



# City of La Quinta

**CITY / SA / HA / FA MEETING DATE:** June 2, 2015

**ITEM TITLE:** APPROVE PROFESSIONAL SERVICES AGREEMENT WITH BENGAL ENGINEERING TO PROVIDE PROFESSIONAL ENGINEERING SERVICES FOR DUNE PALMS ROAD WIDENING PROJECT

**AGENDA CATEGORY:**

**BUSINESS SESSION:**

**CONSENT CALENDAR:** 4

**STUDY SESSION:**

**PUBLIC HEARING:**

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## **RECOMMENDED ACTION:**

Approve a Professional Services Agreement, in the amount of \$123,900, with Bengal Engineering, Inc. to provide professional engineering services for the Dune Palms Road Widening Improvement Project, and authorize the City Manager to execute the agreement.

## **EXECUTIVE SUMMARY:**

- The Dune Palms Road Widening Improvement Project will widen Dune Palms Road between Blackhawk Way and the north project limit of the future Dune Palms Road Bridge across the Whitewater Channel.
- After soliciting and receiving proposals from consultant engineering firms, Bengal Engineering was hired for the Dune Palms Bridge Project, which will abut the proposed Dune Palms Road Widening Project.
- Staff believes Bengal Engineering is the best firm to design the street improvements and that the City will benefit by having both projects designed by the same engineering firm.

## **FISCAL IMPACT:**

Staff proposes to fund this project with Measure A, Transportation Development Impact Fees (DIF), and Coachella Valley Associations of Governments (CVAG) Regional Arterial Funding. Measure A funds in the amount of \$308,000 were previously approved in Fiscal Year 2013/2014 for the street improvement plans. The balance of the funding is included in the proposed Fiscal Year 2015/2016 Capital Improvement Program.

The following are the project's proposed funding and funding sources:

FUNDING SOURCE	AMOUNT
Measure A Funds	\$ 383,000
Transportation DIF Funds	\$ 525,000
CVAG Regional Arterial Funds	\$1,575,000
TOTAL ANTICIPATED FUNDING	\$2,483,000

The following are the anticipated project expenditures:

BUDGET LINE ITEM	BUDGET
Professional:	\$ 56,000
Engineering:	\$ 123,900
Right-of-Way Acquisition:	\$ 500,000
Inspection/Test/Survey:	\$ 112,000
Construction:	\$1,402,000
Contingency:	\$ 244,100
City Administration:	\$ 45,000
TOTAL BUDGET:	\$2,483,000

Contingent upon Council's approval of the Professional Services Agreement (PSA) (Attachment 1), the engineering and professional services phase would begin at this time with an anticipated expenditure of \$179,900. These expenditures will be charged against the Measure A funding approved by Council as part of the Fiscal Year 2013/2014 Capital Improvement Program. No additional appropriation is required for this phase.

### **BACKGROUND/ANALYSIS:**

In 2007, the former Redevelopment Agency purchased over five acres of land at the northeast corner of Dune Palms Road and Westward Ho for an affordable housing project. The proposed street improvements and road widening on Dune Palms Road were anticipated in order to address the project's traffic and drainage impacts. The project was placed on hold when the State eliminated Redevelopment Agencies.

A portion of the originally purchased land at the northeast corner of Dune Palms Road and Westward Ho is being considered for a new regional skate park facility and a new four-lane bridge is under design for Dune Palms Road across the Whitewater River. These two projects will require the widening of Dune Palms Road.

The proposed improvements will consist of constructing Dune Palms Road to its General Plan Secondary Arterial configuration between Black Hawk Way and the northerly bridge approach at the Whitewater River as shown in Attachment 2. The improvements include a new northbound travel lane, bicycle/golf cart lane, curb,

gutter, and a 6-foot wide curb-adjacent sidewalk. Completion of the project will require utility relocation and right-of-way acquisition.

Bengal Engineering's roadway design engineer previously worked on the roadway plans for the former Redevelopment Agency. The roadway widening and the bridge improvement projects overlap in terms of right-of-way acquisition and environmental impact. Using the same design engineer should reduce the overall design cost and will improve coordination of the environmental, right-of-way acquisition, and construction phases of both projects.

**ALTERNATIVES:**

An alternative would be to direct staff to issue a request for proposals for these services. Since uncoupling the design of these projects would forego any cost savings that could be achieved through economies of scale and unnecessarily delay delivery of the street, bridge and skate park improvements, no alternative is recommended.

Report prepared by: Ed Wimmer, P.E., Principal Engineer

Report approved for submission by: Timothy R. Jonasson, P.E.

Public Works Director/City Engineer

Attachments:       1. PSA  
                          2. Project Map



# ATTACHMENT 1

## PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT (the "Agreement") is made and entered into by and between the CITY OF LA QUINTA, ("City"), a California municipal corporation, and Bengal Engineering, Inc. ("Consultant"). The parties hereto agree as follows:

### 1.0 SERVICES OF CONSULTANT

1.1 Scope of Services. In compliance with all terms and conditions of this Agreement, Consultant shall provide those services related to Dune Palms Road Widening Improvement, Project No. 2009-04, as specified in the "Scope of Services" attached hereto as Exhibit "A" and incorporated herein by this reference (the "Services"). Consultant represents and warrants that Consultant is a provider of first-class services and Consultant is experienced in performing the Services contemplated herein and, in light of such status and experience, Consultant covenants that it shall follow the highest professional standards in performing the Services required hereunder. For purposes of this Agreement, the phrase "highest professional standards" shall mean those standards of practice recognized by one or more first-class firms performing similar services under similar circumstances.

1.2 Compliance with Law. All services rendered hereunder shall be provided in accordance with all ordinances, resolutions, statutes, rules, regulations, and laws of the City and any Federal, State, or local governmental agency of competent jurisdiction.

1.3 Licenses, Permits, Fees and Assessments. Except as otherwise specified herein, 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, including a City of La Quinta business license. Consultant and its employees, agents, and subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required for the performance of the Services required by 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 performance of the Services required by this Agreement, and shall indemnify, defend (with counsel selected by City), and hold City, its elected officials, officers, employees, and agents, free and harmless against any such fees, assessments, taxes, penalties, or interest levied, assessed, or imposed against City hereunder. Consultant shall be responsible for all subcontractors' compliance with this Section.

1.4 Familiarity with Work. By executing this Agreement, Consultant warrants that (a) it has thoroughly investigated and considered the Services to be

performed, (b) it has investigated the site where the Services are to be performed, if any, and fully acquainted itself with the conditions there existing, (c) it has carefully considered how the Services should be performed, and (d) it fully understands the facilities, difficulties, and restrictions attending performance of the Services under this Agreement. Should Consultant discover any latent or unknown conditions materially differing from those inherent in the Services or as represented by City, Consultant shall immediately inform City of such fact and shall not proceed except at Consultant's risk until written instructions are received from the Contract Officer (as defined in Section 4.2 hereof).

1.5 Standard of Care. Consultant acknowledges and understands that the Services contracted for under this Agreement require specialized skills and abilities and that, consistent with this understanding, Consultant's work will be held to a heightened standard of quality. Consistent with Section 1.4 hereinabove, Consultant represents to City that it holds the necessary skills and abilities to satisfy the heightened standard of quality as set forth in this Agreement. Consultant shall adopt reasonable methods during the life of this Agreement to furnish continuous protection to the Services performed by Consultant, and the equipment, materials, papers, and other components thereof to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the Services by City, except such losses or damages as may be caused by City's own negligence. The performance of Services by Consultant shall not relieve Consultant from any obligation to correct any incomplete, inaccurate, or defective work at no further cost to City, when such inaccuracies are due to the negligence of Consultant.

