



## City Council Staff Report

Date: April 6, 2016 CONSENT CALENDAR

Subject: APPROVAL OF RIGHT OF WAY ACQUISITION AGREEMENTS FOR THE SOUTH PALM CANYON DRIVE LOW WATER CROSSING BRIDGE REPLACEMENT AT ARENAS CANYON SOUTH, CITY PROJECT NO. 06-18, FEDERAL AID PROJECT NO. BR-NBIL (502)

From: Marcus L. Fuller, Assistant City Manager/City Engineer

Initiated by: Public Works and Engineering Department

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### SUMMARY

The City has successfully completed the right-of-way acquisition process to obtain various permanent drainage and temporary construction easements required to construct improvements associated with the South Palm Canyon Drive Low Water Crossing Bridge Replacement at Arenas Canyon South, City Project No. 06-18, Federal Aid Project No. BR-NBIL (502), (the "Project"). This action will approve and authorize the Assistant City Manager to enter into the various agreements allowing for acquisition of the permanent drainage and temporary construction easements (the City Manager owns property within 500 feet of the Project, and is not participating in any actions associated with the Project).

### RECOMMENDATION:

1. Approve a Right-of-Way Agreement for Acquisition of Flood Control and Drainage Easement, Agreement (A\_\_\_\_), in the amount of Zero Dollars (\$0) with 4348 Lockwood Avenue, LLC, a California Limited Liability Company, as to an undivided twenty-six percent interest (26%) interest, Michael L. Cole and Janet K. Cole, husband and wife as joint tenants, as to an undivided four percent (4%) interest, and Jogesh Kumar Vashisht and Sunita Kumar Vashisht, Trustees for the Vashisht Family Revocable Trust Dated May 2, 2001 and Restated May 4, 2010, as to an undivided seventy percent (70%) interest, all as tenants in common; and
2. Approve a Temporary Construction Easement Agreement, (A\_\_\_\_), in the amount of \$29,000 with 4348 Lockwood Avenue, LLC, a California Limited Liability Company, as to an undivided twenty-six percent interest (26%) interest, Michael L. Cole and Janet K. Cole, husband and wife as joint tenants, as to an undivided four percent (4%) interest, and Jogesh Kumar Vashisht and Sunita Kumar Vashisht, Trustees for

ITEM NO. 24

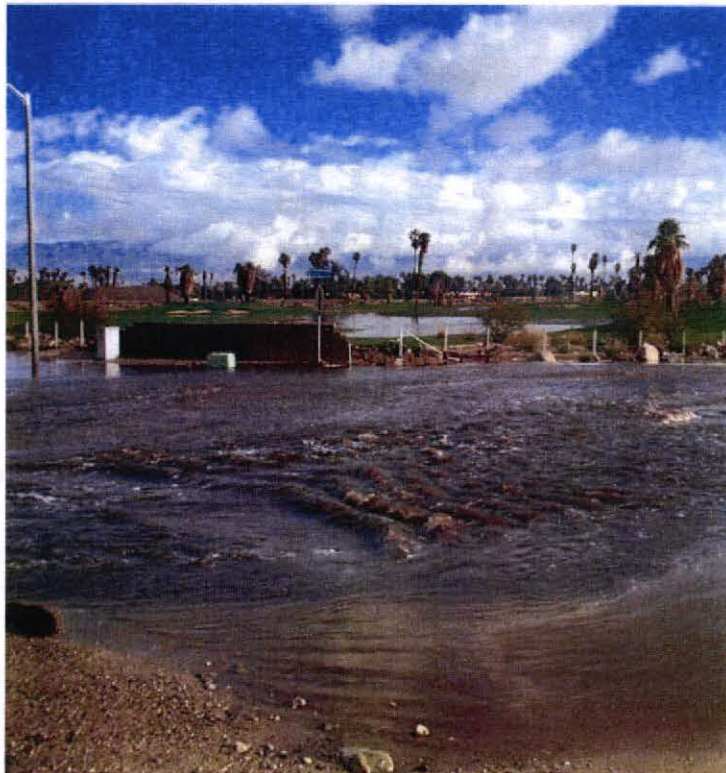
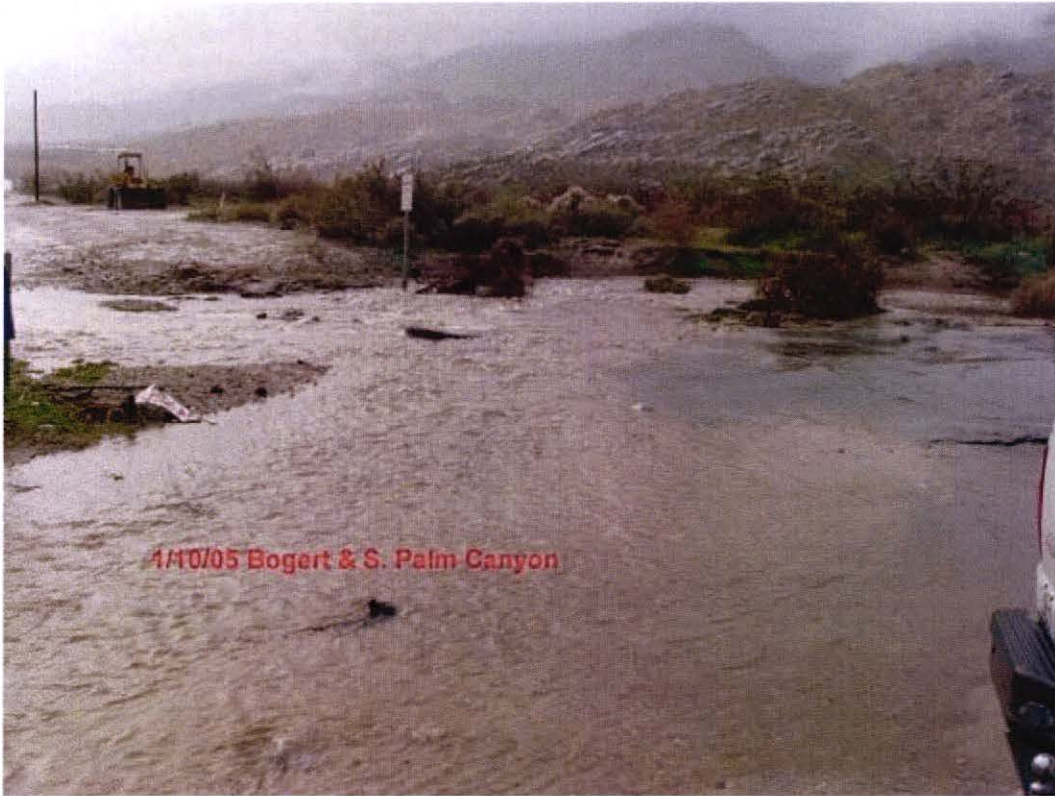
the Vashisht Family Revocable Trust Dated May 2, 2001 and Restated May 4, 2010, as to an undivided seventy percent (70%) interest, all as tenants in common; and

3. Approve an Assignment of Easement, Agreement (A\_\_\_\_), in the amount of Zero Dollars (\$0) with 4348 Lockwood Avenue, LLC, a California Limited Liability Company, as to an undivided twenty-six percent interest (26%) interest, Michael L. Cole and Janet K. Cole, husband and wife as joint tenants, as to an undivided four percent (4%) interest, and Jogesh Kumar Vashisht and Sunita Kumar Vashisht, Trustees for the Vashisht Family Revocable Trust Dated May 2, 2001 and Restated May 4, 2010, as to an undivided seventy percent (70%) interest, all as tenants in common; and
4. Authorize the Assistant City Manager to execute all necessary documents, open escrow, and pay for associated escrow and title costs associated with the right-of-way acquisitions.

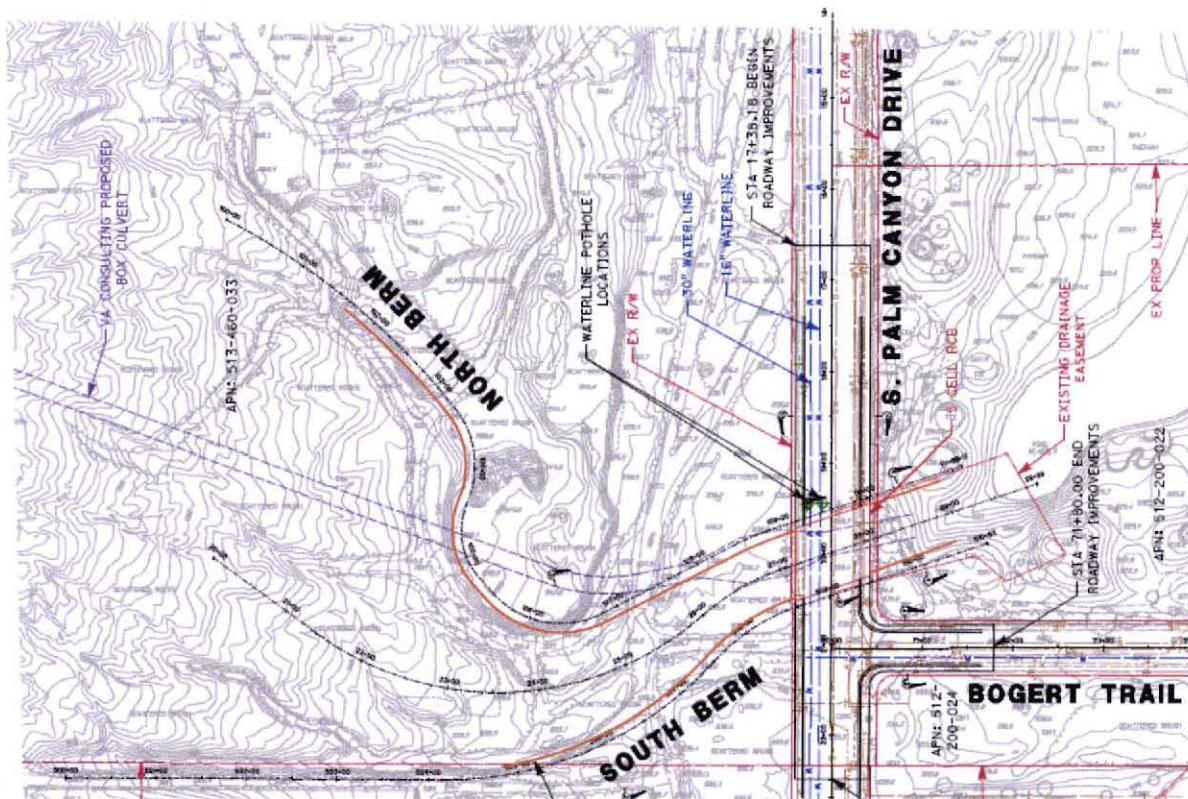
STAFF ANALYSIS:

In 2005, the City applied for funding through the Highway Bridge Program (HBP) for construction of a new bridge on South Palm Canyon Drive, just north of Bogert Trail. The existing roadway is subject to flooding from the Arenas Canyon South drainage channel; and the HBP provides federal-aid funding for construction of new bridges over low water crossings. The City's application was in response to flooding from January 2005, as shown in the following photos:





This flooding event completely closed the S. Palm Canyon Drive / Bogert Trail intersection, restricting access into an area comprised of over 800 residential properties in the southerly portion of the City. The City proposes to construct a new flood control drainage structure to accept and convey the stormwater runoff generated in the San Jacinto Mountains to the west, through a new box-culvert structure under S. Palm Canyon Drive immediately north of Bogert Trail, directing the runoff into the adjacent Indian Canyons Golf Course. The proposed solution includes reconstruction of existing earthen berms located on the adjacent private property, allowing the existing stormwater runoff to be channeled and directed into a new box-culvert structure in S. Palm Canyon Drive which will be reconstructed and elevated to allow for construction of a 5-cell 4'x14' box-culvert structure, 74 feet wide, within S. Palm Canyon Dr., as generally shown in the following figure.



In 2005, the City applied for \$4,055,000 in funding through the federal Highway Bridge Program (HBP) for construction of the Project; the HBP will cover 88.53% of the estimated total project cost of \$4,581,000. Caltrans approved the City's HBP grant application, and awarded the City federal funding for the Project. On October 4, 2006, the California Department of Transportation, ("Caltrans"), as the agency responsible for administering the City's federal grant funds, gave the City authorization to proceed with the Project.

The Project requires acquisition of permanent drainage easements within the adjacent private property identified by Assessor Parcel Number (APN) 514-460-033 located on the west side of S. Palm Canyon Dr., including temporary construction easements, as generally shown on the following Figure 3.



Source: ESRI 2010, Dokken Engineering 4/27/2011





0 500 Feet

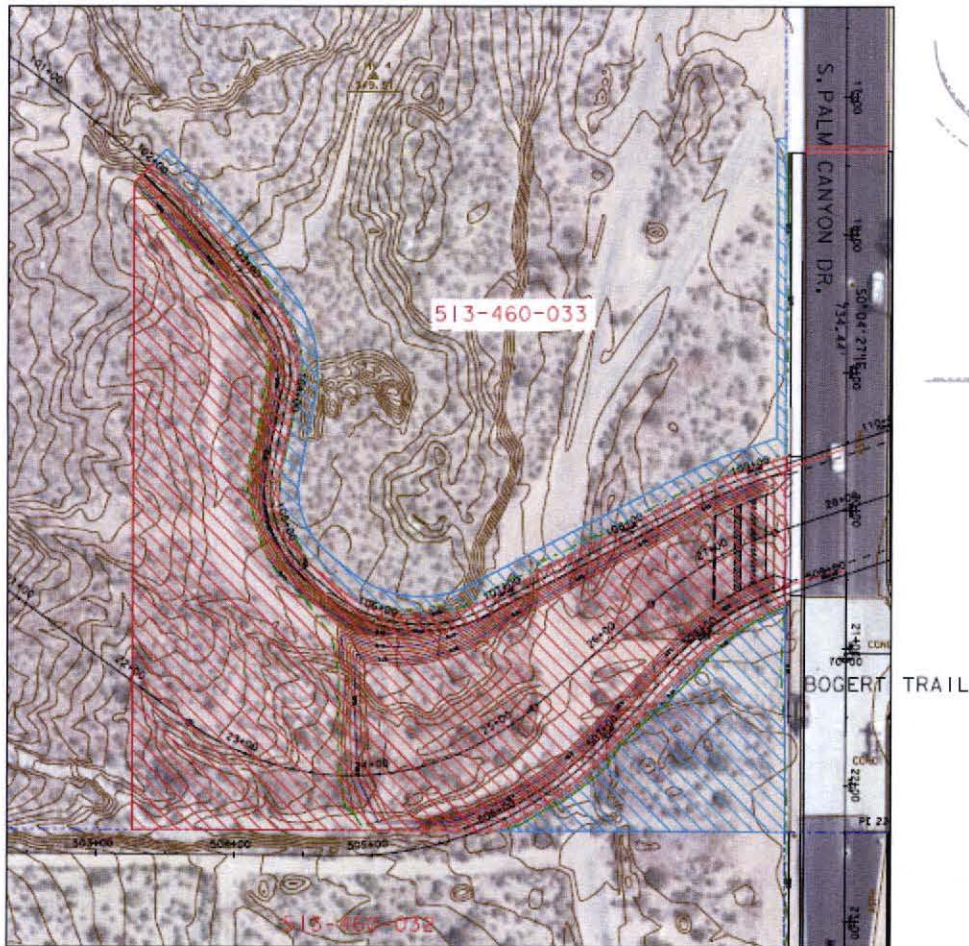
**FIGURE 3**  
**PROPOSED PROJECT**

08-RIV-City of Palm Springs  
 Federal Project No. BR-NBIL (502)  
 South Palm Canyon Drive Bridge Project  
 Palm Springs, Riverside County, California

The project also requires a permanent drainage easement for the outlet structure into the Indian Canyons Golf Course property, identified by APN 512-200-022, a property that is Indian allottee property owned in trust by the Bureau of Indian Affairs (BIA). However, a permanent drainage easement was previously acquired from the BIA for the Project by a prior developer, and the owners in interest of the BIA easement have agreed to transfer and assign their drainage easement to the City for the Project.

