



## City Council Staff Report

Date: November 2, 2016 CONSENT CALENDAR

Subject: APPROVAL OF A RIGHT OF WAY ACQUISITION AGREEMENT IN THE AMOUNT OF \$250,000 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: Engineering Services 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 approves a restated Agreement previously approved on April 6, 2016, (Agreement No. 6839) to compensate the owners for acquisition of the required drainage easement at the fair market value of \$250,000.

Federal funding has been awarded to the City for acquisition of required rights-of-way for the Project. The federal funding will pay 88.53% of all costs, with the remaining 11.47% local match budgeted from the City's Gas Tax Fund. Federal funding for the acquisition of right-of-way for the Project will lapse on June 30, 2017; action on this item is required to ensure the City can complete the required acquisition of right-of-way.

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 restated Right-of-Way Agreement for Acquisition of Flood Control and Drainage Easement, (A6839), in the amount of \$250,000 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 the Vashisht Family Revocable

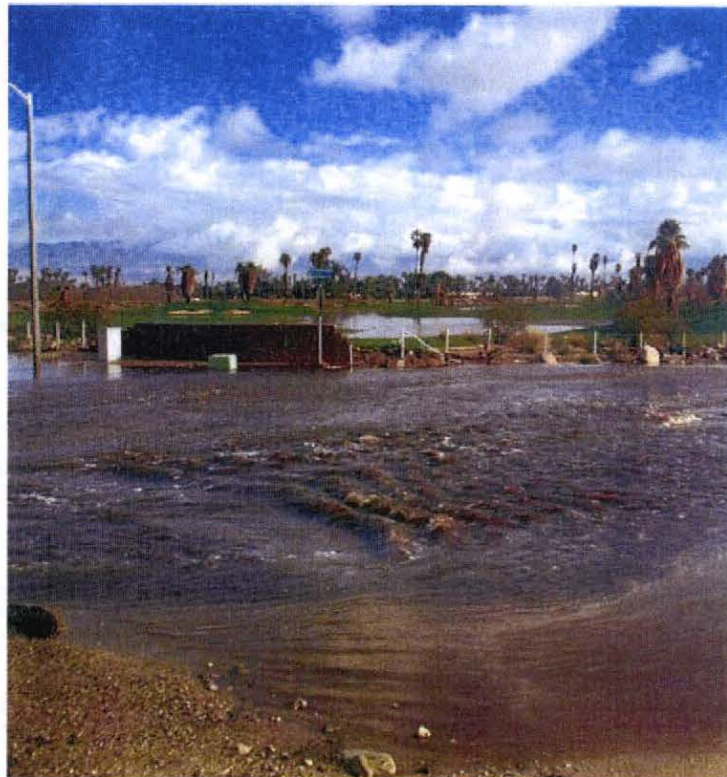
Trust Dated May 2, 2001 and Restated May 4, 2010, as to an undivided seventy percent (70%) interest, all as tenants in common; and

2. 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 acquisition.