1.6 Additional Services. In accordance with the terms and conditions of this Agreement, Consultant shall perform services in addition to those specified in the Scope of Services ("Additional Services") only when directed to do so by the Contract Officer, provided that Consultant shall not be required to perform any Additional Services without compensation. Consultant shall not perform any Additional Services until receiving prior written authorization from the Contract Officer, incorporating therein any adjustment in (i) the Contract Sum, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of Consultant. 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. It is specifically understood and agreed that oral requests and/or approvals of Additional Services shall be barred and are unenforceable. Failure of Consultant to secure the Contract Officer's written authorization for Additional Services shall constitute a waiver of any and all right to adjustment of the Contract Sum or time to perform this Agreement, whether by way of compensation, restitution, quantum meruit, or the like, for Additional Services provided without the appropriate authorization from the

Contract Officer. Compensation for properly authorized Additional Services shall be made in accordance with Section 2.3 of this Agreement.

1.7 Special Requirements. Additional terms and conditions of this Agreement, if any, which are made a part hereof are set forth in Exhibit "D" (the "Special Requirements"), which is incorporated herein by this reference and expressly made a part hereof. In the event of a conflict between the provisions of the Special Requirements and any other provisions of this Agreement, the provisions of the Special Requirements shall govern.

## 2.0 COMPENSATION

2.1 Contract Sum. For the Services rendered pursuant to this Agreement, Consultant shall be compensated in accordance with Exhibit "B" (the "Schedule of Compensation") in a total amount not to exceed One Hundred Twenty Three Thousand, Nine Hundred Dollars (\$123,900.00) (the "Contract Sum"), except as provided in Section 1.6. The method of compensation set forth in the Schedule of Compensation may include a lump sum payment upon completion, payment in accordance with the percentage of completion of the Services, payment for time and materials based upon Consultant's rate schedule, but not exceeding the Contract Sum, or such other methods as may be specified in the Schedule of Compensation. The Contract Sum shall include the attendance of Consultant at all project meetings reasonably deemed necessary by City; Consultant shall not be entitled to any additional compensation for attending said meetings. Compensation may include reimbursement for actual and necessary expenditures for reproduction costs, transportation expense, telephone expense, and similar costs and expenses when and if specified in the Schedule of Compensation. Regardless of the method of compensation set forth in the Schedule of Compensation, Consultant's overall compensation shall not exceed the Contract Sum, except as provided in Section 1.6 of this Agreement.

2.2 Method of Billing. Any month in which Consultant wishes to receive payment, Consultant shall submit to City no later than the tenth (10th) working day of such month, in the form approved by City's Finance Director, an invoice for Services rendered prior to the date of the invoice. Such invoice shall (1) describe in detail the Services provided, including time and materials, and (2) specify each staff member who has provided Services and the number of hours assigned to each such staff member. Such invoice shall contain a certification by a principal member of Consultant specifying that the payment requested is for Services performed in accordance with the terms of this Agreement. Subject to retention pursuant to Section 8.3, City will pay Consultant for all items stated thereon which are approved by City pursuant to this Agreement no later than thirty (30) days after invoices are received by the City's Finance Department.

2.3 Compensation for Additional Services. Additional Services approved in advance by the Contract Officer pursuant to Section 1.6 of this Agreement shall be paid for in an amount agreed to in writing by both City and Consultant in advance of the Additional Services being rendered by Consultant. Any compensation for Additional Services amounting to five percent (5%) or less of the Contract Sum may be approved by the Contract Officer. Any greater amount of compensation for Additional Services must be approved by the La Quinta City Council. Under no circumstances shall Consultant receive compensation for any Additional Services unless prior written approval for the Additional Services is obtained from the Contract Officer pursuant to Section 1.6 of this Agreement.

### 3.0 PERFORMANCE SCHEDULE

3.1 Time of Essence. Time is of the essence in the performance of this Agreement. If the Services not completed in accordance with the Schedule of Performance, as set forth in Section 3.2 and Exhibit C, it is understood that the City will suffer damage.

3.2 Schedule of Performance. All Services rendered pursuant to this Agreement shall be performed diligently and within the time period established in Exhibit C (the "Schedule of Performance"). Extensions to the time period specified in the Schedule of Performance may be approved in writing by the Contract Officer.

3.3 Force Majeure. The time period specified in the Schedule of Performance for performance of the Services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of Consultant, including, but not restricted to, acts of God or of the public enemy, fires, earthquakes, floods, epidemic, quarantine restrictions, riots, strikes, freight embargoes, acts of any governmental agency other than City, and unusually severe weather, if Consultant shall within ten (10) days of the commencement of such delay notify the Contract Officer in writing of the causes of the delay. The Contract Officer shall ascertain the facts and the extent of delay, and extend the time for performing the Services for the period of the forced delay when and if in his or her judgment such delay is justified, and the Contract Officer's determination shall be final and conclusive upon the parties to this Agreement. Extensions to time period in the Schedule of Performance which are determined by the Contract Officer to be justified pursuant to this Section shall not entitle the Consultant to additional compensation in excess of the Contract Sum.



3.4 Term. Unless earlier terminated in accordance with Sections 8.8 or 8.9 of this Agreement, the term of this agreement shall commence on June 3, 2015 and terminate on July 31, 2017 ("Initial Term"). This Agreement may be extended upon mutual agreement by both parties ("Extended Term").

#### 4.0 COORDINATION OF WORK

4.1 Representative of Consultant. The following principals of Consultant ("Principals") are hereby designated as being the principals and representatives of Consultant authorized to act in its behalf with respect to the Services specified herein and make all decisions in connection therewith:

- a. Scott Onishuk, P.E., Principal In Charge  
E-mail: scott@bengalengineering.com
- b. Brad Donais, P.E., Project Engineer  
E-mail: bdonais@hep7.com

It is expressly understood that the experience, knowledge, capability, and reputation of the foregoing Principals were a substantial inducement for City to enter into this Agreement. Therefore, the foregoing Principals shall be responsible during the term of this Agreement for directing all activities of Consultant and devoting sufficient time to personally supervise the Services hereunder. For purposes of this Agreement, the foregoing Principals may not be changed by Consultant and no other personnel may be assigned to perform the Services required hereunder without the express written approval of City.

4.2 Contract Officer. The "Contract Officer" shall be Timothy R. Jonasson, P.E., Public Works Director/City Engineer or such other person as may be designated in writing by the City Manager of City. It shall be Consultant's responsibility to assure that the Contract Officer is kept 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. The Contract Officer shall have authority to sign all documents on behalf of City required hereunder to carry out the terms of this Agreement.

4.3 Prohibition Against Subcontracting or Assignment. The experience, knowledge, capability, and reputation of Consultant, its principals, and its employees were a substantial inducement for City to enter into this Agreement. Except as set forth in this Agreement, Consultant shall not contract with any other 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 transferred, assigned, conveyed, hypothecated, or encumbered, voluntarily or by operation of law, without the prior written approval of City. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty five percent (25%) of the present ownership and/or control of Consultant, taking all transfers into account on a cumulative basis. Any attempted or purported assignment or contracting by Consultant without City's express written approval shall be null, void, and of no effect. No approved transfer shall release Consultant of any liability hereunder without the express consent of City.

4.4 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 its employees, perform the Services required herein, except as otherwise set forth herein. City shall have no voice in the selection, discharge, supervision, or control of Consultant's employees, servants, representatives, or agents, or in fixing their number or hours of service. Consultant shall perform all Services required herein as an independent contractor of City and shall remain at all times as to City a wholly independent contractor with only such obligations as are consistent with that role. 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. City shall not in any way or for any purpose become or be deemed to be a partner of Consultant in its business or otherwise or a joint venturer or a member of any joint enterprise with Consultant. Consultant shall have no power to incur any debt, obligation, or liability on behalf of City. 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. Except for the Contract Sum paid to Consultant as provided in this Agreement, City shall not pay salaries, wages, or other compensation to Consultant for performing the Services hereunder for City. City shall not be liable for compensation or indemnification to Consultant for injury or sickness arising out of performing the Services hereunder. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System ("PERS") as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits. Consultant agrees to pay all required taxes on amounts paid to Consultant under this Agreement, and to indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Consultant shall fully comply with the workers' compensation laws regarding Consultant and Consultant's employees. Consultant further agrees to indemnify and hold City harmless from any failure of Consultant to comply with applicable workers' compensation laws. City shall have the right to offset against

the amount of any payment due to Consultant under this Agreement any amount due to City from Consultant as a result of Consultant's failure to promptly pay to City any reimbursement or indemnification arising under this Section.

