



City Council Staff Report

Date: September 3, 2014

CONSENT CALENDAR

Subject: AWARD PROFESSIONAL SERVICES AGREEMENT TO DOKKEN ENGINEERING, FOR THE EAST PALM CANYON DRIVE BRIDGE WIDENING PROJECT AT PALM CANYON WASH, CITY PROJECT NO. 12-04, FEDERAL-AID PROJECT NO. BRLS-5282 (041)

From: David H. Ready, City Manager

Initiated by: Public Works and Engineering Department

SUMMARY

The Public Works & Engineering Department has received federal funding from the State of California Department of Transportation ("Caltrans") through its Highway Bridge Program ("HBP") to widen the East Palm Canyon Drive Bridge over the Palm Canyon Wash. Caltrans approved the City's federal grant request, and awarded the City federal funding for the environmental and design phase for this project. The City solicited proposals from consultants for environmental and civil engineering design services for this project. The proposal includes services for a future right of way phase and other services that require Caltrans funding and approval. After a competitive consultant selection process, the City selected Dokken Engineering and negotiated the proposed professional services agreement.

RECOMMENDATION:

- 1) Approve Agreement No. _____ with Dokken Engineering, in the amount of \$1,182,540 for environmental and civil engineering design services related to the East Palm Canyon Bridge Widening at the Palm Canyon Wash, City Project 12-04, Federal Aid Project No. BRLS 5282 (041); and
- 2) Authorize the City Manager to execute all necessary documents.

STAFF ANALYSIS:

The East Palm Canyon Drive Bridge, constructed in 1956 and widened in 1963, is listed in the Federal Eligible Bridge List (EBL) with a status flag of "Structurally

Deficient (SD)" and a low Sufficiency Rating (SR) of 53.6 according to the Bridge Inspection Report prepared by Caltrans Office of Structure Maintenance and Investigations (SM&I). Since the bridge is rated with an SR lower than 80, the bridge is eligible for major rehabilitation in accordance with the HBP guidelines.

On April 24, 2012, the City approved a professional services agreement with CNS Engineers, Inc., to develop a bridge advance planning study, and Highway Bridge Program (HBP) funding application for rehabilitation/widening of the existing East Palm Canyon Drive Bridge (Bridge No. 56C0409) at Palm Canyon Wash. CNS subsequently completed the study and the funding application, requesting almost \$6 Million in federal HBP funds for the project. The existing East Palm Canyon Drive Bridge is eligible for funding under the HBP, which is administered by the state of California Department of Transportation ("Caltrans"). The HBP federal funds cover 88.53% of eligible project costs, requiring an 11.47% local match.

On August 30, 2013, Caltrans approved \$890,000 of the total project costs for the Environmental and Design phase of the project. The Coachella Valley Association of Governments adopted the 2010 Update to the Transportation Project Prioritization Study ("TPPS") identifying this project in their report. Therefore, staff requested CVAG to approve a reimbursement agreement with the City to fund a share (75%) of the local match required. On January 27, 2014, the CVAG Executive Committee approved the CVAG Reimbursement Agreement for this project. On April 2, 2014, City Council approved the CVAG Reimbursement Agreement for this project.

While replacing the bridge to meet current design standards, bicycle lanes will be considered on the new bridge as per the City of Palm Springs Bike Route Plan. Per the Caltrans Local Assistance Procedures Manual, Caltrans typically allows 5% of construction costs for Aesthetic treatment. Additional funding for the preliminary engineering phase will be requested from Caltrans to cover additional costs that may arise from presentations to the Public Arts Commissions and/or their recommendations.

This project now requires the services of a professional firm to provide environmental and civil engineering design services, in addition to right of way and other services to be further approved and funded by Caltrans. Staff prepared a Request for Proposals (RFP) for environmental and civil engineering design services to solicit consultants for this project. On January 16, 2014, the RFP was published and made available to firms through the City's Division of Procurement and Contracting, and by the February 18, 2014, deadline, proposals from the following firms were received:

amec; Cathedral City, CA (teamed with Heptagon Seven; Indian Wells, CA)
Biggs Cardosa Associates, Inc.; San Jose, CA
CNS Engineers, Inc.; Riverside, CA
Dokken Engineering; Temecula, CA
RBF Consulting; Palm Desert, CA
Tetra Tech Engineering & Consulting Services, Irvine, CA

Following review of the proposals by a Selection Committee made up of the Director of Public Works, Assistant Director of Public Works, and Caltrans District Local Assistance Engineer, a clear consensus of Dokken Engineering, as the top ranked firm was made. The Selection Committee, in accordance with federal rules regarding consultant selection process, determined that final interviews were not necessary based on its clear determination of a top ranked firm. The selection was based on Dokken Engineering's thorough understanding of the project area, federal processes related to environmental clearances, and their recent experience coordinating federally funded highway bridge projects through Caltrans District 8.

Local Business Preference Compliance

Section 7.09.030 of the Palm Springs Municipal Code, "Local Business Preference Program," requires consultants to use good faith efforts to solicit applications for employment and proposals of sub-consultants for work associated with the proposed contract from local residents and firms as opportunities occur, and to hire qualified local residents and firms whenever feasible. However, in accordance with the exceptions in the Code, given the federal funding associated with this project, local preferences are not allowed, thus, the provisions of the City's Local Business Preference Program were not included in the RFP.

Nondiscrimination provisions apply to all programs and activities of federal-aid recipients, sub-recipients, and contractors, regardless of tier (49 Code of Federal Regulations (CFR), Part 21). Pursuant to the federal regulations, Disadvantaged Business Enterprise (DBE) requirements must be satisfied with this project. A DBE goal of 3.84% was established for this contract. Dokken Engineers is using Aguirre & Associates, a certified DBE firm, claiming 5.05% of the DBE participation for this contract.

FISCAL IMPACT:

The City has programmed \$890,000 with Caltrans for the environmental and design phase of this project with \$787,917 (88.53%) in federal funding with a required \$102,083 (11.47%) local match. The City has also entered into a funding agreement with CVAG to fund 75% of the local match. The proposed agreement includes contract provisions that segregate the required services into Phase 1 and 2 as identified in Exhibit "C-1" in the negotiated contract with a maximum fee of \$790,000.00. This is the maximum compensation authorized upon Council's approval of the agreement.

Once the City issues the Notice to Proceed and/or completes the environmental and design phase, staff will request obligation of additional federal funding from Caltrans to continue on to the Right of Way Phase and/or perform other services as identified in Exhibit "C-2".

Future phases and other tasks once approved by Caltrans are defined as Optional Tasks with a maximum compensation of \$392,540.00. This is the maximum fee for completion of future phases or other services approved and require funding by Caltrans. Pursuant to the provisions included in the agreement, the Consultant cannot proceed without funding authorization from Caltrans.

Therefore, although the Council is approving the total maximum contract fee of \$1,182,540 at this time, compensation is limited to \$790,000.00 for Phase 1 and 2 (Exhibit "C-1") until specific authorization from the City is given to the consultant to proceed with the remaining services identified in Exhibit "C-2".

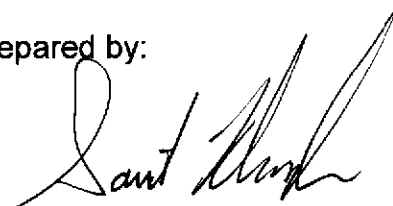
The proposed contract fee of \$790,000.00 for the Environmental and Design Engineering services will be funded with federal HBP, Regional Measure A, and Local Measure A, as follows:

Account 261-4491-50316: \$699,387
Account 134-4497-50316: \$ 67,960
Account 134-4498-50316: \$ 22,653

No local miscellaneous general funds are required for this contract.

SUBMITTED:

Prepared by:



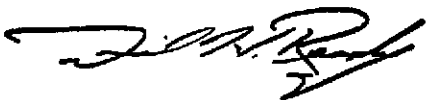
Savat Khamphou
Assistant Director of Public Works/
Assistant City Engineer

Recommended by:



David J. Barakian
Director of Public Works/City Engineer

Approved by:



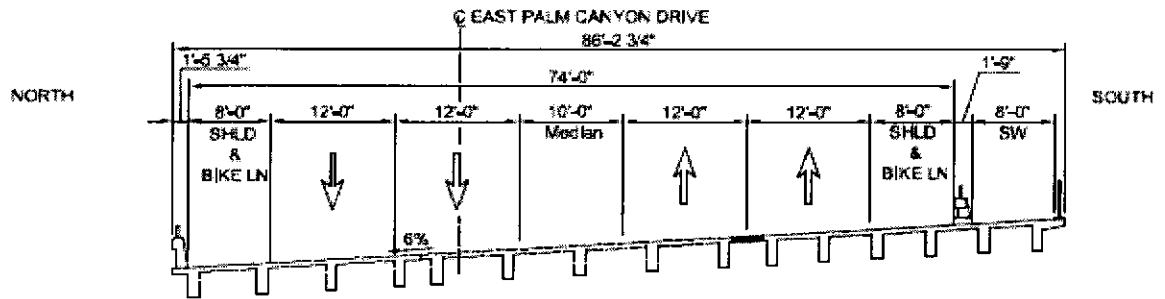
David H. Ready, City Manager

ATTACHMENTS:

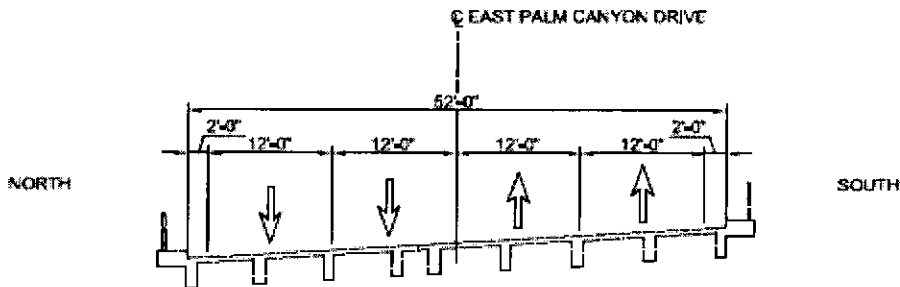
1. Cross Sections for East Palm Canyon Bridge Project
2. Agreement

ATTACHMENT 1

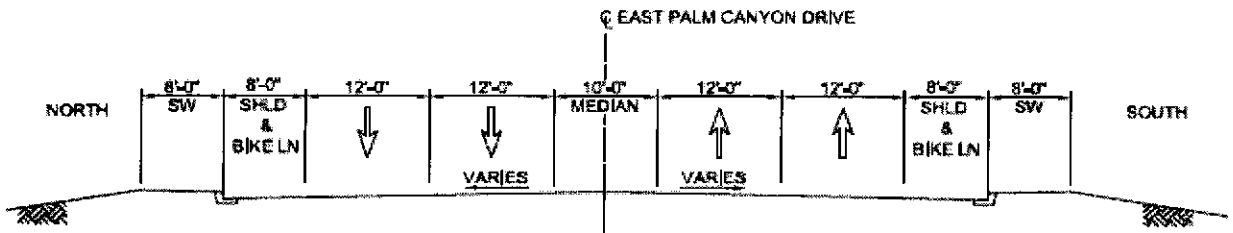
CROSS SECTIONS FOR EAST PALM CANYON BRIDGE PROJECT



CROSS SECTION - PROPOSED WIDENED BRIDGE



CROSS SECTION - EXISTING BRIDGE



CROSS SECTION - PROPOSED APPROACH

ATTACHMENT 2

AGREEMENT

(FOLLOWS THIS PAGE)

**CITY OF PALM SPRINGS
PROFESSIONAL SERVICES AGREEMENT
EAST PALM CANYON DRIVE BRIDGE WIDENING@PALM CANYON WASH
CITY PROJECT NO. 12-04
FEDERAL AID PROJECT NO. BRLS 5282 (041)**

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is entered into, and effective on _____, 2014, between the CITY OF PALM SPRINGS, a California charter city and municipal corporation, ("City") and DOKKEN ENGINEERING, A CALIFORNIA CORPORATION, ("Consultant"). City and Consultant 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 professional services for the environmental, design engineering, and right of way services for the East Palm Canyon Drive Bridge Widening Project at Palm Canyon Wash, City Project No.b12-04, Federal Aid Project No. BRLS-5282 (041) ["Project"].