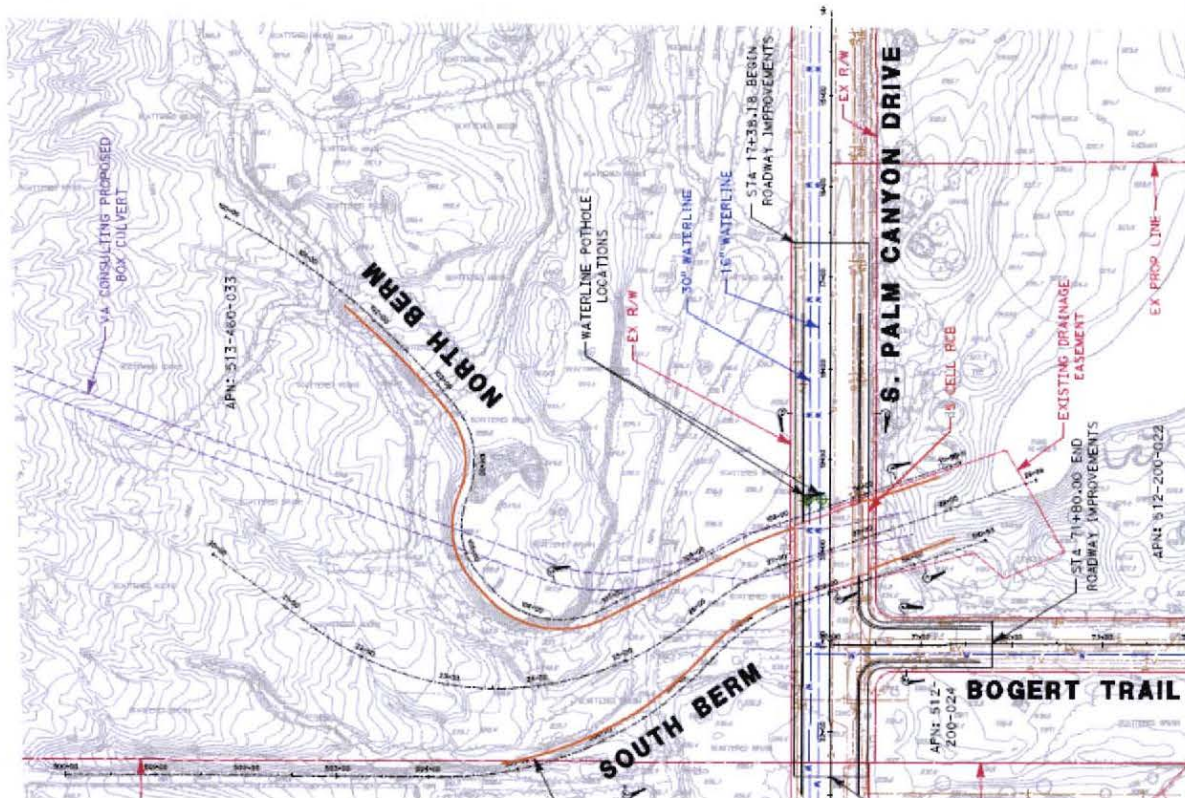
**STAFF ANALYSIS:**

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.

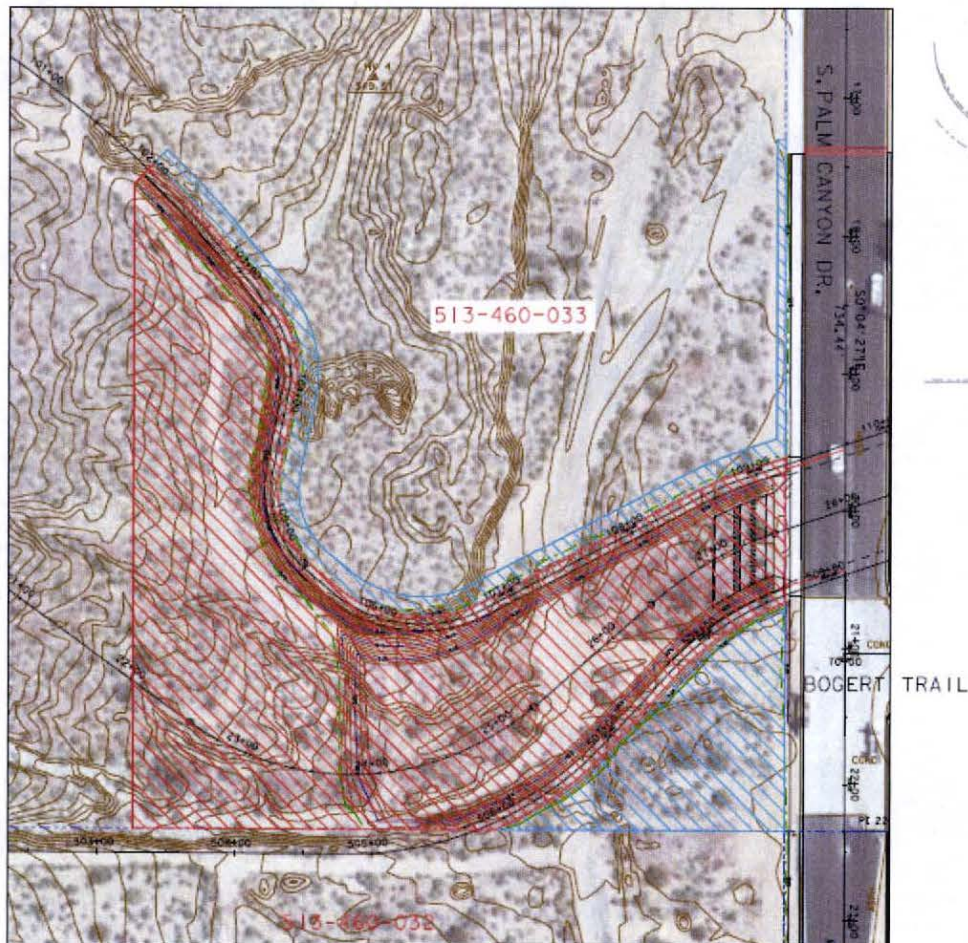


**FIGURE 3**  
**PROPOSED PROJECT**  
08-RIV-City of Palm Springs  
Federal Project No. BR-NBIL (502)  
South Palm Canyon Drive Bridge Project  
Palm Springs, Riverside County, California

