



# CITY COUNCIL STAFF REPORT

DATE: May 2, 2012

CONSENT AGENDA

SUBJECT: APPROVAL OF AGREEMENT WITH R ROBLES PIPELINE LAYING, INC. FOR ROADSIDE MAINTENANCE SERVICES

FROM: David H. Ready, City Manager

BY: Director of Public Works & Engineering

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## SUMMARY

This action will award a contract for roadside maintenance services with R Robles Pipeline Laying Inc. (dba Southern Valley Water Features) for a period of three years with two one-year extensions, upon mutual consent of the Director of Public Works and R Robles Pipeline Laying Inc.

## RECOMMENDATION:

1. Approve the award of a contract services agreement with R Robles Pipeline Laying Inc., as specified in Invitation for Bid #12-09, for roadside maintenance services for an estimated monthly amount of \$5,304.33, not to exceed \$63,652.00 per year for three years with two one-year extensions upon mutual consent of director of public works and goodwill industries.
2. Authorize the City Manager to execute all necessary documents.

## STAFF ANALYSIS

The City contracts out services for roadside cleanup along six designated routes. The work consists of general cleanup of litter, debris and palm fronds. The existing agreement with Goodwill Southern California expires on May 1, 2012. Council has not authorized any further extensions to this contract. Accordingly, the Procurement Division posted and distributed Invitation For Bids #12-09 on February 23, 2012 and advertised the bid on February 25 and March 3, 2012. On March 26, 2012 the Procurement Division received the following bids from Five (5) prospective contractors:

<b>Vendor</b>	<b>Price Quote</b>
R Robles Pipeline Laying Inc.	\$63,652.00
Goodwill Southern California	\$64,393.20
Merchants Landscape Services	\$81,920.00
Mariposa Landscape, Inc.	\$90,192.00
Clean Street	\$103,624.00

The bids were reviewed and qualified and staff recommends the award of the contract to R Robles Pipeline Laying Inc. at the cost of \$63,652.00 per annum fixed for the first 3 years and subject to a CPI increase in the two one year optional renewals.

**FISCAL IMPACT**

The low bid provides hourly rates (lead worker, worker and vehicle & supplies) approximately 1% lower than the City is currently paying. Sufficient funds are available in CSA 152 Street Cleaning account number 124-4242-43200.



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David J. Barakian  
Director of Public Works & Engineering/City Engineer



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David H. Ready, City Manager



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Thomas J. Wilson, Assistant City Manager

Attachment:

1. Agreement

**CONTRACT SERVICES AGREEMENT**  
**Roadside Maintenance**

THIS CONTRACT SERVICES AGREEMENT ( "Agreement") is entered into, and effective on the \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, between the CITY OF PALM SPRINGS, a California charter city and municipal corporation, ("City") and **R Robles Pipeline Laying, Inc. dba Southern Valley Water Features** ("Contractor"). City and Contractor are individually referred to as "Party" and are collectively referred to as the "Parties".

**RECITALS**

A. City has determined that there is a need for **providing roadside maintenance of specified city streets and rights-of-way located in the City of Palm Springs, California** project ("Project").

B. Contractor has submitted to City a proposal to provide **roadside maintenance** to City for the Project under the terms of this Agreement.

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

D. City desires to retain Contractor to provide such Contract Services.

In consideration of these promises and mutual obligations, covenants, and conditions, the Parties agree as follows:

**AGREEMENT**

**1. SERVICES OF CONTRACTOR**

**1.1 Scope of Services.** In compliance with all terms and conditions of this Agreement, Contractor agrees to perform the Contract Services set forth in the Scope of Services described in Exhibit "A" (the "Services" or "Work") , which is attached and incorporated by reference. As a material inducement to the City entering into this Agreement, Contractor represents and warrants that Contractor is a provider of first class work and Contract Services and that Contractor is experienced in performing the Work and Services contemplated and, in light of such status and experience, Contractor covenants that it shall follow the highest professional standards in performing the Work and Services required in this Agreement. For purposes of this Agreement, the phrase "highest professional standards" shall mean those standards of practice recognized as high quality among well-qualified and experienced professionals performing similar work under similar circumstances.

**1.2 Contract Documents.** The Agreement between the Parties shall consist of the following: (1) this Agreement; (2) the Scope of Services; (3) the City's Request for Proposals; and, (4) the Contractor's signed, original proposal submitted to the City ("Contractor's Proposal"), (collectively referred to as the "Contract Documents"). The City's Request for Proposals and the Contractor's Proposal, respectively, are incorporated by reference and are made a part of this Agreement. The Scope of Services shall include the Contractor's Proposal. All provisions of the Scope of Services, the City's Request for Proposals and the Contractor's Proposal shall be binding on the Parties. Should any conflict or inconsistency exist in the Contract Documents, the conflict or inconsistency shall be resolved by applying the provisions in the highest priority document, which shall be determined in the following order of priority: (1<sup>st</sup>) the provisions of the Scope of Services (Exhibit "A" and "A-1"); (2<sup>nd</sup>) the provisions of the City's IFB 12-09; (3<sup>rd</sup>) the terms of this Agreement (including all Exhibits); and, (4<sup>th</sup>) the provisions of the Contractor's Proposal.

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

**1.4 Licenses, Permits, Fees, and Assessments.** Contractor represents and warrants to City that it has obtained all licenses, permits, qualifications, and approvals of whatever nature that are legally required to practice its profession and perform the Work and Services required by this Agreement. Contractor represents and warrants to City that Contractor shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement, any license, permit, qualification, or approval that is legally required for Contractor to perform the Work and Services under this Agreement. Contractor shall have the sole obligation to pay for any fees, assessments, and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Contractor's performance of the Work and Services required by this Agreement. Contractor shall indemnify, defend, and hold harmless City against any such fees, assessments, taxes penalties, or interest levied, assessed, or imposed against City to the fullest extent permitted by law.

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

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

**1.7 Further Responsibilities of Parties.** Parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Parties agree to act in good faith to execute all instruments, prepare all documents, and take all actions as may be reasonably necessary to carry out the purposes of this Agreement.

**1.8 Additional Services.** City shall have the right at any time during the performance of the Services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to, or deducting from such Work. No such extra work may be undertaken unless a written order is first given by the City to the Contractor, incorporating any adjustment in (i) the Maximum Contract Amount, as defined below, and/or (ii) the time to perform this Agreement. Any adjustments must also be approved in writing by the Contractor. Any increase in compensation of up to twenty-five percent (25%) of the Maximum Contract Amount or \$25,000, whichever is less, or in the time to perform of up to thirty (30) days, may be approved by the City Manager, or his designee, as may be needed to perform any extra work. Any greater increases, occurring either separately or cumulatively, must be approved by the Palm Springs City Council. It is expressly understood by Contractor that the provisions of this section shall not apply to the services specifically set forth or reasonably contemplated within the Scope of Services.

## 2. COMPENSATION

**2.1 Maximum Contract Amount.** For the Services rendered under this Agreement, Contractor shall be compensated by City in accordance with the Schedule of Compensation, which is attached as Exhibit "C" and incorporated in this Agreement by reference. Compensation shall not exceed the maximum contract amount of **One Hundred Ninety Thousand Nine Hundred Fifty Six Dollars, (\$190,956)** ("Maximum Contract Amount"), except as may be provided under Section 1.8. The method of compensation shall be as set forth in Exhibit "D." Compensation for necessary expenditures for reproduction costs, telephone expenses, and transportation expenses must be approved in advance by the Contract Officer designated under Section 4.2 and will only be approved if such expenses are also specified in the Schedule of Compensation. The Maximum Contract Amount shall include the attendance of Contractor at all Project meetings reasonably deemed necessary by the City. Contractor shall not be entitled to any increase in the Maximum Contract Amount for attending these meetings. Contractor accepts the risk that the services identified in the Scope of Services may be more costly and/or time-consuming than Contractor anticipates, that Contractor shall not be entitled to additional compensation, and that the provisions of Section 1.8 shall not be applicable to the services identified in the Scope of Services. The maximum amount of city's payment obligation under this section is the amount specified in this Agreement. If the City's maximum payment obligation is reached before the Contractor's Services under this Agreement are completed, Contractor shall complete the Work and City shall not be liable for payment beyond the Maximum Contract Amount.

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

**2.3 Changes in Scope.** In the event any change or changes in the Scope of Services is requested by City, Parties shall execute a written amendment to this Agreement, specifying all proposed amendments, including, but not limited to, any additional fees. An amendment may be entered into:

A. To provide for revisions or modifications to documents, work product, or work, when required by the enactment or revision of any subsequent law; or

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

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

## 3. SCHEDULE OF PERFORMANCE

**3.1 Time of Essence.** Time is of the essence in the performance of this Agreement. The time for completion of the services to be performed by Contractor is an essential condition of this Agreement. Contractor shall prosecute regularly and diligently the Work of this Agreement according to agreed upon attached Exhibit "A", incorporated by reference.

**3.2 Schedule of Performance.** Contractor shall commence the Services under this Agreement upon receipt of a written notice to proceed and shall perform all Services within the time period(s) established in attached Exhibit "A". When requested by Contractor, extensions to the time period(s) specified in the Schedule of Performance may be approved in writing by the Contract Officer, but such extensions shall not exceed one hundred eighty (180) days cumulatively; however, the City shall not be obligated to grant such an extension.

**3.3 Force Majeure.** The time period(s) specified in attached Exhibit "A" for performance of the Services rendered under this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Contractor (financial inability excepted) if Contractor, within ten (10) days of the commencement of such delay, notifies the Contract Officer in writing of the causes of the delay. Unforeseeable causes include, but are not limited to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, and/or acts of any governmental agency, including the City. The City Manager shall ascertain the facts and the extent of delay, and extend the time for performing the Services for the period of the enforced delay when and if in the judgment of the City Manager such delay is justified. The City Manager's determination shall be final and conclusive upon the Parties to this Agreement. In no event shall Contractor be entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Contractor's sole remedy being extension of the Agreement under this section.

**3.4 Term.** Unless earlier terminated under this Agreement, this Agreement shall commence upon the effective date of this Agreement and continue in full force and effect until completion of the Services. However, the term shall not exceed **three (3) years** from the commencement date, except as otherwise provided in attached Exhibit "A", Section 8 and 9 and in Section 3.2 above. Any extension must be through mutual written agreement of the Parties.

**3.5 Termination Prior to Expiration of Term.** City may terminate this Agreement for its convenience at any time, without cause, in whole or in part, upon giving Contractor thirty (30) days written notice. Where termination is due to the fault of Contractor 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 such notice, City shall pay Contractor for Services performed through the date of termination. Upon receipt of such notice, Contractor shall immediately cease all work under this Agreement, unless stated otherwise in the notice or by written authorization of the Contract Officer. After such notice, Contractor shall have no further claims against the City under this Agreement. Upon termination of the Agreement under this section, Contractor shall submit to the City an invoice for work and services performed prior to the date of termination. Contractor may terminate this Agreement, with or without cause, upon sixty (60) days written notice to the City, except that where termination is due to material default by the City, the period of notice may be such shorter time as the Contractor may determine.

