



## City Council Staff Report

Date: September 3, 2014 CONSENT CALENDAR

Subject: AWARD PROFESSIONAL SERVICES AGREEMENT TO CNS ENGINEERS, INC., FOR THE SOUTH PALM CANYON DRIVE BRIDGE REPLACEMENT PROJECT AT TAHQUITZ CREEK CHANNEL, CITY PROJECT NO. 12-02, FEDERAL PROJECT NO. BRLS-5282 (042)

From: David H. Ready, City Manager

Initiated by: Public Works and Engineering Department

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### 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 design and construct a replacement bridge on South Palm Canyon Drive over the Tahquitz Creek Channel. 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 also includes service 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 CNS Engineers, Inc., and negotiated the proposed professional services agreement.

### RECOMMENDATION:

- 1) Approve Agreement No. \_\_\_\_\_ with CNS Engineers, Inc. in the amount of \$999,914.84 for environmental and civil engineering design services related to the South Palm Canyon Bridge Replacement at the Tahquitz Creek Channel, City Project 12-02, Federal Aid Project No. BRLS 5282 (042); and
- 2) Authorize the City Manager to execute all necessary documents.

### STAFF ANALYSIS:

South Palm Canyon Drive Bridge at the Tahquitz Creek Channel is on the federal Eligible Bridge List (EBL) with a low Sufficiency Rating (SR) of 37.1 and is flagged

ITEM NO. 24

"Structurally Deficient (SD)". Given that the aged bridge was built in 1930 and its SR is well below 50.0, a complete bridge replacement is considered. In addition, it is expected that the new replacement bridge will be slightly elevated and the existing arch shape soffit will be redesigned and straightened to enhance the channel flow capacity. The proposed structural improvements will bring the bridge width in compliance with standard lane/shoulder/sidewalk width to match roadway approaches.

On February 22, 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 or replacement of the existing South Palm Canyon Drive Bridge (Bridge 56C0408) at Tahquitz Creek Channel. CNS subsequently completed the study and the funding application, requesting over \$6 Million in federal HBP funds for the project. The existing South Palm Canyon Drive Bridge (Bridge No. 56C0408) is eligible for funding under the HBP, which is administered by the State of California Department of Transportation ("Caltrans"). The HBP funds cover 88.53% (of eligible project costs, requiring an 11.47% local match.

On August 30, 2013, Caltrans approved \$889,000 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, in addition to accommodating the Coachella Valley (CV) Link that will run underneath the bridge along the Tahquitz Creek Channel (see attachment) and ingress/egress at Belardo Road to the west. 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 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 30, 2014, the RFP was published and made available to firms through the City's Division of Procurement and Contracting, and by the March 4, 2014, deadline, proposals from the following firms were received:

amec; Cathedral City, CA  
Biggs Cardosa Associates, Inc.; Orange, CA  
CNS Engineers, Inc.; Riverside, CA  
Dokken Engineering; Temecula, CA  
IDC Consulting Engineers, Inc.; Rancho Cucamonga, CA  
RBF Consulting; Palm Desert, 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 CNS Engineers, Inc., 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 CNS Engineers' 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 for sub-consultants for work associated with the proposed contract from local residents and firms as opportunities occur and 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, and the provisions of the City's Local Business Preference Program were not included in the RFP.

However, CNS Engineers made a conscious effort to include local participation in this contract, and has identified the following three sub-consultants to perform work on this contract:

Overland, Pacific & Cutler, Inc.; Palm Desert, CA  
Southern California Soil & Testing, Inc.; Indio, CA  
Terra Nova Planning & Research, Inc.; Palm Desert, CA  
Webb Associates; Palm Desert, CA

Approximately 51.75% of the total contract amount represents the total fees to be paid to these local businesses as part of this contract.

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. CNS Engineers is itself a certified DBE firm, claiming 30% of the DBE participation for this contract.

FISCAL IMPACT:

The City has programmed \$889,000 with Caltrans for the environmental and design phase of this project with \$787,032 (88.53%) in federal funding with a required \$101,968 (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 Phase 2 as identified in Exhibit "C-1" in the negotiated contract with a maximum fee of \$789,995.48. 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 environment 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 \$209,919.36. 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 \$999,914.84 at this time, compensation is limited to \$789,995.48 for Phase 1 and Phase 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".

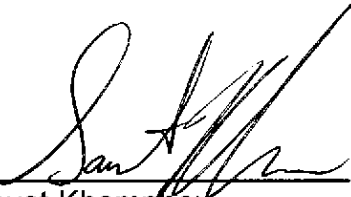
The proposed contract fee of \$789,995.48 for the Environmental and Design Engineering services will be funded with federal HBP, Regional Measure A, and Local Measure A, as follows:

Account 261-4491-50317: \$699,383  
Account 134-4497-50317: \$ 67,959  
Account 134-4498-50317: \$ 22,653

No local miscellaneous general funds are required for this contract.

SUBMITTED:

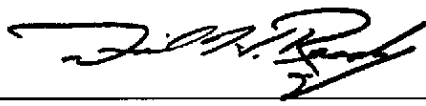
Prepared by:

  
\_\_\_\_\_  
Savat Khamphou  
Assistant Director of Public Works

Recommended by:

  
\_\_\_\_\_  
David J. Barakian  
Director of Public Works/City Engineer

Approved by:

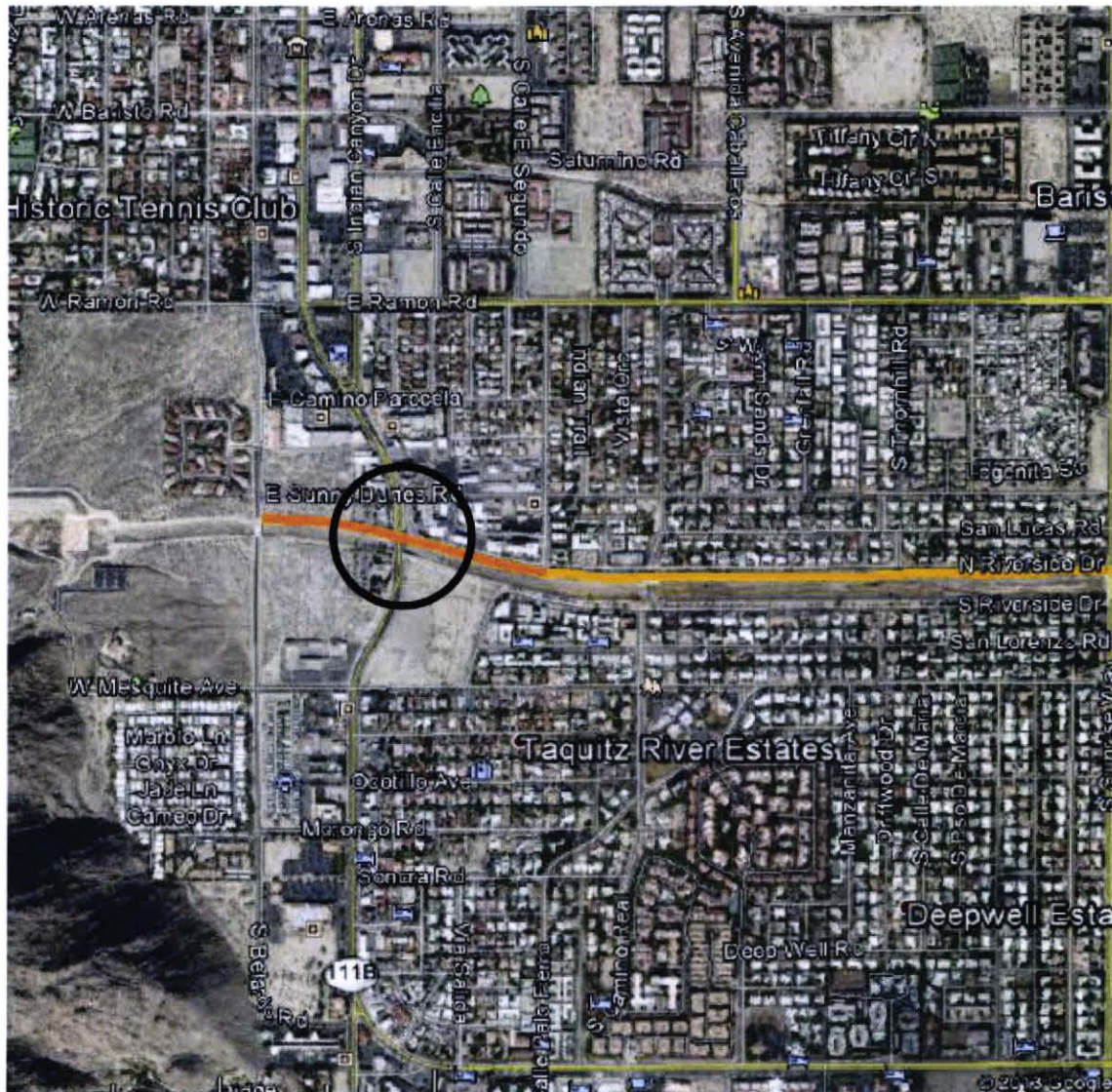
  
\_\_\_\_\_  
David H. Ready, City Manager

ATTACHMENTS:

1. MAP of Proposed CV Link Route by CVAG
2. Cross Section for South Palm Canyon Bridge Project
3. Agreement

ATTACHMENT 1

MAP OF PROPOSED CV LINK ROUTE BY CVAG



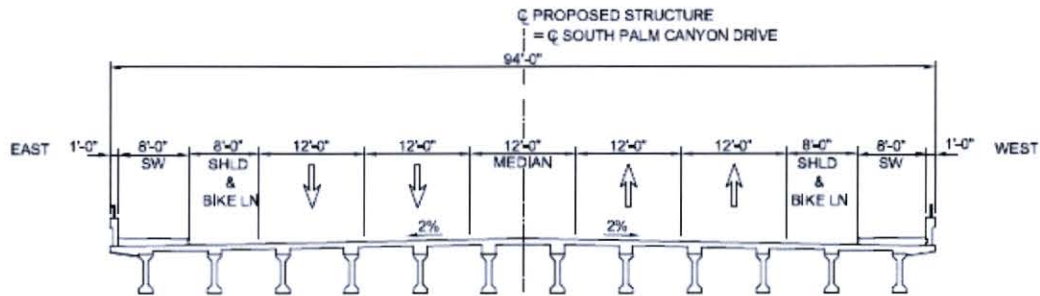
PROPOSED CV LINK ROUTE BY CVAG



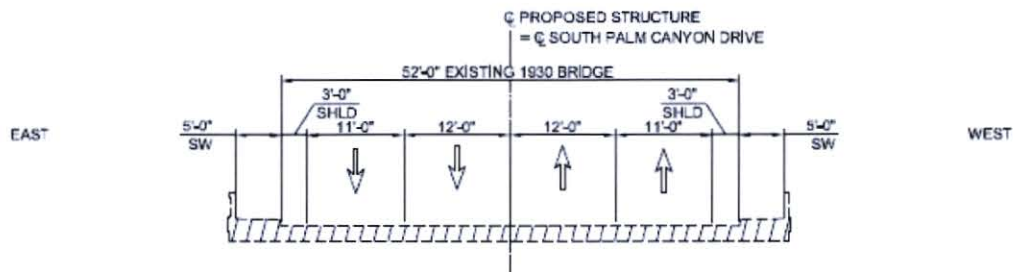
SOUTH PALM CANYON DRIVE BRIDGE PROJECT

ATTACHMENT 2

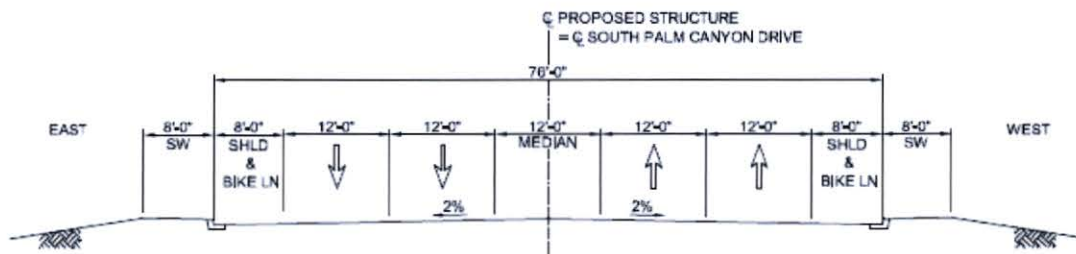
CROSS SECTIONS FOR SOUTH PALM CANYON BRIDGE PROJECT



CROSS SECTION - PROPOSED NEW BRIDGE



CROSS SECTION - EXISTING BRIDGE



CROSS SECTION - PROPOSED APPROACH

ATTACHMENT 3

AGREEMENT

(FOLLOWS THIS PAGE)