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 



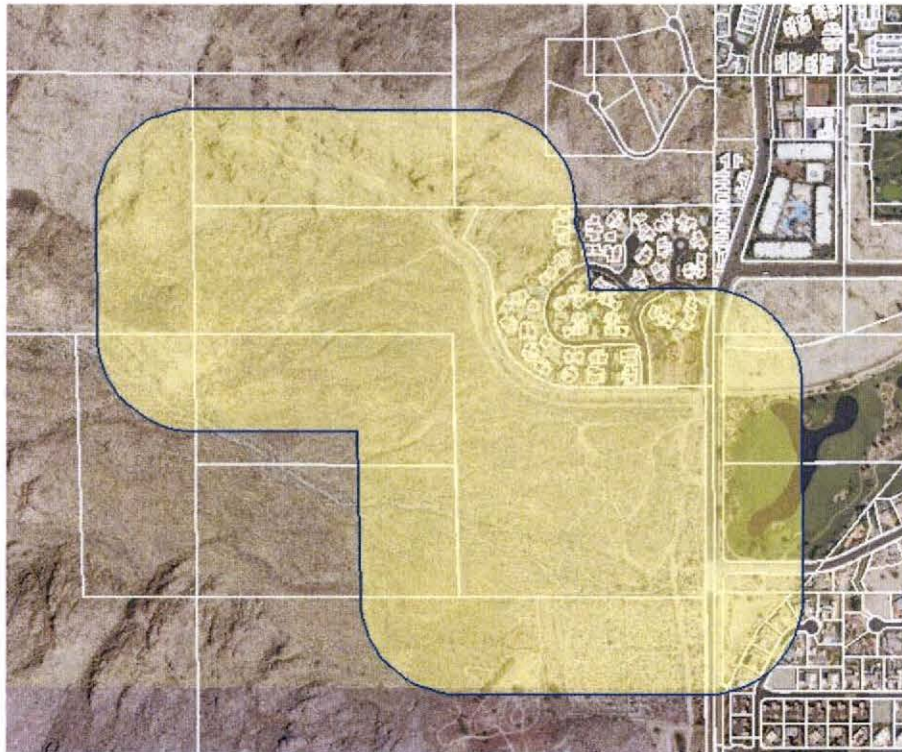
Right-of-way negotiations with the property owners were initiated in 2015. The City commissioned an independent full appraisal of the property, and a fair market value of \$250,000 was determined for the acquisition of the permanent drainage easement of 2.39 acres. At the June 3, 2015, City Council closed session meeting, staff presented the fair market value appraisal for the required drainage easement, and received direction to proceed with acquisition at a cost not to exceed \$300,000.

In early 2016, the property owners agreed to waive their rights to compensation, and to donate the permanent drainage easement of 2.39 acres to the City at no cost, on the basis that the property owners were then processing a new entitlement with the City for "Eagle Canyon", a residential subdivision for their property, which would require construction of new on-site storm drain systems rendering the drainage easement to be acquired by the City 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 was to be vacated and quitclaimed by the City back to the property owners at that time.

On April 6, 2016, the City Council approved right-of-way agreements with the property owners, which included Agreement No. 6839 in the amount of \$0 for acquisition of the permanent drainage easement of 2.39 acres.

Subsequently, the property owners have withdrawn their entitlement applications from the City for the "Eagle Canyon" residential subdivision, which would have rendered superfluous the drainage easement to be acquired for the Project. Due to this fact, the basis for the property owners' waiver of the fair market value of \$250,000 for the 2.39 acre permanent drainage easement has changed, and although escrow has been opened to acquire the permanent drainage easement, escrow has not closed and the property owners have officially notified the City by letter dated September 9, 2016, of its request to receive compensation for the fair market value of the drainage easement previously established by the City at \$250,000. A copy of the property owners' letter is included as **Attachment 1**.

The previously approved right-of-way agreement (Agreement No. 6839) has been revised to include provisions for payment to the property owners of the fair market value of \$250,000 for the permanent drainage easement, included as **Attachment 2**. A 500 foot 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 3**.

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 4**.

The property from which the drainage easement is being acquired is not identified in critical habitat designated by the U.S. Fish and Wildlife Service ("USFWS") for endangered species, including Casey's June Beetle. As a matter of reference, the map of the critical habitat for Casey's June Beetle adopted by the USFWS is shown in Figure 4 with the location of the Project identified.