B. Consultant has submitted to City a proposal to provide professional services to City to complete the Environmental, Design, Right of Way, and Construction Administration Services for the Project under the terms of this Agreement.

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

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

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

AGREEMENT

1. SERVICES OF CONSULTANT

1.1 Scope of Services. In compliance with all terms and conditions of this Agreement, Consultant agrees to perform the professional services set forth in the Scope of Services described in Exhibit "A" (the "Services" or "Work") , which is attached and incorporated by reference. As a material inducement to the City entering into this Agreement, Consultant represents and warrants that Consultant is a provider of first class work and professional services and that Consultant is experienced in performing the Work and Services contemplated and, in light of such status and experience, Consultant covenants that it shall follow the highest professional standards in performing the Work and Services required 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 Consultant's signed, original proposal submitted to the City ("Consultant's Proposal"), (collectively referred to as the "Contract Documents"). The City's Request for Proposals and the Consultant's Proposal , are incorporated by reference and are made a part of this Agreement. The Scope of Services shall include the Consultant's Proposal. All provisions

of the Scope of Services, the City's Request for Proposals and the Consultant'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: (1st) the provisions of the Scope of Services (Exhibit "A"); (2nd) the provisions of the City's Request for Proposal; (3rd) the terms of this Agreement; and, (4th) the provisions of the Consultant's Proposal.

1.3 Compliance with Law. Consultant 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. Consultant represents and warrants to City that it has obtained all licenses, permits, qualifications, and approvals of whatever nature that are legally required to practice its profession and perform the Work and Services required by this Agreement. Consultant represents and warrants to City that Consultant shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement, any license, permit, qualification, or approval that is legally required for Consultant to perform the Work and Services under this Agreement. Consultant shall have the sole obligation to pay for any fees, assessments, and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Consultant's performance of the Work and Services required by this Agreement. Consultant 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, Consultant warrants that Consultant (a) has thoroughly investigated and considered the Scope of Services to be performed, (b) has carefully considered how the Services should be performed, and (c) fully understands the facilities, difficulties, and restrictions attending performance of the Services under this Agreement. If the Services involve work upon any site, Consultant warrants that Consultant has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of any Services. Should the Consultant discover any latent or unknown conditions that will materially affect the performance of the Services, Consultant shall immediately inform the City of such fact and shall not proceed except at Consultant's risk until written instructions are received from the City.

1.6 Care of Work. Consultant shall adopt reasonable methods during the term of the Agreement to furnish continuous protection to the Work and the equipment, materials, papers, documents, plans, studies, and/or other components to prevent losses or damages. Consultant 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 Consultant, 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 Consultant. Any increase in compensation of up to twenty-five percent (25%) of the Maximum Contract Amount or \$25,000, whichever is less, or in the time to perform of up to thirty (30) days, may be approved by the City Manager, or his designee, as may be needed to perform any extra work. Any greater increases, occurring either separately or cumulatively, must be approved by the Palm Springs City Council. It is expressly understood by Consultant that the provisions of this section shall not apply to the services specifically set forth or reasonably contemplated therein, regardless of whether the time or material required to complete any work or service identified in the Scope of Services exceeds any time or materials amounts or estimates provided therein.

1.9 Special Requirements. Additional terms and conditions of this Agreement, if any, which are made a part hereof are set forth in the "Special Requirements" attached hereto as Exhibit "B" and incorporated herein by this reference. In the event of a conflict between the provisions of Exhibit "B" and any other provisions of this Agreement, the provisions in Exhibit "B" shall govern.

2. COMPENSATION

2.1 Maximum Contract Amount. For the Services rendered under this Agreement for Phase 1 and Phase 2, Consultant shall be compensated by City in accordance with the Schedule of Compensation, which is attached as Exhibit "C-1" and incorporated in this Agreement by reference. Compensation shall not exceed the Phase 1 and Phase 2 contract amount of Seven Hundred Ninety Thousand Dollars (\$790,000.00) (herein referred to as the "Phase 1 and Phase 2 Contract Amount"), except as may be provided under Section 1.8. The method of compensation shall be as set forth in Exhibit "C-1". The Phase 1 and Phase 2 Contract Amount is the maximum compensation authorized upon execution of this Agreement.

Upon written authorization from the Contract Officer to proceed with the Services rendered pursuant to this Agreement for Optional Tasks, Consultant shall be compensated by City in accordance with the Schedule of Compensation, which is attached hereto as Exhibit "C-2" and is incorporated herein by reference, but not exceeding the Optional Tasks Contract Amount of Three Hundred Ninety-two Thousand, Five Hundred Forty Dollars (392,540.00) (hereinafter referred to as the "Optional Tasks Contract Amount"), except as may be provided pursuant to Section 1.8 above. The Optional Tasks Contract Amount shall be added to the maximum compensation authorized upon receipt of the written authorization from the Contract Officer to proceed with the Optional Tasks. The method of compensation shall be set forth in Exhibit "C-2".

For all Services rendered pursuant to this Agreement for Phase 1 and Phase 2 and Optional Tasks, Consultant shall be compensated by City in accordance with the Schedule of Compensation, which is attached hereto as Exhibits "C-1" and "C-2" and is incorporated herein by reference, but not exceeding the Maximum Contract Amount of One Million, One Hundred Eighty-Two Thousand, Five Hundred Forty Dollars (\$1,182,540.00) (hereinafter referred to as the "Maximum Contract Amount"), except as may be provided pursuant to Section 1.8 above.

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 Consultant at all Project meetings reasonably deemed necessary by the City. Consultant shall not be entitled to any increase in the Maximum Contract Amount for attending these meetings. Consultant accepts the risk that the services identified in the Scope of Services may be more costly and/or time-consuming than Consultant anticipates, that Consultant shall not be entitled to additional

compensation, 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 Consultant's Services under this Agreement are completed, Consultant 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-1" and "C-2"), in any month in which Consultant wishes to receive payment, Consultant 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 Consultant and accompanied by such reporting data including an itemized breakdown of all costs incurred and tasks performed during the period covered by the invoice, as may be required by the City. City shall use reasonable efforts to make payments to Consultant within forty-five (45) days after receipt of the invoice or as soon 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 Consultant'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 Consultant is an essential condition of this Agreement. Consultant shall prosecute regularly and diligently the Work of this Agreement according to the agreed upon attached Schedule of Performance (Exhibit "D"), incorporated by reference.

3.2 Schedule of Performance. Consultant 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 the Schedule of Performance. When requested by Consultant, 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 the Schedule of Performance 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 Consultant (financial inability excepted) if Consultant, 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 Consultant be entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Consultant's sole remedy being extension of the Agreement 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 the Schedule of Performance described 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 Consultant thirty (30) days written notice. Where termination is due to the fault of Consultant and constitutes an immediate danger to health, safety, and general welfare, the period of notice shall be such shorter time as may be determined by the City. Upon such notice, City shall pay Consultant for Services performed through the date of termination. Upon receipt of such notice, Consultant shall immediately cease all work under this Agreement, unless stated otherwise in the notice or by written authorization of the Contract Officer. After such notice, Consultant shall have no further claims against the City under this Agreement. Upon termination of the Agreement under this section, Consultant shall submit to the City an invoice for work and services performed prior to the date of termination. Consultant 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 Consultant may determine.

4. COORDINATION OF WORK

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

4.2 Contract Officer. The Contract Officer shall be the City Manager or his/her designee ("Contract Officer"). Consultant shall be responsible for keeping the Contract Officer fully informed of the progress of the performance of the services. Consultant 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 Consultant, its principals and employees, were a substantial inducement for City to enter into this Agreement. Therefore, Consultant 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. Consultant shall not contract with any other entity to perform the Services required under this Agreement without the prior written consent of City. If Consultant is permitted to subcontract any part of this Agreement by City, Consultant shall be responsible to City for the acts and omissions of its subcontractor(s) in the same manner as it is for persons directly employed. Nothing contained in this Agreement shall create any contractual relationships between any subcontractor and City. All persons engaged in the Work will be considered employees of Consultant. City will deal directly with and will make all payments to Consultant. In addition, neither this Agreement nor any interest 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 Consultant, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release Consultant or any surety of Consultant from any liability 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 Consultant a City employee.

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

B. Consultant shall not 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 Consultant, its officers, employees, or agents in connection with any performance under this Agreement. Except for professional fees paid to Consultant as provided for in this Agreement, City shall not pay salaries, wages, or other compensation to Consultant for the performance of Services under this Agreement. City shall not be liable for compensation or indemnification to Consultant, its officers, employees, or agents, for injury or sickness arising out of performing Services. 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 Consultant's officers, employees, servants, representatives, subcontractors, or agents, Consultant shall indemnify City for all such financial obligations.

5. INSURANCE

5.1 Types of Insurance. Consultant shall procure and maintain, at its sole cost and expense, 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 Consultant's performance of Work under this Agreement, including Consultant'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 Consultant agrees that the minimum limits of the insurance policies may be changed accordingly upon receipt of written notice from the City Manager or his designee. Consultant shall immediately substitute any insurer whose A.M. Best rating drops below the levels specified 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.** Consultant shall obtain and maintain in full force and effect throughout the term of this Agreement, standard industry form professional liability (errors and omissions) insurance coverage in an amount of not less than one million dollars (\$1,000,000.00) per occurrence and two-million dollars (\$2,000,000.00) annual aggregate, in accordance with the provisions of this section.

(1) Consultant shall either: (a) certify in writing to the City that Consultant is unaware of any professional liability claims made against Consultant and is unaware of any facts which may lead to such a claim against Consultant; or (b) if Consultant does not provide the certification under (a), Consultant shall procure from the professional liability insurer an endorsement providing that the required limits of the policy shall apply separately to claims arising from errors and omissions in the rendition of services 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, Consultant shall obtain continuing insurance coverage for the prior acts or omissions of Consultant during the course of performing Services under the terms of this Agreement. The coverage shall be evidenced by either a new policy evidencing no gap in coverage, or by obtaining separate extended "tail" coverage with the present or new carrier or other insurance arrangements providing for complete coverage, either of which shall be subject to the written approval by the City Manager.

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

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

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

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

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

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

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

5.3.1 For any claims related to this Agreement, Consultant'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 Consultant's insurance and shall not contribute with it.

5.3.2 Any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to City and its officers, council members, officials, employees, agents, and volunteers.

