



## CITY COUNCIL STAFF REPORT

DATE: December 1, 2010

CONSENT

SUBJECT: APPROVAL OF CONSULTING SERVICES AGREEMENT WITH EVERGREEN RECYCLING SOLUTIONS FOR TECHNICAL ASSISTANCE AND PROFESSIONAL SERVICES ON SOLID WASTE AND RECYCLING ISSUES.

FROM: David H. Ready,

BY: Office of Sustainability

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### SUMMARY

In 2005, the City entered into an agreement with Evergreen Recycling Solutions, a local consultant, to provide technical assistance and professional advice on solid waste and recycling issues. The Consultant has provided valuable services to staff with respect to the various recycling programs, administration and coordination with Palm Springs Disposal and support with State Legislation affecting solid waste and recycling. This agreement will continue services for a period of one year with one additional one year extension at the City's discretion.

### RECOMMENDATION

1. Approve a Consulting Services Agreement with Evergreen Recycling Solutions for municipal solid waste management and recycling consulting services, in an amount not to exceed \$50,000 for one year, ending on December 1, 2011;
2. Authorize, at the City's discretion, a one year extension option of this agreement until December 1, 2012 with no change in the annual amount;
3. Authorize City Manager to execute all the necessary documents.

### BACKGROUND

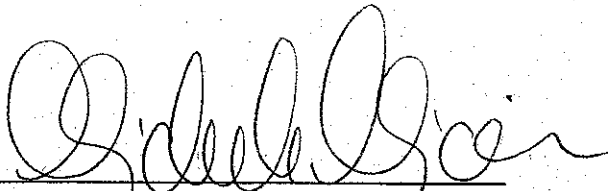
The City has used a locally based consultant to manage the City's recycling and source reduction programs since 2005. The original agreement has been amended to extend the terms and expand the Consultant's scope of services to include attendance at specific regional meetings (i.e., Coachella Valley Association of Governments Energy and Environmental Committee), provide administrative support for the Solid Waste

Franchise; conduct waste audits and characterization studies; work with large venue sites on comprehensive reduction programs; research and apply for grants on behalf of the City; and to assist the Office of Sustainability with programming, community outreach and special events.

The Consultant also plays a key role as part of the Office of Sustainability. Some of those tasks include, reporting to the Sustainability Commission, coordinating with Palm Springs Disposal regarding services, increasing success of the single stream recycling program, and reviewing State Legislation affecting solid waste and recycling.

FISCAL IMPACT

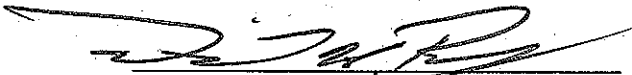
Funds to cover this agreement are available in the Solid Waste Fund (Account Number 125-1280-43200).



Michele Mician  
Sustainability Manager



Thomas J. Wilson,  
Assistant City Manager



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

Attachments:  
Consulting Services Agreement

**CONSULTING SERVICES AGREEMENT**  
**Technical Assistance on Solid Waste and Recycling Issues**

THIS AGREEMENT FOR CONSULTING SERVICES (the "Agreement") is made and entered into this \_\_\_ day of \_\_\_\_\_, 2010 by and between the City of Palm Springs, a California charter city and municipal corporation ("City"), and **Evergreen Recycling Solutions, Incorporated, a California Corporation** ("Consultant").

**RECITALS**

- A. City requires the services of Consultant for professional **Technical Assistance and Professional Advice on Solid Waste and Recycling Issues**.
- B. Consultant has submitted to City a proposal to provide professional **technical assistance and professional services** to City pursuant to the terms of this Agreement.
- C. Based on its experience, education, training, and reputation, Consultant is qualified to provide the necessary services to City for the Project and desires to provide such services.
- D. City desires to retain the services of Consultant for the Project.