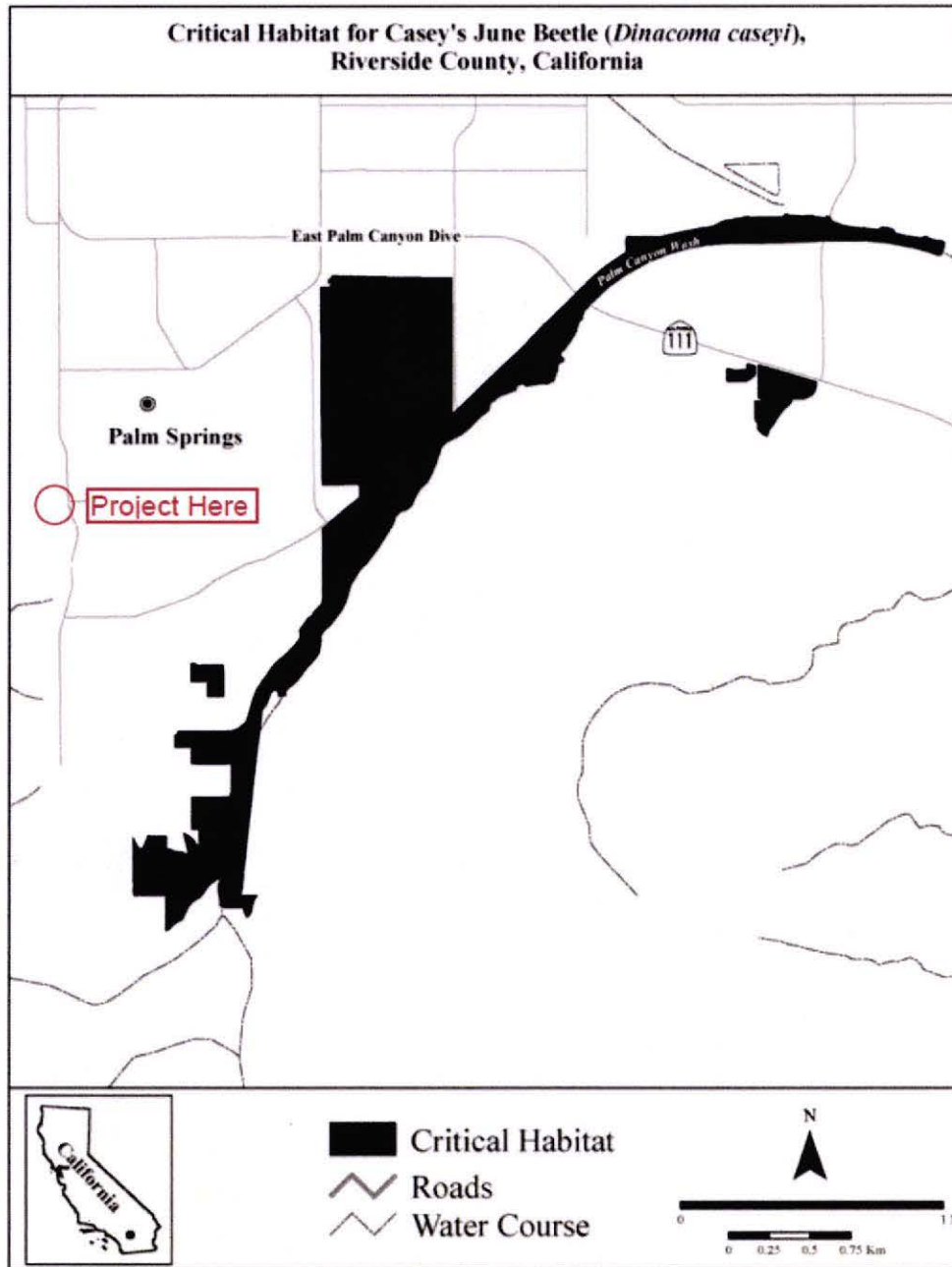


Figure 4

FISCAL IMPACT:

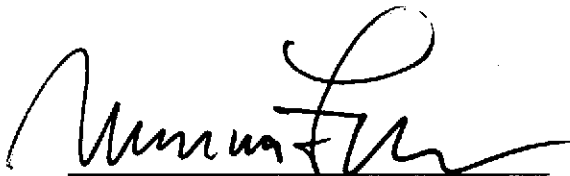
The fair market value for the acquisition of the 2.39 acre permanent drainage easement was previously determined at \$250,000 by the City's independent appraiser. At the June 3, 2015, City Council closed session meeting, staff presented the fair market value appraisal for the required drainage easement, and received direction to proceed with acquisition at a cost not to exceed \$300,000. The property owners have agreed to be compensated at the fair market value, and have not requested nor negotiated a higher price. It is estimated that escrow and title fees of approximately \$15,000 may be incurred in addition to the acquisition cost for the drainage easement.

Funding for the Project is made possible by the federal HBP grant which will cover 88.53% of all eligible project costs. The federal funding programmed on the Project will lapse if not expended within the current fiscal year on June 30, 2017. It is important to complete the required right-of-way acquisition to ensure expenditures are recorded prior to June 30, 2017, to ensure reimbursement by Caltrans. Sufficient funding is currently available for payment of \$250,000 for the drainage easement from the following accounts:

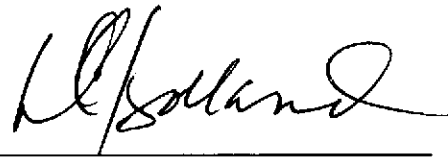
- Capital Project Fund, Account No. 261-4491-50221; \$221,325
- Gas Tax Fund, Account No. 133-4298-50221; \$28,675

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

SUBMITTED



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



Douglas Holland, Esq.  
City Attorney

Attachments:

1. Property Owner Letter dated September 9, 2016
2. Agreement
3. CEQA Notice of Determination
4. NEPA Categorical Exclusion

# **ATTACHMENT 1**

September 9, 2016

**VIA E-MAIL AND**  
**FIRST CLASS MAIL**

Marcus Fuller  
Assistant City Manager/City Engineer  
City of Palm Springs  
3200 E. Tahquitz Canyon Way  
Palm Springs, CA 92262

Re: South Palm Canyon Drainage Improvement Project - Proposed Acquisition of Easements from the Owners of the Eagle Canyon Property

Dear Mr. Fuller:

Rutan & Tucker, LLP, represents the owners ("Owners") of the 117+ acres located on the west side of South Palm Canyon Drive, north of the Bogert Trail ("Eagle Canyon Property").