**CITY OF PALM SPRINGS  
PROFESSIONAL SERVICES AGREEMENT  
SOUTH PALM CANYON DRIVE BRIDGE REPLACEMENT  
@ TAHQUITZ CREEK CHANNEL  
CITY PROJECT NO. 12-02  
FEDERAL AID PROJECT NO. BRLS 5282 (042)**

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 CNS ENGINEERS, INC., 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 South Palm Canyon Bridge Replacement at Tahquitz Creek Channel, City Project No. 12-02, Federal Aid Project No. BRLS-5282 (042) ["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: (1<sup>st</sup>) the provisions of the Scope of Services (Exhibit "A"); (2<sup>nd</sup>) the provisions of the City's Request for Proposal; (3<sup>rd</sup>) the terms of this Agreement; and, (4<sup>th</sup>) 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 and Eighty-Nine Thousand Nine Hundred and Ninety-Five Dollars and Fourty-Eight cents, (\$789,995.48) (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 Two Hundred and Nine Thousand Nine Hundred and Nineteen Dollars and Thirty-Six cents (209,919.36) (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 Nine Hundred and Ninety-Nine Thousand Nine Hundred and Fourteen Dollars and Eighty-Four cents (\$999,914.84) (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: James J. Lu, Project Manager/President. It is expressly understood that the experience, knowledge, education, capability, expertise, and reputation of the foregoing principal is a substantial inducement for City to enter into this Agreement. Therefore, the foregoing principal shall be responsible during the term of this Agreement for directing all activities of 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 subsection 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: CNS Engineers, Inc.  
Attention: James J. Lu  
10370 Hemet Street, Suite 230  
Riverside, CA 92503  
Telephone: (951) 687-1005  
Facsimile: (951) 667-3387

**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**

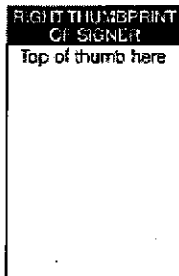
*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**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: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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## EXHIBIT "A"

### SCOPE OF SERVICES

**General Scope of Work** – Consultant shall provide the City with engineering and environmental phase services related to the South Palm Canyon Drive Bridge Replacement Project at Tahquitz Creek Channel, City Project No. 12-02, Federal Aid Project No. BRLS 5282 (042) (hereinafter the "Project"). The intent of the proposed project is to widen and replace the existing 4-lane bridge without additional traffic lanes within the Highway Bridge Program's (HBP) participating limits. The scope of work generally includes all professional services associated with completion of the Project Approval / Environmental Document ("PA/ED") Phase, the Final Design Phase, Right of Way Phase, and Construction Support. Preliminary and final design of the trail undercrossing(s) if determined required in the PA&ED phase is not included in the scope. It is assumed that the majority of the training retaining walls upstream and downstream of the bridge will remain intact without a need of major structural modifications or reconstruction.

#### **Technical Scope of Work**

#### **Phase 1 - Environmental Documents and Technical Studies**

##### **Task 1 - Project Management**

##### **Task 1.1 Project Administration and Project Controls**

Consultant's project administration procedures are generally outlined as follows: Upon receipt of a formal Notice-To-Proceed (NTP) for the project, a project-specific work plan shall be developed to strategize the team resources and detailed assignments. Consultant's work plan shall typically consist of the following items - detailed scope of services; deliverables; schedule; task budget; agency contacts; team member contacts; responsibility of team design disciplines; and project-specific requirements. Consultant' project administration shall be conducted to ensure timely progress reporting and billing, accurate project record keeping, monitoring of costs, progress, deliverables and adherence to quality standards. Internal project coordination meetings shall be conducted monthly through office meetings, conference calls and exchange of emails, to maintain good project communication.

**Schedule Control:** During the project development, Consultant shall ensure that the schedule adheres to all contractual requirements. The schedule will be constantly updated. Consultant shall work closely with the City for the delivery requirements.

**Document Control:** All in-coming and out-going design and correspondence materials shall be logged, and filed according to a project-specific document control system.

**Accounting and Invoicing Procedures:** Consultant shall follow general City and Caltrans accounting and billing requirements. All man-hours, direct and indirect costs shall be tracked.

**Cost Control:** Project costs shall be verified on a monthly basis. Cost-to-date, estimated actual percent completed, and estimated budget to complete by individual task at each invoicing period will be documented.

*Deliverables: monthly invoices, progress reports, schedule updates and document logs*

##### **Task 1.2 Meetings and Coordination**

This task shall include general management and coordination among the City, Consultant Team, Caltrans, jurisdictional agencies, and other key stakeholders. Project meetings shall be conducted to maintain good project communication in purposeful and concise meetings. Project coordination shall be established by frequent progress review meetings or conference calls. Project Development Team (PDT) meetings at City Hall or by conference calls shall be conducted.

A meeting agenda shall be prepared in advance. All action items listed in the meeting minutes shall be reviewed in every meeting. Other typical procedures including preparing monthly progress reports; establishing design criteria; posting project issues to all individuals; conducting biweekly progress review for all engineering plans and reports; mitigating all independent check and review comments; clearing communication lines to maintain the project schedule. Project Manager and appropriate key task leaders or engineers shall attend the meetings.

*Deliverables:* meeting agendas, meeting minutes, and coordination memorandums

### **Task 1.3 Quality Assurance and Quality Control**

Consultant shall provide Quality Control and Quality Assurance (QC/QA) for all project documents and plans to ensure that the project moves forward to delivery as quickly as possible. Upon notice to proceed, the QC/QA procedures shall be clearly outlined for the project team. These procedures shall include checklists for plan preparation, e-file sharing procedures and document controls, and independent reviews by senior staff. Consultant shall review the design documents to make sure that the design is consistent with the funding requirements so that the review and approval process is expedited. Consultant shall make sure all right-of-way acquisitions; easements; and utility relocation for the project are reasonable and efficient.

*Deliverables:* Quality Control and Quality Assurance Plan

## **Task 2 - Planning and Project Development**

### **Task 2.1 Research and Data Gathering**

Consultant shall collect available existing reports, data, as-built plans, and information relevant to the project from the City, Riverside County Flood Control and Water Conservation District (RCFC&WCD), Caltrans, and other stakeholders and agencies.

Consultant shall conduct a field review meeting and a thorough site investigation with the City. The field review meeting shall assist the Consultant in verifying plan information obtained in data collection and research, clarifying the project scope, documenting existing street improvements including public facilities and private developments, drainage conditions, flow patterns, underground and overhead utilities, signing and striping, miscellaneous features, and evaluating potential unforeseen issues that may cause delay to the project.

*Deliverables:* a document log showing all data obtained from the agencies, field review notes and a photo log

### **Task 2.2 Surveys and Aerial Topographic Mapping**

Consultant's subconsultant shall perform the following services - obtain design aerial topography at 1"=40' with 1' contours for the alignment within the project limits and of the Tahquitz Creek Channel to perform Channel Hydraulic Study; utilize Zone 6 NAD83 US Feet State Plane Coordinate System; list all control points on the base topographic mapping; obtain color orthographic photography of the road and bridge alignment area; conduct field topographic survey to locate existing aboveground facilities to include in base mapping; conduct field

topographic survey of all underground utility potholes and geotechnical boring locations; identify all monuments located during field surveys on topographic mapping; tie the project to a minimum of two (2) section corners and/or tract corners or to recorded points.

*Deliverables: project topographic mapping in AutoCAD format showing those items contained within task scope of services*

### **Task 2.3 Right-of-Way Research and Base Mapping**

Consultant's subconsultant, shall obtain record data for parcels, rights-of-way, etc., verify impacted properties and ownership, research upcoming projects by local agencies/utilities within the project area, prepare project base mapping that includes information obtained above, show at least two (2) existing coordinate points on each drawing sheet, list all legal documents on the drawings, and provide adequate dimensions on each sheet.

*Deliverables: digital base map file*

**Preliminary Title Work:** Consultant's subconsultant shall order eleven (11) preliminary title reports, according to the assessor parcels being impacted and provide to all team members as needed.

**Right of Entries:** Consultant's subconsultant shall create four (4) necessary Right of Entry documents, according to the ownership parcels being impacted, for engineering and environmental surveys, securing approval from the City. Subconsultant shall contact and negotiate with private property owners and secure execution of required agreements. Subconsultant shall facilitate any payments from City to private property owners via mail.

*Deliverables: Preliminary Title Reports (11); Right of Entry Agreements (4)*

### **Task 2.4 Utility Research and Mapping**

**Utility Research:** Consultant's subconsultant shall be the primary point of contact with utility owners for identifying and verifying all utility facilities lying within existing and proposed rights of way of planned construction, actively participate on Project Development Team, forward a letter of introduction to the utility owners, and obtain utility owner as-built maps from all utility owners within the project area and provide these to the design team for plotting. Based on preliminary research several utility owners have facilities within the project or its surrounding area. The exact locations of the following facilities will be verified: SCG – 4" MP Gas, Desert Water Agency – 10" & 12" Water, SCE – Electric, Verizon – Phone/Fiber, Time Warner – Cable TV, and City of Palm Springs – Sanitary Sewer.

**Utility Mapping:** Consultant's subconsultant shall compute and plot the utilities using the as-built plans and the field survey data on a base file.

*Deliverables: As-built plans from utility owners, letter of introduction to owners, digital utility base file*

## **Task 3 - Preliminary/Concept Plans**

### **Task 3.1 Roadway Geometric Approval Drawings**

The vertical alignment controlled by the soffit elevation and the bridge deck at the critical point shall be developed based on the existing vertical profile grades and the design speed of 45 mph. Two horizontal alternatives shall be evaluated; one to support a 64 feet wide curb-to-curb

section with 3 foot wide shoulders, and the second one to support a 70 foot wide curb-to-curb bridge section with 5 foot wide Class II bicycle lanes. Horizontal transitions from the existing 64 foot wide street section to the wider bridge section shall not exceed a ratio of 1:15. Each of the two alternatives shall include redesign of the southbound bus bay turnout and one existing driveway to a restaurant. Vertical Curve and Horizontal Taper lengths shall be called out with its design speed to assure the design criteria is being met. With the limits of work established and the proposed improvements shown, including the ultimate lane geometrics, areas of potential concern or impacts shall be identified. Impacts, such as right-of-way requirements, utility conflicts, driveway and access impediments, and location of construction limits shall be further investigated to determine if an alternative design can mitigate these impacts. Preliminary design quantities shall be calculated and an estimate of construction cost shall be prepared based on current unit prices for the various items of work. At this level of completeness, a minimal 20% contingency shall be added to the cost estimate.