Specifically, the Project requires the following right-of-way acquisitions from the property owners of APN 513-460-033:

- Permanent drainage easement of 2.39 acres shown as 
- Temporary construction easement of 0.68 acres shown as 



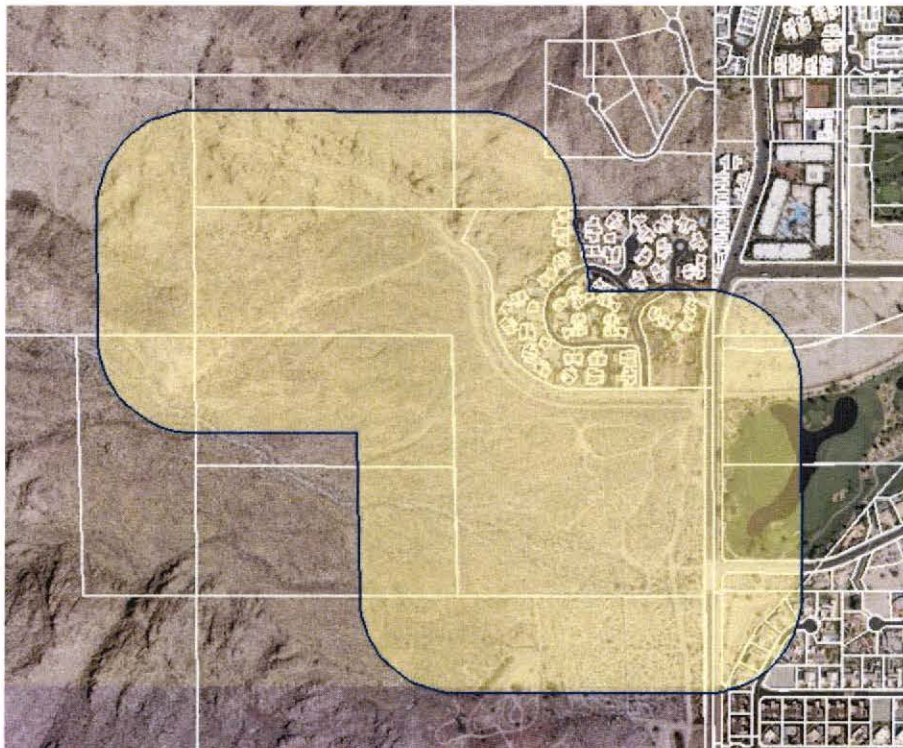
Right-of-way negotiations with the property owners were initiated in 2015, and as a result, the property owners have agreed to donate the permanent drainage easement of 2.39 acres to the City at no cost, on the basis that these property owners are currently

processing a new entitlement with the City for "Eagle Canyon", a residential subdivision for their property, which would reconstruction construction of new on-site storm drain systems rendering the drainage easement unnecessary at that time. To the extent an entitlement is approved by the City for this property, and the developer proceeds to construct on-site storm drain and flood control improvements in accordance with City approved plans, the permanent drainage easement would be vacated and quitclaimed by the City back to the property owner at that time.

Right-of-way negotiations have concluded for acquisition of the temporary construction easements, and an agreement has been reached whereby the City will rent the required 0.68 acres of their property at a cost of \$29,000 for a period terminating on December 31, 2019.

The property owners have agreed to assign the drainage easement acquired from the BIA at no cost to the City.

Agreements have been prepared and are recommended for the City Council's approval, which include the Right-of-Way Agreement for Acquisition of Flood Control and Drainage Easement (**Attachment 1**), Temporary Construction Easement Agreement (**Attachment 2**), Assignment of Easement (**Attachment 3**). A 500 feet radius from the subject property affected by these agreements is provided in the following figure.



**500' Radius Map**

### ENVIRONMENTAL IMPACT:

Section 21084 of the California Public Resources Code requires Guidelines for Implementation of the California Environmental Quality Act ("CEQA"). In accordance with the CEQA Guidelines, the City acting as "Lead Agency" pursuant to CEQA, previously completed an environmental analysis of the potential impacts resulting from construction of the Project. On January 18, 2012, the City Council adopted Resolution No. 23076, adopting and ordering the filing of a Mitigated Negative Declaration for the Project. Subsequently, on January 23, 2012, staff filed a Notice of Determination with the Riverside County Clerk and State Clearing House; a copy of the Notice of Determination is included as **Attachment 4**.

The Project is funded, in part, by federal funds, requiring local oversight by the State of California, Department of Transportation ("Caltrans"). As a federally funded project, the Project is subject to environmental review pursuant to the National Environmental Policy Act ("NEPA"). On February 6, 2012, Caltrans, acting as the lead agency pursuant to NEPA, made an environmental determination that the Project does not individually or cumulatively have a significant impact on the environment as defined by NEPA and is excluded from the requirements to prepare an Environmental Assessment ("EA") or Environmental Impact Statement ("EIS"), has considered unusual circumstances pursuant to 23 CFR 771.117(b), and that it qualifies for a Categorical Exclusion in accordance with 23 CFR 771.117(d). A copy of the NEPA Categorical Exclusion issued by Caltrans is included as **Attachment 5**.

### FISCAL IMPACT:

The costs to acquire the rights-of-way for this Project are as follows:

- Permanent drainage easement of 2.39 acres; \$0
- Temporary construction easement of 0.68 acres; \$29,000
- Assignment of BIA easement; \$0

It is estimated that escrow and title fees of approximately \$5,000 may be incurred in addition to the acquisition costs for the rights-of-way.

Funding for the Project is made possible by the federal HBP grant which will cover 88.53% of all eligible project costs. Sufficient funding is available for payment of \$29,000 for the temporary construction easement from the following accounts:

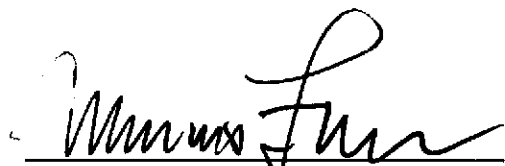
Capital Project Fund, Account No. 261-4491-50221; \$25,673.70

Gas Tax Fund, Account No. 133-4298-50221; \$3,326.30

Applicable escrow fees will be funded from these accounts in a similar split of 88.53% / 11.47%.



SUBMITTED

A handwritten signature in black ink, appearing to read "Marcus Fuller", written over a horizontal line.

Marcus L. Fuller, MPA, P.E., P.L.S.  
Assistant City Manager/City Engineer

Attachments:

1. Right-of-Way Agreement for Acquisition of Flood Control and Drainage Easement
2. Temporary Construction Easement Agreement
3. Assignment of Easement
4. CEQA Notice of Determination
5. NEPA Categorical Exclusion

# **ATTACHMENT 1**

Project: South Palm Canyon Drive Drainage Improvement Project  
Project No.: Federal Project No. BR-NBIL (502), City Project No. 06-18  
APN: 513-460-033

**RIGHT-OF-WAY AGREEMENT  
FOR ACQUISITION OF FLOOD CONTROL AND DRAINAGE EASEMENT**

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THIS AGREEMENT FOR ACQUISITION OF A FLOOD CONTROL AND DRAINAGE EASEMENT, ("Agreement"), dated and entered into for solely for reference purposes as of \_\_\_\_\_, 2016, by and between the CITY OF PALM SPRINGS, a California charter city and municipal corporation ("City") and 4348 Lockwood Avenue, LLC, a California Limited Liability Company, as to an undivided twenty-six percent interest (26%) interest, Michael L. Cole and Janet ~~W~~<sup>JK</sup> Cole, husband and wife as joint tenants, as to an undivided four percent (4%) interest, and Jogesh Kumar Vashisht and Sunita Kumar Vashisht, Trustees for the Vashisht Family Revocable Trust Dated May 2, 2001 and Restated May 4, 2010, as to an undivided seventy percent (70%) interest, all as tenants in common (collectively, "Owner"), with reference to the following facts:

**RECITALS**

A. Owner is the owner of certain real property designated as Assessor's Parcel No. 513-460-033, (the "Property"), located in the City of Palm Springs (the "City"), the County of Riverside (the "County"), State of California (the "State").

B. City desires to acquire a portion of Owner's Property as an exclusive flood control and drainage easement, (the "Easement"), to facilitate construction of the South Palm Canyon Drive Drainage Improvement Project, Federal Project No. BR-NBIL (502), City Project No. 06-18, (the "Project"); the Easement is more particularly described on Exhibit A and shown on Exhibit B attached hereto, (the "Easement Area").

C. Owner voluntarily waives its right to payment of the fair market value as compensation for the City's acquisition from Owner of the Easement Area, and agrees to donate to City and City desires to accept from Owner the Easement over the Easement Area as necessary to construct the Project, in accordance with the terms and conditions contained in this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained in this Agreement, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged by Owner, City and Owner (hereinafter collectively referred to as the "Parties", or individually as a "Party") hereby agree as follows:

## AGREEMENT

### 1. CONVEYANCE OF EASEMENT.

1.1. Agreement to Donate. Subject to the terms and conditions set forth herein, Owner hereby agrees to convey to City, and City hereby agrees to acquire from Owner, the Easement being over, upon, under, across, and within the entirety of the Easement Area as such area, scope and use is more particularly described in the Grant of Easement Deed, (attached hereto as Exhibit C), which Exhibits A and B attached thereto define the Easement Area, and shall be made a part thereof.

1.2. Purchase Price. The purchase price ("Purchase Price") for the Easement shall be Zero Dollars (\$0). Owner hereby acknowledges that City has previously submitted an offer to Owner to acquire the Easement over the Easement Area in an amount equal to City's determination of the fair market value of Two Hundred Fifty Thousand Dollars (\$250,000) in accordance with applicable state and federal law, and Owner hereby agrees to waive its rights to compensation for the City's acquisition of the Easement over the Easement Area from the Owner.

### 2. ESCROW AND CLOSING.

2.1. Opening of Escrow. Within fourteen (14) business days after execution of this Agreement by the City, City shall open an escrow (the "Escrow") with Stewart Title of California, at the address set forth in Section 7.12 ("Escrow Holder"), by depositing with Escrow Holder this Agreement fully executed, or executed counterparts hereof. The date this fully executed Agreement is signed and accepted by Escrow Holder on the last page hereof shall be deemed the "Opening of Escrow" and Escrow Holder shall advise City and Owner of such date in writing. The escrow instructions shall incorporate this Agreement as part thereof and shall contain such other standard and usual provisions as may be required by Escrow Holder, provided, however, that no escrow instructions shall modify or amend any provision of this Agreement, unless expressly set forth in writing by mutual consent of City and Owner. In the event there is a conflict between any such standard or usual provisions and the provisions of this Agreement, the provisions of this Agreement shall control.

2.2. Escrow Fees and Other Charges. At the Close of Escrow, City agrees to pay all of Owner's and City's usual fees, charges and costs incidental to the conveyance of the Easement and Close of Escrow that may arise in this Escrow, including, but not limited to, any costs for the Standard Coverage Policy (defined below) or if elected, an CLTA Extended Coverage Owner's Policy.

2.3. Closing Date; Conditions Precedent to Close of Escrow. Provided all of the conditions set forth in this Section 2.3 have been satisfied (or are in a position to be satisfied concurrently with the Close of Escrow), the Close of Escrow shall occur on or before April 30, 2016, (the "Closing Date"). As used in this Agreement, the "Close of Escrow" shall mean the date a Grant of Easement Deed, as provided in Section 2.4.2(a) hereof, is recorded in the Official Records of the County.

2.3.1 Conditions of City for Close of Escrow. The Close of Escrow and Owner's obligation to convey the Easement are subject to the satisfaction of the following conditions or City's written waiver of such conditions, on or before the Closing Date. City may waive in writing any or all of such conditions in its sole and absolute discretion.

(a) Owner shall have performed all obligations to be performed by Owner pursuant to this Agreement;

(b) No event or circumstance shall have occurred, which, in the sole opinion of City, would make any of Owner's representations, warranties and covenants set forth herein untrue as of the Close of Escrow, including, but not limited to, those warranties and representations of Owner set forth in Sections 3.4 and 4.1 of this Agreement;

(c) There shall have occurred no material adverse change in the physical condition of the Easement Area (such as those caused by natural disasters), which, in the sole opinion of City, would render the Easement Area unsuitable for City's intended use, materially increase the cost, or cause a material delay in the schedule for construction of the Project;

(d) The Title Company shall be committed to issue to City, as of the Closing Date, the Title Policy (defined below) covering the Easement Area, subject only to the Permitted Exceptions; and

(e) Owner shall have caused any lien or charge of any deed of trust that encumbers the Easement Area to be subordinated to the rights of City under the terms of the Easement.

2.3.2 Conditions of Owner for Close of Escrow. The Close of Escrow and Owner's obligation to sell and convey the Easement are subject to the satisfaction of the following conditions or Owner's written waiver of such conditions on or before the Closing Date. Owner may waive in writing any or all of such conditions as a condition to the Close of Escrow in its sole and absolute discretion.

(a) City shall have performed all obligations to be performed by City pursuant to this Agreement; and

(b) No event or circumstance shall have occurred which would make any of City's representations, warranties, and covenants set forth herein untrue as of the Close of Escrow including, but not limited to, those warranties and representations of City set forth in Section 4.2 of this Agreement.

2.3.3 Waiver of a Condition Does Not Excuse Performance. If any condition precedent to the Close of Escrow is expressly waived, in writing, as a condition to the Close of Escrow by the party for whose benefit such condition exists, then, to the extent such condition is capable of being satisfied following the Close of Escrow, such condition shall become a condition subsequent to the Close of Escrow and shall be satisfied by the party whose performance is required to satisfy such condition as soon as reasonably possible following the Close of Escrow.