4.5 Identity of Persons Performing Work. Consultant represents that it employs or will employ at its own expense all personnel required for the satisfactory performance of any and all of the Services set forth herein. Consultant represents that the Services required herein will be performed by Consultant or under its direct supervision, and that all personnel engaged in such work shall be fully qualified and shall be authorized and permitted under applicable State and local law to perform such tasks and services.

4.6 City Cooperation. City shall provide Consultant with any plans, publications, reports, statistics, records, or other data or information pertinent to the Services to be performed hereunder which are reasonably available to Consultant only from or through action by City.

## 5.0 INSURANCE

5.1 Insurance. Prior to the beginning of any Services under this Agreement and throughout the duration of the term of this Agreement, Consultant shall procure and maintain, at its sole cost and expense, and submit concurrently with its execution of this Agreement, policies of insurance as set forth in Exhibit E (the "Insurance Requirements") which is incorporated herein by this reference and expressly made a part hereof.

## 6.0 INDEMNIFICATION.

6.1 Indemnification. To the fullest extent permitted by law, Consultant shall indemnify, protect, defend (with counsel selected by City), and hold harmless City and any and all of its officers, employees, agents, and volunteers as set forth in Exhibit F ("Indemnification") which is incorporated herein by this reference and expressly made a part hereof.

## 7.0 RECORDS AND REPORTS.

7.1 Reports. Consultant shall periodically prepare and submit to the Contract Officer such reports concerning Consultant's performance of the Services required by this Agreement as the Contract Officer shall require. Consultant hereby acknowledges that City is greatly concerned about the cost of the 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 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 said 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.

7.2 Records. Consultant shall keep, and require any subcontractors to keep, such ledgers, books of accounts, invoices, vouchers, canceled checks, reports (including but not limited to payroll reports), studies, or other documents relating to the disbursements charged to City and the Services performed hereunder (the "Books and Records"), as shall be necessary to perform the Services required by this Agreement and enable the Contract Officer to evaluate the performance of such Services. Any and all such Books and Records shall be maintained in accordance with generally accepted accounting principles and shall be complete and detailed. The Contract Officer shall have full and free access to such Books and Records at all times during normal business hours of City, including the right to inspect, copy, audit, and make records and transcripts from such Books and Records. Such Books and Records shall be maintained for a period of three (3) years following completion of the Services hereunder, and City shall have access to such Books and Records in the event any audit is required. In the event of dissolution of Consultant's business, custody of the Books and Records may be given to City, and access shall be provided by Consultant's successor in interest. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds Ten Thousand Dollars (\$10,000.00), this Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of City, for a period of three (3) years after final payment under this Agreement.

7.3 Ownership of Documents. All drawings, specifications, maps, designs, photographs, studies, surveys, data, notes, computer files, reports, records, documents, and other materials plans, drawings, estimates, test data, survey results, models, renderings, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings, digital renderings, or data stored digitally, magnetically, or in any other medium prepared or caused to be prepared by Consultant, its employees, subcontractors, and agents in the performance of this Agreement (the "Documents and Materials") shall be the property of City and shall be delivered to City upon request of the Contract Officer or upon the expiration or 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 use, reuse, or assignment of the Documents and Materials hereunder. Any use, reuse or assignment of such completed Documents and Materials for other projects and/or use of uncompleted documents without specific written authorization by Consultant will be at City's sole risk and without liability to Consultant, and Consultant's guarantee and warranties shall not extend to such use, revise, or assignment. Consultant may retain copies of such Documents and Materials for its

own use. Consultant shall have an unrestricted right to use the concepts embodied therein. All subcontractors shall provide for assignment to City of any Documents and Materials prepared by them, and in the event Consultant fails to secure such assignment, Consultant shall indemnify City for all damages resulting therefrom.

In the event City or any person, firm, or corporation authorized by City reuses said Documents and Materials without written verification or adaptation by Consultant for the specific purpose intended and causes to be made or makes any changes or alterations in said Documents and Materials, City hereby releases, discharges, and exonerates Consultant from liability resulting from said change. The provisions of this clause shall survive the termination or expiration of this Agreement and shall thereafter remain in full force and effect.

7.4 Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify, reuse, or sublicense any and all copyrights, designs, rights of reproduction, and other intellectual property embodied in the Documents and Materials. Consultant shall require all subcontractors, if any, to agree in writing that City is granted a non-exclusive and perpetual license for the Documents and Materials the subcontractor prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all of the Documents and Materials. Consultant makes no such representation and warranty in regard to the Documents and Materials which were prepared by design professionals other than Consultant or provided to Consultant by City. City shall not be limited in any way in its use of the Documents and Materials at any time, provided that any such use not within the purposes intended by this Agreement shall be at City's sole risk.

7.5 Release of Documents. The Documents and Materials shall not be released publicly without the prior written approval of the Contract Officer or as required by law. Consultant shall not disclose to any other entity or person any information regarding the activities of City, except as required by law or as authorized by City.

## 8.0 ENFORCEMENT OF AGREEMENT.

8.1 California Law. This Agreement shall be interpreted, construed, and governed 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.

8.2 Disputes. In the event of any dispute arising under this Agreement, the injured party shall notify the injuring party in writing of its contentions by submitting a claim therefore. The injured party shall continue performing its obligations hereunder so long as the injuring party commences to cure such default within ten (10) days of service of such notice and completes the cure of such default within forty-five (45) days after service of the notice, or such longer period as may be permitted by the Contract Officer; provided that if the default is an immediate danger to the health, safety, or general welfare, City may take such immediate action as City deems warranted. Compliance with the provisions of this Section shall be a condition precedent to termination of this Agreement for cause and to any legal action, and such compliance shall not be a waiver of any party's right to take legal action in the event that the dispute is not cured, provided that nothing herein shall limit City's right to terminate this Agreement without cause pursuant to Section 8.8. During the period of time that Consultant is in default, City shall hold all invoices and shall, when the default is cured, proceed with payment on the invoices. In the alternative, City may, in its sole discretion, elect to pay some or all of the outstanding invoices during any period of default.

8.3 Retention of Funds. City may withhold from any monies payable to Consultant sufficient funds to compensate City for any losses, costs, liabilities, or damages it reasonably believes were suffered by City due to the default of Consultant in the performance of the Services required by this Agreement.

8.4 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. City's consent or approval of any act by Consultant requiring City's consent or approval shall not 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.

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

8.6 Legal Action. In addition to any other rights or remedies, either party may take legal action, at law or at 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.

8.7 Termination Prior To Expiration Of Term. This Section shall govern any termination of this Agreement, except as specifically provided in the following Section 8.9 for termination for cause. City reserves the right to terminate this Agreement at any time, with or without cause, upon thirty (30) days' written notice to Consultant. Upon receipt of any 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 in accordance with the Schedule of Compensation or such as may be approved by the Contract Officer, except as provided in Section 8.3.

8.8 Termination for Default of Consultant. If termination is due to the failure of Consultant to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 8.2, take over the Services and prosecute the same to completion by contract or otherwise, and Consultant shall be liable to the extent that the total cost for completion of the Services required hereunder exceeds the compensation herein stipulated (provided that City shall use reasonable efforts to mitigate such damages), and City may withhold any payments to Consultant for the purpose of setoff or partial payment of the amounts owed City as previously stated in Section 8.3.

8.9 Attorneys' Fees. If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorneys' fees; provided, however, that the attorneys' fees awarded pursuant to this Section shall not exceed the hourly rate paid by City for legal services multiplied by the reasonable number of hours spent by the prevailing party in the conduct of the litigation. Attorneys' fees shall include attorneys' fees on any appeal, and in addition a party entitled to attorneys' fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery, and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment. The court may set such fees in the same action or in a separate action brought for that purpose.

## 9.0 CITY OFFICERS AND EMPLOYEES; NONDISCRIMINATION.

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

9.2 Conflict of Interest. Consultant covenants that neither it, nor any officer or principal of it, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Consultant's performance of the Services under this Agreement. Consultant further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent, or subcontractor without the express written consent of the Contract Officer. Consultant agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Agreement.