*Deliverables: 40 Scale Plan and Profile Alignment Study with one preferred alternative, preliminary right of way requirements map, and construction cost estimate*

### **Task 3.2 Preliminary Geotechnical Investigations**

Preliminary Geotechnical Design Report (PGDR): The PGDR shall be prepared in accordance with Caltrans Guidelines for Preparing Geotechnical Design Reports Version 1.3, to cover the new roadway work and roadway widening, and standard plan structures. The report shall provide the following items: project description, site history, expected subsurface conditions, regional geology and seismicity, potential geologic hazards, potential construction difficulties, boring location plan for the planned field exploration.

Preliminary Structure Foundation Report (PFR): The PFR shall be prepared in accordance with Caltrans Guidelines for Preparing Structure Foundation Reports, (December 2009) to cover the new bridge structure, which will include: a general project description, number location and types of structures, structure-specific seismic recommendations, preliminary foundation recommendations, boring location plan for the planned field exploration.

*Deliverable: Preliminary Geotechnical Design Report and Preliminary Structure Foundation Report*

### **Task 3.3 Floodplain and Bridge Hydraulics Study**

Consultant's subconsultant shall obtain floodplain base model for Tahquitz Creek Channel, verify effective channel hydraulic model using current topography and construction, prepare proposed condition channel hydraulic model to include the proposed bridge configuration, prepare bridge scour analysis where applicable, prepare draft and final channel and bridge hydraulic study.

*Deliverables: Floodplain Study and Bridge Hydraulics Study Report*

### **Task 3.4 Roadway Drainage Study**

Consultant's subconsultant shall prepare roadway hydrology study based on tributary area to South Palm Canyon Drive, and prepare roadway drainage study based on hydrologic information.

*Deliverables: Roadway Drainage Report*

### **Task 3.5 Preliminary Right-of-Way Cost Estimates**

It is assumed analysis of right-of-way impacts shall be performed with regard to eleven (11) separate ownership parcels. Consultant's subconsultant shall ascertain all relevant design plans available for review of project impacts and coordinate with Project Design Team to review impacts and confirm impact assumptions. Continuous coordination with Design Team shall occur as new findings are revealed throughout field research phase. Subconsultant shall physically view each site and record appropriate data. Online data of individual properties shall be incorporated into field research, where necessary. Field research data shall be integrated into appropriate cost estimating formats. Subconsultant's Field Agent and Property Analysts shall meet to discuss data and draw impact conclusions and property remediation strategies, if necessary. These initial property conclusions and strategies shall be reported to Design Team to consider opportunities for creative problem-solving either in design or property remediation strategies.

Once property remediation and design assumptions are finalized and property impact conclusions are confirmed, data is finalized into the approved cost estimating formats, incorporating findings and cost estimations with regard to utility facilities.

Property values for the affected parcels shall be estimated using traditionally accepted property valuation techniques for partial acquisitions, as well as permanent and temporary easement interests. Once relevant market data is gathered and applied to the subject properties, the cost study shall estimate the probable values of land and any impacted improvements, as well as associated damages, relocation assistance costs, demolition costs and cost-to-cure remediation costs, if applicable.

Right-of-Way Data Sheet: Subconsultant shall gather all information and analysis gleaned from the preparation of the right of way cost estimate, as well as information discovered regarding utility impacts, and will prepare the latest approved Caltrans Right of Way Data Sheet form according to the guidelines presented in the Caltrans Right of Way Manual. Subconsultant shall coordinate with relevant Caltrans District 8 representatives and/or design leads to address comments and recommendations.

*Deliverables: Cost Estimate Worksheet, Caltrans Right-of-Way Data Sheet form*

### **Task 3.6 Bridge Type Selection Study**

Based on the final approved roadway geometric design for the preferred alternative, Consultant shall prepare preliminary bridge design in 30% design level including performing preliminary structural design and seismic analyses in accordance with Caltrans bridge design standards. The preliminary structure study shall be summarized in a Bridge Type Selection Report (BTSR). In addition to the structure-related discussion, the BTSR shall include summary of engineering studies in various disciplines including falsework (if required), utility relocation, stage construction, constructability-related topics, and geotechnical evaluation. This step of bridge type selection shall be completed before extensive bridge design work for final PS&E is performed. The 30% bridge type selection design shall include a bridge general plan, a foundation plan, detailed cost estimates and other pertinent information needed to determine the proper structure type. Consultant shall submit the BTSR to the City for forwarding to Structures Local Assistance (SLA) for review and concurrence.

*Deliverables: Bridge Type Selection Report*

### **Task 4: Environmental Approval**

#### **Assumptions for the Environmental Technical Studies**

For the environmental and permitting tasks associated with this scope, the following assumptions have been made: (1) project will replace the existing 4-lane South Palm Canyon Drive Bridge over Tahquitz Creek Channel with a new 4-lane bridge and associated enhancements, (2) it is expected that the National Environmental Policy Act (NEPA) document will be a Categorical Exclusion (CE); (3) that the California Environmental Quality Act (CEQA) document will be an Initial Study and Mitigated Negative Declaration (IS/MND); (4) the California Department of Transportation (Caltrans) will be the lead agency under NEPA and the City of Palm Springs will be the lead agency under CEQA, and (5) the project does not directly impact Native American allottee or tribal lands.

It is also assumed that the area of permanent disturbance to "waters of the US" will be less than one-half acre and that the USACE will process and approve a 404 Nationwide permit for this project. Therefore, no additional NEPA analysis should be required by the Corps to process and approve the subject 404 permit.

Preparation of all technical analyses and reports shall follow all applicable local, state, and federal environmental guidelines, primarily consisting of the Caltrans Standard Environmental Reference (SER), Caltrans *Local Assistance Procedures Manual*, state *CEQA Guidelines and the City Rules to Implement CEQA*, and FHWA Technical Advisory 6640.81 *Guidance on Preparing and Processing Environmental and Section 4(f) Documents*. The formats to be used for the technical studies shall follow the guidance available on the Caltrans SER website as of the date that those studies are initiated.

Unless otherwise noted, the deliverables for the following technical studies will be a separate bound report including a standardized project description, a methodology relevant to each topic area, description of the affected environment, impact assessment, and mitigation measures.

For this scope of work, the technical studies for which a specific scope of work has been included have been assumed based on a review of existing project information. If additional studies are identified during the environmental phase of the project a scope of work and cost shall be submitted for approval prior to their initiation. No effort beyond that included in this scope of work is assumed or included.

The following assumptions have been made with regard to the technical studies that shall be prepared:

- With the possible exception of burrowing owl, focused protocol surveys for individual plant and/or wildlife species are not included in this scope and cost. Neither protocol plant or wildlife surveys are expected to be required for this project. A scope of work and cost shall be submitted for approval for any species-specific surveys specified under the Natural Environment Study. If additional focused surveys are identified during the biological field reconnaissance then this shall be communicated to the City and a scope and cost for this work shall be provided.
- Section 7 consultation shall not be required.
- A maximum of one build alternative shall be evaluated.
- NEPA/404 integration process shall not be required.

#### **Task 4.1 Preliminary Environmental Study (PES)**

Consultant's subcontractor shall be responsible for the preparation of the draft and final Preliminary Environmental Study (PES) form and associated research and supporting documentation. This task shall incorporate results from the City/Caltrans field review meeting, and other consultations, and site investigations, which shall also identify what environmental technical studies are required and what the scope of these studies should be. Provision is made for two revisions to the PES. In coordination with the City and project engineers, Terra Nova



shall further develop and complete the draft Area of Potential Effect (APE) map. Provision is made for two revisions to the APE.

*Deliverables: Preliminary Environmental Studies (PES) Form with Field Review Form, ISA Checklist and VIA Questionnaire*

#### **Task 4.2 Traffic Study**

**Study Orientation, Scope Refinement, and Project Management:** Consultant's subconsultant project manager shall attend a kick-off meeting for the project. Subconsultant for Traffic Study shall attend PDT meetings for the project duration.

**Define Study Area and Data Collection:** The study area is defined to include the analysis of up to eight (8) arterial intersections and five (5) roadway segments. The study area must be large enough to analyze the potential construction impacts for the potential detour routes during the bridge construction. Peak period intersection turning movement counts shall be collected for up to eight (8) intersections during the AM and PM peak hours. Average daily traffic counts (ADT) shall be collected for up to five (5) roadway segments. KOA shall observe and inventory roadway geometrics, existing traffic operations, and any other relevant information. The counts shall be taken by KOA personnel or by a traffic count specialist, depending upon scheduling and availability. If any additional arterial intersections must be analyzed, extra work compensation may be requested.

**Traffic Analysis:** Subconsultant shall prepare a traffic study that summarizes the evaluation of each final alternative that is included for complete analysis in the environmental document. The study shall identify traffic impacts, mitigation measures, and potentially unmitigated impacts. Traffic analysis software, appropriate for evaluating existing and future conditions such as SYNCHRO or Traffix, shall be used in the analysis. The analysis shall follow City guidelines and standards, including use of the *Highway Capacity Manual (HCM)* methodology in determining intersection level-of-service. The traffic study shall include a full analysis of construction-related impacts for any alternative that proposes to partially or fully close South Palm Canyon Drive. This shall include the evaluation of traffic conditions along detour routes and potential mitigation measures where appropriate. Subconsultant shall develop drawings showing conceptual mitigation measures through restriping, signal modifications, or turning lanes along detour routes. Mitigation requiring physical road construction for off-site detours is not envisioned at off-site locations. The study shall present all information prepared by the subconsultant, including existing (2014) traffic conditions, opening year, long range year (open year + 20 years), traffic impacts, mitigations/recommendations, consideration of other modes of transportation, traffic management and traffic control plans for construction alternatives, construction traffic impacts and mitigation measures, and conclusion.

**Submittal and Review of Reports:** Any proper or reasonable revisions shall be incorporated into the traffic study in order to be fully responsive to the Scope of Services. Reasonable revisions include any corrections to the report within the general scope of work, but exclude any traffic data collection or analysis at any locations except as specified in the scope.

*Deliverables: traffic study report*

#### **Task 4.3 Phase I Initial Site Assessment**

Consultant's subconsultant shall prepare an Initial Site Assessment (ISA) Checklist in accordance with the Project Development Procedures Manual. Terra Nova shall also conduct a detailed environmental site assessment, including a Phase I hazardous materials assessment of the project site. The Phase I assessment shall be prepared in conformance with the American

Society for Testing and Materials (ASTM) Standard E1527-05 "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process".

The aerial deposition of lead (ADL) study shall assess the concentrations of aerially deposited lead in soil along South Palm Canyon Drive within the proposed bridge construction area. This soil study shall be conducted in accordance with EPA SW-846 and Caltrans protocols. Soil samples shall be collected from 10 locations along the length of the project fronting South Palm Canyon Road. The soil sampling locations shall be spaced at approximately 10-meter (30 feet) intervals. Each boring shall be placed approximately 1 meter (3.3 feet) from the roadway's paved surface. A hand auger shall be used to drill down and collect samples at each boring location. Soil shall be collected from each boring at the following three depths: between 0 and 0.15 meter (0 and 6 inches), between 0.15 and 0.31 meter (6 and 12 inches), and between 0.46 and 0.61 meter (18 and 24 inches).

The collected soil sample shall be delivered to a State-accredited laboratory for chemical analyses. Each collected soil sample (30 total) shall be analyzed for lead using EPA Method 6010B. Ten percent of the samples (3 total) shall be analyzed for soluble lead (synthetic precipitation leaching procedure; leached with deionized water) using EPA Method 6000/7000 series. Three of the samples shall be analyzed for pH using EPA Method 9045. In addition to lead in soil, yellow striping paint on South Palm Canyon Drive shall also be tested for the presence of lead. The collected paint chip samples shall be analyzed for lead using EPA Method 6010B. Up to two revisions to the ISA and based on Caltrans comments shall be provided.