2.4. Closing Funds and Documents. The parties shall deposit the following with Escrow Holder prior to the Close of Escrow:

2.4.1 City's Deposits. City shall deposit:

- (a) City's escrow and other cash charges; and
- (b) A Certificate of Acceptance for the Grant of Easement Deed executed by the City Clerk of the City of Palm Springs (See, Exhibit C).

2.4.2 Owner's Deposits. Owner shall deposit:

- (a) The Grant of Easement Deed in the form of Exhibit C attached hereto, appropriately executed to convey the Easement subject only to the Permitted Exceptions (defined below).

2.4.3 Deposits of Additional Instruments. Owner and City shall each deposit such other instruments as are reasonably required by Escrow Holder or otherwise required to proceed to the Close of Escrow and consummate the grant of the Easement in accordance with the terms of this Agreement.

2.5. Closing.

2.5.1 Necessary Actions of Escrow Holder. On the Close of Escrow, Escrow Holder shall in the following order: (i) record the Grant of Easement Deed and Certificate of Acceptance in the Office of the County Recorder of the County; (ii) pay any transfer taxes; (iii) instruct the County Recorder to return the Grant of Easement Deed to City; (iv) distribute to Owner the Purchase Price; and (v) deliver to City the Title Policy covering the Easement Area subject only to the Permitted Exceptions, if any.

2.5.2 Real Estate Taxes. Owner will be responsible for any reduction or may seek reimbursement from the Riverside County Tax Assessor's office for any property taxes that have been assessed for a period after the Close of Escrow. City further agrees to cooperate with Owner to provide any necessary information to the Assessor's office in connection with such request for refund.

2.6. Failure to Close; Termination.

2.6.1 Neither Party in Default. In the event that any condition set forth in Section 2.3 (and its subdivisions) is not satisfied or waived, in writing, and the Close of Escrow does not occur within the time required herein due to the failure of such condition or the Close of Escrow does not occur within the time frame required herein for any reason, with or without fault of Owner or City, this Agreement is terminated; Escrow Holder, with no further instructions from the parties hereto, shall return to the depositor thereof any funds, or other materials previously delivered to Escrow Holder, the Escrow shall be automatically terminated and of no force and effect; City shall pay any Escrow termination fees; and except as otherwise provided herein the parties will have no further obligation to one another.

3. ACTIONS PENDING CLOSING.

3.1. Title Review.

3.1.1 Title Report. Within five (5) business days after the Opening of Escrow, Stewart Title of California (the "Title Company") will furnish City with an updated Title Commitment on the Easement Area together with legible copies of all documents referenced therein as exceptions to title and a plot plan for the Easement Area showing all the locations of all easements referenced therein (collectively, the "Title Commitment").

3.1.2 Title Notices. City shall have ten (10) business days after its actual receipt of the Title Commitment to deliver to Escrow Holder written notice (the "Preliminary Title Notice") of City's approval, conditional approval, or disapproval of the title exceptions and other matters disclosed in the Title Commitment. All title exceptions not timely approved by City will be deemed disapproved. All such exceptions and other matters disapproved by City are referred to herein as "Disapproved Exceptions". It shall be the sole responsibility of City to remove any Disapproved Exceptions.

3.1.3 Permitted Exceptions. "Permitted Exceptions" shall mean all exceptions appearing on the Title Commitment which are: (i) standard printed exceptions in the Title Policy issued by Title Company; (ii) general and special real property taxes and assessments, a lien not yet due and payable; and (iii) any other liens, easements, encumbrances, covenants, conditions and restrictions of record approved, or expressly waived by City pursuant to this Section 3.1.

3.2. Title Policy. City's obligation to proceed to the Close of Escrow shall be conditioned upon the commitment by Title Company to issue an ALTA Standard Coverage Owner's Policy of Title Insurance (the "Standard Coverage Policy"), showing title to the Easement Area vested in City with liability equal to the Purchase Price, subject only to the Permitted Exceptions. At City's option, City may require an CLTA Extended Coverage Owner's Policy instead of the Standard Coverage Policy provided that City pays any additional premium on account thereof. The form of title policy selected by City shall be referred to herein as the "Title Policy".

3.3. Immediate Possession and Use. It is mutually understood and agreed by and between the parties hereto that the right of exclusive possession and use of the Easement Area and Easement by the City, including the right to remove and dispose of improvements, shall commence upon the execution of this Agreement by Owner.

3.4. Owner's Covenant Not to Further Encumber the Easement Area. Owner shall not, directly or indirectly, alienate, encumber, transfer, option, lease, assign, sell, transfer or convey its interest or any portion of its interest in the Easement Area, or enter into any agreement to do so, prior to the close of escrow, and will immediately notify City if any of these actions are taken. Owner shall discharge and remove, prior to the Closing, any and all liens and other obligations relating to work performed on, conducted at, or materials delivered to the Easement Area by Owner, or at Owner's direction or on its behalf, in order to preclude the filing of any claim or mechanic's lien with respect to such work or materials.

4. REPRESENTATIONS, WARRANTIES AND COVENANTS.

4.1. Owner's Representations, Warranties and Covenants. In addition to the representations, warranties, and covenants of Owner contained in other sections of this Agreement, Owner hereby represents, warrants and covenants to City as follows, all of which shall survive the Close of Escrow:

4.1.1 Owner's Authority. Owner has the capacity and full power and authority to enter into and carry out the agreements contained in, and the transactions contemplated by, this Agreement, and that this Agreement has been duly authorized and executed by Owner, and upon delivery to and execution by City, shall be a valid and binding agreement of Owner.

4.1.2 Leases. There are no leases, rental agreements, or other such contracts of any kind or nature affecting possession or occupancy of the Easement Area, and Owner shall not enter into any such contracts during the terms of this Agreement without the prior consent of City.

4.1.3 No Liens and Subordination. Owner warrants that at the time of the Close of Escrow, Owner shall have caused any lien and charge of any deed of trust that encumbers the Easement Area to be subordinated to the rights of City under the terms of the Easement.

4.1.4 No Untrue Statements or Omissions of Fact. Each of the representations and warranties made by Owner in this Agreement, or in any exhibit, or on any document or instrument delivered pursuant hereto shall be continuing representations and warranties which shall be true and correct in all material respects on the date hereof, and shall be deemed to be made again as of the Close of Escrow and shall then be true and correct in all material respects. The truth and accuracy of each of the representations and warranties, and the performance of all covenants of Owner contained in this Agreement, are conditions precedent to the Close of Escrow. Owner shall immediately notify City of any fact or circumstance which becomes known to Owner which would make any of the representations or warranties in this Agreement untrue.

4.2. City's Representations and Warranties. City represents and warrants to Owner as follows, all of which shall survive the Close of Escrow:

4.2.1 City's Authority. City has the capacity and full power and authority to enter into and carry out the agreements contained in, and the transactions contemplated by, this Agreement, and that this Agreement has been duly authorized and executed by City and, upon delivery to and execution by Owner, shall be a valid and binding Agreement of City.

4.2.2 No Untrue Statements or Omissions of Fact. Each of the representations and warranties made by City in this Agreement, or in any exhibit or on any document or instrument delivered pursuant hereto, shall be continuing representations and warranties which shall be true and correct in all material respects on the date hereof, and shall be deemed to be made again as of the Close of Escrow, and shall then be true and correct in all material respects. The truth and accuracy of



each of the representations and warranties, and the performance of all covenants of City contained in this Agreement, are conditions precedent to the Close of Escrow. City shall notify Owner immediately of any facts or circumstances which are contrary to the representations and warranties contained in this Agreement.

4.3. Mutual Indemnity. Owner and City shall defend, indemnify, and hold free and harmless the other from and against any losses, damages, costs and expenses (including attorneys' fees) resulting from any inaccuracy in or breach of any representation or warranty of the indemnifying party or any breach or default by such indemnifying party under any of such indemnifying party's covenants or agreements contained in this Agreement and the City further agrees to indemnify and hold harmless Grantor from any liability arising out of City's operations under this Agreement and agrees to assume responsibility for any damages proximately caused by reason of City's operations under this Agreement and City will, at its option, either repair or pay for such damage. The Grantor shall be named as an additional insured under the Grantee or its contractor's liability insurance.

5. CONDEMNATION. Owner and City acknowledge that this transaction is a negotiated settlement *in lieu* of condemnation, and Owner hereby agrees and consents to the dismissal or abandonment of any eminent domain action in the Superior Court of the State of California in and for the City of Palm Springs, wherein the herein described Easement Area or Easement is included, in whole or in part, and also waives any and all claims to any money on deposit in the action and further waives all attorneys' fees, costs, disbursements, and expenses incurred in connection therewith. If, prior to the close of the execution of this transaction, Owner is served with a Summons and Complaint in Eminent Domain in which Owner is a named defendant, upon the Close of Escrow, Owner agrees and consents to City taking a default in the action. Moreover, the consideration set forth in this Agreement provides for the acquisition from Owner of the Easement over the Easement Area, and any rights which exist or may arise out of the acquisition of the Easement for public purposes, including without limitation, Owner's interest in the land and any improvements located thereon, improvements pertaining to the realty (if any), severance damages, any alleged pre-condemnation damages, loss of business goodwill (if any), costs, interest, attorney's fees, and any claim whatsoever of Owner which might arise out of or relate in any respect to the acquisition of the Easement over the Easement Area by the City.

6. BROKERS. Owner and City each represents and warrants to the other that they have not dealt with or been represented by any brokers or finders in connection with the conveyance of the Easement and that no commissions or finder's fees are payable in connection with this transaction. City and Owner each agree to indemnify and hold harmless the other against any loss, liability, damage, cost, claim or expense (including reasonable attorneys' fees) incurred by reason of breach of the foregoing representation by the indemnifying party. Notwithstanding anything to the contrary contained herein, the representations, warranties, indemnities and agreements contained in this Section 6 shall survive the Close of Escrow or earlier termination of this Agreement.

7. GENERAL PROVISIONS.

7.1. Counterparts; Facsimile Signatures. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument and any executed counterpart may be delivered by facsimile transmission with the same effect as if an originally executed counterpart had been delivered.

7.2. Further Assurances. Each of the parties agree to execute and deliver such other instruments and perform such acts, in addition to the matters herein specified, as may be appropriate or necessary to effectuate the agreements of the parties, whether the same occurs before or after the Close of Escrow.

7.3. Entire Agreement. This Agreement, together with all exhibits hereto and documents referred to herein, if any, constitute the entire agreement among the parties hereto with respect to the subject matter hereof, and supersede all prior understandings or agreements. This Agreement may be modified only by a writing signed by both parties. All exhibits to which reference is made in this Agreement are deemed incorporated in this Agreement whether or not actually attached.

7.4. Headings. Headings used in this Agreement are for convenience of reference only and are not intended to govern, limit, or aid in the construction of any term or provision hereof.

7.5. Choice of Law. This Agreement and each and every related document are to be governed by, and construed in accordance with, the laws of the State of California.

7.6. Severability. If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction or rendered by the adoption of a statute by the State of California or the United States invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Agreement, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby; provided that the invalidity or unenforceability of such provision does not materially adversely affect the benefits accruing to, or the obligations imposed upon, any party hereunder, and the parties agree to substitute for the invalid or unenforceable provision a valid and enforceable provision that most closely approximates the intent and economic effect of the invalid or unenforceable provision.

7.7. Waiver of Covenants, Conditions or Remedies. The waiver by one party of the performance of any covenant, condition or promise, or of the time for performing any act, under this Agreement shall not invalidate this Agreement nor shall it be considered a waiver by such party of any other covenant, condition or promise, or of the time for performing any other act required, under this Agreement. The exercise of any remedy provided in this Agreement shall not be a waiver of any other remedy provided by law, and the provisions of this Agreement for any remedy shall not exclude any other remedies unless they are expressly excluded.



If to Escrow Holder, to: Kaz Bernath  
Stewart Title of California  
11870 Pierce Street, Suite 100  
Riverside, CA 92506  
Facsimile No.: (951) 276-2700  
Telephone No.: (951) 276-3466

Notices delivered by air courier shall be deemed to have been given the next business day after deposit with the courier and notices mailed shall be deemed to have been given on the second business day following deposit of same in any United States Post Office mailbox in the state to which the notice is addressed or on the third business day following deposit in any such post office box other than in the state to which the notice is addressed, postage prepaid, addressed as set forth above. Notices sent via telecopy shall be deemed delivered the same business day transmitted if done so before 4:00 p.m., otherwise delivery shall be considered to be on the next business day. The addresses, addressees, and telecopy numbers for the purpose of this Paragraph, may be changed by giving written notice of such change in the manner herein provided for giving notice. Unless and until such written notice of change is received, the last address, addressee, and telecopy number stated by written notice, or provided herein if no such written notice of change has been received, shall be deemed to continue in effect for all purposes hereunder.

7.12. Survivability. All covenants of City or Owner which are intended hereunder to be performed in whole or in part after Close of Escrow and all representations, warranties, and indemnities by either Party to the other, shall survive Close of Escrow and delivery of the Grant of Easement Deed, and be binding upon and inure to the benefit of the respective Parties.

7.13. City Reconveyance (Quitclaim) of Easement to Owner: It is understood by the Parties that conveyance of the Easement is to facilitate, at City's sole cost and expense, construction of the Project that includes certain flood control and drainage improvements, (the "Drainage Improvements"), over, under, and within the Easement Area, which shall permanently remain within the Easement Area unless otherwise replaced as generally described herein this Section 7.13. During such time as the Drainage Improvement exist within the Easement Area, City shall maintain the Drainage Improvements within the Easement Area pursuant to the Easement conveyed herein this Agreement, and the Easement shall remain on record until such time as the Owner, or its successors, proceed to develop the Property in a manner approved by the City that includes construction, at Owner's sole cost and expense, of new flood control and drainage improvements to replace the Drainage Improvements constructed by City, (the "Replacement Drainage Improvements"). At such time as the Replacement Drainage Improvements are completed by Owner, or its successors, and the Replacement Drainage Improvements are accepted by City, Owner by written notice to City may request that the City surrender, vacate, abandon, quitclaim, or otherwise reconvey to Owner the Easement conveyed herein this Agreement, (the "Reconveyance Request"). City agrees to reconvey the Easement, or otherwise quitclaim City's interests within the Easement Area, to Owner within 180 days of receipt of Owner's Reconveyance Request.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have executed this Agreement, which shall only become effective as of the day and year the last of the parties set forth below signs this Agreement.