5.3.3 All insurance coverage and limits provided by Consultant and available or applicable to this Agreement are intended to apply to each insured, including additional insureds, against whom a claim is made or suit is brought to the full extent of the policies. Nothing contained in this Agreement or any other agreement relating to the City or its operations shall limit the application of such insurance coverage.

5.3.4 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 Consultant agrees to require its insurer to modify insurance endorsements to delete any exculpatory wording stating that failure of the insurer to mail written

notice of cancellation imposes no obligation, or that any party will "endeavor" (as opposed to being required) to comply with the requirements of the endorsements. Certificates of insurance will not be accepted in lieu of required endorsements, and submittal of certificates without required endorsements may delay commencement of the Project. It is Consultant's obligation to ensure timely compliance with all insurance submittal requirements as provided in this Agreement.

5.3.6 Consultant agrees to ensure that subcontractors, and any other parties involved with the Project who are brought onto or involved in the Project by Consultant, provide the same minimum insurance coverage required of Consultant. Consultant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Consultant agrees that upon request, all agreements with subcontractors and others engaged in the Project will be submitted to the City for review.

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

5.3.8 Consultant 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 Consultant agrees to provide immediate notice to City of any claim or loss against Consultant arising out of the Work performed under this Agreement and for any other claim or loss which may reduce the insurance available to pay claims arising out of this Agreement. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City, or to reduce or dilute insurance available for payment of potential claims.

5.3.12 Consultant agrees that the provisions of this section shall not be construed as limiting in any way the extent to which the Consultant may be held responsible for the payment of damages resulting from the Consultant's activities or the activities of any person or person for which the Consultant is otherwise responsible.

5.4 Sufficiency of Insurers. Insurance required 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. Consultant shall furnish City with both certificates of insurance and endorsements, including additional insured endorsements, affecting all of the coverages required by this Agreement. The certificates and endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All proof of insurance is to be received and approved by the City before work commences. City reserves the right to require Consultant's insurers to provide complete, certified copies of all required insurance policies at any time. Additional insured endorsements are not required for Errors and Omissions and Workers' Compensation policies.

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

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

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

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

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

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

6. INDEMNIFICATION

6.1 Indemnification and Reimbursement. To the fullest extent permitted by law, Consultant shall defend (at Consultant's sole cost and expense), indemnify, protect, and hold harmless City, its elected officials, officers, employees, agents, and volunteers (collectively the "Indemnified Parties"), from and against any and all liabilities, actions, suits, claims, demands, losses, costs, judgments, arbitration awards, settlements, damages, demands, orders, penalties, and expenses including legal costs and attorney fees (collectively "Claims"), including but not limited to Claims arising from injuries to or death of persons (Consultant's employees included), for damage to property, including property owned by City, from any violation of any federal, state, or local law or ordinance, and from errors and omissions committed by Consultant, its officers, employees, representatives, and agents, that arise out of or relate to Consultant'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 Consultant's indemnification obligation or other liability under this Agreement. Consultant'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 Professional Services Indemnification and Reimbursement. If the Agreement is determined to be a "design professional services agreement" and Consultant is a "design professional" under California Civil Code Section 2782.8, then:

A. To the fullest extent permitted by law, Consultant shall indemnify, defend (at Consultant's sole cost and expense), protect and hold harmless City and its 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 (Consultant's employees included) and damage to property, which Claims arise out of, pertain to, or are related to the negligence, recklessness or willful misconduct of Consultant, its agents, employees, or subcontractors, or arise from Consultant's negligent, reckless or willful performance of or failure to perform any term, provision, covenant or condition of this Agreement ("Indemnified Claims"), but Consultant's liability for Indemnified Claims shall be reduced to the extent such Claims arise from the negligence, recklessness or willful misconduct of the City and its elected officials, officers, employees, agents and volunteers.

B. The Consultant shall require all non-design-professional sub-contractors, used or sub-contracted by Consultant 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, Consultant shall require all non-design-professional sub-contractors, used or sub-contracted by Consultant 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. Consultant shall keep complete, accurate, and detailed accounts of all time, costs, expenses, and expenditures pertaining in any way to this Agreement. Consultant shall keep such books and records as shall be necessary to properly perform the Services required by this Agreement and to enable the Contract Officer to evaluate the performance of such Services. The Contract Officer shall have full and free access to such books and records at all reasonable times, including the right to inspect, copy, audit, and make records and transcripts from such records.

7.2 Reports. Consultant 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. Consultant acknowledges that the City is greatly concerned about the cost of the Work and Services to be performed under this Agreement. For this reason, Consultant agrees that Consultant shall promptly notify the Contract Officer the estimated increased or decreased cost if Consultant 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 Consultant is providing design services, Consultant shall promptly notify the Contract Officer the estimated increased or decreased cost for the project being designed if Consultant 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 Consultant, its employees, subcontractors, and agents in the performance of this Agreement shall be the property of City and shall be promptly delivered to City upon request of the Contract Officer or upon the termination of this Agreement. Consultant shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership of the documents and materials. Any use of such completed documents for other projects and/or use of incomplete documents without specific written authorization by the Consultant will be at the City's sole risk and without liability to Consultant, and the City shall indemnify the Consultant for all resulting damages. Consultant may retain copies of such documents for their own use. Consultant shall have an unrestricted right to use the concepts embodied in this Agreement. Consultant shall ensure that all its subcontractors shall provide for assignment to City of any documents or materials prepared by them. In the event Consultant fails to secure such assignment, Consultant shall indemnify City for all resulting damages.

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

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

8. ENFORCEMENT OF AGREEMENT

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

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

shall not be deemed to limit, expand, or define the contents of the respective sections or paragraphs.

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

A. If the City Manager, or his designee, determines that Consultant is in default in the performance of any of the terms or conditions of this Agreement, he/she shall notify Consultant in writing of such default. Consultant shall have ten (10) days, or such longer period as City may designate, to cure the default by rendering satisfactory performance. In the event Consultant fails to cure its default within such period of time, City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice of any remedy to which City may be entitled at law, in equity, or under this Agreement. Consultant shall be liable for 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 Consultant 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 Consultant shall be liable to the extent that the total cost for completion of the Services required hereunder exceeds the Maximum Contract Amount (provided that the City shall use reasonable efforts to mitigate such damages). The City may withhold any payments to the Consultant for the purpose of set-off or partial payment of the amounts owed the City as previously stated. The withholding or failure to withhold payments to Consultant shall not limit Consultant's liability for completion of the Services as provided 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 consultant fees, court costs and all fees, costs, and expenses incurred in

any appeal or in collection of any judgment entered in such proceeding. To the extent authorized by law, in the event of a dismissal by the plaintiff or petitioner of the litigation or non-judicial proceeding within thirty (30) days of the date set for trial or hearing, the other Party shall be deemed to be the prevailing Party in such litigation or proceeding.

9. CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION

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

9.2 Conflict of Interest. No officer or employee of the City shall have any 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. Consultant warrants that Consultant has not paid or given, and will not pay or give, any third party any money or other consideration in exchange for obtaining this Agreement.

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

10. MISCELLANEOUS PROVISIONS

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

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

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

10.2 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: City Manager & City Clerk
3200 E. Tahquitz Canyon Way
Palm springs, California 92262
Telephone: (760) 323-8204
Facsimile: (760) 323-8332

To Consultant: Dokken Engineering
Attention: Matthew W. Salveson
110 Blue Ravine Road, Suite 200
Folsom, CA 95630
Telephone: (916) 858-0642
Facsimile: (916) 858-0643

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.

(SIGNATURES ON FOLLOWING PAGE)

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:

Date: _____ Agreement No. _____

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.

CONSULTANT 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

PHASE 1 ENVIRONMENTAL DOCUMENT AND TECHNICAL STUDIES

TASK 1.0 PROJECT MANAGEMENT

The Consultant shall coordinate and attend meetings with the City's Project Manager and other required representatives from affected agencies at least once per month, or as deemed necessary by the City's Project Manager. The Consultant's Project Manager and sub-consultants shall attend as appropriate. The Consultant shall prepare minutes for each meeting and distribute them to the City's Project Manager and other attendees at each succeeding meeting. The Consultant shall perform all project management coordination necessary to maintain the Project Schedule.

Task 1.1 Project Development Team – Consultant shall organize and develop a Project Development Team (PDT). Members of the PDT shall include Consultant and subconsultants as required, City, Caltrans, and any other agency representatives, as necessary.

- *Deliverable: PDT Team Roster*

Task 1.2 Kick-Off Meeting – Consultant shall schedule and conduct a kick-off meeting within two weeks of Notice to Proceed (NTP). Consultant shall contact all members of the PDT to coordinate the scheduled meeting date. A meeting notice, an agenda and meeting minutes shall be prepared for the kick off meeting.

- *Deliverable: Kick-Off Meeting Notice; Kick-Off Meeting Agenda; Kick-Off Meeting Minutes*

Task 1.3 Monthly PDT Meetings – Consultant shall coordinate and attend monthly PDT meetings with the City, Caltrans, and other representatives from resource agencies as necessary. Meeting minutes shall be prepared by the Consultant for each meeting and distributed to the City's Project Manager and attendees at each meeting. An Action Item List and a Deliverables Status Matrix shall be prepared and updated for each PDT meeting.

- *Deliverable: Monthly PDT Notice; Monthly PDT Meeting Minutes; Monthly Action Items*

Task 1.4 Monthly Progress Reports – Consultant shall prepare progress reports to record the progress of the project and as supporting data for invoices presented monthly to the City. The progress report shall include accomplished tasks for the month, anticipated progress for the next month, pending issues and schedule completion target dates. Consultant shall mail a progress report with each monthly invoice.

- *Deliverable: Monthly Progress Report*

Task 1.5 Project Schedule – Consultant shall, within two weeks of Notice to Proceed (NTP), provide a detailed project baseline schedule indicating milestones, major activities and deliverables to the City for review and comments. Consultant shall update the schedule, as required.

- *Deliverable: Monthly Project Schedule*

Task 1.6 Quality Control – Consultant shall have a quality control plan in effect during the entire course of the project. Consultant shall develop a plan establishing a process to ensure design calculations are independently checked. Exhibits and plans shall also be checked, corrected and back-checked for accuracy and completeness. Consultant shall review subconsultant submittals to ensure that appropriate background information, study methodology, interpretation of data, format and content are completed in accordance with current standards.

- *Deliverable: Quality Control Plan*

TASK 2.0 PLANNING AND PROJECT DEVELOPMENT

The Consultant shall be responsible for obtaining all required project documents, studies, reports, as-built plans, record drawings, record maps and surveys, and other information required to complete the project. The Consultant shall perform all planning and project development, which shall include, but not be limited to the following:

Task 2.1 Research and Data Gathering – The Consultant shall obtain any and all existing topographic mapping, photos, maintenance reports, right-of-way maps, "as-built" plans, record plans, record maps and surveys, study reports, assessor maps, contract documents, and any other pertinent data required for the project from the City, Riverside County, or other sources. The Consultant shall review all available information and determine what additional information will be necessary to complete the project.

Task 2.2 Surveys – The Consultant shall perform and coordinate all required field surveys, and shall research and compile all existing control data, including research of all affected utility companies within the project area. The Consultant shall perform and coordinate all utility coordination necessary to determine and identify locations of all utilities and facilities, as well as future utility requirements. Required surveys include, but are not limited to, the following:

2.2.1 Research Record Information – Consultant shall obtain all available existing information and survey data from the City, County, and Caltrans.