Phase I/Asbestos Survey Services shall also be provided and include conducting a site visit of bridge and conducting a complete asbestos-containing inspection. Up to 12 samples shall be collected, as appropriate, and tested materials suspected of potentially containing asbestos. Terra Nova shall prepare and submit asbestos samples to a certified laboratory for analysis by Polarized Light Microscopy for 24 hour TAT. Finally, Terra Nova shall prepare written report, including exhibits and lab results, for inclusion as attachment to final Phase I report or as a freestanding report.

*Deliverables: An Initial Site Assessment (ISA) Checklist, integrated environmental site assessment, and ADL and asbestos reports with descriptions of methodologies, including literature search, interviews, survey and sampling approaches, data collection and analysis, and full documentation.*

#### **Task 4.4 Water Quality Assessment Report (WQAR)**

Consultant's subconsultant shall prepare a Water Quality Assessment Report (WQAR) to support the environmental clearances of the preferred project alternative. The content and format of the WQAR shall be as set forth in Caltrans WQAR guidance dated June 2012.

The primary purpose of the WQAR is to fulfill the requirements of the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA), and to provide information to assist with National Pollutant Discharge Elimination System (NPDES) permitting. The WQAR shall include a discussion of the proposed project, the physical setting of the project area, and the regulatory framework with respect to water quality. The WQAR shall provide data on surface water and groundwater resources within the project area and their water quality health, describe water quality impairments and beneficial uses, identify potential water quality impacts/benefits associated with the proposed project, and recommend avoidance and/or minimization measures for potentially adverse impacts. The WQAR is not intended to make conclusions regarding the significance of the impacts as said determinations are to be addressed in the NEPA/CEQA documents based on information provided in the WQAR.

*Deliverables: WQAR*

**Task 4.5 Location Hydraulic Study and Summary Floodplain Encroachment Report**

Consultant's subconsultant shall prepare Bridge Location Hydraulic Study memorandum and Summary Floodplain Encroachment memorandum per Caltrans' requirements.

*Deliverables: LHS and SFER*

**Task 4.6 Biological Resources Study (Natural Environmental Study)**

Consultant's subconsultant shall prepare the NES for this project. In conjunction with the preparation of the NES, the subconsultant shall contract for and manage biologists in the preparation of a general biological resource assessment. Previous resource studies conducted on these and nearby lands shall be evaluated, previous management and mitigation programs shall be reviewed, and the relationship of the South Palm Canyon Drive Bridge at Tahquitz Creek Channel project to other approved projects in the wash and vicinity shall also be assessed. With the possible exception of burrowing owl, no protocol surveys are expected to be required for this project. The project is a "Covered Activity" under the Coachella Valley MSHCP, and mitigation provided by the Coachella Valley MSHCP shall be maximized.

The biological resources assessment shall include performance of a literature review for the Project site to determine if any sensitive biological resources have been reported in the Project area. As a part of this task, previous biological reports prepared for projects in the vicinity, including the Belardo Road and Bridge project, recent aerial photographs, and other pertinent documents from the consultant's library and project files (e.g., other biological surveys from the general vicinity) shall be utilized. Consultant shall also review the Department of Fish and Wildlife's (CDFW's) California Natural Diversity Database, California Native Plant Society's (CNPS) Rare and Endangered Vascular Plants of California, and other readily available biological information. As a part of the literature review analysis, readily available previous resource studies conducted for the project site and nearby lands shall be evaluated, previous management and mitigation programs shall be reviewed, and the relationship of the South Palm Canyon Drive Bridge at Tahquitz Channel project to other approved projects in the vicinity shall also be assessed.

A field reconnaissance survey and general habitat evaluation shall be conducted at the project site. The consulting biologists shall evaluate the suitability of existing habitat on the site to support special-status species with special attention for burrowing owl. The type(s) of vegetation shall be characterized, and dominant plants identified. Human disturbance levels shall also be characterized. Field notes shall include any wildlife species observed or detected on-site and in immediately adjacent areas.

The consulting biologists shall prepare a biological resources report summarizing the results of the literature review, biological field reconnaissance and findings which shall include recommendations for further biological studies (if necessary). The report shall describe the survey methods employed, present the results of the fieldwork, assess the potential for additional sensitive resources to occur on the site, identify regulatory issues related to the resources on the site, and recommend potential mitigation measures. A draft report shall be provided to accompany and support the NES. Provisions are made for one report revision.

**Burrowing Owl Protocol Survey:** As noted above, a habitat suitability evaluation shall be conducted for the burrowing owl. If the owl has the potential to occur on site or in the immediate vicinity, focused protocol owl survey for burrowing owl shall be conducted by a qualified biologist. All areas to be evaluated shall be examined carefully for habitat characteristics and

disturbance factors. The study area for this work is assumed to be the proposed project footprint and appropriate buffer area. It is assumed that access for the survey will be granted by the property owners based on the right of entry secured by OPC. Potentially suitable habitat shall be mapped. No permits are required to perform a habitat evaluation, but the biologist must be experienced with the species' biology, identification of direct and indirect sign, and physical characteristics of potentially suitable habitat. Habitat evaluations for this species can be performed any time of year. A burrowing owl survey and mitigation report (if needed) shall be prepared and the results shall be directly incorporated into the NES.

The survey window for this work is limited to March 1 and August 31 and the survey consists of four visits made to all potential habitats on four separate days. Site surveys can be conducted outside the survey window with the express permission of the CDFW. The site visits need to occur during one hour before sunrise to two hours after and/or two hours before sunset to one hour after. The results of the focused survey for Burrowing Owl shall be directly incorporated into the NES.

*Deliverables: Natural Environmental Study and Protocol Owl Survey (if needed).*

#### **Task 4.7 Wetland Delineation and Assessment**

Consultant's subconsultant and its consulting biologists shall conduct a state and federal jurisdictional delineation to establish waters of the state and of the US. The delineation shall also determine whether and to what extent wetlands, as defined by Federal Regulations, occur within and could be impacted by the proposed bridge project. The results of the delineation shall also be incorporated into the bio report and the Section 1600 and 404 permits, as necessary. The jurisdictional delineation shall be prepared in accordance with methodology in the USACE 1987 Wetlands Delineation Manual, Arid West Supplement and applicable definitions in the California Fish and Game Code. Tasks associated with this effort include coordination with USACE, CDFW and CRWQCB, and include (1) review existing literature related to the site including historical topographic maps and aerial photos, National Wetland Inventory Maps, Soil Surveys, and any previous USACE 404 Permit, etc. in order to determine potential jurisdictional water. Consultant shall review preliminary engineering plans for the project to assess potential impacts to waters in the area, (2) conduct field survey to collect data upstream and downstream of the site location, evaluate soils, vegetation and hydrologic conditions on the site, and delineate jurisdictional waters using approved state and federal methods and collect data using GPS with sub-meter accuracy.

*Deliverables: A Jurisdictional Determination and Delineation Report that defines methods and results of the field assessment. Boundaries of jurisdictional waters shall be overlaid onto aerial photographs for identification. Proposed impact areas shall be overlaid onto the aerial photograph to identify and quantify impacts. Approximate calculations of the amount of acreage of waters to be impacted (if any) by the project shall also be provided.*

#### **Task 4.8 Section 4(f) De Minimis**

Consultant's subconsultant shall evaluate the potential of the proposed project to have an adverse impact on community recreational resources, including trails and bike paths. This assessment shall be conducted in conformance with FHWA Technical Advisory 6640.81 *Guidance on Preparing and Processing Environmental and Section 4(f) Documents*. It is expected that De Minimis findings can be made by the City and that these findings will satisfy Caltrans with regard to possible impacts to recreational facilities.

*Deliverables: Draft and secure signed Section 4(f) De Minimis Letter from City, as appropriate.*

#### **Task 4.9 Visual Resources Technical Memorandum**

Consultant's subconsultant shall proceed with a stepped approach to visual impact assessment, first preparing a scenic resources evaluation as permitted in the Caltrans SER. This work will be rolled into the preparation of Visual Impact Assessment Technical Memorandum. The Visual Impact Assessment Technical Memorandum will be prepared in conformance with the FHWA VIA Guidelines.

*Deliverables: Scenic Resources Evaluation, Visual Impact Assessment (FHWA/Caltrans compliant) and Visual Impact Assessment Technical Memorandum*

#### **Task 4.10 Cultural Resources Study (ASR/HPSR/APE)**

Consultant's subconsultant shall contract for and manage archaeological and historic property research and documentation, as well as consultation with the Native American Heritage Commission, the Agua Caliente Band of Cahuilla Indians and Caltrans, and preparation of reports in conformance with CEQA and Section 106 of the Historic Preservation Act. Subconsultant shall also coordinate with Caltrans on Section 106 jurisdiction and establish the appropriate procedure for expedited Section 106 approval. An Area of Potential Effect exhibit shall be prepared and submitted to Caltrans for approval. Subtasks include the following:

1. Contact and maintain communication with Caltrans to ensure that all the issues are known and addressed; production of maps supporting the APE on the appropriate current USGS 7.5' quadrangle and applicable historic maps to use for the records search, background research, and for inclusion in the report, as needed;
2. Conduct a historical/archaeological resources records search at the Eastern Information Center at University of California, Riverside;
3. Pursue general historical background research based on the APE and its environs;
4. Request a sacred lands record search from the Native American Heritage Commission and contact local Native American representatives regarding Native American resources in and around the project area, as required by Caltrans and Section 106;
5. Consult with Agua Caliente Band of Cahuilla Indians and maintain open channels of communication with the Tribe throughout the course of the study;
6. Conduct a field survey of the APE following standard professional archaeological procedures;
7. Conduct specific historical studies, including archival research, interviews, and including consultations with local historical societies and/or other representatives of the local community concerning the APE, as necessary, to determine past land uses and owners and to explore historical associations;
8. Prepare a Draft Historical Properties Survey Report (HPSR) and an Archaeological Survey Report (ASR) according to Caltrans guidelines to document the findings of the procedures outlined above, identify potential historic properties within or adjacent to the APE, evaluate their integrity and historical significance under criteria for the National Register of Historic Places, incorporate comments and recommendations from local Tribes (if any), and recommend subsequent courses of actions regarding cultural resources, if necessary;
9. Review comments, plan and organize responses to comments, and prepare the final versions of the reports for Caltrans approval.

*Deliverables: Historical Properties Survey Report (HPSR) and an Archaeological Survey Report (ASR); APE map*

#### **Task 4.11 Air Quality Study (CEQA Purpose)**

Consultant's subconsultant shall conduct research, analysis and review of literature and other documentation to prepare an analysis of air quality impacts associate the project. The

assessment of construction activities shall include quantifying emissions from demolition, site preparation and grading, use of construction equipment, haul trips and material deliveries, construction workers commute, and bridge construction activities. GHG emissions shall also be quantified and analyzed pursuant to thresholds. Tasks shall include coordinating with agencies, project team, City staff, Caltrans, and others during the project's environmental review process. If the AQ & GHG Report concludes that emissions exceed established thresholds then subconsultant shall identify mitigation measures that will minimize impacts.