Pursuant to our telephone conference on September 7, 2016, this letter explains the change in circumstances that have caused the Owners of the Eagle Canyon Property to conclude that they are no longer in a position to waive their entitlement to just compensation for the easements requested by the City for the South Palm Canyon Drainage Improvement Project ("Project").

The primary easement proposed to be acquired by the City has been valued by the City's appraiser at \$250,000. At one time, the Owners believed they would be in a position to waive the right to that compensation. To understand the Owners' mindset at that time, a bit of history is necessary. When the Owners bought the Eagle Canyon Property, it had an approved tentative map for 230 housing units (75 single family and 155 townhouse type units) with a certified EIR for that project. Those entitlements were consistent with the stipulated judgment that was entered into by environmental groups, the City, and the prior land owner. That stipulated judgment restricted that areas of the property that could be development. Despite having the right under the stipulated judgment to build 230 units, the Owner, based upon input from the City and the community, determined those entitlements were too dense and not comparable with the majority of housing stock in the greater Andreas Hill area. The Owners voluntarily downsized and redesigned the development plan for 160 single family lots utilizing the same overall development area.

At the time that the City approached the Owners regarding the acquisition easement for the Project, the Owners still were holding the 230 unit entitlements, but were well into the planning process for the reduced 160 unit development. City Planning staff (Edward Robinson) provided positive feedback on the 160 unit development and noted that it was consistent and compatible with the surrounding housing. He indicated staff support for the project and expressed the view

Marcus Fuller  
September 9, 2016  
Page 2

that the community would appreciate the reduction in scope and scale of the development.

At the time the Owners met with the City to discuss the City's interest in the easement, the Owners were under the impression that both the community and the City would support the downsized project. There were discussions between the City and the Owners to the effect that, once the 160 unit project was built, much of the easement area would be returned to the Owners after they installed the replacement drainage facilities. The Owners were told that the return of the property could be streamlined if they waived their right to compensation at this junction. This concept is referenced in Section 7.13 of the Agreement.

As we now know, the 160 unit development caused a community and political firestorm. The public officials involved in the workshops (and subsequent on-site protest) made it abundantly clear that the 160 unit project had no hope of approval. Councilmembers were not even willing to discuss the project with the Owners. This forced the Owners – at great expense – back to the drawing board once again.

The Owners are now to the point of proposing an extremely downscaled project with 60+/- lots and develops only 40 acres, leaving the remaining 77 acres in its natural state. The drainage plan for that project no longer requires the installation of "Replacement Drainage Improvements" that were described in Section 7.13 of the Agreement. As a result, the City reconveyance described in Section 7.13 will no longer occur. This was the primary reason for the waiver of compensation. Financially, the development will not provide the return on investment that the 160-unit project would provide. In simple terms, the Owners can no longer afford to waive their entitlement to just compensation for the easement, and requiring them to do so now would be unfair.

Since the acquisition has not been consummated, it is now appropriate to pay the Owners the compensation that the City itself determined was "just." As an initial matter, we note that Section 2.2 of the Right-of-Way Agreement for the Acquisition of Flood Control and Drainage Easement ("Agreement") established April 30, 2016 as the closing date. Section 2.6 of the Agreement noted that, if the closing did not occur within the required time frame, the Agreement terminates. To our knowledge, there was no extension of that date.

Moreover, given that the new drainage design will no longer allow the Owners to reap the one and only benefit offered by the City in exchange for the waiver of the right to just compensation – the right to the return of the property at no cost upon the completion of the drainage facilities for the 160-unit development -- there would be no consideration for the transaction. As a result, the contract can no longer stand.

Marcus Fuller  
September 9, 2016  
Page 3

Finally, we note the duty of fairness the City is under when it acquires private property for public projects. As explained by the California Supreme Court in *City of Los Angeles v. Decker* (1977) 18 Cal.3d 860, 871, “[t]he condemnor acts in a quasi-judicial capacity and should be encouraged to exercise his tremendous power fairly, equitably and with a deep understanding of the theory and practice of just compensation.” In this regard, it is noteworthy that the Owners had no legal representation during the negotiation and documentation of the Agreement.

For these reasons, the Owners request that the Agreement reinstate the just compensation payment of \$250,000. The Owners stand willing to execute a revised agreement to that effect and to expedite the closing so that the City may proceed with the Project.

Should you require any further information or documentation in order to process this request, please let me know.

Very truly yours,

RUTAN & TUCKER, LLP



M. Katherine Jensen

MKJ:lr

cc: Mr. Michael L. Cole

# **ATTACHMENT 2**

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 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, "**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. Owner desires to convey to City, and City desires to acquire from Owner, 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**").