CITY

OWNER

CITY OF PALM SPRINGS, a California charter city and municipal corporation,

4348 Lockwood Avenue LLC, a California Limited Liability Company

*mt*

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

By:   
Its: Managing member

Attest:

By: \_\_\_\_\_  
Its: \_\_\_\_\_

\_\_\_\_\_  
James Thompson  
City Clerk

Michael L. Cole and Janet L. Cole,  
husband and wife as joint tenants

Approved as to form by:

By:   
\_\_\_\_\_le

\_\_\_\_\_  
Douglas C. Holland, Esq.  
City Attorney

  
\_\_\_\_\_rc

Jogesh Kumar Vashisht and Sunita Kumar Vashisht, Trustees for the Vashisht Family Revocable Trust Dated May 2, 2001, and



By:   
Jogesh Kumar Vashisht, Trustee

  
Sunita Kumar Vashisht, Trustee

**Exhibit List**

- Exhibit A -- Legal Description of the Easement Area
- Exhibit B -- Depiction of the Easement Area
- Exhibit C -- Form of Grant of Easement Deed

**ACCEPTANCE BY ESCROW HOLDER:**

Stewart Title of California hereby acknowledges that it has received a fully executed counterpart of the foregoing Right-of-Way Agreement for Acquisition of Real Property and Escrow Instructions and agrees to act as Escrow Holder thereunder and to be bound by and perform the terms thereof as such terms apply to Escrow Holder.

Date: \_\_\_\_\_ ("Opening of Escrow")     Stewart Title of California

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**Exhibit "A" to the Easement Deed**

**LEGAL DESCRIPTION OF THE RIGHT OF WAY**

**EXHIBIT "A"**  
**PERMANENT DRAINAGE EASEMENT**

THAT PORTION OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 34, TOWNSHIP 4 SOUTH, RANGE 4 EAST, SAN BERNARDINO BASE AND MERIDIAN, IN THE CITY OF PALM SPRINGS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID NORTHEAST QUARTER; THENCE ALONG THE SOUTHERLY LINE OF SAID NORTHEAST QUARTER NORTH 89°48'49" WEST 254.06 FEET TO THE TRUE POINT OF BEGINNING;


1. THENCE CONTINUING ALONG SAID SOUTHERLY LINE NORTH 89°48'49" WEST 264.26 FEET;
2. THENCE LEAVING SAID SOUTHERLY LINE NORTH 0°00'00" EAST 469.34 FEET;
3. THENCE NORTH 43°49'29" EAST 19.90 FEET TO THE BEGINNING OF A NON-TANGENT 805.00-FOOT RADIUS CURVE CONCAVE SOUTHWESTERLY, THE RADIAL BEARING TO SAID POINT BEING NORTH 43°49'29" EAST;
4. THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 9°44'21" A DISTANCE OF 136.83 FEET TO THE BEGINNING OF A TANGENT 80.00-FOOT RADIUS CURVE CONCAVE WESTERLY;
5. THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 47°32'35" A DISTANCE OF 66.38 FEET;
6. THENCE SOUTH 11°06'25" WEST 57.23 FEET TO THE BEGINNING OF A TANGENT 75.00-FOOT RADIUS CURVE CONCAVE NORTHEASTERLY;
7. THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 61°44'28" A DISTANCE OF 80.82 FEET;
8. THENCE SOUTH 50°38'03" EAST 21.11 FEET TO THE BEGINNING OF A TANGENT 95.00-FOOT RADIUS CURVE CONCAVE NORTHERLY;
9. THENCE EASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 66°54'41" A DISTANCE OF 110.94 FEET;
10. THENCE NORTH 62°27'16" EAST 171.47 FEET TO THE BEGINNING OF A TANGENT 310.00-FOOT RADIUS CURVE CONCAVE SOUTHEASTERLY;
11. THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 9°01'35" A DISTANCE OF 48.84 FEET;



12. THENCE NORTH 71°28'51" EAST 24.67 FEET TO THE WESTERLY LINE OF SOUTH PALM CANYON DRIVE PER DOCUMENT RECORDED JUNE 8, 2006 AS INSTRUMENT NO. 06-415382 OF OFFICIAL RECORDS;
13. THENCE ALONG SAID WESTERLY LINE SOUTH 0°04'27" EAST 105.61 FEET TO THE BEGINNING OF A NON-TANGENT 210.00-FOOT RADIUS CURVE CONCAVE SOUTHEASTERLY, THE RADIUS BEARING TO SAID POINT BEING NORTH 20°54'18" WEST;
14. THENCE LEAVING SAID WESTERLY LINE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 27°02'46" A DISTANCE OF 99.13 FEET;
15. THENCE SOUTH 42°02'56" WEST 67.28 FEET TO A TANGENT 255.00-FOOT RADIUS CURVE CONCAVE NORTHWESTERLY;
16. THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 23°29'32" A DISTANCE OF 104.55 FEET TO THE TRUE POINT OF BEGINNING.

AREA = 104,308 SQUARE FEET MORE OR LESS.

THE BEARINGS AND DISTANCES USED IN THE ABOVE DESCRIPTION ARE BASED ON THE CALIFORNIA COORDINATE SYSTEM OF 1983, ZONE 6. DIVIDE DISTANCES SHOWN BY 1.0000273 TO OBTAIN GROUND DISTANCES.

  
\_\_\_\_\_  
MICKEY B. AGUIRRE RCE 27648

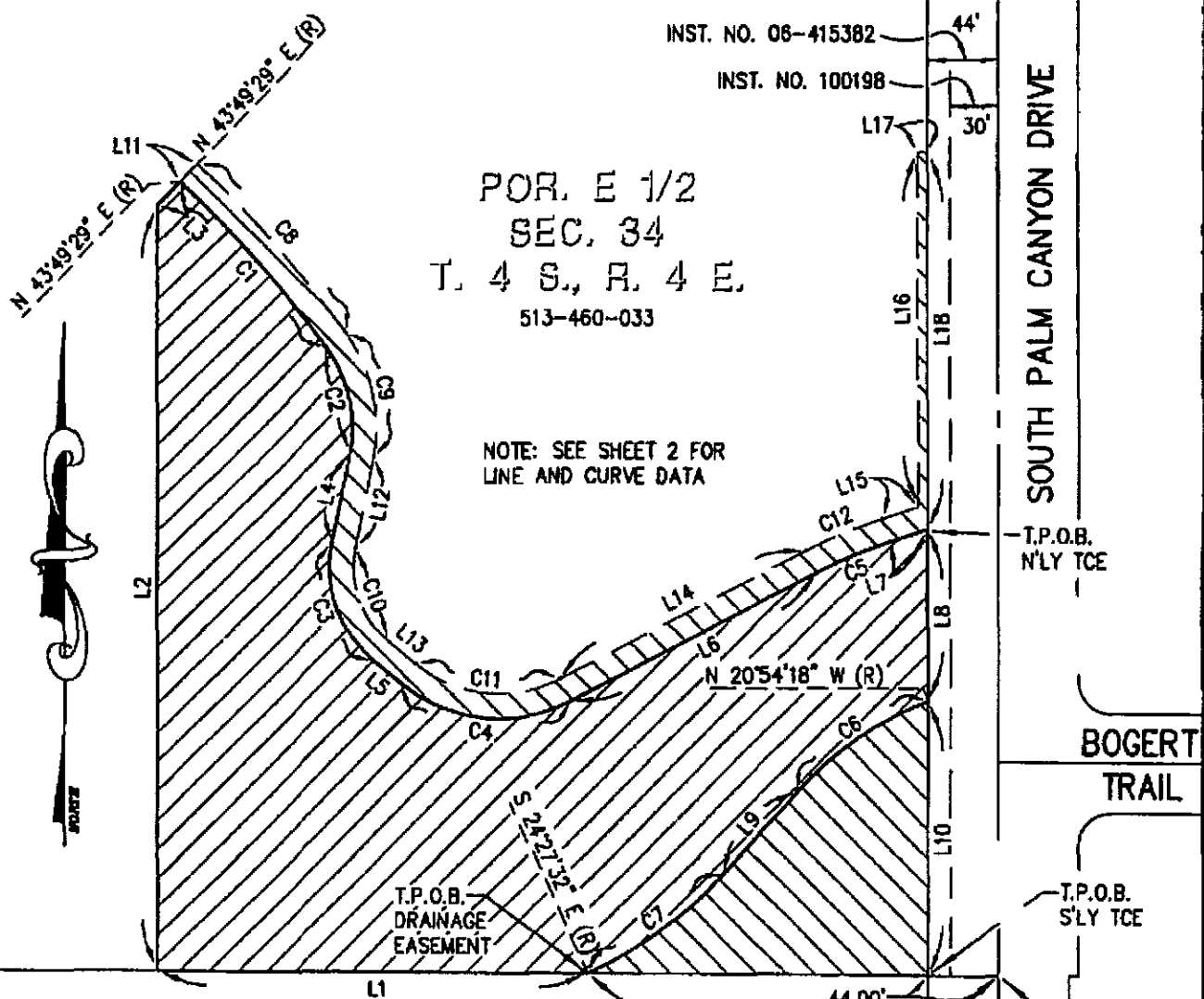
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**Exhibit "B" to the Easement Deed**  
**DEPICTION OF THE RIGHT OF WAY**

# EXHIBIT "B"

PERMANENT DRAINAGE AND TEMPORARY CONSTRUCTION EASEMENTS





POR. E 1/2  
SEC. 34  
T. 4 S., R. 4 E.  
513-460-033

NOTE: SEE SHEET 2 FOR  
LINE AND CURVE DATA

POR. SE 1/4  
SEC. 34  
T. 4 S., R. 4 E.  
513-460-032

### LEGEND

-  DRAINAGE EASEMENT TO BE ACQUIRED  
AREA = 104,308 SF MORE OR LESS
-  TEMPORARY CONSTRUCTION EASEMENT  
TO BE ACQUIRED  
AREA = 29,812 SF MORE OR LESS
- P.O.C. POINT OF COMMENCEMENT
- T.P.O.B. TRUE POINT OF BEGINNING



<b>CITY OF PALM SPRINGS</b>	PREPARED BY: MA
	REVIEWED BY: JR
PROJECT: S. PALM CANYON DRIVE APN'S 513-460-033	SCALE: 1" = 100'
	DATE: 3-20-15 SHEET 1 OF 2

**EXHIBIT C**

**RECORDING REQUESTED BY**  
City of Palm Springs

**WHEN RECORDED RETURN TO:**

City Clerk  
CITY OF PALM SPRINGS  
3200 E. Tahquitz Canyon Way  
Palm Springs, CA 92262

SPACE ABOVE THIS LINE FOR RECORDER'S USE  
Exempt from recording fees under Government Code §6103

**GRANT OF EASEMENT DEED**

**APN: 513-460-033**

This transfer is exempt from Documentary Transfer Tax pursuant to Revenue & Taxation Code § 11922.

**THE UNDERSIGNED OWNER DECLARES:**

**FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,**

*file*  
**4348 Lockwood Avenue, LLC, a California Limited Liability Company, as to an undivided twenty-six percent interest (26%) interest, Michael L. Cole and Janet K. Cole, husband and wife as joint tenants, as to an undivided four percent (4%) interest, and Jogesh Kumar Vashisht and Sunita Kumar Vashisht, Trustees for the Vashisht Family Revocable Trust Dated May 2, 2001 and Restated May 4, 2010, as to an undivided seventy percent (70%) interest, all as tenants in common (collectively, "Grantor"),**

hereby **GRANTS** to:

**CITY OF PALM SPRINGS, a California charter city and municipal corporation ("Grantee"),**

A perpetual exclusive easement for flood control and drainage purposes, over, upon, across, under, and within the real property in the County of Riverside, State of California, legally described on Exhibit A and shown on Exhibit B attached hereto, both exhibits being incorporated herein by this reference.

**TOGETHER** with:

1. Use of all tenements and appurtenances, including easements and water rights, if any, thereto belonging or appertaining, in order for Grantee to use and effectuate the purposes of the Easement; and

2. All rights to enter upon and to pass and repass over and along said easement to deposit tools, machines, implements, and other materials thereon; and to use, control, improve, establish, construct, reconstruct, install, enlarge, repair, refurbish, rehabilitate, inspect, operate, and maintain such flood control and drainage improvements for all time.

**SAID GRANT BEING FURTHER SUBJECT TO:**

1. Grantor shall pay any and all general and special real property taxes for the current fiscal year and all later years.

2. Grantor shall pay any and all assessments imposed by a duly empowered governmental entity, whether or not of record.

3. This grant of easement shall run with the land and bind and inure to the benefit of the respective successors and assigns of the parties hereto.

4. Grantee shall defend and indemnify Grantor and its agents and save them harmless from any and all liability, loss, costs, or obligations on account of, or arising out of, any such injury or losses caused or claimed to be caused by the exercise of the easement rights granted herein or use of the easement area by Grantee, however occurring, other than those caused solely by the willful or negligent acts of omissions of Grantor or its agents.

**Grantor:**

4348 Lockwood Avenue LLC, a California Limited Liability Company

By: \_\_\_\_\_  
Its: Managing Member

By: \_\_\_\_\_  
Its:

Michael L. Cole and Janet L. Cole, husband and wife as joint tenants

By: \_\_\_\_\_  
Michael L. Cole

By: \_\_\_\_\_  
Janet K. Cole

Jogesh Kumar Vashisht and Sunita Kumar Vashisht, Trustees for the Vashisht Family Revocable Trust Dated May 2, 2001, and Restated May 4, 2010

By: \_\_\_\_\_  
Jogesh Kumar Vashisht, Trustee

By: \_\_\_\_\_  
Sunita Kumar Vashisht, Trustee

# **ATTACHMENT 2**

**RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:**

James Thompson  
City Clerk  
CITY OF PALM SPRINGS  
3200 E. Tahquitz Canyon Way  
Palm Springs, CA 92262

Exempt from recording charges  
under Government Code § 6103

(Space above this line reserved for Recorder's use)

**TEMPORARY CONSTRUCTION EASEMENT AGREEMENT**

PROJECT: South Palm Canyon Drainage Improvement

Project

BR-NBIL (502)

APNs: 513-460-033

TEMPORARY CONSTRUCTION EASEMENT AGREEMENT, (the "Agreement"), is hereby made this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between the **City of Palm Springs**, a California charter city and municipal corporation, organized and existing in the County of Riverside, under and by virtue of the laws of the State of California, hereinafter designated as the "City" and/or "Grantee", and 4348 Lockwood Avenue, LLC, a California Limited Liability Company, as to an undivided twenty-six percent interest (26%) interest, Michael L. Cole and Janet <sup>JK</sup> Cole, husband and wife as joint tenants, as to an undivided four percent (4%) interest, and Jogesh Kumar Vashisht and Sunita Kumar Vashisht, Trustees for the Vashisht Family Revocable Trust Dated may 2, 2001 and Restated May 4, 2010, as to an undivided seventy percent (70%) interest, all as tenants in common, hereinafter designated as the "Grantor". City/Grantee and Grantor are individually referred to as "Party" and are collectively referred to as the "Parties".

**RECITALS**

A. Grantor is the owner of certain real property located in the City of Palm Springs, (the "City"), the County of Riverside, (the "County"), State of California, (the "State"), which is identified by Assessor Parcel Number(s) 513-460-033, (referred to as the "Property").