No officer or employee of 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 this Agreement which effects his financial interest or the financial interest of any corporation, partnership or association in which he is, directly or indirectly, interested, in violation of any State statute or regulation. Consultant warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

9.3 Covenant against Discrimination. Consultant covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any impermissible classification including, but not limited to, race, color, creed, religion, sex, marital status, sexual orientation, national origin, or ancestry in the performance of this Agreement. Consultant shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, marital status, sexual orientation, national origin, or ancestry.

## 10.0 MISCELLANEOUS PROVISIONS

10.1 Notice. Any notice, demand, request, consent, approval, or communication either party desires or is required to give the other party or any other person shall be in writing and either served personally or sent by prepaid, 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 forty-eight (48) hours from the time of mailing if mailed as provided in this Section.

To City:  
CITY OF LA QUINTA  
Attention: Frank Spevacek,  
City Manager  
78-495 Calle Tampico  
La Quinta, California 92253

To Consultant:  
BENGAL ENGINEERING, INC.  
Attention: Scott Onishuk, P.E.  
Principal In Charge  
250 Big Sur Drive  
Goleta, CA 93117

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

10.3 Section Headings and Subheadings. The section headings and subheadings contained in this Agreement are included for convenience only and shall not limit or otherwise affect the terms of this Agreement.

10.4 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument

10.5 Integrated Agreement. This Agreement including the exhibits hereto is the entire, complete, and exclusive expression of the understanding of the parties. It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements, and understandings, if any, between the parties, and none shall be used to interpret this Agreement.

10.6 Amendment. No amendment to or modification of this Agreement shall be valid unless made in writing and approved by Consultant and by the City Council of City. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

10.7 Severability. In the event that any one or more of the articles, phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable, such invalidity or unenforceability shall not affect any of the remaining articles, phrases, sentences, clauses, paragraphs, or sections of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.

10.8 Unfair Business Practices Claims. In entering into this Agreement, Consultant offers and agrees to assign to City all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. § 15) or under the Cartwright Act (Chapter 2, (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials related to this Agreement. This assignment shall be made and become effective at the time City renders final payment to Consultant without further acknowledgment of the parties.

10.9 No Third Party Beneficiaries. With the exception of the specific provisions set forth in this Agreement, there are no intended third-party beneficiaries under this Agreement and no such other third parties shall have any rights or obligations hereunder.

10.10 Authority. The persons executing this Agreement on behalf of each of the parties hereto represent and warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) that entering into this Agreement does not violate any provision of any other Agreement to which said party is bound. This Agreement shall be binding upon the heirs, executors, administrators, successors, and assigns of the parties.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates stated below.

CITY OF LA QUINTA,  
a California municipal corporation

CONSULTANT:

By: 


Name: Scott Onishuk, P.E.

FRANK J. SPEVACEK, City Manager

Title: Principal In Charge

Dated: \_\_\_\_\_

ATTEST:

By: 

Name: Md Wahiduzzaman, P.E.

SUSAN MAYSELS, City Clerk,  
La Quinta, California

Title: President

APPROVED AS TO FORM:

WILLIAM H. IHRKE, City Attorney  
City of La Quinta, California

Two signatures are required if Consultant is a corporation.

NOTE: CONSULTANT'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO CONSULTANT'S BUSINESS ENTITY.

Exhibit A  
Scope of Services

The Consultant's Scope of Work, dated May 5, 2015, is attached and made a part herewith.

**Exhibit A**  
**SCOPE OF SERVICES**  
**May 5, 2015**

The following is the proposed scope to assume responsibility of the north Dune Palms Road widening plans.

**Task 1: Project Management.**

The Consultant will manage the project by tracking the schedule, budget, QA/QC and value of the products produced.

Our Project Management approach is highlighted by an aggressive strategy to identify and pursue those critical, long lead time issues that need to be initiated early in the project development process.

Work will include:

- Coordination with stakeholders such as the City, Coachella Valley Water District, Private and Public Utilities, etc.
- Budget preparation for each task and milestone tracking for the project
- Project schedule planning including milestones, project activities and deliverables
- Monthly progress reports accompanied by an invoice
- Lead monthly project status meeting
- Monitoring critical path items in a proactive manner
- Monitor long lead items such as CVWD coordination, Utility Relocations, RW acquisition and City review process

In addition to the PDT meetings with the project team, we will work hand-in-hand with our Environmental Lead and City Staff, as needed to provide and exchange technical data and environmental input. This proactive relationship will be essential to the success of the project.

**Task 2: Topographic Base Mapping.**

Consultant will utilize the existing topographic base map from the prior prepared plans and southern bridge project base files. Due to changes in the project typical section, Consultant will collect field data along the proposed saw cut line of the widening section of the corridor.

**Task 3: Utility Coordination**

Consultant will review existing utility data provided in the existing prior prepared plan set, including the pothole log. Consultant will verify utility locations with each utility company in addition to working with each utility who has facilities in conflict with the proposed street improvements.

**Utility Verification Letter, Conflict Identification and Relocation Letters.** Consultant will write Utility Verification letters requesting final verification to clearly identify conflicts with the proposed design. In addition, Consultant will prepare final letters and exhibits denoting required relocations and the requested timing of each relocation.

**Utility Coordination Documentation.** All utility information including project contacts, correspondence dates, meeting minutes and other coordination will be maintained in a three ring binder. The first sheet on the inside cover will contain a matrix of each utility company, contact

name, and dates of milestone coordination efforts. A copy of the final utility coordination binder will be provided to the City at the project bidding phase of the project.

**Task 4: Legal Descriptions and Exhibits**

Consultant shall prepare up to two (2) Legal Description and Exhibits for one temporary construction easements and one right of way acquisition. Additionally, due to the extension of the acquisitions for the mobile home park site, Consultant will have additional effort on the street easement and TCE legal and exhibits. The temporary construction easements will encompass an area as needed to provide the contractor the sufficient room to perform the anticipated construction activities for the widening project. Consultant shall also fill out the City provided Grant Easement documentation for the City’s use during the acquisition process.

**Task 5: Final Right of Way Services**

As a result of the proposed improvements and the associated construction activities, it is assumed that various interests, including fee simple and/or temporary easements, will be needed from two (2) parcels.

APN	OWNER	USE	LOT SIZE
600-030-010	Chin Family Prop Ltd Partnership	Mobile Home Park with SFR.	11.29 Ac.
600-030-019	Church	Church	1.82 Ac.

Impacts to the mobile home park at the northeast corner of the existing bridge may prove complicated. The current proposed typical section along with the existing structure encroachments into the existing street right of way, will cause the relocation of up to five (5) mobile homes along with the acquisition of additional street right of way along the full frontage of the mobile home site for the proposed improvement project. Separate appraisal reports will be completed for each structure, as well as for the impacted parcel. A separate acquisition case will be opened for the owners of the impacted mobile home coaches. As such, occupants of the structures will necessarily require displacement and relocation assistance, which Consultant will manage and facilitate. Because of the relative complexity of the impacts to this parcel, careful management of multiple appraisal activities, and close communication with several interested parties, will be of utmost importance.

Additionally, the Consultant will acquire the necessary interests, both street right of way easement and TCE, from the church parcel north of the mobile home park site (APN 600-030-019).

Since the acquisition for this project will occur in the same general timeframe as the bridge project, acquisition services will begin following the approval of the NEPA document of the Federal bridge project. Consultant will implement and manage a comprehensive ROW program to cover all aspects involved in the public acquisition process. In general, this process usually includes project management, fee appraisal, appraisal review, F&E appraisal, title and escrow, environmental, property acquisition, relocation assistance, utility coordination, site clearance and right of way certification. Consultant has the properly licensed, experienced, local resources to provide precise

staffing levels exactly when needed, and the expertise necessary to secure the remaining ROW for the project.

Consultant will develop and implement a formal ROW program in compliance with the applicable City and state policies and procedures. For this project specifically, it is understood that local funding will be used for the acquisition. Consultant will provide overall ROW program management, leadership, and direction of all phases of the right of way process, policies, and scheduling.