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. PURCHASE AND SALE.

1.1. Agreement to Buy and Sell. Subject to the terms and conditions set forth herein, Owner hereby agrees to sell and convey to City, and City hereby agrees to acquire and purchase 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 Two Hundred Fifty Thousand Dollars (\$250,000) payable as cash at the Close of Escrow as defined and provided for herein.

## 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 July 1, 2017, (the "**Closing Date**"), unless otherwise extended by mutual agreement of the Parties. 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 City's obligation to purchase 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;

(e) Owner shall have executed and submitted to Escrow Holder the Affidavit of Non-Foreign Status By Transferor (Exhibit D); and

(f) 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) The Purchase Price together with 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);

(b) Subject to Section 2.5.1 below, an executed Affidavit of Non-foreign Status in the form of Exhibit D attached hereto and such other documentation necessary to exempt Owner from the withholding requirements of Section 1445 of the Internal Revenue Code of 1986, as amended, and the regulations thereunder; and

(c) Subject to Section 2.5.1 below, a Withholding Exemption Certificate Form 593 as contemplated by California Revenue and Taxation Code §18662 (the "**Withholding Affidavit**") duly executed by Owner.

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 Withholding. In the event that, pursuant to Section 2.4.2(b) above, Owner fails to deposit with Escrow Holder the executed Affidavit of Non-foreign Taxpayer Status which exempts Owner from the withholding requirements of Section 1445 of the Internal Revenue Code of 1986, as amended, and the regulations thereunder, Owner hereby authorizes Escrow Holder to withhold ten percent (10%) of the Purchase Price less any applicable closing costs and to report and transmit the withheld amount to the Internal Revenue Service. Additionally, in the event that, pursuant to Section 2.4.2(c) above, Owner fails to deposit with Escrow Holder any applicable tax document which exempts City from California withholding requirements, if any, Owner hereby authorizes Escrow Holder to withhold such additional percentage of the Purchase Price of the Easement as is required by California law, and Escrow Holder shall report and transmit the withheld amount in the manner required by California law. By agreeing to act as Escrow Holder hereunder, Escrow Holder expressly agrees to undertake and be responsible for all withholding obligations imposed pursuant to Section 1445 of the Internal Revenue Code of 1986, as amended, and the regulations thereunder and under any similar provisions of California law, and shall defend, indemnify and hold City harmless in connection with such obligations.

2.5.2 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.

2.5.3 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.

7.8. Legal Advice and Construction. Each party has the option to obtain independent legal advice from its attorneys with respect to the advisability of executing this Agreement and the meaning of the provisions hereof. The provisions of this Agreement shall be construed as to the fair meaning and not for or against any party based upon any attribution of such party as the sole source of the language in question. There shall be no presumption in the interpretation of this Agreement that any ambiguity is to be resolved against any party hereto. ."

7.9. Relationship of Parties. The parties agree that their relationship is that of Owner and City, and that nothing contained herein shall constitute either party, the agent or legal representative of the other for any purpose whatsoever, nor shall this Agreement be deemed to create any form of business organization between the parties hereto, nor is either party granted the right or authority to assume or create any obligation or responsibility on behalf of the other party, nor shall either party be in any way liable for any debt of the other.

7.10. Attorneys' Fees. In the event that any party hereto institutes an action or proceeding for a declaration of the rights of the parties under this Agreement, for injunctive relief, for an alleged breach or default of, or any other action arising out of, this Agreement, or the transactions contemplated hereby, or in the event any party is in default of its obligations pursuant thereto, whether or not suit is filed or prosecuted to final judgment, the non-defaulting party or prevailing party shall be entitled to its actual attorneys' fees and to any court costs incurred, in addition to any other damages or relief awarded.

7.11. Assignment. Neither Owner nor City shall assign its rights or delegate its obligations hereunder without the prior written consent of the other, which consent shall not be unreasonably withheld or delayed. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the successors and permitted assigns of the parties to this Agreement.



7.12. Notices. No notice, request, demand, instruction, or other document to be given hereunder to any Party shall be effective for any purpose unless personally delivered to the person at the appropriate address set forth below (in which event such notice shall be deemed effective only upon such delivery), delivered by air courier next-day delivery (e.g. Fed Ex), delivered by mail, sent by registered or certified mail, return receipt requested, or sent via telecopier, as follows:

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

With a copy to:                      City Attorney  
c/o Woodruff, Spradlin & Smart  
555 Anton Boulevard, Suite 1200  
Costa Mesa, CA 92626  
Facsimile No.: (714) 835-7787  
Telephone No.: (714) 558-7000

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

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.

7.13. 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.