B. Grantee desires to obtain from Grantor a temporary construction easement over a portion of the Property, and Grantor hereby agrees to authorize Grantee and its assignees, including its contractor(s), to enter, for a limited duration and term subject to the conditions herein this Agreement, a portion of the Property as described on the attached legal description, referenced as Exhibit "A", and shown on the attached map, referenced as Exhibit "B", (the "Easement Area"), which are attached hereto and incorporated herein by reference.

C. The Parties desire by this Agreement to provide the terms and conditions for the Grantee's acquisition from Grantor of a Temporary Construction Easement, as defined below, over the Easement Area.

### **AGREEMENT**

**NOW, THEREFORE**, in consideration of performance by the Parties of the promises, covenants, and conditions herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Grantor hereby grants to City and its assignees, including its contractor(s), the right to enter upon and use Grantor's Property in the City of Palm Springs, Riverside County, State of California, described as Assessor's Parcel Number(s) **513-460-033** for all purposes necessary to facilitate and accomplish the construction and installation of various public street improvements ("**Temporary Construction Easement**") associated with the South Palm Drainage Improvement Project, Project No. BR-NBIL (502) ("**Project**").
2. The Temporary Construction Easement, used during construction of the Project consists of approximately 29,812 square feet as described on the attached legal description, referenced as Exhibit "A", and shown on the attached map, referenced as Exhibit "B" (hereinafter the "**Easement Area**").
3. It is agreed and confirmed by the parties hereto that notwithstanding other provisions in this Agreement, the right of possession and use of the Easement Area by the Grantee, including the right to remove and dispose of improvements, shall commence on April 30, 2016 or the close of escrow controlling this transaction, whichever occurs first, and the amount shown in Section 15 herein includes, but is not limited to, full payment for such possession and use, including damages, if any, from said date. Temporary Construction Easement will expire on December 30, 2019. Upon the City's recordation of a Notice of Completion for the Project with the Riverside County Recorder's Office, the Temporary Construction Easement granted herein shall be automatically surrendered by Grantee, and Grantee's interests thereto shall be automatically reverted to Grantor as if quitclaimed by Grantee, and shall no longer represent any title interest of or to Grantor's Property. Nevertheless, if requested by Grantor following such termination, City will execute a quitclaim deed confirming such termination.
4. The rights granted herein include the right to enter upon and to pass and repass over and along the Easement Area, and to deposit tools, implements and other materials thereon by City, or its successors and assigns, its officers, agents and employees, and by persons or entities under contract with City, its successors and assigns, wherever and whenever necessary for the purpose of completing the Project in accordance with applicable laws. The City's activities may involve surveying, staking, excavation, grading, and other related uses that are reasonably required to construct the Project. City agrees not to damage Grantor's property in the process of performing such activities. At all times



during the term of this Agreement (and during construction of the Project), Grantor's property will remain accessible for Grantor's ingress and egress.

5. At the termination of the period of use of Grantor's land by City, but before its relinquishment to Grantor, debris generated by City's use will be removed and the surface will be graded, if applicable, and left in a neat condition.
6. Any notice to be given or other document or documents to be delivered to either Party by the other hereunder may be delivered in person or may be deposited in the United States Mail in the State of California, duly registered or certified, with postage prepaid, and addressed as follows:

If to Grantee, to:

Attn: City Clerk  
City of Palm Springs  
3200 E. Tahquitz Canyon Way  
Palm Springs, CA 92262  
Facsimile No.: (760) 322-8332  
Telephone No.: (760) 323-8204

If to Grantor, to:

Michael Cole  
1438 Dorothea Road  
La Habra Heights, CA 90631  
Telephone No.: (562) 882-2389

7. To the extent permitted by law, City (or its contractor) shall indemnify, defend and hold harmless Grantor from all losses, liabilities, costs, damages, expenses, causes of action, suits, claims or judgments, including attorney's fees and costs, (collectively, "Claims") arising directly out of or in connection with any act or omission of City, its employees, representatives, agents, suppliers or subcontractors, pursuant to this Agreement or otherwise, provided, however, that the foregoing duty to defend, indemnify and hold harmless the Grantor from and against any Claims shall not apply to any Claims arising from the negligence or intentional misconduct of Grantor.
8. Grantor hereby warrants that they are the owners of the Property described above and that they have the right to grant City, its successors or assigns, permission to enter upon and use the Easement Area.
9. This Agreement is the result of negotiations between the Parties hereto. This Agreement is intended by the Parties as a final expression of their understanding with respect to the matters herein, and is a complete and exclusive statement of the terms and conditions thereof.

10. This Agreement shall not be changed, modified, or amended except upon the written consent of the Parties hereto.
11. This Agreement supersedes any and all other prior agreements or understandings, oral or written, in connection therewith.
12. Grantor, its assigns and successors in interest, shall be bound by all the terms and conditions contained in this Agreement, and all the Parties thereto shall be jointly and severally liable thereunder in accordance with Civil Code Section 1468.
13. City shall pay to Grantor the total sum of Twenty Nine Thousand Dollars **(\$29,000)**, (the "Rental Price"), for the right to enter upon and use Grantor's land in accordance with the terms hereof. Grantor hereby expressly and unconditionally waives any and all claims for damages, relocation assistance benefits, severance damages, interest, loss of goodwill, claims for inverse condemnation or unreasonable pre-condemnation conduct, or any other compensation or benefits, other than for payment of the Rental Price, it being understood that the Rental Price constitutes complete and full settlement of all acquisition claims, liabilities, or benefits of any type or nature whatsoever, whether known or unknown as of the date of this Agreement, relating to or in connection with the Temporary Construction Easement or any other rights granted under this Agreement. Payment shall be made within thirty (30) days after execution of this Agreement, or pursuant to the terms of and through the close of escrow if acquisition of the Temporary Construction Easement is associated with the City's acquisition from Grantor of permanent right-of-way over a portion of the Property.

Grantor hereby acknowledges that it has been advised by its attorney and is familiar with the provisions of California Civil Code section 1542, which provides as follows:

"A general release does not extend to claims which the Creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

By signing below, Grantor acknowledges that it may have sustained damage, loss, costs or expenses which are presently unknown and unsuspected, and such damage, loss, costs or expenses which may have been sustained, may give rise to additional damage, loss, costs or expenses in the future. Nevertheless, Grantor hereby acknowledges that this Agreement has been negotiated and agreed upon in light of that situation, and hereby expressly waives any and all rights which it may have under California Civil Code section 1542, or under any statute or common law or equitable principal of similar effect, except as set forth in this Section 13.

***[SIGNATURE PAGE FOLLOWS]***

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first above written.

**GRANTEE:**

CITY OF PALM SPRINGS, a California charter city and municipal corporation,

By:

David H. Ready, City Manager

**ATTEST:**

By:

James Thompson, City Clerk

**APPROVED AS TO FORM:**

By:

Douglas C. Holland, Esq., City Attorney

**GRANTOR:**

4348 Lockwood Avenue LLC, a [redacted] Liability Company

By: [redacted]  
Its: Managing member

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Michael L. Cole and Janet L. Cole, husband and wife as joint tenants

By: [redacted]  
Michael L. Cole

By: [redacted]  
Janet L. Cole

Jogesh Kumar Vashisht and Sunita Kumar Vashisht, Trustees for the Vashisht Family Revocable Trust Dated may 2, 2001 and Restated May 4, 2010

[redacted]  
Jogesh Kumar Vashisht, Trustee

By: [redacted]  
Sunita Kumar vashisht, Trustee

**Exhibit List**

- Exhibit A – Legal Description of the Easement Area
- Exhibit B – Depiction of Easement Area

**Exhibit "A"**

**LEGAL DESCRIPTION OF THE EASEMENT AREA**

**EXHIBIT "A"**  
**TEMPORARY CONSTRUCTION EASEMENT**

THAT PORTION OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 34, TOWNSHIP 4 SOUTH, RANGE 4 EAST, SAN BERNARDINO BASE AND MERIDIAN, IN THE CITY OF PALM SPRINGS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID NORTHEAST QUARTER; THENCE ALONG THE SOUTHERLY LINE OF SAID NORTHEAST QUARTER NORTH 89°48'49" WEST 44.00 FEET TO THE WESTERLY LINE OF SOUTH PALM CANYON DRIVE PER DOCUMENT RECORDED JUNE 8, 2006 AS INSTRUMENT NO. 06-415382 OF OFFICIAL RECORDS, AND THE TRUE POINT OF BEGINNING;

1. THENCE CONTINUING ALONG SAID SOUTHERLY LINE NORTH 89°48'49" WEST 210.06 FEET TO THE BEGINNING OF A NON-TANGENT 255.00-FOOT RADIUS CURVE CONCAVE NORTHWESTERLY, THE RADIAL BEARING TO SAID POINT BEING SOUTH 24°27'32" EAST;
2. THENCE LEAVING SAID SOUTHERLY LINE NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 23°29'32" A DISTANCE OF 104.55 FEET;
3. THENCE NORTH 42°02'56" EAST 67.28 FEET TO THE BEGINNING OF A TANGENT 210.00-FOOT RADIUS CURVE CONCAVE SOUTHEASTERLY;
4. THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 27°02'46" A DISTANCE OF 99.13 FEET TO SAID WESTERLY LINE OF SOUTH PALM CANYON DRIVE;
5. THENCE ALONG SAID WESTERLY LINE SOUTH 0°04'27" EAST 167.49 FEET TO THE TRUE POINT OF BEGINNING.

**TOGETHER WITH:**

THAT PORTION OF SAID NORTHEAST QUARTER, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID NORTHEAST QUARTER; THENCE ALONG THE SOUTHERLY LINE OF SAID NORTHEAST QUARTER NORTH 89°48'49" WEST 44.00 FEET TO THE WESTERLY LINE OF SOUTH PALM CANYON DRIVE PER DOCUMENT RECORDED JUNE 8, 2006 AS INSTRUMENT NO. 06-415382

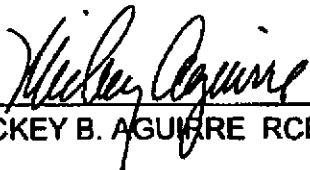
OF OFFICIAL RECORDS; THENCE ALONG SAID WESTERLY LINE NORTH 0°04'27" WEST 273.10 FEET TO THE TRUE POINT OF BEGINNING;

6. THENCE LEAVING SAID WESTERLY LINE SOUTH 71°28'51" WEST 24.67 FEET TO THE BEGINNING OF A TANGENT 310.00-FOOT RADIUS CURVE CONCAVE SOUTHEASTERLY;
7. THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 9°01'35" A DISTANCE OF 48.84 FEET;
8. THENCE SOUTH 62°27'16" WEST 171.47 FEET TO THE BEGINNING OF A TANGENT 95.00-FOOT RADIUS CURVE CONCAVE NORTHERLY;
9. THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 66°54'41" A DISTANCE OF 110.94 FEET;
10. THENCE NORTH 50°38'03" WEST 21.11 FEET TO THE BEGINNING OF A TANGENT 75.00-FOOT RADIUS CURVE CONCAVE NORTHEASTERLY;
11. THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 61°44'28" A DISTANCE OF 80.82 FEET;
12. THENCE NORTH 11°06'25" EAST 57.23 FEET TO THE BEGINNING OF A TANGENT 80.00-FOOT RADIUS CURVE CONCAVE WESTERLY;
13. THENCE NORTHERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 47°32'35" A DISTANCE OF 66.38 FEET TO THE BEGINNING OF A TANGENT 805.00-FOOT RADIUS CURVE CONCAVE SOUTHWESTERLY;
14. THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 9°44'21" A DISTANCE OF 136.83 FEET;
15. THENCE NORTH 43°49'29" EAST 15.00 FEET TO THE BEGINNING OF A NON-TANGENT 820.00-FOOT RADIUS CURVE CONCAVE SOUTHWESTERLY, THE RADIAL BEARING TO SAID POINT BEING NORTH 43°49'29" EAST;
16. THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 9°44'21" A DISTANCE OF 139.38 FEET TO THE BEGINNING OF A TANGENT 95.00-FOOT RADIUS CURVE CONCAVE WESTERLY;
17. THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 47°32'35" A DISTANCE OF 78.83 FEET;
18. THENCE SOUTH 11°06'25" WEST 57.23 FEET TO THE BEGINNING OF A TANGENT 60.00-FOOT RADIUS CURVE CONCAVE NORTHEASTERLY;
19. THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 61°44'28" A DISTANCE OF 64.66 FEET;
20. THENCE SOUTH 50°38'03" EAST 21.11 FEET TO THE BEGINNING OF A TANGENT 80.00-FOOT RADIUS CURVE CONCAVE NORTHERLY;

21. THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 66°54'41" A DISTANCE OF 93.43 FEET;
22. THENCE NORTH 62°27'16" EAST 171.47 FEET TO THE BEGINNING OF A TANGENT 325.00-FOOT RADIUS CURVE CONCAVE SOUTHEASTERLY;
23. THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 9°01'35" A DISTANCE OF 51.20 FEET;
24. THENCE NORTH 71°28'51" EAST 23.35 FEET;
25. THENCE NORTH 0°04'27" WEST 217.33 FEET;
26. THENCE NORTH 89°55'33" EAST 6.00 FEET TO SAID WESTERLY LINE OF SOUTH PALM CANYON DRIVE;
27. THENCE ALONG SAID WESTERLY LINE SOUTH 0°04'27" EAST 231.14 FEET TO THE TRUE POINT OF BEGINNING.

AREA = 29,812 SQUARE FEET MORE OR LESS.

THE BEARINGS AND DISTANCES USED IN THE ABOVE DESCRIPTION ARE BASED ON THE CALIFORNIA COORDINATE SYSTEM OF 1983, ZONE 6. DIVIDE DISTANCES SHOWN BY 1.0000273 TO OBTAIN GROUND DISTANCES.