### **Right of Way Project Management and Document Support**

1. Track and manage all budgetary-related aspects of Consultant's Scope of Work.
2. Assist with the development of administrative policies, procedures, and forms necessary to carry out the initial program.
3. Maintain ongoing general consultation and project coordination with the client, City, and any other project team members as necessary.
4. Provide representation of the client at public meetings, hearings, and litigation related matters.
5. Prepare and present a monthly written status report based on the agreed-upon guidelines regarding information to be provided. Confer weekly with client verbally on general statuses, problem areas, and progress.
6. Participate in up to 4 Project Development Team Meetings to report on acquisition progress.
7. Manage subcontractor and all necessary disciplines needed for the project.
8. Provide quality assurance and quality control for the right of way program and all right of way components.

### **Title Investigation Services – *One (1) Preliminary Title Report***

1. Secure vesting deeds, back up documents, property profiles, and tax maps for each property.
2. Secure preliminary title report which will remain valid for a minimum of 6 months or until there is an ownership change.
3. Secure copies of recorded back-up documents, as needed.
4. Share title information with right of way engineer, surveyor, and appraisers for their use.
5. Prepare list of title exceptions to be cleared; confirm manner of disposition is consistent with approved project plan.
6. Facilitate changes to preliminary title report after the preparation of the legal description, if necessary for partial acquisition.

### **Appraisal Services: *Up to six (6) Appraisal Reports (1 parcel, & 5 mobile homes)***

1. Consultant will mail a notification letter and acquisition policies brochure to the property owner requesting permission to conduct an on-site inspection of the property, advising them of their right to accompany the appraiser at the time of the inspection, and requesting information regarding the property appraised which could influence the appraised value.
2. Appraiser will review title information pertaining to respective ownership and will review drawings and other pertinent information relative to the parcel.
3. Appraiser will inspect the property personally with the owner (if possible) and document the inspection with photographs for use in the report.
4. Appraiser will perform market research to support the selected appraisal methodologies and will document and confirm comparable sales information.

5. Appraiser will prepare a narrative appraisal report that conforms to the Uniform Standards of Professional Appraisal Practice (USPAP). The appraisal study and report are intended to serve as an acquisition appraisal and will be prepared in a summary format consistent with the specifications for narrative appraisal reports.
6. Consultant will receive and analyze the completed appraisal report accordingly.

**Negotiate Right of Way Settlement/Prepare Acquisition Documents: (6) Owners (2 parcels & 5 mobile home owner)**

1. Establish and maintain a complete and current record file in a form acceptable to the client.
2. Receive and analyze title information, approved appraisal report, and legal description in sufficient detail to negotiate with the property owner and other parties.
3. Prepare offer letter, summary statement, and list of compensable items of fixtures and equipment, in accordance with state or federal regulations and the approval of the client.
4. Present written purchase offer to owner or their representative in person, when possible. Secure receipt of delivery of offer as practical and present and secure tenant information statements, as applicable.
5. Follow-up and negotiate with property owner, as necessary; prepare and submit recommended settlement justification to client for review and approval; review any independent appraisal secured by property owner; and coordinate reimbursement of appraisal fees (up to \$5,000) with client. Ongoing negotiations and settlement discussions will continue after the initial offer or until we reach settlement or impasse, as dictated by the overall Project Schedule.
6. Prepare and assemble acquisition contracts, deeds, and related acquisition documents required for the acquisition of all necessary property interests.
7. Maintain a diary report of all contacts made with property owner or representative and a summary of the status of negotiations indicating attitude of owner, problem areas, and other pertinent information. Copies of all applicable written correspondence will be maintained in files.
8. Prepare an impasse letter where, after diligent attempts to settle by negotiation, it appears eminent domain will be needed or prudent to acquire the needed interest.
9. Litigation support: in the event an acquisition is unable to be settled via voluntary means, the negotiations staff will provide a condemnation-ready case file, all relevant negotiations history, and meet with client as needed to provide relevant acquisition content.
10. Transmit executed acquisition documents to client. Each transmittal package shall include a fully executed and properly notarized deed(s), fully executed acquisition contract with attachments, and a brief settlement memorandum which summarizes the pertinent data relative to the transaction.

**Escrow Coordination**

If by Negotiated Settlement: Assist the escrow/title company in the following:

1. Open escrow and coordinate execution of closing instructions providing for title insurance coverage at the settlement amount.
2. Provide escrow officer with fully executed acquisition contract and notarized deed.
3. Work in conjunction with escrow officer to facilitate the clearance of title matters as set forth in the settlement memorandum and escrow instructions.



4. Assist escrow to secure full or partial reconveyance or subordination instruments from lien holders of record.
5. Review settlement statement for accuracy.
6. Coordinate deposit of acquisition price and estimated closing costs with escrow.
7. After the closing, review the title insurance policy for accuracy.
8. Prepare and mail a letter to County Assessor requesting cancellation of taxes if appropriate.

### **Eminent Domain Assistance (if necessary)**

If Settlement by Eminent Domain: Assist eminent domain counsel with the following:

1. Prepare a letter for the client signature to eminent domain counsel, requesting proceeding to condemnation.
2. Provide eminent domain counsel with available right of way maps and legal descriptions, preliminary title reports and title review documents, and information on how to contact each owner or interest holder.
3. Provide eminent domain counsel with a duplicate copy of the parcel file, together with a copy of the appraisal, offer to purchase, correspondence, acquisition contract, and deed as presented.
4. Convert preliminary title reports to litigation guarantees for eminent domain counsel's use. Title company fees (based on the value of the interest required) are additional.

### **Relocation Plan Preparation Services**

1. Interview all potentially affected occupants to determine relocation needs. The interviewer will query household information such as: the number, ages and gender of all occupants, income of the household, distance to employment and utilized neighborhood services, special needs of the household, etc.
2. Research the marketplace for available replacement locations and/or establish rent schedules for compiling project costs.
3. Compile statistics on available housing replacement sites.
4. Calculate potential project costs with regard to relocation assistance.
5. Present draft relocation plan to client.
6. Distribute plan to project participants and make it available for public review.
7. Make any needed revisions brought up during the 30-day public review period.
8. Participate in adoption presentation meeting.

### **Relocation Assistance Program Implementation Services (5 residential relocations)**

1. Secure basic case information and set up case file; maintain the necessary case documentation and contact diary throughout the course of our involvement with the claimant.
2. Conduct initial in-depth field interview with claimant: document rents, income, family size, names/ages of occupants, and determine relocation needs, preferences and special requirements; provide general information notices and brochure; explain relocation process, rights and benefits available.
3. Provide on-going advisory assistance to minimize hardships on claimants, including referrals to and coordination with community service resources, public housing, and other public services as needed.
4. Document rent with rental agreement, receipts or economic rent if needed.

5. Document/verify income using pay stubs, budget worksheets, tax returns, certification and/or cash affidavit as necessary. Use rent-to-rent method if income cannot be verified.
6. Create rent schedule for project as appropriate and if authorized by client.
7. Search for and document comparable sites for each claimant, provide initial referrals and three sets of additional housing referrals every 4-6 weeks, as necessary.
8. Prepare letter of eligibility based on most appropriate comparable or rent schedule and seek authorization of client.
9. Deliver letter of eligibility to claimant and discuss findings and impacts to occupants' particular needs. Amend the letter of eligibility one additional time if the economics of the comparable's availability changes over the course of our assignment.
10. Prepare and deliver 90-day notices to vacate no later than 12 weeks after general information notices have been delivered.
11. Arrange for transportation to view replacement sites if needed. Assist Claimants with their selection of a replacement site, with lease offers, with review of rental agreements and with move bids or fixed moving payment.
12. Inspect selected site to ensure it meets decent, safe, and sanitary requirements.
13. Monitor the replacement site escrow and explain the relocation process to agent and escrow officer as necessary.
14. Verify vacation of the displacement site and secure a certificate of abandonment.
15. Determine eligibility for proposed amount of relocation benefits, including actual and reasonable moving payments, rental/purchase differential payments and fixed payments as applicable.
16. For residential moves, secure and process an advance claim to assist with the move and a second final claim incorporating the moving costs and rental/purchase differential payment once family has moved to selected displacement site.
17. Each claim will be signed by the claimant, supported by appropriate back-up (schedules, receipts, etc.) and will be reviewed by Consultant's project manager for recommendation before submitting to client for approval. Each claim check will be delivered to claimant in person (as feasible) and a receipt of payment will be secured.