2.2.2 Control Survey – Consultant shall establish supplementary survey control, as needed.

2.2.3 Topographic Survey – Consultant shall conduct field surveys and aerial surveys in order to establish a topographic mapping of the project. Field surveys will include project conform locations with existing facilities.

2.2.4 Utility Survey – Consultant shall conduct field surveys to locate all existing underground and overhead utilities and facilities. Consultant will coordinate this work with a potholing subcontractor.

2.2.5 Right-of-Way Mapping – Consultant shall prepare a preliminary base right-of-way map based on record information. After preliminary design is complete, consultant shall perform a right-of-way survey and will prepare a final right-of-way base map.

- *Deliverable: Base Topographic Mapping Hardcopy, Color Aerial Orthophotos in Digital Tiff Format, Design Survey Data in Text Format, Base R/W Mapping Hardcopy*

Task 2.3 Traffic Forecast Analysis – To aid in the development of the environmental technical studies, Consultant shall prepare a Traffic Forecast Analysis to document the existing and future vehicle use through the project.

- *Deliverable: Existing and Future Traffic Analysis Memorandum*

TASK 3.0 PRELIMINARY AND CONCEPT PLANS (PROJECT REPORT)

The Consultant shall prepare preliminary and concept roadway and bridge plans (up to 30% complete engineering drawings and plans) and a Project Report for approval by the City. The preliminary plans, concept plans and Project Report shall include, but not be limited to, the following:

Geometric Approval Drawings – The Consultant shall prepare geometric approval drawings of the project area including the extent and limits of the roadway and structure improvements, centerline and right-of-way alignments, typical sections, and connection/tie-in with project limits.

Right-of-Way Investigations – The Consultant shall determine additional right-of-way and easements (including utility, slope, or other easements/encroachment agreements) necessary for the project. Exhibits shall be prepared for each impacted parcel/owner showing permanent and temporary right-of-way impacts as well as impacts to any existing facilities or features on the parcel. Preliminary Title Reports will be ordered, as needed.

Structure Design and Local Assistance – Consultant shall prepare an Advanced Planning Study (APS) that shall include recommended bridge structure type, a bridge general plan, an estimate of construction cost, and a description of the proposed construction staging. Consultant shall gain approval from Caltrans Local Assistance as it pertains to the construction of a new structure, not within State right-of-way.

Conceptual Aesthetic Treatments – Consultant shall coordinate with City and local interest groups and prepare a conceptual aesthetic visualization.

Project Report – The Consultant shall prepare a written summary of the project and provide a document to be used as the basis of Task 4.0 Environmental Approval, that outlines the proposed improvements, potential impacts on the area and what effects will be mitigated, and related information. The report will include sections addressing:

- Geotechnical Design
 - Hydraulic and Floodplain Investigations
 - Roadway and Bridge Geometrics
 - Existing and Proposed Right-of-Way
 - Utility Impacts
 - Environmental Mitigations
 - Environmental Conservation Measures
 - Project Contact Information
 - Survey Data
 - Project Cost Estimates
- *Deliverable: Project Report*

TASK 4.0 ENVIRONMENTAL APPROVAL

The Consultant shall perform all required environmental research and analysis necessary for the project, pursuant to CEQA and NEPA requirements, as well as the policies and procedures contained in Caltrans' Environmental Handbook and Local Programs Manual. The Consultant shall perform all environmental documentation and coordination, which shall include the following:

Task 4.1 Preliminary Environmental Study (PES) Form – A draft PES Form will be prepared following a scheduled field visit with the City and Caltrans. The draft PES Form will be sent for review by the City of Palm Springs and Caltrans. The PES form will outline the recommended federal environmental documentation, technical studies, surveys, clearances, agency coordination and permits required for the roadway project. The City will review the PES form prior to submitting to Caltrans for signature and prior to initiating technical studies.

- *Deliverable: Preliminary Environmental Study Form*

Task 4.2 Technical Studies – The Consultant shall coordinate the preparation of all necessary and required studies to be included in the Environmental Assessment/Initial Study. The consultant will prepare and distribute copies of the technical studies for each of the review cycles and will respond to comments and update the studies as needed for approval. Technical studies include the following:

4.2.1 Biological Resources – Consultant shall complete prepare a Natural Environment Study (NES) following requirements outlined in the Caltrans Standard Environmental Reference and coordinate Section 7 Consultation for the Federally-endangered Casey's June Beetle. The consultant will conduct a literature review to assist in determining the existence or potential occurrence of sensitive plant and animal species on the project site or in the vicinity. Literature under review will include federal and State lists of sensitive species and current database records, including the *California Natural Diversity Data Base* (California Department of Fish and Game, 2004) and the *California Native Plant Society's Electronic Inventory of Rare and Endangered Vascular Plants of California* (Skinner, et al., 2004). In accordance with Caltrans guidelines, the consultant will submit a letter to the U.S. Fish and Wildlife Service (USFWS) requesting a list of threatened and endangered species known in the project vicinity. The results of the records search will be summarized in a table and included in the NES. The Biological Study Area (BSA) will be approved by the Caltrans biologist.

The consultant biologists will conduct fieldwork in order to document the presence/absence of sensitive biological resources (e.g., species or habitats), or to determine the potential for occurrence of such resources that may not be detectable when the fieldwork is conducted. The location of any sensitive biological resources present on site, including plants and plant communities, will be mapped. For optimal results, the consultant recommends conducting the fieldwork in the springtime (i.e., April or May) if possible. This will maximize our ability to detect and positively identify sensitive species, particularly plants.

The NES will include a description of the field methods used and the results of the biological assessment of the project area. The report will list plant and animal species present, along with a general description of the plant communities occurring within the project area. If any sensitive resources are found on the site, the consultant will prepare and include in the NES a graphic displaying the location of the sensitive plant communities on site and any sensitive biological resources observed. The report also will contain tables describing sensitive species and their habitats that are present or potentially present; it also will identify and assess project impacts on the existing biological resources, including any sensitive species. Mitigation measures will be included as necessary.

4.2.1.1 Section 7 Consultation – The Consultant shall coordinate Section 7 consultation with Caltrans and USFWS biologists for Federally-endangered Casey's June beetle.

4.2.1.2 Jurisdictional Delineation – The consultant will complete a focused wetland delineation according to the 1987 Corps of Engineers (Corps) Wetland Delineation Manual, the currently accepted methodology. We anticipate that a routine delineation, tailored to the site characteristics, will be adequate. The consultant will also complete a jurisdictional "waters of the U.S." determination according to current Corps standards. Finally, Consultant will determine the extent of any streambed and associated riparian areas subject to review by the California Department of Fish and Game (CDFG) under Section 1600 et seq. of the Fish and Game Code.

The results of the delineation will be presented in a detailed report that will include mapping of any wetland areas and jurisdictional areas. The results of the delineation are subject to verification by the Corps and CDFG.

This task is needed for the Environmental Document, EA/IS. Further actions coordinating the delineation will be completed while permitting the project.

4.2.2 Cultural Resources Assessment – Consultant shall prepare documentation in accordance with Section 106 of the National Historic Preservation Act (NHPA). This work shall include:

4.2.2.1 NHPA Section 106 Compliance – All cultural resource efforts will be completed in compliance with Section 106 of the NHPA and will follow the requirements set forth in the Caltrans Environmental Handbook Volume II, Cultural Resources and the

Programmatic Agreement among the FHWA, the Advisory Council on Historic Preservation, the California State Historic Preservation Officer, and Caltrans regarding Compliance with Section 106 of the NHPA, as it pertains to the administration of the Federal-aid Highway Program in California.

4.2.2.2 APE Map – Consultant will coordinate with Caltrans to develop the Area of Potential Effects (APE) Map for review and approval. Following Caltrans approval, the APE Map will be given to FHWA for review and approval.

4.2.2.3 Archaeological/Historic Data Research – A cultural resource records search will be conducted at the Eastern Information Center (EIC), located at the University of California, Riverside. The EIC is the state-designated repository for records concerning cultural resources in Riverside County. The records search will provide information on known cultural resources and on previous cultural resources investigations within a one-mile radius of the project area. Data sources that will be consulted at the EIC include archaeological site and artifact records, historic maps, reports from previous studies, and the state's Historic Resource Inventory (HRI) for Riverside County, which contains listings for National Register of Historic Places (NRHP), California Register of Historical Resources (CRHR), California Historical Landmarks (CHL), and California Points of Historical Interest (CPHI).

In addition, Consultant will complete research for the properties within the APE to determine built dates for any buildings and structures. If any buildings/structures 30 years and older are found to be located within the APE, additional tasks may be required.

4.2.2.4 Native American Coordination – Consultant will contact the Native American Heritage Commission (NAHC). The NAHC will provide a list of Native American groups to contact regarding this project. Consultant will coordinate with the City to consult with the tribes. With City approval, Consultant will contact each tribe via certified mail. After 28 days, the consultant will follow up with those groups that have not commented, via telephone. Consultant will document all efforts to consult with each tribe.

4.2.2.5 Archaeological/Historic Field Survey – Consultant will conduct a systematic field survey of portions of the APE that are not obscured by asphalt/concrete. The ground surface will be visually examined by an archaeologist for evidence of prehistoric (Native American) or historic (non-Native American) archaeological materials and other potential historic resources (e.g., buildings, bridges, railroads, mines, or canals). To meet State standards, any previously unrecorded resources identified during the survey will be recorded on State of California DPR 523 forms.

4.2.2.6 Archaeological/Historic Reports – Consultant will prepare a Caltrans format Historic Property Survey Report (HPSR) and Archaeological Survey Report (ASR) according to Caltrans specifications. The reports will describe: 1) the results of Native American Consultation, 2) research and field methods used in identifying cultural resources, 3) the archaeological and historic resources identified in the project vicinity, and 4) the potential of the project to adversely impact any archaeological or historic resources. If recommendations for further studies are warranted, these will be described in detail in a separate memorandum.

4.2.3 Air Quality Memorandum – The consultant will prepare an Air Quality Memorandum to discuss project-level and regional-level air quality conformity and construction impacts. Air quality impacts from demolition, grading, and construction sources will be analyzed based on the equipment used, length of time for a specific construction task, equipment power type (gasoline or diesel engine), equipment emission factors approved by the EPA (AP-42 Handbooks), horsepower, load factor, and percentage of time in use. Fugitive dust emissions would result from wind erosion of exposed soil and soil storage piles, grading operations, and vehicles traveling on paved and unpaved roads. Construction emissions will be calculated using the Roadway Construction Emissions Model, Version 7.1.5.1.

The memorandum will state that the project is exempt from the requirement that a conformity determination be made. It is a "reconstructing bridges (no additional travel lanes)" a project type listed under 40 CFR 93.126, Table 2.

4.2.4 Noise Technical Memorandum – The consultant will prepare a Noise Technical Memorandum to discuss potential effects on noise conditions. The consultant will review applicable State (Caltrans), City, and County noise and land use compatibility criteria for the project area. Since the project does not qualify as a Type 1 project (construction of highway on new location; substantial change in vertical or horizontal alignment; additional through-traffic lanes) impacts on long-term operational noise are not expected. Noise impacts from construction sources will be analyzed based on the equipment expected to be used, length of a specific construction task, equipment power type (gasoline or diesel engine), horsepower, load factor, and percent of time in use. FHWA recommended noise emission levels will be used for the construction equipment. The construction noise impact will be evaluated in terms of maximum levels (Lmax), and the frequency of occurrence at adjacent sensitive locations. Analysis requirements will be based on the sensitivity of the area and the Noise Ordinance specifications of the City.

