



City Council Staff Report

DATE: August 3, 2016

CONSENT CALENDAR

SUBJECT: APPROVAL OF A REIMBURSEMENT AGREEMENT IN THE AMOUNT OF \$43,717 WITH SMOKE TREE, INC., FOR RECONSTRUCTION OF SMOKE TREE LANE AS PART OF THE 2016 PAVEMENT REHABILITATION PROJECT, CITY PROJECT NO. 16-01

FROM: David H. Ready, City Manager

BY: Engineering Services Department

SUMMARY

This action will approve a Reimbursement Agreement between the City of Palm Springs and Smoke Tree, Inc., a California corporation, in the amount of \$43,717, to accommodate the City's reconstruction of Smoke Tree Lane, a private street owned by Smoke Tree, Inc., extending from E. Palm Canyon Drive to the Smoke Tree Ranch entrance.

RECOMMENDATION:

1. Approve Reimbursement Agreement (Agreement No. ___) with Smoke Tree, Inc., a California corporation, in the amount of \$43,717 to accommodate reconstruction of Smoke Tree Lane as part of the 2016 Pavement Rehabilitation Project, City Project No. 16-01; and
2. Authorize the City Manager to approve a Construction Contract Change Order in the amount of \$43,717 with Match Corporation, (A6878) to include the reconstruction of Smoke Tree Lane as part of the 2016 Pavement Rehabilitation Project, City Project No. 16-01; and
3. Authorize the City Manager to execute all necessary documents.

STAFF ANALYSIS:

On June 17, 2016, Smoke Tree, Inc., a California corporation, ("STI"), submitted a request that the City consider including reconstruction of Smoke Tree Lane as part of its next Citywide pavement overlay project.

ITEM NO. 16

Subsequently, on July 6, 2016, the City Council awarded a construction contract (Agreement No. 6878) to Match Corporation, a California corporation, in the amount of \$5,328,933 for the 2016 Pavement Rehabilitation Project, City Project No. 16-01, (the "Project"). The Project includes reconstruction and overlay of approximately 2,700,000 square feet of asphalt concrete pavement on 75 street segments in various locations throughout the City, representing repairs to approximately 5% of the City street network.

Staff submitted a request to Match Corporation for a proposal to include reconstruction of Smoke Tree Lane extending from the south right-of-way line of East Palm Canyon Drive, south to the main entry to Smoke Tree Ranch, as generally depicted in Figure 1.