NOW, THEREFORE, in consideration of the promises and mutual agreements contained herein, City agrees to retain and does hereby retain Consultant and Consultant agrees to provide services to the City as follows:

**AGREEMENT**

**1. CONSULTANT SERVICES**

**1.1 Scope of Services.** In compliance with all terms and conditions of this Agreement, Consultant shall provide **technical assistance and professional consulting services** to City as described in the Scope of Services/Work attached to this Agreement as **Exhibit "A"** and incorporated herein by reference (the "services" or "work"), which includes the agreed upon schedule of performance and the schedule of fees. Consultant warrants that all services and work shall be performed in a competent, professional, and satisfactory manner in accordance with all standards prevalent in the industry. In the event of any inconsistency between the terms contained in the Scope of Services/Work and the terms set forth in the main body of this Agreement, the terms set forth in the main body of this Agreement shall govern.

**1.2 Compliance with Law.** All services rendered under this Agreement shall be provided in accordance with all laws, ordinances, resolutions, statutes, rules, and regulations of City and any federal, state, or local governmental agency of competent jurisdiction.

**1.3 Licenses and Permits.** Consultant shall obtain at its sole cost and expense such licenses, permits, and approvals as may be required by law for the performance of the services required by this Agreement.

**1.4 Familiarity with Work.** By executing this Agreement, Consultant warrants that it has carefully considered how the work should be performed and fully understands the facilities, difficulties, and restrictions attending performance of the work under this Agreement.

## **2. TIME FOR COMPLETION.**

The time for completion of the services to be performed by Consultant is an essential condition of this Agreement. Consultant shall prosecute regularly and diligently the work of this Agreement according to the agreed upon schedule of performance set forth in Exhibit "A". Consultant shall not be accountable for delays in the progress of its work caused by any condition beyond its control and without the fault or negligence of Consultant. Delays shall not entitle Consultant to any additional compensation regardless of the party responsible for the delay.

## **3. COMPENSATION OF CONSULTANT**

**3.1 Compensation of Consultant.** For the services rendered pursuant to this Agreement, Consultant shall be compensated and reimbursed, in accordance with the schedule of fees set forth in Exhibit "B", which total amount shall **not exceed \$50,000 per year.**

**3.2 Method of Payment.** In any month in which Consultant wishes to receive payment, Consultant shall no later than the first working day of such month, submit to City in the form approved by City's Controller, an invoice for services rendered prior to the date of the invoice. Payments shall be based on the hourly rates as set forth in Exhibit "A" for authorized services performed. City shall pay Consultant for all expenses stated thereon, which are approved by City consistent with this Agreement, within thirty (30) days of receipt of Consultant's invoice.

**3.3 Changes.** In the event any change or changes in the Scope of Services/Work is requested by City, the parties hereto shall execute a written amendment to this Agreement, setting forth with particularity all terms of such amendment, including, but not limited to, any additional 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;

B. To provide for additional services not included in this Agreement or not customarily furnished in accordance with generally accepted practice in Consultant's profession.

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

## **4. PERFORMANCE SCHEDULE**

4.1 **Time of Essence.** Time is of the essence in the performance of this Agreement.

4.2 **Schedule of Performance.** All services rendered pursuant to this Agreement shall be performed pursuant to the agreed upon schedule of performance set forth in Exhibit "A". The extension of any time period must be approved in writing by the Contract Officer.

4.3 **Force Majeure.** The time for performance of services to be rendered pursuant to this Agreement may be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of Consultant, including, but not limited to, acts of God or of a public enemy, acts of the government, fires, earthquakes, floods, epidemic, quarantine restrictions, riots, strikes, freight embargoes, and unusually severe weather if Consultant shall within ten (10) days of the commencement of such condition notify the Contract Officer who shall thereupon ascertain the facts and the extent of any necessary delay, and extend the time for performing the services for the period of the enforced delay when and if in the Contract Officer's judgment such delay is justified, and the Contract Officer's determination shall be final and conclusive upon the parties to this Agreement.

4.4 **Term.** Unless earlier terminated in accordance with Section 8.5 of this Agreement, this Agreement shall continue in full force and effect for a period of **one (1) year**, commencing on **December 1, 2010**, and ceasing on **December 1, 2011** unless extended by mutual written agreement of the parties. **An additional one (1) year extension may be granted at City Staff's discretion provided the terms of Exhibits A, B & C remain unchanged.**

## 5. **COORDINATION OF WORK**

5.1 **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 and work specified herein and make all decisions in connection therewith: **Gary L. Calhoun**. It is expressly understood that the experience, knowledge, education, capability, and reputation of the foregoing principal is a substantial inducement for City to enter into this Agreement. Therefore, the foregoing principal shall be responsible during the term of this Agreement for directing all activities of Consultant and devoting sufficient time to personally supervise the services hereunder. The foregoing principal may not be changed by Consultant without prior written approval of the Contract Officer.