#### **4. COORDINATION OF WORK**

**4.1 Representative of Contractor.** The following principal of Contractor is designated as being the principal and representative of Contractor authorized to act in its behalf and make all decisions with respect to the Services to be performed under this Agreement: **Roberto Robles, President**. It is expressly understood that the experience, knowledge, education, capability, expertise, and reputation of the foregoing principal is a substantial inducement for City to enter into this Agreement. Therefore, the foregoing principal shall be responsible during the term of this Agreement for directing all activities of Contractor and devoting sufficient time to personally supervise the services performed hereunder. The foregoing principal may not be changed by Contractor without prior written approval of the Contract Officer.

**4.2 Contract Officer.** The Contract Officer shall be such person as may be designated by the City manager. ("Contract Officer") to be **The City's Street Maintenance Superintendent**. Contractor shall be responsible for keeping the Contract Officer fully informed of the progress of the performance of the services. Contractor shall refer any decisions that must be made by City to the Contract Officer. Unless otherwise specified, any approval of City shall mean the approval of the Contract Officer.

**4.3 Prohibition Against Subcontracting or Assignments.** The experience, knowledge, capability, expertise, and reputation of Contractor, its principals and employees, were a substantial inducement for City to enter into this Agreement. Therefore, Contractor shall not assign full or partial performance of this Agreement, nor any monies due, voluntarily or by operation of law, without the prior written consent of City. Contractor shall not contract with any other entity to perform the Services required under this Agreement without the prior written consent of City. If Contractor is permitted to subcontract any part of this Agreement by City, Contractor shall be responsible to City for the acts and omissions of its subcontractor(s) in the same manner as it is for persons directly employed. Nothing contained in this Agreement shall create any contractual relationships between any subcontractor and City. All persons engaged in the Work will be considered employees of Contractor. City will deal directly with and will make all payments to Contractor. In addition, neither this Agreement nor any interest in this Agreement may be transferred, assigned, conveyed, hypothecated, or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written consent of City. Transfers restricted in this Agreement shall include the transfer to any person or group of persons acting in concert of more than twenty five percent (25%) of the present ownership and/or control of Contractor, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release Contractor or any surety of Contractor from any liability under this Agreement without the express written consent of City.

**4.4 Independent Contractor.** The legal relationship between the Parties is that of an independent contractor, and nothing shall be deemed to make Contractor a City employee.

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

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

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

## 5. INSURANCE

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

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

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

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



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

B. Workers' Compensation Insurance. Contractor shall obtain and maintain, in full force and effect throughout the term of this Agreement, workers' compensation insurance in at least the minimum statutory amounts, and in compliance with all other statutory requirements, as required by the State of California. Contractor agrees to waive and obtain endorsements from its workers' compensation insurer waiving subrogation rights under its workers' compensation insurance policy against the City and to require each of its subcontractors, if any, to do likewise under their workers' compensation insurance policies. If Contractor has no employees, Contractor shall complete the City's Request for Waiver of Workers' Compensation Insurance Requirement form.

C. Commercial General Liability Insurance. Contractor shall obtain and maintain, in full force and effect throughout the term of this Agreement, a policy of commercial general liability insurance written on a per occurrence basis with a combined single limit of at least one million dollars (\$1,000,000.00) and two million dollars (\$2,000,000.00) general aggregate for bodily injury and property damage including coverages for contractual liability, personal injury, independent contractors, broad form property damage, products and completed operations.

D. Business Automobile Insurance. Contractor shall obtain and maintain, in full force and effect throughout the term of this Agreement, a policy of business automobile liability insurance written on a per occurrence basis with a single limit liability in the amount of one million dollars (\$1,000,000.00) bodily injury and property damage. The policy shall include coverage for owned, non-owned, leased, and hired cars.

E. Employer Liability Insurance. Contractor shall obtain and maintain, in full force and effect throughout the term of this Agreement, a policy of employer liability insurance written on a per occurrence basis with a policy limit of at least one million dollars (\$1,000,000.00) for bodily injury or disease.

**5.2 Deductibles and Self-Insured Retentions.** Any deductibles or self-insured retentions must be declared to and approved by the City Manager or his/her designee prior to commencing any work or services under this Agreement. Contractor guarantees payment of all deductibles and self-insured retentions. City reserves the right to reject deductibles or self-insured retentions in excess of \$10,000, and the City Manager or his/her designee may require evidence of pending claims and claims history as well as evidence of Contractor's ability to pay claims for all deductible amounts and self-insured retentions proposed in excess of \$10,000.

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

5.3.1 For any claims related to this Agreement, Contractor's coverage shall be primary insurance with respect to the City and its officers, council members, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the City and its officers, council members, officials, employees, agents, and volunteers shall be in excess of Contractor's insurance and shall not contribute with it.

- 5.3.2 Any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to City and its officers, council members, officials, employees, agents, and volunteers.
- 5.3.3 All insurance coverage and limits provided by Contractor and available or applicable to this Agreement are intended to apply to each insured, including additional insureds, against whom a claim is made or suit is brought to the full extent of the policies. Nothing contained in this Agreement or any other agreement relating to the City or its operations shall limit the application of such insurance coverage.
- 5.3.4 No required insurance coverages may include any limiting endorsement which substantially impairs the coverages set forth in this Agreement(e.g., elimination of contractual liability or reduction of discovery period), unless the endorsement has first been submitted to the City Manager and approved in writing.
- 5.3.5 Contractor agrees to require its insurer to modify insurance endorsements to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, or that any party will "endeavor" (as opposed to being required) to comply with the requirements of the endorsements. Certificates of insurance will not be accepted in lieu of required endorsements, and submittal of certificates without required endorsements may delay commencement of the Project. It is Contractor's obligation to ensure timely compliance with all insurance submittal requirements as provided in this Agreement.
- 5.3.6 Contractor agrees to ensure that subcontractors, and any other parties involved with the Project who are brought onto or involved in the Project by Contractor, provide the same minimum insurance coverage required of Contractor. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Contractor agrees that upon request, all agreements with subcontractors and others engaged in the Project will be submitted to the City for review.
- 5.3.7 Contractor acknowledges and agrees that any actual or alleged failure on the part of the City to inform Contractor of non-compliance with any insurance requirement in no way imposes any additional obligations on the City nor does it waive any rights in this or any other regard.
- 5.3.8 Contractor shall provide proof that policies of insurance required in this Agreement, expiring during the term of this Agreement, have been renewed or replaced with other policies providing at least the same coverage. Proof that such coverage has been ordered shall be submitted prior to expiration. Endorsements as required in this Agreement applicable to the renewing or new coverage shall be provided to City no later than ten (10) days prior to expiration of the lapsing coverage.

- 5.3.9 Requirements of specific insurance coverage features or limits contained in this section are not intended as limitations on coverage, limits, or other requirements, or as a waiver of any coverage normally provided by any given policy. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue, and is not intended by any party or insured to be limiting or all-inclusive.
- 5.3.10 The requirements in this section supersede all other sections and provisions of this Agreement to the extent that any other section or provision conflicts with or impair the provisions of this section.
- 5.3.11 Contractor agrees to provide immediate notice to City of any claim or loss against Contractor arising out of the Work performed under this Agreement and for any other claim or loss which may reduce the insurance available to pay claims arising out of this Agreement. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City, or to reduce or dilute insurance available for payment of potential claims.
- 5.3.12 Contractor agrees that the provisions of this section shall not be construed as limiting in any way the extent to which the Contractor may be held responsible for the payment of damages resulting from the Contractor's activities or the activities of any person or person for which the Contractor is otherwise responsible.

**5.4 Sufficiency of Insurers.** Insurance required in this Agreement shall be provided by authorized insurers in good standing with the State of California. Coverage shall be provided by insurers admitted in the State of California with an A.M. Best's Key Rating of B++, Class VII, or better, unless such requirements are waived in writing by the City Manager or his designee due to unique circumstances.

**5.5 Verification of Coverage.** Contractor shall furnish City with both certificates of insurance and endorsements, including additional insured endorsements, affecting all of the 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 Contractor's insurers to provide complete, certified copies of all required insurance policies at any time. Additional insured endorsements are not required for Errors and Omissions and Workers' Compensation policies.

Verification of Insurance coverage may be provided by: (1) an approved General and/or Auto Liability Endorsement Form for the City of Palm Springs or (2) an acceptable Certificate of Liability Insurance Coverage with an approved Additional Insured Endorsement with the following endorsements stated on the certificate:

1. *"The City of Palm Springs, its officials, employees, and agents are named as an additional insured..." ("as respects City of Palm Springs Contract No. \_\_\_" or "for any and all work performed with the City" may be included in this statement).*

2. *"This insurance is primary and non-contributory over any insurance or self-insurance the City may have..." ("as respects City of Palm Springs Contract No. \_\_\_" or "for any and all work performed with the City" may be included in this statement).*

3. *"Should any of the above described policies be canceled before the expiration date thereof, the issuing company will mail 30 days written notice to the Certificate Holder named."* Language such as, "endeavor to" mail and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representative" is not acceptable and must be crossed out.

4. Both the Workers' Compensation and Employers' Liability policies shall contain the insurer's waiver of subrogation in favor of City, its elected officials, officers, employees, agents, and volunteers.

In addition to the endorsements listed above, the City of Palm Springs shall be named the certificate holder on the policies. All certificates of insurance and endorsements are to be received and approved by the City before work commences. All certificates of insurance must be authorized by a person with authority to bind coverage, whether that is the authorized agent/broker or insurance underwriter. Failure to obtain the required documents prior to the commencement of work shall not waive the Contractor's obligation to provide them.

## **6. INDEMNIFICATION**

**6.1 Indemnification and Reimbursement.** To the fullest extent permitted by law, Contractor shall defend (at Contractor'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 (Contractor'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 Contractor, its officers, employees, representatives, and agents, that arise out of or relate to Contractor's performance under this Agreement. This indemnification clause excludes Claims arising from the sole 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 Contractor's indemnification obligation or other liability under this Agreement. Contractor's indemnification obligation shall survive the expiration or earlier termination of this Agreement until all actions against the Indemnified Parties for such matters indemnified are fully and finally barred by the applicable statute of limitations or, if an action is timely filed, until such action is final. This provision is intended for the benefit of third party Indemnified Parties not otherwise a party to this Agreement.