4.2.5 Section 4(f) Technical Memorandum – The consultant will prepare a Section 4(f) Technical Memorandum in compliance with FHWA and Caltrans guidelines to assess the potential to impact biking paths and equestrian and hiking trails in the project site. The memorandum will discuss "temporary occupancy" of these facilities during construction. A draft and final Section 4(f) Technical Memorandum will be provided for the City's review. The memorandum will require approval from the jurisdiction over the facility, which is the City of Palm Springs.

4.2.6 Initial Site Assessment – Consultant will prepare a Hazardous Waste Initial Site Assessment (ISA) of the project study area.

Consultant will prepare an ISA to identify all documented hazardous waste sites located within the project study area, as well as facilities located within the project study area that store, transfer, or utilize large quantities of hazardous materials. Consultant will conduct an agency records search to identify all hazardous waste sites located within the project study area and classified as a hazardous waste site under State law. Consultant will conduct a visual survey of the project area via available public access to identify any obvious area of hazardous waste contamination. If hazardous waste sites are identified within the project study area (via governmental records and/or the visual survey), Consultant will determine the potential impact to the project and identify subsequent procedures to determine the extent of contamination and remediation requirements.

4.2.7 Community Impact Checklist – The Consultant will prepare a Community Impact Checklist to address the potential to disrupt or cause controversy in the community. The Checklist will identify impacts using demographic data from Census and guidelines found in current Caltrans guidelines (Environmental Handbook Volume 4, Community Impact Assessment). The checklist will also discuss social, economic, as well as planning and growth.

4.2.8 Visual Impact Assessment – The Consultant will prepare a Visual Impact Assessment (VIA) following guidelines outlined in the FHWA's 1981 publication, *Visual Impact Assessment for Highway Projects*. The VIA will describe visual resources and existing visual quality at the site using vividness, intactness, and unity ratings. Sensitive viewer groups and viewsheds will be identified during a field reconnaissance and visual renderings will be created to show and quantify project impacts. The VIA will indicate appropriate mitigation measures, such as architectural features, hardscaping, or other aesthetic treatments to reduce impacts.

4.2.9 Water Quality Assessment – Consultant will prepare a Water Quality Assessment Report to address the project impacts on water quality based on current Caltrans guidelines (Environmental Handbook Volume 1, Chapter 9, Water Quality). The report will discuss receiving waters conditions, objectives, and beneficial uses as well as Caltrans standard best management practices (BMPs) and project design features required in accordance with the current Caltrans Statewide Storm Water Management Plan (SWMP).

Additionally, compliance with the National Pollution Discharge Elimination System (NPDES) requirements from the Regional Water Quality Control Board (RWQCB), in accordance with the NPDES general construction activity stormwater discharge permit, will also be identified if applicable. Likewise, compliance with Section 401 of the Clean Water Act will ultimately be necessary (water quality certification). With these requirements, specific mitigation measures, including BMPs specified in Caltrans' Storm Water Quality Handbook - Planning and Design Guide, will be identified for any significant water quality impacts that may occur during construction.

4.2.10 Location Hydraulic Study – Since the proposed project will involve some degree of encroachment on the base floodplain of the Palm Canyon Wash, Federal guidelines require that a Location Hydraulic Study and Floodplain Evaluation Report Summary be prepared to supplement the environmental document. These studies include a hydraulic analysis that will be performed to evaluate the impact of the proposed project on the Palm Canyon Wash.

The Consultant will obtain and review any existing condition HEC RAS models and prepare proposed condition models as appropriate. The river geometry, storm flows, and existing/proposed bridge geometries will be modeled to reflect current conditions and regulatory criteria. The Consultant will then perform an analysis to assess the impact of the project on the hydraulic conveyance of the Palm Canyon Wash during the base flood (100-year) event.

The Consultant will prepare a Draft Location Hydraulic Study and Floodplain Evaluation Report Summary to discuss the results of the analysis and compare the impacts/risks of the proposed project. This document will be submitted to the City and Caltrans for one review. Comments on the draft report will be addressed and the Location Hydraulic Study will be updated and finalized.:

- *Deliverable: Natural Environment Study; Deliverable: Cultural Resources Assessment; Area of Potential Effects Map; Historic Property Survey Report; Archaeological Survey Report; 4f Analysis; Community Impact Assessment; Visual Impact Assessment; Air Quality Assessment; Noise Analysis; Initial Site Assessment; Water Quality Assessment; Location Hydraulic Study*

Task 4.3 Prepare Environmental Document, IS/CE – Consultant will incorporate the purpose and need, project description and the technical studies into the Draft Environmental Document, IS/CE. The Draft IS/CE will determine: if the project will have any significant adverse effects on the environment under both State and Federal standards; identify potential mitigation measures for such impacts; determine if the mitigation measures reduce all impacts below a level of significance.

The Draft IS/CE will be provided to agencies for review and comment. The Draft IS/CE will be revised by Consultant in response to the agencies' comments and a revised document will be provided to the agencies for review and comment.

Task 4.3.1 Prepare Draft IS/CE– Consultant will prepare the Draft IS/CE for public review. The Draft IS/CE has a critical objective of providing a means by which the general public and responsible agencies can participate in the environmental

process by providing written comments on issues addressed in the document. Consultant will prepare the requisite public notices for distribution of the Draft IS/CE. Consultant will prepare the requisite number of hard copies of the Draft IS/CE and the technical studies as indicated in the RFP. Consultant will coordinate the preparation of the distribution list with the City and Caltrans.

Task 4.3.2 Prepare Responses to Comments – At the close of the public review period for the Draft EA/IS, Consultant will meet with Caltrans staff to review any comments on the document that were received, and to discuss potential responses to these comments.

Consultant will then formulate responses to the comments on the Draft EA/IS. Once draft responses to comments are completed, they will be submitted to the agencies' staff for review and comment. The agencies' comments will be incorporated into the response to comments document, which will be submitted to Caltrans as an appendix in the EA/IS for use in public hearings.

Task 4.3.3 Mitigation Monitoring Program – Consultant will prepare a mitigation monitoring plan, including monitoring forms, to insure that the mitigation measures contained in the EA/IS are properly implemented.

Task 4.3.4 Final Administrative Record – Prior to action on the EA/IS and the MND, Consultant will assist the City and Caltrans to prepare appropriate findings and the Administrative Record.

Task 4.3.5 Prepare Mitigated Negative Declaration/Finding of No Significant Impact – Following public review of the EA/IS, a final Mitigated Negative Declaration (FONSI) will be prepared by Consultant. The final steps in the NEPA process are dependent on the procedures of the FHWA, and any agreements with the cooperating agencies.

Deliverables: *Environmental Document; Responses to Comments; Mitigation Monitoring Program; Final Administrative Record; Mitigated Negative Declaration*

PHASE 2 FINAL CIVIL ENGINEERING DESIGN

TASK 1.0 FINAL DESIGN REPORTS AND STUDIES

The Consultant shall prepare final design reports and studies necessary for preparation of plans, specifications and estimates (PS&E) for the project. Final design reports and studies shall include, but not be limited to, the following:

Task 1.1 Foundation and Geotechnical Design Reports – Consultant shall complete seven (7) exploratory borings (3 at bridge piers, 1 at an abutment, and 3 at retaining wall locations) along the project alignment using a rubber-track-mounted drill rig equipped with hollow-stem augers, and prepare a Structures Foundation Report in accordance with Caltrans Guidelines for Foundation Investigations and Reports, and shall include the following:

Seismic design recommendations including recommended acceleration response spectra in accordance with the current Caltrans Seismic Design Criteria.

Recommendations for design and construction of shallow or deep foundations including recommended bearing capacities, lateral resistance, and total and differential settlements.

Overall stability analyses of footings, slope and foundation materials; evaluation for static and pseudo-static conditions.

The conclusions and recommendations pertaining to design and construction of foundation systems shall be presented in a Structure Foundation Report with a site map showing boring locations, LOTB Sheets and laboratory test results. After review by the City, comments shall be incorporated into the report and a final report submitted.

Consultant shall review, from a geotechnical standpoint, the plans and specifications for this project to evaluate if earthwork and foundation recommendations have been properly interpreted and implemented during design.

Consultant shall prepare LOTB Sheets to be included as part of the Foundation Report and Contract Plans.

Consultant shall prepare a Geotechnical Design Report for design and construction of embankments and pavement structural sections in general accordance with California Test Method CAL-130, and shall present the data obtained during field exploration and laboratory testing, as well as conclusions and recommendations pertaining to the following:

- *Project description including proposed improvements, climatic conditions, terrain and surface drainage, and land use.*
- *Discussion of geotechnical settings including regional geology, subsurface soil and groundwater conditions.*
- *Recommendations for design of any retaining walls, including foundation type, allowable capacity and lateral pressures.*
- *Recommendations for construction of roadway and embankment foundations and estimated settlement.*
- *Evaluation of gross and surficial stability of the proposed fill slopes.*
- *Earthwork considerations, including excavation characteristics and erosion controls.*

- Collapse, expansive and corrosion potentials of the subgrade soils and recommended mitigation measures, if necessary.
- Earthquake considerations including seismic design criteria for fill embankment, and seismic hazards including the potential for liquefaction, ground rupture due to surface faulting and seismically induced settlement.
- Recommendations for levy design.
- Results of arterial road pavement deflection study and pavement condition survey.

After review by the City, Consultant shall incorporate all comments into a final Geotechnical Design Report.

Consultant shall conduct all field investigations and perform all laboratory testing to support these reports.

- Deliverable: Structures Foundation Report; Geotechnical Design Report

TASK 2.0 PLANS, SPECIFICATIONS, AND ESTIMATES (PS&E)

The Consultant shall prepare PS&E for review and approval by the City. Plans shall be prepared at an appropriate scale such that plans are legible and in English units. Specifications shall be prepared using City standard boiler plate specifications, as provided by the City. As part of this task item of work, the Consultant shall coordinate all required utility relocation, and shall coordinate with all affected utility companies and provide relocation plans and permits. The Consultant shall include plans, specifications and estimates for all aspects and phases of the construction of the project, including, but not limited to, the following:

Roadway Plans – The Consultant shall prepare street improvement plans, specifications and estimates necessary for the project, and shall address all findings from the Geotechnical Design Report (including pavement structural section analysis). Street improvement plans shall include plan and profile views; indicate existing and proposed grading and cuts or fills; design erosion control using Caltrans Best Management Practices (BMPs); provide drainage design and drainage solutions, as required by the Hydrology and Drainage Reports; indicate required traffic striping, signage and marking improvements; as well as all pertinent construction details including, but not limited to, bridge lighting, architectural design features, and environmental mitigation.

Drainage/Flood Control Plans - The Consultant shall prepare storm drainage and flood control plans, including details for the construction of temporary levees. Riverside County Flood Control (RCFC) will review the plans for completeness and adherence to their design standards along with the City's review.

Traffic Control Plans – The Consultant shall prepare traffic control plans for use by the contractor during construction of the project. The traffic control plans shall include stage construction, traffic handling, construction area signs and temporary pavement delineation as needed.