  
\_\_\_\_\_  
MICKEY B. AGUIRE RCE 27648

3/20/15



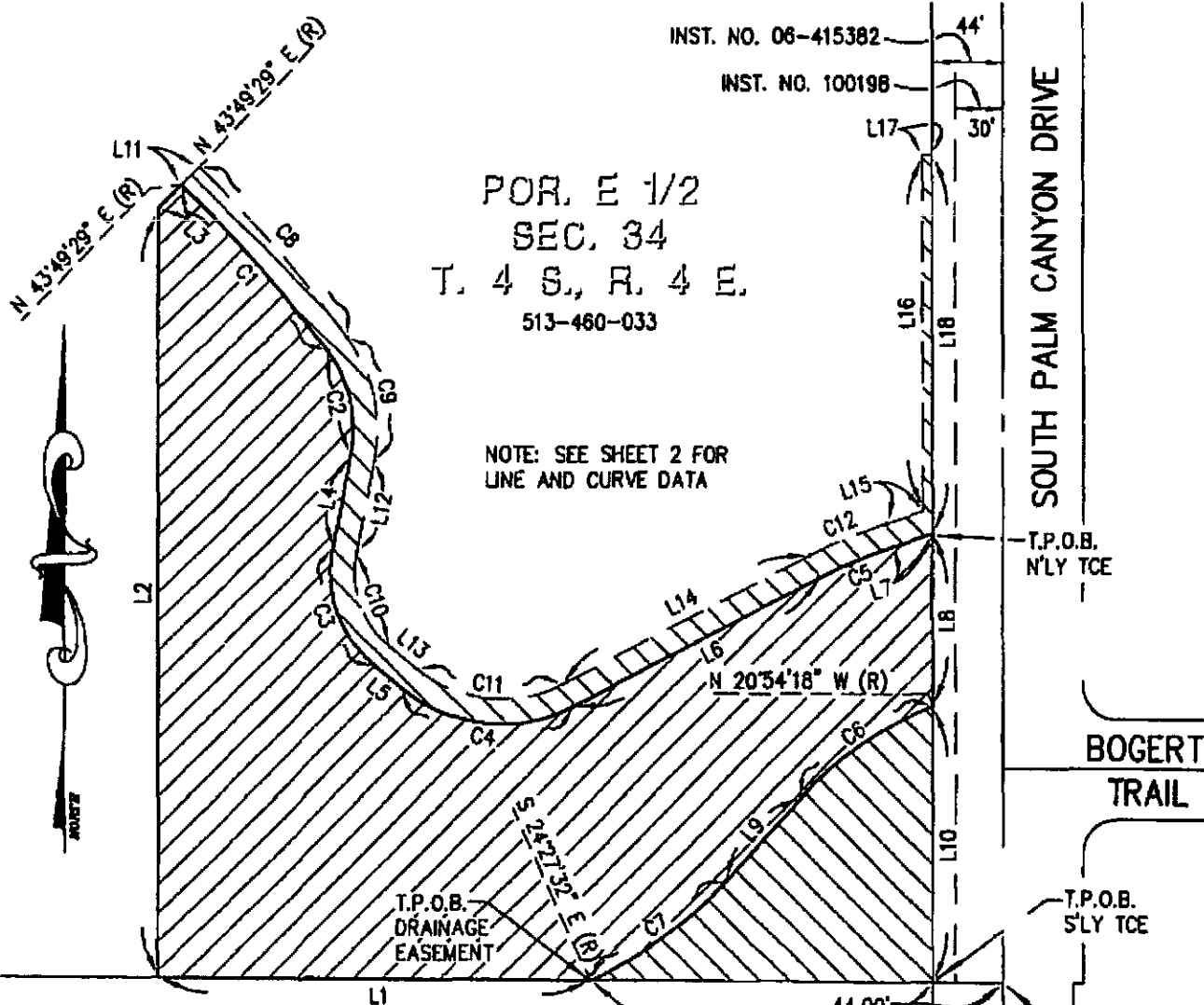


**Exhibit "B"**

**DEPICTION OF THE EASEMENT AREA**

# EXHIBIT "B"

PERMANENT DRAINAGE AND TEMPORARY CONSTRUCTION EASEMENTS



POR. E 1/2  
SEC. 34  
T. 4 S., R. 4 E.  
513-460-033

NOTE: SEE SHEET 2 FOR  
LINE AND CURVE DATA

POR. SE 1/4  
SEC. 34  
T. 4 S., R. 4 E.  
513-460-032

## LEGEND



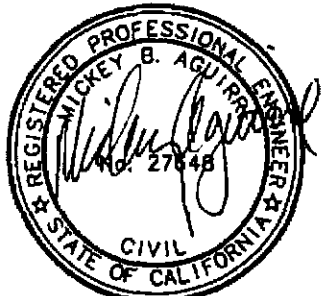
DRAINAGE EASEMENT TO BE ACQUIRED  
AREA = 104,308 SF MORE OR LESS



TEMPORARY CONSTRUCTION EASEMENT  
TO BE ACQUIRED  
AREA = 29,812 SF MORE OR LESS

P.O.C. POINT OF COMMENCEMENT

T.P.O.B. TRUE POINT OF BEGINNING



**CITY OF PALM SPRINGS**

PROJECT: S. PALM CANYON DRIVE  
APN'S 513-460-033

PREPARED BY: MA

REVIEWED BY: JR

SCALE: 1" = 100'

DATE: 3-20-15 SHEET 1 OF 2

ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public, \_\_\_\_\_ personally \_\_\_\_\_ appeared \_\_\_\_\_, 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.

\_\_\_\_\_  
Signature

My Commission Expires: \_\_\_\_\_ This area for official notarial seal

# **ATTACHMENT 3**

Recording Requested by:  
City of Palm Springs  
3200 Tahquitz Canyon Way  
Palm Springs, CA 92262

When Recorded Return to:  
Same as above

Exempt from recording charges  
Under Government Code 6103

Project: South Palm Canyon Road  
APN: 513-200-022

### ASSIGNMENT OF EASEMENT

That for good and valuable consideration, the receipt and sufficiency where of is hereby acknowledged, the 4348 Lockwood Avenue, LLC, a California Limited Liability Company, as to an undivided twenty-six percent interest (26%) interest, Michael L. Cole and Janet K Cole, husband and wife as joint tenants, as to an undivided four percent (4%) interest, and Jogesh Kumar Vashisht and Sunita Kumar Vashisht, Trustees for the Vashisht Family Revocable Trust Dated may 2, 2001 and Restated May 4, 2010, as to an undivided seventy percent (70%) interest, all as tenants in common ("GRANTOR"), does hereby assign to the City of Palm Springs, a municipal corporation of the State of California, it's successors and assigns ("GRANTEE"), all that certain acquired easement rights for the real property situated in the County of Riverside, State of California, as described in the document recorded July 29, 2008 as Instrument No. 2008-0412633, "Exhibit "A" attached hereto and incorporated herein.

This is an agreement of all rights and interests in and to the existing Grant of Easement for Flood Control Purposes; more particularly described in Exhibit "A" (Easement). **GRANTOR** does hereby covenant that is it granting this Easement only to the extent of any interest in may have in the property.

To have and to hold unto **GRANTEE** the Easement herein described for the use and benefit of the public as right of way flood control purposes, together with the right of ingress and egress to permit the economical operations and maintenance of said flood control project, including all incidental purposes consistent herewith.

The **GRANTOR** hereby conveys unto **GRANTEE** all warranties of title of any nature whatsoever which **GRANTOR** and its successors possess.

The Easement shall at all times be maintained and repaired at the sole cost and expense of the **GRANTEE**, its contractors, agents, successors or assigns.

**GRANTEE** agrees to indemnify, defend, and hold harmless **GRANTOR** from and against any and all claims, demands, actions, judgments, settlements, liens, penalties, injuries, losses, liability, costs, or expenses arising out of bodily injury of any person (including death) or damage to the real or personal property of any person, but only to the extent that such claims are caused by or related to the action or inaction, omission, negligence, misconduct, or other fault of the **GRANTEE**, its officers, employees, agents, successors, assigns, contractors or volunteers the exercise of **GRANTEE'S** right to pursuant to the terms of this Easement or in any way caused by or related to the installation, construction, maintenance or repair of the facilities within this Easement by **GRANTEE**, its officers, employees, agents, successors, assigns, contractors or volunteers except those caused solely and exclusively by the gross negligence or willful misconduct of **GRANTOR**.

In the event the right, privilege and Easement herein assigned shall be abandoned and permanently cease to be used for the purpose here in granted, all rights herein assigned shall cease and revert to **GRANTOR**.

This Easement shall run with the land and shall inure to the benefit and be binding upon the **GRANTOR**, the **GRANTEE**, and their respective successors and assigns.

**GRANTOR:**  
4348 Lockwood Avenue LLC, a  
California Limited Liability Company

By: [Redacted Signature]  
Print: Jigar Patel  
Date: 3/3/2016

By: \_\_\_\_\_  
Print: \_\_\_\_\_  
Date: \_\_\_\_\_

**GRANTEE:**  
City of Palm Springs, a California  
charter city and municipal corporation

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

ATTEST

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

APPROVED AS TO FORM

WOODRUFF, SPRADLIN & SMART

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

Michael L. Cole and Janet <sup>AKC</sup> Cole, husband  
wife as joint tenants

By: [Redacted]

Print: [Redacted]

Date: MARCH 3, 2016

Accepted:  
United States of America and  
Department of the Interior Bureau

By: \_\_\_\_\_

Print: \_\_\_\_\_

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

By: [Redacted]

Print: [Redacted]

Date: March 7, 2016

Jogesh Kumar Vashisht and Sunita Kumar  
Vashisht, Trustees for the Vashisht Family  
Revocable Trust Dated may 2, 2001 and  
Restated May 4, 2010

By: [Redacted] Vashisht

[Redacted] Jogesh Kumar Vashisht

Date: March 3, 2016

[Redacted]

Print: SUNITA KUMAR VASHISHT

Date: March 3<sup>rd</sup> 2016

EXHIBIT "A"

WHEN RECORDED RETURN TO:

DAVID A. DARRIN, ESQ.  
SCHLECHT, SHEVLIN & SHOENBERGER  
A Law Corporation  
801 E. Tahquitz Canyon Way, Suite 100  
Palm Springs, CA 92262

DOC # 2008-0412633

07/29/2008 08:00A Fee:27.00

Page 1 of 7

Recorded in Official Records

County of Riverside

Larry W. Ward

Assessor, County Clerk & Recorder



28

S	R	U	PAGE	SIZE	DA	M SC	LONG	RFD	COPY
1			7						1
M	A	L	465	426	PCOR	NCOR	SMF	NCHG	EXAM 802
							T	CTY	UNI

**GRANT OF EASEMENT**

Title of Document

C  
802

THIS PAGE ADDED TO PROVIDE ADEQUATE SPACE FOR RECORDING INFORMATION  
(\$3.00 Additional Recording Fee Applies)

48

MG



When recorded return to:  
CT Eagle, LLC, a Delaware limited liability company  
20151 S. W. Birch, Suite 200  
Newport Beach, CA 926620

ALLOTTED NO : 90EA

R/W FILE NO: 379-76

## GRANT OF EASEMENT

The United States of America, acting by and through the Superintendent, Palm Springs Agency, Bureau of Indian Affairs, Department of the Interior, Palm Springs, California, hereinafter referred to as "Grantor," pursuant to the authority delegated by 209 DM 8, 230 DM 1, and 3 IAM 4 and Sacramento Redlegation Order No.1 (43 F.R. 30131, dated July 13, 1978). Pursuant to the provisions of the Act of February 5, 1948 (62 stat 17, 25 U.S.C. §§ 323 - 328) for valuable consideration, receipt of which is hereby acknowledged, and such consents as required by the above said Federal law having been secured, hereby grants to CT-Eagle, LLC, a Delaware limited liability company, hereinafter referred to as "Grantee", an easement and right of way for the purposes of Flood Control, maintenance and operation, with the right to construct and maintain flood control channel in, over, across, along and upon lands located within the City of Palm Springs, County of Riverside, State of California, and legally described as:

Located in Section 35, Township 4 South, Range 4 East, San Bernardino Base & Meridian in the County of Riverside, State of California, more particularly described as follows:

SEE EXHIBITS "A", "B"

ATTACHED HERETO AND BY ITS REFERENCE MADE A PART HEREOF AND

More particularly shown and delineated on the accompanying map, EXHIBIT "A", & "B" and incorporated herein by this reference

Said easement contains approximately: 23,710.0 sq. ft. or .545 acres m/l, this easement is subject to:

- A. Any Valid existing right or adverse claim;
- B. The applicable terms and conditions contained in Part 169, Title 25, of the Code of Federal Regulation, including the agreements in the stipulation filed pursuant of Section 169.5 of that Part.

This easement is Without Limitation and is subject to any valid existing rights or adverse claim so long as said easement shall be actually used for the purpose above specified:



49

*(Handwritten signature)*

PROVIDED, HOWEVER, that this easement shall be terminable in whole or in part by the Grantor for any of the following causes upon thirty (30) days written notice and failure of the within said notice period to correct the basis for termination.

- (a) Failure to comply with any term or condition of the grant or the applicable regulations contained in Part 169, Title 25 of the Code of Federal Regulations.
- (b) A nonuse of the right-of-way for a consecutive two (2) year period for purpose for which it was granted
- (c) A non use of the right-of-way.
- (d) Failure of the Grantee, upon the completion of construction, to file with the Grantor an affidavit of completion pursuant to 25 C.F.R. 169.16.

The conditions of this easement shall extend to and be binding upon and shall inure to the successors of the Grantee.

IN WITNESS WHEREOF, Grantor executed this easement on June 17, 2008.

THE UNITED STATES OF AMERICA  
The Secretary of the Interior



Superintendent  
Bureau of Indian Affairs  
Palm Springs Agency

Pursuant to the authority delegated by 209  
DM 8, 230 DM 1, and 3 IAM 4 and Sacramento  
Redelegation Order No. 1 (43 F.R. 30131,  
Dated July 13, 1978).



**EXHIBIT 'A'**  
**LEGAL DESCRIPTION**

THAT PORTION OF LOT 73 OF TRACT NO. 16149 IN THE CITY OF PALM SPRINGS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS SHOWN ON A MAP FILED IN BOOK 116, PAGES 3 THROUGH 8, INCLUSIVE OF MAPS IN THE COUNTY RECORDER'S OFFICE OF SAID COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**POINT OF COMMENCEMENT** BEING THE SOUTH SIXTEENTH CORNER OF SECTION 34, TOWNSHIP 4 SOUTH, RANGE 4 EAST, SAN BERNARDINO MERIDIAN, ALSO BEING THE CENTERLINE OF SOUTH PALM CANYON DRIVE AS SHOWN ON SAID MAP; THENCE PROCEEDING COINCIDENT WITH THE EASTERLY LINE OF SAID SECTION, ALSO BEING THE CENTERLINE OF SAID DRIVE NORTH 00°31'59" WEST, 190.98 FEET TO THE **TRUE POINT OF BEGINNING**; THENCE CONTINUING COINCIDENT WITH LAST SAID LINE NORTH 00°31'59" WEST, 88.56 FEET; THENCE LEAVING LAST SAID LINE NORTH 71°01'19" EAST, 203.72 FEET; THENCE SOUTH 30°41'35" EAST, 128.93 FEET; THENCE SOUTH 85°36'18" WEST, 71.89 FEET; THENCE NORTH 50°08'15" WEST, 43.58 FEET; THENCE SOUTH 75°06'54" WEST, 164.22 FEET TO THE EAST LINE OF SAID SECTION, ALSO BEING THE CENTERLINE OF SAID DRIVE AND THE **TRUE POINT OF BEGINNING**.

CONTAINS AN AREA OF 0.545 ACRES, MORE OR LESS.