#### **Task 6: Roadway Improvement Plans**

Consultant will modify the existing 90% improvement plans to accommodate revised street typical section and other noted changes. The improvement plans will include modifying the project title sheet, typical cross sections, construction details, removal and utility relocation plan, horizontal alignment layout plans, vertical profile, signing and striping grading, and cross sections of the proposed roadway improvements and submit to the City for review and comment. The revised improvement plans will also include the addition of a raised median curb. The roadway will be designed in accordance with AASHTO's "A Policy on Geometric Design of Highway and Streets", AASHTO "Guide for the Development of Bicycle Facilities", the "Greenbook" Standard Specifications as well as the City of La Quinta Standards Plans. Consultant will prepare final roadway plans in conformance with the approved preliminary alignment plans and submit to the City for review at 90%, 95% and 100% completion. Mylar plan sheets will be submitted after the approval of the 100% plan submittal package.

### **Task 7: Bid Package and Specifications**

Technical specifications shall be prepared for construction of each item of work in the Project. In addition, Consultant will fill out the bid schedule, matching the item number with their corresponding specification and line item in the Engineer's Estimate. Prior to the publication of the final package, Consultant will review the document. Specifications will be provided starting with the 90% plan submittal.

Consultant will prepare the following items for the Bid Document: Project Description including all major work items, working days, liquidated damages based on Caltrans Specifications, contractor submittals prior to mobilization, special traffic control requirements or coordination, all of section 4000, and bid schedule.

### **Task 8: Construction Cost Estimate**

Starting with the 90% Package Submittal, Consultant shall prepare a Final Quantity and Cost Estimate. The estimate will be submitted with both the 100% and Mylar plan check reviews.

### **Task 9: Services During Bidding**

Consultant will assist the City with the bidding and award process for this project. These services will be performed on a Time-and-Material basis. Consultant assumes up to 8 hours. The following items may be provided upon request by City staff:

- Bid Support. All key team members will be available to attend a pre-bid meeting.
- Respond to Inquiries. Consultant will respond to bidder inquiries by phone or email.
- Prepare Addenda. Consultant will prepare addenda as requested by the City.
- Review/Recommended Award. Consultant will assist in recommendation for award.

### **Task 10: Construction Support Services**

Consultant will assist project staff with construction support services. A budget amount has been prepared, though this may require adjustment based upon the City's determination of the level of consultant involvement needed during construction. These services will be performed on a Time-and-Material basis. Consultant assumes up to 16 hours. Upon request from City staff the following will be provided by the Consultant:

- RFI documentation and response to questions regarding construction documents
- Periodic site visits during construction, as requested.
- Input from the consultant regarding change orders.
- Prepare Record Plans.

### **Task 11: IS/MND Addendum - Updated CEQA Environmental Clearance (OPTIONAL TASK)**

Consultant will prepare an Addendum to the adopted Initial Study/MND dated April of 2010. For a project, the lead agency can prepare the addendum if there are minor changes in the project scope/description/background information, and the environmental evaluation of the project impacts. The City would adopt the addendum and consider it a part of the original IS/MND in making decisions regarding the project.

Several changes has occurred in the project information since the adoption of the IS/MND in April 2010. The addendum will update the project information, address the changes, and provide additional information and documentation in support of the decision to adopt the MND. The following are the required changes to the adopted IS/MND:

- Project Funding Source;
- CIP Funding Schedule;
- Anticipated Traffic Conditions;
- Right of way requirements addressed in 1969 agreement with Dune Palms Mobile Estates and the City;
- Update information in support of the response to comment letter received during the public comment period of the IS/MND of potential environmental impacts;
- Revise Dune Palms widening limits; and
- Update information regarding the require permits.

Consultant will prepare a preliminary Draft Addendum to the adopted IS/MND and provide to the City for review and comments. Following the receipt of the City comments, Consultant shall make the necessary revisions and prepare the final Draft Addendum for the City to review and if found acceptable, the City will notice and circulate the document for review. At the close of the public review period for the Draft Addendum, Consultant will meet with City staff to review any received comments on the Draft Addendum and to discuss potential responses to these comments. Then, Consultant would formulate responses to the comments and submit the response document to the City for review and comment. The City's comments will be incorporated into the Response to Comments document, which will be submitted to City as an appendix to the Final Addendum. Consultant will prepare both a preliminary and Final Addendum for City review and adoption.

Exhibit B  
Schedule of Compensation

With the exception of compensation for Additional Services, provided for in Section 2.3 of this Agreement, the maximum total compensation to be paid to Consultant under this Agreement is One Hundred Twenty Three Thousand, Nine Hundred Dollars (\$123,900.00) ("Contract Sum"). The Contract Sum shall be paid to Consultant in installment payments made on a monthly basis and in an amount identified in Consultant's schedule of compensation attached hereto for the work tasks performed and properly invoiced by Consultant in conformance with Section 2.2 of this Agreement.

**Exhibit B**  
**FEE**  
**May 5, 2015**

**PROPOSED FEE**

The following is the proposed Fee to revise and complete the Construction Documents for the North Dune Palms Road Widening plans from the northern project limits of the Dune Palms Road Bridge project to the intersection of Blackhawk Way / Westward Ho Drive.

<b>Task</b>	<b>Fee</b>
1 - Project Management, Coordination and QA/QC	\$12,900
2 - Additional topo survey	\$2,300
3 - Utility Coordination	\$5,200
4 - Legal and Exhibits	\$3,400
5 - Right of Way Acquisition	\$74,100
6 - Modify Improvement Plans	\$14,800
7 - Bid Package and Specifications	\$2,600
8 - Cost Estimate	\$1,800
9 - Services During Bidding	\$1,200
<u>10 - Construction Support Services</u>	<u>\$2,400</u>
	<b>Total</b> <b>\$120,700</b>
	<b>Reimbursable</b> <b>\$3,200</b>
<b>Optional Task</b>	
11 - Update CEQA Environmental Clearance	\$13,800

Exhibit C  
Schedule of Performance

Consultant shall complete all services identified in the Scope of Services, Exhibit A of this Agreement, in accordance with the Project Schedule, attached hereto and incorporated herein by this reference.





## EXHIBIT C - SCHEDULE DUNE PALMS NORTH WIDENING DRAFT SCHEDULE

ID	Task Name	Duration	Start	Finish	2016												2017														
					Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar			
1	<b>Dune Palms North Widening Project</b>																														
2	<b>Environmental Clearance (Per Terra Nova Milestones)</b>	51 days	Wed 5/20/15	Wed 7/29/15																											
3	Notice to Proceed	0 days	Wed 5/20/15	Wed 5/20/15																											
4	Prepare IS	24 days	Wed 5/20/15	Mon 6/22/15																											
5	City and Consultant Staff Review of IS	3 days	Tue 6/23/15	Thu 6/25/15																											
6	Revise IS	2 days	Fri 6/26/15	Mon 6/29/15																											
7	Release of IS and Comment Period	16 days	Tue 6/30/15	Tue 7/21/15																											
8	Response to Comments	5 days	Wed 7/22/15	Tue 7/28/15																											
9	IS Approval	0 days	Wed 7/29/15	Wed 7/29/15																											
10	<b>Right of Way Acquisition</b>	375 days	Mon 7/6/15	Fri 12/9/16																											
11	<b>NEPA Approval on HBP Project</b>	0 days	Mon 8/24/15	Mon 8/24/15																											
12	Appraise R/W	75 days	Mon 7/6/15	Fri 10/16/15																											
13	Review Appraisals	30 days	Mon 10/19/15	Fri 11/27/15																											
14	R/W Acquisitions Offers and Negotiations	150 days	Mon 11/30/15	Fri 6/24/16																											
15	Relocation Assistance	120 days	Mon 6/27/16	Fri 12/9/16																											
16	<b>Bridge R/W Completion</b>	0 days	Wed 2/1/17	Wed 2/1/17																											
17	<b>Final Design</b>	85 days	Wed 11/4/15	Tue 3/1/16																											
18	<b>Submittal of 65% Bridge Plans</b>	0 days	Wed 11/4/15	Wed 11/4/15																											
19	Revise 90% Plans	40 days	Wed 11/4/15	Tue 12/29/15																											
20	City Plan Review	5 days	Wed 12/30/15	Tue 1/5/16																											
21	Prepare 95% PS&E	25 days	Wed 1/6/16	Tue 2/9/16																											
22	City 95% PS&E Review	5 days	Wed 2/10/16	Tue 2/16/16																											
23	Prepare 100% PS&E Package	10 days	Wed 2/17/16	Tue 3/1/16																											
24	<b>Approval of 100% Bridge Plans</b>	0 days	Mon 7/18/16	Mon 7/18/16																											



Exhibit D  
Special Requirements

None.