5.2 **Contract Officer.** The Contract Officer shall be the City Manager, or his designee, a Contract Officer of the City with respect to this Agreement. It shall be the Consultant's responsibility to keep the Contract Officer, or his/her designee, fully informed of the progress of the performance of the services and Consultant shall refer any decisions that 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.

5.3 **Prohibition Against Subcontracting or Assignment.** The experience, knowledge, education, capability, and reputation of Consultant, its principals and employees, were a substantial inducement for City to enter into this Agreement. Therefore, Consultant shall not contract with any other individual or entity to perform in whole or in part the services required hereunder without the express written approval of City. In addition, neither this

Agreement nor any interest herein may be assigned or transferred, voluntarily or by operation of law, without the prior written approval of City.

**5.4 Independent Contractor.** Neither City nor any of its employees shall have any control over the manner, mode, or means by which Consultant, its agents or employees, perform the services required herein, except as otherwise set forth herein. Consultant shall perform all services required herein as an independent contractor of City and shall not be an employee of City and shall remain at all times as to City a wholly independent contractor with only such obligations as are consistent with that role; however, City shall have the right to review Consultant's work product, result, and advice. Consultant shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City.

**5.5 Personnel.** Consultant agrees to assign the following individuals to perform the services set forth herein. Consultant shall not alter the assignment of the following personnel without the prior written approval of the Contract Officer. Acting through the City Manager, the City shall have the unrestricted right to order the removal of any personnel assigned by Consultant by providing written notice to Consultant.

Name:

Title:

**Gary L. Calhoun**

**Resource Conservation Consultant**

## **6. INSURANCE**

Consultant shall procure and maintain, at its sole cost and expense, policies of insurance as set forth in Exhibit "B", which is attached hereto and is incorporated herein by reference.

## **7. INDEMNIFICATION.**

To the fullest extent permitted by law, Consultant shall defend (at Consultant's sole cost and expense), indemnify, protect, and hold harmless City, its elected officials, officers, employees, agents, and volunteers (collectively the "Indemnified Parties"), from and against any and all liabilities, actions, suits, claims, demands, losses, costs, judgments, arbitration awards, settlements, damages, demands, orders, penalties, and expenses including legal costs and attorney fees (collectively "Claims"), including but not limited to Claims arising from injuries to or death of persons (Consultant's employees included), for damage to property, including property owned by City, from any violation of any federal, state, or local law or ordinance, and from errors and omissions committed by Consultant, its officers, employees, representatives, and agents, which Claims arise out of or are related to Consultant's performance under this Agreement, but excluding such Claims arising from the negligence or willful misconduct of the City, its elected officials, officers, employees, agents, and volunteers. Under no circumstances shall the insurance requirements and limits set forth in this Agreement be construed to limit Consultant's indemnification obligation or other liability hereunder.

## **8. RECORDS AND REPORTS**

**8.1 Reports.** 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.

**8.2 Records.** Consultant shall keep such books and records as shall be necessary to properly perform the services required by this Agreement and enable the Contract Officer to evaluate the performance of such services. The Contract Officer shall have full and free access to such books and records at all reasonable times, including the right to inspect, copy, audit, and make records and transcripts from such records.

**8.3 Ownership of Documents.** All drawings, specifications, reports, records, documents, and other materials prepared by Consultant in the performance of this Agreement shall be the property of City and shall be 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 or ownership of the documents and materials hereunder. Consultant may retain copies of such documents for its' own use. Consultant shall have an unrestricted right to use the concepts embodied therein.

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

**8.5 Cost Records.** Consultant shall maintain all books, documents, papers, employee time sheets, accounting records, and other evidence pertaining to costs incurred while performing under this Agreement and shall make such materials available at its offices at all reasonable times during the term of this Agreement and for three (3) years from the date of final payment for inspection by City and copies thereof shall be promptly furnished to City upon request.