Roadway, Drainage / Flood Control Plans, and Traffic Plans will include the following plan sheets:

- | | |
|------------------------------|---|
| • Title Sheet | • Erosion Control / Water Pollution Control Plan/ Details (2) |
| • Typical Cross Sections (2) | • Drainage Plan / Profiles / Details / Quantities (3) |
| • Survey Control Data | • Signing and Striping Plan / Details / Quantities (2) |
| • Roadway Plan / Profile | • Street Lighting Plan / Details (2) |
| • Construction Details (4) | • Summary of Quantities |
| • ESA Limits | |

(This task does not include the design of the approach roadway beyond the 200 feet typically funded by the HBP program.)

Structure Plans – The Consultant shall prepare plans to widen the bridge across the wash. The Consultant shall also prepare plans for retaining walls adjacent to the bridge abutments and tie-ins to existing levees.

It is expected that the following structure plan sheets will be required:

- | | |
|---------------------------------|--|
| • General Plan | • Cable Restrainer Details (2) |
| • Index to Plans | • Hinge Retrofit Details (3) |
| • Foundation Plan | • Deck Drainage Details (2) |
| • Abutment Layout (2) | • Concrete Barrier Details |
| • Abutment Details (2) | • Metal Railing Details |
| • Pier Layout and Details (2) | • Structure Approach Plans and Details |
| • Typical Section | (4) |
| • Girder Layout and Details (3) | • Retaining Wall Plan and Details (2) |
| • Hinge Layout and Details (4) | • Log of Test Borings (3) |

(Seismic retrofit design is not included in this task)

Task 2.1 Utility Coordination – Consultant shall coordinate all modifications, changes, or relocations to existing utilities. Consultant shall make every effort to ensure that such changes are made prior to the start of construction. Consultant shall coordinate with utility owners to determine the number and location of all future utilities. Consultant shall prepare schedules and progress reports for all utility coordination efforts. Consultant shall prepare and review all relocation cost estimates. Consultant shall show the disposition of each utility (existing and planned) on the project plans. Consultant shall determine prior rights of all impacted utilities. Utility coordination efforts shall be consistent with the Caltrans Right-of-Way Manual. Specific tasks include:

Utility Contact List – Consultant shall coordinate with the City to develop a list of potential impacted utility owners.

Utility Conflict Matrix – Consultant shall prepare a spreadsheet listing all utility owners and potential conflicts with project related improvements for use during the coordination process.

Utility “A” Plans – Utility “A” plans shall be prepared and distributed to all potentially impacted utility owners. These plans shall include proposed project limits, right-of-way limits, proposed roadway geometry, and visible features. Response from the utility owner shall be requested within 15 days of receipt of the “A” plans. As-built utility information and planned utility information shall be obtained and provided to the City for their records. In addition, Consultant shall contact the utility owner directly to verify the request has been received.

During the design phase, Consultant shall contact the utility owner to resolve any conflicts as soon as they become apparent. Consultant shall arrange coordination meetings with the utility owners, as needed. Potholing shall be performed, as needed.

Utility “B” Plans – Utility “B” plans shall be prepared and distributed to all potentially impacted utility owners. These plans shall include 90% plans. In addition to the features shown in the “A” plans, the “B” plans shall include proposed right-of-way and all existing utilities. The “B” plans initiate any needed utility relocations.

Utility owners shall be allowed 30 days to respond to the “B” plans on a standard response form that includes a description of utility conflicts and approximate relocation schedules.

Utility owners shall be allowed 60 days after receipt of the “B” plans for the planning and engineering of any relocations. Consultant shall coordinate closely with the utility owners during this period. Utility coordination meetings shall be held, as needed.

Utility “C” Plans – Utility “C” plans shall be prepared and distributed to all potentially impacted utility owners. These plans shall include final plans showing proposed utilities, proposed relocations, and all features shown in the “A” and “B” plans.

Utility owners shall respond within 10 days of receipt of the “C” plans, confirming their schedules for construction relocation.

- Deliverable: Utility “A” Plans; Utility “B” Plans; Utility “C” Plans

Task 2.2 35% PS&E – Consultant shall prepare 35% plans which shall include: bridge general plan, roadway plan and profile, grading limits, typical sections, and striping plans. Consultant shall prepare a list of construction bid items and a preliminary construction estimate.

- Deliverable: 5% Plans and Estimate

Task 2.3 60% PS&E – Consultant shall revise the 35% PS&E and cost estimate per agency comments in preparation of the 60% PS&E. The remaining plans sheets shall be completed. A detailed construction cost estimate shall be completed. Consultant shall complete the independent structure review.

- Deliverable: 60% Plans and Estimate

Task 2.4 95% PS&E – Consultant shall revise the 60% details and construction cost estimate based on agency and independent structure review comments and shall prepare technical special provisions in preparation of the 95% PS&E.

- Deliverable: 95% Plans, Specifications and Estimate

Task 2.5 100% PS&E – Consultant shall finalize the 100% PS&E by revising the 95% PS&E based on agency comments.

- Deliverable: 100% Plans, Specifications and Estimate

Task 2.6 Architectural Details – Consultant shall prepare architectural details to be incorporated into the 95% bridge widening PS&E.

Task 2.6.1 Licensed Landscape Architect Drawings (OPTIONAL TASK) – Services from a licensed landscape architect including additional architectural enhancements incorporated into the bridge can be included at the option of the City.

- *Deliverable: 95% and 100% Architectural Detail Plan Sheets, Specifications, and Estimate*

TASK 3.0 ENVIRONMENTAL PERMITTING

The Consultant shall be responsible for obtaining all necessary environmental (regulatory) permits necessary for construction of the project.

The consultant will prepare and process applications for project permits required for compliance with Sections 401, 402, and 404 of the Federal Clean Water Act, and Section 1602 of the California Fish and Wildlife Code. The Section 401 permit is anticipated to be under the regulatory authority of the U.S. Environmental Protection Agency (EPA), Section 402 is under the State Water Resources Control Board (SWRCB), Section 404 permit is under the U.S. Army Corps of Engineers (Corps), and the Section 1602 permit is under the California Department of Fish and Wildlife (CDFW).

Permitting shall be accomplished with the following approach:

Initial Coordination with Regulatory Agencies – Consultant will schedule, arrange, and prepare any necessary materials for a pre-application consultation with the involved agencies. The objectives of the meetings would be to describe the proposed project, discuss permitting approach, and identify potential mitigation options. Consultant will arrange meetings with representatives of the EPA, SWRCB, Corps, and CDFW.

Consultant will summarize and document the results of agency coordination in a letter format. The letters will be submitted to the respective agencies and the City.

Permit Applications – Based on the results of the jurisdictional determination and the outcome of the initial coordination with the involved agencies, Consultant will prepare and submit the necessary permit application materials.

- *Deliverable: 401, 402, 404 and 1602 Permits*

PHASE 3 RIGHT OF WAY APPRAISALS AND ACQUISITION (OPTIONAL TASKS)

TASK 1.0 RIGHT OF WAY SERVICES

The Consultant shall prepare a final right-of-way map from compilation of field survey data and research data. Existing and proposed right-of-way limits shall be indicated. Right-of-way engineering shall include, but not be limited to, right-of-way acquisition. Consultant shall prepare all legal descriptions for full and partial land acquisitions and plats for all properties affected by the proposed improvements and to acquire necessary right-of-way. Appraisals and right-of-way acquisition services, as necessary, shall be performed.

Consultant will prepare for and secure right-of-way appraisals for each interest needed, will format and prepare offers to purchase the needed interests in right-of-way, will negotiate in good faith for the purchase of the needed right-of-way, and will deliver the documents necessary to enable the City to proceed to construction. Should any parcel(s) require the use of eminent domain by the City, the documented file and procedure will enable the City Attorney to take over the formal acquisition process and secure the necessary rights through appropriate legal proceedings.

The formal acquisition program will be administered according to Federal guidelines as is appropriate to the project funding. Major elements include:

Caltrans Right-of-Way Certification – Consultant will coordinate and attend certification planning activities and meetings with Right-of-Way Local Assistance Coordinator and project team to determine project requirements and certification level required to meet the project construction schedule. Consultant will conduct preliminary project programming activities to include preparation of Right-of-Way Data Sheet, including right-of-way cost estimates. Consultant will ensure that any interests necessary for the project and relocation activities have been met in compliance with applicable law and regulations. Consultant will prepare certification forms in coordination with engineer and city to include the compilation of all necessary back-up documents required including deed, final order of condemnation, access easements, cooperative agreements, permits, rights of entry, etc. Consultant will attend and coordinate pre and post-audit submittal meetings.

Appraisal Services – Consultant will sub-contract the appraisal services needed for this job. The subcontracted appraisers will be responsible for the following appraisal activities:

- *Prepare and mail a "Notice of Decision to Appraise" letter to each of the affected property owners giving them the opportunity to meet personally with the appraiser to present any information they feel is relevant to the valuation of their property.*
- *Inspect each property personally with the owner (if possible) and document the inspection with photographs for use in the report.*

- *Inventory all improvements affected by the proposed taking including notes on their manner of disposition (i.e. pay-for and remove vs. move back).*
- *Perform market research to support the selected appraisal methodologies.*
- *Prepare a summary narrative appraisal report that conforms to the Uniform Appraisal Standards for Federal Land Acquisitions.*

Real Estate Appraisal Review – Consultant will verify that the completed appraisal report for each property was prepared in accordance with Federal and State laws and policies. Consultant will confirm mathematical computations, appraisal methodologies and valuation determinations are appropriate and reasonable. Consultant will make recommendation to the City as to the determination of just compensation for each parcel.

Right-of-Way Acquisition – Consultant will review preliminary title reports and identify liens and encumbrances requiring clearance. Consultant will prepare all offer letters and summary statements, in accordance with State or Federal regulations and approval of legal counsel. Consultant will personally negotiate with the property owners for the purchase of the required property rights. The written offer to purchase will be presented to the appropriate owners or their representatives in person, when possible. Consultant will coordinate with the BIA for all parcels held in trust by the United States Government on behalf of individual tribal members. Consultant will, upon the initiation of negotiations, transmit receipted offer letters to the client as soon as possible. In instances where the property owner declines the receipt for the offer to purchase, a certification of presentation will be forwarded to the client. Personal negotiations will continue with the property owners and tenants until every reasonable effort has been expended and it appears that the only remaining method of acquisition is through eminent domain proceedings. Consultant will prepare all acquisition agreements, deeds, and other documents necessary to complete the acquisition. At such time the negotiations appear to be unsuccessful and eminent domain proceedings have commenced, assistance necessary to assist the client's condemnation counsel will be provided. Negotiations will continue after the filing of a condemnation action if it is the desire of legal counsel (additional fees apply). A diary of all pertinent information and contacts concerning the project parcels will be maintained. All executed documents on successfully negotiated parcels will be promptly transmitted to client for acceptance. Consultant will coordinate with City and Escrow Company to open escrow, review and approve closing statements, assist with procuring necessary escrow documents and monitor closing of escrows.

Consultant shall prepare plats and legal descriptions as needed. It is assumed that right-of-way services will be required for up to 11 parcels.

- *Deliverable: Plats and Legals; Owner Exhibits; Property Appraisal Reports; R/W Certification Forms;*

PHASE 4 DESIGN SUPPORT (OPTIONAL TASKS)

TASK 1.0 CONSTRUCTION BIDDING PHASE SUPPORT

The Consultant shall provide support to the City during construction bidding. The City will administer and coordinate the bidding procedures for the project.