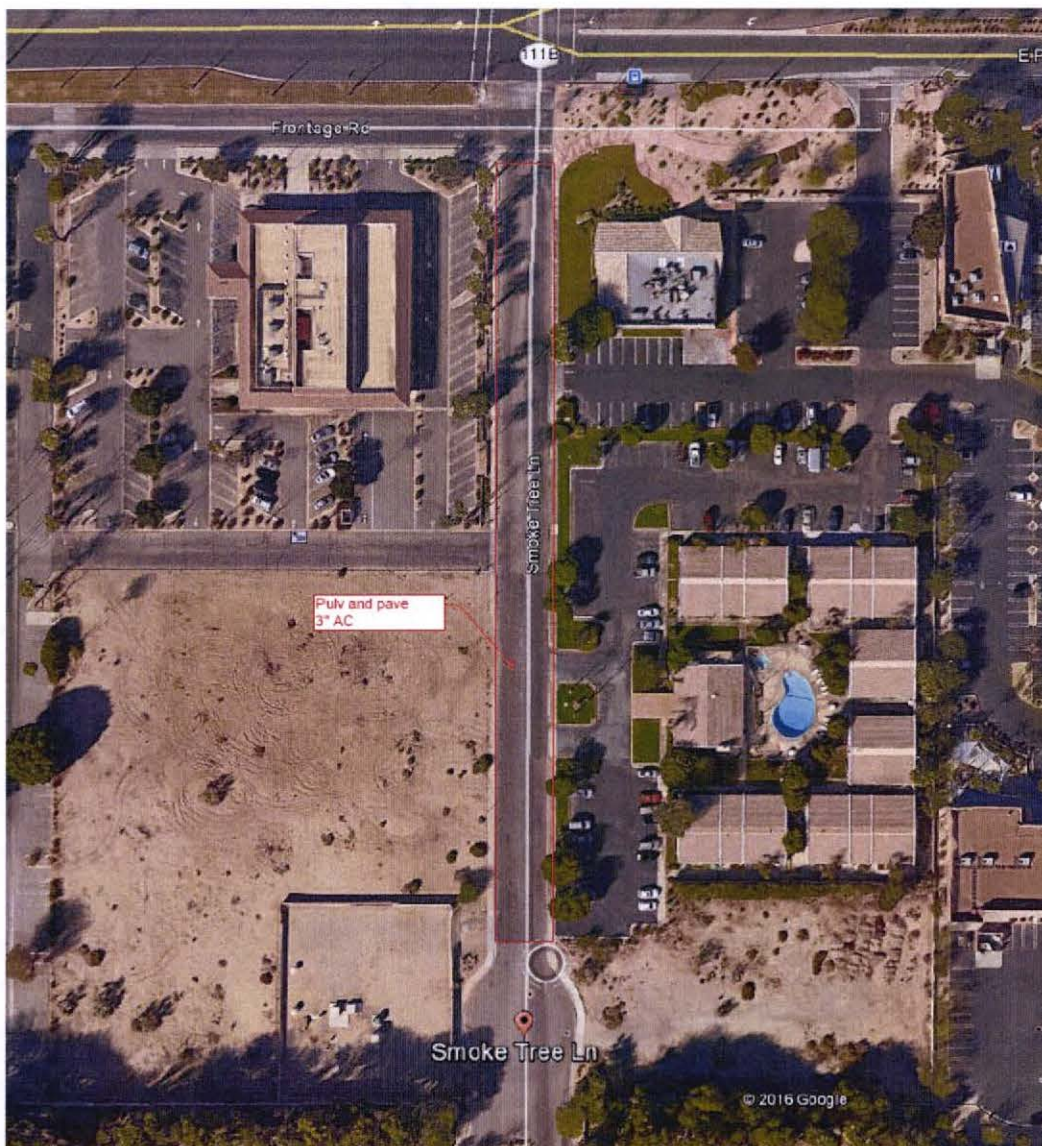


Figure 1

Smoke Tree Lane is a private street owned by STI, and was not surveyed as part of the City's Pavement Maintenance Report, a Pavement Condition Index (PCI) value has not been assigned; however, the pavement is in poor condition and likely has a PCI less than 50 warranting reconstruction.



Staff received a proposal from Match Corporation to include reconstruction of Smoke Tree Lane as part of the Project, with a cost of \$43,717 as identified on its proposal included as **Attachment 1**. Two options were proposed, and STI has requested the City proceed with Option 2 which will construct a new 3" asphalt overlay.

Staff recommends that the City accommodate STI's request; although Smoke Tree Lane is a private street, it provides access to the public between the Smoke Tree Village and Smoke Tree Commons shopping centers and is an important commercial street for that area.

Staff has prepared a Reimbursement Agreement with STI to accommodate including the reconstruction of Smoke Tree Lane as part of the Project. A copy of the Reimbursement Agreement is included as **Attachment 2**; upon execution of the agreement, STI will be required to submit full payment of \$43,717 to the City to accommodate this additional work on their private street.

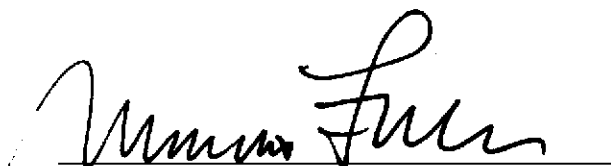
ENVIRONMENTAL IMPACT:

Section 21084 of the California Public Resources Code requires Guidelines for Implementation of the California Environmental Quality Act ("CEQA"). The Guidelines are required to include a list of classes of projects which have been determined not to have a significant effect on the environment and which are exempt from the provisions of CEQA. In response to that mandate, the Secretary for Resources identified classes of projects that do not have a significant effect on the environment, and are declared to be categorically exempt from the requirement for the preparation of environmental documents. In accordance with Section 15301 "Existing Facilities," Class 1 projects consist of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public structures, facilities, mechanical equipment or topographical features involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. Therefore, in accordance with Section 15301(c), staff has determined that the 2016 Pavement Rehabilitation Project, City Project No. 16-01, is considered categorically exempt from CEQA. A Notice of Exemption has been prepared and filed with the Riverside County Clerk.