**6.2 Design Contract Services Indemnification and Reimbursement.** If the Agreement is determined to be a "design Contract Services agreement" and Contractor is a "design professional" under California Civil Code Section 2782.8, then:

A. To the fullest extent permitted by law, Contractor shall indemnify, defend (at Contractor's sole cost and expense), protect and hold harmless City and its elected officials, officers, employees, agents and volunteers and all other public agencies whose approval of the project is required, (individually "Indemnified Party"; collectively "Indemnified Parties") against any and all liabilities, claims, judgments, arbitration awards, settlements, costs, demands, orders and penalties (collectively "Claims"), including but not limited to Claims arising from injuries or death of persons (Contractor's employees included) and damage to property, which Claims arise out of, pertain to, or are related to the negligence, recklessness or willful misconduct of Contractor, its agents, employees, or subcontractors, or arise from Contractor's negligent, reckless or willful performance of or failure to perform any term, provision, covenant or condition of this Agreement ("Indemnified Claims"), but Contractor's liability for Indemnified Claims shall be reduced to the extent such Claims arise from the negligence, recklessness or willful misconduct of the City and its elected officials, officers, employees, agents and volunteers.

B. The Contractor shall require all non-design-professional sub-contractors, used or sub-contracted by Contractor to perform the Services or Work required under this Agreement, to execute an Indemnification Agreement adopting the indemnity provisions in sub-section 6.1 in favor of the Indemnified Parties. In addition, Contractor shall require all non-design-professional sub-contractors, used or sub-contracted by Contractor to perform the Services or Work required under this Agreement, to obtain insurance that is consistent with the Insurance provisions as set forth in this Agreement, as well as any other insurance that may be required by Contract Officer.

## 7. REPORTS AND RECORDS

7.1 Accounting Records. Contractor shall keep complete, accurate, and detailed accounts of all time, costs, expenses, and expenditures pertaining in any way to this Agreement. Contractor shall keep such books and records as shall be necessary to properly perform the Services required by this Agreement and to enable the Contract Officer to evaluate the performance of such Services. The Contract Officer shall have full and free access to such books and records at all reasonable times, including the right to inspect, copy, audit, and make records and transcripts from such records.

7.2 Reports. Contractor shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the Services required by this Agreement, or as the Contract Officer shall require. Contractor acknowledges that the City is greatly concerned about the cost of the Work and Services to be performed under this Agreement. For this reason, Contractor agrees that Contractor shall promptly notify the Contract Officer the estimated increased or decreased cost if Contractor becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the contemplated Work or Services. If Contractor is providing design services, Contractor shall promptly notify the Contract Officer the estimated increased or decreased cost for the project being designed if Contractor becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the design services.

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

7.4 Release of Documents. All drawings, specifications, reports, records, documents, and other materials prepared by Contractor in the performance of services under this Agreement shall not be released publicly without the prior written approval of the Contract Officer. All information gained by Contractor in the performance of this Agreement shall be considered confidential and shall not be released by Contractor without City's prior written authorization.

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

## **8. ENFORCEMENT OF AGREEMENT**

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

**8.2 Interpretation.** This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the Parties. The terms of this Agreement are contractual and the result of negotiation between the Parties. Accordingly, any rule of construction of contracts (including, without limitation, California Civil Code Section 1654) that ambiguities are to be construed against the drafting party, shall not be employed in the interpretation of this Agreement. The caption headings of the various sections and paragraphs of this Agreement are for convenience and identification purposes only and shall not be deemed to limit, expand, or define the contents of the respective sections or paragraphs.

**8.3 Default of Contractor.** Contractor's failure to comply with any provision of this Agreement shall constitute a default.

A. If the City Manager, or his designee, determines that Contractor is in default in the performance of any of the terms or conditions of this Agreement, he/she shall notify Contractor in writing of such default. Contractor shall have ten (10) days, or such longer period as City may designate, to cure the default by rendering satisfactory performance. In the event Contractor fails to cure its default within such period of time, City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice of any remedy to which City may be entitled at law, in equity, or under this Agreement. Contractor shall be liable for all reasonable costs incurred by City as a result of such default. Compliance with the provisions of this section shall not constitute a waiver of any City right to take legal action in the event that the dispute is not cured, provided that nothing shall limit City's right to terminate this Agreement without cause under Section 3.5.

B. If termination is due to the failure of the Contractor to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 8.3A, take over the work and prosecute the same to completion by contract or otherwise. The Contractor shall be liable to the extent that the total cost for completion of the Services required hereunder exceeds the Maximum Contract Amount (provided that the City shall use reasonable efforts to mitigate such damages). The City may withhold any payments to the Contractor for the purpose of set-off or partial payment of the amounts owed the City as previously stated. The withholding or failure to withhold payments to Contractor shall not limit Contractor's liability for completion of the Services as provided in this Agreement.

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

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

**8.6 Legal Action.** In addition to any other rights or remedies, either Party may take legal action, in law or in equity, to cure, correct, remedy or 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 Attorney Fees.** In the event any dispute between the Parties with respect to this Agreement results in litigation or any non-judicial proceeding, the prevailing Party shall be entitled, in addition to such other relief as may be granted, to recover from the non-prevailing Party all reasonable costs and expenses. These include but are not limited to reasonable attorney fees, expert Contractor fees, court costs and all fees, costs, and expenses incurred in any appeal or in collection of any judgment entered in such proceeding. To the extent authorized by law, in the event of a dismissal by the plaintiff or petitioner of the litigation or non-judicial proceeding within thirty (30) days of the date set for trial or hearing, the other Party shall be deemed to be the prevailing Party in such litigation or proceeding.

## **9. CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION**

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

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

**9.3 Covenant Against Discrimination.** In connection with its performance under this Agreement, Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, marital status, ancestry, or national origin. Contractor shall ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, age, marital status, ancestry, or national origin. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

## 10. MISCELLANEOUS PROVISIONS

**10.1 Patent and Copyright Infringement.** To the fullest extent permissible under law, and in lieu of any other warranty by City or Contractor against patent or copyright infringement, statutory or otherwise:

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

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

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

To City: City of Palm springs  
Attention: David J. Barakian  
Director of Public Works/City Engineer  
3200 E. Tahquitz Canyon Way  
Palm springs, California 92262  
Telephone: (760) 323-8204  
Facsimile: (760) 323-8332

To Contractor: R Robles Pipeline Laying, Inc. dba Southern Valley Water Features  
Attention: Roberto Robles, President  
434 East Barbour Street  
Banning, CA 92220  
Telephone: (951)849-4179  
Facsimile: (951)849-0655



**10.3 Integrated Agreement.** This Agreement constitutes the entire agreement between the Parties and supersedes all prior negotiations, arrangements, agreements, representations, and understandings, if any, made by or among the Parties with respect to the subject matter in this Agreement.

**10.4 Amendment.** No amendments or other modifications of this Agreement shall be binding unless through written agreement by all Parties.

**10.5 Severability.** Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law. If any provision of this Agreement shall be determined to be invalid by a final judgment or decree of a court of competent jurisdiction, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of that provision, or the remaining provisions of this Agreement unless the invalid provision is so material that its invalidity deprives either Party of the basic benefit of their bargain or renders this Agreement meaningless.

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

**10.6 Third Party Beneficiary.** Except as may be expressly provided for in this Agreement, nothing contained in this Agreement is intended to confer, nor shall this Agreement be construed as conferring, any rights, including, without limitation, any rights as a third-party beneficiary or otherwise, upon any entity or person not a party to this Agreement.

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

**10.8. Corporate Authority.** Each of the undersigned represents and warrants that (i) the Party for which he or she is executing this Agreement is duly authorized and existing, (ii) he or she is duly authorized to execute and deliver this Agreement on behalf of the Party for which he or she is signing, (iii) by so executing this Agreement, the Party for which he or she is signing is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which the Party for which he or she is signing is bound.

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

**“CITY”  
City of Palm Springs**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
David H. Ready  
City Manager

**APPROVED AS TO FORM:**

**ATTEST**

By: \_\_\_\_\_  
Douglas C. Holland,  
City Attorney

By: \_\_\_\_\_  
James Thompson,  
City Clerk

**APPROVED BY CITY COUNCIL:**

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

**CONTRACTOR NAME:**

\_\_\_\_\_

Check one \_\_\_ Individual \_\_\_ Partnership \_\_\_ Corporation

Address  
\_\_\_\_\_  
\_\_\_\_\_

By \_\_\_\_\_  
Signature (Notarized)

By \_\_\_\_\_  
Signature (Notarized)

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California }  
 County of \_\_\_\_\_ }

On \_\_\_\_\_ before me, \_\_\_\_\_  
Date Here Insert Name and Title of the Officer  
 personally appeared \_\_\_\_\_  
Name(s) of Signer(s)

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

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

WITNESS my hand and official seal.

Place Notary Seal Above

Signature \_\_\_\_\_  
Signature of Notary Public

**OPTIONAL**

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

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_

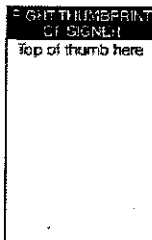
Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_

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



Signer Is Representing: \_\_\_\_\_

\_\_\_\_\_  
 \_\_\_\_\_

Signer's Name: \_\_\_\_\_

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



Signer Is Representing: \_\_\_\_\_

\_\_\_\_\_  
 \_\_\_\_\_

## EXHIBIT "A"

### SCOPE OF SERVICES

1. **BASIC FUNCTION:** Under the direction of the Contract Officer or his designee, remove debris and vegetation from specified City streets and right-of-ways.
2. **SCOPE OF WORK:** Maintain six (6) assigned street routes (Attachment "A-1" attached) located within the City of Palm Springs by policing and litter pick-up to remove paper, glass, trash, vegetation, and other accumulated debris from City streets and rights-of-way; from centerline of road to 10 feet off of road edge in both directions. All routes should be completed once during each ten (10) business day work period.

Perform a city-wide palm frond route when directed by the Contract Officer or his designee.

During normal work hours, respond within thirty (30) minutes to radio, or telephone requests from the City's Street Maintenance staff to remove debris or vegetation that is located in the streets or right-of-ways from events such as traffic accidents, illegal dumping, paint, diesel and oil spills, downed trees, vegetation, and rain and wind storms, transient camp cleanup (trash bedding and other personal effects) as directed by City's Contract Officer. The Contractor must be prepared to respond to changing work assignments. An example is: being pulled off of an assigned route to respond to a request by the Contract Officer, or his designee, to pick up an abandoned mattress or appliance, etc., and then immediately return to the previous assignment.

Contractor shall maintain a log sheet of daily activities and hours worked that is turned into the Contract Officer at the end of the work shift (log sheet will be provided by the Contract Officer). Contractor shall provide phone number, pager number for all personnel on "Call-Out" list.

3. **WORK HOURS:** Regular work hours consist of 6:30 A.M. to 3:00 P.M. Monday through Thursday, unless otherwise modified by Contract Officer or his designee. Any hours worked other than the regularly scheduled hours are considered "emergency call-out" hours, and will be scheduled only at the direction of the Contract Officer.

Contractor has the right to modify the regular work hours/days upon 30 days written notice and approval by the Contract Officer; however, regular work hours will not exceed 8 hours per day or 32 hours per week.

Emergency call-out hours may be necessary in the case of downed trees, storm debris in right-of-ways, or any condition endangering the safety of the public. The Contractor must respond to an emergency call-out within one (1) hour. Hours worked on an emergency basis will be logged in the same way as regular hours, and will be indicated on the Contractor's invoice as "emergency call-out hours".