Exhibit E  
Insurance Requirements

E.1 Insurance. Prior to the beginning of and throughout the duration of this Agreement, the following policies shall be maintained and kept in full force and effect providing insurance with minimum limits as indicated below and issued by insurers with A.M. Best ratings of no less than A-:VI:

Commercial General Liability (at least as broad as ISO CG 0001)  
\$1,000,000 (per occurrence)  
\$2,000,000 (general aggregate)

Commercial Auto Liability (at least as broad as ISO CA 0001)  
\$1,000,000 (per accident)

Errors and Omissions Liability  
\$1,000,000 (per claim and aggregate)

Workers' Compensation  
(per statutory requirements)

Consultant shall procure and maintain, at its cost, and submit concurrently with its execution of this Agreement, Commercial General Liability insurance against all claims for injuries against persons or damages to property resulting from Consultant's acts or omissions rising out of or related to Consultant's performance under this Agreement. The insurance policy shall contain a severability of interest clause providing that the coverage shall be primary for losses arising out of Consultant's performance hereunder and neither City nor its insurers shall be required to contribute to any such loss. A certificate evidencing the foregoing and naming City and its officers and employees as additional insured (on the Commercial General Liability policy only) shall be delivered to and approved by City prior to commencement of the services hereunder.

Consultant shall carry automobile liability insurance of \$1,000,000 per accident against all claims for injuries against persons or damages to property arising out of the use of any automobile by Consultant, its officers, any person directly or indirectly employed by Consultant, any subcontractor or agent, or anyone for whose acts any of them may be liable, arising directly or indirectly out of or related to Consultant's performance under this Agreement. If Consultant or Consultant's employees will use personal autos in any way on this project, Consultant shall provide evidence of personal auto liability coverage for each such person. The term "automobile" includes, but is not limited to, a land motor vehicle, trailer or semi-trailer designed for travel on public roads. The automobile insurance policy shall contain a severability of interest clause providing that coverage shall be

primary for losses arising out of Consultant's performance hereunder and neither City nor its insurers shall be required to contribute to such loss.

Professional Liability or Errors and Omissions Insurance as appropriate shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the consultant and "Covered Professional Services" as designated in the policy must specifically include work performed under this agreement. The policy limit shall be no less than \$1,000,000 per claim and in the aggregate. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend. The policy retroactive date shall be on or before the effective date of this agreement.

Consultant shall carry Workers' Compensation Insurance in accordance with State Worker's Compensation laws with employer's liability limits no less than \$1,000,000 per accident or disease.

Consultant shall provide written notice to City within ten (10) working days if: (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; or (3) the deductible or self-insured retention is increased. In the event any of said policies of insurance are cancelled, Consultant shall, prior to the cancellation date, submit new evidence of insurance in conformance with this Exhibit to the Contract Officer. The procuring of such insurance or the delivery of policies or certificates evidencing the same shall not be construed as a limitation of Consultant's obligation to indemnify City, its officers, employees, contractors, subcontractors, or agents.

E.2 Remedies. In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option:

- a. Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under this Agreement.
- b. Order Consultant to stop work under this Agreement and/or withhold any payment(s) which become due to Consultant hereunder until Consultant demonstrates compliance with the requirements hereof.
- c. Terminate this Agreement.

Exercise of any of the above remedies, however, is an alternative to any other remedies City may have. The above remedies are not the exclusive remedies for Consultant's failure to maintain or secure appropriate policies or endorsements. Nothing herein contained shall be construed as limiting in any way the extent to which Consultant may be held responsible for payments of damages to persons or

property resulting from Consultant's or its subcontractors' performance of work under this Agreement.

E.3 General Conditions Pertaining to Provisions of Insurance Coverage by Consultant. Consultant and City agree to the following with respect to insurance provided by Consultant:

1. Consultant agrees to have its insurer endorse the third party general liability coverage required herein to include as additional insureds City, its officials, employees, and agents, using standard ISO endorsement No. CG 2010 with an edition prior to 1992. Consultant also agrees to require all contractors, and subcontractors to do likewise.

2. No liability insurance coverage provided to comply with this Agreement shall prohibit Consultant, or Consultant's employees, or agents, from waiving the right of subrogation prior to a loss. Consultant agrees to waive subrogation rights against City regardless of the applicability of any insurance proceeds, and to require all contractors and subcontractors to do likewise.

3. All insurance coverage and limits provided by Consultant and available or applicable to this Agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement or any other agreement relating to City or its operations limits the application of such insurance coverage.

4. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to City and approved of in writing.

5. No liability policy shall contain any provision or definition that would serve to eliminate so-called "third party action over" claims, including any exclusion for bodily injury to an employee of the insured or of any contractor or subcontractor.

6. All coverage types and limits required are subject to approval, modification and additional requirements by the City, as the need arises. Consultant shall not make any reductions in scope of coverage (e.g. elimination of contractual liability or reduction of discovery period) that may affect City's protection without City's prior written consent.

7. Proof of compliance with these insurance requirements, consisting of certificates of insurance evidencing all of the coverages required and an additional insured endorsement to Consultant's general liability policy, shall be delivered to City at or prior to the execution of this Agreement. In the event such proof of any insurance is not delivered as required, or in the event such insurance is

canceled at any time and no replacement coverage is provided, City has the right, but not the duty, to obtain any insurance it deems necessary to protect its interests under this or any other agreement and to pay the premium. Any premium so paid by City shall be charged to and promptly paid by Consultant or deducted from sums due Consultant, at City option.

8. It is acknowledged by the parties of this agreement that all insurance coverage required to be provided by Consultant or any subcontractor, is intended to apply first and on a primary, non-contributing basis in relation to any other insurance or self-insurance available to City.

9. Consultant agrees to ensure that subcontractors, and any other party involved with the project that is 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 City for review.

10. Consultant agrees not to self-insure or to use any self-insured retentions or deductibles on any portion of the insurance required herein (with the exception of professional liability coverage, if required) and further agrees that it will not allow any contractor, subcontractor, Architect, Engineer or other entity or person in any way involved in the performance of work on the project contemplated by this agreement to self-insure its obligations to City. If Consultant's existing coverage includes a deductible or self-insured retention, the deductible or self-insured retention must be declared to the City. At that time the City shall review options with the Consultant, which may include reduction or elimination of the deductible or self-insured retention, substitution of other coverage, or other solutions.

11. The City reserves the right at any time during the term of this Agreement to change the amounts and types of insurance required by giving the Consultant ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Consultant, the City will negotiate additional compensation proportional to the increased benefit to City.

12. For purposes of applying insurance coverage only, this Agreement will be deemed to have been executed immediately upon any party hereto taking any steps that can be deemed to be in furtherance of or towards performance of this Agreement.



13. Consultant acknowledges and agrees that any actual or alleged failure on the part of City to inform Consultant of non-compliance with any insurance requirement in no way imposes any additional obligations on City nor does it waive any rights hereunder in this or any other regard.

14. Consultant will renew the required coverage annually as long as City, or its employees or agents face an exposure from operations of any type pursuant to this agreement. This obligation applies whether or not the agreement is canceled or terminated for any reason. Termination of this obligation is not effective until City executes a written statement to that effect.