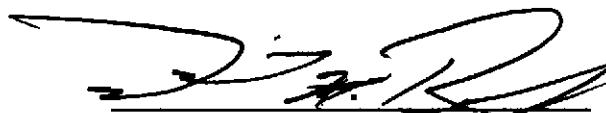
FISCAL IMPACT:

Under the terms of the Reimbursement Agreement, STI will submit full payment of \$43,717 for the cost to include reconstruction of Smoke Tree Lane as part of the Project. A final verification of quantities of items involved with reconstruction of Smoke Tree Lane will be completed after construction, and adjustment of the initial payment made by STI will be determined, whether reimbursement by the City due to overpayment, or an additional payment made by STI to accommodate increased costs. 100% of the cost to perform this work on behalf of STI on its private street will be paid by STI pursuant to the Reimbursement Agreement.

SUBMITTED:



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



David H. Ready, Esq., Ph.D.
City Manager

Attachments:

1. Matich Proposal
2. Reimbursement Agreement

ATTACHMENT 1



PROPOSAL

Company: City of Palm Springs
Attention: Mike Lytar
Re.: Smoketree Lane
Bid Date: 6/27/2016
From: Mark T. Hickman

Item No.	Description	Quantity	Unit	Unit Price	Total
Option No. 1					
1	Mobilization / Supervision	1	LS	\$ 3,000.00	\$ 3,000.00
2	Traffic Control	1	LS	\$ 3,000.00	\$ 3,000.00
3	Roadway Pulverization 9"	22,500	SF	\$ 0.18	\$ 4,050.00
4	Unclassified Excavation (Export) 2 1/2"	175	CY	\$ 21.00	\$ 3,675.00
5	Pulverized Base Material 6 1/2"	22,500	SF	\$ 0.11	\$ 2,475.00
6	Asphalt Concrete C-2 2 1/2"	341	TN	\$ 55.50	\$ 18,925.50
7	Double Adjust Valves	3	EA	\$ 690.00	\$ 2,070.00
8	Double Adjust Manholes	1	EA	\$ 813.00	\$ 813.00
9	Loops	4	EA	\$ 310.00	\$ 1,240.00
					\$ 39,248.50
Option No. 2					
1	Mobilization / Supervision	1	LS	\$ 3,000.00	\$ 3,000.00
2	Traffic Control	1	LS	\$ 3,000.00	\$ 3,000.00
3	Roadway Pulverization 9"	22,500	SF	\$ 0.18	\$ 4,050.00
4	Unclassified Excavation (Export) 3"	209	CY	\$ 21.00	\$ 4,389.00
5	Pulverized Base Material 6"	22,500	SF	\$ 0.11	\$ 2,475.00
6	Asphalt Concrete C-2 3"	405	TN	\$ 56.00	\$ 22,680.00
7	Double Adjust Valves	3	EA	\$ 690.00	\$ 2,070.00
8	Double Adjust Manholes	1	EA	\$ 813.00	\$ 813.00
9	Loops	4	EA	\$ 310.00	\$ 1,240.00
					\$ 43,717.00

NOTES: The Work Described above Must be Done Concurrently with the 16-01 Project.
The Quantities are Estimated Only and Payment Will be by Actual Quantity.
Department of Industrial Relations No. 1000004260

ATTACHMENT 2

**REIMBURSEMENT AGREEMENT
Smoke Tree Lane Pavement Reconstruction**

THIS REIMBURSEMENT AGREEMENT ("Agreement") is made and entered into on _____, 201__, by and between the City of Palm Springs, a California charter city and municipal corporation ("City"), and Smoke Tree, Inc., a California corporation, ("Smoke Tree"). City and Smoke Tree are individually referred to as "Party" and are collectively referred to as the "Parties".

RECITALS

A. On July 6, 2016, the City Council awarded a construction contract (Agreement No. ____) to Matich Corporation, a California corporation, in the amount of \$5,328,933 for the 2016 Pavement Rehabilitation Project, City Project No. 16-01, ("Project").

B. Smoke Tree is the owner of a private street identified as Smoke Tree Lane extending south of East Palm Canyon Drive, as identified on Exhibit "A".

C. Smoke Tree has requested that the City include reconstruction of Smoke Tree Lane as part of the Project, subject to Smoke Tree reimbursing the City for all costs related to the reconstruction of Smoke Tree Lane.

D. City has received a proposal from Matich Corporation to reconstruct Smoke Tree Lane, as identified on its proposal dated June 27, 2016, incorporated herewith as Exhibit "B".