- *Deliverable: Documentation as required to support RFI responses*

TASK 2.0 DESIGN SUPPORT DURING CONSTRUCTION

The Consultant shall respond to requests for information and furnish all necessary additional drawings for correcting and change orders required by errors and omissions of Consultant.

Consultant shall be available to visit to the jobsite for on-site review of construction and other visits to the jobsite as requested by the City to resolve any discrepancies in the contract documents. Consultant shall bring to the attention of the Resident Engineer any defects or deficiencies in the work by the construction contractor which the Consultant may observe. Consultant shall have no authority to issue instructions on behalf of the City or to deputize another to do so. Consultant shall furnish all necessary drawings for corrections and change orders required by errors and omissions of Consultant. The original tracing(s) of the drawings and contract wording for change orders shall be submitted to the City for duplication and distribution. Consultant shall be available to visit the job site for on-site review of construction, as requested by the City to resolve discrepancies in the contract documents. Consultant shall respond to Requests for Information (RFIs) from the Contractor on an as-needed basis.

Consultant shall review and approve submittals and shop plan drawings submitted by the construction contractor. Consultant shall complete shop plan reviews within 1 week of receipt. Consultant shall respond to structures related RFIs from the Contractor on an as-needed basis. Consultant shall be available to clarify geotechnical information and answer questions during the construction of the project. Additional field investigation and analysis is not assumed as part of this task. Consultant shall be available to clarify electrical design information and answer questions during the construction of the project. Significant re-design of traffic electrical facilities is not assumed as part of this task.

Consultant shall attend the pre-construction meeting with the successful construction contractor. Consultant shall, using 'red-lined' drawings from the Resident Engineer and deliver to Caltrans, within two months of completion of project construction, the final "As-Built" plans in electronic format. It is assumed that the contractor provides redlines of design changes that were made in the field and as-built elevations of storm drain lines.

- *Deliverable: Documentation as required to support RFI responses; As-Builts*

PHASE 5 SEISMIC RETROFIT AND ADDITIONAL STRUCTURAL DESIGN (OPTIONAL TASK)

TASK 1.0 SEISMIC RETROFIT DESIGN

The Consultant shall prepare plans to seismically retrofit the bridge and complete additional structural design.

It is expected that the following structure seismic retrofit plan sheets will be required:

- *Pier Retrofit Details (4)*
- *Hinge Retrofit Details (4)*
- *Spall and Crack Repair Details (2)*
- *Architectural Details*

- *Deliverable: Bridge Retrofit and Additional Structural Design Details*

PHASE 6 CONCRETE DECK EVALUATION (OPTIONAL TASK)

TASK 1.0 CONCRETE DECK EVALUATION

In order to evaluate the existing deck condition prior to construction the Consultant will:

- Perform a site reconnaissance and mark out exploratory boring locations in the field for subsequent utility clearance.
- Notify subscribing utility companies via Underground Service Alert (USA) a minimum of 48-hours (as required by law) prior to coring operations at the site.
- Retain a subconsultant to prepare a traffic control plan for the bridge deck coring and provide traffic control services during the coring operations.
- Drill 8 cores through the existing asphalt overlay and into the bridge deck. Cores will be taken at locations identified by Dokken following their condition assessment of the bridge. Six of the samples will be tested for compressive strength, and a petrographic study will be conducted on two of the cores. Cored locations will be backfilled with rapid-set concrete or asphalt concrete cold patch as required in the encroachment permit.
- Provide a letter report with a description of the field services, the core test results, and petrographic analysis.

- *Deliverable: Deck evaluation letter report*

PHASE 7 ADDITIONAL APPROACH ROADWAY DESIGN (OPTIONAL TASK)

TASK 1.0 ADDITIONAL APPROACH ROADWAY DESIGN

The Consultant will prepare roadway design details for the entire roadway limits shown in the proposal. These limits extend beyond the typical 200 feet of approach roadway typically funded by the Caltrans HBP program. The associated plan sheets will likely include:

- *Typical Cross Sections*
- *Roadway Plan / Profile (2)*
- *Construction Details (2)*
- *Erosion Control / Water Pollution Control Plan/Details*
- *Deliverable: Additional approach roadway design details.*

- *Drainage Plan / Profiles / Details / Quantities (2)*
- *Signing and Striping Plan / Details / Quantities*

EXHIBIT "B"

SPECIAL REQUIREMENTS

Add the following to Section 2.0, Compensation:

Section 2.5, Cost Principles. Consultant agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., shall be used to determine the allowability of cost individual items. Consultant also agrees to comply with federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. Any costs for which payment has been made to Consultant that are determined by subsequent audit to be unallowable under 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., are subject to repayment by Consultant to the City.

Add the following to Section 2.0, Compensation:

Section 2.6, General Compliance with Laws and Wage Rates. Consultant warrants that its cost proposal, approved by City and identified on the Schedule of Compensation as set forth in Exhibit "C", complies with all federal, state and local laws and ordinances applicable to the work, including compliance with prevailing wage rates and their payment in accordance with California Labor Code, Section 1770 and 1775.

Add the following to Section 4.0, Coordination of Work:

Section 4.5, Subcontracting. Any subcontracts or contractual arrangements ("subcontracts") between the Consultants and other parties ("subcontractors") entered into in the performance of this Agreement to which the City is not named shall include all applicable provisions of this Agreement and the Consultant shall require that its subcontractors thereby comply with all such applicable provisions.

Add the following two paragraphs to Section 7.5, Audit and Inspection of Records:

For the purpose of determining compliance with Public Contract Code 10115, et seq. and Title 21, California Code of Federal Regulations, Chapter 21, Section 2500 et seq., when applicable and other matters connected with the performance of the contract pursuant to Government Code 8546.7; the Consultant, subcontractors, and the City shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of the contract, including but not limited to, the costs of administering the contract. All parties shall make such materials available at their respective offices at all reasonable times during the contract period and for three years from the date of final payment under the contract. The state, the State Auditor, City, FHWA, or any duly authorized representative of the federal government shall have access to any books, records, and documents of the Consultant that are pertinent to the contract for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested. Subcontracts in excess of \$25,000 shall contain this provision.

Any dispute concerning a question of fact arising under an interim or post audit of this contract that is not disposed of by agreement, shall be reviewed by the City's Chief Financial Officer. Not later than 30 days after issuance of the final audit report, the Consultant may request a review by the City's Chief Financial Officer of unresolved audit issues. The request for review will be submitted in writing. Neither the pendency of a dispute nor its consideration by the City will excuse the Consultant from full and timely performance, in accordance with the terms of this contract.

Add the following to Section 10.0, Miscellaneous Provisions:

Section 10.9, Covenant Against Contingent Fees. The Consultant warrants, by execution of this contract that no person or selling agency has been employed, or retained, to solicit or secure this contract upon an agreement or understanding, for a commission, percentage, brokerage, or contingent fee, except bona fide employees, or bona fide established commercial or selling agencies maintained by the Consultant for the purpose of securing business. For breach or violation of this warranty, the City has the right to annul this contract without liability; pay only for the value of the work actually performed, or in its discretion to deduct from the contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

Add the following to Section 10.0, Miscellaneous Provisions:

Section 10.10, Patent Rights. This agreement includes herein by reference applicable patent rights provisions described in 41 CFR 1-91 regarding rights to inventions.

Add the following to Section 10.0, Miscellaneous Provisions:

Section 10.11, Endorsement. The responsible consultant/engineer shall sign all plans, specifications, estimates (PS&E) and engineering data furnished by him/her, and where appropriate, indicate his/her California registration number.

Add the Following to Section 10.0, Miscellaneous Provisions:

Section 10.12, Disadvantaged Business Enterprise (DBE) Requirements.

The Agency has established a DBE goal for this Contract of 3.84 %.

1. TERMS AS USED IN THIS DOCUMENT

- The term "Disadvantaged Business Enterprise" or "DBE" means a for-profit small business concern owned and controlled by a socially and economically disadvantaged person(s) as defined in Title 49, Code of Federal Regulations (CFR), Part 26.5.
- The term "Agreement" also means "Contract."
- Agency also means the local entity entering into this contract with the Contractor or Consultant.
- The term "Small Business" or "SB" is as defined in 49 CFR 26.65.

2. AUTHORITY AND RESPONSIBILITY

- A. DBEs and other small businesses are strongly encouraged to participate in the performance of Contracts financed in whole or in part with federal funds (See 49 CFR 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs"). The Consultant must ensure that DBEs and other small businesses have the opportunity to participate in the performance of the work that is the subject of this solicitation and should take all necessary and reasonable steps for this assurance. The proposer must not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts.
- B. Proposers are encouraged to use services offered by financial institutions owned and controlled by DBEs.

3. SUBMISSION OF DBE INFORMATION

If there is a DBE goal on the contract, Exhibit 10-01 *Consultant Proposal DBE Commitment* must be included in the Request for Proposal. In order for a proposer to be considered responsible and responsive, the proposer must make good faith efforts to meet the goal established for the contract. If the goal is not met, the proposer must document adequate good faith efforts. All DBE participation will be counted towards the contract goal; therefore, all DBE participation shall be collected and reported.

Exhibit 10-02 *Consultant Contract DBE Information* must be included with the Request for Proposal. Even if no DBE participation will be reported, the successful proposer must execute and return the form.

4. DBE PARTICIPATION GENERAL INFORMATION

It is the proposer's responsibility to be fully informed regarding the requirements of 49 CFR, Part 26, and the Department's DBE program developed pursuant to the regulations. Particular attention is directed to the following:

- A. A DBE must be a small business firm defined pursuant to 13 CFR 121 and be certified through the California Unified Certification Program (CUCP).
- B. A certified DBE may participate as a prime consultant, subconsultant, joint venture partner, as a vendor of material or supplies, or as a trucking company.
- C. A DBE proposer not proposing as a joint venture with a non-DBE, will be required to document one or a combination of the following:
 - 1. The proposer is a DBE and will meet the goal by performing work with its own forces.
 - 2. The proposer will meet the goal through work performed by DBE subconsultants, suppliers or trucking companies.
 - 3. The proposer, prior to proposing, made adequate good faith efforts to meet the goal.
- D. A DBE joint venture partner must be responsible for specific contract items of work or clearly defined portions thereof. Responsibility means actually performing, managing, and supervising the work with its own forces. The DBE joint venture partner must share in the capital contribution, control, management, risks and profits of the joint venture commensurate with its ownership interest.
- E. A DBE must perform a commercially useful function pursuant to 49 CFR 26.55, that is, a DBE firm must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work.
- F. The proposer shall list only one subconsultant for each portion of work as defined in their proposal and all DBE subconsultants should be listed in the bid/cost proposal list of subconsultants.
- G. A prime consultant who is a certified DBE is eligible to claim all of the work in the Contract toward the DBE participation except that portion of the work to be performed by non-DBE subconsultants.

5. RESOURCES

- A. The CUCP database includes the certified DBEs from all certifying agencies participating in the CUCP. If you believe a firm is certified that cannot be located on the database, please contact the Caltrans Office of Certification toll free number 1-866-810-6346 for assistance.
- B. Access the CUCP database from the Department of Transportation, Office of Business and Economic Opportunity Web site at: <http://www.dot.ca.gov/hq/bep/>.
 - 1. Click on the link in the left menu titled Disadvantaged Business Enterprise;
 - 2. Click on Search for a DBE Firm link;
 - 3. Click on Access to the DBE Query Form located on the first line in the center of the page.