15. 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. A coverage binder or letter from Consultant's insurance agent to this effect is acceptable. A certificate of insurance and/or additional insured endorsement as required in these specifications applicable to the renewing or new coverage must be provided to City within five (5) days of the expiration of coverages.

16. The provisions of any workers' compensation or similar act will not limit the obligations of Consultant under this agreement. Consultant expressly agrees not to use any statutory immunity defenses under such laws with respect to City, its employees, officials, and agents.

17. Requirements of specific 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.

18. These insurance requirements are intended to be separate and distinct from any other provision in this Agreement and are intended by the parties here to be interpreted as such.

19. The requirements in this Exhibit 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 Exhibit.

20. Consultant agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Consultant for the cost of additional insurance coverage required by this agreement. Any such provisions are to be deleted with reference to City. It is not

the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.

21. Consultant agrees to provide immediate notice to City of any claim or loss against Consultant arising out of the work performed under 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.

Exhibit F  
Indemnification

F.1 General Indemnification Provision.

a. Indemnification for Professional Liability. When the law establishes a professional standard of care for Consultant's Services, to the fullest extent permitted by law, Consultant shall indemnify, protect, defend (with counsel selected by City), and hold harmless City and any and all of its officials, employees, and agents ("Indemnified Parties") from and against any and all claims, losses, liabilities of every kind, nature, and description, damages, injury (including, without limitation, injury to or death of an employee of Consultant or of any subcontractor), costs and expenses of any kind, whether actual, alleged or threatened, including, without limitation, incidental and consequential damages, court costs, attorneys' fees, litigation expenses, and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation, to the extent same are cause in whole or in part by any negligent or wrongful act, error or omission of Consultant, its officers, agents, employees or subcontractors (or any entity or individual that Consultant shall bear the legal liability thereof) in the performance of professional services under this agreement. With respect to the design of public improvements, the Consultant shall not be liable for any injuries or property damage resulting from the reuse of the design at a location other than that specified in Exhibit A without the written consent of the Consultant.

b. Indemnification for Other Than Professional Liability. Other than in the performance of professional services and to the full extent permitted by law, Consultant shall indemnify, defend (with counsel selected by City), and hold harmless the Indemnified Parties from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including, without limitation, incidental and consequential damages, court costs, attorneys' fees, litigation expenses, and fees of expert consultants or expert witnesses) incurred in connection therewith and costs of investigation, where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Consultant or by any individual or entity for which Consultant is legally liable, including but not limited to officers, agents, employees, or subcontractors of Consultant.

F.2 Standard Indemnification Provisions. Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth herein this section from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this

Agreement. In the event Consultant fails to obtain such indemnity obligations from others as required herein, Consultant agrees to be fully responsible according to the terms of this Exhibit. Failure of City to monitor compliance with these requirements imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder. This obligation to indemnify and defend City as set forth herein is binding on the successors, assigns or heirs of Consultant and shall survive the termination of this agreement or this section.

a. Indemnity Provisions for Contracts Related to Construction.

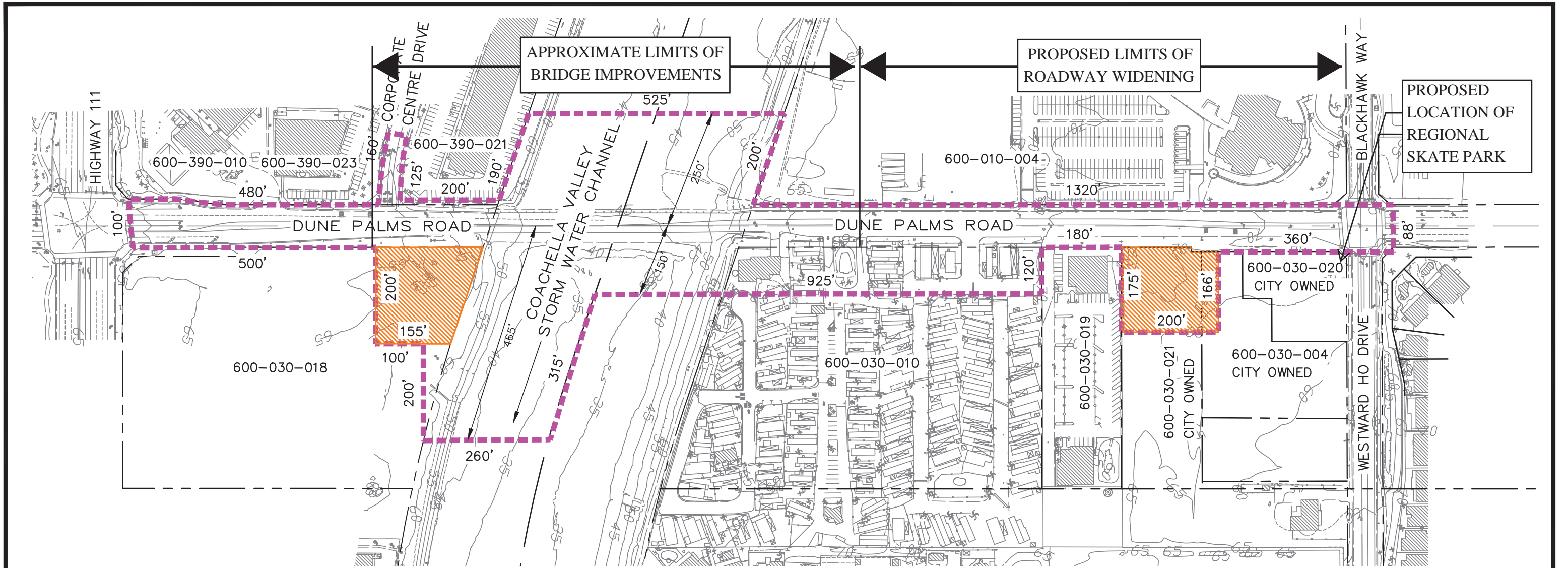
Without affecting the rights of City under any provision of this agreement, Consultant shall not be required to indemnify and hold harmless City for liability attributable to the active negligence of City, provided such active negligence is determined by agreement between the parties or by the findings of a court of competent jurisdiction. In instances where City is shown to have been actively negligent and where City's active negligence accounts for only a percentage of the liability involved, the obligation of Consultant will be for that entire portion or percentage of liability not attributable to the active negligence of City.

b. Indemnification Provision for Design Professionals.

1. Applicability of Section F.2(b). Notwithstanding Section F.2(a) hereinabove, the following indemnification provision shall apply to Consultants who constitute "design professionals" as the term is defined in paragraph 3 below.

2. Scope of Indemnification. To the fullest extent permitted by law, Consultant shall indemnify, defend (with counsel selected by City), and hold harmless the Indemnified Parties from and against any and all claims, losses, liabilities of every kind, nature and description, damages, injury (including, without limitation, injury to or death of an employee of Consultant or of any subcontractor), costs and expenses of any kind, whether actual, alleged or threatened, including, without limitation, court costs, attorneys' fees, litigation expenses, and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation, that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the negligence, recklessness, or willful misconduct of Consultant, any subcontractor, anyone directly or indirectly employed by them or anyone that they control.

3. Design Professional Defined. As used in this Section F.2(b), the term "design professional" shall be limited to licensed architects, registered professional engineers, licensed professional land surveyors and landscape architects, all as defined under current law, and as may be amended from time to time by Civil Code § 2782.8.



LEGEND

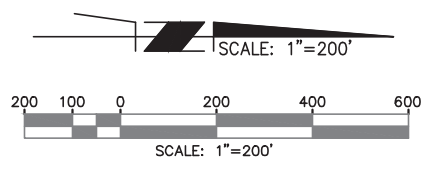


APE - AREA OF POTENTIAL EFFECTS



POTENTIAL CONSTRUCTION STAGING AREA

--- R/W AND PROPERTY LINES



DUNE PALMS ROAD BRIDGE PROJECT  
 FEDERAL AID PROJECT NO. BLRKS-5433(014)  
 APE MAP