E. Smoke Tree has requested that City proceed to include reconstruction of Smoke Tree Lane as part of the Project, in accordance with "Option No. 2" identified on the proposal submitted by Matich Corporation, and has agreed to grant City a non-exclusive temporary easement necessary for City to perform reconstruction of Smoke Tree Lane.

F. City is agreeable to including reconstruction of Smoke Tree Lane as part of the Project subject to Smoke Tree's agreement to reimburse the City for all costs related to its reconstruction.

In consideration of these promises and mutual agreements, City agrees as follows:

AGREEMENT

1. SERVICES OF CITY

1.1 Scope of Services. In compliance with all terms and conditions of this Agreement, City shall include reconstruction of Smoke Tree Lane as identified as

“Option No. 2” in accordance with the proposal from its construction contractor, Matich Corporation, included herewith as Exhibit “B”.

1.2 Compliance with Law. All work and services rendered under this Agreement shall comply with all applicable federal, state, and local laws, statutes and ordinances and all lawful orders, rules, and regulations.

2. GRANT OF TEMPORARY EASEMENT

2.1 Right of Entry and Temporary Construction Easement. By execution of this Agreement, Smoke Tree hereby grants to City a non-exclusive and temporary construction easement (the “Easement”) over that portion of Smoke Tree Lane extending from the south right-of-way line of East Palm Canyon Drive, south to the main entry to Smoke Tree Ranch, as generally depicted on Exhibit “A”, incorporated herewith and by this reference made a part hereof. The Easement shall be made available to City, its construction contractor, Matich Corporation, and any subcontractors performing work under contract for the City as part of the Project.

3. ADVANCE PAYMENT TO CITY

3.1 Agreement Sum. As set forth in Exhibit “B”, and identified as “Option No. 2”, the total estimated cost for reconstruction of Smoke Tree Lane is \$43,717. Smoke Tree hereby agrees to pay the City the total sum of \$43,717 upon execution of this Agreement. Subject to Section 3.2, the Parties acknowledge the final verified total cost for reconstruction of Smoke Tree Lane may differ from the total sum identified herein this Section 3.1 and adjustments as provided in Section 3.2 below shall be made.

3.2 Final Payment Adjustment. At the completion of the Project, the City will perform an analysis of final quantities of work completed, and any adjustment to the total cost for reconstruction of Smoke Tree Lane shall be identified. In the event the final verified total cost for reconstruction of Smoke Tree Lane exceeds the original payment made pursuant to Section 3.1, Smoke Tree shall pay the City the additional amount owed within thirty (30) days receipt of written notice from City. In the event the final verified total cost for reconstruction of Smoke Tree Lane is less than the original payment made pursuant to Section 3.1, Smoke Tree shall pay the City the additional amount owed within thirty (30) days receipt of written notice from City.

4. PERFORMANCE SCHEDULE

4.1 Time of Essence. Time is of the essence in the performance of this Agreement.

4.2 Schedule of Performance. Upon receipt of payment pursuant to Section 3.1, City shall promptly coordinate scheduling of the reconstruction of Smoke Tree Lane with the City’s contractor, Matich Corporation, to be scheduled as part of and concurrently with construction of the Project. City shall coordinate with Smoke Tree on the schedule for reconstruction of Smoke Tree Lane, and shall provide seventy-two (72) hours’ notice prior to initiating work on Smoke Tree Lane.

4.3 Force Majeure. The time for performance of services to be rendered under this Agreement may be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of City. Unforeseeable causes include, but are not limited to, acts of God or of a public enemy, acts of the government, fires, earthquakes, floods, epidemic, quarantine restrictions, riots, strikes, freight embargoes, and unusually severe weather.

4.4 Term. Unless earlier terminated pursuant to Section 4.5, this Agreement shall continue in full force and effect until the completion of the reconstruction of Smoke Tree Lane, and a determination of the final verified total cost, and payment by Smoke Tree (or reimbursement by City) in accordance with Section 3.2.

4.5 Termination Prior to Expiration of Term. The Parties acknowledge that upon receipt of payment in accordance with Section 3.1, the City will initiate efforts with its construction contractor, Match Corporation, to include reconstruction of Smoke Tree Lane as part of the scope of its contract and will assume responsibility therefore for any costs related to this additional work. Therefore, the Parties agree that upon execution this Agreement may not be terminated.