*Deliverables: CEQA Level Air Quality and GHG Analysis and Report*

#### **Task 4.12 Draft Environmental Document (CEQA IS/MND)**

Consultant's subconsultant shall prepare and process an integrated City-compliant CEQA Initial Study/Mitigated Negative Declaration based on the preliminary scoping activities set forth in this scope of work. The City CEQA IS/MND shall analyze the Preferred Project/Proposed Action selected by the City. The Initial Study/Mitigated Negative Declaration shall also include a comprehensive Mitigation Monitoring and Reporting Program for each category where mitigation is required. It is assumed that the City will adopt a Mitigated Negative Declaration. A screen check draft of the IS/MND shall be provided to the City and engineering team and revised as required prior to transmittal. The City of Palm Springs shall be the CEQA Lead Agency. The California Department of Fish and Wildlife (CDFW) shall be a CEQA Responsible Agency, shall be provided with the opportunity to comment on the IS/MND and shall use the adopted IS/MND to process and issue a Streambed Alteration Agreement. The California Regional Water Quality Control Board (CRWQCB) shall also be a Responsible Agency and shall use the approved CEQA IS/MND to process and provide a Section 401 CWA certification. Subconsultant shall also prepare CEQA and City-compliant CEQA Exemptions for City adoption for any needed geotechnical boring, utility potholing and other qualifying exploratory activities in the project area.

*Deliverables: CEQA and City-compliant Initial Study/Mitigated Negative Declaration with Mitigation Monitoring and Reporting Program; CEQA Exemptions.*

#### **Task 4.13 Circulate Draft Environmental Document and Respond Comments (CEQA)**

This task shall include preparation of IS/MND transmittal list and document transmittal based on City-approved agency transmittal list provided to and approved by City Public Works and Planning Departments, and surrounding property owner notification package within a 500-foot radius (per City Public Works). Subconsultant shall also prepare a Notice of Completion for transmittal to the Riverside County Clerk and the State Clearinghouse (SCH) for posting for a 30-day period. The SCH shall also be provided with the required 15 copies of the IS/MND and/or CD of same for SCH distribution. The use of the CEQA Initial Study/Mitigated Negative Declaration shall go forward once certain that this approach will not be inconsistent with Caltrans NEPA actions.

*Deliverables: IS/MND transmittal list, document/CD printing and transmittal of Draft IS/MND, and draft response to comments. Notice of Completion; SCH and general transmittal of Draft IS/MND document and NOC*

#### **Task 4.14 Final Environmental Document (CEQA IS/MND)**

City and State Clearinghouse shall collect any comments received on the draft CEQA document, and shall provide same to Consultant's subconsultant for verbatim restatement and formal response. Terra Nova shall affect any necessary changes to environmental documents

needed to memorialize changes in mitigation measures or findings. Once final action has been taken by the City, the final (approved) CEQA IS/MND and supporting documents shall be provided to the City.

*Deliverables: Final IS/MND document*

#### **Task 4.15 File Notice of Determination (CEQA)**

Consultant's subconsultant, shall prepare a draft staff report and adoption resolution for the approval of the CEQA action. Subconsultant staff shall attend and present, as needed, information to the City Council on the environmental and permitting portions of the project. Subconsultant shall also prepare the Notice of Determination (NOD) following the adoption of the CEQA document by the City. The drafted NOD shall be submitted to the City for signature and delivered to the Riverside County Clerk and to the State Clearinghouse to initiate the statutory 30-day appeal period. A copy of the posted NOD shall be provided to the City upon receipt.

*Deliverables: Draft & Final Staff Report, Adoption Resolution, Notice of Determination & filing of same with County Clerk and State Clearinghouse*

### **Phase 2 - Civil Engineering Design (Plans, Specifications and Estimates - PS&E)**

#### **Task 1 - Final Design Reports and Studies**

##### **Task 1.1 Utility Potholing**

Potholing shall be performed to determine the final disposition of all of the underground utilities. All overhead facilities within the project area appear to be away from proposed construction and shall be protected in place. It is assumed that up to ten (10) potholes shall be required. More specifically, Consultant's subconsultant shall coordinate the identification of necessary potholes for the project with both the design team and affected utility owners, coordinate the actual potholing activity and issue Notice to Owner to Pothole and potholing sub-contractor.

Subconsultant shall review and verify with the design team the conflicting utility facilities based on the results of the potholing. The potholes will be surveyed by another subconsultant on the team and the data will be reflected on the utility base map.

*Deliverables: potholed data and updated utility base map*

##### **Task 1.2 Geotechnical Design Reports**

Geotechnical Design Report (GDR): Consultant's subconsultant shall prepare the GDR in accordance with Caltrans Guidelines for Preparing Geotechnical Design Reports Version 1.3, to cover the new roadway work and roadway widening, and standard plan structures. The report will include a general project description, copies of the boring logs, boring location plan, LOTB's for the Standard Plan Structures, and the results of the field and laboratory testing. All recommendations will be in accordance with the 2007 AASHTO LRFD Bridge Design Specifications and Caltrans Memos to Designers 3-1 and 4-1. SC&SC proposes to drill a total of 2 borings to a depth of about 50 feet below the existing ground surface or auger refusal whichever is less. The Geotechnical Design Report shall provide the following:

- Copies of the laboratory testing results
- Seismic Design Criteria
- Cut and fill requirements and any special issues regarding groundwater, difficult excavation, expansive soils or other hazards encountered in the borings

- Slope stability analyses shall be performed on all the new slopes and recommendations for construction will also be included
- Recommendations for the reuse of excavated materials and volumes of such (swell and/or shrinkage factors to be applied) and the quantity of import/export fill will be estimated
- Based upon the results of the corrosion testing, recommendations for utilities and buried metal conduits shall be included
- Foundation and construction recommendations for the Standard Plan structures
- Grain size distributions for scour analyses
- New structural pavement sections and recommendations for connecting into the existing pavement sections shall will also be included

The City will issue no fee encroachment permits and inspection costs.

Bridge Foundation Report: Subconsultant shall prepare the Bridge Foundation Report in accordance with Caltrans Guidelines for Preparing Structure Foundation Reports, (December 2009) to cover the new bridge structure, which will include a general project description, copies of the Boring Logs, Boring Location Plan, LOTB's for the Structures, and the results of the field and laboratory testing. All foundation recommendations shall be in accordance with the 2007 AASHTO LRFD Bridge Design Specifications and Caltrans Memos to Designers. The borings performed for the geotechnical design report shall be included for the structure foundation report. The Structure Foundation Report shall provide the following:

- Copies of the laboratory testing results
- Seismic Design Criteria
- Structure foundation type and footing elevations
- Any special issues regarding groundwater, difficult excavation, expansive soils or other hazards encountered in the borings
- Specified and design pile tip elevations shall be provided
- Allowable bearing capacities and other data needed to evaluate the selected foundation shall be provided
- Anticipated fill settlement periods needed to prevent excess differential settlement between the structure and adjacent roadway approaches
- Design parameters and potential construction difficulties shall be identified and addressed in the Structure Foundation Report, together with the proper mitigation measures
- For the bridge structure, alternative types of foundations shall be evaluated in consultation with the project engineer to allow selection of the most suitable type of foundation

*Deliverable: Geotechnical Design Report and Structure Foundation Report*

### **Task 1.3 Storm Water Pollution Prevention Plan (SWPPP)**

Consultant's subconsultant shall prepare the Storm Water Pollution Prevention Plan (SWPPP) for the preferred project alternative. The SWPPP shall meet the requirements set forth in the California Construction General Permit, Order 2009-0009-DWQ as amended by Orders 2010-0014-DWQ and 2012-0006-DWQ (California CGP). The SWPPP shall be prepared using the CASQA Template and shall be signed by a Qualified SWPPP Developer (QSD).

The SWPPP shall address the required elements including: project pollutants and their sources, including control measures (BMPs); identification of non-storm water discharges and measures for their elimination, control, or treatment; BMPs that are effective and result in the reduction or elimination of pollutants in storm water and authorized non-storm water discharges; BMPs for control of site run-on; BMPs to stabilize soils disturbed by construction; and a description of



post-construction BMPs incorporated into the project design to control the discharge of pollutants from the completed project.

The Legally Responsible Person (LRP) as defined in the California CGP, or the LRP's designee, shall provide Consultant with project-specific information required for preparing the SWPPP. Such information shall include but not be limited to: the agency name and address; the LRP name and contact information; the anticipated construction start date and construction duration; information regarding the post-construction BMPs incorporated into the project to comply with local requirements; and bid ready project plans in electronic format.

*Deliverables: One electronic copy of the draft California CGP SWPPP, One comment response matrix for the draft California CGP SWPPP, One electronic copy of the final California CGP SWPPP*

#### **Task 1.4 Utility Relocation Coordination**

Consultant's subconsultant shall provide utility coordination for all utilities within the project area. Subconsultant shall manage the utility coordination process, issue required notices to the utility owners, review liability claims, make recommendation for approval, prepare and submit utility agreements to owners, and prepare the utility portion of the Right of Way Certification. A more detailed list of activities required to successfully coordinate utility relocations is as follows:

1. Review and verify with the Design Team the conflicting utility facilities based on the results of the potholing.
2. Coordinate and plan with the utility owners and their designers, as needed, to discuss project design, potential conflicts, relocation alternatives, and resolution to conflicts.
3. Issue Relocation Claim Letters to conflicting utility owners.
4. Determine liability for each utility company that is impacted by the project. Clearly document this information in a formal Report of Investigation.
5. Obtain detailed scopes of work from the utility companies for relocation, estimated start and completion dates, and proposed cost to perform and complete the job.
6. Issue Notice to Owner to relocate utilities.
7. Work with the project manager and utility owner to confirm the Utility Relocation Plan is compatible with permit requirements and utility agreements are accurately and properly prepared.
8. Assist in obtaining permits, licenses, and replacement easements as necessary for utility relocations.
9. Process invoicing and payments for utility relocation work.
10. Obtain final drawings and as-builts from the utility owners and confirm that all items of work have been completed by the utility owner.
11. Confirm all easement and property rights have been properly conveyed to utility owners as necessary.
12. Prepare the Utility Section of the Right of Way Certification and any required Federal Aid documentation.

*Deliverables: Relocation Plans from Utility Owners, Relocation Claim Letters, Notice to Owners, Reports of Investigation, Utility Agreements (as applicable), Easement Documents (as applicable)*

#### **Task 2 - Plans, Specifications and Estimates (PS&E)**

##### **Civil Roadway PS&E**

##### **Task 2.1 65% Roadway Plans**

Upon the acceptance of the 30% Conceptual Review (GAD's), Consultant shall prepare the 65% Complete Plans based on the preliminary geometric layout consisting of a Title Sheet, one Typical Section and Detail Sheet, and one 40-Scale Plan and Profile sheet. All elements of the work is included in the 65% Roadway Plans, however, some details may be remaining for the 95% Submittal. The title sheet shall be prepared in accordance with City of Palm Springs standards and includes the project title, vicinity map, sheet index, general notes and other information in accordance with the City's format. The typical Section Sheet shall include the typical street sections and notes. Non-standard details may be provided on this sheet as well as a full listing of roadway construction and removal notes. The Roadway plan and profile shall show the existing topography, limits of work, construction notes, right of way, utilities, and other general design elements. Centerline, top of curb, and/or edge of pavement design shall be provided on the profile. The cost estimate shall receive a general progress update with the contingency reduced to 15%. Consultant shall prepare channel modification plans for the retaining walls within the channel. It is assumed that the existing retaining walls shall be protected in place to the maximum extent possible to allow for the expansion of the new bridge. Subconsultant shall expand for roadway drainage plans and details, and prepare 65% roadway drainage design drawings.

*Deliverables:* 65% roadway, drainage and channel modifications plans

**Landscape Modification Plans:** Subconsultant's landscape architects and irrigation designers shall prepare final planting and irrigation plans for the bridge approach landscaping (up to four quadrants and the northerly raised median).