ALL AS MORE PARTICULARLY SHOWN ON EXHIBIT 'B' ATTACHED HERETO AND MADE A PART HEREOF.

SUBJECT TO COVENANTS, CONDITIONS, RESERVATIONS, RESTRICTIONS, RIGHTS OF WAY AND EASEMENTS OF RECORD, IF ANY.

THIS DESCRIPTION HAS BEEN PREPARED BY ME OR UNDER MY DIRECTION AND DATED THIS 29<sup>TH</sup> DAY OF JUNE, 2007.

  
E.P. KOWALSKI, P.L.S. 8072  
LICENSE EXPIRES 12/31/07



2008-0412633  
01/29/2008 08 00A  
3 of 7

PAGE 1 OF 1

51



44' WIDE RIGHT OF WAY  
EASEMENT PER INSTRUMENT  
NO. 2006-0415382 RECORDED  
JUNE 8, 2006

30' UTILITY EASEMENT PER  
INSTRUMENT NO. 74995  
RECORDED JUNE 11, 1973 AND  
PER INSTRUMENT NO. 100198  
RE-RECORDED JULY 31, 1973.

50' EASEMENT PER INSTRUMENT NO  
99698 RECORDED AUGUST 13, 1964  
AND INSTRUMENT NO. 64591  
RECORDED JUNE 22, 1966.

FLOOD  
PLAIN

**SOUTH PALM CANYON DRIVE**

N71°01'19"E 203.72'

S30°41'35"E 128.93'

575°06'54"W 164.22'

N50°08'15"W 43.58'

S65°36'18"W 71.89'

TRACT NO. 16149  
M.B. 116/3-8

LOT 73

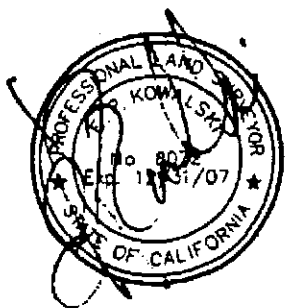
T.P.O.B.

**BOGERT TRAIL**

60' WIDE EASEMENT PER INSTRUMENT  
NO. 99699 RECORDED AUGUST 13,  
1964 AND INSTRUMENT NO. 64591  
RECORDED JUNE 22, 1966.

P.O.C.  
34 S 1/16 CORNER 35  
T4S, R4E,  
S.B.M.

LOT 74



**LEGEND:**  
CENTER LINE  
EASEMENT LINE  
LEGAL DESCRIPTION AREA

AREA=0.545 AC.



**VA CONSULTING INC.**  
CIVIL ENGINEERS LAND PLANNERS  
LAND SURVEYORS  
17801 CARTWRIGHT ROAD  
IRVINE, CA 92614  
(949) 474-1400

**EXHIBIT 'B'**  
SKETCH TO ACCOMPANY  
LEGAL DESCRIPTION OF  
STORM DRAIN EASEMENT  
WITHIN THE CITY OF PALM SPRINGS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

REVISION DATE	
PROJECT NO. 895 6100	
DATE 06/29/07	1 - 50
PREP. MGR. EPH	PAGE 1
SURVEYOR: EPH	1
DRAFTER: TCE	

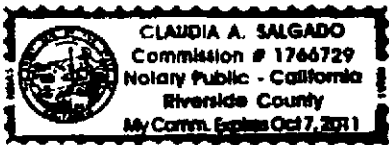
2006-0412633  
07/29/2006 98 009  
6 of 7



*me*

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California  
 County of Riverside  
 On 6-17-2009 before me, Claudia A. Salgado, Notary Public  
Date Notary Public Name and Title of the Office  
 personally appeared Kim Boyden  
Name of Signer



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.

Signature Claudia A. Salgado  
Signature of Notary Public

Place Notary Seal Above

**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**

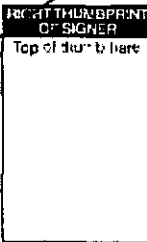
Title or Type of Document: \_\_\_\_\_

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

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

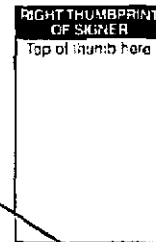
**Capacity(ies) Claimed by Signer(s)**

- 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: \_\_\_\_\_

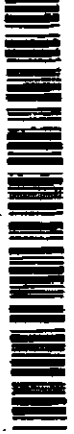


Signer is Representing: \_\_\_\_\_



RECEIVED  
SIA PALM SPRINGS AGENCY  
2007 JUL 20 PM 3:27

2008-0412833  
07/25/2008 08:08A  
2 of 7



ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
COUNTY OF Riverside ) ss.

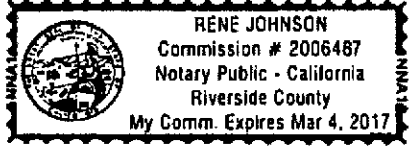
On MARCH 3, 2016, before me, René Johnson, Notary Public, personally appeared MICHAEL L. COLE, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she~~/~~they~~ executed the same in his/~~her~~/~~their~~ 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.

René Johnson  
Signature

My Commission Expires: 3/4/17



*This area for official notarial seal*

ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

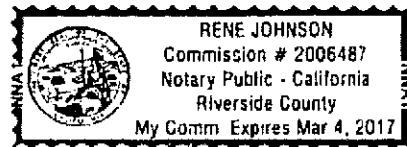
STATE OF CALIFORNIA )  
COUNTY OF Riverside ) ss.

On MARCH 3, 2016, before me, Rene Johnson, Notary Public, personally appeared Deepsh Kumar Vashisht and Sonita Kumar Vashisht, 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.

Rene Johnson  
Signature



My Commission Expires: 3/4/17

*This area for official notarial seal*



ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA  
COUNTY OF Riverside } ss.

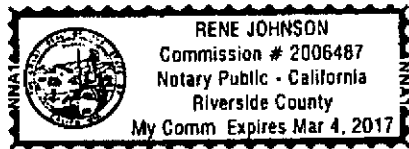
On March 3, 2016 before me, Rene Johnson, Notary Public, personally appeared SAGAR PATEL, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she~~/~~they~~ executed the same in his/~~her~~/~~their~~ 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.

Rene Johnson  
Signature

My Commission Expires: 3/4/17



*This area for official notarial seal*

*(Handwritten initials)*

ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF ORANGE )

On MARCH 7, 2016, before me, DELON CHOI, Notary Public, personally appeared JANET K. COLE, 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.

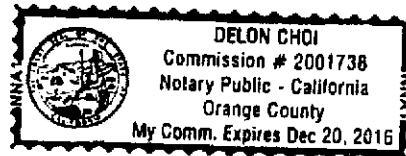
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

[Signature]  
Signature

My Commission Expires: 12/20/2016

*This area for official notarial seal*



# **ATTACHMENT 4**

Notice of Determination

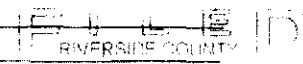
Appendix D

To:
[ ] Office of Planning and Research
For U.S. Mail: P.O. Box 3044
Sacramento, CA 95812-3044
Street Address: 1400 Tenth St.
Sacramento, CA 95814

[ ] County Clerk
County of: Riverside
Address: 2724 Gateway Drive
Riverside, CA 92507

From:
Public Agency: City of Palm Springs
Address: 3200 E. Tahquitz Canyon Way
Palm Springs, CA 92262
Contact: Marcus Fuller
Phone: (760) 323-8253 x8744

Lead Agency (if different from above):
Address:
Contact:
Phone:
Meyer Deput



JAN 23 2012

SUBJECT: Filing of Notice of Determination in compliance with Section 21108 or 21152 of the Public Resources Code.

State Clearinghouse Number (if submitted to State Clearinghouse): 2001101060

Project Title: South Palm Canyon Drive Low Water Crossing Bridge Replacement at Arenas Canyon South

Project Location (include county): S. Palm Canyon Dr. at Bogert Trail, Palm Springs, CA

Project Description:

Replace the existing four lane low water crossing at S. Palm Canyon Dr. and Bogert Trail, with a new four lane bridge structure consisting of a five-cell reinforced concrete box culvert with 14 foot wide by 4 foot high cells. S. Palm Canyon Dr. will be raised 2.5 feet, and the existing Arenas Canyon South tributary will be excavated up to 5 feet and channelized. New levees will be constructed with rock slope protection and cutoff walls to prevent erosion.

This is to advise that the City of Palm Springs has approved the above described project.

January 18, 2012 (Date) and has made the following determinations regarding the above described project:

- 1. The project [ ] will [X] will not have a significant effect on the environment.
2. [ ] An Environmental Impact Report was prepared for this project pursuant to the provisions of CEQA.
[X] A Negative Declaration was prepared for this project pursuant to the provisions of CEQA.
3. Mitigation measures [X] were [ ] were not made a condition of the approval of the project.
4. A mitigation reporting or monitoring plan [X] was [ ] was not adopted for this project.
5. A statement of Overriding Considerations [ ] was [X] was not adopted for this project.
6. Findings [X] were [ ] were not made pursuant to the provisions of CEQA.

This is to certify that the final EIR with comments and responses and record of project approval, or the negative Declaration, is available to the General Public at: City of Palm Springs, 3200 E. Tahquitz Canyon Way, Palm Springs, CA 92262

Signature (Public Agency) Marcus Fuller Title Asst. Dir. of Public Works/Asst. City Engineer

Date Jan 19, 2012 Date Received for filing at OPR

Authority cited: Sections 21083, Public Resources Code. Reference Section 21000-21174, Public Resources Code.

Revised 2005



STATE OF CALIFORNIA - THE RESOURCES AGENCY  
DEPARTMENT OF FISH AND GAME  
ENVIRONMENTAL FILING FEE CASH RECEIPT

Receipt #: 201200035

State Clearinghouse # (if applicable): 2001101060

Lead Agency: CITY OF PALM SPRINGS

Date: 01/23/2012

County Agency of Filing: Riverside

Document No: 201200035

Project Title: SOUTH PALM CANYON DRIVE LOW WATER CROSSING BRIDGE REPLACEMENT

Project Applicant Name: DOKKEN ENGINEERING

Phone Number:

Project Applicant Address: 2365 IRON POINT ROAD SUITE 200 FOLSOM, CA 95630-8709

Project Applicant: Private Entity

CHECK APPLICABLE FEES:

Environmental Impact Report

Negative Declaration

Application Fee Water Diversion (State Water Resources Control Board Only)

Project Subject to Certified Regulatory Programs

County Administration Fee

Project that is exempt from fees (DFG No Effect Determination (Form Attached))

Project that is exempt from fees (Notice of Exemption)

2101.50

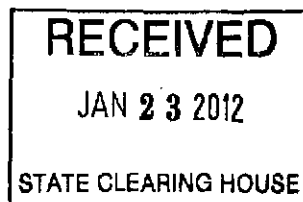
\$64.00

**Total Received**

2165.50

Signature and title of person receiving payment:

Notes:



# **ATTACHMENT 5**

**CATEGORICAL EXEMPTION/ CATEGORICAL EXCLUSION DETERMINATION FORM**

<b>08-RIV-Palm Springs</b>	<b>N/A</b>	<b>N/A</b>	<b>BR-NBIL(502)</b>
Dist.-Co.-Rte. (or Local Agency)	P.M/P.M.	E.A. (State project)	Federal-Aid Project No. (Local project)/ Proj. No.

**PROJECT DESCRIPTION:**

*(Briefly describe project, purpose, location, limits, right-of-way requirements, and activities involved.)*

*Enter project description in this box. Use Continuation Sheet, if necessary*

The City of Palm Springs, in cooperation with the California Department of Transportation, proposes to replace the existing low water crossing on South Palm Canyon Drive at Arenas Canyon South tributary, located in the City of Palm Springs, with a four-lane bridge structure to provide all-weather access. The existing low water crossing is located immediately north of the intersection of South Palm Canyon Drive and Bogert Trail. Currently, access is disrupted on South Palm Canyon Drive during storm events due to flooding. The flooding creates access restrictions and safety problems along the roadway. The proposed project is needed to address drainage and flooding within the Arenas Canyon South tributary at the South Palm Canyon Drive low-water crossing. The purpose of this project is to provide continuous access and improve drainage along South Palm Canyon Drive. (see continuation sheet)

**CEQA COMPLIANCE** *(for State Projects only)*

Based on an examination of this proposal, supporting information, and the following statements (See 14 CCR 15300 et seq.):

- If this project falls within exempt class 3, 4, 5, 6 or 11, it does not impact an environmental resource of hazardous or critical concern where designated, precisely mapped and officially adopted pursuant to law.
- There will not be a significant cumulative effect by this project and successive projects of the same type in the same place, over time.
- There is not a reasonable possibility that the project will have a significant effect on the environment due to unusual circumstances.
- This project does not damage a scenic resource within an officially designated state scenic highway.
- This project is not located on a site included on any list compiled pursuant to Govt. Code § 65962.5 ("Cortese List").
- This project does not cause a substantial adverse change in the significance of a historical resource.

**CALTRANS CEQA DETERMINATION** (Check one)

**Exempt by Statute.** (PRC 21080(b); 14 CCR 15260 et seq.)

Based on an examination of this proposal, supporting information, and the above statements, the project is:

**Categorically Exempt. Class** \_\_\_\_\_. (PRC 21084; 14 CCR 15300 et seq.)

**Categorically Exempt. General Rule exemption.** [This project does not fall within an exempt class, but it can be seen with certainty that there is no possibility that the activity may have a significant effect on the environment (CCR 15061(b)[3])]

N/A	N/A
Print Name: Environmental Branch Chief	Print Name: Project Manager/DLA Engineer
N/A	N/A
Signature	Signature
Date	Date

**NEPA COMPLIANCE**

In accordance with 23 CFR 771.117, and based on an examination of this proposal and supporting information, the State has determined that this project:

- does not individually or cumulatively have a significant impact on the environment as defined by NEPA and is excluded from the requirements to prepare an Environmental Assessment (EA) or Environmental Impact Statement (EIS), and
- has considered unusual circumstances pursuant to 23 CFR 771.117(b) (<http://www.fhwa.dot.gov/hep/23cfr771.htm> - sec.771.117).

In non-attainment or maintenance areas for Federal air quality standards, the project is either exempt from all conformity requirements, or conformity analysis has been completed pursuant to 42 USC 7506(c) and 40 CFR 93.

**CALTRANS NEPA DETERMINATION** (Check one)

**Section 6004:** The State has been assigned, and hereby certifies that it has carried out, the responsibility to make this determination pursuant to Chapter 3 of Title 23, United States Code, Section 326 and a Memorandum of Understanding (MOU) dated June 7, 2010, executed between the FHWA and the State. The State has determined that the project is a Categorical Exclusion under:

- 23 CFR 771.117(c): activity (c) (\_\_\_\_)
- 23 CFR 771.117(d): activity (d) (3)
- Activity \_\_\_\_ listed in the MOU between FHWA and the State

**Section 6005:** Based on an examination of this proposal and supporting information, the State has determined that the project is a CE under Section 6005 of 23 U.S.C. 327.