7.14. Release. The total compensation to be paid by Buyer for the Easement is the Purchase Price, which consideration covers any and all land and improvements, attached or detached furniture, fixtures and equipment, loss of business goodwill, and is the full and complete acquisition cost of the Easement. Buyer shall have no obligation to Seller under the California Relocation Assistance and Real Property Acquisition statutes and guidelines. Except for any breach of terms or conditions contained in this Agreement, Seller waives and forever releases Buyer, including its successors, officers, employees, attorneys, agents, representatives and anyone else acting on Buyer's behalf, of and from any and all claims, demands, actions or causes of action, obligations, liabilities, or claims for further compensation, known or unknown, based upon or relating to the facts or allegations and circumstances arising from Buyer's acquisition of the Easement. By such release, Seller expressly waives its rights, if any, under California Civil Code Section 1542 which provides:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HIS SETTLEMENT WITH THE DEBTOR."

7.15. City Council Approval of Agreement. This Agreement is subject to the approval of the City Council. If this Agreement remains unapproved by the City Council then the parties will have no further obligation under this Agreement. If the City Council approves this Agreement within less than thirty (30) days of the Closing Date set forth herein, the parties agree to extend the Closing Date for an additional thirty (30) days.

[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

\_\_\_\_\_  
Marcus L. Fuller  
Assistant City Manager

By: \_\_\_\_\_  
Its: Managing member

Attest:

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

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

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

Approved as to form by:

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

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

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

**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
- Exhibit D -- Affidavit of Non-foreign Taxpayer Status

**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:

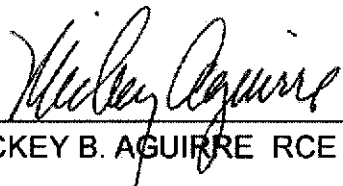
COMMENCING AT THE SOUTHEAST CORNER OF SAID NORTHEAST QUARTER; THENCE ALONG THE SOUTHERLY LINE OF SAID NORTHEAST QUARTER NORTH 89°48'49" WEST 254.06 FEET TO THE **TRUE POINT OF BEGINNING**;