**Preliminary Conceptual Plan:** Subconsultant shall prepare one black and white concept layout for the bridge approach and median improvements - indicating the placement of trees, palms, shrubs and desert accents (hardscape improvements are not included herewith). These plans will be 'quick' representations of the proposed layout such that the team can move forward with a design that meets agency requirements. Upon approval, subconsultant shall prepare final construction plans prepared at a scale of 1" = 20'.

**Planting Plans:** Plans shall include a plant legend indicating trees, palms, shrubs and desert accents. The legend will indicate the botanical and common names, quantity, size, and remarks (such as variety and staking procedure). The plans shall provide an integrated palette of material in accordance with City landscape guidelines.

**Irrigation Plan:** The final irrigation plans shall provide the necessary information for a complete and fully automatic irrigation system for each of the landscape quadrants. The design team anticipates utilizing existing / nearby sources of water from adjacent planting areas. The plans shall indicate new points of connection based upon City / Water District requirements, backflow prevention, pressure regulation (as necessary), and equipment size and type in the irrigation legend. This task includes one site visit with City maintenance representatives to determine the placement and preferred type of proposed equipment.

Effective January 2010, the State of California implemented Water Ordinance AB 1881, which contains many new requirements from both the State and local jurisdictions. At this time, and due to the improvement area, the design team does not anticipate the need to address AB1881 requirements. However, should the water district require such efforts, subconsultant shall provide an additional scope of services and fees for said services.

**Project Specifications/ Bid Schedule and Cost Estimate:** Subconsultant shall prepare project technical specifications for the landscape improvements. The design team shall also prepare a final construction cost estimate and bid schedule in a per unit basis (or lump sum) of proposed improvements once the construction documents have been completed and approved. The

estimate shall be in tabular form for each construction item showing quantity, unit, unit price and total cost.

Construction Details: Subconsultant will prepare construction details for planting and irrigation items.

Agency Review (Submittal and Plan Check): This task includes 2 submittals and revisions to plans. Following project approval, subconsultant shall print and circulate final mylar plans for signature.

*Deliverables: One conceptual plan @ 1"=20' for each landscape quadrant and one meeting with City staff, 1"=20' scale planting plans, 1"=20' scale irrigation plans (excluding State Water Ordinance criteria, soil sample reconnaissance or lab results), construction details, two hard copy sets of specifications and one final digital file in Microsoft Word for Windows format, one construction cost estimate in Excel for Windows format, submittal and revisions to plans based upon City and Water District plan check comments (if required) and the submittal and routing of final mylar plans and specifications for approval.*

### **Task 2.2 65% Traffic Control Plans**

Consultant's subconsultant shall provide construction traffic handling, including traffic control plans. Detour base plans shall be prepared at 1"=40' for the project location and shall be field-reviewed for accuracy. Each plan will be 24"x36" and shall normally show a minimum of 2,000 feet of roadway with relevant medians, striping, and work area. These base drawings may be used more than once, based upon the number of construction phases. The design, legend, and location of all work area signs, barricades, and necessary additional traffic controls are designated and placed on the plan sheets. General notes applying to construction traffic control, a plan legend, and City plan border information are placed on each project sheet. The plans shall be prepared to conform to the general requirements of the City of Palm Springs, with consideration for the needs of the Contractor's construction operations. The project is expected to require four (4) sheets. These plans shall include the necessary phasing and staging for the improvements to the roadway and bridge, as well as a "stick map" showing the road closures, detour routes, and signing. Specific construction staging shall depend on the bridge replacement impacts to South Palm Canyon Drive.

*Deliverables: 65% Traffic Control Plans*

### **Task 2.3 65% Sign / Striping / Signal Modification Plans**

Consultant's subconsultant shall provide striping and signing plans as follows:

Signing & Striping Plans: Signing and striping plans shall be prepared, showing the affected construction area and all affected traffic stripes. The plans shall show the location of all proposed traffic stripes, markings, and the proper disposition of all affected existing signs and markings. Any work required to transition the proposed stripes to join with existing stripes on intersection approaches shall be provided. The final signing and striping plans shall be prepared for final plotting on D-sized sheets at 1" = 40', as appropriate. Two (2) striping plan sheets are envisioned for the project.

Signal Modification: Subconsultant shall prepare traffic signal modification plans for South Palm Canyon Drive and Sunny Dunes Road. The south leg of South Palm Canyon Drive is expected to be impacted by the bridge and roadway widening improvements. Also it is desirable to have mast-arm type signal poles and signal indicators for Sunny Dunes Road. Other signal improvements involving signing, additional safety lighting and pedestrian control may be

appropriate. Curb ramps are expected to be non-standard as part of the signal upgrades. The northwesterly corner has a partial curb return which should be examined and improved if possible. This intersection should be a part of the proposed detour route for closure of South Palm Canyon Drive.

*Deliverables: 65% Sign / Stripping / Signal Modification Plans*

#### **Task 2.4 95% Civil Roadway PS&E**

Comments from various agencies for the 65% roadway design submittal shall be reviewed and resolved. If needed, a meeting with the City or the review agencies shall be held to seek clarification on comments. The design team shall incorporate resolution of comments in the 95% PS&E. The roadway design team shall prepare special provisions for items of work and conditions that are not covered by the Standard Specifications for Public Work Construction (Green Book). Construction Technical Specifications for the roadway improvements shall be prepared using the City's format and the provided boilerplate materials. Each item of work shall include a method of measurement and payment. Quantity calculation and construction cost estimates in Microsoft Excel format with a contingency directed by the City shall be prepared. The design team shall conduct an internal QA/QC review of the project deliverables as described earlier in this document.

*Deliverables: 95% Civil Roadway PS&E*

#### **Structure (Bridge and Retaining Walls) PS&E**

##### **Task 2.5 60% Unchecked Structure Plans**

Engineering conclusions for the preferred alternative identified in the final bridge type selection report shall be carried into the final design phase. The final bridge design shall be based on Caltrans-amended AASHTO LRFD bridge design specifications, various Caltrans Bridge Design and Detail Manuals, and the Seismic Design Criteria (SDC).

*Deliverables: 65% unchecked structure plans*

##### **Task 2.6 Bridge Design Independent Check**

The 65% unchecked bridge plans shall be independently checked by a separate licensed bridge engineer, who has not been involved in the project. A separate set of design check calculations including quantity calculations shall be prepared in accordance with Caltrans bridge design practice. The checker shall review the plans for completeness, consistency, correctness of references. The bridge designer shall revise the design and plans to mitigate checker's review comments. The checker shall perform back check to concur that the comments have been adequately addressed. All comments and responses shall be documented in the project files.

*Deliverables: independent check review comments and check calculations, comment and response matrix*

##### **Task 2.7 95% Structure PS&E**

Response to all agencies' review comments for the 65% submittal shall be prepared and included in this submittal. Consultant shall use Microsoft Word to prepare and edit Caltrans 2010 Standard Special Provisions (SSP) for structural work at 95% PS&E. The design team shall prepare a list of Caltrans standard bridge pay items for bridge construction. Design quantity calculations shall be performed using standard Caltrans and City forms and marginal

cost estimate summary sheets. Item unit prices shall be adjusted using Contract Cost Data Book published by Caltrans. The plans shall be updated per checker's comments.

*Deliverables: 95% bridge plans, specifications and cost estimate*

### **Task 2.8 Final 100% Design PS&E and Contract Bid Documents**

Consultant shall incorporate City' review comments on 95% Roadway and Structure PS&E, and compile and submit final bridge and roadway PS&E packages per City's requirements. It is expected that the plans shall be prepared in AutoCAD 2010 or higher format and in PDF. The final plans are to be plotted on "Arch D" size Mylar. Specification documents, including technical specifications, shall be provided on compact disc in Microsoft Word format with all hidden text shown as well as in PDF. The Engineer's estimate shall be provided in Microsoft Excel format as well as in PDF.

The Final PS&E shall include organized Resident Engineer (RE) Pending File which contains construction related documents and information through the various project development phases for structure and roadway work. The RE Pending File shall include bridge 4-scale deck contour plots, as-built plans, geotechnical reports, and special instructions for the field Resident Engineer, Structure Representatives and City Inspectors.

*Deliverables: final contract bid documents and RE Pending Files*

### **Task 3 - Environmental Permitting:**

#### **Task 3.1 ACOE Section 404 Nationwide Permit**

Consultant's subconsultant shall initiate early and on-going consultation and coordination with the USACE pursuant to Sections 404 of the Federal Clean Water Act. As appropriate, subconsultant shall prepare applications and supporting documentation for a dredge and fill permit to be issued by the US Army Corps of Engineers (USACE) under Section 404 of the federal Clean Water Act. The scope of work assumes the adequacy of a Nationwide Permit. Work product shall include the completed application package and draft NEPA environmental studies and documentation provided to Caltrans and the City and addressing USACE issues. Subconsultant shall also facilitate the processing of the 404 permit through the USACE. The permitting fees shall be paid directly by the City.

*Deliverables: USACE CWA Section 404 Nationwide Permit application package; Associated NEPA documentation; 404 Permit.*

#### **Task 3.2 RWQCB Section 401 Water Quality Certification**

Consultant's subconsultant shall initiate early and on-going consultation and coordination with the CRWQCB pursuant to Sections 404 and 401 of the Federal Clean Water Act. Subconsultant shall also prepare and process applications and supporting documentation for the California Regional Water Quality Control Board for the issuance of a Section 401 certificate. The permitting fees shall be paid directly by the City.

*Deliverables: CWA Section 401 Certificate application packages prepared for and submitted to the CRWQCB*

#### **Task 3.3 CDFW 1602 Streambed Alteration Agreement**

Consultant's subconsultant shall prepare and process a Streambed Alteration Agreement (SAA) application as required by the California Department of Fish and Wildlife and in conformance with Section 1602 of the Fish and Game Code. The SAA shall be included in the CEQA IS/MND document project description and analyzed in the IS/MND document. CDFW may issue the Agreement following City's adoption of the Mitigated Negative Declaration. The permitting fees shall be paid directly by the City. Detailed tasks shall include the following:

- (1) Provide plant and wildlife survey of the project area, including surveys for federally listed and state-listed species, and an assessment of riparian habitat (including quantification of riparian habitat);
- (2) Prepare and submit to CDFW an assessment of the extent of temporary and permanent Tahquitz Creek Channel/streambed disturbance, within the project area of jurisdictional streambed delineation;
- (3) Prepare a written description of the project that covers the project features and activities and proposed construction methods in detail, including location of the activities, project features and activities, how the activities will be conducted, what equipment and materials will be needed for the activities, how access to the site will be achieved, and the schedule of activities;
- (4) Prepare maps showing the project site with a clear project boundary relative to a USGS topographic quadrangle or aerial photographs, including landmark information like street names or other features to identify the location, and include the USACE delineation information on the maps;
- (5) Prepare the Section 1602 Streambed Alteration Notification, along with the applications for RWQCB Water Quality Certification and a USACE Section 404 permit, a copy of a biological evaluation (based on the surveys conducted) including the assessment of riparian habitat (if any) in the project area, and a copy of any draft (and ultimately final) CEQA document prepared for the project;
- (6) Draft 1602 Agreement letter for use, modification and approval by CDFW

*Deliverables: CDFW Section 1602 Streambed Alteration Agreement application package and supporting exhibits and documentation; Draft CDFW SAA*

#### **Task 4 – Optional Tasks**

The following optional tasks (Tasks 4.1 to 5.0) shall be further authorized in writing by the City subsequent to Caltrans' authorization and its obligation of additional HBP funds.