4.6 Warranty and Hold Harmless. The City shall assign to Smoke Tree all rights and remedies the City may have against Match Corporation, and any subcontractors performing work under contract for the City as part of the Project, for work performed on or to Smoke Tree Lane. Smoke Tree shall defend and hold harmless City, its elected and appointed officials, from any and all claims, damages, or demand arising out City, Match Corporation, and any subcontractors thereof, performance of its obligations under City's contract with Match Corporation.

5. ENFORCEMENT OF AGREEMENT

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

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

5.3 Waiver. No delay or omission in the exercise of any right or remedy of a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. No consent or approval of City shall be deemed to waive or render unnecessary City's consent to or approval of any subsequent act of Smoke Tree. Any waiver by either party of any default must be in writing. No such waiver shall be a waiver of any other default concerning the same or any other provision of this Agreement.

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

5.5 Legal Action. In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct, or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain injunctive relief, a declaratory judgment, or any other remedy consistent with the purposes of this Agreement.

6. MISCELLANEOUS PROVISIONS

6.1 Notice. Any notice, demand, request, consent, approval, or communication that either party desires, or is required to give to the other party or any other person shall be in writing and either served personally or sent by pre-paid, first-class mail to the address set forth below. Notice shall be deemed communicated seventy-two (72) hours from the time of mailing if mailed as provided in this Section. Either party may change its address by notifying the other party of the change of address in writing.

To City: City of Palm Springs
Attention: City Manager/ City Clerk
3200 E. Tahquitz Canyon Way
Palm Springs, California 92262

To Smoke Tree: Tracy Conrad
Smoke Tree Inc.
1850 Smoke Tree Lane
Palm Springs, California 92264

6.2 Integrated Agreement. This Agreement contains all of the agreements of the parties and supersedes all other written agreements.

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

6.4 Severability. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law. In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement, which shall be interpreted to carry out the intent of the parties.

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

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

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

6.8 Authority. The persons executing this Agreement on behalf of the Parties warrant that they are duly authorized to execute this Agreement on behalf of Parties and that by so executing this Agreement the Parties are formally bound to the provisions of this Agreement.

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

"CITY"
City of Palm Springs

Date: _____

By: _____

David H. Ready
City Manager

APPROVED AS TO FORM:

ATTEST

By: _____

Douglas C. Holland,
City Attorney

By: _____

James Thompson,
City Clerk

"SMOKE TREE"
Smoke Tree, Inc.

Date: _____

By : _____

Tracy Conrad

President

Date: _____

(name)

(secretary)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

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 _____)

On _____ before me, _____
Date Here Insert Name and Title of the Officer

personally appeared _____
Name(s) of Signer(s)

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

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

WITNESS my hand and official seal.

Signature _____
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended 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: _____

Corporate Officer -- Title(s): _____

Partner -- Limited General

Individual Attorney in Fact

Trustee Guardian or Conservator

Other: _____

Signer Is Representing: _____

Signer's Name: _____

Corporate Officer -- Title(s): _____

Partner -- Limited General

Individual Attorney in Fact

Trustee Guardian or Conservator

Other: _____

Signer Is Representing: _____

EXHIBIT “A”