Aaron Burton	<i>SANAT KHAMPHOU</i>
Print Name: Environmental Branch Chief	Print Name: Project Manager/DLA Engineer
Signature	Signature
1-31-2012	2-6-12
Date	Date

Briefly list environmental commitments on continuation sheet. Reference additional information, as appropriate (e.g., air quality studies, documentation of conformity exemption, FHWA conformity determination if Section 6005 project; §4(f); §7 results; Wetlands Finding; Floodplain Finding; additional studies; and design conditions). Revised June 7, 2010

**CATEGORICAL EXEMPTION/CATEGORICAL EXCLUSION DETERMINATION FORM**  
**Continuation Sheet**

**08-RIV-Palm Springs**

**BR-NBIL(502)**

Dist.-Co.-Rte. (or Local Agency)

P.M/P.M.

E.A. (State project)

Federal-Aid Project No. (Local project)/ Proj. No.

Continued from page 1: Existing berms currently in the floodplain upstream of the proposed structure will be integrated into new flood control levees to direct runoff under the new bridge structure. Scour protection will be incorporated into the Project and will include rock slope protection and cutoff walls. The rock slope protection will armor the levees, channel flowline and bridge abutments, while the cutoff walls will be placed at the upstream and downstream ends of the rock slope protection. There are numerous existing underground utilities located in the project area. Some utilities will be protected in place (existing water and sewer) and others will be relocated as part of the project (gas, telephone, cable, and fiber optic). Right-of-way impacts include permanent drainage easements covering the limits of the proposed levees, and temporary construction easements throughout the project area. The project will be staged to allow at least one lane of traffic to remain open in each direction for the duration of construction, as no viable detours exist. The project may employ a staging area on the northern end of the project to the east of the roadway.

Technical Study Results

(Note: Technical studies were not necessary for Aesthetics, Air Quality, Community Impacts, Farmlands, Greenhouse Gases, Traffic, Visual Impacts, or Water Quality.)

Air Quality

Based on the Preliminary Environmental Study (PES), Air Quality only needed discussed in the environmental document. The following measure will be implemented to ensure that there are not air quality impacts during construction.

• Avoidance, Minimization, and/or Mitigation Measures:

- AQ-1: The construction contractor shall comply with Caltrans' Standard Specifications Section 7-1.01F and Section 10 of Caltrans' Standard Specifications (2006). Section 7-1.01F specifically requires compliance by the contractor with all applicable laws and regulations related to air quality, including air pollution control district and air quality management district regulations and local ordinances. Section 10 is directed at controlling dust by applying either water or dust palliative, or both.

Biological Resources

• Natural Environmental Study approved 9/07/2010

• Avoidance, Minimization, and/or Mitigation Measures:

- BIO-1: In the project area, abandoned roadway features and other hardscape shall be removed. Once the project is completed, the project area shall be revegetated with native species found onsite. These species include, but are not limited to, the following: cheesebush, creosote bush, saltbush, cholla cactus, desert lavender, white bursage, brittle-bush, suncups, desert sand verbena, phacelias, etc.
- BIO-2: The project footprint shall be minimized by using ESA fencing that restricts the area of work.
- BIO-3: Temporary construction staging areas and access roads shall be strategically placed to avoid and/or minimize impacts to SMWSS and SMWSS-D resources, when possible. ESA fencing shall be installed in coordination with a biologist in order to minimize the construction footprint to avoid and/or minimize impacts to sensitive habitat areas.
- BIO-4: Compensatory mitigation and replacement ratios for impacts to SMWSS and SMWSS-D will be consistent with the THCP, the ratio for permanent impacts will be 2:1 and the ratio for temporary impacts will be 1:1. Mitigation credits will be bought from the THCP for impacts to the Valley Floor Conservation Unit. A conceptual mitigation plan describing the compensatory mitigation program, whether it be restoration or purchase of credits, will be developed and submitted to the Tribe along with payment of the mitigation fees.
- BIO-5: Should pre-construction surveys or work associated with construction discover the presence of any of these species, habitats would be avoided, as feasible, using Environmental Sensitive Area (ESA) fencing to clearly define the limits of disturbance.
- BIO-6: Temporarily impacted habitat would be revegetated on-site with similar native vegetation at a proposed 1:1 ratio.
- BIO-7: To ensure compliance with MBTA and CFG code, vegetation removal and work should be avoided outside the nesting season (defined as February 15 – August 15). If this is not possible and vegetation removal or work is to occur during the nesting season, a pre-construction survey shall be conducted. The preconstruction survey shall be performed by a qualified biologist, to determine the presence of nesting birds and ensure active nests are not directly or indirectly impacted during construction. The pre-construction survey area will include the limits of the project impact area plus a 300-ft buffer. If work is planned to begin in an area during the nesting season (February 15 – August 15), all vegetation removal shall be completed within two weeks of the nesting survey if the survey determines no active nests are present.
- BIO-8: If the nest of a protected bird is found, the perimeter shall be flagged and a qualified biologist will coordinate with USFWS and CDFG to determine an appropriate buffer distance for protection of the nest. The contractor shall stop work in the nesting area until the buffer is established and is prohibited from conducting work that could disturb the birds (as determined by the project biologist and in coordination with wildlife agencies) in the protected area until the biologist has determined that nesting activities are complete.
- BIO-9: Temporary staging areas, storage areas, and access roads involved with this project will take place to the extent feasible, in the area of direct impact. Access to the project site will be from the existing South Palm Canyon Drive.
- BIO-10: Consistent with the THCP, a pre-construction survey for burrowing owl will be performed within 30 days prior to commencing construction activities. The survey will take place within the proposed Project limits of disturbance, including a 100-ft buffer where legal access is available; otherwise a visual survey shall be conducted out to 100 feet. The biologist will be qualified to identify burrowing owl sign (scat, pellets, tracks) as well as the species by sight and sound. The survey will occur when the species is known to be most active (i.e., one hour before sunrise to two hours after or two hours before sunset to one hour after). All potential burrows will be mapped as well as any individuals sighted.



**CATEGORICAL EXEMPTION/CATEGORICAL EXCLUSION DETERMINATION FORM**  
**Continuation Sheet**

- BIO-11: If burrowing owls are found on-site during the pre-construction survey:  
If the burrows are occupied during the non-breeding season, owls shall be removed through passive relocation. A permit is not required for passive relocation but the procedure shall be conducted by a qualified biologist. The biologist must ensure through appropriate means (e.g., monitoring for owl use, excavating burrows) that the burrows to be impacted are not being used. Unoccupied burrows shall be collapsed prior to owl removal from the occupied burrows, so that the owls cannot reoccupy the Project site. Owls should be excluded from burrows in the construction area and within an appropriate buffer zone by installing one-way doors in burrow entrances or other technique as deemed appropriate. Once it has been determined that all owls have left the burrow, the burrow shall be collapsed to prevent reoccupancy. Occupied burrows during the breeding season (February 1 through August 31) shall not be disturbed unless a qualified biologist verifies through non-invasive methods that either: (a) the birds have not begun egg laying and incubation; or (b) that juveniles from the occupied burrows are foraging independently and capable of independent survival. A Burrowing Owl Mitigation and Monitoring Plan will be submitted to CDFG for review and approval prior to relocation of owls.  
All relocation shall be approved by CDFG. The permitted biologist shall monitor the relocated owls a minimum of three days per week for a minimum of three weeks. A report summarizing the results of the relocation and monitoring shall be submitted to the Department within 30 days following completion of the relocation and monitoring of the owls.
- BIO-12: If neither active burrows (e.g., sign, scat, feathers) nor individual birds are identified during the preconstruction survey, no additional mitigation is required.
- BIO-13: Construction activities shall be limited to daylight hours.
- BIO-14: If initial project grading takes place between July-September (the time period when northern red-diamond rattlesnakes are born) a pre-construction survey will take place no more than 5 days prior to clearing/grubbing. If the species is found, CDFG will be contacted to establish appropriate avoidance and minimization measures.
- BIO-15: The project biologist shall conduct a pre-construction meeting to ensure that construction crews are informed of the approved limits of disturbance and of the sensitive animals and habitats in the vicinity. The contractor and construction personnel shall be trained on the biological resources associated with the project. At a minimum, the training shall include 1) the purpose for resource protection; 2) a description of sensitive species and their habitats; 3) environmentally responsible construction practices; 4) the protocol to resolve conflicts that may arise at any time during the construction process; and 5) the general provisions of FESA and CESA, the need to adhere to the provisions of FESA and CESA, and the penalties associated with violation of FESA and CESA.
- BIO-16: Prior to clearing/grubbing, grading, and/or construction activities within or adjacent to native habitats on the Project site, a qualified biologist shall supervise the installation of temporary construction fencing along the approved limits of disturbance, including construction staging areas and access routes, to prevent additional habitat impacts into adjacent habitats to be avoided. Fencing shall be installed in a manner that does not impact habitats to be avoided.
- BIO-17: Native fill will be utilized whenever possible.
- BIO-18: In compliance with the Executive Order on Invasive Species, EO 13112, and subsequent guidance from the Federal Highway Administration, the landscaping and erosion control included in the project will not use species listed as noxious weeds. In areas of particular sensitivity, extra precautions will be taken if invasive species are found in or adjacent to the construction areas. These include the inspection and cleaning of construction equipment and eradication strategies to be implemented should an invasion occur.
- BIO-19: Requirements from the State Water Resources Control Board would be filed in accordance with the NPDES general construction activity storm water discharge permit (Section 402). Requirements from this permit, BMPs specified in the Caltrans' Storm Water Quality Handbook - Planning and Design Guide, would be identified for water quality impacts that have the potential to occur during construction.

**Cultural Resources**

Historic Properties Survey Report (HPSR) was approved 4/13/2011

- Historic Property Survey Report (HPSR/ASR) approved 4/05/2011. In the HPSR/ASR, Caltrans determined "no properties requiring evaluation are present within the Project APE" and "As assigned by FHWA, Caltrans has determined a Finding of No Historic Properties Affected, according to 36 CFR 800.4(d)(1), is appropriate for this undertaking."
- Avoidance, Minimization, and/or Mitigation Measures:
  - CUL-1: A cultural monitor shall be present during ground disturbing construction activities.
  - CUL-2: If cultural materials are discovered during construction, all earth-moving activity within and around the immediate discovery area will be diverted until a qualified archaeologist can assess the nature and significance of the find.
  - CUL-3: If human remains are discovered, State Health and Safety Code Section 7050.5 states that further disturbances and activities shall cease in any area or nearby area suspected to overlie remains, and the County Coroner contacted. Pursuant to Public Resources Code (PRC) Section 5097.98, if the remains are thought to be Native American, the coroner will notify the Native American Heritage Commission (NAHC) who will then notify the Most Likely Descendent (MLD). At this time, the person who discovered the remains will contact John Eddy, California Department of Transportation District 8, so that they may work with the MLD on the respectful treatment and disposition of the remains. Further provisions of PRC 5097.98 are to be followed as applicable.

**Hazards and Hazardous Materials**

- Hazardous Waste Initial Site Assessment (ISA) was approved 5/10/2010
- Avoidance, Minimization, and/or Mitigation Measures:
  - HAZ-1: To avoid impacts from pavement striping during construction, testing and removal requirements for yellow striping and pavement marking materials shall be performed in accordance with Caltrans Standard Special Provision 15-300 REMOVE TRAFFIC STRIPE AND PAVEMENT MARKINGS. If the pavement striping will be removed in conjunction with the existing pavement (i.e. pavement demolition with striping attached versus grinding for striping removal), the striping can be considered non-hazardous.
  - HAZ-2: As is the case for any project that proposes excavation, the potential exists for unknown hazardous contamination to be revealed during project construction (such as previously undetected hazardous materials/waste in the soil/rubble piles or potential explosive threat if the subsurface natural gas pipeline is ruptured during construction). At the time of this Initial

**CATEGORICAL EXEMPTION/CATEGORICAL EXCLUSION DETERMINATION FORM**  
**Continuation Sheet**

Site Assessment, there were no documented leaks or soil/groundwater contamination issues related to the existing gas pipelines or soil/rubble piles within or immediately adjacent to the study area and no further investigation of these pipelines or soil/rubble piles are recommended. However, for any previously unknown hazardous waste/material encountered during construction, the procedures outlined the Caltrans Hazards Procedures for Construction shall be followed.

Noise

- Noise Technical Memorandum, approved 10/05/2010
- Avoidance, Minimization, and/or Mitigation Measures:
  - NOI- 1: The Contractor shall follow Caltrans Section 14-8.02 of the Standard Specifications. As such:
    - Do Not exceed 86 dBA at 50 feet from the job site activities from 9 p.m. to 6 a.m. Use an alternative warning method instead of a sound signal unless required by safety laws.
    - Equip an internal combustion engine with the manufacture-recommended muffler. Do not operate an internal combustion engine on the job with without the appropriate muffler.
  - NOI-2: The Contractor shall follow Caltrans Section S5-310 of the Standard Special Provisions. As such:
    - Do not operate construction equipment or run the equipment engines from 7:00 p.m. to 7:00 a.m. or on Sundays except you may operate equipment within the project limits during these hours to:
      - Service Traffic control facilities
      - Service construction equipment
  - NOI-3: Provide 1 Type 1 sound level meter and 1 acoustic calibrator to be used by the Department until contract acceptance. Provide training by a person trained in noise monitoring to 1 department employee designated by the engineer. The sound level meter must be calibrated and certified by the manufacturer or other independent acoustical laboratory before delivery to the Department. Provide annual recalibration by the manufacturer or other independent acoustical laboratory. The sound level meter must be capable of taking measurements using the A-weighting network and the slow response settings. The sound measurement microphone must be fitted with a windscreen. The Department returns the equipment to you at contract acceptance.
  - NOI-4: As directed by the City, the contractor shall implement appropriate additional noise mitigation measures, including (but not limited to) changing the location of stationary construction equipment, turning off idling equipment, rescheduling construction activity, notifying adjacent residents in advance of construction work, and installing acoustic barriers around stationary construction noise sources.
  - NOI- 5: The Contractor shall follow Ordinance 1581, Article 1 and Ordinance 1114, Article 1, 1980, of the Palm Springs Municipal Code, which states construction noise levels would not reach levels of such intensity or quality that it disturbs the peace and quiet of any other person of normal sensitivity from 7 p.m. to 7 a.m. on weekdays and 5 p.m. to 8 a.m. on weekends, unless a permit from the City is obtained.

**REGULATORY PERMITS REQUIRED**

- Clean Water Act Section 402 National Pollution Discharge Elimination Systems

(Waters on the project site do not qualify as waters of the U.S. or State; therefore, Section 401 and 404 of the Clean Water Act and Section 1602 of the California Fish and Game Code do not apply.)