## **9. ENFORCEMENT OF AGREEMENT**

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

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

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

**9.4 Legal Action.** In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct, or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain injunctive relief, a declaratory judgment, or any other remedy consistent with the purposes of this Agreement.

**9.5 Termination Prior to Expiration of Term.** City reserves the right to terminate this Agreement at any time, with or without cause, upon thirty (30) days written notice to Consultant, except that where termination is due to the fault of Consultant and constitutes an immediate danger to health, safety, and general welfare, the period of notice shall be such shorter time as may be determined by the City. Upon receipt of the notice of termination, Consultant shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. Consultant shall be entitled to compensation for all services rendered prior to receipt of the notice of termination and for any services authorized by the Contract Officer thereafter. Consultant may terminate this Agreement, with or without cause, upon thirty (30) days written notice to City.

## **10. CITY OFFICERS AND EMPLOYEES; NON-DISCRIMINATION**

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

**10.2 Covenant Against Discrimination.** Consultant covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination or segregation in the performance of or in connection with this Agreement regarding any person or group of persons on account of race, color, creed, religion, sex, marital status, disability, sexual orientation, national origin, or ancestry.

## **11. MISCELLANEOUS PROVISIONS**

**11.1 Notice.** Any notice, demand, request, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by pre-paid, first-class mail to the address set forth below. Either party may change its address by notifying the other party of the change of address in writing. Notice shall be deemed communicated seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

To City

City of Palm Springs  
Attention: Office of Sustainability  
3200 E. Tahquitz Canyon Way  
Palm Springs, California 92262

To Consultant:

Gary L. Calhoun  
Evergreen Recycling Solutions, Inc.  
48-517 Via Amistad  
La Quinta, CA 92253



## **EXHIBIT "A"**

### **SCOPE OF SERVICES**

Consultant agrees to provide general coordinative and administrative support for City recycling programs and projects, including but not limited to the following tasks:

#### **Task 1: AB 939 Implementation and Support**

- Implement the City's Source Reduction and Recycling Element (SRRE);
- Implement various recycling and source reduction programs including household hazardous waste, green waste, food waste and construction and demolition debris recycling in order to achieve environmental and economic benefits;
- Conduct waste audits and characterization studies as needed;
- Work with large venue sites and facilities to ensure successful implementation of AB 2176;
- Research and apply for grants and funding that support the implementation of AB 939.
- Coordinate with the City's franchised waste hauler to further develop the recycling opportunities for curbside, multi-family, and commercial/industrial collection programs.

#### **Task 2: Prepare CIWMB Annual Report**

Consultant will prepare both an electronic version with PARIS notes on each diversion program as well as a narrative report to be submitted in hard copy showing recycling trends over time, identifying issues and problem areas, and documenting the City's good faith effort in meeting the AB 939 mandates. Consultant will contact and obtain diversion data required for the report from the following entities:

1. Palm Springs Disposal Services (Data on curbside, commercial program, green waste, Spring/Fall cleanups, special events, drop-offs, City facility program, oil recycling program, and tons taken to any Landfills);
2. EPA's Waste Wise Program
3. County of Riverside (Data on HHW drop-offs, ABOP tonnages, Master Composter Program, confirm tons taken to any Landfills in the County, and allocation of biomass tonnage);
4. Cal Biomass, World Products, Southern California Recycling for data on green waste, wood, organics, and any other materials accepted;
5. CIWMB for calculation of diversion percentage, inputs on diversion calculation formula and other applicable data;
6. Kern County for information on organic diversion from local supermarkets;

7. Colmac for biomass tonnage and for sources of tonnage;
8. City Staff for any programs such as street sign recycling, phone book recycling, etc.;
9. Other organizations as needed.

Consultant will coordinate with the CIWMB Office of Local Assistance staff in preparing a draft of the Annual Report for review and comment by City Staff. Upon receipt of comments from the City, Consultant will revise the report and produce a final draft for City review.

CIWMB will make the final determination about when the final report is due.