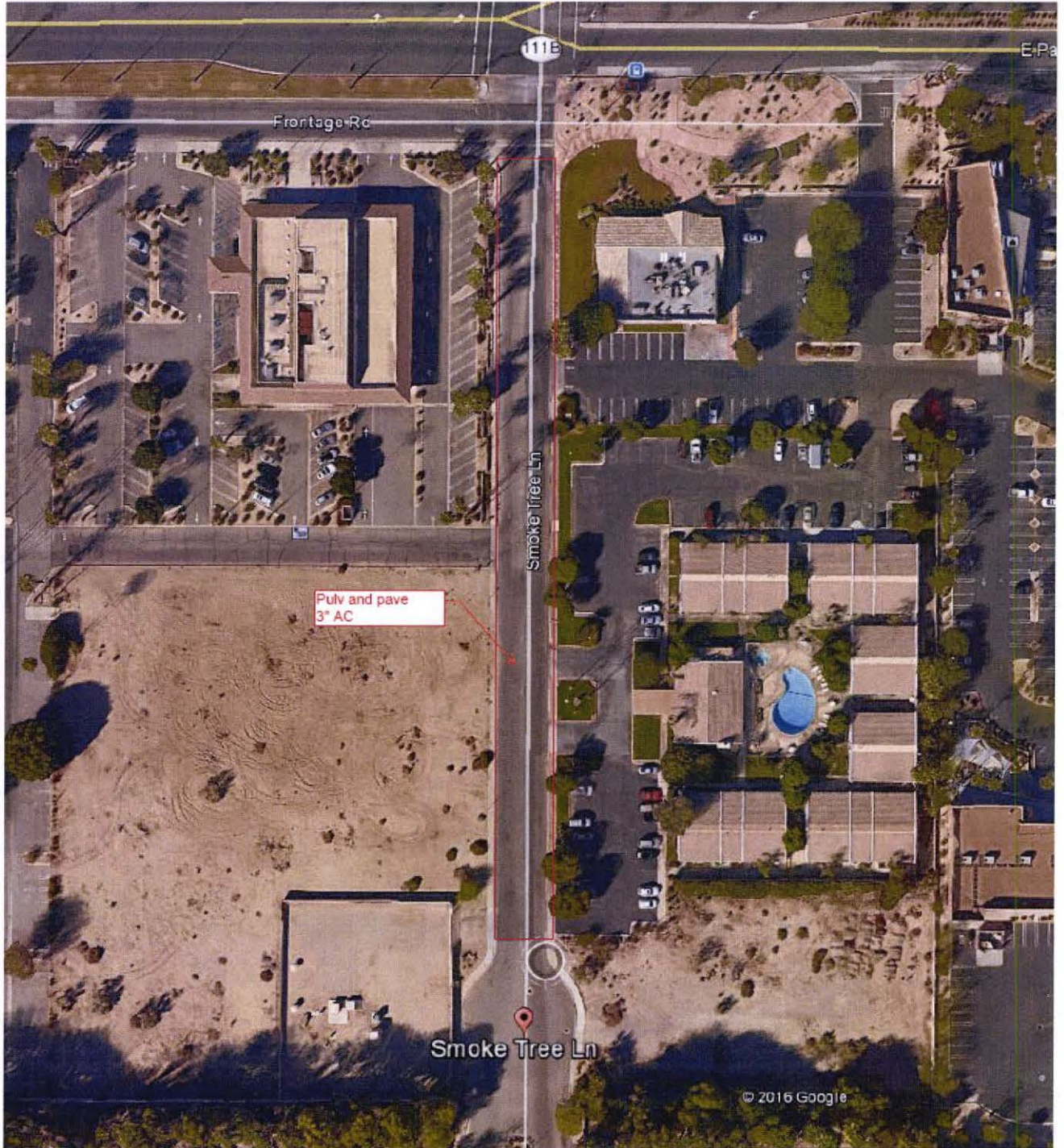


EXHIBIT “B”



PROPOSAL

Company: City of Palm Springs
 Attention: Mike Lytar
 Re.: Smoketree Lane
 Bid Date: 6/27/2016
 From: Mark T. Hickman

Item No.	Description	Quantity	Unit	Unit Price	Total
Option No. 1					
1	Mobilization / Supervision	1	LS	\$ 3,000.00	\$ 3,000.00
2	Traffic Control	1	LS	\$ 3,000.00	\$ 3,000.00
3	Roadway Pulverization 9"	22,500	SF	\$ 0.18	\$ 4,050.00
4	Unclassified Excavation (Export) 2 1/2"	175	CY	\$ 21.00	\$ 3,675.00
5	Pulverized Base Material 6 1/2"	22,500	SF	\$ 0.11	\$ 2,475.00
6	Asphalt Concrete C-2 2 1/2"	341	TN	\$ 55.50	\$ 18,925.50
7	Double Adjust Valves	3	EA	\$ 690.00	\$ 2,070.00
8	Double Adjust Manholes	1	EA	\$ 813.00	\$ 813.00
9	Loops	4	EA	\$ 310.00	\$ 1,240.00
					\$ 39,248.50
Option No. 2					
1	Mobilization / Supervision	1	LS	\$ 3,000.00	\$ 3,000.00
2	Traffic Control	1	LS	\$ 3,000.00	\$ 3,000.00
3	Roadway Pulverization 9"	22,500	SF	\$ 0.18	\$ 4,050.00
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9	Loops	4	EA	\$ 310.00	\$ 1,240.00
					\$ 43,717.00