Except in the case of an emergency call-out, there will be no work scheduled on days that the City is closed for holidays: New Year's Day, Martin Luther King Jr. Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day, Day after Thanksgiving, Christmas Eve, and Christmas Day.

It is anticipated there will be sufficient workload to use the approximate 256 labor hours available per month (2-man crew, 8 hrs per day, 4 days per week). However, there may be occasions when the City determines there is inadequate workload and may choose to require the crew to work less than eight hours per day. Therefore, it is imperative that the Contractor's bid proposal be on an hourly basis. The hourly rate must include the cost of equipment, insurance, uniforms or any other costs associated with this work. The Contractor will bill the City monthly using the number of hours worked as the basis for payment. Individuals assigned to this program will, in addition to daily log sheets, be required to record hours worked on a daily basis at the direction of the City official.

4. PERSONNEL. Roadside Maintenance Crew shall consist of two-person crew, both capable of lifting up to 100 lbs in weight. The lead worker of each crew must be able to understand, read, and write English, possess an appropriate valid California Driver's License, and have knowledge of how to use the equipment listed below. One of the crew members will be designated as a lead worker and will be the primary point of contact to receive and implement instructions. Within 60 days of contract implementation a minimum of one individual member of the crew on duty must possess a current certificate of training in Work Zone Traffic Control. The certificate must be issued by the International Municipal Signal Association, the University of California Institute of Transportation Studies, or an equivalent training program approved by the City. The Contractor will be responsible for any cost associated with Traffic Control Certification. To provide for continuity, rotation of individuals assigned to this program must be held to a minimum.

The City may, at its' sole discretion, direct or allow the Contractor to use a single person to provide the required services. Such work, when authorized by the City, will be governed by the rates proposed in Exhibit "C" – Schedule of Compensation; Schedule "A", or in the case of an emergency, Schedule "B". Except when directed otherwise, the Contractor will be required to provide a 2-man crew.

5. MINIMUM EQUIPMENT NEEDED: A four-wheel drive vehicle equipped with a flashing arrow sign (FAS), and caution light. Vehicle must have a hauling bed or pull trailer with a capacity no less than 10 feet long, five feet wide, with side boards at least five feet high. Anticipated mileage is in excess of 2,000 miles per month.

Small hand tools, such as clippers, hand saws, chainsaw, rakes, brooms, shovels, pitch forks, weed-eaters, and safety equipment, are required.

Radio will be provided by the City. Contractor will be held responsible for loss and/or damage of equipment provided by the City.

6. WASTE DISPOSAL: The City will be responsible for disposal of waste material collected by the Contractor and no fee should be included in the bid for dump fees. The Contractor will be responsible for sorting of material into the proper bins provided at the City Corporate Yard, located at 425 North Civic Drive, Palm Springs. Should the Contractor fail to dump the collected materials into the proper bins, Contractor will be responsible for payment of dump fees for the contaminated bin and repeat offenses could result in the Contractor becoming responsible for his own disposal arrangements, or termination of the Contract.
7. LICENSE REQUIREMENT: Successful Contractor will be required to have a City Business License.
8. TERM OF CONTRACT: The term of this Contract will be three (3) years from date of award, with two (2) one year renewal options upon mutual consent of the City's Director of Public Works and the Contractor.
9. COMPENSATION: The first three (3) years of the contract will be paid monthly at the hourly rates bid. If the optional fourth year renewal is exercised, the hourly rates bid shall be adjusted once based on the regional (Los Angeles/ Riverside/Anaheim) Consumer Price Index (CPI) for the prior twelve months, to be effective on the anniversary date of the contract. If the optional fifth year renewal is exercised, the rates will remain the same as those in year four, with no additional adjustment.
10. PERFORMANCE BOND: The requirement of a Performance Bond shall be waived.

**EXHIBIT "A-1"**  
**ROADSIDE MAINTENANCE BI-WEEKLY ROUTES**

**ROUTE 1**

Palm Canyon Drive  
 Gateway Drive  
 Las Vegas Road  
 Tramview Road

**From:**

Vista Chino  
 Hwy 111  
 Indian Canyon Drive  
 Indian Canyon Drive

**To:**

Gene Autry Trail  
 Las Vegas Road  
 Gateway Drive  
 West End

**ROUTE 2**

Vista Chino  
 Paseo El Mirador  
 Tachevah Drive  
 Amado Road  
 Baristo Road

**From:**

Gene Autry Trail  
 Ave Caballeros  
 Ave Caballeros  
 Calle El Segundo  
 El Cielo Road

**To:**

Whitewater Wash  
 Sunrise Way  
 Sunrise Way  
 Sunrise Way  
 Farrell Drive

**ROUTE 3**

Ramon Road  
 Crossley Road  
 El Cielo Road  
 Ramon Road  
 Ramon Road  
 Mesquite Road  
 San Luis Rey Drive  
 Sunny Dunes Road  
 Camino Parocella  
 Indian Springs Road  
 Rio Blanco Road  
 Public Road  
 Vella Road(W. Side only)

**From:**

La Mirada  
 Ramon Road  
 Escoba Rd & Bike Path  
 El Cielo Road (including Medians)  
 San Luis Rey Drive (S. side only)  
 Vella Road  
 Mesquite Road  
 Gene Autry Trail  
 San Luis Rey  
 Crossley Road  
 Indian Springs Road  
 Sunny Dunes Road  
 Sunny Dunes Road

**To:**

Belardo Road  
 34<sup>th</sup> Avenue  
 Sunny Dunes Road  
 San Luis Rey Drive  
 Ramon Bridge  
 Crossley Road  
 Ramon Road  
 Crossley Road  
 Gene Autry Trail  
 Rio Blanco Road  
 San Luis Rey Drive  
 Camino Parocela  
 Mesquite Road

**ROUTE 4**

S. Palm Canyon Drive  
 Belardo Road  
 Sunny Dunes Road  
 Alejo Road  
 Mesquite Avenue  
 Bogert Trail  
 LaVerne Way

**From:**

E. Palm Canyon Drive  
 Alejo Road  
 S. Palm Canyon Drive  
 Palm Springs Airport  
 S. Palm Canyon Drive  
 S. Palm Canyon Drive  
 Camino Real (South side)

**To:**

South End  
 Sunny Dunes Road  
 Belardo Road  
 Vine Road  
 West End  
 Andreas Hills  
 Calle Palo Fierro

**ROUTE 5**

Farrell Drive  
Sunrise Way  
Ave Caballeros  
Ave Caballeros  
Calle Encilia  
Calle El Segundo

**From:**

Tamarisk Road  
North End  
Racquet Club Road  
Alejo Road  
Alejo Road  
Alejo Road

**To:**

Vista Chino  
Vista Chino  
Via Escuela  
Saturnino Road  
Ramon Road  
Ramon Road



Virginia Road.  
Radio Road.  
Indian Canyon Drive  
Indian Canyon Dr (W.Side only)  
Garnet Road  
20th Avenue  
Dillon Road  
Tipton Road  
Wendy Road  
Salvia Road  
Gene Autry Trail (Palm Drive)  
Executive Drive  
Via Escuela

**From:**

San Carlos Road  
McCarthy Road  
Vista Chino  
Interstate 10  
East End  
W. City Limits  
Melissa Lane  
Hwy 111  
Tipton Road  
West End  
Interstate 10  
Vista Chino  
Executive Drive (North side)

**To:**

San Rafael Drive  
Indian Canyon Drive  
Interstate 10  
8th Avenue  
W.City Limits  
Indian Canyon Drive  
Diablo Road  
Interstate 10  
North End  
East End  
Vista Chino  
Via Escuela  
Whitewater Club Drive

**Route 7 (Citywide)**

Miscellaneous: Complaints, transient camp clean ups, traffic accidents, etc., as instructed by Contract Officer.

**Route 8**

Highway 111 (fence line)

**From:**

Gateway (E side)

**To:**

End of fence line

(To be completed twice per calendar year as instructed by Contract Officer)



Palm Canyon Drive  
Indian Canyon Drive  
Tahquitz Canyon Way  
Cerritos Drive  
Camino Parocella  
Frontage Road

**From:**

Gateway Drive  
Vista Chino  
Palm Canyon Drive  
Ramon Road  
Cerritos Drive  
Camino Parocella

**To:**

Farrell Drive  
Ramon Road  
El Cielo Road  
Camino Parocela  
Sunrise Way  
Cerritos Drive

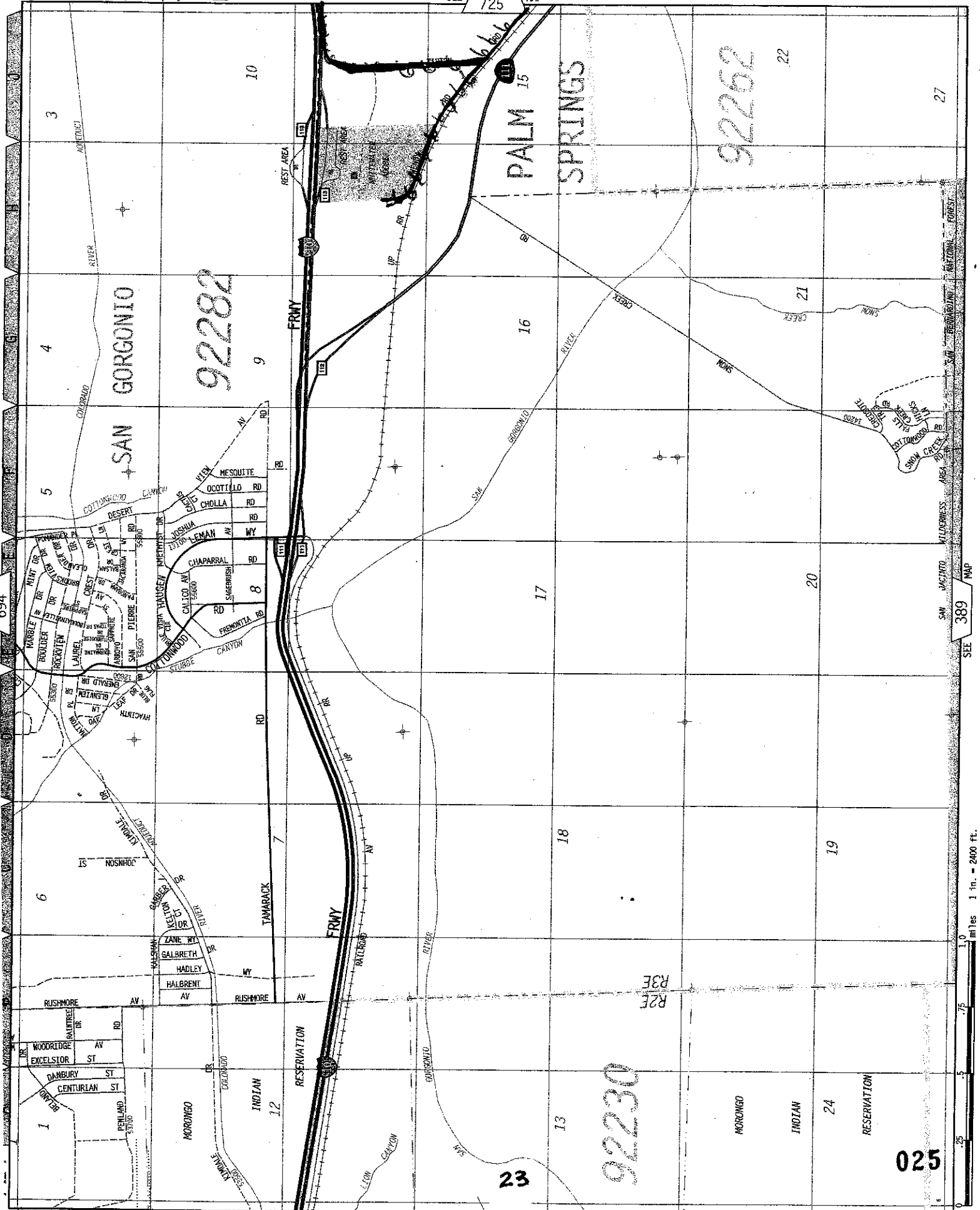
(To be completed as instructed by Contractor Officer; usually following adverse weather conditions (i.e.) wind, rain, etc.)