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

11/14/14



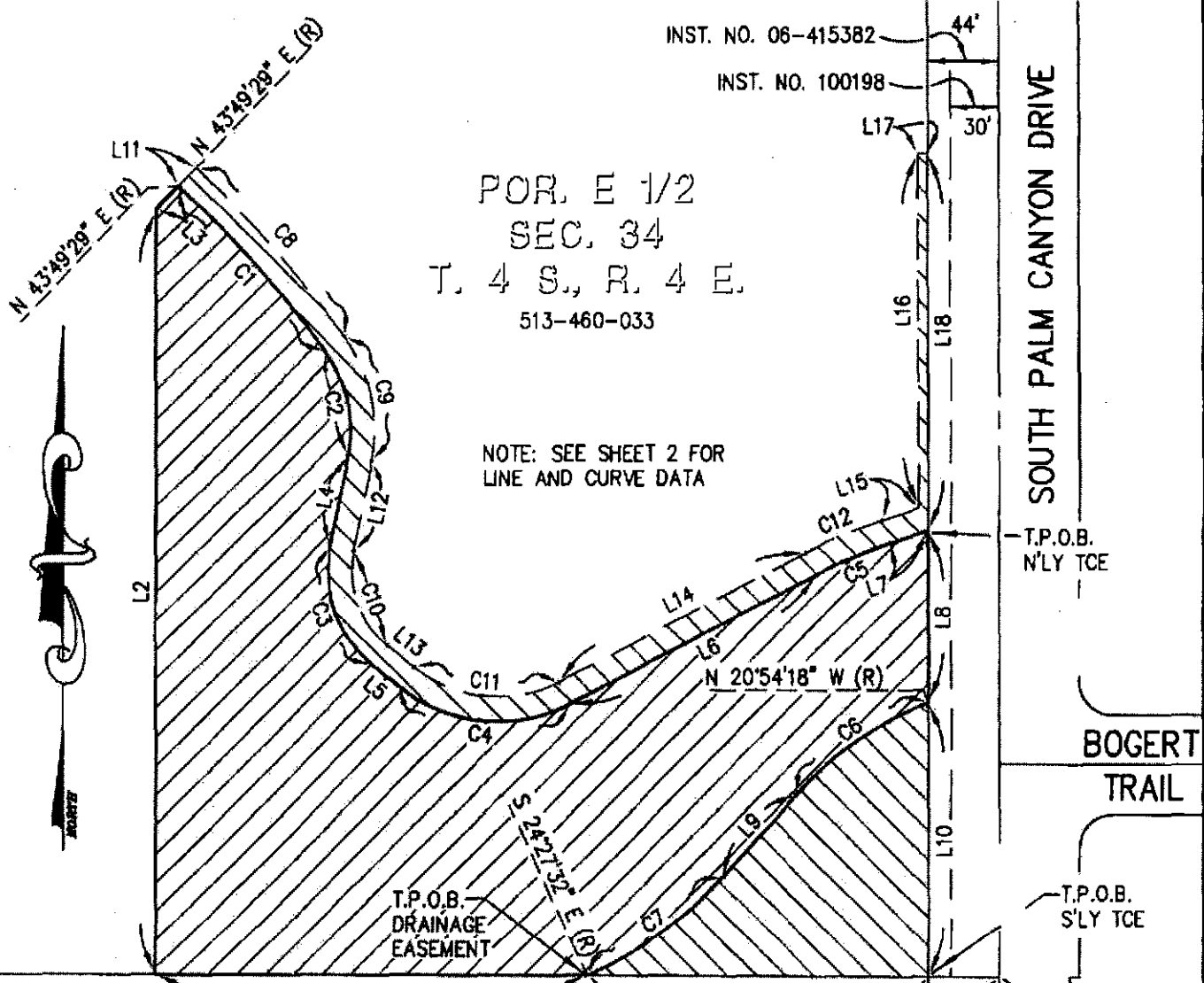
**Exhibit "B" to the Easement Deed**

**DEPICTION OF THE RIGHT OF WAY**



# EXHIBIT "B"

PERMANENT DRAINAGE AND TEMPORARY CONSTRUCTION EASEMENTS


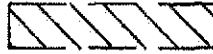


POR. E 1/2  
 SEC. 34  
 T. 4 S., R. 4 E.  
 513-460-033

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,

**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 K. 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

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*

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*

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*

**EXHIBIT D**

DO NOT RECORD.  
DO NOT SEND  
TO IRS.

TRANSFEEE (BUYER)  
MUST RETAIN FOR  
SIX YEARS AFTER  
THE TRANSACTION.

**CERTIFICATION OF NON-FOREIGN  
STATUS BY TRANSFEROR**

1. Section 1445 of the Internal Revenue Code provides that a transferee (Buyer) of a U. S. real property interest must withhold tax if the transferor (Seller) is a foreign person.

2. In order to inform each transferee that withholding of tax is not required upon disposition of a U. S. real property interest by \_\_\_\_\_ (hereinafter referred to as "the Transferor"), the undersigned hereby certifies, and declares by means of this certification, the following on behalf of the Transferor:

A. The one item marked below is true and correct:

- \_\_\_\_\_ (I) The Transferor is not a foreign individual, foreign corporation, foreign partnership, foreign trust, or foreign estate (as these terms are defined in the Internal Revenue Code and Income Tax Regulations).
  
- \_\_\_\_\_ (II) The Transferor is a corporation incorporated under the laws of a foreign jurisdiction but has elected to be treated as a U. S. corporation under Section 897(i) of the Internal Revenue Code, AND HAS ATTACHED TO THIS CERTIFICATE A TRUE AND GENUINE COPY OF THE ACKNOWLEDGMENT OF SUCH ELECTION ISSUED BY THE IRS.

B. The Transferor's social security number is \_\_\_\_\_.

C. The Transferor's address is \_\_\_\_\_.

3. The Transferor understands that this certificate may be disclosed to the Internal Revenue Service by the transferee and that any false statement contained in this certification may be punished by fine or imprisonment (or both).

4. The Transferor understands that each transferee is relying on this certificate in determining whether withholding is required and each transferee may face liabilities if any statement in this certificate is false.

5. The Transferor hereby indemnifies each transferee, and agrees to defend and hold each transferee harmless, from any liability, cost, damage, or expense which such transferee may incur as a result of:

A. the Transferor's failure to pay any U. S. Federal income tax which the Transferor is required to pay under applicable U. S. law, or

B. any false or misleading statement contained herein.

Under penalties of perjury, I declare that I have examined this certification and to the best of my knowledge and belief it is true, correct, and complete; I further declare that I have authority to sign this document on behalf of the Transferor.

EXECUTED in \_\_\_\_\_ County, State of \_\_\_\_\_

on \_\_\_\_\_.

Transferor: \_\_\_\_\_

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

Title: \_\_\_\_\_



# **ATTACHMENT 3**

Notice of Determination

Appendix D

To:
Office of Planning and Research
For U.S. Mail: P.O. Box 3044
Street Address: 1400 Tenth St.
Sacramento, CA 95812-3044 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:
LARRY W. WARD, CLERK
Deputy



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:
Filed per P.R.C. 21152

- 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)

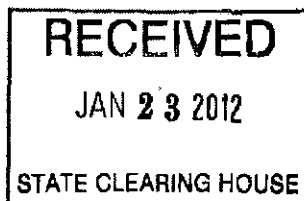
2101.50

\$64.00

Total Received 2165.50

Signature and title of person receiving payment:

Notes:



# **ATTACHMENT 4**

**CATEGORICAL EXEMPTION/ CATEGORICAL EXCLUSION DETERMINATION FORM**

<b>08-RIV-Palm Springs</b>	N/A	N/A	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.

**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

Print Name: Environmental Branch Chief

N/A

Signature

Date

N/A

Print Name: Project Manager/DLA Engineer

N/A

Signature

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

Print Name: Environmental Branch Chief

*[Signature]*

Signature

1-31-2012

Date

SANAT KHAMPHOU

Print Name: Project Manager/DLA Engineer

*[Signature]*

Signature

2-6-12

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; §106 commitments; §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.)