golf course	equipment shelter #3 (near wwfp)	1885 golf club drive	1994	1,670
stadium park	stadium	1901 east baristo road	1949	15,000
stadium park	concession stand building #1 (third base)	1901 east baristo road	1984	713
stadium park	concession stand building #2 (first base)	1901 east baristo road	1985	713
Stadium Practice Field	angel	2099 East Baristo Road	1949	480
Skate Park and Swim Center	Leisure Center	401 South Pavillion Way	1975	15,155
Skate Park and Swim Center	Pavillion	401 South Pavillion Way	1975	20,200
Skate Park and Swim Center	Swimming Center	401 South Pavillion Way	1979	368
Skate Park and Swim Center	Pool Filter Building	401 South Pavillion Way	1979	1,200
Skate Park and Swim Center	Skate Park	401 South Pavillion Way	2003	30,000
Skate Park and Swim Center	Swimming Pool	401 South Pavillion Way	1979	7,680
James O. Jessie Dessert Highland Unity Cent	Gymnasium	480 Tramview Road	1975	9,546
James O. Jessie Dessert Highland Unity Cent	Clubhouse	480 Tramview Road	1975	2,357
Demuth Park	Restrooms/ Storage/ Concession Building	Mesquite Avenue	1973	1,767
Demuth Park	Small Restroom Building @ Playground	Mesquite Avenue	1973	222
Demuth Park	Original Restroom/ Storage Building w/ Canopy	Mesquite Avenue	1973	1,337
Demuth Park	Restroom Building @ Field #7	Mesquite Avenue	1990	1,080
Demuth Park	Blue Restroom Building	Mesquite Avenue	2003	368
Ruth Hardy Park	Restroom Building	700 Tamarisk Road	1965	684

Victoria Park	Restroom Building	2650 Via Miraleste	1965	684
McManus Village	Cornelia House- Historical	211-233 South Palm Canyon I	1952	940
McManus Village	Museum / Gallery- Historical	211-233 South Palm Canyon I	1952	3,310
McManus Village	Museum / Candy Shop- Historical	211-233 South Palm Canyon I	1957	2,685
McManus Village	Ruddy's General Store	211-233 South Palm Canyon I	1987	916
Everybody's Village	Theatre Building	538 North Palm Canyon Dr.	1974	9,820
Everybody's Village	North Wing- Meeting Rooms	538 North Palm Canyon Dr.	1974	2,079
Everybody's Village	South Wing- Meeting Rooms	538 North Palm Canyon Dr.	1974	1,300
Arts Springs Center	Gallery/ South Meeting Room	550 North Palm Canyon Drive	1974	3,023
Arts Springs Center	North Meeting Room	550 North Palm Canyon Drive	1974	2,050
Jaycee Frey Center (Homeless Shelter)	Homeless Shelter	1911 Baristo Road	1964	3,617
Palm Springs Youth Boxing Club	Boxing Club	225 El Cielo Road	1963	2,095
Convention Center (with 2003 & 2005 Addition)	Convention Center	277 North Avenue Cabelleros	1987	264,479
Mizell Senior Center	Senior Center	400 South Sunrise Way	1991	14,262
YMCA	YMCA	3601 E Mesquite Ave.		21,431

Downtown Decorative Street Lighting

EXHIBIT "B"

Fee Estimate

Except as provided for below, within 90 calendar days after Consultant's submission of the final Comprehensive Energy Analysis (CEA) report (subject to prior review and approval by City), City shall compensate Consultant for performance of the Energy Audit by payment to Consultant of Two Hundred Fifty Thousand Dollars (\$250,000). This fee is for performance of the Scope of Work set forth in Exhibit A.

It shall be understood that the City shall have the sole discretion of determining the scope of work to be contemplated in the final CEA. As indicated in the Scope of Work set forth in Exhibit A, the City shall be entitled to review the retrofit options proposed in the Energy Audit, and to agree on the Consultant's recommended package of ECMs consistent with the City's investment and infrastructure improvement goals.

- A. City shall have no payment obligations at the time of execution of this Agreement, but acknowledges that the fee indicated above shall be incorporated into the total contract amount in the event City and Consultant execute an Energy Services Agreement within ninety (90) calendar days after submission of the final CEA report by Consultant to the City. However, if the parties do not execute an Energy Services Agreement within ninety (90) calendar days after Consultant's submission of the final CEA report to City, then the audit fee set forth above shall be immediately due and payable by City to Consultant.
- B. City and/or Consultant reserve the right to terminate the Agreement at any time during the comprehensive audit. If canceled by City, costs incurred by Consultant at the date of termination would be pro-rated based on percentage of completion, and payable by City.
- C. Should the Consultant determine any time during the Energy Audit that the projected savings will not support a paid-from-savings project, the audit may be terminated by Consultant. In this event, this Agreement shall terminate and the City shall have no obligation to pay any amount to the Consultant.
- D. Creditworthiness. If, at any time, City's credit rating falls below investment grade as defined by Moody's Investors Services (or other nationally-recognized independent rating agency), City agrees to provide Consultant with current information regarding its creditworthiness upon the request of Consultant. At its sole option, Consultant may then require City to provide security satisfactory to Consultant, and the Work may be withheld until such security is received. If City deposits the contract amount into a third-party escrow account with an escrow agent and agreement acceptable to Consultant, then the terms of this paragraph are not applicable.

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