EXHIBIT "A-1"  
STREET LIST & MAPS

© 2005 Rand McNally & Company

SEE 725 MAP



SAN GORGONIO

PALM SPRINGS

92282

92262

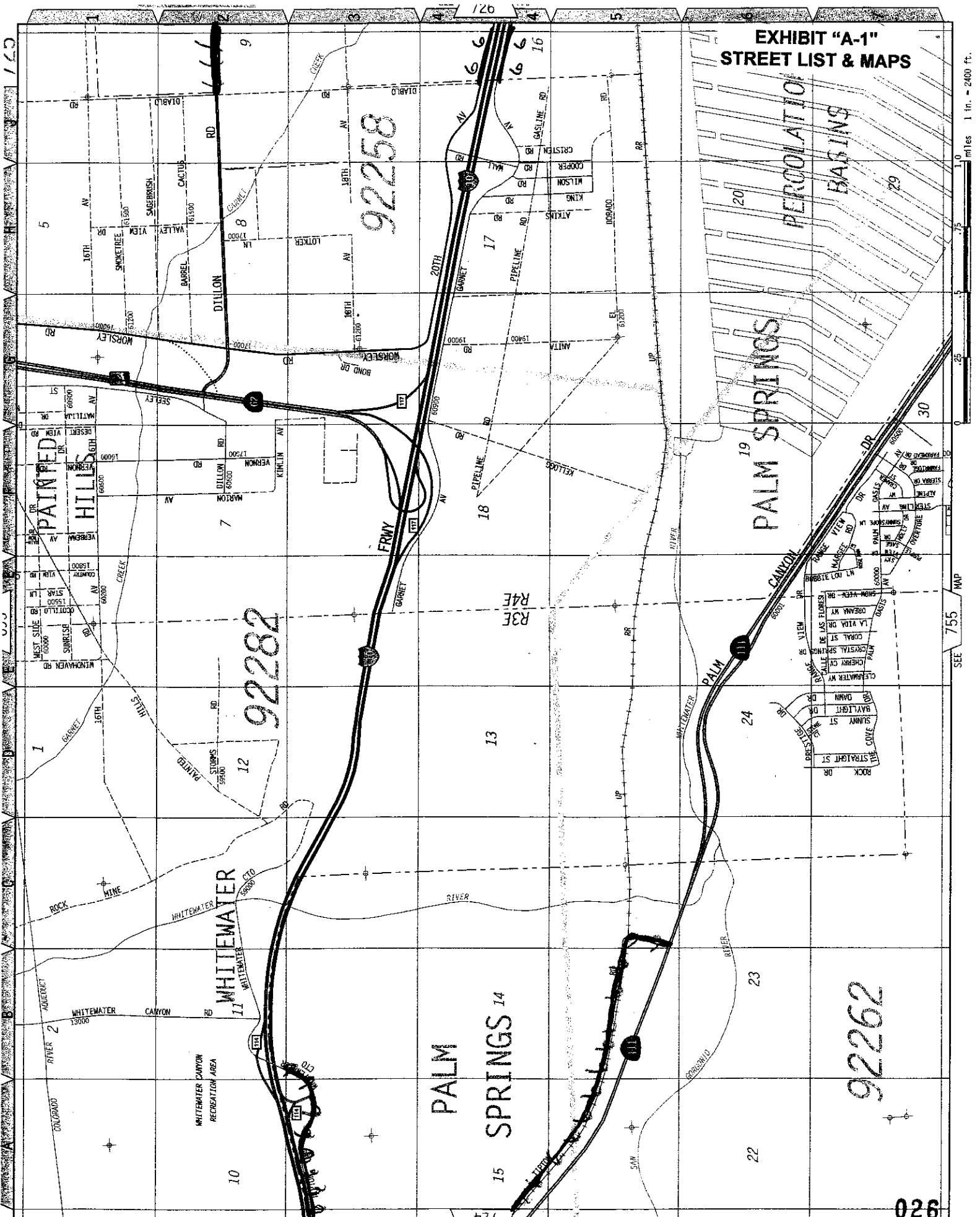
92230

025

SEE 389 MAP

1.0 miles 1 in. = 2400 ft.

EXHIBIT "A-1"  
STREET LIST & MAPS

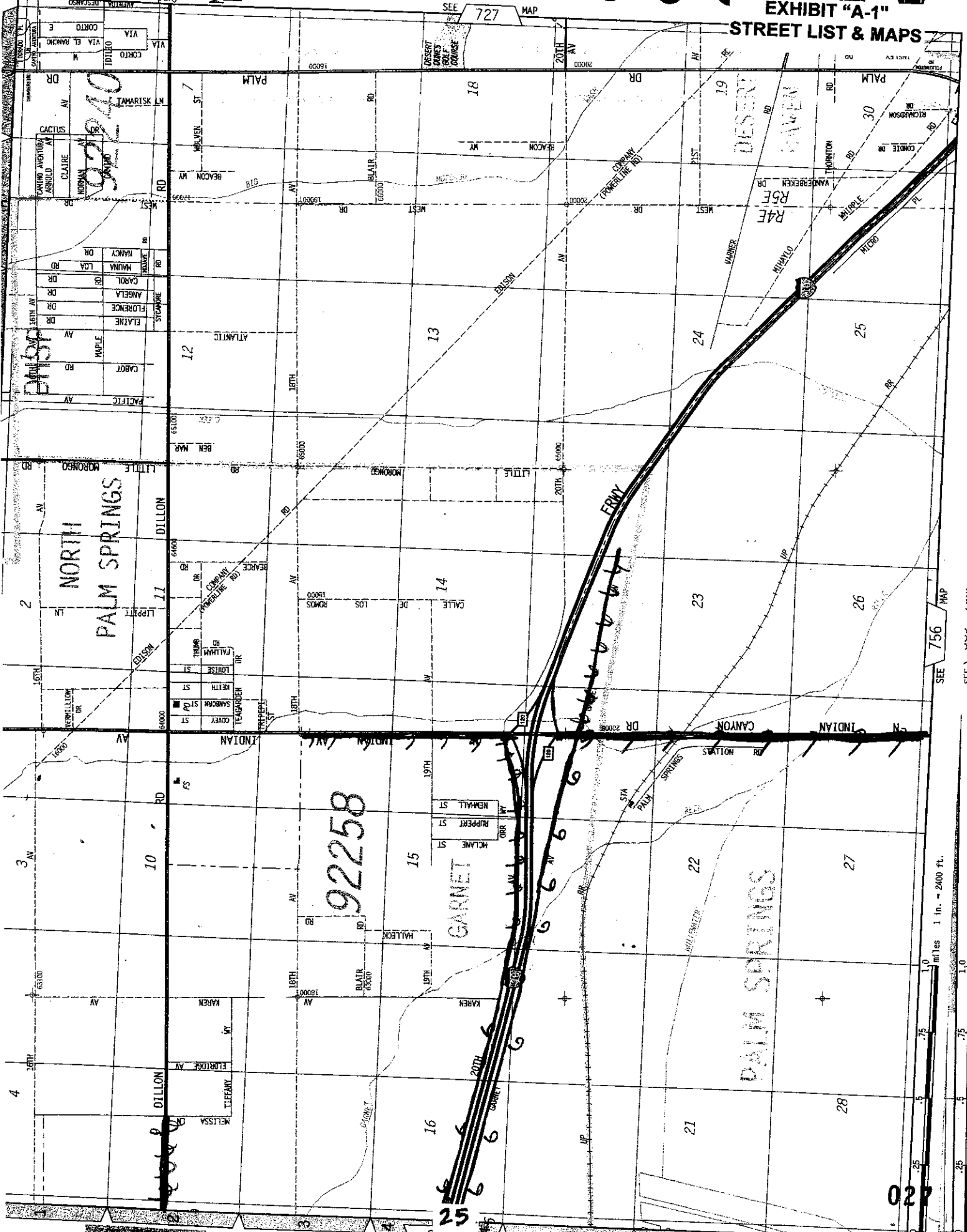


1 in. = 2400 ft.