Searches can be performed by one or more criteria. Follow instructions on the screen.

- 6. MATERIALS OR SUPPLIES PURCHASED FROM DBES COUNT TOWARDS THE DBE GOAL UNDER THE FOLLOWING CONDITIONS:**
- A. If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies. A DBE manufacturer is a firm that operates or maintains a factory, or establishment that produces on the premises the materials, supplies, articles, or equipment required under the Contract and of the general character described by the specifications.
 - B. If the materials or supplies purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies. A DBE regular dealer is a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the Contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a DBE regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a DBE regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating or maintaining a place of business provided in this section.
 - C. If the person both owns and operates distribution equipment for the products, any supplementing of regular dealers' own distribution equipment shall be, by a long-term lease agreement and not an ad hoc or Agreement-by-Agreement basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not DBE regular dealers within the meaning of this section.
 - D. Materials or supplies purchased from a DBE, which is neither a manufacturer nor a regular dealer, will be limited to the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on the job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.

Add the Following to Section 10.0, Miscellaneous Provisions:

Section 10.13, National Labor Relations Board Certification.

In accordance with Public Contract Code Section 10296, the Consultant hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against the Consultant within the immediately preceding two-year

period, because of the Consultant's failure to comply with an order of a federal court that orders the Consultant to comply with an order of the National Labor Relations Board.

Add the Following to Section 10.0, Miscellaneous Provisions:

Section 10.14, Statement of Compliance.

The Consultant's signature affixed herein, and dated, shall constitute a certification under penalty of perjury under the laws of the State of California that the Consultant has, unless exempt, complied with, the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103.

Add the Following to Section 10.0, Miscellaneous Provisions:

Section 10.15, Debarment and Suspension Certificate.

The Consultant's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California that the Consultant has complied with Title 49, Code of Federal Regulations, Part 29, Debarment and Suspension Certificate, which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to the City.

Add the Following to Section 10.0, Miscellaneous Provisions:

Section 10.16, Conflict of Interest.

The Consultant shall disclose any financial, business, or other relationship with City that may have an impact upon the outcome of this contract, or any ensuing City construction project. The Consultant shall also list current clients who may have a financial interest in the outcome of this contract, or any ensuing City construction project, which will follow.

The Consultant hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this agreement.

Any subcontract in excess of \$25,000 entered into as a result of this contract shall contain all of the provisions of this Article.

The Consultant hereby certifies that neither Consultant, nor any firm affiliated with the Consultant will bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract. An affiliated firm is one which is subject to the control of the same persons through joint-ownership, or otherwise.

Except for subcontractors whose services are limited to providing surveying or materials testing information, no subcontractor who has provided design services in connection with this contract shall be eligible to bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract.

Add the Following to Section 10.0, Miscellaneous Provisions:

Section 10.17, Rebates, Kickbacks or Other Unlawful Consideration.

The Consultant warrants that this contract was not obtained or secured through rebates, kickbacks, or other unlawful consideration, either promised or paid to any City employee. For breach or violation of this warranty, City shall have the right in its discretion; to terminate the contract without liability; to pay only for the value of the work actually performed; or to deduct from the contract price or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

Add the Following to Section 10.0, Miscellaneous Provisions:

Section 10.18, Prohibition of Expending Local Agency State or Federal Funds for Lobbying.

The Consultant certifies to the best of its knowledge and belief that:

1. No state, federal or local agency appropriated funds have been paid, or will be paid by or on behalf of the Consultant to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency; a Member of Congress; an officer or employee of Congress, or an employee of a Member of Congress; in connection with this federal contract, grant, loan, or cooperative agreement; the Consultant shall complete and submit Standard Form-LLL "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of the fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, US Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Consultant also agrees by signing this document that it shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000, and that all such sub recipients shall certify and disclose accordingly.

Add the Following to Section 10.0, Miscellaneous Provisions:

Section 10.19, Equipment Purchase Provisions.

Prior authorization in writing by the City shall be required before the Consultant enters into any unbudgeted purchase order or subcontract exceeding \$5,000 for supplies, equipment, or Consultant services. The Consultant shall provide an evaluation of the necessity or desirability of incurring such costs. For purchase of any item, service or consulting work not covered in the Consultant's Cost Proposal and exceeding \$5,000 three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.

Any equipment purchased as a result of this contract is subject to the following: "The Consultant shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of \$5,000 or more. If the purchased equipment needs replacement and is sold or traded in, the City shall receive a proper refund or credit at the conclusion of the contract, or if the contract is terminated, the Consultant may either keep the equipment and credit the City in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established City procedures; and credit the City in an amount equal to the sales price. If the Consultant elects to keep the equipment, fair market value shall be determined at the Consultant's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by the City and the Consultant, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by the City."

All subcontracts in excess \$25,000 shall contain the above provisions.

END EXHIBIT "B"

EXHIBIT "C-1"

SCHEDULE OF COMPENSATION

Tasks listed below are identical to tasks identified in Exhibit A of this Agreement. Payments to Contractor shall be made no more frequently than monthly, and shall be based on lump sum costs per task item of work as indicated herein. Lump sum payments shall be made to Contractor based upon completion of tasks, or pro-rata portions thereof noted below, to a maximum of 75% of the lump sum task item fee until completion of such task item as determined by the Contract Officer. Each request for payment shall contain Contractor's statement of the work or tasks completed or portion performed, with supporting documentation. The determination of payment due shall be made based upon the reasonable judgment of the Contract Officer.

PHASE 1 & 2 CONTRACT AMOUNT

PHASE 1 ENVIRONMENTAL DOCUMENTS AND TECHNICAL STUDIES:

| | | |
|-----------------|---|---------------------|
| TASK 1.0 | PROJECT MANAGEMENT | \$ 41,400.00 |
| TASK 2.0 | PLANNING AND PROJECT DEVELOPMENT | |
| Task 2.1 | Research and Data Gathering | \$6,250.00 |
| Task 2.2 | Surveys | \$41,700.00 |
| Task 2.3 | Traffic Forecast Analysis | \$3,300.00 |
| TASK 3.0 | PRELIMINARY AND CONCEPT PLANS (PROJECT REPORT) | \$47,320.00 |
| TASK 4.0 | ENVIRONMENTAL APPROVAL | |
| Task 4.1 | Preliminary Environmental Study (PES) Form | \$9,860.00 |
| Task 4.2 | Technical Studies | \$117,920.00 |
| Task 4.3 | Prepare Environmental Document, IS/CE | \$32,060.00 |
| | SUBTOTAL PHASE 1 | \$299,810.00 |

PHASE 2 FINAL CIVIL ENGINEERING DESIGN:

| | | |
|-----------------|--|----------------------------|
| TASK 1.0 | FINAL DESIGN REPORTS AND STUDIES | |
| Task 1.1 | Foundation and Geotechnical Design Reports | \$49,500.00 |
| TASK 2.0 | PLANS, SPECIFICATIONS, AND ESTIMATES (PS&E) | |
| Task 2.1 | Utility Coordination | \$11,300.00 |
| Task 2.2 | 35% PS&E | \$94,190.00 |
| Task 2.3 | 60% PS&E | \$119,910.00 |
| Task 2.4 | 95% PS&E | \$136,950.00 |
| Task 2.5 | 100% PS&E | \$62,140.00 |
| Task 2.6 | Architectural Details (Optional Task) | \$20,000.00 |
| TASK 3.0 | ENVIRONMENTAL PERMITTING | \$16,200.00 |
| | SUBTOTAL PHASE 2 (Required Tasks) | \$490,190.00 |
| | <u>TOTAL PHASE 1 & 2</u> | <u>\$790,000.00</u> |

END EXHIBIT "C-1"

EXHIBIT "C-2"

SCHEDULE OF COMPENSATION

Tasks listed below are identical to tasks identified in Exhibit A of this Agreement. Payments to Contractor shall be made no more frequently than monthly, and shall be based on lump sum costs per task item of work as indicated herein. Lump sum payments shall be made to Contractor based upon completion of tasks, or pro-rata portions thereof noted below, to a maximum of 75% of the lump sum task item fee until completion of such task item as determined by the Contract Officer. Each request for payment shall contain Contractor's statement of the work or tasks completed or portion performed, with supporting documentation. The determination of payment due shall be made based upon the reasonable judgment of the Contract Officer.

**OPTIONAL TASKS
(Upon Written Authorization by Contract Officer)**

PHASE 2 - (OPTIONAL TASK)

| | |
|---|---------------------|
| <i>Task 2.6.1 Licensed Landscape Architect Drawings (OPTIONAL TASK)</i> | <u>\$20,000.00</u> |
| SUBTOTAL PHASE 2 (Optional Task) | \$ 20,000.00 |

PHASE 3 RIGHT OF WAY APPRAISALS AND ACQUISITION (OPTIONAL TASK)

| | |
|---------------------------------------|---------------------|
| TASK 1.0 RIGHT OF WAY SERVICES | <u>\$ 87,440.00</u> |
| SUBTOTAL PHASE 3 | \$ 87,440.00 |

PHASE 4 DESIGN SUPPORT (OPTIONAL TASKS)

| | |
|--|---------------------|
| TASK 1.0 DESIGN SUPPORT DURING BIDDING | \$ 6,300.00 |
| TASK 2.0 DESIGN SUPPORT DURING CONSTRUCTION | <u>\$ 54,400.00</u> |
| SUBTOTAL PHASE 4 | \$ 60,700.00 |

PHASE 5 SEISMIC RETROFIT AND ADDITIONAL STRUCTURAL DESIGN (OPTIONAL TASK)

| | |
|---|----------------------|
| TASK 1.0 SEISMIC RETROFIT AND ADDITIONAL STRUCTURAL DESIGN | <u>\$ 159,400.00</u> |
| SUBTOTAL PHASE 5 | \$ 159,400.00 |

PHASE 6 CONCRETE DECK CONDITION EVALUATION (OPTIONAL TASK)

| | |
|--|---------------------|
| TASK 1.0 CONCRETE DECK CONDITION EVALUATION | <u>\$ 15,000.00</u> |
| SUBTOTAL PHASE 6 | \$ 15,000.00 |

PHASE 7 ADDITIONAL APPROACH ROADWAY DESIGN (OPTIONAL TASK)

| | |
|--|---------------------|
| TASK 1.0 ADDITIONAL APPROACH ROADWAY DESIGN | <u>\$ 50,000.00</u> |
| SUBTOTAL PHASE 7 | \$ 50,000.00 |

TOTAL OPTIONAL TASKS (Upon Written Authorization by Contract Officer) \$392,540.00

END EXHIBIT "C-2"

EXHIBIT "D"

SCHEDULE OF PERFORMANCE

City and Consultant hereby mutually agree that the nature of the scope of services associated with this Contract, and the requirement to coordinate and obtain approvals by other agencies, including but not limited to Caltrans and FHWA, may cause the term of this Contract to exceed initial project schedule estimates. The term of this Contract shall automatically extend until such time as required approvals are obtained and all services identified in Exhibit "B" are completed.

The Consultant's schedule of performance included in its proposal shall be incorporated herein. The schedule shall be adjusted accordingly to revise the project Notice to Proceed (NTP) date of June 2, 2014, as indicated in the originally submitted proposal, to the actual NTP date indicated in the City's letter to Consultant following approval of this agreement by the City Council.

END EXHIBIT "D"