NOTES: The Work Described above Must be Done Concurrently with the 16-01 Project.
 The Quantities are Estimated Only and Payment Will be by Actual Quantity.
 Department of Industrial Relations No. 1000004260

EXHIBIT “A”

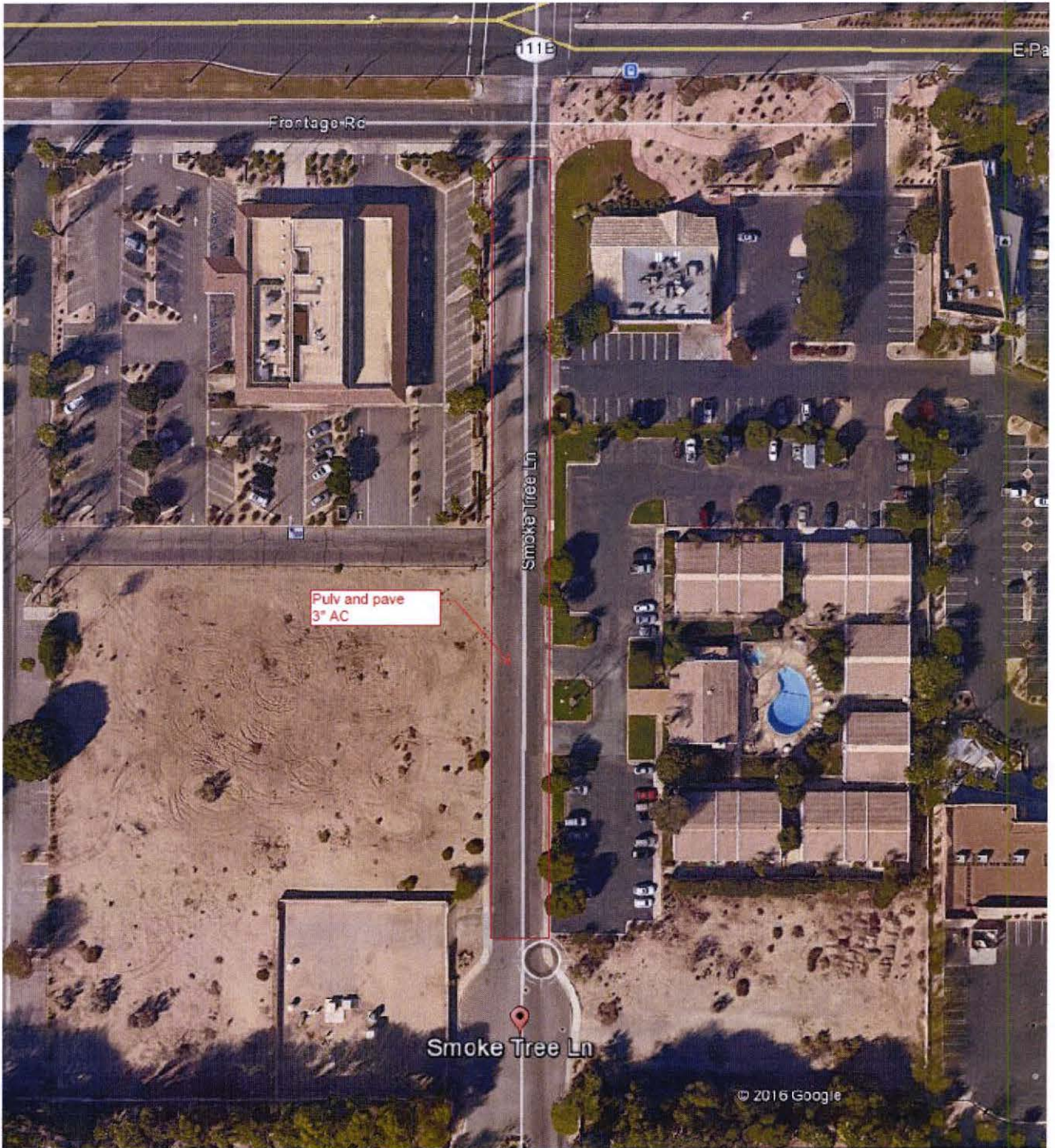


EXHIBIT “B”



PROPOSAL

Company: City of Palm Springs
Attention: Mike Lytar
Re.: Smoketree Lane
Bid Date: 6/27/2016
From: Mark T. Hickman

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