SEE 755 MAP

STREET LIST & MAPS

SEE 727 MAP



NORTH PALM SPRINGS

PALM SPRINGS

92258

92240

SEE 756 MAP

SEE 757 MAP



25

420

2153P

4

3

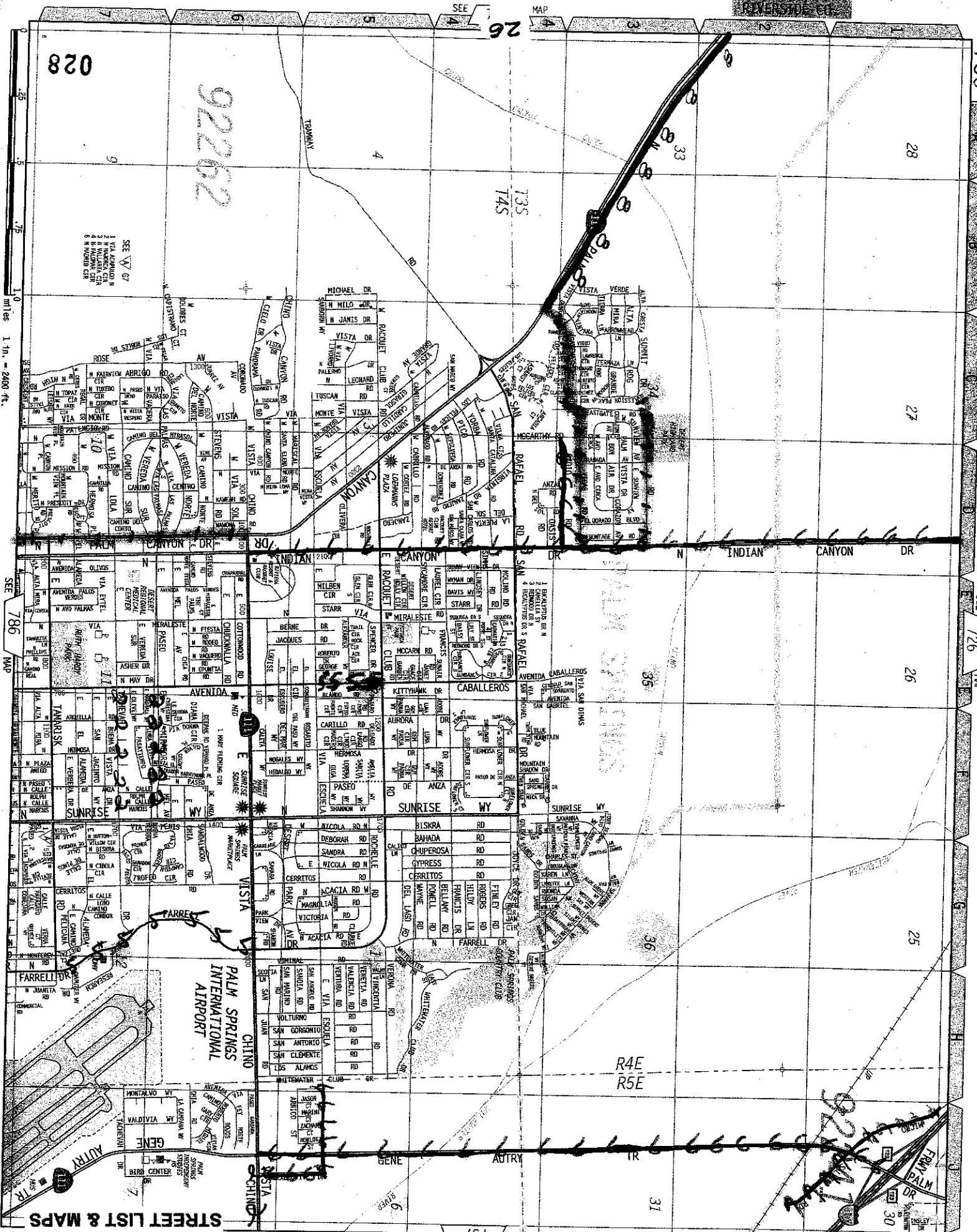
2

1

SE

STREET LIST & MAPS

EXHIBIT "A-1"



1.0  
0.5  
0.25  
0.125  
miles  
1 in. = 2000 ft.