##### **Task 4.1 Supplemental Engineering and Environmental Studies**

The project scope may be modified to include wider shoulders on the bridge deck, construction of a bike trail undercrossing along the Tahquitz Creek Channel, a longer bridge to accommodate a bike trail undercrossing, and signal modifications at the intersection of South Palm Canyon Drive and East Sunny Dunes Road. Upon City's authorization, Consultant shall perform the additional engineering and environmental studies in the PA&ED and Final Design phase of the work. Implementation of the construction of a bike trail undercrossing in the final design shall be further determined by the City and is not included in this scope.

##### **Task 4.2 Bridge Aesthetics Study and Visual Simulations**

Bridge Aesthetics Study: Consultant's subconsultant shall contract with and direct the efforts of landscape architects at in the preparation of two (each) conceptual alternative (sketches) for the bridge aesthetic elements which may include the following: barrier recess enhancements (interior), railing, hardscape treatment, pilasters, channel walls, and possibly an entry element. Subconsultant and their landscape architects shall necessitate a close and coordinated effort between team members. This task includes coordination with the project team, City staff,

Caltrans District 8 landscape architects (if applicable), outside agencies, and community groups. Preliminary cost estimates shall be provided for each of the two proposed alternatives in each category. The final report will depict the modifications desired from the review of the preliminary document.

**Visual Simulation:** Subconsultant shall contract for and manage preparation of one (1) computer-generated high-resolution visual simulation studies of the proposed bridge design, establishing viewshed analyses and locations with City and Caltrans staff. Two rounds of revisions are anticipated. Simulations shall use elevation data flown topography of the wash, existing bridge and surrounding lands, and the new bridge shall be modeled based on design data provided by project engineers.

*Deliverables: The preparation of two concepts for each of the bridge aesthetic components, supporting cost estimates, attendance of two meetings with City staff, one meeting with the Public Arts Commission, and one with City Council (if required), the preparation of an aesthetic design report; one photo visual simulation*

#### **Task 4.3 Right-of-Way Legal Descriptions and Plats**

Consultant's subconsultant shall prepare right-of-way map to support local assistance right of way certification, and prepare right-of-way legal descriptions and plats based on the final right of way acquisition needed for review by the City.

*Deliverables: right-of-way legal descriptions and plats signed by a licensed land surveyor*

#### **Task 4.4 Right-of-Way Appraisal and Acquisition**

**Pre-Appraisal Activities:** Consultant's subconsultant shall obtain a mailing list of property owners along with three sets of labels, for the area within a 1,000' radius from the project in order to support the environmental notification efforts. Subconsultant will mail a Notice of Decision to Appraise letter and acquisition policies brochure to the impacted property owners, requesting permission to conduct an on-site inspection of the property, advising them of their right to accompany the appraiser at the time of the inspection, and requesting information regarding the property appraised which could influence the appraised value.

**Appraisal/Appraisal Review – 4 ownerships parcels (11 Assessor parcels) to be appraised:** Appraiser shall review title information pertaining to respective ownerships and shall review drawings and other pertinent information relative to the parcel. Appraiser shall inspect each property personally with the owner (if possible) and document the inspection with photographs for use in the report. Appraiser shall inventory all improvements affected by the proposed taking, including notes on their manner of disposition (i.e., pay-for and remove vs. move back). Appraiser shall perform market research to support the selected appraisal methodologies and shall document and confirm comparable sales information. Appraiser shall prepare a narrative appraisal report that conforms to the Uniform Standards of Professional Appraisal Practice (USPAP). The appraisal study and report are intended to serve as an acquisition appraisal and shall be prepared in a summary format consistent with the specifications for narrative appraisal reports. Upon completion of the fee appraisal, subconsultant shall conduct a formal review by an independent appraiser in accordance with federal regulations and Caltrans procedures manual. Subconsultant shall receive and analyze the completed appraisal reports accordingly.

**Negotiate Right-of-Way Settlement/Prepare Acquisition Documents (Assumes acquisition of permanent and temporary easements from 4 ownership parcels):** Subconsultant shall establish and maintain a complete and current record file for each ownership in a form acceptable to the City, including maintaining a diary report of all contacts made with property owners or

representatives and a summary of the status of negotiations indicating attitude of owners, problem areas, and other pertinent information. Copies of all applicable written correspondence shall be maintained in files.

Subconsultant's acquisition agent shall receive and analyze title information, approved appraisal reports, and legal descriptions in sufficient detail to negotiate with property owners and other parties. Subconsultant shall prepare all offer letters and summary statements in accordance with state or federal regulations and approval of the City. Upon approval of Just Compensation, subconsultant shall present written purchase offers to owners or their representatives in person, when possible, secure receipt of delivery of offer as practical, and present and secure tenant information statements, as applicable. Subconsultant shall follow-up and negotiate with each property owner, as necessary; prepare and submit recommended settlement justifications to client for review and approval; review any independent appraisal secured by property owner; and coordinate reimbursement of appraisal fees (up to \$5,000) with the City. Ongoing negotiations and settlement discussions shall continue after the initial offer until a settlement or impasse is reached and clearly documented. When a settlement is reached with the property owner, subconsultant shall prepare and assemble acquisition contracts, deeds, and related acquisition documents required for the acquisition of necessary property interests and transmit executed acquisition documents to client. Each transmittal package shall include a fully executed and properly notarized deed(s), fully executed acquisition contract with attachments, and a brief settlement memorandum which summarizes the pertinent data relative to the transaction. If a settlement cannot be reached, subconsultant shall prepare an impasse letter for any parcel where, after diligent attempts to settle by negotiation, it appears eminent domain shall be needed or prudent to acquire the needed interest. In this event, subconsultant shall provide a condemnation-ready case file, all relevant negotiations history, and meet with the City as needed to provide relevant acquisition content.

Escrow Coordination: If necessary interests are acquired by negotiated settlement, subconsultant shall assist the escrow/title company in following:

1. Open escrow and coordinate execution of closing instructions providing for title insurance coverage at the settlement amount.
2. Provide escrow officer with fully executed acquisition contract and notarized deed.
3. Work in conjunction with escrow officer to facilitate the clearance of title matters as set forth in the settlement memorandum and escrow instructions.
4. Assist escrow to secure full or partial re-conveyance or subordination instruments from lien holders of record.
5. Review settlement statement for accuracy.
6. Coordinate deposit of acquisition price and estimated closing costs with escrow.
7. After the closing, review the title insurance policy for accuracy.
8. Prepare and mail a letter to County Assessor requesting cancellation of taxes if appropriate.

If necessary interests are secured through eminent domain proceedings, subconsultant shall assist eminent domain counsel with the following:

9. Prepare a letter for the client signature to eminent domain counsel, requesting proceeding to condemnation.
10. Provide eminent domain counsel with available right-of-way maps and legal descriptions, preliminary title reports and title review documents, and information on how to contact each owner or interest holder.
11. Provide eminent domain counsel with a duplicate copy of the parcel file, together with a copy of the appraisal, offer to purchase, correspondence, acquisition contract, and deed as presented.
12. Convert preliminary title reports to litigation guarantees for eminent domain counsels' use (Title Company fees are additional and not part of this scope).



Caltrans Right-of-Way Certification: The final phase of the right-of-way program is right-of-way certification which documents the construction project is ready for advertising. During this process, subconsultant shall coordinate and attend certification planning meeting with the City, Caltrans Right-of-Way Local Assistance Coordinator, and project team to determine project requirements and certification level required to meet project construction schedule. Subconsultant shall coordinate with the project engineer, as well as the utility relocation, property acquisition, and relocation managers to confirm their respective activities have been completed in compliance with all applicable laws and regulations. Subconsultant shall prepare certification forms in coordination with the engineer and the City to include the compilation of all necessary back-up documents required including; deed, final order of condemnation, access easements, cooperative agreements, permits, right of entries, etc. Subconsultant shall also attend and coordinate pre and post-audit submittal meetings.

*Deliverables: Notice of Decision to Appraise, Summary Appraisal Reports (4), Appraisal Review Reports (4), Acquisition documents and case files (4), Caltrans Certification Form and back-up documents.*

### **Bidding Phase Supports Design Construction Supports**

Consultant shall remain available to attend a pre-bid meeting to be scheduled in advance of the bid opening date. Consultant shall answer bidders' questions regarding the contract bid documents, and prepare bid addenda if required. Consultant shall perform bid review and analysis, if required.

Consultant shall attend a pre-construction meeting as directed by the City. Consultant shall review shop drawings and submittals for conformance with the contract plans and specifications, and make recommendations for acceptance, denial or re-submittal within reasonable time of receipt.

Consultant shall provide response to contractor's requests for information (RFI's) about the contract plans and specifications forwarded to Consultant by the City within reasonable time of receipt. Upon written authorization from the City, Consultant shall provide engineering design services for revisions to construction documents resulting from changed field or unforeseen conditions or other change order work required due to actions of the City. Subsequent change order documentation and processing shall be prepared by the City's Resident Engineer. Consultant shall perform up to five (5) site visits during the construction as requested by the City.

Following the completion and acceptance of the project, Consultant shall furnish the City with a complete set of revised contract drawings showing as-built conditions. Revisions shall be solely based on as-built redlined information provided by the Contractor and the City. The as-built plans will be delivered to the City within two months of receipt of redlined plans. The tasks for bidding and design construction supports are listed below:

#### **4.5 Pre-Bid Meeting**

#### **4.6 Bidding Interpretations**

#### **4.7 Bid Review and Analysis**

#### **4.8 Respond Contractor's RFI's and Review Shop Drawings/Submittals**

#### **4.9 Prepare Design Addenda**

#### **5.0 Prepare As-built Plans**

**END EXHIBIT "A"**

## 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-O1 *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-O2 *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 Consultant 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 Consultant 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 Consultant'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 and Phase 2 Contract Amount**

Task No.	Task Description	Cost
<b>Phase 1 - Environmental Document and Technical Studies</b>		
Task 1	Project Management	
1.1	Project Administration and Project Controls	\$38,109.05
1.2	Meetings and Coordination	\$28,057.20
1.3	Quality Assurance and Quality Control	\$8,880.82
Task 2	Planning and Project Development	
2.1	Research and Data Gathering	\$11,437.53
2.2	Surveys and Aerial Topographic Mapping	\$19,790.15
2.3	Right-of-Way Research and Base Mapping	\$24,908.38
2.4	Utility Research and Mapping	\$7,358.78
Task 3	Preliminary/Concept Plans	
3.1	Roadway Geometric Approval Drawings	\$20,733.80
3.2	Preliminary Geotechnical Investigations	\$8,407.48
3.3	Floodplain and Bridge Hydraulics Study	\$25,074.52
3.4	Roadway Drainage Study	\$9,429.07
3.5	Preliminary Right-of-Way Cost Estimates	\$7,508.55
3.6	Bridge Type Selection Study	\$44,981.88
Task 4	Environmental Approval	
4.1	Preliminary Environmental Study (PES)	\$12,643.09
4.2	Traffic Study	\$21,188.38
4.3	Phase I Initial Site Assessment	\$16,279.96
4.4	Water Quality Assessment Report (WQAR)	\$14,983.77
4.5	Location Hydraulic Study and Summary Floodplain Encroachment Report	\$6,803.86
4.6	Biological Study (Natural Environmental Study)	\$19,603.73
4.7	Wetlands Delineation and Assessment	\$7,648.85
4.8	Section 4(f) De Minimis	\$3,456.68