**Task 3: Provide Administrative Support for Solid Waste Franchise**

Provide administrative support for the City's solid waste franchise including but not limited to:

- Respond to resident complaints and inquiries;
- Process resident requests for exemptions from residential disposal fees;
- Respond to requests by civic organizations for help with recycling needs such as signage or containers;
- Work with the City's franchise waste hauler, Palm Springs Disposal Service, to resolve any solid waste hauling and recycling issues that may arise;
- Prepare public information and educational materials to promote and raise public awareness on solid waste and recycling issues and programs;
- Prepare and submit applications for used oil, recycling and beverage container funding through the State of California;
- Interact, liaison and work with other governmental agencies such as Riverside County, Riverside County Sheriff's Department, CDF and Riverside County Fire Department, Coachella Valley Association of Governments (CVAG), and California Integrated Waste Management Board (CIWMB) regarding solid waste and recycling issues.

**Task 4: Organize and Implement Special Events**

Act on behalf of the City of Palm Springs in scheduling, setting-up, implementing and overseeing special events to include but not limited to:

- Keep America Beautiful Programs, Great American Clean-Up and other designated Keep America Beautiful events
- E-Waste events;
- Shredding events;
- Spring and Fall clean-up events;

- Telephone book recycling;
- Used Oil events
- Christmas tree, wrapping paper and Christmas card recycling;
- Other events, as directed by City.

**Task 5:      **Serve as the Keep America Beautiful (KAB) Program Liaison****

Liaison to the National Keep America Beautiful, engage local volunteers and manage City efforts for clean-up events and local program. Report Volunteer hours to national program, create award program and present award annually to top volunteer. Research and apply for KAB grants. Create program to supply safety vest, clean up supplies and volunteer supplies for clean-up events.

**Task 6:      **Review State Legislation affecting Solid Waste and Recycling****

Review and provide periodical updates to City's Contract Officer on State Legislation affecting solid waste and recycling services.

**Task 7:      **Attend Regional Recycling and Waste Reduction Meetings/Events & Prepare Reports****

Attend and represent City at various regional meetings such as the Coachella Valley Association of Governments and other community events as requested by City's Contract Officer. Prepare a written report to City's Contract Officer summarizing the discussion and/or actions taken.

**Task 8:      **Perform Other Duties as Requested by City****

Perform other duties assigned by the City of Palm Springs.

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**EXHIBIT "C"**  
**INSURANCE PROVISIONS**

Consultant shall procure and maintain, at its sole cost and expense, and submit concurrently with its execution of this Agreement, in a form and content satisfactory to City, public liability and property damage insurance against all claims for injuries against persons or damages to property resulting from Consultant's performance under this Agreement. Consultant shall also carry workers' compensation insurance in accordance with California workers' compensation laws. Such insurance shall be kept in full force and effect during the term of this Agreement, including any extension thereof, and shall not be cancelable without thirty (30) days written notice to City of any proposed cancellation. Certificates of insurance evidencing the foregoing and designating the City, its elected officials, officers, employees, agents, and volunteers as additional named insureds by original endorsement shall be delivered to and approved by City prior to commencement of services. The procuring of such insurance and the delivery of policies, certificates, and endorsements evidencing the same shall not be construed as a limitation of Consultant's obligation to indemnify City, its elected officials, officers, agents, employees, and volunteers.

**A. Minimum Scope of Insurance.** The minimum amount of insurance required hereunder shall be as follows:

1. Comprehensive general liability and personal injury with limits of at least one million dollars (\$1,000,000) combined single limit coverage per occurrence;
2. Automobile liability insurance with limits of at least one million dollars (\$1,000,000) per occurrence;

For any claims related to this Agreement, Consultant's insurance coverage shall be primary insurance as respects City and its respective elected officials, officers, employees, agents, and volunteers. Any insurance or self-insurance maintained by City and its respective elected officials, officers, employees, agents, and volunteers shall be in excess of Consultant's insurance and shall not contribute with it. For Employer's Liability Insurance only, the insurer shall waive all rights of subrogation and contribution it may have against City, its elected officials, officers, employees, agents, and volunteers.

**B. 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 otherwise acceptable to the City.

**C. 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.



procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

**E. Severability of Interests (Separation of Insureds).** This insurance applies separately to each insured against whom claim is made or suit is brought except with respect to the limits of the insurer's liability.