SEE MAP 67  
1. VIA KENNEDY N  
2. VIA KENNEDY E  
3. VIA KENNEDY S  
4. VIA KENNEDY W

SEE MAP 786

SEE MAP 726

028

92202

735  
745

R4E  
R5E

92202

30

31

25

26

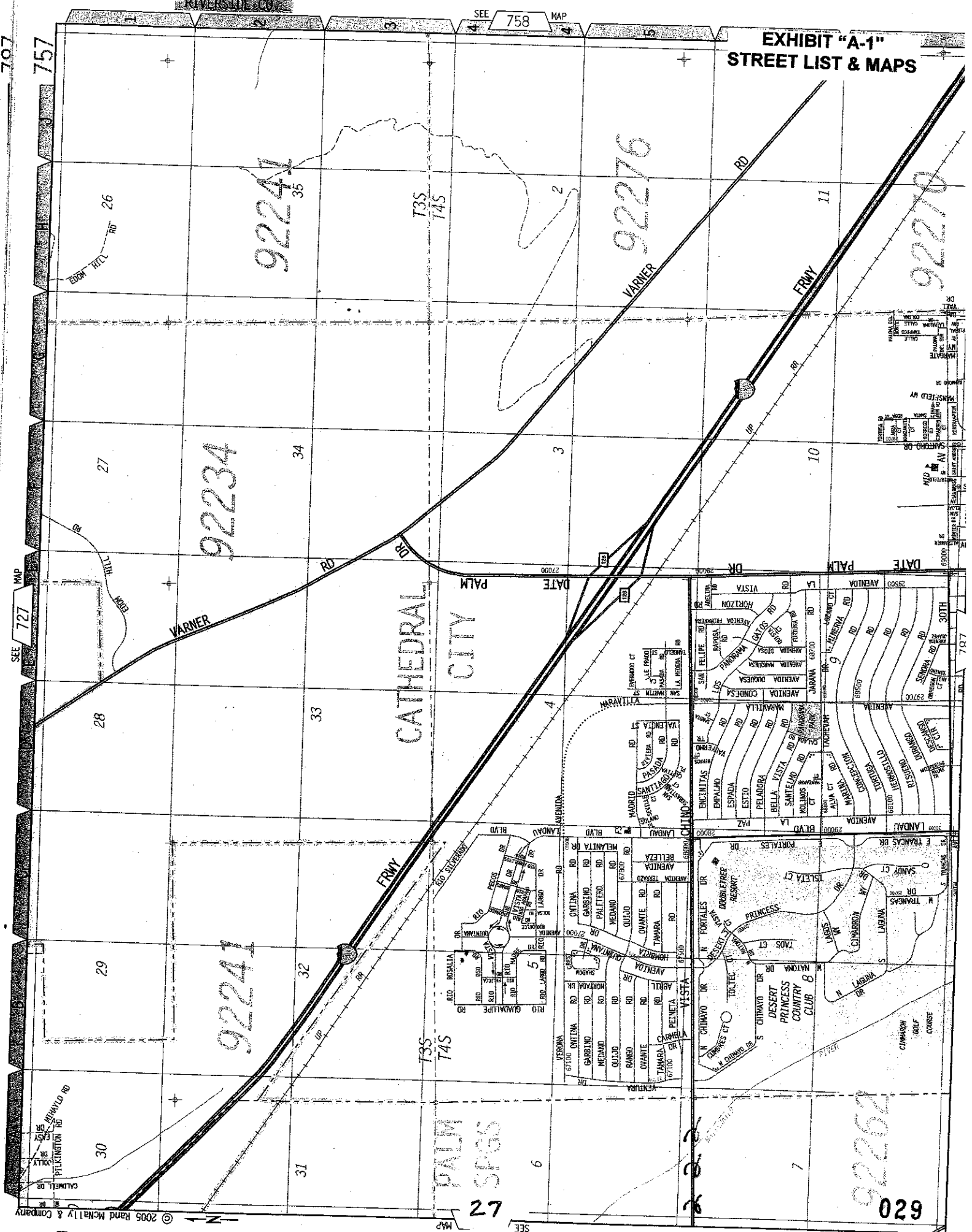
27

28

SEE MAP 26

REVEREND

EXHIBIT "A-1"  
STREET LIST & MAPS



SEE 727 MAP

SEE 758 MAP

92262  
029

PALM  
SPGS  
27

92276  
92270

92241

92234

92241

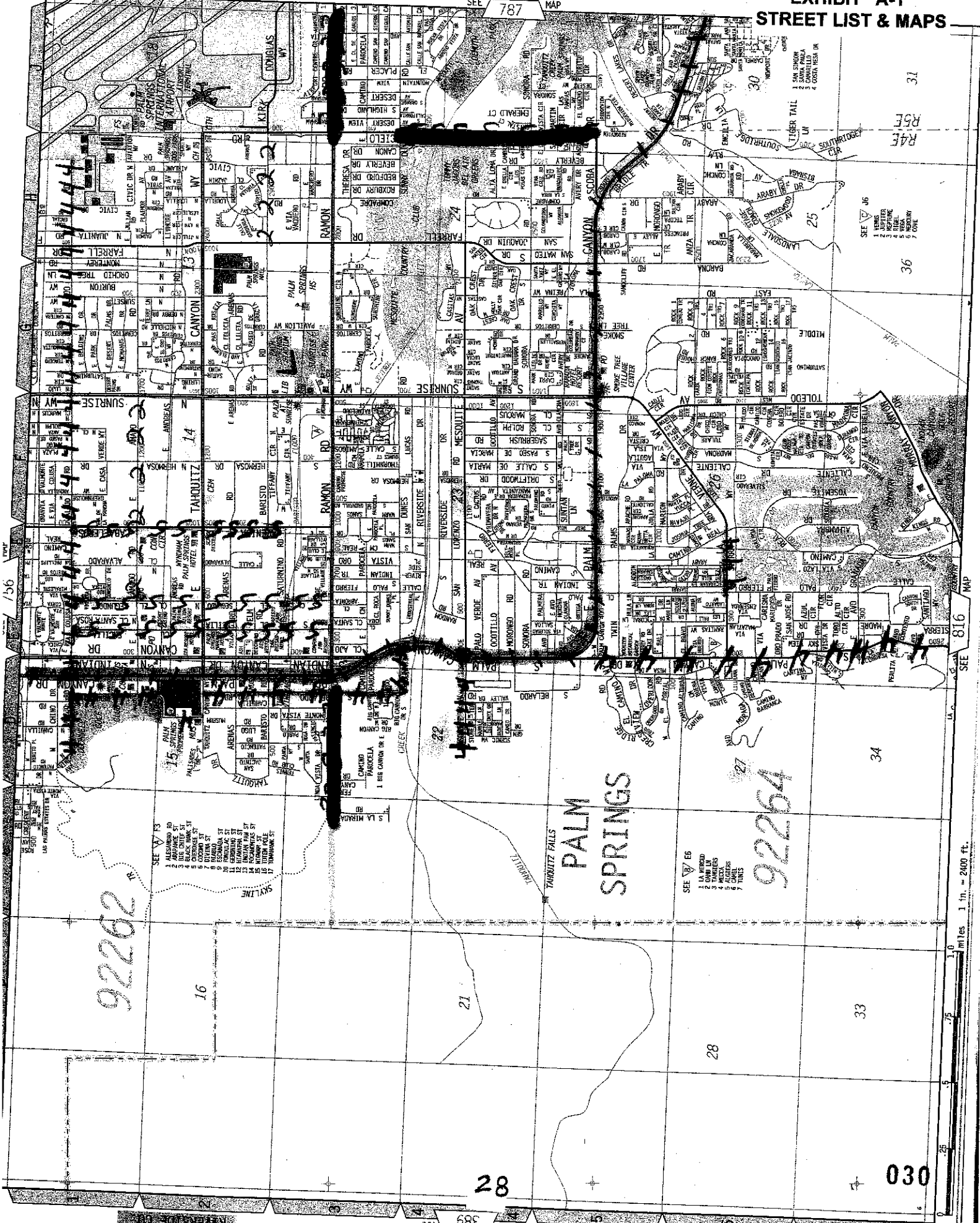
707

757

707

707

SEE 787 MAP



92262

92264

930

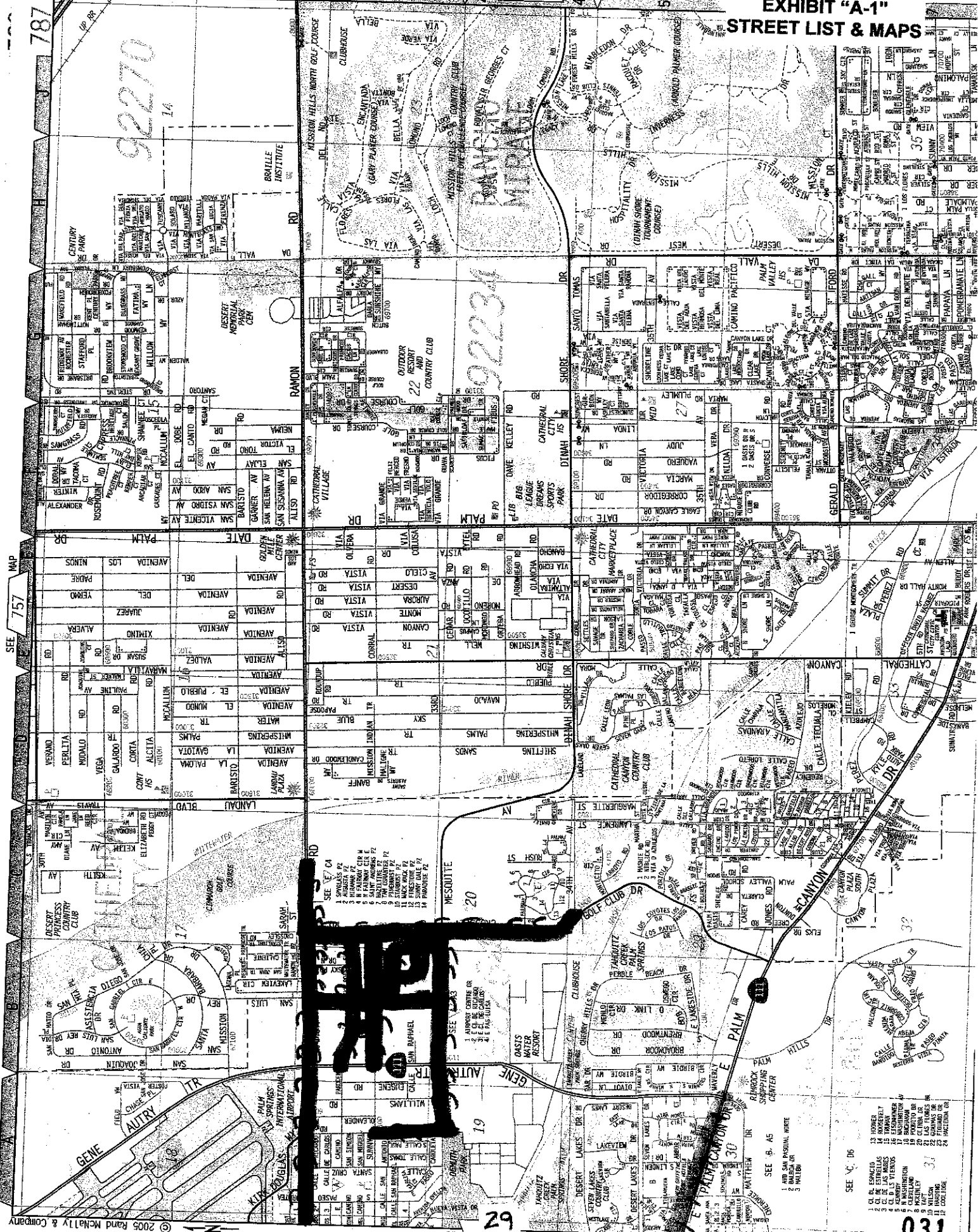
- SEE V 13
- 1 ALBUQUERQUE ST
  - 2 ARIZONA ST
  - 3 BIL COTY ST
  - 4 CHRYSLER ST
  - 5 CHRYSLER ST
  - 6 CHRYSLER ST
  - 7 CHRYSLER ST
  - 8 CHRYSLER ST
  - 9 CHRYSLER ST
  - 10 CHRYSLER ST
  - 11 CHRYSLER ST
  - 12 CHRYSLER ST
  - 13 CHRYSLER ST
  - 14 CHRYSLER ST
  - 15 CHRYSLER ST
  - 16 CHRYSLER ST
  - 17 CHRYSLER ST

- SEE V 66
- 1 LA VERDE
  - 2 DOW LANE
  - 3 WILSON
  - 4 WILSON
  - 5 WILSON
  - 6 WILSON
  - 7 WILSON

1 inch = 2400 ft.



# EXHIBIT "A-1" STREET LIST & MAPS



92270

92234

SEE 757 MAP

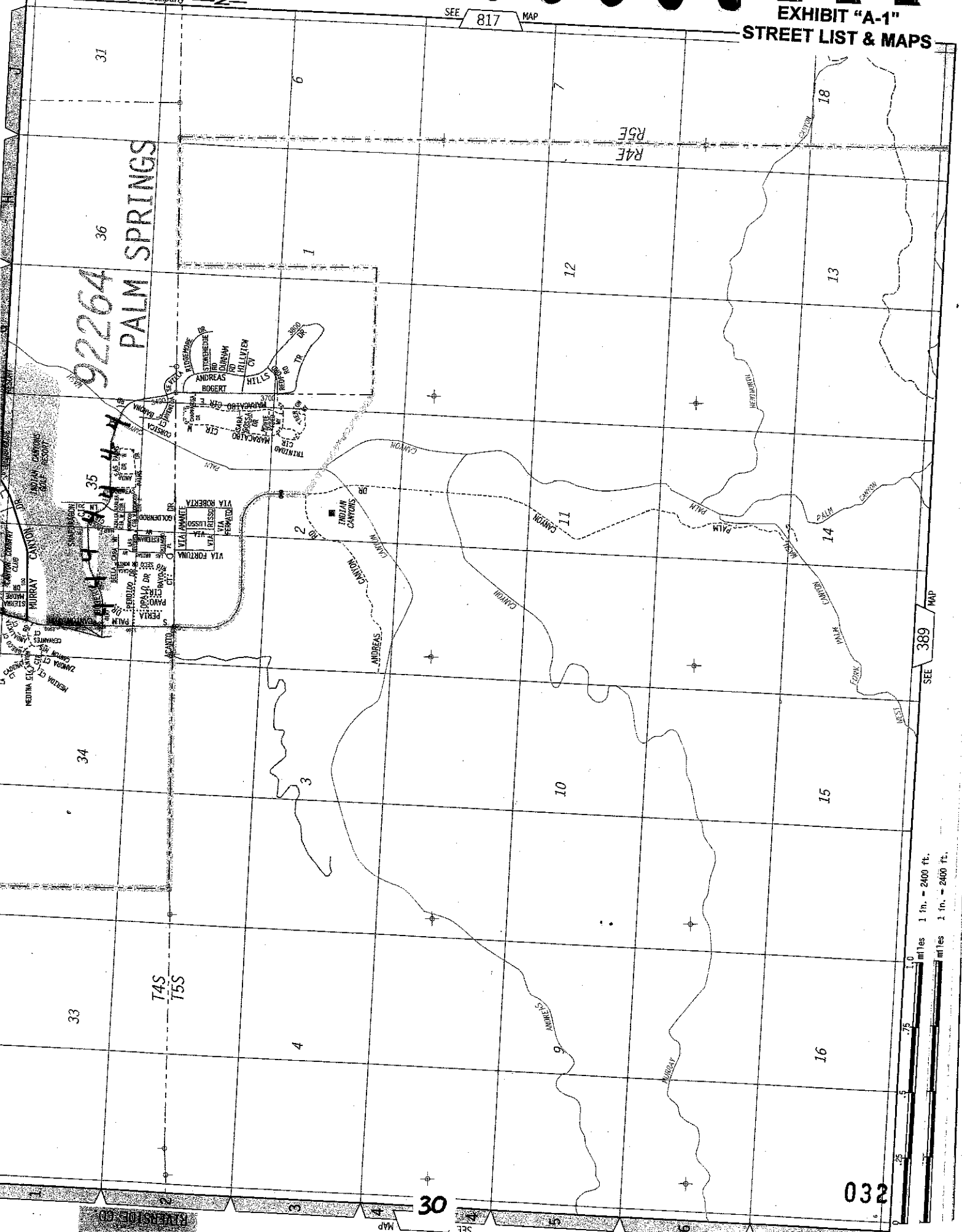
- SEE 'C, 'D'
- 1 CL ESCALON
  - 2 CL B LAS VEGAS
  - 3 CL B LAS VEGAS
  - 4 CL B LAS VEGAS
  - 5 CL B LAS VEGAS
  - 6 CL B LAS VEGAS
  - 7 CL B LAS VEGAS
  - 8 CL B LAS VEGAS
  - 9 CL B LAS VEGAS
  - 10 CL B LAS VEGAS
  - 11 CL B LAS VEGAS
  - 12 CL B LAS VEGAS
  - 13 HOBBER
  - 14 HOBBER
  - 15 HOBBER
  - 16 HOBBER
  - 17 HOBBER
  - 18 HOBBER
  - 19 HOBBER
  - 20 HOBBER
  - 21 HOBBER
  - 22 HOBBER
  - 23 HOBBER
  - 24 HOBBER

- SEE 'B, 'A5'
- 1 AND SAN BASILIAN, WARE
  - 2 BARBARA DR
  - 3 HALLIBI

- SEE 'E, 'F'
- 1 ABBOTT CENTER DR
  - 2 CL B LAS VEGAS
  - 3 CL B LAS VEGAS
  - 4 E PASADENA
  - 5 PASADENA
  - 6 PASADENA
  - 7 PASADENA
  - 8 PASADENA
  - 9 PASADENA
  - 10 PASADENA
  - 11 PASADENA
  - 12 PASADENA
  - 13 PASADENA
  - 14 PASADENA
  - 15 PASADENA
  - 16 PASADENA
  - 17 PASADENA
  - 18 PASADENA
  - 19 PASADENA
  - 20 PASADENA