4.9	Visual Resources Technical Memorandum	\$9,621.61
4.10	Cultural Resources Study (ASR/HPSR/APE)	\$17,340.26
4.11	Air Quality Study (CEQA Purpose)	\$8,169.08
4.12	Draft Environmental Document (CEQA IS/MND)	\$13,593.89
4.13	Circulate Draft Environmental Document and Respond Comments (CEQA)	\$4,956.34
4.14	Final Environmental Document (CEQA IS/MND)	\$5,948.71
4.15	File Notice of Determination (CEQA)	\$11,487.17
<b>Phase 2 - Civil Engineering Design (Plans, Specifications and Estimates - PS&amp;E)</b>		
<b>Task 1</b>	<b>Final Design Reports and Studies</b>	
1.1	Utility Potholing	\$21,218.46
1.2	Geotechnical Design Reports	\$10,857.30
1.3	Storm Water Pollution Prevention Plan (SWPPP)	\$6,619.81
1.4	Utility Relocation Coordination	\$9,865.05
<b>Task 2</b>	<b>Plans, Specifications and Estimates (PS&amp;E)</b>	
	<b>Civil Roadway PS&amp;E</b>	
2.1	65% Roadway Plans	\$56,093.29
2.2	65% Traffic Control Plans	\$12,489.44
2.3	65% Sign/Stripping/Signal Modification Plans	\$13,044.59
2.4	95% Civil Roadway PS&E	\$34,856.13
	<b>Structure (Bridge and Retaining Walls) PS&amp;E</b>	
2.5	65% Unchecked Structure Plans	\$57,921.48
2.6	Bridge Design Independent Check	\$30,385.00
2.7	95% Structure PS&E	\$23,004.53
2.8	Final 100% Design PS&E and Contract Bid Documents	\$28,327.61
<b>Task 3</b>	<b>Environmental Permitting</b>	
3.1	ACOE Section 404 Nationwide Permit	\$19,117.04
3.2	RWQCB Section 401 Water Quality Certification	\$5,857.24
3.3	CDFW 1602 Streambed Alteration Agreement	\$9,435.89
	Subtotal Total Labor Cost	\$767,495.48
	Other Direct Cost (ODC)	\$22,500.00
	<b>Total Cost</b>	<b>\$789,995.48</b>

**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 Consultant 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 Consultant 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 Consultant'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)**

<b>Task No.</b>	<b>Task Description</b>	<b>Cost</b>
Task	Optional Tasks (Upon Written Authorization by Contract Officer)	
4.1	Supplemental Engineering and Environmental Studies	\$62,070.14
4.2	Bridge Aesthetics Study and Visual Simulations	\$37,288.10
4.3	Right-of-Way Legal Descriptions and Plats	\$16,211.94
4.4	Right-of-Way Appraisal and Acquisition	\$54,585.87
	Bidding Phase Supports	
4.5	Pre-Bid Meeting	\$701.43
4.6	Bidding Interpretations	\$3,577.11
4.7	Bid Review and Analysis	\$1,309.81
	Design Construction Supports	
4.8	Respond RFI's, Review Shop Drawings and Submittals	\$18,822.81
4.9	Prepare Design Addenda	\$8,164.64
5.0	Prepare As-Built Plans	\$7,187.51
	<b>Total Cost</b>	<b>\$209,919.36</b>

END EXHIBIT "C-2"

**EXHIBIT "D"**

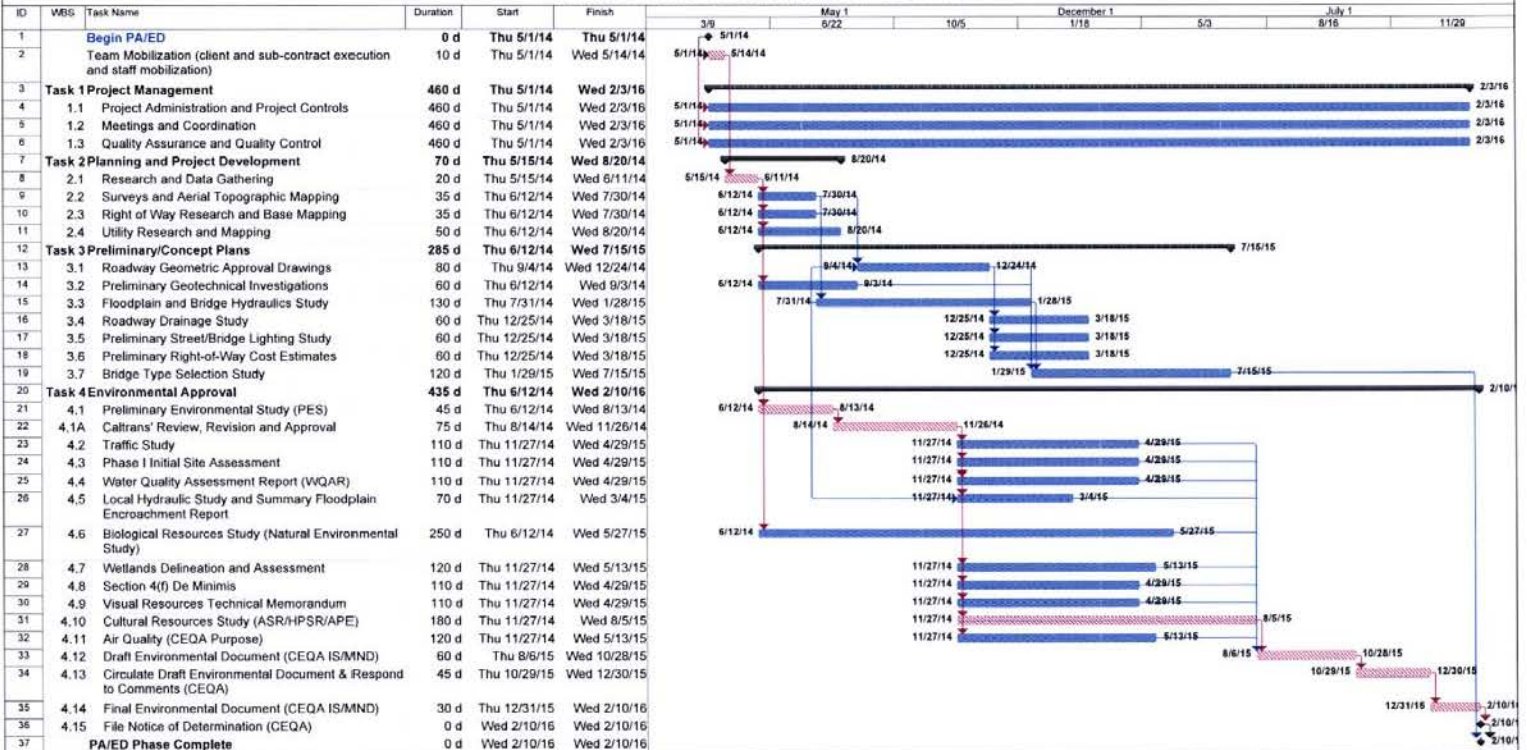
**SCHEDULE OF PERFORMANCE**

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 May 1, 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.

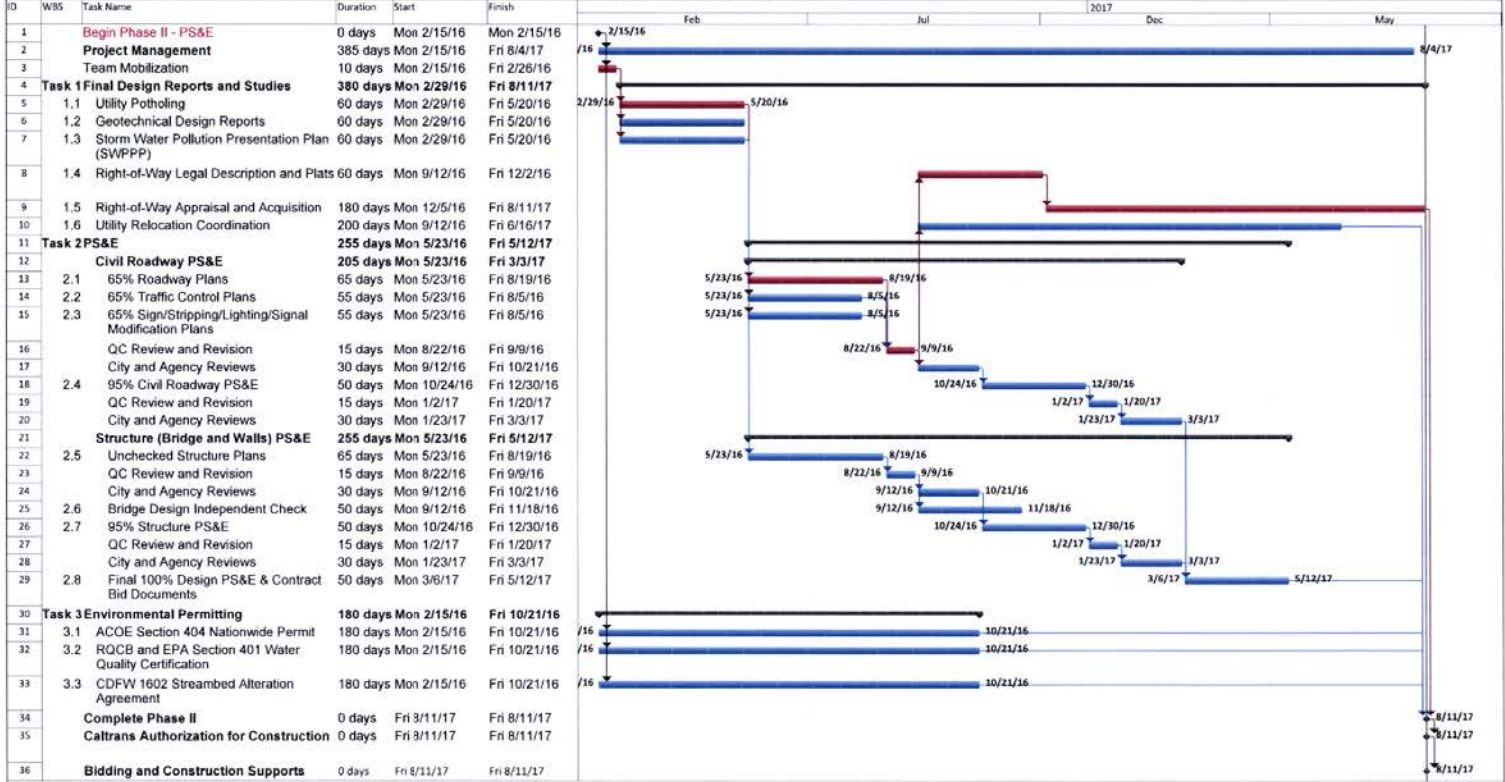
**END EXHIBIT "D"**

**City of Palm Springs - South Palm Canyon Drive Bridge at Tahquitz Creek Channel  
Phase I - Environmental Documents and Technical Studies**



Project: S Palm Canyon Drive Bridge at Tahquitz Creek Channel	Task	Summary	Split	Inactive Task	Manual Summary Rollup
Date: 03/4/2014	Task Progress	Rolled Up Task	External Tasks	Inactive Milestone	Manual Summary
CNS Engineers, Inc.	Critical Task	Rolled Up Critical Task	Project Summary	Inactive Summary	Start-only
	Critical Task Progress	Rolled Up Milestone	Group By Summary	Manual Task	Finish-only
	Milestone	Rolled Up Progress	Inactive Task	Duration-only	Deadline

City of Palm Springs - South Palm Canyon Drive Bridge at Tahquitz Creek Channel  
Phase 2 - Engineering Design (Plans, Specifications & Estimate [PS&E])



Project: S Palm Canyon Drive Bridge at Tahquitz Creek Channel  
Date: 3/4/2014  
CNS Engineers, Inc.

Task	Project Summary	Inactive Milestone	Manual Summary Rollup	Deadline
Split	External Tasks	Inactive Summary	Manual Summary	Critical
Milestone	External Milestone	Manual Task	Start-only	Critical Split
summary	Inactive Task	Duration-only	Finish-only	Progress

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