- SEE 'G, 'H'
- 1 AND SAN BASILIAN, WARE
  - 2 BARBARA DR
  - 3 HALLIBI

- SEE 'I, 'J'
- 1 AND SAN BASILIAN, WARE
  - 2 BARBARA DR
  - 3 HALLIBI



92264

PALM SPRINGS

032

1.0 miles 1 in. = 2400 ft.  
 .75  
 .5  
 .25  
 0

1.0 miles 1 in. = 2400 ft.  
 .75  
 .5  
 .25  
 0

SEE 389 MAP

30

SEE

MAP

T4S  
T5S

31

36

35

34

33

6

1

2

3

4

10

9

12

11

6

MURRAY

18

13

14

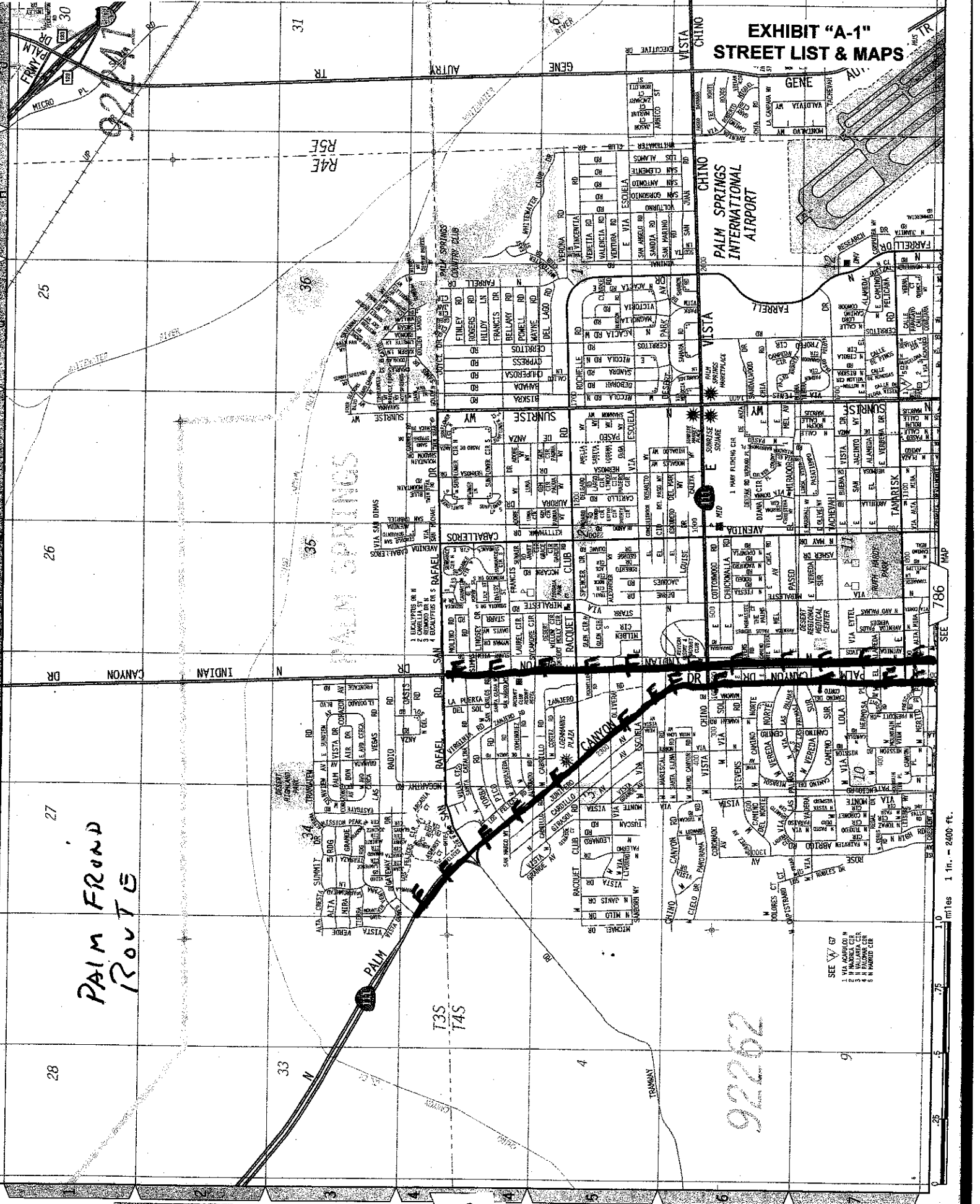
15

16

R4E  
R5E



# EXHIBIT "A-1" STREET LIST & MAPS



Palm Frond  
Route

92262

SEE W 67  
1 VIA ACHOBON  
2 VIA MARICOLA CIR  
3 VIA PALM CANYON DR  
4 VIA MARICOLA CIR

1 0 miles  
1 in. = 2400 ft.

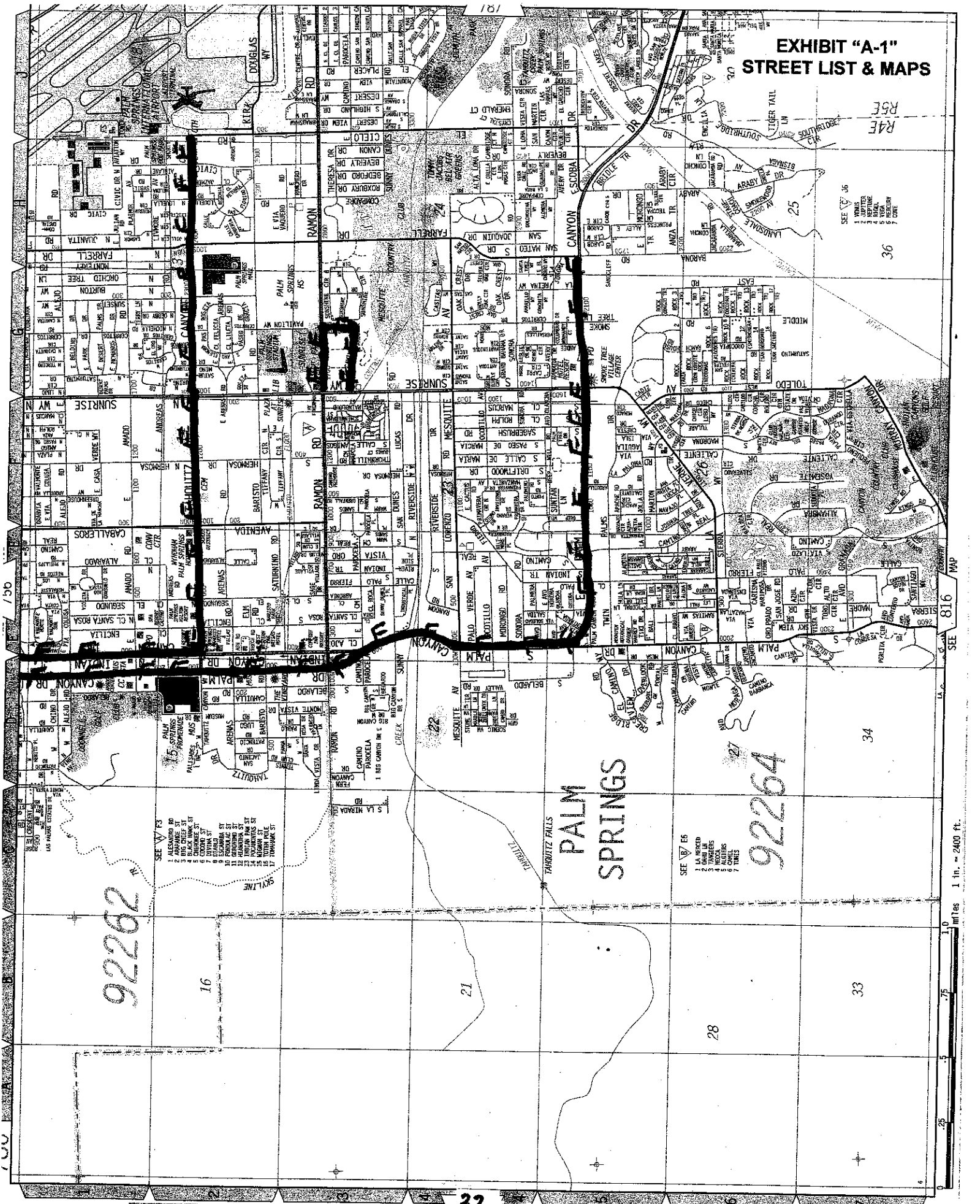
**EXHIBIT "A-1"  
STREET LIST & MAPS**

RSE  
RAE

SEE V 36  
1 WORKS  
2 IMPROVEMENTS  
3 REPAIRS  
4 RECONSTRUCTION  
5 REPAIRS  
6 RECONSTRUCTION  
7 CORE

36

SEE 816 MAP



92262

92264

- SEE V 33
- 1 ALEXANDER RD
  - 2 BLACK HAWK ST
  - 3 BRYAN ST
  - 4 CANTON ST
  - 5 CANTON ST
  - 6 CANTON ST
  - 7 CANTON ST
  - 8 CANTON ST
  - 9 CANTON ST
  - 10 CANTON ST
  - 11 CANTON ST
  - 12 CANTON ST
  - 13 CANTON ST
  - 14 CANTON ST
  - 15 CANTON ST
  - 16 CANTON ST
  - 17 CANTON ST

- SEE V 66
- 1 IMPROVEMENTS
  - 2 REPAIRS
  - 3 REPAIRS
  - 4 REPAIRS
  - 5 REPAIRS
  - 6 REPAIRS
  - 7 REPAIRS

1 in. = 2400 ft.

**EXHIBIT "C"**

**SCHEDULE OF COMPENSATION**

Schedule A:

Rates for roadside maintenance work based on a two-man crew consisting of one Lead Worker and one Worker, each working 8 hours per day, 32 hours per week, and including all equipment, supplies, insurance, uniforms and other associated costs:

Lead Worker	\$10.00 per hour	x1664 hours	=	\$16,640
Worker	\$ 8.50 per hour	x1664 hours	=	\$14,144
Vehicle & Supplies	\$18.25 per hour	x1664 hours	=	<u>\$30,368</u>
			Sub Total:	<u>\$61,152</u>

Schedule B:

Rates for Emergency Call-Outs, based on an estimate of 56 hours annually and based on a two-man crew consisting of one Lead Worker and one Worker, and including all equipment, supplies, insurance, uniforms and other associated costs:

Lead Worker:

Regular Hrs	\$10 per hour	x 32 hours	=	\$ 320
Overtime Hrs	\$15 per hour	x 16 hours	=	\$ 240
Holiday Hrs	\$20 per hour	x 8 hours	=	\$ 160

Worker:

Regular Hrs	\$ 8.50 per hour	x 32 hours	=	\$ 272
Overtime Hrs	\$12.75 per hour	x 16 hours	=	\$ 204
Holiday Hrs	\$17.00 per hour	x 8 hours	=	\$ 136

Vehicle&Supplies:	\$18.25 per hour	x 64 hours	=	<u>\$ 1,136</u>
			Sub Total:	\$ 2,500

**TOTAL: \$63,652**

Invoices shall be submitted to the Contract Officer for approval. Contractor shall bill the City monthly using the number of hours worked as the basis for payment. Individuals assigned to this program shall, in addition to daily log sheets and electronically input time sheet, record hours worked on a daily basis at the direction of the Contract Officer. Such logs and time sheets shall be submitted to the Contract Officer upon request.

It is required that the vehicle hours are to be billed at no more than the total hours of the crewman who works the most billable hours for each month, as the two-man crew share one vehicle that is to be properly equipped with the required supplies and tools. Contractor is not to bill for and City is not responsible to pay for more than one vehicle per day, as the City is not responsible to pay for contractor's use or need of any additional vehicles or supplies. Also, contractor shall not bill and City is not responsible for and "down time" of contractor's vehicle (i.e. flat tire, dead battery, etc.).